

THE INDELIBLE FLAWS OF CONVICTION INTEGRITY UNITS

SARAH GOTTLIEB*

Conviction Integrity Units within prosecutors' offices have doubled in number over the last 10 years. Leaders of the innocence movement initially praised these units, believing they were necessary for the future of innocence work given their unique access to discovery, and scholars hoped Conviction Integrity Units would lead prosecutors away from fighting against claims of innocence to sincere and open review of wrongful convictions. But, as Conviction Integrity Units proliferated, the question of whether prosecutors can fulfill the mandate of these offices and conduct thorough review of their colleagues' work has received insufficient inquiry, particularly given that official misconduct continues to be a leading cause of wrongful convictions.

This Article is the first to conduct in-depth analysis of multiple Conviction Integrity Units and evaluate their efficacy. By analyzing three separate units in jurisdictions with the highest rates of wrongful convictions, this Article reveals that legitimate claims of innocence are often rejected and response to scandal is insufficient and slow when time is of the essence. In so doing, it lays out an inherent framework of flaws articulating why Conviction Integrity Units are not functioning as the reform many had hoped. They suffer from a lack of transparency and inconsistency in leadership that can frustrate even the best intentions. They inappropriately rely on

* Assistant Clinical Professor, Director of the Criminal Justice Clinic at Washington & Lee University School of Law. For insightful feedback on earlier drafts, thank you to Laura Abelson, Valena Beety, Aliza Hochman Bloom, Kyle Compton, Sarah Cravens, Shannon Fyfe, Caitlin Glass, Drake Hagner, Bradley Hall, Brandon Hasbrouck, Shannon Heery, Mia Jackson-Rosenthal, Rachel Kincaid, Jonathan Kerr, Alex Klein, Katie Kronick, Kate Kruse, Evelyn Malave, Alexi Pfeffer-Gillett, Mridula Raman, Peter Robau, Maneka Sinha, Carrie Stanton, Vincent Sutherland, and Jessica Wherry. I am grateful for the invaluable research assistance of Emma Claire Canterbury and Allie Cyr. Substantial thanks are due to the incredible editors at the University of Colorado Law Review for their thorough comments and meticulous editing. Finally, I am deeply grateful to George Adams for your invaluable notes and numerous edits.

self-policing prone to bias to fix ethical violations of the past while those in charge of the units are still engaging in prosecutorial misconduct in the present.

This Article shows that Conviction Integrity Units operate under the guise of a legal reform while truly functioning as a cloak of legitimacy for prosecutors and the criminal legal system. Exonerations provide a veneer of successful operation, regardless of whether the state played a meaningful role. They encourage the misperception that deeply rooted systemic problems are a deviation from the status quo, caused by single bad actors and fixable by singular exonerations. They fail to provide adequate remedies for past harm, thereby failing to change current practices and prevent the same acts from occurring in the future. Conviction Integrity Units therefore perpetuate the criminal legal system's inherent flaws. Misplaced reliance on them causes harm to individuals seeking review of their innocence claims and condones the causes of wrongful convictions they aim to undo.

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INTRODUCTION

In 1974, Mr. Isaiah Andrews's wife was murdered in Cuyahoga County, Ohio.¹ She was found wrapped in bed sheets from two local Howard Johnson motels.² No physical evidence implicated Mr. Andrews and there were no eyewitnesses to the crime. Yet, he was charged and convicted of his wife's murder.³ The State's case rested primarily on the inconsistent testimony of two individuals—a housekeeper and a resident of the motel where Mr. Andrews lived with his wife.⁴ The motel was not a Howard Johnson motel. At trial, the State's key witnesses changed their stories, adding new details that they admitted never telling the police. Even though the resident of the motel originally told police that Mr. Andrews and his wife did not argue, at trial she would create the impression that Mr. Andrews argued with his wife. The housekeeper of the motel added that the sheets were stripped from the bed in the room where Mr. Andrews and his wife were staying.⁵ Mr. Andrews spent the next 45 years in prison proclaiming his innocence.⁶

In 2020, after serving over four decades in prison, Mr. Andrews's conviction was vacated because prosecutors had failed to turn over exculpatory information at the time of the original trial, including that a different suspect had originally been arrested for the murder.⁷ This suspect was staying at a local Howard Johnson and had taken his bed sheets out of his room on the night of the murder.⁸ In addition, detectives' notes indicated

1. Ken Otterbourg, *Isaiah Andrews*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/13104> [<https://perma.cc/T3E5-TQ2B>] (last updated June 27, 2025).

2. *Id.*

3. *Id.*

4. *Id.*

5. *See id.*

6. *See Longest Incarcerations*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/longestincarceration> [<https://perma.cc/XN2T-HZZY>].

7. *See* Amanda Holpuch, *Court Declares Man Wrongfully Imprisoned for 45 Years*, N.Y. TIMES (Mar. 11, 2022, at 11:15 AM), <https://www.nytimes.com/2022/03/11/us/isaiah-andrews-released-ohio.html> [<https://perma.cc/KAT4-Z8U4>].

8. *See* Otterbourg, *supra* note 1.

that Mr. Andrews may have been excluded as the source of the only forensic evidence taken in the case, a bloody palm print.⁹ Despite this exculpatory evidence that state officials withheld, Michael O'Malley, the prosecuting attorney for Cuyahoga County in 2020, would not drop the case.¹⁰ Instead, he offered Mr. Andrews a guilty plea with no jail time.¹¹ When Mr. Andrews continued to proclaim his innocence—as he has since 1974 and throughout 45 years of imprisonment—the State decided it would retry the case against him.¹²

At his retrial, Mr. Andrews had to sit at the defense table in a wheelchair.¹³ He was 83 years old, had terminal cancer, and was fed intravenously.¹⁴ The jury found him not guilty within an hour.¹⁵ Tragically, Mr. Andrews passed away six months later.¹⁶ Mr. Andrews's incarceration was the fifth-longest recorded prison term in the history of the United States that an exoneree has served for a crime they didn't commit.¹⁷

Cuyahoga County has a Conviction Integrity Unit (CIU).¹⁸ CIUs are units housed in local prosecutors' offices that investigate claims of innocence to determine if a defendant has been wrongfully convicted.¹⁹ The CIU in Cuyahoga County has

9. *See id.*

10. *See* Holpuch, *supra* note 7. When a case is vacated, it functions as a reversal of the conviction. However, the original charge remains, and the prosecution must decide whether to continue to pursue charges or dismiss the charges. *See, e.g.*, Md. R. 4-333(i) (2023) (instructing the state's attorney on their post-vacatur actions).

11. Otterbourg, *supra* note 1.

12. Holpuch, *supra* note 7.

13. Terry Gilbert, *Op-Ed: Cuyahoga County's Conviction Integrity Unit Must Do Better*, CLEVELAND SCENE (Dec. 16, 2022, at 8:33 AM), <https://www.clevescene.com/news/op-ed-cuyahoga-countys-conviction-integrity-unit-must-do-better-41030821> [<https://perma.cc/7A7J-NJSB>] (referencing that Gilbert represented Mr. Andrews in his civil case).

14. *Id.*

15. *Id.*

16. Sarah Buduson, *OH Controlling Board Approves \$3 Million for Estate of Cleveland Man Wrongfully Imprisoned for 45 Years*, NEWS 5 CLEVELAND, <https://www.news5cleveland.com/news/local-news/investigations/oh-controlling-board-approves-3-million-for-estate-of-cleveland-man-wrongfully-imprisoned-for-45-years> [<https://perma.cc/7TRV-2TM5>] (last updated Dec. 18, 2023, at 4:45 PM).

17. *See Longest Incarcerations*, *supra* note 6.

18. *Criminal Division: Conviction Integrity Unit*, CUYAHOGA CNTY.: OFF. OF THE PROSECUTING ATT'Y, <https://www.ccprosecutor.us/who-we-are/divisions-and-units> [<https://perma.cc/6FWX-5PYJ>].

19. Barry C. Scheck, *Conviction Integrity Units Revisited*, 14 OHIO STATE J. CRIM. L. 705, 705 n.1 (2017).

existed since 2014.²⁰ Yet, Mr. Andrews is just one of the innocence cases O'Malley has fought against since his election in 2016.²¹ At least three men whose convictions were vacated because of evidence of innocence have been found not guilty by a jury after O'Malley decided to retry them.²² Since the formation of the CIU in 2014, there have been 19 exonerations that the CIU has either not participated in or that the prosecutor's office has actively fought against.²³ The CIU in Cuyahoga County has not pushed the culture of the office away from fighting against innocence claims, nor has it led O'Malley to collaborate with innocence projects to investigate wrongful convictions and exonerate defendants.²⁴

Prosecutors and district attorneys have historically fought against claims of innocence and litigated to maintain convictions, even in the face of overwhelming, unbiased evidence that

20. *Conviction Integrity Units*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/conviction-integrity-units> [https://perma.cc/VZQ9-XLZU] (last updated Aug. 1, 2025).

21. Lauren Gill, *In Cleveland Prosecutor's Office, a Long Trail of Death Sentences and Wrongful Convictions*, BOLTS (Mar. 15, 2024), <https://boltsmag.org/cleveland-prosecutor-death-sentences-wrongful-convictions> [https://perma.cc/2Z8M-5WA8].

22. *See id.*

23. *See Cuyahoga County*, NAT'L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/cases?f%5B0%5D=n_coc%3ACuyahoga&f%5B1%5D=state%3AOhio [https://perma.cc/3LR7-W64D]. O'Malley quickly gained a reputation for fighting against innocence claims, using threats of punishment to pressure defendants to plea regardless of their claims of innocence. *See Timothy Young & Mark Godsey, Cuyahoga Prosecutor's Handling of Conviction Integrity Unit Undermines Its Goal of Integrity*, CLEVELAND.COM (Dec. 18, 2022, at 5:40 AM), <https://www.cleveland.com/opinion/2022/12/cuyahoga-prosecutors-handling-of-conviction-integrity-unit-undermines-its-goal-of-integrity-timothy-young-and-mark-godsey.html> [https://perma.cc/6GCX-5AWK]. The failure to have a functional CIU has not hurt O'Malley politically. He beat back a more progressive challenger in the primary election held in the spring of 2024. *See Cory Shaffer, Cuyahoga County Prosecutor Michael O'Malley Fends Off First Primary Challenger*, CLEVELAND.COM, <https://www.cleveland.com/news/2024/03/cuyahoga-county-prosecutor-michael-omalley-fends-off-first-primary-challenger.html> [https://perma.cc/6SB2-4BQZ] (last updated Mar. 20, 2024, at 9:53 AM).

24. There has been only one exoneration recorded for the CIU since 2020, and it is questionable if this exoneration should count as CIU-involved. Though the CIU recommended supporting the exoneration, O'Malley did not. *See Cory Shaffer, Prosecutors Drop Case Against Cleveland Man Who Spent Time in Prison for Shooting That His Brother Confessed to Committing*, CLEVELAND.COM, <https://www.cleveland.com/court-justice/2024/06/prosecutors-drop-case-against-cleveland-man-who-spent-time-in-prison-for-shooting-that-his-brother-confessed-to-committing.html> [https://perma.cc/7FGJ-W2KW] (last updated June 14, 2024, at 10:08 AM).

they should doubt the integrity of their convictions.²⁵ This phenomenon of prosecutors ignoring evidence of innocence has been documented across the country.²⁶ Scholar Lara Bazelon has coined these prosecutors “innocence deniers,” and she argues that the adversarial drive to win convictions is their major motivating factor.²⁷ Scholar Daniel Medwed explains the common reasons for fighting innocence claims are cognitive bias, resource constraints, the penchant for finality, political concerns, and vague rules of ethics.²⁸

Regardless of their motivations, prosecutors will go to almost any length to protect a conviction. They have created a completely new theory of the case that did not align with what they argued in the initial trial.²⁹ They have refused to accept the results of new and exculpatory forensic evidence, including DNA.³⁰ They have ignored the discreditation of junk science.³¹

25. See generally Aviva Orenstein, *Facing the Unfaceable: Dealing with Prosecutorial Denial in Postconviction Cases of Actual Innocence*, 48 S.D. L. REV. 401 (2011) (analyzing why prosecutors ignore exculpatory DNA evidence); Daniel S. Medwed, *The Zeal Deal: Prosecutorial Resistance to Post-Conviction Claims of Innocence*, 84 B.U. L. REV. 125 (2004) (describing the political and institutional barriers that explain why prosecutors are deterred from recognizing innocence claims); Maneka Sinha, *Radically Reimagining Forensic Evidence*, 73 ALA. L. REV. 879, 917 (2022) (describing how prosecutors have collectively attacked various attempts to improve forensics).

26. See, e.g., Lara Bazelon, *Seventeen Cases of Denied Innocence*, SLATE (Jan. 10, 2018, at 11:30 AM), <https://slate.com/news-and-politics/2018/01/innocence-deniers-seventeen-cases-of-prosecutors-fighting-exoneration.html> [<https://perma.cc/P3CP-FSYC>] (describing 17 separate cases where prosecutors fought against compelling innocence claims in California, North Carolina, Pennsylvania, Illinois, Alabama, New York, Montana, Ohio, Nevada, and Virginia).

27. See generally Lara Bazelon, *Ending Innocence Denying*, 47 HOFSTRA L. REV. 393, 430–31 (2018) (summarizing the extensive literature on psychological reasons for innocence denying).

28. See DANIEL S. MEDWED, PROSECUTION COMPLEX: AMERICA’S RACE TO CONVICT AND ITS IMPACT ON THE INNOCENT 147–56 (2012).

29. See, e.g., Rob Warden, *Juan Rivera*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/11049> [<https://perma.cc/6NZP-C9XY>] (last updated May 5, 2022) (describing how prosecutors discounted exculpatory DNA results that eliminated Rivera as the source of semen in his third retrial on rape and murder charges by arguing the theory, for the first time, that the 11-year-old girl in the case was sexually active so Rivera could still be the murderer).

30. There have even been district attorneys who operate under the belief that exonerating DNA results do not prove innocence. District Attorney Forrest Allgood fought for defendants to remain incarcerated and on death row after learning of exculpatory DNA results. See Shaila Dewan, *Despite DNA Test, a Case Is Retried*, N.Y. TIMES (Sep. 6, 2007), <https://www.nytimes.com/2007/09/06/us/06dna.html> [<https://perma.cc/7HZ9-3U2M>].

31. See Radley Balko, *Election Results: One of America’s Worse Prosecutors Lost Last Night, but One of Its Worst Attorneys General Won*, WASH. POST (Nov. 4, 2015),

Prosecutors will even refuse to accept the recantation of a witness and instead charge them with perjury.³² To make sure they can continue to be innocence deniers, they resist any statewide efforts to codify their ethical obligations to rectify wrongful convictions.³³

The creation of CIUs was supposed to represent a new path forward in innocence work, where prosecutors would work alongside defense attorneys to investigate claims of wrongful convictions.³⁴ This new role would replace the drive to secure and maintain convictions that causes prosecutors to be “innocence deniers.”³⁵ Over the last 20 years, more than 100 CIUs have been formed across the country.³⁶ This expansion was done with calls to create CIUs from both sides of the aisle. Starting in 2010, prominent scholars within and outside of the innocence movement argued that CIUs are necessary given prosecutors’ access to discovery.³⁷ CIUs are also a core principle of the

<https://www.washingtonpost.com/news/the-watch/wp/2015/11/04/election-results-one-of-americas-worst-prosecutors-lost-last-night-but-one-of-its-worst-attorneys-general-won> [<https://perma.cc/WG3Q-GQKY>] (describing how District Attorney Forrest Allgood has defended his use of discredited bite mark analysts in his cases, including fighting against the exoneration of one defendant after exculpatory DNA results).

32. See, e.g., Maurice Possley, *Jerome Morgan*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/12016> [<https://perma.cc/7269-BH9N>] (last updated Nov. 29, 2022). While appealing the vacatur of the conviction and new trial for Jerome Morgan, District Attorney Leon Cannizzaro prosecuted the two eyewitnesses—the only remaining evidence in the case—for perjury. *Id.* They had recanted their original trial testimony explaining that it was caused by pressure from the police to identify Morgan. *Id.*

33. See *infra* Section II.A.

34. See Mike Ware, *Dallas County Conviction Integrity Unit and the Importance of Getting It Right the First Time*, 56 N.Y.U. L. REV. 1033, 1034 (2011) (detailing the creation and new approach of the Dallas County CIU).

35. See Bazelon, *supra* note 27, at 399, 431 (defining “innocence denying” and describing its consequences).

36. See *Conviction Integrity Units*, *supra* note 20.

37. See 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, 2249 (2010) (“[B]ased on greater prosecutorial access to evidence and witnesses, the prosecutor’s office would be the proper place to investigate and take steps to correct wrongful convictions.”) (citation omitted). See generally N.Y.U. SCH. OF L., ESTABLISHING CONVICTION INTEGRITY PROGRAMS IN PROSECUTORS’ OFFICES, https://www.law.nyu.edu/sites/default/files/upload_documents/2011-CACL-Conviction-Integrity-Programs-Report.pdf [<https://perma.cc/FW8D-G59K>] (explaining that prosecutors are already committed to conviction integrity and should formalize conviction integrity in their offices).

progressive prosecutor movement.³⁸ While these units have become a pillar for progressive prosecutors, they are even widespread in more traditional, conservative offices as well.³⁹

Yet the existence of a CIU within a prosecutor's office does not necessarily result in open and genuine review of innocence claims. Moreover, the mere existence of a CIU does not mean that the unit is investigating or involved in any exonerations at all: Only 52 of the 97 CIUs operating today have recorded exonerations, meaning 45 CIUs never have.⁴⁰ Of the 3,730 exonerations recorded since 1989, approximately 21 percent include the involvement of CIUs, although "involvement" does not appear to be an exacting standard.⁴¹ It can include everything from moving to exonerate a defendant, to consenting to a defense filing, to dismissing a case but only after fighting against the exoneration and exhausting every effort to appeal.⁴²

38. See BRENNAN CTR. FOR JUST., 21 PRINCIPLES FOR THE 21ST CENTURY PROSECUTOR 16, https://www.brennancenter.org/sites/default/files/publications/FJP_21Principles_FINAL.pdf [<https://perma.cc/F55M-VAM7>] (recommending conviction integrity units as a means of effective conviction review). While there is no widely accepted definition of the term "progressive prosecutor," there are prosecutors who run campaigns promising to use their power to reduce mass incarceration, hold police officers accountable, and address racial disparities. See generally Sarah Gottlieb, *Progressive Prosecution and the Progressive Prosecutor Movement*, in OXFORD RESEARCH ENCYCLOPEDIA OF CRIMINOLOGY (Henry Pontell ed., 2025).

39. See, e.g., *Prosecution Integrity Unit*, STATE'S ATT'Y FOR WICOMICO CNTY., MD, <https://wicomicostatesattorney.com/positions/prosecution-integrity-unit> [<https://perma.cc/2ERV-VZTU>]. Wicomico is in Salisbury, Maryland. Wicomico County has elected a Republican State's Attorney in every election since 2011. See *State's Attorneys*, MD. MANUAL ON-LINE: WICOMICO CNTY., MD., <https://msa.maryland.gov/msa/mdmanual/36loc/wi/stattorneys/former/html/00list.html> [<https://perma.cc/899X-C8MV>].

40. See *Conviction Integrity Units*, *supra* note 20. Currently, there are CIUs in 22 states. Twenty-eight states currently have no CIUs. The CIUs with no recorded exonerations are in Alabama, Arizona, California, Colorado, Connecticut, D.C., Delaware, Florida, Georgia, Illinois, Massachusetts, Maryland, New York, Ohio, Pennsylvania, Tennessee, Utah, and Virginia. There are no CIUs in Alaska, Arkansas, Hawai'i, Idaho, Iowa, Kentucky, Maine, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. *Id.*

41. *Id.* A recorded exoneration is coded with "CIU" when "[a] Conviction Integrity Unit helped secure the exoneration. (This does not necessarily mean that the prosecutorial office in question made a factual determination that the defendant is innocent.)" See *Understanding the Registry*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/understanding-registry> [<https://perma.cc/B5MP-FBQ7>].

42. See *infra* Section II.C.

The message that many seem to take away from the proliferation of CIUs and their participation in exonerations is twofold: First, that their existence equates to a shift in prosecutors' approach to innocence review and second, that CIUs are addressing the problems of the criminal legal system. Media coverage has justifiably lauded the prosecutors who have participated in exonerations, praising the work these CIUs have done.⁴³ Barry Scheck, one of the cofounders of the Innocence Project, has argued that the lessons we learn from these cases can be used to fix and strengthen the criminal system, viewing the causes of wrongful convictions as errors that can be corrected.⁴⁴ Criminologist Elizabeth Webster notes that the rapid expansion of CIUs and their participation in exonerations show that prosecutors now have political will to remedy wrongful convictions.⁴⁵ Scholar Lara Bazelon uses CIUs as examples wherein good prosecutors can seek truth and protect the innocent.⁴⁶

In practice, CIUs have failed to effectively address the misconduct committed by prosecutors from their own offices. Official misconduct of prosecutors and police remains a leading cause of wrongful convictions: 32 percent of exonerations involve prosecutorial misconduct and 60 percent involve official misconduct, where “[p]olice, prosecutors, or other government officials significantly abused their authority or the judicial process in a

43. See, e.g., All Things Considered, *A Surprising Crusader Against Wrongful Convictions*, NPR (Feb. 5, 2014, at 4:00 PM), <https://www.npr.org/2014/02/05/272100036/a-surprising-crusader-against-wrongful-convictions> [https://perma.cc/8KHA-JK3U] (transcript of interview with Craig Watkins, who established what many deem was the nation's first CIU in 2007).

44. See generally Barry Scheck, *The Integrity of Our Convictions: Holding Stakeholders Accountable in an Era of Criminal Justice Reform*, 48 GEO. L.J. ANN. REV. CRIM. PROC. iii (2019) (explaining the use of sentinel event review in the criminal arena); *The Case For Sentinel Event Reviews*, PENN CAREY L. (July 6, 2023), <https://www.law.upenn.edu/live/news/15956-the-case-for-sentinel-event-reviews> [https://perma.cc/BM3P-G4TX] (arguing for sentinel review of wrongful convictions to be done to correct “undesired or unintended outcomes”). Sentinel event review is a comprehensive review that seeks to get to the root causes of what went wrong and why without placing blame on individual actors. See *Sentinel Events Initiative*, NAT'L INST. OF JUST. (Nov. 1, 2017), <https://nij.ojp.gov/topics/articles/sentinel-events-initiative> [https://perma.cc/B8ZX-7V7S] (defining “sentinel events” and their manner of review in the criminal justice system).

45. See Elizabeth Webster, *The Prosecutor as a Final Safeguard Against False Convictions: How Prosecutors Assist with Exoneration*, 110 J. CRIM. L. & CRIMINOLOGY 245, 246–47 (2020).

46. See Bazelon, *supra* note 27, at 438–43.

manner that contributed to the exoneree's conviction."⁴⁷ This is the case even though almost 10 years have passed since a comprehensive review by John Hollway of the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania and Barry Scheck, the cofounder of the Innocence Project, recommended the best practices and guidelines for CIUs to follow, respectively.⁴⁸ These best practices compiled the most up-to-date data on CIUs and provided a roadmap, showing how CIUs could use what they learned from exonerations to enact front-end changes that would prevent wrongful convictions from occurring in the first place.

Though CIUs are tasked with learning from and remedying ethical violations that occurred in the past, corruption and abuse of authority continues today.⁴⁹ Misconduct has even occurred within the CIUs themselves.⁵⁰ Given this documented misconduct, there are serious questions regarding how CIUs can be the mechanism used to strengthen the criminal legal system or correct errors.⁵¹ If those in charge of these units are committing ethical violations themselves, how can they be trusted to hold

47. See *Understanding the Registry*, *supra* note 41. As of September 2025, a CIU was involved in 820 of the 3,735 exonerations; 534 of those CIU-involved exonerations involved official misconduct. Out of the 3,735 total exonerations, 1,208 involved prosecutorial misconduct, 2,262 involved official misconduct, and police officer misconduct was involved in 1,652, or approximately 44 percent. See *Explore Exonerations*, NAT'L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/cases?f%5B0%5D=n_pre_1989%3A0 [<https://perma.cc/Z8J5-5WHX>].

48. In *Conviction Review Units: A National Perspective*, John Hollway comprehensively collected data from the existing CIUs across the country and made thorough recommendations for those units to operate with transparency and accountability. See generally JOHN HOLLWAY, *CONVICTION REVIEW UNITS: A NATIONAL PERSPECTIVE* (2016). Barry Scheck, the founder of the Innocence Project, concurrently published *Conviction Integrity Units Revisited* in 2017, suggesting guidelines for CIUs that would lead to "productive, non-adversarial post-conviction reinvestigations and efforts to learn from errors involving multiple stakeholders." Scheck, *supra* note 19, at 713.

49. See, e.g., Shawn Mulcahy, *Leadership Scandals Surround Chicago's Wrongful Conviction Unit*, BOLTS (Mar. 14, 2024), <https://boltsmag.org/cook-county-chicago-wrongful-conviction-unit> [<https://perma.cc/92ZA-W98Z>] (reporting a former Chicago CIU leader resigned following accusations of deliberately withholding exculpatory evidence for over a decade).

50. See, e.g., *id.*; Madeline Buckley, *Amid Fight to Overturn Conviction, Special Prosecutors' Report Criticizes CPD Tactics, State's Attorney's Office Reinvestigation*, CHI. TRIB. (July 9, 2024), <https://www.chicagotribune.com/2024/07/09/amid-fight-to-overturn-conviction-special-prosecutors-report-criticizes-cpd-tactics-sao-re-investigation> [<https://perma.cc/5TJU-SE8Q>].

51. See, e.g., Mulcahy, *supra* note 49 (noting controversies and criticisms over the management of Chicago's CIU).

their colleagues, or themselves, accountable?⁵² There are also unanswered concerns about why so many CIUs struggle to produce exonerations despite having the access, ability, funding, and personnel to investigate and address wrongful convictions.⁵³

This Article is the first to assess the efficacy of CIUs and evaluate whether they are positively impacting the criminal legal system in their jurisdictions. This Article analyzes multiple CIUs by looking at their structure and screening process, their efforts to address past or ongoing prosecutorial misconduct, and instances where they join or fight against claims of innocence. This Article also dissects the CIUs' responses to large-scale scandal to determine whether the CIU takes the initiative to address scandals or merely acquiesces to defense filings and then implements remedial measures when forced to do so by negative media coverage and political pressures.

This Article argues that CIUs function as a cloak of legitimacy for prosecutors and the criminal legal system, providing false security that the causes of wrongful convictions are being addressed. CIUs provide an extra layer of credibility for prosecutors, allowing courts to believe that they have a definitive answer whether a defendant has been wrongfully convicted and is deserving of judicial relief. CIUs suffer from operational and structural flaws that can negatively impact even those units with the best intentions. The added benefit of their access to discovery and evidence can act as a double-edged sword, as often the review is being conducted by attorneys with skin in the game, resulting in prosecutors' offices being an inappropriate and inhospitable place for sincere wrongful conviction review. CIUs' impact when contributing to the exoneration of the wrongly convicted cannot be discounted, but they are not a criminal legal system corrective.⁵⁴ The false security they provide causes real harm to individual defendants' claims of innocence, distracts from efforts to enact other reforms, and reinforces the

52. *Id.*; see also Letter from Bina Ahmad et al. to Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts (2021) (on file with author) (alleging in the grievance filed against Mark Hale for egregious *Brady* violations that, as head of the Conviction Review Unit (CRU) in King's County, Hale had a conflict of interest given his extensive tenure as a prosecutor in the same office).

