

TUNNEL VISION: CAUSES, EFFECTS, AND MITIGATION STRATEGIES

*Brian Reichart**

I. INTRODUCTION

The recent spate of exonerations has alerted the public about the problem of intentional prosecutorial misconduct.¹ However, an even more disturbing insight gained from the study of exonerations is that many of these wrongful convictions resulted from something shy of intentional misconduct. We have seen investigations that were deeply flawed by an approach in which legal actors focused solely on building a case against a specific suspect rather than conducting a thorough investigation.²

In recent years, scholars have focused on “tunnel vision” as a cause of wrongful convictions.³ Tunnel vision is the tendency fueled by bias and pressure that leads actors in the criminal justice system to single-mindedly focus on a suspect and build a case for conviction while ignoring evidence that points away from guilt.⁴ Once it has taken hold of an individual, mere notions or assumptions are reified and become almost immovable. The consequences can be devastating—the innocent are sent to prison and the guilty remain free. Given the limits of the law in correcting tunnel vision after it occurs, educating legal actors before they become the investigators, prosecutors, defense lawyers, and judges

* Supervising Attorney and Clinical Teaching Fellow, The Community Justice Project, Georgetown University Law Center. I am indebted to Jane Aiken, Daria Fisher Page, Caitlin Reichart, and Patty Prewitt.

1. See NAT'L REGISTRY OF EXONERATIONS, UNIV. OF MICH. LAW SCH., EXONERATIONS IN 2015, at 1, 3-4, 7-8 (2016), http://www.law.umich.edu/special/exoneration/documents/exonerations_in_2015.pdf.

2. *Id.* apps. at 2-3 (seven illustrative exonerations).

3. See Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 292 (2006).

4. *Id.*

who can serve as the hedge against a biased focus is crucial to minimizing the pernicious effects of tunnel vision.

This Article draws on the author's profound experiences as a law student, practicing attorney, and clinician advocating on behalf of Patricia ("Patty") Prewitt in a case of innocence that has little chance of judicial remedy largely due to the tunnel vision that tainted the investigation and trial. Using the Prewitt case as a vehicle for exploring the effects of tunnel vision, this Article provides insight into how investigations become contaminated by a single-minded theory of culpability.⁵ Through an examination of investigators' reports, prosecutor's notes, and trial records of the Prewitt case, this Article identifies decision points where legal actors manifested tunnel vision.⁶ This Article also shows how tunnel vision led the investigators and prosecution to inflate the probative value of certain evidence and appeal to gender bias as a means of bolstering a weak case.⁷ The Article then explores how tunnel vision results in an inability to cure the fundamental injustice created by these early decisions.⁸ Accordingly, tunnel vision must be prevented at the outset. This Article offers an approach to training legal actors to identify both the urge toward tunnel vision and strategies to mitigate it.⁹ Such strategies are essential skills for all legal actors, particularly those who are likely to be investigators, prosecutors, defense attorneys, judges, and governors.

II. TUNNEL VISION AS A CAUSE OF WRONGFUL CONVICTIONS

The National Registry of Exonerations ("NRE") has estimated that tens of thousands of false convictions occur each year across the United States and that many more have accumulated over the decades.¹⁰ Just a fraction of the wrongfully convicted are exonerated.¹¹ In 2015, a record 149 defendants were exonerated of a criminal conviction.¹² Of these defendants, 58 were exonerated of homicide.¹³ Even for the few wrongfully convicted who are released, post-hoc remedies to incarceration are unacceptable. Those who are exonerated will never get back the time they lost—time away from friends and loved ones, and

5. See *infra* Parts III–IV.

6. See *infra* Parts V–VI.

7. See *infra* Part VIII.

8. See *infra* Part XI.

9. See *infra* Parts II–XI.

10. See NAT'L REGISTRY OF EXONERATIONS, *supra* note 1, at 2, 17.

11. See *id.* at 2.

12. *Id.* at 1, 3–7.

13. *Id.* at 1, 4, 6.

missed holidays, weddings, and birthdays. We need to understand and correct the errors that cause irreparable damage for the wrongfully convicted and their families.

So what are these errors? The Innocence Project has identified the following causes of wrongful conviction: eyewitness misidentification, false confessions, unvalidated or improper forensics, incentivized informant testimony, government misconduct, and inadequate defense.¹⁴ Tunnel vision affects, and is affected by, these flaws in the criminal justice system.¹⁵ Indeed, the problem of tunnel vision has been described as a common theme in almost every case of wrongful conviction.¹⁶

Tunnel vision is a “‘compendium of common heuristics and logical fallacies,’ to which we are all susceptible, that lead actors in the criminal justice system to ‘focus on a suspect, select and filter the evidence that will “build a case” for conviction, while ignoring or suppressing evidence that points away from guilt.’”¹⁷ In addition to its cognitive sources, tunnel vision can be facilitated by institutional and cultural pressures.¹⁸ It is insidious and can affect anyone involved in the administration of justice, at times with tragic results.¹⁹ The impact of tunnel vision does not end once conviction is secured. Instead, as demonstrated by the Prewitt case, tunnel vision can prevent a wrongfully convicted individual from obtaining the very evidence necessary for judicial exoneration or gubernatorial clemency. Because tunnel vision can result in wrongful convictions that are very difficult to overturn, it is essential, to the extent possible, to prevent tunnel vision from the outset. Police, prosecutors, lawyers, and judges all must be alert to its lure.

What follows is a story emblematic of the pernicious effects of tunnel vision. Like so many of the skills and insights necessary to be an effective lawyer, tunnel vision is best understood in context. The details are important because tunnel vision does not manifest itself solely through a single decision by a legal actor. Rather, tunnel vision is characterized by “escalating commitments” that lead to an “incremental descent into poor judgment.”²⁰ Decisions are made that compound upon

14. *The Causes*, INNOCENCE PROJECT, <http://www.innocenceproject.org/#causes> (last visited Dec. 31, 2016).

15. Findley & Scott, *supra* note 3, at 322.

16. *See, e.g., id.* at 296-99.

17. *Id.* at 292 (quoting Dianne L. Martin, *Lessons About Justice from the “Laboratory” of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence*, 70 UMKC L. REV. 847, 848 (2002)).

18. Keith A. Findley, *Tunnel Vision*, in *CONVICTION OF THE INNOCENT: LESSONS FROM PSYCHOLOGICAL RESEARCH* 303-04, 313 (Brian L. Cutler ed., 2012).

19. Martin, *supra* note 18, at 849.

20. Elizabeth Webster & Jody Miller, *Gendering and Racing Wrongful Conviction:*

each other while safeguards against wrongful conviction fail.²¹ The Prewitt case took place in a small town generally spared the horrors of murder, with a police force unsophisticated in investigative techniques. Unfortunately, as in many close-knit communities, notions of appropriate behavior, gossip, and fear can fuel a rush to engage in cognitive shortcuts and increase the probability of tunnel vision.²²

This story is shared as a cautionary tale and a call to action. As legal educators, we have a moral responsibility to educate our students about the temptation of tunnel vision and equip them with the tools to minimize its harmful effects. When the stakes are this high, it is critical that legal educators engage in effective training in this area.

III. MURDER IN HOLDEN

High school sweethearts Bill and Patty Prewitt married in 1968.²³ The Prewitts were active in their small community of Holden, Missouri, a town with 2000 residents roughly fifty miles outside of Kansas City. They had five school-aged children and owned and operated a lumberyard in the center of town.²⁴ Patty served as President of the local Chamber of Commerce,²⁵ volunteered with the PTA, coached softball, and helped start a task force to keep drugs out of the high school.²⁶

On Friday, February 17, 1984, Bill and Patty Prewitt met their longtime friends Paul and Jeri Austin for dinner at a barbecue restaurant just outside of Holden.²⁷ It had been a long week at the lumberyard, and the Prewitts looked forward to a relaxing evening with the Austins. After an evening of dinner, dancing, and video games, Bill and Patty drove home at approximately 2:00 a.m. on February 18, in the rainy, rural Missouri night.²⁸ Bill checked on the kids and went to bed. Patty cleaned the dishes that the children had left in the sink and then followed Bill to bed.

