

WEST VIRGINIA INNOCENCE PROJECT 2020-21

From the Director's Desk



Despite the challenges of a global pandemic, the unflagging efforts of our students and staff continued in our innocence project law clinic.

Following three years of hard work, Jason Lively was finally exonerated and released after 14 years in prison in September 2020. This success has only strengthened our resolve to continue the fight for all of our innocent clients. As demonstrated by Mr. Lively's case, proving innocence and securing release from incarceration can take many years of diligent labor.

Often we face numerous roadblocks like the unavailability of court files from previous lawyers necessitating document copying fees, the expense of investigation and forensic testing fees, and even legal barriers to reopening cases. Additionally, as the only innocence organization in the state, our staff and students travel long distances to represent our clients.

However, these challenges can also be opportunities for the education of law students and the growth of ideas for systemic change. And while we cannot ensure an exoneration every year, we are proud that the law students who pass through our clinic graduate with both the knowledge to prevent wrongful convictions from occurring and the tools to fight for their own clients who have been incarcerated based on flawed or outdated forensics or bad lawyering.

I am proud of the work the students, staff, and interns are doing at the West Virginia Innocence Project Clinic, and I am certain this important work greatly benefits the citizens of West Virginia.



Melissa Giggenbach
Program Director
West Virginia Innocence Project
melissa.giggenbach@mail.wvu.edu
304-293-8286

WVULAW
West Virginia Innocence Project

What is the West Virginia Innocence Project?

The West Virginia Innocence Project is a legal clinic that aims to serve and to free innocent West Virginians who are in prison for crimes they did not commit.

WVIP also works to correct the problems that lead to wrongful convictions in our legal system through policy advocacy and educational outreach.

WVIP is staffed by six to eight third year (3L) law students, four to five undergraduate interns, one staff attorney and one program director.

Clinic Highlights 2020-21

▶ WVIP and attorneys from Baker Botts LLC succeeded in freeing Mr. Jason Lively from prison after successfully petitioning the court to vacate his sentence. Mr. Lively was wrongfully convicted in McDowell County of first-degree murder and first-degree arson in 2005. After presenting evidence by multiple state experts that demonstrated that Mr. Lively was convicted using false fire “science”, he was released after spending 14 years in prison. Mr. Lively currently resides with his fiancée in North Carolina.



Attorney Andrew George of Baker Botts, WVIP exonerated client Charles Jason Lively, and WVIP Program Director Melissa Giggenbach.

▶ Devon Unger, WVU Law 2015 graduate and former WVIP clinical law student, joined our staff in July 2020 and has been instrumental in meeting WVIP’s mission by filing petitions, supervising students, and representing innocent clients. This fall, Devon will represent our client, Nathaniel Barnett, who is facing retrial in Cabell County. Mr. Barnett’s original 2008 murder conviction was vacated after DNA evidence obtained at the scene implicated another perpetrator.

▶ WVIP students, led by staff attorney Devon Unger, filed a Petition for Writ of Certiorari with the Supreme Court of Appeals of the United States on behalf of our long-standing client, Samuel Anstey, whose conviction in Fayette County was based on faulty fire science.

▶ WVIP, in collaboration with The Innocence Project’s state policy advisor, drafted junk science legislation that was introduced by Delegate Joshua Higgenbotham (R-Putnam) and signed into law by Governor Jim Justice in April 2021. The new law provides an avenue for relief for people who were convicted using debunked or outdated forensic science.

▶ Students piloted a program under the First Step Act to file Compassionate Release Motions in West Virginia federal courts attempting to secure release from prison for the most medically vulnerable incarcerated individuals due to the Covid-19 pandemic.

Meet Staff Attorney Devon Unger



Devon Unger serves as the Staff Attorney for the West Virginia Innocence Project, supervising student teams as they investigate and litigate cases. He also represents WVIP clients in court.

Devon is a 2015 graduate of the WVU College of Law and a former WVIP Law Clinic student.

He has worked as both a private criminal defense attorney and a public defender prior to joining WVIP. In 2020, Devon led the effort to draft a Petition for Writ of Certiorari to the Supreme Court of the United States.

When he isn’t working to free the innocent, Devon volunteers with Animal Friends of West Virginia, a no-kill animal shelter serving North Central West Virginia, and cares for his elderly basset hound, Maggie.

Our Future Goals

WVIP’s main goal in the near-term is to secure permanent funding for the staff attorney position.

Doing so would ensure that all potential cases of wrongful convictions would be thoroughly and timely investigated and litigated, while also ensuring excellent legal education for the clinical law program.

In the long-term, WVIP will become the leading post-conviction organization in West Virginia by providing education and support to practicing attorneys.

This would prevent wrongful convictions based on flawed forensics and bad lawyering and also ensure wrongful convictions are properly attacked in court.

FIND US ONLINE AT
law.wvu.edu/wvip

Budget and Expenses 2020-21

WVIP is very fortunate to be a clinical legal program at the College of Law, which provides the salary for the program director, law students, office space, a small budget, and important services such as shared administrative staff, computers, and other office needs.

However, in order to fulfill its mission, WVIP must raise additional funds to support critical operations. Crucially, the staff attorney position is entirely funded by donations from foundations and individuals. The staff attorney position is vital to the organization's ability to represent and free wrongfully convicted West Virginians. Beyond funding the staff attorney position, additional funding is needed to travel to investigate cases and attend hearings, obtain court files, contract with forensic experts and private investigators, provide forensic testing, explore ways to provide systemic change, and reduce the backlog of cases awaiting investigation.

► FY21 Total Support: \$136,497

West Virginia University College of Law

\$81,648

Wilson, Frame & Metheny P.L.L.C.

\$20,000

Individual Donations

\$19,849

Jeremy C. McCamic
Family Foundation, Inc.

\$12,500

Martha Gaines & Russell
Werle Memorial Foundation

\$2,500

► FY21 Total Expenses: \$153,589

Personnel

\$150,968

Professional Fees and Contract Services

\$1,000

Legal Filing Expenses

\$889

Legal Travel

\$324

Promotional
Materials

\$316

Mail

\$92

**TO SUPPORT THE WEST VIRGINIA
INNOCENCE PROJECT, PLEASE CONTACT:**

Jennie James
Assistant Dean for Development
304-293-7367
jennie.james@mail.wvu.edu

Note: expenses were down in FY21 due to the pandemic.



The West Virginia Innocence Project Law Clinic Class of 2021.

2020-21 WVIP BY THE NUMBERS

3600+

HOURS OF LEGAL WORK

44

APPLICATIONS

100%

WEST VIRGINIA CLIENTS

300+

INTERN VOLUNTEER HOURS

25

CASES TAKEN

6

STUDENT CLINICIANS

450

OUTSIDE COUNSEL
PRO BONO HOURS

72

CASES WAITING REVIEW

5

UNDERGRADUATE INTERNS

121

REQUESTS FOR AID

1

EXONERATION

2

FULL-TIME STAFF



West Virginia Innocence Project
101 Law School Drive
Morgantown, WV 26506-6130
cliniclaw@mail.wvu.edu | (304) 293-7249

WVU is an EEO/Affirmative Action Employer —
Minority/Female/Disability/Veteran.