53. See *Conviction Integrity Units*, *supra* note 20.

54. See Daniel S. Medwed, *Innocentrism*, 2008 U. ILL. L. REV. 1549, 1557 (explaining one criticism of the innocence movement is that exonerations "also suggests that the post-conviction process serves an effective corrective function—that, under the current regime, justice will be served, albeit delayed").

harmful narrative that CIUs are fixing the flaws of the criminal legal system.

This Article proceeds in four parts. Part I analyzes prosecutors' ethical obligations to rectify wrongful convictions and their legal ability to do so. Part II explains the basic structure of CIUs, including how they typically operate, whether they follow the widely accepted best practices, the harm they cause when they fail to effectively function, and the formation of the first CIU. Part III illustrates some of the main structural and operational problems that exist within CIUs with in-depth analyses of the CIUs in Harris County (Houston, Texas), Kings County (Brooklyn, New York), and Cook County (Chicago, Illinois). Part III also includes descriptions of the mass exonerations that have taken place in these jurisdictions, which happen to have the highest number of wrongful convictions in the country. Part IV provides a framework of the major flaws inherent in the structure and operation of CIUs, drawing on the illustrative examples in Part III. This framework explains why even those CIUs with sincere intentions can fail to function effectively and pinpoints which actors have the power to recognize and begin to address the inherent flaws of CIUs.

I. PROSECUTORS' GREAT POWER AND GREAT RESPONSIBILITY

Along with prosecutors' great power, prosecutors have great responsibility to rectify innocence claims.⁵⁵ Section I.A describes how prosecutors have an ethical obligation to undo wrongful convictions. Section I.B then describes prosecutors' statutory authority and power to do so. Finally, given that prosecutors' power is not limitless, Section I.B also describes when judges and attorneys general put up systemic barriers to prevent prosecutors from vacating convictions.

55. See Brandon Hasbrouck, *The Just Prosecutor*, 99 WASH. U. L. REV. 627, 672 (2021) ("Prosecutors' control over the ultimate relief provided to wrongfully convicted or sentenced defendants is well documented, making them the most logical party to redress the rights of wrongfully convicted or imprisoned people.").

A. *The Duty to Rectify Wrongful Convictions*

Prosecutors are required to rectify wrongful convictions.⁵⁶ Though they practice within our adversarial system, their role is more than merely that of an advocate. A prosecutor has the “responsibility of a minister of justice.”⁵⁷ As such, prosecutors have multiple considerations beyond seeking a conviction.⁵⁸ As “servants of the law,” they must ensure “that justice shall be done.”⁵⁹ To ensure justice, prosecutors must refrain from convicting the innocent.⁶⁰ This obligation does not end at the time of conviction.⁶¹ Prosecutors are also tasked with rectifying the wrongful convictions of innocent persons.⁶²

In 2008, prosecutors’ post-conviction obligations were codified in an amendment to Rule 3.8, “Special Responsibilities of a Prosecutor,” of the American Bar Association’s Model Rules of Professional Conduct.⁶³ The amendment contained two provisions:

(g) 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:

(1) promptly disclose that evidence to an appropriate court or authority, and

56. See Daniel S. Medwed, *The Prosecutor as a Minister of Justice: Preaching to the Unconverted from the Post-Conviction Pulpit*, 84 WASH. L. REV. 35, 48 (2009) (“The minister-of-justice model, if taken seriously, implies that prosecutors should take all reasonable steps necessary to verify whether an innocence claim is viable, and, upon achieving such confirmation, assist in exonerating that defendant.”).

57. MODEL RULES OF PRO. CONDUCT r. 3.8 cmt. (A.B.A. 1983). A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and rectify the conviction of innocent persons. *Id.*

58. See *id.*

59. *Berger v. United States*, 295 U.S. 78, 88 (1935).

60. *Id.* Though prosecutors exercise considerable discretion to determine whether to bring charges against a defendant, regardless of guilt. *Id.*

61. See Bruce A. Green, *Should Prosecutors Be Expected to Rectify Wrongful Convictions?*, 10 TEX. A&M L. REV. 167, 183–84 (2023) (referencing ongoing prosecutor’s duties to rectify and correct known distortions of the legal process).

62. See Medwed, *supra* note 56, at 53–54.

63. Green, *supra* note 61, at 171.

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.⁶⁴

In the introductory commentary, the Rule makes clear that prosecutors' responsibilities include rectifying the convictions of innocent persons.⁶⁵

Only 24 states have incorporated a version of 3.8(g) or (h) into their adopted versions of these rules, leaving many states without explicitly codified prosecutorial obligations to rectify wrongful convictions.⁶⁶ There does not appear to be a connection between those states that have adopted 3.8(g) or (h) and those states that have CIUs that are participating in exonerations.⁶⁷ Only California, Illinois, Massachusetts, Michigan, New York, and Tennessee have adopted some version of 3.8(g) or (h) and also have CIUs that have recorded exonerations.⁶⁸ In contrast, other states including Alaska, Arizona, Colorado, Connecticut, Delaware, Idaho, Montana, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Washington, West Virginia, Wisconsin, and Wyoming have adopted some version of

64. MODEL RULES OF PRO. CONDUCT r. 3.8(g)–(h) (ABA 2020).

65. See *id.* r. 3.8 cmt. 1 (specifying that prosecutors have an obligation to ensure that “special precautions are taken to prevent and to rectify the conviction of innocent persons”).

66. The following states have adopted Rules 3.8(g) and (h), or some similar version thereof: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawai'i, Idaho, Illinois, Iowa, Massachusetts, Michigan, Montana, New York, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Washington, West Virginia, Wisconsin, and Wyoming. See Green, *supra* note 61, at 172 n.34.

67. See *Conviction Integrity Units*, *supra* note 20.

68. *Id.*; see *supra* note 66.

3.8(g) or (h) and either have no CIUs, or have CIUs with no recorded exonerations.⁶⁹

Though not all states have codified prosecutors' obligations to rectify wrongful convictions, this does not mean that they are not required to do so. In fact, when arguing against codification of 3.8(g), prosecutors in some states have argued that there is no need to codify those obligations precisely because they are already covered under existing legal obligations.⁷⁰ This longstanding duty to act as ministers of justice, disclose exculpatory evidence, and rectify wrongful convictions exists for all prosecutors.⁷¹

B. The Power to Vacate and Systemic Obstructions

Prosecutors' enormous role in the criminal legal system cannot be overstated. They are vested with unfettered discretion in almost every stage of a criminal case.⁷² This discretion makes them uniquely positioned to review claims of wrongful conviction.⁷³ Prosecutors hold this power because of their exclusive control of and access to review the evidence that is used to convict defendants.⁷⁴ Their exclusive control leads to the withholding of favorable evidence, one of the most common causes of official misconduct, and official misconduct by prosecutors and

69. See *Conviction Integrity Units*, *supra* note 20; see *supra* note 66.

70. See Letter from Scott Brumley, Chair, Tex. Dist. & Cnty. Att'ys Ass'n Rule 3.09 Comm., to M. Lewis Kinard, Chair, State Bar Comm. on Disciplinary Rules & Referenda (Oct. 19, 2021), <https://www.texasbar.com/Content/NavigationMenu/CDRR/AgendasMinutes/MeetingMaterialsNov2021.pdf> [https://perma.cc/G2AX-5QTM] (arguing state law already requires disclosure).

71. See Medwed, *supra* note 56, at 50; Green, *supra* note 61, at 183–84; Berger v. United States, 295 U.S. 78, 88 (1935).

72. See RACHEL ELISE BARKOW, PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION 126 (2019).

73. See Bazelon, *supra* note 27, at 394 (distinguishing prosecutors as “the most powerful actors in the criminal justice system”); Medwed, *supra* note 56, at 61 (noting that prosecutors' offices have unique access to files from other cases in their jurisdiction and police information networks); Fred C. Zacharias, *The Role of Prosecutors in Serving Justice After Convictions*, 58 VAND. L. REV. 171, 175 (2005) (analyzing prosecutors' ethical duty to serve justice after conviction and recognizing that a prosecutor “may be the only person with the power to act”).

74. See generally Lissa Griffin & Daisy Mason, *The Prosecutor in the Mirror: Conviction Integrity Units and Brady Claims*, 55 LOY. L.A. L. REV. 1005 (2022) (arguing how CIUs, due to being housed within the prosecution, have the unique ability to locate exculpatory evidence).

police is a leading cause of wrongful convictions.⁷⁵ The evidence of that misconduct is very often in the exclusive control of the prosecutor.⁷⁶ Prosecutors also have the benefit of full access to investigators and collegiality with the police, who often have their own investigative materials—the discovery of which has led to exonerations.⁷⁷

In only a handful of states, prosecutors have been given statutory authority to reopen cases if they doubt the integrity of the conviction or to initiate DNA testing and investigate a claim of innocence.⁷⁸ Some of these legal tools have been crafted in response to high-profile exonerations or scandals, and they grant the state the extraordinary power to undo wrongful convictions.⁷⁹

In the majority of states, prosecutors do not have statutory authority to file for vacatur or undo a wrongful conviction.⁸⁰ Yet,

75. See *Official Misconduct: Yes*, NAT'L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/cases?f%5B0%5D=official_misconduct_468%3A1 [https://perma.cc/3Q6E-ENV7]. Exculpatory evidence was withheld in 1,918 of the 2,258 cases, or 84 percent, of the wrongful convictions contributed to by official misconduct in the registry. *Id.*

76. See Griffin & Mason, *supra* note 74, at 1016.

77. See, e.g., Maurice Possley, *Alfred Chestnut*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/12731> [https://perma.cc/L8PJ-FMRN] (last updated Oct. 18, 2023) (explaining the discovery of hidden police reports with exonerating witness interviews was a substantial factor in the exoneration of Chestnut).

78. See, e.g., Ariz. R. Crim. Proc. 24.2(e); Md. R. 4-333; MO. ANN. STAT. § 547.031; N.C. GEN. STAT. § 15A-1411 (2010); OKLA. STAT. tit. 22, § 1381 (2024).

79. After the Circuit Attorney filed a motion for a new trial alleging innocence of a defendant, the Supreme Court of Missouri held that the Circuit Attorney did not have the legal ability to file such a motion—the legislature thereafter enacted the vacatur statute. See *State v. Johnson*, 617 S.W.3d 439 (Mo. 2021), *superseded by statute*, MO. ANN. STAT. § 547.031, *as recognized in*, Cir. Att'y *ex rel.* Dunn, 708 S.W.3d 867 (Mo. 2025). After prosecutors were unable to file vacatur motions for defendants whose convictions had relied upon disgraced gun trace task force officers in Baltimore City, the Maryland legislature enacted a vacatur statute enabling prosecutors the power to file a vacatur motion if they lost faith in the conviction. See Heather Cobun, *Bill to Provide Tool to Vacate GTTF-Related Convictions Passes House*, DAILY REC. (Mar. 15, 2019), <https://thedailyrecord.com/2019/03/15/vacate-bill-mosby-house> [https://perma.cc/467L-JU3W].

80. In many states, the codified vacatur statutes give power to defendants or judges (or even the attorney general), but not the prosecution. This is so in Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawai'i, Idaho, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, South Carolina, Utah, Virginia, and Wyoming. See Ala. R. Crim. Pro. 32; Alaska R. Crim. 35.1; Ark. R. Crim. P. 37.1; CAL. PENAL CODE § 1172.1 (2023); COLO. REV. STAT. § 18-1-410.7 (2024); Colo. R. Crim. Pro. 35; CONN. GEN. STAT. § 54-95(c) (2024); Del. Super. Ct. R. Crim. Pro. 33; Fla. R. Crim. P. 3.850;

they still hold immense power to impact the ultimate outcome of cases, and their acquiescence to defense filings can have incredible sway with the judiciary.⁸¹ Disparate results can occur in cases that have strikingly similar errors or involve the same junk science when different prosecuting attorneys do not hold the same ethos towards innocence cases.⁸²

This is occurring currently in Texas where the same expert in “shaken baby syndrome” testified for the prosecution in the murder trials of Andrew Roark in Dallas County and Robert Roberson in Anderson County.⁸³ Both Mr. Roberson and Mr. Roark filed motions challenging their convictions based upon discredited scientific or forensic methods.⁸⁴ The district

GA. CODE § 17-10-21 (2023); HAW. REV. STAT. § 712-1209.6 (2021); IDAHO CODE § 19-4901 (2010); IOWA CODE § 822.2 (2019); KAN. STAT. ANN. § 60-1507 (2024); Ky. R. Crim. P. 11.42; La. Code Crim. P. 851; Mass. R. Crim. P. 30; MINN. STAT. § 590.01 (2024); MISS. CODE ANN. § 99-39-5 (2009); MONT. CODE ANN. § 46-21-101 (1997); NEB. REV. STAT. § 29-2101 (2001); NEV. REV. STAT. ANN. § 179.247 (2021); N.J. STAT. § 2C:44-1.1 (2021); N.M. STAT. ANN. § 31-11-6 (1966); N.D. CENT. CODE, § 29-32.1-01 (2013); OHIO REV. CODE ANN. § 2953.21 (2021); 42 PA. CONS. STAT. § 9542 (1998); S.C. CODE ANN. § 17-27-20 (1969); UTAH CODE ANN. § 78B-9-104 (2025); VA. CODE ANN. § 19.2-327.10:1 (2023); WYO. STAT. ANN. § 7-12-403 (2018).

81. See Zacharias, *supra* note 73; see also BARKOW, *supra* note 72, at 144 (discussing judicial deference to prosecutors’ sentencing and bail requests).

82. See, e.g., Alexandra L. Klein, *Commentary: Shaken Baby Syndrome Is Junk Science*, S.A. EXPRESS-NEWS (June 11, 2024), <https://www.expressnews.com/opinion/commentary/article/appeal-conviction-shaken-baby-syndrome-texas-19497902.php> [<https://perma.cc/DSY6-MDQM>]; Richard A. Webster, *He Was Convicted Based on Allegedly Fabricated Bite Mark Analysis. Louisiana Wants to Execute Him Anyway*, PROPUBLICA, <https://www.propublica.org/article/louisiana-jimmie-duncan-bite-mark-analysis-death-row-junk-science> [<https://perma.cc/39VG-8FVS>] (last updated Mar. 19, 2025); Richard A. Webster, *Judge Mulls Bail for Louisiana Death Row Prisoner with Vacated Conviction*, LA. ILLUMINATOR (July 25, 2025, at 2:17 PM), <https://lailluminator.com/2025/07/26/death-row-2> [<https://perma.cc/V6XP-SBD7>]; Richard A. Webster, *Prosecutors Ask State’s Highest Court to Reinstate Death Row Inmate Jimmie Duncan’s Conviction*, VERITE NEWS (Sep. 1, 2025), <https://veritenews.org/2025/09/01/jimmie-duncan-death-row-bail-state-supreme-court> [<https://perma.cc/BBF3-DSLW>].

83. The witness was an expert in “shaken baby syndrome,” a medical cause of death theory that has since been widely discredited. See DEBORAH TUERKHEIMER, *FLAWED CONVICTIONS: “SHAKEN BABY SYNDROME” AND THE INERTIA OF INJUSTICE* xi–xiv (2014); see also Keith Findley, *We Can’t Let Discredited Science Lead to a Texan’s Execution*, AUS. AM.-STATESMAN, <https://www.statesman.com/story/opinion/columns/guest/2024/05/16/texas-law-junk-science-false-trial-execution/73685547007> [<https://perma.cc/9ZSE-JJVH>] (last updated May 16, 2024, at 8:53 AM).

84. See Findley, *supra* note 83; TEX. CODE CRIM. PROC. ANN. art. 11.073(b)(1)(A) (2015) (“A court may grant a convicted person relief on an application for a writ of habeas corpus if: . . . relevant scientific evidence is currently available and was not available at the time of the convicted person’s trial because the

attorney in Dallas County has agreed with Mr. Roark that the medical understanding of “shaken baby syndrome” has drastically changed, while the district attorney in Anderson County has continued to request an execution date.⁸⁵

Even when prosecutors are given the statutory authority to request vacatur on behalf of a defendant, other actors in the system act as innocence deniers, and prosecutors’ efforts can be blocked by systemic obstructions from judges and attorneys general who deny the existence of the wrongfully convicted.⁸⁶ Even though prosecutors argue that they are seeking justice by moving to undo a wrongful conviction, typically after there is newly discovered exculpatory evidence, judges have rejected agreed-upon motions to vacate convictions. One reason given for these rejections is that agreed-upon evidence is not properly vetted or subject to the vigorous cross examination that an adversarial system requires.⁸⁷ Without this traditional cross examination from the state, judges have rejected the testimony of experts that both the defense and prosecution found credible.⁸⁸

evidence was not ascertainable through the exercise of reasonable diligence by the convicted person before the date of or during the convicted person’s trial . . .”).

85. Mr. Roark’s conviction was vacated, and he was granted a new trial on October 9, 2024. *See In re Roark*, 707 S.W.3d 157, 188 (Tex. Crim. App. 2024). For Mr. Roberson’s struggle for relief, see Order on Application for Writ of Habeas Corpus in Cause No. 26,162-A in the 3rd Jud. Dist. Ct. Anderson Cnty., *Ex parte* Robert Leslie Roberson III, No. WR-63,081-03 (Tex. Crim. App. Jan 11, 2023). After extraordinary efforts resulted in a delay of Mr. Roberson’s execution date, he filed a new appeal based, in part, on the ruling in Mr. Roark’s case. *See* Kayla Guo, *Robert Roberson Files First New Appeal Since His Execution Was Delayed*, TEX. TRIB. (Feb. 19, 2025, at 1:54 PM), <https://www.texastribune.org/2025/02/19/texas-robert-rober-son-appeal-death-penalty-case> [<https://perma.cc/B8ZL-7DSR>]; Subsequent Application for Writ of Habeas Corpus Under Articles 11.071 and 11.073 and Suggestion to Reconsider on the Court’s Own Initiative, *Ex parte* Robert Leslie Roberson III, No. 26,162 (Tex. Crim. App. 2024). The Texas Court of Criminal Appeals reopened Mr. Roberson’s habeas application, granted a stay of execution, and remanded the case for consideration of the claim based on Mr. Roark’s case. Order, *Ex parte* Robert Leslie Roberson III, No. WR-63,081-05 (Tex. Crim. App. Oct. 9, 2025).

86. *See, e.g.*, Order on Motion to Reopen Petition for Post-Conviction Relief, *Maze v. State*, No. 2002-D-2361 (Crim. Ct. Davidson Cnty., Tenn. Apr. 25, 2024). In weighing the new expert witnesses in a Motion to Reopen Petition for Post-Conviction Relief that the State supported with a Final Report and affidavit, the court stated: “However, the Court diminishes the value of the newly presented evidence where fresh opinions were offered but not probed The opinions stated in the instant hearing were packed as wholesale truth.” *Id.*

87. *See id.*

88. When questioning the State’s attorney about the new scientific evidence and multiple concurring doctors who had testified in the case, the judge interrogated why the State had not gone back and questioned their original trial witnesses. *See* Pamela Colloff, *He Was Convicted of Killing His Baby. The DA’s Office Says*

State prosecutors moving to vacate a defendant's conviction have also faced resistance from their attorneys general. St. Louis County Prosecuting Attorney Wesley Bell faced unstoppable opposition from the Missouri Attorney General's Office in his efforts to vacate the conviction of Marcellus Williams, who was convicted of murder.⁸⁹ After finding out that the potential exculpatory value of the DNA evidence in the case had been tainted by the trial prosecutors' handling of the evidence, Bell and Williams negotiated a plea that would spare Williams from the death penalty.⁹⁰ Both the judge and the victim's family sanctioned a plea that would have resulted in a life sentence without the opportunity for parole.⁹¹ But the Missouri Attorney General's Office intervened, and Williams was not allowed to enter a plea.⁹²

The Attorney General's Office filed a renewed motion to set an execution date, and the Missouri Supreme Court scheduled an execution date for Williams for September 24, 2024.⁹³ Just 12 days before his execution date, Bell's vacatur motion was denied and the trial court upheld the death sentence.⁹⁴ Bell appealed to the Missouri Supreme Court, and Williams's lawyers filed a

He's Innocent, but That Might Not Be Enough., PROPUBLICA (July 11, 2024, at 5:00 AM), <https://www.propublica.org/article/nashville-conviction-review-russell-maze-shaken-baby-syndrome> [<https://perma.cc/KC77-YE5L>].

89. The motion explained how testing done by three separate DNA experts on the handle of the murder weapon had excluded Mr. Williams as the source of the male DNA, and the other evidence in the case was increasingly unreliable. *See* Consent Order & Judgment, *ex rel.* Williams v. State, No. 24SL-CC00422 (Cir. Ct. of St. Louis Cnty., Mo. Aug. 21, 2024).

90. *See* Jim Salter, *Court Appeals, Clemency Petition Seek to Halt Execution of Missouri Man Who Claims Innocence*, ASSOCIATED PRESS, <https://abcnews.go.com/US/wireStory/court-appeal-clemency-petition-seek-halt-execution-missouri-113760948> [<https://perma.cc/AQ6P-PESX>] (last updated Sep. 17, 2024, at 9:17 PM).

91. *Id.* *See also* Findings of Fact, Conclusions of Law, Order and Judgment at 11, Prosecuting Att'y, 21st Jud. Cir. *ex rel.* Williams v. State, 24SL-CC00422 (21st Jud. Cir., Cnty. of St. Louis, Mo. Sep. 12, 2024) (on file with author) (describing that the Missouri Attorney General objected to the consent judgment agreed to by the Prosecuting Attorney Bell and Williams).

92. *See* Findings of Fact, Conclusions of Law, Order and Judgment, *supra* note 91, at 1.

93. *See id.* at 24; Opinion Overruling Motion to Withdraw Warrant of Execution, State v. Williams, No. SC83934 (Mo. June 4, 2024); Jim Salter, *Execution Date Set for Missouri Inmate, Even as He Awaits Hearing on Claim of Actual Innocence*, ASSOCIATED PRESS, <https://apnews.com/article/missouri-death-row-inquiry-board-state-supreme-court-0103d6047d1caa04eeffb6ef262063fb> [<https://perma.cc/6QKK-HTNK>] (last updated June 4, 2024, at 10:38 PM).

94. Findings of Fact, Conclusions of Law, Order and Judgment, *supra* note 91, at 11

400-page motion to the Missouri Court of Appeals, as well as appealed to the governor for clemency.⁹⁵ Tragically, those efforts failed. Mr. Williams was put to death by the State of Missouri because of the actions of the Attorney General's Office, despite the opposition of the local prosecuting attorney and victim's family.⁹⁶

The grave injustice that occurred to Mr. Williams shows that the power of local prosecutors to rectify wrongful convictions is not limitless. Though some states have codified a pathway for prosecutors to file for vacatur, many have not taken this significant step. Regardless, prosecutors still hold great influence and power in their positions in wrongful conviction cases, allowing CIUs—should they choose to participate in exonerations—a wide latitude of influence.

II. CIU FORMATION AND FAILURE TO EFFECTIVELY FUNCTION

CIUs can differ in almost every aspect of their structure and organization, including their size, mandate, operating procedures, and application requirements. There are several aspects of their makeup that can signal whether they are conducting sincere review of wrongful convictions. This Part describes the structures of CIUs and the best practices that have been recommended by leading legal institutions yet are often overlooked. It then details the harm caused by ineffective CIUs to individual defendants, perceptions of the criminal legal system, and efforts to address the causes of wrongful convictions. Finally, this Part describes the formation of the first CIU.

95. See Salter, *supra* note 90; Dana Rieck, *Two New Court Filings Could Postpone Execution of Marcellus Williams*, ST. LOUIS POST-DISPATCH (Sep. 17, 2024), https://www.stltoday.com/news/local/crime-courts/article_22e559f6-7532-11efa0e8-2707bfbec9c3.html [https://perma.cc/X3AM-F94H].

96. See Shaila Dewan, *Missouri Man Executed After Long Fight for Exoneration*, N.Y. TIMES (Sep. 24, 2024), <https://www.nytimes.com/2024/09/24/us/marcellus-williams-execution-missouri.html> [https://perma.cc/A3UF-KYWP]. As of 2020, the Missouri Attorney General's Office has fought against every innocence case brought since 2000. See Emily Hoerner, *Missouri Attorney General's Office Pushes to Keep Innocent People in Prison*, INJUSTICE WATCH (Sep. 11, 2020), <https://www.injusticewatch.org/archive/2020/missouri-attorney-general-fights-exonerations> [https://perma.cc/7NS9-7NRA]; Innocence Staff, *Who Is Marcellus Williams: Man Facing Execution in Missouri Despite Evidence of Innocence, Prosecutor's Confession of Racial Bias at Trial, and Victim Opposition*, INNOCENCE PROJECT, <https://innocenceproject.org/who-is-marcellus-williams-man-facing-execution-in-missouri-despite-dna-evidence-supporting-innocence> [https://perma.cc/T5AN-UYH8] (last updated Sep. 18, 2024).

A. *The Structure and Operation of CIUs*

CIUs are units housed within the office of a local prosecutor.⁹⁷ Their main purpose is to conduct review of wrongful conviction claims and evaluate claims of actual innocence.⁹⁸ They can be called conviction integrity units or conviction review units (CRU).⁹⁹ Though attorneys can be hired from outside of a prosecutor's office and can have a background in defense, CIUs are staffed by attorneys who work within the local prosecutor's office.¹⁰⁰ There is only one unit in the country that is independent.¹⁰¹

There are no specific requirements for the formation of a CIU.¹⁰² The unit can be as large or as small as a jurisdiction requires.¹⁰³ It has the freedom to create its own policies and

97. See HOLLWAY, *supra* note 48, at 2 (“A CRU is typically contained within a local prosecutor’s office.”). There are nine statewide entities that exist, though these units are outliers and do not typically have jurisdiction in the cases they review. See *Conviction Integrity Units*, *supra* note 20. For example, in Pennsylvania the Conviction Integrity Section (CIS) provides resources and conducts joint reviews with the district attorneys who have jurisdiction. See *Conviction Integrity Section: Frequently Asked Questions*, PA. ATT’Y GEN.: CRIM. L. DIV., <https://www.attorneygeneral.gov/criminal-law-division/conviction-integrity-section> [<https://perma.cc/SVF9-UFYR>].

98. See HOLLWAY, *supra* note 48, at 17 (“CRUs exist to conduct fact-based reviews of plausible claims of actual innocence . . .”).

99. The name may indicate a difference in the type of cases the unit will review. Some CRUs review any case with a plausible claim, whether or not it involves actual innocence, while CIUs typically focus on actual innocence claims. See *id.* at 39–41 (“CRUs differ in terms of the ‘degree’ of innocence that must be alleged at the initial phase to warrant further review by the CRU.”).

