2021 Sentencing Workshop Series
Vetting Wrongful Convictions: Perspective, Approach, and Strategy

Wednesday, June 23, 2021 | 12–1:30 p.m. CDT / 1–2:30 p.m. EDT | Zoom

Panelists:
Lisa Lazzari-Strasiser, chief deputy, Conviction Integrity Section, Office of Pennsylvania Attorney General
Valerie Newman, director, Conviction Integrity Unit, Wayne County, Michigan
Lindsey Guice Smith, executive director, North Carolina Innocence Inquiry Commission
Judge Gene Zmuda, chair, Ohio Task Force on Conviction Integrity and Postconviction Review

Moderator:
John Hollway, executive director, Quattrone Center for the Fair Administration of Justice

TRANSCRIPT

Holly Griffin: Thank you for attending our first event, I'm sorry our second event in the 2021 Sentencing Workshop Series titled Vetting Wrongful Convictions: Perspective, Approach, and Strategy hosted by the National Association of Sentencing Commissions and the Drug Enforcement and Policy Center. Before we begin, we just have a few notes we'd like to share with you. First, to streamline the appearance of the event today, we suggest that you hide non-video participants. To do that, click on the three dots at the top right corner of any participant box that has their video off and click hide non-video participants. Second, we want to draw your attention to the Q & A function at the bottom of the Zoom window. You may submit questions at any time during the presentation. Third, please note that auto-generated transcription has been enabled for this event. To change how you view the automated transcription or to hide it click live transcript in the menu at the bottom of your Zoom window. Finally, this event is being recorded. The recording will be made available on the event page and social media channels as soon as possible after the event. Follow us @OSULawDEPC to stay up to date on our research, programming, and future events. Thank you again for joining us and we hope you enjoy the event. John.

John Hollway: Thanks, all. Judge, do you want to kick us off or would you like me to do the intros?

Gene Zmuda: I think you can do the intros.
John Hollway: Okay, well, my name is John Hollway. I'm the Executive Director of the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Carey Law School. It's an honor to be here and to share the virtual stage with Judge Zmuda and with three really fabulous advocates in the field of conviction integrity units. Conviction integrity units are a, I think they've officially become a thing. Right? Like in in 2005 or so when San Diego and Dallas now fight for the title of who started the first one, it was sort of unclear what a conviction integrity unit was going to become. And the idea of a unit within a prosecutor's office that was dedicated to the investigation of colorable claims of actual innocence, often outside of structured appellate system, was a pretty novel one and one frankly that generated a lot of skepticism from both internally at prosecutors offices, and externally.

When we published our report in 2016 on a national perspective of conviction review units, or conviction integrity units, there had gone we've gone from that one or two in the mid-2000s to about 25. And we interview 21 of them to try to come up with some sort of national sense of best practices, ways to respond to the skepticism that was out there, and to give communities ways to differentiate good units, sincere units that were that were doing this, I think, in good faith, from the units that were kind of created mostly for public relations and sort of you know validating some concerns in their jurisdictions that perhaps it was the fox guarding the hen house. And so, at the time, we interviewed 21 of the first 25 units. They were almost exclusively in large metropolitan areas. And you know raised in addition to the sort of overarching questions of are you for real raised a lot of really interesting procedural and legal questions, some of which were jurisdictionally specific. So, you know, even if a unit or prosecutors wanted to withdraw a conviction that had been confirmed, do prosecutors have the power in that jurisdiction? How do we manage actual innocence in a jurisdiction that doesn't have a colorable claim for that in your law? Should petitioners in the in the process have to toll appeals in post-conviction appeals, or should they have to waive their fifth amendment rights in order to access the unit? How would the unit and defense attorneys interact and investigating these claims? Would it accept claims of innocence resolved by plea bargains? And each of these things has been done sort of on an ad hoc basis as units get started, given the the fractured nature of our criminal justice system. So, we tried to provide some of those answers in 2016 when there were 25. Now, we're aware of more than 90.

So in the past five years this has really as a concept exploded and taken hold in jurisdictions across the country, including, Judge Zmuda correct me if I'm wrong, but there are two in Ohio and a third that has been announced in Columbus, as I understand it. And what was exclusively a large kind of metropolitan structure has expanded now to smaller jurisdictions, sometimes smaller counties sharing a unit, and sometimes even statewide units are now becoming increasingly something that we're seeing raising those raise new questions about jurisdiction and other issues. And some are taking on issues beyond actual innocence, looking at sentencing policy, police misconduct, and other potential injustice issues.

So, there's a lot going on in this space that's worthy of consideration and evaluation. I'm going to let each of our panelists introduce themselves in more detail and talk about their units, but just real briefly, I think it would be hard pressed to find anywhere in the country, a better panel than the three women that are here to talk about how units are emerging, how structural differences might impact what you're able
to do, and how important this work is in general. In no real particular order. I guess, I guess it's alphabetic if I'm going by Strasiser as opposed to Lazzari. But but we'll start with Valerie Newman, who has been the head of Wayne County’s conviction integrity unit since 2017. Wayne County’s CIU has been in the news quite a bit lately because they just keep exonerating people and lots of really interesting cases. The thing that has really struck me about the the Wayne County unit is just how long most of their exoneratees have spent in prison, the kind of length of those sentences. And we'll look forward to having Valerie talk about that.

Lindsay Smith has been working with the North Carolina Innocence Inquiry Commission, a state agency created by statute in North Carolina in 2007 since 2010. And she's been its executive director since 2015, running an organization that has reviewed almost 3000 petitions for innocence and running them through a pretty unique process so Lindsey thanks for being here and we'll look forward to hearing you talk about that.

And then more recently, Lisa Lazzari-Strasiser was tapped to lead Pennsylvania's statewide unit in February 2020. A really terrific time to start a new project just right in front of COVID. I'm sure that was a real joy. And and so, how to merge local or county-driven conviction integrity units within a statewide attorney general context, to make sure that people in other jurisdictions also received this important service.

So, tremendous experience around the table, lots of different perspectives and I thought, maybe we just kind of go around the Zoom square sort of in the order of introductions, and have each of you talk about sort of you know your role, the scope of your mission, your jurisdiction, and how that might help or or or limit what you're able to do in conviction integrity work. So, Valerie, why don't we start with you?

Valerie Newman: Thank you, John, thank you, Judge Zmuda for having us. I'm really happy to be here today. And I am as John said Valerie Newman, the director of the Conviction Integrity Unit for the Wayne County Prosecutor's Office. So, we are a large metropolitan area. We have a population of Wayne County of around a little over 1.7 million, and we are the second most populous county in the state. So we have a lot of and we also have a lot of criminal cases in this county. So, I think our county tries practically 50% of the serious criminal cases for the entire state of Michigan. So, there's a lot going on here. The unit, I was hired in 2017 to start this unit. So, we were a new unit, I was brought in to develop all the procedures and get things up and running. To date, we have received about 1800 requests for review in the little over three years that we've been up and running and I'm really pleased to say that, as of yesterday, we have granted relief to 30 individuals in a little over three years.

Our work has our jurisdiction is quite large, which I think accounts for one of the reasons why we have such a large number of people applying to the unit. So when we set out how we were going to run our unit, we decided, you know I in talks with the prosecutor, of course, I don't make any decision-making, it all lies with the elected prosecutor, but in conjunction with her, we talked about what we wanted to do and how we wanted to do it. And we came down on the side of innocence is innocence. So even though, if it was going to create a backlog we didn't want to put any limitations on who could apply to the unit. So our unit will accept applications from people who have pled guilty, our unit will accept
applications from people who were convicted of misdemeanors, our unit will accept applications from people who never even served time in prison. With the recognition that people who are in prison are always going to be the priority because their liberty has been, they've been deprived of their liberty and that's always going to be the priority where we spend our time, but that there are other consequences attendant with a criminal conviction. For example, I've had multiple cases where people were subjected to deportation so, even though they were not in prison, they were still going to be deprived of their liberty and ability to stay in the United States if this wrongful conviction or you know if they were factually innocent, and we can prove it, they became a priority, otherwise they were going to be deported. So there's a variety of ways that we develop our priorities but certainly people who are at loss of liberty is number one.

