

The Honorable Robert F. McDonnell
Governor of the Commonwealth of Virginia
In the Matter of Michael L. Ledford, #1014878, Petitioner
Petition for an Absolute Pardon

EXECUTIVE SUMMARY

Michael Ledford is serving the thirteenth year of a fifty-year sentence for arson and the first-degree murder of his one-year-old son. He pleaded not guilty and has maintained his innocence ever since. He has expended all his appeals, including his one appeal based on actual innocence. A recent independent re-examination of the evidence in his case has determined that the fire resulted not from arson, but from a seriously overheated electrical circuit. That re-examination has revealed further that an insurance investigator covered up and withheld evidence of that electrical fire. Since Michael Ledford's only remaining avenue for relief is executive clemency, he asks that you carefully consider this petition for absolute pardon.

On October 10, 1999, Petitioner Michael Ledford left his apartment to run errands. His wife and his one-year-old son were asleep in separate bedrooms at the rear of the apartment. As he departed, Michael turned on a nearby table lamp using the wall switch near the entry door. That simple, innocent act triggered an electrical fire within the deteriorating electrical system.

Other residents of the Highland Hills Apartments had recently been having problems with their electrical systems. In an adjacent building, a sewing machine motor dragged and a nightlight refused to work. The tenant noticed that the electrical outlet was "very warm." The tenant notified the management. The management had the outlet replaced.

In another apartment, another outlet had become hot to the touch. The tenant notified the management. The management had the outlet replaced.

In one of the two apartments directly above the Ledford apartment, the tenant experienced problems with a kitchen outlet. Being young and self-confident, he replaced the outlet himself.

At least one of the outlets in the Ledford apartment had been deteriorating for a while. That outlet, however, was located behind the couch, and no one noticed that it was overheating. The Ledford family and friends did notice that a table lamp had started acting up. Its switch seemingly worked only intermittently. Everyone learned to use the wall switch to control the lamp. It was that wall switch Michael flipped to the ON position as he left to run his errands.

A wall outlet is shown below. It is the outlet that powered the bothersome table lamp. It is the outlet controlled by the wall switch near the door.



Figure 1: Smoke Streaks Reveal Fire Within Electrical Outlet

There is no doubt that the wiring inside that outlet burned. The smoke streaks radiating from the perimeter of the outlet and its faceplate provide evidence of a fire within the outlet. Even the insurance investigator, an adverse party to Michael's defense and the only person to actually examine the wiring, conceded that it was burned. The insurance investigator, however, assured the jury that the wiring had been a victim of the fire rather than the cause of the fire. The insurance investigator assured the jury that the wiring inside burned only when the fire outside swept over the outlet.

While there is no doubt that the wiring inside the outlet was burned, it could only have burned because it overheated itself, from within. The only possible alternative, that the wiring burned as fire swept past the outlet, is impossible. No fire swept past the outlet. The entire area behind the couch, where the outlet was located, was spared by the fire. To see that, consider the image below.



Figure 2: Location of Wall Outlet Superimposed on Back of Couch

Figure 2 shows the relative positions of the couch and the wall outlet. The wall outlet would have, of course, been facing the back of the couch, rather than facing away from it as shown. The relative positions of the couch and outlet are, however, properly represented.

Figure 2 shows clearly that the front of the couch was seriously burned and charred. The figure shows with even greater clarity that the back of the couch near the electrical outlet was unburned. There was no fire behind the couch. Fire did not sweep across the face of the outlet. The burned wiring within the outlet did not result from an external heat source.

The insurance investigator must have realized this when he testified otherwise. The insurance investigator is the person who took the two photos used to make the composite image above.

The insurance investigator took the photograph of the back of the couch. He certainly must have noticed that it was not burned.

The insurance investigator positioned himself directly in front of the wall outlet, and looked at it carefully enough to remove the faceplate and the wall outlet itself. He certainly must have seen the smoke streaks emanating from within the outlet.

The insurance investigator removed the faceplate. He certainly must have noticed that it was not melted.

The insurance investigator examined the wiring and saw that they were burned. Given that no fire swept along the wall behind the couch, given that the faceplate was not melted, and given that smoke streaked from within the outlet, the insurance investigator could not have sincerely believed that wiring burned as a result of an external heat source. The wiring could only have burned as a result of internal heating, as a result of an overheated electrical circuit.

Instead of discussing the discussing the significance of the burned wiring in his written report, the insurance investigator made no mention of it. Not a word.

Instead of securing the outlet and preserving it for expert examination, the insurance investigator literally and figuratively covered up the evidence of an electrical fire. He replaced the wall outlet as if he had discovered nothing, and he covered it with the faceplate.

We know of this only because of a passing mention of his discovery during his trial testimony.

Instead of carefully documenting his burned-wiring discovery with multiple photographs taken from multiple angles, the insurance investigator took not a single photograph of the wiring, at least not any photograph ever provided to the Commonwealth or the defense.

The insurance investigator concedes he took 48 photographs. He provided only 47 photographs to the Commonwealth and the defense. In his written report to headquarters in Atlanta, the insurance investigator informed his supervision that he was forwarding one of the photographs in a separate envelope. That photograph, the one never provided to the Commonwealth or the defense, may have been a photograph of the burned wiring discovered inside the wall outlet. We suspect that it was.

The evidence that there was electrical fire inside the Ledford apartment is substantial and compelling. The evidence extends well beyond the wall outlet and he brief discussion above. All the evidence of an electrical fire will be finally detailed in this petition.

Michael Ledford, however, was convicted only in part because the investigators carelessly or willfully ignored the overwhelming evidence of an electrical fire. Michael was convicted also because he confessed.

Though Michael quickly recanted his confession, and though his confession shows the classic hallmarks of being false, Michael did confess. Juries find confessions compelling, even if the confession has been recanted, even if the confession stands in stark contrast to all evidence at the scene.

Juries simply do not understand that false confessions are common.

The Innocence Project explains that in approximately 25% of all DNA exonerations, the person exonerated had either confessed or provided an incriminating statement. Studies conducted since Michael's conviction show that most people, more than 50%, will falsely confess when subjected to interrogation techniques similar to those used on Michael Ledford.

Virginia Governors have a noble history of granting clemency when a person has been proven innocent and when no other relief is available.

In 1989, Governor Gerald Baliles pardoned David Vasquez, though Vasquez had falsely confessed to the rape and murder of Carolyn Jean Hamm. Governor Baliles believed Vasquez to be innocent, so he set Vasquez free.

In 2000, Governor James Gilmore granted Earl Washington, Jr. an absolute pardon, though Washington had falsely confessed to the rape and murder of Rebecca Lynn Williams. Governor Gilmore believed Earl Washington was innocent, so he set Washington free.

In 2009, Governor Tim Kaine granted conditional pardons to three of the Norfolk Four, though they had each falsely confessed to the rape and murder of Michelle Moore-Bosko. Governor Kaine suspected the three were likely innocent, so he set them free.

Because Michael Ledford was in no way responsible for the fire that took the life of his one-year-old son and burned his young wife, and because Michael Ledford has no alternative avenue for relief, he prays that you will grant him an absolute pardon.

1. ELECTRICAL PROBLEMS AT HIGHLAND HILLS APARTMENTS

Chapter Summary: The residents in the units surrounding the Ledford apartment had recently complained of overheating outlets. The smoke detector in the Ledford apartment was improperly and dangerously installed. A circuit breaker in the electrical service panel of the Ledford apartment had been crudely and dangerously repaired, rather than replaced. That crudely repaired circuit breaker showed a burn mark from a fire within the breaker.

Residents of Highland Hills Apartments were having problems with their plug-in appliances. The more fortunate among those residents were those who realized their outlets were overheating. They had their outlets replaced.

The Ledfords were not among the fortunate. The overheating outlet in their apartment was located behind the living room couch. They therefore did not notice that the outlet was becoming dangerously hot. They did not realize that the circuit breaker would fail to protect them. Soon one of them would be dead, one would be seriously burned, and another other would be on trial for his life.

In Apartment 16-C, above and to the left of the Ledford apartment, the resident had a sewing machine motor that dragged and a nightlight that refused to work. She noticed that the outlet was "very warm." She flipped the circuit breaker to the OFF position and notified the management. The management had the outlet replaced.

A second woman in the complex noticed the outlet in her son's room was hot to the touch. She notified the management. The management had the outlet replaced.

In one of the apartments above the Ledford apartment, a kitchen outlet had been replaced, perhaps by the resident. The outlet is brown. No other outlet revealed in more than 100 photos of the building was any color other than white / ivory / almond. That outlet is shown on the next page in Figure 3.

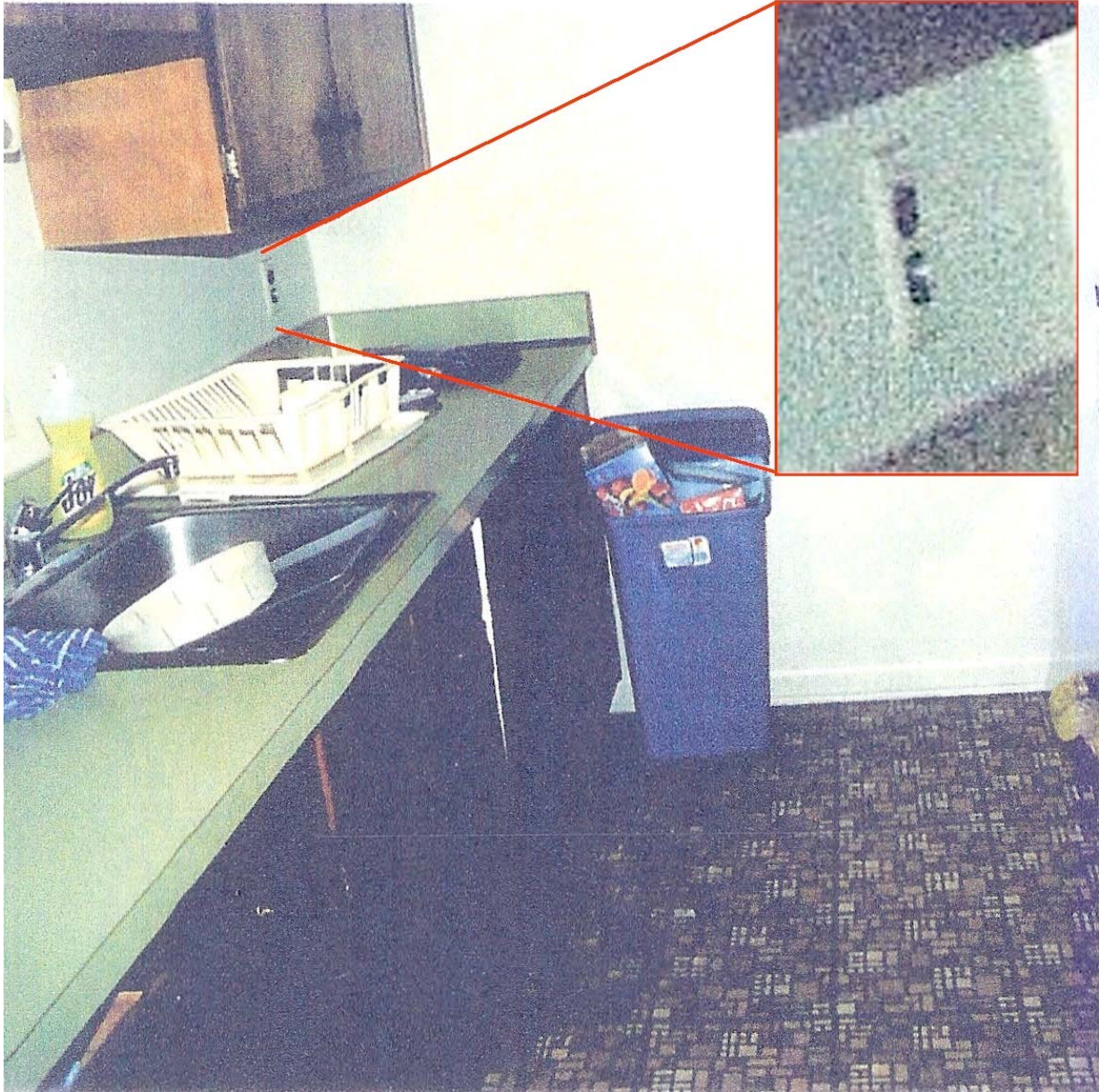


Figure 3: Outlet Repaired in Apartment Above Ledford Apartment

In each case of troublesome electrical behavior, replacing the outlet resolved the superficial problem initially attributed to the appliances. The more serious problem, however, remained unresolved. The electrical systems at Highland Hills Apartments were deteriorating and becoming unsafe. Given that overheating outlets result in more than 5000 fires per year, the multiple instances of overheating outlets should have prompted an inspection of all outlets in all units. Instead, the underlying problems were simply ignored until residents became so concerned that they either complained or attempted to correct the problem themselves.

The electrical problems at Highland Hills Apartments were not limited to wall outlets. Photographs taken at the Ledford fire scene reveal the hardwired fire alarm had been installed

without an electrical box. This is a clear and egregious code violation. Instead of being secured to an electrical box which was in turn secured to rigid structure, the hardwired smoke alarm was carelessly attached using just two plastic anchors loosely embedded in the gypsum ceiling panel.

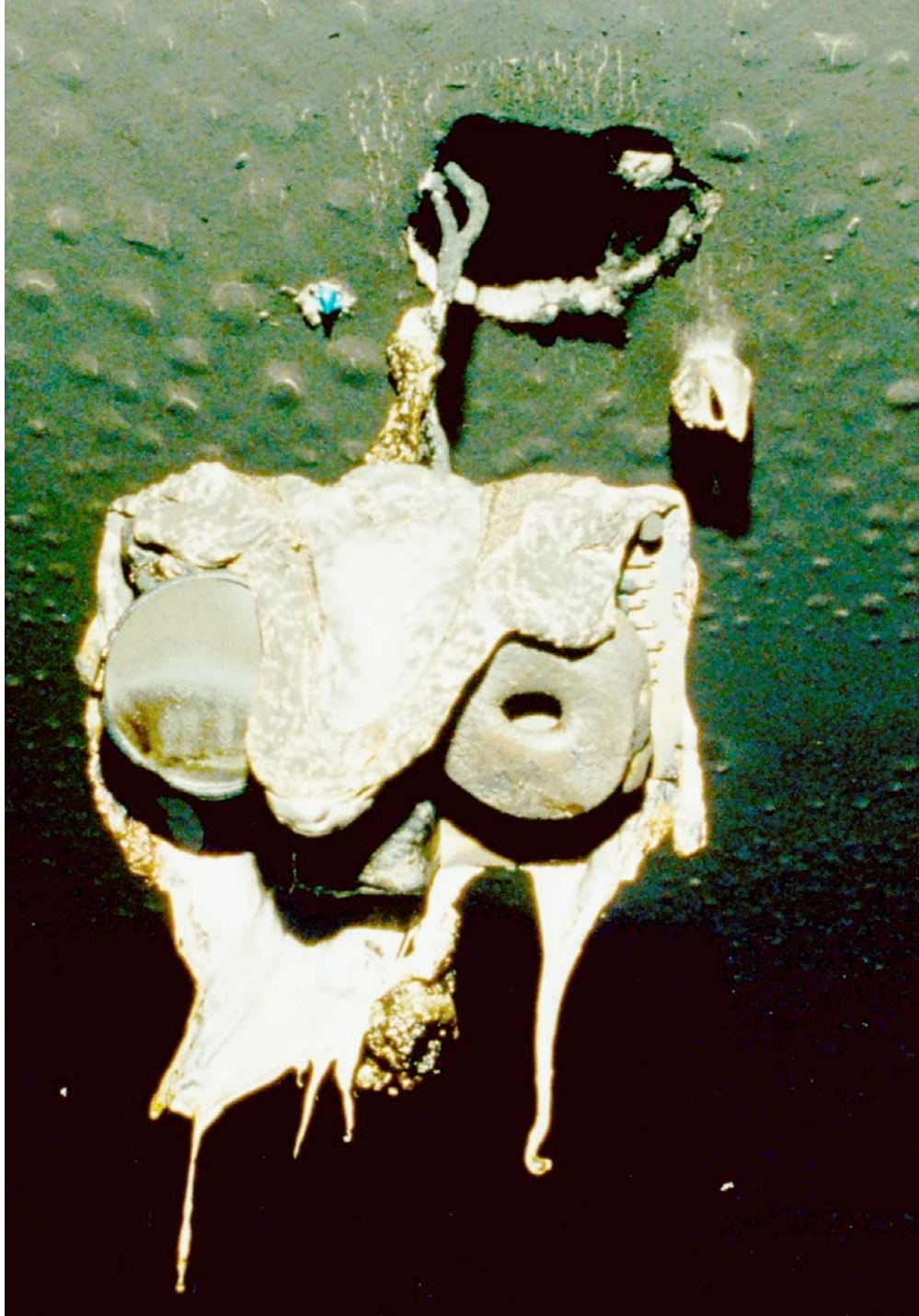


Figure 4: Improper and Unsafe Smoke Detector Installation

Of even greater concern than the missing electrical box is what appears to be a severed electrical cable visible in the space above the ceiling. Given the ragged nature of that exposed cable, and given the equally ragged edge of the hole in that area, it seems as if the electrical cable may have been severed when someone carelessly cut a crude hole in the ceiling to install the smoke detector.

The missing electrical box, the crudely cut hole, and the apparently severed cable suggest that the box was installed during a retrofit program, one that focused on minimizing cost rather than insuring safety.

What is not visible in the photograph is the means by which the smoke detector is connected to the apartment's electrical system. If the smoke detector was merely spliced into a circuit already passing through the overhead, and if that splice was made while working through the small cutout, and if that splice was of similar quality to the rest of the smoke detector installation, then that splice posed another serious fire hazard to the apartment.

Of greater concern than even the overheating outlets (and the crudely installed smoke detector and the exposed wiring in the overhead) is an apparently makeshift repair to one of a circuit breakers photographed after the fire inside the electrical service panel that was supposed to protect the Ledford apartment from electrical hazards.

The circuit breaker, shown on the next page in Figure 5, reveals startling evidence of an egregiously unsafe repair. Rather than replacing the breaker after a presumed earlier problem, maintenance personnel simply glued plastic strips over the top of it, or so it seems.

A sooted spider web connects the plastic strip and its oozing adhesive. The spider web is evidence that the improperly repaired breaker had been deteriorating for some time. The spider web is evidence also that a cheap, improper repair eventually cost an infant child his life, the parents their son, and the father his freedom.

So noticeable were the problems at Highland Hills Apartments that the residents of Apartment 20C expressed their concern to the police that the fire in the Ledford apartment was ignited by the electrical system. As it turns out, they were correct.

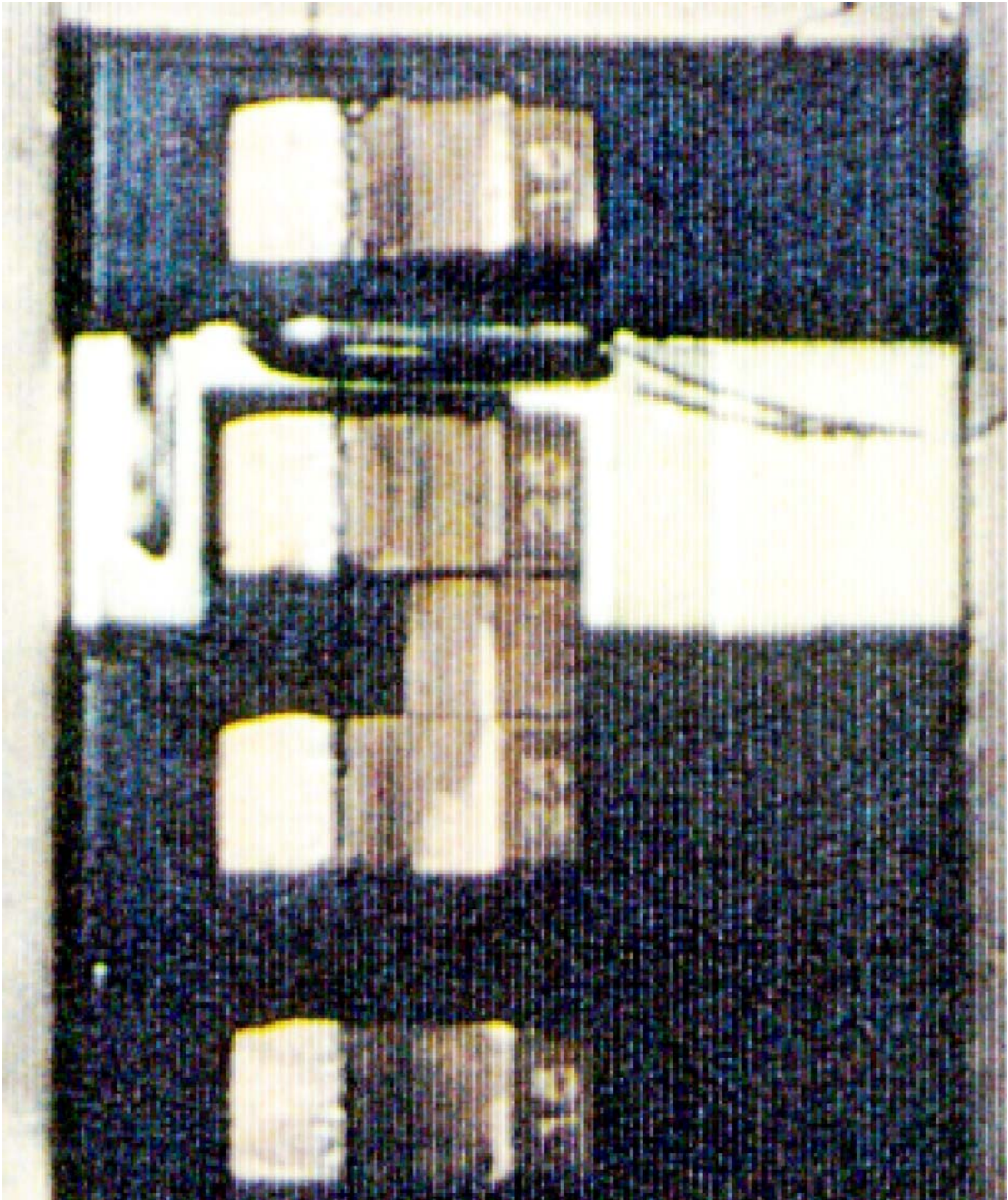


Figure 5: Improper and Unsafe Circuit Breaker Repair

2. THE LEDFORD APARTMENT

Chapter Summary: Fire consumed the living room of the Ledford's two-bedroom, one-bath apartment in Stuarts Draft Virginia. Distinctive smoke streaks surrounding a living room outlet and around the circuit breaker panel indicate the fire resulted from an electrical problem.

Michael, Elise, and one-year-old Zachary Ledford lived in Apartment 17A of the Highland Hills Apartments complex in Stuarts Draft, Virginia. An overhead view of the complex is presented below as Figure 6. Building 17 is circled in red. North is towards the top of the image, as per convention.



Figure 6: Aerial View of Highland Hills Apartments

As shown in Figure 7 below, the Ledford apartment was located on the first floor, to the left as you enter Building 17. The orientation of the building will prove to be of some significance. North is to the right in the image below; south is to the left. West is into the image, and east is behind the reader. The front of the building is the east side of the building.



Figure 7: Entry of Building 17 -- Ledford Apartment on Left

Though the fire did not spread beyond the apartment living room, there was no need to actually enter the apartment to realize it had burned. The smoke streaks around the door testified to a serious fire within.



Figure 8: Smoke Streaks Reveal Fire Within Apartment

Similar streaks around an electrical outlet in the living room testified to a fire within the outlet, behind the faceplate.



Figure 9: Smoke Streaks Reveal Fire Without Electrical Outlet

Similar streaks beneath the circuit breaker panel in the master bedroom testified to a fire within that panel as well. When the panel door is opened, the heavy smoke deposition within is obvious.

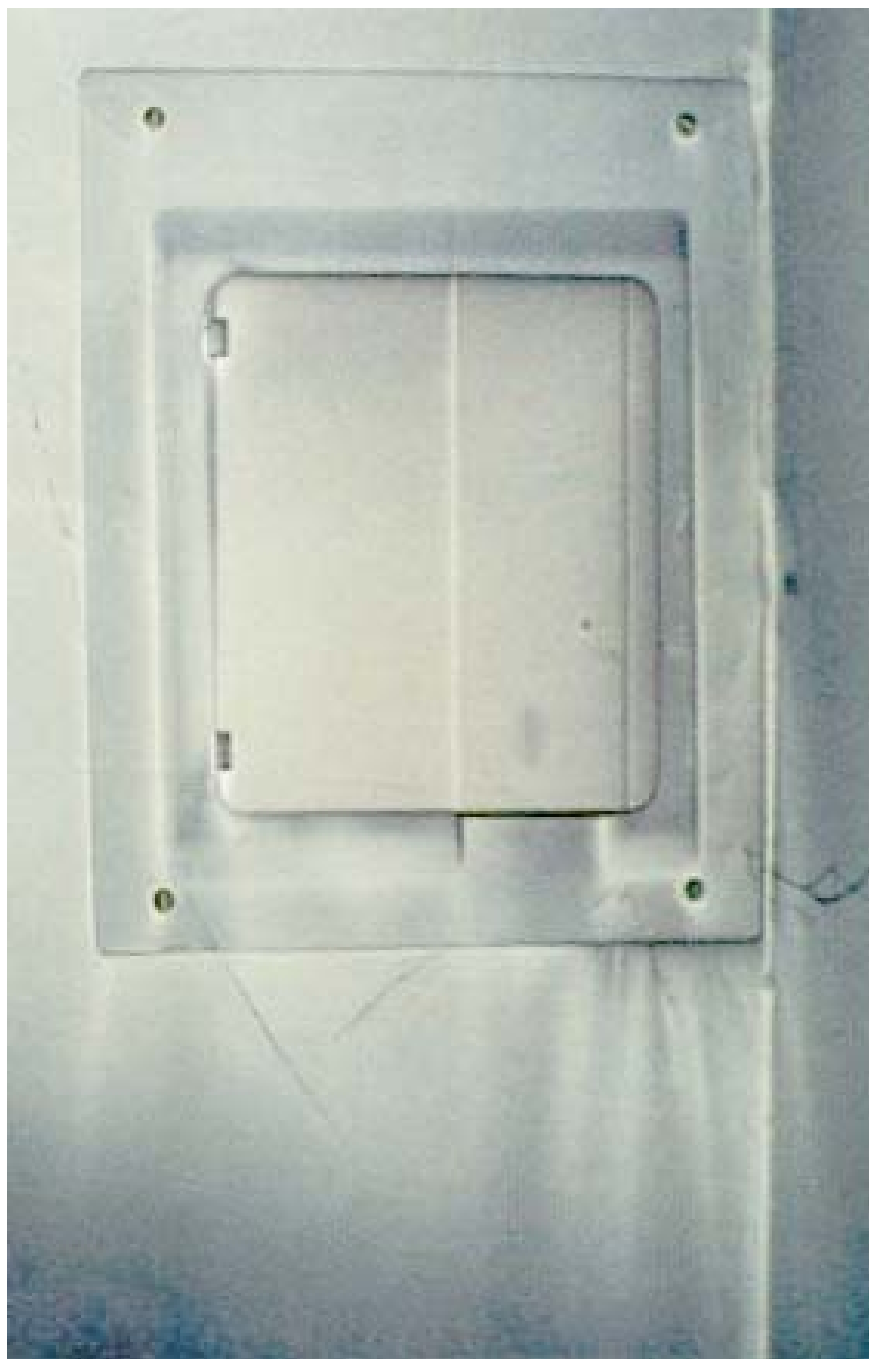


Figure 10: Smoke Streaks Reveal Fire Within Circuit Breaker Panel

1.1 The Floor Plan

The locations of the wall outlet and the circuit breaker panel are shown in the floor plan below.

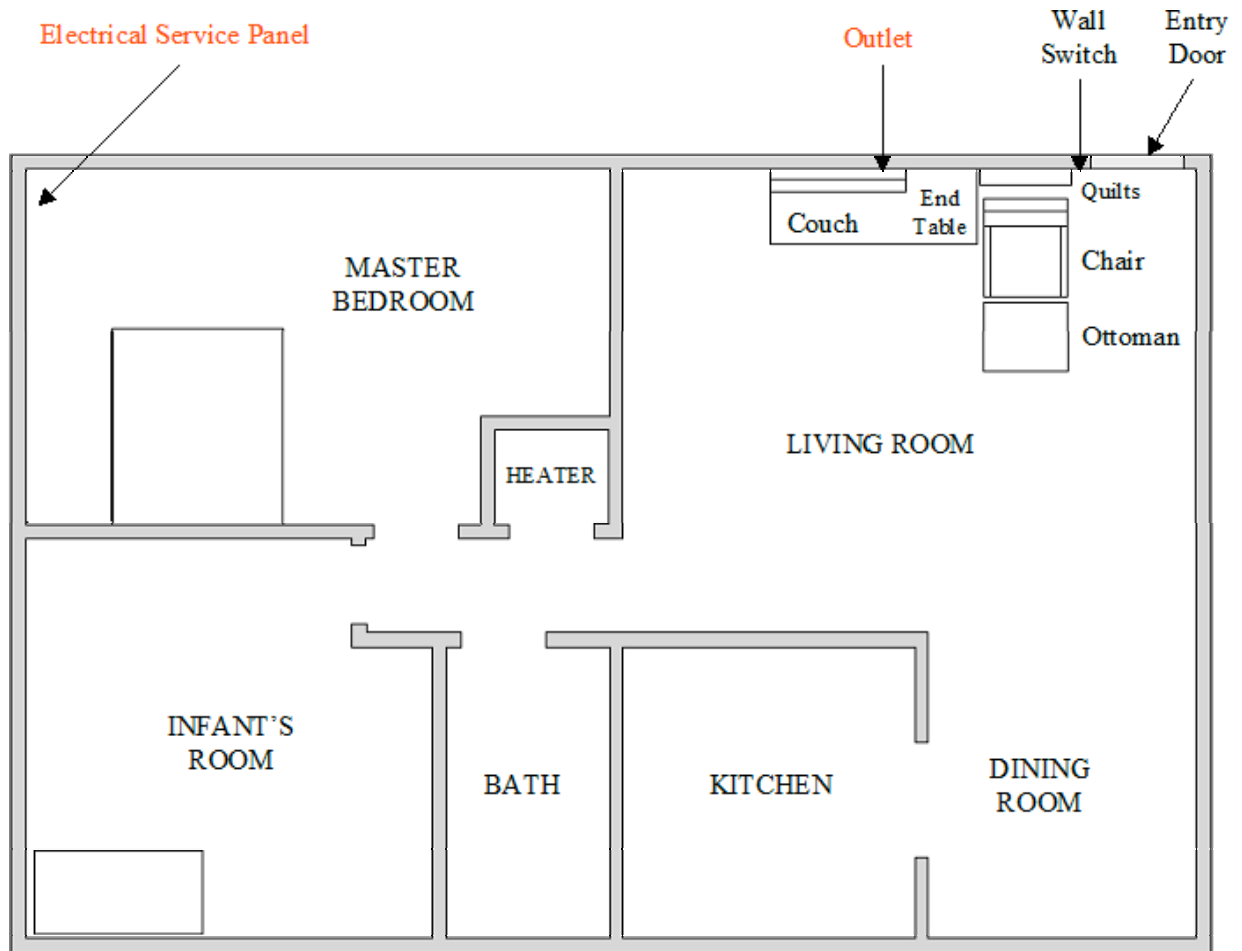


Figure 11: Floor Plan of Ledford Apartment

The area around the entry door (at the upper right corner of the floor plan) is critical to this story. That area was captured in a photograph taken shortly before the fire, while the Ledford family and friends were celebrating Zachary's first birthday.

A photograph of that area is shown in Figure 12 on the next page.

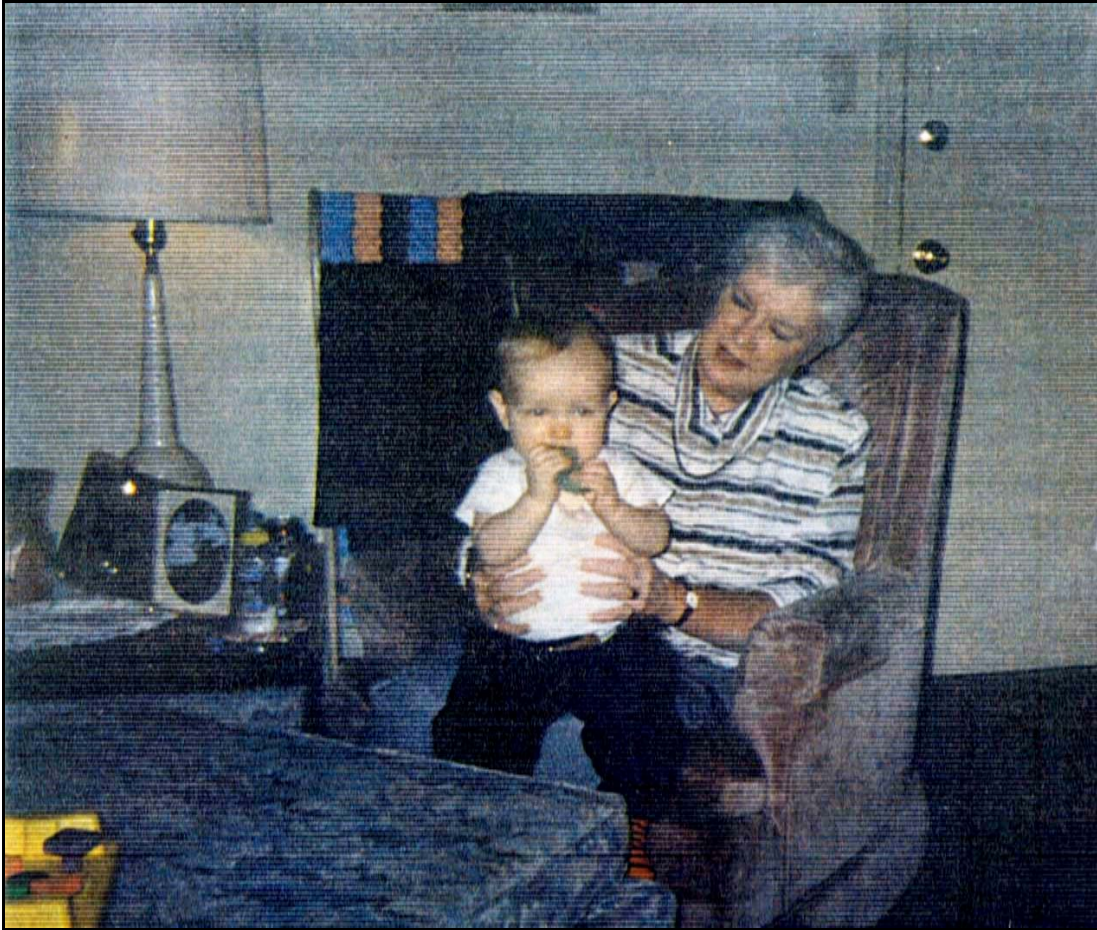


Figure 12: Zachary Ledford, Family Friend, and Region Near Entry

That is Zachary in the photograph. He is sitting on the lap of a family friend.

The upholstered chair and ottoman are obvious in the photograph. The quilt rack is visible behind the chair. The rack is covered with quilts and Afghans. The quilt rack and the chair would, soon after this picture was taken, provide the primary fuel load for the fire.

The end table, which is integral to the couch, is visible at the left. On top of the end table is a lamp. That lamp may have provided the ignition source for the fire.

The lamp is plugged into an electrical outlet located behind the couch, beyond the left edge of the photograph. The wall switch visible near the entry door controls the outlet. You have already seen the electrical outlet in a photograph presented earlier in this petition. You have seen that smoke was being ejected from behind its faceplate.

One of the guests at the birthday party, the daughter of the woman sitting in the chair, experienced trouble while attempting to turn on the lamp. She had to try repeatedly, using both the lamp and the wall switches, before she was successful. The woman in the chair witnessed the trouble.

When Michael Ledford left the apartment that night, shortly before the fire broke out, he flipped the wall switch to the ON position.

3. SEQUENCE OF EVENTS: AN OVERVIEW

Chapter Summary: A lamp in the Ledford apartment had been misbehaving. The lamp was connected to an outlet behind the living room couch. After his wife and son went to bed, Michael Ledford left the apartment to run errands. As he left, he flipped the light switch to the ON position. That switch controlled the lamp that was plugged into the outlet behind the couch. The fire ignited not long thereafter. The Commonwealth's fire investigation found no evidence of arson, nor did it rule out an electrical problem as the cause of the fire. The insurance investigator discovered distinctive smoke patterns emanating from behind the faceplate. When the insurance investigator removed the outlet, he discovered burned wiring within. Michael Ledford was nonetheless interrogated a month after the fire. When subjected to psychological techniques known to cause false confessions, Ledford confessed to starting the fire. His confession is falsified by the evidence at the fire scene.

In Apartment 17-A, Michael and Elise Ledford were having trouble with the table lamp plugged into the outlet behind their couch. The lamp would not turn on reliably by use of its own switch. In this sense, the lamp was much like the other electrical items that seemingly malfunctioned in other apartments suffering from overheating outlets.

Michael and Elise therefore came to rely on the wall switch to control the lamp. That wall switch was located right by the front door. That wall switch controlled the outlet that later showed evidence of burning, the outlet in which the insurance investigator found (but did not photograph or preserve) burned wiring.

It was odd that the lamp switch seemed not to work. The lamp had been given to Michael and Elise by Elise's parents just two months earlier. Her parents had owned and used the lamp for many years. The parents had never had a problem with the lamp. Not until the lamp was plugged into the outlet in the Ledford apartment did it seemingly begin to fail.

We learn of that from the trial testimony of Elise's father, who appeared as a witness for the Commonwealth.

Ervin: Let me show you photograph number 1, Reverend Arner.

Arner: Yes, sir.

Ervin: And there's a lamp here on a table near the door. Where did -- did that lamp come from?

Arner: That was a lamp that we gave them about July of '99.

Ervin: And what was the working condition of that lamp?

Arner: It was excellent.

Ervin: Had there ever been any malfunctions?

Arner: Not -- none. No.

Ervin: Any sparks or anything caused by the lamp?

Arner: Never -- never blew a light bulb. We had used it all the time that we had it; which it was brand new until then.

Darlene Keiper also knew about the recent problem with the lamp. She shared the apartment with Michael and Elise. She was the person who actually moved the couch from the wall, plugged the lamp into the outlet, and moved the couch back against the wall. Only then, when

the previously trouble-free lamp was plugged into the outlet at Highland Hills Apartments, did the lamp begin to misbehave.

Martha and Ronda Reames both knew about the problem with the lamp. On the very day of the fire, while attending a birthday party for one-year-old Zachary Ledford, they each noticed that the lamp did not turn on and off properly.

Nobody, however, noticed that the outlet was overheating. The outlet was located behind the couch: out of site, out of touch, and out of mind.

Later that night, when Zachary and Elise were both early to bed, Michael left to run errands. He planned to put gas in the car. He planned to stop by the firehouse where he volunteered as a firefighter. As he left his apartment, he decided to leave a light on for Darlene Keiper. She was scheduled to arrive home soon after he left. He flipped the wall switch to the ON position as he left the apartment.

It was a simple courtesy. It was a completely innocent act. It had deadly consequence.

Within minutes, Zachary Ledford would die of smoke inhalation. Elise Ledford would be seriously burned during her unsuccessful effort to escape.

The Commonwealth's fire investigator would make only a cursory examination of the fire scene. In his formal report, he would declare that the electrical system could not be ruled out as a cause of the fire.

EXAMINATION OF ELECTRICAL SERVICE:	Type of Distribution Panel
Was Electrical Service Connected Yes	Breaker Box
Any Electrical Shorting observed in Area of Origin	Can Electrical Shorting be Eliminated as a Source of Ignition
No	No

Figure 13: The Commonwealth's Investigator Could Not Rule Out an Electrical Fire

In that same report, the Commonwealth's investigator would declare that he could not exclude an accidental or natural cause of the fire. He would declare the cause to be "Undetermined."

Have All Accidental and Natural Sources of Ignition Been Eliminated
No
ORIGIN OF FIRE: Incendiary <input type="checkbox"/> Undetermined <input checked="" type="checkbox"/> Accidental <input type="checkbox"/> Suspicious <input type="checkbox"/>

Figure 14: The Commonwealth's Investigator Initially Ruled the Fire to be of Undetermined Origin

Instead of making a thorough and scientific investigation of the fire, the state investigator would relinquish the investigation to agents of the apartment complex's insurance carrier, one of them an investigator and one of them an adjuster.

The insurance investigator discovered evidence of an electrical fire. The outlet behind the living room couch showed distinctive smoke patterns emanating from behind the faceplate. When the insurance investigator removed the outlet, he discovered burned wiring inside. The insurance investigator did not photograph the burned wiring, nor did he secure the wiring as evidence. Instead, he replace the outlet and its faceplate as if he had found nothing of interest.

Within weeks, the insurance investigator and/or the insurance adjuster would convince the police that the fire was caused by arson rather than by an electrical problem. Their ultimate client, Allstate Insurance, would be spared a lawsuit for the wrongful death of a one-year-old child, a personal injury lawsuit for the burning of a young mother, and the cost of major electrical repairs to every apartment in the Highland Hills Apartments complex.

Within a month, when subjected to techniques later proven to produce false confessions, Michael Ledford would come to believe that he must have started the fire. He would claim he started the fire by removing one of two candles from one of two candleholders, and by then tossing the candle into the seat of the living room chair. Believing he must be mentally ill for being unable to previously recall the act, he would ask for psychiatric treatment. Believing he must unwittingly be a threat to others, he would ask also to be kept away from other people.

Michael Ledford's confession, however, would be utterly contradicted and absolutely falsified by the evidence from the fire scene. The fire did not start in the chair as Michael claimed in his confession. Nor was any residual candle wax found, though the wax could not have been entirely consumed by the fire. Nor were any candleholders found, though the candleholders certainly could not have been consumed by the fire.

Not only did Michael's confession include candles and candleholders that never were, his confession included precise details of a specific cigarette lighter never found, "a white one with the Dallas Cowboys." Michael confessed that he lit the candles with that specific lighter, the "white one with the Dallas Cowboys", and left the lighter "on the table that had the plants on it." The lighter could not have been consumed by the fire since even the plants on the table were not consumed, but the lighter was never found.

The lighter could not be found for the same reason candle wax and candleholders could not be found. No such items were ever involved in the Ledford fire. Michael's clear recollection of those items was but a confabulation, a false memory resulting from the persistent suggestions of his interrogators.

In addition to taking note of the many false claims central to Michael's confession, the investigators should have also taken note of a burned circuit breaker, and of smoke patterns emanating from the circuit breaker panel. The investigators should have taken note also of the burned wiring inside the living room electrical outlet, and of the smoke discharged from within that outlet.

The investigators should have carefully created a timeline of the events leading up to the fire. Had they done so, they would have realized that ignition occurred well after Michael Ledford left the apartment.

Had the state investigator conducted a thorough and scientific investigation of the Ledford fire, rather than relinquishing the investigation to agents of the insurance company, Michael Ledford would never have been charged. We would not be addressing this issue still today.

Because the state investigator relinquished the investigation to agents of an insurance company having a vested interest in the outcome of the investigation, Michael Ledford would stand trial for capital murder.

During the trial, the jury would hear only a select portion of Michael's confession. The jury would not hear the hours Michael spent denying he started the fire. The jury would not hear

his interrogators try to convince him the fire started on the floor, as they knew it had, rather than in the chair, as they knew it had not. The jury would not hear his interrogators suggest dozens of bizarre motives, including sexual failure and a desire to be a fire chief. The jury would not see those portions of the tape where his interrogators told him he had failed a polygraph test when he had not. The jurors would not see those portions of the tape where his interrogators lied to him about the physical evidence.

Instead, the jury would hear only the moment Michael Ledford suddenly and quietly succumbed to the will of his interrogators.

The jury would certainly not hear of experiments yet to take place that would prove the interrogation techniques applied to Michael Ledford frequently lead to false confessions.

Equally troubling, the jury would not see the compelling evidence of an electrical fire. That evidence had been concealed by the insurance investigator, depriving both the Commonwealth and Michael Ledford critical evidence of his innocence.

The jury would find Michael Ledford guilty of arson and first-degree murder. They would spare his life. The judge would sentence him to fifty years in prison.

For the next decade, Michael's mother would attempt to free her son. In 2010, she would join forces with an advocate for the wrongfully convicted. After a two-year investigation, this petition now explains how the Virginia justice system was deceived by an insurance company into pursuing and securing the conviction of Michael Ledford.

4. A QUICKLY BURNING FIRE

Chapter Summary: Two people reported the fire in separate 911 calls at 8:47 PM. A sophisticated computer simulation of the fire shows that it started no earlier than 8:42 PM. Three witnesses establish that Ledford left the apartment prior to 8:30 PM, at least 12 minutes before the fire started.

The foam rubber used in furniture cushions is so flammable that it is sometimes referred to as solid gasoline. In addition to being an energetic fuel, foam rubber emits hydrogen cyanide during combustion. Few people appreciate how quickly upholstered furniture can cause a room to burn and how quickly occupants can be overcome by the deadly fumes.

The Ledford fire grew so rapidly that the smoke detector sounded soon after ignition. Elise Ledford, who had been asleep in the master bedroom, had barely enough time to attempt an escape through the front door before dialing 911. The 911 operator heard Elise gasp, and then heard nothing more.

The 911 phone call, received at 8:47 PM, provides the most reliable reference point for any timeline of the events immediately surrounding the fire. Based on two separate, sophisticated computer simulations of the fire, we know with reasonable confidence that the fire ignited approximately 5.5 minutes prior to the 911 call. Given that Michael Ledford left the apartment 17 minutes prior to the call, it is not reasonable that he set the fire.

We know that the fire developed quickly because of pre-trial and post-trial computer simulations conducted by Combustion Science & Engineering, Inc. (CSE). Before the trial, Michael's defense team contracted CSE for analysis and expert testimony. CSE's effort to persuade the jury of the significance of the rapidly burning fire was hampered by an adverse court ruling. The court disallowed use of a video that showed how terrifyingly fast upholstered furniture burns. Though the jury found Michael Ledford guilty, CSE has continued to work on Michael's case pro bono. They do so because of their belief in his factual innocence.

In 2000, CSE first simulated the Ledford fire using a then state-of-the-art computer program developed by the National Institute of Standards and Technology (NIST). In 2010, CSE again simulated the Ledford fire, this time using a substantially more sophisticated computer program. Each of the two simulations showed that the fire developed so rapidly that it could have ignited only after Michael Ledford left the apartment.

The Figure 15 below provides a side-by-side pictorial comparison of results from the latest CSE computer simulation against an experimental fire test conducted by NIST. The national institute not only developed fire simulation software, it conducted experiments that could be used to calibrate and validate such computer simulations.

In both the physical experiment and the computer simulation, the fire begin on the cushion of a chair or couch. In the case of the Ledford fire, CSE was exploring the claim that the fire had been started by someone tossing a candle into the seat of the upholstered chair. In both the physical experiment and the computer simulation, the fire developed at a potentially lethal rate.