100. See *id.* at 17 (“While no two CRUs are identical, 23 of the units we reviewed share a similar high-level structure: one or more experienced Assistant District Attorneys are given special responsibility within a prosecutor’s office to review cases . . .”) (internal citation omitted).

101. See N.C. INNOCENCE INQUIRY COMM’N, <https://innocencecommission-nc.gov> [<https://perma.cc/76RK-ZSSP>] (explaining the Commission is an independent forum for post-conviction relief claims in North Carolina).

102. In Hollway’s report, he asked CIUs to answer 19 separate questions to gather data. See HOLLWAY, *supra* note 48, at 6. The topics ranged from reporting structure, number of attorneys, external participation, budgets, length of investigations, training, written policies and procedures, sharing of new evidence, to how they reported exculpatory information. *Id.* None of the CIUs answered all the question in the manner that would indicate that they are conducting a sincere review of wrongful convictions. *Id.*

103. The Wicomico State’s Attorney’s Prosecution Integrity Unit only has a chief of the unit and one full-time attorney. See *Prosecution Integrity Unit*, *supra* note 39. Cuyahoga County’s CIU, described in the Introduction, was originally formed with a team of nine senior attorneys to review claims. See Rachel Dissell, *New Conviction Integrity Unit Will Review Innocence Claims, Cuyahoga County Prosecutor Timothy*

procedures, as well as decide whether to provide those to the public.¹⁰⁴ Like prosecutors' offices writ large, CIUs have no obligation to publicly provide any information about the way they are run or the cases they review.¹⁰⁵ They are not obligated to tell the public, defense attorneys, or defendants why they reject or accept a case for review, or about their ultimate determination of whether to support or fight an exoneration.¹⁰⁶ They also do not have to keep records or data about the types of cases they support or fight against.¹⁰⁷

CIUs typically have a director chosen by the elected prosecutor to lead the unit.¹⁰⁸ The director will set policy for those prosecutors who are working beneath them, such as how they determine if a case warrants review.¹⁰⁹ The director reports to the elected prosecutor, who approves or denies the CIU's proposed positions on cases.¹¹⁰ This setup can lead to interoffice conflict, particularly if the elected prosecutor does not agree with the position that the CIU ultimately takes on a case.¹¹¹

CIUs review cases that originate within their own jurisdictions, which often creates conflicts of interest.¹¹² This means

J. McGinty Announces, CLEVELAND.COM, https://www.cleveland.com/court-justice/2014/04/new_conviction_integrity_unit.html [<https://perma.cc/6AG7-MEX7>] (last updated Apr. 19, 2014, at 7:00 PM).

104. See HOLLWAY, *supra* note 48, at 61 fig. 14 (showing that 70 percent of CRUs have no written protocols); see also *id.* at 35–57 (describing the varying choices CIUs can make in their case selection and screening processes).

105. See, e.g., HOLLWAY, *supra* note 48, at 6 (“Are the CRU’s policies and procedures posted on its web site? Are the CRU’s policies and procedures available upon request?”).

106. See *id.* at 64 (describing the range of information sharing that CRUs engage in when rejecting a claim, whether in writing or orally, sharing the reason or being more vague).

107. See *id.* at 65.

108. See *id.* at 27 (“[T]he individual in charge of the CRU will have a significant impact not just on the Unit’s effectiveness, but on its perception both inside and outside the office.”).

109. *Id.* at 28 (“[T]he choice of a leader for the CRU conveys volumes to external observers about the likely approach that the CRU will take.”).

110. See *id.* at 24 (“The CRU is expected to conduct a thorough investigation and give a recommendation to the District Attorney, who retains the sole discretion on whether to vacate or reverse a conviction.”).

111. For example, O’Malley disagreed with his own CIU and did not recommend supporting the exoneration of Octavius Williams. See Ken Otterbourg, *Octavius Williams*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/13750> [<https://perma.cc/3U8V-4N27>] (last updated June 26, 2024).

112. See HOLLWAY, *supra* note 48, at 56 (noting it is “predictable that a CRU will be confronted with questions and allegations regarding the actions of the original investigator(s) and prosecutor(s)”).

that they review cases where they may be familiar with the original trial attorneys, both prosecution and defense, as well as the trial judge. They may work with colleagues who are accused of *Brady* violations and are tasked with making determinations about their misconduct.¹¹³ This can even include their directors or the elected prosecutors. Given this potential conflict, some CIUs involve external boards that can assist with case review from an unbiased standpoint.¹¹⁴

The majority of CIUs have a mandate to investigate claims of actual innocence.¹¹⁵ To determine if they will conduct a review, “virtually all” CIUs require that new evidence of innocence exists that has not been previously disclosed, while many go further and require that the evidence has not been subject to any previous legal review during trial or post-conviction proceedings.¹¹⁶ There are some units that go beyond investigation of innocence claims and review any claims where there has been an issue with the process or there is any reason to doubt the integrity of the conviction.¹¹⁷ These units are in the minority,

113. See *id.* at 56–57 (considering whether allegations of misconduct brought pursuant to *Brady* violations may affect the objective review of cases by prosecutors). *Brady* violations occur when a prosecutor withholds exculpatory and material evidence from the defense. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

114. HOLLWAY, *supra* note 48, at 30 fig. 7 (showing that only 30 percent of CIUs include the use of external boards to assist with case review).

115. From a review of 81 CIUs, 59.26 percent answered that their policy includes criteria limited to claims of actual innocence; 12.35 percent had no policy. See Taylor Migliori, compiler, QC 2024 Public-Facing Policy Review, Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Carey Law School (Jan. 3, 2025) (on file with author). The term “actual innocence” typically indicates that the defendant did not commit and is not legally responsible for the crime that they are convicted of: It does not include ineffective assistance of counsel or other issues with the process of their conviction or legal issues that would be the subject of a direct appeal process. See, e.g., *Conviction Integrity Unit*, COOK CNTY. STATE’S ATT’Y, <https://www.cookcountystatesattorney.org/conviction-review-unit> [<https://perma.cc/HP7U-TSZ8>]; COOK CNTY. STATE’S ATT’Y OFF., 2023: YEAR-IN-REVIEW 9, <https://issuu.com/cookcountysao/docs/final2023> [<https://perma.cc/Q4H2-35JB>] (“The term ‘actual innocence’ denotes complete absolution of any criminal responsibility on the part of the defendant for the said crime.”).

116. See HOLLWAY, *supra* note 48, at 41; see also *Criminal Division: Conviction Integrity Unit*, *supra* note 18 (describing that the requirements for consideration by the CIU include: “a claim of actual innocence or otherwise compelling claim and not solely a legal issues (previously raised and/or could have been raised at trial or during the appellate process)” and the existence of “[n]ew and credible evidence of innocence”).

117. For instance, Bexar County has an incredibly liberal mission and review policy to “determine whether there is some manifest injustice that may be corrected by the procedures provided by post-conviction law.” *Conviction Integrity Unit*,

however, and do not represent the vast majority of CIUs currently operating.¹¹⁸

CIUs are different from innocence projects in a couple of main respects. First, despite their position reviewing convictions, they are on the opposite side of the adversarial system.¹¹⁹ Even if they take a position in favor of an innocence claim, CIUs represent the prosecution. While defendants can apply to have their cases reviewed, if they are accepted by a CIU, the CIU does not represent them.¹²⁰ A CIU has no attorney-client privilege with those who apply for its assistance and, in fact, can require the defendant who is applying to waive their privilege with prior attorneys.¹²¹ This adversarial position extends to evidence it finds in its review. If CIUs uncover confirmation of guilt when reviewing a case, they can use it in later proceedings to argue against a claim of innocence or release.¹²² And when CIUs uncover confirmation of guilt, they have confirmed that their office got the “right” person in the first instance.¹²³

Second, some CIUs require that defendants stop litigating other legal claims while they are under the CIU’s review.¹²⁴ This

BEXAR CNTY., TEX.: DIST. ATT’Y’S OFF., <https://www.bexar.org/3324/Conviction-Integrity-Unit> [<https://perma.cc/J3DQ-39ZE>].

118. From a review of 81 CIUs, 28.40 percent answered that their policy includes criteria focused on the interests of justice. Migliori, *supra* note 115.

119. This remains so, despite the hopes of scholars that these units would naturally move away from the adversarial nature of the criminal system during the post-conviction, innocence investigation process. Scheck, *supra* note 19, at 718 (“Post-conviction, there is more room for a non-adversarial, dialectical approach to assessing evidence, a safer space to gather more information from all stakeholders, and a unique opportunity to learn from error and ‘near misses.’”).

120. See, e.g., KINGS CNTY. DIST. ATT’Y’S OFF., CONVICTION REVIEW UNIT SUBMISSION FORM/REQUEST FOR REVIEW 2 (stating in the Consent Form to apply for review from the Kings County CIU that “[t]he prosecutors in the CRU at the District Attorney’s Office do not represent you and cannot offer you legal advice. A prosecutor cannot legally or ethically be your attorney”).

121. See HOLLWAY, *supra* note 48, at 51 (noting multiple CRUs request a waiver of attorney-client privilege).

122. See UNIV. OF PA. LEE L. SCH., *Evaluating Collaborative Conviction Review Projects and Hearing from Practitioners in the Trenches*, at 24:06–24:11 (YouTube, Apr. 22, 2024), <https://www.youtube.com/watch?v=oetzykhsoOY&t=1433s> [<https://perma.cc/NYJ5-SLM6>] (recording a CIU Chief who stated that, “We’re not the exoneration unit, we’re the conviction review unit. And [we’re] quality control.”).

123. *Id.* at 23:52–23:58 (recording another CIU Chief who stated that, “[I] think it’s a successful review when we find that we have confidence in that original conviction, as well.”).

124. See, e.g., KINGS CNTY. DIST. ATT’Y’S OFF., *supra* note 120, at 2 (stating in the Consent Form to apply for review from the Kings County CIU at #12: “I understand that if I initiate a post-conviction adversarial proceeding during the pendency

is the case even though many CIUs only evaluate claims of actual innocence. The CIU may not review whether a defendant had a meritorious claim of ineffective assistance of counsel—yet that claim could be put on hold during the CIU review—and if a state has a particularly brief statute of limitations, the defendant could lose their ability to file the claim.

Third, they differ in their access to discovery. Innocence projects often have trouble obtaining discovery from the state.¹²⁵ It can require time-consuming filings and litigation, which can quickly become extremely expensive.¹²⁶ CIUs have automatic and free access to discovery given that they are housed within the office of the prosecution.¹²⁷ They also have preexisting relationships with law enforcement, who willingly hand over their discovery to local prosecutors without the necessity of a request.¹²⁸ Because of this unique access, some scholars believe that CIUs are the best entities to review wrongful convictions and find *Brady* violations.¹²⁹

B. Failure to Follow Best Practices

There are widely accepted best practices for how a CIU should operate if it wants to engage in sincere review of wrongful convictions.¹³⁰ Approximately 10 years ago, Barry Scheck, the cofounder of the Innocence Project, and John Hollway of the Quattrone Center at the University of Pennsylvania published complementary publications clarifying the recommended best

of the CRU's investigation, the CRU will put its investigation on hold pending resolution of the litigation").

125. See Scheck, *supra* note 19, at 736 ("[I]n many jurisdictions, post-conviction discovery barely exists . . .") (citation omitted).

126. See, e.g., Innocence Project, *Michael Morton*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/11033> [<https://perma.cc/PB9L-5KE8>] (last updated Mar. 24, 2022) (describing years of trying to obtain discovery from the state, including filing a Public Information Act request, before Morton was exonerated after spending 25 years in prison).

127. See Scheck, *supra* note 19, at 705 n.1 (defining CIUs as units operating within a prosecutorial office).

128. See generally Vida B. Johnson, *Whom Do Prosecutors Protect?*, 104 B.U. L. REV. 289, 299–302 (2024) (describing the extremely close relationship between police officers and prosecutors).

129. See Griffin & Mason, *supra* note 74, at 1008–10 (arguing CIUs are uniquely positioned to review and address the problem of prosecutorial misconduct).

130. See generally HOLLWAY, *supra* note 48, at 1–66; Scheck, *supra* note 19, at 720–46.

practices for CIUs.¹³¹ The publications relied on the most comprehensive data gathered on CIUs and distinguished those that genuinely operated from those that were insincere in their efforts to conduct conviction review.¹³² These best practices focus on ensuring that CIUs are transparent, flexible, and independent.¹³³

To be transparent, CIUs should have clear policies and procedures that are published. They should publicly track and report their case review and decision data. CIUs should seek to vacate a conviction if the prosecutor loses faith in the integrity of the conviction, regardless of whether they are convinced of actual innocence.¹³⁴

To be flexible, the mandate of a CIU should be as wide as possible, to allow for more cases to be screened and reviewed.¹³⁵ Given that requiring a waiver of a defendant's right to attorney-client privilege can have the practical effect of deterring review with the CIU, best practices advise against requiring a waiver of those rights.¹³⁶

To be independent, it is considered a best practice to hire or appoint someone to lead the CIU who has prior experience working for both the prosecution and defense.¹³⁷ It has also been advised that when a CIU is investigating a claim of misconduct involving attorneys from their own office, the case should be referred to an independent authority for external review.¹³⁸

131. See *supra* note 130; see also Griffin & Mason, *supra* note 74, at 1014 (“[T]he two works can be viewed in tandem as presenting the best practices that all CIUs should aim to follow.”).

132. See HOLLOWAY, *supra* note 48, at 5 (describing that there is skepticism about units “conducting ‘Conviction Review In Name Only,’ or ‘CRINOs’”).

133. See *id.* at 2 (“A CRU dedicated to collaborative, good-faith case reviews designed to ensure the factual integrity of a conviction should be *independent, flexible, and transparent* in its work.” (emphasis added)).

134. See *id.* at 46–47 (quoting prosecutors expressing the view that seeking to vacate a conviction that the office has lost faith in is appropriate for a CRU even without being convinced of an individual's innocence).

135. *Id.* at 42 (“[R]estrictions on cases available for review seem more focused on excluding cases than on sincerely identifying and addressing cases where errors have occurred.”).

136. *Id.* at 52 (“[T]he practical effect of requiring petitioners to waive attorney/client privilege as a condition of conducting a case review is to return to the adversarial system, undercutting the value of the CRU as a driver towards a collaborative search for truth.”).

137. *Id.* at 4.

138. See Scheck, *supra* note 19, at 731 (recommending that “allegations of prosecutorial misconduct involving current or former members of the office should be referred to an independent authority for investigation and review”).

Though these are accepted best practices, they are routinely ignored.¹³⁹ Seventy percent of CIUs have no publicly available written protocols.¹⁴⁰ This means there is no written policy for defendants to know what standard of review is being implemented or what process will occur if their case is accepted. This also means we do not know if those CIUs have a narrow or wide standard of review, or if they require defendants to waive their rights when applying for review. It is also extremely rare for CIUs to publicly track their case review and decision data.¹⁴¹ This means we do not know how many cases are reviewed and when a case is rejected, why that rejection has occurred.

Though it is considered a best practice to select as wide a mandate as possible, the majority have a mandate to only review cases where there is newly discovered evidence of actual innocence.¹⁴² This narrow mandate means that cases are rejected where the defendant is innocent but the evidence is not newly discovered. This also means defendants are rejected when the evidence is not of actual innocence but should still make a prosecutor lose faith in a conviction, such as with egregious police misconduct.¹⁴³

CIUs also do not consistently follow best practices regarding defendants' waivers. Many CIUs require defendants to waive various rights, including their right to attorney-client privilege.¹⁴⁴ Some CIUs also require defendants to waive their right against self-incrimination.¹⁴⁵ These type of waivers discourage defendants from seeking review.¹⁴⁶ Some CIUs require defendants to stop all other litigation while their cases are being reviewed, causing them unnecessary delays in the legal efforts to

139. See *infra* Part III.

140. See HOLLWAY, *supra* note 48, at 61.

141. See *id.* at 65 (explaining the North Carolina Innocence Inquiry Commission's annual report "provides an excellent template that to date has not been followed by any other CRU").

142. See *id.* at 41 ("Virtually all CRUs require some new evidence that has not been previously disclosed to accept a case for further review . . .").

143. See *infra* Part III.

144. 28.40 percent of CIUs (from a review of 81 CIUs) require petitioners to waive attorney-client privilege. See Migliori, *supra* note 115. In 2016, only 11 percent of CIUs reported that they required a defendant to waive their attorney-client privilege to have their case reviewed. HOLLWAY, *supra* note 48, at 50.

145. See CUYAHOGA CNTY. PROSECUTOR'S OFF. CONVICTION INTEGRITY UNIT, LIMITED WAIVER AND AGREEMENT, <https://www.ccprosecutor.us/wp-content/uploads/2023/11/Limited-Waiver-and-Agreement-Form-Exhibit-B.pdf> [https://perma.cc/6EEE-NP62].

146. See, e.g., Scheck, *supra* note 19, at 730.

fight for their exoneration.¹⁴⁷ This is so even when the CIU ends up taking no action and the original litigation would cause no interference of any kind.¹⁴⁸

CIUs do not follow best practices regarding who they hire and how they handle prosecutorial misconduct when it is uncovered. Despite best practices recommending that those selected to lead the CIU have both prosecution and defense experience, CIUs often hire veteran prosecutors to lead who have a history of trying cases in their offices.¹⁴⁹ Though misconduct claims are one of the most common causes of wrongful convictions, they almost never refer claims of misconduct to an independent authority for external review.¹⁵⁰ Instead, they often close ranks and protect their own by remaining secretive about these claims.¹⁵¹ They do not release the names of those involved, even when they are supporting the innocence claim, and have gone so far as to bargain with defense attorneys to keep the misconduct claim out of petitions in court or risk having the CIU pull its agreement.¹⁵²

C. *The Harms of Ineffective CIUs*

Those that are grateful for any marginal move away from the draconian, adversarial positions of prosecutors in the past

147. This may be a minority position, though it is unclear. The most recent survey only compiled answers from 63 CIUs. 9.5 percent make the applicant choose whether to pursue the appeal or investigation by the CIU; 7.9 percent put the appeal or petition on hold until the conclusion of the unit's review; 21 percent the prosecutor handling the ongoing litigation consults with the CIU on how to proceed; 25 percent the ongoing litigation proceeds completely independent of the unit's review; 22 percent responded "Other." See Taylor Migliori, compiler, QC 2023 CIU Survey, Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Carey Law School (Jan. 3, 2025) (on file with author).

148. See, e.g., Ryan Kost & Willow Higgins, *DAs Promised to Help Wrongfully Convicted New Yorkers. In Many Cases, They Made Things Worse.*, N.Y. FOCUS (Feb. 13, 2025), <https://nysfocus.com/2025/02/13/wrongful-conviction-integrity-units-district-attorney-exoneration-new-york> [<https://perma.cc/RXF3-EH2Z>] (describing how Calvin Buari had to stall his pending claims and waited over a year to be rejected by the CIU, then was later exonerated).

149. See *infra* Part III; see also HOLLWAY, *supra* note 48, at 27 ("DAs have without exception appointed experienced, veteran prosecutors to lead the 'traditional' CRU.").

150. In the research for this Article, there were two instances where misconduct was referred to an independent authority for external review. See *infra* Section III.A.

151. See Complaint and Jury Demand at 112, Warren v. City of New York, No. 05085 (E.D.N.Y. July 22, 2024) (on file with author).

152. See *id.*

may wonder what harm could possibly be caused by a CIU.¹⁵³ But when a CIU exists within a prosecutor's office, a cloak of legitimacy can attach itself to all positions that the CIU takes, providing the appearance of validity and accuracy.¹⁵⁴ Thus, when a CIU opposes or does not join in a motion to vacate or exonerate, it can cause harm to the defendant because the judiciary gives that position deference and views it as an additional confirmation of guilt—even if the CIU did no investigation at all.¹⁵⁵

When CIUs are not conducting good faith review, they give false hope to those that may rely on the units to evaluate their cases instead of pursuing other avenues of relief. This can occur because defendants have no other choice—many CIUs require that other litigation is concluded or put on hold while they conduct a review of the case.¹⁵⁶ If the CIU is not engaged in a good faith review, individuals seeking its assistance lose precious time when they could be litigating other avenues of relief. Worse, while they are on hold for a meaningless review, these individuals are typically incarcerated and suffering deep emotional trauma, physical violence, and further separation from their families and loved ones.¹⁵⁷

153. Prosecutors have historically fought against innocence claims even when there is unbiased, exculpatory, scientific evidence. *See, e.g.*, Luke X. Martin et al., *County Prosecutor Accuses Missouri Attorney General of Malpractice for Fighting Kevin Strickland's Release*, NPR (Nov. 24, 2021, at 2:16 PM), <https://www.kcur.org/news/2021-11-24/county-prosecutor-accuses-missouri-attorney-general-of-malpractice-for-fighting-kevin-stricklands-release> [<https://perma.cc/3436-6B3W>] (describing the exoneration of Kevin Strickland); Andrew Martin, *The Prosecution's Case Against DNA*, N.Y. TIMES (Nov. 27, 2011), <https://www.nytimes.com/2011/11/27/magazine/dna-evidence-lake-county.html> [<https://perma.cc/T6HN-JB4F>] (quoting District Attorney Mermel explaining the fight against efforts of defendants to overturn their convictions when DNA evidence is exonerating: "The taxpayers don't pay us for intellectual curiosity. They pay us to get convictions").

154. *See Zacharias, supra* note 73, at 186–87 (“[A] prosecutor’s consent to a motion for a new trial may have persuasive effect on a judge making these determinations . . .”).

155. *See id.*

156. *See, e.g.*, KINGS CNTY. DIST. ATT’Y’S OFF., *supra* note 120, at 2. On page 2 of the form, the defendant must initial the following: “11. I understand that the CRU will not open a review of my case while there is any post-conviction adversarial proceeding in court, and I attest that there is none current pending . . . 12. I understand that if I initiate a post-conviction adversarial proceeding during the pending of the CRU’s investigation, the CRU will put its investigation on hold pending resolution of the litigation.” *Id.*

157. Prison sentences can cause deep emotional trauma and subject those serving them to various forms of physical violence. *See JOSHUA M. PRICE, PRISON AND SOCIAL DEATH* 6 (2015) (describing the three basic qualities of incarceration as

When CIUs do not learn from the causes of wrongful convictions and implement office-wide pretrial changes, they cause harm by simultaneously repeating the mistakes of the past while giving the false impression that those mistakes are being remedied.¹⁵⁸ This can also hamper other efforts to address these systemic issues and assist convicted defendants. The public may believe that prosecutorial misconduct is being taken seriously if a CIU participates in an exoneration where official misconduct is the cause. But if the CIU does not refer the prosecutor to the local bar association and conduct an audit of all of the prosecutor's other cases, it fails to remedy the harm that may have been caused by that prosecutor and leave current prosecutors with the impression that misconduct is condoned by the office.¹⁵⁹

And even when a CIU does join in efforts to exonerate, harm can be caused when it is seen as an example of the system working, emboldening the incorrect belief that singular exonerations fix systemic issues and giving false legitimacy to the broken criminal legal system.¹⁶⁰ Scholar Margaret Raymond has critiqued this as a harm of the innocence movement as well, explaining that exonerations can be used to show that the system

“generalized humiliation, institutional violence, and natal alienation,” labeled collectively “social death”); Katie Rose Quandt & Alexi Jones, *Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health*, PRISON POL’Y INITIATIVE: BRIEFINGS (May 13, 2021), <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts> [<https://perma.cc/WLR7-MMVR>] (describing some of the causes that damage mental health during incarceration: family disconnection, loss of autonomy and lack of purpose, unpredictability, overcrowding and punitiveness, solitary confinement, and trauma from experiencing and witnessing violence).

158. This is a concern with how prosecutorial misconduct is handled in prosecutors’ offices writ large. See Rachel E. Barkow, *Organizational Guidelines for the Prosecutor’s Office*, 31 CARDOZO L. REV. 2089, 2090 (2010) (“[The] existing framework for addressing prosecutorial misconduct is entirely backward-looking, and ineffective. Judges and state bars are supposed to police violations when they occur [T]he model that focused solely on individual liability and addressed particular violations after-the-fact . . . has . . . failed in addressing misconduct within the [larger entity of] the prosecutor’s office.”).

159. See *id.* at 2093. (“The available evidence confirms that violations are likely to cluster in particular offices, as it appears that many prosecutors’ offices have within them multiple cases of misconduct and repeat offenders. To be sure, there are instances of isolated misconduct that occur in a particular office, but these cases are rare. It is more likely that problems are more widespread, either in the form of a repeat offender who is never detected or sanctioned, or as manifested by multiple violators within a particular office.”).

160. See Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2519 (2023) (“Reformism telegraphs to the public that the system, institution, or set of relations it seeks to tweak are here to stay; that the problem is not structural or symptomatic but stray.”).

worked by providing relief, albeit relief greatly delayed.¹⁶¹ This concern was further explored by scholar Abbe Smith, who noted that stories of innocence are too often “regarded as isolated, individual tragedies that are ultimately uncovered and fixed by the system.”¹⁶² When CIUs participate in these exonerations, they support the false narrative that fixing wrongful convictions should restore faith and integrity in the unfixable criminal system.¹⁶³

D. The First CIU—A Response to DNA Exonerations

The first CIUs were initially formed in response to DNA exonerations, with the sole purpose of reviewing cases with biological evidence that could be tested.¹⁶⁴ They had a particularly narrow mandate and their review was uncomplicated—if biological evidence existed, it would be tested to see if the convicted individual matched.¹⁶⁵ These are vastly different from the more encompassing mandates that are considered best practices, such

161. See Margaret Raymond, *The Problem with Innocence*, 49 CLEV. STATE. L. REV. 449, 451 (2001) (“[F]ar from suggesting that the system is irreparably broken, the innocence movement suggests, instead, that the system works. The fact that persons wrongfully convicted of crimes they did not commit have been able to secure relief through the system, it could be argued, belies the need for reform.”) (citation omitted).

162. Abbe Smith, *In Praise of the Guilty Project: A Criminal Defense Lawyer’s Growing Anxiety About Innocence Projects*, 13 U. PA. J.L. & SOC. CHANGE 315, 323 (2009).

163. See, e.g., *Conviction Integrity Unit*, PHILA. DIST. ATT’Y’S OFF., <https://phillyda.org/safety-and-justice/investigations/conviction-integrity-unit-ciu> [<https://perma.cc/TDU6-W5S6>] (“We seek to right past wrongs to make the entire system more fair and accountable . . . [P]rosecutors in this unit strive to increase transparency, integrity [sic] and trust in the criminal justice system . . .”).

164. San Diego County in California was the first to form a unit specifically dedicated to evaluating claims of wrongful conviction by testing DNA evidence. See HOLLWAY, *supra* note 48, at 10 n.5.