And then the other thing I think that's unique, maybe not unique, but forward thinking about our unit is that we will both exonerate people, so if we can find evidence that supports factual innocence that's an exoneration, but we also recognize in many cases, and especially as John said we've had some cases where people have served decades behind bars, you can't always locate the evidence to be able to or be able to reinvestigate to prove someone's innocence. So, if we find that there were problems that undermine the integrity of the conviction, even if we can't fully support factual innocence, this my prosecutor Worthy is still willing to grant relief. So, if you look at the cases the 30 cases, so far, approximately half of them we call exoneration as meaning, we feel comfortable saying we can show factual innocence, and the other half are cases where we say we have dismissed the case, granted, a new trial, but we have not retried anybody. So those cases were dismissed without prejudice and we have had two cases where people entered guilty pleas. So, in one we did we did an investigation and the individual was we found was wrongfully convicted of first-degree murder, but he had played some role and so he accepted a guilty plea to accessory after the fact. And and another case recently we had someone who pled guilty to a second degree murder. So, we work very hard to achieve justice, I guess is the broadest way that I can put it. And so, if we see an injustice, we look for a way that, within the bounds of what's available to us here in Michigan, to rectify that issue.

John Hollway: Thanks, Valerie. Lindsay, you want to get it.

Lindsey Guice Smith: Sure. Thank you all for having me today. As John said I'm Lindsey Guice Smith. I'm the executive director of the North Carolina Innocence Inquiry Commission. And we are a little bit different I think than any of the other conviction integrity groups out there in that we are an independent state agency that is charged with the neutral investigation and evaluation of post-conviction claims of innocence. We are actually set up as an independent agency. We’re housed under our Administrative Office of the Courts, which is our judicial branch I, but that is just for administrative purposes only. So things like finance and HR and things like that, but for our everyday work we are independent.

We have been given all of the tools of both criminal and civil procedure in order to effectuate our investigations. So, that means we can do a lot of things that other folks can't do. One example is, we can subpoena someone for a civil deposition to put them under oath and ask them questions. On the flip side of that, we can also seek a material witness order under criminal procedure. We can get a search warrant if we need to go and search for evidence or if someone, for example, has told us that they have
something, but they won't provide it or produce it, and we have probable cause, we meet that statutory
requirement for a search warrant and we can go get one of those. We also are able to collect all files
that have been preserved by the state, whether that's the prosecutor's office, law enforcement, or the
clerk's office. And we're also able to collect all physical evidence that remains. That includes seeking to
search for evidence, if there is information that it may still exist. We've actually had 28 cases where
someone has said the evidence does not exist, but we've been able to go in and either ask them to
search again or conduct a search ourselves and have found that evidence. And in multiple cases, those
cases where we've located and then subjected that evidence to DNA or other forensic testing has
resulted in exonerations. We also have the ability, once we locate the evidence, to collect it. We have
our own evidence room and our own evidence custodians. I'm one of those. And we bring it back to our
office, where we store it pursuant to all of the same guidelines law enforcement and clerks are required
to store evidence under. And then we can subject that to DNA and other forensic testing, and that
includes up to and including consumption of biological material where doing so is necessary to our
investigation.

We're a little different because we are kind of this independent and neutral body. We never represent
the convicted person in any way. We're not advocates for them in any way. And we're simply there to
seek truth, whatever the truth may be. A lot of times that can result in a confirmation of guilt, other times
that leads to a hearing where we are presenting all relevant materials and information to our
Commissioners to determine whether a case should move back into the court process for additional
review. Our process is also completely outside of the appeals process, so that's a little different as well.
Our cases are handled outside of that process. The basics are someone applies to the Commission or
has their case referred to us, we internally have staff that investigates and evaluate those claims. If
there appears to be some evidence of innocence, that is new incredible or verifiable, then that case is
presented to the Commissioners, and there are eight of them, at a hearing. At that hearing, the
defendant isn't responsible or convicted person isn't responsible for any burden at that hearing. That is
simply a hearing that is non adversarial where I present the case to our Commissioners and they say
there is sufficient evidence of factual innocence to merit judicial review or there is not. And if they move
the case forward, then it goes back to a three-judge panel process, which is an adversarial process, and
where the convicted person then has to prove by clear and convincing evidence that he or she is
innocent of the crimes.

A couple of other quick things, we are limited to look at only felonies for convictions in North Carolina
State Court. So we can't look at misdemeanors we also cannot look at any claims outside of North
Carolina or in the federal jurisdiction. And I apologize if you all hear a weed eater in the background, I'm
actually on vacation right now and I can't control what's happening outside the window. The other key
hallmark of the statute is that individuals must be claiming complete, factual innocence for the crime
they've been convicted of or for any reduced level of responsibility. So they can't say hey I was just the
getaway driver, we are just not able to look at those cases. And then there must be new evidence of
innocence that wasn't heard at trial or that wasn't reasonably available at the time of the guilty plea. So
we can look at plea cases and cases that resulted in conviction after trial.
I said that our Commissioners are eight individuals, those are statutorily laid out and they are intended to represent a full array of individuals from the criminal justice system and beyond. So, they include a superior court judge, a district attorney, a defense attorney, a sheriff, a victim advocate, a member of the public who is not an attorney, and then two discretionary members. And those folks are all chosen by the Chief Justice of our Supreme Court here in North Carolina. Or the Chief Justice of the Court of Appeals in North Carolina. Thank you.

John Hollway: Thanks, Lindsey, for what it's worth, A) lot of us love to talk about conviction integrity units while we're on vacation, but B) your your weed whacker is not audible so you were doing great. No, no, no interference there. Lisa, why don't we turn to you, I mean a statewide model, but I suspect we're going to hear some pretty substantial differences from what Lindsey just laid out.

Lisa Lazzari-Strasiser: I'm Lisa Lazzari-Strasiser. I am the chief deputy of the Pennsylvania Office of Attorney General Conviction Integrity Section. We launched in February of 2020. Launched in a very strange and moving environment, so I went from the office for two literally two days to my home where I still am working out of. So we are in let's say the development stage, but I will say this, as I listened to Lindsey, I thought we were so different as far as how we operate, but very much of our criteria is exactly the same. Felony we are still you must be incarcerated on the conviction in question, a complete claim of innocence, and the only we're statewide. So we have 67 counties in Pennsylvania. Philadelphia has its own operating unit, so those that is the only jurisdiction that our state agency would not look at. As far as criteria, we're very much the same. Now do we intend to stay that way? I think we call it keeping the funnel narrow so that we're not overwhelmed and we can address those persons that are possibly innocent still serving a sentence. And do I see the unit change and developing so that we would open up the criteria to say, even if you are no longer serving a sentence or a misdemeanor because of collateral consequences? We may do that down the road, but we do, that is not how we accept cases. The difference between Lindsey and I and Valerie, as a State Agency, I accept applications and of the over 600 that I have since last year, 1% have come from defense attorneys. So, they are pro se applicants, they are the inmates serving the sentences. We have our applications either available online at our website. The majority of those I send out after a letter from an inmate and once received, I vet them until I get to the point where I would go to the local prosecutor and that's where we differ.

