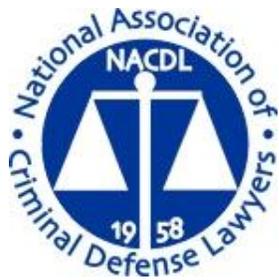


Innocence Invigorated:

**The Assessment of the
FY2010 Wrongful Conviction Review Program**



BJA
Bureau of Justice Assistance
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- University of Baltimore Innocence Project Clinic
- California Innocence Project
- Innocence Project of Florida
- Georgia Innocence Project
- Innocence Project, Inc.
- Mid-Atlantic Innocence Project
- Midwest Innocence Project
- New England Innocence Project
- Innocence Project New Orleans
- Office of the Appellate Defender (NY)
- Pennsylvania Innocence Project
- Rocky Mountain Innocence Center

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STATEMENT OF PURPOSE

The goal of this report is to provide an in-depth assessment of the recipients of funds from the Bureau of Justice Assistance (BJA) FY2010 Wrongful Conviction Review Program, examining the impact that BJA grant funds had on improving and expanding access to representation and increasing efficiency in criminal cases involving post-conviction claims of innocence. Performance metrics analyzed include not only case outcomes and the number of innocence claims screened, but also other factors such as reduction in case backlogs, changes in the number and nature of cases investigated and accepted, legal filings, and the length of the case screening process.

EXECUTIVE SUMMARY

Achievements

- **The grant funding led directly or indirectly to the exoneration of twenty-five innocent people who were wrongly convicted.**
- **More than twenty actual perpetrators were identified.**
- **The federal funding greatly increased Grantees' ability to screen and investigate claims of innocence more effectively and quickly, eliminating or reducing their case backlogs, which were often significant. Funding led to new synergies and allowed existing relationships to grow. Increased staff support allowed several Grantees to recruit and supervise more law students and volunteer lawyers to assist in case screening, investigation and litigation, multiplying the impact of the grant funds.**

- **Government support allowed Grantees to pursue potential cases of wrongful conviction in many remote and/or rural jurisdictions that have historically been underserved by innocence efforts.**
- **Several projects collaborated with the law enforcement communities to improve both local practices and larger reform efforts, advancing the dual goals of exonerating the innocent and minimizing the risk of wrongful conviction.**
- **The majority of Grantees were able to maintain staffing and sustain the progress made possible by the grant by continuing to cultivate alternative funding streams.**
- **Although this work was not funded by this grant, it is important to note that several Grantees were able to use non-grant staff and resources to obtain compensation for exonerees under their state laws. The exonerees' critical need for this money and other forms of support when re-entering the community after spending many years incarcerated cannot be overstated, and the assistance provided by the Grantees in navigating this complex legal process was invaluable.**

Challenges & New Opportunities to Address Wrongful Conviction

- **Many Grantees faced recurring difficulties in obtaining documents and locating physical evidence for potential DNA testing due to a lack of cooperation from various government agencies. Several Grantees then encountered difficulty obtaining DNA testing of physical evidence because of prosecutor opposition. These serious obstacles create additional costs to both parties, create case backlogs, hinder identifying the true perpetrator and delay the exoneration and release of individuals who are actually innocent.**
- **Although future fundraising and grant opportunities are by nature uncertain, Grantees should develop a realistic sustainability plan to be implemented during**

the grant period that is designed to support the continuation of essential work funded by the federal grant.

- **The government should consider making technical assistance on financial resource development available to all Wrongful Conviction Review Program Grantees to further aid Grantees in their efforts to sustain grant-funded program enhancements.**
- **Exonerees have a unique need for re-entry assistance, given the additional trauma and hardship of being wrongly convicted and wrongly incarcerated for many years. The government may wish to consider allowing a small portion of the grant funding to support staff work to provide exonerees with re-entry assistance.**
- **Exonerees have a need for legal assistance in obtaining any compensation available under state law to those who have been wrongfully convicted and incarcerated. The government may wish to consider allowing a small portion of the grant funding to support staff work to obtain compensation for exonerees in states where such laws exist.**

INTRODUCTION

On August 14, 1989, an Illinois state court overturned Gary Dotson’s rape conviction after deoxyribonucleic acid (DNA) tests performed on the biological evidence retained from the original rape kit excluded him as the perpetrator.¹ This event marked the first exoneration of an innocent person based on post-conviction DNA testing—and it was not the last. In the subsequent quarter century, post-conviction DNA evidence has yielded more than 300 other exonerations in the United States.² It may be fair to say that the Dotson exoneration helped launch a veritable revolution in criminal justice: a legal, political and social campaign to rectify miscarriages of justice that some have labeled a “civil rights movement” for the twenty-first century.³

During the past twenty five years, dozens of entities that work to exonerate people who have been wrongfully convicted (“innocence efforts”), the majority of which are now members of the Innocence Network, have emerged across the country to investigate and litigate post-conviction innocence claims as well as to promote criminal justice reforms aimed at preventing similar injustices.⁴ Some innocence efforts, housed within law or journalism schools, are

¹ See Profile of Gary Dotson, Innocence Project Website, available at http://www.innocenceproject.org/Content/Gary_Dotson.php. See also Daniel S. Medwed, *Prosecution Complex: America’s Race to Convict and Its Impact on the Innocent* 148-149 (New York University Press, 2012); Daniel S. Medwed, *A Quarter Century of Righting Wrongful Convictions*, Cognoscenti (WBUR), available at <http://cognoscenti.wbur.org/2014/08/14/dna-exoneration-gary-dotson-daniel-medwed> (last visited Sept. 1, 2014).

² According to the Innocence Project in New York City, 317 people have been exonerated through post-conviction DNA testing. See Innocence Project Website, available at www.innocenceproject.org (last visited Sept. 15, 2014).

³ Keith A. Findley, “Innocence Found: The New Revolution in American Criminal Justice,” *Controversies in Innocence Cases in America* 3 (Sarah Lucy Cooper, ed., 2014).

⁴ Innocence Network members are independent organizations that are “dedicated to providing pro bono legal and/or investigative services to individuals seeking to prove their innocence of crimes for which they have been convicted.” For a list of Innocence Network members, see Innocence Network Website at <http://www.innocencenetwork.org/members>. See also Keith A. Findley, “The Pedagogy of Innocence: Reflections on the Role of Innocence Projects in Clinical Legal Education,” 13 *Clinical L. Rev.* 231, 231 n.1 (2006); Jacqueline McMurtrie, “The Innocence Network: From Beginning to Branding,” *Controversies in Innocence Cases in America* 21-37.

structured as clinics in which faculty and students jointly pursue innocence cases. Others are independent nonprofit organizations or arms of public defender offices. Their missions vary too, with some groups focusing solely on local, state or regional cases or working only on certain kinds of cases.⁵ Many innocence efforts in the United States qualify for membership in the Innocence Network, which serves as a clearinghouse for information about best practices and advances collaboration within the community.⁶

Although the design of individual innocence efforts may differ, they have generally encountered similar challenges. First and foremost, wrongful convictions are hard to detect—let alone correct—and require extensive fact investigation to identify those who are truly innocent at the front end of the process. Innocence efforts sometimes receive referrals from local attorneys, but more often obtain cases directly through inquiries from inmates.⁷ Inmates must fill out questionnaires to demonstrate whether their claims meet the basic parameters of the innocence effort’s mission. If the applicant qualifies for consideration, innocence effort staff members, students and/or volunteer attorneys then gather any and all documents about the case by obtaining files from the prior attorney and/or at the county clerk’s office, filing open records act requests, purchasing trial transcripts, and copying court files. Once the team obtains information about the case and the evidence used in the conviction, the team designs a case investigation plan which may include tracking down evidence, and interviewing witnesses and other key players in the case.⁸

⁵ See Findley, *The Pedagogy of Innocence*, at 231 n.1; Jacqueline McMurtrie, “The Innocence Network: From Beginning to Branding,” *Controversies in Innocence Cases in America* 21-37; Daniel S. Medwed, “The Prosecutor as Minister of Justice: Preaching to the Unconverted from the Post-Conviction Pulpit,” 84 *Washington Law Review* 35, 58 (2009); Daniel S. Medwed, “Actual Innocents: Considerations in Selecting Cases for a New Innocence Project,” 81 *Nebraska Law Review* 1097 (2003).

⁶ See McMurtrie, *Innocence Network*, at 21-37.

⁷ See Medwed, *Actual Innocents*, at 1114.

⁸ See *id.* at 1121-23.

Second, even if the preliminary fact investigation indicates the likely innocence of an inmate, the practical and legal hurdles to overturning the conviction in court can be extremely onerous. Only an estimated 10 to 20% of criminal cases contain the type of biological evidence retrieved from the crime scene that could be suitable for advanced DNA testing; that percentage is much lower in reality because evidence is often lost, degraded or destroyed over time.⁹ In situations where such evidence does exist, prosecutors and other law enforcement officials are not always forthcoming in disclosing it to the defense, prompting innocence efforts to resort to lengthy and costly post-conviction litigation.¹⁰ When the biological evidence is ultimately located, it must be preserved and tested in a way that comports with legal requirements.¹¹ The cost of testing can be an additional hurdle.

What is more, as noted above, the bulk of cases do not have biological evidence suitable for DNA testing. These cases demand even more fact investigation than do DNA-based claims. Innocence efforts must try to gather other forms of compelling newly discovered evidence of innocence, such as confessions by the true perpetrator, statements from previously unknown witnesses, or recantations by witnesses in the trial proceedings. Cases based on outdated forensics or faulty medical evidence are re-examined by today's leading experts in those fields. Even in cases where evidence of innocence is uncovered through case examination and/or expert re-examination of evidence, defendants still face the daunting task of litigation to prove their innocence and obtain release from prison. Wrongful convictions lacking evidence that can be

⁹ See Death Penalty Overhaul: Hearing Before the S. Comm. on the Judiciary, 107th Cong. (2002) (statement of Barry Scheck), available at 2002 WL 1335515 (“The vast majority (probably 80%) of felony cases do not involve biological evidence that can be subjected to DNA testing.”); Nina Martin, “Innocence Lost,” *San Francisco Magazine*, Nov. 2004, at 78, 105 (noting that “only about 10 percent of criminal cases have any biological evidence--blood, semen, skin--to test”).

¹⁰ See Medwed, *Prosecution Complex*, at 149-150.

¹¹ For a current listing of post-conviction DNA testing statutes, see Innocence Project Website, Access to DNA Testing, available at <http://www.innocenceproject.org/fix/DNA-Testing-Access.php> (last visited Sept. 15, 2014).

subjected to DNA testing are notoriously difficult to reverse. State post-conviction procedures tend to impose onerous statutes of limitations, extremely high burdens of proof and other procedural hurdles on litigants seeking exoneration.¹²

In light of these obstacles, innocence efforts need sufficient funding to adequately investigate and litigate wrongful conviction cases.¹³ Because the process of handling a single innocence case can consume years of painstaking work—from detection to investigation to litigation—organizational stability and continuity of personnel are essential. This calls for a consistent and robust stream of resources, which can be difficult to achieve and maintain.¹⁴ A 2011 study of twenty-two innocence efforts revealed a stunning correlation between financial resources and litigation successes. To put it bluntly, the six best-funded organizations had the greatest number of exonerations, while the seven most poorly-funded groups had the lowest exoneration figures.¹⁵ The financial well-being of most innocence efforts, perilous even in the best of times, suffered dramatically in the wake of the “Great Recession” that began in 2008. For example, the Innocence Project in New York City lost approximately 12.5% of its operating budget in one fell swoop when one of its major institutional funders closed its doors.¹⁶

Aware of the financial burdens facing innocence efforts, the Bureau of Justice Assistance, (BJA), which is part of the Office of Justice Programs within the Department of Justice, established a grant program – the Wrongful Conviction Review Program. The explicit purpose of

¹² See Daniel S. Medwed, “Up the River Without a Procedure: Innocent Prisoners and Newly Discovered Non-DNA Evidence in State Courts,” 47 *Ariz. L. Rev.* 655, 657-660 (2005).

¹³ See Medwed, *Prosecutor as Minister of Justice*, at 58.

¹⁴ See Medwed, *Prosecutor as Minister of Justice*, at 58.

¹⁵ See Steven A. Krieger, “Why Our Justice System Convicts Innocent People, and the Challenges Faced by Innocence Projects Trying to Exonerate Them,” 14 *New Crim. L. Rev.* 333, 371-72 (2011).

¹⁶ Telephone Interview between Daniel S. Medwed, Barry Pollack, Madeline deLone and Audrey Levitan on July 9, 2014.

these grants was to provide high-quality and efficient representation for potentially wrongfully convicted individuals in post-conviction innocence claims.

In 2011, the National Association of Criminal Defense Lawyers (NACDL) received grant funding from BJA to conduct an assessment of the twelve innocence efforts that received funding under Category I of the FY2010 Wrongful Conviction Review Program (the “Grantees”). NACDL examined the impact of the grant funding on each organization and its work, including comparing the status of the organization prior to the grant and any improvements attributable to this new funding stream. The objective of this assessment is to gauge the impact that BJA funding had on each organization’s ability to screen, investigate and litigate post-conviction innocence claims, identify desirable practices, expose the challenges faced by the Grantees in accomplishing their goals, and ascertain ways in which government support can be deployed even more effectively going forward.

In this effort, NACDL applied what it learned through its prior assessment of the FY2009 Wrongful Conviction Review Program Category I Grantees for BJA. That endeavor resulted in an in-depth 2012 report: *Aiding the Innocent: The Assessment of the FY2009 Wrongful Conviction Review Program*.¹⁷ That report described a series of achievements resulting from the FY2009 grant program, most notably, that the funding contributed to ten exonerations; led to the identification of the actual perpetrator in at least three cases (and the probable perpetrator in several others); and permitted one innocence effort to survive.¹⁸

¹⁷ This report was issued on November 19, 2012, and the authors can readily make a copy available.

¹⁸ *Aiding the Innocent* at 3.

ASSESSMENT PARTICIPANTS

NACDL's "Assessment Team," comprised of NACDL staff and the Advisory Group members, planned and executed the assessment. NACDL staff members involved in the project were individuals with expertise in criminal defense litigation; post-conviction litigation, including screening and pursuing innocence claims; criminal justice policy; and non-profit management. Specifically, the following NACDL staff participated extensively in the assessment: Executive Director Norman Reimer, Associate Executive Director for Policy Kyle O'Dowd, Post-Conviction Counsel Lindsay Herf, and Senior Resource Counsel Vanessa Antoun. Ms. Antoun served as project manager for the assessment.¹⁹

To conduct the assessment, NACDL first assembled an Advisory Group of individuals with experience litigating post-conviction claims of innocence and/or administering or assessing defense systems, including innocence efforts to be part of the Assessment Team.²⁰ The Advisory Group helped develop the methodology for the assessment, reviewed Grantee documents, conducted telephone interviews, assisted in site selection, and participated in site visits. To achieve a broad pool of experience and knowledge, NACDL recruited members of the Advisory Group from across the country and from different practice settings. Further, to ensure an objective review of the Grantees, any Advisory Group members with formal connections to a particular Grantee were barred from playing a role in the assessment of that organization.

NACDL also engaged a consultant, Professor Daniel S. Medwed, with expertise in evaluating and litigating post-conviction cases to assist in protocol development, data analysis

¹⁹ See Appendix A for biographies of the NACDL staff members who participated in this assessment.

²⁰ See Appendix B for biographies of the Advisory Group members.

and to oversee the drafting of the report.²¹ The consultant, along with the Advisory Group, helped NACDL to determine what data to obtain from the Grantees and to formulate interview protocols that would best ascertain the impact of the BJA funds. The consultant also conducted interviews regarding the work of the Grantees, participated in site visits, and played a key role in drafting the report.²²

ASSESSMENT METHODOLOGY

NACDL's Assessment Team, comprised of NACDL staff and Advisory Group members, evaluated each Grantee thoroughly and systematically. The Assessment Team utilized a five-step assessment process that it honed through its earlier assessment of the FY2009 Grantees. Specifically, the Assessment Team **(1)** devised a set of performance metrics; **(2)** gathered and reviewed all available documentation; **(3)** conducted telephone interviews with each of the twelve Grantees; **(4)** conducted site visits with six Grantees; and **(5)** followed up with additional telephone interviews and/or requests for information as needed.

STEP ONE: The Assessment Team initiated the assessment process by establishing a list of performance metrics to gauge whether the funds were distributed in a way that advanced the goals of the FY2010 Wrongful Conviction Review Program: to bolster the case screening process for innocence efforts and to facilitate the investigation and litigation of cases deemed meritorious after screening. The Assessment Team identified case outcomes as an important, but not necessarily the most important, performance metric given the uncertainty of litigation and the amount of time necessary to investigate and pursue cases through the post-conviction processes.

²¹ The consultant is currently a member of the Board of Trustees of one Grantee (the New England Innocence Project) and served on the Board of Directors of another Grantee during the grant period (the Rocky Mountain Innocence Center). In order to avoid any conflict of interest and the appearance of impropriety, Professor Medwed was not directly involved in the assessment of those Grantees.

²² See Appendix C for Professor Medwed's biography.

STEP TWO: The Assessment Team notified each of the Grantees and reviewed all documentation available through BJA and the Grantee, including grant application documents and grant progress reports. The Assessment Team also obtained and reviewed the Grantees' financial reports, and any grant adjustments and budget modifications that were filed with BJA.

The Assessment Team gathered additional data from Grantees as needed.

STEP THREE: After evaluating the documentation related to each Grantee, the Assessment Team identified the crucial variables that it wished to evaluate and refined the areas of inquiry for telephone interviews with each of the Grantees. In most cases, at least two members of the Assessment Team participated in the subsequent interviews.

STEP FOUR: The Assessment Team then determined which of the Grantees would receive site visits, with geographical and organizational diversity along with the specifics of each grant project and its progress serving as important factors in the selection process. Six Grantees were ultimately selected for site visits: University of Baltimore Innocence Project Clinic, California Innocence Project, Innocence Project of Florida, Innocence Project, Inc., Innocence Project of New Orleans, and the Pennsylvania Innocence Project.

STEP FIVE: Finally, the Assessment Team conducted follow-up interviews, as deemed appropriate, with some of the Grantees.

Pursuant to the terms and deliverables of this grant project, the Assessment Team did not undertake a financial audit, as this was not a deliverable of this project. However, the Assessment Team did review and utilize the Grantees' financial status reports filed with BJA as well as the Grantees' own statements and records regarding their use of funds. Several of the Grantees had requested and were granted no-cost time extensions so that they were able to make full use of the grant funds to pursue their project goals.

FY2010 WRONGFUL CONVICTION REVIEW PROGRAM GRANTEES

University of Baltimore Innocence Project Clinic

Part 1: Program Prior to the Grant

The Baltimore Innocence Project Clinic (BIPC) originated out of Maryland Office of Public Defender (OPD) in 2002, where it was formerly known as the Innocence Project Unit. The 2002 DNA exoneration of Bernard Webster, who was represented by attorneys from the Innocence Project Unit, led to hundreds of requests for help from Maryland inmates to the Innocence Project Unit. The Unit worked steadily on cases over the next few years but, due to budget constraints at the Maryland OPD in 2008, attorneys from the Innocence Unit were re-assigned to other departments within the office, which left only one attorney at the Innocence Unit.

The University of Baltimore Law School and the Maryland OPD collaborated on a solution and formed the Innocence Project Clinic at the law school. The review, investigation and litigation of cases then shifted from the OPD to the law school clinic, headed by attorney Michelle Nethercott, who ran the Innocence Project Unit at the OPD. Under this collaboration, costs for the Innocence Project Clinic are shared: the law school provides office space, administrative support, travel costs, and training expenses related to the work of the project, and the OPD pays the salary of the Director (Nethercott), who is also a clinical professor at the law school, and supervises the students in the clinic and represents Innocence Project clients in all court proceedings on innocence claims.

The Innocence Project Clinic, housed at the University of Baltimore School of Law, became operational in August of 2009 and provides an opportunity for law students to earn school credit working on innocence cases, learn the post-conviction criminal procedure process, and understand the causes of wrongful convictions. Since the founding of the Innocence Project Unit at the OPD to the time of the BJA grant application (submitted by the Baltimore Innocence Project Clinic), hundreds of cases had been reviewed for potential claims of innocence.

In 2010, just prior to submitting the grant application, BIPC client Tyrone Jones was exonerated after twelve years in prison wrongly convicted of a 1998 fatal shooting of a teenager in his neighborhood. Additional work of the Baltimore Innocence Project includes obtaining new trails for twelve defendants based on newly discovered evidence, resulting in ten of those individuals regaining their freedom. In the course of investigating cases and searching for evidence, the Innocence Project learned that a particular Maryland hospital had retained evidence from rape kits for decades. The Project alerted state authorities, which led to DNA testing of the rape kits, which identified suspects through the DNA database in 51 cases which had not previously been solved.

The BIPC's thorough case review process begins with (1) questionnaire – designed with specific questions to separate out cases with claims that should be further investigated from those that do not fall under the Project's review criteria; (2) obtaining case documents, including court records of proceedings, police reports, expert review reports and conclusions, and appellate opinions (this may also include a co-defendant's case or the victim's prior criminal history); (3) fact investigation (witness interviews, background checks, viewing crime scene photos and visiting crime scenes); (4) locating physical evidence and, in appropriate cases, obtaining expert review of evidence, especially if advancements in a particular scientific, medical or forensic field

have been made since the time of trial; and (5) litigation of appropriate cases in Maryland state courts and federal courts. Once the BIPC was born at the law school, almost all of this work fell upon the shoulders of one person: the Project's Director.

Part 2: Grant Request

The Baltimore Innocence Project Clinic requested \$318,230.00 under the BJA Wrongful Conviction Review Program to facilitate the identification and intake processing of wrongful conviction claims by Maryland inmates who were convicted on the basis of flawed eyewitness identification evidence, false confession evidence, or unreliable forensic evidence and for whom post-conviction DNA testing is unavailable or not sufficient to establish innocence. At the time of the 2010 grant application, the BIPC identified 122 cases that required screening (including obtaining more complete case files – police reports, trial transcripts, and appellate records), seven cases requiring professional investigation and expert review, and eight cases in litigation in Maryland courts. The BIPC lacked the resources of a full-time attorney or staff to conduct this work. Therefore, the BIPC sought funds to hire a full-time paralegal, full-time attorney, and cover the costs of retaining experts and professional investigators to work on designated cases.

The backlog of 122 cases accumulated during the 2008 to 2010 time period when the Project was undergoing the change from the OPD to the law school. From the fall of 2008 to the fall of 2009, the Project lacked full time staff to keep up with incoming requests and initial case screening necessary to make an informed determination on whether a case is appropriate for further review. However, the lead attorney, who became the Director of the BIPC, continued litigation by filing Motions for DNA testing in three cases and filing Motions for New Trials in two other cases.

The loss of attorneys from the OPD has impacted the ability of the Project to adequately and timely review every incoming case. Further, due to the lack of resources (attorneys, investigators, and funding), the work involved in the case review (fact investigation, expert review of evidence, and evaluation of potential legal claims), ultimately led to the 2010 backlog of cases at the Project.²³ Thus, the BIPC needed funds to secure a full-time attorney to assist in case review; evaluate evidence; obtain expert assistance; prepare appropriate cases for litigation, (including legal research and drafting motions and legal memoranda); and prepare cases for post-conviction litigation (locating evidence through state agencies, locating and subpoenaing witnesses, and conducting depositions or other interviews necessary prior to litigation).

Additionally, the BIPC needed a paralegal to assist with the screening process and collection of documents for the 122 cases in line for review. Before a case be reviewed, the case file must be obtained, which is not an easy task for cases in Maryland that are decades old. The paralegal would be responsible for tracking down documents, traveling to clerk's offices to obtain files and communicating with current and incoming inmate applicants. The paralegal would also track each step taken during the case review process and coordinate case related tasks for the law students.

Part 3: NACDL Review Process & Findings

Assessment Team members Kyle O'Dowd, NACDL Policy Director, and Lindsay Herf, NACDL Post-Conviction Project Counsel, thoroughly reviewed the grant application documents, activity reports, and conducted a site visit to the Baltimore Innocence Project Clinic on June 27,

²³ Law students assist with fact investigation and case review, but there is a revolving door of students from year to year and thus the Project needs a full-time attorney to maintain oversight and direct necessary steps on each case.

2014. During the site visit, O'Dowd and Herf met with Director Michelle Nethercott and Paralegal Towanda Luckett to discuss all of the work the BIPC accomplished under the BJA grant. Notably, the BIPC, with use of BJA funds from 2010 to 2013, achieved the exonerations of three individuals and made significant progress with case reviews and investigations in nearly 150 other cases.

Most Significant Case Outcomes Achieved Through this Grant

BIPC achieved three exonerations through this grant funding – Demetrius Smith, Larry Hugee, and John Mooney, as detailed below.

Demetrius Smith:

Demetrius Smith was arrested in fall of 2008 for the March 2008 murder of Robert Long and the unrelated August 2008 robbery of Clyde Hendricks. In 2010, the murder case against Smith proceeded to trial. Baltimore City prosecutors presented two witnesses who testified they saw Smith with Long in the park the night Long was killed. Michelle testified that she was on her way to the methadone treatment center when she saw Smith and Long walking toward the railroad tracks, but could not recall where exactly the shooting occurred or how many shots she heard fired. The physical evidence showed Long was shot twice in the head at close range while he was standing, but Michelle testified that she saw Long running (from the perpetrator) before he was shot. Mark, the second witness, testified that he was using the pay phone near the park to arrange a heroin deal when he saw Smith and Long walk toward the railroad tracks and then saw Smith shoot Long. Mark testified that he knew Long since childhood and knew Smith from heroin transactions. Mark theorized that Long must have stolen Smith's heroin stash, worth

\$7000.00, and the murder was retaliation for the drug theft. Smith was convicted of first degree murder and sentenced to life in prison.

In 2011, while Smith's case was on direct appeal, a federal investigation was underway on Jose Morales, an infamous drug dealer for whom Long had worked. Thirteen days before Long was murdered, Long had agreed to cooperate with law enforcement and to testify against Morales in a narcotics smuggling case in which he and Morales were co-defendants. Morales soon learned about this agreement. The federal investigation showed that Morales hired DMI (Dead Man Inc.) for \$20,000 to kill Long. During the 2011 federal investigation, Morales told federal authorities that he knew it was a DMI member (and that member's brother) who had shot Long two times in the head. Additionally, Morales had confessed to his attorney, Stanley Needleman, three weeks after the murder about his involvement in hiring DMI to murder Long. This confession was held in confidence until 2011, when Needleman came under federal investigation after \$1.2 million in unreported cash was found in his home. Needleman learned that Morales had turned on him for drug trafficking and also fingered him for the murder of Long. Ultimately Needleman pled guilty to tax evasion and provided testimony against Morales in the federal investigation for Long's murder.²⁴

In August of 2012, the Baltimore City Attorney joined BIPC's motion to vacate Smith's murder conviction. The following month, the U.S. Attorney's Office obtained an indictment against Morales for ordering the murder of Long, and in October 2013, Morales was convicted and sentenced to life in prison.

