



UNIVERSITY OF HOUSTON INNOCENCE PROJECT OCA BIENNIAL REPORT (06/01/22 – 12/31/22): PROJECT NARRATIVE

The University of Houston Innocence Project (UHIP), founded by Professor David R. Dow, works to exonerate innocent inmates who did not commit the crimes for which they were wrongfully-convicted.

In order to fulfill its mission, UHIP evaluates, investigates, and litigates claims of actual innocence. Letters from inmates and their agents are initially reviewed to ascertain whether there is an actual innocence claim that falls within project parameters. If so, UHIP requests additional information to provide a better understanding of the inmate's case and the basis of his¹ innocence claim. Upon receipt of this information, UHIP reviews the case file to determine whether there is any viable evidence not previously examined by the trial fact-finder² that would indicate that the inmate was wrongfully convicted. If there is, UHIP attempts to locate the exonerating evidence. Once evidence of actual innocence has been established, located, and verified, UHIP provides post-conviction legal assistance to wrongfully-convicted inmates by filing petitions for a writ of habeas corpus at the state and/or federal level and/or clemency applications.

University of Houston Law Center (UHLC) students are integral to the success of UHIP. Students enroll in a semester-long Innocence Investigations class taught by Professor David R. Dow, Cullen Professor of Law, and Legal Clinic Supervisor/Adjunct Professor Cassandra Jeu. UHLC offers Innocence Investigations during the Fall, Spring, and Summer semesters. Like all clinics at UHLC, the Innocence Investigations class contains a substantive and practical component.

During the substantive portion of the course, UHLC students are trained on how to assess the viability of actual innocence claims; perform fact-based investigations; and seek post-conviction relief based on actual innocence. To further these objectives, students study Texas law (encapsulating both criminal statutes and case law), post-conviction relief at the judiciary and executive levels, and criminal procedure at both the state and federal levels. Students utilize specific investigation skills, including: locating witnesses, conducting witness/inmate interviews, obtaining and reviewing records and physical evidence, and understanding and interpreting evidence (*e.g.*, autopsy/police/DNA reports). In addition, students are taught how to draft legal documents related to criminal appellate work, such as:

¹ For purposes of this report, UHIP uses the pronoun “him,” because the vast majority of requests come from male inmates. UHIP reviews, investigates, and litigates innocence claims made by female and LGBTQ+ inmates, as well. UHIP must use an inmate's legal name on the envelopes of all of its outgoing correspondence, in order to conform with Texas Department of Criminal Justice (TDCJ) guidelines and requirements. UHIP typically uses the inmate's legal name and set of pronouns as a default but will gladly honor an inmate's request for preferred name(s), pronoun(s), and/or prefix in its direct communications with the inmate.

² *i.e.* – the trial court judge in a bench trial or the jury in a jury trial.



Chapter 64 motions, state habeas petitions, federal habeas petitions, and clemency applications. Finally, students identify the causes of wrongful convictions (*e.g.*, eyewitness misidentification, junk science, false confessions, etc.) and potential policy reforms that could assist in minimizing them. The substantive portion of the course provides students with the necessary foundation to evaluate, investigate, and litigate inmates' actual innocence claims.

By studying the causes of wrongful convictions and the ways to avoid them, law students who plan on practicing criminal law learn best-practices to avoid wrongful convictions throughout their careers. Law students who plan to practice other types of law gain important knowledge about the legal system, which may advance and eventually result in future criminal justice reforms. Regardless of whether students eventually practice criminal law, they come away from UHIP with increased empathy for all actors in the criminal justice system, increased practical knowledge with respect criminal investigation and law, and increased desire to both avoid wrongful convictions and correct them when they occur.

During the practical component of the course, UHLC students utilize their skills and knowledge by evaluating, investigating, and assisting in the litigation of actual innocence claims.

Prior to student involvement, UHIP staff initially assesses correspondence received by inmates and their agents in order to determine whether there is an actual innocence claim that fits within project parameters. UHIP does not accept cases where:

1. the inmate's conviction (by trial or plea bargain) and/or direct appeal has not been completed; or
2. the inmate's claim is based solely on constitutional/procedural violations;³ or
3. the inmate has fully discharged his sentence, even if the wrongful conviction is later used to enhance sentencing in an unrelated crime;⁴ or

³ While successful litigation of a stand-alone constitutional claim may invalidate an inmate's arrest/conviction, it would result in legal innocence (*i.e.* – the inmate should not have been arrested/convicted), rather than actual innocence (*i.e.* – the inmate factually did not commit the acts constituting the crime for which he was wrongfully convicted.). As discussed *infra* on pages 7–8, TIN will litigate constitutional/procedural violations if they are conjunction with a persuasive actual innocence claim.

⁴ An exception exists where a defendant would not be in prison, but for the previous offense. For example, a defendant convicted of various sexually-based offenses is required to register as a sex offender, following the completion of the sentence. UHIP will look into the underlying sexually-based offense, even if the sentence has been completed. This is because sex offender registration has wide-reaching implications in terms of a person's personal relationships, housing, and work. More important, if an inmate were innocent of the underlying crime, the registration requirement would not exist.

