



WHO IS THE REAL CRIMINAL?
IMPOSING SPECIFIC CRIMINAL LIABILITY FOR
POLICE MISCONDUCT IN FALSE CONFESSION CASES
UNDER NEW YORK LAW

Anna Maria Giblin*

DEDICATION

This Commentary is dedicated to Armond McCloud. You have truly taught me how to be a strong advocate for those in the criminal justice system, and I am forever grateful for my experience with you. You will always hold a special place in my heart.

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INTRODUCTION

No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.¹

Imagine the following scenario. Police receive a dispatch call that a man heard shots fired at his neighbor's apartment located in the Bronx, New York at 12:30 a.m. The police quickly arrive to the scene and find a woman lying in a pool of blood in the next-door apartment, which appears to have been broken into. Inspection of the body reveals that the woman had been shot twice, once in the head and once in the chest. Bullet casings near the body indicate that both shots were fired by the same gun. The police remove the body from the scene.

The lead investigator—Detective John Gallagher—arrives to the scene shortly after the police and emergency responders begin to gather evidence. Based on his conversations with personnel, Detective Gallagher mistakenly believes that the woman was shot only once in the head. He memorializes this misunderstanding in the first complaint follow-up report, also known as a DD5,² and states: “At approximately 0030 h., the O/S did respond to said location to investigate a woman shot in the head inside her apartment.”

In the days following the murder, Detective Gallagher feels immense pressure to find the perpetrator. This is not the first shooting to occur; multiple women have been shot in several apartment complexes in the surrounding area over the past six months. A week later, Detective Gallagher receives a tip that a nineteen-year-old black man—Elijah Abrams—was involved in the woman's shooting. The detective calls Elijah into the police station for questioning at 11:00 p.m. Elijah, as an

1. President Theodore Roosevelt, Third Annual Message (Dec. 7, 1903), <https://www.presidency.ucsb.edu/documents/third-annual-message-16>.

2. Alfred NG, *This Is NYPD's Official Crime-Fighting Phone*, CBS NEWS (Oct. 13, 2016, 11:19 AM), <https://www.cbsnews.com/news/this-is-nypds-official-crime-fighting-phone/>.

adolescent, does not realize that the police consider him to be a suspect in the murder investigation.

Detective Gallagher and his partner intensely interrogate Elijah throughout the night while depriving him of food, water, and sleep. Detective Gallagher claims that there likely will be immense retaliation against Elijah and his family—who live in an extremely dangerous and impoverished area of the Bronx—if Elijah does not confess to the murder. Detective Gallagher’s partner convinces Elijah that he can later prove his innocence at trial.

Throughout the evening, Detective Gallagher and his partner feed false information to Elijah. First, they tell him that the victim was shot only in the head. Later, the detectives falsely tell Elijah that they recovered his fingerprints from the bullet casings found near the victim’s body. They also suggest to Elijah that this was an attempted burglary gone wrong.

Elijah, with his will overborne, falsely confesses to the murder and writes and signs the following statement: “I broke into the victim’s apartment. Upon seeing her in the apartment, I got scared and shot the victim once in the head. I then ran out of the apartment building.”

Although the statement clearly does not match the physical evidence, and many disturbing events occurred throughout the interrogation, a jury convicts Elijah Abrams of murder, and a judge sentences him to thirty years to life in prison. Elijah maintains his innocence throughout his time in prison. Only forty years later is Elijah’s defense attorney able to prove his innocence and convince the court to vacate his conviction.

Little to Elijah’s knowledge, this is not the first time that Detective Gallagher has obtained a false confession from a suspect using these interrogation tactics. He has done this on at least five different occasions. Still, however, Elijah was forced to serve forty years in prison for a crime that he clearly did not commit, and Detective Gallagher will get to return home to his family as if nothing ever happened. The overarching question becomes: what should happen to Detective Gallagher?

False confessions, and subsequent wrongful convictions, present a serious problem in the criminal justice system as a whole, but especially in New York State. Since 1989, New York has ranked “third in the nation

in confirmed wrongful convictions.”³ Furthermore, police-induced false confessions “are among the *leading causes* of wrongful convictions.”⁴

This Commentary argues that New York should adopt a statute imposing specific criminal liability on police officers for intentionally, knowingly, recklessly, or negligently obtaining a false confession from an individual who is later wrongly convicted of and imprisoned for a crime for which the false confession was obtained.⁵ Part I provides background information on false confessions and the police misconduct that often give rise to them. It also analyzes current civil remedies for exonerees, arguing that an individual cannot fully achieve justice through compensation alone. Part II describes New York’s penal law, asserting that the interrogation tactics police routinely utilize to obtain false confessions do not fit neatly within the current definitions of official misconduct or obstruction of governmental administration. Part III lays out a legislative proposal that imposes specific criminal liability for obtaining a false confession in the first and second degrees. Part IV discusses the implications likely to arise from the proposal, anticipated objections to the proposal, and responses to those concerns.

I. BACKGROUND

A. *The Problem: Police Misconduct in False Confession Cases*

A false confession is “an admission (‘I did it’) plus a post-admission narrative (a detailed description of how and why the crime occurred) of a crime that the confessor did not commit.”⁶ People unfamiliar with our criminal justice system find it difficult to believe that anyone would falsely confess to a crime they did not commit. However, police frequently obtain false confessions during suspect interrogations through “a

3. Susan Arbetter, *New York’s Wrongful Conviction Track Record Is, Horrendous. Asm. Quart Wants to Change That.*, SPECTRUM NEWS 1 (Mar. 8, 2021, 6:24 PM), <https://spectrumlocalnews.com/nys/capital-region/capital-tonight/2021/03/08/new-york-s-wrongful-conviction-track-record-is-horrendous--asm--dan-quart-wants-to-change-that->.

4. *Facts and Figures*, FALSE CONFESSIONS (emphasis added), <https://falseconfessions.org/fact-sheet/> (last visited Aug. 28, 2023).

5. Although this Commentary urges only New York to enact the following proposal, it does not limit this type of proposal to New York. Other states, such as Illinois, where false confessions occur dangerously often, should also follow suit in enacting a statute that imposes specific criminal liability on police officers for obtaining a false confession. See Matt Masterson, *Is Chicago Really the ‘False Confession Capital?’*, WTTW (Sept. 22, 2017, 4:51 PM), <https://news.wttw.com/2017/09/22/chicago-really-false-confession-capital> (“In Chicago, in particular, false confessions (are) a huge problem . . . and [it is] the false confession capital of the country.”).

6. Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY L. 332, 333 (2009).

multistep process and sequence of influence, persuasion, and compliance” as well as psychological coercion.⁷

Many factors contribute to or cause false confessions.⁸ These factors include: (1) “[r]eal or perceived intimidation of the suspect by law enforcement”; (2) “[u]se of force by law enforcement during the interrogation, or perceived threat of force”; (3) “[c]ompromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, and, in some cases, mental limitations or limited education”⁹; (4) “[d]evious interrogation techniques, such as untrue statements about the presence of incriminating evidence”; and (5) “[f]ear, on the part of the suspect, that failure to confess will yield a harsher punishment.”¹⁰

In addition to these factors, there are three sequential errors that typically occur during police interrogations, which contribute to the emergence of a false confession and resulting wrongful conviction: misclassification error, coercion error, and contamination error.¹¹ First, the police investigator will misclassify the suspect as guilty.¹² Second, the investigator will subject the suspect to “a guilt-presumptive, accusatory interrogation that invariably involves lies about evidence and often the repeated use of implicit and explicit promises and threats.”¹³ Third, the investigator will elicit a false confession from the suspect and provide a post-admission narrative of the crime that the suspect adopts.¹⁴

False confessions occur regularly.¹⁵ According to the Innocence Project,¹⁶ many of the “more than 360 wrongful convictions overturned by DNA evidence in the United States involved some form of a false

7. *Id.* at 333.

8. See generally *False Confessions*, INNOCENCE PROJECT, <https://innocenceproject.org/false-confessions-recording-interrogations/> (last visited Aug. 28, 2023).

9. B. Madeleine Goldfarb, *Autism and Law Enforcement: Training, and When to Say No*, AUTISM SPECTRUM NEWS (Apr. 1, 2019), <https://autismspectrumnews.org/autism-and-law-enforcement-training-and-when-to-say-no/>. “Young people who do not understand their rights and are taught to please authority figures are particularly vulnerable.” *Id.*

10. *Id.*

11. Leo, *supra* note 6, at 333–37.

12. *Id.* at 333. This means that the investigator will “erroneously decide that an innocent person is guilty.” *Id.* at 334. The misclassification error occurs as the result of many cognitive errors, the most prominent one being poor investigative training. *Id.*

13. *Id.* at 333.

14. *Id.* at 333–34.

15. See generally *False Confessions Happen*, FALSE CONFESSIONS, <https://falseconfessions.org/false-confessions-happen/> (last visited Aug. 28, 2023).

16. The Innocence Project, founded by Barry C. Scheck and Peter J. Neufeld, “work[s] to free the innocent, prevent wrongful convictions, and create fair, compassionate, and equitable systems of justice for everyone.” INNOCENCE PROJECT, <https://innocenceproject.org/about/> (last visited Aug. 28, 2023). For further information on the cases that the Innocence Project has handled, see *All Cases*, INNOCENCE PROJECT, <https://innocenceproject.org/all-cases/> (last visited Aug. 28, 2023).

confession.”¹⁷ Of these cases involving false confessions, forty-nine percent of the exonerees¹⁸ were twenty-one years old or younger at the time of arrest.¹⁹ More alarmingly, as of July 2018, 130 DNA exonerees had been wrongfully convicted of murder, and sixty-two percent of them had falsely confessed to the crime.²⁰

1. The Reid Method

To be admissible in court, a confession must be voluntary: “made of the free will and accord of the accused, without fear or threat of harm and without hope or promise of benefit, reward, or immunity.”²¹ To avoid obtaining an involuntary confession in violation of an individual’s Due Process rights,²² police departments widely use a system of interviewing and interrogation known as the Reid Method.²³

The Reid Method is an “accusatory method of questioning where ‘police are trained to interrogate only those suspects whose culpability they “establish” on the basis of their initial investigation,’ and where interrogators seek to get a confession from these suspects no matter what it takes, often resorting to deceptive tactics.”²⁴ It involves three components: factual analysis, interviewing, and interrogation.²⁵

17. *DNA Testing Identifies Actual Perpetrator in 1996 Idaho Falls Rape and Murder, Confirming Christopher Tapp’s Innocence*, INNOCENCE PROJECT (July 17, 2019), <https://innocenceproject.org/news/christopher-tapp-exoneration/#:~:text=More%20than%2025%20percent%20of,form%20of%20a%20false%20confession.>

18. An exoneree is “someone who is officially cleared from a wrongful criminal conviction.” *Exoneree*, BLACK’S LAW DICTIONARY (11th ed. 2019).

19. *DNA Exonerations in the United States*, INNOCENCE PROJECT, <https://innocenceproject.org/dna-exonerations-in-the-united-states/> (last visited Aug. 28, 2023).

20. *Id.*

21. *Confession*, CORNELL L. SCH. LEGAL INFO. INST., <https://www.law.cornell.edu/wex/confession> (last visited Aug. 28, 2023); see *Schneekloth v. Bustamonte*, 412 U.S. 218, 225 (1973) (“[T]he confession [must be] the product of an essentially free and unconstrained choice by its maker.”).

22. See, e.g., *Jackson v. Denno*, 378 U.S. 368, 385–86 (1964) (“[T]he Fourteenth Amendment forbids the use of involuntary confessions . . . because of the probable unreliability of confessions that are obtained in a manner deemed coercive.”).

23. James Orlando, *Interrogation Techniques*, OLR RSCH. REP., <https://www.cga.ct.gov/2014/rpt/2014-R-0071.htm> (last visited Aug. 28, 2023). The “Reid Method” is the short-hand term for the “Reid Technique of Interviewing and Interrogation,” a registered trademark of John E. Reid and Associates, Inc. *Id.* For further information about Reid, see *Protecting the Innocent and Identifying the Guilty*, REID, <https://reid.com/> (last visited Aug. 28, 2023).

24. Ariel Spierer, *The Right to Remain a Child: The Impermissibility of the Reid Technique in Juvenile Interrogations*, 92 N.Y.U. L. REV. 1719, 1721 (2017) (citations omitted).

