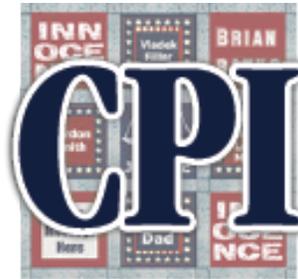


WHITE PAPER

**Conviction Integrity Units:
Vanguard of Criminal Justice Reform**



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January 4, 1989 marked a watershed moment in the history of the American criminal justice system. On that day, Virginia governor Gerald L. Baliles issued a pardon for David Vasquez. Vasquez was released from prison that evening.

Vasquez had been charged with the 1984 rape and murder of Carolyn Hamm, a 32-year-old lawyer. Vasquez's blood did not match the semen found on the victim's body and his shoes did not conform to the footprints found at the crime scene. Nonetheless, his disjointed confession sufficed to convince the jury to convict and sentence him to 35 years behind bars.

But three years later another rape-murder occurred in the same suburban-Washington, D.C. community with details that were eerily similar to the Hamm case. Police began to wonder if a rash of previous rapes all shared a common perpetrator.

Investigators tapped the newly developed, still controversial forensic technique of DNA analysis. The tests soon linked Timothy Spencer, not David Vasquez, to the series of rapes. Spencer was eventually convicted and sentenced in 1988.

Six months after the release of David Vasquez, another man – Gary Dotson of Illinois – was exonerated of a crime that he did not commit. The following year, Edward Green became the beneficiary of a third DNA exoneration.

More exonerations followed, compelling prosecutors, lawmakers, and the American public to question long-held beliefs about the infallibility of the criminal justice system. The Innocence Movement was born.

As Innocence Projects were established across the country, the pace of exonerations accelerated.¹ It soon became possible to identify patterns and pinpoint causes of the wrongful convictions. The National Registry of Exonerations reported that 47% of wrongful convictions could be attributed to misconduct by prosecutors and other officials.² Calls for reform could no longer be ignored.

One of the most promising corrections has been the establishment of post-conviction review programs, commonly referred to as Conviction Integrity Units (CIUs). Conviction Integrity Units are entities located within District Attorneys' offices that are designed to investigate claims of wrongful convictions. Many of these units have also developed policies designed to reduce future false convictions.

This White Paper spotlights Conviction Integrity Units, providing an overview of their administrative and screening procedures, a compilation of their accomplishments, and a discussion on how they have sought to achieve the proper degree of administrative independence.

¹ See MARVIN ZALMAN & JULIA CARRANO, *WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM MAKING JUSTICE* 94 (2013).

² National Registry of Exonerations, *Percent Exonerations by Contributing Factor* (Nov. 21, 2014), [http://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime#](http://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime#.) .

UNIT DESCRIPTIONS

This section introduces the 16 Conviction Integrity Units (CIUs) currently in existence,³ chronicling their establishment and leadership, highlighting their administrative arrangements, and recounting selected screening procedures. Because many of the CIUs – including the six units established in 2014 -- have been existence for a relatively short period of time, detailed information about many units is not yet available.

Listing of Conviction Integrity Units

Following is a listing of the CIUs, including the name of the unit director and other introductory information. The units are presented in order of year of establishment:

Dallas County, Texas

The Dallas County CIU was established in 2007 by DA Craig Watkins, who had been elected to office on a “smart on crime” platform. At the outset Watkins set the tone by releasing 10 senior prosecutors. The Unit is headed by Russell Wilson and has four full-time employees: two prosecutors, an investigator, and a paralegal.⁴

Wayne County, Michigan

Originally named the Forensic Evidence Review Unit, the CIU of Wayne County was created in 2008 by Kym L. Worthy and headed by Rob Morgan. Its purpose is to handle responsibilities of the former Detroit Police Crime Lab, facilitate Michigan State Police forensic testing in new Detroit Police Department cases, and audit sexual assault kits.⁵

Harris County, Texas

The Conviction Review Section was established in Harris County (Houston) in 2009 and is led by prosecutor Inger Hampton. It is comprised of a team of full-time lawyers and investigators who are dedicated to post-conviction review. DA Patricia Lykos vowed that the Conviction Review Section would review every legitimate claim of innocence brought before it.⁶

³ As of December 1, 2014. A draft of this White Paper was provided to all CIU directors to assure the accuracy of the information provided.

