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Fostering Equity and Accountability in Georgia’s Criminal Legal System Through Conviction Integrity Reforms*

E. Addison Gantt**
Meagan R. Hurley***

I. INTRODUCTION

An often-quoted excerpt from *Berger v. United States*¹ sums up the role of a prosecutor in the criminal legal system. The context is the federal system, but it applies across the board. It begins by explaining the duty of a prosecutor: to represent the sovereign, “whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.”² Then, it turns to the real-world application of that role, instructing that prosecutors should present their cases with “earnestness and vigor” and, at times, “strike hard blows”—not “foul ones”—because, in the end, “It is as much his duty to refrain from improper methods calculated to produce a wrongful

*The opinions and views contained in this Article are those of the authors alone and should not be considered the views of the U.S. Department of Justice or the Georgia Innocence Project.

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1. 295 U.S. 78 (1935).

2. *Id.* at 88.

conviction as it is to use every legitimate means to bring about a just one.”³

The next statement, however, is often overlooked. The Court went on to state that, because “the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed,” inappropriate actions by the state “are apt to carry much weight against the accused when they should properly carry none.”⁴ And, as *Berger* itself recognizes, there are instances when prosecutors cross the line.⁵ But even in cases where a prosecutor’s actions comply with the letter of the law, the prosecutor can force an unjust result. For example, in post-conviction proceedings, “Judges are often obligated to enforce procedural rules, and [they] must often defer to discretionary decisions made by prosecutors,” placing prosecutors in the driver’s seat.⁶ In those cases,

3. *Id.* In full, the Court stated:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

4. *Id.*

5. *Id.* at 85 (“The prosecuting attorney’s argument to the jury was undignified and intemperate, containing improper insinuations and assertions calculated to mislead the jury. A reading of the entire argument is necessary to an appreciation of these objectionable features.”).

6. *See Sprayberry v. Inman*, No. S20I0038, at *3 (Ga. S. Ct. 2019) (Nahmias, J., concurring).

Everyone in our criminal justice system should dread the conviction and incarceration of innocent people. During my decade of service on this Court, I have reviewed over 1,500 murder cases in various forms. In those cases, trial courts, habeas courts, and this Court through appellate review have occasionally granted new trials to defendants who appeared not to be guilty of crimes of which they were convicted. Of the multitude of cases in which a new trial has been denied, Inman’s case is the one that causes me the most concern that an innocent person remains convicted and sentenced to serve the rest of his life in prison.

Id. at *3–4. On November 16, 2021, the Superior Court of Chattooga County granted Inman habeas relief after a contested hearing. Clare Gilbert, *Court Grants Devonia Inman’s Habeas Corpus Petition!*, GA. INNOCENCE PROJECT (Nov. 19, 2021), <https://www.georgiainnocenceproject.org/2021/11/19/court-grants-devonia-inmans-habeas-corporus-petition-2/>; Bill Rankin, *Exclusive: Devonia Inman, Behind Bars for 23 Years, Was Wrongfully Convicted, Judge Says*, AJC (Nov. 19, 2021), <https://www.ajc.com/news/exclusive-devonia-inman-behind-bars-for-23-years-was->

the decisions prosecutors make can tie the hands of the courts, and we have to rely on prosecutors to “exercise their discretion to seek justice—to do the right thing”—and let justice be done.⁷

Simply put, prosecutors are responsible for ensuring that the legal system operates with integrity and accountability. When prosecutors don’t exercise their authority with care, wrongful and unjust convictions occur, and the system fails.

It should not be shocking that some prosecutors cross the line—they’re human.⁸ And it should not be shocking—though the rate may be—that innocent people are convicted, often because our system is imperfect.⁹ But the fact remains that prosecutors’ mistakes and misconduct shake the system in a way that the actions of others do not. We must ask ourselves how we should address the imperfections in our system in a way that makes it fair and equitable for everyone.

Our criminal legal system is not, and never will be, perfect, no matter what we do. That does not mean we should not strive for perfection. We should. But we must keep in mind that, as hard as we try, mistakes and misconduct will happen; how we address those issues defines how successful the system is. We need to encourage continuing conversations and collaboration between defense attorneys and

wrongfully-convicted-judge-says/Z2LGEZZWT5GSFF42CUBN334DHI/. Mr. Inman was officially exonerated on December 20, 2021. Bill Rankin, *Devonia Inman Freed After 23 Years in Prison for Wrongful Conviction*, AJC <https://www.ajc.com/news/georgia-news/devonia-inman-freed-after-23-years-in-prison-for-wrongful-conviction/BM33TUI5QVB4LFSVIZOKKFYUZQ/> (last updated Dec. 20, 2021).

7. *Inman*, No. S20I0038, at *3–5.

8. The Office of the Georgia Attorney General recognizes that, despite Georgians’ “right to expect that their government officials will be beyond reproach,” the Attorney General’s Office has “prosecuted and obtained convictions against a number of state officials who violated the public trust.” *Public Corruption*, OFF. OF THE ATTY GEN., <https://law.georgia.gov/public-corruption> (last visited Oct. 24, 2021).

9. In 2021, three elected Georgia district attorneys were indicted. Bill Rankin, *Another Georgia District Attorney Indicted, this One for Bribery*, AJC (Sept. 7, 2021), <https://www.ajc.com/news/crime/another-georgia-district-attorney-indicted-this-one-for-bribery/FQFS6DUWWJFDTHQTGTCPX5NHWY/>. The Georgia Attorney General’s Office indicted (1) the Paulding County District Attorney on, among other offenses, bribery; (2) the Glynn County District Attorney for obstructing an investigation and extending favor to acquaintances suspected, and later convicted of crimes; and (3) the now-former Muscogee County District Attorney with suborning perjury and offering assistant district attorneys money in exchange for obtaining a conviction and lying. *Id.* Later in this Article, we discuss the Glynn and Muscogee County allegations more in-depth. But even when a prosecutor complies with the law, room for error in convictions still exists: “[A] properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt, and the same may be said of a trial judge sitting as a jury.” *Jackson v. Virginia*, 443 U.S. 307, 317 (1979).

prosecutors to foster integrity and accountability in systemic reform efforts, helping the arc of the moral universe bend toward justice.¹⁰ Each counterpart plays a pivotal role, and each side has a story to tell. Advocates owe it to one another to work together whenever possible to ensure that communities are served and that justice is done. We should strive to keep what works, eliminate what does not, and look for ways to improve an imperfect system designed for, and implemented by, imperfect humans.

With that in mind, this Article addresses the current state of the Georgia criminal legal system as it pertains to conviction integrity reforms and wrongful convictions. It does not tell the whole story, and it does not pretend to have any magical answers or solutions to deep-rooted issues. Instead, this Article is meant to be part of the patchwork of literature on Georgia criminal law that continues the conversation about where we are now and where we hope to be, contemplating ways to achieve a better system. First, it addresses the problem of wrongful convictions. Second, it examines the role of prosecutors in correcting wrongful convictions and the landscape of prosecutorial attitudes in Georgia. Finally, it considers the viability of different reform efforts. Although it is too early to tell where current trends will lead, we are optimistic about the potential for progress in Georgia's criminal legal system.

II. PREVALENCE AND PROBLEM OF WRONGFUL CONVICTIONS

The most obvious example of a wrongful conviction is the conviction of a factually innocent person, but the term can be broader; it can also include a conviction, regardless of the defendant's factual innocence, in which procedural errors violated the defendant's rights.¹¹ Of course, not every error at trial will or necessarily should result in a wrongful conviction—the nature of the right and the nature of the violation matter in determining whether an error undermines confidence in the

10. People may disagree about what “justice” is in some contexts, but we should all agree that justice is not present when the government resorts to intentional misconduct. Finding the middle ground in this context is an essential part of the conversation we must all have before working to pull the arc of the universe toward justice because it doesn't bend on its own. Mychal Denzel Smith, *The Truth About 'The Arc Of The Moral Universe'*, HUFFPOST, https://www.huffpost.com/entry/opinion-smith-obama-king_n_5a5903e0e4b04f3c55a252a4 (last updated Jan. 18, 2018).

11. *Wrongful Convictions*, NAT'L INSTITUTE OF JUST., <https://nij.ojp.gov/topics/justice-system-reform/wrongful-convictions> (last visited Oct. 24, 2020).

verdict.¹² In that sense, the broader definition of a wrongful conviction can be ambiguous. For purposes of this Article, though, the term is given its broader definition because, ultimately, the two situations often overlap.

According to the National Registry of Exonerations, 3,036 people have been exonerated in the United States since 1989, resulting in more than 26,700 years lost to wrongful incarceration.¹³ And although the exact rate of wrongful convictions is practically impossible to know, studies have estimated that the system gets it wrong anywhere from 4% to 6% of the time.¹⁴ If those percentages and Georgia's year-end count of incarcerated people are used, there were anywhere from 1,845 to 2,767 factually innocent people in Georgia's prisons in 2020.¹⁵ Certainly, people may disagree with these calculations, but whether these numbers are exact is not the point. The point is that innocent people are convicted, and Georgia's error rate is without a doubt higher than the forty-seven exonerations it has had since 1989.¹⁶ The state's relatively low number of exonerations likely can be attributed to several factors, including procedural barriers, lack of counsel, or a lack of new evidence, but a large part of the problem likely stems from indifference to post-conviction claims of innocence and injustice.

Six factors are generally considered the primary causes of wrongful convictions: (1) eyewitness misidentification; (2) official misconduct (3) invalid or inaccurate forensic evidence; (4) false accusations; (5) false

12. Jonathan D. Colan, *Structural Errors are Not Created Equal and are Not All Per Se Reversible*, 67 DEP'T JUST. J. FED. L. AND PRAC. 125 (Apr. 2019).

13. THE NATIONAL REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (last visited Nov. 15, 2021).

14. Samuel R. Gross et al., *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 111 PROC. NAT'L ACAD. SCI. no. 20 (2014); Michele W. Berger, *Wrongful Convictions Reported for 6 Percent of Crimes*, U. PA. (May 8, 2018), <https://penntoday.upenn.edu/news/first-estimate-wrongful-convictions-general-prison-population>; *Research Resources*, INNOCENCE PROJECT, <https://innocenceproject.org/research-resources/> (last visited Nov. 15, 2021).

15. GA. DEP'T OF CORRECTIONS, YEAR-END COUNTS OF INMATES OF THE GEORGIA PRISON SYSTEM, 1925 TO PRESENT (2020), <http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/1925pop.pdf> [hereinafter GEORGIA YEAR-END COUNT].

