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Conviction Integrity Work:
Missing Voices

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“Exoneration”: Common Usage, Unintended Consequences

Many prosecutors' offices now have initiatives—often called Conviction Integrity Units (CIUs)—to review potentially unjust convictions and sentences. Both the units, and the work they do, have grown exponentially over the past 15 years. Yet despite broad public support for this work, it has come under significant attack, especially in the last eight years.

These attacks are coming not from the communities these units serve, but from institutional players: old-guard prosecutors, judges, state attorneys general, and politicians who are often not elected by the affected communities. And those attacks are being levied in courtrooms and legislatures where the resulting impact is profound.

Meanwhile, the work of CIUs is also being criticized by criminal justice reform advocates and anti-establishment commentators who claim it's either empty PR or doesn't go far enough to address the injustices they want fixed. But unlike the attacks from institutional players, most criticism from the advocacy community has been theoretical—often detached from the reality of the politics of a prosecutor's role in post-conviction litigation.

A note on this series' title: In calling these conversations 'Missing Voices,' we do not mean to suggest prosecutors have been silenced or excluded, or that theirs are the only voices that should be heard on this work. This series is our effort, as former prosecutors, to add what we can to the conversation.

I'm Courtney Oliva, a former state and federal prosecutor who now runs the Peter L. Zimroth Center at NYU School of Law. I'm moderating a series of conversations with Emily Maw and Patricia Cummings. Both have established and run conviction review efforts in locally elected prosecutors' offices, and both came to that work after long careers that gave them experience across different parts of the criminal justice system.

Emily and Patricia's experiences before and during their time leading CIUs differ in important ways, but they've been surprised by how similar their experiences turned out to be—and by the lessons they learned. Since leaving their respective roles, both have become ever more convinced that this work needs much more support and much more sophisticated treatment than it is currently getting. This series of conversations is their effort to do just that.

What follows is the second in our series of conversations.¹

1. This conversation has been edited for clarity and length. We have chosen not to format our conversation as an academic paper. Hyperlinks to references or explanatory news pieces are included when necessary and/or helpful.

“Exoneration”: Common Usage, Unintended Consequences

In our first paper, *Squeezed from Both Sides*, we discussed how Conviction Integrity Units came into existence and why their work faces significant attacks from both sides of the political spectrum. Less than two months after we published that article, a divided Pennsylvania Supreme Court issued its decision in *Lavar Brown*, which we cited in our paper as an example of the crisis facing conviction integrity work being done in prosecutor’s offices throughout the country. The *Brown* case is troubling, not just because it is an example of the current fraught political climate, but because it illustrates some of the unintended consequences of inaccurately or imprecisely describing conviction integrity work as “exoneration” work.

In *Brown*, the Pennsylvania Supreme Court exercised its extraordinary Kings Bench power and roundly denounced the Philadelphia District Attorney’s Office and its practice of conceding relief in post-conviction cases. In a 5-4 opinion, the majority accused the DAO of violating its duty of candor to the court when it conceded relief in *Brown*’s case, writing that “[w]hen relief is not dictated by the record and law but merely advocated for personal, political, ideological, policy, or other non-legal reasons, a prosecutor’s concession does not minister justice; it facilitates injustice.”

To address what it perceived as the DAO’s dishonesty, the *Brown* court went further than simply reversing and remanding the trial court’s decision to grant *Brown* a new trial. The majority also expressly held that, going forward, in any Post Conviction Relief Act case in which the DAO concedes relief, the PCRA court must give the Pennsylvania Office of Attorney General notice and an opportunity to intervene before issuing any decision. This aspect of the *Brown* holding is a sea change in PCRA practice: prior to *Brown*, relevant Pennsylvania law did not contain any provision permitting or requiring the OAG to become a full party to PCRA litigation. But the *Brown* majority, by judicial caveat, essentially ignored Pennsylvania law to permit the OAG to intervene in every PCRA case where the DAO concedes relief is appropriate.

As we will discuss below, this broad remedy was premised in part on the majority’s belief that the DAO’s Conviction Integrity Unit and appeals and post-conviction unit was not forthright in conceding relief in *Brown*. The majority also stated that in at least ten other cases, the DAO conceded relief where none was warranted and engaged in other unreliable conduct. Or, put differently, as Justice Wecht candidly stated in his dissent, “[t]he Majority thinks that the DAO too often concedes that criminal defendants are entitled by law to relief in murder cases.”

To fashion its unprecedented remedy granting the OAG full party status in PCRA cases, the *Brown* majority engaged in a multi-step analysis that it used to frame the DAO’s work as untrustworthy and misleading. In step one, it defined the term “exoneration,” initially by saying what it *is not*, then by narrowly defining it to mean “vindication,” as when someone is proven to be actually innocent. In step two, it applied its narrow definition to the DAO’s cases to conclude that the DAO was actively misleading the judiciary (and the public). On the majority’s line of thinking, exoneration should involve only cases of actual innocence. However, the DAO was conceding relief in cases where people were not always innocent, which meant that the DAO was therefore fostering the “false impression” that all their case were “exonerations.”