²⁴ See "Jose Morales Sentenced to Life in Prison for Murdering a Witness in a Baltimore City Case", news release by the United States Drug Enforcement Administration (December 10, 2013), <http://www.justice.gov/dea/divisions/wdo/2013/wdo121013.shtml>

Larry Lane Hugee:

Larry Lane Hugee was arrested in May 2003 for the robbery of a Dollar Tree store clerk three weeks before. Police found the perpetrator's gun and clothing in a ravine behind the store. The three witnesses to the robbery, an employee and two customers, told police the assailant was armed with a gun and wore a balaclava, which covered his *entire* face except his eyes. Nonetheless, police created a photo array, which included Larry Hugee's photo, and showed it to the witnesses for identification. Two of the three witnesses identified Hugee. Police also created a voice line-up, but none of the witnesses identified Hugee's voice. In February 2004, Hugee was tried for armed robbery, first degree assault, and illegal possession and use of a firearm. The state presented the store employee and customer to identify Hugee as the perpetrator. The state also presented a witness named Sandra T., who testified that she was watching television with Hugee on the night of the robbery, and that Hugee left and later returned wearing different clothing. Sandra T. identified the clothing behind the Dollar Store recovered by police as belonging to Hugee. Hugee was convicted and sentenced to 25 years in prison.

Hugee applied to the BIPC and, after a thorough investigation, the BIPC filed a Petition for Post-Conviction Relief based on records and reports the State failed to disclose to Hugee's defense regarding Sandra T.'s mental health problems, drug addiction, motive to retaliate against Hugee, and - most importantly - evidence that she was in county jail on the day of the robbery and thus her entire testimony was false. In May 2012, the court overturned Hugee's conviction based on the new evidence presented regarding Sandra T. The State agreed to dismiss all charges if Hugee remained arrest-free for a year, which he did, and on May 16, 2013 the case was dismissed.

John Mooney

John Mooney was arrested in 2008, almost one year after victim Keith Ray's body was found under a pile of wood. Ray had been shot once in the head four days earlier on September 21, 2007. In 2010, Mooney was tried in Baltimore City, where the State presented three witnesses to prove their case. One witness testified that she heard Mooney drunkenly claim that he shot Ray: "Yeah, I did it. So what?" A second witness claimed to have seen Mooney in the wooded area where Ray's body was discovered shortly before the body was found. A third witness claimed that Mooney, "Cappo," and a third man committed the crime together. The jury acquitted Mooney on the first degree murder charge but convicted him on conspiracy to commit murder and Mooney was sentenced to life in prison.

Meanwhile, a federal investigation of Kyle Stevens, aka "Cappo," on a prison gang case produced wiretap recordings which discussed the murder of Keith Ray. Stevens admitted he and Kevin Bales were hired by Thomas Penner to kill James Wright (murdered in January 2006) and Keith Ray as retaliation because Wright and Ray had assaulted Penner and burglarized his home years earlier. Stevens and Bales were paid \$20,000 for the killings. In January 2013, Stevens was indicted in federal court for these two murders. The U.S. Attorney's Office soon learned that John Mooney had already been tried and convicted in state court for Ray's murder and contacted the BIPC about the case. Stevens admitted that Mooney was not involved at all in the murder. The BIPC represented John Mooney in overturning the state court conviction and achieving his exoneration on March 13, 2014. Stevens ultimately pled guilty to the murder of Ray and was sentenced to 32 years.²⁵

²⁵ See "Gunman Exiled to 32 Years in Prison for Murder", news release by the U.S. Attorney's Office for District of Maryland. <http://www.justice.gov/usao/md/news/2013/GunmanExiledTo32YearsInPrisonForMurder.html>

Work Throughout the Grant Period

During the first reporting period (October 1, 2010 – December 31, 2010), the BIPC moved its office and clinic to the University of Baltimore Law School. They selected and purchased computers and other necessary equipment for the grant staff. After a public search and interview process, they hired a paralegal and staff attorney.²⁶ The new staff set up a reporting system and case tracking system to monitor case progress. The BIPC Director began training the new staff and under her guidance, the team began a review on six new cases.

During the second reporting period (January 1, 2011 – June 30, 2011), the BIPC began review on 52 cases. Five of these cases were screened and identified as having faulty forensic evidence playing a role in a potential wrongful conviction. The BIPC attorneys contacted experts in the appropriate forensic science fields to review the evidence in those cases. In two other cases, professional investigators working with the BIPC uncovered new facts in support of the defendant's innocence claims, and BIPC attorneys worked on post-conviction petitions based on the new evidence. In three other cases, pleadings were filed on claims of wrongful conviction. The BIPC staff spent over 1400 hours conducting case screening and review, retained three experts for consultation on three different cases (resulting in 60 hours of expert review time), and received 10 new applications from defendants seeking assistance on their innocence claim.

Also of note, with a newly elected State's Attorney in Baltimore City, the BIPC reached out to the State's Attorney to discuss ways in which the BIPC and the prosecutors could work together to identify wrongful conviction cases. The State's Attorney agreed to start a "Conviction

²⁶ One of the challenges faced by the Baltimore Innocence Project Clinic was that they were unable to hire staff in the first 60 days of the grant period due to requirements by the University of Baltimore Human Resources hiring process. After a short delay, appropriate people were hired to fill the grant funded positions.

Integrity Unit” which would review cases involving post-trial innocence claims to determine the claim’s merit and whether it should be resolved without a need for prolonged litigation.

During the third reporting period (July 1, 2011 – December 31, 2011), the BIPC continued in depth document collection and case reviews. The BIPC closed 45 cases because there was either insufficient evidence to support the innocence claim or no legal avenue to pursue the case in post-conviction proceedings. The BIPC began review on 38 new cases. Three cases moved on to post-conviction DNA testing, with the lab results pending. In three other cases, experts in fire science, firearms identification, and sexual assault examinations were hired to re-examine evidence and the prior conclusions. In other two cases, the BIPC sent professional investigators to interview witnesses, view crime scenes, and conduct other fact research to determine the strength of evidence supporting the innocence claim. One case proceeded to an evidentiary hearing on the post-conviction relief claims. The BIPC ended this activity period with a total of 1940 hours screening, evaluating and litigating cases; 82 hours of forensic re-analysis by different experts; three cases in which evidence will undergo modern DNA testing, and evidence in seven other cases was re-examined by experts in various fields. The BIPC also received 52 new claims of innocence to review under the grant.

During the fourth reporting period (January 1, 2012 – June 30, 2012), BIPC staff spent a considerable amount of time working toward the exoneration of Demetrius Smith (see above under “*Exonerations*”). In 2011, the U.S. Attorney and Drug Enforcement Administration became involved in this case after evidence surfaced that another man, Jose Morales, hired someone to commit this murder and that Demetrius Smith was not involved at all. BIPC staff represented Smith, conducted further fact investigation, and was successful in achieving his exoneration.

Additional review and investigation continued in 45 other cases: 12 cases were closed after an exhaustive review the BIPC did not uncover sufficient evidence to support the innocence claim, and 33 cases were still undergoing review, investigation, and document collection. The BIPC began review on 13 new cases and received 33 new claims of innocence. The 122 cases mentioned in the grant application progressed to the initial review phase. Three cases entered litigation based on evidence uncovered by the professional investigators and/or forensic expert consultant re-examination of forensic evidence. BIPC staff spent 2061 hours screening, evaluating, and litigating innocence claims; in 10 cases, experts were consulted regarding forensic evidence, resulting in 63 hours of expert re-analysis of evidence; in one case, three actual perpetrators were identified. The BIPC received a six month no-cost extension to continue work under this grant and accomplish its goals.

In the next reporting period (July 1, 2012 – December 31, 2012), BIPC attorneys represented Demetrius Smith in court proceedings to achieve his official exoneration. In other cases, the BIPC continued its review, document collection, and investigation, closing 32 cases after the review did not uncover sufficient evidence to support the innocence claim. BIPC had reviewed, or begun review, on all 122 cases identified in the grant application, and exhausted review in 89 of the 122 cases – resulting in closing the case or, in a select few, commencing post-conviction litigation.

In the final period of the grant (January 1, 2013 - July 1, 2013), BIPC staff prepared for and commenced litigation in two murder cases (Larry Lane Hugee and John Mooney – see case descriptions above), both of which ultimately ended in exonerations. The BIPC spent a significant amount of time reviewing an arson conviction and obtained the assistance of fire science experts to determine how the fire started and whether it could be determined as

accidental or intentional in its origin. The BIPC attorneys recommended the case to the State's Attorney to conduct an independent expert review of the evidence. The BIPC continued its review and investigation of existing cases - closing 14 – and also began work on six new cases.

Challenges Faced Under the BJA Grant

The BIPC reported the most significant challenges it faced involved acquiring necessary case documents from state agencies in a timely manner. Often state agencies would take weeks or months to respond to the requests for case files. Sometimes, the agencies reported the documents were destroyed or could not be located, only to have another employee – at a later date – find the case file and provide it to the BIPC. The delays in obtaining documents created delay in BIPC's ability to expeditiously conduct case assessments and exonerate the wrongly convicted.

The BIPC also noted the federal limit of paying experts \$450 per day was a challenge in getting experts to continuously conduct work on a case. Most experts charge \$100 or more per hour, so this limit created a challenge with experts only being able to work 2-3 hours per day on a case. However, the Assessment Team points out that OJP subsequently increased the consultant rate maximum limit to \$650 per day or \$81.25 per hour, effective June 1, 2014. NACDL reported on this challenge in our first Assessment Report to BJA in 2012, and notes that BJA acted to improve Grantees' ability to access experts.

Part 4: Conclusions & Remarks

The BIPC made exceptional use of the grant funds. The BIPC achieved its grant deliverables, including commencing a thorough review and evaluation of 122 existing cases (as well as new cases that came in during the grant period), obtaining expert review and professional

investigation services, and litigating cases. Notably, the BIPC achieved three exonerations during the grant period. Two of these involved the unusual circumstance of two different federal investigations yielding evidence identifying the true perpetrator and thus showing that the state had tried and convicted the wrong men in two separate cases. Finally, the BIPC established cooperative, working relationships with two main prosecuting agencies: (1) the State's Attorney for Baltimore City – to work together in identifying potential wrongful convictions, and (2) the U.S. Attorney's Office for the District of Maryland, the unintended consequence of working to exonerate Smith and Mooney when federal investigations identified the true perpetrators in their cases. After the grant ended, BIPC was able to keep the paralegal position, but could no longer support the staff attorney position funded by the grant due to limited resources, decreasing the numbers of cases it can handle at one time.

California Innocence Project

Part 1: Program Prior to the Grant

The California Innocence Project (CIP) is a law school clinic at California Western School of Law in San Diego whose mission is to secure the release and exoneration of wrongfully convicted inmates and also provide high quality education to its students. Founded in 1999, CIP provides assistance to inmates in Southern California, accepting both DNA and non-DNA cases where the client has a strong claim of factual innocence. The Project reviews over 1,400 claims of innocence from inmates convicted in Southern California counties each year. CIP has reviewed thousands of cases over the past ten years, and exonerated eight California inmates at the time of the grant application.

CIP is partially funded by the law school and has both faculty and non-faculty staff. The funding from the law school covers a little over half of the project's yearly salary budget, and CIP relies on outside funding to support all non-faculty staff member positions. The staff members involved in the implementation of the grant are the Director, Co-Director, Program Manager, Assistant Director, and Staff Attorney, with the last two positions being funded by the grant.

Part 2: Grant Request

CIP requested \$325,000 in funding, and actually received a grant in the amount of \$180,749, due to the amount of grant funding available in the overall budget for the Wrongful Conviction Review Program. CIP proposed to use the majority of the funds for salary and

benefits for two existing staff members (the Associate Director and Staff Attorney) and the remainder for litigation and investigation expenses.

While CIP is partially funded through a yearly allocation of \$250,000 by the California Western School of Law, this allocation covers only just over half of the Project's fiscal salary budget. CIP is responsible for covering the rest of the costs through outside fundraising (e.g., foundations, government agencies, and private donations). All non-faculty CIP staff members, such as those to be funded under this grant, rely on outside funding to support their positions. Without this grant, CIP would be unable to retain these two attorneys, decreasing CIP's ability to continue its effective representation of its clients. CIP's proposal was to use the grant to make up the budget shortfall for staff salaries, and allow other staff to pursue fundraising initiatives to sustain the project staff into the future.

In its grant proposal, CIP outlined four specific goals: (1) to increase the number of legitimate claims of factual innocence reviewed through case screening and investigation; (2) to identify and pursue new evidence in cases where there has been wrongful conviction; (3) to consult forensic experts, where applicable, to identify and test exculpatory biological evidence in DNA cases or provide other forensic analysis in non-DNA cases; and (4) to effectively represent inmates in court where there is strong evidence of innocence and overturn their convictions.

To accomplish these goals, CIP anticipated that the staff funded by the grant would streamline the case screening process, develop a comprehensive database of experts CIP has used, continue to supervise clinical law students during case investigations, monitor the status of all CIP case filings in the court system, coordinate any legal filings, and represent clients in courts and before administrative agencies. The Director would continue to oversee CIP's entire operation and financing (including the management of the grant objectives), co-teach the clinic

portion of the Project, supervise the clinical law students and the staff, and represent CIP clients at court hearings and before administrative agencies. The Project also planned to re-screen cases that previously had little chance of proving factual innocence, but could now be reviewed due to advances in the science of testing various types of evidence.

Part 3: NACDL Review Process & Findings

The grant period began on October 1, 2010, and had an end date of September 2012, although the funds were exhausted by the end of March, 2012. After a thorough review of the grant application documents and reports, the Assessment Team obtained additional information and data from the Grantee regarding its activities under the grant via telephone and email. Barbara Bergman, Professor at the University of New Mexico Law School and NACDL Past-President, and NACDL Senior Resource Counsel Vanessa Antoun conducted a telephone interview with Program Manager Kimberly Hernandez, who has been with CIP since it was founded.

In addition, Ms. Antoun and Professor Bergman conducted a site visit to the California Innocence Project at its offices at California Western School of Law in August, 2014. Ms. Antoun and Professor Bergman spoke extensively with the two attorneys funded under this grant – Staff Attorney Alissa Bjerkhoel and Associate Director Alex Simpson – as well as CIP’s Executive Director Justin Brooks and Program Manager Kimberly Hernandez, regarding the work under this grant and overall operation of the organization. In addition, Ms. Antoun also met with the following CIP staff attorneys to discuss CIP’s work: Michael Semanchik, Raquel Cohen, and Audrey McGinn. In addition to information about exonerations and other work

performed under the grant, the site visit provided insight into several aspects of the structure and work of the organization that contribute to its success.

Most Significant Case Outcomes Achieved Through this Grant

CIP achieved the exoneration and release of two people under the grant project – Uriah Courtney and Daniel Larsen—and two additional exonerations that were not related to the grant funding, including the high-profile case of Brian Banks, who was falsely accused of rape. They also had some positive results in Michael Hanline’s case, although he has not yet been exonerated.

Uriah Courtney was convicted of kidnapping and rape of a young girl in 2004. The victim thought that the man who assaulted her may have been a man she had seen in a truck shortly before the assault. The police showed her a picture of Mr. Courtney’s truck, and she stated she was 80% sure it was the truck she had seen. The victim’s identification of Mr. Courtney from a photo line-up was even more uncertain – she stated that she wasn’t sure but Mr. Courtney looked most similar to the man who attacked her. However, at the time of trial, the victim testified that she was certain of her identification of Mr. Courtney and his truck. He was convicted and sentenced to life in prison. CIP began work on the case in the fall of 2010 and sought DNA testing of the physical evidence with the cooperation of the San Diego District Attorney’s Office. Some of this evidence was tested prior to trial without results, but the technology had advanced enough since that time that male DNA could be isolated on the victim’s clothing. The DNA did not match Mr. Courtney. Law enforcement put that DNA profile into the CODIS database and got a match to a man who lived in the area of the crime scene and looked similar to Mr. Courtney. He was released in June 2013 after serving 8 years in prison. CIP estimates the cost of his wrongful incarceration at \$360,000.

Daniel Larsen's case is more complicated, because although he has been exonerated and released after 13 years in prison, the ultimate status of his exoneration remains uncertain pending the prosecution's appeal to the United States Supreme Court. In 1999, Mr. Larsen was convicted of possession of a concealed weapon – a knife – and sentenced to 27 years to life under California's Three Strikes Law. The conviction was based on two police officers' testimony that Mr. Larsen threw a knife under a car. Mr. Larsen's trial counsel failed to investigate and learn that many other witnesses saw another man throw the knife, and he called no witnesses in Mr. Larsen's defense at trial. That lawyer has since been disbarred. CIP's investigation resulted in statements from multiple witnesses, including a former chief of police, who stated that he was present and saw another individual throw the knife, and CIP sought relief in federal court. That court found that Mr. Larsen was actually innocent and reversed his conviction, making a determination that the two police officers were not credible and Mr. Larsen's trial counsel was ineffective. However, the Attorney General appealed that decision based on their position that Mr. Larsen's petition was filed too long after his conviction. Three years later, in 2013, the Ninth Circuit Court of Appeals denied the Attorney General's appeal and released Mr. Larsen. Although he has been freed, the case remains on appeal. CIP estimated that Larsen's wrongful incarceration cost \$585,000.

CIP has been representing Michael Hanline for 15 years, seeking to exonerate him in the murder for which he is now serving a sentence of life without parole. In the fall of 1978, a biker disappeared and his body was discovered several days along the side of a road, with multiple gunshot wounds. After an investigation, Hanline was arrested and convicted. During years of investigation, CIP was able to get the court to unseal previously sealed police reports, never seen by defense counsel, which discredited prosecution witnesses and implicated others involved in a

cocaine trafficking ring in the murder. This evidence had been sealed prior to trial at the request of the prosecution and Bruce Robertson, a defense lawyer who represented several of the prosecution's witnesses in this matter, and had also been the victim's lawyer. Robertson represented at least one alternate suspect named in the sealed reports, and another person who was a key witness against Hanline, and argued those reports should be "buried" for their safety. Robertson himself had been with the victim shortly before the murder and was also a key witness for the prosecution in this matter. Robertson, who is now deceased, was later described by witnesses as a known drug dealer who had made threats to ensure they testified against Hanline. In addition to the suppressed evidence, Hanline's defense counsel was ineffective, failing to present a letter from a witness recanting her testimony, and failing to call several witnesses in Hanline's behalf. CIP presented this evidence at a hearing in federal court in 2010 and United States District Court Magistrate Judge issued a report recommending that his conviction be overturned and a new trial held. The magistrate judge found that:

For thirty years, evidence material to determining whether petitioner committed the crime remained sealed in the Ventura County Superior Court. Those documents reveal that – in violation of court orders to disclose it to the defense – the prosecution intentionally suppressed evidence that the prosecutor, the police, and more than one trial court judge all had agreed was material to the defense.²⁷

However, the U.S. District Court rejected that recommendation in 2011. CIP then filed habeas corpus pleading in state court and the prosecution has agreed to DNA testing of physical evidence in the case.

²⁷ *Hanline v. Galaza*, Case No. EDCV 00-530-VAP(AJW), Report and Recommendation of Magistrate Judge (U.S. District Court for the Central District of California) (2010)

Work Throughout the Grant Period

CIP has an organized system in place to handle the high volume of innocence claims it receives, as well as the enormous total volume of mail – over 200 pieces of mail every week. Requests for assistance go through a four-stage case management system: initial intake, prescreening, student investigation, and client representation. During initial intake, CIP obtains a completed Case Screening Questionnaire from the inmate claiming innocence. In the prescreening stage, volunteer attorneys evaluate the case, gather any additional information necessary to support a recommendation for further investigation (with the assistance of clinic students when needed), and draft a case history memorandum. Cases that proceed to the third stage are assigned to clinic students for a full investigation, focused on the specific factors leading to the possibly wrongful conviction, such as eyewitness misidentification or unreliable forensic evidence. The students present a case “activation” memo to the CIP staff in cases where their investigation leads to a strong claim of actual innocence. The staff votes on whether to “activate” or accept the case and begin the last stage – client representation. CIP takes this step very seriously, and once they become counsel they never quit on a case where they believe a client is innocent. Staff attorneys are responsible for all filings and litigation strategy. During case representation, CIP utilizes clinic students for case law research, document preparation, file organization, and hearing preparation.

Alissa Bjerkhoel, one of the attorneys funded by the grant, serves as CIP’s habeas attorney, drafting almost all of the office’s habeas filings – a crucial role. She also supervises several of the clinic students. In the other grant funded position, Alex Simpson is the litigation coordinator, overseeing all CIP’s active cases. Both attorneys have received awards in recognition of their work in freeing wrongly convicted individuals, including a joint award for

Post-Conviction Lawyer of the Year from the Criminal Defense Bar Association of San Diego. Ms. Bjerkhoel also received *California Lawyer's* 2013 Attorney of the Year award in Criminal Law, along with CIP's Justin P. Brooks, Michael A. Semanchik, and Jan Stiglitz.

During the 18-month grant period, CIP received 1105 requests for assistance, and approximately 70 of those were accepted for full investigation by the clinic students (stage three). CIP consulted 25 experts; provided 306 hours of forensic re-analysis services; and provided 14,300 hours of screening, evaluation, and litigation services.

As part of its activities to establish collaborations with law enforcement, educate criminal justice stakeholders and improve the litigation of innocence claims, CIP accomplished the following:

- CIP collaborated with the San Diego District Attorney's office in an effort to create a process to bypass the courts to test evidence where there is an innocence claims. CIP hopes to extend this model to other southern California prosecutorial offices. CIP also plans to do more joint work with the offices of prosecutors and Attorneys General, including joint programs on how to identify wrongful convictions.
- The Associate Director and Director co-authored an article, *Blood, Sugar, Sex, Magik: A Review of Post-Conviction DNA Testing Statutes and Legislative Recommendations*, detailing all of the post-conviction DNA statutes in the United States and analyzing the issues and concerns with the differing approaches to DNA testing nationwide. CIP hopes that state legislators will use this article to adopt or modify statutes addressing the continuing need for post-conviction DNA testing.

- At the 2012 National Innocence Network Conference, attendees from all over the world heard CIP staff give nine lectures/presentations on topics such as factors of misidentification, federal habeas as it applies to post-conviction work, and touch DNA.

Part of CIP's work that was not funded by this grant should be mentioned because it fills a need in the area of wrongful convictions. CIP lawyers work to obtain compensation for exonerees under the California law, which allows them to present a claim to the California Victim Compensation and Government Claims Board. Despite many exonerations in California, few were being granted compensation by the state. A coalition that included CIP and the Northern California Innocence Project were successful in changes to the law enacted that have improved the process and allow more claims for compensation to be approved. Even so, it is a complex process where exonerees have the burden of proof, must overcome potentially disqualifying factors (including the two year limit on claims), and must present evidence at a hearing. Without the help of CIP's lawyers, the clients would not be able to navigate this process. CIP staff also connects their released clients with volunteers who provide social services such as counseling, and try to assist them in getting medical care.

Although not funded by the grant, it is very important to discuss the extensive fundraising done by CIP, which allows its current level of work and success to continue. The affiliation with the law school does provides stability for the faculty staff at CIP, but the amount of funding received by the school varies by fiscal year. Therefore, CIP is always working to bring in the money necessary for what can be extremely lengthy and expensive work on each innocence case. This appears to be a key strategy for an innocence effort: support from an institution such as a law school, paired with many other fundraising efforts, so that continued operations are not dependent upon one source or one grant. The organization has been very successful in using

creative methods such as law student-run bake sales and events such as dodge ball tournaments and races to raise money. In fact, the clinic students have a fundraising goal that often results in \$25,000 to \$40,000 for CIP in a year. The students are so committed to CIP's mission that they have a webpage to raise money for the organization, and often ask friends and family to make a donation to sponsor their work in lieu of giving the student gifts. CIP also seeks funds from local bar organizations, and this type of funding helped maintain the two positions under this grant once the BJA funding was exhausted. CIP also uses events that gain media attention to focus awareness on their cases, but this can also help attract concerned individuals and organizations to the cause of remedying wrongful convictions. All of these efforts are enhanced by CIP's close budget management and eye toward economy in the use of all their funds.

Challenges Faced Under the BJA Grant

CIP has had difficulty getting access to evidence needed to file a motion for DNA testing under the state's statute. In several jurisdictions, law enforcement refuses to tell CIP lawyers of the existence and location of physical evidence unless CIP obtains a court order formally appointing them in that particular case. CIP then must take the additional steps, including court appearances, to request that the court appoint them to represent these defendants. The courts will appoint CIP lawyers *pro bono*, so it is important to note that the project does not receive any compensation for its as court-appointed counsel. In addition, backlogs at testing laboratories further delay their efforts.

The attorneys also report that it has been very difficult for them to identify actual perpetrators in their cases, as many prosecuting agencies will not run DNA testing results through the CODIS database. Such unwillingness can hamper efforts to exonerate the wrongly convicted as well as missing an opportunity to identify a different possible perpetrator. San

Diego law enforcement did run the DNA results through CODIS in Uriah Courtney's case (discussed above) and got a match to the apparent perpetrator.

Part 4: Conclusion & Remarks

The California Innocence Project's is an excellent example of a successful, sustainable innocence effort. During its 14 year existence, CIP has secured the exoneration of 12 innocent people who were wrongly convicted – two of these were accomplished under this grant, and another two occurred during the grant period but did not involve the use of grant funds. CIP certainly made good use of the grant funds, and importantly, has practices in place to maintain the funding necessary to support its work which could be a model to other organizations. Because of CIP's enormous fundraising efforts, the two staff members supported by this grant remain at CIP, and the organization has sustained the rate at which it can screen and accept cases. The affiliation with the California Western School of Law offers a level of financial stability that is rarely achieved by "freestanding" innocence efforts with no financial relationship to a law school or a state public defender agency. This structure also provides the incredible benefit of directly supervised work by the clinic students, who themselves receive valuable training that may direct their future career toward criminal justice. The effects of this mutually beneficial relationship are clearly demonstrated by the fact that all four of CIP's current staff attorneys are former clinic students, while other clinic students have gone on to become prosecutors, criminal defense attorneys and civil attorneys, taking with them their experience identifying and seeking to remedy wrongful convictions.

Innocence Project of Florida

Part 1: Program Prior to the Grant

The Innocence Project of Florida (IPF) is a freestanding non-profit organization whose mission is to find and free innocent inmates in Florida prisons, help exonerees transition back into society, and work to reform the criminal justice system. The IPF was founded in 2003 in response to Florida's newly enacted post-conviction DNA testing statute, which came into effect in 2001.²⁸ The IPF founders saw a need to help hundreds of Florida inmates with claims of innocence, which requires navigating the post-conviction legal process, seeking DNA testing on evidence not previously subjected to DNA analysis, and meeting filing deadlines created by Florida's post-conviction DNA testing statute.

The Project started with two advocates – Jennifer Greenberg and Sheila Meehan – and direction from Talbot “Sandy” D’Alemberte, the Founding Chair of the IPF’s Board of Directors. IPF’s first office was in a hallway in the Florida State University College of Law. For its first three years (2003-2006), IPF staff worked with interns, volunteers, and pro bono attorneys throughout Florida identifying cases that met the criteria for post-conviction DNA testing under the new statute. Florida prisons house just over 100,000 inmates and many of these people were convicted without the benefit of DNA technology.

