

# **Texas Criminal Justice Integrity Unit**

## **2008 Annual Report of Activities**

### **TCJIU Members:**

Judge Barbara Hervey, Texas Court of Criminal Appeals

Senator Rodney Ellis, Texas Senate

Mary Anne Wiley, Deputy General Counsel to Governor Rick Perry

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Pat Johnson, Director, Texas Department of Public Safety Crime Lab

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Craig Watkins, District Attorney, Dallas

Jaime Esparza, District Attorney, El Paso

Representative Jim McReynolds, Texas House of Representatives

Gary Udashen, Criminal Defense Attorney, Dallas

Judge Sid Harle, District Judge, San Antonio

Jim Bethke, Director, Texas Task Force on Indigent Defense

Representative Jerry Madden, Texas House of Representatives

**This report summarizes TCJIU activities for June 2008 - January 2009**

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## **I. Introduction**

This report discusses the activities, research findings, and progress of the Texas Criminal Justice Integrity Unit (TCJIU). It summarizes activities for June 2008 through January 2009.

The TCJIU is an ad hoc committee created by Judge Barbara Hervey of the Texas Court of Criminal Appeals. Established in June 2008, the TCJIU held its first formal meeting in August 2008. The TCJIU was created to review the strengths and weaknesses of the Texas criminal justice system. Furthermore, the TCJIU's purpose is to bring about meaningful reform through education, training, and legislative recommendations. It is not a forum for any particular group, nor does it embrace the plan of one particular political party.

## **II. Meetings and Guest Speakers**

At each meeting, the TCJIU hosted criminal justice experts from Texas and around the nation. Each guest presented before the TCJIU members and other criminal justice stakeholders who attended the TCJIU meetings. Their presentation format focused on providing suggestions for reform that could be implemented in the near future. The overriding theme presented by all of the speakers was that the Texas criminal justice system could be improved by implementing certain evidence based practices to minimize the possibility of wrongful convictions.

The TCJIU met in August, September, and October of 2008 and in January of 2009. The following guest speakers presented:

- **Barry Scheck**, Director, The Innocence Project—August 8, 2008. Mr. Scheck presented on the need and possibility for reform in the area of eyewitness identification procedures. ([www.innocenceproject.org/](http://www.innocenceproject.org/))
- **John Terzano**, President, The Justice Project—September 25, 2008. Mr. Terzano recommended legislative changes to improve eyewitness identification procedures based upon the data showing the vast majority of Texas' and other State's wrongful convictions involved mistaken eyewitness identifications. He also addressed the need for recorded interrogations and urged similar modernization through legislation for jailhouse informant testimony, forensic evidence and testimony, and ensuring adequate counsel for indigent defendants. ([www.thejusticeproject.org/](http://www.thejusticeproject.org/))

- **John Vasquez**, President, Texas Association of Property and Evidence Inventory Technicians (TAPEIT)—September 25, 2008. Mr. Vasquez presented on the importance of having properly organized and up-to-date evidence rooms, the lack of money and streamlined training in this area, and how the procedures within an evidence room affect every stage of a criminal case. ([www.tapeit.net/](http://www.tapeit.net/))
- **Richardson Police Department**—October 30, 2008. The Richardson Police Department presented their self-imposed double blind and best practices approach to eyewitness identification procedures.
- **Dr. Gary Wells**, Professor, Iowa State University; Director of Social Sciences of the Institute of Forensic Science and Public Policy; and eyewitness identification expert—October 30, 2008. Dr. Wells summarized the theory behind why certain eyewitness identification procedural changes are necessary and presented reformation suggestions on the same subject. ([www.psychology.iastate.edu/faculty/gwells/homepage.htm](http://www.psychology.iastate.edu/faculty/gwells/homepage.htm))
- **Dr. Richard Leo**, Professor, University of San Francisco School of Law and false confession expert—January 13, 2009. Dr. Leo summarized the theory behind how false confessions are often obtained. He also presented the concept of mandatory recording of interrogations as a preventative measure for false confessions and a progressive step that all police agencies will, at some point, require. ([acadserv.usfca.edu/preview/law/faculty/fulltime/RichardLeo.html](http://acadserv.usfca.edu/preview/law/faculty/fulltime/RichardLeo.html))
- **Thomas Shehan**, Division Director, Texas Extension Service (TEEX), Texas A&M—January 13, 2009. Mr. Shehan presented on behalf of the entire TEEX team regarding their commitment to work with the TCJIU to provide education and training for proper collection, preservation, and storage of evidence. ([www.teex.com](http://www.teex.com))

### III. Summary of TCJIU Work

The TCJIU was formed as a call to action for criminal justice reform. The initial issues set out by the TCJIU were:

- Improving the quality of defense counsel available for indigent defendants.
- Implementing procedures to improve eyewitness identification.
- Making recommendations to eliminate improper interrogations and to protect against false confessions.
- Reforming the standards for collection, preservation, and storage of evidence.
- Improving crime lab reliability.
- Improving attorney practices and accountability.
- Adequately compensating the wrongfully convicted.
- Implementing writ training.
- Establishing local, “home rule” protocol for the prevention of wrongful convictions.

