



Conviction Integrity Unit Best Practices
October 15, 2015

District Attorney's offices are increasingly creating Conviction Integrity Units (CIUs) to re-examine questionable convictions and guard against future error. Many of these offices are new, and all operate according to their own set of internal guidelines. While it is admirable that district attorneys wish to create avenues to reinvestigate past cases that might have resulted in wrongful convictions or injustice, unfortunately there is little history, experience or research for prosecutors to draw upon in ensuring that these units operate effectively without overlooking past miscarriages of justice

The Innocence Project has developed a set of guidelines that represent our best thinking, at this point in the development of CIU's, to guide the creation and implementation of these units. The Innocence Project recognizes that there are differences in what can be done depending on the size of district attorney offices, and we also, as always, remain open to constructive suggestions and criticisms as to how these best practices can be improved.

There are two aspects to developing best practices for Conviction Integrity Units (CIU): 1) Individual case re-investigation of potential miscarriages of justice; and 2) Developing policies, practices, and reforms to apply and respond to the lessons learned from the re-investigations.

A. Individual cases

1. Who refers cases for consideration:
 - a. Innocence organizations
 - b. Defense (public defender, private defense bar)
 - c. Internal audit of cases based on finding previous errors or instances of misconduct
 - d. Individual prosecutors identifying cases
 - e. Police
 - f. Courts
 - g. Press
 - h. Individuals claiming innocence, usually pro se applications
2. Criterion for selecting cases for review (any one of the following)
 - a. Facts suggest plausible claim of innocence
 - i. That a defense lawyer might have found these facts with the exercise of due diligence should not be a bar.
 - b. Evidence of a constitutional violation (including Brady violations, ineffective assistance of counsel , unfair trials or plea agreements) that might lead to the vacature of a conviction.

- c. Review is in the interests of justice
 - i. It should be noted that in many jurisdictions prosecutors and courts have explicit statutory or common law authority to vacate convictions or reduce sentences in the interests of justice. It should be emphasized, however, that the orientation or mindset of an “interests of justice” review is frequently an important element in making a judgment about whether relief is warranted when reconstructing what occurred in old cases where there are, as in most cases, a need to resolve issues with less than perfect information.
 - d. The fact that a defendant pled guilty or is no longer incarcerated should not be a bar to examining cases.
3. Investigation: Information Sharing and Discovery
- a. There should be an open exchange of information and ideas with the parties seeking relief.
 - b. A cooperative approach, including coordination with defense lawyers or innocence organizations, is essential. For example joint witness interviews with prosecution and defense investigators or lawyers, agreements about recording interviews, jointly planned identification procedures, joint requests to obtain information from third-parties both informally and by legal process are all measures that should be considered and have proven to be successful.
 - c. One important way to facilitate a co-operative re-investigation is to enter into formal confidentiality agreements with defense counsel with respect to sharing information and prohibiting the disclosure of that information. These agreements work best when they are time limited and require reasonable notice from the parties as to a time when either one of them will no longer be bound by the agreement. The value of these confidentiality agreements is providing assurances to both sides that neither will “sandbag” the other with surprise leaks to the press or motions to courts. While some CIUs (notably Dallas) have successfully operated informally with these understandings, formalizing the agreements is generally a good idea.
 - d. Open file
 - i. The district attorney should provide an “open file” that includes work product
 - ii. All police agency files, including multiple agencies that may have been involved in the investigation, should be disclosed.
 - 1. Reasonable exceptions should be made for danger to witnesses and other good cause but the best practice would be to summarize what is being withheld, preserve the information, and have a record available for court review if re-investigation results in litigation. If necessary, the parties may seek court intervention through a binding protective order to facilitate the release of sensitive information.
 - e. Crime laboratory records, including but not limited to, the laboratory case file, proficiency testing, and any relevant personnel records (such as those of the analysts involved in the case) should be disclosed subject to judicial review and protective orders if there are privacy problems with respect to the disclosure.

