

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

MARTIN H. TANKLEFF,  
90T3844  
Clinton Correctional Facility  
Cook Street  
Dannemora, New York 12929-2001

Petitioner,

v.

Civil Action No. \_\_\_\_\_

D.A. SENKOWSKI,  
Superintendent of  
Clinton Correctional Facility  
Cook Street, Box 2000  
Dannemora, New York 12929-2001,

PHILLIP COOMBE, JR.  
Acting Commissioner  
N.Y. State Department of  
Correctional Services  
State Office Bldg. # 2  
State Office Bldg. Campus  
Albany, NY 12226-2050, and

THE HON. DENNIS C. VACCO,  
Attorney General  
New York State Department  
of Law  
The Capitol  
Albany, New York 12224,

Respondents.

DECLARATION OF DR. RICHARD J. OFSHE

INTRODUCTION

1. My name is Richard J. Ofshe and I am an expert in the use of extreme forms of influence in general, and the coercion of confessions from criminal suspects by police officers in particular. I have testified on thirty-three occasions on these subjects in approximately sixteen states. I have over thirty years of academic training and professional experience in the subject.

2. I have had an opportunity to review the testimonial facts surrounding the admission and post-admission narrative of Martin H. Tankleff presented during pre-trial and trial proceedings in the case of The People of the State of New York vs. Martin Tankleff, Case Nos. 1535-88 & 1290-88. Based upon that review, it is my opinion, as set forth more fully below, that Mr. Tankleff's admission and post-admission narrative of the crime were involuntarily made and not based upon Mr. Tankleff's personal knowledge of the crime. I use the term "admission" in this declaration to refer to Mr. Tankleff's acknowledgement of responsibility for his parents' murders, and the phrase "post-admission narrative" to refer to his recounting of the facts detailing how he purportedly committed those murders.

#### BACKGROUND AND QUALIFICATIONS

3. I have been a Professor in the Department of Sociology at the University of California, Berkeley, since 1982. From 1967 until 1982 I was an Assistant and Associate Professor in the Department of Sociology at the University of California, Berkeley.

4. I received my bachelors degree in Psychology in 1963 from Queens College, City University of New York; my masters degree in Sociology in 1964 from Queens College, City University of New York; and my doctorate in Sociology in 1968 from Stanford University. My masters thesis ("Effects of Interaction in Interpersonal Communication") and my doctoral dissertation ("A Theory of Behavior Under Conditions of Reference Conflict") relate to my current work and study in the field of coerced confessions.

5. I have testified in court thirty-three times on the subject of interrogation. These cases include: Arnet v. Lewis, 870 F.Supp. 1514 (D. Arizona 1994) (court granted habeas corpus petition and ordered new trial after determining petitioner's confession was involuntary); Spaziano v. State, 429 So.2d 1344 (1983) (following post-conviction evidentiary hearing court granted death-row prisoner new trial after determining eyewitness testimony in 1976 murder trial was coerced); State v. Sawyer, 561 So.2d 278 (Fla. 2d App. 1990) (appellate court affirms trial court suppression of coerced confession); and Ingram v. Riveland, 59 F.3d 175 (9th Cir. 1995) (in unpublished disposition court affirms finding that habeas corpus petitioner voluntarily entered guilty plea). In addition to these four cases I have testified in court twenty-nine times on police interrogation and influence.

6. I have also consulted on a number of significant cases that did not go to trial. Most notable and relevant for purposes of this declaration is the case generally referred to as the Phoenix Temple Murder Cases involving the execution of nine Thai buddhists at a Buddhist Temple in Phoenix, Arizona. In that matter I was retained on behalf of two of three young Tucson men who had been interrogated and, through coercion, made to confess falsely to the mass murder of nine people. The interrogation and confession of these men were recorded. Prior to trial the actual killers were caught with items stolen from the Temple and confessed to the crimes. The individuals tried for the crimes had never met any of the Tucson men who were made to confess. On the occasion of

dismissing charges against the Tucson men, the county prosecutor publicly admitted that the Tucson men were absolutely not involved in any way in the Temple murders.

7. In addition, I served as a consultant to the office of the Governor of the State of Missouri in connection with the decision to pardon Johnny Lee Wilson. Mr. Wilson had confessed, in a recorded interrogation, to the murder of an elderly woman in a small town in Missouri. I was asked to analyze the interrogation and report to the governor's office my conclusions regarding the confession's voluntariness and reliability. After completing the investigation into Mr. Wilson's confession, the governor pardoned him.

8. I have served as a criminal legal consultant on topics including false confession, witness intimidation and group generated violence to many law enforcement agencies; including Office of the District Attorney, Los Angeles (1995); Office of the Governor of Missouri (1995); State's Attorney's Office, Fort Lauderdale, Florida (1992-94); Thurston County Prosecutor's Office, Washington (1990); United States Attorney's Office, West Virginia (1987-91); the Internal Revenue Service (1986-88); Commissioner's Office of the Department of Social and Rehabilitation Services, Vermont (1984); Los Angeles District Attorney's Office (1984-85); Prosecuting Attorney, Jefferson County, West Virginia (1984); United States Department of Justice, Tax Division (1982-84); Office of Attorney General, Arizona (1982-84); United States Attorney's

Office, Los Angeles (1982); Office of Attorney General, California (1980-81); and the Marin County Sheriff's Department (1979-80).

9. My articles include:

"Coerced Confessions: The Logic of Seemingly Irrational Action." Cultic Studies Journal, Vol. 6, No. 1, 1989.

"Inadvertent Hypnosis During Interrogation: False Confession Due to Dissociative State; Misidentified Multiple Personality and the Satanic Cult Hypothesis." International Journal of Clinical and Experimental Hypnosis, Vol. 40, No. 3, July 1992.

"I'm Guilty If You Say So," in Convicting the Innocent, Donald Connery (ed.), Cambridge, Brookline Press, 1995.

