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## YALE LAW & POLICY REVIEW

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### Independent Systemic Integrity Reviews: Shining the Light of Truth on Law Enforcement Conduct

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*Experience teaches us that law enforcement misconduct is an urgent and pervasive concern that plagues the administration of criminal law nationwide, burdening the innocent and guilty alike with criminal convictions devoid of integrity and grounded in manifest injustice. Despite that fact, the criminal system's capacity to confront the misdeeds of police and prosecutors—and the systemic taint of those misdeeds—is extremely limited. That dynamic drives the need for new tools and mechanisms to investigate allegations of law enforcement misconduct and its systemic impact. This Article provides critical insights about one such tool:*

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*independent systemic integrity reviews. Such reviews, conducted by a panel of individuals, explore and investigate allegations of law enforcement misconduct in the context of criminal convictions. While they can be deployed to investigate allegations of law enforcement misconduct in a single case, their focus is on uncovering the scale and scope of law enforcement misconduct across a cohort of cases. Following their investigative work, the review panel provides a report and recommendation to a jurisdiction's chief prosecuting authority detailing their findings and the implications of their investigation on a series of criminal cases. Those recommendations, to be acted on by the prosecuting authority, can range from taking no action to supporting the dismissal of the conviction(s) and case(s) under review.*

*In this Article, I draw on my own experiences as a member of a panel of three individuals responsible for conducting the first independent systemic integrity review of its kind in Cook County, Illinois. I provide three pieces of advice and guidance for individuals, stakeholders, and jurisdictions seeking to replicate systemic integrity reviews in the search for law enforcement accountability. First, I suggest that those considering an independent systemic integrity review embrace its core function as a truth-seeking enterprise designed to address conviction integrity in the shadow of law enforcement misconduct. This framing, centered on the review's core purpose, informs the contours of the work, the resources that an independent panel conducting the review might need, and the values that guide its investigative efforts. Second, I recommend that a systemic integrity review panel operate as structurally independent from a jurisdiction's penal bureaucracy. Doing so limits the conflicts and biases that can accompany in-house scrutiny, enhancing the value of a systemic integrity review to all those concerned about the operation of a criminal legal system. Finally, bolstered by the example of prolific journalist and anti-lynching activist Ida B. Wells, I explain how attention to race and its dynamics yields benefits for an independent systemic integrity review in its truth-seeking role. Using the case that sparked the Cook County systemic integrity review, I demonstrate how race can provide explanatory context for the actions and decisions of law enforcement, the accused, and the host of entities and individuals touched by a criminal case. Those benefits, among others, lead me to conclude that anyone undertaking an independent systemic integrity review should be concerned with race and racial justice. I close by recognizing that, while independent systemic integrity reviews are not a panacea for law enforcement misconduct, when properly resourced, constituted, and oriented toward racial justice, they can play an important role in vindicating claims by individuals and communities alike who have labored under the harms of bad behavior by law enforcement for far too long.*

INTRODUCTION.....	183
I. THE GENESIS OF AN INDEPENDENT SYSTEMIC INTEGRITY REVIEW.....	198
A. A Brief Introduction to Conviction Review Models .....	198
B. A Catalyst for an Independent Systemic Integrity Review: The Case of the Englewood Four .....	209
II. EMBRACE TRUTH SEEKING.....	218
III. IMPOSE STRUCTURAL INDEPENDENCE.....	236
IV. BE RACE CONSCIOUS.....	246
A. A Model for a Race-Conscious Investigative Lens .....	248
B. The Cultural Context of Race and the Criminal System at the National Level.....	252
C. The Cultural Context of Race and the Criminal System at the Local Level.....	258
D. The Implications of Deploying a Race-Conscious Lens.....	273
CONCLUSION .....	286

*"The way to right wrongs is to turn the light of truth upon them."<sup>1</sup>*

- Ida B. Wells

## INTRODUCTION

Year after year, media reports, academic literature, police-oversight bodies, and firsthand accounts document law enforcement misconduct. The stories run the gamut, revealing instances when law enforcement and their confederates have broken the rules in ways large and small—in the course of an investigation, while making an arrest, during an interrogation, and in the courtroom—sometimes all in the same case.<sup>2</sup> Some accounts

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1. Mia Bay, *Introduction to IDA B. WELLS, THE LIGHT OF TRUTH: WRITINGS OF AN ANTI-LYNCHING CRUSADER* xix (Mia Bay & Henry Louis Gates, Jr. eds., 2014) [hereinafter WELLS, LIGHT OF TRUTH].
2. In this Article, when I reference law enforcement, I do so expansively to encompass all of those officials responsible for the investigation, arrest, prosecution, and sentencing of an individual accused and convicted of a crime—from police and prosecutors to crime-lab technicians. This definition

detail law enforcement lies told on official reports or on the witness stand.<sup>3</sup> Others expose efforts to withhold evidence that could exonerate the accused.<sup>4</sup> Some of the most egregious behavior that we know about are those episodes when law enforcement officers have beaten suspects, made up stories out of whole cloth, or taken part in other misdeeds, only to

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is consistent with the prosecution's obligation to learn of and disclose to the accused "any favorable evidence known to the others acting on the government's behalf in the case ...." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *see also* *Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment ....").

3. *See* Katie Mettler, *How a Lab Chemist Went from 'Superwoman' to Disgraced Saboteur of More Than 20,000 Drug Cases*, WASH. POST (Apr. 21, 2017), <https://www.washingtonpost.com/news/morning-mix/wp/2017/04/21/how-a-lab-chemist-went-from-superwoman-to-disgraced-saboteur-of-more-than-20000-drug-cases> (detailing actions of a Massachusetts state drug-lab chemist who falsified drug-lab analysis records in more than 20,000 cases, leading to "the largest dismissal of convictions in U.S. history"); Mark Joseph Stern, *The Police Lie. All the Time. Can Anything Stop Them?*, SLATE (Aug. 4, 2020, 11:51 AM), <https://slate.com/news-and-politics/2020/08/police-testilying.html> [https://perma.cc/RZC7-9TGB] ("This tendency to lie pervades all police work .... Law enforcement officers lie so frequently—in affidavits, on post-incident paperwork, on the witness stand—that officers have coined a word for it: testilying."); Joseph Goldstein, *'Testilying' by Police: A Stubborn Problem*, N.Y. TIMES (Mar. 18, 2018), <https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html> (discussing "testilying"); *see also* Don Sweeney, *Officer Lied, Coerced Witness in Murder Trial That Put Two in Prison, CA Officials Say*, SACRAMENTO BEE (Apr. 26, 2023, 1:21 PM), <https://www.sacbee.com/news/california/article274736871.html> [https://perma.cc/42CQ-JNDS] (reporting on case involving a homicide detective whose lies led to 2 wrongful convictions for murder).
4. *See* Raj Rajaratnam, *I Was Incarcerated Under Failed Law. Now I Push for Consequences for Bad Prosecutors.*, USA TODAY (Feb. 9, 2022, 7:00 AM), <https://www.usatoday.com/story/opinion/policing/2022/02/09/prosecutorial-misconduct-consequences-rare/6606831001> [https://perma.cc/C2XF-QMAX] (recounting instances of prosecutors withholding exculpatory evidence); *Official Misconduct*, INNOCENCE PROJECT, <https://innocenceproject.org/official-misconduct> [https://perma.cc/9SR6-CCRH] (describing official misconduct as a leading contributing factor to wrongful convictions).

cover their tracks with more, often shocking, misconduct.<sup>5</sup> And what we have learned from those reports is that law enforcement has done this in cases where the accused is demonstrably innocent, and in cases where the only circumstantial evidence of guilt is the evidence that law enforcement has manufactured through its own mischief.<sup>6</sup>

All of this bad behavior does lasting damage in a myriad of ways. It destroys the lives of the individuals captured by the criminal system, with

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5. A few examples are instructive. In Brooklyn, New York, one detective is thought to be responsible for at least 21 overturned convictions. Theodore Hamm, *The Scarcella Files: When Unethical Prosecutors Get Off Scot-Free*, INDYPENDENT (May 2, 2024), <https://indypendent.org/2024/05/the-scarcella-files-when-unethical-prosecutors-get-off-scot-free> [https://perma.cc/HWQ3-9CQG]. In Chicago, one detective's misconduct, including framing people and falsely testifying in proceedings, led to at least 40 wrongful convictions. Heather Cherone, *Chicago Taxpayers Have Paid \$35.7M to Defend Disgraced Detective Reynaldo Guevara, with No End in Sight*, WTTW DAILY CHICAGOAN NEWS (July 11, 2024, 5:00 AM), <https://news.wttw.com/2024/07/11/chicago-taxpayers-have-paid-357m-defend-disgraced-detective-reynaldo-guevara-no-end-sight> [https://perma.cc/UL23-R3BU]; James Gordon, *Up to 50 Murder Convictions Could Be Quashed as Review Is Launched into Chicago Detective Accused of 'Beating Suspects to Get Confessions and Falsifying Witness Statements'*, DAILY MAIL (May 16, 2020, 3:18 PM EDT), <https://www.dailymail.co.uk/news/article-8325593/Up-50-murder-convictions-quashed-review-launch-ed-cop-beat-people-up.html> [https://perma.cc/GG7D-6CLM]. The coverups are as shocking as the misconduct. For example, four members of the Baton Rouge police department were arrested after beating a suspect in their custody and then attempting to cover up the beating by suppressing body-worn-camera footage of their misconduct. Amanda Holpuch, *Baton Rouge Officers Accused of Covering Up Use of Excessive Force*, N.Y. TIMES (Oct. 1, 2023), <https://www.nytimes.com/2023/10/01/us/baton-rouge-police-brave-cave-charged.html>; *Four Officers in Now-Disbanded Police Unit Charged in Cover-Up of 2020 Beating*, ASSOCIATED PRESS (June 26, 2024, 3:19 PM EDT), <https://apnews.com/article/baton-rouge-police-indicted-beating-coverup-e20569566fe17434884c5aa255fa79b2> [https://perma.cc/RR9C-2ZG5].
6. Vanessa Romo, *Ex-Florida Police Chief Sentenced to 3 Years for Framing Black Men and Teen*, NPR (Nov. 28, 2018, 7:01 PM ET), <https://www.npr.org/2018/11/28/671716640/ex-florida-police-chief-sentenced-to-3-years-for-framing-black-men-and-teen> [https://perma.cc/V7BE-PFGW]; Melissa Segura, *A Chicago Cop Is Accused of Framing 51 People for Murder. Now, the Fight for Justice.*, BUZZFEED NEWS (Apr. 4, 2017, 5:57 AM), <https://www.buzzfeednews.com/article/melissasegura/detective-guevaras-witnesses> [https://perma.cc/9GM6-QG9V].

painful “ripple effect[s]” that touch their families, loved ones, and communities.<sup>7</sup> It upends the faith of those who look to police, prosecutors, courts, and punishment to address harm.<sup>8</sup> It feeds on itself by encouraging more misconduct, as law enforcement evades accountability, comforted by a sense that it is impervious to repercussions.<sup>9</sup> It diminishes the integrity

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7. Charlie Nelson Keever, *Mass Exonerations: Protocols for Reviewing Convictions for Serious Crimes in Cases of Systemic Misconduct*, 28 BERKELEY J. CRIM. L. 229, 229 (2023) (“The discovery of one ‘bad actor’ in the criminal legal system often has a ripple effect, calling into question a host of potentially impacted cases.”). “Wrongful convictions in serious cases cause both substantial individual and public harm.” *Id.* at 267. The police violence that can accompany a wrongful conviction can shape everything from academic performance to mental health. Desmond Ang, *The Effects of Police Violence on Inner-City Students*, 136 Q.J. ECON. 115, 115, 118 (2021); Lindsey Webb, Dylan B. Jackson, Monique Jindal, Sirry Alang, Tamar Mendelson & Laura K. Clary, *Anticipation of Racially Motivated Police Brutality and Youth Mental Health*, 83 J. CRIM. JUST., Nov.-Dec. 2022, at 5, 14 (examining the “high prevalence of personal and vicarious stress related to anticipation of racially motivated police brutality among adolescents in urban communities,” and finding evidence “that this stress is linked to poor mental health”).
8. See Jason Mazzone, *Foreword*, 2018 U. ILL. L. REV. 1573, 1574 (2018) (explaining how police misconduct can foster mistrust toward law enforcement, in turn “undermin[ing] the community cooperation upon which effective policing depends and thus threaten[ing] the safety of all citizens”); Kevin J. Strom & Sean E. Wire, *The Impact of Police Violence on Communities: Unpacking How Fatal Use of Force Influences Resident Calls to 911 and Police Activity*, RTI PRESS (2024), <https://rtipress.scholasticahq.com/article/92464-the-impact-of-police-violence-on-communities-unpacking-how-fatal-use-of-force-influences-resident-calls-to-911-and-police-activity> [https://perma.cc/6M8U-6VEZ] (demonstrating that resident calls to 911 decline in majority-Black neighborhoods after a deadly incident of police violence); John Felipe Acevedo, *Restoring Community Dignity Following Police Misconduct Reforming the Criminal Injustice System*, 59 How. L.J. 621, 638 (2016) (“The DOJ investigation... found that the [Maricopa County Sheriff’s Office’s] excessive use of force against Latino citizens and its attempts to enforce immigration laws (which were beyond its purview) created significant mistrust between the Sheriff’s Office and the wider community.”).
9. As one former police officer explained, “Being a cop taught [his ex-wife] how to do wrong... and how to get away with it.” Darren M. Slade, *I’m a Former Cop. This Is Not Just a Few Bad Apples.*, GLOB. CTR. FOR RELIGIOUS RSCH. (Mar. 31, 2020), <https://www.gcrr.org/post/fewbadapplesmyth> [https://perma.cc/TMR6-H2M9]; Edika G. Quispe-Torreblanca & Neil Stewart, *Causal Peer*

and legitimacy of a criminal system already in disrepute.<sup>10</sup> And, it fuels a sense of legal estrangement among communities—particularly Black and Brown communities who endure a disproportionate share of interactions with law enforcement.<sup>11</sup>

The criminal system was not built to contend with police and prosecutorial wrongdoing and the harm it produces. That fact makes it difficult to uncover misconduct, determine the extent of its reach, and repair the damage it causes. The most egregious misdeeds draw headlines and harsh punishments.<sup>12</sup> But the steady drumbeat of routine law

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*Effects in Police Misconduct*, 3 NATURE HUM. BEHAV. 797, 797 (2019) (demonstrating that officers who were exposed to more peer officers with misconduct cases were more likely to commit future misconduct). Although misconduct may draw monetary repercussions, accountability for responsible officers can be limited. *See, e.g.*, Keith L. Alexander, Steven Rich & Hannah Thacker, *The Hidden Billion-Dollar Cost of Repeated Police Misconduct*, WASH. POST (Mar. 9, 2022), <https://www.washingtonpost.com/investigations/interactive/2022/police-misconduct-repeated-settlements> [<https://perma.cc/LHR5-WTCV>] (“City officials and attorneys representing the police departments said settling claims is often more cost-efficient than fighting them in court. And settlements rarely involve an admission or finding of wrongdoing. Because of this there is no reason to hold officers accountable for them....”); *see also* Amelia Thomson-Devaux, Laura Bronner & Damini Sharma, *Police Misconduct Costs Cities Millions Every Year. But That’s Where the Accountability Ends.*, MARSHALL PROJECT (Feb. 22, 2021, 6:00 AM EST), <https://www.themarshallproject.org/2021/02/22/police-misconduct-costs-cities-millions-every-year-but-that-s-where-the-accountability-ends> [<https://perma.cc/4K95-ABSX>] (noting the difficulties in collecting data on police settlements, which is “indicative of broader problems and complications in police accountability: lack of standardization, a dearth of transparency, and incomplete or missing data”).

10. *See* Rachel Moran, *Scofflaw Law Enforcement*, 69 WAYNE L. REV. 31, 52 (2023) (“Hypocrisy also undermines security: the rule of law means very little if the people we entrust to enforce it can and do break those laws freely. When governments entrust police departments with the role of protecting people from crime, but those departments consistently betray community trust, all manner of harm results.”).
11. Legal estrangement is a sense of legal cynicism among a group based on experience and observation that “the law and the agents of its enforcement, such as the police and courts, are viewed as illegitimate, unresponsive, and ill equipped to ensure public safety.” Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2066-67 (2017).
12. *See, e.g.*, Patty Santos, *Former OKC Police Officer Daniel Holtzclaw Sentenced to 263 Years in Prison*, KOCO NEWS (Jan. 21, 2016, 6:55 PM CST),

enforcement misbehavior continues, cloaked in a code of silence.<sup>13</sup> The gap in tools to address it is especially pronounced when it comes to surfacing and addressing systemic injustices, born of the understanding that law enforcement's bad behavior is evidence of a widespread problem rather

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<https://www.koco.com/article/former-okc-police-officer-daniel-holtzclaw-sentenced-to-263-years-in-prison/4307909> [https://perma.cc/X62U-X4AV] (describing a 263-year prison term); Adrian Sainz, Kristin M. Hall & Jonathan Mattise, *Mixed Verdict for 3 Memphis Officers Convicted in Tyre Nichols' Fatal Beating*, ASSOCIATED PRESS (Oct. 3, 2024, 10:16 PM EDT), <https://apnews.com/article/tyre-nichols-beating-death-memphis-officers-trial-5e19e800cd5017c89cb652cfc8235ea2> [https://perma.cc/KR4Q-98UR] (describing a guilty verdict reached on witness tampering charges, which could result in a 20-year prison sentence); *Inside the GTTF: What Happened to the Officers in Baltimore's Biggest Police Corruption Scandal*, CBS NEWS (Apr. 29, 2022, 11:30 PM EDT), <https://www.cbsnews.com/baltimore/news/inside-the-gttf-what-happened-to-the-officers-in-baltimore-s-biggest-police-corruption-scandal> [https://perma.cc/S42C-TQ7R] (noting that 11 of 13 officers convicted for involvement in the Baltimore Police Department Gun Trace Task Force scandal remain in federal prison); C.J. Ciaramella, *A Look at America's Most Corrupt Police*, REASON (Oct. 26, 2020, 11:39 AM), <https://reason.com/2020/10/26/a-look-at-americas-most-corrupt-police> [https://perma.cc/PXL8-WAA3] (describing the conviction of a dozen Baltimore Police Department officers "on charges of robbery, extortion, racketeering, filing false reports, and lying to federal grand juries"); Richard Winton & Libor Jany, *Prosecutors Fear LAPD Gang Unit Scandal Could Jeopardize Over 300 Cases, Sources Say*, L.A. TIMES (Oct. 26, 2023, 6:06 PM PT), <https://www.latimes.com/california/story/2023-10-25/prosecutors-fear-lapd-gang-unit-scandal-could-jeopardize-over-300-cases-sources-say> [https://perma.cc/AJ4H-4RRN] (describing investigation of 15 Los Angeles Police Department officers for involvement in corruption scandal).

13. The long legacy of one high-ranking Chicago police official, Chicago Police Department Sergeant Ronald Watts, exemplifies this point. For nearly a decade, Watts and his underlings extorted a "tax" from alleged drug dealers and targeted their rivals. Jamie Kalven, *Operation Brass Tax: Corrupt Chicago Police Were Taxing Drug Dealers and Targeting Their Rivals*, INTERCEPT (Oct. 6, 2016, 9:00 AM), <https://theintercept.com/2016/10/06/corrupt-chicago-police-were-taxing-drug-dealers-and-targeting-their-rivals> [https://perma.cc/Q59J-XTNC]. Nearly 200 people had their convictions vacated and charges dismissed upon discovery of the extortion scheme. *Illinois 2016 (1)*, NAT'L REGISTRY EXONERATIONS, <https://exonerationregistry.org/groups/4235> [https://perma.cc/76HM-7ZBG]. His behavior was an open secret in Chicago and only came to an end when fellow officers broke the code of silence. Kalven, *supra*.

#### **Independent Systemic Integrity Reviews**

than a series of isolated incidents and misdeeds done by individual actors.<sup>14</sup>

From 2021 to late 2024, I was given the unique opportunity to do something about allegations of law enforcement misconduct that plagued Cook County's criminal system and extended beyond a single case. I was appointed to a three-lawyer panel—what I will call the Cook County Working Group—to conduct an independent systemic integrity review of just under twenty homicide cases for the taint of misconduct by a cohort of law enforcement officials. On the basis of that review, the Working Group was tasked with recommending actions to be taken by the chief prosecuting authority. At the time, the Working Group's undertaking was unprecedented, because it was among the first independent systemic integrity reviews of its kind anywhere in the United States.<sup>15</sup> What I mean by an independent systemic integrity review is that the Cook County Working Group operated outside the confines of the prosecutor's office. It focused on allegations of misconduct by a cohort of law enforcement officials in a substantial number of cases those officials investigated, and it was concerned with the integrity of the criminal system and the convictions in those cases. The Cook County Working Group was the first to put the idea of examining the system-wide impact of law enforcement misconduct in a particular jurisdiction into practice.<sup>16</sup>

The long sweep of history will determine the extent to which the Cook County independent systemic integrity review was successful. Even as history's judgment unfolds, my hope is that others will replicate the independent systemic integrity review model to address allegations of police and prosecutorial misconduct in their respective jurisdictions. With that in mind, the point of this Article is to share three pieces of advice that can inform the choices of practitioners, advocates, communities subject to

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14. Chiraag Bains, *"A Few Bad Apples": How the Narrative of Isolated Misconduct Distorts Civil Rights Doctrine*, 93 IND. L.J. 29, 30 (2018).
15. In a 2023 article, Professor Charlie Nelson Keever provided a robust argument in favor of independent review panels following the discovery of a pattern of law enforcement misconduct impacting a potentially large number of cases. Keever, *supra* note 7, at 235, 240-41, 274. The purpose of this piece is to build on Professor Keever's recommendation and the ideas of scholars and advocates, cited *infra* note 93, by focusing on the values that should inform an independent systemic integrity review.
16. Innocence Project cofounder Barry Scheck has called for "independent, well-funded government entities" to investigate wrongful convictions outside of the prosecutor's office. Barry Scheck, *Conviction Integrity Units Revisited*, 14 OHIO ST. J. CRIM. L. 705, 710 (2017).

law enforcement practices, and system actors as they develop independent systemic integrity reviews and similar tools to address allegations of suspected law enforcement misconduct and its systemic impact. My advice is drawn from what the Working Group experience taught me about the utility and function of independent systemic integrity reviews and the panels who conduct them. It is also informed by the best practices and shortcomings of analogous methods of conviction review. I share my insights over the course of four parts.

In Part I, I briefly describe comparable conviction review models before discussing the genesis of the Cook County Working Group's independent systemic integrity review, focusing on the case that inspired it. I return to the facts and circumstances of that case throughout this Article to ground my advice and recommendations. The subsequent parts bridge the gap between the idea of an independent systemic integrity review and some of the realities that come with its implementation.

In Part II, I recommend that those considering an independent systemic integrity review focus on its truth-seeking function as core to the mission of investigating and addressing questions of conviction integrity in the shadow of law enforcement conduct. Practically, that means discerning the truth among competing narratives about law enforcement's treatment of the accused to recommend how a prosecutor's office should proceed. This frame, focused on the review's core purpose, informs the contours of the work, the resources that an independent panel might need, and the values that guide its investigative efforts.

In Part III, I recommend homing in on independence as an essential component of the systemic integrity review model. If law enforcement conduct is at issue, those scrutinizing that conduct should not and cannot be burdened by the types of relational conflicts and motivations that can infect or cloud the investigation. Structural independence is often compromised by the composition or leadership of conviction review bodies, even as best practices highlight its importance.<sup>17</sup> In my experience, independence enhanced the value of the review, yielding benefits for all concerned with the integrity of the criminal system.

In Part IV, I turn to race and racial justice, which I suggest should be front of mind for those conducting an independent systemic integrity review. While racism and racial inequality unquestionably infect the criminal system, these phenomena and their effects are too often

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17. John Hollway, *Conviction Review Units: A National Perspective*, QUATTRONE CTR. FOR THE FAIR ADMIN. OF JUST. 23, 27-28 (2016), [https://scholarship.law.upenn.edu/faculty\\_scholarship/1614](https://scholarship.law.upenn.edu/faculty_scholarship/1614) [<https://perma.cc/Z8U6-DTAC>].

overlooked and underappreciated when institutions and entities seek to hold the system and its actors accountable. Taking inspiration from the prolific journalist and anti-lynching activist Ida B. Wells, I explore how to construct a racial justice lens and explain how attention to race and its dynamics yields concrete benefits. It can inform how we understand law enforcement behavior. It can provide explanatory context for the actions and decisions of the accused. And it vindicates the experiences of communities who have been beset by discriminatory and brutalizing policing for decades. Those benefits, among others, lead me to believe that anyone undertaking an independent systemic integrity review should be concerned with race and racial justice.

I offer a few caveats up front. I was appointed as a special prosecutor to serve on the Working Group and conduct the systemic integrity review. The confidentiality restrictions imposed by that appointment prevent me from discussing specific cases, deliberations, and investigative efforts undertaken by the Working Group. However, I try to illuminate values and frameworks that can be of use to others engaged in this sort of work. I do so by laying out my thinking about the mechanics of an independent systemic integrity review and panel. These are my own views and should not be taken as any official position of the Working Group or the prosecutor's office whose work we reviewed. Nor should it be taken as an affirmation or critique of the Working Group's efforts. While I can provide advice and make recommendations, there are particular conditions that gave rise to the Cook County Working Group that extend beyond anything that my experience can guide. The Working Group effort began after years of organizing by families and communities complaining of law enforcement misconduct, reinforced by dedicated lawyers and advocates working to vindicate those claims. It also required officials in the prosecutor's office—including, and perhaps most importantly, its leadership—willing to subject their work to scrutiny and to dedicate resources, time, energy, and political capital to the effort. I can say that the dynamics and circumstances that led to the independent systemic integrity review—while not necessarily unique to Cook County—merit serious attention as others pursue a similar path. There are real questions about how a jurisdiction decides whether an instance of misconduct is isolated or evidence of a potentially larger pattern. It may be that every unjust conviction is the tip of a larger iceberg that merits exploration and investigation, given the history of a jurisdiction. Likewise, the power dynamics at play, including the power of the entity that carries out a systemic integrity review, deserve outsized attention, to the extent that

such reviews can be viewed as a tool for police reform.<sup>18</sup> Although I touch on these topics in Part III, I plan to explore both more fully in future scholarship.

Finally, it is worth considering where an independent systemic integrity review centered on truth seeking, structural independence, racial justice, and race consciousness sits on the spectrum of tools aimed at addressing the challenges and concerns of the criminal system and the administration of criminal law. Doing so provides a coherent normative framework for the values that I am suggesting should inform an independent systemic integrity review. In one sense, an independent systemic integrity review informed by these values is consistent with the suite of reforms that system stakeholders might pursue to improve the system as it stands, rather than transform or end it altogether.<sup>19</sup> In another sense, independent systemic integrity reviews with the qualities I have suggested are aligned with reforms pursued by those with abolitionist sensibilities, because reviews that include those features call into question the legitimacy of the criminal legal system while providing a vision of how an alternative system might operate.<sup>20</sup> I turn first to the reformist nature

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18. See Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 803 (2021) (applying a power lens to police reform and discussing how police accountability tools can foster power over police and police practices).
19. See Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2518 (2023) (“Non-reformist reforms . . . require a horizon beyond legalism.”); Jamelia Morgan, *Abolition in the Interstices*, LPE PROJECT (Dec. 14, 2023), <https://lpeproject.org/blog/abolition-in-the-interstices> [https://perma.cc/3NLM-WD7W] (offering the example of abolitionists who work to elect progressive prosecutors as a potentially reformist reform); Keramet Reiter, *No Data, No Change: Bringing Prisons out of Hiding*, in THOMAS MATHIESEN, THE POLITICS OF ABOLITION REVISITED 314, 314 (2015) (“Information gathering is a means to transparency, and transparency is a means to systemic reform.”).
20. See *So Is This Actually an Abolitionist Proposal or Strategy?: A Collection of Resources to Aid in Evaluation and Reflection*, INTERRUPTING CRIMINALIZATION, PROJECT NIA & CRITICAL RESISTANCE (June 30, 2022), <https://criticalresistance.org/resources/actually-an-abolitionist-strategy-binder> [https://perma.cc/URW2-NA8J] (evaluating reforms based on whether they “legitimize or expand the carceral system we’re trying to dismantle”); Akbar, *supra* note 19, at 2527-28 (describing nonreformist reform as “a criticism of the prevailing political, economic, and social system or set of relations, who benefits from it, and at whose expense, and how; a horizon for a radical new state, society, or world; and an evolving praxis of how to bridge the two”); Morgan, *supra* note 19 (discussing how campaigns

of independent systemic integrity reviews before discussing the transformative dimension that such reviews can offer. Even as I believe that the transformative vision—grounded in abolitionist sensibilities—should fuel the work of independent systemic integrity reviews, I think it is worth embracing the murkiness between reform and abolition.<sup>21</sup> That means taking advantage of the overlap between those who seek to improve upon current conviction review models and those who would support an independent systemic integrity review informed by the values I have suggested.<sup>22</sup>

For those looking to reform the system, independent systemic integrity reviews can upend the idea that law enforcement misconduct is an isolated instance, the result of “one bad apple” or a singular set of corrupt officials.<sup>23</sup> An independent systemic integrity review can identify the structural shortcomings that invite misconduct by individual law enforcement officials, or fill the gaps in the systems and institutions that allow misconduct by those officials to recur unchecked and undetected.<sup>24</sup> An independent systemic integrity review can also send a signal to law enforcement officials who choose to remain silent in the face of problematic behavior that their silence amounts to complicity and is

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to elect a progressive prosecutor could “themselves be a non-reformist reform—if, for instance, there is an effort to expand power (indeed, democratize power, as [Professor] Akbar puts it) within and across the campaign and importantly, after the electoral victory or loss”); Reiter, *supra* note 19, at 318-19 (“Demands for greater transparency are the first steps not just to reform, but to revolutionary change.”).

21. For a discussion on the relationship between abolition and reform, see Liat Ben-Moshe, *The Tension Between Abolition and Reform*, in *THE END OF PRISONS: REFLECTIONS FROM THE DECARCERATION MOVEMENT* 83, 86-88 (Mechthild E. Nagel & Anthony J. Nocella II eds., 2013). See also Angel E. Sanchez, *In Spite of Prison*, 132 HARV. L. REV. 1650, 1652 (2018) (analogizing the prison-industrial complex to cancer, in that “we should fight to eradicate it but never stop treating those affected by it”).
22. The notion of making progress by finding the overlap in interests between groups is akin to Professor Derrick Bell’s theory of interest convergence. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (“[The] principle of ‘interest convergence’ provides: The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.”).
23. See Bains, *supra* note 14 (describing the harms of narratives of isolated misconduct).
24. See *infra* Section IV.C.

intolerable. Law enforcement is ordinarily left to police itself; independent systemic reviews have the potential to ensure that oversight work is done with honesty and reliability by outsiders. If taken seriously, the results of an independent systemic integrity review can be used to shape reforms to law enforcement practices and policies across a jurisdiction's criminal system, in an effort to head off misconduct in cases to come.<sup>25</sup>

An independent systemic integrity review can also lend legitimacy to the system by inviting external oversight and scrutiny.<sup>26</sup> In initiating that scrutiny, system actors are acknowledging that a system has problems that need to be addressed, and are creating a mechanism to do so.<sup>27</sup> If a

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25. See Scheck, *supra* note 16, at 743-46 (suggesting ways that conviction review units can use the process of conviction review to help the prosecutor's office learn from its mistakes and understand the ways that wrongful convictions come about); Hollway, *supra* note 17, at 76 (recommending that where the Conviction Review Unit ("CRU") "decides that the criminal justice system has made an error, it should ensure that the jurisdiction is actively engaging in a Just Culture Event Review to learn from the error, and prevent its recurrence"). This work is akin to the root cause analysis that the National Transportation Safety Board (or other similar entities) undertakes in its investigation of a transportation accident, aimed at ensuring that the circumstances that led to the accident are surfaced and addressed to prevent them from arising again. *The Investigative Process*, NAT'L TRANSP. SAFETY BD., <https://www.ntsb.gov/investigations/process/Pages/default.aspx> [https://perma.cc/QKQ7-QLE4].
26. As one 2016 report detailed, summarizing interviews with 17 CRUs, audits of this sort were rarely conducted:

"Another question unresolved by CRUs to date is how to address situations in which there could be multiple instances of the same error. No CRUs were eager to embrace the conduct of an 'audit' that would expand a case review to review a large group of related cases to ensure that all potential incidences of the error were identified and addressed. In such situations, most people interviewed suggested that they would conduct broader reviews 'when they feel it necessary' but were not able to describe what those conditions might be. For whatever reason, such audits appear to be more easily embraced when pertaining to a crime lab, and less clear when pertaining to a colleague in a DA's Office or a police officer."

