



**Philadelphia District
Attorney's Office**

OVERTURNING CONVICTIONS— AND AN ERA

Conviction Integrity Unit Report
January 2018–June 2021



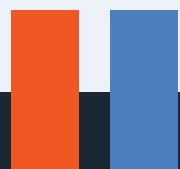
In my view, the Philadelphia District Attorney's Office and the Philadelphia Police Department have historically violated their sworn oaths to uphold the Constitution, seek justice, and protect and serve Philadelphians. Too often, they engaged in and tolerated horrendous abuses of power. Numerous police officers coerced confessions through physical abuse, verbal threats, and violations of constitutional rights. Sometimes, they simply fabricated the confessions. Some officers in this City planted evidence and lied in court about their investigations to help obtain convictions. Meanwhile, a fair number of Philadelphia prosecutors, driven by a win-at-all-cost office culture, covered for or participated in these abuses. At the same time, the District Attorney's Office sought excessively long, harsh sentences in almost every case, often with little appreciation or understanding of the person's individual culpability or the sentence's frequently negative impact on public safety.

When my administration started the Conviction Integrity Unit in 2018, we anticipated that we would uncover many cases where misconduct caused innocent people to go to prison. What we saw, however, has taken our breath away. In just over three years, the Unit has exonerated twenty people in twenty-one cases. Combined, these men spent 384 years wrongfully imprisoned. In twenty cases, prosecutors withheld evidence they were ethically and constitutionally required to disclose. In fifteen cases, police committed egregious misconduct.

The case reviews revealed that the Philadelphia Police Department chronically under-used forensic science as compared to other jurisdictions. This causes problems for solving crimes and preventing wrongful convictions. Almost all of the men who suffered these systemic inaccuracies and injustices were Black. So were the victims of the crimes for which they were wrongfully convicted. Those victims' hopes that law enforcement was holding accountable the criminals who committed those crimes were dashed. The opportunity to solve those crimes was usually long gone.



Photo: Hannah Yoon.

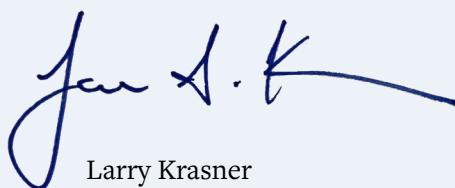


My Office does not shy away from examining the harsh realities of prior administrations' misconduct, and this report presents our findings to date. This report also documents the ways in which the Unit has tried to right some of the worst sentencing practices of the past as a secondary aspect of its work. We believe that when people no longer pose a threat to public safety, there is little reason for them to stay in prison. It costs the taxpayer too much money that could go for prevention and public health approaches that actually improve public safety.

Our sworn oath as prosecutors is to seek justice unconditionally, with no limit as to time. When we discover past injustices, we must not only right those wrongs, but implement policies to ensure that they do not occur again in the future. This report describes how an independent Conviction Integrity Unit, with a broad mandate, has worked to change the culture and practices of the District Attorney's Office. Our oath requires that we never stop trying to fix injustices, even if they turn out to be the product of our administration's missteps.

During court proceedings involving defendants the CIU has determined to be innocent of the crimes for which they were wrongly convicted, the District Attorney's Office as an institution has apologized to the exonerees. We should. Lost years and decades of a life cannot be returned. But we remain enormously proud of what we have done to date.

We are putting out this report because transparency is important. For too long, the District Attorney's Office operated in the dark and the public suffered. Our administration, from the start, has been committed to changing that and restoring public trust. We know we have a long way to go.



Larry Krasner
District Attorney





Since I took on the leadership of the new Conviction Integrity Unit, District Attorney Krasner has made conviction integrity a priority, giving us a broad mandate to remedy wrongful convictions and unjust sentences. This first report shines a spotlight on our work to ensure justice is served by the Office’s prosecutors and to remedy past injustices, however and whenever they have occurred.

We are proud to have reviewed and/or investigated hundreds of cases, resulting in twenty-one exonerations. We are equally proud to have righted unjust sentences and successfully advocated for commutations for dozens of deserving applicants who have collectively served more than 800 years in prison. And finally, we are proud to have developed policies, led trainings, and investigated official misconduct in our efforts to fix the root causes of wrongful convictions.

This report is about transparency. Transparency cannot be attained if only success stories are reported. Indeed, while we have accomplished great success, we have also faced enormous challenges. Some were expected: the inevitable resource constraints and cultural pushback that conviction integrity units across the nation must contend with, and our inability under narrowly construed, and sometimes draconian, Pennsylvania law to vacate convictions without an occasionally arduous judicial process. But as other challenges have emerged, we have not wavered or acquiesced in our commitment to right past wrongs. We have faced lawsuits by the local police union, the hostility of some judges to our fundamental mission, and the intensity of conflict even within our own Office. Of course, the COVID-19 pandemic gave us yet another hurdle to overcome.

Despite all this, our team has worked steadfastly to advance our mission. With the support of District Attorney Krasner, we have kept the Unit independent within the Office and fought back when law enforcement has sought to impede us. Even at the height of the pandemic, we maintained a steady pace of interviews, court appearances, and even exonerations—both in person and virtual—to ensure that justice is done in our cases without undue delay.

Looking ahead, we have many cases pending in court and are leading more than 100 active investigations. We are working closely with local stakeholders and engaging in dialogue with those doing similar work in other jurisdictions. Our report details these and many other ongoing initiatives. In my opinion, the title of this report—*Overturning Convictions—and an Era*—encapsulates the significance of the Unit’s work and echoes public and press sentiment.

But it is important to understand that ending an era of wrongful convictions means so much more than identifying the innocent and wrongfully incarcerated. It means we can learn from our mistakes. And if we learn from our mistakes, we can have a criminal justice system that gets it right the first time.

A handwritten signature in black ink that reads "Patricia Cummings". The signature is fluid and cursive, with "Patricia" on the top line and "Cummings" on the bottom line.

Patricia Cummings
Supervisor, Conviction Integrity Unit



TABLE OF CONTENTS

6	<u>Introduction</u>
9	<u>By the Numbers</u>
13	<u>Unit Overview</u>
14	<u>Challenges</u>
18	<u>Exonerations</u>
20	<u>Exoneree Profiles</u>
26	<u>Righting Sentencing Inequities</u>
29	<u>Setbacks</u>
31	<u>Commutations</u>
33	<u>Unit Projects</u>
33	<u>Police Misconduct Disclosure</u>
35	<u>Pro Se Review Project</u>
35	<u>Penn Law Externship</u>
36	<u>Official Misconduct Case Review</u>
39	<u>Prosecutorial Misconduct Project</u>
40	<u>False Confession Project</u>
40	<u>Open-File Discovery</u>
41	<u>Forensic Policy</u>
42	<u>Trainings & Outreach</u>
44	<u>Committee Participation</u>
45	<u>Pending Cases</u>



Introduction

History

The Conviction Integrity Unit (“CIU”) was established in 2018 by District Attorney Larry Krasner. The CIU’s predecessor, the Conviction Review Unit (“CRU”), which was established in 2014, had operated for a number of years with only a small staff and a narrow mandate. The CRU only reviewed claims of actual innocence, and rarely undertook investigations into whether new evidence existed that could prove those claims. Cases where the defendant had confessed were largely excluded from consideration, as if false confessions (which occur in a quarter of DNA exonerations nationally) were always reliable.

Today, the CIU is an independent unit within the Philadelphia District Attorney’s Office, reporting directly to the District Attorney, and involved in one out of every ten homicide exonerations in the country. When District Attorney Krasner transformed the unit from the CRU to the CIU, he immediately tasked it with a broader mandate: not only to review past convictions for credible claims of actual innocence but also to review claims of wrongful conviction and secondarily to consider sentencing inequities.

Early in his first term, District Attorney Krasner merged the CIU with the Office’s Special Investigations Unit (“SIU”). The two units share a common focus on investigating official misconduct, and their cases frequently overlap. However, as the CIU and SIU personnel have grown and expanded their case-loads, the units were separated in the summer of 2020 to better accommodate each unit’s mission.



Exoneree Terrance Lewis hugging his son Zahaire after Terrance’s release from prison. Zahaire was born a month after Terrance was incarcerated. *Photo: The Philadelphia Inquirer, Jessica Griffin.*





Exoneree John Miller after being released from decades in prison. *Photo: The Philadelphia Inquirer, Jose F. Moreno.*

Mission

The CIU's mission is to ensure that justice is served by prosecutors at the Philadelphia District Attorney's Office and to remedy the Office's wrongful convictions.

Pennsylvania prosecutors have limited post-conviction discretion in general and they have no legal authority to set aside convictions in the interest of justice. Since CIU prosecutors cannot unilaterally dismiss an existing conviction or free anyone we believe to be wrongfully incarcerated, the CIU makes a recommendation to the court that the petitioner be granted a new trial whenever its independent investigation leads it to conclude that a conviction lacks integrity. If warranted, the CIU will move to withdraw the charges against the petitioner or reduce the charges so that an equitable sentence can be imposed. In cases that are ultimately withdrawn or dismissed, the CIU will investigate and prosecute

the actual perpetrator where feasible. However, given the inherent difficulties involved in investigating decades-old crimes where the original investigation was either botched or inadequate, identifying the real perpetrator and bringing that person to justice may be impossible. To date, the Philadelphia Police Department has declined to re-open and re-investigate old cases following exonerations. For example, Walter Ogród was exonerated of a 1988 murder in 2020. While investigating the case, the CIU identified two alternate suspects. As of almost a year after Ogród's exoneration, however, police [had not even begun the process](#) of re-opening the underlying murder case.

Additionally, the CIU believes that conviction integrity is more than simply fixing past mistakes and exposing misconduct. It also requires policies and processes to prevent future injustices. With this aim, the CIU helps craft office-wide policies and trainings designed to reduce the number of future wrongful convictions.



Review Process & Criteria

Convictions based on any type of criminal charge are generally eligible for review by the CIU. However, to be legally eligible for relief under Pennsylvania’s statutory scheme governing collateral challenges to final convictions (the Post Conviction Relief Act), a petitioner must be currently serving a sentence of imprisonment, probation, or parole for the crime.⁴² Pa.C.S. § 9543(a)(1). Legal eligibility for federal habeas relief is likewise limited to those who are in custody or under supervision as a result of the judgment they challenge.²⁸ U.S.C. § 2254(a).

Practically speaking, the overwhelming majority of cases that the CIU pursues involve first- or second-degree murder convictions. This is because the CIU prioritizes capital sentences and sentences of life without parole when assessing whether to accept a case. There is no shortage of these cases because Philadelphia ranks high in national statistics for having incarcerated the most people serving sentences of life without the possibility of parole.

The Duty of a Prosecutor

The prosecutor’s oath in Pennsylvania specifically includes a duty to seek justice. Under the Pennsylvania Rules of Professional Conduct, prosecutors have an obligation to act as ministers of justice, rather than purely as legal advocates. To uphold this duty, prosecutors must approach the merits of each case with evenhanded consideration, rather than an eye for tactical advantage. However, these Rules do not impose any such duty after a conviction becomes final. Nor do the Rules impose any obligation to remedy wrongful convictions.

Rather than disregarding the prosecutor’s oath and accepting the narrow mandate of the Pennsylvania Rules as its ethical compass, the CIU has committed itself to upholding the more expansive ethical obligations that are recommended by the Model Rules of Professional Conduct. Consistent with the prosecu-

tor’s oath to seek justice unconditionally, [Rule 3.8](#) of the Model Rules requires prosecutors to investigate and disclose any exculpatory evidence discovered after a conviction becomes final, as well as to remedy any conviction of the actually innocent.

While Rule 3.8 is a modern-day recognition of the fallibility of our criminal justice system and the understanding that innocent people are convicted and incarcerated for crimes they did not commit, the CIU operates under the principle that its ethical obligations extend even beyond that. Instead of just requiring prosecutors to affirmatively remedy cases of actual innocence, consistent with the prosecutor’s oath to uphold the Constitution while seeking justice, the CIU is committed to remedying convictions that lack integrity (*i.e.*, those convictions tainted by prosecutorial misconduct and cases in which an inequitable or illegal sentence was imposed even when there is no credible claim of actual innocence).

Scope of Report

This report encompasses exonerations, commutations, and sentencing adjustments from January 1, 2018 through June 15, 2021. This report includes data on cases submitted to the CIU, active investigations, cases declined or closed, and cases awaiting review that are accurate as of May 31, 2021.

Experts who have opined on the issue of best practices for conviction integrity units agree that in order to increase public understanding of and trust in such units, offices should publish annual reports detailing the results of their conviction and case reviews and actions taken. This report is the first report issued by the CIU under District Attorney Krasner and is a first-term report, rather than an annual report. Although annual reports were contemplated, they were postponed as a result of multiple factors ,including lack of resources, internal technology deficits, case-load, and the COVID-19 pandemic.



By the Numbers

21

Exonerations

See [p. 18](#).

23

Commutations Granted

following CIU support or positive feedback. See [p. 31](#).

447

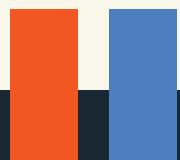
New Arrests the Office Declined to Charge

out of 9,566 arrests involving officers on the Police Misconduct Disclosure Database (May 8, 2018–May 31, 2021). See [p. 33](#).

139

Juvenile Resentencings

See [p. 44](#).



The
exonerees
spent

384

years in
prison.