Intersectionality, "Normal Crimes," and Women's Experiences of Miscarriage of Justice, 78 ALB. L. REV. 973, 1027 (2015) (quoting William S. Lofquist, *Whodunit? An Examination of the Production of Wrongful Convictions*, in *WRONGLY CONVICTED: PERSPECTIVES ON FAILED JUSTICE* 174, 176 (Saundra D. Westervelt & John A. Humphrey eds., 2001)).

21. *See id.* at 1027-29.

22. For a particularly disturbing example of a small town murder investigation gone awry, see JOHN GRISHAM, *THE INNOCENT MAN: MURDER AND INJUSTICE IN A SMALL TOWN* 118-22 (2006).

23. Shelley Smithson, *Man Killer: Did Patty Prewitt Pump Two Bullets into Her Husband's Head? It Is a Mystery That Has Lingered for Twenty Years*, RFT (Aug. 11, 2004), <http://www.riverfronttimes.com/stlouis/man-killer/Content?oid=2492582>.

24. *Id.*

25. *See id.*

26. *See id.*

27. *See id.*

28. *See id.*

What happened next has been disputed for over thirty-two years. In 1985, a jury agreed with the State's account in which Patty shot her husband of fifteen years as he slept just feet away from their children.²⁹ The prosecutor repeatedly argued that Patty was motivated by "lust and greed."³⁰ He characterized Patty as an unfit mother and elicited detailed testimony from three men regarding their extramarital relationships with her, each of which had occurred five or more years before Bill's death.³¹ Despite their failure to follow exculpatory leads, investigators testified to the dearth of evidence they found to support Patty's account of an intruder.³²

Patty was sentenced to life in prison without the possibility of parole for fifty years.³³ Patty, now sixty-seven years old, has always maintained her innocence.³⁴ The author of this Article, as a law student in the Community Justice Project at Georgetown University Law Center, had co-authored a clemency petition on Patty's behalf that was submitted to former Governor Jay Nixon in 2010.³⁵ In January 2017, Nixon left office without acting on the clemency petition.

IV. IDENTIFICATION OF THE SUSPECT BASED ON PREEXISTING FRAMEWORKS

How do legal actors come to identify particular suspects as suspect? Sociologist William Lofquist contends that legal actors adopt preexisting frameworks into which particular crime scenarios are fitted.³⁶ This occurs when legal actors rely upon "normal crime" frameworks. Sociologist David Sudnow identifies normal crime scenarios as those occurrences whose typical features (how they occur and who commits them) are known by legal actors based on routinely encountering such scenarios.³⁷ Meanwhile, there is a premium on quick action. Experts have identified the first forty-eight hours after the report of a homicide

29. *See id.*

30. *Id.*

31. *See id.*

32. *See id.*

33. *Id.*

34. *See id.*

35. *See* Heather Hollingsworth, *Clemency Sought for Woman in Husband's Killing*, EMISSOURIAN.COM (Dec. 17, 2010), http://www.emissourian.com/news/state/clemency-sought-for-woman-in-husband-s-killing/article_42ecef2a-0a02-11e0-9622-001cc4c002e0.html?mode=jqm; *Clemency Sought for Mo. Woman Convicted in Husband's Murder*, KMBC NEWS (Dec. 8, 2013, 6:54 AM), <http://www.kmbc.com/article/clemency-sought-for-mo-woman-convicted-in-husband-s-murder/3679651>.

36. Lofquist, *supra* note 21, at 183.

37. David Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, 12 SOC. PROBS. 255, 260 (1965).

as critical to clearing the crime.³⁸ The necessity for haste likely increases the probability of using cognitive shortcuts.³⁹ These shortcuts are often based on “typical” understandings of whom the perpetrator is likely to be.⁴⁰ This can create either the starting point of a thorough investigation or, as demonstrated in the Prewitt case, invite an investigator to embrace the “typical” solution prematurely.

The lead investigator in the Prewitt case, Johnson County Deputy Sheriff Kevin Hughes, twenty-seven years old, arrived at the Prewitt home at about 4:40 a.m. on February 18, lacking significant homicide investigation experience.⁴¹ There were only five murders in all of Johnson County—population 25,000—in the previous three years.⁴² Yet, the young investigator had ambitions for career advancement, and the Prewitt case presented a unique opportunity. Indeed, according to a “fictionalized” account of the Prewitt case authored by the Johnson County prosecuting attorney, Tom Williams, “[Hughes] had a plan—to move up in his career. . . . Precisely, he needed a major case, something spectacular, preferably a murder, one with plenty of mystery, a lot of media interest, a case where he could take the lead and get publicity.”⁴³ Meanwhile, Holden was stunned by the news of a prominent community member’s death. In just a few months, this shaken community would have to decide whether to reelect Hughes’s boss, Sheriff Charles Norman.⁴⁴ Pressure was on Hughes and his colleagues to quickly identify and arrest the perpetrator.

Absent extensive personal experience with homicide investigations, Hughes relied on what he believed was a common feature of these crimes to guide his inquiry. Specifically, Hughes later revealed he had arrived on the scene mindful of a statistic that seventy-five percent of murders are committed by a family member or friend of the victim.⁴⁵

38. DAVID L. CARTER & BRIAN RUSSELL, VIOLENCE REDUCTION NETWORK, STRATEGIES TO IMPROVE HOMICIDE INVESTIGATIONS AND INCREASE CLEARANCE RATES 17 (2015), <https://www.vrnetwork.org/Documents/VRN%20Homicide%20Investigations%20Webinar%20June%20202%202015.pdf>.

39. See Gregory K. Moffatt & Nicholas W. Hersey, *Typical and Atypical Homicide: Investigative Differences and Cold Case Profiling*, 19 FORENSIC EXAMINER 40, 41 (2010).

40. See *id.* at 42.

41. TOM R. WILLIAMS & NAN COCKE, PRACTICE TO DECEIVE 19 (2016). This book is based on a manuscript copyrighted by Prosecutor Tom Williams in 1987. It was published two years after his death. The publisher labeled the book as fiction.

42. E-mail from U.S. Dep’t of Justice to author (Feb. 8, 2016, 9:28 AM) (on file with author).

43. WILLIAMS & COCKE, *supra* note 42, at 7.

44. See Transcript of Record at 216-17, *State v. Prewitt*, No. CR484-5F (Mo. Cir. Ct. Oct. 16, 1985).

45. *Id.* at 328.

Hughes was notified that a shooting had taken place at a residence approximately two miles north of downtown Holden.⁴⁶ He learned from Holden Police Chief John Scott that Bill Prewitt was dead in his bedroom. Patty had driven with her five children to a neighbor's house to seek help after Bill was shot.⁴⁷ Upon arriving at the Prewitt home, Hughes conducted a brief survey of the murder scene, later recalling that he saw no indication of struggle in the bedroom.⁴⁸ Hughes then drove to the neighbor's home to interview Patty with his colleague, Deputy Doug Rusher.⁴⁹ Still dressed in the white pajamas she wore to bed, Patty shared her account with Hughes. She woke up to a loud noise, was grabbed by her hair, and thrown to the floor.⁵⁰ In complete darkness, a man pulled down Patty's pajama bottoms as he held a knife to her throat.⁵¹ After a struggle, the assailant departed down the stairs.⁵² Patty checked on her husband who was immobile. The lights were inoperable, as were the phones.⁵³ She gathered the children and left for the neighbor's house where she sought help.⁵⁴ Hughes learned from Patty that the Prewitts owned two guns. In a report written later that day, Rusher noted that he had observed "hesitation type cuts" running horizontally across Patty's throat.⁵⁵ Indeed, years later Hughes would recall, "When I saw the marks on her neck, I thought, '[t]hat looks like she did it looking in the mirror with a razor blade.'"⁵⁶

An hour after his arrival on the scene, it became clear that Hughes was faced with either a "whodunit" case in which there were no clear leads yet or a more "typical" case, at least in his mind, where the murderer was a family member of the victim. From that point forward, his actions demonstrate that Hughes had a single-minded focus on Patty as the perpetrator. With tunnel vision already rooted in his approach to the investigation, subsequent information pointing to another suspect did not move Hughes from this narrow viewpoint.