NIST / Test Living Room



CSE / Ledford Living Room

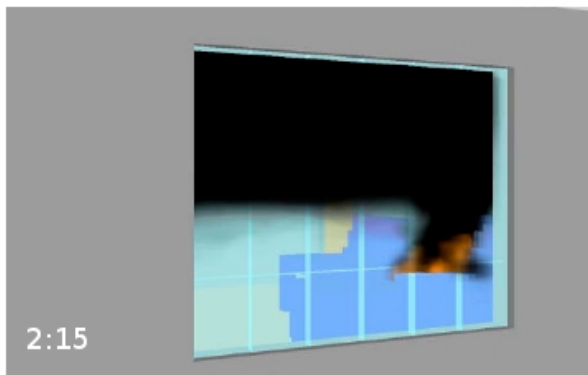
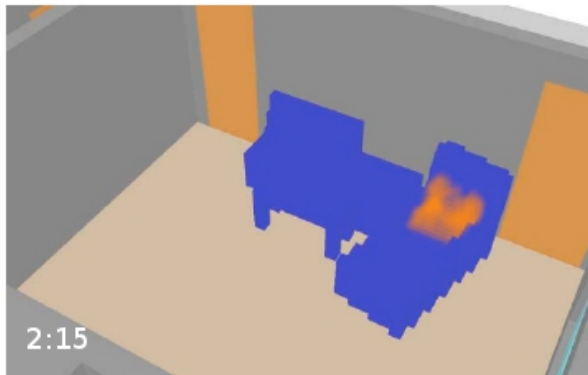
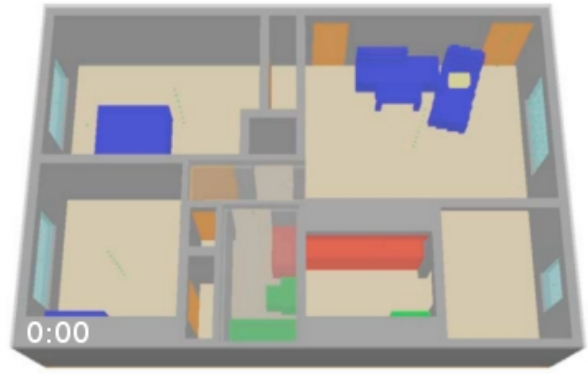


Figure 15: Experimental Fire (Left) -- Ledford Simulation (Right)

In the computer generated images of the Ledford fire the smoke is displayed in only one, though smoke was present to some degree throughout the fire. The one image including the smoke is a view from the perspective of neighbors who witnessed the smoke layer as it descended rapidly from the ceiling. The comparison with the experimental fire (unrelated to the Ledford fire) is impressive.

From the timestamps on the images, it is clear that the Ledford fire developed quickly, within just a few minutes. The experimental fire developed even more rapidly, probably because the door in the experimental room was left open. The experimental fire was provided a continuous supply of oxygen while the Ledford fire could consume only that which was initially in the apartment.

The comparison of the CSE simulation with the NIST experimental fire shows that the CSE simulation is entirely reasonable. Together, the simulation and the experiment provide compelling evidence that the Ledford fire developed within just minutes of ignition.

Now, using the development time of the Ledford fire and the well-established time of the 911 call, we can detail the timing of the critical events on the night of the Ledford fire. We begin with the 911 call and work backwards.

8:47 PM

At 8:47 PM on 10 October 1999, two Augusta County 911 operators each received a call from the Highland Hills apartment complex. One call came from Denise Moran who reported a fire at one of the apartments within the complex. The other call came from the Ledford apartment. The operator who received that call made the following note.

CALLER CALLED AND GASPED AND LINE WENT DEAD
OTHER DISPATCHER WAS TAKING THE FIRE CALL
APT 17-A

8:45 PM

Two minutes before Elise called the 911 operator, she entered in the living room to attempt an escape out the front door. From across the room, it would have seemed as if escape was possible, but it was not. The quilt rack and the chair were near the front door, and they provided the primary fuel load for the fire. The fire was already radiating heat at a rate equivalent to a thousand 100-watt light bulbs. Two neighbors witnessed Elise twice approach the front door only to be forced back.

It was during those approaches that Elise most likely suffered the serious burns to her body. She would not have to come into direct contact with any flame. The radiant heat would be sufficient to burn from a distance.

After her two attempts to escape, Elise retreated to the bedroom and called 911. She succumbed to the fumes before she uttered a word. After later awakening from her coma, she would have no memory of the fire. She would not be interviewed until after Michael's arrest.

8:44 PM

One minute before entering the living room, Elise was awakened by the smoke alarm. Studies show that people require approximately 30 seconds to awake after an alarm sounds, particularly if the people are deeply asleep. Studies show also that people require another 30 seconds to orient themselves and decide on a course of action. CSE is well aware of these studies and incorporated the knowledge into their simulation.

Elise however may have awakened sooner than 30 seconds after the alarm sounded, since she had gone to bed only 30 minutes earlier. If Elise did awaken sooner than 30 seconds after the alarm sounded, then the fire must have ignited even later than indicated by this timeline. Similarly, if Elise reacted more quickly than 30 seconds after awakening, then the fire must have ignited later than indicated by this timeline.

8:43 PM

Thirty seconds before Elise awoke, the smoke alarm began to sound. To determine the time the alarm sounded, CSE incorporated a well-established smoke-alarm-activation algorithm into their post-trial fire simulation. CSE then validated its newly incorporated alarm-activation feature against experimental data. Their modified and validated fire simulation model showed that the smoke detector sounded just 30 seconds after the fire ignited.

8:42 PM

A half minute before the smoke alarm sounded, the fire ignited. As is characteristic of compartment fires involving upholstered furniture, the fire grew rapidly. It fed itself primarily on the quilt rack and the back of the chair. It climbed the wall near the front door, and sent hot gases to the ceiling. The hot gases accumulated and, together with the flames, radiated heat throughout the room.

The radiant heat would soon thwart Elise's attempt to escape through the front door. The heat would drive her back to her bedroom. As the hot gases accumulated further, the radiant heat would scorch objects such as the couch and ottoman cushions. It would melt plastic objects such as the thermal mugs on the end table, and the computer monitor on the computer table. Eventually, the radiant heat would become sufficiently intense to break one of the uppermost panes in the living room window, the one closest to the door and the fire. Window glass breaks when exposed to radiant energy 35 times as intense as direct sunlight on a bright day.

Because the apartment entry door was closed, however, as were all the apartment windows, the fire quickly consumed the available oxygen. When the oxygen concentration reached approximately 50% of the normal level, the fire extinguished itself. The fire never reached flashover conditions. It never got hot enough to melt glass or metal, such as any candleholders reportedly on the end table. The fire did not burn long enough or hot enough to consume all the wax from a candle on the end table or a candle in the chair.

8:35 PM

Seven minutes before the fire ignited, Michael was putting gas in the family car. Elise needed the car fueled for her drive to work the next morning. Fueling the car was one of two quick errands Michael hoped to complete that night before returning home and going to bed.

Michael purchased the gas from the Exxon (now Citgo) station located at a major intersection just a quarter mile away. Fellow firefighter and family babysitter Sharon Toner corroborated Michael's presence at the station. Ms. Toner and a friend drove by the Exxon station at 8:35 PM and saw the Ledford family car there. Michael must have been, at that moment, inside the station paying for the gas.

The state investigator would not interview Ms. Toner's friend, would not interview the attendant at the station, would not obtain copies of the receipt, and would not view any security video. We must therefore rely on Ms. Toner's recollection for the time of Michael's presence at the gas station.

8:30 PM

Michael Ledford left the apartment twelve minutes before the fire ignited. That critical timing is based on the reports of three different witnesses.

James Hirtriter lived in the unit across the hallway from the Ledfords. He did not see Michael leave the apartment, but he did hear Michael's car start up. Michael's car was noticeably loud. Mr. Hirtriter heard the car start approximately one-half hour before the fire trucks arrived. Since the fire trucks arrived at 8:58 PM, Mr. Hirtriter places Michael's departure at 8:28 PM.

Jim Dorsey lived in Building 18, the building to the left of Michael's building as you face them from parking area. Mr. Dorsey was helping his girlfriend, Debbie Moore, move into his apartment. Mr. Dorsey recalls Michael leaving the building 20 minutes before Mr. Dorsey and Ms. Moore both became aware of the fire. Each of them observed Elise make her two efforts to escape through the front door. Since Elise attempted her escape at 8:46 PM, Mr. Dorsey places Michael's departure at 8:26 PM.

The estimates of Mr. Hirtriter and Mr. Dorsey are reassuringly close.

Michael Ledford was the third witness to his departure. He reported on multiple occasions that he left between 8:30 and 8:40 PM. It is unlikely he left as late as 8:40, given that he was placed at the gas station at 8:35. It is even more unlikely that he left as late as 8:40 since Jim Dorsey recalled him departing 20 minutes before he [Dorsey] became aware of the fire.

Taking the evidence of the three witness to his departure as a whole, and considering the evidence of the babysitter who placed him at the gas station at 8:35, it is likely that Michael Ledford left the apartment near 8:30 PM.

The Significance of the Quickly Burning Fire

Neither Mr. Hirritter nor Mr. Dorsey was interviewed until after the state investigator had unwittingly extracted a false confession from Michael Ledford. Had the state investigator interviewed either of these critical witnesses soon after the fire, and had the state investigator understood how rapidly furniture-laden room fires develop, he would have realized that Michael could not have started the fire.

Had the state investigator conducted a thorough and scientific investigation of the Ledford fire, he would have realized that Michael left the apartment approximately twelve minutes before the fire ignited. He would have realized Michael's confession was false. He would have realized that the fire resulted from an aging, poorly maintained, and dangerous electrical system.

Regarding the quality of the investigation into the Ledford fire, CSE included the following observations in its most recent scientific paper on that fire.

While the confession was obtained, it is consistent with neither the facts of the case nor the principles of fire science. An analysis of the timeline of the fire, as well as the lack of evidence of wax in the chair, indicate that the confession should have been rejected and the fire either listed as undetermined, or further analysis should have been conducted. Definitively, though, the fire scenario that Michael Ledford confessed to is not how the fire occurred. ...

In the last year, criminal fire investigation has seen increased mainstream media coverage, particularly relating to the Cameron Todd Willingham case. In this case, a man was convicted of arson and murder related to a fire that killed his three children. Mr. Willingham was charged, convicted, and ultimately executed for the crime. It has been shown, in some pre- and post-execution analyses, that the bases of the investigative conclusion by the public officials of an arson fire were not rooted in sound fire science. There has been some push from the fire investigation community that fire investigators should rely on fire science education, instead of rule-of-thumb training and that a mistake was made in the Willingham case.

As demonstrated above, there is scientific analysis that shows that the primary piece of evidence used to support the arson conviction of Mr. Ledford, his questionable and long since recanted confession, is erroneous. Fire science-based analysis of the timeline indicates that the confession cannot be a true statement. Analysis at the time of his trial asserted this fact. New scientific advancements, particularly centering on the ability of computer modeling to simulate toxic gas generation, window breakage, and smoke alarm activation, have been used to re-analyze the fire. The initial conclusion that the confession details do not match the facts of the fire is affirmed. Had the initial public fire investigators undertaken a scientific analysis to determine if the confession matched the facts of the case, they would have realized that their hypothesis, that Michael Ledford intentionally set the fire as he left the house, does not pass the test of the Scientific Method. This potential hypothesis should have been discarded, and additional hypotheses developed and tested.

Stephen Olenick, Richard Roby, and Douglas Carpenter authored the CSE paper.

Mr. Olenick is a Principal Engineer at CSE, an expert in the computer simulation of fire. He is a principal member of the NFPA 72 committee that is responsible for residential smoke alarms. As such, he understands smoke alarm activation times and escape times.

Dr. Roby is President and Technical Director of CSE. He understands how deficient the Ledford fire investigation truly was, particularly since he is a principal member of the NFPA 921 Committee on fire investigation. NFPA 921 is a widely recognized national code that describes proper practices for fire investigation. The state investigator for the Ledford fire conceded awareness of the code, though he violated many of its basic precepts.

Mr. Carpenter is Vice President and Principal Engineer of CSE. He is in a unique position to compare the inadequacy of the Ledford fire investigation with the inadequacy of the Willingham fire investigation. Mr. Carpenter was one of the five-member Arson Review Committee commissioned by the Innocence Project to investigate the Cameron Todd Willingham and Ernest Ray Willis. He is Dr. Roby's alternate for the NFPA 921 Committee.

Each of the three CSE experts understands what the state investigator seemingly did not, that furniture-laded room fires develop fully within a few minutes of ignition.

In the Willingham case, Governor Rick Perry ignored a last minute warning from our nation's foremost fire investigator that the investigator's claims of arson were totally without merit. Governor Perry allowed the execution of Willingham to proceed. Still today, when even Willingham's prosecutor concedes the arson investigation was seriously flawed, Governor Perry faces difficult questions about his decision to ignore the scientific evidence of a man's innocence.

In this petition, we will show that the Ledford fire investigation was in some regard even more egregious than the Willingham fire investigation. In the Willingham case, the State did not relinquish the investigation of the fire to the agents of an insurance company that had a vested interest in determining the cause to be arson.

5. THE SUPERFICIAL INVESTIGATION OF AGENT JAMES WATSON

Chapter Summary: The Commonwealth's fire investigator conducted only a cursory investigation of the fire scene. He did not follow widely recognized procedures. He did not preserve critical evidence. He did not photograph the burned wiring within the electrical outlet behind the couch. That outlet showed distinctive smoke patterns indicative of a fire within the outlet. The lamp had been plugged into that outlet. The Commonwealth's fire investigator also failed to photograph or examine the circuit breaker panel. That panel also showed distinctive smoke patterns indicative of a fire within the panel. One circuit breaker in particular showed a burn mark, evidence of a fire within the breaker.

5.1 Agent Watson's Training

Virginia Police Special Agent James Watson had, at the time of the Ledford fire, been with the police force for 26 years. He received his initial training in fire investigation 5 years prior to the Ledford fire. In those intervening 5 years, he received a total of 20 days of classroom training and 16 days of in-service training in either fire investigation or arson. He also attended a 3-day seminar for arson investigators.

During his training, Agent Watson was almost certainly exposed to NFPA 921. Prepared by the National Fire Protection Association, the document describes its purpose thus:

This document is designed to produce a systematic, working framework or outline by which effective fire investigation and origin and cause analysis can be accomplished. It contains specific procedures to assist in the investigation of fires and explosions. These procedures represent the consensus judgment of the committee on a system that, if followed, can be expected to lead to sound conclusions with supporting evidence. **Deviations from these procedures**, however, are not necessarily wrong or inferior but **need to be justified**. [Emphasis added.]

Since initially issued in 1992, NFPA 921 has had broad and unchallenged acceptance in both the scientific community and courts of law. As one of our country's most widely recognized fire investigation codes, NFPA 921 forms a substantial basis of the information that a professional fire investigator must know to be certified by the International Association of Arson Investigators, of which Agent Watson was then, and probably still is, a member.

During a preliminary hearing, Agent Watson testified that he was in fact familiar with NFPA 921.

Bobbitt: Mr. Watson, you mentioned your qualifications. Are you also familiar with the NFPA standards, the 921 standards?

Watson: Yes, sir.

Bobbitt: Are those the procedures that you follow when you're investigating a fire?

Watson: That's a reference guide we use. And I refer to that guide, and as far as when I need to, as far as investigation goes.

Unfortunately, as we shall see, Agent Watson failed to follow the guidelines of NFPA 921. He offered no justification for ignoring them. His failure to follow the guidelines caused him to overlook evidence of an electrical fire at the Ledford apartment.

5.2 Interviews

Agent Watson learned of the fire by phone at 9:39 PM, just 52 minutes after the 911 call was placed. He arrived at the scene one hour and one minute later. He walked through the fire scene, but did not take pictures that night. He did interview three people.

5.2.1 Interview of Debbie Moore

Debbie Moore told Agent Watson that she had been moving into Building 18 when she and her boyfriend, Jim Dorsey, heard glass exploding and saw flames coming from the adjacent Building 17. She heard a scream from inside the building. She yelled for someone to call 911, went to the apartment, knocked on the door, and told the woman she saw inside to go around to the back. Ms. Moore then ran down the driveway to direct the firefighters as they arrived. She later learned that one firefighter turned out to be Michael Ledford. She remembered that her boyfriend had seen Michael Ledford leave the apartment shortly before the fire.

From a photograph taken months after the fire, we can see how close Debbie Moore and Jim Dorsey may have been to the Ledford apartment when they became aware of the fire. They were moving her belongings into Building 18. Building 18 is the leftmost building in the photo below. The Ledford apartment was in Building 17, the middle building of the three shown in Figure 16 below.

Lisa Hall, to be discussed next, lived in Building 12. That would be reasonably near the spot from which Figure 16 was taken.



Figure 16: Approximate View of Witness Lisa Hall

5.2.2 Interview of Lisa Hall

Agent Watson interviewed Lisa Hall three days after the fire. She told him that she heard Debbie Moore screaming for someone to call 911. As her neighbor made the call, she went across the driveway towards the fire, heard glass break, and saw smoke and flames inside the apartment. She heard Moore yelling to the woman inside to go around to the back. Hall reported, incorrectly as it turned out, that Michael Ledford was the first firefighter on the scene. He was actually the second. She remembered he went "ballistic" when he learned it was his apartment that was burning.

Lisa Hall used similar language during her interview with reporter Lynn DiBiase of the *Daily News Leader*. According to the October 11 news article, Lisa Hall explained: "He just went ballistic ... There was a bunch of (firefighters) fighting him, trying to keep him from going inside."

5.2.3 Interview of Darlene Keiper

Darlene Keiper told Agent Watson that she resided in the Ledford apartment. She had been working at Walmart at the time of the fire. She reported that neither Michael nor Elise smoked. Though she, Darlene, did smoke, she never smoked while in the apartment. Darlene Keiper could give no reason for the fire. During her next interview, she would express concern that the table lamp had started the fire.

5.3 Twenty-Two Photos and a Glance

Agent Watson secured the apartment and returned the next morning (or the one after that) to photograph and to further examine the fire scene. His photographic efforts were limited. He took only 22 photographs, two less than one full roll of film.

Agent Watson did not photograph the wall outlet, despite the smoke ejected from behind the faceplate. One image of that wall outlet was presented twice previously as Figures 1 and 9 and is repeated below as Figure 17. The image was clipped from a much larger photograph taken not by Agent Watson, but by the insurance investigator.

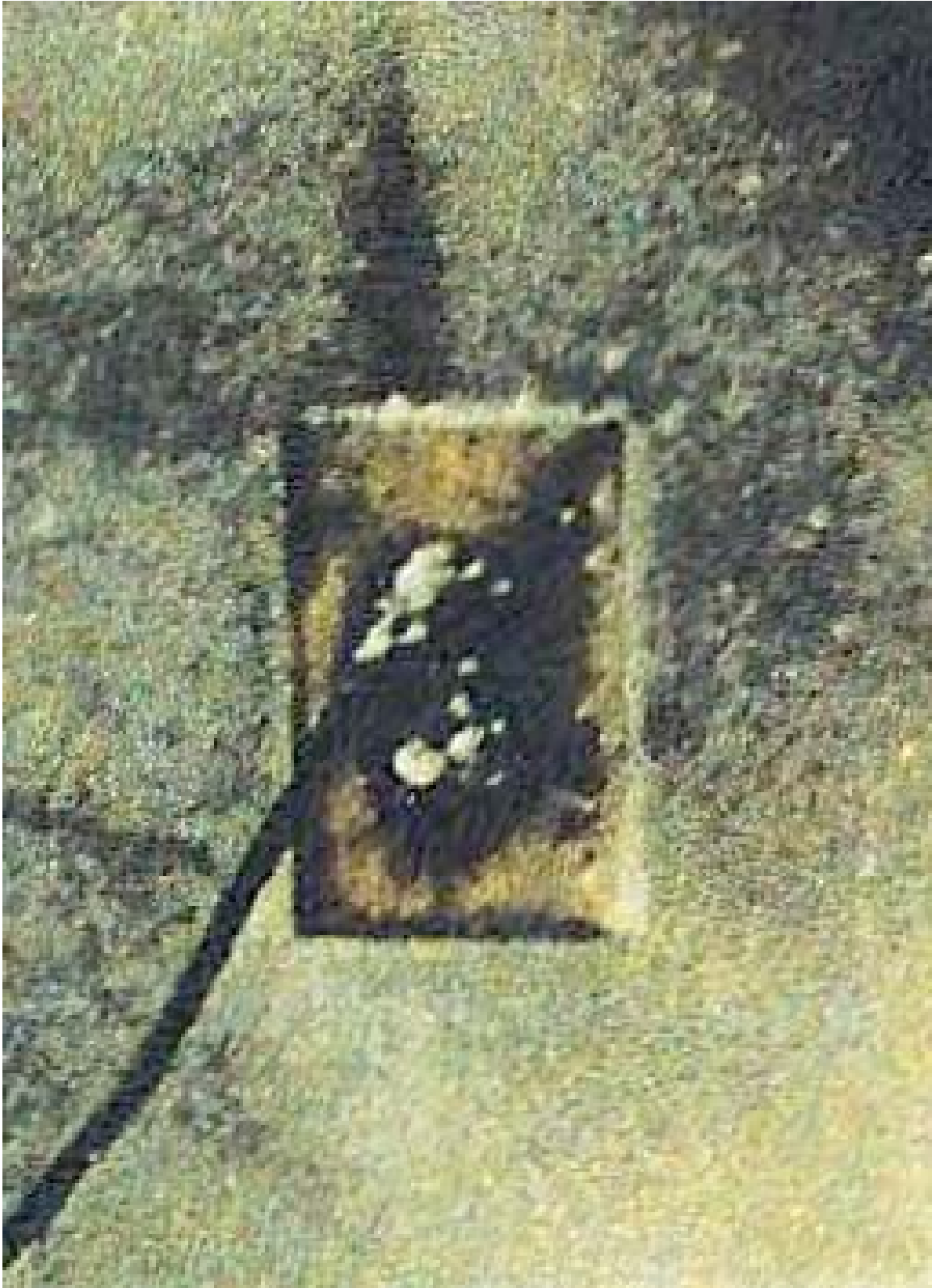


Figure 17: Smoke Streaks Reveal Fire Behind Faceplate

Nor did Agent Watson photograph the circuit breaker panel, despite the smoke ejected from within. That image was presented previously as Figure 10 and is repeated below as Figure 18. The image is enlarged from a photograph taken not by Agent Watson, but by the insurance investigator.

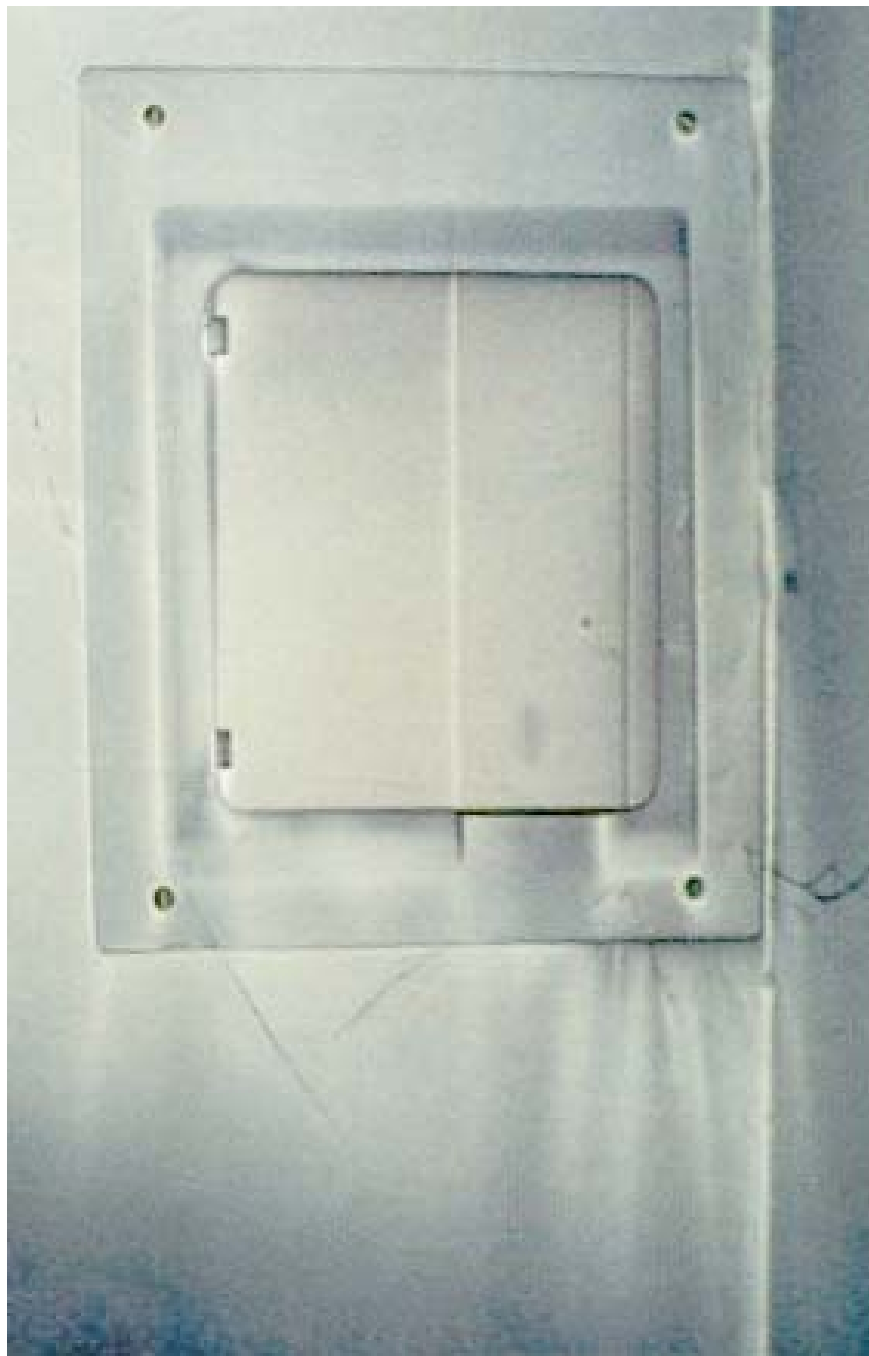


Figure 18: Smoke Streaks Reveal Fire Within Circuit Breaker Panel

Regarding the number of photographs to be taken at a fire scene, NFPA 921 offers the following general guidance.

8-2 Photography. A visual documentation of the fire scene can be made using either film or video photography. Images can portray the scene better than words. They are the most efficient reminders of what the investigator saw while at the scene. Patterns and items may become evident that were overlooked at the time the photographs or videos were made. They can also substantiate reports and statements of the investigator. ... As many photographs should be taken as are necessary to adequately document and record the fire scene. It is recognized that time and expense considerations may impact the number of photographs taken, and the photographer should exercise discretion. **It is far preferable to err on the side of taking too many photographs rather than too few.** [Emphasis added.]

Regarding the specific need to photograph the circuit breaker panel and wall outlets, NFPA 921 is quite clear.

8-2.5.7 Utility and Appliance Photographs. ... **the fuse or circuit breaker panels should be photographed.** ... Likewise, **all electrical cords and convenience outlets pertinent to the fire's location should be photographed.** [Emphasis added.]

Agent Watson took too few photographs. He took no photograph of the circuit breaker panel, though it had been ejecting smoke from within. He took no photograph of the wall outlet, though it had smoke being ejecting smoke from behind the faceplate. He took no photograph showing the unsafe installation of the smoke detector. He used only a portion of one roll of film. Rather than document and preserve the condition of the wall outlet, the circuit breaker panel, and the smoke detector, he left two negatives unexposed on his single roll of film.

The paucity of photos taken by Agent Watson reflects the superficial nature of his examination. He did not take a picture of the inner workings of the wall outlet because he did not bother to remove the outlet from the wall. Agent Watson did not bother even to remove the faceplate, or to take a single photograph of the faceplate. Despite just three dozen days of formal training as a fire investigator, and despite his stated familiarity with NFPA 921, Agent Watson explained in court that he excluded the possibility of an electrical fire at the outlet by "just glancing at it."

Similarly, Agent Watson did not take a picture of the inner workings of the circuit breaker panel. He did not bother to remove the four screws that held the faceplate in place, remove the faceplate, and look inside. He paid almost no attention to the panel. His courtroom testimony regarding the panel consisted of only two sentences: "There was 9 breaker switches in the breaker box. I don't recall -- I don't recall if any were thrown or not."

Had Agent Watson taken even a single picture of that smoke damaged panel, he would have been able to refer to his picture during trial and answer questions about the panel accurately. He could have testified accurately that there were 13 breakers in the panel, not 9. He could have testified that all the breakers were "thrown" at the time of the fire scene investigation.

Agent Watson could have testified that the smoke deposition patterns suggested 7 of the breakers tripped automatically during the fire, while 6 were tripped manually afterwards. He could have testified that one of the breakers had been carelessly and dangerously repaired,

rather than replaced. He could have testified that dangerously repaired circuit breaker showed a burn mark on its handle.

In fact, had Agent Watson examined the electrical panel carefully, there should have been no trial at all.

5.4 Breaker 10

The circuit breaker box in the Ledford apartment was designed to hold a maximum of 16 circuit breakers. The positions are numbered from left to right, top to bottom. The numbering system places the odd numbered positions along the left-hand side and the even-numbered positions along the right-hand side of the panel.

Position 10 is located along the right-hand side as you face the breaker box. It is in the fifth position from the top. We will refer to the breaker located in position 10 as Breaker 10.

As noted previously, there is something mysterious about Breaker 10. Breaker 10 appears to be covered with one or more pieces of white plastic, apparently held in place by two crude drops of adhesive.

A burn mark remains visible on the switch handle of Breaker 10.

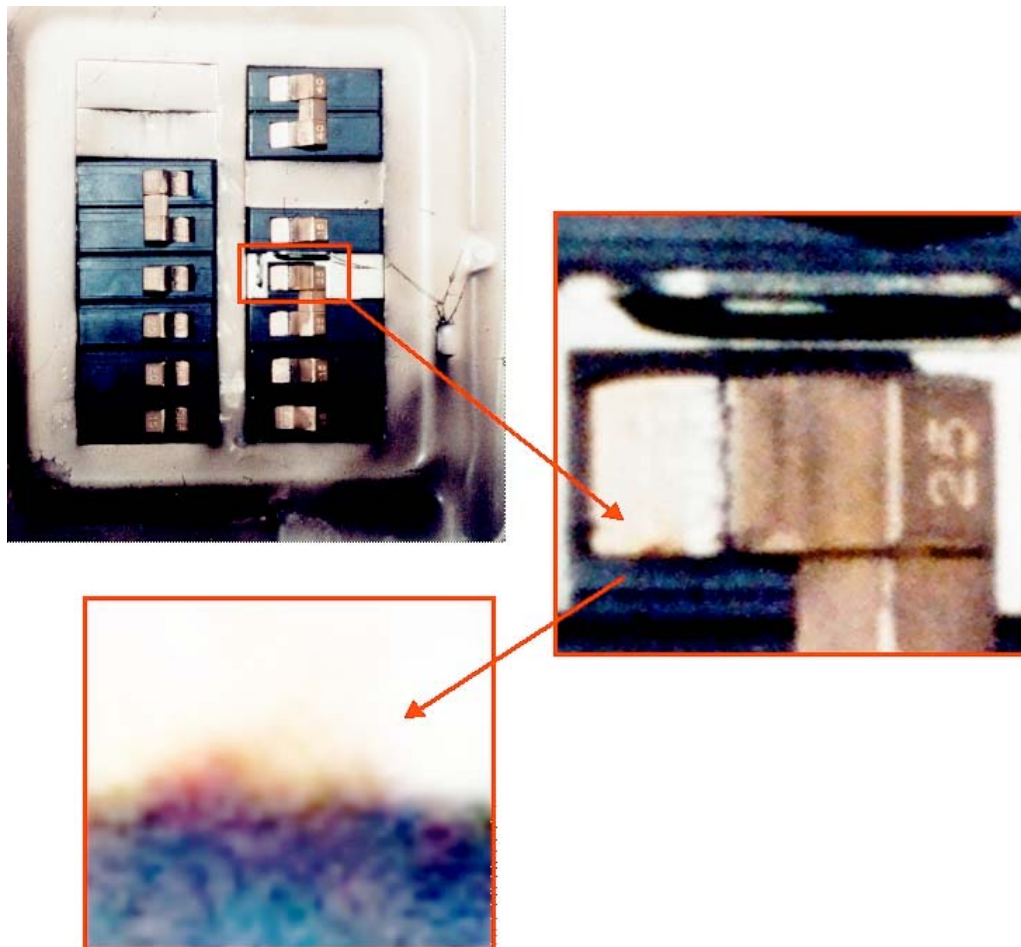


Figure 19: Burn Mark Reveals Fire Within Breaker 10

The burn mark is small but telling. The burn did not occur when the switch handle was flipped to the "OFF" position, as it is shown in the picture. Instead, the switch handle was in the "ON" position when that burn mark was made. The white portion now visible was, when the breaker was in the "ON" position, buried inside the circuit breaker. That's why it wasn't sooted during the fire by the smoke ejected from elsewhere in the panel. That's why the white portion of the toggle handle on Breaker 10 was burned but not sooted.

The white portion of the handle became exposed only after the fire, only after the smoke had settled, only after someone manually flipped Breaker 10 to the "OFF" position.

In other words, Breaker 10 failed to trip even though it was hot enough to leave a distinct burn mark on its white handle. No other circuit breaker in the panel shows any such burn mark. No other breaker shows any evidence of such shoddy repair and maintenance. Only Breaker 10 shows evidence of a jury-rigged repair. Only Breaker 10 shows a burn mark on its handle.

5.5 A Possible Failure Mode

From the image above, you can see that Breaker 10 is connected to Breaker 12 via a handle tie. There are three such pairings in the panel. Breakers 2 and 4 are also tied together. (They are the top two on the right side of the panel.) Breakers 5 and 7 are tied together as well. (They are the top two on the left side of the panel.) Each paired set indicates use of a 220-volt circuit or use of a multi-wire branch circuit.

Some household appliances require 220 volts for proper operation. Electric stoves, electric water heaters, electric clothes dryers, and outside air conditioners typically rely on 220 volts. Since residential households are provided with two 110-volt lines but no 220-volt line, the 220-volt demand is met by using both of the 110-volt lines properly combined. The circuit breakers for the two lines must be tied together to insure that each breaker interrupts its circuit when either breaker detects an overload. This simultaneous operation is implemented by the manufacturer using both an internal and an external linkage. Externally, the linkage is made by the use of a handle tie. A pair of such internally and externally connected breakers is called a dipole breaker.

The Ledford apartment had demand for only two 220-volt circuits: one for the electric stove and one for the outside air conditioner. The apartment used a gas-fired water heater and a gas-fired furnace, neither of which demanded a 220-volt line. The apartment did not have a washer or dryer. The Ledford apartment therefore required only two 220-volt circuits.

The two circuit breaker pairs used for the 220-volt circuits would probably have been the ones with the higher amperage rating. It is likely that dipole breaker in positions 5 and 7 (at 60 amps each) protected the air conditioner circuit while dipole breaker in positions 2 and 4 (at 40 amps each) protected the electric stove.

Given there were no other 220 volt appliances to be protected by dipole breakers, circuit breaker pair 10 and 12 was apparently used to protect a multi-wire branch circuit.

A multi-wire branch circuit consists of two nearly independent circuits that share a common neutral wire. The use of a common neutral wire substantially reduces the cost and space requirements of the installation, and such circuits are generally allowed by code. The paired circuit breakers need not be connected internally, but they must be connected externally by a breaker tie. The breaker tie insures that both breakers are manually flipped to the "OFF" if

either one is flipped to the "OFF" position. This precaution protects anyone working on the system. In the absence of an internal linkage, however, the handle tie does not insure that both breakers will interrupt their circuits if either breaker detects a fault.

Multi-wire branch circuits have a potentially hazardous failure mode. If the common ground fails, then both circuits can experience up to 240 volts. That means that any appliance on either circuit can be subjected to twice its design voltage and twice its design amperage.

Agent Watson failed to make a map of which circuits were protected by which circuit breakers. It is therefore possible, though not certain, that the two circuits supposedly protected by breakers 10 and/or 12:

- provided power to both the living room outlet and the smoke detector,
- experienced a failure of their common neutral,
- were subjected to twice the design voltage and twice the design amperage,
- while at least one of their breakers (Breaker 10) failed to interrupt the power surge,
- allowing at least one of the two circuits to overheat,
- leading to the fire that erupted in the Ledford living room soon after Michael Ledford switched on the living room light as he left to run errands that night.

This possible failure mode would explain why indications of fire were evident at three distinct locations throughout the apartment: at the breaker box, at the smoke detector, and at the living room outlet.

5.6 A Possible Installation Failure

Multi-wire branch circuits are particularly dangerous if not properly wired. Failure to properly terminate the hot conductors to separate phases in the electrical panel can cause the common neutral to become overloaded and to overheat. Unlike the previous scenario in which the hot conductors became overloaded and overheated, this possible failure would result in the common neutral being overloaded and overheated. In either case, conductor overheating is known to decrease insulating material service life. Over time, the degraded insulation can lead to arcing faults in hidden locations, and these arcing faults can lead to a fire such as that at the Ledford apartment.

Given the dangerous, unprofessional installation of the smoke detector in the Ledford apartment, and given the overheating of the outlets in the units surrounding the Ledford apartment, it is certainly possible that some or all of the multi-wire branch circuits in the Highland Hills apartment complex were improperly wired.

This possible installation hazard would also explain why indications of fire were evident at three distinct locations throughout the apartment: at the breaker box, at the smoke detector, and at the living room outlet. This possible installation hazard would also explain why other residents at the Highland Hills apartment complex were detecting overheated outlets.

Because Agent Watson conducted only a superficial fire scene investigation, and because he documented the fire scene so poorly, we cannot determine with certainty the nature of the electrical problem in the Ledford apartment. We can, however, be confident that the apartment's electrical system was dangerously installed and carelessly maintained. We can also be confident that both the electrical service panel and the living room outlet provided powerful evidence of an electrically based fire.

6. RELEGATION OF INVESTIGATION TO INSURANCE COMPANY

Chapter Summary: The Commonwealth's fire investigator effectively relegated the fire scene investigation to agents of the insurance company. The insurance investigator and the insurance adjuster took most of the photographs. The two insurance agents collected and preserved what little evidence was collected and preserved. Though the Commonwealth's fire investigator claimed he examined the scene independently of the insurance agents, multiple lines of evidence contradict that claim. During his later interrogation of Michael Ledford, the Commonwealth's fire investigator would refer to the insurance agents as "the experts."

6.1 Relegation as a Matter of Law and Pragmatism

The Code of Virginia assigns and grants the responsibility for fire investigation to the Virginia State Police.

§27-55. Department of State Police or successor agency to keep record of fires and explosions; ... Whenever the word "Department" appears in this article it shall be deemed to mean the Department of State Police or its successor agency in the Office of Public Safety.

§27-56. Department to examine into origin of fires; ... The Department shall examine, or cause examination to be made, into the origin and circumstances of all fires occurring in this Commonwealth, ...

We learn from Agent Watson's trial testimony that he worked out of Division III within the Department of State Police.

Watson: I work the field division of Appomattox, Virginia, which covers from Augusta County south, to the North Carolina line.

Division III is one of 7 divisions within the Virginia State Police organization. Division III covers 15 counties, including Augusta County where the Ledford fire took place. The headquarters for Division III is located in Appomattox, and Agent Watson referred to the division by the name of its headquarters.

From Agent Watson's testimony at a preliminary hearing, we learn that only two arson investigators were expected to cover the entire northern portion of Division III.

Watson: The area I work out of is Appomattox, Virginia, and there's basically only two arson investigators in the northern part of this particular division of Appomattox. And I guess I was the first to be called.

It is neither illegal nor unusual for state fire investigators, in Virginia and across the country, to seek the assistance of insurance investigators during their fire investigations. Such cooperation is frequently necessary due to budgetary constraints. As just noted, the Virginia Code expressly allows the Virginia Police to relegate all or a portion of any fire investigation to an outside agent or agency.

§27-56. ... The Department shall examine, **or cause examination to be made**, into the origin and circumstances of all fires occurring in this Commonwealth, ...

The Virginia Code in fact provides a mechanism by which an insurance company can effectively pay to play. By simply requesting the assistance of the Virginia State Police in one of its investigations, the insurance company becomes obliged to pay all costs the State Police incur during the investigation.

§27-57. When insurance company to pay expenses of examination: When such examination is made on the application of any fire insurance company, the necessary expenses attending the same shall be paid by such company.

We do not know whether or not Allstate Insurance, or its agents, made an application to the Virginia Police requesting assistance with Allstate's investigation into the fire at the Ledford apartment. We do expect, however, that while participating in police investigation, particularly a potential death penalty investigation, the insurance company should be held to the same high standard as the Virginia State Police.

6.2 Relegation as Evidenced by the Photographic Record

Agent Watson took only 22 photographs of the Ledford fire scene. The two insurance investigators, by comparison, took at least 65 photographs. In fact, the two insurance investigators took at least 87 photographs if you include the ones they took of the stairway and the other apartments in the building. In other words, the insurance investigators took between 75% and 80% of the photographs ever taken of the fire scene.

Though Agent Watson could not rule out the electrical system as a cause of the fire, he failed to take a single photograph of the wall outlet that showed evidence of fire from within.

Instead, Agent Watson left it to the insurance agents to photograph the wall outlet. The insurance investigator captured an image of that outlet, at least obliquely, in two photographs. The insurance investigator actually removed the wall outlet and examined it.

Though Agent Watson could not rule out the electrical system as a cause of the fire, he failed to take a single photograph of the electrical service panel that showed evidence of a fire from within.

Instead, he left it to the insurance agents to photograph the electrical service panel. Both the insurance investigator and the insurance adjuster captured the panel from a distance. One of them also took two close-up pictures of the panel: one with the panel door closed and one with the panel door open. Neither apparently removed the panel to examine the wiring inside.

Though Agent Watson could not rule out the electrical system as a cause of the fire, he failed to take any photograph that would clearly show the hard-wired smoke detector, though that detector evidenced clear signs of a hazardous installation and possible signs of fire.

Instead, Agent Watson left it to the insurance agents to capture a reasonably clear image of the smoke detector. The insurance investigator captured the smoke detector both from a distance and in a close up. That investigator actually removed the smoke detector from the apartment. The smoke detector was thereby kept from both the Commonwealth and those who defended Michael Ledford.

So important is documenting the condition of the electrical system after a fire that NFPA 921 reinforced the very guideline that it had made clear earlier in its document.

11-6.2 Utilities. **The condition of the utility services in the structure should be located and documented.** Documentation may involve simply photographing the electrical distribution panel for a home, or it may involve studying a complex electrical distribution system for a large industrial building. In either event, **the type and method used to distribute electricity should be determined, and damage to the systems should be documented.** [Emphasis added.]

Rather than follow the guidelines of NFPA 921 as he was trained to do and as he testified he did in some cases, Agent Watson relegated the responsibility for photographing the electrical system to agents working indirectly for Allstate Insurance. As we shall see, the insurance investigator suppressed at least one critical photograph that has not yet, to this day, been seen by the Commonwealth of Virginia or those defending Michael Ledford.

Agent Watson relied so heavily on the insurance agents for taking photographs that the Commonwealth could not build their case on his photographic record. Ten photographs showing the living room after the fire were presented as exhibits during Michael Ledford's capital murder trial. Only 3 of them were taken by Virginia State Police Special Agent James Watson. The other 7 were taken by either of the two insurance agents.

6.3 Relegation as Evidenced by the Carpet Samples

Agent Watson collected only a single piece of physical evidence from the fire scene. From his trial testimony, we learn that he cut a swath of carpet and sent it to a lab to be tested for accelerants.

Watson: After I considered a particular area a point of origin, I took samples. The samples consisted of cutting carpet that were -- was in that particular area and putting 'em -- putting them in a metal can for later submission for forensic analysis.

From the lab report, we learn that no accelerants were found in the sample.

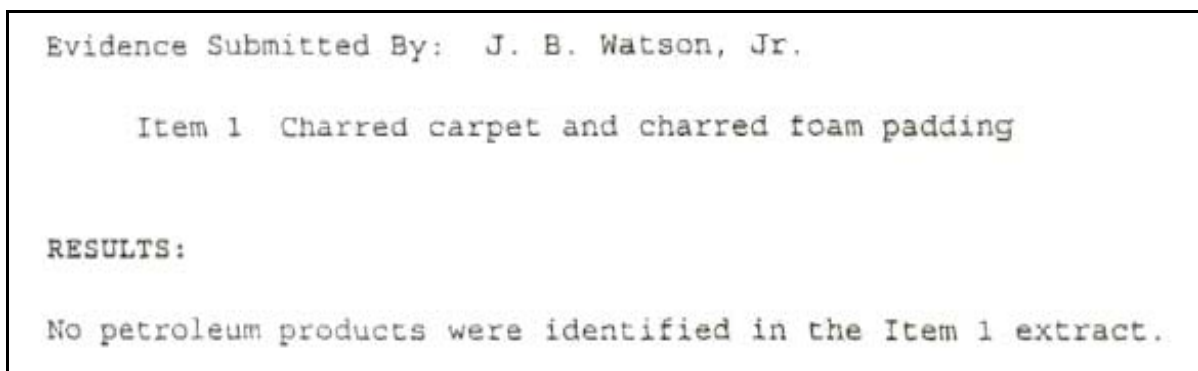


Figure 20: No Accelerant Found in Carpet Sample Submitted by Special Agent Watson

The lab report indicates that Watson not only removed a section of carpet, he removed the underlying foam padding as well. The resulting hole in the carpet should be obvious in the photographs. No such cutout, however, can be found in any of the photographs taken by Agent Watson or by either of the insurance agents.

The absence of any cut-out in the photographic record suggests that Agent Watson took the carpet sample after all the photographs had been taken, after the insurance agents had

completed their investigation. It seems as if Agent Watson relied on the insurance agents when he made his determination regarding the fire origin.

We see also from Agent Watson's fire scene report that he took the sample from the area he determined to be the origin. In response to EXAMINATION OF AREA OR POINT OF ORIGIN / Were Samples Taken, he entered "Yes."

EXAMINATION OF AREA OR POINT OF ORIGIN:		Was Scene Photographed
Were Samples Taken	Yes (Denote location on Attached Diagram)	Yes
Have All Accidental and Natural Sources of Ignition Been Eliminated		
No		
ORIGIN OF FIRE:	Incendiary <input type="checkbox"/>	Undetermined <input checked="" type="checkbox"/>
	Accidental <input type="checkbox"/>	Suspicious <input type="checkbox"/>

Figure 21: Carpet Sample Taken from Presumed Point of Origin

In response to the instruction that he "Denote location on Attached Diagram", Agent Watson prepared a diagram of the fire scene, added the words "Fire Origin", and drew an arrow to the area against the wall, between the quilt rack and the end table. The resulting sketch is presented below as Figure 22. Note that the origin is identified as being near the wall, between the coffee table and the quilt rack. Note that the origin is not in or behind the chair.

