

CONTINUOUS QUALITY IMPROVEMENT: INCREASING
CRIMINAL PROSECUTION RELIABILITY THROUGH STATEWIDE
SYSTEMATIC IMPROVEMENT PROCEDURES

by
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Several district attorney offices have established conviction integrity units and instituted programmatic reform as a result of wrongful convictions. However, reform only as a result of a wrongful conviction misses countless opportunities to reduce errors, identify best practices, and improve processes. This Comment explores various organizational models to reduce error and capture best practices in an effort to assist district attorneys in bolstering the effectiveness, efficiency, and reliability of criminal prosecutions. Ultimately, district attorneys should establish systematic procedures for assessing errors and improving internal processes. Part II describes various conviction integrity unit models created by district attorneys. Part III introduces the sentinel-event review process as a means of reducing error. Part IV describes different organizational procedures for institutionalizing and distributing best practices, such as the U.S. Air Force and New York State’s criminal justice Best Practices Committee. I conclude in Part V by arguing that district attorneys should learn from these various programs, partner with police agencies and other stakeholders, and establish statewide organizations to capture and disseminate best practices.

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I. INTRODUCTION

Lawrence O’Connell’s body was found near RFK Stadium in February 1994.¹ His shoes and suit jacket were missing.² The pockets of his pants were turned inside out.³ His tie was wrapped around one wrist and a telephone cord wrapped around the other.⁴ A black bandana lay next to his body.⁵ Nearby, detectives found a large rock covered with blood splatter.⁶ The murder of a civil engineer working for the federal government initially stumped investigators; however, shortly after O’Connell left work, a woman wearing glasses and a baseball cap entered a liquor store and attempted to purchase several items using O’Connell’s credit card.⁷ Police detectives developed a grainy ATM photograph and a sketch, but had no corroborative evidence.⁸

Detective Jim Trainum later received a credible tip leading to a woman named Susan Thomas⁹ who matched the description of the woman at the liquor store.¹⁰ The detectives believed Thomas “fit the investigative profile:”¹¹ she matched the physical description and had a “history of drug abuse, homelessness, violence, and prostitution.”¹² Police also matched the credit card receipt signatures with Thomas’ handwriting samples.¹³

Law enforcement took Thomas into custody and interrogated her using standard procedures.¹⁴ Initially, Thomas adamantly denied any involvement with the stolen credit cards or the murder.¹⁵ After a short

¹ *Lawrence O’Connell—Homicide Victim*, D.C. METROPOLITAN POLICE DEP’T (Feb. 24, 1994), <http://mpdc.dc.gov/publication/lawrence-o-connell-homicide-victim>.

² James Trainum & Diana M. Havlin, *A False Confession to Murder in Washington, D.C.*, in *CRIMINAL INVESTIGATIVE FAILURES* 205, 206 (D. Kim Rossmo ed., 2008). The name of the victim was changed in Trainum & Havlin’s narrative. *Id.* at 205 n.1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 207.

⁸ *Id.* at 209.

⁹ Alias used for privacy reasons. *Id.* at 205 n.1.

¹⁰ *Id.* at 209.

¹¹ *Id.* at 210.

¹² *Id.*

¹³ *Id.* at 211.

¹⁴ *Id.*

¹⁵ *Id.*

break in the interrogation, investigators decided to change their strategy to obtain a confession: instead of questioning her about the murder, they focused on the credit card fraud.¹⁶ Investigators emphasized the crime's pettiness, and Thomas finally confessed to using O'Connell's credit cards.¹⁷ However, Thomas could not recall any of the specifics of how she acquired the credit cards or what she purchased.¹⁸ Although she could not provide details, the investigators justified this as an attempt to protect someone.¹⁹ Detectives resolved the discrepancies by providing Thomas with the credit card receipts to "refresh" her memory.²⁰ Unsurprisingly, she subsequently described the stores she went to and how much money she spent, albeit without specifics of what she actually purchased.²¹ Satisfied, detectives then pressed her for the murder confession.²² Thomas again denied involvement, but she eventually capitulated.²³ She concocted a story of O'Connell soliciting her for sex knowing she was seven-months pregnant.²⁴ Thomas claimed that a watchful group of nearby men wanted to teach O'Connell a lesson and ultimately murdered him, while she only took the credit cards.²⁵

The case unraveled when the detectives attempted to corroborate her story because Thomas had an unshakable alibi.²⁶ A carefully monitored sign-in/sign-out log at a homeless shelter confirmed that Thomas could not have participated in the murder.²⁷ Additionally, further analysis of the credit card receipts revealed that Thomas likely did not forge the signatures.²⁸ Prosecutors subsequently dropped the charges, and the case went cold after spending months investigating Thomas.²⁹

Despite the clear exculpatory evidence, many detectives struggled to move on from Thomas as the primary suspect.³⁰ After all, she confessed. Fortunately, the detectives videorecorded the entire interrogation, allow-

¹⁶ *Id.* at 212.

¹⁷ James L. Trainum, "I Did It"—*Confession Contamination and Evaluation*, POLICE CHIEF (June 2014), http://www.policchiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=3368&issue_id=62014.

¹⁸ Trainum & Havlin, *supra* note 2, at 212; Trainum, *supra* note 17.

¹⁹ Trainum, *supra* note 17.

²⁰ Trainum & Havlin, *supra* note 2, at 212.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 214.

²⁴ *Id.* at 212–13.

²⁵ *Id.* at 213.

²⁶ Trainum, *supra* note 17.

²⁷ Trainum & Havlin, *supra* note 2, at 215.

²⁸ *Id.*

²⁹ *Id.* at 216.

³⁰ *Id.* at 215.

ing them to analyze the questions, answers, and body language.³¹ A close critique of the interrogation revealed a “textbook false confession.”³² After initially denying involvement, Thomas slowly wore down and provided the detectives with what she thought they wanted to hear.³³ Thomas responded to questions with guesses, and detectives ignored the inconsistencies but keyed in on the answers that matched their original theory.³⁴ Once she guessed correctly at a general question, detectives led her to specific details and answers using affirming body language and facial expressions.³⁵ This continued until Thomas gave a complete confession with details that “only the killer would have known.”³⁶

The O’Connell investigation demonstrated that well-intentioned investigators, following standard procedures, could make critical mistakes—confession contamination through leading questions and revealing evidence in this case.³⁷ These same investigators diligently retraced their steps to identify the mistake, but because of this initial error, other potential leads went uninvestigated, Thomas’ life was ripped apart, and police never found the actual murderer.³⁸

Little data exists for how frequently false confessions occur.³⁹ In 2014 alone, 125 people were exonerated.⁴⁰ While no one factor single-handedly leads to a wrongful conviction, common police or prosecutor errors, such as mistaken identifications,⁴¹ false confessions,⁴² and jail-

³¹ See *id.* at 213, 217.

³² Trainum, *supra* note 17.

³³ Trainum & Havlin, *supra* note 2, at 213.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Trainum, *supra* note 17.

³⁸ Trainum & Havlin, *supra* note 2, at 216.

³⁹ False confessions invariably lead to one of several possible outcomes: dropped charges upon further investigation (as in the Thomas case); unsuccessful prosecution; or a wrongful conviction. Data has only been collected on wrongful convictions, likely a small minority of the total number of false confessions. See Samuel R. Gross & Barbara O’Brien, *Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases*, 5 J. EMPIRICAL LEGAL STUD. 927, 928–30 (2008).

⁴⁰ NAT’L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>. The National Registry listed a total of 1,810 as of June 2016. For the current number of exonerations, see *id.* (the number is listed on the top of every page of the site).

⁴¹ As Justice Brennan noted, “[t]he vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification.” *United States v. Wade*, 388 U.S. 218, 228 (1967).

