

Crime Scene Staging: A Denial of Justice

SAMSON D. SU*

INTRODUCTION

While mass media makes access to information more attainable than ever before,¹ it also provides equal information access to criminals and can expose investigative techniques via forensic science television programs and publications.² As a result, crime scene staging is on the rise due to the phenomena known as the “CSI Effect,”³ which impose unprecedented challenges for death scene crime investigations.⁴ Additionally, a large number of case studies have revealed the prevalence of police misconduct in death crime investigations, including inappropriate and reckless suicide rulings based on insufficient or contrary evidence. This not only has severe societal impacts from a public policy standpoint, but also undermines the proper functioning of the entire criminal justice system. This Note will survey a series of death crime case studies that were wrongfully decided, using the high-profile Cobain case as the main case discussion, in addition to proposing possible remedies.

Part I of this Note will briefly describe the historical development of crime scene staging, its detrimental impact on crime investigations as illustrated by the Casey Anthony and Rebecca Zahau case, and the introduction of the “CSI Effects” along with an apparent suicide case study that largely resembles the death scene described in the main case discussion section. Part II will dive into a detailed Cobain case analysis by applying the “Seven Major Mistakes in Suicide Investigation” technique to reveal ample evidentiary inconsistencies that resulted from improper police investigative conduct. It then will draw parallels to a more recent Andreacchio case to demonstrate the prevalence of such ongoing reckless suicide rulings. Part III will propose a set of comprehensive recommendations to reform death scene investigation procedures as well as advocating for a change in law for the Exemption Clause of The Freedom of Information Act. The Note concludes by examining the responsibilities of the legal communities and why

* J.D., Georgetown University Law Center (expected May 2023); B.B.A., Middle Tennessee State University (2015). © 2022, Samson D. Su.

1. See M. A. Mughal, *Mass Media and its Influence on Society*, THE DAILY JOURNALIST, <https://thedailyjournalist.com/pen-and-pad/mass-media-and-its-influence-on-society/> [<https://perma.cc/X3PM-87SH>] (last accessed April 22, 2022).

2. Claire Ferguson, *The Defects of the Situation: a Typology of Staged Crime Scenes*, Bond University (Sept. 2010), https://pure.bond.edu.au/ws/portalfiles/portal/18275117/The_Defects_of_the_Situation.pdf [<https://perma.cc/JF24-EBZM>].

3. *Id.* at 73-74.

4. *See id.*

lawyers may have an ethical obligation to propose and advocate such reforms in order to address the current investigative defects.

I. THE INTRODUCTION AND HISTORY OF CRIME SCENE STAGING

Deception is an innate feature of life with deep evolutionary roots in the development of all species.⁵ It is an attribute that is vital to the reproductive success of living organisms and can take a variety of forms ranging from the smallest bacterial molecule interaction to insects and animal camouflage,⁶ all of which share the common goal of self-preservation—a crucial element that goes to the heart of the primary motive for crime scene staging.⁷ Or, as the famous Austrian criminologist Dr. Hans Gross defines it in his 1924 seminal writing on criminal investigation handbook:

[T]he defects of the situation are those contradictions, those improbabilities, which occur when one desires to represent the situation as something quite different from what it really is, and this with the very intentions and in the purest belief that one has worked with all the forethought, craft, and consideration imaginable.⁸

Crime scene staging has a deep root in history and dates back to ancient Biblical times. The story of Joseph in the book of Genesis is perhaps one of the earliest documented accounts dealing with crime scene staging. In the story, Joseph's brothers conspired to remove Joseph from the family by selling him into slavery because they were angry and jealous of him being the favorite son of their father, Jacob. In order to cover up their act, they slaughtered a goat, dipped Joseph's coat into the blood, and convinced their father that his beloved son Joseph had been devoured by wild animals.⁹ Further, in the early 1600s, William Shakespeare wrote the famous play *The Tragedy of Macbeth* in which the Scottish General Macbeth and his wife, lady Macbeth, stabbed the King of Scotland to death in his sleep and then smeared the blood of the dead king on the clothes of the sleeping guards to avoid the detection of their involvement.¹⁰ In other words, the essence of crime scene staging is to manipulate and modify the surroundings at the scene in order to make it look like something else might have happened in an attempt to mislead and redirect an investigation off course.¹¹

5. ROBERT TRIVERS, DECEIT AND SELF-DECEPTION, 374-75 (2011).

6. *Id.*

7. Robert Hazelwood & Michael Napier, *Crime Scene Staging and Its Detection*, INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 746-47 (2004).

8. HANS GROSS, CRIMINAL INVESTIGATION: A PRACTICAL HANDBOOK FOR MAGISTRATES, POLICER OFFERS, AND LAWYERS 643 (1906).

9. *Genesis* Chapter 37.

10. Shakespeare, *The Tragedy of Macbeth*, (April 22, 2022), <http://shakespeare.mit.edu/macbeth/full.html> [<https://perma.cc/S6TH-5QKV>].

11. Hazelwood & Napier, *supra* note 7, at 751.

There are severe societal complications associated with crime scene staging. First, it poses unwarranted challenges for law enforcement to successfully solve the case if the evidence has been intentionally tampered with at the crime scene to divert attention away from the perpetrator, which in turn creates a direct danger to public safety if the offender was on the loose.¹² Second, crime scene staging misuses the limited resources available for death investigations.¹³ In the controversial case of Casey Anthony, Ms. Anthony, a suspect at the time, verbally staged the scene by purposely lying and misleading the investigators to the Universal Studio where she claimed to have worked, only for them to find out later that the whole thing was a setup, which was confirmed by a Studio supervisor. The goal here, again, was for self-preservation by redirecting the investigative attention and resources away from the real focus of the investigation.¹⁴ This misallocation of time and resources could have devastating consequences, preventing the true victim from a needed timely rescue.¹⁵