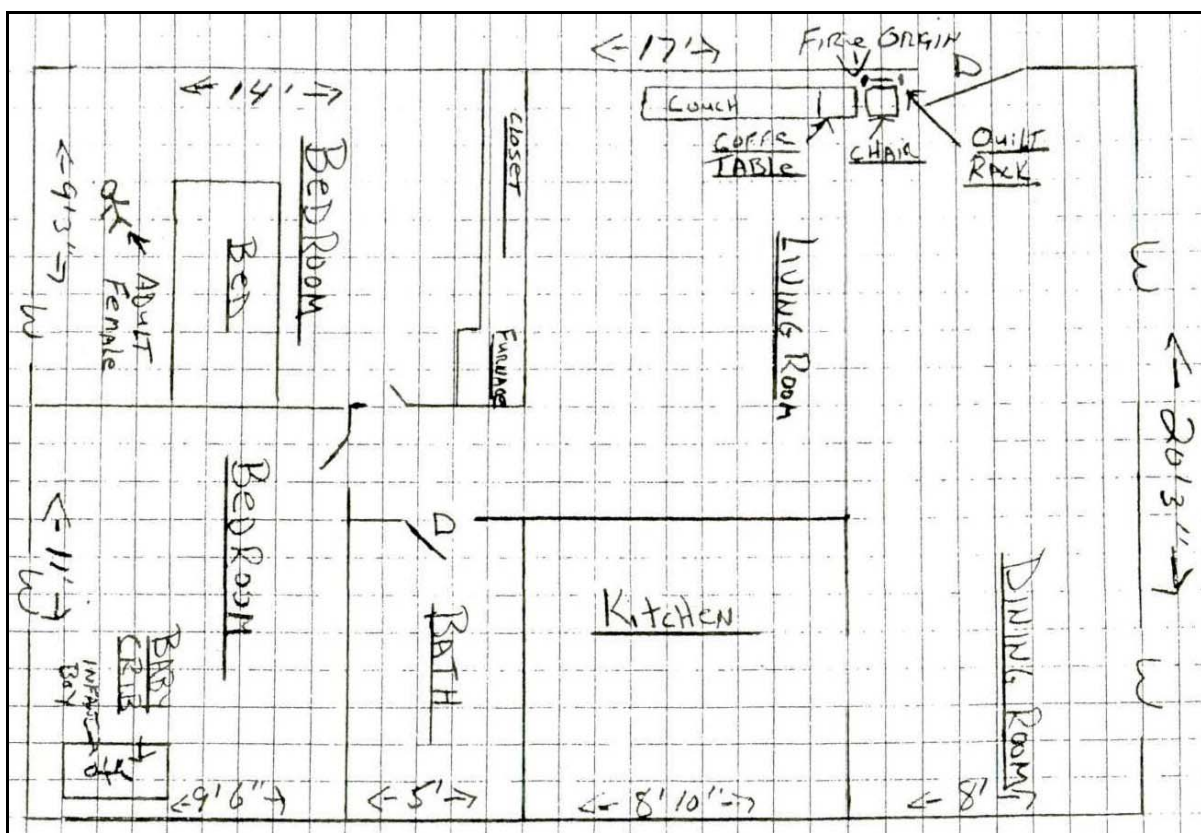


Figure 22: Agent Watson's Presumed Fire Origin -- Not in Chair

Agent Watson did not, however, photograph the location after he cut and removed the sample. The missing carpet / foam padding segment is found in none of his three photographs focusing on that area. Of those three photographs, the one most closely focused on the area is included below as Figure 23.

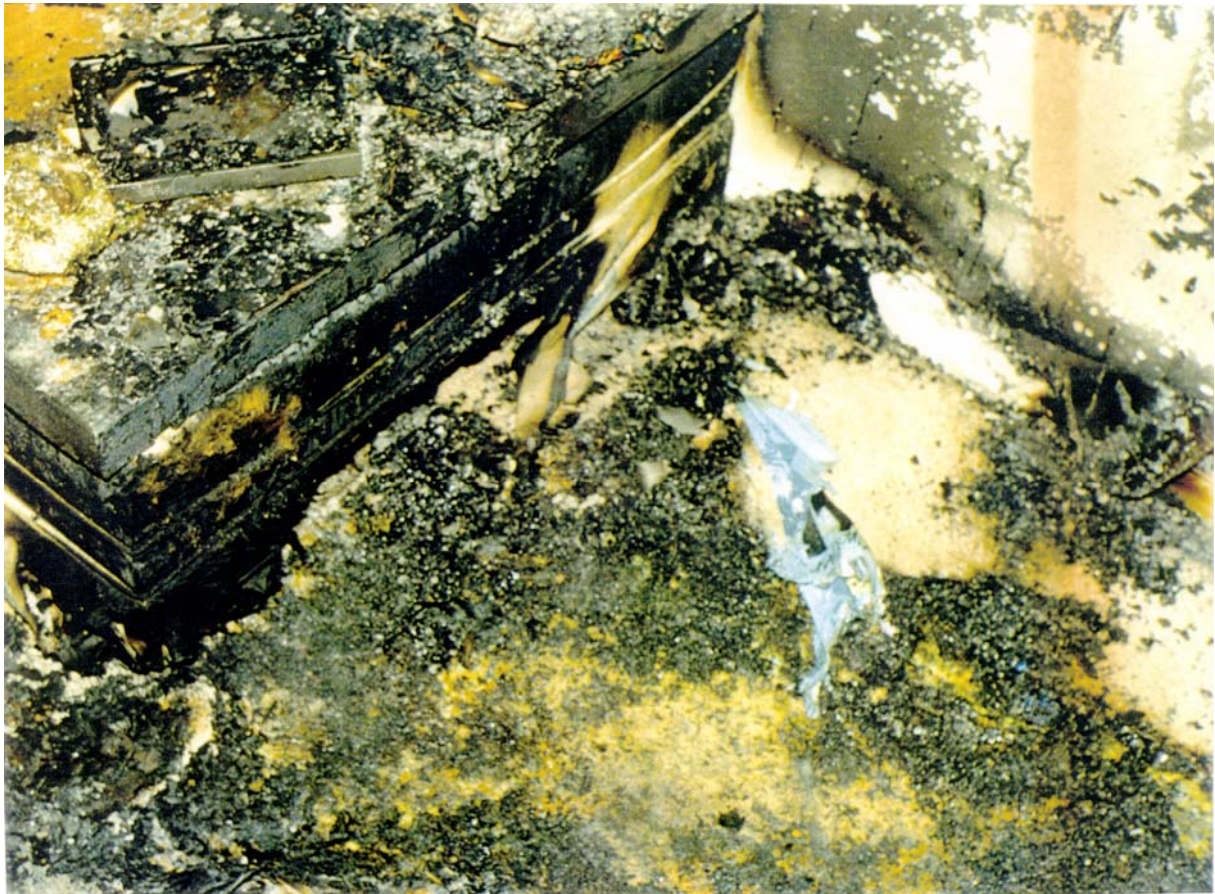


Figure 23: Agent Watson's Photo of Presumed Fire Origin -- Carpet Sample Not Yet Removed

Nowhere in the photograph can we see a section with carpet and foam padding removed. In fact, nowhere in any of Agent Watson's 22 photographs, nor in any of the insurance investigators' 65 photographs, can we see where a segment of carpet and padding has been removed.

Of the many photographs of that area taken by the insurance agents, the most appropriately focused follows as Figure 24.



Figure 24: Insurance Investigator's Photo of Presumed Fire Origin -- Carpet Sample Not Yet Removed

All of the photographs showing this area, and the area underneath the chair, and the area underneath the ottoman, are included as part of this petition package. None of the photographs reveal the missing carpet segment. It seems as if Agent Watson removed the carpet sample only after the insurance agents had completed their on-scene investigation. It seems as if Agent Watson relied on the insurance agents to determine the fire origin.

It seems as if everyone was then confident the fire started near the wall, between the end table and the quilt rack. It seems as everyone was confident the fire did not start in the chair.

6.4 Relegation as Evidenced by Failure to Collect Electrical Components

NFPA 921 provides guidelines regarding the collection of electrical components as evidence.

9-5.5 Collection of Electrical Equipment and Components. ... Electrical switches, **receptacles**, thermostats, relays, junction boxes, **electrical distribution panels**, and similar equipment and components are often collected as physical evidence. It is recommended that these types of electrical evidence be removed intact, in the condition in which they were found. When practical, it is recommended that any fixtures housing such equipment and components be removed without disturbing the components within them. **Electrical distribution panels, for example, should be removed intact.**

Agent Watson did not collect as evidence either the wall outlet or the electrical panel, though both showed substantial evidence of burning. Instead he relegated that task to the insurance agents.

As we mentioned previously, one of the insurance agents actually removed the wall outlet but did not collect it as evidence.

Bobbitt: And let me show you this photograph, Exhibit Number 9, and ask you if you recognize that?

Toler: Yes, sir.

Bobbitt: Does that show the outlet in the wall?

Toler: Yes, sir. It does.

Bobbitt: Okay. Now, this outlet is near -- where the fire occurred. Is that correct?

Toler: Yes, sir. It is. It was, actually, I believe, behind the -- the little end table that was attached to the couch.

Bobbitt: And what did you do about this outlet? Did you check the outlet?

Toler: Yes, sir. I examined the outlet from the outside first, for any signs of any arching or beading or any -- malfunctions of the wiring; any abnormalities. Also, I -- I took it out and examined the wiring inside. The wiring inside showed evidence of external heating only. There was not internal heating; no beading, no separation of the wiring within that outlet.

Though the wiring inside the outlet did in fact show signs of overheating, the insurance investigator did not secure the outlet for further examination. He did not take even a single photograph of the overheated wiring inside. Instead, he decided the burned wiring was inconsequential, unworthy of further examination, unworthy of preservation as evidence. Instead of securing the wall outlet, the insurance investigator actually replaced it in the wall and covered it with its faceplate. No one else would be allowed to see the burned wiring inside the outlet that left the distinctive soot patterns on the surrounding wall.

6.5 Relegation as Evidenced by Failure to Collect Electrical Appliances

NFPA 921 provides guidelines regarding the collection of electrical appliances as evidence.

9-5.6 Collection of Appliances or Small Electrical Equipment. Whenever an appliance or other type of equipment is believed to be part of the ignition scenario, it is recommended that the fire investigator have it examined or tested. **Appliances may be collected as physical evidence to support the fire investigator's determination that the appliance was or was not the cause of the fire.** This type of physical evidence may include many diverse items from the large (e.g., furnaces, water heaters, stoves, washers, dryers) to the small (e.g., toasters, coffee pots, radios, irons, **lamps**). Where practical, the entire appliance or item of equipment should be collected as physical evidence. **This includes any electrical power cords or fuel lines supplying or controlling it.** [Emphasis added.]

Agent Watson did not collect and secure the finicky table lamp that hovered directly over the area he identified as the fire origin. Instead Agent Watson relegated that task to the insurance agents. The insurance agents also failed to secure the lamp, and the lamp soon disappeared forever.

Agent Watson released the fire scene at 1 PM, after taking his photographs in the morning, and presumably after the fire agents took theirs. On the next day, Michael Ledford's family and friends unwittingly cleaned the apartment of all those items Agent Watson deemed unworthy of preservation. Lost forever were the chair, the ottoman, the quilt rack, and the remnants of the quilts.

Most significantly lost, however, was the table lamp. That lamp most assuredly should have been preserved and examined, along with its switch, its cord, and the extension cord that connected it to the outlet. During a preliminary hearing, Agent Watson stumbled as he attempted to explain why those items were not collected. As you read his testimony, recall that he declared in his official report that he could not rule out electrical as the cause of the fire.

Watson: From my years of experience in my prior investigations, they didn't come into play in this particular investigation. ... Because this was a lamp. The electrical system had nothing to do -- it was at the point of origin, which was the chair and the quilt rack. And nothing from the lamp, or the lamp plugged in, or the wall socket, were at the point of origin. ... I looked at the wiring, but, again, from my years of experience as a fire investigator I had narrowed the point of origin of the fire. The fire occurred at a certain point, which was away from the lamp -- the lamp plugged in, and the light switch.

But the lamp and its cord were not "away" from the location that Agent Watson identified as the fire origin. As shown in his own sketch, the one he included in his fire scene examination report, Agent Watson identified the origin of the fire to be against the wall, in the narrow space between the end table and the quilt rack. The lamp was on the corner of the end table, the corner nearest origin as defined by Agent Watson.

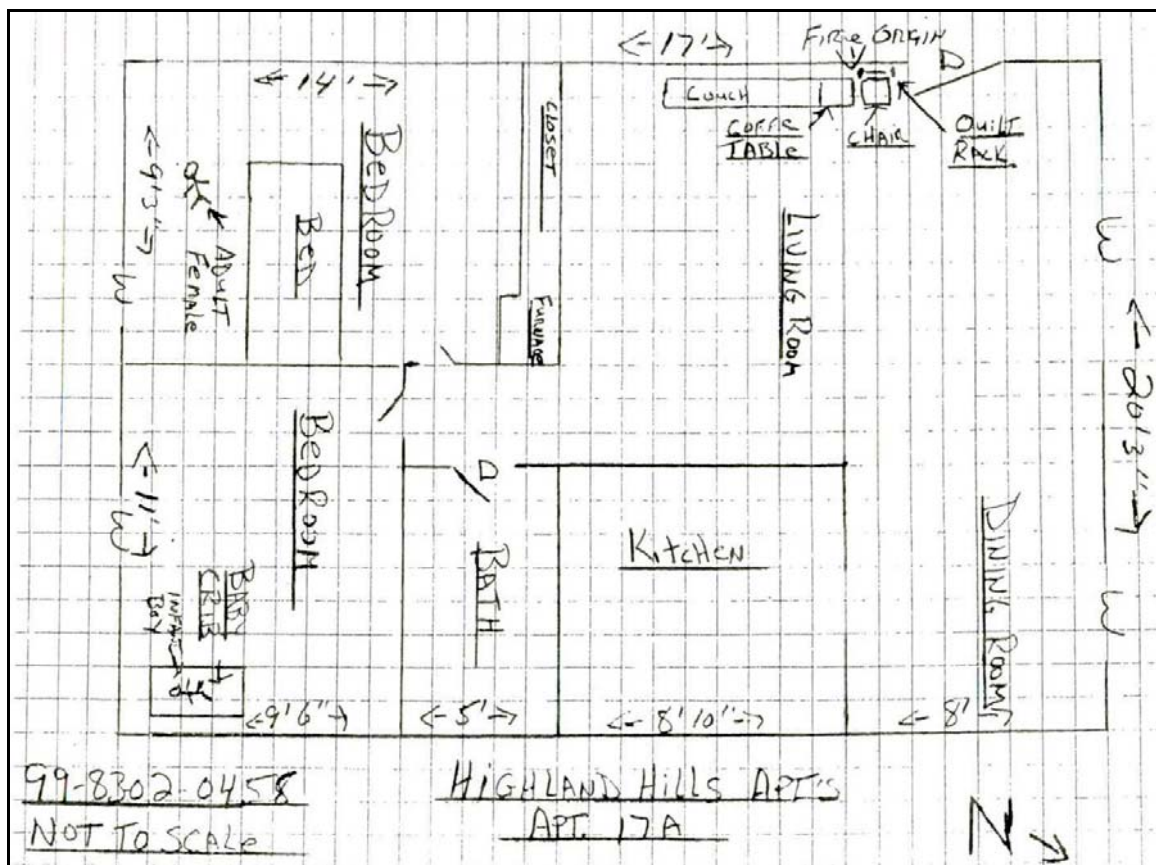


Figure 25: Agent Watson's Presumed Fire Origin -- Far Right Corner of End Table

As shown previously in Figure 12 and as shown again in Figure 26 below, the lamp was sitting on the back corner of the end table, right next to the quilt rack. Its shade, which burned and dripped flaming debris, hovered directly over Watson's fire origin. Its cord crawled along the floor against the wall, possibly even underneath the quilts.

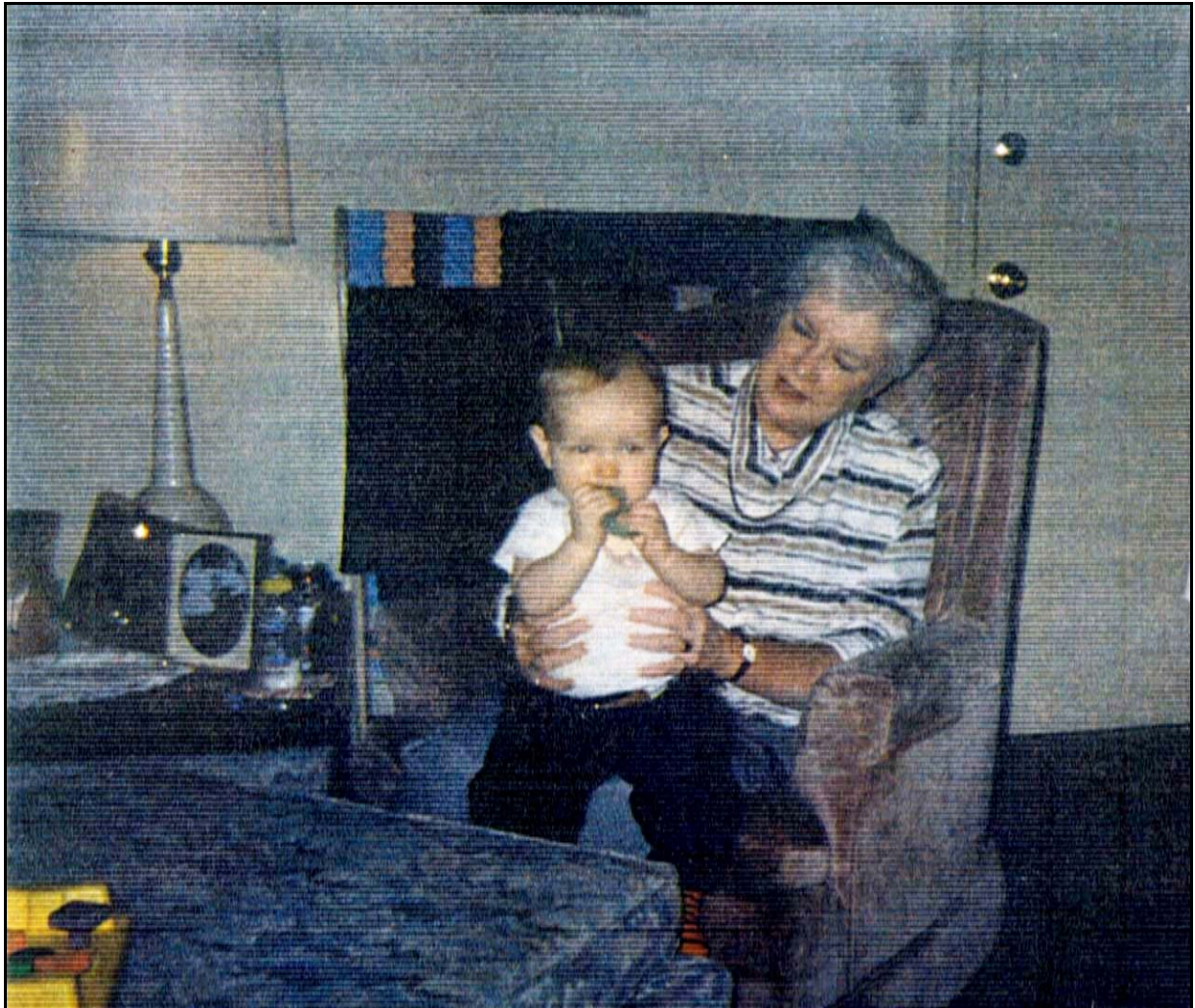


Figure 26: Table Lamp Located Above Presumed Fire Origin

Not only was the lamp precariously close to Watson's fire origin, the post-fire condition of the lamp provided substantial reason for concern. Most noticeable was its light bulb, which had exploded. The enlarged image of the exploded bulb presented below was cut from a larger, more encompassing photograph.



Figure 27: Close up of Table Lamb After Fire -- Light Bulb Exploded

It is exceedingly rare that a light bulb will explode. Light bulbs are surprisingly durable, designed as they are to withstand the several thousand-degree temperature of their white-hot filaments. Even when heated by a raging fire, light bulbs merely soften and sometimes bulge towards the heat source. From NFPA 921:

4-20.1 Distorted Light Bulbs. Incandescent light bulbs can sometimes show the direction of heat impingement. As the side of the bulb facing the source of heating is heated and softened the gases inside a bulb of greater than 25 watts can begin to expand and bubble out the softened glass. This has been traditionally called a "pulled" light bulb, though the action is really a response to internal pressure rather than a pulling. The bulged or pulled portion of the bulb will be in the direction of the source of the heating. ... Often these light bulbs will survive fire extinguishment efforts and can be used by the investigator to show the direction of fire travel.

The light bulb in question did not need to survive fire extinguishment efforts. The Ledford fire self-extinguished. The firefighters applied not a drop of water, nor did they bump or bang the bulb, at least not with sufficient authority to knock the lamp over. Agent Watson found and photographed the lamp undisturbed, as shown in Figure 28.



Figure 28: Table Lamp Undisturbed after Fire Self Extinguished

Agent Watson's shows that the table lamp was well separated from the traffic path. It was protected on the rear by the wall and on either side by the couch or quilt rack. It was set as far from the front of the table as possible. Not only was the lamp not tipped over, the tabletop photo nearest to the lamp was undisturbed by any movement of the lamp.

As can be seen in the photo, the ceramic lamp base did shatter. The base, however, was never designed to withstand intense heat. The bulb, on the other hand, was so designed. It should have survived, as did its counterpart bulb in the floor lamp at the other side of the couch. As Shown in Figure 29, that bulb was undamaged by fire.



Figure 29: Light Bulb in Floor Lamp Undamaged by Light Bulb

One known cause of exploding light bulbs is inadvertent exposure to 240 volts. Even such extreme abuse does not usually cause the bulb to explode. Under such abuse, the bulb will burn hot and brightly for a surprisingly long time. If left exposed to 240 volts, the filament will burn out within minutes. On occasion, however, a light bulb exposed to 240 volts simply explodes.

As has already been mentioned, the bulb in the Ledford apartment may indeed have been exposed to 240 volts, due to an open common ground in a multi-wire branch circuit. Such a failure would expose either of two separate circuits to as many as 240 volts. The circuit would be exposed to 240 volts all the way from the circuit breaker panel, though the wiring in the walls and ceiling, into the wall outlets, along the electrical cords, and into the appliances.

The exploded light bulb should have prompted Agent Watson to collect the lamp as evidence, and secure it for investigation by an expert. So too should have the stains dripping from the lamp switch down the lamp base. Those stains are shown in Figure 30 on the next page.



Figure 30: Melt Stains Running Down Side of Table Lamp

Something inside the lamp switch seems to have melted prior to or during the fire. A conscientious investigator, would have been compelled to examine the inside of the switch. Agent Watson instead left any such examination to the insurance agents, and they declined to investigate.

And certainly the condition of the lamp's plug should have prompted Agent Watson to secure the lamp for further investigation. While that plug suffered no particular external damage, it was missing both its prongs, as shown in Figure 31 below.



Figure 31: Enlargement of Lamp Cord Plug from Photo Taken by Agent Watson

Agent Watson, of course, did not capture the image above. The image was instead captured, perhaps inadvertently, by the insurance investigator. (The image above is a substantial enlargement of a small portion of another photograph.) Since Agent Watson was the person who unplugged that lamp before he moved it across the room, he must have noticed that the prongs were left behind. Despite the guidance of NFPA 921, Agent Watson failed to document or secure even the obviously damaged plug.

8-2.5.7 Utility and Appliance Photographs. ... all electrical cords and convenience outlets pertinent to the fire's location should be photographed.

9-5.6 Collection of Appliances or Small Electrical Equipment. ... Where practical, the entire appliance or item of equipment should be collected as physical evidence. This includes any electrical power cords or fuel lines supplying or controlling it.

Instead, Agent Watson left it to the insurance agents to document and secure the cords and plugs. The insurance investigators did no such thing.

6.6 Relegation as Evidenced by the Interrogation Tapes

During Michael Ledford's interrogation, he was questioned first by Special Agent Stanley Ogden, who began by administering a polygraph examination. Although Polygrapher Ogden would later report the examination to be inconclusive, he nonetheless followed the polygraph examination by immediately accusing Michael Ledford of lying about the fire. Polygrapher Ogden, who was unfamiliar with the case, based his accusation not on the polygraph exam, but on a briefing from Agent Watson. If we are to take Agent Watson at his word, Agent Watson relied in turn on others identified during the interrogation only as the "expert" or "experts."

Given that neither Michael Ledford nor his defense team was informed of any fire scene examination other than those conducted by Agent Watson and by the two insurance agents, we can presume that the experts referenced during Michael Ledford's interrogation were the two insurance agents, the investigator and the adjuster. Since the insurance investigator took the majority of the photographs inside the burned apartment, we can presume his was the expert, when the term is used in the singular.

Polygrapher Ogden first mentioned the experts after two and one half hours of interrogation, after Michael Ledford had explicitly denied starting the fire 18 times.

And what they've just done is **they have had an expert come in, that has examined the crime scene, or the fire scene**, and they have also done the canvass, interviewing people throughout the neighborhood ... By doing that examination and then doing the canvassing of the neighborhood, they have got eyewitnesses. Not one, but several eyewitnesses that can put you there at the apartment at **the time this expert says that fire started** ... Now, when you take the information that has been gathered here, and then you take the reports that have come in from the lab, **from these experts that have been called in**, ... this is over, it's gone.

Five minutes later, Polygrapher Ogden told Michael Ledford that the expert's investigation leaves no doubt about Michael's guilt, despite the inconclusive polygraph examination Polygrapher Ogden had just administered and scored.

Well Mike, it's not an if. It's there's no doubt. And I mean that. You know, I was not there. I did not see the chair, you know. I can only go on what the pictures have painted for me. But Mr. Watson was there, **an expert that I told you about had been there**, and what I'm afraid is based on what they have told me and what you have just told me does not, still does not fit the picture. Doesn't fit the picture. And as long as we have things that don't fit the picture, we're on the wrong road.

After another five minutes, Polygrapher Ogden informed Michael Ledford that it was the expert who determined that candles were strategically placed to start the fire.

They had to be. They had to be. And they had to be strategically **placed, according to this expert**.

Polygrapher Ogden mentioned the expert one more time before turning the interrogation over to Agent Watson.

It's inconsistent with the **reports from the expert**. It's inconsistent with the witnesses.

Nearly three and a half hours into the interrogation, Polygrapher Ogden gave up trying to extract a confession from Michael Ledford. He turned the interrogation over to Agent Watson. Agent Watson (and Agent Joe Ritchie) had been monitoring Polygrapher Ogden's efforts by video and audio feed from the interrogation room.

After taking over the interrogation, Agent Watson almost immediately mentioned the expert.

But, uh, it really helped Stan, but, uh, the point is you say that the, uh, did he tell you about the [inaudible] when **we had an expert do a time burn?** ... This time burn helped, helped, you know, with, with, with, with confirm what [inaudible] saying. People moving in next door, and they saw, saw when you left the apartment there and [inaudible] like that. So that confirms you were at, nobody else was in this, and the fire was seen a couple minutes after that. Uh, so in [inaudible], of course, the time burn, which puts you there when the fire was ablaze. So there isn't no doubt that that happened.

If the insurance agents (or any other state sponsored expert) estimated the time the fire started with sufficient precision to claim Michael Ledford was there when the fire was ablaze, they did not make known such analysis or testing. The only such analysis performed in this case was conducted by Combustion Science & Engineering, Inc. (CSE). That firm was hired by the defense to provide expert analysis and testimony. CSE concluded that the fire started after Michael Ledford left the apartment. CSE has recently reexamined the issue using state of the art computer simulations not yet developed at the time of Michael's trial. Their most recent analysis confirmed their pre-trial analysis. The fire started after, not before, not even slightly before Michael Ledford left the apartment that evening.

Agent Watson then explained, as previously suggested herein, that it was the fire expert who determined the origin of the fire.

... basically when we get to the Commonwealth Attorney, we'll say "well, he held this back, he withheld, this is what happened, **we talked to a fire expert, this is what happened where the fire started.**" You won't tell the reason why the fire was placed there. Just want to give the excuse that the candle fell over when he closed the door, basically. But **experts will testify that knows the candle was not on, in the coffee table.** It was set in a different location that ignited something that caused the fire.

Note that Agent Watson refers to the end table at the side of the couch as "the coffee table." This is consistent with the labeling on his fire scene diagram, but it confuses the discussion. The Ledfords actually had both a coffee table and an end table in their living room. The coffee table was located, as one would expect, in front of the couch. The end table was located, as one would expect, at the end of the couch. Agent Watson's nomenclature confused rather than clarified.

Agent Watson mentioned the experts one more time during the interrogation. He noted once again that the experts were the ones who determined the fire origin.

Experts disagree, Mike. I'm, I'm telling you, it's, it's, uh, things not, uh, uh, I think you [inaudible] tells you now, I, I, I, don't know if he told you, but I actually looked in your court and I'll [inaudible] expect **the experts will say this is where, where the fire was set** and you insist the candle was over here somewhere.

6.7 Relegation as Evidenced by the Weather

Agent Watson seems to have erred when he reported and testified that he photographed the fire scene on October 11, 1999, the day after the fire. The photographic record provides compelling evidence that he took his photographs on October 12, 1999, near 10 AM. That is two days after the fire, not one. That is the same date, and the same time, that the insurance agents took their pictures.

There is nothing inappropriate with Agent Watson meeting the insurance agents at the fire scene, or coordinating the photographic examination of the apartment with them. As we have already noted, §27-56 of the Virginia Code mandates that the Virginia Police Department "shall examine, **or cause examination to be made**, into the origin and circumstances of all fires occurring in this Commonwealth." Such close coordination, however, would provide further evidence that Agent Watson relegated the fire scene investigation to agents acting on behalf of Allstate insurance.

Agent Watson's fire scene report is unambiguous. According to the report, he examined the scene on the 10th and the 11th of October. He cleared the scene at 1 PM on the 11th.

Date of Exam	Examination Conducted by	Code No.	Case Number
10-10-99 & 10-11-99	SA J. B. Watson, Jr.	1869	99-83-02-0458
Date & Time Notified	Date & Time of Arrival	Date & Time Cleared	
10-10-99 2139	10-10-99 2240	10-11-99 1300	

Figure 32: Agent Watson Reportedly Examined Fire Scene on October 10 & 11

From the trial transcripts, we see that Agent Watson's testimony was consistent with his report. Note in the transcript segment below that he testified he took his photographs on the morning of October 11, the day after the fire.

Watson: I was called out on October the 10th, at 9:39 PM, from my residence in Greene County and responded to the residence at 10:40 PM on October the 10th, '99.

Ervin: So you responded the same date of the fire? Is that correct?

Watson: Yes, sir. I did.

Ervin: And did you go back to that apartment on more than one occasion?

Watson: Yes, sir. I did; that night and the following day, doing fire-scene examinations.

...

Ervin: Okay. Did you take photographs that night of the apartment?

Watson: No, sir. **I took them the following morning.**

...

Ervin: Okay. And, in the daylight, did you conduct a more thorough investigation?

Watson: Yes, sir. I did.

Ervin: And did you take -- were photographs taken?

Watson: Yes, sir. There were.

Agent Watson's own photographs indicate, however, that they were not taken on the morning of October 11. Consider first one of two exteriors shots taken by Agent Watson, shown below in Figure 33.



Figure 33: Agent Watson Photograph Reportedly Taken on October 11, 1999

As noted previously, north is to the right in this image and south is to the left; west is into the building and east is behind the reader. The sun must be coming from the southeast, lest the visible side of the building (the east side) would be entirely in shadow. The photograph was therefore taken in the morning, just as Agent Watson testified. The direction of the incoming sunlight, as revealed by the light streaks on the grass and walkway, indicate it was taken mid-morning.

It therefore seems impossible that Agent Watson's photograph was taken on the morning of the 11 October. The morning of 11 October was first foggy then completely overcast, as shown in the historical weather data presented below.

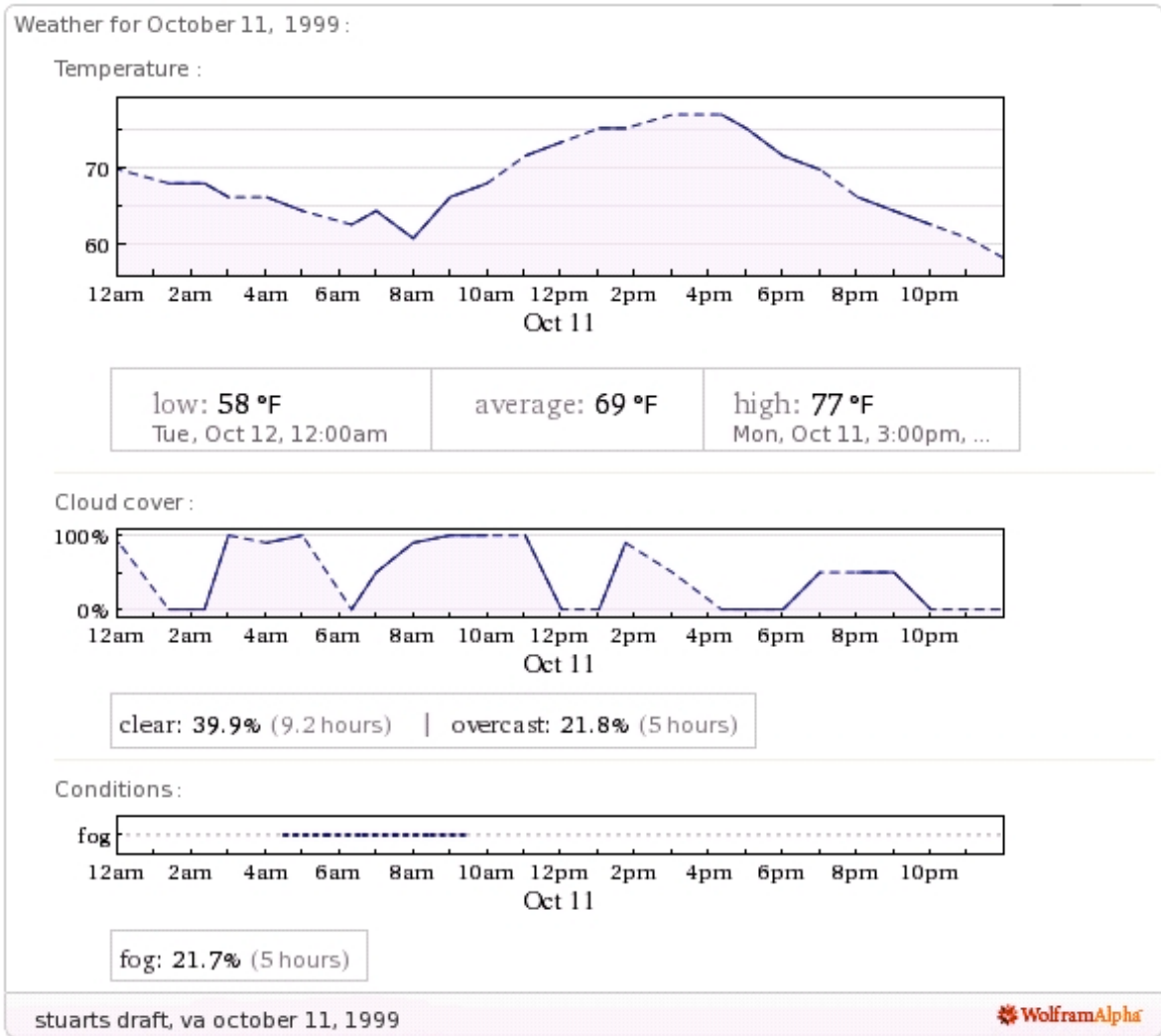


Figure 34: Weather Conditions on Morning of October 11: Foggy and Overcast

The weather data show that it was foggy in Stuarts Draft on October 11, the day after the fire. It was foggy between 4:30 AM to 9:30 AM. The data show also that the cloud cover was complete from just after 8 AM to sometime after 11 AM. The sun could not have cast the distinct shadows shown in the Watson photograph above.

Another photograph taken by Agent Watson more precisely identifies the time. That image is presented as Figure 35 below. Of interest is the shadow cast by the electrical box, barely visible through the rear window. For a specific date and geospatial location, the angle of such a shadow is associated with a specific time of day.



Figure 35: Shadow Cast by Electrical Box Reveals Time of Day

Google Sketchup is a three-dimensional modeling program that allows users to display shadows of buildings and other objects. Users have the option to specify a specific date and geospatial location for the shadows to be displayed in a Sketchup model. Below, in Figure 36, we present the results of our model.

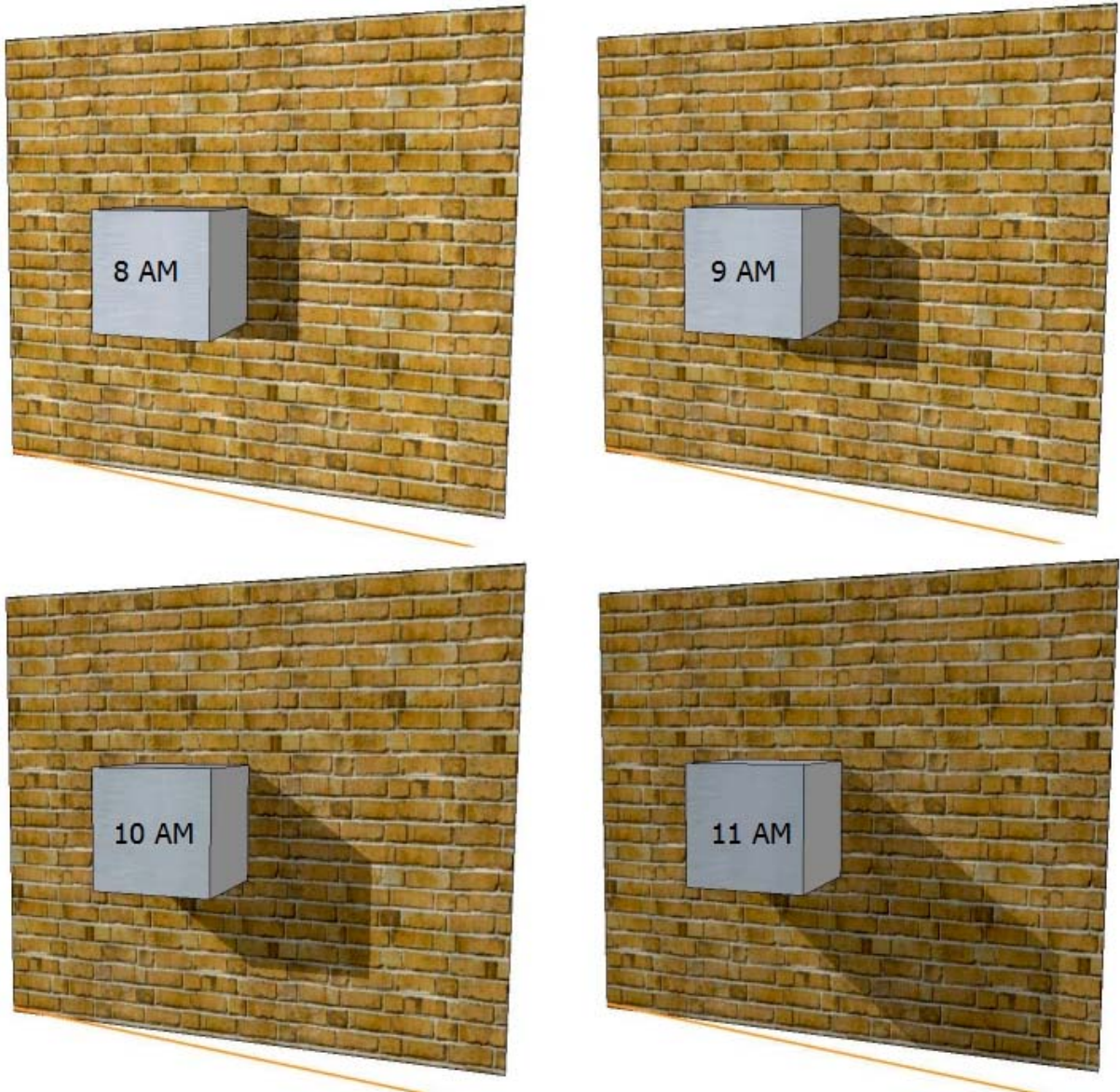


Figure 36: Shadow Cast by Electrical Box At Various Times of Day

The four images below show shadows cast by a generic electrical box located on an east-facing wall in Stuarts Draft Virginia on October 11, 1999. The images would be imperceptibly different for the following day, October 12.

We can now compare the timed shadow patterns above with the shadow captured by Agent Watson in his photograph, enlarged below in Figure 37.

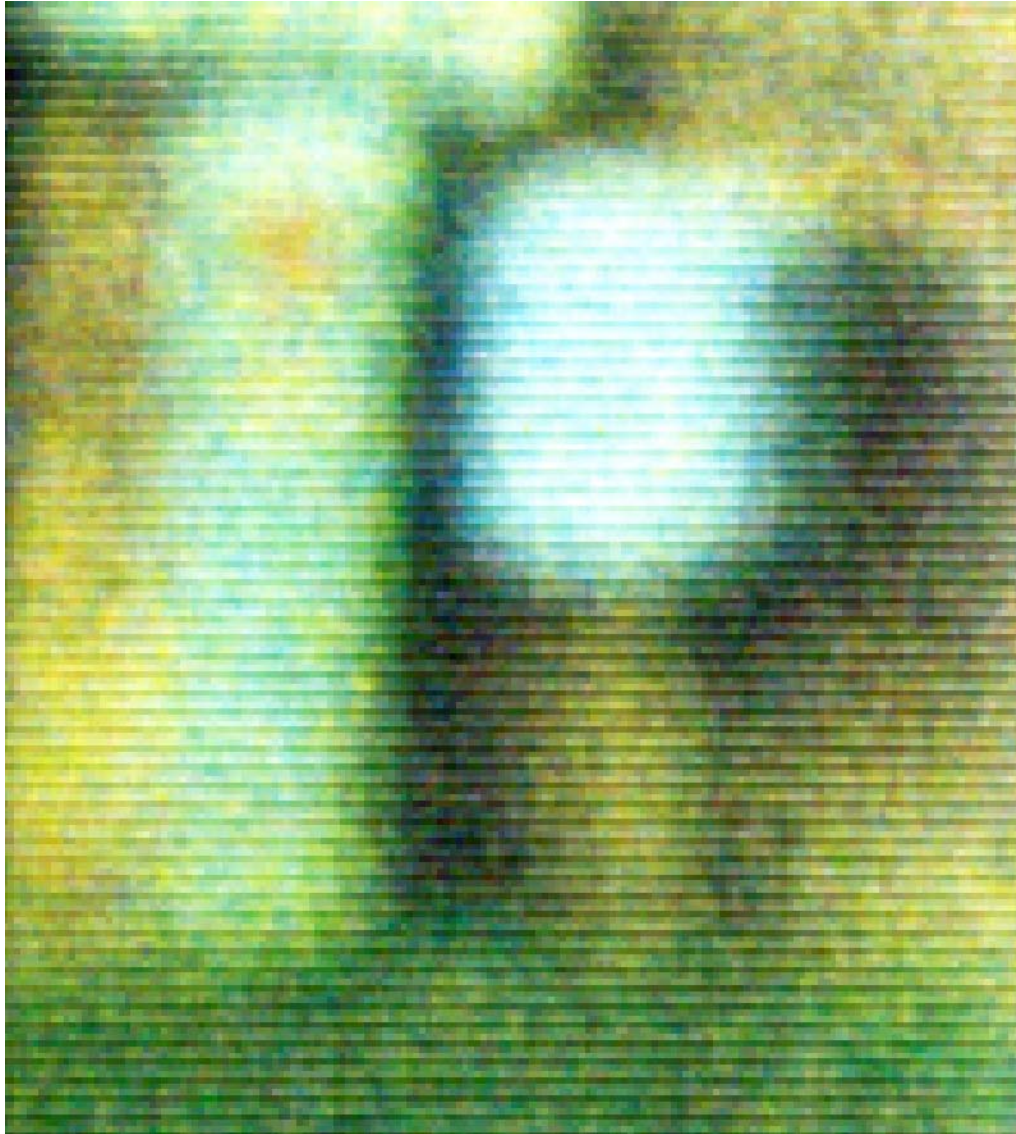


Figure 37: Shadow Cast by Electrical Box Indicates Photograph Taken near 9:30 AM

Though the image is blurry, the shadow from the electrical box clearly does not extend to the ground, or even close to the ground. The photograph was therefore taken well before 11 AM.

Similarly, the shadow does descend noticeably beneath the box. The photograph was therefore taken well after 8 AM.

Though the graininess of the photograph precludes a precise timing, the shadow cast by the electrical box indicates the photograph was taken sometime between 9 and 10 AM.

It therefore seems impossible that Agent Watson could have taken his photographs on October 11, as he reported and as he testified. The sky was completely covered by clouds that day, from 8 to 11 AM. No shadows could have been cast. Agent Watson must have erred in his report and testimony. He must have taken the photographs on the morning of October 12.

As it turns out, the insurance agents also took their photographs on the morning of October 12. As it turns out, the insurance investigator also captured an image of the same electrical box through the same rear window. You can see it below, just barely, in the lower left corner of the window.



Figure 38: Electrical Box Photographed by Insurance Investigator on Morning of 12 October

When the two images of the electrical box are enlarged and placed side-by-side, the shadows show that they were taken at similar times of the day, sometime between 10 and 11 AM. In Figure 39 below, the image captured by Agent James Watson is on the left; the image captured by insurance investigator Gary Toler is on the right.



Figure 39: Same Electrical Box as Photographed by Agent Watson and Gary Toler

6.8 Peculiarities Resolved

Some peculiarities in other Watson photographs make more sense now that we realize Agent Watson probably took his photographs on the same day and at nearly the same time that insurance agents took theirs.

As discussed previously, Agent Watson apparently did not cut out his carpet sample until after the insurance agents had taken their photographs. If Agent Watson had taken his photographs on October 11, he would have had to return to the scene on October 12 just to collect the sample, even though he reported he cleared the scene at 1300 hours (1 PM) on October 11.

Also, it need no longer be a coincidence that Agent Watson and the insurance investigators propped the building door open in the same fashion, using the same broom. Two photographs of the building's front door are shown in the composite image below. Agent Watson's photo is on the left. Insurance investigator Toler's photo is on the right. The image of each broom is enlarged and displayed side-by-side beneath.



Figure 40: Front Door Propped Open in Similar Fashion in Photos Taken on Allegedly Different Days

The same broom is used in the same fashion in each instance because the photographs were probably taken on the same morning, at nearly the same time.

Also, it no longer need be a coincidence that both Agent Watson and insurance investigator Gary Toler each mis-identified the front of the building as being the north side. Agent Watson, in his fire scene sketch, identified the front of Building 17 as facing nominally north. Gary Toler, in his photograph location sketch, also identified the front of Building 17 as facing nominally north. The two sketches with their common error are shown in Figure 41 below.

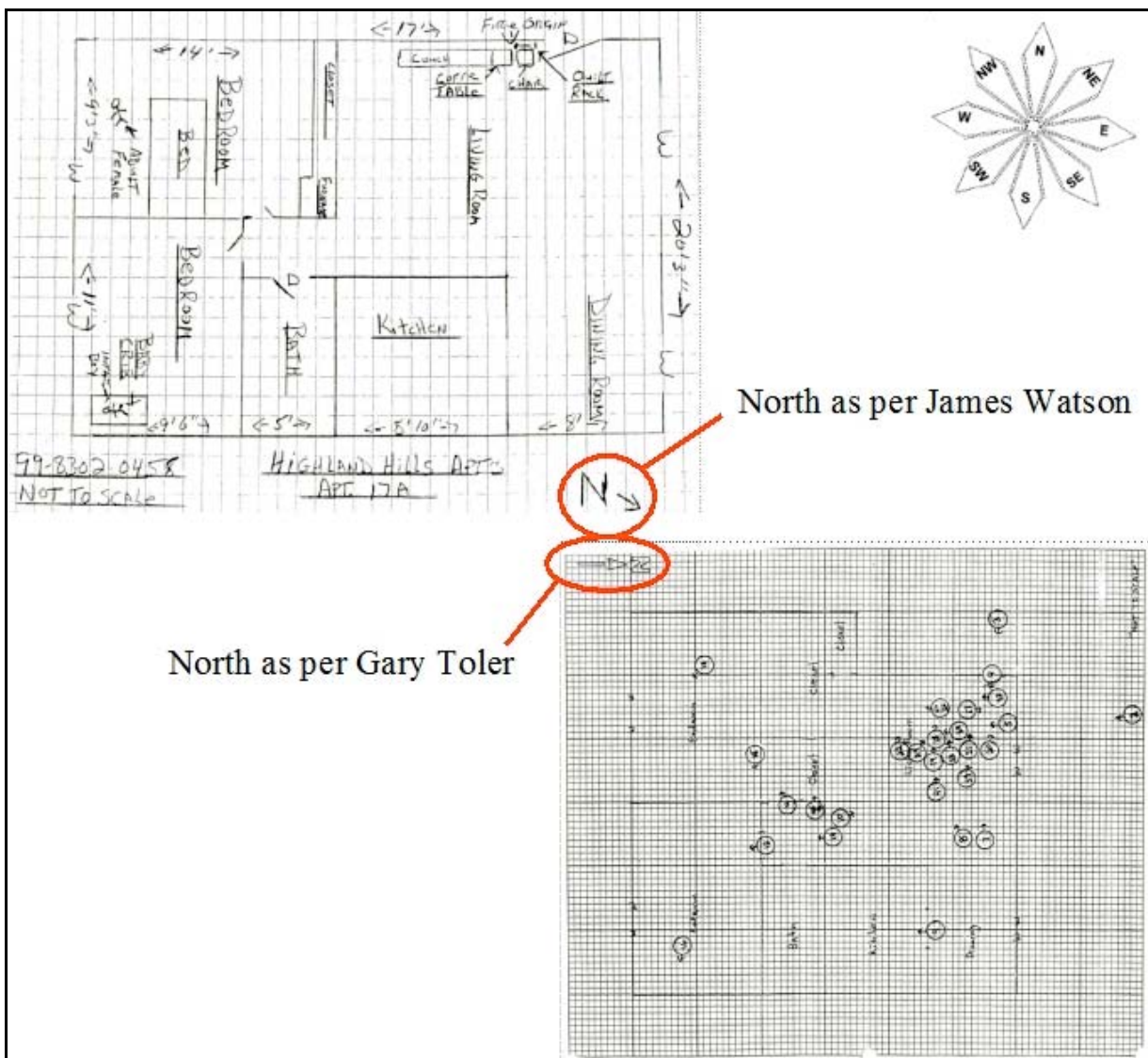


Figure 41: Agent Watson and Gary Toler Misidentified North in Similar Fashion

Rather than being coincidental errors, one of investigators may have misinformed the other as the two of them worked near one another while preparing their on-scene sketches.

