Book Review

The Innocence Commission: Preventing Wrongful Convictions and Restoring the Criminal Justice System

Jon B. Gould
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*Reviewed by Jeffrey D. Stewart**

The Innocence Commission: Preventing Wrongful Convictions and Restoring the Criminal Justice System is not strictly about potential redemption for convicts since the advent of criminal DNA testing. As author Jon B. Gould explains throughout his book, DNA testing can solve only some of the problems concerning wrongful convictions. Indeed, DNA testing does not apply to crimes which do not involve biological evidence, e.g. bank robberies. However, many of the wrongful convictions Gould and the Innocence Commission for Virginia (ICVA) explored involved rape or murder charges, for which DNA testing was of paramount importance.

The ICVA is not the first of its kind; Gould provides extensive background information regarding the concept of innocence projects. Initiatives from the United Kingdom, Canada, and North Carolina all preceded the ICVA. The United King-

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dom established the Criminal Cases Review Commission (CCRC) in 1997, which independently reviewed cases with "wide-ranging investigative powers."[1] The British example began long ago, however, as "[m]ore than a century ago Canada created royal commissions of inquiry . . . 'regarding the . . . fair administration of justice.' "[2]

Such commissions had a later start in the United States, though. Gould refers to various articles and books exploring criminal justice reform from the late twentieth century.[3] Of particular influence to Gould was *Actual Innocence* by Barry Scheck and Peter Neufeld, which recommended federal and state bodies of review that were similar to the CCRC in the UK.[4] After publication of their book, Scheck and Neufeld continued to call for domestic innocence projects.[5] Only two states, Illinois and North Carolina, heeded that call.[6] In the case of Illinois, such action was long warranted. Gould cites an Illinois death row statistic revealing more defendants were later exonerated than actually executed.[7] In 2000, Northwestern University, led by Professor David Protess' journalism class, and the *Chicago Tribune* continued the investigation into the state's homicide prosecutions, finding gross prosecutorial and systemic errors.[8] This environment prompted Illinois' Governor George Ryan to establish the Commission on Capital Punishment "to study the system of capital investigations and prosecutions in Illinois."[9] The Ryan Commission's report induced the governor to purge

1. JON B. GOULD, THE INNOCENCE COMMISSION: PREVENTING WRONGFUL CONVICTIONS AND RESTORING THE CRIMINAL JUSTICE SYSTEM 35 (2008).

2. *Id*. at 35 (quoting Barry C. Scheck & Peter J. Neufeld, *Toward the Formation of* "*Innocence Commissions*" *in America*, 86 JUDICATURE 98, 100 (2002)).

3. *See id*. at 36.

4. *See id*. (citing BARRY SCHECK ET AL., ACTUAL INNOCENCE: WHEN JUSTICE GOES WRONG AND HOW TO MAKE IT RIGHT 351-57 (2001)).

5. *See* GOULD, *supra* note 1, at 36-37.

6. *Id*. at 38.

7. *Id*. at 39 ("Between 1977 and 1999, of the more than 250 murder cases in which a defendant was sentenced to death in Illinois, fewer persons were actually executed (12) than were later released from prison upon questions of their guilt (13).").

8. *Id*. Recently, prosecutors in the Cook County (Illinois) state attorney's office began an investigation into the methods used by Professor Protess' students to question witnesses. *See* Monica Davey, *Prosecutors Turn Tables on Student Journalists*, N.Y. TIMES, Oct. 24, 2009, *available at* http://www.nytimes.com/2009//10/25/us/25innocence.html.

9. *See* GOULD, *supra* note 1, at 39.

the state's death row until the system underwent systematic change to something less "arbitrary and capricious."[10]

Gould recognizes the importance of the Ryan Commission, but distinguishes it as "a one-time inquiry."[11] He places more emphasis on North Carolina's Actual Innocence Commission (NCAIC), which the state's Chief Justice I. Beverly Lake initiated in 2002 with a personal appeal for a roundtable discussion of convictions and exonerations.[12] Gould refers to Chief Justice Lake's aims with approval, but points out that the commission "does not investigate individual cases. Rather, it considers the general sources of erroneous convictions and issues reports and best practices to prevent such errors."[13] North Carolina's example has some success, as the state implemented some of the NCAIC's recommendations for eyewitness identification procedures.[14]

