NATHAN & KAMIONSKI LLP

CONVICTION INTEGRITY UNITS AND THEIR IMPACT ON REVERSE CONVICTION LITIGATION

2022 IMLA Conference

October 20, 2002

Portland, Oregon

Avi Kamionski & Shneur Nathan

Chicago – Baltimore – Detroit – Long Island

WRONGFUL CONVICTION LAWSUITS

Typical Claims

- Due Process/ Brady
- Fabrication of Evidence
- False Confessions
- Malicious Prosecution



Typical Damages Requests

- 1 to 2 Million Per year

WRONGFUL CONVICTION JURY VERDICTS

Jury Awards **$27 Million** To Massachusetts Man Wrongfully Convicted Of Murder (2019): https://www.npr.org/2019/10/02/765786518/jury-awards-27-million-to-massachusetts-man-wrongfully-convicted-of-murder

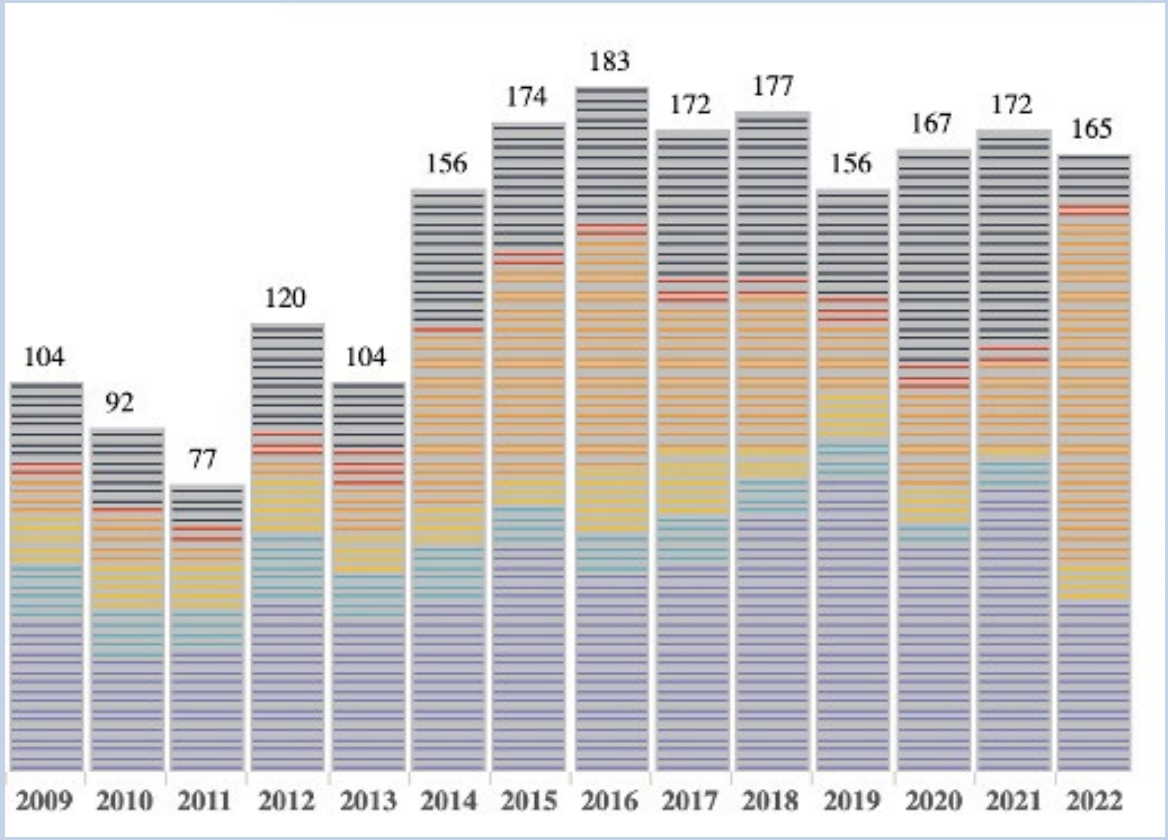
North Carolina jury awards **$75 Million** to brothers wrongly convicted of 1983 murder (2021): https://www.theguardian.com/us-news/2021/may/16/north-carolina-jury-awards-75m-to-brothers-wrongly-convicted-of-1983

Jury Awards **$17 Million** To Chicago Man Who Accused Detective Of Framing Him For Murder (2018): https://chicago.cbslocal.com/2018/06/29/jacques-rivera-wrongful-conviction-verdict-detective-reynaldo-guevara/

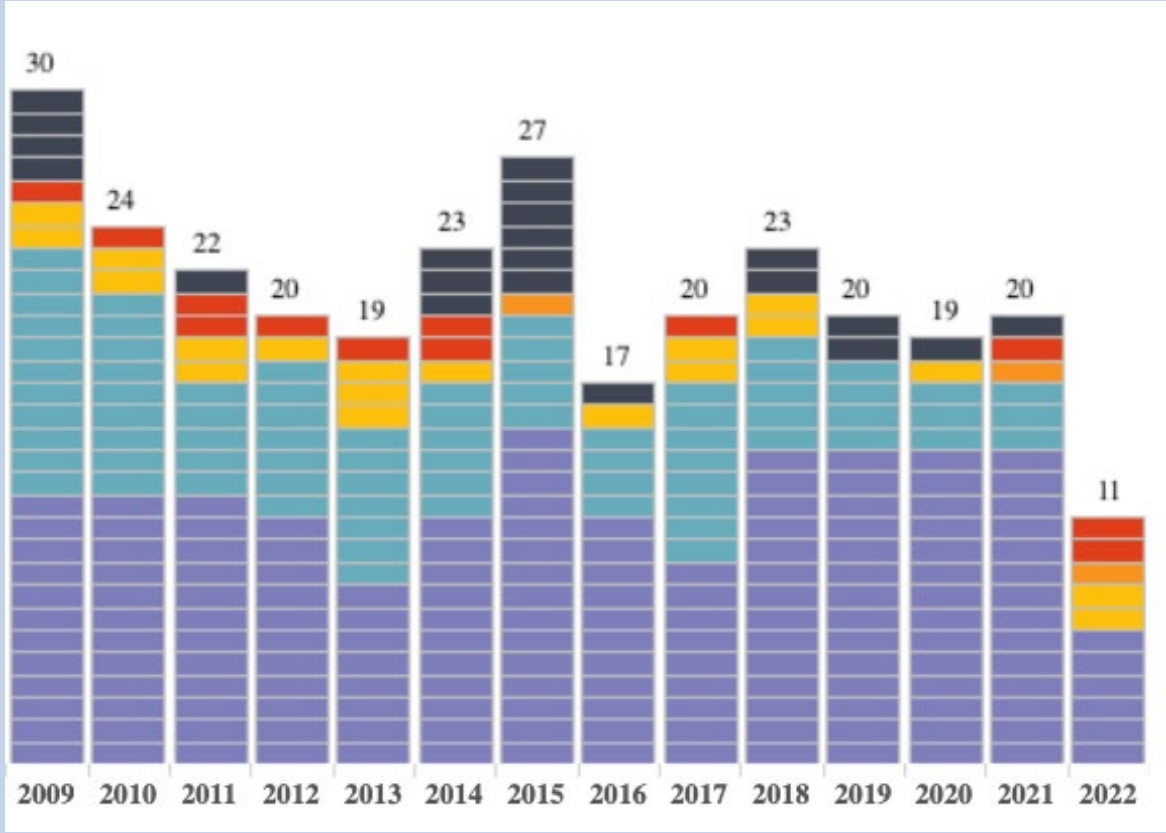
Jury's **$15 Million** Judgment Against Baltimore Detective Affirmed (2021): https://news.bloomberglaw.com/us-law-week/jurys-15-million-judgment-against-baltimore-detective-affirmed