Perhaps more significantly, it is no longer necessarily shocking that Agent Watson did not close the windows of the Ledford apartment when he left the apartment "secured" the night before against unauthorized intrusion. His own exterior photograph, presented thrice previously and now again below as Figure 42, shows he left the dining room window open.



Figure 42: Agent Watson Photograph Showing he Did Not Secure Apartment -- Door Open

The dining room window is at the far left edge of the image. That window was not broken during or after the fire. If the window was closed, it would show one horizontal and two vertical pane dividers, as do all the other windows in the photograph.

Now we realize there was no need for Agent Watson to actually secure the windows. He was there the entire time, from when he started his fire scene investigation to when the insurance investigators finished theirs.

Finally, it is no longer necessarily shocking that Agent Watson did not actually close the front door of the Ledford apartment when he left and "secured" the apartment against unauthorized intrusion. His own photograph, presented and enlarged below as Figure 43, shows he left the door not quite closed, and certainly unlatched.



Figure 43: Door Unlatched Despite Police Tape

Now we realize there was no need for Agent Watson to actually secure the door, since he was there the entire time, from when he started his fire scene investigation to when the insurance investigators finished theirs.

7. ALLSTATE, CRAWFORD, THEIR EMPLOYEES AND AGENTS

Chapter Summary: The apartment complex was insured by Allstate Insurance. Several years prior to the Ledford fire, Allstate had adopted a policy of aggressively resisting claim payments. Allstate's profits soared. At least one claims adjuster reported that Allstate offered substantial prizes to adjusters who denied claims by blaming fires on arson. In multiple cases, homeowners suffering fires ended up falsely charged with arson. The primary insurance investigator of the Ledford fire reported directly to a senior manager working in Atlanta. In his one known written report of the fire, the insurance investigator noted to that senior manager that he had "complied with all your instructions."

7.1 The Allstate Corporation

The Highland Hills Apartments complex was insured at the time of the Ledford fire by Allstate Insurance.

Sears, Roebuck & Company created Allstate Insurance in 1931. In the first half of the 1990s, Allstate separated from and became independent of Sears. During its infancy as an independent company, Allstate hired the management consulting firm of McKinsey & Company to re-engineer its claims operations. McKinsey convinced Allstate to replace its fiduciary model with a zero-sum model. From a McKinsey briefing slide, we find:

Improving Allstate's casualty economics will have a negative economic impact on some medical providers, plaintiff attorneys, and claimants. ... Zero-sum economic game -- Allstate gains -- Others must lose.

In the mid-1990s, the partners at McKinsey & Company were writing books, articles, and essays promoting their new business model for their corporate clients. According to the McKinsey partners, the best example of their new model was their long-time client Enron. As the *Guardian* explained in an online article:

Enron is the house that McKinsey rebuilt. The brightest minds at the world's most prestigious consulting firm helped turn the lumbering old-economy gas distribution dinosaur into a new-economy success story envied by every corporation in America.

Allstate's five-year consulting relationship with McKinsey institutionalized within Allstate a substantially more aggressive position against its claimants. From 1994 (the year Allstate implemented McKinsey's recommendations) to 1999 (the year Allstate's agents investigated the Ledford fire), Allstate's payout rate dropped 21 percent, from 76 cents per premium dollar to 60 cents per premium dollar. During that same period, Allstate's net worth nearly doubled from \$7 billion to \$13 billion.

One technique adopted by Allstate was the use of a computer program called *Colossus* to standardize its initial offer to be 20 percent lower than its historical payouts. Allstate required its adjusters to make non-negotiable, take-it-or-leave-it settlement offers based on the artificially low *Colossus* evaluations.

McKinsey had advised Allstate that 90 percent of its policyholders would succumb to the reduced payment within six months. Under the new claims policy, those who succumbed would be given what McKinsey described as "The Good Hands Treatment."

Those relatively few policyholders who refused to accept Allstate's reduced benefits would be given what McKinsey described as "The Boxing Glove Treatment." They would be driven into the delays, uncertainty and expense of the American civil justice system. Allstate would make known its new policy to aggressively litigate all bad faith claims to the very end.

Jerry Choate, Allstate's CEO at the time, said in a news conference that the company's new claims-handling process had reduced payments and increased profit. He told the reporters that insurers couldn't make significantly more money simply by cutting sales costs.

The leverage is really on the claims side. If you don't win there, I don't care what you do on the front end. You're not going to win.

One of McKinsey's initial findings had been that "Allstate doesn't aggressively use litigation to drive down values in the market." Not only did Allstate respond by using the civil courts to reduce its payments, Allstate seems also to have begun using the criminal courts (or at least the threat of criminal courts) as a claims reduction tool.

Jo Ann Katzman worked as a claims adjuster for Allstate in 2002 and 2003. In a *Bloomberg* article, she reported that managers regularly came to her office to give pep talks about keeping claim payments low. The company awarded prizes, such as portable refrigerators, to adjusters who tried to deny claims by blaming fires on arson without justification.

Though Katzman's claim may seem shocking, it is not difficult to find cases in which Allstate claimants were mysteriously charged with arson. We'll consider only three of them in this petition, four counting the case of Michael Ledford.

7.2 Allstate versus Mary Johnson of Illinois

Consider first the case of Mary Johnson. The house she was leasing in Hanover Park, Illinois sustained severe fire damage in March of 2002. She submitted a claim to her insurer, The Allstate Insurance Company. That same day, two law enforcement officials interviewed her. One of those officials then discussed the case with Allstate's claims adjuster. Two agents working on behalf of Allstate then inspected the fire scene.

Soon thereafter, the DuPage County Fire Investigation Task Force issued its report indicating that the cause and origin of the fire were undetermined, that no flammable or combustible accelerants were found.

At this point, Mary Johnson was in a nearly identical situation as that of Michael Ledford after his apartment had been examined by Agent Watson. In both cases, the authorities had ruled the cause of the fire to be undetermined. In both cases, testing for accelerants had been negative. In both cases, two agents of the insurance company inspected the fire scene.

In Michael Ledford's case, he would be arrested and charged with arson within a month. In Mary Johnson's case, she was arrested and charged with arson within five months. Allstate claimed it had conducted its own investigation. Though its investigation was also inconclusive, the company denied Mary Johnson's claim.

It was only after Mary Johnson's attorney sent a letter to Allstate raising issues of bad faith that Mary Johnson was arrested. She was arrested even though there was no probable cause to

believe a crime had been committed. Two years later, she was tried, convicted, and sentenced to 9 1/2 years in prison.

After she had been imprisoned for a year, her court-appointed counsel discovered a previously undisclosed exculpatory report of the DuPage County Fire Investigation Task Force. The report was so exculpatory that Mary Johnson was released from prison while she awaited a new trial. At the new trial, she was acquitted.

7.3 Allstate versus Dr. Lawrence Butcher of Mississippi

Consider now the case of Dr. Lawrence Butcher of Mississippi. In the early morning hours of September 20, 2004, his million-dollar home was destroyed by fire. He had his home insured by Allstate under a Deluxe Plus Homeowners Policy with stated limits of \$953,951 for the dwelling \$135,395 for other structures, and \$715,464 for personal property. Allstate was staring at a million-dollar settlement.

At the request of Allstate, a cause and origin expert with Crawford and Company investigated the fire scene. (Allstate also relied on Crawford and Company for its investigation of the Ledford fire.) The Crawford investigator reported that he could not determine whether or not the Butcher fire resulted from arson. (Similarly, the only Crawford / Allstate investigator to file a report of the Ledford fire would be unable to determine, based solely on his fire scene investigation, whether or not the Ledford fire resulted from arson.)

Six months after the fire, Allstate denied Dr. Butcher's claim after the company's internal investigation determined the fire resulted from arson. Three months later, Dr. Butcher filed suit against Allstate. His suit was quickly stayed for 8 months while criminal arson charges were pursued against him. He was then arrested and indicted for arson.

After another two-year delay, the District Attorney submitted a *nolle prosequi* petition to the court, requesting that the criminal charges against Dr. Butcher be dropped. Such a petition is rare. From The Free Dictionary online, we find this explanation for the significance of a *nolle prosequi* petition.

nolle prosequi: (no-lay pro-say-kwee) n. Latin for "we shall no longer prosecute," which is a declaration made to the judge by a prosecutor in a criminal case (or by a plaintiff in a civil lawsuit) either before or during trial, meaning the case against the defendant is being dropped. The statement is an admission that the charges cannot be proved, that evidence has demonstrated either innocence or a fatal flaw in the prosecution's claim, or the district attorney has become convinced the accused is innocent. Understandably, usage of the phrase it is rare.

Dr. Butcher was not charged with arson prior to filing his suit against Allstate. He was charged with arson and imprisoned only after filing his suit. Two years later, before his trial, the district attorney conceded the State simply did not have a case against Dr. Butcher.

7.4 Allstate versus John Johnson of Missouri

Consider finally the case of John Johnson, a homeowner in Salem, Missouri. (John Johnson is apparently unrelated to the unfortunate Mary Johnson above.) John Johnson's home burned in July of 2002. He filed a claim with his insurer, Allstate. After a seven-month delay, Allstate denied his claim. Though Allstate did not, in this case, convince the authorities to pursue an

arson investigation against its client, the company did effectively accuse him of arson in their denial letter. Specifically, they wrote:

The investigation into the facts and circumstances surrounding your claim has led to a reasonable belief and conclusion that you engaged in fraudulent conduct and/or made false statements in this investigation ...

From that point on, John Johnson was unable to secure insurance from any insurer. Each prospective insurer asked Johnson if he had made a prior claim, and each of them wanted to know the circumstances. Johnson was obliged each time to reveal Allstate's denial letter. Had Johnson withheld the letter, the insurer would have had the right to deny any future claim.

Knowing that he had not set fire to his house, John Johnson sued Allstate for defamation. To prevail, he had to prove 1) publication, 2) of a defamatory statement, 3) that identifies the plaintiff, 4) **that is false**, 5) that is published with the requisite degree of fault, and 6) damages the plaintiff's reputation. So compelling was his case that he did not set his house on fire, the jury awarded him \$900,000 in compensatory damages and \$100,000 in punitive damages.

Allstate appealed the jury's verdict, arguing in part that Johnson had not proven his damages. Allstate did not appeal the jury's decision that Allstate's accusation was false.

7.5 Crawford & Company

With respect to investigating the Ledford fire scene, Allstate insurance relied on two investigators working for or contracting with Crawford & Company. Crawford is the world's largest independent claims management company, with more than 700 offices in 67 countries. Headquartered in Atlanta, Georgia, Crawford generates approximately \$1 billion in revenues each year by performing investigative and other services for insurance companies.

7.6 Jim Cressman

Only four people working for or on behalf of Allstate are mentioned by name in the Ledford case documents.

The only Allstate employee to have his name appear on any of the case documents, at least those available to the Commonwealth and the defense, was Jim Cressman. Cressman was a senior employee with Allstate. He worked in Claims, specializing in General Liability. At the time of the Ledford fire, he was working in Atlanta, just miles from the headquarters of Crawford & Company. Crawford was the company that would actually investigate the fire for Allstate.

Jim Cressman seems to be the person who orchestrated Allstate's investigation of the Ledford fire. Even though he was geographically far-removed from the fire scene, and even though the investigators who photographed the fire scene worked for Crawford (not Allstate), Cressman was the addressee of the only fire scene report prepared by Allstate or its agents. The author of that lone report, Gary Toler, concluded the report as follows:

Having complied with all your instructions, this file will now be closed and the report forwarded onto the claims representative. [Emphasis added.]

Jim Cressman was not interviewed about Allstate's investigation into the fire. He did not testify at either of the two preliminary hearings. He did not testify at the trial.

Jim Cressman retired from Allstate Insurance in 2004.

7.7 John Pflanz

John Pflanz was, at the time of the Ledford fire, the Northern Regional Manager for Crawford.

Despite his lofty position within Crawford, and despite Crawford's lead role in investigating the Ledford fire, the only known Ledford fire scene report generated on behalf of Allstate was addressed Jim Cressman rather than John Pflanz. In that report, Gary Toler assured Jim Cressman, not John Pflanz, that all instructions had been followed.

John Pflanz appears in Gary Toler's report only in the single-name cc list. John Pflanz' name appears no where else in any of the case documents.

John Pflanz was not interviewed about Allstate's investigation into the fire. He did not testify at either of the two preliminary hearings. He did testify at the trial.

By 2006, John Pflanz had been promoted to President of Crawford Investigative Services.

7.8 Maynard Barker

Maynard Barker is one of the two people employed or contracted by Crawford & Company who photographed the Ledford fire scene. He was the claims adjuster mentioned many times before.

At the time of the Ledford fire, Maynard Barker worked out of Crawford's Staunton, Virginia office. Staunton is 13 miles from Stuarts Draft, and 509 miles from Atlanta, Georgia.

We do not know who notified Maynard Barker of the fire. We do know that Maynard Barker notified Gary Toler of the fire. We know also that Maynard Barker met Gary Toler at the Ledford apartment on October 12, 1999. From Gary Toler's trial testimony, we learn:

Ervin: Mr. Toler, you know why we're here today?

Toler: Yes, sir.

Ervin: Did you respond to Apartment 17-A, after this fire occurred?

Toler: Yes, sir. I did.

Ervin: Now, why did you do that?

Toler: I received an assignment from the insurance company representing the building's owners, to conduct an origin and cause investigation into the fire which had occurred.

Ervin: What do you mean by origin and cause investigation?

Toler: To determine where and why the fire started; the "origin" being where it started, and the -- the other being why it started.

Ervin: Did you actually go to the apartment, yourself?

Toler: Yes, sir. I did.

Ervin: And what day did you go to the apartment?

Toler: May I refer to my report? The investigation commenced on October the 12th, 1999.
Ervin: And what did you do when you got to the apartment?
Toler: **When I got to the apartment**, I met with -- excuse me -- I met with Maynard Barker, of Crawford and Company, who had assigned me to the case. And **he showed me where the apartment was**. [Emphasis added.]

Gary Toler was of course being disingenuous when he claimed Maynard Barker met him at the Ledford apartment so that Maynard Barker could show him where the Ledford apartment was. Toler concedes the two of them met at the Ledford apartment. There would be no need for Barker to show Toler the location of the apartment as they were both standing in front of it, after Toler had arrived without Barker's assistance.

Maynard Barker met Gary Toler at the Ledford apartment presumably for reasons that Gary Toler did not want revealed to the jury.

Because Maynard Barker never filed a report or testified about this case, and because Gary Toler was less than completely truthful during his sworn testimony, we can only attempt to infer why Maynard Barker met Gary Toler at the Ledford fire scene.

Maynard Barker was, as we just noted, a claims adjuster. The other three units in Building 17 had suffered smoke damage. ServiceMaster, a cleaning and restoration company, had been called in to clean and restore the three smoke-damaged units. The ServiceMaster vehicle is visible in Toler's photograph of the building's exterior, shown again below in Figure 44.



Figure 44: Service Master Vehicle Outside Building 17 On Morning of 12 October

We assume Maynard Barker was at the scene to document the condition of Units B, C, and D after they were cleaned and restored by ServiceMaster. We are aware of 3 photographs of the stairway and 14 photographs of Units B, C, and D taken by someone identified to us only as an insurance adjuster. One of those insurance adjuster photographs is presented below as Figure 45.

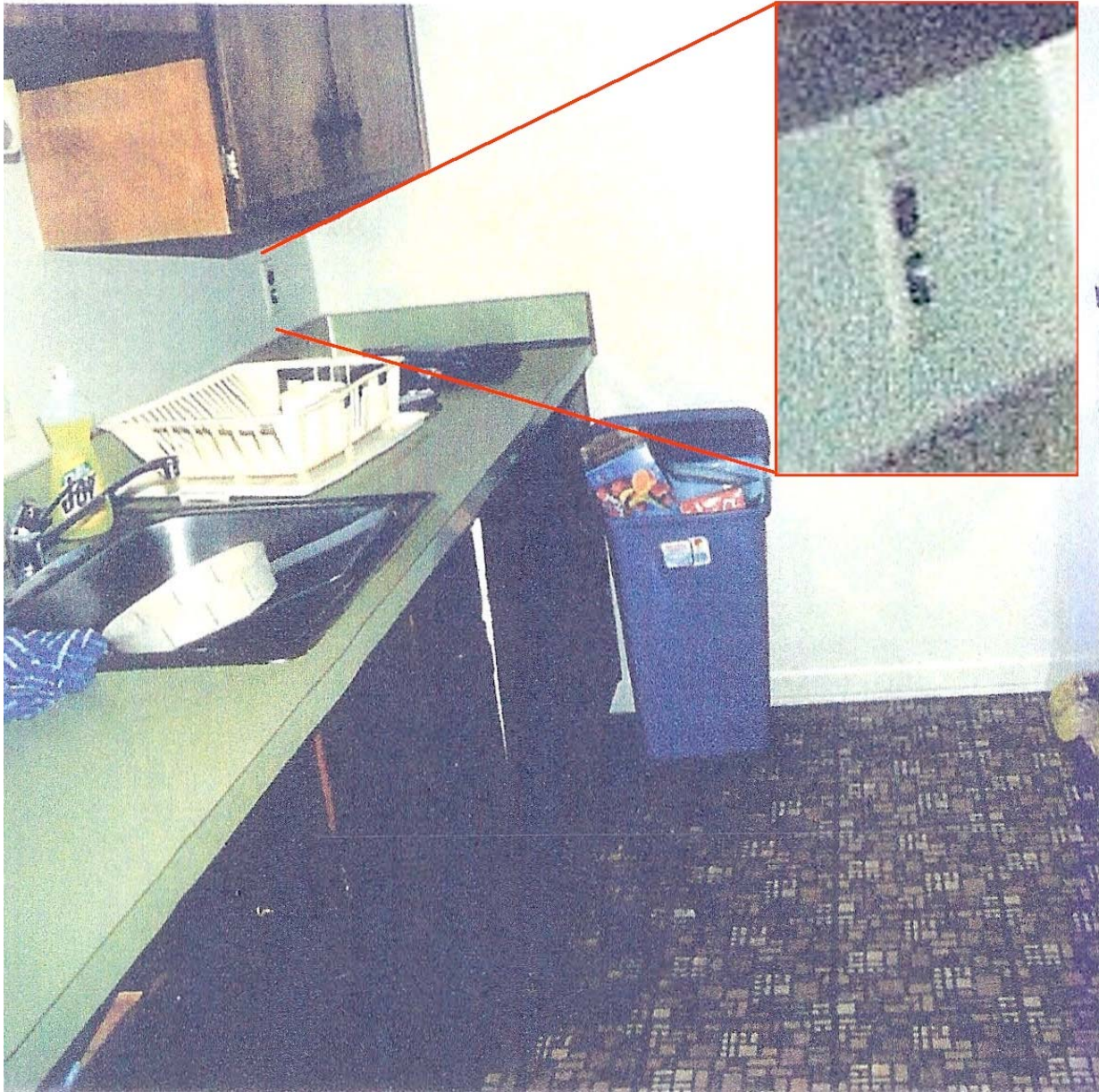


Figure 45: Outlet Repaired in Apartment Above Ledford Apartment

Not only does the photograph show that the kitchen has been well cleaned, it shows a wall outlet that had been replaced. The outlet is now dark brown rather than white. All other outlets visible in any photograph of any apartment are white / ivory / almond.

One of the upstairs units was occupied by Michael Williams. Before the fire, Michael Williams had mentioned to Michael Ledford the problem he, Williams, had been having with an outlet. Williams explained that he had replaced the outlet himself.

We therefore presume the insurance adjuster photograph shown above is from Michael Williams' upstairs apartment. We presume further that the outlet in the kitchen is the outlet of which Michael Williams spoke. If not, if our assumption is incorrect, than the photograph reveals yet another wall outlet that had to be replaced.

While there, at Building 17 of the Highland Hills Apartments complex, the insurance adjuster also photographed the interior of Unit A, the Ledford apartment. We are aware of 17 interior photographs of the Ledford apartment taken by a person identified only as an insurance adjuster.

Though that adjuster took only three fewer interior photographs of the Ledford apartment than did Agent Watson, that adjuster did not submit a report. He did not further document his investigation in any fashion. At least he did not provide any further documentation to the Commonwealth or the defense.

Because the insurance adjuster did not document his photographs, did not file any report, was not interviewed, and did not testify, we don't know the adjuster's name with absolute confidence. We assume, however, that the person was Maynard Barker. With that qualification, we henceforth refer to the insurance adjuster as Maynard Barker.

We know that Maynard Barker took all or most of his photographs of the Ledford apartment after Agent Watson took his photographs and before Gary Toler took his.

During his investigation, Agent Watson moved the chair and quilt rack (and other items) from their original position to allow photographs of what lay beneath.

Gary Toler, on the other hand, eventually returned the chair and quilt rack (and other items) to their original position so that he could photograph them in their original positions, or approximately so.

Maynard Barker's photographs of the Ledford apartment interior were taken while the chair and the quilt rack were in their relocated position. Maynard Barker must therefore have taken his photographs after Agent Watson moved the items but before Gary Toler returned them.

Other than what we can infer from Barker's photographs and from Toler's rare mention of Barker's name, we do not know the details of Maynard Barker's involvement in the Ledford case. Maynard Barker is the informational firewall between Gary Toler's narrowly documented investigation and Allstate's broader undocumented investigation.


Four months after Michael Ledford was charged with arson and murder, Maynard Barker launched his own business. Today, Barker Claims Services has 12 offices spread over 4 states.

7.9 Gary Lee Toler

Gary Toler was at the bottom of the Allstate / Crawford pecking order. He received his initial instructions from Maynard Barker. From his fire scene investigation report, we find the following:

The assignment was received on October 11, 1999, from Maynard Barker of Crawford & Company in Stanton, Virginia. Specific instructions were to conduct an origin and cause investigation into a fire which occurred on October 10, 1999 at Highland Hills Apartment 17A. Additional instructions included coordinating with State Police investigators on their investigation.

Gary Toler was soon thereafter in contact with Jim Cressman of Allstate Insurance in Atlanta. From an evidence transmittal form dated October 12, 1999, we find the following:



EVIDENCE TRANSMITTAL FORM

File No: 7229-000080 Insured: Highland Hills #2
 Date of Loss: 10/10/99 Location: 19 Highland Ave Apt #17A
 Date Retrieved: 10/12/99 Date Submitted: N/A
 Retrieved By: G. L. Toler Transported By: N/A
 Received By: _____ Date Received: _____

Purpose: (Transfer, Laboratory submission, storage, etc. and the full name and address of the facility.)
Storage

Item No.	Item Description	Retrieval Location
1	Smoke detector	Hallway

Instructions:
Hold for possible testing & exam.

Original Report & Invoice To:
 Name: Jim Cressman Policy No: UNKN
 Company: Allstate Claim No: 3701884219
 Address: P.O. Box 105302
 City, State, Zip: Atlanta, GA 30348

Copy of Report to:
 Investigator: Gary L. Toler
Crawford Investigation Services
 Address: 542 Lednbrook Dr. (Reg. Svc. Ctr.)
Danville, VA 24541
 Phone/Fax: 804-799-1926

Investigator Signature: Gary Lee Toler Date: 10/12/99
 Page 1 of 1

Figure 46: Gary Toler Reported Directly to James Cressman in Atlanta, Georgia

Gary Toler, at some point, began acting in response to the instructions of Jim Cressman. From the concluding paragraph of his fire scene report to Jim Cressman, we find the following.

Having complied with all your instructions, this file will now be closed and the report forwarded onto the claims representative. [Emphasis added.]

Apparently as per those instructions, Gary Toler withheld critical evidence from the Commonwealth and the defense. From the attachment list to his report to Jim Cressman, we find the following:

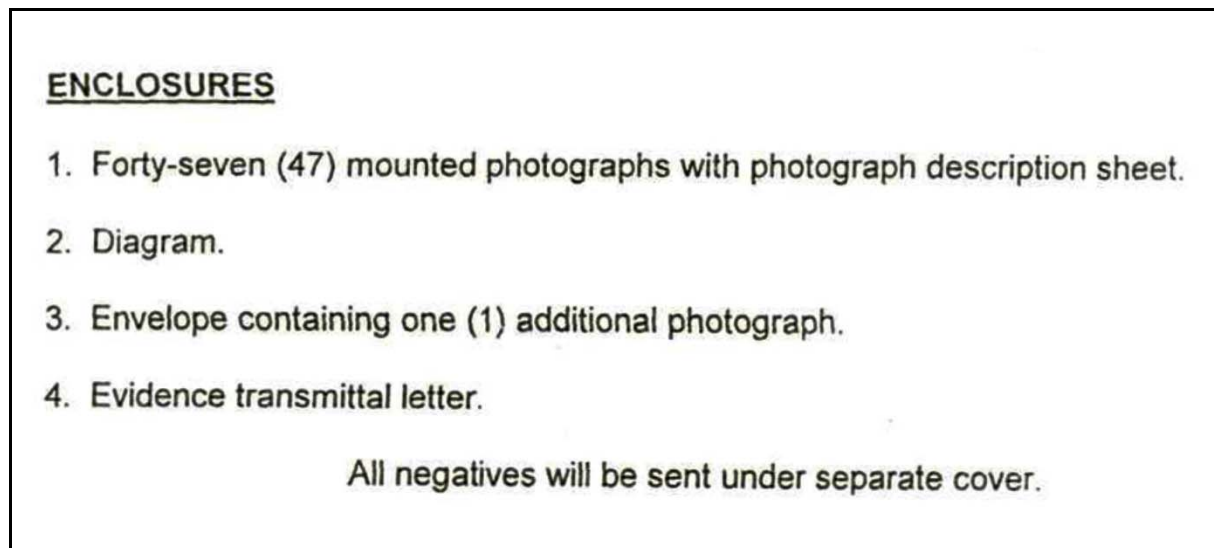


Figure 47: Gary Toler and James Cressman Gave Special Treatment to One Photograph

The Commonwealth and the defense received only 47 photographs from Gary Toler, though he took 48. Gary Toler and Allstate Insurance withheld one photograph, apparently the photograph that was sufficiently sensitive that it had to be placed in a separate envelope when sent to Jim Cressman. We will discuss this withholding of evidence further in the next section.

Gary Toler authored the only two Allstate / Crawford documents associated with the Ledford case, at least any documents ever provided to the Commonwealth and defense. We will discuss Toler's reports in the next section.

Gary Toler was the only person working for Allstate and/or Crawford who testified at Michael Ledford's trial. In his testimony, he clearly did not "tell the truth, the whole truth, and nothing but the truth" about meeting Maynard Barker at the Ledford apartment. More significantly, Gary Toler almost certainly perjured himself in more spectacular fashion about discovering incriminating, undocumented, and previously unreported evidence at the fire scene. We will discuss Gary Toler's perjured trial testimony in a later section.

Unlike the others associated with Allstate and Crawford, Gary Toler did not fare well after his involvement in the Michael Ledford case. As you may recall, Jim Cressman retired in 2004. John Pflanz was promoted to President of Crawford Investigative Services in 2006. Maynard Barker started his own company not long after Michael Ledford was charged with murder, and that company thrives today.

[REDACTED]

8. CONCEALED EVIDENCE OF AN ELECTRICAL FIRE

Chapter Summary: Insurance investigator Gary Toler withheld at least one photograph from the Commonwealth and the defense. Gary Toler falsified either his photo location diagram or his photo numbering scheme. Gary Toler found burned wiring inside the living room wall outlet, then replaced that outlet and its faceplate without securing, photographing or otherwise documenting the burned electrical wiring.

Gerald Hurst is widely recognized as our country's foremost fire science expert. He is the person who cautioned Governor Perry about executing Cameron Todd Willingham. From a PBS *Frontline* interview with Dr. Hurst about arson cases in general, we learn:

The insurance company doesn't want to pay off, so the husband is accused of killing the wife, or the wife is accused of torching the place and killing the husband. If it is a torch job, they don't have to pay off. ... The insurance company's investigators find typically anywhere from 25 to 60 percent arson cases. National stats are like 14 percent of fires are arson.

In an online FAQ available at the *Truth in Justice* website, we find the following quote from Dr. Hurst.

Insurance company investigators play a key role in a high percentage of bogus arson cases. I have had a number of cases in which state fire investigators ruled a fire accidental only to change the finding to arson following a visit by an insurance investigator. ... In some states, the state fire marshals NEVER dig out and investigate a serious fire, even if it results in one or more deaths. They simply wait for the insurance company to do the job and base their decision on whether to prosecute on what the insurance investigators tell them.

And finally from the Innocence Project, we find this short but disturbing quote from Dr. Hurst:

Accidental fires being turned into arsons is going on all the time.

8.1 Withheld: Gary Toler's 48th Photograph

More than two and a half months after his examination of the Ledford fire scene, and well after Michael Ledford had been arrested for the arson-murder of his one-year-old son, Gary Toler finally submitted his written report to Allstate's Jim Cressman. As part of that report, Gary Toler enclosed 47 mounted photographs, a photograph description sheet, and a diagram showing the locations from where the photographs were taken.

One photograph was apparently so damning to Allstate's interests that Gary Toler did not mount it along with the other 47. Instead Gary Toler placed that damning 48th photograph in a separate envelope before sending it to Jim Cressman. We will henceforth refer to that missing photograph as Toler 48.

Toler 48 may have received its special treatment based on specific instructions from Jim Cressman. At the bottom of his report to Jim Cressman, Gary Toler took care to note that he had acted in accordance with Cressman's instructions, as shown in Figure 48 on the next page.

COMMENTS

Having complied with all your instructions, this file will now be closed and the report forwarded onto the claims representative. It may, however, be easily reopened at any future date upon request.

If you have any further questions or comments, please feel free to contact me at (804) 793-1928.

Very truly yours,

Gary Toler
Special Investigator

GT/lr

Enclosures

cc: John F. Pflanz
Northern Regional Manager

Figure 48: Gary Toler Complied with the Instructions of Jim Cressman, Allstate in Atlanta

Neither the Commonwealth nor the defense has ever seen Toler 48. The photograph has certainly been withheld. It may by now have been destroyed.

Neither the Commonwealth nor the defense has ever seen any of the negatives, though Gary Toler indicated he would send all of them to Jim Cressman under a separate cover. The negatives would reveal whatever was captured by Toler 48, the photograph that Allstate Insurance did not want seen. The negatives have been withheld. They may by now have been destroyed.

One advantage of the special handling of the photographs is obvious. Gary Toler would be left with only prints of the 47 photographs, no print of the 48th photograph, and no negatives. When asked to provide all his photographs of the fire scene, he could provide the 47 prints and argue that is all he has.

Perhaps Toler 48 was a photograph of the circuit breaker panel with its cover plate removed. Perhaps it was a photograph of the living room outlet during the brief period when Gary Toler removed it and examined it. Perhaps Toler 48 was a photograph of the improperly installed smoke alarm improperly spliced into the apartment's electrical system.

Whatever it was that Toler 48 recorded, can assume with confidence that it was seriously damaging to Allstate's financial interests.

8.2 Falsified: Gary Toler's Photo Location Diagram

It seems as if Gary Toler initially intended to suppress also his photograph of the electrical service panel. We can infer such intent from his photo diagram.

Gary Toler documented his photographs using a numbered list of the photo descriptions and a diagram showing where they were taken. The last portion of the numbered list is shown below, as Figure 49.

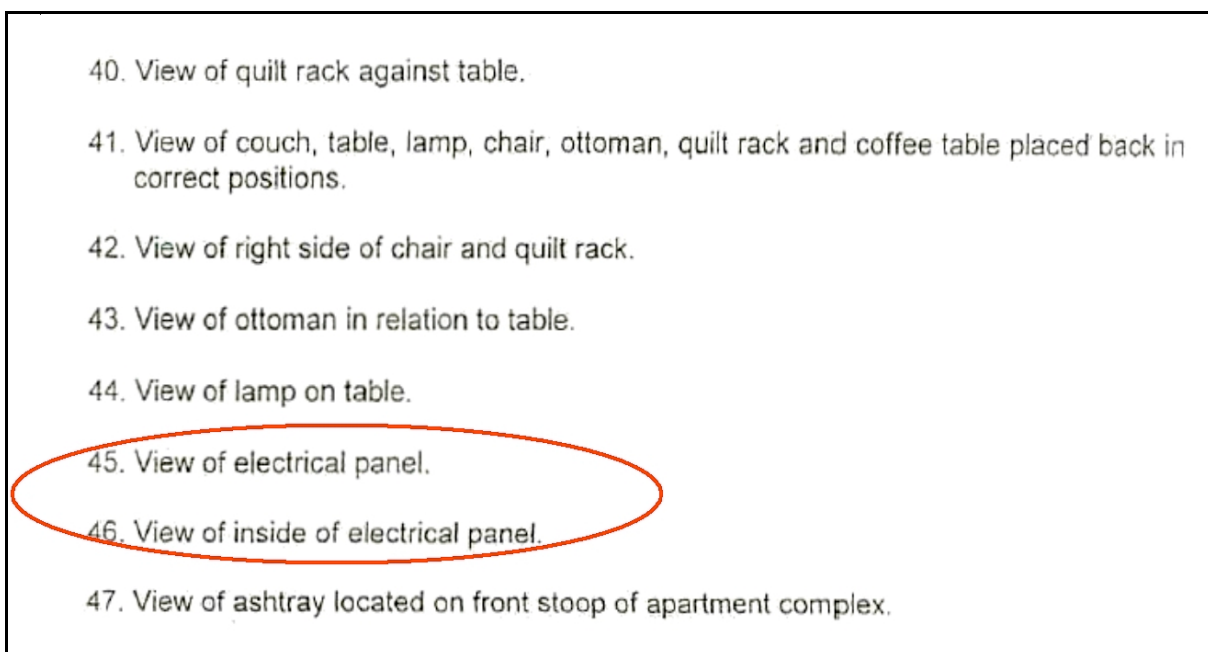
- 
40. View of quilt rack against table.
 41. View of couch, table, lamp, chair, ottoman, quilt rack and coffee table placed back in correct positions.
 42. View of right side of chair and quilt rack.
 43. View of ottoman in relation to table.
 44. View of lamp on table.
 45. View of electrical panel.
 46. View of inside of electrical panel.
 47. View of ashtray located on front stoop of apartment complex.

Figure 49: Photographs 45 and 46 Identified as Shots of the Electrical Service Panel

We can see from the list that Toler 45 is a close up of the electrical panel with the panel door closed. You have seen that photograph before, with smoke being ejected from behind the panel door and breaker faceplate.

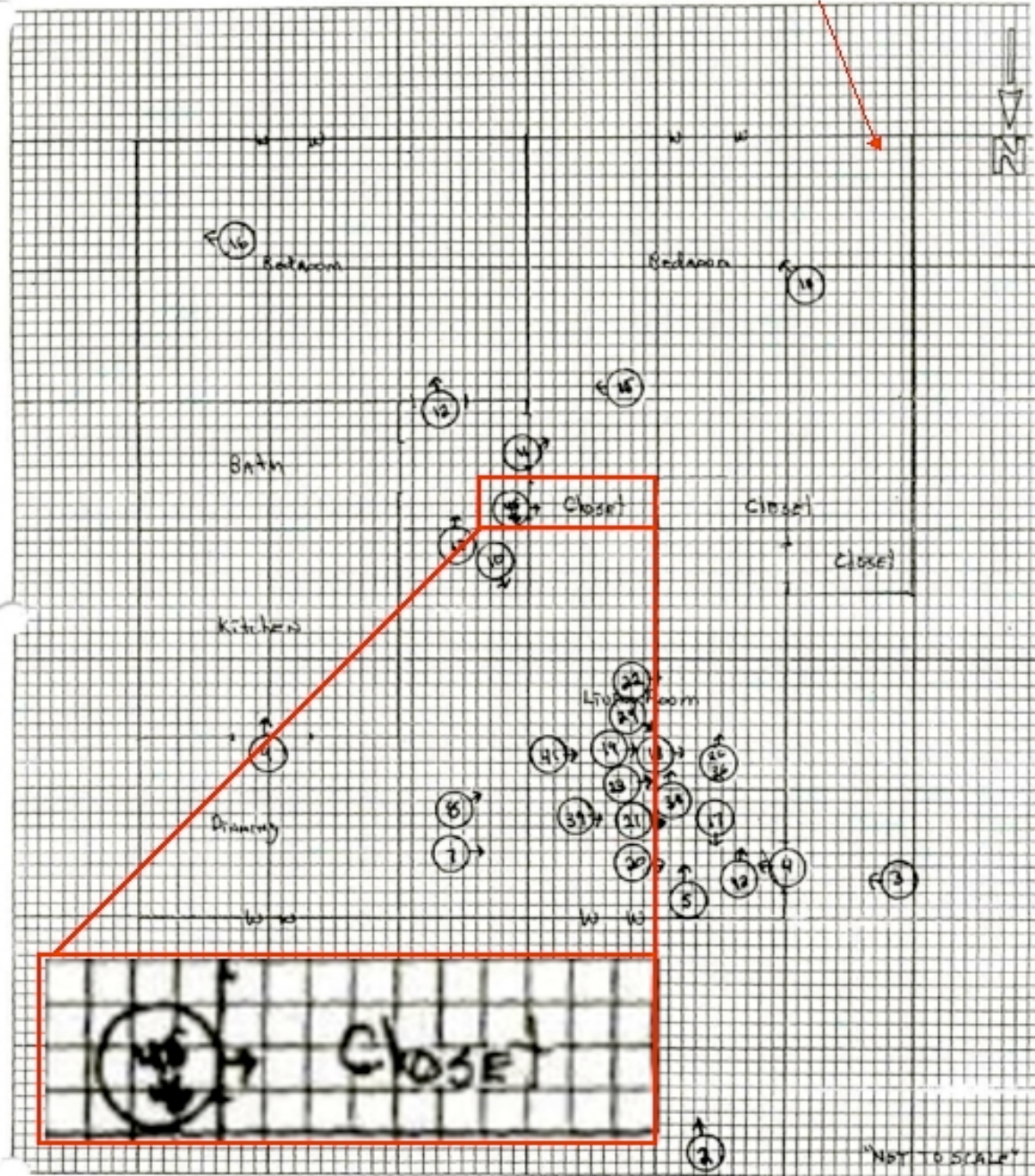
We can see from the list that Toler 46 is a close up of the electrical panel with the door open. You have now seen that photograph as well many times. It shows the false white cover added to Breaker 10. It shows also the small but telling burn mark on the toggle handle of Breaker 10. Toler 46 shows that there was a serious electrical problem in the Ledford apartment, that previous problems in the panel were literally covered up rather than fixed. Toler 46 posed a serious problem for the insurance carrier.

Gary Toler's photo location diagram is shown below, as Figure 50. The diagram is dated 10/12/99, the same day Gary Toler took his photographs. The diagram is now oriented such that the front of the building is at the bottom of the diagram, rather than to the right as shown previously.

Crawford®

DIAGRAM SHEET

Electrical Panel



Insured Highland Hills #2

Adjuster G.L. Toler

File No. 7229-000080

Date 10/12/99

Figure 50: Gary Toler Falsified His Photo Diagram by Excluding Photos of the Electrical Service Panel

Note that there are no photo numbers pointing to the electrical panel. According to Gary Toler's own diagram, made on the same day he took his pictures, Gary Toler allegedly took no close-up photographs of the electrical panel. We know that to be false. We know that he took at least one close-up of the electrical panel with the panel door closed, and at least one close-up with the panel door open. He identified those photographs in his numbered list as photographs 45 and 46. Those pictures exist. We have them. We have already shown them in this petition.

According to Gary Toler's diagram, however, photographs 45 and 46 were not of the electrical panel. Instead, on the same day as his fire scene investigation, Gary Toler falsified his photo diagram by identifying photographs 45 and 46 as shots of the hallway closet. In the enlargement we have added to his photo location diagram, you can barely make out the numbers 45 and 46, one on top of the other. The circle surrounding them has an arrow pointing to the word "Closet."

The hallway closet contained the gas-powered furnace and the gas-powered water heater. Neither the Commonwealth nor the defense has ever received any photographs of the furnace or water heater from anyone associated with Allstate Insurance or Crawford & Company. If photographs of those appliances were taken, they too must have been withheld along with Toler 48.

8.3 Staged: Single Black Plug in Living Room Wall Outlet

At the time of the Ledford fire, two cords were plugged into the living room wall outlet. We recreate the arrangement in the image below.

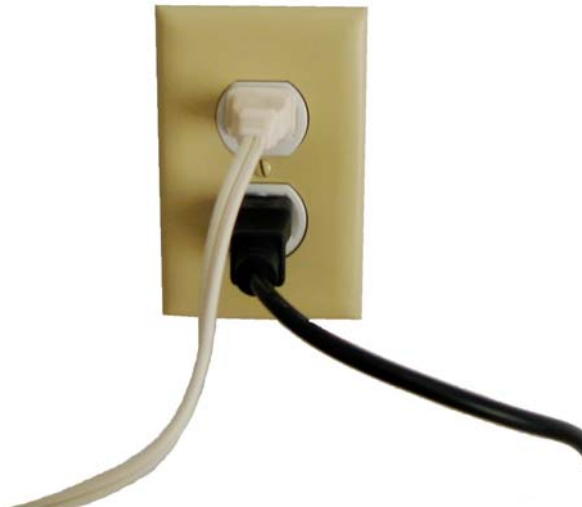


Figure 51: Recreation of Cords Plugged into Wall Outlet Prior to Fire

The top cord was white, ungrounded, with two flat prongs. That white cord, yellowed with age, went to the left as you face the outlet. It powered the floor lamp at the far side of the couch. You will soon see photographic evidence of that.

The bottom cord was black. It was apparently a grounded, three-prong extension cord. It ran to the right. The finicky table lamp was plugged into the black extension cord rather than directly into the outlet.

The two-cord configuration above looks nothing like the one-cord image of the wall outlet you have seen before. We repeat that image below as Figure 52.

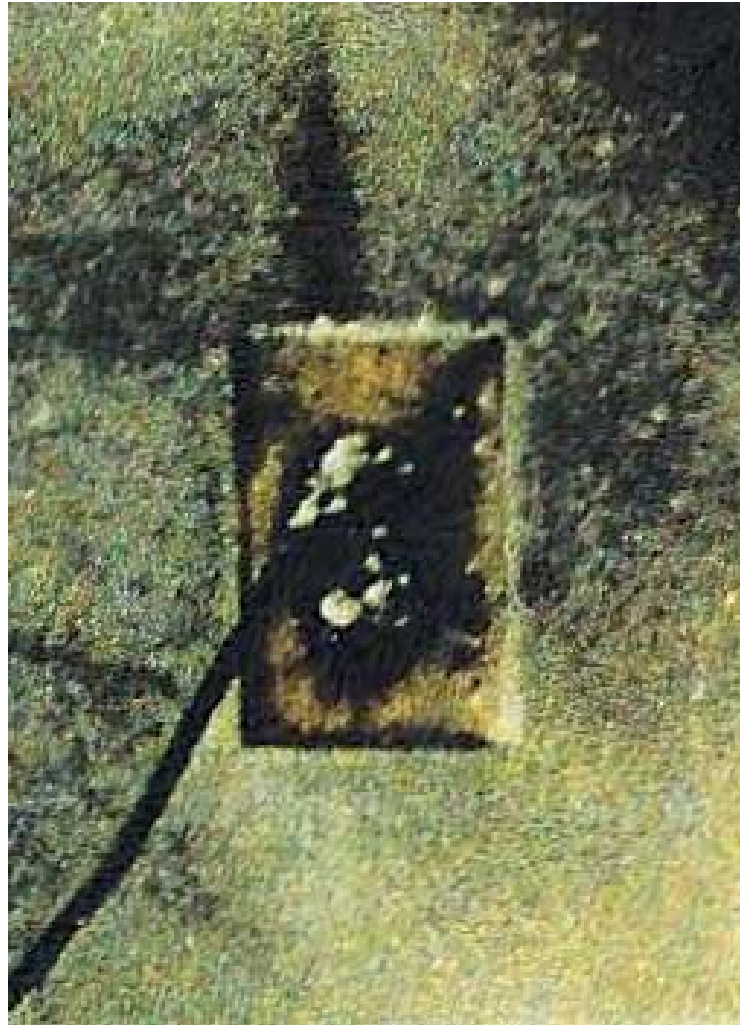


Figure 52: Single Plug Inserted into Wall Outlet for Gary Toler's Photograph

When insurance investigator Gary Toler took his photograph, there was only one cord plugged into the wall outlet. As staged by Gary Toler, the outlet could not have powered both the floor lamp and the table lamp.

When insurance investigator Gary Toler took his photograph, the black cord was oriented to the left, not the right. The black cord was oriented as if it powered the floor lamp at the far end of the couch, not the finicky lamp on the end table near the entry door.

These two observations regarding the number and orientation of the cords are of no great significance at the moment. The location of the plug relative to the outlet is, however, now of substantial interest. The black plug does not appear to be properly plugged into either the upper half or the lower half of the outlet. The black cord is, nonetheless, somehow plugged into the wall outlet.

The Figure 53 below shows recreations of three ways in which the black plug might have been inserted into the wall outlet.