The *Brown* court’s treatment of the term “exoneration” embodies many of the challenges facing conviction integrity work today—from how to present post-conviction findings and the reasonable conclusions to be drawn from those findings, to when prosecutors are legally and ethically obligated to concede error and move to dismiss criminal charges.

I’m here again with Patricia Cummings and Emily Maw, who have both run CIUs and have spent a lot of time thinking about the term “exoneration.” Almost everything we discuss in our conversation that follows traces back to one fact: there is no universal definition of exoneration. That void, they’ve concluded, has fueled our collective use—and misuse—of this term, creating serious problems for the work that will worsen unless and until we find a more nuanced way to navigate that void.

So, What Does ‘Exoneration’ Mean?

Courtney: Let’s jump right in and talk about what it means when people say that a person has been “exonerated.” And considering the political attacks against CIUs, including attacks that challenge the integrity of their judgment and their continued usefulness, I have to ask: does using the term “exoneration” help or harm the work?

Patricia: “Exoneration” has come to be an incredibly powerful term, even though it has no precise legal definition universally accepted by courts or legislatures. However, it is used often—and sometimes in a harmful way—by Innocence Projects, CIUs, the media, the National Registry of Exonerations (NRE) and even some courts.

To fill this definitional void, the NRE wrote its own definition of exoneration: [“In general, an exoneration occurs when a person who has been convicted of a crime is officially cleared after new evidence of innocence becomes available.”](#) In addition to this general definition, the NRE offers a more precise definition that specifically states in part that “the evidence of innocence need not be an explicit basis for the official act that exonerated the person.” The NRE [reports](#) that, as of July 2026, there have been 3,842 exoneration and more than 35,982 years lost since 1989.

Emily: Yes, that is right, and the NRE’s statistics are powerful. But, the bigger and often messy issue in all of this is that people equate an exoneration with a person who has been “proven factually innocent,” even when there has been no legal finding that the person is in fact innocent.

Patricia, don’t you think the NRE’s definition raises more questions than it answers? Many states and the federal courts don’t recognize innocence as a basis for relief from a conviction. Given this, the NRE’s definition, the fact that there are many cases of claimed exoneration, and many people who dispute those claims, and the colloquial understanding of the term, it is important to question how this definition plays out in the way post-conviction cases get resolved. So, who decides if it is evidence of innocence? In the absence of other evidence, does new evidence that severely damages the credibility of the prosecution witnesses at trial count? That is certainly evidence of legal innocence and, in many instances, would be grounds for relief from a conviction.

Courtney asked, “what does it mean when people say someone has been exonerated?” Well, even under the NRE’s definition, it means different things to different people. Many people we have spoken to in the CIU world use it to mean cases that have met a certain threshold for new evidence, and no more. They are certainly not necessarily equating those cases with factual innocence. They will say “we have exonerated x number of people, and about x number of those were factual innocence cases.” And these are not off-the-record opinions, these are careful conclusions usually represented in the state’s pleadings. They are using the term as the NRE defines it.

Patricia: You are absolutely right, Emily, and the questions you raise are good ones. That said, I suppose we must start somewhere, and the reality is, at least the NRE has a definition, and, whether we like it or not, folks rely on that definition.

Meanwhile, buried in the *Brown* 109-page majority opinion on [page 69](#), the Pennsylvania Supreme Court attempts to define exoneration—and gets it wrong in a way that perfectly illustrates the confusion we are discussing.

Courtney: I want to come back to *Brown*, but for now, before we do, I want to stick with this definitional issue you’ve both raised. Media reports regarding individual exoneration have been commonplace over the last several decades, and I think most people would be hard pressed to think of one story where the term exoneration was not used synonymously with innocence. Are both of you suggesting this reporting is inaccurate, and that when an exoneration occurs, it does not necessarily mean there was a finding of factual innocence?

Emily: Yes, absolutely. And the NRE’s definition makes clear there won’t always be such a finding. But it also cuts both ways. And, though not necessarily pertinent to this discussion, it’s important to recognize that the people who are classified by the registry as “exonerated” are certainly only a fraction of the innocent people who have been imprisoned, as the NRE readily explains. This is because many innocent people in prison will never have access to lawyers to bring their case back to court to prove their innocence. If they do, often by the time the lawyers can get their case back, evidence and witnesses may be lost to time or, in the case of physical evidence, destroyed, and they may never succeed in either proving it or on any legal claim for relief. They may take a plea to a lesser offense to leave prison, they may die in prison, they may get paroled. Quite simply, there are far too many factually innocent people in prison but the NRE’s list of exoneration neither corresponds with all of

the factually innocent who have been released, nor excludes all the people who committed the crimes they were convicted of but who were nonetheless released because they were afforded an unconstitutional process. And to be clear, the NRE does not claim otherwise.

