

AN ANALYSIS OF ISSUES AT PRE-TRIAL PROCEEDINGS  
LEADING TO WRONGFUL CONVICTIONS IN “NO CRIME”  
CASES: THERE WAS NO CRIME, BUT THEY DID THE TIME

*Irina Zakirova\**

I. INTRODUCTION

Wrongful conviction is a term used to describe a situation when an innocent individual is wrongly accused and convicted for a crime that he or she did not commit.<sup>1</sup> However, there are cases where an innocent individual was wrongly accused and convicted of a crime that did not even occur.<sup>2</sup> To date, such cases fall under the umbrella of wrongful convictions and are known as the “no crime” cases.<sup>3</sup> So far, more than a third of wrongful conviction cases and later exonerations were for a crime that did not take place.<sup>4</sup> This illustrates the flaws of the criminal justice system: not only are those within the system blind to who is innocent and who is guilty, but they are also blind as to whether or not a crime occurred. Thus, this paper seeks to define the no crime phenomenon and further explain how an accident, suicide, or a fabricated crime can be wrongly determined to be a crime before adjudication leading to a wrongful conviction.

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\* Adjunct Assistant Professor at John Jay College of Criminal Justice, New York. Holds a Ph.D. in Legal Studies with a concentration on compensation for damages. In addition, she attained a First Professional Degree in Law and Master Degrees in Journalism and Criminal Justice. The first attempt to analyze issues related to wrongful conviction was in the Master's thesis (*Compensation for Damages Caused by Wrongful Conviction*) in 2015 in John Jay College of Criminal Justice, which was further extended through an article published in the Albany Law Review. See Irina Zakirova, *Forensic Evidence in Wrongful Conviction Cases: From Being a Right-Hand Man to Becoming a Snake in the Grass*, 81 Alb. L. Rev. 877 (2018). All values and numbers herein have been calculated as of February 13, 2019, and may be subject to change.

<sup>1</sup> See SERI IRAZOLA ET AL., STUDY OF VICTIM EXPERIENCES OF WRONGFUL CONVICTION 14 (2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/244084.pdf>.

<sup>2</sup> See, e.g., *Exoneration Detail List*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last visited Feb. 13, 2019).

<sup>3</sup> See *Glossary*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/glossary.aspx#NC> (last visited Feb. 13, 2019) (“The exoneree was convicted of a crime that did not occur, either because an accident or a suicide was mistaken for a crime, or because the exoneree was accused of a fabricated crime that never happened.”).

<sup>4</sup> See *Exoneration Detail List*, *supra* note 2.

## II. DEFINING NO CRIME CASES

According to the National Registry of Exonerations, no crime cases are cases that were either an accident,<sup>5</sup> a suicide,<sup>6</sup> or a fabricated crime<sup>7</sup> that was mistaken for a crime before adjudication<sup>8</sup> and led a wrongful conviction of actually innocent persons.<sup>9</sup> To date, there are 860 no crime cases out of 2,366 exonerations, which accounts for about 36%.<sup>10</sup>

According to Bluhm Legal Clinic, the majority of those who were wrongfully convicted in no crime cases were women.<sup>11</sup> Whereas, when it comes to exonerations, the major indicator of innocence, DNA evidence was able to reveal the innocence of a woman in around 3% of cases, compared to 22% among men.<sup>12</sup> This goes along with the types of crimes that individuals were convicted for, where men are convicted of crimes where DNA evidence was either the only evidence that was lacking and as a result led to wrongful convictions, or was erroneous.<sup>13</sup>

Continually, there is a distinct pattern between the types of crimes that individuals were wrongly convicted for and which in turn did not occur since, in reality, they were either an accident, a suicide or a fabricated crime.<sup>14</sup> The present article will examine a number of

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<sup>5</sup> “An unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury.” *Accident*, OXFORD DICTIONARY, <https://en.oxforddictionaries.com/definition/accident> (last visited Feb. 13, 2019).

<sup>6</sup> “[T]he act or an instance of taking one’s own life voluntarily and intentionally. *Suicide*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/suicide> (last visited Feb. 13, 2019).

<sup>7</sup> “[T]o make up for the purpose of deception.” *Fabricate*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/fabricate> (last visited Feb. 13, 2019).

<sup>8</sup> “[A] judicial decision or sentence.” *Adjudication*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/adjudication> (last visited Feb. 2, 2019).

<sup>9</sup> *Glossary*, *supra* note 3; see Keith A. Findley, *Defining Innocence*, 74 ALB. L. REV. 1157, 1159 (2011).

<sup>10</sup> See *Exoneration Detail List*, *supra* note 2.

<sup>11</sup> “Two-thirds of female exonerees were convicted in cases in which no crime occurred.” *Women’s Project*, NW. PRITZKER SCH. L.: BLUHM LEGAL CLINIC CTR. ON WRONGFUL CONVICTIONS, <http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/womensproject/> (last visited Feb. 13, 2019).

<sup>12</sup> See *id.*

<sup>13</sup> See, e.g., Molly Redden, *Why Is It So Hard for Wrongfully Convicted Women to Get Justice?*, MOTHER JONES (July–Aug. 2015), <https://www.motherjones.com/politics/2015/08/wrongfully-convicted-women-exonerations-innocence-project/>.

<sup>14</sup> Among the 860 no crime cases, there were 258 drug possession/sale cases, 211 child sex abuse cases, seventy-seven sexual assault cases, sixty-nine murder cases, forty-six assault cases, twenty-five weapon possession/sale cases, twenty-two cases for violating sex offender registration, nineteen fraud/tax evasion cases, eighteen manslaughter cases, thirteen arson cases, twelve theft cases, ten robbery cases, eight conspiracy cases, eight other violent felony cases, eight other nonviolent felony cases, eight child abuse cases, seven other crimes, five

these to identify and analyze issues that occurred before adjudication and have led to wrongful conviction.

### A. Accidents

Accidents occur daily, but there are those that fall on the border between being ruled an accident or a crime.<sup>15</sup> According to the National Safety Council, accidental deaths have been on the rise “and are currently the third leading cause of death behind heart disease and cancer.”<sup>16</sup> In addition, the victims’ own homes become the place where they are most likely to die accidentally, followed by an accidental death in a motor vehicle, in the public, and the least common, the workplace.<sup>17</sup> However, experts argue that society is not familiar with accidental deaths, and therefore, does not do much to help prevent it, let alone being able to distinguish it from a crime.<sup>18</sup> Therefore, society relies on police investigators and forensic experts to gather sufficient evidence before adjudication.<sup>19</sup>

Among the experts coming on the scene are forensic experts who access the evidence at the crime scene that can support or eliminate the belief that the incident is a crime.<sup>20</sup> However, to date, there are cases where experts did not distinguish between an accident and a crime which led to wrongful conviction.<sup>21</sup> As a result, misleading and

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attempted murder cases, four traffic offense cases, four perjury cases, four cases for burglary/unlawful entry, three kidnapping cases, three threat cases, two bribery cases, two failure to pay child support cases, two forgery cases, two obstruction of justice cases, one dependent adult abuse case, one case for filing a false report, one case for stalking, one case for solicitation, one case for immigration violation, one case for official misconduct, one case for harassment, one case for possession of stolen property, and one case for menacing. *See Exoneration Detail List, supra* note 2.

<sup>15</sup> See James A. Charnesky, *Unintentional Crimes—When an Accident Is No Longer an Accident*, CHARNESKY & DIEGLIO (Oct. 6, 2012), <https://www.tucsonduilawyers.com/felony-related-dui>.

<sup>16</sup> See *Historical Preventable Fatality Trends: Where We’ve Been*, NAT’L SAFETY COUNCIL: INJURY FACTS, <https://injuryfacts.nsc.org/all-injuries/historical-preventable-fatality-trends/where-weve-been/> (last visited Feb. 13, 2019).

<sup>17</sup> See *All Injuries: Overview*, NAT’L SAFETY COUNCIL: INJURY FACTS, <https://injuryfacts.nsc.org/all-injuries/overview/> (last visited Feb. 13, 2019).

<sup>18</sup> See Redden, *supra* note 13.

<sup>19</sup> See Keith A. Findley, *Guilt vs. Guiltiness: Innocents at Risk: Adversary Imbalance, Forensic Science, and the Search for Truth*, 38 SETON HALL L. REV. 893, 898 (2008); see also *Job Description for Forensic Laboratory Scientists*, CRIMESCENEINVESTIGATOREDU.ORG, <https://www.crimesceneinvestigatoredu.org/forensic-scientist-job-description/> (last visited Feb. 15, 2019) (describing the responsibilities of a forensic scientist).

<sup>20</sup> See, e.g., *What Is a Medical Examiner?*, CRIMESCENEINVESTIGATOREDU.ORG, <https://www.crimesceneinvestigatoredu.org/medical-examiner/> (last visited Feb. 15, 2019).

<sup>21</sup> See, e.g., Maurice Possley, *William Amor*, NAT’L REGISTRY EXONERATIONS (last updated May 21, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5283> [hereinafter *William Amor*].

false forensic evidence accounts for 23% of wrongful conviction cases.<sup>22</sup> Scholars examining expert tactics for gathering evidence find that certain tests that they conduct with the evidence have flaws and are in need of further development.<sup>23</sup> Among the most common is forensic serology, where the experts have tested blood and fluids that may have been accidentally mixed with the victim's and the perpetrator's, leading to an erroneous result.<sup>24</sup> In addition, based on this flawed result, the expert's testimony in court also significantly impacts the jury's decision, and the expert's inclusion or exclusion of the defendant.<sup>25</sup> In other words, the majority of the time, the forensic experts, by relying on the faulty serology results, or other unreliable methods and techniques, may still argue that the defendant is guilty, leading to wrongful conviction.<sup>26</sup> Lastly, it is argued that forensic experts, by using ambiguous terminology when testifying in the courtroom, may confuse the jurors into convicting, without being objective when reaching a verdict.<sup>27</sup>

Forensic experts gather their results in a variety of crimes, including murder, whereby forensic experts must first determine the victims' cause of death and whether it was indeed a result of foul play.<sup>28</sup> Motor vehicle accidents resulting in death are the second most common type of accidental deaths.<sup>29</sup> According to U.S. fire statistics, 38.6% of vehicle fires are unintentional.<sup>30</sup> The case of Sheila Bryan is illustrative because she was wrongly convicted for the murder of her mother by arson of a motor vehicle.<sup>31</sup> The cause of her wrongful

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<sup>22</sup> See % Exonerations by Contributing Factor, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> (last visited Feb. 15, 2019).

<sup>23</sup> See Gerald LaPorte, *Wrongful Convictions and DNA Exonerations: Understanding the Role of Forensic Science*, NAT'L INST. JUST. J., Apr. 2018, at 1, 8.

<sup>24</sup> See *id.* at 10.

<sup>25</sup> See *id.* at 10, 11.

<sup>26</sup> See *id.* at 11.

<sup>27</sup> See *id.*

<sup>28</sup> See Toni Feder, *Physicists in Forensics: From Faulty Products to Murder, Physicists Help Figure Out What Really Happened*, PHYSICS TODAY, Mar. 2009, at 20.

<sup>29</sup> See *Preventable Deaths: Minute by Minute*, NAT'L SAFETY COUNCIL, <https://injuryfacts.nsc.org/all-injuries/preventable-death-overview/minute-by-minute/data-details/> (last visited Feb. 17, 2019).

<sup>30</sup> *U.S. Fire Statistics*, U.S. FIRE ADMIN., <http://www.usfa.fema.gov/data/statistics/> (last visited Feb. 17, 2019).

<sup>31</sup> See Maurice Possley, *Sheila Bryan*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3066> (last visited Feb. 17, 2019) [hereinafter *Sheila Bryan*]. In 1997, Sheila Bryan was convicted of arson and the murder after she lost control of the vehicle she was driving and went into an eighteen-foot embankment, resulting in the death of her eighty-two-year-old mother. *Id.* Through the trial the prosecution argued that Bryan had intentionally set fire to her own vehicle in order to collect on the vehicles insurance policy, based on the state arson investigators finding that that the fire was

conviction was the prosecution’s false claim that Bryan purposely set her mother’s car on fire while the victim was inside, relying on invalid “pour patterns.”<sup>32</sup> While Bryan was charged and convicted of murder, the medical examiner was not able to conclusively find a cause of death, instead indicating that Ms. Weeks could have died before the fire began due to heart failure.<sup>33</sup> In addition, in the case of Victor Caminata, the fire investigators also relied on flawed techniques, and incorrectly claimed that Caminata set the fire on purpose.<sup>34</sup> In both of these cases, the primary task of the fire investigators was to identify whether the fire was accidental or deliberate, which they failed to do.<sup>35</sup> UK scholars argue that relying on evidence such as

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intentionally set using a flammable liquid since there were “pour patterns.” *Id.* Despite the defense expert’s conclusion that the fire was due to an electrical failure and there being no evidence of “pour patterns,” the jury sentenced Bryan to life in prison for the murder and 20 years for the arson. *Id.* The Supreme Court of Georgia later overturned the conviction based on the absence of a link between the insurance policy and the crime, thus the evidence on the policy was improperly admitted. *Id.* Bryan was acquitted of the crimes in 2000, the defense had retained an arson expert who found that the fire was a result of a faulty ignition switch and burning plastic had left the marks that the state arson investigators, “rel[ying] on outdated and disproven arson theories,” had determined to be pour patterns. *Id.*

<sup>32</sup> See *id.*; see also Marika Linnéa Henneberg & Neil Richard Morling, *Unconfirmed Accelerants: Controversial Evidence in Fire Investigation*, 22 INT’L J. EVIDENCE & PROOF 45, 48 (2018) (“Fires that are deliberately started with the application of a naked flame to a combustible item will leave little or no evidence of the act. Without definitive physical evidence of the ignition source the fire investigator may have to rely on the analysis and assessment of data such as burn patterns, smoke-staining or estimates of when the fire started to reach a conclusion that a fire had a deliberate cause. This type of evidence is subjective and is open to the individual interpretation of investigators, which means that opinions based on such data could be considered less reliable evidence when used in court.”).

