

Texas Criminal Justice Integrity Unit

2009 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

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

James McLaughlin, Executive Director, Texas Police Chiefs Association

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

Bill Allison, Clinical Professor of Law and Director, University of Texas Criminal Defense Clinic

This report summarizes TCJIU activities for
January 2009 – December 2009

Table of Contents

| | | |
|-------------|---|----------|
| I. | INTRODUCTION..... | 3 |
| II. | SUMMARY OF TCJIU WORK..... | 3 |
| III. | MEETINGS AND GUEST SPEAKERS..... | 4 |
| IV. | EDUCATION & TRAINING REFORMS | 5 |
| | a) Collection, Preservation and Storage of Biological Evidence... 5 | |
| | b) Eyewitness Identification..... 6 | |
| | c) Forensic Science..... 6 | |
| | d) Fire Science | 6 |
| | e) Quality Defense..... 7 | |
| V. | POLICY CONSIDERATIONS..... | 7 |
| | a) Eyewitness Identification Procedures | 7 |
| | b) Traveling DNA Lab | 7 |
| | c) Reliability of Confessions..... 7 | |
| | d) Evidence Storage..... 7 | |
| VI. | FUTURE TCJIU GOALS | 8 |
| VII. | CONCLUSION..... | 8 |

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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 January 2009 through December 2009.

The TCJIU is an ad hoc committee created by Judge Barbara Hervey of the Texas Court of Criminal Appeals. The TCJIU was established in June 2008 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. 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.

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. The TCJIU completed a statewide survey of the judiciary's reaction to the National Academy of Sciences (NAS) report entitled "Strengthening Forensic Science in the United States: A Path Forward." The survey revealed that judges are not receiving enough training on forensic science and the standards for the admissibility of scientific evidence.

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

- April 29, 2009: University of Texas Conference on Criminal Appeals
- June 2, 2009: San Antonio Women's Bar Association
- December 9-12, 2009: Presentation with Representative Jerry Madden at the National Conference of State Legislatures Fall Forum, San Diego, CA
- Upcoming Seminars:
 - February 6, 2010: Presentation with Jim Bethke at the American Bar Association Annual Summit on Indigent Defense Improvement, Orlando, FL
 - February 18-19, 2010: National Symposium on Indigent Defense hosted by the U.S. Department of Justice, Washington, D.C.
 - February 22-27, 2010: American Academy of Forensic Sciences Annual Scientific Meeting, Seattle, WA
 - March 9, 2010: Actual Innocence: Establishing Innocence or Guilt hosted by the Center for American and International Law (CAILAW)
 - May 14, 2010: Indigent Defense hosted by the Texas Criminal Defense Lawyers Association (TCDLA), Houston, TX

III. 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 TCJIU met in January, March, and November of 2009. The following guest speakers presented:

January 13, 2009 Meeting

- **Dr. Richard Leo**, Professor, University of San Francisco School of Law and false confession expert. 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)
- **Thomas Shehan**, Division Director, Texas Extension Service (TEEX), Texas A&M. 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)

March 19-20, 2009 Meeting (held in conjunction with CAILAW's Actual Innocence Seminar)

- **John Blackledge**, Major, Palm Bay Police Department, Investigations Division
- **Thomas L. Bohan**, Incoming President, American Academy for Forensic Science

- **Joseph P. Bono**, Forensic and Investigative Sciences Program, Indiana University Purdue University Indianapolis
- **Jennifer Dysart**, Associate Professor, Department of Psychology, John Jay College of Criminal Justice
- **Dean M. Gialamas**, President, American Society of Crime Lab Directors
- **Carol Henderson**, President, American Academy for Forensic Science and Director, National Clearinghouse for Science, Technology and the Law
- **Kenneth E. Melson**, Director, Executive Office for United States Attorneys Department of Justice
- **Ashraf Mozayani**, Laboratory Director & Chief Toxicologist, Harris County Medical Examiner's Office
- **Christine Mumma**, Executive Director, North Carolina Center on Actual Innocence
- **Randy Murch**, Adjunct Professor, School of Public and International Affairs, Virginia Tech
- **Captain Ken Patenaude**, Operations Division Commander, Northampton Police Department
- **Hon. Ronald Reinstein**, Judicial Consultant, Arizona Supreme Court
- **Carl M. Rone**, Forensics Firearm Examiner
- **Ronald Singer**, Crime Laboratory Director, Tarrant County Medical Examiner's Office
- **Anjali Swienton**, Director of Outreach, National Clearinghouse for Science Technology and the Law
- **Michael Logan Ware**, Director, Conviction Integrity Unit Dallas County District Attorney

November 13, 2009 Meeting

- **Ed Salazar**, Director, Texas State Fire Marshal's Office. Mr. Salazar explained how the Fire Marshal's Office investigates fires and the indicators of arson they currently use. (www.tdi.state.tx.us/fire/fmfar.html)
- **Sondra Budge**, Analyst, Texas State Fire Marshal's Office Arson Laboratory. Ms. Budge presented on the process the lab uses to test evidence that has been collected during an arson investigation for accelerants. (www.tdi.state.tx.us/fire/fmlab.html)