MAJORITY OF PENDING WRONGFUL CONVICTION CASES INVOLVE WITNESS RECANTATIONS, NOT DNA

TOTAL EXONERATIONS



DNA EVIDENCE PRESENT



Source: National Registry of Exonerations

WHERE ARE THESE CASES COMING FROM?

Direct appeals

State Court Post Conviction Petitions

Federal Habeas Corpus Proceedings

Conviction Integrity Units

PROSECTURORIAL DUTIES GOVERNED BY STATUTE

- **ABA Rule of Professional Conduct 3.8**
- **(g)** When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
  - **(1)** promptly disclose that evidence to an appropriate court or authority, and
  - **(2)** if the conviction was obtained in the prosecutor's jurisdiction,
    - **(i)** promptly disclose that evidence to the defendant unless a court authorizes delay, and
    - **(ii)** undertake further reasonable investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
- **(h)** When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

PROSECUTORIAL DUTIES GOVERNED BY STATUTE

The Michigan Rules of Professional Conduct Rule 3.8(g) states:

When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction is innocent of the crime for which the defendant was prosecuted, the prosecutor shall seek to remedy the conviction.

Official comment: A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.

WHAT IS THE CIU?

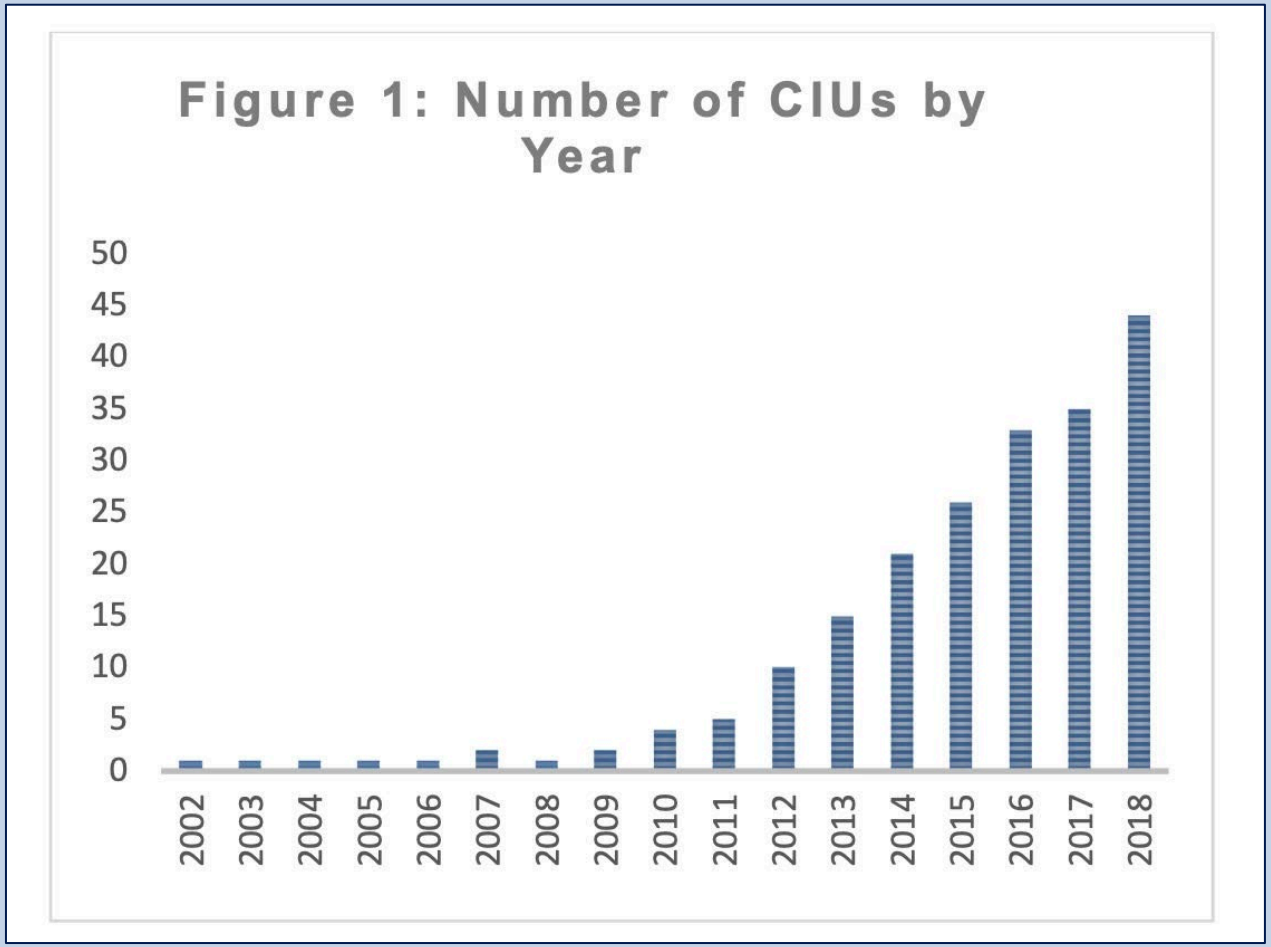
A Conviction Integrity Unit is a unit in the prosecutorial office that prosecuted the exoneree helped secure the exoneration.