165. See, e.g., Kimberly Epler, *DNA Testing Program Up for Harvard Award*, S.D. UNION-TRIB., <https://www.sandiegouniontribune.com/2001/05/10/dna-testing-program-up-for-harvard-award-2> [<https://perma.cc/RJ6V-VHK3>] (last updated Aug. 27, 2016, at 8:42 PM). This review was made easier by the fact that in many cases these were sexual assault cases where biological evidence would clearly indicate whether the defendant was excluded from the sample. The first seven exonerations in the Dallas County Conviction Integrity Unit involved the use of DNA. Five of them were sexual assault allegations. See, e.g., *DNA, Dallas, & Conviction Integrity Units*, NAT’L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/cases?f%5B0%5D=n_coc%3ADallas&f%5B1%5D=n_dna%3A1&f%5B2%5D=n_pre_1989%3A0&f%5B3%5D=state%3ATexas&f%5B4%5D=tags%3ACIU&search [<https://perma.cc/E6Q3-5B5T>].

as those that review any case where there is reason to doubt the integrity of the conviction.

The oldest currently operational CIU was formed in Dallas County, Texas, in 2007 in response to the DNA exonerations of 13 individuals.¹⁶⁶ District Attorney Craig Watkins, the first Black district attorney in Texas history, brought national attention to the potential of prosecutors to participate in the review of wrongful convictions.¹⁶⁷ The prior district attorney had fought the attempts of defendants to have DNA testing conducted, making the creation of this unit a huge shift in approach.¹⁶⁸ The CIU initially reviewed cases where the defendants' requests for DNA testing had been opposed by the prior administration and denied in court.¹⁶⁹ Then, the unit conducted a widescale review of sexual assault cases and conducted DNA testing if any evidence was available, even in those cases where a defendant had not alleged a wrongful conviction had occurred.¹⁷⁰ This led to the exoneration of Michael Phillips, who had pled guilty to avoid a potential life sentence.¹⁷¹ Mr. Phillips had already served his 12-year prison sentence when the CIU tested the rape kit originally collected in the case and the single male profile did not match Mr. Phillips.¹⁷²

The Dallas County CIU has participated in 44 exonerations.¹⁷³ However, the office has not always held a consistent

166. See Jessica Pishko, *No County for Innocent Men*, D MAG. (May 15, 2018, at 10:30 AM), <http://www.dmagazine.com/frontburner/2018/05/dallas-county-exonerations-innocent-conviction-integrity-unit> [<https://perma.cc/B4BL-SSBB>].

167. See Elizabeth Webster, *Postconviction Innocence Review in the Age of Progressive Prosecution*, 83 ALB. L. REV. 989, 997 (2019) (documenting the impact of Watkins's work in creating one of the first conviction integrity units in 2007).

168. Ware, *supra* note 34, at 1035–36 (“In most of those cases, the District Attorney’s office, under the prior administration, had resisted the defendant’s motion for postconviction DNA testing.”).

169. See Bethany Erickson, *The Changing Face of Dallas County Exonerations*, D MAG. (July 27, 2023, at 2:20 PM), <https://www.dmagazine.com/frontburner/2023/07/the-changing-face-of-dallas-county-exonerations> [<https://perma.cc/NLF3-8RKJ>].

170. See Maurice Possley, *Michael Phillips*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/11620> [<https://perma.cc/LV99-N4G6>] (last updated July 8, 2021).

171. *Id.*

172. *Id.*

173. See *Conviction Integrity Units: Dallas County*, NAT’L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/cases?f%5B0%5D=n_coc%3ADallas&f%5B1%5D=n_pre_1989%3A0&f%5B2%5D=state%3ATexas&f%5B3%5D=tags%3ACIU&search [<https://perma.cc/782T-YUQZ>].

position on each defendant's case, and there was serious concern about the outlook for the CIU when Watkins was no longer in charge.¹⁷⁴ The case of Andrew Roark, described in Part I, is a stark example of why—under Watkins, the state supported Mr. Roark's efforts to reverse his conviction, but after Watkins's tenure, the state reversed course and fought against Mr. Roark's efforts for release.¹⁷⁵ Thankfully, the State reversed course and again supported Mr. Roark's writ of habeas corpus alleging actual innocence.¹⁷⁶ As the Dallas CIU continued to review cases and expand beyond their initial DNA mandate, it forecast the fragility of these units and the unreliability of placing them within prosecutorial offices, where the success of the unit is entirely dependent on personnel, and the attitude toward wrongful convictions can shift with each election.¹⁷⁷

III. THE REALITY OF CONVICTION INTEGRITY

CIUs suffer from multiple structural and operational flaws that can hamper even the best intentions.¹⁷⁸ There are structural flaws that exist because CIUs are housed in local prosecutors' offices. These offices have no requirement to be transparent and openly publish their practices or results.¹⁷⁹ They often rely on intra-institutional hiring to fill CIU positions.¹⁸⁰ This results in a myriad of ethical issues, including requiring prosecutors to complete the impossible task of policing their own.¹⁸¹ They have a chain of command that includes line prosecutors reporting to the director of the CIU and an elected head prosecutor, both transient positions that have the power to drastically impact the ethos of the office.¹⁸²

174. See Erickson, *supra* note 169; Agreed Findings of Fact & Conclusions of Law and Trial Ct.'s Recommendation on Application for Writ of Habeas Corpus at 1, 36, *Ex parte* Roark, Writ No. W99-02290-L(C) (Tex. Crim. Dist. Ct. Dec. 30, 2014) (on file with author) [hereinafter Agreed Findings, *Ex parte* Roark]. Watkins was defeated by Republican Susan Hawk in 2015. See Pishko, *supra* note 166.

175. See Pishko, *supra* note 166.

176. See Agreed Findings, *Ex parte* Roark, *supra* note 174, at 36–37.

177. The coverage has certainly been mixed regarding the continued sincerity of the CIU's work after Watkins's departure. See Erickson, *supra* note 169.

178. See *infra* Sections III.A–C.

179. See *supra* Section I.A.

180. See *supra* Section II.A.

181. See *infra* Sections III.A–C.

182. See *infra* Sections III.A–C.

CIUs suffer from operational flaws as well.¹⁸³ While exonerations are not necessarily a measure of success, a CIU that has been in operation for over a decade and has failed to join the exonerations in its jurisdiction can signal that something is amiss.¹⁸⁴ When CIUs have mass exonerations because of a large scandal, there should be a review of all implicated cases. Instead, the CIUs often do not act until they are pressured to do so.¹⁸⁵ These mass exonerations give the false impression that the CIU is operating successfully when the CIU did not initiate or file the review of cases itself.¹⁸⁶

These structural and operational flaws show how CIUs are not a reliable reform to conduct sincere innocence claim reviews or address the causes of wrongful convictions.¹⁸⁷ The creation and existence of these units, however, leaves the impression that these problems are being addressed in these jurisdictions. This Part will provide three case studies from Texas, New York, and Illinois to show how CIUs can fail to comprehensively address innocence claims and implement changes to prevent wrongful convictions. These three CIUs selected for in-depth analysis have the highest number of recorded exonerations in the country while operating in jurisdictions with the highest rates of wrongful convictions in the country.¹⁸⁸ Despite their extraordinary

183. See *infra* Sections III.A–C.

184. In Pima County, Arizona, a CIU has been operational since 2014 and has no recorded exonerations. See *Conviction Integrity Units*, *supra* note 20. The CIU's actions in the case of Louis Taylor may be illustrative of its ethos. Rather than agreeing to exoneration when developments in forensic evidence (in the form of an expert) indicated no arson had occurred in the 1972 murder case, the CIU disputed the new evidence and offered Taylor a no contest plea and time served sentence. See Maura Dolan, *After Four Decades, a Wrongful-Conviction Case with Racial Overtones Still Reverberates*, L.A. TIMES (Jan. 17, 2019, at 5:00 PM), <https://www.latimes.com/nation/la-na-arizona-arson-wrongful-conviction-20190117-story.html> [<https://perma.cc/M89P-PLWV>].

185. See *infra* Sections III.A–C.

186. See *infra* Sections III.A–C.

187. These structural and operational flaws are further explored in Part IV. See *infra* Part IV.

188. Harris County is one of the oldest operational CIUs, Kings County is put forth as a model to be used by other offices, and Cook County was recently re-branded with the election of Kim Foxx. See *infra* Sections III.A–C. All three CIUs also have had high-profile mass exonerations and high-profile, large-scale scandals, resulting in thorough media coverage from multiple news outlets. See *infra* Sections III.A–C. While other CIUs are included throughout the Article in footnotes, these three CIUs were selected for in-depth analysis for these reasons. In addition, the average time from conviction and incarceration to exoneration and release in murder cases is 19.8 years. The average time in other types of cases is 6.7 years. See 2023 ANNUAL REPORT, NAT'L REGISTRY OF EXONERATIONS 1, 12 (2024), <https://>

numbers of exonerations, the review of these CIUs shows how the systemic problems that cause wrongful convictions continue, despite the existence of CIUs.

A. *Harris County (Houston), Texas*

The Harris County CIU was formed in 2009, making it one of the oldest units in the country.¹⁸⁹ District Attorney Patricia Lykos followed the lead of Dallas in creating the unit, years before CIUs were an agreed-upon reform.¹⁹⁰ The unit, staffed with two prosecutors and an investigator, quickly went to work and recorded four high-profile exonerations: two in 2010, one in 2011, and one in 2014.¹⁹¹

These four exonerations were emblematic of many of the early DNA exonerations that inspired the creation of CIUs.¹⁹² The cases involved rape and sexual assault charges where dispositive forensic evidence existed that had never been tested.¹⁹³

exonerations: exonerationregistry.org/sites/exonerationregistry.org/files/documents/2023%20Annual%20Report.pdf [https://perma.cc/ZR3M-MGG9]. CIUs that have been operating for less than seven years were excluded from any analysis in this Article, including any that had been formed since 2018 or where formation dates were unknown, including: Jefferson (Bessemer), AL; Jefferson (Birmingham), AL; Maricopa, AZ; Alameda, CA; Federal, Central District, CA; Monterey, CA; Napa, CA; Orange, CA; 18th Judicial Circuit, CO; Denver, CO; 1st Judicial Circuit, CO; Statewide, CT; Statewide, DE; 9th Circuit, FL; 15th Circuit, Palm Beach Co., FL; Gwinnett, GA; Kankakee, IL; Rock Island, IL; Northwestern District, MA; State-ment, MA; Anne Arundel, MD; Prince George's, MD; Montgomery, MD; Statewide, MN; Columbia, NY; Federal, Eastern District, NY; Federal, Southern District, NY; Monroe, NY; Ulster, NY; Franklin, OH; Hamilton, OH; Summit, OH; Centre, PA; Chester, PA; Statewide, PA; Shelby, TN; Davis, UT; Salt Lake, UT; Utah, UT; Sum-mit, UT; and Arlington, VA. See *Conviction Integrity Units*, *supra* note 20.

189. See *Conviction Integrity Units*, *supra* note 20.

190. See *Harris County*, NAT'L REGISTRY OF EXONERATIONS, https://exoneration-registry.org/cases?f%5B0%5D=n_coc%3AHarris&f%5B1%5D=n_pre_1989%3A0&f%5B2%5D=state%3ATexas&f%5B3%5D=tags%3ACIU&search [https://perma.cc/PL53-E782]; Peggy O'Hare, *Odds Still Against Clearing Convicts: Despite County's New Approach on Innocence Claims, Most of Texas Still Takes a Hard Stance*, HOU. CHRON., Aug. 2, 2010.

191. See *Harris County*, *supra* note 190.

192. See *supra* Section I.B.

193. Maurice Possley, *Ricardo Rachell*, NAT'L REGISTRY OF EXONERATIONS [hereinafter *Rachell*], <https://exonerationregistry.org/cases/10782> [https://perma.cc/4UR3-52UB] (last updated Jan. 31, 2024); Maurice Possley, *Michael Anthony Green*, NAT'L REGISTRY OF EXONERATIONS (Aug. 29, 2011) [hereinafter *Green*], <https://exonerationregistry.org/cases/10493> [https://perma.cc/AH6Q-2UHF]; Stephanie Denzel, *Allen Wayne Porter*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/10766> [https://perma.cc/XPB7-46YD] (last updated Nov. 26, 2016); Maurice Possley, *Mandel Rogers*, NAT'L REGISTRY OF EXONERATIONS

The CIU's investigation and subsequent actions substantially helped three of the defendants win their claims.¹⁹⁴

For example, Michael Anthony Green had filed a motion requesting post-conviction DNA testing in 2005 before the CIU was created, and the relevant clothing had not yet been located for testing.¹⁹⁵ The CIU is credited with searching for the evidence that remained in the case—the clothing of the victim—to submit it for DNA testing.¹⁹⁶ Mr. Green was exonerated in 2010 after serving 27 years in prison.¹⁹⁷

Ricardo Rachell's lawyer also successfully petitioned Harris County to produce the DNA evidence that was collected but never tested in Mr. Rachell's case.¹⁹⁸ After the results excluded Rachell, the CIU supported his petition for a writ of habeas corpus.¹⁹⁹ Rachell was released from prison after serving five years.²⁰⁰

Allen Wayne Porter's DNA test results also excluded his profile, yet he had previously been denied relief.²⁰¹ The same judge that ultimately released him ruled against his earlier 2004 claim because the lab technician testified that a lack of DNA does not equate to innocence.²⁰² In 2009, District Attorney Lykos received a letter directly from Porter.²⁰³ It included an affidavit from his nephew asserting Porter's innocence.²⁰⁴ The CIU interviewed Porter's nephew and the second individual who committed the crime—both confirmed Porter's innocence and gave the

[hereinafter *Rogers*], <https://exonerationregistry.org/cases/11662> [<https://perma.cc/DF4V-XGPW>] (last updated May 2, 2022).

194. See *supra* note 193.

195. See Brian Rogers, *DNA Clears Houston Man 27 Years After Conviction*, HOU. CHRON. (July 28, 2010), <https://www.chron.com/news/houston-texas/article/dna-clears-houston-man-27-years-after-conviction-1703150.php> [<https://perma.cc/B5TC-CNFJ>].

196. See O'Hare, *supra* note 190.

197. See *Green*, *supra* note 193.

198. James C. McKinley, Jr., *Man, Imprisoned 5 Years, Is Cleared of Sexual Assault*, N.Y. TIMES (Dec. 12, 2008), <https://www.nytimes.com/2008/12/13/us/13exonerate.html> [<https://perma.cc/26BL-9CEB>].

199. *Rachell*, *supra* note 193.

200. However, it took three more years for a hearing and official exoneration. See *id.*; Roma Khanna et al., *Freed by DNA to Life as an Innocent Man*, HOU. CHRON., Dec. 13, 2008.

201. Allan Turner, *Teary-Eyed Judge Calls for Inmate's Freedom: Jurist Says Houston Man Has Spent 19 Years in Prison for Rape He Didn't Commit*, HOU. CHRON., July 23, 2010.

202. *Id.*

203. *Id.*

204. *Id.*

identity of the third participant, whose fingerprints matched those from the scene.²⁰⁵ Mr. Porter was exonerated in 2010 after serving almost 20 years in prison for a rape he did not commit.²⁰⁶

Ultimately, each of these CIU-involved exonerations had exculpatory DNA results.²⁰⁷ They were what some refer to as the “easy” cases, where a prosecutor is clearly obligated to correct the injustice that has occurred because indisputable DNA evidence exists to support the innocence claim. For prosecutors, their duty to rectify the wrongful conviction in these easy cases is unambiguous. For Mr. Porter, Mr. Green, and Mr. Rachell, the CIU’s actions made a life-changing difference. They were all released in large part because of the CIU’s position in their cases.²⁰⁸

Since 2012, there has been only one exoneration that did not originate from a scandal.²⁰⁹ Mandel Rogers, the fourth non-scandal related exoneration, is notable because the CIU opposed three of Mr. Rogers’s four state petitions seeking to vacate his no-contest pleas, forecasting how the CIU was starting to develop an approach that did not encompass an open-minded and sincere review.²¹⁰

Mr. Rogers was charged with four separate robberies occurring in December of 1997.²¹¹ In three of the cases, he was charged with a codefendant, and in one of those cases, it was alleged that a sexual assault had occurred.²¹² After being convicted at trial in two cases, including the sexual assault case, the State offered Rogers a plea deal of 12 years in prison for all four cases and he accepted.²¹³ Years later, Rogers requested DNA testing in the case where he had been identified as committing

205. *Id.*

206. Denzel, *supra* note 193.

207. Rachell, *supra* note 193.

208. *Id.*; Denzel, *supra* note 193; Green, *supra* note 193.

209. See *Harris County*, *supra* note 190. A fifth case, Chris Truong, is listed as weapon possession or sale. However, Mr. Truong’s charges were initiated because the gun was found in proximity to four tablets alleged to be a controlled substance and it is unlawful to possess a gun while committing a crime in Texas. Once the crime lab tested the tablets and no controlled substance was found, Mr. Truong’s defense attorney filed a state petition and with the support of the CIU, his conviction was vacated. See Maurice Possley, *Chris Truong*, NAT’L REGISTRY OF EXONERATIONS (Apr. 10, 2017), <https://exonerationregistry.org/cases/12220> [<https://perma.cc/D6SV-YMC5>].

210. See Rogers, *supra* note 193.

211. *Id.*

212. *Id.*

213. *Id.*

a sexual assault, and the results were exculpatory: two profiles were identified, and neither matched Rogers.²¹⁴ The Texas Court of Criminal Appeals followed the State's lead and only vacated the one case with DNA evidence, even though Mr. Rogers took the consolidated plea after his conviction in the sexual assault case.²¹⁵

After District Attorney Lykos departed in 2012, the CIU changed its standard of review to a more restrictive standard.²¹⁶ The new standard of review is vastly different from what was implemented by the CIU from 2009 to 2012, when three of the four non-scandal related exonerations took place.²¹⁷ The unit now reviews applications of defendants who have been convicted of a state offense, including both felonies and misdemeanors, who are alleging actual innocence which can be proven by newly discovered or newly available evidence.²¹⁸ The unit will not review requests for sentence modifications, claims based on ineffective assistance of counsel, or claims where newly discovered evidence supports an affirmative defense.²¹⁹ If the evidence supporting innocence is witness recantation, the unit requires corroboration or it will not consider the claim.²²⁰

This standard of review is much more restrictive than those recommended by scholars and leading legal institutions.²²¹ The best practice recommendations include that a CIU should "accept any and all cases for review that have a plausible or colorable claim of factual innocence."²²² A "plausible claim" of factual innocence is a much more inclusive standard than "actual innocence that can be proven by newly discovered or newly available evidence," and allows for a much wider range of cases to be investigated.²²³ Many of the defendants excluded by this narrow

214. *Id.*

215. Mr. Rogers alleged that he would not have taken the plea to any of the cases had he been aware of the exculpatory DNA evidence. *Id.*

216. See *Wrongful Convictions*, HARRIS CNTY. DIST. ATT'Y'S OFF.: JUST. & SAFETY, <https://dao.harriscountytexas.gov/Justice-Safety/Wrongful-Convictions> [<https://perma.cc/52MX-V7X5>].

217. *Id.*; see HOLLWAY, *supra* note 48, at 2–3.

218. *Wrongful Convictions*, *supra* note 216.

219. See *id.*

220. See *id.*; Inger H. Chandler, *Conviction Integrity Review Units*, TEX. DIST. & CNTY. ATT'YS ASS'N, https://www.tdcaa.com/wp-content/uploads/ABA-Summer-2016_0.pdf [<https://perma.cc/SL6C-99LJ>].

221. See HOLLWAY, *supra* note 48, at 2–3; Scheck, *supra* note 19, at 726.

222. HOLLWAY, *supra* note 48, at 3.

223. See *id.*; *Wrongful Convictions*, *supra* note 216; *e.g.*, Warden, *supra* note 29 (describing the three trials of Juan Rivera, who would not have qualified for review

standard will be rejected for review while serving time in prison.²²⁴ Despite having a colorable claim of innocence, they will be forced to navigate their wrongful conviction claim from behind the walls without investigation by or assistance from the CIU.

The bulk of the 181 exonerations that Harris County's CIU is credited for participating in primarily stem from two large scandals.²²⁵ The CIU did not proactively discover these scandals, though they received international praise for their reaction and participation in the exonerations that resulted from them.²²⁶ The first batch of exonerations occurred in 2014 after a newspaper reporter alerted the head of the CIU about an injustice happening within the prosecution's own office: The line attorneys were offering guilty pleas to incarcerated defendants who had been charged with possessing illegal drugs before receiving test results confirming the illicit nature of the substances.²²⁷ Many of these defendants had been arrested based upon field tests, which are notoriously unreliable and not accepted as evidence in court.²²⁸

The earliest of these exonerations was that of Mario Martin, who was arrested in 2008 and pled guilty to possession of cocaine.²²⁹ He was sentenced to 30 days of incarceration.²³⁰ Two years later, the crime lab tested the alleged cocaine, and the test was negative.²³¹ The CIU then contacted Martin's attorney and supported a writ of habeas corpus.²³² His conviction was

under the Harris County standard after the first or third trial, despite having a plausible and colorable claim of innocence).

224. *See, e.g., id.*

225. *See Harris County, supra* note 190.

226. *See* Jessica Lussenhop, *Why Harris County, Texas, Leads the US in Exonerations*, BBC: NEWS (Feb. 12, 2016), <https://www.bbc.com/news/magazine-35543898> [<https://perma.cc/33DZ-BDQ8>].

227. *Id.*

228. *Id.*; *see also* ROSS MILLER ET AL., QUATTRONE CTR. FOR THE FAIR ADMIN. OF JUST., GUILTY UNTIL PROVEN INNOCENT: FIELD DRUG TESTS AND WRONGFUL CONVICTIONS (2023), <https://www.law.upenn.edu/institutes/quattronecenter/reports/field-drug-test-study> [<https://perma.cc/BQT7-UT6H>].

229. Maurice Possley, *Mario Martin*, NAT'L REGISTRY OF EXONERATIONS (Apr. 26, 2014), <https://exonerationregistry.org/cases/11570> [<https://perma.cc/28YX-QR8R>].

230. *Id.*

231. *Id.*

232. *Id.*

vacated.²³³ As late as 2018, defendants were still being exonerated for convictions secured based on inaccurate field tests.²³⁴

From 2010 to 2018, approximately 157 defendants were exonerated when testing ultimately confirmed the substances they pled guilty to possessing were not illegal.²³⁵ Harris County gained notoriety for its record number of exonerations.²³⁶ The CIU's work was praised nationally and credited for the exonerations.²³⁷ In response to the scandal, Harris County's CIU conducted a review and found 317 lab tests that did not confirm the alleged drugs defendants pled guilty to possessing.²³⁸ In response, the prosecutor's office implemented changes to its plea policy, requiring lab results in felony cases where the prosecution was asking for jail time.²³⁹

The policy changes in response to innocent defendants being wrongfully convicted were woefully inadequate. The policy to postpone the offer of a plea bargain until confirmatory testing had been done only included those charged with a felony offense.²⁴⁰ Only including defendants charged with felony offenses potentially left out defendants charged with misdemeanor drug possession.²⁴¹ It also did not apply unless jail time was being

233. *Id.*

234. Some of the crime lab reports were not discovered until 2014, even though the arrests occurred as far back as 2009. *See, e.g.*, Maurice Possley, *Humberto Cantu*, NAT'L REGISTRY OF EXONERATIONS (Jan. 11, 2018), <https://exonerationregistry.org/cases/12361> [<https://perma.cc/Q695-XLXA>].

235. *See* SAMUEL R. GROSS ET AL., NAT'L REGISTRY OF EXONERATIONS, RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES 2022 31 (2022); *Harris County: Drug Possession or Sale*, https://exonerationregistry.org/cases?f%5B0%5D=n_coc%3AHarris&f%5B1%5D=n_pre_1989%3A0&f%5B2%5D=state%3ATexas&f%5B3%5D=tags%3ACIU&f%5B4%5D=worst_crime_display%3ADrug%20Possession%20or%20Sale&search_api_fulltext=&order=custom_204&sort=asc [<https://perma.cc/C6X5-F2BK>].

236. Jon Schuppe, *How One Texas County Drove a Record Rise in Exonerations*, NBC NEWS, <https://www.nbcnews.com/news/us-news/how-one-texas-county-drove-record-rise-exonerations-n730161> [<https://perma.cc/P5EL-48AP>] (last updated Mar. 8, 2017, at 2:15 AM); Marti Hause & Ari Melber, *Jailed but Innocent: Record Number of People Exonerated in 2015*, NBC NEWS, <https://www.nbcnews.com/news/us-news/jailed-innocent-record-number-people-exonerated-2015-n510196> [<https://perma.cc/2PZX-BFGA>] (last updated Feb. 2, 2016, at 10:20 PM).

237. Lussenhop, *supra* note 226 (recognizing Harris County as a "shining example" for other CIUs).

238. Schuppe, *supra* note 236.

239. *Id.*

240. *Id.*

241. *See generally* TEX. HEALTH & SAFETY CODE ANN. §§ 481.101–.118 (2023) (describing that possession of less than 28 grams qualifies as a Class B misdemeanor).

requested, discounting the extreme negative effects that a criminal conviction and probation can cause,²⁴² as well as the effort and length of time undoing a wrongful conviction can take.²⁴³ Further, it did not account for the fact that defendants could still be incarcerated while awaiting those results, ignoring the extreme toll pretrial detention can cause.²⁴⁴

What is especially striking is that no policy was introduced that would have truly put a stop to the initiation of these wrongful convictions. If the district attorney was seriously concerned about addressing the scandal, the office could have either created a policy of delaying all charging decisions in drug cases until confirmatory testing was complete or instructed her line attorneys to recommend the release of anyone arrested on a drug offense. Instead, the office continued to arrest and detain citizens who may have committed no crime.

In 2019, another scandal occurred that would lead to approximately 24 exonerations, but may have tainted countless other convictions.²⁴⁵ The scandal involved officer Gerald Goines, who was investigated by the Harris County District Attorney's office after he shot and killed two civilians and their dog when executing a no-knock warrant at their home.²⁴⁶ Goines was also shot in the neck during the execution of the warrant. He was interviewed while in the hospital recovering and admitted to lying in the search warrant application by completely fabricating

242. See generally Cameron Kimble & Ames Grawert, *Collateral Consequences and the Enduring Nature of Punishment*, BRENNAN CTR. FOR JUST. (June 21, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/collateral-consequences-and-enduring-nature-punishment> [<https://perma.cc/H7C5-DTL7>] (describing collateral consequences of a criminal conviction, such as limiting employment options, ineligibility for government benefits, and disenfranchisement).

243. See *supra* note 188 (citing the statistic that the average exoneration takes approximately seven years).

244. Shima Baradaran Baughman, *Dividing Bail Reform*, 105 IOWA L. REV. 947, 961–62 (2020) (“Pretrial detention induces innocent defendants to plead guilty, causes defendants to be convicted three times as often, receive three times longer sentences, higher bail amounts, and even commit more future crime.”).

245. See Ken Otterbourg, *Texas 2020*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/groups/4273> [<https://perma.cc/5RV7-3KJ4>] (last updated Sep. 22, 2025); see also Jacob Sullum, *New Charges and Audit Results Reveal Widespread Laxness and Corruption in the Houston Narcotics Division that Killed an Innocent Couple*, REASON (July 2, 2020, at 2:30 PM), <https://reason.com/2020/07/02/new-charges-and-audit-results-reveal-widespread-laxness-and-corruption-in-the-houston-narcotics-division-that-killed-an-innocent-couple> [<https://perma.cc/MHG3-JTAP>].