<sup>33</sup> See *Accused: A Small-Town Mom Is Accused of Killing Her Own Mother*, CBS NEWS (Apr. 20, 2000), <https://www.cbsnews.com/news/accused/>; *Sheila Bryan*, *supra* note 31.

<sup>34</sup> See Maurice Possley, *Victor Caminata*, NAT’L REGISTRY EXONERATIONS (Sept. 28, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4235> [hereinafter *Victor Caminata*]. In 2008, Victor Caminata was convicted of arson following a fire which destroyed the home of his fiancé, Nicole Vanderhoef. *Id.* Caminata had recently installed a new wood stove in the basement where the fire began, though Caminata attempted to extinguish the fire it was too late and the home was a total loss. *Id.* The fire was determined to be an accidental chimney fire and the insurance company paid Vanderhoef \$273,000. *Id.* Days after the fire, the police received an anonymous tip that Caminata had stated that due to his experience as a firefighter he would be capable of burning down the house without getting caught, thereafter, state fire investigator and an insurance company investigator re-examined the evidence and concluded the fire was arson stating that the blaze had multiple origins and was started with a blowtorch. *Id.* Thus, the prosecution argued that Caminata intentionally set the fire and he was sentenced to nine to forty years in prison despite expert testimony for the defense that the fire had been accidental. *Id.* Following an appeal to the Michigan Court of Appeals, Caminata received assistance from the Michigan Innocence Clinic which discovered that Caminata’s fiancé had previously filed a false report against her estranged boyfriend to reduce his visitation rights over their daughter. *Id.* Using this new evidence, the Michigan Innocence Project filed a motion for a new trial based on inadequate legal defense, and Caminata’s conviction was vacated and he was later awarded \$1.1 million for wrongful incarceration. *Id.*

<sup>35</sup> See *Sheila Bryan*, *supra* note 31; *Victor Caminata*, *supra* note 34.

pour patterns, and the measurement of the burn stains based on which the investigators try to estimate when the fire began, only leads them into arguing that the fire was deliberately set, and is, therefore, spurious.<sup>36</sup> In turn, the fire investigators should consider all the evidence and examine them for individualistic characteristics, otherwise, it may lead to wrongful convictions.<sup>37</sup>

Besides forensic experts, police also come on the scene and examine evidence, as well as gather witness testimony. However, in some cases, before adjudication, police violate the law and coerce a false accusation from witnesses leading to a wrongful conviction, also known as official misconduct.<sup>38</sup> To date, official misconduct is the second most common contributing factor, accounting for 52% of wrongful convictions that were later exonerated.<sup>39</sup> Specifically, in the case of Michael Branch, the witness was coerced into claiming that the death was not accidental but was a murder that Branch committed.<sup>40</sup> At first, it might seem astonishing that official misconduct accounts for nearly half of all wrongful conviction cases, however, it is to be expected for courts continue to fail to identify police-generated witness testimony, making police prone to do so in subsequent cases.<sup>41</sup>

In some cases, there is a combination of violations before adjudication as in the case of William Amor, where he was first

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<sup>36</sup> See Henneberg & Morling, *supra* note 32, at 48.

<sup>37</sup> See *id.*

<sup>38</sup> See Russel Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. U. L. REV. 1133, 1160 (2013); *Glossary*, *supra* note 3 (“Police, prosecutors, or other government officials significantly abused their authority or the judicial process in a manner that contributed to the exoneree’s conviction.”).

<sup>39</sup> See % *Exonerations by Contributing Factor*, *supra* note 22.

<sup>40</sup> See Maurice Possley, *Michael Branch*, NAT’L REGISTRY EXONERATIONS (Apr. 5, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4406> [hereinafter *Michael Branch*].

Branch was charged with first-degree murder after the shooting death of Richard Taylor, who had been in Branch’s home to examine the shotgun for purchase. *Id.* Originally, Branch and both witnesses to the incident told police that the shooting had been an accident, although after the autopsy revealed that Taylor had died hours before the 9-1-1 call both witnesses were interrogated and changed their story. *Id.* Both witnesses testified that Branch and the victim had been arguing about a joint business venture and the shooting had been intentional, thereafter Branch was charged with murder. *Id.* Branch was convicted by a jury and sentenced to twenty years in prison, although this conviction was overturned by the Arkansas Court of Appeals and a new trial ordered. *Id.* At the new trial, one of the witnesses testified against Branch while the other testified that she had been coerced by police to testify against Branch in the original trial and instead testified that the other witness to the incident was arguing with Taylor and were struggling over a shotgun, when Branch attempted to intercede, the gun fired. *Id.* In 1998, the jury acquitted Branch. *Id.*

<sup>41</sup> See Sandra Guerra Thompson, *Judicial Gatekeeping of Police-Generated Witness Testimony*, 102 J. CRIM. L. & CRIMINOLOGY 329, 330–31, 333 (2012); % *Exonerations by Contributing Factor*, *supra* note 22.

interrogated for fifteen hours by the police, which led to his false confession and false forensic evidence generated using outdated techniques for identifying whether the fire was arson or not.<sup>42</sup> Besides obtaining false testimony from the witness, official misconduct also pertains to interrogating the suspect for a lengthy period of time in order to lock a confession, one that may in fact be false.<sup>43</sup> To date, false confession accounts for twelve percent of wrongful conviction cases that were later exonerated.<sup>44</sup> According to studies examining police interrogations, the average time for an interrogation is 1.60 hours.<sup>45</sup> Just as mentioned above, when it comes to arson cases, investigators, when determining the cause and presence or absence of intent in setting the fire, must rely on current and innovative techniques that have been proven to be accurate.<sup>46</sup>

In addition to murder, individuals have also been wrongly

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<sup>42</sup> See *William Amor*, *supra* note 21. In 1995 Amor was charged with first degree murder and aggravated arson for the death of his mother-in-law and fire to the condominium he shared with his wife's family. *Id.* The night of the fire Amor and his wife, Tina, went to a drive-in movie, ten minutes after Amor and Tina left the home Tina's partially disabled mother, Miceli, called 9-1-1 reporting that there was a fire in the home and she was unable to escape because a chair was blocking her exit. *Id.* When first responders arrived Tina's mother had died of smoke inhalation and Tina's family immediately began to suspect that Amor was involved in starting the fire due to their disapproval of the marriage between Amor and Tina. *Id.* Through police interviews Amor maintained his innocence, stating that he had accidentally spilt vodka on newspapers that were near an ashtray, until he almost admitted that he dropped a cigarette onto the vodka-soaked papers but did not put off the fire. *Id.* Amor later recanted his near confession but was nonetheless charged. *Id.* Two years later Amor was tried for these crimes, his defense attorney argued that he had given a false confession as a result of nearly fifteen hours of interrogation and his wife serving him with divorce papers the day before. *Id.* Despite differing expert testimony from fire investigators from both sides, Amor was convicted and sentenced to forty-five years in prison. *Id.* Following the Illinois Innocence Project reinvestigating the case and filing petitions on behalf of Amor, an evidentiary hearing was granted in 2016 where arson experts testified that the methods used in the original investigation were outdated and the cause of the fire should have been labeled “undetermined.” *Id.* In 2017 Amor's convictions were vacated and a new trial ordered, noting that the investigators' lack of understanding contributed to their misidentifying certain evidence as proof that the fire was started next to the chair. *Id.* In 2018 Amor was tried once again and acquitted of the crimes by bench trial. *Id.*

<sup>43</sup> See *Glossary*, *supra* note 3 (“A confession is a statement made to law enforcement at any point during the proceedings which was interpreted or presented by law enforcement as an admission of participation in or presence at the crime, even if the statement was not presented at trial. A statement is not a confession if it was made to someone other than law enforcement. A statement that is not at odds with the defense is not a confession. A guilty plea is not a confession.”).

<sup>44</sup> See % *Exonerations by Contributing Factor*, *supra* note 22.

<sup>45</sup> See Saul M. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 L. & HUM. BEHAV. 381, 392 (2007).

<sup>46</sup> See Marika L. Henneberg & Neil R. Morling, *Unconfirmed Accelerants: Controversial Evidence in Fire Investigations*, 22 INT'L J. EVIDENCE & PROOF (forthcoming Jan. 2018) (manuscript at 10), [https://researchportal.port.ac.uk/portal/files/8455526/Final\\_Revised\\_Unconfirmed\\_Accelerants\\_2017.pdf](https://researchportal.port.ac.uk/portal/files/8455526/Final_Revised_Unconfirmed_Accelerants_2017.pdf).

convicted of arson, illustrating that mistakes are made by fire investigators. Even though there are only thirteen arson wrongful conviction cases, their presence shows that fire investigators who gather evidence in such cases tend to make mistakes.<sup>47</sup> Among the cases, there is the case of William Haughey where the forensic expert overlooked an electrical accident and failed to preserve evidence for further review, which led to Haughey’s wrongful conviction.<sup>48</sup> In some cases, both the police and forensic experts tend to make mistakes that culminate into a wrongful conviction, as in the case of Herbert Landry.<sup>49</sup> Despite no evidence of flammable liquids being

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<sup>47</sup> See *id.* (manuscript at 54); *Exoneration Detail List*, *supra* note 2.

<sup>48</sup> See Maurice Possley, *William Haughey*, NAT’L REGISTRY EXONERATIONS (July 25, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4907> [hereinafter *William Haughey*]. Haughey was charged with arson and attempted criminal mischief in Carmel, New York in 2007. *Id.* Haughey discovered a fire in the bathroom ceiling at a restaurant, removed a bathroom ceiling tile and extinguished the fire. *Id.* The next day, Porto, the owner of the restaurant, accused Haughey of setting the fire. *Id.* The fire investigator, Geoghegan, concluded that the fire was arson, and Haughey was arrested. *Id.* In 2008, at trial, Porto testified that Haughey had motive to set the fire, due to an altercation they had earlier in the day. *Id.* Geoghegan testified that the fire was not due to anything electrical and that he found residue of burned paper towels which were used to set the fire. *Id.* Haughey testified that Porto’s claim as to a motive was completely false and fabricated. *Id.* Customers denied any altercation between Haughey and Porto. *Id.* Surveillance video showed that Haughey was nowhere near the place where the smoke started. *Id.* The jury convicted Haughey of arson and attempted criminal mischief and sentenced him to ten years in prison. *Id.* While in prison, Haughey contacted the commissioner of emergency services who asked a retired fire marshal, Paul Roncallo, to review the case. *Id.* Roncallo and another fire marshal, William Tulipane, found that Geoghegan had failed to preserve evidence and failed to investigate whether there was an electrical accident which caused the fire. *Id.* In 2013, Haughey filed for a writ of habeas corpus stating that he received inadequate legal representation. *Id.* In 2016, District Attorney Robert Tendy and the Conviction Integrity Review unit re-examined Haughey’s case. *Id.* That same year, Tendy requested to grant Haughey’s writ and vacate the conviction. *Id.* Tendy’s re-investigation found that there was no evidence of arson. *Id.* “[I]t was agreed, Haughey had been convicted and sentenced to prison for attempting to extinguish the fire—not set it.” *Id.* “Haughey’s conviction was vacated and the charges were dismissed.” *Id.* He sought compensation from the city and filed a federal civil rights lawsuit. *Id.*

<sup>49</sup> See Maurice Possley, *Herbert Landry*, NAT’L REGISTRY EXONERATIONS (Jan. 30, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5078#> [hereinafter *Herbert Landry*]. Landry was charged with first-degree aggravated arson in Provo, Utah in 2006. *Id.* Firefighters were alerted to a fire at an apartment complex. *Id.* Landry moved to the complex after Hurricane Katrina. *Id.* In January, Landry returned to his apartment for his belongings, but the landlord had changed the locks thinking that Landry moved out. *Id.* Landry broke into the apartment for his belongings, which was followed by the landlord deciding to evict Landry. *Id.* Landry and the landlord agreed that he would vacate the apartment on February 26 at 9 p.m. *Id.* Landry moved out and went to a hotel for the night. *Id.* Around 4:30pm the fire started and thereafter neighbors “told investigators that Landry was being evicted, that he was leaving for Texas and that he had left the complex not long before the fire broke.” *Id.* Another neighbor told police that he saw a man, unfamiliar to him knocking on Landry’s door immediately preceding the incident, but the police failed not follow up on the report, resulting in Landry being the prime suspect. *Id.* When the news showed Landry as wanted, he went back to the apartment; thereafter, a police officer “sent him



detected by forensic experts, Landry was convicted due to the testimony of the K9 handler who stated that K9 detection was more accurate than laboratory equipment.<sup>50</sup>