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Reform through the TCJIU was accomplished by way of education, training, and policy considerations. The TCJIU members also conducted additional research in support of the TCJIU's reformation actions. Two statewide surveys were completed in the area of collection, preservation, and storage of evidence. The first was conducted by the TCJIU for district judges, and the second for court reporters. The surveys revealed that these groups are not properly or consistently educated on the proper management of biological evidence before, during, and after trials.

The Texas Police Chiefs Association sponsored a survey for Texas Police departments on two topics: videotaping interrogations and eyewitness identification procedures. The survey revealed that some departments are videotaping interrogations under their own self-imposed procedures, and that few departments use double blind eyewitness identification procedures.

Judge Hervey was asked to speak about the TCJIU on the following occasions:

- September 23, 2008: Keynote speaker for the Texas Association of Property & Evidence Inventory Technicians' annual conference
- November 20, 2008: Presentation with Jim Bethke at the National Legal Aid & Defender Association's annual conference
- December 9, 2008: Distinguished Speaker Series hosted by the Office of the Attorney General
- December 12, 2008: Texas Forensic Science Commission board meeting
- January 7, 2009: San Antonio Bar Association, appellate section
- January 23, 2009: National Institute of Justice conference
- January 26, 2009: Regional judicial conference hosted by the Texas Center for the Judiciary
- Ongoing: Provide summaries and updates at Texas Judicial Council meetings
- Upcoming Seminar: March 19, 2009: Actual innocence conference hosted by the TCJIU and the Center for American and International Law (CAILAW)
- April 29, 2009: University of Texas conference on criminal appeals
- June 2, 2009: San Antonio Women's Bar Association

#### **IV. Education & Training Reforms**

The following education and training reforms represent the most significant product of the TCJIU. These educational components were completed in record time. Some have already made it to the classroom with positive feedback.

##### **a) Training for Court Clerks**

Clerks across the state now receive training from a DPS forensic scientist on the proper collection, preservation, and storage of biological evidence. The first training session took place in January for more than three hundred clerks. The same presenter from DPS will also present training sessions in April and June of 2009.

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**b) Training for Judges and Attorneys**

Our surveys showed that judges and attorneys across the state would benefit from the same training that was designed for the court clerks. Judges and attorneys either: handle biological evidence, store evidence, are responsible for understanding proper chain of custody for evidence, or need to know if evidence was properly stored and handled. For these reasons, the TCJIU facilitated training attorneys and judges on proper collection, preservation, and storage of biological evidence. All of this training will be by the same presenter, using the same curriculum so those in the courtroom will be “on the same page”.

The Judges will receive specific training at regional conferences in January and February. The training entities for the attorney groups have agreed to add this training in future seminars.

**c) TCLEOSE Curriculum Updates**

The TCJIU is working closely with the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) to implement training for new eyewitness identification procedures. This could prevent the need for legislative mandates.

TCLEOSE is considering new eyewitness identification procedures on double blind and best practices which could be implemented into their curriculum by Summer 2009. The curriculum updates would include basic police officer course materials and in-service classes.

**d) TPCA Law Enforcement Recognition Program**

The Texas Police Chiefs Association (TPCA) Law Enforcement Recognition Program consists of 160 “Best Practices” that have been identified as critical areas for law enforcement agencies. Each agency that desires to receive “Recognized Status” must have acceptable policies covering all applicable areas. Proof is required that these policies are in place and practiced by the agency personnel.

As stated during the TCJIU meetings concerning eye witness identification procedures, TPCA is in the process of developing a “Best Practice” standard for such procedures. Any legislative directives should be mindful of TCLEOSE and TPCA’s work in the area of eyewitness identification procedures.

**e) Forensic Science Seminar**

The TCJIU worked with the Center for American and International Law (CAILAW) to facilitate a seminar which will be held in Austin, Texas on March 19 and 20, 2009. This seminar will be one of the first in the nation to present and discuss new national forensic science reports that was released on February 18, 2008 by the National Academy of Science ([www.nap.edu/catalog.php?record\\_id=12589](http://www.nap.edu/catalog.php?record_id=12589)). Both the report and seminar are likely to have a major impact on the entire criminal justice system.