Similarly, if an inmate is currently in prison for a "Possession of a Firearm by a Felon" conviction and is claiming actual innocence for his prior felony conviction(s), UHIP will look into the case. The underlying logic



4. the inmate is seeking general legal assistance unrelated to an innocence claim;⁵ or
5. the innocence claim is related to an incident that did not lead to a criminal conviction, but rather led to the revocation of an inmate's probation/parole; or
6. the innocence claim is related to a correctional department's disciplinary actions; or
7. another innocence project is currently investigating the inmate's case.⁶

UHIP investigates cases involving DNA evidence, as well as cases where there is no DNA evidence. UHIP also accepts cases where an inmate has pled guilty/nolo contendere. However in these cases, an inmate's innocence claim generally must contain physical evidence, a victim recantation, or evidence of widespread problems⁷ in order to proceed to litigation.⁸ When considering DNA evidence, the Texas Legislature has taken into account the fact that approximately 11% of the cases in which a defendant's wrongful conviction was overturned based on DNA evidence contained a guilty plea.⁹ Texas statute implicitly acknowledges that someone who has pled guilty may, in fact, be innocent of the crime for which he was convicted. Nonetheless, in cases that do not contain DNA evidence, courts generally argue that a guilty plea contains a defendant's acknowledgment of having committed the crime. This completely ignores the facts that 95% of all felony convictions occur pursuant to a guilty plea and eighteen percent of all exonerees pled guilty to crimes they did not commit.¹⁰

Innocence projects generally receive requests for assistance in three ways. In the great majority of cases, inmates and their agents (*e.g.* – friends or family) call or write UHIP and state that they were wrongfully convicted and are actually innocent. The second method is a case referral from defense attorneys. These referred cases are often ones where a defense attorney lost the case at trial, but believe in their client's actual innocence. The trial attorney wants someone to continue working towards their client's exoneration, but does not have the time/financial resources/appellate knowledge/etc. to work on the case themselves. With

is that if the defendant did not prior felony convictions, then he would not have been barred from possessing a firearm, thereby negating the "Possession of a Firearm by a Felon" conviction as well.

⁵ *e.g.* – Family law, probate, torts, legal research, criminal issues unrelated to an actual innocence claim (*e.g.* – Fourth Amendment search and seizure), etc.

⁶ If the Texas A&M Public Policy and Research Institute (PPRI) database shared by all Texas innocence projects indicates that another project has sent the inmate a questionnaire but has not yet moved the case to investigation, UHIP will also send the inmate a questionnaire. This is because each project has different intake/screening times, depending on capacity. Once UHIP receives the completed questionnaire, it again consults the PPRI database and proceeds accordingly. See pages 6–7 of this report, *infra* for additional information pertaining to UHIP's methods to avoid duplication.

⁷ For example, if a police officer is found to have planted evidence in a Possession of a Controlled Substance case, all of the officer's similar cases would come under scrutiny.

⁸ "A convicted person who has pleaded guilty or nolo contendere or, whether before or after conviction, made a confession or similar admission in the case may submit a motion [for post-conviction DNA testing] under this chapter, and the convicting court is prohibited from finding that identity was not an issue in the case solely on the basis of that plea, confession, or admission, as applicable." Tex. Code Crim Art. 64.03(b)

⁹ <https://innocenceproject.org/causes/access-post-conviction-dna-testing/>. (Last checked Jan. 5, 2023).

¹⁰ <https://guiltypleaproblem.org>. (Last checked Jan. 5, 2023).



referred cases, an attorney asks UHIP either to take over a case in its entirety or to consult/assist with the attorney's ongoing effort to further the client's actual innocence claim. In the third method, projects are made aware of forensic issues and work on cases being spearheaded by other organizations.

The acceptance of DNA as evidentiary proof has led to a dwindling number of exonerations based on DNA testing. Texas law already provides a mechanism by which inmates can request post-conviction DNA testing under certain circumstances.¹¹ Consequently, the number of older cases that still have physical evidence subject to post-conviction DNA testing continues to diminish, as more and more of the older cases are litigated and resolved. Quite simply, there will eventually be a time where older cases containing DNA evidence that might lead to exoneration will run out. Moreover, the need for UHIP involvement in such cases has diminished, given the increase of Conviction Integrity Units at local district attorney's offices throughout Texas. Litigation is unnecessary when district attorney's offices look into innocence claims themselves. Also, as inmates become increasingly aware of the nuances surrounding Chapter 64 of the Texas Code of Criminal Procedure, inmates can file *sua sponte* Chapter 64 Motions and request an appointed attorney,¹² thereby bypassing project involvement.

Over time, the number of cases involving DNA retesting will diminish, as well. As Professor David R. Dow noted to *The Atlantic*: "I think we've kind of reached maximum velocity on how much better the technology can get.... And so what that means in terms of innocence work is that you're not going to have cases where you can do testing five or ten years from now that you can't do today.¹³ And so if the biological material is collected, it's obviously going to be tested before the trial occurs."¹⁴ Although there have been advances in DNA technology, the advances do not improve the results of past testing methods. Rather, recent technological advances result in the ability to perform DNA testing on previously untestable

¹¹ Specifically, physical evidence subject to DNA testing (*e.g.*, blood, semen, etc.) must: (1) have been collected at the scene and been available at the time of trial; and (2) not have been previously tested, be subject to newer, more accurate testing, or have been previously tested at a lab that was subsequently shown to have engaged in faulty testing techniques. Tex. Code Crim. Proc. Art. 64.01(a)–(b).

¹² *Id.* at 64.01(c).

¹³ This is one of the avenues under which defendants can request post-conviction DNA testing, pursuant to Texas Code of Criminal Procedure section 64.01(b)(2)(A). Specifically, a criminal defendant may request post-conviction DNA testing of evidence that was previously subjected to DNA testing, but can be retested subject to newer techniques "that provide a reasonable likelihood of results and probative than the results of the previous test...." *Id.* at 64.01(b).

Please note that Professor Dow's stated thesis pertains only to cases that might require *re*-testing of physical evidence in order to obtain more exact results. Since current test results are highly exclusionary when there is a sufficient sample available, current DNA test results will stand and further testing would not be necessary. Moreover, the number of cases based on older DNA testing will continue to diminish, given that there are an increasingly finite number of cases involving older testing methods where physical evidence still exists.

¹⁴ <https://www.theatlantic.com/ideas/archive/2021/06/innocence-project-death-row/619132/> (last checked Jan. 5, 2023).



samples.¹⁵ This is most helpful in cold cases where law enforcement previously did not have a suspect (or insufficient evidence to arrest a suspect). It is not as helpful in cases where DNA testing had been previously performed and results had not excluded the defendant to a significant degree. District Attorney's offices and Courts could easily conclude that DNA testing on previously untested pieces of evidence might lead to alternative suspects but would not conclusively show that no juror would have voted to convict.¹⁶

Finally, defense attorneys are more consistent about requesting and courts are more consistent about granting DNA testing prior to trial, in the event that test results might be exclusionary and law enforcement previously had not tested the evidence. Thus, there are fewer recent cases where post-conviction DNA testing is even necessary. While wrongful convictions will continue to occur, it is likely that they will not involve as many cases where there is physical evidence subject to DNA testing.