Most importantly, staged homicide crime scenes impede justice deserved by the victims and their families because tampered crime scenes can prevent law enforcement from making timely criminal charges, and cases often become cold due to a failure to yield plausible investigative leads.¹⁶ The mysterious death surrounding the Zahau case illustrates the difficulties a staged crime scene imposes in seeking justice.¹⁷ In July 2011, Rebecca Zahau was found dead, naked, gagged, with her hands tied behind her back, hanging on the balcony of Spreckels Mansion in Coronado, California. The San Diego authority in that case twice ruled the death as a suicide despite sufficient indications of foul play, such as: the suspicious way her hands were tied, the second autopsy result performed by Dr. Cyril Wecht, as well as the cryptic message left on the bedroom door “she saved him, can you save her.”¹⁸ It took a decade for the Zahau family to finally win their day in court, with a chance to give their arguments and present evidence of a homicide in hopes of compelling the San Diego authority to reopen the case.¹⁹

Unfortunately, while experts may disagree on which type of staging is the most common, they do reach consensus that crime scene staging is on the rise as a

12. LAURA PETTLER, CRIME SCENE STAGING DYNAMICS IN HOMICIDE CASES, 54-55 (2016).

13. *Id.*

14. Jessica Hopper, *Casey Anthony Trial: Frustrated Cops Called Her ‘Cold Blooded . . . Monster’*, ABC NEWS (Feb. 21, 2022), <https://abcnews.go.com/US/casey-anthony-trial-tape-police-detectives-grilling-caylees/story?id=13743542> [<https://perma.cc/BC87-ZK9N>].

15. PETTLER, *supra* note 12, at 55.

16. RICHARD H. WALTON, COLD CASE HOMICIDES: PRACTICAL INVESTIGATIVE TECHNIQUES, 2 (2006).

17. Ken Stone, *Zahau Family Wins Day in Court vs. Sheriff Gore, Seeking Proof of Murder*, TIMES OF SAN DIEGO (Feb. 22, 2022), <https://timesofsandiego.com/crime/2021/03/23/zahau-family-wins-day-in-court-vs-sheriff-gore-seeking-proof-of-murder/> [<https://perma.cc/ZA6E-F6H8>].

18. Lynn Redmond, Joseph Rhee, Tami Sheheri & Pavni Mittal, *The Mysterious Death of Rebecca Zahau: Where This Bizarre Case Stands Today as the Civil Suit Goes Before a Jury*, ABC NEWS (March 1, 2018), <https://abcnews.go.com/US/mysterious-death-rebecca-zahau-bizarre-case-stands-today/story?id=53425140> [<https://perma.cc/H6KQ-BW99>].

19. Stone, *supra* note 17.

result of the “CSI Effects”—in which the general public (including criminals) becomes increasingly educated on the investigative techniques in the field of forensic science from mass media, true crime books, and criminal investigation TV shows.²⁰ The former Commander of Bronx Homicide division at New York City Police Department, Vernon Geberth, argues that the most common type of staging is of homicides being made to look like suicides via manipulation and alteration of the crime scene.²¹ Geberth employs the following case study to illustrate the characteristics of a staged suicide crime scene: the male victim was found dead lying on his back on the bed with a rifle between his legs, indicative of a self-inflicted gunshot wound to the head.²² The gun belonged to the victim and two spent shell casings were found in the room. The case was ruled as a suicide. However, upon review, aside from the inadequate length of the police report, Geberth found a lack of numerous necessary investigative steps—the police failed to examine the firearm, the fingerprints, and reconstruct the crime scene; no gunshot residue testing was performed to determine if the victim had, in fact, shot himself with the firearm. They also failed to conduct victimology to better understand the victim as a person and his life experiences in order to more objectively evaluate the motive and intent necessary for a suicide determination. In addition, the autopsy was not conducted by the proper authority, which would be a medical examiner or forensic pathologist.²³

Based on the above findings, as well as the contrary victimology discovery of the victim, Geberth believed that the police had rushed to the conclusion based on preliminary inspections of the crime scene while ignoring the crucial indication of foul play.²⁴

What’s more, the “CSI Effects” had little presence in this case, for the actions of the perpetrator did not even seem to take the basic level of reasonable precaution to avoid detection. There were strong indicators suggesting greed motivated the homicide given that a number of valuables and cash of the deceased were taken from his residence and vehicle.²⁵ The police misconduct, in my opinion, reached the threshold of gross negligence if not a complete dereliction of duty due to the utter failure to perform the fundamental routine protocols involved with any homicide and death investigation. Regrettably, wrongfully decided cases like this are by no means rare instances in the field of criminology, which leads to the main discussion of the case analysis in Part II of this note—the Cobain case.

20. Vernon J. Geberth, *Crime Scene Staging and Alterations: The CSI Effect on Criminal Investigations*, 20 PI MAG. J. PRO INVESTIGATORS (April 2007), <https://www.practicalhomicide.com/Research/PIMag0707.htm> [<https://perma.cc/5DN4-KN4U>].

21. *Id.*

22. *Id.*

23. Vernon J. Geberth, *The Staged Crime Scene*, 44 L. & ORD. MAG. (Feb. 1996), <http://www.practicalhomicide.com/articles/staging.htm> [<https://perma.cc/DY4J-DDYX>].

24. *Id.*

25. *Id.*

II. THE COBAIN CASE ANALYSIS

On April 8, 1994, the American rock band frontman, Kurt Cobain, was found dead in the greenhouse above the garage of his Seattle home.²⁶ It was determined that he died on April 5, three days prior to the discovery of his body by an electrician, who was called in to install security lighting that morning.²⁷ Cobain was found lying on his back on the floor with a 20-gauge shotgun across his body, suggesting that he had shot himself in the head with the firearm.²⁸ The death scene largely resembled the previous case study. A note was found at the scene with a pen stuck through it inside a flowerpot, which was later identified as a “suicide note” written by Cobain.²⁹ Within a few hours after his body was found, the Seattle police announced to the world that Kurt Cobain had committed suicide.³⁰

On the face of a preliminary review, the investigation procedure seems to be questionable on many fronts. This analysis will only focus on the objective evidence and facts of the case, steering away from the abundant public speculations on Cobain’s personality, the interpretation of his music, and anecdotal stories. The inquiry will incorporate forensic expert Geberth’s “The Seven Major Mistakes in Suicide Investigation” as the framework to further systematically examine the Seattle police department’s investigation on the Cobain case. These seven major mistakes are:

