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# **An Evaluation of The Texas Innocence Projects**

A Report to the Texas Indigent Defense Commission





# **An Evaluation of The Texas Innocence Projects**

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A number of people at each of the funded law schools also shared their personal in-depth knowledge of the innocence projects at their respective institutions. Nearly thirty students spoke about how the program has influenced their law school experience and future careers. Additional perspective was offered by administrators and faculty responsible for the oversight or implementation of innocence clinics. We wish to recognize the following individuals.

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# **Executive Summary**



## EXECUTIVE SUMMARY

Since 2005, the Texas State Legislature's General Appropriations Act has included a rider allocating \$400,000 per biennium for the purpose of establishing innocence clinics at each of the state's four public law schools. Since that date, the Texas Indigent Defense Commission has administered the funds through contracts with the following institutions:

- Thurgood Marshall School of Law Innocence Project (TMSLIP) at Texas Southern University,
- Texas Tech University School of Law, contracting with the Innocence Project of Texas (IPTX),
- The University of Houston School of Law Innocence Project (UHIP), and
- The University of Texas School of Law Actual Innocence Clinic (UTAIC).

This report examines the factors shaping the organizational structure, operations, and outcomes at these programs. Such a review is timely since Texas A&M University and the University of North Texas recently established new Schools of Law in 2013 and 2014 respectively. Documenting lessons learned over the past decade will inform planning for the future.

## PART I: ADMINISTRATION OF INNOCENCE PROJECTS

### *Project Administration*

Three of the four innocence projects are located within the administrative structure of the law school. There, state and federal guidelines regulate practices in areas such as business procedures, personnel decisions, travel, purchasing, performance evaluation, and restrictions on lobbying. Only one site, Texas Tech University, provides innocence clinic services through an external provider, the Innocence Project of Texas. Unlike the law school-based projects, the independent non-profit organization is primarily accountable to their board of directors rather than to the university. Therefore, when sub-awards agreements are used, special provisions such as regular status reports on contract-related accomplishments or required submission of conflict of interest policies guiding non-profit board members can help insulate the programs against factors outside law school control that can put program operation or integrity at risk.

### *Program Costs*

The \$200,000 biennial allocation for each innocence program is sufficient to cover core personnel costs. However, supplemental funding is essential for the programs to be sustained. All operational costs such as office space, equipment, supplies, and business services are covered by local fund sources. Local contributions toward personnel range from \$10,000 to more than \$100,000 per program per year. Since FY 2014, only the University of Texas Law School has provided resources to cover costs of investigation such as trial transcripts, evidence testing, experts, or travel. At other sites, cases are commonly put on hold until the program can acquire funds to evaluate evidence, delaying the time to completion by

weeks or months. As little as \$17,000 per year has significantly increased case processing efficiency at UTAIC.

### *Resource Development Strategies*

The law school-based innocence projects operate entirely within the budget available from state and university funds. As a non-profit organization, the Innocence Project of Texas has adopted a different strategy. IPTX has leveraged donor contributions to implement a resource development strategy including fundraising, board development, and grant-writing. As a result, at this site a diverse portfolio of innocence initiatives – large-scale forensic case reviews, student investigation teams at multiple universities, and continuing legal education – complement and enhance the state innocence contract. While these accomplishments are impressive, the complex mix of fund sources makes comingling of state and private funding a concern. To ensure transparency, as a general rule any non-state entities providing innocence program services should account for the source of funds used to support activities that are disallowed under the state contract.

## **PART II: INNOCENCE CASE FLOW**

### *Case Processing: Screening*

An average of nearly 3,000 total requests for assistance are submitted to the state’s innocence projects each year. Most come in the form of a letter, though increasingly cases are also being identified through institutional reviews of forensic cases within a government agency. Examples include arson cases identified through the State Fire Marshall’s Office or hair and fiber evidence from the Texas Department of Public Safety. If early evidence suggests an innocence claim could be valid and the case meets program criteria, a questionnaire is sent to gather more information. Each project processes between three and eight questionnaires each week on average. Those approved are considered to be “pending investigation.” At the end of FY 2014, an average 432 cases were pending at each of the innocence sites.

### *Case Processing: Investigation*

UHIP and UTAIC have the most liberal review standards, accepting about one of every six applicants for investigation of a wide variety of innocence claims. IPTX is the most selective, accepting just one of every 21 applicants, largely because they prioritize cases with a forensic claim. The median case takes a year or longer to investigate. One reason is the lack of funds to pay for documentation, evidence tests, or expertise needed to determine the validity of a claim. Providing paraprofessional support to assist Clinic Professors with bringing advanced cases to closure would also help expedite case flow. Finally, student experience level is a factor. Case processing occurs most quickly where law school policies allow and encourage clinic participants to enroll for multiple semesters.

### *Case Processing: Pursuit of Legal Remedies and Case Outcomes*

Together, the currently funded innocence projects consider nearly 3,000 requests for assistance each year. Legal remedies have been pursued in 62 cases, and some form of relief has been granted to 21 individuals, 13 of whom have been exonerated. Three of every four exonerations was achieved at IPTX. A substantially stronger financial base and networked relationships with a partners positioned to refer promising innocence claims have helped to advance a larger number of cases toward exoneration at this site.

## **PART III: STUDENT AND LAW SCHOOL PERSPECTIVES**

### *Student Experience*

More than 800 students completed innocence clinics since 2005. The state-funded clinics all share a similar structure. Aspiring attorneys learn about post-conviction law and innocence investigation in the classroom, then practice their skills on people with wrongful conviction claims. Every student interviewed said the experience gained through this unique opportunity will one day make them better lawyers. Many of those who completed the program in past years are currently applying their clinic education in careers as professional attorneys, in public policymaking, or in pro bono work.

There are, however, opportunities for improvement. Law school policies prohibiting or discouraging innocence clinic enrollment over multiple semesters have a detrimental effect. Students at the University of Houston and Texas Southern University, where one-time participation is the norm, rarely have time to develop advanced investigation skills or to follow promising cases over time. The median days required to complete an investigation at these universities is at least 23 percent longer than at institutions where repeat participation is allowed and encouraged. Changes to policies that discourage sequential enrollment would support faster case processing and potentially improve program outcomes.

### *Benefit to Law Schools*

Texas's state-funded innocence projects view the clinics as a point of institutional pride. They value the partnership with the legislature and the Indigent Defense Commission and are pleased to have the opportunity to help address one of the most important and intractable challenges facing policymakers and the criminal justice system. They also see the programs as an important enhancement to students' law school experience. The innocence clinics expose students to broad justice objectives, and they gain practical lawyering skills that help them graduate "practice ready."

## **PART IV: THE FUTURE OF TEXAS'S INNOCENCE PROJECTS**

### *The Future of Funding*

Policymakers must determine whether to integrate the state's newest public law schools into the current innocence project infrastructure. For expansion to succeed, a sufficient and stable funding base is essential for both old and new members of the innocence network. In addition to maintaining current

funding levels, a small amount of targeted new investment is needed to cover costs of investigation and to provide paraprofessional staff to focus on the closure of advanced cases. This incremental new funding would significantly enhance the sites' ability to process innocence claims, increasing the state's overall return on investment and potentially leading to more exonerations.

### *Future Focus of Investigation*

Looking toward the future, Texas innocence projects face a value choice about how the state allocation should best be used. One course is to focus on efficiency, directing limited resources toward high-volume single-cause forensic reviews of wrongful conviction, yielding a larger number of exonerations at relatively low cost. A second course is to focus on fairness, following traditional letter requests from people who often lack forensic evidence but who would otherwise have little chance of a hearing. The contrast between forensic and non-forensic cases highlights a pivotal dilemma faced by the innocence projects. The state-funded projects are intended to assist all individuals with an innocence claim. Yet resources are limited. In the coming years, then, the projects must find ways to meet the state's expectations for identifying and remedying wrongful convictions while balancing the use of forensic and traditional tools for investigation.

### *Future Collaboration*

To date, the state's four innocence projects have operated with relative independence. Still, they share a number of common needs and overlapping interests. Closer communication and cooperation in these areas would be advantageous. Quarterly telephone meetings would allow for timely consideration of emerging challenges, concerns, or opportunities. Face-to-face meetings held at least annually would provide a venue for shared input regarding long-term foundational issues related to the basic innocence mission. Specific areas in which collaboration may be beneficial include centralized case screening, shared litigation expertise, the development of high-quality continuing legal education opportunities regarding wrongful conviction, increasing community and stakeholder awareness of innocence-related concerns, and mentorship of new innocence projects at the Texas A&M University and University of North Texas Schools of Law, should they be funded.

## **PART V: CONCLUSIONS AND RECOMMENDATIONS**

The innocence project review resulted in six recommendations.

**FINDING 1:** Expansion of the innocence projects would benefit the state, but the current \$200,000 biennial funding level should at least be maintained for every program.

**FINDING 2:** Innocence projects that are operated outside of the law school infrastructure require special oversight provisions.

**FINDING 3:** Incremental investment to offset costs of investigation and to provide paraprofessional staff assistance would enhance efficiency and expedite case processing outcomes.

**FINDING 4:** Law school policies should allow and encourage contiguous student enrollment in innocence clinics.

**FINDING 5:** The innocence projects must find a balance between claims amenable to forensic testing and those requiring more costly and time-consuming non-forensic methods of investigation.

**FINDING 6:** The innocence projects should seek out new ways to collaborate and share resources.



**An Evaluation of  
The Texas Innocence Projects**



# INTRODUCTION

In 2005, the General Appropriations Bill passed by Texas's 79<sup>th</sup> Legislature contained a provision for \$400,000<sup>1</sup> each year of the biennium to be administered by the Texas Indigent Defense Commission for the support of innocence clinics at the state's four public law schools (Appendix A). These include:

- Thurgood Marshall School of Law Innocence Project (TMSLIP) at Texas Southern University,
- Texas Tech University School of Law, contracting with the Innocence Project of Texas (IPTX),
- The University of Houston School of Law Innocence Project (UHIP), and
- The University of Texas School of Law Actual Innocence Clinic (UTAIC).

By training students to understand the causes and consequences of wrongful conviction and to undertake investigations to identify and gain release for innocent people, these programs blend multiple missions for the benefit of the state. First, the innocence projects provide an important fail-safe for people who may be imprisoned for crimes they did not commit, thus improving the overall integrity of the criminal justice system. Additionally, students gain practical experience investigating and litigating cases under the supervision of attorneys. In this way, the innocence clinics educate future legal practitioners and policymakers about the causes of wrongful conviction laying a foundation for systemic change and improvement over the long term.

The need for Texas's innocence programs is evident. According to the National Registry of Exonerations,<sup>2</sup> since 1994, 57 Texans have been wrongfully convicted and later proven innocent through DNA testing. Since 1989, an additional 130 individuals have been cleared of mistaken convictions without the benefit of DNA testing. More inmates have been cleared of false conviction in Texas than any other state.

The consequences of convicting an innocent person are serious. Beyond the tragic personal costs of incarceration for innocent people and their families, when the wrong person is accused, actual perpetrators often go on to commit additional crimes. Nationally, 160 perpetrators identified after DNA exonerations were found to have committed 145 additional crimes including 77 rapes and 34 murders while the wrong person was in prison.<sup>3</sup> Texas's state-funded innocence clinics fill an important gap in the continuum of protections against wrongful conviction. Without these publicly-funded programs, a significant proportion of people in prison now would have nowhere else to turn for a case review.

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<sup>1</sup> For the 2012-13 Biennium only, the state innocence allocation was reduced to \$320,000.

<sup>2</sup> "Exoneration Registry." *The National Registry of Exonerations*. Accessed May 15, 2015, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

<sup>3</sup> Senator Rodney Ellis, "DNA Exoneree Michael Morton, and Advocates Push for Stronger DNA Testing Law." *Senator Rodney Ellis RSS*. February 9, 2015. Accessed May 15, 2015, <http://www.rodneyellis.com/2015/02/09/sen-ellis-dna-exoneree-michael-morton-and-advocates-push-for-stronger-dna-testing-law/>.

## **PURPOSE OF THE STUDY**

The Texas Indigent Defense Commission provides oversight of the innocence projects through a contract with the host law schools. However, legislative guidance is broad and there are substantial differences across the funded projects. A comprehensive review of all four programs offers a means to better understand differences and similarities as well as the factors that have shaped their structures, operations, and outcomes. Furthermore, with the acquisition of Texas Wesleyan Law School by Texas A&M University in 2013 and the creation of the University of North Texas School of Law in 2014, interest has been expressed in expanding the state-funded innocence mission to these campuses. These developments pose an opportunity to review the evolution of current projects and consider how future efforts might be directed.

## **METHOD AND ORGANIZATION**

From September 2014 through March 2015, the Public Policy Research Institute at Texas A&M University conducted site visits, interviews, and analysis of program and case data in order to document innocence project characteristics including:

- Organizational and funding structure;
- Educational experiences of students participating in the clinics;
- Innocence case flow;
- Communication and collaboration between projects;
- Relationships between the innocence projects and the host law schools;
- External affiliations and partnerships; and
- Innocence-related accomplishments.

The pages that follow present the results of the study. Part I of the report (Chapters 1 through 3) focuses on administration and cost of the innocence projects. Part II reviews the flow of cases being investigated. Chapters 4 through 6 discuss case screening, investigation, and outcomes respectively. Part III describes the experience of students enrolled in the clinics and the benefits reported by the host law schools (Chapters 7 and 8). In Part IV, Chapters 9 through 11 focus on issues of importance for the future of Texas's innocence clinics, and conclusions and recommendations are presented in Part V, Chapter 12.

**PART I**

**Innocence Project  
Administration and Funding**



# 1. INNOCENCE PROJECT ADMINISTRATION

There are two administrative structures through which Texas's innocence projects operate. All four programs have experience as an independent non-profit organization, but the Innocence Project of Texas is the only program that today operates exclusively under the non-profit structure, fully independent of the law school except as constrained by the contract. This chapter briefly reviews the history and development of the programs, then considers impacts of school- and contract-based implementation arrangements on operational independence and accountability.

## ORGANIZATIONAL STRUCTURES

### *Law School Administrative Structure*

The innocence projects at the University of Houston and the University of Texas are the only completely law school-based clinics. The UHIP program was initially established in March of 2000 as a student-run organization, making it the oldest in the state. In 2003 it became formally established as a non-profit organization. Professor David R. Dow founded, and for a number of years supervised, the modest self-sustaining organization where volunteer students covering their own costs researched cases in their spare time or during school vacations. A few years later, in August of 2003, a small group of law faculty at the University of Texas formed a similar non-profit entity for the investigation of actual innocence claims. At both schools, the 501c3 organization provided a means to cover costs at a time when other resources were unavailable.

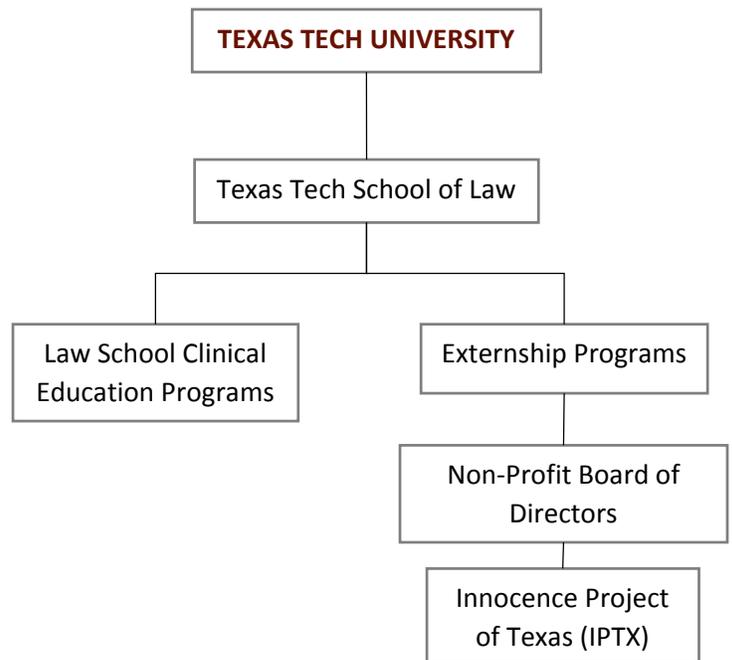
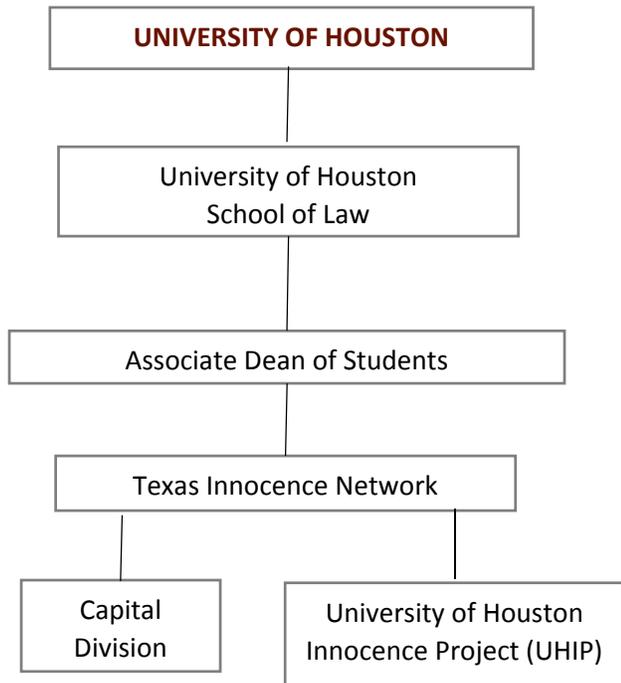
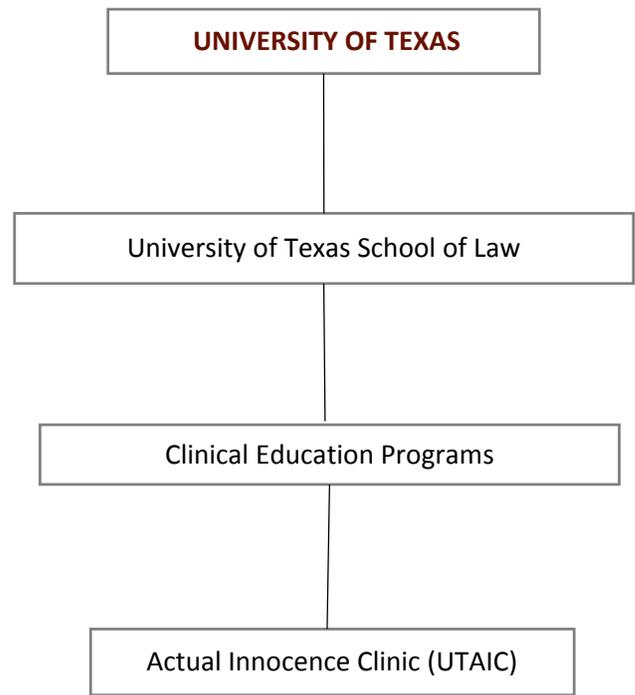
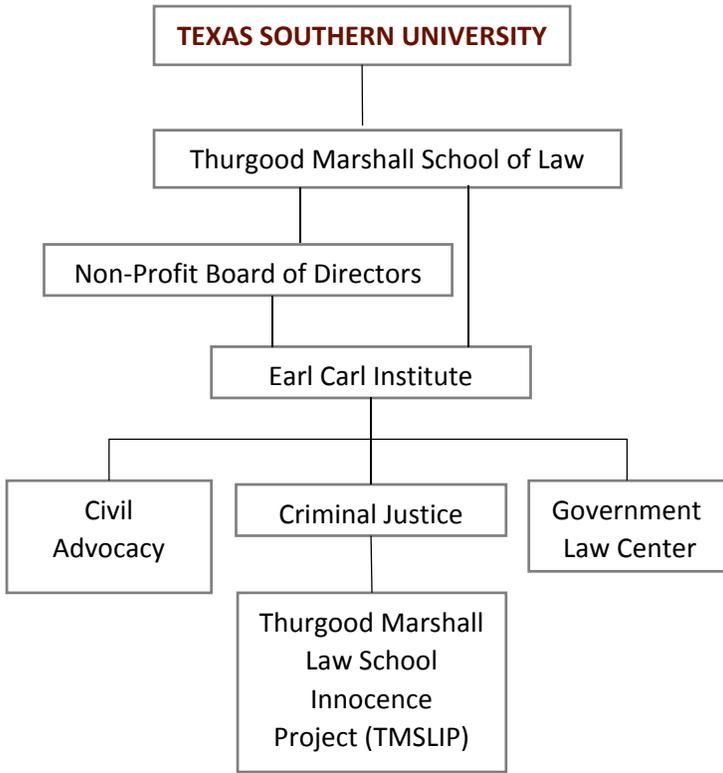
The extra-university non-profit model ultimately proved untenable at both of these institutions. Responsibilities such as fundraising, financial management, and board maintenance were outside the expertise of criminal law faculty. Furthermore, program staff discovered the unpredictable resource base was destabilizing. University of Houston Professor David R. Dow recalls, "When we operated under the private non-profit model before there was legislative funding.... we didn't know if money was coming in the door.... So we were making investigative decisions based on how much money we thought we were going to raise. I hated that. It's much better to have a budget." Ultimately maintaining the non-profit undermined the ability to perform innocence work (Figure 1).

