

## Conviction Integrity Units: Why We Need Them and How They Work

**Wrongful convictions are more prevalent than most Americans realize. For far too long, the public has been more concerned about a guilty person going free rather than about an innocent person being locked away for a crime they did not commit.**

According to data from the National Registry of Exonerations (NRE), there were 2,673 exonerations in the United States from 1989 to 2020.<sup>1</sup> In total, those exonerees lost more than 23,950 years from their lives. This and other data of exonerations revealed in the last 30 years show that “more innocent people have been convicted than anyone imagined.”<sup>2</sup> Exonerees have been convicted for murder, robbery, and drug offenses, and those convictions stemmed from perjury, false accusations, and police and prosecutorial misconduct.<sup>3</sup> The failures of prosecutors (and trial judges) cannot be overstated in what has proven to be one of the most egregious miscarriages of justice in the criminal legal system.

In a 1935 ruling in *Berger v. United States*, the Supreme Court declared that the prosecution’s ultimate goal “is not that it shall win a case, but that justice shall be done . . . . [The prosecutor] is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.”<sup>4</sup> Yet, many wrongful convictions

**Since 1989, more than 2,673 people, mostly Black and brown defendants, have been released from prison due to wrongful convictions and blatant miscarriages of justice. A staggering 23,950 years of their lives were lost.**

– National Registry of Exonerations (2020)

can be traced back to prosecutorial misconduct and haste. Too often, prosecutors have focused their attention on win-loss records, sacrificing their roles as ministers of justice or quasi-judicial officials with a duty to promote justice that extends beyond merely securing convictions.<sup>5</sup>

Constitutional, statutory, judicial, and administrative rules and procedures serve as guardrails to protect the rights of the accused and provide a foundation for a fair adversarial process to take place. However, prosecutors, the officers of the court responsible for “doing justice” and working “in the interest of justice,” have often subverted this system. Their ethical failures have forced thousands of defendants into jails and prisons on invalid charges based on faulty police investigations, botched prosecutions, and outright misconduct. Conviction Integrity Units (CIUs)<sup>6</sup> have been established by reform-minded prosecutors to examine claims of actual innocence and wrongful conviction, and to determine whether the actions of police and prosecutors meet the highest legal and ethical standards to sustain the conviction. CIUs are one safeguard against the harm of wrongful convictions that all prosecutors must adopt.

**Prosecutors have the professional and ethical duty to promote justice** in general, which can require “advocat[ing] just as zealously for the freedom of the innocent as . . . conviction of the guilty.”<sup>7</sup> Prosecutors are the best-situated actors in the system to identify and correct existing errors and weaknesses in their offices’ practices.<sup>8</sup> Due to a lack of statutory guidance and general reticence (and sometimes, outright hostility) to second-guess what they see as hard-won victories, prosecutors have ignored these obligations.<sup>9</sup> There has also been an abdication of oversight from the system as a whole, including the judiciary, to question the finality of many cases that present troubling facts.<sup>10</sup> Consider the case of Curtis Flowers, a Black man who was tried six times and sentenced to death four times for multiple murders that took place in 1996.<sup>11</sup> Flowers’ most recent conviction was reversed by the Supreme Court in June 2019 due to the prosecution’s “relentless, determined effort to rid the jury of [B]lack persons”<sup>12</sup> in violation of his constitutional rights.<sup>13</sup> Evidence of his innocence has reportedly been uncovered, and the case against him was dismissed with prejudice after the Mississippi Attorney General submitted a motion to dismiss the indictment.<sup>14</sup>

**CIUs conduct fact-based reviews of past convictions.** Usually housed within District Attorneys’ offices (DAO), CIUs examine the legitimacy of past convictions. They investigate claims of “actual innocence.”<sup>15</sup> To claim “actual innocence,” the defendant asserts that he or she was wrongfully convicted of the crime charged. CIUs are an embodiment of recent principles articulated by the American Bar Association (ABA) to guide prosecutors in evaluating the disposition of certain cases.<sup>16</sup> By reviewing past cases for defects, CIUs can hold prosecutors accountable to the highest “ethical and constitutional obligations”<sup>17</sup> to correct their mistakes and prevent them from happening in the future. By establishing CIUs, elected district attorneys acknowledge their essential role in ensuring that all criminal convictions are justly

secured and that cases are routinely examined for legal and procedural errors.

