

THE UNIVERSITY OF TEXAS AT AUSTIN
SCHOOL OF LAW

Actual Innocence Clinic

Biannual Report
Fiscal Year 2022-2023
(Jun 1, 2022 – December 31, 2022)

1 INTRODUCTION

The Actual Innocence Clinic (AIC) consists of a director, part-time staff attorney, administrator and law students working together to screen, investigate and litigate Texas inmates' claims that they are actually innocent of the felony offense for which they were convicted and sentenced to prison. The director is an attorney licensed to practice law in Texas and the clinical professor for the classroom component of the course. The staff attorney works remotely but assists in both intake and screening of cases. The administrator works with the AIC and another law school clinic. Law students enroll in the AIC course and receive credit towards their law school degree for their work in the clinic. The AIC operates on an academic calendar. The AIC generally accepts eight new students during each fall semester (early September through mid-December) and spring semester (late January through mid-May). The AIC does not accept new students for enrollment during the summer term (mid-May through late August). Some students continue to work with the AIC for law school credit after their first semester of enrollment. Law students are supervised by a licensed attorney during all phases of screening and investigation of actual innocence cases. Students assist attorneys with litigation or clemency proceedings related to actual innocence claims

2 SERVICES PROVIDED

2.1 Client Services

2.1.1 Case Review

Receipt of Letter

The AIC conducts all its case intake through the mail. The AIC does not accept requests for assistance via electronic mail, telephone, or fax. The AIC does not accept requests for assistance from third parties, including friends and family members. When the AIC receives an inmate's letter it is opened and reviewed by the director or staff attorney. We then create an electronic file and scans the letter into the file.

Initial Review

The director and/or staff attorney perform an initial review prior to cases being distributed to law students. The director's review is designed to get rid of requests that are not handled by the AIC. The director responds to third parties who are requesting assistance for inmates, inmates whose claims are unclear and inmates or whose requests fall outside the scope of the services provided by the AIC. The director makes every effort to respond to new requests for assistance the day they are received.

Not Actual Innocence Claim

The AIC only accepts cases in which the inmate did not commit the offense and was not involved in any way or cases in which no crime

occurred. The AIC does not accept cases in which the inmate is claiming the offense was an accident, is claiming the offense was committed in self-defense, is admitting they participated in the crime or is otherwise not claiming actual innocence. These claims are closed during the director's review.

Outside Scope Claim

To preserve its limited resources the AIC further limits the type of cases it accepts. The AIC does not accept cases in which the inmate's conviction is not final. For an inmate's conviction to be final they must have been convicted at trial or after entering a plea agreement, and they must have completed all of their direct appeals, including any Petition for Discretionary Review (PDR) or the time for filing their direct appeal has expired.

The AIC does not accept cases in which the inmate is not incarcerated at the time they contact the AIC for assistance. If an inmate contacts the AIC for assistance while they are incarcerated but they are later released on parole or because they have completed their sentence the AIC will continue to review their case even after they are released. The inmate is required to provide the AIC with an address where they may be contacted after they are released.

The AIC does not accept cases in which the inmate was convicted of a misdemeanor or a federal offense. These cases are closed during the director's review.

The AIC does not accept cases in which the inmate was convicted of Capital Murder and sentenced to death. These cases are closed during the director's initial review. The director refers these cases to the Capital Punishment Clinic.

The AIC does not accept cases in which the inmate was convicted outside of Texas. These cases are closed during the director's review. The director refers the inmate to the appropriate out-of-state innocence organization.

Actual Innocence Claims

If the inmate is making a claim of actual innocence within the scope of the AIC's services, the director will send the inmate an introduction letter and questionnaire:

- Introduction Letter
The introduction letter acknowledges receipt of the inmate's letter and briefly explains the review process.

- Questionnaire
The questionnaire requests detailed information about the inmate's case.

Screening

When the Introduction Letter and Questionnaire are received back the director or staff attorney confirms that the inmate is making a claim of actual innocence that falls within the scope of the AIC's services. If the inmate is still making a claim that falls within the scope of the AIC's services, the inmate's case is put on a waiting list of cases to be investigated. A letter is sent to the inmate explaining that their case is on a waiting list of cases to be investigated. The letter explains that the AIC will not communicate with third parties regarding the inmate's case. Finally, the letter explains that the AIC has not agreed to represent the inmate and may close the case at any time. If the inmate is not making such a claim of actual innocence the case is closed within the AIC and a letter is sent to the inmate explaining that the case is closed.