25. Orlando, *supra* note 23.

The factual analysis component refers to an inductive approach where the investigator evaluates each suspect with respect to the relevant crime.²⁶ The behavior analysis interview involves a “non-accusatory question and answer session, involving both standard investigative questions and ‘structured “behavior provoking” questions to elicit behavior symptoms of truth or deception from the person being interviewed.”²⁷ The interrogation is the final component and should occur only when the investigator is “reasonably certain of the suspect’s involvement.”²⁸ There are nine steps to the interrogation technique: (1) positive confrontation, (2) theme development, (3) handling denials, (4) overcoming objections, (5) procurement and retention of suspect’s attention, (6) handling the suspect’s passive mood, (7) presenting an alternative question, (8) having the suspect orally relate various details of the offense, and (9) converting an oral confession to a written confession.²⁹

Courts, including the United State Supreme Court, have “long recognized the use of the Reid [M]ethod by law enforcement.”³⁰ More specifically, these courts have concluded that confessions were admissible where police used the following tactics during interrogation:³¹ (1) minimization,³² (2) misrepresenting evidence to the suspect,³³ (3)

26. *Id.*

27. *Id.*

28. *Id.*

29. For further information on the nine steps, see *id.*

30. *People v. Thomas*, 124 N.Y.S.3d 143, 150 (Sup. Ct. 2020).

31. Joseph P. Buckley, *How Courts View the Reid Technique*, REID (Sept. 20, 2021), <https://reid.com/resources/whats-new/2021-how-courts-view-the-reid-technique>.

32. This technique involves interrogators minimizing the moral seriousness or the psychological consequences of the suspect’s behavior. *Id.*; see, e.g., *People v. Holloway*, 91 P.3d 164, 169, 177 (Cal. 2004) (affirming the defendant’s conviction where detectives, during the defendant’s interrogation, suggested that “the killings might have been accidental or resulted from an uncontrollable fit of rage”).

33. See, e.g., *Valle v. Butler*, 707 F. App’x 391, 392–93 (7th Cir. 2017) (affirming denial of defendant’s habeas corpus petition where detectives, during the interrogation, lied that a co-suspect implicated the defendant in the murder).

being friendly and empathetic with the suspect,³⁴ and (4) alternative question,³⁵ among others.³⁶

Despite these decisions, the Reid Method “has been increasingly criticized for its guilt-presumptive approach, its coercive nature, and its premise of isolating and psychologically manipulating the suspect.”³⁷ Many legal experts and scholars agree that these tactics can lead to false confessions and, in fact, have been employed in countless cases of proven false confessions.³⁸ As a result, many prominent figures in the criminal justice system, *including law enforcement*, have denounced its use.³⁹

2. An Example: Huwe Burton

Huwe Burton and his case serve as a classic example of police misconduct in false confession cases. In 1991, Mr. Burton, who at the time was an adolescent, was convicted of the murder of his mother, who was stabbed to death in their Bronx home.⁴⁰ His conviction was entirely based on a false confession obtained by three detectives—Frank Viggiano, Stanley Schiffman, and Sevelie Jones—who used psychologically coercive techniques during his interrogation.⁴¹ These

34. *See, e.g.*, *State v. Parker*, 671 S.E.2d 619, 630 (S.C. Ct. App. 2008) (“Excessive friendliness on the part of an interrogator can be deceptive. . . . Nevertheless, the ‘good guy’ approach is recognized as a permissible interrogation tactic.” (quoting *Miller v. Fenton*, 796 F.2d 598 (3d Cir. 1986)).

35. When a suspect appears ready to tell the truth during an interrogation, this technique teaches police to use “an alternative question to develop the first acknowledgment of guilt.” Buckley, *supra* note 31; *see, e.g.*, *Harris v. State*, 979 So. 2d 372, 376 (Fla. Dist. Ct. App. 2008) (“[T]he detectives did not make promises or threats that coerced [the defendant] into confessing. . . . Nor did the detectives indicate that murder resulting from a robbery is any less serious than intentional murder. They only inquired as to whether the boy had planned a robbery, as opposed to having grabbed the victim off the bike to intentionally beat him to death.”).

36. *See generally* Buckley, *supra* note 31.

37. Spierer, *supra* note 24, at 1721–22. Experts find that its “tactics are *too* powerful, i.e., can break down the innocent as well as the guilty.” Alan Hirsch, *Going to the Source: The “New” Reid Method and False Confessions*, 11 OHIO STATE J. CRIM. L. 803, 805 (2014).

38. Megan Crane, Laura Nirider, & Steven A. Drizin, *The Truth About Juvenile False Confessions*, 16 INSIGHTS ON L. & SOC’Y 10, 13 (2016); Hirsch, *supra* note 37, at 806.

39. *See, e.g.*, Eli Hager, *A Major Player in Law Enforcement Says It Will Stop Using a Method That’s Been Linked to False Confessions*, INSIDER (Mar. 9, 2017, 7:44 PM), <https://www.businessinsider.com/reid-technique-false-confessions-law-enforcement-2017-3>. One of these key players includes Wicklander-Zulawski & Associates, a consulting group that has worked with many U.S. police departments. *Id.* Wicklander-Zulawski confirmed “it will stop training detectives in the [Reid] method it has taught *since 1984*,” further stating it would use the technique “*only to educate police on the risk and reality of false confessions*.” *Id.* (emphases added).

40. *Huwe Burton*, INNOCENCE PROJECT, <https://innocenceproject.org/cases/huwe-burton/> (last visited Aug. 28, 2023).

41. *Id.*

techniques included “isolating Mr. Burton from his father, threatening him with additional criminal charges, and offering leniency if he confessed to killing his mother,”⁴² all while Mr. Burton had been sitting in a windowless room and “had not eaten or slept much in 48 hours.”⁴³ Mr. Burton subsequently served nineteen years in prison and was released on parole in 2009.⁴⁴

A reinvestigation of Mr. Burton’s case—conducted by his legal team⁴⁵ and the Bronx District Attorney Conviction Integrity Unit (“CIU”)⁴⁶—resulted in two significant findings, among others.⁴⁷ First, the CIU agreed that the three detectives used psychologically coercive techniques that caused Mr. Burton to confess falsely.⁴⁸ It recognized that the “false confession research was itself ‘newly discovered evidence’ that, when applied to the facts . . . required a finding that Mr. Burton’s confession was false and unreliable.”⁴⁹ Second, the reinvestigation also revealed that the three detectives “had used the same psychologically coercive interrogation tactics to obtain false confessions *from two other individuals just three months before Mr. Burton’s interrogation.*”⁵⁰ All of these findings, along with other pieces of newly discovered evidence, ultimately led the Supreme Court for Bronx County to vacate Mr. Burton’s conviction and sentence and dismiss the indictment on January 24, 2019.⁵¹ Mr. Burton finally was exonerated after bearing the weight of a wrongful conviction—and, most devastatingly, a wrongful conviction for the murder of his mother—for nearly *twenty-eight years*.⁵²

42. *Id.*

43. Jan Ransom, *3 Detectives Obtained a False Murder Confession. Was It One of Dozens?*, N.Y. TIMES (Feb. 15, 2021), <https://www.nytimes.com/2021/02/15/nyregion/3-detectives-obtained-a-false-murder-confession-was-it-one-of-dozens.html>.