The Conviction Integrity Unit investigates claims of innocence to determine whether there is clear and convincing new evidence that the convicted defendant was not the person who committed the offense.

Extrajudicial proceeding – Rules of Evidence do not apply

CIU's Recommendations lead to the release of individuals.

CIU UNITS KEEP GROWING



AS OF OCTOBER 2022:

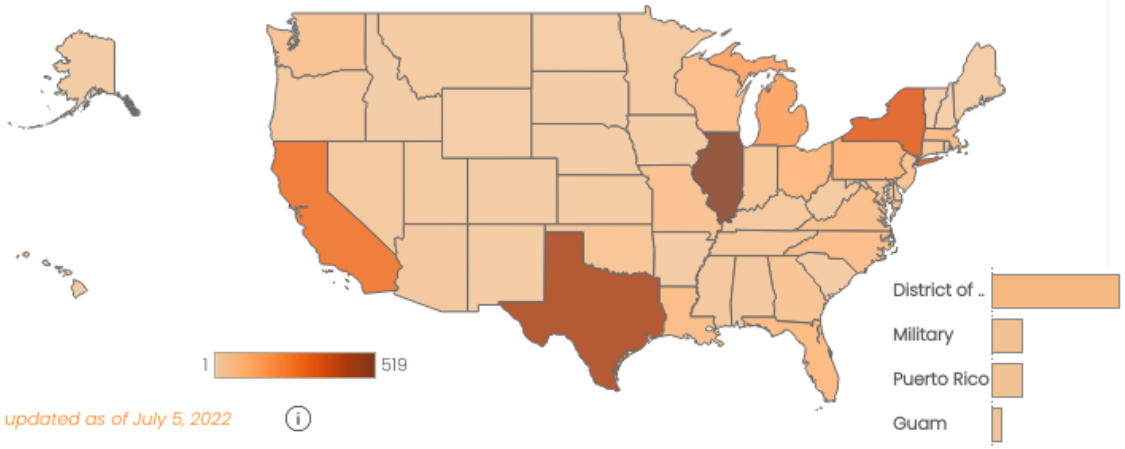
- **95 CIU UNITS (doubled since 2018)**
- 42 have exonerated
- 53 have not yet exonerated

The National Registry of EXONERATIONS

3,220	27,926	8.7
Exonerations since 1989	Years Lost - Total	Years Lost - Avg./Case

Exonerations by State

Fed / Non-Fed All



Data updated as of July 5, 2022

Contributing Factors		
Mistaken Identification	Absent	Present
False Confession	Absent	Present
Bad Forensic Evidence	Absent	Present
Perjury / False Accusatio..	Absent	Present
Official Misconduct	Absent	Present

Crime		
Murder	1,178 (37%)	Death Sentence All
Sexual Assault	350 (11%)	
Child Sex Abuse	310 (10%)	
Drugs	560 (17%)	
Robbery	151 (5%)	
Other	671 (21%)	

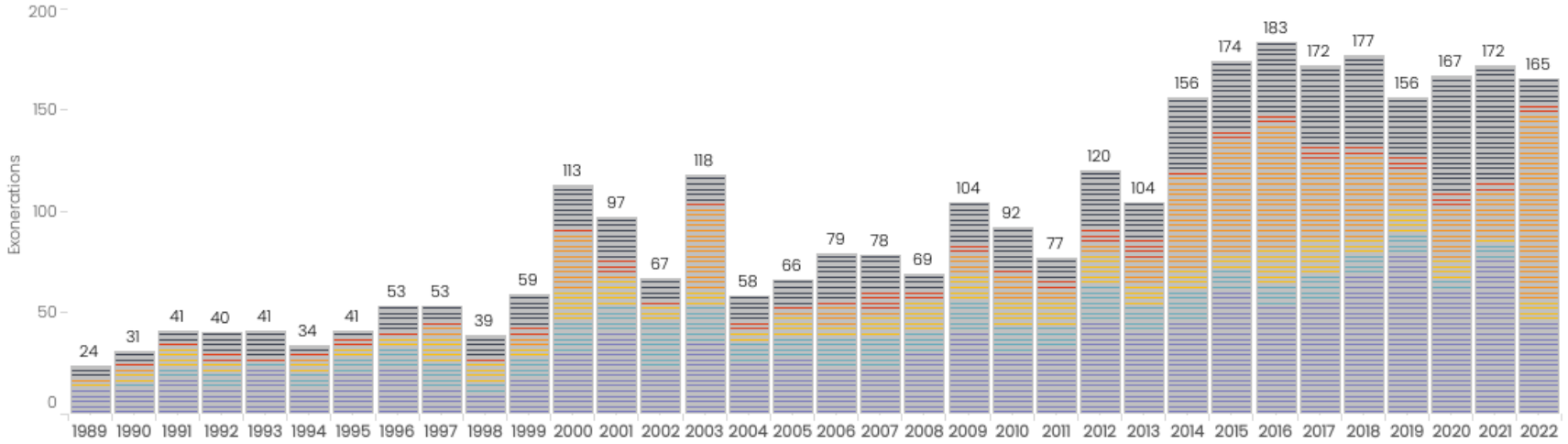
Race/Ethnicity	
Black	1,696 (53%)
Hispanic	386 (12%)
Other	
Don't Know	
White	1,061 (33%)

Gender	
Male	2,939 (91%)
Female	281 (9%)

Additional Aspects		
DNA	Absent	Present
Guilty Plea	Absent	Present

Exonerations Total by Year

Show Total by Year



Dashboard designed by CLEAR TELLIGENCE

Murder | Sexual Assault | Child Sex Abuse | Drugs | Robbery | Other

TRENDS TO NOTE

2018: 177 exonerations

2019: 156 exonerations

2020: 167 exonerations

2021: 172 exonerations

Source: National Registry of Exonerations

TRENDS TO NOTE

The National Registry of EXONERATIONS

EXONERATIONS in 2019

EXONERATIONS BY STATE



30	IL	5	KY
15	PA, TX	4	NC
11	NY	3	LA, MA
9	MI	2	CT, GA, IN, OK, UT, WA
7	CA	1	AR, CO, HI, ID, ME, MN, MO, NH, NM, OH, OR, SC, SD, TN, VT, VA, DC
6	FL, MD		

TRENDS TO NOTE (CONT.)