Psychologists have recognized adults have a natural tendency to "integrate experiences that validate or fit their meaning schemes and

46. *Id.* at 255.

47. WILLIAMS & COCKE, *supra* note 42, at 40-41.

48. Transcript of Record, *supra* note 45, at 261.

49. Transcript of Deposition of Kevin Craig Hughes at 6, State v. Prewitt, No. CV-584-84F (Mo. Cir. Ct. May 25, 1984).

50. WILLIAMS & COCKE, *supra* note 42, at 31.

51. *Id.*

52. Transcript of Record, *supra* note 45, at 279-80, 282.

53. *Id.* at 282-83.

54. *Id.* at 286.

55. Doug Rusher, Johnson Cty. Sheriff's Office, Offense/Incident Report, Complaint No. 84-085 (Feb. 18, 1984) (on file with author).

56. Smithson, *supra* note 24.

discount those that do not.”⁵⁷ In order “[t]o learn, adults must break through preexisting patterns, allowing them to either validate or transform assumptions that they may bring to a given situation.”⁵⁸ Professor Jane Aiken has encouraged law professors to teach “‘reflective skepticism,’ where students learn to understand that knowledge is constructed, gain the ability to identify and challenge assumptions, and imagine and explore alternatives.”⁵⁹

Similarly, adult education scholar Stephen Brookfield has identified four components of critical thinking. First, critical thinkers identify and challenge assumptions. Second, critical thinkers are aware of context. Third, critical thinkers imagine and explore alternatives. Finally, critical thinkers engage in reflective skepticism.⁶⁰

Imagine if, after meeting with Patty, Hughes explored a series of questions such as the following:

What assumptions am I making? It is unlikely that the perpetrator was an outsider. It is only an outsider if there are signs of an intruder. People lock their homes. If there was no struggle, then it was an inside job. If it was an inside job, then it must be the wife. The only direct witness is lying. Patty self-inflicted the lacerations on her neck. She cut the power and the phone lines. There was no intruder. Patty killed her husband.

What facts support these assumptions? We live in a small town not subject to much crime. The cuts appear self-inflicted. There are no signs of an intruder.

Are there other ways to interpret these facts? The intruder was solely interested in murdering Bill, not theft, so there would be no sign of an intruder. The house was unlocked and, therefore, the intruder could enter without leaving an indication of forced entry. I do not have the expertise to determine whether cuts are self-inflicted.

What contextual factors are affecting this investigation? Pressure from the community and my boss.

What stake do I have in this investigation? Ambitions for career growth.

57. Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & SOC. JUST. 231, 238 (2012).

58. *Id.* at 239.

59. *Id.* at 236.

60. STEPHEN D. BROOKFIELD, *DEVELOPING CRITICAL THINKERS: CHALLENGING ADULTS TO EXPLORE ALTERNATIVE WAYS OF THINKING AND ACTING* 7-9 (1987).

Such analysis by Hughes could have dramatically changed the course of the investigation and profoundly altered the life of Patty Prewitt.

V. BUILDING A CASE (TUNNEL VISION VIA CONFIRMATION BIAS)

Once a suspect is identified, the effects of tunnel vision almost guarantee that the person will be seen as the actual wrongdoer.⁶¹ Among the dimensions of tunnel vision identified by scholars is “confirmation bias.” Confirmation bias is the tendency to seek, interpret, or recall information in a manner that supports existing beliefs, expectations, or hypotheses.⁶² One expression of the bias is the tendency to seek information that confirms a hypothesis.⁶³ While there is nothing inherently wrong in seeking information to confirm a hypothesis, such an approach becomes problematic when it is done at the expense of ignoring any other possibility.⁶⁴ Confirmation bias expresses itself not only by what information is sought to confirm a hypothesis but also through the tendency to avoid information that would disconfirm the hypothesis.⁶⁵ As Keith Findley and Michael Scott have noted, collecting physical evidence from a crime scene can be influenced by the theory of the crime and where the primary investigator is also the primary collector of physical evidence, as Hughes was in the Prewitt case, there is a heightened risk that important physical evidence might be overlooked if the primary investigator prematurely settles on one theory of the crime.⁶⁶

Hughes’s actions on the first day of his investigation are consistent with one experiencing confirmation bias. After his initial interview with Patty at her neighbor’s house, Hughes returned to the Prewitt home.⁶⁷ Little physical evidence used at trial was collected in these crucial, early hours of the investigation, even though there was plenty that could have been preserved. Fingerprints were not collected from anywhere in the bedroom or from the breaker box used to cut the electric power to the house.⁶⁸ Reports made at the time by investigators do not note any effort

61. Findley & Scott, *supra* note 3, at 316 (explaining that once a suspect is identified, tunnel vision often causes investigators to both seek evidence confirming the suspect’s guilt and avoid disconfirming evidence).

62. *Id.* at 309, 312.

63. *Id.* at 309.

64. *See, e.g., id.* at 309-10 (describing, briefly, two experiments in which participants sought confirming evidence in lieu of disconfirming evidence while the latter would have been more probative).

65. *Id.*

66. *Id.* at 377.

67. Transcript of Record, *supra* note 45, at 331.

68. *Id.* at 316-17.

to collect or search for hairs in the bedroom.⁶⁹ In fact, not a single fingerprint or hair sample was lifted from the entire house. In a report written over a year later and just prior to trial, Hughes claimed that he had searched for hair to verify Patty's account of being pulled from bed by her hair, but no quantities of hair were discovered.⁷⁰ At trial, however, Hughes testified that he did see hairs embedded in the bedroom carpet, but they appeared to have been there for a long period of time.⁷¹ Mary Englert, Patty's friend, cleaned the bedroom after the sheriff's office released the crime scene to the Prewitt family.⁷² She testified that she had vacuumed hair off the bedroom floor.⁷³ Footprints were not analyzed despite a later account from the sheriff that many footprints were present near the Prewitt home.⁷⁴ The lack of rigor surrounding evidence collection at the Prewitt home is further demonstrated by the way in which the shell casings from the murder weapon were discovered. One shell casing was discovered by a detective roughly eleven hours after the crime scene had been secured and only because it fell out of a wicker loveseat that he sat on.⁷⁵ The loveseat was just four feet from the bed where Bill was murdered.⁷⁶ A second shell casing was found by Englert behind the love seat after the crime scene had been released by investigators.⁷⁷

Instead of a thorough investigation of the scene, Hughes collected Bill Prewitt's insurance policy, which listed Patty as the beneficiary, as well as over a dozen Alfred Hitchcock mystery novels. In a deposition three months later, Hughes stated that he had taken the books because "[o]n the back of one of the books there was an advertisement for another book, another novel of some kind that said something to the effect of how to commit the perfect murder."⁷⁸ It is difficult to imagine how an insurance policy and murder mystery novels relate to the possibility of an intruder murdering Bill Prewitt. The collection of the insurance policy and murder mystery novels indicates Hughes focused on Patty as the prime suspect from the earliest moments of the

69. *Id.* at 324, 327.

70. *Id.* at 324-26.

71. *Id.* at 324.

72. *Id.* at 324, 550-51.

73. *Id.* at 550-51.

74. Transcript of Preliminary Hearing at 43, *Missouri v. Prewitt*, No. CR684-84F (Mo. Cir. Ct. Apr. 6, 1984).

74. Transcript of Record, *supra* note 45, at 322.

75. *Id.* at 348.

76. *Id.* at 196-97, 262.

77. Smithson, *supra* note 24.

78. Transcript of Deposition of Kevin Craig Hughes, *supra* note 50, at 17.

investigation. This is the telltale indication of the start of tunnel vision. Such singular focus might have been based on generalities about murders of spouses or, as subsequent evidence suggests, invidious gender bias.⁷⁹ No matter the motivation, this start to the case set the course for the remainder of the criminal investigation.

