

SUMMARY OF TESTIMONY OF DR. RICHARD OFSHE

1. Dr. Richard Ofshe is proffered as an expert on the phenomenon of false confessions, and the voluntariness and reliability of Mr. Am's confession. As

phenomenon of false confessions, and the voluntariness and reliability of Mr. Am's confession. As

pertinent to this case, a false confession is an admission to a criminal act that the confessor did not

commit. Dr. Ofshe has studied the evidence regarding the circumstances of Mr. Am's confession and

will opine that Mr. Am's confession was involuntary and unreliable, in short, a false confession.

QUALIFICATIONS

2. A copy of Dr. Ofshe's curriculum vitae is attached hereto.

3. Dr. Ofshe is a Professor in the Department of Sociology, at the University of California,

Berkeley. Dr. Ofshe has a Ph.D. in sociology from Stanford University, and received his Bachelors in

psychology and Masters in sociology from Queens College of the City University of New York.

4. Dr. Ofshe is a member of the American Sociological Association, the American

Psychological Association, the American Psychological Society, the Sociological Practice Association,

and the Pacific Sociological Association.

5. Dr. Ofshe has consulted with both law enforcement officials and with defense counsel. Dr.

Ofshe served as a consultant to the United States Attorney's Offices in Los Angeles in 1982 and in West

Virginia from 1937-1991, and as a consultant to the United States Department of Justice, Criminal

Division from 1934 to 1990.

6. Dr. Ofshe was awarded a John Simon Guggenheim Memorial Foundation Fellowship in

1973-1974, and shared a Pulitzer Prize in 1979 for public service as a member of a three-person

reporting group that did an expose on Synanon.

7. Over the years, Dr. Ofshe has evaluated over 40 interrogations and has testified in over 60

case in both ~imtm courts.

CASE NO. ca 92.0151 MISC CAL  
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#### BACKGROUND REGARDING INTERROGATION TECHNIQUES AND CONFESSIONS

& Dr. Ofshe will testify that an interrogation can be divided into two sub-phases: pre- and post-

admission. In the pre-admission phase, techniques are used to cause a suspect to shift from denial to

admission. In this phase, the goal is to elicit the statement "I did it." In the second phase of the interrogation, the goal is to elicit from the suspect a post-admission narrative of the crime that proves the suspect's guilt.

9. Although there are different types of confessions (e.g., a voluntary and true confession; voluntary-false; involuntary-true; involuntary-false), Dr. Ofshe's testimony will focus on what he terms a coerced-compliant confession. A coerced-compliant confession is a statement elicited through the overzealous use of interrogation tactics such as threats, promises, or other forms of inducement.

10. Dr. Ofshe will testify that there are generally two things that produce a coerced-compliant confession. First, techniques are used by the police that are so intense and so draining that the individual stalls to comply to the demands of the interrogators because he simply lacks the strength, the will and the resistance to continue denying that he was involved in the crime. The interrogator works to convince the suspect that all his future holds is certain arrest, trial, and punishment no matter what the suspect does.

11. Second, once the suspect is convinced that his future is determined, the interrogators will offer the suspect an incentive to confess and threaten harm if he remains silent. Interrogators often manipulate suspects to make them believe that confession versus continued denial will result in different sentencing outcomes. For example, interrogators can use a variety of incentives or threats to elicit a statement. They may give a minimal incentive by emphasizing how a judge will be affected by a demonstration of remorse or may introduce the threat of a death penalty or long sentence to promote compliance. In addition, with a coerced-compliant confession, the suspect confesses because he believes

that his situation is hopeless, that further denial is pointless, and that it is in his self interest to confess

12. Dr. Ofshe will testify that a coerced-compliant confession can be either true or false. The difference between a true and a &I confession can only be detected with confidence by analyzing the contents of the post-admission statements. The fit between the suspect's post-admission narrative

CASE NO. CR 924131 MISC CAL  
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and the facts of the crime provides strong evidence of whether the suspect possesses actual knowledge of

the crime or is ignorant of information that would be known to the perpetrator.

13. A post-admission narrative that is full of errors, that does no more than parrot information provided by the police, and that demonstrates an inability to contribute a host of specific details the perpetrator should know, supports the conclusion that the suspect is ignorant of the crime. A suspect that provides information that is no more likely to be accurate than would be expected by chance has not provided a post-admission narrative that fits the facts of the crime.

#### ANALYSIS OF MR. ARTI'S CONFESSION

14. In preparation for this case, Dr. Ofshe has reviewed among other materials, Mr. Am's and

Mr. McKiernan's statements, the trial testimony of Mr. Art: and his interrogators, the 1981 and 1978

detective notes, the Miles autopsy report, background studies and case reports regarding Castlereagh,

and materials regarding assassination attempts on Mr. Art and stops of Mr. Am by the RUC. In

addition, Dr. Ofshe has met with Mr. Art:.

15. Based on his evaluation of the material, Dr. Ofshe's expert opinion is that Mr. Art provided

an involuntary confession to a crime that in all likelihood he did not commit. On the question of

voluntariness, Mr. Art's confession was facilitated by his being worn down by his interrogators (1)

through prolonged questioning - the statement was provided on the third day of his 1981 interrogation

after approximately 17 hours of questioning - (2) through intense pressure - the detectives admitted

raising their voices with Mr. Art, calling him a liar and a murderer, one of the detectives purported

to have snatched Mr. Art; and before being confronted by Mr. McKiernan the detectives had a countdown..