It was in this context that Gould and his cohort began the formation of the Innocence Commission for Virginia. The ICVA was formed as a result of long-developing and concurrent social, political, and legislative processes in Virginia. Gould explains in great detail the underlying origins and motivations for the ICVA.[15] As an undergraduate professor, Gould encountered a student who challenged the conventional wisdom regarding post-conviction rights of incarcerated criminals.[16] In 2001, Gould responded by creating a death penalty course clinic, which would examine case documents and study pending capital cases.[17] Gould mentions that such a clinic was not a novel idea, as various undergraduate and law schools provide similar clinics that allow students to help represent indigent defendants.[18] Where the states and agencies either could not or would not help those who needed it, students and professors were able substitutes. Expounding a recurring theme, Gould subtly chastises the states for foregoing their institutional re-

10. *Id*. at 40.
11. *Id*.
12. *Id*.
13. *Id*. at 41.
14. *Id*.
15. As Gould puts it, "[t]o understand where we should be going, it is crucial to appreciate how we have gotten here." *Id.*
16. *Id*. at 42.
17. *Id*. at 44.
18. *Id*. at 43.

sponsibility to provide the same assistance: "In some instances, academics have mobilized to fill this breach."[19] After the students submitted their report in 2002, Gould involved himself with the Innocence Project for the National Capital Region (IPNCR), "an offshoot of the Innocence Project created by Scheck and Neufeld."[20]

The IPNCR won the case of Marvin Anderson,[21] a defendant wrongfully convicted in 1982.[22] The Anderson case revealed multiple problems within Virginia's criminal justice system.[23] In 2003, the ICVA formed to address these problems and any others uncovered in the cases it explored.[24]

Much of the narrative in *The Innocence Commission* involves Gould gently justifying the ICVA's cause to the reader. Gould often speaks directly to the reader, providing the reasoning and motivation for particular directions the commission chose to take. A prime example is how he places the ICVA into a sociological context: "[T]his description is intended to locate the ICVA's development in the collective action and social movement literature."[25] In this light, Gould emphasizes the agency-opportunity model of John Kingdon and the resource mobilization theory of John McCarthy and Mayer Zald as vehicles for advancing social change.[26] Gould describes the agency-opportunity model as actors with "a sense of self-confidence in their abilities and resources" advancing "proposals for policy change, trying to take advantage of a window of opportunity in political debate to accomplish their goals."[27] McCarthy's and Zald's resource mobilization theory, on the other hand, depicts a world

19. *Id*.

20. *Id*. at 46. The IPNCR is now the Mid Atlantic Innocence Project. *Id.*

21. *Id*. at 46-47.

22. *Id.* at 46.

23. *Id*. Gould and the ICVA repeatedly returned to the Anderson case to discover misconduct and derive possible solutions for problems in the criminal prosecution process.

24. *Id*. at 63. Gould does not provide an exact date for the formation of the ICVA. He does refer to a desire to begin research in the summer of 2003. Additionally, the meetings with IPNCR members occurred after 2002.

25. *Id*. at 51.

26. *Id*. at 49. Both models stress the importance of resources, opportunity, and motivated actors being necessary for successful change. Kingdon's model, however, does not emphasize resources to the same extent as McCarthy and Zald's.

27. *Id*.

where "actors cultivate a variety of resources to create a central movement organization and then organize others for change."[28] These models appear to have guided Gould and the ICVA members in finding the proper method of academic justification for the commission: "We each had considerable experience in the justice system; we believed that changes were necessary to improve the way that criminal cases were handled; and we felt compelled to do more than simply get together and complain about the status quo."[29]

Gould is especially sensitive to explaining why the ICVA fit into burgeoning social mores, but perhaps the best justification was that it was just the right time. However, during Gould's discussion of the ICVA's formation, he devotes the least amount of pages to the "window of opportunity," as opposed to the other tenets from the two models described above.[30] The foundation of the ICVA occurred in the recent shadow of the North Carolina Actual Innocence Commission and the Ryan Commission in Illinois. Furthermore, "the political climate was more hospitable to reform at that time than any of us could remember" in Virginia.[31] Gould attributes this climate to three factors: (1) Virginia just experienced two recent high-profile exonerations; (2) willingness to enact reform increased through piecemeal legislation; and (3) calls for reform came from the American Bar Association (ABA) and the American Civil Liberties Union (ACLU), as well as newspaper editorials.[32]

Part of the reason for Gould's caution came from the original uncertainty as to the ICVA's mission: "We knew we wanted to do something to improve the system of criminal justice [in Virginia], an effort that might help reduce wrongful convictions, but we did not start with a clear vision of what that work

28. *Id*. at 51.