20

of their convictions involved
official misconduct, including:

*Withheld Exculpatory
Evidence*



Police Misconduct



Witness Tampering



Official Perjury



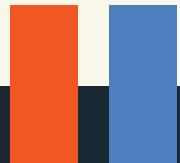
Prosecutor Lied in Court



*False or Misleading
Forensic Evidence*



*Misconduct in Exoneree's
Interrogation*



Exoneration Timeline

2018

May	December	March	April	May
 <p>Dontia Patterson Years in Prison: 11 Vacated: May 2018</p>	 <p>Jamaal Simmons Years in Prison: 9 Vacated: Dec. 2018</p>	 <p>Dwayne Thorpe Years in Prison: 11 Vacated: March 2019</p>	 <p>James Frazier Years in Prison: 7 Vacated: April 2019</p>	 <p>No Photo Available</p> <p>Sherman McCoy Years in Prison: 6 Vacated: May 2019</p>

June

July	October
 <p>Terrance Lewis Years in Prison: 22 Vacated: May 2019</p>	 <p>Johnny Berry Years in Prison: 25 Vacated: June 2019</p>

2020

December	January	June	October
 <p>Christopher Williams Years in Prison: 30 Vacated: Dec. 2019</p>	 <p>Theophalis Wilson Years in Prison: 28 Vacated: Jan. 2020</p>	 <p>Walter Ogród Years in Prison: 28 Vacated: June 2020</p>	 <p>Andrew Swainson Years in Prison: 32 Vacated: June 2020</p>

2021

December	February	March	May	June
 <p>Termaine Hicks Years in Prison: 20 Vacated: Dec. 2020</p>	 <p>Robert Donald Outlaw Years in Prison: 20 Vacated: Dec. 2020</p>	 <p>Christopher Williams Years in Prison: 30 Vacated: Feb. 2021</p>	 <p>Jahmir Harris Years in Prison: 8 Vacated: March 2021</p>	 <p>No Photo Available</p> <p>Obina Onyiah Years in Prison: 11 Vacated: May 2021</p>

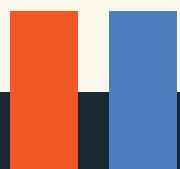
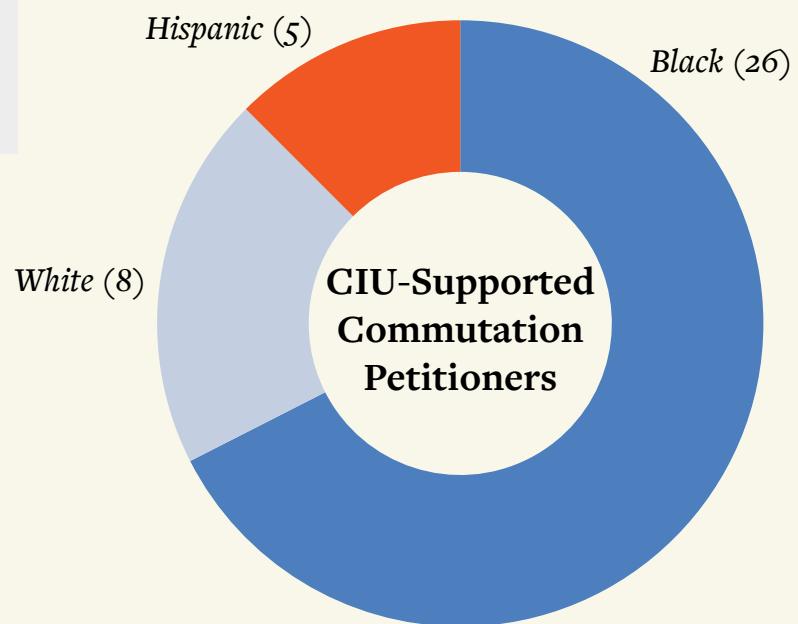
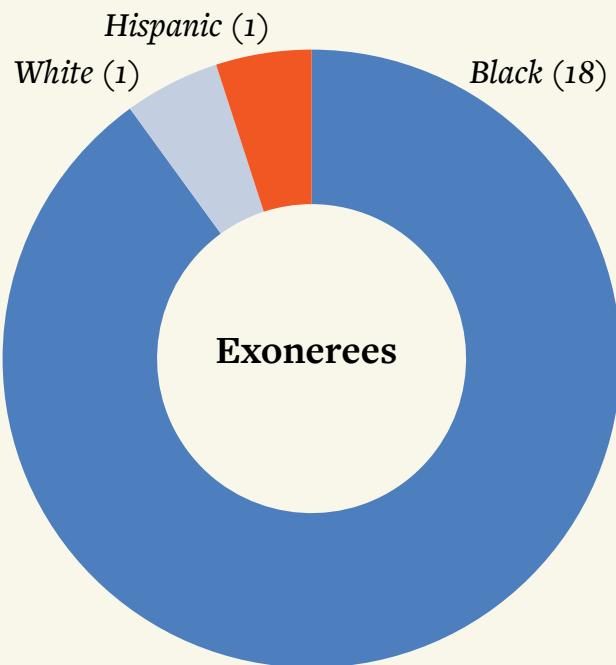
Photo credits can be found on the final page of this Report.



Breakdown of Exonerees and CIU-Supported Commutation Petitioners by Race

According to the National Registry of Exonerations, “African Americans are only 13% of the American population but a majority of innocent defendants wrongfully convicted of crimes and later exonerated.”

In Pennsylvania, Black people make up only 12% of the population but 65% of those sentenced to life without parole, and an even higher proportion of those sentenced under the second-degree murder (or “felony murder”) statute, according to a recent study.



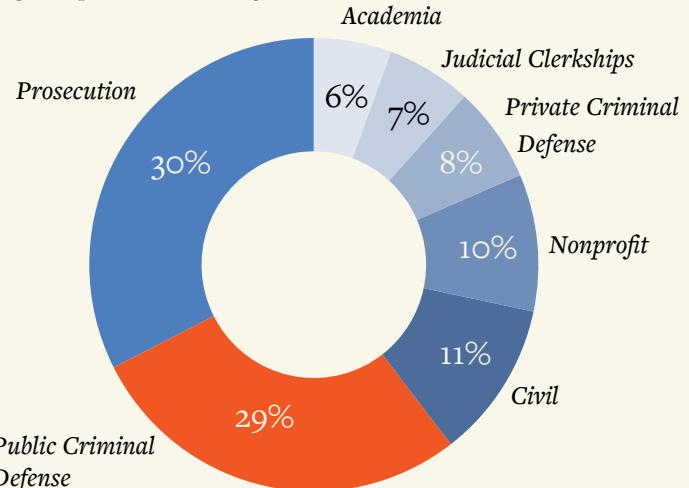
Unit Overview

The Massachusetts Conviction Integrity Working Group—developed in response to the growth in conviction integrity units in order to study those units and recommend best practices—recommends in a [February 2021 report](#) that all conviction integrity units include “at least one person with criminal defense or post-conviction innocence experience.” The CIU has found the perspectives offered by attorneys with such backgrounds to be invaluable in pursuing its mission. Consequently, the CIU employs attorneys from different professional backgrounds including prosecutors and former defense attorneys, legal aid attorneys, law clerks, and academics. The CIU, however, does not currently meet its goal of creating the same diversity in the racial background of its full-time attorneys. As of 2021, the CIU does not reflect the racial demographics of the community it serves. Despite having improved racial and ethnic diversity in this administration, the CIU recognizes that the lack of diversity remains problematic and is working to remedy this through its recruitment strategies going forward.

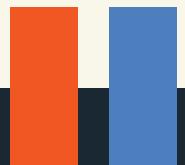
Beginning in November 2020, the Unit also selected three attorneys drawn from the two most recent

classes of assistant district attorneys to act as CIU fellows. Although it is generally considered a best practice for CIU attorneys to possess significant trial and post-conviction experience, by adding a fellowship program composed of newer attorneys to its bench of more senior staff, the CIU has succeeded in pursuing many of the policy, training, and other projects, including this report, that had not been possible with a smaller staff.

As of June 2021, our twelve attorneys have more than 140 years of combined legal experience across a wide range of practice settings:



The Conviction Integrity Unit as of June 14, 2021, from left to right. Back row: Ryan Kellner, Isabel Ballester, Lyandra Retacco, Graham Sternberg, John Schatz, Jonathan Eubank, Jessica Attie, Thomas Gaeta, Andrew Wellbrock. Front row: Arlyn Katen, Laura McAboy, Banafsheh Amirzadeh, Patricia Cummings, Rebecca McDonald, Janet Morris, Michael Garmisa, Eleanor Carpenter, Samantha Bass. Not Pictured: Lauryn Coleman, Sarah Boyette. Photo: Jacqueline Scott.



Challenges

Funding and Resources

Funding constraints limit the extent and pace of the CIU's work. The CIU currently faces a backlog of 1,165 cases awaiting review. Additionally, the CIU has not been able to implement as many training and policy programs as it would have liked, and has had difficulty putting in place a system to track its case submissions and outcomes. This makes collecting detailed data analytics—a best practice recommended by the Massachusetts Conviction Integrity Working Group—a burdensome process.

That said, the CIU has been fortunate in that District Attorney Krasner has continued to prioritize conviction integrity work, increasing the Unit's staff by 150% since he took office in January 2018. As of June 2021, the Unit includes nine full-time attorneys, three Office-funded legal fellows, five paralegals, and investigative support.

To combat its budget and personnel shortfalls, the CIU has also applied for and received several grants. These grants have allowed for the creation of the *Pro Se* Project and the Prosecutorial Misconduct Fellowship. The CIU has also benefitted from the work of law students. In fall of 2019, the CIU began an externship program with the University of Pennsylvania Carey Law School, and the CIU has also hosted legal interns from various law schools during the winter and summer months.

“In my opinion, it is no surprise that when you do the work of undoing institutional wrongs, there is resistance from people who want to make excuses for those wrongs. On behalf of all Philadelphians, [we] will not be cowed or deterred from our duty to seek justice in the future.”

**District Attorney
Larry Krasner**

Cultural Changes

The priorities of conviction integrity unit attorneys and the priorities of other prosecutors working in the same office can easily come into conflict. To illustrate, the chief of another conviction integrity unit, while in the midst of experiencing the inherent conflict that exists when the work reveals constitutional violations committed by a fellow prosecutor, lamented that conviction integrity unit job descriptions should read: “In addition to experience identifying and extinguishing a burning dumpster fire, candidates should not mind being viewed around the office as the guy who killed Superman.”

When the formation of conviction integrity units was being debated nationwide, one recurring sentiment was that they could never truly be effective being run out of the very office where the wrongful conviction occurred. Skeptics likened such an arrangement to “the fox guarding the hen house.” The opposite of that problem, however, is what is reflected in the above analogy comparing conviction integrity unit prosecutors to the “guy who killed Superman.” Institutionally, trial lawyers in general, and homicide trial lawyers in particular, are often viewed as superheroes in a prosecutor’s office. So, when a conviction integrity investigation reveals that the conviction of an innocent person occurred because the trial prosecutor hid exculpatory evidence, internal conflict—if not downright hostility—can ensue. And, just because an elected District Attorney is progressive does not mean the larger office and the conviction integrity unit will be immune from such conflict.

The CIU has also faced cultural conflict with the Philadelphia Police Department (“PPD”). Until recently, this conflict made it difficult to obtain homicide investigative casefiles from the PPD. Traditionally, the PPD would deliver those files whenever a prosecutor requested them and leave the files with the prosecutor for as long as they were needed. However, in May 2018—within months of the start of this administration—PPD overhauled its homicide investigative casefile sharing policy, significantly hindering the

CIU's ability to obtain them. Instead of allowing the CIU to assume possession of the files, the new policy required the CIU to travel to PPD headquarters to examine and copy the files. The policy was then modified again to require the presence of a PPD employee during any examination of the file—on designated, limited days, times, and equipment—thereby further limiting the CIU's ability to access the files. After some further changes during the pandemic, PPD amended its policy yet again in April 2021. The PPD now allows for what appears to be prompt delivery of original physical files to the CIU.

The Unit's Police Misconduct Disclosure Project (discussed *infra*) led to a lawsuit from the Fraternal Order of Police ("the FOP"). The FOP argued that, by disclosing officer misconduct to defense attorneys, the Office violated PPD officers' due process rights and infringed on their privacy and reputational interests. The state trial court dismissed the suit with prejudice, and a ruling on the FOP's appeal has been pending for almost a year. (*See* the briefs filed in response by the City and the District Attorney's Office.)

The FOP also sued the Office after the CIU hired a Special Assistant with a career-long background in criminal defense investigations and case review. The special assistant was tasked with conducting independent casefile reviews and supplementary investigations of claims of actual innocence and wrongful convictions. The CIU, in conjunction with the District Attorney, made this hiring decision in order to ensure that the case review and specialized investigations conducted by the CIU are conducted properly and impartially, but the FOP argued that this violated its collective bargaining agreement with the city. Due to structural changes within the Office and the resulting reassignment of the Special Assistant, this case was settled because the issues were rendered moot.

Often the message from judges is, 'Who are you to come in and try to undo what we've been doing for years?"'

CIU Supervisor Patricia Cummings

Legal Hurdles

As previously mentioned, Pennsylvania law does not give prosecutors unfettered discretion to vacate convictions that have become final nor to simply recommend that convictions be vacated in the interest of justice. Instead, the CIU can only make recommendations as supported by law and fact to the judge, who is the final decisionmaker. Over the past three years, the Unit has found that the judge's role as final arbiter can, at times, make post-conviction proceedings unnecessarily arduous.

