

Information for the California Commission on the Fair Administration of Justice

It is hoped that the following remarks will assist the Commission in carrying out its work which is most important for the people of California.

False Confessions

An example of a false confession in my personal experience has to do with a simply DUI case in which the defendant consumed no alcohol at all prior to testing but registered an extremely high blood alcohol level from a blood test. Exactly how such technical evidence could be in error took a very large amount of engineering investigation time. In this DUI example, an engineering analysis proved the vials used by the police were so deficient in preservative and anti-coagulant that the real 0% result actually came out to be an erroneous 0.14%. Blood naturally forms its own alcohol in a short time in the amount of 0.3% to 0.4% without additives.

The defendant in this case was so fearful of the prosecution and had so little confidence in his own attorney that he pleaded guilty to two moving violations. He had no idea that the prosecution could not allow such damning evidence to ever be presented in a court of law because of repercussions. The prosecutor would have had to dismiss the charge at the time of trial, and the inept defense attorney did not know this.

Fundamental to such examples is the fact that some people have a "fighting spirit" and will pursue their rights regardless of possible adverse outcomes, whereas other people are non-confrontational by nature and will always compromise whenever they think they can avoid a possible adverse outcome or simply an unpleasant experience. This factor applies to any criminal case, regardless of whether it's a simple negative note in the person's record as in the example above or their execution because of a murder having been committed.

Evidence of this in one capital case came to my attention from a speech by a woman exonerated from her sentence after many years of incarceration for murder when her innocence was finally proven from accidental release of the prosecutor's files that had hidden the exculpatory evidence at the time of trial. She was so frightened by the prosecution and the possibility of further false charges and long prison time that she couldn't even file for modest compensation for the erroneous incarceration with its debilitating emotional damage. She also told me in private that she would sign whatever she had to in order to avoid the possibility of longer incarceration time and regardless of the evidence in support of her innocence.

It would appear that there are two major factors that require introduction in order to prevent or at least minimize these false confessions:

- 1). Mandate that defendants have adequate experienced legal counsel. This means an attorney with a "fighting spirit", intent on being relentless in pursuing justice for clients that are truly innocent. (It is noted that many experienced attorneys are intent on minimizing their time with each case and, therefore, attempt to settle every case regardless of legal merits.)
- 2). Place reasonable limitations on prosecutorial behavior by enforcing our legal system's tenet that people are "innocent until proven guilty". This is very difficult for prosecuting attorneys but item (1) above should be helpful as well as detailed prescribed rules for behavior of prosecutors which are enforced.

Eye Witness Testimony

Having performed accident analysis for over 30 years as an expert engineering witness allows me to comment with some authority about eyeball witnesses. It is needless to say that judges, juries, and attorneys all like eyeball witness testimony. What is rarely realized is that supposed facts presented by such witnesses in accident cases is the most unreliable information an analyst like myself has to deal with. Not only must the erroneous information be shown to be incorrect, but the rationale as to how the eyeball witness could honestly be wrong must also be presented. Otherwise, there is the possibility for the witness being correct and the physical evidence being incorrect for some unknown reason.

False testimony based on out and out lying, e.g. a jailhouse snitch, is one thing, but honest testimony that is actually erroneous in quite a different matter. The area of expertise for this type of analysis comes under the heading of "dynamic human factors". Of importance is the fact that very few people have photographic memories, so the vast majority of people have to rely on remembering only a few facts in a traumatic and fleeting situation, after which they always have to ask themselves "what happened?" In answering this question to themselves, they are forced to do their own accident reconstruction by simply connecting the few facts they remember together in a "reasonable" manner and then extending the reconstruction to reasonable conclusions. It takes relatively little time, a few minutes at most, for the eyeball witness to then honestly believe the version reconstructed is actually what they saw.

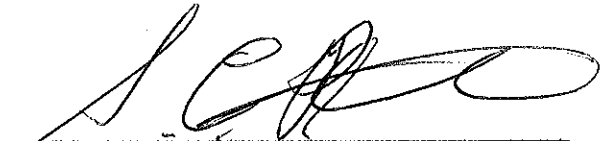
It seems certain that my experience with eyeball witness accounts in accident cases carries over to criminal cases. (In fact some of my analyses have been criminal cases.) The basic factor here is that people's minds play tricks on them, causing them to believe things that are not really true. (Almost all of us have had the experience of talking to a couple after an extended trip to a foreign country. It is usually quite difficult after such a discussion to believe that the two people involved were actually on the same trip together.)

An explanation in accident analyses which probably is the same in many criminal cases is that a person is not generally fully alert until something occurs to enhance their attention. In an auto accident for example, it isn't until the "bang" that a person nearby will actually note the accident. At that point of time it is generally too late to really have seen what actually happened just prior to impact as well as immediately afterwards. An example would be whether or not a person standing on a street corner actually watches the vehicles going past carefully enough to witness an impact. It would seem to follow that an "eye-witness" to a shooting crime, for example, might not be fully alert until after the shots are heard.

To be complete on this subject, eyeball witness testimony regarding points of rest for accident vehicles is generally very reliable. The same is true for an injured party in any accident case knowing their position after the impact. Likewise in criminal cases, eye-witness details concerning the aftermath of a crime might be very accurate.

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Date



Sheldon C. Plotkin, Ph.D., P.E.
Consulting Systems and Safety Engineer

Sheldon C. Plotkin, Ph.D. & Associates
Consulting Engineers
3318 Colbert Avenue, Suite 200
Los Angeles, California 90066
(310)390-0306; (fax)(310)390-3898

RESUME OF SHELDON C. PLOTKIN



EDUCATION:

B.S.E.E. (University of Colorado, 1946)
B.S.Aero.E. (University of Colorado, 1949)
Ph.D.E.E. (University of California, 1956)

EXPERTISE:

Accident reconstruction (all types)
Product and safety design
Dynamic human factors
Fundamental technical analyses
Systems engineering

BACKGROUND:

Over thirty-five years experience in analysis and design of electronic, electro-mechanical, mechanical, human factor, chemical and computer systems, as well as combinations thereof. Automobile crash test and dynamic behavior experience. Specialized experimentation, modeling, and demonstrations. Previous employers include Los Alamos Scientific Laboratory, U.S. Naval Air Missile Test Center, University of California (Berkeley), Energy Systems, University of Southern California, Hoffman Electronics, Hughes Aircraft, TRW Systems, and the RAND Corporation.

LITIGATION AREAS:

Vehicular accident reconstruction, design and characteristics; slip and fall; human impact; chemical and electrical explosions; electronic circuitry; high voltage; escalator safety; elevator operation; highway design; pattern recognition; criminal evidence; production equipment design and operation; human factor perception and dynamics; fires; tire fabrication and design; and test equipment.

RATES:

Hourly or fixed fee available.

PUBLICATIONS AND SEMINARS

"Multiple Causation", AUTOMOTIVE ENGINEERING AND LITIGATION (book),
Chapter 10, Garland Publishing Inc., 1984.

ACCIDENT AND PRODUCT FAILURE ANALYSES (book), California Syllabus, 1976.

"Introduction to Accident, Safety, and Forensic Engineering" (seminar).

Several hundred papers, reports, and intra-company documents.

PROFESSIONAL AFFILIATIONS

Registered Professional Engineer (California, Safety, No. SF459), Systems Safety Society, Institute of Electrical and Electronic Engineers — Social Implications of Technology, Pi Mu Epsilon, Eta Kappa Nu, Sigma Xi, Southern California Federation of Scientists^ and American Association for the Advancement of Science