The dark figure of wrongful convictions: how intake decisions impact exonerations

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The Dark Figure of Wrongful Convictions:
How Intake Decisions Impact Exonerations

by
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ABSTRACT

Innocence organizations contributed to 45% of exonerations in the year 2020, and account for nearly 25% of all U.S. exonerations. Yet little is known about these organizations, including a review of their intake criteria and procedures, how they select their intake criteria and procedures, or how those choices influence the landscape of known wrongful convictions. The contents of these intake decisions as well as how they are chosen have implications for what is currently known about wrongful convictions nation-wide. In this study, 19 innocence organizations represented by 24 innocence organization staff and leaders completed qualitative interviews to address this gap in the literature. Findings indicate that though both intake criteria and procedures vary across organizations, rationales for the adoption of intake criteria and procedures appear to be based on a number of factors, including how pursuing a case will impact other applicants and active caseloads, as well as a case’s likelihood of success. Implications and future directions in light of these findings are discussed.
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Chapter 1 – Introduction

Innocence organizations have assisted in the exonerations of 738 individuals,¹ changing lives and helping to right the wrongs the criminal justice system has incurred upon the wrongfully convicted. However, the intricacies of how these organizations decide which cases to undertake remains unknown. A review of these policies and practices can have great implications for the Innocence Movement. Innocence organizations are entities which by way of their missions are dedicated to assisting the wrongly convicted, be it via exoneration efforts, policy reform, education, or all the above (“Who We Are,” 2021). These organizations are oftentimes considered separately from governmental bodies and Conviction Integrity Units (CIUs) doing similar work (“Glossary,” n.d.).

The Innocence Network is an umbrella organization which houses many innocence organizations across the world, and currently boasts 68 members, including the Innocence Project, California Innocence Project, and Puerto Rico Innocence Project (“Network Member Organization Locator and Directory,” 2021). There are also innocence organizations that are not members of the Innocence Network but taking on the same work, such as Centurion Ministries (“Centurion,” 2022), Institute for Actual Innocence (“Institute for Actual Innocence,” 2022), and Innocence Matters (“Innocence Matters,” n.d.). Intake policies and decisions at innocence organizations determine whether innocent individuals will receive assistance from these experts in issues related to wrongful convictions, which can facilitate their path towards being released or exonerated. As a result, identifying the ways innocence organizations decide to take cases may reveal a larger picture of the landscape of wrongful convictions. If there are systematic patterns

¹ Data from the National Registry of Exonerations as of 12/30/21.
to how cases are chosen or what policies dictate those choices, this could mean that there are entire classes of innocent people that are thus far under-recognized by innocence scholarship and practice.

In this dissertation, innocence organizations’ intake policies and practices are first described, and their implications then are explored. Finally, how these intake decisions help shape which claims of innocence receive assistance from one of these organizations is examined.

**Background**

To date, there have been approximately 2,932 people exonerated of their wrongful convictions. Collectively, the exonerated individuals have lost of over 21,000 years of freedom (“About,” n.d.). Wrongful convictions typically refer exclusively to claims of factual innocence (Acker & Redlich, 2019; Gould & Leo, 2010; Medwed, 2008). In cases of factual innocence, the person accused of a crime did not commit it, either because no crime occurred or because someone else was the perpetrator. Estimates of the prevalence of factual wrongful convictions range from 1% to 6% of felony cases (Acker & Redlich, 2019; Loeffler, Hyatt, & Ridgeway, 2018), though it is a difficult measure to obtain which varies dependent upon the analysis conducted (Gross & O’Brien, 2008; Zalman & Norris, 2021). In response to the recognition of wrongful convictions, organizations and programs have developed to assist those with innocence claims through investigation, representation, policy reform, reintegration, and more. Some of

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2 Data from the National Registry of Exoneration as of 12/30/21.
3 There also exists another recognized miscarriage of justice in which someone is factually guilty of a crime and is convicted, but has procedural errors occur with their case (Gould & Leo, 2010; Medwed, 2008). However, innocence organizations almost exclusively focus on factually innocent wrongful convictions, as does the present study.
4 A more complete discussion of how innocence is defined can be found in Chapter 2.
these organizations are branded as “innocence organizations,” and are non-governmental organizations which seek to exonerate the wrongfully convicted (“Glossary,” n.d.).

Empirical work has demonstrated that assistance from an innocence organization plays one of the most significant roles in defendants’ exonerations (Gould & Leo, 2015; West & Meterko, 2015). The National Registry of Exonerations, through its collection of information on as many of the known exonerations in the United States as it can locate, has indicated a steady rise in exonerations with the contributions of “professional exonerators.” According to the National Registry of Exonerations (2020), “professional exonerators” include innocence organizations and Conviction Integrity Units (CIUs). Conviction Integrity Units pose several significant differences from innocence organizations and for this reason the focus of this dissertation will be exclusively on innocence organizations. In the Registry’s most recent report for the year 2020, innocence organizations contributed to 45% of exonerations (“Exonerations in 2020,” 2021). To date, innocence organizations alone have played a role in approximately 25% of all known exonerations, with CIUs playing a role in about 18% (“The National Registry of Exonerations,” n.d.).

Although we know that innocence organizations are instrumental to securing exonerations of the wrongfully convicted, empirical work has yet to examine why intake policies and practices that shape their caseloads are chosen and how these choices might impact the characteristics of exonerations. Uncovering the answers to these questions might change what we think we know about the characteristics of wrongful convictions so far.

This work is imperative because even with the assistance of an innocence organization, it is a heavy burden to overturn a wrongful conviction. Many that have been able to secure an

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5 Data from the National Registry of Exonerations as of 12/30/21.
exoneration tell stories about how they came to be granted their freedom, often entailing years of hopelessness, perseverance, and hard work. One such person is Ricky Kidd, who was convicted of a double homicide he did not commit and served over 20 years in prison for the crimes. After he obtained post-conviction counsel in 2005, a habeas corpus petition vacated his conviction on August 15, 2019. One of his lawyers, Tricia Bushnell, described the long and arduous process which got them to Kidd’s eventual release: “You know, his case was started and investigated by another individual in 2005. And then that team just grew and grew and grew to several different types of appeals and the appeals can take forever. Now here we are, you know, almost 15 years later” (“Kansas City lawyer,” 2019). Even now, Kidd is still waiting to see if the state of Missouri will retry him on the charges (Schwers, 2019). This is only one example, which highlights how even with help from an innocence organization, exoneration cases take a long time to resolve. If intake policies and procedures across organizations in the U.S. systematically address only the same types of cases while omitting others, then the reasons for this must be uncovered to provide as many of the wrongfully convicted as possible with opportunities for relief.

**Significance of the Research Endeavor**

If there are policies and practices in place which result in some individuals with innocence claims not receiving assistance from innocence organizations, we are unable to explore the wider landscape of wrongful convictions and implement a more just criminal justice system. Innocence organizations’ missions all have one noble component in common: they prioritize freeing as many of the wrongfully convicted as they can. However, the barriers they face to taking on cases and seeing them through can be many. Should there be a discrepancy in who is assisted and who is not, it is important to discover why. The answers to this question have
implications for how the innocence and broader legal communities approach those cases. This dissertation expands knowledge about the field of criminal justice by 1) identifying a wide array of U.S. innocence organizations’ intake policies and procedures, 2) uncovering the original and evolving rationales underlying the development of innocence organizations’ intake policies and decision-making, and 3) examining how these policies and practices related to intake selection impact existing exoneration case characteristics.

Although some prior studies have explored innocence organizations’ intake policies, practices, and decision-making, many of these accounts are nearly 15-20 years old (e.g., Findley, 2006; Medwed, 2003; Stiglitz et al., 2002) and the last review of intake operations across organizations was published 10 years in the past (Krieger, 2011). Innocence organizations have likely evolved in the intervening years, given the rapid growth and recognition of the innocence movement, as described in the following chapter. Although these narratives are described in detail to provide a backdrop for the current study, they serve primarily as examples of how innocence organizations conduct their intake practices, which will be examined, updated, and expanded upon in the current study.

**Current Study**

The objectives of this dissertation are three-fold: first, to provide a comprehensive description of intake policies and procedures across organizations; second, to explore the considerations underlying the establishment and evolution of intake-related policies within each organization, including the decisions which account for differences between case selection processes across U.S. innocence organizations; and lastly, to venture beyond these policies and rationales to examine their implications for the characteristics of requests for assistance, current
caseloads, and exoneration cases. This analysis will be the first to jointly examine the characteristics of current caseloads and those cases that have thus far resulted in an exoneration. Literature regarding how innocence organizations were formed and addressing policy diffusion will provide relevant frameworks to help explain how these policy decisions are made (Chapter 2). The specific research questions guiding this dissertation are as follows:

1. What are the case selection policies implemented within innocence organizations, and how do case selection policies and practices vary across different innocence organizations?
2. How were these policies and practices developed, and why do differences in policies and practices occur across these organizations?
3. How do case selection policies and practices shape the characteristics of caseloads and exonerations within and across innocence organizations?
Chapter 2 – Literature Review

History of Innocence Movements and Organizations

It is necessary to note the beginnings of the Innocence Movement to discuss contributions of the movement today. Early innocence scholarship began with Edwin Borchard’s (1913) work, which recognized “unjust conviction” and detentions in European systems (Gould & Leo, 2010; Zalman, 2020). Though it was not widely received at the time, his later book *Convicting the Innocent* drew more attention yet to wrongful convictions by outlining specific cases, why they occurred, and potential reforms to prevent the phenomenon (Borchard, 1932). In the 1940s, Erle Stanley Gardner discussed wrongful convictions and the public’s responsibility in addressing them as part of the “Court of Last Resort.” The 1980s saw the work of Hugo Bedau and Michael Radelet (1987), which similarly described individual cases of believed wrongful convictions, this time of those convicted of capital crimes. From there, research and further recognition of wrongful convictions escalated at an even faster pace than before (Gould & Leo, 2010).

Innocence is a concept that organizations which devote their time and resources to uncovering still have trouble defining. The pursuance of justice for innocent individuals is said by many to have begun with the “indisputable,” or DNA-based exonerations in wrongful convictions (Findley & Golden, 2014). Yet the first innocence organization, Centurion Ministries, did not rely on cases dependent on DNA. Founded by Jim McCloskey in 1983, Centurion Ministries was formed to assist a broader base of the wrongfully incarcerated (Findley & Golden, 2014; Godsey & Pulley, 2004; Norris, 2017b). McCloskey was working as a chaplain in a state prison when he met a man who he believed to be innocent of murder, which put him on a track to form Centurion Ministries and assist over 60 individuals in their journeys to be exonerated and freed (McCloskey, 2020).
Though Centurion Ministries laid the framework, the development of the innocence movement accelerated with the use of DNA technology. DNA evidence was first used in the criminal justice context to convict, but in 1985, DNA profiling was used in Britain to prove the innocence of a 17-year old boy accused of a rape and murder to which he confessed (Norris, Bonventre, & Acker, 2018). Around this time, two attorneys who soon became founders of the nation’s largest innocence organization, Peter Neufeld and Barry Scheck, worked together on a case where they discovered the capabilities of DNA technology (Norris, 2017b). The first American exoneration based on DNA evidence occurred in 1989 of a man named David Vaquez who was pardoned by the governor of Virginia when DNA results from the crime matched to a serial killer named Timothy Spencer. It was then, in 1992, that the pair of former public defenders from the Bronx founded the Innocence Project housed at Cardozo Law School (Cooper & Gough, 2014; McMurtrie, 2014; Norris, 2017b).

The innocence movement only continued to pick up speed and began to garner nationwide attention. In 1996, Attorney General Janet Reno commissioned the National Institute of Justice to investigate the role of DNA technology in the “criminal justice system’s search for truth” (Findley & Golden, 2014; United States Department of Justice, 1996, p. iv). In 1998, a conference developed by Rob Warden and Lawrence Marshall entitled the “National Conference on Wrongful Convictions and the Death Penalty” was held in Chicago, Illinois. Although the focus of the conference was on persons exonerated from death row and the anti-death penalty movement, experts, practitioners, and students gathered to discuss issues of how wrongful convictions stem from the criminal justice system (Norris, 2017b; Warden, 2005). This conference also sparked the creation of more innocence organizations (Findley & Golden, 2014; McMurtrie, 2014; Norris, 2017b).
Neufeld and Scheck, several years after their formation of the Innocence Project, began to reach out to law schools and defense counsel across the country to aid them with their work. After they distributed information about their model, approximately ten innocence projects were formed and in 2000, another Chicago meeting was organized, this time amongst those who were interested in connecting with others doing innocence work (Norris, 2017b). Some recommendations for the formation of the Innocence Network came from the book *Actual Innocence*, which suggested that law schools form a network of innocence projects designed to challenge the wrongful convictions of those with both DNA and non-DNA innocence claims (McMurtrie, 2014; Dwyer, Neufeld & Scheck, 2000). The Network had an official structure beginning in 2005, when it formed its Board of Directors. In 2012, the Network became a more collaborative entity when it formed the Innocence Network Support Unit, which is responsible for sharing resources across member organizations, organizing their annual conference, and “provid[ing] customized organizational development support” to each of its members (“The Network Support Unit,” n.d.). More specifically, this unit oversees a downloadable Resource Library available only to Innocence Network member organizations which includes resources such as guides for hosting effective organizational meetings, suggestions for working with crime victims in exonerations cases, how to manage organization volunteers, case management system guides, and more (“Network Member Resource Library,” n.d.). The Network Support Unit also offers one-on-one coaching and advice, editing services for member organizations’ communications and fundraising materials, and referrals to experts both within the Network and externally (“The Network Support Unit,” n.d.).

Today, there are 68 Innocence Network member organizations, including a majority of organizations that are either associated with or fully housed within law schools (61%). The
remaining organization types include non-profits organizations and public defenders’ offices that are not associated with a law school, and pro bono portions of law firms (Findley, 2014). All member organizations are “dedicated to providing pro bono legal and investigative services to individuals seeking to prove innocence of crimes for which they have been convicted, and working to redress the causes of wrongful convictions” (“About the Innocence Network,” 2021). Membership is determined by application, with one of the primary criteria for entry being the dedication of “substantial” resources to those who have been convicted and have an innocence claim. Innocence Network organizations are required to complete an annual report, pay dues, comply with the Memorandum of Understanding regarding the Network’s relation to the Innocence Project, and be prepared to submit additional documentation to confirm their eligibility to be a Network member (“Become a Member,” 2021). Network members enjoy exclusive benefits including the aforementioned assistance from the Innocence Network Support Unit, in addition to access to other innocence organizations, a $2,000 grant available to all persons exonerated within the Innocence Network, discounted registration to the annual Innocence Network conference, and use of the “Innocence Project” trademark (“Network Benefits,” 2021). The promised access to other organizations comes in the form of private listservs, Innocence Network Committee collaboration, an Intranet platform, and the informal sharing of resources across member organizations (“Become a Member,” 2021).

Aside from the 68 Innocence Network organizations, there are also other agencies, non-profits, and other organizations doing similar work. Though the work all innocence organizations partake in is similar, the type of organization can be relevant for the implementation of policies and practices to achieve their goals. Thus, it is important to discuss the known differences across
each type of innocence organization to lay the groundwork for how their differences contribute to the development of intake processes.

**Types of Innocence Organizations**

Innocence work has been described as both time-consuming and complex, regardless of the assistance or services each organization provides (Hartung, 2013; McMurtrie, 2014; Suni, 2002). Services offered by innocence organizations range from preliminary investigation with referrals, to client legal representation and policy reform work (Krieger, 2011; Suni, 2002). Some innocence organizations focus exclusively on investigative work and employ outside representation post-investigation to handle legal representation (Suni, 2002). As noted earlier, one such organization is Centurion Ministries, the nation’s first innocence organization, which specializes in investigating DNA and non-DNA factual innocence claims. On their website, they state: “The majority of cases will require a field investigation, meaning you have to go and talk to witnesses who testified on both sides of a case: you have to look for new witnesses; new evidence of innocence; and you may need to bring in witnesses who lied at the original trial… this is our expertise” (“Our Work,” 2016). Centurion Ministries is an example of an independent nonprofit, whereas the other type of innocence organization is affiliated with a university.

Even when organizations are of the same type, they vary richly in terms of their structure. For example, innocence organizations affiliated with universities may range from fully student-run, voluntary projects with little faculty supervision, to full-fledged in-house clinics which are run by faculty members, to student placement in externships with public defenders’ offices (Medwed, 2003). The following section explores the specifics of how the predominant innocence organization type, those that operate through the assistance of law school clinics, function in
their work according to the available scholarship on the topic. What is known about the inner workings of law school-based innocence organizations is limited to the few works published by staff and founders of such organizations. Together, these accounts provide a starting point for broadly understanding the structure that is utilized in this type of organization.

**Law School-Based Innocence Organizations**

Though law school-based innocence clinics are lauded for their hard work, not many understand the considerations and structure of them, which is important because they can be vital to the success of an incarcerated person’s innocence claim. Innocence organizations affiliated with law school clinics generally share the same goal as those that do not share such an affiliation: to service those with claims of actual innocence. Because of their structure, these law school clinics can vary in several notable ways from nonprofit and public defense organizations doing the same work. Founders and staff from law school-affiliated innocence organizations across the country have published work on the various structures, responsibilities of staff, and philosophies of their organizations (see Findley, 2006; Medwed, 2003; Stiglitz et al., 2002). Representatives of such organizations have discussed the need to make practical judgments that are unique to their posture as a university-affiliated program, such as how many students to admit to their clinic each semester, how students are selected, the course content, the number of credit hours offered, and more (Stiglitz et al., 2002).

The biggest difference between law school-affiliated organizations and those that operate independently from law schools, according to the extant literature, is that the former are faced
with considerations of how to structure student responsibilities and oversight.\(^6\) Student roles often vary by organization as a matter of where resources are most needed (Findley, 2006; Hartung, 2013; Medwed, 2003; Stiglitz et al., 2002). For instance, staff at the California Innocence Project, which is affiliated with the California Western School of Law, have indicated that an adequate number of students is necessary to ensure that the “good” cases get identified, signaling that at this organization students play an important role in screening procedures (Stiglitz et al., 2002). Those leading these innocence organizations also differ in how they approach student supervision at their organizations (Hartung, 2013). For example, the California Innocence Project follows an extensive supervision approach, suggesting that “the critical part of the education occurs when the student’s work is reviewed by his or her supervisor” (p. 426). The New England Innocence Project, though not affiliated with a legal clinic, also practices a similar model of extensive supervision with the student interns they employ (Carroll, 2007).

Other organization leaders have taken a different view. Keith Findley, then-director of the Wisconsin Innocence Project at the University of Wisconsin-Madison Law School, and Daniel Medwed, co-founder of the Second Look Program Clinic at Brooklyn Law School,\(^7\) utilize non-directive supervision (Findley, 2006; Medwed, 2003). Findley explains how nondirective supervision is imperative at their Project, stating, “We simply cannot read all of the massive case records, observe directly all (or even many) of the witness or client interviews, or take part directly in the myriad other aspects of the students’ case work” (2006, p. 1141). Medwed states

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\(^6\) This is not to say that non-law school affiliated organization do not use law student interns; for example, the New England Innocence Project and the Georgia Innocence Project both utilize student interns yet are independent non-profit organizations (“About,” 2019; “Who We Are,” n.d.).

\(^7\) Though a co-founder of the now-ended Second Look Program Clinic at Brooklyn Law School, Daniel Medwed is now a University Distinguished Professor of Law and Criminal Justice at Northeastern University (“Faculty Directory,” 2022).
that there are some activities where the stakes are low enough that this approach is workable. For example, in his clinic, students were responsible for writing what they refer to as “evaluation memorandums.” This exercise put students at the forefront of the preliminary stages of case selection and made them responsible for reviewing information sent by potential clients about their cases and making a determination of whether a case had merit for an innocence claim. It is also low-stakes enough that a lack of supervision of this task will not greatly affect an incarcerated person’s claim.

A student’s work does not go unchecked, however; Medwed (2003) indicates that although students would provide a recommendation and proposed course of action for their assigned cases, faculty provided input for the ultimate decision. Beyond this point, if a decision was reached to take the case, the student became responsible for its continuation under supervision from faculty. A similar structure exists within the Wisconsin Innocence Project (Findley, 2006). The approaches discussed above are relevant to the current proposed work because a law student’s role in an innocence clinic, though it varies, is the functional equivalent of a staff member or volunteer’s role at another innocence organization. It is also likely that though instructive, the above accounts of how students are utilized and supervised might differ across organizations today now that it has been almost nine years since the last account was published. The level of supervision exercised over law students working in innocence clinics has implications for the types of intake practices employed at an innocence organization, and thus, how decisions are made at those preliminary stages.

Innocence Organization Functions

Each innocence organization has a different set of policies and procedures which guide them at each step of the exoneration and post-exoneration processes. The functions these
organizations perform, however, remain consistent. Functions can be broken down into several stages: investigating, litigating, policy reform efforts, and post-exoneration efforts. To provide background on the basic framework of innocence organizations, each of their possible functions is discussed in further detail below.

**Investigating Claims**

According to Krieger (2011), the average number of requests for assistance received by innocence organizations when the article was published was 600 per year. This number is likely to have changed in the last decade, given the increase in innocence organizations that has occurred in that time. Intake procedures are then employed to narrow in on which cases they will focus on (Suni, 2002). To work through their received requests, most innocence organizations have described beginning with a screening of cases. Screening is important to innocence organizations because they already operate with an underabundance of resources and must cut down on the number of requests they receive to then take cases in which they are truly able to provide assistance (Krieger, 2011; Suni, 2002). Generally, at this stage, directors, students, or staff are looking to make a preliminary determination of whether the case meets the basic intake requirements of an organization (Findley, 2006; Medwed, 2003).

Directly past the initial screening stage, organizations do a deeper dive into examining the case facts, field investigations, and legal histories of a case to help determine whether to take it on (Medwed, 2003; Stiglitz et al., 2002). Cases then proceed to the lengthy investigative and client legal representation phases of their work. It is through an innocence organization’s investigation of its selected cases that staff develop a strategy for what to do next. According to a 2011 study of innocence projects’ challenges in achieving exonerations, organizations reported that the number of cases they “seriously” investigate per year ranges from 12 to 225 (Krieger, 2011, see footnote 221, p. 368). This process, from locating evidence through litigation to
exoneration takes approximately six years according to an analysis conducted at the nation’s largest innocence project (Meterko, 2017). Though the above-detailed investigation process is based on writings from those at the innocence organizations themselves, not all organizations operate in the same ways. It is therefore necessary to further explore how investigations function at an array of various innocence organizations.

**Litigation**

As evidence is being located and analyzed, attorneys and law students at innocence organizations are working toward developing litigation strategies based on post-conviction options. These options are often dictated by the discovery of new evidence, post-conviction DNA testing statutes, and the jurisdictional rules surrounding how those claims can be made (for review, see Garrett, 2007). As previously noted, however, not all organizations offer client legal representation. In that case, after the completion of an investigation, the case is referred to another organization or post-conviction attorney that handles representation.

**Policy Reform**

Innocence organizations may also partake in policy reform efforts to prevent wrongful convictions and to aid those who have been wrongfully convicted in receiving justice (“Policy Reform,” 2019). Large reforms such as the Justice for All Act, which addressed funding for DNA testing and increasing compensation for federal exonerated persons, demonstrate that innocence items have received considerable governmental attention (Zalman, 2006). State-wide reform efforts have also been implemented, from creating reform commissions to legislation aimed at curbing contributors of wrongful convictions; however, one study of state-level policies found that jurisdictions with wrongful convictions reforms tend to focus on only one or two
substantive areas (Norris, Bonventre, Redlich, & Acker, 2011). Even so, policy reform work is an important focus in many organizations’ goals and mission statements.

*Other Functions (Reintegration, Compensation, etc.)*

Some organizations also offer post-exoneration services to their exonerated persons, such as assistance with reintegration and compensation (Norris, 2012; Westervelt & Cook, 2010). In *Life After Death Row* (2012), Westervelt and Cook examine the post-conviction struggles of exonerated persons who served time on death row. It is evident from exonerated persons’ accounts of PTSD, money management, dealing with technological changes, and other practical matters that a great deal of assistance is necessary for exonerated persons to effectively transition back into society. Some exonerated persons require assistance with where to go upon release, as they do not have access to reintegration plans or services offered to parolees (Westervelt & Cook, 2010). Perhaps most essential is procuring compensation from the local, state, or federal governments upon exoneration. Pursuing such proceedings require continuous hard work on the part of an exonerated person and their attorneys to be successful. The percentage of Innocence Project (2009) clients who received compensation ranges from 9-25% between private bills and litigation, respectively.

Each of these functions serves an important purpose in the world of an innocent incarcerated person. The range of services an innocence organization provides varies, though, and organizations must choose which ones to offer and how to deploy them. For this reason, the scope and practice of an innocence organization also vary.

**Innocence Organizations: Scope and Practice**

*Scope*

Though innocence organizations’ missions are often to exonerate *all* the wrongfully convicted and are not specifically tailored to assisting those with particular kinds of claims,
practically speaking, this is not possible. An innocence organization can be limited in the cases they take by their own intake criteria, resources, or external limitations which keep organizations from effectively completing their work and assisting every wrongfully convicted person. Many organizations try to make clear under what circumstances they cannot or will not help (for examples, see: “Application Process,” n.d.; “How to Apply,” 2019). Some organizations have less strict rules governing such matters. In these organizations, though they are not likely to take cases with certain characteristics, they also do not expressly prohibit them from review (Medwed, 2003). These softer rules are not usually publicly available and rest with the decision-makers within each innocence organization. Overall, organizations do consider that by narrowing their focus too far, they will inevitably fail to be able to help someone in need (Medwed, 2003).