⁴ ZALMAN & CARRANO, *supra* note 1, at 191.

⁵ WAYNE COUNTY PROSECUTOR, CONVICTION INTEGRITY UNIT, *available at* <http://www.waynecounty.com/prosecutor/405.htm> (last visited Sept. 23, 2014).

⁶ Emily Friedman, *50 Years for Crimes They Didn't Commit*, ABC NEWS (July 30, 2010), <http://abcnews.go.com/US/texas-inmates-released-wrongful-convictions-discovered-46-years/story?id=11287347> (last visited Sept. 23, 2014).

New York County, New York

Created in 2010 by District Attorney Cyrus R. Vance,⁷ the Manhattan CIU is now headed by Bonnie Sard. The Unit relies extensively on the advice of a Conviction Integrity Committee consisting of 10 senior District Attorneys, and an external Conviction Integrity Policy Advisory Panel.⁸

Denver, Colorado

The DNA Justice Review Project is a joint venture between the Denver District Attorney's Office and the Colorado Attorney's General Office. Launched in 2010, the unit is led by prosecutor Dawn Weber. The Project has reviewed 5,125 cases of murder, non-negligent homicide, and forcible rape where DNA evidence was present.⁹

Santa Clara County, California

The Santa Clara County CIU was created in 2010 by DA Jeffrey F. Rosen and is directed by David Angel. Like the Dallas and Manhattan units, Santa Clara's Unit oversees back-end conviction review and develops front-end policies.¹⁰

Brooklyn, New York

The Brooklyn CIU was established by DA Charles Hynes.¹¹ The program is currently headed by John O'Mara. The Unit is staffed by 10 assistant district attorneys, and three investigators. It has an annual budget of \$1.1 million.¹² The cases reviewed to date include the 57 convictions arising from fraudulent investigations by an unethical detective.¹³

⁷ ZALMAN & CARRANO, *supra* note 1, at 197.

⁸ WRONGFUL CONVICTION - THE NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE, *available at* <http://manhattanda.org/wrongful-conviction> (last visited Sept. 23, 2014).

⁹ DENVER DA, DENVER DNA JUSTICE REVIEW PROJECT, *available at* http://www.denverda.org/dna/Denver_DNA_Justice_Review_Project.htm (last visited Sept. 23, 2014).

¹⁰ Rachel Dissell, *Conviction Integrity Units like the one formed last week by Cuyahoga County Prosecutor Timothy J. McGinty are increasingly popular -- but do they work?*, CLEVELAND.COM (Apr. 21, 2014), http://www.cleveland.com/court-justice/index.ssf/2014/04/conviction_integrity_units_lik.html (last visited Sept. 23, 2014).

¹¹ The Editorial Board, *A Prosecutor's Reputation Sinks Lower*, N.Y. TIMES (June 3, 2014), <http://www.nytimes.com/2014/06/04/opinion/a-prosecutors-reputation-sinks-lower.html> (last visited Sept. 23, 2014).

¹² Jennifer Peltz, *US prosecutors revisiting nearly 5,000 convictions*, THE BOSTON GLOBE (June 8, 2014), <https://www.bostonglobe.com/news/nation/2014/06/07/prosecutors-revisiting-nearly-convictions/tCWXLFT3ZKcR4IKmdeYGmO/story.html> (last visited Sept. 23, 2014).

¹³ Stephanie Clifford, *In Brooklyn, Scarcella's Cases Continue to Face Review*, N.Y. TIMES (June 3, 2014), <http://www.nytimes.com/2014/06/04/nyregion/in-brooklyn-scarcellas-cases-continue-to-face-review.html> (last visited Sept. 23, 2014).

Lake County, Illinois

Running as a challenger, Michael Nerheim claimed the incumbent prosecutor had repeatedly pursued cases that should not have been charged due to lack of evidence.¹⁴ Within a year of Nerheim's election, Lake County established its first CIU.¹⁵

Oneida County, New York

The decision to establish the Oneida County CIU arose from the 2008 exoneration of Steven Barnes. Convicted for murder following eyewitness misidentification, Barnes had spent 20 years in prison. Scott McNamara, who heads the unit, currently is focusing on implementing best practices for suspect lineups.¹⁶

Baltimore, Maryland

The Baltimore CIU was announced as one of 15 initiatives by Baltimore City State Attorney Gregg L. Bernstein. According to the program's website, "In addition to ensuring justice for those who have been convicted, the unit is also analyzing cases with an eye toward producing better prosecutorial practices."¹⁷