⁴² See Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1062–66 (2010). In one study of 40 false confessions cleared based on DNA evidence, mental illness, juveniles, and contaminated confessions were major factors. Forty-three of the defendants suffered from some mental illness. Thirty-three percent of

house informants, increase the likelihood of a wrongful conviction.⁴³ These wrongful convictions are a tragedy for all involved: the innocent person convicted of a crime, the victim who lacked closure or justice, and the community exposed to further crimes from the actual perpetrator.⁴⁴

Post-conviction claims for relief are met with high legal barriers in the judicial system.⁴⁵ Additionally, many scholars have noted that some prosecutor offices have generally resisted any and all post-conviction claims of innocence.⁴⁶ More recently, however, several district attorneys have taken an open-minded approach to potential wrongful convictions. For instance, many district attorneys do not automatically oppose motions for DNA testing.⁴⁷ Some have even taken proactive measures to uni-

the defendants were juveniles. 65% of the defendants were either mentally disabled, under 18, or both. Nearly 95% of the defendants described specific details of how the crime occurred, including facts that would “be known only by the culprit.” *Id.* at 1064, 1066.

⁴³ See Doug A. Lepard & Elizabeth Campbell, *How Police Departments Can Reduce the Risk of Wrongful Convictions*, in CRIMINAL INVESTIGATIVE FAILURES 269, 270 (D. Kim Rossmo ed., 2008). Of the 1,810 exonerations mentioned *supra* note 40, several documented contributing factors led to the wrongful conviction: Perjury or False Accusation: involved in 56% of convictions; Official Misconduct: 51%; Mistaken Witness Identification: 31%; False Confessions: 13%; False or Misleading Forensic Evidence: 23%. % Exonerations by Contributing Factor, NAT'L REGISTRY OF EXONERATIONS (June 4, 2016), <http://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>.

⁴⁴ Kristine Hamann, *Statewide Best Practices Committees for Prosecutors: Leveraging Experience and New Evidence to Benefit the Criminal Justice System*, PROSECUTOR, Oct.–Dec. 2013, at 18.

⁴⁵ Under the *Strickland* standard, a convicted petitioner making an ineffective assistance of counsel claim must prove two components:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984).

⁴⁶ As the Supreme Court has held, “[a] criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man.” *Dist. Attorney's Office for the Third Judicial Dist. v. Osborne*, 557 U.S. 52, 68 (2009); see Mike Ware, *Dallas County Conviction Integrity Unit and the Importance of Getting It Right the First Time*, 56 N.Y.L. SCH. L. REV. 1033, 1037 (2012) (noting that “prototypical prosecuting authority aggressively protects their hard-earned convictions . . . when the defendant attacks them on direct appeal and in other post-conviction motions”); see, e.g., Benjamin Weiser, *Doubting Case, a Prosecutor Helped the Defense*, N.Y. TIMES (June 23, 2008), <http://nyti.ms/1QHFJqW> Prosecutor Daniel Bibb reinvestigated a murder conviction after new exculpatory evidence emerged. Bibb could not convince his superiors at the Manhattan District Attorney's Office to drop the case and chose to secretly support the defense in a rehearing. *Id.*

⁴⁷ Judith A. Goldberg & David M. Siegel, *The Ethical Obligations of Prosecutors in*

laterally investigate post-conviction claims of innocence⁴⁸ in accordance with the revised American Bar Association's Model Rules of Professional Conduct.⁴⁹ Even fewer district attorneys have established programmatic reform or improvement procedures resulting from wrongful convictions.⁵⁰ Yet the need for reform can often just as easily be identified from dropped charges—as in the O'Connell investigation discussed above. A recent mistake enables a district attorney or police chief to identify and correct current flawed procedures instead of correcting flawed procedures stemming from a wrongful conviction years later.

District attorneys “have an obligation to learn from the mistakes of the past and to work diligently to minimize the risk of future wrongful convictions.”⁵¹ Wrongful convictions aside, “avoiding errors [is] a matter of professionalism, workmanship, and, ultimately, self-respect; . . . not a matter of social policy.”⁵² Recently, former Attorney General Eric Holder,

Cases Involving Postconviction Claims of Innocence, 38 CAL. W. L. REV. 389, 394–95 (2002) (“On one end of the spectrum, prosecutors have assented to, and in some cases assisted with, the locating and testing of evidence On the other end of this spectrum, prosecutors have forced defendants to engage in protracted litigation to obtain the evidence and the tests.”); see Brandon Garrett, *Judging Innocence*, 108 COLUM. L. REV. 55, 119 (2008) (In a study of 200 DNA-based exonerations, 60 percent of exonerees received access to DNA testing through the consent of prosecutors.); cf. Kathleen Hopkins, *Prosecutors Fight DNA Test in Rape Case*, USA TODAY (Jan. 8, 2015), <http://www.usatoday.com/story/news/crime/jersey-mayhem/2015/01/08/prosecutors-fight-dna-test-rape-case/21471157/> (The district attorney's office initially opposed DNA testing of a recently discovered rape kit from a 1992 conviction because the defendant was no longer serving a prison sentence.).

⁴⁸ See *infra* Part II (describing different Conviction Integrity Units). Craig Watkins initiated the nation's first CIU in Dallas County, and while he lost his reelection bid in 2014, much of this had to do with unrelated mistakes and the establishment of a CIU is still widely seen as a success. See generally Dana Carver Boehm, *The New Prosecutor's Dilemma: Prosecutorial Ethics and the Evaluation of Actual Innocence*, 2014 UTAH L. REV. 613; Gromer Jeffers, Jr., *Susan Hawk Ousts Craig Watkins in Heated Race for Dallas County DA*, DALLAS MORNING NEWS (Nov. 5, 2014), <http://www.dallasnews.com/news/politics/local-politics/20141105-susan-hawk-ousts-craig-watkins-in-heated-race-for-dallas-county-da.ece>.

⁴⁹ The ABA Model Rules of Professional Conduct states:

When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall . . . undertake further investigation . . . to determine whether the defendant was convicted of an offense that the defendant did not commit.

MODEL RULES OF PROF'L CONDUCT r.3.8(g) (AM. BAR ASS'N 2013); see also Imbler v. Pachtman, 424 U.S. 409, 427 n.25 (1976) (noting that regardless of any constitutional obligation, a prosecutor “is bound by the ethics of his office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction”).

⁵⁰ See *infra* Part II (describing different Conviction Integrity Units).

⁵¹ Hamann, *supra* note 44, at 18.

⁵² James M. Doyle, *Learning from Error in American Criminal Justice*, 100 J. CRIM. L.

Jr. argued for an improvement in the criminal justice system, stating “[W]e are missing a chance to improve outcomes if we ignore the opportunity for growth that an honest assessment of error presents [Many] mistakes stem from decisions that were well-intentioned, were consistent with customary practice, and seemed sound at the time.”⁵³ He continued,

If we truly hope to get to the bottom of errors and reduce the chances of repeating them, then it is time we explore a new, system-wide, way of responding, not by pointing fingers, but by forthrightly assessing our processes, looking for weaknesses in our methods, and redesigning our approach so that the truth will be more attainable.⁵⁴

District attorneys should organize statewide systematic internal assessment processes to minimize error and implement best practices. This Comment explores various organizational models to reduce error and capture best practices in an effort to assist district attorneys in bolstering the effectiveness, efficiency, and reliability of criminal prosecutions. Part II describes various conviction integrity unit (CIU) models created by district attorneys. Part III introduces the sentinel event review process as a means of reducing error. Part IV describes different organizational procedures for institutionalizing and distributing best practices, such as the U.S. Air Force and New York state’s criminal justice Best Practices Committee. I conclude in Part V by arguing that district attorneys should learn from these various programs, partner with police agencies and other stakeholders, and establish statewide organizations to capture and disseminate best practices. Each state should organize, under its attorney general’s office or a district attorney’s association, to improve the investigation and prosecution of criminal cases. The organization should begin by meeting regularly to identify common problems, such as eyewitness identification and interrogations. Once problems are identified, the organization can focus on harnessing best practices through collaboration, conducting office exchanges, engaging with all stakeholders, and consulting experts. Most importantly, these organizations should disseminate and implement statewide best practices.

II. CONVICTION INTEGRITY UNITS

Many district attorneys across the country have recently created CIUs, which take various forms, missions, purposes, and staffing levels. CIUs generally consist of two components: back-end review of questiona-

& CRIMINOLOGY 109, 111 (2010).

⁵³ Eric H. Holder Jr., *Message from the Attorney General, in* MENDING JUSTICE: SENTINEL EVENT REVIEWS (Nat’l Inst. Justice, U.S. Dep’t of Justice, Sept. 2014), <http://www.ncjrs.gov/pdffiles1/nij/247141.pdf>.