For instance, the CIU's collaborative approach to post-conviction relief has garnered criticism from some judges who believe that an adversarial relationship is essential to post-conviction litigation. Indeed, the CIU's approach to each case and to working with defense counsel is required by the prosecutor's oath to seek justice, but does not typify American legal practice. Instead of being adversarial, the CIU engages in a collaborative and cooperative process with defense counsel. This approach allows the CIU to thoroughly investigate claims of wrongful conviction and ensures that previously suppressed information is properly disclosed. Despite the CIU's rigorous investigation in a particular case, some judges remain unclear on the prosecutor's actual role. They are dismayed by this relatively cooperative arrangement, and cannot conceptualize how justice can be done if prosecutors do not fight the defense every step of the way. In such instances, judges can become skeptical of—or outright hostile



Exoneree Willie Veasy leaving court in 2019 following his successful hearing to vacate his conviction. Willie was convicted in 1993. Photo: *The Philadelphia Inquirer*, Heather Khalifa.

to—CIU prosecutors, whom they incorrectly view as abdicating their responsibility as prosecutors. In the face of skepticism or hostility, it can be difficult to obtain a fair consideration of the merits in a post-conviction petition.

Another impediment to post-conviction relief can be a judge's skepticism of claims that suggest constitutional violations or other misconduct might be widespread among police and prosecutors. The CIU has encountered judges who are all too ready to credit weak excuses proffered by even repeat offenders in law enforcement. One explanation for this deference may be that many judges are former prosecutors or products of past administrations' culture and so have misconceptions about how prosecutors should behave. But even judges from other backgrounds are of-

ten reluctant to recognize how pervasive police and prosecutorial misconduct can be. When that is the case, officials accused of misconduct are likely to find a "sympathetic ear" ready to listen to any reason they might offer for their allegedly problematic behavior. This can make it difficult for the CIU to convince a judge that misconduct occurred, notwithstanding the existence of evidence corroborating the misconduct or a history of similar behavior by the official being questioned.

The unfamiliarity of the CIU's approach to remedying wrongful convictions can also lead to friction with judges over the Unit's ethical obligations. While most state and federal judges have been supportive of the CIU's submissions, one federal judge accused the CIU of failing to live up to its duty of candor and

threatened to impose sanctions after the CIU agreed to waive all procedural and exhaustion defenses in federal court, only to have the petitioner decide to seek relief in a state court proceeding that had essentially been stayed during the pendency of the federal court matter. The state court then went on to grant relief. Although the decision to pursue relief in state court and the ensuing grant of relief were an unexpected turn of events, the federal judge, in an [order to show cause](#), expressed concern that the CIU had not been completely honest about its reasons for waiving the defendant's need to exhaust his state court remedies. Thirty-three attorneys and scholars co-signed an [amicus brief](#) in support of the CIU. (The CIU's own brief is available [here](#).) The federal judge [ultimately found](#) that the CIU had not violated its

duty of candor and that sanctions were unwarranted. The federal judge, however, issued an admonishment requiring the CIU to provide status updates regarding any parallel state court proceedings if relief is being sought on a federal writ of habeas corpus in the Eastern District of Pennsylvania.

Lastly, a judge's role as final arbiter may complicate post-conviction proceedings simply because the judge assigned to hear the post-conviction claims is often the same judge who conducted the petitioner's original trial. While there are, of course, institutional advantages to such an arrangement, it is not surprising that judges might have a hard time second-guessing a conviction that they tacitly or explicitly endorsed at the close of the original trial.



Exoneree Terrance Lewis and CIU Supervisor Patricia Cummings walk past Philadelphia City Hall. Photo: *The Philadelphia Inquirer*, Jessica Griffin.

Exonerations

21

Exonerations

88

Active Investigations

611

Cases Declined or Closed

1,165*

Awaiting Review

Overview

Since the CIU's inception, the Unit has found no shortage of cases for its review. In fact, the Unit received 560 submissions in its first year alone. As of June 15, 2021, 1,165 submissions are awaiting review. The high number reflects a newfound hope among the public and incarcerated individuals in remedying injustices and is not unique to Philadelphia. Even conviction integrity units with a narrower mandate or more procedurally streamlined statutory schemes suffer from a high number of cases awaiting review.

In addition, several factors contribute to the CIU's caseload. First, the CIU considers cases submitted by attorneys as well as those submitted *pro se* (by the petitioners themselves). *Pro se* submissions by far outnumber the cases submitted for review by attorneys and are more time-consuming to review. Second, the Unit's mandate is broader than that of many other conviction integrity units. While other conviction integrity units are often limited to the review of actual innocence claims, the CIU reviews wrongful convictions (*e.g.*, claims involving official misconduct) and sentencing inequities as well. Third, governing law, such as Pennsylvania's Post Conviction Relief Act, means the CIU lacks the discretion some other conviction integrity units have to simply vacate or dismiss prosecutions in the interest of justice.

The review process is conducted by CIU prosecutors who coordinate and collaborate with defense counsel (when possible) in order to litigate the defendant's claims and provide relief when appropriate.

Submissions in 2018: ... in 2019:

560

... in 2020:

296

777

... in 2021
(as of June 1):

149

Once a request for review is received in the CIU, it goes through an intake process. Then, a claim's credibility is determined through a review of all available files and evidence. Reinvestigations are also conducted to determine if new evidence exists or if exculpatory evidence was suppressed at a prior proceeding. Modern forensic science and/or technology, when applicable, may also be used to extract new information from existing evidence. For example, in May 2021, the CIU secured the exoneration of Obina Onyiah after uncovering affirmative evidence of actual innocence through the use of several photogrammetry experts who reviewed eleven-year-old surveillance footage. (*Discussed infra* at [p. 37](#).)

* The discrepancy between cases submitted and cases in or awaiting review, exonerated, or closed can be explained by cases submitted in 2017 that remain in the queue, by new cases not yet assigned numbers, and by repeat submissions.

The COVID-19 pandemic likely contributed to a decline in 2020–21 submissions.



Pro se claims are submitted using a sixteen-page [Submission and Consent Form](#) in which the defendant outlines their claim of wrongful conviction or actual innocence, cites new evidence, and consents to the CIU review process. Letters that contain enough information may also suffice to open a case file.

Because the CIU receives an enormous number of submissions, they are prioritized according to a range of factors, including the nature of the sentence and the severity of the alleged misconduct.

The CIU may also decline a submission. This generally happens because the submitter is not imprisoned or on parole—and therefore is ineligible for post-conviction relief under Pennsylvania law—or because their case is outside the CIU’s jurisdiction. Sometimes the submission is declined in an exercise of discretion based largely on resources and the reality of having to triage submissions in an effort to identify cases likely warranting relief. A declination is not a decision on the merits of a case or claim.



When Termaine Hicks was convicted in 2001, he told the judge presiding over his case: “An innocent man can’t sit in jail for long.” He was exonerated in 2020. *Photo: Associated Press, Jason Miczez, for The Innocence Project.*



This is one of those bittersweet moments where [there is] joy in the fact that justice has been served, but sadness in the fact that it has taken so long.”

**Judge Gwendolyn N. Bright,
on the exoneration of Chester Hollman III.**

The CIU exonerated twenty people in twenty-one cases from May 2018 to June 2021. They represent about 5% of the submissions considered by the CIU during that period. All told, those people spent 384 years in prison before their exonerations. Two exonerees were originally sentenced to death.

Definitions

The CIU classifies a case as an exoneration using the same [criteria](#) as the National Registry of Exonerations. Accordingly, the CIU views a person as exonerated when new evidence, or newly discovered evidence, results in the dismissal of all charges against them.

Additionally, Pennsylvania does not have a statutory definition of “actual innocence,” nor have the Pennsylvania Courts adopted one. The Commonwealth therefore relies upon the standard for actual innocence applied in federal courts: whether it is “more likely than not that no reasonable juror would have found [the defendant] guilty beyond a reasonable doubt.” *Schlup v. Delo*, 513 U.S. 298, 327 (1995).

Exoneree Profile: Andrew Swainson

Andrew Swainson was convicted of first-degree murder and related offenses in connection with a robbery-gone-wrong at a drug house in 1988. Swainson was sentenced to life in prison without the possibility of parole.

The crime for which Swainson was arrested involved two men who killed Stanley Opher during the robbery of a drug house. Police caught three men fleeing the house, but rather than make any of those men their prime suspects, the police inexplicably relied on one of them as their star witness against Swainson.

One of those men, Paul Presley, identified Swainson as the robber responsible for Opher's death. Police arrested Swainson, but at Swainson's preliminary hearing, Presley failed to identify Swainson. A few months later, Presley told an investigator for the defense that his first identification of Swainson had been incorrect. One month prior to trial, however, Presley was brought in for two interviews at the District Attorney's Office and recanted his recantations, reaffirming his identification of Swainson.

At trial, the Commonwealth bolstered Presley's weak testimony with evidence that Swainson left the country—allegedly to avoid arrest. Indeed, Swainson had flown to Jamaica during this time. On the basis of this evidence, Swainson was convicted.

Years later, Presley provided defense investigators with recantations in which he stated that he had been pressured into identifying Swainson and was promised leniency on open charges if he testified. Presley later died in 2009.

When the CIU began reviewing Swainson's case, it became clear that the Commonwealth had misrepresented and/or suppressed evidence. First, the Commonwealth obscured the severity of the charges that



Exoneree Andrew Swainson with his attorneys Nilam Sanghvi (left) and Nathan Andrisani (right) celebrating his exoneration. *Photo:* Nathan Andrisani.

Presley was facing at the time of Swainson's trial. Importantly, the prosecution had charged Presley with felony drug charges under the false name of Kareem Miller. Presley was held for seven months on those charges prior to Swainson's trial. The charges were then dismissed immediately following Swainson's conviction. Second, the prosecution had suppressed

evidence showing that Swainson could not have known that there was a warrant for his arrest when he took a planned trip home to visit his parents in Jamaica, as he left before an arrest warrant was ever issued—and that activity logs showed that detectives were aware of his travel plans ahead of time. Finally, the Commonwealth failed to disclose the existence of at least two alternate suspects, one of whom committed another robbery/homicide and was killed during the commission of a violent crime.

In light of the suppressed evidence, and the possibility that Swainson was actually innocent, Swainson was exonerated (*see* CIU filings [here](#) and [here](#)) on June 18, 2020.

Date of Exoneration:

June 18,
2020

Years in Prison:

32

Exoneree Profile: Chester Hollman

Chester Hollman III was convicted of second-degree murder and related crimes in 1993 for the shooting death of foreign exchange student Tae Jung Ho and sentenced to life imprisonment without the possibility of parole. Ho was attacked by two men who fled by jumping into the back of a white Chevy Blazer with a license plate beginning with the letters “YZA.” The Chevy Blazer was driven by a woman and there was also another female passenger in the front seat.

Hollman was pulled over a few blocks from the crime scene four minutes after the first 911 call was made. He and a woman named Di-erdre Jones were driving a rented white Chevy Blazer, the license plate of which included the letters “YZA.”

In 2018, the CIU provided Hollman access to his case files for the first time and, as a result, Hollman’s attorney discovered exculpatory evidence that had been suppressed by the Commonwealth. That evidence linked at least three other people to the crime, one of whom—Denise Combs—had rented a white Chevy Blazer whose license plate began with “YZA” during the time Ho was attacked.

The two white Chevy Blazer rental cars were rented from Alamo Rent a Car, and the similarity in their license plates was likely a consequence of Alamo having registered them in the same transaction. Incriminatingly, Combs returned her rental car before the car was due back—at 5:00 A.M. on the morning of the murder.

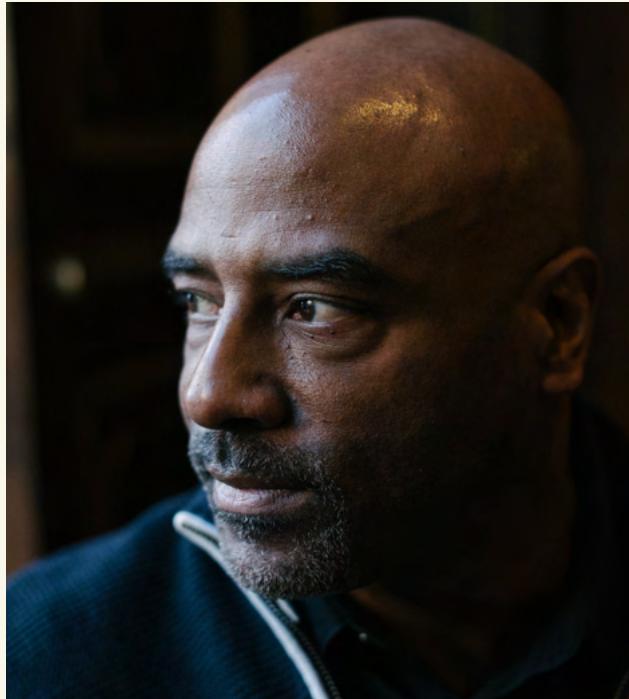
The suppressed evidence also showed that, within 24 hours of the murder, an anonymous caller identified

Date of Exoneration:

July 30,
2019

Years in Prison:

28



Exoneree Chester Hollman spent decades in prison as a result of a conviction based on coerced testimony.
Photo: Hannah Yoon.

Combs as a suspect in the murder. The police pursued this lead, but only in an effort to link her to their initial suspect, Hollman. Once they found no link between the two, they abandoned Combs as a suspect.

Additionally, fingernail clippings had been taken from Ho after he died, but never tested for DNA. Since it was thought that Ho had struggled with Hollman before being shot, and therefore might have scraped DNA from his attacker with his fingernails, the clippings were finally analyzed in 2019. The clippings contained DNA from two people: Ho, and someone who was not Chester Hollman.