Late 2006 was a time of growth and development for IPF as systems for case review and acceptance were more specifically defined. Two full-time staff attorneys were hired and tracked thousands of backlogged requests for assistance. IPF employed a social worker to help exonerees

²⁸ When first enacted in 2001, Florida’s post-conviction DNA testing statute (§925.11) required a defendant to seek post-conviction DNA testing within two years after the conviction and sentence became final, and in capital cases within 2 years after collateral counsel is appointed for post-conviction representation, or by October 1, 2003 – whichever is later. The 2001 statute also precluded defendants who pled guilty from seeking DNA testing.

transition back into society, and an intake coordinator to screen applicants and obtain the necessary documents to review each case. IPF hired a development director to spearhead critical fundraising, education, and outreach efforts in Tallahassee and throughout Florida.

Since 2006, the IPF has maintained six staff members and hosts 6-8 student interns (law students and undergraduates) each semester. Students review case files, write memoranda on assigned cases and work with IPF staff in conducting case reviews. The IPF Executive Director, Seth Miller, teaches a weekly seminar to all interns on relevant criminal law, procedure, evidence, and policy issues. The IPF is a member of the Innocence Network, an affiliation of organizations dedicated to providing pro bono legal services to innocent men and women in prison throughout the nation.

From 2007-2009, IPF processed nearly 1000 requests for legal assistance from Florida inmates and conducted detailed case screening to identify only those appropriate for post-conviction DNA testing.²⁹ The high volume of requests that continued to pour could be attributed to a combination of three developments: Florida's post-conviction DNA testing statute was amended in 2006 and 2007, eliminating the time limit deadline for filing and the requirement that the defendant went to trial (previously, those who pled guilty were not eligible for DNA testing under the statute). This greatly expanded the number of eligible inmates. In addition, numerous DNA exonerations in Florida lead to greater awareness among the prison population of the IPF's pro bono legal services for innocent inmates.³⁰ Lastly, Florida's growing prison population meant an increased pool of people with innocence claims.

²⁹ Since its inception in 2003, IPF has reviewed over 3000 Florida cases.

³⁰ According to the National Registry of Exonerations, at the time of IPF's grant application, 13 Florida inmates had been exonerated through post-conviction DNA testing: (1) Frank Lee Smith (2000 posthumous exoneration), (2) Jerry Frank Townsend (2001), (3) Rudolph Holton (2003), (4) Wilton Dedge (2004), (5) Luis Diaz

Since its inception, the IPF has accepted over 70 cases which lead to fact investigation, tracking down evidence, and litigation of claims for defendants seeking post-conviction DNA testing to prove a claim of innocence. At the time of the 2010 grant application, the IPF had 300 active files under case review as well as 190 cases in the initial screening process. This heavy influx of cases created a backlog for the small IPF staff.

Part 2: Grant Request

The IPF applied for \$297,534.00 under the BJA Wrongful Conviction Review Program to fund its backlog reduction program. The grant request for the 24 month period was to fund an intake coordinator and an attorney to review and process the hundreds of cases (of 300 cases under review, 200 cases still needed additional documents and the IPF had another 190 cases in queue for initial screening), and to determine which cases are appropriate for DNA testing. The grant funds would allow IPF the additional resources to efficiently review each applicant, determine whether DNA testing could resolve the claim of innocence, ascertain the existence of physical evidence, and file appropriate pleadings seeking post-conviction DNA testing. Where DNA testing proves the defendant did not commit the crime, IPF attorneys would seek formal exoneration and release from incarceration for the defendant.

The litigation process to obtain post-conviction DNA testing can drag on for months or even years, thus the IPF's planned use of BJA funding is a comprehensive backlog reduction of cases already in queue for review as well as litigating for DNA testing (Rule 3.853 motions for DNA testing) in the appropriate cases. The grant would also fund the work of a professional

(2005), (6) Orlando Boquete (2006), (7) Alan Crotzer (2006), (8) Larry Bostic (2007), (9) Cody Davis (2007), (10) Chad Heins (2007), (11) Bill Dillon (2008), (12) James Bain (2009), (13) Anthony Caravella (2010). During the implementation of this grant, a 14th person (Derrick Williams) was exonerated through DNA testing by the IPF in 2011.

investigator, travel necessary for case review/investigation and court hearings, DNA testing and expert consultation, and procuring case documents and records from state agencies.

Part 3: NACDL Review Process & Findings

In addition to a thorough review of the grant application documents, activity reports, and IPF website, on February 21, 2014, Vanessa Antoun, NACDL Resource Counsel, and Lindsay Herf, NACDL Post-Conviction Project Counsel, conducted a site visit to the IPF in Tallahassee, Florida. Ms. Antoun and Ms. Herf met with the staff of the IPF, including Executive Director Seth Miller, Staff Attorney Melissa Montle, Intake Coordinator Lisa Prychodko, Social Worker Anthony Scott, and Assistant Director Toni Shrewsbury. The grant ran from October 1, 2010 to September 30, 2012.

Most Significant Case Outcomes Achieved Through this Grant

IPF's biggest accomplishment was the exoneration of Derrick Williams, who was released from prison on April 4, 2011, after 18 years in prison for a crime DNA testing showed he did not commit. IPF also achieved the release of Billy Joe Holton, a client who was serving a life sentence and whose claim of innocence was still pending at the time the grant concluded. IPF first argued that Holton's sentence exceed the maximum allowed by law and the court granted relief, resentencing Holton to time served, which allowed his release from prison on probation. IPF continues to represent Holton on his actual innocence claim and filed a motion to vacate his conviction based on new evidence of innocence.

In Derrick Williams's case, IPF's work culminated in a two-day evidentiary hearing on William's motion to vacate his conviction and sentence on March 15 and 16, 2011. On March

28, 2011, the judge granted Williams post-conviction relief. The facts and evidence surrounding Williams' case include the following:

On August 6, 1992, the victim, a white female, arrived at her home in Manatee County and noticed a black male on her porch. The man walked to her vehicle, she spoke to him briefly and he walked away. As the victim opened her car door to exit, the man forced his way into the vehicle, punched her, and drove her to a nearby orange grove. The assailant tied his shirt around the victim's head to block her vision and sexually assaulted her. He then tied her up with her pantyhose, stole her money, and smoked one of her cigarettes. The assailant exited the car for a moment, leaving the keys in the ignition, and the victim, having managed to untie herself, jumped into the front seat, locked the door and drove away leaving the assailant in the orange grove.

Based on a photo identification by the victim, Derrick Williams was arrested several days after the incident. Williams was charged with kidnapping, sexual battery, robbery, and grand theft of a motor vehicle. At trial, the prosecution's case relied heavily on the victim's identification of Williams as her attacker. The sheriff's deputy testified that when putting together the photo line-up, he inadvertently included two photos of Williams. The victim initially identified Williams' photo, indicating she was 80% sure Williams was her attacker. She subsequently identified Williams in a live line-up, then stating that she was positive he was her attacker.

Although vaginal swabs from the victim tested positive for the presence of semen, the state's forensic serologist testified that microscopic examination showed no sperm or semen on the swabs. Thus, the evidence did not undergo DNA testing at that time. The Sheriff's Office

also collected the victim's clothing and her vehicle, which contained the assailant's t-shirt, his white cloth, and numerous hairs.

Williams' defense at trial was that the victim mistakenly identified him as the perpetrator and that he did not commit the crime. Williams' friends, neighbors, and family members testified that Williams was at a family barbecue at his mother's house at the time of the incident, and that they had never seen Williams wear the t-shirt left in the victim's car. The defense emphasized that police tainted the victim's identification by allowing two photos of Williams in the photo line-up.

On March 19, 1993, a jury convicted Williams on all counts and the judge sentenced him to concurrent life sentences.

In 2009, the IPF began working on the Williams case. In 2010, the IPF sought DNA testing on the rape kit, hairs found in the victim's car, car floor mats with bodily fluids, the victim's clothing, and the assailant's t-shirt and white cloth. However, the only evidence that could be located was the assailant's t-shirt and victim's pantyhose. The other items had been destroyed by the Manatee County Sheriff's Office.

There was no dispute at trial that the t-shirt and white cloth found in the victim's vehicle belonged to the assailant. These items were sent to a private lab, which obtained a DNA profile from the t-shirt that definitively excluded Williams. The IPF filed a Rule 3.850 Motion to Vacate Conviction and Sentence. The state opposed relief for Williams, claiming that the victim's identification of Williams as her attacker was strong enough evidence to maintain the conviction despite the DNA results.

The court held a two day evidentiary hearing in March of 2011, where the IPF presented the new DNA results and testimony from the DNA expert, expert testimony from Jen Dysart on witness misidentification, and additional witnesses and evidence. On March 28, 2011, the judge ruled in Williams' favor, granting relief in the form of a new trial. Soon thereafter, the State dismissed the case against Williams. On April 4, 2011, after 18 years in prison, Williams was freed and able to re-join his family.

It is interesting to note that Williams was ineligible to receive any compensation from the state for his wrongful conviction and incarceration due to a prior drug-related conviction from the early 1990s.

Work Throughout the Grant Period

During the first reporting period (October 1, 2010 – December 31, 2010), the IPF reviewed 161 backlogged requests for assistance, and sent out questionnaires to 58 of those inmates whose cases deserved a more in-depth evaluation. The IPF completed document collection and case review on previous applicants and accepted six new cases to proceed to litigation of post-conviction DNA testing claims.³¹ In two cases, the IPF filed motions for post-conviction DNA testing. In three cases, where work began prior to the grant, the evidence from the cases proceeded to DNA testing. The IPF received DNA results in three cases; results in two cases confirmed guilt and in one case the DNA results excluded the defendant. For the DNA exclusion case, the IPF continued with additional case investigation. The IPF consulted with seven different experts, which resulted in 50 hours of forensic re-analysis of evidence in various cases.

³¹ Case review includes reading the entire case file including police investigation reports, forensic analysis reports, expert opinions, trial transcripts or plea colloquies, direct appeal pleadings and rulings, post-conviction pleadings and rulings, federal habeas pleadings and rulings, and any other materials that compose the case file.

During the second reporting period (January 1, 2011 – June 30, 2011), the IPF made significant progress in tackling the backlog by reviewing 320 requests for help, and deemed 125 cases appropriate to send an IPF screening questionnaire.³² IPF conducted in-depth reviews of 53 case files to determine whether the case is appropriate for post-conviction DNA testing to resolve a claim of innocence. From the case reviews, the IPF accepted seven new clients and proceeded with efforts to track down physical evidence. The IPF grant attorney filed four Rule 3.853 Motions for DNA testing in four new cases. Physical evidence from five IPF cases proceeded to DNA testing during this period. The IPF consulted with nine different experts, which resulted in 90 hours of forensic re-analysis in various cases, as well as testimony from two different experts in the Derrick Williams evidentiary hearing in March of 2011, which led to his exoneration as discussed above.

During the third reporting period (July 1, 2011 – December 31, 2011), the IPF continued to tackle the backlog and address new cases. The IPF reviewed 285 new requests for help from Florida inmates, sending questionnaires to 115 to obtain more information. The IPF completed document collection and case review for 37 new case files. The IPF grant attorney filed five Rule 3.853 Motions for DNA testing in five new cases. Physical evidence from five other IPF cases proceeded to DNA testing during this period. The IPF consulted with eight different experts, which resulted in 75 hours of forensic re-analysis of evidence in various cases, as well as expert testimony and reports. Additionally, the IPF attorneys represented a client at an evidentiary hearing on a motion seeking post-conviction DNA testing. Ultimately, the court ruled in favor of IPF's client and granted the DNA testing.

³² Note, between the time of the BJA application and the time the IPF began implementing the grant, the IPF received many more requests for help, adding to its already existing backlog.

During the fourth reporting period (January 1, 2012 – June 30, 2012), the IPF continued to make significant progress in screening the backlog of requests *and* answering the new requests. IPF screened 415 new requests for help and sent out 127 questionnaires. IPF completed document collection and case reviews of 42 new cases and accepted five new clients for representation of post-conviction DNA testing claims. IPF filed a Rule 3.853 motion for post-conviction DNA testing in one new case and physical evidence in three different cases proceeded to DNA. IPF succeeded in obtaining DNA testing for a client at the evidentiary hearing on their motion. IPF also consulted with 14 experts, which resulted in 150 hours of forensic re-analysis of evidence in various cases.

In the final grant reporting period (July 1, 2012 – September 30, 2012), the IPF eliminated the backlog of requests for assistance. In addition, IPF screened 280 new requests for assistance, sending out 205 questionnaires for more in-depth review. IPF continued case review and document collection, sending 161 public records requests for case files and documents from state agencies. IPF reviewed 38 new cases to determine appropriateness for post-conviction DNA testing. IPF attorneys filed Rule 3.853 motions for DNA testing in four new cases. Earlier in 2012, in three different cases, the IPF had appealed the trial judge's denials of post-conviction DNA testing. By the end of 2012, the appellate courts had decided the appeals and reversed the cases of two IPF clients. Those cases were sent back to the trial court for reconsideration of the motion for DNA testing. In the third case, the Court of Appeals granted oral argument, which occurred during this grant period. IPF attorneys were also busy with two evidentiary hearings on post-conviction DNA testing claims. Finally, IPF achieved the release of a client (Holton) who was serving a life sentence and whose claim of innocence was still pending at the time the grant concluded.

Challenges Faced Under the BJA Grant

The recurring problems and barriers the IPF noted in its grant reports were (1) difficulty in locating physical evidence for DNA testing, especially in older cases where retention records were not kept; and (2) prosecutors opposing DNA testing, which results in prolonged litigation over the right to DNA testing in each case challenged. Both of these barriers significantly slow down the progress IPF can make in identifying who is actually innocent.

To locate physical evidence, IPF calls every agency (investigating police agency, FDLE crime lab, courthouse, etc.) to track down the items or find out the last known location. This inquiry process, requiring numerous phone calls, records requests and in-person visits, can drag on for months before an agency will confirm the existence (or destruction) of evidence. For cases where the evidence is located, and the IPF's fact review deems the case appropriate for DNA testing (identity is at issue and DNA testing can reveal who committed the crime), the IPF faces further delay when prosecutors fight against DNA testing. The IPF proposed to use funds allocated under this grant to pay for the DNA testing to alleviate any resource burden on the state, but prosecutors still fought against testing in many cases. When prosecutors object to DNA testing, the litigation process begins and state resources (court time and prosecution time) are consumed by the ensuing litigation. Where trial courts denied DNA testing, the IPF has sought appellate review and in two cases won reversal of the trial court's denial. This litigation takes years to complete, which is a huge resource burden in comparison to the time and cost of a DNA test to see if the evidence matched the defendant or not. IPF's case vetting process demonstrates how the IPF accepts only a very small percentage of cases to proceed to DNA testing. Cases where consent to sex or self-defense was at issue, the IPF will not seek DNA

testing. Thus, the challenges the IPF faces when prosecution opposes DNA testing, not yet knowing what the results will be, needlessly delays the process and consumes state resources.

Re-Entry and Exoneree Compensation

One aspect of IPF that was not funded by this grant, but the Assessment Team deemed worth mentioning, is the work of their full-time social worker, who assists IPF's exonerees upon release from incarceration. During the site visit to the IPF, Ms. Antoun and Ms. Herf met with social worker Anthony Scott about his work with IPF clients and spoke with IPF exoneree James Bain, who spent 35 years in prison and was released in 2009 when DNA testing proved his innocence. Bain explained how instrumental Scott was in Bain's adjustment into the free world and how Scott continues to be the person Bain turns to for help on a weekly basis.

The exonerees face a whole new world – one in which they are rarely equipped to survive without assistance. Upon release, most exonerees receive only a few dollars, often the amount that was left in their prison account. Most do not have proper identification, so simple tasks, such as cashing the check, is a difficult process. Finding housing, employment, and adapting to life outside the prison walls are incredibly difficult challenges for all exonerees. There is also psychological frustration of knowing they unfairly lost a significant amount of their life sitting in prison for a crime they did not commit, as well as post-traumatic stress, depression, pressure from family and friends, expectations of their own, and other issues they are not equipped to handle on their own. The IPF's clinical social worker assists IPF clients from before their release and through the years after release. He assists exonerees with everything from obtaining proper identification (a state ID card or driver's license), finding a place to live, helping them find work, helping them re-connect with family, and – perhaps most importantly – connects them with clinical therapists in their community. He remains involved with each individual as needed.

The IPF social worker informed us that although Florida has a compensation statute, because it has limitations, not all of the IPF exonerees “qualify” for assistance. The Florida statute, passed in 2008, allows for \$50,000 per year for every year of wrongful conviction, but bars any exoneree who has a prior felony from before the wrongful conviction, and it requires the prosecuting agency to certify the defendant is innocent and if there is a dispute, then the judge must determine innocence by clear and convincing evidence. Derrick Williams, the exoneree mentioned above, did not qualify for compensation of his 18 years of wrongful conviction because he had a prior drug-related conviction from the early 1990s.

Part 4: Conclusions & Remarks

As noted in this report, the IPF achieved the DNA exoneration of Derrick Williams and conducted a considerable amount of work by screening hundreds of requests for assistance from Florida inmates; reviewing case files; tracking down case documents and evidence; investigating cases; and litigating claims of wrongful conviction during this grant cycle. IPF accomplished its original grant goal by eliminating the backlog of requests for assistance and processing over 1,400 new applications. After a thorough vetting process of each application, IPF identified over 200 cases worthy of an in-depth analysis and completed thorough reviews of the evidence in each case. The IPF litigated numerous other cases - seeking post-conviction DNA testing, appealing denials of DNA testing motions, and representing clients at evidentiary hearings. Though not funded by the grant, the IPF’s social worker contributed to the successful re-entry of IPF exonerees, assisting them with navigating a world that seems foreign after decades of incarceration. The resources necessary to conduct the case screening, investigation, review and litigation of Florida inmates could not have been accomplished without the resources from the BJA.

The Georgia Innocence Project

Part 1: Program Prior to the Grant

The Georgia Innocence Project (GIP) was founded in 2002 with the mission of exonerating wrongly convicted inmates in Georgia prisons. The project traces its origins to the 1999 exoneration of Calvin Johnson, who served more than 15 years for a rape he did not commit before becoming Georgia's first DNA exoneration. GIP takes only post-conviction cases where scientific testing unavailable at trial (due to lack of technology or negligence in failing to test evidence) could prove the defendant's actual innocence. In 2007, GIP expanded its jurisdiction and began accepting cases from Alabama as well. Alabama does not have an innocence project.

Prior to the grant, GIP consisted of a two-person staff, an executive director (also an attorney) and a communications director, and relied heavily on unpaid legal interns and volunteer attorneys. The executive director would lead a volunteer staff of 6 to 12 law student interns each semester. Legal interns were assigned a number of cases to investigate and present to the Legal Advisory Committee. In addition to the legal interns, more than forty volunteer attorneys would work on individual cases as their time allowed, sometimes in tandem with a GIP intern. These advantages have allowed GIP to pursue its mission in spite of fiscal limitations.

All requests for assistance received by GIP go through the same case investigation procedure. First, legal interns and volunteer attorneys, supervised by GIP's executive director/staff attorney, investigate potentially viable cases. When a case has been fully investigated, the intern assigned to the case prepares a written summary and presents the case to the GIP Legal Advisory Committee (LAC) for Georgia or Alabama. These committees are

comprised of volunteer defense attorneys, investigators, and prosecutors in the respective states. Based on the interns' case summaries and presentations, the LACs debate the merits of each case brought before them, and evaluate whether the case should be litigated, closed, or sent back for further investigation. Each state's LAC meets two to three times yearly. Cases that the LAC determines to accept are then litigated by the GIP attorney and possibly volunteer attorneys.

Until the 2008 recession, GIP enjoyed generous funding from the Georgia Bar Foundation and several local law firms. After the recession, these donations declined considerably, forcing GIP to cut its budget significantly. Fortunately, the Georgia Bureau of Investigation provides post-conviction DNA testing free of charge. GIP also receives pro bono DNA consultation from an expert at Boise State University.

Since its founding in 2002, GIP has addressed more than 4,200 requests for assistance. In the two years preceding the grant, 2008 and 2009, GIP received 502 and 437 new requests for assistance respectively. GIP closed roughly the same number of cases in those years. Georgia has a statute providing for post-conviction DNA testing, allowing GIP to process the vast majority of its Georgia DNA cases within two years. In a handful of cases, investigation takes longer due to the complexity of the case or to the failure to find crime scene evidence in a case with a particularly compelling claim of actual innocence. Focusing on case processing figures, GIP has functioned smoothly and has not accumulated the case backlogs that sometimes plague other projects.

In total, GIP has accepted twenty-eight clients for representation. GIP's work has exonerated four men and has led to the identification of the true perpetrator in three of those cases. At the time of the grant, twelve of the twenty-eight cases were active, and at any given time, GIP has between 100 and 250 cases under investigation in Georgia and Alabama.

GIP has also played an important policy and reform role in the state, for example by promoting legislation enacted in 2003 that requires the state to preserve biological evidence for at least 10 years.

Part 2: Grant Request

GIP requested \$138,790 in federal grant money, mostly to fund a second full-time staff attorney and related expenses, with a small portion (\$12,000) allocated to pay for DNA or other scientific testing. While GBI's technology is good, it is not state of the art, and GIP sometimes needs to send crime scene DNA to a private laboratory for further testing.

Of particular note, as explained in GIP's grant application, a closing window of opportunity in Alabama made additional funding especially critical. A law passed in 2009 provided a one-year window to file motions for DNA testing in capital cases. This window opened on August 1, 2009, requiring that GIP prioritize its limited resources to investigating hundreds of Alabama capital cases, and slowing down the processing of Georgia cases.

In its grant proposal, GIP estimated that the addition of a second attorney would reduce the amount of time it currently takes to process and litigate innocence cases by more than half. In addition to case work, the executive director/staff attorney handles policy and education issues related to wrongful convictions/actual innocence and serves in a management role, which sometimes includes assistance with fundraising. Without these burdens, a second attorney, devoted solely to casework, could substantially increase the speed and efficiency of the casework.

GIP outlined four major goals for their grant project: (1) determine the existence of DNA (or lack thereof) from crime scenes in at least eight longstanding Georgia cases currently under

investigation; (2) finalize at least two Georgia non-DNA cases currently under investigation; (3) file motions in Alabama capital cases eligible for post-conviction DNA testing; and (4) continue to investigate and litigate Alabama capital cases eligible for post-conviction DNA testing. Lastly, GIP stated its intent to seek additional sources of funding, mostly grants, to continue to fund the second attorney's position.

Part 3: NACDL Review Process and Findings

In addition to a complete review of the grant application documents and reports, on August 21, 2014, NACDL staff Kyle O'Dowd and Advisory Group member Barry Pollack, a prominent criminal defense practitioner based in Washington, D.C., conducted a telephone interview of Georgia Innocence Project Executive Director Aimee Maxwell.

Most Significant Case Outcomes Achieved Through this Grant

While exonerations under the grant have yet to occur, several cases remain pending. For example, GIP is currently representing on appeal Sandeep Bharadia, who is serving a life sentence in Georgia for rape. On the day of the attack, which occurred near Savannah, Mr. Bharadia testified that he was in Atlanta performing car repairs. Another witness at trial supported this alibi. The next day, Bharadia asked Sterling Flint to help him retrieve his car in South Carolina. On the return trip, Flint disappeared with Bharadia's car. Bharadia reported the theft and provided information that led police to the apartment of Flint's girlfriend in Savannah. This is where police recovered a bag containing the victim's possessions as well as the gloves and knife used in the attack. While the victim eventually identified Bharadia in a photographic lineup, she indicated that Flint looked familiar in a previous lineup. Post-conviction DNA testing revealed that DNA found on gloves did not come from Bharadia but from Flint, who is currently

incarcerated for other crimes. GIP's motion for a new trial was denied, and the case was recently granted review by the Georgia Supreme Court. This case presents an important issue under Georgia law regarding the right of a person to present a claim of innocence despite procedural obstacles.

Work Throughout the Grant Period

GIP hired the grant-funded staff attorney, Alissa Jones, in January 2011. In addition to her work with new claims of innocence, she undertook an effort to audit GIP's older, closed cases to determine whether there were any innocence claims that were closed for lack of DNA evidence but with some other scientific evidence to test.

While GIP had initially planned to litigate more than 200 Alabama capital cases, they determined, after filing the grant application, that there were actually far fewer cases eligible for GIP's assistance than originally anticipated. Out of the approximately 600 cases reviewed, GIP filed twelve motions within the one-year window for post-conviction testing in capital cases. Two of those motions were granted.

GIP also planned to pursue non-capital cases in Alabama, but these cases proved more challenging than originally anticipated. There is no DNA testing statute for non-capital cases, no access to law enforcement records, and prosecutors have been almost universally opposed to consent orders. While this aspect of the project failed to meet expectations, GIP's presence in Alabama has had collateral benefits. During the course of reviewing cases, GIP often finds serious problems unrelated to innocence issues. For example, GIP identified five cases in which inmates had been waiting for over ten years to have an attorney appointed to represent them on their first appeal. Even though GIP does not handle direct appeals, they worked with the courts

and private bar associations to find lawyers for these inmates. On one case, the individual had been in prison for 23 years without a lawyer; due to GIP's efforts, this inmate obtained a lawyer and was granted the right to file an out-of-time appeal. Because GIP is one of the few organizations reviewing criminal cases in Alabama, they have become de facto watchdogs.

The addition of Ms. Jones as second staff attorney has made a significant impact on GIP's work. GIP was able to provide a more thorough evaluation of each case in a shorter period of time. In her audit of GIP's old closed cases, Ms. Jones has completed 4,352 of the 4,602 case reviews since her arrival at GIP. GIP received 685 new requests during Ms. Jones' grant-funded tenure, and she personally reviewed each one. Ms. Jones litigated eleven cases and, at the close of the grant, was investigating 214 cases. In the eight years prior to Ms. Jones' arrival, GIP accepted twenty-eight cases for representation for which DNA evidence had been located. During the grant term, GIP found evidence in twenty-five cases and accepted twenty-two of those cases for representation.

Ms. Jones litigated six of the twelve Alabama capital cases filed under the 2009 statute. Motions for DNA testing were granted in four, and one case is pending. Unfortunately, due to a severe backlog at the Alabama Department of Forensic Science, the testing of this evidence has not yet been completed. As for the cases not covered by the 2009 statute, there is no dedicated DNA testing statute to force review of these cases.

Part 4: Conclusion & Remarks

During the grant term, GIP found evidence in twenty-five cases and accepted twenty-two of those cases for representation. By adding a second attorney to their staff, GIP was able to increase its productivity by well over the fifty percent estimate in the grant proposal. GIP's

success is even more impressive taking into account the pervasive difficulties they encountered in pursuing Alabama cases. GIP's progress reports lament the roadblocks and complete lack of cooperation they were receiving from Alabama prosecutors in pursuing cases. GIP reported that it was repeatedly denied access to court records and was stymied by prosecutors when the project requested DNA evidence. On top of all of this, the Alabama Department of Forensic Science has such a huge backlog that even when GIP was able to get DNA for testing, results will take years to complete. While extremely frustrating, these problems in Alabama's judicial system highlight exactly why GIP's work is so crucial there.