⁵⁴ *Id.*

ble convictions and front-end reform.⁵⁵ Nearly all CIUs contain the back-end component and many add the additional front-end component to develop new policies and procedures.⁵⁶ Dallas County established the first CIU, which warrants discussion.

A. *Dallas County District Attorney's Office*

Dallas County had nine DNA exonerations by the time Craig Watkins took office in 2007, and three more within his first weeks in office—more than any other county in the United States.⁵⁷ Like many prosecutor offices, prior to 2006, the Dallas County District Attorney's Office vehemently opposed any claims of actual innocence.⁵⁸ In 2006, Dallas County elected a former public defender named Craig Watkins to the district attorney post.⁵⁹ In his first year in office, he established the nation's first CIU to correct wrongful convictions and called the review of questionable convictions "the natural function of a prosecutor's office."⁶⁰ Dallas was an ideal test case for a CIU because the public demanded action through the election of a former public defender, and the local crime laboratory preserved biological evidence from cases dating back to the late 1970s.⁶¹

However, some did not embrace Watkins's initiative. Seven of the 234 prosecutors left the office.⁶² Many police officers opposed the pro-

⁵⁵ See *Conviction Integrity Units: Vanguard of Criminal Justice Reform*, CTR. FOR PROSECUTOR INTEGRITY 3, 7–8 (2014), <http://www.prosecutorintegrity.org/wp-content/uploads/2014/12/Conviction-Integrity-Units.pdf> [hereinafter *Conviction Integrity Units*]; Hella Winston, *Wrongful Convictions: Can Prosecutors Reform Themselves?*, CRIME REP. (Mar. 27, 2014), <http://www.thecrimereport.org/news/inside-criminal-justice/2014-03-wrongful-convictions-can-prosecutors-reform-themselv>.

⁵⁶ See, e.g., *Conviction Integrity Units*, *supra* note 55, at 3.

⁵⁷ Ware, *supra* note 46, at 1035; *Dallas County Records 12th DNA Case*, USA TODAY (Jan. 19, 2007), http://usatoday30.usatoday.com/news/nation/2007-01-19-texas-dna_x.htm; see also NAT'L REGISTRY OF EXONERATIONS, *supra* note 40.

⁵⁸ The district attorney's office predictably opposed any post-conviction motions for DNA testing. In one case, the defendant spent four years requesting DNA testing of exculpatory DNA evidence within the State's possession. The defendant was exonerated after the state's highest appellate criminal court ordered DNA testing, *Smith v. State*, 165 S.W.3d 361, 365 (Tex. Crim. App. 2005); *Ex Parte Smith*, No. AP-75573, 2006 WL 3691244, at *1 (Tex. Crim. App. Dec. 13, 2006); Boehm, *supra* note 48, at 628 n.54; Ware, *supra* note 46, at 1037 ("Dallas County fell in line with most prosecuting authorities that viewed . . . requests for DNA testing . . . with skepticism, cynicism, and sometimes, open disdain.").

⁵⁹ Boehm, *supra* note 48, at 628 n.54; Terri Moore, *Prosecutors Reinvestigate Questionable Evidence: Dallas Establishes "Conviction Integrity Unit,"* CRIM. JUST., Fall 2011, at 4, 6; Ware, *supra* note 46, at 1034.

⁶⁰ Elizabeth Barber, *Dallas Targets Wrongful Convictions, and Revolution Starts to Spread*, CHRISTIAN SCI. MONITOR (May 25, 2014), <http://www.csmonitor.com/USA/Justice/2014/0525/Dallas-targets-wrongful-convictions-and-revolution-starts-to-spread>.

⁶¹ Moore, *supra* note 59, at 6.

⁶² Barber, *supra* note 60.

gram as well, arguing that “our job [was] to put criminals in jail, not get them out.”⁶³ The establishment of a CIU was not the sole reason for the resistance to Watkins’s policies. Watkins also changed the office’s culture of “convictions-at-all-costs” and attempted to reduce the adversarial relationship with defense attorneys.⁶⁴

He staffed the CIU with two prosecutors, an investigator, and an assistant.⁶⁵ The CIU began an internal audit of over 400 cases where the office previously refused an inmate’s request for DNA evidence testing.⁶⁶ This opening action led to three convictions being set aside.⁶⁷ By initially focusing on DNA cases, with “decisive, conclusive, and unquestionable exonerations,” Watkins validated the importance of having a CIU within the office.⁶⁸

After the initial review of DNA requests, the Dallas County CIU developed working relationships with the Innocence Project and public defender’s office.⁶⁹ If the Innocence Project or a similar organization presented a plausible claim of innocence, the CIU would turn over the entire file for review, including work product.⁷⁰ Administratively, the CIU reports directly to the First Assistant and the District Attorney.⁷¹ While all exonerations stemmed from convictions during a previous district attorney’s administration, some of the prosecutors still worked in the office. In these instances, the prosecutor is “notified of the exoneration and its cause, and if appropriate, additional steps to reform office procedure may be taken.”⁷² To date, 51 individuals have been exonerated in Dallas County since 2006,⁷³ and the Unit maintains robust support under the post-Watkins administration. The majority of wrongful convictions resulted from mistaken identifications where DNA evidence had been preserved.⁷⁴

The success of Dallas County’s CIU and the rise of the innocence movement has contributed to the establishment of CIUs across the coun-

⁶³ Moore, *supra* note 59, at 8.

⁶⁴ Barber, *supra* note 60.

⁶⁵ Boehm, *supra* note 48, at 628; *see* Moore, *supra* note 59, at 7–8.

⁶⁶ Barber, *supra* note 60.

⁶⁷ *Id.*

⁶⁸ Boehm, *supra* note 48, at 631.

⁶⁹ Barry Scheck, *Professional and Conviction Integrity Programs: Why We Need Them, Why They Will Work, and Models for Creating Them*, 31 *CARDOZO L. REV.* 2215, 2250 (2010).

⁷⁰ *Id.*

⁷¹ *Id.* at 2251.

⁷² Boehm, *supra* note 48, at 630.

⁷³ *Dallas County Exonerations*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx> (click next to “County (Fed. Dist.)” then select “Dallas” from drop-down menu).

⁷⁴ *Id.*

try.⁷⁵ Sixteen CIUs have currently been created, with six being established in 2014 alone.⁷⁶ All take different approaches to meeting the specific needs of their communities.⁷⁷

B. *Back-End Conviction Integrity Units*

A CIU's back-end process refers to the internal review of an uncertain conviction.⁷⁸ An internal review can be as simple as DNA testing on questionable convictions, such as those that relied primarily on a single eyewitness.⁷⁹ Back-end CIUs may or may not also have reform initiatives in place, but their advertised missions are exclusively focused on reviewing potential wrongful convictions.⁸⁰ Below are a few examples in addition to Dallas County.

Wayne County, Michigan established a Forensic Evidence Review Unit (later called a Conviction Integrity Unit) in 2008.⁸¹ The Wayne County CIU takes a back-end focus on ensuring reliable convictions through DNA testing. The Unit "ensure[s] that justice is served by determining that all forensic evidence utilized by the Wayne County Prosecutor's Office was and is accurate and reliable."⁸² This is a standard back-end CIU.

In another back-end centric CIU, Denver's District Attorney's Office added an additional layer to the standard construct by partnering with the Colorado Attorney General's Office to establish the DNA Justice Review Project.⁸³ After an initial case review by legal interns, potential cases

⁷⁵ See *infra* note 76.

⁷⁶ *Conviction Integrity Units*, *supra* note 55, at 2–5. (providing a list of current CIUs: Dallas County, Texas; Wayne County, Michigan; Harris County, Texas; New York County, New York; Denver, Colorado; Santa Clara County, California; Brooklyn, New York; Lake County, Illinois; Oneida County, New York; Baltimore, Maryland; Philadelphia, Pennsylvania; Cuyahoga County, Ohio; New Orleans, Louisiana; Washington, D.C. (federal CIU); Pima County, Arizona; Multnomah County, Oregon.)

⁷⁷ Several district attorney's offices have identified common reforms to improve the effectiveness of prosecutor offices. For eyewitness identification, Dallas County advocated for a "double-blind" process where both the witness and conducting police officer do not know which person is the suspect. See *id.* at 7. Brady violations constitute another area of common reform and several CIU's have advocated for open-file disclosure policies. *Id.* at 8.

