

Conviction Review Unit

APPLICATION “LEGAL WORK-UP” PROCESS

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Who we are & What we do

The NJ CRU is one of the first statewide conviction review units in the nation to be based out of the Attorney General's Office. It was founded in April 2019.

The office reviews claims of **actual innocence** by persons convicted of **felonies** in New Jersey state courts to determine whether there is **clear and convincing evidence** of actual innocence.

Process Overview

- 1. Application:** The convicted individual submits an application for review. Additional legal documents and criminal history are added to the package
- 2. Screening:** screening team reviews application package and drafts a memo with next-step recommendations
- 3. Close a case** after screening OR
- 4. Re-investigation:** Conducted by CRU attorneys and investigators
- 5. Conclusion** of Re-investigation: Memo is sent to the Attorney General to either take no legal action, set aside the conviction, modify the conviction or seek a re-trial

Your Role: Application Additions

Once an application is received, attorneys, para-professionals, and volunteers gather additional information pertaining to the applicant's case. This information is added to the application package for the screeners to review.

Look for:

- Appellate opinions related to the conviction
- Post-conviction relief opinions
- Federal opinions
- Media accounts
- Trial/hearing transcripts
- Appellate briefs
- All other information available about the case

Resources

These documents are accessed through:

- Westlaw: for appellate opinions and available briefs filed
- LexisNexis Advance
- Archives maintained by Rutgers Law School
- N.J. State Library
- PACER: for habeas petitions filed
- Google/Bing: for information on the defendant and the case

If an exhaustive search fails to produce an appellate opinion related to an application based on a conviction from a trial, the CRU analyst contacts the New Jersey Judiciary Appellate Division for that opinion, as well as any available briefs and transcripts related to that opinion.

Common Red Flags

Mistaken eyewitness identification

“Incentivized” testimony, for example, jailhouse informants

False confessions, particularly from young defendants or cognitively impaired defendants

Police or prosecutorial misconduct

Forensic Science problems

Identification issues

One identification witness or more?

Stranger to stranger identification?

Identification in person or by photo?

How long did identifying witness observe assailant? Under what lighting conditions? Was there focus on a weapon?

Is the witness's original description consistent with the defendant's appearance?

How certain was identifying witness (certainty alone is not indicia of reliability.)

Use common sense. If it seems impossible to make an identification in the circumstances outlined, it probably is.

Confession issues

Age/mental status of confessing defendant

Are the initial details provided by the defendant consistent with other evidence

Were the circumstances of the interrogation out of the ordinary, such as: an excessively long interrogation, taking the defendant to the crime scene, or inappropriately revealing information about the crime to the suspect

Was the crime a high-profile offense in the community which was not solved quickly

Defense Counsel issues

Strickland Standard: Deficient performance which were so egregious as to deprive defendant of a fair trial.

Examples:

- Failing to interview witnesses pre-trial
- Failing to obtain and review discovery
- Failing to object to inadmissible evidence
- Failing to effectively impeach witnesses
- Failing to develop a coherent defense
- Conceding the defendant's guilt at closing

Police and Prosecutor issues

Police

- Failing to record or turn over identification of other individuals
- Failing to record or turn over confessions of other individuals
- Threats to witness, eg. involving child protective services
- Early tunnel vision in the direction of defendant

Prosecutors

- Encouraging witnesses by using improper incentives
- Failing to turn over exculpatory evidence
- If the prosecutor makes a decision concerning guilt too early in the process, s/he can also develop tunnel vision and disregard or minimize subsequent evidence that contradicts his earlier conclusion of guilt

Forensic issues

Certain types of testing have been discredited to different degrees: certain arson evidence, trace evidence, and bite mark testimony

Certain items that were not tested successfully for DNA in the past can now be successfully tested.

Your Recommendation

After finding the appellate decisions and reviewing the application, you will make a recommendation about with what priority the case should go to the screening teams. Rate the package from 1-3.

1 – the application on its face demonstrates a plausible claim of actual innocence

2- the application demonstrates a plausible claim of actual innocence but factually there is no evidence independently corroborative of the claim

3 – the application demonstrates no claim of actual innocence or there is a procedural bar

Prepare a short (1-2 paragraphs) synopsis about your case and explaining your rating.

What happens next?

While you do the legal work-up, a detective obtains a criminal case history for the applicant. The entire package is sent to the unit screeners who then screen the application.

The package consists of:

- Application
- Documents sent in support of the application by the applicant
- All appellate and other documents gathered regarding the case
- Summary of the applicant's criminal history

Regarding Confidentiality

Must sign confidentiality agreement.

Cannot discuss specific case details with non-CRU staff.

If you have a digital copy of paperwork, keep it safe.

What to do next if you are interested:

Email your interest to Peggy Borghoff at BorghoffM@njdcj.org

You will receive by return email a confidentially agreement to electronically sign and return

You will then receive an electronic file containing at least an application and, in some cases, any supporting documents they applicant may have sent. You will also receive a contact number for our analyst Kathy Ratliff, if you have questions.

When you have found all available opinions and open media source information regarding the case please return electronically to Peggy Borghoff. Please include a 1-2 paragraph narrative including your rating and reasoning as to the rating.

If you find no opinions or media accounts after a reasonable search, please let us know. We may have a resource in the courts which can help or the case may just be too new. We can also provide you with an additional case if you wish.

Subsequent contact with the screeners.

Questions?

THANK YOU!

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