EXECUTIVE SUMMARY

MAJOR THEMES

There were 129 exonerations in 2020.

Years Lost to Wrongful Imprisonment.

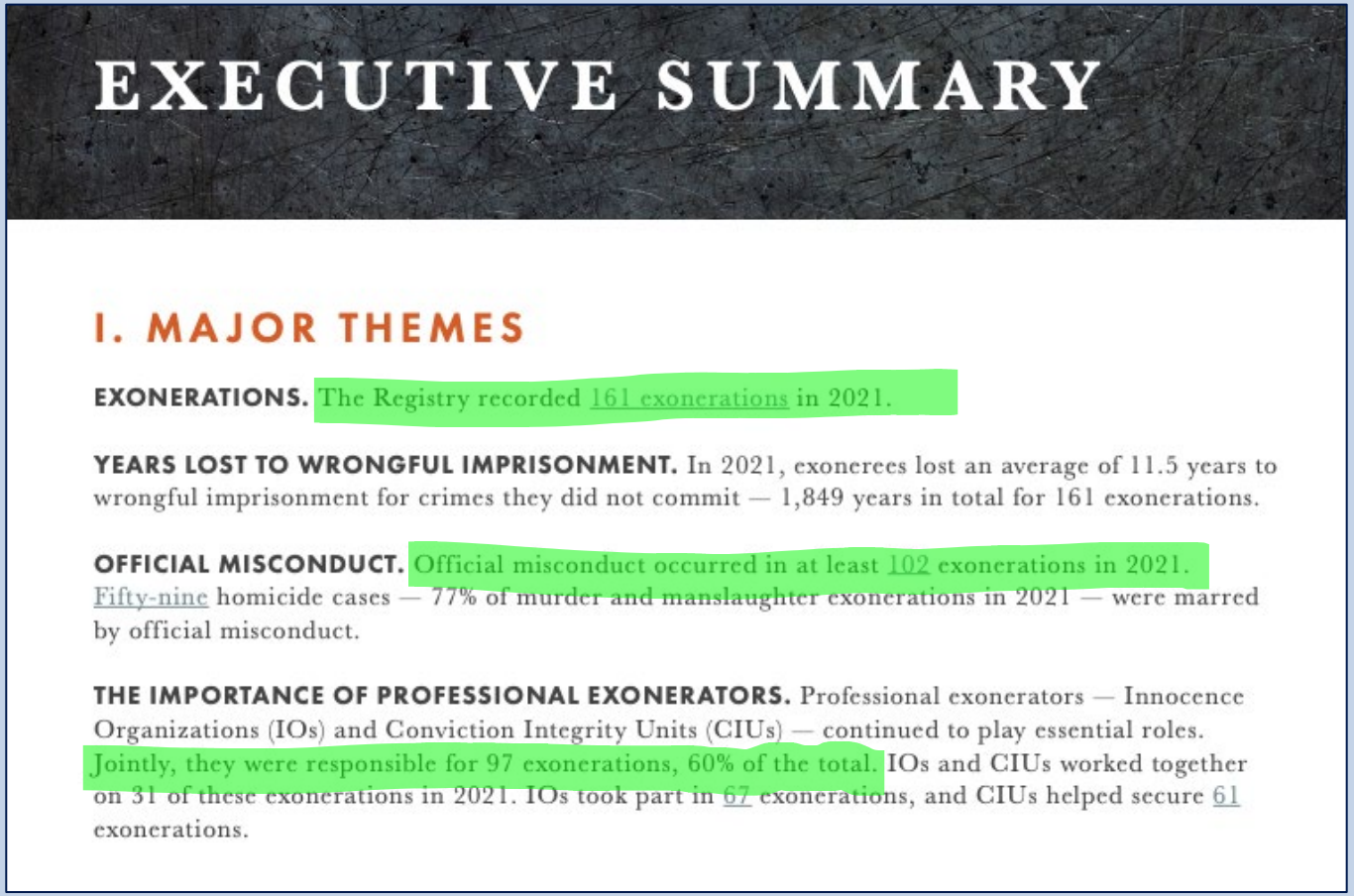
Defendants exonerated in 2020 lost a total of 1,737 years, an average of 13.4 years per exoneree.

Official Misconduct.

Official misconduct occurred in at least 87 exonerations in 2020. Forty-eight murder cases—nearly 80% of the 61 murder exonerations in 2020—were marred by official misconduct.

The Importance of Professional Exonerators.

Professional exonerators—Innocence Organizations (IOs) and Conviction Integrity Units (CIUs) played essential roles in 84 exonerations, 61% of the total. IOs took part in 58 exonerations, and CIUs helped secure 61 exonerations. IOs and CIUs worked together on 35 exonerations in 2020.



EXECUTIVE SUMMARY

I. MAJOR THEMES

EXONERATIONS. The Registry recorded 161 exonerations in 2021.

YEARS LOST TO WRONGFUL IMPRISONMENT. In 2021, exonerees lost an average of 11.5 years to wrongful imprisonment for crimes they did not commit — 1,849 years in total for 161 exonerations.

OFFICIAL MISCONDUCT. Official misconduct occurred in at least 102 exonerations in 2021. Fifty-nine homicide cases — 77% of murder and manslaughter exonerations in 2021 — were marred by official misconduct.