Hollway, *supra* note 17, at 77.
27. Kim Foxx embodied this perspective when reflecting on the work of the Cook County State's Attorney's Office during her tenure as the head of the office to address the misconduct and corruption that infected Chicago's criminal system. As State's Attorney Foxx explained, "[W]e owe a responsibility for people who don't trust the justice system to acknowledge when we've gotten

prosecuting authority accepts the recommendation of a review panel, and that decision leads to the dismissal of a case or a person's release from prison, there is an additional dimension to this benefit. As inadequate as it can feel—particularly if it is long after the misconduct occurred, the conviction happened, and a sentence was served—there is value in having a system actor, who is representative of those who bore some responsibility for a conviction marred by misconduct, declare that what happened was unfair, unjust, and lacked integrity.<sup>28</sup>

Independent systemic integrity reviews can also be understood through an abolitionist framework. That framework, simply stated, seeks to shrink the carceral state, aims to build systems and institutions that allow individuals to thrive, and is concerned with the racial dynamics that fuel the criminal system.<sup>29</sup> The independent systemic integrity reviews informed by the values I articulate here exemplify what Professor Jamelia Morgan has termed “abolition in the interstices,” the state between the “radically reconfigured world abolitionists seek” and the present reality.<sup>30</sup> They provide a pathway for harm reduction,<sup>31</sup> which abolitionists pursue alongside transformative goals to address and alleviate the immediate pain of those enmeshed in the criminal system.<sup>32</sup> That is because when

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things wrong and actively work to make them right.” Shelby Hawkins, *Kim Foxx Reflects on Her Challenges, Legacy After 8 Years as Cook County’s Top Prosecutor*, WTTW (Nov. 14, 2024, 7:13 PM), <https://news.wttw.com/2024/11/14/kim-foxx-reflects-her-challenges-legacy-after-8-years-cook-county-s-top-prosecutor> [https://perma.cc/A7LA-4R6K].

28. *Id.*; see also Scheck, *supra* note 16, at 708, 716; Kristine Hamann, *Conviction Review Today: The Role of Prosecutors*, AM. BAR ASS’N CRIM. JUST. MAG. (May 2, 2024), [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2024/spring/conviction-review-today-role-prosecutors](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2024/spring/conviction-review-today-role-prosecutors) (explaining that in the context of a CRU, “the key objectives for prosecutors include creating specialized procedures to review claims of innocence and remedy wrongful convictions in the furtherance of justice; enhancing community confidence in the criminal justice system”).
29. Vincent M. Southerland, *Public Defense and an Abolitionist Ethic*, 99 N.Y.U. L. REV. 1635, 1643 (2024).
30. Morgan, *supra* note 19.
31. Southerland, *supra* note 29, at 1645, 1686.
32. Cara McClellan & Jamelia Morgan, *Toward Abolitionist Remedies: Police (Non)reform Litigation After the 2020 Uprisings*, 51 FORDHAM URB. L.J. 635, 641 (2024); Jamelia Morgan, *Responding to Abolition Anxieties: A Roadmap for Legal Analysis*, 120 MICH. L. REV. 1199, 1215 (2022) (highlighting the importance and value of harm reduction in abolitionist practice); Adam

independent systemic integrity reviews successfully uncover law enforcement misconduct, they are responsive to some of the most pressing harms and resultant injustices of the criminal system. They can be used to nullify a person's criminal conviction, lead to their release from incarceration, and erase the collateral consequences of criminal system involvement. To the extent a systemic review exposes misconduct by a cohort of law enforcement officials, it can call into question a host of other cases, expanding the potential scope of reparative justice. Meanwhile, members of communities who have felt the harsh sting of law enforcement misconduct can tell their story through the systemic review process, as a necessary step towards healing a community plagued by the results of that misconduct.<sup>33</sup>

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Davidson, *Criminal Procedure in a Time of Abolition*, 72 UCLA L. REV. DISCOURSE 246, 260-64 (2024); Jamelia Morgan, *Lawyering for Abolitionist Movements*, 53 CONN. L. REV. 605, 615 (2021) ("[T]he goal of harm reduction, though not strictly abolitionist, is a tactic used by abolitionists."); Daniel S. Harawa, *In the Shadows of Suffering*, 101 WASH. U. L. REV. 1847, 1881 (2024) (positing that "reformists, abolitionists, and minimalists are part of this diverse coalition... they are all rowing in the same general direction—trying to fix the intractable problem that is our current system of incarceration" by "work[ing] to radically reduce the amount of suffering left in the wake of the quest for 'justice'").

33. An independent review panel and audit can operate akin to Professor Leigh Goodmark's model of a community-based justice forum, which she suggested could deliver justice in response to intimate partner violence. Leigh Goodmark, *"Law and Justice Are Not Always the Same": Creating Community-Based Justice Forums for People Subjected to Intimate Partner Abuse*, 42 FLA. ST. U. L. REV. 707, 732 (2015). Modeled on truth and reconciliation commissions, but severed from the state, these forums "provide [a] space for stories that the legal system has been reluctant to hear." *Id.* at 735. They also create spaces for those who have been harmed to share their stories, which Goodmark counsels "is essential in achieving validation and vindication; only when stories are told can the community acknowledge the wrong that has been done." *Id.* at 736. Indeed, "one misses an important part of the story in the context of collective and systematic wrongs if one fails to see the significance of moral recognition for the victims of those wrongs." Frank Haldemann, *Another Kind of Justice: Transitional Justice as Recognition*, 41 CORNELL INT'L L.J. 675, 681 (2008). To the extent that community members tell their stories of law enforcement misconduct on the way to healing and reconciliation, an audit can serve as a conduit for the necessary first step of truth telling in the sequential process of truth and reconciliation. Angela Mae Kupenda & Tamara F. Lawson, *'Truth and Reconciliation': A Critical Step Toward Eliminating Race and Gender Violations in Tenure Wars*, 31 COLUM. J.

#### Independent Systemic Integrity Reviews

At a broader level, independent systemic integrity reviews align with the deconstructive dimension of abolition, which “encourages a steady shrinking of the criminal legal system and the carceral state.”<sup>34</sup> They do so by exposing the depth, nature, and range of law enforcement misbehavior. Since they are aimed at the system-wide impact of law enforcement misconduct, they encourage system-wide reform, rather than piecemeal fixes like firing one officer or sanctioning a single prosecutor. For those who already harbor a jaundiced view of the system, a review’s findings can bolster arguments that the criminal system is not simply broken, but instead consistently imposes harm and fosters injustice. For others, the results of a review can shake their unwavering faith in the criminal system’s fairness and accuracy. These sentiments, whether owing to a crisis of confidence or confirming one’s priors, can fuel efforts to dismantle, overhaul, or transform the system altogether.

An independent systemic integrity review can also be understood in light of abolition’s positive, constructive dimension.<sup>35</sup> It serves as an “unfinished alternative” to the current criminal system.<sup>36</sup> It imposes values that I have found to be in short supply when considering how the system operates today—a concern with the truth and an independence from the punitive sentiments that often inform criminal law administration. While systemic integrity reviews are not a radical reimagination of the status quo,<sup>37</sup> and their entanglement with the state can complicate their

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GENDER & L. 87, 93, 97-98 (2015) (describing the importance of truth telling as a critical first step in the truth and reconciliation process designed to transform an institution or entity); Michael A. Lawrence, *Racial Justice Demands Truth & Reconciliation*, 80 U. PITTS. L. REV. 69, 70 (2018) (detailing the importance of truth telling as a precursor to healing and reconciliation).

34. Southerland, *supra* note 29, at 1643.
35. *Id.*; Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1163 (2015).
36. Allegra M. McLeod, *Confronting Criminal Law’s Violence: The Possibilities of Unfinished Alternatives*, 8 UNBOUND: HARV. J. LEGAL LEFT 109 (2013) (defining and exploring unfinished alternatives, which are “in partial, in process, incomplete reformist efforts that seek to displace conventional criminal law administration as a primary mechanism for social order maintenance”).
37. Professor Amna Akbar contrasts traditional Department of Justice-focused police reforms that could include tools like independent systemic integrity reviews, with alternative visions from the Black Lives Matter movement. Amna A. Akbar, *Toward A Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 408 (2018).

effectiveness,<sup>38</sup> they have the potential to be enough of a departure from the current system that they can constitute “the type of iterative experimentation that grounds abolition.”<sup>39</sup> Finally, a review informed by race consciousness is consistent with abolition’s focus on the racial logics that feed the criminal system.<sup>40</sup> No matter what orientation one prefers, from reform to abolition, there is an undeniable convergence of interests among would-be proponents of independent systemic integrity reviews: All aim to excavate the harmful dimensions of the current criminal system and tack toward a more just horizon.<sup>41</sup> With this framing as context, I turn next to the Cook County Working Group’s independent systemic integrity review.

## I. THE GENESIS OF AN INDEPENDENT SYSTEMIC INTEGRITY REVIEW

### A. A Brief Introduction to Conviction Review Models

I begin with an examination of comparable conviction review models. Doing so helps to highlight what made the Cook County independent systemic integrity review unique. Conviction review models operate on a continuum, from in-house entities contained within the prosecutor’s office on one end to wholly external entities on the other. One scholar has highlighted illustrative examples of the range of models from California, Indiana, North Carolina, and Minnesota.<sup>42</sup> Those examples alongside one from Illinois help situate the Cook County Working Group’s independent systemic integrity review and ground my advice for jurisdictions that create bodies to undertake such reviews. I take each in turn before

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38. See *infra* Part III.

39. Southerland, *supra* note 29, at 1707.

40. *Id.* at 1643, 1674-76; Fanna Gamal, *What Does Critical Race Theory Teach Us About Non-Reformist Reforms?*, LPE PROJECT (Nov. 29, 2023), <http://lpeproject.org/blog/crt-non-reformist-reforms> [<https://perma.cc/Q7HX-FPTM>]; see also Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2511-15 (2023) (identifying “the return of a commonsense on the left that racism and capitalism are entangled and co-constitutive of the unequal and undemocratic world”).

41. Harawa, *supra* note 32.

42. Keever, *supra* note 7, at 278-79 (cataloguing the limited number of independent review panels in North Carolina, San Francisco, and Minnesota).

explaining what made the Cook County Working Group experience stand out.

At the in-house end of the spectrum is a conviction integrity unit (“CIU”), also known as a conviction review unit (“CRU”).<sup>43</sup> A CIU can be thought of as a building block for an independent systemic integrity review. The typical CIU is a specialized unit housed within a prosecutor’s office and tasked with identifying and investigating convictions to determine if they are wrongful or otherwise lack integrity.<sup>44</sup> CIUs were created to address the potential wealth of misbehavior, misconduct, negligence, and recklessness that plagues the criminal system.<sup>45</sup> They “exist to conduct fact-based reviews of plausible claims of actual innocence without regard to the type of error or mindset of the participants

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43. Hollway, *supra* note 17, at 17. *Conviction Integrity Units*, NAT'L REGISTRY EXONERATIONS, <https://exonerationregistry.org/conviction-integrity-units> [<https://perma.cc/LQ5F-2KDT>]. As of November 2025, 108 such units exist nationwide. *Id.*
44. Hollway, *supra* note 17, at 17.
45. *Id.* at 10. (“While all prosecutors’ offices have a procedure for handling appeals, including habeas corpus or postconviction appeals, the most prevalent institutional response by prosecutors to address fact-based postconviction claims of actual innocence is the Conviction Review Unit (CRU), sometimes called the Conviction Integrity Unit.”). In this Article, I use the terms interchangeably. The first CIUs sprung up in the early-to-mid-2000s, with the CIU in Dallas County, Texas—founded in 2007—serving as the longest continually operating CIU in the United States. *Id.* at 10. The idea of a CIU housed in a prosecutor’s office originated in San Diego in 2000, when the deputy district attorney there created a “DNA Innocence Project” to review claims of factual innocence that could be resolved through DNA testing. *Id.* at 10 n.5. A CIU in Santa Clara, California, followed in 2004, before being disbanded and reinstated in 2008. *Id.* CIUs were created in response to a growing awareness of wrongful convictions and law enforcement misconduct. For example, in Dallas, District Attorney Craig Watkins established the CIU there following 9 DNA exonerations, the most in the country at the time. *See* Mike Ware, *Dallas County Conviction Integrity Unit and the Importance of Getting It Right the First Time*, 56 N.Y.U. L. REV. 1033, 1039 (2012). Three additional exonerations happened in Watkins’s first few weeks on the job. *Id.* at 1040 n.21. The awareness around wrongful convictions was also driven by the work of the Innocence Project, founded in 1992 by Peter Neufeld and Barry Scheck. *About*, INNOCENCE PROJECT, <https://innocenceproject.org/about/> [<https://perma.cc/6JLN-UKVL>].

involved.”<sup>46</sup> Veteran prosecutors tend to lead most CIUs, with line and appellate prosecutors given responsibility to review and investigate claims.<sup>47</sup> When well-run and properly resourced, they can correct past injustices, as well as restore confidence in the integrity of a prosecutor’s office, and by extension, the criminal system.<sup>48</sup> As of August 2025, there were 108 dedicated units housed in state and federal prosecutor’s offices nationwide.<sup>49</sup>

Moving along the continuum, other conviction review models function like a CIU with additional components and features that leave them straddling the line between an in-house and external unit, operating independently from the prosecutor’s office even as they are beholden to its authority. These models may involve collaboration between members of the prosecutor’s office and outside stakeholders to support the conviction review. Alternatively, they may involve a CIU that consults with an external body to support its work. Conviction review models in California and Indiana provide ready examples.

San Francisco’s Innocence Commission was created in 2020 by San Francisco’s district attorney at the time. The Commission consists of a five-member team of experts appointed by the district attorney<sup>50</sup> and tasked with “review[ing] cases where an incarcerated person asserts that they

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46. Hollway, *supra* note 17, at 17; *see also id.* at 5-7 (providing checklist of features that align with transparency, independence, and flexibility and that, when missing, undermine the sincerity and commitment of a CRU).
47. *Id.* at 27.
48. Hamann, *supra* note 28. In keeping with this trend, the American Bar Association amended the Model Rules of Professional Conduct to “enumerate a prosecutor’s ethical duties in the face of evidence of a possible wrongful conviction.” Lissa Griffin & Daisy Mason, *The Prosecutor in the Mirror: Conviction Integrity Units and Brady Claims*, 55 LOY. L.A. L. REV. 1005, 1011 (2022); *see also Conviction Integrity Unit Best Practices*, INNOCENCE PROJECT, <http://www.innocenceproject.org/wp-content/uploads/2016/09/Conviction-Integrity-Unit.pdf> [<https://perma.cc/B4PP-DLBN>]; Scheck, *supra* note 16 (detailing best practices for CIUs); Hollway, *supra* note 17, at 1-4.
49. *Conviction Integrity Units*, NAT’L REGISTRY EXONERATIONS, <https://exonerationregistry.org/conviction-integrity-units> [<https://perma.cc/H2WU-NBSU>].
50. Press Release, S.F. Dist. Att’y, District Attorney Brooke Jenkins Announces New Reforms and Appoints Julia Cervantes to Innocence Commission (Sep. 26, 2022), <https://sfdistrictattorney.org/press-release/district-attorney-brooke-jenkins-announces-new-reforms-and-appoints-julia-cervantes-to-innocence-commission> [<https://perma.cc/LZ8S-ZEBF>].

were wrongfully convicted.”<sup>51</sup> The Commission evaluates the evidence and conducts an appropriate reinvestigation.<sup>52</sup> Following its investigation and evaluation, a majority vote by the Commission to vacate a conviction leads to its preparation of “a findings of fact and conclusions of law memorandum that will serve as the basis to seek to vacate the conviction.”<sup>53</sup> The district attorney “afford[s] great weight to the determination of the Commission” while “retain[ing] the final decision-making power on each case.”<sup>54</sup> The Commission is chaired by a law professor and comprised of a retired judge, a medical expert, and representatives from the San Francisco District Attorney’s Office and the San Francisco Public Defender’s Office.<sup>55</sup> A “full-time, grant-funded staff attorney who works under the supervision of the University of San Francisco Law School’s Racial Justice Clinic” supports the Commission’s work.<sup>56</sup> Despite the presence of a District Attorney’s Office representative, the Commission was designed to operate independently from the District Attorney’s Office given the potential for conflicts that might arise from a prosecutor investigating their own office.<sup>57</sup> Although the San Francisco Innocence Commission was responsible for producing the “first

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51. *The Innocence Commission*, S.F. DIST. ATT’Y, <https://sfdistrictattorney.org/policy/innocence-commission> [<https://perma.cc/8R8H-M8VS>].
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.* Although the San Francisco District Attorney website lists a retired judge as a member of the Commission, that judge resigned from the Commission in 2025. Bob Egelko, *Former Judge Accuses DA Brooke Jenkins of Hostility Toward Judges in State Bar Complaint*, S.F. CHRON. (Apr. 29, 2025, 9:40 PM), <https://www.sfchronicle.com/politics/article/brooke-jenkins-bar-complaint-20301276.php>.
56. *The Innocence Commission*, *supra* note 51.
57. *DA’s New Innocence Commission Gets Its First Exoneration in 32-Year-Old Case*, FORENSIC MAG. (Apr. 20, 2022), <https://www.forensicmag.com/585306-DA-s-New-Innocence-Commission-Gets-its-First-Exoneration-in-32-Year-Old-Case> [<https://perma.cc/SKX7-4RKK>]; Joshua Sharpe, *Chesa Boudin Created a Commission to Investigate Wrongful Convictions. Will His Replacement Keep It Going?*, S.F. CHRON. (July 15, 2022, 4:40 PM), <https://www.sfchronicle.com/sf/article/chesa-boudin-innocence-commission-17301094.php>.

collaborative exoneration in San Francisco history,”<sup>58</sup> a change in the District Attorney’s Office’s leadership has seemingly stalled the Commission’s work.<sup>59</sup> That is so even as the new district attorney announced planned reforms in 2022 to ensure the Commission’s longevity and enhance its review,<sup>60</sup> and despite concerns about a broader pattern of misconduct by officers responsible for two known wrongful convictions.<sup>61</sup>

Turning next to Indiana, the state’s first CIU, established by the Marion County Prosecutor’s Office in 2021, consults with an external advisory body to do its work. Staffed with attorneys and support staff, the CIU collaborates with “[a]n independent advisory panel composed of legal experts and community members . . . to provide additional analysis and evaluation of cases under review.”<sup>62</sup> Although the Marion County CIU focuses on “claims that could exonerate the applicant from a role in the offense,” its purview is broader.<sup>63</sup> It also can review legal challenges in instances where “there is an obvious material error or ruling that so undermines the integrity of the conviction to have substantially denied the application a fair adjudication of guilt.”<sup>64</sup> The office secured its first exoneration in 2023, following a joint investigation with the University of San Francisco School of Law’s Racial Justice Clinic.<sup>65</sup>

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58. *Racial Justice Clinic*, UNIV. S.F., <https://www.usfca.edu/law/engaged-learning/law-clinics/racial-justice-clinic> [<https://perma.cc/AGH5-UDLF>].
59. Eddie Kim, *San Francisco’s Innocence Commission Seems to Have Been on Hiatus for Nearly a Year*, S.F. GAZETTEER (Jan. 27, 2025, 2:30 PM), <https://sf.gazetteer.co/san-franciscos-innocence-commission-seems-to-have-been-on-hiatus-for-nearly-a-year> [<https://perma.cc/K2XX-22L5>].
60. Press Release, S.F. Dist. Att’y, *supra* note 50.
61. Joshua Sharpe, *Two Detectives Are Behind Two Wrongful Convictions. Why Is S.F. Still Defending Them?*, S. F. CHRON. (Sep. 18, 2023), <https://www.sfchronicle.com/crime/article/sf-detectives-wrongful-convictions-17769496.php>.
62. *Conviction Integrity Unit*, MARION CNTY. PROSECUTOR’S OFF., <https://www.indy.gov/activity/conviction-integrity-unit> [<https://perma.cc/78A9-TD2Q>].
63. *Id.*
64. *Id.*
65. Maura Johnson, *State Legislation Would Change Police Lineups*, IND. LAW. (Feb. 26, 2025), <https://www.theindianalawyer.com/articles/state-legislation-would-change-police-lineups>; Lauren Liebhaber, *Cop Withheld Evidence in Case that Sent Man to Jail for 60 Years, Indiana Lawsuit Says*, KAN. CITY STAR (May 23, 2024, 6:34 AM), <https://www.kansascity.com>

Moving to the other end of the continuum are conviction review bodies—like those in North Carolina, Illinois, and Minnesota—that operate as separate entities outside of the prosecutor’s office. These bodies are not beholden to the prosecutor’s office. North Carolina’s Innocence Inquiry Commission is a state agency established in 2006 by the state legislature “to investigate and evaluate post-conviction claims of factual innocence,” according to its mission statement.<sup>66</sup> The first entity of its kind in the United States, the Commission is distinct from the appeals process, and “is charged with providing an independent and balanced truth-seeking forum for credible post-conviction claims of innocence in North Carolina.”<sup>67</sup> The eight commissioners are “selected by the Chief Justice of the North Carolina Supreme Court and the Chief Judge of the North Carolina Court of Appeals,” and include a superior court judge, a prosecutor, a defense attorney, a victim advocate, a sheriff, a member of the public, and two “discretionary members.”<sup>68</sup> A staff of attorneys, paralegals, a victim services program manager, and an executive assistant led by an executive director conducts the Commission’s investigations.<sup>69</sup> The Commission’s scope of review is limited to claims of factual innocence alone.<sup>70</sup> And of those innocence cases, only those in which new evidence of innocence is available are subject to review.<sup>71</sup> A set of rules and procedures governs the workings of the commission and its staff, shaping everything from the criteria for review to the procedures for hearings before the Commission

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/news/nation-world/national/article288652705.html  
[<https://perma.cc/VB47-XCNJ>].

66. N.C. INNOCENCE INQUIRY COMM’N, <https://innocencecommission-nc.gov> [<https://perma.cc/B5NQ-4WEP>].
67. *Id.*
68. *Meet the Commissioners*, N.C. INNOCENCE INQUIRY COMM’N, <https://innocencecommission-nc.gov/commissioners-2> [<https://perma.cc/2UUU-84QB>].
69. *Meet the Staff*, N.C. INNOCENCE INQUIRY COMM’N, <https://innocencecommission-nc.gov/about> [<https://perma.cc/KF8A-GBCH>] (“Our staff includes an Executive Director, Assistant Director, Associate Counsel, four Staff Attorneys, two Grant Staff Attorneys, a Victim Services Program Manager, two Paralegals and an Executive Assistant.”).
70. N.C. GEN. STAT. § 15A-1460 (2026); N.C. GEN. STAT. § 15A-1467 (2026).
71. Laura N. Pierro, *2024 Annual Report*, N.C. INNOCENCE INQUIRY COMM’N 11 (2025), <https://innocencecommission-nc.gov/wp-content/uploads/2025/01/2024-annual-report.pdf> [<https://perma.cc/TM78-9V5T>].

afforded to claimants.<sup>72</sup> Upon a recommendation by the Commission, the case under review is referred to a 3-judge panel commissioned by the chief justice of the North Carolina Supreme Court for an evidentiary hearing to determine whether, by clear and convincing evidence, the convicted person has proven their innocence.<sup>73</sup> To date, the Commission has reviewed more than 3,500 claims of innocence and produced 16 exonerations.<sup>74</sup> The Commission's narrow standard of review—focused on factual innocence—leaves no room for mass exonerations or examinations of law enforcement misconduct unaccompanied by a claim of innocence.<sup>75</sup>

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72. *The North Carolina Innocence Inquiry Commission Rules and Procedures*, N.C. INNOCENCE INQUIRY COMM'N (rev'd. Dec. 6, 2023), <https://innocencecommission-nc.gov/wp-content/uploads/2024/04/rules-and-procedures.pdf> [https://perma.cc/8ZBP-N3PT].
73. *Id.* at 18; *see also* N.C. Gen. Stat. § 15A-1469(h) (2026).
74. Eric Miller, *NC Senate Wants to Cut the State's Innocence Commission. Its Director Now Pleads with the House*, WRAL NEWS (Apr. 17, 2025, 7:27 PM), <https://www.wral.com/news/state/nc-senate-cuts-innocence-commission-funding-plea-house-april-2025> [https://perma.cc/Y62Y-K8HK]. As of January 2025, the Commission had received 3,826 claims of innocence, conducted 20 hearings, and yielded 15 exonerations. Pierro, *supra* note 71, at 13. An additional exoneration was announced in April 2025. Luciana Perez Uribe Guinassi, *NC Man Exonerated in Murder as Senate Calls for End to Innocence Commission*, NEWS & OBSERVER (Apr. 21, 2025, 12:07 PM), <https://www.newsobserver.com/news/politics-government/article304391441.html> [https://perma.cc/LZ3J-U27Y].
75. To be considered, the claim must be a new one that has not been previously considered; applicants must sacrifice procedural protections; and if conviction resulted from a plea (as it frequently does, since “15% of known exonerees pled guilty”), the Commission must unanimously agree to review. Marcus Pollard & Angie Weis Gammell, *Wrongful Convictions in North Carolina*, WILSON CTR. FOR SCI. & JUST. AT DUKE L. 34 (Oct. 2, 2024), <https://wcsj.law.duke.edu/wp-content/uploads/2024/10/Wrongful-Convictions-in-North-Carolina.pdf> [https://perma.cc/K9W9-KUKW]; Fiona Leverick, Kathryn Campbell & Isla Callander, *Post-Conviction Review: Questions of Innocence, Independence, And Necessity*, 47 STETSON L. REV. 45, 67 (2017) (“The test used in North Carolina is about as narrow as it is possible to envisage, but, it does run the risk of considerable injustice. Those who acted without mens rea, or who had a recognized justification defense such as self-defense, cannot apply, but it is difficult to see how they are any less innocent in moral terms than those who can demonstrate that they were not involved in the incident at all.”).

Law enforcement opposition to the Commission's work and mission have led to threats to its funding and existence.<sup>76</sup>

Illinois has another model of this sort. The state's eight-member Torture Inquiry and Relief Commission ("TIRC") was created by a 2009 state statute to investigate and vindicate widespread claims of police torture by the Chicago Police Department (the "CPD"), claims that I explore in Part IV.<sup>77</sup> It is chaired by a retired judge and consists of a former public defender, a former prosecutor, a law professor, a practicing criminal defense attorney, and three members of the public who are not attorneys, officers, or members of the judicial branch.<sup>78</sup> By law, TIRC's authority is limited to claims "that an officer coerced a confession that was used against the defendant to obtain his conviction."<sup>79</sup> Accordingly, TIRC's mandate is to "gather evidence about a claim of torture occurring in Cook County, and then determine whether there is sufficient credible evidence of torture to merit judicial review."<sup>80</sup> Claimants must allege that they were tortured, that their torture produced a confession that was used to secure a conviction, and that there is credible evidence of torture.<sup>81</sup> If TIRC makes such a finding by a preponderance of the evidence, it can refer the case to the Cook County Circuit Court, which can then hold a hearing on the

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76. Michael Hewlett, *Abolishing Innocence*, ASSEMBLY (Apr. 22, 2025), <https://www.theassemblync.com/politics/criminal-justice/nc-innocence-commission-elimination> [<https://perma.cc/MX2P-L8CY>]; Miller, *supra* note 74, at 17. The North Carolina Innocence Inquiry Commission would lose all funding under a budget proposal approved in April by the North Carolina Senate. *Id.* ("The commission has 13 full-time employees, and a total annual budget of \$1.6 million — approximately 0.005% of the state's overall budget.... Sen. Danny Britt, R-Robeson, said the commission has failed to handle enough cases in its 18-year existence. He pointed to other nonprofit organizations that have also been working on exonerations and suggested they could take up the commission's work.").
77. The story of the regime that produced those allegations is the focus of Section IV.C and serves as the backdrop for the Working Group's efforts. *About Us*, TORTURE INQUIRY & RELIEF COMM'N [hereinafter TORTURE INQUIRY & RELIEF COMM'N], [https://tirc.illinois.gov/about-us.html#faq-whatisthecommission-faq\\_copy](https://tirc.illinois.gov/about-us.html#faq-whatisthecommission-faq_copy) [<https://perma.cc/F8JG-Q29L>].
78. 775 ILL. COMP. STAT. 40/20 (2024).
79. TORTURE INQUIRY & RELIEF COMM'N, *supra* note 77.
80. *Id.*
81. *Id.*

claim.<sup>82</sup> At the conclusion of a successful hearing, the court can award a new trial to the claimant.<sup>83</sup> TIRC has been the subject of criticism for the narrow conditions that claimants must meet under TIRC's rules, and how those conditions distort TIRC's credibility determinations to the disadvantage of claimants who allege that they endured police abuse.<sup>84</sup> By statute, TIRC ceased taking up new cases for consideration in 2019.<sup>85</sup>

Minnesota provides a final model for consideration, one related to those found in North Carolina and Illinois. There, an independent panel supported by a law firm and comprised of "key stakeholders in the criminal legal system, including prosecutors, advocates from innocence organizations, and legal experts from academia" engaged in a comprehensive review of a single case.<sup>86</sup> The investigation and review of the panel determined that the conviction lacked integrity, leading to a finding that the convicted man's continued incarceration was no longer in the interests of justice.<sup>87</sup> In the wake of the panel's report, the Minnesota Board of Pardons commuted the man's sentence, resulting in his release from prison.<sup>88</sup>

Situating the Cook County Working Group's Independent Systemic Integrity Review within the preceding set of examples highlights some of its key features. It merges aspects of conviction review models across the continuum. The Working Group functioned like a CIU, because it was tasked with identifying and investigating convictions where integrity was at issue. However, its mandate was broader than the examples above, because it focused on systemic concerns that extended beyond individual cases. The Working Group effort was sparked by an infamous episode of police and prosecutorial misconduct that unfolded in one case. That case—known as the case of the Englewood Four—involved a cohort of law

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82. *Id.*

83. *Id.*

84. Kim D. Chanbonpin, *Truth Stories: Credibility Determinations at the Illinois Torture Inquiry and Relief Commission*, 45 LOY. U. CHI. L.J. 1085, 1123-27 (2014).

85. TORTURE INQUIRY & RELIEF COMM'N, *supra* note 77.

86. Keever, *supra* note 7, at 281-82.

87. *Id.* at 282; Keith Findley, Maria Hawilo, Mark Osler, Jim Petro, David Singleton & Mike Ware, *Report of the Independent Panel to Examine the Conviction and Sentence of Myon Burrell*, NW. UNIV. PRITZKER SCH. OF L. CTR. ON WRONGFUL CONVICTIONS 15 (Dec. 2020).

88. *Id.*

enforcement actors who secured false confessions and used those false confessions to produce four wrongful convictions.<sup>89</sup> The concern that what happened to the Englewood Four was widespread and systemic, rather than an isolated incident, gave rise to the Cook County Working Group's review. Thus, the Working Group's mandate focused on the conduct of a group of law enforcement officials and the "ripple effect" of their misconduct on other cases that they touched, rather than atomized claims of wrongful convictions.<sup>90</sup> In that respect, the Working Group's purview was akin to TIRC's, investigating whether, when, and how often law enforcement engaged in misconduct beyond an individual case.

In keeping with that mandate, the possible innocence of the convicted person was not dispositive, nor was it the trigger for review. Instead, the focus was on the system actors and their behavior. Given that focus, the Working Group's charge was to review and investigate cases originating in Cook County's county seat of Chicago in which a convicted person made credible allegations that the police—and specifically one of the seven CPD detectives involved in the Englewood Four case—engaged in coercive conduct, whether through threats, physical violence, psychological manipulation, or any other unlawful means, to secure a confession. Following that review, the Working Group was to make recommendations to the Cook County state's attorney. The Group could recommend a *vacatur* due to a loss of confidence in the integrity of the conviction, regardless of the claimant's factual guilt. The Working Group could also recommend a *vacatur* due to a belief that the claimant was actually innocent. Or it could recommend taking no action at all. The state's attorney ultimately determined what to do in court with that recommendation, placing the Working Group more on the CIU-California-Indiana side of the continuum. My time as a member of the three-lawyer Working Group began after the pool of cases was identified and assembled by local advocates surveying prisons across Illinois. Those cases were then screened by the prosecutor's office to ensure that the law enforcement officials of concern were indeed involved in the initial investigation and prosecution of the cases to be reviewed. From there, the work took shape, in the long shadow of the Englewood Four.

Another distinctive feature of the Cook County Working Group in light of the examples above was its place in the conviction review ecosystem.

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89. See *infra* Section I.B.

90. See Keever, *supra* note 7, at 232 ("The discovery of one 'bad cop' often has a ripple effect, calling into question a whole host of potentially impacted cases.").

Unlike a traditional CIU, the Working Group was external to the prosecutor's office. It was comprised of three individuals with significant criminal defense experience (and no law enforcement experience), and it operated outside the prosecutor's office and the confines of the law enforcement bureaucracy. Our status as special prosecutors allowed for unconstrained access to law enforcement materials, but beyond that we were not actual prosecutors with law enforcement authority. Unlike the models in San Francisco and Marion County, the Working Group was not an advisory appendage of a CIU.<sup>91</sup> It was the CIU's external functional equivalent, operating much more like the Minnesota conviction review model, and sitting closer to the North Carolina and Illinois end of the continuum. The fact that police and prosecutor actions led to the Englewood Four's wrongful convictions produced potential conflicts of interest that meant the systemic integrity review and the review panel had to operate independently, facts that I explore later in this Article.<sup>92</sup>

The point is that an independent systemic integrity review is a unique tool, forged out of specific facts and circumstances and aimed at broader injustices that extend beyond one case.<sup>93</sup> It calls into question how a

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91. See *Hollway*, *supra* note 17, at 28-31 (providing examples of CIUs with external participants).
92. The conflict of interest is clear—just “as there are certain institutional and political barriers that deter district attorneys’ offices from recognizing potentially valid innocence claims,” the same can be said for claims of law enforcement misconduct. Daniel S. Medwed, *The Zeal Deal: Prosecutorial Resistance to Post-Conviction Claims of Innocence*, 84 B.U. L. REV. 125, 130 (2004); see also Keever, *supra* note 7, at 278 (explaining that the scope of misconduct and the inherent conflict posed by a prosecutor’s office investigating a partner law enforcement agency make independent review panels optimal for auditing systemic misconduct).
93. The idea of independent entities to reinvestigate potential wrongful convictions was first suggested more than two decades ago by Innocence Project cofounders Peter Neufeld and Barry Scheck, and journalist Jim Dwyer. Scheck, *supra* note 16, at 710-11 (citing BARRY C. SCHECK, PETER NEUFELD & JIM DWYER, *ACTUAL INNOCENCE: FIVE DAYS TO EXECUTION AND OTHER DISPATCHES FROM THE WRONGLY CONVICTED 1* (2000)); Barry Scheck & Peter Neufeld, *Towards The Formation of “Innocence Commissions” in America*, 86 JUDICATURE 98, 103-04 (2002); BARRY SCHECK, PETER NEUFELD & JIM DWYER, *ACTUAL INNOCENCE: WHEN JUSTICE GOES WRONG AND HOW TO MAKE IT RIGHT* 351 (New American Library 2003). Their suggestion was endorsed by a number of scholars and advocates. Scheck, *supra* note 16, at 711 (citing Lissa Griffin, *Correcting Injustice: Studying How the United Kingdom and the United States Review Claims of Innocence*, 41 U. TOL. L. REV. 107, 152 (2009)); Lissa Griffin,

locality's entire criminal system operates. The mixture of features from across the continuum made the Working Group a unique body, serving as a model for the components of an independent review that a jurisdiction should consider. In the next Section I describe the case that set the stage for the Working Group's efforts and informed its mandate. I return to the facts and circumstances of the case in subsequent Sections, to unpack what it can teach us about independent systemic integrity reviews and the values that should inform them.

