



FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

ISSUES AT A GLANCE

Conviction Integrity Units and Internal Accountability Mechanisms

Fair and Just Prosecution (FJP) brings together recently elected district attorneys¹ as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP's "Issues at a Glance" provide district attorneys with information and insights about a variety of critical and timely topics. These papers give an overview of the issue, key background information, ideas on where and how this issue arises, and specific recommendations to consider. They are intended to be succinct and to provide district attorneys with enough information to evaluate whether they want to pursue further action within their office. For each topic, Fair and Just Prosecution has additional supporting materials, including model policies and guidelines, key academic papers, and other research. If your office wants to learn more about this topic, we encourage you to contact us.

SUMMARY

This briefing paper discusses the role of "Conviction Integrity Units," or "CIUs" (also sometimes called Conviction Review Units or "CRUs") in ensuring internal accountability.

This is one of a series of FJP's "Issues at a Glance" briefing papers addressing internal office practices and structures that can enhance the ability of an elected prosecutor and her office to influence, improve and monitor staff decision-making and office culture, strengthen community trust, and achieve the highest possible integrity in case outcomes. At the core, these practices are aimed at creating a "just culture," where achieving the right and fair outcome is the overriding objective in every case. They also promote a forward-looking "learning" organization that is constantly evolving in its practices.

While CIUs have recently gained popularity in many local prosecutors' offices, experience has also shown that poorly staffed CIUs or ones that operate with too narrow of a mandate and

¹The term "district attorney" or "DA" is used generally to refer to any chief local prosecutor, including State's Attorneys, prosecuting attorneys, etc.

"My primary concern, in any case, is doing the right thing, no matter the optics, the political pressure, or any external considerations."

— NUECES COUNTY (CORPUS CHRISTI, TX) DISTRICT ATTORNEY MARK GONZALEZ

a lack of transparency can fail to produce meaningful results and may ultimately hinder trust with communities. On the other hand, elected prosecutors who have created well-resourced CIUs with an expansive scope of review and transparent practices have found the impacts to be tremendously beneficial, not just for remedying past individual wrongful convictions and enhancing community confidence in the justice system, but also as a tool for improving office-wide practices in a manner that reduces the likelihood of errors occurring again in the future. This preventative accountability — aiming to use errors learned from troubling incidents as a mechanism for teachable moments that can enlighten the entire office — should be a key ingredient in how the office operates its integrity review process.

BACKGROUND AND DISCUSSION

“Conviction Integrity Review” or, more expansively “Case Integrity Review” or “Post-Conviction Integrity Review,” is a high-profile effort that has garnered a great deal of recent attention. As these units were initially conceived (and as many still exist in their narrowest form) the focus was solely on actual innocence claims, often where the defendant was serving a life sentence or received the death penalty. Many of these earliest units operated internally, with little transparency and limited staff. Where a claim was substantiated, the office’s response was generally limited to releasing that person from prison, and perhaps providing some monetary relief to the wrongfully convicted individual. These results are vitally important for the individual but fail to account for the underlying cause of the mistake or guard against its occurrence in *future* cases.

A growing number of elected prosecutors are starting to realize that the CIU concept has much broader potential. Pieces of the next evolution of conviction review can be seen throughout offices in various parts of the country. The theme that emerges is district attorneys/state’s attorneys taking steps to expand the work of CIUs in all directions — reviewing the integrity of cases beyond just wrongful convictions, expanding the number and seniority of staff, enhancing the capacity of CIUs through full-time investigatory support, using more expansive remedial tools, building out training modules and policy changes based upon lessons learned in CIU cases, and increasing overall transparency. An elected prosecutor thinking about creating a CIU, or overhauling an existing CIU, should aim to implement these emerging practices. The operational principles to focus on include the areas discussed below.

Broad “Integrity Review”

A district attorney should give the CIU a broad mandate to review integrity issues of any kind including, but not limited to, wrongful convictions. This mandate should be reflected in the policies and protocols for the unit, which could make clear that while the unit is required to review and prioritize investigations of actual innocence claims, it also has wide discretion to review other types of integrity issues. This may also be reflected in the name of the unit itself — for example, some district attorneys have renamed their CIUs as a “Post-Conviction Integrity Unit,” or simply

“You have to train people, re-educate them, and change the culture so that people understand their job is not to obtain convictions. Their job is to seek justice.”

— 13TH JUDICIAL CIRCUIT (TAMPA, FL) STATE ATTORNEY ANDREW WARREN

“Integrity Review Unit,” reflecting that the unit might review any significant integrity issue in a case such as revisiting a disproportionately and unfairly punitive outcome even if there is no question about the defendant’s guilt.

District attorneys should also strongly consider setting up a parallel “*Misdemeanor Post-Conviction Integrity Unit*” or including serious misdemeanors as eligible cases for discretionary review by their CIU. Integrity issues in misdemeanor cases are as, if not more, profound as concerns arising in felony cases, for numerous reasons. It is well-documented that a number of innocent defendants plead guilty to misdemeanor charges to hasten the end of pretrial incarceration, and it is also generally true that criminal justice actors often overlook systemic integrity issues in these “less serious” cases.² Despite their “less serious” nature as compared to felonies, these prosecutions are often the most frequent contact a district attorney’s office has with the public. A lack of fairness and justice in these cases can have a significant impact on the community and on community trust. At the same time, relatively small adjustments in misdemeanor case processing practices — uncovered and identified through a CIU process — may yield widespread benefits for case outcomes and garner broad community support.