Based on the Commonwealth’s failure to disclose exculpatory evidence at the time of trial, and the newly discovered exculpatory DNA evidence, Chester Hollman was exonerated (see CIU filings [here](#) and [here](#)) on July 30, 2019.



Exoneree Profile: Walter Ogrod

Date of Exoneration: June 10, 2020 **Years in Prison:**

28

Walter Ogrod was convicted of first-degree murder and sentenced to death in relation to the infamous 1988 killing of four-year-old Barbara Jean Horn.

Horn's body was discovered inside a cardboard television box on a curb less than 1,000 feet from her home. She had open head wounds and bruises on her head, back, and shoulders. At least five eyewitnesses told police that they had seen a man carrying or dragging a cardboard box through the neighborhood on the afternoon Horn was murdered. Although Ogrod lived in the neighborhood, none of the witnesses described him as the man with the box.

The case drew national attention, including an episode of the nationally broadcast show *Unsolved Mysteries*, but the attention did not generate any leads that pointed to Ogrod as Horn's killer. Eventually, the case went cold.

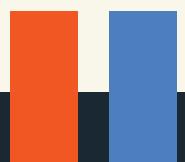
Nearly four years after Horn's death, two new detectives were assigned to investigate the murder. They summoned Ogrod to the Philadelphia Police Administration Building, ostensibly to interview him as a witness in Horn's murder case. When Ogrod arrived, he had already been awake for nearly 30 hours, having just completed an all-night, 18-hour shift driving a bakery delivery truck. The detectives began with an unrecorded "interview" that produced a statement written entirely by the detectives but signed by Ogrod. It was allegedly a verbatim transcript of a confession Ogrod had given the two detectives. Throughout the course of two separate trials (the first trial ended with a mistrial)—and afterward—Ogrod maintained that this confession had been coerced.



Exoneree Walter Ogrod celebrating his release from prison by playing with his lawyer Tracy Ulstad's dog.
Photo: Tracy Ulstad.

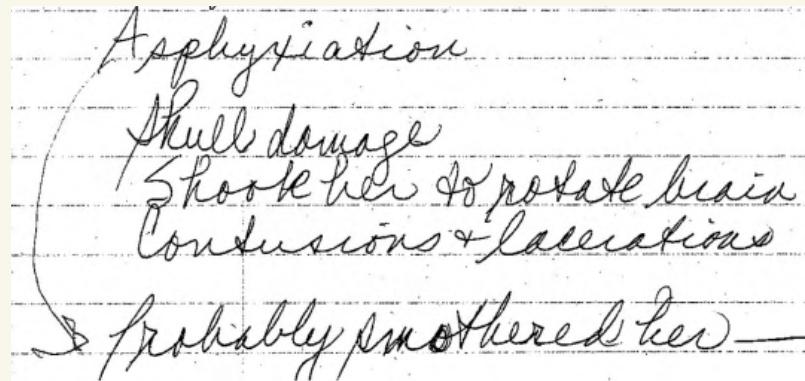
During the second trial that resulted in Ogrod's conviction and death sentence, the written confession and testimony from a jailhouse informant were the only evidence tying Ogrod to the murder. During her closing arguments, the prosecutor argued that there had been no arrangement between the Commonwealth and the informant in exchange for his testimony.

In 2018, an investigation by the CIU combined with newly discovered scientific evidence revealed a voluminous record of other exculpatory evidence—including evidence proving the crime did not occur as detectives had claimed. The jailhouse informant



who testified against Ogrod at trial had worked with the District Attorney's Office on many other cases—including 12 murders. The record also included notes from a police investigation into a separate crime committed by a third person at Ogrod's house that included details about the house's layout that made the events in Ogrod's confession practically impossible. That investigative file also seems to have supplied the detectives who interviewed Ogrod with key details about his house and the purported murder weapon that they included in the confession they wrote. Additionally, handwritten notes from the trial prosecutor's pre-trial interview with a forensic neuropathologist suggested that Horn died from asphyxiation, not blunt force trauma as the confession claimed.

In February 2020, the CIU filed extensive briefing and expert reports (see CIU filings [here](#) and [here](#)) joining in Ogrod's request for a new trial. The CIU also conceded that Ogrod is likely innocent. Although a court



Neuropathologist notes indicating death by asphyxiation, not blunt force trauma. Photo: CIU file.

date to consider the joint request for a new trial was scheduled, the pandemic effectively shut down the courts in Philadelphia for a period of time. While in prison awaiting a hearing and/or a decision in his case, it is believed Ogrod contracted COVID-19. Fortunately, he recovered.

In light of the overwhelming evidence that Ogrod had been the victim of detectives and prosecutors hellbent on closing a notorious cold case, Ogrod was exonerated on June 10, 2020. The CIU, however,

continued its efforts to solve the crime. As of today, two suspects have been identified—one individual was identified as a suspect in the original homicide investigation and has since died, and the other is serving a life sentence in another state for a homicide and sexual offense.



District Attorney Krasner (right) and CIU attorneys Patricia Cummings (left) and Carrie Wood (second from left) meeting with Sharon Fahy (second from right). Ms. Fahy's daughter, Barbara Jean Horn, was murdered in 1992. Ms. Fahy supported the eventual exoneration of Walter Ogrod, who was wrongfully convicted of Horn's murder. Photo: District Attorney's Office.

Exoneree Profiles: Theophalis Wilson & Christopher Williams

Theophalis Wilson and Christopher Williams were both convicted of murdering three men who were found shot in the head around Philadelphia on the same day in 1989. Christopher Williams was sentenced to death for this crime, while Wilson was sentenced to life in prison without the possibility of parole. Eighteen months prior to this conviction, Williams was separately convicted for the murder of a man named Michael Haynesworth and sentenced to life in prison without the possibility of parole.

The cases against Wilson and Williams hinged on the testimony of two men: James White and David Lee.

During Williams's separate trial, and in exchange for more lenient sentencing in his own six murder cases, White testified that he had planned Haynesworth's death with Williams and a teenage girl. Lee testified that he had purchased several guns on Williams's behalf, including a 9mm handgun that White testified had been Williams's original plan for killing Haynesworth.

When Williams and Wilson were tried for the deaths of the three men a year and a half later, White and Lee testified again. They claimed that the three men were lured to Philadelphia with the promise of being sold a pair of AK-47 assault rifles, in an attempt to rob them. The victims were unable to produce as much money as their robbers desired, and were forced into a van. The men were allegedly driven around Philadelphia until Williams shot them, one by one, with a

Theophalis Wilson:

Date of Exoneration: Years in Prison:

January 21,
2020 27

“ There was some skepticism in me as a human being that one individual could be wrongfully convicted more than once. But lightning did strike twice.”

CIU Supervisor Patricia Cummings

9mm pistol. Their bodies were then thrown from the moving van.

Lee again testified that he had purchased a 9mm pistol for Williams—and that it was the exact pistol police had taken from Williams during his arrest. Lee assured the jury that, although he knew that purchasing the guns had been illegal, he had not been offered any leniency from law enforcement and—aside from purchasing the guns—had no criminal record.

A man named Chris Vaughn also testified that White confessed to him in prison about committing three murders in Philadelphia with someone named “Chris.”

In 2011, White recanted his testimony against Williams and Wilson in relation to the murder of the three men in 1989. Additionally, an expert conclud-

Christopher Williams:

Dates of Exoneration: Years in Prison:

December 18,
2019 29

February 9,
2021



ed that based on the blood evidence available and the condition of the bodies, the three men had been killed where they were found, not thrown from a moving van. The CIU also made a disclosure to the defense that included a significant amount of exculpatory information that had been withheld at the time of trial including reports of alternate suspects, firsthand accounts that make no mention of bodies being thrown from vans, evidence that undermined the timing of events that White gave at trial, and evidence that both Lee and White had been induced to testify by the Commonwealth.

Based on this evidence (see [here](#) and [here](#)), Williams was exonerated of his triple homicide conviction in December 2019, and Wilson was exonerated in January 2020.

Wilson's exoneration marked an unnecessarily late end to his time in prison. Because he was given a mandatory sentence of life without the possibility of parole while he was still a juvenile, the U.S. Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460



Exoneree Christopher Williams (right) hugging members of his family upon arriving home after 30 years in prison.
Photo: The Philadelphia Inquirer, Jessica Griffin.

(2012), required that he be resentenced—and, as a model prisoner, any resentencing would likely have involved his release. But the court refused to grant Wilson a resentencing hearing because the claims of innocence that ultimately led to his exoneration were still outstanding.

Despite his exoneration, Williams remained in prison due to the Haynesworth conviction.



Exoneree Theophalis Wilson exiting his exoneration hearing, free after 28 years in prison.
Photo: Associated Press.

The CIU revisited the Haynesworth conviction in light of the evidence produced in the triple homicide case. In that case, White's testimony about Hayneworth's murder was inconsistent with the physical evidence that was available. Because of Lee's very similar involvement and the concerns that White's prior testimony raised as to his credibility, the CIU recommended (see [here](#)) that the Haynesworth conviction be vacated as well. On February 9, 2021, Williams was exonerated for a second time.

Righting Sentencing Inequities

The CIU's work extends beyond identifying and correcting wrongful convictions. In several instances, the CIU has reviewed cases in which defendants were subject to unjust levels of punishment for their offenses. These cases involved defendants either improperly convicted of a more serious crime than their conduct warranted or whose sentences were based on inappropriate factors unrelated to their conduct. Because Pennsylvania law does not generally allow for the correction of unjust sentences, the CIU's ability to correct such errors is tightly circumscribed—absent a legal or constitutional error at trial, it is exceedingly difficult to revisit an unjust sentence.

Four cases involving six individuals illustrate the CIU's efforts in this area. Although these cases did not warrant exonerations, they involved excessive and unjust punishments. In each of these instances, the CIU was able to seek justice only because it identified unrelated errors that gave the CIU an avenue to ensure they were resentenced to a fair and appropriate term of imprisonment.

Jamal Wright

INITIAL SENTENCE: LIFE

NEW SENTENCE: 17–34 YEARS

In the case of Jamal Wright, the CIU reviewed his first-degree murder conviction and life sentence. His codefendant had previously been granted relief in federal court pursuant to an agreement with the Office and pled guilty to third-degree murder. At that time, the Office refused to agree to similar relief for Wright.

Upon review, it was clear that a similar outcome was appropriate for Wright—the circumstances of the crime demonstrated that a conviction for first-degree murder was unjust as neither Wright nor his codefendant had intended to kill. The CIU conceded in federal court that Wright's counsel—who had put on no defense whatsoever—provided ineffective assistance of counsel and that a new trial was required. Rather than retry Wright, the CIU agreed to a plea to third-degree murder on essentially the same terms as Wright's codefendant. Instead of life imprisonment, Wright is now serving seventeen to thirty-four years and is eligible for parole.

Ricky Mallory, Hakim Lewis, & Braheem Lewis

INITIAL SENTENCE: 35–70 YEARS

NEW SENTENCE: 10–20 YEARS

The second case involved three codefendants: Ricky Mallory, Hakim Lewis, and Braheem Lewis. Each was convicted of attempted murder, criminal conspiracy, and related offenses arising out of a nonfatal shooting. When they were sentenced, the trial judge was under police protection, apparently as a result of the judge's belief that someone associated with the defendants intended to retaliate against him. Without disclosing that belief to the defendants, he imposed an extraordinarily severe sentence—the statutory maximum for each count of conviction, run consecutively—which was approximately three times greater than called for by Pennsylvania sentencing guidelines. While it was not possible to address their excessive sentences directly, the CIU was able to seek relief in federal court based upon an unrelated violation of their right to a trial by jury. As a result, their convictions and sentences were vacated. Each then pled guilty to the same offenses in exchange for a guidelines sentence providing for their release after serving over 20 years for their crimes.

Eric Riddick

INITIAL SENTENCE: LIFE

NEW SENTENCE: 10–20 YEARS

In the third case, the CIU reviewed Eric Riddick's conviction and life sentence for first-degree murder and possession of an instrument of crime. The conviction arose out of the 1991 murder of William Catlett. The basis for Riddick's conviction was testimony that placed him at the scene of the crime, firing a rifle. At trial, during a brief sidebar, the prosecutor revealed for the first time that a rifle had been found at the scene, but assured Riddick's attorney that the rifle would not be introduced as evidence against Riddick. The CIU discovered during its review and investigation of the case that the prosecutor did not disclose that the rifle had been found fully loaded, that tests by police revealed that it was prone to jamming, and that it did not match the caliber of any bullets taken from Catlett's body. Rather than merely being unnecessary to prove the Commonwealth's case—as the prosecutor had implied—the rifle was evidence indicating that Riddick not only was not the person who shot Catlett, but he likely never fired the rifle during the crime.

Although this suppressed evidence tended to demonstrate that Riddick did not fire a shot, much less the fatal shot, it did not contradict eyewitness testimony that depicted him as a participant in Catlett's murder. As a result, the CIU agreed that Riddick's conviction and sentence should be vacated and a new trial granted, and proposed a negotiated guilty plea to third-degree murder and possession of an instrument of crime.

In a surprising twist, however, the Common Pleas judge originally presiding over Riddick's post-conviction petition produced a letter from Riddick's original trial prosecutor that attempted to undermine the CIU's finding that a *Brady* violation had occurred. Far from refuting the CIU's theory of the case, however, the letter was an unwitting admission

to exactly the misconduct the CIU suspected.

Shortly afterward, the case was reassigned to another judge and Riddick's conviction was vacated. Rather than relitigate his case, Riddick elected to enter a plea of no contest to third-degree murder and was released from prison.