- (1) Assuming the case is a suicide based on the initial report;
- (2) Assuming “the suicide position” at the crime scene;
- (3) Not handing “the suicide” as a homicide investigation;
- (4) Failure to conduct victimology;
- (5) Failure to apply the three basic investigation considerations to establish if the death is suicide in nature: The presence of the weapon or means of death at the scene - Injuries or wounds that are obviously self-inflicted, or could have been inflicted by the diseased, The existence of a motive or intent on the part of the victim to take his or her own life -
- (6) Failure to properly document any suicide notes;
- (7) Failure to take each factor to its ultimate conclusion.³¹

Each of these elements are assessed in turn with regard to the death scene evidence of the Cobain case:

26. Neil Strauss, *Kurt Cobain’s Downward Spiral: The Last Days of Nirvana’s Leader*, ROLLING STONE (June 2, 1994), <https://www.rollingstone.com/music/music-news/kurt-cobains-downward-spiral-the-last-days-of-nirvanas-leader-99797/> [<https://perma.cc/8LBW-LCHB>].

27. *Id.*

28. *Id.*

29. Brendan Manley, *April 5, 1994: Kurt Cobain Dies at his Seattle Home*, DIFFUSER (April 5, 2016) <https://diffuser.fm/kurt-cobain-death-anniversary/> [<https://perma.cc/R8PS-CVVD>].

30. SOAKED IN BLEACH, *Suburban Hitchhiker & Daredevil Films* (June 11, 2015) [hereinafter BLEACH]; see also Studio 10, *Was Kurt Cobain Murdered?*, <https://www.youtube.com/watch?v=UTmXbmVKyUI> [<https://perma.cc/U6ZF-5NVK>] (last visited Feb. 22, 2022).

31. Vernon J. Geberth, *The Seven Major Mistakes in Suicide Investigation*, 61 L. & ORDER MAG. (Jan, 2013), <https://www.practicalhomicide.com/Research/7mistakes.htm> [<https://perma.cc/3WGN-V5SV>].

(1) During Cobain's six days of disappearance prior to his body being found on April 8, Cobain's wife, Courtney Love, filed a missing person police report that stated that Cobain "ran away from California (rehab) facilities . . . bought a shotgun and maybe suicidal."³² Subsequently, he was found dead with a shotgun. The case was then reported as a suicide, which only takes a few hours for the police to confirm as the official type of incident.³³ This determination was done without any knowledge of the blood tests, fingerprint processing, and victimology (see discussion below), which strongly suggests a predetermined bias based on the initial report.

(2) Under the influence of this initial assumption, it seems the police went right into the "suicide position" and cut corners in the investigation, especially given that suicides are not recorded in the Uniform Crime Reporting Handbook.³⁴ This "suicide position" mentality was manifested by the fact that the determination seemed already set by the parole officer (not a detective or investigator) upon a few minutes of preliminary inspection. According to Detective Kirkland from the Seattle Police Department, "if the parole officer thinks it's a suicide and feels good about it, he notifies the medical examiner's office."³⁵ However, the authority to determine the manner of death should fall squarely in the medical examiner's office's purview, as they have a legal duty to investigate a death scene unless it can be positively classified as routine suicide, which was not the case here.³⁶

(3) Due to the seemingly predetermined presumption of suicide, the police failed to investigate the case from the angle of a potential homicide, even though Cobain's wife, Courtney Love, had a direct financial motive and was conveniently the sole beneficiary of Cobain's death.³⁷ As mentioned previously, this Note will avoid engaging in speculation, and thus will not further discuss Love's potential involvement other than simply laying out the facts on the motives. Nevertheless, it is the professional duty and obligation of law enforcement to pursue all clues and look beyond the scene into any potential person of interest with a motive on a death investigation.³⁸ Because the Seattle Police Department failed to do so, they also failed to preserve evidence that later could be useful for a

32. See BLEACH, *supra* note 30 (containing Seattle Police Department missing person report (April 4, 1994)).

33. See *id.* (Seattle Police Department police follow-up report (April 8, 1994)).

34. FBI, UNIFORM CRIME REPORTING HANDBOOK, at 16 (2004), https://ucr.fbi.gov/additional-ucr-publications/ucr_handbook.pdf [<https://perma.cc/HBD7-TBN7>] [hereinafter HANDBOOK].

35. See BLEACH, *supra* note 30.

36. Stefan Timmermans, *Suicide Determination and the Professional Authority of Medical Examiners*, AMERICAN SOCIOLOGICAL REVIEW (Apr. 1, 2005) (finding the diseased had well-documented suicide intent history including putting only one bullet in the chamber, an act consistent with routine suicide), <https://journals.sagepub.com/doi/pdf/> [<https://perma.cc/YW95-PCNZ>].

37. Matt Lauer, *More Questions in Kurt Cobain's Death?*, NBC NEWS (April 2, 2004), <https://www.nbcnews.com/id/wbna4645881> [<https://perma.cc/ZZR5-4KF9>] (confirming that Cobain and Love were in the process of a divorce at the time and Cobain had directed their attorney Rosemary Carroll to remove Love from his will).