Today these innocence programs have effectively relinquished non-profit status and are administered entirely by the law schools.<sup>4</sup> Project staff at both UHIP and UTAIC say state support has been a relief, allowing staff to focus exclusively on students and casework rather than financial sustainability.

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<sup>4</sup> The University of Texas Actual Innocence Clinic's non-profit is functionally suspended but has not yet been legally dissolved pending a determination by the board regarding how to dispense remaining assets.

**Figure 1. Administrative Location of Innocence Projects in Funded Law Schools**



### *Hybrid Administrative Structure*

The innocence clinic at Texas Southern University, established in 2007, is the newest of the state-funded programs. TMSLIP can best be described as a hybrid administrative structure with aspects of both the non-profit and the law school models. The clinic is located administratively in the Earl Carl Institute (ECI), a non-profit entity within Thurgood Marshall School of Law. Overseen by a board of directors, ECI is comprised of three Centers focusing on Civil Advocacy, Government Law, and Criminal Justice. The innocence program is a component of the Criminal Justice Center.

As a non-profit, ECI has the ability to pursue external grants and donations for any of its Centers independently of the university. Yet, the Institute also remains within the law school program structure and is subject to their direct administrative oversight. Thus, ECI has considerable leeway to pursue external resources to supplement and enhance their work, but the law school is a close partner in all endeavors and remains responsible for the program within the traditional law school framework.

### *Contract-Based Administrative Structure*

When state innocence funds became available, unlike peers in Houston and Austin, Texas Tech University School of Law had no prior experience or infrastructure for the investigation of wrongful convictions. Law school leaders turned to Amarillo defense attorney, Jeff Blackburn, for assistance. Well known for his work in high profile wrongful conviction cases, Mr. Blackburn agreed to provide innocence clinic services through the non-profit organization, the Innocence Project of Texas.

Beginning in 2005, individuals associated with IPTX were signed by Texas Tech University as adjunct faculty to operate an innocence clinic. During the 2012-13 academic year, the program was reclassified as an externship program. The change more accurately depicted the program's off-campus operation by an independent non-profit organization unsupervised by law school faculty. A year later in 2014, the structure of the agreement changed again from contracts with individuals to a sub-award channeling the full state allocation directly to the IPTX organization. While the terms of the sub-award contract now guide the work performed for the law school, IPTX is primarily accountable to the non-profit's board of directors.

## **OVERSIGHT MECHANISMS AND ACCOUNTABILITY**

### *Accountability Differences between Law School vs. Non-Profit Administration*

There are considerable differences in accountability mechanisms available to innocence projects administered directly by law schools compared to those administered through a sub-award agreement. Federal, state, and departmental regulations direct virtually every aspect of the three law school-based programs. Business procedures, personnel decisions, travel, purchasing, performance evaluation, restrictions on lobbying, and other aspects of operation are determined by guidelines and oversight. As state university employees, innocence project staff at TMSLIP, UHIP, and UTAIC are subject to all of these conditions.

Occasionally law school or university requirements do impede the innocence work performed by the projects. The University of Texas, for instance, has asked UTAIC to substitute a urine test for a DNA test because a low-cost vendor was already pre-approved. At UHIP, innocence clinic enrollment declined when a new law school policy replaced “pass-fail” grading with a mandatory curved numeric grade.<sup>5</sup> TMSLIP has also struggled with a law school policy that prevents interested students from enrolling in the same class for multiple semesters.

The law school-based programs are sometimes frustrated by these institutional challenges, but staff also point to ways in which the requirements enhance accountability. “I mean it’s burdensome,” observes Tiffany Dowling, Clinic Professor at UTAIC, “but it also provides a pretty clear record of what you’re doing. Whereas if we were doing all this through the non-profit the record would be a checkbook register, depending on how good the person keeping the checkbook record is, which varied widely in our non-profit.”

IPTX, in contrast, considers university policies an existential threat. “This is our cardinal principle, it’s our independence,” states Chief Counsel Jeff Blackburn. “‘I need you to...,’ or ‘We’ve changed our mind, you need to turn your class into something that gives out exams and has a grade curve...,’ or you know whatever other thing that doesn’t have any connection with the work – they could do that with a regular class. But if you’re trying to get people out of prison, all that starts getting in the way.”

Compared to the other innocence projects, then, IPTX operates with relative autonomy. Staff strongly prefer a structure that allows them to circumvent what they view as unacceptable bureaucratic interference. For instance, IPTX administrators say the ability to hire and fire staff as needed is essential. By contrast, law school clinic directors are required to follow rules including annual performance reviews, and personnel decisions based on demonstrable qualifications and documented performance. IPTX staff also cite “cycles of paperwork,” and the 30 percent or higher indirect cost rate charged by universities to administer external grant funds as other reasons for their institutional separation from the law school.

### *Impact of Accountability Differences on Innocence Investigation*

Although overt problems resulting from the sub-award arrangement between Texas Tech and the Innocence Project of Texas have been avoided, the potential nonetheless exists.<sup>6</sup> To reduce exposure to such risks, law schools that contract for the operation of innocence programs should institute meaningful procedures to proactively monitor agreements. Reporting requirements should substantiate the program is being properly managed, and should provide information needed for early detection if problems should emerge. In addition to financial oversight, projects may wish to require status reports regarding contract-related accomplishments. Contractors’ ethics policies should also be reviewed and

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<sup>5</sup> The forced curve at the University of Houston Law Center ranges between 2.8 and 3.2 and is mandatory in classes with more than 11 students but is ordinarily applicable even when the class size is smaller. Variances require a petition to the Associate Dean and are granted only in extraordinary circumstances. Students concerned about their grade point average are discouraged by the high probability of earning a “B.”

<sup>6</sup> See Appendix B for example.

integrated into agreements. Conflict of interest policies for IPTX and TMSLIP, the two innocence sites with active boards of directors, are provided in Appendix B.

## **CONCLUSION**

Innocence projects administered by law schools are subject to an array of controls specified in federal, state, and university regulations. Strict oversight and protections against fraud, waste, and abuse are built into the administrative infrastructure. Where projects contract outside of the law school for innocence instruction, supervision may be less rigorous. To insulate the program, separate safeguards must be constructed through enhanced reporting requirements or other forms of monitoring specified in sub-award or other contractual agreements. Proactive measures are recommended to not only demonstrate to TIDC, lawmakers, and other stakeholders the university's commitment to performing due diligence, but also to implement meaningful controls and provide early warning if factors outside law school control should put program operation or integrity at risk.

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## 2. INNOCENCE PROJECT PROGRAM COSTS

The state of Texas receives a substantial value for their investment in public innocence projects. State funds incentivize the work of innocence clinics, but cover only a portion of the costs. Besides the value of the investigations performed by students, the innocence projects meet a number of other essential expenses on their own. The following section explores the resource environment in which the Texas innocence projects operate, and considers implications for program impacts.

### PERSONNEL COSTS

#### *State-Funded Personnel Costs*

The \$100,000 average annual innocence award is just sufficient for the funded innocence projects to employ qualified professionals to teach classes and supervise case investigation (Table 1). At Texas Southern University, funding is directed to support a single full-time Clinic Professor. The Innocence Project of Texas and the University of Houston stretch their dollars further to support 1.67 and 2.00 full-time equivalent (FTE) personnel respectively. The University of Texas is unique in their law school's exceptional support for the program. There only half of the Clinic Professor's salary is billed to the contract with remaining salary and all fringe benefits covered from the law school budget. Because of these significant local contributions, UTAIC is the only site able to reserve a portion of the state allocation toward other costs such as investigation.

#### *Locally-Funded Personnel Cost*

While state funding supports professionals to lead the clinics, all four programs also contribute supplemental project personnel. TMSLIP and UTAIC law schools provide more than \$20,000 per year to cover part-time staff to help manage paperwork, filing, and other clerical needs (Table 1). Two of the innocence projects benefit from the contributions of high-level professionals at no cost to the state contract. UHIP clinic founder Professor David R. Dow and IPTX founder and Chief Counsel, Jeff Blackburn both assist with clinic instruction in their respective programs. Some programs also take advantage of expertise in university departments such as psychology, journalism, or forensic science. IPTX additionally pays the employer portion of all payroll tax for innocence project staff from privately acquired funds. The value of these local contributions for personnel alone averages nearly \$50,000 per year across all four projects

### OPERATIONAL COSTS

Local funding summarized in Table 1 also pays for facilities and administrative services required for a professionally run program. The three law school-based projects provide on-campus offices in locations convenient to students. Other expenses covered outside of state funds include business services

**Table 1. State and Local Contributions<sup>7</sup>**

	Texas Southern University (TMSLIP)	Texas Tech University (IPTX)	University of Houston (UHIP)	University of Texas (UTAIC)
<b>PERSONNEL PAID WITH STATE INNOCENCE FUNDING</b>				
<b>State-Funded Personnel Costs</b>	\$99,833	\$100,000	\$100,000	\$82,982
<b>Total Professional FTE</b>	0.95	1.67	2.00	0.50
<b>State-Funded Other Costs</b>	\$167	\$0	\$0	\$17,018
<b>PERSONNEL PAID WITH LOCAL FUNDS</b>				
<b>Locally-Funded Personnel</b>	<ul style="list-style-type: none"> <li>• Work-Study Students (1 FTE)</li> <li>• Paralegal (0.5 FTE summer only)</li> </ul>	<ul style="list-style-type: none"> <li>• Chief Counsel (0.05 FTE)</li> <li>• Litigator (0.50 FTE)</li> <li>• Payroll Tax (for IPTX Innocence Staff)</li> </ul>	<ul style="list-style-type: none"> <li>• Clinical Prof. (0.5 FTE)</li> <li>• Admin. Asst. (0.5 FTE)</li> </ul>	<ul style="list-style-type: none"> <li>• Law Prof. (0.05 FTE)</li> </ul>
<b>Estimated Value of Locally-Funded Personnel</b>	\$22,000/yr.	\$45,000/yr.	\$112,000/yr.	\$10,000/yr.
<b>OPERATIONAL COSTS PAID WITH LOCAL FUNDS</b>				
<b>Office Space</b>	Law School	Grants and Donations	Law School	Law School
<b>Equipment and Supplies</b> (e.g., Mail, Scanning/Copying, Furniture, Computers, Software, File Storage, Law Reference Subscription)	Law School	Grants and Donations	Law School	Law School
<b>Business Services</b> (e.g., Purchasing, Billing, Payroll Processing, IT Support)	Law School	Grants and Donations	Law School	Law School
<b>Case-Related Costs</b> (e.g., Travel, Evidence Testing, Experts)	Law School	Grants and Donations	Law School	Law School

<sup>7</sup> For the 2012-13 Biennium only, the state innocence allocation was reduced to \$80,000 per site. To adjust for this atypical event, the percent of funds expended in each fund category was averaged for FYs 2012 to 2014. The proportions were then applied to the current \$100,000 average annual allocation to reach personnel costs shown.

(e.g., purchasing, billing, payroll, and IT support), equipment, and supplies such as office supplies, mail, copies, furniture, computers, software, file storage, and legal reference service subscriptions as examples. At Texas Tech University the contractor, IPTX, has arranged donated office space in downtown Lubbock and remaining operational costs are paid using grants and donations. At none of the sites are these operational expenses billed to the state contract.

## INVESTIGATION COSTS

Costs of investigation are another expense unaddressed by state funds. An average investigation is completed in one to two years,<sup>8</sup> in part due to limited resources with which to assess the validity of innocence claims. A single trial transcript can range in cost from \$50 to as much as \$2,000. Consultants and experts in just one recent case exceeded \$50,000<sup>9</sup> and are sometimes even higher. Polygraphs and DNA testing run thousands of dollars. Travel is frequently necessary to meet with inmates or witnesses, or to retrieve court records. For the small percentage of highly promising cases that reach advanced stages, progress can slow to a standstill while the project looks for funds to complete investigation.

The innocence projects are frugal and have developed creative strategies to manage costs. The first tack is always to extract all the information available from the internet or the media. Most sites try to get trial transcripts directly from inmates if possible, or court documents for the client or a co-defendant can sometimes be found through legal reference services (e.g., LexisNexis, Westlaw, or Bloomberg). In some instances, students have actually taken notes in the clerk's office to avoid having to purchase trial transcripts. Volunteer experts are used if they can be located. However, those willing to donate their time are often heavily booked with other requests for assistance.

All of the sites prioritize case investigation based on availability of funds. At the University of Texas alone approximately \$17,000 of contract funds are provided through law school contributions to purchase trial transcripts, travel, tests, or experts. Clinic Professor, Tiffany Dowling describes the difference these resources have made for the program. "This financial setup allows me to not have to skimp and make those really tough financial decisions each and every minute of each and every day, which I use to have to do. Now I have the money there so I don't spend a lot of time hemming and hawing over whether or not we're going to pay for a transcript. I just can do it."

At the Innocence Project of Texas, investigative costs are sometimes covered through grants or donations, though funding is unpredictable. When funds are not available, progress is put on hold. At the University of Houston and Texas Southern University, the law school has been able to provide for most of these expenses, though delays commonly occur until funds can be secured.

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<sup>8</sup> See Table 11.

<sup>9</sup> Chammah, Maurice. "The Mystery of the San Antonio Four - The Texas Observer." *The Texas Observer*. January 7, 2014. Accessed May 15, 2015, <http://www.texasobserver.org/mystery-san-antonio-four/>.

## CONCLUSION

Their \$100,000 average annual allocation is almost exclusively used by the innocence clinics to cover core personnel costs. All of the law schools provide either supplemental clerical personnel or high level post-conviction expertise at their own expense. These contributions alone are valued between \$10,000 and \$112,000 per year depending on the program (Table 1). All operational costs such as office space, equipment, supplies, and business services are also covered by local fund sources. Taken together these personnel and non-personnel contributions combined equal at least the total value of the state contract award.

The law schools intend a voluntary long-term commitment to supporting innocence investigation at their respective institutions. Still, none of the innocence programs, save one, have a reliable source of funds to pay for trial transcripts, evidence testing, experts, or travel. At the University of Texas, as little as \$17,000 has made a tremendous difference in the progression of cases. A small financial increment to the state contract would go a long way to remedy this problem and perhaps shorten the time to complete an investigation below the average one- to two-years currently required.

### **3. RESOURCE DEVELOPMENT STRATEGIES**

Of the four innocence projects, only the Innocence Project of Texas has actively acquired a significant amount of independent funding above that provided through the state contract. With these additional resources, IPTX has been able to diversify into areas beyond the provision of clinic education. This chapter examines the expanded scope of activity at that site, and how it was accomplished. Since some activities performed at IPTX are disallowed under innocence contract funds, recommendations are made to ensure that state and non-state funding streams are accounted for separately.

#### **LAW SCHOOL-BASED RESOURCE STRATEGY**

The resource strategies of the three law school-based innocence projects are straightforward. They focus their efforts on work that can be performed within the limits of the state budget allocation as supplemented by the host law school.<sup>10</sup> As a result, these programs are committed to a modest but financially stable existence. The entire program at these schools is comprised of contract-funded clinical staff teaching students and supervising investigation.

The programs recognize that they could potentially seek out additional resources, but fund-raising and grant-writing are not an allowable expense under the state contract. Therefore, there is no way to pay for personnel time to raise funds, and current staff are not positioned to do so without directing resources and effort away from innocence investigation. To undertake these activities, volunteers or donations would be needed to support development activities.

For Cassandra Jeu, Clinic Professor of the UHIP program, the decision to do the best job possible with available resources is strategic. “You can fundraise and do more, but then on the other hand, you have to spend time fundraising.... We have zero fundraising. The funds that could be raised when we were a non-profit were not offsetting the amount of work we put into it.”

UTAIC Clinic Professor Tiffany Dowling agrees, “You need people in charge of a non-profit that know how to do fundraising.... People who can write grants, people who can do media and social media. Those were skills not a single member on our board of directors had.... The work the non-profit needed to be doing, the fundraising, etc., no one was doing it. That’s part of the reason the non-profit was a disadvantage for us.”

#### **INDEPENDENT NON-PROFIT RESOURCE STRATEGY**

The resource strategy at the Innocence Project of Texas is the opposite. IPTX has successful post-conviction attorneys on the board of directors who have donated time, money, and other resources.

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<sup>10</sup> Although the Texas Southern University innocence project has the ability to raise additional funds through the non-profit Earl Carl Institute, they have not done so.

These early investments were seed money creating the organizational slack needed to do larger-scale fund development. The initial board donations have been leveraged into fundraising, board development, and grant-writing to attract even more resources. With independent sources of support, IPTX has been able to undertake a number of diverse initiatives, of which the state-funded innocence work is only one component. Recent endeavors include the following.

- ***Institutional Innocence Investigations.*** IPTX has established working relationships with several public institutions to screen large numbers of cases with a similar cause of conviction rooted in flawed science. These collaborations since 2007 have included reviews of DNA cases with the Dallas County Prosecutor's Convictions Integrity Unit, arson cases with the State Fire Marshall's Office, and soon, hair and fiber cases with the Texas Department of Public Safety. The Texas Forensic Science Commission has also been a close partner in facilitating these connections.
- ***Supervision of Student Investigation Teams at Other Universities.*** To assist in processing the hundreds of cases resulting from institutional innocence reviews, IPTX expanded the number of student investigation groups beyond those enrolled at Texas Tech Law School. Until external grant funding expired in October 2014, an IPTX staff attorney supervised three student teams at Southern Methodist University (SMU) and at the University of Texas at Dallas (UTD).<sup>11</sup> In addition, IPTX board member Mike Ware and Executive Director Nick Vilbas currently lead an innocence clinic at the Texas A&M University School of Law.

The externally funded student workforce provides greater case processing capacity at IPTX than is available at the law school-based clinics. Cases investigated by all of these student groups at Texas Tech and at other institutions are logged on the case tracking website and attributed to the state-funded innocence project.

- ***Policy Advocacy.*** IPTX supports an active policy agenda. Connections to policy bodies such as the Forensic Science Commission have been key to establishing relationships leading to funding and collaborations in institutional reviews. Policy Director Cory Session is currently employed to lead public policy initiatives and community outreach in the legislature. Chief Counsel Jeff Blackburn and Executive Director Nick Vilbas also meet with agency and legislative staff and testify in public hearings. A second part-time policy position was eliminated when external grant funding expired in October of 2014.
- ***Continuing Legal Education on Wrongful Convictions.*** IPTX collaborates with partners to co-sponsor two continuing legal education opportunities each year training young attorneys on causes and remedies of wrongful conviction. Other partners include the Harris County Public Defender's Office and the Texas Criminal Defense Lawyer's Association.

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<sup>11</sup> The Innocence Project of Texas supervised Southern Methodist University School of Law students meeting a pro-bono service requirement; undergraduate students in the Southern Methodist University Human Rights Department; pre-law undergraduate students at the University of Texas at Dallas; and law students enrolled in an innocence clinic at Texas A&M University School of Law.

- ***Involvement in the National Innocence Agenda.*** IPTX Executive Director, Nick Vilbas, currently serves on the national Innocence Project Board of Directors and the organization hosted the fall 2014 meeting in Dallas. This is just one example of the organization’s involvement in national discourse about wrongful convictions.

IPTX clearly has more diverse and far-reaching undertakings than the state’s law school-based innocence projects. “By not being stuck in the academic role, we’ve been able to do all this other stuff. And if we had gone that other route... I think we’d be the same thing as the other projects now,” says Chief Counsel Jeff Blackburn. Yet to maintain this broad focus, IPTX is necessarily bound to an ongoing fund-raising and grant-writing agenda. The following paragraphs offer some insight into the level of investment and focus required to succeed in this endeavor.

### ***Fundraising***

Like the other innocence project sites, IPTX staff say attorneys do not have the expertise for capital development. Unlike the other sites, however, they have been able to allocate donations to retain the services of a fundraising firm. “We hired this fundraising consultant outfit because we’re desperate to figure out how to get this non-profit on a regular level so that we have at least some degree of financial security,” said Chief Counsel Jeff Blackburn.

Upon the advice of the consulting firm, in January 2015 IPTX formally relocated their headquarters from Lubbock to Dallas. However, Blackburn says the Lubbock office will remain unchanged. “Expanding our footprint and our visibility in the Metroplex broadens our opportunity to raise money and let more people know about the work we are doing. It will be the flagship office in terms of development and the non-profit... but we’re never going to leave Lubbock because that’s where the program is... and we’ve got to be where we’ve got the troops.”