Preliminary Investigation

When the case is assigned to a law student for preliminary investigation, they gather the inmate's Texas Department of Criminal Justice (TDCJ) Offender Information Detail sheet, appellate history, appellate documents, writ history, writ documents and media coverage, if any. The student may also do any additional research deemed valuable to the screening. All prior filings on behalf of an inmate are critically important in our assessing whether the inmate has a viable actual innocence claim.

2.2 Teaching and Student Development

In the AIC students learn the law by working on real cases with a licensed attorney. The clinical experience trains students to be better lawyers, investigators and advocates while providing legal services to inmates. By participating in the AIC, the student assumes the responsibilities and challenges of working in a law office.

The AIC aspires to help law students understand their role and their obligations as an attorney. The classroom component of the AIC is designed to teach students about: the criminal justice system; the causes of wrongful conviction; the law related to DNA testing, actual innocence claims, postconviction writs of habeas corpus, clemency, compensation of the wrongfully convicted and expunction of wrongful convictions; reentry barriers for exonerees; and ethical issues that arise in actual innocence cases. The casework component of the AIC is designed to teach students: to communicate efficiently and effectively in a legal environment; legal research, analysis and writing skills; case management; time management; and professionalism.

Students will be given opportunities to engage with these goals and receive feedback during class meetings and meetings with the director. Students are evaluated on total performance, including attendance, class preparation, class participation, case preparation, case discussions and meeting deadlines.

Students are assigned cases that are in various stages of investigation and litigation. Cases are assigned at the beginning of each fall semester (early September) and at the beginning of each spring semester (late January). Cases are not assigned to students for review during the summer term (mid-May through late August). During the summer term, the director reviews and investigates cases. Cases may be transferred from previous semesters in order for students to continue and finish investigative steps, such as gathering documents and interviewing witnesses.

3 USE OF CONTRACT FUNDS

3.1 Staff Attorney and Director

3.1.1 Client Services

The AIC used some portion of contract funds to maintain a part-time staff attorney. The Director has been paid out of UT's budget for this reporting period. The staff attorney manages the AIC's caseload, including and conducting initial screening of all incoming requests for assistance. The staff attorney assists the Director in assigning cases to students. The Staff Attorney also assists the Director in monitoring communication between inmates and students, including reviewing all incoming and outgoing mail. The Director is primarily responsible for working with students to identify cases where there may be viable claims of actual innocence, helping students to gather documents and investigate cases. The Director also acts as a liaison to the public and media by responding to inquiries about actual innocence claims.

The clinic shares an administrator with another law school clinic. No contract funds are used to compensate the AIC administrator. He is compensated by using other funds.

3.1.2 Teaching and Student Development

The Director develops the syllabus for the classroom component of the AIC and prepares and conducts class lectures and discussions on topics related to actual innocence law, investigation, and litigation. The clinic meets once each week for a classroom component and case discussion. The Director maintains the schedule and syllabus for this weekly meeting. He also meets individually with each student at least once per week to discuss cases and

strategy for investigating and litigating cases. He maintains course materials used by the clinic to teach the AIC course. Prior to the beginning of each semester the Director edits and updates all class materials. Finally, he works with other clinical professors to develop teaching strategies to improve the clinical education of students.

3.1.3 Other Duties

The Director prepares required reports regarding the number of cases reviewed by the AIC and workload measures, addresses media questions regarding actual innocence law and claims, works with other law school departments regarding the AIC's function and supervises the Administrator.

3.2 Administrator

3.2.1 Client Services

The Administrator assists the Director in responding to requests for assistance that come into the AIC office via telephone, email, and walk-in. He also helps to maintain inmate files and translates documents and letters from and to Spanish.

3.2.2 Teaching and Student Development

The Administrator manages the day-to-day operations within the AIC office. He assists students in the use of the AIC's electronic case management database and telephone system. He also assists students in handling correspondence to and from Spanish-speakers who contact the AIC.

3.2.3 Other

The Administrator also manages the day-to-day office environment by monitoring the supplies needed for the office and working with the accounting department to pay for needed office expenses

3.3 Case Work

In addition to providing a salary and benefits for the Director, contract funds were used to conduct actual innocence investigations and litigation. Finally, contract funds were used to purchase office supplies to maintain communication with clients and potential clients.