The most effective lawyers develop skills in which they recognize the choices they have in the course of representing their clients. Therefore, law students should be encouraged to take action by design, to the extent possible, rather than by default. Once again, imagine if Hughes considered a series of questions such as the following:

What is my hypothesis? Patty Prewitt murdered her husband.

How can I confirm this hypothesis? Finding evidence that would establish a motive and physical evidence connecting her to the crime.

How can I disconfirm this hypothesis? Finding evidence corroborating Patty's account intruder; dusting for fingerprints on items likely touched by the murderer; identifying any shoe prints in or near the Prewitt home; interviewing neighbors.

What actions have I undertaken to confirm or disconfirm my hypothesis? I have obtained Bill's life insurance policy and the mystery novels.

Hughes might have also engaged in self-reflective practice in order to reduce the chances of a flawed investigation:

Are my conclusions based on facts or beliefs?

Who benefits from these conclusions?

Who is harmed by these conclusions?

Am I foreclosing avenues of investigation prematurely?

VI. INTERPRETING THE EVIDENCE (TUNNEL VISION AND ASSUMPTIONS)

Tunnel vision impacts not only the manner in which evidence is sought but also the manner in which evidence is interpreted.⁸⁰ In particular, "people tend to interpret data in ways that support their prior beliefs."⁸¹ Exculpatory evidence in the Prewitt case was ignored or explained away as immaterial. Ambiguous evidence was interpreted as

79. See Findley & Scott, *supra* note 3, at 296-97, 313-15.

80. *Id.* at 307-13.

81. *Id.* at 313.

confirmation of Patty's guilt. The afternoon of the murder, Deputy Rusher conducted interviews with the Prewitt children. Sarah Prewitt, the oldest child present in the home at the time of the murder, described being awoken in her upstairs bedroom by her mother that morning. Patty ordered Sarah downstairs as her mother gathered the younger siblings from their bedrooms. While Sarah was waiting at the foot of the stairs, she heard, according to investigators' records, a noise that sounded like rattling or someone banging on tin coming from the basement.⁸² Sarah also shared that she thought her dad was downstairs because she saw a light coming from beneath the basement door. Because power to the house had been cut, the light seems to indicate that someone was in the basement with a flashlight. There is no record of any subsequent search of the basement as a result of Sarah's comments. In his closing argument, the prosecutor dismissed Sarah's account since it was given "after being in the custody of her mother," implying, of course, that Patty had pressured her daughter to make the comment.⁸³ This also signals that investigators likely dismissed Sarah's account from the outset.

Tunnel vision impacts the weight assigned to leads. If inconsistent with the working theory, the lead goes unexplored and that possible avenue to prove innocence is foreclosed, perhaps, forever.⁸⁴ A neighbor of the Prewitts, Ethel Juanita Stephens, testified that she spoke with the sheriff the morning of the murder to tell him that she had seen a suspicious vehicle on the desolate road facing the Prewitt home just two hours before the murder took place.⁸⁵ There is no indication that the sheriff's office conducted any investigation based on this information. The sheriff later denied receiving such information, even though the investigative records include a lead related to a car on the road at the time of the murder.⁸⁶ This lead was voided and never revisited. It appears investigators embraced the belief Patty Prewitt was the murderer to such a degree that evidence about a suspicious vehicle consistent with the possibility of an intruder was not considered material enough to the investigation to warrant further inquiry.

Meanwhile, Hughes interviewed another neighbor of the Prewitts, Clifford Gustin, at his home. Gustin recalled that Patty had arrived at his home in hysterics. His wife calmed Patty down, and Gustin sought help from local authorities. Gustin arrived at the Prewitt home with Holden

82. Transcript of Record, *supra* note 45, at 698.

83. *Id.*

84. See Findley & Scott, *supra* note 3, at 313-15, 329-30, 375-77.

85. Transcript of Record, *supra* note 45, at 722-23.

86. Smithson, *supra* note 24.

Police Chief Scott in the early morning darkness. According to Hughes's report of the interview, Gustin stated that he thought he saw only one set of tire tracks leading out when pulling into the driveway, and he thought the tracks were made by Prewitt's car when she drove to his home.⁸⁷ The remoteness of the Prewitt home no doubt bolstered Hughes's belief that there was no intruder, though Hughes himself did not confirm Gustin's account through an investigation of the road near the Prewitt home. Indeed, at trial, in response to whether he had the statistic that seventy-five percent of murders are committed by family or friends on his mind the morning of the murder, Hughes volunteered, "Yes, sir, I didn't find any car."⁸⁸ In his closing argument, the prosecutor, Tom Williams, referred to the lack of vehicle tracks as evidence against Patty's account. Williams posed the following question to the jury, "How did that intruder get there and where did he go?"⁸⁹

This Article has highlighted three pieces of evidence—Sarah's account of light coming from the basement, Stephens's account of a suspicious vehicle, and Gustin's account of the tire tracks—each interpreted by investigators as unfavorable to Patty without further inquiry. By this point in the case, tunnel vision had taken complete hold. Imagine if Hughes had been trained in a methodology that required him to analyze his assumptions in the normal course of his investigation. A major focus of legal training and, in particular, clinical education is to encourage students to unpack assumptions before making critical decisions in a case. One tool for doing so is the "except when/especially when" method of challenging assumptions.⁹⁰ To illustrate, one might say that Gustin's account of the tire tracks in the Prewitt driveway indicates there was not an intruder, especially when followed by a number of propositions (for example, Gustin had a clear view of the driveway, the tracks were most likely made by Patty's vehicle when she drove away with the children, it is likely an intruder would have pulled in the Prewitt driveway, individually identifiable tracks would have been left by an intruder's vehicle, there is no other evidence of an intruder, or trained investigators would have noted the tracks if they were material to the case). Conversely, one would say that Gustin's account of the tire tracks indicates there was not an intruder, except when followed by other

87. See Kevin Hughes, Johnson Cty. Sheriff's Office, Offense/Incident Report, Complaint No. 84-085 (Feb. 18, 1984) (on file with author).

88. Transcript of Record, *supra* note 45, at 328-29.

89. *Id.* at 661.

90. Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 22-23 (2013).

propositions (for example, Gustin had only a fleeting and obscured view of the driveway, an intruder would more likely have walked to the Prewitt home from the main road, or a vehicle would not have left individually identifiable tracks). By engaging in this exercise, evidence is less likely to be quickly interpreted in a manner consistent with confirmation bias.

VII. FOCUSING THE ENTIRE INVESTIGATIVE TEAM ON PATTY PREWITT: THE SOCIAL INFLUENCE OF BIAS

Tunnel vision can be shaped by social influences. Studies have demonstrated that “descriptions provided in advance (expectations) about a person’s qualities can affect how others assess that person.”⁹¹ Findley and Scott have observed that “[t]his phenomenon can be particularly significant in criminal cases, where an individual is being judged—by police, prosecutors, defense lawyers, judges, and jurors—and where the initial working hypothesis presented to each actor in the system is that the defendant is guilty (despite the theoretical presumption of innocence).”⁹²

On Sunday, February 19, the day after Bill Prewitt was murdered, Kevin Hughes convened the Rural Missouri Major Case Squad (“Major Case Squad”) to work on the case.⁹³ Rural counties with relatively small police forces in Missouri utilize the Major Case Squad to investigate major crimes such as homicides.⁹⁴ Approximately twenty-five officers from law enforcement offices across west central Missouri met for an initial briefing on the case from Hughes.⁹⁵ In a deposition, Hughes testified he had shared with the officers that morning his suspicion of parts of Patty’s account.⁹⁶ Hughes stated that Patty was a suspect since there were many inconsistencies in her statements at the time she had been interviewed.⁹⁷ In his handwritten notes of that initial meeting, the officer in charge of the Missouri Rural Crime Squad, Sheriff Paul

91. See, e.g., Findley & Scott, *supra* note 3, at 314.

92. *Id.*

93. Transcript of Record, *supra* note 45, at 342-44; Transcript of Deposition of Kevin Craig Hughes, *supra* note 50, at 31-32; see *Investigations*, JOHNSON COUNTY SHERIFF’S OFF., <http://jocomosheriff.org/page.php?id=6> (last visited Dec. 31, 2016).