38. ARTHUR S. CHANCELLOR & GRANT D. GRAHAM, CRIME SCENE STAGING, 23-25 (2017).

homicide investigation. Once the suicide ruling was announced, the Seattle police allowed Love to cremate the body just six days after Cobain was found. They also waited for a month before starting to process the fingerprints on the shotgun, and most importantly, they allowed the entire greenhouse, the potential crime scene, to be torn down and destroyed.³⁹

(4) Forensic victimology is an analytical scientific study of the victim, an indispensable component in any death investigation because it provides the necessary insight into the victim's personality, lifestyle, and behaviors by initially examining the surrounding environment, such as their relationships with friends and family.⁴⁰ Given the nature of the process, conducting victimology takes time to complete.⁴¹ The Seattle Police Department, however, made a public accountment that Cobain had committed suicide within hours on the same day when the victimology alone could take at least three weeks based on the assessment of Geberth.⁴² This is unacceptable police conduct by the established professional standard on death investigations.⁴³ The Philip Seymour Hoffman case is a good example of how a death investigation should be conducted. The police, in this case, did not rush to a conclusion⁴⁴ even though Hoffman was found dead in his Manhattan apartment with a syringe in his arm and a large amount of heroin next to him, which overwhelmingly suggests a drug overdose. The investigators instead waited for autopsy results while investigating the circumstances surrounding his death, which subsequently yielded four arrests.⁴⁵

Dr. Cyril Wecht, as a renowned forensic pathologist who was involved in a number of high-profile cases ranging from the J.F.K assassination to the death of Michael Jackson, opined that celebrity death investigations especially take more time due to public scrutiny and curiosity.⁴⁶ This analysis, however, does not seek a heightened standard or special treatment due to Cobain's prominent status. It simply calls into question whether the deceased received a thorough, fair investigation, as deserved by all victims under such unfortunate circumstances. If the Seattle police had done due diligence and exercised reasonable care to conduct

39. See BLEACH, *supra* note 30.

40. See generally BRENT E. TURVEY, FORENSIC VICTIMOLOGY: EXAMINING VIOLENT CRIME VICTIMS IN INVESTIGATIVE AND LEGAL CONTEXTS (2009).

41. See *id.*

42. See *Was Kurt Cobain Murdered?*, *supra* note 30 (stating the estimated time of victimology by Gererth).

43. *Id.* (explaining the forensic experts' consensus on the rushed suicide announcement).

44. *Philip Seymour Hoffman: Arrests Made Over Heroin, Reports Say*, THE GUARDIAN (Feb. 4, 2014), <https://www.theguardian.com/film/2014/feb/05/philip-seymour-hoffman-heroin-from-apartment-analysed> [<https://perma.cc/D2F2-LXMB>].

45. David Osborne, *Philip Seymour Hoffman Dead: Four People Arrested as Police Investigate Actor's Death From Suspected Drug Overdose*, INDEPENDENT (Feb. 5 2014), <https://www.independent.co.uk/news/people/news/philip-seymour-hoffman-death-arrests-four-people-detained-as-part-of-investigation-into-actor-s-death-9108283.html> [<https://perma.cc/6M49-SWX5>].

46. See BLEACH, *supra* note 30.

an in-depth victimology *before* the official announcement,⁴⁷ they would have quickly discovered the reaction from many of Cobain's close friends and family members point in the opposite direction of suicide.⁴⁸

(5) The gunshot wound to the head could not have been inflicted by the deceased because the toxicology result indicated that Cobain's morphine blood level (converted from heroin) was 1.52 mgs per liter, which is over three times the lethal dose.⁴⁹ There were no recorded precedents where the patient had similar or above Cobain's blood morphine level and it did not result in immediate death upon injection. Further, none of the prior case studies involved the use of heroin and a gun for the commission of suicide.⁵⁰ In other words, with that level of morphine in the blood, Cobain would have been immediately incapacitated, let alone able to place the cap back on the syringe, put everything back in the cigar box,⁵¹ roll down his sleeves, reposition himself, then pick up the shotgun and proceed to kill himself. It is physically highly improbable, as a notion that defies science.

There was also evidence contrary to the existence of a motive or intent on the part of the victim to take his own life. First, there was no previous suicide attempt by the deceased, as Cobain had clarified that a Rome overdose in March was an accident.⁵² His grandmother also reported that Cobain had confirmed to go fishing with his grandfather and was in good spirit when the two spoke.⁵³ In addition, aside from the alleged "suicide note" (discussed below), Cobain left Love a second note in which he mentioned plans for divorce.⁵⁴ Such evidence as making future plans with family members and preparing for the divorce process run counter to a suicidal intent that the deceased had the motive to end his own life.

(6) While there was a "suicide note" at the scene, the authenticity of the note has been called into question by experts.⁵⁵ The content and handwriting of the last four lines are very different from the rest of the letter, which seemed to have been written to Cobain's fans talking about his loss of passion for music.⁵⁶ There was also a letter practice sheet found in Love's backpack that appeared as if

47. Linda Keene, Duff Wilson, Ferdinand M. De Leon, Vanessa Ho, Patrick Macdonald, Kery Murakami & Peyton Whitely, *Questions Linger After Cobain Suicide—Credit-Card Activity, Details Of Last Days Intrigue Investigators*, SEATTLE TIMES (May 11, 1994), <https://archive.seattletimes.com/archive/?date=19940511&slug=1909954> [<https://perma.cc/ELY9-JCH8>] (finding detectives only conducted interviews after the official ruling, which insisted on initial determination despite of contrary findings from Cobain's close family and friends).

48. *Id.*

49. Tom Grant, *The Kurt Cobain Murder Investigation*, (Feb. 22, 2022), <https://cobaincase.com/index.html> [<https://perma.cc/62H2-LC7J>].

50. See BLEACH, *supra* note 30.

51. *Id.*

52. See Keene et al., *supra* note 47 ("Love later said it was a suicide attempt, Cobain, when he came out of his coma, insisted it had been an accident.")

53. *Id.*

54. See BLEACH, *supra* note 30.

55. See *id.*

56. See *id.*

someone was trying to mimic Cobain's handwriting.⁵⁷ The timing of the note may be questionable as well. The note reads in part, "*Thank you all from the pit of my burning, nauseous stomach for your letters and concern during the past years.*" However, in a December 1993 MTV interview, Cobain stated that a former stomach problem had been long healed with no issues for over a year.⁵⁸ A thorough victimology inquiry could have addressed these discrepancies as such, which the Seattle police failed to do.