44. *Huwe Burton*, *supra* note 40.

45. Mr. Burton’s legal team was comprised of Susan Friedman and Berry Scheck of the Innocence Project, Steven Drizin of Northwestern Pritzker School of Law’s Center on Wrongful Convictions, and Laura Cohen of Rutgers Law School’s Criminal and Youth Justice Clinic. *Id.*

46. The Bronx District Attorney Conviction Integrity Unity is “a division of the Bronx District court system that investigates appeals of innocence.” *Bronx District Attorney Conviction Integrity Bureau*, HOW TO JUST., <https://howtojustice.org/resources-services/bronx-district-attorney-conviction-integrity-bureau/> (last visited Aug. 28, 2023). The goal of the unit “is to act as a dedicated office within the District Attorney’s office focused on valid claims of injustice in the court system by providing due consideration to cases wherein individuals offer verifiable evidence that they are innocent, have been wrongfully convicted or have otherwise been subject to injustice as part of legal proceedings.” *Id.*

47. *See Huwe Burton*, *supra* note 40.

48. *Id.*

49. *Id.*

50. *Id.* (emphasis added).

51. *Id.*

52. *Id.*

B. *The Inadequate Solution*

1. Civil Remedies for Exonerees

Generally speaking, only those who have been exonerated have the right to pursue civil remedies.⁵³ There are three avenues for recovering financial compensation: (1) filing a civil rights lawsuit, (2) receiving special legislation, or (3) receiving relief pursuant to a statute.⁵⁴ In a civil rights lawsuit, an exoneree sues the police officers and the prosecutors who were involved in the wrongful conviction.⁵⁵ This avenue, however, typically proves unsuccessful because the exoneree must overcome the barriers of the defendants' qualified and absolute immunity.⁵⁶ To receive special legislation, an exoneree must "petition his or her state legislature to pass a private bill that would distribute money from the state treasury directly to the individual exoneree to remedy him or her for the wrongful conviction."⁵⁷ Special legislation, however, "is especially difficult to receive because exonerees typically do not have the political influence to successfully push a private bill through a state legislature."⁵⁸ The third avenue—receiving compensation under a statute—therefore is the most viable option for exonerees.⁵⁹

53. See Roy Strom, *Out of Prison and Broke, Wrongly Convicted Sell Their Cases (1)*, BLOOMBERG L., <https://news.bloomberglaw.com/business-and-practice/out-of-prison-and-broke-wrongly-convicted-turn-lawsuits-to-cash> (Feb. 2, 2022, 12:38 PM) (explaining that the wrongfully convicted can seek compensation from the state only if they can verify their innocence through exoneration). However, many jurisdictions impose strict and sometimes insurmountable barriers to civil recovery. See, e.g., Ashley Nicole Miller, *Life After Exoneration*, AM. PSYCH.-L. SOC'Y (Mar. 1, 2014), <https://www.apadivisions.org/division-41/publications/newsletters/news/2014/03/exoneration> ("[S]tate compensation mechanisms for the exonerated remain 'excessively restrictive in identifying who will be compensated, and cap the amount of recovery at artificially low levels.'").

54. Camera C. Bacon, *Student Spotlight: Compensation for Exonerees Other Than Money*, TENN. BAR ASS'N, <https://www.tba.org/?pg=compensationexonerees> (last visited Aug. 28, 2023).

55. *Id.*

56. *Id.* Police officers possess qualified immunity once a warrant is obtained with probable cause. *Id.* Prosecutors possess absolute immunity if acting within their prosecutorial powers. *Id.*

57. *Id.*

58. *Id.* Regrettably, some state constitutions outright prohibit special legislation. *Id.*

59. Notably, compensation statutes "vary[] tremendously from state to state," and "those who are exonerated are not guaranteed the same rights or compensation." Miller, *supra* note 53; see also Scott Rodd, *What Do States Owe People Who Are Wrongfully Convicted?*, PEW (Mar. 14, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/03/14/what-do-states-owe-people-who-are-wrongfully-convicted>.

In simple terms, exonerees in New York can file a claim under the state's Unjust Conviction and Imprisonment Act.⁶⁰ In order to present a claim for unjust conviction and imprisonment, a claimant must establish by documentary evidence that:

- (a) he has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and
- (b) (i) he has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (ii) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed . . . and
- (c) his claim is not time-barred.⁶¹

Some exonerees have prevailed under the Act. For example, Daniel Gristwood was convicted of attempted murder of his wife in 1996 and sentenced to twelve-and-a-half to twenty-five years in a New York State prison.⁶² His conviction was based largely on a false confession that he later recanted.⁶³ In 2005, the court vacated the conviction, and Mr. Gristwood later sued the state for wrongful conviction and false imprisonment, among other claims, arguing that “his confession was a product of coercion.”⁶⁴ Mr. Gristwood won his suit, and the court ordered the State of New York to pay him \$5,485,394 in damages.⁶⁵

Jabbar Collins was convicted of multiple counts of murder and attempted murder and sentenced to consecutive terms of twenty-five years to life and eight-and-a-third to twenty-five years.⁶⁶ Mr. Collins,

60. See N.Y. CT. CL. ACT § 8-b (Consol. 2023).

61. *Id.* § 8-b(3).

62. Jury Verdict, *Gristwood v. State of New York*, 2013 Jury Verdicts LEXIS 7101 (Apr. 4, 2013).

63. *Id.*

64. *Id.*

65. *Id.* Ultimately, the state lost its appeal of the award and paid Mr. Gristwood \$7,500,000 in damages in September 2014. *Daniel Gristwood*, NAT'L REGISTRY OF EXONERATIONS (Feb.27,2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3266>. It is important to note that this case serves as an outlier, as most civil suits for unjust conviction and imprisonment are resolved by settlement rather than trial. See *How Wrongful Conviction Settlements Work*, MARRONE L. FIRM, LLC, <https://marronelaw.com/wrongful-conviction/how-wrongful-conviction-settlements-work/> (last visited Aug. 28, 2023) (“[M]any wrongful conviction cases are resolved through a settlement, which can more quickly provide victims of wrongful convictions with the financial resources they need to put their lives back together.”).