In Pennsylvania, the attorney general's office has limited jurisdiction and it's dictated by statute. So my heavy lift over the last been the last 18 months has been creating an atmosphere of trust and collaboration with the local prosecutor's office. Because if they don't refer the case to us, if it wasn't a case that we prosecuted originally, we have to get that referral from that DA. So my work essentially is to develop a review that would indicate to the local prosecutor something went wrong, and we should look at it, and if you have the resources, you can do yourself. But the majority of Pennsylvania counties don't have the resources, so that's where our office came into play. And we're moving forward at a very quick pace as far as what the culture has become over the last year. And if you think about it folks, everything that has happened in the last 12 months has put our our mission at the forefront. Criminal justice reform, prison reform, sentencing reform, indigent representation reform, post-conviction
statutory reform. So, this is critical. And being able to look at different jurisdictions and different ways that we address wrongful convictions is critical work and important work. I'll get off my soapbox.

**John Hollway:** It's actually kind of the point for you to be on your soapbox here, so thank you for that. I just want to say for everybody in the audience that the Q & A area is open. I actually have it open on my screen, so we can field questions as they come in and would encourage anybody any of the any of the observers to throw questions into that so that we can make this as rewarding for you all watching as we possibly can. So, one of the interesting challenges that I think each of the three of you are reflecting in different ways is how to convey the kind of sincerity and good faith of this as a kind of higher order mission. Right? And the mission of the ongoing mission of doing justice and being accurate and getting it right as a perpetual obligation of a prosecutor. And and you know we see units that struggle with this in a couple of different areas.

One is with a defense bar where the adversarial relationships you know can can create that that skepticism and where there is, I think, a risk of the perception that an office isn't going to investigate its own cases. Right? So, Lindsey doesn't have that, and Lisa maybe less but but Valerie I'm sure you've had that. Then there's the the internal pushback from either prosecutors who have had those cases and would never be part of a case you know where something has gone wrong and that's you know it can be a challenge there. Or other office or other other people in the office you just feel like now they've got a new watchdog. So, I and and Lindsey even though you're an independent agency, you're still trying to get information and things, so let me ask each of you and I'll just kind of throw this open and we can have a conversation because that's more fun. What do you do to convey and build that trust? How do you convince skeptics that this is for real? And what do you have to do to deliver on that promise?

**Valerie Newman:** Well, I guess I'll start, since I have to deal with this on a daily basis. So, I would say it's really tough. When I came into this office, I was a defense attorney with over 20 years experience. I had never been a prosecutor. I'd never prosecuted a case, never worked in a prosecutor's office in any capacity. And so I came in here with a reputation I hope of integrity and someone who could be trusted, but yet someone who is always an adversary, to the people that were in this office and I specialized in appellate work. And so I was very familiar with the appellate attorneys in the office, but maybe not so much with all the trial attorneys. And I think my reception in this office is is was pretty much the same as as out all of my colleagues that I've talked to across the country which is, we were not welcomed with open arms. It was a very difficult thing for a lot of people when I'm sure our office, like many offices, struggles with resources. Doesn't get enough money to you know doesn't don't feel like we get enough money to prosecute the cases and do the work wow that that needs to be done, and now you're going to take some resources and you're going to say you're going to go and investigate these old cases. You know, we have that that's not really our job is prosecutors. And so it has been a cultural change.

I think Lindsey and Lisa both hit on that that you know things change over time and I would say, you know, I've been here a little over three years, I have seen a very significant cultural shift, I would say among at least a percentage of the prosecutors. You know people who are glad that I'm here. They come in and they talk to me about ethical issues they have, or a legal issue that they have. You know they don't want to do anything wrong. And so I think that's all a very good, positive shift. I'm not going to
say you know it's the entire office, but you know, progress is progress, and you take what you can get sometimes. And then with the defense bar, you know the defense bar, I think, for me, I feel very fortunate that because I was a defense attorney for so long that people know me, they trust me, and I think they approach this that I would try to do the right thing. Now they might not have had a trust of the entire process, because of course I don't control the entire process. I control a piece of it. I don't make decisions, I make recommendations.

So, we still had to show them that the entire process, from start to finish, was going to be fair and I've done that by working with defense attorneys in a very, very collaborative manner. I mean if they want to sit in on witness interviews, by and large I allow a defense attorney to sit in on a witness interview. I mean I will integrate the defense into my case investigation as much pretty much as the defense wants to be integrated into that investigation. I mean there's going to be times, where we can't do it, but they're going to be rare. When we find documents I'm going to turn those documents over, and no one has to say, no one has to ask me hey Val do you have this? Or hey Val did you find this? If I find it, I'm going to turn it over. So, I think that you there's a lot of things we can do in a conviction integrity unit to build trust. By acting in an open and transparent manner, by communicating with people what we're doing, why it's taking so long, I mean that's the biggest complaint is that it takes too long. And how can it take so long, when I, as a lawyer, have done all the work for you. I've already interviewed the witnesses, I've given you I've written it all up for you, I mean, all you have to do is read what I wrote and you should you know, you should see that my guy is innocent. And and it's like, as much as I trust you, I may trust you, we still have to do the work ourselves. And guess what when we do the work ourselves, I will say in almost every case, we have found things the defense attorneys never found and part of that is access. We have we have greater access as prosecutors than you do as a defense attorney. And I have had cases, for example, where I have uncovered federal investigations into the defendant that overlap with when the crime was committed. Now, as a defense attorney I could never go to the DEA and say hey I want to come look at your file. I mean I could, right? But it wouldn't happen. But as a prosecutor, I can go to the DEA and say hey I'd like to look at your file. And I can go and I can look at a file. So, I still can't copy anything but I can look at it. And you know we that has proved a treasure trove of information in some of these cases that otherwise we wouldn't have had access to and has helped prove people's innocence. So I think those are that… I could talk about this for a long time, so I won't.

But those are some of the ways, where I think you know we work really hard to develop trust outside the office and then inside the office I'm kind of known, I mean some of this stuff is silly and we've talked about it on our CIU things, but um you know I bake cookies or brownies and I bring in them and I let people know that they're here. It brings people to your office, you have a casual conversation and I don't become the demonize person I become the person who brings cookies. You know just I you know I do what I can to ingratiate myself. I help out whenever there's a call for volunteers, I always raise my hand for I'll do it. I'll volunteer for anything, doesn't matter what it is. And so I just try to you know I try really hard, because the CIU is walled off from the rest of the office, to show people that I'm here, I'm a I'm a decent human being, I'm willing to volunteer and help and participate in the office, and so you know that's how I try and build relationships with folks and get them to trust me. And then they see our work
and it gives me an opportunity, I tell my entire team, every single one of you is an ambassador for this unit. When you talk to people, I want to hear positive things. Talk about you know talk about how intensive our investigations are, you know kind of what we're doing that we're not looking to blame or shame anybody we just want the truth. I mean really who can be against truth? It's really hard to stand up and raise your hand and say I don't believe in finding the truth. I you know so I think if you phrase things in a way that people are just like, yeah, okay mistakes get made, we're human beings so some things might get overlooked and…

Gene Zmuda: But Valerie, I think that that seeking the truth is is implicitly not what ultimately happens in many wrongful conviction evaluations. Which is why there are only 90 CIU units nationwide. I mean there are what 2700 counties in this in this nation, 90 of which… And I think one of the issues is the lack of the process itself, the integrity of the process, is not really being examined. Rather is the impetus of the person. You happen to work for a district attorney who is very much proactive in that truth seeking. There are other prosecutors that are not, right? Because for them, or they think they are, but they act upon it in a different way. All right? So if it's driven because you have an, you have somebody in the office that says yes, we must investigate these clients. All right? Justice shouldn't be dependent on the person, it should be dependent on equal application within the process. And one of the things that I do is chairing the task force in Ohio is to try and figure out what's the best way to maintain or improve the integrity of the process, so that the individuals coming through the system, right, hopefully get the fair shake and the trial, to begin with. If the conviction occurs, and then there is a claim of innocence, they're also going to get a better shake in terms of a fair exoneration evaluation process.