(7) The investigation did not warrant the ultimate conclusion of each factor due to a number of inconsistencies and unanswered questions on the scene. For instance, the investigators determined that the deceased had committed suicide by shooting himself in the head with a shotgun as well as leaving behind a suicide note, yet, there were no legible fingerprints on the shotgun, the note, or the pen. It was alleged that Cobain wrote the note himself and had the gun in his possession before leaving for rehab, with no one but himself having access to it.⁵⁹ Further, there was no blood spatter as expected from the gunshot wound to the head,⁶⁰ which could have occurred due to a lack of blood pressure, thereby suggesting the plausibility of the weapon firing into a dead body. Most importantly, the bullet shell landed on the left side of the deceased instead of the right side as expected given his firing position.⁶¹ Lastly, there was inconsistency in the police report regarding the position of the stool. It was reported that the deceased had locked himself in the room using a stool blocking the entrance, which was later debunked by the first responder paramedic John Fisk at the Seattle fire department.⁶² Therefore, the Seattle police failed to take each factor to its ultimate conclusion, or consider other factors that could provide clues for the reconstruction of the event.

Based on an objective assessment of the case, the investigation yielded many questions that have yet to be answered. This resembles the Zahau case where Judge Katherine Bacal stated in her ruling against the Sheriff's Department, "The Court feels remiss if it does not state that the sheriff's investigation leaves almost as many unanswered questions as it answered." This Note is not making any

57. *Id.*

58. MTV News, Kurt Cobain Talks Music Videos, His Stomach & Frances Bean, YouTube (April 29, 2015), <https://www.youtube.com/watch?v=hJtm9HomKdE&t=45s> [<https://perma.cc/AS4N-4CJ2>].

59. See BLEACH, *supra* note 30.

60. Stuart H. James, Paul E. Kish & T. Paulette Sutton, *Chapter 4: Bloodstain Patterns*, in FORENSIC SCIENCE: AN INTRODUCTION TO SCIENTIFIC AND INVESTIGATIVE TECHNIQUES, 76 (2019), https://www.routledge.com/rsc/downloads/10.1201_b16445-11.pdf [<https://perma.cc/B6WV-CGCF>].

61. See BLEACH, *supra* note 30 ("Seattle police reports indicate that Kurt Cobain was found with a shotgun upside down, with his left hand around the barrel in a vice-like grip known as cadaveric spasm, cadaveric spasm is a form of muscular stiffening that only occurs in death . . . as it clearly shows the precise orientation of the deceased at the exact moment of death . . . the only explanation we can think up is someone or some kind of disruption was to Cobain's right causing the shotgun shell to ricochet and land on his left side.").

62. Eric Senich, 'Soaked in Bleach' Review: The 15 Key Points That Lead to Kurt Cobain's Murder, 195 (Dec. 5, 2015), <https://i95rock.com/soaked-in-bleach-review-the-15-key-points-that-lead-to-kurt-cobains-murder/> [<https://perma.cc/WZ9B-MN96>].

conclusions and is not accusing Ms. Love of any wrongdoing. Rather, it simply calls for a reassessment of the evidence and need for transparency in a new investigatory inquiry that was lacking but needed. To quote the former Seattle Police, Chief Norm Stamper, “it’s about right and wrong, it’s about honor, it’s about ethics.”⁶³

It is important to note that, unfortunately, the Cobain case was by no means a fluke and is only one in a long line of mishandled cases. There are still such injustices even in recent cases. In February 2014, 21-year-old Christian Andreacchio was found dead in the bathtub with a gunshot wound to the head in his Mississippi apartment.⁶⁴ After a mere 45-minute investigation at the scene, the Meridian Police Department ruled Andreacchio’s death as a suicide.⁶⁵ Similar to the Cobain case, the police’s investigative conduct raised many concerns. For example, very little investigation took place at a death scene following the 911 call that reported the event as a suicide; there was no conducting of victimology; police used a cellphone to take crime scene photos instead of a professional camera; and they failed to photograph the deceased’s friend and girlfriend, the two persons of interest who were at the scene and became potential suspects later.⁶⁶ In addition, there were a number of similar troubling facts: no fingerprints were found on the handgun allegedly used by the deceased; no blood spatter which would be expected as a result of a gunshot wound to the head; the gun was found on his left side even though the deceased was right-handed, and the gunshot wound was also on the right side of his head; photos show that Andreacchio’s body was in advanced rigor mortis (body tense) state, which takes hours to occur, suggesting he was already dead hours before the 911 call while the deceased’s friend was attempting to withdraw cash from his debit card.⁶⁷ There were also numerous inconsistencies in the POI (person of interest) statements (the analysis did not get into this aspect with Love in the Cobain case to ensure focusing on objective physical evidence only); and POI tested positive for gun residue on both hands.⁶⁸

Although a new police chief reopened the case as a result of the vast discrepancies mentioned above, and the new report indeed classified the incident as a

63. Snejana Farberov *Cops Should Re-open Kurt Cobain Death Investigation Over Murder Claims, Says Ex-Seattle Police Chief in New Documentary that Casts Blame on Courtney Love*, DAILY MAIL (June 24, 2015), <https://www.dailymail.co.uk/news/article-3137638/Cops-open-Kurt-Cobain-death-investigation-murder-claims-says-ex-Seattle-police-chief-new-documentary-casts-blame-Courtney-Love.html> [<https://perma.cc/59LA-Q2WZ>].

64. Gabriela Szymanowska, *Christian Andreacchio Case Featured on '48 Hours' Episode with New Information in 2014 Death, Producers Say*, MISSISSIPPI CLARION LEDGER (Jan. 8, 2021), <https://www.clarionledger.com/story/news/local/2021/01/08/48-hours-tv-show-investigates-christian-andreacchio-death/6587101002/> [<https://perma.cc/H3QZ-CL5S>].

65. *Id.*

66. Emily Wichick, *New Developments Revealed in the Suspicious Death of Christian Andreacchio*, CBS NEWS (Sept. 2, 2021), <https://www.cbsnews.com/news/christian-andreacchio-death-developments-48-hours/> [<https://perma.cc/AY2U-JAT5>].