One way in which innocence organizations determine who they can provide post-conviction assistance is by identifying their own definitions of “innocence” (Findley, 2010). The definition of “innocence” used by an innocence organization as well as factors such as crime details, evidence, and geography are tools they can use to decide which cases they will expend their resources on. Examining the guiding definitions and criteria that limit the scope of an innocence organization can shed light on whether there are innocent incarcerated people who are systematically accepted or declined for assistance.

Defining “Innocence”

One word that varies in meaning across scholarship and practice is the very word of “innocence.” Previous work has discussed how innocence scholarship and databases define “exonerations” and “innocence,” and the importance of such definitions (see Findley, 2010; Gould & Leo, 2015; Leo, 2017), though current works do not focus on their impact on the practice of intake. These definitions drive the types of cases that innocence organizations pursue
and provide a way to measure success of the Innocence Movement in reaching one of its missions to exonerate the innocent.

Wrongful convictions are largely defined in terms of innocence. Most commonly, definitions of innocence differentiate only between factual and legal innocence. However, there is some recognition of other instances of innocence, such as for those who are unable to establish *actus reus* (Risinger & Risinger, 2014); those convicted without the appropriate level of *mens rea* (Givelber, 1997); and those who act in ways which fulfill an affirmative defense (Acker & Wu, 2019; Bedau & Radelet 1987, Poveda, 2001). Factual innocence relies on an assertion that the individual did not commit the crime, while legal or “procedural” innocence depends on whether the appropriate authority has made a determination of guilt in a process that is consistent with the standards of due process (Risinger, 2007). Most innocence organizations focus only on cases of factual innocence (Krieger, 2011; Suni, 2002). This is in part because they make an easier “sell” to the public, criminal justice actors, and legislators, and are considered by many to be a purer pursuance of justice (Medwed, 2003; Smith, 2009). This preference for factual innocence cases can be to the detriment of incarcerated people with legal innocence cases where procedural safeguards were not followed and resulted in a miscarriage of justice, because they receive less attention and are viewed as less compelling than factual wrongful convictions (Medwed, 2003; Smith, 2009).

The confusion between these definitions and the available pathways to exoneration might also influence whether an incarcerated person will reach out to an innocence organization for assistance with their case. Oftentimes incarcerated people seeking assistance for their innocence claims confuse factual and legal innocence, believing that the only way to reverse their conviction is through making legal innocence arguments (Krieger, 2011). Though untrue,
previous research demonstrates that exonerated persons often did not receive new trials based on factual claims alone and instead ended up raising other, often procedural, claims to have their convictions overturned (Garrett, 2008).

**Case Details**

Some limitations of scope pertain to details about the crime or appeals. For example, common prohibitions include not taking cases of self-defense, insanity claims, or issues of consent (e.g., Centurion Ministries; Midwest Innocence Project; Wisconsin Innocence Project). There are also several organizations which will not process a request for assistance if the incarcerated person is represented by an attorney at the time of their submission, has not exhausted their direct appeals, or if the incarcerated person has little time left to serve on their sentence or has completed it (“How to Apply,” 2019; Medwed, 2003).

Some innocent people who are incarcerated are excluded from exoneration or release because their case details cannot reach the threshold of evidence required (Findley, 2010; Leo, 2017). That is, innocence organization staff are limited to using the evidence they can obtain to demonstrate an individual’s innocence, without which achieving a successful outcome is unlikely (Gould & Leo, 2015). For example, instances of prosecutorial misconduct are notoriously difficult to uncover and prove (Schoenfeld, 2005; Weintraub, 2020). If there is limited additional evidence pointing to a convicted person’s innocence and an organization is unable to prove this misconduct, the wrongly convicted may go unreleased. This can create a situation in which cases drag on for unusually lengthy amounts of time in the search for evidence, or where innocence organizations might be hesitant to take similar cases in the future for fear of utilizing resources on a case that cannot be successful. Instances where these shortcomings make it increasingly difficult to identify and litigate wrongful convictions are misdemeanor and plea bargain cases. In
these types of cases, the availability of evidence is often a strong force working against successful outcomes for the innocent (Gross & Shaffer, 2012).

One of the primary decisions made about the parameters of innocence organizations’ intake policies is whether they will exclusively focus on DNA cases, non-DNA cases, or accept both. Although DNA evidence may be viewed as a fast path to exoneration, there are several potential barriers to its use that may make the work of an innocence organization more difficult. First, the reality that DNA evidence is only available in an estimated 20% of cases heavily impacts which kinds of cases innocence organizations will take in lieu of such evidence (Banner, 2014; Findley, 2010; Stiglitz et al., 2002; West & Meterko, 2015). Additionally, if DNA evidence did exist at the time of trial, it may eventually be lost or destroyed, an unfortunate reality in some of these cases (Scheck & Neufeld, 2001; Stiglitz et al., 2002). Pedagogically, taking on only DNA cases might mean that the skills that can be learned by students working on DNA cases are limited, especially if DNA-testing is governed by statute in a jurisdiction (Stiglitz et al., 2002). One significant benefit to taking only DNA-based cases is the decrease in how many cases an organization will pass through the screening phase of their intake review. Limiting case selection to those that involve DNA evidence can be one method of paring down the number of requests for assistance an organization receives because cases where such evidence can be obtained are small in number (Medwed, 2003; Stiglitz et al., 2002).

Different challenges face organizations that choose to take on non-DNA based cases. Focusing exclusively on or accepting non-DNA based cases can increase the number of requests for assistance an organization receives (Medwed, 2003). Additionally, the development of DNA testing to demonstrate innocence can cause screening, investigating, and litigating cases without DNA evidence to be more difficult and time-consuming because meeting the burden of proof in
those cases is now made more difficult (Medwed, 2003; Hartung, 2013; Stiglitz et al., 2002). Staff at the California Innocence Project describe their experience with non-DNA based cases as something that can be “daunting” based on the amount of additional investigation that must go into the case (Stiglitz et al., 2002, 425). Criminal justice actors are also potentially less receptive of innocence claims without DNA evidence, seeing them as weaker than other innocence claims (Leo, 2014; Medwed, 2003; Risinger & Risinger, 2014). These cases of innocence may not be as convincing to others, particularly if an organization is looking to show that the incarcerated person is innocent based on recantations or invalid forensic science (Findley, 2010).

The most common reason for accepting cases only located in particular geographic locations is the licensing of the attorneys involved at the organization for investigation and litigation purposes (Findley, 2006; Medwed, 2003). Beyond this, even though an attorney might be granted permission to appear, it does not always follow that they are familiar or skillful with the rules of another jurisdiction, something that can greatly influence a case (Medwed, 2003). Another reason geography is a factor in case selection processes is that other nearby organizations may exist that are better equipped or more suitable to take on certain cases (Medwed, 2003). When the Second Look Program realized they did not have the proper skillset to litigate DNA cases, they referred them to the Innocence Project located nearby, which had the relevant experience to handle those cases (Findley & Golden, 2014).

**Rationales for Scope/Limitations**

There are a variety of organizational theories that can explain why innocence organizations choose their policies; in this case, intake criteria and procedures. Innocence organization staff determine their own mission statements, including specific definitions of
“innocence” or objectives that can dictate the cases they will take on. The co-founder of the Second Look Program Clinic explained that the reason their organization does not handle direct appeals is because doing so would be a “misallocation of our resources” because, as part of their mission, they only take cases that have exhausted the appellate process (Medwed, 2003, p. 1104). The experiences of those that are involved with the organization can also dictate which cases will be best served by their organization. At the Second Look Program, Medwed (2003) states that one reason they chose not to take on DNA cases was that their attorneys did not have the proper experience litigating and investigating such claims. On the opposite end of the spectrum, the Michigan Innocence Project also does not take on DNA cases. However, this decision may be in part because staff members have a background in forensic-based issues that do not utilize DNA evidence (“Faculty and Staff,” 2019). It will be necessary to speak with additional organization leaders and intake staff to determine whether the following rationales hold true across multiple organizations, or if there are particular considerations for each one.

**Pedagogy.** Law school-based innocence organizations’ largest variance from other innocence organizations is their need to satisfy specific pedagogical concerns as an institution for legal education (Findley, 2006; Medwed, 2003; Stiglitz et al., 2002). Law school clinics are designed to teach students essential skills for their subsequent practice of law (Medwed, 2003; Sturm, 1993). Directors of these clinics must therefore ensure that they are serving both the best interests of their students and their clients. Taking the time to ensure that students’ tasks meet pedagogical requirements can take away from an organization’s innocence work (Krieger, 2011). This is primarily due to the influx of cases and limited resources, at which point it makes sense for faculty to have students involved in what may appear to be less enriching tasks such as initial

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8 Based on public information I’ve collected from innocence organizations’ websites, all of these organizations solicit claims of factual innocence.
case review or memo writing (Krieger, 2011). It can be difficult to balance both the goals related to the innocence movement in undertaking client service, research, and public policy work with making a student’s experience in the clinic valuable to their future legal career (Findley, 2006).

In the context of operating an innocence clinic, pedagogical considerations may impact case selection, among other decisions about how to best educate students. Because of this, legal clinics may be at least partially concerned with selecting cases that will be educationally valuable to their students (e.g., child advocacy law clinics, appellate clinics). Maureen Laflin of the Appellate Clinic located at the University of Idaho College of Law, for instance, indicated that case choices were determined, in part, by the case’s educational value (Laflin, 1997). In an advocacy clinic, choosing cases based on their potential to provide a particular educational experience is even harder to achieve (Medwed, 2003; Sturm, 1993). In one qualitative study done with a corrections advocacy law clinic, directors identified the difficult balance between picking cases that would be beneficial for the goals of corrections and those that would be pedagogically valuable to students, admitting that many times these concerns outweighed the significance of a case (Sturm, 1993). Innocence clinic directors have made similar comments about weighing the two considerations. One director noted that their organization has felt free to stray from the outlined criteria for selecting cases when the educational value to students would be high (Findley, 2006). Medwed contends that for his case selection process, the opposite is true: “Frankly, our judgment of each claim’s legal and factual strength eclipsed any pedagogical concerns” (2003, p. 1136). However, he has still expressed concern that this “warped” approach in having students engage with cases of factual innocence could cause innocence clinics to do a disservice to their students by giving them a skewed approach to the legal field (2003, p. 1106). Considerations of this kind are precisely what is expected to be gleaned from conversations with
various innocence organization staff to determine whether pedagogical interests can have an impact on case selection.

**Framing Innocence Through Problem Definitions.** Framing theory, or the belief that issues can take on different values based on various perspectives that are taken of the issue, might assist in an understanding of how intake decisions are made (Chong & Druckman, 2007). The “problem” of innocence, as discussed in the literature as a problem to propel the innocence movement (Norris, 2017b), can be defined in many ways. Because policy problems are not objective, the ways in which social conditions or problems are defined by activists can have an impact on how they are viewed (Cobb & Elder, 1983; Dery, 1984; Rochefort & Cobb, 1993). By examining how innocence organizations define the policy problem of innocent individuals being held legally responsible for crimes they did not commit, it may become clear why their intake guidelines are set up the way that they are, which practices they employ, and why organizations’ choices differ from one another. According to Rochefort and Cobb (1993), there are five dimensions to problem definitions: problem causation, nature of the problem, characteristics of the problem population, ends-means orientation, and nature of the solution. Specifically, organizations that perceive wrongful convictions differently in nature might be driven to select cases to address the perceived problem and thus have different intake policies and practices to capture those cases.

The nature of a policy problem is another aspect that can influence public action. Organizations or public interest groups can define the nature of policy problems as matters of severity, incidence, novelty, proximity, and/or crisis. Should staff emphasize the devastating impacts of a wrongful conviction, for example, they might be inclined to address cases that have more severe sentences than others do. As a matter of incidence, an organization leader that
identifies a certain type of person to be more at-risk of a wrongful conviction (e.g., susceptible juveniles) might then dictate that their organization will focus on this population. Proximity is a matter of how personally relevant the policy problem may be. Some examples of this in the field of wrongful convictions include innocence organizations begun by exonerated persons such as Jeffrey Deskovic and others who undertook this work as a personal charge. Other organization leaders may choose cases based on their own expertise or interest, such as the Michigan Innocence Project mentioned above which selects forensics-based cases that seem to match the interests and training of their current staff (“Faculty and Staff,” 2019). Assigning a crisis characteristic by an innocence organization to wrongful convictions may influence them to take on more cases which have immediate, emergency consequences such as those on death row or those with limited remaining legal avenues to pursue in having their wrongful conviction overturned.

The population being impacted by the policy problem can also be characterized in different ways to impact public policy. For instance, different judgments about the perceived worth of expending resources to aid a particular type of person, or in a particular case, can influence whether the public is willing to provide aid. Medwed (2003) has indicated that this could be a driving reason for why most innocence organizations do not represent incarcerated people with claims outside of actual innocence, stating that: “In a world of scarce resources, concentrating on the most worthy cases makes a lot of sense, presupposing one views the presence of a factually innocent person (‘he didn't do it’) languishing in jail to be a greater injustice than that of a wrongfully convicted prisoner (‘even if he did it, he shouldn't have been convicted’)” (p. 1105). The implications of all these characteristics taken together are that innocence organizations can be responsible for framing wrongful convictions by the nature of the
cases they accept, determined by their intake policies, and thus, mold how the public views the issue and therefore which exonerations are produced.

**Resources.** Organization leaders have suggested that case selection is limited to those cases that are the most deserving of those scant resources (Krieger, 2011; Suni, 2002). Similar to innocence clinics, directors of corrections advocacy clinics have also noted that there are resource concerns that come with law school affiliation. First, there are only so many cases that a university can access with such limited resources (Sturm, 1993). In addition, it could be more difficult for advocacy organizations to work on cases that will take more time. This is not just because of the ever-changing composition of law students, but also because co-counsel from outside of the university may be necessary to effectively litigate a case (Findley, 2006; Stiglitz et al., 2002; Sturm, 1993). Careful case selection is also done to pacify and persuade funders who might be more inclined to award grant money for more sympathetic cases (Medwed, 2003). Cases may be deemed more “deserving” if they are more appealing to the state and the public, especially if the involvement of opposing parties (e.g., police, prosecutors) could gain them political advantages (Medwed, 2003).

**Practice**

It is important to understand how innocence organizations employ practices to perform their functions. Practices vary widely across organizations insofar as each unit must decide who will perform which tasks and the exact steps they will take to complete them. The specific practices employed by innocence organizations are not widely known, with the exception of various accounts provided by staff and leaders (e.g., Findley, 2006; Medwed, 2003; Stiglitz et al., 2002), which provides another compelling reason for the current study.
Intake

Cases come to innocence organizations from various sources. Referrals for potential cases can come from the court, community organizations, and legal service providers, and cases that are highlighted by the media (Medwed, 2003). Other requests for assistance come from the process of “creaming,” which is described as the act of receiving referrals from trusted others (Medwed, 2003). In most circumstances, innocence organization staffs make an effort to refer a case that they are unable to take to somewhere that is more appropriate (e.g., cases that are not innocence related, cases that do not meet an organization’s eligibility guidelines). There is some evidence to support that referral practices can impact decisions at the intake selection stage. In one mock case selection study, when case reviewers received instructions that indicated that the case had been referred from another innocence advocacy organization, they were more likely to believe in the defendant’s innocence (Smith et al., 2011). Although the study did not include a judgment of whether to choose to accept the case or not, it certainly is a possible implication of this work that such information could impact the likelihood of taking a case.

Intake systems at innocence organizations can fall into two categories: open and closed systems. Staff at organizations with an open intake system will continue to evaluate new requests regardless of the number of clients on their roster, whereas those with closed systems set a discrete number for how many cases they will work on at a given time (Medwed, 2003; Stiglitz et al., 2002). One consequence of an open intake system is the constant flow of requests, which plagues many innocence organizations (Hartung, 2013; Stiglitz et al., 2002). Because of the backlog of cases, some organizations may close their intake until they can deplete some of their cases waiting for review. Open intake systems can also be beneficial, however, for providing more of an opportunity to catch the rarity of a case that is perfectly suited for an organization
Information on which type of system each organization utilizes is generally not publicly available, although some organizations will display on their website if they are not currently taking new clients (see the Deskovic Foundation website, publicly available at: https://www.deskovicfoundation.org/).

**Screening**

Screening cases requires a lot of work and consists of several steps (Gould & Leo, 2015; Suni, 2002). The first step for many organizations taking on requests for assistance is that of a screening questionnaire. The purpose of the questionnaire is to improve the efficiency of the intake process to ensure that a case meets an organization’s standards before more investigation is promised or completed (Krieger, 2011; Medwed, 2003). These screening forms generally ask for details about the incarcerated person, their current conviction, and appellate history (Carroll, 2007; Medwed, 2003). In addition, some organizations may also request additional documents such as trial and appellate transcripts to help fill out some of the information asked for in the screening questionnaire (Medwed, 2003). This is not a universal system, however; other organizations expressly prohibit the use of additional documents at this stage of the process (e.g., “Submit a case to the Innocence Project,” 2019). Some organizations have screening questionnaires readily available for download on their websites (e.g., California Innocence Project; The Exoneration Initiative), and others ask that incarcerated people themselves write to an organization to receive an application form (e.g., Innocence Project New Orleans; New England Innocence Project).

Who will be responsible for screening activities also varies by organization. At some organizations, directors would be responsible for reviewing questionnaires as a means of pre-screening, to cut down on the number of questionnaires that would need to be reviewed.
(Medwed, 2003). At others, it is up to administrative staff to focus on screening (Smith et al., 2011). At the New England Innocence Project, as with some other innocence clinics, screening forms are handed off to a law student to provide a case summary (Carroll, 2007; Hartung, 2013; Smith et al., 2011). At this particular project, the case summary is then reviewed by a committee of law professors from the New England area to determine whether the case will be taken on (Carroll, 2007). A general review of innocence organizations’ internal procedures demonstrates that this procedure is popular. That is, memos are often produced by law students and reviewed by an attorney on the way to reaching a final intake decision (Krieger, 2011; Medwed, 2003). After screening, organizations require that further investigation into a case is necessary to determine whether the case will be chosen (Suni, 2002).

**Investigating**

Gould & Leo (2015) muse that innocence organizations are met with particularly cumbersome investigative barriers based on their attempts to assist in more complex cases. Throughout the course of an investigation into a case, staff members at innocence organizations are conducting interviews with witnesses and law enforcement involved in previous trials, tracking down DNA evidence if it is available, reviewing trial and appellate transcripts, and communicating with previous counsel (Findley, 2006; Hartung, 2013; Krieger, 2011). Investigative practices can prove to be pedagogically fruitful for innocence clinic students at a law school. For instance, law students get client-centered work experience in connecting with their clients (Findley, 2006; Hartung, 2013). Once an organization has processed a case through the screening and investigation stages, the post-conviction processes to exoneration continue to litigation and post-conviction strategies.
**Stages of Litigation**

Ultimately, the available avenues for post-conviction relief will determine who in the landscape of the wrongfully convicted will end up with successful outcomes and who will not. Each path is filled with procedural hurdles that keep people who are incarcerated from having their convictions overturned or becoming exonerated (Garrett, 2008; Gould & Leo, 2015; Krieger, 2011). Previous scholarship notes that claims filed based on evidence of actual innocence are not always granted, and instead, cases are heard based on what procedural wrong occurred to cause the wrongful conviction (Gould & Leo, 2015). For this reason, there are numerous ways wrongful conviction claims can be addressed in the legal system. Broadly, there are three stages of review available to incarcerated people: direct appeals, state postconviction proceedings, and federal habeas corpus (Garrett, 2008; Krieger, 2011, Maiatico, 2007; Sperling, 2014). As a final resort, action in the form of a pardon from the executive branch can also grant relief to an incarcerated person with a claim of factual innocence (see Cooper & Gough, 2014; Ridolfi & Gordon, 2009). Because the appellate system is set up to review findings of law and not findings of fact, factual assertions of innocence are very hard to challenge at this stage (Findley, 2012; Sperling, 2014) and are rarely the basis of a challenge, and thus not described in the discussion below.

**State Postconviction Proceedings.** State postconviction proceedings have their own pitfalls but are better able to handle factual innocence claims than the appellate system. Usually, incarcerated people utilizing this avenue do not have help from an attorney or investigator, and they are given little time to do their own investigations. This lack of assistance is especially detrimental because if incarcerated people fail to raise claims at this stage, they typically cannot
be raised later (Newton, 2005; Sperling, 2014). These proceedings can challenge factual assertions of guilt (new evidence of innocence) or procedural issues (constitutional claims).

Overall, new evidence of innocence is a tough sell in the U.S. adversarial criminal justice system (Gould & Leo, 2015; Risinger, 2007; Risinger & Risinger, 2014). First, once a conviction occurs, it may be difficult to collect or gain access to evidence kept by the state (Garrett, 2008; Sperling, 2014). Moreover, various levels of proof of innocence exist per jurisdiction, upon which a determination of exoneration is made (Findley, 2010) and extreme deference is given to the trial judge to determine whether the trial was fair (Sperling, 2014). Because of this, an incarcerated person who cannot prove an innocence claim to the appropriate standard of certainty for their jurisdiction may not enjoy the benefits of this process (Gould & Leo, 2015). In addition, a motion for a new trial based on newly discovered evidence must happen quickly in many jurisdictions, at times within 30 days of conviction (Hart & Dudley, 2000; Medwed, 2005; Sperling, 2014), though some states such as Montana (46-21-102) have a longer petition period up to about one year (Phillips, 2015; Raeder, 2009).

More often, incarcerated people make constitutional error claims because it is an easier gateway to claims of innocence, though previous research has demonstrated that reversals were granted most often when factual claims were raised (Banner, 2014; Garrett, 2008). Claims of constitutional error permit incarcerated people to argue that obtaining new evidence of innocence was obstructed by these errors (Findley, 2010). In these instances, it is more often the case that even if the courts recognize that a mistake was made, it can be considered a “harmless error,” or to not have significantly impacted the outcome of the verdict (Garrett, 2008; Sperling, 2014). Although these issues can be raised to make a more convincing argument attesting to an incarcerated person’s factual innocence, the most glaring obstacle for incarcerated people with
innocence claims is that avenues for factual wrongful conviction depend heavily upon state constitutions or one’s ability to reach the high threshold set out by *Herrera v. Collins* (p. 417, 1993; Garrett, 2008), described below.

**Postconviction DNA Testing.** Post-conviction DNA testing can provide an easier path to exoneration for those who can access it. In a comparison of incarcerated people seeking exoneration who had access to DNA testing with those who did not, Olney and Bonn (2015) found that those with access to DNA testing were 6.93 times as likely to be exonerated for murder or sexual assault relative to those without such access. However, even if DNA evidence exists and has not been tampered with, access to post-conviction DNA testing is not constitutionally guaranteed, as ruled by the Supreme Court in the case of *District Attorney’s Office for the Third Judicial District v. Osborne* (2009). In a state proceeding, access to post-conviction DNA testing is largely dependent on each state’s statute (“Access to Post-Conviction DNA Testing,” 2019). Despite the existence of such statutes, many include additional barriers to being granted testing. For example, although some states only require “clear and convincing evidence” that the DNA evidence would have altered the result of the original trial, other states’ legislation require that there is conclusive proof that such results would alter the trial’s outcome (Brooks, Simpson, & Kaneb, 2016). Another potential barrier at this step is the state’s contention of the applicability of DNA testing statutes and refusal to agree that post-conviction DNA testing is indeed warranted (Kreimer & Rudovsky, 2002; Medwed, 2009; Neufeld, 2000; Orenstein, 2000).

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9 States’ constitutions and laws regarding relief for the wrongly convicted vary greatly and many are the focus of reform (Joy & Mcmunigal, 2020). In New York State, CPL § 440.10 does not currently allow for those who have pled guilty to a crime to qualify for relief under the law. Senate bill S.266 sponsored by Senator Myrie and Assemblymember Quart in the 2021-22 legislative session, however, aims to clarify the statute not only to make eligible for relief cases involving guilty pleas, but also to broaden the evidence which would be permitted to be presented to a court as evidence of innocence.

10 At the federal level, access to post-conviction DNA testing was granted via statute in 2000 (18 U.S. Code § 3600).
Despite the hardships that are endured in reaching post-conviction DNA testing, it is a process that is instrumental for many wrongfully convicted incarcerated people in securing their release.

**Federal Habeas Corpus.** Federal habeas claims are generally asserted after the exhaustion of options through the state mechanisms and can only address claims based on the federal Constitution (Marceau, 2012; Sperling, 2014). These claims are only pursued by 1-2% of state incarcerated people (Garrett, 2008). Though already constricted, further restrictions were placed on federal habeas in 1996 with the passage of the Anti-Terrorism and Effective Death Penalty Act (AEDPA). Specifically, the Act makes it more difficult to be granted federal habeas relief. To be successful, the federal incarcerated person must demonstrate that the decision rendered by the state court was either an unreasonable application of Federal law, or that it was “based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding” (28 U.S.C. § 2254(d)(1)&(2)).