While early success has been mixed, IPTX has already held several fundraising events and is making progress toward establishing a donor base. Chief Counsel Blackburn notes IPTX is committed to succeed over the long term. In addition to putting IPTX in closer proximity to donors, the new center of operations will also position the organization to provide innocence clinic instruction at the state’s two newest public law schools, should state funding become available.<sup>12</sup>

Not only is IPTX the only innocence program with an external fundraising strategy, this program also has the most ambitious social media presence of any the four state-funded projects. Donations are accepted on the IPTX website, and they are the only of the state’s four projects to maintain Twitter and Facebook accounts. Indeed, Executive Director, Nick Vilbas reports the Innocence Project of Texas has more social media followers than any innocence initiative other than the national Innocence Project.

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<sup>12</sup> Texas A&M University School of Law is located in Fort Worth and the University of North Texas School of Law is located in Dallas, both in convenient proximity to the new IPTX headquarters in Dallas.

## *Board Development*

Board development is a second significant strategy being used for resource growth at the Innocence Project of Texas. As some current board members approach retirement, IPTX is forming a plan to cultivate a new generation of post-conviction attorneys, starting with those expressing interest at CLE trainings and in other venues. Those that join the board will have opportunities to litigate cases under the supervision and mentorship of more experienced colleagues with the goal of sustaining a ready pool of legal advisors qualified to support innocence casework.

Parallel efforts are directed at attracting new non-attorney board members able to build the IPTX financial base. The idea is to create positions for affluent and well connected individuals who can support IPTX development objectives. “We decided about a year ago we need to become less of a lawyer committee and more of a nonprofit,” says Chief Counsel Jeff Blackburn. The IPTX experience illustrates that while board development and maintenance can potentially pay off, the work is not trivial and requires a significant ongoing commitment of time and effort to produce a financial return.

## *Grants*

The third resource development strategy is to continue taking advantage of both donations and grant and contract opportunities where they present themselves. Table 2 summarizes more than \$1 million in federal and foundation grants and private donations that have supported IPTX work over the past five years. Seven grants from federal and foundation sources have ranged in value from \$5,000 to \$479,000. In an average year, the Innocence Project of Texas also receives as much as \$100,000 in unrestricted donations.

**Table 2. Innocence Project of Texas Grants and Donations in the Past Five Years**

<b>Fund Source</b>	<b>Amount</b>	<b>Dates</b>	<b>Purpose</b>
Texas Bar Foundation	\$25,000	2009, 18 mos.	Transcripts and DNA
Office of the Governor US DOJ Post-Conviction DNA Testing Assistance Program	\$479,000	2010, 16 mos.	DNA Testing and Office Equipment
US Department of Justice Wrongful Convictions Grant	\$250,000	2011, 18 mos.	Non-DNA Case Work
Texas Bar Foundation	\$20,000	2011, 12 mos.	Transcripts and DNA
Texas Bar Foundation	\$20,000	2012, 12 mos.	Transcripts and DNA
Meadows Foundation	\$25,000	2014, 12 mos.	Program Expansion to Dallas- Fort Worth Area
Dallas Bar Foundation	\$5,000	2014, 12 mos.	Documents
Unrestricted Donations	Approx. \$100,000	Annually	General Support (Payroll, Bills, Office Expenses)

Grant-writing has been an effective strategy for growth at IPTX. However, it can only be done if staff are available to prepare proposals, a condition not met at the other innocence sites. The IPTX experience shows grants offer opportunity, but also introduce programmatic change and uncertainty. Work has to be tailored to meet the demands of the fund source, and when funds expire significant recalibration may be required to adjust. Recently expiring grants have required IPTX to release a full-time staff attorney in Dallas and a part-time policy advocate in Austin, reduce student investigation at SMU and UTD, and lose funding previously allocated for investigation.

## **RISK OF COMINGLING OF STATE AND OTHER FUNDS**

The scope of impact achieved by the Innocence Project of Texas is impressive. However, the complex mix of fund sources creates complications that are not present at other programs. While fundraising, lobbying or policy advocacy is allowable, it must be paid with non-state funds. Means to identify how state funds are being used are already in place. Eligible expenses are delineated in an itemized invoice and paid only after review by both Texas Tech University and TIDC. Still, while there is no evidence to suggest impropriety has occurred, with so many different resource streams converging at IPTX, more detailed accounting of fund allocation to particular program activities is necessary. As a general rule, any non-state entities providing innocence program services should account for the source of funds used to support activities that are disallowed under the state contract. The same concern does not exist at innocence projects based in public law schools. There all funding is subject to oversight and audit, keeping appropriate use of resources readily transparent.

## **CONCLUSION**

The law-school based innocence projects lack staff to focus on fundraising work. They therefore rely exclusively on state funding and contributions from the host universities for all of their support. The funding is modest but stable. The Innocence Project of Texas has followed a different path. Building upon contributions of time, money, and donated assets from board members, they have implemented a successful independent resource strategy. Approaches include hiring a professional fundraising firm, board development aimed at increasing donations, and grant-writing.

With a resource base that far exceeds other innocence projects', IPTX has developed a diverse portfolio of innocence initiatives. Most of these activities – institutional case reviews, expanded student investigation teams, post-conviction continuing legal education – complement and enhance the objectives of the state innocence contract. However, use of state funds for policy advocacy at the state or national levels is strictly prohibited. To avoid potential perceptions of impropriety, it is recommended that innocence providers give a separate accounting for funds allocated toward disallowed activities.



## **PART II**

### **Innocence Case Flow**



## 4. CASE SCREENING AND SELECTION

Requests for a review of an innocence claim go through a two-phase screening before being accepted for investigation. The first phase involves an initial review of preliminary information. This may be in the form of a letter from an inmate asking for help or in the form of case documents accessed as part of a targeted institutional forensic case review. If the early information suggests a claim of actual innocence, the inmate is sent a questionnaire requesting additional information. Questionnaire responses are then used to determine whether a potential path to exoneration exists, thereby making the claim appropriate for investigation.

This chapter describes this two-step early screening process. Data is provided on the number of requests for assistance (RFAs) received at each site, the processes by which they are reviewed, how long the process takes, and the proportion that ultimately end in an investigation. Results are reported in two ways depending on the type of information being presented:

- ***Snapshot of Current Workloads:*** Data based on all cases active in FYs 2012, 2013, and 2014, irrespective of when the cases began or ended. These analyses depict current work volume at each stage of processing.
- ***Results for Closed Cases:*** Data based on cases closed during FYs 2012, 2013, and 2014. These analyses depict the time required to complete each stage of case processing. By excluding active cases, partially completed claims that could artificially shorten the duration of case processing are excluded from analysis.

A fictional sample of 100 cases is used in Figure 2 to show case advancement through each phase of processing. The differences across sites reflect variations in institutional policies, program administration, and case strategies described in the narrative. A table summarizing investigation-related procedures and time required for case processing at each of the state's innocence projects is provided in Appendix C.

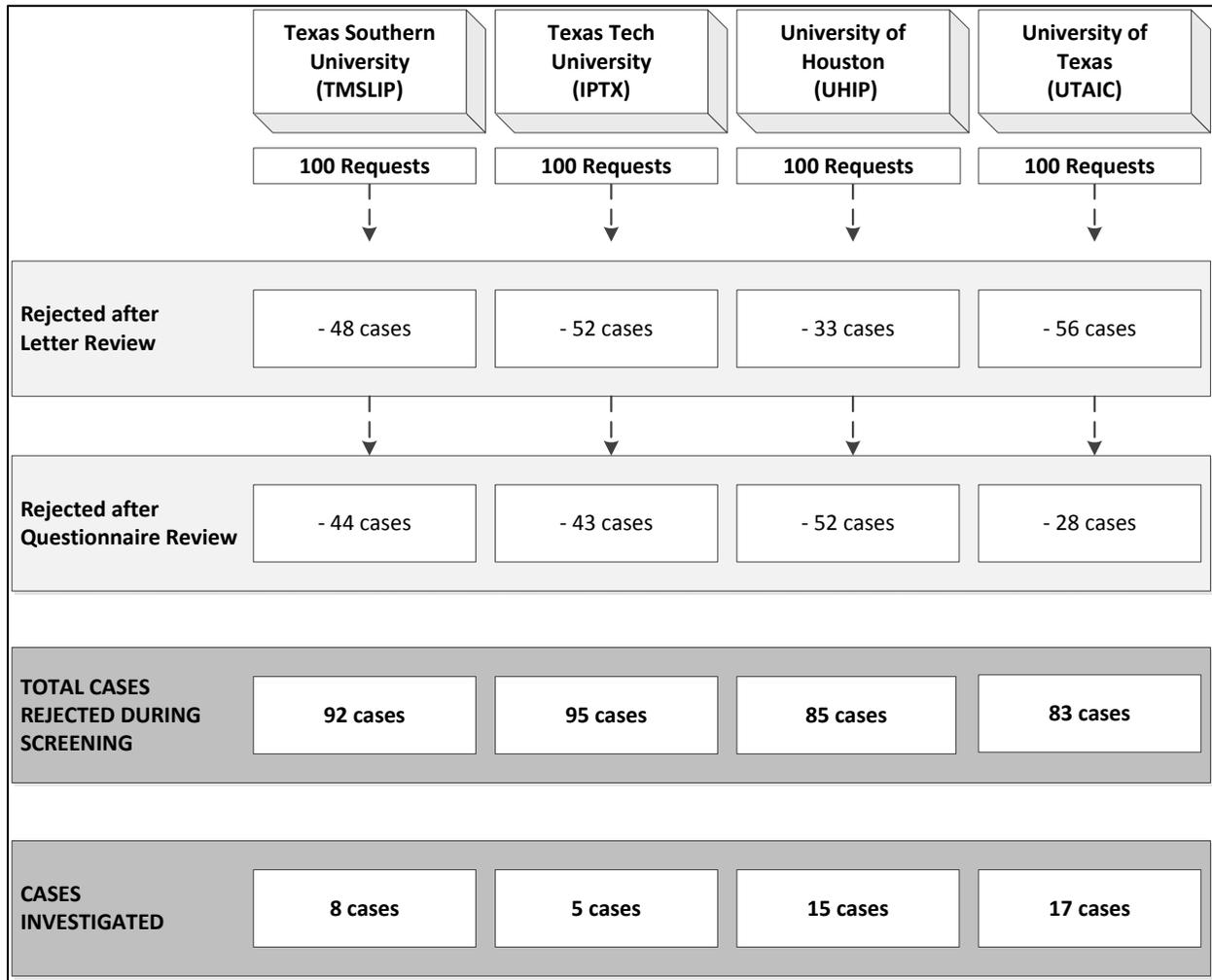
### PHASE 1: LETTER REQUEST FOR ASSISTANCE

#### *Case Acceptance Criteria*

Texas's innocence projects share some common eligibility criteria, but they may also exercise discretion in the cases they choose to pursue. Capital death cases and applications seeking civil damages are excluded at all sites as a condition of funding. Applicants must also be claiming "actual innocence" meaning that either no crime occurred, or if it did occur, the individual claiming innocence was not involved. Failure to meet one of these standards results in automatic rejection.

Other conditions are locally determined and can potentially be adjusted over time. For example, TMSLIP is the only program that considers wrongful misdemeanor convictions. UHIP rarely accepts convictions

**Figure 2. Progression of 100 Individuals Requesting Assistance at Each Innocence Project  
(Cases Closed, FY 2012 – FY 2014)**



based on a guilty or nolo contendere plea, and will not consider charges related to probation or parole violations. At IPTX, forensic cases involving DNA or “junk science” claims are prioritized above non-forensic cases. UTAIC rarely takes drug cases because inmates are frequently released before the investigation is complete, though this position is being reconsidered as new tools for forensic analysis can now speed investigation. Most sites also reject claims based on consensual sex offenses or justifiable defenses such as self-defense or accidents. People who have fully discharged the sentence are also unlikely to have a review. Within a broader common framework, then, each project has considerable flexibility regarding case selection.

### *Means for Submitting Requests for Assistance*

Requests for assistance come in one of two forms. Letter requests are written by an inmate, though requests may also be submitted by a third-party source such as family members, a board member, an expert, or an agency partner sponsoring a targeted case review.

### Letter Requests

Most cases are identified from inmate requests for assistance that arrive by mail.<sup>13</sup> Upon receipt, each letter is logged in a central online database used to track and coordinate cases across all the innocence sites. The initial letter review is ordinarily performed by the Clinic Professor. Only Texas Southern University trained student employees use their own judgment to determine whether to advance a case, though all claims recommended for rejection must first be reviewed by Clinic Professor Anthony Haughton. At all sites, if a claim is judged to be potentially viable, the inmate is sent a follow-up questionnaire to gather more information.

In addition to letter requests received by mail, the Innocence Project of Texas accepts referrals from other sources such as board members. Forensic pathologists also sometimes share affidavits pointing out flaws in the science underlying a conviction, inviting IPTX to take up the case.

### Non-Letter Requests

The Innocence Project of Texas is the only site that also finds cases through institutional reviews targeting a single source of conviction. The first such review involved a 2007 partnership with the Dallas County Prosecutor's Office to review closed cases with untested DNA evidence. A second 2011 collaboration with the State Fire Marshall's Office (SFMO) sought to identify cases where flawed fire science was a factor in conviction. A third such institutional review is currently being launched with the Texas Forensic Science Commission to test convictions based on hair and fiber evidence the Department of Public Safety and non-DPS laboratories. Other such targeted case reviews are likely in the future.

If sufficient prima facie evidence exists for a pre-investigation questionnaire to be sent, cases emanating from institutional reviews are entered into the shared innocence project website. In the arson review, for example, of 1,100 cases screened, approximately 250 inmates were sent questionnaires and entered in the online tracking system. It is not possible to distinguish letter requests from non-letter requests in the web-based reporting system.

**Table 3. Number of Initial Requests for Assistance  
(Requests Received, FY 2012 – FY 2014)**

		Texas Southern University (TMSLIP)	Texas Tech University (IPTX)	University of Houston (UHIP)	University of Texas (UTAIC)
Cases with "Request Received" Date in FY 2012-14		1,404	3,064	1,935	2,129
Number of Requests for Assistance	Average per Year	468	1,021	645	710
	Average per Week	9	20	12	14
% Request Distribution by Site		16%	36%	23%	25%

<sup>13</sup> In 2010, the four projects collaborated with the Texas State Counsel for Offenders office to establish the Texas Prisoner's Innocence Questionnaire (TPIQ) that is now available to inmates in prison law libraries.

### *Number of Requests for Assistance*

Over the past three fiscal years, the innocence projects received an average 2,844 requests for assistance each year. This translates to an average 711 requests per program per year, or between 9 and 20 requests per week on average (Table 3). The largest number, more than 1,000 requests per year or about one-third of the total, went to the Innocence Project of Texas. The bulk processing of questionnaires through large-scale institutional reviews described above has elevated the count of requests at this site. In addition, inmates are more likely to be aware of the Lubbock program as a result of their vigorous media presence. Press bulletins keep the public informed of case successes or policy initiatives. Unlike other sites, IPTX is visible in social media with a website, an active Twitter feed, and more Facebook “friends” than any wrongful conviction investigation program other than the New York-based Innocence Project.

Texas Southern University receives the fewest requests for assistance, with an average 468 per year, or 16 percent of the total. The reason for the low RFA rate is not entirely clear. The program started in 2007, two years later than other clinics, and had a lengthy start-up phase. Though TMSLIP gained momentum after Anthony Haughton was assigned to the Clinic Professor position in 2011, the project’s public profile may be the least visible. As noted in the sections that follow, the project is currently working through a sizeable backlog of RFAs so attracting more requests is not a current priority.

The University of Houston and the University of Texas programs receive a proportional number of requests, each with one-fourth of the total or about 13 letters each week.

**Table 4. Time to Initial Review of Requests for Assistance  
(Cases Closed, FY 2012 – FY 2014)**

		Texas Southern University (TMSLIP)	Texas Tech University (IPTX) <sup>14</sup>	University of Houston (UHIP)	University of Texas (UTAIC)
RFAs Closed in FY 2012-2014		366	3,341	2,545	1,794
Days from Receipt to Initial Review of RFAs	Average	93	22	1	8
	Median	2	0	0	0
	25 <sup>th</sup> - 75 <sup>th</sup> Quartiles	0 - 82	0 - 5	0 - 0	0 - 2

### *Time to Screen Initial Requests for Assistance*

In general, initial requests for assistance are reviewed promptly. Among cases closed in the past three years, the median time to read letters is less than two days at all of the innocence projects. However, for a number of older cases at Texas Southern University, the wait has been considerably longer.

<sup>14</sup> The IPTX data regarding “Days from Receipt to Initial Review of RFAs” excludes 270 cases that were shown in notes to have been re-opened after first having been closed. Because the initial review date was overwritten when the cases were re-opened, the days from receipt to initial review cannot be calculated for these cases.

Twenty-five percent of TMSLIP cases take 82 days or longer to review. At other sites, the 75<sup>th</sup> quartile is just five days or less (Table 4).

**Table 5. Assigned Responsibility for Case Screening**

	<b>Texas Southern University (TMSLIP)</b>	<b>Texas Tech University (IPTX)</b>	<b>University of Houston (UHIP)</b>	<b>University of Texas (UTAIC)</b>
<b>Letter Requests</b>	Administrative Students	Case Director	Clinic Professor	Clinic Professor
<b>Questionnaires</b>	Administrative Students	Case Director	Clinic Students	Clinic Professor

Letter backlogs have been a longstanding challenge at TMSLIP, dating to the early years of the program before routine procedures were well established and unread letters accrued. Today, even though staff say more than 1,000 letters are still waiting to be reviewed from the period prior to FY 2012, just 79 requests for assistance are recorded on the innocence project website from that timeframe. TMSLIP is the only site where student employees review letters, and staff say mail processing is interrupted by exam weeks and time off between semesters. In contrast, Clinic Professors who review letters at other sites say letter the process requires only a few minutes each day making it reasonably easy to avoid a backlog (Table 5).

## **PHASE 2: QUESTIONNAIRE REVIEW**

If a request for assistance passes the letter review phase, individuals with promising claims are sent a questionnaire. While the specific information requested varies by site, in general questionnaires ask for detail about charges, the innocence claim, access to court documents, and available evidence. Answers determine whether further investigation could potentially prove a wrongful conviction. A common questionnaire accepted by all sites is also available in the state’s prison libraries.

### *Number of Questionnaires Reviewed*

Each of the state-funded innocence projects receives an average of between 161 and 438 completed questionnaires each year, or 3 to 8 per week (Table 6). The Innocence Project of Texas and Texas Southern University reject about half of requests for assistance after letter review (48 and 52 percent respectively, Figure 2), and just slightly less after questionnaire review (44 and 43 percent respectively). A markedly different pattern is observed at the University of Houston and the University of Texas.

**Table 6. Number of Questionnaire Reviews  
(Questionnaire Received, FY 2012 – FY 2014)**

		Texas Southern University (TMSLIP)	Texas Tech University (IPTX)	University of Houston (UHIP)	University of Texas (UTAIC)
Cases with "Questionnaire Received" Date in FY 2012-2014		482	1,248	1,315	864
Number of Questionnaires Received	Average per Year	161	416	438	288
	Average per Week	3	8	8	6
% Questionnaire Distribution by Site		12%	32%	34%	22%

Compared to other sites, UHIP rejects the smallest proportion of cases after the letter screening (33 percent), and the largest proportion after questionnaire review (52 percent; Figure 2). Cassandra Jeu, Clinic Professor at UHIP, says there are two reasons she intentionally requests a large number of questionnaires. First, she wants to make sure inmates have full benefit of the doubt. She observes, "I give inmates and their agents wide latitude at the initial stage when determining whether an innocence claim exists at all. If there is even a hint of an innocence claim, I give the inmate the benefit of the doubt...."

Second, because there is pedagogical value in engaging students in the decision whether to investigate. Since most students limit their participation in the clinic to a single semester,<sup>15</sup> questionnaire screening exposes students to an array of innocence issues without requiring a high level of experience. "We focus a lot on the screening aspect because there is an intense learning process," says Professor Jeu. "They get exposure to every type of criminal case, different types of evidence, and writing memos. They learn certain skills at the beginning because in the beginning most of them are not ready to do litigation anyway."

UTAIC takes the opposite approach, rejecting more cases than other sites after letter reviews (56 percent) but rejecting the fewest cases based on the questionnaire screening (28 percent, Figure 2). At the University of Texas, then, relatively few individuals seeking assistance are asked to submit questionnaires, but those who do have a very good chance of investigation (61 percent). Clinic Professor Tiffany Dowling says if there is even a chance of a path to exoneration she prefers to conduct at least some investigation. She notes, though, that resource limitations are increasing pressure to close more cases based on questionnaire evidence alone. If this occurs, the number of questionnaires leading to investigation at UTAIC will more closely align with the other sites in the coming years.