**CIUs bypass limitations imposed by the appellate process.** A CIU’s purpose is fundamentally different from that of appellate units in a DAO. Rather than attempting to preserve convictions, CIUs critically reexamine previously secured convictions and objectively reconsider the possibility of innocence,<sup>18</sup> allowing the wrongfully convicted to get the relief they deserve. Conviction review panels can look at more evidence than what is available during the appellate process, so they are more likely to uncover substantive proof of actual innocence.<sup>19</sup> They are able to do their work despite procedural roadblocks within the criminal appellate process.<sup>20</sup> One example is the filing of a motion for a new trial based on recently discovered evidence, which is subject to time restrictions in most states, typically a few months to three years. Most new evidence to support actual innocence claims can take several years or more to gather. Even when this new evidence is uncovered, convicted individuals face a significant hurdle in convincing the courts that this evidence was not available at their first trial and that having the benefit of this new evidence at a new trial would result in acquittal. Importantly, some CIUs also review cases involving claims of overcharging offenses—that is, cases in which the convicted individual was not entirely innocent but was nevertheless charged with an offense more serious than their actual conduct warranted.<sup>21</sup>

**District Attorneys’ offices must have a process to correct inevitable errors in the criminal justice system.** Even where there is no intentional wrongdoing, prosecutors and other actors within the system are going to make mistakes. Criminal justice is a “high-risk field” with complex processes that are “capable of producing serious accidents.”<sup>22</sup> CIUs are error-correcting mechanisms that require prosecutors to reduce the “occurrence and severity” of errors.<sup>23</sup> Extensive self-review can reduce the public condemnation and lack of

trust that occurs when errors are uncovered.<sup>24</sup> Convicting an innocent person and sentencing them to a prolonged prison sentence—even death—is “perhaps the most dramatic example[] of failure in any criminal justice system” and must be corrected.<sup>25</sup> CIUs aim to do just that.

**CIUs can reveal systemic weaknesses within prosecutors’ offices and help implement procedures to cure them.** CIUs have the power to identify systemic weaknesses that either fail to protect against individual errors or actively incentivize them, such as failing to identify and disclose exculpatory evidence or police presenting false testimony at trial.<sup>26</sup> This allows for increased accuracy in future prosecutions as prosecutor offices learn from the mistakes uncovered through these reviews.<sup>27</sup>

Most prosecutors’ offices lack effective mechanisms for developing and enforcing prosecutorial best practices—indeed, most lack any formal, written quality assurance programs—so CIU reviews fill a desperate need.<sup>28</sup> Even measures as simple as creating checklists stressing particular pain points—say, the criteria that trigger an obligation to disclose information favorable to the defense, also known as *Brady* material<sup>29</sup>—based on errors identified through case reviews would be a marked improvement over current practices in many prosecutor offices.<sup>30</sup>

It is important that prosecutors’ offices develop office-wide best practices (e.g., what kind of evidence is and is not *Brady* material) and implement those via manuals, guidelines, and training.<sup>31</sup> Guided by the review process, policies created to ensure that everyone from line prosecutors to the District Attorney fully understands that errors were made, and in what ways those actions were legally, factually, or ethically lacking.<sup>32</sup> Even if a particular office had no errors, instituting these

review programs shows a commitment to ensuring accurate convictions.<sup>33</sup>