⁷⁸ Cyrus R. Vance, Jr., *The Conscience and Culture of a Prosecutor*, 50 AM. CRIM. L. REV. 629, 633 (2013).

⁷⁹ *Id.* at 632–34.

⁸⁰ *Id.*

⁸¹ *Conviction Integrity Unit*, WAYNE CTY. PROSECUTOR (2016), <http://www.waynecounty.com/prosecutor/405.htm>.

⁸² *Id.*

⁸³ *Denver DNA Justice Review Project*, DENVER DIST. ATT'Y, http://www.denverda.org/DNA/Denver_DNA_Justice_Review_Project.htm.

are submitted to a review panel to decide whether DNA testing should be conducted.⁸⁴ The review panel consists of representatives from the Attorney General's Office, Denver District Attorney's Office, Colorado Bureau of Investigation, Colorado Public Defender's Office, Office of Alternative Defense Counsel, and the Colorado District Attorney's Council.⁸⁵

Brooklyn heavily staffs its Conviction Review Unit (CRU) based on documented widespread police misconduct and continues to uncover fraudulent investigations by the notorious police detective Lou Scarcella.⁸⁶ Prosecutors are closely scrutinizing 90 cases due to potential police misconduct—57 coming specifically from Scarcella.⁸⁷ Brooklyn District Attorney Kenneth Thompson currently budgets \$1.1 million annually toward the effort with ten assistant district attorneys and three investigators.⁸⁸ Harvard Law Professor Ronald S. Sullivan and Assistant District Attorney Mark Hale, a 30-year veteran prosecutor, jointly lead the CRU.⁸⁹

C. *The Front-End Component*

CIUs with a back-end component may also have a front-end component to improve procedures and reduce systematic deficiencies in criminal prosecutions. Failures resulting in wrongful convictions are corrected through necessary reforms.

Manhattan District Attorney Cyrus Vance established a Conviction Integrity Program in 2010 to closely examine the wrongful convictions causes and to minimize the chances of them occurring.⁹⁰ The Manhattan

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Details of former Detective Lou Scarcella's unethical tactics were revealed after a judge released David Ranta, who spent 23 years in prison. In that case, in exchange for testimony against Ranta, Scarcella removed criminals from prison to let them smoke crack cocaine, and also told a witness to pick Ranta in a lineup. Frances Robles & N.R. Kleinfield, *Review of 50 Brooklyn Murder Cases Ordered*, N.Y. TIMES (May 11, 2013), <http://nyti.ms/19vY23Z>.

⁸⁷ Yamiche Alcindor, *Brooklyn 'Ground Central' for Wrongful Convictions Claims*, USA TODAY (July 26, 2014), <http://www.usatoday.com/story/news/nation/2014/07/26/brooklyn-ground-central-for-wrongful-conviction-claims/12930509/>. To date, ten homicide convictions involving Scarcella have been overturned. *Lou Scarcella*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx> (Enter "Scarcella" in the filter box, then click "Filter").

⁸⁸ Alcindor, *supra* note 87. See generally *Conviction Review Unit*, BROOK. DIST. ATT'Y'S OFFICE, <http://brooklynda.org/conviction-review-unit/>.

⁸⁹ *Conviction Review Unit*, *supra* note 88. To date, 18 convictions have been vacated, including three individuals convicted in 1980 for a deadly arson in 1980. *Id.* Ken Womble, *Public Defenders Are the Real Driving Force Behind DA Ken Thompson's Conviction Review Unit*, MIMESIS L. (July 20, 2015), <http://mimesislaw.com/fault-lines/public-defenders-are-the-real-driving-force-behind-da-ken-thompsons-conviction-review-unit/1896>.

⁹⁰ Vance, *supra* note 78, at 631.

CIU consists of dual purposes: a front-end component to prevent wrongful convictions by establishing new policies, procedures, and training to prevent unjust prosecutions; and a back-end component to review prisoner claims of actual innocence.⁹¹

Vance adopted a three-pronged approach. He first created a team called a Conviction Integrity Policy Advisory Panel to advise the office on best practices and evolving issues concerning wrongful convictions.⁹² Vance wanted a comprehensive team of stakeholders in the criminal justice system to provide guidance on policy and initially advise him on the creation of the CIU itself.⁹³ This team consisted of experienced assistant district attorneys alongside a distinguished group of advisors including Innocence Project Co-Director Barry Scheck, former U.S. Attorney Zachary Carter, retired New York Court of Appeals Judge Howard Levine, and Fordham Law Professor Bruce Green.⁹⁴ These experts examined national best practices in areas such as eyewitness identification, jailhouse informants, interrogation and confessions, and preservation and disclosure of exculpatory evidence.⁹⁵

Internally, Vance established a Conviction Integrity Committee consisting of ten senior members of his staff to “review practices and policies related to training, case assessment, investigation, and disclosure obligations, with a focus on potential errors such as eyewitness misidentification and false confessions.”⁹⁶ Vance wanted a team that would develop best practices in forensic science, interviewing witnesses, and examining cases.⁹⁷ As a result, the Manhattan District Attorney’s Office reformed its intake procedures by establishing a set of uniform questions to systematically analyze new cases.⁹⁸ The Committee created or reformed guidelines in several areas.⁹⁹ For example, in eyewitness identification cases, assistant district attorneys are directed to analyze the witness’s ability to view the perpetrator at the start of the case.¹⁰⁰ Guidelines are also used to encourage the assistant district attorneys to check independent sources of evidence, such as cell tower records, when dealing with an alibi defense.¹⁰¹

⁹¹ *Id.*; *Conviction Integrity Program*, N.Y. CTY. DIST. ATT’Y’S OFFICE, <http://www.manhattanda.org/wrongful-conviction>.

⁹² *Conviction Integrity Program*, *supra* note 91.

⁹³ Cyrus R. Vance, Jr., *A Conviction Integrity Initiative*, 73 ALB. L. REV. 1213, 1216 (2010).

⁹⁴ *Id.*

⁹⁵ Vance, *supra* note 78, at 631–32.

⁹⁶ *Conviction Integrity Program*, *supra* note 91.

⁹⁷ Vance, *supra* note 93, at 1215.

⁹⁸ Vance, *supra* note 78, at 632.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

The Conviction Integrity Committee also created new procedures for major felony cases.¹⁰² These cases are presented to a small group of senior assistant district attorneys to vet the facts and the investigation to both reduce the risk of prosecuting the innocent and strengthen cases where a prosecution should go forward.¹⁰³ Vance explained, “the very process of examining our procedures, of trying to articulate and systematize our best thinking, and to put it in front of our assistants in a synthesized form has been critical to the evolution of the conscience and culture of our office.”¹⁰⁴

The third component of the Manhattan District Attorney Conviction Integrity Program is the back-end process.¹⁰⁵ Similar to Dallas County, the Conviction Integrity Program Chief reviews post-conviction claims of actual innocence and reports directly to the district attorney.¹⁰⁶ If reinvestigation is appropriate, the case is reassigned to an assistant district attorney who was not on the original case.¹⁰⁷ The new assistant district attorney conducts a de novo investigation and reports his or her recommendations to a Conviction Integrity Panel.¹⁰⁸ The Panel consists of roughly a dozen senior assistant district attorneys and the program chief who makes a recommendation to the district attorney.¹⁰⁹

III. SENTINEL-EVENT REVIEWS

Other professions have instituted systematic processes to improve standard procedures, capture best practices, and reduce error. James Doyle, a former Visiting Fellow at the National Institute of Justice, advocated for the exploration of new ideas to combat errors, and specifically identified sentinel-event reviews that other professions, such as medicine and aviation, institutionalized.¹¹⁰ A sentinel event is “anything that stakeholders can agree should not happen again.”¹¹¹ In the area of criminal justice, sentinel events are not only wrongful convictions, but also may include “near miss” acquittals, dropped charges, cold cases, “wrongful re-

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 633.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* Investigations by the Manhattan CIU have led to the exoneration of Johnnie O’Neal in 2013, who was convicted of sexual assault in 1985. *Johnnie O’Neal*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4246>.

¹¹⁰ Holder, *supra* note 53.