10. I have given numerous presentations at meetings of scientific associations on topics relating to criminal interrogations and confessions by criminal suspects, including:

"Coerced Confession: Case Studies in The Tactics of Persuasion." American Sociological Association, Atlanta, August 1988.

"Thought Reforming Interrogations in America," The Society for the Study of Social Influence, Los Angeles, November 1988.

"Police Brainwashing in America," Pacific Sociological Association, Las Vegas, April 1989.

"The Social Psychology of Coerced Internalized False Confessions," with Richard Leo. American Sociological Association, Cincinnati, August 1991.

"The Creation of Illusory Belief," Claremont Conference on Applied, Cognitive Psychology: Suggestibility and the Conference on Applied Cognitive Psychology: Suggestibility and the Veracity of Memory, Claremont, March 1994.

11. I have also given numerous presentations to other associations and groups on topics relating to criminal interrogations and confessions by criminal suspects, including:

"Coercive Persuasion of the Mind in Police Obtained Confessions," Second Annual Conference - Criminal Defense Litigation Along the Rim and the River, Public Defender's Office, Coconino County, Flagstaff, June 1991.

"Coerced False Confessions: the Social Psychology of Extreme Influence." Alameda County Criminal Defense Bar, Oakland, October 1993.

"Police Interrogation and the Coercion of False Confessions." Top Gun II, Criminal Defense Seminar, St. Petersburg, Florida, October 1993.

"Coerced False Confessions." Advanced Criminal Law Seminars, Aspen, Colorado, January 1994.

"False Confessions." Florida State Supreme Court, Judicial Conference, mini-course for trial and appellate judges, Tampa, Florida, May 1994.

"Police Interrogation and False Confession." Death Penalty Resource Center National Training Conference, Charleston, South Carolina, June 1994.

"The Social Psychology of False Confession." Alaska Academy of Trial Lawyers, Anchorage, Alaska, September 1994.

"The Psychology of Interrogation: Unearthing False Confessions." The North Carolina Academy of Trial Lawyers. Greensboro, North Carolina, September 1994.

"Police Interrogation and Confession." Capital Case Defense Seminar, California Attorneys for Criminal Justice and California Public Defenders Association, Monterey, California, February 1995.

"Analyzing Coerced Statements and False Confessions." Capital Case Defense Seminary, California Attorneys for Criminal Justice and California Public Defenders Association, Monterey, California, February 1995.

"False Confession: Decision and Analysis." Florida Association of Criminal Defense Lawyers, 8th Annual Meeting, St. Petersburg, Florida, June 1995.

"Analysis of Coerced and False Confessions," National Association of Criminal Defense Lawyers, Annual Meeting, Snowmass, Colorado, August 1995.

"The Case for Recordation of Interrogation." Principal speaker at a day-long Forum on Convicting the Innocent, Hartford, Connecticut, September 1995.

"Police Interrogation and False Confession." International Conference on Allegations of Child Abuse: The Law, The Science, The Myths, The Reality, Chicago, October 1995.

12. I am a member of the American Sociological Association, the American Psychological Association, the American Psychological Society, the Sociological Practice Association, and the Pacific Sociological Association.

#### POLICE INTERROGATION RESEARCH

13. The subject of influence in police interrogation has received a great deal of study starting in the mid-1980's in England and within the scientific community, and later in the late-1980's in the United States. This is a subject that has been extensively researched and written about by scientists as well as by police interrogation training manual writers. It is well established that the misuse of influence in police interrogation and the improper or overzealous application of tactics that are commonly used in interrogation can result in an involuntary, false confession by an entirely innocent individual.

14. The most recent, authoritative academic text on the subject, authored by Gisli Gudjonsson, Ph.D., is entitled The Psychology of Interrogations, Confessions, and Testimony, published in 1992 by John Wiley originally in England and then in the United States. Dr. Gudjonsson's text reviews the substantial body of research directed at understanding interrogations and false confessions.

15. The principle interrogation training manual is written by F.E. Inbau, J.E. Reid, and J.P. Buckley, and is entitled Criminal Investigation and Confessions (1986), (3rd Edition).



16. The 1987 law review article by M.L. Radelet and H.A. Bedau, Miscarriages of Justice in Potentially Capital Cases, 40 Stanford Law Review 21 (1987), reviews the facts surrounding 350 miscarriages of justice involving potentially capital cases. In their analysis of these 350 examples of cases which were classified (using very conservative standards) as miscarriages, police-induced false confession was the third most likely cause of a miscarriage of justice.

#### FINDINGS

17. I have reviewed the testimonial facts surrounding the admission and post-admission narrative of Martin H. Tankleff presented during pre-trial and trial proceedings in the case of The People of the State of New York vs. Martin Tankleff, Case Nos. 1535-88 & 1290-88. In my opinion Mr. Tankleff's admission and post-admission narrative of the crime were involuntarily made and are inherently unreliable.

18. In reviewing the facts surrounding a suspect's admission and post-admission narrative for purposes of determining voluntariness, it is necessary to isolate factors which indicate whether the admissions and post-admission narrative are more likely the product of a suspect's free will and personal knowledge of a crime or the result of coercion, coupled with free suggestion and confabulation.

19. The conditions under which Mr. Tankleff's questioning occurred and the interrogative tactics employed by the detectives who questioned Mr. Tankleff (i.e. isolation, intimidation,

persuasion, positive and negative reinforcement, deception and trickery) — as presented in the testimony of the detectives and Mr. Tankleff — included identifiable police tactics which routinely occur in interrogations that go too far and are sufficient to result in a coerced and unreliable narrative.

20. In addition, the physical evidence presented at trial, which does not corroborate the post-admission narrative, leads me to conclude that Mr. Tankleff's admission was coerced.