94. See Transcript of Deposition of Kevin Craig Hughes, *supra* note 50, at 31-32; *Investigations*, *supra* note 94.

95. See Transcript of Record, *supra* note 45, at 342-44; see also Transcript of Deposition of Kevin Craig Hughes, *supra* note 50, at 33 (estimating that twenty-two law enforcement officers were involved in the case).

96. Transcript of Deposition of Kevin Craig Hughes, *supra* note 50, at 32-33.

97. *Id.* at 26-29.

Johnson, noted that “[t]he victim’s wife Patricia Ann Prewitt was a likely suspect.”⁹⁸

Hughes’s introduction of Patty to the Major Case Squad as the likely suspect prior to the start of their investigation undoubtedly affected the choices they made in the crucial, early stages. According to the prosecutor’s account of this meeting, “Sheriff Norman wanted every fact considered on its own merit. Hughes had successfully set a different effort in motion. The facts would now be reconciled to fit the Hughes theory. The investigation at that moment took a definite and direct course toward Patty Prewitt.”⁹⁹ As a result, “Hughes’s soldiers set out like a swarm of scandal sheet reporters, intent on digging up dirt.”¹⁰⁰ Records indicate that the efforts of the Major Case Squad focused on information about Patty’s affairs and Bill’s insurance coverage.¹⁰¹ Investigators conducted numerous interviews with individuals to discuss second- or third-hand accounts of Patty’s past affairs.¹⁰² On Sunday, at least five individuals, some of whom acknowledged that they did not know the Prewitts, shared rumors that Patty had boyfriends and/or was a flirt in response to investigators’ questions. Such single-minded focus on Patty and rumors of years-old affairs prevented law enforcement from following leads that would identify other suspects.

One of the insidious aspects of tunnel vision is that it can be injected into a “groupthink” that infects all who are engaged in the investigation and, because it appears that all share the same view, reinforces assumptions.¹⁰³ Imagine if before Hughes infected the Crime Squad with his view that Patty was the perpetrator, he had engaged his colleagues in “rounds,” which is a clinical method designed to expand options and see problems from other perspectives.¹⁰⁴ Rounds are regularly conducted as a way for students and practitioners in many

98. Memorandum from Paul Johnson, Officer in Charge, Rural Mo. Major Case Squad (Feb. 19, 1984) (on file with author).

99. WILLIAMS & COCKE, *supra* note 42, at 62.

100. *Id.* at 90.

101. *See* Transcript of Record, *supra* note 45, at 331-32.

102. *Id.* at 414-39; T. Charrette & D.S. Stewart, Johnson Cty. Sheriff’s Office, Lead No. 10 (Feb. 19, 1984) (on file with author) (Suzan Brown interview notes); Jefferson & Carroll, Johnson Cty. Sheriff’s Office, Lead No. 7 (Feb. 19, 1984) (on file with author) (Billy Gunn interview notes); Jefferson & Carroll, Johnson Cty. Sheriff’s Office, Lead No. 23 (Feb. 19, 1984) (on file with author) (Harmon Randolph interview notes); Frank Walker & Robert Scott, Johnson Cty. Sheriff’s Office, Lead No. 11 (Feb. 19, 1984) (on file with author) (Paul Martin Kluz interview notes); Sammy L. Watson & Tony Zink, Johnson Cty. Sheriff’s Office, Lead No. 8 (Feb. 19, 1984) (on file with author) (Robert G. Wolfe interview notes).

103. Tigran W. Eldred, *Exploring Tunnel Vision*, 16 LEGAL ETHICS 390, 396 (2013) (book review).

104. *See* Susan Bryant & Elliott S. Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education?*, 14 CLINICAL L. REV. 195, 196-97 (2007).

professions to present challenging situations to their peers in a structured fashion.¹⁰⁵ The structure prevents jumping directly to a solution from a problem prematurely, before relevant facts have been identified and the problem has been diagnosed as clearly as possible.¹⁰⁶ In a legal context, rounds often begin with the presentation of a challenging circumstance.¹⁰⁷ This is followed by factual questions posed by the rest of the group.¹⁰⁸ During this segment, participants are prohibited from diagnosing the problem or offering solutions. This limitation curbs the tendency to make assumptions about the presenter's issue based on participants' past experiences.¹⁰⁹ Once fact gathering—the crucial and often longest part of rounds—is completed, participants move to problem diagnosis.¹¹⁰ The presenter is often surprised to learn that his or her peers have completely different diagnoses of the problem. Next, comes question flooding, where each participant poses a single question about the issue presented.¹¹¹ No response is permitted to these questions. This is meant to spur thinking about a variety of issues. Question flooding is followed by problem solving, where participants suggest possible solutions.¹¹² Rounds conclude with a review of whether and how the discussion was useful to the presenter and the group as a whole.

Rounds can be instructive to investigators who work in teams. The structure of rounds requires participants to engage in a deliberative, thoughtful process of collaborative problem solving.¹¹³ If Hughes had engaged the Major Case Squad in rounds, other investigators would have been more likely to raise alternative theories for potential suspects and prevent a rush in judgment toward Patty's guilt.

VIII. PRESSURE ENHANCES THE RISK OF TUNNEL VISION

Tunnel vision begins with police investigations, but that is not where it ends. Prosecutors may fall prey to tunnel vision at the pretrial stage, especially if they only receive evidence to implicate the suspect.¹¹⁴

105. *Id.*

106. *See id.* at 195, 200-01.

107. *See id.* at 250-51.

108. *See* Bryant & Milstein, *supra* note 105, at 244 (examining the various types of questions asked by colleagues and instructors after factual presentation).

109. *See id.* at 204, 210 (identifying that assumptions and perspectives shape judgment).

110. *See id.* at 213-14 (discussing how members of the group define the problem differently).

111. *See id.* at 232-33 (illustrating single questions and comments posed by group members to incite thinking).

112. *See id.* at 211 n.41, 234 (developing solutions discussed).

113. *See id.* at 208-09 (explaining the collaborative learning promoted by rounds).

114. Daniel S. Medwed, *Emotionally Charged: The Prosecutorial Charging Decision and the Innocence Revolution*, 31 CARDOZO L. REV. 2187, 2203 (2010).

As with investigators, prosecutors can be subject to public pressures, which facilitate tunnel vision. One expert has concluded that “public and media pressure . . . poses the greatest risk for distorting normal decision making in the criminal justice system.”¹¹⁵ In the Prewitt case, the manner in which Patty was arrested had been designed by Hughes to pressure the prosecutor to bring charges despite a weak case.

On February 21, investigators recovered a missing gun owned by the Prewitts from a pond on their property and discovered footprints nearby allegedly matching Patty’s boots.¹¹⁶ She was subsequently arrested on February 22.¹¹⁷ Investigators relied on statements from two men with whom Patty had ended relationships over five years prior to Bill’s death.¹¹⁸ One of the men told investigators that during their relationship, five years before Bill’s death, Patty twice expressed a desire for Bill to be killed.¹¹⁹ The other man claimed that while he and Patty were engaged in a relationship, also five years before Bill’s death, she had offered to buy him a lumberyard if he killed Bill.¹²⁰

According to the prosecuting attorney, Tom Williams, Hughes purportedly had a firm belief in the case against Patty on February 22, but he decided “a little insurance wouldn’t hurt.”¹²¹ So Hughes arranged to have Patty arrested prior to informing Williams. As the prosecutor recalled, “The press would pick up the fact of the arrest and would supply pressure on the prosecutor. It would make it harder for him to refuse to file the charges after the arrest had occurred.”¹²² On February 24, Patty was charged with capital murder.¹²³ Just as Hughes had done with the Major Case Squad, he injected bias into Williams’s decision to charge Patty with the murder of her husband. Indeed, Williams filed

115. BRUCE A. MACFARLANE, *WRONGFUL CONVICTIONS: THE EFFECT OF TUNNEL VISION AND PREDISPOSING CIRCUMSTANCES IN THE CRIMINAL JUSTICE SYSTEM* 7 (2008), https://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/policy_research/pdf/Macfarlane_Wrongful-Convictions.pdf.