The least common place for accidental fires is a workplace,<sup>51</sup> yet they still occur as in the case of Jennifer Hall.<sup>52</sup> The police and

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to the police station to be interviewed.” *Id.* Landry denied involvement but said that since the landlord had changed the locks, he kept the apartment unlocked. *Id.* Fire investigators said the fire began in Landry’s bedroom and found burn patterns that hinted at a flammable liquid. *Id.* An “ignitable liquid smelling’ dog . . . alerted to three locations in the bedroom and samples of the floorboards were removed and sent to the crime lab for testing”; Landry’s shoe and a sock were also sent to lab. *Id.* Despite the laboratory tests showing no signs of flammable liquids, Landry was arrested. *Id.* At trial, tenants and the landlord testified against Landry. *Id.* Fire investigators testified about the pour patterns and the dog handler testified about where the dog had alerted; even if the lab results showed no signs of flammable liquid, the dog handler told the jury that the dog was more accurate than any lab test. *Id.* The defense called the resident who testified about “a tall skinny black man” knocking on Landry’s door. *Id.* After a two-day trial, Landry was convicted and sentenced to five years to life in prison. *Id.* After numerous denied appeals, in 2010, an attorney from Rocky Mountain Innocence Center sought a new trial. *Id.* The petition argued that the arson investigators relied on “outdated and unproven arson theories” and that Landry received an inadequate representation since his attorney failed to call an arson expert or consult one during the cross-examination of the prosecution’s fire investigators. *Id.* In addition, the defense did not object to the testimony about the dog alerts. *Id.* The Utah Court of Appeals reversed and sought a new trial. *Id.* At trial, an arson expert testified that the fire investigators were wrong to have relied on the pour patterns, but the judge dismissed the petition. *Id.* In 2016, the Utah Court of Appeals, for a second time, reversed the trial judge and vacated Landry’s conviction. *Id.* At that time, Landry had been released on parole in 2014 and had moved to Texas. *Id.* In 2017, the charges were dismissed. *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Cf. U.S. Fire Statistics, supra* note 30 (explaining U.S. residential fires outnumbered non-residential fires 364,300 to 96,800 in 2016).

<sup>52</sup> *See* Maurice Possley, *Jennifer Hall*, NAT’L REGISTRY EXONERATIONS (June 6, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3271>

[hereinafter *Jennifer Hall*]. Hall was charged with first-degree arson in Harrisonville, Missouri in 2001. *Id.* A fire commenced in the respiratory therapy room of the medical center, resulting in approximately \$23,000 in damage. *Id.* “Hall was the only respiratory therapist on duty at the time.” *Id.* She told authorities that she was outside when the fire alarm went off. *Id.* “She rushed back into the building and, along with two other employees, . . . turned off the oxygen valve in the room to prevent an explosion.” *Id.* While there, she accidentally burned her hand. *Id.* Investigators noticed Hall’s injury as well as charred paper around the fire and concluded that Hall set the fire. *Id.* At trial, Hall’s private attorney “failed to examine the evidence and routinely mixed up facts.” *Id.* “The prosecution argued that Hall . . . was unhappy about a sexual harassment claim she had filed against a co-worker, who died two weeks before the fire” and therefore intentionally set the fire (where she got burned) in an attempt at gallantry for attempting to extinguish it. *Id.* The jury convicted Hall of second-degree arson, but per her attorney’s advice, she pled guilty falsely claiming to have accidentally dropped a cigarette and received three years in prison. *Id.* A new attorney hired an expert, Carl Martin, to review the evidence. *Id.* Martin found that the fire was caused by an electrical shortage on an old clock while the charred papers were files that were on top of a computer which melted due to the heat and fell on the floor. *Id.* “[T]he Missouri Court of Appeals affirmed Hall’s conviction.” *Id.* Hall’s attorney filed a motion arguing that she received an “inadequate legal defense.” *Id.* In 2004, Cass County Judge Cook, who was a trial judge in Hall’s case, “ruled that Hall’s trial defense attorney [was] ineffective.” *Id.* Hall was released on parole, but the prosecution sought a retrial. *Id.* In 2005, at the second trial, a jury acquitted her. *Id.* “Hall filed a federal lawsuit

forensics found a motive and physical evidence to claim that Hall set up the fire.<sup>53</sup> Specifically, the police found Hall’s report where she accused a co-worker of sexual assault, but the case was dismissed because the alleged perpetrator died and she did not receive her justice, which the prosecution took for motive.<sup>54</sup> In addition, Hall was badly injured from the fire and the police suspected her of setting it since they found the charred paper at her workplace.<sup>55</sup> Only after some time was it discovered that Hall was only saving people from the fire, rather than setting it.<sup>56</sup>

Insurance policies often signal a potential defendant; as in the case of James Hebshie, who was wrongly convicted after the prosecution contended that he had motive to burn down his business in order to collect on the insurance.<sup>57</sup> Similar cases are of Frederick Mardlin, where a fire investigator, hired by the insurance company, claimed that Mardlin was guilty and was then convicted.<sup>58</sup> The next is the

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against her trial defense attorney seeking to recover more than \$100,000 paid in fees.” *Id.* The case was dismissed with no disclosure as to whether it was settled. *Id.*

<sup>53</sup> *See id.*

<sup>54</sup> *See id.*

<sup>55</sup> *See id.*

<sup>56</sup> *See id.*

<sup>57</sup> *See* Maurice Possley, *James Hebshie*, NAT’L REGISTRY EXONERATIONS (May 10, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3857>

[hereinafter *James Hebshie*]. Hebshie was charged with arson and mail fraud in Taunton, Massachusetts in 2001. *Id.* Hebshie, an owner of a convenience store, was suspected of setting it on fire as he was the last one to leave. *Id.* Following an investigation by the local fire authority and investigators employed by an insurance company, Hebshie was arrested. *Id.* At trial in 2006, prosecutors argued that Hebshie set the fire as a ploy to collect \$30,000 on the insurance policy. *Id.* “State Trooper David Domingos, an investigator in the State Fire Marshal’s Office, testified that . . . the fire started in the wall of Hebshie’s store,” not the basement. *Id.* The authorities brought in an accelerant-sniffing dog which was alerted to the area contended to be the origin of the fire. *Id.* A state chemical analysis identified it as a light petroleum distillate. *Id.* Hebshie was sentenced to 15 years in prison. *Id.* In 2010, the court ruled that Hebshie’s defense was inadequate since they did not challenge the prosecution’s scientific evidence. *Id.* The new defense sought Lentini, “one of the nation’s leading fire scientists, [to] analyze[] the evidence and concluded the fire started in the basement—which was not part of Hebshie’s leased space in the building.” *Id.* The sniffing dog’s accuracy was also questioned. *Id.* The judge critiqued “evidence collection procedures and noted that the light petroleum distillate could have come from a number of products in Hebshie’s store.” *Id.* In 2010, Hebshie was released on bond. *Id.* In 2011, the prosecution dismissed the charges. *Id.*

<sup>58</sup> *See* Maurice Possley, *Frederick Mardlin*, NAT’L REGISTRY EXONERATIONS (Apr. 27, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4108> [hereinafter *Frederick Mardlin*]. In 2006, Mardlin was charged with two counts of arson in Capac, Michigan. *Id.* Mardlin’s neighbors called firefighters as the fire broke out. *Id.* Fire investigators concluded that it was arson. *Id.* Mardlin was not in his home at the time of incident, but was nevertheless arrested. *Id.* At trial, both Michigan State Police Sergeant Michael Waite and David Stayer, a fire investigator hired by the insurance company, testified that the “fire was intentionally set in a love seat.” *Id.* Prosecutors argued that Mardlin had defaulted on several mortgage payments, which seemed to be a proper motive. *Id.* Additionally,

case of Jerome Rubin whereby the insurance company introduced records regarding Rubin’s debt complications, thereby providing a potential motive for burning his home.<sup>59</sup> While in the case of Daniel

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“[i]n 1994, his truck burned while he was fishing. In 2001, his van’s engine caught fire and burned his uninsured mobile home. In 2003, a van he drove for a carpet business caught fire, and in 2006, a blanket left on a kerosene heater in his home had ignited.” *Id.* Defense fire expert, Trenkle, testified that Sergeant Waite’s and David Stayer’s original hypothesis was incorrect and that the fire started behind a couch, but due to lack of funds no more tests were done. *Id.* “Prior to trial, Mardlin’s attorney had requested that an electrical expert be appointed to examine the outlet and power cords in the room where the fire began, but the motion was denied.” *Id.* In 2007, Mardlin was convicted and sentenced to three to twenty years in prison. *Id.* “Mardlin’s appellate attorney found an electrical expert who examined the outlet and cords . . . [and] concluded that the fire was caused by . . . a short in a cord leading from a power-strip [which] created a significant heat source that, in turn, caused the outlet to overheat and ignite.” *Id.* In 2008, the trial judge, on remand, denied a motion for a new trial. *Id.* “In May 2009, the Michigan Court of Appeals reversed the conviction . . . rul[ing] that the evidence of the other fires had been improperly admitted.” *Id.* “In 2010, the Michigan Supreme Court reversed the appeals court . . . and reinstated the conviction,” sending the case back to the appeals court. *Id.* In 2011, Mardlin was released on parole. *Id.* In 2012, the Michigan Court of Appeals set aside the conviction, ruling that there was reversible error at the trial level, namely the failure to permit the introduction of the testimony of an electrical expert which could have led to Mardlin’s acquittal. *Id.* The charges were dismissed in 2013. *Id.* Mardlin filed a civil action against the state of Michigan, seeking compensation, but Mardlin would later die in 2017 resulting in the dismissal of the claim. *Id.*

<sup>59</sup> See Maurice Possley, *Jerome Rubin*, NAT’L REGISTRY EXONERATIONS (Feb. 11, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4887> [hereinafter *Jerome Rubin*]. In 2007, Rubin was charged with “arson, insurance fraud and attempting to commit a crime,” in Framingham, Massachusetts. *Id.* Firefighters were called to combat a fire that had started at a local business. *Id.* There was “smoldering fire” in the basement. *Id.* Rubin, the owner of the business, alleged he was in the building around 6 a.m. and after fifteen minutes, Rubin noted he attended a drug store, the latter of which was confirmed by video surveillance. *Id.* Subsequent to Sergeant Cook’s investigation, he claimed there was but one viable conclusion, the fire was started with an “open flame.” *Id.* Following Sergeant Cook’s investigation, an investigator, working for the insurance company, operated a separate investigation, however the cause of the fire was “undetermined.” *Id.* Rubin informed authorities that he was in debt and “owed more than \$500,000 on his home, had two mortgages on the business . . . and was on a payment plan with the Internal Revenue Service.” *Id.* While the insurance company declined to pay for damages, Rubin took it upon himself to repair the damage in an effort to reopen the store. *Id.* After eighteen months, Rubin was indicted by grand jury. *Id.* At trial, Sergeant Cook and the prosecutor said “Rubin set the fire in an attempt to collect on his insurance policy.” *Id.* Defense expert focused solely on Cook’s findings. *Id.* In 2010, the jury deadlocked three times and then sentenced Rubin to two years in prison; he was released on parole in 2011. *Id.* The appeal was assigned to a public defender agency and private attorney Lehman also reviewed the case. *Id.* In 2013, Lehman filed a motion for a new trial claiming that Rubin received inadequate legal representation. *Id.* Lehman presented an affidavit from a fire protection engineer, Titus, who analyzed the documents and found no evidence of Rubin intentionally setting the fire. *Id.* Titus blamed Cook for relying on “negative corpus” theory—that the absence of accidental cause meant the fire was intentionally set,” was violating the fire investigation standards and, overall, Cook’s investigation was incomplete. *Id.* In 2014, a Superior Court Judge vacated Rubin’s conviction. *Id.* The judge found that the defense fire expert was “minimally qualified” and hence was not able to help Rubin during the trial, whereas, Rubin’s defense counsel did not present any eyewitness testimony or any other evidence to contradict the insurance company’s investigator. *Id.* In 2016, the prosecution dismissed the charges and Rubin filed a claimed for compensation from the state of Massachusetts. *Id.*

Burreson, the prosecution’s main argument was that Burreson burned his boat to collect on the insurance policy, which was enough for a conviction.<sup>60</sup> Lastly, Joseph Awe was wrongly convicted for arson of his home once the insurance fire expert and an informant called the police during the investigation stage claiming that Awe burned the house to collect the insurance policy.<sup>61</sup>