¹¹¹ James M. Doyle, *Learning from Error in the Criminal Justice System: Sentinel Event Reviews*, in MENDING JUSTICE: SENTINEL EVENT REVIEWS 3, 4 (Nat’l Inst. of Justice, U.S. Dep’t of Justice, Sept. 2014), www.ncjrs.gov/pdffiles1/nij/247141.pdf.

leases” of factually guilty criminals, or failures to thwart preventable domestic violence acts.¹¹² He argues that “[t]he U.S. criminal justice system lacks a feature that medicine, aviation and other high-risk enterprises see as critical: a way to account for unintended tragic outcomes, to learn lessons from our errors, and to use these lessons to reduce future risks.”¹¹³ Doyle uses the term sentinel event because “[s]entinels stand watch. They are the first to see threats, and they sound a warning before those threats can do harm It is a significant, unexpected negative outcome that signals a possible weakness in the system or process.”¹¹⁴

The medical profession provides an illustrative example of a high-risk organization that recovered from repeated simple errors by improving internal procedures and, more importantly, its culture. One study looked into a wrong-patient surgery where doctors mistakenly performed an invasive cardiac electrophysiology study on a 67-year-old woman.¹¹⁵ Much like a wrongful conviction in the criminal justice system, a wrong-patient surgery is one of the most disturbing errors in the healthcare field.¹¹⁶ In reviewing the sequence of events, researchers surprisingly found 17 minor systematic errors instead of a single egregious mistake.¹¹⁷ The study identified system weaknesses, called “latent conditions,” which are correctable, systematic faults.¹¹⁸ Failures of communication, teamwork, and identity verification led to several individual errors.¹¹⁹ For example, the hospital’s information system consisted of a patchwork of stand-alone computer systems with no ability to interact with each other.¹²⁰ Additionally, nurses actually identified the conflicting charts and contradictory patient stickers, but assumed the charts and stickers were

¹¹² *Id.*

¹¹³ *Id.* at 3.

¹¹⁴ *Id.*

¹¹⁵ Mark R. Chassin & Elise C. Becher, *The Wrong Patient*, 136 ANNALS INTERNAL MED. 826, 826 (2002). During an electrophysiology study, doctors insert a straw-sized tube into an artery, which is then guided through blood vessels to the heart. The doctor then sends small electrical pulses through the catheters where the doctors can monitor abnormalities. *Electrophysiology Studies*, AM. HEART ASS’N (Oct. 23, 2014), http://www.heart.org/HEARTORG/Conditions/Arrhythmia/SymptomsDiagnosisMonitoringofArrhythmia/Electrophysiology-Studies-EPS_UCM_447319_Article.jsp#.VtP8ivkrLIU.

¹¹⁶ See Chassin & Becher, *supra* note 115, at 826; cf. *National District Attorneys Association Addresses Exonerations*, MARICOPA CTY. ATT’Y’S OFFICE 1 (2012), <http://www.maricopacountyattorney.org/pdfs/NDAA-Addresses-Exonerations.pdf> (containing the National District Attorneys Association’s statement that “[o]ur worst nightmare is convicting an innocent person”).

¹¹⁷ Chassin & Becher, *supra* note 115, at 829.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 830.

mistakes.¹²¹ A “culture of low expectations” developed in which medical professionals grew accustomed to incomplete or mistaken information.¹²² Catching mistakes was not a cause for alarm, merely an expected annoyance. Most importantly, researchers discovered that no single error caused the wrong-patient surgery itself.¹²³ Instead, several individuals made minor, routine errors as a result of a systematic communication problem. The wrong-patient surgery was the result of an “organizational accident.”¹²⁴

Organizational accidents, such as the wrong-patient surgery, occur when no single error directly causes the accident.¹²⁵ A culmination of minor errors that “combined and cascaded” led to a tragic accident.¹²⁶ Similarly, in the criminal law context, several errors often contribute to a wrongful conviction.¹²⁷ Susan Thomas was not wrongfully convicted, but still gave a false confession, and had other errors occurred, the situation could have turned out much worse. When corroborating the confession, the sign-in/sign-out logs could have been misplaced. Or even worse, the log could have contained incorrect information that reinforced Thomas’s false confession.

Early identification and correction of these sentinel events, as described in the medical profession and criminal justice system, would remove latent conditions that are “accidents waiting to happen.”¹²⁸ Decreasing the latent conditions inherent in nearly all organizations would maximize positive outcomes. Reliance on the “lone villain” or “bad apple” approach is flawed.¹²⁹ This approach assumes a certain “lazy, ill-trained, venal or careless” individual is solely responsible for the tragedy,

¹²¹ See *id.* at 827–28.

¹²² *Id.* at 830.

¹²³ *Id.* at 831.

¹²⁴ *Id.* at 829.

¹²⁵ Doyle, *supra* note 111, at 4.

¹²⁶ *Id.*

¹²⁷ Doyle argues that a multitude of small errors would simultaneously have to occur, such as initially with the witness and police, then also with the technician, prosecutor, defense, judge, jury, and appellate courts. See *id.* While a valid point, common large-scale errors such as misidentification or false confessions may lead to wrongful convictions in itself even if the rest of the criminal justice system procedurally acted properly. Justice Sotomayor recently noted, “empirical evidence demonstrates that eyewitness misidentification is ‘the single greatest cause of wrongful convictions in this country.’” *Perry v. New Hampshire*, 132 S. Ct. 716, 738 (2012) (Sotomayor, J., dissenting) (quoting *State v. Henderson*, 27 A.3d 872, 885 (N.J. Sup. Ct. 2011)). One error may not be the single factor in a wrongful conviction, but it may be the root cause.

¹²⁸ Doyle, *supra* note 52, at 129.

¹²⁹ Doyle, *supra* note 111, at 6. Doyle describes the “bad apple” or “lone villain” by example: the “corrupt or incompetent forensic scientist” or the “prosecutor who buries plainly exculpatory evidence.” *Id.*

and senior leaders simply need to remove the individual to correct the problem.¹³⁰ This is not to contend that incompetent or unethical behavior should go unpunished; only that this is one of many possible or necessary steps. After potentially removing the “bad apple,” the question should be: “Why did this decision look like the best (or, perhaps, the least bad) choice to the bad apple at the time?”¹³¹

Doyle argues that checklists will not solve the problem.¹³² Leaders must reform the culture so that individuals treat mistakes as sentinel events to establish lessons learned. This can be accomplished through a sentinel-event review process to explore “what in the prosecutors’ environment motivated their mistaken choices and what accounted for the performance of other actors.”¹³³ Factors can range from limited resources, to media or political pressure, to mistrust with the police department.¹³⁴ Sentinel-event reviews of “near miss” events could “yield the most informative accounts.”¹³⁵ A mistaken arrest due to a misidentification may be as instructive as an exoneration years after a conviction.¹³⁶ In fact, a near miss event may be more informative because court records, police reports, and memories in near miss cases are easier to access.¹³⁷ Doyle claims that the criminal justice system should embrace a sentinel-event review process.¹³⁸ Several jurisdictions have already made attempts to establish a culture of embracing near miss events as an instructive tool, leading to a “feedback loop into criminal justice operations that is currently missing.”¹³⁹

For example, the Westchester County district attorney commissioned a report by outside experts, including two judges, a former prosecutor, and a defense attorney, to examine the wrongful conviction of Jeffrey Deskovic.¹⁴⁰ In that case, Deskovic was wrongfully convicted of the brutal

¹³⁰ *Id.* at 5.

¹³¹ *Id.* at 6.

¹³² *See id.* at 7. NASA had the most thorough checklist but still fatefully launched Challenger and Columbia. *Id.*

¹³³ *Id.* at 8.

¹³⁴ *Id.* at 8–9.

¹³⁵ *Id.* at 14.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 16.

¹³⁹ *Id.* at 14. In addition to Westchester County and Allegheny County discussed below, in Will County, Illinois, a sheriff initiated a review of a near miss event in which a father was wrongfully accused of murdering his daughter. Cambridge, Massachusetts organized a diverse group to investigate police practices after the arrest of Harvard professor Henry Louis Gates. *Id.* at 9.

