

Government Misconduct, Convicting The Innocent, and The Conviction Integrity Unit

A letter from an innocent man while still in prison 15 years after a 2008 murder he did not commit.

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While the formation of county level Conviction Integrity Units (CIU's) has been a great first step in correcting the wrongful convictions of the past, they are not enough. There is no incentive or sense of urgency for them to overturn convictions. Since they are a part of the district attorney's office whose enforcement arm is the police, they actually have to expose crimes of their own colleagues and people they have professional and personal relationships with. This presents a clear conflict of interest.

I actually feel victimized all over again, as my case has sat with the Contra Costa CIU for over a year and a half, while other priorities have been placed before it. I could understand the delay if the evidence I presented to the CIU was ambiguous or incomplete and needed further investigation. However, the professional misconduct that occurred in my case was so overwhelming and blatant that there is no way that it could be overlooked. The case I presented is solid and can stand on it's own. It is clear that actual innocence claims are not a priority for the CIU since they do not have court deadlines.

In January of 2022 my mother delivered my actual innocence claim to the CIU, with all supporting evidence, showing that my conviction was based on perjured testimony suborned by both my trial attorney (counsel) and the prosecutor. I provided transcribed proof of witness tampering and showed a clear conspiracy between the Walnut Creek Police, counsel, and the prosecutor to permanently suppress exculpatory and impeachment evidence. The identification of myself as the perpetrator had only been possible because the entirety of two 911 calls and three eye witness interviews taken the day of the murder were withheld from the jury and myself. I listed and provided proof of several crimes committed by the Walnut Creek Police, counsel, prosecutor, and witnesses before, during, and after my trial.

I received a letter from the CIU dated January 26, 2022, stating that they received my application, that they might contact me for more information if needed, and thanking me for my patience. After a couple of months my mother called the DA's office and was told they have a six month back log. Then, after

nine months, she was told that they most likely won't be able to review my case till the summer of 2023, because the new resentencing laws take priority over actual innocence claims. The resentencing cases have court deadlines and actual innocence claims do not. This meant that there could be an indefinite postponement of cases such as mine as new laws and priorities come into play.

This seemed fundamentally unfair, so I put the energy I felt to constructive use. In November 2022, I wrote about my case and the delay with the CIU to the governor, several government agencies both local and federal, many advocacy groups, and investigative reporters. As of August of 2023, I have not received any responses from my writings. What is most disheartening is that the CIU has left me in prison for over a year and a half now, while ignoring every request for information and evidence my mother has asked for.

I stated that my complaint is that the CIU is underfunded and understaffed. Why would a unit with limited funding and resources be burdened with resentencing when they have not fulfilled their original mandate or had even one exoneration? Shouldn't the real priority be to spring the wrongfully convicted from prison without delay? Such as is in this headline:

Mission of DA's New Unit is to Spring the Wrongly Convicted from Prison by Annie Sciacca and Nate Gartrell PUBLISHED: May 24, 2019 in the East Bay Times.

In January 2023, my mother then received a call from DDA Feinberg, the head of the CIU. He called to inform her that my case had come up for review and that he will be investigating it. I can still remember the excitement and joy in my mother's voice as she told me that she finally received the call that we have been waiting for. She asked him if she could send him the digital audio/video copies of the witness interviews and one 911 recording that could not be transcribed. He already had the certified transcripts of the two interviews that she was able to have transcribed in 2014.

Between January and February 1st, DDA Feinberg e-mailed my mother, letting her know that he was waiting on the 'record of conviction' from the Attorney General. Her understanding is that this is a complete digital record of my case, which should contain digital copies of the two 911 calls and three eyewitness interviews taken the day of the murder - recordings that were never transcribed by the prosecution or counsel and kept from the jury, my appellant attorney, and myself.

Since February 1st DDA Feinberg has now ignored every attempt my mother has made to communicate. She has continued to ask if he wanted the digital copies of the interviews, as he never gave her a

positive reply. She sent him more evidence of misconduct including a marsden transcript. She sent e-mails with information and asking for the common courtesy of a reply to just let her know if he has received what she sent by mail and e-mail, her correspondences have gone unanswered. On March 14th, I sent a three page letter to DDA Feinberg explaining my position and asking him to please reply back to my mother. As of August 2nd, I have not received a reply. Neither the Attorney General's Office or the CIU will give my mother nor me a confirmation of whether the 'record of conviction' has been requested or sent to the CIU. We have asked for a copy of it so that I could file a habeas corpus, but those requests have gone unanswered.

It has become clear that until the CIU receives pressure to do the job they were mandated to do, they will continue to stall or have their resources redirected in order to protect their present and former colleagues.

The misconduct that occurred in my case carries criminal charges. I wrote in my letter to DDA Feinberg that I did not care about others being held accountable for their transgressions. However, if it wasn't for the professional misconduct in my case, it would have never made it to trial. I wouldn't have lost my fiancé and the last fifteen years of my life. It is apparent, that unless I push for the public servants to be held accountable for their crimes, my case will just keep being ignored.

Since there is no court deadlines or apparent oversight, cases like mine could be postponed for years without any accountability for the delay. Should I sit quietly in prison this entire time for a crime I did not commit?

The wrongfully convicted and their families deserve better than what we are receiving now.