16. *Exonerations by State*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> (last visited Nov. 15, 2021).

confessions; and (6) inadequate legal defense.¹⁷ Other significant considerations impacting individual wrongful conviction factors are implicit bias, tunnel vision, and confirmation bias.¹⁸ Of the aforementioned factors, official misconduct—most often referring to misconduct by prosecutors and police—has been a leading contributor in about 55% of exonerations.¹⁹ In some jurisdictions, the rate is even higher.²⁰

Since 1925—the start of Georgia’s year-end count of incarcerated people—the state’s prison population, like prison populations across the nation, has grown exponentially.²¹ From 1925 until 1974, the population was below 10,000 and as low as 2,945.²² Since 1999, the state’s prison population has been over 40,000 and as high as 54,281.²³ The 1,434% increase from 1925 to 2020 makes correcting wrongful convictions more critical than ever and raises important questions. Statistically speaking, the more convicted people there are, the more innocent people there will be in prisons.

17. *Detailed View*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx> (last visited Nov. 15, 2021).

18. *The Psychological Phenomena That Can Lead to Wrongful Convictions*, INNOCENCE PROJECT (Nov. 18, 2018), <https://innocenceproject.org/the-psychological-phenomena-of-wrongful-convictions/>.

19. At the time this Article was written, there were 3,036 total exonerations in the National Registry’s interactive data display, and official misconduct was present in 1,632 cases. *Exonerations By State*, *supra* note 16.

20. For example, a recent Kings County, New York, Conviction Review Unit report noted that twenty-three of its twenty-five exonerations involved misconduct. DIST. ATTY KINGS CNTY., 426 YEARS: AN EXAMINATION OF 25 WRONGFUL CONVICTIONS IN BROOKLYN, NEW YORK 19 (2020).

21. GEORGIA YEAR-END COUNT, *supra* note 15. Georgia’s year-end inmate count is based on “state prisoners in state prisons, inmate boot camps, county prisons, transition centers, [and] private prisons.” *Id.* It “[d]oes not include probationers in detention centers, diversion centers, or probation boot camps, nor inmates in county jails.” *Id.* For national trends, see *Criminal Justice Facts*, SENTENCING PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/> (last visited Oct. 24, 2020). Although in 2019, the United States’ incarceration rate fell to its lowest rate since 1995, the United States still “incarcerates a larger share of its population than any other country for which data is available.” John Gramlich, *America’s Incarceration Rate Falls to Lowest Level Since 1995*, PEW RSCH. CTR. (Aug. 16, 2021), <https://www.pewresearch.org/fact-tank/2021/08/16/americas-incarceration-rate-lowest-since-1995/>.

22. GEORGIA YEAR-END COUNT, *supra* note 15.

23. *Id.*

III. THE ROLE OF PROSECUTORS IN CORRECTING WRONGFUL CONVICTIONS

A. *National Developments*

Nationally, many exonerations are the result of collaboration between prosecutors and defense counsel.²⁴ This method of producing exonerations makes sense given that prosecutors have a duty to further the ends of justice, the weight guilty verdicts and guilty pleas have,²⁵ and the limited avenues for post-conviction relief.²⁶

While studies vary on the prevalence of collaboration in exonerations, recent trends show that more and more prosecutors are receptive to the reality that wrongful convictions occur, and with alarming frequency. For example, the National Registry of Exoneration's 2020 report indicates that, for homicide cases, conviction integrity unit involvement has slowly ticked upwards since 2013: there were four exonerations in 2013, seventeen in 2014, and thirty-one in 2019.²⁷ According to the same report, conviction integrity unit exonerations in homicide cases account for "31% of all homicide exonerations since 2014."²⁸ When it comes to drug crime exonerations, however, the numbers tell a different

24. NAT'L REGISTRY OF EXONERATIONS, ANNUAL REPORT 3, 8 (2020); Elizabeth Webster, *The Prosecutor as a Final Safeguard Against False Convictions: How Prosecutors Assist with Exoneration*, 110 J. CRIM. L. AND CRIMINOLOGY 245, 258–59 (2020); Jon B. Gould & Richard A. Leo, *The Path to Exoneration*, 79 ALBANY L. REV. 325, 365 (2016).

25. Our beyond-a-reasonable-doubt standard is the linchpin of the American legal system, "giv[ing] 'concrete substance' to the presumption of innocence to ensure against unjust convictions, and to reduce the risk of factual error in a criminal proceeding." *Jackson*, 443 U.S. at 315. After a guilty verdict, the general inquiry is "whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt," which does not depend on "whether [a court] believes that the evidence at the trial established guilt beyond a reasonable doubt," but rather, on whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 318–19 (emphasis in original). In conducting that inquiry, courts review the evidence in the light most favorable to the state. *State v. Jackson*, 294 Ga. 9, 10, 748 S.E.2d 902, 903 (2013). If, however, a conviction is the product of a guilty plea, which most are, a defendant cannot withdraw the plea unless the defendant entered into the plea involuntarily or unknowingly, or withdrawal is necessary to remedy "manifest injustice [or] ineffective assistance of counsel." *Upton v. State*, 350 Ga. App. 535, 829 S.E.2d 791, 793 (2019).

26. Although a detailed description of post-conviction avenues in Georgia is beyond the scope of this Article, there are generally three: "an extraordinary motion for new trial, [O.C.G.A.] § 5-5-41, a motion in arrest of judgment, [O.C.G.A.] § 17-9-61, or a petition for habeas corpus. [O.C.G.A.] § 17-9-4." *Harper v. State*, 286 Ga. 216, 217, 686 S.E.2d 786, 786 (2009).

27. NAT'L REGISTRY OF EXONERATIONS, ANNUAL REPORT, *supra* note 24, at 14.

28. *Id.*

story. Since 2014, 83% of drug crime exonerations have been the product of conviction integrity unit involvement.²⁹

Conviction integrity units are a relatively new concept, but are more frequently being implemented around the country.³⁰ In 2011, according to the National Registry of Exonerations, there were six conviction integrity units.³¹ That number quadrupled to twenty-four by 2015.³² As of early November 2021, there are ninety-three recognized conviction integrity units on the registry.³³ In 2014, the first federal conviction integrity unit was established in the District of Columbia.³⁴ Like the unit established in D.C., the vast majority of conviction integrity units are part of individual prosecutorial offices, functioning as divisions under the control of the chief prosecutor in each office.³⁵ But that is not always the case; at least one state, North Carolina, has a statewide program that functions as an independent state agency.³⁶ The varying success rates of conviction integrity units across the country, however, have caused some tension and created the perception that many were established for cosmetic reasons.³⁷ But, if executed properly, as outlined later in this Article, conviction integrity units represent an effective way to promote accountability for wrongful convictions.

29. *Id.*

30. Richard A. Opper, Jr. & Farrah Stockman, *Prosecutors Usually Send People to Prison. These Are Getting Them Out*, N.Y. TIMES (Nov. 28, 2019), <https://www.nytimes.com/2019/11/28/us/conviction-integrity-unit-innocence.html>.

31. NAT'L REGISTRY OF EXONERATIONS, CONVICTION INTEGRITY UNITS 1 (2016), https://www.law.umich.edu/special/exoneration/Documents/2.2016_Newsletter_Art2.pdf.

32. *Id.*

33. *Conviction Integrity Units*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Conviction-Integrity-Units.aspx> (last updated Nov. 4, 2021).

34. Press Release, U.S. Dep't of Just., U.S. Attorney Machen Announces Formation Of Conviction Integrity Unit Initiative Follows Comprehensive Review Of Older Cases (Sept. 12, 2014), <https://www.justice.gov/usao-dc/pr/us-attorney-machen-announces-formation-conviction-integrity-unitinitiative-follows>.

35. See Opper. & Stockman, *supra* note 30; *Conviction Integrity Units*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Conviction-Integrity-Units.aspx> (last updated Nov. 4, 2021). The National Registry of Exonerations uses this definition: "A Conviction Integrity Unit (CIU) is a division of a prosecutorial office that works to prevent, identify, and remedy false convictions. They are sometimes called Conviction Review Units (CRUs)." *Id.*

36. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION, <https://innocencecommission-nc.gov> (last visited Nov. 18, 2020).

37. Opper. & Stockman, *supra* note 30.

B. Georgia Exoneration Cases

When it comes to Georgia, statistics related to prosecutor cooperation are not readily available.³⁸ But the figures that are available through the National Registry of Exonerations and other sources suggest that Georgia prosecutors—like most traditional prosecutors—have a long history of opposing post-conviction relief and testing for the wrongfully convicted. That said, these results do not tell the whole story because the data set is limited to the forty-seven exonerees listed on the registry; and the results miss post-conviction cases where defendants freed from conviction do not qualify as exonerees, even if the freed persons maintain their innocence.³⁹ To get a better understanding of

38. The Fulton County's conviction integrity unit was involved in two exoneration in 2021: Mario Stinchcomb and Michael Woolfolk. Maurice Possley, *Mario Stinchcomb*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5954> (last updated May 22, 2021); Maurice Possley, *Michael Woolfolk*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5968> (last updated May 22, 2021).