#### B. A Catalyst for an Independent Systemic Integrity Review: The Case of the Englewood Four

“Oh, you know what you guys did. You guys raped and murdered this woman.’ And, you know, he was like, ‘yeah, you’re going to die in jail. You’re never going home.’ My life was, you know, flashing before me, sitting there like I’m – how am I going to die in jail? I don’t even know what’s going on.”<sup>94</sup>

Those are the words of Terrill Swift in 2021, recounting a nightmare that began for him nearly 3 decades earlier, in March of 1995.<sup>95</sup> Mr. Swift was, at the time, being interrogated by Chicago Police Department detectives.<sup>96</sup> He was 17 years old, one of 5 teenagers, ranging in age from 15 to 17, accused of a horrific crime.<sup>97</sup> Mr. Swift and his then-teenaged codefendants, Vincent Thames, Michael Saunders, and Harold Richardson,

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*International Perspective on Correcting Wrongful Convictions: The Scottish Criminal Cases Review Commission*, 21 WM. & MARY BILL RTS. J. 1153 (2013); Kent Roach, *The Role of Innocence Commissions: Error Discovery, Systemic Reform or Both?*, 85 CHI.-KENT. L. REV. 89 (2010); Sarah L. Cooper, *Innocence Commissions in America: Ten Years After*, in *CONTROVERSIES IN INNOCENCE CASES IN AMERICA* 197 (Sarah Lucy Cooper ed., 2014).

94. Patrick Smith, *Illinois Measure Is Intended To Prevent Juveniles' False Confessions*, NPR (June 7, 2021, 5:05 AM), <https://www.npr.org/2021/06/07/1003872817/illinois-measure-is-intended-to-prevent-juveniles-false-confessions> [https://perma.cc/2NY9-R3ZA].
95. *Id.*
96. *Id.*
97. Symposium, *Juveniles in the Innocence Project: Current Cases in Practice*, 18 CARDOZO J.L. & GENDER 615, 619 (2012).

would eventually spend nearly half of their lives in prison for a crime they did not commit.<sup>98</sup>

Four months before Mr. Swift's interrogation, Nina Glover's naked, brutalized, lifeless body was discovered by a sanitation worker.<sup>99</sup> It was wrapped in a sheet in a dumpster behind a liquor store in the Englewood neighborhood of Chicago's South Side at 7:00 a.m. on November 7, 1994.<sup>100</sup>

Chicago Police Department detectives arrived at the crime scene that morning and began to investigate.<sup>101</sup> There they found three people in addition to the sanitation worker who stumbled upon Ms. Glover's body: the liquor store's assistant manager, a neighborhood resident, and Johnny Douglas.<sup>102</sup> Douglas was more than ten miles from home that morning, and could not explain how he ended up in the alley where Ms. Glover's body was found.<sup>103</sup> He told police he knew nothing about Ms. Glover.<sup>104</sup> They believed him and did not pursue him any further.

The police made no arrests and had no leads. What these detectives employed was a very particular method of clearing cases and securing convictions. Their practice was simple but effective. It was also difficult to uncover, shrouded in a cloak of law enforcement secrecy, and burdened by procedural bars that obscured the reparative vision of courts, prosecutors, defense attorneys, investigators, and a host of criminal system actors.<sup>105</sup>

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98. Nancy Petro, *Englewood Four Are Officially Innocent*, WRONGFUL CONVICTIONS BLOG (Sep. 14, 2012), <https://wrongfulconvictionsblog.org/2012/09/14/englewood-four-are-officially-innocent> [<https://perma.cc/2NY9-R3ZA>].
99. *Juveniles in the Innocence Project*, *supra* note 97, at 618-19.
100. Complaint at 6-7, *Saunders v. City of Chicago*, No. 12-cv-09158, 2013 WL 6009933 (N.D. Ill. Nov. 13, 2013) [hereinafter *Saunders Complaint*]; *5 Teens Charged in Beating Death*, CHI. TRIB. (Mar. 13, 1995, 1:00 AM), <https://www.chicagotribune.com/1995/03/13/5-teens-charged-in-beating-death>.
101. *Saunders Complaint*, *supra* note 100, at 7.
102. *Id.* (describing that Douglas had been "arrested 83 times and convicted 38 times between July 1980 and April 1998," many of them for sexual assault and violence against women). *Terrill Swift*, NAT'L REGISTRY EXONERATIONS (Jan. 25, 2019), <https://exonerationregistry.org/cases/11044> [<https://perma.cc/NA79-MCN2>].
103. *Saunders Complaint*, *supra* note 100, at 7-8.
104. *Id.* at 7.
105. Jason Meisner & Dan Hinkel, *Ex-Prosecutor: Chicago Police, Prosecutors Colluded in Englewood 4 Wrongful Conviction*, CHI. TRIB. (May 23, 2019, 4:42

The investigating detectives constructed a complete falsehood based on coerced confessions obtained through threats, physical violence, psychological torture, and a combination of illegal tactics. They manufactured suspicion and guilt.

The detectives investigating the gruesome crime canvassed Englewood until they came upon 18-year-old Jerry Fincher, on the street outside of his home, blocks from the crime scene, *4 months after the crime*.<sup>106</sup> They handcuffed him and took him at gunpoint to the police station.<sup>107</sup> Fincher was held in that station for 2 days.<sup>108</sup> Over those 2 days he was threatened with physical violence and prison time.<sup>109</sup> He was told that if he cooperated with their investigation, he could go home.<sup>110</sup> Chicago

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AM), <https://www.chicagotribune.com/2017/07/20/ex-prosecutor-chicago-police-prosecutors-colluded-in-englewood-4-wrongful-conviction>.

106. The police version differed on this point. They claimed that Fincher voluntarily walked into the police station to provide information about Glover's murder in order to "gain 'some consideration' for a friend of his who was in custody on a drug charge," and ended up confessing to the murder and implicating the other four after two days of interrogation. *Four Chicago Men Exonerated of 1994 Murder and Rape by New DNA Evidence Linking the Crime to a Convicted Murderer*, INNOCENCE PROJECT (Jan. 17, 2012), <https://innocenceproject.org/four-chicago-men-exonerated-of-1994-murder-and-rape-by-new-dna-evidence-linking-the-crime-to-a-convicted-murderer> [https://perma.cc/K8FT-GVT3]. According to Saunders's complaint filed in connection with a civil rights suit against the detectives, prosecutors, and the city, four months after Glover was murdered, the officers approached Fincher on the street about the crime. *Saunders Complaint*, *supra* note 100, at 10. The detectives held him at the police station for two days, using physical violence, threats, and other coercive measures to secure an inculpatory false confession to the crime that falsely implicated four other neighborhood teenagers in the murder: Harold Richardson, Vincent Thames, Michael Saunders, and Terrill Swift. *Id.* at 10-12. None of these teenagers were involved in the murder, nor did they know the true perpetrator: Johnny Douglas. *Id.* at 11. These four teenagers were selected by the officers to be framed for Nina Glover's rape and murder "because of [their] belief that they were gang members or somehow affiliated with gangs." *Saunders v. City of Chicago*, No. 12-cv-09158, 2017 WL 36407, at \*2 (N.D. Ill. Jan. 4, 2017).
107. Complaint at 6, *Swift v. City of Chicago*, No. 12-cv-09155, 2012 WL 5936765 (N.D. Ill. Nov. 15, 2012) [hereinafter *Swift Complaint*].
108. *Id.*
109. *Id.*
110. *Id.*

detectives fed Mr. Fincher a story—one in which he and four neighborhood teenagers beat and sexually assaulted Ms. Glover.<sup>111</sup>

He recorded an inculpatory statement that parroted the narrative law enforcement had fed him, implicating himself and the four teenagers in the rape and murder.<sup>112</sup> According to his confession, the teenagers abducted, raped, and murdered Ms. Glover in the basement of Vincent Thames's home.<sup>113</sup> The detectives not only told Fincher the story he would confess to, but fed him the names of those who would become his codefendants.<sup>114</sup> At that point, a state prosecutor, working alongside the detectives who framed him, took Fincher's statement—serving as both a witness and a reporter—the standard practice in Cook County.<sup>115</sup>

Fincher's newly created coconspirators were then rounded up by Chicago police and interrogated by seven detectives.<sup>116</sup> Like Fincher, over several days, they were threatened, beaten, and lied to. Allegations set forth in civil litigation—allegations that were later bolstered by accounts of a prosecutor who helped secure their convictions—shed a light on the violence these teenagers endured.<sup>117</sup> Then-eighteen-year-old Vincent Thames alleged that he confessed after he was threatened with life imprisonment.<sup>118</sup> Richardson and Swift spent hours in police custody,

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111. *Id.*

112. *Id.* at 6-7.

113. *Michael Saunders*, NAT'L REGISTRY EXONERATIONS (June 22, 2021), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caid=3846> [https://perma.cc/8FAC-ULFA].

114. *Saunders* Complaint, *supra* note 100, at 10-11.

115. *Id.* at 11.

116. See *Saunders* Complaint, *supra* note 100, at 12 (stating that the 7 named defendant detectives interrogated each teenager using unlawful and coercive tactics); see also Bluhm Legal Clinic, *Vincent Thames*, NW. UNIV. PRITZKER SCH. OF L. CTR. ON WRONGFUL CONVICTIONS, <https://www.law.northwestern.edu/legalclinic/wrongfulconvictions/exonerations/il/vincent-thames.html> [https://perma.cc/7JGR-W679].

117. See *Richardson v. City of Chicago*, 314 F. Supp. 3d 999, 1006 (N.D. Ill. 2018) (describing how Chicago police officers threatened the four teenagers, told them what to say in their confessions, and ensured coordination of the fabricated testimony); FED. BUREAU OF INVESTIGATION, FD-302 OF TERENCE JOHNSON (2012) [hereinafter JOHNSON 302].

118. *Saunders v. City of Chicago*, No. 12-cv-09158, 2013 WL 6009933, at \*2 (N.D. Ill. Nov. 13, 2013), *reconsideration granted in part*, 146 F. Supp. 3d 957 (N.D. Ill. 2015).

during which they were induced to confess with false promises of leniency.<sup>119</sup> Richardson did so, implicating Saunders and Thames, while Swift falsely implicated Richardson, Saunders, and Thames.<sup>120</sup> The detectives, according to Saunders, ripped an earring from his ear and threatened to kill him by shooting him on the railroad tracks behind the precinct.<sup>121</sup> Law enforcement officers tricked Swift into coming to the police station, misdirecting his family about where he was so that they could interrogate him about the murder in their absence.<sup>122</sup> They told him what to say and promised that if he repeated the story to the prosecutor, he could go home.<sup>123</sup> He did so, as police refused to let him call his mother or a lawyer.<sup>124</sup>

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119. *Id.* at \*11.

120. Saunders v. City of Chicago, No. 12-cv-09158, 2017 WL 36407, at \*2 (N.D. Ill. Jan. 4, 2017) (summarizing the complaint in Harold Richardson's suit seeking redress for wrongful convictions, which described threats, coercion, false promises of leniency, physical violence, threats to kill, and other pressure brought to bear by detectives to secure confessions of the Englewood teenagers). For example, Harold Richardson testified at a deposition in connection with his civil rights lawsuit that, following his arrest, "once they were back at the police station, CPD officers instructed him that if he told the state's attorney the following story, then he should be able to go: He had gotten Glover's attention, put his arm around her neck, and walked her to Thames' house. Once there, Richardson, Saunders, Thames and Swift all had sex with Glover. Saunders hit her on the head with a shovel, and Richardson strangled her. Thames got a sheet to wrap the body, while a fifth man, Jerry Fincher, acted as security. They moved the body to another location to hide it." Richardson v. City of Chicago, 314 F. Supp. 3d 999, 1004 (N.D. Ill. 2018).

121. *Id.*; Joshua A. Tepfer, Craig M. Cooley & Tara Thompson, *Convenient Scapegoats: Juvenile Confessions and Exculpatory DNA in Cook County, Illinois*, 18 CARDOZO J.L. & GENDER 631, 662 (2012).

122. I take as true Swift's trial testimony, which detailed his interrogation. Tepfer et al., *supra* note 121, at 663–64.

123. *Id.* at 664; Erica Goode, *When DNA Evidence Suggests 'Innocent,' Some Prosecutors Cling to 'Maybe,'* N.Y. TIMES (Nov. 15, 2011), <https://www.nytimes.com/2011/11/16/us/dna-evidence-of-innocence-rejected-by-some-prosecutors.html> ("Mr. Swift... said his own confession came out of terror and exhaustion after being questioned for hours by the police, who told him, he said, that if he... signed the confession he could go home but if not, he would go to prison for the rest of his life.").

124. Tepfer et al., *supra* note 121, at 664.

All of their stories contained inconsistencies, both internally and between the different accounts.<sup>125</sup> DNA evidence excluded each one of them from responsibility for Nina Glover's rape.<sup>126</sup> And each of their stories put the time of the assault and murder at 9:00 p.m., even as other witness accounts placed Ms. Glover in one of those witnesses' apartments, alive and well, between 11:30 p.m. and 1:00 a.m.<sup>127</sup> The one thing they had in common? The same basic, false story. They each confessed to "luring Glover to the basement, taking turns having vaginal sex with her, beating her over the head with a shovel, strangling her, carrying her dead body one-and-a-half blocks, and dumping the body in a dumpster."<sup>128</sup> The detectives did more than make threats and false promises that the teenagers would go home if they acquiesced to, and repeated, the stories they were being fed.<sup>129</sup> They manufactured their stories, correcting them when there were glaring inconsistencies that would have raised significant doubts about their legitimacy.<sup>130</sup> They corrected the teenagers' statements so that the handwritten and court-reported statements would align.<sup>131</sup> They persuaded the teenagers not to recant their statements by doubling down on false promises that they would solely be witnesses.<sup>132</sup> They fed them false facts only to later use those false facts to bolster their constructed narrative. They told Swift that a shovel and mop handle had been tossed into a lagoon and then took him to the lagoon, where Swift pointed generally toward the water and mentioned that people dump all kinds of garbage; prosecutors later claimed he had pointed to the spot where the shovel had been found.<sup>133</sup> Detectives created false police reports to support the host of lies.<sup>134</sup>

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125. *Id.* at 659-61.

126. *Id.* at 662. The pretrial DNA testing that was conducted using a semen sample collected from a vaginal swab during Glover's autopsy excluded all 5 of the charged teenagers. *See also Terrill Swift, supra* note 102.

127. Tepfer et al., *supra* note 121, at 663.

128. *Michael Saunders, supra* note 113.

129. JOHNSON 302, *supra* note 117, at 4.

130. *Id.* at 3-4.

131. *Id.* at 3.

132. *Id.*

133. Goode, *supra* note 123 ("Mr. Swift said that the police told him that the tools had been tossed into the lagoon and took him there, and that he had just pointed in a general direction at the water.").

134. *See Saunders Complaint, supra* note 100, at 14.

The misconduct extended into the courtroom. The detectives testified to the credibility of the patently false statements in pretrial hearings and at trial.<sup>135</sup> The detectives and prosecutors worked together from a “cheat sheet” that the detectives created to ensure that law enforcement’s in-court testimony would be consistent.<sup>136</sup> There was no evidence implicating the teenagers beyond their confessions.

The system ground on, even as the teenagers did what they could to profess their innocence, including recanting their confessions, maintaining their innocence, and pursuing any avenues available to them to derail the train of injustice.<sup>137</sup> Pretrial motions to suppress the inculpatory statements by all those who were eventually convicted proved unsuccessful.<sup>138</sup> Fincher was the only one who escaped the nightmare. His

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- 135. JOHNSON 302, *supra* note 117, at 6.
- 136. *Id.*; Meisner & Hinkel, *supra* note 105; Richardson v. City of Chicago, 314 F. Supp. 3d 999, 1006 (N.D. Ill. 2018) (describing the coordination of fabricated testimony, as detailed in a report of an FBI interview with one of the Englewood prosecutors); JOHNSON 302, *supra* note 117, at 6.
- 137. See Jenny Leigh Davis, *The Englewood Four*, 22 FORENSIC EXAM’R 110, 110 (2012); Saunders Complaint, *supra* note 100, at 36; Swift Complaint, *supra* note 107, at 16; see also First Amended Complaint at 14, Thames v. City of Chicago, No. 12-cv-09170, 2012 WL 13076951 (N.D. Ill. Nov. 20, 2012) [hereinafter *Thames Complaint*]; Complaint at 27, Richardson v. City of Chicago, No. 12-cv-09184, 314 F. Supp. 3d 999 (N.D. Ill. 2018). Appeals of their convictions proved unsuccessful. Tepfer et al., *supra* note 121, at 665. Vincent Thames, who pled guilty, wrote a letter to the judge presiding over his case attempting to withdraw his guilty plea in 1998, filed a pro se motion in 2005 to seek further DNA testing, and moved pro se in 2008 to again attempt to withdraw his guilty plea, despite the risk of an increased sentence if the court accepted his withdrawal. *Thames Complaint*, *supra* at 14.
- 138. Saunders’s motion was initially successful. On the first day of the hearing, the judge ruled that his confession was involuntary, though he eventually reversed that decision after the state complained that suppression would bar prosecution of the teenagers and sought more time to present additional witnesses whose testimony addressed the court’s concern that Saunders was kept incommunicado prior to his interrogation. Brandon L. Garrett, *Contaminated Convictions Revisited*, 101 VA. L. REV. 395, 403 (2015); see also People v. Saunders, 718 N.E.2d 531 (Ill. App. Ct. 1999) (affirming the trial court’s decision to deny Saunders’s motion to suppress). Harold Richardson likewise unsuccessfully attempted to suppress his statement. See *Richardson*, 314 F. Supp. at 1005. Swift’s attorney failed to file a pretrial suppression motion. Tepfer et al., *supra* note 121, at 663 n.290.

confession was suppressed<sup>139</sup> because a judge found incredible the notion that Fincher voluntarily chose to remain in a police station interrogation room for two days rather than go home, prior to his confession.<sup>140</sup> Once the confession was suppressed as the fruit of an unlawful arrest, the indictment against him was dismissed.<sup>141</sup>

Three of the four proceeded to trial, opting to waive a jury in favor of a bench trial. The judge presiding over the cases made a comment in Terrill Swift's trial that summed up the general sentiment in all four cases: "[T]his case is relatively simple. It's all confession. Without the confession there is no case.... We have a 22-page confession, and that is enough for me."<sup>142</sup> Swift was convicted and sentenced to 36 years in prison.<sup>143</sup> Richardson and Saunders were convicted following bench trials and sentenced to 40 years' imprisonment each.<sup>144</sup> In truth, the trials were little more than extended guilty pleas based on their "confessions." Thames pled guilty after seeing his codefendants' convictions, and was sentenced to 30 years' imprisonment.<sup>145</sup> Police and prosecutors, with the blessing of an unwitting court, manufactured guilt.

The convictions, built on law enforcement lies and abuse, stole decades from the teenagers, who became known as the Englewood Four. They each spent sixteen years in prison before DNA evidence exonerated them and definitively tied Johnny Douglas, the man who was at the scene of the crime in 1995 and left unpursued by police, to Ms. Glover's assault and murder.<sup>146</sup> Initially, then-Cook County State's Attorney Anita Alvarez

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139. Tepfer et al., *supra* note 121, at 662.

140. *Id.*

141. *Id.*

142. *Terrill Swift*, *supra* note 102; Garrett, *supra* note 138, at 406.

143. *Saunders v. Chicago*, No. 12-cv-09158, 2013 WL 6009933, at \*2 (N.D. Ill. Nov. 13, 2013).

144. *Id.*

145. *Id.*

146. In 2010, Swift and Saunders jointly filed a motion, later joined by Richardson, for postconviction DNA testing using a more advanced form of DNA testing than what was done before trial. The lab conducting the DNA testing obtained a single male DNA profile matching that of Johnny Douglas from the vaginal swab extracts collected. *See Thames Complaint*, *supra* note 137, at 14-15; Robert Wildeboer, *Members of 'Englewood Four' to Get \$24 Million After Wrongful Murder Convictions*, WBEZ Chi. (Jan. 23, 2019, 7:52 PM EDT), <https://www.wbez.org/chicago/2019/01/23/members-of-englewood-four-to-get-24-million-after-wrongful-murder-convictions>

opposed their release, stating that a DNA match was not enough to cast significant doubt on their guilt.<sup>147</sup> Despite this resistance, their convictions were eventually vacated, the indictments against them were dismissed, and the court that granted relief issued certificates of actual innocence to the men.<sup>148</sup> Following their exoneration, they filed civil rights suits against, among others, the police and prosecutors whose dirty work disappeared them in prison.<sup>149</sup> The law enforcement defendants denied any wrongdoing—denials that were undermined by a federal investigation revealing the depths of the misconduct.<sup>150</sup> Multi-million-dollar awards

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[<https://perma.cc/ANV8-HL6C>]. The plaintiffs' joint petition to vacate their petitions was granted in 2011, leading to their release from prison and issuance of certificates of innocence in 2012. *Saunders v. City of Chicago*, 146 F. Supp. 3d 957, 960 (N.D. Ill. 2015). When the convictions of the four men were vacated, the presiding judge quoted a statement made by the judge who had convicted them back in 1998: "If there is a DNA match, then we are talking about a different case all together." *Terrill Swift, supra* note 102.

147. Goode, *supra* note 123.

148. *Judge Gives Innocence Certificates to 4 Men in '94 Murder, Rape Case*, CHI. TRIB. (Nov. 3, 2021, 8:56 PM CDT), <https://www.chicagotribune.com/2012/09/14/judge-gives-innocence-certificates-to-4-men-in-94-murder-rape-case>.

149. *Richardson v. City of Chicago*, 314 F. Supp. 3d 999, 1004 (N.D. Ill. 2018) (describing civil suits filed by the Englewood Four).

150. See Sarah Macaraeg & Yana Kunichoff, *'Nothing Happens to the Police': Forced Confessions Go Unpunished in Chicago*, GUARDIAN (Jan. 28, 2016, 9:10 AM EST), <https://www.theguardian.com/us-news/2016/jan/28/chicago-police-department-false-confessions-torture> [<https://perma.cc/GYG3-8PLT>]. Law enforcement's behavior has only come to light in recent years, after federal authorities began to investigate allegations of misconduct by police and prosecutors in Cook County. *FBI Report Says Chicago Police Coerced Confessions of Englewood Four*, INNOCENCE PROJECT (Nov. 17, 2016), <https://innocenceproject.org/englewood-4-attorneys-say-fbi-report-reveals-misconduct> [<https://perma.cc/KDU4-RTLH>]. That investigation included an interview with one of the prosecutors who helped secure the convictions, during which he described to an FBI agent the tactics and methods they all used to coerce confessions and ensure that they would lead to convictions. *Id.*; Steve Mills & Todd Lighty, *Prosecutor Admitted in FBI Report That Englewood Four Teens Coerced into False Confessions*, CHI. TRIB. (June 9, 2018, 6:13 AM CDT), <https://www.chicagotribune.com/2016/11/17/prosecutor-admitted-in-fbi-report-that-englewood-four-teens-coerced-into-false-confessions>.

were one facet of the settlement of the civil litigation.<sup>151</sup> The Cook County Working Group emerged in the wake of that litigation, with the blessing of the Cook County State's Attorney's Office. In the Sections that follow, I provide some advice based on my time as a member of the Working Group.

## II. EMBRACE TRUTH SEEKING

While the rank injustice of the Englewood Four may have been the spark for the independent Working Group and systemic integrity review, that case was representative of a broader, historical pattern of law enforcement misconduct that called into question the legitimacy of Chicago's entire criminal legal system.<sup>152</sup> Other jurisdictions considering a similar path are certain to confront cases that demand review under comparable circumstances.<sup>153</sup> In those instances it is worth weighing the

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151. In total, the City of Chicago and Cook County have paid out over \$59.6 million to the four men. Sara E. Teller, *Three of the 'Englewood Four' Enter Settlement with Cook County*, LEGAL READER (Jan. 30, 2019), <https://www.legalreader.com/three-of-the-englewood-four-enter-settlement-with-cook-county> [https://perma.cc/BJX3-DYUQ].
152. I detail this history in Section IV.C. For an extensive discussion of this history by one of the first journalists in Chicago to uncover it, see also John Conroy, *House of Screams*, CHI. READER (Jan. 26, 1990), <https://chicagoreader.com/news-politics/house-of-screams> [https://perma.cc/W8QA-TGVH].
153. As I mention in the Introduction, the question of when a jurisdiction decides that a review is warranted because a singular instance of misconduct evinces a potentially larger pattern is one beyond the scope of this Article but worthy of attention. There are ways to approach answering the question. In my own experience, local criminal system actors often know who the problematic officials are. As a public defender, thanks to the offices where I worked and the clients I represented, I had a very clear sense of the reputations of particular precincts and officers. Prosecutor's offices, for example, likewise have lists of officers whose credibility has been called into question repeatedly, rendering them too untrustworthy to call as witnesses. See Craig McCarthy & Bruce Golding, *Court Battle Ignites over 'Bad Cop List' of NYPD Officers*, N.Y. POST (Apr. 22, 2019, 10:10 PM ET), <https://nypost.com/2019/04/22/court-battle-ignites-over-bad-cop-list-of-nypd-officers> [https://perma.cc/BH5K-HTML]; Greg Ng & Tolly Taylor, *Baltimore Prosecutor Republishes Police Officer 'Do Not Call' List*, WBAL TV11 (Sep. 18, 2023, 6:12 PM EDT), <https://www.wbaltv.com/article/baltimore-police-officer-do-not-call-list-2023/45189738> [https://perma.cc/2Q5B-38EY]; George Joseph & WNYC Staff, *New York City's DAs Keep Secret Lists of Cops with Questionable Credibility*, GOTHAMIST (Apr. 22, 2019), <https://gothamist.com/2019/04/22/das-keep-secret-lists-of-cops-with-questionable-credibility>.

#### **Independent Systemic Integrity Reviews**

value of an independent systemic integrity review on its own terms. My first piece of advice relates to that deliberation. What I suggest is this: Embrace truth seeking as the core purpose of the review and use that as a guide for all else, including the work to be done, the resources provided,

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com/news/new-york-citys-das-keep-secret-lists-of-cops-with-questionable-credibility; Tierna Unruh-Enos, *The Bad Cop List*, PAPER (Jan. 24, 2024), <https://abq.news/2021/05/abq-bad-cop-list> [https://perma.cc/WR4N-T2UZ]; Emily Hofstaedter, *New “Do Not Call” List Bars 60 Current or Former Baltimore City Police From Testifying in Court*, WYPR (Sep. 18, 2023, 5:52 PM EDT), <https://www.wypr.org/wypr-news/2023-09-18/new-do-not-call-list-bars-60-current-or-former-baltimore-city-police-from-testifying-in-court> [https://perma.cc/HNB5-8XNU]. If they are too untrustworthy to testify, perhaps the cases they have investigated should raise questions as well.

and the parameters for review.<sup>154</sup> More simply put, form follows function.<sup>155</sup>

My advice is a reflection of my own experiences. At its heart, the Working Group review was tasked with investigating allegations of law enforcement misconduct and making a recommendation to the jurisdiction's top law enforcement officer about how to proceed with the case. Stripping that mission down to its core, the Working Group functioned as a tool to distill and discern the truth (or as close to the truth as one can get) out of a collection of contested facts. The heart of the work was an investigative exercise aimed at sorting out how law enforcement treated the accused and all those connected to the conviction at issue. Practically speaking, an independent systemic integrity review should lead to a recommendation that explains who can be believed, what can be believed, and why. It is helpful to keep this inquiry in mind, because it can

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154. Beyond the context of an independent systemic integrity review, truth seeking is also a term of art that comprises one of the five pillars of transitional justice, which "has become the globally dominant method used in countries seeking to redress the legacies of trauma, violence, oppression, or massive human rights abuses following periods of conflict and repression." Angela A. Allen-Bell, *Taking Exception to Criminal Justice Reforms That Fail to Transform: Using Transitional Justice to End the Carceral State*, 11 PENN ST. J.L. & INT'L AFFS. 1, 4 (2023). Transitional justice aims "to create a platform of justice to account for past abuses and injustices." *Id.* at 5. Truth seeking offers "victims and communities a platform to publicly share their experiences, contributing to a public record and a transformational and shared narrative for the future." *Id.* at 5 (quoting Off. of the United Nations High Comm'r for Hum. Rts., *Human Rights and Transitional Justice*, at 8, U.N. Doc. A/HRC/49/39 (Jan. 12, 2022)). Truth seeking works "to document and acknowledge human and civil rights violations and to understand the causes of strife as a conflict resolution strategy. To be effective, the effort must: be comprehensive; be concerned with more than specific cases; include the voices and stories of those whose rights have been violated (known as narrative truth); and be followed by a commitment to use the information gathered to implement transition and change." *Id.* at 7. Although an exploration of transitional justice and truth commissions is beyond the scope of what I hope to convey in this Article, there are lessons to be learned from the experiences of truth commissions worthy of attention. See generally Eduardo González & Howard Varney, *Truth Seeking: Elements of Creating an Effective Truth Commission*, INT'L CTR. FOR TRANSITIONAL JUST. (2013), <https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf> [<https://perma.cc/26W8-AASP>].

155. See Henry Louis Sullivan, *The Tall Office Building Artistically Considered*, 57 LIPPINCOTT'S MAG. 403 (1896).

inform the contours of the work and the types of resources that an independent review panel needs to conduct its investigation and inquiry.

That work, though straightforward in theory, can be challenging in practice. Truth can be complex, is shaped by a diverse array of forces, and is sometimes unknowable.<sup>156</sup> The nature and circumstances of an integrity review mean that a set of narratives is being offered up by all those connected to the case or cases under scrutiny.<sup>157</sup> The independent panel tasked with conducting the integrity review and recommending how to proceed ultimately needs to determine which narrative it believes—among those presented or those that emerge from the investigative

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156. *E.g.*, Chanbonpin, *supra* note 84, at 1116 (2014).

157. By narrative, I mean “constructing and telling stories” about what happened, including the world in which the story took place. *See* Ty Alper, Anthony G. Amsterdam, Todd E. Edelman, Randy Hertz, Rachel Shapiro Janger, Jennifer McAllister-Nevins, Sonya Rudenstine & Robin Walker-Sterling, *Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial*, 12 CLINICAL L. REV. 1, 4 (2005). Narrative “refers to a particular representation of a series of events: a text or other embodiment of a certain telling or treatment of a story’s events.” Anne E. Ralph, *Narrative-Erasing Procedure*, 18 NEV. L.J. 573, 577 (2018). Narratives have important functions in litigation and in the context of an audit. As they relate to an audit, narratives are a tool for making sense of experiences and observations and provide a means of “reconciling our expectations about the normal, proper course of life with deviations from it.” Alper et al., *supra* at 5-9. Narratives also serve as a platform for the vulnerable and marginalized to “challenge the legal status quo.” Nicole Smith Futrell, *Vulnerable, Not Voiceless: Outsider Narrative in Advocacy Against Discriminatory Policing*, 93 N.C. L. REV. 1597, 1599 (2015) (explaining how narrative accounts by those who endured police violence in New York City were used to help fight back against that unlawful law enforcement conduct). Some narratives are consistent with trial practice. *See* Anne Bowen Poulin, *The Investigation Narrative: An Argument for Limiting Prosecution Evidence*, 101 IOWA L. REV. 683, 686 (2016) (highlighting how prosecutors in trial practice frame their cases as the product of a legitimate and skilled investigation, strengthening their cases by making law enforcement’s focus on the accused seem justified and reasonable). Even as stories are a useful way to organize and communicate information, they “can jeopardize accuracy” by allowing us to elide facts and make sense of the ordinarily irreconcilable, or can drive us to rely on biases and “heuristics” to shape our analysis and conclusions. Lisa Kern Griffin, *Narrative, Truth, and Trial*, 101 GEO. L.J. 281, 315 (2013).

exercise—to arrive at a sense of the truth about what happened when the target of an interrogation was in law enforcement custody.<sup>158</sup>

Law enforcement's narrative is a familiar one, anchored by the outcome of a conviction that gives us the feeling of a conclusive resolution.<sup>159</sup> For example, from the perspective of law enforcement, the narrative arc of the Englewood Four case is dramatically different from the narrative I offered at the outset in Section I.B. If we excise their misconduct, as their narrative would (and still does), what's left is a stock story that one will find on every TV crime drama and police procedural.<sup>160</sup> A terrible crime happens. Police respond, investigate, and theorize. They talk to witnesses. They follow leads. They identify suspects. They arrest them on suspicion of guilt. The suspects confess to the crime, confirming the suspicion that brought them to the attention of law enforcement. The suspect or suspects are charged, convicted, and punished. Case closed; justice is done. Courts, which convict the accused and affirm those

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158. See generally Lisa Kern Griffin, *supra* note 157 (detailing narratives and the role of trial rules as aids to ensure factual accuracy). It is worth noting that an independent systemic integrity review should work to determine whether law enforcement engaged in plainly illegal, illicit, reckless, or negligent behavior, rather than whether the confession obtained from the aggrieved party was true or false. The parameters of the review must account for the possibility that even in obtaining a truthful confession, law enforcement engaged in conduct that crossed a bright line from legitimate police work to unlawful or otherwise problematic conduct. Indeed, as one scholar has pointed out, “[c]oerced confessions are often true” even as “coercive techniques increase the odds of a false confession.” Samuel R. Gross, *Convicting the Innocent*, 4 ANN. REV. L. & SOC. SCI. 173, 179 (2008).