29. *Id*.

30. Gould did not delineate a section for motivating actors, but the description of his own background and inspiration, as well as that of the involvement of IPNCR members, is more extensive than the section discussing opportunity.

31. *Id*. at 52.

32. *Id*. The cases were of Earl Washington and Marvin Anderson; legislation addressed post-conviction DNA testing; editorials criticized Virginia's 21-day rule, *see infra* text accompanying notes 66-71; and the ABA and ACLU criticized Virginia's indigent defense system. *See* GOULD, *supra* note 1, at 53.

would entail."[33] Many commissions and inquiries focused on the wrongful result, but Gould and the ICVA were more concerned with "what was being done to prevent these errors in the first place."[34]

To accomplish this goal, the ICVA wanted to incorporate many of the facets from its predecessors. Gould mentioned the commissions in Canada and the UK, Scheck and Neufeld's article, and most influentially, NCAIC.[35] The ICVA approved of NCAIC's "hybrid" structure, but ultimately the ICVA's goal was "to bring a series of recommendations to light, and as much as we may have expected particular issues to arise, we were committed to conducting a serious, thorough review of the cases in order to understand what mistakes had occurred and why."[36]

Gould continues to justify the ICVA's course of action, though. Much of this justification originated from the ICVA's status as a non-governmental, and therefore private, institution. As stated previously, Gould is especially sensitive to outside attitudes and how they could affect the impact of the commission's findings. One passage is particularly illustrative of this point:

> Criminal justice reform may be a difficult case to sell, but protecting the innocent — both current defendants and future victims — is an easier argument to advance. That said, I did insist on one tweak to our project's name. It was the Innocence Commission *for* Virginia, not *of* Virginia. Not only did I want to avoid any misconceptions about our private status, but I also could not help using another reminder (admittedly oblique) that this should have been the state's responsibility.[37]

Moreover, Gould refers to a fear of "alienat[ing] policymakers and criminal justice officials."[38] Such language reveals the balancing act of the ICVA: it wanted to be a serious institution, but it had to mind the potential image of a private organization "imposing" recommendations on the public at large.[39] This sen-

33. *Id*.
34. *Id*. at 54.
35. *Id*. at 54-55.
36. *Id*. at 55.
37. *Id*. at 56.
38. *Id*. at 57.
39. *Id*. at 67. Gould describes these two considerations in terms of what kind of approach was best to effectuate the public attention and eventual change that was the ICVA's mission.

sitivity to public image is a result of public perception of exonerating defendants as inherently "liberal," with the underlying fact that such a word can be a pejorative, whether that characterization is fair or not. As Gould states, however, such issues would be irrelevant had Virginia begun the effort by its own accord: "I deeply believe that it is the state's responsibility to provide oversight of the punitive system it employs."[40]

On behalf of the ICVA in *The Innocence Commission*, Gould makes sure to extend appreciation to the various law firms who provided assistance to the ICVA.[41] This portion of the book relates to both the commission's private status and the resource mobilization theory. As a private entity, the commission was responsible for raising its own funds.[42] Accordingly, the pro bono work of some of Virginia's most prestigious law firms was instrumental, in Gould's view, to maintaining independence from special governmental interests.[43] Additionally, acquiring the time of scores of attorneys, clerks, and interns represented a significant portion of the resources required to successfully advance the change desired by the ICVA.[44]

The ICVA considered three specific criteria for its case studies. These cases were not exclusively capital Virginian cases, but the ICVA did decide to study only rape and murder cases with wrongfully convicted defendants.[45] According to Gould, "Although wrongful convictions are likely in many kinds of cases, the stakes are highest for serious crimes, and we believed that these would receive the most attention if investigated."[46] Next, the ICVA limited its cases to defendants wrongfully convicted after 1980: "Because available case information dissipates over time . . . we were concerned about the reliability of the data if we were to push the investigation much further into the past."[47] Lastly, the commission studied only "cases in which a defendant's conviction was later overturned by a gov-

40. *Id*. at 56.
41. *Id*. at 59.
42. *See id.* at 56 ("In many ways, the ICVA's private nature hamstrung us as much as it aided [us].").
43. *Id*. at 58 ("We had few resources to support the ICVA and were not interested in taking time to write grant applications . . . .").
44. *See id.* at 59 (listing contributing law firms).
45. *Id.* at 60.
46. *Id*.
47. *Id*. at 60-61.

