

# FALSE CONFESSION PSYCHOLOGIST TESTIMONY DENIED

## IN MANHATTAN TRIAL OF LINDA STEIN'S KILLER, JUDGE SLAMS DOOR ON ECHOES OF CENTRAL PARK JOGGER CASE

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**New York** – In a decision likely to ripple through courts in New York State, Judge Richard Carruthers denied a defense effort to present the false confessions testimony of Ohio forensic psychologist Solomon Fulero, Ph.D. to the Manhattan jury weighing evidence in the trial of Natavia Lowery. Ms. Lowery is accused of the bludgeoning murder of high-profile real estate agent Linda Stein, her employer at the time. Ms. Stein was found dead in her apartment in her Upper East Side doorman building. With a lack of physical evidence available, Ms. Lowery's later self-incriminating statements to police have drawn energetic efforts by her attorneys to blunt their impact at trial.

Defense attorneys sought to introduce testimony by Dr. Fulero, who has testified in a number of jurisdictions in support of defense efforts to paint confessions as coerced. Prosecutors responded by petitioning the court to hold a *Frye* hearing to determine admissibility of Dr. Fulero's testimony, challenging the general acceptance of his psychological testimony on false confessions. Assistant District Attorney Joan Illuzi-Orbon retained forensic psychiatrist Michael Welner, M.D., Associate Professor of Psychiatry at NYU School of Medicine and Chairman of The Forensic Panel, to appraise Dr. Fulero's testimony and to educate the court about the state of the science, and how it might be relevant to the evidence before the court in *State vs. Lowery*. Dr. Welner has examined disputed confession cases for both defense and prosecution, and has testified for the prosecution in several cases around the United States which resulted in defense witnesses on false confessions being excluded, including three such cases in New York state.

In a pre-trial hearing, Dr. Fulero, who did not interview Ms. Lowery, testified that the psychological qualities of an individual suspect are not relevant to the interrogation setting so much as the interrogation itself. The psychologist offered testimony about social influence research in general and other research which he asserted demonstrated the coercive nature of police interrogation.

Among research particularly lauded by Dr. Fulero was that of Saul Kassin, Ph.D., whose studies of college students in mock interrogations are the most publicized of studies exploring false confessions. Dr. Fulero also drew a link between the well-documented Milgram obedience experiments and false confessions to the authority of police. Pointing to cases such as the Central Park Jogger case, and to DNA exonerations of the Innocence Project, Dr. Fulero listed a variety of police techniques which he aimed to testify cause false confessions, asserting that these miscarriages of justice occur frequently

In rebuttal, Dr. Welner explained that false confessions invariably reflect the individual vulnerabilities of the suspect, and that any psychological input in such cases would have to account for limitations and strengths of the defendant in order to have any relevance to the available literature in false confessions. Dr. Welner took the court through the specifics of the Kassin research to dismiss its inability to replicate the inherent pressures of a setting of interrogation for murder. In addition, Dr. Welner cited numerous key features of the Milgram studies that render them irrelevant to consideration of false confessions.

Then, reviewing published sets of cases of false confessions, Dr. Welner demonstrated how defense advocates and critics of police procedure double count cases or include guilty pleas or erroneous third party statements, for example, to the end of elevating numbers of confirmed false confessions. In his testimony, Dr. Welner also pointed out that specific interrogation techniques had not been studied for causal relationships to false confessions. Moreover, according to the psychiatrist, the circumstances of confirmed false confessions bore no resemblance to the Lowery case. Ms. Lowery, the psychiatrist pointed out, has

never written any explanation asserting that her confession was coerced false or what would have prompted her to confess falsely to murder.

In an emphatically worded opinion, Judge Carruthers excluded the defense's proposed psychological testimony, noting that "Fulero would have nothing to contribute that a jury, properly guided by careful instructions, could not determine for themselves." Judge Carruthers pointed out the irrelevance of the Kassin research touted by Dr. Fulero, observing, "Dr. Kassin's experiment cannot compare to a police interrogation where a suspect knows she is facing a criminal charge." Of Milgram, Judge Carruthers asserted, "The scenario has no bearing on the self-destructive act of making a false admission of guilt...to an interrogator perceived as occupying an adversarial role."

One of the areas of disagreement between Dr. Fulero and Dr. Welner was in testimony on the Reid School, which trains many officers in interrogation techniques. Dr. Fulero, like Dr. Kassin, Dr. Richard Leo and Dr. Richard Ofshe and other widely visible experts who testify that interrogations commonly coerce false confessions, strongly criticized the "Reid technique" as responsible for false confessions, and linked those criticisms to his testimony in support of the notion that Lowery's confession was false. Dr. Welner characterized focus on the Reid technique as akin to presuming that a lawyer tries a case based upon what he learned in law school twenty years earlier. The psychiatrist dismissed such focus on Reid training as ignoring that officers, like psychologists and psychiatrists, shape their interrogation styles on the basis of experience, having long ago forgotten their training. And, that there was no evidence that officers in this case were so trained by Reid.

Judge Carruthers, echoing Dr. Welner's characterization of the evidence as irrelevant, opined, "Fulero's offered nothing of scientific or evidentiary value to support his claim that the Reid technique leads to an increase in false confessions." As for Dr. Fulero's minimization of the significance of individual differences, Judge Carruthers observed, "His words are particularly jarring since he was not referring to psychological or physical torture, but rather, to ordinary police questioning."

Judge Carruthers' ruling is particularly noteworthy in light of the most visible of reputed false confessions, that of the Central Park Jogger assailants. This case, invariably referenced in scientific journal articles published by academic critics of police procedure, originated in New York and drew tremendous media attention. Since the Central Park Jogger case, a number of expert witnesses have been active in testifying before juries with general criticisms of police techniques as coercive. Courts have disallowed this testimony in certain instances; advocates have responded by publishing all the more articles in an attempt to exhibit scientific legitimacy. The momentum of publication was emphasized by Dr. Fulero in his testimony as well.

Judge Carruthers, however, would have none of it, concluding that social psychologists "have not yet developed a truly scientific body of knowledge about false confessions." Applauding the decision, Dr. Welner observed, "The court thus returned the burden to the scientific community to commit legitimate research effort to this question, rather than conflating irrelevant social science theories and college student studies in disguised advocacy. The tragedy of false confessions loses credibility when the coterie of those who profit from it soften the science to the end of its irrelevance."

#### **FOR FURTHER INFORMATION:**

Joanna Fiorentini  
The Forensic Panel  
Tel: 212.535.9286  
Email: [jfiorentini@forensicpanel.com](mailto:jfiorentini@forensicpanel.com)  
Web: [www.forensicpanel.com](http://www.forensicpanel.com)