IV. Education & Training Reforms

The following education and training reforms represent the most significant product of the TCJIU this year.

a) Collection, Preservation, and Storage of Biological Evidence

Clerks, judges, defense attorneys, and prosecutors across the state have now received training from the same Department of Public Safety (DPS) forensic scientist, using the same curriculum, on proper collection, preservation, and storage of biological evidence. Training sessions for clerks took place in January

of 2009. Judges received training during their regional conferences in January and February of 2009. And defense and prosecution attorneys received training throughout the year.

b) Eyewitness Identification

The TCJIU worked with the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) to add eyewitness evidence training to the Basic Peace Officer Course curriculum. Since its addition in February 2009, approximately 4,000 new officers have been trained on basic eyewitness identification procedures.

The TCJIU also assisted TCLEOSE in developing a sixteen hour training course on eyewitness identification procedures modeled after the National Institute of Justice's Eyewitness Evidence Guide. The training course is now available upon request to all law enforcement agencies, academies, and other criminal justice entities.

c) Forensic Science

In March 2009, the TCJIU joined forces with CAILAW to host a conference on actual innocence. The conference gathered scientists, judges, attorneys, law enforcement, and others into one forum to discuss, among other topics, the impact of the NAS report and the future of forensic science.

As a result of that conference and inquiries from interested groups about how the criminal justice system will respond to the NAS report, the TCJIU surveyed all criminal law judges in Texas about their knowledge, opinions, and reactions to the NAS report. The survey revealed that almost half of the responding judges received zero hours of forensic science training last year, and many judges requested additional training on the standards for reliability of scientific evidence.

The TCJIU will use the information gleaned from the survey to develop and recommend forensic science training programs. The TCJIU will launch a pilot training program in 2010 and will work with grantees of the Court's grant program to continue the training.

d) Fire Science

Brought on by the publicity of the Willingham and Willis cases, the TCJIU has answered the public's call to action by being one of the first entities in Texas to begin educating the system and the public about fire science and investigations. The TCJIU has taken the first step in this process by investigating how the system is currently operating. The TCJIU intends to continue on this first step to reform in 2010 by inviting training facilities to explain how fire investigators are trained and certified. The TCJIU will also continue to investigate possible reforms in this area and methods to educate litigants.

e) **Quality Defense**

To improve the quality of representation offered to indigent defendants, the TCJIU is working with the Texas Court of Criminal Appeals to track recurring mistakes made by the defense bar. Once this study is complete, TCDLA has agreed to develop a training program aimed at preventing these mistakes.

The Court of Criminal Appeals has also set aside approximately \$60,000 of administrative funds to reimburse public defenders for their travel expenses during training seminars. Over thirty public defenders to date have requested reimbursement for multiple seminars that they would not otherwise have been able to attend without this funding.

V. **Policy Considerations**

a) **Eyewitness Identification Procedures**

The TCJIU encourages law enforcement entities to follow the lead of Richardson, Dallas, and other jurisdictions that have voluntarily reformed their eyewitness identification procedures. The TCJIU is collaborating with other members of the criminal justice system to develop legislation that will address this issue statewide.

b) **Traveling DNA Lab**

The TCJIU proposed the concept of a traveling DNA lab last year. The 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.

News of backlogs and other problems at labs statewide demonstrates the continuing need to improve the reliability and efficiency of crime labs. The TCJIU is pleased to report that committees in both the House and Senate reported favorably last session on proposed legislation that would create such a traveling DNA lab. The TCJIU encourages the legislature to pass the proposed bill during its next session.

c) **Reliability of Confessions**

The TCJIU remains committed to improving the reliability of confessions. The TCJIU is working with other members of the criminal justice system on ways to improve interrogation practices. The TCJIU supports legislation to address this issue but is also dedicated to continuing education on this topic.

d) **Evidence Storage**

The TCJIU is pleased to announce that a bill it researched, and Representative Jim McReynolds sponsored, was passed by the legislature last session. H.B. 3594 establishes a system whereby less-populated counties may store some biological

evidence at DPS. The TCJIU remains dedicated to continuing improvement of evidence collection, preservation, and storage.

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 2010:

- Explore ways to decrease the backlog of cases in laboratories statewide and improve the overall quality of laboratory results.
- Investigate and train on best practices for the proper collection of evidence.
- Increase public awareness of the criminal justice system and better promote the work of the TCJIU by establishing a website.
- Increase training for attorneys who represent indigent defendants.
- Develop a forensic science seminar.
- 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.

VII. Conclusion

The TCJIU has been touted nationwide as a model for efficient and effective collaboration. The TCJIU continues to pursue its mission of reforming the criminal justice system to prevent wrongful convictions through education, training, and policy recommendations. The focus this year has been on reforming the second leading cause of wrongful convictions—invalidated or improper forensic science. The TCJIU has made significant progress this year in educating and improving standards for the proper collection, preservation, and storage of evidence. The TCJIU intends to continue to work with other members of the criminal justice system in the future to rectify all causes of wrongful convictions.

Administrative Note: 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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