Both UHIP and UTAIC ultimately advance two- to three-times as many cases to investigation (about 16 percent each) than either Texas Southern University or the Innocence Project of Texas. TMSLIP and

<sup>15</sup> See generally, *infra* Chapter 7, Supervised Investigation, Opportunity for Repeated Participation (discussing the effect of UHIP law school's "forced curve" grading policy on clinic enrollment).

IPTX, on the other hand, reject nearly half of all requests for assistance in both the letter and the questionnaire screening, promoting just five to eight percent of cases for investigation (see Figure 2).

### *Time to Review Questionnaires*

At the Innocence Project of Texas, the Case Director reads the questionnaire and makes the determination to either reject the case or assign it to a review category (e.g., DNA, possible DNA, “junk science,” or non-forensic claim). There, half of all questionnaire reviews are complete in just four days, faster by far than at other sites (Table 7).

Questionnaire review time is longer at TMSLIP and UHIP where students do the job. At the University of Houston (median 56 days) clinic students are assigned three to five questionnaires each week with a recommendation on whether to investigate due two weeks later. At UHIP the Clinic Professor sometimes assists with questionnaire review to prevent backlogs. At Texas Southern University (median 146 days), questionnaires are first read by administrative students who summarize the case in a memo, rank the merits on a scale from one-to-five, then pass it on the Clinic Professor to make a final determination. These data suggest the involvement of students<sup>16</sup> in case selection may extend the time required to complete the task.

**Table 7. Time from Questionnaire Received to Decision Whether to Investigate  
(Cases Closed, FY 2012 – FY 2014)**

		Texas Southern University (TMSLIP)	Texas Tech University (IPTX)	University of Houston (UHIP)	University of Texas (UTAIC)
RFAs Closed in FY 2012-2014 with Questionnaire Received		156	1,164	1,178	582
Days from Questionnaire Received to Decision to Investigate	Average	314	271	139	401
	Median	146	4	56	393
	25 <sup>th</sup> - 75 <sup>th</sup> Quartiles	5-502	1 - 65	20 - 148	0 - 779

The longest interval by far, however, is at the University of Texas. There, even though the Clinic Professor reads questionnaires as soon as they are received, most approved requests wait more than a year before their status is changed to “pending investigation.” A backlog of nearly 1,000 cases is already approved and awaiting assignment so there is no urgency to line up more.

<sup>16</sup> *Supra*. UHIP students have less opportunity to develop investigation skill than students at other schools because the law school policy regarding the enforced curve discourages many students from enrolling more than one semester.

### *Time Spent Pending Investigation*

Once cases clear the questionnaire review phase, they are considered to be “pending investigation” until openings for assignment to students are available. All of the sites have substantial numbers of pending cases ranging from 157 at Texas Southern University to 981 at the University of Texas at the end of FY 2014 (Table 8).

At the University of Houston and Texas Southern University, the median case spends about 52 days pending investigation. The interval is nearly four times longer (median 186 days) at the Innocence Project of Texas. IPTX is the only site where assignment of cases to students is delayed until after key documents have been assembled. “If a trial transcript exists but I don’t have it yet, I’m not going to assign it for investigation,” explains Case Director Jennifer Mirll. When the required documents cannot be located or funding for purchase is unavailable, cases remain “pending investigation” for months in some cases. Similar delays also occur at other sites, but there, document acquisition is part of the student investigators’ job. The effect is therefore to extend the time in investigation rather than time in pending status.

**Table 8. Time Spent Pending Investigation  
(Cases Closed, FY 2012 – FY 2014)**

		Texas Southern University (TMSLIP)	Texas Tech University (IPTX)	University of Houston (UHIP)	University of Texas (UTAIC)
Cases Pending Investigation at the End of FY 2014 <sup>17</sup>		157	339	253	981
Days from Questionnaire Received to Investigation	Average	194	525	149	647
	Median	56	186	49	757
	25 <sup>th</sup> - 75 <sup>th</sup> Quartiles	0-302	29-848	18-151	485-804

The largest backlog of pending cases is at the University of Texas. At present, 981 pending cases face a median 757-day wait to be assigned for investigation. This substantial accumulation is a remnant of UTAIC’s operation as a non-profit organization. As recently as three years ago, board members were directly involved in teaching and supervising students with the Clinic Professor playing a support role. If demands in their private practice conflicted with clinic duties, however, members could sometimes be unavailable to students for months while cases stacked up.

Disjointed supervision slowed case processing even when board attorneys were present. Clinic Professor Tiffany Dowling describes the problem. “A supervising attorney would say, ‘OK, you need to get these documents’ and the student would ask how. The attorney would say, ‘I don’t really know how

<sup>17</sup> “Cases Pending Investigation” are based on cases in pending status at the end of FY 2014. “Days from Questionnaire Received to Investigation” is based on cases closed between FY 2012 and FY 2014.

it works in that county – go talk to Tiffany, she’s done it before.’ Instead of supervising attorneys having students ping-ponging all over the place, now the students just come to me. We talk about the case and come up with an action plan.” Centralizing supervision under the Clinic Professor has addressed the causes of investigation backlogs, but has not yet resolved the backlogs themselves. Still, UTAIC has a plan and conditions are favorable for better caseload management in the future.

## **CONCLUSION**

With more than 711 requests for assistance submitted to each of the state’s innocence projects each year, the programs serve as an important role offering final recourse to individuals who believe they have grounds for exoneration. If early information in a letter or a case file indicates the innocence claim may be valid and meets program criteria, a questionnaire is requested to gather more information. Each project receives between three and eight completed questionnaires each week on average. Following questionnaire review, cases are considered to be “pending investigation.” At the end of FY 2014, the number of cases were cleared and awaiting investigation ranged from 157 at Texas Southern University to 981 at the University of Texas.

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## 5. CASE INVESTIGATION

Investigation is at the heart of the work performed by Texas’s innocence projects. It is both the means by which wrongfully convicted individuals find a path to exoneration and a strategy for training a new generation of law students to avoid the same mistakes in the future. This chapter describes investigation case flow at each of the four innocence sites.

### PHASE 3: INVESTIGATION

#### *Number of Cases Investigated*

The number of cases investigated at each innocence project depends on the number of initial requests for assistance received and rates of rejection. Among cases closed between FY 2012 and 2014, the University of Texas and the University of Houston have the most generous selection criteria, investigating about one of every six applicants (Table 9). Table 10 shows that these programs with the most liberal investigation acceptance rates also have the largest active caseloads. Over the past three fiscal years, these projects opened three to six times as many investigations each week on average than the other projects. At the end of FY 2014, UHIP had 346 and UTAIC had 267 open investigations compared to 65 and 91 at Texas Southern University and the Innocence Project of Texas respectively.

**Table 9. Proportion of Requests for Assistance Investigated  
(Cases Closed, FY 2012 – FY 2014)**

	Texas Southern University (TMSLIP)	Texas Tech University (IPTX)	University of Houston (UHIP)	University of Texas (UTAIC)
RFAs Closed in FY 2012-2014	366	3,341	2,545	1,794
Number of Cases Investigated	8% (n=30)	5% (n=151)	15% (n=386)	17% (n=299)
Ratio of RFAs to Investigations	1 in 12	1 in 21	1 in 7	1 in 6

The acceptance ratio is smaller, just one of every 12 applicants, at Texas Southern University. However, the Innocence Project of Texas is the most selective site by far, investigating just one in 21 applications (Table 9). For IPTX, the extremely low investigation rate is part of a strategy to focus limited resources on cases backed by forensic evidence while avoiding lengthy, high-cost conventional innocence claims.

“Let’s say a guy writes you and says, ‘I know I confessed to doing a murder but that confession was phony, I got coerced into it. I have evidence that I never committed the crime and my lawyer didn’t do anything about it at trial,’ ” says Chief Counsel Jeff Blackburn. “Just investigating a claim like that is absurdly time consuming and expensive.” IPTX Executive Director Nick Vilbas agrees, “If they don’t have

the DNA aspect of it, it's going to become cost prohibitive just to even get that case into court, much less spending three or four years litigating."

**Table 10. Number of Investigations  
(Cases Investigated, FY 2012 – FY 2014)**

		Texas Southern University (TMSLIP)	Texas Tech University (IPTX)	University of Houston (UHIP)	University of Texas (UTAIC)
Cases with "Investigation Pursued" Date in FY 2012-14		70	167	432	462
Number of New Investigations Opened	Average per Year	23	56	144	154
	Average per Week	0.4	1.07	2.8	3.0
Number of Investigations Open at the End of FY 2014		65	91	346	267

The other innocence sites with higher acceptance rates have a different philosophy. Despite the additional cost and effort required, they consider all types of claims equally. As a result, TMSLIP, UHIP, and UTAIC investigate a larger proportion of cases including those where the basis for the claim is a non-forensic factor such as: recanting witnesses, false confession, or the implication of another perpetrator.

### *Time to Complete Investigation*

Just as more cases are accepted for investigation at the University of Houston and the University of Texas, they are also cleared more quickly there than at other sites. At UTAIC, half of all investigations closed in the past three fiscal years were complete within 145 days or 4.7 months (Table 11). Investigations at other sites take at least twice as long, ranging from a median 330 days (0.9 years) at the University of Houston to 427 days (1.2 years) at the Innocence Project of Texas.

**Liberal Case Acceptance Policies.** Where acceptance policies are relatively liberal, time to completion is faster in part because a larger proportion cases are marginal, amenable to being cleared quickly with just a small amount of additional information. At UHIP many investigations are actually more like "enhanced screenings" where students request and review minimal information beyond the questionnaire (most commonly appellate records unavailable through the internet or law reference services) before making a decision. Similarly, at UTAIC Clinic Professor Tiffany Dowling concedes she will often want to see more than just the questionnaire before closing a case. "I think it's just a very personal decision, as a lawyer running your own program, whether you're going to cut bait on a case.... I understand the idea of trying to find the real definitional point where 'if says this, yes,' and 'if this, no....' The reality is much messier than that."

**Table 11. Time from Investigation Initiated to Case Closed  
(Cases Closed, FY 2012 – FY 2014)**

		Texas Southern University (TMSLIP)	Texas Tech University (IPTX)	University of Houston (UHIP)	University of Texas (UTAIC)
RFAs Closed in FY 2012-2014 with Investigation		30	151	386	299
Days from Investigation Initiated to Case Closed	Average	513	690	469	339
	Median	406	427	330	145
	25 <sup>th</sup> - 75 <sup>th</sup> Quartiles	181 - 886	126 - 1,031	189 - 543	27 - 567

Other factors also help explain why the average innocence project investigation takes more than a year to complete. These include limited resources for experts and evidence testing, difficulty acquiring court documents, and clinic student turnover.

**Limited Resources for Documents, Experts, and Evidence Testing.** Evidence needed by the innocence projects to determine the viability of an innocence claim is not free. Yet with state funding allocated almost entirely for clinical instruction personnel, few resources remain to pay for the considerable costs of investigation.<sup>18</sup> To close a case, court documents or other records must be acquired, evidence must often be tested, or experts must be retained to evaluate the scientific basis for a wrongful conviction.

Most of the law schools have no reliable source to pay for non-attorney litigation expenses. Since FY 2014, contributions from the University of Texas Law School have freed approximately \$17,000 per year for use toward evaluating evidence. The Innocence Project of Texas sometimes has grant funds for some of these expenses (see Table 2) though they are unreliable. Case Director Jennifer Mirll describes the protocol, “So I just ask Nick... how much money can I have for records and he’ll say keep it under whatever. So the last time I asked him he told me don’t order any records.”

**Difficulty Acquiring Documents.** Even when funding is available, the innocence projects report other difficulties acquiring necessary evidence. Often, transcripts can only be retrieved directly from the county clerk. If clerks are unwilling to send documents by mail, students must travel considerable distances to retrieve them. In addition to travel expenses, cost of the documents themselves can range from \$50 to more than \$1,000 per transcript and orders may remain unfilled for literally months or years.

Local record-keeping is often poor, particularly for older cases that pre-date electronic record-keeping or in small counties that have not adopted such systems. Clinic students at Texas Southern University describe the challenge. “We went to [a Texas county]; it was case from a long time ago. We talked to

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<sup>18</sup> See generally, *supra* Chapter 2, Personnel Costs (discussing the University of Texas Law School salary contribution).

the clerk and she said, 'I don't even know where they put the stuff back then.' So they had to get back with us." Tiffany Dowling of UTAIC elaborates, "People always ask, 'Why does it take so long to get an innocent person out of prison?' Because it takes six months to get two pieces of paper into the record, or it takes three years to get a copy of one file that you need to make a decision about how to proceed."

Need for non-litigating attorneys to make special records requests can also cause delay. "A lot of things that are at the 'have been investigated' status, we need something else like... an attorney to file for some documents we can't just get by calling. That's a big part of the problem," says IPTX Case Director Jennifer Mirill. At IPTX, board members are available to assist with cases ready to go to court. However, locating qualified attorneys to handle routine legal matters during investigation – requests to prosecutors for sealed juvenile records, autopsy reports, or gunshot residue reports, for example – has been a challenge and extends the time to case closure.

**Limited Time Commitment from Student Investigators.** Investigation can also be slowed in programs where student participation is limited to a single semester. With a second semester of enrollment, students are able to follow assigned cases longer, and they can apply advanced skills developed with experience. The University of Houston and Texas Southern University have had particular difficulty arranging consecutive participation.<sup>19</sup>

## CONCLUSION

The most liberal investigation criteria are at the University of Texas and the University of Houston where about one of every six applicants is accepted. The Innocence Project of Texas, in contrast, accepts just one of every 21 applicants because of a targeted focus on cases backed by forensic evidence.

The median case takes a year or longer to investigate. There are several contributing factors. First, progress is commonly delayed until a means can be found to pay for things needed to make a decision how to proceed such as: documents, evidence testing, or experts. Even when funds are available, some court documents can be difficult to acquire because of limitations in county record-keeping.

The experience level and time commitments from students may also be a factor. Where clinic students participate for a single semester they rarely become as expert as students with more than one semester of involvement. The total amount of time students are required to dedicate to the clinic may also be a factor in the speed of case processing.

The University of Texas completes investigations at a considerably faster pace than other sites (Table 11). Their higher acceptance rate likely means more investigated cases are marginal and can be quickly cleared. It is worth noting, as well, that this is the only program with reliable funding available for investigation, and students contribute more time to clinic case review here than at other sites. With just four programs it is difficult to establish causality, but these factors seem to improve case processing efficiency.

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<sup>19</sup> See generally, *infra* Chapter 7, Differences in Program Structure, Opportunity for Repeated Participation (discussing the effect of UHIP law school's forced curve grading policy on clinic enrollment).

## 6. LEGAL REMEDIES AND CASE OUTCOMES

If investigation reveals a potential path to exonerations, the innocence projects must next determine a legal strategy. This chapter describes the options available for post-conviction relief. Next, case outcomes at each of the innocence projects are reviewed, and the factors that underlie differences across sites are examined.

### PHASE 4: THE PURSUIT OF LEGAL REMEDIES

Two main avenues for exoneration are available for wrongfully convicted individuals: clemency and litigation. Litigation has been the most common deployed method used by Texas's innocence projects. However, there are also examples of exonerations achieved through clemency.

#### *Litigation*

If an innocence claim is litigated, a writ of habeas corpus must first be filed presenting new evidence in the trial court where the original conviction occurred.<sup>20</sup> Habeas writs commonly include affidavits from recanting victims or witnesses, or from new witnesses, substantiating: false confession, false testimony, eyewitness error, victim/witness recantation, and/or the implication of another individual as the actual perpetrator of the crime.

Beyond sworn statements, scientific evidence such as fire science, fingerprint analysis, toxicology, ballistics, or medical examination may also form the basis of a habeas writ. Recent legislation has opened new avenues for the use of forensic science in post-conviction appeals. In 2011, Texas Senate Bill 122 amended Chapter 64 of Texas's Code of Criminal Procedure, the state's post-conviction DNA statute, to increase access to post-conviction DNA testing.<sup>21</sup> In 2013, Texas's 83<sup>rd</sup> Legislature also clarified standards for courts to grant habeas corpus relief in junk science cases.<sup>22</sup> As a result, emerging forensic science can now be used to challenge faulty evidence used in a conviction.

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<sup>20</sup> Article 11.07 Sec. 4(a), Texas Code of Criminal Procedure requires that an individual have new evidence not presented at trial that proves that the person did not commit the offense and/or "by a preponderance of the evidence, but for a violation of the United States Constitution, no rational juror could have found the applicant guilty beyond a reasonable doubt."

<sup>21</sup> Article 64, Texas Code of Criminal Procedure was adopted in 2001 to streamline processes for new testing of DNA. Prior to 2011, post-conviction DNA testing was confined to cases where testing was not available at trial. During the 82<sup>nd</sup> Regular Legislative Session, the law was changed to require post-conviction DNA testing if the evidence was available but not previously tested, or if it was tested but newer techniques would provide "more accurate and probative" results. If the convicting court finds it reasonably probable that conviction would not have occurred if test results were available during the original trial, Chapter 64 testing can form the basis for a writ.

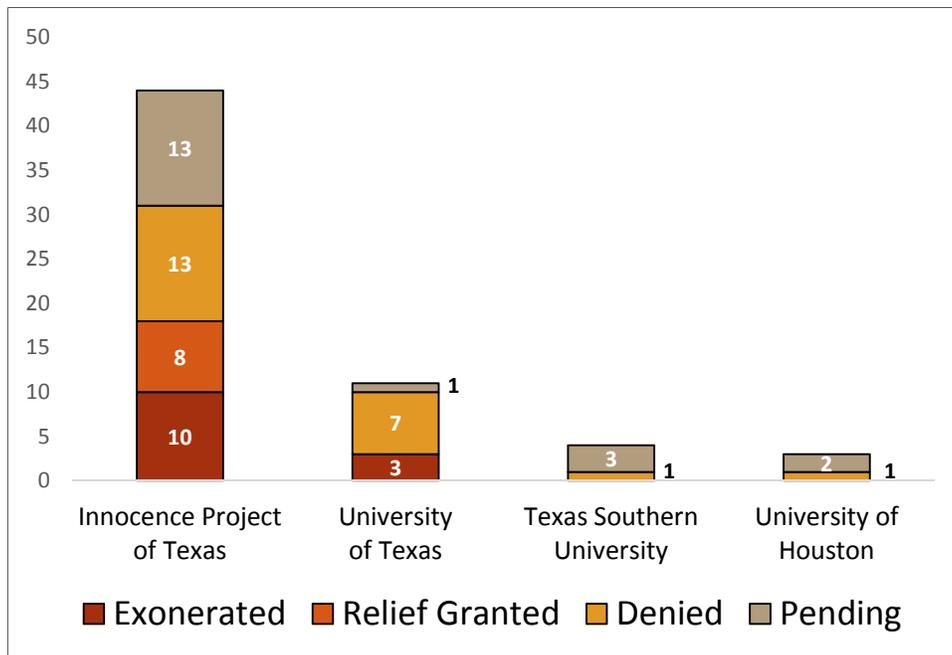
<sup>22</sup> Chapter 11, Texas Code of Criminal Procedure, Article 11.073 specifies that evidence to contradict scientific evidence presented at trial is among the types of claims or issues that can affect court consideration of an application for a writ of habeas corpus. Recent examples of such evidence include dog-scent lineups, misinterpreted indicators of arson, and shaken baby syndrome.

Litigation may result in one of three possible outcomes. First, the claim may be denied. In that case, the innocence project may close the case or they may continue investigation to develop other possible paths to exoneration. Second, if the prosecutor agrees the evidence presented is decisive, relief may be granted in the form of positive Findings of Facts and Conclusions of Law from the trial court, recommending that the conviction be overturned. Importantly, however, a successful habeas claim at the trial court level does not guarantee exoneration. Third, if the first two hurdles can be cleared, the case must go before the Texas Court of Criminal Appeals for a final determination regarding whether exoneration may be granted.

### Clemency

While litigation is a legal process, clemency offers a political path to exoneration.<sup>23</sup> A clemency pardon based on innocence, which exonerates an individual and erases the conviction, requires one of two things. Evidence of actual innocence may be submitted to the Texas Board of Pardons and Parole by at least two trial officials including the district attorney, district judge, sheriff, or chief of police in the county where the conviction occurred. Alternatively, the district judge in the county of conviction may submit the findings of fact and conclusions of law in a state habeas action indicating actual innocence. If, based on this application, a majority of members make a written recommendation, the governor has authority to grant clemency.