39. For example, post-conviction litigants like Johnny Lee Gates, whose factual innocence was supported by exculpatory DNA evidence, are not included on the National Registry of Exonerations. In 1977, Gates, a then twenty-one-year-old Black man, was sentenced to death for the murder of a nineteen-year-old white female. *State v. Gates*, 308 Ga. 238, 239, 840 S.E.2d 437, 439–40 (2020) (hereinafter *Gates II*). The State of Georgia then destroyed most of the evidence from Gates's case before his direct appeal was complete. *See id.* at 245–46, 840 S.E.2d at 444 (“The State's records . . . contained a document” with the “notation: “DESTROYED May 2, 1979.”); *Gates v. State*, 244 Ga. 587, 261 S.E.2d 349 (1979) (hereinafter *Gates I*) (decided October 24, 1979). Gates then spent twenty-six years on death row before the State agreed to convert his death sentence to life without the possibility of parole following a series of protracted intellectual disability proceedings. *Gates II*, 308 Ga. at 246, 840 S.E.2d at 445. About twelve years later, interns from the Georgia Innocence Project discovered evidence from Gates's trial that was thought destroyed, sparking a legal battle over DNA testing and evidence of other constitutional violations—including racial discrimination by the prosecution in jury selection—that would ultimately lead to Gates's freedom. *Id.* at 247–49, 265 n.22, 840 S.E.2d at 445–46, 457. In 2018, after an extraordinary motion for a new trial was granted, the State appealed the case to the Georgia Supreme Court, arguing that Gates failed to satisfy the six-factor *Timberlake* test because he did not exercise diligence and that the DNA results were immaterial. *Id.* at 250, 840 S.E.2d at 447. The Georgia Supreme Court affirmed the trial court's decision in 2020, stating that “the newly discovered evidence now available to Gates casts significant doubt on the State's theory that Gates was the perpetrator,” sending Gates's case back to its pretrial posture. *Id.* at 259, 265, 840 S.E.2d at 453, 456. Then, facing a district attorney who refused to dismiss the original charges and the growing COVID-19 pandemic, Gates—at age sixty-four—entered into an *Alford* agreement and walked out of the Muscogee County Jail free. *Johnny Lee Gates*, GA. INNOCENCE PROJECT (May 15, 2020), <https://www.georgiainnocenceproject.org/cases/freed->

Georgia's post-conviction landscape, more information is needed, but of the forty-seven recognized exonerees on the registry, which only goes back to 1989:

- twenty-two of the cases involved some form of misconduct;
- twenty-four of the cases involved perjury or a false accusation;
- seventeen of the cases involved bad forensic evidence;
- three of the cases involved a false confession;
- sixteen of the cases involved some form of mistaken identity;⁴⁰ and
- eight of the cases appear to have involved cooperation from district attorneys' offices before a court ordered DNA testing or vacated a conviction.⁴¹

Below is a list of all forty-seven exonerations on the national registry and summaries of the case facts, organized by year of exoneration.

1989	<p>James Williams, the subject of the book <i>Midnight in the Garden of Good and Evil</i>,⁴² was tried four times after shooting his assistant. The first two trials were overturned by the Supreme Court of Georgia based on prosecutorial errors; the third was a mistrial; and the fourth trial, which was relocated to Augusta, resulted in an acquittal.⁴³</p>
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clients/johnny-lee-gates/. Leading up to his release, Gates was represented by Georgia Innocence Project and Southern Center for Human Rights. *Id.*

40. *Exonerations by State*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> (last visited Nov. 15, 2021).

41. Each of these cases is marked with an * after the exoneree's name.

42. JOHN BERENDT, *MIDNIGHT IN THE GARDEN OF GOOD AND EVIL* (1999).

43. Maurice Possley, *James Williams*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4195> (updated Apr. 23, 2021).

1661	<p>Gary Nelson was sentenced to death for raping and murdering a six-year-old girl in Savannah after prosecutors represented that Nelson was “readily identified” in a photo lineup and hair at the scene matched Nelson.⁴⁴ The Supreme Court of Georgia upheld his death sentence before pro bono defense attorneys discovered that Nelson was not “readily identified” and that the Federal Bureau of Investigation had authored a report stating that the hair at the scene was not suitable for significant comparison.⁴⁵ The District Attorney dropped the case after the supreme court vacated his conviction.⁴⁶</p>
1691	<p>Terry Lee Wanzer was convicted of rape and aggravated sodomy after he was identified from a photo lineup even though there was no physical evidence and he presented three alibi witnesses. Later, the judge that sentenced him asked the state to reopen the case, but the District Attorney refused. Eventually, Wanzer was paroled in 1981 and was granted a pardon based on innocence in 1991. In 2018, DNA evidence excluded Wanzer.⁴⁷</p>
1694	<p>Ron Leverett was convicted of drug charges after he wandered onto the scene of a drug bust and was falsely identified as Tom Clark, a local drug dealer. Although Tom Clark confessed to a local police investigator that he, not Leverett, committed the crime, Leverett’s appeals were unsuccessful. Leverett was pardoned in 1994.⁴⁸</p>

44. Alexandra Gross, *Gary Nelson*, NAT’L REGISTRY OF EXONERATIONS (June 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3501>.

45. *Id.*

46. *Id.*

47. Stephanie Denzel, *Terry Lee Wanzer*, NAT’L REGISTRY OF EXONERATIONS <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3716> (updated June 28, 2019).

48. Stephanie Denzel, *Ron Leverett*, NAT’L REGISTRY OF EXONERATIONS (June 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3381>.

1997	Jack Dinning was convicted of a double murder after the state granted three witnesses immunity in exchange for their testimony but never disclosed the immunity agreements to the defense. After the Supreme Court of Georgia reversed Dinning's conviction, a retrial resulted in acquittal. ⁴⁹
1997	The thirteen-year-old son of Wayne Cservak's girlfriend accused Cservak of molesting him. ⁵⁰ One of the jurors, however, was a lone, initial holdout and was "browbeaten" into voting to convict. ⁵¹ Even before sentencing, the juror wrote the judge requesting mercy for Cservak because he strongly believed Cservak was wrongly accused. After Cservak was sentenced to 10 years' imprisonment, the juror hired an attorney who successfully sought a new trial. Even after a new trial was granted and the state filed a perjury petition against the thirteen-year-old boy, the District Attorney continued to push back against claims that Cservak was innocent. ⁵² The state eventually dismissed the charges.
1999	Calvin Johnson Jr.* was convicted of raping a woman in College Park, Georgia, after an analyst improperly testified that 36% of males could be excluded as contributors based on lab results. ⁵³ After an extraordinary motion for a new trial was filed, the District Attorney's Office voluntarily turned over DNA for testing and did not challenge the exculpatory DNA results, agreeing to Johnson's release. ⁵⁴ Johnson served sixteen years in prison. ⁵⁵

49. Maurice Possley, *Jack Dinning*, NAT'L REGISTRY OF EXONERATIONS (Dec. 30, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4339>.

50. Maurice Possley, *Wayne Cservak*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3141> (last updated Sept. 1, 2021).

51. *Id.*

52. Barry Siegel, *Lone Juror's Change of Heart in Child Molestation Case Tips Scales of Justice*, L.A. TIMES (Mar. 10, 1998), <https://www.latimes.com/archives/la-xpm-1998-mar-10-mn-27462-story.html>.

53. *Calvin Johnson*, INNOCENCE PROJECT, <https://innocenceproject.org/cases/calvin-johnson/> (last visited Nov. 14, 2021).

54. David Firestone, *DNA Test Brings Freedom, 16 Years After Conviction*, N.Y. TIMES (June 16, 1999), <https://www.nytimes.com/1999/06/16/us/dna-test-brings-freedom-16-years-after-conviction.html>.

55. *Calvin Johnson*, *supra* note 53.

2000	<p>Shelia Bryan was convicted of murdering her eighty-two-year-old mother after the mother died in a car accident. After the Supreme Court of Georgia reversed the conviction based on evidentiary issues, a jury acquitted Bryan following testimony from a Texas arson expert who testified that the state’s experts utilized outdated and disproven arson theories.⁵⁶</p>
2002	<p>Samuel Scott and Douglas Echols were convicted of raping, kidnapping, and robbing a woman in Savannah, Georgia, based on a witness identification despite two alibi witnesses in their support. In 1996, prosecutors consented to DNA testing, which excluded both individuals. Nevertheless, the District Attorney’s Office resisted the notion that the results proved innocence and tested a reference sample from the victim’s then-boyfriend—despite statements that she had not had consensual sex within the relevant period—before dismissing the indictments. Before the indictments were dismissed, Scott was released on parole and arrested for failing to register as a sex offender.⁵⁷</p>

56. Maurice Possley, *Shelia Bryan*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3066> (last updated Apr. 2, 2021).

57. *Samuel Scott*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3623> (last visited Nov. 14, 2021); *Douglas Echols*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3199> (last updated Jan. 29, 2019).

2004	<p>Weldon Wayne Carr was convicted of murdering his wife after their house caught fire. The supreme court, however, reversed on evidentiary issues in 1997 and criticized the prosecutor for engaging in “extensive inappropriate” misconduct.⁵⁸ Three years later, the case was dismissed because the prosecution failed to re-prosecute the case.⁵⁹</p> <p>Clarence Harrison* was sentenced to life in prison in 1986 after he was convicted of sexual assault. After the Georgia Innocence Project got involved in his case, however, Dekalb County prosecutors assisted and found evidence for DNA testing. The tests confirmed that Harrison was innocent, and prosecutors consented to his exoneration.⁶⁰</p>
2005	<p>Robert Clark, who did not match the victim’s initial description, was convicted of rape and armed robbery in 1982 after he admitted to driving the victim’s car after it was stolen. The state unsuccessfully opposed DNA testing in 2003, but it successfully appealed the issue of which lab should test the DNA. Two years later, a California lab excluded Clark as the perpetrator based on exculpatory DNA tests.⁶¹</p>
2006	<p>Johnathan Adams, a twelve-year-old boy at the time, was convicted of strangling an eight-year-old girl. Two years after his conviction, a mentally challenged eighteen-year-old confessed to the killing, revealing specific details about the girl’s death. Adams’s conviction was later vacated.⁶²</p>

58. Maurice Possley, *Weldon Wayne Carr*, NAT’L REGISTRY OF EXONERATIONS (July 3, 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3936>.

59. *Id.*

60. *Man Exonerated by New DNA Test*, SUN JOURNAL (Sept. 1, 2004), <https://www.sunjournal.com/2004/09/01/man-exonerated-new-dna-test/>.

61. *Robert Clark*, INNOCENCE PROJECT, <https://innocenceproject.org/cases/robert-clark/> (last visited Nov. 13, 2021).

62. Maurice Possley, *Jonathan Adams*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=2981> (last visited Nov. 14, 2021).

2007	<p>John Jerome White* was convicted of raping and robbing a seventy-four-year-old woman in 1979. In 2004, when the Georgia Innocence Project located testable evidence from the crime, the Coweta District Attorney's Office agreed to DNA testing, which excluded White.⁶³</p> <p>Willie Williams was convicted of rape in 1985. After his conviction was affirmed on appeal, his attorney learned of three similar crimes that occurred after Williams was arrested. New DNA testing, however, did not happen until a court ordered it in 2006. The results excluded Williams and matched the perpetrator of the three similar crimes.⁶⁴</p> <p>Lori Campbell was convicted of theft by deception in 2005. The Georgia Court of Appeals, however, reversed the conviction because there was no evidence on one of the necessary elements and dismissed the case.⁶⁵</p>
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63. *John Jerome White*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3735> (last updated Nov. 22, 2016).