Patricia: I think Emily is not only picking up on the difficulty of quantifying the number of innocent people convicted of crimes, but she is also specifically picking up on the complexity of using the term “exoneration” in a post-conviction context.

Courtney: Let me push back on this apparent complexity with an idea put forth in [Professor Keith Findley’s 2011 article, *Defining Innocence*](#). In this article, Findley suggests that being innocent in a post-conviction posture simply means the same thing as the pretrial presumption of innocence. In other words, when the courts or the executive branch of government vacate someone’s conviction and charges are dismissed, that person is restored to the presumption of innocence that existed before their criminal proceedings started. Put simply, without proof of guilt, they’re legally innocent. Thus, what exoneration should mean is “legal innocence.” His definition has some appeal: it’s clean, it’s constitutional, and it treats people fairly.

Patricia, does Findley’s definition of innocence solve the problem you and Emily believe exists with the term “exoneration”?

Patricia: No, I don’t think so. I find it fascinating that when the Pennsylvania Supreme Court recently opined in *Brown* on what exoneration means in a post-conviction setting, the Court never once used the phrase “legal innocence” or “presumption of innocence.” Not because the Court rejected Findley’s framework as set out in that article, but because the concept never seems to have been on the table. Instead, the *Brown* majority implies that the notion that people who might actually be guilty could somehow be “exonerated” because they received an unfair trial, and their charges were dismissed, is somehow abhorrent.

Unlike the Pennsylvania Supreme Court, I think Findley’s suggested solution is important and warrants a serious discussion. But, unfortunately, we’re nowhere near where we’d need to be as a society to embrace his solution, in part because people struggle with the pretrial presumption of innocence. Findley himself recognizes this problem. How many times have we heard people assuming someone is guilty simply because they have been charged with a crime? And if that person is later acquitted of all criminal charges at a trial, people don’t generally refer to

the acquittal as an exoneration. So, if the public has difficulty accepting and perhaps understanding the pretrial presumption of innocence, how can we expect people to accept and understand it in a post-conviction setting where someone has already been found guilty, often by a twelve-person jury?

Now, let me set aside the pretrial presumption of innocence for just a few minutes and focus solely on what happens after a conviction. That world, or what we refer to as the “post-conviction” phase of the criminal justice system, is simply not set up to make findings of “innocence” or “guilt.” In fact, that part of our system is not really concerned with either of these categories—albeit for very different reasons. Instead, when deciding whether a new trial is warranted, a judge’s sole focus is on whether a convicted person was deprived of their constitutional right to a fair trial. And the vast majority of post-conviction petitions or applications for relief get denied on procedural grounds without an evidentiary hearing and an opportunity to present any new evidence.

Meanwhile, most states don’t recognize a post-conviction free-standing claim of innocence. In other words, even if a convicted person is lucky enough to get an evidentiary hearing, they can’t just go into court and say, “I’m innocent, here’s my proof.” If they try to do that, most courts will just shrug their shoulders and say, “I’m sorry, there’s nothing I can do for you.” Instead, to overturn your conviction and get a new trial you often must present newly discovered evidence of innocence, or you must prove a constitutional violation, such as (1) ineffective assistance of counsel, (2) a *Brady* violation, or (3) that false evidence was presented to the jury. And even if you win on those grounds and your conviction is vacated, the court’s inquiry generally does not directly answer the question of whether the convicted person is in fact innocent.

Courtney: Ok. What I’m hearing is that there’s an important difference between legal innocence and factual innocence. Legal innocence is technically the outcome of a conviction being vacated and dismissed, while factual innocence is whether the person committed the crime (if a crime was even committed). What you both are saying is that the term “exoneration” routinely ignores this difference and instead conflates the two. Is that right?

Emily: That’s exactly right. In legal terms, what happens when a conviction is vacated and charges are dropped is that a person is restored to the presumption of innocence. That is what “exoneration” should mean—nothing more. Legal innocence. The State has the burden to prove guilt and has not or cannot.

The problem is that in common parlance, “exoneration” has come to imply factual innocence that has not been established in any legal proceeding or “found” by any fact finder. And it is that implication that is causing real damage, which is exactly what we see in the majority’s opinion in *Brown*.

The conflation of the two terms attaches a moral value to being exonerated, because—quite simply—most people believe prisoners who were innocent of their crimes of conviction have more of a moral right to relief and their freedom than a prisoner who committed the crime but who was only convicted because the government committed misconduct, *e.g.*, by police beating a guilty suspect into confessing.