¹⁴⁰ Leslie Crocker Snyder, Peter J. McQuillan, William L. Murphy & Richard Joselson, *Report on the Conviction of Jeffrey Deskovic*, WESTCHESTER CTY. DIST. ATT’Y (June 2007), <http://www.westchesterda.net/Jeffrey%20Deskovic%20Comm%20Rpt.pdf>.

rape and murder of a 15-year-old girl even though seminal fluid collected from the victim excluded Deskovic as the perpetrator.¹⁴¹ The conviction hinged primarily on an unrecorded false confession.¹⁴² The report identified numerous failures with the police, prosecutors, defense lawyers, and the court, but also made recommendations for corrective actions.¹⁴³

In another jurisdiction, the Allegheny County Court of Common Pleas in Pennsylvania implemented a case review process to identify chronic issues by a close examination of sample cases.¹⁴⁴ A committee of judges, prosecutors, defense counsel, human service providers, probation officers, police officers, and various court staff members attended the case review to examine how to “deliver justice more fairly and efficiently.”¹⁴⁵ President Judge Donna Jo McDaniel and district court administrator Ray Billotte secured full participation from all of the participants and emphasized the importance of system evaluation, as opposed to finger pointing.¹⁴⁶ Judge McDaniel distributed identified issues to four committees, requiring resolution deadlines for an interim and final report.¹⁴⁷ A basic timeline of events from a selected prosecution quickly revealed several simple mistakes, such as warrants being issued when the defendant was already in custody.¹⁴⁸ She ensured high-level participation by assigning a criminal court judge to each committee.¹⁴⁹ The four committees addressed 21 specific policy and administrative issues during eight hours of case discussions.¹⁵⁰ Most importantly, Allegheny County planned to continue case review sessions periodically until the benefits no longer outweighed the preparation time.¹⁵¹

IV. INSTITUTIONALIZING AND DISTRIBUTING BEST PRACTICES

Some professions add an additional layer of not only developing their own best practices, but also systematically disseminating them to other similar or affiliated organizations. District attorneys can learn from the U.S. Air Force, which employs a highly structured process to capture and distribute best practices. New York’s Best Practices Committee pro-

¹⁴¹ *Id.* at 5.

¹⁴² *Id.* at 6.

¹⁴³ *Id.* at 5–6.

¹⁴⁴ Doyle, *supra* note 111, at 10.

¹⁴⁵ Bruce Barron, *How Case Reviews Transformed Allegheny County’s Criminal Justice System*, ALLEGHENY CTY. 2 (Sept. 2011), <http://www.county.allegheny.pa.us/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=2147486508>.

¹⁴⁶ *Id.* at 5.

¹⁴⁷ *Id.* at 7.

¹⁴⁸ *Id.* at 4.

¹⁴⁹ *Id.* at 7.

¹⁵⁰ *Id.* at 8.

¹⁵¹ *Id.* at 9.

vides a model of a how one district attorney's association developed statewide best practices.

A. *The U.S. Air Force Model*

The Air Force established Weapons and Tactics offices, commonly called "weapons shops,"¹⁵² to develop sound operational tactics and policy.¹⁵³ These weapons shops identify best practices in the realm of mission tactics and methodically disseminate them to similar operational units.¹⁵⁴ Weapons shops are established at all levels of the Air Force hierarchy, from a small tactical squadron to a major command.¹⁵⁵ Graduates of an elite Weapons School Instructor Course lead each weapons shop as a "Chief of Weapons and Tactics."¹⁵⁶ These graduates receive world-class training in weapons and tactics employment, thus ensuring an officer with advanced training in each unit.¹⁵⁷ Weapons shops coordinate with superior, equivalent, and subordinate units to, inter alia, "[i]dentify deficiencies in training, equipment, support or tactics . . . [r]ecommend improvements for unit operations . . . [and] [i]dentify problem areas requiring corrective action above unit level."¹⁵⁸ Coordination between units is critical and commanders are directed to "ensure a free avenue of information exchange to and from weapons shops."¹⁵⁹ This explicit language to direct communication in governing documents ensures constant contact between organizations. Whether to a parent organization for guidance/recommendation, or to sister organizations for collaboration, this cross talk often occurs on a daily basis.¹⁶⁰

¹⁵² SEC'Y OF THE AIR FORCE, AIR FORCE INSTRUCTION 11-415, WEAPONS AND TACTICS PROGRAMS 4 (Oct. 15, 2014) [hereinafter WEAPONS AND TACTICS PROGRAMS], http://static.e-publishing.af.mil/production/1/af_a3/publication/afi11-415/afi11-415.pdf.

¹⁵³ *Id.* at 5.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* The Weapons School mission is as follows:

The mission of the [Weapons School] is to train expert instructors and leaders skilled in the art and science of integrated battlespace dominance across all domains. The [Weapons School] provides graduate-level instructor courses delivering the world's most advanced training in weapons and tactics employment to officers of the Air Force to include structured joint- and composite-force integrated employment training. The courses provide airmen the necessary training to develop the core competencies for execution of integrated air, space, and cyberspace power.

Id. at 10.

¹⁵⁷ *See id.* at 5.

¹⁵⁸ *Id.* at 6.

¹⁵⁹ *Id.* at 8.

¹⁶⁰ E-mail from Nathan Masunaga, U.S. Air Force Major, to Author (May 19, 2016) (on file with Lewis & Clark Law Review).

Each weapons shop also maintains a Tactics Development Program.¹⁶¹ The goals of the Tactics Development Program are to identify tactical employment opportunities, develop new tactics as a result of tactical deficiencies, pursue new “Tactics, Techniques, and Procedures” (TTPs), and validate existing tactical procedures against emerging threats and new technologies.¹⁶² The Air Force takes a broad approach in defining tactics and does not limit the Tactics Development Program to strictly airborne operations.¹⁶³ It includes all phases of mission execution, such as mission planning, intelligence preparation, and weapons employment.¹⁶⁴ Weapons shops closely scrutinize all phases to develop optimal procedures. Broadly speaking, commanders and supervisors of every organization must review their areas of responsibility for tactical deficiencies and provide recommendations to the weapons shops.¹⁶⁵ The vagueness of this requirement contrasts with the formal Tactics Improvement Proposal (TIP) process.

¹⁶¹ WEAPONS AND TACTICS PROGRAMS, *supra* note 152.

¹⁶² SEC’Y OF THE AIR FORCE, AIR FORCE INSTRUCTION 11-260, TACTICS DEVELOPMENT PROGRAM 2 (Sept. 15, 2011) [hereinafter TACTICS DEVELOPMENT PROGRAM], http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi11-260/afi11-260.pdf.

General Policy:

1.1 The Tactics Development Program is designed to develop, document, and disseminate tactics for the Air Force. The Program’s broad goals are to:

1.1.1 Identify tactical employment opportunities in all areas of fighter, bomber, rescue, command and control, airlift, air refueling, special ops, air operations center, information warfare, air defense sector operations, intelligence operations, information operations, space operations.

1.1.2 Conduct formal Tactics Development and Evaluations (TD&E) to determine new tactics that correct identified tactical deficiencies and pursue new/improved Tactics, Techniques, and Procedures (TTP).

1.1.3 Continually validate existing tactics against emerging threats and new technologies.

1.1.4 Consolidate and rapidly disseminate tactical information.

1.1.5 Develop tactics for new or modified weapons systems entering the AF inventory.

Id.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 3.

1.2 Tactics incorporate *all facets* involved with accomplishing assigned tactical missions and are not limited to airborne assets. Any participants actively involved in engagement of the enemy while executing the mission should be involved in the tactics development process. This includes planning, rehearsal, takeoff, departure, intelligence preparation of the operational environment, command and control, ingress to the target, weapons employment, egress procedures, arrival, and any additional support assets required for mission success.

Id. (emphasis added).

¹⁶⁵ *Id.* at 6.