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<sup>60</sup> See Maurice Possley, *Daniel Burreson*, NAT’L REGISTRY EXONERATIONS (June 19, 2016), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4919> [hereinafter *Daniel Burreson*]. In 1998, Burreson was charged with arson in Berrien, Michigan. *Id.* Firefighters reported to Burreson’s home to combat a fire that ultimately consumed Burreson’s boat. *Id.* In 1998, “an insurance company investigator concluded that the fire was intentionally set with an accelerant to collect on the insurance policy” and Burreson went to trial. *Id.* “The prosecution’s expert testified that the fire was intentionally set with an accelerant. A defense expert testified that the fire was accidental and was the result of . . . Burreson’s wife’s four-year-old grandson.” *Id.* The defense’s motion to present Burreson’s testimony about the grandson “crying hysterically and saying that he was sorry for burning the boat,” and the mother of the boy’s testimony to testify, was barred. *Id.* Burreson, along with being sentenced to three years of probation, was also required to wear an electronic monitoring device for a year. *Id.* “In July 2000, the Court of Appeals of Michigan reversed the conviction and ordered a new trial[.] . . . h[olding] that the testimony about the boy’s admissions should have been allowed.” *Id.* The prosecution appealed to the Michigan Supreme Court, but it was denied. *Id.* Burreson’s charges were dropped in 2001. *Id.*

<sup>61</sup> See Maurice Possley, *Joseph Awe*, NAT’L REGISTRY EXONERATIONS (July 24, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4161> [hereinafter *Joseph Awe*]. In 2007, Awe was charged with arson in Harrisville, Wisconsin. *Id.* A fire burst in a local pub. *Id.* During the time at which the fire erupted, the owner, Joseph Awe, was home more than thirty miles away. *Id.* Both the bar and the apartment, which was unoccupied, were destroyed in the fire. *Id.* Despite a cursory investigation, Awe became the prime suspect as the firefighters tasked with the investigation concluded the fire was not accidental. *Id.* The insurance company hired a fire expert and an accountant to study Awe’s finances. *Id.* Awe was charged following the statement of a police informant, Kohel, who alleged Awe had previously shared with Kohel his desire to burn down the building in an attempt to collect on the insurance policy. *Id.* In return for Kohel’s testimony, prosecutors dismissed numerous charges pending against him. *Id.* The insurance fire experts “testified that the fire was intentionally set by someone who punched a hole in the back of the bar . . . [and] said they had eliminated all other causes for the blaze.” *Id.* The fact that the arson experts were compensated by the insurance company was completely withheld by the prosecution. *Id.* The defense’s fire specialist said the cause was electrical. *Id.* Awe “said the building had numerous electrical problems.” *Id.* “Awe also disputed the state’s evidence that he and his wife were suffering financially, and provided records showing they had more than \$3,000 a month in income from his military and Social Security disability payments.” *Id.* In 2007, Awe “was sentenced to three years in prison and nine years supervision, but was allowed to remain free while he appealed the conviction.” *Id.* The insurance company sued Awe for the fees they paid to fire experts. *Id.* In 2010, Awe’s appeal was rejected and he began serving his sentence. *Id.* In 2011, the Wisconsin State Journal questioned whether fire experts who were paid by the insurance company were truly impartial. *Id.* “Awe filed a . . . petition for a new trial . . . [and] [i]n 2013 . . . [a] Marquette County Circuit Court Judge . . . vacated Awe’s conviction and ordered a new trial. *Id.* “Judge Wright found that the state’s experts had improperly testified that the fire was caused by arson” only because “no other cause for the blaze could be established.” *Id.* “Awe was released from prison, two months before completing his prison term . . . [and] prosecutors dismissed the case.” *Id.* “Awe filed a lawsuit against the [insurance company] . . . seeking damages and accusing the company of ‘meddling’ with the criminal investigation. The lawsuit was settled for an undisclosed amount in July 2014.” *Id.*

Overall, when it comes to accidental deaths or property damage, the prosecution’s main, but unfortunately flawed, agenda is to find someone liable for the damage by inventing a motive using outside information such as personal debts and insurance policies. In addition, the police and the forensics also sometimes lack objectivity when investigating the case, thereby no longer seeking justice, but framing an innocent person as guilty.

### B. *Suicide*

Suicide is another commonly misinterpreted death for a homicide.<sup>62</sup> In 2016 “[s]uicide was the tenth leading cause of death” in the U.S.<sup>63</sup> When it comes to the manner of death, the most common way victims die from suicide is by using a firearm, followed by suffocation, poisoning, and any other form.<sup>64</sup> Both murder and suicide have many factors in common, including a dead body, and even a deadly weapon; as a result, there are a number of cases where experts have mistakenly claimed one for the other.<sup>65</sup>

When it comes to investigating a report on death, investigators and forensics begin the autopsy right at the crime scene—since most evidence based on observation is located right at the scene.<sup>66</sup> Besides the murder weapon, the forensics also examine the place and position of the body, the place of the weapon, if present, and the place of other evidence that may help explain whether the death of the victim was a suicide or a homicide.<sup>67</sup> However, perpetrators may stage the crime scene as a suicide to overcome conviction, which can fool law enforcement from reporting the case as a homicide.<sup>68</sup> Such a one-sided argument may cause another problem: investigators and

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<sup>62</sup> See generally *Suicide*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/suicide> (last visited Feb. 22, 2019) (“[T]he act or an instance of taking one’s own life voluntarily and intentionally.”).

<sup>63</sup> *Suicide*, NAT’L INST. MENTAL HEALTH (May 2018), <https://www.nimh.nih.gov/health/statistics/suicide.shtml>.

<sup>64</sup> See *id.* at tbl. 2.

<sup>65</sup> See, e.g., Matt Doran, *Murder or Suicide? The Exhumation of Michelle O’Connell*, HUFFINGTON POST (May 24, 2016), [https://www.huffingtonpost.com/matt-doran/murder-or-suicide-the\\_b\\_10110682.html](https://www.huffingtonpost.com/matt-doran/murder-or-suicide-the_b_10110682.html); Maurice Possley, *Raynella Dossett Leath*, NAT’L REGISTRY EXONERATIONS (June 2, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5146> [hereinafter *Raynella Dossett Leath*].

<sup>66</sup> See Renee M. Robinson et al., *Forensic Scene Investigation: Overview*, MEDSCAPE (Nov. 6, 2016), <https://emedicine.medscape.com/article/1680358-overview>.

<sup>67</sup> See *id.*

<sup>68</sup> See Seth Augenstein, *Staged Crime Scenes: Suicide, Murder or Disappearance?*, FORENSIC MAG. (Dec. 8, 2016), <https://www.forensicmag.com/article/2016/12/staged-crime-scenes-suicide-murder-or-disappearance>.

experts becoming suspicious of all crime scenes and incorrectly reporting a suicide as a homicide—which has occurred in cases and led to wrongful convictions.<sup>69</sup> For instance, Raynella Dossett Leath was wrongly convicted for the murder of her husband, who was shot in the head.<sup>70</sup> Because the investigator argued that the location of

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<sup>69</sup> See *Raynella Dossett Leath*, *supra* note 65.

<sup>70</sup> See *Raynella Dossett Leath*, *supra* note 65. Dossett Leath was charged with first-degree murder of her husband, David Leath, in Knoxville, Tennessee. *Id.* “On the morning of March 13, 2003, the 57-year-old David Leath was found dead of a gunshot wound to the head in the bedroom of his home . . . [where a] handgun was found next to his right hand.” *Id.* Police ruled the case as a homicide based on the revolver being discharge not once, not twice, but three times where one bullet hit the wall, another the mattress, and finally Leath. *Id.* The County deputy medical examiner ruled that Leath’s death was a homicide without referring to Leath’s medical records. *Id.* No physical evidence, including the gunshot residue, connected Dossett Leath to Leath’s death. *Id.* Police suspected Dossett Leath because her first husband, Ed Dossett, also died under violent circumstances. *Id.* Ed Dossett was the Knox County District Attorney General. *Id.* “In 1992, Dossett was suffering from terminal cancer when he was trampled by cattle and died.” *Id.* “In 1996, Dossett Leath was charged with firing several shots at Steve Walker. Dossett Leath said Walker was snooping around her farm and she shot into the ground to scare him off.” *Id.* Dossett Leath “pled guilty to a reduced charge of aggravated assault [and] she was sentenced to six years of supervision with no jail time and the case was expunged. *Id.* Years earlier, Walker’s wife, a colleague of Leath, had an affair with Dossett, whereby she would later announce that Dossett, not Walker, was the father of her son. *Id.* “The Knox County District Attorney General Randy Nichols recused the office from investigating Leath’s death . . .” *Id.* In 2006, even though the investigation was open, no charges had been filed. *Id.* “Leath’s daughter from his previous marriage, filed a civil lawsuit against Dossett Leath claiming that either she killed Leath or that she hired someone to kill him,” in an attempt to prevent Dossett from sharing in the inheritance. *Id.* “[I]n November 2006, Dossett Leath was charged with first-degree murder of her second husband[,] . . . [and] authorities began re-investigating the cattle-trampling death of her first husband.” *Id.* A couple of years later, Dossett Leath would be charged with the murder of her first husband. *Id.* The medical examiner concluded, based on numerous reports, that Ed Dossett’s death stemmed from a morphine overdose, not a stampede. *Id.* In 2009 and unable to come to a unanimous verdict, the County Court was forced to grant a mistrial. *Id.* In 2010, at a second trial, the medical examiner testified that “Leath was shot once in the forehead above his left eye, in which he was blind[, and] [t]he shot was fired from 12 to 14 inches away.” *Id.* In an effort to invalidate the possibility of the incident being rendered a suicide, the medical examiner concluded that, based on the toxicology reports, Leath would have physically been unable to kill himself. *Id.* Pursuant to the testimony, there were no fingerprints on the revolver and there appeared to be postmortem activity with the body as Leath’s body was found “tucked” into the bed.” *Id.* Prosecution also presented evidence of entries from Dossett Leath’s calendar, including comments such as “‘Dave paranoid, bad argument,’ ‘Dave hateful,’ ‘Dave in bed all day,’ and ‘I’m tired of it.’” *Id.* Dossett Leath’s daughter left for school at or about 8:20 a.m. on the day in question. *Id.* Dossett Leath watched television with her husband, made him breakfast, and put clothes in the dryer. *Id.* She then reached out to Leath’s daughter as she was concerned Leath had left without eating. *Id.* Hospital personnel corroborated evidence put forth by the defense that Dossett Leath was in fact at the hospital at that particular time. *Id.* It was confirmed that Dossett Leath exited the hospital at 10:45 a.m. to, as she proposed, to bring her daughter medicine. *Id.* The prosecution would go on to argue that such activities served as a ploy to build an alibi, whereas the truth was Dossett Leath murdered her husband subsequent to her daughter leaving for school, and then positioning the gun in such a fashion as to give the impression that her husband’s death was a suicide. *Id.* Following Dossett Leath being convicted and sentenced to life in prison, the prosecution dropped all pending charges against her with respect to the death of her first husband. *Id.* A motion for new trial and an

the gun looked staged, it led Dossett Leath to be suspected and convicted.<sup>71</sup> On appeal, it was found that a police officer arriving on the scene took the gun, and then later placed it back on the crime scene for the forensics to take the photos.<sup>72</sup> In Leath’s case, many factors hinting at the victim’s suicide were overlooked, such as the fact that the victim had a list of chronic diseases and that he was regularly taking various medications.<sup>73</sup> These factors can increase an individual’s chances of dying from a suicide.<sup>74</sup> Specifically, diagnosis of a chronic disease and the use of certain medications can cause a person to develop a mental health disorder.<sup>75</sup> All of these factors are known to be as biopsychosocial causes to die from suicide.<sup>76</sup>

As in accidental death cases, there are also suicide cases where

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appeal were denied. *Id.* In 2015, and in support of their filing for post-conviction relief seeking a new trial, Dossett Leath’s legal team claimed that medical records which were not introduced at the trial prove that Leath had dementia since 2002 and his condition was deteriorating. *Id.* Also, some time before his death, “his physician noted in the records that Leath was suffering from mood changes, a failing memory, and feelings of frustration and being demoralized.” *Id.* In addition, former Sheriff’s deputy Robinson told a defense investigator that at the day of the incident, when he arrived at Leath’s home, “he saw a police officer emerge from the home carrying the gun that killed Leath,” and that this “occurred prior to the arrival of crime scene technicians.” *Id.* Robinson’s sworn affidavit later explained the prosecution’s claim that “the gun had been placed on the bed in a way that looked staged.” *Id.* Despite Robinson’s recantation, his account was later settled by the paramedic on the scene. *Id.* “Brookshire gave a sworn statement that before any crime scene technicians were on the scene, he saw an officer holding a revolver in his hand . . .” *Id.* The defense witness, a professor of pathology who examined medical examiner’s reports, said “the drugs found in Leath’s bloodstream were ‘at levels within the therapeutic range,’” and he could not have been drugged nor was he incapacitated. *Id.* In addition, the petition noted that the trial judge lacked the requisite capacity during the trial given his use of pain-killers, such that the defense argued the sole reason their motion for a new trial was denied was because of an ongoing investigation into the trial judge. *Id.* Consequently, the trial judge was later convicted on both state and federal charges for his illicit use of pain-killers. *Id.* In 2016, Dossett Leath was released on bond and granted a new trial for the trial judge deprived her of a constitutional right to a fair trial. *Id.* In 2017, the prosecution, relying on the findings of a blood spatter expert, alleged that Leath was in fact sitting, not lying in bed. *Id.* “The defense presented the medical evidence to show that Leath had in fact committed suicide.” *Id.* Prior to deliberations, defense’s motion for a judgment of acquittal was granted for despite the uncertainty surrounding as to whether Leath committed suicide or was murdered, lacking from the record was any credible evidence that Dossett Leath was nearby when Leath died. *Id.*

<sup>71</sup> *See id.*

<sup>72</sup> *See id.*

<sup>73</sup> *See id.*

<sup>74</sup> *See* April Kahn, *Suicide and Suicidal Behavior*, HEALTHLINE (Jan. 27, 2016), <https://www.healthline.com/health/suicide-and-suicidal-behavior>.