ernor's pardon or a court's order, or when prosecutors conceded that the wrong person had been convicted."[48] This last criterion represented a desire to elicit public attention through "factual exonerations," rather than risk the public ignoring the ICVA's study of "legal technicalities."[49] Again, both Gould and the ICVA were conscious of the public's perception of their work, or else the effort would be for naught:

> In general, we erred on the side of caution and conservatism, trying to temper any inflammatory rhetoric or unnecessarily provocative conclusions . . . to ensure that our report and recommendations would have the greatest chance to reach legislators and justice officials in Virginia.[50]

The ICVA published its final report on March 30, 2005.[51] It included descriptions of the 11 chosen cases, statistics, recommendations, and answers to confidential surveys of prosecutors, lawyers, and investigative agencies in Virginia.[52]

For the first two chapters, Gould provides a free-flowing explication of the history and motivations for changing the criminal justice system, particularly for indigent defendants and capital crimes. However, after this point Gould delves into the details of the defendants, cases, and procedures that he believes should be followed. As such, Gould begins the third chapter of *The Innocence Commission* briefly explaining the types of problems that led to the wrongful convictions, followed by a summary of the ICVA's findings.[53] For the remainder of the chapter, Gould provides (for each case) a summary of the facts, procedural history, identification of the main questions with the conviction, details of the problem(s) that led to the conviction, and problems with evidentiary issues and procedure. In Table 3.2, Gould presents each defendant and the corresponding categories (identified by the ICVA) that apply to each case.[54] These factors include eyewitness identification, interrogation methods, forensic science, defense counsel, discovery, tunnel vision,

48. *Id*. at 61.
49. *Id*.
50. *Id*. at 67.
51. *Id*. at 66.
52. *Id*. at 65.
53. *Id*. at 75-76.
54. *Id*. at 127.

and post-conviction.[55] Interestingly, each case had more than one factor that contributed to the wrongful conviction.

In the fourth chapter, Gould addresses the lack of standards or upgrades to procedures and policies that led to the wrongful convictions. This section deviates slightly from Gould's introductory promise not to simply restate the findings of the ICVA's final report. While Gould does make sure to explain the findings in a form that is readable for a broad cross-section of readers, the material is almost all duplicative. Of course, such a result is difficult to avoid, and Gould breaks down much of the data into presentable and easily readable subsections. Furthermore, each explanation of the ICVA's identified problem contains subsections describing the problem generally, the applicable law, recommendations, and lastly how those recommendations could potentially have altered the applicable cases in which the problem was found.

First, Gould explores eyewitness identification. Based on many of the ICVA's case studies, Gould and the ICVA believe sequential, double-blind eyewitness identification is the proper procedure to identify suspects.[56] This practice involves presenting a witness with uniform pictures of similar-looking individuals, sequentially, by an officer who is separate from the case.[57] Such a procedure would eliminate much of the eyewitness error in picking out suspects. First, the uniform pictures or lineup members would reduce artificial differences among potential suspects, e.g. a color photograph among black-and-whites or at least one figure in a police lineup without facial hair.[58] Next, double-blind procedures would shield the witness "from the suspicions of investigating officers."[59] The ICVA also recommended eliminating "show-up" identifications, which occur when a witness "shows up" to view the suspected perpetrator outside of an official police lineup, and almost always without counsel for the purported suspect present.[60] Additionally, the ICVA recommended electronic recording of the identification

55. *Id*.
56. *Id*. at 139.
57. *Id*.
58. *Id.* at 136, 139.
59. *Id*. at 141.
60. *Id*.

procedure; while video recording would be best, the ICVA's report acknowledged that "even audiotape is an improvement over a written transcript."[61]

Next, Gould addresses interrogation procedures. According to Gould, "[o]f the eleven cases investigated by the ICVA, two (or 18 percent) involved false confessions, but several more reflected problematic interrogation techniques."[62] These false confessions involved suspects of questionable intelligence or mental capacity.[63] To safeguard potential victims of pressured false confessions, the ICVA recommended videotaped interrogations[64] for the same reasons as those regarding eyewitness identification. The final report recognized the prior technological or financial constraints of having videotaping equipment present, but those issues are no longer a factor, given modern technological improvements.[65] Police departments can no longer convincingly claim that videotaping interrogations is impractical; costs "can be offset by reductions in frivolous challenges to police conduct and by the greater speed with which defendants who confess to a crime are likely to plead guilty."[66] Moreover, such recording ought to commence "as soon as the police begin questioning . . . and before the police first advise suspects of their *Miranda* rights."[67]