159. One of the functions of a narrative is to “tell us how the story should end.” Alper et al., *supra* note 157, at 6.

160. Jessica D. Gabel, *Forensiphilia: Is Public Fascination with Forensic Science a Love Affair or Fatal Attraction?*, 36 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 233, 237 (2010) (“The plot formula to the standard police procedural is fairly straightforward: bad guy commits crime + good guy investigates and identifies the possible suspects = crime solved; order restored. Of course, for variety, the ‘guy’ may be exchanged for a gal or group.”); see also *Prosecutor Admitted in FBI Report That Englewood Four Teens Coerced into False Confessions*, ORLANDO SENTINEL (June 9, 2018, 6:13 AM EDT), <https://www.orlandosentinel.com/2016/11/17/prosecutor-admitted-in-fbi-report-that-englewood-four-teens-coerced-into-false-confessions/> (“The detectives, both now retired, have denied wrongdoing in their investigation of Glover’s strangulation death, as did Terence Johnson, a prosecutor who helped conduct the interrogations and obtain the confessions . . . ”).

convictions, are part of that narrative, offering up a story that aligns with the police and prosecutor's version of events. We tend to afford the law enforcement narrative a presumption of credibility and are predisposed to believe each component of it.<sup>161</sup>

The independent systemic integrity review panel's task, indeed part of the entire enterprise, is to resist that predisposition. Understanding the narrative battle at play, part of that resistance means considering the narrative of the claimant—the convicted person—and their community with as much deference as is ordinarily afforded the law enforcement tale.<sup>162</sup> The claimant's narrative muddies the law enforcement story, challenging the presumption of credibility that we afford it.<sup>163</sup> These

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161. This bias in favor of the law enforcement narrative that ends in a conviction is akin to the presumption of guilt that plagues prosecutor's offices. Hadar Aviram, *Legally Blind: Hyperadversarialism, Brady Violations, and the Prosecutorial Organizational Culture*, 87 ST. JOHN'S L. REV. 1, 28 (2013). The presumption is an assumption of the guilt of the accused because they have been investigated, arrested, charged, and prosecuted. *Id.* The bias in favor of the law enforcement narrative has led one scholar to suggest that courts limit the admission of evidence to bolster the "investigation narrative" at trial, the story that rigorous investigation justified law enforcement's focus on the accused. Poulin, *supra* note 157, at 686-87.
162. Race, gender, and status play into what Professor Deborah Tuerkheimer has called "credibility discounting," which is the "unwarranted failure to credit an assertion where this failure stems from prejudice." Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. PA. L. REV. 1, 3 (2017). It is a concept that flows from Miranda Fricker's work on "epistemic injustice." See MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING (2007). Epistemic injustice is comprised of two harms: testimonial injustice, which is the harm caused by discrediting a narrative based on the teller's membership in a group, and hermeneutical injustice, which is caused by "preventing socially oppressed groups from contributing to society's collective knowledge or understanding." Elizabeth Langston Isaacs, *The Mythology of the Three Liars and the Criminalization of Survival*, 42 YALE L. & POL'Y REV. 427, 448 (2024); see also Gross, *supra* note 158 (offering an alternative to the law enforcement narrative, in which false evidence against the accused misleads law enforcement, leading to a wrongful prosecution and conviction).
163. Professor Kim Chanbonpin has highlighted this challenge in the context of TIRC's credibility determinations made through a summary disposition process. Chanbonpin, *supra* note 84, at 1122. She described how TIRC concluded that a claimant's allegations of torture were not credible because the claimant had not raised any torture allegations prior to filing a claim with TIRC—in a pretrial suppression motion, he had only raised the

dynamics are familiar to defense attorneys who scrupulously comb the prosecution's case for reasons to doubt the allegations leveled against a client. Those reasons may present as inconsistencies in the law enforcement story, behavior that bears on law enforcement credibility, or alternative explanations grounded in a claimant's experience.

I return to the Englewood Four case to help clarify how an independent systemic integrity review's truth-seeking work could unfold. Several features of the Englewood Four case might raise concerns that would warrant attention in an independent systemic integrity review. Since we know the outcome of that case, hindsight can surface what may have been less obvious when the case was initially prosecuted. However, some facts and questions stand out. For starters, does it make sense that in the course of such a brutal and violent assault, there would be no physical evidence—no DNA on the victim or evidence at the crime scene—tying these individuals to the crime?<sup>164</sup> What about the shifting inconsistencies over time between their confessions about who engaged in what conduct?<sup>165</sup> Or the differing accounts of the crime's chronology?<sup>166</sup> And what should we make of the wide discrepancy between the time of death that came up in their confessions—9:00 p.m.—and independent witness accounts that Nina Glover was alive and in one of those witness's apartments between 11:30 p.m. and 1:00 a.m.? How about the fact that, in the absence of a statement, there is no independent evidence that these individuals had any connection to the crime?<sup>167</sup> Investigation of the facts

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"unembellished claim" that he was "physically coerced and lied to by the police" leading to his confession. *Id.* (quoting CLAIM OF JOHN KNIGHT, TIRC No. 2011.005-K, at 7). When the claimant asserted that he had not provided more details on the advice of defense counsel, TIRC interviewed the claimant's counsel, who explained that if the claimant had presented him with a torture claim, "he would have raised" it. *Id.* TIRC credited counsel's account and found the claimant not credible. In doing so, TIRC privileged defense counsel's version of events over the claimant's, in the same way that trial courts during the Burge era found police testimony more credible than that of the accused, reproducing the injustice of the original conviction through "credibility assumptions made in favor of the police." *Id.* at 1123.

164. Tepfer et al., *supra* note 121, at 662.

165. *Id.* at 659-61.

166. *Id.*

167. The doctrinal guardrails to prevent convictions on a confession alone leave much to be desired. "The *corpus delicti* rule does not require corroboration that the defendant committed the crime, nor does it demand any proof of the requisite mental state or any other elements of the crime. Moreover, the rule

and circumstances, aimed at answering these sorts of questions, can produce evidence that confirms, challenges, complicates, or clarifies the narratives at play.

There are some basic tools that can help an independent panel fulfill its investigative function. I mentioned earlier that the Working Group operated as an external CIU. That is a good framing for weighing the resources that an independent working group should be afforded. Scholars and advocates alike have detailed best practices for CIUs that serve as an appropriate and worthwhile starting point for the resources that the model I am proposing demands.<sup>168</sup> I am specifically thinking of intensive factfinding resources that allow an independent panel to fulfill its truth-seeking function through a rigorous and granular investigation of the facts and circumstances at issue. They include: investigators to track down witnesses, conduct interviews, and engage in other investigative tasks; and paralegals to provide case and document management support.<sup>169</sup> An independent systemic integrity review panel should also have unfettered access to prosecutorial files, police reports, laboratory reports, investigative memos, forensic reports, and the wealth of law enforcement materials in their possession.<sup>170</sup> That includes materials that are provided in discovery and those that are ordinarily excluded from disclosure to the defense because of work product or other privileges.<sup>171</sup> I would add to that list subpoena power to obtain materials or engage with relevant witnesses with the force of law.

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only requires corroboration of the fact that a crime occurred; it does not require that the facts contained in the confession be corroborated.” Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo & Allison D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 10 (2010).

168. See generally Hollway, *supra* note 17, at 32-35 (detailing resources necessary for a CIU); *Conviction Integrity Unit Best Practices*, INNOCENCE PROJECT (2015), <http://www.innocenceproject.org/wp-content/uploads/2016/09/Conviction-Integrity-Unit.pdf> [https://perma.cc/97PU-MK7Q]; Scheck, *supra* note 16.
169. See Hollway, *supra* note 17, at 32-35.
170. See Scheck, *supra* note 16, at 729-31 (discussing the best practices of a CIU and describing the value of open-file discovery and reciprocal discovery for a review, meaning that the police and prosecution’s entire file is made available to the defense).
171. See, e.g., FED. R. CRIM. P. 16(a)(1)(G)(vi)(2)-(3) (excluding some privileged documents, government witness statements, and grand jury transcripts from the government’s disclosure obligations).

The experiences of in-house CIUs provide a helpful window into the availability of these sorts of resources. Dedicated staffing resources vary from jurisdiction to jurisdiction, turning on the budgetary constraints of the prosecutor's office where a CIU is housed.<sup>172</sup> Better-resourced units are naturally more effective in fulfilling their institutional mission.<sup>173</sup> To the extent the resources concern unrestrained access to the materials in law enforcement's possession, access will turn on law enforcement's institutional prerogatives. And where the authority to compel the production of materials is at issue, the practices, policies, and procedural rules of a particular jurisdiction may dictate the powers available to a party. Without revealing the substance of our deliberations or discussions with the Cook County State's Attorney's Office, the Chicago Working Group was afforded ready access to the law enforcement materials and investigative personnel needed to conduct our review. That fact points to the relative importance of the prosecutorial authority's willingness to subject itself to the scrutiny entailed by an independent systemic review and to use budget dollars to support that review.<sup>174</sup> Subpoena power in Illinois is governed by statute,<sup>175</sup> which meant that the Working Group was free to exercise that power as needed within those statutory bounds.

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172. Hollway, *supra* note 17, at 32-35.

173. *See id.*

174. The dynamics of the Chicago Working Group and its origins were such that budget considerations were not a dispositive concern. However, for jurisdictions and criminal system stakeholders pursuing a similar review, financing the review warrants serious consideration, and will turn on political will. As recent experience at the federal level suggests, governments can find the funds to support their priorities when sufficient political will demands it. *See, e.g.*, Mark Schlakman, *Florida is Fronting the \$450M Cost of Alligator Alcatraz – a Legal Scholar Explains What We Still Don't Know About the Detainees*, CONVERSATION (July 15, 2025, 3:07 PM EDT), <https://theconversation.com/florida-is-fronting-the-450m-cost-of-alligator-alcatraz-a-legal-scholar-explains-what-we-still-dont-know-about-the-detainees-260665> [https://perma.cc/4FGM-YZR2] (describing the state of Florida "essentially lending the federal government half a billion dollars and providing other assistance to help support the Trump administration's immigration enforcement agenda"); *see also, e.g.*, Zolan Kanno-Youngs & Hamed Aleaziz, *ICE Set to Vastly Expand Its Reach with New Funds*, N.Y. TIMES (July 13, 2025), <https://www.nytimes.com/2025/07/12/us/politics/ice-expansion-concerns.html> (describing \$170 billion in funding for the Trump administration's immigration agenda).

175. 725 Ill. Comp. Stat. Ann. 5/115-17 (LexisNexis 2026).

Knowledge is also a resource. An independent systemic review panel should have access to expertise on forensic science, law enforcement practices, and the factors that produce false confessions and wrongful convictions. There are a host of resources readily available, focusing on interrogations and beyond.<sup>176</sup> The Englewood Four provides a useful lens for understanding what those resources might entail. In that case, at times, the narratives of law enforcement and the Englewood Four aligned—a horrific crime *was* committed, the police *did* investigate, they *did* obtain

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176. See, e.g., Ryanne Berube, Miko Wilford, Allison Redlich & Yan Want, *Identifying Patterns Across the Six Canonical Factors Underlying Wrongful Convictions*, 3 WRONGFUL CONVICTION L. REV. 166 (2022) (detailing the co-occurrence of the most common factors underlying wrongful convictions, including false confessions, false evidence, and official misconduct); Nancy La Vigne, *Wrongful Convictions: The Literature, the Issues, and the Unheard Voices*, U.S. DEP’T OF JUST. OFF. OF JUST. PROGRAMS (2023), <https://www.ojp.gov/pdffiles1/nij/251446.pdf> [<https://perma.cc/9CLF-Q8PD>] (discussing the causes of wrongful convictions). Indeed, a Cook County prosecutor who was involved in two wrongful conviction cases produced trainings and an article detailing what he learned from his experiences. Tepfer et al., *supra* note 121, at 636-38 (quoting Robert J. Milan, *Preventing and Addressing Wrongful Convictions*, PRAC. PROSECUTOR, May 2005, at 35) (recommending scrutinizing the “nexus between the crime and arrest,” being wary of cases where the accused have no connection to one another, and being alert to confessions extracted from youth and suspects with intellectual disabilities). Other resources likewise provide significant insights. See, e.g., *The Issues*, INNOCENCE PROJECT, <https://innocenceproject.org/the-issues> [<https://perma.cc/VC46-TA2P>]; BRANDON L. GARRETT, *CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG* (2011) (examining the varied causes of wrongful convictions, including false confessions, eyewitness misidentifications, and faulty forensic science); Kassin et al., *supra* note 167 (examining police-induced false confessions); M. CHRIS FABRICANT, *JUNK SCIENCE AND THE AMERICAN CRIMINAL JUSTICE SYSTEM* (2022) (examining faulty forensic science and its relationship to wrongful convictions); Carrie Leonetti, *The Innocence Checklist*, 58 AM. CRIM. L. REV. 97, 100-02 (2021) (detailing causes of wrongful convictions); Leona D. Jochnowitz & Tonya Kendall, *Analyzing Wrongful Convictions Beyond the Traditional Canonical List of Errors, for Enduring Structural and Sociological Attributes, (Juveniles, Racism, Adversary System, Policing Policies)*, 37 TOURO L. REV. 579 (2021) (describing structural causes of wrongful convictions); Gross, *supra* note 158, at 186 (“There is a canonical list of factors that lead to false convictions: eyewitness misidentification; false confession; misleading, false, or fraudulent forensic evidence; testimony by highly motivated police informants such as ‘jailhouse snitches’; perjury in general; prosecutorial misconduct; ineffective legal defense.”).

confessions from them, and they *were* arrested, prosecuted, and convicted. The points where the stories align may be taken as a ground truth from which to proceed (e.g., all parties agree that a person was taken into police custody at a particular time). But where those stories diverge, not just in terms of factual guilt or innocence but in their descriptions of the way law enforcement treated the youth or how they came to the attention of police to begin with—are spaces for heightened scrutiny.

That scrutiny is strengthened by access to experts who can provide insights about the interrogation itself, including: typical law enforcement interrogation techniques,<sup>177</sup> the hallmarks of false confessions,<sup>178</sup> the

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177. The most widespread interrogation procedure used in the United States today is the Reid technique. *About the Reid Technique*, REID, <https://reid.com/about> [<https://perma.cc/5U9F-WBNH>] (“The courts in the United States have recognized The Reid Technique® as the leading interview and interrogation approach used today in both the law enforcement and business communities.”). In a twist of irony, it was developed by a Chicago police officer and a professor at Northwestern in the late 1940s. *See* Frances E. Chapman, *A Recipe for Wrongful Confessions: A Case Study Examining the “Reid Technique” and the Interrogation of Indigenous Suspects*, 28 MICH. ST. INT’L. L. REV. 369, 385 (2020) (detailing the origin story of the Reid technique); *see also* Douglas Starr, *The Interview*, NEW YORKER (Dec. 1, 2013), <https://www.newyorker.com/magazine/2013/12/09/the-interview-7>. The technique centers on steering the subject toward a confession, by doing everything from reading nonverbal behavior, to minimizing the crime to foster an admission, to lying to suspects. *Id.* Some experts have criticized the Reid technique as “so unscientific that the confessions elicited from this technique should be wholly inadmissible in court.” Chapman, *supra* at 387; *see also* Samantha Buckingham, *Abolishing Juvenile Interrogation*, 101 N.C. L. REV. 1015, 1066-70 (describing and critiquing the Reid technique of interrogation); Francesco Galvano, *The Reid Technique Controversies, Criticisms, and Evolving Interrogation Practices*, BEHAV. ANALYSIS TEAM (June 2023), [https://www.researchgate.net/publication/371874407\\_The\\_Reid\\_Technique\\_Controversies\\_Criticisms\\_and\\_Evolving\\_Interrogation\\_Practices](https://www.researchgate.net/publication/371874407_The_Reid_Technique_Controversies_Criticisms_and_Evolving_Interrogation_Practices) [<https://perma.cc/9GK7-UT37>] (describing the Reid technique of law enforcement interrogation and its critiques); Kassin et al., *supra* note 167 (detailing the influence of police interrogation practices on false confessions).

178. *See generally* Kassin et al., *supra* note 167 (detailing the conditions that lead to false confessions, including interrogation techniques that involve trickery and deception, manipulation, isolation, presentation of false evidence, and suspects who are atypically vulnerable because of their age and cognitive abilities); *see also* Brandon L. Garrett, *The Substance of False Confessions*, 62

effects of being held in law enforcement custody for an extended period of time,<sup>179</sup> the impact of being isolated and held incommunicado,<sup>180</sup> effects that youth and race impose on interrogations,<sup>181</sup> the heightened likelihood

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STAN. L. REV. 1051, 1064 (2010) (“Social scientists have long documented how pressure combined with repetition of a crime narrative may cause the suspect to internalize that narrative and repeat it, possibly becoming convinced of his own guilt.”).

179. Lengthy interrogations are a touchstone of false confessions. *See* Eve Brensike Primus, *The Future of Confession Law: Toward Rules for the Voluntariness Test*, 114 MICH. L. REV. 1, 46 (2015) (gathering sources). The average length of an interrogation lasts anywhere from 30 minutes to 2 hours, while in false confession cases, interrogations lasted more than 16 hours on average. Kassin et al., *supra* note 167, at 28.
180. Kassin et al., *supra* note 167, at 16 (“To ensure privacy and control, and to increase the stress associated with denial in an incommunicado setting, interrogators are trained to remove suspects from their familiar surroundings and question them in the police station—often in a special interrogation room.”); *see also id.* (“[P]rolonged isolation from significant others in this situation constitutes a form of deprivation that can heighten a suspect’s distress and incentive to remove himself or herself from the situation.”); Tepfer et al., *supra* note 121, at 663-64 (describing how law enforcement asked Terrill Swift to come to the police station and told him he would see his family there, but then tricked them and brought him to a different police station for interrogation; Swift testified that police did not allow him to call his mother).
181. Being a youth of color compounds the risks of police interrogations, especially when officers use accusatory and coercive tactics. The vulnerabilities created by race and youth combine to increase a youth of color’s susceptibility to law enforcement pressure and false confessions. *See generally* Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL’Y 395 (2013) (examining the realities of juvenile interrogations and the coercive tactics used by law enforcement); Kristin Henning & Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 ARIZ. ST. L.J. 883 (2020) (discussing the ways that the combination of race and youth makes children of color especially vulnerable to coercive law enforcement interrogation); Buckingham, *supra* note 177, at 1020-29; *Youth Interrogation: Key Principles and Policy Recommendations*, FAIR & JUST PROSECUTION (Jan. 27, 2022), <https://fairandjustprosecution.org/wp-content/uploads/2022/01/FJP-Juvenile-Interrogation-Issue-Brief.pdf> [https://perma.cc/N37D-9PRG] (detailing the harmful consequences of improper youth interrogations, including coerced confessions, wrongful convictions, and trauma); Aamna Mohdin, *‘They Saw Me as Calculating, Not a Child’: How Adultification Leads to*

that youth of color will be subjected to violence by law enforcement,<sup>182</sup> and the effect of race on the credibility assigned to a confession.<sup>183</sup> The goal here is not to determine the truth or falsity of the confession. Instead, it is to understand the nature of the interaction between law enforcement and the convicted person, because the focus of the review is on the integrity of the criminal system. Information and expertise can help with the process of sorting fact from fiction, and signal from noise.

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*Black Children Being Treated as Criminals*, GUARDIAN (July 5, 2022, 1:00 PM EDT), <https://www.theguardian.com/society/2022/jul/05/they-saw-me-as-calculating-not-a-child-how-adultification-leads-to-black-children-being-treated-as-criminals> [https://perma.cc/JW84-2W6E] (examining how adultification bias causes Black children to be treated as more culpable and less vulnerable, leading to discriminatory treatment in schools and by law enforcement); Jahnine Davis, *Adultification Bias Within Child Protection and Safeguarding*, HM INSPECTORATE OF PROBATION (June 2022), <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/06/Academic-Insights-Adultification-bias-within-child-protection-and-safeguarding.pdf> [https://perma.cc/V9RC-N3HU] (analyzing adultification bias as a form of racialized discrimination that dehumanizes Black children, diminishes their perceived vulnerability, and reduces safeguarding responses). See also Andrew Cohen, *Confessing While Black*, MARSHALL PROJECT (Dec. 12, 2014, 8:37 AM EST), <https://www.themarshallproject.org/2014/12/12/confessing-while-black> [https://perma.cc/Y6PD-733H] (describing cases where police or counsel warned Black suspects they should confess or plead guilty, to avoid going in front of racist white judges and juries); Iris Blandón-Gitlin, Hayley Cleary & Alisa Blair, *Race and Ethnicity as a Compound Risk Factor in Police Interrogation of Youth*, in THE LEGACY OF RACISM FOR CHILDREN: PSYCHOLOGY, LAW, AND PUBLIC POLICY 169 (Margaret C. Stevenson, Bette L. Bottoms & Kelly C. Burke eds., 2020) (discussing how minority youth face amplified risks of coercion and false confessions in police interrogations due to compounded individual and situational vulnerabilities).

182. KRISTIN HENNING, RAGE OF INNOCENCE (2021); Henning & Omer, *supra* note 181, at 901-09; Sarah McCammon, Gabe O'Connor & Ashley Brown, *Black Children Make Up More Than Half of the Incidents of Police Using Force on Kids*, NPR (Oct. 21, 2021, 4:56 PM EDT), <https://www.npr.org/2021/10/21/1048130246/black-children-make-up-more-than-half-of-the-incidents-of-police-using-force-on-kids> [https://perma.cc/U3HR-2ZX6].
183. Logan Ewanation & Evelyn M. Maeder, *The Interactive Effects of Race and Expert Testimony on Jurors' Perceptions of Recanted Confessions*, FRONTIERS PSYCH., Sep. 2021, <https://pmc.ncbi.nlm.nih.gov/articles/PMC8446190/pdf/fpsyg-12-699077.pdf> [https://perma.cc/32QW-BJ9K].

A review panel should also be equipped to guard against the sorts of biases that typically cloud one's judgment about events of the past. There is a wealth of scholarship covering the landscape of biases that shape judgments in and about the criminal system.<sup>184</sup> I focus here on tunnel vision—the psychological phenomenon of beginning with a conclusion and then filtering all evidence and observations through the prism of that conclusion—to make the point.<sup>185</sup> Tunnel vision might lead one to assume that a conviction<sup>186</sup> or identification of an individual as a suspect is a legitimate indicator of guilt, and that facts contradicting such a finding

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184. Vanessa Meterko, *What Is Cognitive Bias and How Does It Contribute to Wrongful Conviction*, INNOCENCE PROJECT (Aug. 19, 2021), <https://innocenceproject.org/what-is-cognitive-bias-how-it-contributes-to-wrongful-conviction> [https://perma.cc/5U5K-SSVW]; Scheck, *supra* note 16, at 716-17 (footnotes omitted) (noting those biases include "confirmation bias, motivated reasoning, groupthink, commitment effects, the coherence effect, and selection bias"); Huang Shiyuan, *Cognitive Biases That Lead to Wrongful Convictions: Illustrated by Twenty-Three Erroneous Chinese Cases*, 54 CAL. W. L. REV. 103, 106-113 (2017) (detailing tunnel vision, confirmation bias, belief perseverance, reiteration effect, hindsight bias, outcome bias, noble-cause corruption, emotional attachment, motivational bias, and goal pursuit).

185. Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 292 (2006) (explaining that tunnel vision is a "compendium of common heuristics and logical fallacies," to which we are all susceptible, that lead[s] actors in the criminal justice system to 'focus on a suspect, select and filter the evidence that will "build a case" for conviction, while ignoring or suppressing evidence that points away from guilt.'") (quoting Dianne L. Martin, *Lessons About Justice from the "Laboratory" of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence*, 70 UMKC L. Rev. 847, 848 (2002)); *see also id.* (describing tunnel vision as a process that "leads investigators, prosecutors, judges, and defense lawyers alike to focus on a particular conclusion and then filter all evidence in a case through the lens provided by that conclusion"); *id.* (explaining how thanks to tunnel vision, "all information supporting the adopted conclusion is elevated in significance, viewed as consistent with the other evidence, and deemed relevant and probative," while "[e]vidence inconsistent with the chosen theory is easily overlooked or dismissed as irrelevant, incredible, or unreliable").

186. The results of a police investigation, including the prosecution, can create an affirmative bias, leading an individual to believe that because the outcome seems, "in hindsight, to have been both unavoidable and a 'good' decision," it must be correct. Shiyuan, *supra* note 184, at 110.

should be ignored.<sup>187</sup> The most popular law enforcement interrogation techniques proceed in this manner, despite being roundly criticized.<sup>188</sup> An independent systemic review panel should operate to avoid a similar critique. Doing so requires consulting with experts and engaging with the scholarship on types of biases, as I just described. It also means resisting the deference afforded the typical law enforcement narrative, adhering to protocols that guide the investigative function, and looking beyond guilt and innocence alone.

This work begins with recognizing that a conviction is just one part of the law enforcement narrative and is not entitled to special deference. After all, each member of the Englewood Four was convicted, following trials and a guilty plea. If anything, the fact that they were all convicted, and wrongfully so, should make us skeptical of adjudications by courts, not deferential to them.<sup>189</sup> Indeed, the entire point of the integrity review is to

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187. Findley & Scott, *supra* note 185, at 292-93 (describing the role of tunnel vision in shielding from consideration exculpatory evidence); Deborah Davis & Richard A. Leo, *To Walk in Their Shoes: The Problem of Missing, Misunderstood, and Misrepresented Context in Judging Criminal Confessions*, 46 NEW ENG. L. REV. 737, 762 (2012) (“[T]he complex of tunnel-vision and confirmation biases . . . focuses the search for evidence on that which will implicate the suspect, biases interpretation of evidence as consistent with guilt, and discourages the search for or recognition of exculpatory evidence.”).
188. See *About the Reid Technique*, *supra* note 177; Kassin et al., *supra* note 167, at 27 (“As illustrated by the Reid technique and other similar approaches, the modern American police interrogation is, by definition, a guilt-presumptive and confrontational process—aspects of which put innocent people at risk.”); Buckingham, *supra* note 177, at 1019 (“Reid teaches officers to present false evidence, minimize the seriousness of the offense, feign sympathy, offer excuses, pretend to have the suspects’ interests in mind, demonstrate confidence in the suspect’s guilt, interrupt and deny any protestations of innocence, prolong questioning, and offer false choice (such as, ‘Did he start the fight or did you get angry first?’.”). The criticism of the Reid technique has been so substantial that John E. Reid and Associates has an entire page on its website dedicated to combatting the critique the technique has received. *Critics Corner, Protecting the Innocent and Identifying the Guilty*, REID, <https://reid.com/resources/critics-corner> [https://perma.cc /6W6P-MYBJ].
189. Keith A. Findley, *Adversarial Inquisitions: Rethinking the Search for the Truth*, 56 N.Y.L. SCH. L. REV. 911, 914 (2012) (explaining that the American adversarial system does not “truly permit[] full adversarial testing of the evidence”).

scrutinize how the system operates. Uncritical fidelity to the signal a conviction sends is at odds with the sensibility that a review panel should bring to bear. Instead, the inquiry should open by asking what happened between the police and the accused, giving due consideration to the wealth of possibilities, including those advanced by the person raising objections to police or law enforcement conduct.<sup>190</sup> Implicit in that guidance is that the panel's investigation includes affording the claimant an opportunity to advance their narrative and considering any and all evidence bearing on that narrative.

Consistent with suggested best practices for a CIU, an independent panel should adopt a set of protocols to assist with its credibility-sorting and truth-seeking function.<sup>191</sup> There are ample CIU protocols and procedures to draw from.<sup>192</sup> Objective standards can counter subjective judgments that might otherwise taint the investigative process and the recommendations that flow from it. Among the considerations that might

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190. This approach is akin to the PEACE (Preparation and Planning, Engage and Explain, Account, Closure, Evaluate) interview method adopted in England. Starr, *supra* note 177. PEACE encourages police to gather information during an interview with a suspect in the way that a journalist would, using open-ended questions to elicit the subject's story. *Id.* Lying, minimizing, and coercion are forbidden, grounding the interview as part of a broader effort to "get as much information as possible, which, along with corroborating evidence, would either inculpate the suspect or set him free." *Id.*
191. See Hollway, *supra* note 17, at 35-48 (describing standards for intake and review of cases); see also Scheck, *supra* note 16, at 720-28 (providing standards for case referrals and reviews); Keever, *supra* note 7, at 274-78 (describing protocol that prioritizes criteria and scope of review in mass-exoneration cases).
192. Examples of CIU protocols and procedures include: *Conviction Integrity Unit*, MIDDLESEX DIST. ATT'Y'S OFF., <https://www.middlesexda.com/beyond-courtroom/pages/conviction-integrity-unit> [<https://perma.cc/SHF2-ZJ95>]; *Conviction Integrity Unit*, PHILA. DIST. ATT'Y'S OFF., <https://phillyda.org/safety-and-justice/investigations/conviction-integrity-unit-ciu> [<https://perma.cc/QY5M-YP6S>]; *Conviction Integrity Unit*, ERIE CNTY. DIST. ATT'Y'S OFF., <https://www4.erie.gov/da/conviction-integrity-unit> [<https://perma.cc/P7JM-E8UF>]; *Conviction Integrity Unit*, BEXAR CNTY., <https://www.bexar.org/3324/Conviction-Integrity-Unit> [<https://perma.cc/AW2T-87F9>]; *Conviction Integrity Unit*, SALT LAKE CNTY., <https://www.saltlakecounty.gov/district-attorney/conviction-integrity-unit> [<https://perma.cc/6EJY-DYYM>]; *Conviction Review Unit*, ARLINGTON VA., <https://www.arlingtonva.us/Government/Departments/Courts/Commonwealth-Attorney/Conviction-Review-Unit> [<https://perma.cc/AJC6-76D8>].

factor into a protocol are the types of cases subject to review, the quantum of evidence required for a particular recommendation, and how the panel weighs a demonstrated pattern of police misconduct in its determinations.<sup>193</sup> The precise parameters of a protocol will come down to a host of variables, from the political dynamics of the jurisdiction where the integrity review is taking place, to the types of cases under investigation, to the sensibilities of the individuals conducting the review. The point is to have some parameters that can be a consistent source of objective guidance as cases arise and investigations proceed.

Finally, an independent systemic integrity review should extend in scope beyond the binary question of guilt and innocence and embrace a broader mandate consistent with its truth-seeking function. I make this suggestion in light of the structural limits on the work of CIUs, which often circumscribe their inquiry to a convicted person's claims of actual innocence or newly discovered evidence supporting such claims.<sup>194</sup> Thus, questions of actual innocence tend to be the touchstone and trigger point for CIU review, excluding cases where separate questions about law enforcement conduct are more germane.<sup>195</sup>

Cook County's Conviction Review Unit, for example, limits its work to cases involving a "claim of actual innocence," where new evidence is arguably "of such a conclusive nature that the claimant is likely

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193. See Keever, *supra* note 7, at 261-74 (suggesting that in cases involving known widespread misconduct, those conducting a review should err on the side of *vacatur* rather than conducting a time-consuming and unfavorable case-by-case method of review). I share Professor Keever's view but would go further, suggesting that a finding of misconduct in one case should lead to the *vacatur* of the convictions in all the cases handled by the offending law enforcement officials. I leave a more robust discussion of standards of review and *vacatur* for future scholarship.

194. See Hollway, *supra* note 17, at 44-46; Scheck, *supra* note 16, at 727. The focus on innocence flows from the fact that early CIUs focused on investigating claims of factual innocence in serious cases that yielded lengthy sentences, up to and including death. *Conviction Integrity Units and Internal Accountability Mechanisms*, FAIR & JUST PROSECUTION 2 (2017), <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBriefConvictionIntegrity.9.25.pdf> [<https://perma.cc/L279-G6NW>].

195. Hollway, *supra* note 17, at 36 ("None of the CRUs we spoke to felt that their role was to review a case where actual innocence was not the core of the rationale for why a petitioner's case should be reviewed."). Even due process claims that appear meritorious or warrant investigation still must be grounded in a claim of actual innocence. *Id.* at 45.

innocent.”<sup>196</sup> While the Englewood Four’s case could have been framed to fit that criterion, the Cook County state’s attorney steadfastly denied their actual innocence claim for years.<sup>197</sup> The question of police conduct, even as central as it was to the case, was eclipsed by the narrow question of guilt and innocence. A review limited only to claims of innocence can send a signal that as long as the person complaining of police abuse committed the crime, law enforcement misconduct is immaterial—or even justified. Claimants seeking to vindicate concerns about law enforcement misconduct are burdened with proving their innocence, something that is ordinarily anathema to the criminal system.