Patricia: I agree with some of what Emily is saying, but not all of it. I am just not sure I can endorse a universal definition of exoneration that means legal innocence and nothing more. And here is why: even if we could put the genie back in the bottle, wind the clock back 30-plus years before DNA exonerations set the narrative on what the public understands an exoneration is, that narrow definition creates the opposite problem from what we are describing now. Put simply, rather than being over-inclusive, it would be under-inclusive because it would fail to differentiate the cases where factual innocence has actually been proven. In those cases, the term is unambiguous and appropriate. The problem is when the label is stretched beyond those cases and there is no attempt or mechanism to distinguish between the two.

The Reality: How ‘Exoneration’ Gets Used and Misused

Courtney: If recognizing the distinction between legal innocence and factual innocence is at the core of the problem, why are people using the term the way they are, and what is the resulting impact of using the term this way?

Patricia: Well, as I alluded to earlier, DNA cases made it easy to equate exoneration with factual innocence. That’s because, starting in the late 1980s, DNA testing suddenly produced a [wave of cases where scientific proof of innocence became the basis for post-conviction relief and dismissal](#)—new evidence undermining a conviction, followed by dismissal. That two-step pattern is how most people first learned to recognize a wrongful conviction at all, and DNA made the proof part unusually easy to see. Although many wrongful conviction cases we now

hear about don’t always involve DNA, we have not shifted the way we talk about them. I even fell into that trap of equating exoneration with factual innocence, but for a different reason: it was not until I moved from Texas to Pennsylvania in 2018 that I began to understand the fallacy of that equivalency.

[Texas is one of the few states where courts recognize freestanding claims of innocence as a due process right.](#) To obtain post-conviction relief on that claim and to be exonerated under Texas law, you must prove by clear and convincing evidence that you’re factually innocent. Courts have called meeting this burden a “Herculean effort.” So, in Texas, exoneration has a very specific, very narrow legal meaning. When I heard other people in other states use the term exoneration, I thought they were operating under either the same framework or a similar framework.

Pennsylvania, where I moved to in 2018 to run Larry Krasner’s CIU, did not and still does not have a freestanding claim of innocence. As the new leader of the Philadelphia CIU, one of the first things that surprised me and caught my attention happened when I attended a conference on mass exonerations. During that conference, a fellow attendee asked Krasner, what does it mean to exonerate somebody? He answered with a definition straight from a dictionary: to exonerate means to release somebody from charges or accusations—as broad of a definition as possible. I remember thinking, “Oh my, that’s going to impact our CIU work,” because a definition that broad and all-encompassing was bound to invite pushback.

The NRE’s definition that I laid out earlier seems to find a middle ground between Krasner’s dictionary definition and Texas’ “Herculean” definition. Remember, the NRE says a person is exonerated if they have been released from charges in a post-conviction setting and there was some new evidence of innocence. Emily, however, astutely flagged the inherent problems with the NRE’s definition when she asked a critical question: “Who decides if evidence qualifies as ‘new’ and whether it is evidence of innocence?”

Although the NRE’s website does not explicitly answer that question, a close review of their case summaries reveals an implicit answer. To illustrate, if defense pleadings assert a claim of new evidence of innocence and the other definitional requirements are met, the NRE may count that as sufficient. For instance, if a judge granted a new trial based on a *Batson* violation and never addressed the innocence claim and there’s a recantation in the post-conviction application that never gets adjudicated, the NRE may count that as an exoneration.

Emily: And, as we discussed earlier, the way a convicted prisoner can actually win post-conviction relief in most jurisdictions is through claims like ineffective assistance of counsel or *Brady* violations. To win those, you basically must show new evidence that might have made a difference to the outcome of the trial. But that new evidence is often impeachment of the State’s witnesses, which may mean the State doesn’t have a case and the person is legally innocent. But, in the event that charges are dismissed after someone wins relief on one of those grounds, it is disingenuous to equate that every time with factual innocence.

Courtney: What you are describing sounds like what happened in *Brown*. The DAO’s own filing conceded relief and agreed to the grant of a new trial. It stated that the Commonwealth believed Brown was likely involved in the underlying robbery and homicide, but even so, Brown did not get a fair trial when he was convicted of those crimes. Can you walk through why the majority addressed the term “exoneration” and its meaning in that case, and where you think it went wrong?

Patricia: Yes, but it is important to note that Brown himself was in no way exonerated—instead, procedurally, the trial court vacated his convictions and ordered a new trial. His right to a new trial was the subject of the Pennsylvania Supreme Court’s review. Yet, as I mentioned earlier, buried in the majority opinion is an extended discussion of what “exoneration” does and does not mean. This discussion was not part of the Court’s holding. Instead, it was part of its reasoning that led the Court to question whether the office’s history of conceding relief was legally and ethically sound.

