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# STATE CRIMINAL JUSTICE NETWORK LEGISLATIVE UPDATE

BY SCOTT EHLERS

## Lessons Learned From Legislative Victories in the Lone Star State

Texas has a reputation around the country — and the world — for being “tough on crime,” and the statistics would seem to bear that out. As of 2011, Texas had more people in prison than any other state<sup>1</sup> and had the fourth highest imprisonment rate in the country.<sup>2</sup> Texas regularly leads the nation in executions. In 2012, the Lone Star State executed 15 people, representing over one-third of the 43 executions in America.<sup>3</sup>

Texas has always been politically conservative, whether Democrats or Republicans have been in charge. The state has not elected a Democrat to a statewide office since 1994, longer than any other state in the country.<sup>4</sup> In addition to a Republican governor and lieutenant governor, Republicans held sizeable majorities in the state legislature in 2013 — 95 to 55 in the House and 19 to 12 in the Senate.<sup>5</sup>

While some will presume that a historically conservative, tough-on-crime state such as Texas would have a legislature and governor that are hostile to criminal justice reform, they would be mistaken in certain respects. Although the police, prosecutor, and victim lobbies generally hold more sway with the legislature, criminal justice reform advocates<sup>6</sup> seeking alternatives to incarceration, reforms to reduce and compensate for wrongful convictions, and improvements to indigent defense have had some significant legislative victories in recent years. This article documents a few of those victories in 2013 that are particularly relevant to the defense bar, how those victories were achieved, and what lessons can be learned by criminal defense lawyers and reformers in other states.

### Discovery Reform

Arguably the most significant piece of criminal justice reform legislation that

passed in Texas in 2013 was S.B. 1611, the Michael Morton Act, which significantly improved the state’s discovery law for the first time in nearly 50 years.<sup>7</sup> The legislation was named for an exoneree who spent nearly a quarter-century in prison until DNA evidence proved that he was innocent. An investigation of the case showed that the prosecutor had withheld evidence that could have prevented Morton’s wrongful conviction.<sup>8</sup>

Prior to the passage of the Michael Morton Act, discovery practices in Texas differed widely from county to county, with district attorneys in some counties having a true “open file” policy and others providing nothing more than what the old law required, which was not much.<sup>9</sup> It was not uncommon for defense attorneys to be forced to take handwritten notes of material in the prosecutor’s file in certain counties.<sup>10</sup> Under the “old” version of Tex. Code Crim. Proc. art. 39.14(a), defense counsel had to file a motion and show “good cause” to get discovery beyond what was otherwise constitutionally required to be disclosed.<sup>11</sup> Written statements of witnesses were specifically excluded.<sup>12</sup> The statute also did not require the pretrial disclosure of offense reports or oral statements of the defendant or any statements of co-defendants.<sup>13</sup>

The new law addresses all of these problems and more. The new and improved Tex. Code Crim. Proc. art. 39.14 simply requires the defendant to make a “timely request” for discovery from the state. The request can be made orally, in the form of a letter, or in a motion.<sup>14</sup> The law requires the state to “produce and permit the inspection and the electronic duplication, copying, and photographing” of the requested discovery material, without any “good cause” requirement.<sup>15</sup> New, specific discoverable materials have been added to the statute, including offense reports and “recorded statements of the defendant or a witness, including witness statements of law

enforcement officers.”<sup>16</sup> The law also specifically applies to material evidence that is in the possession, custody, or control of the state “or any person under contract with the state.”<sup>17</sup>

For the first time, criminal discovery law in Texas also includes a statutory *Brady* requirement (that is broader than *Brady*) establishing that “the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.”<sup>18</sup>

What made all of this possible? How did a state like Texas, whose highest criminal court once said that “a defendant does not have a general right to discovery of evidence in possession of the State,”<sup>19</sup> suddenly create such a right after numerous failures to pass more modest reforms?