16. The justifying factor, however, was classic coercion. Detective Hylands said that he would promise to it that Mr. Art rotted in jail for the rest of his life. Mr. Art: then was offered a strong incentive if he confessed. Art was told that if he gave a remorseful statement he might get out in 7 years and be able to rejoin his family, otherwise he faced a 30-year sentence.

17. Dr. O'Farrell will testify that the police exaggerated their case against Mr. Art in their efforts to make him believe that his situation was hopeless. Mr. Art was told that in addition to Mr. McKiernan, that the driver (Frankie Steel.) also was going to testify against him. A sketch of a courtroom was drawn for Mr. Art and it was explained where Mr. McKiernan, Mr. Steele, the police, and the judge  
CASE NO. CR 92.01st MISC CAL  
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would be seated. He was told that it would look very bad to him. In addition, the police concealed that during his interrogation they showed Mr. Art a newspaper that had a headline about a supergrass. Also, Mr. Art was mistakenly told that he had fired the fatal shots, when in fact the autopsy report states that the fatal shot came from the gun allegedly held by Mr. McKiernan.

18. Dr. O'Farrell will testify that the confession statement was crafted in a fashion consistent with Mr. Art's assertion that the detectives told him that he would receive a lighter sentence if he gave a remorseful sounding statement.

19. Dr. O'Farrell will testify that Mr. Art's encounters with the police prior to 1981 and his interrogation in 1973 also played a role in producing the involuntary confession. Through these experiences, the police impressed upon Mr. Art their power over him. Consequently, when Mr. Art was interrogated in 1981, he had been conditioned to believe that if the police said they were going to do something, that they in fact had the power to do it. This conditioning was reinforced by the police when they drew a sketch of the courtroom, thereby suggesting that they effectively could control the outcome of any judicial proceedings.

20. On the question of the reliability of Mr. Art's confession, Dr. O'Farrell will testify that if Mr. Art had committed the Miles murder, he would have been able to supply a wealth of details about the crime that would have corroborated his involvement. For example, if Mr. Art should have been able to

supply some or all of the following information: the type of car that was used; the route that was taken from the Shamrock club to the Miles residence; bow many shots he fired; how many shots the other shooter fired; a description of Mn. Miles; bow he allegedly was cut at the murder scene; the route that was taken by the pupetratom away from the Miles residence; whether the perpetrators had worn gloves or masks; tIm iq leading up to the crime; how he got his gun and from whom.

lineu~ the autopsy report indicates that the fatal bullet was fired at Mr. Miles afier ~ he had collapsed onto the floor. Because this bullet was fired from the gun supposedly held by Mr.

McKiernan, Mr. Ant should have, but did not~ report that the other gunman fired a shot at Mr. Miles as he lay collapsed on the floor.

22. Instead, with respect to the details of the murder Mr. Ant repeated beck to the police what he already had been told. Detectives admitted that "the full facts of the murder" were supplied to Mr. Artt  
CASE NO. CR 9-OISI MISC CAL  
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In-the days following his statement, the police sought to obtain additional information from Mr. Artt that

might corroborate his involvement. Mr. Artt, who was a taxi driver by trade, whose father had owned a

service station, and who had owned a number of cars, was unable to tell the police the color or the make

of the car that had been used in the murder. Furthermore, the detective notes state that on the day after

his confession when Mr. Artt was asked to identify the guns that were used he gave the following vague

description - one gun had a "round barrel and silver colour" and that the other "was a bigger one, ugly

looking ~

23. Further undercutting the reliability of Mr. Artt's statement is his assertion that he had

received no training in how to use a weapon and had simply "pulled the trigger and the gun just fired."

The forensic evidence is that four shoots were fired from the gun that Mr. Artt alleged held and two of

the shots hit the victim in the head and one in the arm. It seems highly

unlikely that a first-time shooter  
could hit his target with such deadly accuracy.

24. Dr. Ofshe will testify that Mr. Artt's post-admission oral statement to the police did not "fit"

the facts of the murder. For example, the detective notes from December 2, 1991, at 10:35 a.m. indicate

that Mr. Artt stated that "The other man fired first and then he fired." This does not square with the

autopsy report which states that the fatal shot (which was fired from McKiernan's gun) was fired after

Mr. Miles had collapsed on the floor. Since~PParently only one shot was fired from McKiernan's gun,

he could not have fired first since Mr. Miles would have been standing at that point and not yet felled by

the shots from the other gun?~

25. Finally, in evaluating the reliability of Mr. Artt's claim to have received a cut at the murder

scene, Dr. Ofshe will note that (1) there was no blood evidence reported by the police at the Miles

murder scene linking Mr. Artt to the crime; (2) John Artt testified, consistent with a medical record, that

Kevin sustained the injury during a fall at John Artt's service station, and (3) there is absolutely no

mention in Mr. McKiernan's statement of Mr. Artt having received an injury at the murder scene.

CASE NO. CR 92-0151 MISC CAL  
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