UHIP volunteers to work on non-DNA forensic cases (*e.g.* – hair microscopy, bite mark analysis, etc.) but is rarely needed to look into them, given the number of conviction integrity units, organizations, and law firms already reviewing them. UHIP occasionally receives requests pertaining to non-DNA forensic evidence from inmates who have been contacted by the Texas Forensic Science Commission (TFSC) about the possibility of an issue pertaining to forensic evidence presented in their cases. In its correspondence, TFSC suggested that the inmate contact an attorney or innocence project. When this type of request occurs, UHIP follows its normal protocols with respect to screening, investigation, and litigation. When reviewing non-DNA forensic cases, UHIP must examine both the veracity of the testing and testimony, and the weight the forensic evidence presented at trial. Even if UHIP identifies an issue with the forensic testing and/or testimony, a conviction would stand if there was other evidence presented at trial that still could have resulted in a conviction.¹⁷

¹⁵ <https://sitn.hms.harvard.edu/flash/2018/next-generation-forensics-changing-role-dna-plays-justice-system/> (Last checked Jan. 5, 2023).

¹⁶ For example, take a case where a woman was sexually assaulted, then strangled to death with a piece of rope. There were no witnesses to the crime. DNA testing on pieces of evidence taken from the sexual assault kit indicated that the probability that semen taken from vaginal swabs is consistent with anyone but the defendant was 1 in 1,327,000,000,000. The rope was not tested at the time of trial, because there was an insufficient physical sample from the rope available for testing. Even though recent advances in DNA technology would permit testing on skin samples taken from the rope, identifying a different suspect might only indicate that someone else handled the rope at an unknown point in time. At most, it could be theorized that both parties were present during the time of the crime. Subsequent testing would not conclusively exonerate the inmate, since previous DNA testing did not exclude him.

¹⁷ For example, take a case where someone was robbed at gunpoint outside his home. The perpetrator shot at the victim and took his wallet. Bullet mark analysis was performed on the spent bullet/casing and an analyst testified at trial that testing proved that a gun found in the defendant's car "absolutely and positively fired the bullet. The testing performed was essentially a gun DNA test." This is a complete overstatement of the forensic evidence, given that ballistics testing is a comparative analysis. At most, an analyst should state that markings found from the evidence collected at the crime scene is *consistent* with markings made when firing the gun found in the defendant's car.



Although UHIP acknowledges and appreciates that taking over cases referred by defense/trial attorneys are more likely to lead to litigation and possible exonerations, it determined that all indigent defendants should have equal and shared access to UHIP services. This provides parity between all indigent defendants. The Texas Indigent Defense Commission (TIDC) “safeguards liberty by ensuring that Texas and its 254 counties provide the right to counsel guaranteed by the United States and Texas Constitutions.”¹⁸ In line with this goal, rather than choosing specific types of cases in order to maximize potential litigation, UHIP equalizes referred cases with cases brought by the public at large. By doing so, UHIP provides unbiased assistance to as many people as possible throughout all of Texas’ 254 counties, rather than to a few pre-selected individuals and cases.

If a claim falls within UHIP parameters, the inmate is sent a questionnaire requesting additional information regarding the innocence claim. An inmate may bypass the initial intake process by completing a Texas Prisoners’ Innocence Questionnaire (TPIQ) and sending it directly to UHIP. Inmates may find copies of the TPIQ, a form questionnaire approved by all the Texas innocence projects, in their prison library or on the TIDC website.¹⁹ Likewise, an inmate’s agent may obtain a copy of UHIP’s questionnaire by contacting UHIP and requesting a copy or by accessing an older copy of its questionnaire on its website.²⁰

Once a questionnaire is returned, UHIP staff first ensures that another innocence project is not currently investigating an inmate’s case. UHIP shares the Texas A&M Public Policy Research Institute (PPRI) database with all Texas innocence projects. As a general rule,

If this forensic evidence was the only evidence presented at trial, then it is clear that the faulty testimony must have been given great weight by the fact-finder. However, if an examination of the trial transcript indicates that the victim’s neighbor had a home-security video system that clearly showed the defendant’s face and that the victim identified the defendant as someone from his high school, then it is clear that there would have been sufficient evidence to convict the defendant even without the forensic testimony.

¹⁸ <http://www.tidc.texas.gov/about-us/what-we-do/> (last checked Jan. 5, 2023).

¹⁹ <http://www.tidc.texas.gov/media/8d87a24363c687e/innocence-project-standard-questionnaire.pdf>. (last checked Jan. 5, 2023).

²⁰ http://texasinnocencenetwork.com/wp-content/uploads/2014/02/TIN_Questionnaire.pdf. (last checked Jan. 5, 2023).

Please note that the Texas Innocence Network website is admittedly outdated, as it references Adam Ward and Jack Smith as two of its current death penalty cases. http://texasinnocencenetwork.com/?page_id=37 (last checked Jan. 5, 2023). Mr. Ward was executed in March 2016 and Mr. Smith died of natural causes in April 2016. https://www.tdcj.texas.gov/death_row/dr_executed_offenders.html (last checked Jan. 5, 2023) and <https://www.seattletimes.com/nation-world/oldest-inmate-on-texas-death-row-dies-of-natural-causes/> (last checked Jan. 5, 2023).