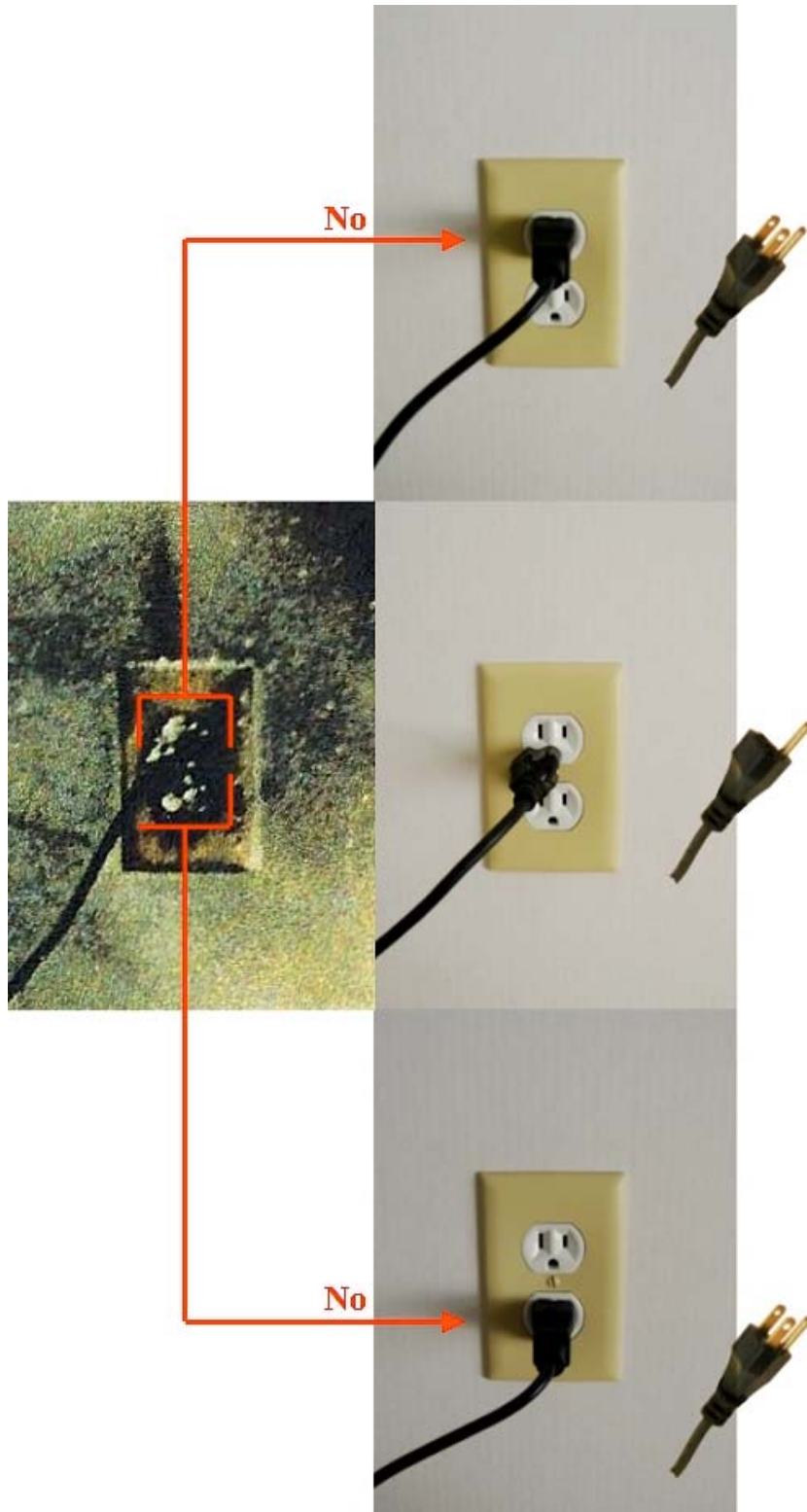


Figure 53: Three Possibilities for Black Cord Plugged into Wall Outlet

1. The black plug might have been inserted as normal into the top half of the outlet. The recreation, however, looks nothing like the enlargement from Gary Toler's photograph. Gary Toler's photograph shows a substantial portion of the upper outlet to be still visible. The recreation shows that the upper half of the outlet would have been almost completely hidden by the plug.
2. The black cord might have been plugged as normal into the bottom half of the outlet. The recreation, however, looks nothing like the enlargement from Gary Toler's photograph. Gary Toler's photograph shows a substantial portion of the lower outlet to be still visible. The recreation shows that the lower half of the outlet would have been almost completely hidden by the plug.
3. The plug for the black cord might have been missing its two flat prongs. The plug might then have been inserted into the upper outlet by only its grounding prong. The plug might then have rotated somewhat more than 90 degrees counterclockwise. As shown below, the recreated image of this scenario appears strikingly similar to the enlargement from Gary Toler's photograph.

From Gary Toler's photograph, it is difficult to tell how much damage the black plug suffered during the fire. It appears that the plug remained largely intact, that the exterior did not melt sufficiently (if at all) to expose and release its two flat prongs. Instead, the plug seems to have experienced internal heating that softened the bond with its prongs.

It seems as if the prongs remained in the wall outlet when Gary Toler removed the plug. Recall that he testified he removed the wall outlet for examination. He must have first removed the plugs and the faceplate.

While it might be difficult to image that a plug could lose its prongs without experiencing substantial external damage, such an event indisputably happened during the Ledford fire. The plug for the finicky table lamp lost both its prongs during the fire, though the outer portion of the plug shows no sign of melting.

Recall that the lamp plug, minus its prongs, was captured in a photograph Gary Toler took of the floor. An enlargement from that photograph was provided previously as Figure 31 and is included again on the next page as Figure 54.



Figure 54: Lamp Cord Plug with Prongs Missing

That cord for the finicky lamp must have been plugged into the black extension cord coming from the wall outlet. The plug at the end of that lamp cord must have left its prongs in the female end of the black extension cord as it was removed.

It is indisputable that the ungrounded plug shown above in Figure 54 no longer had either of its two flat prongs when it was photographed. It is therefore demonstrably possible that the grounded plug Gary Toler reinserted into the wall outlet had lost both of its two flat prongs, as his photograph strongly suggests.

Neither of the two plugs seems so seriously burned on the outside that the prongs would have become exposed. Instead each plug seems to have lost its prongs because of internal heating that softened the bonding of the prongs to the plastic.

Coupled with the evidence of overheating within the circuit breaker panel and the wall outlet, the two plugs with missing prongs provide evidence that the entire electrical circuit was overheated all the way from the circuit breaker to the wall outlet, through the extension cord, into the lamp cord, and into the lamp.

The evidence also indicates that neither Breaker 10, nor any other circuit breaker, interrupted that overheated circuit.

8.4 Hidden: Evidence of Fire within the Wall Outlet

In his testimony, insurance investigator Gary Toler testified that he removed the wall outlet and examined it. He testified that the wiring inside the outlet was indeed overheated. He testified that the overheating was due to an external, not an internal source.

Bobbitt: And let me show you this photograph, Exhibit Number 9, and ask you if you recognize that?

Toler: Yes, sir.

Bobbitt: Does that show the outlet in the wall?

Toler: Yes, sir. It does.

Bobbitt: Okay. Now, this outlet is near -- where the fire occurred. Is that correct?

Toler: Yes, sir. It is. It was, actually, I believe, behind the -- the little end table that was attached to the couch.

Bobbitt: And what did you do about this outlet? Did you check the outlet?

Toler: Yes, sir. I examined the outlet from the outside first, for any signs of any arcing or beading or any -- malfunctions of the wiring; any abnormalities. Also, I -- I took it out and examined the wiring inside. **The wiring inside showed evidence of external heating** only. There was no internal heating; no beading, no separation of the wiring within that outlet. [Emphasis added.]

We will now examine Toler's claim that the overheated wires inside the outlet were damaged only by an external heat source, specifically by the fire that burned elsewhere in the living room.

After insurance investigator Gary Toler took his initial photographs of the living room, he took a photograph of the kitchen, then moved down the hallway and took a few photographs of each bedroom. He returned to the living room and took close up photographs of the chair and ottoman. He then moved the couch away from the wall.

He removed the two plugs from the wall outlet. In the process, he may have left two flat prongs from the black plug in the lower receptacle, as just described in the previous subsection.

After removing the plugs, he removed the faceplate. He then removed the entire outlet from the wall. He examined the outlet and found that the wires showed evidence of overheating. He did not take any photographs of the outlet while he had it removed. Instead, he placed it back in the wall and covered it up with the faceplate.

By reinserting that outlet and replacing the faceplate, insurance investigator Gary Toler literally covered up critical evidence of value to both the Commonwealth and Michael Ledford. By refusing to photograph the burned wiring, or by withholding the photograph of the burned wiring, insurance investigator Gary Toler suppressed critical evidence of value to both the Commonwealth and Michael Ledford.

Insurance investigator Toler reinserted the black plug into the outlet, apparently into the upper outlet rather than the lower. He was apparently able to connect the plug only by its grounding prong. He extended the black cord to the left beyond the far end of the couch, hiding the female end of the extension cord. That manipulation of the cord presumably caused the black plug to rotate 45 degrees counterclockwise from its normal position.

He moved the aged, yellowed cord to some location where it would show up no longer in any photograph.

Only then did insurance investigator Toler take photographs of the scene just staged. We present the first of those two photographs below. The photograph was framed such that the wall outlet is just out of sight, just beyond the upper edge of the photo.



Figure 55: Unburned Region Between Couch and Outlet

You can see the shoes that were protected from soot because they were underneath the couch. More interesting are the marks on the back of the couch, near the upper left of the photograph. Those marks are clearly visible in the enlargement.

The marks are photographic fossils of the cords that came from the wall outlet. The marks are soot shadows caused by the two cords. Though the back of the couch is only lightly sooted, the cords provided enough protection that their location and direction were preserved forever by the photograph.

During the fire, the upper cord traveled away from the camera, toward the pole lamp at the end of the couch.

The lower cord left a less distinct shadow. The shadow is sufficiently distinct, however, to show that the lower cord traveled toward the camera, toward the finicky table lamp that sat on the end table near the quilt rack.

Most importantly, note that the back of the couch shows no sign of being burned. This means there was no significant heat source near the faceplate, at least none powerful enough to leave any evidence on the upholstery nearby. If Gary Toler's presumed external heat source was

insufficient to even mark the upholstery immediately across from the wall outlet, it was surely insufficient to overheat the wires buried inside the wall.

The overheating of the wires inside the outlet must have been caused by an external heat source. It must have resulted from a problem inside the outlet.

Below is a second, more expansive view of the area behind the couch. The photograph was framed such that the wall outlet is just out of sight, just beyond the right-hand edge of the photo.



Figure 56: Unburned Region Between Couch and Outlet

The cord shadows are less distinctive from this distance, so we have circled them. We have also provided an enlargement of them, darkened somewhat to make them more obvious.

The black plug is somewhat visible at the right of the photograph. We have circled it and provided an enlargement, lightened somewhat to make the cord stand out. The black cord is coming from the outlet and heading away from the camera, disappearing beyond the far end of the couch. This photograph was therefore taken after insurance investigator Toler removed the two plugs and replaced the one. We presume that, in between, he removed the wall outlet and found the overheated wiring within.

Also circled in the photograph is a segment of the lamp cord. The lamp was still, at the time of this photograph, sitting on the floor by the entertainment center.

Once again, the most important aspect of the photograph is that the area near the wall outlet did not suffer burns from the fire that raged elsewhere in the living room. The outlet was well protected by the couch from heat and flame. In fact, the area around the outlet is nearly pristine. It is unburned. It is barely sooted.

To help you better understand the spatial relationship between the couch and the wall outlet, the composite image of Figure 57 below presents the two items superimposed. The couch and outlet images are necessarily taken from two different photographs. The individual images have been adjusted such that they share the same scale, the same origin, and the same perspective.



Figure 57: Location of Wall Outlet Superimposed on Back of Couch

It is now unassailably obvious that the wiring in the outlet could not have been burned by an external heat source. The temperature directly outside the outlet was not high enough to burn the back of the couch. The temperature directly outside was not high enough to burn the electrical cords that were plugged into that outlet. The temperature was not even hot enough to melt the outlet faceplate. The temperature outside the electrical outlet was certainly not hot enough to melt the wiring buried inside the wall.

In the absence of an external heat source sufficiently intense to damage the couch, the electrical cords, or the faceplate, the burned wiring inside the wall provides overwhelming evidence of an overheating electrical circuit. Insurance investigator Gary Toler literally covered up that burned wiring, withheld a photograph possibly of that outlet from both the Commonwealth and Michael Ledford, and mislead the jury about the cause of the burned wiring.

9. INTERLUDE: PHOTOGRAPHY TO INTERROGATION

Chapter Summary: The Commonwealth's investigator and the insurance agents seemingly used the apartment opposite the Ledford apartment as a staging area during a joint on-scene investigation. The Commonwealth's investigator initially recorded the cause of the fire as undetermined, and was unable to rule out the electrical system as the cause of the fire. The insurance investigator took instructions directly from Allstate headquarters in Atlanta. At some point, most likely after speaking with the insurance investigator, the Commonwealth's investigator decided to pursue the fire as an arson homicide.

After his on-scene investigation, Agent Watson referred to Michael Ledford as a victim of the fire. After insurance investigator Gary Toler coordinated with Jim Cressman in Atlanta, however, Michael Ledford somehow became a suspect. The transformation happened even though no photographic, forensic, or interview evidence has to this day ever hinted at arson.

By the time of the polygraph test, Agent Watson was sufficiently convinced of Michael Ledford's guilt that Agent Watson intended to extract a confession. As we shall see in the next section, the polygraph was but a means to that end. In this section, we will consider the 29-day period between Agent Watson's photographic documentation of the fire scene and Michael Ledford's interrogation.

9.1 The Apartment of James Hirtriter

James Hirtriter lived in Apartment 17B, directly across the entryway from the Ledfords. Agent Watson or someone else apparently used Mr. Hirtriter's apartment as a staging area during the on-scene investigation of the fire.

ServiceMaster was then cleaning the Hirtriter apartment of smoke damage. Mr. Hirtriter was apparently elsewhere. Agent Watson did not interview him until much later, on November 15, five days after Michael's polygraph examination, interrogation, and confession.

We have good reason to believe that Agent Watson and/or another investigator was at some point inside the Hirtriter apartment. The composite image of Figure 58 below reveals someone was using the apartment as a staging area.



Figure 58: Apartment Across Entry Way Used as Staging Area for Investigators

Electronic equipment was set atop both the table and the cardboard box, and the two pieces of equipment were connected with an electrical cable. A large, sturdy, two-handled carry bag is visible on the one chair not situated around the table.

Of particular interest are the smoking items: the ashtray, the pack of cigarettes, and the lighter. The smoking items appear unused. There are no cigarette butts to be seen. The ashtray seems perfectly clean. The pack of cigarettes appears unopened. Agent Watson may have removed the smoking items from the Ledford apartment and placed them, temporarily, on Mr. Hirtriter's dining room table.

Though Agent Watson made no record of removing any object from the Ledford apartment, he testified during a preliminary hearing that he did find a cigarette lighter.

Bobbitt: Or how about a lighter? Did you ever find a lighter?

Watson: I found a lighter, but I did not find it in the area of the fire.

Bobbitt: I see. Where was that?

Watson: The lighter I found was in the back bedroom.

From Michael Ledford's interrogation tape, we learn that Agent Watson not only found a lighter, he found a red lighter. In the following transcript segment, Ledford is being interrogated both by Agent James Watson and Agent Joe Ritchie. The emphasis is added.

Ritchie: What, what did you light the candle with?

Ledford: A lighter.

Ritchie: What, uh, a cigarette lighter?

Watson: Where's, where's that lighter?

Ledford: Um, I, I put it on the table that had the plants on it.

Watson: **A red lighter, right?**

Ledford: No. It was a white one with the Dallas Cowboys.

Watson: Did you pick it up later?

Ledford: No.

None of this proves that Agent Watson removed a red cigarette lighter from the Ledford apartment and placed it on the Hirtriter dining room table. Someone, however, was using the table. No other photograph of any other apartment being cleaned by ServiceMaster shows any other furniture being used in such fashion. The only items noted in the other photographs are cleaning products.

In no other photograph do we find electronic devices interconnected by cable, or large carry bags, or cigarette lighters. Nowhere else do we find a red lighter like the one James Watson believed Michael Ledford used to light the candles that were never found in the room.

However, given that Agent Watson waited until the insurance investigators finished taking their photographs before he cut his carpet sample, it now seems reasonable that he seated himself at Mr. Hirtriter's dining room table while he waited.

It seems reasonable as well that Agent Watson may have sketched his fire scene diagram while sitting at the table. He did not clear the scene until 1 PM, according to his report, and it certainly didn't take him long to take his 22 photographs sometime near 10:30 AM. That leaves Agent Watson with two to three hours to discuss the case with the insurance investigators and to draw fire scene diagrams. We know that he did not spend the time interviewing people. No interview whatsoever was conducted on either October 11 or 12. He did not interview Michael Ledford until the next day, the 13th.

While we cannot be positive that Agent Watson was inside Mr. Hirtriter's apartment, we can be confident that insurance investigators Maynard Barker and Gary Toler were. Maynard Barker, after all, took the photograph of Mr. Hirtriter's dining room, along with photographs of the other rooms in that apartment.

Also, Gary Toler was standing inside Mr. Hirtriter's apartment when he took his photograph of the Ledford apartment door. At the lower right corner of the photograph, repeated below, you can see the latch plate in the doorjamb of Mr. Hirtriter's entry door. Gary Toler was standing inside Mr. Hirtriter's apartment when he took that photograph.



Figure 59: Photograph of Ledford Apartment Door -- Taken from Inside Hirtriter Apartment

Insurance investigator Gary Toler, in fact, may have also sat at Mr. Hirtriter's dining room table when he filled out his photo diagram, the one in which he pointed photographs 45 and 46 into the hallway closet rather than toward the electrical panel. The physical and temporal proximity of the two sketches could explain how both Agent James Watson and insurance investigator Gary Toler came to mislabel North in similar fashion on their two diagrams.

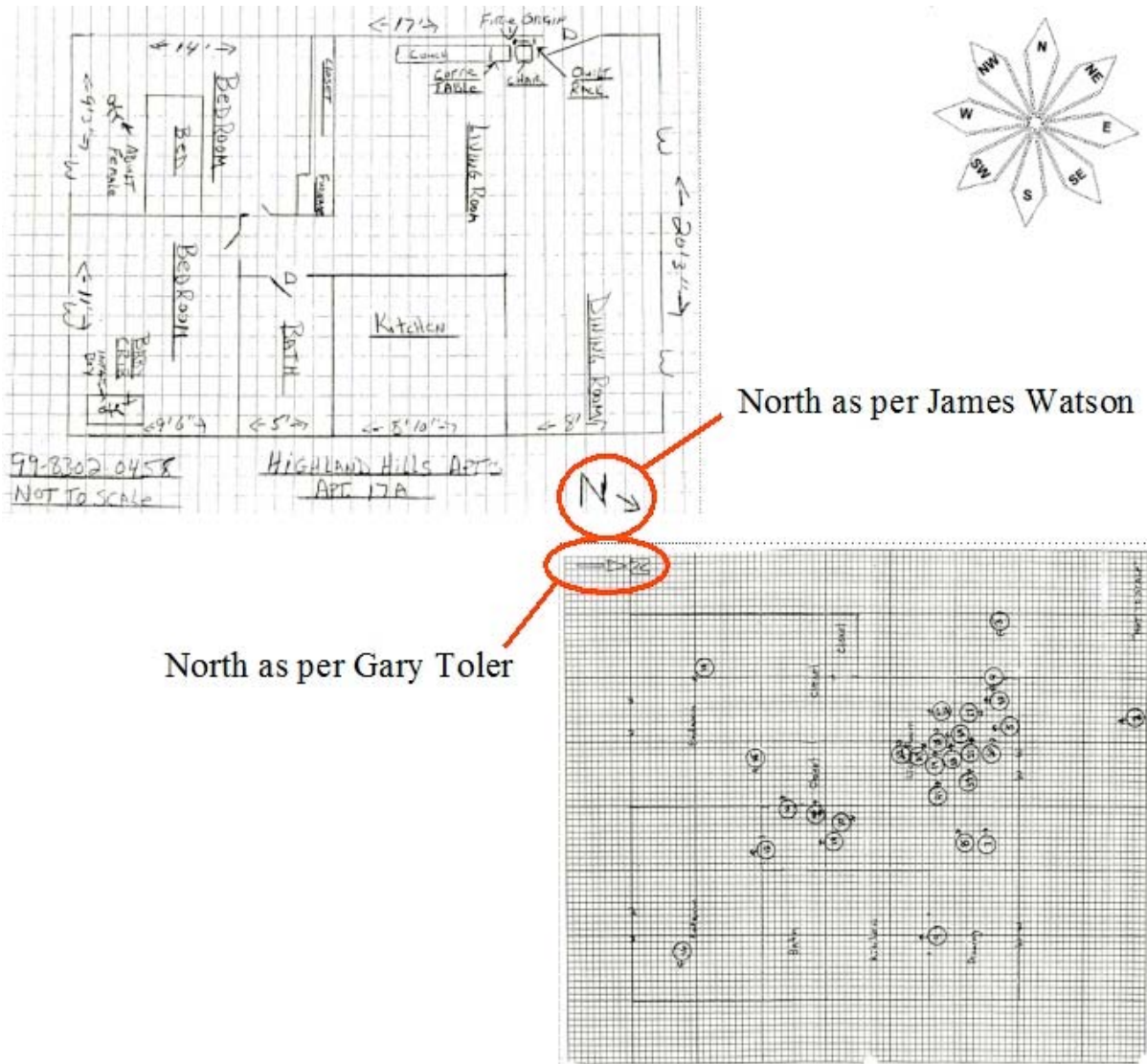


Figure 60: Agent Watson and Gary Toler Misidentified North in Similar Fashion

9.2 Gary Toler's Report to Jim Cressman


Insurance investigator Gary Toler prepared only one known report regarding his fire scene investigation. He signed that report 95 days after his on-scene investigation. That is an exceptionally long, and an exceptionally convenient, delay. By delaying the report until after Michael Ledford had been interrogated, Gary Toler was able to conclude, based on Michael's confession, that the fire resulted from arson. Presumably, Jim Cressman in Atlanta was

pleased to learn that Allstate would be spared a million dollar settlement for the death of a one-year old child and the serious burning of the child's mother.

After Gary Toler signed his report on December 28, he submitted to Jim Cressman. We have good reason to suspect, however, that Gary Toler was in communication with Jim Cressman much earlier than the date of his report. For example, Toler concluded his report with a revealing note:

Having complied with all your instructions, this file will now be closed and the report forwarded onto the claims representative.

Toler knew early on, even on the day he investigated the fire scene, that he would be reporting and taking instructions from Jim Cressman. Toler knew as well that he would depend on Jim Cressman for payment of services rendered. To confirm that those points, one need only look at the Evidence Transmittal Form that Gary Toler filled out when he removed the smoke detector from the fire scene.



EVIDENCE TRANSMITTAL FORM

File No: 7229-000080 Insured: Highland Hills #2
 Date of Loss: 10/10/99 Location: 19 Highland Ave Apt #17A
 Date Retrieved: 10/12/99 Date Submitted: N/A
 Retrieved By: G. H. Toler Transported By: N/A
 Received By: _____ Date Received: _____

Purpose: (Transfer, Laboratory submission, storage, etc. and the full name and address of the facility.)
Storage

Item No.	Item Description	Retrieval Location
1	Smoke detector	Hallway

Instructions:
Hold for possible testing & exam.

Original Report & Invoice To:

Name: Jim Cressman Policy No: UNK
 Company: Allstate Claim No: 3701884219
 Address: P.O. Box 105302
 City, State, Zip: Atlanta, GA 30348

Copy of Report to:

Investigator: Gary L. Toler
Crawford Investigation Services
 Address: 542 Cochran Dr. (Reg Svc. Ctr.)
Danville, VA 24541
 Phone/Fax: 804-793-1926

Investigator Signature: Gary L. Toler Date: 10/12/99
 Page 1 of 1

Figure 61: Gary Toler Reported Directly to James Cressman in Atlanta, Georgia

Gary Toler investigated and photographed the Ledford fire scene on October 12, 1999. On that day, Gary Toler knew that he would be reporting to Jim Cressman of Atlanta. He knew also that he would be submitting his invoice to Jim Cressman of Atlanta. He would report later that he "complied with all ... instructions" from Jim Cressman.

What we do not know is the nature of those instructions, and when they were given.

9.3 Agent Watson's Interview of Michael Ledford

Agent Watson interviewed Michael Ledford for the first time on October 13. That would be three days after the fire, one or two days after Agent Watson photographed the fire scene. That would be on the same day that Michael Ledford was allowed to return to his apartment and unwittingly dispose of critical evidence not secured by the investigators.

During that first interview, Michael Ledford related the events as follows, at least according to the paraphrased summary recorded by Agent Watson.

LEDFORD advised his wife went to bed about 8:00 p.m. and he told her he would be leaving for a little bit but would be back. LEDFORD further advised that between 8:30 p.m. and 20 minutes till 9 he told his wife he was going down to the Exxon to go get gas for the car. LEDFORD also advised his wife that he was going to stop at the Stuarts Draft Fire Department and sign papers to show what classification he had to drive the fire truck. ... LEDFORD advised he gave his wife a kiss on the forehead, told her that he loved her, and stated he would be right back. LEDFORD advised he left the residence and did everything he told his wife that he was going to do. LEDFORD further advised that upon leaving the Fire House tones activated ... for a possible structure fire Highland Hills apartment. LEDFORD stated "That with living up there he decided not to wait for the fire truck, but that he was just going to go up there." "Upon arriving up there with not knowing where it was, one of the neighbors who motioned me in said it was up there at the top of the hill." LEDFORD advised "He drove up, parked his car and was advised by SHAWN ABSHIRE ... that it was this front building and this front apartment." LEDFORD stated he yelled to ABSHIRE "That's my apartment, where's ELISE and where's ZACKARY."

When Agent Watson informed Michael Ledford that the fire started in the vicinity of the chair, couch, and quilt rack, Michael Ledford expressed concern that the fire may have been caused by the table lamp.

LEDFORD was advised the point of origin was in the vicinity of the lounge chair, couch, and quilt rack. LEDFORD was asked what could have been in that area to cause the fire. LEDFORD stated there was a lamp on the coffee table with a paper shade. LEDFORD advised he thought maybe the "lamp fell over if he close the door to hard." LEDFORD also advised, "He wondered if the cause of the fire was electrical, because the lamp was controlled by the wall switch."

When asked to describe what was on the table, Michael mentioned the lamp, some pictures, two plastic drink mugs, and candleholders. It was the first mention of candles in the investigation. It was an incorrect recollection, or an incorrect record of what Michael said. In either case, it would be his downfall.

LEDFORD was asked to recall what was on the coffee table. LEDFORD advised there were two drink glasses and the lamp itself, the lamp in question, some pictures, and two candle

holders, but he doesn't recall having candles in them. LEDFORD did state they would occasionally burn candles to cut down on the electrical bill, but would always blow them out and stick them under a water faucet.

There is substantial room for confusion here because Agent Watson consistently refers to the end table as the coffee table. As you recall, there was both an end table and a coffee table in the living room. The two tables were well separated.

When Elise was finally interviewed, after coming out of her medically sustained coma, she explained that they only rarely used candles, and when they did, they placed them on the coffee table, not the end table.

[Elise] LEDFORD was asked about a candle kept in her residence. [Elise] LEDFORD advised they burned candles on occasion, but that was very rare. [Elise] LEDFORD was asked where these candles were located. [Elise] LEDFORD stated they were **on a coffee table in the middle of the living room.** [Emphasis added.]

When Agent Watson interviewed Rhonda Reames, who had been at Zachary's birthday party that day, she informed him that there were no candles lit. She also expressed concern about the table lamp.

Ronda attempted to turn on a lamp at the LEDFORD residence and the switch did not work. She was afraid that that may have been a factor in the fire because the lamp was in the living room and ELISE's father told Ronda that the fire appeared to have started in the living room. Ronda said that no candles were lit.

Agent Watson did not clarify whether any candles or candleholders were even observed.

When Agent Watson interviewed Martha Reames, who had also been at Zachary's birthday party that day, she also expressed concern about the lamp. She was apparently not questioned about candles, and she made no note of them.

Reames stated that Ronda tried to turn on a light in the living room of the LEDFORD residence and had a problem with the light switch and had to use a wall switch to turn the light on. Reames did not remember anything unusual while at the LEDFORD residence.

We do not, however, need to rely on the recollections of witnesses to determine whether there were candleholders or candles on either the end table or the coffee table. We have photographs of the items on the end table and we have photographs of items on the coffee table.

Nowhere in any of the photographs taken by any of the investigators does there appear a candleholder, a candle, or any remnant thereof. Insurance investigator Gary Toler testified that he found no candles or residual candle wax. The lab reported no evidence of any petroleum products in the carpet sample submitted. Most candles are made of paraffin, a hydrocarbon.

There simply were no candles or candle holders involved in the Ledford fire.

9.4 Agent Watson's Carpet Sample Submission

We do not know how Agent Watson's carpet sample made its way the 78 miles from the Ledford apartment to Western Laboratory in Roanoke. We do know that it arrived on October 14, four days after the fire, two or three days after Agent Watson took his photographs, one day after Agent Watson interviewed Michael Ledford.

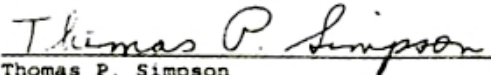
CERTIFICATE OF ANALYSIS	
October 21, 1999	Western Laboratory 6600 Northside HS Road Roanoke, VA 24019-2837
	Tel. No.: (540) 561-6600 Fax: (540) 561-6608
TO: J. B. WATSON, JR. R. J. SCOTT DEPARTMENT OF STATE POLICE P O BOX 577 APPOMATTOX VA 24522-0577	FS Lab #W99-9041
Your Case #: 88-81-02-0458	
Victim(s): LEDFORD, Michael	
Suspect(s): - - -	
Evidence Submitted By: J. B. Watson, Jr.	Date Received: 10/14/99
Item 1 Charred carpet and charred foam padding	
RESULTS:	
No petroleum products were identified in the Item 1 extract.	
The evidence is being retained for personal pickup.	
Attest:	
I certify that I performed the above analysis or examination as an employee of and in a laboratory operated by the Division of Forensic Science, and that the above is an accurate record of the results of that analysis or examination.	
 Thomas P. Simpson Forensic Scientist	

Figure 62: Agent Watson Considered Michael Ledford a Victim, Not a Suspect

We have already noted that the analysis was negative for any petroleum product. No gasoline, lighter fluid, paraffin, or other hydrocarbon was detected, even in extremely minute amount.

Of interest here are the sections of the report identifying the victim or victims, and the suspect or suspects. Someone informed Thomas P. Simpson, the forensic scientist at Western

Laboratory, that Michael Ledford was a victim of the fire. We presume that person was Special Agent James Watson.

Also, someone declined to inform Thomas Simpson that anyone was suspected of setting the fire. Once again, we assume that person was Special Agent James Watson.

Even after his fire scene investigation, Special Agent James Watson considered Michael Ledford a victim of the fire, rather than an arson suspect.

9.5 Agent Watson's Fire Scene Investigation Report

Agent Watson submitted his fire scene investigation report on October 20. That was 10 days after the fire, 8 or 9 days after Agent Watson photographed the scene. As you recall, Agent Watson could not then rule out the possibility of an electrical fire. He declared the cause of the fire to be "Undetermined."

EXAMINATION OF ELECTRICAL SERVICE:	Type of Distribution Panel
Was Electrical Service Connected Yes	Breaker Box
Any Electrical Shorting observed in Area of Origin	Can Electrical Shorting be Eliminated as a Source of Ignition
No	No

Figure 63: Agent Watson Could not Eliminate Electrical Shorting as a Source of Ignition

Have All Accidental and Natural Sources of Ignition Been Eliminated
No
ORIGIN OF FIRE: Incendiary <input type="checkbox"/> Undetermined <input checked="" type="checkbox"/> Accidental <input type="checkbox"/> Suspicious <input type="checkbox"/>

Figure 64: Agent Watson Did not Consider the Fire to be Either Incendiary or Suspicious

Agent Watson had the opportunity to mark the fire as "Suspicious." It would have been just as easy to mark it "Suspicious" as it was to mark it "Undetermined." Agent Watson elected not to do so.

As of October 20, no one was apparently suspected of setting fire to the Ledford apartment. Within 6 days, however, Agent Watson would be conducting an "ongoing criminal investigation."

9.6 An Ongoing Criminal Investigation

On October 26, Special Agent in Charge R. J. Scott signed and dated a letter to State Farm Insurance Company. State Farm carried two life insurance policies on Elise Ledford. Agent Scott requested information regarding any and all beneficiaries of those policies.

Of interest at this point is Agent Scott's description of the fire as suspicious, and his mention that Agent Watson was then conducting an "ongoing criminal investigation." See Figure 65 on next page.

DEPARTMENT OF STATE POLICE
P. O. Box 577, Appomattox, Virginia 24522-0577

October 26, 1999

State Farm Life Insurance Company
1500 State Farm Boulevard
Charlottesville, Virginia 22901

Attention: Fay Cooper
Life Health Policy Holder Services Assistant

Re: Elise Michelle Ledford, Victim
UNATTENDED DEATH/SUSPICIOUS FIRE
Our File No. 99-83-02-0458

Dear Ms. Cooper:

It is requested life insurance policy information for Elise Michelle Ledford, (DOB: 9-14-71, SSN: [REDACTED]) be provided this office. This information is to include any and all beneficiaries. An ongoing criminal investigation concerning the serious injury of the victim and death of her infant son is being conducted by Special Agent J. B. Watson, Jr.

Should you have any question, please feel free to contact me at (804) 352-7128. Please be assured it is our desire to cooperate in all matters of mutual interest.

Sincerely,



R. J. Scott
Special Agent in Charge
Bureau of Criminal Investigation

RJS JBW/dw

Figure 65: Agent Watson Considered Michael Ledford a Victim, Not a Suspect

The first indication that Agent Watson considered the Ledford fire a crime rather than a possible electrical fire was actually the day prior to the letter presented above. On October 25, Agent Joe Ritchie interviewed three female colleagues of Elise at her place of employment. Agent Ritchie was then (and may still be) a homicide investigator.

Sometime between October 20 and October 25, Agent Watson's perception of the Ledford fire somehow changed from possible electrical fire to homicide.

We are aware of no forensic, photographic, or testimonial evidence that might have prompted such a change. We are aware only of the claims made by Agent Watson to Michael Ledford (directly and via Officer Ogden) during Michael Ledford's interrogation. We excerpt from that interrogation below. The emphasis has been added.

Ogden: And what they've just done is **they have had an expert come in, that has examined the crime scene, or the fire scene** ... Now, when you take the information that has been gathered here, and then you take the reports that have come in from the lab, **from these experts that have been called in,** ... this is over, it's gone.

Ogden: But Mr. Watson was there, **an expert that I told you about had been there,** and what I'm afraid is based on what they have told me and what you have just told me does not, still does not fit the picture. Doesn't fit the picture. And as long as we have things that don't fit the picture, we're on the wrong road.

Ogden: And [the candles] had to be strategically **placed, according to this expert.**

Ogden: [Your version is] inconsistent with the **reports from the expert.**

Watson: Did he tell you about the [inaudible] when **we had an expert do a time burn** ... which puts you there when the fire was ablaze. So there isn't no doubt that that happened.

Watson: **[W]e talked to a fire expert, this is what happened, where the fire started.** You won't tell the reason why the fire was placed there. Just want to give the excuse that the candle fell over when he closed the door, basically. **But experts will testify that knows the candle was not on, in the coffee table.** It was set in a different location that ignited something that caused the fire.

Watson: **[T]he experts will say this is where, where the fire was set** and you insist the candle was over here somewhere.

Agent Watson conceded, while interrogating Michael Ledford, that he spoke with experts (plural) about the fire, and that those experts (plural) told him where, when, and how the fire was started. Those experts (plural) must have been the two insurance agents, the investigator and the adjuster, since no one else examined the fire scene.

Insurance investigator Gary Toler conceded during his trial testimony that he did indeed talk to Agent Watson about the fire. The following transcript segments are presented below in the same order they occurred at trial. The segments are not strictly sequential. Other questions, an objection, and a court ruling to allow the witness time to answer were interspersed among them. The emphasis has been added.

Dugan: Well, you talked with Mr. Watson, didn't you?

Toler: Yes, sir.

Dugan: You didn't think he should know that?

Toler: I told him where -- yes, I talked with him on the phone **and told him where I thought the fire started.**

Dugan: Did you think it was important to tell Mr. Watson that you thought this was an incendiary fire?

Toler: **I told Mr. Watson that I could find no accidental cause for the fire.**

Dugan: But you must have talked with him?

Toler: Yes, I talked with him.

Dugan: So, do you think if Mr. Watson said that -- in response to 'Have all accidental and natural sources of ignition been eliminated' and he said "No," he's wrong?

Toler: I don't have any idea what Mr. Watson was thinking when he wrote that report, sir.

10. THE POLYGRAPH EXAMINATION OF MICHAEL LEDFORD

Chapter Summary: The police asked Michael Ledford if he would take a polygraph examination and Michael willingly agreed. The examination questions were phrased to increase the likelihood that the polygraph test would indicate deception. The test nonetheless did not indicate deception. The polygrapher scored the test as Inconclusive. The polygrapher, however, told Michael that the test provided incontrovertible proof that Michael was lying. Given the biased nature of the questions and the confirmation bias of the polygrapher, the Inconclusive finding is indicative of Ledford telling the truth when he denied numerous times that he had any involvement in starting the fire.

After being administered a polygraph examination and subjected to an interrogation, Michael Ledford confessed to starting the fire in the Ledford apartment by placing a lit candle in the upholstered chair near the entry door. Though he quickly recanted the confession, he was convicted of arson and murder based on that confession.

The entire polygraph / interrogation / confession session was recorded on video. That recording was provided to the defense. The Commonwealth had the confession portion, and only the confession portion, transcribed by a professional. That portion, and only that portion, was shown to the jury.

As part of our investigation, we transcribed the video in its entirety. We include our transcription as an appendix to this petition. We include also a digital copy of the entire video, viewable on any standard computing system, to allow comparison of our transcription against the video record.

In this petition, we consider Michael Ledford's confession in four chapters: the polygraph examination, the role of the interrogators in false confessions, the interrogation of Michael Ledford, and his confession.

In this chapter, we will explain that the polygraph examination did not indicate deception when Michael denied starting the fire.

In the next chapter, we will explain how standard police interrogation techniques can inadvertently prompt false confessions.

In the chapter after next, we will explain how a false representation of the polygraph results helped convince Michael that he had indeed started the fire.

In the fourth in this series of chapters, we will explain how the photographic record proves that Michael confabulated the details of his confession.

We will, in summary, show that Michael Ledford's confession was false.

10.1 Overview

Michael Ledford was administered a polygraph examination on November 10, 1999, one month after the fire. The polygraph was followed immediately by an interrogation that led to a confession. The polygraph, the interrogation, and the confession occurred sequentially, without interruption, during the same session.

The polygraph examination was administered by Virginia State Police Special Agent Stanley P. Ogden, who was then assigned to the Bureau of Criminal Investigations. Not only did Polygrapher Ogden administer the polygraph, he conducted more than 80% of the interrogation, though he was admittedly unfamiliar with the case.

The recording of the polygraph examination began at 9:53 AM when both Michael Ledford and Polygrapher Ogden were sitting in the examination room. Michael Ledford can first be heard saying: "So that's what one of those things looks like."

For the purpose of this petition, we treat the polygraph phase as ending two hours later, at 11:51 AM, when Polygrapher Ogden began the interrogation phase by showing Michael Ledford the polygraph charts and saying: "Let's take a look see."

10.2 The Comparison Question Test

Polygrapher Ogden administered what is known as a Comparison Question Test. The CQT is by far the most frequently administered form of polygraph examination. As do all types of polygraph examination, the CQT assumes that a test subject's elevated breathing, heart rate, and perspiration are accurate indicators of deception. Though that premise is found wanting both by independent scientific bodies and by our courts, this petition does not rely one way or the other on the validity of polygraph testing.

We will instead address in this petition Polygrapher Ogden's assurances and Michael Ledford's belief that the tests are accurate, even more accurate than one's own memory.

Beyond a fundamental assumption that physiological changes are indicators of deception, the CQT assumes that a subject will respond more noticeably to so-called "relevant" questions than to so-called "comparison" questions. The relevant questions used in Michael's examination were:

- Did you intentionally start that fire which resulted in Zach's death?
- Regarding that fire which later caused Zach's death, did you intentionally start that fire?

The comparison questions used in Michael's examination were:

- Between the ages of seventeen and twenty, do you remember hurting someone?
- During the first seventeen years of your life, do you remember hurting someone who trusted you?
- During the first twenty years of your life, do you remember hurting someone to get even with them?

Only relevant and comparison questions are used in scoring the subject as Truthful or Untruthful, or declaring the examination to be Inconclusive.

Interspersed among the relevant and control questions are non-scoring questions. The non-scoring questions are included to pace the examination, calm the subject, and assist the polygrapher in determining whether the subject is too nervous for examination. The non-scoring questions used in Michael's examination were:

- Is your first name Michael?
- Were you born in 1976?

- Do you believe me when I promise you I won't ask a question we haven't gone over word for word?
- Even though I promised you I would not, are you afraid I will ask you a question we have not gone over word for word?
- Regarding whether you intentionally started the fire which caused Zach's death, do you intend to answer truthfully each question about that?

Polygrapher Ogden previewed all ten questions for Michael before connecting him to the polygraph machine. Polygrapher Ogden assured Michael that he would not ask any questions other than those listed above. He did not.

Once Michael was connected to the machine, Polygrapher Ogden asked Michael three sets of nine questions. During the first and last set of questions, Polygrapher Ogden did not ask Michael the question about his year of birth. During the second set of questions, Polygrapher Ogden did not ask Michael the question about his name.

In each set of questions, Michael answered "No" to each relevant question and to each control question. "No," he did not start the fire. "No," he never hurt anyone.

In each set of questions, Michael answered "Yes" to each non-scoring question. "Yes," his name was Michael. "Yes," he was born in 1976. "Yes," he trusted Polygrapher Ogden. "Yes," he intended to tell the truth.

During the questioning, Polygrapher Ogden wrote briefly on the strip chart as each question was being asked and answered. We assume he was numbering the questions on the chart for future reference. He later referred to segments of the strip charts by question number.

After each set of questions, Polygrapher Ogden removed the strip chart from the machine and used a large straight-edge to draw horizontal lines along the chart. We assume he used those horizontal lines to compare the peak responses from the relevant questions with the peak responses from the comparison questions.

The dirty, no-so-little secret behind a Comparison Question Test is that the subject is expected to lie while answering the comparison questions, despite pre-test admonishments to always tell the truth. In fact, comparison questions are sometimes referred to as probable-lie questions. With respect to Michael's comparison questions, all of us know that we hurt someone somehow when we were younger. The strictly honest answer for anyone would therefore be "Yes."

Michael Ledford in fact volunteered, during the pre-test interview, various relatively-minor, hurtful acts he had committed earlier in his life. Despite those admissions (perhaps because of them), Polygrapher Ogden wrote each of his control questions to ask about hurting someone. Polygrapher Ogden fully expected Michael to deny ever hurting anyone, even though Michael had just volunteered that he had.

Polygrapher Ogden, as it turned out, was correct. Michael Ledford denied ever hurting anyone. The curious aspect about the test is that it would have been invalidated had Michael answered "Yes" to the probable-lie questions. Polygrapher Ogden knew this. Michael Ledford did not.

During a CQT, a negative verbal response to the comparison questions is expected and is absolutely necessary for the test to be scored. The physiological response to the relevant questions can then be compared against the physiological response to the comparison questions.

- If Michael's physiological response was **greater** when he denied starting the fire than when he denied ever hurting someone, the assumption would be that Michael was being Untruthful when he denied starting the fire.
- If Michael's physiological response was **less** when he denied starting the fire than when he denied ever hurting someone, the assumption would be that Michael was being Truthful when he denied starting the fire.
- If Polygrapher Ogden and his polygraph machine could not detect a different level of physiological response between the relevant and the comparison questions, the test would be deemed Inconclusive.

Polygrapher Ogden indicated in his report that Michael Ledford's polygraph examination was Inconclusive. In other words, Polygrapher Ogden reported that Michael's physiological responses to the "Did you start the fire?" questions were indistinguishable from Michael's physiological responses to the "Did you ever hurt anyone when you were younger?" questions.

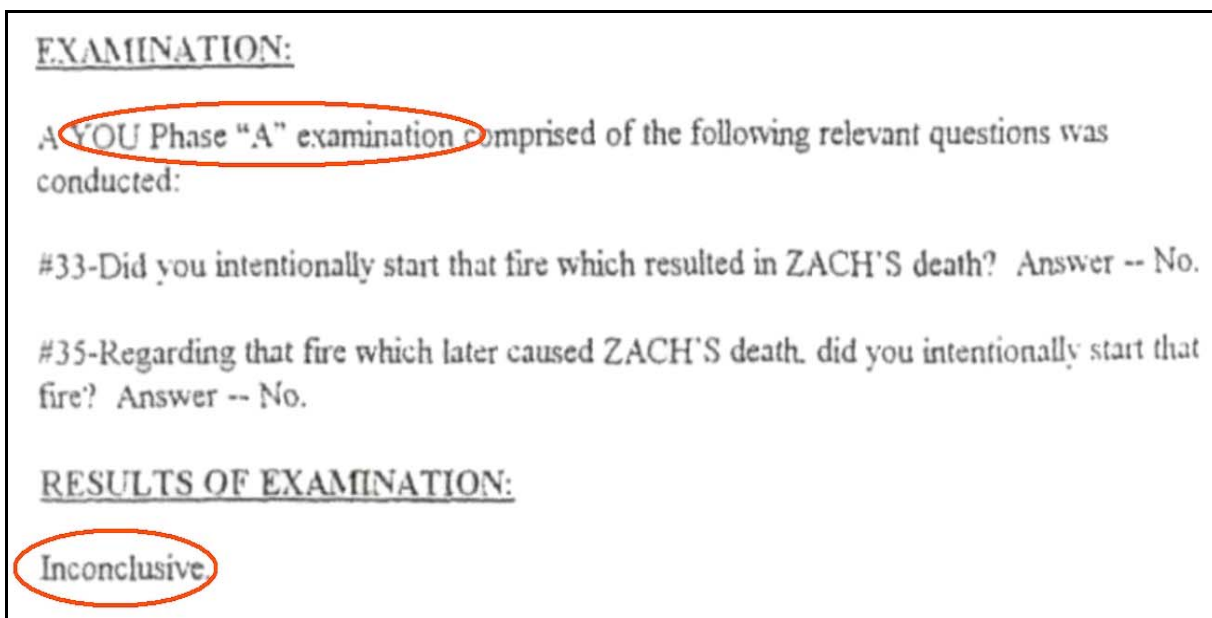


Figure 66: Polygrapher Ogden Officially Ruled Michael Ledford's Polygraph Exam Inconclusive

10.3 Emotionally Charged Relevant Questions

There are various versions of the Comparison Question Test. As we can see from Polygrapher Ogden's report, he administered a YOU Phase variant of the CQT. This standardized variant addresses a single issue. The format provides for two or three relevant questions, worded slightly differently from one another, addressing a single issue and degree of involvement.

Polygrapher Ogden, however, deviated from the standard. His relevant questions did not address a single issue. They did not just ask Michael Ledford whether or not he started the fire. They also asked, in effect, whether or not Michael murdered his own one-year-old son.

We suggest a more properly worded question would have asked Michael only if he started the fire. The inclusion of Zachary's death in each of the relevant questions added a powerful emotional element that could cause a physiological response unrelated to Michael's truthfulness or deception.

In fact, Polygrapher Ogden's relevant questions were so emotionally charged that Michael's physiological response started while the question was being asked, even before Michael began his answer. The transcript segment below took place while Polygrapher Ogden was showing the strip-chart results to Michael.

Ogden: This is the other question here, you know, "Did you intentionally start that fire regarding, that fire which later caused Zach's death?" "Did you intentionally start the fire?" Look what happens right here. **As soon as I started asking you that question** how your blood pressure changes, right there, and also up here in the green. [Emphasis added]

Even though the relevant questions were emotionally charged, unnecessarily so and contrary to the standardized procedure, Michael's physiological response to those questions was no greater than his physiological response to the comparison questions asking "Did you ever hurt someone earlier in your life?" We know that because Polygrapher Ogden scored the examination as Inconclusive.

10.4 Emotionally Diminished Comparison Questions

Not only did Polygrapher Ogden improperly charge the relevant questions with emotional content, he deprived the comparison questions of significance. The following transcript segment is from Polygrapher Ogden's pre-test questioning of Michael Ledford. In the segment, Polygrapher Ogden informs Michael, intentionally or carelessly, that when talking about hurting someone, Polygrapher Ogden is referring only to substantial, willful hurting. The emphasis has been added.