In addition to federal statutory restrictions, the Supreme Court, over the years, has prescribed a narrow pathway for incarcerated people with actual innocence claims. Ruling doctrine from *Herrera v. Collins* (1993) states that a capital incarcerated person cannot receive relief based solely on a substantive claim of actual innocence without an “extraordinarily high” demonstration of such innocence (p. 417). In this case, an incarcerated person on death row in their federal habeas petition contended that it was a “constitutionally intolerable event” under the 8th and 14th Amendments to execute an innocent incarcerated person. However, the Court decided that should a fair and error-free procedure produce this result then, absent an “extraordinarily high” demonstration of actual innocence, carrying out such an execution does not violate the federal Constitution. Claims that a state violated the Constitution can act as a

**Executive Action.** Executive action is one way to correct wrongful convictions and is often the last resort when judicial avenues are not available (Cooper & Gough, 2014; Garrett, 2008). In *Herrera v. Collins* (1993), the majority also reiterated that clemency processes are the “fail safe” of the criminal justice system (p. 415). Executive action towards innocent incarcerated people consists of an act of clemency, usually in the form of a pardon, granted by the head of either the federal or state executive branches (Norris et al., 2018). Pardons are defined as an “official nullification of punishment or other legal consequences of a crime” (Ridolfi & Gordon, 2009). In seeking clemency, transparency issues, imbalanced administrative board compositions, and barriers to meaningful review stand in an innocent incarcerated person’s way (Cooper & Gough, 2014). In Garrett’s (2008) study of the first 200 people exonerated via post-conviction DNA testing, 21% received a pardon from the state executive branch primarily due to a lack of a pathway to judicial relief. In other words, the people exonerated in these cases did not have any remaining claims that they could raise in court.

Overall, there are not many options for incarcerated people looking to become exonerated, which translates to longer times to exoneration for those who are wrongfully convicted. On average, it takes more than 13 years from the time someone is convicted to reach exoneration (*Gould & Leo*, 2015). This includes time spent seeking assistance, selecting a possible avenue for relief, and pursuing that avenue (e.g., via investigation, litigation, brief writing, etc.), until a final decision is rendered (*Carroll*, 2007; *Gould & Leo*, 2015). Currently, it
is unknown how much of the time between conviction and exoneration can be attributed to waiting for assistance from an innocence organization or other type of assistance to conduct further investigation or litigation (Gould & Leo, 2015; Hartung, 2013).

**Policy Reform Efforts**

Innocence organizations that participate in policy work are generally working with state and federal legislatures to pass laws related to a myriad of topics (e.g., compensation, interrogation practices, preservation of evidence, etc.) (“Policy Reform,” 2019). Additionally, the Innocence Network has written amicus briefs addressed to local, state, and federal courts on many broad issues related to innocence which have impacted policy (“Brief Bank,” n.d.). A pedagogical aspect that is unique to innocence cases is that these cases allow students to venture beyond case representation and give them experience with strategies to achieve policy reform efforts targeted towards factors underlying wrongful convictions (Findley, 2006).

**Policy Diffusion**

Though each innocence organization typically pursues the same areas of work, the ways they carry out their missions can vary, starting with their intake policies and procedures. These intake policies and operating procedures are policies which have been carefully selected by each organization. Why these organizations make intake decisions in their own ways may be examined in connection with the theory of policy diffusion. The policies of focus for this dissertation are intake criteria and the practices adopted to process cases through intake. The diffusion of policies, or innovations, covers how ideas, concepts, information, or practices spread from a source to an adopter in a social system (Greenhalgh et al., 2004; Rogers, 1995; Rogers, 2003; Wejnert, 2002). This theory first took form in 1903 by the French sociologist and criminologist Gabriel Tarde, who argued that the laws of imitation are what defines a society
Policy diffusion has also been utilized to explore how policies travel across nonprofit organizations (Barth & Sherlock, 2003; Kerlin, 2010; Sugiura, 1986). Early work in the area primarily focused on how government programs could be most efficiently adopted (Rogers, 2003; Valente, 1995), but over time has evolved to describe the entirety of the process from the development of an innovation, to its transfer, and the factors that influence an innovation’s adoption. Understanding the role that policy diffusion plays in the context of criminal justice organizations can benefit practitioners that seek to implement effective changes to their practices and policies (Klinger, 2003), and provides a path for new organizations to follow when creating their own practices by learning why certain policies have spread across their respective fields (Bergin, 2011).

The study of policy diffusion in the field of criminal justice has expanded from explaining how policies and statutes spread throughout different governments (Bergin 2011; Jones & Newburn, 2007; Wemmers, 2005), to how criminal justice-specific policies are spread at police agencies (Mastrofski et al., 2003; Skogan & Hartnett, 2005; Weisburd, et al., 2003; Weisburd & Lum, 2005; Weiss, 1997). Specifically, these works have focused on the expansion of police technologies including COMPSTAT, crime mapping, and information technology (Skogan & Hartnett, 2005; Weisburd et al., 2003; Weisburd & Lum, 2005). Many of these studies cite the importance of relevant networks’ and nearby communities’ policies on policy
adoption (Skogan & Hartnett, 2005; Weisburd & Lum, 2005; Weiss, 1997). However, existing studies in criminal justice do not look far beyond these factors to determine why policies were adopted, nor have they expanded to apply to other criminal justice agencies or organizations. It is possible that policy diffusion takes place in the context of innocence organizations; that is to say that innocence organizations may select their intake criteria and practices to carry out intake duties based on what other organizations have chosen.

One work on policy diffusion that might provide guidance as to how and why innocence organizations select their intake criteria and procedures is that of the conceptual approach outlined by Wejnert (2002). Wejnert (2002) details a conceptual framework which integrates variables from previous empirical research on an adopter’s decision to implement an innovation. What’s most appealing about the application of this framework to policy diffusion in innocence organizations’ intake policies, is that the author makes it a point to differentiate between factors most influential to both individuals and organizations. Because innocence organizations vary greatly in size and organizational structure, both sets of factors may be relevant to how intake policies are chosen. It is therefore expected that the factors described as most influential for individual or organizational policy diffusion will both be present, but dependent upon the structure of each organization (i.e., how many people are on staff, how their intake is structured, etc.).

**Influence of Intake Decisions on Wrongful Convictions Characteristics**

Innocence organization exonerations have contributed to roughly one quarter (25.2%) of all exonerations known to date.\footnote{Data from the National Registry of Exonerations as of 12/30/21.} As such, how innocence organizations choose their cases has implications for what is known about the characteristics of wrongful convictions. How cases are
chosen throughout an innocence organization’s intake process must partially influence which cases ultimately make it to exoneration. Though there are steps in between intake and exoneration which will mold each person’s progress towards exoneration, the decision as to whether or not an organization will take their case is the first major step. Should there be patterns or nuances to case selection at the outset which favor or exclude certain case characteristics, exoneration characteristics may not necessarily reflect the true nature of wrongful convictions cases. The assistance of innocence organizations in one-quarter of all known exonerations is significant, and thus it is important to know how innocence organizations process their cases. It is anticipated that intake decisions will reflect the differences, if any, between innocence organization exonerations and non-innocence organization exonerations.

**Form and Function**

Exploring the relation between intake policies and exoneration characteristics could change the way we think about wrongful convictions. There have been studies that systematically examine post-conviction processes utilized by exonerated persons (Garrett, 2008) and how wrongful conviction errors are responded to and by whom (Gould & Leo, 2015). Yet there is something missing in between, which is how those that respond to claims of innocence choose to respond to them. In their discussion of variables contributing to time to exoneration, Gould and Leo (2015) state: “the Innocence Project and many of the regional innocence projects require an application and extensive screening of a defendant's case before the groups even agree to investigate the case. This process alone may lengthen the course of an exoneration. It is also possible that innocence organizations take on the most complex cases, which require greater investigation and advocacy—*or even that they are the place of last resort for defendants who have not been able to prove their innocence on their own*” (emphasis added; p. 360). Either way, there is empirical evidence that innocence organizations contribute to the exoneration process.
Moreover, if it is true that they are the last resort for defendants, then what about those who are turned away? The answer to these questions, who are the missing people and why are innocence organizations missing them, have implications for the policy reform efforts that are pursued and how scholars look at cases.

Public policy is often inspired by harmful events which spark change (Birkland & Schwaeble, 2019). Several examples of instances where this occurred in wrongful convictions include the federal statute that established the Kirk Bloodsworth Post-Conviction DNA Testing Program (34 U.S.C. § 40727), Texas House Bill 34 prompted by the evidence of John Nolley’s innocence which tracks certain jailhouse informants’ testimonies (Grissom, 2017; H.B. 34), and a piece of legislation signed in Illinois in July 2021 which bans police from lying to juveniles during interrogations (Boyette, Stracqualursi, & Kaur, 2021). If there are patterns to the cases missing from exonerations based on practices by those who help to produce them, the field can then move to address assistance for such individuals. A more complete picture of wrongful convictions is also to be gained from the discovery of these previously unnoticed cases.

It was only recently that academic scholarship and public policy took note of misdemeanor and guilty pleas in the context of wrongful convictions, although these account for 80% of American criminal charges and 97% of case dispositions in the United States (National Association of Criminal Defense Lawyers, 2018; Natapoff, 2018). Yet only about 3% and 20% of all known exonerations have been misdemeanor and plea bargain cases, respectively. Do those numbers accurately reflect the number of instances in which such people are wrongfully convicted? Or are there other factors at work which skew those numbers?\textsuperscript{12} Although intake

\textsuperscript{12} There, of course, are a number of factors which skew these numbers, some of which are discussed by Gross and Shaffer (2012) (e.g., lack of DNA evidence, decreased incentives to seek exonerations, etc.).
policies and practices may not be the primary reason more of these cases are not uncovered, if there are any, it is possible that they contribute to them. Should innocence organizations systematically screen out cases such as these, which are already disadvantaged in seeking exonerations, innocent individuals could be receiving double the injustice in the criminal justice system. It is therefore imperative that innocence scholars and practitioners focus on these issues.
Chapter 3 – Research Questions, Sampling, and Methods

This research employs a qualitative analysis of intake criteria and qualitative interviews with innocence organizations’ intake staff and leaders to catalog existing intake criteria across U.S. innocence organizations, explore what factors influence the adoption of such intake criteria and procedure policies, and explain how these intake policy choices may impact the characteristics of known wrongful conviction cases. Qualitative research is made up of the subjective interpretations of observations and narratives that occur between a researcher and their participants (Graneheim & Lundman, 2004; Wolcott, 1992). Its nature permits the researcher to develop from the data rich explanations for phenomena, through the lived experiences of people and can be used to build new theories or test existing ones (Gherardi & Turner, 1987; Miles & Huberman, 1994). Qualitative interviewing is the most appropriate form of data collection for this dissertation because of how the method allows the researcher to examine what factors go into a decision or practice (Ritchie & Lewis, 2003). Prior research from Bergin (2011), which sought to examine the factors behind the diffusion of criminal justice policy across the United States, specifically acknowledged that “… more nuanced forces that can sometimes be difficult to capture in quantitative studies can also affect the diffusion of policies” (p. 416). Because answers to these research questions will involve extensive explanations, quantitative methods would not have been sufficient to detect the rich details being sought, which qualitative methods are well-equipped to uncover (Miles & Huberman, 1994).\textsuperscript{13} The data from the qualitative

\textsuperscript{13} Previously, this dissertation was proposed to include a survey component to collect quantitative data about organizations’ caseload characteristics. This survey was piloted to three innocence organizations based on a recommendation from the dissertation committee and the Innocence Network Research Review Committee. Organizations which completed pilot testing of the survey were selected based on their various positions as members and non-members of the Innocence Network, organization size, and differing intake policies. Upon review of the survey responses, many of which were left blank, and a conversation with a larger innocence organization’s Intake Director, it was determined that information being sought was not available, and estimates would not be rigorous enough to be held up as reliable. Therefore, the survey was removed from the proposed dissertation and most of the questions were integrated into the qualitative interviewing script.
interviews are analyzed using both deductive and inductive coding techniques to answer the posed research questions. This study was exempted from University at Albany, SUNY Institutional Review Board (IRB) review.

**Reiteration of Research Questions**

As discussed in Chapter 1, innocence organizations play a large role in the exoneration of innocent individuals (Gould & Leo, 2015). Although intake procedures of some innocence organizations are known (for review, see Suni, 2002), they vary across different types of innocence organizations (e.g., university-affiliated clinics, independent non-profits) and have evolved over the last two decades. Though intake guidelines are often posted on innocence organizations’ websites, the ways in which the policies are interpreted and followed are unclear. Additionally, limited and dated academic work has examined the policy and practical goals of innocence organizations (Findley, 2006; Medwed, 2003; Stiglitz et al., 2002), and no empirical work has cataloged these differences across organizations and their implications for caseload and exoneration case characteristics. Therefore, the current work seeks to answer the following research questions:

1. What are the case selection policies implemented within innocence organizations, and how do case selection policies and practices vary across different innocence organizations?
2. How were these policies and practices developed, and why do differences in policies and practices occur across these organizations?
3. How do case selection policies and practices shape the characteristics of caseloads and exonerations within and across innocence organizations?
Research Design

Sampling Strategy

The sampling parameters for this study were limited to currently active innocence organizations in the United States. The decision to include only non-governmental organizations within the United States was made because governmental organizations (e.g., Conviction Integrity Units housed in District Attorneys’ offices, public defenders with offices tied to the state) have their own unique political structure, funding sources, and political interests, and it was important to ensure that the innocence organizations included did not differ from one another in such substantial ways. Excluding international organizations ensured that each organization within the sample dealt with the same set of federal laws regarding not only innocence claims, but also labor operations within the organization as well as guidance for not-for-profit organizations.

To identify qualifying organizations and collect information about basic organization demographics and the intake policies of these organizations, a database was developed by collecting publicly available information up to July 2020. First, organization names of members of the Innocence Network were added to the database from a list provided by the Innocence Network website (publicly available at https://innocencenetwork.org/members/). To capture innocence organizations that are not a part of the Innocence Network, organization names from a public online contact list were added to the database. Some organizations were also identified via Twitter, news articles of exonerations and other innocence issues, and from participants who identified them as collaborative organizations in their qualitative interviews. In addition, a team

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14 As operationalized by the NRE, innocence organizations for this study are defined as non-governmental organizations which seek to exonerate the wrongfully convicted (“Glossary,” n.d.).

15 This website was previously available to the public at http://truthinjustice.org/ipcontacts.htm but has since been removed.
of five undergraduate students verified the information in the database upon its completion. Overall, the database includes 59 organizations which are involved in reviewing cases of wrongful conviction or error (i.e., some organizations which focus not only on wrongful convictions, but also on convictions which may have been tainted by procedural issues).\footnote{Total sampling pool after removing international agencies and inactive organizations, as well as the Justicia Reinvindicada- Puerto Rico Innocence Project.} Once the innocence organizations were identified, information from their webpages, if available, was used to fill in details such as basic intake requirements, geographical location, year of founding, organization type, and more. Prior to extending an invitation to participate in a qualitative interview to any of the organizations, approval to distribute the study to Innocence Network members was applied for and granted by the Innocence Network Research Review Committee.

Due to an expectation that not all organizations invited to participate in this study would be willing or able to, the decision was made to extend an interview invitation to each of the organizations. Though an invitation to participate in an interview was extended to any organization that fit the population criteria and was willing to participate, it is still imperative to consider the guiding literature regarding sample sizes in qualitative research. Many articles and books on qualitative methods suggest a sample size between 5 to 50 participants depending upon factors that include saturation and the ability to provide repeated evidence across participants (Dworkin, 2012). Guest, Bunce, and Johnson (2006) recommend a minimum sample size of 12 participants for interview data collection based on their study, which found that this is when the point of saturation occurred.

**Methods**

First, each organization from the database was called and asked for the best email address to be sent an invitation to participate in the research study. If an organization did not provide a
best email address, the invitation was sent to a staff member involved with intake based on the organization’s website; if that information was unavailable, the invitation was sent to the organization’s generic email address. After that, an initial invitation to participate in the study was sent to each organization via email (see Appendix A), in alphabetical order, over a 4-week period in September 2020. In that initial contact, three organizations declined to participate, and 16 organizations agreed to participate in the study. Between three to four weeks after an organization received their initial email invitation, in October 2020, they were each sent a reminder email asking again for their participation if they had not already agreed to do so (see Appendix B). Another three organizations agreed to participate after the reminder email, with two organizations declining to participate. In total, of the 59 organizations contacted to participate in a qualitative interview, five (9%) declined to participate, two (3%) did not follow-up after initial contact, one (2%) interview was scheduled, canceled, and subsequently not rescheduled, and 32 (54%) did not respond to the extended invitations. Organizations which declined to participate cited resource limitations caused by the COVID-19 pandemic, the organization’s posture as being bound to the host law school, not having an active innocence project, and several simply declined to participate. In the end, 19 (32%) unique innocence organizations had staff complete a qualitative interview between September 2020 and December 2020. For three interviews, there were two or more people participating simultaneously in the interview, bringing the total of individuals interviewed to 24. Of the 24 individual participants, 10 were the organization’s top and secondary leadership (i.e., Founders, Directors, Associate Directors, Clinic Professors), 10 were leaders of intake departments or operations (i.e., Directors, Associate/Deputy Directors, Managers, Coordinators), and four were intake or other staffers (see table 1 for characteristics of the interviewees). For one organization, two staff members were
interviewed at separate times, putting the total number of interviews at 20. Descriptive characteristics of the individuals interviewed (n = 24) and the participating organizations (n = 19) are listed in tables 2 and 3 below.

**Table 1**

*Demographics of Interviewees*

<table>
<thead>
<tr>
<th>Interviewee Title</th>
<th>Years in Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director of Operations</td>
<td>5.00</td>
</tr>
<tr>
<td>Staff Attorney</td>
<td>.50</td>
</tr>
<tr>
<td>Intake manager</td>
<td>4.00</td>
</tr>
<tr>
<td>Associate Director</td>
<td>5.00</td>
</tr>
<tr>
<td>Interim Director of Intake &amp; Evaluation</td>
<td>1.00</td>
</tr>
<tr>
<td>Document Manager</td>
<td>13.00</td>
</tr>
<tr>
<td>Legal director</td>
<td>17.00</td>
</tr>
<tr>
<td>Case Manager</td>
<td>5.00</td>
</tr>
<tr>
<td>Paralegal</td>
<td>1.50</td>
</tr>
<tr>
<td>Clinic Director/Professor Emeritus</td>
<td>23.00</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>.50</td>
</tr>
<tr>
<td>Intake coordinator</td>
<td>6.00</td>
</tr>
<tr>
<td>Director</td>
<td>15.00</td>
</tr>
<tr>
<td>Founder</td>
<td>11.00</td>
</tr>
<tr>
<td>Co-Founder</td>
<td>11.00</td>
</tr>
<tr>
<td>Screening director</td>
<td>13.00</td>
</tr>
<tr>
<td>Intake Analyst</td>
<td>.50</td>
</tr>
<tr>
<td>Legal director and Clinic Supervisor</td>
<td>1.50</td>
</tr>
<tr>
<td>Legal Assistant</td>
<td>2.50</td>
</tr>
<tr>
<td>Deputy Director</td>
<td>2.00</td>
</tr>
<tr>
<td>Managing attorney</td>
<td>4.00</td>
</tr>
<tr>
<td>Founder/Director</td>
<td>9.00</td>
</tr>
<tr>
<td>Founder/Director</td>
<td>9.00</td>
</tr>
<tr>
<td>Director</td>
<td>5.00</td>
</tr>
</tbody>
</table>

*a Participant titles are listed in random order.

**Table 2**

*Characteristics of Innocence Organizations (IO)*

<table>
<thead>
<tr>
<th>Demographics</th>
<th>Innocence Organizations Interviewed</th>
</tr>
</thead>
</table>

47
<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>University/Law School Affiliation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Affiliated</td>
<td>12</td>
<td>63%</td>
</tr>
<tr>
<td>Not affiliated</td>
<td>7</td>
<td>37%</td>
</tr>
<tr>
<td>Innocence Network Membership</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member</td>
<td>16</td>
<td>84%</td>
</tr>
<tr>
<td>Not Member</td>
<td>3</td>
<td>16%</td>
</tr>
<tr>
<td>Budget ($$)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0-600K</td>
<td>4</td>
<td>21%</td>
</tr>
<tr>
<td>601K-900K</td>
<td>5</td>
<td>26%</td>
</tr>
<tr>
<td>901K+</td>
<td>3</td>
<td>16%</td>
</tr>
<tr>
<td>Unknown</td>
<td>7</td>
<td>37%</td>
</tr>
<tr>
<td>Region</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northeast</td>
<td>5</td>
<td>26%</td>
</tr>
<tr>
<td>Midwest</td>
<td>4</td>
<td>21%</td>
</tr>
<tr>
<td>South</td>
<td>6</td>
<td>32%</td>
</tr>
<tr>
<td>West</td>
<td>4</td>
<td>21%</td>
</tr>
<tr>
<td>Organization Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-9 years</td>
<td>3</td>
<td>16%</td>
</tr>
<tr>
<td>10-19 years</td>
<td>12</td>
<td>63%</td>
</tr>
<tr>
<td>20-29 years</td>
<td>4</td>
<td>21%</td>
</tr>
<tr>
<td>Full-Time Staff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0-3 FT staff</td>
<td>8</td>
<td>42%</td>
</tr>
<tr>
<td>4-6 FT staff</td>
<td>3</td>
<td>16%</td>
</tr>
<tr>
<td>7-9 FT staff</td>
<td>4</td>
<td>21%</td>
</tr>
<tr>
<td>10+ FT staff</td>
<td>4</td>
<td>21%</td>
</tr>
</tbody>
</table>
All but three organizations were members of the Innocence Network. Innocence organizations from which staff were interviewed were located in various regions across the United States. Specifically, five organizations (26%) were in the Northeast, four (21%) in the Midwest, six in the South (32%), and four in the West (21%). The geographic areas which are served by these groups, collectively, only excludes California, Illinois, and Wisconsin.

Estimates of organizations’ budgets were also requested from participants. Twelve participants were unable to provide an estimate either because they reported their budget as tied up in the law school’s overall budget (n=4), or they were simply unsure of the number. For those interviewees from 501(c)(3) organization staff that could not estimate their budget, line 18, p. 1 (total expenses) of their publicly available 990 form for 2019 was used as a proxy. Overall, there were 7 organizations where neither estimates nor expense information was available. Of those 7, 4 organizations indicated that their budget was tied into that of their associated law schools. Including both estimated budgets and expense numbers used as a proxy for budget, organizations had an annual budget range of $68,000 to $1,544,223 with a mean of $667,368.09.\(^{17}\) In addition, organization revenue is captured from the 501(c)(3) 990 forms (line 12, p. 1) for 2019 (n=10) save for one organization where that information was collected from their 2019 annual report.

Moreover, participants provided information about their organization’s level of involvement in policy reform advocacy efforts. Only one organization indicated that they did not engage at all in such efforts, and cited a lack of resources and high volume of cases in their backlog as the primary drivers. Another organization stated that they were only recently beginning to focus on policy reform. However, the remainder of the organizations all indicated that they are highly involved with such efforts, listing active lobbying, service on policy working

\(^{17}\) These numbers do not reflect the inclusion of one participating organization, which had a budget of over $1.55m.
groups, and taking stances on legislative proposals as their primary activities. Some participants spoke about how efforts had increased since the organization’s founding, or over the course of the last few years, but otherwise identified high levels of engagement. Because of this, it is not possible in this study to ascertain whether high levels of policy reform involvement relate to choices in intake criteria and practices.

It is important to note the impact of organizations that were invited but did not participate in the study (n=40) on the representativeness of the organizations which did participate to the general population of innocence organizations. Non-response rates may link to non-response bias (Groves, 2006). Berg (2005) describes non-response bias as, “the mistake one expects to make in estimating a population characteristic based on a sample of survey data in which, due to non-response, certain types of survey respondents are under-represented” (p. 3). Although this study is comprised of qualitative interview data, non-response bias issues can still be present and influence its findings. For instance, organizations which chose not to participate or respond may not have had the resources (either monetary or human) to do so. The absence of organizations with this quality from the collected data could cause the representation of under-resourced innocence organizations to be smaller than is true of the population. This, in turn, could mean that the questions being answered by this study are true for better-resourced innocence organizations but not necessarily for those with various levels of resources. Another possible impact of non-response bias on this study is that the views of non-Innocence Network members may not be representative for all such organizations since only 3 of the 10 identified non-IN members participated in an interview. However, non-response rates do not necessarily reflect the magnitude of non-response bias that will occur (Groves, 2006). Moreover, because innocence organizations are so unique in their structures, practices, and criteria., generalizing perfectly to
this population is likely to be difficult without the inclusion of every single identified population member.

The majority (95%) of the interviews were conducted using a University at Albany Zoom account. Video interviewing provided for some in-person interviewing benefits such as decreasing the distraction of interviewees (McCoyd & Kerson, 2006) and maintaining the observation of nonverbal, visual cues (Garbett & McCormack, 2001). The use of virtual conference software has grown increasingly popular since the start of the COVID-19 crisis in March 2020 and thus, almost all of the individuals that participated were versed in using the program. This method of delivery also enabled video and audio recording of the interviews, which occurred in all but one interview wherein the participant did not grant permission to record. In the interviews where participants granted permission to record via Zoom, there was also a back-up audio file recorded via cell phone. In one Zoom interview, video was only used for the first portion of the interview as the participant had to switch over to their phone for the last group of questions. One interview was conducted by phone at the request of the participant, with permission to record granted. Most of the interviews were completed in the researcher’s home. Interviews lasted a range of 34 minutes to 105 minutes, with an average time of 63 minutes per interview.