67. *Id.*

68. *Id.* (stating one person had a contradictory alibi for a prior shooting practice, the other did not have an explanation for the positive gun residue on his hand).

homicide after an intensive fact-finding inquiry, the report was never presented to the grand jury for the issuance of an indictment.⁶⁹ Cases such as Cobain, Zahau, Andreacchio, and more illustrate the importance of crime scene investigators not rushing to a conclusion when investigations due to the potential deception of staging that would likely go undetected even for experienced law enforcement agents.⁷⁰ However, current police investigatory protocols urgently need to be improved due to severe incompetence, as the above case studies have shown.⁷¹ The following section of this Note will present and advocate a comprehensive set of reforms needed to ensure justice in the legal system and calls for a uniform and proper investigatory procedures involving all death investigations.

III. SOLUTION

A. THE NEW RULE OF A PRESUMPTION OF FOUL PLAY UNTIL PROVEN OTHERWISE AND THE PROPER ROLE OF PATROL OFFICERS IN DEATH SCENE INVESTIGATIONS

A presumption of foul play until proven otherwise should be the standard investigative procedure for all death inquires as the stakes are the highest when cases involve human life.⁷² The risk of letting a perpetrator go loose jeopardizes the justice deserved by all victims and is a violation of the inalienable constitutional right of liberty.⁷³ The default nature of this rule differentiates itself from the probabilistic fifty-one percent rule of evidence employed by medical examiners where deaths are presumed to be natural unless contrary evidence amounts to a certain threshold.⁷⁴ The benefit of the default nature for a presumption of foul play is that it encourages active investigation as opposed to nurturing laziness and cutting corners as demonstrated in the above case studies. There are no logically conceivable explanations as to why the police in the Andreacchio case took death crime scene photos with their cell phones instead of using a professional camera, which is a clear violation of the forensic photography standard,⁷⁵ other than coming in with a predetermined bias of suicide based on the initial 911 call.

69. *What Happened to Christian Andreacchio? '48 Hours' Episode Includes New Information in Mysterious Death*, INSIDE EDITION (Jan. 8, 2021), <https://www.insideedition.com/what-happened-to-christian-andreacchio-48-hours-episode-includes-new-information-in-mysterious> [<https://perma.cc/HCG3-V3GK>].

70. PETTLER, *supra* note 12, at 55 (stating the perpetrator successfully deceived the police by verbally staging the crime scene, resulting in a tremendous waste of police force resources).

71. SZYMANOWSKA, *supra* note 64 (finding the Mississippi DA Kassie Coleman acknowledged that the Meridian police's initial investigation was "without a doubt lacking competence and thoroughness.").

72. UN, *Universal Declaration of Human Rights* (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [<https://perma.cc/7BK3-GWEW>].

73. U.S. CONST. amend XIV, § 1.

74. See Timmermans, *supra* note 36, at 321-22.

75. Steven Staggs, *Crime Scene and Evidence Photography—Camera and Lighting*, from CRIME SCENE AND EVIDENCE PHOTOGRAPHY (2nd ed. 2014), <https://www.crime-scene-investigator.net/csp-cameraandlighting.html> [<https://perma.cc/EB59-8AGD>].

It is worth noting that while a default ruling of “undetermined” manner of death by medical examiners has been refuted due to such public policy concerns as negating suicide awareness and prevention efforts by falsely under-reporting the actual number of suicide cases,⁷⁶ the default rule of presumption of foul play only applies to law enforcement agents under the investigative context, not to medical examiners or forensic pathologists who have the final authority in the manner of death determination.⁷⁷ A default rule like this still needs to be strictly guided by a rigorous fact-finding inquiry and does not interfere with the proper medical evaluation process, and therefore should not run counter to the underlying interests of public health. Inversely, reckless suicide rulings (i.e., if it *looks* like a suicide, then it is a suicide) are similarly detrimental to society and the subgroups who are already suffering from depression and entertaining self-destructive thoughts,⁷⁸ because it creates a negative and false impression of suicide prevalence negating much-needed suicide prevention efforts. Such pernicious impacts are especially pronounced when a celebrity equivocal death is labeled as a suicide, as evidenced by the copycat suicide phenomena following Cobain’s death.⁷⁹

Given the negative effect of the police’s investigative misconduct, which was biasedly influenced by the initial report, medical examiner’s offices should be shielded from such subconscious prejudice. However, some jurisdictions not only allow patrol officers to conduct initial death scene investigations, but also permit them to give their opinions on the manner of death to the medical examiners.⁸⁰ This is an error due to their fundamentally distinct job functions from detectives and investigators.⁸¹ While a collaborative “pairing and sharing” working relationship between patrol officers and detectives is certainly encouraged,⁸² assisting regular preliminary criminal investigations is quite different from conducting

76. Amy Hawes & Darinka Mileusnic-Polchan, *Medical Examiners and ‘Manner of Death’*, Tennessee Bar Association (Feb. 2019) <https://www.tba.org/index.cfm?pg=LawBlog&blAction=showEntry&blogEntry=33465>, [<https://perma.cc/AVV3-Y28E>] (“if medical examiners began to default or skew toward undetermined or accident for manner of death. . . it will be impossible to track the true incidence of suicide fatalities.”).

77. See Timmermans, *supra* note 36.

78. See generally Julie Cerel, Myfanwy Maple, Judy van de Venne, Melinda Moore, Chris Flaherty & Margaret Brown, *Exposure to Suicide in the Community; Prevalence and Correlates in One U.S. State*, PUBLIC HEALTH REP. (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4716477/> [<https://perma.cc/WD6V-CVJE>].

79. *Kurt Cobain’s Death Tied to Triple Suicide*, TAMPA BAY TIMES (Oct. 18, 1994), <https://www.tampabay.com/archive/1994/10/18/kurt-cobain-s-death-tied-to-triple-suicide/> [<https://perma.cc/K2XW-QMJM>].

80. Seattle Police Department Manual (May 7, 2019), <https://www.seattle.gov/police-manual/title-15-primary-investigation/15055-death-investigation> [<https://perma.cc/K3FU-PGN8>].

81. See generally U.S. Bureau of Labor Statistics, Occupational Outlook Handbook: Police and Detectives, (Oct. 20, 2021), <https://www.bls.gov/ooh/protective-service/police-and-detectives.htm#tab-2> [<https://perma.cc/NKL5-H3B7>].