66. Jury Verdict, *Collins v. State of New York*, 2014 Jury Verdicts LEXIS 19084 (July 10, 2014).

however, maintained his innocence even after his conviction.⁶⁷ In 2010, the court granted his habeas corpus petition, vacated his conviction and sentence, and dismissed the indictment with prejudice.⁶⁸ Mr. Collins sued under the Unjust Conviction and Imprisonment Act and settled with the state for \$3,000,000 in damages.⁶⁹

Under federal law, exonerees can sue under Section 1983 of Title 42 of the United States Code, which provides a civil action for deprivation of rights.⁷⁰ It states: “Every person who, under color of [the law], subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.”⁷¹ Exonerees typically sue under § 1983 to address the constitutional violations that are not necessarily covered under the state statute.⁷² These suits, however, depend upon the resolution of potentially difficult issues involving constitutional law,⁷³ and exonerees who bring such actions “are often denied monetary compensation.”⁷⁴

2. The Real Harm in Wrongful Conviction Cases

Although civil remedies are particularly important in making a victim feel whole again, an exoneree cannot fully achieve justice through compensation alone. More significantly, in wrongful conviction suits, it is the state that compensates the victim-exoneree.⁷⁵ As a result of qualified and absolute immunity, the police investigators and the prosecutor—the

67. *Id.*

68. *Id.*

69. *Id.* Mr. Collins also settled with the City of New York for \$10,000,000 in August 2014. *Jabbar Collins*, NAT'L REGISTRY OF EXONERATIONS (July 26, 2021), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3115>.

70. *See* 42 U.S.C. § 1983.

71. *Id.*

72. *See generally* Martin A. Schwartz & Robert W. Pratt, *Wrongful Conviction Claims Under Section 1983*, 27 *TOURO L. REV.* 221 (2011) (explaining multiple constitutional violations commonly alleged by wrongfully convicted individuals in § 1983 suits).

73. *Id.* at 222.

74. Teressa E. Ravenell, *Cause and Conviction: The Role of Causation in § 1983 Wrongful Conviction Claims*, 81 *TEMPLE L. REV.* 689, 691 (2008); *see* BARRY SCHECK & PETER NEUFELD, *INNOCENCE PROJECT, 200 EXONERATED: TOO MANY WRONGFULLY CONVICTED* 34–35 (2007), https://www.innocenceproject.org/wp-content/uploads/2016/10/ip_200.pdf (finding less than half of exonerees recovered compensation under § 1983).

There are several reasons why courts deny exonerees monetary compensation under § 1983. Ravenell, *supra* note 74, at 692. First, “although such convictions may be factually wrong, they may not be legally wrong” because the defendant did not deprive the exoneree of a constitutional right. *Id.* Second, even if the exoneree can prove a constitutional violation, “the persons responsible for the deprivation are often immune from suit.” *Id.*

75. *See* Rodd, *supra* note 59.

parties who played the primary roles in wrongfully convicting the individual—are never required personally to compensate the victim.⁷⁶

Many victims, however, “want to make sure that people are held accountable” for their actions.⁷⁷ They feel “overwhelmingly powerless” and want to “regain[] that power.”⁷⁸ One way to hold a person properly accountable for his or her actions, while also helping the victim to regain his or her power, is through the imposition of criminal liability on the person who caused the harm.

The extensive and egregious harm that results from a wrongful conviction serves as the policy justification for imposing specific criminal liability on police in false confession cases. A wrongful conviction causes an exoneree to suffer a host of physical and psychological consequences. First and foremost, a wrongful conviction strips away the individual’s life and liberty through the attachment of criminal liability and, in most cases, subsequent long-term incarceration.⁷⁹ While in prison, the individual often lives in fear and is subject to constant violence and abuse from other inmates as well as correctional officers.⁸⁰ Once released from prison—because he or she (1) completed the sentence term, (2) was released on parole, or (3) was exonerated—the exoneree will face additional harm, including severe financial struggles, difficulties

76. *See id.*; *supra* note 56 and accompanying text.

77. Marisa Lagos, *What Do Victims Want? New California Justice Reforms Expose Divide Among Crime Survivors*, KQED (Mar. 19, 2021), <https://www.kqed.org/news/11864483/what-do-victims-want-new-california-justice-reforms-expose-divide-among-crime-survivors>.

78. Lynn Finzel, Guest Speaker and Victim of Violence, IACP Summit on Victims of Crime (1999), in *What Do Victims Want? Effective Strategies to Achieve Justice for Victims of Crime*, INT’L ASS’N OF CHIEFS OF POLICE (2000), <https://www.theiacp.org/sites/default/files/2018-08/WhatDoVictimsWantSummitReport.pdf>.

79. *See How Many Innocent People Are in Prison?*, INNOCENCE PROJECT (Dec. 12, 2011), <https://innocenceproject.org/how-many-innocent-people-are-in-prison/>.

80. Kathryn Campbell & Myriam Denov, *Miscarriages of Justice: The Impact of Wrongful Imprisonment*, JUSTRESEARCH (Jan. 20, 2023), <https://www.justice.gc.ca/eng/rp-pr/jr/jr13/p5a.html>. “A prison sentence constitutes a ‘massive assault’ on the lives of those imprisoned and such an experience is exacerbated for first-time inmates.” *Id.* One wrongfully convicted person described the experience:

It's true that in prison, it's a world where survival comes before everything . . . you have to try to survive in the jungle, and there's a lot of violence. So, you have to protect yourself, especially if you are accused of sexual crimes . . . And so, you're always going around with a shiv or . . . a fork in your pockets. Because when you're walking around, you never know where and when and how you'll be attacked.

Id. This is not to say that factually guilty individuals do not experience similar physical harm in prison, as they often do.

obtaining employment, and hardships in readjusting to society.⁸¹ These issues will be exacerbated the longer the individual has been in prison.

Exonerees also typically suffer from significant psychological effects both inside and outside of prison. These effects include: a change in self-identity, strain on external relationships, depression, anxiety, post-traumatic stress disorder, sleep disorders, paranoia, anger, helplessness, isolation, and more.⁸² Overall, “the psychological impact of being wrongfully accused of a crime . . . [is] extreme and long-lasting.”⁸³

II. THE LIMITATIONS OF THE NEW YORK PENAL LAW

Police should face criminal liability for their misconduct in obtaining false confessions from innocent individuals. However, such misconduct currently does not fall under the purview of New York penal law.⁸⁴ There are only two criminal offenses that potentially could cover such conduct: official misconduct and obstruction of governmental administration.