### A Perfect Storm Created By a ‘Perfect’ Exoneration

Considering that the Texas discovery reform bill is named the Michael Morton Act, few would argue that the bill’s passage would have been possible without



Morton's tragic wrongful conviction, dramatic exoneration, and tireless efforts to pass the bill named in his honor. While Texas has seen its fair share of exonerations (89) and paid dearly to compensate them (\$65 million since 1992),<sup>20</sup> Morton's case had a number of unique features that galvanized the public and Texas lawmakers at just the right time.

Morton was released from prison on Oct. 4, 2011,<sup>21</sup> some four months after the end of the 2011 legislative session ended, and another 15 months before the next session, since the Texas Legislature only meets every two years. This provided a long period of time for the story of the exoneration to develop in the media, and for pressure to build to ensure that the causes of this exoneration were rectified in the legislature. Unlike many exonerations that come and go from public attention in a matter of days or weeks, the drama surrounding the Michael Morton exoneration continues to this day.

In the year after Morton was exonerated and leading up to the 2013 legislative session, the prosecutor in his trial, former District Attorney Ken Anderson (and at the time, a district judge), had a disciplinary case filed against him by the State Bar of Texas for violating five of Texas' rules of professional conduct, including deliberately withholding evidence and making "false statements during the trial that led to Morton's wrongful conviction."<sup>22</sup> A "court of inquiry"<sup>23</sup> was also initiated to determine if criminal charges should be filed against Anderson for tampering with evidence and contempt of court.<sup>24</sup> (The national Innocence Project requested the court of inquiry. NACDL Past Presidents Barry Scheck, Cynthia Orr, and Gerald Goldstein played a critically important role in the court of inquiry<sup>25</sup> that resulted in criminal charges being filed against Anderson<sup>26</sup> and his ultimate conviction for contempt of court.<sup>27</sup>) The prosecutor who fought against Morton's post-conviction DNA testing for five years, John Bradley, lost his re-election bid in the Republican primary in 2012, thanks in large part to his actions in the Morton case.<sup>28</sup> And the real perpetrator of Christine Morton's murder, Mark Norwood, was arrested thanks to the DNA test that excluded Michael Morton and included Norwood. It was also determined that Norwood's DNA was found at the murder scene of Debra Masters Baker, who was killed a year-and-a-half after Christine Morton.<sup>29</sup>

During the time between his exoneration and the 2013 legislative session, Morton hired a Republican lobbyist, Thomas Ratliff, with the original goal of

passing a bill to impose fines and possible revocation of prosecutors' law licenses for engaging in misconduct.<sup>30</sup> On Morton's one-year anniversary, he launched a website (michael-morton.com) so that members of the public could contact their legislators about prosecutor accountability issues, and he began meeting with legislators, governor's office representatives, prosecutors, defense lawyers, and other stakeholders to build support for his efforts for prosecutorial accountability.<sup>31</sup>

All of these events came to a head at the beginning of the legislative session. The court of inquiry into Anderson's possible criminal conduct during the Morton trial began the first week of February, a few weeks into the legislative session.<sup>32</sup> In March, Mark Norwood went on trial for the murder of Christine Morton and was convicted and sentenced to life in prison.<sup>33</sup> In April, Judge Louis Sterns concluded the court of inquiry and determined that there was probable cause to believe that Judge Anderson "broke two state laws and committed criminal contempt of court for lying to Morton's trial judge. He then signed a warrant for Anderson's arrest as required under state law governing courts of inquiry."<sup>34</sup>

### Strong Legislative Sponsors and Staff

While Michael Morton's exoneration and surrounding dramatic events created the environment that made discovery reform possible in Texas, in the end it would not have been possible without strong legislative sponsors and staff who believed in the cause and were willing to put in the long hours to push the legislation over the "goal line" of enactment. Senate Bill 1611 was jointly authored by Sen. Rodney Ellis (D-Houston) and Sen. Robert Duncan (R-Lubbock), two veterans who have seen their fair share of criminal justice reform victories over the years. These senators, along with their staffers — Brandon Dudley, Sen. Ellis' chief of staff and general counsel, and Megan LaVoie, Sen. Duncan's general counsel — "are due much credit for shepherding this momentous legislation and dealing with all of the competing and often contentious interests involved."<sup>35</sup>