Using Zoom also allowed the researcher, as the host, to utilize an automatic transcription tool via otter.ai. The transcription tool produced an approximate initial transcription of each interview. In addition to the recordings and transcriptions, notes were taken both throughout and at the finish of each interview. Follow-up questions and notations of particularly interesting responses as they occurred were made in these notes. The use of video and audio recording in

18 Other locations interviews were conducted include: a cohort-mate’s apartment; on a personal device in the NYS Capitol building; at the researcher’s husband’s work-from-home station; and, in the researcher’s parents’ basement.
addition to notetaking was twofold in its intentions; first, it decreased the likelihood of data loss, and secondly, audio recording specifically provided an opportunity to capture meaningful quotes and phrases that may not have been captured exactly relying solely on note-taking. Once each interview had concluded, nine of the audio recordings were reviewed by the researcher and compared to Zoom’s auto-transcription to fix any errors. Several undergraduate research assistants checked the initial transcription for errors in the other 11 interviews. Three undergraduate research assistants then independently reviewed the fixed transcripts for accuracy a second time.

**Interview Instrument**

Every interview began with a reading of the informed consent (Appendix C). The interview questions were formulated in a semi-structured manner based on the proposed research questions (see Appendix D). This semi-structured approach allows the researcher to guide the interview while maintaining the freedom to pursue more specific, in-depth areas that may emerge from individual participants via probes (DiCicco-Bloom & Crabtree, 2006; Flick, 2018). The semi-structured interviews that were conducted acted as case studies, defined by Seawright & Gerring (2008) as: “the intensive (qualitative or quantitative) analysis of a single unit or a small number of units (the cases), where the researcher’s goal is to understand a larger class of similar units (a population of cases)” (p. 296). Additionally, in using this method, concepts that may not have been apparent in prior literature or theories could be explored while maintaining a conversational tone.

**Analytic Framework**

Qualitative interviews were analyzed in two ways: first was via a deductive coding method named by Crabtree and Miller (1999) as the “template organizing style,” followed by a
general inductive coding method (Thomas, 2003). The coding of data is a form of analysis in which the researcher assigns labels to the data for the purposes of capturing words and phrases which relate to a research question, hypothesis, construct, or theme. Once assigned, codes are categorized and can then be used to interpret the data (Miles & Huberman, 1994). The hybrid approach to coding used in this dissertation is ideal for testing hypotheses and theories, while also allowing the researcher to identify new themes which emerged from the raw data (Crabtree & Miller, 1999; Fereday & Muir-Cochrane, 2006). The data coded originated from the qualitative interviews in the form of the edited interview transcripts. Transcribed interviews were entered into a qualitative coding software called Dedoose for both open and focused coding.

First, a “start list” of codes was developed which was reflective of the theories and concepts discussed in Chapter 2, as well as the themes noted throughout transcription and initial review of the interviews (Fereday & Muir-Cochrane, 2006; Miles & Huberman, 1994) (see Appendix E). The start list acted as a guide for which codes to apply; however, new codes were also created and assigned to the text as new, unanticipated themes related to the literature arose (Boyatzis, 1998; Fereday & Muir-Cochrane, 2006; Willms et al., 1990). In the end, many of the codes from the starting list changed, were removed, and were expanded upon with the use of sub-codes as the analysis progressed through each interview transcription (see Appendix F for the final codebook). These changes to the a priori codes were intentional; codes are intended to be fluid and to evolve based upon an analysis of each subsequent data source (Crabtree & Miller, 1999; Miles & Huberman, 1994).

While completing an immersive initial read-through and deductive coding of the start list, a general inductive coding technique was also employed. General inductive qualitative data analysis is a form of data reduction which “allows research findings to emerge from the frequent,
dominant or significant themes inherent in raw data…” (Thomas, 2003, p. 2). Utilizing this approach ensures that the researcher does not miss key themes that may not have been originally hypothesized or expected (Thomas, 2003). Specifically, general inductive qualitative data analysis requires that the researcher reads through all available data to identify categories or themes which emerge (Creswell, 2002). This is completed through both open and focused coding. Open coding occurs when data are reviewed to first identify possibly relevant themes from the data.

Therefore, as each interview was read and coded for the themes identified a priori, notes also were made of themes that arose from the data themselves. Next, focused coding required a re-read of the data to narrow in on previously identified themes relevant to the research questions being asked (Emerson, Fretz, & Shaw, 1995). After the initial read-throughs of the data, the codebook was examined to ensure that the captured themes applied to this dissertation’s research questions. The emergence of these themes is indicated in Appendix F (under “Codes added throughout focused coding”). This practice emphasizes the importance of carefully reading through both the transcription and field notes taken for each interview multiple times to properly capture all relevant data. The results of the qualitative interview data are presented in Chapter 4.
Chapter 4 – Results

Three primary areas of exploration were covered throughout the qualitative semi-structured interviews: discussions of innocence organizations’ case selection policies and practices, how and why these policies and practices were adopted by the organization, and the characteristics of innocence organizations’ cases. First, participants explained what their organization’s intake policies and practices were and how they were chosen. They then described what kinds of cases they receive, reject, take on as clients, and have had successful outcomes. This chapter presents the qualitative research findings in those areas, and is followed by a formation of conclusions, discussion, and recommendations for further research in Chapter 5.

Intake Policies and Procedures

A. Intake Criteria

There are several types of intake policies that are contemplated by innocence organizations, and their adoption varies by organization. Overall, though commonalities were found when examining how and why intake policies were chosen at various organizations, the answer to this question also appears to be policy-dependent, as each criterion possesses its own logistical challenges in exonerating the innocent.

1. Factual Innocence. One policy that was shared across all the organizations but one was the requirement that the applicant be factually innocent of the crime they were writing to the innocence organization about. This emphasis on factual innocence was echoed when most participants answered “no,” with various reasons, when asked if they could envision their organization’s mission expanding beyond cases of factual innocence to that of procedural issues present in a case (e.g., prosecutorial misconduct), manifest injustice (e.g., improper sentencing or charging), or questions of the applicant’s mental culpability at the time of the crime (e.g., insanity). One organization, which had moderate-sized staff and budget, stated that there had
been internal discussions on taking manifest injustice cases for unnecessarily lengthy sentences. The single organization which indicated they would work on cases of manifest injustice was a non-Innocence Network member which also spoke about how they work with those deserving of compassionate release.

Nearly 85% of organizations (n=16) indicated that taking these types of cases would be beyond the scope of their organization’s mission, and that there were other, more appropriate organizations already to assist those with such claims. To this end, Participant 12 stated, “Oh, no, we're not in the business of the- that’s what criminal defense attorneys do, but that’s not our job. I mean, I respect criminal defense attorneys for doing it, but it's not our job.” Other participants similarly stated:

When the problem is I took the action, I believe my action was legal, and you believe my action was not legal or was not appropriate, that’s the gray area that we have trouble with. And so when we talk about actual innocence we're just excluding, from my perspective, we're just excluding that middle group of people. And there are other lawyers who will file post-conviction motions for those people. My personal sense is we already have so much work that needs to be accomplished. I think it's important that we remain specialized. (P8)

I don't think we ever would because like we have, I think other clinics who would take those on… and then we also are seeing a rise of prosecutors offices, who are proactively reviewing those, those just unfair cases that aren't necessarily innocence cases. So I don't think I don't think we would ever do that, regardless of resources. (P17)

This is not to say that participants did not have sympathy for those with these types of claims:

In the application process, that is the hardest thing that I look at is when somebody says, ‘I did it, but I got reamed on the sentencing,’ or ‘I did it, but I have a mental health issue that makes it very difficult for me to actually recognize the, the wrongness in my actions’ or what have you. You know, those are the most difficult applications that I get because it's not that they're not guilty, it's that the system isn't designed to rehabilitate them or help them. (P10)

I mean we do see cases where, you know, it's just horrible ineffective assistance of counsel. You know the guy's not actually innocent, but you know any, anybody who was
half awake during the trial could have gotten a not guilty on this one. It's just terrible and and those, those are almost as heartbreaking as getting to the end of it and not having anything to go on, you know, because I'd like to help those folks, too, but the purview of what we're doing here. I just can't. (P16)

Instead, participants discussed taking on a larger number of factual innocence cases if additional resources were on the table. For example, Participant 24 stated, “There are so many factual innocence cases, and perhaps you would rather just take care of trying to, you know, process all those first.” Yet another participant stated:

I don't think the scope would expand, I think the depth would expand. And so one of the things that we've talked about is as an organization, we don't have the resources, both financial and intellectual, to take on more than probably two Shaken Baby Cases at once, just because of the nature of the experts that one needs to hire, the complexity of the medical records, the, I mean, this is a emotional labor of a dead child, and also all of the money that goes into preparing for such a case. We really don't have the people. (P8)

Overall, participants appeared to have more interest in remaining specialized in innocence work than expanding into other criminal justice issues.

2. Child Sexual Abuse & Sustained Abuse. There were nine organizations that stated they would look into cases involving the sexual abuse of a child. Interestingly, however, eight organizations discussed their hesitations in actually taking on cases involving the sexual abuse of a child. The reasons for declining these cases varied, but primarily focused on the difficulties in proving the applicant’s innocence in those cases. Several organizations described how the cases were draining in resources and very often yielded no evidence to move forward on an innocence claim, indicating that an organization’s access to additional resources determined whether these cases could be pursued. This focus on the depletion of resources with little chance of success was made by those with at least 4 full-time staff members, and all were affiliated with a law school:

We are very cautious about taking on child sex abuse cases. So I think that's an internal policy… Because they're extraordinarily draining in terms of resources and there's really very little to move forward on in those cases. We don't have a strict policy of saying
we're going to, we're going to reject every child molestation case but in effect that's generally what ends up happening if there's no forensic evidence tied to the case. (P21)

One of our newer criteria, probably within the past year or two is if the client took any kind of plea to a sexual assault of a minor, we typically don't take on those cases as well. That’s, that's a hard line that we've drawn in recent times that kind of before, that happened before I came on as intake analyst, but from what I understand, we just got too many applications of that nature and it's very hard to do much of anything in those kinds of cases. (P7)

It was really starting to affect some of the students because those are some of the hardest ones to, to read and really get involved in. And then I think we'd also had a few or we'd kind of been burned with really going down the road far, but then you know the witnesses ended up ultimately not coming forward or something… I mean even if it’s not a trial, it's a child who testified to something. So even if they recant later it seems like the courts just really don't want to pay as much as they don't like recantations, they don't like recantations of children even worse… So just the likelihood of success on those, I think compared to the burden it was causing to everybody who was working them was just, you know, the likelihood was too small to really investigate those, every single one, in the same way that we did the regular murders and rapes. (P6)

Two participants noted how taking such cases where there is a lack of evidence of innocence was unfair to the other applicants:

We were just getting so many of them that it seemed like it was weighing us down. And it was also becoming clear that we were hardly ever going to be able to do anything with them. And so it was really kind of affecting our ability to investigate the other ones that were coming in. And given that they were so unlikely to ever go forward, it just seemed like it was not worth the burden of laying it down. (P6)

I made sort of an executive decision to uh, to not take... sexual battery where the victim is under 12. They're just really difficult cases, you know. In those cases, it's usually, there's never DNA because it's going to be a case where it's over a period of time, and then, unless you get on it really quickly, they're difficult to to set up a good defense. It's the, you know, the testimony of the child victim and then you know the defendant saying I didn't do it… So we had several of them, and they're just they were taking away from other cases that we needed to focus on. (P16)

This information about organizations’ hesitancy in taking cases of a child’s sexual abuse was not available publicly on the internet, likely because it is not a straightforward rule and depends heavily upon the available facts and evidence of each case.
In a similar vein, one participant detailed why they do not take cases of sustained abuse (i.e., continuous acts of abuse) because proof of innocence is virtually impossible to locate:

Sustained abuse cases we don't take those are cases where somebody is convicted of multiple assaults. A child says that their grandfather raped them over five years multiple times, we wouldn't take those cases because perhaps you could prove the very last crime or the last few crimes with the evidence, but you're not going to be able to prove that the crime that the person is accused of from five years prior didn't happen. (P19)

3. Involvement In The Criminal Action. Organizations also varied on whether they would take on cases where the applicant had any role in the criminal action for which they were claiming innocence, for example, in circumstances where the applicant was not involved with the entirety of the crime, cases involving affirmative defenses, and cases where there was arguably no mens rea. For one organization, their objection to taking cases where the defendant was involved with the crime seemed to be based upon the complexity of finding the truth:

Involvement is often complex in terms of like, the population, we're surveying the situations they might find themselves in because of their circumstances that I think it would be harmful if we were so, like if we didn't take the time to really figure it out. (P22)

Another participant indicated that if someone were claiming innocence for part of their charges, they would likely not take those cases because there would likely be no actual change to the applicant’s circumstances:

I want someone who is actually innocent. And if they're not claiming actual innocence and sort of assenting to the conviction on the other one, they're going to be serving time on that for that crime too, so even if I win crime A, they're still going to be in prison on crime B. And that that doesn't really... I mean, it helps the, for lack of a better word, the accounting of, from an actuarial point of view, you're serving X amount of years for this crime, but it doesn't really change the person's life in any way. (P16)
Regarding cases where affirmative defenses (e.g., self-defense, insanity, consent) are being raised, when asked whether they could envision their organization expanding into investigating and representing such cases, one participant said they would not:

My, my opinion is that we wouldn't. Only because there's so many other people who have the capability to litigate those kinds of pieces and the kinds of work that we do is specific, and there are not as many people in this jurisdiction, who have expertise litigating those kinds of claims. (P8)

There were four organizations that contemplated the idea, though. One participant stated that historically the organization had accepted them and likely would at least consider such cases depending on their caseloads and available resources:

Well, and we I mean, that was, again, so [Founder] had a few of the battered women syndrome. And so before that was a defense in [state], [Founder] took those cases. And so when it became a legal defense, we took on a bunch of those cases at the beginning of the project… We do have like, we have some cases, you know, where it was, they had PTSD. And so that was, you know, a defense that they use that we took on. I think it depends on our caseload, what all, how we would fit cases in that criteria. (P2)

Several others alluded to the importance of their Executive Director and organizational mission in making the decision to take affirmative defense cases: “I feel like I have to channel [Executive Director] and what I've heard them say before, which is that we have to maintain, for the purposes of our policy work, cases in which people were actually innocent.” (P23) Another participant stated:

I don't know that I can say either way. Maybe, maybe, knowing our Executive Director I think that it would certainly be a possibility, yes. Because, because we want to combat injustice in any form and I think cases like that kind of fit into the mold there as well. (P7)

19 Though Battered Woman Syndrome (BWS) is not in itself a defense, it is used to substantiate claims of self-defense.
One participant unequivocally stated that their organization would not consider cases where there was a question of an accidental death or mental culpability, comparing them to consent cases:

And then in that same vein, like accidental deaths or questions of like mental capacity, like if the person, you know, maybe did it, but they weren't in their right mind at the time. It's pretty much like you weren't there or it didn't happen and then kind of like the, he said, she said cases where there's like a person who says an act was nonconsensual, but the other person says that was consensual, we also do not handle those cases, either. (P5)

Overall, the selection of intake criteria surrounding circumstances where the individual claiming innocence was involved in the charged crime seemed to be based primarily on the opinions of leadership, whether a particular case could fit within the organization’s existing mission to serve the innocent, and whether there were enough resources available to adequately pursue such cases.

4. DNA Cases. Save for one, all of the participating organizations were willing to take on cases involving DNA evidence. For the one organization that does not take DNA cases, they indicated that they would still continue with their investigation of an accepted case if DNA evidence appeared later in the process. This policy was explained as being implemented because a nearby innocence organization focused exclusively on DNA cases, allowing this particular organization to refer any DNA cases their way. One organization exclusively focuses on DNA cases. When participants were asked about the decision to review DNA cases, particularly for the rationale at the organization’s founding, two pointed to the receipt of resources (namely, grant funding) specifically allocated to investigate such cases. For one, grant funding gave them the resources necessary to expand into non-DNA cases. One common reason given for why DNA cases are reviewed was the ease of testing DNA evidence as compared to identifying new non-DNA evidence of innocence:
It's you know, it's a bit more straightforward to just do DNA testing and that if it was not done before and exonerate your client. So I think it's a bit of us more straightforward exoneration. (P11)

So, DNA cases you can do remotely fairly well, you know, I would have to maybe go there and litigate a little bit but once the evidence is found, like you find the evidence, you ship it to the lab, you argue about it. It's all kind of in court. (P1)

When asked why organizations took on non-DNA cases, many pointed out that it was not a controversial decision to do so. One organization spoke about how those at the Innocence Project actually encouraged the expansion, though they do not examine such cases themselves:

I think the bulk of the organizations started to do both DNA and non-DNA and Barry and Peter really encouraged that as well. I believe they started their efforts… the DNA exonerations are such concrete examples of wrongful convictions, but they were always encouraging people in their words, and in their book, to when they started efforts to do both DNA and non-DNA cases and the non-DNA exonerations are the bulk of the exonerations across the country. (P21)

Participants also stated that they implemented the policy to examine non-DNA cases based on what is known about wrongful convictions today:

We move from working only on DNA based claims to expanding to work on both DNA and non-DNA claims. And the primary driver for that was around that time, the National Registry of Exonerations came online and we had this very clear indicator that not only the largest proportion but in fact, most, US exonerations had been achieved without DNA. (P8)

The most common reason for why a particular DNA intake policy was selected, however, was based on the beliefs and actions of the individuals responsible for forming the organization, or those who joined shortly after. Some examples include:

I think it was something they always wanted to do with like a passion of theirs… they felt that it would be a good tool to use in the criminal justice system to prove that there are individuals that are incarcerated that are actually innocent but it was their vision. This is something I think they've always wanted to do. (P20)

I think that's because, [redacted]. I mean, their first one was an arson case and so, you know, that’s… they knew that there was more than just the DNA wrongful convictions and they wanted to make sure we had those as well. (P2)
Like, I think that the steering committee was really thinking DNA because then, that was all the shiny lights like “look over there, it's shiny.” But really the day I started and started going through the mail, I’m like “um, no, we can't just do DNA cases, we have to look at everything” so that, that happened right away. (P1)

Others indicated that their decision was largely based on policies that existed at analogous, already-established organizations, either by way of emulation or because they intentionally wanted to expand beyond what those organizations were doing:

Our goals were to free innocent people in [redacted] state… and also made a decision, initially, not to limit cases to just cases where DNA evidence could prove evidence of innocence, like the Innocence Project and Barry Scheck and Peter Neufeld, but rather to be more expansive in our reexamination of cases. (P21)

Well, look you, like in research or anything else, right, you stand on the shoulders of giants. So we adopted stuff from the Innocence Project and from the Innocence Network. And then we also added as we saw fit. And occasionally, we've, we varied when we saw fit. So, you know, we're modeled after the Innocence Project… but they don't do non-DNA cases, but we do both. (P3)

Interestingly, it appears that factors for both individual and organizational policy diffusion were discussed by participants as it relates to the decision to utilize a DNA-only intake policy. Though some organizations focused more on the preferences and influence of smaller entities like individuals and Founders, others indicated that the presence of others within the collective innocence community aided their decision-making.

5. Arson and Shaken Baby Syndrome (SBS). A few organizations had more specific intake policies about what particular features of cases they would and would not handle. Most innocence organizations, for example, expressed their openness to taking cases of arson (n=9) and those involving Shaken Baby Syndrome (n=10). Not many pointed to why they advertised acceptance to each of these case types, but one participant did recall that their Founder’s first case was an arson case (P2). One organization discussed how a focus on Shaken Baby Syndrome cases originated from a grant they received to scope out those cases.
6. Guilty Pleas. For cases involving plea decisions, six participants mentioned that their intake criteria do allow them to investigate convictions based on guilty and no contest pleas. One organization indicated that they do consider those cases because of what is known about pleas in the wrongful convictions space: “We look at plea cases, we will consider plea cases because we know about 10% of the exonerated persons nationwide pled guilty to crimes that they didn’t do.” (P1)

Two organizations which are willing to look into cases involving pleas detailed the difficulty with successfully representing those cases:20

We try to be open in terms of like, maybe there’s like compelling physical evidence, but I think typically if someone takes a straight plea and like it just doesn’t look good in terms of like the evidence against them and stuff like that. It can be difficult to send that closing case letter, but oftentimes it comes from a place of, like, we don’t really, there’s not much we can do, right? It’s harder when someone takes the straight plea. (P23)

Legally speaking. Yeah, that makes it difficult because of the case law. So that's one category of cases which are also claims that you can't bring. [state] has a statute of limitations of one year for ineffective assistance of counsel claims and so after that year is over, after the direct appeal is over, it's harder to bring that claim. (P21)

We don't usually take the guilty pleas. We have and we will, but it's so hard to overturn a guilty plea that, I mean, we've done it twice out… but like I've never taken one in the entire time I've been here because it's virtually impossible. (P5)

7. Geographic Restrictions. Organizations cover cases only where the wrongful conviction crime occurred in a particular state (n=12), one area within a state (n=1), or within a specific multi-state radius (n=6). Of all of the intake policies discussed with participants, geographic criteria appeared to be the most strictly adhered to; in other words, it was less likely to be flexible enough to be broken unless there was a conflict of interest with another innocence organization and they had to take it to represent a co-defendant in a case. Predictably, the reason for implementing these policies primarily had to do with the skills and qualifications of the staff

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20 Participants 21 and 23 yield from the same organization.
working with the state’s specific laws, including having attorneys admitted to practice in the state or simply having expertise with the state’s specific post-conviction procedures. As one participant put it:

So the laws that govern how a person is able to effectuate overturning their conviction, regardless of the mechanism by which they achieve that, the laws are specific to the state. And so we work in state level convictions because our attorneys are experts on the particular types of procedures that we use in [state]. (P8)

Another common theme in determining geographic criteria for an organization was the consideration of whether there was another organization currently doing the same work nearby. It was hypothesized that the close geographic proximity of another innocence organization might lead to similar policies being adopted, but instead, several participants spoke about how proximity to other legal organizations impacted their decisions to take cases in an area:

In [state] there's an organization… that's a state-funded organization where lawyers get appointed to post-conviction, on the final death sentences, so… you know that that pool of potential clients is represented. (P16)

A practical reality that in [state], when you're convicted of a crime, most people are eligible for the services of the public defender's office, and they will automatically get assigned an appellate attorney and get that level of skill dedicated to whether there were errors that could be corrected on appeal, and legal errors. (P12)

Lastly, a few organizations paired consideration of whether there were other available organizations to do this work with a lack of resources to take on more cases as a reason they did not expand their geographical reach:

We also, I've got applications from people… We just, we don't have the resources to take, you know what I mean. So there might be some of those policies that we may at some point need to expand upon because there are no Innocence Projects in [location] and there's no Innocence Projects in [location], like, you know, that kind of stuff. (P11)

Originally we were going to take cases across the [region]. So we were taking applications from [lists 4 states], which was insane… But we were one of [few] organizations across the country, so that was the thinking behind that. I can't remember when the change was made, but it was made probably five years after the organization was founded to limit cases to [state] and especially in consideration of the fact that
organizations started forming in [4 states], and the realization that there wasn't the capacity there to represent people outside of the state…. (P22)

8. Contact. There are a few intake policies related to initial contact that organizations have. For instance, several organizations only allow mail correspondence with applicants. Over half (n=10) of the organizations mentioned that they accept initial correspondences from the applicant only. Two participants summarized the rationale for why they only take initial contact directly from the applicant themselves, stating that it is primarily to ensure that the individual submitting the application maintains that they are actually innocent:

Stage one is where that inmate will write to us. We require that the inmate him or herself writes to us because there's a couple of reasons. First and foremost, it establishes a prospective client relationship, which establishes confidentiality. Second, there's lots of reasons why a person might tell their friends or family that they're innocent of a crime, but they might not take that second step to like write to an innocence organization. And so it kind of like cuts out the people who might, you know, say to, their friends or family. “Oh, I didn't do this,” but they might not take that second step, to write to an innocence organization. So we require that actual communication from that actual inmate. (P18)

If you're on the fence and send an application. What happens is we get the letter of the person asking for you know assistance. Sometimes we'll get a letter from, you know, a grandmother or an aunt or a cousin or so forth, in which case we send a letter back to that person saying, “We'd love to help. Please have the person send us a letter directly because we need communication from the prospective client directly” because sometimes there's a possibility that the person doesn't want anything to be done on their behalf. So I need that request to come from him, not from mama. (P16)

9. New Evidence. Two organizations indicated intake criteria where the applicant must have new evidence of innocence. A third organization expressed that there is a priority for applicants that have such evidence: “Priority given to cases where convincing and corroborating evidence can establish actual innocence, and unlikely to accept a case without independent and verifiable evidence to support the prisoner’s claims.” However, those that were looking for this information at intake were understanding that the applicants themselves may not have access to such evidence or leads:
I would say, I mean they have to have new evidence of actual innocence. Something that you use to formulate, as you review the case. So it's something that we asked, you know, applicants kind of from the onset, but it's not something that they typically can answer so. Jennifer Weintraub: Right, you would still take a case, even if they didn't - weren't able to indicate it on their application, but it's obviously something you're looking for. (P11) Participant: Yeah, right.