The importance of the extra staff attorney cannot be overstated. In the year following the grant, GIP reverted to one attorney and accumulated a backlog of cases requiring investigation. Fortunately, GIP was able to secure a Bloodsworth grant for 2014-15 and hire another staff attorney. Also of note, GIP was unable to sustain its other non-attorney staff position, but due to the executive director's successful fundraising, which was facilitated by the grant-funded staff attorney, GIP secured private funding (from former NBA All-Star Joe Barry Carroll) for an administrative staff person.

The Innocence Project (NY)

Part 1: Program Prior to the Grant

Since its inception in 1992, the Innocence Project in New York City has focused on exonerating inmates across the country through the use of post-conviction DNA testing. Prior to the grant period, the Innocence Project had a staff of 47 and had either exonerated or assisted in the exoneration of more than 100 people. A pioneer and long-time leader in the field, the Innocence Project played a pivotal role in establishing the Innocence Network, an international consortium of projects committed to freeing the innocent throughout the world. Given its national scope and reputation, the Innocence Project has traditionally had a remarkably large caseload and receives an average of over 250 first contacts from potential clients each month.

The Innocence Project had developed and honed a five-stage screening process for potential clients: (1) selection of cases with possible definitive DNA evidence; (2) distribution and analysis of inmate questionnaires; (3) case-specific information gathering; (4) a written evaluation of the gathered information; and (5) determination to have case accepted or referred to another appropriate program. A potential client is assessed and aided by a team of professionals from the Innocence Project. The team consists of a case assistant, case coordinator/analyst, paralegal, and attorney. The assistant is primarily responsible for the initial intake, questionnaire mailing, and evaluation of the questionnaire; the case analyst oversees the review at all stages and focuses on detailed assessment and analysis in the fourth stage of evaluation; the paralegal and attorney then litigate the selected cases.

The Innocence Project traditionally sustained itself through a combination of grants from foundations as well as funding from individual donors. During the Great Recession, however, the

Innocence Project lost a major funding source when the family-funded JEHT Foundation ceased operations; it had invested heavily with Bernard Madoff and absorbed devastating losses when evidence of Madoff's crimes surfaced. Specifically, the JEHT Foundation was no longer able to follow through on a remaining \$1.5 million commitment to the Innocence Project (\$750,000 a year for two years). The Innocence Project had factored these sums into its budget to help pay for the increased staff level it had assumed over the previous three years. Executive Director Madeline deLone estimated that this loss represented a 12.5% reduction in the organization's budget.

Part 2: Grant Request

The Innocence Project sought funds from the FY 2010 grant program to fill part of the fiscal hole wrought by the closure of the JEHT Foundation. The Innocence Project requested a one-year grant in the amount of \$200,000 to fully fund the salary of an attorney and a case analyst as well as defray half the expense of a paralegal and a case assistant. Other grant expenses would include fringe benefits, equipment services, and some travel.

The Innocence Project wanted to use the funds to maintain its staffing levels and allow time to nurture new donors. The Innocence Project emphasized that its priorities were to (1) maintain a systematized evaluation process, so it could take appropriate cases and refer non-forensic evidence cases to other organizations, as well as (2) ensure that legal staff could focus on finding evidence and moving forensic evidence cases forward.

The Innocence Project identified four objectives for its use of the grant funding. First, it aimed to reduce the number of cases waiting for review. This would include having the case assistant enter 250 new applications into the case management system per quarter and having the

case analyst manage, analyze, and recommend options for 338 cases per quarter. Second, it sought to evaluate claims on the basis of forensic analysis with the case analyst reviewing 50 cases annually and determining how forensic evidence could be probative. Additionally, the Innocence Project stated that the legal staff would maintain a caseload of 50 while spending 15 to 20 percent of their time developing a legal strategy to use the forensic evidence and securing testing for the forensic evidence. Third, the Innocence Project hoped to obtain DNA testing for at least 20 percent of the caseload over the course of the year. Fourth, it aimed to maintain high staff retention to facilitate the completion of the first three goals.

Part 3: NACDL Review Process and Findings

In addition to a complete review of the grant application documents and reports, on July 9, 2014, Consultant Daniel S. Medwed and Advisory Group member Barry Pollack, a prominent criminal defense practitioner based in Washington, D.C., conducted a telephone interview of Innocence Project Executive Director Madeline deLone and Development Director Audrey Levitan. Professor Medwed followed up with a site visit to the Innocence Project in New York City on July 16, 2014, where he met with Ms. deLone as well as two staff members whose salaries were fully funded by the grant: Staff Attorney Olga Akselrod and Case Analyst Edwin Grimsley.

Most Significant Case Outcomes Achieved Through this Grant

The Innocence Project achieved three exonerations through the work of grant funded Staff Attorney Akselrod and Case Analyst Grimsley. Thomas Haynesworth was exonerated in 2011 as part of collaboration between the Innocence Project and the Mid-Atlantic Innocence Project, a fellow grant recipient, after serving 27 years in person for multiple rape convictions in

Virginia. Ms. Akselrod and Innocence Project Co-Director Peter Neufeld played vital roles in litigating the DNA aspects of the convictions, while partnering with MAIP on the non-DNA components. Ms. Akselrod also worked on the case of George Allen, who was exonerated in January 2013. Mr. Allen was convicted in Missouri for the murder of Mary Bell and was sentenced to 95 years in prison, 30 of which he served before being released. Mr. Grimsley worked extensively on the case of Nathan Brown, who was exonerated in June 2014, after serving 17 years of a 25 year sentence for an attempted rape in Louisiana.

Work Throughout the Grant Period

The Innocence Project's receipt of federal funds immediately improved productivity. During the October 1 to December 31, 2010 grant reporting period, the case assistant entered 246 new requests (out of 688 total requests) into the case management system, and the case analyst assumed managerial responsibility for 347 cases. Moreover, the case analyst prepared 17 full case reviews, and the legal team managed a caseload of 47, filing motions or consulting experts in seven of those matters. Eight of the 47 cases in litigation (17 percent) entered into the DNA testing phase. The team funded by the grant remained largely intact; the paralegal left the organization to attend law school but was promptly replaced. Beyond addressing the goals outlined in its grant application, the Innocence Project reported several other noteworthy achievements, including the identification of one actual perpetrator through the re-examination of evidence, the overall provision of legal assistance to 273 inmates by the organization, and the release of one client.

During the six-month reporting period from January 1 to June 30, 2010 (twice as long as the initial reporting period), the case assistant entered 1028 requests into the case management system (more than 500 per quarter), and the case analyst funded by the grant managed 631 of the

total requests received by the Innocence Project (roughly 315 per quarter). In addition, the case analyst prepared 60 complete case reviews. The legal staff managed a caseload of 40 clients. Experts were consulted or motions filed in 13 cases. The legal team succeeded in conducting DNA testing in seven (20.5 percent) of these active cases. The entire grant-funded team contributed to another very productive period of Innocence Project work in which the group assisted 240 clients and secured the release of one inmate who, as of the end of the reporting period, had not yet been formally exonerated.

In the final six-month reporting period from July 1 to December 20, 2011, the case assistant received and entered 828 requests into the case management system. The case analyst, Edwin Grimsley, processed and managed approximately one quarter of the 2,031 requests received during this time frame, and reviewed 64 cases at the final stage of evaluation. The legal staff handled 38 cases with 12 of them (31.5 percent) entering the forensic testing phase. Two actual perpetrators were identified through evidence re-examination and the organization as a whole provided legal aid to 264 clients, securing the release of four innocent men. In addition, the grant-funded team remained employed by the Innocence Project beyond the grant period.

Part 4: Conclusion & Remarks

The Innocence Project used its federal grant funds in a highly efficient and effective manner, partially funding the salaries of a team of non-legal and legal staff that succeeded in processing inmate inquiries, evaluating viable claims, and litigating matters in court. Notably, Ms. deLone attributes three exonerations to the work of Staff Attorney Akselrod and Case Analyst Grimsley during this period.

In addition, Innocence Project generally met its anticipated performance goals in terms of case processing, screening and litigation. The first goal concerned data entry and case management. For most of the grant period, the goal for entering information into the case management database met or far exceeded the envisioned 250 cases per quarter. Similarly, the Innocence Project came close to its anticipated deliverable of managing 338 cases each quarter, and in the first quarter vastly exceeded this goal.

Pursuant to the Innocence Project's second goal, it expected to conduct final reviews on 50 cases annually and for the legal staff to maintain a caseload of 50 throughout the year while spending 15 to 20 percent of their time developing legal strategies to make use of the forensic evidence. The Innocence Project fulfilled its aspiration for final review, with 141 cases entering the final review process. The legal staff managed a caseload that ranged from 47 in the first to 38 clients in the final quarter. Having a reasonable caseload is crucial to the ability of an Innocence Project attorney to make headway on viable cases. Ms. deLone explained that this reduction in caseload stemmed from an internal policy to become more stringent in closing case files in which forensic evidence could not be obtained and/or the inmate did not have a viable claim of actual innocence. This allowed Ms. Akselrod to focus her energies on the most compelling cases on her docket.

The Innocence Project excelled at meeting its third goal of having at least 20 percent of cases enter DNA testing. In the final quarter, 31.5 percent of the caseload entered the DNA testing phase with strong percentages in the other quarters as well. The Innocence Project also met its fourth goal of maintaining current staff, with the grant-funded team remaining in place for the duration of the grant with the exception of the replacement of the paralegal in the first quarter when the original paralegal left to attend law school.

Overall, the Innocence Project successfully used its grant funds to maintain staffing levels and compensate for lost funding from other grant sources. The result was laudable; the Innocence Project continued to provide its unparalleled level of investigative and litigation aid to innocent inmates across the country. Much to its credit, the Innocence Project took the time during the grant period to nurture alternative funding streams to enable it to retain staff after the completion of the grant. The Innocence Project currently has 70 employees (as opposed to 47 at the time of the grant application) and a budget of roughly \$11 million in 2014 (as compared with a \$6 million budget in 2011). The Innocence Project plans to launch a “reserve” campaign to develop a core fund to invest and generate returns in order to weather fundraising lulls. By courting a diverse base of individual donors and applying for support from an array of foundations, the Innocence Project has positioned itself to maintain and perhaps even augment its admirable capacity to help the wrongfully-convicted.

Mid-Atlantic Innocence Project

Part 1: Program Prior to the Grant

The Mid-Atlantic Innocence Project (MAIP) was founded in 2001 to provide *pro bono* investigative and legal assistance to inmates with viable claims of innocence in the District of Columbia, Maryland, and Virginia. MAIP considers both DNA and non-DNA cases. Prior to the grant period, MAIP helped secure the freedom of six innocent people, five in the eighteen months before receiving this grant.

MAIP grew significantly between 2001, when it was entirely volunteer-run, and the time that it sought this grant. Its staff increased from one employee to four: an Executive Director, Assistant Director, Virginia DNA Staff Attorney, and Program Assistant. Those four positions remain in place as MAIP's core. The Executive Director bore responsibility for overall supervision of the project. The Assistant Director read all screening questionnaires and initial supporting documents, making initial determinations about whether to further screen cases. The Assistant Director also worked with MAIP's screening committee of *pro bono* lawyers to ensure proper flow of cases, answer their questions, and supervise their work. The Virginia DNA Staff Attorney oversaw the Old Case Testing Project, in which Virginia voluntarily commenced post-conviction DNA testing in nearly 1,000 cases; MAIP took a lead role in this project. Lastly, the Program Assistant managed the distribution of questionnaires to potential clients in prison.

The staff also worked with and supervised law students and *pro bono* attorneys. By the time of its grant application, MAIP has established clinics or classes at law schools and used private investigators when necessary. MAIP had also recently taken a more active role in the

litigation of its discovered cases – rather than just referring cases to pro bono lawyers, MAIP began to serve as co-counsel.

MAIP had installed a meticulous five-stage review process: initial intake; questionnaire review; screening; investigation; and litigation. The Program Assistant monitored the initial intake process, dispatching questionnaires to inmates whose cases meet basic criteria (inmates must be in the correct jurisdiction, no longer have the right to appointed counsel, and present a factual claim of innocence). Next, the Assistant Director reviewed the inmates' completed questionnaires and appellate documents to further assess the cases' merits. Suitable cases then proceeded to the screening committee (comprised of the Assistant Director and *pro bono* attorneys); if cases passed the screening committee, they then underwent re-investigation by law students and/or private investigators supervised by MAIP. Where the investigation turned up persuasive evidence of innocence, MAIP and co-counsel at area law firms proceeded to litigation.

MAIP aimed to increase its caseload capacity. The preliminary strategy included reaching out to corporate sponsors, rather than just law firms, for their annual fundraising event; the creation of a young professionals committee; approaching new foundations; and starting a capital campaign. To help in achieving those goals, MAIP engaged a Board Fellow through Georgetown University's McDonough School of Business to research funding opportunities and the possibility of hiring a development consultant.

Part 2: Grant Request

MAIP requested and received a grant of \$293,859.80. With those funds, MAIP proposed to hire a full-time staff investigator, partially fund existing staff, increase funding for document

gathering, and employ DNA expert evaluation of cases. The budget included \$114,850 for personnel costs – the majority for two years’ salary for the investigator and the remainder to fund a portion of the salaries of MAIP’s four existing staff members. Other grant funds were to be used for travel expenses, expert consultants; supplies, and office space for the new investigator position. These funds were sought to defray a portion of MAIP’s personnel costs and to fill its greatest needs - (1) the need for a full-time investigator to supplement the work of the staff and students in investigating plausible claims of innocence and preparing those matters for litigation and (2) funding for expert assistance in interpreting forensic evidence.

MAIP traditionally received about fifty new requests from inmates per month.³³ This high volume, coupled with MAIP’s consideration of both DNA cases and the much more time-consuming non-DNA cases, required the staff to spend a significant amount of time evaluating those requests in their five-step process. MAIP’s ability to quickly and efficiently deal with each request was hampered by lack of resources in three areas: document gathering, expert evaluations, and investigative services. This lack of resources resulted in a massive backlog of cases, leaving many possibly innocent clients languishing in prison. Through its internal tracking reports, MAIP determined that it most urgently needed more resources dedicated to: (1) the second stage (the evaluation stage), when the Assistant Director determines whether a case appears to present both a genuine innocence claim and the possibility of proving that claim, and (2) the fourth stage, in which investigators go into the field to locate the evidence and witnesses. Specifically, MAIP identified three main problems at the evaluation stage. First, many inmates have difficulty effectively filling out the initial questionnaires, which requires that MAIP personnel visit them in person to understand and assess their innocence claim. MAIP’s large,

³³ Approximately 1,124 in 2008 and 2009 alone.

three-state jurisdiction makes this burdensome. Second, in order to evaluate cases thoroughly, MAIP needs legal documents that inmates usually do not have. Copying court documents is very expensive, and so it is much more efficient to visit a courthouse in person when seeking an old transcript. Third, MAIP lacked money for expert analysis in many cases. Many cases require a second opinion on a fingerprint comparison, whether a more advanced DNA technique might obtain different results, or whether a ballistics report is flawed.

Yet the main problem at the investigation stage of the review process was the huge backlog of worthy cases. Many cases need thorough re-investigation for proper litigation, an activity most properly and effectively conducted by a professional investigator. In an attempt to combat this problem in the past, MAIP received a grant from the Virginia Law Foundation to hire private investigators on a contract basis, but the grant's budget (\$20,000) covered, at most, only ten cases per year.

MAIP initially applied for the grant in conjunction with American University Washington College of Law (WCL). WCL has a proven track record of successfully managing grant-related expenditures, and the vision was for MAIP to sub-grant the funds from WCL.

Part 3: NACDL Review Process and Findings

In addition to a thorough review of the grant application documents and reports, on June 17, 2014, Consultant Daniel S. Medwed and Advisory Group member William G. Gallagher, an experienced criminal defense practitioner based in Cincinnati, Ohio, who is a former member of NACDL's Board of Directors, conducted a telephone interview of MAIP Executive Director Shawn Armbrust.

Most Significant Case Outcomes Achieved Through this Grant

According to Executive Director Shawn Armbrust, grant funds contributed to seven exonerations – a huge accomplishment. MAIP obtained two DNA exonerations, and the work on those cases involved funds from the grant program. Garry Diamond, who spent five years in a Virginia prison for a rape he did not commit, was exonerated by DNA testing and won a Writ of Actual Innocence in January 2013. Jerry Jenkins was exonerated by DNA testing in June 2013, after test results cleared him and identified the real perpetrator, a serial rapist already in prison in Virginia. MAIP also was an integral part of the legal team that secured Thomas Haynesworth’s exoneration, which is discussed in more detail in the report on the Innocence Project. In addition, MAIP won a federal habeas petition in the Virginia case of Michael Hash, who spent ten years in prison for a murder that he did not commit. The federal court found overwhelming evidence of “outrageous” police and prosecutorial misconduct leading to a miscarriage of justice. Hash was released and MAIP advocated on his behalf to persuade the Commonwealth against pursuing a retrial. In August 2012, the Culpepper Circuit Court dismissed the charges at the request of the Commonwealth’s Attorney, based on a determination that there was insufficient evidence to charge Hash for the crime. The Hash case prompted an investigation of the Culpepper County Sheriff’s Office.

The two most recent exonerations are discussed below:

Johnathan Montgomery

Johnathan Montgomery was convicted in 2008 of a sexual assault that never occurred. The alleged victim recanted her testimony in October 2012 to a friend from her office. Police and prosecutors subsequently interviewed her, and found her recantation to be credible. Based on evidence that no sexual assault occurred, the Hampton Circuit Court authorized Montgomery’s

release in November 2012, but the court lacked jurisdiction under Virginia law, so the order was not enforced. That month, representatives of Virginia Gov. Robert F. McDonnell asked MAIP to become involved in the case. With the aid of co-counsel at Hogan Lovells LLP, MAIP helped Montgomery seek a conditional pardon, which was granted on November 20, 2012, and Montgomery then pursued a Writ of Actual Innocence. The request for a Writ was joined by Virginia Attorney General Ken Cuccinelli on behalf of the Commonwealth. In December 2013, the Court of Appeals of Virginia granted Montgomery a Writ of Actual Innocence, officially exonerating him. The woman who falsely accused Montgomery was charged and convicted of perjury.

Sabein Burgess

In 1995, Sabein Burgess was convicted of killing his girlfriend. The conviction rested solely on gunshot residue (GSR) testimony by an examiner from the Baltimore City Police Department. Absolutely no other evidence implicated Burgess; without the GSR results, even the lead detective conceded that he would not have had probable cause to arrest him.

Burgess consistently maintained his innocence. MAIP and co-counsel Steptoe & Johnson pursued the case and concluded that given new research about GSR evidence, the testimony linking him to the crime lacked scientific validity. Even more compelling, the true perpetrator confessed to the crime, and the victim's son came forward to state that he saw his mother's killers that day and Burgess was not among them.

In December 2013, Steptoe and MAIP submitted a Petition for a Writ of Actual Innocence. The Baltimore City State's Attorney's Office agreed that Burgess had met his burden to have the case reversed and a new trial granted. In February 2014, a Baltimore City Circuit Court Judge granted a new trial, and the State's Attorney then dismissed the charges.

Work Throughout the Grant Period

During this first reporting period from September to December 2010, MAIP finalized its budget in accordance with the conditions of the grant, but no grant money was spent during this period due to problems encountered in negotiating the sub-grant agreement (Memorandum of Understanding) with WCL. Finalizing that agreement was a prerequisite to MAIP beginning to spend a large portion of the grant funding. Because of this delay, MAIP perceived that it would no longer be able to complete its grant objectives within the 24-month grant period, and anticipated that it would need to request a five-month no-cost extension of the grant.

During the second reporting period from January to June 2011, MAIP resolved the sub-grant relationship with WCL and began working toward its grant project goals in earnest. In May 2011, MAIP hired its staff investigator, Don Stoop, who immediately assumed responsibility for eighty-six cases that MAIP staff had deemed most appropriate for his investigation. In a matter of weeks, the staff investigator made significant progress in multiple cases and flagged several for closures (not viable claims of innocence).

MAIP also made progress in three cases in which they planned to seek grant-funded DNA testing on behalf of a client. First, MAIP filed a motion for and obtained post-conviction DNA testing on behalf of Christopher Turner, who maintains that he was wrongfully convicted of a 1984 District of Columbia murder. Second, MAIP located DNA evidence in a Maryland rape case in which they had previously believed all evidence had been destroyed, and planned to file a motion for post-conviction DNA testing. Third, MAIP located evidence in a D.C. rape case in which they had a pending order for DNA testing. MAIP also secured the release on parole of Thomas Haynesworth on March 21, 2011, after twenty-seven years in prison for a series of rapes he did not commit.

Throughout this period, MAIP consulted with three experts, all of whom provided their services pro bono. MAIP received approximately 215 post-conviction claims of innocence during this period; of these 215 claims, MAIP identified eighty-seven with solid claims of innocence.

During the third reporting period (July to December 2011), MAIP secured the formal exoneration of Thomas Haynesworth in December 2011, winning the second-ever Writ of Actual Innocence for Non-Biological Evidence in Virginia. The Haynesworth case involved extensive collaboration and coordination between MAIP and the Innocence Project in New York City, a fellow Grantee under the 2010 Wrongful Conviction Review Program. MAIP also obtained preliminary expert reports in two cases that are extremely favorable to their clients: one involved an eyewitness identification expert; the other, a gunshot residue expert. Lastly, MAIP obtained evidence in another promising case right before the end of the grant period.

The staff investigator continued to clear the backlog of unpromising cases so that MAIP could focus on more meritorious ones. He spent more than 1,000 hours investigating dozens of cases, closing at least ten cases and isolating three that he considered particularly promising. The intake and screening process continued to proceed smoothly, and the expert services that MAIP engaged brought them closer to exoneration in at least two cases. MAIP acknowledged that it had not spent the money allocated for expert consultation as quickly as anticipated. However, throughout this reporting period, MAIP consulted four experts; provided 2,424 hours of screening, evaluation, and litigation services; received 295 post-conviction claims of innocence; re-examined evidence in 187 of those 295 claims; and identified one actual perpetrator through re-examination of evidence.

During the fourth reporting period (January to June 2012), MAIP won a federal habeas petition in the case of Michael Hash, who spent ten years in prison for a murder that he did not commit. The court gave the Commonwealth of Virginia until August to decide whether to retry Hash, with Hash free on parole while awaiting this decision. MAIP advocated Hash's behalf to persuade the Commonwealth against pursuing a retrial. MAIP's habeas petition rested on a claim of ineffective assistance of counsel by Hash's trial lawyer for failing to investigate a police informant as well as prosecutorial misconduct. MAIP also represented a client in a three-week hearing in the District of Columbia Superior Court. In preparing for the hearing, MAIP uncovered what it viewed as significant Brady violations as well as persuasive evidence of actual innocence.

MAIP also made progress in two cases involving DNA testing. In the first, a 1996 D.C. rape case, MAIP obtained an order for DNA testing. MAIP had been seeking such testing for several years. Unfortunately, the testing revealed that there was insufficient biological material left at the crime scene to obtain useful results on behalf of their client. MAIP also obtained DNA testing in a 1986 Maryland rape case with a promising innocence claim and through investigation, identified an alternative suspect. In addition, MAIP made significant investigative progress in a Maryland murder case, including obtaining a statement from an eyewitness that exonerates their client; evidence of misconduct by a police detective involved in the case; and an admission of guilt from the actual perpetrator (the Montgomery case discussed above). Lastly, MAIP took on the representation of a Virginia man who obtained exculpatory results through Virginia's Old Case Testing Project.

MAIP held its Fifth Annual Awards Luncheon, raising \$200,000 for its general operating fund. This figure is approximately \$90,000 more than was raised at the previous year's luncheon.

The staff investigator worked on approximately twenty cases, closing four of them. MAIP engaged the services of five DNA experts, which brought them closer to exoneration in at least two cases. MAIP provided 3,100 hours of screening, evaluation, and litigation services; received 328 post-conviction claims of innocence; and re-examined evidence in sixty-six of those 328 cases.

During this period, MAIP applied for, and received, a five-month no-cost time extension of their grant (due to the five-month delay it experienced as a result of its initial plan to have WCL as a sub-grantee). MAIP also applied for a budget modification, partially to account for the hiring of a new staff attorney needed to work with and supervise the staff investigator for the remainder of the grant period to maximize his productivity.

In the fifth reporting period (July-December 2012), MAIP secured the final release of Michael Hash. In August 2012, the charges were dismissed at the request of the Commonwealth of Virginia. MAIP obtained DNA exclusions in two cases, one of which involved BJA funding. In one of the cases (in Virginia, where the government pays for post-conviction DNA testing), the Commonwealth joined MAIP's petition for a Writ of Actual Innocence in the Virginia Supreme Court. In the second DNA case, a Maryland case, MAIP awaited review of the private laboratory's results by the state laboratory, so that the state can determine its position.

MAIP instituted several changes to continue reducing its case backlog. It hired a new staff attorney to focus entirely on litigation, and instituted weekly case meetings designed to work systematically through the backlog and provide support to the staff investigator. This made it easier to prioritize cases and determine the next steps in each. These strategies seemed to be working: in the past six months, MAIP decreased its backlog of cases needing investigation from 108 to eighty-five.

MAIP also reported progress on two of its secondary goals: consulting with experts in necessary cases and gathering documents in its cases. MAIP consulted an eyewitness identification expert and a gunshot residue expert, as well as obtained DNA tests in three cases (two by private laboratories). During this period, MAIP consulted four DNA experts; provided sixty hours of forensic re-analysis; provided 7,560 hours of screening, evaluation, and litigation services; received 310 post-conviction claims of innocence; and re-examined evidence in 276 of those 310 cases.

In the sixth reporting period (January-June 2013), MAIP obtained two DNA exonerations - Garry Diamond and Jerry Jenkins, discussed above. Both exonerations involved funds from the grant program. MAIP also filed an appeal in a case in which they represent one of seven co-defendants who were wrongfully convicted of a 1984 D.C. murder.

During this period, MAIP consulted two DNA experts; provided ten hours of forensic re-analysis services; provided 2,956 hours of screening, evaluation, and litigation services; received 222 post-conviction claims of innocence; re-examined evidence in seventy-two of those 222 cases; and identified one actual perpetrator through re-examination of evidence.

Following the completion of the grant period, MAIP secured two additional exonerations in cases in which much of the work occurred during the grant period: Jonathan Montgomery was officially exonerated in December 2013 and Sabein Burgess was exonerated in February 2014. The grant funded expert assistance, document collection, and travel in those cases.

Challenges Faced Under the BJA Grant

MAIP achieved these successes, despite tremendous administrative difficulties in administering the grant with the American University-Washington College of Law, in

conjunction with whom MAIP applied for the grant. The original plan was that WCL, given its experience in successfully managing grants of a similarly large size, would assist MAIP with the financial management of the grant, helping MAIP track spending and prepare financial reports, leaving MAIP free to focus on the substance of the project. Difficulties in establishing and executing this system resulted in a five-month delay in grant work, and ultimately the sub-grant was withdrawn by mutual consent on June 22, 2012. The total amount sub-granted under the contract was \$21,364.88.