The primary point of contention for many in the defense bar was the fact that S.B. 1611 (and earlier discovery reform bill S.B. 91) required some reciprocal disclosures by the defense that were not required under then-existing law. S.B. 1611's new defense disclosure provisions would have included written or recorded statements of witnesses related to the charge; physical or documentary evidence

the defense intended to use in its case-in-chief; and, at the beginning of jury selection, the names and possibly addresses of lay witnesses whom the defense reasonably expected to testify at trial. The original bill would also have required the defense to disclose pretrial affirmative defenses, alibi locations, and alibi witnesses if requested by the state.<sup>36</sup> In the end, all reciprocal provisions in the bill were stripped out.

Evidence of the extraordinary investment by legislators and their staff in passing the discovery reform legislation can be seen in the fact that the two interest groups who had the biggest stake in criminal discovery procedures — the Texas District and County Attorneys Association (TDCAA) and the Texas Criminal Defense Lawyers Association (TCDLA) — were not pushing for passage of discovery reform legislation at the beginning of the session. After failed attempts at reform in previous sessions, a stalemate over the issue had settled in, and neither side was particularly interested in going to battle over a lost cause, or at least one with few likely benefits and many potential pitfalls. Despite the initial lack of initial interest by prosecutors and the defense bar, the issue was foisted on them by legislators and staff who saw this as an once-in-a-lifetime opportunity to improve the criminal justice system and prevent any future miscarriage of justice like Michael Morton's.

### Support From Many Conservatives

Also important to passage of the discovery reform bill was support from many conservative legislators. In fact, many "tea party" conservatives in the House of Representatives were interested in making the legislation more defense-friendly, but it was determined that the legislation as passed out of the Senate was as good as it was going to get, and any changes in the House meant that it would have to go back to the Senate to have the changes go into effect. The easiest route to passage was leaving the bill alone, which House conservatives agreed to do. S.B. 1611, sponsored by a bipartisan group of representatives, passed the House unanimously on May 14, 2013.

### Dedicated Advocates — Including Criminal Defense Lawyers

The most important advocate working tirelessly for the passage of S.B. 1611 was the man for whom the bill was named — Michael Morton. He attended stakeholder meetings, met with legislators, and

worked the press magnificently.

Many criminal defense lawyers put in plenty of hours of overtime to get the discovery reform legislation passed. TCDLA's main concern was that the legislation contained no reciprocal discovery requirements, as evidenced by a resolution passed by the TCDLA board on March 9 that opposed reciprocal discovery.<sup>37</sup>

Finally, there were other advocates who were deeply engaged in getting the legislation passed. Prior to the legislative session, Texas Appleseed and the Texas Defender Service (TDS) embarked on a survey of defense lawyers and prosecutors across Texas to ascertain what the discovery practices were in counties across the state, reviewed discovery laws and practices in other states, and reviewed ABA Standards on discovery. Their research culminated in the report, *Improving Discovery in Criminal Cases in Texas: How Best Practices Contribute to Greater Justice*, which was released in the early days of the 2013 legislative session. It garnered press coverage and served as an educational tool about Texas discovery practices and how they were lacking when compared to other states.

## State Criminal History Database: Free Access For Public Defenders

While the Michael Morton Act was an example of how a high-profile exoneration propelled a piece of defense-friendly legislation onto the governor's desk, other defense-friendly bills passed with little fanfare this past session in Texas. One such bill was S.B. 1044, which provides public defender offices and the Office of Capital Writs<sup>38</sup> with free access to the state's criminal history database. Such criminal history information is used to investigate the criminal history of clients and potential witnesses for impeachment purposes.