82. Moe Greenberg, *5 Myths About Patrol Officers and Detectives: A Philosophy of “Pairing and Sharing” Creates an Atmosphere for Learning*, Police 1 (Oct. 19, 2010), <https://www.police1.com/investigations/articles/5-myths-about-patrol-officers-and-detectives-jvk4L0f49CiqY6rQ/> (advocating for an operative relationship between patrol officers and detectives by encouraging “hands on” assistance from patrol officers) [<https://perma.cc/9EC7-R4YR>].

death scene inquiries, especially on equivocal death events without the necessary specialized training on forensic pathology. Thus, there should be a nationally standardized protocol regulating patrol officers' proper scope of job duty and the separation of their involvement with the medical examiner's manner of death determination process.⁸³

B. THE NECESSITY OF INCENTIVE PROGRAMS AND INVESTIGATIVE PROCEDURAL REFORM

Since suicide cases are not recorded in the Uniform Crime Reports (UCR) due to their non-amenable nature,⁸⁴ law enforcement agents are incentivized to take shortcuts in their investigative conduct.⁸⁵ There must be an incentive program implemented from within agencies to counterbalance this effect. One way to achieve it is to offer financial rewards or a point system connecting to promotion, where investigators and detectives will be rewarded if they have successfully solved a certain number of suicide-resembling cases. In addition, aside from the negative impact of UCR classification on the agencies' investigative integrity, the challenging nature of apparent suicides due to deceptive staging makes those riddles extraordinarily difficult to decode.⁸⁶ Thus, an incentive structure is vital to bring about any meaningful change.⁸⁷ Studies show that The Government Employee's Incentive Awards Act of 1954⁸⁸ yielded positive returns on federal employees' performance and efficiency.⁸⁹ Similar benefits were also found within the private corporate sector, which further solidifies the effectiveness of such agency reforms.⁹⁰

The desired outcome of incentive programs will not be maximized without proper police training reform. While knowledge and experience are certainly important attributes in the field of criminology, zeal, accuracy, and a self-denying nature are qualities essential to a qualified investigating officer.⁹¹ The satisfaction in attacking a case energetically is the antithesis of laziness, an ethical integrity

83. See Stefan Timmermans, *Introduction: Brokering Suspicious Deaths*, in POSTMORTEM, HOW MEDICAL EXAMINERS EXPLAIN SUSPICIOUS DEATHS (2006), <https://press.uchicago.edu/Misc/Chicago/803988.html> (stating the ability of medical examiners to conduct independent death investigations without outside influence is a crucial component of their forensic authority) [<https://perma.cc/89ZB-LNS3>].

84. See HANDBOOK, *supra* note 34, at 16.

85. See Geberth, *supra* note 31.

86. PETTLER, *supra* note 12, at 54–55.

87. Thaddeus L. Johnson & Natasha N. Johnson, *Commentary: Department Incentive Structures are the Linchpin to Real Police Reform*, Arizona State University (March 9, 2021), <https://crimeandjusticenews.asu.edu/commentary-departmental-incentive-structures-are-linchpin-real-police-reform> [<https://perma.cc/E2FZ-44HK>].

88. See generally Government Employees Incentive Awards Act, title III, 68 Stat. 1112.

89. Darrell W. Fifield, *Management Incentive Programs and the Future of Law Enforcement*, Fresno Police Department, at 29 (Dec. 1986) <https://www.ojp.gov/pdffiles1/Digitization/110313NCJRS.pdf> [<https://perma.cc/H4A8-8PGY>].

90. See *id.* at 24–28.

91. GROSS, *supra* note 8, at 20–22.

that is indispensable in handling any equivocal death scene investigation.⁹² Likewise, investigators must not solely rely on their own experience and intuition, but should be able to acknowledge their potential shortcomings in the scope of their knowledge in order to sharpen the skills of detecting the red flags in staged crime scenes.⁹³ All detectives must attend staged crime scene case study sessions periodically to familiarize themselves with the methodology and common trickery in various types of crime scene staging scenarios, as well as simulating the deconstruction and reconstruction of each death scene category.⁹⁴

The agency training reform, therefore, should diligently implement a set of comprehensive investigative procedures methodically and systematically.⁹⁵ There needs to be a uniform, consistent approach to every death investigation across all jurisdictions. All death scene detectives should begin the investigating process with a presumption of foul play while simultaneously asking the key question, “who benefits from the victim’s death?”, then assessing motives of all persons of interest facilitated by a rigorous victimology inquiry, from which victim-offender links can oftentimes be discovered.⁹⁶ Moreover, all major inconsistencies of physical evidence should have to be explained in apparent suicide cases, and any contradictory witness testimonies should be followed up while conducting a thorough background check on the said individual(s). Investigating officers shall follow common sense in behavioral analysis and shall not do mental gymnastics to unwarrantedly justify any irregularities in a victimology inquiry. Finally, no conclusion or official comment on the manner of death in ostensible suicide scenes should be made without autopsy and toxicology results. A tentative ruling may be issued upon the release of forensic pathological findings, which should be corroborated by the victimology discovery upon the issuance of a final, official verdict.

C. THE CRUCIAL ROLE OF TRANSPARENCY IN THE REFORM AND THE PROPOSAL OF A CHANGE IN LAW

Most importantly, no meaningful reforms could take place without transparency; and this is particularly the case with law enforcement agents who live in glass houses as public servants.⁹⁷ Thus, public officials have both an ethical obligation as well as a legal requirement to share information with citizens to ensure accountability. The Freedom of Information Act (FOIA) of 1966 provides that

92. *See id.*

93. *See* PETTLER, *supra* note 12, at 137.

94. *See generally* Hazelwood & Napier, *supra* note 7 (illustrating the techniques of detecting crime scene staging through the breakdown of various case studies and rare cases that do not conform to existing staging categories).

95. *See* Ferguson, *supra* note 2, at 28.

96. *See* PETTLER, *supra* note 12, at 122.