As a result of the termination of the sub-grant agreement with WCL, MAIP applied for a grant modification during the January-June 2012 reporting period. In the budget modification request, MAIP sought, in addition to changes to accommodate the sub-grant termination, to re-allocate the grant funds in numerous areas of the budget. Due to the hiring of the new staff attorney and a slight salary increase for the staff investigator, MAIP sought to increase the personnel budget from \$114, 850.75 to \$162,762.49; they also sought to increase the budget for consultants/contracts from \$50,000 to \$77,264.88. The new consultants/contracts budget is comprised of \$50,000 for DNA testing and other forensic services, \$5,000 for private investigators, \$900 for a bookkeeper to track MAIP's monthly expenses and yearly financial reports, and \$21,364.88 for the amount sub-granted to WCL to administer on MAIP's behalf. MAIP reported that it needed the \$5,000 for contract investigators to supplement the work of the staff investigator when needed. To cover the increased budgets for personnel and consultants, MAIP proposed decreasing the funds allocated to fringe benefits, travel expenses, supplies, and "other" costs. The reallocation of the grant funds worked out so that after the grant modification, MAIP only requested 20¢ more than in its original grant request (\$293,860.00 instead of \$293,859.80).

Part 4: Conclusions & Remarks

Overall, MAIP's use of BJA grant funds was a great success. MAIP showed itself at the outset to be an extremely well-run – if understaffed and under-resourced – organization equipped with a sophisticated case review process and internal tracking system. MAIP achieved its proposed grant project goals, maximizing its efficiency and streamlining its case review process, and bolstering its capacity to utilize expert services. At the conclusion of the grant period, MAIP only had a backlog of 52 cases, approximately half the volume of the pre-grant backlog. MAIP also conferred with six paid experts during the period, five of whom were paid for through the grant funds.

This increased support for investigative and expert services allowed MAIP to focus its efforts on litigating meritorious cases - and this focus reaped rich dividends. During the grant period, MAIP secured five exonerations, and later secured two additional exonerations in cases that were investigated and litigated during the grant. In her June 17, 2014, telephone interview with the Assessment Team, the Executive Director lauded BJA funding for playing a role in a total of seven exonerations. Mr. Stoop, grant-funded investigator, contributed directly to these cases, and his work also allowed MAIP's legal staff to litigate these matters by doing the screening and investigative legwork that had previously been the responsibility of the legal team. Thrilled with the benefits of employing a full-time staff investigator, MAIP allocated funds from its own budget after the completion of the grant to continue to employ Mr. Stoop.

Despite having to overcome several roadblocks along the way, MAIP optimized the use of grant funds in a manner that helped to yielded an impressive number of exonerations of innocent inmates.

Midwest Innocence Project

Part 1: Program Prior to the Grant

The Midwest Innocence Project (MIP), which has now been in existence for nearly 15 years, provides pro bono legal assistance to inmates with strong claims of factually based innocence in Kansas, Missouri, Iowa, Oklahoma, Arkansas, and Nebraska. MIP accepts cases with DNA and non-DNA evidence. MIP is the only innocence project within its six-state jurisdiction that accepts all viable innocence claims, and therefore its caseload is much higher than many other innocence-related projects.

MIP previously received a FY2009 Wrongful Conviction Review Program grant from BJA in the amount of \$287,500. The impact of that grant was exhaustively assessed in NACDL's assessment of the FY2009 wrongful conviction Grantees, which generated a 2012 report: *Aiding the Innocent: The Assessment of the FY2009 Wrongful Conviction Review Program*.³⁴ As part of that review, NACDL's Assessment Team reviewed all grant reports, held telephone conferences with MIP personnel, conducted an extensive site visit, and obtained additional supporting materials. The Assessment Team concluded that despite a period of exceptional transition and "some instability and delays in utilizing the grant funds," by all accounts, "funding proved invaluable." Specifically, the 2009 grant funding enabled much quicker case processing, allowed the project to establish a major pro bono effort in the legal community and resulted in two exonerations, one of which was wholly achieved by MIP and the other was achieved with MIP support.

³⁴ This report was issued on November 19, 2012, and the authors can readily make a copy available.

Part 2: Grant Request

Under the FY2010 grant program, MIP requested and received a grant of \$250,985 to cover all costs of its two-year grant project, to be divided as followed: \$192,850 to cover the salaries of the second staff attorney and investigator; \$32,785 for their fringe benefits; \$3,000 for equipment; and \$21,600 for “other” costs. The “equipment” refers to computers that MIP will buy for the second staff attorney and investigator; the “other” refers to the cost of MIP relocating into new offices.

Specifically, MIP proposed to hire its own internal investigator who would perform the essential role of developing an investigative plan, locating witnesses, and interviewing said witnesses in review of post-conviction claims of innocence – tasks that had previously been performed by external contractors. The investigator position would also improve the levels of speed and efficiency in responsiveness to clients’ claims of innocence by allowing MIP to respond immediately to requests for information and clarification, and investigate that information promptly. MIP projected that an internal investigator would be able to complete at least three cases in a given year and prepare them with the staff attorney for litigation. Hiring an internal investigator would also be significantly less expensive than hiring external contractors on an as-needed basis. An average investigation of one innocence case can cost about \$20,000 to \$25,000 – the contract investigator used on an actual MIP case going to court this summer charged a total of \$21,482 for 353 hours of investigation. Thus, hiring a full-time investigator at a yearly salary of \$45,000 would allow more cases to be investigated in a much more cost-efficient manner.

MIP’s second proposed use for the BJA grant funds was to hire a second staff attorney. Prior to the grant, MIP’s Legal Director managed the financial, compliance, and other procedural

and business aspects of its operation in order to enable the legal staff (paralegals, Senior Attorney) to focus on investigative and litigation practices. The addition of a staff attorney position that would manage a caseload and work with clinical students, in addition to the benefits provided by two paralegals added during 2009-2010 (under the first BJA grant), would enable all phases of MIP's services to be comprehensively fulfilled.

Lastly, MIP proposed to use BJA grant funds to move to a larger office space. For the four years prior to the grant, MIP had enjoyed the benefit of donated office space at a law firm in Kansas City, Missouri, and the University of Missouri-Kansas City's Law School, which necessitated much inner-office travel and communications by telephone and email. The large increase in both staff size and caseload that MIP has experienced over the past three years rendered the current office setup inefficient and unworkable.

In its grant proposal, MIP identified four major deliverables for its grant project: (1) increase investigative and legal capacity to expedite the exoneration process; (2) increase legal representation services for claims of actual innocence by thirty-five percent; (3) increase cost effective investigative procedures; and (4) increase outreach, and access to inmates seeking exoneration in the six-state region.

Part 3: NACDL Review Process and Findings

Under the guidance of the NACDL Project Coordinator and the Assessment Team, NACDL conducted a thorough review of the grant application documents and grant reports. In addition, on September 16, 2014, the Assessment Team, which was comprised of NACDL Executive Director Norman L. Reimer and NACDL Senior Resource Counsel Vanessa Antoun, conducted a telephonic interview with the MIP's Executive Director Oliver Burnette and

University of Missouri-Kansas City School of Law Associate Professor Laura O’Sullivan, who serves as Senior Counsel for the MIP. Thereafter, at the request of the Assessment Team, the MIP provided additional documentation, including Profit and Loss Statements for the MIP for the period of January 2010 – December 2013, and a narrative of specific achievements which can be correlated to the grant funding.

At the outset, it should be noted that because of the delay in the disbursement of funds under the 2009 grant and the commencement of the 2010 grant the following year, there was chronological overlap between the two grants.³⁵ This complicated the assessment process in terms of attributing some of MIP’s specific achievements to a specific funding year of this grant program, but the Profit and Loss Statements provided by the MIP includes a detailed breakdown of expenditures attributed to each grant. Those statements confirm that the vast majority of the funds provided under the 2010 grant (\$235,400.67) were applied as proposed to fund a Staff Attorney and a Staff Investigator, with the bulk of the balance allocated to additional investigative and expert services, as well as related travel. The MIP did not use grant funds for rental expenses as proposed in the grant, but rather applied all of the grant funds toward either staff or case expenses. The reason they did not use the funds for rent was that they obtained an external benefactor, and rent was waived.

Most Significant Case Outcomes Achieved Through this Grant

The single most notable impact of the grant was the exoneration of Robert Nelson as a result of DNA testing. MIP investigated the case to locate records and witnesses. In addition, the MIP obtained extensive DNA testifying that not only exonerated Mr. Nelson, but also identified

³⁵ Each grant was for a two-year term, the MIP obtained an extension and therefore the overall term for both grants extended from January 2010 through December of 2013.

two actual perpetrators – one of whom was in prison serving time for another crime and another of whom has been apprehended. Charges are pending against that alleged perpetrator.

Additionally, the MIP was able to pursue DNA testing and active litigation in the case of Rodney Lincoln. MIP obtained DNA testing and the results excluded Mr. Lincoln as the source of the hair that was used to connect him to the crime at trial (however, the two young girls who survived the attack that killed their mother had identified Mr. Lincoln as the attacker). The MIP had additional DNA testing conducted on 14 items recovered from the crime scene, and Mr. Lincoln was excluded as a possible contributor – leaving no physical evidence linking him to the crime. However, the state circuit court found that the results were not sufficient to prove Mr. Lincoln’s innocence, and denied his release. MIP appealed that decision and the case is still pending.

Work Throughout the Grant Period

Unquestionably, the additional staff support enabled MIP to enhance its capacity and generated tangible results. Funding enabled the MIP to actively investigate cases in Arkansas, Iowa, Kansas and Missouri, and the project was also able to identify a pool of cases in which DNA testing could result in exoneration. The project then began the process of locating physical evidence in those cases, a process that continued after the end of the grant term. Additionally, the MIP worked with the Innocence Project to transition cases to MIP from the University of Arkansas Innocence Project, which was closed.

The MIP also continued their Freedom Friday community initiative. This program, which was fully described in the assessment of the 2009 grant, involves outreach to the local bar to recruit and train volunteers to assist in the review of potential wrongful conviction cases.

The 2010 grant also enabled the MIP to resolve long-standing case management challenges. The MIP had long struggled to manage documents because it lacked a scanner and case management software. Largely by sharing the success stories that were made possible by the BJA grant, the MIP was able to obtain a corporate grant for the funds necessary to procure the equipment to scan and expeditiously digitize files.

Finally, the BJA grant vastly enhanced the MIP's capacity to more broadly support innocence efforts. Specific examples are the following:

- The MIP's senior counsel filed amicus briefs in at least two important wrongful conviction cases, and organized a panel discussion at the University of Missouri –Kansas City to explicate the issues in one of those cases.
- The MIP partnered with a major law firm (Hughes Hubbard) to procure its assistance in reviewing cases and the MIP provided training sessions to the lawyers to educate them about issues related to wrongful conviction and case processing methods.
- MIP staff engaged in outreach to the public as well as the legal and clerical communities to highlight issues related to wrongful conviction, and regularly provides continuing legal education in various locations to elevate standards of practice related to the investigation and litigation of potential wrongful conviction cases.

Part 4: Conclusion and Remarks

The assessment of the MIP, which was the beneficiary of two consecutive BJA grants that provided significant funding over a four-year period, in many ways reveals the consummate example of how this funding can help address the problem of wrongful conviction. Despite many hurdles, the funding enabled the project to vastly expand its capacity and to achieve tangible

results, including enhanced case processing and actual exoneration of three wrongly convicted individuals,³⁶ as well the identification of two perpetrators. In addition, the project has engaged the legal community to better equip volunteer lawyers to assist in assessing and litigating cases.

But perhaps most importantly, the BJA funding not only helped the MIP to increase its capacity and produce tangible results, but it also provided a critical bridge to enable the MIP to build on that increased capacity and those tangible results to secure other sources of funding. For example, private support for the mission of MIP obviated the need to apply grant funds for rent; an external benefactor stepped in and rent was waived. In a sense, the MIP capitalized on the availability of grant funding to pursue other revenue streams. Thus, a project that was seriously overloaded and under-resourced prior to the BJA support was able to use the funding to build a stable and sustainable infrastructure, ensuring that a large region of the country will continue to have the services of a first rate innocence project to address the persistent problem of wrongful conviction.

³⁶ Two of these exonerations (Helmig and Price) were discussed in the 2009 assessment.

New England Innocence Project

Part 1: Program Prior to the Grant

The New England Innocence Project (NEIP) is a non-profit organization that provides pro bono legal representation to people with claims of actual innocence who were convicted in New England (Maine, Massachusetts, Vermont, New Hampshire, Connecticut, and Rhode Island). NEIP was founded in 2000 and originally only took cases where DNA testing could prove a person's innocence. However, in 2009, NEIP expanded its mission to accept cases where other evidence could establish factual innocence.

Located in Boston, Massachusetts, NEIP has established working relationships, including internships and externships, with professors and law students from the six surrounding law schools. Over the years, NEIP has cultivated relationships with attorneys throughout the New England area who are willing to represent NEIP's clients on a pro bono basis. NEIP has also developed a relationship with the Committee for Public Counsel Services Innocence Program (CPCS), a unit of the public defender office in Boston, wherein NEIP conducts screening and initial investigation of incoming cases from Massachusetts and joins with CPCS for case litigation to seek exoneration.

Since its inception, NEIP has maintained a small staff and has relied on student volunteers and attorneys to review, investigate, and litigate cases. The review process begins with an inmate sending NEIP a completed application for assistance. NEIP staff and students review the application to make sure (a) the person was convicted in one of the New England states and (b) the person has a claim of innocence. From there, students begin a review of the case file (police investigation reports, trial testimony, crime lab or other forensic analysis

reports) and write a memorandum on the facts, evidence, procedural history, and claim of innocence. NEIP staff helps screen out certain cases and others cases proceed to NEIP's Case Review Committee.

The Case Review Committee (CRC), composed of NEIP Board Members and others with experience in the criminal justice system (defense attorneys and former prosecutors), is presented with the case memo and an in-person presentation of the facts, any newly discovered evidence, and investigative leads to pursue to prove innocence. The CRC evaluates the strength of the claim and the legal and investigation avenues ahead. The CRC then votes on whether to accept the case, and, if accepted, NEIP then contacts attorneys interested in taking the case on a pro bono basis.

From 2008-2009, NEIP processed nearly 400 requests for legal assistance. At the time NEIP applied for this grant, it had 12 cases pending CRC evaluation and 29 cases accepted by the CRC that were undergoing additional investigation or in stages of litigation. NEIP's case load has continued to grow because (1) in 2009, NEIP expanded its mission to also review cases where other forensic evidence – not just DNA - could be used to prove a claim of innocence, thus accepting more cases than ever before, and (2) the rising number of exonerations in New England and nationwide has led to awareness among the prison population and more applications for NEIP's pro bono legal services.

Part 2: Grant Request

NEIP sought \$253,540.00 under the BJA Wrongful Conviction Review Program to fund a full-time staff position and create an investigation and litigation support fund to aid the screening of incoming cases and assist with coordinating and financing the expert forensic

review, analysis, and consultation needed to identify evidence of innocence. The grant was originally intended to fund to fund a full-time Intake Case Coordinator position, but the budget was modified with the permission of BJA in June 2011 (at no additional cost) to include a part-time Marketing and Outreach Assistant to help with attorney trainings, and create an online “Knowledge Center,” and procure services necessary to upgrade the NEIP computer database.

Prior to this grant request, NEIP did not have a full-time Intake Case Coordinator. Through its years of work and expanded mission – leading to more cases than ever to review and investigate, NEIP identified this as a necessary position. The Intake Case Coordinator would be responsible for tracking every case at all levels of review, including collecting and maintaining case files; training the law students and volunteers, as well as overseeing their work on each assigned case; facilitating case review meetings; maintaining the database; and communicating with members of the Case Review Committee and all pro bono attorneys on the status of cases entering litigation.

Due to the expansion of the NEIP mission in 2009, the increasing caseload produced a need for NEIP staff to become knowledgeable on additional forensic disciplines and hire experts in the various forensic fields to review cases and evaluate evidence to identify potential cases of wrongful conviction. NEIP envisioned that investigation and litigation support fund under the grant would allow the organization to aid the pro bono attorneys with resources needed for the case work, including funds for a professional investigator and expert analysis and consultation on forensic evidence necessary to complete the review of a case.

Finally, the Marketing and Outreach assistant was needed to help the executive director implement a training program for New England attorneys and law enforcement members. The outreach assistant would also be responsible for upgrading the NEIP website and collecting

litigation materials, research on wrongful conviction cases and causes, and other materials to educate attorneys, the public, and policy makers.

Part 3: NACDL Review Process and Findings

Assessment Team members Maddy deLone, Executive Director of the Innocence Project, Vanessa Antoun, NACDL Senior Resource Counsel, and Lindsay Herf, NACDL Post-Conviction Project Counsel, thoroughly reviewed the grant application documents, activity reports, modification requests, and the NEIP website content. On June 20, 2014, those three Assessment Team members conducted a telephone interview with NEIP's Intake Case Coordinator and Staff Attorney. The Advisory Committee consultant, Daniel S. Medwed, did not participate in the review process for this Grantee because he is currently a member of NEIP's Board of Trustees. Due to an initial delay in receiving funding, implementation of the grant began February 1, 2011, and ran through August 30, 2013.

Most Significant Case Outcomes Achieved Through this Grant

In 2011, NEIP became involved in John Grega's case in Vermont. In September 1994, Mr. Grega, his wife, and their two and a half year-old son were vacationing in West Dover, Vermont.³⁷ Mr. Grega and his son returned to the condominium to find his wife murdered. The medical examiner noted trauma to the victim's anus and swabbed the area to collect any physical evidence of a possible sexual assault. State authorities focused on Mr. Grega and, without any other apparent suspects, ultimately charged him with sexual assault and first degree murder. Mr. Grega was convicted in 1995 and sentenced to life without the possibility of parole, the first defendant in Vermont's history to receive a natural life sentence.

³⁷ Grega and his family lived in Long Island, New York.

Beginning in 2010, Mr. Grega's defense attorney, Ian Carleton, sought post-conviction DNA testing of the physical evidence under the Vermont post-conviction DNA testing statute. In 2011, the court ordered DNA testing of eight items by the Vermont state crime lab. In May of 2012, the lab issued results eliminating Mr. Grega as the contributor of the male DNA present on the anal swabs, showing that he did not sexually assault and murder his wife.

The State sought additional time and testing so they could determine whether that unknown male DNA belonged to other males who had access to the condo the Gregas had rented. The State had the lab compare the DNA profile with: (1) the owner of the condo where the murder occurred, (2) the condo rental agent, (3) the state medical examiner, (4) the regional medical examiner, and (5) the state trooper assigned to the medical examiner's office. The State was seeking clarity on whether the male DNA (found inside the victim's anus) could have come from any of these men with access to the scene or access to the victim's body (including potential contamination of the sample through handling by law enforcement or lab personnel). All of these men were also excluded as the donor of the male DNA found inside the victim.

This evidence was the basis for Mr. Grega's Motion to Vacate the conviction, filed by Mr. Carleton in July 2012, after the crime lab completed DNA testing on the five "elimination" samples. In August 2012, the prosecution agreed that Mr. Grega was entitled to a new trial based on the new DNA evidence and the court ordered his release from prison. On August 22, 2012, Mr. Grega regained his freedom, after 18 years in prison. The following year the state declined to re-try Mr. Grega and dismissed the case.

Work Throughout the Grant Period

NEIP used the grant funds in its work on the first DNA exoneration in Vermont. During the first reporting period (February 1, 2011 – June 30, 2011), NEIP received 120 new requests for assistance. NEIP used grant funds to hire an interim Intake Case Coordinator and a Marketing and Outreach Assistant, and to engage a private investigator to work on three different cases under review. NEIP had 26 cases in various stages of litigation, handled by pro bono or court appointed attorneys and 17 cases in active investigation - including searching for physical evidence, meeting with state's attorneys to discuss DNA testing on evidence, and other case review tasks. NEIP held an Innocence Litigation Training Conference on June 17, 2011, which had 120 attendees including attorneys, judges, and law enforcement personnel. The topics included the 2009 NAS Report, advancements in DNA testing technology, developments in fire science and arson investigation, and eyewitness identification. Also, NEIP held its training orientation for the new student interns to educate them on the causes of wrongful convictions and how to conduct a post-conviction review of a criminal case.

During the second reporting period (July 1, 2011 – December 31, 2011), NEIP received 98 new requests for assistance. The permanent Intake Case Coordinator (Criselda Ruiz) replaced the interim person. Ms. Ruiz is responsible for the case management process, including directing the case initial review process and training attorneys and law students on how to conduct case reviews. Ms. Ruiz created a more organized case tracking process, updating the box tracking system to better track all case materials within the NEIP office. NEIP's private investigator was tasked with five more cases in need of professional investigation to determine whether new facts or evidence exist to support the claim of innocence. The Marketing and Outreach Assistant began reviewing database systems to determine the best fit for NEIP.

During this second period - in July of 2011 - a certain “closure” was reached for Massachusetts exoneree Anthony Powell. In 1992, Powell was convicted of kidnapping and sexual assault. In 2002, Powell sought DNA testing which ultimately proved his innocence. The male DNA profile obtained from the rape kit evidence was uploaded into the national DNA database and “hit” to Jerry Dixon, whose DNA profile was in the database for an unrelated crime. In July of 2011, Dixon pled guilty to the 1991 crime for which Powell was wrongly convicted. This news in the Boston area brought renewed attention to NEIP’s work and the importance of post-conviction DNA testing to resolve claims of innocence.

During the third reporting period (January 1, 2012 – June 30, 2012), NEIP received 86 new requests for assistance. Work accomplished during this period led to four cases nearing DNA testing and five cases in litigation for post-conviction relief. Notably, Massachusetts passed a Post-Conviction DNA Testing statute, which Governor Patrick signed into law on February 8, 2012, making Massachusetts the 49th state to enact a DNA access law. NEIP worked with other criminal justice stakeholders to educate legislators on the importance of this law.

Also during this period, NEIP became involved in John Grega’s case out of Vermont (discussed in detail above). Grega was convicted of sexual assault and murder in 1994. NEIP assisted in providing funding and resources for DNA testing and expert consultation. NEIP also assisted with legal research and provided Grega’s lead attorney with DNA exoneration cases as references, as Vermont had no case law offering guidance on new DNA test results being used to meet the threshold to vacate a conviction.

Finally, NEIP held its second annual training on forensic science and innocence litigation on June 29, 2012. NEIP reported 130 attendees came to the training, which focused on interrogations and false confessions, DNA testing – mixture and contamination issues, flaws in

the diagnoses of shaken baby syndrome, and other advances in forensic science. The grant funded Marketing and Outreach Coordinator was largely responsible for the coordination of this training.

During the fourth reporting period (July 1, 2012 – December 31, 2012), NEIP received 98 new requests for assistance. The Intake Case Coordinator managed the review of incoming cases, facilitated meetings or assisted with pleadings seeking DNA testing in 15 cases (through litigation or agreement with state’s attorneys), and served as the point person between NEIP and pro bono counsel on 24 different cases in various phases of litigation. The Marketing and Outreach Coordinator made significant progress in collecting research on a variety of wrongful conviction issues and making them available on NEIP’s “Knowledge Center” portion of the website. Additionally, NEIP made progress on creating its new case database system by meeting with numerous software consultants and experimenting with different database options. NEIP continued providing resource assistance to John Grega’s defense team in Vermont. In August of 2012, the court granted Grega’s request for a new trial based on the new DNA results in his case. The state of Vermont dismissed the charges against John Grega, who was released after 18 years of incarceration. Grega was the first man to be exonerated by DNA evidence in Vermont.

In the fifth period of the grant (January 1, 2013 – June 30, 2013), NEIP processed 132 new requests for assistance. NEIP secured funding to hire another attorney, who began work this period and greatly assisted the Intake Case Coordinator in the review and investigation of incoming cases. The Intake Case Coordinator held six case meetings which resulted in the review of 59 cases. The Case Review Committee met twice to evaluate five different cases, and ultimately accepted two cases to proceed to additional investigation and committed resources to help develop the legal claims. Significant progress was made on upgrading and customizing the

NEIP computer database. The Intake Case Coordinator was intimately involved in this process, as she is most familiar with the information obtained and tracked on each case to make most efficient use of the database. The NEIP Outreach Coordinator, along with the new staff attorney, partnered with the Massachusetts Chief of Police on an Eyewitness Misidentification Project. This Project collected and analyzed the different eyewitness identification policies of the law enforcement agencies within the state. The analysis was ultimately included in the Massachusetts Supreme Court's Eyewitness Identification Study Group report issued in July 2013.³⁸

In the final period of the grant (July 1, 2013 – August 30, 2013), NEIP processed 44 new requests for assistance. The Intake Case Coordinator and staff attorney held case review meetings where 25 new cases were reviewed and decisions were made regarding whether the case would proceed. Grant funds were used for professional investigations on two new cases and for DNA testing on two new cases. NEIP expanded its Eyewitness Identification Project to Vermont after the successful partnership with the Massachusetts Chief of Police. In addition, NEIP held its third annual Innocence Litigation training seminar in July of 2013. NEIP ended the grant with 35 cases in various stages of litigation with the aid of pro bono attorneys from within the NEIP network.

Challenges Faced Under the BJA Grant

NEIP reported that it faced minimal challenges in implementing the BJA grant. An initial challenge was the grant funds were not available until February of 2011. This initial delay ultimately led to NEIP's request for a no-cost extension through August 30, 2013, which BJA granted. NEIP reported that launching the new database took longer and was more costly than

³⁸ *Supreme Judicial Court Study Group On Eyewitness Evidence: Report And Recommendations to the Justices* (June 25, 2013) <http://www.mass.gov/courts/docs/sjc/docs/eyewitness-evidence-report-2013.pdf>

expected. Due to changing needs. NEIP also had to make three different budget modification requests during the course of the grant, all of which were granted by the BJA.

Part 4: Conclusions and Remarks

A portion of the grant was used for litigation expenses, and some of those funds were utilized in freeing a wrongly convicted man, John Grega, which is the ultimate goal of this grant program. The funding also allowed NEIP to greatly improve the intake process and case management system, both through the work of the Intake Case Coordinator and the Marketing and Outreach Coordinator's implementation of a new, enhanced database for all aspects of case tracking. NEIP was able to retain Ms. Ruiz, who was hired as the Intake Case Coordinator, and she transitioned into a Staff Attorney/Case Director position and now acts as co-counsel on some of their cases. This demonstrates how the addition of one position can have lasting benefits beyond the grant term, as that individual takes on greater responsibility and continues to work for the organization.

Innocence Project New Orleans

Part 1: Program Prior to the Grant

The Innocence Project New Orleans (IPNO) was founded in 2001 and today it is the second largest non-profit, free-standing (not financially connected to a law school or undergraduate institution) innocence project in the United States.³⁹ IPNO blossomed from what began as a two-year Equal Justice Works attorney fellowship, hosted by another organization. Over the last decade IPNO grew into a free-standing project with a staff of eight people as well as legal interns. IPNO is the only organization that offers pro bono legal representation to indigent inmates in Louisiana and Mississippi with claims of innocence resting on DNA and non-DNA evidence. In 2007, IPNO helped found Resurrection After Exoneration, the nation's first exoneree led holistic re-entry program providing assistance to other Louisiana exonerees upon release. IPNO also helped raise seed money and conceptualize the University of Mississippi Law School Innocence Clinic, which was established in 2007. The Mississippi Innocence Project accepts cases from the northern half of Mississippi while IPNO accepts cases from the southern half of Mississippi.