I mean, we, all we really require is that the prisoner insists that they're innocent and, you know, we look at the case to decide if we think there's a possibility that evidence is out there to be found. But we certainly don't require that they have already found it. (P4)

One organization stood firm that without an indication of new evidence of innocence from an applicant, they would not continue their intake process by sending them an application:

If they can't point to any new evidence then we also wouldn’t send out [the intake application]. Like if, if they can't, and it's not just new evidence, but like new leads too. If they're just re-arguing the case, we really can’t move forward… So most often the, the vehicle, if you will, that we use to advocate for our clients in court is what's called a post conviction relief petition. And so we are guided by that which is, you have to weigh the evidence that was provided at trial against the new evidence. And so that's our, that's our limit. (P10)

10. Indigent Status. Two organizations stated that one of their policies is that the applicant be indigent, though one of those organizations indicated that this could be a flexible policy which depended on the facts of the case.

11. Sentence Length. Six organizations mentioned that they would not accept cases where participants were convicted of low-level crimes, namely, misdemeanors. Four organizations indicated that they do not receive any, or many, requests for assistance involving misdemeanor cases. One organization detailed that they would not be priority over applicants convicted of felony offenses due to an emphasis on helping those with the longest sentences:

When it comes to our choice of like, only working on felony cases, that choice was simply made because there's so many innocent people in prison that we feel like we can only dedicate the time to those people who are serving those longer sentences. I'm sure there's, yeah, there's plenty of innocent people convicted of misdemeanors. But, you know, we're going to prioritize the people with life sentences or something like that. (P17)
Seven organizations stated that they have a sentence-related policy, in terms of restrictions on the number of years left on one’s sentence. When asked about applying their intake criteria, participants cited sentencing policies as the most flexible. In practice, many participants pointed to mitigating factors such as whether an applicant is on parole, their status on the sex offender registry, or simply whether overturning their conviction would result in release as considerations for whether the sentencing intake criteria would be broken. The time it takes to investigate and litigate these cases was one factor identified by organizations as to why these policies existed:

A vast majority of the time they have to still be in prison, really, we won't take them if they're out of prison unless it's someone maybe we've already been working on for a long time and they just managed to get released… or if they really have a short term like sometimes they write in and they have two years left. Well, it usually takes us that long to even figure out what we're doing. So sometimes we'll just reject those because there's not enough time to even help them. (P5)

The rationale for the five years [sentence criterion] just because it takes so long to get to a case. So that's, that's basically the rationale for that the sex offender registry is we consider if you're still on the sex offender registry, you're in, in essence, sort of incarcerated still so that's, that's the thought behind that. (P24)

One organization pointed this out while stating that informally, though, they would not reject based on this criterion:

That has changed informally. And that's probably my fault [both laugh]. There's a lot of arbitrariness in creating policies like this, right? Like the number of years left or wherever that is. And what I've tried to, I think mostly successfully tried to change the thinking on, basically, people should not be punished for never having heard of us. Or like not writing at the right time, or, or things like that. There is, you know, the sentencing consideration’s interesting because you know the average amount of time it takes us to resolve any case is seven-ish years right? So that part is changing, but certainly the, certainly the life or practical life sentences will probably continue to be prioritized… But I've tried to stop penalizing people for what they happen to be sentenced to or when they happen to reach out to us. (P9)

Overall, most organizations with these policies, or without them, pointed to the desire to effectuate change in individuals’ lives:
If I have two equally situated cases, one guy gets out in six months, and the other guy is serving life, I'm going to take the one with life because you know he's got a lot more impact and I can do more, more good to help that person than somebody's going to be out in six months. You know, these with limited resources, you gotta draw the line somewhere. (P16)

Any kind of criminal conviction typically has ramifications, of everything. Like we have a client that applies to us. She can't travel, she can't travel internationally with the conviction that she has on her record. So, it also affected housing so like, you know, you don't have the ability to have... like Section Eight housing. If you have certain criminal convictions on your record, right, so it can kind of have all these like lasting impacts on your life if you're still on parole or you fail to register as a sex offender. You know, those are also things that can kind of ruin somebody's life, even after they've served their time. (P11)

We initially, somebody had to be in custody. They had to actually be serving a prison sentence. We are now taking some people who are out of prison just because of the collateral, collateral consequences, particularly sex offender registry can be a real problem, especially if you didn't do the crime. So we will work with people who are out of prison. They don't take quite the high priority probably that people in prison do, right?... But honestly, if somebody reaches out to me and they're, they're out of custody and they have a good claim of innocence and they're still dealing with collateral consequences we take them. (P1)

I should say that one is that we're going to reject a case where exonerating the person for this crime wouldn't get them out anytime soon. Okay, so if they're serving another sentence. Another very long sentence, we're not gonna take that case. The point is that we want to dramatically improve that person's position. And so if there's another case that is going to keep them in prison or keep them on the sex offender registry. And then, no. (P15)

Presume the person has a de facto life sentence which means actual life in a case. But they also have some... 15-year sentence for a burglary in 1982. Nothing about that 1982 burglary for 15 years is going to stop me from working on the life case. Because if we were to overturn the life case, we can, we'll get... the 15 years doesn't worry me, we'll get to that. We’ll achieve something. But in situations where the person is absolutely boxed in and there's no way out it doesn't seem like it's fair to people who could have a life circumstance change to put effort into such a case. (P8)

Similarly, one organization opined that they could not address those convicted of lower-level crimes because they have minor sentences, and there was nothing they could do for those people despite the consequences of their convictions:
If you asked me what the biggest category of convicted innocence is-- would be, comprise that category- what cases- by category, my first one would be low-level street crimes in which there's a sort of dragnet, everybody gets bought in and everybody gets convicted in half and half of them are not actually guilty. That happens all the time. But we can't get involved in those cases. Usually the sentences are, are relatively minor. And so— (P13)
And the collateral consequences are lifelong. (P12)
Yes. (P13)
But, there's very little that we can do about it. (P12)

**Conclusion.** Though each intake criterion had its own unique considerations depending on what its implications are specific to wrongful convictions work, generally, individualized factors and those based on the innovators themselves were more highly emphasized than factors relating to large-scale reform and characteristics of the innovation. Moreover, it also came up in speaking with participants that over 50% (n=10) of the interviewed organizations discussed intake policies that were not present on their publicly available website(s). The implications of these findings are discussed in Chapter 5, but first, results are presented for how intake procedures are decided upon at innocence organizations.

**B. Intake Procedures**

The 19 organizations that were interviewed each had a unique intake process. Though a few organizations stated that their process was originally modeled after already-established innocence organizations, most organizations described the importance of the influence individuals at the organization have on their procedures. First, a common theme for why intake practices existed as they did or had changed was the ability of the organization to increase resources towards having devoted intake or investigatory staff. Also in relation to available resources, two organizations indicated that their intake practice changes were in response to considering how they might address their backlog of requests for assistance.
Another common thread amongst the responses was that changes to the intake process appeared to be largely the result of individual choices made by those in charge of intake operations. Specifically, participants attributed changes to their own professional development and that of their staff, who became better versed at intake operations the longer they stayed in their roles and looked for innovative ways to improve the process based on what they saw. For instance, one participant described how they created a triage system when arriving at the organization, while another indicated that it was their goal during their time to create a better system for prioritizing cases. Lastly, credit was attributed to existing organization leaders for spurring the creation of the organization itself or advising on initial processes in five interviews.

Two participants described how this happened with Barry Scheck and Peter Neufeld:

I think Barry Scheck and Nina Morrison, you know, one of them or both of them together, came down and along with [redacted] who was the person who helped create the organization here, they started pulling case files and they just had a desk in the law school hallway. And their goal was in that, in that first run of cases was to find anyone who is eligible for post-conviction DNA testing and get those petitions in before the deadline. So that was the original goal and then from there, things, as I understand it, kind of developed and built out. (P8)

And then I was paying attention to what was happening [redacted] with Barry Scheck and Peter Neufeld and the [nearby innocence organization]. And Barry Scheck came to town for an actual CLE and he asked to meet with somebody at the law school who was interested in doing innocence work and I said I would be happy to take that on and we had dinner together and the organization was launched. (P21)

Most intake processes proceeded through the same basic phases: receipt of an initial request for assistance from the applicant; applications; post-application review; and acceptance, which for many was described as the litigation stage. A flow chart of each organization’s steps can be seen in Figure 1.
Figure 1

*Illustration of Intake Organization Procedures*
1. Initial Requests For Assistance. Organizations reported receiving a range of 20 to 2,400 requests for assistance per year, with an average of 530 requests per year.\textsuperscript{21} Participants which reported a lower number of requests for assistance each year also had fewer (between 0 and 6) full-time staff members; however, there were also organizations which had fewer full-time staffers and a high volume of requests received per year. In fact, two organizations which reported having the highest numbers of requests for assistance received per year only had between 0 and 3 full-time staff members. When asked what kinds of problems participants think applicants face in reaching innocence organizations, those with lower numbers of requests had a range of suggestions, including issues with literacy, mental health, language barriers, how to best express their case, and that it can be hard for applicants to express themselves to innocence organizations. One organization worried that some of these factors actually influenced how they view the applicants:

The thing that always concerns me the most is people having the ability to communicate and explain their case… I used to work at [defender organization] and I think one flaw in the application system with all those questions is, you know, people maybe can't read or write. Or maybe can't write in English, or maybe don't understand the question. And it makes things really complicated and they're not able necessarily to advocate for themselves in the way that always like, I feel so badly about it because I find myself being drawn to those people who are better communicators. Yeah, you want to be careful about that. (P17)

The organizations with the highest reported number of requests received all mentioned word of mouth being important to how applicants hear of them. They also cited similar concerns with literacy and language barriers. Another factor which was prominent in these participants’ responses was the loss of hope for their case or a lack of trust in the justice system as a reason why participants chose not to reach out to an innocence organization:

\textsuperscript{21} Organizations receive an average of 422 applications per year without the inclusion of the organization which received 2,400.
Maybe they just don't want to fight; they’re resigned to it. They don't want to bring it back up. They don't want to go you know dredge it all back up and relive it or get their hopes up to have them, you know, taken. Because even in the best cases, you don't walk everybody out of prison. So maybe they've tried it once and thought they were close and got dashed. (P16)

If you're a person who is innocent and you're in prison for something you didn't do, why would you trust any system or any organization? Because something that you know to be fundamentally just and right, you know, your sense of justice of things that are right, all of that has been taken from you, And so I’m surprised that anyone would have the space to ask another institution for help when all that’s happened to get the potential applicant to this point is that things went wrong. (P8)

Regarding participants’ initial contact, most organizations received letters as the first source of contact from an applicant, but sometimes they would receive completed applications or screening forms if publicly available on their website. As indicated above, organizations generally preferred that applicants be the ones to reach out for assistance, even if they obtained help in writing the initial contact letter or filling out the application. In addition, many participants indicated that the process of requesting assistance, especially initially, is conducted almost exclusively through the mail. Initial contact was almost always received by students, volunteers, or administrative staff, though one organization reported using a software system which receives their requests.

When asked about how organizations process requests for assistance, there were a variety of triaging strategies employed. Two organizations reported not having any triaging procedures. Eight organizations indicated that requests are processed in a “first in, first out” manner, though four of those organizations noted exceptions to this rule. Those exceptions included priority for the following cases: applicants who are still incarcerated; if law enforcement indicates that a colleague of theirs messed up a case; if the case is referred to the organization by another attorney; if an attorney asks them to serve as co-counsel on a case; and if there is DNA evidence involved. Three organizations indicated no first in, first out system but noted that priority was
given to cases that occurred prior to 1990 and had DNA evidence, as it was unlikely to have been tested. Another four organizations mentioned prioritizing requests based on whether a post-conviction deadline was in play. One organization described how students are trained to process these requests:

There's a statute, sort of, I’ll call it a statute of limitations. That you have to file a post-conviction motion within two years of the conviction becoming final and if you do that, then you have the whole universe of available post-conviction remedies available to you. So if one comes in, one of the things that the students are required to do on the original mail screen is do the research to figure out when their conviction became final and check it against today’s date and see how fast we need to move. (P16)

A few organizations had a more complex triaging system which consisted of other tiered-prioritization (n=2) or grading systems (n=2) based on certain case facts. The two organizations which employed tiered systems described three levels of prioritization, whereas the two organizations with grading systems (with letters A-E) indicated that their system also acted as a mechanism to determine which cases would not be taken up by the organization without developments in the case. Grading was undertaken by different actors dependent on the organization; for Innocence Organization 8, the Case Manager assigned grades. For Innocence Organization 11, students undertook this task. One of these organizations described their grading system not as creating a queue of cases to review, but instead of establishing a list of high-priority cases to pull from:

As there are more cases than we can possibly handle, grades are assigned so that we have a pool of high priority cases to choose from when space opens up on the investigation docket. Grades do not establish a queue. Cases are chosen from the pool of higher priority cases based on current resources – for example, if the space that opens up on a lawyer’s docket is small, we might choose a case that requires less on-the-ground investigation, like a straightforward DNA case or a case with a very limited number of investigative angles. The next case might also be influenced by grants or initiatives –for example, we’ve received a grant to work on jurisdiction-specific cases or we are focusing on specific kinds of evidence, like fingerprint cases in XX jurisdiction that can be run through the database. Every case in which an applicant returns an application, or the
equivalent if the applicant is unable, for whatever reason, to return one, receives a grade. Grades also change regularly with the receipt of new information. (P9)

The other organization utilizing grading did so to give themselves a baseline idea of the strength of an applicant’s innocence claim:

And the first thing I to all my students is to give a fair evaluation, just a surface evaluation, and give it a letter grade. The letter grade should reflect ABCD or E and that the letter grade should reflect a somewhat serious, but it can be surface evaluation on the likelihood of the person's innocence, together with an evaluation of the likelihood of ever generating any information that could become the basis for relief for that person. So a letter grade of C is probably the saddest grade of all to receive because that reflects a judgment that the person might very well be innocent, but um, it's not at all clear and would probably require a tremendous amount of investigation to generate more information about that person's innocence and, you know, the likelihood of getting such information is low enough to, at least for now-- that we wouldn't bring that up to the top of the pile for further investigation and review. (P12)

One participant was very candid about the unfortunate necessity of prioritizing cases due to the volume of requests received:

Just the whole notion of just the whole notion of triage is damaging. I'm sure you can talk to ER doctors and nurses about the same thing. You know, it's like ‘Really, do I have to make this decision?’ kind of thing. But that, I think, is very, very avoided in conversations like this. Because they're often set up to be a place where dissent is not welcome because it brings in moral questions in the end, ethical questions in the end. And as much as possible people don't want to be having like fortnightly conversations about how they might not be morally or ethically up to snuff. Yeah, and that's all exacerbated by just the volume that everybody is, is, is experiencing. (P9)

Related to triaging, one organization mentioned that they had to establish an entirely separate intake system to address child sexual abuse cases. Under this process, the Legal Assistant would take the application and do an extra intake sheet with different questions. At that point they would make a recommendation to the Deputy Director about whether there is anything they can do to assist the applicant in determining whether to take their case. When asked why this process was necessary, Participant 6 explained:

We kind of have it in the intake process, we kind of have a separate intake process for the child sex cases because we used to assign all of those out to the students, and then we got
so overwhelmed with them that it seemed like half of each student’s caseload was the child sex cases and it became overwhelming to them in a lot of different ways. So we've kind of, we have that sort of carved out as a separate intake process from the others, but we will take them. It's just, very rare.

a. Types of Requests Received. Participants described many of the initial requests for assistance they receive as being far outside their scope, primarily because they are unrelated to factual innocence or were outside of their jurisdictional reach. For this reason, 14 participants described how applicants’ cases could be declined at the outset because they did not meet their most basic intake criteria:

A lot of times folks will write to us and it's clear from their very first letter that they don't meet our criteria so I would reject that case before I even send them the questionnaire. Honestly, I don't keep track of those numbers, but there's a pretty significant amount of cases that are like that. (P7)

One organization described how they aim to send out a resource list if the case is clearly outside of their actual innocence requirement:

No, we would filter [those cases] out and we have a resource list of other places in [state], that might be helpful. So we always send that out with any case that we say we can’t help you with, we send a resource list with it. (P24)

Another organization discussed how a lack of ability to point to new evidence in an initial contact would cause them not to progress them to the next stage by sending out an application:

One other restriction that I don't think I mentioned is that, if they can't point to any new evidence then we also wouldn’t send [it] out. Like if they can't, and it's not just new evidence, but like new leads too. If they're just re-arguing the case, we really can’t move forward. (P10)

Though very few organizations reported keeping official data on the requests they receive, participants provided their thoughts on the most common and uncommon types of requests they receive. Overall, participants indicated that the most common types of crimes applicants were convicted of were those that carry long incarceration sentences, and/or sex
offense registration, while the least common requests they received generally dealt with

nonviolent crimes carrying less severe sentences:

Now, when I'm thinking about that, it might be because the sentences are incredibly long whereas if you have a theft or burglary, or something like that, sentences aren't as long. So that's likely why we get those applicants because they have a lot of time to, you know, develop and really think about what's going on in their stuff. Whereas, somebody might be paroled within a year of their burglary charge or something like that and then they're moving on with their life, they're trying to get forward. It doesn't mean that they're not innocent. It just means that they're trying to get behind them and keep going and support themselves. So that is something. I guess the type of charges are, tend to be involved with sex, sex crimes and murder. (P10)

You know, your robberies, your homicides, and your sexual assaults… They are the cases that get the worst sentences. The longest sentences. (P18)

We don't typically get misdemeanors. I don't know that anyone has ever applied to us for a misdemeanor, unless it was like a misdemeanor sex assault, something that has like, you know, teeth to it in the sense of like they have to register or something that's preventing them from getting employment. Because I think there's a lot of people that plead guilty to something they're actually innocent of. But they, you know, they already served their time and they just forget about it… Every once in a while you get one, but it’s because something comes up on a background check, and so they can't get a job, and they can't get security clearance, or something like that. (P11)

Moreover, the types of requests commonly seen partially tracked with the National Registry of Exoneration’s most recent annual report of characteristics of exonerations involving the assistance of an innocence organization. Thus, murder, attempted murder and adult sexual assaults/rapes were reported as commonly seen crimes in received requests for assistance. Over 75% (n=15) of the interviewed organizations mentioned murder or attempted murder as the most common requests they receive, which is the most common crime type for innocence organization exonerations nationally, accounting for 55.1% of their exonerations. Interestingly, crimes of adult sexual assault and rape are second lowest in non-innocence organization exonerations according to the NRE. But more than half (n=11) of the innocence organizations interviewed mentioned crimes of sexual assault and rape as their most common requests received, which is in
line with the NRE’s data that those crimes are the second-most prevalent in innocence organization exonerations, accounting for 17.3%. It is possible that this difference between innocence organization exonerations and non-innocence organization exonerations exists because innocence organizations are taking up the majority of such cases.

Additional similarities to the NRE data on innocence organizations also arose in the qualitative interviews. Over 20% (n=4) of organizations also mentioned burglary and robbery as commonly seen crime types in their requests for assistance. Although these were the “worst crimes” committed for only 4.6% of innocence organization exonerations, if numbers for nonviolent crimes and violent non-murder, non-sexual crimes are combined, they account for about 21.9% of such innocence organization exonerations. Regarding commonly discussed contributors to wrongful convictions, three organizations indicated that there were commonly claims of inadequate legal defense in the requests they received, which consist of only approximately 26.6% of innocence organization exonerations. Two organizations mentioned mistaken eyewitness identification (37.6% of innocence organization exonerations, 12% more than non-innocence organization exonerations), and another two organizations mentioned official misconduct (55.1% of innocence organization exonerations having claims of police misconduct, and 31.3% of innocence organization exonerations having claims of prosecutorial misconduct). The differences and implications of some of these comparisons are discussed in greater depth in Chapter 5.

A third of participants (n=6) stated that crimes of child sexual abuse were commonly found in their requests for assistance. This is in contrast to data from the NRE which suggests that crimes of child sex abuse are the least common in all known exonerations to date, accounting for only 9.6% of innocence organization exonerations. Intake policies which are
designed to screen out most of these cases may account for the low number of exonerations with this crime type, even though they are present in requests for assistance.

Uncommon requests for assistance were generally reported to be lower-level offenses which did not carry long sentences or other legal consequences. Three organizations mentioned white collar crime, with one speculating that this may be because those accused of white collar crime might be more likely to have private counsel and thus, better plea deals. Three organizations mentioned drug crimes specifically as being uncommon. Two mentioned federal crimes.

After this initial request is made by an applicant, the next step for many organizations is for a screening form and/or application to be sent to the applicant and reviewed.

**2. Applications.** All organizations but one utilize some sort of screening form and/or application to collect additional, targeted information from applicants about their claim, if one was not submitted as an applicant’s initial correspondence. Two organizations send a 2-4 page screening form to applicants prior to completing a more comprehensive application. Though one of these organizations stated that they did not decline any cases until they received that pre-screening form back, the other indicated that they would decline cases at the initial letter if there were jurisdictional or factual innocence disqualifiers. The remainder of the organizations, excluding the one that did not use either type of form, send applicants that did not have their cases declined at the outset an application ranging from 10 to 20 pages in response to their initial letters (see Appendix G\(^2^2\)).\(^2^3\)

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\(^{22}\) To preserve participants’ anonymity, examples indicated in Appendix G include forms from both organizations interviewed for this dissertation and those that were not.

\(^{23}\) The organization which does not utilize an application instead has letters from applicants reviewed by an undergraduate intern, who will also review the appellate decision and write a memo summarizing the case with their recommendation about whether to move it forward included as part of that memo. A staff attorney and the Director
Some participants expressed concern about possible confusion for applicants when filling applications out, or that longer forms might actually disincentivize potential applicants, which factored into the way they structured their forms. Two organizations expressed their concern with providing false hope to applicants by sending them an application after their initial contact if it is unclear that they meet the intake criteria:

There's not always a lot of detail provided in the letter. And so, you know, it doesn't hurt often to... like, we don't want to send false hope, of course, but if we can get the application, there's more room for them to explain the situation and explain the details. (P22)

I don’t like giving people false hopes, and I never sent him an application. But I probably have more letters back and forth-- More letters from him than from any other person. And I have probably written him more letters than I should have. And so as a matter of fact, I have at times said to myself why— why send an application to this person? I know he's not-- you're just making him go through the process-- that's going to give him false hope. And I actually do not have a policy now of sending applications to anyone who asks for one. (P12)

Still, organizations described why it would be hard to rely solely on an applicant’s letter for information about their case:

A lot of times people will just write to us and like “send me an application” and that’ll be the extent of it. You get somebody that's just straightforward, like “I was wrongfully convicted. Send me an application.” And then you get people that will tell you, like everything about their case in their letter. (P11)

Literally, when it first started, it was through the criminal law clinic and we would sit there and we would read a letter. “Okay, I think he has a viable non-DNA case. Accept. No, reject.” So that's the way the process started in the beginning, and now it's just this complicated process with a questionnaire which is really useful. You get a lot of information that's necessary and the reason why we did that is because we can literally from the beginning know whether or not we can push a case on just by reading that questionnaire and the way they answer the questions that are on our questionnaire. (P20)

a. Process for Application Review. Once the application is received back from a participant, the next stage of review varies widely across organizations. Nine organizations then review the undergraduate’s memo looking for “red flags” such as whether there is untested DNA, or exculpatory evidence that has not yet been litigated.
indicated that the application was next reviewed by 1-2 people, and a decision was made as to whether or not to move the case forward for further investigation. The people responsible for reviewing the application and determining if it moves forward also vary among the organizations. In three organizations, intake staff are entrusted with this decision. In one organization, this decision is made by an attorney on staff. For four organizations, the Intake Director is directly responsible for making the decision. In another organization, an intern reviews the completed application. Law students screen these applications in another organization, with their work reviewed by the Director. This final organization posited how the intake process could be different if who reviews these applications changed from students to attorneys:

I think if we did the intake differently, you know, with the attorneys doing the more, being more involved in the initial intake, we probably could screen out a whole lot more than we do in the initial intake, but part of the reason we don't is because that's what the students are supposed to be helping with, and, learning the way they're learning. (P6)

Five organizations described their next step after receiving back the completed application as putting together a memo or report based on the information they’d collected up to this point in order to determine how to proceed with the case. These memos were written by either analysts, students, or volunteers (including pro bono attorneys) and reviewed by the Director, staff attorneys, or intake teams. Memos at this stage include information which ranges from an explanation of the case and a guess at what new information might be available to uncover, to calculations of likely success, the availability of new evidence, and an assessment of whether or not a “colorable claim” of innocence exists.24 The former (i.e., memos based upon preliminary information explaining the case) is a process utilized at organizations where

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24 Colorable claims are defined by Cornell Law Schools’ Legal Information Institute as “A plausible legal claim. In other words, a claim strong enough to have a reasonable chance of being valid if the legal basis is generally correct and the facts can be proven in court. The claim need not actually result in a win.” (“Colorable Claim,” n.d.)
documentation beyond public information and the application has not yet been acquired (n=3).
The latter (i.e., memos written based upon calculations of likely success, new evidence, and
colorable claims of innocence) is a more stringent assessment done by two organizations which
had already gathered and reviewed all of the case’s legal documents.