Before the passage of S.B. 1044, at least nine states provided public defenders with "terminal" or direct computer access to the state's criminal history record information database: Alaska, Arkansas, Connecticut, Florida, Georgia, Minnesota, Nebraska, Oregon, and Tennessee.<sup>39</sup> Some states define a public defender as a "criminal justice agency," and give public defenders access as they would the courts, district attorney, or the police. Other states specify the public defender as an agency that essentially has full access to the state database, or access with certain restrictions.

The two legislators who carried the

bill both represent districts with public defender offices: Sen. Jose Rodriguez (D-El Paso), whose district includes the El Paso County Public Defender's Office, and Rep. Armando Walle (D-Houston), whose district includes the Harris County Public Defender's Office. Prior to the passage of this new law, the Texas Department of Public Safety (DPS), which administers Texas' criminal history record information (CHRI) database, was prohibited from charging a "criminal justice agency" for CHRI. S.B. 1044 simply specified that DPS now may not charge public defender offices and the Office of Capital Writs, along with criminal justice agencies, for CHRI.

At committee hearings, public defender office representatives explained why the legislation was needed. Alex Bunin, chief of the Harris County Public Defender's Office, testified in both the Senate and House, as did Leonard Clemens, an investigator for the Dallas County Public Defender's Office. Clemens' testimony included an interesting argument that others might find useful in their advocacy efforts. He noted that having criminal history information was helpful because it was important for his own personal safety. As an investigator, he was responsible for interviewing witnesses, some of whom may be potentially dangerous. Having criminal history information about such witnesses, he said, is helpful in terms of knowing the people he is dealing with and whether or not they are potentially armed.

There was no opposition by police or prosecutors. In fact, a new independent crime lab being created by the city of Houston helped to get the bill passed after an amendment was added to the bill so that the crime lab could conduct background checks on its employees, subcontractors, and interns.

The one legislator who expressed any concern with the bill was only concerned about the fact that private criminal defense attorneys who were appointed to represent indigent defendants would not get free access to the DPS criminal history database like public defender offices would. Unfortunately, to give the thousands of defense attorneys who take appointed cases in Texas free access to the CHRI database would have undoubtedly added to administrative costs at DPS and resulted in a fiscal note for the legislation, which could have led to its defeat.

## Addressing Excessive Caseloads

Excessive caseloads for public defenders and appointed counsel is a problem throughout the country, and Texas counties have experienced the same financial pressures that have led to excessive caseloads nationwide. H.B. 1318, by Rep. Sylvester Turner (D-Houston), attempts to address the problem in a few different ways.<sup>40</sup> First, the bill adds statutory language that specifies that a public defender's office may not accept an appointment if doing so would violate the maximum allowable caseloads established at the public defender's office.<sup>41</sup> It also states that a "chief public defender may not be terminated, removed, or sanctioned for refusing in good faith to accept an appointment. ..."<sup>42</sup>

Additionally, the legislation creates a new system of reporting, both by appointed counsel (including public defender attorneys) to the counties, and by the counties to the state. Attorneys who accept appointments must now annually report the estimated percentage of their practice time devoted to appointed cases in the counties in which they accept appointments.<sup>43</sup> All counties will also have to report to the state the number of cases assigned to individual attorneys.<sup>44</sup> This added level of transparency will make it easier for the public, judges, and elected officials to know how many appointed cases an individual attorney has over various counties, and whether that number of cases could be considered excessive.

In order to determine what an "excessive caseload" looks like, the legislation tasks the TIDC with conducting a

study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that, when the attorney's total caseload, including appointments made under Article 26.04, Code of Criminal Procedure, appointments made under Title 3, Family Code, and other work, is considered, allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation.<sup>45</sup>

This legislation actually started out as three different bills, none of which had much to do with each other. But thanks to quick thinking and maneuvering by legislators and advocates, the bills were cobbled together through floor amendments

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and H.B. 1318 was signed by Gov. Perry on June 14, 2013.