**Figure 3. Cases with Legal Remedies Pursued by Site**



<sup>23</sup> *Texas Board of Pardons and Paroles Executive Clemency Page*. April 1, 2013. Accessed May 15, 2015, [http://www.tdcj.state.tx.us/bpp/exec\\_clem/exec\\_clem.html](http://www.tdcj.state.tx.us/bpp/exec_clem/exec_clem.html). Clemency can include: full pardons, conditional pardons, commutations of sentences, pardons based on innocence, and emergency or family medical reprieves.

## CASE OUTCOMES

Thirteen individuals in nine years have been exonerated as a result of Texas’s innocence projects. Figure 3 depicts all of the cases where a legal remedy was initiated along with information about outcomes. The various legal strategies are depicted in Table 12, and Table 13 shows cases processed by year. Additional summaries of key information about individual cases are available in Appendix D.

### *Legal Remedies Pursued at the Innocence Project of Texas*

The Innocence Project of Texas has so far pursued legal remedies in 44 cases, more than any other site. Of these, ten have resulted in successful exonerations. Three were 2008 and 2009 DNA exonerations from the Dallas County Prosecutor’s Convictions Integrity Unit review of previously untested biological evidence. Two of these cases were resolved in litigation and one by a clemency petition. Three letter requests led to the 2010 posthumous exoneration of Timothy Cole,<sup>24</sup> as well as a successful habeas petition and an additional DNA exoneration, both in 2011. Three 2012 state habeas exonerations occurred after a University of Houston clinic student continued investigation of the cases after entering private practice, then teamed with IPTX during litigation. Additionally, there was one DNA exoneration in 2014.

Of the 34 IPTX clients not exonerated, two had relief granted by the trial court without exoneration, and six have had relief granted with exoneration still being determined. No outcomes have been determined for 13 pending cases. Thirteen cases were unsuccessful.

**Table 12. Legal Strategies Utilized in Cases with Relief Granted**

	Cases with Relief Granted				
	IPTX			UT	Total
	Relief Only	Exoneration Being Determined	Exonerated	Exonerated	
Chapter 64/DNA Testing with Writ	1	2	4	1	8
State Habeas Corpus	1	4	4	2	11
Clemency			1		1
Petition for Court of Inquiry <sup>25</sup>			1		1
<b>Total</b>	<b>2</b>	<b>6</b>	<b>10</b>	<b>3</b>	<b>21</b>

<sup>24</sup> At the time of the Timothy Cole Case, there was no legal remedy to exonerate a deceased individual. Through a Petition for a Court of Inquiry into the Wrongful Conviction of Timothy Cole, he was both officially exonerated and pardoned. His case led to the Timothy Cole Act and the Timothy Cole Advisory Panel on Wrongful Convictions.

<sup>25</sup> *Supra*.

**Table 13. Innocence Case Outcomes by Year**

FY	Texas Southern University (TMSLIP)			Texas Tech University (IPTX)				University of Houston (UHIP)			University of Texas (UTAIC)			
	Initiated	Denied	Granted	Initiated	Denied	Granted*	Exonerated	Initiated	Denied	Granted	Initiated	Denied	Granted	Exonerated
2005														
2006											1			
2007				3							3	2		
2008				3								1		
2009				12	1		1				4	1		
2010	1			2	3		3	1				3		1
2011				6	1		2							
2012	1			6	3		3				2			1
2013	1			6	3	1		1						
2014	1	1		3	1	4		1	1		1			1
2015				3	1	3	1							
<b>Total</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>44</b>	<b>13</b>	<b>8</b>	<b>10</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>11</b>	<b>7</b>	<b>0</b>	<b>3</b>

\* Includes two cases where relief was granted but exoneration has been denied. Includes five cases with relief granted and exoneration pending.

**NOTES:**

- All cases with relief initiated are counted in the “Initiated” columns.
- Cases with known outcomes are shown in the remaining columns (i.e., Denied, Relief Granted, or Exonerated).
- Cases with relief pending are not shown but can be calculated as the difference between the count of “Initiated” and other cases shown.

### *Legal Remedies Pursued at the University of Texas*

The University of Texas has pursued a legal remedy in 11 cases, three of which resulted in exonerations. All of these were state habeas claims resolved through litigation completed at two year intervals in 2010, 2012, and 2014. Relief was denied in seven of the remaining eight cases, and one is still pending a determination.

### *Other Legal Remedies Pursued*

No exonerations have yet been achieved at Texas Southern University or the University of Houston, though several cases are currently in process. Between 2010 and 2014, TMSLIP initiated a total of four legal remedies. One has been denied and the others are still in litigation. UHIP initiated a total of three remedies in 2010, 2013, and 2014, one of which has so far been denied.<sup>26</sup>

## **FACTORS EXPLAINING DIFFERENCES IN INNOCENCE OUTCOMES**

The data clearly show the Innocence Project of Texas holds a substantial lead over the other innocence projects in both the number of cases with a legal remedy pursued, and the number of exonerations attained. Two key assets have helped IPTX advance more cases toward exoneration advantages relative to peer institutions: resources and relationships.

### *Resources*

While the law school-based innocence projects have concentrated their limited state funding on the work of the clinic, IPTX has looked outward, attracting additional donations and grant funding needed to expand the reach of the program.<sup>27</sup> Over the past five years, IPTX has acquired over \$1 million in external funding. Programs based on grant-writing and fund-raising can be unstable, and several initiatives have been cut back as major grants have recently expired. Nonetheless, a stronger resource base in recent years has given the Innocence Project of Texas advantages that propel more cases toward exoneration.

For instance, IPTX has assembled a significantly larger grant-funded student workforce than other institutions possess. Including the Texas Tech innocence program, four additional student investigation groups were developed at three other universities.<sup>28</sup> Grant funds have also been available to cover costs that are unsupported at other sites yet are necessary to identify cases with a path to exoneration.<sup>29</sup> With both a primary emphasis on cases with “testable” forensic-based claims and greater access to funds for documents, experts, and evidence-testing, it should perhaps not be surprising that five of the

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<sup>26</sup> The University of Houston does post-conviction work with the Innocence Project of New York. Credit for the case depends on factors such as the extent of assistance provided and whether UHIP is formally designated as co-counsel.

<sup>27</sup> See generally, *supra* Chapter 3 (discussing innocence project resource strategies).

<sup>28</sup> *Supra*.

<sup>29</sup> See generally, *supra* Chapter 5, Phase III Investigation, Time to Complete Investigation.

nine IPTX exonerations have resulted from science-based challenges. In these ways, access to resources have been fundamental for successful case outcomes.

### **Relationships**

The second key to success for the Innocence Project of Texas has been their emphasis on developing and maintaining networks of well-connected partners. Established on many fronts, these relationships complement and enhance the organization's case-development strategy.

#### **Leading Post-Conviction Attorney Board Members**

IPTX has worked hard to recruit some of the state's leading post-conviction attorneys in Texas to serve on the non-profit's board of directors. In addition to performing the regular oversight duties of a board, these lawyers also actively refer cases for investigation and assist in litigation. Executive Director Nick Vilbas describes how the attorney panel also helps increase exonerations, "A lot of the cases we litigate, come from outside... cases that may have been on the board attorney's radar for a while.... You have a better chance of finding winnable cases that people bring to you just because a lot of times those are pre-vetted and have a level of support behind them that someone who just writes you a letter doesn't."

#### **State Government Agency Partnerships**

Close partnerships with public agencies have also increased the number of viable cases. Between 2007 and 2009, for example, IPTX worked closely with the Dallas County Prosecutors' Office in a DNA evidence review that ultimately credited the program with three exonerations.<sup>30</sup> In recent years, IPTX staff have also served as an informal resource to the state's Forensic Science Commission, the agency charged with strengthening the use of forensic science in criminal investigations. "I can't overstate how important our relationship with the Forensic Science Commission has been," says Executive Director Nick Vilbas. "Just being there and being a resource and if they have cases or complaints that come through and don't fit their guidelines, they'll refer them to us. We'll take a look at them. We have no problem doing that."

When the Forensic Science Commission recommended a retroactive case review to improve arson investigations in Texas,<sup>31</sup> IPTX took the lead in collaboration with the State Fire Marshall's Office.<sup>32</sup> The project generated 11 cases with compelling claims of innocence. Legal remedies are being pursued for

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<sup>30</sup> In 2007, Dallas County District Attorney Craig Watkins created the nation's first conviction integrity unit which investigates claims of wrongful conviction. The initial DNA reviews were conducted in tandem with the Innocence Project of Texas, and Mike Ware who oversaw the conviction integrity unit at the time was an IPTX board member. See Emily, Jennifer. "Dallas County Conviction Integrity Unit Turns Focus to Non-DNA Cases." *The Dallas Morning News*. May 24, 2010. Accessed May 15, 2015, <http://www.dallasnews.com/news/community-news/dallas/headlines/20100522-Dallas-County-conviction-integrity-unit-turns-6750.ece>.

<sup>31</sup> "Report of the Texas Forensic Science Commission-Willingham/Willis Investigation." *Texas Forensic Science Commission*. April 15, 2011. Accessed May 15, 2015, <http://www.fsc.state.tx.us/documents/FINAL.pdf>.

<sup>32</sup> As part of the arson review, 1,085 inmates were surveyed to ascertain if flawed science could have been a factor in their conviction. Based on responses, more than 250 were sent a questionnaire requesting further information, and 35 were selected for in-depth investigation. Of those, eight were submitted to the SFMO's Science Advisory Workgroup for scientific review. One case has so far had relief granted without a chance of exoneration. In this case, the original conviction was overturned by the Court of Criminal Appeals, and the case was remanded back to the trial court for retrial.

some of these cases today. In another institutional collaboration brokered by the Texas Forensic Science Commission, IPTX is preparing to undertake a review of convictions based on now-discredited methods of hair and fiber analysis used in laboratories operated by the Department of Public Safety and others. Future areas targeted for similar institutional reviews include firearms, fingerprints, and sexual assault examinations among others.

### Other Partnerships

IPTX has close partnerships outside of Texas as well. The National Center for Reason and Justice referred a case leading to the prominent release of four San Antonio women currently seeking exoneration.<sup>33</sup> IPTX Executive Director Nick Vilbas also networks as a member of the board for the national Innocence Project in New York. Connections with individuals and organizations capable of generating viable innocence claims have boosted the success rate of IPTX relative to peer institutions. Since many of these partners are vested in forensic or “junk science” causes of conviction, the cases that they bring can often be processed more quickly than cases based on untestable non-forensic claims. In these ways, individual and organizational relationships have helped funnel promising cases to IPTX.

## CONCLUSION

If a path to exoneration is discovered during investigation, the innocence projects must determine a legal strategy. Though litigation and clemency are both options, litigation is far more commonly used. The Innocence Project of Texas has the strongest litigation capacity because of extensive post-conviction legal expertise available on the board of directors.

In nine years, Texas’s innocence projects have initiated legal remedies in 62 cases, and thirteen wrongfully convicted individuals have been exonerated. Three-fourths of these were achieved at the Innocence Project of Texas. A substantially stronger financial base developed through grant-writing and fund-raising has provided resources that help advance cases toward exoneration. Networked relationships with a variety of partners have also enhanced IPTX access to viable forensic-based wrongful conviction cases.

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<sup>33</sup> *Supra* note 9. Four women known as the “San Antonio Four” had their convictions overturned and were freed on November 19, 2013. Exoneration is pending.



## **PART III**

### **Student and Law School Perspectives**



## 7. STUDENT EXPERIENCE

None of the funded law schools offer a criminal law concentration, and few students enrolled in the state's innocence clinics are destined for a career in criminal practice. Only at Texas Southern University, the one law school with a social justice orientation, are a majority of students considering a career as a prosecutor or a defense attorney. Even so, when students talk about their work with the program, it is uniformly described as among the most meaningful experiences of their law school career. Young people mentioned a number of specific ways participation has touched their lives. These quotes are typical of views expressed at every site.

- **Academic Learning:** "I could see each step of the process... The regular trial, the different appeals, the paperwork involved, the motions you have to draft, and then finally once they get to us, the process making writs from innocence or habeas corpus depending on what their needs are. I just feel like the level of understanding of the justice system and the legal system has really developed over the past year I've been involved here."
- **Practice Skills:** "The work we're doing really is day to day lawyering. Right? It is like figuring out who to contact in McLennan County. That is the 'on the ground' work that you are doing when you're advocating for people. So the bulk of our time is really spent on gathering information so we can figure out what to do next, and that's what lawyers do."
- **Personal Connection:** "You meet the people that are in the program, that run the program, it's like a family. This is like my second home. I feel so welcome every time I come here."
- **Lifetime Impacts:** "I feel like, because I most likely will be working for a much larger firm, I'll still want to participate in pro bono work on my own time just because I've interacted and seen the people that are affected by it."

This chapter describes how students experience innocence instruction and supervised investigation as it is delivered at each of the four law schools.

### STUDENTS IMPACTED

Since FY 2005, more than 800 law students have completed a clinic or externship with an innocence project. In FY 2014 alone, the four current innocence projects helped a total of 138 students gain a deeper understanding of wrongful convictions (Table 14). Between 19 and 26 students took part in each of the four law school clinics, contributing an average 108 hours each to innocence investigation.

The innocence projects also have significant secondary benefits beyond the law schools. At Texas Tech University, in the last program year 30 forensic science students instructed by innocence project staff contributed an average 90 hours each toward investigation. Three to five additional students

volunteered through the Innocence Project of Texas Student Association, a student membership group established to help connect IPTX to the campus community.

**Table 14. Student Hours Supporting Innocence Investigation in FY 2014**

	<b>Texas Southern University (TMSLIP)</b>	<b>Texas Tech University (IPTX)</b>	<b>University of Texas (UTAIC)</b>	<b>University of Houston (UHIP)</b>
<b>LAW STUDENTS</b>				
<b>Innocence Clinic</b>	22 students	20 students	19 students	26 students
Total Hours Worked	1,734 hours	2,600 hours	1,672 hours	3,396 hours
Avg. Hours/Student	79 hours	130 hours	88 hours	131 hours
<b>Non-Innocence Clinic</b>	20 students	----	----	----
Total Hours Worked	2,200 hours	----	----	----
Avg. Hours/Student	110 hours	----	----	----
<b>NON-LAW STUDENTS</b>				
Non-Law Students	1 student	30 students	----	----
Total Hours Worked	124 hours	2,700 hours	----	----
Avg. Hours/Student	124 hours	90 hours		

Each summer, Texas Southern University Clinic Professor Anthony Haughton teaches an innocence motions class for approximately 10 to 15 students. The content complements the concepts taught in the innocence clinic and each student contributes about ten hours of case investigation as a course requirement. Professor Haughton also supervises a group of about ten volunteers, each of whom contributes 15 hours of investigation each week of the eight week summer session. The large majority are law students, though the opportunity is open to students from other departments.

In some years TMSLIP also provides placements for visiting students taking part in the Texas Legislative Internship Program (TLIP). The program places visiting undergraduates in positions where they earn course credit while gaining experience in public sector law. Interns assigned to the TMSLIP innocence project work as a full-time student for the program for an entire 19-week semester providing an immersive experience in the investigation of wrongful conviction.

The University of Houston innocence project does not have a formal volunteer program. Cases are sometimes shared for investigation with St. Thomas University where they are supervised by Nicole Casarez, an experienced and qualified journalism professor and post-conviction attorney. Concerns about supervision and accountability has also limited the use of volunteers at the University of Texas Law School. The clinic director has tried in the past but found that without the leverage of a grade, it was difficult to guarantee commitment and quality of work. Options are emerging that may circumvent

this problem as the law school is developing an optional pro bono pledge program. This alternative could create a path for non-clinic law student volunteers in the future.

## CLASSROOM INSTRUCTION

Key features of innocence course requirements are summarized in Table 15. The innocence clinics each enroll between eight and eleven students on average per semester. All sites require eight hours of independent investigation each week, but required class time varies. IPTX and UHIP require just a two-hour weekly classroom commitment.<sup>34</sup> UTAIC requires three hours in class plus an additional scheduled meeting with the Clinic Professor to discuss cases one-on-one. TMSLIP requires four hours of class time.

At each site, the Clinic Professor, an attorney skilled in criminal and post-conviction law, provides formal instruction on subjects including, causes of wrongful conviction, paths to exoneration, how to do investigation, and post-exoneration concerns (Figure 4). Equal class time is devoted to reviewing cases assigned for investigation. Students and Clinic Professors problem-solve as a group, applying the concepts learned in lecture. Professors may enrich the process in various ways like challenging students with hypothetical scenarios or conducting mock cross examinations of experts.

As students investigate on their assigned cases, Clinic Professors are available for consultation at any time. However, UTAIC is the only site that requires a scheduled weekly one-on-one meeting.

Classes are offered both fall and spring semesters at every school. Summer instruction is only available at Texas Tech University and the University of Houston. At UTAIC, the clinic director maintains cases under active investigation during this interval. At Texas Southern University, volunteers and students enrolled in the innocence motions class provide continuity of investigations during summer semester.

### Figure 4. Innocence Course Topics

#### Criminal procedure

- Causes of wrongful conviction
- Case processing, arrest to trial
- Evidentiary standards and science
- Habeas corpus and clemency
- Prosecutorial perspectives
- Post-conviction integrity units
- Policy proposals

#### How to investigate wrongful conviction

- Confidentiality
- Legal file management
- Screening innocence claims
- Interpreting physical/scientific evidence
- Locating documents and evidence
- Interviewing witnesses
- Communicating with inmates and families

#### Starting over after exoneration

- Compensation
- Expunction
- Re-Entry

<sup>34</sup> During the summer semester, UHIP requires four hours of total lecture and case discussion.

**Table 15. Innocence Clinic Course Requirements**

	Relationship to Law School	Average Class Size	Weekly Expectations	Summer Clinic	Number of Investigations Active at Once	Graded	Minimum Participation	Post-Completion Options
<b>Texas Southern University (TMSLIP)</b>	Law School Clinic	11 students	<ul style="list-style-type: none"> <li>• 2-hour lecture</li> <li>• 2-hour case discussion</li> <li>• 8 hours investigation</li> </ul>	None	1-2 investigations <i>(rolling case assignment)</i>	Pass-Fail	1 semester	Externship <i>(2 hours/week)</i>  Advanced Clinic <i>(2 hours/week)</i>
<b>Innocence Project of Texas (IPTX)</b>	Externship	8 students	<ul style="list-style-type: none"> <li>• 2 hours integrated lecture/case discussion</li> <li>• 8 hours investigation</li> </ul>	<ul style="list-style-type: none"> <li>• 2 hours integrated lecture/case discussion</li> <li>• 8 hours investigation</li> </ul>	1-2 investigations <i>(rolling case assignment)</i>	Pass-Fail	1 semester	Repeat Externship <i>(up to 3 semesters)</i>
<b>University of Houston (UHIP)<sup>35</sup></b>	Law School Clinic	8-10 students	<ul style="list-style-type: none"> <li>• 1-hour lecture</li> <li>• 1-hour case discussion</li> <li>• 8 hours investigation</li> </ul>	<ul style="list-style-type: none"> <li>• 2-hour lecture</li> <li>• 2-hour case discussion</li> <li>• 16 hours investigation</li> </ul>	3-5 questionnaire reviews  2-3 investigations <i>(rolling case assignment)</i>	Forced Curve	1 semester	Repeat Clinic <i>(up to 6 credit hours)</i>
<b>University of Texas (UTAIC)</b>	Law School Clinic	8-10 students	<ul style="list-style-type: none"> <li>• 3-hour integrated lecture/case discussion</li> <li>• 0.5 hour one-on-one case discussion</li> <li>• 8 hours investigation</li> </ul>	None	15-18 investigations <i>(cases assigned once/semester)</i>	Pass-Fail	1 semester	Advanced Clinic <i>(1-3 hours)</i>

<sup>35</sup> During summer UHIP students take 6-10 questionnaire reviews and 2-3 investigations.

## SUPERVISED INVESTIGATION

### *Investigation Techniques Learned*

Within a few weeks of learning the techniques of innocence investigation, students begin practicing their new skills on real wrongful conviction claims. Basic investigation skills include internet background research and locating trial transcripts or other court documents. As cases progress and students gain experience, they may advance to interviewing clients, co-defendants, witnesses, experts, or prosecutors; visiting crime scenes; or drafting writs. Throughout the process, students carefully document their progress and summarize evidence for or against wrongful conviction in memos. One student described the thrill when what has been learned in the classroom is first connected to an actual case:

With the classroom experience, that's where we're learning, OK this is what "new evidence" is going to be. So we're looking at, OK, is there something with DNA or a recantation or something with the witnesses that can help us? Was there misidentification? We learn what those actual concepts are in the classroom.