Philadelphia, Pennsylvania

The Philadelphia Conviction Review Unit was created in early 2014 to review homicide cases where new evidence of innocence appeared.¹⁸ Directed by veteran prosecutor Mark Gilson, the Unit collaborates with the Pennsylvania Innocence Project to identify post-conviction cases for review.¹⁹

Cuyahoga County, Ohio

The Cuyahoga County (Cleveland) CIU is coordinated by Assistant County Prosecutor Jose Torres. The Unit consists of nine staff members. Cases accepted for review must meet the following criteria: the convicted offender must claim to be actually innocent,

¹⁴ See Chris Kennedy, *Conviction Integrity*, DEERFIELD PATCH (Aug. 1, 2012, 12:28 PM), <http://deerfield.patch.com/groups/chris-kennedys-blog/p/bp--conviction-integrity> (last visited Sept. 23, 2014).

¹⁵ Peltz, *supra* note 12.

¹⁶ See Joleen Ferris, *Five Years after Wrongly Convicted Man Freed, Search Continues for Simon's Killer*, NBC-WKTV NEWS (Nov. 26, 2013, 10:21 AM), <http://www.wktv.com/news/local/Five-years-after-wrongly-convicted-man-freed-search-continues-for-Simons-killer-233453771.html> (last visited Sept. 23, 2014).

¹⁷ THE BALTIMORE CITY STATE'S ATTORNEY'S OFFICE – 1.9.12 STATE'S ATTORNEY BERNSTEIN REVIEWS YEAR-ONE ACCOMPLISHMENTS (2012), available at <http://www.stattorney.org/news/209-1912-states-attorney-bernstein-reviews-year-one-accomplishments.html> (last visited Sept. 23, 2014).

¹⁸ Mensah M. Dean, *D.A. Creates New Unit to Review Homicide Convictions*, PHILLY.COM (Apr. 17, 2014), http://articles.philly.com/2014-04-17/news/49188420_1_new-trials-new-unit-convictions (last visited Sept. 23, 2014).

¹⁹ See Dissell, *supra* note 10.

new evidence must be present, and the applicant must waive his rights to procedural safeguards and privileges.²⁰

New Orleans, Louisiana

In August 2014, DA Leon Cannizzaro announced the formation of a new Conviction Integrity Unit.²¹ Acknowledging that his office had become “the subject of a mounting chorus of accusations regarding prosecutorial misconduct,” Cannizzaro revealed the unit would operate in cooperation with the New Orleans Innocence Project.

Washington, D.C.

The first federal Conviction Integrity Unit was established in 2014. The unit was created after a review of more than 2,000 files involving FBI analyses of hair or fiber evidence and the vacating of five convictions. According to U.S. Attorney Ronald Machen, who oversees the investigation and litigation of criminal and civil cases brought on behalf of the United States in the District of Columbia, the unit is designed to “work to uncover historical injustices and to make sure that we are doing everything in our power to prevent such tragedies in the future.”²²

Pima County, Arizona

On October 1, Pima County Attorney Barbara LaWall announced the establishment of a new Conviction Integrity Unit, directed by Deputy County Attorney Rick Unklesbay.²³ The unit requires that the applicant’s conviction occurred in Pima County and there must be a claim of actual innocence.

Multnomah County, Oregon

Multnomah County DA Rod Underhill appointed J. Russell Ratto as his Post-Conviction Deputy District Attorney in October 2014. Besides reviewing claims of actual innocence, Ratto is responsible for developing office policies addressing discovery obligations, eyewitness identification, ethics and professionalism, confidential informants, proffers and cooperation agreements, file closing protocols, and jail call protocols.²⁴

²⁰ See CONVICTION INTEGRITY UNIT – CUYAHOGA COUNTY OFFICE OF THE PROSECUTOR (2014), available at <http://prosecutor.cuyahogacounty.us/en-US/conviction-integrity.aspx> (last visited Sept. 23, 2014).

²¹ Leon Cannizzaro, District Attorney, Conviction Integrity Unit, State of CJS (Aug. 19, 2014).

²² See *Washington U.S. Attorney Sets Up First Unit to ID Wrongful Convictions*, REUTERS (Sept. 12, 2014) <http://www.reuters.com/article/2014/09/12/us-usa-justice-districtofcolumbia-idUSKBN0H71X320140912> (last visited Sept. 23, 2014).