According to Section 195.00, a public servant is guilty of official misconduct “when, with intent to obtain a benefit or deprive another person of a benefit: (1) [h]e [knowingly] commits an act . . . constituting an unauthorized exercise of his official functions . . . or (2) [h]e knowingly refrains from performing a[n official] duty.”⁸⁵ One could argue that, in obtaining a false confession from a suspect, a police officer is depriving the person of his or her liberties and knows that he is unauthorized to obtain a false confession. This argument, however, would entail a novel theory of law that prosecutors likely would be unwilling to pursue. Prosecutors already are reluctant to indict police officers—even for the most heinous crimes—due to the tension it creates within the police-prosecutor relationship; consider the Tamir Rice case.⁸⁶

81. Samantha K. Brooks & Neil Greenberg, *Psychological Impact of Being Wrongfully Accused of Criminal Offences: A Systematic Literature Review*, 61 MED. SCI. & L. 44, 49–50 (2021).

82. *Id.* at 47–48. Again, this is not to say that factually guilty individuals do not experience similar psychological harm, as they often do.

83. *Id.* at 47.

84. *See generally* N.Y. PENAL LAW (Consol. 2023).

85. *Id.* § 195.00. Official misconduct is considered a class A misdemeanor. *Id.*

86. *See* Tom Jackman & Devlin Barrett, *Charging Officers with Crimes Is Still Difficult for Prosecutors*, WASH. POST (May 29, 2020, 7:25 PM), <https://www.washingtonpost.com/crime-law/2020/05/29/charging-cops-with-crimes-is-still-difficult-prosecutors/> (“There’s reluctance . . . as reflected in the decisions of prosecutors, to hold police officers accountable because of the unique nature of the role they have.”); Alexandra Hodson, *The American Injustice System: The Inherent Conflict of Interest in Police-Prosecutor Relationships & How Immunity Lets Them ‘Get Away with Murder’*, 54 IDAHO L. REV. 563, 582–89 (2018) (explaining that close-working relationships between police and prosecutors have resulted from a concerted effort to join forces).

According to Section 195.05, a person is guilty of obstructing government administration in the second degree “when he intentionally obstructs, impairs or perverts the administration of law or other governmental function . . . by means of intimidation, physical force or interference, or by means of any independently unlawful act”⁸⁷ One could argue that, in obtaining a false confession from a suspect, a police officer is perverting the administration of law by means of intimidation. Again, however, prosecutors likely would be unwilling to pursue this novel theory of law.⁸⁸

If police misconduct in false confession cases is viewed by many as egregious,⁸⁹ then how can police face criminal liability for their actions?

III. A DIFFERENT APPROACH: SPECIFIC PROHIBITION OF POLICE MISCONDUCT IN FALSE CONFESSION CASES

Police can face criminal liability for misconduct in false confession cases if the legislature specifically prohibits such conduct. First, it is important to note that “[c]rime is a social construction that refers to a collective judgment concerning the norms of society.”⁹⁰ Thus, state legislatures must choose to make certain behaviors crimes.⁹¹

Obtaining a false confession that results in a wrongful conviction should be adopted by the New York Legislature as an offense against the person⁹² and added under Article 135: Kidnapping, Coercion and Related

Tamir Rice and his case serve as an example of when police have evaded criminal prosecution. On November 22, 2014, twelve-year-old Tamir Rice was shot and killed by a white police officer in Cleveland, Ohio. *Tamir Rice*, STAN. LIBRS. SAY THEIR NAMES, <https://exhibits.stanford.edu/saytheirnames/feature/tamir-rice> (last visited Aug. 28, 2023). Police had responded to a dispatch call that reported a young male pointing a pistol, likely a fake one, at people in the park. *Id.* Within three seconds of arriving on the scene, one of the officers fatally shot Tamir before surmising that the pistol was a replica toy gun. *Id.* The Justice Department, however, declined to prosecute the officers, finding “insufficient evidence to support federal criminal charges.” *Justice Department Announces Closing of Investigation into 2014 Officer Involved Shooting in Cleveland, Ohio*, U.S. DEP’T OF JUST. (Dec. 29, 2020), <https://www.justice.gov/opa/pr/justice-department-announces-closing-investigation-2014-officer-involved-shooting-cleveland>.

87. N.Y. PENAL LAW § 195.05. Like official misconduct, obstruction of governmental administration is also considered a class A misdemeanor. *Id.*

88. *See supra* note 86 and accompanying text.

89. *See generally supra* Part I.

90. *See, e.g.*, Mark Haugaard, *Power and Crime: A Theoretical Sketch*, 15 J. POL. POWER 14, 15 (2022).

91. *Criminal Law*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/criminal_law (last visited Aug. 28, 2023).

92. An offense against the person refers to a “crime against the body of another human being.” *Offense Against the Person*, BLACK’S LAW DICTIONARY (11th ed. 2019).

Offenses.⁹³ The New York Legislature could adopt a statute, for example, along the lines of the following proposal:⁹⁴

§ 135.80 Obtaining a false confession in the second degree

A governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, is guilty of obtaining a false confession in the second degree when he or she recklessly or with criminal negligence obtains a false confession from an individual who was unjustly convicted and imprisoned of the crime in which the false confession was used against the individual, and in doing so, engaged in any of the following behavior during the individual's interrogation(s) for that crime:

1. Real or perceived intimidation of the individual⁹⁵;
2. Use of force or perceived threat of physical force;
3. Compromised the reasoning ability of the individual, due to exhaustion, stress, hunger, substance use, and, in some cases, mental limitations or limited education;
4. Devious interrogation techniques, such as false statements about the presence of incriminating evidence; or
5. Instilled fear in the individual that failure to confess will yield a harsher punishment.

An individual has been unjustly convicted and imprisoned if the State can establish by documentary evidence one of the requirements proscribed under the New York Unjust Conviction and Imprisonment Act.

§ 135.85 Obtaining a false confession in the first degree

A governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, is guilty of obtaining a false confession in the first degree when he or she intentionally or knowingly obtains a false confession in the

93. N.Y. PENAL LAW § 135 (Consol. 2023).

94. This proposal is modeled after the language in Section 12601 of Title 34 of the United States Code as well as the Innocence Project's list of factors that contribute to or cause false confessions. *See* 34 U.S.C. § 12601(a); *False Confessions*, *supra* note 8.