64. *Willie Williams*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3751> (last updated June 6, 2017).

65. Maurice Possley, *Lori Campbell*, NAT'L REGISTRY OF EXONERATIONS (Jan. 12, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5257>.

2009	<p>Tom Edwin Chumley was convicted of murdering his mother. Chumley confessed, but he later recanted. After the Georgia Supreme Court reversed his conviction because the judge improperly decided a matter for the jury, the defense presented testimony that, months before the confession, Chumley told a friend he was going to confess falsely. The jury acquitted.⁶⁶</p> <p>Melonie Ware was convicted of murdering a nine-month-old baby. Although the child had sickle cell disease, the state said there was no sign the disease caused the child's death. When the case was retried, defense experts revealed that the disease did cause the baby's death.⁶⁷</p> <p>Michael Marshall pleaded guilty to armed robbery after the court failed to suppress an eyewitness identification. After the Georgia Innocence Project got involved in 2008, DNA testing excluded Marshall, and the Fulton County Superior Court ordered Marshall's release.⁶⁸</p>
2011	<p>Days before Lathan Word was supposed to report to basic training, a store was robbed. Although the employee initially could not identify the robber, he later identified Word. After Word's conviction, his lawyer did not file an appeal. Years later, an out-of-time appeal was granted, but again, no appeal was filed. Eventually, Word received assistance with a motion for a new trial, and although it was rejected, the Georgia Court of Appeals reversed on appeal. During the retrial, the witness who identified Word—by then serving life sentences for armed robbery and murder—refused to testify, stating, "I refuse to lie. I've been lying all along." The court then granted Word's request for a dismissal.⁶⁹</p>

66. Maurice Possley, *Tom Edwin Chumley*, NAT'L REGISTRY OF EXONERATIONS (June 25, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4204>.

67. Alexandra Gross, *Melonie Ware*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3814> (last visited Nov. 14, 2021).

68. Maurice Possley, *Michael Marshall*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3408> (last visited Nov. 13, 2021); *Michael Marshall*, GA. INNOCENCE PROJECT (Dec. 14, 2009), <https://www.georgiainnocenceproject.org/cases/freed-clients/michael-marshall/>.

69. Maurice Possley, *Lathan Word*, NAT'L REGISTRY OF EXONERATIONS (Mar. 12, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4119>.

2012	<p>In 2011, Leonard Swanagan was convicted of failing to register as a sex offender. After Swanagan reached out to the media for help, they discovered that Swanagan should have been removed from the registry in 2004, and the state agreed that he was not required to register as a sex offender in Georgia.⁷⁰</p>
2013	<p>Timothy Johnson was convicted of murdering a store clerk after he was identified by an informant. The state sought death and arrested Johnson's mother, stepfather, and then-girlfriend, but after Johnson pleaded guilty, the state dropped death and dismissed the charges against Johnson's family. Johnson filed a <i>pro se</i> habeas petition, and the Supreme Court of Georgia vacated his plea. At the retrial, Johnson presented alibi witnesses, and the state had lost most of the evidence against him. Johnson was acquitted.⁷¹</p> <p>Christopher Roesser was convicted of murder as part of a bad drug deal. Roesser did not deny shooting the victim; he claimed self-defense. During his trial, a detective corroborated testimony that the victim never threatened Roesser. After the Supreme Court of Georgia reversed, the defense discovered the medical examiner's notes that contradicted the detective's testimony. The second jury acquitted on all but a lesser included offense, deadlocking in favor of acquittal. The Supreme Court of Georgia dismissed a third retrial.⁷²</p>

70. Maurice Possley, *Leonard Swanagan*, NAT'L REGISTRY OF EXONERATIONS (July 2, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4454>.

71. Maurice Possley, *Timothy Johnson*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4318> (updated Nov. 10, 2015).

72. Maurice Possley, *Christopher Roesser*, NAT'L REGISTRY OF EXONERATIONS (Nov. 21, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4308>.

2013	<p>David Peralta was convicted of murdering a woman with whom he had a previous relationship. After his trial, one of the witnesses admitted to falsely accusing him in exchange for a lesser charge. Nevertheless, the state opposed a new trial, and the court found the recantation lacked credibility. In 2006, a federal investigation revealed evidence that Peralta was innocent and turned it over to the state in 2008.⁷³</p> <p>Nathan Christopher Dwight was charged with robbing a convenience store and stealing a car. After he was convicted, his attorneys filed a motion for DNA testing, which revealed that Dwight's DNA was not present. The state then dismissed all charges. Later, a video revealed that a white detective threatened him with an all-white jury that would see him as a "n*****."⁷⁴</p>
2015	<p>Lawrence William Lee Jr. was convicted at trial of murdering a family of three. Lawrence filed a habeas petition in 1989, and his case bounced around: the habeas court denied the petition; an appeal remanded the case for further hearings; the habeas court denied the motion again; then the Supreme Court of Georgia allowed Lee's attorneys to examine Georgia Bureau of Investigation files, revealing exculpatory evidence that was never disclosed. In 2006, the trial court granted a new trial, pointing out that state prosecutors withheld evidence that Lee was not the perpetrator, allowed witnesses to lie, and failed to disclose inconsistent statements. The state later dismissed the charges after Lee sought to bar re-prosecution.⁷⁵</p>

73. Maurice Possley, *David Peralta*, NAT'L REGISTRY OF EXONERATIONS (Sept. 19, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4275>.

74. Maurice Possley, *Nathan Christopher Dwight*, NAT'L REGISTRY OF EXONERATIONS (Nov. 8, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4300>.

75. Maurice Possley, *Lawrence William Lee, Jr.*, NAT'L REGISTRY OF EXONERATIONS (Jan. 18, 2016), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4824>.

2015	<p>Michael Googe* was convicted of robbing a convenience store. The Georgia Innocence Project, however, as part of a collaboration with the Georgia Bureau of Investigation and the Prosecuting Attorneys' Council of Georgia, made possible by a two-year grant from the U.S. Department of Justice, uncovered exculpatory DNA evidence, leading prosecutors to consent to a new trial.⁷⁶</p>
2016	<p>Justin Chapman was convicted of murder in 2007 after his duplex caught fire and killed his neighbor. In 2013, however, his attorneys filed a post-conviction petition based on, among other things, a newly discovered interview of an informant in the case asking for favorable treatment and inconsistent statements that were not turned over to the defense. After Chapman's petition was granted, the state appealed, and the Supreme Court of Georgia affirmed.⁷⁷</p>
2017	<p>Kelvin Bradley was convicted of aggravated assault after shooting and killing a thirty-six-year-old woman recklessly driving around an Atlanta neighborhood and striking several individuals. After granting Bradley a new trial, the Fulton County Superior Court granted Bradley immunity because the state failed to establish that he had a duty to flee, and the state did not appeal.⁷⁸</p>

76. *Michael Googe*, GA. INNOCENCE PROJECT (Aug. 6, 2015), <https://www.georgiainnocenceproject.org/cases/freed-clients/michael-googe/>; Maurice Possley, *Michael Googe*, NAT'L REGISTRY OF EXONERATIONS (Aug. 20, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4740>.

77. Maurice Possley, *Justin Chapman*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4938> (last updated July 4, 2019).

78. Maurice Possley, *Kelvin Bradley*, NAT'L REGISTRY OF EXONERATIONS (May 16 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5134>.

2017	<p>Burrell Ellis was charged with crimes related to his duties as the chief executive officer of Dekalb County. His first jury, however, could not reach a unanimous verdict, and a mistrial was declared. The second trial resulted in a conviction, but the Supreme Court of Georgia reversed because the trial court allowed a grand juror to testify. The Dekalb County District Attorney then dismissed the charges, citing judicial economy and taxpayer costs.⁷⁹</p>
2018	<p>Dominic Lucci, Kenneth Gardiner, and Mark Jones were convicted of gunning down a thirty-five-year-old based on eyewitness identification of a car they were driving. After their convictions, however, defense attorneys discovered contradictory police reports and pressure by the police to identify Lucci, Gardiner, and Jones. The trial court, however, denied two rounds of post-conviction petitions before the Supreme Court of Georgia vacated all three convictions. The Chatham County District Attorney's Office pursued a retrial but ultimately decided to drop the case.⁸⁰</p> <p>Trevor Cannon was convicted of vehicular homicide after his truck collided with an SUV on Interstate 516, killing two individuals. Afterward, defense attorneys located a recorded statement from an emergency medical technician that undermined the state's theory and corroborated Cannon's trial defense. The Chatham County Superior Court then awarded Cannon a new trial, and the District Attorney's Office pursued a retrial but dismissed the charges.⁸¹</p>

79. Maurice Possley, *Burrell Ellis*, NAT'L REGISTRY OF EXONERATIONS (Feb. 23, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5097>.

80. Maurice Possley, *Mark Jones*, NAT'L REGISTRY OF EXONERATIONS (July 20, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5354>; Maurice Possley, *Kenneth Gardiner*, NAT'L REGISTRY OF EXONERATIONS (July 20, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5355>; Maurice Possley, *Dominic Lucci*, NAT'L REGISTRY OF EXONERATIONS (July 20, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5356>.

81. Maurice Possley, *Trevor Cannon*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5258> (last updated Apr. 3, 2020).

2019	<p>Elgerie Cash and Jennifer Weathington were charged after Weathington's boyfriend was accidentally shot and killed. The trial court, however, awarded a new trial based on ineffective assistance of counsel. The state sought to retry the case, and the Georgia Bureau of Investigation's chief medical examiner admitted that he had erred.⁸²</p>
2020	<p>Marlina Hamilton was convicted after she shot her ex-husband. The trial court, however, granted a motion for a new trial based on ineffective assistance of counsel because, among other things, her trial attorney did not adequately present her self-defense claim and erroneously believed she could not pursue a pretrial self-defense ruling and a self-defense case at trial. After Hamilton was granted a new trial, the state appealed to the Supreme Court of Georgia, and the court affirmed. Ultimately, the case made its way back up to the supreme court after the trial court granted immunity from prosecution, and again, the court upheld the trial court's decision.⁸³</p> <p>Kerry Robinson* was convicted of raping a forty-two-year-old woman after two teens were identified from a local junior high yearbook and one of them accused Robinson. The DNA testimony in the case, however, was flawed. A new DNA testing method adopted by the Georgia Bureau of Investigation "indicated that a random African-American's DNA is 1,800 times more likely than Robinson's DNA to explain the mixture of DNA in the rape kit."⁸⁴ The new results prompted the Colquitt County District Attorney not to oppose Robinson's extraordinary motion for a new trial based on new DNA evidence, and he dismissed the underlying charges.⁸⁵</p>

82. Ken Otterbourg, *Jennifer Weathington*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5554> (last updated May 16, 2019); Ken Otterbourg, *Elgerie Cash*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5555> (last updated May 16, 2019).