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This seminar is the capstone to the TCJIU's activities and findings over the past few months. In addition to the forensic science aspect, the conference will also address eyewitness identification procedures as well as collection, preservation, and storage of evidence. The TCJIU hopes that attorneys, judges, legislators, law enforcement, and law students will all have the opportunity to benefit from this important seminar.

**f) Developing Writ Training**

The TCJIU is working with the Court of Criminal Appeals to provide more article 11.07 writ of habeas corpus training.

**V. Policy Considerations**

**a) Eyewitness Identification Procedures**

TCJIU recognizes that one of the leading causes of false convictions is erroneous eyewitness identifications. TCJIU urges the legislature to address this issue during this session of the legislature. It is the position of the TCJIU that instituting reforms in the eyewitness identification procedures used by law enforcement agencies throughout Texas should have the highest priority of any efforts in the area of wrongful convictions.

**b) Traveling DNA Lab**

This concept came about from the TCJIU's original goal to improve crime lab reliability. The TCJIU has worked with Texas Department of Public Safety (DPS), the Texas Forensic Science Commission (TFSC), Michael Bromwich, and many others to formulate the framework for this "first" in the nation and Texas.

The traveling DNA lab will act as an unannounced check on criminal labs throughout the state of Texas. Similar to a health department's method of operation, the traveling DNA lab will arrive at a Texas crime lab without notice to review lab operations pursuant to a protocol jointly developed by Michael Bromwich and The TCJIU. This will include taking samples to be processed and analyzed at a stationary lab.

The TCJIU proposes to house the results from the traveling DNA lab with the TFSC. The TFSC is an established state commission and one of its three main purposes is: "Developing and implementing a reporting system through which accredited laboratories, facilities, or entities report professional negligence or misconduct." The traveling DNA lab will provide an additional form of accountability to ensure that Texas crime labs (including DPS) are complying with their professional standards.

**c) Reliability of Confessions**

The TCJIU is committed to improving the reliability of confessions. Dr. Richard Leo and John Terzano of the Justice Project suggested possible ways to ensure

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that confessions are reliable, such as: recording the full interrogation, from the *Miranda* warning onward; proper interrogation practices; and improved waiver of rights forms.

While the TCJIU also urges the legislature to address this issue during the present session, the TCJIU remains dedicated to continuing education on these topics.

## **VI. Future TCJIU Goals**

The TCJIU is currently focused on the education, training, and policy considerations already in motion. However, the TCJIU is always brainstorming what should be next on the agenda. These are a few items that will hopefully receive more attention and progress from the TCJIU in 2009:

- Ensure that Texas statutes provide for adequate training for every group that handles or manages evidence in the areas of collection, preservation, and storage of evidence.
- Further pursue evidence storage ideas presented and researched by TCJIU member and State Representative, Jim McReynolds.
- Make recommendations to eliminate improper interrogations and to protect against false confessions. Recommendations should be in the form of education, training, and/or a policy consideration with regard to police procedures for recording of interrogations.
- Increase training for public defenders: Texas should find ways to provide increased incentives and support to counties to improve the quality of counsel to the indigent and establish adequately resourced public defender offices.
- Continue working with criminal justice agencies and organizations around Texas and the nation to get education, training, and other criminal justice reform to those who need it most, in the fastest manner possible, and at the lowest cost to the state.
- Explore ways to improve discovery practices.

## **VII. Conclusion**

The TCJIU has had enthusiastic participation and feedback from both its members and interested parties throughout the Texas criminal justice system. In less than six months, the TCJIU made significant progress in reforming the areas of eyewitness identification procedures, and collection, preservation, and storage of evidence. The TCJIU also set the framework for a concept which would be a first for Texas and the nation: the traveling DNA lab.

The TCJIU has provided Texas with a roadmap for criminal justice reform and preventing wrongful convictions at the front end of the system. The TCJIU's momentum and success will only grow stronger with time.

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**Administrative Note:** The TCJIU's next meeting will be held in conjunction with CAILAW's seminar on March 19<sup>th</sup> and 20<sup>th</sup>. TCJIU meetings are posted through the Texas Register as open meetings. Anyone may also request to be added to our general e-mail list which is used for periodic updates and meeting notifications. The TCJIU welcomes suggestions and looks forward to initiating more improvements to the Texas criminal justice system. Please direct all inquiries to:

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