Ideally, an independent systemic integrity review calls into question the legitimacy and integrity of the entire criminal system, regardless of the convicted person’s guilt or innocence. Of course, answers to the question of guilt or innocence may shed some light on the interaction between law enforcement and the convicted person.<sup>198</sup> But the review should not rise or fall on that question alone. The central concern is the conduct of the law enforcement itself. A broad mandate—one that reaches beyond factual guilt to encompass law enforcement behavior—allows an independent panel to explore the host of ways that law enforcement conduct can upend the integrity of the system. The broader net expands the number of potential cases that warrant review and law enforcement actors who warrant scrutiny. That, in turn, opens up the possibility for more justice to be done where the potential for injustice has festered. What matters is uncovering the truth about more than the criminal conviction alone.

As is hopefully clear, there are a host of implications that flow from this first piece of advice—embracing the core truth-seeking purpose of the review. In the next Section, I turn from the core purpose of a systemic review to the independence of the panel tasked with conducting it and the value that it offers as an entity external to law enforcement. The relationship between truth seeking and independence is somewhat

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196. *Conviction Integrity Unit*, COOK CNTY. STATE’S ATT’Y, <https://www.cookcountystatesattorney.org/conviction-review-unit> [<https://perma.cc/D7VK-V63C>].

197. See David Protess, *When Juveniles Confess to Murders They Didn’t Commit*, HUFFPOST (Nov. 18, 2011, 11:15 AM EST), [https://www.huffpost.com/entry/false-confessions-juveniles\\_b\\_1100665](https://www.huffpost.com/entry/false-confessions-juveniles_b_1100665) [<https://perma.cc/FDB7-Z9LA>] (noting that Anita Alvarez, the head of the State’s Attorney’s Office when Englewood Four came to light, steadfastly opposed relief given her belief in their guilt).

198. For example, in a case with overwhelming evidence of guilt, that evidence might serve as a comparison point for a confession.

symbiotic—an independent entity will be less concerned about threats to its existence and repercussions from the truth that its work has exposed. Likewise, some of the characteristics that enhance a panel's ability to seek the truth, like access to its own investigative resources, staffing, and unrestricted access to law enforcement materials, are consistent with independence.<sup>199</sup>

### III. IMPOSE STRUCTURAL INDEPENDENCE

My second piece of advice for constructing a systemic integrity review is to impose and maintain structural independence. Scholars and advocates alike have highlighted independence as essential to a well-functioning CIU.<sup>200</sup> Those calls for independence are often satisfied by staffing the CIU with personnel unconnected to the prosecutor's office or creating a separate unit within the office.<sup>201</sup> My suggestion extends CIU

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199. See Hollway, *supra* note 17, at 23-32.

200. *Id.* at 5-7 (providing checklist of features that align with transparency, independence, and flexibility that, when missing, undermine the sincerity and commitment of a CRU); Keever, *supra* note 7, at 278-79.

201. Barry Scheck, a cofounder of the Innocence Project and leader of the national innocence movement, has explained that the best CIUs are those run by defense attorneys working full-time for the CIU, or working part-time but with oversight authority over the CIU, in large part because the staffing creates the perception of credibility and legitimacy. Scheck, *supra* note 16, at 738-39. CIUs in New York, New Jersey, Virginia, and Michigan are examples of offices in which the CIU is run by a former defender. Press Release, Manhattan Dist. Att'y's Off., D.A. Bragg Announces Launch of Post-Conviction Justice Unit Application Process (Apr. 14, 2022), <https://manhattanda.org/d-a-bragg-announces-launch-of-post-conviction-justice-unit-application-process> [https://perma.cc/RF3M-4NCG] (announcing the Manhattan District Attorney's Office launch of a new Post-Conviction Justice Unit to review wrongful convictions, which has elicited positive responses from criminal legal reform advocates); Press Release, N.J. Off. of the Att'y Gen. & Off. of Pub. Integrity & Accountability, Former Public Defender Chosen by AG Platkin to Lead Conviction Review Unit (May 10, 2024), <https://www.njoag.gov/former-public-defender-chosen-by-ag-platkin-to-lead-conviction-review-unit> [https://perma.cc/TB3L-2BXN] (announcing the appointment of a former public defender to lead New Jersey's Conviction Review Unit); *Conviction Integrity Unit Takes Shape*, HENRY CNTY. ENTER. (Apr. 21, 2021), <https://henrycountyenterprise.com/conviction-integrity-unit-takes-shape> [https://perma.cc/67W4-XP92] (describing the formation of a Conviction Integrity Unit in Henry County to investigate wrongful convictions, review

independence one step further, such that a systemic integrity review operates wholly outside the confines of the prosecutor's office and is conducted by individuals with no professional or personal ties to that office.<sup>202</sup>

The need for independence comes into sharp view when considering the breadth of law enforcement's misconduct.<sup>203</sup> Illinois is among the

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past cases for prosecutorial misconduct or new evidence, and implement reforms to ensure justice and prevent future errors).

202. I can understand why a chief prosecutor would want to staff a CIU with prosecutors from the office. It "signifies the DA's commitment to the Unit and provides it with the credibility to advocate for overturning a conviction where appropriate." Hollway, *supra* note 17, at 27. Yet that choice can lead to serious conflicts that undermine the credibility of the entire enterprise. *See, e.g.*, Gerald Doyle, *Ethical Responsibilities of the Conviction Integrity Unit*, 60 S. TEX. L. REV. 445, 449 (2019) (noting that the CIU the author works at is "staffed by prosecutors . . . of the very office that convicted the person who now says they were innocent"); *see also* Shawn Mulcahy, *Leadership Scandals Surround Chicago's Wrongful Conviction Unit*, BOLTS (Mar. 14, 2024), <https://boltsmag.org/cook-county-chicago-wrongful-conviction-unit> [https://perma.cc/8A5B-N4TT].
203. Prosecutors and police are responsible for an outsized share of exonerations, underscoring the extent of their potential misconduct and the damage it can do. A 2020 report by the Registry found that, when examining "official misconduct" as a whole, prosecutors, who committed misconduct in 30% of cases at that point, "were responsible for most of the concealing of exculpatory evidence and misconduct at trial, and a substantial amount of witness tampering." Samuel R. Gross, Maurice J. Possley, Kaitlin Jackson Roll & Klara Huber Stephens, *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement*, NAT'L REGISTRY OF EXONERATIONS iv (Sep. 1, 2020), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1165&context=other> [https://perma.cc/ML82-VDS4]; *see also id.* (reporting that police officers committed misconduct in 35% of cases and "were responsible for most of the witness tampering, misconduct in interrogation, and fabricating evidence—and a great deal of concealing exculpatory evidence and perjury at trial"). The share of prosecutor and police misconduct has only risen in recent years. The National Registry of Exonerations, an online database of "information about all known exonerations of innocent criminal defendants in the United States, from 1989 to the present," includes "prosecutor misconduct" as a specific characteristic within the broader searchable category of "official misconduct." *What We Do*, NAT'L REGISTRY EXONERATIONS, <https://exonerationregistry.org/about> [https://perma.cc/N3V5-PN7F]. As of November 2025, the Registry contains entries for 3,750 exonerations.

nation's leaders in the number of known wrongful convictions leading to exonerations,<sup>204</sup> and Chicago is known as the false-confession capital of the United States.<sup>205</sup> But examples nationwide demonstrate that law enforcement misconduct is not confined to any single jurisdiction. Prosecutors have refused to disclose favorable evidence to the accused,

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*Explore Exonerations*, NAT'L REGISTRY EXONERATIONS, [https://exonerationregistry.org/cases?f%5B0%5D=n\\_pre\\_1989%3A0](https://exonerationregistry.org/cases?f%5B0%5D=n_pre_1989%3A0) [https://perma.cc/E77E-NCLL]. Close to a third of those exonerations—1,214—involved prosecutor misconduct. *Explore Exonerations*, NAT'L REGISTRY EXONERATIONS, [https://exonerationregistry.org/cases?f%5B0%5D=n\\_pre\\_1989%3A0&f%5B1%5D=pr\\_prosecutor\\_misconduct%3A1](https://exonerationregistry.org/cases?f%5B0%5D=n_pre_1989%3A0&f%5B1%5D=pr_prosecutor_misconduct%3A1) [https://perma.cc/QF69-AXP9] (applying filter “PR: Prosecutor Misconduct: Yes”). According to the National Registry of Exonerations, official misconduct was a factor in 44% of exonerations since 1989. *Explore Exonerations*, NAT'L REGISTRY EXONERATIONS, [https://exonerationregistry.org/cases?f%5B0%5D=n\\_pre\\_1989%3A0&f%5B1%5D=of\\_om\\_by\\_police\\_officer%3A1](https://exonerationregistry.org/cases?f%5B0%5D=n_pre_1989%3A0&f%5B1%5D=of_om_by_police_officer%3A1) [https://perma.cc/XU9S-LKQT] (applying filter: “OF – OM by police officer: Yes”).

204. To be clear, Illinois is among the nation's leaders in wrongful convictions that have been *uncovered and discovered* resulting in an exoneration. Michael Loria, *\$50M Case Highlights Chicago Police Abuse*, USA TODAY (June 18, 2024, 7:36 PM ET), <https://eu.usatoday.com/story/news/nation/2024/06/15/chicago-pays-50m-to-4-wrongfully-imprisoned-convicted-for-73-years-marquette-park-police/74076897007> [https://perma.cc/XXG8-K2DW] (“Illinois has been dubbed by the Innocence Project, a nonprofit legal organization that's helped to successfully overturn over 300 convictions nationwide through DNA-based exonerations, as 'the wrongful conviction capital of the country.' Illinois' 540 exonerations of wrongfully convicted people tops the ranking of states, followed by Texas, with 474 exonerations, according to the Innocence Project.”). It is possible that other state criminal systems have produced more wrongful convictions, but that those cases have not yet been discovered.
205. Gregory Pratt, *Chicago Mayor Lori Lightfoot Says People Charged with Violent Crimes 'Are Guilty' and Shouldn't Be Released on Bail Pending Trial*, CHI. TRIB. (June 7, 2022, 11:34 PM CDT), <https://www.chicagotribune.com/politics/ct-lightfoot-chicago-bail-violent-offenders-reform-20220606-ljwmmndjrzhc7lyjewxis46sf4-story.html>. As Innocence Project cofounder Peter Neufeld put it, “Quite simply, what Cooperstown is to baseball, Chicago is to false confessions. It is the Hall of Fame.” *60 Minutes: Chicago: The False Confessions Capital* (CBS television broadcast Dec. 9, 2012), available at [https://www.youtube.com/watch?v=YSo\\_9Xo\\_78E](https://www.youtube.com/watch?v=YSo_9Xo_78E) [https://perma.cc/S75M-ZRDV]; Kevin Davis, *Under Questioning: The Chicago Police Legacy of Extracting False Confessions Is Costing the City Millions*, 104 A.B.A. J. 36, 38-40 (2018).

engaged in racial discrimination during jury selection, and elicited false testimony in hearings and trials.<sup>206</sup> They have covered up the dirty deeds of the police officers they worked alongside<sup>207</sup> and demonstrated a willingness to use any means at their disposal to secure a criminal conviction.<sup>208</sup> Meanwhile, police have their own set of problems. Their bad behavior includes everything from the everyday violence, abuse, and misconduct that motivated the uprisings of 2020, to “shading” cases to make them appear more compelling in reports and testimony, to “testilying”—lying while testifying.<sup>209</sup> In some jurisdictions, police

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206. *The Problem: A Deeper Dive*, ACCOUNTABILITY NY, <https://accountabilityny.org/the-problem> [<https://perma.cc/FW4Y-DDCS>].
207. *See, e.g.*, Somil Trivedi & Nicole Gonzalez Van Cleve, *To Serve and Protect Each Other: How Police-Prosecutor Codependence Enables Police Misconduct*, 100 B.U. L. REV. 895, 922 (2020) (detailing Orange County District Attorney’s Office collaboration with local sheriff’s department in jailhouse informant bribery scheme that allowed them to use illegally obtained information in trials without disclosing its source). Indeed, “the persistent, codependent relationship between police and prosecutors exacerbates police misconduct and violence and is aided by prosecutors in both legal and extralegal ways.” *Id.* at 932; *see also* Kate Levine, *Who Shouldn’t Prosecute the Police*, 101 IOWA L. REV. 1447, 1479 (2016) (suggesting that the relationship between police and prosecutors is so intertwined that the conflict should disqualify prosecutors from investigating local police).
208. *See, e.g.*, Jessica S. Henry, *Smoke but No Fire: When Innocent People Are Wrongly Convicted of Crimes That Never Happened*, 55 AM. CRIM. L. REV. 665, 675 (2018) (describing case in which prosecutor hid a medical report concluding that a death was not a homicide, in order to pursue a conviction against defendant); Troy Closson, *They Spent 24 Years Behind Bars. Then the Case Fell Apart*, N.Y. TIMES (Mar. 5, 2021), <https://www.nytimes.com/2021/03/05/nyregion/queens-wrongful-convictions.html> (reporting that prosecution’s reason for “completely abdicat[ing] its truth-seeking role” in wrongful conviction case may have been to improve chances of convicting the defendants). A look at just one state sheds light on the extent of the problem. A 2021 study examined more than 7,000 claims of prosecutorial misconduct in Pennsylvania between 2000 and 2016. *Hidden Hazards: Prosecutorial Misconduct Claims in Pennsylvania, 2000 - 2016*, QUATTRONE CTR. FOR THE FAIR ADMIN. OF JUST. 5 (2021), <https://www.law.upenn.edu/live/files/11857-hidden-hazards-prosecutorial-misconduct-claims-in> [<https://perma.cc/D6HP-NUJZ>] (finding that over half of those claims identified “improper withholding of exculpatory evidence” and “improper comments made by the prosecutor during closing arguments”).
209. Trivedi & Gonzalez Van Cleve, *supra* note 207, at 906. A 2018 *New York Times* investigation of “testilying” revealed that New York City police officers

misconduct is so prevalent that local criminal justice actors have been forced to develop methods to track their conduct to ensure that cases are not tainted by it.<sup>210</sup>

The damage from the scourge of official misconduct is magnified when one considers the scope of group exonerations—“groups of defendants tied together by a common pattern of systematic official misconduct in the investigation and prosecution of these cases that undermined confidence in the defendants’ convictions.”<sup>211</sup> These are the types of cases that were at the heart of the Cook County Working Group’s systemic integrity review. As of November 2025, the National Registry of Exonerations reported 48 separate entries. Those exonerations have involved 37,351 individuals across 22 states, large and small.<sup>212</sup>

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provided false testimony in court on more than 25 occasions between 2015 and 2018. *See* Goldstein, *supra* note 3 (noting that these officers falsely claimed they were present at crime scenes, lied about seeing the accused being armed, and testified that they had not conducted searches of dwellings when they had).

210. The Baltimore City State’s Attorney and the Prince George’s County State’s Attorney recently made public their “do not call lists” of officers who they will no longer call to testify because of concerns about their credibility. *See* Alissa Marque Heydari, *Why Prosecutor ‘Do Not Call’ Lists Help Curb Police Misconduct*, CRIME REP. (Nov. 13, 2021), <https://www.prosecution.org/tcr-why-prosecutor-do-not-call-lists-help-curb-police-misconduct> [<https://perma.cc/WS2W-CUPZ>]. Prosecutors in Houston, Philadelphia, Seattle, and St. Louis keep similar lists of problematic police officers. Eli Hager & Justin George, *One Way to Deal with Cops Who Lie? Blacklist Them, Some DAs Say*, MARSHALL PROJECT, <https://www.themarshallproject.org/2019/01/17/one-way-to-deal-with-cops-who-lie-blacklist-them-some-das-say> [<https://perma.cc/84JJ-4J23>]; *see also* George Joseph, *Exclusive: Brooklyn DA Releases Secret Lists of Cops They Don’t Trust*, GOTHAMIST (Nov. 6, 2019), <https://gothamist.com/news/exclusive-brooklyn-da-releases-secret-lists-cops-they-dont-trust> (explaining that in New York City, district attorney’s offices across all 5 boroughs developed secret lists of police officers accused of misconduct. The Brooklyn district attorney’s list included 53 cases occurring between 2008 and 2019 where officers’ testimony was “discredited or called into question by state and federal judges,” as well as 7 cases where prosecutors themselves found officers’ statements unreliable).
211. *The Groups Registry*, NAT’L REGISTRY EXONERATIONS, <https://exonerationregistry.org/groups> [<https://perma.cc/KAS9-K6PZ>].
212. *Id.*

Misconduct in Maryland affected nearly 800 individuals.<sup>213</sup> Since 2021, in New York alone, 1,088 individuals have been affected.<sup>214</sup> In Massachusetts, from 2017 to 2018, over 32,000 individuals had their cases upended by findings of law enforcement misconduct.<sup>215</sup>

It is easy to imagine the challenges that emerge when those tasked with investigating law enforcement misconduct are themselves law enforcement allies, especially when the allegations of misconduct span multiple cases. Staffing review panels with prosecutors or those with a connection to the office invites cognitive biases and produces natural conflicts that can cloud judgment, even among those with the best of

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213. Michael R. Bromwich, Jason M. Weinstein, Rachel B. Peck, Katherine M. Dubyak, William G. Fletcher, James M. Purce & Troy D. Shephard, *Anatomy of the Gun Trace Task Force Scandal: Its Origins, Causes, and Consequences*, STEPTOE INVESTIGATIVE TEAM (Jan. 2022), <https://www.stephoe.com/a/web/219380/GTTF-Report.pdf> [<https://perma.cc/658J-YIZZ>]; *The Groups Registry: Maryland 2017*, NAT'L REGISTRY EXONERATIONS, <https://exonerationregistry.org/groups/4251> [<https://perma.cc/CEM2-2HK6>] (listing 760 defendants exonerated due to police misconduct in Maryland).
214. *The Groups Registry*, NAT'L REGISTRY EXONERATIONS, <https://exonerationregistry.org/groups> [<https://perma.cc/FJ5N-T7VS>].
215. Matthew Segal & Jessica Lewis, *From Lab Scandals to Police Scandals: Lessons in Resolving Government Misconduct in Criminal Cases*, Bos. BAR ASS'N (2024), <https://bostonbar.org/journal/from-lab-scandals-to-police-scandals-lessons-in-resolving-government-misconduct-in-criminal-cases> [<https://perma.cc/SNB6-FUDE>]; *see also* Michael Ricciuti, Kathleen Joyce, Scott Lopez, Liza Lunt, Christina Miller, Martin Murphy & Mark Smith, *Report of the Boston Bar Association Drug Lab Crisis Task Force*, Bos. BAR ASS'N (2012), <https://www.bostonbar.org/wp-content/uploads/2022/06/bba-drug-lab-crisis-task-force-report.pdf> [<https://perma.cc/9Z79-QZEZ>]; Craig LeMoult, *Exonerees in Mass. State Drug Lab Scandal Want Their Seized Property and Money Back*, GBH (2023), <https://www.wgbh.org/news/local/2023-02-07/exonerees-in-mass-state-drug-lab-scandal-want-their-seized-property-and-money-back> [<https://perma.cc/3DUT-SZBN>]; Katharine Seelye & Jess Bidgood, *Prison for a State Chemist Who Faked Drug Evidence*, N.Y. TIMES (Nov. 22, 2013), <https://www.nytimes.com/2013/11/23/us/prison-for-state-chemist-who-faked-drug-evidence.html> ("Prosecutors say Ms. Dookhan declared drug samples positive that she had not bothered to test, tampered with evidence, forged signatures and lied about her credentials to enhance her standing in court as an expert witness."); *The Groups Registry*, *supra* note 211.

intentions.<sup>216</sup> It can place those prosecutors in the role of challenging convictions they ordinarily would defend.<sup>217</sup> It can also leave them investigating the work of their law enforcement colleagues,<sup>218</sup> or their own work.<sup>219</sup>

Conflicts like these are more than theoretical. The Englewood Four case illustrates the problem: Local police involved in the misconduct worked on the case alongside complicit prosecutors in the Cook County State's Attorney's Office.<sup>220</sup> An in-house conviction integrity unit staffed by local prosecutors and tasked with an audit of the system in the wake of that case would be forced to investigate the behavior of police officers they have worked with, prosecutors who were their colleagues (and in some instances superiors), and judges before whom they have appeared (and

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216. Scheck, *supra* note 16, at 717 ("Truth be told, what cognitive psychology teaches about the challenges criminal investigators face from confirmation bias, motivated reasoning, groupthink, commitment effects, the coherence effect, and selection bias is, to say the least, daunting. It makes the whole notion that prosecutors could fairly re-investigate possible miscarriages of justice emanating from their own offices seem problematic on its face, especially since so many of these processes operate below the level of conscious awareness."); *see also supra* notes 185-187.
217. *See* Lara Bazelon, *Ending Innocence Denying*, 47 HOFSTRA L. REV. 393, 399-419 (2018) (describing several variations of "innocence denying" prosecutors); *see also* Daniel Medwed, *The Zeal Deal: Prosecutorial Resistance to Conviction Claims of Innocence*, 84 B.U. L. Rev. 125, 134-38 (2003).
218. *See* Josie Duffy Rice, *Do Conviction Integrity Units Work?*, APPEAL (Mar. 22, 2018), <https://theappeal.org/do-conviction-integrity-units-work-a718bbc75bc7> [<https://perma.cc/3EFJ-LM38>]; *see also* Jennifer Gonnerman, *A Murder Trial in Reverse*, NEW YORKER (Feb. 24, 2020), <https://www.newyorker.com/magazine/2020/03/02/a-murder-trial-in-reverse> (explaining that in some cases, the prosecutor who is being charged with misconduct during a postconviction petition might even be working for the CIU to which the petitioner is bring their case).
219. Madeline Buckley, *Former Assistant State's Attorney Who Headed Wrongful Conviction Unit amid Scrutiny Sues Kim Foxx Alleging Discrimination*, CHI. TRIB. (Sep. 4, 2024, 2:14 PM CDT), <https://www.chicagotribune.com/2024/09/04/former-assistant-states-attorney-who-headed-wrongful-conviction-unit-amid-scrutiny-sues-foxx-alleging-discrimination>.
220. *See supra* notes 133-136 and accompanying text.

#### Independent Systemic Integrity Reviews

who may have also been colleagues at one time).<sup>221</sup> The risk of a biased or conflicted review is particularly high in a place like Chicago, where the courts constitute a racialized conviction machine fueled by the complicity of multifarious actors in the system.<sup>222</sup> In Chicago, and in criminal systems across the nation, individuals steeped in the local culture could face immense difficulties when investigating and holding to account the officials embedded in that culture.<sup>223</sup>

For that reason, a panel conducting a systemic integrity review should exist outside the confines of the law enforcement bureaucracy of the jurisdiction at issue.<sup>224</sup> The goal is to ensure that those conducting the audit are not beholden to the individuals, entities, or systems they are investigating. That means staffing the systemic integrity review panel with individuals who have credentials and expertise equivalent to that of attorneys who staff CIUs, but who are former defenders or similarly aligned advocates with no connection to law enforcement or the prosecutor's office. If a member of the audit panel has worked in the court system, even as a defense attorney, they and their fellow panelists need to be mindful of the biases that might weigh on their judgments. While knowledge of the local system is invaluable, a panel comprised, at least in part, of individuals from jurisdictions outside the place under review affords the opportunity for diverse perspectives that can yield more accurate outcomes.<sup>225</sup>

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221. NICOLE GONZALEZ VAN CLEVE, CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT 46 (2016) (noting that three-quarters of the judges in Cook County had been prosecutors prior to ascending to the bench).
222. *Id.* at 17-20, 130-35, 181, 185.
223. See Anjelica Hendricks, *Tolling Justice*, 85 OHIO ST. L.J. 471, 488-95 (2024) (explaining how the symbiotic relationship between police and prosecutors, along with the characteristics of police, prevents prosecution of crimes committed by police).
224. Ideally, "independence, efficiency, and transparency" shape the composition and operation of an independent systemic audit group, allowing it to be successful. Keever, *supra* note 7, at 279.
225. Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCH. 597 (2006), <https://www.apa.org/pubs/journals/releases/psp-904597.pdf> [<https://perma.cc/ZBA7-J8SX>]; see also Amanda N. Bergold & Margaret Kovera, *Diversity's Impact on the Quality of Deliberations*, 48 PERSONALITY SOC. PSYCH. BULL. 1406 (2022), <https://journals.sagepub.com/doi/10.1177/01461672211040960> [<https://perma.cc/6348-J6V2>]; Deborah Ramirez, *Affirmative Jury Selection*:

Independence matters not just for the composition of the systemic review panel, but also for the relationship between those conducting the review and the prosecutor's office. The panel should be able to provide a recommendation to the chief prosecutor absent any sense that it is beholden to that individual, any other officials in the office, or the political dynamics that the office navigates in its day-to-day operations. Thus, the contact between the panel and the office, even an office with an in-house CIU, should be minimal. It might be limited, for example, to obtaining assistance gathering investigative materials such as court files, transcripts, or internal files—or to acquiring insights about the inner workings of the prosecutor's office, including its routine policies and practices.<sup>226</sup> Of course, the prosecutor's office or its in-house CIU may have useful information to share about particular police practices or past reviews that can be of value to an independent panel. To the extent that is the case, the systemic integrity review panel should weigh that information in the context of all else in the investigative enterprise, recognizing the source and potential conflicts that make independence so essential.

Ultimately, independence means the panel is not guided or influenced by the prosecutor's office or by the chief prosecutor's views about the appropriate course of an investigation, including which witnesses to interview and how to interpret those conversations. The point is to avoid the conflicts or appearance of conflicts that can bedevil a typical CIU, even one that claims and works to be independent while housed within a prosecutor's office.

Before closing the discussion on independence, it is worth recognizing the role of state actors in a systemic integrity review. The arrangement places inherent limits on independence. First, a review panel's independence will be limited to the extent that the chief prosecutor has the discretion to accept or reject its recommendations. Making the panel's recommendations binding could enhance its independence and power,<sup>227</sup>

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*A Proposal to Advance Both the Deliberative Ideal and Jury Diversity*, 1998 U. CHI. LEGAL F. 161 (1998).

226. By suggesting these limits on contact, I am not recommending that a panel have *no* contact with the office. It may be that prosecutors in the office can provide useful insights about law enforcement practices or the local dynamics. My suggestion is aimed at ensuring that the members of the review panel will not be compromised by their allegiances to the entities or system they are scrutinizing.
227. Shifting power involves “directly impacted people hav[ing] real influence on the scope and policies of policing in their neighborhoods, counties, cities, and states.” *See* Simonson, *supra* note 18; *see also* Vincent M. Southerland, *The*

#### **Independent Systemic Integrity Reviews**

but may also increase the political costs for a chief prosecutor contemplating what may be perceived as unlimited substantive scrutiny of their office's work. Additionally, the panel relies on state actors to provide the resources necessary to conduct its work, as referenced in Part II. If the jurisdiction provides fewer resources and less access to needed information, it can neuter the investigative and truth-seeking work, thereby undermining a panel's independence.

Finally, even when a panel makes strong findings, courts remain the ultimate arbiters of relief, further embedding the process within the structures of the criminal legal system. The state's involvement thus raises concerns about the interlocking nature of formal and informal justice practices.<sup>228</sup> "The formal justice system is characterized by its dependence on rigid legal rules as well as the predominance of legal professionals," such as police, prosecutors, and judges, "in its daily operation."<sup>229</sup> Informal practices take place "outside of the formal courtroom, in settings that are less rule-bound and adversarial."<sup>230</sup> These are "methods of conflict resolution, such as truth commissions, reparations, restorative justice programs, and mediation."<sup>231</sup> Independent systemic integrity reviews can be seen as "occupy[ing] a liminal space between the formal and informal justice worlds; a borderlands called the informal-formal justice complex."<sup>232</sup> In theory, independent systemic integrity reviews are aimed at providing a different kind of justice, but they must rely on the state to do so. That positionality can render an independent systemic integrity review susceptible to co-optation, and in turn, can cause a review to "reproduce the legal and social status quo."<sup>233</sup> These tensions raise larger questions about the relationship between state power and alternative pathways to

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*Master's Tools and a Mission: Using Community Control and Oversight Laws to Resist and Abolish Police Surveillance Technologies*, 70 UCLA L. REV. 2, 60 (2023) (examining the power of laws establishing oversight over police surveillance on a range, from those granting input to those providing actualized power to communities).

228. Chanbonpin, *supra* note 84, at 1106-09.

229. *Id.* at 1106.

230. *Id.* at 1108 (quoting ANDREW WOOLFORD & R.S. RATNER, INFORMAL RECKONINGS: CONFLICT RESOLUTION IN MEDIATION, RESTORATIVE JUSTICE AND REPARATIONS 1 (2008)).

231. *Id.* at 1108.

232. *Id.* at 1113.

233. *Id.*

justice, questions that deserve consideration as advocates and institutional stakeholders consider implementing systemic integrity reviews. However, as a baseline, the import of maintaining structural independence ensures that a systemic review panel can better engage its truth-seeking function and fulfill its mission.

#### IV. BE RACE CONSCIOUS

My last piece of advice—to be race conscious—draws from Ida B. Wells's words that opened this Article: “The way to right wrongs is to turn the light of truth upon them.”<sup>234</sup> As a journalist with an unwavering commitment to racial justice, Wells exposed the harsh realities of white supremacy and racism in the early twentieth century through rigorous documentation and investigation of facts and circumstances, informed by her understanding of the influence of race on the attitudes and actions of her subjects.

Wells's life and work, outlined in the paragraphs that follow, may seem out of place in an article about independent systemic integrity reviews of criminal cases and law enforcement behavior. Yet her methods offer valuable lessons for an independent systemic review panel working to uncover the ground truth and to reconcile that truth with the facts and accounts at hand. Wells uncovered the spirit that animated the lynchings she documented and debunked the myths used to justify them. She investigated official accounts offered by law enforcement officials and other representatives of the racialized power structure who carried out or supported lynchings. She compared those accounts to the lived experiences and public testimonies of the communities of lynching victims, opening up avenues for an alternative narrative and a different truth. She used a broader racial frame to interpret the facts that she gathered. Doing so allowed her to contextualize lynchings and the allegations leveled by those that carried them out through the lens of the cultural dynamics of her day. Her work challenged the dominant narrative that lynchings, though extralegal, were just deserts for the alleged transgressions of the lynching victim. She used history and cultural context, in part, to understand why people behaved the way that they did and how allegations that led to lynching might have emerged. She showed how race could serve as an interpretive lens trained at the facts on the ground, publicly reframing the dominant story. Most importantly, Wells demonstrated how context—and race in particular—can complicate, challenge, and upend the

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234. WELLS, LIGHT OF TRUTH, *supra* note 1.

accepted public narrative, supplanting it with a truth that aligns with justice and accountability.

Wells's work evoked the type of race consciousness that I am suggesting should be part of the frame of an independent systemic integrity review. If such a review is truly about sorting out competing narratives, and if race influences both those narratives and whose accounts are believed, we must center race and racial justice. At a fundamental level, that means that with each fact gathered, judgment weighed, decision made, step taken, and inference drawn, we ask ourselves: What, if anything, does race have to do with it?<sup>235</sup> Race consciousness requires understanding how the racial context might have informed the actions and choices of everyone connected to a case. In some (rare) cases, it may be that race had no influence at all. In others, it may account for an individual's life circumstances or perspective, which in turn might shape their behavior.<sup>236</sup> At bottom, race consciousness is about being open to the influence of race on the administration of criminal law, including the choices and behaviors of those tasked with enforcing the law.<sup>237</sup> It is an indispensable feature of an independent systemic integrity review. In the Sections that follow, I explore Wells's work and methodology as a guide for the race-conscious investigative work of an independent systemic integrity review.

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235. DOROTHY A. BROWN, CRITICAL RACE THEORY: CASES, MATERIALS, AND PROBLEMS 1 (2014) ("Critical Race Theory asks the question: 'what does race have to do with it?'").

236. *See* Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 230 (2023) (explaining that universities may consider "an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise").

237. I am not suggesting that one make judgments about individuals *solely because of their race*. In other words, I am not recommending that we assume an actor—for example a Black prosecutor—behaved the way she did because her identity predisposed her to do so. Or that a white police officer behaved the way that they did because of their race. Instead, what I am suggesting is that one take stock of how race, racism, and racial inequality may have affected a case or class of cases under review. The former use of race risks descending down the path of racialized stereotypes; the latter is a realistic assessment of how race casts a shadow over much of American life and informs experiences, worldviews, and behaviors. *See Students for Fair Admissions*, 600 U.S. at 407 (Jackson, J., dissenting) ("Although formal race-linked legal barriers are gone, race still matters to the lived experiences of all Americans in innumerable ways...."). It is about considering how race matters to one's experience.

### A. A Model for a Race-Conscious Investigative Lens

An examination of Ida B. Wells's work provides a framework for a race-conscious investigative lens. Wells led a lifelong crusade against racial-terror lynchings.<sup>238</sup> That crusade was "an all-out assault on white supremacy," and of a piece with her work to expose social injustice in all forms.<sup>239</sup> Wells was the archetype of an investigative journalist, "pioneer[ing] reporting techniques that remain central tenets of modern journalism."<sup>240</sup> She investigated lynchings across the American South, hiring private detectives and combing local news coverage to exonerate lynching victims and expose the lies told to justify their torture and murder by white supremacists.<sup>241</sup> She visited the sites of lynchings and obtained sworn statements from witnesses.<sup>242</sup> She took stock of the narrative advanced by the local media, countering that narrative with the

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238. Caitlin Dickerson, *Overlooked: Ida B. Wells*, N.Y. TIMES (Mar. 9, 2018), <https://www.nytimes.com/interactive/2018/obituaries/overlooked-ida-b-wells.html>.