In practice, an individual who identifies a solution to a tactical deficiency submits a TIP to the unit tactics shop.¹⁶⁶ Oftentimes, the TIP comes directly from the weapons shop itself, but it does not have to.¹⁶⁷ The TIPs usually develop at the lowest level from lessons learned during conflicts or exercises.¹⁶⁸ The weapons shop evaluates the improvement proposal, refining the information and objectives to ensure it is “clear, obtainable, and measureable.”¹⁶⁹ The TIP is then submitted to the parent weapons shop for further evaluation and validation at a Tactics Review Board (TRB).¹⁷⁰ Each level of the organization conducts a yearly TRB for a presentation and discussion of submitted proposals.¹⁷¹ While tactical recommendations from each unit are not required, it is generally ill-advised to attend a yearly TRB without submitting a recommended improvement.¹⁷² This board reviews tactics and makes suggestions to correct deficiencies.¹⁷³ In a squadron, the most basic operational unit, the weapons shop will formulate proposals to their superior organization, called a Group or Wing. The Group or Wing convenes a board to discuss proposed TIPs and make recommendations.¹⁷⁴ This review board consists of representatives from each subordinate unit (usually from the weapons shop) to weigh in on suggested improvements and deficiencies.¹⁷⁵ Recommendations can include several dispositions, such as disseminating the new tactic throughout the organization, submitting it to a superior organization for broader consideration and testing, or returning it for further refinement.¹⁷⁶

Once an improvement goes through each organizational layer of review, and, if approved for testing, results are disseminated through Air Force Tactics, Techniques, and Procedures (AFTTP) 3-1 Volumes.¹⁷⁷ The AFTTP 3-1 is the primary and most authoritative source of tactical doctrine and guidance, “bringing together lessons learned from previous conflicts, operational evaluations, training exercises, tactics development programs, and analyses of the threat.”¹⁷⁸

¹⁶⁶ *Id.* at 3.

¹⁶⁷ *See id.* at 6.

¹⁶⁸ COMMANDER AIR FORCE SPACE COMMAND, AIR FORCE SPACE COMMAND INSTRUCTION 10-260, TACTICS DEVELOPMENT PROGRAMS 10 (Feb. 23, 2016), <http://static.e-publishing.af.mil/production/1/afspc/publication/afspci10-260/afspci10-260.pdf>.

¹⁶⁹ TACTICS DEVELOPMENT PROGRAM, *supra* note 162, at 6.

¹⁷⁰ *Id.* at 7.

¹⁷¹ *Id.* at 4, 7.

¹⁷² *Id.* at 6–7.

¹⁷³ *Id.* at 8.

¹⁷⁴ *Id.* at 7.

¹⁷⁵ *Id.* at 8.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 11.

¹⁷⁸ *Id.* at 38.

In a less formal and expedient channel to disseminate improved procedures, a tactics squadron distributes notices called “Flash Bulletins” that are TTPs, or lessons learned that must reach operational units immediately.¹⁷⁹ These Flash Bulletins are validated and vetted, but must be disseminated quickly due to time sensitivity.¹⁸⁰ During routine AFTTP 3-1 updates, Flash Bulletins may potentially be incorporated into the volumes after further formalized vetting.¹⁸¹

Tactics Bulletins, on the other hand, are less urgent than Flash Bulletins and act as official updates to the AFTTP 3-1 between rewrites.¹⁸² Finalized Tactics Bulletins are disseminated to operational units and later incorporated into the AFTTP 3-1 without further vetting.¹⁸³ These two types of notices compensate for the cumbersome, formalized AFTTP 3-1 rewrites. While imperfect, the multiple avenues of process improvement ensure a systematic process for identifying latent conditions and distributing best practices.

Just like the separate Air Force squadrons, district attorneys offices serve identical purposes. However, no formal mechanism ties lessons learned and best practices from each county together for improved collective knowledge. Many states have district attorney’s associations that host conferences and numerous training programs,¹⁸⁴ but they do not have formalized, ongoing improvement procedures like the Air Force model that systematically takes best practices and vets them for broader dissemination. New York’s model, discussed below, is an example of a state that has implemented statewide improvement procedures.

B. Best Practices Committees

As previously discussed, several prosecutor offices have advocated or instituted ad hoc committees to determine failures due to wrongful convictions. However, waiting until errors and bad practices lead to a wrongful conviction disserves all stakeholders. This logic misses a valuable opportunity for improvement. An “ideal of continuous quality improvement”¹⁸⁵ will prevent harmful errors, even if the reform stems from a harmless one.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See, e.g., *CDAAs Trainings & Events*, CAL. DIST. ATT’YS ASS’N, http://registrations.cdaa.org/CDAAs/Events/CalDA/Events_Home.aspx?DisplayAreaOptions=No&hkey=d0512087-13b8-4fca-a9d9-247ff4c0577a; *Training*, OHIO PROSECUTING ATT’Y’S ASS’N, <http://www.ohiopa.org/training.html>.

¹⁸⁵ Doyle, *supra* note 52, at 137.

One example of continuous quality improvement is New York's statewide Best Practices Committee, created by the District Attorney's Association of the State of New York (DAASNY).¹⁸⁶ This Committee's chair, Kristine Hamann, has advocated for the implementation of statewide best practices committees throughout the country through the Department of Justice Bureau of Justice Assistance.¹⁸⁷ In 2009, the state's criminal justice stakeholders widely discussed wrongful convictions and the innocence movement.¹⁸⁸ The New York State Bar Association created a task force and produced a report analyzing the contributing factors of wrongful convictions.¹⁸⁹ New York's Chief Judge Jonathan Lippman also created the Justice Task Force to examine the causes of wrongful convictions and recommend reforms.¹⁹⁰

The DAASNY responded by creating the "Fair and Ethical Administration of Justice Committee" which contained three subcommittees: Best Practices, Ethics, and Mutual Assistance.¹⁹¹ The Best Practices Committee "explore[s] ways to improve the investigation and prosecution of criminal cases and to respond to issues arising from wrongful convictions."¹⁹² The Ethics Committee analyzes ethical issues that may arise for prosecutors and provides updates on changes to case law or rules to the DAASNY.¹⁹³ The Mutual Assistance Committee provides back-end support in reinvestigating wrongful conviction claims for prosecutor offices requesting assistance.¹⁹⁴ Members of the subcommittees consist of senior ADAs that meet once a month, alternating between Albany and New York City.¹⁹⁵

The Best Practices Committee began by reviewing recent exoneration files.¹⁹⁶ A prosecutor from the county in which a wrongful conviction occurred would present the case to the Committee, identifying issues and lessons learned.¹⁹⁷ These initial inquiries led the Committee to hone in

¹⁸⁶ Hamann, *supra* note 44, at 18, 20.

¹⁸⁷ Kristine Hamann is a Visiting Fellow at the Department of Justice's Bureau of Justice Assistance. *BJA Visiting Fellows Program: Kristine Hamann*, BUREAU JUSTICE ASSISTANCE, <https://www.bja.gov/Programs/Fellow-Hamann.html>.

¹⁸⁸ Hamann, *supra* note 44, at 20–22.

¹⁸⁹ Kristine Hamann, *New York Law Enforcement Creates Best Practices to Prevent Wrongful Convictions*, CRIM. JUST., Fall 2012, at 36, 37.

¹⁹⁰ The permanent task force made recommendations in the areas of discovery, eyewitness identification, custodial interrogations, and forensics. *About the Task Force*, N.Y. STATE JUSTICE TASK FORCE, <http://www.nyjusticetaskforce.com/mission.html>.

¹⁹¹ Hamann, *supra* note 44, at 20.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

on two common problems: eyewitness identification procedures and interrogations.¹⁹⁸

The Committee discovered that counties had few written procedures or training to conduct eyewitness identification.¹⁹⁹ Thus, the Committee created statewide procedures “designed to make identifications fair, neutral, and reliable.”²⁰⁰ Next, the Committee fostered buy-in from police agencies across the state by requesting improvement recommendations.²⁰¹ On May 19, 2010, the president of DAASNY and the New York City Police Commissioner announced the statewide adoption of the identification procedure guidelines.²⁰² The guidelines specified various best practices, such as providing written instructions to the witness, advising the witness that the suspect may or may not be present, not commenting during the identification, and recording the witness’s words and reactions.²⁰³

The Best Practices Committee’s initial success led to a coordination effort with the New York Division of Criminal Justice Services (DCJS) to develop a statewide training program on identification procedures.²⁰⁴ The training program encompassed day-long training sessions as well as online training.²⁰⁵ The New York City Police Department, New York State Police, and many urban, suburban, and rural communities have adopted the eyewitness identification procedures.²⁰⁶

The Best Practices Committee then progressed to other areas, such as video recordings of custodial statements.²⁰⁷ While some opposed the policy, many saw the benefits, such as having a full record of a suspect’s statement, rebutting allegations of false confessions, and utilizing the recordings for training purposes.²⁰⁸ To overcome financial constraints with recording interviews, the Committee received funding from DCJS and the New York State Bar Association.²⁰⁹ On December 14, 2010, New York’s district attorneys and police agencies jointly announced the endorsement of videorecording custodial interrogations.²¹⁰

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 20–21.