One organization indicated that they collect and review additional legal documents prior
to reviewing the completed applications when they come in. They described processing these
documents in a way that is guided by what the post-conviction relief petition they would be filing
would require if they were to take the case:

They may have a bang-on case for ineffective assistance of counsel, but if we don't have
it paired with a new evidence of innocence, we more than likely are not going to take that
case. That doesn't mean that... later, you know, we're gonna raise all of this in our petition
for post-conviction relief. The new evidence might not be the thing that wins the day and
to be quite frank with you, that's only been the thing that's won the day once out of the
eight clients that we've been able to free. So oftentimes it is the ineffective assistance of
counsel claim that will ultimately win the day but for our mission and for our purposes,
we need to have that attached to new evidence of innocence to even get our foot in the
door, largely because of the statutory language. (P10)

Two organizations described how once they received the complete application, they
moved on to their grading systems to establish a queue of cases to work from, as previously
described. Finally, one organization indicated that with a completed application in hand, they
next move to a presentation of the case given by their interns and externs, and vote on whether to
move it forward to full investigation. Though the vote is taken amongst the student interns and
externs, the final decision to move a case forward is up to their Intake Director and staff
attorneys.

b. Process and Standards for Moving Cases Forward at Application Review. Along
with initial contact, the application review stage was identified by participants as where most
cases were rejected. One participant stated that more cases were declined at this stage as
compared to the initial contact because of the additional information they would receive on a
completed application. Another participant estimated that 30% of their total number of cases are
rejected at the questionnaire review stage. Each organization had their own standards for what
type of information, or lack thereof, would cause a case to be declined at this point. It is
important to note that once applications are received back from an applicant, only four
organizations review these applications alone at this stage, while most (n=13) completed this
stage of review with more information in hand. Seven organizations reported reviewing
applications and additional publicly available documents such as appellate opinions and news
media about crime at this stage. Fewer (n=5) reported requesting additional legal documents like
police and laboratory reports, as well as trial transcripts at this stage of review. The majority of
organizations described how they still tend to err on the side of caution when evaluating
information at this stage:

If anything about the questionnaire is inconsistent we err on the side of moving the case forward. So an example might be: On my first page I have three boxes. It says check all of the following that are true. And it says, I had no part in the thing I was convicted of, my conviction happened in the state of [state], and my direct appeal is over. And so we want someone to check all those three things. So you're claiming innocence, you are within our state, and you're in post-conviction. So a situation might happen when a person indicates, I had no part in the crime for which I'm in prison. But on the flip side, they might check I went to prison because I defended myself and someone died. So in that situation, now it's like unclear. Is this person telling me that the thing didn't, that they weren't there? Or are they telling you that they were there and they were part of what happened, but they don't think they're criminally responsible? So when things aren't congruent we always err on the side of collecting more information. And that's true throughout the process. (P8)

Precisely what and how much information each organization wanted to see at this stage to
move a case forward is on a spectrum. A few were more lenient with their evaluations here than
were others. One participant mentioned that they declined cases at this stage only if it were
clearly not a claim of actual innocence, and another still only mentioned conflict of interest as
the sole reason why applicants would be rejected at this stage of the intake process. For the most part, however, organizations reported rejecting cases at this point if they did not meet their unbendable rules related to jurisdiction, existing representation, and the exhaustion of appeals.

One participant described how difficult it was to have to close cases that don’t meet these criteria:

> It's all you know what can we prove in court? But, I mean, it's also really hard because, I mean, most of the people that you're talking to have been in custody 20 plus years. And so it's easy to feel really badly and want to do something, but the case doesn't have - the facts aren’t there. (P11)

For the organizations that collected legal documents in tandem with the application, cases were rejected with the most rigorous set of standards. This was described by participants as being because the review of legal documents generally provided enough information for the intake team to determine if the case should move forward in the process. Organizations making a decision at the application stage with full legal documents in hand described consideration of evidentiary pathways forward to prove the person’s innocence:

> When you litigate a case you have to do more than just prove their innocence but if you can't prove someone's innocence, you can’t litigate a case. So that's kind of the two main things that the screening process focuses on and then they send that memorandum back to us and then our legal staff reviews it, and decides after reading through that memorandum, is that the case that we want to take on and potentially go out in the field and investigate, or is this something that we think, you know, we can't really do much for this person, even if we even if all avenues of investigation were perfect and we uncovered good evidence, what could we really do in reality with this? (P7)

> We make an assessment… these are the lines that we can play in this, and viability, like what actual steps would be done?... And assuming for a second that all these broke right for the defendant, you know, would that be enough? And what are the odds that they would break right?...We also ask ourselves… is there at least a colorable claim of actual innocence based on something objective? And number two, do we see a potential route to victory? (P3)

> Everybody will get a stage one review. That should lay out explicitly, like, their thinking on the cases on viability of what might be investigated or, what hurdles we can potentially or could never ever overcome in a case. (P9)
The questions are still ultimately the same. Is there a claim of actual innocence? Is there evidence that we can find to do it? Or do we have a clear path moving forward on it?... Many times we’ll get in that position, uh, there won't be there won't be any new evidence and there's procedural bars left and right, and sometimes in those circumstances, we have to make the tough decision to not accept that particular case. (P16)

Only two organizations which only evaluated the applications and publicly available information about the case at this stage indicated that they would reject a case for lack of new evidence of innocence:

Then we go to the screening stage and there's two phases. The first phase is where we get all of the open records and publicly available information about the case. And then that information gets digested and put together in a report form that can be talked about with attorneys and the Executive Director and me and anybody else who’s touched it. And at that point, if we still feel that there's something that we could actually help with. Then we go to the second phase where we actually do our own investigation of the case. (P24)

The standard at the questionnaire stage is we’ll further investigate the case if there's a plausible claim of actual innocence and we can think of, possible new ways to find it new evidence to find it, or to prove it. (P15)

Across all organizations, participants also noted how they kept an eye out for common contributors to wrongful convictions cases when evaluating a case’s path forward:

If we ever got a case and the analyst had been caught doing misconduct in some other case that's an automatic “yes” because there's a clear cut route to victory that way. (P3)

We use our working knowledge of kind of past cases as reference points, right? Where we say like, ‘oh, like this case is similar to this case that we won in X and X number of ways. and so that's why it would be a good case.’ Or, ‘this case would be bad case because it's like some other case,’ you know what I mean? So I think that process is very subjective. (P7)

And in other cases, we basically just look for red flags. So like anything that we know usually causes wrongful conviction like some sort of unreliable eyewitness identification or some indicator of like bad lawyering or prosecutorial misconduct. If it's a prosecutor, for example, who we know has done some really bad things in the past, or a police officer who has done some questionable things on other cases, we’re more inclined to look into that. We also look a lot at confession cases, and if there’s a case that was based largely around somebody's confession. We will almost automatically agreed to at least evaluate whether we think the interrogation could have caused a false confession... So we look for all those red flags. (P17)
And then part of what we're looking for too is to see if there's any commonalities with cases that we've already evaluated. And by that I'm talking about, like, the red lights about detectives that have been, you know, the same people that pop up or the same agencies and the same issues that pop up, depending on what county the cases in. So we're also looking for that. From the beginning, any kind of commonalities with other cases that we've already become familiar with. (P24)

c. Screening Interviews. After application review, two organizations mentioned that prior to taking a case forward to investigation, they conduct screening interviews with the applicant. One organization described the screening call with an applicant just to check that their case meets their basic intake requirements of factual innocence, jurisdiction, etc. The other organization described the interviews as tools to verify the information they have about a case, and that the facts are how they understand them to be:

In the end that's [the interview] really just to determine if what we've looked at and what has been submitted actually, in reality, correlates to the understanding that the defendant has about their own case. It's not like a gotcha session... It's really just to confirm ‘Okay, here's our understanding of your case. Here's our understanding of your claim. And here's our understanding of what would need to be investigated to get to actual innocence.’ Basically, making sure that we're on the same page as far as also just being on the same page about what resources we actually have. (P9)

The same participant spoke about how a screening interview can also lead to information that changes the way the case will be evaluated as far as whether there is a path forward to success:

For example, I might think that talking to these eight people would be potentially very helpful [to the case] and then have a screening interview and maybe like six of those people are dead and so how does that change, the what I call ‘investigative avenues?’ So most of these reviews end with ‘if this case progresses, here are the things we might investigate because here are the things that they might prove or would hopefully, prove even, depending on what kind of evidence you're trying to unearth.’ (P9)

Once the screening forms and/or applications are received back from an applicant and reviewed, next most organizations would enter what can be characterized as an investigatory phase of review.
3. Post-Application Review. When the applicant has made their initial contact with the organization and the screening form/application has been submitted, it is at this next stage that most organizations begin a more in-depth review of legal documents and/or on the ground investigation. It is also at this stage where even more variation is seen for how each organization’s process works, though decisions as to whether to move a case forward or not start to focus even more heavily on the possibility of proving one’s innocence.

Seven organizations reported document collection as the primary next step, with three of these organizations also adding that investigatory steps (e.g., speaking with witnesses, searching for evidence) are also taken at this time. Decisions regarding whether to move cases beyond this stage when organizations are completing document collection are largely centered around the importance of being able to identify a legal path forward. This includes references to the availability of new evidence, as well as jurisdictional standards to bring a post-conviction motion:

Those law students in conjunction with the staff attorney are trying to look at two things. A, do we think that the person has a colorable claim of innocence? And sometimes they don't. Sometimes we look at it and the victim is the person's wife and she lived and she’s saying ‘he sexually assaulted me and beat me’ and like, she didn't make a mistake in eyewitness identification, right? And I guess she could be lying, but there's not much we can do about that, right? Somebody who was lying. So if they seem to have a colorable claim of innocence and there's something we think we can do about it, because that's also a piece. I mean, it may be that we look at it and we go, boy, I can't believe this guy got convicted. There wasn't very much evidence there, the jury got it wrong. But almost like the less evidence there is, like, what can we do? You got to find out that a piece of evidence was wrong or an expert was wrong or, you know, there's another person out there who could have provided an alibi that was never checked out by the defense attorney. So it's got to be sort of a colorable claim of innocence and then we have to be able to come up with a path to something, some sort of investigation we can do that would uncover new evidence. (P1)

---

25 Two organizations indicated that their final stages of review were at application review.
But like if we do find, like for example if we do see a lot of red flags, but there's just no conceivable path toward. Like meeting the legal standard of a new trial motion then sometimes we won’t, you know, we won’t take that case… Here you can file a new trial motion as many times as you want, the only the only issue, I guess, would be is if someone comes to us and they say, ‘I have this really like exculpatory evidence’ but it's already been litigated in a new trial motion and they lost, then we're like, ‘well, there's nothing we can do because you've already lost on that claim, if there's more we can do and look into we'll do it.’ But if there isn't. Then that is barred. We can't relitigate it. (P17)

We’ll take the case if we have new evidence that wasn't previously presented and we are firmly convinced, the whole team is firmly convinced the person is innocent, actually innocent, then we'll take the case. So the standard at the questionnaire stage is we’ll further investigate the case if there's a plausible claim of actual innocence and we can think of possible new ways to find it new evidence to find it, or to prove it; but to actually take the case, we have to have a case where we're firmly convinced of actual innocence and we we've got new evidence to prove it. (P15)

However, two organizations indicated that belief in one’s factual innocence always comes first:

What I have always told my students is that if we can find a good factual narrative of innocence, we'll figure out a way to bring it into court so not to worry so much on the process or the framework. We are definitely looking at it to see if we can find something to support their claim that they didn't commit the crime, whether that's DNA testing, whether those are new witnesses, whether it's other kinds of evidence that established, they didn't commit the crime and that investigative review can take years, and it also most often ends up with us saying that we can't take the case because we haven't been able to uncover anything that would be considered new evidence of innocence… We've had cases in the organization, one since almost its inception and other cases that we've been working on for a long, long time. (P21)

My ideology in regard to innocence is, well, if a person is innocent, in my opinion, they're entitled to a do over. That is to say, the court has the obligation to examine the evidence in its entirety, even if that same evidence has been presented to the court before, whether on trial or on prior post-conviction of proceedings. So just because this person has been making the same claim over and over again, doesn't mean that their case is not worthy of attention and reinvestigation. (P13)

Another participant from an organization within this group of seven detailed how a case would be closed either in the absence of evidence of innocence, or the presence of evidence of guilt:
If we don't see any red flags or if we see, like, overwhelming evidence of guilt… there's just certain pieces of evidence that are really unavoidable, especially where the applicant, like for example, is acknowledging that they were present at the crime scene. There's things that we just can't get past because we don't think we could prove that you didn't commit this crime. (P17)

Three organizations indicated that investigation alone is undertaken at this stage. In two of these organizations, there was not a standard described for moving a case forward other than the ability to find evidence which would allow them to support a post-conviction claim. The remaining organization mentioned examination of potential legal pathways forward based on both their jurisdiction’s post-conviction motion, and also, the courtroom workgroup in their jurisdiction:

Well, it's really just, if we think we have the evidence we need to work with to be successful. Most of the time we're in state court here so it's usually a motion for a new trial or post-conviction petition… But then as part of that calculation, as much as it bothers me that it's true, it is true, also some of what we take into consideration is which court, may even be which judge, you know, which county, which prosecutor, because some prosecutor’s offices are more willing to work with us than others. You know, some jurisdictions we've had better success in and it, you know, at the end of the day, it shouldn't matter where you're convicted or which judge or prosecutor you had. But the fact of the matter is, it does. (P6)

The same participant also described why it was important for them to remain somewhat open-minded about a case’s chance of success as this stage of review:

The intake is more just siphoning out the ones that we already know for definite sure we're not going to do, and then the real meat of it gets done with the law students… And then, honestly, the students too, a lot of what they're doing is, a lot of a lot of the clients write in and they don't necessarily know what the new evidence will be, but we don't filter all of those out if it's not clear in the application because a lot of times, you know, it's something that gets developed during the investigation. They may not have any idea that there's another witness out there or that there was DNA that could have been tested that wasn't because they didn't know what all the evidence was necessarily or something like that. So that's why that process is needed, because a lot of times it's not obvious from the initial screening what exists and what doesn't. (P6)

Another three organizations indicated that in addition to document collection, volunteer attorneys, law students, and undergraduate students, are also responsible for putting together a
memo at this stage of review. In constructing these memos, most participants described an
analysis of legal documents to determine whether or not the person is factually innocent, the
facts and evidence of the case, and whether/what pathways might prove the applicant’s
innocence via additional investigatory efforts. Interestingly, the two organizations that utilize
students for this stage of review had different processes; one had law student interns working
with their organization, whereas the other would send documents out to volunteer undergraduate
and law school classes. The first of those organizations described how students’ memo-writing
was reviewed to ensure that a comprehensive product was reached:

Each week, the student meets with their attorney supervisor to go over what's going to go
into the memo. And then at the end, I [the Intake Director] get the first draft of the memo
as someone who's only ever seen the case from an intake perspective. And then I offer
any questions about things that are not clear or information that I know to be missing. So
it's gone through a number of revisions and then if based on the memo we do decide to
accept a case for litigation, the attorney who is assigned is going to read through the
whole record anyway. So that being said, one of the things that we tell our students is, if
there is a bad fact you must include it. We don't want you to censor anything because we
need to look at these cases holistically. And so, there's been problems in the further-past
of students who became emotionally attached to their cases and they didn't want to admit
that there was evidence that suggested their person did the thing. (P8)

The other organization’s participant spoke about how their process and who they would
send cases out to varied greatly by the amount of case documents they had available:

You know, case files will differ in size from case files that are very small, and some case
files, the stack of papers that you see behind me, this is a recent file that we got in. You
can see it's a huge stack, almost everything in that stack is all police reports which is
incredibly rare. Most of the time you have like 100, 150 pages of police reports
maximums and so this is, this made me very excited when I got this because, I was like,
‘Oh my gosh, we have so many police reports.’ This would be the type of case that I
would send out to a class because if the class has 10 people in it, they can all divide up
the work and review it all. So usually the larger a case file is, that, those are the types of
cases that I'm going to send to the class and then I try to give them however long they
need. (P7)

Reviews of these memos were completed in a very similar manner across all three
organizations, where a panel of staff at the innocence organization including legal staff reviewed
the memos to determine whether the case would go into investigation. As investigation would be the next stage, these organizations indicated that they were focused on whether there would be a pathway forward for the applicant should they decide to take their case. Another organization also mentioned the balancing act of considering the resources it would take to pursue a case versus the chance of a successful outcome.

The remaining four organizations described discussions amongst both internal and external groups as the next step in their intake process as document collection had been completed at a previous stage. This system varied greatly by organization. In one of these organizations, once the Founder and Case Analyst had agreed that a case should move forward, they would then pitch it to an external law firm who would agree to take on approximately 88-90% of the cases brought to them. The remaining three organizations had an in-house process, generally involving debate and discussions amongst the organization’s Director, one of the in-house attorneys, Case Managers, and in one of the organizations, students involved in intake evaluations. These internal reviews of a case are evaluated based, for one organization, on what is currently on their dockets and if the resources are there for them to take on the case. The second organization that has internal review at this stage is just looking to see if anything might be able to be uncovered from an investigation. The last internal review organization described how even without a pathway forward at this stage, sometimes the case will remain “open” in hopes that additional evidence will come to light or if they can assist in other ways:

I got a couple cases that I refused to just get rid of because I am hopeful that one day I'm going to find some files or additional evidence. Essentially, we just tell them you know like, unfortunately, even to communicate with a client that “Listen we're not going away. We're not getting rid of your case. But we've got to keep it dormant, we've got to find XYZ evidence.” And sometimes that can take a really long time… And sometimes what we'll do in those kind of cases, too, is if the person has a parole hearing coming up, you know, we'll sometimes go represent them in a parole hearing. And so that sometimes is
enough for clients, you know, they understand we can’t do anything with what we have access to. But we try to help them in any way that we can. (P11)

For about half of all the organizations (n=9), the step directly following application review is the final stage of review at which point a case is considered “accepted” for litigation by the organization. The remaining eight organizations had one final step left. Three organizations moved lastly into full investigation. A participant from one of these organizations indicated that closing a case at this stage was primarily due to a lack of available evidence to bring the case to litigation.

Four organizations described a process which ended in a review by a team from the organizations. One organization discussed their last step as the writing of a “deep dive memo” by law students or volunteers, which would incorporate public information about the case, and finally be reviewed by the legal team to determine if the case would move forward into litigation. Though the participant described taking on any case where a member of the legal team feels strongly about the applicant’s innocence, they also spoke about how ultimately, without additional evidence to move the case forward, they cannot litigate it. Similar in process, another organization indicated that their last stage before acceptance was a presentation of the case given by law students to the organization’s attorneys, staff investigator, and intake staff, who will then decide if the case moves into litigation. This participant discussed a few discussion points staff use when determining whether to move a case into litigation or not, which included pathways to success, how compelling a case of innocence there is, and the chances of success:

If a case has come to legal team, there's enough there that I have found a particular avenue that we can use, so the discussion will be ‘Can we use X avenue to achieve Y result in this case?’ Or there will be such egregious or upsetting facts that point conclusively to this person not being guilty that even if there's no obvious hook, it's something that we might want to sink our teeth into long term. And then finally, we talk about the relative like allocation of resources vs. chance of success. (P8)
Two more organizations indicated that cases are reviewed with their legal team, who then make the final decision on whether or not to take a case. For both organizations, participants indicated that the attorneys are looking for a pathway to litigate the case in making their decision. One stated:

Later on, after we get their full case file and like review all the documents for the first time then it's more flexible because it's kind of up to the attorneys at that point to say, “Well, even if we investigated down X, Y, and Z avenues, and we got favorable evidence down all those avenues, we still wouldn't be able to do anything for them,” so that would be a case that we’d close. And at that point there's no real criteria. It's just kind of what the attorneys decide. (P7)

The final organization with an additional last step post-application described a more complex process, which consisted of a panel review, investigation, and then possible litigation. In this organization, once document collection is completed and the pieces are reviewed, there is a panel of defense attorneys and prosecutors who make final decisions as to whether additional steps can be taken. These additional steps can be anything from talking to a potential witness, or decisions as to whether the organization can proceed to litigation.

We give them everything, all of the facts, good, bad, the ugly, everything, and they just hit us with all the questions and we just make a presentation to them. And they give us the go-ahead, because we have very limited resources. So can we, as the [organization name] put our name and reputation behind this case or whatever we're asking, like can we investigate this case and come back to the panel?... We just make that ask in front of this panel and have them say “Yes, this is the type of case that we feel is warranted. It has a legitimate innocence claim that you should be putting your representation behind your reputation behind.” And so, they just hit us with all the questions. And at the end of the day, they say yes or no. (P18)

4. Acceptance. Participants were able to provide estimates of how many active cases they had in the organization, with definitions of what qualifies as “active” changing depending upon the organization’s intake processes. Primarily, organizations defined active cases as those that have reached the point where a retainer agreement has been signed, or full investigatory resources have been deployed. The current number of active cases for each organization ranged
from 3 to 780, with an average of approximately 104 cases (for more details, see table 3). Of the organizations with smaller caseloads \((n \leq 20)\), 67% had a budget that was either unknown or in the lowest bracket (from $0-600k), and 50% had 0-3 full-time staff members. All non-members of the Innocence Network also fell into this smaller range of caseload numbers. Interestingly, two organizations which had some of the lowest active case numbers were on the high end of the resource bracket, with two of the highest budgets and having at least 10 full-time staff members. These two organizations, though larger in terms of overall staff members, indicated having only 1-2 full-time intake staff. It is possible that because of this, fewer cases can be processed and moved into “active” status. Another possibility that could extend the amount of time it takes for these organizations to get their cases to an acceptance stage is that the intake processes at each of these organizations run through at least four steps from initial request to acceptance, whereas many of the other organizations only work through three. Lastly, as previously mentioned, the definition of an “active” case varies from organization to organization; at each of these organizations, their definition of when a case becomes active is at the stage of filing paperwork with the courts on a person’s behalf. Conversely, the organizations which reported having the most active cases all had a full-time staff of at least 7 people.

Table 3

Active Innocence Organization Cases

<table>
<thead>
<tr>
<th></th>
<th>Currently Active Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0-20</td>
</tr>
<tr>
<td><strong>Innocence Network</strong></td>
<td></td>
</tr>
<tr>
<td>Non-Member</td>
<td>2</td>
</tr>
<tr>
<td>Member</td>
<td>5</td>
</tr>
<tr>
<td><strong>Staff Range</strong></td>
<td></td>
</tr>
<tr>
<td>0-3 FT</td>
<td>4</td>
</tr>
<tr>
<td>4-6 FT</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>7-9 FT</td>
</tr>
<tr>
<td>----------------</td>
<td>--------</td>
</tr>
<tr>
<td></td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

When asked to describe their respective active caseloads, most participants did so not based on any written record, but from memory as this information did not appear to be stored in this way. Three organizations specifically indicated that the characteristics of their active cases are largely characteristic of the types of requests for assistance they receive. Another seven organizations described crime types that they also indicated were most prevalent in the request they received, including murder, sexual assault, and robberies. Four participants from various organizations indicated that ineffective assistance of counsel issues were common across their active cases. Three participants spoke about outdated science being a common thread across active cases as well. Three organizations stated that they did not think there were any similarities across their active cases.
5. Successful Cases. Finally, participants discussed the cases which their organization saw to a successful outcome (see table 4). Success was defined as anything from release to exoneration. The total number of successful cases ranged from 0 to 190, with a mean of 23 successful cases per organization.

Table 4

*Successful Innocence Organization Cases*

<table>
<thead>
<tr>
<th></th>
<th>Total Successful Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0-20</td>
</tr>
<tr>
<td>Innocence Network</td>
<td></td>
</tr>
<tr>
<td>Non-Member</td>
<td>3</td>
</tr>
<tr>
<td>Member</td>
<td>10</td>
</tr>
<tr>
<td>Staff Range</td>
<td></td>
</tr>
<tr>
<td>0-3 FT</td>
<td>8</td>
</tr>
<tr>
<td>4-6 FT</td>
<td>1</td>
</tr>
<tr>
<td>7-9 FT</td>
<td>2</td>
</tr>
<tr>
<td>10+ FT</td>
<td>2</td>
</tr>
<tr>
<td>Budget Range</td>
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</tr>
<tr>
<td>unknown</td>
<td>5</td>
</tr>
<tr>
<td>0-600k</td>
<td>3</td>
</tr>
<tr>
<td>601k-900k</td>
<td>4</td>
</tr>
<tr>
<td>901k+</td>
<td>1</td>
</tr>
<tr>
<td>Organization Age</td>
<td></td>
</tr>
<tr>
<td>1-9 yrs</td>
<td>3</td>
</tr>
<tr>
<td>10-19 yrs</td>
<td>9</td>
</tr>
<tr>
<td>20-29 yrs</td>
<td>1</td>
</tr>
<tr>
<td>US Region</td>
<td></td>
</tr>
<tr>
<td>Northeast</td>
<td>4</td>
</tr>
<tr>
<td>Midwest</td>
<td>2</td>
</tr>
<tr>
<td>South</td>
<td>4</td>
</tr>
<tr>
<td>West</td>
<td>3</td>
</tr>
</tbody>
</table>
Like with active caseloads, it was difficult for most to describe how those cases compare to requests for assistance they receive, their active cases, and even their other successful cases. Of those that could identify any trends, three indicated that their successful cases looked similar in characteristics to their active caseloads. Four organizations mentioned ineffective assistance of counsel issues being present in these cases. Of interest were two organizations which mentioned that they receive quite a number more requests for child sexual assault cases than are reflected in their successful cases. One of these organizations described this as a factor of their being much more careful in handling victims in these cases, and being quicker to close them if it looks like re-victimization of the child victim might occur. Another participant from a different organization indicated that though they have a large number of active cases which utilized the junk science of Shaken Baby Syndrome at trial, they have only had success with one such case thus far.