Larry Walker

INITIAL SENTENCE: LIFE

NEW SENTENCE: 10–20 YEARS

Larry Walker was convicted of second-degree murder and sentenced to a mandatory term of life without the possibility of parole for the 1983 homicide of Clyde Coleman. Walker's conviction was based on the testimony of two eyewitnesses—Coleman's fifteen-year-old neighbor and his mother—who believed that Walker resembled one of the three men that they had seen struggling with Coleman. However, another witness, Theresa Teagle, testified that she had seen three men—including one in a bloodied shirt holding a gun—flee past her and was certain that those men were not Walker. Walker denied any involvement in the murder, but admitted to helping Coleman wash his car a few days earlier and that they had been sexually intimate on prior occasions.

For his defense, Walker testified that he had been with his friends watching a karate movie on television the night Coleman was murdered. However, the prosecution was able to demonstrate that no karate movie was aired that evening.

Perhaps because of this botched attempt to present an alibi, the jury convicted Walker despite Teagle's testimony that Walker was not one of the men she saw fleeing on the night of Coleman's murder.

Throughout his incarceration, Walker repeatedly attempted to get his conviction overturned. This included contacting the CIU's predecessor, the CRU. During the CRU's investigation, they were contacted by the trial prosecutor who described the case against

Walker as “the thinnest homicide case” he tried, and “the only homicide case . . . in which I had doubt regarding the guilt of the accused.” Despite the former ADA’s assistance, the evidence Walker possessed to support his innocence was insufficient to meet the CRU’s exacting standard, and the case was declined.

Walker submitted a second request for review following the CIU’s creation. Thanks to the CIU’s broader mandate, it was able to investigate more than just evidence of Walker’s actual innocence. The CIU learned:

- The police investigation into Coleman’s murder was limited solely to Walker’s involvement, and despite eyewitness testimony that there were at least three assailants, no suspects other than Walker were ever developed.
- Teagle was not merely a civilian witness—she was a cooperating informant in another ongoing murder investigation. Had evidence that police relied heavily on Teagle in another murder investigation been given to Walker’s attorney, it is likely that it could have been used to bolster the strength of Teagle’s testimony.
- Although no karate movie was aired on the night of Coleman’s murder, the very movies that comprised Walker’s alibi were aired the following week. Additionally, Walker originally told police that he was simply watching television at the time of Coleman’s murder—not that he was watching karate movies. This strongly suggested that the errors in Walker’s alibi were attributable to faulty memory rather than an intent to deceive.
- Evidence of Walker’s prior relationship with Coleman may have inflamed biases the jury held.

Taken together, the evidence uncovered by the CIU undermined confidence in the integrity of Walker’s conviction. However, due to the passage of time, the deaths of critical witnesses, and the fact that the eyewitnesses have stood by their identifications, the

I remember the Walker case well because it was the thinnest homicide case I tried while I was in the office, and it is the only homicide case that I tried in which I had a doubt regarding the guilt of the accused. . . .

I certainly hope that Mr. Walker is guilty, as I believed when I tried this case. However, recognizing the fallibility of eyewitness identification and the circumstances of this case, it is certainly possible that Mr. Walker, who had no prior record, is innocent.”

Richard P. Myers

Former Assistant District Attorney who handled the case against Larry Walker, in the 2012 letter urging the District Attorney’s Office to assist with Walker’s investigation.

CIU was unable to determine with confidence that Walker was actually innocent. As a result, the CIU struck an agreement under which Walker’s conviction would be vacated, but he would plead nolo contendere to third-degree murder. Walker was released from prison on May 21, 2021 and pled no contest on June 2, 2021.



Setbacks

Dontez Perrin

In 2010, Dontez Perrin was convicted of robbery and sentenced to five to ten years of incarceration. As noted by the trial judge at the time, the case against Perrin was relatively weak and turned entirely on the testimony of the Commonwealth's only credible witness, Lynwood Perry.

Shortly after Perrin was convicted, Perry admitted he fabricated his testimony in an effort to obtain a better sentence in his own federal prosecution. Based on that admission, Perrin moved for a new trial.

The motion lingered for over a decade due to the Commonwealth's insistence that the new evidence was procedurally improper. The trial court held a full evidentiary hearing at which Perrin presented witness testimony about Perry's fabricated testimony. Nonetheless, the court ultimately adopted the Commonwealth's procedural argument and denied Perrin's motion without assessing the credibility of the new evidence. On appeal, the Superior Court reversed, resolving essentially every legal issue in Perrin's favor, and remanded the case to the trial court to rule on a single factual question: whether Perrin's new evidence was sufficiently credible to warrant relief. Because the original trial judge retired while the case was on appeal, the motion for a new trial was assigned to a new judge on remand.

After conducting a full review and independent investigation, the CIU agreed that Perry's confession necessitated a new trial. Among other things, the CIU interviewed one of Perrin's witnesses, who reiterated the account to which he had previously testified. That witness was credible, and the CIU concluded that he would present the same testimony already in the record if called again. Accordingly, the CIU conceded that the evidence was sufficiently credible to warrant relief and submitted factual stipulations to that effect.

But the court refused to consider the stipulations at all and insisted that it could not grant the motion without conducting another evidentiary hearing during which the same witnesses would testify. In effect, the court demanded an opportunity to resolve a factual dispute where none existed. The parties asked the court to grant the motion for a new trial in light of the undisputed facts before it without additional testimony. The court denied Perrin's motion for a new trial for lack of evidence.

Stacey Culbert

This case dealt with the question of whether Pennsylvania trial courts possess jurisdiction to rectify a patently illegal sentence even after the one-year limitations period on state post-conviction claims has passed. Culbert was sentenced to twenty to forty years of imprisonment for third-degree murder. At the time of his conviction, the statutory maximum sentence for that offense was ten to twenty years. The CIU conceded that the sentence was illegal and did not oppose relief—a request to simply correct the sentence to a legally valid sentence. The trial court held that Pennsylvania Supreme Court precedent was clear: the trial court lacked jurisdiction to correct the sentence because Culbert's post-conviction petition was filed too late. Culbert appealed the decision and the appellate court affirmed the trial court. The Pennsylvania Supreme Court declined to consider the case.

Fortunately, Culbert filed a federal habeas petition following his loss in the Pennsylvania state courts. In that petition, he argued that his illegal sentence violated the Eighth Amendment's ban on cruel and unusual punishment. The Office's Law Division conceded relief and the federal court granted Culbert's petition, remanding his case to state court for resentencing. Accordingly, a Common Pleas judge vacated Culbert's 1998 sentence on April 9, 2021. At that time, she resentenced him to ten to twenty years with credit received from the date of original sentencing.



Salvatore Chimenti

In October 1986, prosecutors reneged on an agreement to resentence Salvatore Chimenti—who had been convicted of first-degree murder three years earlier—on a lesser charge in exchange for his cooperation in a criminal investigation of his trial attorney for suborning perjury. Chimenti lived up to his end of the bargain, and in doing so lost a critical opportunity to litigate constitutional flaws in his trial.

But when a new District Attorney took office in 1986, the Office abandoned its end of the deal, resulting in Chimenti’s imprisonment for almost two decades longer than he would have served had the agreement been honored and accepted.

Chimenti’s case was first submitted to the Office’s CRU in 2015. The CRU rejected the case in late 2017.

In 2018, Chimenti submitted his case to the CIU for review. A thorough review of Chimenti’s file revealed numerous violations of Chimenti’s constitutional right to a fair trial.

CIU attorneys, together with Chimenti’s post-conviction counsel, appeared before the assigned judge in February 2018. The parties jointly requested that, due to defense counsel’s constitutionally deficient representation of Chimenti at trial and subsequent

government interference, Chimenti’s conviction be vacated and that he be immediately allowed to plead guilty to third-degree murder (as per the terms of the original agreement).

Despite clear evidence of almost thirty-five years of government interference inhibiting Chimenti’s presentation of a valid constitutional claim—ineffective assistance of counsel—the judge dismissed the Post Conviction Relief Act petition as untimely. Once again, the appellate court affirmed this conviction.

Today, Chimenti is still in prison and, according to his lawyer, has become terminally ill. He is in the process of filing for compassionate release for hospice care under 42 Pa. C.S. § 9777.

 **If a prosecutor cannot be trusted to adhere to the substance of his agreements, our criminal justice system is in serious trouble.”**

Paul Shechtman

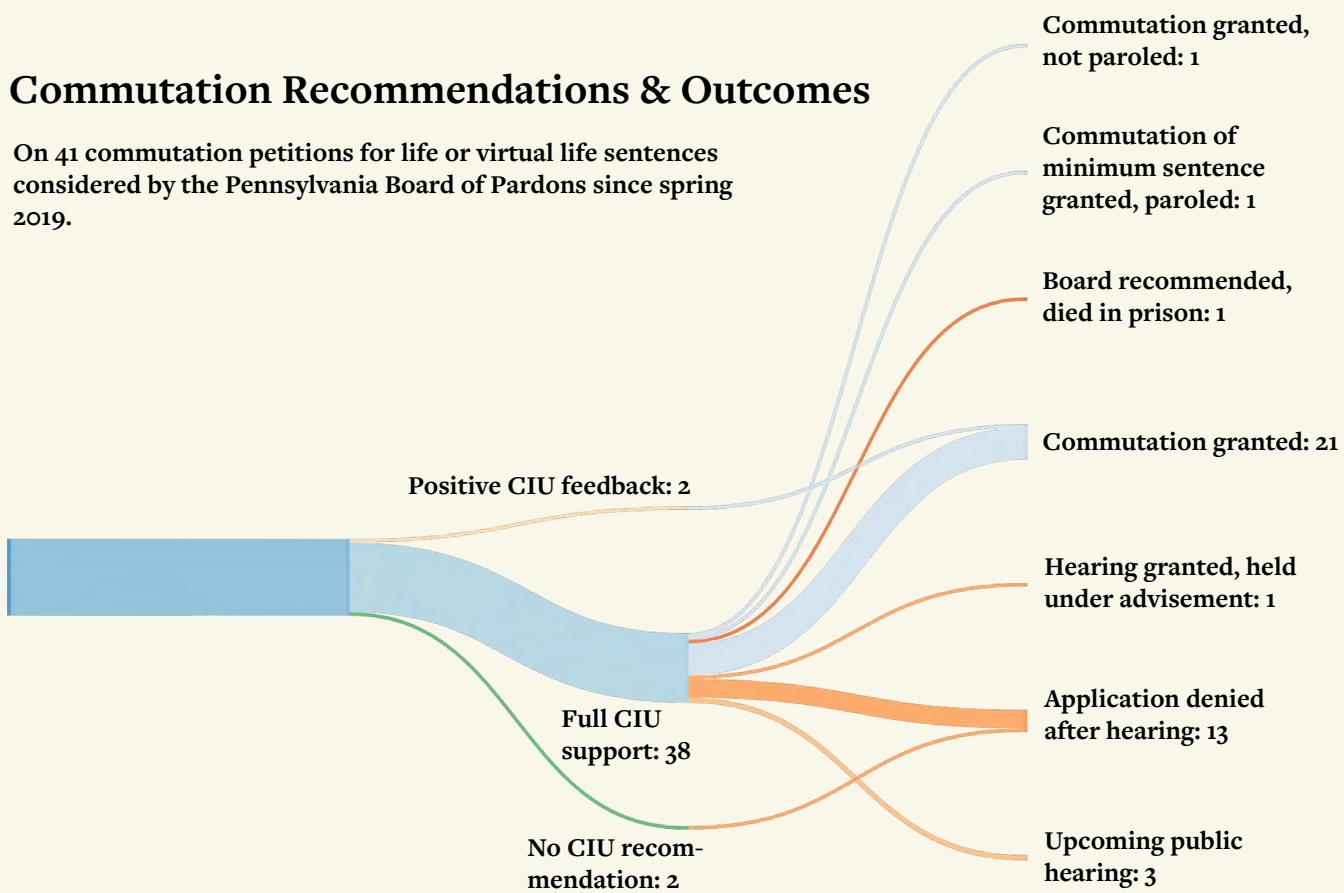
Former Attorney for Chimenti, in a 1986 letter to the then-District Attorney.



Commutations

Commutation Recommendations & Outcomes

On 41 commutation petitions for life or virtual life sentences considered by the Pennsylvania Board of Pardons since spring 2019.



The CIU also assesses and, where appropriate, advocates for commutations, clemency, and compassionate release for people serving life sentences and “virtual life” sentences with decades-long minimum terms that approximate their lifespans.

Pennsylvania is one of only six states in which people serving life sentences are ineligible for parole. Instead, they must be granted a commutation to be released, no matter what has taken place since they were first imprisoned. And, of the roughly 5,300 people serving life without parole in Pennsylvania, more than 2,000 were convicted in Philadelphia. This makes the CIU’s participation in Pennsylvania’s

commutation process an important replacement for the kind of periodic, case-specific review that is available for parole-eligible convictions in the vast majority of American jurisdictions.

As part of its review process, the CIU provides detailed feedback to the Board of Pardons on requests for clemency and supports those requests when appropriate. Since 2019, the CIU has also taken a role in responding to petitions for compassionate release filed by incarcerated people with terminal illnesses. The CIU’s policy is to support such a request when it meets the statutorily imposed criteria.



Parole Granted for the MOVE Nine

In 2019 and 2020, the CIU assisted four members of the MOVE Nine in obtaining parole. The MOVE Nine are nine members of MOVE, a Black revolutionary organization, who were convicted of third-degree murder and each sentenced to 30-to-100 years for their involvement in the 1978 killing of Philadelphia Police Officer James Ramp. (MOVE maintains the innocence of the MOVE Nine, alleging that Officer Ramp died by friendly fire.) The 1978 confrontation was a pivotal moment that set the stage for another tragic event: the 1985 MOVE bombing. On May 13, 1985, the Philadelphia Police Department bombed the residential home that served as MOVE headquarters—killing eleven people and destroying sixty-five homes in the surrounding neighborhood.