Post-conviction remedies were a somewhat different problem identified by the ICVA, as the Virginia General Assembly already partially amended the infamous "21-day rule" at the time of the commission's final report.[68] The "21-day rule" formerly allowed only 21 days after conviction for a defendant to come forward with alternate physical evidence to the Virginia Supreme Court.[69] In 2001, the assembly amended the rule to allow defendants to petition for a writ of actual innocence any time after conviction.[70] This amendment improved a convicted

61. *Id*. at 142.
62. *Id*. at 155.
63. *See id.* at 155-59.
64. *Id*. at 149.
65. *Id.* at 152.
66. *Id*. at 152-53.
67. *Id*. at 153.
68. *Id.* at 31-32.
69. *Id*. at 30. *See also* VA. SUP. CT. R. 3A:15.
70. *See* GOULD, *supra* note 1, at 30. *See also* VA. CODE ANN. § 19.2-327.1 (West 2010).

defendant's options, but it still had one caveat: the petition had to involve the presentation of biological evidence only.[71] Additionally, defendants who pleaded guilty or were paroled are not eligible to petition for the writ.[72] Accordingly, the ICVA believed further expansion of the amendments was necessary.[73]

With regard to criminal defense, the ICVA largely deferred to Virginia's Rules of Professional Conduct[74] and the Sixth Amendment.[75] However, indigent defense continued to be a lingering problem beyond the cases studied by the ICVA. The commission echoed the recommendations of the ABA's 2004 Spangenberg Report,[76] which called for: state funding for indigent defense services, a commission on indigent defense, uniform standards for indigent defense, and a system to collect data on indigent criminal services in Virginia.[77]

The ICVA paid particular attention to scientific evidence, specifically DNA testing.[78] But DNA testing was not as widespread or refined at the time of many of the ICVA's cases. Thus other "junk sciences," involving hair matching and blood type comparison prevailed for some wrongfully convicted defendants.[79] The commission's report also recognized the inherent limitations of DNA testing, including degradation of the evidence, costs, preservation problems, and non-biological crimes.[80] Like many of the ICVA's other recommendations, funding is paramount; indeed, the commission found it imperative to "allocate enough resources to public defenders and court-appointed counsel for indigent defendants so that necessary defense experts can be retained in appropriate cases."[81]

According to Gould, the ICVA's recommendation for "open files discovery" between prosecution and defense was

71. *See* GOULD, *supra* note 1, at 30.
72. *Id*. at 163.
73. *Id*.
74. *Id.* at 166-67 (citing VA. MODEL RULES OF PROF'L CONDUCT R. 1.7).
75. GOULD, *supra* note 1, at 166-67 (citing U.S. CONST. amend. VI).
76. Am. Bar Ass'n Standing Comm. on Legal Aid & Indigent Defendants, A Comprehensive Review of Indigent Defense in Virginia (2004), *available at* http://abanet.org/legalservices/downloads/sclaid/indigentdefense/va-report2004.pdf.
77. *See generally id. See also* GOULD, *supra* note 1, at 172.
78. GOULD, *supra* note 1, at 175.
79. *Id*. at 175-76.
80. *Id*. at 177.
81. *Id*. at 183.

one of the most controversial.[82] Gould repeatedly cites the U.S. Supreme Court case, *Brady v. Maryland*,[83] which obliges Virginia prosecutors to "provide to the defense any exculpatory evidence in their possession or in the possession of others acting on the commonwealth's behalf, including the police."[84] However, the results of the ICVA's prosecutorial surveys revealed that half of all jurisdictions surveyed provide only the minimum required by law.[85] The explicatory responses to the surveys revealed that open files policies were "both fair and practical in day-to-day cases."[86] Yet many of those surveyed also said defense counsel did not always request or look at the available files.[87] Gould approves of the other half of responding Virginia jurisdictions who go beyond the law in their discovery standards; but the "challenge is to bring the rest of the state into conformity . . ."[88] To effectuate this change, the ICVA recommended full disclosure and sharing between prosecution and defense, except "confidential and privileged information . . . that, if disclosed, could endanger witnesses or otherwise substantially threaten public safety."[89]

Tunnel vision was a recurring problem in the ICVA cases. According to Gould, tunnel vision is "the unwanted focus by police or prosecutors on a single suspect."[90] This problem is especially dangerous for the wrong suspect, as a narrowed prosecutorial focus eliminates other possibilities by making them appear less likely. The ICVA identified tunnel vision as a problem in eight of the 11 cases it studied.[91] To combat tunnel vision, the ICVA endorsed the recommendations of other lead-

82. *Id*. at 184, 192.