The second component I think that's worth worth articulating is this. I think there's a there's a disconnect because the forces that require in our adversarial criminal justice system to result in a conviction, are an antithesis of the of the innocent investigation that you do on a regular basis. It's not it's not in some respects, some might say that the tables are reversed. But you're the defense person now because you're defending, your offices is defending that conviction and the defense counsel, but we shouldn't call them defense counsel or prosecutor, you call them innocent inquirers, right? I like what the prosecutor in St. Louis called it. She said we're Ministers of Justice when we deal with innocent claims.

And it's that changing event mindset and I think I think courts need to look at and I'm glad the Sentencing Commission organization is hosting this, because I think you have to look at how can we improve the process so that integrity of the process is is beyond suspect. That everyone is getting their fair shake by it, by improving the process itself, how do we, how do we achieve that? That's what we're doing in Ohio in terms of our task was trying to figure out. What's the best methods that are being used in your office, Valerie, or Lindsey's office or in Lisa's office? And how we can we combine them together to create a mechanism by which we've created a process where the integrity is paramount and it's not dependent on the advocacy of an individual prosecutor who's forward thinking or progressive, however you want to characterize it? That's difficult but that's what we're trying to accomplish here in Ohio. And I just I'm really enjoying your engagement and it's great to hear how because you are down in the trenches working within the existing system. I'm trying to figure out are there ways that we can modify
the system to make the job easier so that that truth-seeking isn't as hard or as long as it's taken in many instances.

Valerie Newman: Absolutely, Judge, and I think the key to that, though, is what we've all talked about is changing the culture. Right?

Gene Zmuda: Uh huh.

Valerie Newman: If you can bring in people into the prosecutor’s offices and you can elect people in the prosecutor’s offices and you can work with the police departments to change the culture. Well, especially the police departments. I will say the thing that shocked me most coming from the defense over to here was the quality or lack thereof, of the police investigations, ranging from just not a good investigation. I don’t know that you can point a finger at somebody. To police officers who actually framed people for crimes they did not commit. I don’t care how good of a prosecutor you are, probably in the moment you could not have figured it out. And it takes, sometimes it takes the passage of time, unfortunately, to be able to go back and see a clearer picture or see a pattern of certain police officers and the misconduct they engaged in to figure out what was what was going on. But I think I don’t think I have never met anyone who goes into prosecution, who says I’m going to go do this to convict innocent people. I mean I think people come in with the right mindset, but you get you get busy and overwhelmed and overworked and stressed and jaded and whatever else happens, cynical, it all happens to people and you just start like getting chipped away at. So, I you know.

Lisa Lazzari-Strasiser: I'm going to jump in here. Judge, just to step step off of what you were saying as far as what what do you do, and to say that the Minister, to be a Minister of Justice that should apply to police officers, defense attorneys, prosecutors, everyone in the system. Like, it should that should be the ultimate goal, whether we we're working for a different end, but that that's what how we that's what should gauge our steps along the process. And what I what I fear is that from, for whatever reason, our system, where it came from and how it evolved, has never evolved into the idea that it's justice. It's not a win, it's not a conviction. It's it's not about who takes the biggest paycheck home. What we need to do is educate. And the component that I see is missing in this along the way, is the bench. Your your judiciary body has so much power over what goes on in that courtroom. And I was a I was in a public defender's office for 18 years, and then went was the elective DA for eight years thereafter and now I've done this. And I will tell you that the the judge, some judges, have control their courtroom completely, and i'm not saying they do it well, but the judiciary has such power over anti-integrity or disingenuous people and they don't use it. And maybe we need to educate our, you know the bench part of it, about this isn't about putting people away, this is about doing the right thing. I don't know, that's my perspective, from being in the well I guess.

Gene Zmuda: Well, I don't, that's an interesting perspective because I've been a judge long enough that I, I hope I don't have those judicial blinders on. I don't think I do, quite frankly. But I view, I view the role of judges and maybe some judges don't like this view, is that all we can ultimately do as the quarter as judges is to hopefully instill the integrity of the process. We set the table or the playing field as you’d like, Right, so that you advocates will come in and you will be given fair treatment and if you're applying
those same fair rules will get a fair result. Isn't that what, I mean that's really what the goal is of our process. So, the issue really becomes what happens when some of the participants, and I'm not suggesting it's the lawyers, I'm not suggesting it's even the police quite frankly, it could be a witness that ultimately ends up recanting, right? The conviction is based on a witness that witness, for whatever reason, and motivations unknown to anyone but ultimately over time, it became clear that you know that witness was wrong and therefore justice wasn't served because an innocent person was convicted.

Our system has a hard time coming to grips with that because the individuals that we did everything right we prosecuted this complying with the rules of engagement, and a conviction occurred, and as an end if the Court imposes those rules purely, that conviction occurred. All right? We live in a system where status quo and the end of that case, all right, provide some level of peace to know we're moving on. And so, these wrongful convictions really disrupt that tremendously, which is why I like talking about it being the process itself and innocence inquiry versus a continuation or post-conviction matter of that adversarial proceeding. Because I think if we can divorce or separate the two to recognize the distinction, it becomes clearer in my mind that we're not, your your advocacy and the defense council's advocacy shouldn't be at odds, but rather to be joined. And this gets into what John is trying to opine about it, you know, in his writings about how you view these going forward, whether it is truly adversarial or should be innocent with with no culpability. It's just let's all seek the truth in that innocence process.

John Hollway: Well, and to be clear, I mean I think, and Lindsay I definitely want to hear your thoughts on this, you know I think one of the things that conviction integrity unit do very effectively, the good units do very effectively, is they do review these cases, they do try to write past wrongs. The opportunity for every single one of Lindsey's, you know, 10 exonerations, Valerie's 30, and I don't mean to personalize these right, the organization's exonerations, every one of those is an opportunity for learning and understanding, where the checks and balances that are there to prevent a wrongful conviction didn't operate. And so there are opportunities for police to understand how the wrong person was arrested, for prosecutors to understand how they can screen that case and accept it and charge it and prosecute it and believe it was righteous, for the defense attorneys in the defense part to understand why they weren't able to prevent it, and and for judges to understand how their actions may have facilitated an environment in which we didn't get to the truth. And, and the first part of that, the investigating part and the remedy part, I think we're getting better and better at. That learning process should be a separate conversation that we have with all of the participants and I haven't seen a conviction integrity unit that does that, as a matter of course, yet. Obviously, resource constraints are what they are. But so with with now I'll get off my soapbox and, Lindsey, let's let's go to you and let me ask what you do to build that credibility. If the cookie integrity unit is working, that's great, but maybe there are other things that you do as well.

Lindsey Guice Smith: Yeah, sure. I can't bake at all so cookies are not in my wheelhouse and that's not happening. That's not what I do. So many thoughts, right now. But just to get back to that original question so what you have to remember about the Commission is when we were created, we came out of a study Commission, much like what Judge Zmuda is doing now. And there they brought together all of these different people from all over the criminal justice system to talk about the causes of wrongful
convictions and what remedies we might have in North Carolina. And so, what they realized then was that the motion for appropriate relief system that we had was not really addressing innocence claims. Judges didn't have time when they came across their desk to really delve into them, and no one was putting the resources into those, and so the Commission was created. Part of that involved a whole lot of compromise, right? All these different groups had different ideas about what this would look like and that's why you see some of the kind of constraints on the commission's ability to look at cases. That's why we only look at felony cases, that's why we only look at actual innocence. And those are all really good compromises that were made. Another compromise that was made was that the convicted person at some point in our process would have to waive all of their privileges. The right against self-incrimination, they have to answer every question that we ask, those kinds of things. They had to give up that attorney client privilege from the first, from their trial attorneys and their appellate attorneys, so that we can access that information because, again, we're only looking at factual innocence. So, we have to be able to ask those questions. You know, did this person ever admit guilt to you? That kind of thing. So, through all of that, I think that compromise system already laid a foundation in North Carolina for some trust of the Innocence Commission process.