239. WELLS, LIGHT OF TRUTH, *supra* note 1. In 1884, early in her life as an activist and a decade before *Plessy v. Ferguson*, Wells sued a railroad for forcing her off a train car reserved for white women. IDA B. WELLS, CRUSADE FOR JUSTICE: THE AUTOBIOGRAPHY OF IDA B. WELLS 16-17 (Alfreda M. Duster ed., 2nd ed. 2020) [hereinafter WELLS, CRUSADE FOR JUSTICE]; *see also id.* at xviii, 7 (describing that when the train conductor tried to remove her from the train, she resisted: "He tried to drag me out of the seat, but the moment he caught hold of my arm I fastened my teeth in the back of his hand."). She unsuccessfully sued the railroad, marking the first time a Black person had sought redress in the state courts following the nullification of the Civil Rights Act of 1875, the only federal law that prohibited racial discrimination by individuals or businesses. *Id.* at 17-18. The battle foreshadowed the activism that would define her career. Indeed, at the outset of her career as a journalist, while she was still working as a teacher, Wells wrote an article criticizing the deplorable conditions afforded Black children in Memphis's segregated schools, an article which cost Wells her teaching job. *Id.* at 32-34.

240. Dickerson, *supra* note 238.

241. WELLS, CRUSADE FOR JUSTICE, *supra* note 239, at 7, 56; *see also* David Smith, *Ida B Wells: The Unsung Heroine of the Civil Rights Movement*, GUARDIAN (Apr. 27, 2018, 2:00 PM EDT), <https://www.theguardian.com/world/2018/apr/27/ida-b-wells-civil-rights-movement-reporter> [https://perma.cc/3PBC-CATB].

242. Smith, *supra* note 241.

accounts gathered from the Black community.<sup>243</sup> For Wells, race and racism cast a shadow over the official story, undermining its validity altogether and opening up avenues worthy of deeper exploration. In short, she deployed a race-conscious framework to compare the official narrative of a lynching to the community testimonies, exposing the truth.

Born into slavery in Holly Springs, Mississippi, a few months before the Emancipation Proclamation,<sup>244</sup> Wells was a thirty-year-old newspaper editor and owner when she began her anti-lynching campaign, spurred by the lynching of a close friend Thomas Moss, one of three Black men taken from a Memphis jail and lynched by a white mob.<sup>245</sup>

Wells, a Black woman living in an era when her race rendered life precarious, was, by necessity, a keen observer of the racial dynamics and cultural context of her time. As Wells explained, the lynching of her friend “changed the whole course of [her] life.”<sup>246</sup> The murder of her friend had “opened [her] eyes to what lynching really was.”<sup>247</sup> She came to

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243. See IDA B. WELLS-BARNETT, LYNCH LAW IN GEORGIA (1899), reprinted in WELLS, LIGHT OF TRUTH, *supra* note 1, at 313-34 (detailing news reports and investigation by private detective hired to investigate a lynching in Georgia); see also IDA B. WELLS, A RED RECORD (1895), reprinted in WELLS, LIGHT OF TRUTH, *supra* note 1, at 218.

244. Emancipation Proclamation No. 95 (Jan. 1, 1863) (“On September 22, 1862, Abraham Lincoln issued the preliminary Emancipation Proclamation. Under his wartime authority as commander-in-chief, he ordered that as of January 1, 1863, enslaved individuals in all areas still in rebellion against the United States ‘henceforward shall be free.’”); Paul Gardullo, *Emancipation Proclamation: An Introduction*, NAT’L MUSEUM AFR. AM. HIST. & CULTURE (2022), <https://nmaahc.si.edu/explore/stories/emancipation-proclamation-striking-mighty-blow-slavery/introduction> [https://perma.cc/EP38-MN5F].

245. WELLS, CRUSADE FOR JUSTICE, *supra* note 239, at xx, 7, 32, 42-45.

246. *Id.* at 42. Wells was the godmother to Moss’s child; Moss and his wife were her best friends. *Id.* Her newspaper, the *Free Speech*, published an editorial that decried the lynching and those who carried it out, suggesting that Black people leave Memphis: “There is therefore only one thing left that we can do; save our money and leave a town which will neither protect our lives and property, nor give us a fair trial in the courts, but takes us out and murders us in cold blood when accused by white persons.” *Id.* at 46. The *Free Speech* went on to ignite a Black exodus from Memphis and an economic boycott. *Id.* at 47-49. That boycott and exodus debilitated the city’s streetcar system and the way of life for the white people of Memphis, who depended on a Black labor class to serve them. *Id.* at 47-49, 55.

247. *Id.* at 56.

understand, through experience, that it was “[a]n excuse to get rid of Negroes who were acquiring wealth and property and thus keep the race terrorized.”<sup>248</sup> It was a means of keeping Black people in a position of subservience, occupying a fixed place at the bottom of society’s strata.<sup>249</sup> Until that point, Wells’s view of lynching reflected a sense common to many at the time that it might have been wrong and extralegal, but was perhaps justified by righteous anger toward someone guilty of rape or a similarly terrible crime.<sup>250</sup> But Moss’s lynching had nothing to do with accusations of rape or any other crime—a fact that challenged the dominant narrative that those lynched likely deserved it.<sup>251</sup> Wells set out to investigate every lynching she read about.<sup>252</sup> She traveled to Mississippi to investigate lynchings where the victims were accused of raping white women, only to find the truth—that each of the Black men lynched was in a consensual relationship with the white woman whose honor the lynching was meant to preserve.<sup>253</sup>

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248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.* at 56-57. Wells’s newspaper was destroyed by a white mob three months after the lynching, just after the *Free Speech* published an editorial decrying the lynching. *Id.* at 53-57. Wells took a position with another publication to continue her crusade against lynching, even as a white mob destroyed her newspaper and forced her into exile. *Id.* at 54. Fleeing the terror of the South and the wrath of all her work had exposed, Wells eventually settled in Chicago, marrying and raising children while continuing to investigate and write about racial-terror lynchings. Alfreda M. Duster, *Introduction to WELLS, CRUSADE FOR JUSTICE*, *supra* note 239, at xx-xxiii; Mia Bay, *Introduction to WELLS, LIGHT OF TRUTH*, *supra* note 1, at xxviii-xxx. Her connection to Chicago is memorialized today in a monument to her work that sits on the city’s South Side. Yvonne Krumrey, *Reclaiming Monuments: The Light of Truth Memorializes Ida B. Wells’ Activism in Chicago*, NEW CITY ART (Oct. 8, 2021), <https://art.newcity.com/2021/10/08/reclaiming-monuments-the-light-of-truth-memorializes-ida-b-wells-activism-in-chicago>

[<https://perma.cc/K86H-LEPC>]. The monument sits on a plot of land that was once occupied by a Chicago Housing Authority public-housing complex that was built in 1939 to house Black families and which bore her name. *Id.*; *Ida B. Wells Housing Projects*, CHI. ARCHITECTURE CTR., <http://www.architecture.org/online-resources/stories-of-chicago/ida-b->

The focus of her life's work was publishing the facts that she gathered.<sup>254</sup> Those facts—obtained through exhaustive investigation at tremendous personal risk—challenged the mainstream narrative that the entire Black race was “moral monsters and despoilers of white womanhood and childhood.”<sup>255</sup> Wells’s reporting destroyed the myth that lynchings were a legitimate form of vigilante justice for Black crimes.<sup>256</sup> She documented the consensual interracial relationships that led white mobs to lynch Black men.<sup>257</sup> Wells’s work made clear that lynching had nearly nothing to do with sexual assault.<sup>258</sup> Instead, lynching became understood as “a terrifying and extralegal form of racial subjugation [that] supplemented the disenfranchisement, legal disabilities, and economic exploitation that white Southerners used” to enforce a white supremacist hierarchy.<sup>259</sup> Her crusade against lynching was carried out through speeches and publications, organizing opposition in the United States and abroad and providing a critical plank in the platforms of early civil rights organizations.<sup>260</sup> She documented 728 lynchings between 1884 and

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wells-barnett-and-the-ida-b-wells-housing-projects-homes  
[<https://perma.cc/32T8-6JMJ>].

254. See WELLS, CRUSADE FOR JUSTICE, *supra* note 239, at 62.

255. *Id.*

256. Smith, *supra* note 241.

257. WELLS, CRUSADE FOR JUSTICE, *supra* note 239, at 56-57.

258. See *id.*; Dickerson, *supra* note 238 (“Her goal was to question a stereotype that was often used to justify lynchings — that black men were rapists. Instead, she found that in two-thirds of mob murders, rape was never an accusation. And she often found evidence of what had actually been a consensual interracial relationship.”).

259. Mia Bay, *Introduction* to WELLS, LIGHT OF TRUTH, *supra* note 1, at xxvi-xxvii; Dickerson, *supra* note 238.

260. Mia Bay, *Introduction* to WELLS, LIGHT OF TRUTH, *supra* note 1, at xxvi-xxviii.

1892,<sup>261</sup> methodically undermining the white mainstream narrative that the extralegal torture and killing of Black people had been justified.<sup>262</sup>

An independent systemic integrity review should take stock of racial context in the same way that Wells did in her investigations. One approach might be to explore attitudes on race, as expressed through surveys and other data points, to gain insights on how those attitudes might have shaped the way systems and their actors operated. Another could be to examine the racial landscape that existed at the national and local level at the time the case or cases under review unfolded, and then to consider the possible effect of that landscape on the story that a criminal conviction pushes us to accept. In the Sections that follow I take that approach by examining the local and national cultural climate on race and the criminal system at the time the Englewood Four were arrested, prosecuted, and convicted. The cultural context offered is illustrative of how race was infused into national and local attitudes, policies, practices, systems, and institutions. When we think about race, it can raise a context that is impossible to ignore.

#### B. The Cultural Context of Race and the Criminal System at the National Level

The link between race, fear, and criminality dominated the American consciousness in the 1990s, the same era that witnessed the Black teenagers suspected of assaulting and murdering Nina Glover being arrested, prosecuted, and imprisoned. They were arrested in March of 1995,<sup>263</sup> when America was in the midst of a surge in its racially imbued

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261. *Ida B. Wells Housing Projects*, *supra* note 253; *see also* IDA B. WELLS, SOUTHERN HORRORS: LYNCH LAW IN ALL ITS PHASES (1892), *reprinted in* WELLS, LIGHT OF TRUTH, *supra* note 1, at 57-82; IDA B. WELLS, A RED RECORD (1895), *reprinted in* WELLS, LIGHT OF TRUTH, *supra* note 1, at 218-312; IDA B. WELLS-BARNETT, MOB RULE IN NEW ORLEANS: ROBERT CHARLES AND HIS FIGHT TO THE DEATH (1900), *reprinted in* WELLS, LIGHT OF TRUTH, *supra* note 1, at 339-93.

262. *Exposing the “Thread-Bare Lie”: How Ida B. Wells Used Investigative Journalism to Uncover the Truth About Lynching*, WTTW, <https://interactive.wttw.com/chicago-stories/ida-b-wells/exposing-the-thread-bare-lie-how-ida-b-wells-used-investigative-journalism-to-uncover-the-truth-about-lynching> [https://perma.cc/N63Q-N7V2].

263. Smith, *supra* note 94.

obsession with mass incarceration.<sup>264</sup> Decades of racist propaganda binding criminality to Black and Brown skin peaked in the 1990s with the proliferation of harsh and hyperpunitive criminal system policies. It was a period punctuated by cascading racial flashpoints.<sup>265</sup> It was also the culmination of a tough-on-crime era that grew out of a staggering growth in the prison population in the 1970s and 1980s, cementing America firmly at the top of the world's leading jailers by the 1990s.<sup>266</sup>

For the Englewood Four, one cultural phenomenon flowing from the fusion of race and criminality that defined the 1990s loomed especially large: the superpredator.<sup>267</sup> Although today we recognize it as a myth, at the time, superpredators were cast as a generation of irredeemable Black and Brown youth on their way to terrorize and commit all manner of violent crimes—murder, robbery, rape, and assault. Those youth needed to be “[brought] to heel.”<sup>268</sup> The superpredator typified the merger of race, dangerousness, and youth, grounded in junk science and racist, faulty predictions about youth criminality.<sup>269</sup> The myth was driven by a prediction of social scientists in the 1990s that the juvenile population

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264. Between 1990 and 1995, the prison population of every state, save one, increased. Ashley Nellis, *Mass Incarceration Trends*, THE SENT'G PROJECT 1 (May 21, 2024), <https://www.sentencingproject.org/app/uploads/2024/05/Mass-Incarceration-Trends.pdf> [https://perma.cc/V6U6-NMQA]; Ginia Bellafante, *Here's What Happens as the Era of Mass Incarceration Winds Down*, N.Y. TIMES (Mar. 31, 2023), <https://www.nytimes.com/2023/03/31/nyregion/mass-incarceration-ny.html> [https://perma.cc/V35G-PX9W]. From 1990 to 2005, the United States built, on average, a new prison every 10 days. BRYAN STEVENSON, JUST MERCY: A STORY OF JUSTICE AND REDEMPTION 260 (2014).
265. Jonathan Chait, *Bill Clinton, O.J. Simpson, Clarence Thomas, and the Politics of 1990s Racial Backlash*, N.Y. MAG. (July 4, 2016), <https://nymag.com/intelligencer/2016/06/clinton-and-the-politics-of-90s-racial-backlash.html>.
266. Nellis, *supra* note 264.
267. *The Origins of the Superpredator: The Child Study Movement to Today*, THE CAMPAIGN FOR THE FAIR SENT'G OF YOUTH (May 2021), <https://cfsy.org/wp-content/uploads/Superpredator-Origins-CFSY.pdf> [https://perma.cc/E5SX-459R].
268. Reena Flores, *Hillary Clinton on “Superpredators” Remark: “I Shouldn’t Have Used Those Words,”* CBS NEWS (Feb. 25, 2016, 5:09 PM EST), <https://www.cbsnews.com/news/hillary-clinton-on-superpredators-remark-i-shouldnt-have-used-those-words> [https://perma.cc/36NA-ZVHT].
269. Vincent M. Southerland, *Youth Matters: The Need to Treat Children Like Children*, 27 J. CIV. RTS. & ECON. DEV. 765, 766 (2015).

would explode into a cohort of hyperviolent, remorseless youth steeped in criminality.<sup>270</sup> The media spread that narrative,<sup>271</sup> which politicians eventually adopted.<sup>272</sup> The discourse about these youth—deemed superpredators—was suffused with racism.<sup>273</sup> Between 1992 and 1997, nearly every state in the country passed laws that made it easier to try children in adult court and subject them to adult punishments, foregoign the rehabilitative aims of the juvenile system.<sup>274</sup> Thousands of life and life-without-parole sentences were imposed on youth, ballooning the youth prison population and inexorably changing the course of juvenile justice, bending it in a more harsh, punitive direction.<sup>275</sup>

The superpredator myth was more than a singular flirtation with race and criminality. As false and flawed as it was, it was representative of an era when race and criminality were bound together in the public consciousness. My memories of the 1990s opened with the merciless beating of a Black man—Rodney King—by Los Angeles police officers in

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270. See Richard Zoglin, *Now for the Bad News: A Teenage Time Bomb*, TIME (Jan. 15, 1996), <https://time.com/archive/6728417/now-for-the-bad-news-a-teenage-time-bomb> [<https://perma.cc/P5ZN-PZD6>]; see also *The Superpredator Myth, 25 Years Later*, EQUAL JUST. INITIATIVE (Apr. 7, 2014), <https://eji.org/news/superpredator-myth-20-years-later> [<https://perma.cc/EZ44-3JCA>]; Robin Templeton, *Superscapegoating*, FAIR (Jan. 1, 1998), <https://fair.org/extra/superscapegoating> [<https://perma.cc/8FSV-JFB7>]; Carroll Bogert & Lynnell Hancock, *Superpredator: The Media Myth That Demonized a Generation of Black Youth*, MARSHALL PROJECT (Nov. 11, 2020), <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth> [<https://perma.cc/65GC-SWU7>]; Southerland, *Youth Matters*, *supra* note 269, at 773-78.

271. Southerland, *Youth Matters*, *supra* note 269, at 771-73.

272. *Id.* at 778-81.

273. *Id.* at 769-71.

274. *Id.* at 780 (citing John F. Stinneford, *Evolving Away from Evolving Standards of Decency*, 23 FED. SENT'G REP. 87, 90).

275. *Id.*; *The Origins of the Superpredator*, *supra* note 267, at 7. The era of the so-called superpredator stretched from the late 1980s through the late 1990s, cresting in the mid-1990s. See Hannah Markov, *The Superpredator's Lingering Impact on Juvenile Justice Policy*, COAL. FOR JUV. JUST. (July 30, 2024), <https://juvjustice.org/blog/the-superpredators-lingering-impact-on-juvenile-justice-policy/> [<https://perma.cc/C3W8-V6FA>].

1991.<sup>276</sup> The beating—surreptitiously caught on video—echoed decades of law enforcement violence visited upon Black and Latino Angelenos.<sup>277</sup> The Los Angeles uprising a year later followed the acquittal of the officers who beat Mr. King nearly to death.<sup>278</sup> It was an explosion of racial frustration and outrage—at the injustice of the criminal system and the Los Angeles Police Department’s brutality.<sup>279</sup> O.J. Simpson’s arrest and prosecution for murder, ending in an acquittal, served as another 1990s racial flashpoint, exposing racial divisions nationwide.<sup>280</sup> I remember, for example, celebrating Simpson’s acquittal alongside other Black and Brown college classmates, feeling that it was a form of payback against a system that routinely railroaded people who looked like me.<sup>281</sup> I also remember the

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276. Sam Levin, *Rodney King: 30 Years After Brutal Beating, Activists Say LAPD Still Corrupt and Violent*, GUARDIAN (Mar. 3, 2021, 1:00 PM EST), <https://www.theguardian.com/us-news/2021/mar/02/rodney-king-lapd-police-30-years-later> [https://perma.cc/M6RS-W5MR]; *30 Years Later, the Rodney King Beating Remains a Seminal Part of Los Angeles History*, NBC L.A. (Mar. 3, 2021, 6:34 PM), <https://www.nbclosangeles.com/news/local/rodney-king-beating-1991-lapd-police-la-history/2540703> [https://perma.cc/U5JZ-HPNC]; Anjuli Sastry Krbechek & Karen Grigsby Bates, *When LA Erupted in Anger: A Look Back at the Rodney King Riots*, NPR (Apr. 26, 2017, 1:21 PM EST), <https://www.npr.org/2017/04/26/524744989/when-la-erupted-in-anger-a-look-back-at-the-rodney-king-riots> [https://perma.cc/AHD6-3KAW].

277. See Ryan Reft, *A Tale of Two Commissions: Watts, Rodney King and the Politics of Policing*, PBS Socal (June 2, 2020), <https://www.pbssoical.org/shows/lost-la/a-tale-of-two-commissions-watts-rodney-king-and-the-politics-of-policing> [https://perma.cc/S9GA-FZJK] (explaining that the Los Angeles Police Department “treated minorities as second class citizens” in the 1960s, and that from 1973 to 1993, “only African American and Latino teens stood subject to law enforcement” for gang membership in Los Angeles, even though gang membership crossed racial lines).

278. *Id.*

279. Krbechek & Bates, *supra* note 276.

280. See PBS News Hour: *How O.J. Simpson’s Murder Trial Exposed a Stark Racial Fissure in America* (PBS News television broadcast Apr. 11, 2024), <https://www.pbs.org/newshour/show/how-o-j-simpsons-murder-trial-exposed-a-stark-racial-fissure-in-america> [https://perma.cc/TN3R-SYPS].

281. ON POINT WITH MEGHA CHAKRABARTI: *25 Years on, the Lasting Cultural Impact of the O.J. Simpson Trial* (WBUR, June 12, 2019), <https://www.wbur.org/onpoint/2019/06/12/oj-simpson-trial-murder-nicole-simpson-ron-goldman> [https://perma.cc/8WCQ-RW98].

disappointment of white classmates who were stunned that the system failed to hold an alleged murderer to account.

Other data points provide useful insights about America's racial attitudes and the criminal system. Public support for the death penalty was at its all-time high in the 1990s.<sup>282</sup> New death sentences peaked over the 3-year period from 1994 to 1996, reaching unprecedented levels, with more than 300 new death sentences handed down per year during those 3 years.<sup>283</sup> Executions reached a high in the 1990s as well, with 98 executions carried out in 1999.<sup>284</sup> For comparison's sake, 24 people were executed in 2023.<sup>285</sup>

One early flashpoint of the racialized and hyperpunitive 1990s was the 1992 presidential campaign. Arkansas governor and then-candidate Bill Clinton bred a tough-on-crime image in the face of Republican criticism by leaving the campaign trail to preside over the execution of Ricky Ray Rector.<sup>286</sup> Mr. Rector was a mentally ill Black man who was effectively lobotomized when he attempted to take his own life after killing two people, including a police officer.<sup>287</sup> He was unequivocally incompetent, as evidenced by the fact that he set aside the dessert that accompanied his

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282. *Death Penalty*, GALLUP, <https://news.gallup.com/poll/1606/death-penalty.aspx> [https://perma.cc/MRE4-KHGP].

283. *History of the Death Penalty*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty> [https://perma.cc/LCC2-DU2D]. In 1996, 316 death sentences were imposed. *Facts About the Death Penalty*, DEATH PENALTY INFO. CTR. 3 (Dec. 19, 2024), <https://files.deathpenaltyinfo.org/documents/pdf/FactSheet.pdf?dm=1736463595> [https://perma.cc/8H26-9NQT].

284. *Id.*

285. *Id.*

286. Nathan Robinson, *The Death of Rick Ray Rector*, JACOBIN (Nov. 5, 2016), <https://jacobin.com/2016/11/bill-clinton-rickey-rector-death-penalty-execution-crime-racism> [https://perma.cc/5NYP-B7YT]; Paul Rosenberg, *Bill Clinton's Gutsy Apologies: Now He Owes One to Ricky Ray Rector*, SALON (July 25, 2015, 1:30 PM EDT), [https://www.salon.com/2015/07/25/bill\\_clintons\\_gutsy\\_apologies\\_now\\_he\\_owes\\_one\\_to\\_ricky\\_ray\\_rector](https://www.salon.com/2015/07/25/bill_clintons_gutsy_apologies_now_he_owes_one_to_ricky_ray_rector) [https://perma.cc/RH4L-94KV].

287. Robinson, *supra* note 286.

last meal to save it for later.<sup>288</sup> Clinton would go on to win the presidency.<sup>289</sup>

During his first term in office, in the midst of a national obsession with crime,<sup>290</sup> Clinton bolstered his tough-on-crime bona fides by signing into law the Violent Crime Control and Law Enforcement Act of 1994.<sup>291</sup> Known as the 1994 Crime Bill, and passed with bipartisan support, the law today is infamous.<sup>292</sup> It put more police on the streets, incentivized the building of new prisons and jails, doubled down on lengthy prison sentences, extended the range of capital offenses, expanded prosecutorial power, and incentivized an end to parole in a host of jurisdictions.<sup>293</sup> These policies were of a piece with the modern era of mass incarceration and mass criminalization—one that was deeply racialized and which exploded the carceral population.<sup>294</sup> Two years later, Clinton signed into law more

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288. *Id.*

289. *Id.*; see also Peter Applebome, *The 1992 Campaign: Death Penalty; Arkansas Execution Raises Questions on Governor's Politics*, N.Y. TIMES (Jan. 25, 1992), <https://www.nytimes.com/1992/01/25/us/1992-campaign-death-penalty-arkansas-execution-raises-questions-governor-s.html>.

290. Candice Norwood & Mariel Padilla, *The Complicated Legacy of the 1994 Crime Bill*, 19TH (Sep. 16, 2024), <https://19thnews.org/2024/09/the-complicated-legacy-of-the-1994-crime-bill> [https://perma.cc/5953-H8LY].

291. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).

292. Lauren Gambino, '*Things Have changed': Can Biden Overcome the Racist Legacy of the Crime Bill He Backed?*', GUARDIAN (Oct. 17, 2020, 5:00 PM EDT), <https://www.theguardian.com/us-news/2020/oct/17/joe-biden-race-crime-bill-1994-policing> [https://perma.cc/35CM-XLZQ]; German Lopez, *The Controversial 1994 Crime Law that Joe Biden Helped Write, Explained*, VOX (Sep. 29, 2020, 10:25 AM EDT), <https://www.vox.com/policy-and-politics/2019/6/20/18677998/joe-biden-1994-crime-bill-law-mass-incarceration> [https://perma.cc/FT87-LJFZ]; Norwood & Padilla, *supra* note 290.

293. Carrie Johnson, *From Clinton to Trump, How Talk About Crime Has Changed Since a Landmark Bill*, NPR (Sep. 13, 2024, 5:15 AM ET), <https://www.npr.org/2024/09/12/nx-s1-5103810/crime-bill-1994-justice-reform> [https://perma.cc/B67U-EGB5]; Todd S. Purdum, *The Crime-Bill Debate Shows How Short Americans' Memories Are*, ATLANTIC (Sep. 12, 2019), <https://www.theatlantic.com/politics/archive/2019/09/joe-biden-crime-bill-and-americans-short-memory/597547>.

294. Udi Ofer, *How the 1994 Crime Bill Fed the Mass Incarceration Crisis*, ACLU (June 4, 2019), <https://www.aclu.org/news/smart-justice/how-1994-crime>.

bipartisan legislation that sounded in the same register as the 1994 Crime Bill: the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”) and the Illegal Immigration Reform and Immigrant Responsibility Act. Each encouraged courts to privilege procedure over justice and echoed the tough-on-crime spirit of the era.<sup>295</sup> AEDPA, after all, was designed to make the death penalty more effective—limiting pathways for litigants challenging their convictions and sentences.<sup>296</sup>

In the most generous terms, the 1990s were laden with race and criminality, from policy pronouncements, to media images, to the narratives that shaped perspectives of everyone from system actors to communities. As the next Section shows, the connections between race and criminality were just as salient at the local level.

### C. The Cultural Context of Race and the Criminal System at the Local Level

Chicago’s racial past casts a long shadow on its current law enforcement processes, informing how policing operates and is experienced. In the case of the Englewood Four, Chicago’s cultural context of race and the criminal system is directly connected to the police violence they endured. History, with race operating as connective tissue, explains

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bill-fed-mass-incarceration-crisis [https://perma.cc/4C7N-S2SS]; Lauren Brooke-Eisen, *The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System*, BRENNAN CTR. FOR JUST. (Sep. 9, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice> [https://perma.cc/DT2R-B5K6].

295. Erica Bryant, *25 Years of IIRIRA Shows Immigration Law Gone Wrong*, VERA INST. (June 28, 2022), <https://www.vera.org/news/25-years-of-iirira-shows-immigration-law-gone-wrong> [https://perma.cc/R2S9-BJAR]; Bryan A. Stevenson, *The Politics of Fear and Death: Successive Problems in Capital Federal Habeas Corpus Cases*, 77 N.Y.U. L. REV. 699, 701 (2002). Clinton also signed “welfare reform” into law, the bipartisan run-up to which was laden with racially coded language and stereotypes about recipients of government assistance. Alma Carten, *The Racist Roots of Welfare Reform*, NEW REPUBLIC (Aug. 22, 2016), <https://newrepublic.com/article/136200/racist-roots-welfare-reform> [https://perma.cc/3HSS-HFUF].
296. See Brandon L. Garrett & Kaitlin Phillips, *AEDPA Repeal*, 107 CORNELL L. REV. 1739, 1742-44 (2022) (explaining how AEDPA’s procedural mechanisms were aimed at “expediting death penalty cases” and “restrict[ing] federal habeas corpus”).

why. G. Flint Taylor, the Chicago-based human rights and civil rights lawyer who has been fighting police torture in Chicago for more than thirty-five years, makes it plain: “The complete Chicago police torture narrative traces an unbroken line of white supremacist violence from slavery, Black codes, convict leasing, and lynching to Jim Crow laws and police torture in Chicago.”<sup>297</sup> As was the case in so many cities across the country, policing in Chicago was a handmaiden to racial caste.<sup>298</sup> The city was structured around race, as law and policy were fueled by racial animus and deployed with surgical precision to ensure that Black, white, and Latino enclaves remained separate and unequal.<sup>299</sup> Chicago police were the enforcers of this racial divide, visiting unbridled brutality on communities of color to keep them in their place. That confluence of forces left Chicago among the most segregated cities in America.<sup>300</sup>

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297. G. FLINT TAYLOR, THE TORTURE MACHINE: RACISM AND POLICE VIOLENCE IN CHICAGO 510 (2019).
298. Elizabeth Hinton & Deanza Cook, *The Mass Criminalization of Black Americans: A Historical Overview*, 4 ANN. REV. CRIMINOLOGY 261, 271 (2021) (explaining that during the Second Great Migration, involving Black people fleeing segregation, police in Chicago, New York, and Los Angeles “focused on controlling racial groups and enforcing de facto segregation”).
299. “What really happened was more sinister. On the South Side of Chicago, a pattern of intentional, government-sanctioned policies systematically extracted the wealth from Black neighborhoods, bringing an erosion of health for generations of people, leaving them to live sick and die young.” Linda Villarosa, *Black Lives Are Shorter in Chicago. My Family’s History Shows Why.*, N.Y. TIMES (Apr. 28, 2021), <https://www.nytimes.com/2021/04/27/magazine/life-expectancy-racial-gap.html>.
300. A host of sources make this point. See, e.g., Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 15, 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631>; RICHARD ROTHSTEIN, *THE COLOR OF LAW* (2018); Jacqueline Serrato, Charmine Runes & Pat Sier, *Mapping Chicago’s Racial Segregation*, S. SIDE WKLY. (Feb. 24, 2022), <https://southsideweekly.com/mapping-chicagos-racial-segregation> [<https://perma.cc/4CJJ-WTAY>]; Zachary Leiter, *Chicago’s 250 Year History of Segregation*, CHI. REP. (Aug. 30, 2023), <https://www.chicagoreporter.com/chicagos-250-year-history-of-segregation> [<https://perma.cc/SF75-6DWP>]; Edward Robert McClelland, *There Is One Map of Chicago*, CHI. MAG. (Apr. 28, 2023), <https://www.chicagomag.com/news/there-is-one-map-of-chicago> [<https://perma.cc/BS5F-UFXK>]; Jamie Kalven, *The Geography of Fear: Policing a Segregated Chicago*, S. SIDE WKLY. (Feb. 24, 2022), <https://southsideweekly.com/the-geography-of-fear-policing-a-segregated-chicago> [<https://perma.cc/4NCA-E4W7>].

Englewood was no exception.<sup>301</sup> Once a thriving enclave of German and Irish immigrants, Englewood's property values were undercut as a result of redlining, white flight, and divestment.<sup>302</sup> As Black Chicagoans fled the expense of the city, they settled in Englewood, replacing the immigrants who had left.<sup>303</sup> The crack epidemic, the drying up of manufacturing jobs, and the decline in housing, education, and social services, left Englewood as a predominantly Black neighborhood where divestment bred crime and violence.<sup>304</sup> It was bounded by law enforcement.<sup>305</sup>

As Black and Brown communities in Chicago worked to resist those dynamics, police operated as foot soldiers in a war against people of color waged by the city's leadership, which included the mayor and the state's attorney.<sup>306</sup> The Black Panther Party, led by the charismatic nineteen-year-

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301. Itamar Steiner, *Englewood: A Difficult History Yet Resilient Future*, ARCGIS STORYMAPS (May 4, 2020), <https://storymaps.arcgis.com/stories/a5200aa61fac4f349e9301c82b20f137> [https://perma.cc/EQ5U-TFZU]; Monique Wingard, *Englewood*, WTTW, <https://interactive.wttw.com/chicago-by-l/neighborhoods/englewood> [https://perma.cc/J9VA-BJFM].

302. *Id.*

303. Atavia Reed, *Why Are There No Sit-Down Restaurants in Englewood?*, BLOCK CLUB CHI. (Jan. 24, 2024), <https://blockclubchicago.org/2024/01/24/where-are-englewoods-restaurants> [https://perma.cc/X5PP-WFAJ].

304. Michael Z. Green, *"Just Another Little Black Boy from the South Side of Chicago": Overcoming Obstacles and Breaking Down Barriers to Improve Diversity in the Law Professoriate*, 31 COLUM. J. GENDER & L. 135, 140-41 (2015) (describing his upbringing in Englewood, the crime and unemployment that plagues the city, and the violence he witnessed); Joseph Erbentraut, *Don't Believe Everything You've Heard About Chicago's Most 'Dangerous' Neighborhood*, HUFFPOST (May 23, 2014, 11:28 AM EDT), [https://www.huffpost.com/entry/whats-good-in-englewood\\_n\\_5360688](https://www.huffpost.com/entry/whats-good-in-englewood_n_5360688) [https://perma.cc/NU4M-UHPY]; Natalie Moore, *Troubled Chicago Neighborhood Wary of Spike Lee's 'Chiraq,'* NPR (Apr. 29, 2015), <https://www.npr.org/2015/04/29/402971445/residents-of-troubled-chicago-neighborhood-wary-of-spike-lee-s-chiraq> [https://perma.cc/4E2J-EYQU]; RACE: OUT LOUD: *Race, Segregation, and Violence: Views from One Block in Englewood*, (WBEZ Chicago, June 25, 2012), <https://www.wbez.org/race-out-loud/2012/06/25/race-segregation-and-violence-views-from-one-block-in-englewood> [https://perma.cc/EY53-82SR].

