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Thurgood Marshall School of Law



EARL CARL INSTITUTE FOR LEGAL & SOCIAL POLICY, INC.



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL OF LAW
INNOCENCE PROJECT
OCA ANNUAL REPORT FOR FISCAL YEAR 2013
(September 1, 2012 to August 31, 2013)

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Annual Report
Fiscal Year 2013

Introduction.

The Thurgood Marshall School of Law Innocence Project (TMSLIP or Project) continues to be housed and operated under the Law School's Earl Carl Institute for Legal and Social Policy (ECI or Institute). TMSLIP has been operated under the ECI since April 2009. The ECI seeks to address, through research and direct advocacy, the legal and social problems that disproportionately impact the urban community and in particular minorities. One of the primary ECI focuses is the training and provision of resources to Thurgood Marshall Law students in legal advocacy. TMSLIP is one of three legal clinics operated by the ECI in support of its goal to better prepare students for full participation in the legal profession by substantially enhancing the student learning experience and by promoting socially responsible public service that promotes civil and human rights.

As in 2012, the Project remains run and overseen by the ECI Center for Criminal Justice Associate Director, Anthony S. Haughton, who serves as the Project's Supervising Attorney. Additional oversight and decision-making authority rests in the hands of TMSL Dean Danyne Holley and ECI Executive Director Sarah R. Guidry. Each level of the Project's leadership plays a distinct and cooperative role in both the development and direction of the program.

The following report details the major works of the TMSLIP during fiscal year 2013.

Fiscal 2013

Intake:

The Project currently receives approximately twenty to thirty new requests for assistance per month. This rate has been fairly consistent over the past two years. The Project currently has over 1,300 total requests for assistance¹, and the number of requests is expected to continue to grow at a similar rate over the next fiscal year. The growth in the rate of new requests for assistance stems directly from the Project's continued aggressive outreach campaign and an increase in the use of the Texas Prisoner Inmate Questionnaire (TPIQ).

The intake process has continued in much the same way as in 2012, with two additional refinements. Initially, the Project replied to letter and phone inquiries with post-card directions on how to obtain, fill out, and return the TPIQ. Now, the project sends the questionnaire in its initial response. Thus eliminating the additional steps incurred by use of a post-card response. This change reduces the overall time for prisoners to respond, and eliminates concerns inmates raised regarding obtaining the TPIQ from their institution.

Second, the ECI has provided the Project with paralegal assistance in responding to initial letter and phone inquiries. The use of a paralegal has allowed for quicker identification of and response to inquiries that do not meet our guidelines and /or do not request help on an actual innocence claim, and has sped up the process of responding to the initial request with a questionnaire. In addition, two law students are assigned to help with administrative tasks. These administrative students worked up to 10 hours per week for 12 weeks in the spring and fall, and up to 20 hours in the summer. Their

¹ The project reported a total of just over 800 requests received by the end of fiscal 2012.

responsibilities revolved around initial intake, filing, letter writing, other administrative tasks, and first line questionnaire review.

Our review process remains the same for questionnaires. Step one is an initial review and rating of the request for assistance by students. The students make a facial evaluation of the strength of the actual innocence claim, which they record on a numerical scale. If additional material is needed, the student obtains it from the Internet if possible, or immediately sends a request for the information. The students also highlight cases that fall outside our practice parameters for quick review and possible rejection by the Project Attorney. The Project Attorney reviews all requests for assistance once Questionnaires are submitted. The Project Attorney makes the final determination on whether the request should be rejected or not, and where the case should be placed in our prospective case pool.

During fiscal 2013, 54 cases have been rejected after initial screenings. Most initial screening rejections stem from facially apparent causes. For example, requests by inmates for assistance for offenses that occurred out of state or requests for assistance for trial or general appellate representation. Rejection of Requests after second level review, that is, after receipt of a questionnaire but before initiating investigation, generally stems from a determination that no cognizable actual innocence claim is being made.