Ledford: Everyone that knows me knows that Elise and I did have minor arguments that were just basic, you know, marital ones that were stupid ... you know, I never, never physically hit my wife in anger. I never physically hit my son in anger. The only time I hit my wife was once, a couple times we were playing around on the floor, well, I backhanded her accidentally. Another time I had a nightmare and I hit her, but other than that I never did it in anger.

...

Ogden: You told me earlier that you and your wife have been married for about a year or so?

Ledford: Yeah.

Ogden: And, uh, there have been some times that you have had some arguments of some kind or the other but that you have never hit her or anything like that?

Ledford: Yeah.

Ogden: **Other than the little accidents?**

Ledford: Right.

Ogden: **Anytime you play around there's going to be a little scratch here, a little scratch there. Have you ever really thought about seriously hurting her, get angry to the point where you want to hurt her?**

Ledford: Naw. I love her with all my heart. I would never do anything [inaudible].

Polygrapher Ogden had just advised Michael Ledford that he [Ogden] did not consider accidental, minor incidents to be significant. Polygrapher Ogden reinforced that perception repeatedly during the pre-test, non-scoring, preview questioning.

Ogden: I will be reviewing with you ten questions but I will only be asking you nine of ten questions each time we go through it, so there will always be one question that's left off. What I need you to do, of course, is to **answer the questions truthfully**. Listen to the questions. Don't read anything into them, don't take anything out of them. Answer the questions in review with Yes or No answers the same way you would if you was hooked up to the polygraph instrument. If you need to explain any of your answers, you're free to do that now. We can talk as much as we want, but during the test, all I want is Yes or No answers. ... The first three questions that I am going to go over with you is going to deal with the fire and Zachary's, Zach's death, and we'll be looking for whether or not you're the one who set the fire, and whether or not you intend to tell the truth about it. There's also another category on there that's going to take you to particular time periods in your life. **Please stay within the time periods that I give you**, and we're going to talk about certain people, and stuff like that. That just gives me some background on you, and **let's me know whether you're the type of person that would be capable of doing something like this.** ...

Ledford: Okay.

Ogden: ... Did you intentionally start that fire which resulted in Zach's death?

Ledford: No.

Ogden: Regarding that fire which later caused Zach's death, did you intentionally start that fire?

Ledford: No.

Ogden: Regarding whether you intentionally started that fire which caused Zach's death, do you intend to answer truthfully each question about that?

Ledford: Yes.

Ogden: **During the first seventeen years of your life, do you remember hurting someone who trusted you?**

Ledford: **No.**

Ogden: **Now, between the ages of seventeen and twenty, do you remember hurting someone?**

Ledford: **No.**

Ogden: **During the first twenty years of your life, do you remember hurting someone to get even with them?**

Ledford: **No.**

Ogden: Is your first name Michael?

Ledford: Yes.

Ogden: And were you born in 1976?

Ledford: Yes.

Ogden: Do you believe me when I promise you I won't ask a question we haven't gone over word for word?

Ledford: Yes.

Ogden: Even though I promised you I would not, are you afraid I will ask you a question we have not gone over word for word?

Ledford: No.

Ogden: Now Mike, that's all the questions that's going to be on the test. ... **Do you feel like the questions I have presented to you are fair questions?**

Ledford: **Yes.**

Ogden: Do you understand all the questions?

Ledford: Yes.

As mentioned previously, this specific round of questions was a preview. Michael was not connected to the polygraph. The preview was conducted to insure that there would be no confusion during the test. As far as Michael was concerned, there was no confusion. As far as he was concerned, Polygrapher Ogden would only ask about intentional, serious harm. Polygrapher Ogden had made clear he was not interested in incidental, accidental, minor harms. "Anytime you play around there's going to be a little scratch here, a little scratch there."

Instead, Michael believed that Polygrapher Ogden was interested only in any serious harm, intentionally inflicted. The questions would allow Polygrapher Ogden to determine whether Michael was "the type of person that would be capable of doing something like" intentionally starting "that fire that resulted in Zach's death."

After all, Michael had just answered "No" three times in succession to questions about harming someone. Polygrapher Ogden had instructed him to "answer the questions truthfully" and Polygrapher Ogden wanted all the questions to be fair and understandable. But Polygrapher Ogden didn't say anything to Michael about answering "No" to the pre-test questions.

Polygrapher Ogden, however, was of an entirely different mindset. His examination depended on Michael answering "No." He felt he had excluded Michael's admissions to unintentionally hurting Elise by restricting his control questions to the time before Michael was twenty years old. Polygrapher Ogden clearly stated "Please stay within the time periods I give you."

It seemingly did not occur to Polygrapher Ogden that his instructions were far too convoluted and far too subtle for most people to understand. It seemingly did not occur to him that Michael might have sincerely believed he was answering the probable-lie questions truthfully, at least according to the guidance given him.

By diminishing the significance of the control questions and increasing the emotional content of the relevant questions, Polygrapher Ogden artificially increased the possibility that Michael Ledford would show a stronger physiological response to the relevant questions than to the control questions. However, even with the questions heavily biased against Michael Ledford, Agent Watson was unable to detect any deception.

We know that because Agent Ogden scored the test as Inconclusive.

10.5 Confirmation Bias

Science Daily offers the following explanation of confirmation bias.

In psychology and cognitive science, confirmation bias (or confirmatory bias) is a tendency to search for or interpret information in a way that confirms one's preconceptions ...

Confirmation bias is a phenomenon wherein decision makers have been shown to actively seek out and assign more weight to evidence that confirms their hypothesis, and ignore or underweigh evidence that could disconfirm their hypothesis.

Confirmation bias is one of the many pitfalls associated with polygraph examinations. A 1968 segment of *60 Minutes* revealed how insidious the problem can be. The producers hired three polygraphers to investigate the theft of an expensive camera from the office of a photography magazine. The office was staffed by only four employees, and only one of the employees could have stolen the camera.

None of the polygraphers was aware that two other polygraphers had or would investigate the crime. Each polygrapher separately examined all four employees, and all four employees denied stealing the camera. Each polygrapher was told beforehand which of the four employees was the most likely suspect. Each polygrapher was given a different name for the likely suspect.

After each polygrapher finished examining all four employees, the polygrapher declared one of the employees to be Untruthful and three of the employees to be Truthful. In each case, the polygrapher fingered the person identified before testing as the Untruthful suspect.

Since the three polygraphers identified three different employees, at least two of the polygraphers must have been wrong. As it turns out, all three polygraphers were wrong. There had been no theft. The producers had simply lied to the polygraphers about the theft, just as the polygraphers would lie to the employees about the comparison questions. The only truthful participants in the investigation were the employees, the ones subjected to the polygraph examinations. All the employees were truthful when they denied stealing the camera.

In three out of three cases, the polygrapher conducted his four examinations while having a bias against one of the subjects. In each case, the polygrapher was unable to keep his bias from becoming the sole determinant of the subject's guilt. Neither the equipment nor the subjects' truthfulness had any impact on the outcome of the examinations.

As Polygrapher Ogden conducted the polygraph examination of Michael Ledford, Polygrapher Ogden believed Michael to be guilty. We know this to be so because Polygrapher Ogden immediately and repeatedly accused Michael of lying soon after the examination was complete. Since Polygrapher Ogden did not form his bias during the examination (having ruled the examination to be Inconclusive) and since Polygrapher Ogden had only recently learned of the case from Agent Watson, we can assume that Polygrapher Ogden inherited his bias from Agent Watson just prior to the examination.

Polygrapher Ogden had been placed in the same position as the three polygraphers hired by *60 Minutes* to investigate a theft that never happened. Polygrapher Ogden was investigating an arson that never happened.

Given that Michael Ledford was examined by a polygrapher primed for confirmation bias, and given that the relevant questions were inappropriately loaded with emotional content, and given that the comparison questions were trivialized by pre-test instructions and guidance, it is impressive that neither the polygraph machine nor the examiner himself could detect any sign of deception on the part of Michael Ledford.

Given that Michael Ledford evidenced no sign of deception even under such adverse circumstances, we suggest that a more fair interpretation of the polygraph test results would be that Michael was simply telling the truth.

11. INTERROGATION BASED FALSE CONFESSIONS

Chapter Summary: Empirical and experimental evidence shows that false confessions are, unfortunately, easy to extract. Three actual cases of false confessions are discussed. In each case, a Governor of Virginia eventually intervened to correct a terrible injustice. Three experiments reveal that standard police interrogation techniques cannot only cause a subject to falsely confess, but to actually believe he committed a crime he did not commit.

There can be no doubt that false confessions occur with distressing frequency. The national Innocence Project reports that in 25% of all DNA exonerations, factually innocent defendants made incriminating statements, pled guilty, or delivered outright confessions.

In 2003, Rob Warden studied the role of false confessions in Illinois homicide prosecutions since 1970. He found that 33% of the 42 people wrongfully convicted had falsely confessed.

Before discussing the interrogation of Michael Ledford, we will therefore consider some of the empirical and experimental evidence that standard police interrogation techniques cause many people to confess to crimes they did not commit. We will briefly discuss three cases of false confession in Virginia that were later corrected by gubernatorial pardon. We will then briefly discuss three experiments that show such false confessions are unfortunately common and easy to extract.

11.1 The Norfolk Four

In 1997, four Navy service members confessed to the rape and murder of a woman in Norfolk Virginia. Despite recanting their confessions, and despite being excluded by crime scene DNA, each was found guilty. Three were sentenced to one or more life terms in prison. One was sentenced to 8.5 years.

A few years later, police matched the crime scene DNA with that of Omar Ballard, who was then serving time for an unrelated offense. Ballard confessed to the rape and murder, gave an accurate description of the physical evidence, and insisted he had acted alone. He added: "them four people that opened their mouths is stupid."

Though none of the Norfolk Four had ever mentioned Ballard, as they freely implicated others, the police changed their theory of the crime. Ballard was the ringleader but didn't want to implicate the others for fear of being labeled a snitch. The others were accomplices who didn't want to implicate Ballard because they feared him.

In 2005, three of the four petitioned Governor Mark Warner for clemency. Governor Warner did not rule on the petition, and Governor Tim Kaine then considered it. In 2009 Governor Kaine granted a conditional pardon to the three petitioners. In 2009, U.S. District Court Judge Richard L. Williams vacated the murder and rape convictions of Derek Tice, one of the Norfolk Four. In 2011, the United States Court of Appeals for the Fourth Circuit affirmed that ruling.

11.2 David Vasquez

In 1984, the nude body of Carolyn Jean Hamm was discovered in her basement of her Arlington, Virginia home. According to the police reports, she had been assaulted and raped before being hanged from a water pipe.

Two witnesses reported they had seen David Vasquez in the area around the time of the murder. The police escorted Vasquez to the police station and interrogated him. They lied to him about finding his fingerprints at the scene. They fed him information about details of the crime and encouraged him to restate them. They yelled at him when his answers did not conform to the details.

Finally, during his third interrogation session, Vasquez told the police he might have helped the victim "move something." Vasquez began speaking of a dream he had that paralleled the crime. The police recorded only the last 8 minutes of Vasquez' three interrogation sections. In that brief recording, David Vasquez recounted his "dream" of rape and murder.

The person who actually raped Carolyn Hamm was a secretor. That means that his blood type could be determined from his bodily fluids, including his semen. Forensic testing thereby excluded Vasquez as the contributor of the semen stains found at the scene and on the vaginal swabs. That fact, however, didn't cause the police to question the confession. They simply modified their theory to include an unidentified accomplice.

The existence of a hypothetical accomplice is so commonly used by police to buttress an otherwise untenable case that the hypothetical accomplice has become known as The Unindicted Co-Ejaculator. As we have just seen, a hypothetical accomplice was employed in the case of the Norfolk Four and the case of David Vasquez.

Realizing that their client did not stand a chance at trial, given his confession, the Vasquez defense team accepted an *Alford* plea to avoid the capital murder charge. Vasquez was sentenced to 20 years imprisonment.

While Vasquez was serving his wrongful imprisonment, police investigations tied Timothy Wilson Spencer to four eerily similar murders. Three of the murders had occurred in the months before Hamm's murder, and one had been occurred after Vasquez was imprisoned. Though the DNA from the Hamm murder was insufficient to allow testing, given the technology at the time, the DNA from the other four murders proved Spencer to be the rapist in each of those cases.

In 1989, Governor Gerald Baliles pardoned David Vasquez. Regarding her support for the pardon, Commonwealth Attorney Helen Fahey said: "I think everyone involved tried to do the right thing. I think people should know that; that even when the system didn't work, people were doing their job and worked hard. It just didn't work."

11.3 Earl Washington, Jr.

No one argues that Earl Washington was a decent person. No one argues, not even Earl Washington himself, that he did not brutally beat and sexually assault 78-year-old Hazel Weeks. Washington broke into her house to steal the .22 caliber handgun she kept on top of her refrigerator. He planned to shoot his brother with that gun. By his own admission, Hazel Weeks was merely an unfortunate and helpless target of opportunity.

It is therefore not surprising that no one argues Earl Washington was a decent person. Earl Washington, however, was not guilty of the crime for which the Commonwealth nearly executed him.

During Washington's initial interrogation, he confessed to his crimes against Hazel Weeks. When he was soon thereafter questioned about a recent unsolved rape of a young woman, he confessed to that crime. When asked about the unsolved murder of Rebecca Lynn Williams, he confessed to that crime as well.

By the end of a series of interrogations, none of which were particularly aggressive, Earl Washington had confessed to three break-ins, two malicious woundings, one attempted rape, two actual rapes, two robberies, a burglary, and capital murder. Earl Washington confessed to every crime about which the police asked.

The police and prosecutor had plenty of reason to be suspicious of Washington's confessions. So inconsistent were they, so devoid of insight into the crimes, most were disallowed before trial. His confession regarding the murder of Rebecca Lynn Williams, however, was allowed to stand.

With respect to her murder, Washington had been unable to provide her race, her height, or the number of times she had been stabbed. He said he had stabbed her once or twice. She had in fact been stabbed 38 times.

Washington did not know where she lived, though she was killed in her own apartment. He did not know that her door was undamaged. He claimed to have kicked it in.

Washington did not know that her two children were with her at the time she was murdered. He did not know she had been raped.

The jury found Earl Washington guilty of capital murder, though there was no forensic or witness testimony to tie him to the crime. It is well established and not surprising that juries find confessions compelling.

Nine days before his execution, Earl Washington, Jr. was granted a stay when his new defense team petitioned for a state writ of habeas corpus. While the petition was pending, the new defense team discovered a report showing that the Virginia Division of Forensic Science had analyzed semen stains on a blanket from the murder scene. The Commonwealth had dutifully provided that report to the defense, but Washington's trial lawyer had ignored it.

The report showed the semen at the crime scene came from a secretor, from someone with Type A blood. Neither Earl Washington nor the victim's husband had Type A blood. The Commonwealth agreed to subject the biological evidence to DNA testing. That testing confirmed that the stains could not have come from Earl Washington, Jr.

The testing was too late, however, to form the basis of any legal proceeding. Under the law at that time, new evidence had to be presented within 21 days of sentencing. Earl Washington therefore petitioned Governor Douglas Wilder for clemency. Governor Wilder commuted Washington's sentence to life imprisonment. Governor James Gilmore later granted Washington an absolute pardon. After almost eighteen years in prison, most of those spent on death row, Earl Washington finally walked free.

11.4 Experimental Evidence of Interrogation Induced False Confessions

In 1996, researchers Saul Kassin and Katherine Kiechel demonstrated that police interrogation techniques frequently cause subjects to falsely confess. More significantly, their experiment demonstrated that people could easily be convinced they are guilty, though they are not. Many of those persuaded of their guilt confabulate events. They imagine (and believe) details to make sense of a false memory or belief.

In the experiment, 75 undergraduate students were asked to perform an alleged reaction-time test. The subject and a test confederate were seated across a table from the experimenter. The confederate read a list of letters and the subject typed them on the keyboard. The subject was specifically warned not to hit the ALT key, because doing so would cause the program to crash and data to be lost. After 60 seconds of testing, the computer seemingly crashed, and the experimenter accused the subject of hitting the ALT key.

Initially, all 75 test subjects denied guilt. Then, in approximately half the cases, the experimenter asked the confederate if she had witnessed the subject hitting the ALT key. By experimental design, the confederate always confirmed that she had witnessed the subject doing hitting the ALT key, even though none of the subjects had done so. In other words, the confederate was there to provide false evidence of guilt.

In all cases, the experimenter then wrote a standardized confession: "I hit the 'ALT' key and caused the program to crash. Data were lost." The experimenter asked the subject to sign the confession, the consequence of which would be a phone call from the principal investigator. If the subject refused, the request was repeated a second time. Overall, 69% of the subjects signed the confession, though none had hit the forbidden key.

These results might be easily dismissed, since none of the subjects faced any serious consequence for falsely confessing to a relatively inconsequential act. Perhaps that is so. The more interesting portion of the test, however, remains to be described. We shall do that now.

The experimenter escorted the subject from the test area, leaving the confederate behind. In the reception area, the experimenter and the subject encountered the next subject to be tested. The next subject to be tested, however, was also a test confederate. The experimenter explained the test session would need to be rescheduled, then left the room to retrieve his appointment calendar. The second confederate then asked the actual test subject "What happened?" The discussions were surreptitiously recorded and later reviewed to see if any of the subjects had come to believe they were indeed responsible for what had happened.

Only unambiguous expressions of guilt were counted. Examples of unambiguous expressions were "I hit the wrong button and ruined the program" and "I hit a button I wasn't supposed to."

Any expression prefaced with "he said" or "I may have" or "I think" was not counted as a false belief of guilt.

Overall, 28% of the subjects had somehow become wrongly convinced of their guilt during their brief, non-confrontational experience. Even though none of the test subjects had pressed the offending key, and even though none of them had been subjected to the rigors of a police interrogation, 69% of them confessed and 28% of them actually believed themselves to be guilty.

More startling still is the powerful effect of introducing false evidence into the interrogation. In one cohort of test subjects (those subjected to rapid reading of the questions and to false evidence of guilt), 100% of the subjects confessed and 65% of the subjects believed they were indeed guilty.

Clearly, lying to the subjects about the evidence stacked against them can lead to false confessions. It can also cause people to actually believe they committed a crime, though they did not.

During Michael Ledford's interrogation, he was told repeatedly that the polygraph results proved he lied, though they did not. Even the National Research Council recognizes the risk of such a devious interrogation technique. In 2003, their Committee to Review the Scientific Evidence on the Polygraph published *The Polygraph and Lie Detection*. From that report, we find:

False confessions are more common than sometimes believed, and standard interrogation techniques designed to elicit confessions -- including the use of false claims that the investigators have definitive evidence of the examinee's guilt -- do elicit false confessions. There is some evidence that interrogation focused on a false positive polygraph response can lead to false confessions. In one study, 17 percent of respondents who were shown their strong response on a bogus polygraph to a question about a minor theft they did not commit subsequently admitted the theft.

There is still more to be learned from the experiment, beyond the fact that people can be easily prompted to falsely confess, and the fact that many innocent people actually come to believe their guilt. After the experiment was over, the experimenter brought all the subjects back to the lab. He reread the list of letters they had all been asked to type. He asked them if they could reconstruct how or when they hit the ALT key. It was at this point that the experimenters observed evidence of confabulation. Responses showing confabulation were similar to "Yes, here, I hit it with the side of my right hand when you called out the "A."

Overall, 9% of the subjects confabulated details to support their belief that they had caused the computer to crash and data to be lost. The cohort subjected to false evidence of their guilt (and a rapid reading of the letters) confabulated at a much higher rate: 35% of that cohort confabulated details of how they had caused the computer to crash.

As we will soon see, Michael Ledford provided details of the fire that, according to the photographic record, cannot possibly be true. Michael Ledford was confabulating. He was creating details out of thin air to support his interrogation-induced false belief that he had started the fire.

11.5 Experimental Confirmation of Interrogation Induced False Confessions

In 2003, Robert Horselenberg (and two others) reported that they had effectively replicated the findings just discussed. Horselenberg modified the test such that the experimenter himself claimed to have witnessed the subject hit the forbidden key. In Horselenberg's experiments, all subjects were given false evidence of their guilt.

Horselenberg also increased the cost of a false confession. Anyone who confessed would lose 80% of the fee they were to be paid for their participation in the test.

Despite the increased penalty for confessing, a greater percentage of subjects falsely confessed in Horselenberg's experiment (82%) compared to Kassin's experiment (69%). Also a greater percentage were actually convinced of their guilt after Horselenberg's experiment (42%) compared to those subjected to Kassin's experiment (35%).

11.6 Maximization and Minimization Techniques

Lying about incriminating evidence is one many techniques broadly classified as maximization techniques. Other maximization techniques include dismissing the subject's claims of innocence, assuring him instead of his conviction, stressing that no one believes him now and no one will believe him at trial, and implying the penalty will be severe unless he confesses.

At the other end of the interrogation spectrum is a cluster of tactics classified as minimization techniques. These techniques include minimizing the subject's role in the alleged crime, empathizing with him, convincing him the interrogator is interested only in helping him, and implying that the penalty will be minimized if he confesses.

The psychologically based maximization and minimization techniques have replaced the physically based strong-arm techniques of long ago. Implicit threats and promises have now replaced the explicit threats and promises now forbidden by court rulings.

It turns out to be unnecessary to beat a subject, or explicitly threaten him, to extract a confession. Playing with the subject's mind has proved to be just as effective. The new techniques do not seemingly need to be applied with any particular finesse to be effective. Apparently, they need only be applied with persistence and in generous portions.

Just last year, in 2011, Allyson Horgan (and three others) reported that they were able to easily extract false confessions using maximization and minimization techniques. In their experiment, undergraduate subjects and confederates were paired, instructed to work together on some tasks and work independently on others. The confederate at some point asked the subject for assistance on a task to be solved independently, thereby giving the subject the opportunity to cheat by helping.

Some subjects cheated, some did not. This experimental arrangement allowed the experimenters to compare the rate of true and false confessions.

In each case, the experimenter accused the subject of cheating, whether they had or not. The experimenter stated that the supervising professor had been notified, was irritated, and might consider the incident to constitute academic dishonesty. The test subject was asked to sign a statement admitting their participation in the cheating incident.

With respect to false confessions, the result of Horgan's experiment should no longer be surprising. Of those students subjected to standard maximization and minimization techniques, 42% of those who did not cheat confessed they had.

What is new and revealing about Horgan's experiment is the ratio of false confessions to true confessions. Use of standard maximization and minimization techniques caused one false confession for every two true confessions.

Horgan, however, also subjected a different cohort of subjects to modified maximization and minimization techniques. The modified techniques excluded implicit threats of severe punishment and explicit promises of leniency. The modified minimization relied more heavily on sympathy, flattery, and appeal to conscience; the modified maximization relied more heavily on an unfriendly attitude and a firm belief in the subject's guilt.

Surprisingly, the modified techniques resulted in both a higher rate of true confessions and a lower rate of false confessions. The ratio of true-to-false confessions rose from 2-to-1 to nearly 5-to-1.

Coupled with the earlier experiments of Kassin and Horselenberg, Horgan's experiment adds to a substantial body of work that shows false confessions are easily induced. False confessions are particularly easy to induce when the subjects are presented with false evidence of their guilt, implicitly threatened with dire consequences if they do not confess, and implicitly offered leniency in return for confessions.

In other words, the interrogation techniques used against Michael Ledford are now known to frequently result in false confessions.

12. THE INTERROGATION OF MICHAEL LEDFORD

Chapter Summary: The polygraph examination of Michael Ledford was followed immediately by an interrogation conducted primarily by the polygrapher. Though the polygrapher declared in his official report that the exam was inconclusive, the polygrapher assured Michael that the exam provided incontrovertible proof of Michael's guilt. Michael's interrogators lied to him also about the physical and witness evidence. They told him that he had an emotional problem and suggested he needed psychological help. They assured him that he would suffer extreme punishment if he did not confess. They implied he would be treated with leniency if he confessed. As explained in the previous chapter, these techniques not only lead to high rates of false confession, they can actually cause the subject to believe he committed a crime that he did not commit.

During his interrogation, Michael Ledford would be told by the polygrapher the polygraph showed him to be lying when he denied starting that fire. The polygraph examination, as you now know, showed otherwise.

During his interrogation, Michael Ledford would be led to believe that the carpet sample extracted by Agent Watson had come back positive for accelerants. The actual test results, as you know, showed no evidence of accelerants.

During his interrogation, Michael Ledford would be told that experts had established that the fire resulted from an open flame. No such expert had ever made such a claim, as far as can be determined from the investigators' reports and testimony.

During his interrogation, Michael Ledford would be told that experts had placed him at the scene while the fire was burning. No such expert had ever made such a claim, as far as can be determined from the investigators' reports and testimony.

During his interrogation, Michael Ledford would be assured he would be found guilty, and implicitly threatened with extreme punishment.

During his interrogation, Michael Ledford was implicitly offered lenient treatment if he would confess.

Now that we understand the contaminating influence of such interrogation techniques, we are in a better position to consider the interrogation of Michael Ledford.

12.1 The Polygraph Examiner as the Interrogator

At first blush, it might seem odd that Polygrapher Ogden conducted 80% of Michael Ledford's interrogation. Polygrapher Ogden's role was seemingly to make an unbiased determination of truthfulness or deception, just as it was the chemist's role was to make an unbiased determination of the presence or absence of accelerant. Surely no one would suggest that the chemist should have conducted the interrogation of Michael Ledford. Why then did Agent Watson merely observe and advise from another room as Polygrapher Ogden interrogated Michael Ledford?

The answer is that the polygraph examination was not administered to determine truthfulness or deception. The polygraph was administered to confront Michael Ledford with incontrovertible evidence of his guilt, whether or not the test actually revealed any deception.

We know that to be true because his interrogation proceeded apace even though the polygraph examination resulted in no evidence of deception.

Before hooking Michael up to the polygraph machine, Polygrapher Ogden grossly mischaracterized the machine's stature and ability. Polygrapher Ogden assured Michael that the polygraph was a scientific instrument that determined truth regardless of the subject's responses. Even if the test subject believed he was telling the truth but was not, even if the subject was "lying to himself," the polygraph would detect the truth.

Polygrapher Ogden was later more explicit. He told Michael that it was possible for someone to forget the truth for a while but to remember it later. He, Polygrapher Ogden, had personally witnessed that many times.

Ogden: Mike, what I want to do is just take a couple minutes to try to ... explain to you a little bit about polygraph and how it works, what makes it work, what makes you work in conjunction with it. ... **What you see right there on that table is nothing more than a scientific recording device.** ... [Y]ou will be asked a series of questions and to each one of the questions that I ask you, you have to make a decision: whether or not you're going to tell the truth to it or if you're going to tell a lie to them. ... When a person tells a lie, whether to these questions or to anything ... your system ... produces changes within the internal part of the body where you don't feel it. You don't know it, but it's, it's happening. ... What makes polygraph work is this, ... the person that is taking the polygraph, if they were involved in an incident or if they were not involved, they know the absolute truth about it, like no one else knows. ... They know the inside and the outsides of it. **Even the habitual liar, even the, the psychopath** knows the absolute truth about the matter like no one else knows. **And for that reason, they cannot lie to themselves.** And when they try to lie to themselves, then that's what produces these changes that take place. That's why we encourage you, you know, to come in and to tell the truth, because actually what's happening is **this is revealing the truth.** ... **[I]t is really more of a truth detector because it reveals the truth.**

Ogden: I've seen it so many times where, you know, some people do block it out, but I have seen it where it turns back more vivid.

Immediately after the polygraph test, Polygrapher Ogden showed Michael the resulting strip charts. Though Polygrapher Ogden would, in his report, declare the results to be Inconclusive, he nonetheless convinced Michael that the charts were convincing evidence of his guilt.

Ogden: [Y]ou see, it's like it would be your [inaudible] resistance, then comes all the way up here, then in the green, this thing [inaudible]. Now, you see some question here, this question here, number 46 is "Between the ages of seventeen and twenty, do you remember hurting someone?" You see some reaction to that question right here, right there, pretty substantial amount right there, and you see some right up in here. Well what you're doing here is you've, you've reacted some to that question, which tells me **there's somebody out there at that time period that you had hurt that you thought about that you had not told me about.** Then we come to this question here, number 33 which is the question "Did you start, intentionally start that fire which resulted in Zach's death?" See the tremendous reaction to it right there. Up here. This is the other question here, you know, "Did you intentionally start that fire regarding, that fire which later caused Zach's death?" "Did you intentionally start the fire?" Look what happens right here. **As soon as I started asking you that question** how your blood pressure changes, right there,

and also up here in the green. Same thing here. Let's focus, because the unresolved issue, really, as far as we concerned really is going to surround the question about the fire.

Ledford: Uh huh.

Ogden: Notice "Do you intend to tell the truth?" See how consistent with the other charts?

Ledford: Uh huh.

Ogden: Same thing here. Same thing up in here. The question here "Did you intentionally start the fire?" There and there, it's really predominant. There you see something happening, and here you see it happening here. This chart, this is the last chart we did. Right here. Number 35 again. "Did you intentionally start that fire?" With that, with all [inaudible], that's a triple saddle basically, is what we call it. Right here. Look at the reaction there. You didn't really, you know, do that much in the breathing here except that you really slowed your breathing cycle down, and uh, one, two, three, three cycles within that five, ten, fifteen, twenty, twenty-five seconds. One there. Good indication that there's reaction in there. Same thing right here. Same thing here. And then right in here. Now, Mike I'm going to be very honest with you. **There's something about this fire that, and you setting the fire, that bothers you tremendously.**

Ledford: I didn't set the fire.

Ogden: Well, I need to go out here and answer a page. I want you sit here and think about it for just a few minutes. Then I'm going to come back in and we'll sit down and we're going to talk a while. Okay?

Ledford: Okay.

...

Ogden: Now, you are at a point today where you can do just what you really want to do. You can help Mr. Watson to get things cleared up. ... But the main thing that I'm concerned with is not necessarily helping Mr. Watson. I'm concerned with helping you.

Ledford: Uh huh.

Ogden: Okay? You went through a very tragic type thing, and I want to help you get through it if I can. ... Give me just a few minutes and you think about it, and I'll be back in just a second, alright?

Polygrapher Ogden had just employed the maximization technique of lying about incriminating evidence. He had then immediately followed with minimization techniques of expressing sympathy and offering to help. Under the pretense of answering a page, Polygrapher Ogden left Michael Ledford to wonder how he could have possibly failed the polygraph test.

Polygrapher Ogden's mischaracterizations had a powerful effect on Michael. As Michael attempted to rationalize what he thought he knew with what he was being told, he began to confabulate events to make sense of the conflicts. When told repeatedly that he was still not telling the truth, Michael finally accepted that he must have been lying to himself all along, that he simply didn't remember what he had done.

Recall that Polygrapher Ogden assured Michael that the polygraph would detect lies even if the subject did not realize he was lying, even if the subject was lying to himself. When Polygrapher Ogden later asked Michael why he finally decided to confess, Michael replied simply and tellingly. "Because I was tired of lying to myself."

12.2 Polygrapher Ogden Continues the Interrogation

Unfortunately, when Polygrapher Ogden left the room, the audio portion of the interrogation was somehow lost. Even after Polygrapher Ogden returned, 7 minutes and 38 seconds of the interrogation could not be heard. Polygrapher Ogden apparently spent that time assuring Michael of his guilt while minimizing Michael's responsibility. We can reasonably assume that to be true based on the transcript segments from the audio immediately after it had been restored.

Ogden: But there is no doubt in my mind, the fire was intentionally set. **But I don't think it was with the intention that I've come to record, the intention of burning down the entire building.** Uh, it was probably meant more, uh, I won't say as a joke, but meant something along the lines of, uh, uh, an attention getter.

Below, we provide a sampler of transcript segments from the next 25 minutes of Polygrapher Ogden's interrogation of Michael Ledford.

Ogden: You're a fireman. You understand fire. And with this fire right here, if Elise hadn't opened that door, and let the smoke in, it probably wouldn't never hurt Zach. And all it was was maybe just could be a way, because sometimes we do things that help us to reassure our love for one another. And I can almost see that as being the reason why you think some way that the chair would catch on fire, because it would be pretty much confined to that area. Nobody would get hurt. That you could come in, in a way of really showing that you loved Elise and that you loved Zach. And I'm trying to say, I don't think you intentionally deliberately set it with the intentions of harming anyone. You did not do that.

Ledford: I did not set the fire.

Ogden: Well then who did?

Ledford: I don't know. I told you the truth.

...

Ogden: This is what doesn't add up. It doesn't add up, and I can't help you. I've gotta go out here and sit down and go through this thing with Mr. Watson and Mr. Ritchie. And I've got to tell them. Now, you're an intelligent person. You tell me what's going to be the best. If I go out there and sit down and tell them "Hey, **look at these readings, look at these reactions on these charts. Look at 'em.**" But he don't want to help himself." What do you think is going to be the best route? To do that or for me to go out there and be able to sit down and tell them "Listen, you know, he did not intentionally do it to hurt anyone. The fire was meant more as a joke, or practical joke, or something like that." And like I said before, you didn't open that bedroom door to let the smoke in, so you know that doesn't hang on you with Zach. What do you think is the best?

Ledford: I don't know. I'm just telling you the truth. I did not set the fire.

Ogden: No! No! That's the problem. **The full truth has not been put out today. And you saw it yourself. You pointed it out right on here to me. You saw it.**

Ledford: If I was going to set a fire as a joke, one I'm not going to have my family in the building. Two, I'm not going to do it in the same building as I live in. If I was going to set a fire to put harm on someone, I certainly wouldn't have wanted, I wouldn't have wanted to hurt my family.

Ogden: I mean, I don't think you did want to hurt your family. I think you wanted to save your family.

Ledford: Why would I have started a fire in my own apartment?

...

Ogden: You tell me.

Ledford: I am telling you, I did not start the fire.

Ogden: People do it because they do it. People do it because they do it, that's only a question you could answer. And only you can answer that. So you tell me.

Ledford: I didn't start it.

Ogden: Who did?

Ledford: I don't know, but it wasn't me.

Ogden: [Deep sigh.] I see you want me to go out there and you want me to tell them that **he's got all these strong reactions on the polygraph. That, that he sees them, he admits that they're there, but he don't wanna admit that he set the fire.**

Ledford: The only way I can say, sir, is do what you need to do, but I am going to claim my innocence until the day I die. I did not set the fire that took the life of my son and damned near took the life of my wife. There is no way in hell I'd have ever done that.

Ogden: I'd like to believe that. ... I'd would really like to believe that.

Ledford: If I deliberately set that fire, may God strike me dead now. I did not set the fire.

Ogden: Well you know and understand he has the power to do that.

Ledford: Right.

Ogden: He has the power to do it, but for some reason he usually doesn't choose to do that now. And that's a very, very brave statement to make, but for some reason God doesn't always see in our day and time choose to do that.

...

Ogden: Now, do you think that you could convince a jury that the front door being locked at your house, it's possible for anyone else to get in? People could see, being seen, neighbors coming in, going out, this that or the other, no one else seen going into your apartment. What happens if someone says they saw you leave the apartment, and you go just this very, very short period of time? Now that doesn't leave but two people to start the fire. That's you and that's Elise. And it's, really, I think when the investigation is done and said, it's gonna prove she did not do it. And it doesn't leave but one person at just the right time.

...

Ogden: The only reason you wouldn't open that front door is because you knew where the fire was at. You knew the fire was by that door. That's the only reason, that's the only reason, is that you knew the fire was by that door. That's the only way you would have known that the fire was concentrated there in that area is because you're the one that set the fire.

...

Ogden: Now, you know, the only thing you're gonna do today is you're just gonna put it off for a while. Because when this investigation is fully complete, then it's gonna reveal exactly who set that fire. It's gonna reveal that. And when it reveals that you set the fire, then you're gonna be at a point, Mike, to where nobody can do anything to help you. Nobody can do anything to help you. And that's what you need to think about. You know, you've already lost enough, and as I've told you before, you know, you already decided to get the matter cleared up. **Because if you don't, the only option you leave me is to say, is to say one of two things: that you set back and planned this thing out and planned it out, and planned it out, and planned it out with the intention of either hurting your wife or your child;** or it was one of those things that happened. This may be there that afternoon because of some events that took place or whatever, that you probably you got provoked, and without really sitting down and thinking about it fully, you just kinda did it on the spur of the moment type thing. Face it, while maybe we've had our little struggles or whatever, I need to reassure her that I can take care of her. Now I can do this. **You set the fire, you leave, maybe come in and be the hero. That's fine, and I can respect you for that.**

Ledford: I am not in the fire department to be a hero.

Ogden: You're not?

Ledford: No.

...

Ogden: Well, then, what would be our other option? That you did it deliberately with the intention of killing both the wife and the child? ... That, that you intended to burn the entire apartment complex down?

Ledford: No, because I didn't set the fire.

Ogden: I don't think that's really a matter of question anymore.

Ledford: Why would I set a fire to take the life of my wife and son who I love dearly?

Ogden: Because you don't love them or didn't love them as much as you're sitting there trying to make me believe. ... The only thing that comes back around the spectrum is that you set the fire intentionally. **And I can tell you from the preliminary reports that have come in, that the fire was set intentionally. It had to take direct contact.** It had to come from that. ... You set the fire with the intentions of killing your wife and your child. ... I wanted to give you the benefit of the doubt that maybe something happened that afternoon at your house with your in-laws, at the birthday party. Maybe something happened there ... but now I have to stop and I have to think this thing was in the planning for a long time. That may be the thing that pushed the button, that pushed the button, and gave you the courage you needed to do it, for what ever reason, for whatever reason.

Ledford: October 10th 1999 was just a regular day.

Ogden: Yeah?

Ledford: A very good day.

Ogden: And I believe, and I think you're convinced of that. It was a very good day ...

Ledford: I had no ...

Ogden: ... number one, **it was a good day, Mike, because** that was the day you successfully nearly killed your wife and **that was the day you successfully killed your son.** That's what you had been planning. That's what you had in your heart, and that was your motive and that was the reason it was a good day.

By this point, Polygrapher Ogden had become angry and was raising his voice. That is generally considered to be ineffective as an interrogation technique. For that reason or for some other reason, Polygrapher Ogden left the room for a second time to coordinate with Agent Watson.

12.3 Polygrapher Ogden Persists

Keep in mind that Polygrapher Ogden was allegedly an unbiased polygraph examiner who had determined that the polygraph examination showed no evidence of deception. Agent Watson nonetheless preferred that Polygrapher Ogden continue the interrogation. Polygrapher Ogden returned, much composed, after an absence of 6 minutes and 33 seconds.

Upon returning, Polygrapher Ogden calmly intensified the maximization techniques. He told Michael that experts and witnesses put him at the apartment when the fire started. He suggested to Michael that Agent Watson had damning reports from the crime lab and that more will be coming in. He asked Michael if he knew what it would be like to be caged up like an animal.

Polygrapher Ogden then told Michael that things could be easy or hard for him, depending on whether or not Michael confessed.

Ogden: I just talked with Mr. Watson. And I talked to Mr. Ritchie. ... Mr. Ritchie is, I guess you can say our resident expert on homicide investigations. **Anytime there is a homicide or murder, he's the one that's called to do the crime scene investigation.** He's the one called in to do the particular canvassing of the area to make sure the witnesses that are going to talking and all this stuff. He's also the one that has the link that ties in for contacting other expert witnesses. And what they've just done **is they have had an expert come in, and that has examined the crime scene**, or the fire scene, and they have also done the canvass, interviewing people throughout the neighborhood, not just your neighbors, but throughout that entire neighborhood. Number one, the report that has come in from that, shows that the establishment of the time for the fire. And ... by doing that examination and then doing the canvassing of the neighborhood, **they have got eyewitnesses.** Not one, but several eyewitnesses **that can put you there at the apartment at the time this expert says that fire started**, having you leaving the apartment. Now I'm not going to sit here and I'm not gonna brow beat you today. That's not my purpose. The only thing I'm interested in is the truth. You're at a point to where you have to make a decision. You're at the crossroads today. You're right up here. You either have to go off to the right, which leads you absolutely nowhere, or you've gotta go over here where you can get help. Help for you and help for the family. You can get that second chance that you say you think people deserve. And I'm of the frame of mind just like you. I believe that people deserve a second chance. Everybody makes silly mistakes in life. Now, when you take the information that has been gathered here, and then you take **the reports that have come in from the lab, from these experts that have been called in, and from what Mr. Ritchie tells me**, the next step that they have to do after this is, as far they're concerned, **this is over, it's gone.** It just verifies for them what they already know. Their next step is to go down here to the Commonwealth Attorney's office. And when they go down to the Commonwealth Attorney's office, they're gonna lay it out for him and he has to make a decision. Once they do go to that court, then when this left line that takes you off to where you can get help, that road is blocked. It is closed. It is not to be

opened any more, and it's always been, this is the ballgame. And I hate to tell you, you should already know what takes you up this road. **Now I don't know if you've ever been caged up like an animal or not. But that's exactly what's at the end of this Y right up here. Okay?** You have to make a decision today. Which one of those roads you want to take. And I mean they're not going to pull any punches on you, except to cooperate with you the same way you cooperate with them. That's a decision you have to make. The ball is in your court. You have to make that decision. **I'm going to be very frank with you, it's not a question anymore of who set the fire. They know that.** And it probably, even before this day is over, **more reports** from the stuff that they have done, **and take to a lab** or whatever, **will probably be coming in.** You know, each day it's going to seal it tighter and tighter and tighter. This is your opportunity to give your true version of what happened. Because I can tell you that from the witnesses they have talked to, things are said differently than your version of the story. Things are said differently. And all of these people will be subpoenaed. All of these people will be brought in to testify. **Now, it's an easy road or it's a hard road. It's a simple as that.** It's your turn.

Ledford: [inaudible]

It seemed that Polygrapher Ogden's lies about additional incriminating evidence, the overt threat of severe punishment, and the thinly veiled offer of lenient treatment were, at least initially, ineffective. We realize from Ogden's response to Michael's [inaudible] statement, that Michael had once again denied starting the fire.

Polygrapher Ogden then attempted to convince Michael that he had a psychological problem, that he needed psychological help.

Ogden: That's not gonna help you. That puts you off on this right hand road that's going up to a dead end. Absolutely nowhere. That's not going to help you. You've got to come back and get on the right road. **You've got to get help. You need help.** You've got to get help. And the only way you are gonna get it is to, to help yourself. Now, if you was an alcoholic or a drug addict, then how would you get help? **First of all you've got to admit "I've got a problem."** It's the same thing here. You got a problem. You've got to get the help that you need. **You've got a psychological problem,** if you want my personal opinion. You can get help for that. Do it before it is too late. That is up this road, not down that road. **The only thing that will get you that help, Mike, is for you to take it on yourself, to stand up and make the admission you need to admit.**

That technique worked, at least in convincing Michael he had a psychological problem. Michael would eventually preface his confession by admitting he had a psychological problem, asking for help, and asking to be kept away from other people.

After Ogden suggested to Mike that he had a psychological problem, there was a fifty-four second silence in the interrogation. Polygrapher Ogden seemed to realize Michael was getting ready to break. Michael was trying to make sense of what he believed versus what he was being told. He believed he had not set the fire but he was being told he had. The lie detector said he was lying. The experts said he was lying. The witnesses said he was lying. The lab results said he was lying.

It was at this point that Michael displayed the first indisputable signs of confabulating details. To make sense of everything, Michael began to remember in minute detail events that never took place.

In the segments that follow, you will see the effect the interrogation techniques had on Michael Ledford. The lies about the evidence, the implicit threats of harsh treatment, and the hints at leniency had not fallen on deaf ears. They had been having their intended and expected effect. Despite Michael's stoicism to this point, he would soon be in tears, sobbing and difficult to hear.

Ledford: Alright, here's the truth. Before Elise went to bed, we shut the lights off, we watched TV, and we had two candles burning. When I left, I shut the light, uh, I turned the light back on, and I was pretty certain up to this point in time now, mainly because I was scared, that I did blow out the candles. But now I'm thinking that apparently I didn't. And something caused the candles, at least one them to fall. That is the God's honest truth.

Ogden: Where were those candles sitting?

Ledford: They would have been sitting right on the same nightstand type table that the lamp was on. One was sitting right next to, one was, okay the table was here, the chair was here, there's one candle here, the lamp was kinda in the middle towards the back and then there was another candle by the couch.

Ogden: Why didn't you tell me about the candles before?

Ledford: I was afraid I would react because I'd be scared to death.

Ogden: Why were you scared?

Ledford: I was afraid that if I said anything about the candles that I would be charged with killing my child, and attempting to kill my wife. And like I said in the beginning, I would never have done anything to hurt them. I keep thinking every day ...

Ogden: Right.

Ledford: ... I keep telling myself that I know he died, there's something wrong.

Ogden: That's what I see here. [Ogden points at the polygraph strip charts]

Ledford: But I just keep [inaudible] because I was afraid. [Crying] I was afraid that my family wouldn't love me anymore. I was afraid that my wife [inaudible] would leave me. I was afraid that my friends would not want to associate with me anymore. And I was afraid that somebody wouldn't believe me. [inaudible] with all my heart and [inaudible] ...

Ogden: I really don't want any more of that.

Ledford: Every morning when I get off work, I go down to the fire house and I sit on the *America La France* fire truck and I just talk to him. **And I tell him every day "If I did it, please forgive me."**

Ogden: **Well Mike, it's not an if. It's there's no doubt. And I mean that.**

One need only examine the photographic record to see that Michael was by this point confabulating. Michael was quite specific about the location of the candles. "They would have been sitting right on the same nightstand type table that the lamp was on. ... There's one candle here, the lamp was kinda in the middle towards the back and then there was another candle by the couch."

Consider now the single photograph taken by Agent Watson that showed the items on the table in their nearly undisturbed, post-fire state. That photograph is presented with annotations in Figure 67 below.



Figure 67: No Evidence of Candles or Candle Holders on End Table

The lamp is clearly visible. No candles, however, are anywhere to be seen, in this photograph or any other photograph taken by any of the investigators. Nor are any candle holders visible, nor any candle wax. Nor is any space apparent where the candles or candleholders might have been. The table was pretty much occupied by the lamp, multiple family pictures, two large drinking mugs, and a decorative bowl.

The two plastic mugs remain clearly visible, melted to the table. They were not consumed completely by the fire. Are we to believe that two candles and two candleholders were consumed so thoroughly that not a hint of them remained, not even a shadow of where they might have been?

We know as well that Michael Ledford was not merely telling Polygrapher Ogden what Polygrapher Ogden wanted to hear. The following transcript segments make that obvious.

Polygrapher Ogden began feeding Michael a story line that would support the police theory. The police by then theorized (for some unknown reason) that an open flame had been applied at floor level to the back of the chair, near the end table. Instead of following Polygrapher Ogden's less-than-subtle cues, Michael continued to confabulate, placing (in his mind) the

candle precariously close to the corner of the table, though the picture shows there was no room to do so.

Ogden: You know, I was not there. I did not see the chair, you know. I can only go on what the pictures have painted for me. But Mr. Watson was there, an expert that I told you about had been there, and what I'm afraid is based on what they have told me and **what you have just told me does not, still does not fit the picture.** Doesn't fit the picture. And as long as we have things that don't fit the picture, we're on the wrong road. We got, **did you set the candle down there by the chair?**

Ledford: No. I thought I blew it out. It was left on the table.

Ogden: No. Did you set the candle maybe over close to the edge of the table so when you went out the door ...

Ledford: I had it close to the, I had it in the corner.

Ogden: Okay. **Knowing that when you went out, pulling that door extra hard that it would fall off into the chair?**

This is the very first mention of a candle falling or being placed into the chair. Michael Ledford did not introduce this idea. Polygrapher Ogden did. Michael later incorporated the idea into his confabulations, to the consternation of Agent Watson. Agent Watson knew that fire did not originate in the seat of the chair. It was one of the few problems Agent Watson experienced by relinquishing the interrogation to Polygrapher Ogden.

Ledford: I didn't think it would, that it would have done anything because I thought I blew those candles out.

Ogden: You knew that when you left them there that both candles were lit. Now, don't, don't start going backwards ...

Ledford: Alright.