83. *Marlina Hamilton*, NAT'L REGISTRY OF EXONERATIONS (July 31, 2020), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5773>.

84. *Kerry Robinson*, GA. INNOCENCE PROJECT (Jan. 8, 2020), <https://www.georgiainnocenceproject.org/cases/freed-clients/kerry-robinson/>.

85. *Id.*

2021	<p>Dennis Perry was convicted of murdering a church deacon and his wife after an anonymous tipster implicated him. Although Perry was initially cleared due to an alibi—he was working hundreds of miles from the shooting—Perry again became a suspect fifteen years later when an informant, seeking a \$25,000 reward, came forward. The prosecution agreed not to seek the death penalty in exchange for Perry agreeing not to appeal. In 2020, after a contested extraordinary motion for a new trial based on new DNA evidence that matched a key alternative suspect rather than Perry, the Glynn County Superior Court released Perry on bond. It took another year and the election of a new district attorney to get the charges dismissed.⁸⁶</p> <p>Michael Woolfolk* and Mario Stinchcomb* were convicted of murdering a twenty-two-year-old female. After they were convicted, however, new evidence came to light suggesting that they acted in self-defense, and Stinchcomb filed an extraordinary motion for a new trial. Although the state initially opposed it, convincing the superior court to deny the motion, the Fulton County conviction integrity unit got involved after the Supreme Court of Georgia sent the issue back for a hearing and consented to an order exonerating Stinchcomb. A motion to vacate Woolfolk’s conviction was filed later, and he was released a month after Stinchcomb.⁸⁷</p>
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86. *Dennis Perry*, GA. INNOCENCE PROJECT (July 19, 2021), <https://www.georgiainnocenceproject.org/cases/freed-clients/dennis-perry/>.

87. Maurice Possley, *Michael Woolfolk*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5968> (last updated May 22, 2021); Maurice Possley, *Mario Stinchcomb*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5954> (last updated May 22, 2021).

2021	<p>Albert Debelbot and Ashley Debelbot were convicted of murder after their infant daughter died three days after she was brought home from the hospital. Despite defense expert testimony explaining that the child died as a result of defects before or during birth, and a joint trial where the state, when describing the legal standard for findings of guilt—beyond reasonable doubt—informed the jury, “You don’t have to be 90% sure. You don’t have to be 80% sure. You don’t have to be 51% sure,” the state still opposed a new trial all the way to the Supreme Court of Georgia.⁸⁸ After the case was remanded, a newly elected district attorney dismissed it.⁸⁹</p> <p>Ronald Jacobsen was convicted of kidnapping and raping his ex-girlfriend despite several statements from the victim after the crime occurred that the assailant was a stranger. Jacobsen became a suspect in the case after a friend of the victim’s father, who had never met Jacobsen, told police he thought Jacobsen might be the culprit. Eventually, the victim also pointed the finger at Jacobsen. Despite an alibi that he was 150 miles away when the crime occurred, Jacobsen was convicted. In 2015, the Innocence Project and the Georgia Innocence Project sought DNA testing on the rape kit. After a contested hearing, testing was granted, and Jacobsen was excluded. After further litigation and several years, the District Attorney agreed that Jacobsen’s conviction should be vacated. Nevertheless, the district attorney did not consent to his release, and Jacobson remained in jail for twenty-one months before he was released on bond. A new district attorney agreed to dismiss the charges in 2021.⁹⁰</p>
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88. Shaddi Abusaid, *Prosecutor Won’t Retry Georgia Couple in Newborn’s Death*, *AJC* (Apr. 10, 2021), <https://www.ajc.com/news/prosecutor-wont-retry-georgia-couple-in-newborns-death/QTNWOTB6ARBSXPCUEILQHPV2FA/>.

89. *Id.*

90. *Ron Jacobsen*, GA. INNOCENCE PROJECT, <https://www.gorgiainnocenceproject.org/cases/freed-clients/ron-jacobsen/> (last visited Nov. 13, 2021).

2021	<p>Terry Talley* was convicted of multiple sexual assault offenses in 1981. Talley became a suspect when he was arrested regarding an unrelated incident stemming from an attempt to pay for sex. Despite no evidence connecting him to the offenses, investigators included him in photographic and in-person lineups, and witnesses identified him as the perpetrator. Talley received life sentences in two separate trials over forty-eight hours. He then pled to the remaining charges. In 2013, the Georgia Innocence Project secured DNA testing on the only remaining rape kit, which excluded Talley. He was granted a new trial in that case, but the underlying indictment was not then dismissed. The remaining convictions remained intact, as no biological evidence from the remaining cases could be located. After a renewed investigation into Talley’s case, the Georgia Innocence Project and the LaGrange Police Department presented Talley’s case to the Coweta County District Attorney’s Office. In February 2021, the DA joined with the Georgia Innocence Project in asking the court to vacate four of the convictions. The District Attorney then dismissed those underlying charges. Talley was released from prison after serving nearly forty years.⁹¹</p> <p>and then-Chief Justice Harold Melton [to write] separate opinions urging the Attorney General to stop defending Inman’s conviction.” The Attorney General continued contesting the case until the habeas court vacated Inman’s conviction. The local district attorney then dismissed the charges.</p>
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91. *Terry Talley*, GA. INNOCENCE PROJECT (Feb. 23, 2021), <https://www.georgiainnocenceproject.org/cases/freed-clients/terry-talley/>.

2021	<p>Devonia Inman was convicted of murder, armed robbery, theft, and illegally possessing a firearm. At trial, Inman attempted to introduce evidence indicating that Hercules Brown committed the murder, but the state withheld evidence connecting Brown to the crime. Without that evidence, the court prevented Inman from presenting the defense. Subsequently, post-conviction DNA testing of the perpetrator’s mask identified one DNA profile—that of Brown. Nevertheless, Inman was denied relief after a contested hearing. Inman then went on to file a habeas petition, raising recantation issues and additional evidence suggesting that Brown was the actual perpetrator. The Georgia Attorney General’s office opposed a hearing on the motion, and even after it was granted, appealed to the Georgia Supreme Court, prompting “[t]hen-presiding Justice David Nahmias and then-Chief Justice Harold Melton [to write] separate opinions urging the Attorney General to stop defending Inman’s conviction.” The Attorney General continued contesting the case until the habeas court vacated Inman’s conviction. The local district attorney then dismissed the charges.⁹²</p>
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After examining these cases and considering the statistics, one must ask why so many wrongful conviction cases lack prosecutorial cooperation and how our system got to where it is. Then, the next question is, if prosecutorial cooperation is so rare, and the chances of obtaining relief without it are bleak, how many wrongfully convicted people are there in Georgia that will likely never know freedom?

As a legal community and society, we cannot accept an unwillingness to right even the plainest of wrongs in a human-created, human-run system bound to encounter errors, misjudgments, and misconduct from time to time. Rather, we must work toward a more just path forward. The task will not be easy. It will require prosecutors and defense attorneys to cooperate to build a better system for everyone.

92. Maurice Possley, *Devonia Inman*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6089> (last updated Jan. 3, 2022); Clare Gilbert, *Devonia Inman Exonerated After 23 Years of Wrongful Imprisonment*, GA. INNOCENCE PROJECT (Dec. 20, 2021), <https://www.georgiainnocenceproject.org/2021/12/20/devonia-inman-exonerated/>.

C. Progressive Prosecutor Trend in Georgia

In some instances, efforts to improve the criminal legal system have already begun. In 2020, voters around the country elected a wave of prosecutors who ran on progressive platforms, ousting incumbents who, in the past, would have handily won re-election by touting tough-on-crime approaches, high conviction rates, and long sentences.⁹³ Instead, they lost to candidates pushing to reduce mass incarceration, to prioritize conviction integrity, and to encourage accountability reforms.⁹⁴ In many respects, Georgia was no exception.⁹⁵ At least eight incumbent district attorneys in Georgia lost re-election in 2020, and five of them represented the five largest cities in Georgia.⁹⁶ Another seven retired, resulting in fifteen newly elected district attorneys—roughly 30% of all Georgia judicial circuits at that time.⁹⁷

There is no single reason why each of these incumbents lost, but there are common factors among them that suggest their communities wanted change and accountability for their chief prosecutors. On the national level, Georgia's new wave of prosecutors came on the heels of social movements and media attention dominated by the tragic deaths of Black Americans caused by police officers—the very people meant to protect our communities.⁹⁸

93. Cheryl Corley, *Newly Elected DAs Vow to Continue Reforms, End Policies Deemed Unfair*, GA. PUB. BROAD. (Nov. 26, 2020), <https://www.gpb.org/news/2020/11/26/newly-elected-das-vow-continue-reforms-end-policies-deemed-unfair>; Caren Morrison, *Progressive Prosecutors Scored Big Wins in 2020 Elections, Boosting a Nationwide Trend*, THE CONVERSATION (Nov. 18, 2020), <https://theconversation.com/progressive-prosecutors-scored-big-wins-in-2020-elections-boosting-a-nationwide-trend-149322>.

94. *Id.*

95. See Greg Land, *Five GOP Georgia District Attorneys Defeated in Election*, DAILY REPORT (Nov. 4, 2020), <https://www.law.com/dailyreportonline/2020/11/04/five-gop-georgia-district-attorneys-defeated-in-election/?slreturn=20210425090801>; See also Bill Torpy, *Opinion: Why So Many GA DAs Got Dumped This Election Year*, AJC (Nov. 6, 2020), <https://www.ajc.com/opinion/columnists/opinion-why-did-so-many-georgia-das-get-dumped-this-election-year/5YFEBBKFBD35MQZ3VMYZOHWHM/>.