While the questionnaire found on the Texas Innocence Network website has been updated, it still requests the fundamental information necessary to look into an inmate’s innocence claim. Therefore, UHIP can and will screen cases based on this older questionnaire, asking for additional information from the inmate at a later time, as needed.



innocence projects will not duplicate investigative efforts and make every effort to avoid this from potentially occurring. If the PPRI database indicates that another project is currently investigating a case, UHIP immediately contacts the other project and offers to assist the other project with the investigation in any way possible. UHIP is always willing to collaborate with other projects in whatever support capacity is requested. If the other project does not require assistance at the time, UHIP sends the inmate's paperwork to the other project. UHIP then informs the inmate that we have terminated his file in our records and that he should contact the other project for future updates. If the PPRI database indicates that another project has already investigated (and subsequently terminated) an inmate's case, UHIP contacts the other project to discuss the case.²¹ If the inmate is presenting the same new/exculpatory evidence to UHIP that the other project already looked into, UHIP will not investigate the case. UHIP will begin an investigation only if there is new, exculpatory evidence that was not looked into by the other project (*e.g.* – there have been changes in scientific testing; a witness who previously could not be located/had been unwilling to testify recently came forward; etc.). In the event that a new investigation is warranted, UHIP will request the case file from the project that previously looked into the case and offer to collaborate with that project.

Once UHIP determines that an investigation would not be duplicative, UHLC students review an inmate's case file in order to assess and evaluate the viability of the actual innocence claim. This process requires UHLC students to understand the statutory basis of the crime for which the inmate was convicted, the evidence found during the law enforcement investigation, the evidence presented at trial by both the State and the defense, the inmate's narrative of events, and the new/exculpatory evidence that the inmate says would exonerate him.

In assessing the viability of an inmate's innocence claim, UHLC students first ensure that an inmate is claiming actual innocence. If an inmate claims only legal innocence (*e.g.* – self-defense, accident, double jeopardy, prosecutorial misconduct, etc.) but not actual innocence (*i.e.* – he did not commit the crime for which he was wrongfully convicted), UHIP terminates the case. Likewise, UHIP will not investigate a case if the inmate's actual innocence claim would still result in conviction based on the law of the parties. For example, if an inmate was convicted based on the State's theory that he was the gunman in an aggravated robbery of a convenience store clerk, but his innocence claim is based on his

²¹ Of course, if another project is looking into a case that UHIP previously investigated and terminated, UHIP gladly shares information with the project in order to avoid duplicative, needless effort. Communication between innocence projects is permitted, since inmates sign a waiver when they initially request assistance from innocence projects. The waiver allows case information to be shared between projects. Since all innocence projects provide legal aid, these communications are considered attorney work product for purposes of the Texas Disciplinary Rules of Professional Conduct and are therefore privileged conversations not subject to open record requests.



assertion that was the getaway driver and did not have a gun, the inmate would still be guilty of aggravated robbery under Texas law. Consequently, UHIP would terminate the case.

Once UHIP staff and students determine that the inmate is claiming actual innocence and does not have a law of the parties issue, they review readily available case documents such as the inmate's correspondence and questionnaire, available appellate briefs/opinions, and online research in order to determine whether there is any potential new evidence would tend to show that the inmate did not commit the crime for which he was convicted.²² If there is no potential new evidence or the potential new evidence would not overcome the evidence presented at trial or the guilty/nolo contendere plea, the innocence claim is not viable and the case is terminated.²³ However, if proposed new evidence would indicate that the inmate was wrongfully convicted or if there is insufficient information to make a determination, the case is passed to investigation. UHIP's staff attorney oversees all aspects of student screening to ensure that all viable innocence claims are being investigated. When needed, she also screens cases to avoid potential backlogs at the screening stage.²⁴

Once a case has been passed to investigation, UHLC students look into inmates' actual innocence claims in order to obtain the evidence that would indicate that an inmate was wrongfully convicted. UHIP's staff attorney directs and oversees this student work, which may include: record collection, evaluating police/lab/medical/autopsy/arson/etc. reports, researching medical/scientific claims (*e.g.* – shaken baby syndrome), locating witnesses, interviewing witnesses, obtaining testing of physical evidence, etc. As with screeners, UHIP's staff attorney takes part in investigating cases when needed.²⁵

After exonerating evidence is identified, located, secured, and verified, UHIP staff and UHLC students assist wrongfully inmates in obtaining post-conviction relief through

²² The inmate usually informs UHIP of potential new, exculpatory evidence. However, UHIP students and staff can independently identify potential new, exculpatory evidence while reviewing the inmate's file.

²³ It must be emphasized that the decision to terminate a case focuses on the availability and strength of the potential new, exonerating evidence compared to the evidence presented at trial or the guilty/nolo contendere plea. By terminating a case, UHIP is not providing an opinion with respect to an inmate's guilt or innocence. UHIP is only saying at this stage that there is insufficient new, exculpatory evidence to indicate the inmate was wrongfully convicted.

For obvious reasons, UHIP also terminates a case if there is no potential new, exculpatory evidence. Inmates and their agents may question the strength of the evidence presented at trial, pointing out things like inconsistencies between a witness' original statement to police and subsequent trial testimony. However, it is up to the defendant's trial attorney to point out potential inconsistencies to the fact-finder and the fact-finder to weigh the strength of the evidence.

²⁴ This most often occurs between semesters, during periods of lowered student enrollment, and/or in the event of a large, sudden influx of inmate questionnaires.

²⁵ As with screeners, this typically occurs between semesters until students are sufficiently trained to investigate cases and during periods of lowered student enrollment. In addition, UHIP staff takes a large role in investigating more complex cases requiring specialized knowledge and cases nearing litigation. Students assist on these cases but are not assigned to be the primary investigator.



state/federal habeas proceedings, the clemency process, or both. As mentioned earlier, UHIP seeks to exonerate individuals who did not commit the crime for which they were wrongfully convicted. Consequently, it will not seek post-conviction relief if an inmate claims only legal innocence.²⁶ However, if an inmate has both a viable actual (*i.e.* – factual) innocence claim and one or more viable legal innocence claim(s) (*e.g.* – ineffective assistance of counsel), UHIP will present both the factual and legal claims during legal proceedings. That being said, an actual innocence claim must always be the foundation of an inmate’s post-conviction legal proceedings.²⁷

Moreover, UHIP seeks post-conviction relief only when its attorneys determine that the case contains persuasive evidence of actual innocence that can meet the exacting standards set by the judiciary and/or the Texas Board of Pardons and Paroles. It is important to note that UHIP bases its own standard with respect to investigation and litigation on the Texas rules of professional responsibility as pertains to attorneys²⁸ and Texas Court of Criminal Appeals’ case law.