²³ See Anthony Victor Reyes, *Pima County Attorney's Office Announces the Conviction Integrity Unit*, KVOA (October 1, 2014), <http://www.kvoa.com/news/pima-county-attorney-s-office-announces-the-conviction-integrity-unit/>.

²⁴ See DA UNDERHILL CREATES POST-CONVICTION DEPUTY DA POSITION, MULTNOMAH COUNTY DISTRICT ATTORNEY (2014) <http://mcda.us/index.php/news/da-underhill-creates-post-conviction-deputy-da-position/>.

Administration and Case Screening

This section highlights selected administrative challenges faced by the units, including their structure, recruitment, and staff supervision, and their case screening procedures.

CIUs structure their post-conviction review efforts either as a self-contained operational unit, which is characteristic of most CIUs, or as an office-wide committee. An example of the later approach is seen in the Cuyahoga County CIU, which is comprised of nine senior members of the County Prosecutor's Office, including the Criminal Division Chief, Appeals Unit Supervisor, and the CIU Coordinator.²⁵ At the U.S. Attorney's Office in Washington, D.C., the Conviction Integrity Committee is comprised of several senior prosecutors and two defense attorneys.²⁶

While most District Attorneys have assigned existing prosecutorial staff to the newly formed CIU, some DAs have recruited new staff. The Dallas CIU, for example, emphasizes the hiring of prosecutors who demonstrate a dedication to ethical practice, with applicants invited to discuss the ethical challenges of evidentiary disclosure."²⁷

Line prosecutors take their cue from unit managers, so effective supervision is essential. The Santa Clara CIU affords one approach, where DA Jeff Rosen emphasizes that prosecutors are evaluated not only on their win-loss records, but also on sound case selection and even willingness to abandon cases that have already been charged. Rosen gives his prosecutors an award for exemplary work.²⁸

Appropriate case screening procedures are a critical factor in determining the overall effectiveness of the unit.

Because DNA cases represent "low hanging fruit" for uncovering false convictions, many units only accept such cases. At the Denver DNA Justice Review Project, for example, six legal interns undertake the initial review and submit reports to the Project Case Review Panel. If the Panel decides to proceed with the investigation, the evidence is sent to a crime lab for DNA typing.

Most CIUs are willing to reinvestigate cases where the convicted pled guilty. The Manhattan CIU affords greater consideration to claims based on alleged

²⁵ See CUYAHOGA COUNTY PROSECUTOR'S OFFICE CONVICTION INTEGRITY UNIT PROTOCOL (2014), http://prosecutor.cuyahogacounty.us/pdf_prosecutor/en-US/Conviction%20Integrity%20Unit/CCPO%20Conviction%20Integrity%20Unit%20Policy-04-2014.pdf.

²⁶ See Spencer Hsu, *D.C. Prosecutors Create Unit to Find Wrongful Convictions*, WASH. POST (Sept. 11, 2014), http://www.washingtonpost.com/local/crime/dc-prosecutors-create-unit-to-find-wrongful-convictions/2014/09/11/91a3722c-39da-11e4-bdfb-de4104544a37_story.html (last visited Sept. 23, 2014).

²⁷ See Daniel S. Medwed, *Brady's Bunch of Flaws*, 67 WASH. & LEE L. REV. 1533 (2010), available at <http://papers.ssrn.com/abstract=1723426> (last visited Sept. 23, 2014).

²⁸ See COURTNEY OLIVA, ESTABLISHING CONVICTION INTEGRITY PROGRAMS IN PROSECUTOR'S OFFICES at 16 (2012), http://www.law.nyu.edu/sites/default/files/upload_documents/Establishing_Conviction_Integrity_Programs_FinalReport_ecm_pro_073583.pdf.

misidentification, untruthful informants, alibis, witness recantation, and newly discovered evidence. The Manhattan CIU only accepts cases in which defendants hold to the same theory of innocence as at the time of their trial.²⁹

The Cuyahoga County Unit imposes a rigorous requirement before accepting a new case: “The convicted offender must waive his or her procedural safeguards and privileges, agree to cooperate with the Unit, and agree to provide full disclosure regarding all inquiry requirements of the Conviction Integrity Unit.”³⁰ In practice, this means the applicant must waive his rights to attorney-client privilege.