**Conclusion.** Though no one organization had an identical intake process to another, the decisions made within the process and why certain procedures are adopted have some commonalities; namely, that procedures are implemented to aid in balancing out the cost of resources needed to achieve a successful outcome for a case. Within those procedures, this focus on how they can best assist each of the individuals under their review and within their active caseloads also influences how many intake decisions are made. Participants discussed how, also, intake decisions are very much subjective and subject to bias, dependent upon who is reviewing the case and how particular facts are viewed by that person. One participant described their attempts to actively foster decision-making that is more specific to the case at hand, as they had noticed a heavy reliance on case facts and what is known about wrongful convictions in case review, and less attention paid to the applicant’s case on its own as a claim of innocence.
Determining how or why procedures were adopted was difficult with some organizations because intake staff, aside from Founders and one staff member who had seen the organization’s founding, often had little to no institutional knowledge of why these choices were made. On top of this, the intake procedures themselves at organizations changed very little from founding, with intake instruments (i.e., application forms) being most likely to have faced any changes in recent years.

Regarding the use of students in their innocence work, overwhelmingly, participants stated that whether a case would provide important skills or lessons for their students had no bearing on whether the organization would take on a particular case. The reasons given for this ranged; one participant stated that there is pedagogical value to all cases, and most others who provided a reason (n=4) stressed the importance of fulfilling the organization’s mission and assisting the individuals who fit their criteria. Interestingly, participants did vary in their responses to how the assistance of students impacts their operations. Some (n=2) participants mentioned that the inclusion of students in the process (in intake or beyond) might slow the organization’s work down a little bit. Conversely, one participant described how the involvement of students actually enables the organization to take on more cases than they would otherwise be able to handle. Further conclusions, discussion, and implications for the findings presented in Chapter 4 are covered in the final chapter.

**Innocence Organization Exoneration Characteristics**

It is also imperative to examine how exonerations which occurred with the assistance of innocence organizations differ from those where this assistance was absent. These variations in characteristics may be, at least in part, a result of an organization’s chosen intake criteria and processes. Therefore, nationwide exoneration data comparing innocence organization
Exonerations and non-innocence organization exonerations are displayed in Table 5 below. The differences in characteristics across innocence organization exonerations and those where innocence organizations did not assist in the exonation are not extreme, but there are a few worth highlighting. Demographically, the racial breakdown of exonerated persons is similar across both groups, however, innocence organizations have almost double the rate of juvenile defendant exonerations than non-innocence organization exonerations. In addition, there are several states that have seen no innocence organization exonerations but some non-innocence organization exonerations (i.e., Alabama, Delaware, Iowa, Maine, Nebraska, New Hampshire, New Mexico, North Dakota, South Carolina, South Dakota). Crime types also appear to be similar across the two groups, though innocence organizations’ exonerations have a higher rate of murders and sexual assaults than non-innocence organizations, and therefore a less diverse mix of cases. Innocence organizations have almost triple the percentage of DNA exonerations than non-innocence organizations (37.2% versus 13.4%), and roughly 25% more police misconduct cases than non-innocence organizations (55.1% versus 30.9%). The percentage of exonerations which included the primary recognized contributors to wrongful convictions was higher in innocence organization cases than non-, except for a small difference in percentages of inadequate legal defense claims raised in exonerations (27.3% of non-innocence organization exonerations as compared with 26.6% of innocence organization exonerations).

Table 5

Exonerations, by Assistance of Innocence Organizations (IOs)\(^{ab}\)

<table>
<thead>
<tr>
<th>Exoneration Factors</th>
<th>Exonerations without IO assistance</th>
<th>Exonerations with IO assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Count (N=2,066)</td>
<td>Count (N=688)</td>
</tr>
<tr>
<td></td>
<td>% within cases</td>
<td>% within cases</td>
</tr>
<tr>
<td>Age(^{c})</td>
<td>Juvenile at time of crime</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7.30%</td>
</tr>
<tr>
<td>Race of the exonerated person</td>
<td>1908</td>
<td>92.70%</td>
</tr>
<tr>
<td>------------------------------</td>
<td>------</td>
<td>--------</td>
</tr>
<tr>
<td>Asian</td>
<td>27</td>
<td>1.30%</td>
</tr>
<tr>
<td>Black</td>
<td>931</td>
<td>45.10%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>263</td>
<td>12.70%</td>
</tr>
<tr>
<td>Native American</td>
<td>12</td>
<td>0.60%</td>
</tr>
<tr>
<td>Other</td>
<td>14</td>
<td>0.70%</td>
</tr>
<tr>
<td>White</td>
<td>814</td>
<td>39.40%</td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>202</td>
<td>9.80%</td>
</tr>
<tr>
<td>Male</td>
<td>1864</td>
<td>90.20%</td>
</tr>
<tr>
<td>Worst criminal charge for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>exoneration crime</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violent non-murder, non-sexual crime</td>
<td>325</td>
<td>15.70%</td>
</tr>
<tr>
<td>Murder and attempted murder</td>
<td>768</td>
<td>37.20%</td>
</tr>
<tr>
<td>Nonviolent, non-sexual crime</td>
<td>489</td>
<td>23.70%</td>
</tr>
<tr>
<td>Adult sexual crime</td>
<td>253</td>
<td>12.30%</td>
</tr>
<tr>
<td>Child sex abuse</td>
<td>230</td>
<td>11.10%</td>
</tr>
<tr>
<td>DNA</td>
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</tr>
<tr>
<td>No DNA evidence</td>
<td>1789</td>
<td>86.60%</td>
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<tr>
<td>DNA evidence</td>
<td>277</td>
<td>13.40%</td>
</tr>
<tr>
<td>False confessions</td>
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<tr>
<td>No false confession</td>
<td>1852</td>
<td>89.60%</td>
</tr>
<tr>
<td>False confession</td>
<td>214</td>
<td>10.40%</td>
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<tr>
<td>Eyewitness misidentification</td>
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<tr>
<td>No eyewitness misidentification</td>
<td>1549</td>
<td>75.00%</td>
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<td>Eyewitness misidentification</td>
<td>517</td>
<td>25.00%</td>
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<tr>
<td>False/misleading forensic evidence</td>
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<td></td>
</tr>
<tr>
<td>No false or misleading forensic evidence</td>
<td>1605</td>
<td>77.70%</td>
</tr>
<tr>
<td>False or misleading forensic evidence</td>
<td>461</td>
<td>22.30%</td>
</tr>
<tr>
<td>Perjury/false accusation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No perjury/false accusation</td>
<td>884</td>
<td>42.80%</td>
</tr>
<tr>
<td>Perjury/false accusation</td>
<td>1182</td>
<td>57.20%</td>
</tr>
<tr>
<td>Police officer misconduct</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No police officer misconduct</td>
<td>1428</td>
<td>69.10%</td>
</tr>
<tr>
<td>Police officer misconduct</td>
<td>638</td>
<td>30.90%</td>
</tr>
<tr>
<td>Prosecutorial misconduct</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No prosecutorial misconduct</td>
<td>1429</td>
<td>69.20%</td>
</tr>
<tr>
<td>Prosecutorial misconduct</td>
<td>637</td>
<td>30.80%</td>
</tr>
<tr>
<td>Inadequate legal defense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No inadequate legal defense</td>
<td>1501</td>
<td>72.70%</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------</td>
<td>--------</td>
</tr>
<tr>
<td>Inadequate legal defense</td>
<td>565</td>
<td>27.30%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Data from the National Registry of Exonerations as of 4/1/21.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentages may not add up to 100% due to missing values.</td>
</tr>
<tr>
<td>There were eight exonerations without Innocence Organization</td>
</tr>
<tr>
<td>aid where age was unknown.</td>
</tr>
<tr>
<td>There were five exonerations without Innocence Organization</td>
</tr>
<tr>
<td>aid where race of the exonerated person was unknown.</td>
</tr>
</tbody>
</table>

A chi-square test of independence examined the relation between innocence organization assistance in an exoneration and all the exoneration factors listed in the table above. The relation between innocence organization assistance in an exoneration and each of these variables was significant at $p < .001$ for all these factors except for prosecutorial misconduct, $\chi^2 (1, N = 2754) = .042, p = .837$ and inadequate legal defense, $\chi^2 (1, N = 2754) = .146, p = .702$. The implications of these differences are discussed in Chapter 5.

**Chapter 5 – Discussion, Future Directions, and Conclusions**

The answers and rationales provided by the participants included in this study illuminate how intake policies and practices ultimately impact the landscape of known exonerations. In addition, interviews provided insight into how policies are selected and adapted across different innocence organizations. Chapter five therefore provides a discussion, limitations and directions for future research, recommendations for practice, and conclusions based upon these findings.
Discussion

Overall, conversations with innocence organization staff and leaders about intake practices and policies demonstrate that they play an instrumental role in who receives assistance from an innocence organization, which can increase one’s chance of a successful outcome in their innocence case. A few key conclusions about organizations’ intake criteria and procedures, and how they are chosen, arise from the current study.

First, observations made of existing intake criteria make clear that there are some cases of factual innocence that are either accepted on a case-by-case basis, or systematically not taken on by innocence organizations. This appears to be attributable to several factors. Many participants cited the need to consider fairness to those in need of their services in choosing intake criteria. This manifested in several ways; some of what was mentioned revolved around how the cost/benefit analysis of available resources versus chance of success weighed into their intake criteria choices, when there were other applicants and their active caseloads to take into consideration. Also related to a weighing of the chance of success, participants described how difficulty in proving the case, be it by way of obtaining evidence, parsing out the truth, or working within their jurisdiction’s post-conviction laws, also controlled how they chose case selection policies. On the other end of this spectrum, rationales for why most innocence organizations in this study would take on DNA cases included the ease with which these cases could be pursued.

Another way the needs of the wrongfully convicted are addressed in the intake process is how organizations keep in mind, when reviewing new cases, which applicants would experience a change to their personal circumstances if their case should be successfully taken on by the innocence organization. This particular consideration is reflective of Rochefort and Cobb’s (1993) concept of crisis, concerning how problem definitions can be framed to shape responses
to policy problems. When framing a policy problem as a matter of “crisis,” this means that there is an assessment of who is in most imminent need of help. This was especially present in discussions of why intake policies regarding time remaining on one’s sentence were implemented, in addition to how decisions are made throughout the intake process as to whether organizations will commit their resources to a new case.

The availability of resources to take on not only more cases, but more complex cases either by way of difficult fact patterns, or those which have higher investigatory requirements was also discussed in reference to how intake criteria were chosen. Not only did organizations mention that they could lack the resources to carry out such cases, but they also described how when weighing resource allocation with chance of success, there are times at which certain types of cases could not justifiably be taken on. All of these factors were mentioned by participants when speaking specifically about cases of child sexual abuse. Despite some organizations indicating that they receive numerous requests for applicants with child sexual abuse cases, many still expressed hesitation in taking them on for these reasons.

Moreover, the historical nature of the organization’s intake criteria was also important to whether such criteria are in place. Numerous times throughout the interviews, organizations indicated that they take on certain types of cases because the Founder(s) or Executive Director(s) had done so, or expressed an interest in doing so. It seems this precedent cemented some intake criteria within an organization, though it did not stop innocence organizations from expanding into considerations of other types of cases.

The underpinnings of an innocence organization’s choices for their geographic intake criteria partially echoed that which was found in the existing academic literature in that attorneys’ licensing requirements were a largely cited limitation. But also in this study,
participants indicated that the work of similar nearby organizations (whether they were innocence organizations or not) would also influence whether they took on certain types of cases. It appeared that organizations erred on the side of not overlapping in these areas, likely because with limited resources it is most efficient to allow each organization to focus their efforts on different issues to cover the most substantive ground for applicants in an area.

The adoption of intake criteria also appears to be based more upon what small entities (e.g., individuals, the organizations themselves) need rather than serving the goals of larger collectives and social movements. Relatedly, the characteristics of the innovators, or those individuals involved in policy adoption, also appeared to be more important to policy choices in this space than the characteristics of the innovations (i.e., policies). Specifically, the opinions, experiences, and goals set forth by leadership either for the organization itself or intake operations were often cited as the rationale for policy selection and change. Importantly, aside from Founders and another staff member who had been with the organization since its founding, institutional knowledge of how the organization was formed, original goals of the organization, and its evolution, were scarce. This in and of itself also points to why individuals currently staffing or in leadership roles at the organization have such a large influence on intake policy and practice. In this way, mission statements would also play a large part in guiding how organizations choose which types of cases they will review.

These findings are in contrast to the concept of policy diffusion, which ultimately involves how practices and policies of one or more organizations influence those choices in other organizations. Though it was expected that connections with other innocence organizations in a network would influence how intake process policies were chosen, conversations with participants demonstrated that while similar organizations played a role in assisting others with
their policy selection, it was largely by way of advisory roles. Instead, decisions for intake policies and procedures appear to be more focused on organization-level factor rather than larger-scale considerations undertaken by wider social movements. A small exception to this is how several participants, in discussing certain intake criteria, pointed to knowledge of commonly seen wrongful convictions contributors as the basis for how they analyzed a case at intake and throughout their evaluations of likelihood of the case’s success. Moreover, although data in this study did not support policy diffusion across innocence organizations’ adoption of intake policies, many of the components described in Wejnert’s (2002) factors influencing policy diffusion (i.e., considerations of how policies will impact individuals, cost/benefit analyses, characteristics of innovators themselves, environmental context by way of geographic settings) are present within the organizations.

As seen in Figure 1, no organization had an identical process to another though the overall missions of each organization are nearly identical. How and why particular intake steps were undertaken hinged largely upon choices and preferences of those in leadership either at the organizational level or the intake department, as well as the resources, human and capital, that are available to each organization. Organizations with university affiliations primarily had smaller staffs but utilized students in their work and had budgets allocated to them by the associated schools. In contrast, those that did not have such association relied primarily upon fundraising and in many cases, grant work, to acquire as many resources as possible to run their operations. An organization’s access to resources then controlled not only what kind of intake process they would need to, or could, implement, but also how to make decisions within their process. Though organizations varied on when in the process more stringent intake requirements were applied to move a case forward, in the end, they all acknowledged that intake decisions
come down to the need to prioritize and sort through applications based upon whether they can allocate resources to uncover the evidence necessary to be successful with a case. And although new evidence of innocence is required to move innocence cases through the legal system, and cases with clear evidence may be prioritized in review, participants also appeared to recognize that most applicants will not have that information at their fingertips and would still investigate cases with compelling claims of factual innocence.

Another research expectation that was absent from the participants’ descriptions for why intake policies were chosen, or cases were taken on, was pedagogical considerations of the students working with their organization. As was discussed in Chapter 4, the needs of the applicants and fulfilling the organization’s missions were paramount to meeting specific educational goals for the organization’s students. This again is reflective of an emphasis put on the need to serve the organization’s mission above all else, and how focusing on the wrongfully convicted person’s case is of the utmost importance. Though intake decisions were not reported to be influenced by pedagogical concerns, the use of students at innocence organizations did impact how intake procedures could be structured. At one organization, for example, the participant spoke about how the review of case documents and writing of memos describing those documents was dependent upon having students (or volunteer attorney) to complete them. When students played a role in intake procedures at an organization, they were responsible for screening, memo-writing, and presentations of the case to legal staff, and played an important part in the initial review of cases.

Relatedly, few notable differences emerge across organizations’ intake policies and procedures and how they are chosen when comparing organizations which were affiliated with a law school (n=12) versus those which were not (n=7). Every organization represented in this
study stated that they used some type of student, be it law students, undergraduates, or graduate students, in some phase of their efforts, which may account for why there are not many differences between them. Though most of the organizations had their law students working on intake-related duties such as screening, application review, and memo-writing, law school-affiliated organizations tended to keep these students on through the investigatory stages. This is likely because students assisting at non-law school affiliated organizations were doing so to compensate for the organization’s lack of available staff at the front-end of review. Yet law school affiliated organizations have a responsibility to ensure students are receiving education not just about intake but importantly for future J.D. holders, how to undertake investigatory and legal steps in a post-conviction case. Ultimately, there were no notable differences between innocence organizations that are affiliated with law schools and those which are not regarding their intake criteria and procedures.

Limitations and Future Directions

This study is not without its limitations. First, the conclusions drawn from the data in this study are representative only of those who participated. Out of 59 organizations contacted, 40 innocence organizations identified within the U.S. either declined to participate or did not respond to the invitation to participate in this study. Should more of these entities have been included in the study, there may have been more representation, for example, of those which have lower budgets, or are not members of the Innocence Network. Also, a sampling bias may have occurred where the organizations which did accept the invitation to participate in this study are more likely to engage with activities such as policy advocacy, which would help to account for the high rate of this activity reported. And although there is sizable representation amongst

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26 One organization indicated that they are not currently utilizing volunteers due to the COVID-19 pandemic.
the participating innocence organizations on the demographics reported in Table 2, because of the overall lower sample size (n=19), conclusions were still drawn based on a small total number of organizations per cell.

Future studies in this area should seek to gain the participation of more innocence organizations, perhaps through offered compensation or donations. Similarly, this study did not include other professional exoneration organizations like CIUs or other government-affiliated entities which are tasked with addressing wrongful convictions. As previously discussed, these entities are fundamentally different from innocence organizations. They are de facto political entities in that they are often tied to an elected prosecutor’s office and/or executive agency. Even with these differences, future work should explore how the policies and procedures at these organizations compare to innocence organizations, and explore the implications of such differences on wrongful convictions.

In addition, questions posed to participants regarding the number of requests and declined, active, closed, and successful cases were not only difficult to obtain but also not easily comparable across one another as the unit of measurement varied (e.g., asked for number of requests per year, but only the current number of active cases, and the total number of successful cases). This limitation is also shaped by what information innocence organization staffs are able to track. Still, a quantitative survey which applies a uniform approach to collecting such information may have more success to comparing requests, caseloads, and successful cases in the future.

Finally, there is some under- and over-representation in the quotes used to demonstrate the concepts discussed in Chapter 4. There were several participants (P2, P3, P4, P19, P20, and P23) which were only quoted 1-2 times. It was difficult to edit quotes from Participants 3, 19,
and 20 in a way which would keep them unidentifiable. In addition, Participants 19 and 20 were part of the same organization and thus, together, came closer to the average number of times cited in the results; the same is true of Participant 23, who not only was interviewed with several other organization members but also experienced internet connectivity issues throughout the length of the interview. The interviews completed by Participants 2 and 4 ran shorter than the average interview (44m and 51m, respectively) and therefore a smaller number of quotes were retrieved from their transcripts. To keep from inaccurately recalling Participant 14’s exact words, as permission to record the interview was not granted, no quotes from them appear in the results. On the other end of the spectrum, Participants 8 had the most quotes attributed to them (n=12); this is likely because this individual provided additional follow-up information post-interview in addition to completing a longer interview (78m).

Recommendations for Practice

A few recommendations for practice flow from the findings of this study. First, participants’ constant need to consider deadlines for filing post-conviction motions indicate that an extension or abolition of such limitations may be justified. Several participants discussed how this plays a role in their triaging of requests for assistance. These deadlines likely exist not only to ensure that the finality of a case is speedily met, but also to limit the number of cases to be heard on appeal. In death penalty cases, this habeas deadline has served as way to ensure that death sentences are carried out in a timely manner (Armstrong, 2014). Additionally, implementing a deadline can prevent there from being a burden on the courts to hear cases from those who are filing simply for the sake of doing so, without a meaningful claim being raised. Still, the solution to an overburdened legal system should not be to cut down on the number of claims that can be brought at the expense of those with legitimate issues by utilizing a filing deadline. Given the extraordinary amount of time it can take for a wrongful conviction to be
remedied or addressed and the difficulties wrongfully convicted persons face in attaining assistance in their cases, the added time limit on when a claim can be brought is unnecessarily prohibitive.

Moreover, innocence organizations might consider adhering to more rigorous data collection regarding their requests for assistance and active caseloads. Though this is largely driven by an organization’s resource capacity to do so, such systematic examination of these cases could shed light on whether changes to intake criteria and procedures are warranted. Identifying trends in their cases could also be used to monitor, overall, where in the process certain types of cases get caught up, which has implications for how to devote resources to cases and move them most effectively through to the exoneration process. Data collection and maintenance on these records could also provide innocence organization staff and leaders a data source from which they could apply for specialized grants to further their work, as applicable.

The availability of additional funds like through grants and allocations of funds by governmental entities could ensure that innocence organizations are able to keep up with the needs they encounter. According to this study’s participants, this is already difficult to do; most innocence organizations rely upon fundraising to fund the bulk of their work. The ability to hire grant writers, which some organizations are now beginning to do, could also increase options for funding for these entities. Similarly, organizations which rely upon students and volunteers to process intake and participate in investigations could also benefit by adding to their core staff. Participants spoke about how much of the time, their work would not be able to be carried out without this staffing, though it can slow down the process as students and volunteers learn the ropes.
Conclusions

The findings and conclusions drawn from this study have implications for not only the operation of innocence organizations but also for the landscape of wrongful convictions as we currently know it. First, because decisions by innocence organization intake staff appear to focus on the balance of casting their limited resources and the possibility of pathways to success, more complex crimes and circumstances which have led to a wrongful conviction are likely underrepresented in not only innocence organization exonerations, but exonerations nationwide. Should the cases that innocence organizations are unable to assist not see their way to exoneration, this could lead to a deceptive decrease in the number of such cases reported by sources like the National Registry of Exonerations.

Crimes that are more complex may be those with complicated factual patterns difficult to bring forth in a post-conviction motion, but also, those which consist of crimes that need to be handled more intricately, like with child sexual abuse cases where there is a concern for alienating child victims. Participants indicated that they would continue as far as they can with a compelling case of innocence, but eventually, new evidence of innocence needs to be brought forward to gain relief for the wrongfully convicted individual. And because the resources (e.g., funding, staffing, specialized experts) innocence organizations are working with to collect such evidence are scarce, this means that organizations will either reject such a case or keep it on deck until they hopefully, one day, can allocate the necessary resources to uncover the truth. As a result, cases which require a lot of human or monetary capital for support, or which do not fit the mold of other well-known contributors to wrongful convictions, may not see relief at these organizations.

This potential underrepresentation of complex cases across exonerations is exemplified by the NRE’s data on exonerations across both innocence organization exonerations and non-
innocence organization exonerations. These data for cases involving child sexual abuse crimes show that such exonerations are some of the least prevalent across both innocence organization exonerations and non-, even though a third of participants stated that these cases were among the most common in the requests for assistance they receive. Moreover, numerous participants that stated they would review cases of child sexual abuse expressed caution in taking these cases in part because their pathway to success was likely to be difficult considering the available resources and the nature of child sexual abuse cases. It is possible that this rationale transfers to non-innoccence organizations (i.e., governmental-affiliated organization doing exoneration work, appellate attorneys specializing in postconviction work) as well. However, the lower rates of child sexual assault exonerations may also be explained by how difficult it is to prosecute and achieve convictions for such cases (Block & Williams, 2019). Two participants in this study made similar points about how difficult it is to prove innocence in these cases, as they explained why their organizations declines to review them.

As state legislatures weigh the expansion of avenues to achieve relief for cases of wrongful convictions, these more difficult cases may more often see relief. Such legislation includes a New York State bill sponsored by Senator Myrie and Assemblymember Quart (S.B. 266) which would expand upon the evidence which would be permitted to be presented to a court as evidence of innocence. Another example is Missouri bill (S.B. 53, 2021), signed into law in July 2021, which, in part, allows prosecutors to vacate convictions of individuals who may be innocent or erroneously convicted. Reforms such as these could provide innocence organizations with more pathways by which they can reach a successful result in a case, which in turn could influence decisions made as to whether the organization can take on certain cases.
Relatively, most participants expressed an exclusive focus of their organization on cases of factual innocence, even with the offer of an unlimited pool of resources. Though this allows innocence organizations to be more specialized, and cases are often referred to other organizations that will handle non-factual innocence cases, this also means that those who are convicted of a crime but offer an affirmative defense or are convicted based upon a violation of their due process rights must find alternate representation. These sets of circumstances, while not often reflected in wrongful convictions literature (exceptions include Acker & Wu, 2019, and Risinger, 2007), do represent a miscarriage of justice and can be considered by some to be just that: a conviction that did not rightfully occur. And because the types of organizations that will take on such cases consist largely of public defenders’ offices with varying and often even more limited resources (Worden, Davies, & Brown, 2011), the representation these applicants are able to receive is unpredictable and sometimes difficult to attain. As a result, increasing funding opportunities for not only innocence organizations to focus on their specific goals but also governmental and non-profit bodies that carry out defense work could provide more applicants who have suffered an erroneous conviction with quality representation.