The portion of the bill pertaining to protecting chief public defenders from being fired or sanctioned for controlling their caseloads was inspired by American Bar Association Resolution 104C, which was passed by the House of Delegates on Feb. 11, 2013.<sup>46</sup> The resolution "calls for governments to enact legislation to protect Chief Defenders and other non-union supervisory personnel from wrongful termination for attempting in good faith to provide competent and diligent representation in accordance with ABA and state bar mandated ethical obligations."<sup>47</sup> The Harris County Public Defender's Office suggested the idea to Rep. Roberto Alonzo, a criminal defense attorney, who introduced stand-alone legislation on the issue.<sup>48</sup> The text of the legislation was later added to H.B. 1318 as an amendment.

## Junk Science Writ Reform

For the past three legislative sessions, the Innocence Project of Texas (IPTX) has been diligently trying to get a junk science writ reform bill passed, and 2013 was the year that the dream became reality. According to IPTX's founder and chief counsel, Jeff Blackburn, this legislation was the single most important bill for IPTX over the past four to five years, and he believes that it will lead to a sea change in innocence work and criminal law in Texas — and other states that follow Texas' lead.

Sen. John Whitmire (D-Houston), the "Dean" of the Senate and longtime Chairman of the Senate Criminal Justice Committee, authored S.B. 344. It allows for habeas relief to be granted when relevant scientific evidence was not available at trial or when currently available scientific evidence that was not available or ascertainable at trial contradicts the scientific evidence relied on by the state at trial.<sup>49</sup> The court may grant relief if it finds that "had the scientific evidence been presented at trial, on the preponderance of the evidence the person would not have been convicted."<sup>50</sup>

According to Jeff Blackburn and IPTX lobbyist Scott Henson,<sup>51</sup> there were two major changes this session that made passage of the legislation possible. First, between the 2011 and 2013 legislative sessions, the Texas Court of Criminal Appeals (CCA) decided an important case that pointed to the very real need for the legislation. In *Ex Parte Robbins*,<sup>52</sup> the CCA denied Neal

Robbins a new trial despite the fact that “the state’s key witness, Dr. Patricia Moore, the assistant medical examiner who performed the autopsy, had re-evaluated her trial testimony and concluded, based on the additional five years of training and experience she had acquired, that the cause and manner of death should have been ruled ‘undetermined’ and not ‘homicide.’”<sup>53</sup> This case was highlighted in Senate Criminal Justice Committee testimony by Brian Wice, appellate attorney for Neal Robbins, and former District Attorney Michael McDougal, who agreed early on that Robbins deserved a new trial.<sup>54</sup> The bill, they said, would ensure that Robbins and others like him would get a new trial in the future.

In past legislative sessions, before the *Robbins* case, district attorneys who opposed the bill would often argue that the legislation was not needed because no injustices like the *Robbins* case had occurred. That argument could no longer be made after *Robbins*. In the past, the Harris County District Attorney’s Office (HCDAO) was the most vocal of the district attorney’s offices in opposing the junk science writ reform legislation. But with the *Robbins*

decision, and a new lobbyist, the HCDAO was no longer willing to outright oppose the bill. Instead, to its credit, that office worked with Sen. Whitmire, Sen. Whitmire’s staffer, Larance Coleman, and IPTX to slightly modify the bill to everyone’s liking.

According to Blackburn, the new law will do more than help on the back end in terms of getting innocent people out of prison — it will also prevent them from going to prison in the first place. “This new law will raise awareness of trial judges, district attorneys, and criminal defense lawyers about junk science. If there is a penalty — habeas relief and a retrial — for the use of junk science, then it will be less likely that the junk science will be allowed at trial. When you put post-conviction relief in the mix, then people start paying attention. Judges don’t want to be reversed.”