We're also independent and neutral. We're not tied to a prosecutor's office and I think that that helps in part, with some of the skepticism from the defense community. The other piece to this is really just education. I spend an incredible amount of my time on outreach and education. Whether it is talking to district attorney's or clerks, or going to the Chiefs of Police conferences and trying to communicate with as many Chiefs in the state that I can, or the Sheriff's association, all defense bars, all of those different what we call criminal justice partners. And really educating them about who the Commission is and what our mission is. Talking to them about the fact that hey you know we're not just looking for innocent people, were also confirming guilt. And our statute requires us if, in the course of an investigation, we uncover evidence of another crime or wrong-doing or misconduct, whether it's on the part of the convicted person, the prosecutor, law enforcement, or some third party we're required to turn that over to the appropriate authorities. So, for example, we were out one day and we're trying to locate a witness who had absconded from probation. When we located him, we call probation and said hey this is where he's at. So that is a way that we build that trust with those different partners and that's just kind of a function of the statutory scheme that we're under.

John Hollway: So, Lisa, understanding that you've been Conviction Integrity Unit by remote connection for the past, you know, year as you're getting started, how are you being received in various counties? Have you had cases where a jurisdiction says, thanks for the heads up, we'll take it from here? Are, you know do counties welcome the the resources? You know, does that vary? Like, how do you, how do you do your outreach in that regard?

Lisa Lazzari-Strasiser: From the beginning, as an elected DA, I was a member of the board of directors, for the statewide DA's association. So, I had a voice with the elected and and, you know, the managing organization statewide. So, when I lost the election and then got appointed to this position, I the mission in the beginning was for me to talk to as many leaders in the organization, as I could to try to explain what we saw this unit becoming. And it was amazing to me, in the beginning, to see how
much pushback there was, but once we, as Lindsay said, once you start to educate them and say look we're not here to tap on your shoulder and say, you made a mistake, we're here so that we can do the right thing and correct an injustice with the resources that aren't available to a lot of the local jurisdictions. So, remotely, what I do is we developed an agreement between the DA’s association, how we handle cases, what the process will look like, it's very fluid, though, because no cases ever the same. But as we developed that agreement, you know, you can see the attitudes beginning to change. And what what I'm doing now is I contact the office and I haven't had one local jurisdiction say no, we're not we're going to provide access to a file, even before I would make a decision as to whether we're going to further investigate. You can't make that decision until you have the information and access to the files. So, it's been developing over the last 12 months into something that's very workable. Collaborative and the attitude is changing, that this is what we all should be doing together. But I still feel that there's a lot of education that education up front is what I think needs to happen.

**Lindsey Guice Smith:** And John, I'd like to just go back in and add on to something that you said as well. So, learning, I think the piece about educating not just about what we're doing but about the lessons learned to the different groups is really important, and I'm hopeful that we're actually partnering with one of our Commissioners in the coming months to write a law review article about just that, about some of the things that we've learned and how those can be applied to hopefully prevent these wrongful convictions on the front end so that people can really be thinking about all of these different things that go into play.

**Gene Zmuda:** And do you think that, you know I think this education component is is key, as well, because the education is just because you're a criminal defense lawyer infrastructure doesn't mean that you have the tools or the education that really allows this inquiry relative to the wrongful convictions, because it's a different analysis and different process because you're taken out, as I said before, you're taken out of that advocacy. And therefore to build within your respective systems, some educational requirements so that for those that are representing individuals that are petitioning because they believe they've been wrongly convicted, that they understand it's not just because they do criminal work that I'm qualified to do this kind of work. And I think Valerie, maybe you're the best example on the other end, is that just because you're a prosecutor doesn't mean that you can look objectively from the prosecutors perspective on these petitions of wrongful conviction, because I think it is a different mindset. And how do we create, that that's what I like to look at, how do we create tools or educational opportunities to recognize it's a different set of factors, it's a different set of mechanisms I think to do it effectively and properly. And if if we can find them, I think you build that cooperative, you know, rapport that you're looking to improve that the efficiency of the system.

**John Hollway:** Yeah what, what we see here, Judge, is you know, obviously, both Valerie and Lisa, Lindsey you may as well, have both prosecutorial and defense expertise. Right? And so the ability to do what all of us as advocates I think should do anyway, which is to understand the weaknesses in our case and be able to look at it from the other side, you know, but but that's that both of those expertises are there and very pronounced and that's a very useful thing to have in your in your CIU, is to make sure that you have that capacity. The other thing that we saw when we did our survey of units was that units,
where the CIU was separate from the appellate unit, and reported directly to that the head of jurisdiction, the elected, you know that does two things. The first is when you report directly to the elected, you send a very strong signal about what the elected believes, and you eliminate opportunities for other or other other supervisors or leaders who might not buy into the mission, to hoard resources are deprived of oxygen. Right? So, so that's one good sort of cultural, structural thing. When you remove it from an appellate unit, though, I mean, the appellate unit is geared almost by definition to preserve convictions, to argue the procedures that this was a fair process, there is no reason to look at this. And that's not being critical of them in any way. Like, that's the structure and the design of of that unit. This is a different process, right? What we're saying is we're not looking at the procedures, necessarily. What we're looking at… The procedures might explain why we got it wrong. We're trying to figure out did we get it wrong? Right, right? And, and so the question did we get it wrong as a different question than were our procedures run the way they were supposed to run? And when you remove the unit from the appellate organization, you allow more easily for that shift in thinking that you're describing to happen and be consistent. And so, those are sort of two things that that we've seen structurally, I think they're reflected in all of, well Lindsey's obviously got you know, I'm struck by the fact the word neutral is in your, you know, in your mission and on your website. I, I kind of go back and forth on that, because you know we can get go back to that, because you know we can get go back to that in a second, but but certainly with Valerie and Lisa, right, that that distinction is is made clear in those, in those ways.

Valerie Newman: So, John…

Lisa Lazzari-Strasiser: If it was… Okay, go ahead, Valerie.

Valerie Newman: No, it's all right, you go ahead. I didn't know what the feedback was. You go.

Lisa Lazzari-Strasiser: Nope. I'll defer, I'll defer to you.

John Hollway: I'm the moderator. Lisa, go.

Lisa Lazzari-Strasiser: I was just gonna go back to the idea that, I mean, if we are are going to keep talking about Ministers of Justice, if I have such a problem with the the idea that the appeal unit is working, they are they're defending the conviction, but when they recognize, and they do because I've had the conversations with the appellate attorneys who have been defending a conviction from PCRAs for 12 years and they know something's wrong. That that's the part of the education that I think we have to insert there and say, okay, why are we defending something so rigorously that you know is wrong? That's where the thinking has to start to change. And then we can all be out of jobs and retire. Right?


Valerie Newman: So, Lisa and I are in exactly the same page. And that that it when you talk about education, I like Lindsey and I'm sure Lisa, once she gets out of her house, would do the same, but I speak at and anyone who asks me to speak I speak. It doesn't matter if it's a community event, a lawyer event, a prosecutors conference. If you asked me to be there, I will be there. I think it's really a critical part of our mission, and we need to spend time educating people, talking about what we do, how we do it, so they understand. Because that is a critical, to Judge Zmuda’s point, a critical part is the education.
And so people can understand the causes of wrongful conviction, how as the defense attorney, or how as a prosecutor, or how as a police officer, can I do my job better so that this doesn't happen? And the other part is I couldn't agree with Lisa more. It was exactly what I was gonna say. I have put a lot of time and effort into working, I don't want to say I'm working with appeals because they are separate division right, but working on the concept that we shouldn't fight cases just because we can. That we need to look at what we're doing and and have some rationality in there.