Conditions of Interrogation and Interrogation Tactics

21. Mr. Tankleff and the detectives conducting the interrogation, Detectives James McCreedy and Norman Rein, offered differing testimony on the nature and substance of Mr. Tankleff's interrogation. Mr. Tankleff testified that during the interrogation and confession the detectives pressured him to answer their questions regardless of whether he had personal knowledge with which to do so, and suggested proper answers to their questions. Mr. Tankleff testified that he conformed his account of his conduct to the scenario suggested by his interrogators by repeating their recommended responses. Detectives McCreedy and Rein testified that Mr. Tankleff provided the details of the crime in narrative form.

22. Mr. Tankleff's interrogation was not recorded. The failure of the police to record the interrogation forever deprives all fact finders of access to the best evidence of what techniques the interrogators used and with what degree of intensity they applied them.

23. Nonetheless, in its entirety, the testimony concerning Mr. Tankleff's questioning raises the specter of an interrogation going forward using tactics known to be sufficient to secure an involuntary and unreliable statement — that is, a coerced false confession.

24. The undisputed facts show that prior to Mr. Tankleff's questioning the Suffolk County police removed the 17-year-old Mr. Tankleff from his family, friends and familiar surroundings. Specifically, police officials separated Mr. Tankleff from his brother-in-law, Ron Rother, and intercepted family friend and attorney Myron Fox who arrived at the Tankleff home and approached Mr. Tankleff.

25. The undisputed facts also show that Suffolk County police directed Mr. Tankleff to remain outside his home and began questioning him outside his home. The officers later directed Mr. Tankleff to wait for them in a police car outside his home, and then transported Mr. Tankleff in that car to the Yaphank police station, thus isolating Mr. Tankleff from all friends and relatives.

26. The officers testified that before taking Mr. Tankleff to Yaphank, they believed he was involved in the crimes and intended to question him about his involvement in the crimes.

27. Notwithstanding these suspicions, officers took Mr. Tankleff to the police station unaccompanied by counsel, family members, or friends. When he arrived, he was placed in a small,

windowless interrogation room. When the interrogation commenced, the door to the room was closed.

28. The testimony of Mr. Tankleff and his interrogators demonstrates that Detectives Rein and McCready assumed the familiar "good cop/bad cop" roles, with Detective Rein remaining relatively even-tempered and friendly during the questioning, and with Detective McCready argumentatively and angrily questioning Mr. Tankleff in a confrontational manner.

29. During much of Mr. Tankleff's questioning, both Detectives Rein and McCready expressed disbelief with Mr. Tankleff's answers to their questions. However, when Mr. Tankleff indicated that he thought he might be culpable in the attack on his parents, the detectives indicated agreement.

30. The undisputed facts also show that just prior to Mr. Tankleff's discussion of his culpability for the attacks on his parents, Detective McCready reported to Mr. Tankleff that he had received a telephone call from the hospital and that Seymour Tankleff had come out of his coma and identified Mr. Martin Tankleff as the attacker.

31. Mr. Tankleff testified that he believed Detective McCready's representations about the call from the hospital to be true. Detective Rein testified that he, too, believed McCready. Mr. Tankleff testified that, based upon McCready's report, he began to believe that he might be involved in the attacks.

32. In addition to the undisputed testimony, Mr. Tankleff testified that the detectives asked him to accompany them to the

police station to gather information about Seymour Tankleff's business dealings with Seymour's business partner Jerry Steuerman. Mr. Tankleff also testified that he indicated that his preference was to go to the hospital to be with his father rather than to the police station. He testified further that the police promised to take him to the hospital after questioning.

33. Mr. Tankleff testified that during questioning, in addition to lying about Seymour Tankleff's purported identification of Martin Tankleff as the perpetrator, police also lied about pieces of evidence they had uncovered linking Mr. Tankleff to the crime — including locating a clump of Mr. Tankleff's hair on his dead mother's body. In fact, while hair was found on Mrs. Tankleff's body, tests had not yet been conducted on it. When those tests were conducted they indicated that the hair was not that of Martin Tankleff.

34. Mr. Tankleff testified that the interrogators also told him that they knew he was lying about not taking a shower the morning he discovered his parents' bodies because they had performed a "humidity test" in the shower which showed that the shower had been used that morning. In fact, no such test had been performed.

#### Fit Between Post-Admission Narrative and Physical Facts

35. In addition to the presence of interrogative techniques suggestive of coercion, this case involves a confession and post-admission narrative of the crime facts purportedly by Mr. Tankleff that is inconsistent with or contradicted by the crime scene facts

and forensic evidence presented at trial. These inconsistencies and contradictions suggest that the confession and post-admission narrative are unreliable.

36. My training indicates that if Mr. Tankleff gave a voluntary statement and did in fact commit the crimes for which he was convicted, then his description of these crimes should fit well with the physical facts of the crime scene.

37. If, on the other hand, Mr. Tankleff's admission was coerced and Mr. Tankleff is innocent (and therefore possessed no actual knowledge of the events of the crime except for what was provided by the police), then his narrative of the crime had to have been guesswork, invented and likely to contain gross discrepancies when compared with the undisputed facts of the crime.

38. In this case Mr. Tankleff's confession does not fit with the physical evidence presented during the trial. The sorts of discrepancies between the confession and the testimony — concerning central matters such as the time and method of the crime — are common characteristics that come about when an individual who has no actual knowledge of a crime has been coerced into giving an involuntary statement.

39. Detectives testified that Mr. Tankleff confessed to killing his parents, Arlene and Seymour, by using a dumbbell and a "watermelon knife" found on the kitchen counter. (Tr. at 3493-94). The two dumbbells found in Mr. Tankleff's room and the "watermelon knife" from the kitchen were disassembled and tested for blood traces, hair, and fibers. All tests were negative. A surgeon who

examined and operated upon Mr. Tankleff's father, Seymour Tankleff, concluded that Seymour Tankleff's injuries looked to have been caused by a hammer. Tr. at 2235-38, 2249-55, 2302-05, 2312-16 and 4347.