THE IMPORTANCE OF PROFESSIONAL EXONERATORS. Professional exonerators — Innocence Organizations (IOs) and Conviction Integrity Units (CIUs) — continued to play essential roles. Jointly, they were responsible for 97 exonerations, 60% of the total. IOs and CIUs worked together on 31 of these exonerations in 2021. IOs took part in 67 exonerations, and CIUs helped secure 61 exonerations.

Source: National Registry of Exonerations

SAMPLE CIU REQUISITES FOR REINVESTIGATION

- Application Criteria in Orange County, CA
  1. There must be a claim of factual innocence. **The request must raise a meaningful claim of factual innocence** and not be merely a request for re-sentencing, a re-weighing of conflicting evidence or relief from collateral consequences;
  2. Applicant bears **the burden to present new, credible, and material evidence that was not presented to the jury or was unknown to the defense at time of disposition**, including via new technology that exists to test or re-test evidence;
  3. Applicant agrees to fully cooperate with CIU and law enforcement in the investigation;

CIU WRITTEN POLICY (CONT.)

- Application Criteria in Nashville, TN
  1. CRU attorneys review cases for overlooked evidence, eyewitness misidentification, inaccurate or evolved science, false confessions, unreliable testimony, police or prosecutorial misconduct and ineffective counsel…. Central to any CRU review must be new evidence of actual innocence not previously presented to a jury.

COLLABORATION AGREEMENTS BETWEEN CIU AND CONVICT



Cooperative investigations: Cooperative investigations should be the norm in a conviction review program. Cooperative investigations promote transparency and ensure that all parties receive the same information and receive it at the same time. **Indeed, often defense counsel or agents acting on behalf of the convicted individual are in a superior position to find witnesses or gain trust with potential witnesses.**

COLLABORATION AGREEMENTS (CONTINUED)

CIU = PROVIDE ALL DISCOVERY

a. CIU agrees to provide all relevant information – original documents, recordings, memoranda, notes, lab results, or information regarding physical evidence – within their possession or within possession of other state agencies (police, forensics, medical examiners, etc.) including otherwise protected work product as part of the cooperative agreement and subject to the below confidentiality provisions;

DEFENSE COUNSEL = NO RECIPROCAL OBLIGATION

Defense provision of materials: The CIU agrees Counsel is not required to provide blanket reciprocal discovery to have the case reviewed and investigated, nor is the Applicant expected to provide broad waiver of the attorney-client or work-product privileges. However, to complete a

DOJ GRANTS FOR JOINT RE-INVESTIGATIONS

Currently, the SAO is not brought into a case until UBIPC and/or MAIP have completed their investigation and are prepared to raise the issue of their client's conviction at court. At that time, the SAO must complete their own independent investigation prior to agreeing to initiate court action on the merits of the case. This significantly delays the case while the wrongfully convicted individual remains incarcerated. Bringing the SAO into the case earlier in the investigation stage will eradicate the need for a second, independent investigation and significantly reduce case processing time. The addition of the Investigator to the SAO will enable the SAO to begin its investigation alongside MAIP and UBIPC thus reducing the investigatory caseload for MAIP and UBIPC and expediting case processing.

Source: FOIA re Baltimore City's Grant Application to DOJ Program on "Upholding the Rule of Law and Preventing Wrongful Convictions"

QC MODEL CIU GUIDELINES FOR CASE INTAKE

6. The broader the criteria for forwarding a case to investigation and potential review, the more cases a CIU will be able to process and provide relief where appropriate.

- *How will your unit define the funnel through which cases will pass initially?*

Think about any of the following:

☐ Actual innocence – that the individual convicted had no role in the crime
☐ Actual innocence and the individual claims there is new evidence to prove it
☐ Actual innocence without new evidence to prove it
☐ Legal innocence in that the individual's actions were justified through mental illness, self-defense or defense of others
☐ Legal innocence in that the individual committed some of the acts alleged but not all
☐ Illegal or improper sentencing issues

MORE QC MODEL CIU GUIDELINES

- **Having a trial or appellate prosecutor who handled the underlying conviction work of be part of a post-conviction review is problematic.**
  - The prosecutor has taken multiple stances to affirm the conviction, which only serves to cement the "correctness" of the conviction in her mind. The trial prosecutor, especially, may have developed a relationship with the victim or the victim's family and be invested in protecting them and their sensibilities in a post-conviction review. Basic requirement:
  - Information regarding an investigation will not be shared with prior prosecutors and they will not have access to the CIU file as the case is being reviewed.

QC MODEL POLICY:
WHO SHOULD LEAD THE CIU

4. Because case reviews are complex reviews should be conducted with as much of an 'innocent eye' as possible the leader of a CIU should have criminal defense experience.

- *Will the leader of your CIU have defense experience?*

- *If they will have defense experience, how many years of experience do you consider a minimum requirement?*

BARRY SCHECK IN 2019

MASSACHUSETTS CONVICTION INTEGRITY WORKING GROUP

Convened by the Massachusetts Bar Association

On May 9, 2019, the MCIWG participated in a dialogue with Attorney Barry Scheck, Co-Founder of and Special Counsel to the National Innocence Project and Professor of Law and Co-Director of the Innocence Clinic at Benjamin N. Cardozo School of Law. He is a national expert and a leading scholar on conviction integrity. Attorney Scheck discussed a number of exonerations involving leading CIUs in the United States and provided a history of CIUs and law enforcement misconduct registries. He emphasized the importance of CIUs and defense counsel collaborating in a joint search for justice. He stressed the importance of structuring CIUs to be independent of appeals units and of having attorneys with innocence or defense practice backgrounds to lead, or at least participate meaningfully in, CIUs. Attorney Scheck also noted that many exonerations

https://www.law.upenn.edu/live/files/11615-conviction-integrity-programs-massachusetts-bar