305. Kalven, *supra* note 300.

306. Jacqueline Serato, *Fifty Years of Fred Hampton's Rainbow Coalition*, S. SIDE WKLY. (Sep. 27, 2019), <https://southsideweekly.com/fifty-years-fred-hampton-s-rainbow-coalition>.

old Fred Hampton, rose to prominence by convening a multiracial coalition that demanded economic and social justice and an end to police brutality in the city.<sup>307</sup> The brutality to which Hampton and many others objected was the North Star for Chicago police. Violence was their tool of the trade. In 1969, the police and FBI agents deployed that same violence to murder Hampton and one of his fellow activists during an early-morning raid on his apartment, acting at the direction of Cook County State's Attorney Edward Hanrahan and a squad of special police.<sup>308</sup> It would take well over a decade of litigation to expose a government-backed surveillance program to suppress and repress Black political movements and to hold the Chicago Police Department accountable.<sup>309</sup>

That violence was part of a larger pattern of policing that spanned the 1950s and '60s, encompassing beatings with nightsticks, slaps to the face, and violent blows to the most vulnerable parts of the body, like the stomach and kidneys.<sup>310</sup> Chicago police also used a tactic known as “hanging him up”: a practice in which officers would handcuff the detained with their hands behind them, loop a rope through the handcuffs and over a door, and lift the victim up until their toes barely touched the floor.”<sup>311</sup>

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hampton-rainbow-coalition-young-lords-black-panthers  
[<https://perma.cc/P7RJ-778R>].

307. Tana Ganeva, *Black Panther Fred Hampton Created a “Rainbow Coalition” to Support Poor Americans*, TEEN VOGUE (July 25, 2019), <https://www.teenvogue.com/story/fred-hampton-black-panthers-rainbow-coalition-poor-americans> [<https://perma.cc/X67U-VM6V>]; *see also* TAYLOR, *supra* note 297, at 26.
308. *The Murder of Fred Hampton*, PEOPLE'S L. OFF., <https://peopleslawoffice.com/about-civil-rights-lawyers/history/the-murder-of-fred-hampton> [<https://perma.cc/8RTA-A9PU>]; *Black Panthers and Fred Hampton*, PEOPLE'S L. OFF., <https://peopleslawoffice.com/issues-and-cases/panthers> [<https://perma.cc/6473-HVSM>]; G. Flint Taylor, ‘*Nothing but a Northern Lynching*’: The Assassination of Fred Hampton, HUFFPOST (Dec. 5, 2012), [https://www.huffpost.com/entry/fred-hamptom-death\\_b\\_2234651](https://www.huffpost.com/entry/fred-hamptom-death_b_2234651) [<https://perma.cc/MK88-KTTM>]; G. Flint Taylor, *The Assassination of Fred Hampton: A Short People's History*, BLACK AGENDA REP. (Dec. 10, 2020), <https://www.blackagendareport.com/assassination-fred-hampton-short-peoples-history> [<https://perma.cc/K5QG-MXAG>].
309. Taylor, ‘*Nothing but a Northern Lynching*,’ *supra* note 308.
310. Philip O’Sullivan, *Putting a Check on Police Violence: The Legal Services Market, Section 1983, Torture, Abusive Detention Practices, and the Chicago Police Department from 1954 to 1967*, 56 HARV. C.R.-C.L. L. REV. 1, 10 (2021).
311. *Id.*

Evidence of these tactics would typically disappear by the time the victim was out of police custody, making it easier for offending officers to maintain denials.

It was out of this history that one of Chicago's most infamous purveyors of police violence emerged. CPD Lieutenant Jon Burge was at the forefront of a two-decade-long reign of terror in the city, the effects of which reverberate in Chicago to this day.<sup>312</sup> Burge and those under his command—known to the CPD as "Burge's Ass-Kickers"<sup>313</sup>—tortured more than 100 witnesses and suspects in an effort to close cases and secure convictions.<sup>314</sup> A Vietnam veteran, Burge returned from war in 1969 and joined the CPD, employing tactics he learned on the battlefield and deployed in prisoner of war camps on those that he and his officers pulled out of their homes and off the streets of Chicago. He was a "serial racist and sadist"<sup>315</sup> whose career began "in the shadow of 1968, when Mayor Richard J. Daley ordered officers to 'shoot to kill' amid riots after the assassination of... Martin Luther King – and when officers were televised clubbing protesters outside the Democratic National Convention."<sup>316</sup> He tortured his first known victim in 1973.<sup>317</sup> He and a cohort of other Vietnam veterans formed the "backbone of a crew of almost exclusively white Chicago police detectives who would torture at least 118 African American criminal suspects."<sup>318</sup> Burge was the driving force behind a reign

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312. Elliott Riebman, *How and Why a Code of Silence Between State's Attorneys and Police Officers Resulted in Unprosecuted Torture*, DEPAUL J. FOR SOC. JUST., Summer 2016, at 1; *see also* Hendricks, *supra* note 223, at 476-78 (detailing the CPD torture scandal under Burge).

313. G. Flint Taylor, *The Torture Machine: Racism and Police Violence in Chicago*, DEPAUL J. FOR SOC. JUST., Winter 2019, at 2.

314. G. Flint Taylor, *A Long and Winding Road: The Struggle for Justice in the Chicago Police Torture Cases*, 17 PUB. INT. L. REP. 178, 180-82 (2012).

315. Trivedi & Gonzalez Van Cleve, *supra* note 207, at 897.

316. Harrison Smith, *Jon Burge: Chicago Police Chief and 'Torturer' Who Targeted Black Men*, INDEP. (Sep. 26, 2018, 1:37 PM EDT), <https://www.the-independent.com/news/obituaries/jon-burge-dead-chicago-police-commander-racist-torturer-pig-black-men-cpd-a8554421.html> [https://perma.cc/M57Q-7TML].

317. Natalie Y. Moore, *Payback*, MARSHALL PROJECT (Oct. 30, 2018), <https://www.themarshallproject.org/2018/10/30/payback> [https://perma.cc/Y7TP-CNE2].

318. G. Flint Taylor, *The Chicago Police Torture Scandal: A Legal and Political History*, 17 CUNY L. REV. 329, 330 (2014).

of terror, a reign countenanced by Chicago's political machine.<sup>319</sup> Burge led a torture ring, drawing on techniques such as electric shock—which he most likely picked up during his time serving as a military police sergeant in the Vietnam War—to elicit confessions.<sup>320</sup> Officers and detectives under Burge's command participated in the torture and were complicit in covering it up.<sup>321</sup> Meanwhile, prosecutors joined in the interrogations, took confessions that were beaten out of suspects, and used them to support prosecutions and secure convictions.<sup>322</sup>

Burge's "success" in clearing cases led to his rapid promotion up the ranks.<sup>323</sup> As a lieutenant, he was placed in charge of a newly created Violent Crimes Unit in the early 1980s.<sup>324</sup> In 1982, Burge was tasked with investigating the murder of two CPD officers: This culminated in a manhunt and served as an opportunity for him and his fellow officers to torture and beat confessions out of dozens, including two people who were convicted for the police killing.<sup>325</sup> That manhunt was rife with Burge's brand of police violence: kicking down doors, kidnapping Black people from their communities, renditioning them to a police station, and torturing them.<sup>326</sup>

To call what Burge and his associates did appalling is an understatement. Their torture methods included "electrically shocking individuals on their genitals, lips and ears with an electric shock box or cattle prod; suffocating individuals with plastic bags; subjecting individuals to mock execution with guns; physical beatings with telephone books and rubber hoses; and other forms of physical and psychological

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319. See Taylor, *supra* note 314, at 179-80.

320. *Id.* Taylor recounts, "On one occasion, an African-American detective from Area 2 walked in on a Burge torture scene; when he reported it to a supervisor, he was told to mind his own business – then he was transferred out of Area 2. Another Black detective saw what appeared to be the torture box, which Burge sometimes referred to as the 'n\*\*\*\*\* box,' sitting on a table near the sergeant's desk at Area 2." *Id.*

321. *Id.*

322. *Id.*

323. See *id.*; Moore, *supra* note 317.

324. Taylor, *supra* note 314, at 180.

325. *Id.*; Moore, *supra* note 317; Conroy, *supra* note 152.

326. Taylor, *supra* note 314, at 180.

abuse.”<sup>327</sup> They put shotguns in their mouths. They deployed mock executions. They used a torture tactic known as a “dry submarino”—suffocating individuals and knocking the wind out of them to the point that they thought they were dying.<sup>328</sup>

Burge had plenty of support to pull this off. The entire criminal legal system apparatus and those at the apex of Chicago’s political structure protected and countenanced his behavior.<sup>329</sup> While torture in his police precinct had long been an “open secret,” no one exposed it, including judges who consistently rejected suppression motions alleging torture.<sup>330</sup> Everyone who knew better and had the power to do something about it looked away, or worse, covered up the misconduct.<sup>331</sup> And they benefited

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327. *Reparations Ordinance*, CHI. JUST. TORTURE MEM’LS, <https://chicagotorture.org/reparations/ordinance> [<https://perma.cc/7Z2X-Z4E5>]; *see also* Moore, *supra* note 317; Hendricks, *supra* note 223, at 477 (describing Burge’s reign of terror).

328. Taylor, *supra* note 313, at 4.

329. *See id.* at 3 (“The Torture Machine is also the political machine of the city of Chicago.”); Taylor, *supra* note 314, at 179 (noting that the long-running scandal implicated “two Chicago mayors and numerous officials at the highest levels of the Chicago Police Department and the Cook County State’s Attorney’s Office as well as members of the Cook County judiciary, and continues to this day”); *id.* at 180, 182 (detailing prosecutor and police complicity in countenancing torture).

330. Taylor, *supra* note 314, at 182; *see also* John Conroy, *Town Without Pity*, CHI. READER (Jan. 11, 1996), <https://chicagoreader.com/news/town-without-pity> [<https://perma.cc/FL4E-SUM2>] (describing a host of allegations of police abuse and the lack of action and concern by government officials, media outlets, and members of the public).

331. *See* Joan Parkin, *The Legacy of a Torturer*, JACOBIN (Sep. 26, 2018), <https://jacobin.com/2018/09/jon-burge-chicago-police-torture-obituary> [<https://perma.cc/ZJE9-8494>]. Professor Nicole Gonzalez Van Cleve describes how prosecutors overlooked misconduct and abuse by deploying cultural tools, among them a perspective that “allow[ed] them to collaborate with police and share a belief system about morality while distinguishing their identity as separate, colorblind, and race-neutral in comparison to the police.” GONZALEZ VAN CLEVE, *supra* note 221, at 143-45. By “distinguishing themselves and their beliefs as separate from police . . . prosecutors are able to ignore the racial bias that links them in practice, and compartmentalize when law-bending versus law-breaking is allowable or when they are better off just looking the other way. *Id.* at 143. That allows prosecutors to “locate racial bias and abuse as *adjacent to them* but *not emanating from them*.” *Id.* *See generally* Riebman, *supra* note 312, at 1-2 (describing how the collusion

from it—securing confessions and closing cases meant career advancement.<sup>332</sup> Closing cases also meant relieving the pressure of rising crime rates in the 1990s.<sup>333</sup>

Race and racism were animating forces in the Burge-era reign of torture and the police department's treatment of Black and Brown Chicagoans. Nearly every one of Burge's victims was relatively young and Black or Latino.<sup>334</sup> They came from communities, like Englewood, that were viewed as disposable, rendering the inhabitants of those communities disposable too.<sup>335</sup> Centuries-long notions that coupled race and criminality made it unlikely for those in power to believe allegations of abuse and torture by the police—and Burge himself was a virulent racist: “Here was a man who so undervalued [B]lack lives that the words ‘it’s fun time’ would spew from his sneering lips before he chained people to

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between the police, prosecutors, and government officials cloaked law enforcement misconduct in a protective cone of silence).

332. G. Flint Taylor, *supra* note 313, at 3 (describing the motivation behind the torture as a means of obtaining confessions in an era where law and order was racialized, pressure to solve serious cases was paramount, and success—regardless of how it was obtained—was rewarded with a promotion).
333. Professor Steven Drizin, cofounder of Chicago's Center on Wrongful Convictions of Youth, described those dynamics: “You can't divorce the Chicago false confessions from the context in which they arose. You have a police department that is under siege—not enough detectives working too many homicides on a daily basis and having to deal with crime victims. I think it created an environment where police officers were more interested in closing cases than in solving crimes.” Davis, *supra* note 205, at 38.
334. See Alma Campos, *UN Urges 'Immediate' Action for Victims Allegedly Tortured by Chicago Police*, GUARDIAN (July 31, 2024, 1:00 PM EDT), <https://www.theguardian.com/us-news/article/2024/jul/31/chicago-police-misconduct-false-confessions> [https://perma.cc/XP5V-HJG8] (reporting that torture disproportionately affected people of African and Latino descent). The fact that race was a central feature helps to explain why the organization Black People Against Police Torture was established to promote organized community resistance to torture. See Vickie Casanova Willis & Standish E. Willis, *Black People Against Police Torture: The Importance of Building a People-Centered Human Rights Movement*, 21 PUB. INT. L. REP. 235, 236 (2015).
335. Parkin, *supra* note 331 (explaining that Burge could “operate with impunity” because his victims were “demonized as second-class citizens” and were stolen from neighborhoods occupied by police).

steaming hot radiators, attached charged wire electrodes to sensitive body parts, played Russian roulette with a loaded gun, suffocated men with typewriter covers, and beat others senseless.”<sup>336</sup>

Burge was fired in 1993 in the wake of multiple complaints of police abuse, but he remained defiant about the allegations against him.<sup>337</sup> Burge was finally held to account in 2010, when he was convicted for perjury for lying in a proceeding about the torture he oversaw.<sup>338</sup> Despite this conviction, he and his supporters continued to deny any wrongdoing and pursued their narrative of innocence.<sup>339</sup>

Unraveling Burge’s crimes took decades of community activism, litigation, criminal appeals, postconviction proceedings, reports by oversight boards, and exonerations. These exonerations included half-a-dozen people who were sentenced to death due to convictions secured by false confessions under his supervision.<sup>340</sup> The city of Chicago and Cook

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336. *Id.*; see also Conroy, *supra* note 152. For more about the long history of notions of race and criminality, see William M. Carter, Jr., *A Thirteenth Amendment Framework for Combating Racial Profiling*, 39 HARV. C.R.-C.L. L. REV. 17, 34, 56-60 (2004) (“The stereotypical association of blackness and criminality evokes the legally enforced, racially disparate power structure that arose out of American chattel slavery . . . .”); and Alexis Hoag, *The Color of Justice*, 120 MICH. L. REV. 977, 982 (2022) (“A few decades after white settlers brought enslaved Africans to the shores of colonial America, white supremacy began to shape the social and legal ordering. The developing ideology of Black inferiority and innate difference informed early colonial laws and the slave codes. Some of these laws relied upon race—that of the victim and of the perpetrator—to determine what conduct was considered criminal and the appropriate punishment. They cast Black people’s conduct as criminal, worthy of the most severe punishment, and simultaneously failed to recognize Black people as victims of what would otherwise constitute crime.”)

337. Parkin, *supra* note 331; Natasha Korecki, *What Chicago’s Ultimate Bad Cop Taught Me About Police Reform*, POLITICO (June 15, 2020, 4:30 AM EDT), <https://www.politico.com/news/magazine/2020/06/15/chicago-bad-cop-police-reform-318955> [https://perma.cc/H497-YUAT].

338. *Jon Burge and Chicago’s Legacy of Police Torture*, CHI. TRIB. (Sep. 19, 2018), <https://www.chicagotribune.com/news/ct-jon-burge-chicago-police-torture-timeline-20180919-htmlstory.html>.

339. Parkin, *supra* note 331.

340. See Taylor, *supra* note 314, at 179 (detailing the “25-year struggle fought by the torture survivors and their families, a group of dedicated lawyers, community activists and organizations, and a precious few reporters and politicians to expose these crimes against humanity and to pursue justice for

County have spent millions defending Burge and compensating his victims.<sup>341</sup> As referenced in Part I, remedial efforts led to the 2011 creation of the Torture, Inquiry, and Relief Commission, which worked “to gather evidence about a claim of torture occurring in Cook County, and then determine whether there [was] sufficient credible evidence of torture to merit judicial review.”<sup>342</sup> By legislative decree, TIRC ceased accepting claims of police torture in 2019.<sup>343</sup>

An entire reparations regime was crafted to respond to the violence of the Burge era.<sup>344</sup> That regime included, among other things, an ordinance that spelled out Burge’s crimes, a formal apology from the city, the creation of public memorials to the era of torture, a public fund to compensate victims of torture, and counseling opportunities for torture

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those who were tortured.”); *see also* G. Flint Taylor, *The Long Path to Reparations for the Survivors of Chicago Police Torture*, 11 Nw. J.L. & Soc. Pol’Y 330 (2016) (detailing path to accountability for Burge); Editorial, *Chicago’s Grim Era of Police Torture*, N.Y. TIMES (Oct. 31, 2016), <https://www.nytimes.com/2016/10/31/opinion/chicagos-grim-era-of-police-torture.html?ref=opinion> (describing decades-long effort to obtain accountability).

341. G. Flint Taylor, *Burge Torture Taxpayer Tab Eclipses \$210M—and Counting*, INJUSTICE WATCH (June 14, 2022), <https://www.injusticewatch.org/archive/2022/burge-torture-taxpayer-tab-210-million> [https://perma.cc/QBH6-KF2P]; *Archive of Chicago Police Misconduct Cases*, CHI. REP., <https://projects.chicagoreporter.com/settlements/case/06-cv-6772> [https://perma.cc/QG7U-BWTQ]; Heather Cherone, *City Council Votes to Pay \$50M to 4 Men*, WTTW NEWS (June 12, 2024, 6:50 PM), <https://news.wttw.com/2024/06/12/final-city-council-vote-set-whether-pay-50m-4-men-who-each-spent-nearly-20-years-prison>.
342. TORTURE INQUIRY & RELIEF COMM’N, *supra* note 77.
343. *Id.* TIRC was not the only entity to emerge from the Burge era. Chicago also “paid reparations to scores of police torture victims. The legislation also provides substance abuse treatment, counseling and other services to victims and their immediate family members, as well as free tuition at city colleges. A memorial will be built and this history will be taught in city public schools.” *Chicago’s Grim Era of Police Torture*, *supra* note 340.
344. *History of Chicago’s Reparations Movement*, CHI. TORTURE JUST. CTR., <https://www.chicagotorturejustice.org/history> [https://perma.cc/9AHG-6MST]; Taylor, *supra* note 340, at 341-52 (detailing the efforts undertaken to create and implement a reparations regime for police torture in Chicago).

survivors.<sup>345</sup> All of these efforts have been met with resistance, even in the face of clear evidence of torture.<sup>346</sup>

The Burge era was the bridge between Fred Hampton's murder and the 1990s. Over the course of his 19-year career, from 1972 to 1991, over 120 people—largely Black men—were tortured under his command.<sup>347</sup> Burge's departure from the Chicago Police Department in 1993 came just 2 years after he worked with the 7 detectives who would beat, coerce, and frame the Englewood Four in 1994.<sup>348</sup> In Chicago, police misconduct endures. The years since Burge have witnessed others following in his footsteps and continuing his legacy of police violence and abuse.<sup>349</sup>

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345. *Reparations Ordinance*, *supra* note 327.

346. The history of efforts to uncover Burge's legacy of torture is littered with delays and frustration. Editorial, *Enough with the Delays in Getting to the Bottom of Police Torture Cases*, CHI. SUN-TIMES (July 11, 2019), <https://chicago.suntimes.com/2019/7/11/20690685/jon-burge-kim-foxx-anita-alvarez-police-torture-robert-milan-leroy-martin-sun-times-editorial> [https://perma.cc/G9ZH-9KQM]. TIRC was delayed 4 times because of a lack of commissioners to constitute a quorum. *Id.* Megan Crepeau, *Judge Rips Special Prosecutor for His Handling of Jon Burge-Related Case*, CHI. TRIB. (May 13, 2019, 9:07 PM), <https://www.chicagotribune.com/news/breaking/ct-met-chicago-cop-killing-beating-jon-burge-20180216-story.html> (reporting that as of 2022, the cost to taxpayers has eclipsed \$210 million, and there is no end in sight, as "[t]he city is currently fighting seven lawsuits filed by torture survivors in federal court. And the county's special prosecutor continues to fight tooth and nail to maintain convictions that were obtained through alleged torture").

347. *History of Chicago's Reparations Movement*, *supra* note 344; *Chicago Police Torture Archive*, INVISIBLE INST., <https://invisible.institute/cpta> [https://perma.cc/CYT8-238Y].

348. Matt Masterson, *Chicago Man Who Says He Was Beaten into 1991 Murder Confession Sues City*, WTTW NEWS (Apr. 1, 2019, 3:22 PM), <https://news.wttw.com/2019/04/01/chicago-man-who-says-he-was-beaten-1991-murder-confession-sues-city> [https://perma.cc/K4WS-A7QP]; Cherone, *supra* note 341; *Former CPD Detective Lashes Out Against Allegations of Abuse*, FOX 32 CHI. (May 14, 2018, 9:38 PM), <https://www.fox32chicago.com/news/former-cpd-detective-lashes-out-against-allegations-of-abuse> [https://perma.cc/R8QH-Y8RQ].

349. Chanbonpin, *supra* note 84, at 1098; see also Mari Cohen, *Burge Squad Gone, but the Cases Live On*, INJUSTICE WATCH (Dec. 12, 2017), <https://www.injusticewatch.org/criminal-courts/appeals-wrongful-convictions/2017/burge-squad-gone-but-the-cases-live-on> [https://perma.cc/RW86-UDBP]. In 2016, a report by the City of Chicago's

Examples of youth and men who were abused by Burge's acolytes abound.<sup>350</sup> A code of silence, enforced by violence, retaliation, and

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inspector general in the wake of the fatal shooting of 17-year-old Laquan McDonald by Chicago police officer Jason Van Dyke revealed that as many as 16 police personnel contributed to the cover-up of McDonald's murder. Trivedi & Gonzalez Van Cleve, *supra* note 207, at 904. A DOJ study released the following year highlighted the CPD's practice of encouraging officers to alter official statements so as to "coach and conceal" misconduct." *Id.* at 907 (describing further that in the years since Burge was discharged, police violence has remained an abiding feature of the Chicago landscape).

350. A number of allegations have emerged in recent years. LaShawn Ezell, Charles Johnson, Troshawn McCoy, and Larod Styles (known as the Marquette Park Four) were teenagers in 1995 when they were arrested for a double murder and robbery. *Johnson v. City of Chicago*, MACARTHUR JUST. CTR., <https://www.macarthurjustice.org/case/charles-johnson> [https://perma.cc/NCK4-J44Y]. Two decades later they were exonerated, and they successfully sued the detectives who coerced confessions and fabricated evidence against them—some of the same Area I detectives involved in the Englewood Four case. *Id.*; *see also Wrongfully Convicted "Marquette Four" Sue City of Chicago*, MACARTHUR JUST. CTR. (Feb. 12, 2018), <https://www.macarthurjustice.org/wrongfully-convicted-marquette-park-four-sue-city-of-chicago-chicago-police-officers> [https://perma.cc/XX4X-5CFB]. Their suit yielded a \$50 million settlement. *Chicago City Council Approves \$50 Million Settlement to Marquette Park Four Following Wrongful Imprisonment for Total of 73 Years*, LOEYV + LOEYV, <https://www.loevy.com/big-wins/marquette-park-four-settlement> [https://perma.cc/5378-4NTN]. Marcellous Pittman and David Wright likewise successfully overturned their convictions after pursuing claims of abuse by Area I detectives. Debra Loevy, *Marcellous Pittman Exonerated After 21 Years of Wrongful Conviction*, EXONERATION PROJECT (2022), <https://www.exonerationproject.org/stories/marcellous-pittman-exonerated-after-21-years-of-wrongful-conviction> [https://perma.cc/6UGB-K3PW]; David Wright, NAT'L REGISTRY EXONERATIONS, <https://exonerationregistry.org/cases/13517> [https://perma.cc/BQH7-VLPB]. The appellate court of Illinois, in vacating George Anderson's two homicide convictions which arose from shootings in 1991, recounted testimonial and documentary pattern and practice evidence from more than two dozen individuals about their interactions with Burge-era detectives who, among other things: punched, kicked, and beat the targets of their interrogations; fed them facts to confess to; and provided them with inculpatory statements to sign. *People v. Anderson*, 2024 IL App (1st) 200462-B, ¶ 95 (recounting "voluminous documentary 'pattern and practice' evidence relating to allegations in other cases by numerous other individuals claiming abuse or coercion"). The same court made similar findings in the case of Clayborn Smith, who was convicted of three 1992 homicides. *People*

department-wide coverups, shielded the abuse from discovery and accountability.<sup>351</sup> Prosecutors remained complicit in the misconduct and

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v. Smith, 2022 IL App (1st) 201256-U, ¶ 2. In that case, the court took stock of the evidence relating to claims of abuse and torture by nearly 60 suspects and witnesses leveled against Burge acolytes. *Id.* at ¶ 78. The sheer number of allegations, combined with the number of civil settlements and payments from the City of Chicago's Reparations for Burge Torture Victims Ordinance, meant that the evidence rose "above the level of mere allegations and suggests a pattern of torture." *Id.* at ¶ 99. Indeed, Smith "produced evidence that at least eight [people] were later exonerated, acquitted, awarded a certificate of innocence, or had their charges dropped even though some combination of [Area I detectives] allegedly extracted a confession from them using torture." *Id.* The weight and consideration that an independent panel should give to a pattern of abuse and coercion is a topic that I hope to return to in future scholarship.

351. See Jamie Kalven, *How the Chicago Police Department Covered Up for a Gang of Criminal Cops*, INTERCEPT (Oct. 6, 2016, 9:01 AM), <https://theintercept.com/2016/10/06/how-the-chicago-police-department-covered-up-for-a-gang-of-criminal-cops> [https://perma.cc/3U3U-M7HF] (detailing how the CPD protected officers engaged in criminal misconduct, suppressed complaints, and obstructed accountability efforts); Jamie Kalven, *Chicago Police Bosses Targeted Cops Who Exposed Corruption*, INTERCEPT (Oct. 6, 2016, 9:01 AM), <https://theintercept.com/2016/10/06/chicago-police-bosses-targeted-cops-who-exposed-corruption> [https://perma.cc/5YY7-6H8H] (reporting that Chicago officials retaliated against whistleblower officers who exposed corruption, through harassment, intimidation, and professional repercussions); Conroy, *supra* note 152 (investigating systemic torture by Chicago police under Commander Jon Burge, detailing physical abuse, coerced confessions, and the failure of authorities to hold officers accountable); Harrison Smith, *Jon Burge: Police Chief Turned Racist "Torturer" Who Brought Disgrace to the Force in Chicago*, INDEP. (Sep. 8, 2018, 1:37 PM EDT), <https://www.the-independent.com/news/obituaries/jon-burge-dead-chicago-police-commander-racist-torturer-pig-black-men-cpd-a8554421.html> [https://perma.cc/EHA2-3LHV] ("Craig Futterman, a professor at the University of Chicago Law School who focuses on racial discrimination and police brutality, said Burge's actions persisted for so long because of 'institutional denial, a code of silence and refusal to address patterns of abuse, and racism.' There was also a 'collective denial,' he added, from a society that is 'resistant to believe that the people whom we trust to protect us from harm would be predatory.'"); Jamie Kalven, *Operation Smoke and Mirrors*, INDEP. (Oct. 6, 2016, 9:00 AM), <https://theintercept.com/2016/10/06/in-the-chicago-police-department-if-the-bosses-say-it-didnt-happen-it-didnt-happen> [https://perma.cc/Z397-CBB6]; Trivedi & Gonzalez Van Cleve, *supra* note 207, at 904-08 (explaining how Chicago's "culture of

went out of their way to protect police.<sup>352</sup> Judges who began their careers as prosecutors in the 1980s and 1990s<sup>353</sup> helped to maintain the code of silence from the bench. Meanwhile, the culture of abusive and violent policing—if you can call what Burge was engaged in policing—did not disappear, but instead mutated. As one journalist put it, “The broader culture of racism and brutality that he was at the helm of in the Chicago Police Department appears to be firmly intact.”<sup>354</sup> A pattern and practice investigation by the Department of Justice in 2017 confirmed as much, finding a police department that was defined by violence and brutality, fueled by racism, and shielded from accountability by deficient systems, structures, and training.<sup>355</sup>

Court culture was likewise corrupted by the racism that tainted policing and expressed itself in Chicago’s segregated landscape. Professor Nicole Gonzalez Van Cleve’s masterful, painstaking ethnographic account of “the professionals whose actions define the experience and appearance of justice” in Chicago courts details an “entire culture of racialized justice”

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silence and violence”—threats of retaliation for breaking the silence about law enforcement misconduct—shielded police wrongdoing from scrutiny by courts, prosecutors, and defense attorneys).

352. Trivedi & Gonzalez Van Cleve, *supra* note 207, at 897-98.
353. GONZALEZ VAN CLEVE, *supra* note 221, at 54.
354. Micah Utrecht, *Accused Torturer Jon Burge Died Last Week, but His Legacy of Brutal, Racist Policing Lives On in Chicago*, INTERCEPT (Sep. 25, 2018, 11:29 AM), <https://theintercept.com/2018/09/25/jon-burge-chicago-police-torture> [<https://perma.cc/6RKP-29AC>]; Trivedi & Gonzalez Van Cleve, *supra* note 207, at 932-33.
355. The Department of Justice investigation into policing in Chicago found that the patterns of the past hold constant in the present. A report of the investigation revealed that Chicago police routinely deployed unreasonable force, including shooting at fleeing suspects who presented no immediate threat, firing at vehicles without justification, and using less than lethal (but still unreasonable) force against adults and children who present no threat. *Investigation of the Chicago Police Department*, U.S. DEP’T OF JUST. CIV. RTS. DIV. & U.S. ATTY’S OFF. FOR THE N. DIST. OF ILL. 4-7, 22-27 (Jan. 3, 2017), [https://www.justice.gov/d9/chicago\\_police\\_department\\_findings.pdf](https://www.justice.gov/d9/chicago_police_department_findings.pdf) [<https://perma.cc/YLC6-T852>.] Faulty investigative structures and procedures, along with deficient accountability measures that benefit from and encourage a code of silence among police, allowed police misconduct to flourish. *Id.* at 7-10. The burdens of CPD’s misconduct, lack of accountability, and “systemic deficiencies falls heaviest on the predominantly black and Latino neighborhoods on the South and West Sides of Chicago.” *Id.* at 144.

that extends beyond individual actors.<sup>356</sup> Cook County, Chicago, has “the largest unified criminal court system in America,” and these courts “serv[e] as a crucial gateway where racism and discretion collide.”<sup>357</sup> The racial segregation of the city is reflected “in and around the courthouse,” shaped by “separate and unequal rules and practices between white professionals and the people of color who define[] the consumers of criminal justice.”<sup>358</sup> The hierarchy of court actors—lawyers and judges—“influence[s] a type of racialized, legal habitus—a complex cultural engine for the proverbial assembly line of criminal justice.”<sup>359</sup> Those dynamics are passed down as “new generations of attorneys, judges, sheriffs, and clerks inherit a social arrangement with a life history that is larger than any one individual actor.”<sup>360</sup> To put it succinctly: “Race is everywhere but nowhere: in the structural arrangements, in the policing of racial boundaries, in the recoding of rhetoric, and in the delineation of defendants as ‘deserving’ or ‘undeserving.’”<sup>361</sup> Gonzalez Van Cleve’s account describes how “the racialized culture of the Cook County Courts was entangled with the attorneys’ understanding of justice.”<sup>362</sup> And in Cook County, “[j]ustice in the courts is punishment, racial punishment.”<sup>363</sup>

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356. GONZALEZ VAN CLEVE, *supra* note 221, at xiii-xiv.

357. *Id.* at xii.

358. *Id.* at 17. Notably, Cook County Jail, “the largest single-site jail in the nation,” is “[a]ttached to the courthouse structure by walkways and tunnels that act like the arteries and veins of an organism.” *Id.* at 19. The overwhelming majority of those held there are young Black men between the ages of 21 and 30, from Chicago’s South and West Side, “creating a perversely convenient arrangement whereby the jail is closest to its target population.” *Id.* at 19.

359. *Id.* at 49.

360. *Id.*

361. *Id.* at 53.

362. *Id.* at 131. That is so even as actors in the system express views at odds with racial injustice: “We can think about culture as what we say or express. Or, we can think about it as what we do and practice. In the case of the Cook County Courts, practices speak louder than attorneys’ words. What we will see is that attorneys—from prosecutors to judges—are able to speak in sympathetic ways about justice, fairness, colorblindness, and even identify bias in the system, but these words often help rationalize the practice of racialized justice that reigns in the courts.” *Id.* at 134.

363. *Id.* at 185. Professor Gonzalez Van Cleve draws an apt comparison between Professor David Garland’s concept of popular justice and the racialized justice of today in Cook County. *Id.* at 186-87. Popular justice was “carried

#### D. The Implications of Deploying a Race-Conscious Lens

The interpretive power of a race-conscious lens, informed by an understanding of race and the criminal system at the national and local levels, renders it indispensable. Wells demonstrates why. In the course of exposing and challenging the lies used to justify the unjustifiable, Wells took stock of the racially infused cultural context to sort fact from fiction. She used that context to understand the divergence between the official narrative offered by the lynch mob and the targets of racial violence. And in doing so, she arrived at a fundamental truth about the vigilante violence endured by Black people. In much the same way, an audit has the same set of aims—to sort fact from fiction and arrive at some understanding of the truth.