CIUs typically investigate only claims that are brought to their attention by requests from inmates or local innocence projects. In contrast, the Dallas CIU sponsors an innovative Systematic DNA Testing Project that does not rely upon a petition by a wrongfully convicted individual. Instead, the DA’s crime laboratory searches its files for rape convictions in which the identity of the rapist was at issue, and for which untested biological evidence is still in existence. The laboratory attempts to match the DNA of the victim with the convicted.³¹ If a match is not produced, the national CODIS database is searched to identify the true perpetrator. On July 25, 2014 Michael Phillips, wrongfully convicted for rape in 1990, became the first exoneree to benefit from this proactive approach.³²

EFFECTIVENESS

The effectiveness of a given Conviction Integrity Unit can be gauged by examining the policy changes it has implemented, as well as the number of case reviews performed and exonerations achieved. These achievements are the focus of the following two sections.

Policy Reforms

Building on their efforts in seeking to exonerate the innocent, a number of CIUs have identified and implemented office-wide policies to improve the accuracy of future verdicts. For many units, information about newly-implemented policies has not been made publicly available.

Eyewitness Identification

Flawed eyewitness identification procedures are a common cause of wrongful convictions. The Dallas County unit, for example, has advocated for the implementation of a “double blind” line-up and photo identification system, in which both the witness and conducting police officer are unaware of which person is the suspect.³³ The

²⁹ See Oliva, *supra* note 28, at 28.

³⁰ CONVICTION INTEGRITY UNIT – CUYAHOGA COUNTY, *supra* note 20.

³¹ See THE DALLAS COUNTY CONVICTION INTEGRITY UNIT’S SYSTEMATIC DNA TESTING PROJECT. JULY 24, 2014.

³² Press Release. Michael Phillips is Exonerated by the Dallas County District Attorney’s Conviction Integrity Unit’s Systematic DNA Testing Project. July 25, 2014.

³³ See Oliva, *supra* note 28, at 196.

Philadelphia CIU has implemented a policy to not prosecute homicide cases in which the only evidence against the defendant consists of testimony of a single eyewitness who is a stranger to the suspect.³⁴

Evidence Disclosure

Brady violations are one of the most common contributors to flawed judicial outcomes. Several CIUs have implemented policies regarding evidence disclosure, including the endorsement of open-file disclosure policies. The Santa Clara Unit has established a standardized process for disclosing *Giglio* material relating to arresting police officers in order to determine their reliability as witnesses.³⁵

Policies and Checklists

Many CIUs have developed office-wide policies designed to avoid faulty convictions. For example, the Manhattan CIU has developed a policy on Non-Suspect DNA Matches, which applies when where one person is listed as the named “suspect,” but a different person has been identified as the source of the DNA. The policy is reprinted in Appendix A.

In an attempt to replicate the success that physicians have had in reducing medical errors, some CIUs have begun to develop checklists. The Manhattan Unit, for example, has developed checklists to address *Brady/Giglio* compliance, eyewitness identification, law enforcement testimony, and confidential informants.³⁶

Case Reviews and Exonerations

The effectiveness of a given CIU can also be gauged by the number of case reviews and exonerations. The table indicates the number of case reviews and exonerations for those CIUs established during the period 2007–2013.

The Table shows that over the seven-year period, the nine Conviction Integrity Units reviewed a total of 6,933 cases. Considerable differences are seen among the units, including a range of three to 1,281 cases reviewed annually by each unit (Column E).³⁷ The low value – three in Oneida County, NY – may be attributable to the recent establishment of the program. The high annual number for the Colorado Justice Review Project may be explained by the fact that the program used less rigorous selection criteria.

³⁴ Jodi Lobel, Presentation at the Center for Prosecutor Integrity Innocence Summit, Washington, DC (June 21, 2014).

³⁵ See Oliva, *supra* note 28, at 26.

³⁶ See ZALMAN & CARRANO, *supra* note 1, at 196.

³⁷ The average number of cases reviewed each year is derived by dividing the total number of cases reviewed (Column D) by the number of years the Unit has been in existence (2013 minus the year listed in Column C, plus one). Calculations are based on the assumption that the Unit opened in January of the year listed in Column C.

In regard to exonerations, the nine CIUS are credited with 61 exonerations. The Dallas County Unit has registered the largest number – 33 since its founding in 2007. For the newer units, more time is needed to weigh their effectiveness in achieving exonerations.