<sup>75</sup> *See id.*

<sup>76</sup> *See, e.g.,* VAN HOPWOOD & CLARE DONNELLAN, ACUPUNCTURE IN NEUROLOGICAL CONDITIONS 40 (2010) (“The biopsychosocial model considers individuals as well as their health problem and the social context. It recognizes that health, disease, illness and disability result from complex interactions of biological, emotional, cognitive, social and environmental factors.”).

investigators utilized coerced methods for obtaining a confession. In the case of Beverly Monroe, who was wrongly charged for the murder of her boyfriend, the investigator strongly suspected that she killed her boyfriend, and to prove his assertions he interrogated her for hours and even threatened her until she gave a false confession.<sup>77</sup> Just as in accidental cases, official misconduct also played its role in suicide cases leading to wrongful convictions.<sup>78</sup>

Another factor that may lead the case to wrongful conviction is the lack of objectivity of the investigator at pre-trial stages. For instance, Katherine Dendel was wrongly convicted for the murder of her partner when the victim’s doctors and sister urged the investigator to open the case and side-tracked the investigation.<sup>79</sup> They argued

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<sup>77</sup> See Stephanie Denzel, *Beverly Monroe*, NAT’L REGISTRY EXONERATIONS (Nov. 7, 2016), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3482> [hereinafter *Beverly Monroe*]. In 1992, Monroe was charged with first-degree murder of her 60-year old boyfriend, Roger Zygmunt de la Burde, in Powhatan County, Virginia. *Id.* Monroe found her boyfriend dead in his home. *Id.* The death of Burde was first ruled as a suicide, however a detective charged with investigating the case believed “Monroe had murdered the victim out of jealousy for sleeping with other women.” *Id.* The detective interrogated Monroe for eight hours, “suggesting that she had blocked the memory of the killing,” until she admitted that “she might have been at the victim’s home at the time of the death and blocked the memory.” *Id.* The detective also met with Monroe and threatened that she would not see her children unless she signed the statement that she was at home when the death occurred. *Id.* Monroe was arrested and went to trial where the “prosecution experts testified that, based on the position in which the gun was found, the victim could not have shot himself.” *Id.* The prosecution provided evidence of Monroe attempting to purchase a gun from an individual prior to her boyfriend’s death. *Id.* In 1992, a jury convicted Monroe and sentenced her to twenty-two years in prison. *Id.* Monroe’s daughter, a licensed attorney, discovered that the prosecution had withheld evidence that “the witness claiming that Monroe tried to buy a gun was given a deal in exchange for her testimony”; a groundskeeper informed police that “he had moved the gun when he found the body”; “[m]edical documents concluding the death was a suicide . . . as were notes from the interrogation of Monroe supporting her contention that the detective manipulated her.” *Id.* Monroe’s conviction was overturned and her motion for habeas corpus relief was granted in 2002. *Id.* In 2003, the Court of Appeals upheld the decision. *Id.* Shortly thereafter, Monroe was released. *Id.*

<sup>78</sup> See, e.g., Maurice Possley, *Brad Jennings*, NAT’L REGISTRY EXONERATIONS (Aug. 20, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5357> [hereinafter *Brad Jennings*]; see also *Glossary*, *supra* note 3 (“Police, prosecutors, or other government officials significantly abused their authority or the judicial process in a manner that contributed to the exoneree’s conviction.”).

<sup>79</sup> See Maurice Possley, *Katherine Dendel*, NAT’L REGISTRY EXONERATIONS (Feb. 13, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5092> [hereinafter *Katherine Dendel*]. In 2002, Dendel was charged with first-degree murder for the death of Paul Burley in Jackson, Michigan. *Id.* Dendel found Burley dead in their home and called 911. *Id.* According to the prosecution, in an attempt to collect on a payout from Burley’s life insurance, Dendel purposefully injected Burley with insulin. *Id.* Statements from Dendel and the medical examiner regarding Burley’s consciousness prior to his death were in complete contradiction with one another. *Id.* The paramedic testified that Dendel “wanted Burley’s body cremated, and . . . did not want an autopsy or for Burley’s family to be contacted.” *Id.* Given Burley’s extremely low glucose levels, a toxicologist concluded it would have been nearly impossible for Burley to have injected himself. *Id.* The prosecution’s case was further bolstered



that Dendel was guilty because she admitted to being overwhelmed taking care of the victim since he had a list of illnesses requiring constant care.<sup>80</sup> Factually similar to Leath’s case, in Dendel’s case, the victim suffered from a list of illnesses and had to take a long list of medications, which may have contributed to his depression, resulting in a suicide.<sup>81</sup> Further, Brad Jennings was convicted for the murder of his wife which initially was ruled to be a suicide, but the case was reopened after an inquiry of the victim’s sister to re-investigate the case and which led to the withholding of forensic evidence vindicating the defendant.<sup>82</sup> Another is John Tomaino, who

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by the testimony of Burley’s neurologist who confirmed that no medications Burley was prescribed would have caused such a drastic decrease in his glucose levels. *Id.* Burley’s sister alleged that Dendel urged to not place Burley in a nursing home because the nursing home, not Dendel, would receive medical benefit payments. *Id.* In addition, there was testimony that Dendel allegedly “said she felt ‘like giving him a shot of insulin.’” *Id.* According to Dendel, Burley had numerous health related issues. *Id.* Dendel too was diabetic, and she stated that taking care of her own health issues, coupled with those of Burley, became overwhelming, especially due to the fact that Burley had not yet qualified for residential care. *Id.* In 2003, Dendel was convicted and ultimately sentenced to seventeen and one-half to fifteen years in prison. *Id.* An evidentiary hearing was held to address Dendel’s defense attorney’s claim that Dendel’s trial lawyer’s defense was legally inadequate for neglecting to call an expert witness. *Id.* Dendel’s new lawyer presented testimony from a forensic pathologist stating that “the prosecution’s evidence did not significantly support a finding that Burley’s death resulted from an insulin overdose, and that a multiple drug overdose was also a possible cause of death.” *Id.* Despite Dendel’s motion for a new trial being denied in 2005, 2006 fared much better for the order was subsequently reversed by the Michigan Court of Appeals. *Id.* “In 2008, the Michigan Supreme Court reversed that ruling and remanded the case back to the Court of Appeals, which, in 2010, upheld Dendel’s conviction.” *Id.* In 2012, Dendel was released on parole and filed a writ of habeas corpus claiming that her trial lawyer was inadequate. *Id.* However, the writ was denied. *Id.* In 2016, “the Sixth Circuit U.S. Court of Appeals granted the writ and vacated Dendel’s conviction,” ordering a new trial. *Id.* In 2017, the prosecution dismissed the charge. *Id.*

<sup>80</sup> *See id.*

<sup>81</sup> *See id.*; *Raynella Dossett Leath*, *supra* note 65; *see also* Kahn, *supra* note 74 (explaining that diagnoses with a serious medical condition, taking certain medications and suffering with depression are risk factors for suicide).

<sup>82</sup> *See Brad Jennings*, *supra* note 78. Jennings was charged with second-degree murder and armed criminal action for the murder of his wife in Buffalo, Missouri in 2006. *Id.* In 2006, following a family gathering where both Jennings and his wife had been drinking, they returned home and would later get into an altercation. *Id.* Shortly after midnight, authorities were called to the Jennings’s residence on a report that a woman had been shot in the head. *Id.* At the home, police discovered a revolver under the deceased’s body. *Id.* Jennings’s wife’s, Lisa, death was ruled a suicide. *Id.* Upon the belief that Jennings killed Lisa, Lisa’s sister met with Sergeant Dan Nash demanding that the investigation be re-opened. *Id.* Nash went forth with the re-investigation and came across a photo portraying a single drop of blood on Lisa’s hand, however, according to Nash, if Lisa committed suicide there would have been more blood. *Id.* Jennings maintained his innocence and provided what he was wearing at the incident. *Id.* “A forensic analysis revealed microscopic traces of blood” on the clothing, which was a positive match of Lisa’s blood, but Jennings argued the blood was transferred when he found her in the room after hearing the gunshot. *Id.* In 2009, Jennings was arrested and brought to trial. *Id.* Despite being married for eighteen years, police contended that “their relationship had deteriorated in recent years . . . [and] asserted, Lisa told friends she was going to move into her

was wrongfully convicted for the murder of his wife when the investigation by the chief investigator was contaminated from the very beginning by the victim’s friends’ and relatives’ assertions that the victim would have never committed suicide due to her religious views.<sup>83</sup> Further, Andrew Golden was wrongly convicted for the

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own apartment and end the marriage.” *Id.* On the night of the incident, Lisa’s adult daughter, Laci Deckard, testified that after 1 a.m. she heard Lisa crying, followed by accusations by Jennings that Lisa had been with another man. *Id.* The Sheriff’s Deputy, who was at the crime scene when Jennings called the police, testified that “Jennings was wearing a shirt, jeans, and shoes, and was drinking a beer;” Lisa’s body was in the closet. *Id.* The autopsy of Lisa was conducted by a forensic pathologist who later testified that the “blowback” was caused by the revolver being discharged so close to her head, essentially “rip[ing] her scalp apart.” *Id.* Neither Lisa’s arm, hand, nor the gun, contained traces of blood or tissue, leading Nash to conclude that Lisa’s death was not a suicide. *Id.* Despite there being no presence of gunshot residue on Jennings’ hands, the prosecution nevertheless contended that Jennings must have washed his hands subsequent to Lisa’s death. *Id.* The prosecution entirely ruled out the possibility of a suicide based primarily on the testimony of a paramedic who stated that in cases involving suicide, the gun typically does not land under the victim, whereas in this case, that is exactly what happened. *Id.* Jennings denied any involvement in Lisa’s death, alleging that at the time of her death, “he went out to his shop to tinker and have a beer.” *Id.* Upon reentering the home, Jennings claims he discovered Lisa’s body in their bedroom closet where he then moved her body and contacted local law enforcement. *Id.* The prosecution argued that “Lisa had gunshot residue on her hand because she was near Jennings when he shot her.” *Id.* In 2009, Jennings was convicted and sentenced to twenty-five years in prison. *Id.* In 2010, the Missouri Court of Appeals upheld the convictions. *Id.* A few years thereafter, Jennings’ sister contacted a retired law enforcement officer, requesting that he analyze the evidence. *Id.* In 2015, an attorney reviewed a particular file within the larger police file which confirmed the negative results of gunshot residue performed on the robe. *Id.* Consequently, in 2016, an attorney representing Jennings sought habeas corpus relief due to the prosecution’s failure to produce the results conducted on the robe. *Id.* The prosecutor, however, denied any allegation regarding his knowledge of the report. *Id.* In 2018, Jennings was granted a new trial and was subsequently released from prison. *Id.* In April of the same year, all charges against Jennings were dismissed. *Id.*

<sup>83</sup> See Maurice Possley, *John Tomaino*, NAT’L REGISTRY EXONERATIONS (May 12, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4169> [hereinafter *John Tomaino*]. John Tomaino of Wheatland, New York, was charged with the murder of his wife, Linda. *Id.* Tomaino’s marriage was falling apart and the two were a couple of weeks away from finalizing their divorce, one that was highly contentious. *Id.* When Linda did not attend Sunday school at the church at which she taught, Tomaino sent his daughter to check on Linda. *Id.* Tomaino’s daughter was unable to unlock the door, at which time Tomaino broke down the door, later to find his wife lying in a pool of her own blood. *Id.* Linda suffered a gunshot wound to the head. *Id.* Tomaino noted that there was a revolver lying in Linda’s lap. *Id.* The authorities originally ruled Linda’s death a homicide. *Id.* However, the autopsy report concluded that “Linda was shot from a distance of about 18 inches, making it virtually impossible for her to have shot herself.” *Id.* At first, an indictment to charge Tomaino was unsuccessful. *Id.* Discontent with the result, Linda’s relatives urged investigators to continue investigating. *Id.* This time, however, the second grand jury returned an indictment charging Tomaino with his wife’s murder. *Id.* The prosecution’s case-in-chief centered around the theory that Tomaino murdered his wife, and in an attempt to divert the authorities, staged the crime scene by positioning Linda’s body in such a manner so as to mimic a suicide. *Id.* Further, the prosecution relied on the testimony of several witnesses and a forensic scientist who stated that Tomaino was upset with his wife and the body was moved postmortem, respectively. *Id.* The defense however objected for “the prosecution’s experts had failed to adequately search for gunshot residue, which would have shown the gun was fired at close range.” *Id.* Nevertheless,

murder of his wife, where the investigators based their accusation solely on the fact that he owed money and took out life insurance on his wife, which was taken as a motive.<sup>84</sup> In all of these cases, due to the involvement of outside parties of the case, the investigator was no longer objective which led to legal violations including the withholding of evidence and a wrongful conviction.