96. Torpy, *supra* note 95. The five cities are Atlanta, Augusta, Columbus, Macon, and Savannah. *Id.*

97. *Id.* Before the 2020 election cycle, there were forty-nine judicial circuits in Georgia. After the election cycle and the election of the Augusta Judicial Circuit's first black district attorney, the state split the circuit, taking away Columbia County—1/3 of the Augusta Judicial Circuit—and making it a new circuit: the Columbia County Judicial Circuit. O.C.G.A. § 15-6-1 (2021); Sandy Hodson, *Split of August Judicial Circuit Now in Hands of Georgia Supreme Court Justices*, AUGUSTA CHRONICLE (Nov. 10 2021), <https://www.augustachronicle.com/story/news/2021/11/10/georgia-supreme-court-voting-rights-challenge-augusta-judicial-circuit-split/6353292001/>.

98. See Kevin Cokley, *When is Enough, Enough?*, THE HILL (May 30, 2020), <https://thehill.com/opinion/civil-rights/500184-when-is-enough-enough>.

Brunswick's incumbent, Jackie Johnson, was involved in allegations of official misconduct related to her handling of the February 2020 murder of unarmed jogger Ahmaud Arbery,⁹⁹ and her defense of John Johnson, her longtime chief deputy. At one point, Johnson was named Georgia's top assistant district attorney because of his conviction record, but he came under scrutiny because of his "dark legacy of problem cases over the years—cases in which judges later found he cheated to win."¹⁰⁰ Johnson's office, including her chief deputy, also came under scrutiny in 2020 for its role in defending the conviction of now-exonerated Dennis Perry, who served twenty years for a 1985 double murder that DNA evidence indicated another person committed.¹⁰¹ Keith Higgins, who dismissed the charges against Perry after he defeated Johnson, cited the former district attorney's mishandling of cases as the reason he chose to run for office.¹⁰²

In Muscogee County, three-term incumbent, Julia Slater, was defeated by Columbus attorney, Mark Jones.¹⁰³ With more than twenty

99. Former District Attorney Johnson was indicted in September 2021 for obstruction of justice and violating her oath of office regarding her role in the prosecution of two of the men charged and later convicted in Arbery's death. Brad Schrade & Bill Rankin, *Former Glynn DA Johnson Arrested After Indictment Linked to Arbery Case*, AJC (Sept. 8, 2021), <https://www.ajc.com/news/former-glynn-da-johnson-arrested-after-indictment-linked-to-arbery-case/7Z36B5GBTFDXJAFJHQAJN3XG5I/>; Zoe Christen Jones, *3 Men Convicted in Ahmaud Arbery's Murder Found Guilty of Federal Hate Crimes*, CBS NEWS <https://www.cbsnews.com/news/ahmaud-arbery-trial-verdict-hate-crimes/> (last updated Feb. 22, 2022). Johnson allegedly instructed Glynn County police officers not to arrest Travis McMichael, the man who shot Arbery. She also allegedly exercised her discretion to bestow favor on Greg McMichael, Travis McMichael's father—also facing charges in the case, while failing to treat Arbery's family with dignity. *Id.*

100. Torpy, *supra* note 95; Bill Rankin et al., *Dark Legacy of Overtaken Convictions Trails Longtime Prosecutor*, AJC (July 24, 2020), <https://www.ajc.com/news/dark-legacy-of-overtaken-convictions-trails-longtime-prosecutor/4SDCY5SP3FGKJP4GVUTM4OLAMM/>.

101. Perry was granted a new trial in July 2020 following a contested hearing on his extraordinary motion for a new trial based on DNA evidence from the crime scene matching an alternate suspect. *Dennis Perry*, GA. INNOCENCE PROJECT (July 19, 2021), <https://www.georgiainnocenceproject.org/cases/freed-clients/dennis-perry/>. Perry's attorneys also alleged instances of official misconduct by the police and prosecutors involved in the case. *Id.* In July 2021, Perry was exonerated when new District Attorney Keith Higgins dismissed the charges against him. *Id.*

102. Harmeet Kaur, *How A Long-Shot Candidate Tossed Out the DA Accused of Mishandling the Ahmaud Arbery Case*, KCTV5 (Nov. 18, 2020), https://www.kctv5.com/how-a-long-shot-candidate-tossed-out-the-da-accused-of-mishandling-the-ahmaud-arbery/article_81491464-463c-5a5e-8ff6-36cf24c8f9df.html.

103. Tim Chitwood, *Election 2020: Unofficial Tally Shows Columbus DA Challenger Wins 6-County Judicial Race*, COLUMBUS LEDGER-ENQUIRER (June 10, 2020),

years of experience prosecuting cases in the Chattahoochee Judicial Circuit,¹⁰⁴ Slater was criticized by community members,¹⁰⁵ including the local NAACP,¹⁰⁶ for defending Johnny Gates's conviction. Gates was granted a new trial in 2019 following a contested hearing on his innocence claims related to the 1976 slaying of a Fort Benning soldier's wife, which included exculpatory DNA evidence and allegations of race discrimination and other misconduct by prosecutors and police.¹⁰⁷ Gates was released in 2020 after serving forty-three years in prison.¹⁰⁸ Slater's office also came under scrutiny in 2020 for defending the convictions of military couple Ashley and Albert Debelbot despite evidence of innocence concerning the death of their infant daughter, who defense experts claimed was born with fatal biological defects.¹⁰⁹ The Debelbots were exonerated in 2021 after Jones,¹¹⁰ who ran on a platform promising reform¹¹¹ as "the People's DA,"¹¹² requested dismissal of the charges.¹¹³ Jones himself was removed from office in November 2021 following convictions for various instances of misconduct, including

<https://www.ledger-enquirer.com/news/politics-government/election/article243417646.html>.

104. *Id.*

105. Wane A. Hailes, *The Johnny Lee Gates Story*, COURIER, Apr. 11, 2019, at 7–11, https://issuu.com/connectionssbj/docs/the_courier_04-11-19.

106. Olivia Gunn, *New Trial Granted for Man Convicted of Rape, Murder in Columbus in 1977*, WTVM 9 (Mar. 16, 2020), <https://www.wtvm.com/2020/03/16/new-trial-granted-man-convicted-rape-murder-columbus/>.

107. *Johnny Lee Gates*, GA. INNOCENCE PROJECT (May 15, 2020), <https://www.georgiainnocenceproject.org/cases/freed-clients/johnny-lee-gates/>.

108. *Id.*

109. Ken Otterbourg, *Ashley Debelbot*, NAT'L REGIST.OF EXONERATIONS (May 25, 2021), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5964>; see also Ken Otterbourg, *Albert Debelbot*, NAT'L REGISTRY OF EXONERATIONS (May 25, 2021), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5965>.

110. Tim Chitwood, *After 12 Years in Jail, Case Dismissed Against Columbus Couple Convicted in Baby's Death*, COLUMBUS LEDGER-ENQUIRER (Apr. 14, 2021), <https://www.ledger-enquirer.com/news/local/crime/article250635184.html>.

111. Brennan Reh & Olivia Gunn, *Election Results: Race for DA Ends with Attorney Mark Jones as Winner*, WTVM9 (Jun. 10, 2020), <https://www.wtvm.com/2020/06/10/election-results-race-da-complete-attorney-mark-jones-leads-votes/>.

112. *Mark Jones The People's DA*, FACEBOOK, <https://www.facebook.com/MarkJonesThePeoplesDA> (last visited Mar. 10, 2022).

113. Chitwood, *supra* note 110.

influencing witnesses, attempted bribery, and violating his oath of office.¹¹⁴

In Fulton County, six-term incumbent Paul Howard lost re-election following multiple state and federal investigations into his conduct, including his alleged misuse of nonprofit funds to pay his salary and allegations of discrimination and sexual harassment.¹¹⁵ Fani Willis, who defeated Howard, ran on a platform focused on integrity and middle-ground approaches to progressive prosecution.¹¹⁶ Under Willis, the conviction integrity unit she inherited from Howard's administration—the first in Georgia—has exonerated two people.¹¹⁷ Elsewhere in Georgia, two other newly elected district attorneys who ran on progressive prosecution platforms have started conviction integrity units: Patsy Austin-Gatson in Gwinnett County,¹¹⁸ and Shalena Cook Jones in Chatham County.¹¹⁹ Both units were created in 2021 and have not yet produced any exonerations.¹²⁰

Other notable newcomers who ran on reform-based campaigns are Jared Williams of the Augusta Judicial Circuit¹²¹ and Deborah Gonzalez of the Western Judicial Circuit.¹²² Williams, who overcame incumbent Natalie Paine, promised voters a “smart on crime” approach

114. Tim Chitwood, *Former Columbus DA Mark Jones' Misconduct Trial Ends in Plea Deal. Here's What Happened*, COLUMBUS LEDGER-ENQUIRER (Nov. 16, 2021), <https://www.ledger-enquirer.com/news/local/crime/article255747151.html>.

115. Christian Boone, *Fani Willis Unseats 6-Term Fulton DA Paul Howard*, AJC (Aug. 12, 2020), <https://www.ajc.com/news/crime/early-results-show-fulton-da-challenger-in-the-lead/X23G6PDMIFBVHJKYH6UVTQM54/>.

116. Christian Boone, *After Historic Victory, Fani Willis Plans Transformation of Fulton DA's Office*, AJC (Aug. 14, 2020), <https://www.ajc.com/news/crime/after-historic-victory-fani-willis-plans-transformation-of-fulton-das-office/ESMGVJXELBFPRDC2NBXSLJAGSU/>.

117. *Detailed View*, *supra* note 17.

118. *Conviction Integrity Unit*, GWINNETT COUNTY DISTRICT ATTORNEY'S OFFICE <https://www.gwinnettcounty.com/web/gwinnett/departments/districtattorney/convictionintegrityunit> (last visited Nov. 19, 2021).

119. *Home*, CHATHAM COUNTY DISTRICT ATTORNEY'S OFFICE, <https://www.chathamcountyda.com> (last visited Nov. 20, 2021).

120. *Conviction Integrity Units*, *supra* note 120.

121. Susan McCord, *Jared Williams' Augusta District Attorney Election Win Historic*, AUGUSTA CHRONICLE (Nov. 7, 2020), <https://www.augustachronicle.com/story/news/politics/elections/local/2020/11/07/jared-williams-augusta-district-attorney-election-win-historic/114725482/>.