Table 1. CIU Case Reviews and Exonerations

A	B	C	D	E	F	G
	Unit Name, Location	Year Estab- lished	Total No. of Cases Reviewed (through 2013)³⁸	No. of Cases Reviewed per Year	No. of Exonerations	Web Site
1	Conviction Integrity Unit, Dallas, TX	2007	400	57.1	33	https://www.dallasda.com/division/conviction-integrity-unit/
2	Conviction Integrity Unit, Wayne County, MI	2008	400	66.7	6	http://www.waynecounty.com/prosecutor/405.htm
3	Post Conviction Review Section, Harris County, TX	2009	650	130	2	None
4	Conviction Integrity Unit, Manhattan, NY	2010	150	37.5	4	http://manhattanda.org/preventing-wrongful-convictions
5	DNA Justice Review Project, Denver, CO	2010	5,125	1,281	1	http://www.denverda.org/dna/Denver_DNA_Justice_Review_Project.htm
6	Conviction Integrity Unit, Santa Clara County, CA	2010	100	25	5	http://www.sccgov.org/sites/da/aboutus/aboutthedistrictattorney/Pages/default.aspx
7	Conviction Integrity Unit, Brooklyn, NY	2011	90	30	10+	None
8	Conviction Integrity Unit, Lake County, IL	2013	15	15	0	None
9	Conviction Review Committee, Oneida County, NY	2013	3	3	0	None
	Total		6,933		61	

Variations in the number of reviews and exonerations can be explained by a number of factors including availability of resources, case selection criteria, local legal requirements, and external demands from the media, lawmakers, and public officials.

³⁸ All figures from Peltz, *supra* note 12, except for Denver, which can be found at DENVER DNA JUSTICE REVIEW PROJECT, *supra* note 8; and the Harris County (Texas) Post Conviction Review Section (communication from Keith Satterwhite, Harris County District Attorney’s Office, September 22, 2014).

ADMINISTRATIVE INDEPENDENCE VS. OFFICE SUPPORT

By virtue of being situated within the prosecutor's office, Conviction Integrity Units must manage a delicate balancing act. In order to properly pursue their case reviews, CIUs must enjoy a certain level of administrative independence from the rest of the office. Simultaneously, the units must also engage the support of others in the DA office in order to implement policy changes.

Budget pressures can engender intra-office conflicts. Heavy caseloads may impede effective working relationships. Another challenge arises when a CIU decides to re-evaluate a conviction won by a prosecutor still employed in the DA's office.

This dilemma became apparent in the Conviction Integrity Unit at the U.S. Attorney's Office in Washington, DC. The CIU is organizationally placed in the Special Proceedings Division. This is the same division that is responsible for *opposing* defendants' post-conviction appeals.³⁹

These four strategies can help to assure that Conviction Integrity Units achieve an optimal level of administrative independence and office support:

Reporting Relationships

Having the unit report directly to the District Attorney, instead of through a mid-level manager, can promote DA support and office-wide collaborations. Such arrangements are particularly important in large DA offices.

External Advisory Committee

The involvement of outside experts can help to balance internal office pressures. Denver's DNA Justice Review Project, for example, relies on a Project Case Review Panel consisting of representatives from the Colorado Public Defender's Office, Office of Alternative Defense Counsel, Colorado Bureau of Investigation, and other groups.

Involvement of Defense Counsel

Defense counsel should be involved at an early stage of the review process. Defense counsel may be invited to present a claim on a client's behalf or present new evidence for consideration. Such collaborations may entail the granting of a partial waiver allowing prosecutors access to defense work products.

Semi-Autonomous Status

A fourth strategy is to accord the CIU semi-autonomous status. Bob Gottlieb of the New York Bar Association's Task Force on Wrongful Convictions has counseled:

³⁹ See Hsu, *supra* note 26.

If a DA is really serious and committed to having a CIU, then [the CIU] must be staffed with an inspector general-type prosecutor who has no connection to the past procedures and trials that are the subject of the conviction review Members of the CIU (also) cannot include the chief assistant DA or any of the executive staff of the DA’s office. It must truly be an independent entity.⁴⁰

HARBINGER OF REFORM

Conviction Integrity Units represent a welcome development to the cause of ensuring conviction accuracy. They are an implicit acknowledgment that wrongful convictions are not as infrequent as persons once believed. They provide an official avenue by which post-conviction claims of innocence can be investigated and resolved. And they represent a venue in which new prosecutorial approaches can be developed and tested.