116. *See* *State v. Prewitt*, 714 S.W.2d 544, 546 (Mo. Ct. App. 1986); Transcript of Record, *supra* note 45, at 217-20.

117. *See* Memorandum from Cynthia Jones, Johnson Cty. Sheriff’s Office (Feb 22, 1984) (on file with author) (referring to the initial arrest of Patty).

118. Transcript of Record, *supra* note 45, at 414-39 (containing testimony from the two men, Jonathan R. Hancock and Richard Hays); *see also id.* at 637-39 (containing testimony from Patty in regard to the two men).

119. *See* K. Logan et al., Johnson Cty. Sheriff’s Office, Investigation Report, Lead No. 50 (Feb. 21, 1984) (on file with author) (statement of John Hancock).

120. *Id.* at 423-24 (testimony of Hays).

121. WILLIAMS & COCKE, *supra* note 42, at 157.

122. *Id.*

123. *The Case for Commutation of Patty Prewitt’s Sentence*, COMMUTATION FOR PATTY PREWITT, <http://commutepatty.blogspot.com> (last visited Dec. 31, 2016).

charges without demanding further evidence from Hughes despite the weak case against Patty.

IX. TUNNEL BLINDNESS

After an arrest, tunnel vision is almost impossible to mitigate. The effects have been described as follows:

As more resources—money, time, and emotions—are placed into a narrative involving a suspect, criminal justice professionals are less willing or able to process negative feedback that refutes their conclusions. Instead, they may devote additional resources in order to “recoup” their original investment. As a result, evidence that points away from a suspect is ignored or devalued, and latent errors are overlooked.¹²⁴

Recognizing a weakness in the case against Patty, Williams wrote, “[investigators] had to find, if it existed, a more recent, and more compelling romantic affair.”¹²⁵ The two affairs initially discovered by investigators “were a bit distant in time and they were a little shallow to provide a motive powerful enough to have propelled the young wife on this course.”¹²⁶ On February 22, an acquaintance of the Prewitts, Ricky Mitts, was initially interviewed by investigators.¹²⁷ One week later, Mitts was interviewed again by Hughes.¹²⁸ Only this time did Mitts share that he had been in a sexual relationship with Patty from 1975 to 1979.¹²⁹ Mitts also claimed that in the summer of 1982, Patty had offered him \$10,000 to kill Bill.¹³⁰ Patty allegedly suggested that Mitts set fire to the barn on her property and then shoot Bill when he came to check on it.¹³¹ Immediately after providing this account to Hughes, Mitts went to the Prewitt lumberyard. He eagerly told Patty about his statement to the police and suggested that they marry so he would not have to testify against her.¹³²

124. Jon B. Gould et al., *Innocent Defendants: Divergent Case Outcomes and What They Teach Us*, in *WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE* 73, 84 (Marvin Zalman & Julia Carrano eds., 2014).

125. WILLIAMS & COCKE, *supra* note 42, at 135-36.

126. *Id.*

127. Robert Scott & Frank Walker, Johnson Cty. Sheriff's Office, Lead No. 71 (Feb. 22, 1984) (on file with author) (Mitts interview notes).

128. Smithson, *supra* note 24.

129. Transcript of Record, *supra* note 45, at 432.

130. *Id.* at 434-36.

131. *Id.* at 436.

132. *Id.* at 446-47.

Mitts had already told investigators that he used the murder weapon previously.¹³³ It was also discovered that he had been late for work at the time of the murder.¹³⁴ Mitts freely admitted in his testimony that, after speaking to Hughes, he proposed to Patty that he divorce his wife and marry Patty to protect her from his testimony.¹³⁵ Despite this bizarre behavior, no investigative efforts focused on Mitts. Hughes already accomplished his goal: Patty had been charged with the murder.

In his account of the case, Williams acknowledged that Mitts was “in love with Patty, proficient with the murder weapon, and late for work on the morning of the murder; motive, means and opportunity—the classic formula. . . . Couldn’t he have been, in fact, the intruder police never really looked for?”¹³⁶

Scholars have noted that “when presented with information that supports prior beliefs, people allocate fewer resources to scrutinizing the information and are more inclined to accept the information at face value.”¹³⁷ Perhaps, then, it is not surprising that Hughes did not investigate Mitts. Indeed, Mitts filled a need for the investigators. If true, his statement supported the State’s theory that Patty had planned to kill her husband for years and, crucially, provided evidence of a recent attempt by Patty to have Bill murdered.

X. MAKING MOUNTAINS OUT OF MOLEHILLS: TUNNEL VISION AND NARRATIVE CONSTRUCTION

Once the decision had been made to charge Patty with murder, the prosecutor was faced with a case comprised of little, if any, actual hard evidence. Williams recognized the weakness of the case and offered a plea bargain to Patty that would have made her eligible for parole in seven years.¹³⁸ Weak prosecution cases have been identified as a statistically significant factor that distinguishes erroneous convictions from near misses. Accordingly, “[w]eak facts . . . may encourage the

133. *See id.* at 687; Smithson, *supra* note 24 (“When police interviewed Mitts after Bill’s death, he told them he had visited the Prewitt house three weeks earlier. He also admitted he had shot Bill’s semi-automatic rifle in the past.”).

134. Transcript of Record, *supra* note 45, at 688 (“[H]e was suppose[d] to be at work at 2:30 that morning, and he didn’t get there until long after Bill Prewitt was dead.”).

135. *Id.* at 446-47.

136. WILLIAMS & COCKE, *supra* note 42, at 401.

137. Findley & Scott, *supra* note 3, at 313 (quoting Alafair S. Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 WM. & MARY L. REV. 1587, 1611 (2006)).

138. *Affidavits Establishing That a Plea Bargain Was Offered to Patty*, COMMUTATION FOR PATTY PREWITT, <http://commutepatty.blogspot.com> (last visited Dec. 31, 2016).

state to engage in certain questionable practices to bolster the case.”¹³⁹ As exhibited in the Prewitt case, such practices include the failure to disclose exculpatory evidence or reliance on corroborating testimony that is, at best, dubious.¹⁴⁰ To illustrate, “a prosecutor, convinced of the defendant’s guilt, may withhold what she considers to be a ‘red herring’ from the defense.”¹⁴¹ In Patty’s case, the State withheld evidence that included a report of footprints near the pond where the gun was recovered.¹⁴² Whether this evidence was related to Bill’s murder, we will never know. What may have been a red herring to the prosecutor could have been the basis for a more thorough investigation. In addition, the prosecution relied heavily on the testimony of lead investigator Hughes, particularly his account of an unrecorded seventeen-hour interrogation session.¹⁴³ This testimony featured damaging, sexually suggestive statements attributed to Patty, who has consistently denied making such outrageous remarks.¹⁴⁴

Without hard evidence, Williams was left with a difficult sell to the jury. The prosecutor needed answers to fundamental questions: Why would a seemingly devoted mother kill the father of her children? Why would Patty kill her husband and business partner? What kind of woman turns to this type of violence? Lofquist has analyzed the process of constructing a compelling narrative and explained:

Without an unambiguous confession or corroborated eyewitness testimony, legal wrongdoing is not the product of factual certainty. Rather, it is the product of narrative constructions: efforts by various people to construct a highly credible narrative account. This process of storytelling or narrative construction inevitably relies on popular images, assumptions, and inferences.¹⁴⁵

From where do popular images and assumptions emerge? In the context of female murder suspects, Webster and Miller have identified several stereotypes, including monstrous mothers; desperate, spoiled, and manipulative housewives; femme fatales; and cold-blooded killers, where involvement in any illicit activity evidences the capacity to murder.¹⁴⁶ By drawing upon gendered cultural ideologies, the crime narratives constructed by criminal justice actors become highly credible

139. Gould et al., *supra* note 126, at 82.

140. *Id.*

141. *Id.*

142. Transcript of Record, *supra* note 45, at 270-71.

143. *Id.* at 322, 340-43.