CIU DIRECTORS

- **Detroit** - CIU Director worked at State Appellate Defender for more than 25 years
- **Philadelphia** - Attorney on staff was a Sr. Project Attorney at the Death Penalty Moratorium Implementation Project
- **Washington DC** - CIU Director worked as the Director of the Mid-Atlantic Innocence Project for 2 years
- **Indianapolis** - CO-CIU Director worked as a Public Defender for more than 9 years
- **Dallas** - CIU Deputy Chief worked as a Public Defender for more than 9 years
- **Austin** - CIU Director worked as a Public Defender for more than 10 years
- **Nashville** - CIU Director worked as a criminal defense attorney for more than 10 years
- **Tampa** - CIU Supervisor worked as a criminal defense attorney for than 16 years
- **Orlando** - CIU Chief worked as a Public Defender for more than 11 years
- **St Louis** - CIU Chief worked as a Public Defender for more than 11 years
- **Baltimore** - Sentencing Review Unit Chief worked as a Public Defender for more than 14 years
- **Bronx County, NY -** CIU Chief worked in a public defender type role for over 20 years
- **Queens County, NY** - CIU Director was a staff attorney at the Innocence Project for 7 years
- **Prince George's County, MD** - CIU attorney worked as a Public Defender and at the Innocence Project

CIU REVIEW IS EXTRA JUDICIAL

CIU DIRECTOR DEPOSITION TESTIMONY

10	Q.	Is the standard you apply the standard for newly
11		discovered evidence or newly-acquired evidence?
12	**A.**	**Newly -- well, it's newly acquired. It's not the**
13		**legal definition of newly discovered.**
14	Q.	Why not?
15	**A.**	**Because the whole point of the unit is that it's an**
16		**extra judicial process that is a truth-seeking**
17		**process, and we don't want to be hamstrung by legal**
18		**rules that might prevent us from getting to the truth.**

CIU WILL MAKE CREDIBILITY DETERMINATIONS

CIU DIRECTOR DEPOSITION TESTIMONY

Q. Are you at all concerned that a CIU investigator or attorney might substitute his or her own credibility assessment for those of the triers of fact?

A. No. Part of what we do is assess credibility of the new witnesses.

Q. Okay. You made -- you were making a credibility determination about a witness based on credibility determinations from other witnesses?

A. I make a credibility determination based on all the evidence available and what is supportive of what happened.

IMPACT OF CIU FINDING

- Joint (State and Criminal Defendant) Motion for Innocence
- Declaration of Innocence
  - In Illinois, "*The decision to grant or deny a certificate of innocence shall be binding only with respect to claims filed in the Court of Claims and shall not have a res judicata effect on any other proceedings.*"
  - Plaintiff's Exhibit 1

INNOCENCE IS RELEVANT

In the
United States Court of Appeals
For the Seventh Circuit

The judge admitted the certificate of innocence largely because he concluded that it was highly relevant to Patrick's case—in particular, to his malicious-prosecution claim. Under Illinois law a plaintiff in a suit for malicious prosecution must prove not only that his conviction was vacated but that the prosecution was favorably terminated in a manner indicative of innocence. *Swick v. Liautaud*, 662 N.E.2d 1238, 1243 (Ill. 1996). A certificate of innocence entails a finding by a state-court judge that a criminal defendant has shown by a preponderance of the evidence that he "is innocent of the offenses charged in the indictment or information." 735 ILL. COMP. STAT. 5/2-702(g)(3). The district judge held—and we agree—that Patrick's certificate of innocence was directly relevant to an element on which he bore the burden of proof: that the prosecution against him was terminated in a manner indicative of innocence.

Patrick v. City of Chicago, No. 18-2759 (7th Cir. 2020)

DAMAGES



DISCOVERY ON THE CIU

- **Gather all CIU Investigative Materials**
  - Witness interviews
  - Forensic testing
  - CIU File (all reports evaluated)
  - CIU Memo (public memo and private memo)
- **Depose CIU Attorneys and Investigators**
- **Order Post Conviction Transcripts**
- **Subpoena Prison Calls (See DRI Webinar)**
- **Hire Expert to Evaluate CIU Investigation**

CIU REVIEW CHECK LIST

- Did The CIU Interview The Detectives?
- Did The CIU Retain Its Own Experts?
- Could Additional Testing Be Conducted?
- Did The CIU Record Witness Interviews?
- Were Witnesses Allowed To Review Their Testimony Prior To CIU Interview?
- Did the CIU Review Recorded Prison Calls?
- Did The CIU Collect All Relevant Records?
- Did the CIU make credibility determinations?
- Did the CIU mischaracterize or fail to consider evidence?

CHESTNUT V BALTIMORE



The New York Times

They Spent 36 Years Behind Bars for Murder. Someone Else Did It.

Three men were imprisoned as teenagers for the shooting of a middle school student over his jacket. That was 1983. Now prosecutors say they didn't do it.

CIU WITNESS INTERVIEW

DETECTIVE ELLIS: Did you see any of the --

Did you see any of the three guys that they talked about?

MR. CALDWELL: You talking about the ones that we had identified?

DETECTIVE ELLIS: Yeah.

MR. CALDWELL: See, that's what I'm saying. Like I've seen -- I've seen the individuals, right? But like when you sittin' there and you tellin' me about -- you tellin' me about everything that's going on, and I'm sitting' there like damn, you know, is it possible that I could made a mistake or something like that? I'm sittin' there like I don't believe -- Like that really got me second-guessing myself. I'm sitting there like I ain't crazy. I know I seen what I seen like --

DETECTIVE ELLIS: Right. But you were young though, you know.

MR. CALDWELL: Yeah. Yeah.

DETECTIVE ELLIS: You can make mistakes when you're young.

MR. CALDWELL: Man, that's like I don't -- man, I'm really hoping and I'm praying that that's not -- that that's not the situation.



LEADING QUESTIONS CAN LEAD TO FALSE STATEMENTS

Journal of Investigative Psychology and Offender Profiling

Leading questions, another form of interrogative pressure (Baxter et al., 2006), which prompt an interviewee to respond in a certain way (Gudjonsson & Clark, 1986; Gudjonsson, 2003; Soukara et al., 2009), have also been associated with known false confession cases (Garret, 2010). Asking leading questions, which may contain plausible but misleading information, may result in memory for an event being supplemented, distorted, and reconstructed (Busey & Loftus, 2007; Loftus, 1975, 1979, 2002). The use of leading questions can also introduce erroneous information, impair accurate recall, induce uncertainty, and make it difficult to differentiate sources of information (Gudjonsson & Clark, 1986; Loftus, 1975, 2002, 2005).

https://researchonline.gcu.ac.uk/ws/portalfiles/portal/27669124/Journal_of_Investigative_Psychology_and_Offender_Profiling_Resubmission_PDF_Aug_2

BALTIMORE (CONT)

CIU INTERVIEW

MR. BISHOP: Everything I said in my pre -- in my testimony in the grand jury was correct. If you read the grand jury trial -- I mean testimony. 100 percent correct.