While skeptics may view CIUs as mere political “window dressing,” others hail Conviction Integrity Units as a harbinger of broad-based criminal justice reform. Jeff Blackburn, founder of the Innocence Project of Texas has remarked, “In ten years we’ll look back and say we began a process in Texas that fundamentally changed attitudes about the whole meaning of justice in this country.”⁴¹

The exoneration of David Vasquez a quarter-century ago did more than confirm the utility of DNA as a useful forensic tool; it also foreshadowed a revolution in the broader criminal justice system. The legal, political, and social campaign to rectify injustices in our system has been hailed as the civil rights movement of this century.

The ramifications of the fledgling Innocence Movement have only begun to be discerned.

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ACKNOWLEDGEMENT

CPI intern Tate Fegley of Boise State University researched and wrote the initial draft of this White Paper.

⁴⁰ Hella Winston, *Wrongful Convictions: Can Prosecutors Reform Themselves?*, THE CRIME REPORT (Mar. 27, 2014, 8:40 AM), <http://www.thecrimereport.org/news/inside-criminal-justice/2014-03-wrongful-convictions-can-prosecutors-reform-themself> (last visited Sept. 23, 2014).

⁴¹ Elizabeth Barber, *Dallas targets wrongful convictions, and revolution starts to spread*, CHRISTIAN SCIENCE MONITOR (May 24, 2014), <http://www.csmonitor.com/USA/Justice/2014/0525/Dallas-targets-wrongful-convictions-and-revolution-starts-to-spread> (last visited Sept. 23, 2014).

Non-Suspect DNA Matches⁴²

The Office of the Chief Medical Examiner (“OCME”) notifies our Office of all DNA matches to Manhattan cases. Occasionally, a notification will include a non-suspect DNA match, where one person is listed as the named “suspect,” but a different person has been identified as the source of DNA on a particular piece of evidence.

Notifications of DNA Matches on Pending Cases

When a non-suspect DNA match occurs on a pending case, the assigned ADA will be made aware of this and, in consultation with the Chief of the Forensic Science and Cold Case Unit (“FSCCU”), will investigate and review the significance (or lack thereof) of the match in the context of the case. Of course, the non-suspect match information will be disclosed to the suspect defendant as discovery.

Notifications of Post-Conviction Non-Suspect DNA Matches

As is standard practice, OCME also notifies our office of non-suspect DNA matches on closed cases. The notifications indicate a DNA match between a piece of evidence that was submitted at the time of the crime and a particular individual. The non-suspect matches fall into four general categories:

1. Those which are obviously *Brady* material, such as a non-suspect DNA match that tends to exculpate the convicted defendant.
2. Those which are obviously not *Brady/Giglio* material, such as a match to another victim from the case.
3. Those which do not appear to be *Brady/Giglio* material, but in hindsight it is not possible to determine what a defense attorney would have done with the information at the time of the trial. (For example, a match to a consensual partner of victim, friend, patron of bar, etc.)
4. Those for which the significance is not apparent from the notification or a review of the file, and the ADA is no longer available or doesn’t recall the case.

Upon receipt of such a notification, FSCCU will review the case file and/or confer with the Assistant who originally handled the case or an Assistant from the Bureau in which the case was handled. The review will include i) the significance of the evidence itself (i.e. what is the evidence and why was it tested); ii) the connection between the source of the DNA and the case (i.e. who is this person and what is his or her relationship to the victim, the defendant, or the case); iii) whether the defendant was aware at the time of the conviction that there was DNA evidence that did not match him or her. In any case that falls into the “obviously *Brady* material” category above, the FSCCU Chief will notify the Chief of the Trial Division and the Chief of the Conviction Integrity Program for further investigation.

For cases that fall into categories 2, 3 and 4 above, once the review is complete, the Assistant will notify in writing the defendant and/or the last known attorney of record and the court of the DNA non-suspect match. The notification will include an explanation of the significance of the non-suspect match and of the relationship between the now-known source of the DNA to the case. Where possible, the notification will include whether the defendant was notified during the pendency of the case that his DNA was not found on the evidence in question.

⁴² The Center for Prosecutor Integrity thanks Mr. William Darrow, director of the Manhattan Conviction Integrity Unit, for permission to reprint this policy.