Texas Rule 3.01 specifies that a “lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.”²⁹ Attorneys have a duty not to abuse legal procedure. In addition, all courts prohibit the filing of frivolous documents, whereby the attorney is unable to make a good faith argument that the filing is consistent with existing law.

The current legal standard with respect to claims of actual innocence was set by the Court of Criminal Appeals (“CCA”) in *Ex Parte Elizondo*.³⁰ The CCA determined that a defendant must show that newly discovered evidence unquestionably establishes innocence. Courts examine new evidence in light of the trial evidence. If no rational juror would have convicted the defendant in light of the clear and convincing newly discovered evidence, the court grants relief. The CCA mandated that defendants cannot collaterally attack a conviction without an exceedingly persuasive case. Moreover, defendants “should not be permitted to wage, and [the CCA does] not permit him to wage, a collateral attack on that conviction

²⁶ (*e.g.* – self-defense, accident, double jeopardy, prosecutorial misconduct, etc.)

²⁷ On the other hand, it is possible that UHIP will file clemency proceedings other than for a Pardon Based on Actual Innocence. This is because the Texas Board of Pardons and Paroles requires *either* evidence of actual innocence from at least two trial officials (*i.e.* – the District Attorney, head of the arresting/investigating Law Enforcement Agency, and/or trial judge) *or* Findings of Facts and Conclusions of Law from the district judge in state habeas proceedings indicating actual innocence in order for an inmate to even potentially qualify for a Pardon Based on Actual Innocence. (https://www.tdcj.texas.gov/bpp/exec_clem/Pardon_for_Innocence.html. Last checked Jan. 5, 2023.) If UHIP conducts a full investigation and locates exonerating evidence but cannot garner sufficient trial official support to proceed with a Full Pardon Based on Actual Innocence, it might instead assist an inmate request clemency on other grounds (*e.g.* – a Conditional Pardon).

²⁸ formally the “Texas Disciplinary Rules of Professional Conduct” and hereinafter the “Texas Rule(s)”

²⁹ <https://www.texasbar.com/AM/Template.cfm?Section=Home&ContentID=27271&Template=/CM/ContentDisplay.cfm> (last checked Jan. 5, 2023)

³⁰ *Ex Parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996)



without making an exceedingly persuasive case that he is actually innocent.”³¹ The CCA later specified in *Ex Parte Brown* that “establishing a defendant’s actual innocence is a Herculean task.”³²

Consolidating the Texas Rules with the existing legal standard, UHIP must believe in good faith that any litigation it decides to file contains a factual and legal basis that might satisfy the exacting, exceedingly high standard for actual innocence set by the CCA. UHIP takes this mandate seriously. It exhaustively investigates cases before moving towards litigation to ensure that only newly discovered or newly available evidence is put forth. The CCA has specified that actual innocence claims must rest on previously unavailable evidence. Previously unavailable evidence has been defined as evidence that the defendant did not know about and could not have known about at the time of trial.³³ Consequently, the investigative process can be lengthy and may result in dead-ends or in evidence that indicates actual innocence but is not viable in a court of law.

OCA funding is vital to the existence of UHIP. UHIP began in March 2000, with four student volunteers and a shoestring budget. Prior to receiving OCA funding, UHIP was staffed by a full-time investigator—one of the original four UHIP law student volunteers who had graduated from UHLC but had not yet passed the Texas bar exam—and a part-time administrative assistant. Professor David R. Dow provided funding for both staff salaries and investigative costs through his own limited stipends, foregoing conferences and other academic-related items in order to assist the wrongfully convicted. UHIP’s case backlog also prevented it from reviewing inmate mail immediately upon its receipt. There was an approximate two-month lag between the time a letter was received and the time it was read/processed by UHIP staff. Once inmate questionnaires were received, there was an approximate six-month waiting period before UHLC law students could review case files and discuss their recommendations with Professor David R. Dow, the only licensed attorney associated with UHIP.

³¹ *Id.* at 205.

³² *Ex Parte Brown*, 205 S.W.3d 538 (Tex. Crim. App. 2006).

³³ For example, a victim in a Sexual Assault of a Child case who is willing to recant years after the trial, stating that the actual perpetrator had threatened to harm her and her family, unless she said that someone else committed the crime. Since the recantation was not available at the time of trial, it would be considered new evidence. Compare this to a victim who had signed a non-prosecution affidavit prior to trial. Regardless of whether the victim ended up testifying at trial or whether the defendant eventually pled guilty, the recantation would not be considered new evidence. This is because the recantation was available prior to the guilty verdict/plea.

Physical evidence that was previously available at the time of trial and even previously tested may become “new” evidence if it “can be subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test....” Texas Code of Crim. Proc. Art 64.01(2)(A).



Prior to obtaining OCA funding, UHIP could not provide wrongfully convicted inmates with post-conviction legal assistance. Due to insufficient resources, UHIP could not afford to hire a staff attorney. UHLC students successfully evaluated actual innocence claims; investigated numerous cases; and located exonerating evidence. However, given Professor Dow's class schedule and death penalty caseload, UHIP could not litigate the inmate's case and assist him get out of prison. Instead, UHIP would often have to either locate an experienced criminal appellate attorney who would be willing to accept the inmate's case *pro bono*, or turn the evidence over to the inmate with general information regarding potential avenues of post-conviction relief.

OCA contract funds are being used by UHIP to enhance the services provided to indigent defendants, as well as the speed with which assistance is provided. Since its inception, UHIP has received approximately 19,000 requests for assistance. Since FY 2005, OCA funding has allowed UHIP to quickly respond to approximately 13,000 of those requests—more than half of which contained claims of actual innocence. OCA funds were used to fund a full-time staff attorney to operate UHIP on a daily basis; oversee and perform non-capital investigations; and provide direct legal assistance.