40. Detectives testified that Mr. Tankleff confessed to beating his mother with a dumbbell bar, fighting with her, and then going to the kitchen to get the watermelon knife. Tr. at 2895-96 and 3494. The blows from a blunt instrument fractured Mrs. Tankleff's skull with sufficient force to render her unconscious and unable to struggle, yet she had defensive cutting wounds on her arms. Mr. Tankleff was unscratched, with no sign of having been in a struggle. Tr. at 2658-60, 3945-46 and 4009-10.

41. Detectives testified that Mr. Tankleff confessed to assaulting both his father and his mother before making the "911" call. Tr. at 2896-97 and 3494-95. Mr. Tankleff's tape-recorded telephone call to "911" refers only to his father; there is no mention of the mother. Tr. at 4115-16. Mr. Tankleff testified at trial that he discovered his mother's body after calling "911". Tr. at 4119-20.

42. Detectives testified that Mr. Tankleff confessed that he showered to wash away the blood stains from his body, the dumbbell bar and the knife. Tr. at 2897 and 3495. Detective McCready also testified that Mr. Tankleff had a bloodstain on his shoulder, where a shower would have rinsed it off. Tr. at 2875-76. The police tested the shower floor and walls and disassembled the traps under the shower to determine the presence of blood, hair or any "trace"

evidence from Mr. Tankleff's parents. Tr. at 2218-21. Police found no blood or hair in the shower, the traps, the drain stopper or on the sponge. Tr. at 2220-21 and 2223-34. The towels in Mr. Tankleff's shower were damp, not wet, which was consistent with his trial testimony that he had showered the night before, not that morning. Tr. at 1579.

43. Detectives testified that Mr. Tankleff confessed to assaulting his parents between 5:35 a.m. and 6:10 a.m. Tr. at 2896-98 and 3493-95. The Emergency Medical Technicians testified that Mr. Tankleff's father had dried blood on his head, scalp, and arms, and that a coagulated clump of blood fell to the floor. Tr. at 486-89. Mrs. Tankleff's skin was pale, dry, and discolored, and there was dried blood on her skin and clothes, all suggestive of a time of death that was hours earlier than Mr. Tankleff's narrative indicated. Tr. at 470-77.

44. Detectives testified that Mr. Tankleff confessed to killing his mother and then walked through the house with the murder weapons to attack his father in the study. Tr. at 2896 and 3494. There were no spots of Mrs. Tankleff's blood on the white rug or the surfaces between her room and the room in which Seymour Tankleff was attacked. Tr. at 364-69.

45. Detectives testified that Mr. Tankleff's confession made no reference to the use of gloves. Tr. at 2465. Bloodprints on Arlene Tankleff's bedding and a stain on Mr. Tankleff's light switch plate had a "chain link" or honeycomb pattern indicative of a fabric or rubber work glove. Tr. at 2455-60.



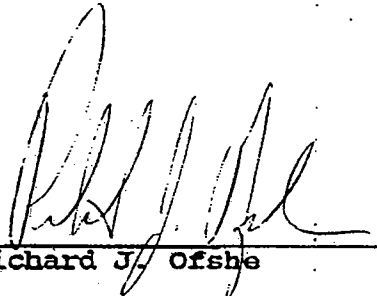
46. Detectives testified that Mr. Tankleff stated that he took a shower immediately after attacking his father, and that he did not return to the master bedroom until after he showered and washed. Tr. at 3302. Seymour Tankleff's blood was found on the bed and wall in Arlene's bedroom, indicating that, contrary to Mr. Tankleff's confession, Seymour was assaulted before Arlene or the killer returned to the bedroom from the office after the attack on Seymour. Tr. at 2179-83.

47. Detectives testified that Mr. Tankleff said he removed his father from the chair after taking a shower to wash the blood, and did not shower again. Tr. at 2897-98. The clothes that Mr. Tankleff was wearing when the police arrived were not blood stained. Tr. at 256-57, 318-19, 332 and 359-60.

48. These numerous discrepancies between the post-admission narrative resulting from the interrogation and the forensic evidence strongly suggest that the narrative was not the product of Mr. Tankleff's personal knowledge of the crime. Rather, the narrative is the product of information made available to Mr. Tankleff during the interrogation.

49. In my opinion the foregoing evidence of Mr. Tankleff's isolation from friends and relatives, of deceptive interrogative tactics, and the divergence between Mr. Tankleff's post-admission narrative and the physical evidence at the crime scene indicates that Mr. Tankleff's narrative, whether voluntary or coerced, is unreliable. In light of the undisputed testimony as to what happened during the interrogation and the weight of the evidence that counters Mr. Tankleff's post-admission narrative, in my opinion Mr. Tankleff's narrative is both unreliable and involuntary.

Pursuant to 28 U.S.C. §1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

  
Richard J. Ofshe

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X

PEOPLE OF THE STATE OF NEW YORK,

AFFIDAVIT IN SUPPORT

- against -

MARTIN H. TANKLEFF,

Defendant.

Ind. Nos. 1535-88/1290-88

-----X

STATE OF CALIFORNIA)  
COUNTY OF ORANGE ) ss.:  
TOWN OF IRVINE )

RICHARD A. LEO, Ph.D., J.D., being duly sworn, deposes and says:

1. My name is Richard A. Leo, Ph.D., J.D., and I have been an Associate Professor at the Department of Criminology, Law and Society at the University of California, Irvine, since July, 2001. I have been an Associate Professor of Psychology and Social Behavior at the University of California, Irvine since July 2001. Between July 1997 and June 2001 I was an Assistant Professor at the Department of Criminology, Law and Society at the University of California, Irvine. Between April 1999 and June 2001 I was an Assistant Professor of Psychology and Social Behavior at the University of California, Irvine. From August, 1994 through May, 1997, I was an Assistant Professor of Sociology and Adjoint Professor of Law at the University of Colorado, Boulder. My primary area of research specialization is the social psychology of police interrogations, false confessions, miscarriages of justice, police organization and behavior and coercive persuasion. My primary area

Affidavit of Professor Richard A. Leo, Ph.D., J.D.

of academic specialization is criminology, social psychology, the sociology of police, law and social science and criminal procedure.