**CIUs should be empowered to seek or support a variety of remedies.** Once miscarriages of justice, particularly wrongful convictions, are revealed, CIUs should recommend dismissing/expunging cases, support petitions for the restoration of petitioners’ rights, advocate for early release, move to reduce a sentence, or support clemency.<sup>34</sup> CIUs could also support compensation for the wrongfully convicted.<sup>35</sup> Having exposed systemic weaknesses, CIUs must take a proactive approach to prevent future errors by pushing for internal reforms of prosecutorial practices. Recommended practices might include conducting “root cause analyses” on each case where the CIU recommends altering a conviction in order to find common trends and errors; recommending improvements internally to stakeholders; publicizing accepted modifications throughout relevant jurisdictions; and creating a process of implementing and evaluating those modifications.<sup>36</sup>

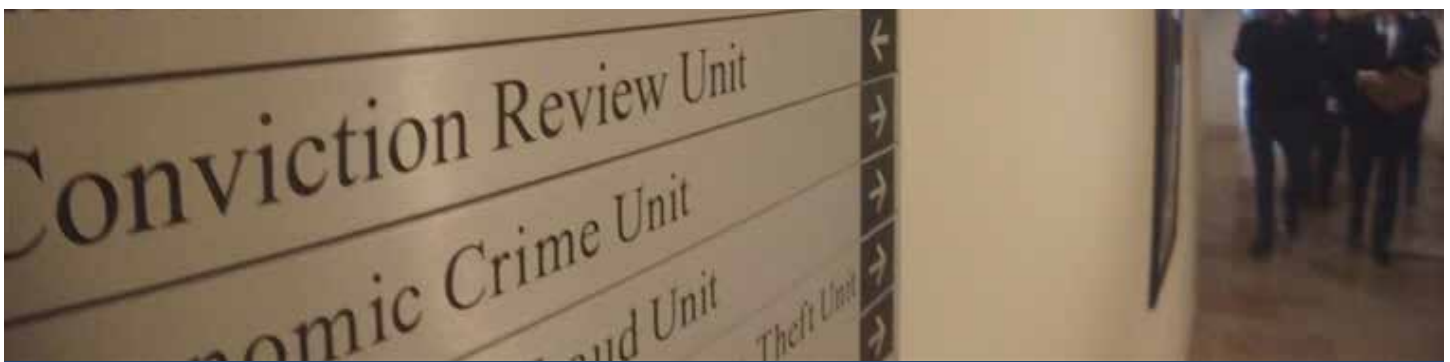
**District Attorneys’ offices nationwide must make implementing CIUs a top priority.** Despite the significant and proven gains CIUs offer, they remain rare: only about 3% of prosecutor offices currently use CIUs, but they are growing in number. As of 2020, 62 local prosecutors’ offices (and three state attorneys general) have active CIU’s. A public defender’s office in New Jersey has also established one.<sup>37</sup> While an antagonistic relationship between rank and file prosecutors and CIUs might seem inevitable, prosecutors in offices with CIUs “uniformly believe that investigating cases where errors may have occurred is not only desirable, but essential.”<sup>38</sup>

**Successful implementation of a CIU requires adequate staffing, funding, and a clear mandate.**

Insufficient staffing, lack of funding, inflexible operating environments, and a lack of clear direction from office leadership<sup>39</sup> can render a CIU unable to fulfill its mandate.<sup>40</sup> To emphasize leadership's support of their mission, CIUs should report directly to DAs or head prosecutors—but a DA should never have ultimate discretion over the CIU's operation<sup>41</sup> since that could potentially threaten its independence and commitment to meaningful reviews. DAs should also anticipate and counter any tendency of line prosecutors to see CIU reviews as a rebuke,<sup>42</sup> and require full cooperation within the office. Commentators have expressed skepticism about prosecutors' ability to self-review, especially when compared to post-conviction advocates like innocence organizations.<sup>43</sup> These organizations, however, often do not have access or the resources to fully examine prosecutors' entire records of case management. Instead, allowing defendants and their counsel to participate in the CIU re-investigation process could provide some balance against prosecutorial bias. Unfortunately, most CIUs exclude petitioners from their review

panels, while others require participating petitioners to waive their attorney-client<sup>44</sup> or self-incrimination privileges,<sup>45</sup> which are two major deterrents to petitioner participation. CIUs should employ confidentiality agreements with petitioners and their counsel to facilitate information sharing and prohibit disclosure of shared information.<sup>46</sup> To actualize the prevention of future wrongful convictions by avoiding repeat mistakes, CIUs must dedicate resources to analyzing the systemic causes of wrongful convictions. These and other challenging issues must be considered and resolved by elected district attorneys if a CIU is to be effective.