Specifically, OCA funding permitted UHIP to hire a full-time attorney. Cassandra Jeu has been employed as a staff attorney³⁴ for UHIP since OCA funding began in 2005 and has co-taught Innocence Investigations as a UHLC Adjunct Professor since 2007. She performs TIN's administrative work; supervises non-capital cases and student investigations; and provides direct legal assistance to wrongfully convicted inmates. Ms. Jeu reviews all incoming correspondence and determines which requests contain a claim of actual innocence that fit into UHIP parameters. She evaluates inmate case files and decides which cases contain viable claims of actual innocence that should be moved to investigation. During the investigative process, she instructs and supervises UHLC law students as they examine and/or substantiate inmates' claims of actual innocence. Finally, Ms. Jeu drafts and files legal documents—such as Chapter 64 motions, habeas writs and clemency petitions—under Professor David R. Dow's direction and supervision in order to exonerate the wrongfully convicted.

OCA funding has led to increased investigative and legal instruction, training, assistance, and supervision. UHIP students can schedule meetings with Ms. Jeu at any time to discuss cases, rather than having to wait for Professor Dow's office hours or their weekly class. If a student feels more comfortable having supervised discussions with witnesses, law enforcement personnel, attorneys, etc. instead of attending such meetings alone, Ms. Jeu attends and assists upon student request. In addition investigating and litigating wrongfully

³⁴ To clarify, Ms. Jeu's official UHLC titles are Legal Clinic Supervisor and Adjunct Professor. On a practical basis, she serves as UHIP's Director, given the fact that she handles UHIP's administration, daily operations, and case management. In 2005, Ms. Jeu was originally hired as a staff attorney. "Director" and "staff attorney" provide a more descriptive understanding of Ms. Jeu's daily functions than her official titles.



convicted inmates' claims of actual innocence, UHIP has long-lasting effects on a future generation of attorneys. OCA funding has exponentially increased law students' education with respect to the criminal justice system, causes of wrongful conviction, and the ways to avoid them.

OCA funding has allowed UHIP to completely clear its backlog at the intake and screening phases. UHLC's staff attorney cleared UHIP's two-month mail backlog; incoming mail is now read and processed immediately upon receipt. UHIP has cleared its backlog at the screening phase, as well. Inmate questionnaires are assigned for screening the day they are received. Under attorney supervision and review, UHLC students screen a majority of all screeners as part of their coursework. Student screening increases the number of cases reviewed and provides pedagogical value. Attorney review of student cases provides vital quality control of student work and ensures that all viable innocence claims are investigated. UHIP's staff attorney screens and investigates cases deemed to be particularly complex,³⁵ as well as all backlogged cases on an ongoing basis, thereby providing heightened service to wrongfully convicted inmates. This process has the added benefit of permitting UHLC students to spend a greater amount of time investigating and furthering inmates' claims of actual innocence.

OCA funds reimburse expenses directly related to the investigation of non-capital inmates' claims of actual innocence. Most criminal cases do not contain physical evidence stored at local law enforcement agencies that can be easily accessed and tested. Rather, a wrongfully convicted inmate's innocence claim will more often rely on witnesses who must be located and interviewed. This is a lengthy and potentially costly process that is difficult to maintain without OCA support.

Prior to OCA funding, UHIP's ability to investigate claims of actual innocence was highly limited. UHIP was often unable to afford to procure case-related records, such as police reports, news articles, and trial transcripts, thereby severely limiting the efficacy of its investigations. UHIP also could not afford to pay for travel expenses, in the event that witnesses needed to be interviewed off-campus. Cases outside the Houston area would be placed on hold until UHIP had a student whose family lived nearby. Students would schedule witness interviews whenever they happened to be out of town during vacations. This resulted in many cases being placed on indefinite hold for months, or even years. OCA funding alleviated these issues, as UHIP can now afford case records and related investigative expenses.³⁶ OCA funds reimburse expenses directly related to the investigation

³⁵ For example, a case requiring specialized medical knowledge or scientific claims. Students assist in this type of case but are not assigned as the primary investigator.

³⁶ It must be noted that UHIP makes every attempt to defray expenses by requesting trial transcripts on an as-needed basis and paring down police report requests to the necessary pieces. (*e.g.* – in an “Aggravated Assault on a Public Servant” case, if a defendant is charged with trying to run over Officer Smith with his vehicle,



of non-capital inmates' claims of actual innocence, thereby allowing UHIP to provide inmates with faster, more thorough investigations.

That having been said, UHIP continues to make every attempt to conserve OCA resources by working collaboratively with other criminal justice shareholders. Whenever possible, UHIP works with district attorneys' offices to see if records such as police reports and trial transcripts can be obtained/shared without cost. UHIP also works with law enforcement agencies to ensure that public information requests are streamlined to minimize cost, while still providing the information needed to thoroughly investigate claims of actual innocence.³⁷

Because of OCA funding, UHIP has been able to expand the parameter of cases that can be passed to investigation. UHIP previously denied assistance in cases where the inmate had been granted probation or parole, but the probation/parole had subsequently been revoked. UHIP is now able to assist inmates whose probation/parole has been revoked, as long as they are claiming actual innocence for the underlying crime.³⁸ In conjunction with the OCA,

UHIP will request Officer Smith's body cam footage but would not request the body cam footage of officers who responded to the scene after the fact.).

³⁷ With that in mind, significant roadblocks still exist when it comes to information gathering, thereby causing significant delays in UHIP investigations. For example, UHIP receives a large number of requests regarding sexual assaults and/or crimes against children. Since both types of cases are exceptions to Texas' Public Information Act, law enforcement agencies are prohibited from providing UHIP with offense reports related to these cases. As most criminal cases result in plea bargains and many inmates no longer have access to their legal files, this means that UHIP often has no way to obtain documents in these cases and must investigate without knowing the specifics of the underlying law enforcement investigation. Although conviction integrity units will often assist UHIP in obtaining information pertaining to these cases, most counties do not have conviction integrity units.