246. See Otterbourg, *supra* note 245.

his basis for probable cause.²⁴⁷ Prosecutors began a widespread investigation of all the cases involving Goines, finding numerous incidents of misconduct and falsified evidence.²⁴⁸ Multiple other officers were found to be complicit with his actions and, in the worst cases, committed their own acts of fraud.²⁴⁹

Officer Goines's conduct was so egregious that the Texas Court of Criminal Appeals extended a falsity of evidence inference that had never been applied to a police officer previously.²⁵⁰ In *Ex Parte Mathews*, the Court held that the particularly egregious nature of the misconduct on the part of Officer Goines justified the inference that his testimony was false, shifting the burden to the State to offer evidence that there was no intentional misconduct.²⁵¹ During the course of the litigation, the State took no position regarding the allegation that Goines falsified information in a 2019 search warrant affidavit, despite Goines's own admission that he did so.²⁵²

Though this litigation occurred many years after the initial revelations of misconduct, the State remained silent as to the egregious official misconduct committed by Officer Goines.²⁵³

There were also no policy changes made by the state to address this scandal. The Goines cases put the Harris County CIU on notice of general circumstances that can allow officers to

247. *Id.*

248. *Id.*

249. Goines was ultimately charged with felony murder for his actions. See Holie Silverman et al., *Former Houston Officer Accused of Lying to Get Warrant Faces Murder Charges After Botched Raid*, CNN: US, <https://www.cnn.com/2019/08/23/us/houston-officers-charged-no-knock-raid/index.html> [<https://perma.cc/L6QF-N3YJ>] (last updated Aug. 23, 2019, at 8:11 PM); Jacob Sullum, *A Houston Drug Cop's Lies Sent This Man to Prison for 25 Years*, REASON (July 22, 2022, at 5:20 PM), <https://reason.com/2022/07/22/a-houston-drug-cops-lies-sent-this-man-to-prison-for-25-years> [<https://perma.cc/DL8X-3L3H>].

250. In *Ex Parte Coty*, an applicant argued that because a forensic chemist working for the state had falsified lab test results in other cases, the state had obtained his guilty plea based upon false evidence as well. The Court of Criminal Appeals of Texas held that proof in other cases could create the inference of false evidence in the applicant's case if certain conditions were met, which would then shift the burden to the State to offer evidence that there was no intentional misconduct. The State fought for a more rigorous test in *Coty* (that the presumption should be "only when the misconduct is so persistent and pervasive that it shocks the conscience of the court"). *Ex parte Coty*, 418 S.W.3d 597, 602–05 (Tex. Crim. App. 2014).

251. See *Ex parte Mathews*, 638 S.W.3d 685, 692 (Tex. Crim. App. 2022) (extending the *Coty* five-part test establishing an inference the evidence was falsified to police officers who have lied multiple times to convict defendants of illegal possession).

252. *Id.* at 689.

253. *Id.*

continue to lie and put innocent people in prison. These circumstances include the use of fake confidential informants who are never spoken to by the prosecution or brought into court to testify, or entire cases based upon statements of one officer alone with no corroboration.²⁵⁴ Changes on the front end to stop wrongful convictions before they occur are the only way to truly rectify the harm caused by rogue police.²⁵⁵ The CIU had an obligation to consider and recommend changes once it learned of the official misconduct. It could have recommended that the office refuse to prosecute cases based on information from a confidential informant without disclosure or on the uncorroborated statement of a single officer. In this instance, no public changes occurred.²⁵⁶

It seems somewhat odd that only 37 exonerations have thus far been recorded by the Harris County CIU in connection with this scandal, particularly when approximately 70 convictions were identified as being dependent on the testimony of Goines.²⁵⁷ It is also unclear whether the CIU is able to effectively investigate and exonerate defendants in cases outside of these two scandals—the CIU may be so overwhelmed with the volume of cases that it can only react to those, or it may simply not be

254. See St. John Barned-Smith, *Harris County DA Kim Ogg Says Prosecutors Will Review Additional Narcotics Casework*, CT POST, <https://www.ctpost.com/news/houston-texas/houston/article/Harris-County-DA-Kim-Ogg-says-prosecutors-will-14885750.php> [<https://perma.cc/V6LD-RSST>] (last updated Dec. 5, 2019, at 7:14 PM).

255. See Elisha Anderson & John Wisely, *Deadly Arson Case Leads Oakland Co. Prosecutor to Hire Counsel to Investigate Her Office*, DET. FREE PRESS, <https://www.freep.com/story/news/local/michigan/oakland/2021/05/14/juwan-deering-arson-oakland-county-prosecutor-jail-informants/5071835001> [<https://perma.cc/H9TU-D4YK>] (last updated May 14, 2021, at 7:07 PM) (reporting that after uncovering prosecutors violated *Brady* by failing to disclose rewards given to testifying confidential informants, District Attorney McDonald recognized the inherent unreliability in the use of confidential informants and mandated new ethics training for all prosecutors in her office and a policy requiring her consent for any future use). Changes to the front-end of the criminal process could also include requiring corroboration if only one officer is presenting evidence against a defendant, especially if the charge is a felony.

256. See Barned-Smith, *supra* note 254.

257. See Otterbourg, *supra* note 245; Eric Dexheimer & St. John Barned-Smith, *As Officials Drop Cases from a Tainted HPD Unit, They're Keeping Some of the Seized Cash*, HOU. CHRON., <https://www.houstonchronicle.com/news/houston-texas/crime/article/As-officials-drop-cases-from-a-tainted-HPD-unit-17552974.php> [<https://perma.cc/4KP9-W7SD>] (last updated Nov. 11, 2022, at 5:52 PM) (“Following the Harding Street raid prosecutors have dismissed more than two dozen of Goines’s still-active cases and identified about 70 past convictions dependent on [Goines’s] testimony alone.”).

investigating cases on its own.²⁵⁸ Either way, defendants seeking sincere innocence review who are not a part of the scandals can be overlooked as a result. In 2019, District Attorney Ogg stated publicly that her office was reviewing 14,000 past cases of Goines and his narcotics squad.²⁵⁹ Coverage of the scandal reveals multiple egregious examples that the CIU should have investigated.²⁶⁰ While Ogg requested additional attorneys to assist with the investigation, those prosecutors were not designated as assigned to the CIU or even the more encompassing Post-Conviction Division.²⁶¹

The CIU's failure to investigate may result from the absence of state-codified obligations for prosecutors in Texas, even though they are bound by their role as ministers of justice.²⁶² The lack of codified rules is by design. Prosecutors in Texas have historically fought against incorporating post-conviction obligations into their rules of professional conduct.²⁶³ In 2022, the Committee on Disciplinary Rules and Referenda proposed revisions to Rule 3.09, "Special Responsibilities of a Prosecutor," that would have required prosecutors to investigate if they learn of evidence that creates a reasonable likelihood that a defendant is innocent and seek to remedy the conviction if there is clear

258. See *Harris County*, *supra* note 190.

259. St. John Barned-Smith, *After Drug Raid Scandal, Houston Police Chief Art Acevedo Creates New Narcotics Squad to Handle High-Risk Warrants*, CT POST, <https://www.ctpost.com/news/houston-texas/houston/article/After-drug-raid-scandal-Houston-Police-Chief-Art-14550760.php> [<https://perma.cc/Q2MH-UH8E>] (last updated Oct. 21, 2019, at 10:09 PM).

260. See, e.g., Maurice Possley, *Frederick Jeffery*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/13450> [<https://perma.cc/BP8H-BZNV>] (last updated Jan. 7, 2025) (detailing the case of Frederick Jeffery, whose conviction was vacated by the Texas Court of Criminal Appeals after the Court found Goines provided false evidence and testimony against him). It also appears that the civil-asset forfeiture that took place based on these tainted convictions has not been returned in the majority of cases, including at least \$75,000. See Dexheimer & Barned-Smith, *supra* note 257.

261. See Keri Blakinger, *Harris County DA Again Asks for More Prosecutors to Deal with Fallout from Botched Drug Raid*, HOU. CHRON., <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-DA-again-asks-for-more-prosecutors-14189247.php> [<https://perma.cc/TSX4-7CNR>] (last updated July 26, 2019, at 8:11 PM) (describing the request by Ogg for funding to add seven chief felony positions and three civil rights investigators to address the Goines cases).

262. The rule covering "Special Responsibilities of a Prosecutor" in Texas has no post-conviction obligations. See TEX. DISCIPLINARY RULES OF PRO. CONDUCT r. 3.09.

263. See Green, *supra* note 61, at 174 (discussing how Texas prosecutors fought incorporation of ABA Rule 3.8(g) and (h) into their own state's rules).

and convincing evidence that the defendant is innocent.²⁶⁴ Texas prosecutors successfully opposed the codification of those obligations.²⁶⁵

The CIU is also failing to investigate when it comes to the most serious of crimes—in 25 years, the CIU has never actively participated in the exoneration of a defendant charged with murder.²⁶⁶ Those convicted of murder account for approximately 38 percent of all exonerations nationwide and are sentenced to much longer periods of incarceration than those convicted of more minor offenses.²⁶⁷ In states such as Texas, this can include being sentenced to death.²⁶⁸ Additionally, there are significant racial disparities in murder exonerations.²⁶⁹ Black defendants are seven times more likely to be wrongfully convicted of murder than white defendants.²⁷⁰ Given the gravity of murder charges and the severe racial disparities that have historically occurred, it is particularly noteworthy that the CIU has never recorded a single murder exoneration.²⁷¹

264. See *Committee on Disciplinary Rules and Referenda Proposed Rule Changes*, 85 TEX. BAR J. 196, 202–03 (2022), www.texasbar.com [<https://perma.cc/8PJ8-GWU4>].

265. See Letter from Scott Brumley, *supra* note 70 (arguing Texas law already requires disclosure, calling the quest for justice before advocacy “a tall enough order”; stating that imposing the requested changes would make the task “Sisyphean”; stating that the language “when a prosecutor knows” is ambiguous and could require review of predecessors cases; and stating that they are “unaware of any instance or evidence showing that Texas prosecutors systemically are failing to make already-required post-trial disclosures or rectify convictions of defendants who are actually innocent”).

266. See *Harris County*, *supra* note 190.

267. Murder charges account for approximately 31 percent of the exonerations with CIU involvement: This is slightly lower than the 38 percent for all exonerations recorded since 1989. See *Conviction Integrity Units: Murder*, NAT’L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/cases?f%5B0%5D=n_pre_1989%3A0&f%5B1%5D=tags%3ACIU&f%5B2%5D=worst_crime_display%3AMurder [<https://perma.cc/2JKR-DW6J>]; *Murder*, NAT’L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/cases?f%5B0%5D=n_pre_1989%3A0&f%5B1%5D=worst_crime_display%3AMurder [<https://perma.cc/RC3Y-Y9P3>].

268. See TEX. PENAL CODE ANN. § 12.31 (2013).

269. See generally SAMUEL R. GROSS ET AL., NAT’L REGISTRY OF EXONERATIONS, *RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES* 3–5 (2017) (outlining basic racial patterns in murders and exonerations).

270. *Id.* at 4.

271. See *id.*; *Conviction Integrity Units: Murder*, *supra* note 267.

B. Kings County (Brooklyn), New York

Unlike Texas, prosecutors in New York have a state-codified ethical duty to investigate and remedy wrongful convictions.²⁷² The New York City Bar initially drafted amendments to Rules 3.8(g) and (h) in 2006 that codified a prosecutor's responsibilities to turn over evidence of innocence and address wrongful convictions.²⁷³ Shortly after the rules' adoption, Kings County (Brooklyn) formed its CIU (or CRU) in 2011.²⁷⁴

Kings County's CIU is touted as a model that other CIUs have followed.²⁷⁵ The CIU's webpage has a timeline of the 41 exonerations that it has participated in since 2014 and states that the office has exonerated over 500 people.²⁷⁶ These 500 exonerations include "34 following lengthy reinvestigations plus 468 vacated convictions," 378 of which occurred because of the misconduct of 14 officers.²⁷⁷ The National Registry of Exonerations has 43 exonerations recorded by the Kings County CIU.²⁷⁸ Approximately 70 percent of the recorded exonerations the CIU participated in involve official misconduct.²⁷⁹

272. See N.Y. RULES OF PRO. CONDUCT r. 3.8(c)–(e).

273. See Letter from Patricia M. Hynes, President, N.Y.C. Bar, to Hon. Jonathan Lippman, C.J., N.Y. State Ct. of Appeals (Feb. 3, 2010), <http://www.nycbar.org/pdf/report/uploads/20071856-LetterregardingRule3.8RulesofProfConduct.pdf> [<https://perma.cc/B8GM-GAJA>] (explaining the 2006 Report that proposed the rule regarding prosecutor's obligations when a convicted defendant may be innocent).

274. See *Conviction Integrity Units*, *supra* note 20. The unit is called a Conviction Review Unit, though it is the same in form and function as a CIU. See *supra* Section II.A.

275. Cook County State's Attorney Kim Foxx consulted with Professor Ron S. Sullivan, Jr., who designed the CIU in Kings County, before implementing changes in Cook County. See Ronald S. Sullivan, Jr., *Op-Ed: How Brooklyn's Conviction Review Unit Became a National Model*, POLITICSNY (Aug. 25, 2017), <https://politicsny.com/2017/08/25/op-ed-brooklyns-conviction-review-unit-became-national-model> [<https://perma.cc/46GS-PMPV>].

276. The webpage also includes a photograph of every exoneree. See *Post-Conviction Justice Bureau*, BROOKLYN DIST. ATT'Y'S OFF., <http://www.brooklynnda.org/post-conviction-justice-bureau> [<https://perma.cc/ZYT3-DUS4>].

277. *Id.*

278. See *Kings County*, NAT'L REGISTRY OF EXONERATIONS, https://exoneration-registry.org/cases?f%5B0%5D=n_coc%3AKings&f%5B1%5D=n_pre_1989%3A0&f%5B2%5D=state%3ANew%20York&f%5B3%5D=tags%3ACIU [<https://perma.cc/K5UC-GWSX>].

279. See *id.* Thirty of the 43 recorded exonerations, or approximately 70 percent, involve official misconduct—100 percent of the 378 recorded vacatures the CIU participated in involve official misconduct. See Ken Otterbourg, *New York 2022*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/groups/4269> [<https://perma.cc/8N2L-S6CY>] (last updated Nov. 9, 2022).

Of the 468 vacated convictions, 378 involved egregious wrongdoing on the part of the officers.²⁸⁰ The CIU conducted a review of cases that involved 13 former officers who had been found guilty of various crimes committed on duty, ranging from planting drugs and perjury to murder.²⁸¹ While the CIU “did not uncover misconduct,” the office lost confidence in cases where the officers had served as essential witnesses.²⁸² Yet, these were not considered exonerations because there were no findings of innocence, drastically reducing the ability of those impacted to receive compensation.²⁸³

While this striking number of vacated convictions is notable, it does not seem to be generally indicative of how official misconduct is handled by the CIU. In fact, the CIU displayed a severe lack of initiative in addressing other allegations of corruption that have landed on its doorstep and appear to demand more than lost confidence to join in an exoneration. The actions of Louis Scarcella, a former officer, led to one-third of the exonerations in Kings County.²⁸⁴ Scarcella was accused of coercing confessions and false witness testimony.²⁸⁵ Despite years of complaints by defendants and defense attorneys, the CIU only agreed to review 50 murder cases after a *New York Times* investigation revealed that Scarcella had used the same woman who

280. See Press Release, Brooklyn DA Eric Gonzalez to Dismiss 378 Convictions That Relied on 13 Officers Who Were Later Convicted of Misconduct While on Duty (Sep. 7, 2022), <http://www.brooklynda.org/2022/09/07/brooklyn-da-eric-gonzalez-to-dismiss-378-convictions-that-relied-on-13-officers-who-were-later-convicted-of-misconduct-while-on-duty> [<https://perma.cc/LYL8-KLAP>].

281. *Id.*

282. *Id.*

283. *Id.* (“The dismissals will be made pursuant to a writ of error coram nobis that states that prosecutors ‘have not identified any information or evidence indicative of innocence . . .’”). Because they were not exonerations, the District Attorney did not consider any of the defendants to be entitled to refunds of monetary fees. *Id.* A Writ of Error Coram Nobis is based in common law and allows courts to correct errors of law. See *Writ of Coram Nobis*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/writ_of_coram_nobis [<https://perma.cc/5GCQ-AM42>].

284. See Corey Kilgannon, *Prosecutors’ Error Exposes Potential Scope of Disgraced Detective’s Harm*, N.Y. TIMES (Apr. 15, 2024), <https://www.nytimes.com/2024/04/15/nyregion/louis-scarcella-detective-overtured-conviction.html> [<https://perma.cc/MY9H-TW9U>].

285. Scarcella has never been criminally charged for his actions though he has cost New York City \$110 million in settlements to those wrongfully convicted by his actions. See Frances Robles, *An Ex-Detective’s Overtured Murder Cases Have Cost New York \$110 Million*, N.Y. TIMES (Nov. 20, 2023), <https://www.nytimes.com/2023/11/20/nyregion/louis-scarcella-nypd-settlements.html> [<https://perma.cc/37G8-4VCM>].

suffered from a drug addiction to testify in multiple murder cases.²⁸⁶

The CIU's lack of willingness to investigate Scarcella is even more egregious given its internal knowledge of his misconduct. When the *New York Times* published the story, the CIU was already aware of the misconduct.²⁸⁷ Defense attorneys had alerted the unit, in an appeal to get them to join in the exoneration of the initial defendant who was wrongfully convicted.²⁸⁸ Even though it did not oppose the exoneration, the CIU did not join in the case. The CIU was on notice of the misconduct yet did not begin a review of the Scarcella cases until the story was published and it faced public pressure to do so.²⁸⁹

Regardless of these failures to address misconduct, in 2017, the professor who designed and implemented the unit claimed that the CIU was addressing the causes of wrongful convictions by "identifying bad actors, changing policies to root out the causes of wrongful convictions, identifying false confessions, handling one-witness identification cases judiciously and emphasizing prosecutors' ethical obligations."²⁹⁰ The Brooklyn District Attorney website states that the CIU is engaged in training new prosecutors on the causes of wrongful convictions, but no specific policies or training information are available for review.²⁹¹ This goes against best practices for transparency, which would recommend publishing the training information and policies for review.²⁹²

There are also serious concerns about whether the head of the CIU from 2014 to 2022 took prosecutorial ethics and *Brady* obligations seriously.²⁹³ Mark Hale became the head of the unit in 2014 after prosecuting cases in the office for decades.²⁹⁴ He

286. See *id.*; Frances Robles & N.R. Kleinfield, *Review of 50 Brooklyn Murder Cases Ordered*, N.Y. TIMES (May 11, 2013), <https://www.nytimes.com/2013/05/12/nyregion/doubts-about-detective-haunt-50-murder-cases.html> [https://perma.cc/BB59-QUF9].

287. See Maurice Possley, *David Ranta*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/11297> [https://perma.cc/2KJ5-JRD9] (last updated June 20, 2019).

288. *Id.*

289. See *id.*

290. See Sullivan, Jr., *supra* note 275.

291. *Post-Conviction Justice Bureau*, *supra* note 276.

292. See *supra* Section I.B.

293. See Letter from Bina Ahmad et al., *supra* note 52 (raising concerns over Hale's record as a homicide prosecutor).

294. See *id.*

was found by a trial court in 1998 to have committed a *Brady* violation for conduct the court described as egregious, including failing to tell defense attorneys that a State's witness said his initial story was false.²⁹⁵ Hale's own ethical violations should have prompted an audit of every case he had prosecuted. Even more troubling, there is no way to know how many of the defendants he prosecuted applied to the unit for review during his time in charge.

In January of 2022, Charles Linehan was appointed to be the new director of the CIU.²⁹⁶ Linehan had a background working in the Manhattan District Attorney's Office, not in Kings County. Because of this, he would not have been personally involved with the cases the CIU reviewed.²⁹⁷ Linehan changed the procedures for applying to the unit and was able to expand the number of attorneys dedicated to the unit.²⁹⁸ In 2023, he stated that the CIU had shortened their average time for reviewing a case down to 1.36 years, a strikingly small number compared to seven years for the average exoneration.²⁹⁹

There is reason to be skeptical of this extraordinarily low, self-reported number.³⁰⁰ The CIU in Kings County requires defendants to stop all other litigation while the CIU reviews its case.³⁰¹ While they await the decision of the CIU's review, defendants remain in prison while their other claims stall.³⁰² This low calculation does not include the multiple defendants who apply to the CIU and, because of the length of time their

295. *Id.*

296. See Reuven Blau, *Brooklyn Conviction Review Unit Wants to 'Correct Mistakes' Quicker — But Still Silencing Cases*, CITY, <http://www.thecity.nyc/2023/10/03/brooklyn-da-conviction-review-team-slow-silence> [https://perma.cc/4LXJ-5579] (last updated Oct. 3, 2023, at 4:15 PM).

297. *See id.*

298. *Id.*

299. *Id.*; see also *supra* note 188.

300. See Press Release, Families & Friends of the Wrongfully Convicted, Inc., *Wrongfully Convicted Cite Long Delays at D.A. Conviction Review Units* (on file with author).

301. See KINGS CNTY. DIST. ATT'Y'S OFF., *supra* note 120, at 2.

302. See Kost & Higgins, *supra* note 148 (describing how Calvin Buari had to stall his pending claims and waited over a year to be rejected by the CIU then was later exonerated); see also Maurice Possley, *Calvin Buari*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/12398> [https://perma.cc/S92W-RZXF] (last updated Mar. 8, 2022) (describing the exoneration process, including how Buari was incarcerated until 2017).

application is taking, pull their applications to pursue other avenues of relief.³⁰³

It also does not include the defendants that have pursued their wrongful conviction claims without the CIU and have been successful. There have been 20 successful exonerations that were not supported by the Kings County CIU.³⁰⁴ The Kings County CIU has also failed to join cases where defendants have since been exonerated and were also the victims of Scarcella.³⁰⁵

One of those victims, Sunde Moses, was wrongfully convicted of murder in 1995.³⁰⁶ One main piece of evidence against Moses was his confession, which he testified was coerced by Scarcella when he punched Moses in the face and choked him.³⁰⁷ Moses was released on parole in 2013, the same year the Kings County CIU wrote to Moses and told him the case was under review because of Scarcella's involvement.³⁰⁸ Yet, the CIU took no action in his case despite the additional recantation of two identification witnesses and a codefendant coming forward asserting that Moses was not involved.³⁰⁹ After waiting for years for the CIU to act, Moses and his defense attorneys filed a motion to vacate his convictions in 2015.³¹⁰ Despite CIU review, the motion was opposed by the district attorney, in part because they considered the Scarcella impeachment material "insignificant."³¹¹ In 2018, the motion to vacate was granted by a judge because of the evidence of Scarcella's misconduct.³¹²

303. See, e.g., Complaint, *Williams v. Scarcella*, No. 20-CV-02348 (E.D.N.Y. May 26, 2020).

304. See Kost & Higgins, *supra* note 148.

305. See *New York: Kings County*, NAT'L REGISTRY OF EXONERATIONS, https://exoneratiregistry.org/cases?f%5B0%5D=n_coc%3AKings&f%5B1%5D=n_pre_1989%3A0&f%5B2%5D=state%3ANew%20York&search_api_fulltext=&order=custom_7&sort=desc [<https://perma.cc/3N7H-89GG>] (listing 96 exonerations); *Kings County*, *supra* note 278 (listing 43 exonerations).

306. See Maurice Possley, *Sundhe Moses*, NAT'L REGISTRY OF EXONERATIONS, <https://exoneratiregistry.org/cases/12384> [<https://perma.cc/238R-M6JG>] (last updated Apr. 24, 2021).

307. *Id.*

308. *Id.*

309. See *People v. Moses*, 13565/1995, 2018 N.Y. Misc. LEXIS 701, *3-7 (N.Y. Sup. Ct. Jan. 11, 2018).

310. See Christina Carrega, *Inside a Wrongfully Convicted Man's 24-Year Quest to Clear His Name*, ABC NEWS (Sep. 7, 2019, at 6:11 AM), <https://abcnews.go.com/US/inside-wrongfully-convicted-mans-24-year-quest-clear/story?id=65433721> [<https://perma.cc/9DWN-CRD8>].

311. See *Moses*, 2018 N.Y. Misc. LEXIS 701, at *2.

312. See Possley, *supra* note 306.

The CIU also failed to join in the exoneration efforts of Shawn Williams.³¹³ For four years, Shawn Williams appealed to the Kings County CIU for assistance before filing a motion to vacate.³¹⁴ Williams had been convicted based on the testimony of an eyewitness who was 100 feet away, who subsequently recanted and said she was coerced by Scarcella.³¹⁵ To compel her testimony, that eyewitness was arrested on a material witness order in Georgia and brought to New York to testify.³¹⁶ This information was never turned over to defense counsel. Instead, during trial the prosecutor described the witness as agreeing to cooperate, referring to her as “spunky.”³¹⁷ The CIU opposed the motion, even though at the time of the filing there had been eight other exonérations involving Scarcella’s misconduct.³¹⁸ A year after Williams filed a vacatur motion, the State finally dropped the case.³¹⁹

The CIU failed to take initiative and conduct a thorough audit of the Scarcella cases, while the scandal snowballed for years.³²⁰ The CIU was ultimately forced to conduct a more encompassing review of his cases, though it was not transparent about this process.³²¹ Its master list of 319 cases under review was mistakenly shared with defense attorneys in 2024 as part of discovery in a civil suit.³²² A spokesperson for the Brooklyn District Attorney’s Office reported that only 235 of the 315 cases involved Scarcella, and of those, only 77 murder cases were being reviewed by the CIU.³²³ Even though the remaining cases included approximately 90 where the defendant took a plea, none of them will actually receive any type of automatic review,

313. See Maurice Possley, *Shawn Williams*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/12459> [<https://perma.cc/S96F-9SCH>] (last updated Oct. 25, 2024).

314. See *id.*

315. See Complaint, *supra* note 303, at 2; see also Possley, *supra* note 313.

316. Possley, *supra* note 313.

317. See Complaint, *supra* note 303, at 3.

318. See Possley, *supra* note 313.

319. *Id.*

320. A search for “Louis Scarcella” on [nytimes.com](https://www.nytimes.com) results in seven pages of results. See Search: *Louis Scarcella*, N.Y. TIMES, <https://www.nytimes.com/topic/louis-scarcella> [<https://perma.cc/44FQ-2CWR>].

321. Prosecutors would not share their list of Scarcella’s worked cases with defense attorneys and have filed a motion asking the judge to order the attorneys to return the list. See Kilgannon, *supra* note 284.

322. See *id.*

323. *Id.*

despite the fact that pleas occurred in 24 percent of all recorded exonerations since 1989.³²⁴

The omission of guilty pleas and the failure to join multiple Scarcella exonerations show that the CIU neglected to conduct a comprehensive audit. Its lack of transparency about the process makes it impossible to know how it arrived at these decisions, particularly in cases that were rejected. Worse yet, it is possible there may still be unreviewed cases and defendants who are unjustly incarcerated awaiting resolution of their claims.

