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CONVICTION INTEGRITY UNITS – PRACTICAL AND ETHICAL CONSIDERATIONS

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About Wrongful Convictions

According to the National Registry of Exonerations, there have been 2,576 exonerations in the United States since 1989.¹ Of those, 802 people had been sentenced to life in prison, and 123 people had been on death row. Common factors in wrongful convictions include perjury or false accusations, official misconduct, mistaken eyewitness identification, inadequate legal defense, incorrect or unreliable forensic evidence, and false confessions. Of the 2,559 exonerations, 500 of the cases involved a person who pled guilty. Texas leads the nation with 363 exonerations.

Why is conviction integrity important?

"It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done."

TEX. CODE CRIM. PROC. 2.01

Seeing that justice is done includes acknowledging that no system is perfect. Sometimes, the criminal justice system gets it wrong. As prosecutors, it is vital that we approach claims of actual innocence with an open mind. While it is easy to dismiss such claims out of hand, justice requires that we take the more difficult course of carefully considering the merits of an actual innocence claim. The role of a Conviction Integrity Unit derives from the duty to see that justice is done. Even in jurisdictions without a CIU, prosecutors should approach claims of actual innocence with the mindset that the duty to see that justice is done includes making sure that the right person is convicted.

Justice is not defined by statute. The Oxford English Dictionary defines justice as "Maintenance of what is just or right by the exercise of authority or power; assignment of deserved reward or punishment; giving of due deserts." Rather than provide a guidepost, this definition merely opens up for debate what is meant by "deserved reward or punishment" or "due deserts." Every person involved in the criminal justice system has their own definition of justice. For prosecutors, whose

¹ <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> retrieved March 27, 2020.

statutory duty is to see that justice is done, it is often left to each individual to determine what that means and how it should guide the exercise of their office.

One way to conceptualize the duty to see that justice is done is by examining the different constituencies to whom the duty is owed. Prosecutors owe a duty to victims of crime, to defendants, to the criminal justice system, and to the community. For victims, the prosecutor's duty includes giving them a voice in the process, treating them with dignity and respect, and making sure that perpetrators are held accountable for the harm caused. For defendants, justice



includes making sure that the punishment is proportional to the offense, that the rights of the defendant are respected, and that prosecutorial discretion and decision making are guided by the evidence. For the criminal justice system, prosecutors have a duty to follow the rules and to ensure that the other participants in the system likewise fulfill their duties. Finally, the duty to the community includes making sure that the community can have confidence that the system works fairly and equitably, that everyone is held to the same standards, that the system ensures community safety, and that the outcomes reflect the community's values.

Conviction integrity is an extension of these same duties. Victims, defendants, the criminal justice system, and the community are all harmed when a wrongful conviction occurs. The conviction integrity function, even in offices without a dedicated conviction integrity unit, serves to further the interest of justice by identifying and remedying wrongful convictions, by conducting thorough root cause analyses, and by working to prevent wrongful convictions. The duty to see that justice is done does not end when the mandate issues.

"There is no greater failure of the criminal justice system than the conviction of innocent persons. Conviction integrity / review units represent the acknowledgement of those failures by prosecutors' offices across the country, and their commitment to right the wrongs of the past and prevent similar injustices from happening in the future."

Inger Chandler, *Conviction Integrity Review Units*, Criminal Justice, Summer 2016.

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