In addition, many criminal defendants no longer have access to their trial transcripts, and the transcripts are no longer available at the county clerk's office. At that point, the trial transcript belongs to the court reporter. To get a copy of the trial transcript, UHIP would have to pay the court reporter for the transcript at a rate of approximately \$1/page. Given that a trial transcript can be hundreds-to-thousands of pages, it is impracticable for UHIP to buy a transcript whenever one is not readily available. Without a trial transcript, it is immensely difficult to ascertain what evidence was presented by the State at trial.

Finally, UHIP has encountered significant difficulty when dealing with law enforcement agencies. Public information requests are often ignored or only minimally acknowledged. Instead of providing a full offense report, some law enforcement agencies will only provide the cover page of an arrest report. There have been instances where law enforcement agencies have insisted that they have no responsive records pertaining to a request, despite the fact that UHIP has provided the specific offense report number found in the inmate's indictment. In addition, law enforcement agencies often claim exemptions to public information requests, thereby preventing UHIP from ascertaining background facts regarding an inmate's case. UHIP has countered such exemptions with varying degrees of success, but the process of arguing whether an exemption exists is time- and resource-consuming.

³⁸ As a policy matter, UHIP does not assist on innocence claims relating to circumstances surrounding the revocation of a defendant's probation/parole revocation for several reasons. First and foremost, UHIP's mandate and resources focus on wrongful convictions. Second, probation/parole revocation issues are administrative in nature, rather than judicial. UHIP would need to either train or hire staff to effectively resolve these types of claims. Third, UHIP does not have the resources to handle the potential volume of claims relating



UHIP better serves the wrongfully convicted and all shareholders in the criminal justice system.

During the reporting period, UHIP resumed its pre-Covid-19 operations. The American Bar Association's Covid-19 waiver, permitting law schools to operate widespread online classes, expired in Spring 2022. Nonetheless, UHLC allowed professors the option to permit hybrid classes, in which students could choose to attend classes either in-person or online. Given the nature of its work, UHIP declined the hybrid option and required its students to attend in-person classes. This resulted in no students enrolling in Innocence Investigations during Summer 2022. UHIP's sole summer intern worked remotely, as she was hired prior to the lifting of Covid-19 restrictions with the understanding that she would not come into the office or travel due to health concerns.

Since UHLC's maintenance and operations department is fully staffed, UHIP receives and sends mail daily. However, since UHIP cannot determine whether TDCJ's operations are back to normal, it has continued to act as if TDCJ units were still following Covid-19 protocols. Specifically, to best serve inmates and their agents, UHIP resends questionnaires to inmates; sends questionnaires to the inmates' agents; advises inmates' agents that the inmate could request a copy of the TPIQ from the prison law library; extends its deadlines when requesting documents, responses, etc.; and resends its correspondence if an inmate does not respond, just in case the original letter was never received by the inmate.

During the reporting period, OCA funding ensured the continued daily operations of UHIP during the reporting period by providing the equipment and supplies which allowed Ms. Jeu to effectively prepare and review case assignments, perform legal research, process casework, correspond with criminal justice stakeholders (*e.g.* – inmates, their agents, law enforcement agencies, defense attorneys, and court personnel), digitalize case files, and conduct zoom meetings. File digitization was a priority during the reporting period, as UHIP moved its offices to the new John O'Quinn Law Building in Fall 2022.

After assessing UHIP's importance to the law school curriculum and the community at large, UHLC provided UHIP new office space in the building's clinical offices, rather than housing UHIP separate from the main law building. UHIP is now located with UHLC's clinics and now enjoys increased student office workspace, conference rooms, state-of-the-art equipment, visitor parking spaces, and a receptionist. UHLC solely funded the construction and pays the receptionist's full salary, thereby saving OCA funds.

In preparation for the July 2022 move, UHIP processed and scanned a decade's worth of archived files. It is in the process of digitalizing its current screener and investigation files,

to revocation issues. In mid-2022, approximately 400,000 people in Texas were on probation, parole, or in prison. https://www.tdcj.texas.gov/documents/rid/RID_Reentry_Biennial_Report_09_2022.pdf (last checked Jan. 5, 2023). Of these, approximately 282,000 were on probation or parole. *Id* at 3.



since the new law building does not contain a file storage area. By determining methods to minimize paper files in the future, UHIP hopes to streamline its processes and provide students with easier access to case files. As UHIP has begun to move away from paper files, it is now accepting electronic documents from inmates and their agents.

File digitization has resulted in UHIP's ability to keep recantation-based investigations open longer, as file storage space is no longer at a premium. This type of case makes up a significant percentage of UHIP's investigations. In recantation-based cases, the only evidence that was presented against an inmate was the victim's statement³⁹ or testimony. The inmate contacts UHIP for assistance, saying that the victim is willing to recant their allegations and admit that they either made up the allegations or misidentified the inmate as being the perpetrator.⁴⁰ UHIP policy requires recanting victims to initiate contact, so it informs the inmate of its policy, as well as the fact that inmates and their agents are not allowed to ask a victim to recant. However, if a victim has *sua sponte* contacted an inmate's agent stating that they wish to recant, the inmate's agent can pass along UHIP's contact information. Once contacted, UHIP continues the investigation by conducting interviews and proceeding accordingly. Previously, UHIP provided a sixty-day deadline for a victim contact, due to file storage considerations. Now that case files are being scanned and electronically stored on UHLC servers, UHIP can provide longer, even potentially open-ended, deadlines for victims to contact UHIP at their convenience.

In addition to providing UHIP with new office space and the means to digitize its files, UHLC has continued to demonstrate its support of UHIP by fully funding UHIP's indirect costs (*i.e.* – office space, furniture, utilities, overhead, etc.) and by paying for its phone, internet, copier/fax/scanner, and mailing costs. UHLC has also begun including UHIP in more of its clinical marketing materials to students, thereby increasing student awareness of UHIP and ways that students can become involved in its work.