**CIUs must ensure transparency and create confidence in the review process.** CIUs should publicize their decisions. Giving stakeholders and the public a look behind the curtain—as well as demonstrating the impact of the review procedures on actual cases—enhances public favor and trust in these systems.<sup>47</sup> Finally, CIUs should issue annual reports on their activities, including ultimate outcomes for reviewed cases.<sup>48</sup>



**The Legal Defense Fund calls on District Attorneys to establish, fully-fund, and sufficiently empower Conviction Integrity Units in their offices and require line prosecutors' complete cooperation with these units as a matter of policy.**

LDF encourages District Attorney offices, large and small, to utilize existing models and best practices for the establishment of CIUs, like Fair and Just Prosecution's "[Conviction Integrity and Review: Key Principles and Best Practices for Ensuring Justice and Accountability](#)," and The Innocence Project's "[Conviction Integrity Unit Best Practices](#)."

## Notes

- 1 See NRE, *Exonerations in the United States Map*, <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> (last visited Sept. 12, 2020); see also Vaidya Gullapalli, *Defending the Conviction Integrity Unit in St. Louis*, Appeal (Aug. 19, 2019), <https://theappeal.org/defending-the-conviction-integrity-unit-in-st-louis/>; see also Elizabeth Webster, *The Prosecutor as a Final Safeguard Against False Convictions: How Prosecutors Assist with Exoneration*, 110 J. Crim. L. & Criminology 245, 245–305 (2020).
- 2 Barry C. Scheck, *Conviction Integrity Units Revisited*, 14 Ohio St. J. Crim. L. 705, 709 (2017).
- 3 Richard A. Oppel, Jr. & Farah Stockman, *Prosecutors Usually Send People to Prison. These are Getting Them Out.*, N.Y. Times (Nov. 28, 2019), <https://www.nytimes.com/2019/11/28/us/conviction-integrity-unit-innocence.html>; see NRE, *Exonerations in 2018* (2019).
- 4 295 U.S. 78, 88 (1935).
- 5 Bennett L. Gershman, *The Prosecutor's Contribution to Wrongful Convictions*, in *Examining Wrongful Convictions: Stepping Back, Moving Forward* 109 (Allison D. Redlich et al., ed. 2014).
- 6 Conviction Integrity Units are defined by different names, including Conviction Review Units, Case Review Units, Post-Conviction Review Section, Conviction Review Committee. The NAACP Legal Defense Fund (LDF) prefers the name Case Review (and Integrity) Unit, which emphasizes an office's role in continual case review not only to ensure the integrity of case processing and convictions, but also to ensure that offices employ industry best practices and training for line prosecutors to ensure conformity with office standards, directives, and protocols.
- 7 Daniel Kroepsch, *Prosecutorial Best Practices Committees and Conviction Integrity Units: How Internal Programs Are Fulfilling the Prosecutor's Duty to Serve Justice*, 29 Geo. J. Legal Ethics 1095 (2016).
- 8 *Id.* at 1095–96.
- 9 Laurie L. Levinson, *Searching for Injustice: The Challenge of Post-Conviction Discovery, Investigation, and Litigation*, 87 S. Cal. L. Rev. 545 (2014); Dana Carver Boehm, *The New Prosecutor's Dilemma: Prosecutorial Ethics and the Evaluation of Actual Innocence* 2014 Utah L. Rev. 613, 624 (“While prosecutors generally aspire to seek justice, their default response to postconviction innocence claims is often characterized by reflexive skepticism and strenuous resistance, a reflex generated by the importance of conviction statistics for raises, recognition, and district attorney politics; social pressure from police officers and other prosecutors; the fact that most such claims are baseless; and the importance of giving finality to victims and the public.”) (footnote omitted).
- 10 See generally Joaquin Sapien & Sergio Hernandez, *Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody*, *Pro-Publica* (Apr. 3, 2013), <https://www.propublica.org/article/who-polices-prosecutors-who-abuse-their-authority-usually-nobody> (discussing the routine lack of action by trial courts to refer prosecutors to state disciplinary review boards for misconduct); see also Thomas P. Sullivan & Maurice Possley, *The Chronic Failure to Discipline Prosecutors for Misconduct: Proposals for Reform*, 105 J. Crim. L. & Criminology 881 (2015); Bruce A. Green & Samuel Levine, *Disciplinary Regulation of Prosecutors as a Remedy for Abuses of Prosecutorial Discretion: A Descriptive and Normative Analysis*, 14 Ohio St. J. Crim. L. 143, 144–45 (2016); Samuel J. Levine, *The Potential Utility of Disciplinary Regulation as a Remedy for Abuses of Prosecutorial Discretion*, 12 Duke J. Const. L. & Pub. Pol’y 2 (2017).
- 11 Curtis Gilbert, et al., *Reversed, Curtis Flowers wins appeal at U.S. Supreme Court*, APM Reports (Jun. 21, 2019), <https://www.apmreports.org/episode/2019/06/21/curtis-flowers-wins-scotus-appeal>; see also Curtis Flowers Updates, APM Reports, <https://features.apmreports.org/in-the-dark/season-two/curtis-flowers-updates.html> (last visited Sep. 12, 2020).
- 12 *Flowers v. Mississippi*, 588 U. S. \_\_\_\_, 139 S. Ct. 2228 (2019).
- 13 See *Fourteenth Amendment, Equal Protection Clause, Batson Challenges, Flowers v. Mississippi*, 133 Harv. L. Rev. 352, 355–56 (2019).
- 14 Parker Yesko, *It's Over, Charges against Curtis Flowers are dropped*, APM Reports (Sep. 4, 2020), <https://www.apmreports.org/episode/2020/09/04/charges-against-curtis-flowers-are-dropped>.