2. I received my Bachelor's Degree in Sociology in 1985 from the University of California, Berkeley; my Master's Degree in Sociology in 1989 from the University of Chicago; my Juris Doctor (J.D.) degree in 1994 from the University of California, Berkeley; and my doctorate (Ph.D.) in 1994 in Jurisprudence and Social Policy from the University of California, Berkeley. My doctoral dissertation (Police Interrogation in America: A Study of Violence, Civility and Social Change") relates to my current research in the field of police interrogation and false confessions.

3. I have testified 69 times in State, Military and Federal Courts in 16 different states on one or more of the following topics: police interrogation training; the Reid Method of interrogation; police interrogation techniques, methods and/or strategies; social psychology; influence and decision-making; persuasion and conformity; coercion; the social psychology of police interrogation and confession; the history of American police interrogation practices and contemporary interrogation techniques; the effects of police interrogation tactics; coercive persuasion; coercive influence techniques; coercive interrogation practices; coerced and/or involuntary confessions; the phenomenon, causes, and/or indicia of police-induced false confessions; the reliability of police-induced statements, admissions and/or confessions; the reliability of confession evidence; the law and practice of *Miranda*; police organization and behavior; police perjury; police investigation practices; and criminology.

4. I have also consulted as an expert witness on over 300 criminal and civil cases in 35 States and 4 Countries (U.S., Germany, Japan, Canada).

5. My professional publications on the subject of police interrogation and coerced confessions

include:

### BOOKS

Richard A. Leo. *Inside the Interrogation Room: The Real World of Police Questioning* (Under contract with New York University Press). Expected publication date: 2004

Richard A. Leo and George C. Thomas, III, Eds. (1998). *The Miranda Debate: Law, Justice and Policing*. (Boston: Northeastern University Press). ISBN #: 1-55553-338-8

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Richard A Leo (1998) "Civil Rights and Civil Liberties: Videotaping the Police." Criminal Justice Ethics. Volume 17, Number 1. Winter/Spring 1998. Pp. 44-45

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Richard A. Leo (1998) "Witness for False Confession No Expert." The Forensic Echo: The Monthly Newsmagazine of Psychiatry, Law & Public Policy. Vol. II, No. 3 (February, 1998). Pp. 14-15

### REPRINTED ARTICLES

Richard A. Leo (2002). "Questioning the Relevance of *Miranda*," forthcoming in Yale Kamisar, Wayne LaFave, and Jerold Israel. *Modern Criminal Procedure: Cases, Comments, Questions*. Ninth Edition. (St. Paul, MN: West Publishing)

Richard A. Leo (2001). "Trial and Tribulations: Courts, Ethnography, and the Need for an Evidentiary Privilege for Academic Researchers," in Robert Emerson, *Contemporary Field Research: Perspectives and Formulations* (Prospect Heights: Waveland Press) Pp. 260-279.

David T. Johnson and Richard A. Leo (1998). "The Yale White-Collar Crime Project: A Review and Critique," in Michael Levi, Ed., *Fraud: Organizational, Motivation, and Control*, Volume II (England: Ashgate Publishing Ltd.) Pp. 51-88.

Richard A. Leo (1998). "Inside the Interrogation Room," in Joshua Dressler and George C. Thomas III, *Cases and Materials on Criminal Procedure* (West Publishing) Pp. 566-568, 598, 673-676

Richard A. Leo (1998). "The Impact of *Miranda* Revisited," in Richard A. Leo and George C. Thomas III, Eds. *The Miranda Debate: Law, Justice and Crime Control* (Boston: Northeastern University Press) Pp. 208-221.

Richard A. Leo (1998). "From Coercion to Deception: The Changing Nature of Police Interrogation in America," in Richard A. Leo and George C. Thomas, III, Eds. *The Miranda Debate: Law, Justice and Crime Control* (Boston: Northeastern University Press) Pp. 65-74

Jerome H. Skolnick and Richard A. Leo (1992). "The Ethics of Deceptive Interrogation." Revised and expanded as a chapter in John Bizzack (Ed), *Issues in Policing: New Perspectives*. (Lexington: Autumn House Publishing) Pp. 75-95. Also reprinted in *The Boalt Hall Transcript*, Spring 1993, Pp. 21-23; *The Leadership Journal* (January-March, 1993) Pp. 23-27; Michael C. Braswell,



Belinda R. McCarthy and Bernard J. McCarthy (1998) *Justice, Crime and Ethics* (2002) Fourth Edition (Cincinnati: Anderson Publishing Co.) Pp. 69-83; and Jeffrey Reiman (2000), *Criminal Justice Ethics* (New York: Prentice-Hall).

6. I have given numerous presentations at scientific conferences, professional associations and universities on the subject of police interrogation and coerced confessions. These include:

"The Consequences of False Confessions Revisited in the DNA Age" (with Steve Drizin). Paper to be presented at the Annual Meetings of the American Society of Criminology. Chicago, IL. November, 2002.

"How Prejudicial is Confession Evidence?" Paper to be presented at the Annual Meetings of the Society of Experimental Social Psychology. Columbus, OH. October, 2002

"Thinking About Miscarriages of Justice." Paper to be presented at the Annual Meetings of the Law and Society Association. Vancouver, Canada. May, 2002.

"Public Perceptions of Interrogation Tactics in Criminal Setting" (with Jodi Quas and Brianne Beck). Annual Meetings of the Western Psychological Association. Irvine, Ca. April, 2002.

"Influence, Coercion and Confession: Connecting Scholarly Research and Courtroom Testimony." The Annual Meetings of the American Psychological Association. San Francisco, CA. August, 2001.

"Investigating and Correcting Official Misconduct: Preliminary Lessons from the Rampart Scandal" (with Bull Thompson and Paul Kaplan). The Annual Meeting of the Society for the Study of Social Problems. Anaheim, CA. August, 2001.

"Police Misconduct Inside the Interrogation Room." The Annual Meetings of the American Society of Criminology. San Francisco, CA. November, 2000.