Ogden: ... because you're on the right path now to where you can get the help that you need. Okay? **Mike, you've got a psychological problem.**

Ledford: **Okay.**

Ogden: And you need to take care of it. **You can't take care of it by all of the denials.** I sense that in you. Okay? And I wouldn't tell you that if I genuinely wasn't interested in getting you the help you need. **I'm not here to hurt you. I'm here to help you.** I do not want to see you have to go through and feel any more pain than what you already feel. I want you to believe that. That I do sense through the training, with the training that I've had, I don't call myself a psychologist, I don't do that, but **I do sense that you've got a psychological problem that's going to get worse if you don't get help. And I can tell you that if you don't tell the full truth about this that it's only gonna get worse.**

Ledford: I swear to God I did not [inaudible].

Ogden: They had to be. They had to be. And **they had to be strategically placed according to this expert.** They had to be. You take that report, you put it with this report [the polygraph], and we're right back where we were awhile ago. The truth is just not yet on the table. But you're making headway. You're making headway. Now nothing would please me more than to be able to go out here and tell those people he wants help. He wants to talk to you. He wants to explain to you exactly what happened, and he wants to tell you the full truth of it, the lying is over, that he

has been lying for whatever reason since day one. It's time for it to stop. And he can't stop until you stop.

Ledford: I turned the light on, the TV was still on. I bent down and I blew on each candle. I then shut the TV off and I opened the door. I went out. I opened up the door, I locked it, I closed it, I left.

Ogden: We burn a lot of candles around my house. A lot. And just from a human practical standpoint, I don't know of anyone that blows a candle, [makes whooshing sound] turns around and walks off without making sure. If their intent is to put that candle out, if their intent is to blow that candle out then their intent is to make sure that candle is put out. And **you'll be hard pressed to convince any jury in this county, or in Augusta County that you didn't intentionally leave it burning.** You'll be hard pressed to do that. You're dealing with people with just good plain common sense and that's all that this is all about. It's good plain common sense. You had a reason for putting that candle in that chair. **You had a reason for it getting into the chair.** That's what you need to explain. Was it anger? Was it frustration?

Ledford: I didn't put the candle in the chair.

...

Ogden: Now I can see you taking the candle and sitting it down maybe behind the chair so that it would just slow burn right up. **I can see you dumping the candle even in the bottom of the chair.** I can see you sitting it on the edge of a table and tilted so that when you went out the door that it would form such a vacuum that indeed it would do that. That it would fall over. And that would relieve you of the responsibility of saying I intentionally set the fire. But that doesn't clear things up. That still makes you responsible. And we can get you the help that you need, the help that I really believe that you want. But you gotta stop this going down the wrong road, Mike.

For a second and a third time, Polygrapher Ogden suggested the fire was started by a candle in the chair. For the second and third times, Michael denied placing the candle in the chair.

Ledford: I turned the light on, blew the candles out, or I thought I did, went into the room and told Elise what I was going to do, kissed her on the forehead, told her I loved her. I came out, shut the TV off, I put the remote in the chair, opened the door, locked the door, closed the door, and left. I honestly thought, thought the candles weren't on because of where the [inaudible].

Ogden: You say you turned the light on or off?

Ledford: I turned it on. I turned it on before I blew out the candles. That way, what light I had from the candles I could see to turn the lamp, and find the switch, which is a regular household switch that went into the electrical [inaudible].

Ogden: What you're saying, you think that the candles were still lit? And that when you went out, that one of them fell over in the chair or something?

Ledford: We were always careful of where we put the candles, but for some reason we just set them on the corners that night.

Ogden: Who set them there?

Ledford: Elise and I. I set the one on the corner, and she set the other one on the corner.

Michael's confabulations had by this point grown to include Elise placing one of the candles on one corner of the table and Michael placing the other candle on the other corner of the table. As we can see from Agent Watson's photograph, just presented, there was no room in either corner for the candles. Michael was remembering events that never happened.

Ogden: Still too inconsistent with what I see here. It's inconsistent with the reports from the expert. It's inconsistent with the witnesses.

...

Ogden: It's the lying that's already gone on too long. Where has it gotten you? It's gotten you to the point that no matter what you say, it's hard for anyone to believe you. You don't want that. **That's not how you get the help that you need.** Only you can change it. **Now Mike, did you set the candle on the edge of that table knowing very well that it was going to fall into the chair?**

Ledford: No, I didn't.

For a fourth time, Polygrapher Ogden suggested the fire was started by a candle in the chair. For the fourth time, Michael denied placing the candle there.

Ogden: Alright. Did you set the candle on the floor, and that it burned up to the chair?

Ledford: No, I didn't.

Ogden: Did you put it over a table?

Ledford: It slid right off the table where it was.

Ogden: Would you be willing to give a statement to Mr. Watson and to Mr. Ritchie?

Ledford: Yes.

Ogden: Well, let me talk to them and see what, uh, see what they want to do. But I can tell you, Mike, and **I'll tell you truthfully from a professional standpoint, you have not told the full truth.** There's more truth to be told. And uh, **I don't want to leave here today thinking that you deliberately thought that October the 10th was a good day because that was the day that you successfully killed your son and that was the day that you almost killed your wife.** I don't want to think that. I wouldn't have any problem at all feeling good about you and feeling good to myself to know that he started the fire intentional, knowing that he was in control of that fire at all time, because he was close by and he knew that it was not to do but just a certain amount of smoke damage, this, that or the other. Nobody was gonna get hurt. I can live with that. And you can live with that. **But if you keep on the route you are, everybody's got to have but one option, and that's to think he deliberately did it to kill his son. He deliberately did it to kill his wife.** She's on the verge of surviving. Tell me the truth Mike. Tell me the whole truth.

Ledford: It's really, really important what you think. I thought I blew them out, after turning on [inaudible.] When I left I had to lock the door, mainly for her security. And I was adamant that we were sure [inaudible] locked the door. The door was giving us problems. If we locked it before we closed it, and I knew ahead of time that to [inaudible] it I was going to have to pull down, [inaudible] down, and [inaudible] it to make sure it was a safe [inaudible]. If I would have, for one brief second, thought that candle was still lit, I would have closed the door and then locked it with my key. And it's the God's honest truth.

...

Ogden: What kind of candles were on the table?

Ledford: White ones about yea big around [indicates by forming a circle with his thumb and index finger] and high, probably about maybe that tall. [Indicates by holding hands flat and parallel to the ground separated by approximately five inches]

Ogden: Okay. What kind of containers were they in?

Ledford: They were candleholders that we got for wedding present, from [inaudible].

Ogden: Okay. I'll be back.

Michael describes 5-inch tall taper candles placed in candleholders nice enough to have been given as a wedding present. No photograph shows any hint of any candle, much less a 5-inch tall taper candle. No photograph shows any hint of any candleholder, much less one impressive enough to have been given as a wedding gift.

12.5 Agent Watson Interrogates Michael Ledford

Agent Watson decided at this point that it was time to take the interrogation away from Polygrapher Ogden. He and Agent Joe Ritchie entered the room and continued to employ standard maximization and minimization techniques. Agent Watson began by providing false evidence that their fire expert (or experts) placed Michael in the apartment while the fire was ablaze. Agent Watson then convinced Michael that the fire had to have started as a result of an open flame.

Watson: How you doing, Mike?

Ledford: Alright. A little tired.

Watson: I'll bet. We'll, I talked to Stan and ... did he tell you about the, uh, Monday, this week, when **we had an expert do a time burn ... which puts you there when the fire was ablaze.** So there's no doubt that that happened. ... So what you told Stan that, uh, the candle fell over when the door opened is not true. But I think that, and we're both in agreement [he and Agent Ritchie] ... you did not intend to hurt your son, Zach, with your wife Elise. It's just an unfortunate thing that, that happened ... And what happens is, **the fire itself**, you should know this, you're a firefighter, **was the result of an open flame.** No accident here as far as the lamp falling over. You could take that lamp, knock it over fifteen times, the bulb would break, no fire. ... **So don't you agree the fire is a result of an open flame?**

Ledford: **Um, hum.**

Watson: Okay. **But the placement of that open flame does not match what you just told Stan a few minutes ago.** When we did the time burn, when we saw the charring of the quilt rack back there where it says a V pattern. Are you familiar with the V pattern, the fire burns up and out ...

Ledford: Yeah.

Watson: ... in that little space? Doesn't match.

Just as Polygrapher Ogden fed Michael inside information about the fire scene, Agent Watson fed Michael information. Agent Watson, however, was more specific than Polygrapher Ogden had been. Agent Watson told Michael Ledford that the fire started at the base of the quilt rack, that a V pattern (a specific burn pattern) on the wall proved that to be so. Agent Watson told Michael Ledford that the fire began exactly where Agent Watson had marked it on his fire scene investigation report.

And now, Michael Ledford was suggesting that the candles must have fallen into the chair, just as Polygrapher Ogden had originally suggested. Agent Watson knew, absolutely knew, that the fire did not start in the chair.

Agent Watson wanted to lead Michael away from the chair and to the base of the quilt rack. Michael insisted instead on telling the details as he remembered them, whether those memories were accurate or not.

Watson: Stan's given you the opportunity to be truthful about this. And you have been truthful about this, but the fact is you're still holding something back. And what you're holding back is ... the reason why the fire was placed there. Just want to give the excuse that the candle fell over when he closed the door, basically. **But experts will testify that knows the candles was not on the coffee table.** [Agent Watson again refers to the end table as the coffee table.] **It was set in a different location that ignited something that caused the fire.** ... I think that we [he and Agent Ritchie] are in agreement when we say, when I say this, is that a situation developed that got out of hand. And when things got out of hand, caused the death of a child. It's the only child you ever had, right?

Ledford: Um, hum.

Watson: Never had another child? It's the only child you ever had. You have a wife over in the hospital. A wife I think you dearly love.

Ledford: Um, hum.

Watson: You did not intend to harm your wife, or the fact that your child is gone. You'll remember Zachary the rest of your life. You think about him a lot. So that just happened. ... But for some reason, ... whether ... the in-laws caused a problem, whether it was an argument with the wife, whatever, got out of hand, and, uh, you wanted to set that fire. You'll come back and show your father-in-law or show Elise that "I'm the man of the house. I saved your life, I protected you," this and that. Fire is crazy. You know fire is crazy. You can't, can't predict it. You were there. There to save them. Fire got out of hand. You were there for the purpose of rescuing them. ... And I can understand that, dealing with the father-in-law ...

Ledford: Um, hum.

Watson: ... this and that, things can frustrate you. And you were at this point right there you were frustrated. ... So you, you set that somewhere to cause that before you left that apartment.

Ledford: I didn't set it anywhere. I left it in the candleholder on the table.

Watson: **Experts disagree, Mike. I'm, I'm telling you ... the experts will say "This is where the fire was set" and you [inaudible] the candle was over here somewhere.** ... So [inaudible], but it's time to get to the point. Do you want to leave it in the hands of twelve people on the jury, and I guarantee you eight of 'em are going to be women, eight of 'em are going to be mothers, so you might as well go ahead and tell the truth right now. ... Get it all out right now, Mike. Get it out. Help is there for you. [Inaudible] go to the Commonwealth Attorney and tell him this is what happened. **You got a problem.** You got a problem. Family problems. **Emotional problems.** A spur of the moment thing. We don't have something that's planned out, here. Spur of the moment thing that got out of hand. It's what we need to hear from you right now. The truth of this matter right now.

Ledford: The truth of the matter is the candle was on the table. I did not put it anywhere else.

12.6 Agent Ritchie Interrogates Michael Ledford

Agent Ritchie took over the interrogation at this point.

Ritchie: I work these cases all the time. And I want to tell you, I agree with him that I don't believe that you intended to hurt anyone. I really don't think that's the case in this. But this thing's going to come into court. And you're going to put your fate in the hands of these jurors. And ... one of the things people get sentenced hard on these days is domestic violence. And they're going to look at this case and say "Well, this is a case of domestic violence. **We're not going to have any mercy on this guy.** He's not, he's not coming out, he's not telling the truth. And the State has proved their case beyond a reasonable doubt, and he's not showing any remorse whatsoever. Now he can take the stand, after trial, after the evidence has been presented, and he can say, yeah now I have remorse." ... And buddy, I'm going to tell you one thing right now, and I'm going to level with you, **when it gets down to it and these jurors see this, and I see it all the time, they're going to be hard, they're going to come down hard on you.** And I wanna prevent that, he wants to prevent that, we want the, we want the facts to come out to weigh on your behalf to get you some help.

Watson: [inaudible]

Ritchie: And for, you're too young to realize, you're too young to, to remember a TV show that used to be on called *This Is Your Life*. Well, since this thing has gone on, Buddy, this is your life. We've been digging. We know a lot more than what you, that what you think we know. We know that we can come back and show that several, uh, instances where you haven't been on the level with us and we would have to present these in court. We'd have to call these witness in, people that, that you know. People that you deal with. And we'll, we have to do this. And we, we don't want this to come to this point. Mike, you don't want this to come to this point. It, it's down to a situation now where the ball's in your court. If you have any remorse whatsoever, it's up to you to come forth and lay it, lay it on the line. **Now, scientifically we can show ... what you tell us is not the truth.** Testimony ... we've got these witnesses that can come in and, and, and show that some ... facts you've given us are not truthful. Mike, now is the time to lay it on the line. I'm, I'm being just up front with you. I think it's, now is the time. Now or never. Cause when it comes down to it, when it comes down to when, when we bring this thing into a court of law, uh, the jury's going to look at that and they're going to say "He didn't do it up front when he had the opportunity, now he's trying to save himself." It's not going to fly.

Watson: It comes down to you telling another lie and we can, right now we can string out a whole line of lies, of false statements you've made to us through this whole time. We can string it out and then, and then you're going to go to court **and you're going to tell this story about the candle on the coffee table, and they're going to say "Well, this is just another lie he told."** If you, if you wanted to tell the truth, the whole truth, go ahead and tell the truth today. ... I think it's domestic problems, family problems, emotional problems. You suffered enough at the loss of his child. We're not going to let you suffer anymore.

Ritchie: One thing you that you've got in your, your favor right now is you're a young man. You're a young, you're an adult, but you're still young. You've got that in your favor, and, and we can show that, that, uh, your youth, your inexperience, your, your, uh, you're new into a relationship with your wife, uh, newlyweds by, by all

practical purposes, and all this is, is, uh, all these pressures, and we can, we can, we can, like I say this is your life. And I think right now is the time for you to come, come around with this and let us, uh, and, and, uh, and again, I'm going to tell you, man, I worked a lot of these, a lot of, uh, homicides on a regular basis, and I can tell when a man, uh, or woman has intent to, to do harm to someone. And I, I'd be willing to come, come forth and say "Yeah, I don't think he did, uh, intend to do harm. I just think he wanted to get someone's attention." And I really believe that. I really believe that on your behalf. And I think right now if, if I go to bat for you, uh, and, and feel that way, I really think that right now is, is the time to come forth and, and, uh, and let us lay it all on the line. And now's the time to do it.

Remarkably, that last rambling, nearly incoherent tangle of maximization and minimization finally prompted Michael Ledford to finally confess to a crime he did not commit, to a crime that never happened.

13. THE CONFESSION OF MICHAEL LEDFORD

Chapter Summary: Michael Ledford's confession cannot be true. The standard text on police interrogation warns that the interrogation techniques applied to Ledford can lead to false confessions. All confessions should therefore be weighed against the other evidence to determine if the confession is at least consistent with that evidence. Michael Ledford's confession is wildly inconsistent with the other evidence in the case.

By far the most influential and practical manual at the time of Michael's confession was *Criminal Interrogation and Confessions*, by Inbau, Reid, and Buckley. The book was originally published in 1967. The third edition was published in 1996, just three years prior to Michael Ledford's interrogation. The fourth edition was published in 2001. According to the fourth edition, hundreds of thousands of investigators had already received training in the techniques presented therein. The U.S. Supreme Court has cited the book.

While the authors deny that their interrogation techniques, properly applied, lead to false confessions, they do concede that police interrogations can lead people to confess to crimes they did not commit. In their third and fourth editions, published after Michael Ledford's confession, the authors included a chapter entitled "Distinguishing between True and False Confessions."

13.1 How to Induce a False Confession

In Chapter 15, "Distinguishing between True and False Confessions", Inbau et. al. alternately claim that false confessions do not happen, then explain how they come about, then contend twice again that they do not happen. The emphasis in the segments below has been added. The exclamation mark is in the original.

Consider an innocent rape suspect who is falsely told that DNA evidence positively identifies him as the rapist. Would this false statement cause an innocent to suddenly shrink in the chair and decide that it would be in his best interest to confess? Would a suspect, innocent of a homicide, bury his head in his hands and confess because he was told that the murder weapon was found during a search of his home? Of course not!

However, consider that such false statements were then used to convince the suspect that regardless of his stated innocence, he would be found guilty of the crime and would be sentenced to prison. Further, the investigator tells the subject that if he cooperates by confessing, he will be afforded leniency. **Under these conditions, it becomes much more plausible that an innocent person may decide to confess** -- not because fictitious evidence was presented against him, but because the evidence was used to augment an improper interrogation technique.

It is our clear position that merely introducing fictitious evidence during an interrogation would not cause an innocent person to confess. It is absurd to believe that a suspect who knows he did not commit a crime would place greater weight and credibility on alleged evidence than his own knowledge of his innocence. ...

It is our contention ... that an innocent suspect operating within normal limits of competency would not accept physical responsibility for an act he did not commit.

Somewhere in the midst of that rambling, the authors of *Criminal Interrogation and Confessions* conceded that it's "plausible that an innocent person might confess" under the following circumstances:

1. The innocent person was presented with false evidence of his guilt. For example: "Now, scientifically we can show that what you tell us is not the truth."
2. The innocent person was assured he would be found guilty. For example: "I can tell you you'll never convince twelve people sitting on a jury."
3. The innocent person was assured he would be sent to prison. For example: "Now I don't know if you've ever been caged up like an animal or not."
4. The innocent person was told his confession would be rewarded with leniency. For example: "Now, it's an easy road or it's a hard road. It's a simple as that."

13.2 How to Detect a False Confession

The authors of *Criminal Interrogations and Confessions* are unambiguous about the need and responsibility of the investigator to determine the validity of any confession.

Ultimately, the responsibility of determining whether a confession is true or false falls upon the investigator who obtained it.

The authors offer one common sense method of determining whether any confession is true or false: corroboration.

When the suspect is able to provide independent corroboration of his crime, it must certainly be true. ... The truthfulness of a confession should be questioned, however, when the suspect is unable to provide any corroboration beyond the statement "I did it." ...

When the confession contains specific details of the offense that turn out to be false, and these details would have been emotionally difficult to disclose, this suggests the possibility that the suspect may have been simply agreeing with suggestions offered by the police and the confession was not the product of spontaneous recall on the part of the subject.

While Inbau et. al. are generally dismissive of false confessions as a significant problem, Professors Richard Offshe and Richard Leo are among those who devote substantial time to researching, explaining and trying to correct the false confession problem they deem substantial. Despite the disparate views between the false confession skeptics and the interrogation reformers, all parties agree that a confession should comport with the facts of the crime if it is to be accepted to be valid. Offshe and Leo argue that point as follows:

The post-admission narrative can in many instances be used to distinguish the innocent from the guilty. Because the person's post-admission narrative is a statement about the crime, it is evidence of something -- the question is whether it is evidence of guilt or innocence. Whereas a guilty suspect can corroborate his admission because of his actual knowledge of the crime, the innocent cannot. The more information the interrogator seeks, the more frequently and clearly an innocent will demonstrate his ignorance of the crime. His answers will turn out either to be wrong, to defy evaluation, or to be of no value for discriminating between guilt and innocence. ...

Although an investigator's purpose in taking a post-admission narrative is to develop evidence of the suspect's guilt, he may develop evidence of the suspect's innocence. If a

suspect's post-admission narrative accurately describes the crime and leads to missing evidence, the narrative is strong evidence of guilt. If, however, his answers about missing evidence are proven wrong, he cannot supply verifiable information that should be known to the perpetrator, and he inaccurately describes verifiable crime facts, then the post-admission narrative provides evidence of innocence.

As we will see, Michael Ledford's confession did not comport with the facts of the crime. Rather it consisted of a combination of accurate recollections, confabulations, and interrogator suggestions woven into a story accepted by the jury as unassailable proof of Michael's guilt.

13.3 Michael Ledford's Demonstrably False Confession

So effective were the standard interrogation techniques in manipulating Michael's thoughts, he came to believe that he suffered a psychiatric problem. He began his confession by asking to be placed in a psychiatric hospital and kept away from others he might harm.

Ledford: Okay. I want the agreement that I will be sent for, I want the agreement that I will be placed in a psychiatric hospital. It evaluates my need, my problem, and afterwards getting help and get a trade, not necessarily make a good living at, but something where I will be away from people. Can you guarantee that?

So effective were the standard interrogation techniques in deluding Michael, he actually believed he would be going home after his confession. While he was writing his confession, Agent Ritchie asked him about Elise.

Ritchie: Mike, ... when were you last at the hospital?

Ledford: Monday.

Ritchie: Monday.

Ledford: ... Going to get some sleep today then go a little bit tonight.

So confident was Michael of receiving the help so frequently offered, that he then asked if he could receive his "health benefits" in Pennsylvania.

Ledford: Is there any way possible that the health benefits could be in a different state?

Ritchie: Now you're asking me something I can't answer. What state did you have in mind? Pennsylvania?

Ledford: [Nods head yes.]

Ritchie: Uh, I don't know how what the, uh, how that works. ... I can't answer that. Mike, you're going to need a lawyer. You know that?

By the time of his confession, Michael was malleable and barely able to resist suggestion. The lies told him by his interrogators, the assurances of harsh treatment at the hands of unfriendly jurors, and the implicit offers of leniency had all taken their toll.

We now present Michael's spoken confession, in its entirety, without interruption.

Ledford: Okay. I want the agreement that I will be sent for, I want the agreement that I will be placed in a psychiatric, psychiatric hospital. It evaluates my need, my problem, and afterwards getting help and get a trade, not necessarily make a good living at, but something where I will be away from people.

Watson: You'll get help.

Ledford: Can you guarantee that?

Ritchie: Well, now, let me, let me just put this up front with you what my powers are on this. Uh, I personally can't make that guarantee. That is a, a guarantee that's going to have to be made by the Commonwealth's Attorney and your attorney, which I can assure you that, uh, all tests, uh, I, I assume that all the tests will be done that, that will evaluate you to determine that, and, and, I, like I said I'm going to bat for you on this, and I'm sticking my neck for you a little bit here, and I'm telling you, that I, I agree with, uh, with you that there is a problem here. And ...

Watson: We've established, we've background which would match what you're going to tell right now ...

Ritchie: Exactly.

Watson: ... to support this.

Ledford: Here's the truth. I did have another child. ... I got involved with a girl after a relationship of four years with another girl, and got her pregnant. Afterwards, we moved down to Florida. Her dad was transferred down there. They flew up to Pennsylvania for a visit. That night, coming back from a friend's house, they were hit head on. My daughter was killed. About two days later. All the emotions spilled over and I just didn't see them anymore. I wasn't so scared that I was going to lose my child and my wife. I never meant to hurt 'em.

Watson: What, what, what happened with, uh, with ...

Ritchie: I mean how's this play into your current situation?

Ledford: During the birthday party, everyone was getting along just fine. I was joking around. My father-in-law and I were joking around. Uh, we set our differences aside. He told my wife on the phone that he would set his differences aside against me, as long as I agreed to put my differences aside. So I agreed to it. We were getting along.

Ritchie: Okay.

Ledford: After the party had died down, we laid Zachary down for a nap. My mom had called. Mom asked me, what, what did Zachary get for his birthday, you know, and did he enjoy everything. Afterwards, she talked to my wife for a few minutes. My wife was giggling, so I don't know if they were just cracking jokes or they came up with a brilliant idea to get me something for Christmas. My wife and I fooled around, after [inaudible] she got off the phone with my mom. For some reason I just thought I could get away with it. And I tell you every single day I've wanted to tell the truth.

Ritchie: I believe you.

Watson: [inaudible]

Ledford: Every single day

Ritchie: Now ...

Ledford: ... that went by I was scared.

Ritchie: Okay. Now when you say "get away with it," exactly what are you talking about there?

Ledford: I thought with the way that I did it, that the invest..., I didn't even think an investigation, I thought the fire department would come in, extinguish the fire and say "This is what happened," and it wouldn't even be close to what happened.

Ritchie: What did you intend for it to happen?

Ledford: I intended the fire to be ruled accidental.

Ritchie: And for what to, what to have occurred have occurred as a result of the fire?

Ledford: That nobody would get hurt. I didn't set the fire to make myself look like a hero. I have never been in the fire department and had that attitude. I've never had the attitude I'm in the fire company to be a hero. I've never had the attitude I'm in it for the glory. I was nineteen years old when I got into the fire service. I did it because I wanted to help my community. When I moved down here, one of the hardest things that I ever had to do was to resign from the fire department in [inaudible]. Several months had gone by before I could get into the fire department down here, and I was going nuts. You know, I, I needed to do something that was helping my community. Going to work and coming home and going to work and going home was not enough. I got involved in the fire department, and made a lot of friends down here. I felt more at home down here than what I did in Pennsylvania. I just snapped. I [Makes gasping sound] ...

Ritchie: Tell it, alright, as long as we're, we're talking about it, how exactly did you go about and set the fire?

Ledford: We did have candles lit. That's the truth.

Ritchie: Okay, I believe ya, yeah.

Ledford: After Elise went to bed, I turned the light on in the living room, and told her that I would blow out the candles. I blew out the one, made sure that Zach's door was closed, that way he wouldn't get hurt. I even made sure that our bedroom door was closed. I lit, I kept the candle lit, I threw it in the chair. I thought to myself no big deal, extinguish the fire, put Elise and Zachary in my arms, and I could start fresh. I honestly did not intend to kill my son. If I would have known for the least second that Elise would have opened up his bedroom door, I never would have done it. I was expecting a quick response, like we always had for structure fires. Go in, put the fire out, do the investigation, everything's back to normal. I will admit I do have a problem.

Watson: You, were there when the flames were, were burning the chair?

Ledford: No. I lit the candle, threw the candle in the chair. Deep down, I was hoping that nothing would ever occur, that I ...

Ritchie: What, what did you light the candle with?

Ledford: A lighter.

Ritchie: What, uh, a cigarette lighter?

Watson: Where's, where's that lighter?

Ledford: Um, I, I put it on the table that had the plants on it.

Watson: A red lighter, right?

Ledford: No. It was a white one with the Dallas Cowboys.

Watson: Did you pick it up later?

Ledford: No.

After the questions about the lighter, Michael's interrogators no longer asked about the details of the fire scene, and with good reason. Everything Michael had said about the fire was wrong. There were no candles to be found. There were no candleholders to be found. The fire

did not start in the seat of the chair. There was no lighter found on the table with the plants on it. There was no white lighter found anywhere in the apartment. There was no lighter with Dallas Cowboys on it found anywhere in the apartment.

His interrogators had told him the answers they wanted to hear. The investigators wanted Michael to confess to applying an open flame to the base of the quilt rack, preferably with a red lighter. But Polygrapher Ogden had already convinced Michael that the fire started in the seat of the chair. Michael had already confabulated the existence of a white lighter with Dallas Cowboys on it. Michael had already confabulated a memory of placing the lighter on the table with the plants on it, though Agent Watson clearly found no lighter there.

There is no rational explanation for Michael Ledford's confession other than he was recounting remembered events that never happened.

There is no possibility that his confession was factually correct. The photographic record falsified his confession in every relevant detail.

There is no reasonable possibility, either, that Michael Ledford was merely telling his interrogators what they wanted to hear, so as to minimize his sentence. Even though his interrogators told him exactly what they wanted him to say, and even though he was trying to cooperate fully as he confessed, his naiveté and his confabulated memories prevented him from going along with their proffered story.

Instead, Michael Ledford related events that could not possibly have been true because the standard interrogation techniques had convinced him they must be true. After trying to mold Michael's confession differently, Agent Watson merely accepted the confession as somehow true though every detail was false.

Just as Agent Watson had relinquished his responsibility for investigating the fire scene, he relinquished his responsibility to verify or falsify Michael's confession. Just as he turned the fire scene investigation over to the insurance investigators, he turned the confession over to an ill-prepared jury that would be denied the means to falsify or corroborate it.

13.4 The Motive, or Lack Thereof

Instead of inquiring further about Michael's knowledge (or lack of knowledge) about the fire scene, Agent Watson and Agent Ritchie turned their efforts to establishing a motive. During his interrogation, his three interrogators doggedly suggested motives. They suggested Michael started the fire:

- As an attention getter
- As a means of showing Elise and Zach that he loved them
- So that he could save them from the fire
- To hurt them
- Because he was provoked
- To reassure Elise he could take care of her
- To be a hero
- To kill them
- To burn down the entire apartment building

- Because he didn't really love them
- Because he has a psychological problem
- Because he was angry
- Because he was frustrated
- Because he failed sexually
- Because he failed financially
- Because Elise said something about his failings
- Because of problems with his in-laws
- To collect insurance money
- To get a promotion at the volunteer fire department
- Because of problems with his father-in-law
- Because he and Elise were late in getting an inheritance from her grandmother
- Because an argument got out of hand
- To show everyone he was the man of the house
- Because he had domestic problems
- Because he had emotional problems
- As a spur of the moment thing
- Because of the pressures associated with youth, inexperience, and being a newlywed

Michael denied, dismissed, or ignored all such suggestions. Even after his confession, even when he was being completely compliant, he could provide no clear motive for setting the fire.

Watson: What, what did you think was going to happen after you rescued uh, uh, Elise and, uh, Zach and put the fire out was that, did you think that was gonna make you a better person? Your standing in the community here?

Ledford: I don't know.

Watson: I guess what I'm looking for is reason for this. Uh, I don't understand your reason for setting the fire.

Ledford: I don't know what my reason was. Yeah, I mean ...

Watson: Yeah, [inaudible], was it frustration or anything?

Ledford: I mean it wasn't for insurance money because it wasn't until two weeks afterward that I found out how much Elise's insurance policy was worth. I was never told how much Zachary's life insurance policy was because the way it was set up, by law, the insurance agency would not [inaudible].

Watson: Did you burn the apartment thinking you could get out of the lease of the apartment.

Ledford: Our lease was already up.

Watson: You had planned to move into another apartment anyway, [inaudible] another house anyway, right? So you figured, "Wow, this was starting to [inaudible] enough, and I'll, I'll be out ...

Ritchie: How about attention, or anything like that?

Ledford: No. No.

Ritchie: Did that ever run across your mind, that maybe just need some attention, that, uh ..

Ledford: No, cause I've never been that way. If I needed to talk to someone I had [inaudible] people I could talk to. I never had to be the kind person who knew how to get attention.

Watson: You didn't argue with Elise before you set the fire?

Ledford: No.

When informing Michael that he needed to prepare and sign a written confession, Agent Ritchie took one more shot at suggesting a motive.

Watson: Well, we need to get a written statement [inaudible] what took place.

Ritchie: And part of the rehabilitation is to be able to admit to, uh, to the things I think Stan probably talked to you about. Stan's a good man. He's, he's, uh, a chaplain with us and I know, I know you been, you've been a religious person your whole life, but he's, he's the kinda person that, uh, that probably would advise you right, uh, in that you need to get, uh, start the, uh, healing process you got to admit that what you did was not right. And that, though it, it, uh, didn't really turn out the way that, uh, you thought it would, matter of fact it went totally haywire, it, uh, didn't turn out, uh, good at all. We, we need for you, uh, physically just put it down the way it happened.

Watson: What I'm going to do is I got a form, uh, the second, second half of, uh, you have the right form which you signed with Stan. Uh, and then, uh, [inaudible] these are your words what happened. [inaudible] October the 10th, that led to the fire at the apartment at, uh, [inaudible], Highland, uh, was it Highland Drive, Apartment 17A. Okay? Uh ..

Ritchie: Put that in your, in your own words the way it happened, at the time it happened. **If you want to include at the bottom of it some factors that, uh, that you were being pressured by her parents or whatever, you know, that's up to you.**

As you will see immediately below, Michael Ledford was by this point so pliable that he incorporated Agent Ritchie's last moment suggestion into his written statement. Keep in mind that Michael had just minutes earlier explained that he and his father were getting along well.

13.5 The Signed Statement

We present Michael Ledford's handwritten statement, followed by our transcription.

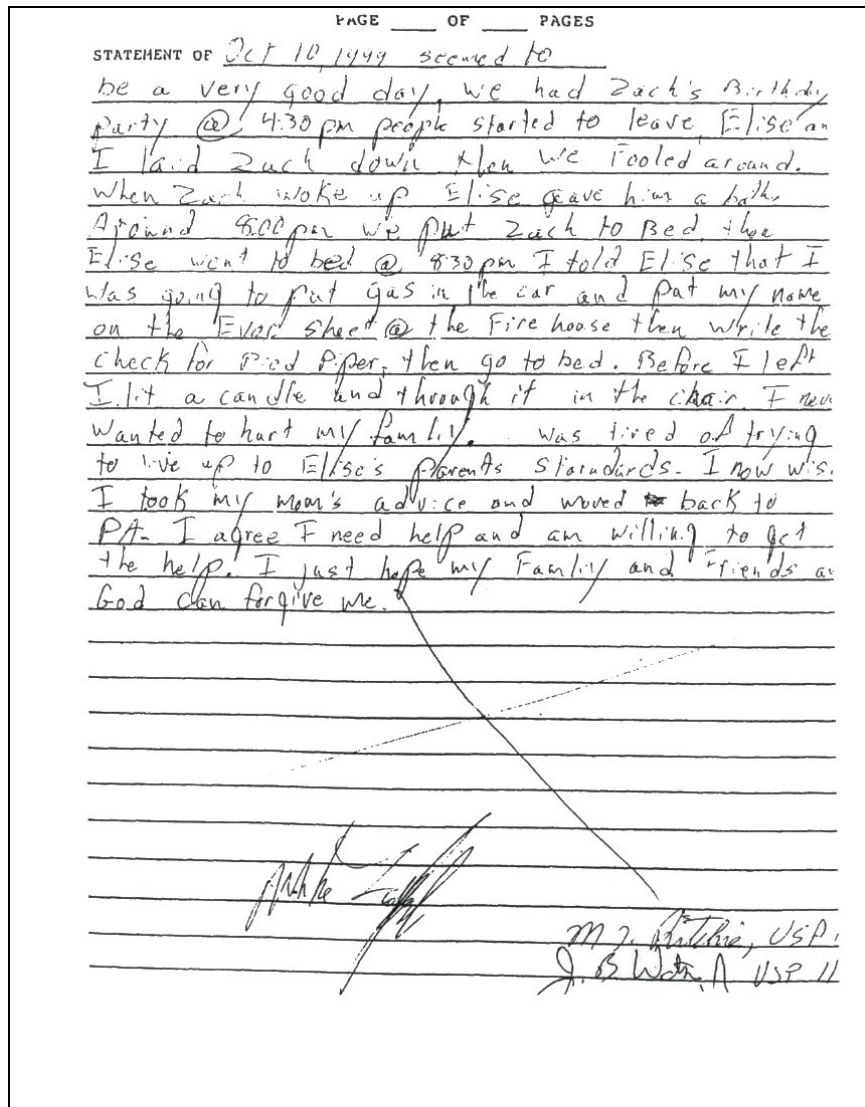


Figure 68: Michael Ledford's Written Confession

Transcription of Michael Ledford's written confession:

October 10, 1999 seemed to be a very good day. We had Zach's Birthday party @ 4:30 pm people started to leave. Elise and I laid Zach down then we Fooled around. When Zach woke up Elise gave him a bath. Around 8:00 pm we put Zach to Bed then Elise went to bed @ 8:30 pm I told Elise that I was going to put gas in the car and put my name on the EVAC sheet @ the Fire house then write the check for Pied Piper, then go to bed. Before I left I lit a candle and through it in the chair. I never wanted to hurt my family. **I was tired of trying to live up to Elise's parents standards.** I now wish I took my mom's advice and moved back to PA. I agree I need help and am willing to get the help. I just hope my Family and Friends and God can forgive me.

14. THE TRIAL OF MICHAEL LEDFORD

Chapter Summary: Ledford was convicted based on his confession. No other evidence was presented at trial showing that Michael or anyone had started the fire. Regarding the electrical outlet in the living room, the Commonwealth's fire investigator testified he determined the outlet was the victim of the fire, rather than the cause of the fire. He made this determination merely by looking at the outlet; he did not remove the outlet to examine the wiring inside. The insurance investigator, on the other hand, did remove the outlet. The insurance investigator did notice burned wiring inside. The insurance investigator, however, testified that the burned wiring inside the outlet resulted from heating outside the outlet. The photographic record, however, shows the rationalization for burned electrical wires inside the outlet cannot be true. The burned wiring remains today compelling evidence of an electrical fire within the outlet itself.

Michael Ledford was charged with the capital murder of his infant son, the attempted murder of his wife, and arson of an occupied dwelling. He had little chance of acquittal. He had confessed. The fire scene evidence of an electrical fire had been concealed, destroyed, or simply left uncollected. Several witnesses would alter or enhance statements they made prior to trial. The alternations and enhancements were always adverse to the defense.

14.1 The Confession as Revealed to the Jury

The heart of the case against Michael Ledford was of course his confession. The jury, however, was not allowed to hear all of Michael's interrogation. The entirety of the polygraph examination, and the entirety of Polygrapher Ogden's interrogation had been excised from the segment the jury was allowed to see. More than 80% of the interrogation session was therefore withheld from the jury.

It seems there may have been a method to the madness of having Polygrapher Ogden be the primary interrogator. Because any evidence of a polygraph examination is generally excluded from trials, the jury did not hear Michael 30 times deny setting the fire. The jury only heard Michael confess to it that one time.

The jury did not hear Polygrapher Ogden tell Michael repeatedly that the polygraph showed he was lying, when the polygraph did no such thing. The jury did not hear Polygrapher Ogden tell Michael that the lab results indicated arson, though they did not. The jury did not hear Polygrapher Ogden tell Michael that witnesses would place Michael in the apartment while the fire was ablaze, though no such witnesses existed.

The jury did not hear Polygrapher Ogden suggest repeatedly that Michael had placed a candle in the chair, or located a candle such that it would fall in the chair. The jury would not see Agent Watson's fire scene sketch placing the origin of the fire not in the seat of the chair. The jury would not see that Agent Watson instead placed the origin against the wall, between the quilt rack and the wall outlet that burned from within. They jury would only hear Michael confess to placing a lit candle in the cushion of the chair.

The jury did not hear Polygrapher Ogden assure Michael that he would be convicted. Nor did they hear Polygrapher Ogden ask Michael if he knew what it felt like to be caged up like an animal.

The jury did not hear Polygrapher Ogden tell Michael that he must not have loved his family, lest he would confess. Nor did they hear Polygrapher Ogden tell Michael that it was a very good day for Michael, because that was the day the he killed his son and nearly killed his wife.

The jury did not hear Polygrapher Ogden assure Michael that he had emotional problems, and psychological problems, and that he could get help for those problems if only he would confess.

The jury only heard Michael admit that he had a problem, that he needed help, and that he wanted to be put away where he could not hurt anyone else.

14.2 Behavior Testimony

Wrongful arson convictions are typified not only by poor fire science, but also by questionable evidence of guilty behavior. Such was the situation in the infamous cases of Gerald Lewis, Ernest Willis, and Cameron Todd Willingham. Such was the situation in the case of Michael Ledford.

The Case of Gerald Lewis and The Lime Street Fire

Gerald Lewis of Florida survived a house fire in which his wife, his 12-year-old daughter, three other children, and his wife's pregnant sister all died. One witness described Lewis as agitated. Another claimed he was simply standing in front of the house, watching it burn. One noted that Lewis had neither called 911 nor asked anyone else to do so. Instead, they claimed, he simply banged on the door of the long-abandoned house next door.

Lewis' wife had a restraining order against him for domestic violence. The two were scheduled for divorce in three days. He was unemployed so she allowed him to sleep outside in the car.

Though the arson investigators found what they believed to be indisputable evidence of arson, and though Lewis' behavior pointed toward his guilt, Lewis would never face trial. Due to an assertive defense by Lewis' court-appointed public defender, the abandoned house next door would be burned to compare the findings of the arson investigators against Lewis' claims of innocence. The controlled fire, now known as the Lime Street Fire, proved Lewis' claims of innocence to be true. It also proved the long-held rules-of-thumb about arson to be false. The Lime Street Fire was the beginning of modern fire science. It prompted scientific research into fire behavior. It led to the development of NFPA 921, the very guideline that Agent Watson so casually ignored. The Lime Street Fire also highlighted the unreliability of alleged guilty behavior as evidence of arson.

The Case of Ernest Willis

Ernest Willis of Texas survived a fire in which adult females died. Willis' behavior soon after the fire was allegedly unlike that of an innocent person. He was insufficiently emotional. He wasn't burned. He wasn't even coughing. He failed a polygraph examination. State and insurance investigators found "pour patterns" in the house, though lab tests would find no evidence of gasoline or other accelerants.

Willis was convicted of capital murder based on a faulty arson investigation buttressed by evidence of his allegedly guilty behavior. Willis was granted a new trial because he had

literally been drugged during the first. The fire scene evidence was, after the trial, reviewed by fire investigators better trained and experienced with respect to fire behavior. So compelling was their review that Governor Rick Perry set Ernest Willis free from Texas death row. The alleged guilty behavior of Ernest Willis was, as it turned out, not guilty behavior at all.

The Case of Cameron Todd Willingham

Cameron Todd Willingham of Texas was convicted and executed based on the testimony of unqualified arson investigators buttressed by questionable testimony regarding Willingham's guilty behavior. According to witnesses, Willingham showed insufficient concern for his children. He did not attempt to reenter the house to save them. He was worried about saving his car more than he was about saving his children. He was inordinately concerned about finding his dartboard in the debris. He played loud music at the fire scene and laughed as he searched for the dartboard. He had heavy metal posters on his wall.

During the sentencing phase, prosecutor John Johnson presented testimonial evidence that Willingham beat his wife while she was pregnant. Though Willingham's wife herself disputed that evidence, it did no good. The jury sentenced Willingham to death.

The Willingham fire has possibly been reviewed more frequently and more thoroughly than any other arson case in our country's history. Multiple, in-depth reviews by our nation's most highly-qualified fire scientists have revealed that the arson investigation of the Willingham fire was deeply flawed. So compelling have been the reviews that even Willingham's prosecutor, John Jackson, conceded the point during a *Nightline* interview with Terry Moran. From September 17, 2010:

- Moran: You would agree that this report from the Texas Forensic Science Commission calls into very serious question the methodology, and the way this arson investigation...
- Jackson: Without question.
- Moran: ...that it really has a problem.
- Jackson: That the techniques used were flawed.
- Moran: Deeply.
- Jackson: Yes ... Some of the evidence is certainly less credible than I would have liked to see.
- Moran: And doesn't that give you pause at all about sending a man to death?
- Jackson: Not a man like Todd.... The best evidence to me is not the investigation of the arson, the best evidence that I believe I presented was the prior attempts of Todd Willingham to kill his children.
- Moran: He beat his wife when she was pregnant, therefore he killed his children in the fire?
- Jackson: I think that's a major factor that most finders of facts such as jurors would consider.

The Case of Michael Ledford

Questionable behavior testimony is frequently used to buttress weak cases of arson. In Michael's case, the Commonwealth called only four witnesses to describe the rescue of Elise,

the unsuccessful rescue of Zachary, and the investigation of the fire. Just four witnesses. By comparison, the Commonwealth called twelve witnesses to diminish Michael Ledford in the eyes of the juror. Those witnesses testified to the problems Michael and Elise had in their marriage, and to the insurance policies covering Elise and Zachary.

Witness Nathaniel Miller, for example, testified that approximately one week before the fire, Michael told him he was not getting along with his wife.

Witness James Rossman testified about a hurtful letter that Michael wrote to Elise. Rossman testified as well that he informed Michael that, if he divorced Elise, he (Michael) would not get custody of Zachary but would have to pay child support.

Witness Shannon Toner testified that Michael told her he was going to buy a pickup with the money he and Elise would receive from Zachary's insurance, and that he had mentioned a pick up prior to the fire.

Witness Paul Merrel, a registered nurse, testified that Michael asked him what would happen if Elise "came off the ventilator or if the tube suddenly came out." Under cross examination, Merrel explained that such questions about the ventilator are not unusual, that they are in fact "fairly common."

Such was the nature of most of the testimony against Michael Ledford. The testimony of two witnesses, however, was so egregious that it will be discussed in more detail.

Witness Debbie Moore

Debbie Moore was the person moving into her boyfriend's apartment when she heard glass break and saw flames in the apartment next door. Agent Watson interviewed her on the night of the fire. From her contemporaneous report, we know she ran to the street to direct firefighters as they arrived.

MOORE stated she went to the entrance of the apartment complex. MOORE further advised she directed one of the firefighters [Michael Ledford] into the parking lot. MOORE stated she went back up to the burning apartment and met another firefighter [Shawn Abshire], who she learned lived in the apartment complex. MOORE further stated she motioned to this firefighter [Abshire] and showed him which apartment was on fire. MOORE advised she saw the firefighter she motioned into the apartment complex [Ledford] come running to the burning apartment. ... MOORE advised the rescue squad arrived and started to comfort the firefighter, who's residence was burning.

Debbie Moore described Michael Ledford as being in need of comfort. That description was supported by the contemporaneous reports of other witnesses. Shawn Abshire, for example, was another volunteer firefighter and another resident of Highland Hills Apartments. Not surprisingly therefore, he was the first firefighter to arrive at the scene, but just barely; Michael arrived soon after and second. Shawn Abshire had to physically restrain Michael from entering the burning apartment without an air pack. He reported, as did Debbie Moore, that Michael had to be controlled by the rescue squad.

ABSHIRE advised he was the first firefighter on the scene at the Highland Hills apartment fire on 10-10-99. ABSHIRE stated he heard the alarms go off and responded from his residence. ABSHIRE stated he was standing in front of the building and couldn't tell which apartment was on fire, because no smoke was visible. MIKE LEDFORD, another firefighter

arrived just a few seconds after him. ABSHIRE stated LEDFORD ran up to him, yelling that's my apartment. ABSHIRE further stated LEDFORD handed him the keys to the apartment and advised him that his wife and child were in there. ABSHIRE advised he grabbed hold of LEDFORD to prevent him from going into the apartment. ABSHIRE stated Captain MIKE CONNER of Stuarts Draft Rescue arrived and took custody of LEDFORD. ABSHIRE advised when the Stuarts Draft Fire Department arrived, with air packs, he entered the apartment with firefighter PEGGY KANE.

Lisa Hall was sitting on the front steps of her apartment. She heard Debbie Moore scream. She recalled (incorrectly) that Michael was the first firefighter on the scene. She agreed with the others that Michael was in need of comforting.

HALL advised the man who lives in the burning apartment, was the 1st fireman to get there. HALL remembers this man going "ballistic" when he learned it was his apartment on fire.

During Michael's trial, only Debbie Moore changed her story about what happened that night. She testified that Michael behaved in guilty and heartless fashion.

Ervin: And, as you ran down the parking lot, did you observe anything?

Moore: When I hit the pavement and I looked to my left, I saw a car parked along a curve. And it was close to the trees. It was dark. And I thought, with the street light behind it, that I could make out a fireman's light on top of the car. ... It was just parked there. ... I was slowly walking toward it, trying to make out to, to determine if that was a fireman sitting there or not. ...

Ervin: And, when you first saw the car, it was just sitting there?

Moore: Yes. ... At that point in time, I heard a voice behind me and turned to see another fireman approaching our direction from out of nowhere. I was looking. I did not see a car, or a fire truck or anything. ... I had ran up the parking lot with him. ... That fireman had went up; opened the door, and there was smoke filtering out the top of this door there. I turned to see the other gentleman park his car up in the gravel lot.

Ervin: This was the one who was parked down there on the street?

Moore: Yes. ... He came out of the car and asked which apartment it was. Someone indicated which one it was. And he had said, indicated that that was his apartment. ...