According to the majority, since 2018, the DAO has made at least 120 post-conviction concessions. In discussing this practice, the Court states plainly: “the DAO’s concession program is not an exoneration program.” Its reasoning is that the DAO doesn’t limit concessions to cases where it believes the defendant is actually innocent—as in Brown’s case, where the DAO’s own filing said it believed he was likely involved in the crime. From there, the majority takes on what it refers to as the DAO’s own definition of exoneration. In doing so, it quotes the 2018–2021 CIU Report I wrote, [Overturning Convictions—and an Era](#), which says a person is exonerated “when new evidence, or newly discovered evidence, results in the dismissal of all charges against them.” What the majority doesn’t quote from the CIU Report—or acknowledge in any way—is the sentence immediately before the one they quote, which says the Philadelphia CIU refers to exonerations using “the same criteria as the National Registry of Exonerations.” So, it seems the *Brown* majority thinks it is

rejecting the CIU’s own definition. Instead, it’s actually rejecting the NRE’s definition, indirectly, without ever acknowledging that, not only is it the NRE’s definition, but it is the definition most widely used by the public and the legal community.

Emily: And to be fair to the CIU Report, using the NRE’s criteria—because, again, there’s no other widely accepted definition—doesn’t mean the CIU’s position was that every dismissal reflected factual innocence. So it’s a bit like the majority saying “you’re saying all these people are innocent and they weren’t, so you are not to be trusted”—when the DAO was never saying that at all.

Patricia: Right—and the CIU Report itself shows that. We didn’t stop our reporting at the aggregate number of exonerations from 2018 through 2021—our case profiles, and their respective CIU court pleadings, typically assigned confidence levels to the prosecution’s position on the question of factual innocence. For instance, when we labeled someone an exoneree, we made statements such as “likely innocent,” “affirmative evidence of innocence,” and “the possibility of innocence.” Three different confidence levels, all filed under the same “exoneration” label. The Report also explains there is no Pennsylvania definition of factual innocence, so it relied on the [Schlup post-conviction standard of review](#) used in federal courts, which asks “whether it is more likely than not that no reasonable juror would have found the defendant guilty beyond a reasonable doubt.” Yet, the majority criticizes the DAO for globally treating a dismissal as the equivalent of factual innocence, while never engaging in the distinction between legal and factual innocence.

Courtney: So where does the majority land on the term?

Patricia: Having rejected the CIU’s definition, the majority reaches for Black’s Law Dictionary’s “common meaning” of exoneration: “the clearing of someone’s name after that person has been accused of blameworthy conduct or wrongdoing; vindication.” That’s the same move Krasner made—neither had an actual legal standard, so both reached for a dictionary. But the majority does something Krasner didn’t: it implicitly equates “vindication” with “actual innocence,” writing that “the dismissal of charges does not vindicate an individual’s actual innocence,” without ever explaining why vindication must mean actual innocence rather than, say, legal innocence. Said another way, the majority borrows a broad, informal definition of ‘vindication’ from a dictionary, but then applies it narrowly—treating it as if it can only mean actual innocence—without ever explaining why, who gets to make the call and what standard or proof is required.

Emily: Which means the majority did exactly what we’ve been describing—either conflating legal and factual innocence, or not recognizing that two concepts of innocence exist. Notably, the Court used the media’s and advocates’ over-claiming of exonerations to justify distrusting all of them.

Patricia: And there’s another piece of this I find genuinely striking and worth repeating; nowhere in the majority opinion, or in any of the other four opinions in the case, does anyone use the phrase “legal innocence” or “presumption of innocence.” Not once. Recall Findley’s framework: exoneration should mean legal innocence, full stop. The Court doesn’t reject that idea. It never engages it. The theoretical and practical debate Emily and I are having about the term exoneration is not even acknowledged.

Courtney: What does this mislabeling, and misuse of the term, mean for the viability of CIU work?

Patricia: In a world where there is no real recognition of the distinction between legal and factual innocence, the term “exoneration” has come to mean everything and nothing simultaneously. And the ensuing confusion creates exposure to negative outcomes. If critics can point to cases labeled “exonerations,” where there are legitimate questions about guilt or innocence, they can use that to attack all CIU work—even those cases where someone is clearly factually innocent—which is exactly what the majority did in the *Brown* case when it very deliberately called into question all of the work of the CIU.

Emily: That confusion creates two main problems. As we see in *Brown*, it makes it much easier for critics—the many, many critics—to question the thoroughness of the work and the judgment of the office that agreed to relief in a case. The reality of political discourse today means that battles about good or bad policy are waged in 280 characters. “Exonerated” fits well. As does “Woke DA ‘exonerated’ killer.” An explanation of the gravity of constitutional violations in a case in which guilt may appear evident to an outside observer does not, but—in a society governed by the rule of law—it remains the State’s responsibility to admit when those violations occur and correct them.