## Conclusion

Although these four new laws will help improve the fairness of the Texas criminal justice system for years to come, they were not the only ones enacted last year. Texas also was the first state to pass legislation requiring law enforcement to obtain a warrant in order to access a person’s email, computer files stored “in the cloud,” or other customer data stored on company computers.<sup>55</sup> The legislature passed legislation requiring DNA testing of any biological material collected in capital cases.<sup>56</sup> And the state enacted a law to establish new disciplinary rules for prosecutors who engage in *Brady* violations that requires reprimands to be public and establishes that the statute of limitations does not toll until a wrongfully convicted person has been released from prison.<sup>57</sup>

All of these legislative success stories show that criminal defense-friendly reforms are possible in the most conservative of Southern states — but reform does not happen by accident. Reform requires ongoing efforts by advocacy groups as well as the defense bar and public defender offices. It also requires invested and dedicated legislators and staff who are supported in their reform efforts by credible advocates. If Texas can do it, then so can other states, but only if these important building blocks are in place.

Scott Ehlers was Senior Policy Advisor for Sen. Rodney Ellis on the Senate Criminal Justice Committee from 2008 to 2011.

## Notes

1. E. Ann Carson & William J. Sabol, U.S. Dept. of Justice, Bureau of Justice Statistics, *Prisoners in 2011*, Table 2, at 3; Appendix Table 1, at 21 (2012).

2. *Id.* at 23, Appendix Table 3.

3. Tracy L. Snell, U.S. Dept. of Justice, Bureau of Justice Statistics, *Capital Punishment, 2011 — Statistical Tables*, Figure 5, at 3.

4. W. Gardner Selby, *Texas Is ‘the State That Has Now Gone the Longest Without Electing a Democrat Statewide,’ Politifact Texas*, AUSTIN AMERICAN-STATESMAN, available at <http://www.politifact.com/texas/statements/2012/sep/26/joaquin-castro/joaquin-castro-says-texas-has-gone-longest-all-sta/> (accessed Jan. 6, 2014).

5. Legislative Reference Library of Texas, *Membership Statistics for the 83rd Legislature*, available at <http://www.lrl.state.tx.us/legleaders/members/memberstatistics.cfm>. The table only counts 30 senators, despite the fact that there are 31 senators, because Sen. Mario Gallegos died prior to the 2012 election. Sen. Silvia Garcia, Democrat, was elected to Sen. Gallegos’ seat, thus bringing the total number of Democrats in the Senate to 12.

6. Such “criminal justice reform advocates” include (alphabetically): American Civil Liberties Union of Texas; Innocence Project of Texas; Texas Appleseed; Texas Criminal Defense Lawyers Association; Texas Criminal Justice Coalition; Texas Fair Defense Project; Texas Public Policy Foundation; and the Texas Defender Service. Governmental entities such as the Harris County Public Defender’s Office, Dallas County Public Defender’s Office, and the Texas Indigent Defense Commission were supportive of reforms during this past legislative session, but in a restricted manner due to their status as governmental agencies.

7. For a discussion of the history of criminal discovery in Texas, see Keith S. Hampton, *Texas Discovery: Where We Were, Where We Are Headed*, VOICE FOR THE DEFENSE 25, Nov./Dec. 2013.

8. Brandi Grissom, *Prosecutors Prepare to Open Their Files*, TEXAS TRIBUNE, Nov. 27, 2013, available at <http://www.texastribune.org/2013/11/27/prosecutors-prepare-open-their-files/>.

9. See generally Texas Defender Service and Texas Appleseed, *Improving Discovery in Criminal Cases in Texas: How Best Practices Contribute to Greater Justice* (Feb. 2013).

10. *Id.* at 29 (noting that defense counsel from Hidalgo, Johnson, Val Verde, and Ector counties reported as of Fall 2012 being required to take handwritten notes of discovery).

11. See *Brady v. Maryland*, 83 S. Ct. 1194, 1196-97 (1963) (“suppression by the prose-

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cution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution"); *Giglio v. United States*, 92 S. Ct. 763 (1972) (due process requires impeachment evidence about government witnesses to be disclosed to the defense).

12. TEX. CODE CRIM. PROC. art. 39.14(a) (2013), amended by S.B. 1611, 83rd Reg. Sess. (Tex. 2013).

13. *Id.*; see also Texas Defender Service and Texas Appleseed, *supra* note 9, at 8.