Individuals conducting an audit of law enforcement conduct can and should follow Wells's example. A race-conscious lens provides another way to understand how an individual or group of individuals travels from civilian to suspect to the clutches of the criminal legal system, providing insights about law enforcement behavior. That alternative explanation disrupts our collective inclination to believe the police and prosecutors and discredit the accused. In other words, it upsets the anchoring bias of a criminal conviction. It can also help us understand why those individuals might have behaved as they did when they came into contact with the criminal system and its representatives. In short, it provides the sort of revelatory "counter-narrative" at the core of Ida B. Wells's work exposing the truth behind the justifications offered by perpetrators of lynchings and other forms of racial violence.<sup>364</sup> Wells teaches us that context matters, especially when the intersection of race and power define and determine it.

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out in local communities" and "acted on uncorroborated allegations, confessions induced under torture, and the infallible word of white victims or witnesses. It was designed to enact punishment with speed and efficiency, mostly on people of color, and included the degradation and humiliation of the offender." *Id.* As Professor Gonzalez Van Cleve explains, while some of the "overt violence and public spectacle" has diminished, the "racial and punitive elements" that undergird the modern system are rooted in the past. *Id.*

364. "We have to transform that 'business as usual' into a counter-narrative about police practices, racial bias, and the irrationality of many of our criminal justice policies." Vanita Gupta, *Critical Race Lawyering in Tulia, Texas*, 73 FORDHAM L. REV. 2055, 2071 (2005).

Applying Wells's lessons to the torture, prosecution, conviction, and exoneration of the Englewood Four is instructive. Those teenagers' nightmarish engagement with the criminal system happened at a time when youth who looked like them were deemed criminal by virtue of their race, youth, and identity. Recall the stock story that I described early on: A horrific crime happens. A suspect is identified who confesses and leads law enforcement to more suspects. Those suspects confess and are charged and prosecuted. They resolve their case by way of a trial or a plea, both of which end in convictions. The convictions confirm suspicions and align with expectations. Cases are closed. Crimes are solved. Justice is served. At each stage of that stock story, a presumption favors the system and its representatives.

Enter the smog of race and racial injustice. The Englewood Four were arrested, prosecuted, and convicted in an era defined by tough-on-crime sensibilities, mass criminalization, punitive excess along racial lines, and the superpredator myth. These Black teenaged boys fit the stereotype of the sorts of kids whom the media, politicians, and social scientists said would commit such a horrific crime. They even came from the "right" neighborhood—one suffering from divestment, hypersegregation, and crime, where the crime of interest took place. It was confirmation bias in the worst possible sense. These youth were presumed to be the wolf pack; they were thought to be the kids who were wilding.<sup>365</sup> Law enforcement could have easily understood them as embodying the proclivities of the worst youth of color in the 1990s, because kids like the Englewood Four were the usual suspects. The crime alone would have been enough to make that connection. They fit the role of violent, Black, teenaged criminal. The fact that they became suspects would have been unremarkable.

It becomes easier to believe that these Black teenagers would have been beaten by the police and railroaded by the prosecution when one considers that their case unfolded during an era in Chicago when the entire culture of policing was infused with a tendency toward racialized violence and a discounting of Black and Latino lives.<sup>366</sup> The Englewood Four were arrested by Burge's acolytes—individuals whose time with the CPD coincided with Burge's and the policing culture he sustained. Their arrest happened before the judgment of history had rendered a full verdict on the egregious behavior of law enforcement, rendering those behaviors

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365. Vincent M. Southerland, *Youth Matters: The Need to Treat Children Like Children*, 27 J. CIV. RTS. & ECON. DEV. 765, 771-72 (2015) (describing media portrayals of Black teenagers in animalistic terms like wilding).

366. *See supra* Section IV.C.

easier to overlook or ignore back then. They included: holding suspects incommunicado; threatening them and their families; beating them with flashlights; pointing guns at them; depriving them of food, water, and the ability to use the restroom; and kicking and punching them.<sup>367</sup> When understood in light of the decades-long history of police violence in Chicago, from the period when police enforced the lines of segregation, to the Burge era, to more recent revelations of police misconduct, it becomes easier to believe that what happened in all those cases was a feature of, rather than a bug in, the operation of Chicago's criminal system. It makes it more likely that the Englewood Four were just one tragic group of victims in a larger pool.

Reflecting on race, the Englewood Four's review panel might wonder how, if at all, the presumption of criminality weighed on law enforcement conduct—did they presume they had the right suspects in custody, and proving it was just a matter of generating a confession?<sup>368</sup> We could imagine that with each denial, the treatment would have worsened, as the police doubled down on their initial suspicion that they had arrested the

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367. Conroy, *supra* note 152; Campos, *supra* note 334.

368. Professor Andrew Taslitz described how this process can play out, with race carrying the laboring oar. Andrew E. Taslitz, *Wrongly Accused: Is Race a Factor in Convicting the Innocent?*, 4 OHIO ST. J. CRIM. L. 121, 125 (2006). The challenge is significant enough when law enforcement suspects that someone they are interrogating is guilty: "When investigators expect suspect guilt... they use more investigative techniques, try harder, exert more pressure and, as a result, lead innocent suspects most of all to behave defensively. But that defensiveness makes them appear more guilty to observers." *Id.* at 131. Race heightens those dynamics. Racial stereotyping infuses an interrogator's suspicions with a sense of certainty about the young Black suspect's guilt. *Id.* at 131-32. Defensiveness is read as deception. *Id.* at 132. The interrogator "close[s] off alternative theories" and turns up the pressure, "mak[ing] real evidence sound more inculpatory than it is." *Id.* The interrogator pushes ahead as "they deceive him into believing there is still more inculpatory evidence against him, they appeal to his self-interest, and they hammer away at him for hours. Young, isolated, cut off from family and friends, fearful, and rightly seeing no way out, he confesses. Falsely." *Id.* The ripple effect continues through trial: "Should the youth take the stand at a suppression hearing, the judge, drawing on the same racially-stigmatizing images of black youth, won't believe him. The case goes to trial, and the jury likely sees a film just of his confession. But even if they see a video of the entire interrogation, they will see a camera focused on only the suspect, not the police, a camera angle shown in laboratory studies to enhance the perceived likelihood of guilt." *Id.*

right person for the crime.<sup>369</sup> Did closing a case where stereotypes pointed towards the suspect's guilt make it more acceptable to exceed the bounds of the law in the course of their investigation, interrogation, and prosecution?<sup>370</sup>

Race also has implications for how a review panel might view the actions of Black teenagers who, like the Englewood Four, confessed to crimes they did not commit, lost pretrial motions challenging law enforcement's conduct, and in some instances pled guilty without contesting the criminal charges they faced. In many instances, all of these

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369. *See id.* at 131-32.

370. The combination of race, youth, and psychology is a recipe for law enforcement misconduct. The potential implications of race-tinged stereotypes that may lead law enforcement to presume guilt are exacerbated by what is called noble cause corruption. Major Michael E. Gilbertson, *Just Mercy: A Story of Justice and Redemption*, ARMY L. Jan. 2017, at 30, 32 (reviewing STEVENSON, *supra* note 264). "Noble cause corruption is a teleological (ends-oriented) approach to an ethical dilemma that says law enforcement professionals will utilize unethical, and sometimes illegal, means to obtain a desired result. Remember, we are talking about good officers trying to do the right thing (noble cause), but due to bureaucratic red tape, a lack of evidence, or any other roadblock to 'getting the job done,' they feel forced to bend or even break the rules to catch the bad guy (corruption)." Bruce Bayley, *Noble Cause Corruption: Do the Ends Justify the Means?*, POLICE1 (Feb. 12, 2010, 5:46 AM), <https://www.police1.com/chiefs-sheriffs/articles/noble-cause-corruption-do-the-ends-justify-the-means-SCKX3VQGkXYSFhUb> [<https://perma.cc/4JP6-PBMG>]. The extent to which law enforcement is willing to engage in misconduct to pursue what they view as a noble cause is further shaped by stereotypes and biases that shape views and perceptions of youth. For example, one of the more pernicious features of the superpredator myth is that it erases the distinction between youth and adults. In doing so, it operates akin to the phenomenon of adultification, which, in the case of Black children, makes them seem more culpable, less innocent, and older than similarly situated white children. Phillip Atiba Goff, Matthew Christian Jackson, Carmen Marie Culotta, Brooke Allision Lewis Di Leone & Natalie Ann DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526, 529, 539-40 (2014). Adultification, which is dehumanization at its core, "not only predicts racially disparate perceptions of Black boys but also predicts racially disparate police violence toward Black children in real-world settings." *Id.* at 540. It does not take much to imagine how the combination of these factors might have led police to ratchet up their coercive conduct as the denials continued in the case of the Englewood Four. *See also supra* note 368.

signs point to guilt and bolster claims that law enforcement did nothing wrong. Race calls those claims into question.

Consideration of race would help review panelists understand that youth of color are especially susceptible to law enforcement interrogation techniques. Youth presents its own set of challenges in judgment, susceptibility to suggestion, and ability to navigate the criminal system.<sup>371</sup> The overlay of race, which transformed policing and police into purveyors of fear rather than protection,<sup>372</sup> might fuel and heighten a sense of powerlessness in youth of color that would have made them especially vulnerable to interrogation.<sup>373</sup>

Race can inform how an audit panel weighs a claimant's silence—whether that silence comes after a prosecutor asks the claimant how they were treated by police during their interrogation, or whether the silence ensues in the days, weeks, months, and years afterward. The panel might consider that in the Englewood case, the entire law enforcement apparatus was in on the act—from crime to cover-up. Weighing that fact might cause a panel trying to understand the silences to ask themselves what they could expect of a Black or Latino youth taken into police custody, given the long history of racial violence inflicted and sanctioned by law enforcement.<sup>374</sup> Is their silence evidence that nothing untoward

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- 371. *Montgomery v. Louisiana*, 577 U.S. 190, 207-08 (2016) (describing the characteristics that separate youth from adults).
- 372. The segregation that defines Chicago shapes policing and feeds a sense among officers that they need to be feared by those they are duty bound to protect and serve. *Kalven*, *supra* note 300. The neighborhoods where half of the police force live are “overwhelmingly white and have a distinctly suburban feel. They are home to multi-generational police and fire department families. To grow up in such a place is to be shaped by a particular sense of community.” *Id.* For a young police officer who grew up in a police family and “gets dropped into the second watch in Englewood[,] [i]t doesn’t look to him like community as he knows it. It looks like a war zone. And the mode of policing into which he is socialized reinforces the sense that the role of the police is to be, in effect, an occupying force. Those who live in this war zone are by definition devalued people.” *Id.*
- 373. *Henning & Omer*, *supra* note 181, at 896-916 (describing vulnerability of youth of color to interrogation).
- 374. Professor Devon Carbado has detailed the structural forces that drive police violence against Black people. In particular, Professor Carbado cites: social and political forces that render Black people vulnerable to repeated police surveillance and contact; frequency of contact that exposes Black people to the possibility of police violence; police culture and training that encourages

happened? Or is it the manifestation of a lesson learned from torture sessions—that resistance and outcry is futile? Would seeing no accountability for that violence inspire a claimant's faith in the system to redress wrongs like those the Englewood Four endured?<sup>375</sup> Likely not—indeed, it would seem to demoralize the abused and encourage their silence.

The cultural context of race and the criminal system also complicates the story told at trial. As a defense attorney, I harbor a healthy degree of skepticism for the trial process. It is a human enterprise and people are imperfect. Witnesses are fallible. Police and prosecutors engage in misconduct—intentionally and unintentionally. Everyone in the courtroom has a perspective tainted by bias. Defense attorneys can be ineffective, inattentive, or unmotivated. And so trials that end in a conviction only tell a piece of the story—often a snapshot of the facts refracted through that maze of variables. The rulings issued throughout the appellate process, often focused on procedural issues and not evidence of actual innocence, are of questionable precedential import in the context of a systemic integrity review.<sup>376</sup>

Applying a racial justice lens to the Englewood Four undercuts the presumption of regularity or credibility that we lend a criminal conviction. That is because it forces us to contend with the fact that Cook County courts at the time were containers of racialized punishment fueled by silence.<sup>377</sup> Each courtroom was staffed by actors with incentives that

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violence; legal actors that translate police violence into justifiable uses of force; and lack of accountability which encourages the use of violence. Devon Carbado, *Blue on Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479 (2016); see also Joanna C. Schwartz, *An Even Better Way*, 112 CAL. L. REV. 1083, 1087-88 (2024) (explaining that “police violence is not simply the work of individual, rogue, bad-apple officers, but is instead the product of systemic and structural forces”).

375. Silence in the face of law enforcement violence could have been part of a trauma response, a response to threats to stay silent or face further abuse, or the result of a general sense that being roughed up by the police is the norm and to be expected. See Melissa L. Breger, *Juvenile Brain Trauma as the New Frontier in Supreme Court Jurisprudence*, 98 TUL. L. REV. 259, 268 (2023) (explaining how a child's response to trauma can present as a fight-or-flight reaction or dissociation).
376. See Ellyde Roko, *Finality, Habeas, Innocence, and the Death Penalty: Can Justice Be Done?*, 85 WASH. L. REV. 107, 127 (2010).
377. See GONZALEZ VAN CLEVE, *supra* note 221, at 143 (describing how prosecutors can exercise cognitive dissonance on matters of racial justice because they

would have diminished the likelihood that misconduct would derail a conviction. Like police, prosecutors were motivated to close cases by securing convictions.<sup>378</sup> At best, it would have been easy to overlook inconsistencies, or assent to the law enforcement narrative, infused with the same sensibilities that made suspicion of the Englewood Four unremarkable. At worst, prosecutors were intimately involved in the misconduct themselves.<sup>379</sup> Judges often started out as prosecutors.<sup>380</sup> Defense attorneys were woefully overworked, or even harbored the same sensibilities as their adversaries.<sup>381</sup> Under those circumstances, a conviction—whether by plea or trial—does not deserve the presumption of reliability that it might ordinarily carry.

Finally, a review panel deploying a race-conscious lens must understand how racism and racial inequality adapt.<sup>382</sup> The contemporary

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can “collaborate with police and share a belief system about morality while distinguishing their identity as separate, colorblind, and race-neutral in comparison to the police. It is through distinguishing themselves and their beliefs as separate from police that prosecutors are able to ignore the racial bias that links them in practice, and compartmentalize when law-bending versus law-breaking is allowable or when they are better off just looking the other way.”).

378. *See supra* note 332 and accompanying text; Trivedi & Gonzalez Van Cleve, *supra* note 207, at 897 (describing how, by failing to disclose Burge’s torture, “prosecutors validated a formalized process through which police could operate with nearly unchecked oversight and prosecutors could reap the ‘benefits’ of high conviction rates and long sentences”).

379. *See supra* note 105 and accompanying text.

380. GONZALEZ VAN CLEVE, *supra* note 221, at 54, 136.

381. GONZALEZ VAN CLEVE, *supra* note 221, at 159 (“The caseloads for public defenders in Chicago are well above the national average. In 2005, for instance, the Public Defender’s Office achieved resolution (on average) in 229 felonies for each public defender—well above the nationally mandated 150 felonies per year figure. These caseload standards far exceed the annual caseloads for other notoriously busy states, including Minnesota (100-120), Arizona (100-120), and even New York (150.”).

382. This notion is in keeping with Professor Derrick Bell’s thesis that racism is a permanent force in America. Professor Bell asserts that “Black people will never gain full equality in this country. Even those herculean efforts we hail as successful will produce no more than temporary ‘peaks of progress,’ short-lived victories that slide into irrelevance *as racial patterns adapt in ways that maintain white dominance.*” Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373 (1992) (emphasis added); *see also* Elise C. Boddie, *Adaptive Discrimination*, 94 N.C. L. REV. 1235, 1239 (2016) (asserting that “racial

criminal system is a descendant of the past. As Professor Dorothy Roberts aptly points out, “[T]oday’s carceral punishment system can be traced back to slavery and the racial capitalist regime it relied on and sustained.”<sup>383</sup> The same routine violence of police and law enforcement—from arbitrary harassment to murderous aggression—was the animating force behind the 2020 racial justice uprisings.<sup>384</sup> Violent abductions of Latino people, Black people, and other people of color from courthouses, hospitals, houses of worship, workplaces, their homes, and off of the street<sup>385</sup> by masked

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discrimination *adapts* to the legal and social environment by mutating to evade prohibitions against intentional discrimination”); Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy of Being “Out of Place” from Emmett Till to Trayvon Martin*, 102 IOWA L. REV. 1113, 1119 (2017) (discussing the killings of Emmett Till in 1955 and Trayvon Martin in 2012 and “how the same race-based forces and the same racist tropes” that “undergirded the Till case” are “still operating today,” even as racism has evolved).

383. Dorothy Roberts, *The Supreme Court, 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 4, 12 (2019).
384. Mustafa Dikeç, *Rage as a Political Emotion*, 49 TRANSACTIONS INST. BRIT. GEOGRAPHERS, September 2024, at 6 (finding that the 2020 uprising was “justified anger that eventually turned to rage. Exploring the broader context of these uprisings shows not only white and police contempt for black life – as evidenced in the murders – but also for black people as shown by the repeated dismissals of their demands for justice, turning justified anger into an explosive rage.”).
385. Tanya Lopez, *ICE Agents Wielding Guns Tried to Intimidate My Church*, USA TODAY (July 15, 2025, 5:04 AM EST), <https://www.usatoday.com/story/opinion/2025/07/15/ice-raids-la-church-trump-deportation/84640051007> [https://perma.cc/WLB7-U6J8]; Lynn D. Pearson, *Factsheet: Trump’s Rescission of Protected Areas Policies Undermines Safety for All*, NAT’L IMMIGR. L. CTR. (Feb. 26, 2025), <https://www.nilc.org/resources/factsheet-trumps-rescission-of-protected-areas-policies-undermines-safety-for-all> [https://perma.cc/QKH3-KGB6]; Jeanne Kuang, *California Democrats Push to Block ICE from Schools*, CALMATTERS (June 5, 2025), <https://calmatters.org/politics/2025/06/immigration-ice-raids-schools-hospitals> [https://perma.cc/4NJ5-QE7F]; Sara Moniuszko, *Doctors Fear ICE Agents in Health Facilities Are Deterring People from Seeking Care*, CBS NEWS (July 9, 2025, 3:50 PM EDT), <https://www.cbsnews.com/news/doctors-fear-ice-agents-health-care-facilities-deterring-people> [https://perma.cc/8Y7Q-PKT2]; Nathaniel Meyersohn & Vanessa Yurkevich, *America’s Migrant Workers Are Terrified to Work but Unable to Stay Home*, CNN (June 14, 2025, 5:48 PM EDT), <https://www.cnn.com/2025/06/13/business/ice-workplace-raids-home-depot> [https://perma.cc/SSN2-3S9B];

Federal Immigration and Customs Enforcement officers<sup>386</sup> echo the earliest forms of American policing, wherein police forces were tasked with enforcing the Fugitive Slave Act of 1850.<sup>387</sup> The contemporary criminal system and the punishments it metes out serve as tools of racial control, stripping away the rights and dignity of those enmeshed in the system much in the way that slavery and segregation did while bolstering America's racial caste system.<sup>388</sup> The brutality of the modern death penalty

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Adrian Florido, *'Antagonized for Being Hispanic': Growing Claims of Racial Profiling in LA Raids*, NPR (July 4, 2025, 1:00 PM ET), <https://www.npr.org/2025/07/04/nx-s1-5438396/antagonized-for-being-hispanic-growing-claims-of-racial-profiling-in-la-raids> [https://perma.cc/BH3J-RWZ6].

386. Jonah Valdez, *A Pattern of Violence*, INTERCEPT (July 7, 2025, 6:00 AM), <https://theintercept.com/2025/07/07/ice-raids-la-violence-video-bystanders> [https://perma.cc/L9VK-DAL7]; Roberts, *supra* note 383, at 12.
387. See Sandra L. Rierson, *Fugitive Slaves and Undocumented Immigrants: Testing the Boundaries of Our Federalism*, 74 U. MIA. L. REV. 598 (2020); Karla Mari McKanders, *Immigration Enforcement and the Fugitive Slave Acts: Exploring Their Similarities*, 61 CATH. U. L. REV. 921 (2012); Jill Lepore, *The Invention of the Police*, NEW YORKER (July 13, 2020), <https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police> [https://perma.cc/AEF3-QUQ3]; Roberts, *supra* note 383, at 27.
388. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012). But see James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. Rev. 21 (2012) (critiquing the Jim Crow analogy). See also Roberts, *supra* note 383, at 4, 12 ("[C]riminal procedure and punishment in the United States still function to maintain forms of racial subordination that originated in the institution of slavery — despite the dominant constitutional narrative that those forms of subordination were abolished. Key aspects of carceral law enforcement — police, prisons, and the death penalty — can be traced back to slavery and the white supremacist regime that replaced slavery after white terror nullified Reconstruction. Criminal punishment has been instrumental in reinstating the subjugated status of black people and preserving a racial capitalist power structure."); Evelyn Malavé, *Criminal Courteaucracy*, 61 AM. CRIM. L. REV. 1205, 1210 (2024) (detailing and highlighting the role of court administrators in the context of recent scholarship positing that "the entire function of courts has changed, such that the system no longer adjudicates guilt or innocence, but sorts and monitors the primarily Black, Latinx, and people of low socioeconomic status who cycle through the system according to their perceived level of threat"). See generally ISSA KOHLER-HAUSMANN, *MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING* (2018).

bears the hallmarks of the brutality and racial control that accompanied lynchings and other acts of racialized terror that Wells investigated a century ago.<sup>389</sup>

Data proves the point. Racial disparities remain stark at every stage of the criminal system, from stops and arrests to prosecutions, convictions, and punishments.<sup>390</sup> Those numbers are a reflection, at least in part, of biases—both explicit and implicit—that continue to inform the exercise of discretion by criminal system actors.<sup>391</sup> My own experience in the criminal

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389. David Rigby & Charles Seguin, *Capital Punishment and the Legacies of Slavery and Lynching in the United States*, 694 ANNALS AM. ACAD. POL. & SOC. SCI. 205 (2021); Serena L. Hargrove, *Capital Punishment: 21st Century Lynching*, 6 UDC L. REV. 33 (2001); Jordan Steiker, *American Death Penalty Exceptionalism, Then, and Now*, 53 CAL. W. INT'L L.J. (2023). Indeed, the “extreme cruelty and degradation that characterize today’s penitentiaries, police forces, and executions” are the “inevitable result of a racially subordinating system.” Roberts, *supra* note 383, at 19.

390. Radley Balko, *There’s Overwhelming Evidence That the Criminal System Is Racist. Here’s the Proof.*, WASH. POST (June 10, 2020), <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system>; *Bias in the Criminal Legal System*, NAT’L IMMIGR. PROJECT & MILLS LEGAL CLINIC (June 2024), <https://law.stanford.edu/wp-content/uploads/2024/06/2024-Bias-Criminal-Legal-System.pdf> [<https://perma.cc/KPY4-G8ZD>]; Nazgol Ghandnoosh, *One in Five: Ending Racial Inequity in Incarceration*, THE SENT’G PROJECT 3 (Oct. 2023), <https://www.sentencingproject.org/app/uploads/2024/02/One-in-Five-Ending-Racial-Inequity-in-Incarceration.pdf> [<https://perma.cc/6HRP-MKBR>] (reporting that even as the number of Black people imprisoned has declined, they continue to make up a disproportionate share of the prison population: “The lifetime likelihood of imprisonment among Black men born in 2001 . . . remains four times that of their white counterparts.”).

391. Catherine M. Grosso, Michael Laurence & Jeffrey Fagan, *Processes That Produce Racial Disparities in California Death Sentences: A Review of the Literature*, 65 SANTA CLARA L. REV. 39, 56 (2025) (detailing how biases shape the discretion of criminal system actors in California’s death penalty system to produce racial disparities); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CAL. L. REV. 1781, 1797 (2020) (“Policing is not impartial. The policing of poor people and poverty has been the subject of a wide range of scholarly work, including work focused on questions of race and criminalization. A significant body of work analyzes police targeting of Black people in particular. Conduits for disproportionate anti-Black police violence include ‘broken-windows’ policing, legal sanction, mass surveillance and criminalization, racial stereotypes, racial segregation and gentrification,

system bears all that out. My work as a public defender and civil rights lawyer in the criminal system began in the mid-2000s, years after the era I detailed in Section IV.B. Race was and has been the constant throughout my career in the criminal legal system. It was front and center every time I walked up to the criminal courthouse and saw a line of Black and Brown people stretching out the front door and down the block. I felt its presence when practicing as a public defender in criminal courts, where I witnessed system actors conflate race and criminality to justify the criminal system's role as a tool of social control wielded against people of color.<sup>392</sup> I saw the implicit and explicit racial attitudes of too many criminal system actors diminish the empathy and compassion they afforded my clients. I felt it when I visited clients on death row at prisons that were sited on plantations.<sup>393</sup> These were the same plantations where the enslaved people who toiled in the fields under the watchful eye of an overseer more than a century ago had been replaced by Black men in chains and prison jumpsuits working the fields while being watched by prison guards on horseback with shotguns.<sup>394</sup> The more things have changed, the more race remains salient.

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and police culture and training."); L. Song Richardson, *Systemic Triage: Implicit Racial Bias in the Criminal Courtroom*, 126 YALE L.J. 862, 887 (2017); Hon. Jane Kelly, *The Power of the Prior Conviction*, 97 N.Y.U. L. REV. 902, 915 (2022) (detailing the biases that inform the exercise of discretion by criminal system actors); I. India Thusi, *The Pathological Whiteness of Prosecution*, 110 CAL. L. REV. 795, 807 (2022) ("Multiple studies have shown that prosecutors, like many criminal legal system actors, exercise their discretion in a racially biased manner.").

392. See *Roberts*, *supra* note 383.

393. *History of the State Penitentiary*, LA. PRISON MUSEUM, <https://www.angolamuseum.org/history-of-angola> [https://perma.cc/G7KK-5JU6].

394. Margie Mason & Robin McDowell, *Prisoners Fight Against Working in Heat on Former Slave Plantation*, ASSOCIATED PRESS (July 25, 2024), <https://www.ap.org/news-highlights/spotlights/2024/prisoners-fight-against-working-in-heat-on-former-slave-plantation-raising-hope-for-change-in-south> [https://perma.cc/ED9W-D8H3]; Press Release, ACLU, Describing Modern Day Prison Labor's Roots in Slavery (Oct. 12, 2023), <https://www.aclu.org/press-releases/describing-modern-day-prison-labors-roots-in-slavery-groups-urge-court-to-uphold-rights-of-incarcerated-workers-subjected-to-harsh-conditions-inhumane-treatment> [https://perma.cc/9PHC-V5CH]; Natalia Marques, *Black Prisoners Organize for Dignity in Angola*, PEOPLES DISPATCH (Feb. 23, 2025), <https://peoplesdispatch.org/2025/02/23/black-prisoners-organize-for-dignity-in-angola>.

Race and racism have left an indelible mark—on society in general and on the criminal legal system in particular.<sup>395</sup> The racial attitudes and contexts that shaped the histories detailed in Sections IV.B and C did not simply disappear. Instead, they adapted and evolved.<sup>396</sup> Though legal regimes and societal norms have changed over time, racial injustice remains “chief among [the criminal system’s] defining features.”<sup>397</sup>

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dignity-in-angola-louisianas-modern-day-plantation  
[<https://perma.cc/T5PY-NUZV>]; Margie Mason & Robin McDowell, *Locked Up: The Prison Labor That Built Business Empires*, ASSOCIATED PRESS (Sep. 22, 2022, 5:23 PM EDT), <https://apnews.com/article/ap-investigation-convict-leasing-reveal-podcast-71bcdbeff840ff4fbfbea48ea50a1cb5> [<https://perma.cc/HNT6-JBKU>].

395. Southerland, *supra* note 29, at 1676; Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373-74 (1992).
396. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 393 (2023) (Jackson, J., dissenting) (“History speaks. In some form, it can be heard forever. The race-based gaps that first developed centuries ago are echoes from the past that still exist today.”).
397. Southerland, *supra* note 29, at 1676. By legal regimes, I am referring to systemic efforts to end explicit racial discrimination in the administration of criminal law through checks on the racially discriminatory exercise of discretion by criminal system actors. Examples include procedures to eliminate racial bias in jury selection espoused in *Batson v. Kentucky*, 476 U.S. 79 (1986), or legislative measures designed to address and upend racial bias in the criminal system, such as California’s Racial Justice Act of 2020. Hoang Pham & Amira Dehmani, *The California Racial Justice Act of 2020*, SLS BLOGS (Apr. 22, 2024), <https://law.stanford.edu/2024/04/22/the-california-racial-justice-act-of-2020-explained> [<https://perma.cc/7HS5-BVM8>]. By societal norms, I am referring to the cultural shift fueled by the Civil Rights Movement that made overt expressions of racism socially unacceptable. EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA* 4 (6th ed. 2021) (“Much as Jim Crow racism served as the glue for defending [an] . . . overt system of racial oppression in the pre-civil rights era, color-blind racism serves today as the ideological armor for a covert and institutionalized system in the post-civil rights era . . . . [I]t aids in the maintenance of white privilege without fanfare, without naming those who it subjects, and those who it rewards.”); *see also* JOHN L. JACKSON, *RACIAL PARANOIA* 73 (2009) (noting that post-civil rights era norms rendered overt racism socially taboo, pushing explicit bias underground and making public expressions of racism socially marginal as “most fear it like the plague”). The backlash to the 2020 racial justice uprisings in the wake of George Floyd’s murder by police and the election of Donald Trump in 2016 and 2024 have raised serious questions about those

Whether at a national level or in an individual locality, race persists as determinative for those targeted, acquired, and punished by the criminal legal system and its actors. Even as efforts have been undertaken to redress the noxious influence of racial inequality on the administration of criminal law, nothing has successfully dislodged the racial logic that undergirds our criminal legal system. Government policies and practices aimed at erasing the racial progress of the last six decades underscore the urgency of paying attention to race now.<sup>398</sup> Race is a constant. Understanding that demands that we confront and acknowledge its pervasive influence.<sup>399</sup>

These are just a few of the ways that race can enter the frame and remain relevant. Other areas ripe for exploration are how race shapes the perspectives and experiences of the independent systemic integrity review panelists themselves, and how we should respond to the pernicious influences of race on the criminal system more broadly. Deploying a race-conscious lens is more art than science. There is no quantitative formula to guide how much or how little weight anyone should afford the cultural context of race. The facts and circumstances of each case and each independent systemic integrity review will determine how race shows up. The point is to acknowledge that it does show up, to understand its impact (or not) on the case under review, and to proceed with the work of the independent systemic integrity review with that understanding in mind.

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norms. See Juliana Menasce Horowitz, Anna Brown & Kiana Cox, *How Americans See the State of Race Relations*, PEW RSCH. CTR. (Apr. 9, 2019), <https://www.pewresearch.org/social-trends/2019/04/09/how-americans-see-the-state-of-race-relations> [https://perma.cc/9VY3-7BDC]; Fabiola Cineas, *The “Racial Reckoning” of 2020 Set Off an Entirely New Kind of Backlash*, Vox (June 3, 2024, 10:00 AM UTC), <https://www.vox.com/policy/351106/backlash-politics-2020-george-floyd-race> [https://perma.cc/8YLZ-AQAN].

398. Nikole Hannah-Jones, *How Trump Upended 60 Years of Civil Rights in Two Months*, N.Y. TIMES (June 27, 2025), <https://www.nytimes.com/2025/06/27/magazine/trump-civil-rights-law-discrimination.html> [https://perma.cc/FQ9N-6SG5].
399. Schuette v. Coal. to Defend Affirmative Action, 572 U.S. 291, 380 (2014) (Sotomayor, J., dissenting) (explaining that “[t]he way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination”).

## CONCLUSION

There is much more that I could say, and hope to say, in future scholarship about my Working Group experience. Considerations of transparency, politics, and the law can all weigh on an independent systemic integrity review and present challenges and opportunities for the work. The standard of review, the weight and probative value of incidents of confirmed past misconduct, and the nature of the cases under review are also worthy of reflection. Ensuring that those who raise claims of law enforcement abuse and misconduct are afforded the resources, protections, and rights—including the right to counsel—that those accused of a crime are provided merits attention and consideration as well. I leave those concerns for another day. My hope here is that the advice I have laid out helps to inform independent systemic integrity reviews and the panels that conduct them, as other jurisdictions work to replicate the experience in Chicago.

To be clear, an independent systemic integrity review is not a panacea for law enforcement misconduct. But it can be an effective tool when properly resourced and singularly focused on its truth-seeking mission, external to and independent of law enforcement actors, and attentive to the contours of race. Satisfying these conditions, each of which I have explored in this Article, will ensure that an independent systemic integrity review and the panel of people doing the work are on the right track.

One thing is for certain: As the criminal system continues to churn along, and more misconduct comes to light, we will only have more opportunities to right the wrongs of the past.<sup>400</sup> Hopefully, by taking stock of the recommendations I have laid out here, that work will grow ever more effective. Only time can tell.

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400. This is especially true as we bear witness to the Trump Administration's incessant attacks on truth, bureaucratic independence, and racial justice. *See* Hannah-Jones, *supra* note 398.