Specifically related to how intake decisions are made within an innocence organization’s procedures, how standards for moving cases forward through each respective stage also varied across organizations. For instance, the majority of organizations indicated that their stage of review directly following receipt of a completed application was carried out and a decision made with more information at hand than the few organizations which would review only the completed application. Organizations not utilizing additional information like what is contained within appellate opinions, news media about the crime, and legal documents such as police and laboratory reports earlier in the intake process may prematurely decline a case when additional
information could have swayed their beliefs about whether the case could or should be moved forward in the process. Overall, participants expressed their carefulness about being cautious at all points throughout the process, however, so it is more likely that applicants’ cases are carried forward so far that innocence organizations may actually run the opposite risk; that they will expend resources into cases which ultimately will not ever, or for a long time, have the break necessary to get relief for the applicant. This practice could also explain why innocence organization exonerations differ from non-innocence organization cases. In other words, exonerations that occur with the assistance of innocence organizations may take more time to come to fruition given the layers of cautious review seen in their intake processes. This could cause the number of total exonerations to trail behind non-innocence organization exonerations, although future research should be done to determine how governmental organizations carry out this work to make a proper comparison between the two.

Exonerations uncovered by innocence organizations may also differ significantly from exonerations uncovered through other means (i.e., exonerations produced through the efforts of organizations and individuals which are not classified as innocence organizations). Evidence of this possibility is shown in the comparison in Table 5 and the discussion that immediately follows. Some of these differences may be attributable to information gathered throughout this study. For instance, the higher percentage of murder and sexual assault exonerations, as well as those involving the use of DNA, resulting from innocence organizations versus non-innocence organizations is likely a result of the much-expressed sentiment that cases with easier paths forward and higher likelihood of success are more often taken on than other, riskier cases. In addition, innocence organization assisting in double the rate of juvenile exonerations than non-innocence organizations might be explained by the participants’ prevalent emphasis on ensuring
that those who will see the most change to their individual circumstances are prioritized in their intake criteria, like those who are spending their younger, formative years waiting to be exonerated.

Another significant difference across these exonerations which may be explained by the current study is why innocence organizations have a 25% higher rate of exonerations involving police misconduct than non-innocence organization exonerations. Several participants indicated that one of the things they look for at intake are factors and circumstances that they’ve seen in previous wrongful convictions, which could lead to a more watchful eye for cases of police misconduct in particular. In fact, two participants specifically referenced looking at applications for whether certain members of law enforcement have previously been implicated in a wrongful convictions case. It is also possible that because innocence organizations are, by definition, not affiliated with a governmental agency, this means they are also more comfortable taking on cases which challenge law enforcement’s actions than Conviction Integrity Units or public defense organizations doing this work in connection with the state, which may harbor fear of retaliation or of disrupting the courtroom workgroup.

Lastly, how innocence organizations communicate to potential applicants has implications for who might reach out to one to have their case reviewed. Communications between applicants and innocence organizations are still primarily via mail, which can be slow and inefficient for having questions answered and case details conveyed. More barriers to direct communication with potential applicants can also inhibit them from contacting the correct entity for their case; some participants discussed how they were not permitted, or able, to advertise their services directly in jails and prisons, and others mentioned literacy and language barriers as well. Moreover, differences in how intake policies appear on publicly available websites from
what the actual criteria are might inhibit applicants from reaching out to innocence organizations to review their case. And though many participants indicated that they are primarily known via word of mouth, which can expand their exposure, this limited way of hearing about an organization could also cause a potential applicant to question whether their case fits the mold for what the organization can handle. Even if an applicant does choose to complete an application, which are often lengthy due to organizations’ needs in getting as full of a picture of the case as possible, applicants can be rejected for not meeting intake criteria and need to start over again. All of these barriers to effective communication with potential applicants to innocence organizations indicates that there are likely very many wrongfully convicted individuals who are still waiting, or may never have their cases advocated for by an innocence organization.

Though exploratory, this study expands upon the examination of how innocence organizations form intake criteria and procedural policies, and how those decisions shape what we know about wrongful convictions in the U.S. It is an important first step to learning more about all of those who have had the great misfortune to have been wrongfully convicted as they embark on their journeys to find help by way of an innocence organization. Although innocence organizations are but one vehicle by which a person who has been wrongfully convicted can seek relief, those who staff them are the bedrock of the wrongful convictions community, their work is unwavering and undeterrable in the pursuit of justice.
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18 U.S. Code § 3600.


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[https://doi.org/10.1177%2F0887403406292740](https://doi.org/10.1177%2F0887403406292740)

[https://doi.org/10.29173/wclawr6](https://doi.org/10.29173/wclawr6)

Appendix A

Interview Recruitment Initial Email Correspondence

[Subject Line: Invitation to Innocence Network Approved Dissertation Research]²⁷

Dear Dr./Ms./Mr. ______________,

I am a Ph.D. student in the School of Criminal Justice at the University at Albany, SUNY. For my Ph.D. dissertation, I am conducting research to better understand the evolution of intake policies and practices of innocence organizations, and how they relate to caseload and exoneration characteristics of active innocence organizations in the United States. This research has been reviewed and approved by the Innocence Network Research Review Committee.²⁸

I write to you today with the hope that I might arrange to interview intake personnel and organizational leaders who can share their perspectives on implementing and creating intake policies in the organization. Thus, I am hopeful that you (or another person in your organization to whom you might refer me, if you would not be available) might be willing to participate in an interview with me to explore these issues. Your assistance would be invaluable to this work, which I hope will be of benefit to the innocence community.

If you agree to take part in this research, your identity and the identity of your organization will be kept strictly confidential and information you share with me will not be attributed to you or your organization by name (that is, the information will remain anonymous). Your participation in this study would be completely voluntary, with no anticipated risks or benefits for taking part. The interview will take approximately 1 hour or less and would be scheduled via Zoom. If you are interested, we can schedule the interview for a date and time in the coming weeks that is convenient for you.

If another member of your organization is more appropriate for this study, I would appreciate it if you could provide me with their name and contact information. Additionally, if you have any questions, please feel free to contact me at jweintraub@albany.edu or 845-522-1274, or my dissertation committee chair, Dr. James Acker at jacker@albany.edu or 518-442-5317.

Thank you kindly for your attention and consideration. I look forward to hearing from you!

Sincerely,

Jenn Weintraub

²⁷ Subject line for invitations to non-Innocence Network organizations read: “Invitation to Participate in Dissertation Research.”
²⁸ This final sentence was removed for invitations sent to non-Innocence Network organizations.
Appendix B

Interview Follow-Up Email Correspondence

[Subject Line: Reminder - Invitation to Participate in Innocence Network Approved Dissertation Research]29

Dear Dr./Ms./Mr. ______________,

I have no doubt that you are very busy, especially with Wrongful Conviction Day having just passed, but I hope you have had a chance to read the email I recently sent to you about my dissertation project. For your reference, I have copied the contents of the email below. This email is a follow up to inquire whether you, or someone else in your organization if you are unavailable, would be interested in sharing your perspective on the subject of my research.

I am a Ph.D. student in the School of Criminal Justice at the University at Albany, SUNY. For my Ph.D. dissertation, I am conducting research to better understand the history and evolution of intake policies and practices of innocence organizations, and how they relate to caseload and exoneration characteristics in the United States. This research has been reviewed and approved by the Innocence Network Research Review Committee.30

If you could spare approximately 1 hour of your time for a Zoom interview, I would be very grateful for your generosity. If you are interested, we can schedule the interview for a date and time that are convenient for you beginning the week of October 19th, 2020.31 I look forward to hearing from you!

Sincerely,
Jenn Weintraub

[email signature]
Jennifer N. Weintraub, M.A.
Ph.D. Candidate
School of Criminal Justice
University at Albany, SUNY

[ORIGINAL EMAIL PASTED HERE]

29 Subject line for invitations to non-Innocence Network organizations read: “Reminder - Invitation to Participate in Dissertation Research.”
30 This final sentence was removed for invitations sent to non-Innocence Network organizations.
31 The date included here fluctuated dependent upon the week the email was sent to the recipients.
Appendix C

Informed Consent

Before I start with reading the informed consent, I wanted to ask your permission to record our conversation. I would like to record this interview for transcription purposes, and to utilize quotes only without attribution to yourself or your organization. Do I have your consent to do so?

Yes - I will now start recording. When I do, Zoom will ask for you to indicate that you consent to doing so.

No - I will not record our conversation today.

Thank you for taking the time to speak with me today. My name is Jenn Weintraub, PhD Candidate @ UA. Diss advisor Dr. James Acker. As a reminder, the purpose of this research is to better understand the history, enactment, and impact of intake policies and practices of innocence organizations in the United States on innocence caseloads and exonerations. As I previously mentioned, this research has been reviewed and approved by the Innocence Network Research Review Committee.32

Participation in this study involves minimal risk. Though your answers will not remain anonymous to the researcher, the information gathered from your responses and included in the research product will not include any identifying information about you, your organization, your caseloads, or anything else we talk about today. To further minimize this risk, all information collected as part of this research will be stored on a secure password-protected University at Albany server account to which only myself and the research assistant helping me with transcription(s) will have access. Lastly, this interview is completely voluntary. You may choose to skip questions or stop the interview at any time. It is expected that the interview will last about one hour, at maximum.

Although there are no direct benefits to you for participating, the information you provide will help improve the understanding of how intake policies are developed and implemented across U.S. innocence organizations, and how these policies impact the selection of wrongful convictions cases.

Do you have any questions for me before we begin?

32 This final sentence was removed for interviews with non-Innocence Network organizations.
Appendix D

Interview Script

Participant Background
I would like to start with some brief background questions.
1. What is your position with the organization?
2. How long have you served in your current position?

Organization Background
First, I would like to hear a little more about your organization.
1. Can you tell me in what year your organization was formed?
2. How actively engaged would you say your organization is in the innocence movement?
   a. Prompt: What kinds of activities do you partake in? (For instance, social media presence; media events; events with other innocence organizations; education; policy advocacy?)
3. Does your organization participate in active policy advocacy efforts? (If yes: what kinds of activities do you participate in?)
4. Is your organization affiliated with a law school?
5. How often does your org interact with other Innocence Network members/innocence orgs?
   a. Prompt: On what matters?
6. Tell me about the kinds of resources your organization has access to, to do your work.
   a. Grants (how much?)
   b. Fundraising (how much?)
   c. Connections with other collaborative organizations
   d. Size/availability of paid staff
   e. Size/availability of long-term volunteer staff (e.g., students)
   f. Resources from law school? (if applicable)
   g. Approximate annual budget
   h. Anything else?

Organization’s Goals and Focus
Now I would like to hear a little more about your organization’s goals, policies, practices, and how they were arrived at.

7. Walk me through the formation of this organization.
   a. Probe: By whom?
   b. Probe: How?
   c. Probe: With what focuses or goals?
   d. Prompt: What, if any, events precipitated its formation?
8. How, if at all, have the focuses or goals of your organization, as they pertain to who your organization seeks to assist, evolved over time?
   a. Prompt: For what reasons have they changed or remained the same?
9. How does your organization’s position as being associated with a law school influence your organization’s goals, or the types of cases you take on? (e.g., finding funding, pedagogy)

Intake Policies

Next I’d like to talk about your intake policies.

1. From my research using publicly available information regarding your current case selection policies, I understand that you [describe cases they do/do not take based on database]. Are there any other formal policies that I am missing?
   a. Probe: Do you take cases with lesser sentences, or misdemeanor crimes?
2. Are there any informal policies that I am missing? That is, those that are not enumerated but are typically followed/considered best practice?
3. Why do you use these case selection policies? For example, why does your organization [insert cases accepted/not accepted]?
4. How were your organization’s case selection policies originally decided upon?
   a. Prompt: Were any considered controversial, or unique, at the time of adoption? Which ones/why?
   b. Prompt: Were these policies adopted or modeled after those from other organizations? If yes - Which one(s)?
5. Have your case selection policies and processes changed over time? In what ways/why?
6. In a perfect world with unlimited resources, what types of cases would your organization handle?
   a. Prompt: Would your organization, for instance, consider taking procedural wrongful convictions cases, where someone is factually guilty but had some violation like alleged prosecutorial misconduct at their trial?
   b. Prompt: Would your organization consider affirmative defense wrongful convictions (e.g., insanity [person should have been found NGBRI], self-defense)?
   c. Prompt: Would your organization consider manifest injustice convictions (e.g., unreasonably long sentence, mental illness)?
   d. Prompt, if yes to any of the above: Why are these cases your organization is not currently taking on?
7. Do you think your intake process or policies might ever change in the future?
   a. Prompt: For what reasons do you think they may or may not change?
8. Would you please describe the steps and structure of your organization’s intake process? Starting from where your requests typically come from, through to the final decision on case intake.
   a. Who is involved at each step?
   b. Who is the final decision-maker at each step?
   c. How do you triage or prioritize the review of applications at any stage of this process?
   d. Aside from your intake guidelines, how do you decide what cases you will take on? In other words, how do you evaluate whether a case is appropriate for your organization to take on? Such as strength of evidence, evaluation of strength of
actual innocence, how it's evaluated, are there certain arguments you would/would not make, etc.?
e. Will you take on parts of charges or claims (e.g., only DNA evidence, only more provable charges)?
f. Are there any legal arguments that your organization is hesitant to make?
g. What types of investigative steps do those who are working in intake, take? That is, what kinds of information-gathering do they do (collecting documents, talking to witnesses, etc.)?
9. Tell me about the role subjective decision-making plays with your intake policies.
a. Probe: Where does subjective decision-making most often occur? That is, at what stage?
b. Probe: Are there screening criteria that are up for interpretation, or other decisions moving past an initial review stage that are up to the individual viewing the case?
c. Probe: Who is it that has the most opportunity for subjective decision-making?
d. Prompt: How flexible are your intake criteria?

**Caseload Characteristics**

**Lastly, I would like to discuss the characteristics of your organization’s requests for assistance, and active and successful caseloads.**

10. Approximately how many requests for assistance does your organization receive per year?
11. Are there any case characteristics that you most often see across those who contact your organization for assistance?
   a. Prompt: Why do you think you often see these types of cases?
   b. Prompt: Conversely, are there any types of cases that are less commonly seen in your requests for assistance?
   i. Prompt: Why do you think these are less commonly received by your organization?
12. Approximately how many cases does your organization decline to review per year? That is, cases that do not get past screening/intake to active status.
   a. Prompt: Where in this process do cases typically get declined?
   b. Prompt: What happens with declined requests for assistance?
13. What are the biggest barriers you face that force you to decline cases at the outset?
   a. Prompt: Adherence to intake requirements?
   b. Prompt: Organizations’ resources?
   c. Prompt: Criminal justice system barriers?
   d. Prompt: Geography?
   e. Prompt: Strength of claims (to being successful/colorable)?
   f. Prompt: Other factors?
14. Approximately how many currently active cases does your organization have? In other words, individuals that have signed a retainer agreement (or are a client according to your project’s definition – i.e., filed a motion for DNA testing, motion for postconviction relief in court, etc.)?
a. Prompt: What are some common case characteristics that you most often see across your accepted cases?

15. Approximately how many cases does your organization close per year? That is, cases that you no longer have active after at some point determining that you would do further investigation.
   a. Prompt: What are the most common reasons cases are closed?

16. Approximately how many successful outcomes has your organization assisted with or produced, in total?
   a. Prompt: How many of those cases were exonerations?
   b. Prompt: What are some of common characteristics you see across your successful cases?

17. How do potential clients learn about your organization?

18. What are some of the challenges you think potential clients face in reaching innocence organizations?

19. What do you think could be done by innocence orgs to help address some of these challenges?

20. Can you think of any other reasons someone who is factually innocent might choose not to contact an innocence organization for assistance with their case?

Conclusion

21. Is there anything else that I didn’t ask about your organization, intake, or case characteristics today that you think is important for me to know?

*Thank you for taking the time to speak with me today about your organization’s intake activities. As a reminder, the purpose of this study is to understand how intake policies form and evolve, and how they impact caseloads across U.S. innocence organizations.*

22. Do you mind if I reach out if I have any additional clarifying questions?
23. Would you be comfortable providing me with a copy of any of your intake-related applications (screening questionnaires, follow-up forms etc.), if not listed on your website?
24. Would you like to receive a brief summary of this study’s findings upon completion to your email?

*Well, thank you again for your participation. If you have any additional questions about this study, please feel free to contact myself or my dissertation advisor, Dr. James Acker.*
# Appendix E

## Start List of Codes

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<thead>
<tr>
<th>Code Description</th>
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**Pedagogy**

- Peda
  - Any mention of pedagogy either influencing or not influencing intake decisions/policies

**Framing problem definitions**

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<td>Who needs immediate assistance most</td>
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**Characteristics of innovations**

- Public consequences
  - Widespread information
    - Chin-pub-info
  - Historic impact
    - Chin-pub-imp

- Private consequences
  - Individual impact
    - Chin-priv-sm
  - Likelihood of success
    - Chin-priv-ch
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Appendix F

Final Codebook

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### Influence of other organizations

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<td>Contact with other orgs</td>
<td>Infl-cont</td>
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### Pedagogy

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### Framing problem definitions

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#### Crisis - similar to private consequence of who might have change in circumstance if assisted

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### Characteristics of innovations

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### Cost/benefit analysis

<table>
<thead>
<tr>
<th>Description</th>
<th>Abbreviation</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk</td>
<td>Chin-costben-risk</td>
<td>Choosing policies based on the risk associated with adopting/utilizing a policy</td>
</tr>
<tr>
<td>Risk</td>
<td>Chin-costben-risk-su</td>
<td>Choosing policies based on the likelihood that they will be successful as it relates to available resources</td>
</tr>
<tr>
<td>Public optics</td>
<td>Chin-costben-risk-pub</td>
<td>Choosing policies based on a consideration of public optics of cases (how public would react)</td>
</tr>
<tr>
<td>Characteristics of innovators</td>
<td></td>
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<tr>
<td>-------------------------------</td>
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</tr>
<tr>
<td><strong>Societal Entity of Innovators</strong></td>
<td>Char-soc</td>
<td>The extent to which being part of, and interactions with, a network influences policy choices</td>
</tr>
<tr>
<td>Network inspiring matching policies</td>
<td>Char-soc-net</td>
<td>Where networked organizations’ leaders actively gather information from others, in this case police departments, and imitate their successes</td>
</tr>
<tr>
<td>Peer emulation</td>
<td>Char-soc-net-peer</td>
<td>How interpersonal connections of individuals across organizations influence choice of policies</td>
</tr>
<tr>
<td>Interpersonal connection</td>
<td>Char-soc-conn</td>
<td>How what the organization leaders themselves want influences choice in policies</td>
</tr>
<tr>
<td>Needs of actors themselves</td>
<td>Char-soc-need</td>
<td></td>
</tr>
<tr>
<td><strong>Familiarity with the Innovation</strong></td>
<td>Char-fam</td>
<td></td>
</tr>
<tr>
<td>Novelty of innovation</td>
<td>Char-fam-nov</td>
<td>Choosing a policy based on how well-known it is, or how often it is already used</td>
</tr>
<tr>
<td><strong>Environmental context</strong></td>
<td>Env</td>
<td></td>
</tr>
<tr>
<td>Geographic setting</td>
<td>Env-geo</td>
<td>How geographic proximity of one organization to another will influence policy diffusion</td>
</tr>
<tr>
<td>Closeness</td>
<td>Env-geo-clos</td>
<td>How physical geographic proximity of one organization to another will influence policy diffusion</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Codes added throughout focused coding</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>active</td>
<td>Active caseloads</td>
<td></td>
</tr>
<tr>
<td>application</td>
<td>Mode/how they take applications</td>
<td></td>
</tr>
<tr>
<td>backlog</td>
<td>Mention of backlog of cases</td>
<td></td>
</tr>
<tr>
<td>bias</td>
<td>Individuals' biases in making intake decisions</td>
<td></td>
</tr>
<tr>
<td>change</td>
<td>Change in policy over time</td>
<td></td>
</tr>
<tr>
<td>change-practice</td>
<td>In practice, difference from stated policies</td>
<td></td>
</tr>
<tr>
<td>change-web</td>
<td>Change in policy different from website</td>
<td></td>
</tr>
<tr>
<td>conflict</td>
<td>Conflict of interest as reason for taking a case</td>
<td></td>
</tr>
<tr>
<td>contact</td>
<td>Reasons an individual may not contact an innocence organization</td>
<td></td>
</tr>
<tr>
<td>mail</td>
<td>Mode of communication by mail</td>
<td></td>
</tr>
<tr>
<td>cooperation</td>
<td>Will DAs/law enforcement/judges etc. be cooperative with claim</td>
<td></td>
</tr>
<tr>
<td>dishonest</td>
<td>Mention of dishonesty in case review</td>
<td></td>
</tr>
</tbody>
</table>
ease  
emotion  
evidence  
dna  
ext  
ext  
ex  
fair  
flexibility  
gather  
known  
manifest  
need-gap  
need-innocence  
need-req  
outreach  
pathway  
pol-plea  
pol-rep  
procedural  
process  
closed  
final approval  
investigation  
declined  
declined-response  
screening  
screening-second  
students  
system  

Ease of evidence to test
Emotional weight of cases as reason for not taking them
Need for evidence in taking a case forward
DNA evidence
Interviewees’ examples
Fairness to caseloads as part of decision to take cases or not
In choosing cases, in practices
Time needed to gather evidence as a reason for taking/not taking cases
What is known about wrongful convictions as a reason for taking cases
Manifest injustice cases (e.g., overly long sentences, punishment doesn’t fit crime)
Will give consideration for cases where there are limited other orgs for them to go to
Need to have belief in factual innocence to take case
Need for help determined via requests
Outreach done by innocence organizations to prisons community etc.
Ability to put together a legal way forward for an innocence claim
Intake policies regarding whether an applicant took a plea deal
Intake policies about applicants not currently being represented
Would innocence organization consider taking cases where the person had a procedural issue in their case
General outline of how intake process works
Information on closed cases
Who is responsible for final intake decisions
How investigation phase of intake works
Descriptions of the cases innocence organizations decline to review
Whether organizations send response to those decline cases/not
How screening works in the intake process
How the second step of screening works in the intake process
How students are involved in the intake process
Changes to intake system as reason for intake policies/practices
<p>| <strong>timeline</strong> | Reference to how long an intake process takes |
| <strong>volunteers</strong> | How volunteers are involved in the intake process |
| <strong>quote</strong> | Notable quotes |
| <strong>reach-app</strong> | Reason for people not reaching out to organization: application complexity |
| <strong>reach-case</strong> | Reason for people not reaching out to organization: case type not commonly accepted |
| <strong>reach-disability</strong> | Reason for people not reaching out to organization: person has a disability |
| <strong>reach-evidence</strong> | Reason for people not reaching out to organization: difficulty in gathering initial evidence |
| <strong>reach-funds</strong> | Reason for people not reaching out to organization: lack of money to send application/get docs |
| <strong>reach-hope</strong> | Reason for people not reaching out to organization: applicant hopelessness |
| <strong>reach-know</strong> | Reason for people not reaching out to organization: person does not know organization exists |
| <strong>reach-language</strong> | Reason for people not reaching out to organization: language barrier |
| <strong>reach-literacy</strong> | Reason for people not reaching out to organization: applicant literacy issue |
| <strong>reach-mail</strong> | Reason for people not reaching out to organization: difficulty communicating via mail |
| <strong>reach-materials</strong> | Reason for people not reaching out to organization: access to legal materials |
| <strong>reach-mental</strong> | Reason for people not reaching out to organization: applicant mental health issues |
| <strong>reach-time</strong> | Reason for people not reaching out to organization: belief that it is better to just serve out their time |
| <strong>reach-trust</strong> | Reason for people not reaching out to organization: distrust of systems |
| <strong>reach-wait</strong> | Reason for people not reaching out to organization: anticipated wait to have case heard by organization |
| <strong>referral</strong> | Whether an organization makes referrals for declined cases |
| <strong>referral-atty</strong> | How an organization treats attorney referrals |</p>
<table>
<thead>
<tr>
<th>requests</th>
<th>Information about the requests for assistance an organization receives</th>
</tr>
</thead>
<tbody>
<tr>
<td>requests-common</td>
<td>Commonalities across requests for assistance</td>
</tr>
<tr>
<td>requests-uncommon</td>
<td>Differences across requests for assistance</td>
</tr>
<tr>
<td>res-lack</td>
<td>Mention of a lack of resources</td>
</tr>
<tr>
<td>res-plenty</td>
<td>Mention of an abundance of resources</td>
</tr>
<tr>
<td>skillset</td>
<td>Need for people with certain skillsets as a consideration of whether cases will be taken or not</td>
</tr>
<tr>
<td>state</td>
<td>State policy influencing whether cases are taken on or not</td>
</tr>
<tr>
<td>strength</td>
<td>Strength of a case as a consideration in the intake process</td>
</tr>
<tr>
<td>successful</td>
<td>Information about the successful cases an organization has had</td>
</tr>
<tr>
<td>triage</td>
<td>General information about triage system in intake</td>
</tr>
<tr>
<td>triage-deadline</td>
<td>Triage system based upon legal deadlines</td>
</tr>
<tr>
<td>triage-dna</td>
<td>Triage system based upon whether the case involves DNA evidence</td>
</tr>
<tr>
<td>triage-info</td>
<td>Triage system based upon the amount of information available about a case</td>
</tr>
<tr>
<td>triage-order</td>
<td>Triage system based upon the order in which applications are received</td>
</tr>
</tbody>
</table>
Appendix G

Questionnaires were retrieved from Innocence Organizations at the following websites:

https://californiainnocenceproject.org/submit-a-case/submit-a-case/;

https://www.azjusticeproject.org/contact;

https://www.lls.edu/academics/experientiallearning/clinics/projectfortheinnocent/submitacase/.

Copies are available from the author on request.