3.4 Use of Contract Funds*

Personnel (Staff attorney salary and benefits)	\$19440
Attorney Fees	\$0
Investigation Expenses (including Records & Case Documents)	\$5991.1
Expert Witness Services (including DNA testing)	\$0
Litigation Expenses	\$0
Travel	
Supplies	\$160.00
Equipment (Computer Hardware & Software)	0
Equipment Maintenance & Support	\$0
Rent/Office Space Costs	\$0
TOTAL	\$25591.1

*All values are approximate and based on receipts of funds spent.

3.5 Available Non-Contract Funds*

Personnel (Director, Administrator Salary & Benefits (provided by UT))	\$83,918
Clinic Office Supply Fund (provided by UT)	\$3,000
Clinical Instructor Faculty Development Account (provided by UT)	\$4500
Student Office Space (provided by UT)	NA
Director Office Space (provided by UT)	NA
Texas Center for Actual Innocence (TCAI) non-profit funds	\$700
TOTAL	\$92, 118

*All values are approximate.

4.1 Accomplishments Related to Indigent Defense

4.1.1 DNA Cases

We are continuing to assist attorney Gerry Morris of Austin in the current representation of Mr. Kusssmaul and are pursuing options regarding additional DNA testing.

Accomplishments Related to Student Development

During the fall semester of 2022, which began August 16, 2022, the AIC included 7 new students and one returning student.

4.3 Work Performed

Total requests for assistance received	146
Requests for assistance based on new claim of actual innocence	118
# of innocence claims screened	108*
# of innocence claims closed after screening	61
# of innocence claims closed after investigation	25
# of innocence claims with legal remedy pursued	0
# of innocence claims with relief granted	0
# of innocence claims with relief denied	0
# of innocence claims under active investigation at end of period	254
# of innocence claims awaiting investigation at end of period (INCLUDES CASES WHERE WE ARE STILL AWAITING QUESTIONNAIRE AFTER INITIAL LETTER)	1095
# of law student participating in project	8
# of hours worked by law students	720
# of students from other fields of study participating in project	0
# of hours worked by students from other fields of study	0

4.4 Backlog

The clinic has 1095 cases awaiting screening and investigation and 254 cases under investigation. Of the cases awaiting investigation, 379 are “pending”, meaning that the AIC has received an initial inquiry but no response. Although there is still a backlog, we have reduced it by 191 cases in our last report and more than double that amount than from a year ago. We continue to close cases if we do not receive a response within one year of sending a questionnaire to the prisoner, so we expect a number of these cases will be closed. Cases without a viable legal claim of actual innocence claim are closed after the preliminary investigation. Cases with a viable legal claim of actual innocence are placed on the waiting list of cases to be investigated.

Our backlog still persists because we continue to get more requests for assistance than we have had in the past. In this quarter, we received 34 more requests than in the previous quarter. We also continue to take a small number of cases from the Forensic Project in Austin as well as two cases originally referred to the Travis County Conviction Integrity Unit.

Moreover, COVID-19 still impacts not only the backlog because of the difficulty in obtaining necessary documents from short-staffed courts and agencies. Additionally, our efforts to investigate claims of innocence as we cannot do in-person interviews with potential witnesses.

Summary of Innocence Claims with Legal Remedy Pursued

The AIC represents Charles Morehouse, who was convicted of aggravated sexual assault as a juvenile and served 15 years in prison. Mr. Morehouse was released in 2015 but is still required to register as a sex offender.

We filed our petition on April 25, 2022. We are awaiting a ruling from the District Court

Summary of Innocence Claims with Relief Granted

4.6 Summary of Innocence Claims with Relief Denied

In February of 2020, the AIC, in conjunction with the Innocence Project of Texas, filed a request for pardon based on innocence with the Texas Board of Pardons and Paroles for Douglas Perry, who died in 2015. This was completed after securing both a letter from the Travis County District Attorney and the 147th Judicial Court of Travis County signed letters contesting to Mr. Perry’s Innocence. Without addressing the merits of his application, the Board denied the pardon application. The Board agreed to re-consider Mr. Perry’s application but denied it again on June

14, 2020. We still consider the case open and are pursuing other possible remedies including returning to the Board. We are continuing to work with the Travis County DA's Conviction Integrity Unit who agree that the injustice perpetuated upon Douglas Perry and his family must be remedied.