122. Suzanna Gamboa, *Deborah Gonzalez Makes History as Georgia's First Hispanic District Attorney*, NBC NEWS (Dec. 2, 2020), <https://www.nbcnews.com/news/latino/deborah-gonzalez-makes-history-georgia-s-first-hispanic-district-attorney-n1249744>.

to prosecution aimed at prevention rather than reaction.¹²³ After Williams won the election, Paine became the chief deputy for the newly minted Columbia County Judicial Circuit, which split from the Augusta Circuit.¹²⁴ In January of 2021, Gonzalez, who defeated former Chief Deputy Assistant District Attorney James Chafin, unveiled a memorandum with changes to more than forty policies to his office staff.¹²⁵ Among the policy changes were commitments not to seek the death penalty, to create a sentencing review project, and to promote accountability courts for juvenile offenders.¹²⁶

What onset of the progressive prosecutor trend means in Georgia remains to be seen. But its potential impact is immense, especially when it comes to wrongful conviction cases where procedural barriers to discovering and litigating claims are often daunting.

IV. SUGGESTED REFORMS

Because prosecutors play a critical role in both correcting and causing wrongful convictions, suggestions for conviction integrity reforms abound. In recent years, there has been increased emphasis both nationally and in Georgia on the importance of working together to right wrongs in individual cases and creating conviction integrity units.¹²⁷ Efforts to hold prosecutors accountable for misconduct and reckless mistakes have also garnered interest in Georgia, as evidenced by proposed legislation to create prosecutor oversight commissions during recent sessions of the Georgia General Assembly,¹²⁸ and revisions to the Georgia Rules of Professional Conduct proposed by the State Bar of Georgia, that, if formally adopted by the Supreme Court of Georgia, will require prosecutors to disclose to defendants exculpatory

123. Maya T. Prabhu, *DA Candidates of Color Seek Different Approach to Punishing Crimes*, AJC (Oct. 27, 2020), <https://www.ajc.com/politics/da-candidates-of-color-seek-different-approach-to-punishing-crimes/C6LHIJJIOVHARAIJS5VFGDRDFWY/>.

124. See Hodson, *supra* note 97; see also Kennedi Harris, *Columbia County Swears in New District Attorney After Launch of New Court System*, WRDW (Jul. 23, 2021), <https://www.wrdw.com/2021/07/23/columbia-county-swears-new-district-attorney-day-two-new-court-system/>.

125. Foster Steinbeck, *Newly Elected Athens District Attorney Deborah Gonzalez Announces Day One Reforms, Plans*, THE RED & BLACK (Jan. 4, 2021), https://www.redandblack.com/athensnews/newly-elected-athens-district-attorney-deborah-gonzalez-announces-day-one-reforms-plans/article_44a32178-4ee8-11eb-b51f-7726db9cae10.html.

126. *Id.*

127. *Conviction Integrity Units*, *supra* note 118.

128. Ga. H.R. Bill 411, Reg. Sess. (2021); Ga. H.R. Bill 1214, Reg. Sess. (2020).

evidence that comes into their possession after a conviction is final.¹²⁹ Some of these proposed reforms, while well-founded, are often cost-prohibitive or face daunting opposition in Georgia's political climate. But the fact remains that Georgia's wrongfully and unjustly convicted need a mechanism to encourage government actors to prioritize integrity and accuracy of convictions and hold nonconforming actors accountable.

The truth of the matter is that there is no one-size-fits-all solution to the deep-rooted issues explored in this Article. Meaningful change will take time, and a multi-tiered approach is necessary for systemic reform. That change, however, can and should begin now—with a focus on flexible measures designed to educate and shift systemic culture to one that prioritizes normalizing integrity and accountability over defending every conviction at all costs, regardless of the conviction's reliability.

Below, we address the viability and potential impact of suggested reform efforts aimed at improving Georgia's criminal legal system for the wrongfully convicted.

A. *Educational Initiatives*

One way to promote prioritizing the integrity and accuracy of convictions when faced with post-conviction innocence claims is providing more educational opportunities, trainings, and programming for prosecutors and defense attorneys on the causes and consequences of wrongful convictions in Georgia.

These educational initiatives—ideally designed to provide a crash course on the prevalence and causes of wrongful convictions, common legal barriers to relief, Georgia-specific case examples, and how government actors can and should handle wrongful convictions—could take many forms, like annual continuing legal education events; state, regional, and intra-office conferences and trainings; self-paced informational toolkits with resources like documents and interactive databases; and networking opportunities with attorneys and

129. State Bar of Georgia, *Disciplinary Rules and Procedures Committee: Meeting of January 8, 2021*,

<https://www.gabar.org/committeesprogramssections/committees/upload/DRPC-2-24-21-Agenda.pdf>; Bill Rankin, *State Bar Considers Strict Penalties for Prosecutorial Misconduct*, *AJC* (Mar. 24, 2021), <https://www.ajc.com/news/atlanta-news/state-bar-considers-strict-penalties-for-prosecutorial-misconduct/54DSLBM4ZEGRMA236Z5VP2DAY/>; Greg Land, *State Bar Approves Rule Allowing Disbarment for Prosecutors Who Hide Evidence*, *DAILY REPORT* (Mar. 24, 2021), <https://www.law.com/dailyreportonline/2021/03/24/state-bar-approves-rule-allowing-disbarment-for-prosecutors-who-hide-evidence/>.

investigators specializing in this work. Such content would provide prosecutors with a foundational knowledge of issues to build upon as they encounter wrongful conviction cases and provide needed support for offices moving toward more formal conviction integrity reforms, like implementing conviction integrity units. Educational content could be created and facilitated by various individuals and organizations, but prosecutors would likely be best served if the content is the result of a collaborative effort among prosecutors, defense attorneys, exonerees, and neutral parties like judges and scholars with experience in wrongful conviction cases.

Moreover, because Georgia attorneys must provide competent representation—requiring “the legal knowledge, skill, thoroughness and preparation reasonably necessary”—and annual continuing legal education responsibilities, implementing educational initiatives tailored to fostering accountability in post-conviction work should not be a high hurdle and could help create a more just and accountable system overall.¹³⁰

B. Internal Policies and Procedures

Another way to correct and prevent wrongful convictions and the factors that cause them is to create and implement internal best practices tools for prosecutors to assess post-conviction claims of innocence and injustice. Prosecutors and police officers have used this reform method in various jurisdictions as a practical means to inform and guide government officials’ actions when faced with wrongful conviction issues,¹³¹ aiming to ensure that claims are fairly and carefully assessed before deciding when and how to proceed.

Almost everyone agrees that wrongfully convicted people should not be imprisoned and should have meaningful access to relief. The challenge, however, often arises in determining when a case involves a

130. GA. RULES OF PRO. CONDUCT R. 1.1 (STATE BAR OF GA.) (competence); State Bar Handbook pt. VIII, r. 8-101 (State Bar of Ga).

131. INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, NATIONAL SUMMIT ON WRONGFUL CONVICTIONS: BUILDING A SYSTEMIC APPROACH TO PREVENT WRONGFUL CONVICTIONS 10–11, (2013), https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/IACP-Wrongful_Convictions_Summit_Report.pdf; GEORGIA LAW ENFORCEMENT CERTIFICATION PROGRAM, STANDARDS MANUAL 48 (6.2 ed. 2021), https://gachiefs.com/wp-content/uploads/2021/08/6.2-Edition-Standards-Manual_Rev092121.pdf; CENTER ON THE ADMINISTRATION OF CRIMINAL LAW, ESTABLISHING CONVICTION INTEGRITY REFORMS IN PROSECUTORS’ OFFICES 4-6, available at http://www.law.nyu.edu/sites/default/files/upload_documents/Establishing_Conviction_Integrity_Programs_FinalReport_ecm_pro_073583.pdf.

wrongful conviction. Process guides and checklists codifying accepted best practices created by stakeholders on both sides can effectively implement conviction integrity reforms in even the most underfunded offices. These types of tools could ensure that wrongful conviction claims are meaningfully considered and could highlight issues like implicit and cognitive biases and key indicators of wrongful conviction, like official misconduct.

Just this year, the Georgia Association of Chiefs of Police took an important step in this direction by beginning to require law enforcement agencies accredited by the Georgia Police Accreditation Coalition to implement post-conviction investigation standards.¹³² The Accreditation Coalition now requires state-certified law enforcement agencies to promulgate policies addressing “[n]otification and agency requirements for or after the discovery of exculpatory evidence” in post-conviction cases.¹³³ The standard also mandates that “post-conviction agency requirements are not assigned to the employee responsible for the original investigation” and requires that the agency document any actions taken on post-conviction cases.¹³⁴ Commentary to the standard clarifies that its primary motivation was wrongful incarceration of the innocent.¹³⁵

While Georgia’s state-accredited law enforcement community has begun implementing necessary post-conviction review procedures, there is no evidence that the state’s prosecutor community has yet ventured to do the same on a widespread level. It stands to reason, however, that prosecutor’s offices and the wrongfully convicted alike would similarly benefit from implementing post-conviction review protocols. Prosecutor’s offices throughout the country utilize similar tools to ensure compliance with constitutional and ethical obligations and track patterns and trends within their jurisdictions.¹³⁶ Checklists for prosecutor compliance with *Brady* and other constitutional obligations also have been endorsed by Fair and Just Prosecution,¹³⁷ R Street Policy Study No. 199,¹³⁸ and the Prosecutors’ Center for Excellence.¹³⁹

132. See GEORGIA LAW ENFORCEMENT CERTIFICATION PROGRAM, *supra* note 131, at 48.

133. *Id.*

134. *Id.*

135. *Id.*

136. CENTER ON THE ADMINISTRATION OF CRIMINAL LAW, *supra* note 131, at 25.

137. *Promoting Transparency and Fairness Through Open and Early Discovery Practices*, FAIR AND JUST PROSECUTION, https://fairandjustprosecution.org/wp-content/uploads/2018/01/FJP.Brief_Discovery.pdf (last visited Nov. 20, 2021).