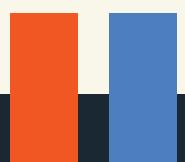
Members of the MOVE Nine became eligible for parole in 2008. The first of the MOVE Nine to be granted parole was Debbie Sims Africa, who was released in 2018. Her husband, Michael Davis Africa, was released later that same year.

At their request, the CIU became involved in the parole proceedings of Janine Phillips Africa, Janet Hollaway Africa, Charles (“Chuck”) Sims Africa, and Delbert Orr Africa. The CIU wrote letters of support for all four, and they were ultimately granted parole.

Chuck Sims Africa, the last MOVE Nine member to be released from incarceration, was paroled in February 2020.



MOVE member Delbert Africa speaking to the press after his release on parole. Delbert was in prison for almost 42 years. Photo: *The Philadelphia Inquirer*, Lauren Schneiderman.



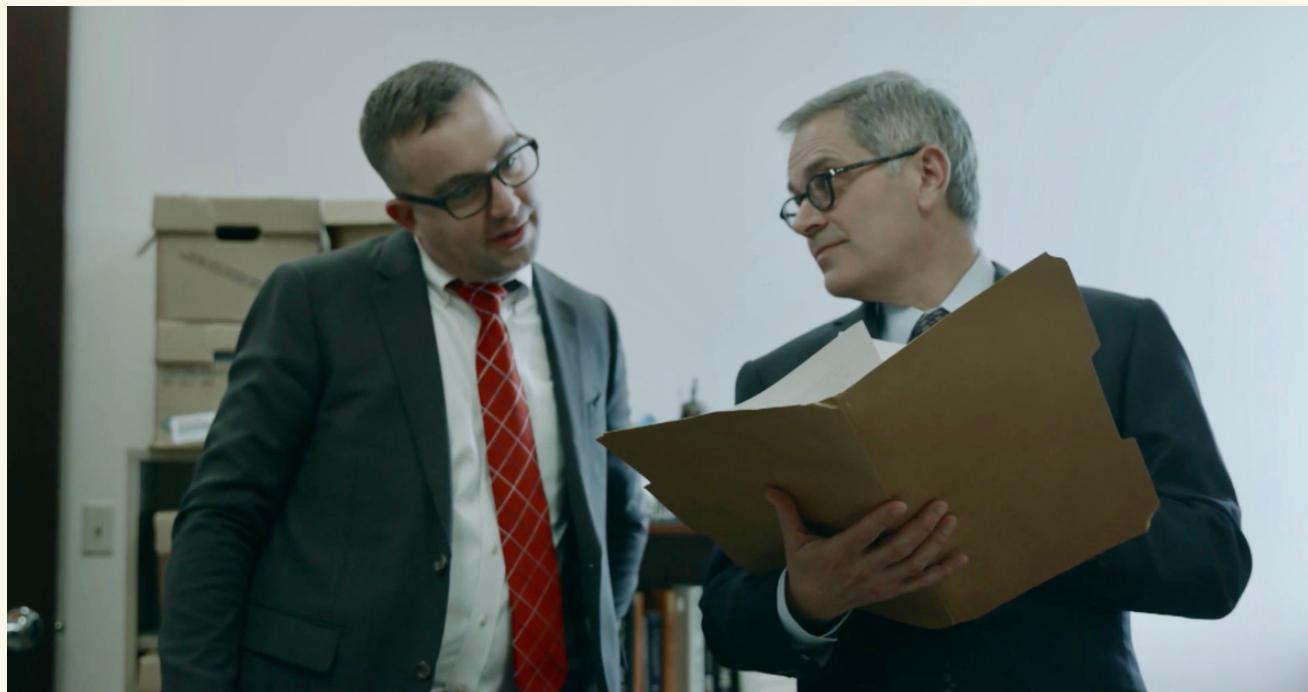
Unit Projects

Police Misconduct Disclosure

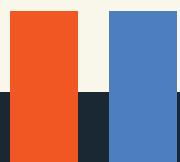
In keeping with its mission to prevent wrongful convictions, the CIU developed an office-wide policy regarding the disclosure of police misconduct to the defense. This policy establishes an affirmative duty for prosecutors to retrieve the misconduct history of any law enforcement personnel who would be called to testify in a criminal case. If prosecutors identify instances of misconduct that might constitute exculpatory, impeachment, or mitigating information in that case, then, pursuant to the Office policy and obligations under *Brady v. Maryland*, *Giglio v. United States*, *Napue v. Illinois*, and their progeny, they must turn over that information to the defense. Prosecutors are also required to assess any impact the misconduct has on the integrity of the prosecution.

To effectuate this policy, the CIU works with law enforcement agencies to collect such *Brady/Giglio* information about their officers and places this information in a database accessible to all prosecutors. The Police Misconduct Disclosure database automatically flags the existence of *Brady/Giglio* information at two critical stages in the life of a case: when charges are first filed, if an officer who engaged in misconduct is involved in the investigation or arrest, and then again if that particular officer is subpoenaed to appear at a preliminary hearing or trial.

The automated alerts divide flagged officers into one of two categories: impact or presumption. An “impact” notification signals for the prosecutor to consider the overall impact that the officer’s past misconduct will have on their case and proceed accordingly. On the other hand, a “presumption” notification alerts the prosecutor that there must be extraordinary circumstances to justify calling the officer and they must seek permission from the District Attorney or a First Assistant District Attorney before calling that officer as a witness in their case.



ADA Andrew Wellbrock and District Attorney Larry Krasner reviewing a list of Philadelphia Police Officers noted by a previous District Attorney's Office administration as “damaged goods.” Photo: Philly D.A., Episode 1, Public Broadcasting Service (PBS), Independent Lens. Directed by Yoni Brook, Ted Passon, and Nicole Salazar (hereinafter, Philly D.A. (PBS)).





Assistant District Attorneys attending an office-wide training. Photo: Philly D.A. (PBS), Episode 2.

This disclosure policy was first implemented in May 2018. From then until the end of May 2021, there have been 114,691 arrests in Philadelphia made by 9,861 police officers. Of those arrests, 9,566 (8%) involved 444 officers with misconduct documented in the database. The Office declined to bring charges in 447 of those 9,566 arrests. Although it is difficult to ascertain exactly what role the policy played in case dispositions, cases involving one or more officers in the database were more likely to be dismissed or withdrawn than those not involving officers in the database.*

“We have enough officers on that ‘do not call’ list to invade Cuba.”

**John McNesby,
President of FOP Lodge #5**

Related Litigation

This project prompted a lawsuit by the Fraternal Order of Police (“FOP”), which argued that disclosing incidents of police misconduct to defense attorneys violated individual officers’ rights, specifically including their rights to due process and privacy and reputational rights guaranteed by the Pennsylvania Constitution. Likely the result of the lawsuit, the Office has been embroiled in a constant battle with the police department over its requests for *Brady/Giglio* information pertaining to its officers.

Rather than complying with the Office’s procedures and regulations set up to ensure prosecutors fulfill their constitutional obligations, the police department has maintained that it is able to unilaterally determine what must be disclosed and the procedure for how to disclose information to the Office. Although the lawsuit was dismissed with prejudice, and a decision on the FOP’s appeal remains pending, it is possible that further litigation may be required to resolve the many important issues that remain.

* Oren M. Gur, Andrew Wellbrock, Charles J. Arayata, Sebastian Hoyos-Torres, Alexa Cinque, Stephen Braccia, Wes Weaver, Michael Hollander & Patricia Cummings, *Enhancing accountability: Implementing an automated police misconduct disclosure system in a prosecutor’s office*, unpublished manuscript (2021).

Pro Se Review Project

In January 2021, the CIU began a partnership with Phillips Black, Inc.—a nonprofit law office that specializes in advocacy for people who have been sentenced to life without parole or death—to develop the *Pro Se* Review Project. This project is similar to other projects where conviction integrity units, such as in Wayne County, Michigan, and Baltimore, Maryland, have received federal grant funding to partner with Innocence Projects to help review and navigate high numbers of requests from *pro se* applicants (individuals without legal counsel).

“We’re getting letters saying, ‘I got an 80-year sentence and my co-defendants got five.’”

**CIU Supervisor
Patricia Cummings**

Due to the overwhelming number of *pro se* applications the CIU receives, the CIU would require substantially more resources than it has at its disposal to conduct investigations on behalf of these petitioners. Imprisoned individuals are also extremely limited in their ability to access information and engage in the kind of detailed, complex investigation that is necessary to overturn a wrongful conviction. Thus, one of the purposes of the *Pro Se* Project is to address institutional barriers that unrepresented petitioners face when attempting to have their convictions reviewed.

Additionally, the CIU has no legal authority to file petitions on behalf of *pro se* applicants or to provide them with legal advice. As a result, this creates a huge void in *pro se* cases the CIU has reviewed, investigated, and in which it has determined relief is likely. Fortunately, the grant funding provided directly to Phillips Black allows these *pro se* applicants to retain Phillips Black on a pro bono basis should they wish to do so.

Penn Law Externship

Since fall of 2019, the CIU has partnered with the University of Pennsylvania Carey Law School to host clinical externs from the school. The partnership is the first of its kind in the nation. The core purpose of the Penn Law/CIU externship program is to involve law students at each critical stage of case review in actual innocence claims and claims of wrongful conviction. Law school-affiliated innocence projects have been successful in harnessing the energy and enthusiasm of law students in the investigation of and remedying of wrongful convictions.

Similar work in a conviction integrity unit housed within a prosecutor’s office is designed to provide equal if not greater advantages to students, the law school, and the Office. Traditional prosecution clinics or externships (such as the current District Attorney’s Office/Penn Law prosecution externship) focus on developing litigation and courtroom skills. The CIU externship program allows for developing traditional lawyering skills such as witness interviewing, fact gathering, legal research, and writing that are transferable to any lawyering context, and the program is uniquely designed to help develop investigative and case assessment skills and students’ understanding of the workings of the criminal justice system as a whole.

Penn Law Externs

<i>Fall 2019:</i>	5
<i>Spring 2020:</i>	5
<i>Fall 2020:</i>	2*
<i>Spring 2021:</i>	2*

* Remote due to the COVID-19 pandemic.

Faculty supervision for the externship program is provided by the Quattrone Center for the Fair Administration of Justice and its affiliated faculty at the Law School. The externship is offered for 7 credits in the fall and spring semesters with the possibility of continuing on a second semester.



Official Misconduct Case Review

Although prosecutorial and police misconduct are the result of cultural and institutional practices, there are some actors whose practices are particularly egregious. When those actors are identified, the CIU engages in a systematic review of any convictions in which those individuals participated. To date, the CIU is in the process of conducting two such reviews.

Detective James Pitts

In November 2013, *Philadelphia Daily News* published a report titled, “Dead Wrong: 2 detectives, 3 murder cases, 3 cleared . . . & cries of foul play,” based on three prosecutions involving Homicide Detective James Pitts.

The first prosecution described in the article, which ultimately resulted in a jury acquittal, involved the defendant’s allegations that Detective Pitts elicited false confession by utilizing “good cop/bad cop” tac-

tics that included Detective Pitts physically assaulting him. In the second prosecution, the defendant was also arrested based on the investigative work of Detective Pitts. That case also resulted in an acquittal by a jury—apparently because the defendant established an alibi using video evidence. The third prosecution involved a dismissal of charges following the trial court’s order suppressing the defendant’s purported confession. The confession was suppressed because the defendant had been held in custody for forty-one hours, and because the statement was not voluntary and was the product of psychological coercion. In the article, the lawyer for the defendant is quoted as saying that Detective Pitts “gets in there and bullies people, and he causes people to say things that may not be true.”

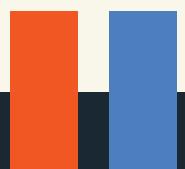
Less than three years later in 2017, a Common Pleas judge heard testimony concerning Detective Pitts’s interrogation habits relevant to the post-conviction claims of Dwayne Thorpe, who had been previously convicted of homicide. In 2018, after that hearing concluded, the judge ordered a new trial, finding:

distinct patterns of behavior described by the witnesses throughout the arc of Detective [Pitts’s] ca-



District Attorney Larry Krasner and CIU Supervisor Patricia Cummings review police misconduct records.

Photo: Philly D.A. (PBS), Episode 2.



reer rose to the level of habit evidence. Rather than supporting the value-laden conclusion that Detective Pitts has a general propensity of “abusiveness” towards uncooperative or unhelpful witnesses and suspects, this Court found that, when he is operating under the apparent belief that an interrogation subject is untruthful or withholding evidence, Detective Pitts habitually (1) makes unreasonable threats of imprisonment or threats targeting an interrogation subject’s specific vulnerabilities, such as family members, children, or housing; (2) employs physical abuse; (3) prolongs detentions of interrogation subjects to an unreasonable degree and without probable cause; and, (4) does not permit witnesses or suspects to review or correct statements before signing them. The witnesses’ testimony, described *supra*, established that Detective [Pitts’s] conduct was systematic, as he consistently applied two or more of the four distinct tactics described when a witness asserted that he or she knew nothing about a given incident or failed to answer questions to Detective [Pitts’s] apparent satisfaction. The time-span over which the incidents described occurred, comprising a majority of Detective [Pitts’s] career in the Homicide Unit, established that these behaviors were continuous.

(CP-51-CR-0011433-2008, Opinion 6/7/2018.)