144. See Smithson, *supra* note 24.

145. Lofquist, *supra* note 21, at 183.

146. Webster & Miller, *supra* note 21, at 1030.

and result in wrongful convictions.¹⁴⁷ Absent eyewitnesses and physical evidence linking Patty to the crime, such gender stereotypes were critical to move the jury toward a conviction.

Tom Williams made a series of calculated efforts to play into various gender stereotypes. He relied on the testimony of individuals with whom Patty had relationships over five years before Bill's death, as well as Hughes's account of statements Patty allegedly made during the seventeen-hour, unrecorded interrogation.¹⁴⁸ Williams utilized the four stereotypical tropes to secure a conviction.¹⁴⁹

A. *Femme Fatale*

Significant emphasis was placed on Patty's knowledge of operating the .22-caliber rifle used to murder Bill. According to Hughes, Patty told him that the Prewitts previously lived on a property with a chicken house, and rats would get into it.¹⁵⁰ On direct examination, Hughes testified that "[s]he said she used to sit out there and plug those suckers" with the rifle.¹⁵¹

On cross-examination, Williams asked if Patty had told officers that she sought the rifle a week before Bill's death to shoot a stray dog. Patty clarified that she had wanted it only to scare the dog away.¹⁵² The prosecutor continued, "You had used the semi-automatic a lot of times, hadn't you?" Patty replied, "I had used it before."¹⁵³ The prosecutor also asked if she kept bullets in the jewelry box near her and Bill's bed.¹⁵⁴ Patty explained that the ammunition was in the jewelry box because for fifteen years it was where she would place items that Bill emptied from his pockets.¹⁵⁵

It is difficult to imagine that a prosecutor would focus so heavily on a defendant's experience with guns or the presence of ammunition in a defendant's bedroom if the defendant were a man. A knowledge of guns would not have incriminated a male from rural Missouri—it would have been expected. Williams, in his closing argument, emphasized Patty's familiarity with the weapon: "Mrs. Prewitt's knowledge of that gun. She

147. *Id.*

148. *See* Transcript of Record, *supra* note 45, at 322, 340-43; Smithson, *supra* note 24.

149. *See* Transcript of Record, *supra* note 45, at 654-66; Smithson, *supra* note 24.

150. Transcript of Record, *supra* note 45, at 288-89.

151. *Id.* at 289.

152. *Id.* at 627.

153. *Id.*

154. *Id.* at 628.

155. *Id.*

used to set and plug those suckers. She knew how to use it. Had one, she knew how to use it, kept her shells for [fifteen] years handy.”¹⁵⁶

B. *Monstrous Mother*

The prosecution sought to portray Patty as an unfaithful wife and unfit mother. In his direct examination of Richard Hays—one of the men with whom Patty had a relationship five years before the murder—the prosecutor repeatedly questioned the whereabouts of Patty’s children at the time of his two sexual encounters with Patty at the Prewitt home.¹⁵⁷ On cross-examination of Patty, Williams continued with this theme:

[Williams:] As I understand your explanation of that, the extramarital affairs were just for the sexual gratification they offered?

[Patty:] No.

[Williams:] Well, what did they afford, ma’am?

[Patty:] I don’t know, some comforts. I don’t know.

[Williams:] Did they have an effect on your relationship with your children?

[Patty:] No, sir.

[Williams:] Well, wasn’t it necessary for you to abandon[] the children’s interests when you were with these men?

[Patty:] No, sir.

[Williams:] Is it your testimony that you could continue being a good and proper mother and be at a motel with John Hancock?

[Patty:] I was always a good mother.¹⁵⁸

According to Williams, these questions served as “a few parting shots” that relied on “the old favorite, motherhood.”¹⁵⁹ He knew this would draw an emotional reaction from the jury. In his closing argument, Williams returned to this theme. He stated, “The evidence is that [Patty] defiled [Bill’s] home with those lovers when the children were there,” and “she abandoned her duties as mother of her children.”¹⁶⁰

C. *Desperate, Spoiled, and Manipulative Housewives*

On direct examination, Hughes shared a number of sexually suggestive statements allegedly made by Patty. He told the jury that Patty had estimated she and John Hancock met for sexual relations

156. *Id.* at 661.

157. *Id.* at 422.

158. *Id.* at 637-38.

159. WILLIAMS & COCKE, *supra* note 42, at 467.

160. Transcript of Record, *supra* note 45, at 698.

“about a million times” over the course of their year-long relationship.¹⁶¹ When he asked her to be more realistic, Patty allegedly said that they would meet “at least once a day, sometimes three or four times a day.”¹⁶² The prosecutor asked Hughes if she had given a reason for that frequency. Hughes replied, “Her exact quote was, ‘my fire burns hotter than others.’”¹⁶³ In his account of the trial, Williams later wrote that this statement “raised several eyebrows on the jury and became a favorite with the newspaper reporters.”¹⁶⁴ Hughes stated that when he had asked Patty if her husband knew of the affairs, she answered, “no,” and that she would not tell the truth unless caught red-handed.¹⁶⁵ Finally, in response to the prosecutor’s inquiry about whether Patty made “any overture” toward him, Hughes volunteered that Patty asked if he would take her to dinner before she went to prison.¹⁶⁶ In her testimony, Patty denied making each of these statements.¹⁶⁷

To support his narrative that Patty was motivated by lust and greed, Williams solicited salacious testimony from three men with whom Patty had ended relationships at least five years before Bill’s murder. In his closing argument, the prosecutor mockingly referred to Patty’s defense as one that relied on an intruder committing the murder “to enjoy Mrs. Prewitt’s oft-enjoyed sexual favors.”¹⁶⁸ The prosecutor also implied that Patty had used sex as a tool on the night of the murder. Reminding jurors that Bill was found nude in the bed, Williams accused Patty of “lulling” her “unsuspecting” husband to bed before killing him.¹⁶⁹

In his final remarks, the prosecutor instructed the jury: “Your duty is to convict her of capital murder and anything less will not do your duty. You must do your duty, the awful damage and injury and hurt she has caused justifies it. The dignity of the institution of marriage and the State and our communities require it.”¹⁷⁰

D. Cold-Blooded Killer

The prosecution literally described Patty as cold-blooded. In his direct examination of Hughes, Williams asked, “Did [Patty] say

161. *Id.* at 297.

162. *Id.*

163. *Id.*

164. WILLIAMS & COCKE, *supra* note 42, at 380.

165. Transcript of Record, *supra* note 45, at 299-300.

166. *Id.*

167. *Id.* at 636, 640, 645.

168. *Id.* at 657.

169. *Id.* at 659.

170. *Id.* at 701.

anything about being warm or cold blooded?”¹⁷¹ Hughes responded as follows:

[T]he way it happened, we were getting in the car to take her home, the car was cold, and she indicated she was cold. I said, in a few minutes when the car gets warm and the heater gets going, you will be warm. She looked at me and said, “I am cold blooded.”¹⁷²

The prosecutor also asked Hughes if Patty had “comment[ed] upon her nature or her values.”¹⁷³ He replied that Patty had said she has a “different set of values.”¹⁷⁴

In his closing argument, Williams stated, “The defendant was motivated by sheer greed and sexual lust and had been for years. That she had planned for years to kill her husband. She disregarded her marital vows and the noticeable obligations of motherhood.”¹⁷⁵ The weakness of the case against Patty posed a problem for the prosecution. However, the appeal to gender stereotypes provided a solution—it moved the jury. Resorting to an invidious appeal to gender bias raises significant ethical issues.