During the reporting period, Professor David R. Dow transitioned into his role as UHIP's Litigation Director. As Litigation Director, Professor Dow provides vision, direction, and support. Specifically, he oversees litigation strategy; identifies cases that have the potential for litigation; advises potential investigative pathways that would strengthen litigation potential; supervises legal research; and edits habeas and clemency petitions. Professor Dow and Cassandra Jeu meet regularly to discuss cases on-the-brink of litigation and actively review files in order to formulate litigation action plans.

³⁹ In cases involving a guilty/nolo contendere plea, there was no trial and therefore no trial testimony. The victim's initial statement was the basis for the criminal charges and subsequent plea bargain.

⁴⁰ This scenario occurs primarily in child sexual assault cases involving family members. A child has indeed been assaulted, but the perpetrator has threatened the child and/or the child's family if the child tells what happened. When confronted, the child points to an innocent person as the perpetrator, mistakenly believing that nothing would actually happen to the falsely accused person, since the falsely accused person is innocent.



While some may measure project success in terms of the number of litigated cases and/or exonerations, UHIP argues that this viewpoint ignores a larger picture and a greater constituency. UHIP instead considers its effects on Texas citizens as a whole. As of July 2022, there were approximately 121,000 inmates in Texas prisons, 204,000 individuals on probation, and approximately 78,000 individuals on parole.⁴¹ Many of these inmates, their families, and their friends bring actual innocence claims to UHIP, asking for the opportunity to be heard. Through OCA funding, UHIP directly furthers TIDC's mission by focusing on the many, rather than the few. UHIP provides inmates with meaningful reviews and investigations of their actual innocence claims, even if it is later determined that such claims cannot obtain post-conviction relief. Through OCA funding, UHIP has assisted thousands. Regardless of the result, UHIP continually strives to provide all Texas citizens fair, equal, impartial, and thoughtful defense.

⁴¹ https://www.tdcj.texas.gov/documents/rid/RID_Reentry_Biennial_Report_09_2022.pdf (last checked Jan. 5, 2023).



**UNIVERSITY OF HOUSTON INNOCENCE PROJECT
OCA BIENNIAL REPORT (06/01/22 – 12/31/22): RELEVANT STATISTICS**

PHASE I: INTAKE

<i>Description</i>	<i>Total</i>
Incoming requests containing an claim of actual innocence	215
Incoming requests that did not contain a claim of actual innocence (<i>e.g.</i> , law of the parties) or did not fit into project parameters (<i>e.g.</i> , discharged sentence)	90
Letters from inmates already in the UHIP database	763

PHASE II: SCREENING

<i>Description</i>	<i>Total</i>
Number of cases (innocence claims) screened, following receipt of inmate questionnaire	121
Number of cases (innocence claims) placed on hold following screening: Inmate still in the process of his direct appeal or additional information required	7
Number of cases (innocence claims) passed to investigation after screening	34
Number of cases (innocence claims) closed: inmate did not return a questionnaire and has been released from TDCJ without providing a forwarding address	12
Number of cases (innocence claims) closed after screening	68

PHASE III: INVESTIGATION

<i>Description</i>	<i>Total</i>
Open investigations as of 06/01/22	471
Total cases investigated by UHIP from 06/01/22 – 12/31/22	68
New investigations started 06/01/22 – 12/31/22	34
Investigations completed 06/01/22 – 12/31/22	9
Open investigations as of 12/31/22	496
Number of innocence claims awaiting investigation at end of period *	0

PHASE IV: LITIGATION

<i>Description</i>	<i>Total</i>
Number of innocence claims with legal remedy pursued	0
Number of innocence claims with clemency pursued	0
Number of innocence claims with relief denied	0
Number of innocence claims with relief granted	0



**UNIVERSITY OF HOUSTON INNOCENCE PROJECT
OCA ANNUAL REPORT (06/01/22 – 12/31/22): RELEVANT STATISTICS – CTD.**

STUDENT & STAFF STATISTICS

<i>Description</i>	<i>Total</i>
Law students enrolled in UHIP 06/01/22 – 12/31/22 **	6
Law students volunteering for UHIP 06/01/22 – 12/31/22	1
Hours worked by enrolled UHIP law students 06/01/22 – 12/31/22	724.0
Hours worked by volunteer UHIP law students 06/01/22 – 12/31/22	400.0
Students from Other Fields of Study Participating in UHIP 06/01/22 – 12/31/22	0
Number of Hours Worked by Students in Other Fields of Study 06/01/22 – 12/31/22	0
Staff Hours (Investigative/Administrative/Paralegal) 06/01/22 – 12/31/22	0
Staff Hours (Legal) 06/01/22 – 12/31/22 ***	1,224.0
External Contract Staff Hours (Investigative/Administrative/Paralegal) 06/01/22 – 12/31/22	0
External Contract Attorney Hours 06/01/22 – 12/31/22	0
Donated Hours (Investigative/Administrative/Paralegal)	0
Donated Hours (Legal) ****	71.0

* - At UHIP, once a case is passed to investigation, the law student or staff member who passed it to investigation immediately begins work on it. Consequently, at UHIP, there are never cases awaiting investigation. That having been said, only a finite number of investigations are assigned out to students during any given semester. While all investigations are considered open, some may be on hold during a specific semester. In order to give a better picture of UHIP’s operations, one needs to instead consider the number of assigned cases (by type) each semester.

** - The reporting period encompasses the Summer and Fall 2022 semesters.

*** - Cassandra Jeu is an exempt employee at the University of Houston Law Center. Her hours are calculated based on a forty-hour work week/fifty-two week year. In accordance with UH policy, timesheets for exempt employees are not submitted. Consequently, any hours over the forty-hour work week are not calculated or included in this report.

**** - OCA grant funds do not pay for any portion of Professor David R. Dow’s salary. As a result, the work he does for UHIP as its Litigation Director must be performed at home, following the completion of his teaching duties at UHLC. The time he spends corresponding/meeting with Cassandra Jeu regarding UHIP, reviewing cases, etc. is donated and must be performed in his spare time.