But perhaps more importantly, it creates real emotional difficulties for survivors and victims’ families. When I was working in Orleans Parish, in most cases in which, after thorough review, we concluded that the evidence proved a constitutional violation and the law required relief, families were incredibly

understanding when we explained why relief was warranted—some even wished the defendant well, glad it might come to an end for them, too. But then they found the fanfare around “exoneration” offensive and truly re-traumatizing. It made them resent the entire process.

Patricia: The first problem Emily just described made me think of an interesting New Orleans case that has been in the news. It is a case of political consequences playing out in real time, and one that illustrates a different kind of vulnerability. The case involves Calvin Duncan. Emily represented him years ago at the Innocence Project New Orleans and recused herself when the DA’s Office later litigated it, so it’s not a case she can discuss.

Duncan’s murder conviction was originally vacated in 2011 due to an agreement to plead to lesser charges. He later successfully petitioned to have his conviction on the lesser charges vacated after Jason Williams was elected DA in 2021. Four years later, when Duncan ran for the political office of Clerk of Criminal Court for Orleans Parish, the Louisiana Attorney General publicly challenged his right to call himself an exoneree, arguing he wasn’t truly exonerated because there was never a finding that he was factually innocent. Despite that attack, [Duncan won his election in November](#). But since the election, the political fight has not only grown more intense, it has morphed into a bigger and even more controversial issue.

During a recent Louisiana legislative session, a law was passed to remove Duncan from office, couched as a “streamlining bill” that merges his position with the clerk of civil court. So, when Duncan showed up for his first day as Orleans Parish Clerk of Criminal Court in May, the governor had already signed the legislation eliminating the position before he could take office. [A federal court found that legislation unconstitutional; but the Fifth Circuit stayed that ruling within hours](#). The escalation is still unfolding: [on July 2, 2026, a New Orleans grand jury indicted the Attorney General on sixteen counts of intimidation and malfeasance over her conduct in this fight](#)—an indictment the Louisiana Supreme Court has since stayed.

Duncan’s case illustrates how a political fight that started over the term “exoneration” can explode and literally take on a life of its own. What ostensibly began as a dispute over a label has become what we described in our first conversation: institutional power working to undo a democratic outcome by other means.

What's at Stake

Courtney: I want to pivot a little to talk about collaboration in CIU work. As we touched on in our first conversation, the collaborative model grew out of DNA cases—a new frontier where everyone could agree that a person should not be imprisoned for a crime they did not commit. So, a promise that we could work together to free “innocent” people had mass appeal. However, given the legal attacks on concessions, stipulations and agreements for post-conviction relief combined with the misguided exoneration narratives, is the idea of collaboration in CIU cases based on a false promise?

Patricia: Before either one of us answers that question, I think it's worth not losing sight of what the collaborative model has made possible. After the combined success of the Dallas County CIU's DNA exonerations and the decade-long effort to exonerate Michael Morton, we got the [Texas legislature to pass bi-partisan sweeping criminal discovery reform and other consequential wrongful conviction legislation](#). DNA cases, and Morton's case, are what got the system to initially embrace the innocence movement.

The reason this was possible was because of the message “innocence is different,” meaning, everyone could agree that if someone is actually innocent, we should work together to fix it. But now, many people are questioning whether that promise was a myth. While the word “myth” feels too strong, I do think the honest answer is that the promise was conditional—conditional on interested parties using important terminology, like “innocence,” and “exoneration,” with enough precision to make collaboration sustainable.

Emily: And to date we have not done that, so I think it is becoming clear collaboration was based on a false promise, or at least has never been properly defined. If every case is going to be trumpeted as an “exoneration,” and society understands exoneration as factual innocence—regardless of what was proven, conceded, or found—then there really is no collaboration. There's no sense of common responsibility for the longevity of the effort. This is of course the criticism a lot of advocates have with CIUs—you can never have real collaboration when one side has a client to represent to the best of their ability, no matter the consequences to anything else, and the other side, the CIU, has institutional considerations in addition to trying to balance all of the interests that the State must represent in any case at any stage. Those who make that criticism often

go further: we should give up the “collaboration” model and return to traditional adversarial litigation. Many opponents of CIU work, and even some advocates, find that more appealing. That question—whether collaboration can or should survive—deserves its own full treatment.

Courtney: So where does all of this leave us?

Patricia: I believe CIUs need to exist. But if we don't face these definitional issues, we may find ourselves going backwards. In other words, it may become even harder to remedy a wrongful conviction.