Lawyers committed to social justice should be attuned to gender and racial bias, intentional or implicit. They should be able to identify not only their own biases but also when others appeal to biases. This provides a hedge against tunnel vision. It is critical that lawyers realize such bias is most appealing when cases are weak and, therefore, to be vigilant in their self-reflection.

XI. TUNNEL VISION AND POST-CONVICTION RELIEF

Tunnel vision does not end with a conviction but instead intensifies as a case proceeds through post-conviction litigation.¹⁷⁶ In a motion for a new trial, cognitive bias may prejudice the trial judge toward making his findings consistent with the trial court result.¹⁷⁷

After Patty had been convicted, the judge volunteered his opinion in the matter. In thanking the jury, Judge Donald Barnes stated, “For whatever help it might be, I think that the verdict, my personal opinion

171. *Id.* at 300.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at 659.

176. Findley & Scott, *supra* note 3, at 303-04.

177. Stephanie Roberts Hartung, *Missing the Forest for the Trees: Federal Habeas Corpus and the Piecemeal Problem in Actual Innocence Cases*, 10 STAN. J. C.R. & C.L. 55, 61-62 (2014).

is, now that it is over, is proper under the circumstances.”¹⁷⁸ Just over one month later, Judge Barnes would rule on a motion for a new trial.¹⁷⁹

When she learned of Patty’s conviction, Ethel Stephens was troubled that that Sheriff Norman never revisited her account of a suspicious vehicle near the Prewitt home the night of Bill’s murder. Stephens shared her account with Patty’s lawyer, who promptly sought a new trial.¹⁸⁰ Sheriff Norman testified that he did not recall the conversation and, upon review of his case file, “found no report of contact” with Stephens.¹⁸¹ He did not mention that there had been a report of a vehicle recorded, undisclosed to the defense, which law enforcement apparently failed to investigate.¹⁸² In his ruling, Judge Barnes credited Sheriff Norman’s testimony over Stephen’s testimony.¹⁸³ However, Judge Barnes ruled that, even if the lead had been available at trial, “such evidence would have been unlikely to have affected the verdict” due to the “substantial evidence linking [Patty] to the killing and the relative weakness of her contention that an intruder was the murderer.”¹⁸⁴ Judge Barnes’s analysis failed to address how tunnel vision had taken hold of investigators and resulted in the view that evidence of an intruder was weak. Most damaging, Judge Barnes, who had already formed and expressed his own view of Patty’s guilt, foreclosed the possibility of a jury ever hearing Stephens’s account.

Tunnel vision is prescribed on appeal by legal rules.¹⁸⁵ For example, appellate courts do not decide the accuracy of factual determinations.¹⁸⁶ Rather, trial court rulings are afforded deference. In the Prewitt case, this meant that the appellate court gave deference to the factual determinations of Judge Barnes, including his ruling that Patty was not prejudiced by the omission of evidence on the suspicious vehicle.¹⁸⁷ Thus, the finding that the trial court made no errors was affirmed on appeal.¹⁸⁸

It is true that a showing of actual innocence may result in an overturned conviction. In Missouri, for example, a freestanding claim of

178. Transcript of Record, *supra* note 45, at 711.

179. *Id.* at 651, 712.

180. *Id.* at 712, 718-25.

181. *State v. Prewitt*, 714 S.W.2d 544, 549-50 (Mo. Ct. App 1986); *see* Transcript of Record, *supra* note 45, at 731.

182. Ruling on Defendant’s Motion for New Trial at 6, *State v. Prewitt*, No. CR484-5F (Mo. Cir. Ct. 1985); *see* Transcript of Record, *supra* note 45, at 728-35.

183. Ruling on Defendant’s Motion for New Trial, *supra* note 183, at 6.

184. *Id.*

185. *See* Findley & Scott, *supra* note 3, at 333, 348-53.

186. *Id.* at 333, 348-49; *see, e.g., Prewitt*, 714 S.W.2d at 551.

187. *See* *State v. Prewitt*, 714 S.W.2d 544, 549-51 (Mo. Ct. App 1986).

188. *Id.* at 546, 551-52.

actual innocence requires the defendant to make a clear and convincing showing that undermines confidence in the correctness of the judgment.¹⁸⁹ Meeting this high standard is quite difficult. Normally, clear and convincing evidence is more than undisclosed leads that point toward a possible intruder as the perpetrator. It requires a showing that the person is actually innocent, which often requires evidence such as DNA, witness recantation, or a confession from the actual perpetrator.¹⁹⁰ In a case like Patty's—where the tunnel vision exhibited by investigators resulted in uncollected evidence and ignored exculpatory leads and where witnesses did not offer testimony about the crime itself but rather damaging character evidence—it will likely be impossible to ever meet the clear and convincing standard.

The wrongfully convicted must then put their hope in an executive to grant relief through clemency, as Patty has done. At a time when many governors are reluctant to use their clemency power,¹⁹¹ this is a fanciful hope. Indeed, where a prisoner continues to insist on his or her innocence, but cannot prove it, such steadfastness can be fatal to a clemency petition. One former federal judge observed that a prisoner's acceptance of responsibility and expressions of remorse are considered the most important factors in granting release from confinement.¹⁹² In Patty's case, this means that her extraordinary record over the past thirty years, which includes obtaining multiple academic degrees, serving the state as a computer programmer, and decades of mentorship of younger inmates, has not moved the Governor to act.¹⁹³

XII. CONCLUSION

The increased awareness of wrongful convictions in recent years has rightfully led many to question the effectiveness of our criminal justice system.¹⁹⁴ We have learned that tunnel vision—the tendency

189. *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 543 (Mo. 2003) (en banc).

190. See John M. Leventhal, *A Survey of Federal and State Courts' Approaches to a Constitutional Right of Actual Innocence: Is There a Need for a State Constitutional Right in New York in the Aftermath of CPL § 440.10(G-1)?*, 76 ALB. L. REV. 1453, 1485-86 (2013).

191. Maggie Clark, *Governors' Pardons Are Becoming a Rarity*, GOVERNING (Feb. 8, 2013), <http://www.governing.com/news/state/sl-governors-balance-politics-with-pardons.html>.

192. H. Lee Sarokin, *The Guilty Have a Better Chance for Parole or Pardon Than the Innocent*, HUFFINGTON POST (Dec. 28, 2015, 10:49 PM), http://www.huffingtonpost.com/judge-h-lee-sarokin/the-guilty-have-a-better-_b_8885290.html.

193. Mary Ann McGivern, Opinion, *Clemency for Patty Prewitt* (Dec. 29, 2015), http://www.stltoday.com/news/opinion/clemency-for-patty-prewitt/article_9c75491c-90a4-5d25-83a7-378382e7437e.html.

194. See generally Scott Martelle, Opinion, *Exonerations of the Wrongfully Convicted Are on the Rise*, L.A. TIMES (Feb. 3, 2016, 5:05 AM), <http://www.latimes.com/opinion/opinion-la/ol-wrongful-convictions-exonerations-death-penalty-20160202-story.html>.

fueled by bias and pressure that leads actors in the criminal justice system to focus singularly on a suspect and build a case for conviction while ignoring evidence that points away from guilt—has devastating consequences. It not only creates a sense that the case is open and shut but, if the evidence generated through tunnel vision is weak, can also tempt a prosecutor to bolster a weak case by withholding evidence, relying on false testimony, or appealing to jurors' biases.¹⁹⁵

The impact of tunnel vision has had a tragic impact on Patty Prewitt and her family. Today, as she seeks clemency—her only hope of release before 2036—Patty is still paying the price for choices that investigators and prosecutors made over thirty years ago. In some instances, these choices were unintentional and in others they were calculated to secure a conviction. The net effect is that Patty Prewitt, though no fault of her own, is not in a position where she can prove her innocence.

Given the link between tunnel vision and wrongful convictions, educators have an ethical obligation to teach future legal actors about the pernicious effects of tunnel vision and equip them with the tools to mitigate it. The methods for inculcating reflective skepticism into the investigation and prosecution are well developed. It is time that they become a regular and essential part of the training of legal actors.

195. *See supra* notes 139-50 and accompanying text.