So, for example, and I think things are changing, but I think again, it takes time. Our very first case was a gentleman who had been in prison. My very first CIU case was a gentleman who had been in prison for almost 50 years. The, there was a trial court motion. The judge had granted a new trial. And the appellate division was appealing the grant of a new trial. There was a lot of evidence of innocence. And they were appealing on the legal issue that the evidence of innocence was not, would not be admissible if there was a retrial. So, okay, that's fair on an appellate level, you know, to make that argument, but why would you make that argument? You're making an argument that evidence of innocence couldn't have come in, so therefore he shouldn't get a new trial, instead of looking at the fact that it's evidence of innocence. Like, this is a man who's been incarcerated for almost 50 years and you're going to continue to, first of all, even if he did the crime, hasn't he done enough time, you know just from a pragmatic perspective, but from a realistic perspective. So I I, I agree, I agree so strongly with Lisa that we have to work on the appellate divisions and and and then that, I think, will work its way down much more effectively into the rest of the office if appeals divisions are saying you know going to talk to a trial attorney and say you know we lost this because of this and we're not going to take it up to the Michigan Supreme Court because we are Ministers of Justice and it's just not the right thing to do.

And so, I think that's how you can really permeate the message, in addition to, for example, I just gave an ethics talk to all of the new incoming lawyers in the in the training. And so I think if you if you can get your training directors to put CIU front and center in training inside the office, that helps tremendously and I'm also a big advocate, although I will admit I have not accomplished it yet in this office, that the CIU you should be the ethical officer. The director of the CIU you should be the ethical officer for the office, should be designated as the ethics wing of the office for a variety of reasons that we don't need to talk. But I think all of those things you know start changing the culture and and and presenting a culture that fairness matters, justice matters. You know you see an email or someone congratulate somebody you know for convicting somebody. You know I, you know I push back on that, because if you're a Minister of Justice, whether the jury says guilty or not guilty, justice has been achieved, hopefully. Right? And so we have to get away from celebrating a conviction and crying over a not-guilty verdict because it's all justice. And you do the best you can with what you got, and if you don't getand if you get too personally invested that's where things go wrong. So, that's it.

**John Hollway:** So, so, Lindsey, um you know, as you said you operate within a statute. Right, the the authority that you have is statutorily driven and so you're in a little bit of a different position than an elected who might have policy opportunities. So, how does your office function then with the Statute that provides some of those same limitations that an appellate division might put on things? This idea that you know if the evidence could have been reasonably, you know, used a trial, right, so it's not just was
used as I understand the way you describe the Statute, it's also could have been used. Does that, you
know, how does that impact your work and your ability to to kind of look at innocence, as the key?

**Lindsey Guice Smith:** Sure, so it is, by statute, it is if there was a trial, if it was presented, then it's not new. So, if someone didn't present it, for whatever reason, then it could be considered new. And if there was a plea, if it was reasonably available at the time of plea, then it's not new. Reasonably available is something that is really in the discretion of the director to decide, you know, was that reasonably available? Any kind of forensic testing we're going to we're going to say that can be new. Right? Just because someone didn't do it then, you know, forensic testing is changing all the time, and so, if if it wasn't done then it's it wasn't reasonably available to the convicted person. The rest of that really is just discretionary and the Statute is very clear about the director's discretion and how much leeway there is there, so that gives me the opportunity to make sure that we are really investigating every avenue that we can, and we try not to foreclose things just off the gate or out the gate without really thinking about whether or not they can be considered new.

**John Hollway:** Well, so that's very helpful and interesting and you raise another really interesting point which is, I personally have never understood why we would have a fight about whether or not to test material that is available for testing. I, you know, particularly if the petitioner is willing to pay for that expense. Right? I guess I could see in some instances somebody saying well it's expensive and not prohibitive. But if the if the petitioner's willing to take on that expense and they have an otherwise colorable claim, right, the so to save forensic information is always sort of defined as new evidence as a way of addressing that point. Right? Because it just strikes me as a tough a tough spot to be in to say, oh, we want actual innocence, but no we're not gonna let you test that.

**Lindsey Guice Smith:** Yeah, and so that is kind of again unique to the Commission, because there are post-conviction remedies that a convicted person can seek outside the Commission process in North Carolina for DNA testing, but there are some specific elements of that statute and requirement that make it sometimes difficult to get a court to grant that motion. Whereas, if they're willing to come through the Commission process, they don't have to meet any of those hurdles. If, in my discretion, I believe that the items should be tested, then we're going to test it. And so and we do we err on the side of testing, we may set up a testing progression. So we may test most probative evidence first and then move on to other items that would be less probative, but that you know, assuming that the most probative item doesn't confirm guilt, we would still need to test this other items. We might kind of move through a progression to save money, but we're always going to err on the side of testing and we're always going to consider any kind of forensic testing to be new evidence.

**Gene Zmuda:** But oftentimes, John, aren't there, I think the state's statutes preclude testing unless it's specifically related to the petitioner themselves, I think. It certainly, that's what happens in Ohio and I'm sure that's the same law that Valerie in Michigan. If the Statute that allows that subsequent DNA testing has to be related to the petitioner versus some third party unrelated or at least I don't know if that's that's what the law is in Pennsylvania. But I think it's a good example of you building it on top of existing criminal structure, right, that dealt with the conviction of a of a person. And is it related to that person, and therefore they would have standing versus not, to our to try and argue, well wait, we want this
tested. And I think it's another example of that conflict because it's no longer the conviction process, it's the innocence project process.

**John Hollway:** Yeah, and certainly, Judge, you're hitting on a really important thing, which is each jurisdiction has these different rules. Right? And we are seeing this kind, you know, this high profile case in Missouri that has gone up to the Missouri Supreme Court where everybody basically agrees that this person is innocent but there, the Court is basically saying there is no claim to deal with that. Now, in that way, conviction integrity units have a really valuable role to play, because you know if you look at Texas they've added an actual innocence cause of action to their habeas law because they realized that the prosecutors didn't have that ability. In in Florida, when I was talking to Melissa Nelson the elected in Jacksonville and she was starting the first Florida Conviction Integrity Unit, one of their challenges was there was no ability to toll the post-conviction appellate process. So, a CIU investigation would be going in parallel with a moving appellate investigation. And that appellate investigation might have an influence on the ability to seek, you know, factual innocence, because you might have deadlines exogenous deadlines, that that get in the way. And so each jurisdiction has different challenges like the ones that that you're citing and I think that you know Lisa, Valerie, Lindsay, are in a position to be able to go back and say hey, this is why we're having a problem. These are the the the logical loopholes and gaps that are created by our appellate system and then and then they're in a great position being part of kind of the the government and law enforcement infrastructure to some extent to then advocate for that change in a way that is supportive and not viewed as, you know, problematic politically. Like, hopefully, hopefully we're all non-partisan in our roles with Conviction Integrity. Right?

**Gene Zmuda:** I think so.

**Valerie Newman:** Yeah, absolutely.

**Gene Zmuda:** Some of us have taken the oath of that. Right? Justice is blind. Lady Justice wears a blindfold for a reason.

**John Hollway:** That's right. I'm sorry, Lisa and then Valerie.

**Lisa Lazzari-Strasiser:** I just had a conversation this morning with a defense attorney that's in habeas litigation right now, where the local jurisdiction would not agree to DNA testing. And my opinion is this. If the person, if the applicant has the funds or a benefactor that's going to pay, there is no reason that that testing should not take place. And if if the prosecutor's office is saying no, and they're pushing back, then that's a red flag. So, we have a lot of, which rolls into a lot of, there's a lot of push right now for amending our post-conviction statute. We have a tremendous group that's talking to the legislature, and it could be a quick fix. Do I think it will happen, no. But it could be very similar to what, Lindsey and Valerie you may agree with this or not, it seems that you almost have the perfect, perfect environment for in vetting and investigating these cases, because you don't have to answer to anyone. I mean, other than your Commission. You're not dealing with the local prosecutor. Here's to you, Val.