Expanded Remedial Tools and Creating Vehicles for System and Organizational Reform

An expanded review mandate should be paired with an expanded set of remedial tools. The CIU should be empowered, where appropriate, to seek the dismissal or expungement of the underlying criminal case, support a petition for the restoration of rights, engage in direct advocacy with parole boards in support of early release where an overly punitive sentence was imposed, and support compensation for the wrongfully convicted person (for example, collaboratively negotiating for monetary settlements, or supporting a defendant’s petition for compensation under a state wrongful conviction statute).

Whatever the appropriate remedy, the CIU should also be directed to pursue those corrective actions aggressively, as soon as it is clear that a mistake has been made. The otherwise good work of CIUs across the country has been overshadowed by a few instances that reflect an unfortunate habit of reflexively and tenaciously fighting exonerations, rather than engaging in good faith efforts to resolve integrity issues at the earliest possible juncture. That practice is not only a waste of time and resources, but sends a mixed message to office staff and can damage the CIU’s credibility with the public and the field.

² See, e.g., Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. Davis L. Rev. 277 (2011).

“We have ushered in a new way of thinking about ... our role in the justice system, about the power we wield and also about the tools we have at our disposal to actually positively impact the community.”

— 4TH JUDICIAL CIRCUIT (JACKSONVILLE, FL) STATE ATTORNEY MELISSA NELSON

Teachable Moments

In addition to employing an expanded set of remedial tools, the office should make it a matter of course to use the CIU review process to identify any system weaknesses that permitted the bad outcome to occur. The district attorney should ensure the unit has a clear avenue for recommending policy and procedural changes, as well as enhanced training, to address any deficiencies that are uncovered. Incorporating principles of “sentinel event review” or “root cause analysis” can be very effective here.³ The outcomes of CIU investigations provide a critical opportunity to identify systemic gaps that go beyond just one individual’s error, and can reinforce the idea that the district attorney’s office is a “learning organization.”

Staffing, Support and Reporting Structure

Some CIUs have been constrained by too few and too inexperienced staff. A CIU should be led by a respected senior lawyer and well-staffed with prosecutors and investigators with passion and zeal for the work. It should be a career-building opportunity with room for upward mobility and be viewed as a valued and respected assignment. Existing CIU chiefs have noted the need to strike a balance between having staff stay in the unit for many years where they can build expertise, and strategically using the rotation of staff through the unit as a way to spread the “CIU mentality” and focus on creating a “just culture” throughout the office.

It is also important to consider the appropriate organizational location and reporting structure of the unit. Specifically, there are good reasons to have the unit report directly to the district attorney (or the office executive immediately under the district attorney), so the authority is clear and the information is not diluted *en route* to the office head. It is also critical that the unit is not headed by or merged with the appellate unit. Some offices that have followed this latter approach have encountered difficulties with the appellate unit being much more oriented toward protecting the underlying conviction, as opposed to the open and searching mindset required for effective conviction review.

External Engagement and Transparency

The unit should be as open-facing as possible, in two respects. First, there should be some external involvement in designing and operating the CIU. Many district attorneys have brought in external experts and/or constituted external advisory boards for this purpose.⁴ Some external advisory board or expert is vitally important and offers an important outside lens on the cases, as well as an extra layer of credibility to decision making.

Second, a district attorney should ensure the public understands the work of the CIU by reporting out on an annual basis the actions taken in individual cases for defendants (exoneration, compensation, etc.), involved personnel (discipline, termination, etc.) and any systemic reforms implemented.

³ “Sentinel event review” and “root cause analysis” are non-disciplinary processes to dissect a bad outcome (or a “near miss”), determine where system failures occurred, and to address them prospectively. The focus is not assessing “blameworthiness” or disciplining bad actors, but rather determining systemic failures and joint accountability.

⁴ The Brooklyn District Attorney’s office, for example, recruited an external academic advisor to help revamp its CRU and has an external advisory board that convenes periodically to review case referrals, investigations, and potential outcomes before they are finalized and announced to the public.

RECOMMENDATIONS

1. **Create a CIU or some other equivalent mechanism for integrity review** within the office.
2. **Consider charging the CIU with a broad mandate that includes review of overly punitive dispositions and, ultimately, misdemeanors** (external resources may be available regarding the latter). Also consider reframing the unit as an “Integrity Review Unit” to make clear the intended broad focus of the work.
3. **Empower the unit to use multiple remedies** to address individual errors, move quickly to address any errors uncovered (including recommending discipline or termination of staff where appropriate), and use what is learned in those case reviews to inform training and system reforms that will reduce the likelihood of future errors.
4. **Staff the units with senior leadership** and ensure placement is a valued and career-building opportunity.
5. **Use an external advisory board and/or experts** to inform CIU policies and to aid in case reviews and weigh in on recommended actions.
6. **The CIU should, ideally, report directly to the district attorney.**
7. **Avoid combining the CIU with the office’s appellate function.**
8. **Report out results of case reviews and actions taken** on an annual basis.

RESOURCES

- *Conviction Integrity Units Revisited*, Ohio State Journal of Criminal Law, Barry Scheck (April 2017), available at: <http://moritzlaw.osu.edu/students/groups/osjcl/files/2017/04/15-Scheck.pdf>.
- *Conviction Review Units, A National Perspective*, Penn Law Review, John Holloway (2016), available at: http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2615&context=faculty_scholarship.
- *Establishing Conviction Integrity Programs In Prosecutors’ Offices*, Center on the Administration of Criminal Law’s Conviction Integrity Project, New York University School of Law (2012), available at: http://www.law.nyu.edu/sites/default/files/upload_documents/Establishing_Conviction_Integrity_Programs_FinalReport_ecm_pro_073583.pdf.

FOR MORE INFORMATION: Contact FJP at info@fairandjustprosecution.org