C. Cook County (Chicago), Illinois

Cook County is perhaps the most well-known CIU in the country, due in large part to its operation in a jurisdiction with some of the worst police scandals in the country.³²⁵ It has recorded 240 exonerations, the most of any CIU.³²⁶ Of those 240 exonerations, approximately 84 percent were drug charges and 98 percent involved official misconduct.³²⁷ Most of the exonerations that took place in Cook County involved large scandals with corrupt police officers.³²⁸ Approximately 200 exonerations arose primarily from the conduct of one officer over a ten-year period, when he was regularly planting drugs and guns on people going in and out of a public housing project.³²⁹

324. Guilty pleas occurred in 908 of the 3,735 exonerations recorded. *See Plea, NAT'L REGISTRY OF EXONERATIONS*, https://exonerationregistry.org/cases?f%5B0%5D=n_pre_1989%3A0&f%5B1%5D=tags%3AP [https://perma.cc/G7P9-XVE2].

325. *See, e.g.,* Kelly Hayes, *Chicago Police Torture: Explained*, APPEAL (Dec. 5, 2019), <https://theappeal.org/the-lab/explainers/chicago-police-torture-explained> [https://perma.cc/W9TM-7RN6] (explaining how Officer Jon Burge tortured over 100 Black men and women, resulting in numerous wrongful convictions).

326. *See Exonerations by County, NAT'L REGISTRY OF EXONERATIONS*, <https://exonerationregistry.org/exonerations-county> [https://perma.cc/BFW2-GGVV] (last updated July 17, 2025); *Cook County, NAT'L REGISTRY OF EXONERATIONS*, https://exonerationregistry.org/cases?f%5B0%5D=n_coc%3ACook&f%5B1%5D=n_pre_1989%3A0&f%5B2%5D=state%3AFlorida&f%5B3%5D=state%3AGeorgia&f%5B4%5D=state%3AIllinois&f%5B5%5D=tags%3ACIU&search_api_fulltext=&order=custom_204&sort=asc [https://perma.cc/69XQ-6K2N].

327. *See Cook County, supra* note 326.

328. *Id.*

329. *See* Grace Hauck, *A Corrupt Chicago Cop Destroyed Hundreds of Lives. Now Victims Want Justice.*, USA TODAY, <https://tangent.usatoday.com/in-depth/news/nation/2023/02/05/chicago-police-ronald-watts-exoneration-cases/10470598002> [https://perma.cc/48L4-L8SA] (last updated Feb. 8, 2023, at 4:24 PM).

The Cook County CIU was formed in 2012.³³⁰ Like other units formed during this time, the unit was conceived after several high-profile exonerations involving horrific incidents of official misconduct, including torture.³³¹ It may have also been formed in response to public criticism lodged at State's Attorney Anita Alvarez for her unwillingness to drop charges against defendants when compelling evidence of innocence was present.³³² Alvarez faced extreme criticism for her statements in a "60 Minutes" segment that pronounced Chicago the false confession capital.³³³ In the broadcast, she denied the innocence of multiple exonerees who were convicted as juveniles due to coerced confessions and later exonerated because of exculpatory DNA evidence that was retested by the Innocence Project.³³⁴

Alvarez continued to receive criticism for her position in cases, though the CIU participated in the exoneration of Alprentiss Nash within the first year of its formation.³³⁵ However, the CIU fought against the initial DNA testing that ultimately excluded Mr. Nash as the source.³³⁶ When further testing produced a different DNA profile, prosecutors continued to deny that the results should lead to his exoneration before

330. See *Conviction Integrity Units*, *supra* note 20.

331. See Jason Meisner, *Wrongful Convictions Spur State's Attorney Anita Alvarez to Form Review Unit for Controversial Prosecutions*, CHI. TRIB., <https://www.chicagotribune.com/2012/02/03/wrongful-convictions-spur-states-attorney-anita-alvarez-to-form-review-unit-for-controversial-prosecutions> [https://perma.cc/5WKA-FNYK] (last updated Aug. 23, 2021, at 7:58 AM).

332. Things had become so antagonistic with Northwestern University's Innocence Project that the director at the time compared Alvarez to the "Gestapo." See Rummana Hussain, *Prosecutor Alvarez Creates Team to Probe Wrongful Conviction Claims*, CHI. SUN-TIMES (Feb. 6, 2012, at 12:39 PM), <https://chicago.suntimes.com/news/2012/2/6/18532567/prosecutor-alvarez-creates-team-to-probe-wrongful-conviction-claims> [https://perma.cc/Q39X-6HN5]; see also *New Cook County Unit Formed to Review Prosecutions*, ASSOCIATED PRESS, Feb. 3, 2012.

333. See CBS NEWS, *Chicago: The False Confession Capital* (YouTube, Dec. 9, 2012), https://www.youtube.com/watch?v=YSo_9Xo_78E [https://perma.cc/25MJ-983B].

334. When Alvarez was asked about the innocence of the exonerees, she stated, "I don't know whether he committed the crime or not. There are still unanswered questions in both of these cases." *Id.* at 12:31–12:38.

335. See Thomas Frisbie, *Challenger Disputes Alvarez's Conviction-Integrity Record*, CHI. SUN-TIMES, Sep. 12, 2012.

336. See Maurice Possley & Rob Warden, *Alprentiss Nash*, BLUHM LEGAL CLINIC: CTR. ON WRONGFUL CONVICTIONS, <https://www.law.northwestern.edu/legalclinic/wrongfulconvictions/exonerations/il/alprentiss-nash.html> [https://perma.cc/4RBH-WE66]; see also Maurice Possley, *Alprentiss Nash*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/11163> [https://perma.cc/7DEP-3KYF] (last updated Oct. 7, 2017).

moving to vacate the conviction.³³⁷ While the CIU ultimately acquiesced to the defense position, it was not without a fight.³³⁸ This appears to be the typical stance of the unit when assessing individual claims while Alvarez was the state's attorney in Cook County.³³⁹

It is not particularly surprising that the unit fought against the initial testing of Mr. Nash. The CIU has a restrictive standard that does not follow the recommended best practices.³⁴⁰ To investigate claims, it requires that the defendant asserts actual innocence with conclusive evidence showing they were wrongfully convicted.³⁴¹ It is an incredibly restrictive criterion that severely limits the cases the CIU will investigate.

While there were 13 exonerations from 2012 to 2015, the glaring inaction of the CIU during that time to address massive police corruption showcases exactly how these units can cease to fulfill their mandates.³⁴² Former Chicago Police Sergeant Ronald Watts had been planting drugs and guns on innocent residents of the Ida B. Wells housing projects for over a decade.³⁴³ Watts was arrested after being caught on an FBI wiretap taking money from an alleged drug courier who was an FBI informant.³⁴⁴ He pled guilty and was sentenced to 22 months in prison in 2013.³⁴⁵ No large-scale review or audit of the cases of those he arrested was initiated by the CIU at that time, despite years of complaints and testimony during trials from defendants that

337. See Possley & Warden, *supra* note 336.

338. See *id.*

339. See Frisbie, *supra* note 335.

340. See HOLLWAY, *supra* note 48, at 9–10; see, e.g., Scheck, *supra* note 19, at 739 n.107.

341. See *Conviction Integrity Unit*, *supra* note 115.

342. See *Cook County*, *supra* note 326. The only three exonerations in Cook County history involving the CIU that did not involve official misconduct interestingly happened in 2012, 2014, and 2016. See *Cook County (Contributing Factors: No Official Misconduct)*, NAT'L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/cases?f%5B0%5D=n_coc%3ACook&f%5B1%5D=n_pre_1989%3A0&f%5B2%5D=official_misconduct_468%3A0&f%5B5%5D=state%3AIllinois&f%5B6%5D=tags%3ACIU&search [https://perma.cc/MUM2-RZ4B].

343. See Hauck, *supra* note 329.

344. See Press Release, U.S. Atty's Off., N.D. Ill., Chicago Police Sergeant and Officer Charged with Stealing \$5,200 from Individual They Believed Was Transporting Drug Proceeds (Feb. 13, 2012) (on file with author).

345. See Phil Velasquez, *Former Chicago Cop Gets 22 Months for Stealing from FBI Informant*, CHI. TRIB., <https://www.chicagotribune.com/2013/10/09/former-chicago-cop-gets-22-months-for-stealing-from-fbi-informant> [https://perma.cc/9VZK-5TNT] (last updated Nov. 4, 2021, at 12:23 AM).

Watts and his squad of officers had planted evidence.³⁴⁶ The exonerations only began when attorney Joshua Tepfer with the Exoneration Project started filing new post-conviction motions in 2016 based on Watts's corruption.³⁴⁷

The Watts-related filings also happened to coincide with the election of a progressive prosecutor who was committed to conviction review.³⁴⁸ In 2016, Kim Foxx became the Cook County state's attorney and announced her plans to reorganize the CIU.³⁴⁹ Part of this reorganization included hiring a new head of the CIU who had previously served as both an assistant U.S. attorney and a criminal defense attorney.³⁵⁰ That fall, when a consolidated exoneration was filed by a defense attorney on behalf of 15 of those impacted by Watts's misconduct, the CIU initially fought the consolidation.³⁵¹ The defense only found out the day before the hearing that they would have the agreement of the CIU.³⁵² Cook County's first mass exoneration was 15 of those wrongfully convicted by the misconduct of Watts.³⁵³

Another mass exoneration occurred with 18 wrongfully convicted defendants in 2017, which was also not initiated or filed

346. See Rebecca McCray, *For Victims of Corrupt Chicago Police, an Unusual Taste of Justice*, APPEAL (Nov. 29, 2017), <https://theappeal.org/for-victims-of-corrupt-chicago-police-an-unusual-taste-of-justice-7a9c6bf17f40> [https://perma.cc/G7LH-G8FS]; see also Ken Otterbourg, *Illinois 2016 (1)*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/groups/4235> [https://perma.cc/P32J-C69C] (last updated Sep. 30, 2025) ("Watts's misconduct was a well-known secret. During the period of misconduct, at least eight of these exonerees filed complaints against Watts and the officers who patrolled the housing development. Even as far back as 1997, the Federal Bureau of Investigation heard rumors he was engaged in illegal activities.").

347. See Matt Masterson, *15 Men Cleared in First-Ever Mass Exoneration in Cook County*, WTTW: NEWS (Nov. 16, 2017, at 1:49 PM), <https://news.wttw.com/2017/11/16/15-men-cleared-first-ever-mass-exoneration-cook-county> [https://perma.cc/M6L9-DSMH]. This occurred after Alvarez lost her bid for reelection to Kim Foxx in the primary. See *id.*; Mulcahy, *supra* note 49.

348. See Mulcahy, *supra* note 49.

349. See Steve Schmadeke, *Newly Elected Kim Foxx Details Plans to Reshape State's Attorney's Office*, CHI. TRIB., <https://www.chicagotribune.com/2016/12/05/newly-elected-kim-foxx-details-plans-to-reshape-states-attorneys-office> [https://perma.cc/W4EL-DZUN] (last updated May 23, 2019, at 3:48 AM).

350. See Erica Demarest, *Kim Foxx Taps Longtime Attorney to Head Conviction Integrity Unit*, DNAINFO (May 25, 2017, at 4:35 PM), <https://www.dnainfo.com/chicago/20170525/downtown/kim-foxx-taps-longtime-attorney-head-conviction-integrity-unit> [https://perma.cc/87WB-K35P].

351. See McCray, *supra* note 346.

352. *Id.*

353. See Steve Bogira, *The Hustle of Kim Foxx*, MARSHALL PROJECT (Oct. 29, 2018, at 6:00 AM), <https://www.themarshallproject.org/2018/10/29/the-hustle-of-kim-foxx> [https://perma.cc/9A3S-CN33].

by the CIU.³⁵⁴ Former Officer Reynaldo Guevara was accused of forcing defendants to confess to murders and pressuring witnesses to lie.³⁵⁵ The City of Chicago ordered a review of his cases in 2013 and found that there were at least six wrongfully convicted defendants serving time.³⁵⁶ State's Attorney Alvarez declined to release those individuals from incarceration; Foxx indicated her office would continue to investigate the cases, but it took no action.³⁵⁷ All six men were ultimately exonerated, though the state continued to stand by Guevara for years.³⁵⁸

The real story behind these mass exonerations appears to be that of dogged defense attorneys.³⁵⁹ Attorneys from the Exoneration Project brought most of these mass exonerations to the Cook County CIU, though the CIU knew of their potential existence since at least 2013 when Watts took his guilty plea.³⁶⁰ The

354. Ultimately, 55 wrongfully convicted individuals were exonerated due, in part, to the involvement of Guevara. See *List of Exonerees*, NAT'L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/Guevara_Links.pdf [<https://perma.cc/92Y9-RH8E>]. The CIU's role in these exonerations was to dismiss cases that were already investigated, written, filed, and scheduled to be argued by Attorney Tepfer, attorney for the Exoneration Project. See Melissa Segura, *A Chicago Attorney Is Getting Justice for Hundreds of Wrongfully Convicted People All at Once*, BUZZFEED NEWS (Jan. 11, 2023, at 4:00 PM), <https://www.buzzfeednews.com/article/melissasegura/josh-tepfer-mass-exonerations-wrongfully-convicted> [<https://perma.cc/XZR3-LWZR>].

355. See, e.g., Maurice Possley, *Eruby Abrego*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/13374> [<https://perma.cc/D8GH-734C>] (last updated Apr. 21, 2024) (summarizing multiple cases where Guevara forced witnesses to falsely testify with physical abuse and torture); see also Melissa Segura, *A Chicago Cop Is Accused of Framing 51 People for Murder. Now, the Fight for Justice.*, BUZZFEED NEWS (Apr. 4, 2017, at 3:57 AM), <https://www.buzzfeednews.com/article/melissasegura/detective-guevaras-witnesses> [<https://perma.cc/94D5-VLT6>].

356. See Andrew Schroedter, *Alvarez Won't Bend on Wrongful Conviction Cases*, ILL. ANSWERS PROJECT (Sep. 20, 2015), <https://illinoisanswers.org/2015/09/20/alvarez-wont-bend-on-wrongful-conviction-cases> [<https://perma.cc/TA4N-TNC5>].

357. See *id.*; see also Segura, *supra* note 355.

358. See e.g., Maurice Possley, *Roberto Almodovar*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/12228> [<https://perma.cc/XN77-RRJY>] (last updated July 18, 2025). During Roberto Almodovar's contested hearing for a new trial in 2017, the State referred to Guevara as an "experienced detective who labored to solve crimes." Just two days later, Foxx suddenly announced that her office would no longer oppose Almodovar's new trial motion. *Id.*

359. See McCray, *supra* note 346; see also Segura, *supra* note 354; Segura, *supra* note 355; Otterbourg, *supra* note 346.

360. See McCray, *supra* note 346; Otterbourg, *supra* note 346. Joshua Tepfer represented approximately 200 of the Watts exonerees, as well as 7 individuals who were exonerated in the first mass exoneration for murder cases due to the misconduct of former officer Guevara. Segura, *supra* note 354; Otterbourg, *supra* note 346.

CIU did not initially agree to all the exonerations, actively fighting some of the cases until the last hour.³⁶¹

While the CIU in Cook County did acquiesce to many exonerations from 2016 to 2024, it did not take the lead in addressing police corruption even though the state's attorney's office was equipped with the information to perform a proper audit of the Watts convictions.³⁶² It had a spreadsheet listing the 500 convictions involving Watts that it could have used to investigate and vacate convictions.³⁶³ Instead, it often waited on defense attorneys to initiate litigation and reacted to those filings.³⁶⁴

The Watts scandal shows how a CIU can cause harm to countless defendants when the CIU fails to proactively address misconduct. While the CIU waited, countless defendants paid the price of its inaction.³⁶⁵ Though the last conviction involving Watts occurred in 2011, the most recent exoneration occurred in 2024, at least 13 years later.³⁶⁶ During that delay, those who were wrongfully convicted suffered the consequences of having a conviction that could deny them access to public housing, food assistance, or job opportunities.

The Cook County CIU also should have acted years earlier and taken a stronger stance in its recommendations to stop these wrongful convictions from being charged in the first place. In 2016, when the first mass exoneration took place, nine officers who had worked alongside Watts were still working as police officers in Cook County.³⁶⁷ Steps were taken to stop Watts's co-conspirators from testifying in cases later, yet the cases were still allowed to move forward to trials rather than being dismissed outright.³⁶⁸

The CIU was also embroiled in multiple scandals during Foxx's final tenure in office, including the head of the office being

361. See McCray, *supra* note 346; see also Segura, *supra* note 354.

362. See McCray, *supra* note 346.

363. *Id.*

364. *Id.* (describing how defense attorney Tepfer moved to consolidate multiple cases after learning of the hundreds of cases impacted by Watts misconduct).

365. See Otterbourg, *supra* note 346 (noting the convictions ranging from 2003–2011, with the most recent exoneration occurring in 2024).

366. *Id.*

367. See Hauck, *supra* note 329.

368. See Joshua Tepfer, *What About the City's Other Police Scandals?*, CHI. SUN-TIMES (Jan. 4, 2021, at 12:09 PM), <https://chicago.suntimes.com/2021/1/4/22213597/ronald-watts-anjanette-young-lori-lightfoot-scandals-joshua-tepfer> [<https://perma.cc/5L3X-7ZU8>].

accused of committing *Brady* violations.³⁶⁹ Nancy Adduci, who was chosen to head the unit in 2019, was a veteran prosecutor.³⁷⁰ She was appointed head of the unit while prosecuting the high-profile murder of an officer with three codefendants, a case that had been ongoing for almost a decade.³⁷¹ Adduci is alleged to have committed multiple *Brady* violations, including using her personal email to avoid making evidentiary disclosures to defense attorneys.³⁷² Her conduct caused her to be removed from the case.³⁷³ Shortly thereafter, Adduci was replaced as the head of the CIU in 2023.³⁷⁴

Under Adduci's leadership, there were further allegations that a conflict of interest may have negatively impacted case reviews.³⁷⁵ The CIU had reviewed and rejected the wrongful conviction claim of Kevin Jackson.³⁷⁶ Two years later, special prosecutors were assigned to review the Jackson case again after it was discovered that a prosecutor in the CIU was married to the detective in Jackson's case who was accused of coercing witnesses.³⁷⁷ The detective has been accused by more than a dozen defendants of using the same coercive tactics in their cases.³⁷⁸

The review done under Adduci's leadership determined that there was no reason to change the State's position on the case, but the special prosecutors' report called out the review for

369. See Mulcahy, *supra* note 49.

370. *Id.* The original head attorney of the CIU appointed by Foxx left the office unexpectedly. See Chuck Goudie et al., *EXIT INTERVIEW: Exclusive Sit Down with Just-Departed Kim Foxx Top Staffer*, ABC7 (May 9, 2019), <https://abc7chicago.com/kim-foxx-staffer-i-tema-jussie-smollett/5293256> [<https://perma.cc/8L4Y-FVND>].

371. See Mulcahy, *supra* note 49.

372. *Id.*

373. *Id.*; see Andy Grimm, *Alleged Gunman in Cop Murder Wants Prosecutors' Actions Scrutinized*, CHI. SUN-TIMES (Aug. 16, 2023, at 6:02 PM), <https://chicago.suntimes.com/crime/2023/8/16/23833199/alleged-gunman-in-cop-murder-wants-prosecutors-actions-scrutinized> [<https://perma.cc/CDA9-NH3T>].

374. See Andy Grimm, *Kim Foxx Revamps Cook County Wrongful Conviction Unit, Names Senior Adviser as New Head*, CHI. SUN-TIMES (Dec. 6, 2023, at 12:00 PM), <https://chicago.suntimes.com/crime/2023/12/6/23990808/kim-foxx-wrongful-conviction-unit-michelle-mbekeani> [<https://perma.cc/65S5-28Y3>].

375. See Matthew Hendrickson, *Wrongful Convictions Unit Failed to Look into Possible Police Misconduct in Murder Case, Confidential Report Concludes*, CHI. SUN-TIMES (June 21, 2024, at 4:36 PM), <https://chicago.suntimes.com/the-watch-dogs/2024/06/21/wrongful-convictions-unit-failed-possible-chicago-police-misconduct-murder-case> [<https://perma.cc/5MZH-P3LC>].

376. *Id.*

377. Buckley, *supra* note 50.

378. There is a very real risk that those cases were reviewed by the CIU during the time the detective's wife was still working within it. See *id.*

failing to investigate the “integrity of the police investigation.”³⁷⁹ The special prosecutors came to the conclusion that there was an “unacceptably high likelihood” that Jackson may be innocent.³⁸⁰ They were highly critical of the cursory review they allege was done by the CIU under Adduci’s leadership.³⁸¹ Their report detailed how the CIU failed to question two key witnesses.³⁸² In addition, it failed to question the detectives on their methods of taking statements from witnesses, the very allegation of official misconduct in the case.³⁸³

After the special prosecutors’ review, the Cook County State’s Attorney’s Office changed its position and agreed to Jackson’s motion for a new trial.³⁸⁴ Judge Angela Petrone, who had previously denied three unopposed motions that would have vacated wrongful convictions, denied the agreed-upon motion, stating she did not agree with the special prosecutors’ report.³⁸⁵

Mr. Jackson appealed and won.³⁸⁶ The Appellate Court of Illinois reversed the circuit court’s denial and vacated his conviction, finding that “any reasonable person would have to conclude that the report contains new information demonstrating by a preponderance of the evidence the existence of a meritorious defense: that these convictions resulted solely from coerced and

379. See Hendrickson, *supra* note 375.

380. See Buckley, *supra* note 50.

381. *Id.*

382. *Id.*

383. The report detailed how a pregnant witness was told she would give birth in jail and lose custody of her children if she did not name Jackson. *Id.*

384. See Matthew Hendrickson, *Judge Won’t Overturn Man’s Murder Conviction Despite Report that Found ‘Powerful Evidence’ He May Be Innocent*, CHI. SUN-TIMES (June 24, 2024, at 4:09 PM), <https://chicago.suntimes.com/police-reform/2024/06/24/judge-wont-overturn-mans-murder-conviction-despite-report-that-found-powerful-evidence-he-may-be-innocent> [<https://perma.cc/MM3M-4ABJ>].

385. Megan De Mar, *Judge Upholds Controversial Decision in Kevin Jackson Case*, CBS NEWS: CHI. (June 24, 2024, at 6:23 PM), <https://www.cbsnews.com/chicago/news/judge-upholds-controversial-decision-kevin-jackson-case> [<https://perma.cc/QT66-QT22>].

386. See *People v. Jackson*, 2024 Ill. App. Ct. (1st) 241356, ¶ 7. Prior to arguments on the appeal, his counsel successfully won a motion to have him released from custody. See Maurice Possley, *Kevin Jackson*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/14350> [<https://perma.cc/63JW-NX49>] (last updated Sep. 25, 2025).

false statements.”³⁸⁷ After remand, the State dismissed the case.³⁸⁸

This independent review highlights how a CIU can fail when leadership is not providing proper guidance. Bias was allowed to infect the CIU’s review process, impacting the ability of the CIU to sincerely review Mr. Jackson’s claim. Thankfully, Mr. Jackson was able to gain his freedom, but not all defendants can counter the assertion of a CIU when it incorrectly determines that the original prosecutor got it right.

IV. A FRAMEWORK OF FLAWS

Given the complexity of the structural and operational problems plaguing CIUs, it would be impossible to suggest full and comprehensive solutions based upon the scope of this initial analysis. This Article is the first in a multistage project analyzing the efficacy of CIUs.³⁸⁹ What follows below are categories of inherent flaws found in the structure and operation of the CIUs analyzed above. While these flaws may not be causing negative effects in all CIUs, they have the potential to spoil even those units that currently engage in what seems to be sincere review of innocence claims.

A. *Structural Flaws*

Three structural flaws impact the efficacy of CIUs: lack of transparency, ever-changing chain of command, and biased internal reviews of misconduct. While this analysis naturally points to potential solutions, such as moving CIUs and their reviews of prosecutorial misconduct outside of local prosecutors’ offices, the viability of such change is unknown. What is clear is that prosecutors hold much of the power to impact these structural flaws. They control the level of transparency in CIUs and decide whether reviews of misconduct are done internally. So long as CIUs remain housed in local prosecutorial offices,

387. See *Jackson*, 2024 Ill. App. Ct. (1st) 241356, ¶ 81. The Court held that the circuit court abused its discretion and tainted the process by ruling on Mr. Jackson’s unopposed motion without giving the defense access to the unredacted independent review. *Id.* at ¶ 51.

388. See Possley, *supra* note 386.

389. The next Part focuses on the impact of external reviews of prosecutorial misconduct by conducting an in-depth analysis of the North Carolina Innocence Commission and the conviction integrity units housed in attorney general’s offices.

prosecutors in charge of those offices hold the exclusive ability to address those flaws.

1. Lack of Transparency

Prosecutors' offices operate behind a wall of secrecy.³⁹⁰ Housing CIUs behind those walls predictably shields them in the same way.³⁹¹ CIUs have no obligation to report anything about how they function. They may have CIU-specific webpages that include their missions, standards of reviews, and application procedures, or they may merely be listed on a local prosecutors' general website.³⁹² They are not required to publish their process for determining whether they will support or fight against an innocence case or their legal standards for review. They do not have to create or provide annual reports of how many cases are reviewed, rejected, or accepted, or the outcomes of investigations.³⁹³

This is particularly problematic with CIUs because without transparency, there is no way to hold these units accountable.³⁹⁴

390. See David Alan Sklansky, *The Nature and Function of Prosecutorial Power*, 106 J. CRIM. L. & CRIMINOLOGY 473, 474–75 (2016) (“And unlike the police, prosecutors carry out most of their work behind closed doors . . . [I]t has become common over the past half-century for large police departments to open themselves to outside researchers . . . We have nothing like that for prosecutors.”).

391. See HOLLWAY, *supra* note 48, at 10 (“Very few CRUs have written protocols, policies, or procedures, and what protocols do exist have rarely been made public.”).

392. See, e.g., *Conviction Integrity Program*, DAVID M. HOOVLER: ORANGE CNTY. DIST. ATT’Y, <https://www.davidmhoovler.com/initiatives/conviction-integrity-program> [<https://perma.cc/6GCB-53SB>] (describing the Orange County Conviction Integrity Program (CIP) while omitting any legal standard or requirements for review); *Criminal Prosecutions*, SAN BERNARDINO CNTY. DIST. ATT’Y, <https://da.sbcounty.gov/criminal-prosecutions> [<https://perma.cc/6J8Q-PKL5>] (listing the existence of a CRU and basic criteria with no contact information or process for review).

393. The Philadelphia District Attorney’s Office’s CIU publishes data about the exonerations it has joined—it includes no information about the more than 600 cases it has reviewed and rejected. See, e.g., *Exonerations*, PHILA. DIST. ATT’Y’S OFF.: PUB. DATA DASHBOARD, <https://data.philadao.com/Exonerations.html> [<https://perma.cc/6LU2-V3PX>] (compiling data of all the exonerations joined by the Philadelphia District Attorney Office’s CIU, including the name of the original convicting attorney).