In addition, when investigators are working on a case, they may utilize various tactics, including making a deal with the witness as long as she implicates the perpetrator. This was the case for Lon Walker whose primary witness wrongly accused him of murdering their friend since she made a deal with the investigator for her husband to get released from pre-trial detention.<sup>85</sup>

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Tomaino was convicted and sentenced to twenty years in prison. *Id.* In 1998, Tomaino’s conviction was vacated and the indictment dismissed due to numerous serious errors permitted to take place. *Id.* Despite Tomaino being released, a third grand jury re-indicted Tomaino for the murder of his wife. *Id.* Tomaino’s second murder trial uncovered the ambiguity surrounding Linda’s body being moved postmortem, the fact that “the [crime] scene had been contaminated by responding police and emergency personnel . . . [and] the blood on the bedding was consistent with a suicide.” *Id.* As such, in 1999, Tomaino was acquitted. *Id.*

<sup>84</sup> See Alexandra Gross, *Andrew Golden*, NAT’L REGISTRY EXONERATIONS (June 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3242> [hereinafter *Andrew Golden*]. Golden charged with the 1989 murder of his wife in Winter Haven, Florida. *Id.* “On September 13, 1989, police found the body of Ardelle Golden floating in a lake” and her car was found submerged. *Id.* Following a several month investigation, Golden was arrested. *Id.* Golden maintained his innocence and filed motions for a dismissal; the motions were denied. *Id.* At trial, the prosecution argued that Golden owed money and drowned his wife for life insurance. *Id.* Golden did collect on the life insurance policy, and when asked about it, lied to investigators about doing so. *Id.* Surprisingly, Golden was sentenced to death despite the prosecution’s inability to prove Ardelle’s death was a homicide. *Id.* Detrimental to Golden’s case appeared to be his defense being unable to establish that Ardelle’s death was a suicide. *Id.* In fact, the defense failed to introduce evidence that “[Ardelle] was depressed over the recent death of her father, several notices of her father’s death were found in the car, a coffee mug was wedged near the brake, and the water in the lake was not above the victim’s head.” *Id.* In turn, Golden’s conviction was vacated and he was subsequently released. *Id.*

<sup>85</sup> See Maurice Possley, *Lon Walker*, NAT’L REGISTRY EXONERATIONS (Nov. 30, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4797> [hereinafter *Lon Walker*]. In 1997, Lon Walker was arrested and charged with the murder of James Harp in Cookeville, Tennessee. *Id.* Harp’s body was found was discovered in Walker’s trailer, and according to Stacy Patzer, Harp had committed suicide. *Id.* Despite police obtaining information regarding Harp’s previous suicide attempts and that Harp had allegedly expressed to his brother that he was going to commit suicide, the autopsy report indicated that Harp had “died of a contact gunshot wound.” *Id.* Shortly thereafter, police arrived at Walker’s trailer and escorted Patzer to the police station for further questioning, lasting approximately three hours. *Id.* During questioning, and despite her previous conclusion regarding Harp’s death, Patzer stated to the officer that Harp’s death was not a suicide, but Walker in fact shot Harp. *Id.* Further, Patzer was concerned as to whether Walker had been apprehended for she alleged that Walker had “threatened her because she implicated him in Harp’s death.” *Id.* Patzer would later become the prosecution’s primary witness at trial. *Id.* The pistol discovered at the scene of the crime was in fact Walker’s. *Id.* However, out of fear, Walker initially denied ownership of the gun. *Id.* Contrary to Patzer’s testimony at trial, the defense presented

Besides investigators, when it comes to forensic experts reviewing the evidence during pre-trial stages, it is important to identify the techniques used to assess the evidence, as they may be outdated. Han Tak Lee, was the victim of a wrongful conviction for the murder of his daughter when the forensic arson experts relied on outdated techniques when investigating the causes of fire, and mistakenly ruled that the fire was deliberately set.<sup>86</sup> Similarly, Freda Susie Mowbray was convicted for the murder of her husband where the prosecution based their accusation solely on a blood spatter result

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evidence of Patzer’s prior inconsistent statements regarding the cause of Harp’s death. *Id.* This included “her 911 call saying that Harp had committed suicide, as well as statements to her husband and some friends that Harp had shot himself.” *Id.* In addition, the defense’s case-in-chief consisted of statements from Harp’s brother of Harp’s prior attempts at suicide, all of which occurred under factually similar circumstances. *Id.* Namely, “[Harp] was drunk” during the prior suicide attempts. *Id.* The defense also presented testimony of a close associate, Willie Bennis of Patzer, who testified that “[Patzer] would have said ‘anything [she] ha[d] to’ to get her husband released from pretrial detention.” *Id.* Furthermore, Bennis testified that Patzer and Harp, prior to Harp’s death, had an altercation with one another, and alleged that because of such altercation, Harp killed himself. *Id.* At the conclusion of the trial, Walker was convicted and sentenced to twenty years in prison. *Id.* Subsequent to Walker’s conviction, and after failing at the Tennessee Court of Criminal Appeals, Walker, in 2003, filed a writ of habeas corpus. *Id.* Walker’s petition outlined numerous evidentiary errors, including, but not limited to a “claim[] that the prosecution had made improper arguments to the jury and that the judge had erroneously instructed the jury that Patzer’s statement to the 911 operation . . . [could] not [serve] as evidence that Harp in fact killed himself.” *Id.* Walker’s petition for habeas corpus relief was denied, but subsequently granted by the U.S. Court of Appeals for the Sixth Circuit. *Id.* The court agreed with the evidentiary errors alleged in the petition, and in 2012, Walker was released from prison and the charge dismissed. *Id.*

<sup>86</sup> See Maurice Possley, *Han Tak Lee*, NAT’L REGISTRY EXONERATIONS (Dec. 28, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4820> [hereinafter *Han Tak Lee*]. In 1989, Han Tak Lee was charged with first-degree murder of his daughter, Ji Yun Lee. *Id.* It all began on July 29, 1989, when a fire broke out in a cabin in Monroe County, Pennsylvania. *Id.* Authorities came to the conclusion that Lee deliberately set the fire. *Id.* The prosecution’s case-in-chief consisted of three witnesses: an expert in the origin of fires, the fire marshal, and a chemist. *Id.* Their testimony supported the proposition that “the fire burned so fast and at such an extraordinarily high temperature that it could only have been caused by the intentional use of accelerants.” *Id.* The defense’s case-in-chief relied solely upon the theory that Lee’s daughter committed suicide after a battle with depression. *Id.* Moreover, the defense in fact neglected to call an arson expert as a witness for he was unable to pinpoint the “actual cause of the fire.” *Id.* Lee testified that he exited the cabin once the fire erupted. *Id.* However, according to Lee, “[w]hen he realized Ji Yun was still inside, he went back inside, but could not find her and fled because the flames and smoke were too intense.” *Id.* At the conclusion of the trial, the jury found Lee guilty and sentenced him to life in prison without the possibility of parole. *Id.* After several failed attempts at receiving a new trial, Lee, in 2008, filed a writ of habeas corpus. *Id.* At first, the petition was denied, however, a hearing was subsequently granted by the U.S. Court of Appeals for the Third Circuit. *Id.* The magistrate assigned to the case recommended the petition be granted. *Id.* Consequently, in 2014, Lee’s writ was granted and his conviction vacated. *Id.* Lee was to be tried within 120 days and was subsequently “released . . . pending retrial.” *Id.* The prosecution’s appeal of the Third Circuit Court of Appeals’ decision was denied and chose not to appeal to the U.S. Supreme Court, resulting in the 120 day time period in which the prosecution had to retry Lee to lapse. *Id.*

which was gathered with luminol, and which later was found to be unreliable since it illuminates any particle, including blood spatter.<sup>87</sup>

The accuracy of the forensic evidence results depends not just on the techniques performed, but also on the credentials of the forensic expert investigating the case. In the case of Virginia LeFever, the toxicologist lied about his credentials as an expert and dubiously performed the tests implicating LeFever in the murder of her husband.<sup>88</sup> In the 1970s, there was an ongoing scandal about forensic experts with respect to the requisite level of accreditation, and as a result, conducted flawed forensic tests which led to wrongful convictions.<sup>89</sup>

In some cases, more than one expert gets to examine evidence, whose results are then presented to the jury.<sup>90</sup> However, this may also open the door for more mistakes, which increases the chance of wrongful convictions.<sup>91</sup> This was the case for Cesar Munoz where a

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<sup>87</sup> See Stephanie Denzel, *Freda Susie Mowbray*, NAT'L REGISTRY EXONERATIONS (June 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3495> [hereinafter *Freda Susie Mowbray*]. In 1987, Freda Susie Mowbray was charged with the murder of her husband, Bill, in Brownsville, Texas. *Id.* Contrary to Mowbray's contention that her husband committed suicide “while she was lying in bed next to him,” police investigators concluded, based on the blood spatter pattern, Mowbray killed her husband. *Id.* Prior to trial, the prosecution obtained a second opinion with respect to the blood spatter whereby the expert concluded the method previously used by police investigators was unreliable. *Id.* Aware of this report, the prosecution nevertheless refused to disclose the information until a few weeks before trial. *Id.* Furthermore, the prosecution neglected to call the witness to testify at trial. *Id.* Based on police testimony that was in direct contrast to the findings of the blood spatter expert, Mowbray was convicted of murder and sentenced to life in prison. *Id.* Approximately seven years later, at a post-conviction hearing, “police investigators who had testified at Mowbray's trial admitted . . . that there was no scientific support for their testimony.” *Id.* As such, Mowbray was granted a new trial. *Id.* Following the prosecution's appeal and the United States Supreme Court denying review, “Mowbray went on trial a second time” and was acquitted of all charges. *Id.*

<sup>88</sup> See Stephanie Denzel, *Virginia LeFever*, NAT'L REGISTRY EXONERATIONS (Sept. 28, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3378> [hereinafter *Virginia LeFever*]. Virginia LeFever was charged with murdering her husband, William, in 1988 in Newark, Ohio. *Id.* William died from an overdose of antidepressants. *Id.* The prosecution, relying on an expert toxicologist, claimed LeFever must have injected her husband for “[William] would have died much sooner if he had ingested an entire bottle.” *Id.* That is, the prosecution alleged LeFever poisoned her husband. *Id.* Further, the prosecution's theory also alleged that “when [William] did not die soon enough, she shut him in a closed room with a pesticide fumigant.” *Id.* In turn, LeFever was convicted of her husband's murder and sentenced to life. *Id.* However, approximately two decades later, LeFever's attorney revealed that “the toxicologist had lied about his credentials.” *Id.* As such, LeFever's conviction was vacated and she was subsequently released from prison. *Id.*

<sup>89</sup> See Jordan Michael Smith, *Forget CSI: A Disaster is Happening in America's Crime Labs*, BUS. INSIDER (Apr. 30, 2014), <https://www.businessinsider.com/forensic-csi-crime-labs-disaster-2014-4>.

<sup>90</sup> See, e.g., Alexandra CC Derwin, *The Judicial Admission of Faulty Scientific Expert Evidence Informing Wrongful Convictions*, 8 W. J. LEGAL STUD. 1, 15 (2018).

<sup>91</sup> See, e.g., NAT'L INST. OF JUST., THE BIOLOGICAL EVIDENCE PRESERVATION HANDBOOK:

locksmith expert and a forensic analyst both confidently provided inaccurate analysis of results.<sup>92</sup>

Overall, because suicide cases look very similar to homicide, some experts are not well-equipped to be able to distinguish one from the other.<sup>93</sup> Therefore, just as in accidental death cases, the forensics must rely on innovative and proven methods and techniques for gathering, storing, and analyzing the evidence from the crime scene.<sup>94</sup> In regards to the police officers and investigators, instead of rushing to close a case by dubious means, it is best to continue seeking justice for the victims and finding the true causes of victims' deaths.

### C. *Fabricated Crime*

In comparison to accidents and suicides mistakenly ruled for a

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BEST PRACTICES FOR EVIDENCE HANDLERS 9 (2013) (noting the risk of contamination when packaging and storing evidence); *Misapplication of Forensic Science*, INNOCENCE PROJECT, <https://www.innocenceproject.org/causes/misapplication-forensic-science/> (last visited Feb. 7, 2019).