At the time of the 2010 BJA grant application, IPNO had exonerated 15 innocent people. This is a significant feat in a justice system where post-conviction investigation and litigation often takes years to complete. Three of the fifteen cases were overturned on DNA test results, and the remaining 12 cases were overturned based on a combination of DNA evidence and other evidence demonstrating innocence.

³⁹ The Innocence Project, Inc. in New York is the largest non-profit innocence project in the U.S.

Louisiana and Mississippi have the highest incarceration rates per capita (Louisiana has 4.6 million people with 39,726 incarcerated; Mississippi has 2.985 million people with 21,313 incarcerated). Neither state is immune from wrongful convictions. In Louisiana, 25 people were exonerated from 1990-2010. In Mississippi 5 people were exonerated from 2006-2010. Notably, both Mississippi and Louisiana have thousands of inmates serving life without parole sentences, many of whom were convicted decades ago, prior to DNA testing technology, and none of whom are entitled to an attorney to help them now.⁴⁰ Through IPNO's case reinvestigations, it has found that for decades the quality of indigent defense was poor: defense attorneys were assigned a high volume of serious felony cases and lacked proper training, litigation experience, funding for investigations, experts, or independent examinations, and lacked sufficient time to prepare for trial. Also, Louisiana is notorious for prosecuting agencies withholding exculpatory materials from defendants, which has led to numerous wrongful convictions. Thus, all inmates with a claim of innocence now turn to the non-profit IPNO for assistance.⁴¹

Since IPNO's inception in 2001, it has received over 3,250 requests for help from incarcerated men and women. IPNO employs a five step process of review.

- 1) Review inmate's application and assign grade to it.
- 2) Filter out all applications previously graded "A" for need of further review under Beyond New Orleans Program, grade incoming applications to identify cases for further review, spot-check previously reviewed applications to ensure most appropriate cases are selected
- 3) Consult ICS (Inmate Counsel Substitutes) at Angola Penitentiary for priority cases new to the project⁴²

⁴⁰ In Louisiana, only defendants on death row have a right to counsel for post-conviction relief proceedings.

⁴¹ IPNO does not accept every defendant's case. IPNO is limited by resources and by the case information available to the Project during its review. Therefore, many defendants will not receive any legal assistance to litigate their post-conviction relief claims.

⁴² IPNO reports that ICS acts as a screener and referral source of potential innocence cases.

- 4) Assign an investigator to cases outside New Orleans for Phase 2 investigation consisting of determining procedural posture; conducting comprehensive document collection and review (including transcripts and records, police and prosecution documents via public records requests, prior counsel's files); and investigating witnesses, informants, possible alternate perpetrators, and other leads.
- 5) Interview material witnesses; Exhaust records research; Obtain expert forensic analysis or re-analysis of evidence; Present case to IPNO's Case Review Panel for vote on whether case should proceed to litigation of claims

IPNO's current staff of attorneys, investigators and administrators allows for litigation of 13-17 cases and investigation of 15-20 cases at a time. At the time of the BJA grant application, IPNO had 13 cases in litigation and 18 cases under active investigation - the majority of those cases were from New Orleans (New Orleans Parrish and Jefferson Parrish). In 2010 alone, INPO achieved eight exonerations.⁴³ Based on the heavy work load, IPNO sought grant funding to tackle case reviews and investigations for convictions outside of New Orleans. Approximately only 25% of Louisiana's convictions occur in New Orleans. Therefore, a large volume of convictions, and undoubtedly some wrongful convictions, originate in other parts of the state and defendants convicted outside New Orleans have applied to IPNO for help. Lacking the resources, time and travel funds needed to collect documents and start investigation on additional cases throughout Louisiana and southern Mississippi, IPNO's ability to take on cases outside New Orleans was paralyzed.

⁴³ In 2010, IPNO achieved eight exonerations in the following cases: Jimmie Bass (March 1, 2010), Larry Ruffin (September 1, 2010), Anthony Johnson (September 15, 2010), Bobby Ray Dixon (September 16, 2010), Phillip Bivens (September 16, 2010), Terrence Meyers (September 24, 2010), Larry Delmore (September 24, 2010), and Glenn Davis (September 24, 2010).

Part 2: Grant Request

IPNO requested \$167,898.00 to fund the “Beyond New Orleans Project” designed to jumpstart case review (court and police record collection and analysis), investigation, and litigation of DNA and non-DNA claims of innocence from defendants convicted outside of New Orleans but within Louisiana and southern Mississippi. Specifically, IPNO sought BJA funds for the work of an investigator, including statewide travel for case investigation tasks throughout Louisiana and southern Mississippi; expert consultation and/or re-analysis of forensic evidence; and improved case management technology.

At the time of the 2010 application, IPNO had approximately 135 cases in queue for review and further investigation. Of the 135 cases, IPNO will select 30 of the most promising cases for more thorough review and investigation utilizing the grant funds. After completing that process, IPNO will select appropriate innocence claims for litigation of DNA testing and post-conviction relief claims.

Under IPNO’s grant proposal, the grant funded investigator would work with the case manager, supervising attorney, and IPNO director on investigation tasks for each selected case. Case investigation begins with obtaining all necessary documents for review of the pertinent facts and procedural history; this includes contacting state agencies to secure case files or evidence. The investigator was needed by IPNO to obtain files, inspect evidence, interview witnesses, and meet with defendants in prison, among other tasks. In addition, some cases require expert review of forensic, scientific, or medical evidence. Grant funds would be used to hire experts on a contract basis as needed.

As case reviews and investigations proceed, IPNO determines which cases are most appropriate for DNA testing or post-conviction litigation. The Executive Director and Case Manager are involved in all decisions on case work from Phase 2 through the litigation process. IPNO's Case Review Panel, comprised of independent criminal attorneys, reviews each proposed case and the supporting evidence and decides which cases should proceed to litigation, based on the strength of the evidence and the chances of success.

The IPNO team consists of Executive Director Emily Maw, who joined IPNO in 2003, and four staff attorneys. Each staff attorney began as an intern at IPNO and upon graduation and bar admission returned to IPNO for attorney positions. The staff attorneys oversee the work of legal interns and volunteers. Prior to the grant, IPNO used private investigators to conduct the majority of investigative tasks. Finally, IPNO has an office manager who is responsible for the oversight of daily operations, funding, fundraising and events, public awareness, and exoneree support.

IPNO's case work budget is \$700,000 per year. In 2010, IPNO received a grant of \$400,000 from the state of Louisiana. However, the grant funds could only be used on Louisiana convictions (not Mississippi) and only for litigation *after* a court grants a hearing on the post-conviction relief claims. There are thousands of hours of case review, on the ground investigation, documents location and collection, expert review, and forensic re-analysis that is necessary *prior to* any litigation or court filing. Thus, IPNO developed a specific plan for the BJA funds to fill this critical need: support investigations on cases all over Louisiana and southern Mississippi to identify the most appropriate cases for post-conviction relief. Finally, a small portion the BJA funds would be used to purchase better software for case and data tracking and to hire a part-time paralegal to transfer existing data into the new software program.

Part 3: NACDL Review Process and Findings

The Assessment Team conducted a thorough review of the grant application documents including financial and activity reports as well as a site visit. Barbara Bergman, Professor at the University of New Mexico Law School and NACDL Past-President, and Lindsay Herf, NACDL Post-Conviction Project Counsel, traveled to IPNO's office in New Orleans on March 7, 2014. Professor Bergman and Ms. Herf interviewed IPNO Director Emily Maw, two staff attorneys, and their legal interns.

Work Throughout the Grant Period

In its first quarter of the grant (October 1, 2010 to January 1, 2011), IPNO completed the initial screening review of 130 applications that had been flagged for additional case review and fact investigation. The initial screening included review of the application materials submitted by the inmates. IPNO contacted the inmate directly to obtain additional case information when needed. Of the 130 applications, IPNO identified 30 cases to proceed to further review and fact investigation. Eleven of the thirty cases were deemed "high priority." A review team including the case manager, attorneys, and investigator met to develop investigation plans for the 30 cases, which included travel by the investigator to parishes throughout Louisiana to track down case files from courts, clerks, and police agencies. This was necessary so that IPNO would have a complete case file to begin its thorough review of each case.

During this period, IPNO received 57 new applications for assistance which underwent initial screening by the IPNO staff. IPNO consulted with Inmate Counsel Substitute (ICS) staff at Angola prison for help with screening potential IPNO clients. ICS staff helps inmates prepare applications to IPNO - ensuring all questions are answered and all requested documents are

supplied to IPNO for initial review. Finally, although not attributable to this grant because the work occurred before the grant began, it is notable that IPNO concluded litigation resulting in the exoneration of three individuals: Phillip Bivens, Bobby Dixon, and Larry Ruffin. Tragically, Ruffin had died in prison in 2002 and was exonerated posthumously, and Dixon died less than three months after his release.

In the second reporting period (January 1 to June 30, 2011), IPNO added four cases to the initial group for a total of 34 cases selected for more thorough case review and fact investigation. IPNO began document collection in all 34 cases, which required sending public records requests to police agencies and prosecution offices in search of documents and records. IPNO reported that the response time from the state agencies differs and there is often a long waiting period (many months) from the time the request is made to the time documents are produced, which in turn, delays IPNO's ability to begin a detailed case review.

IPNO completed case memoranda in 14 of the 34 cases.⁴⁴ IPNO selected eight cases to proceed to full investigations, based on additional information learned about the cases during the review and investigation process. IPNO interviewed three inmates through "legal visits" and legal scheduled legal visits with other inmates whose cases have been accepted for Phase 2 investigation.⁴⁵ In three other cases, IPNO's investigation efforts uncovered records which had not previously been disclosed to the defense. IPNO delved further into the records and evidence in each case and analyzed whether discovery of the new information constitutes a *Brady*

⁴⁴ IPNO's case memoranda consolidate the essential information about the case, including the facts of the crime, the evidence used at trial, the weaknesses of the state's case, forensic evidence and results from expert analysis, procedural history, and issues IPNO finds necessary to further investigate.

⁴⁵ Setting up legal visits with inmates in prison can be a timely process. Prisons require security clearance and even after the required documents are submitted for clearance, it can take weeks for the prison to confirm a visit.

violation as a basis for post-conviction relief.⁴⁶ IPNO also completed an initial evaluation and grading analysis for 106 new applications for assistance received during this reporting period.

In the third reporting period (July 1, 2011 to December 31, 2011), the IPNO Case Review Panel voted for three IPNO cases to proceed to litigation with applications for post-conviction DNA testing.⁴⁷ Case review and fact investigation continued in eight cases, including travel to the prisons for interviews with the eight inmates. IPNO's investigator traveled to "far-flung corners" of Louisiana and Mississippi to collect documents, interview witnesses, and actual view physical evidence to confirm its existence. IPNO accepted three new cases to proceed to Phase 2 investigation. At this time, IPNO had accepted 37 cases for Phase 2 review (exceeding the projected 30 cases under grant application). IPNO also received 94 new requests for assistance and consulted with three different experts, including a forensic video enhancement expert from California who worked *pro bono* on the case; a latent print examiner from California who worked *pro bono* on the case; and a forensic scientist from Louisiana.

Although these cases were not part of the grant funded project because they were in Jefferson Parish and therefore not "Beyond New Orleans," it is important to report that IPNO did achieve two exonerations in the cases of Henry James⁴⁸ (October 21, 2011) and Michael

⁴⁶ Under *Brady v. Maryland*, a due process violation occurs when the prosecution withholds evidence favorable to the defendant that is material to the guilt, innocence, or punishment of the defendant.

⁴⁷ One case involved a sexual assault conviction from East Baton Rouge Parrish. At the time of filing for DNA testing, the state could not confirm whether the victim's clothing and rape kit still existed and could be produced for DNA testing. Another other case involved a murder conviction from Ouachita Parrish.

⁴⁸ In 1982, Henry James was convicted of aggravated rape in Jefferson Parrish. The main evidence against him was the victim's identification of James as her assailant. Serology was performed on semen samples and showed the donor was a non-secretor, meaning his blood type cannot be detected through other bodily fluids, like semen. Mr. James, however, was a secretor. Nonetheless, James was convicted and sentenced to life in prison with no chance at parole. In 2011, after numerous searches for evidence in his case turned up empty, the rape kit evidence was found in the file of another case. Prosecutors agreed to DNA testing, the evidence was soon submitted to DNA analysis, and the results excluded Mr. James as the donor of the semen. Mr. James was released from prison on October 21, 2011, and fully exonerated soon thereafter.

Williams⁴⁹ (November 19, 2011). Work on both cases demonstrates the time and resources necessary to review and investigate claims of innocence to correct an injustice.

In its fourth reporting period (January 1, 2012 to June 30, 2012), IPNO filed a petition for post-conviction DNA testing in a second case out of East Baton Rouge Parrish, making it the third case to proceed to post-conviction litigation under the Beyond New Orleans Program. During the investigation, IPNO had found exculpatory evidence not previously disclosed to defense. IPNO also investigated a 1980 case out of Jackson, Mississippi and the IPNO Case Review Panel then voted to proceed with litigation for post-conviction DNA testing.

Since the beginning of this grant, IPNO sought case documents from the Lafayette Police Department, which were never produced. After over a year of delays, IPNO filed a civil suit against the LPF for failure to comply with the Public Records Law of Louisiana. A hearing was set for August 2012. By the end of the grant, IPNO had won the civil suit against the Lafayette Police Department and was awarded access to all documents and case materials it sought in its initial request, as well as compensation for the filing fees in the civil suit.

IPNO accepted three new cases for record review and fact investigation under the Beyond New Orleans program. This represents a total of 40 cases undergoing a Phase 2 investigation – exceeding the projected 30 cases. Fact investigations and document collection continued on eleven cases. During this period, IPNO also received and screened 163 new applications for assistance. Additionally, case review and fact investigation led IPNO to close

⁴⁹ In 1996, Michael Williams was convicted of second degree murder in Jefferson Parrish and sentenced to life in prison without parole. In 2009, IPNO began investigating the case when the main witness recanted his story and admitted he would have faced murder charges if he didn't implicate Williams. Through re-investigation, IPNO discovered this witness had given numerous inconsistent, conflicting statements to police, which also conflicted with other evidence. IPNO presented its findings to the Jefferson Parrish District Attorney's Office, which after conducting its own investigation into the case, joined IPNO in a motion to overturn the conviction. Williams was freed on November 18, 2011.

cases based on evidence that the case is not appropriate to pursue. IPNO ended this period with three cases in post-conviction litigation in Ouachita Parrish (Monroe, LA) and East Baton Rouge Parrish.

Also, during this reporting period, IPNO helped exonerate Darrin Hill on April 27, 2012. Hill was convicted for a 1992 sexual assault and confined in a mental hospital for 20 years. The physical evidence from the case was discovered by an evidence clerk while cataloguing evidence pursuant to the National Institute of Justice grant IPNO helped secure for New Orleans Parish. IPNO moved for DNA testing and the State agreed DNA testing was appropriate. The DNA test results showed Hill was excluded as the source. Hill was soon exonerated, released from confinement and reunited with his mother.

In the final reporting period (July 1, 2012 to December 31, 2012), IPNO commenced litigation in the 1980 Jackson County, Mississippi case by filing a Motion for Leave to Proceed in Trial Court, which was granted, and then filing an Application for Post-Conviction DNA testing in the Jackson County trial court.⁵⁰ Jackson County state agencies had not yet confirmed whether the physical evidence had been located at the time the petition was filed. As noted above, IPNO had commenced litigation in two cases from East Baton Rouge Parrish. In one of those cases, the physical evidence could not be located for over a year. Then, during this reporting period, an evidence clerk in Livingston Parrish – a totally separate jurisdiction - found the evidence, which had been mislabeled and stored in wrong place. Also, IPNO's investigation on a Marshall County, Mississippi case produced favorable DNA results on an item from the

⁵⁰ This motion was filed in the Mississippi Supreme Court because Mississippi procedural rules require a defendant to first seek permission from the Supreme Court before proceeding with a post-conviction claim in trial court.

murder. This case required additional evidence to conclusively prove innocence and thus IPNO began to pursue further fact investigation.

IPNO commenced litigation in a new case out of Caddo Parrish (Shreveport, Louisiana), seeking post-conviction DNA testing and post-conviction relief based on a *Brady* violation discovered during IPNO's investigation. Additionally, IPNO continued detailed fact investigation in eleven cases, closed two cases and continued record review in nine other cases. IPNO received 159 new requests for assistance this period.

IPNO ended the grant with remarkable success, exceeding nearly all of the goals set in the application. From a pool of 135 cases, IPNO identified 44 cases to pursue under the grant. After document collection and Phase 2 review, 13 of the 44 cases were selected for a full re-investigation. Due to work under the grant, five new cases were sent to the Case Review Panel, which voted to proceed to litigation. IPNO ended the grant with six new clients seeking post-conviction relief.

Challenges Faced Under the BJA Grant:

IPNO reported a few challenges during the implementation of this grant; these are mainly systemic challenges. First, IPNO reported that obtaining records and case materials from state agencies in a *timely* manner was a challenge they faced repeatedly. Certain agencies refused to abide by the Louisiana public records laws and/or did not properly maintain records in a particular case. Without these records and documents IPNO is unable to further investigate the case. IPNO reported:

“The most significant obstacle, both to our case review and to the broader goal of transparency in the criminal justice system, is the refusal or inability of records custodians in the region to comply with public records laws and provide records to which

the public is entitled. Louisiana has an extensive theoretical right of access to law enforcement and prosecution files once a conviction is closed under the Louisiana Public Records Act (“PRA”). In practice, however, most records custodians, especially those outside of metropolitan areas, are infrequently asked for records, are not used to complying with the PRA, and fail to do so. The problem our office faces is that these records are absolutely crucial for Stage 2 review of a non-DNA case. 13 of IPNO’s 21 victories have been won because we obtained law enforcement or prosecution records that either proved or strongly supported the person’s claim of innocence. Despite a statutory right of access to these crucial records, agencies routinely refuse to honor the law. As a result, we have a backlog of 13 Stage 2 cases, including several begun under the 2010-12 BJA grant, awaiting further review while we indefinitely await responses from records custodians.” - Jene O’Keefe Trigg

Second, state agencies did not respond or did not confirm whether physical evidence had been located, has been destroyed, or if the agency was still searching. Third, IPNO’s progress in a case is often delayed by the slowness of the court system and the passage of time before receiving a response from the District Attorney’s Office or a ruling from the court in which a petition was filed. Finally, IPNO reported that illiteracy can be a barrier, because much of the communication between an inmate and IPNO, at least initially, is conducted through written materials. If an inmate cannot adequately read and communicate in writing, it is extremely difficult for IPNO to fully understand their claim of wrongful conviction and the evidence that supports it. Adding to this problem is the fact that some individuals, for a variety of reasons, do not fully comprehend what occurred at trial or the issues that were raised on appeal, and therefore are unable to communicate that important information to IPNO on the application form.

Part 4: Conclusion and Remarks

Over the two-year grant period, IPNO selected 40 cases out of hundreds of applications to undergo a thorough record review and fact investigation through the “Beyond New Orleans” program. This exceeded the projected number of 30 cases outlined in the grant application. Each

of the 40 cases underwent record collection from jurisdictions all over Louisiana and southern Mississippi, as well as fact investigation and evidence location in appropriate cases. The in-depth investigation and record review led six cases into post-conviction litigation for DNA testing and/or relief based on Brady violations. When the grant ended, these six cases were still in litigation. Exonerations may result as the cases proceed through the legal system. But the Assessment Team notes that IPNO achieved 6 exonerations in cases that were not part of the grant program. IPNO accomplished its main goals for the “Beyond New Orleans” program to jumpstart investigation of cases from jurisdictions outside New Orleans in an effort to identify cases of actual innocence and pursue exoneration.

Office of the Appellate Defender

Part 1: Program Prior to the Grant

Based in New York City, the Office of the Appellate Defender (OAD) is a nonprofit, 501(c) (3) organization that endeavors to provide high-quality, client-centered appellate representation and services to indigent New Yorkers convicted of felony crimes. Founded in 1988, OAD is the second longest standing institutional indigent defense provider in New York City. It contracts with the City to represent 160 indigent defendants on direct appeal of their conviction.

Traditionally, wrongful conviction claims are not pursued until after the litigation of direct appeals has been completed. This leads to a number of unfortunate consequences. First and foremost, a potentially innocent defendant remains in custody, sometimes for a period of many years. Aside from this obvious injustice, the delay results in the unnecessary expenditure of taxpayer dollars to incarcerate the wrongfully convicted individual, as well as the costs of appellate litigation. Additionally, the passage of time can result in the loss of evidence critical to establish innocence. Finally, the failure to promptly pursue a wrongful conviction claim may leave an actual perpetrator free to inflict greater harm upon society. Since direct appeals are generally limited to litigating questions of law and fact that appear on the record of the proceedings below, it is not possible to develop claims of innocence based upon facts and circumstances that are not reflected in that record.

In late 2007, OAD launched “The Reinvestigation Project,” which established an “early intervention model” to screen, reinvestigate, and litigate claims of innocence *before* direct appeal, rather than requiring defendants to exhaust their appeals before they are eligible for

assistance, as is the requirement with most innocence efforts. This requirement stems from the state procedural rules and the state laws which both establish and limit the ways in which an individual may pursue post-conviction innocence claims. The object of the Reinvestigation Project was to take advantage of various unique procedural mechanisms available in New York to pursue innocence claims without the necessity of perfecting and exhausting all available direct appeals. The Project reviews cases assigned to OAD for direct appeal to identify those that rested heavily or exclusively on evidence that is known to frequently underlie wrongful convictions: eyewitness identifications, faulty forensic science, and confessions. To identify these cases, the Project sends a questionnaire in English and Spanish to the defendant in each case assigned to OAD, asking detailed questions about the facts presented at trial, the use of physical and forensic evidence, eyewitness evidence, and the circumstances under which any incriminating statements were made. Where screening shows one of these “red flags,” the Project conducts a preliminary (Phase I) investigation, in which the Project interviews trial counsel about areas that call for reinvestigation, specifically focusing on the use of questionable or unreliable evidence. Where the Phase I investigation demonstrates that further evidence of wrongful convictions can be uncovered, the Project conducts a more intensive (Phase II) investigation. Where the Phase II investigation is fruitful, the Project brings the case to litigation. In 2009, the Project screened sixty cases, conducted six Phase I investigations, five Phase II investigations, and litigated three cases. In 2008, the Project screened 58 cases, reinvestigated eight cases, and litigated three cases. They were still litigating the six cases filed in 2008 and 2009 at the time of the grant request.

Prior to the grant funding, the Project consisted of one part-time staff member, the Project Director. The Director worked full-time for OAD, and devoted half of that time to the Project. She performed all of the case screening, developed reinvestigation strategy, conducted the

reinvestigations, and litigated the cases (either solo or with co-counsel). Because she split her time between the Project and regular OAD duties, the Director was also responsible for a docket of direct appeals. The Project also runs a Criminal Appellate Defender Clinic at New York University School of Law, and receives some help from law student volunteers through that program.

Part 2: Grant Request

OAD sought federal funding primarily to expand the Reinvestigation Project to its entire 160 annual case assignments, and to disseminate the Project's model to other similar situated defense providers. Specifically, OAD sought the funding to enable the Project Director to work full time on the project, to increase investigative and expert capacity, to add support staff, and to recruit and train volunteer students to assist the project. OAD estimated that its grant project would cost \$432,433 to run for two years. The Project itself would cover \$136,874 of that amount, and therefore requested and received \$295,559 in federal grant money to cover the rest of the costs. The federal funds were designated to contribute to personnel, fringe benefits, travel, equipment, supplies, consultants/contracts, and several "other" costs (including rent, utilities, printing and postage, a Westlaw subscription, etc.).

The Project's pre-existing staffing (with the Project Director as its only staff, and she only devoted half of her time to the Project) and budget did not allow it to screen each of the 160 cases assigned to OAD each year; in reality, the Project had been able to screen only around sixty of these cases per year. Prior to the grant, the Project Director performed all the screening and investigation, and developed and litigated all Project cases. When a case was being heavily reinvestigated and litigated, screening activities on other cases had to wait, resulting in significant delays in screening and investigation.

The Project's primary goal for the funding was to increase its capacity to enable it to screen each of these 160 cases. Specifically, OAD identified the following deliverables for the Project: (1) devote the Project Director full-time to the Project; (2) screen all OAD cases; (3) hire a part-time Investigator; (4) consult with appropriate experts in a wider set of circumstances; (5) add a part-time Staff Attorney to the Project; (6) recruit and train attorney and law student volunteers; and (7) disseminate the Project's model.

Part 3: NACDL Review Process and Findings.

Under the guidance of the NACDL Project Coordinator and the volunteer Assessment Team, NACDL conducted a thorough review of the grant application documents and reports. In addition, the Assessment Team conducted a telephonic interview with several key participants in the OAD project, and thereafter sought and received additional written submissions to verify and clarify the information provided in the oral interview. Participants in the telephonic interview, which was conducted on July 8, 2014, included NACDL Assessment Team Members Madeline deLone and Norman L. Reimer, and the following OAD staff: Richard Greenberg, attorney in charge; Alexandra Keeling, deputy attorney in charge; Anastasia Heeger, director of the Reinvestigation Project; and Thomas Nosewicz, staff attorney.

Most Significant Case Outcomes Achieved Through this Grant

OAD work under the grant led to three exonerations (two codefendants) and significantly reduced prison sentences in two other cases.

Latisha Johnson, a client of OAD, and Malisha Blyden, her co-defendant, were convicted of attempted murder, burglary, robbery and weapons possession. Each was sentenced to 40 years imprisonment – a sentence they commenced serving when they went into custody in December

2008, with the earlier release date set for July 19, 2041, and a maximum release date of April 9, 2047. OAD investigated this case during the grant period, interviewing 10 witnesses and canvassing for 6 more. Although the investigation extended beyond the grant period, the post-conviction claim was shaped during the grant term. OAD developed a strong claim that the both Ms. Johnson and her co-defendant were innocent, and persuasive evidence of the identity of the actual perpetrator. Rather than proceeding with the direct appeal, OAD submitted the results of the investigation to the District Attorney's Office, which after a one-year investigation concurred in the findings. OAD then filed a pro forma motion to vacate which was joined by the District Attorney, who subsequently moved to dismiss the charges. On January 16, 2014, Ms. Johnson and Ms. Blyden were released from custody. Their exoneration rectified a miscarriage of justice and saved the taxpayers of New York the cumulative cost of 68 years imprisonment and 10 years of supervised release.

In another case, an individual convicted of a felony was sentenced to a serve a state prison sentence of two to six years. Following OAD reinvestigation of the case and prior to filing an appeal, OAD presented to the prosecutor compelling evidence that the defendant was actually a victim and not a perpetrator. The prosecution thereafter agreed to vacate the conviction and dismiss the charges. The individual had served only two years of the maximum six year sentence.