- f. Defense disclosures related to evidence proffered as to innocence claims or constitutional violations including work product (subject to confidentiality agreements) but excluding attorney client communications. If, however, the defense
4. Cases involving substantial, non-conclusory allegations of prosecutorial misconduct¹ involving prior or former members of the office should be referred to an independent authority for investigation and review. This referral should include both the allegations of misconduct as well as the claims of innocence and constitutional violations.
5. Standard of review for assessing claims of innocence: Clear and convincing evidence of actual innocence for constitutional claim of “actual innocence.” State standard for newly discovered evidence of innocence – usually reasonable probability of a different outcome.
6. Staffing
 - a. The best Conviction Integrity Units have either been run by defense attorneys working on a full-time basis or defense attorneys working on a part-time basis with substantial oversight authority for the operation of the unit. This might well be the single most important best practice to assure that the CIU runs well and is perceived as credible by the legal community and the public.
 - b. Independent advisory boards of lawyers from outside the office to assist in assessing the cases have proven valuable.
 - c. Different staffing solutions plainly depend on the size of the office
 - d. The CIU should report to and be supported by the District Attorney and executive level staff.
 - e. Prosecutors who originally tried case, or prosecutors who participated in the prosecution, should not be re-investigating themselves.
 - f. There should be full-time prosecutors assigned to the CIU
 - g. There should be full-time investigators assigned to the CIU.
 - h. The CIU should have written policies and procedures for its staff;
 - i. CIU staff should receive appropriate training for their special assignment drawing upon expertise from cognitive scientists involved in “human factor” research, prosecutors and police involved in successful CIUs, innocence organizations, and the defense bar.
7. Transparent results – Annual report detailing:

¹ The term “misconduct” here is defined by ABA Model Rule 8.4:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

- a. Number and nature of cases reviewed. This includes but is not limited to:
 - i. Number of total applications for relief received;
 - ii. Number of cases where trials occurred;
 - iii. Number of plea cases;
 - iv. Number of cases where prior state or federal post-conviction applications had been filed and adjudicated;
 - v. Source of referrals – pro se, innocence organizations, defense bar, office initiated investigations pursuant to audits arising from prior wrongful conviction matters (audits involving individual prosecutors, police officers, or forensic techniques), press instigated, or other individuals;

- b. Outcomes of investigations. This includes but is not limited to:
 - i. Number of cases where a decision was made not to undertake a re-investigation;
 - ii. Number of cases where a re-investigation was undertaken;
 - iii. Number of cases where relief was granted and the nature of that relief – agree to vacate conviction, the grounds, whether re-trial was sought or a plea agreement was made; agree to dismiss and the grounds;
 - iv. Number of cases where investigation was undertaken, no agreement between the parties could be reached, and post-conviction litigation continues, as well as the results of that litigation;
 - v. Number of cases sent out for independent investigation because there was substantial, non-conclusory allegation of misconduct by a prosecutor;

B. Learning from Errors in Wrongful Convictions or “Near Misses”

Conviction Integrity Units must not only investigate and remedy wrongful convictions, but they must also establish policies and procedures to learn from the errors identified so that the system is strengthened. Different sorts of errors uncovered in the course of understanding the causes of a wrongful conviction will require different remedial actions. Among others, an effective unit must have the following:

1. District attorney’s office should have a unit tasked to do “root cause analysis” (RCA) of errors, including errors identified by a CIU.

- a. The office must have a written policy that details how it will do root cause analyses for any case where it is determined that there was a wrongful conviction. The policy must be consistent with the criteria soon to be released by the National Commission on Forensic Science. Among other elements, it must include an external expert to ensure some objectivity in the process.

- b. The office must work to remedy the root cause identified by the process, including creating a remedial/corrective action plan and a method for assessing whether the plan solves the problem
 - c. A report evaluating whether the remediation efforts were successful must be made available to the public.
- 2. A “sentinel event” “all stakeholder review” should be conducted of selected wrongful convictions or “near misses” where it is likely that the acts of people from more than one unit of the agency or more than one agency were involve.
- 3. Retrospective reexamination of other cases with like factors (same “bad actor,” same “flawed discipline,” when indicated)
- 4. The lessons learned and the solutions identified must be folded in to ongoing training , the orientation of new staff, and policy development in the office.