<sup>92</sup> See Maurice Possley, *Cesar Munoz*, NAT'L REGISTRY EXONERATIONS (Feb. 19, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4239> [hereinafter *Cesar Munoz*]. In 2000, Cesar Munoz was charged with the murder of Magdaliz Rosario, his common-law wife in Chicago, Illinois. *Id.* Munoz would be subject to four different trials, one of which was declared a mistrial and the other two were reversed on evidentiary grounds. *Id.* Throughout the first three trials, both the prosecution's and defense's case-in-chief remained unchanged. The prosecution alleged that Munoz was jealous of Rosario's affair with John Flores, thereby establishing motive. *Id.* In further support of their case, the prosecution noted that the bedroom door which Munoz initially alleged was locked prior to the gun being discharged, was in fact unlocked. *Id.* Moreover, the prosecution noted that Munoz's tale of events with respect to discarding the gun was unsubstantiated for "the gun was found underneath garbage—not on top where it would be expected to have landed if it had been tossed out of the second floor bedroom window." *Id.* In response, the defense continued to rely on the theory that Rosario was suffering from depression and committed suicide. The fourth trial, however, in an attempt to bolster its case, the defense introduced evidence from a locksmith and a child psychologist. *Id.* The former stated that the door "was in fact locked," as Munoz stated at the outset of the case, and the latter testified that "Rosario had been abandoned by her mother as a very young child and had become depressed prior to the shooting when her mother refused to meet with her," thus reinforcing their theory of the case. *Id.* A separate ambiguity that had taken its ride throughout the previous three trials was the fact that Rosario is right handed, but the gunshot residue was nevertheless found on Rosario's left hand. *Id.* The inconsistency notwithstanding, for the first time, the defense offered evidence that "suggested that the gunshot residue on Rosario's left hand . . . was the result of her holding the gun in her left hand and pulling the trigger with her right thumb." *Id.* Based on the evidence, Munoz was ultimately acquitted in 2013. *Id.*

<sup>93</sup> See Naomi Whidden, *Investigators Use Many Methods to Tell Difference Between Homicide, Suicide*, JDNEWS.COM (July 16, 2017), <https://www.jdnews.com/news/20170716/investigators-use-many-methods-to-tell-difference-between-homicide-suicide>.

<sup>94</sup> See, e.g., NAT'L INST. OF JUST., *supra* note 91, at 9; Ryan Thompson, *Concurrent Expert Evidence: Hot Tubbing in America? Experts Jump in*, NAT'L L. REV. (Aug. 31, 2016), <https://www.natlawreview.com/article/concurrent-expert-evidence-hot-tubbing-america-experts-jump>.

crime, fabricated crime stands out from the others due to the fact that it is not mistakenly, but intentionally claimed, which results in wrongful convictions.<sup>95</sup> One of the first elements of a fabricated crime is when a false report of a crime is filed to the police station.<sup>96</sup> Uniform Crime Reporting (UCR) acknowledges such reports, and once cleared to be false, labels them as unfounded cases.<sup>97</sup> However, if the crime reports are not found to be false, then they are investigated, leading to a wrongful conviction; only after years of legal battle and exoneration, the case is ruled to be unfounded.

Just as in accidental and suicidal cases, official misconduct was also contributing in fabricated crime cases; only in this category, the police were found to be inventing crimes to charge innocent bystanders and thereby wrongfully convicting them.<sup>98</sup> As in the cases of Seneca Adams and Tari Adams, who were charged with assaulting a police officer after the officers stopped Seneca Adams, arrested, and physically assaulted him in a police car before coming to the precinct.<sup>99</sup> Interestingly, that officer’s testimony about the alleged

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<sup>95</sup> See Robert Dunham, *DPIC Analysis: Causes of Wrongful Convictions*, DEATH PENALTY INFO. CTR. (May 31, 2017), <https://deathpenaltyinfo.org/causes-wrongful-convictions>; *Detective at the Center of Wrongful Convictions of Keith Hardin and Jeff Clark Retires*, INNOCENCE PROJECT (Feb. 28, 2018), <https://www.innocenceproject.org/detective-at-the-center-of-wrongful-convictions-of-keith-hardin-and-jeff-clark-retires/> see also *Fabricate*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/fabricate> (“[T]o make up for the purpose of deception[;] accused of *fabricating* evidence[.]”) (emphasis in original).

<sup>96</sup> See NAT’L SEXUAL VIOLENCE RES. CTR., FALSE REPORTING: OVERVIEW 2 (2012), [https://www.nsvrc.org/sites/default/files/Publications\\_NSVRC\\_Overview\\_False-Reporting.pdf](https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Overview_False-Reporting.pdf) (“A false report is a reported crime to a law enforcement agency that an investigation factually proves never occurred.”).

<sup>97</sup> See UNIF. CRIME REPORTING (UCR) PROGRAM, FED. BUREAU OF INVESTIGATION, SUMMARY REPORTING SYSTEM (SRS) USER MANUAL 111 (2013), <https://ucr.fbi.gov/nibrs/summary-reporting-system-srs-user-manual>.

<sup>98</sup> See, e.g., Jay Stanley, *Police Accidentally Record Themselves Conspiring to Fabricate Criminal Charges Against Protester*, ACLU (Sept. 19, 2016), <https://www.aclu.org/blog/free-speech/photographers-rights/police-accidentally-record-themselves-conspiring-fabricate>.

<sup>99</sup> See Maurice Possley, *Seneca Adams*, NAT’L REGISTRY EXONERATIONS (Dec. 8, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4563> [hereinafter *Seneca Adams*]; Maurice Possley, *Tari Adams*, NAT’L REGISTRY EXONERATIONS (Dec. 8, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4562> [hereinafter *Tari Adams*]. On September 14, 2004, Seneca Adams was confronted by several officers with their weapons drawn. *Id.* After Seneca got down on the ground, he was brutally beaten and handcuffed by the officers. *Id.* Bleeding profusely, Seneca was shoved in a police car where the beating continued. *Id.* Seneca’s siblings, Sicara and Tari, both witnessed the suspicious activity. *Id.* As such, Sicara and Tari followed the police car containing their brother. *Id.* Shortly thereafter, the two confronted the police officers, which led to Tari being punched in the face. *Id.* The officers returned Seneca back to his apartment complex with Tari and Sicara following shortly behind. *Id.* However, en route, the car carrying Tari and Sicara was struck on the driver’s side door by a police car. *Id.* “Panicked, Tari sped off,” and when the car came to a halt, Tari was handcuffed and beaten by the police. *Id.* Both Seneca and Tari were charged with “aggravated assault on a police officer.” *Id.* Tari would eventually be

assault was enough for the judge to convict Adams of misdemeanor battery.<sup>100</sup> The case correlates with the argument that once an officer is not caught violating the law, they are then prone to do it again.<sup>101</sup> Meanwhile, some more quick-thinking police officers, when violating the law, look for a way to blame it all on the individual, thereby wrongfully charging him with a crime he did not commit. For instance, Dwight Allen was the victim of a police shooting, who was accused of charging at the officer to justify the officer’s shooting.<sup>102</sup>

Just as in the previous sections, no crime cases may be the result of both false forensic science and police officers’ lack of objectivity. In Amy Albritton’s case, the officers blindly relied on false forensic field test results which led to her conviction.<sup>103</sup> Albritton was charged with

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released on bond, however, Seneca remained in custody. *Id.* At trial, both Seneca and Tari were acquitted of the aggravated assault charges, but were nevertheless convicted of misdemeanor battery. *Id.* Afterwards, “prosecutors requested that the convictions of Seneca and Tari be vacated,” for the officers involved in the trial were later indicted “for planting evidence on defendants, falsely accusing defendants of having guns, and breaking into homes and robbing residents of guns, money and drugs and then filing false reports.” *Id.* That same year, all three filed a civil rights lawsuit. Approximately nine years later, Seneca, Sicara, and Tari were all compensated for the injustice. *Id.*

<sup>100</sup> See Seneca Adams, *supra* note 99.

<sup>101</sup> Cf. Michael Bloch, *When Cops Lie Under Oath, Prosecutors Must Take Some Blame*, USA TODAY (Feb. 22, 2018), <https://www.usatoday.com/story/opinion/policing/2018/02/22/when-cops-lie-under-oath-prosecutors-must-take-some-blame/360414002/> (“Dismissals on grounds that a prosecutor did not believe his or her police witness are virtually unheard of. In my experience, prosecutors are overwhelmingly more likely to protect their officer witnesses in the face of indiscretions than to unwind a case they are invested in.”).

<sup>102</sup> See Maurice Possley, *Dwight Allen*, NAT’L REGISTRY EXONERATIONS (Oct. 10, 2016), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5004> [hereinafter *Dwight Allen*]. In 1999, Dwight Allen was cut off by an off-duty Baltimore police officer, Stuart Parker. *Id.* The two pulled over, began yelling at each other and according to Parker, “Allen . . . came toward him in a threatening manner.” *Id.* Parker alleged that he requested Allen to stop multiple times, such that when Allen failed to do so, Parker pulled his firearm and shot Allen in the leg. *Id.* Allen was later charged with assaulting a police officer and Parker was the subject of an internal police investigation, however, he “was cleared of any wrongdoing.” *Id.* Shortly after his conviction in 2000, Allen retained a new legal team. *Id.* Allen’s attorneys, in pursuit of their investigation, came across several files, one of which contained “interviews with three eyewitnesses who said that Allen did not charge at Parker and in fact had both hands in the air when Parker shot him.” *Id.* As such, Allen’s motion for a new trial was granted and Allen was subsequently released with all charges dismissed. *Id.*

<sup>103</sup> See Maurice Possley, *Amy Albritton*, NAT’L REGISTRY EXONERATIONS, (July 24, 2018) <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4951> [hereinafter *Amy Albritton*]. Amy Albritton was traveling with her boyfriend, Anthony Wilson, to Houston, Texas. *Id.* The car in which the two were traveling belonged to Albritton, however, she was merely a passenger on the day in question. *Id.* The two would later be pulled over by police, and while the car was being searched, discovered was crumb which later tested positive for cocaine. *Id.* After charges were filed, Albritton pled guilty to possession of a controlled substance. *Id.* While Albritton’s time in jail was forty-five days, once released, she was evicted and lost her job. *Id.* Approximately one year after her release, “the Houston police crime laboratory tested the white crumb and no controlled substance was found.” *Id.* It was not until roughly four years following the negative test results that Albritton was informed of false field-



possession of a controlled substance after the officers conducted a car search, found a white speck and when tested on the field, concluded that it was a gram of cocaine.<sup>104</sup> A similar case was of Johnny Adams where officers also relied on a field test that tested positive for cocaine.<sup>105</sup> In both cases, the field drug test was later found to be erroneous, but due to the perceived accuracy of the results, both defendants had pled guilty to avoid harsh sentences, which were vacated years after when it was found that the field test was misleading.<sup>106</sup>

In like manner, official misconduct may occur without the officer’s intent, but it still leads to wrongful conviction. For instance, Medell Banks was convicted for the murder of an infant when his wife was arrested on a separate offense, and to get released, she lied that she was pregnant.<sup>107</sup> After three months, the police inquired about the baby and after learning that she had a miscarriage, interrogated the family for hours, and threatened them with the death penalty until

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test. *Id.* Albritton then, with legal assistance, succeeded in having her conviction vacated. *Id.* In 2016, the charge of possession of a controlled substance was dismissed. *Id.*

<sup>104</sup> *See id.*

<sup>105</sup> *See* Maurice Possley, *Johnny Adams*, NAT’L REGISTRY EXONERATIONS (Mar. 18, 2016), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4854> [hereinafter *Johnny Adams*]. Johnny Adams, a man with a lengthy criminal record, was arrested in Houston, Texas in 2008 after police discovered a substance in Adams’s possession which later field-tested positive for cocaine. *Id.* Because of his criminal past, Adams pled guilty to possession of a controlled substance, facing a sentence of ninety days. *Id.* However, following Adams’s guilty plea, “the Houston Police crime laboratory tested the substance and no controlled substance was found.” *Id.* This report was sent to the district attorney’s office but was “inadvertently overlooked.” *Id.* In turn, five years had passed before anyone reviewed the findings contained in the report. *Id.* In 2015, Adams’s legal team filed a writ of habeas corpus. *Id.* The petition was granted, Adams’s conviction was vacated and the charge was dismissed. *Id.*

<sup>106</sup> *See Amy Albritton, supra* note 103; *Johnny Adams, supra* note 105.