ASA LIPSCOMB: Okay.

GRAND JURY TESTIMONY

Q And when you saw the gun, do you know whose hand the gun was in? Who did that boy look like that you know?

A I don't know...I just...like he had a gray hoody on. I think it was Alfred Chestnut.

FAILURE TO REVIEW GJ

MS. LIPSCOMB: No. The State, again, remains silent. I would just not that the State, at no point, has located grand jury transcripts. And has indicated as such

THE COURT: Right. And I think -- do you know why the State's Attorney does not have these transcripts, Ms. Lipscomb?

MS. LIPSCOMB: No, Your Honor. It goes back to -- I mean, I really (inaudible 01:20:59). I mean, I don't really know. I don't know. We have a copy of, you know,

CIU'S FAILURE TO REVIEW EVIDENCE (E.G., GJ TRANS.)

aware of it as well. So everybody's on the same page and we can all talk. Is that these transcripts do exist. And by statute, the State's Attorney's Office is supposed to be in possession of them. I have been talking to Mr.

can to try to rectify that. But I think that the State's Attorney's Office is now on notice that these transcripts exist and needs to do something a little bit more than file off a two sentence response that says they don't exist. They need to do a little bit more due diligence to look for these transcripts, because in response to both of

JOHNSON V BALTIMORE



JOINT PETITION ASSERTS THAT "REAL KILLER" CONFESSED

JOINT PETITION FOR WRIT OF ACTUAL INNOCENCE AND
MEMORANDUM OF LAW IN SUPPORT OF JOINT PETITION FOR WRIT OF ACTUAL INNOCENCE

NOW COMES, Jerome L. Johnson, through undersigned counsel, and Marilyn J. Mosby, State's Attorney for Baltimore City and the State of Maryland by and through Lauren R. Lipscomb, Assistant State's Attorney for Baltimore City, and hereby petition this Court for a Writ of Actual Innocence, pursuant to Maryland Code of Criminal Procedure § 8-301, to set aside the verdict against Mr. Johnson, or in the alternative, to grant a new trial. Johnson respectfully requests a hearing on this Petition.

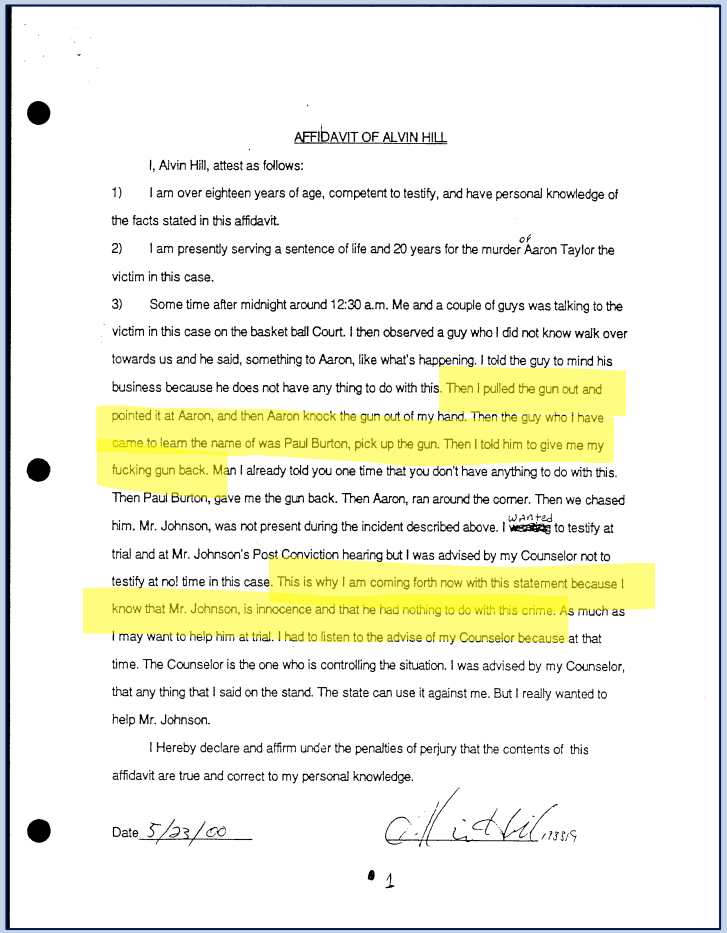
C. Newly Discovered Evidence Since the Time of Mr. Johnson's Trial Proves Innocence under 8-301.

In addition to the aforementioned statement and trial testimony inconsistencies, counsel provided as follows.

Affidavit of Alvin Hill, Shooter

On May 23, 2000, Shooter provided an affidavit that Johnson was not present at the time of the murder. He admitted to pulling the gun out on Victim and that Johnson was not there.

ALVIN HILL AFFIDAVIT



AFFIDAVIT OF ALVIN HILL

I, Alvin Hill, attest as follows:

1) I am over eighteen years of age, competent to testify, and have personal knowledge of the facts stated in this affidavit.

2) I am presently serving a sentence of life and 20 years for the murder of Aaron Taylor the victim in this case.

3) Some time after midnight around 12:30 a.m. Me and a couple of guys was talking to the victim in this case on the basket ball Court. I then observed a guy who I did not know walk over towards us and he said, something to Aaron, like what's happening. I told the guy to mind his business because he does not have any thing to do with this. Then I pulled the gun out and pointed it at Aaron, and then Aaron knock the gun out of my hand. Then the guy who I have came to learn the name of was Paul Burton, pick up the gun. Then I told him to give me my fucking gun back. Man I already told you one time that you don't have anything to do with this. Then Paul Burton, gave me the gun back. Then Aaron, ran around the corner. Then we chased him. Mr. Johnson, was not present during the incident described above. I wanted to testify at trial and at Mr. Johnson's Post Conviction hearing but I was advised by my Counselor not to testify at no! time in this case. This is why I am coming forth now with this statement because I know that Mr. Johnson, is innocence and that he had nothing to do with this crime. As much as I may want to help him at trial. I had to listen to the advise of my Counselor because at that time. The Counselor is the one who is controlling the situation. I was advised by my Counselor, that any thing that I said on the stand. The state can use it against me. But I really wanted to help Mr. Johnson.