14. Troy McKinney, *Criminal Discovery in Texas — 2014: The Beginning of a Brave New World of Fairness*, VOICE FOR THE DEFENSE, Nov./Dec. 2013, at 17.

15. TEX. CODE CRIM. PROC. art. 39.14(a).

16. *Id.*

17. *Id.*

18. TEX. CODE CRIM. PROC. art. 39.14(h).

19. *Kinnamon v. State*, 791 S.W.2d 84, 91 (Tex. Crim. App. 1990).

20. Mike Ward, *Tab for Wrongful Convictions in Texas: \$65 Million and Counting*, AUSTIN AMERICAN-STATESMAN, Feb. 10, 2013, available at <http://www.statesman.com/news/news/tab-for-wrongful-convictions-in-texas-65-million-a/nWLQM/>.

21. Brandi Grissom, *Michael Morton: A Year of Freedom*, TEXAS TRIBUNE (Oct. 4, 2012), <http://www.texastribune.org/2012/10/04/michael-morton-year-freedom/>. Morton was officially exonerated by the Texas Court of Criminal Appeals on Dec. 19, 2011. See [http://www.innocenceproject.org/Content/Michael\\_Morton.php](http://www.innocenceproject.org/Content/Michael_Morton.php).

22. Grissom, *supra* note 21.

23. See TEX. CODE CRIM. PROC. ch. 52.

24. Grissom, *supra* note 21.

25. Press Release, The Innocence Project, *Innocence Project Asks Texas Court to Officially Exonerate Michael Morton of the 1987 Murder of His Wife; Group Files Report on Its Investigation Into the Misconduct That Caused His Wrongful Conviction* (Dec. 19, 2011); available at [http://www.innocenceproject.org/Content/Innocence\\_Project\\_Ask\\_Texas\\_Court\\_to\\_Officially\\_Exonerate\\_Michael\\_Morton\\_of\\_the\\_1987\\_Murder\\_of\\_His\\_Wife.php](http://www.innocenceproject.org/Content/Innocence_Project_Ask_Texas_Court_to_Officially_Exonerate_Michael_Morton_of_the_1987_Murder_of_His_Wife.php).

26. *In re Honorable Ken Anderson* (A Court of Inquiry), Cause No. 12-0420-K26 (26th Dist. Ct., Williamson Co., Tex.), Apr. 19, 2013; available at <http://www.innocenceproject.org/docs/andersonfindings.pdf>.

27. Chuck Lindell, *Ken Anderson to Serve 10 Days in Jail*, AUSTIN AMERICAN-STATESMAN, Nov. 8, 2013, available at <http://www.statesman.com/news/news/ken-anderson-to-serve-10-days-in-jail/nbmsH/>.

28. Ross Ramsey, *Texas Prosecutors No Longer Unassailable*, TEXAS TRIBUNE (Apr. 26,

2013), <http://www.texastribune.org/2013/04/26/texas-prosecutors-once-unassailable-take-beating/>.

29. Grissom, *supra* note 21.

30. Brandi Grissom & Morgan Smith, *S.B.O.E. Member's Client Shows Small World of Texas Politics*, TEXAS TRIBUNE (Aug. 8, 2012), <http://www.texastribune.org/2012/08/08/S.B.oe-members-new-client-shows-small-world-texas-po/>.

31. Grissom, *supra* note 21.

32. Brandi Grissom, *Morton Calls Anderson's Inquiry 'Road to Accountability'*, TEXAS TRIBUNE (Feb. 7, 2013), <http://www.texastribune.org/2013/02/07/morton-calls-andersons-inquiry-road-accountability/>.

33. Brandi Grissom, *Tears and Relief After Norwood Found Guilty*, TEXAS TRIBUNE (Mar. 27, 2013), <http://www.texastribune.org/2013/03/27/closing-arguments-norwood-murder-trial/>.