<sup>107</sup> *See* Maurice Possley, *Mendell Banks*, NAT’L REGISTRY OF EXONERATIONS (Apr. 22, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3010> [hereinafter *Medell Banks*]. Victoria Bell Banks, in 1999, was incarcerated in Butler, Alabama. *Id.* In an attempt to be released, Victoria claimed to have been pregnant and was threatening legal action if the county did not release her. *Id.* Two doctors would later examine Victoria, while the “first doctor found no evidence of pregnancy . . . the second doctor reported hearing a fetal heartbeat.” *Id.* Still curious of Victoria’s alleged pregnancy, investigators interrogated Victoria, her husband Medell, and her sister Diane, for days. *Id.* All three were unrepresented, and to make matters worse, all three possessed a very low IQ. *Id.* Unable to trust what was being said, police remained alert, and “eventually, Victoria and her sister admitted that a baby was born and claimed that they and Medell murdered the baby.” *Id.* All three were charged with capital murder, and all three pled guilty to manslaughter, each being sentenced to fifteen years in prison. *Id.* Despite his guilty plea, Medell continued to express his innocence. *Id.* In 2002, at the request of Medell’s defense attorney’s, the testing performed on Victoria “confirmed that her tubes were still blocked, and the results were consistent with a tubal ligation, rather than an infection,” as alleged by the state. *Id.* Come to find out, “[i]nvestigators admitted that they had lied to Medell” during the interrogation. *Id.* Consequently, Medell’s charges were dismissed. *Id.*

all three, with low intelligence, confessed to murdering the baby.<sup>108</sup> In this case, the officers’ primary concern was to solve the supposedly criminal case, where three adults were suspected of murdering an infant.<sup>109</sup> However, they did not realize in time that they were also violating the rights of the defendants by interrogating and intimidating them for hours, leading to a wrongful conviction.<sup>110</sup>

Just as in the previous case, in the cases of Darryl Adams and Ronald Eubanks, on two occasions the police pressured the individuals involved in the case.<sup>111</sup> First, a police officer pressured the alleged victim about whether she was raped by the two suspects;<sup>112</sup> on the second occasion, police officers aggressively questioned the alleged suspects until they pled guilty to receive a lighter sentence.<sup>113</sup> In other words, police tactics for deriving a confession, also known as the Reid technique,<sup>114</sup> has inadvertently resulted in obtaining false confessions and leading to wrongful convictions.<sup>115</sup> With regard to fabricated crimes, a false confession, if presented in court, sometimes becomes a tool by which a person is convicted for no crime.<sup>116</sup>

Unfortunately, submitting a false crime report may not be difficult,

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<sup>108</sup> *See id.*

<sup>109</sup> *See id.*

<sup>110</sup> *See id.*

<sup>111</sup> *See* Jennifer Emily, *DNA Clears Dallas County Man of Rape but Path to Exoneration Not Clear*, DALL. NEWS (Apr. 2016), <https://www.dallasnews.com/news/crime/2016/04/08/dna-clears-dallas-county-man-of-rape-but-path-to-exoneration-not-clear>; Maurice Possley, *Darryl Adams*, NAT’L REGISTRY EXONERATIONS (Feb. 2, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5089> [hereinafter *Darryl Adams*]; Maurice Possley, *Ronald Eubanks*, NAT’L REGISTRY EXONERATIONS (Feb. 18, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5090> [hereinafter *Ronald Eubanks*]. In 1992, Dallas police officers rushed to the scene of an alleged rape. *Darryl Adams, supra*. When the police arrived at the scene, they found a woman and two men, Darryl Adams and Ronald Eubanks, sleeping on the street nearby. *Id.* The woman first denied being raped, however, shortly thereafter the woman “said that Adams had raped her and that Eubanks had attempted to rape her.” *Id.* Both men were charged with and pled guilty to aggravated sexual assault, where both were sentenced to ten years’ probation. *Id.* Adams and Eubank had their probation revoked and were sentenced to twenty-five and ten years in prison, respectively. *Id.* The next two decades consisted of Adams and Eubanks requesting further DNA testing, and it was not until 2014 that “the final round of testing of the rape kit identified a male DNA profile and excluded both Adams and Eubanks.” *Id.* Both men petitioned for a writ of habeas corpus and in 2016, their petitions were granted and their charges dismissed. *Id.*

<sup>112</sup> *See Ronald Eubanks, supra* note 111.

<sup>113</sup> *See Emily, supra* note 111.

<sup>114</sup> Reid technique is a method of a police interrogation that has been critiqued for producing false confessions. *See* Evan Nesterak, *Coerced to Confess: The Psychology of False Confessions*, PSYCH REP. (Oct. 21, 2014), <http://thepsychreport.com/conversations/coerced-to-confess-the-psychology-of-false-confessions/>.

<sup>115</sup> *See id.*; Richard A. Leo, *Police Interrogation and Suspect Confessions* 1–4, 8, 11–12 (Univ. S.F. Law Research, Paper No. 2018-09).

<sup>116</sup> *See, e.g., Nesterak, supra* note 114; *Medell Banks, supra* note 107.

since not only officials, but also business owners, succumb to this practice against their own employees for financial gain.<sup>117</sup> In the cases of Cheryl Adams, charged with felony larceny,<sup>118</sup> and Mary Mengloi, charged with theft,<sup>119</sup> both were working at Cumberland Farms, which fabricated an accusation allegedly claiming that the women had stolen and used the store’s products without paying for them; the company offered them a deal of pleading guilty and paying restitution.<sup>120</sup> Besides these women, numerous other employees were accused of similar charges, pled guilty, and paid the restitution.<sup>121</sup> Years later, the charges were vacated and Cumberland Farms agreed to pay a settlement to the exonerated.<sup>122</sup>

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<sup>117</sup> See Maurice Possley, *Cheryl Adams*, NAT’L REGISTRY EXONERATIONS (Oct. 28, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4536>, [hereinafter *Cheryl Adams*]; Maurice Possley, *Mary Mengloi*, NAT’L REGISTRY EXONERATIONS (Oct. 26, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4533>, [hereinafter *Mary Mengloi*].

<sup>118</sup> See *Cheryl Adams*, *supra* note 117. Cheryl Adams, an employee at Cumberland Farms, was ordered to leave her register. *Id.* Adams was accused of stealing and “allowing customers to leave without paying.” *Id.* Despite the accusations, Adams professed her innocence. *Id.* Nevertheless, interrogators, taking advantage of her marital issues, threatened Adams with custody of her son. *Id.* As such, Adams subsequently signed a written confession. *Id.* Consequently, Adams was charged with “larceny of more than \$250, a felony.” *Id.* Approximately one year later, a Philadelphia newspaper circulated several stories—many of which were factually similar to Adams’s case—illuminating that “Cumberland Farms employees[, and not just Adams] . . . had been coerced to falsely confess to theft.” *Id.* A few years after the stories’ release, Adams’ conviction was vacated and her case dismissed. *Id.* Adams’ attorney “filed a lawsuit on behalf of Adams and numerous other Cumberland employees who . . . were similarly forced to false[ly] confess to theft and were fired.” *Id.* Adams and the other parties to the suit received compensation from Cumberland Farms. *Id.*

<sup>119</sup> See *Mary Mengloi*, *supra* note 117. Mary Mengloi, a recovering drug addict, was employed at Cumberland Farms in Boca Raton, Florida as a cashier. *Id.* Without any corroborating evidence, two other Cumberland Farms employees accused Mengloi of stealing food and not charging customers for their purchases. *Id.* Mengloi was then requested to go to one of the rooms in the back where she was accompanied by one of the two employees, Richard Doyle, who “demanded that she confess.” *Id.* If not, Doyle threatened to file criminal charges against her. *Id.* Due to Mengloi’s drug addicted past, she was fearful that a conviction would result in her children being taken away from her. *Id.* As a result, and at the request of Doyle, Mengloi signed a written statement confessing to the accusations and agreeing to pay back an agreed upon sum. *Id.* However, not long after signing the confession, Mengloi was involved in a car accident and was unable to repay Cumberland Farms. *Id.* Accordingly, a criminal complaint was filed against Mengloi. *Id.* At trial, despite her testimony that she signed the written confession, Mengloi professed her innocence, “contend[ing] that she signed the confession after she was threatened with criminal prosecution and the loss of her children.” *Id.* Nevertheless, Mengloi was convicted of grand larceny. *Id.* In 1991, Mengloi sought to appeal her conviction, but it was denied. *Id.* In 1992, however, new evidence had surfaced “that other Cumberland Farms employees . . . had been coerced to falsely confess.” *Id.* Approximately one year later, Mengloi was granted a new trial at which her conviction was vacated. *Id.* Mengloi, along with several other Cumberland Farms employees, received compensation in a settlement with their former employer. *Id.*

<sup>120</sup> See *Cheryl Adams*, *supra* note 117; *Mary Mengloi*, *supra* note 117.

<sup>121</sup> See *Mary Mengloi*, *supra* note 117.

<sup>122</sup> See *id.*

Police officers were found to be fabricating crimes against people, yet there are also cases where the roles were switched, and a police officer was facing criminal charges based on a false accusation.<sup>123</sup> In the case of Sandra Adams, she was charged with second-degree menacing because a motorist claimed that Adams pointed a gun at him before speeding off.<sup>124</sup> Later, it was found that Adams did not even have her gun on her, as she had a shoulder injury weeks before the alleged incident and could not hold a gun.<sup>125</sup> Yet, the false accusation has significantly impacted Adams’ life since she was fired from the police department after her conviction.<sup>126</sup>

All the above-mentioned cases show how accessible it is to file a false crime report that can withstand the justice system and lead to a wrongful conviction. Therefore, before adjudication, crime reports should not be reviewed one-sided, but thoroughly examined to avoid another wrongful conviction.

### III. CONCLUSION

This article has presented and discussed some of the issues that occur before adjudication in “no crime cases,” leading to wrongful conviction. The paradox of the no crime cases is that the issues are varied and do not have a distinct party to blame. Overall, the key issues that occur before adjudication are due to the investigator’s lack of objectivity. Since their goal is to prepare the case for trial in “the best way” possible, they are prone to use various tactics, from offering a deal to witnesses, to using coerced tactics to obtain a false

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<sup>123</sup> See, e.g., Maurice Possley, *Sandra Adams*, NAT’L REGISTRY EXONERATIONS (Apr. 1, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4130>, [hereinafter *Sandra Adams*].

<sup>124</sup> *Id.* In 1997, a Rochester, New York police officer, Sandra Adams, was involved in an accident when the driver in front of her unexpectedly slammed on the brakes. *Id.* The driver of the car, William Cross, alleged that in addition to speeding around him, Adams had pointed her gun at him as she passed. *Id.* Cross obtained Adams’s license plate number and would later identify Adams as the individual who pointed a gun at him at a “photographic lineup that was highly suggestive because Adams was the only African American and the only person wearing a police uniform.” *Id.* Adams endlessly denied ever pointing a gun at Cross. *Id.* In fact, “Adams said that her gun was at home.” *Id.* Yet, Adams would be found guilty of second-degree menacing. *Id.* Her conviction led to her termination at the Rochester Police Department. *Id.* Shortly after the trial, Adams’ attorney “accused the prosecution of misconduct” for improperly withholding evidence that would have gone directly to William’s credibility. *Id.* Adams’ second trial began in 1999 whereby the judge “who heard the trial without a jury, acquitted Adams.” *Id.* As a result, Adams would later be reinstated by the Rochester Police Department. *Id.*

<sup>125</sup> See *id.*

<sup>126</sup> See *id.*

accusation or a false confession.<sup>127</sup> Along with the prosecution, the investigators may be side-tracked once they find evidence that at first glance seems to be a strong motive (e.g., insurance policy) for the defendant to commit the crime.<sup>128</sup>

Besides the investigators, forensic experts may be unreliable themselves, due to the absence of credentials, as well as the use of invalid and outdated methods and techniques (e.g., burn patterns, serology) for analyzing the evidence.<sup>129</sup> When it comes to false crime reports, from this case sample, they were filed not just by police, but also by civilians (i.e., individuals, legal entities).<sup>130</sup> There is a wide range of people that take part in pre-trial proceedings<sup>131</sup> and depending on how correctly and unbiased they will perform their duties, will depend on the classification of the crime, by which the person will or will not be charged. If these procedures will be incompetently conducted, then accidental deaths can be taken for murder, accidental fires for arson, suicide for homicide, and the like.<sup>132</sup> As a result, innocent people might be facing punishments, some of which are irreversible, where no crime was committed. While there is still data of wrongful conviction for no crime cases, the criminal justice system still has work to do.

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<sup>127</sup> See, e.g., *Beverly Monroe*, *supra* note 77; *Michael Branch*, *supra* note 40; *William Amor*, *supra* note 21.

<sup>128</sup> See, e.g., *James Hebshie*, *supra* note 57; *Sheila Bryan*, *supra* note 31; *William Amor*, *supra* note 21.

<sup>129</sup> See, e.g., *Freda Susie Mowbray*, *supra* note 87; *Sheila Bryan*, *supra* note 31; *Victor Caminata*, *supra* note 34; *Virginia LeFever*, *supra* note 88.

<sup>130</sup> See, e.g., *Darryl Adams*, *supra* note 111; *Mary Mengloi*, *supra* note 117; *Seneca Adams*, *supra* note 99.

<sup>131</sup> See, e.g., *Frederick Mardlin*, *supra* note 58; *Herbert Landry*, *supra* note 49; *Katherine Dendel*, *supra* note 79.

<sup>132</sup> See, e.g., *Beverly Monroe*, *supra* note 77; *Michael Branch*, *supra* note 40; *Sheila Bryan*, *supra* note 31.