394. See Scheck, *supra* note 19, at 742 (“Keeping track . . . provides an important window for the public to see what the CIU is doing.”); see, e.g., Heather Yakin, *Orange County Conviction Integrity Panel Finds No Cases of Overcharging*, TIMES HERALD-REC. (Apr. 24, 2019, at 10:08 AM), <https://www.recordonline.com/story/news/2019/04/24/orange-county-conviction-integrity-panel/5355570007> [<https://perma.cc/Y82D-5F4W>]; *People v. Tiger*, 171 N.Y.S. 3d 169, 174 (N.Y. App. Div. 2022); see also Tandy Lau, *Guilty After Proven Innocent: The Challenge of*

The public is left unaware of whether CIUs are operating pursuant to their mandates or merely as electoral talking points.³⁹⁵ This secrecy also prevents CIUs from receiving feedback from external sources about how they can improve their practices.³⁹⁶

Kings County is the most transparent of the three units reviewed in Part III though its lack of transparency has been criticized by individuals who have applied to the unit for assistance.³⁹⁷ For every case that it moves to vacate, it writes a report detailing the investigation and reasons for recommending vacatur.³⁹⁸ Importantly, if there is official misconduct, the reports do not name the prosecutor that was involved.³⁹⁹ In addition, these

Challenging Wrongful Convictions (Part I), N.Y. AMSTERDAM NEWS (Jan. 18, 2024), <https://amsterdamnews.com/news/2024/01/18/the-challenge-of-challenging-wrongful-convictions> [<https://perma.cc/EF2Z-AF5C>]. The Orange County CIU was created in 2015 with an extremely broad mandate to review grossly disproportionate sentences. Yakin, *supra*. By 2019, it had reviewed 35 claims of wrongful conviction or draconian sentences and rejected every single claim, including the failure to join the exoneration of Natascha Tiger, whose conviction was for a crime that never occurred. *Id.*; Lau, *supra*.

395. See, e.g., *Righting a Wrong: How Oneida Co. Reviews Convictions*, LOC. SYR., <https://www.localsyr.com/news/righting-a-wrong-how-oneida-co-reviews-convictions> [<https://perma.cc/WP84-4HJS>] (last updated Nov. 14, 2016, at 11:58 PM); *District Attorney: Staff*, ONEIDA CNTY., <https://ocgov.net/departments/district-attorney/staff> [<https://perma.cc/8JD3-ECU9>]. Oneida County's CIU was created in 2013 and has no recorded exonerations yet has reviewed dozens of cases. Their website shows no evidence of the CIUs existence to date and no staff appear to be assigned to conviction *integrity review*, *sentence review*, or *postconviction claims*. See *District Attorney: Staff*, *supra*; *Righting a Wrong: How Oneida Co. Reviews Convictions*, *supra*.

396. See HOLLWAY, *supra* note 48, at 59 (“The ability of those outside the DA’s Office to see what actions a CRU is taking and to understand the rationales behind those actions is what enables communities to verify the good faith of their CRUs—or validate their worst suspicions.”). For example, while there are mentions of a CIU in Oneida County, New York, nothing exists on the district attorney’s webpage to verify that a unit exists or a person in the office is assigned to review wrongful convictions nor are there any instructions for submitting a case or standards for review. See *Oneida County District Attorney: Overview*, ONEIDA CNTY., <https://ocgov.net/departments/district-attorney> [<https://perma.cc/LPW8-S3S7>].

397. See Press Release, Families & Friends of the Wrongfully Convicted, Inc., *supra* note 300.

398. See, e.g., CONVICTION REVIEW UNIT, DIST. ATT’Y KINGS CNTY., REPORT ON THE CONVICTION OF STEVEN L. RUFFIN (2024).

399. See Ryan Kost, *Who Do Prosecutors Blame for Wrongful Convictions? Apparently Not Themselves*, N. Y. FOCUS (Apr. 14, 2025), <https://nysfocus.com/2025/04/14/wrongful-conviction-integrity-unit-new-york-prosecutorial-misconduct> [<https://perma.cc/MWQ7-FCZH>]. In addition, an examination and report in 2020 of the 25 exonerations joined by the CIU found 10 of the cases involved prosecutors failing to disclose relevant evidence—those prosecutors were not named, and the names of the defendants were replaced with pseudonyms. See KINGS CNTY. DIST. ATT’Y’S OFF.

reports are not listed on the CIU's webpage and must be searched for individually.⁴⁰⁰ There are also no reports for the cases that are not supported by the CIU.⁴⁰¹ This leaves the public without answers about whether a full and sincere review was done of a case and why it was rejected.

When it was truly important for the CIU in Kings County to be transparent about how it was addressing the Scarcella scandal, it did the opposite. The list of cases the unit audited was only made public in 2024 when it was turned over by mistake in discovery in a civil lawsuit, despite Scarcella's corruption being public since at least 2014.⁴⁰² When the audit list was turned over, prosecutors immediately filed a motion asking the judge to order the attorneys to return it.⁴⁰³ If there is transparency at the outset, defense attorneys in these situations can start independent reviews, or the public can push the CIU to be more comprehensive. But this knowledge was kept from the public by the CIU, which prides itself on restoring public trust.⁴⁰⁴

This type of secrecy prevents community members from knowing if the CIU is conducting sincere review of convictions or merely functioning as a budgetary ploy. The Harris County District Attorney's Office never publicly released the list of the 14,000 cases it was reviewing that involved officer Goines.⁴⁰⁵ Without transparency, there is no way to know if a proper audit was done or if the CIU was even involved in the review. Of the 14,000 cases reviewed in 2019, there have been only 24 exonerations, a shockingly small amount.⁴⁰⁶ This amount is even more shocking when you consider that 13 exonerations occurred from 2019 to 2025 that the CIU did not join.⁴⁰⁷ Yet, Ogg used the audit and investigation as a reason to ask for funding to hire more attorneys for her office.⁴⁰⁸

ET AL., 426 YEARS: AN EXAMINATION OF 25 WRONGFUL CONVICTIONS IN BROOKLYN, NEW YORK 2, 14 (2020).

400. See *Post-Conviction Justice Bureau*, *supra* note 276.

401. See, e.g., Press Release, Brooklyn Dist. Att'y's Off., Brooklyn District Attorney Moves to Vacate Conviction of Man Who Served 14 Years for Homicide Committed by Someone Else (Jan. 18, 2024) (on file with author).

402. See Kilgannon, *supra* note 284.

403. *Id.*

404. See *Post-Conviction Justice Bureau*, *supra* note 276.

405. See *supra* Section III.A.

406. See *supra* Section III.A.

407. See *Harris County*, *supra* note 190.

408. See Blakinger, *supra* note 261.

Lack of transparency plagues the Cook County CIU as well. While its website has clearly laid out the procedures for who can apply and how they should do so, no case reviews are released regardless of the ultimate position of the CIU.⁴⁰⁹ This means that when the CIU joins a case, there is not a memorandum explaining what went wrong or recommendations for how to prevent the error from occurring in the future. There are no reports that detail whether official misconduct was committed by police officers or prosecutors in the case. There have also been 122 murder exonerations in Cook County that the CIU has not participated in or joined.⁴¹⁰ Because of this lack of transparency, there is no way to know if the CIU ever reviewed these claims and, if it did, why it rejected them. This information is critical to determine if the CIU is denying claims because they do not meet its standard of review or because of reasons that indicate it is not conducting sincere review, such as rejecting cases that involve prosecutorial misconduct. In these 122 exonerations, there was a judicial determination that the state wrongfully prosecuted the defendants, and the CIU has not been clear whether it is conducting any analysis of the causes or taking any remedial measures to prevent the errors from occurring in the future.

The housing of CIUs in local prosecutorial offices results in their ability to evade transparency, leaving defendants without answers for why they are rejected, hiding information about the full extent of audits, and preventing community members from providing oversight.⁴¹¹ While there are other locations that may be less opaque, it remains to be seen whether these external options are effective, and they have yet to be particularly viable.⁴¹² Given this reality, prosecutors are currently the actors best positioned to address this flaw and should mandate transparency in line with best practices.

409. See *Conviction Integrity Unit*, *supra* note 115.

410. See *Cook County*, *supra* note 326.

411. See *supra* Sections III.A–C.

412. One potential example that is ripe for critical analysis to determine the efficacy of this alternative is the North Carolina Innocence Inquiry Commission (NCIIC). It is the only Commission of its kind in the United States. See N.C. INNOCENCE INQUIRY COMM'N, *supra* note 101. There is reason to be skeptical of this solution, though. The NCIIC has a more arduous process for exoneration than any CIU I have researched, and they require waiver of procedural safeguards and privileges. See N.C. GEN. STAT. §§ 15A-1460–1475 (2007).

2. Ever-Changing Chain of Command

A CIU's ability to function effectively is hampered by the unreliability of the chain of command in local prosecutors' offices.⁴¹³ The instability of the elected prosecutor is particularly problematic—they make the ultimate decision in wrongful conviction cases and appoint the director of the CIU, a position that is also impermanent. Consequently, the ethos of an office can shift with every election. When an administration changes or the head of a unit is replaced, a CIU can reverse position in specific cases even if it has already agreed to a form of relief, causing extreme harm to the defendants that have attempted to work alongside it.⁴¹⁴ CIUs are also composed of line prosecutors that report to the head prosecutor, which can cause ethical issues when disagreements occur about the position of the office in a case.⁴¹⁵ If a CIU recommends that a defendant's conviction be vacated or believes that justice requires a new trial, those recommendations are meaningless without the agreement of the head prosecutor.⁴¹⁶

In Harris County, the elected head prosecutor's impact on the course of the unit shows this structural flaw.⁴¹⁷ Under the direction of District Attorney Lykos from 2009 to 2012, the CIU reviewed wrongful convictions and participated in three exonerations.⁴¹⁸ But after Lykos left, a much more restrictive standard of review was implemented and there has not been a non-scandal related exoneration since.⁴¹⁹ The CIU should be conducting

413. See *supra* Sections III.A–C; see also Ryan Kost & Willow Higgins, *We Investigated the DA Units that Review Innocence Claims. Here's What We Learned.*, N. Y. FOCUS (Mar. 6, 2025), <https://nysfocus.com/2025/03/06/wrongful-conviction-district-attorney-new-york-exoneration> [<https://perma.cc/W6UB-92J6>].

414. See, e.g., Darcy Costello, *Prosecutors Backtracked on Releasing Him from Prison. Now, a Judge Has Rejected His Post-Conviction Motion.*, BALTIMORE SUN (Jan. 11, 2024, at 9:45 AM), <https://www.yahoo.com/news/prosecutors-backtracked-releasing-him-prison-164500595.html> [<https://perma.cc/NG58-37PQ>]. After Ivan Bates beat Marilyn Mosby in the election for State's Attorney, his line attorneys withdrew an offer to reopen Mr. Warren's post-conviction petition and recommend release. *Id.*

415. In Cuyahoga County, O'Malley would not agree to support the exoneration of Mr. Williams despite the CIU's recommendation to do so. See Shaffer, *supra* note 24. A dismissal of the case came only after the State lost its appeal to reinstate the conviction with the Ohio Supreme Court in 2024. *Id.*

416. *Id.*

417. See *supra* Section III.A.

418. See *supra* Section III.A.

419. See *supra* Section III.A. The lack of non-scandal exonerations continued under District Attorney Ogg, who proclaimed herself to be the most progressive

an initial review of cases that are not solely involved with scandal even with this restrictive standard of review, yet the Harris County CIU appears unwilling or unable to do so.

Currently in Harris County, there is no dedicated director of the CIU.⁴²⁰ Inger Chandler was the head of the CIU from 2013 to 2016, during the height of the drug testing scandal.⁴²¹ When the newspaper reporter tipped her off to the scandal, she took the lead on implementing remedial measures and auditing potentially involved cases.⁴²² During coverage of the Goines scandal, Ogg took center stage and eclipsed any mention of the CIU's involvement.⁴²³ This may be why the response to the Goines scandal was much less comprehensive than the previous forensics one—without a dedicated head of the unit, there was no one to lead the audit or suggest remedial measures.

Similarly, while Foxx was the elected state's attorney, Cook County cycled through four different heads of the CIU.⁴²⁴ In 2019, the original defense attorney brought in to lead the CIU under Foxx's first term left the office unexpectedly.⁴²⁵ Many believed it had to do with other high-profile scandals that involved the Cook County State's Attorney's Office.⁴²⁶ When Nancy Adduci stepped down in 2023 in the midst of her own scandal, she was replaced by Michelle Mbekeani.⁴²⁷ Mbekeani quickly left the position in 2024, stating that she was stepping down for personal reasons, but her tenure involved scandals from the very start, including a judge removing her as a prosecutor on a

District Attorney in Texas. See Video posted by Kim Ogg Harris County District Attorney, FACEBOOK, *Texas most progressive District Attorney is Kim Ogg. She is reforming our system for victims and the accused.* (Feb. 17, 2020), <https://www.facebook.com/kimoggforda/posts/1874214279378161> [<https://perma.cc/Y8TT-7BZJ>].

420. Instead, there is a chief of all the post-convictions bureaus: appellate, writs, and conviction integrity. See *Bureaus & Leadership*, HARRIS CNTY. DIST. ATT'Y'S OFF., <https://dao.harriscountytexas.gov/About-Us/Bureaus-Leadership> [<https://perma.cc/YT4R-EJD4>].

421. See Lussenhop, *supra* note 226; see also *Inger Hampton Chandler '03*, S. TEX. COLL. OF L. HOU., <https://www.stcl.edu/profile/inger-hampton-chandler-03> [<https://perma.cc/H3WP-633V>].

422. See Lussenhop, *supra* note 226.

423. See *supra* Section III.A.

424. See Goudie et al., *supra* note 370; Madeline Buckley, *Cook County Prosecutors' Conviction Review Unit Head Plans to Step Down in July*, CHI. TRIB., <https://www.chicagotribune.com/2024/06/19/cook-county-prosecutors-conviction-review-unit-head-plans-to-step-down-in-july> [<https://perma.cc/2QJX-6EAU>] (last updated June 19, 2024, at 2:36 PM).

425. See Goudie et al., *supra* note 370.

426. *Id.*

427. See Buckley, *supra* note 424.

case.⁴²⁸ Given Foxx's decision not to run for a third term, no one was chosen to lead the CIU after Mbekeani's departure and guide its direction into the next administration.⁴²⁹

The new state's attorney, O'Neill Burke, has proclaimed support for a "robust" CIU, though her actions demonstrate the opposite. Burke chose Iris Ferosie, a career prosecutor from Cook County, to lead the office.⁴³⁰ Like Ferosie, the two other attorneys in the unit are also career prosecutors from Cook County who have no defense experience. The CIU will also no longer consider a case for review while there is any other ongoing litigation.⁴³¹ Troublingly, no exonerations have occurred during the first year of Burke's tenure.⁴³²

Indeed, just because Burke expressed public support for a CIU does not mean that she can recognize the signs of a wrongful conviction in her own practice. She made extremely controversial comments regarding the wrongful conviction of an eleven-year-old boy in a case she prosecuted in 1993.⁴³³ Instead of admitting that a closer look should have been taken of the untaped, coerced confession she relied on to prosecute the child, Burke defended the prosecution as one where she presented the facts and sought justice on behalf of the victim.⁴³⁴ This is particularly troubling given that the false confession had numerous hallmarks that should have given a prosecutor pause: It was taken from a child, it was not taken until a year after the murder, it did not align with the physical evidence in the case, it was not consistent with any of the child's other statements, and it

428. See Mulcahy, *supra* note 49.

429. See Todd Feurer et al., *Cook County State's Attorney Kim Foxx Won't Run for Re-Election in 2024*, CBSNEWS: CHI., <https://www.cbsnews.com/chicago/news/cook-county-states-attorney-kim-foxx-third-term-2024> [https://perma.cc/4YVT-22UT] (last updated Apr. 25, 2023, at 10:24 PM).

430. See Dan Hinkle, *Cook County's New Prosecutor Has Weakened an Already Broken System for Freeing the Innocent*, INJUSTICE WATCH (Sep. 30, 2025), <https://www.injusticewatch.org/project/denying-innocence/2025/eileen-oneill-burke-conviction-integrity-unit-wrongful-convictions/> [https://perma.cc/X7GE-W6GE].

431. *Id.*

432. *Cook County*, *supra* note 326.

433. See A.D. Quig & Sam Charles, *State's Attorney Candidate Prosecuted Boy Whose Murder Conviction Was Overturned Because Police Coerced Confession*, CHI. TRIB., <https://www.chicagotribune.com/2023/12/21/states-attorney-candidate-prosecuted-boy-whose-murder-conviction-was-overturned-because-police-coerced-confession> [https://perma.cc/MG7Q-VZUQ] (last updated Dec. 22, 2023, at 12:15 AM).

434. *Id.*

was taken by detectives over the course of two days.⁴³⁵ Under this leadership, the sincerity of the CIU in Cook County is doubtful.

Defendants should not have to dash to the courthouse before an election change lest they lose support from a CIU. Yet, the transient chain of command inherent in CIUs leaves their leadership and culture vulnerable to a shift towards innocence denial in the next election. Having a CIU with consistent leadership dedicated to sincere review of wrongful convictions is imperative if it is to continue playing a role in the innocence movement, or if it aims to address the causes of wrongful convictions. It remains unclear if this is possible without removing CIUs' control from the head elected prosecutor and shifting political whims.

3. Biased Internal Reviews of Misconduct

CIUs are structured with the assumption that prosecutors are capable of, and in the best position to, police their own.⁴³⁶ Prosecutors control who can view their own files and evidence, leading many to believe they are the ones who should review claims of prosecutorial misconduct, such as withholding evidence.⁴³⁷ Prosecutors who work in CIUs are confident that they

435. *Id.*; see Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051 (2010) (describing the general characteristics of exoneree confessions, including, but not limited to, mental disabilities and age (juveniles)); George C. Thomas III, *Regulating Police Deception During Interrogation*, 39 TEX. TECH L. REV. 1293, 1298 (2007) (explaining the length of interrogations positively correlates with false confessions); e.g., Garrett, *supra*, at 1088 (describing the case of Earl Washington, Jr., who gave answers that were inconsistent with the physical evidence and his earlier answers); INNOCENCE PROJECT, OVERVIEW OF EARL WASHINGTON, https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?filename=0&article=1056&context=flc_events&type=additional [https://perma.cc/K5CD-SH3W] (describing the circumstances of Washington's interrogation, including that it took place almost a year after the crime).

436. See Scheck, *supra* note 37, at 2215 ("The best way to effectively prevent *Brady* violations and other forms of prosecutorial misconduct that cause wrongful convictions is internal regulation of the District Attorney's office."). But see Scheck, *supra* note 19, at 716–17 (discussing the cognitive psychological lessons that make prosecutors investigating their own offices problematic).

437. See Griffin & Mason, *supra* note 74, at 1008 ("The withholding of exculpatory evidence has been documented in approximately 26 percent of exoneration cases since 1989, making it a notable factor in wrongful convictions. *Brady* violations are particularly insidious At the same time, Conviction Integrity Units, which have full access to the prosecution's case files, are in a unique position to locate exculpatory evidence and to find evidence as to whether it had been disclosed. They are in a unique position to both remedy violations and to prevent future ones.").

can be objective when evaluating claims against their current coworkers.⁴³⁸ This is an assumption that has been proven disastrously wrong for other law enforcement agencies, such as the police.⁴³⁹ Given that the majority of wrongful convictions involve official misconduct, structuring a CIU to depend upon the ability of prosecutors to self-police is a deeply flawed design concept.⁴⁴⁰

Prosecutors can suffer from cognitive biases that can impact their ability to be impartial and, instead, influence them to take an anti-innocence stance.⁴⁴¹ Original trial attorneys who represented the state have such a personal stake in their cases that they have gone so far as to write to a court to protest an exoneration, file amicus briefs trying to reaffirm original evidence in a case, and enter an appearance as the victim's representative.⁴⁴² Scholar Alafair Burke has argued that cognitive biases—such as confirmation bias, selective information processing, belief perseverance, and the avoidance of cognitive dissonance—can explain why prosecutors argue a defendant is guilty despite knowing evidence to the contrary.⁴⁴³ Scholar Aviva Orenstein has focused on the role of denial to explain why prosecutors cannot accept when they have participated in the conviction of the wrong person.⁴⁴⁴ Scholars Bruce A. Green and Ellen Yaroshefsky have explained how tunnel vision has caused prosecutors to discredit or discount exculpatory evidence in numerous wrongful convictions.⁴⁴⁵ Regardless of the reason, these cognitive biases still

438. HOLLWAY, *supra* note 48, at 56 (“Despite broad public skepticism, prosecutors were uniformly confident that their objectivity in case review would be unaffected in a case where, for example, a prosecutorial violation of the requirement of *Brady* by one of their current co-workers was alleged.”).

439. Rachel Moran, *Ending the Internal Affairs Farce*, 64 BUFF. L. REV. 837, 853–68 (2016) (describing the failure of internal review systems for police misconduct).

440. *See supra* note 47.

441. *See generally* Alafair S. Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 WM. & MARY L. REV. 1587 (2006) (arguing that cognitive biases make prosecutors irrational and impact their discretion and countering the narrative that prosecutors who fight exculpatory evidence are necessarily bad actors).

442. *See, e.g.*, Colloff, *supra* note 88. The two original attorneys who prosecuted Mr. Maze wrote to the court, opposing the exoneration efforts of the prosecution and defense. *Id.* They were denied the opportunity to file an amicus brief with the court. *Id.*

443. *See generally* Burke, *supra* note 441.

444. *See* Orenstein, *supra* note 25, at 428–36.

445. *See* Bruce A. Green & Ellen Yaroshefsky, *Prosecutorial Discretion and Post-Conviction Evidence of Innocence*, 6 OHIO STATE J. CRIM. L. 467, 488 (2009).

impact those within the CIU, severely hampering their attempts to be objective.

Barry Scheck, the cofounder of the Innocence Project, recommends referring misconduct allegations against current or former prosecutors of the local office to an independent authority.⁴⁴⁶ But this only occurs in the rarest of cases—it is not the widespread practice of these units.⁴⁴⁷ It is much more common that the CIU attorneys are tasked with reviewing the actions of their colleagues or bosses, regardless of the scale of their conflict of interest.⁴⁴⁸ This can lead to reviews that are much more likely to confirm convictions, rather than unearth and publicize misconduct by colleagues and superiors.⁴⁴⁹ Even if a different prosecutor in the unit conducts a “blind” review, the review would be to determine if their friend, colleague, or boss committed misconduct.⁴⁵⁰ It is unrealistic to expect that process to produce an unbiased review free of conflicts of interest and ethical concerns.⁴⁵¹

Further, if a director of the CIU has engaged in prosecutorial misconduct themselves, it is unlikely they will encourage meaningful, unbiased review of claims of misconduct.⁴⁵² Adduci, the head of Cook County’s CIU from 2019 to 2023, was accused of withholding exculpatory cellphone tower data showing that the defendants in a murder case were not present at the scene and of assisting police to edit their reports so the defense would be unaware of evidence that was not disclosed.⁴⁵³ On the day Adduci was scheduled to testify about her potential ethical violations, the State dismissed murder charges pending against two defendants, allowing her to avoid being subject to cross-examination while under oath.⁴⁵⁴ These types of *Brady* violations have

446. See Scheck, *supra* note 19, at 731.

447. See HOLLWAY, *supra* note 48, at 23; *supra* Part III.

448. See *supra* Part III.

449. See Eric S. Fish, *Against Adversary Prosecution*, 103 IOWA L. REV. 1419, 1420–21 (2018) (describing the strong structural incentives that maximize the likelihood of conviction rather than justice).

450. See *supra* Part III.

451. See MODEL RULES OF PRO. CONDUCT r. 3.8 (ABA 2020) (outlining the special responsibilities and ethical rules for prosecutors).

452. See *supra* Part III.

453. Grimm, *supra* note 374.

454. See Andy Grimm, *Judge Rejects Request for Special Prosecutor to Probe Alleged Misconduct by Police, Prosecutors in 2011 Cop Murder*, CHI. SUN-TIMES (Aug. 21, 2023, at 6:46 PM), <https://chicago.suntimes.com/crime/2023/8/21/23840732/judge-rejects-special-prosecutor-murder-chicago-police-officer-clifton-lewis> [https://perma.cc/UD2J-7UUZ]; Tim Hecke, *Veteran Prosecutor Sues Kim Foxx*,

occurred in 51 percent of all exonerations.⁴⁵⁵ It is deeply problematic to have the head of the CIU in charge of those that are reviewing allegations of misconduct when she has displayed it in her own practice. Her history of misconduct invites uncertainty regarding whether she understands the ethical rules that prosecutors must follow and gives the appearance that she may be unwilling to take allegations of prosecutorial misconduct seriously.

Similarly, Mark Hale, the director of Kings County's CIU, was found by a trial court to have committed *Brady* violations.⁴⁵⁶ His actions when accused were particularly troubling because it appears he attempted to avoid accountability by denying knowledge of the withheld disclosures.⁴⁵⁷ There were allegations that Hale committed prosecutorial misconduct in other cases as well. One included a defendant whose conviction was vacated after serving 27 years.⁴⁵⁸ In that instance, post-conviction discovery revealed that a recorded statement identifying the shooter as someone other than the defendant was never disclosed to the defense.⁴⁵⁹ Another case included Hale allegedly withholding that an eyewitness saw another person, not the defendant, running from the scene with a gun.⁴⁶⁰ At the post-conviction hearing, Hale insisted he had no recollection of the case.⁴⁶¹ Shortly after his retirement, a grievance was filed

Claiming She Was Demoted and Fired for Being 53 and White, CWBCHICAGO (Sep. 3, 2024, at 11:48 AM), <https://cwbchicago.com/2024/09/veteran-prosecutor-sues-kim-foxx-claiming-she-was-demoted-and-fired-for-being-53-and-white.html> [https://perma.cc/5P2R-M22X].

455. Exculpatory evidence has been withheld in 1,920 of the 3,732 exonerations, or 51 percent, in the National Registry of Exonerations. *See supra* note 47.

456. *See supra* Section III.B.

457. He was found to have failed to tell the defense that a state's witness said his initial story was false. *See supra* Section III.B.

458. *See* Jeff Winter, *Wrongfully Convicted Man Was Released After 27 Years, but Then the World Went on Lockdown*, CNN: US (May 22, 2021, at 7:59 PM), <https://www.cnn.com/2021/05/22/us/wrongful-conviction-emmanuel-cooper/index.html> [https://perma.cc/T8E5-HSRR].

459. Theodore Hamm, *Advocates Demand Former Brooklyn Prosecutor Mark Hale Be Held Accountable for Trial Misconduct*, INDYPENDENT (Jan. 3, 2024), <https://indypendent.org/2024/01/advocates-demand-former-brooklyn-prosecutor-mark-hale-be-held-accountable-for-trial-misconduct> [https://perma.cc/RM23-2BZL].