- 15 John Hollway, *Conviction Review Units: A National Perspective* 9 (Univ. of Pa. Law. Sch, Faculty Scholarship Research Paper No. 16142016), [http://scholarship.law.upenn.edu/faculty\\_scholarship/1614](http://scholarship.law.upenn.edu/faculty_scholarship/1614).
- 16 Model Rules of Prof'l Conduct R. 3.8 (2017).
- 17 See Scheck, *supra* note 2, at 746; Letter from Aramis Ayala et al. (Criminal Justice Leaders), to Kansas City Board of Commissioners, (Aug. 8, 2018) [hereinafter Criminal Justice Leaders Letter], <https://fairandjustprosecution.org/wp-content/uploads/2018/08/KCK-CIU-SIGN-ON-LETTER-FINAL.pdf>.
- 18 *Id.* at 25.
- 19 *Id.* at 41.
- 20 See generally Levinson, *supra* note 9, at 545.
- 21 Hollway, *supra* note 15, at 42.
- 22 Webster, *supra* note 1, at 250.
- 23 Hollway, *supra* note 15, at 13.
- 24 Kroepsch, *supra* note 7, at 1096, 1099.
- 25 See *id.* at 1097 (footnote omitted).
- 26 See e.g. Justin Fenton, *Baltimore's State's Attorney says she has a list of 300 officers with credibility issues. Public defenders are demanding to see it*, Balt. Sun (Feb. 11, 2020), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-do-not-call-list-compel-20200211-xsjzrh2we5df7etqreyxgu2e4y-story.html>; Elizabeth Weill-Greenberg, *When Cops Lie, Should Prosecutors Rely Upon Their Testimony At Trial*, Appeal (July 29, 2019), <https://theappeal.org/advocates-demand-da-do-not-call-lists-dishonest-biased-police/>; see also Julie Shaw & Chris Palmer, *Here are the 29 Philly cops on the DA's 'Do Not Call' list*, Phila. Inquirer (Mar. 6, 2018), <https://www.inquirer.com/philly/news/crime/29-philly-officers-do-not-call-list-krasner-20180306.html>.
- 27 See Scheck, *supra* note 2, at 718; see Hollway, *supra* note 15, at 75–76; *Conviction Integrity and Review: Key Principles and Best Practices for Ensuring Justice and Accountability*, Fair & Just Prosecution 2 (Aug. 2019) [hereinafter Fair & Just Prosecution], <https://fairandjustprosecution.org/wp-content/uploads/2019/08/Conviction-Integrity-Statement-of-Principles.pdf>; *Conviction Integrity Unit Best Practices*, Innocence Project 4 (Oct. 15, 2015) [hereinafter Innocence Project], <http://www.innocenceproject.org/wp-content/uploads/2016/09/Conviction-Integrity-Unit.pdf>.
- 28 Barry C. Scheck, *Professional and Conviction Integrity Programs: Why We Need Them, Why They Will Work, and Models for Creating Them*, 31 Cardozo L. Rev. 2215, 2225–26 (2010) [hereinafter Scheck, *Professional and Conviction Integrity Programs*]; see also *id.* at 2216 (“Professional and Conviction Integrity Programs are models for internal regulation of prosecutorial offices. They draw upon quality assurance ideas that have been successfully employed by the medical profession to reduce error, which were, in turn, borrowed from business and industry.”).
- 29 *Brady v. Maryland*, 373 U.S. 83 (1963).
- 30 Scheck, *Professional and Conviction Integrity Programs*, *supra* note 27, at 2239–40 (At least for courts, the legal focus on procedural over factual errors and the “harmless error doctrine” also limit their ability to enforce prosecutorial best practices); See Webster, *supra* note 1, at 255–56.
- 31 *Id.* at 2244; see Fred C. Zacharias, *The Role of Prosecutors in Serving Justice After Convictions*, 8 Vand. L. Rev. 171, 238 (2005).
- 32 See Scheck, *Professional and Conviction Integrity Programs* *supra* note 27, at 2247–48.
- 33 See *id.* at 2218.
- 34 Fair & Just Prosecution, *supra* note 27, at 2–3.