In 2011, Findley acknowledged the various tensions Emily and I are describing when he said that “[the simple story of clear innocence is not a story the criminal justice system is designed to accommodate](#).” He also said that we were at a crossroads when he offered a solution to the definitional confusion surrounding use of the terms “exoneration” and “innocence,” which at least removes the “innocence” determination from any individual actor, which may be the most our legal system can realistically offer. In the 15 years since Findley's article, CIU efforts to identify and rectify wrongful convictions have expanded significantly beyond just DNA cases. But we still haven't figured out how to clearly define that work.

The general definitional problem hasn't gone unnoticed. Richard Leo and Lara Bazelon—who between them bring academic and practitioner perspectives to this field—engaged in this very debate in their recent article in the [Annual Review of Criminology](#). In the article, they cover a lot of ground, including the NRE definition of exoneration. What the article doesn't take up, which is understandable given its scope, is how the absence of a shared definition of exoneration creates specific operational and political vulnerabilities for CIUs.

We need a better way to talk about this, or the work is going to continue to suffer, perhaps irreparably, and not just for the legal innocence cases—even getting relief for factually innocent people may become nearly impossible if the term gets so degraded that nobody trusts it. We're already seeing this play out—in Pennsylvania and [Missouri](#), the argument that CIU concessions can't be trusted because they were never tested in the adversarial process has gained traction in courts, directly enabled by cases that were labeled exoneration when no court and no prosecutor ever said they were factual innocence cases.

Emily and I are aware that we have not really offered a realistic solution. Notwithstanding Emily's endorsement of, "exoneration equals legal innocence," a universal legal definition of exoneration that simply means factual innocence would require some combination of 1) the United States Supreme Court to do an about-face and disavow its holding in [Herrera v. Collins](#), 2) an act of Congress, and/or 3) a consensus among all fifty states, whose approaches to post-conviction claims vary enormously across the country. None of these are realistic goals, and pretending otherwise would be its own kind of dishonesty. What we are left with is a definitional quagmire that is not going away. However, the practical question we keep returning to is simpler: can those of us committed to this work develop enough shared discipline about how we describe CIU-involved outcomes to protect CIU work before that void is used to destroy it?

Emily: The discussion about exoneration encapsulates so many tensions. How much should these efforts encompass? Who gets to label outcomes? It only matters if there are consequences to labeling something a certain way, but I believe there are. How outcomes get communicated matters enormously.

If we want a system in which prosecutors do not reflexively defend illegal convictions, every honest concession to a constitutional violation cannot be hailed as an exoneration when even forums such as the Pennsylvania Supreme Court equates that with factual innocence (and weaponizes that mischaracterization to assail CIU work generally). This is the exact dilemma we discussed in our first conversation, "*Squeezed from Both Sides*." Alternatively, we all—lawyers, media, commentators included—need to be clearer that "exoneration" means only "legal innocence." Because currently each time a case of legal

innocence gets called an exoneration it raises an implicit bar: it tells other prosecutors that agreeing to relief will be treated as a concession of factual innocence. That makes those prosecutors far less willing to concede anything at all and returns us to a world in which prosecutors just underpin and defend a criminal justice culture in which "the ends (convictions) justify the means," and that is a far more dangerous and lawless world.

There is one thing I want to be clear about before we close. Some readers may conclude that we are saying certain outcomes should only count as an exoneration if the prosecutor agrees. That is not what we are saying. Prosecutors are not infallible arbiters of innocence—we have spent our careers proving exactly that. What we are saying is that when no court has made a finding, and no prosecutor has made a concession, of factual innocence, calling the outcome an exoneration muddies—in the minds of most people—what happened. That is a plea for accuracy in describing outcomes in CIU work, not a claim of state authority.

Courtney: So that's where we are. We have a term that everyone uses, nobody has defined universally, and that's increasingly being weaponized against the very work it was supposed to describe.

In our next conversation, we'll look at the evolution of CIUs. How did this work develop? What were the early models, and how did they change? Understanding that evolution—how CIUs went from common-sense reform to "radical" threat—might help us figure out how to protect and sustain this work going forward. 🍌

About the Authors

Emily Maw and **Patricia Cummings** began their legal careers in opposite places. Emily, a Scottish-trained lawyer who studied at the University of Edinburgh before earning her J.D. at Tulane, started out in complex post-conviction litigation, spending four years on capital cases across Louisiana, Mississippi, and Texas before joining the nascent Innocence Project New Orleans. Patricia, a Texas-trained lawyer who graduated from the University of Texas and the University of Houston Law Center, spent her early career in private practice trying everything a courtroom could throw at her—from misdemeanor public intoxication cases to capital murder trials in front of a jury.