95. This element could be further defined through a subjective and an objective standard: the suspect felt intimidated, and a reasonable person of the same age, education, mental health etc., reasonably would have felt intimidated under such circumstance.

second degree, as defined in section 135.80 of this article, and has:

1. Previously been convicted of that crime; or
2. Engaged in a pattern or practice of such conduct in previous false confession cases.⁹⁶

Such statutory provisions would satisfy the General Purpose Clause of New York's Penal Law because they "proscribe conduct which unjustifiably and inexcusably causes . . . substantial harm to individual[s]," namely those who falsely confess and are thereby wrongfully convicted.⁹⁷ The proposed statutes further protect other members of society from falsely confessing to crimes they did not commit, thereby ensuring "public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized."⁹⁸

One significant hurdle⁹⁹ remains: how can the New York Legislature adopt this proposal when courts, including the United State Supreme Court, have upheld these interrogation tactics?¹⁰⁰ While it is true that police officers in these situations are acting in accordance with widely accepted police practices and judicial opinion, there is widespread consensus among legal experts and scholars that these tactics create a breeding ground for false confessions.¹⁰¹ And these tactics have been employed in countless cases of proven false confessions where the individual was later exonerated by irrefutable evidence of innocence.¹⁰²

96. This element would impose criminal liability on actors, such as Frank Viggiano, Stanley Schiffman, and Sevelie Jones in Mr. Burton's case, who have used similar coercive interrogation tactics to obtain false confessions from other individuals in prior cases. *See supra* Section I.A.2.

97. N.Y. PENAL LAW § 1.05(1).

98. *Id.* § 1.05(6). Implicit in this Commentary is the idealistic view that criminal liability deters individuals from committing crime. There is, however, much academic debate over the value of criminal deterrence. *See, e.g.*, Rauhut Heiko & Marcel Junker, *Punishment Deters Crime Because Humans are Bounded in Their Strategic Decision-Making*, 12 J. ARTIFICIAL SOC'YS & SOC. SIMULATION 1 (2009) (arguing that punishment effectively deters crime because humans are bounded by their rationality). *But see, e.g.*, Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 24 CRIME & JUST. 199 (2013) (arguing that the severity of the ensuing legal consequence is not as effective at deterring a criminal as is the certainty of apprehension).

99. With a proposal like this, there are many hurdles to overcome, for example: when would the statute of limitations begin to run? Although this Commentary does not address all the problems likely to arise, the statute of limitations could begin to run the moment the person becomes exonerated and could establish any one of the requirements proscribed under the New York Unjust Conviction and Imprisonment Act. For further discussion on some of the implications of this proposal, see *infra* Part IV.

100. *See supra* Section I.A.1.

101. *See supra* Section I.A.1.

102. *See generally* Crane et al., *supra* note 38.

Moreover, some states, including Nevada and Illinois, already criminalize the compulsion and extortion of a confession by force or threat.¹⁰³

One court has also recognized the deceptive nature of interrogation tactics and denounced their use. In *People v. Sanchez*,¹⁰⁴ the Illinois Court of Appeals concluded:

While our supreme court has expressly approved the use of deception to obtain confessions, this case shows us how the use of deception in interrogations leads to false confessions. Deceptive practices contribute to an atmosphere in which whole communities act with hostility toward police. If police want the members of the community to treat them with respect and help them in their efforts to reduce crime, police should renounce the use of deceptive practices in law enforcement so that the members of the community learn that they can trust police officers to treat them honestly. The practice of deception in interrogations and other settings can destroy the trust needed as a foundation for the relationship between police officers and the members of the communities the police officers have a duty to serve and protect. A revision of police department rules, and the actual imposition of significant sanctions for deceptions, might help repair the strained relations between police and some of the communities they have a duty to serve.¹⁰⁵

The New York Legislature, therefore, should rely on this extensive research and consider the statutes already enacted in states like Nevada and Illinois to impose specific criminal liability for police misconduct in false confession cases and thereby ignite a much-needed change in the criminal justice system.

103. See NEV. REV. STAT. § 199.460(1) (2023) (“An officer or person having the custody and control of the body or liberty of any person under arrest shall not . . . subject any person under arrest to any form of personal violence, intimidation, indignity or threats for the purpose of extorting from that person . . . a confession.”); 720 ILL. COMP. STAT. ANN. 5/12-7(a) (2022) (“A person who, with intent to obtain a confession, statement or information regarding any offense, knowingly inflicts or threatens imminent bodily harm upon the person threatened or upon any other person commits compelling a confession or information by force or threat.”). It is, however, important to note that these statutes apply to confessions generally.

104. 103 N.E.3d 529 (Ill. App. Ct. 2018).

105. *Id.* at 544. For further information on the opinion, see Mari Cohen & Jeanne Kuang, *Illinois Court Panel Breaks New Ground in Condemning Police Deceptions*, INJUSTICE WATCH (Apr. 13, 2018), <https://www.injusticewatch.org/news/2018/illinois-appellate-court-breaks-new-ground-in-condemning-police-deception/>.

IV. IMPLICATIONS

Imposing specific criminal liability for police misconduct in false confession cases would carry major implications. First, it would create enormous backlash from law enforcement and other key players in the criminal justice system. Legislators may be hesitant to adopt the proposal because it subjects the officers to a new form of criminal liability that has never been imposed previously. Even if the legislature enacted the proposal, prosecutors would be reluctant to indict police officers under the law because it would strain the police-prosecutor relationship.¹⁰⁶

However, if the police interrogators trust the evidence and are confident that they apprehended the correct suspect, which is expected under the current penal law, then they should not have to worry about the threat of criminal liability. It relates back to the common phrase we have all heard at least once before: “If you do not have anything to hide, then you do not have anything to fear.” If this were the case—as it should be because we should be able to trust that police investigators will only obtain truthful confessions—then prosecutors should not worry about straining the police-prosecutor relationship because they would not need to indict any officers.¹⁰⁷

Putting aside this idea of a utopian criminal justice system, the threat of criminal liability in this context could incite the much-needed police reform for which the public has been advocating.¹⁰⁸ The proposal

106. See *supra* note 86 and accompanying text.

107. Even if prosecutors had to indict officers, the charges would not be as serious as, for example, murder charges because the investigator likely would face significantly less prison time for obtaining a false confession.