83. 373 U.S. 83 (1963).

84. *Id*. at 185. *See also Brady*, 373 U.S. at 87 ("We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."). The *Brady* Court applied this constitutional rule to the states via the 14th Amendment of the U.S. Constitution. *Id.* at 86.

85. *See* GOULD, *supra* note 1, at 186.

86. *Id*. at 187.

87. *Id*.

88. *Id*. at 190.

89. *Id*.

90. *Id*. at 193.

91. *Id*. at 194-97.

ing studies, which suggested continuing police training and refresher training for prosecutors.[92]

Finally, the ICVA recommended reform in the Virginia court system. Gould wonders how the courts can be willing to intervene in school funding but seemingly ignore the problems of indigent defense funding.[93] Specifically, Gould believes Virginia's caps on indigent defense attorneys' fees to be "a violation of the Sixth Amendment."[94] But he is careful to soften the blow, explaining:

> When I criticize the courts (and bar) for failing to stand up to fee caps and other inadequacies of indigent defense, it is not because I think they are wrong to weigh the political costs of dramatic action against potential success. It is because I think their calculus is off. Criminal justice reform must account for political pressures, for public opinion, for costs and interests that resonate outside "the usual suspects" in the reform community.[95]

Again, Gould gently chastises the system, ever-mindful of the delicate balancing act required when a group advocates for broad, systemic change.

The final chapter in *The Innocence Commission* is aptly titled "Putting it All Together."[96] Here, Gould summarizes the effects of the ICVA report on Virginia's criminal justice system going forward. In addition, he describes the efforts of other states to reform their indigent defense systems, including Wisconsin and California.[97] Lastly, Gould takes one final look at the process of reform, and how it performs in the criminal justice system.

Conspicuously absent until now, Gould's opinion on death penalty reform is relegated to a three-page synopsis near the end of the book.[98] Yet perhaps such a complex topic was necessarily distinguished from both Gould's and the ICVA's analysis. Gould describes a scenario where abolitionists of the death penalty can no longer claim such a high margin of error, while proponents simultaneously point to the diminished error as even more reason to go forward with capital punishment.[99] The

92. *Id*. at 198.
93. *Id.* at 201.
94. *Id*. at 201.
95. *Id*. at 203.
96. *Id*. at 204.
97. *Id*. at 222, 225.
98. *Id.* at 241-43.
99. *Id*. at 241-42.

pervasive differences between the two sides might explain why Gould chose to largely avoid the issue. Almost wearily, Gould calls for the separation of criminal justice reform from the death penalty, because "the *real* problem is that many cases below capital prosecutions do not get the attention they deserve to prevent and rectify error."[100]

The irony of Gould's statement is that one of the stated purposes of the ICVA was to focus on factual innocence, to essentially avoid boring the public. Throughout *The Innocence Commission*, Gould refers to the need to grab the public's attention, to effectively promote the desired change to Virginia's criminal justice system. Moreover, the ICVA consciously, and perhaps necessarily, avoided lesser cases in order to receive the greatest amount of attention. For this reason, Gould's final lament regarding the treatment of lesser cases rings a bit hollow.

But it is not a total loss; Gould mentions that Virginia eventually "created the [Virginia] Indigent Defense Commission (VAIDC) in 2004 to provide oversight and certification of attorneys who represent indigent defendants in the commonwealth."[101] Such a development was one of the central recommendations of the ICVA. Regardless of its extent, the creation of a statewide commission, with direct links to the ICVA report, represents a success. Looking further inward, it represents a success of the sociological models to which Gould so carefully ascribed. Therefore, if Gould truly wants to address those lesser cases, he should build on the example the ICVA set with higher profile cases. After all, much of the challenge is "to get the ball rolling."[102]

100. *Id*. at 242.
101. *Id*. at 221.
102. *Id*. at 68.