34. Chuck Lindell, *Judge Finds That Anderson Hid Evidence in Morton Murder Trial*, AUSTIN AMERICAN-STATESMAN, Apr. 19, 2013, available at <http://www.statesman.com/news/news/local/ken-anderson-court-of-inquiry-resumes/nXRLm/>. See also *In re Honorable Ken Anderson* (A Court of Inquiry), *supra* note 26.

35. McKinney, *supra* note 14, at 16.

36. See S.B. 1611 (Introduced), § 2; available at <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=83R&Bill=S.B.1611>.

37. Hampton, *supra* note 7.

38. The Office of Capital Writs is a statewide public defender office that is charged with representing death row inmates in state habeas proceedings. See TEX. GOV'T CODE ch. 78, sub. B.

39. ALASKA ADMIN. CODE tit. 13, § 68.215(a); ARK. CODE §§ 12-12-1502(a)(4), 12-12-1503(12), and 12-12-1506(a)(4)(A)(ii); CONN. GEN. STAT. ANN. § 54-142q(i); FLA. STAT. §§ 943.053(7) and 943.053(3)(b); GA. ANN. CODE § 35-3-34(a)(2); MINN. STAT. § 611.272; NEB. REV. STAT. §§ 29-3504, 29-3509, and 29-3510(6); OR. ADMIN. R. 257-010-0015(7)(d) and 257-010-0015; and TENN. CODE ANN. § 8-14-205(h).

40. H.B. 1318, 83rd Reg. Sess. (Tex. 2013) (enacted). Available at <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=83R&Bill=HB1318>.

41. H.B. 1318, 83rd Reg. Sess. § 2 (Tex. 2013) (codified at TEX. CODE CRIM. PROC. art. 26.044(j)(4)).

42. H.B. 1318, 83rd Reg. Sess. § 2 (Tex. 2013) (codified at TEX. CODE CRIM. PROC. art. 26.044(j-2)).

43. H.B. 1318, 83rd Reg. Sess. § 1 (Tex. 2013) (codified at TEX. CODE CRIM. PROC. art. 26.04(j)(4)).

44. H.B. 1318, 83rd Reg. Sess. § 6 (Tex. 2013) (codified at TEX. GOV'T CODE

§ 79.036(a-1)).

45. H.B. 1318, 83rd Reg. Sess. § 8 (Tex. 2013).

46. American Bar Association, Res. 104C, adopted by the House of Delegates on Feb. 11, 2013; available at [http://www.americanbar.org/content/dam/aba/administrative/house\\_of\\_delegates/resolutions/2013\\_hod\\_midyear\\_meeting\\_104c.docx](http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2013_hod_midyear_meeting_104c.docx).

47. *Id.* at 2.

48. H.B. 3207, 83rd Reg. Sess. (Tex. 2013); text and history available at <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=HB3207>.

49. TEX. CODE CRIM. PROC. art. 11.073(a)-(b).

50. TEX. CODE CRIM. PROC. art. 11.073(b)(2).

51. In addition to serving as IPTX's lobbyist, Henson has an excellent criminal justice blog, GRITS FOR BREAKFAST, <http://gritsforbreakfast.blogspot.com/>. He wrote about the passage of S.B. 344 in *Habeas Reform at the Texas Legislature: The Backstory*, GRITS FOR BREAKFAST (Aug. 22, 2013), <http://gritsforbreakfast.blogspot.com/2013/08/habeas-reform-at-texas-legislature.html>.

52. *Ex Parte Neal Hampton Robbins v. State*, 360 S.W.3d 446 (Tex. Crim. App. 2011).

53. Brian Wice, *Mr. Wice Goes to Austin*, TEXAS BAR JOURNAL 831-2 (Sept. 2013).

54. *Id.*

55. H.B. 2268, 83rd Reg. Sess. (Tex. 2013) (enacted), text and history available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=HB2268>.

56. S.B. 1292, 83rd Reg. Sess. (Tex. 2013) (enacted), text and history available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=S.B.1292>.

57. S.B. 825, 83rd Reg. Sess. (Tex. 2013) (enacted), text and history available at <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=S.B.825>. ■

## About the Author

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