And then when we look at the file, it's like, "Well look, this is what misidentification is! Oh my gosh, it's actually here in this case right now, so let's see what we can do to move forward!" Or we'll be like, "Oh no, we've hit a dead end. Everything I thought was going on is not going on. You know, he might actually be guilty. Maybe these witnesses were telling the truth." Or maybe what you thought was new evidence is not, because I'm looking at the transcript and this was all brought up during trial.

Students uniformly report the insights gained in the innocence clinic are unlike anything experienced in other classes.

### *Case Processing*

#### **Assignment**

The number of cases assigned to students varies by school (see Table 15). The University of Houston is the only program that involve students in screening questionnaires. They review and make a recommendation whether to investigate three to five cases per week. In addition to the screenings, they also carry five or six active investigations assigned on a rolling basis. Over the course of a semester they may handle 40 or more cases, far more than any other innocence project. However, since students rarely enroll for more than a single semester<sup>36</sup> they are primarily assigned low-complexity screening cases or early-stage investigations. A full-time contract attorney investigates more complex or advanced cases.

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<sup>36</sup> See generally, *infra* Chapter 7, Supervised Investigation, Opportunity for Repeated Participation (discussing the effect of UHIP law school's "forced curve" grading policy on clinic enrollment).

At Texas Southern University and the Innocence Project of Texas, students carry just one or two open investigations at once with new cases assigned on a rolling basis. At the University of Texas, in contrast, cases are assigned just twice each year, at the beginning of fall and spring semesters. Since a large number of cases are allotted at once, the active caseload seems deceptively large at UTAIC relative to other schools.

The number of investigations students complete in a semester depends on the nature of the cases themselves. If evidence can be acquired and evaluated timely, a determination can sometimes be reached in a few days. However, if there are delays getting documents or arranging for attorneys, experts or tests, or if investigators follow multiple possible paths to exoneration, cases may not be completed within the semester. In this instance, they are passed forward for re-assignment in the next clinic class.

### Transfer

Students at every site say there is good continuity for transferred cases. A physical file contains the memos summarizing work done by previous custodians of the case, including conclusions reached at the time the case is passed on and untraced leads remaining. New clinic students are encouraged to review their predecessor's work critically both to develop their own case evaluation skills and to look for new paths not previously recognized. In some instances, students who have worked on cases in the past are still on campus and available for questions. Some even check in intermittently to learn the status of cases they worked on in the past.

### Completion

Each of the programs gives students a great deal of latitude to follow their instincts during case investigation. It is part of the educational experience, but it is also a check to ensure no valid paths to exoneration are overlooked. UHIP has an official policy that if a student feels more information may be needed, if they have a "burr under their saddle" about a particular case, they cannot be made to close it. "I do not have the power to overrule their decision to investigate, I only have the power to overrule their decision to terminate," says Clinic Professor Cassandra Jeu. When students recommend that no path to innocence is currently available, if the Professor agrees, the case is closed.

### *Opportunity for Repeated Participation*

Because students grow more expert at innocence investigation with experience, it is beneficial if they can participate for at least two semesters. According to students, "You spend the first half of the semester figuring out how to go about the case. By the time you're getting closer to the second half you can actually start making more progress."

Texas Southern University has a policy preventing law students from taking the same class more than once, limiting innocence clinic participation to a single semester. "One of the things we are grappling with is that... we would like to see a sequential course. By the time students get up to speed, the semester is over," says ECI Executive Director Sarah Guidry. As one of the most popular programs on campus, students pressed hard for a solution and within the past year, the law school has responded. Though the clinic still cannot be repeated, new options now exist for continued participation through a

complementary externship, or through an advanced clinic available for a small number of outstanding students.

At the University of Houston, grading policies discourage enrollment or long-term student participation in the innocence clinic. This issue has so far proven unsolvable. At most innocence programs, students either “pass” or “fail” the course. Only at UHIP is performance graded on a “forced curve” to ensure that a fixed proportion of the class will necessarily receive a “B” grade. For students committed to a high grade point average, this is a substantial barrier. Indeed, as soon as the policy was implemented clinic registration declined, and those who do enroll rarely take the class more than once.

At Texas Tech University and the University of Texas, repeated participation is a common occurrence, with as many as 80 percent of students registering at least twice. It is difficult to precisely assess the effect of the difference in clinic experience on investigation outcomes; but if university policies incentivized students to make a longer-term commitment they would learn advanced skills, follow cases longer, and perhaps increase the number of clients for whom relief is granted.

## CLINIC VS. EXTERNSHIP STRUCTURE

Texas Tech University has the only innocence project that is operated as an externship. IPTX staff worked as adjunct Clinic Professors until FY 2012 when the program was relocated through a sub-award agreement.<sup>37</sup> Like a clinic, externship instruction is based on a syllabus with assigned readings, students have the same opportunities to investigate wrongful conviction, and they earn credit for their effort. The primary distinction is that an externship is operated outside the law school administrative structure.

As an externship, the biggest challenge for IPTX has been making sure students are aware of the opportunity. Classes are held off-campus and the course is not listed with standard law school offerings. Instead, a small posting on the Texas Tech Clinical Program website notes, “In addition to faculty-supervised clinics, students are provided the opportunity to participate for academic credit in the work of The Innocence Project of Texas, a non-profit organization dedicated to those wrongfully convicted of crimes in Texas.”<sup>38</sup> The student-run Innocence Project of Texas Student Association was formed to help raise program visibility, and notices can be distributed through the Career Services Department’s email distribution list. Law school administrators say they do not anticipate a change in the externship arrangement in the foreseeable future.

## COMPLIMENTARY CLINIC ACTIVITIES

In addition to the innocence clinic, some of the programs offer additional components that enrich the experience of learning about wrongful conviction.

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<sup>37</sup> See generally, *supra* Chapter I, Organizational Structures, Contract-Based Administrative Structure, Contract-Based Administrative Structure (discussing the IPTX transition from clinic to externship).

<sup>38</sup> “Clinical Programs.” *Texas Tech University School of Law*. Accessed May 15, 2015, <http://www.law.ttu.edu/acp/programs/clinical/>.

- ***Innocence Project Publicity.*** At Texas Southern University, students are required to write a three to five page blog entry as a course requirement. They are also encouraged to represent the innocence program on “The Prison Show” aired on Houston’s KPFT community radio station.
- ***Innocence Motions Class.*** TMSLIP students who want a greater depth of understanding and skill on exculpatory law may also choose to enroll in an innocence motions class taught in the summer and designed to complement the innocence clinic.
- ***Forensic Science Classes.*** For several years IPTX staff have taught a graduate-level class in the Forensic Science Institute (FSI) at Texas Tech University. IPTX is disseminating the course developed for forensic science students by offering a similar class to law students beginning Spring Semester, 2015.
- ***Student Innocence Association.*** The Innocence Project of Texas has organized an association of approximately 20 student volunteers from all disciplines across campus. Though ineligible for the externship, these students co-sponsor innocence-related events with IPTX and invite attorneys and exonorees as lunch-time speakers to showcase the issue of wrongful conviction. Four or five of these students also volunteer to assist with IPTX office work each year.
- ***Regional Externships.*** Beginning Fall Semester 2015, IPTX will join the Texas Tech Law School’s Regional Extern Program. This program places third-year law students in unpaid extern positions around the state, where they work nearly full-time (35 hours/week) for a full semester. IPTX will be able to place students at their own offices in Lubbock, Amarillo, and Dallas. If additional interns become available in future years, options exist for placements in law firms represented on the IPTX board.

## CONCLUSION

Many of the more than 800 students completing innocence clinics since 2005 are currently applying their education in careers as professional attorneys, in public policymaking, or in pro bono work. The state-funded clinics all share a similar structure. Aspiring attorneys learn about post-conviction law and innocence investigation in the classroom, then practice their skills on people claiming wrongful conviction. Every student interviewed said the experience gained through this unique opportunity will one day make them better lawyers.

There are, however, opportunities for improvement. Law school policies prohibiting or discouraging innocence clinic enrollment over multiple semesters have a detrimental effect. Students at the University of Houston and Texas Southern University, where one-time participation is the norm, rarely have time to develop advanced investigation skills or to follow promising cases over time. If the policies that discourage sequential enrollment could be relaxed, the change would support faster case processing and potentially improve program outcomes.

## 8. BENEFIT TO LAW SCHOOLS

The legislature was strategic in placing responsibility for Texas's innocence projects in the state's public law schools. In addition to providing both the experience and the institutional structure to manage clinical education programs, law schools are a nexus of key constituencies. Faculty scholars have expertise to guide investigations to redress wrongful convictions. Bright and capable assistants can be drawn from among students preparing to become the next generation of legal practitioners. The innocence clinics offer these pre-professionals course credit as well as an opportunity to practice a uniquely meaningful type of law. For many years, people convicted of crimes have directed pleas for help toward criminal law programs in our state's academic institutions. While the innocence clinics are strengthened by their link to a law school community, schools that host these programs receive substantial benefits in turn.

### LAW SCHOOL PERSPECTIVES ON THE INNOCENCE CLINICS

#### *Pride and Reputation*

Texas's public law schools uniformly view the innocence clinics as a point of institutional pride. The schools recognize their unique status as the only state-funded source for review of actual innocence claims. Deans mention the program when recruiting new students or talking with potential donors to demonstrate the law school is making a difference. While many people may be unaware of the state investment in innocence programs, UT Law School Dean Ward Farnsworth observes, "...there are communities of intense interest in these issues. They know we have one, and I'm glad they do." The programs like that the innocence work is meaningful and important to state policy objectives. Says Farnsworth, "The partnership with the legislature sort of feels like a vote of confidence.... We want to be involved in solving the state's problems."

#### *Professional Education about Wrongful Conviction*

The four funded law schools agree the innocence projects expose students to the most important aspects of professional practice. Students commonly report the innocence clinic is the best class in law school. For some, the experience will help shape future careers as judges, legislators, prosecutors, or defense lawyers. Even those who follow other career paths will have a depth of understanding about the causes and consequences of wrongful conviction. Many will devote time or resources to the cause of criminal justice system integrity. "I know that there are at least two or three students from every year that I've taught that have worked on an innocence case or some kind of criminal case pro bono at their firm, or have gone into prosecution or gone into defense, or somehow engaged in what we do as part of the clinic once they graduate," said Tiffany Dowling of UTAIC. She has also utilized the clinic alumni network in the past to get assistance with civil issues on behalf of clinic clients.

### *Practice-Ready Graduates*

The state-funded innocence projects are not directly considered in law schools' accreditation or rankings. They do, however, contribute to the goal of turning out students that are "practice ready." The best law schools offer opportunities that help students to gain experience performing the functions of a lawyer. Students affirm this is the case. "I don't care what sort of law you're interested in," said one student, "this is a great class to take.... It teaches you common sense that you don't necessarily get from just taking classes and reading case law. You have to not only play by the rules as they are written, but also like the unwritten rules of 'this is how things operate.' It also teaches you that you are stronger and more reliable than you thought. It made me really get organized. You get a lot of practical experience that you can take beyond the criminal law realm into just any area of practice."

### *Broader Justice Objectives*

Innocence clinics are part of a growing role for state law schools as a vehicle for social justice. At the University of Houston Law School, Dean Leonard Baynes has been in that position for less than a year, but already he sees the innocence clinic as part of a larger strategy to help non-traditional students find meaning in the law school experience. As a professor at St. John's University School of Law in Queens, NY, he recounts being surprised at the number of students that knew someone who had taken a plea deal even when they committed no crime. "There are not enough lawyers actually doing this kind of work... and they're not in the communities where they need to be," he explains. "I view our role at this institution as helping to change society in some way... and I am very proud of the innocence work, and I want to make sure we continue doing it and make it bigger, better, and integrated with a lot of other things that we do at the law school."

Similarly, Texas Tech Law School Dean Darby Dickerson speaks of a recent event honoring Timothy Cole, a Lubbock man whose posthumous exoneration led by the Innocence Project of Texas has inspired significant changes in policy and legislation. Students from the Texas Tech University innocence program, operated by IPTX, helped plan and organize the event, which was attended by Gov. Rick Perry, Greg Abbott, Wendy Davis, Dan Patrick, Leticia Van de Putte, Texas Tech Chancellor Robert Duncan, and many other luminaries from across the state who are passionate about the issue. The prestigious event was just one example of the ways in which the innocence program helps law students experience first-hand the connection between legal and social policy.

Similarly, Texas Southern University houses their program administratively in the Thurgood Marshall Law School's Earl Carl Institute for Legal and Social Policy. There it complements the Institute's core mission to address legal and social issues that disproportionately affect urban and disenfranchised communities. Investigations help students see first-hand the linkages between race, poverty, mental health, and wrongful convictions. Executive Director Sarah Guidry notes, "The civic engagement, public service, and sense of empathy matters for our students.... [Inmates] are human beings to them now. People's biases are dented."

## **CONCLUSION**

Texas's state-funded innocence projects are highly prized by the host law schools. School administrators are gratified to be able to contribute to the mission of freeing the wrongfully convicted. They also believe the program on their campus helps them achieve their own strategic objectives related to reputation, student learning, and social justice goals.



## **PART IV**

### **The Future of Texas's Innocence Projects**



## 9. THE FUTURE OF FUNDING

After a decade of partnership between public law schools and the state, there is opportunity to consider whether adjustments to the funding agreement would strengthen the innocence projects' ability to meet policy objectives. There are two prominent questions. The first is whether and how state funding should be extended to the state's newest public law schools. The second is whether adjustments to base funding might improve the state's overall return on investment. This chapter shares observations from the study to inform thinking on these issues.

### FUNDING FOR NEW INNOCENCE PROJECTS

All of Texas's public law schools have shown ample willingness to help the state address the problem of wrongful conviction. Besides a history of successful cooperation with the four currently funded projects, Texas A&M University School of Law has already established a volunteer-run clinic operated by the Innocence Project of Texas. The University of North Texas Law School does not yet have a program in place, but the Dean and some faculty have expressed strong interest. It is for the legislature to decide whether the state will support the hiring of permanent staff and bring these programs to scale. With each of the current innocence projects receiving between 500 and 1,000 requests for assistance each year<sup>39</sup> there is adequate demand to involve many more students in the worthwhile work of innocence investigation.

If program expansion occurs, commensurate financial backing will almost certainly be needed for the new law schools. Asking the existing programs to divide the allocation by six sites is uniformly viewed by current clinic staff as a formula to undermine the overall initiative. Clinic Professors recall that a one-time 20 percent budget reduction during the 2012-13 biennium stretched capacity to the limit and, if not restored, would have made survival nearly impossible over the long term. The \$100,000 average annual allocation is considered the bare minimum investment to accomplish the sites' core objectives, and even then only with additional assistance from the sponsoring law schools.<sup>40</sup>

Stable funding is also required to assure the law schools that their contributions are being directed toward a permanent and valued asset that will continue to receive state backing well into the future. With this affirmation, these institutions are significantly more likely to maintain their current significant level of investment, vital to the programs' operation and success.<sup>41</sup> The newest projects facing additional costs of start-up may be particularly fazed by any reduction in state support. If the innocence projects can be expected to thrive long term, current state investment must be maintained at each funded law school.

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<sup>39</sup> See Table 3.

<sup>40</sup> See generally, *supra* Chapter 2, Innocence Project Program Costs, Personnel Costs (discussing law school personnel and operational contributions toward costs of the innocence projects).

<sup>41</sup> *Supra* Table 1.

## FUNDING FOR IMPROVED EFFICIENCY AND IMPACT

In addition to maintaining current resource levels, this study further suggests incremental new investment could increase both efficiency and effectiveness for the state's innocence projects. A substantial number of cases are under active investigation (769 cases, Table 10). An even larger number (1,730 cases, Table 8) are pending assignment. At TMSLIP nearly 1,000 additional letters have not yet even been reviewed for eligibility. Managing this level of case volume at current resource levels is a difficult challenge. New investment in two key areas will help improve case processing to determine case outcomes more timely and with greater proficiency. These include funding for investigation costs and additional personnel to help bring advanced cases to closure.

### *Funding for Costs of Investigation*

Earlier chapters have shown progress toward completing investigations is often impeded by a lack of funds for trial transcripts, evidence testing, experts, travel, and other elements needed to evaluate the claim.<sup>42</sup> As a result, cases are commonly set aside for weeks or months until a means to pay can be determined. Since FY 2014, the University of Texas Law School became the only program with a stable resource pool for these expenses.<sup>43</sup> Since then, UTAIC staff say information to conclude cases is available more quickly and program operation is more efficient. As little as \$15,000 to \$20,000 per year for each project could address this problem, boosting productivity at all of the innocence sites and increasing the state's overall return on investment.

### *Funding for Investigation Personnel*

Second, additional paraprofessional staff would help manage the volume of cases and carry those most promising forward to the litigation phase. Students are a powerful but incomplete resource for innocence investigation. While student teams change from one semester to the next, an assistant could lend focus and continuity needed to push cases all the way to exoneration. With clinic professors' time largely consumed by teaching, student supervision, and administrative tasks, a small amount of additional staff capacity could extend the programs' impacts on wrongful convictions.

## CONCLUSION

Texas now faces a decision regarding whether and how to integrate new law schools into the current innocence project infrastructure. For expansion to succeed, a sufficient and stable funding base for both old and new members of the innocence network must be preserved. In addition to maintaining current funding levels, a small amount of targeted new investment to cover costs of investigation and an assistant to provide focus and continuity in advanced cases would significantly enhance the sites' ability to achieve exonerations efficiently, thereby increasing the state's overall return on investment.

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<sup>42</sup> See generally, *supra* Chapter 5, Phase III Investigation, Time to Complete Investigation.

<sup>43</sup> *Supra*.

## 10. FUTURE FOCUS OF INVESTIGATION

In the decade since the Texas innocence projects have existed, the nature of investigation has changed. Today, forensic science is a major force behind an upsurge in the rate of exonerations. Nationally, 2014 saw the highest number of exonerations ever, with nearly half (47 percent) of the 125 cases cleared involving DNA, junk science, or both.<sup>44</sup> The other half were proven through non-forensic avenues by proving false confessions, mistaken identification, false accusation, or inadequate legal defense.

While the use of forensics is of growing importance, statistics suggest many wrongful convictions cannot be verified through a scientific test. The national Innocence Project finds nearly three of every four DNA exonerations (72 percent) can be traced to eyewitness misidentification, and two-thirds (63 percent) of homicides cleared using DNA evidence originated with a false confession.<sup>45</sup> The implication is that statistics suggest most wrongful convictions cannot be verified through a scientific test. In these non-forensic cases, however, the path to exoneration is much more arduous and costly, posing a serious dilemma for Texas's innocence projects.

### FORENSIC INNOCENCE CLAIMS

#### *Forensic Reviews are Lower Cost, Faster Paced*

Clear financial incentives exist for the innocence projects to favor innocence claims backed by forensic proof. Where exoneration depends on extracting new testimony from a recanting witness, on proving a confession to be false, or on identifying a true perpetrator, investigation is more costly and can take years to prove. In many instances, even though the defendant may have committed no crime, the necessary evidence can never be successfully compiled. For these reasons, the Innocence Project of Texas has made a resource-based determination to make these types of non-forensic cases the lowest priority. Jeff Blackburn, Chief Counsel at IPTX explains why:

You've got to get somebody on the ground, you've got to write him letters, you've got to maybe talk to witnesses, you know we're talking before very long twenty, thirty hours on a claim that probably isn't going to make it anyway no matter what you do. God forbid that you need an expert to work on it; even if those guys cut you a break they're still expensive. It's going to become cost prohibitive to even get that case into court, much less spending three or four years litigating it possibly. So for us, we had to go, okay how can we continue to do the work, provide ourselves the best opportunity for a positive legal outcome at the end of it, and survive financially.

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<sup>44</sup> "Exoneration Registry." *The National Registry of Exonerations*. Accessed May 15, 2015, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

<sup>45</sup> "DNA Exonerations Nationwide." *The Innocence Project*. February 7, 2007. Accessed May 15, 2015, [http://www.innocenceproject.org/free-innocent/improve-the-law/fact-sheets/dna-exonerations-nationwide\\_](http://www.innocenceproject.org/free-innocent/improve-the-law/fact-sheets/dna-exonerations-nationwide_)

At IPTX traditional non-forensic innocence claims are moved to the pending list to be considered as time allows. Active investigation capacity is then allocated to cases backed by scientific proof. In recent years through partnerships with government agencies, IPTX has begun conducting large-scale categorical investigations of cases eligible for a common cause of wrongful conviction.<sup>46</sup> As with post-conviction DNA cases, the next decade or longer may be spent working through extant cases in areas such as firearms, ballistics, arson, fingerprints, hair and fibers, sexual assault examinations, and shaken baby syndrome. Because a large number of cases can be screened for a single science-based factor in a short period of time, the chance of finding provable innocence claims is considerably higher than in reviews based on letter requests for assistance, and the cost per successful claim is considerably lower.