The CIU reviewed the judge’s findings set out in her opinion, and undertook an investigation to determine whether there was sufficient evidence to retry Thorpe. The CIU concluded there was not sufficient evidence to retry Thorpe so the charges were dismissed instead of referred to the Homicide Unit for retrial.

Detective Pitts is currently the subject of a pending Internal Affairs investigation and has been administratively reassigned within the police department, and removed from street duty.

Given this history, the CIU is actively reviewing cases involving Detective Pitts. However, unlike cases involving Detective Nordo (*see below*), there is no internal office policy centralizing that review in the CIU.

Exoneree Obina Onyiah

On May 4, 2021, Obina Onyiah was exonerated of his conviction for an October 2010 robbery and homicide, in part because of Pitts’s involvement in the investigation. During the original police investigation and trial, Pitts not only obtained Onyiah’s purported confession to the crime, he also served as an important witness for the Commonwealth at trial, allowing the Commonwealth to introduce several important pieces of substantive evidence. At trial, Onyiah argued unsuccessfully that the confession had been coerced.

However, the CIU demonstrated the falseness of Onyiah’s purported confession by obtaining the analysis of photogrammetry experts. Indeed, the reports showed that Onyiah could not have been the second assailant, because he is 6’3” tall, while the second assailant depicted in video is no taller than 5’10”. This, in conjunction with the CIU’s investigation into Pitts’s conduct, affirmed that Onyiah’s confession was false.

 That is the equivalent of a DNA exclusion in a rape case. That is affirmative evidence of innocence.”

Former CIU Assistant Supervisor Carrie Wood

on the significance of the photogrammetry expert analysis.

On the basis of the exculpatory evidence and due process violations present at his original trial, the CIU agreed that Onyiah was innocent and entitled to relief.



Detective Philip Nardo

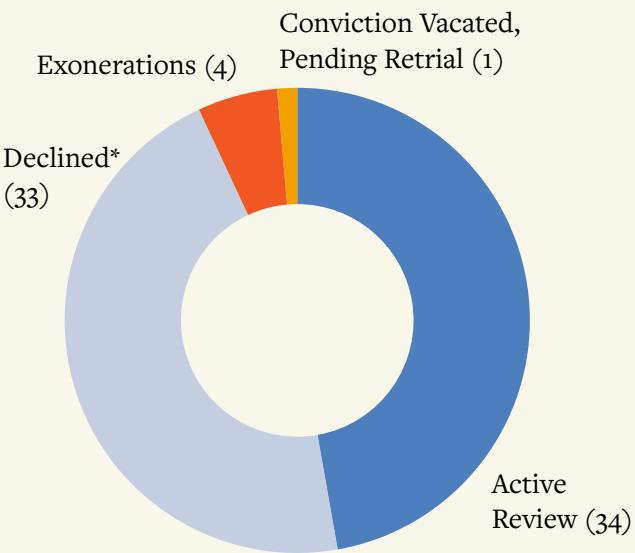
Detective Philip Nardo was a homicide detective with PPD who is currently charged with multiple crimes, including various sexual assault offenses, spanning much of his career. In August 2017, the PPD provided Nardo with notice of intent to dismiss in 30 days. In February 2019, he was arrested and criminally charged. Like all criminal defendants, Nardo is entitled to a presumption of innocence until such time as a jury or judge hears the evidence against him and finds beyond a reasonable doubt that he is guilty.

The criminal charges stem from a Philadelphia county investigating grand jury presentment which alleges that Nardo used his position of authority to cultivate relationships with suspects, witnesses, or individuals unrelated to an investigation in order to make them more susceptible to his sexually assaultive and coercive behavior. According to the grand jury presentment, Nardo did this by employing threats, coercion, and force, or by conferring benefits and promising loyalty.

Pursuant to an internal office policy, any identified “Nardo” case on appeal or in other post-conviction litigation is transferred to the CIU for review. Following this transfer, the assigned CIU prosecutor reviews the case to determine the extent of Nardo’s

involvement in the underlying investigation, and whether that tainted the investigation so as to materially undermine confidence in the conviction. Ultimately, the CIU decides to accept or decline the case based on available information about the extent and the nature of Nardo’s involvement.

Thus far, the Nardo policy has produced the following results:



* Declinations are not a CIU conclusion that the conviction is sound or that there is no basis for overturning it. Rather, a declination simply means that the Nardo misconduct, if it exists at all in the case, does not by itself warrant relief.

Exoneree Arkel Garcia

Arkel Garcia is the most recent individual to have their conviction overturned because of Nardo’s misconduct. Unlike the criminal charges above which must be proven beyond a reasonable doubt, a judge has found the following to be proven by a preponderance of the evidence at a Post Conviction Relief Act hearing.

Garcia was convicted of homicide and related offenses, and sentenced to life in prison without the possibility of parole. Garcia was convicted based almost solely on a confession that he purportedly gave to Nardo after the two were alone together for almost two hours. The details of that confession did not match the facts of the crime that were recorded on

surveillance video. The investigation into Nardo brought to light evidence that the former detective used this murder investigation as an opportunity to attempt to sexually exploit three individuals, including Garcia.

Overall, the evidence against Garcia—even including the purported confession—was relatively weak. Nardo’s habitual misconduct, as well as his specific and documented misconduct in this case, undermined confidence in the jury’s verdict. The CIU supported Garcia’s petition for a new trial, which was granted on June 4, 2021. The CIU’s motion to withdraw charges against Garcia was granted that same day.

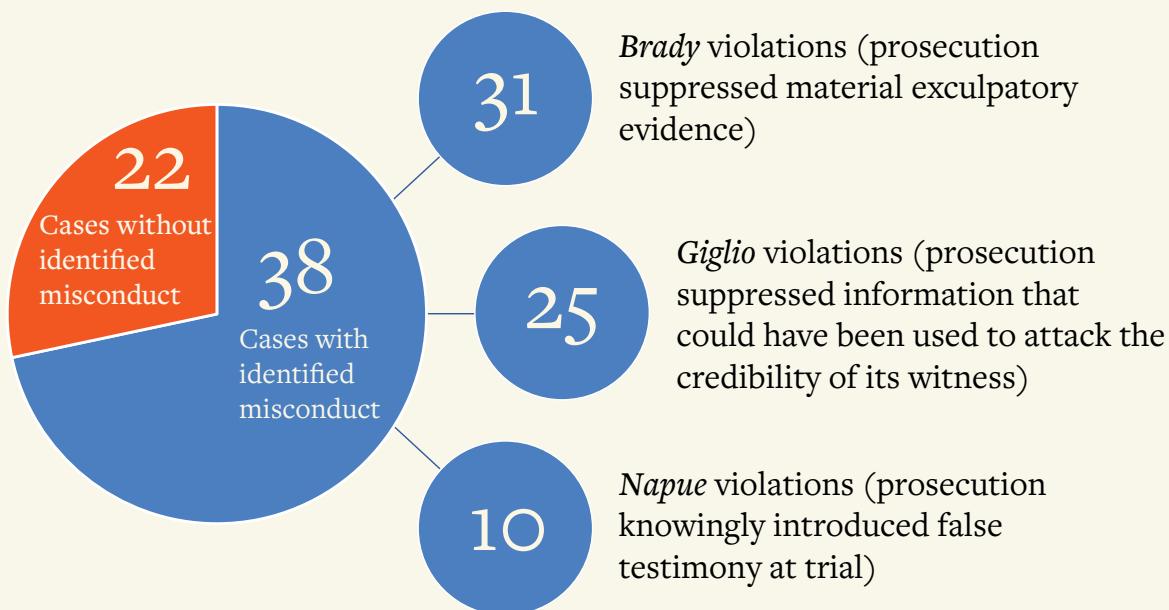


Prosecutorial Misconduct Project

The Prosecutorial Misconduct Project is a partnership between the CIU and the Center on the Administration of Criminal Law (“CACL”) at NYU School of Law. The goal of the Project is to identify cases involving prosecutorial misconduct that is consciously committed by members of the Philadelphia District Attorney’s Office. The Project is focused on misconduct pertaining to prosecutors’ constitutional disclosure obligations and their obligation to refrain from using false testimony. The CIU and CACL are reviewing (i) state and federal cases where convic-

tions were vacated as a result of such misconduct, (ii) state and federal cases where a court found that suppression of favorable evidence occurred, and (iii) state cases where people were wrongfully convicted as a result of such misconduct. The Project will eventually release a written report that summarizes case findings and, among other things, offer policy proposals to help minimize the risk of misconduct going forward. The Project started in June 2020, and is expected to continue through July 2021.

To date, the project has substantially reviewed sixty cases dating back to 1980, to the extent that those files were accessible. Of the sixty, thirty-eight involved official misconduct, including (often overlapping) violations of *Brady*, *Giglio*, and *Napue*.



“ If I’d spilled hot coffee on myself, I could have sued the person who served me the coffee. But I can’t sue the prosecutors who nearly murdered me.”

John Thompson

on the outcome of his civil lawsuit against the prosecutors who suppressed exculpatory evidence during his trial. In the landmark case of Connick v. Thompson, 563 U.S. 51 (2011), the U.S. Supreme Court held that prosecutors are immune from civil liability.



New Orleans death-row exoneree John Thompson. Photo: Associated Press, Patrick Semansky.

False Confession Project

In response to the number of wrongful convictions that resulted from coerced statements and confessions, the CIU has partnered with a cognitive psychologist and professor of psychology from Iowa State University and a retired Air Force intelligence officer, both of whom specialize in subjects related to false confessions. At the onset of this project, these experts assessed Philadelphia cases that involved problematic or false confessions to determine what interrogation techniques led most frequently to those outcomes.

Through their review of CIU cases, police trainings, prior reports, and news coverage of interrogations and interviews in Philadelphia, the experts identified some recurring factors that have contributed to false confessions obtained by PPD. One of the main factors they identified is the detectives' use of an accusatorial interrogation model that feeds information to the person they are questioning—the supplied information is then parroted back to the detectives by the interrogatee after long periods locked in the interrogation room in an attempt to get out of custody.

Beyond their historical reviews, the experts also assist the CIU in active investigations where CIU attorneys believe a false confession may have occurred. In these instances, one of the experts will likely meet with the petitioner and conduct an interview. The expert then generates a report of these findings for use by the CIU. As of April 2021, the experts have reviewed, or are in the process of reviewing, eight cases for the CIU. Of those, three have resulted in exonerations.



Exoneree James Frazier on his way home with his mother and attorney, Edward Foster. Frazier's wrongful conviction rested on a false confession and withheld evidence. Photo: Edward Foster.

Open-File Discovery

The CIU has included discovery reform as part of its efforts to remedy the root causes of wrongful convictions. To this end, the CIU took the lead in developing the Office's *Brady* policy as well as its new open-file discovery policy. A training series on these policies is scheduled to begin in late June 2021.

The goal of open-file discovery is to ensure the defendant has access to all material information relating to their case. Office compliance with even the basic mandates of *Brady* and its progeny has been inconsistent, as exemplified by the fact that in twenty

of the CIU's twenty-one exonerations, prosecutors withheld exculpatory evidence from the defense. These violations underscore the importance of a robust discovery policy. Under the Office's new open-file discovery [policy](#), prosecutors must consult with a supervisor before withholding any case information from the defense, must document any decision to withhold evidence, and are encouraged to consult the CIU for guidance. In addition, prosecutors are reminded of their

constitutional, statutory, and ethical duties to disclose information regardless of the form the information takes (e.g., written vs. oral) and regardless of whether a case is resolved via plea or trial.

In step with this policy, the CIU has [supported a proposal](#) to amend Pennsylvania's statutory discovery obligations by, among other things, eliminating the current requirement that evidence be "material" and that defendants affirmatively request discovery.

Looking ahead, the CIU is working to develop more specific guidelines for open-file discovery in conjunction with a modernized case management system.

Forensic Policy

The CIU believes that an efficient and sufficiently resourced forensics lab is critical for ensuring the integrity of the Office’s prosecutions, as well as for solving crimes. As a result, the CIU has spearheaded efforts to reform office-wide policies regarding the testing and retention of forensic evidence. Simultaneously, District Attorney Krasner has persistently advocated for major investments in cutting-edge forensic testing capacity to be done by the Philadelphia Police Department’s forensic lab. Because the CIU works closely with the Office of Forensic Science (“OFS”), the City lab that handles chemical testing and other forensic analysis for the Office as part of its work on exonerations, the CIU and OFS maintain an excellent working relationship, making the CIU the natural point of contact for all forensic policy projects. Despite the City’s history of chronically under-valuing forensics in investigations, the OFS is led and staffed by nationally recognized experts. However, the City has not provided the funding necessary to expand its capacity and has forced it to outsource requests that utilize certain cutting-edge tools.

Drug Evidence Destruction Policy

In 2018, not long after the CIU formally became the unit that it is today, it became clear that the Office had never established a policy governing destruction of drug evidence. Consequently, decades of evidence remained in storage at OFS. The policies governing destruction of evidence are particularly important to the CIU because of the danger that evidence might be destroyed when it should not. To relieve the lab of this problem while ensuring that evidence was not destroyed inappropriately, the CIU has worked with OFS to audit cases where stored evidence may be ripe for destruction and, when those cases are identified, obtain orders permitting destruction. The CIU is also in the process of developing a uniform policy for requesting orders of destruction in closed cases moving forward.

“ We should always strive for a criminal justice system that is much more reliant on the truth, instead of one that simply relies on human emotions—in all of their unreliability and flaws.”