Ervin: Would you recognize the man that was sitting there in the parked car that night?

Moore: I didn't really get a good look at him. He wore glasses. But I didn't get a full look at him.

Ervin: But he said it was his apartment? Is that right?

Moore: He did say it was his apartment.

Ervin: Did he ever say why he was just parked there on the road?

Moore: No.

Immediately after the fire, Debbie Moore described Michael as someone in need of calming, someone in need of control of the rescue squad. Other witnesses reported similarly: Michael went "ballistic"; Michael attempted to enter the apartment himself, without the proper gear; Michael needed to be physically restrained; the rescue squad took custody of him.

According to Debbie Moore's trial testimony, however, a firefighter (who could only have been Michael) behaved in cold and calculating fashion, parking on the street while his apartment burned, biding his time as his wife and child were consumed by fire. There can be no doubt that such testimonial evidence had a powerful effect on the jury.

Sadly, neither of Michael's defense attorneys even attempted to impeach Debbie Moore's testimony. They were apparently caught off guard. Perhaps that should come as no surprise, since Debbie Moore's shocking claim was nowhere to be found in the police reports or the preliminary hearing.

Nonetheless, Debbie Moore's shocking new testimony absolutely should have been challenged. It was absolutely contrary to her own contemporaneous report that Michael was one of the first firefighters at the scene, and that he had to be calmed by the rescue squad. Debbie Moore's testimony was also absolutely contrary to Shawn Abshire's contemporaneous report that Michael attempted to enter the apartment, without a partner, without the proper gear. Debbie Moore's testimony was absolutely contrary to Lisa Hall's contemporaneous report that Michael went "ballistic."

Debbie Moore's testimony should have disproved also by the well-established sequence-of-events regarding the arrival of firefighters. She testified, falsely, that Shawn Abshire was entering the apartment as Michael arrived on scene.

That fireman had went up; opened the door, and there was smoke filtering out the top of this door there. I turned to see the other gentleman park his car up in the gravel lot.

Her testimony simply cannot be true. Firefighter Shawn Abshire, Debbie Moore herself, and several others told a materially different story soon after the fire. Michael was the first or second firefighter to arrive. Michael attempted to enter the burning apartment on his own, without proper equipment. He was restrained by Shawn Abshire. He was turned over to the care and control of the rescue squad. Only later, when other firefighters arrived with air packs, did Shawn Abshire and another firefighter enter the apartment.

No one else, either soon after the fire or during the trial, claimed that Michael arrived only after the fire truck arrived, only after Shawn Abshire and another firefighter had donned their air packs, only as the two properly equipped firefighters entered the apartment. Debbie Moore's trial testimony of Michael's intentional and substantial delays in responding to the fire was simply not true.

As discredited as her testimony now is by her own police statements, and by those of others, her testimony is impeached most thoroughly by the fire scene evidence itself, as that evidence is preserved in the photographic record. The implication of her testimony, that Michael set the fire and waited on the street as it consumed his family, simply cannot be true. The photographic record reveals that the fire did not result from arson, but resulted instead from an unsafe and poorly maintained electrical system.

Witness Greg Swartz

Greg Swartz was also a volunteer firefighter, and thereby an associate and friend of Michael Ledford. Greg Swartz was married to Christy Swartz. Christy was a good friend and confidant of Michael's wife, Elise. After the fire, when Michael had no place to live, Greg and Christy Swartz allowed Michael to stay with them.

Greg Swartz was not interviewed after the fire. Christy Swartz was interviewed twice, 16 and 25 days after the fire.

Greg and Christy Swartz both testified at Michael's trial. Christy Swartz testified that Michael did not visit Elise in the hospital as frequently as she thought he should. Greg Swartz testified that, when helping clean up after the fire, he found a candle under a second couch, one located distant from the fire origin.

Ervin: Did there come -- come a time when you helped Mr. Ledford clean out his apartment?

Swartz: Yes, sir.... We took most of the burnt furniture out of this room. ...

Ervin: When you moved that sofa, did you find anything?

Swartz: There was what appeared to be a melted candle right around in the area where the sofa/table had gone. ...

Ervin: Was there any damage to that sofa; underneath the sofa?

Swartz: The only real damage to the sofa was the dust cloth underneath the sofa. ... The underlining underneath of it had a hole in it, about yea big, that appeared to have melted away.

Ervin: And was this right over the candle, itself?

Swartz: Yes, it was.

Ervin: And that was on this sofa, which did not have any fire damage?

Ervin: Right. There was no -- no top, back or burned side damage to the sofa at all. It was only one spot underneath the sofa.

Ervin: Where the candle was melted down?

Swartz: Yes, sir.

The implication of Greg Swartz' testimony is that Michael attempted to start a second fire by placing a lit candle beneath the second couch. DA Ervin made the claim explicit during his closing argument.

Just like that candle over there by the sofa shows that the second fire was set. No, he didn't admit to setting the second fire. Of course he didn't admit to that. He didn't think anybody knew about it. So why admit to it? But the evidence, ladies and gentlemen, the evidence is what you look at. The evidence shows the second fire was set with a candle. Where was that set? Over here where it would blaze up, blocking that exit. And why didn't it blaze up? Maybe the oxygen put it out before it could blaze up or whatever. But a second fire was set.

There are multiple problems with Greg Swartz' testimony, the first of which was glossed over by DA Ervin. No witness nor any report established (or even claimed) there was a second fire. Ervin's assertion that "a second fire was set" was unsupported by any evidence presented during, before, or after the trial.

A second problem with Greg Swartz' testimony is its lack of provenance. Greg Swartz' apparently never mentioned the so-called second candle to the police (to whom he never gave an interview) or even to his wife (who gave two interviews). Nor did any of the other people who helped remove and dispose of the debris notice the candle.

A third problem is that Greg Swartz' made no effort to secure the candle. He did not claim, even during his trial testimony, that he did anything other than leave it where he claimed to see it. Someone else must therefore have disposed of it, assuming it ever existed. Someone else must therefore have seen it, yet no one else did.

A fourth problem with Greg Swartz' testimony was his apparent lack of concern regarding the significance of the second candle directly beneath fire damage on a couch. Greg Swartz' was a firefighter. He must have understood the significance of that candle beneath that couch. Certainly he understood its significance when he told the jury of his discovery.

Greg Swartz' had not ever before however, as far as can be discerned from the case documents, been sufficiently concerned about the candle to mention it to anyone before trial, anyone other than the DA. Seemingly never before had Greg Swartz thought to mention it to the police, or to his fellow firefighters, or to those who helped clean the apartment, or to his wife. And at no point did Greg Swartz ever attempt to confront Michael with what he had found.

On the contrary, when Michael had nowhere else to live, Greg and Christy Swartz took him in. Greg Swartz was at that time working third shift. That means Greg Swartz was comfortable leaving Michael alone with his wife and children. It's exceptionally unlikely Greg would have done so if he believed Michael was an arsonist who had recently killed his own son and burned his own wife.

When it is all said and done, though, Greg Swartz' testimony fails for the same reason Debbie Moore's testimony fails. Michael simply did not set the fire. The fire resulted from an aging, improperly maintained electrical system. The Commonwealth's investigator relinquished the investigation to an insurance company. The agents for that company then protected the company's pecuniary interest, even at substantial insult to the Commonwealth's system of justice.

14.3 Agent Watson's Testimony Regarding the Origin of the Fire

Agent Watson testified that he began his investigation by locating the origin of the fire. He testified initially that he determined the origin to have been "in the area of the chair and quilt rack." More specifically, he placed the origin at the base of the wall, beneath the V burn pattern that climbed the wall.

Ervin: Okay. Agent Watson, exactly where did you determine that the fire had started?

Watson: I found the fire origin would be in the front door. As you come through the front door, the only entrance to this apartment, the fire origin would be in the area of the chair and quilt rack.

Ervin: Where was the fire, the source of the fire, when you came in?

Watson: This is the front door. You come through the front door. You see you have the quilt rack here. The fire would be in this area of the chair and the quilt rack.

Ervin: Now you talked about burn patterns. What are burn patterns? Could you tell the Court?

Watson: ... Generally, a fire will burn up at a fifteen degree angle. When it's up against a vertical surface, like a wall, then the heat ... leave[s] that particular V-pattern showing where the fire has burned up and out. And underneath that, at the apex or

the bottom of that particular V-pattern, would be the fire origin, or the heat source itself.

Recall that Agent Watson had informed Michael, during Michael's interrogation, that he [Watson] had found a V pattern on the wall, and the V-pattern contradicted Michael's suggestions that the fire might have started in the chair.

Watson: But the placement of that open flame does not match what you just told Stan a few minutes ago. When we did the time burn, when we saw the charring, other than the quilt rack back there where it says a V pattern. Are you familiar with the V pattern, the fire burns up and out in that little space?

Ledford: Yeah.

Watson: Doesn't match.

Agent Watson's trial testimony to this point was entirely consistent with his sketch of the fire scene, which we have repeated below. As shown in Figure 69 below, he placed the words "Fire Origin" at the top of his sketch, to the right of center. The arrow points to the base of the wall, near the quilt rack, behind the chair. It does not point to the seat of the chair.

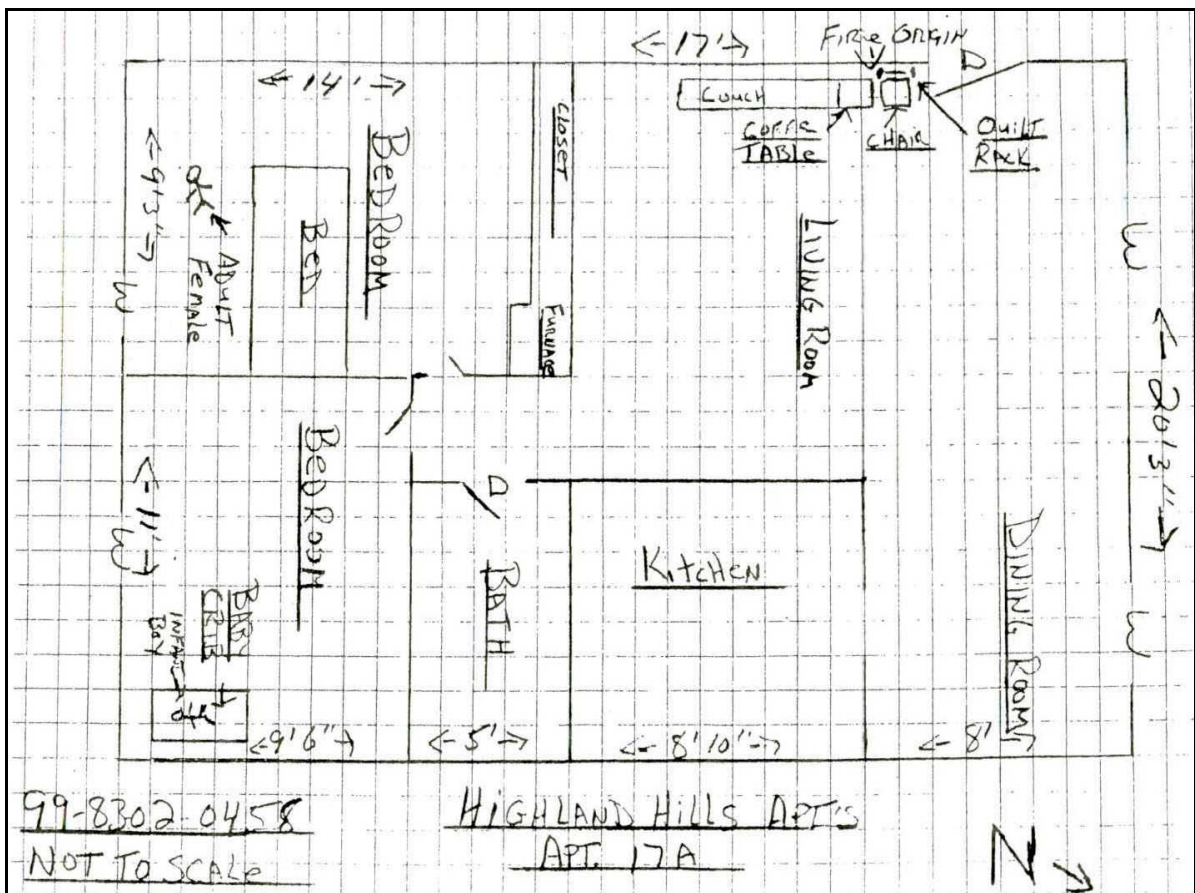


Figure 69: Agent Watson Identified Fire Origin as beneath Finicky Table Lamp

The jury, however, did not see Agent Watson's sketch of the living room. Instead they saw a later, larger sketch. That sketch is shown below, crudely reassembled from the six partial images provided by the court upon our request. Note that the fire origin is not identified in the sketch presented to the jury.

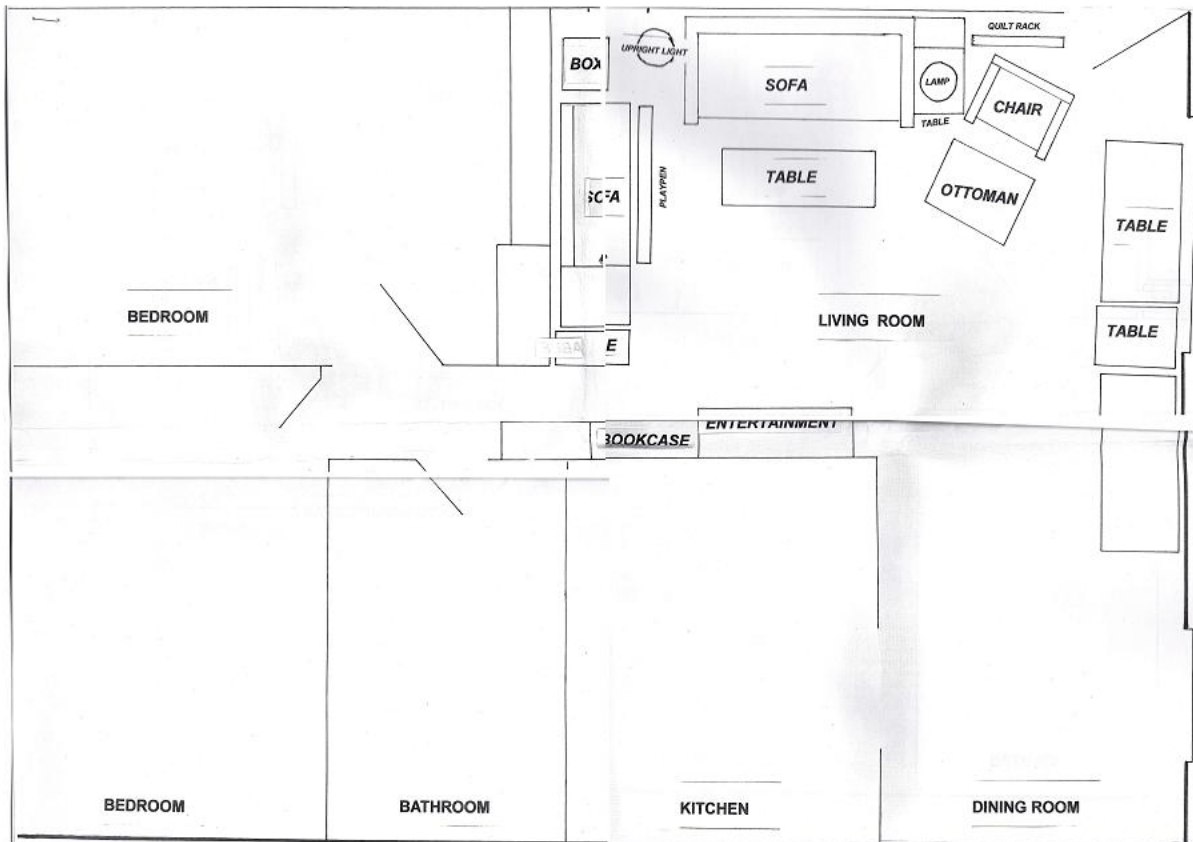


Figure 70: Fire Scene Sketch Shown to Jurors Excludes Agent Watson's Fire Origin

It was therefore inaccurate and unjust when, during cross-examination, Agent Watson suddenly moved the point of origin to the seat of the chair.

Bobbitt: Okay. Were you able to determine a point of origin in this case?

Watson: The point of origin; yes, would be in the chair itself.

Bobbitt: In the chair, itself?

Watson: The chair -- to my -- what I observed, the fire to be in the chair, because the fire seemed to burn up from that particular location. To actually say an exact pinpoint, I cannot say that; no.

Agent Watson had never before, in any written report or in any testimony, claimed the fire started in the chair. In fact, during his interrogation of Michael Ledford, he repeatedly attempted to get Michael to admit that he [Michael] had started the fire with an open flame on the floor, at the base of the quilt rack or base of the chair. Agent Watson refused to accept any suggestion on Michael's part that the fire could have started in the seat of the chair, either by a candle or by a lamp falling into the chair.

Michael's defense team did not challenge Agent Watson's last-minute relocation of the fire origin from the floor, near the wall, to the seat of the chair. The jury was left with the impression that Agent Watson's fire scene examination corroborated Michael's confession, though it in fact Agent Watson's investigation falsified Michael's confession.

We now know however, without a shadow of a doubt, that Agent Watson believed the fire started on the floor, not in the chair. Recall that Agent Watson collected a carpet sample, not an upholstery sample, to be tested for accelerants.

14.5 Agent Watson's Testimony Regarding the Wall Outlet

Regarding the wall outlet, Agent Watson testified during his direct testimony that burn marks on and surrounding the outlet faceplate resulted from fire external to the outlet.

Ervin: You said the damage to the outlet was all external?

Watson: Yes, sir.

Ervin: What do you mean by that?

Watson: It's the damage as a result of heat contact. If you put a, have a flame exposed to it; nothing from the interior causing this damage. All of the damage was, was fire related; coming from external reasons.

Ervin: By the burn patterns, were you able to trace the fire from the source of the fire to the outlet itself? Were there any burn patterns showing that the fire had traveled that way?

Watson: Yes.

Ervin: Show the jury what you're talking about, on Exhibit Number 9, please.

Watson: This is the plug, itself. You really can't see it here. But you can see all this is soot and smoke damage here. And it's traveling this particular location; over. My pictures and, and looking at it, to the left of this plug, as you're facing the wall, you'll have a, a still clear portion of the wall, where it shows smoke and flame damage going over top of this. And this extends a little bit out from the wall, as, you know, like flames would do. It travels over, so it leaves a little space where it doesn't hit; so it leaves the existing wall there. So the fire was traveling in this particular direction.

Ervin: There's one mark above the plug, itself. What, what's that? This mark? ... Was that a scorch mark or anything?

Watson: No, sir. It would be similar to the heavy soot here; that heavy soot right here. It's similar to this type of soot. It was a heavy soot mark.

Ervin: So you were able to tell that the fire traveled from this location; over like this. Is that correct?"

Watson: Yes, sir. And you can also see, when you're looking at the plug, itself, you're seeing more melting of the actual plug on this side, compared to the other side.

Ervin: And you were able to tell that?"

Watson: Just, just glancing at it. Yes, sir.

When the prosecutor asked about the wall outlet, he referred to Exhibit 9. We show Exhibit 9 below as Figure 71.



Figure 71: Photograph Barely Showing Wall Outlet

One interesting point about this photograph is that Agent Watson did not take it, though he referred to it as one of "my pictures." None of Agent Watson's 22 pictures captured even a remote image of the outlet.

In fact, it's not clear that Agent Watson even looked at the outlet during his fire scene examination. To do so, he would have had to move the couch, and the evidence suggests that he never did even that. If Agent Watson moved the couch, he must have returned it to its original position before the insurance agents began taking their photographs. That would make his treatment of the couch unique. Of all the other items Agent Watson moved around the room, he returned none of them to their original position.

Given that Agent Watson may have never examined (or even glanced at) the outlet in person, his ability to discern details from a photograph (taken by someone else) is incredible. We use that word in the literal sense of not believable. Agent Watson testified that he could see in the photograph "more melting of the actual plug on this side, compared to the other side." We note that, since the photograph is two-dimensional, one can not actually see "the other side" of the plug.

Agent Watson testified also that he could see a clear portion of the wall along the left side of the outlet faceplate. He claimed that clear portion was a fire shadow, evidence of a fire

moving from right to left across the faceplate and plug. We can see no such clear area to the left of the faceplate.

We do however note, as we have several times previously, that fire did not burn along the wall behind the couch. Smoke was deposited there, some of which was emitted from the outlet, but fire did not burn there. As evidence, we once again show the back of the couch superimposed with the wall outlet, this time as Figure 72.



Figure 72: Location of Wall Outlet Superimposed on Back of Couch

Notice that in the area of the wall outlet, the temperature was not high enough to even darken the upholstery, much less melt the faceplate. The heat between the couch and the faceplate was certainly insufficient to damage the wires within the outlet.

For comparison, we show the front of the couch in Figure 73 below.



Figure 73: Unlike the Back of the Couch, the Front Shows Clear Evidence of Burning

Unlike the back of the couch, the front of the couch was clearly burned. Large portions of it are charred and blackened.

Had Agent Watson actually moved the couch and examined the outlet, he would have realized that the fire did not spread along the wall behind the couch. He would then not have been forced to provide testimony based only on a glance at a photograph that he didn't take.

Agent Watson would have then understood the significance of the "mark above the plug." It was indeed a soot mark, as he testified, but its shape made sense only if the soot came from behind the faceplate, not from a generalized fire sweeping over the entire region behind the couch.

To reinforce that critical point, we compare below the soot patterns around the outlet faceplate to the soot patterns around the front door chime, looking from outside the apartment. The soot pattern around the door chime is evidence of a fire within the apartment, not of a fire that swept across the lobby outside of the Ledford front door. Similarly, the soot pattern around the wall outlet is evidence of overheating within the outlet, behind the faceplate. It is not evidence of heating from in front of the faceplate.

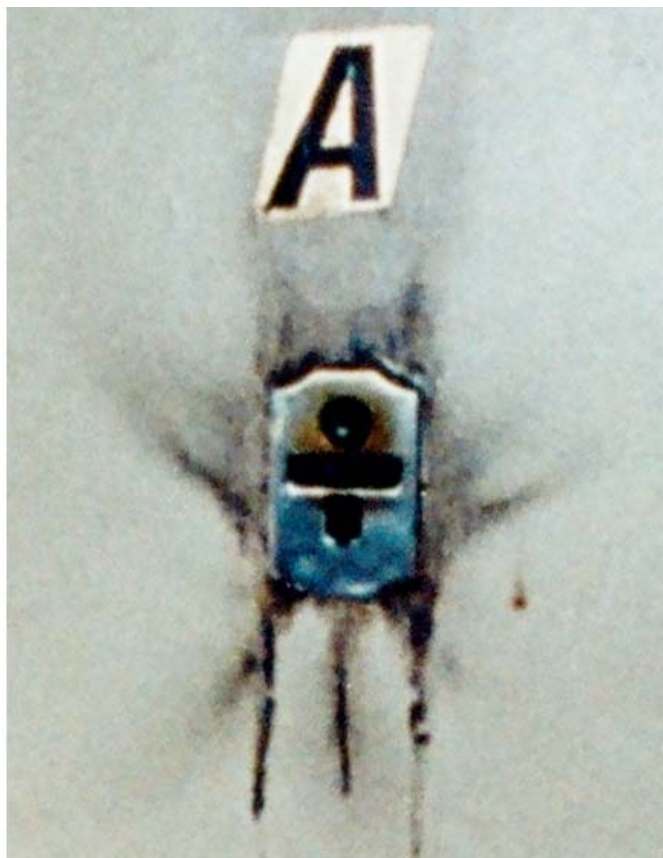


Figure 74: Faceplate and Front Door Chime Each Reveal Fire from Behind

14.5 Agent Watson's Testimony Regarding Flashover

Agent Watson testified that the fire initially consumed the quilt rack and chair. The fire spread up the wall, traveled across the ceiling and "flashed over and then provided smoke and radiant heat to the rest of the walls."

Given Agent Watson's training and experience as a fire investigator, and given that he was qualified as an expert by the court, it is disturbing that he did not understand the basic concept of flashover. From The Innocence Project's *The Report on the Peer Review of the Expert Testimony in the Cases of State of Texas v. Cameron Todd Willingham and State of Texas v. Ernest Ray Willis*, we find this explanation of flashover.

When the temperature of the upper layer reaches approximately 1,100-1,200 °F, there is sufficient thermal radiation ... reaching the fuel packages within the compartment to ignite every exposed and "easily-ignitable" combustible surface in the room. This level of thermal radiation has been defined as the onset of *flashover*, which is a transitional event that marks ... a condition where the fire is dominated by the burning of all combustible items in the compartment.

Insurance investigator Gary Toler testified that the Ledford fire did not flash over.

Dungan: Is it your contention, based on your study of this fire, that there was a flashover in this fire?

Toler: I don't believe that there was a flashover. No.

Dungan: What is, I'm sorry, I'm using technical terms that I didn't know about until I started this trial. What's a flashover?

Toler: Just, basically ... a flashover is when everything, all combustibles in the room reach ignition temperature and they flash.

Dungan: Burst into flame?

Toler: Burst into flame. Yes, sir.

As you have seen in the fire scene photos already presented, the Ledford fire did not flash over. Every "easily-ignitable" combustible item in the room did not ignite. Paper, plants, plastic wrap, wood, upholstery and even the highly flammable polyurethane cushions remained unburned. As compartment fires go, the Ledford fire was not particularly intense. It self-extinguished due to lack of oxygen before it could reach flashover.

Agent Watson's use of the term "flashed over" was not simply a slip of the tongue or careless use of jargon. Consider the following transcript segment in which he was specifically asked on cross-examination if the fire had indeed flashed over.

Bobbitt: And was there, at some point, a flash-over?

Watson: Yes, sir.

Bobbitt: How did you determine that?

Watson: By following the patterns -- fire patterns that had extended to the ceiling area and then went from the least amount of damage to the greater amount of damage. In a reverse, it's a reverse investigation process, where you see on one side of the wall less fire damage and you fire back to the, fall back to the greater fire damage. And it went from the ceiling back, and continued back down the wall, to what I considered the area of origin.

Agent Watson's explanation how he determined flashover is, quite bluntly, incomprehensible.

We don't argue that Agent Watson's misunderstanding of flashover, by itself, seriously impaired Michael Ledford's right to a fair trial. We do argue, though, that Agent Watson's misunderstanding of such a fundamental fire investigation concept casts further doubt on his ability to fairly evaluate a fire scene. It might explain also his unfortunate reliance on the insurance agents to investigate the fire.

14.6 Gary Toler's Testimony Regarding the Wall Outlet

Insurance investigator Gary Toler's testimony regarding the wall outlet was brief and enlightening.

- Ervin: Okay. And the plug-in that the lamp was plugged into?
- Toler: The outlet.
- Ervin: The outlet. Where was that located?
- Toler: I believe, to the best of my recollection, it was located along that wall, behind the couch.
- Ervin: And let me show you this photograph, Exhibit Number 9, and ask you if you recognize that?
- Toler: Yes, sir.
- Ervin: Does that show the outlet in the wall?
- Toler: Yes, sir. It does.
- Ervin: Okay. Now, this outlet is near where the fire occurred. Is that correct?
- Toler: Yes, sir. It is. It was, actually, I believe, behind the little end table that was attached to the couch.
- Ervin: And what did you do about this outlet. Did you check the outlet?
- Toler: Yes, sir. I examined the outlet from the outside first, for any signs of any arcing or beading or any malfunctions of the wiring; any abnormalities. Also, I took it out and examined the wiring inside. The wiring inside showed evidence of external heating only. There was no internal heating; no beading, no separation of the wiring within that outlet.
- Ervin: And what does that mean?
- Toler: That indicates that the outlet had nothing to do with the start of the fire; the origin of the fire.

Insurance investigator Toler testified that he removed the outlet from the wall and examined the wiring on the inside. He testified that the inside wiring did in fact show signs of overheating, but he attributed that overheating to an external source. He did not identify the external source of heat, but we presume he was referring to the fire that burned in the Ledford living room.

Insurance investigator Toler's presumption of internal damage due to external heat is, of course, untenable. It is not possible that the inside wiring experienced visually obvious damage from an external heat source while the faceplate did not.

In fact we know what a faceplate looks like after it has been subjected to the heat of a living room fire. It looks like the faceplate protecting the light switch near the front door. Agent Watson actually captured an image of that switch plate several times in his minimal collection of 22 photographs. Below, we show a side-by-side comparison of the wall outlet and the switch plate near the front door.

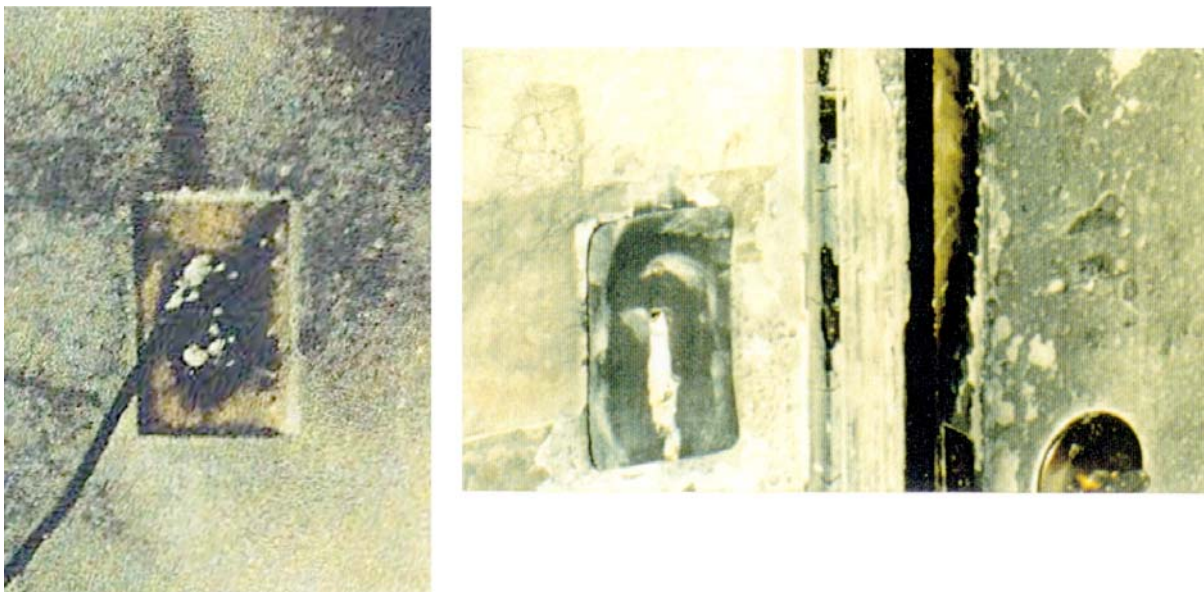


Figure 75: Outlet Faceplate Shows No Evidence of External Heating; Switch Plate Does

The switch plate was clearly deformed by the external heat, curled outward at the corners. It was scorched, not simply sooted. The light switch handle melted and flowed downward over the plate.

By comparison, the outlet faceplate showed no deformation. While it showed substantial sooting, it showed no scorching whatsoever. The white outlet material did not melt and did not flow downward over the plate.

Even to a lay person, it must seem unreasonable to argue that the internal wiring was damaged by an external heat source that was incapable of damaging an external faceplate.

We accept insurance investigator Toler's testimony that he did in fact remove the outlet from the wall. We accept also insurance investigator Toler's testimony that he did discover the outlet wiring to have overheated. The soot patterns surrounding the faceplate support his testimony in that regard. We do not accept, however, that the overheated wires in the outlet resulted from an external heat source. The sooted but otherwise pristine condition of the faceplate precludes that possibility.

We therefore conclude that overheated wires witnessed by insurance investigator Toler are indisputable evidence of a serious electrical problem in the Ledford wall outlet. Given that other residents had experienced problems with their wall outlets, it unfortunately should not have been a surprise that the Ledford outlet failed. The apartment complex had practiced only corrective, not preventive maintenance. The apartment complex and its insurance carrier, Allstate, were financially liable for the wrongful death of Zachary Ledford, and the serious burning of Elise Ledford.

It is disturbing, from a fire investigation perspective, that none of the three fire investigators secured the wall outlet against replacement and destruction. It is particularly disturbing that insurance investigator Toler, who actually removed and examined the outlet, did not (as far as we know) bother to take a single photograph of the overheated wiring he discovered.

Insurance Investigator Toler should have taken multiple photographs of the outlet interior, from multiple angles. He should have then removed and secured the outlet and its local wiring for detailed examination, testing, and preservation. He did not. Instead he re-inserted the outlet into the wall, covered the evidence with the outlet faceplate, and then improperly staged a black plug.

We leave open the possibility that insurance investigator Gary Toler did take a single photograph of the burned electrical wiring within the wall outlet. Recall that the Commonwealth and the defense were provided only 47 of Toler's 48 photographs. Recall also that Toler handled one photograph differently than all the others. He put that one photograph in a separate envelope and sent that envelope (and all the negatives) to Jim Cressman of Allstate Insurance in Atlanta, Georgia. It is possible that the one photograph that was withheld from the Commonwealth and from the defense documented the burned wiring inside the electrical outlet.

The burned wiring within the outlet not only disproved arson, it was powerful evidence that the insurance company was financially liable for a horrific tragedy. The only photograph of that evidence (or other damning evidence) ended up in the hands of an Allstate executive, and to this day has been withheld from the Commonwealth of Virginia and from petitioner Michael Ledford.

14.6 Gary Toler's Perjury

Insurance investigator Gary Toler may have himself, probably to protect his client Allstate Insurance. Consider the following testimony, offered during his cross examination.

Dungan: But there were no accelerants used here, were there?

Toler: No sign of any accelerants. No, sir.

Dungan: And, in fact, there are no signs of a candle. Were there?

Toler: Not that I found.

Dungan: And you searched carefully, didn't you?

Toler: I looked through the debris, and I did not see any sign of a candle.

Dungan: So are you saying . . .

Toler: No, excuse me. Let me, let me re-phrase that. There were signs of the little metal cups from votive candles in the debris on the floor.

The defense attorney was seemingly surprised by this new evidence and asked no more about it. On redirect, the prosecutor had Gary Toler repeat his testimony about the "signs of the little metal cups".

Ervin: Mr. Toler, one thing Mr. Dungan brought out and then tried to shy away from real quick. You found something in the debris there, where the fire was?

Toler: Yes. There was the remains of a metal, almost like, I describe it as a cover. ...
[Objection. Sustained.]

Ervin: Mr. Toler, did you find something in the debris there, where the fire was?

Toler: Yes, sir. Yes, sir. There was the remains of what appeared to me to be the bottom out of, of one of these votive candles like you see; little tea candles, they call 'em. It's a little metal cup.

Ervin: And that was in the debris itself?

Toler: In the debris on the floor. Yes, sir.

There is no corroborating evidence that the metal cup ever existed. If it did not exist, then insurance investigator Gary Toler perjured himself.

The metal cup certainly can't be found in any of the photos Gary Toler took of the crime scene. The collection of photos shown below reveal no metal cup on the floor beneath the quilt rack, or beneath the chair, or beneath the end table, or behind the couch, or in front of the couch, or by the door.



Figure 76: Toler's Perjured Metal Cup Appears in no Photograph from Fire Scene

In fact, no metal cup can be found in any of the photographs taken by any of the three investigators, taken in any of the rooms. Each of the high-definition photos showing the floor was scanned from left to right, from top to bottom under extreme magnification. While such scanning discovered minute detail in the photos (such as the missing prongs from the lamp plug), no metal cup was found.

Not only did everyone fail to capture any metal cup in any photo, insurance investigator Toler failed to secure any metal cup as evidence. The only physical evidence collected from the crime scene was a carpet sample and the smoke detector. Special Agent James Watson collected the carpet sample to test for accelerants. Insurance investigator Gary Toler took the smoke detector. No one collected a little metal cup.

Not only did Insurance investigator Toler fail to collect or photograph a little metal cup, he never mentioned any such cup to his Allstate control in Atlanta, at least not according to his sole written report. Gary Toler's written report makes no mention whatsoever of a metal cup that he noticed, photographed, or secured at the fire scene.

Furthermore, there is no evidence that insurance investigator Toler ever mentioned a metal cup to Special Agent Watson, the Commonwealth's lead investigator in the case. It seems as if Agent Watson was completely unaware of any such item.

Agent Watson did not photograph a metal cup as he investigated the crime scene.

Agent Watson did not mention a metal cup in his fire scene report, or in any amendment to that report.

During Michael's interrogation, when the interrogators were maximizing (even lying about) the evidence of arson, Agent Watson never mentioned a metal cup. Nor did either of the Michael's other interrogators, Agent Ritchie and Polygrapher Ogden.

Though Agent Watson testified at each of Michael's two preliminary hearings, he did not mention the metal cup at either of them.

During his trial testimony, Agent Watson never mentioned a metal cup.

It seems insurance investigator Gary Toler did not mention a metal cup even to the Commonwealth's attorney, Lee Ervin. The prosecutor did not ask Gary Toler about discovering the metal cup during his direct questioning.

If the metal cup ever existed, insurance investigator Gary Toler must have secured it before he took his many photographs of the floor where he claimed to find it. He must have decided not to report the cup as an item secured from the scene though he reported securing the smoke detector. He must have decided to tell no one. He told neither the lead investigator, the Commonwealth's attorney, the defense team, nor even his own control from Allstate in Atlanta. He decided to tell no one though he must have realized the cup was important enough to secure from the scene before he photographed it.

It makes no sense whatsoever. There is no evidence, outside Gary Toler's surprise testimony, that the metal cup ever existed. It is therefore a near certainty that insurance investigator Gary Toler perjured himself, and probably did so to protect his client Allstate Insurance.

15. SUMMARY AND PRAYER FOR RELIEF

Chapter Summary: The photographic record provides compelling evidence that the Ledford fire resulted from an overheated electrical system. Evidence of the electrical problem was covered up by an agent working for the insurance company. Because Ledford was in no way responsible for the fire that took the life of his one-year-old son and seriously burned his wife, and because he has no alternative avenue for relief, he prays that you will grant him an absolute pardon.

Though the insurance investigator covered up and withheld evidence of an electrical fire in the Ledford apartment, and though the insurance investigator probably perjured himself about evidence of arson, the photographic record preserves a compelling body of evidence revealing a fatally overheated electrical circuit. We conclude this petition by summarizing just a fraction of that evidence and then asking that you use your gubernatorial power to correct a terrible injustice.

15.1 The Overheated Circuit Breaker

The circuit breaker in the 10th position of the circuit breaker panel shows a small burn mark on its toggle handle. The burn mark is located on the portion of the toggle handle that was buried within the breaker during the fire.

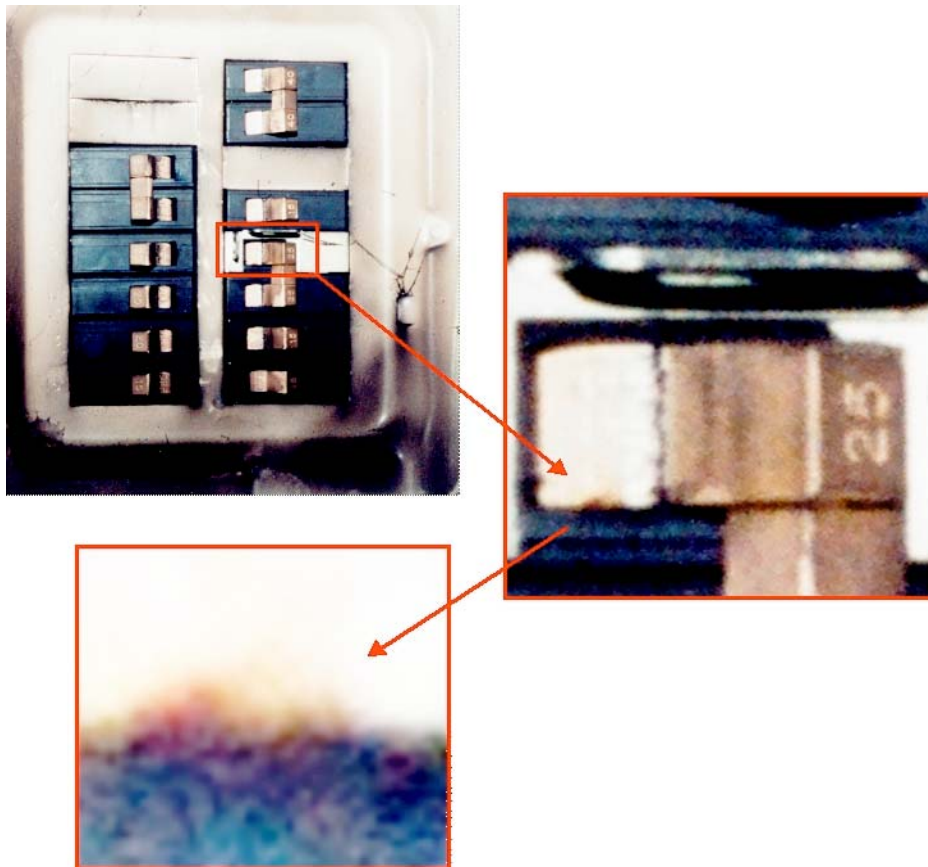


Figure 77: Burn Mark Reveals Fire Within Breaker 10

15.2 The Overheated Wall Outlet

The lamp on the end table was powered through an electrical outlet located behind the couch. There is no dispute that the wiring in that electrical outlet showed evidence of overheating. Insurance investigator Gary Toler is the only person associated with this case who claimed to have examined the wiring. As part of his sworn trial testimony, he provided uncontested testimonial evidence that the wiring suffered overheating.

Toler: I took it [the outlet] out and examined the wiring inside. The wiring inside showed evidence of external heating only.

15.3 The Cover-Up of the Overheated Wall Outlet

Insurance investigator did not secure the wall outlet for further examination and testing. Nor did he photograph the overheated wiring about which he would later testify. Instead, for some unexplained reason, he replaced the outlet and secured it flush against the electrical box. He then literally covered up evidence of an electrical fire by re-installing the faceplate.

Though insurance investigator Toler testified the overheating he saw inside the outlet resulted from an external heat source, the outlet's faceplate shows his presumption to be wrong.

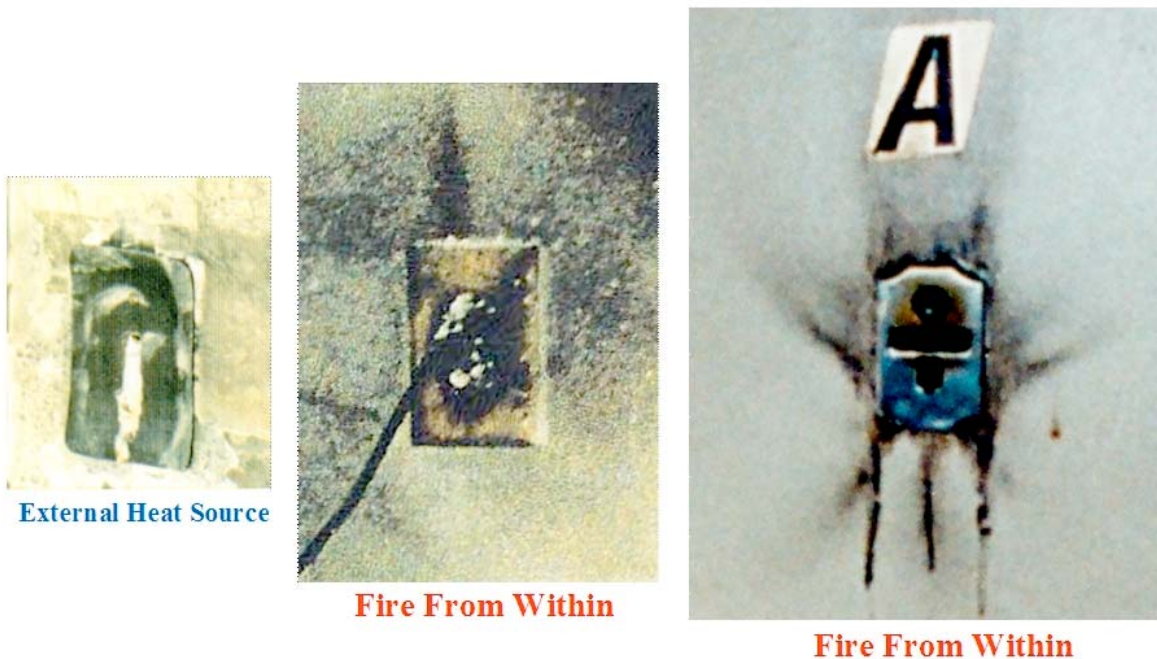


Figure 78: Faceplate Shows No Evidence of External Heating -- Only Evidence of Fire from Within

Unlike the light switch plate (which did suffer from external heating), the outlet faceplate showed no sign of external heating. The light switch plate melted; the outlet faceplate did not. The light switch plate did not have smoke being ejected from behind; the outlet faceplate did.

The burn patterns on and around outlet faceplate instead have the same character as those surrounding the exterior doorbell chime. In both cases, the burn patterns reveal a fire from within.

15.4 Allstate Insurance and Gary Toler

Allstate Insurance had a substantial pecuniary interest in the investigation and trial of Michael Ledford. Insurance investigator Gary Toler, acting directly as an agent for Crawford Investigative Services and indirectly as an agent for Allstate Insurance, was the person most responsible for covering up evidence of Michael Ledford's innocence.

Gary Toler submitted his 48 photographs and his 48 negatives to Jim Cressman of Allstate Insurance in Atlanta. He enclosed the 48th of those photographs in a separate envelope. He provided neither that 48th photograph nor any of the negatives to the Commonwealth or to Michael Ledford.

Gary Toler may have intended to withhold as well the two photographs he took of the circuit breaker panel, one with the panel door closed and one with the panel door open. The photograph with the panel door closed showed smoke streaming from inside the panel. The photograph with the panel door open showed a burn mark on the handle a critical circuit breaker.

As evidence that Gary Toler intended to withhold those two clearly exculpatory photographs, Gary Toler prepared a photo location diagram indicating no such photographs were taken. His photo location diagram indicates no photographs were taken of the circuit breaker panel. The diagram instead indicates two other photographs were taken of the hall closet. No photographs of the hall closet, however, were ever provided to the Commonwealth or to Michael Ledford.

Gary Toler took possession of the smoke detector from the Ledford apartment. He apparently felt it was important to secure it as evidence. Its wiring, after all, showed evidence of overheating. Gary Toler withheld that smoke detector from the Commonwealth and from Michael Ledford.

Gary Toler literally covered up the burned electrical wiring he found within the wall outlet located near the fire's origin. After removing the wall outlet and finding the burned wiring inside, he took no photograph of the wiring or he suppressed the photograph he did take. He did not secure the outlet as evidence, nor did not mention it in his fire scene report. Instead he replaced the wall outlet then covered it with the faceplate.

Gary Toler figuratively covered up the significance of the burned wiring. He testified that the burned wiring resulted from external heating, rather than overheating of the wiring itself. As a fire investigator, he must have known his testimony not to be true. Neither the upholstery near the outlet nor the faceplate covering the outlet suffered any heat damage.

Gary Toler impeached his own testimony and his integrity with a surprise, last moment claim that he had discovered a metal cup at the fire scene. Gary Toler's own photographs show no such cup existed where he claimed to have found it.

There is a sad and disturbing twist to this decade long injustice. Gary Toler further discredited his own character not long after Michael's trial. Gary Toler, the man primarily responsible for covering up the evidence of Michael Ledford's innocence, is now imprisoned for a crime of moral turpitude.

15.5 Prayer for Relief

Because Michael Ledford was in no way responsible for the fire that took the life of his one-year-old son, and because the Commonwealth was deceived by an agent of Allstate insurance, and because Michael Ledford has no alternative avenue for relief, he prays that you will grant him an absolute pardon.

[Signed]_____

[Dated]_____

Michael L. Ledford, #1014878
Petitioner

Date

Prepared by:

John B. Allen
[Redacted]