Outreach and Community Development

During FY 2013, the Project continued its efforts to raise its presence and the availability of its services to the community. The outreach this year included television and radio appearances and hosting and participating in various Forensic and Wrongful Conviction based related conferences. Most notably, in the summer of 2013, the Project

entered into an agreement with the *Prison Radio Show* on KPFT 90.9 to appear on the show once monthly to discuss issues relating to forensic science and actual innocence claims. The following is a partial list of Outreach / Community Development Activities in Fiscal 2013:

1. 10/4/2012 - - TMSLIP Recruitment Event and information session. 52 law and journalism students attended the presentation which featured Kelly Siegler, special prosecutor on the Anthony Graves case. Ms. Siegler presented on the prosecutorial misconduct she found when she examined the Anthony Graves case and found no legitimate evidence linking him to the murder that sent him to death row. The event also featured a presentation by exoneree Michael Green on his wrongful conviction experience for a rape out of Harris County.
2. 11/9-10/2012 - - ABA Practicing in the Era of Forensics II, CLE, (Lubbock) Project Attorney Haughton acted as a presenter and team leader. Haughton presented on understanding and challenging issues associated with Arson and Finger print examinations.
3. 12/13-14/2012 - - ABA Practicing in the Era of Forensics II CLE (Memphis, Tennessee) Project Attorney Haughton acted as a presenter and team leader. Haughton presented on understanding and challenging issues associated with Arson and Finger print examinations.
4. 1/11/2013 - - Houston Chronicle Article, Project Attorney, Provided background information on Competency for Execution.
5. 01/19/2013 - - Sienna Library Youth Group, Project Attorney and Project students presented on street law and actual innocence issues.
6. 02/21-22/2013 - - Second Annual Hon. Craig Washington & Sen. Rodney Ellis Excellence in Indigent Defense CLE, Co-Sponsored along with TCDLA and Harris County Public Defender; 2-day event with over 200 attendees (students and attorneys).
7. 02/25/2013 - - 2013 African American Legislative Summit, Project Attorney was a panel presenter on the School to prison pipeline for the Texas legislative Black Caucus (TLBC)
8. 8/19 - - Billy Smith Houston Chronicle Reporter presented to law and journalism students on Human Tragedy Photo Essay depicting the experiences of 24 Texas Exonerees.
9. Monthly - - Ongoing - - Project Attorney and 2 Project Students (per show) present on KPFT Prison Radio Show on Actual Innocence Issues.

Student Participation / Student Development

The Project remains a firm favorite with Thurgood Marshall School of Law students. Donnell Samuels, a spring of 2013 student, recently licensed in Georgia, said:

“I did not intend to become a criminal defense lawyer. In fact, my background is in nursing, as I am also an R.N. But the Innocence Project gave me the best practical preparation and insight into lawyering while in law school. In fact, being in the project spurred me towards attending a SANE (Sexual Assault Nurse Examiner) training, and because of my time with the Project, I was able to see exactly what the proper limits on SANE testimony should be, and how important adhering to those limits are to truthful fact finding in trial. It was also my most interesting and important class. I saw how the system fails and how innocent people are sometimes convicted and I was able to work towards undoing a wrongful conviction.”

Former summer 2012 volunteer summer intern, and current Fall 2013 student, Penina Senduwula, states:

“The most rewarding experience I’ve had in law school, thus far, is the time I’ve devoted to the Innocence Project (“IP”). The first time I became involved was when I volunteered the summer after I completed my first year of law school. I spent countless hours performing work on a case of a man who claimed to be innocent of the crime for which he was convicted. That summer, I knew instantly that my life had turned a chapter: I was no longer an everyday law student; I was now a justice fighter. After my summer experience, and as soon as I was academically eligible to join the IP class, I joined. Throughout my time working for IP, I have researched, investigated, interviewed, and produced numerous documents from memorandums to reports. In the classroom setting alone, I have learned a great deal about the legal mistakes and resulting injustices that happen all too frequently in the criminal justice system - - information I believe should be known by every citizen - - information that is vital to criminal attorneys.

... I’ve always told myself that the reason I chose law is to help people. Most of the people who write the IP have no other recourse; we are their last hope. To the extent they are innocent and wrongfully convicted, there can be no greater good, no greater justice than helping them. And the Innocence Project gives me not just the opportunity, but also the knowledge and guidance to do just that, help people secure justice. For me, this is not just a great legal experience, it is an honor.”

A total of 40 students participated in the Project in 2013. The IP class and clinic had a total enrollment of 10 students in the fall and 7 students in the spring. The Motions Practice / Innocence Project class had 7 students in the summer. The volunteer summer intern program had 9 students (7 law students and 2 non-law students). Four students participated in the project as administrative students. Two students participated in the program as part of Senator Rodney Ellis's Texas Legislative Intern Program. And one journalism student participated in the program at different times during the year.