**Valerie Newman:** And now I think statewide AGs have a whole host of very specific hurdles that nobody else has. And you know dealing with all the different prosecutors is definitely a situation that's unique
only to a statewide AG’s office. So, I commend you because it's a lot of different personalities to deal with to try and get things done. I can tell you in Wayne County, we have a DNA, the Bloodsworth grant, we partner with the Cooley Law School Innocence Project. And my answer to them is the same in every single case. They don’t even ask, or they ask if they want to laugh at me. I’m like, whatever you want to do, we’re going to do it. That's it. Don't don’t even ask me. You, you want to do it, you think it's probative? We're going to do it. Why would I say no? It just doesn't make, it doesn't make any sense. So, I agree, I think that it goes back to everything we've been talking about about the culture of the prosecutor's office. Right? Why would you ever say no to testing a piece of evidence that could be probative of someone’s innocence? And, like Lindsey said, the other flip side of that of their guilt, I mean usually testing is definitive. You’re, it either doesn't match and it's probative of innocence, or a does, and you can confirm that, hey, we got the right guy and you know, or right gal, and then you know you don’t have any questions about that case. So, no matter which side you fall on, I think you know testing is necessary and and nobody should be fighting it.

Lindsey Guice Smith: And I agree with what Lisa said. I do think the Commission model is a good model in that we are independent, and so it doesn't matter if the prosecutor doesn't want us to look into a case, we’re able to look into the case. Part of that is relationship building. Right? And we work really hard to do that. But at the end of the day, if the case meets the criteria, then we’re going to look into it. And so I think that that is, that keeps us from being kind of our hands tied as to what cases we look into and that that can be really important in getting to the truth.

John Hollway: So, let me circle back um, Valerie, to something that that you talked about, because I I'm intrigued by it. And it it, it may be an area that, you know, I haven't thought all the way through. One of the things that we suggested in our report in 2016 was, given the challenges with building these connections that the three of you and Judge Zmuda also talked about building, that we would separate disciplinary matters from conviction integrity matters. So, if, in the course of reviewing a case, you were to find Brady issues, whether they're police driven or or within the office, our suggestion was, hey, the conviction integrity unit has enough problems trying to build credibility without also being internal affairs. So, so if those things are discovered, the ethical obligation is the same as it would be for any other attorney in the office to turn it over in that route as well. And if it's Brady, if it's Giglio, if it's whatever on the police side, to turn that over in that route as well.

When you mentioned having the, the head of the unit become the ethics officer, does that conflate those roles and would that complicate things for the for the unit?

Valerie Newman: I think it could, absolutely. Um. So, from my perspective, if we found prosecutorial misconduct that needed to be reported to the group, you know needed to be reported to a grievance administrator, you know, you know, we haven't yet, so I don't know that I've thought this through either, John. So, maybe I'm thinking of something. Maybe it's not a great idea because I'm thinking my rationale is more for the office, to set the CIU up as the ethical center of the office. Certainly, if we investigate a case and we find an ethical violation, I would have a duty, just as a lawyer, to to report that to the grievance administrator. Um. I think that's a potential problem that we would have to work out. Like, would there be a separate person that if we find prosecutorial misconduct, and maybe it would go
to the public integrity unit, we have one in this office, we're large enough that we have one. I know many offices don't have a separate integrity unit, but it seems to me that if it was a more formal, like the office wanted to do further investigation, it should go into the hands of somebody else. So, I would treat it the same way we treat police misconduct. If we find police misconduct, I report it to the Chief of, if it's a smaller agency I report it to the Chief of Police. And if it's the Detroit Police Department or a department with you know, a big Internal Affairs Department, I report it to the head of the Internal Affairs Department. And then they do whatever they want to do with it and we cooperate with them. We turn over our documents. We'll sit down with them, we'll walk them through the case, what we found, why we think it's misconduct, bring along supporting documentation to make it easier for them. And so and but but it's not our investigation, it's someone else's investigation. Does that make sense?

John Hollway: It does, yeah. I think that's very clear, thank you. So, the, let me, let me ask this question of the three of you. And I guess I'll start with with Lindsey on this one. So, one of the really interesting questions that we've engaged with with a lot of units is, what data they should be tracking, right? What information should be conveyed about the work of the unit? Because there's a risk that people think well if I've got 30 exonerations I must be a good unit and if i've got one exoneration or no exonerations it must not be a good unit. And that you know, may be the case, but I, I personally would say exonerations are a useful, but not a dispositive metric of doing it right, if you will. But Lindsey, you again have some legislative responsibilities and publish an annual report. Can you, can you talk to us about what's in that report and how you use that report to improve over time?

Lindsey Guice Smith: Sure. It includes lots of things. I mean everything from basic statistics, like you said, we want to let our general assembly know how many claims on average we're getting each year, and how many we had in the year before, how many exonerations or hearings that we've had in year. All of those things help us justify asking for additional funding, but another thing that I track is, you know how, last year, I wanted to know how many overtime hours and how many hours, did we have interns or pro bono students working on projects for us? And it turned out to be almost three full time positions-worth. And so, that is just part of that statutory duty of reporting that allowed me to then go to the General Assembly, this year, and request three additional positions. We don't know if we'll get them yet, but knock-on-wood. But, so any kind of data like that you can track to justify the money that you need, the resources that you need. I think it's important to track, you know the why, why are we closing cases, what types of cases are we seeing come into the office? We also track things like gender. We do have statistics on race, although we don't as a neutral agency, we don't opine about those. That data is available so that other people can opine. So, all of those types of things. Generally speaking though, the the items that I'm reporting to the General Assembly are intended to show the work that the Commission has done over the last year, show what we've done since the our creation, which we've now been we were created 15 years ago, so now we're showing okay, what have we done over the life of this agency? And then utilize the information that we're tracking to request additional funds for positions.

John Hollway: And so, Valerie and Lisa, obviously you know, look 1,800 petitions in three years, that's no joke. You know it, do you have a capacity to generate those reports, are there other and other other
data that you would be interested in following or that you do report? You know, curious to see how you're approaching this issue as well.

Valerie Newman: So, I produce an annual report every year. It's not a public document, it's an internal document. But it tracks everything that Lindsey said, and it also tracks cases that have come in by most serious crime convicted of, and I track a whole bunch of other stuff as well. But currently, one one thing I find surprising when I came into this world of Conviction Integrity Units was the lack of data, and the lack of collection of data across units. And so, I was very extremely fortunate to fall into a one year, where a specific grant was available, which is just was available that one time, but I got in there and and and received it and I'm working with the Urban Institute and NORC to develop a data, a pretty comprehensive database for my CIU that I hope will then be able to be rolled out to other CIUs at a significantly lower cost because I developed everything and we've spent two years on development to track a lot of data.

So, we want to track, we talked we've talked a lot in this conversation about how to make the system better, how do we avoid the mistakes, how do we not convict innocent people? Well, one of those ways is really ramping up people's knowledge of what causes wrongful convictions. So, I want to track in my database the cause, the primary causes of wrongful convictions. So, were jailhouse informants involved in this case? Was there false confession involved in this case? Were there bad forensics? If so, you know, delineate the types of bad forensics that, you know, that that were involved. You know, was there ineffective assistance of counsel? You know, was there police misconduct? Or, you know, now I guess the term is more official misconduct. And then kind of breaking it out into police, prosecutor, judicial, you know, wherever it comes in, whatever kind of misconduct there is. And so that we, instead of just talking anecdotally when we give talks, that there will be this comprehensive database and I can say, all right, we've had 30 exonerations. This is what we found. I mean, so you know, misidentifying people. I mean I have seen case, after case, after case, after case, where you just say to yourself why would anyone bring this case to trial? It's a it's a one witness, stranger-identification where someone saw someone from maybe second. And then they're prosecuted for first degree murder and sent to prison for the rest of their lives. And so, you know, those are the types of cases I think, if we can raise awareness, to the prosecutor in the charging, so when they're making those charging decisions, they can look at things more critically and say oh no, wait a second, I'm not charging this case and they can tell the police officers, you need to do more work because you know I'm not going to deprive potentially deprive someone of their liberty based on this stranger-identification cross racial, whatever it might be. And so, I think those are the ways, by collecting that data, being able to show the interplay of things.