Finally, in two other cases the OAD Reinvestigation Project resulted in favorable court determinations that prompted the prosecutors to offer to resolve the cases with guilty pleas to substantially reduced sentences. The resulting disposition similarly saved many years of prison time and avoided unnecessary appellate litigation. While such resolutions are not exonerations, it is imperative to recognize that many wrongful convictions do not involve the presence of

biological evidence that through DNA testing can definitively establish innocence. Accordingly, when a wrongful conviction claim results in a new trial or an evidentiary hearing, innocent individuals who still face the prospect of spending interminable years in prison must make the difficult decision of whether or not to accept a prosecutor's favorable offer. The extremely lengthy, difficult, and uncertain road to remedying a wrongful conviction is now so well established that it is irrefutable that innocent people will plead guilty to secure their freedom. Indeed, in at least one of the OAD cases discussed above, the defendant serving a sentence of 25 years to life entered a guilty plea in exchange for a sentence of time served and his immediate release from custody.

Work Throughout the Grant Period

As reflected in OAD's reporting, project staffing was significantly enhanced as a result of the grant.⁵¹ Although the project did not achieve its goal of screening each of the 160 cases assigned annually, project capacity was significantly increased. During the grant period screening questionnaires were sent to 261 clients, all of which were reviewed by intake teams. Clients returned completed questionnaires in 161 cases, all of which were reviewed based on the record on appeal and subsequent client communications. Altogether OAD conducted 34 Phase I investigations during the grant period, which means that trial files and discovery materials were obtained and reviewed and the trial attorney was interviewed. OAD also conducted 17 Phase II investigations during the grant period, which means that witnesses were interviewed, a Freedom of Information demand was made upon law enforcement or an expert was consulted. During the

⁵¹ It should be noted that the grant term was extended until December 2012. Although the grant commenced on October 1, 2010, funds were not immediately available and expenditures did not begin until December 1, 2010. Accordingly, in August 2012, the Project sought and obtained a grant adjustment to receive a no-cost extension so that they could continue using the grant funds until December 2012. Aside from this grant adjustment notice, the Project did not file any requests for modifications of the proposed use of grant funds.

grant period, the Project consulted with experts in false confessions, eyewitness identification, forensic psychiatry, forensic video analysis, and phone record review and analysis.

Additionally, during the grant period, OAD litigated seven wrongful conviction claims. Further, four cases initially investigated during the grant period were prepared for presentation to prosecutors during the next grant term.⁵² This productivity was made possible by the additional staffing, which included the full-time director, a part-time staff attorney, investigative and expert support, and increased volunteer support made possible by the paid staffing.

Looking behind the raw statistics, it is clear that the federal support yielded substantial and tangible results in terms of the twin objectives of expanding the impact of the Reinvestigation Project and disseminating the techniques to others. With regard to this latter objective, OAD also took substantial steps. OAD has undertaken a multi-pronged effort to incorporate the reinvestigation approach into appellate advocacy throughout New York State. OAD conducts training programs at various seminars geared toward public defenders, private assigned counsel who represent the indigent pursuant to appointment programs, and it conducts a Volunteer Appellate Program through which it provides training for attorneys in larger firms who provide voluntary appellate assistance to indigent defendants. Additionally, OAD conducts trainings in regions of New York State outside of New York City and has integrated the principles and strategies of the Reinvestigation Project into presentations on false confessions and ineffective assistance of counsel. All of these training programs stress the importance of having the initial appellate attorney consider matters outside the cold record before plunging into the direct appeal.

⁵² As will be noted below, OAD received a second two-year grant from BJA to continue its work.

Finally, recognizing the potential national import of the reinvestigation approach to appellate advocacy, OAD plans to address the value of this approach in a law review article that will focus on the reinvestigation and litigation of non-DNA claims of wrongful conviction. This article will also identify states where opportunities to litigate wrongful conviction claims prior to direct appeal may exist.

One final note about the grant to OAD: in seeking the grant to bring the Project up to its full potential, OAD expressed the hope that the federal grant might enhance the prospect of attracting additional private support. In fact, OAD reports that the combination of the 2010 grant, and the subsequent BJA grant for another two years, albeit at one-half the level of support, has produced results that in fact did help in developing other funding sources.

Part 4: Conclusions & Remarks

Overall, OAD effectively used federal grant funds for its Reinvestigation Project. In addition to two exonerations and several positive case outcomes, OAD bolstered its ability to evaluate and investigate post-conviction claims of injustice. Equally important, OAD offered an innovative model to the innocence community—a post-conviction investigative endeavor not divorced from direct appellate representation, but rather interconnected with the appellate process in an efficient and thoughtful way. By attempting to investigate possible wrongful conviction cases before the perfection and exhaustion of the direct appeal, OAD sought to circumvent needless appellate litigation and potentially allow for the consolidation of both the trial and post-conviction appeals in order to present the case in the most comprehensive manner possible.

Pennsylvania Innocence Project

Part 1: Program Prior to the Grant

The Pennsylvania Innocence Project (PIP) was founded in 2009 as the first statewide innocence project in Pennsylvania. Richard Glazer, who was part of the working group that explored the formation of an innocence project in the state, became the organization's Executive Director and hired experienced public defender Marissa Bluestine as PIP's first Legal Director as well as an office manager.

PIP's immediate goal was to address the large amount of post-conviction innocence claims in the state, a number that had soared in recent years due to the growing inmate population in Pennsylvania. This high volume of cases created a severe backlog at the outset of its operations. Between its formation and the grant application, PIP received 1499 requests for assistance and 739 completed questionnaires from potential clients. Of these requests, 37 cases had entered PIP's information gathering stage, the second stage in its three-stage review process described below.

PIP developed a three-stage review process to handle requests for assistance. In stage one, a questionnaire is distributed to any inmate who claims to be innocent, along with a request for the appellate documents and trial record. In stage two, PIP vets the questionnaires and assigns plausible innocence claims to a team of volunteer attorneys and law students for investigation. In stage three, PIP sends cases with a strong innocence claim to a review board composed of respected lawyers in the community. If the review board votes to accept a case, that matter is referred to pro bono attorneys for potential litigation.

At the time of its grant application, PIP operated with a barebones staff: an office manager, a part-time executive director, and a full time legal director. This team was complemented by a volunteer board of 22 attorneys. Ms. Bluestine, the Legal Director, had to personally review each case before investigation, creating a major bottleneck in case processing. The investigation and litigation aspects were then handled by pro bono volunteers and law students largely under Ms. Bluestine's supervision. PIP had partnered with Cornerstone Forensics to design a database to facilitate and economize case information storage for PIP on a pro bono basis. PIP anticipated that this database would create efficiencies and allow staff to devote more time to other tasks.

Part 2: Grant Request

PIP requested a total of \$111,422 to fund the salary and benefits for a new paralegal. Approximately \$2000 of the grant funds would be used to purchase a computer and office supplies, and the remainder was for a 7% indirect cost rate for the new position. With the goal of maintaining the paralegal position for the long term and generally supporting the project's work, PIP had implemented a fundraising plan even before the award of the grant, which had already netted \$285,000.

PIP sought to fund a full-time paralegal position to bear responsibility for the case review process and remove a significant burden from the Legal Director, who had to review each application for assistance before information gathering could commence. The new paralegal would assume this painstaking task and review requests, mail questionnaires and supervise volunteers investigating stage three cases. Thus the Legal Director could focus on the most promising cases, and have more time to both train new volunteers and law students, and conduct

greater outreach to law schools and law firms to recruit additional volunteers. In particular, PIP hoped to recruit pro bono attorneys in other areas of the state to allow for more face-to-face meetings with clients and to accommodate a larger active caseload.

PIP outlined three goals for this grant. First, it aimed to increase by 400% the number of cases proceeding through stage three of its review process. Second, it intended to increase the pool of *pro bono* attorneys by 50%. Third, it planned to create a database prototype that could be used by other innocence projects throughout the country.

Part 3: NACDL Review Process and Findings

In addition to a thorough review of the grant application documents and grant reports, on June 23, 2014, Consultant Daniel S. Medwed and Advisory Group member Madeline deLone, the Executive Director of the Innocence Project in New York City, conducted a telephone interview of PIP Legal Director Marissa Bluestine and Executive Director Richard Glazer. On July 17, 2014, Professor Medwed conducted a site visit to the Pennsylvania Innocence Project, meeting with Ms. Bluestine and Mr. Glazer, as well as with several other staff members and law students enrolled in PIP's summer clinical program. Ms. Bluestine subsequently sent additional information to Professor Medwed regarding PIP's activities under the grant.

Most Significant Case Outcomes Achieved Through this Grant

The grant funding directly supported PIP's work achieving the exoneration of co-defendants Eugene Gilyard and Lance Felder, who were convicted of murder. Gilyard had written PIP shortly after its formation in 2009, and the project spent several years gathering and reviewing the documents in the case. Gilyard and Felder had been convicted for the 1995 murder of a Philadelphia bar owner outside his home. The victim's daughter had observed the incident

from her bedroom window and generally described the two perpetrators, one of whom wore a red bandanna. Initially, she was unable to make any identifications, but more than two years after the slaying she identified a photograph of Gilyard, branding him as “the man in the red bandana.”⁵³ Soon Gilyard was indicted, along with his purported criminal partner, Felder. Both men were only 19 years old at the time of their convictions.

PIP accepted the case in the spring of 2011, and with the arrival of the grant funded investigator/paralegal, Shana Tyler, PIP began to investigate the case in earnest. Ms. Tyler interviewed an inmate named Ricky Welborn whom Gilyard believed might have information about the murder. Ms. Tyler's work resulted in a full confession from Mr. Welborn, one of the true perpetrators of the murder. The statement began with Welborn stating "Earlier that day I shot a man named Anthony Stokes with the same gun later used in the robbery and murder of Thomas Keal." Ms. Tyler tracked down Mr. Stokes, who confirmed he had been shot by Welborn the same day, and obtained his medical records to corroborate his statement. Welborn also implicated Rob Felder, Lance's brother, in the murder. This was later supported by testimony from a third Felder brother who acknowledged that Rob, not Lance, was involved in the murder. Although Tyler located five eyewitnesses in the neighborhood, many of them were too frightened to come forward for fear of retribution from the perpetrators. One person, however, was willing to state on the record that Welborn and Rob Felder had committed the crime; she had supplied this same lead to the police 16 years earlier but it had not been pursued.

In August 2011, PIP filed a petition for post-conviction relief and requested that the prosecutors re-investigate the case. Although they were even joined by the victim's daughter in

⁵³ See Charlotte Whitmore & Shaina Tyler, “The Man in the Red Bandana: The Case of Eugene Gilyard,” *American Bar Association, Section on Litigation, Access to Justice*, April 28, 2014, available at <http://apps.americanbar.org/litigation/committees/access/articles/spring2014-0414-man-red-bandana-case-eugene-gilyard.html>

this request, it languished unanswered for more than a year. Prosecutors instead sought to dismiss the post-conviction petition as untimely. Finally, an evidentiary hearing was held over several days in July 2013. The judge ultimately overturned Gilyard and Felder's convictions in October 2013 and the prosecution dismissed the charges in June, 2014.

Ms. Tyler played a vital role both during the Gilyard/Felder investigation and at the hearing itself, giving critical testimony about Welborn's statement when he asserted his rights under the Fifth Amendment and refused to testify. In addition, while the hearing was in progress, Ms. Tyler led a team of dozens of student and attorney volunteers in reviewing hundreds of hours of recorded phone calls of the perpetrator (Welborn) made while in prison and uncovered additional evidence of Mr. Felder's and Mr. Gilyard's innocence.

Work Throughout the Grant Period

During the first reporting period (October 1 to December 31, 2010), PIP experienced a delay in using funds because of the BJA budget review process. As a result, the paralegal position was not immediately filled, but PIP later requested—and received—a no-cost grant extension through September 30, 2013.

Delays in the budget approval process were resolved in early 2011, allowing PIP to commence the paralegal hiring process during the second reporting period from January 1 to June 30, 2011. PIP hired Shana Tyler, an experienced criminal defense investigator, as its program-based investigator/paralegal in May 2011. Ms. Tyler began assisting the Legal Director with finding and interviewing witnesses in PIP's open investigations, improving productivity. PIP received 338 innocence claims, reviewed 139 cases and had 86 under review upon conclusion of this period. Most notably, the organization advanced some of its most meritorious

cases, re-examining the physical evidence in four cases and identifying seven actual perpetrators in five different cases.

In the next reporting period, from July 1 through December 30, 2011, the full impact of Ms. Tyler's hiring became evident. She managed the following duties in the review process:

- locating and interviewing witnesses and, in some instances, actual perpetrators;
- obtaining medical and court records;
- communicating with clients and potential clients;
- consulting with students and volunteers on stage 3 cases;
- preparing for and attending court hearings.

Ms. Tyler transformed the investigative process at PIP by developing investigative plans for individual cases and formulating an "investigative report" template for use in cases that survive initial screening. She also played a key role in drafting final case screening memoranda. Both Mr. Glazer and Ms. Bluestine stressed that Ms. Tyler's work - beginning shortly after her hiring -allowed PIP to move more quickly through the latter stages of the review process and therefore accept more cases for litigation.

The data supported this claim. PIP re-examined evidence in 21 innocence claims during this reporting cycle, identifying five actual perpetrators in three different cases. While PIP's new requests for assistance continued to climb—it obtained 200 innocence claims during this period—it still began to make significant reductions in its backlog. Specifically, PIP conducted stage two review of 150 cases and stage three review of 30. Moreover, in a collaboration with Cornerstone Forensics, PIP beta-tested a cloud-based document sharing system to facilitate its capacity to serve as co-counsel with private *pro bono* attorneys.

PIP continued its upward trajectory in 2012. During the January 1 through June 30, 2012, reporting period, Ms. Tyler's work on the case review process greatly bolstered the organization's ability to complete its preliminary investigations and move the most compelling cases toward litigation. PIP handled 40 case reviews at stage three of the investigation process, each of which consumed 80-150 hours of work; it also conducted 150 stage two reviews and re-examined evidence in thirteen cases.

In the second half of 2012, Ms. Tyler's impact on PIP's capacity to focus on litigating promising cases was particularly evident. She continued to undertake a wide range of tasks in progressing through stage three investigations - identifying, locating and interviewing witnesses, conducting background checks, interpreting forensic reports, corresponding with clients and prospective clients, gathering documents and preparing subpoenas. This work allowed Ms. Bluestine and the litigation staff to direct their efforts to obtaining forensic reanalysis in two cases, including four tests in one case and eight tests in the other. Ms. Bluestine estimated that the work on each case averaged 54 hours during this period. PIP also re-examined evidence in seventeen cases and received 210 innocence claims during this period.

PIP displayed similar results in 2013. During the first half of 2013 (January 1 through June 30), PIP received 230 innocence claims, re-examined evidence in 18 cases and identified one actual perpetrator. In the final grant reporting period—July 1 through September 30, 2013—PIP identified six actual perpetrators and received an additional 150 innocence claims.

Part 4: Conclusion & Remarks

As shown by the activities detailed above, and emphasized by to the Executive Director and Legal Director, the addition of Ms. Tyler as a staff investigator/paralegal increased PIP's capacity to investigate cases "exponentially." Specifically, Ms. Tyler spent a significant amount of time vetting potential wrongful conviction cases and even enhanced their review by adding a new stage to the process. In the two years preceding the grant funding, PIP conducted 27 interviews and actively investigated eight cases; in just the first eight months after Ms. Tyler's hiring (from May 2011 to January 2012), PIP conducted 85 interviews in 21 active cases.

Most notably, PIP achieved the exonerations of Eugene Gilyard and Lance Felder. Moreover, PIP closed 105 cases after exhaustive, time-consuming stage three reviews. In contrast, only 37 cases had even reached stage two information-gathering prior to the grant application. Ms. Tyler also contributed significantly to the identification of actual perpetrators. In fact, PIP reported identifying a staggering 19 perpetrators overall during the grant period. In addition to investigative field work, Ms. Tyler trained students on investigating cases, reviewed cases, interpreted forensic reports, and drafted case memoranda.

Ms. Tyler was also instrumental in investigating, and locating the actual perpetrators in four PIP cases that are currently pending in state court. For example, in the Tyrone Jones case, which is currently in litigation, her tenacity allowed PIP to identify previously unknown eyewitnesses to the murder who exculpate Mr. Jones and identify, by "street name," the true perpetrator. In total, Ms. Tyler identified, tracked down, and interviewed at least 38 witnesses—most of whom were gang members - with knowledge of the crime. Ms. Bluestine and Mr. Glazer could not praise Ms. Tyler enough, and view her performance as transformative for the organization.

Ms. Tyler remained on the PIP staff after the completion of the grant period, requiring PIP to dedicate its own funds for the position. When Ms. Tyler moved to California with her husband in May 2014, PIP deemed maintenance of this position essential to its work and filled the position. PIP would also like to hire another staff attorney and expand its geographic reach more thoroughly into the western part of the state, including the Pittsburgh metropolitan region. Its ability to expand in this way, however, is hampered by its need to self-fund the investigator position.

PIP met, and even exceeded, many of its stated goals in applying for the grant. It intended to increase the pool of *pro bono* attorneys by 50%, which it accomplished. Ms. Bluestine succeeded in recruiting many additional *pro bono* law firms, exceeding the goal of a 50% increase in volunteer lawyers. PIP began litigating cases in several different counties throughout the state with law firm support it did not have before. Ms. Tyler's work ensured that Ms. Bluestine could focus on litigation. PIP's active caseload more than doubled from six or seven cases prior to the grant period to 19 as of July 2014. PIP had hoped to create a cloud-based database prototype that could be used by other innocence projects throughout the country and partnered with Cornerstone Forensics. But ultimately that company decided to go in another direction, this goal was not realized and this initiative is currently dormant. Beyond its stated goals, PIP did remarkable work during the grant period in identifying 19 actual perpetrators and Ms. Tyler's investigative efforts were essential in exonerating Eugene Gilyard and Lance Felder.

Rocky Mountain Innocence Center

Part 1: Program Prior to Grant

The Rocky Mountain Innocence Center (RMIC), located in Salt Lake City, Utah, works to correct and prevent the conviction of innocent men and women in Utah, Wyoming and Nevada. RMIC accepts both DNA and non-DNA cases, and conducts education and advocacy programs about the causes and consequences of wrongful convictions, and legal reforms to make the criminal justice system more accurate and fair. RMIC was founded in 2000, and by 2004 had succeeded in securing the DNA exoneration of Bruce Dallas Goodman, who had served eighteen years in prison for a rape and murder he did not commit.

RMIC began as a grassroots organization that was not affiliated with a law school, with its sole employee being the Executive Director. At the time of the grant application, RMIC's Executive Director, still the sole employee, was responsible for reading and responding to all inmate correspondence; evaluating inmate questionnaires; participating in and overseeing the screening process; supervising and assisting the law students in their investigations; recruiting, training, assisting and supervising volunteer attorneys in their litigation; locating and managing all experts; and overseeing forensic testing. Apart from the Executive Director, RMIC consists mainly of law students and volunteer attorneys from the three states it serves. RMIC coordinates its tri-state work through law schools, volunteer board members, and attorney volunteers in each state. RMIC partners with clinic programs (Innocence Clinics) in law schools in Utah and Nevada. Through these clinics, law students work on the investigation of RMIC cases, supervised by law professors who also serve on RMIC's Board of Directors. RMIC's board members, all of whom have relevant post-conviction experience, serve on RMIC's Case

Oversight Committee, and, in that capacity, assist with case screening and act as co-counsel on litigation in their state.

Claims of innocence received by RMIC go through a three-step process: screening, investigation, and litigation. In most instances, inmates contact the project by mail. If a case meets RMIC's criteria for consideration (correct jurisdiction, factual-based innocence claim, more than seven years remaining of his/her prison sentence, new evidence of innocence, etc.), the inmate is asked to complete a detailed screening questionnaire, which is then evaluated by RMIC's Executive Director and Case Oversight Committee. If the Case Oversight Committee approves the case, it moves on to the investigation stage, where the case is assigned to clinic law students who analyze the case records, locate physical evidence and witnesses, conduct witness interviews, and develop potential litigation strategies. If the investigation reveals compelling evidence of innocence, RMIC moves the case into the litigation stage, and assigns it to a volunteer attorney to assist in filing for post-conviction relief.

In 2008 and 2009, RMIC received 384 letters from inmates seeking assistance. Of those requests, RMIC screened sixty questionnaires and approved twenty-four of those cases for investigation. During 2009, RMIC completed factual investigations in eleven cases: five in Utah, two in Wyoming, and four in Nevada. In two Utah cases, RMIC uncovered significant evidence of innocence and filed actions in court for post-conviction relief. RMIC filed a petition for DNA testing in two cases – in Utah and Wyoming. At the time of its grant application, RMIC had sixteen cases in investigation, three in litigation, and three pending litigation.

Part 2: Grant Request

RMIC requested and received a grant of \$175,000 to achieve the goals of (1) conducting case screening, investigation, and litigation more quickly and efficiently to assist more innocent inmates, and (2) improving the overall quality of representation of its clients in court. RMIC proposed to achieve this by (1) increasing staff capacity by hiring two new staff members - a full-time Staff Attorney and part-time Case Assistant; and funding a portion of the Executive Director's salary; and (2) making more funds available for litigation expenses. Litigation expense to be funded by the grant included: gathering case materials, hiring experts and investigators, DNA testing expenses, and discovery expense for cases in litigation.

Multiple factors led the need for increased staffing and litigation funds. RMIC's extensive use of volunteer lawyers allowed them to keep case development and litigation costs lower, but it also severely restricted the number of cases it could accept. Volunteer lawyers work hard and give very generously of their time, but they have full-time job responsibilities, as do the members of the RMIC Board of Directors, which increases the amount of time it takes to accomplish all of the organization's tasks. Likewise, having the assistance of clinic students is a great help, but they are not available over the summer months, and a new group must train and catch up on the cases every fall. RMIC's only paid employee, the Executive Director, had to accomplish the organization's administrative duties, policy reform efforts, education goals and fundraising in addition to the casework described above. Moreover, RMIC's caseload increased over the past few years, it faced a significant increase in costs associated with case investigation and review of evidence by forensic experts.

To remedy these issues, RMIC sought funds for the new full-time Staff Attorney to oversee and assist in case screening; perform critical investigation; obtain case files and evidence

(which often requires litigation); obtain experts and handle forensic testing; recruit, train, and manage volunteer attorneys and act as co-counsel; and conduct legal research and writing. The part-time Case Assistant would handle inmate correspondence, conduct initial screening, create and manage case files and the case database, track case status, and provide additional support to the Staff Attorney.

Part 3: NACDL Review Process and Findings

The grant began on October 1, 2010, and ended on September 30, 2012. In addition to a review of the grant application documents, progress reports, and financial reports, NACDL obtained additional information through email communications with RMIC and a telephone interview. Vanessa Antoun, NACDL Senior Resource Counsel, conducted the telephone interview with RMIC Executive Director Jennifer Hare Salem and Legal Director Jensie Anderson. Ms. Anderson serves as the Legal Director in an unpaid capacity, is on the RMIC Board of Directors, and also served as President of RMIC from 2001 until 2011. Ms. Anderson is a professor at the University of Utah's S.J. Quinney College of Law, and Director of its Innocence Clinic, whose students work on cases with RMIC. NACDL's consultant, Daniel Medwed, did not participate in the assessment of this Grantee because of his long-time affiliation with the Rocky Mountain Innocence Center as a member of the Board of Directors from 2004 to 2012, including a one-year term as Board President.

RMIC experienced a short delay in accessing the grant funds, so no funds were expended until the beginning of 2011, when RMIC hired Elizabeth Fasse as the grant funded Staff Attorney and Darcie Yarbrough as the Case Assistant.

Most Significant Case Outcomes Achieved Through this Grant

RMIC achieved three exonerations as a result of work under this grant: Andrew Johnson (Wyoming), Debra Brown (Utah), and Harry Miller (Utah). It is significant that three of the four total exonerations RMIC has achieved thus far were related to the Wrongful Conviction Review Program funding.

Debra Brown was the first person to be exonerated under Utah's non-DNA factual innocence statute, which RMIC helped draft and pass in 2008. Liz Fasse, the grant-funded Staff Attorney worked on Ms. Brown's case. Ms. Brown was exonerated and released in May 2011, and that was affirmed by the Utah Supreme Court in July 3013. She was wrongly convicted of murder in 1994, and spent seventeen years in prison. RMIC also obtained \$570,000 in compensation for Ms. Brown for her wrongful conviction and incarceration.

RMIC achieved another first with its work under this grant: the first DNA exoneration in Wyoming, allowing Andrew Johnson to be released after serving 24 years in prison for rape and burglary. Ms. Fasse had primary responsibility for Mr. Johnson's case. She drafted and filed pleadings, recruited a volunteer attorney in Wyoming to assist, and obtained DNA testing. Despite being fully exonerated in 2013, Mr. Johnson was not able to receive compensation from the state for his wrongful conviction and incarceration. Wyoming, unlike Utah and many other states, does not have a statute providing compensation for individuals who have been exonerated. Although outside of this grant work, it should be noted that Jensie Anderson and RMIC are advocating for Wyoming to adopt exoneree compensation legislation.

In 2011, Harry Miller became the second person to be exonerated under Utah's non-DNA innocence statute. Mr. Miler spent four years in prison for a robbery he did not commit. RMIC was also able to obtain compensation for him under Utah law.

Work Throughout the Grant Period

There was a short delay in accessing the grant funds, so no funds were expended until the beginning of 2011. RMIC achieved its main goal for the grant first reporting period of January to June 2011 - hiring a Staff Attorney and Case Assistant. The new staff members, Ms. Fasse and Ms. Yarbrough, started on March 1, 2011, and immediately improved RMIC's productivity.

RMIC began 2011 with seven cases in litigation and thirteen cases in active investigation. RMIC's huge accomplishment during the first half of the year was the exoneration of Debra Brown, as discussed above. In addition, RMIC succeeded in getting DNA testing for one of its clients in Utah and for another client in Nevada, and made progress in the other cases in litigation. RMIC consulted two ballistics experts (involving eight hours of analysis), one eyewitness identification expert, three DNA experts (involving four hours of analysis), one police science expert, one private detective, and one former prosecutor.

In the second half of 2011, RMIC's momentum continued as it achieved Harry Miller's exoneration - the second exoneration under Utah's non-DNA innocence law. RMIC made significant progress in other cases, including conducting DNA testing and winning a motion for DNA testing. RMIC also conducted depositions of government witnesses and won more access to government case files in a fourth case in litigation. RMIC consulted two forensic experts, both of whom identified significant failing on the part of police officials in that case. The Innocence Clinics continued investigations in seven of RMIC's cases and began new investigations in another seven cases. With the new Staff Attorney position, RMIC was able to provide more effective and meaningful supervision of the students' work. The Staff Attorney attends and participates in all clinic classes and meetings with students (in person in Utah and via videoconference in Nevada).

RMIC also began an important collaboration with law enforcement authorities in Nevada, Utah, and Wyoming to determine whether there have been DNA matches to actual perpetrators in cases in which someone else has already been convicted.

RMIC made similar progress throughout 2012, moving forward on cases already in litigation and investigation, while bringing at least two more cases into active litigation. The Staff Attorney's work on the cases included filing requests for DNA testing in two cases – one with the prosecutor's agreement. She also conducted training at a law firm that agreed to serve as co-counsel in a Nevada case. To improve the overall operations of RMIC, the Staff Attorney finalized a "best practices" document pertaining to all aspects of the organization's casework.