### *Forensic Reviews Inform Changes in Policy and Practice*

The growing focus on forensic claims also has benefits for the broader criminal justice system. Exposing “junk science” convictions helps raise awareness among prosecutors, defense attorneys, and legislators, leading to changes in policy and practice that prevent the underlying mistakes in the future. The effectiveness of this strategy can be seen with post-conviction DNA testing. The Texas Legislature created Chapter 64 of the Code of Criminal Procedure to make post-conviction DNA testing more broadly available.<sup>47</sup> Following a spate of subsequent DNA exonerations in the mid-2000’s, most observers agree today there are few cases with untested biological evidence remaining and new laws and practices make such convictions much less likely in the future.<sup>48</sup>

## **GENERAL INNOCENCE CLAIMS**

Despite these benefits, three of the innocence projects – UTAIC, UHIP, and TMSLIP – have opted not to give precedence to forensic cases over traditional innocence claims. The sites are certainly interested in cases where forensic evidence is in play. UHIP Clinic Professor Cassandra Jeu says, “It would feel really great to work on that awesome case where you get towards the finish line easily and handily.” One DNA exoneration at UTAIC was cleared in about a month.

At most of the innocence projects, however, cases are selected primarily from inmates’ or families’ letter requests. Sometimes dispositive science-based evidence is available in letter requests, but more often it is not. The Innocence Project of Texas is the only site that currently uses of targeted government agency forensic investigations to generate a large volume of cases with “testable” evidence. While IPTX leadership has suggested centralized case distribution as a means to share this work, at present no such mechanism is in place.

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<sup>46</sup> See generally, Chapter 3, Independent Non-Profit Resources.

<sup>47</sup> See generally, *supra* Chapter 6, Phase 4: The Pursuit of Legal Remedies, Litigation (for discussion of changes in legislation related to changes in criminal science and forensic testing).

<sup>48</sup> *Supra* note 30.

### *General Innocence Reviews Offer Holistic Review of Multiple Paths*

A limitation of targeted forensic investigations is that they examine a single cause of wrongful conviction while other potential paths to exoneration go unexplored. The elements investigators look for in a hair and fiber analysis, for instance, may not reveal other valid evidence that might legitimately lead to an overturned conviction. In contrast, investigators at UTAIC, UHIP, and TMSLIP follow all available paths until each is exhausted. “[W]hen you’re doing intake through letters,” says Professor Dowling, “you do all of that review at once – you’re looking at all the paths holistically.”

### *General Innocence Reviews Offer Equal Access*

TMSLIP, UHIP, and UTAIC offer principled objections to prioritizing forensic cases, arguing that the type of evidence available should not determine which inmates have a chance for exoneration. “If somebody wants us to focus on arson for the next few years, we can do that,” explains Professor Jeu. “It’s not that we don’t have the ability, it is just that we look at the many people who are out there and they deserve someone to look at their cases as well.” UTAIC Clinic Professor Tiffany Dowling elaborates:

These are people who won’t get a review anywhere else. They aren’t legally entitled to appointed counsel, they won’t get traction pro se. Most attorneys aren’t taking post-conviction cases because they are time consuming and expensive. Most inmates can’t pay an attorney even if they wanted to because it could be in the range of \$25,000. I’m reviewing cases that no one else will look at. It’s part of the reason for such a backlog. I figure they deserve that at least.

To be sure, the innocence projects are the only place where people with no objective proof of innocence can be assured of some consideration. In contrast, there are a number of programs working to clear forensic cases. The Innocence Project, a project based in New York, specializes in DNA exonerations, and prosecutors in Bexar, Dallas, and Harris Counties operate conviction integrity units. While these programs occasionally review non-forensic claims, they more often favor cases with objective proof. For instance, the Harris County program alone accounted for 33 exonerations in 2014 based on laboratory drug tests.<sup>49</sup>

On the other hand, the growing number of conviction integrity units creates new opportunities for collaboration. Even if wrongful convictions are identified outside of the innocence projects, the individuals involved require a defense attorney with post-conviction defense expertise to navigate the legal channels to exoneration. Because the state’s innocence projects have particular expertise in this unique area of law, those that seek partnerships with entities such as prosecutors’ conviction integrity units may establish productive partnerships leading to more exonerations.

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<sup>49</sup> Hassan, Anita, and Mike Tolson. “Harris County leads way in 2014 exonerations.” *Houston Chronicle*. January 26, 2015. Accessed May 15, 2015, <http://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-leads-way-in-2014-exonerations-6041657.php>.

## BALANCED CASE SELECTION APPROACH

The contrast between forensic and non-forensic cases highlights a pivotal dilemma faced by the innocence projects. All of the projects would like to provide comprehensive investigation of all possible paths in every inmate's claim. Yet the reality is that resources are limited. While time is spent following second- and third-tier leads, cases with a more feasible chance of exoneration may wait in the pending queue. Attorneys must use discretion to determine the best course of action in each individual case, but consideration must also be given to the achieving state's objectives for identifying and seeking remedies for wrongful convictions. The innocence projects must find a means to balance full and fair consideration to as many applicants as possible against the ultimate standard of success: exonerations.

## CONCLUSION

Looking toward the future, Texas innocence projects face a value choice about how the state allocation should best be used. One course is to focus on efficiency, directing limited resources toward high-volume single-cause forensic reviews of wrongful conviction, yielding a larger number of exonerations at relatively low cost. A second course is to focus on fairness, following traditional letter requests from people who often lack forensic evidence but who would otherwise have little chance of a hearing.

Both approaches are important. Directing scarce resources toward forensic cases increases the likelihood that the state's expectations of achieving exonerations will be met. At the same time, there are ethical arguments that a person's right to an innocence review should not be determined by the type of evidence available. The innocence projects must find ways in the future to increase case processing efficiency and improve exoneration outcomes while preserving some form of recourse for all inmates with a claim of wrongful conviction.

Two changes could support these dual objectives. First, as recommended in Chapter 9, strategic investment in evidence testing and paraprofessional staff support<sup>50</sup> can help to expedite otherwise slow-moving non-forensic cases. Second, as suggested in Chapter 11, a mechanism is needed to distribute the large numbers of cases generated from institutional forensic reviews across all of the innocence projects. More forensic cases to supplement letter requests for assistance, could elevate exoneration rates. At the same time, projects could preserve and maintain their unique and enduring function as the only source of assistance for inmates who have no "testable" proof of innocence.

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<sup>50</sup> See generally, *supra* Chapter 9.

## 11. FUTURE COLLABORATION

Past efforts to coordinate the state’s four innocence projects have met with limited success. Staff recall an Innocence Project Coordinating Committee existed years ago, and for a time monthly conference calls were organized by the TIDC contract manager. However, neither of these initiatives was sustained long enough to yield significant collaborations. At present, there remains no formal means of communication between the innocence projects.<sup>51</sup> Still, there are number of common needs and overlapping interests that would make such a forum well-advised.

Quarterly conference calls would seem to be the minimum interaction needed to keep all of the sites and Indigent Defense Commission staff timely apprised of challenges, concerns, and opportunities. Face-to-face meetings held at least annually would allow for in-depth consideration of foundational issues. As discussed below, core topics suitable for joint planning include centralized case screening, shared litigation expertise, and innocence project website development. This chapter examines in greater detail these and other areas in which closer collaboration might be beneficial.

### CENTRALIZED INTAKE

Because the steps involved in reviewing letters and screening questionnaires are similar across the four innocence projects,<sup>52</sup> one of the most widely discussed areas of collaboration has involved centralizing case intake. The Innocence Project of Texas has been a vocal advocate for centralization. Staff from the other innocence projects cite reasons such a change should be made with caution.

#### *Centralized Letter Reviews*

A key rationale for centralizing intake is to reduce duplication in letter and questionnaire reviews used to select cases for investigation. Analysis of the data shows duplication in inmate requests for assistance does occur across sites. Of 7,129 unique individuals that applied for assistance between FY 2012 and FY 2014, 2,223 individuals— about one in three— have a letter logged at more than one program. Clinic Professors and Case Directors who do reviews say the request volume is manageable, with each site receiving four or fewer letter requests and less than two questionnaires in an average day (Table 6). Clinic Professors also resist centralized intake because duplicate review across sites increases the likelihood that valid claims will be identified. “I happen to think that redundancy is a good thing,” says University of Houston Professor David R. Dow, “...because a whole bunch of safeguards already failed.”

On the other hand, tightening case selection criteria might help increase exoneration rates by culling letter requests with relatively low chance of a valid claim. For centralization to be effective, all of the innocence projects would need to agree on screening standards and case allocation methods. Reaching

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<sup>51</sup> Because of their close geographic proximity, the University of Houston and Texas Southern University innocence programs have discussed coordinating efforts. Although the scope of any alliance has not been determined, the projects have begun working together on investigations where litigation is anticipated.

<sup>52</sup> See generally, *supra* Chapter 4.

consensus could be challenging. Clinic Professors value the ability to exercise professional discretion when selecting cases for their individual programs. If centralization is considered, system planning must occur in an open and inclusive way in order to maintain essential communication and trust needed for success over the long term. Systems should also be pilot tested for an extended interval to identify and resolve challenges before formal adoption. While efficiency is a worthwhile objective, it must be balanced against lawyers' abilities at each project to have discretion about whether and how to develop the cases they represent.

### *Centralized Institutional Reviews*

While each innocence project prefers to independently evaluate letter requests, cases identified through large-scale forensic reviews described in Chapter 10 are a different matter. In institutional reviews, categories of cases with a single cause of conviction are examined for a narrow range of science-based elements. Standardized criteria leave little room for discretion about possible alternative paths to exoneration. In this scenario, centralizing responsibility for identifying promising cases then allocating them across the remaining innocence projects for investigation makes sense.

IPTX Chief Counsel Jeff Blackburn shares his vision of how such a system might work. "I'm pretty sure we could all work out some sort of general agreement. 'Well, these are the cases we want to look at, so... send us these type of cases.'" This approach offers clear advantages in terms of managing the amount of work associated with targeted reviews. As an example, the 2011 IPTX arson investigation conducted in collaboration with the State Fire Marshall's Office involved screening 1,100 arson cases. Over 250 questionnaires were sent out, and 35 were culled for in-depth investigation. According to IPTX staff, in the foreseeable future as many as 170 cases may require investigation after hair and fiber reviews with the Department of Public Safety are complete. Collaboration among Texas's innocence projects to apportion these cases would expedite processing of these and other cases, and maximize the utility of the state's innocence infrastructure.

## **SHARED LITIGATION CAPACITY**

There are marked differences in depth of litigation expertise available across the innocence projects, making this another potentially fruitful area of collaboration. Each project has qualified litigators on staff, but expert post-conviction attorneys are a necessary asset in advanced cases. For instance, the University of Texas innocence project typically develops cases independently until they are ready to file. At that time a board attorney or, less often, pro bono counsel affiliated with a large firm may be brought in to assist. With a number of new cases nearing litigation, Clinic Professor Tiffany Dowling acknowledges a standing team of attorneys would be an advantage.

The Innocence Project of Texas has the best litigation capabilities of the four projects. At that site, Executive Director Nick Vilbas says, "Board attorneys help determine what cases will be litigated, and they usually end up doing the litigation." IPTX is looking for ways to further develop the current team of experienced post-conviction experts with at least fifteen young attorneys in the past year expressing

interest in a mentored board position.<sup>53</sup> Texas Southern University and the University of Houston have not needed litigators to date, but TMSLIP Clinical Professor, Anthony Haughton says he would feel comfortable asking other projects for assistance. “As we get closer to filing our own cases,” he says, “we may reach out to [other sites] to see if they have any folks interested in coming on as co-counsel.”

## **INNOCENCE PROJECT WEBSITE DEVELOPMENT**

The shared innocence project website has served as an important resource for case coordination. The website provides basic functionality needed for the innocence projects to identify cases already under investigation at a different site. It is also used to locate and request files to conduct a second review of a closed case: for example when a site wants to explore a new theory, or when changes in law open new paths to exoneration. A public portion of the innocence project website enhances transparency by making basic workload measures and summary statistics available to external stakeholders.

Though it is a simple system, to date it has been a key resource for efficiently coordinating investigations across the multiple projects. Nonetheless opportunity for improvement exists. For one thing, adaptations would be required to support centralized case selection (if adopted) or to add new innocence projects if they are established in the future. Improved validation and other upgrades would make the site more responsive to specific needs of the projects that rely on it. Because the website is a shared resource, however, and because is the central means of inter-project communication, any revisions to the current functionality must be collaboratively determined with input from all the partners including the innocence sites, TIDC, and PPRI which is responsible for website maintenance.

## **OTHER AREAS OF POTENTIAL COLLABORATION**

Collaborating on case review, litigation, and website development directly impact processing of innocence cases. There are also ways in which closer connections between the projects can benefit the legal profession, communities, and future innocence clinics.

### *Innocence-Related Continuing Legal Education*

The Innocence Project of Texas has embraced continuing legal education (CLE) as a primary strategy for increasing the pool of attorneys who are knowledgeable about wrongful convictions and potentially prepared to assist with litigation. Toward this end, they work with partners including the Texas Criminal Defense Lawyers Association, the Center for American and International Law, and the Harris County Public Defender’s Office, among others to sponsor continuing legal education opportunities. “Educating the warriors” as Chief Counsel Jeff Blackburn describes it, is a significant responsibility. CLE events could also enrich the innocence clinic experience for students. In addition to learning from the training itself, students could potentially present, network with peers from other schools, attend special pull-out sessions, or participate in other ways.

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<sup>53</sup> See generally, *supra* Chapter 3, Independent Non-Profit Resource Strategy, Board Development (discussing IPTX efforts to strengthen membership of the non-profit board).

There are other ongoing training initiatives that the innocence projects, in collaboration, might also leverage. The Texas Court of Criminal Appeals provides grants to educate criminal justice stakeholders including: defense attorneys, prosecutors, law enforcement personnel and judges on the sources of wrongful convictions. Additionally the Criminal Justice Integrity Unit founded by Court of Criminal Appeals Judge Barbara Hervey provides a forum for discussing improvements to the system with an emphasis on stakeholder education and training. Through these programs, the innocence projects could collaborate to help develop a training agenda, then potentially even share their expertise in developing and delivering that innocence-related training. At a minimum, coordinated input from the innocence projects would enhance the effectiveness of efforts in to prevent wrongful conviction.

### *General Awareness of Innocence Issues*

Importantly, as a provision of the contract, no state funding can be directed toward lobbying. At present, the Innocence Project of Texas is the only site with a policy advocacy agenda. Still, there may be ways in which the innocence projects can work together to raise awareness of the causes and consequences of wrongful conviction in the broader community. Through closer regular communication, innocence projects may be able to agree on shared messaging. Although teaching and investigation responsibilities may prevent Clinic Professors from making appearances at community or state-level events, students might find such opportunities rewarding. Chief Counsel Jeff Blackburn of IPTX notes, “Even on just one or two issues where you can come together and say we are the Innocence Project in this state and we can agree on this, it carries a lot of weight.”

### *Mentorship of New Innocence Project Sites*

If the state’s innocence network is expanded to include additional public law schools, a regular forum for communication would enable clinics with longstanding experience to share guidance and advice with their new peers. Such mentoring relationships will reduce the learning curve for the state’s newest innocence projects in the short term and will help lay a stable and integrated foundation to sustain the larger innocence mission over the long term.

## **CONCLUSION**

At present there is no forum for regular communication through which the innocence projects can engage in joint planning and problem-solving. Quarterly telephone meetings would allow for timely discussion of emerging opportunities or concerns, while an annual face-to-face meeting would allow for collaborative discussion on more foundational issues. At present, the most pressing decisions relate to centralizes case screening, shared litigation expertise, and innocence website upgrades. Other possible types of collaboration involve enhanced innocence-related continuing legal education or dissemination of community-level information on issues of wrongful conviction.

## **PART V**

### **Conclusions and Recommendations**



## 12. CONCLUSIONS AND RECOMMENDATIONS

This report presents the results of a review of innocence projects administered by the Texas Indigent Defense Commission through contracts with the state's four publicly funded law schools. Since 2005, these programs— unique nationally— have met two important objectives.

First, they provide a means to identify and seek legal remedies for people who stand wrongfully convicted of a crime. All together, the currently funded innocence projects consider nearly 3,000 requests for assistance each year. Legal remedies have been pursued in 62 cases, and some form of relief has been granted to 21 individuals, 13 of whom have been exonerated.

Second, the program has also shaped the professional education of more than 800 law students, many of whom are practicing attorneys or policymakers today. Students describe the innocence clinic as among the most meaningful opportunities of their law school education. Most further believe the experience will have lifelong impacts. This study examined the structure and operation of these innocence projects; impacts on inmates, students and law schools; and factors shaping their future. Based on this investigation, six major recommendations are made.

### **FINDING 1: Expansion of the innocence projects would benefit the state, but the current \$200,000 biennial funding level should at least be maintained for every program.**

The law schools contracted to operate Texas's innocence projects view the clinics as a point of pride for their institutions. Beyond benefits to students, the law schools value the opportunity to contribute to worthy and meaningful state policy objectives. Their appreciation is backed by significant financial and non-financial contributions toward the innocence programs' success. Indeed, the clinics could not be sustained without the office accommodations, business services, operational expenses, and equipment and supplies provided by the schools at no cost to the contract.

Stable funding for the innocence projects is essential to encourage and reward continued support from the host law schools. Their long-term investment depends in part on their confidence that the state is a reliable partner. Furthermore, with financial margins tight, if new innocence clinics are established at the new Texas A&M University and University of North Texas Schools of Law, funding at least commensurate with the state's current appropriation is crucial. Any reduction below \$200,000 per biennium for each funded program would risk undermining the overall innocence initiative.

With more than 700 requests for assistance and more than 400 cases pending investigation per program per year on average, increased capacity available through new clinics would help to meet demand. The current innocence projects also encourage the addition of new clinics as long as resources remain sufficient and stable.

**FINDING 2: Innocence projects that are operated outside of the law school infrastructure require special oversight provisions.**

The three Texas innocence clinics housed within the administrative structure of the law school are automatically subject to standardized accountability measures. State and federal regulations govern an array of procedures relating to business practices, personnel management, travel, purchasing, performance evaluation, restrictions on lobbying, and other aspects of operation. As public institutions of higher education subject to state audits, controls also exist to ensure state funds are properly spent.

A single site, Texas Tech University Law School, contracts with an external non-profit organization, the Innocence Project of Texas, for the provision of innocence clinic services. As a non-profit organization, IPTX is primarily accountable to their own board of directors, independent from oversight requirements except to the extent they are conditioned in the sub-award agreement. Even then, because the program operates apart from the university, it may difficult for contract administrators to be aware of unexpected emerging concerns that could compromise project integrity.<sup>54</sup>

Therefore, where state innocence contracts are implemented through external contractors, special oversight provisions are needed. At a minimum, proper controls must be specified to protect against the blending of public and private monies. IPTX for example has received hundreds of thousands of dollars in unrestricted donations over the past five years.<sup>55</sup> At the same time, fundraising consultants are under contract and staff lobbyists are working to advance innocence-related causes among policymakers, making co-mingling a concern. Any non-state entities providing innocence program services should account for the source of funds for activities disallowed under the state contract. Requirements to guard against non-financial improprieties might also include regular status reports on contract-related accomplishments or required submission of conflict of interest policies guiding non-profit board members.

**FINDING 3: Incremental new investment to offset costs of investigation and to provide paraprofessional staff assistance would enhance efficiency and expedite case processing outcomes.**

Once investigation of an innocence claim begins, the average case takes more than a year to complete. Two prominent obstacles known to slow case processing can potentially be addressed with targeted new funds. Funding to cover costs of investigation is one such investment. Evidence required to assess the validity of an innocence claim is often costly. It may be necessary to travel, purchase court documents, test evidence, or retain experts to evaluate a potential wrongful conviction. When funds to pay for these documents or services are unavailable, progress halts for weeks or even months.

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<sup>54</sup> See Appendix B.

<sup>55</sup> See Table 2.

The University of Texas is the only innocence project where the law school has set aside a pool of resources to provide for these expenses. Program staff say the availability of these funds over the past year has significantly boosted the efficiency of case investigation. An increment of just \$15,000 to \$20,000 per year for each of the sites could prevent significant delays, speed the pace of investigation, and shorten the time to case completion.

Additional investment in a full- or part-time paraprofessional assistant would further augment case processing efficiency. Clinic Professors need help to manage case volume, resolve particularly complicated investigation issues, and advance late-stage cases to litigation. While student teams turn over from one semester to the next and Clinic Professors' time is fully consumed by the responsibilities of teaching and supervising students, a full or part-time assistant could lend focus and continuity to complex or promising cases. With help, potential paths could be evaluated more efficiently and cases either advanced or closed promptly.