97. *See id.* at 61.

the general public has a right to access records from any federal agency.⁹⁸ The United States Supreme Court has made clear that the “basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”⁹⁹

Each state has subsequently enacted its own Freedom of Information laws mirroring the general purpose of FOIA to ensure their citizens have access to state and local records.¹⁰⁰ Exemptions of federal or state FOIA ought to be construed narrowly barring sensitive information of medical, personnel, and law enforcement records.¹⁰¹ However, criminal investigative records are generally considered confidential at the state level¹⁰² despite running counter to the congressional intent for the scope of exemption for law enforcement records.¹⁰³ As a crucial component of reform, there ought to be a for-cause exemption to the general exemption of investigative files. For example, in apparent suicide and equivocal death investigations, where there is mounting evidence and facts indicating foul play or glaring inconsistencies in the official police reports, law enforcement agencies should make the investigative files available for public scrutiny and address any legitimate questions raised in terms of their analysis and conclusion of the case, which should be followed by a mandatory and *independent* third-party review.¹⁰⁴

CONCLUSION

When law enforcement agencies fail to adhere to their investigative ethics by engaging in grossly negligent investigatory conduct that severely deviates from the standard of professionalism required, it endangers the fairness of criminal proceedings. This, in turn, jeopardizes the entire criminal justice system for both the prosecution and defense, not only because of constitutional obligations to preserve evidence,¹⁰⁵ but also by deeply implicating ethical concerns of facilitating a fair trial. This is due to the fact that the direct consequence of reckless suicide

98. The Freedom of Information Act, 5 U.S.C. §552.

99. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

100. Jeffrey R. Boles, *Documenting Death: Public Access to Government Death Records and Attendant Privacy Concerns*, 22 CORNELL J. L. PUB. POL’Y. 237, 251–253 (2012).

101. *See id.* at 252–53.

102. Sarah Henderson Hutt, *Praise of Public Access: Why the Government Should Disclose the Identities of Alleged Crime Victims*, 41 DUKE L.J. 368, 382–384 (1991).

103. Freedom of Information Act Guide, Exemption 7 (May 2004), https://www.justice.gov/archives/oip/foia-guide-2004-edition-exemption-7#N_5_ [<https://perma.cc/2QUK-Z7A4>].

104. *See* BLEACH, *supra* note 30. Due to the public outcry, in 2014 the Seattle Police Department finally issued a review on the Cobain case and for the first time processed four rolls of death scene photos that were never developed before. *See id.* However, the review was conducted by SPD itself instead of an independent third-party agency, therefore the case remained closed. *See id.*

105. *See* Garcetti v. Ceballos, 547 U.S. 410, 447 (2006) (Breyer, J., dissenting) (“A prosecutor has a constitutional obligation to learn of, to preserve, and to communicate with the defense about exculpatory and impeachment evidence in the government’s possession.”).

rulings is the destruction of evidence as illustrated by the case studies, which is essential for a fair trial.¹⁰⁶ It also violates litigants' rights of due process,¹⁰⁷ since the case would not come into the legal system to begin with in the event of wrongful suicide determinations, thus depriving justice for the victim and their families to have a day in court. Lawyers, as stewards of justice, have an ethical responsibility to ensure equal access to the legal system.¹⁰⁸ The stakes are the highest when human lives are in question, which is related to the inalienable rights to life, liberty, and the pursuit of happiness—the utmost fundamental core principles upon which our country is founded.¹⁰⁹

In criminal investigations, tampering with evidence or the collection process—either intentionally or recklessly—runs afoul of this underlying democratic principle. Allowing such misconduct to go unaddressed not only has severe societal impacts as potentially causing citizens to lose trust in the integrity of law enforcement,¹¹⁰ but it also defies logic and undermines the important skills learned in law school—critical, analytical thinking abilities and the skepticism necessary for an effective legal advocate¹¹¹ being an integral part of legal training. Therefore, lawyers, as advocates of justice¹¹² and proponents for the fairness of adjudicative proceedings,¹¹³ should have an ethical duty to advocate for necessary reforms in law enforcement investigatory conduct. This should be done in order to uphold the honor and integrity of litigants' constitutional rights within the criminal justice process and, more importantly, the high stakes of human lives and the pursuit of rightful justice.

106. See Che H. Lee, *The Prosecution's Duty to Preserve Evidence before Trial*, 72 CAL. L. REV. 1019, 1019 (1984).

107. U.S. CONST. amend XIV, §1.

108. See Society of American Law Teachers, *Chapter Two: Lawyers as Stewards of Justice: Our Professional Ethic to Serve*, in CHOOSING THE RIGHT LAW SCHOOL FOR YOU: A CONSUMER GUIDE FOR THE SOCIAL JUSTICE-MINDED LAW STUDENT (2015), <http://consumerguide.saltlaw.org/part-1-chapter-2-lawyers-as-stewards-of-justice-our-professional-ethic-to-serve/> [<https://perma.cc/WA76-P4AC>].

109. THE DECLARATION OF INDEPENDENCE para.2 (U.S. 1776).

110. See Szymanowska, *supra* note 64 (finding Andreacchio's family expressed extreme distrust and skepticism towards the Meridian Police Department and the Mississippi DA as a result of the public officials mishandling his son's death).

111. See generally Larry Richard, *The Lawyer Personality: Why lawyers Are Skeptical*, AMERICAN BAR ASSOCIATION, <https://www.americanbar.org/careercenter/blog/the-lawyer-personality-why-lawyers-are-skeptical/> [<https://perma.cc/QCG9-6TSM>] (last accessed Feb. 22, 2022).

112. Robert W. Gordon, *Lawyers, the Legal Profession & Access to Justice in the United States: A Brief History*, JUDICATURE (Fall 2019), <https://judicature.duke.edu/articles/lawyers-the-legal-profession-access-to-justice-in-the-united-states-a-brief-history/> (noting that in traditional sense, access to justice at a minimum necessitates the effective capacity to bring claims to a court and it requires even more in modern times) [<https://perma.cc/3JTP-MWXU>].

113. MODEL RULES OF PROF'L CONDUCT R. 3.4–5 (2009) (indicating that a lawyer's ethical duty to impartiality of the tribunal or fairness to opposing counsel will not be fulfilled if the victims of wrongful suicide rulings are deprived of their right to the judicial system).