"Police-Induced False Confessions, Wrongful Deprivations of Liberty, and Miscarriages of Justice." The Annual Meetings of the American Society of Criminology. San Francisco, CA. November, 2000.

"Psychological Research and Wrongful Convictions: Influence, Suggestion and Coercion." Invited address at the Annual Meetings of the American Psychological

Association. Washington, D.C. August, 2000.

“Going to a Different Ivory Tower.” American Association of Law Schools Conference on Criminal Justice. Washington, D.C. June, 2000.

“The Legal Consequences of False Confessions.” The Semi-Annual Meeting of the American Psychology-Law Society. New Orleans, LA. March, 2000.

“False Confessions: Causes, Consequences, Solutions.” Paper presented at the Annual Meetings of the American Society of Criminology. Toronto, Canada. November, 1999.

“Science in the Courtroom.” The Annual Meetings of the American Society of Criminology. Washington, D.C. November, 1998.

“The Social Psychology of False Confessions.” The Annual Meetings of the American Sociological Association. San Francisco, CA. August, 1998.

“The Psychology of Confession Evidence: From the Ivory Tower to the Realities of Practice.” The Annual Meetings of the Law and Society Association. Aspen, CO. June, 1998.

“The Truth About False Confessions: What Criminologists Should Know.” The Annual Meetings of the Academy of Criminal Justice Sciences. Albuquerque, NM. March, 1998.

“False Confessions and Miscarriage of Justice *Today*.” A Day of Contrition-Revisited: Contemporary Hysteria Condemns the Innocent.” Conference sponsored by The Justice Committee. January, 1997. Salem, MA.

“Police Interrogation, False Confessions and Expert Witnesses.” The Annual Meetings of the American Society of Criminology. San Diego, CA. November, 1997.

“The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation” (with Richard Ofshe). The Annual Meetings of the Law and Society Association. St. Louis, Missouri, May, 1997.

“Coerced False Confessions.” The Annual Meetings of the American Society of Criminology. November, 1996. Chicago, Illinois.

"Deception by Sociologists." The Annual Meetings of the American Sociological Association. New York, NY. August, 1996.

"Between Reality and Metaphor: A Friendly Critique of *The Myth of Repressed Memory*." The Annual Meetings of the Pacific Sociological Association. Seattle, WA. March, 1996.

"The Context and Outcome of Police Interrogation: A Quantitative Analysis." The Annual Meetings of the American Society of Criminology. November, 1995. Boston, MA.

"Interrogation and Surveillance: Changing Trends in Police Detection and Social Control." The Annual Meetings of the American Sociological Association. August, 1995. Washington, D.C.

"False Memory, False Confession: When Police Interrogations Go Wrong." The Annual Meetings of the Law & Society Association. June, 1995. Toronto, Canada.

"Trial and Tribulations: Courts, Ethnography, and the Need for an Evidentiary Privilege for Academic Researchers." The Annual Meetings of the Pacific Sociological Association. San Francisco, CA. April, 1995.

"Westville Revisited: A Contemporary Analysis of Order, Legality, and Crime Detection." The Annual Meetings of the American Society of Criminology. Miami, FL. November, 1994.

"The Historical Sociology of the Third Degree in America: Analyzing the Rise and Fall of a Violent Social Practice." The Annual Meetings of the American Sociological Association. Los Angeles, CA. August, 1994.

"The Impact of Miranda Revisited: Analyzing an Old Question with New Data." The Annual Meetings of the Law & Society Association. Phoenix, AZ. June, 1994.

"Police Interrogation as a Confidence Game." The Annual Meetings of the Western Society of Criminology. Berkeley, CA, February, 1994.

"Inside the Interrogation Room: A Participant Observation Study of Custodial Police Questioning." The Annual Meetings of the American Society of Criminology, Phoenix, AZ, October, 1993.

"Criminal Interrogation and Confessions Revisited: An Analysis and Critique of Inbau and Reid's Police Training Manuals and Courses." The Annual Meetings of the American Society of Criminology, New Orleans, LA, November, 1992.

"Police Interrogation and Social Control." The Annual Meetings of the Law and Society Association, Philadelphia, PA, May, 1992.

"From Coercion to Deception: An Empirical Analysis of the Changing Nature of Police Interrogation in America." The Annual Meetings of the American Society of Criminology, San Francisco, CA, November, 1991.

"The Social Psychology of Coerced-Internalized False Confessions" (with Richard J. Ofshe). The Annual Meetings of the American Sociological Association, Cincinnati, OH, August, 1991.

#### PRESENTATIONS AT UNIVERSITIES

"Police Interrogation, False Confessions and Miscarriages of Justice." Department of Sociology. California State University, Northridge, May, 2002.

"Video-taping, Police-Induced False Confessions and Interrogation Reform: Defining the Problems, Finding the Solutions." California Western School of Law. National Innocence Projects Conference. San Diego, CA. January, 2002.

"Thinking Critically About False Memories, False Confessions and False Accusations: Past, Present and Future." University of California, Irvine. Students for Science and Skepticism. May. 2001.

"False Confessions." Cardozo School of Law, Yeshiva University. New York City, N.Y. January, 2001.

"Questioning the Relevance of *Miranda* in the Twenty-First Century." University of Michigan, School of Law. Ann Arbor, MI. November, 2000.

"Studying Miscarriages of Justice in the Age of DNA, Video Technology and Death Row Exonerations: Understanding and Solving the Problem." Distinguished Faculty Lecture (in recognition of the *Distinguish Assistant Professor Award for Research*). University of California, Irvine. Irvine, CA. November, 2000.

"Miscarriage of Justice in the 21<sup>st</sup> Century: Coercion, False Confessions and the Wrongful Conviction of the Innocent." Marian Miner Cook Athenaeum Distinguished Lecture. Claremont, CA. September, 2000.