I Hereby declare and affirm under the penalties of perjury that the contents of this affidavit are true and correct to my personal knowledge.

Date 5/23/00 C. Hill #198829

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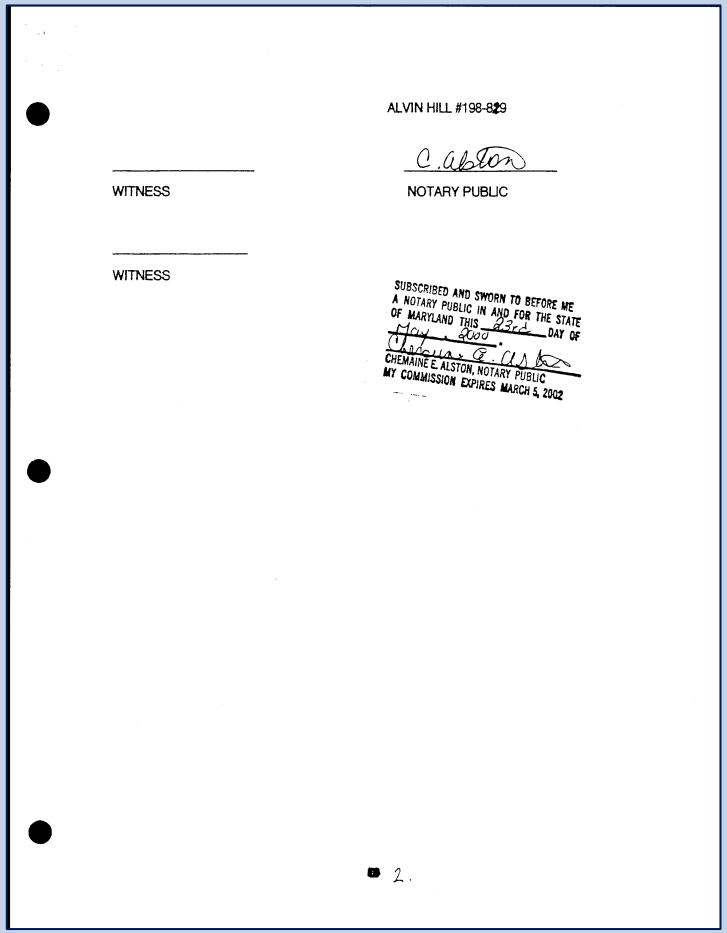

ALVIN HILL #198-829

WITNESS

C. Alston
NOTARY PUBLIC

WITNESS

SUBSCRIBED AND SWORN TO BEFORE ME A NOTARY PUBLIC IN AND FOR THE STATE OF MARYLAND THIS 23rd DAY OF May, 2000.
Chemaine E. Alston
CHEMAINE E. ALSTON, NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 5, 2002

2.

NOW UNDISPUTED THAT AFFIDAVIT WAS FALSE: PAUL BURTON AFFIDAVIT

EXHIBIT 1

AFFIDAVIT OF PAUL BURTON

I, Paul Burton, attest as follows:

1. I am over eighteen years of age, competent to testify, and have personal knowledge of the facts stated in this Affidavit.

2. I am presently serving a sentence of 40 years in the Maryland Division of Corrections, dating from June 16, 1994. At the present time, I am incarcerated in the Maryland House of Corrections Annex (hereinafter "Annex") in Jessup, Maryland.

3. Sometime after midnight on July 14, 1988, the automobile I was operating was involved in a minor traffic accident with another vehicle at the intersection of Reisterstown Road and Woodland Avenue.

4. While I was standing outside of my automobile at that location, I observed a friend of mine named "Aaron", whose last name I did not know but who I also knew as "Hooper", involved in an argument on the nearby basketball court with four or five men and a female I did not know. I heard him say something to the effect of, "It doesn't have to be like that."

5. I walked over to Aaron and asked what was going on. One of the men he was arguing with, a light-skinned man I heard Aaron call "Poopie", said "This motherfucker wants some trouble." That man then pulled out a handgun and pointed it at Aaron. Aaron hit the gun out of his hand, and I picked it up. "Poopie" said "Give me my shit." Because I did not know if the gun was loaded or operable or if any of the other people in the group was armed, I handed the gun back to him. Aaron then started running and went through a hole in the fence, with the men chasing him. I did not see what happened after that, but I heard the following day that Aaron had been shot.

6. At the time of this incident, I did not know Jerome Johnson. I met him while we were both serving our sentences at the Annex. Mr. Johnson was not present during the incident described above.

7. When I learned that Mr. Johnson had been convicted in connection with the incident described above, I felt bad, because I knew that he was not involved, and that in fact I was the person who had handed "Poopie" a gun (which he had dropped) during the incident. That is why I told him the truth about the incident. Prior to my meeting him at the Annex, we did not know each other or about each other, and there was no way he could have learned about my role in the incident or produced me as a witness at his trial.

I HEREBY declare and affirm under the penalties of perjury that the contents of this Affidavit are true and correct to my personal knowledge.

4/15/97
Date

Paul Burton
PAUL BURTON

BURTON DEPOSITION

Transcript of Paul Burton
Conducted on January 20, 2021

19 A So, yes, so the aff -- the affidavit
20 that he used with my name on it to get out of
21 prison is fake.

20 A What I do remember is that Jerome
21 Johnson used the affidavit that he wrote up or
22 typed up or however he did it with a signature

1 that I did not authorize for him to use. And now
2 that --
3 Q And your testimony is, Mr. --
4 A I was incarcerated the whole 1988. And
5 it's clear that you are representing a lawsuit
6 that is illegal and I don't think --

PETITIONER NOW ADMITS THE PAUL BURTON AFFIDAVIT IS FALSE

Transcript of Jerome Johnson
Conducted on July 22, 2021

19 Q Based on your independent knowledge -- I'm
20 not asking into any conversations that you've had
21 with counsel -- is this, "Affidavit of Paul
22 Burton," that we just looked at, true?

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1 A No.

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