Under this Commentary’s legislative proposal, the New York Legislature would have the power to make the crime a misdemeanor or a felony. See Peter F. Neronha, *Federal Criminal Prosecution*, U.S. ATT’Y OFF. D.R.I., https://www.justice.gov/sites/default/files/usao-ri/legacy/2011/04/04/ri_federal_criminal_brochure.pdf (last visited Aug. 28, 2023); *New York Felonies and Misdemeanors Explained*, MCCABE, COLEMAN, VENTOSA & PATTERSON PLLC (Apr. 15, 2019), [https://www.mccabecoleman.com/blog/2019/april/new-york-felonies-and-misdemeanors-explained/#:~:text=Many%20states%2C%20including%20New%20York,a%20felony%20and%20a%20misdemeanor](https://www.mccabecoleman.com/blog/2019/april/new-york-felonies-and-misdemeanors-explained/#:~:text=Many%20states%2C%20including%20New%20York,a%20felony%20and%20a%20misdemeanor.). Currently, murder carries a sentencing range of twenty years to life in prison. See N.Y. PENAL LAW §§ 125.25–27, 70.00 (Consol. 2023). If the legislature enacted this proposal as a nonviolent felony, then it would carry a sentencing range of only probation to twenty-five years in prison. See *id.* §§ 65.00, 70.00. Naturally, a prosecutor would be more reluctant to bring charges against a police officer for murder, but likely more willing to bring charges for obtaining a false confession, due to the stark differences in punishment.

108. See, e.g., RASHAWN RAY & CLERK NEILY, A BETTER PATH FORWARD FOR CRIMINAL JUSTICE: POLICE REFORM 6 (2021), <https://www.brookings.edu/multi-chapter-report/a-better-path-forward-for-criminal-justice/> (proposing a host of short-term, medium-term,

could encourage police to improve their police training curricula, namely by abandoning the Reid Method, to reduce the likelihood of false confessions. It would also be incumbent upon the individual officers to be cognizant of the risks of false confessions.

Adoption of this proposal, however, could further strain the relationship between the police and members of society. Currently, most American adults do not trust law enforcement, and their “confidence in the police has dropped to a record low.”¹⁰⁹ If subject to criminal liability for obtaining a false confession, police could resent the public and make officers particularly more hostile to suspects during interrogations. However, adoption of the proposal could have the opposite effect: if the public knows that police could face criminal liability in these situations, then people may become more trusting of and gain more confidence in law enforcement.¹¹⁰

Nevertheless, the imposition of specific criminal liability for police misconduct in false confession cases would carry a host of benefits. Most importantly, it would reduce the number of false confessions that occur, and in turn, reduce the number of wrongful convictions. Moreover, police would expend less time and money on the wrong suspect and instead focus their resources on finding the real perpetrator.¹¹¹ Equally as important, if a false confession results from police misconduct, the imposition of criminal liability would hold police accountable for their actions, thereby helping the innocent individuals regain their power and fully achieve the justice they deserve.¹¹²

CONCLUSION

So, what should happen to Detective Gallagher? Under the proposal suggested herein, the State, at a minimum, could charge him with obtaining a false confession in the second degree. Detective Gallagher

and long-term police reforms); *US: 14 Recommendations for Fundamental Police Reform*, HUMAN RIGHTS WATCH (Aug. 12, 2020, 8:00 AM), <https://www.hrw.org/news/2020/08/12/us-14-recommendations-fundamental-police-reform> (listing fourteen recommendations for police reform).

109. See, e.g., Aimee Ortiz, *Confidence in Police Is at Record Low, Gallup Survey Finds*, N.Y. TIMES (Aug. 12, 2020), <https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html>.

110. See *People v. Sanchez*, 103 N.E.3d 529, 544 (Ill. App. Ct. 2018) (“A revision of police department rules, and the actual imposition of significant sanctions for deceptions, might help repair the strained relations between police and some of the communities they have a duty to serve.”).

111. When a wrongful conviction is overturned or vacated, the police then must reinvestigate the crime to find the real perpetrator, thereby using two times the amount of resources.

112. See *supra* Section I.B.2.

acted negligently—some might argue recklessly—because he brought Elijah in for questioning before properly investigating the evidence to learn that the victim had in fact been shot twice, once in the head and once in the chest. He interrogated Elijah based on his erroneous understanding of the facts and made Elijah believe he had incriminating evidence, such as the fingerprints from the bullet casings, which caused Elijah to falsely confess. Moreover, Detective Gallagher used perceived intimidation and threat of force against Elijah when he claimed there likely would be immense retaliation against him and his family and compromised Elijah’s reasoning ability by depriving him of food, water, and sleep. Additionally, because he obtained false confessions from other individuals on at least five different occasions, Detective Gallagher could be charged with obtaining a false confession in the first degree if the prosecution could prove he acted intentionally or knowingly.

Because Elijah was forced to serve forty years in prison for a crime that he clearly did not commit, Detective Gallagher can no longer act as if nothing ever happened. He would receive the proper punishment for his misconduct in an interrogation that forever changed the course of Elijah Abrams’s life. And, in this way, Elijah could fully achieve the justice that he so rightfully deserves.

Like all meaningful reform efforts, adoption of a legislative proposal that imposes specific criminal liability for police misconduct in false confession cases will take time and considerable effort.¹¹³ And, although it will not eradicate wrongful convictions entirely, it will help prevent them to a certain extent. This legislative proposal also will make many feel uncomfortable and generate a good deal of unfavorable reactions, especially from law enforcement. However, “discomfort is a catalyst for growth.”¹¹⁴ Furthermore, too many people have falsely confessed because of investigators’ overbearing tactics and thereby suffered the harm of a wrongful conviction, which causes *irreversible damage*.¹¹⁵ In virtually every false confession case, it was the suspect who was entirely innocent and the police officer who was entirely guilty of inflicting these harms. It is time to reduce the likelihood of false confessions occurring. And it is also time—when false confessions do occur—to punish the real criminals.

113. See generally Randy Petersen, *Why Is It So Hard To Reform Criminal Justice?*, RIGHT ON CRIME (May 10, 2019), <https://rightoncrime.com/why-is-it-so-hard-to-reform-criminal-justice/>.

114. Thomas Oppong, *The Only Time You Are Actually Growing Is When You’re Uncomfortable*, MAKE IT (Aug. 13, 2017, 12:00 PM), <https://www.cnbc.com/2017/08/11/the-only-time-you-are-actually-growing-is-when-youre-uncomfortable.html>.

115. See *supra* Section I.B.2.