"Coercive Interrogation and False Confessions: Reflections on the Wenatchee Cases." Conference sponsored by the University of Washington, Washington Law School Foundation, Continuing Legal Education. Seattle, WA. April, 2000.

"Suggestive Interrogation and False Confessions." Featured Speaker at "Miscarriages of Justice" Conference. University of California, Irvine. Irvine, CA. March, 2000.

"Adapting to *Miranda*: Modern Interrogators' Strategies for Dealing with the Obstacles Posed by *Miranda*." School of Law, University of Southern California. Los Angeles, CA. March, 1999.

"The Social Psychology of Police Interrogation and False Confession." Department of Psychology and Social Behavior. University of California, Irvine. Irvine, CA. January, 1999.

"The Regulation and Memorialization of Confessions." The National Conference on Wrongful Convictions and the Death Penalty. Northwestern University School of Law. Chicago, IL. November, 1998.

"*Miranda* and the Adversary System: Lessons for Japan." Center for the Study of Law and Society. University of California, Berkeley. Berkeley, CA. April, 1998.

"The Truth About False Confessions: Understanding Their Causes and Consequences." The Center for Legal Studies, Wayne State University. Detroit, MI. April, 1998.

"The Causes and Consequences of False Confessions." Department of Sociology. The University of Washington. Seattle, WA. January, 1998.

"The Decision to Confess." The University of Denver College of Law, Symposium on Coercion, Exploitation and the Law. March, 1997.

"Police Interrogation, False Confessions, and Expert Witnessing." The University of Colorado, Boulder. Department of Sociology, Graduate Student Forum. March, 1997.

"Explaining False Confessions." The University of Colorado, Boulder, School of Law. February, 1997.

"False Confessions: Documenting, Explaining and Preventing Miscarriages of Justice." Department of Criminology, Law and Society. University of California, Irvine. November, 1996.

"Police Interrogation in America." Department of Criminology, Chinese People's Public Security University. Beijing, China. October, 1996

"The Principles and Practices of Criminal Law in the United States." School of Law, Tsingua University, Beijing, China. October, 1996

"Is Miranda Enough or Should We Video-tape All Confessions?" Seton Hall University Law School, Newark, New Jersey. October, 1996.

"Secrecy and the Interrogation of Suspects." Conference on "George Simmel's Actual and Potential Impact on Contemporary Society." University Colorado, Boulder. April, 1996.

"The Social and Legal Construction of Recovered Memories." Department of Legal Studies, University of Delaware at Newark. Newark, DE. November, 1995.

"The Social Meaning of the O.J. Simpson Case." Department of Sociology, Diversity Forum, University of Boulder. Boulder, CO. October, 1995

"The Mythology and Sociology of Recovered Memories." Department of Sociology, Northern Arizona University. Flagstaff, AZ. October, 1995.

"False Confessions and Miscarriages of Justice: A Preliminary Study." Departments of Sociology and of Criminal Justice, Northern Arizona University. Flagstaff, AZ. October, 1995.

"Police Interrogation: Empirical Observations, Legal Questions, Ethical Dilemmas." School of Law, University of Colorado, Boulder. February, 1995.

"Violence, Civility and Social Change: The Case of American Police Interrogation in the Twentieth Century." Department of Sociology, University of Minnesota, Minneapolis. January, 1995.

"The Sociologist as Detective: Reflections on the Methodology and Ethics of Fieldwork Inside the Police Interrogation Room." Department of Sociology, EPOS (Ethnomethodological, Phenomenological, and Observational Sociologies) faculty and students at the University of California, Los Angeles. Los Angeles, CA. October, 1994.

"Violence, Civility and Institutional Change: The Case of American Police Interrogation." Department of Sociology, University of Colorado, Boulder. Boulder, CO. January, 1993.

"The Ethics of Deceptive Interrogation" (with Jerome H. Skolnick). The Boalt Hall Faculty Colloquium, School of Law. University of California, Berkeley. September, 1991.

"Research on Police Interrogation: Some Thoughts and Questions About the Permissible Limits on Deception." Jurisprudence and Social Policy Program, Friday Forum. University of California, Berkeley. May, 1991.

7) My formal police interrogation coursework and training includes:

Attended and participated in one week advanced interrogation training course taught by the Federal Law Enforcement Center (FLETC). Glynco, Georgia. Received Certificate. March, 1993.

Attended and participated in one week interrogation training course taught by the San Mateo Community College, Administration of Criminal Justice Department. San Mateo, California. Received certificate. January, 1992.

Attended and participated in two day advanced interrogation training course taught by Reid & Associates. San Francisco, California. Received certificate. November, 1991.

Attended and participated in three day introductory interrogation training course taught by Reid & Associates. Los Angeles, California. Received certificate. March, 1991.

Attended one-day in-house interrogation training course for Sergeants. Criminal Investigation Division, Oakland Police Department. Alameda, California. December, 1990.

**OTHER LAW ENFORCEMENT RELATED WORK:**

- 10/01-Present      Academic Education and Action Research Advisory Committee to the Chief of Police, Long Beach Police Department, Long Beach, CA.
- 5/84-8/84          Voluntary Internship, San Francisco District Attorney's Office, Consumer Fraud Division, San Francisco, CA.

8. I am a member of the American Society of Criminology, American Psychological Association, Law and Society Association, American Sociological Association, American Psychology-Law Society, Academy of Criminal Justice Sciences, Pacific Sociological Association and Boalt Hall Alumni Association.

9. I have received the following grants to pursue my research on police interrogation and false confessions:

"How Prejudicial is Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis." University of California, Irvine. School of Social Ecology. 2001-2002

"Studying the Miscarriages of Justice in America." University of California, Irvine. School of Social Ecology. 1999-2000

"Miscarriages of Justice: Understanding the Problem and Finding Solutions." Principal Investigator (with William Thompson) University of California, Irvine. February, 2000

The Ruth Shonle Cavan Young Scholar Award (1999). American Society of Criminology. (Given to Recognize Outstanding Scholarly Contributions to the Discipline of Criminology).