As noted in our 2012 report, the IP class and clinic students receive four credit hours for their participation in the Innocence Project class and clinic (2 hours for the class and 2 hours for clinic). The class is a typical seminar-type class where students are exposed to the causes of wrongful convictions and substantive and procedural issues related to obtaining relief for the actually innocent. The clinic, in-line with ABA requirements, requires each student to work 120 clinical hours for the two credit hours they receive on successful completion of the semester. Each student also gives a minimum of an additional 8 hours to the project per semester in the form of individual one-on-one weekly thirty-minute meetings with the project attorney for direct supervision of their cases.

Law students gave a total of 3,525 hours of investigation on the Project's cases during the past year, and received a total of 174 hours of direct one-on-one supervision. The students were able to start or continue investigations on 92 cases, and were able to reach the conclusion that we should close 38 of those cases. The remaining 54 cases continue to be investigated. TMSL students, through use of their 3L bar cards, were able

to participate in one case in which they acted as co-counsel, providing additional investigatory and litigation resources to the attorney who represented the client.

Similarly to 2012, the Project invited a variety of guest speakers to visit with the class in 2013. Presentations made in 2013, included presentations from exonerees, potential clients, prosecutors, defense attorneys, and this year a journalist. As in the past, the exonerees made the most powerful impact on the students, but students were also energized by the work being done on wrongful convictions by both prosecutors and defense attorneys.

Presentations by potential clients took place as part of “clinical class investigation brainstorming sessions”. In these sessions a potential client is invited to attend the clinic class and make a presentation or answer questions relating to his or her innocence claim. If students have previously been assigned to investigate the potential client’s case they complete the presentation, including a discussion of the investigation they have accomplished to date and of proposed tasks yet to be accomplished. Thereafter, the discussion is opened to the rest of the class for further ideas on additional investigation.

This year the Project was able to send 13 students to CLE’s around the state. The CLE’s were Innocence based Forensic CLE’s and much of the material covered was supplemental to that covered in class.

As noted above the Project also expanded its course offering this year, adding a new class on Motion Practice/ Innocence Clinic. As a two hour seminar course, the class combines an examination of both forensic and non-forensic evidence in light of current advances in understanding the value and limits of such evidence, and an explanation of and examination of methods for obtaining, preparing, presenting, and challenging such

evidence. Motions practice students are required to perform 20 hours of clinic work as part of the course curriculum. This year the motions practice students performed 138.5 hours, primarily of clinic intake work.

The project has also through its affiliation with the ECI been intimately involved with student development in the area of wrongful convictions through the research and writing arm of the ECI and the Texas Legislative Intern Program. Under the ECI writing and research arm the Project currently supervises one student who is working on a paper detailing the losses incurred by the individual through wrongful conviction. The title of the paper is, *Where Are They Now?* The aim of the paper is to interview each of Texas' DNA exonerees to determine the extent of the harm incurred from their wrongful conviction. The Project is also working on a paper that examines the feasibility of implementing videotaping requirements in serious criminal cases to reduce the likelihood of false confessions.

The Texas Legislative Intern Program (TLIP) provided two full time law school interns to the Innocence Project in the Spring of 2013, and has committed to providing at least one full time law school intern for the Spring of 2014. The interns attend class with the TMSL students but otherwise act as full-time law clerk / investigators on their assigned Project cases. They are closely supervised by the project attorney.

Resource Development and Volunteers

With the growth in the rate of new requests for assistance the project has continued to seek out avenues to generate additional resources and for ways to increase efficiencies in its intake process. The project sought and obtained additional resources from the law school and from the ECI during 2013, and unsuccessfully applied for

several grants during fiscal 2013. The law school provided two part-time law students on a semester basis (fall, spring and summer) to assist with intake and administrative tasks for the Project. This assistance was first secured in 2012, and continued throughout 2013. In addition, the law school also provided for the first time an Innocence Clinic Motions Practice class. The class, taught by the Project Attorney, was given in the summer of 2013, and the school has indicated that it intends to continue the class as part of its annual summer curriculum offerings. Students in the class also assisted clinically providing intake, administrative, and research duties for the Project, as part of their course requirements.

The Project had its second successful volunteer summer intern program, and has been informed by the law school that it can carry the program annually. The volunteer summer intern program is open to law and non-law students and this year the program had 7 law students and 2 non-law students. Volunteers are required to commit to at least 8 weeks of work over the summer semester, and to perform at least 15 hours of work per week. Summer volunteers work primarily on intake.