460. George Joseph, *A Wrongful-Conviction Hearing Puts a Heralded Brooklyn Prosecutor on the Stand*, CITY (Feb. 24, 2022, at 1:25 PM), <http://www.thecity.nyc/2022/02/24/anthony-sims-wrongful-conviction-hearing-mark-hale-brooklyn> [https://perma.cc/TJ8D-QSW9].

461. *Id.*

against Hale for his conduct.⁴⁶² No decisions or findings have ever been issued in response.⁴⁶³

More concerning, Adduci's and Hale's misconduct are only public knowledge because of media coverage and the filing of a grievance by concerned members of the public, respectively. Cook County's and Kings County's CIUs did not publicly report the allegations or confirm instances of misconduct against their directors. CIUs are quite secretive and protective of the names of prosecutors who are involved in instances of misconduct, even when the misconduct is so egregious that it is the basis of an exoneration.⁴⁶⁴ CIUs have gone so far as to use prosecutorial misconduct as a bargaining tool, threatening that they will not join an exoneration if the defense includes the claim on the petition.⁴⁶⁵

The harms from this secretive and protectionist position are numerous. Denying that misconduct was committed by a prosecutor prevents the court and public from hearing the real reasons why someone was unjustly incarcerated. It harms that individual's ability to reconcile the injustice that happened to them. It perpetuates historical harm by preventing innocence organizations and defense attorneys from knowing that a particular prosecutor committed misconduct, rendering them unable to use that knowledge for their own clients or to publicly pressure the CIU to conduct an audit of the prosecutor's cases.

That is why there should be widespread, public audits of a prosecutor's cases after a finding of misconduct.⁴⁶⁶ If CIUs keep hidden the names of those that commit misconduct, they cannot

462. See *Grievance Against Mark Hale*, ACCOUNTABILITY NY, <https://accountabilityny.org/grievances/brooklyn/grievance-against-mark-hale> [https://perma.cc/M2GP-JKLM] (last updated Jan. 1, 2024).

463. See Theodore Hamm, *Failure to Launch: NY's Prosecutorial Misconduct Commission Is Going Nowhere Fast*, INDYPENDENT (Jan. 31, 2024), <https://indypendent.org/2024/01/failure-to-launch-nys-prosecutorial-misconduct-commission-is-going-nowhere-fast> [https://perma.cc/8J8J-GRRU].

464. See Ryan Kost & Oishika Neogi, *When Conviction Integrity Units Exonerate the Innocent, Prosecutors Escape Blame*, N.Y. FOCUS (Mar. 13, 2025), <https://nys-focus.com/2025/03/13/conviction-integrity-units-failure-new-york-wrongfully-incarcerated> [https://perma.cc/Q5PG-HCWM]; see also KINGS CNTY. DIST. ATT'Y'S OFF. ET AL., *supra* note 399, at 4–5. But see Possley, *supra* note 313.

465. See, e.g., Complaint, *supra* note 151, at 112; see also Kost, *supra* note 399.

466. See Griffin & Mason, *supra* note 74, at 1037–41 (describing the audit of Glenn Kurtzrock by the Suffolk County District Attorney's Conviction Integrity Bureau).

be pushed to conduct a full audit.⁴⁶⁷ Even when there is confirmed misconduct by a trial court, each instance of prosecutorial misconduct is viewed as a singular occurrence and never taken as a sign that misconduct may have been part of a lifelong pattern and practice.⁴⁶⁸ This leaves every defendant vulnerable to acts of official misconduct so long as prosecutors are the ones committing it.

Biased internal reviews of misconduct cannot continue to be the baseline for CIUs—the design concept must be changed. Prosecutors and CIUs have had the power to prevent this bias yet continue to decline to follow best practices. Given that external, independent review and audits of prosecutors' cases have so far been the exception instead of the norm, changing where CIUs are housed may be the change that will truly be effective.

B. Operational Flaws

Two operational flaws—the failure to join exonerations and the failure to address scandal—display significant problems at the very core of what CIUs were formed to do. Opaqueness surrounding their operations hampers accountability for CIUs, as well as efforts to suggest comprehensive solutions. Prosecutors have the resources both to fill this information void and attempt to change course. They should provide case reviews, case rejections, and full, audited case lists to the public and immediately treat every act of misconduct as the full-blown scandal it could turn out to be.

1. Failure to Join Exonerations

While exonerations are not necessarily a measure of efficacy or successful operation, when a CIU does not join in the exonerations occurring in its jurisdiction, it is a strong signal that the CIU is not conducting a thorough review of cases with the open mind recommended by best practices.⁴⁶⁹ In Kings County, there have been 20 exonerations, 14 of which were murders, that the

467. By stripping the names, the public does not know who has committed the harm in order to seek a remedy. *See supra* Part III.

468. *But see* Griffin & Mason, *supra* note 74, at 1047.

469. It is worth noting that the lack of well-defined conditions for qualification as a CIU-involved exoneration makes these self-reported numbers highly unreliable. *See, e.g., supra* note 32.

CIU did not join.⁴⁷⁰ In Harris County, there have been 38 exonerations, including two wrongful convictions for murder, that the CIU did not join.⁴⁷¹ In Cook County, there have been 153 exonerations that the CIU did not join, and 115 of those exonerations were for murder cases.⁴⁷²

There have been two exonerations for murder in Harris County that the CIU should have investigated and supported: Lydell Grant and Alfred Brown.⁴⁷³ Mr. Grant's case was a straightforward DNA exoneration.⁴⁷⁴ A state forensic analyst had testified falsely that Mr. Grant was not excluded from the DNA sample taken from underneath the victim's fingernails.⁴⁷⁵ Mr. Grant's lawyers had DNA testing done that was exculpatory for Mr. Grant.⁴⁷⁶ The CIU willingly provided the raw data from the original DNA testing to the defense but did not conduct further testing itself or do its own investigation.⁴⁷⁷ Lydell Grant's exoneration was ultimately supported by District Attorney Ogg, though the CIU did not investigate the case or file the post-conviction appeal.⁴⁷⁸

The CIU also should have supported Mr. Brown's case, which involved egregious prosecutorial misconduct.⁴⁷⁹ Alfred

470. See *Kings County*, *supra* note 278.

471. See *Harris County*, *supra* note 190.

472. See *Cook County*, *supra* note 326.

473. See *Harris County: Murder*, NAT'L REGISTRY OF EXONERATIONS, https://exonerationregistry.org/cases?f%5B0%5D=n_coc%3AHar-ris&f%5B1%5D=state%3ATexas&f%5B2%5D=worst_crime_display%3AMurder [<https://perma.cc/G6GP-KNTK>]. This is an extraordinarily small number for the size of the jurisdiction, so it may also mean that there is a bench that is particularly unreceptive to innocence claims.

474. See Mike Ware & Angie Ambers, *The Wrongful Conviction of Lydell Grant for Murder in Texas: A Cautionary Tale of Faulty Eyewitness Identification and the Perils of "Inconclusive" DNA Mixture Statements*, ISHI REP. (May 2021), <https://promega.foleon.com/theishireport/the-ishi-report-may-2021/the-wrongful-conviction-of-lydell-grant-for-muder-in-texas-a-cautionary-tale-of-faulty-eyewitness-identification-and-the-perils-of-inconclusive-dna-mixture-statements> [<https://perma.cc/H2WK-ZL82>].

475. *Id.*

476. The original DNA results in the case clearly excluded Mr. Grant, despite the forensic DNA analyst testifying that Grant could not be excluded. *Id.* His original trial attorney did not hire an expert to review the report and did not cross-examine the state's forensic expert. *Id.*

477. See *id.*

478. See *id.*

479. See Lisa Falkenberg, *Rizzo's Defense in Alfred Dewayne Brown Case Questionable Then, Chilling Now*, HOU. CHRON. (Mar. 11, 2018), <https://www.houstonchronicle.com/news/columnists/falkenberg/article/Rizzo-s-defense-in-Alfred-Dewayne-Brown-case-12742618.php> [<https://perma.cc/MVM4-R7ZL>].

Brown was convicted of murder in 2005 and sentenced to death.⁴⁸⁰ He fought for years to prove his innocence, often against the efforts of the district attorney to maintain his conviction.⁴⁸¹ The prosecuting attorney committed egregious ethical violations to originally secure the conviction, which came to light in 2013 when records from the case were discovered in the garage of a homicide detective.⁴⁸² Original phone records confirming Brown's alibi were in the file and had never been turned over to the defense.⁴⁸³ The trial prosecutor had charged Brown's girlfriend with felony perjury and held her in jail for 120 days so that she would falsely testify that Brown was not at her apartment at the time of the murder.⁴⁸⁴

The CIU played no role in Brown's investigation or ultimate exoneration.⁴⁸⁵ Brown's conviction was vacated and he was granted a new trial by the Texas Court of Criminal Appeals without any CIU involvement.⁴⁸⁶ Mr. Brown remained incarcerated for another eight months while he waited for the current district attorney of Harris County, Devon Anderson, to decide

480. Maurice Possley, *Alfred Brown*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/11819> [<https://perma.cc/69HW-HXKZ>] (last updated May 18, 2021).

481. Brown also faced the efforts of the police department, which continued to state that he was guilty even after his case was dismissed. See Lisa Falkenberg, Commentary, *Key Witness Recants Testimony in Death Case*, HOU. CHRON. (July 24, 2014), [hereinafter Falkenberg, *Key Witness Recants*], <https://infoweb-news-bank-com.eu1.proxy.openathens.net/apps/news> [<https://perma.cc/Y9SV-KNQ3>]; Lisa Falkenberg, Commentary, *In Brown Case, Police Should Trust Evidence – Not Emotion*, HOU. CHRON. (June 9, 2015), <https://www.houstonchronicle.com/news/columnists/falkenberg/article/In-Brown-case-police-should-trust-evidence-not-6315021.php> [<https://perma.cc/8DUV-XRNC>].

482. See Lisa Falkenberg, *Alfred Dewayne Brown Deserves Final Bit of Justice for 12 Years He Lost Behind Bars*, HOU. CHRON. (May 2, 2018), <https://www.houstonchronicle.com/news/columnists/falkenberg/article/Alfred-Dewayne-Brown-deserves-final-bit-of-12879853.php> [<https://perma.cc/3RPQ-MTK2>]. The misconduct of the trial attorney was so egregious that District Attorney Ogg ultimately filed a bar complaint against him. *Id.*

483. See Falkenberg, *supra* note 479.

484. See Lisa Falkenberg, *Part II: Locked Up and Facing Tough Choice*, HOU. CHRON. (July 18, 2014), <https://members.newsleaders.org/files/Lisa%20Falkenberg%203.pdf> [<https://perma.cc/B7EG-DA6N>]; see also Falkenberg, *Key Witness Recants*, *supra* note 481 (detailing how Brown's girlfriend said she was intimidated in private room meetings with the trial prosecutor, who said he would charge her in the murder case and call child protective services).

485. See Falkenberg, *Key Witness Recants*, *supra* note 481.

486. Falkenberg, *supra* note 482; *Ex parte Brown*, No. WR-68,876-01, 2014 WL 5745499, at *1 (Tex. Crim. App. Nov. 5, 2014). This was granted because of the misconduct of the trial prosecutors in the case. *Ex parte Brown*, 2014 WL 5745499, at *1.

whether the state was going to retry the case against him or enter a *nolle prosequi*.⁴⁸⁷

Anderson's skepticism of innocence cases could have been the reason the CIU was not joining exonerations. While she ultimately decided to enter a *nolle prosequi* due to the insufficiency of the evidence, she made clear that Brown was not being declared innocent, calling the term wrongful conviction a term of art she was not comfortable using.⁴⁸⁸ She further maintained that the prosecutor's actions were inadvertent, not misconduct.⁴⁸⁹ It was not until Brown later sued the state for compensation and further evidence confirmed misconduct by the trial attorney that an investigation was conducted by the district attorney's office.⁴⁹⁰ District Attorney Ogg appointed a special prosecutor to review the case in 2018.⁴⁹¹ While that investigation led Ogg to declare Brown factually innocent of the crime, it was the zealous defense work by Brian Stolarz that led to Mr. Brown's exoneration.⁴⁹²

In Cook County there have been numerous exonerations that the CIU did not join. Of particular concern is the low number of recorded exonerations for the CIU since 2023, despite the 44 murder exonerations that have occurred without the participation of the CIU.⁴⁹³ In 2023, the CIU participated in 4 exonerations while there were 22 exonerations in Cook County; in 2024, the CIU participated in 3 while there were 18; and in 2025,

487. See Michael Hardy, *A Hard Look at the Harris County District Attorney's Office*, TEXASMONTHLY (Sep. 12, 2016), <https://www.texasmonthly.com/the-daily-post/the-harris-county-district-attorney-office-problems> [https://perma.cc/ER4E-A5DS]. A *nolle prosequi* is a Latin term ("not to wish to prosecute") used when a prosecutor decides to stop pursuing charges. See *Nolle Prosequi*, BLACK'S LAW DICTIONARY (12th ed. 2024).

488. See Brian Rogers, *Man Sent to Death Row in Officer's Killing Is Freed*, CHRON., <https://www.chron.com/news/houston-texas/article/DA-6314119.php> [https://perma.cc/FVH5-WR6E] (last updated June 8, 2015, at 10:42 PM).

489. Falkenberg, *supra* note 479. This dismissal was not a determination of innocence and left Mr. Brown without a legal pathway to file for compensation against the state, despite the egregious *Brady* violations in the case. See Falkenberg, *supra* note 482.

490. Falkenberg, *supra* note 482. An email was discovered showing that the trial attorney, who has denied any wrongdoing and explained the lack of disclosure was inadvertent, was told by the police that they had the original phone records, and they were exculpatory. Falkenberg, *supra* note 479.

491. Falkenberg, *supra* note 482.

492. *Id.*; see Rogers, *supra* note 488.

493. See *Cook County*, *supra* note 326. The CIU participated in one murder exoneration in 2023 and no murder exonerations in 2024. See *Conviction Integrity Units*, *supra* note 20.

the CIU has not participated in a single one while there have been 12.⁴⁹⁴ This signals that the CIU has ceased to function as a place the that defense will refer cases to or that will sincerely review a claim of wrongful conviction. While it is possible that the CIU also suffered from a lack of resources or lost productivity during the administration change, the harm to the defendants is the same—multiple meritorious claims failed to receive sincere review—and the idea that the CIU thoroughly and sincerely reviewed all 44 murder exonerations and chose not to participate in them, despite a judge finding the claims meritorious, is far from plausible.⁴⁹⁵

When you look closer at the exonerations that the CIU did not join in Cook County since 2023, the story becomes even more concerning. Of the exonerations not joined by the CIU, 95 percent involved official misconduct, 55 percent involved false confessions, and 17 percent involved false or misleading forensic evidence.⁴⁹⁶ The overwhelming majority—95 percent—of those wrongfully convicted that did not have CIU support were Black or Latino individuals.⁴⁹⁷ Almost 75 percent of those exonerated without the CIU's involvement were under the age of 21 when convicted, a particularly vulnerable age group that is often subject to extreme abuse while in prison.⁴⁹⁸

In Kings County, the CIU failed to join multiple exonerations that involved the misconduct of former officer Scarcella.⁴⁹⁹ This is especially troubling, as it could be one of the largest scandals that occurred in the jurisdiction.⁵⁰⁰ These exonerations

494. See *Cook County*, *supra* note 326.

495. *Id.*

496. *Id.* There were 45 exonerations from 2023–2025 not joined by the CIU, 43 of those involved official misconduct, or 95.55 percent; 25 involved false confessions, or 55.55 percent; and 8 involved false or misleading evidence, or 17.77 percent. *Id.* To arrive at the numbers above, I counted the exonerations that took place in Cook County from 2023–2025, subtracted those that the CIU participated in, and either subtracted or added the relevant case characteristic and calculated the percentage (for example, I subtracted the two exonerations that did not have participation from the CIU and did not involve official misconduct).

497. *Id.* 43 of the 45 exonerations that the CIU did not join since 2023 were tagged as “Black” or “Hispanic,” though it is worth noting that all seven of the CIU joined exonerations were of Black individuals. *Id.*

498. *Id.* Since 2023, 34 of the 45 individuals who were exonerated without the participation of the CIU, or 75.55 percent, were under 21 at the time of their conviction. *Id.*

499. See *supra* Section III.B.

500. See Kilgannon, *supra* note 284 (describing the 524-page PDF of the Scarcella involved cases that was mistakenly sent to attorneys in a civil lawsuit,

included John Bunn, who was only 14 years old when he was arrested by Scarcella for murder based on an anonymous tip.⁵⁰¹ Bunn served 16 years before his conviction was overturned, yet the district attorney's office continued to fight his exoneration through the appellate process until it had exhausted its appeals.⁵⁰² These exonerations were granted without the assistance of the CIU, and there are still countless defendants, some of whom may be in prison, who have not had a thorough review of their cases.⁵⁰³

The very core of what CIUs were created to do is conduct sincere review of wrongful convictions. There is reason to be concerned when there are exonerations that they do not join, even though exonerations are not a measure of success. This is even more concerning when the cases mirror the disparate trends and systemic racism of wrongful convictions in the criminal legal system. Prosecutors and those who lead the CIUs are in the best position to enact change that can answer these questions by immediately publishing their case reviews, including those cases that are rejected. This would remove the secrecy that makes it impossible to know why the CIUs made their internal decisions, or even if they reviewed the cases at all.

2. Failure to Address Scandal: Reactionary CIUs

The media portrays large numbers of exonerations as proof of success, though it is certainly not an accurate measure of efficacy in the CIUs analyzed in this Article. Harris County, Cook County, and Kings County have recorded the most exonerations of any CIUs in the country.⁵⁰⁴ These large numbers are the

including a master list of 235 cases). Given the secrecy that surrounds the list of involved cases, there is no way to know the true extent of the involved cases. *Id.*

501. See Reuven Fenton & Jorge Fitz-Gibbon, *Wrongfully Convicted Man Sues NYC, Disgraced Detective Louis Scarcella*, N.Y. POST, <https://nypost.com/2019/08/15/wrongfully-convicted-man-sues-nyc-disgraced-detective-louis-scarcella> [<https://perma.cc/5HDQ-856E>] (last updated Aug. 15, 2019, at 8:26 PM); Maurice Possley, *John Bunn*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/12428> [<https://perma.cc/TVU7-8U42>] (last updated Aug. 7, 2022).

502. See Possley, *supra* note 501.

503. See Kilgannon, *supra* note 284 (describing how 90 of the 235 cases on the master list were pleas, which are not given automatic conviction reviews, and a third of the cases resolved via plea bargains in Brooklyn County are typically homicide cases).

504. See *Harris County*, *supra* note 190; *Kings County*, *supra* note 278; *Cook County*, *supra* note 326; see also *Exonerations by County*, *supra* note 326 (indicating

result of serious scandals involving massively corrupt officers, requiring the undoing of hundreds of wrongful convictions.⁵⁰⁵ While these exonerations have been praised as proof of concept, these mass exonerations actually pale in comparison to the group exonerations that have resulted from other scandals throughout the country.⁵⁰⁶

The number of exonerations that occurred as a result of the scandals in Harris, Cook, and Kings Counties are significantly smaller than their own internal lists of cases that required review, prompting real concerns whether all the cases that needed to be screened were given thorough, unbiased, genuine review.⁵⁰⁷ Best practices would indicate that most of these cases should have some sort of judicial review—having an officer who is found to be habitually corrupt is certainly a reason to doubt the integrity of a conviction. These lists also did not include those that had entered a guilty plea, which is how the majority of cases are resolved in the criminal legal system.⁵⁰⁸

The failure to address scandals by initiating audits is an operational flaw of CIUs. Though each CIU was put on notice of the scandals years before they became public, the CIUs failed to act and merely took reactionary positions.⁵⁰⁹ Cook and Kings Counties had ample notice of officer misconduct, and Harris County had notice of the forensic issues causing wrongful convictions.⁵¹⁰ All three CIUs responded to the scandals in their jurisdictions only when they were forced to—either by journalists or by lawyers—and did not proactively work to try to undo the wreckage quickly or efficiently.⁵¹¹ The delay by all three CIUs allowed innocent people to languish in prison.

that the CIU in Los Angeles has only recorded 137 exonerations and the Wayne County has only recorded 101).

505. See *supra* note 504.

506. See *The Groups Registry*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/groups> [<https://perma.cc/XM67-TQD5>]. The gun trace task force in Baltimore, Maryland, resulted in 760 overturned convictions. The drug lab scandals in Massachusetts in 2017 and 2018 resulted in 19,000 and 13,100 exonerations, respectively. *Id.* In Philadelphia, Pennsylvania, police misconduct resulted in 1,100 exonerations in 2013. *Id.*

507. See *supra* Part III.

508. See, e.g., Kilgannon, *supra* note 284.

509. *Id.*

510. *Id.*; see *supra* Part III.

511. See *supra* Part III.

In Kings County, exonerees have spoken out about the failure of the CIU to address misconduct properly.⁵¹² The CIU's initial response to the Scarcella scandal was to only review 50 cases.⁵¹³ The accidental disclosure of the audit list shows that this number grew substantially to 319, yet its review of his cases continued to be a narrow one.⁵¹⁴ Criminal cases are much more likely to resolve with a guilty plea than a trial.⁵¹⁵ Conducting an audit of cases without including guilty pleas is likely to leave out the vast majority of defendants who were impacted by the misconduct. Auditing solely trial cases is only addressing the smallest percentage of those convicted.⁵¹⁶ This audit still resulted in exonerees that did not have CIU participation in multiple cases where Scarcella had been involved in the original conviction.⁵¹⁷ There has been no review to determine or disclose why the CIU declined to join in these exonerations.

In both murder cases in Harris County that the CIU did not join, there was misconduct on the part of the state, either through false forensic testimony or egregious misconduct by the prosecutor.⁵¹⁸ An internal audit of every case each of these individuals worked on should be conducted to determine if false testimony or misconduct contributed to other wrongful convictions. Yet these exonerations were viewed as singular instances of misconduct, not as a potentially larger systemic problem that should be addressed with a mass audit of all the cases the state actors had touched. It appears that no postmortem was conducted to review why Harris County did not join or initiate any murder exonerations.

When there was a large-scale scandal in Harris County caused by the lack of confirmatory drug testing, the CIU did not begin to investigate it until pushed to do so by a reporter in 2014.⁵¹⁹ It knew that defendants were taking pleas to

512. See Press Release, Families & Friends of the Wrongfully Convicted, Inc., *supra* note 300.

513. See Robles & Kleinfeld, *supra* note 286.

514. See Kilgannon, *supra* note 284.

515. Carrie Johnson, *The Vast Majority of Criminal Cases End in Plea Bargains, a New Report Finds*, NPR (Feb. 22, 2023, at 5:00 AM), <https://www.npr.org/2023/02/22/1158356619/plea-bargains-criminal-cases-justice> [https://perma.cc/6TLA-5HZL] (describing the American Bar Association report finding trials are rare in federal and state criminal courts, with New York trial rates less than 3 percent).

516. See *id.*

517. See, e.g., Possley, *supra* note 501.

518. See *supra* Section III.A.

519. See Lussenhop, *supra* note 226.

field-tested drugs without confirmatory test results as early as 2010, yet did nothing on its own initiative to investigate if this was a larger, systemic problem.⁵²⁰ When the crisis was pushed to the CIU's attention in 2014, it did not spur immediate action to stop charging defendants with possession based on the use of field tests. As late as 2017, District Attorney Ogg acknowledged that field test use was continuing, despite the cost to defendants who are incarcerated as they await the results of confirmatory tests.⁵²¹

In Cook County, the CIU failed to take sufficient steps in more than one of the large-scale scandals involving police corruption. The Watts conviction put the CIU on notice of his corruption in 2013, after defendants had been testifying in trials for years about Watts's misconduct.⁵²² But it would be three more years before exonerations began to take place, at the initiation of the defense.⁵²³ This was an utter failure of the CIU to immediately address how Watts had been falsely arresting and planting evidence on residents of the housing project for years.

The CIU in Cook County also failed to conduct a full and proper audit of the cases impacted by Guevara's misconduct. The state has continued to fight against defendants' claims that involved Guevara despite the numerous exonerations that had been granted by the judiciary, with and without the CIU's involvement.⁵²⁴ The first exoneration involving Guevara occurred in 2004 and the most recent exonerations in 2022.⁵²⁵ These initial exonerations should have been a signal to the CIU that every case in which Guevara was involved should be reviewed.⁵²⁶ It even failed to join the petition of Juan and Rosendo Hernandez, who were framed by officer Guevara and another infamous officer who would ultimately be sentenced to life in prison.⁵²⁷ If

520. See *supra* Section III.A.

521. See Schuppe, *supra* note 236.

522. See Velasquez, *supra* note 345.

523. See *supra* Section III.C.

524. See *Cook County*, *supra* note 326. By 2022, there were 18 people exonerated based on evidence of Guevara's misconduct: Five exonerations were granted in 2022. See *List of Exonerees*, *supra* note 354.

525. See sources cited *supra* note 524.

526. *Id.*

527. See Maurice Possley, *Juan Hernandez*, NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/13363> [<https://perma.cc/F2TQ-MSQB>] (last updated Dec. 13, 2023). When the post-conviction petition for relief was initially filed, the prosecution filed a motion to dismiss. *Id.* It was only after the petition was

the CIU had done a sincere and proper audit in 2004 when it was put on notice, these cases would have been given a thorough review 20 years ago. Instead, wrongfully convicted defendants had to fight against the state for their release, as if no CIU existed at all.

CIUs cannot only react when scandal falls at their feet. They will often be the first to learn of acts of official misconduct, given their unique access to discovery and relationship with the police. CIUs must immediately treat these acts of misconduct as the systemic problems they are by initiating a public audit and supporting judicial review for all the impacted cases.

CONCLUSION

The creation of CIUs was prompted by the belief that they would change the way prosecutors evaluate claims of innocence, but their attempts to conduct sincere review of wrongful convictions and responsibility to address scandal have fallen short. Their structural and operational problems hinder sincere efforts to review defendants' claims. There has repeatedly been an inadequate response to official misconduct and large-scale scandal, causing unnecessary delays for defendants and precluding them from pursuing other litigation. CIUs are unable to adequately police their own prosecutors when they commit misconduct, fail to provide adequate remedies for harm that has occurred in the past, and in doing so, fail to change the practices of their prosecutors and protect individuals from acts of misconduct in the future. Often, prosecutors still fight against defendants' innocence claims, while the very existence of a CIU can give cover to the systemic causes and enduring nature of wrongful convictions.

CIUs have created the impression that they are fixing the criminal legal system, when often they continue to perpetuate some of its worst endemic flaws. The framework of flaws laid out by this Article explains why they are an unreliable criminal reform. CIUs' lack of transparency invites misconduct and unaccountability; their position in local prosecutorial offices injects electoral instability into their functionality; and bias impedes their ability to police their own when they commit misconduct.

granted and the brothers' convictions were vacated that the prosecution ultimately dismissed their cases. *Id.*

They make mistakes in their reviews, failing to join exonerations of innocent defendants or act until scandal lands on their doorstep. These units are just as flawed as the criminal legal system at large, despite their mandate and progressive support. Unless this is recognized, we risk believing that the causes of wrongful convictions are being solved when they are often being repeated.