"Miscarriages of Justice in America: Understanding the Causes, Exploring the Consequences, Solving the Problem." University of California, Irvine. School of Social Ecology. 1998-1999

Conference Support Grant. "Miscarriages of Justice: Understanding the Problem and Finding Solutions." Principal Investigator (with William Thompson).



Conference held at U.C. Irvine. February 2000.

Faculty Career Development Award, University of California, Irvine. 1998-1999.

Fellow, Earl Warren Legal Institute. University of California, Berkeley, Boalt Hall School of Law. Criminal Justice Program (10/98-Present)

University of Colorado, Boulder. Council on Research and Creative Work. "The Ethics of Police Deception." December, 1996.

University of Colorado, Boulder. Council on Research and Creative Work. "The Third Degree in American and the Rise of Police Professionalism: A Historical and Sociological Analysis." October, 1996.

University of Colorado, Boulder. Council on Research and Creative Work. "Police Interrogation Practices in International Perspective: A Comparative Study of the United States and China." July, 1996.

University of Colorado, Boulder. Graduate Committee on the Arts and Humanities. "The Ethics of Deception, Manipulation, and Coercion in Police Interrogation: A Comparative Analysis of the United States, England, Japan and China." July, 1996.

University of Colorado, Boulder. Council on Research and Creative Work. Small Grant. "Understanding Coerced-Internalized False Confessions." July, 1995.

University of Colorado, Boulder. Council on Research and Creative Work. "Police Professionalism and the Rise of Scientific Crime Detection." July, 1995.

University of Colorado, Boulder. Graduate Committee on the Arts and Humanities. Small Grant. "The Third Degree in America: A Historical Analysis." February, 1995.

University of Colorado, Boulder. Council on Research and Creative Work. Small Grant. "Miscarriages of Justice in America: When Innocent Suspects are Wrongfully Convicted." January, 1995.

University of Colorado, Boulder. Council on Research and Creative Work. Small Grant. "Police Interrogation Practices and International Perspective: A Comparative Study of the United States and Japan." December, 1994.

## POLICE INTERROGATION RESEARCH

10. The subject of police interrogation and false confessions has received a great deal of study within the scientific community, both in England and the United States. This subject has been extensively researched and written about by scientists as well as by police interrogation training manual authors. It is well established that the improper or overzealous use of social influence techniques that are common in interrogation can result in involuntary and false confessions by innocent individuals.

11. The most recent, authoritative academic text on the subject of police interrogation and coerced confessions, authored by Gisli Gudjonsson, Ph.D., is entitled, The Psychology of Interrogation, Confessions and Testimony, published in 1992 by John Wiley. Dr. Gudjonsson's book reviews the substantial body of research directed at understanding police interrogations and false confessions.

12. The principle interrogation manual is written by Fred Inbau, John Reid, Joseph Buckley and Brian Tayne and is entitled, Criminal Investigation and Confession. The fourth and most recent edition of this book was published in 2001 by Williams and Wilkins.

13. The 1987 law review article by Hugo Bedau and Michael Radelet, "Miscarriages of Justice in Potentially Capital Cases," 40 Stanford Law Review 21 (1987) reviews the facts surrounding 350 miscarriages of justice in capital cases and capital cases. (See also, Michael Radelet, Hugo Bedau and Constance Putnum, In Spite of Innocence: The Ordeal of 400 Americans Wrongly Convicted of Crimes Punishable by Death, published in 1992 by Northeastern University Press). In their analysis of these 350 cases, Bedau and Radelet classified police-induced false confessions as the

third most likely cause of miscarriages of justice and the principle cause of wrongful convictions attributed to police misconduct.

#### AVAILABILITY OF EXPERTS

14. Martin H. Tankleff's criminal case was pending between 1988 and 1990. In 1990, Mr. Tankleff's case went to trial and he was convicted of 2 counts of second degree murder.

15. During this time period, 1988-1990, there were several experts in the field of false and coerced confessions that could have testified on Mr. Tankleff's behalf. Most notably, Dr. Gisli Gudjonsson, a Professor of Psychology at the University of London and the leading and the most recognized interrogation expert in the world, was available. So too was Dr. Richard Ofshe<sup>1</sup>, a Professor of Sociology at the University of California, Berkeley as was Dr. Saul Kassin, a Professor of Psychology at Williams College.

16. Had Mr. Tankleff's lead trial counsel, Robert C. Gottlieb, attempted to consult with a false confession expert, there is no question that he could have found one.

17. Based on my research and experience, I believe that the testimony of an expert can dramatically affect the judge or jury's decision making process about whether a confession is coerced and/or false.

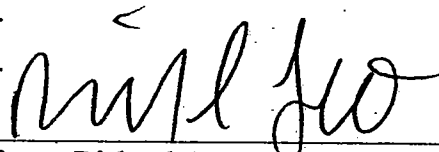
18. In my opinion, had a false confession expert been called to testify on behalf of Mr. Tankleff, the outcome of the criminal case could have been different because the judge and the jury could have come to understand how innocent people confess to crimes they did not commit.

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<sup>1</sup> Professor Richard Ofshe provided defendant with a declaration in support of his federal habeas corpus petition concluding that the defendant's "narrative" was "both unreliable and involuntary."

**DIRECT KNOWLEDGE OF DEFENDANTS CASE**

19. Since the mid-1990's when Professor Ofshe was retained to conduct an evaluation of the defendant's case, I have become intimately aware of the facts and circumstances of the case. Since that time, I have personally researched the case, and have jointly with Professor Ofshe written several articles detailing my opinion regarding defendants case. Based on my research, it is my professional opinion that the defendant's "confession" in this case, is inconsistent with the facts elicited in this case, unreliable, and almost certainly false.



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Professor Richard A. Leo, Ph.D., J.D.

Subscribed and sworn to before me this

22<sup>nd</sup> day of June 2002.

Ivan G. Castillo  
NOTARY PUBLIC

In and for the County of Orange, State of California