138. LARS TRAUTMAN, HOW A CHECKLIST COULD IMPROVE PROSECUTION, 6 (2020).

C. Conviction Integrity Units

A major national conviction integrity reform trend for prosecuting attorneys' offices is creating formal conviction integrity units.¹⁴⁰ Conviction integrity units generally exist for the exclusive purpose of reviewing claims of wrongful conviction—sometimes limited to actual innocence—and requesting judicial relief when justice requires.¹⁴¹ Often, they collaborate with defense attorneys.¹⁴²

Since the first unit was created in 2000,¹⁴³ conviction integrity units have contributed to an estimated 517 exonerations.¹⁴⁴ Those figures include the recently formed CIUs in Georgia, which contributed to two exonerations.¹⁴⁵

Conviction integrity units as a whole make sense as an effective tool for systemic reform. As explained by the Fulton County District Attorney's Office regarding its decision to start a conviction integrity unit, "prosecutors can and should be leading the charge to ensure the public has confidence in criminal convictions," recognizing that "[t]he many proven cases of wrongful convictions and their known causes demonstrate that more needs to be done to guard against such errors."¹⁴⁶

139. PROSECUTORS' CENTER FOR EXCELLENCE, CONVICTION REVIEW TODAY: A GUIDE FOR PROSECUTORS 38, 57 (2020).

140. *Conviction Integrity Unit*, FULTON COUNTY, <https://tested.fultoncountyga.gov/inside-fulton-county/fulton-county-departments/district-attorney/district-attorney-divisions/conviction-integrity-unit> (last visited Nov. 11, 2021).

141. *Conviction Integrity Units*, INNOCENCE PROJECT (2015), <https://leg.mt.gov/content/Committees/Interim/2015-2016/Law-and-Justice/Meetings/June-2016/Exhibits/innocence-project-conviction-integrity-doc-june-2016.pdf>.

142. *Id.*

143. Steve Horn, *Conviction Integrity Units, Innocence Commissions Tackle Wrongful Convictions, Prosecutorial Misconduct*, CRIMINAL LEGAL NEWS (Oct. 15, 2018), <https://www.criminallegalnews.org/news/2018/oct/25/conviction-integrity-units-innocence-commissions-tackle-wrongful-convictions-prosecutorial-misconduct/>.

144. *Detailed View*, *supra* note 17.

145. *Id.*

146. Since it was founded in 2019, the Fulton County Conviction Integrity Unit has produced two exonerations. Maurice Possley, *Mario Stinchcomb*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5954> (updated May 22, 2021); Maurice Possley, *Michael Woolfolk*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5968> (updated May 22, 2021). The other conviction integrity unit in the state of Georgia was founded in 2021 in Gwinnett County. *Conviction Integrity Units*, *supra* note 118. It appears that it does not have any exonerations yet.

To help ensure that conviction integrity units function properly, organizations like the Quattrone Center for the Fair Administration of Justice, a “nonpartisan, national research and policy hub,” provide access to resources and potential solutions to improve the criminal legal system.¹⁴⁷ Unsurprisingly, since conviction integrity units generally function from within a district attorney’s office—the same office that prosecuted the cases it reviews for wrongful convictions—the first objective is to ensure the unit is independent.¹⁴⁸ In other words, at a minimum, the unit should be separate from traditional appellate or post-conviction components; be led by an attorney that is well-respected in the criminal legal community and, ideally, has both prosecutorial and criminal defense experience; and guard against office bias by incorporating external criminal defense attorneys into the review process.¹⁴⁹

But like other internal reforms, the biggest problem with conviction integrity units is that the prosecutor offices with the most need—offices with a reputation for wrongful convictions or bad actors—are the least likely to create conviction integrity units, and if they do, are the least likely to conform to best practices. This is the precise reason why education and normalizing best practices are crucial to bringing about the shift necessary to ensure a solid foundation on which prosecutor communities can build other conviction integrity reforms. That said, if executed properly, the underlying premise for conviction integrity units is sound, and the defense community and prosecutors should strive to incorporate the collaborative method into their practice.

Georgia’s new conviction integrity units are encouraging, and we hope to see them live up to their potential as a tool to free the wrongfully convicted and inspire their counterparts in other jurisdictions to do the same.

147. *About the Center*, QUATTRONE CTR., <https://www.law.upenn.edu/institutes/quattronecenter/about-us.php> (last visited Nov. 11, 2021).

148. JOHN HOLLWAY, QUATTRONE CTR., *CONVICTION REVIEW UNITS: A NATIONAL PERSPECTIVE 2* (2016). An alternative to the traditional conviction integrity unit, which operates with a district attorney’s office, is North Carolina’s state-wide Innocence Inquiry Commission. *Id.* at 18. The North Carolina Commission, however, only accepts claims associated with actual innocence, and requires “[n]ew evidence of innocence that the jury did not hear or that was not available prior to a plea.” *A Neutral, Fact-Finding State Agency*, N.C. INNOCENCE INQUIRY COMM’N, <https://innocencecommission-nc.gov> (last visited Nov. 1, 2021).

149. HOLLWAY, *supra* note 148, at 2.

D. Cultural Change and Accountability Measures

As addressed throughout this Article, the underlying key to any successful prosecutorial reform effort is cultural change—a willingness to keep an open mind, listen, and learn from those who come forward with credible claims of wrongful conviction, prioritizing integrity, equity, and accountability over loyalty to conviction rates and finality. With that kind of change, the reform efforts mentioned above could meaningfully alter the system within which we operate.

But crucial to cultural change is commitment. In some cases, the failure to correct a wrongful conviction has less to do with identifying innocence or injustice and more to do with indifference, corruption, or ongoing misconduct. In those instances, internal efforts are less likely to prove effective on their own, and external mechanisms are more necessary to ensure compliance with constitutional, ethical, and moral obligations. For that reason, conviction integrity reforms likely would more readily achieve fruition if we invested in both internal and external reforms.

When it comes to encouraging accountability, some suggestions have included eliminating qualified and prosecutorial immunity,¹⁵⁰ creating oversight commissions,¹⁵¹ and imposing tougher ethical standards on prosecutors.¹⁵² While there may not be widespread support in Georgia for most of these proposals, there is one area where there is: revisions to Georgia's Rule of Professional Conduct 3.8 concerning special duties of a prosecutor.¹⁵³

Under the current version of Rule 3.8, the maximum penalty for prosecutors who engage in misconduct is public reprimand.¹⁵⁴ But the

150. Kate Levine & Joanna Schwartz, *Hold Prosecutors Accountable, Too*, BOSTON REV. (Jun. 18, 2020), <https://bostonreview.net/law-justice/kate-levine-joanna-schwartz-hold-prosecutors-accountable-too>; Madeleine Carlisle, *The Debate Over Qualified Immunity is at the Heart of Police Reform. Here's What to Know*, TIME (Jun. 3, 2021), <https://time.com/6061624/what-is-qualified-immunity/>.

151. Brad Schrade & Bill Rankin, *In Georgia, Few Options to Hold Prosecutors Accountable*, AJC (July 24, 2020), <https://www.ajc.com/news/in-georgia-few-options-to-hold-prosecutors-accountable/G4BXBWGFPJAANMIWGDICBXSOU/>.

152. Bill Rankin, *State Bar Considers Strict Penalties for Prosecutorial Misconduct*, AJC (Mar. 24, 2021), <https://www.ajc.com/news/atlanta-news/state-bar-considers-strict-penalties-for-prosecutorial-misconduct/54DSLBM4ZEGRMA236Z5VP2DAY/>.

153. Greg Land, *State Bar Approves Rule Allowing Disbarment for Prosecutors Who Hide Evidence*, DAILY REPORT (Mar. 24, 2021), <https://www.law.com/dailyreportonline/2021/03/24/state-bar-approves-rule-allowing-disbarment-for-prosecutors-who-hide-evidence/>.

154. GA. RULES OF PRO. CONDUCT R. 3.8 (STATE BAR OF GA.) (Special Responsibilities of a Prosecutor).

new revisions to the rule—an effort led by Dekalb County District Attorney Sherry Boston and supported by the Prosecuting Attorneys’ Council of Georgia, among others—will give decision-makers the authority to disbar prosecutors who commit certain egregious infractions.¹⁵⁵ Significantly, the revisions will require prompt disclosure of evidence indicating that a person may be wrongfully convicted.¹⁵⁶ “This was an opportunity to look in the mirror and see how we as prosecutors could hold ourselves accountable for our actions,” Boston, who chaired the panel making the revisions, told the Atlanta Journal-Constitution.¹⁵⁷ “It gives everybody the playbook and roadmap they have to adhere to.”¹⁵⁸

Earlier this year, the Georgia Bar’s Board of Governors approved the revisions and received public comment.¹⁵⁹ The State Bar must now file the proposed rule with the Supreme Court of Georgia for adoption.¹⁶⁰ Once adopted, the rule will go into effect and become binding on all state prosecutors.

We are optimistic that the revised Rule 3.8 will go into effect soon, and that the stronger ethics requirements for state prosecutors will improve Georgia’s criminal legal system by encouraging compliance with basic best practices and helping jumpstart other suggested internal reform efforts.

V. CONCLUSION

Every aspect of the criminal legal system is filled with humans who, despite their best efforts, are fallible, and we cannot eliminate that. But we can acknowledge it, learn from it, and work to correct miscarriages of justice by normalizing an open dialogue between prosecutors and defense attorneys, putting aside procedural issues and conviction rates, and focusing on the injustices that have occurred. If we can shift the culture of the criminal legal system to one that appreciates the paramount significance of conviction integrity and accountability, stressing that all prosecutors and defense attorneys embrace the idea that mistakes happen and can be corrected—and even prevented—

155. Bill Rankin, *State Bar Considers Strict Penalties for Prosecutorial Misconduct*, AJC (Mar. 24, 2021), <https://www.ajc.com/news/atlanta-news/state-bar-considers-strict-penalties-for-prosecutorial-misconduct/54DSLBMt4ZEGRMA236Z5VP2DAY/>.

156. *Disciplinary Rules and Procedures Committee: Meeting of January 8, 2021*, *supra* note 129.

157. Rankin, *supra* note 155.

158. *Id.*

159. *Id.*

160. *Id.*

through collaboration, we almost certainly would make meaningful progress toward a better system. At the end of the day, prosecutors have unparalleled authority and discretion when compared to their defense counterparts, and they should be willing to do whatever is necessary to embrace their primary duty to ensure that justice is done.

Georgia's criminal legal system is now in a pivotal moment and time of change, one with great opportunity for learning, collaboration, and cooperation. The potential impact of the progressive prosecution movement, coupled with possible reform opportunities, is immense, especially when it comes to wrongful conviction cases. Is widespread cultural change among Georgia's prosecutor community possible? Will progressive changes result in the more rapid freedom of the wrongfully and unjustly accused? Will conviction integrity reforms align how prosecutors and defense counsel interact in a traditionally adversarial system? Is meaningful change on the horizon? Only time will tell, but the possibilities are endless. We encourage prosecutors and defense attorneys alike to listen to one another's plights and work together to achieve progress and, ultimately, justice. The futures of many trapped in Georgia's imperfect system depend on it.