In 2013 the ECI provided additional administrative assistance with personnel for initial intake dealing directly with first line letters. In addition the Institute also provided support with efforts to secure grant funding. With the assistance of the ECI's grant funding arm the program put together a proposal for a Recantation Diversion Project and applied for two separate grants. The Project is currently sponsoring a third year student who is seeking an Equal Justice Works Fellowship.

The Project is in the process of putting together an advisory board to assist with, amongst other things, resource development.

Other Volunteers

During fiscal 2013, as in 2012 the Project has also been assisted by Professors from different departments at the University including: law, journalism, forensic and public administration. The journalism department has also provided a student who volunteered with the Project during 2013. In 2013, the Project was also able to secure additional attorney and other professional volunteers to assist with the review of cases and with the investigation of actual innocence claims. Most notably, the Project secured the services of an Expert Psychologist who has volunteered to assist in performing all of the examinations required and in testifying if needed in one of our most complex recantation cases.

Investigation / Litigation

In Fiscal 2013 the Project opened a total of 340 new cases, and screened 263cases². Of the cases screened, the Project closed 52 cases and have an additional 40 cases scheduled for closure. The project started the year with 33 open investigations and has opened 59 new investigations. During the year our students have interviewed more than 30 lay witnesses, experts, and / or attorneys. The cases we investigated this year have been primarily non-DNA cases. Of the cases we have investigated, we have determined that 38 should be closed, and we are continuing investigations on 54 cases.

The Project's investigations have mainly taken place in Houston, San Antonio, Killeen, and Dallas, but other Texas locations have been visited and some limited out of state investigation took place during 2013, including investigation in Muscatine, Iowa. The law school has paid for all travel away from Houston.

² The Project screened 78 additional cases carried over from but not screened in fiscal 2012

The Project did not file any actual innocence cases in 2013, but it did agree to engage in litigation as co-counsel in one previously filed case that had several hearings through 2013. In that case, third year law students obtained 3L bar cards and participated in investigation and litigation. The case, involving one of 6 co-defendants is currently pending judgment. Relief in that case may lead to further review of the innocence claims associated with the other co-defendants' cases.

The Project is nearing the end of investigation in several other cases and hopes to file additional cases into litigation during Fiscal 2014.

THURGOOD MARSHALL SCHOOL OF LAW INNOCENCE PROJECT OCA

ANNUAL REPORT FISCAL YEAR 2013

WORK PERFORMANCE DATA

INTAKE

Description	Total
Incoming requests from inmates for innocence review	340
Number of cases screened	263
Number of cases rejected after screening	52

SCREENING

Description	Total
Questionnaires sent	211
Questionnaires returned	20
TPIQ'S received	105

INVESTIGATION

Description	Total
Total Student Hours ³	3,525
Total Attorney Hours	1,218
Investigations open at start of year	33
New investigations initiated	59
Investigations that suggest closing case	38
Open investigations	54

LITIGATION

Litigation initiated	1 ⁴
Clemency proceedings initiated	0
Number of cases clemency granted	0
Convictions overturned	0
Cases referred to another institution	0

³ This number does not include, administrative student hours (718), volunteer student hours (law students 859, non-law 134) or Motions Practice student clinic hours (138.5) which were primarily dedicated to intake and questionnaire review, but does include investigation by the two TLIP interns.

⁴ The Project acted as co-counsel in one Harris County case, which is now pending judgment.

STUDENT PARTICIPATION

Description	Totals
Number of TMSL Law students participating in Project ⁵	31
Hours worked by TMSL law students	3534
Number of Non-TMSL Law students participating ⁶	2
Hours worked by Non-TMSL Law student	984
Students from other fields of study participating in the Project	3
Hours worked by students from other fields of study	128

STUDENT ADMIN⁷ PARTICIPATION

Description	Totals
Number of TMSL Law students participating in Admin	4
Hours worked by TMSL law students	718

ATTORNEY PARTICIPATION

Description	Totals
Staff Attorney Hours	2,281
Volunteer Attorney	42
Assistance from other Attorneys (school only)	32

⁵ The Innocence project class and clinic had 10 students in the fall and 7 students in the spring. The Motions Practice / Innocence Clinic class had 7 students, and 7 students participated in the IP clinic summer volunteer program. This figure does not include the administrative students hours which are set out separately.

⁶ Spring 2013 - - Refers to two fulltime student interns from The Southern Law Center, and one worked for the entire semester, one worked for half of the semester.

⁷ The School has agreed to pay for 2 students a semester to assist with the administrative tasks associated with the project. The students work up to 10 hours each per week for 12 weeks.