²⁰⁰ *Id.* at 20.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *New York State Photo Identification Guidelines*, N.Y. STATE DIST. ATT’Y’S ASS’N BEST PRACTICES COMM’N (Apr. 18, 2014), http://www.criminaljustice.ny.gov/ops/training/other/story_content/external_files/photoarrayguidelines.pdf.

²⁰⁴ Hamann, *supra* note 44, at 21.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 21–22.

²⁰⁷ *Id.* at 22.

²⁰⁸ *See id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

The Best Practices Committee improves the criminal justice system by systematically allowing prosecutors to “proactively recommend improvements, learn about new evidence, and brainstorm difficult issues, all with the goal of getting it right in the first instance.”²¹¹

C. Recommendations

The development of CIUs to reform procedures stemming from wrongful convictions is a necessary step in the right direction. However, reform should not come exclusively as a result of a wrongful conviction. Systematic procedures for process improvement should be a constant element of a prosecutor’s office, much like Air Force weapons shops and New York’s Best Practices Committee.

To achieve this, states should install statewide organizations targeted to identify prosecutorial deficiencies and disseminate best practices. The source could come from a state legislature,²¹² but a more practical solution is for a district attorney association or a state attorney general’s office to establish a best practices committee with appointed representatives from each jurisdiction. Each county representative should be a senior deputy/assistant district attorney who has the experience and expertise to provide meaningful input to the committee. The representative should answer directly to the district attorney to encourage clear lines of communication between the committee and each district attorney. Internal to each prosecutor’s office, the best practices representative should establish a means to foster internal best practices, much like the TIP procedures within Air Force units. These internal best practices should also feed into the state committee for broader vetting and implementation.

The committee should meet quarterly for presentations, case analysis, and discussion. Just like the case review process in Allegheny County, the best practices committee can evaluate a case from inception to dismissed charges, conviction, or exoneration. A close analysis of most cases will reveal systematic missteps. These case studies will then identify system issues that can be assigned to a particular individual or office for creative solutions. These solutions can either be presented at the next quarterly meeting or at an annual symposium.

²¹¹ *Id.* at 26.

²¹² *See, e.g., Agenda, Timothy Cole Exoneration (Oct. 29, 2015)*, TEX. JUDICIAL COUNCIL REVIEW COMM’N, www.txcourts.gov/media/1125653/2015_1029_TCERC.pdf. (The Texas Legislature recently established a commission charged with identifying the causes of wrongful convictions and more specifically, inter alia, to “ascertain errors and defects in the laws, evidence, and procedures applied or omitted in the defendant’s case . . . identify any patterns in errors or defects in the criminal justice system . . . that impact the pretrial, trial, appellate, or habeas review process.”).

The best practices committee should additionally hold an annual review board or symposium presenting best practice proposals with the expectation that all jurisdictions propose at least one substantive recommendation. The committee should also invite all stakeholders in the criminal justice system, such as judges, the defense bar, the Innocence Project, victims' rights groups, and police departments. Buy-in from related organizations is critical to develop meaningful change. The New York Best Practices Committee worked closely with police agencies to reform its eyewitness identification procedures. Without their support, significant progress would not have been possible.

The state attorney general's office should also be involved. Many states defend post-conviction through the attorney general's office instead of the county district attorney.²¹³ The massive caseloads provide a plethora of identified mistakes at trial.²¹⁴ Thoughtful databasing of reoccurring issues such as sentencing errors, Brady violations, or search and seizure missteps can provide a source of systematic errors ripe for analysis and reform. As in Allegheny County, this process must emphasize system evaluation and not finger-pointing. A cultural change may be necessary to take a critical look at the status quo and improve policies.

The first session of the yearly symposium could begin with case studies, chronic problem presentations, formal proposed solutions, and discussion. Case studies and presentations could come from counties that have conducted in-depth case reviews, as in Westchester County and Allegheny County. The next session could include small working groups to refine policies, addressing highlighted concerns. The last session could include finalizations of a new policy and implementation plans. Committees can establish streamlined processes where a district attorney's office may propose a statewide policy, members can discuss and refine the proposal, and re-present at the conclusion of the conference for discussions on implementation plans.

D. *Response to Potential Objections*

As with any change, there will be roadblocks. Cultural change takes time but should start at the top. While many prosecutors adapted to the changes in Dallas County after Watkins's election, others did not and ul-

²¹³ See, e.g., *Criminal Appeals*, FLA. ATT'Y GEN., <http://myfloridalegal.com/pages.nsf/Main/7295a759cf3fb5c985256cc600587a33>; *Criminal Justice Divisions*, TEX. ATT'Y GEN., <https://www.texasattorneygeneral.gov/cj/criminal-justice-divisions>.

²¹⁴ See Adam M. Gershowitz & Laura R. Killinger, Essay, *The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants*, 105 NW. U. L. REV. 261, 287–88 (2011); see, e.g., *Trial*, OR. DEP'T JUSTICE, http://www.doj.state.or.us/divisions/pages/trial_index.aspx (The unit responding to state post-conviction relief and federal habeas corpus claims at Oregon Department of Justice “manages an extremely high volume caseload, and typically has over 2000 cases pending at any point in time.”).

timately left the district attorney's office. Establishing a statewide best practices committee may meet resistance from district attorneys in addition to line prosecutors within an office. District attorneys set policy and any perceived infringement on this authority will likely be met with skepticism. However, a best practices committee would work within a district attorney's association, providing each district attorney a voice in how a particular best practices committee is established. Also, a best practices committee is intended to improve the full spectrum of the criminal justice process, not point fingers or force ill-advised policies onto district attorneys. Appointing a well-regarded senior deputy as the best practices representative with direct access to the district attorney is thus critical.

Similarly, some may oppose working with the defense bar, Innocence Projects, or other organizations at annual symposiums. This misplaced fear has no merit. Defense attorneys and Innocence Projects have a critical role in the criminal justice system and provide a valuable perspective. Broad, meaningful improvements to the process require involvement from all stakeholders.

Certain prosecutors may oppose colleagues scrutinizing their work. In similar fashion, committee representatives may hold back on their critique of fellow prosecutors.²¹⁵ To combat this, the best practices committee must establish a culture focused on improvement, not assigning blame.

Many communities, especially rural counties, may struggle to fund their participation. However, a statewide best practices committee provides a cost-effective solution to smaller communities that cannot afford full scale CIUs or other innovative programs.²¹⁶ Pooling resources together for statewide best practices reduces costs for all. Small prosecutor offices may also reap the largest benefit by the increased exposure to differing perspectives.

Large states such as California and Texas should consider regional committees subordinate to the statewide committee. Regional best practices can be developed and vetted before making proposals at the statewide level. This will not only cut down on travel costs but will also improve efficiency by providing smaller jurisdictions a larger voice at the regional level. Organizationally, the regions could mirror federal jurisdictions or state appellate courts.

Lastly, potential statewide best practices committees must be mindful that practices around the state differ significantly.²¹⁷ This is due in part to regional requirements or long-standing traditions.²¹⁸ Representatives

²¹⁵ See Vance, *supra* note 78, at 634.

²¹⁶ Hamann, *supra* note 44, at 24.

²¹⁷ *Id.* at 20.

²¹⁸ *Id.*

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should factor in regional differences and focus on improvements applicable across the state.²¹⁹

V. CONCLUSION

Programs such as CIUs, sentinel-event reviews, Air Force Weapons and Tactics, and best practices committees all take differing approaches but accomplish similar goals: identify systematic mistakes, reduce errors, and improve quality. Prosecutor offices that have not implemented any improvement procedures can learn from the examples discussed above to aid in the development of a program that fits their needs. Regional differences between states, and even between counties, will drive different requirements in establishing a best practices process. Improving police and prosecutorial procedures will reduce errors like the ones that occurred in Lawrence O'Connell's case. Thomas's false confession did not result in a wrongful conviction, but learning from confession contamination flaws may prevent future wrongful convictions.

²¹⁹ *Id.*