Both eventually moved on to building and running institutions. Emily spent over 16 years at Innocence Project New Orleans, 13 of them as its director, representing innocent prisoners serving life sentences in Louisiana and Mississippi, where she also worked on policy and legislative reform and developed pioneering law enforcement training programs. She later worked for Chief Justice Bernette Johnson of the Louisiana Supreme Court before founding and leading the Civil Rights Division in the Orleans Parish District Attorney's Office from 2021 to 2024. Under her leadership, the Civil Rights Division helped remedy a significant number of wrongful convictions and extreme sentences,

including many secured by the non-unanimous jury verdicts declared unconstitutional by the United States Supreme Court in *Ramos v. Louisiana*. Patricia served as Director of Policy and Litigation for the Innocence Project of Texas and as General Counsel for the Texas Criminal Defense Lawyers Association. She also helped secure landmark criminal discovery reform in Texas with the passage of the Michael Morton Act in 2013, after serving as a pro bono member of Michael Morton's legal team during the decade-long effort to exonerate him. Patricia went on to lead two of the country's most prominent conviction integrity units—first as Special Fields Bureau Chief of the Dallas County District Attorney's Office Conviction Integrity Unit, and then as Supervisor of the Philadelphia District Attorney's Office Conviction Integrity Unit under Larry Krasner from 2018 to 2021.

Today, both continue this work through the Peter L. Zimroth Center on the Administration of Criminal Law at NYU School of Law, where Patricia is a Research Scholar and Emily is a consulting scholar. The conversations in this series grew out of that collaboration, as well as consultation with prosecutors, former and current elected officials, and other practitioners across the country.

About the Series

This is the second in a series of conversations between Patricia Cummings, Emily Maw, and the Zimroth Center at NYU School of Law. Cummings and Maw are former prosecutors who have collectively led conviction integrity units in three different prosecutors' offices. An important goal of this series is to include the perspective of people who have done conviction integrity work in a prosecutor's office—a perspective missing from the

literature on policies and best practices. Each conversation covers challenges that prosecutors working to address wrongful convictions are facing today, lessons learned, and potential paths forward. These topics are the product of joint research and discussion between the Zimroth Center, Cummings, and Maw, as well as consultation with prosecutors, former and current elected officials, and other practitioners across the country.



The Peter L.
Zimroth Center
on the Administration
of Criminal Law
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About the Zimroth Center

Clemency and Second Chances

The Center is a leading voice for clemency reform at the federal and state levels. From 2016 to 2018, the Center established pro bono legal services, provided through the Mercy Project and the Clemency Resource Center, for the purpose of preparing and submitting federal clemency petitions to the Office of the Pardon Attorney. As a result of our work, President Barack Obama granted freedom to 96 of our clients, many of whom were serving life sentences for non-violent drug offenses. In recognition of the Center's efforts, our student fellows were awarded the inaugural Make a Difference Award in 2017 by NYU President Andrew Hamilton, for having "made a lasting impact for the better on the city, region, nation, or globe."

In 2018, the Center launched the Historical State Clemency Project, which explored states' historical clemency grants, and examined the types of offenses for which people received commutations, and the involvement of prosecutors in the deliberative process. The goal of the project was to shape the larger debate about "violent" versus "non-violent" offenses and the conventional wisdom about who was permitted a second chance in the criminal legal system. Our fellow, Ben Notterman, gathered commutation data for four states before the project was terminated due to the COVID-19 epidemic.

Prosecutors and Wrongful Convictions

In 2023, the Center published a report summarizing wrongful convictions and other court cases involving judicial findings of prosecutorial misconduct in the Philadelphia District Attorney's Offices. The Report identifies the individual trial and post-

conviction prosecutors who were involved in these cases. Finally, it identifies certain common themes and factors that cut across the cases and contributed to the misconduct and offers reform recommendations for how to address and prevent prosecutorial misconduct going forward.

The Center is currently working on a research project with two former CIU leaders, Zimroth Research Scholar Patricia Cummings and Zimroth consulting scholar Emily Maw, that focuses on the legal and political climate within which CIUs operate, and the current challenges that CIU prosecutors face. As part of the project, Cummings and Maw will consult with CIU prosecutors, as well as elected officials and other practitioners, and produce a series of publications on various topics that are germane to the work of CIUs across the country.

Judicial Accountability

The Center has a partnership with Scrutinize, an organization dedicated to state court transparency and accountability, that has resulted in publication of various reports about bail-setting practices in New York City, including analyzing publicly available pretrial data for New York City judges to (i) identify those judges who were more likely to order pretrial detention relative to their peers, and (ii) understand how judges were complying with their legal obligation to set at least three different forms of bail for all bail-eligible defendants. We are currently working on reports focusing on the relationship between judges' bail orders and prosecutors' bail requests and the New York City Criminal Justice Agency's bail/detention recommendations.