And I also think that having a comprehensive database will help all of us as directors, because I think it will show us patterns that we don't necessarily see case by case, but by inputting all this information, patterns will emerge that will that we haven't looked for necessarily. And I do agree, despite the fact that I've exonerated in this unit, I think, more people than most, I do agree that we should not track that as a way of saying this is a good unit or a real unit versus, this is not. Because Michigan has a very favorable legal landscape for me to be able to move quickly. And so, that is, you know I don't want to diminish the work of my team. I have a great team, and a deep bench, but we also have very favorable conditions in
Michigan in terms of the way, the things that are available to us, to go to get back into court, we don't have a procedural hurdles like in Missouri. We don't have anyone fighting us, saying you don't have the power to do this. I mean everything and part of that is relationship building. Right? I have a very good relationship with the bench here, and so I think part of the reason we're successful is, we have a very conducive environment to being able to do this work.

John Hollway: Thanks, Valerie. Lisa, have you established a sort of report philosophy in the in the short time you've been up and running?

Lisa Lazzari-Stratiser: What I have found is, what's most important, I think, as a statewide agency, I mean the Attorney General is the highest ranking law enforcement officer and thereby has a responsibility to identify jurisdictions where these trends may be surfacing. And that's the information I'm getting in these applications. You know, you hear at once, and you hear it again, and you hear it again. And that's the kind of tracking, that data I think would be important for our agency to be able to collect at the end of the year, so that we can implement not only a sort of a watchdog, but also best practices. Look folks, this is what's happened in PA last year. This is why we need to address these particular issues. And I think the comprehensive data collection that Valerie, you're soon going to get it to me, right? If if this works, this is an incredible tool for us, not only on the implementation part for exonerations, but also for the education part that I think is so important. So that we can identify these trends that are happening. This is why it's happening, this is what's causing it to happen, and this is how we change it and fix it.

Gene Zmuda: John, I think…

John Hollway: That was.

Gene Zmuda: That's a good answer. John, I think it's important to to also understand, in Ohio we have a post-conviction statute that specifically requires the data collection of post-conviction proceedings with our Sentencing Commission. And yet there's no mechanism, there's no infrastructure, there's no ability. Even though it's it's ordained in the Statute there's no ability to do that. So, it's one thing to say, we need to collect and everything everyone, you know data is the new DNA is one prosecutor has recently told me. Right? And I don't disagree with that. But the reality is data is one thing, but how does one collect it? Because we are, despite one criminal justice system, we are multifaceted, we are individual courts in individual counties and, in some instances, individual judges within those individual counties. And it really, there's no there's no unification of that. So, so as as we try to collect the data is to create the transparency and the uniformity, so that it's meaningful to the practitioners, it's meaningful to researchers like you, John. So you can study the systems and say, Lisa, you're doing really well in Pennsylvania, Valerie not so well in Michigan. Or vice versa, whatever the case, might be. And the only other thing I would say is, I think the data collection piece, the proof of its success isn't that illustrated in what happened in Illinois in Chicago? Where the, where they started looking at the cases and then, and then they found that that single component, which is I think a one officer, is that right? One detective and based on that they were able to go back and then look at all of that individual's cases to essentially clear out a whole bunch of wrongly convicted cases because because of that one individual. So.
John Hollway: Yeah and, in fact, the the Brooklyn Conviction Integrity Unit was created on that very basis. There was a homicide detective whose name kept coming up, kept coming up, and they started with a group of 150 cases from that officer. Philadelphia, I think, is seeing the same names kind of pop up and both Brooklyn and Philadelphia, Philadelphia even just last week, released reports that are sort of longitudinal in that in that way to sort of explain to people kind of of the work that they're doing. So, I want to keep my eye on the clock. We've got about five minutes left. So, we've got a little bit of time for a bonus round. Quick answers. And I guess you know, Judge, you know look, this is, this is really something for an Ohio audience, so let me ask you what we haven't covered that you want to that you want to tap into in the in the now four minutes that we have remaining.

Gene Zmuda: Oh boy in the bonus round. Opportunities create systemic improvements, is what I'm looking for. And, actually, this gets to what Lisa was was suggesting. She had just been participating with your, with your, Quattrone Center? Quattrone Center. Yeah, I can never tell, sorry. But, but I think it's important because you know we can do piecemeal improvements, you know DNA testing, yes, but the question is, can we create an environment by which these are the rules of engagement for which wrongful convictions should be processed.

John Hollway: So, so 30 seconds or less. We'll start with Lindsay. What is the one systemic change you would like to advocate for to help your work go, you know, improve or to create better, you know, justice in the system?

Lindsey Guice Smith: That's a tough question. I think, you know, just the creation, continued creation, whether it's commissions like mine, or Conviction Integrity Units like Lisa and Valerie have, that have some real teeth in them. I think that's really important. Just getting people to buy into that. And I think the biggest way to get that buy in is what we've seen here in North Carolina. And that is a bipartisan support for these changes. Nobody expected North Carolina to be the first and only of its kind to create a Commission like ours, based on the political landscape, here. But we had bipartisan support, and we continue to have bipartisan support today, and that's really important.

John Hollway: That's great, and I think you know you see that in Texas as well. When I tell people that Texas has an Actual Innocence team, people look at me like I'm crazy and I say, hey, look if you've done it, they're going to come after you, but if you haven't done it, right, then, then then that's that. So, Valerie, you're up.

Valerie Newman: I think, you know, the judges can play a huge role in terms of systemic change. So, the Supreme Court has control over court rules, right, so I think every Supreme Court, it would be nice if every Supreme Court across the country had a free standing innocence claim in the court rules and took away time limitations, with the recognition that people often don't get the information that supports innocence in a timely fashion. So, I start there. Leadership from the top and and bring it down.


Lisa Lazzari-Strasiser: With that there's really not much to add. I do think statutorily and legislatively, we need a big change, and it would help.
**John Hollway:** And for me, Judge, I'm going back to my soapbox. I think I think judges could also, as agents to the Court, can talk about doing event reviews, assembling the participants and doing event reviews and reporting back to the Court on the structural challenges that contributed to a wrongful conviction, above and beyond people's intentional acts. And making that what do we learn from this and forward-looking accountability to improve the system, making that a routine part of what we do in conviction integrity could have real structural change.

**Gene Zmuda:** And perhaps add that then into the data collection piece, because that…

**John Hollway:** 100%.

**Gene Zmuda:** That gives the story behind the actual statistics, is what that does. Excellent.

**John Hollway:** And with that, we are right at 2:30. So I want to thank Lindsey, Valerie, Lisa and you Judge Zmuda. I think this was a fascinating conversation. I always love doing these because I learned a ton, and this is true. Once once again you guys do great work, and you it's really hard work, and you all do really, really well. So, thanks for sharing your expertise with us and Judge I'm sure I speak on behalf of everybody that if we can be helpful to you or your audience at any point, happy to do so.

**Gene Zmuda:** Thank you very much. And thank all of you for your participation. It’s been tremendous. Yeah, I just and I welcome working with you in the future, as we move forward, not only in Ohio but all across the country to set up the right… Take care everybody.

**Valerie Newman:** All right, thank you guys. Good job. Bye.

**Lisa Lazzari-Strasiser:** Bye.