We received four of the five recordings in 2014 from a third party. They cost me nearly a five-million-dollar judgment; however, without Rhoads' filing a wrongful death civil suit against my parents and myself, we would have never received any of these recordings. They would have been lost forever, as the courts refused to order them to be turned over unless I was able to prove they had exculpatory value (which was of course impossible without having them in the first place).

Mendell's 911 call was missing, Rhoads 911 call's (tampered) volume was too low to be transcribed, and Longfellow's one hour and twelve minutes video interview had no sound.

Rhoads and Mendell's interviews were the only two recordings that were able to be transcribed. This cost my mother \$1,000 (money of which she did not have and had to borrow). However, this new

evidence proved that both Rhoads and Mendell had given perjured testimony during the trial. I thought that with this 'new evidence', I would finally have my case heard and overturned. However, neither my parents nor I had money for an attorney, so I had to file a habeas on my own. It was denied without receiving an evidentiary hearing to review the recordings. My parents and I were again devastated. To this day the court has still not heard or reviewed this new evidence.

Counsel used his experience as a prosecutor to help his former colleague, Steven Moawad win his first murder trial and then helped him make it so I would never be able to get my case heard in court. He made sure that the Walnut Creek police, prosecutor, and himself would never be held accountable for burying the evidence in my case. By 2016, I was devastated and without hope of ever being able to prove my innocence. By this time, it was explained to me that I would never be able to get my case overturned. The way the law was written, I would have to be able to prove my innocence before getting heard by the court. There was no DNA in my case and the prosecution claimed to not have tested my clothing for blood or pepper spray. These tests would have at least proved that whoever shot Joshua wasn't wearing clothing taken from my house. Clothing the jury had been led to believe was worn by the assailant.

I had become so desperate to get out of prison that I was willing to admit to the shooting of Joshua, something that I would never have done, nor have I ever had a reason to do. By the time Covid arrived at Soledad, I was in such a bad state that I would have confessed to the assassination of Kennedy or any case that I might have been accused of, if I thought it would get me out of prison and be able to be with my parents to help them out.

It was explained to me that the ONLY way I was ever going to be released was through the Parole Board. I was also told that the Board does not release people who claim to be innocent. Therefore, if I ever wanted to be released, I would have to say that I murdered Joshua and really own this. Try to imagine the mental and emotional gymnastics the wrongfully convicted has to go through to do this.

My parents are aging and I need to be there for them, as they have always been there for me. An inmate cannot go to Board and halfway take responsibility for the crime he is accused of. It is a guaranteed denial based on lack of insight, lack of remorse, minimizing, or a handful of other reasons they fabricate. Therefore, I would have to get comfortable with and used to saying that I did something that I did not do.

When Covid ran through this prison, inmates were dying and being moved between three different yards into tents and an overfilled gym. Near the end of 2020, I was trapped in a cell 24-hours-a-day on lockdown with another inmate who was always angry and had Covid. I was full of anxiety. I literally thought I was going to die here at Soledad. I was desperate because I was cut off from seeing my parents. I thought I would never see them again. To further my anxiety, I found out that my dad, Tony had back surgery (of which he has still not recovered from).

Then I heard of the CIU and read the LA Special Directive 20-13. I was given new hope. Finally a unit was instituted for cases just like mine. I was no longer time barred from having my case heard. My parents and I were given hope once again.

Update - In June of 2023, I found on pages 29 and 30 of the police report that the prosecutor's claim that my jacket was not tested for blood was a lie. On March 21, 2008 my jacket was sent to the crime lab to be tested for blood residue. The prosecutors claim that the jacket wasn't tested was perjury and fraud on the court. The results of the test not being turned over to the defense was a *Brady* violation. This new evidence was turned over to the CIU immediately, and they still have not made any attempt to contact me or at the very least acknowledged any of the misconduct that occurred in my case.

While I am abundantly grateful that the need for CIU's has been recognized, it is clear that they are not doing the job they were mandated to do. Whether it is because they have pressure from colleagues or because they have had a stranglehold put on them by being understaffed and underfunded doesn't matter. The wrongfully convicted and their families continue to be victimized by being separated and living under the stigma of guilt.

It is clear by the 2021 report on Government Misconduct and Convicting the Innocent that very few cases each year get overturned by the CIU's alone. The large majority of cases like mine where misconduct has been hidden, never see the light of day.

Our CIU's must receive more staff and funding before a dent can be taken out of all the misconduct which has been hidden from the public. A dedicated CIU is needed whose resources are not divided; one which only works on cases of wrongful conviction. If this does not happen, then it is clear that they are only here to give the appearance of correcting wrongful convictions while being prevented from doing so. I pray that this is not the case.

It is unconscionable that an actual innocence claim has to wait over a year before a review has even started. It has already been over 15 years since I was torn from my life, lost my fiancé, and had my friends and parent's lives thrown into turmoil. If this was your family member, would you find this acceptable? I am the one who is in prison, why has no one tried to interview or talk to me?

I hope and pray that my case and others like it will be brought to the attention of the public so that changes can take place. From my conversations with other inmates, government misconduct and their cover ups are normal practice as there is little to no oversight or accountability even when misconduct charges are filed. Something has to change.

Thank you,

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