In short, two preventable obstacles to timely case completion are investigation expenses and supplemental staff expertise. A small funding increment could remove these barriers, improve the efficiency of case processing, and increase the state's overall return on investment in the innocence program.

#### **FINDING 4: Law school policies should allow and encourage contiguous student enrollment in innocence clinics.**

The University of Texas and the Innocence Project of Texas are advantaged relative to other clinics because up to 80 percent of students who register for the innocence clinics stay enrolled for at least two consecutive semesters. In a second semester, students can follow individual cases longer and they can use advanced investigation skills developed through experience. At the other projects, law school policies pose barriers to this kind of sustained participation.

Texas Southern University Law School has a general rule against enrollment in the same course twice. At the University of Houston, students concerned about maintaining a high grade-point average are reluctant to take the clinic at all because a "forced curve" policy ensures many will be assigned a "B" grade.<sup>56</sup> Those that do enroll rarely do so twice. It is noteworthy that the median days required to complete an investigation at these universities is at least 23 percent longer than at institutions where repeat participation is allowed and encouraged. Adapting policies to support longer-term clinic enrollment would reduce investigation time by retaining more students with advanced expertise.

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<sup>56</sup> Other innocence clinics are graded on a "pass/fail" basis.

**FINDING 5: The innocence projects must find a balance between claims amenable to forensic testing and those requiring more costly and time-consuming non-forensic methods of investigation.**

In the past decade, forensic science has offered new tools for innocence investigation. Where scientific evidence is available, innocence claims can be verified more quickly and at lower cost than in cases that lack a “testable” standard of proof. Traditional non-forensic evidence – recanting witnesses or proof of a false confession, for example – is considerably more difficult and expensive to acquire.

The Innocence Project of Texas has determined to prioritize forensic claims. In collaboration with government agency partners, IPTX is focusing resources on large-scale reviews of case categories that share a similar “testable” cause of conviction in areas such as arson or hair and fiber evidence. In addition to increasing the chance of identifying a valid claim, these types of forensic reviews also call attention to flawed science underlying false convictions, raising awareness of the need for changes in policies and practices.

On the other hand, there are strong arguments that an inmate’s opportunity for case review should not be determined by the type of evidence available. Restricting the projects’ focus to individuals with “testable” evidence would leave many potentially innocent people with no place to turn for help.

The contrast between forensic and non-forensic cases highlights a pivotal dilemma faced by the innocence projects. The state-funded projects are intended to assist all individuals with an innocence claim. Yet resources are limited. In the coming years, then, the projects must find ways to meet the state’s expectations for identifying and remedying wrongful convictions while balancing the use of forensic and traditional tools for investigation.

**FINDING 6: The innocence projects should seek out new ways to collaborate and share resources.**

To date, the state’s four innocence projects have operated with relative independence. Still, they share a number of common needs and overlapping interests, suggesting that closer communication and cooperation would be advantageous. Quarterly telephone meetings would allow for timely consideration of emerging challenges, concerns, or opportunities. Face-to-face meetings held at least annually would provide a venue for shared input regarding long-term foundational issues related to the basic innocence mission. There are a number of specific areas in which collaboration may be beneficial.

Centralization of letter and questionnaire reviews used to select cases for investigation has been proposed as a means to reduce duplication of effort. Centralized review reduces attorney discretion to determine whether and how cases will be investigated, but it may also increase efficiency by eliminating from consideration cases with a very low chance of a valid claim. If centralized screening of letter

requests is considered, collaborative consensus on rejection standards and case allocation methods must be reached.

Centralized screening may be easier to achieve for large-scale forensic case reviews. With categories of similar cases subjected to standardized examination for a single cause of wrongful conviction, professional discretion is a less significant factor. Agreement on centralized processing for forensic cases may therefore be easier to achieve. Even so, close collaboration will be required to determine mutually acceptable strategies for case selection and assignment.

With wide variation in access to post-conviction attorneys across sites, shared litigation expertise may be another fruitful area of collaboration. The Innocence Project of Texas has the strongest team of litigation experts, with a number of the state's leading post-conviction attorneys represented on their board of directors. If a mechanism for shared access can be determined, sites with less depth in this area may benefit from leveraging existing attorney networks, instead of developing separate litigation resources.

Collaborative planning for the shared innocence website would also be beneficial. While the current system has proven to be an effective tool for basic cross-site case coordination, improved validation and upgraded functionality would make it more responsive to the specific needs of the projects. New features will also potentially be required if new innocence projects are added in the future, or if case assignment becomes centralized. Such changes require input from all of the sites as well as TIDC and PPRI, which is responsible for website maintenance.

Other areas in which the innocence projects have shared interests include: the development of high-quality continuing legal education opportunities regarding wrongful conviction, increasing community and stakeholder awareness of innocence-related concerns, and mentorship of new innocence projects at the Texas A&M University and University of North Texas Schools of Law, should they be funded.

## **CONCLUSION**

Texas's innocence projects are unlike any other resource available for people who are wrongfully convicted. The program is an innovative collaboration that applies the talent and expertise of bright and enthusiastic law students to one of the most important yet intractable problems of our time: the wrongful conviction of innocent people.

Although the four current projects have been in operation for a decade, they continue to evolve. Progressive developments in criminal science have opened new opportunities to prove innocence through forensics. New public law schools are eager to join the current projects in educating students and assisting inmates with issues of wrongful conviction. Lessons from the past, articulated in this report, can inform decisions being made today to guide the innocence projects into the future.



# **APPENDIX A**

## **Innocence Project Budget Rider**



**General Appropriations Act for the 2014-15 Biennium, 83<sup>rd</sup> Texas Legislature, Regular Session, 2013, Article IV, Office of Court Administration, Texas Judicial Council, Item 11.**

11. Innocence Projects. Out of amounts appropriated above in Strategy D.1.1, Texas Indigent Defense Commission, \$400,000 in each year of the biennium from the General Revenue-Dedicated Fair Defense Account No. 5073 shall be used by the Commission to contract with law schools at the University of Houston, the University of Texas, Texas Tech University, and Texas Southern University for innocence projects. It is the intent of the Legislature that the amount of each contract with each university shall be \$100,000. Any unexpended balances in the \$400,000 in funds designated for innocence projects as of August 31, 2014 are hereby appropriated to Strategy D.1.1, Texas Indigent Defense Commission for the same purpose for the fiscal year beginning September 1, 2015.



## **APPENDIX B**

### **Conflict of Interest Policies for Sites with Active Non-Profit Boards**



## Notes Regarding Conflict of Interest Provisions for Contracted Innocence Clinic Providers

Law schools that choose to implement innocence clinic operation through a subcontract agreement must assume greater responsibility for program oversight beyond those required for law school-based programs. As an example, between 2008 and 2011, while under contract to Texas Tech University School of Law, there was a controversy related to referral fees for wrongful compensation claims.<sup>1</sup> All of the claims were settled in arbitration and the individuals involved were cleared of professional ethics violations by the State Bar of Texas. Still, the controversy illustrates why law schools contracting clinic services to external organizations must establish contractual provisions capable of protecting the interests and work of the innocence project.

Conflict of interest policies for the two sites with active non-profit boards including the Innocence Project of Texas and Thurgood Marshall School of Law, Earl Carl Institute are illustrated on the following pages.

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<sup>1</sup> Emily, Jennifer. "Innocence Project Counsel Criticized for Profiting on Exonerees." *The Dallas Morning News*. December 11, 2009. Accessed May 15, 2015, <http://www.dallasnews.com/news/crime/headlines/20091211-Innocence-Project-counsel-criticized-for-profiting-2369.ece>; Hargrove, Brantley. "Kevin Glasheen Fought to See Innocent Prisoners Compensated, Then Fought To Take Millions For Himself." *Dallas Observer*. August 11, 2011. Accessed May 15, 2015, <http://www.dallasobserver.com/2011-08-11/news/kevin-glasheen-fought-to-see-innocent-prisoners-compensated-mdash-then-fought-to-take-millions-for-himself/full/>; Chappell, Bill. "The Uneasy Trust between Exonerated Inmates and Their Attorneys." *NPR*. August 15, 2011. Accessed May 15, 2015, <http://www.npr.org/blogs/thetwo-way/2011/08/15/139654470/the-uneasy-trust-between-exonerated-inmates-and-their-attorneys>; Schwartz, John. "Exonerated Inmates Fight Lawyer's Lobbying Fees." *The New York Times*. May 9, 2011. Accessed May 15, 2015, <http://www.nytimes.com/2011/05/10/us/10exonerate.html>; Carver, Logan G. "Glasheen Disciplinary Hearing Begins." *Lubbock Online*. February 14, 2012. Accessed May 15, 2015, [http://lubbockonline.com/crime-and-courts/2012-02-13/glasheen-disciplinary-hearing-begins#.VOeqe\\_nF9Zs;](http://lubbockonline.com/crime-and-courts/2012-02-13/glasheen-disciplinary-hearing-begins#.VOeqe_nF9Zs;)



## **Client Referral Policy**

It is the policy of The Innocence Project of Texas not to refer its current or former clients to private lawyers or firms for the purpose of pursuing compensation claims for the clients' wrongful convictions.

**CONFLICT OF INTEREST POLICY**

**Article I**  
**Purpose**

The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

**Article II**  
**Definitions**

**1. Interested Person**

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

**2. Financial Interest**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

**Article III**  
**Procedures**

**1. Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

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**2. Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

**3. Procedures for Addressing the Conflict of Interest**

**a.** An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

**b.** The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

**c.** After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

**d.** If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

**4. Violations of the Conflicts of Interest Policy**

**a.** If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

**b.** If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

**Article IV**  
**Records of Proceedings**

The minutes of the governing board and all committees with board delegated powers shall contain:

**a.** The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.

**b.** The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the

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proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

**Article V**  
**Compensation**

- a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**Article VI Annual**  
**Statements**

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

**Article VII**  
**Periodic Reviews**

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

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**Article VIII**  
**Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

ADOPTED, Attested to, and certified by:

\_\_\_\_\_, *sf* \_\_\_\_\_, Secretary  
Martina Cartwright

\_\_\_\_\_, */sf* \_\_\_\_\_, President  
J. Cummings

December 9, 2010.

**APPENDIX C**  
**Case Flow by Innocence Site**



### C. Case Processes and Statistics by Phase

(NOTE: Averages based on FY12-14)

	Letter Review	Questionnaire Review	Investigation
<b>Texas Southern University (TMSLIP)</b>	<p>Trained admin. students (paid by law school) log letters on IP website.</p> <p><b>Avg. Weekly Requests Logged: 9</b> <b>Avg. Days to Initial Review: 93</b></p> <p>Students determine whether to send questionnaire. Clinical Professor reviews any undecided or rejected cases.</p> <p><b>Rejected at Initial Review: 48%</b></p> <p><i>BACKLOG of 1,100 unread letters.</i></p>	<p>Trained admin. students (paid by law school) review Questionnaires and prepare a case memo. Rank strength of innocence claim 1-5.</p> <p>Clinical Professor reviews memo and decides whether to pass the case to students for investigation.</p> <p><b>Avg. # Questionnaires Returned/Week: 3</b> <b>Rejected at Questionnaire Review: 44%</b></p> <p>File accepted cases as “pending investigation” until assigned.</p> <p><b>Median Days, Q Review to Investigation: 56</b> <b>Current Cases Pending Investigation: 157</b></p>	<p>Students identify, retrieve, and review documents. Record progress in memos, passed forward each semester, culminating in recommendation for paths to exoneration.</p> <p><b>Current Cases in Active Investigation: 65</b> <b>Rejected After Investigation: 8%</b></p> <p>Help develop legal strategies and draft pleadings and motions if applicable in collaboration with Clinical Professor</p> <p><b>Median Days, Investigation Start to Closed: 406</b></p>
<b>Texas Tech University (IPTX)</b>	<p>Case Director logs all cases received from any source (mail, attorney referral, or institutional reviews) on IP website.</p> <p><b>Avg. Weekly Requests Logged: 20</b> <b>Avg. Days to Initial Review: 22</b></p> <p>Case Director determines whether to send questionnaire.</p> <p><b>Rejected at Initial Review: 52%</b></p>	<p>Case Director reviews Questionnaires.</p> <p>Either rejects the case (after review by Executive Director) or categorizes based on case type (DNA, possible DNA, junk science, etc.)</p> <p><b>Avg. # Questionnaires Returned/Week: 8</b> <b>Rejected at Questionnaire Review: 43%</b></p> <p>File accepted cases as “pending investigation” until assigned.</p> <p><b>Median Days, Q Review to Investigation: 186</b> <b>Current Cases Pending Investigation: 339</b></p>	<p>Case Director retrieves documents and assigns cases to student groups at four universities.</p> <p>Students in various university groups review documents and complete file inventories. Summarize evidence in memos. Case files are passed forward each semester until a recommendation for possible paths to exoneration can be made.</p> <p><b>Current Cases in Active Investigation: 91</b> <b>Rejected After Investigation: 5%</b></p> <p>Completed memos and files are returned to Case Director. Potentially successful claims are forward for review by the board litigation committee.</p> <p><b>Median Days, Investigation Start to Closed: 427</b></p>

**C. Case Processes and Statistics by Phase**  
(continued)

	<b>Letter Review</b>	<b>Questionnaire Review</b>	<b>Investigation</b>
<b>University of Houston (UHIP)</b>	<p>Clinical Professor logs all letters on IP website.</p> <p><b>Avg. Weekly Requests Logged: 12</b> <b>Avg. Days to Initial Review: 1</b></p> <p>Clinical Professor determines whether to send questionnaire.</p> <p><b>Rejected at Initial Review: 33%</b></p>	<p>Students and Clinical Professor review Questionnaires. Often conduct preliminary investigation including review of appellate record before preparing a screening memo evaluating viability of innocence claim.</p> <p>Clinical Professor reviews screening memo and discusses with students whether to pass the case on for investigation. If a student rejects the case, Clinic Professor may overrule to proceed with investigation.</p> <p><b>Avg. # Questionnaires Returned/Week: 8</b> <b>Rejected at Questionnaire Review: 52%</b></p> <p>File accepted cases as “pending investigation” until assigned.</p> <p><b>Median Days, Q Review to Investigation: 49</b> <b>Current Cases Pending Investigation: 253</b></p>	<p>Students identify, retrieve, and review documents. Record progress in memos, passed forward each semester, culminating in recommendation for paths to exoneration or for a termination of the investigation. If Clinical Professor recommends termination of the case, students may overrule to continue the investigation.</p> <p><b>Current Cases in Active Investigation: 346</b> <b>Rejected After Investigation: 15%</b></p> <p>Clinical Professor develops legal strategies.</p> <p><b>Median Days, Investigation Start to Closed: 330</b></p>
<b>University of Texas (UTAIC)</b>	<p>Clinical Professor logs cases on IP website.</p> <p><b>Avg. Weekly Requests Logged: 14</b> <b>Avg. Days to Initial Review: 8</b></p> <p>Clinical Professor determines whether to send questionnaire.</p> <p><b>Rejected at Initial Review: 56%</b></p>	<p>Clinical Professor reviews Questionnaires and decides whether to close or pass to students for investigation.</p> <p><b>Avg. # Questionnaires Returned/Week: 6</b> <b>Rejected at Questionnaire Review: 28%</b></p> <p>File accepted cases as “pending investigation” until assigned.</p> <p><b>Median Days, Q Review to Investigation: 757</b> <b>Current Cases Pending Investigation: 981</b></p>	<p>Students identify, retrieve, and review documents. Record progress in memos, passed forward each semester, culminating in recommendation for paths to exoneration.</p> <p><b>Current Cases in Active Investigation: 267</b> <b>Rejected After Investigation: 17%</b></p> <p>Help develop legal strategies and draft pleadings and motions if applicable in collaboration with Clinical Professor.</p> <p><b>Median Days, Investigation Start to Closed: 145</b></p>

**APPENDIX D**

**Cases with Relief Granted**



### D1. Unexonerated Cases with Relief Granted

Source of Referral	Project	Name	Year of Conviction	Request Received	Investigation Pursued	Legal Remedy Initiated	Type of Remedy Pursued	Relief Granted Date	Exoneration Still Possible?
Arson Review	IPTX	Edward Graf	1988	1/6/2010	2/1/2010	12/1/2012	State Habeas	3/27/2013	No
Board Member	IPTX	Kristie Mayhugh	1998	1/1/2011	2/1/2011	6/1/2011	State Habeas	11/19/2013	Yes
Board Member	IPTX	Elizabeth Ramirez	1997	1/1/2011	2/1/2011	6/1/2011	State Habeas	11/19/2013	Yes
Board Member	IPTX	Cassandra Rivera	1998	1/1/2011	2/1/2011	6/1/2011	State Habeas	11/19/2013	Yes
Board Member	IPTX	Anna Vasquez	1998	1/1/2011	2/1/2011	6/1/2011	State Habeas	11/19/2013	Yes
Letter	IPTX	Dennis Allen	2000	3/23/2009	3/23/2009	7/8/2009	Chapter 64 and State Habeas	10/28/2014	Yes
Letter	IPTX	Darryl Adams	NA	4/1/2008	6/5/2008	6/5/2009	Chapter 64 and State Habeas	12/15/2014	No
Letter	IPTX	Andrew Roark	NA	1/1/2013	1/1/2013	3/6/2013	State Habeas	December 2014	Yes

## D2. Cases with Chapter 64 Motion and No Relief Granted

Source of Referral	Project	Name	Year of Conviction	Request Received	Investigation Pursued	Legal Remedy Initiated	Conviction Sustained Date
Letter	UTAIC	Adam Orta	1988	10/25/2004	12/29/2005	5/2/2006	5/22/2007
Letter	UTAIC	Culberson Henry	1994	11/17/2004	6/13/2006	9/25/2006	7/11/2007
Letter	UTAIC	Michael Menefee	2005	10/3/2006	10/9/2006	10/9/2006	1/24/2008
Letter	UTAIC	Dexter Johnson	1998	4/26/2005	6/14/2006	11/15/2006	7/21/2009
Dallas County DA	UTAIC	Lawrence Gill	2000	2/19/2009	2/20/2009	5/7/2009	12/23/2009
Dallas County DA	UTAIC	Donald Holman	1987	4/29/2009	5/7/2009	5/7/2009	12/23/2009
Private Practice Attorney	UTAIC	Robert Martin	2001	5/20/2009	7/28/2009	7/28/2009	4/14/2010
Letter	UHIP	Adrian Miles	1979	2/13/2008	10/12/2009	8/12/2014	10/14/2014

### D3. Exonerations by State-Funded Innocence Projects

Source of Referral	Project	Name	Year of Conviction	Request Received	Investigation Pursued	Legal Remedy Initiated	Type of Remedy	Exoneration Date
Dallas County DA	IPTX	Patrick Waller	1992	10/1/2007	10/1/2007	1/1/2008	Chapter 64 and State Habeas	9/24/2008
Dallas County DA	IPTX	James Woodard	1981	11/29/2007	11/29/2007	12/28/2007	Chapter 64 and Clemency	9/30/2009
Dallas County DA	IPTX	Jerry Evans	1987	1/19/2008	2/1/2008	5/27/2009	Chapter 64 and State Habeas	10/21/2009
Letter	IPTX	Timothy Cole	1986	5/1/2007	5/1/2007	6/5/2007	Other Remedy	3/1/2010
Letter	IPTX	Billy Allen	1983	2/2/2007	5/21/2009	5/27/2009	State Habeas	3/21/2011
Letter	IPTX	Johnny Pinchback	1984	10/15/2007	5/20/2009	6/26/2009	Chapter 64 and State Habeas	6/13/2011
*Private Practice Attorney	IPTX	Darryl Washington	1996	9/1/2011	9/1/2011	9/1/2011	State Habeas	5/12/2012
*Private Practice Attorney	IPTX	Marcus Smith	1995	1/3/2012	1/3/2012	1/3/2012	State Habeas	5/12/2012
*Private Practice Attorney	IPTX	Shakara Robertson	1995	1/3/2012	1/3/2012	1/3/2012	State Habeas	5/12/2012
Letter	IPTX	Rickey Wyatt	1981	10/19/2007	3/7/2011	1/9/2012	Chapter 64 and State Habeas	12/31/2014
Letter	UTAIC	Claude Simmons, Jr.	1997	8/9/2005	4/5/2007	6/9/2009	State Habeas	3/30/2010
Travis County DA	UTAIC	Michael Trevino	1993	6/10/2009	6/17/2009	5/24/2012	State Habeas	5/24/2012
Dallas County DA	UTAIC	Michael Phillips	1990	7/3/2014	7/7/2014	7/23/2014	Chapter 64 and State Habeas	8/6/2014

\* A University of Houston innocence clinic student investigated these cases after entering private practice. Cases were litigated by the Innocence Project of Texas.