35 Cf. NRE, *supra* note 3 (“Fewer than half of exonerees received any compensation.”).

36 Innocence Project, *supra* note 27 (“District attorney’s office should have a unit tasked to do ‘root cause analysis’ (RCA) of errors, including errors identified by a CIU.”); see also Fair & Just Prosecution, *supra* note 27, at 2–3 (“Errors identified by the CIU should be used to inform proactive accountability measures and trainings within offices . . . .” (emphases omitted).

37 See NRE, *Conviction Integrity Units* (2020), <http://www.law.umich.edu/special/exoneration/Pages/Conviction-Integrity-Units.aspx> (last visited Sept. 12, 2020).

38 Hollway, *supra* note 15, at 13.

39 *Id.* at 32–33.

40 *Id.* at 10. (“Very few CRUs have written protocols, policies, or procedures, and what protocols do exist have rarely been made public.”).

41 See *id.* at 24.

42 See *id.* at 19; Opper, *supra* note 3.

43 Criminal Justice Leaders Letter, *supra* note 16.

44 Hollway, *supra* note 15, at 50.

45 *Id.* at 51.

46 See Innocence Project, *supra* note 27; see, e.g., Scheck, *supra* note 2, at 730.

47 See Hollway, *supra* note 15, at 59–60.

48 See *id.* at 65.