District Attorney Larry Krasner

Drug Testing Protocol

In 2019, the Office and OFS were experiencing an enormous backlog of untested drugs. The scope of the backlog was such that it could not be remedied solely by hiring new analysts or mandating overtime for existing analysts. The Office’s lack of communication with OFS as well as the Office’s lack of policies and procedures for prioritizing testing contributed to this backlog. Prosecutors often found themselves urgently needing test results and began individually emailing the lab to request that testing for their case be expedited. Ultimately, this stop-gap solution exacerbated the problem rather than solving it.

37,000

Drug testing backlog as of July 2019

Working in conjunction with OFS, the CIU developed a triage protocol for promptly identifying and testing priority cases. Pursuant to that policy, the Office as a whole now categorizes its cases based on their urgency and submits that list to the lab from a single source. It also capped the number of cases that could be categorized as a priority each week to stabilize the load placed on OFS.



Trainings & Outreach



Jean Friedman Rudovsky and the Economy League moderating and hosting a panel discussion with CIU Supervisor Patricia Cummings and The Center for Returning Citizens Exec. Dir. Jondhi Harrell. *Photo: District Attorney's Office.*

The CIU organizes and provides trainings for every Office employee that relate to the unit’s mission. Many of these trainings are practical in nature. These trainings serve to familiarize Office employees with policies spearheaded by the CIU and discussed elsewhere in this section, such as the Police Misconduct Disclosure Database, the False Confession Project, Open-File Discovery, and the Office’s various forensic policies. The CIU also provides new prosecutors with training regarding their *Brady* obligations.

Two office-wide training sessions deserve special mention because they were given by the outside organizations Witness to Innocence and Healing Justice.

Witness to Innocence

[Witness to Innocence](#) is a locally based nonprofit organization founded in 2003 “dedicated to empowering exonerated death row survivors to be powerful and effective voices in confronting problems in the criminal justice system in the United States.” The training Witness to Innocence presented included the legal framework through which wrongful convictions could be remedied, firsthand testimony from death-row exonerees, and discussion of the lessons that could be learned from past wrongful convictions.

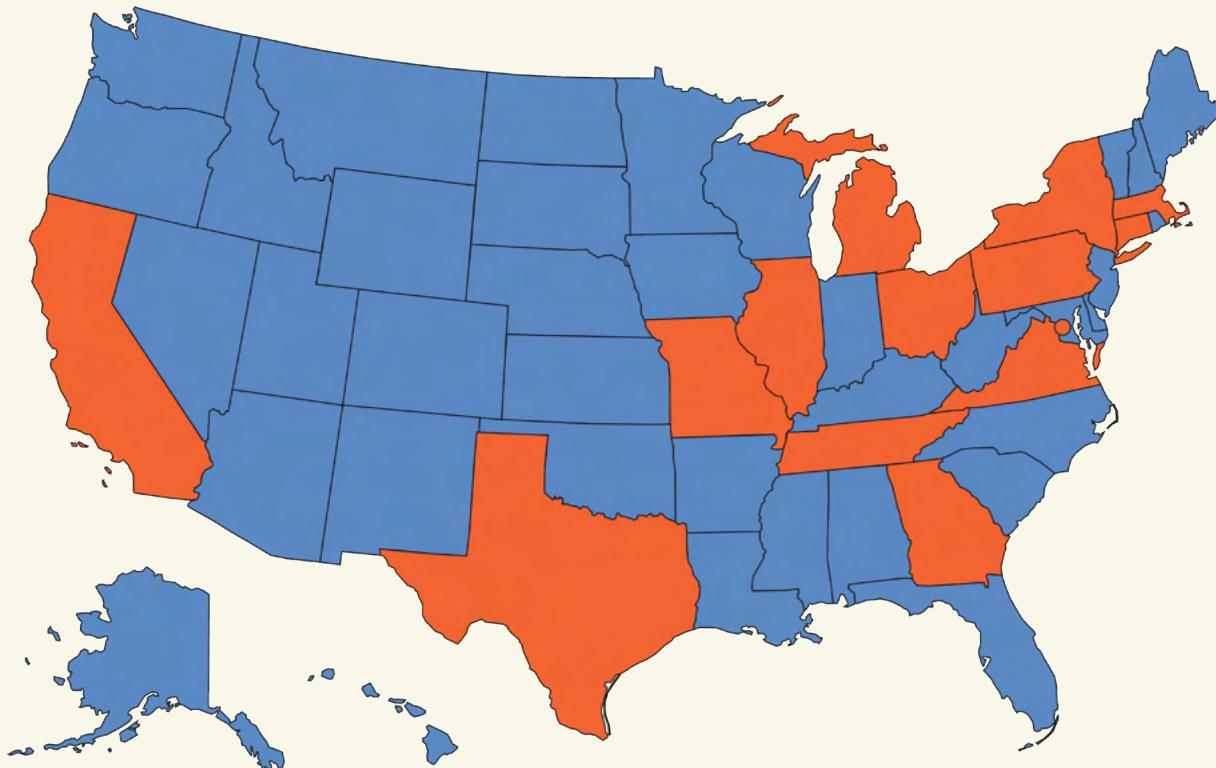
Healing Justice

[Healing Justice](#) is a national nonprofit organization that “provides support and services to crime victims and survivors, their families, and others in these cases.” Healing Justice specifically addressed the difficult position that victims are placed in and the complex emotions that they can experience when a wrongful conviction is vacated.

“When these wrongful convictions occur, the damage to our criminal justice system and to our country is widespread. So often you hear the focus is on the damage to the defendant. But everybody has to pause and think about the damage that also occurs to the victim and that occurs to the system as a whole.”

CIU Supervisor Patricia Cummings





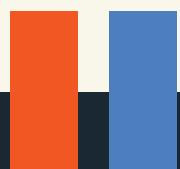
Orange indicates states where the CIU has led presentations or lectures since January 2018.

National Presentations

In addition to the CIU's internal trainings, the CIU has participated in more than thirty educational lectures and trainings across the country. While the lectures predominately focus on the importance of conviction integrity units, the trainings take a practical approach, covering specific areas of law and offering tools to attorneys working within the criminal justice system that will aid them in identifying official misconduct and preventing future wrongful convictions.

These presentations have included the following:

- **Presentation to the Supreme Court of Ohio Task force on Conviction Integrity and Postconviction Review** (Columbus, OH, 11/19/2020) (*see* [here](#)*).*
- **American Bar Association 2019 Criminal Justice Spring Meeting: Plenary Session II—Prosecutors as Agents of Change 2.0—Conviction Integrity Units** (Nashville, TN, 4/5/2019) (*see* [here](#)*).*
- **Association of Prosecuting Attorneys: The Trials and Tribulations of Discovering *Brady* Violations During a CIU Review** (virtual, 2/25/2021) (*see* [here](#) *and* [here](#)*).*



Committee Participation

The CIU sits on two committees within the Office: the *Miller* Resentencing Committee (also known as the Juvenile Lifer Committee) and the Homicide Sentencing Committee.

Miller Resentencing Committee

The *Miller* Resentencing Committee was assembled following the U.S. Supreme Court’s decision in *Miller v. Alabama*. *Miller* held that imposing mandatory sentences of life without the possibility of parole on juvenile homicide defendants violated the Eighth Amendment’s prohibition of cruel and unusual punishment. Pursuant to that decision, the Committee meets to review and recommend resentencing for any prior juvenile conviction that violated the Eighth Amendment.

Homicide Sentencing Committee

The Sentencing Committee is composed of representatives from units throughout the Office. The committee meets whenever the Homicide Unit or the Law Division have cases where special circumstances warrant a departure from the Office’s sentencing policies in cases awaiting trial or when a sentence imposed after conviction warrants a “second look.”

“I was just existing for twenty-one years. Now, I’m about to live.”

*Exoneree Terrance Lewis,
a wrongfully convicted
juvenile lifer, at his release.*

139

Cases
*Resentenced
by the Miller
Resentencing
Committee*

According to an April 2020 [study](#) of the Office’s resented juvenile lifers, the average age at the time of offense for the Philadelphia juvenile lifers was sixteen years and four months. The average age at the time of resentencing was forty-five years, and the average age at the time of release was fifty-one years.



Pending Cases

Marvin Hill

In 2013, the Commonwealth successfully prosecuted Marvin Hill for a homicide that the CIU now agrees he could not have committed. In his October 2020 PCRA filing, Hill presented a claim of actual innocence, outlining multiple constitutional violations that undermined the integrity of his conviction. He alleged prosecutorial misconduct under *Brady* and *Napue*, as well as ineffective assistance of counsel. After conducting an independent review and investigation of Hill's case, the CIU has agreed relief is warranted.

Most strikingly, in the course of its investigation, the CIU reviewed a surveillance video and other evidence that existed at the time of trial that proved Hill was approximately a block and a half away when the shooting occurred. The video evidence was known to all parties during the original trial; however, other evidence regarding when the shooting occurred was withheld from the defense.

Despite this clear evidence, the Commonwealth maintained at trial that Hill was the shooter. In order to account for the video at trial, the Commonwealth advanced a factually unsupported argument that the shooting occurred later than it actually did, baselessly claiming that the 911 calls and computer assisted dispatch (CAD) report that established when the shooting occurred were not accurate. By presenting such an argument to the court, the Commonwealth misled the court.

In light of its findings, the CIU is supporting Hill's PCRA petition. The matter is pending before the Court of Common Pleas.

Montrell Oliver

In 1998, at the age of seventeen, Montrell Oliver was convicted of first-degree murder and related charges. Police arrested Oliver based on statements from two witnesses, one of whom recanted prior to trial. At the trial, multiple eyewitnesses implicated Oliver's co-defendant in the murder, but none were able to identify Oliver except for the single remaining witness that police had originally relied on. One defense witness testified that Oliver was not present on the night of the murder. The jury deliberated for three days before finding Oliver guilty.

Oliver's defense attorney died in 2010; however, before he died, he testified during a post-conviction hearing about how he had originally planned to call two additional alibi witnesses to testify, but abandoned that strategy at trial. Later, during an investigation conducted by the CIU and a prosecutor assigned to the federal litigation unit in the Office, it was discovered that Oliver's trial attorney had used the wrong address in his attempt to serve the primary alibi witness with a subpoena to secure her testimony at trial.

Given the weakness of the Commonwealth's case against Oliver, the CIU believes that the two alibi witnesses would have been sufficient to raise a reasonable doubt in the mind of the jury. Because of this, the Office does not oppose Oliver's most recent federal habeas corpus petition and instead joins him in his request for relief.

Curtis Crosland

Curtis Crosland was arrested in 1987 for a 1984 robbery that led to the death of Il Man Heo. Crosland's arrest came only after Rodney Everett, the father of Crosland's nephew, identified Crosland in an attempt to receive leniency regarding a parole violation. Everett, however, asserted his Fifth Amendment right against self-incrimination during Crosland's first trial. This ultimately resulted in a retrial, at which Everett was granted immunity and called to testify. Everett denied making any earlier statements incriminating Crosland, but his statement to police and testimony he had given at a preliminary hearing were read into evidence. The only other evidence linking Crosland to the crime was testimony from Delores Tilghman, who had once been in a relationship with Crosland's cousin. Yet, while she testified in the first trial that was reversed on appeal, she did not testify during the second trial that resulted in Crosland's conviction. Instead, her previous testimony was read to the jury.

Crosland unsuccessfully pursued collateral relief in state court for many years before seeking federal habeas relief. During those proceedings, Crosland presented statements from eyewitnesses who knew Crosland stating that Crosland was not involved in the crime for which he had been convicted, as well as statements from Everett explaining that he had lied to police, and evidence undermining the credibility of the Commonwealth's only remaining witness.

At Crosland's request, the CIU agreed to review his case in March 2020. In the course of its review and investigation, the CIU discovered materials that not only impeached the credibility of Tilghman and Everett, but also exonerated Crosland. In October 2020, as the CIU continued its investigation, it shared these materials with Crosland, informing him that they did not appear to have been previously disclosed. Pursuant to a jointly executed Discovery and Cooperation Agreement, the CIU also provided Crosland with open-file discovery of the prosecution files, as well as the police department's file.

“ My hope is that there are many like you out there. Compassionate, respectful, understanding, competent, professional and genuine. As I said at the end of our Zoom meeting, ‘flip every rock and stone.’ Make us proud of the Justice System by always questioning its integrity with respect to equity. I am deeply thankful for your hard work and continuing to do what is right.”

Charles Heo, on the CIU’s work. Heo’s father was shot and killed during the 1984 armed robbery for which Curtis Crosland was convicted.

On January 11, 2021, Crosland sought authorization from the U.S. Court of Appeals for the Third Circuit to file a successive petition based on this newly discovered evidence. On January 21, 2021, the Third Circuit granted the motion, authorizing Crosland to file the petition now before the court. *See In re Crosland*, No. 21-1048 (3d Cir. 2021).

In response to Crosland's successive petition, the Commonwealth agreed that the evidence it recently disclosed to Crosland not only undercuts the credibility of the Commonwealth's key witnesses, Tilghman and Everett, but also incriminates others, including Michael Ransome, who was the prime suspect in the original homicide investigation in 1984. Following careful review and investigation of the matter, the Commonwealth recently acknowledged both factually and legally that it violated Crosland's right to due process by not disclosing this evidence to him prior to trial, resulting in his wrongful conviction.



Exoneree Chester Hollman; his attorney, Alan Tauber; and CIU Supervisor Patricia Cummings gather after his exoneration. *Photo: The Philadelphia Inquirer.*

The form to request Conviction Integrity Unit review of your case is available [here](#) and may be submitted via mail or email to the following addresses:

Conviction Integrity Unit
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107-3499

CIU.submission@phila.gov

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