One of RMIC's challenges is covering three large states and the travel required to meet with clients and investigate cases. The Staff Attorney position allowed RMIC to accomplish substantially more investigation, and complete it much more quickly and efficiently. She made numerous trips to Nevada and Wyoming with clinic students to interview clients, witnesses (several key witness interviews), locate physical evidence and obtain records, among other investigative work. In addition, the Staff Attorney conducted in-house investigations into cases for which RMIC previously lacked the resources to investigate given their size and complexity. Thus, the Staff Attorney enabled RMIC to vet cases more thoroughly before accepting them for full investigation, saving the organization time and money by rejecting inappropriate cases earlier.

Throughout the grant period, the Case Assistant made substantial improvements to RMIC's case screening capacity and case tracking ability. The Case Assistant has helped RMIC significantly improve the time in which they respond to inmates' requests. Specifically, RMIC was able to catch up on reading, evaluating, and responding to a backlog of inmate letters dating

back to 2009. Response time for an inmate's request for assistance is now less than one month. RMIC received 365 requests for assistance during the grant and the Case Assistant sent questionnaires to 223 of those inmates, while the remaining requests were either referred to innocence organizations in other states or rejected. The Case Assistant also conducted an initial screening of at least 96 completed applications for assistance and moved those along in the process.

Another important accomplishment by the Case Assistant was completing the construction of databases to collect and track case information for all stages of the process. That included a two-tiered database to track inmate requests for assistance and their returned questionnaires, as well as another database to house the relevant information for cases in the investigation and litigation stages. Further, to improve RMIC's visibility and to streamline the process for inmates to request assistance, the Case Assistant helped RMIC launch a new interactive website containing its screening materials in both English and Spanish. RMIC reaches more people via their new website and social media, as shown by an increase in the number of people requesting help directly resulting from these avenues.

Part 4: Conclusions and Remarks

Overall, RMIC's grant project was a success, achieving an impressive three exonerations, with Ms. Fasse, the grant-funded Staff Attorney, working directly on two of the cases. The addition of the Staff Attorney and Case Assistant positions dramatically increased the organization's capacity to screen, investigate and litigate innocence claims. RMIC also clearly exceeded the specific deliverables outlined in its grant proposal, which would not have been possible without the government funding. The Case Assistant not only responded to all 365 new

requests for assistance received during the two-year grant period, she cleared the backlog of inmate letters dating back to 2009 that were awaiting response. As a result of the work of the Case Assistant and Staff Attorney, RMIC screened approximately 100 completed inmate applications.

When the grant ended, RMIC was able to retain the Case Assistant, but did not have the funds to support the Staff Attorney position any longer. However, the grant funds resulted in substantial, permanent improvements to the organization's infrastructure that continue to this day. The Staff Attorney crafted new retainer letters for RMIC to use with clients and co-counseling agreements for use with volunteer law firms and attorneys. She also helped improve the process by which students return and check-in case files at the end of the year. RMIC implemented a new system in to ensure all case-related correspondence sent and received by law students is routed RMIC for record keeping in each case.

RMIC reported that overall, the addition of the Staff Attorney and Case Assistant made a dramatic improvement in the capacity of the organization, which previously was dependent on one paid employee and volunteers, which led to delays despite their high level of commitment to remedying wrongful convictions.

CONCLUSIONS AND RECOMMENDATIONS

In sum, the FY2010 Wrongful Conviction Review Program had an enormous positive impact. This federal funding contributed to the exoneration of twenty-five innocent people who were wrongful convicted and incarcerated - an extremely impressive number by any measure – as well as numerous additional achievements chronicled by the Assessment Team. The harm caused by the conviction of an innocent person is by no means confined to the wrongly incarcerated individual, but extends to that person’s family, the victim and their family, and members of law enforcement and the prosecution. Public safety is compromised when the true perpetrator is not identified, and often remains free to commit additional offenses. In addition, wrongful convictions come at a great financial expense – the cost of the wrongful incarceration of just the two people exonerated by the California Innocence Project under the grant is approximately \$945,000. All of these consequences of wrongful conviction serve to undermine public confidence in the criminal justice system. The organizations funded through the federal grant program stand on the front lines of the battle to correct these injustices.

The Assessment Team documented many ways in which this federal grant program enhanced the efficiency of operations and yielded more effective practices for screening, investigating and litigating innocence claims. The Assessment Team also detected some areas in which grant support for innocence efforts can be improved, and thereby generate even greater positive impact.

ACHIEVEMENTS

Exonerations

The most striking accomplishment under this program was that the federal funding led to **twenty-five exonerations**. Grantees emphasized the extent to which these outcomes are attributable to the federal funding – both directly and indirectly. The Executive Director of the Mid-Atlantic Innocence Project attributes seven exonerations to the federal support. In that example, the grant allowed the Project to hire a staff investigator to both investigate and evaluate cases, which also permitted the attorneys to focus on litigation – amplifying the effect of those funds. Likewise, the Pennsylvania Innocence Project cites its ability to hire an investigator through the grant program as the reason for the dramatic rise in its litigation activity, including the exonerations of Eugene Gilyard and Lance Felder. More exonerations stemming from work done during the grant period are likely to occur in the future, and many more cases progressed significantly.

Actual Perpetrators Identified

Investigating and litigating innocence claims, at its core, is about correcting an injustice and freeing an innocent person. But it also serves the important purpose of potentially identifying the actual perpetrator, improving public safety and helping the victim obtain true closure. Grantees from the FY2010 program reported approximately 30 cases in which grant funds assisted in pinpointing the actual perpetrator of the crime. This number was influenced disproportionately by the astonishing total of 19 actual perpetrators identified by the Pennsylvania Innocence Project alone, but five other Grantees reported the identification of at

least one actual perpetrator, demonstrating widespread success in this crucial function of innocence work.

Increase in Investigative Capacity and Improved Case Screening

Grantees, for the most part, utilized their funds to support the positions of investigators, lawyers and/or paralegals to work not only on investigating and preparing cases for litigation, but also to thoroughly screen all innocence claims received to identify potential cases of wrongful conviction. Having the capacity to efficiently screen and investigate cases, and importantly, close those cases without merit, were essential to the Grantees' achievements in reducing case backlogs and pursuing cases with viable innocence claims. For example, the case assistant and case analyst funded by the grant to the Innocence Project were incredibly productive. During the Innocence Project's one-year grant period, the case assistant entered more than 1,000 applications for assistance into the case management database, and those 1,000 applications were then managed by the case analyst. Wrongfully convicted inmates across the nation would have undoubtedly suffered - their requests for assistance stalled and justice delayed - absent the funding provided to process a high volume of cases.

Other Grantees had comparable success stories. At the time of its grant application, the Innocence Project of Florida had nearly 500 cases needing further action in their screening process - 300 cases under review plus 190 cases in the initial screening stage. Over the course of the grant period, the IPF eliminated its backlog of inmate requests and also addressed the inflow of new requests - eventually processing more than 1,400 new applications. Similarly, the Georgia Innocence Project dramatically improved its case review capability. During the grant term, GIP discovered evidence in twenty-five cases and accepted twenty-two of them for

representation. The addition of a second attorney to its staff enabled GIP to bolster its productivity by well over the fifty percent estimate in the grant application.

Reaching Underserved Populations

Government funding directly led to the provision of legal services to underserved prison populations in remote and/or rural parts of the country. BJA funding aided several organizations that handle cases in multiple states. For instance, the grant directly enabled the Midwest Innocence Project to pursue active investigations into cases in Arkansas, Iowa, Kansas and Missouri, and the project was also able to uncover a group of cases in which DNA testing could possibly result in multiple exonerations. Other Grantees that investigate and litigate innocence claims in broad geographic areas reported considerable benefits too. For example, one of the Rocky Mountain Innocence Center's challenges is covering three large states (Utah, Nevada and Wyoming) and the travel required to meet with clients and investigate cases. The grant funded staff attorney was able to travel extensively, allowing RMIC to accomplish substantially more investigation, and complete it much more quickly and efficiently. The Innocence Project New Orleans expanded its reach, accepting 40 cases across Louisiana and southern Mississippi through the "Beyond New Orleans" program, exceeding the 30 cases envisioned in the grant application.

Sustainability and Fundraising

Sustaining the gains made as a result of the grant funding and retaining the grant supported staff positions beyond the grant term were both challenges and achievements for the Grantees. While it was a challenge for these innocence efforts to continue their operations and staffing at the level allowed by the grant, the overwhelming majority were successful in

achieving this goal. This is another way in which this BJA funding program has positive effects beyond the grant term. The California Innocence Project is an excellent example of an organization that has implemented a successful strategy to obtain the funds necessary to support its staff and the lengthy, expensive work involved in remedying wrongful convictions. CIP, and many other Grantees, pursued additional grant opportunities from a wide variety of sources such as local bar associations and individual donors. CIP is also an example of an organization that has been very successful in using creative methods such as law student-run fundraising events to raise money. Many successful innocence efforts shared this strategy: support from an institution such as a law school, public defender office, or large law firm, paired with many other fundraising efforts, so that continued operations are not dependent upon one source or one grant.

Other notable examples of Grantees' fundraising: The Innocence Project's very successful fundraising strategy involves developing a diverse array of individual donors and applying for support from a variety of foundations, and has allowed it to increase its capacity. Mid-Atlantic Innocence Project also reached out to a diverse group of potential funders, holds an annual fundraising event, and engaged a Board Fellow through Georgetown University's McDonough School of Business to research funding opportunities.

Collaboration with Law Enforcement

As part of their grant-funded work, many Grantees established positive collaborations with law enforcement, including local prosecutorial agencies and police departments. Specifically, the University of Baltimore Innocence Project Clinic forged cooperative links with the State's Attorney for Baltimore City and the U.S. Attorney's Office for the District of Maryland. The Baltimore City State's Attorney even formed a "Conviction Integrity Unit" to

review post-conviction innocence claims to determine the claim's merit and whether it should be resolved without prolonged litigation. Similarly, the California Innocence Project worked with the San Diego District Attorney's Office to establish a process to bypass the courts to test biological evidence where innocence is possible. The Rocky Mountain Innocence Center also entered into an arrangement with law enforcement authorities in Nevada, Utah, and Wyoming to ascertain whether DNA matches to actual perpetrators have occurred in cases in which someone else has been convicted.

In addition, NEIP's grant funded staff partnered with the Massachusetts Chief of Police on an Eyewitness Misidentification Project to document and analyze eyewitness identification policies of law enforcement agencies in the state. The results were included in the Massachusetts Supreme Court's Eyewitness Identification Study Group report issued in July 2013.⁵⁴

CHALLENGES & NEW OPPORTUNITIES TO ADDRESS WRONGFUL CONVICTION

Project Continuation Post-Grant Period / Sustainability

Although the Assessment Team reported on the overall success of the Grantees in maintaining the staffing and other gains realized through this grant program, there is a definite need for improvement in this critical area. Not all Grantees were able to overcome the challenges and retain the grant funded positions.

One problem in executing successful development plans such as those mentioned above is that it takes a significant amount of time – time that a small Grantee must devote to their work

⁵⁴ *Supreme Judicial Court Study Group On Eyewitness Evidence: Report And Recommendations to the Justices* (June 25, 2013) <http://www.mass.gov/courts/docs/sjc/docs/eyewitness-evidence-report-2013.pdf>

identifying and pursuing cases of wrongful convictions. Grantees often lack adequate staffing to conduct their casework, and while the BJA grant enabled projects to increase capacity, not all had the additional time and resources to cultivate funding sources while at the same time advancing their innocence cases. In addition, fundraising, including grant writing, requires a specialized skill set and knowledge that many lawyers do not have and must develop to be effective.

But this problem cannot just be attributed to a lack of time or appropriate effort. Funding sources are finite and quite often scarce, with many criminal justice organizations competing for those dollars. The result is that many worthy organizations are left with a shortfall. The government could play a new role in helping Grantees combat these obstacles by making technical assistance on financial resource development available to all Wrongful Conviction Review Program Grantees to further aid Grantees in their efforts to achieve greater sustainability.

Difficulty Obtaining Documents, Access to Evidence and DNA Testing

Many Grantees, including the California Innocence Project and Baltimore Innocence Project Clinic, reported on the recurring difficulties they face in obtaining documents and locating physical evidence stemming from a lack of cooperation from a variety of government agencies. This is a serious obstacle, common to many Grantees, that hinders efforts to investigate potentially exculpatory evidence, creates case backlogs, and delays the exoneration and release of those who are actually innocent. The Innocence Project New Orleans even had to resort to litigation after the documents they sought were never produced after a year of delays. IPNO won its civil suit against the Lafayette Police Department for failure to comply with Louisiana's

public records law and was awarded access to all documents and case materials it sought in its initial request, as well as compensation for the filing fees in the civil suit.

Moreover, several Grantees encountered difficulty obtaining DNA testing of physical evidence after they were able to locate it. The Innocence Project of Florida reported that in cases where it seeks DNA testing, delays occur when prosecutors oppose testing. Although the IPF proposed to use funds allocated under this grant to pay for the DNA testing, eliminating that cost to the state, in many cases the prosecutor still actively opposed testing. The ensuing litigation results in more delays and increased costs to the state. The Georgia Innocence Project faced even more difficult hurdles in its attempt to pursue non-capital innocence claims in Alabama. In that state, the complete unwillingness of prosecutors to consent to post-conviction DNA testing is compounded by the lack of a post-conviction DNA testing statute for non-capital cases or legal mechanism for gaining access to law enforcement records.

In the future BJA could consider utilizing its grant programs to assist in alleviating these issues. For instance, BJA could encourage law enforcement and prosecution agencies seeking grants to include some manner of outreach or interdisciplinary working groups (including courthouse personnel as members, for example) to address document collection and evidence preservation and location problems faced by innocence efforts.

Re-Entry Support Services for Exonerees

Exonerees' need for re-entry support after spending many years incarcerated cannot be overstated. Several Grantees were able to use non-grant staff (including social workers) to provide exonerees with re-entry support as well. Through site visits to the Innocence Project of Florida and California Innocence Project in particular, the Assessment Team saw that with the

necessary staffing and funding, innocence efforts could help meet exonerees' critical need for support when re-entering the community.

IPF's clinical social worker assists exonerees with critical tasks such as obtaining proper identification, finding housing and employment, and obtaining access to therapists or other professionals. An IPF exoneree explained to the Assessment Team how important the social worker's help was in his adjustment to life outside of prison after 35 years of incarceration. This individual stated that the re-entry assistance he received from IPF was essential for him and other exonerees. Likewise, CIP staff connects their released clients with volunteers who provide social services such as counseling, and assists them in getting medical care.

Considering the enormous impact of re-entry services and assistance on the lives of wrongly convicted individuals, the government should consider allowing a small portion of the grant funding to support staff work in this area.

Exoneree Compensation

Exonerees have a need for legal assistance in obtaining any compensation available under state law to those who have been wrongfully convicted and incarcerated. Exonerees' need for this compensation after spending many years incarcerated and being released without the money or modern job skills to initially support themselves also cannot be overstated. Several Grantees were able to use non-grant staff and resources to obtain compensation for exonerees in states with such laws. Projects such as IPF, CIP, and the Rocky Mountain Innocence Center work to obtain compensation for exonerees in addition to providing other support services. It is a complex process where exonerees have the burden of proof and often must overcome potentially disqualifying factors, making it essential for them to have counsel. RMIC won compensation in

Utah for two people who were exonerated under this grant (Debra Brown received \$570,000). But Wyoming does not have an exoneree compensation statute, so RMIC's third exoneree received nothing for his wrongful conviction and 24 years of wrongful incarceration.

The government may wish to consider allowing a small portion of the grant funding to support staff work to obtain compensation for exonerees in states where such laws exist.

APPENDIX A

NACDL Staff

Norman L. Reimer is the Executive Director of the National Association of Criminal Defense Lawyers (NACDL), the nation's preeminent criminal defense bar association. Since joining NACDL, Norman Reimer has overseen a significant expansion of the Association's educational programming and policy initiatives, cultivated external support and launched a major capital campaign. Mr. Reimer also serves as publisher of *The Champion*, NACDL's acclaimed magazine.

Prior to assuming this position, he practiced law for 28 years. A criminal defense lawyer throughout his career, Mr. Reimer is also a recognized leader of the organized bar, and a spokesperson on behalf of reform of the legal system. He is a past president of the New York County Lawyers' Association (NYCLA); in his work at NYCLA, he played a pivotal role in undertaking litigation against the State and City of New York that upheld the right of a bar association to sue on behalf of indigent litigants and resulted in a judicial decision declaring New York's underfunding of indigent defense services unconstitutional. Mr. Reimer has also served as a delegate to both the American Bar Association House of Delegates and the New York State Bar Association House of Delegates. Mr. Reimer has played leading roles on several other reform efforts on issues ranging from mandatory recording of custodial interrogations, a moratorium on death penalty prosecutions, judicial independence, preservation of habeas corpus, to collateral consequences of criminal convictions. During his tenure at NACDL, he has participated in numerous amicus curiae briefs on issues related to indigent defense reform,

judicial independence and GPS tracking, has given numerous public presentations and published more than 70 articles on myriad criminal justice issues.

Norman Reimer taught Trial Practice as an Adjunct Professor of Law at New York Law School from 1990 until 2004. He received his B.A. cum laude from New York University's Washington Square College and his J.D. with honors in criminal law from New York University School of Law.

Kyle O'Dowd is the Associate Executive Director for Policy for the National Association of Criminal Defense Lawyers (NACDL). Before joining NACDL, he was General Counsel for Families Against Mandatory Minimums, where he lobbied Congress and the U.S. Sentencing Commission, and ran a project that raised court challenges to inflexible sentencing laws. He practiced criminal defense at the firm Moffitt, Zwerling & Kemler in Alexandria, Virginia, for several years after graduating from Emory University School of Law and Washington University in St. Louis. He has served on various advisory groups, including the United States Sentencing Commission's Practitioners Advisory Group, and written numerous articles and reports on sentencing and other criminal law issues for NACDL and outside publications, including the Federal Sentencing Reporter, the Association of Corporate Counsel's ACCA Docket, and Families Against Mandatory Minimums' FAMM-gram.

Vanessa Antoun is Senior Resource Counsel for the National Association of Criminal Defense Lawyers (NACDL). She provides resource materials, support and training for criminal defense lawyers across the country, with a particular focus on small and solo practices, indigent defense counsel, and post-conviction lawyers. Ms. Antoun organizes nationwide trainings for defense lawyers on the latest techniques for investigating and litigating cases involving forensic

evidence, post-conviction innocence claims, immigration issues, representing juveniles in adult court, and a variety of other topics. She developed and maintains an online resource center for defense counsel, including developing research and training materials on issues such as challenging flawed forensic evidence, eyewitness identification and trial skills. She has represented NACDL on several Advisory Boards, assisting those organizations in implementing national criminal justice projects and trainings.

Prior to joining NACDL, Ms. Antoun was a criminal defense lawyer for over ten years, representing clients charged with offenses ranging from reckless driving to capital murder. Following an internship with the City of Alexandria Public Defender, she joined the Fairfax County Office of the Public Defender in northern Virginia. She served as an Assistant Public Defender, Senior Assistant, Deputy Public Defender and finally as the chief Public Defender for the City and County of Fairfax. She then went into private practice with Devine & Connell, P.L.C., and most recently had been a solo practitioner. Ms. Antoun is a graduate of the University of Michigan in Ann Arbor, and George Mason University School of Law.

Lindsay Herf is Post Conviction Counsel for the National Association of Criminal Defense Lawyers (NACDL). Ms. Herf works on issues related to post-conviction innocence claims with an emphasis on faulty forensics. Prior to joining NACDL, Ms. Herf was the Co-Director of the Arizona Justice Project where she litigated post-conviction innocence and manifest injustice cases. At the Arizona Justice Project, Ms. Herf specialized in DNA cases and worked on a partnership grant with the Arizona Attorney General's Office reviewing homicide and sexual assault cases for claims of innocence that could be resolved by modern DNA testing. During the five years Ms. Herf worked for the Arizona Justice Project (2008-2013), ten Justice Project clients won their freedom from incarceration through post-conviction litigation in court

or through the Board of Executive Clemency. She graduated from the California Western School of Law in 2008, where she investigated innocence cases as law student with the California Innocence Project, and received her undergraduate degree from the University of San Diego in 2002.

APPENDIX B

The Advisory Group

Barbara Bergman is a Professor of Law at the University of New Mexico School of Law. She also served as Interim Dean from October 2012 to July 2013 and was the Associate Dean for Academic Affairs from 2008 until 2012. She joined the UNM law faculty in 1987, bringing years of experience as a criminal defense lawyer with the Public Defender Service in Washington, D.C. She also had spent a year as associate counsel to President Jimmy Carter and had practiced for three years with Bredhoff & Kaiser, a law firm specializing in employment law.

Her teaching remains focused on criminal law, but once a year, she leads students through an intense six-credit hour Evidence and Trial Practice course. On leave in 2000-2001 and the spring of 2004, Professor Bergman worked on the defense team in the *State of Oklahoma v. Terry Nichols*, a state death penalty case. Nichols was prosecuted for conspiracy and murder in connection with the bombing of the Alfred P. Murrah Building in Oklahoma City.

Professor Bergman has lectured and published extensively, including serving as editor of the Fifth Edition of the D.C. Criminal Jury Instructions. She also is the co-author of *Wharton's Criminal Evidence*, 15th edition, *Wharton's Criminal Procedure*, 14th edition, and *The Every Trial Criminal Defense Resource Book*. The latter book deals with emergencies that may arise in criminal trials. She is a Past President of the National Association of Criminal Defense Lawyers and continues to serve as a co-chair of the NACDL Amicus Committee. She currently serves on the Board of Trustees of the National Institute for Trial Advocacy (NITA) and the Board of Directors for PB&J Family Services.

In 2001, she received the Robert C. Heeney Award, the highest honor given by the National Association of Criminal Defense Lawyers. In 2010, the Stetson College of Law awarded her a Lifetime Achievement Award for the Teaching of Trial Advocacy.

Madeline deLone became the Executive Director of the Innocence Project in March 2004. Before joining the Innocence Project, Ms. deLone was an attorney with the Prisoners' Rights Project of the Legal Aid Society, a Skadden Fellow and staff attorney with Children's Rights, Inc., and a law clerk to the Honorable Robert W. Sweet. Prior to becoming a lawyer, she held various administrative and policy positions in New York City involving juvenile justice, public health, and the city jails. She is the editor of the *American Public Health Association's Standards for Health Services in Correctional Institutions*, 3rd Edition. Ms. deLone is a graduate of Harvard and Radcliffe Colleges, holds a Masters in Health Policy and Management from the Harvard School of Public Health and is a graduate of New York University School of Law, where she was an Arthur Garfield Hays Civil Rights and Civil Liberties Fellow.

William Gallagher practices criminal law in both state in federal courts at the firm of Arenstein & Gallagher in Cincinnati, Ohio. He is a 1987 graduate with honors from Chicago-Kent College of Law in Chicago. After seven successful years as a trial attorney in the Lake and Cook County Public Defender Offices in Illinois, he moved to Cincinnati in 1994.

In addition to many jury trial victories, Mr. Gallagher has tried 13 capital murder trials in three different states with none of his clients receiving the death penalty. Currently, Mr. Gallagher is one of only a few local lawyers in private practice handling federal Habeas Corpus litigation.

He is a frequent presenter on a variety of topics relating to criminal defense. His presentations have included topics such as “Opening Statements,” “Evidentiary Issues in Drug Cases,” “Professionalism,” and “Theories and Themes in Criminal Cases.” In addition to his guest lecturing, Mr. Gallagher is a past adjunct faculty member at DePaul University Law School and is currently on the adjunct faculty at the University of Cincinnati Law School. He has taught in the areas of Ethics, Trial Advocacy, and Forensic Sciences.

Mr. Gallagher is a founding member of the Ohio Innocence Project located at the University of Cincinnati Law School and serves on its Advisory Board.

He is a Past President of the Greater Cincinnati Criminal Defense Lawyers Association. He is a past member of the Board of Directors of the Ohio Association of Criminal Defense Lawyers and the current Chair of the CLE Institute for the National Association of Criminal Defense Lawyers.

In 2011, Mr. Gallagher was awarded the Robert C. Heeney Memorial Award, the highest honor conferred by the National Association of Criminal Defense Lawyers.

Barry J. Pollack represents individuals and corporations in criminal investigations and trials and in other government enforcement matters, such as Securities and Exchange Commission (SEC) proceedings, at the law firm of Miller & Chevalier. Mr. Pollack has extensive jury trial experience and is best known for his skills in the courtroom.

Mr. Pollack represented Martin Tankleff, whose double murder conviction was reversed and all charges against him dismissed. In a lengthy hearing, Mr. Pollack led a team of *pro bono* counsel that presented evidence that Mr. Tankleff was innocent of the crimes for which he spent 17 years in prison. The Mid-Atlantic Innocence Project honored Mr. Pollack with its “Defender

of Innocence Award” and the New York State Association of Criminal Defense Lawyers honored Mr. Pollack with its “Gideon Champion of Justice Award” for his successful representation of Mr. Tankleff. Mr. Pollack also led a *pro bono* defense team on behalf of Fernando Bermudez, who had been serving a 23-years-to-life prison sentence for murder. After 11 previous unsuccessful attempts, Mr. Bermudez, with Mr. Pollack serving as his lead counsel, challenged his conviction based on the perjured trial testimony of a cooperating witness and tainted identification procedures. Mr. Pollack presented evidence that Mr. Bermudez was innocent. The judge ruled for Mr. Bermudez, finding by clear and convincing evidence that he is innocent, reversed his conviction, and dismissed the indictment. In addition, Mr. Pollack is an accomplished appellate advocate. Several years ago, he won a complete reversal from a federal court of appeals for a client who had been convicted at trial of conspiracy and eight counts of embezzlement from an insurance company in an alleged scheme to enrich a United States Congressman.

In September 2008, Mr. Pollack was inducted as a Fellow into the American College of Trial Lawyers. Fellowship in the College is extended only by invitation, after careful investigation, to experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility, and collegiality. Membership is limited to no more than one percent of the lawyers in each state.

Mr. Pollack currently serves as President of the Board of the Mid-Atlantic Innocence Project and as Second Vice President of the National Association of Criminal Defense Lawyers.

APPENDIX C

The Consultant

Daniel S. Medwed is Professor of Law at Northeastern University School of Law. He is the author of a book entitled *Prosecution Complex: America's Race to Convict and Its Impact on the Innocent* (New York University Press, 2012), as well as numerous law review articles related to wrongful convictions.

He served on the faculty of the University of Utah-S.J. Quinney College of Law for eight years before joining the Northeastern faculty in 2012. He was a longtime member of the Board of Directors of the Innocence Network, a non-profit organization that is a consortium of innocence projects across the world. In 2011-2012, he was president of the Board of Directors of the Rocky Mountain Innocence Center, an innocence project that investigates and litigates post-conviction claims of innocence in Nevada, Utah, and Wyoming. He is currently a member of the Board of Trustees for the New England Innocence Project, which investigates and litigates innocence claims in the region.

Prior to joining the Utah faculty in 2004, he was an instructor at Brooklyn Law School and served as assistant director of the school's Second Look Program, where he worked with students investigating and litigating innocence claims by New York state inmates. He has also worked in private practice and as an associate appellate counsel at the Legal Aid Society, Criminal Appeals Bureau, of New York City. He is a graduate of Yale College and Harvard Law School.