

# Criminal Justice System — Systemic Harm Proceedings

## Before the Honourable Tribunal

I will make clear at once what this proceeding is and what it is not.

This is not an inquiry. This is not a review. This is not a commission of recommendation. The findings have been made. The evidence has been heard. The photographs have been seen. The cells have been walked through. The notes have been read.

This is a sentencing.

I will now address each of you directly.

### **To the psychologist who wrote that report.**

You assessed a person in custody who could form words on the phone with their friend but not in the room with you.

You wrote that down. You observed it correctly. And then you used your correct observation as evidence that the person was faking.

You are a person who spent years acquiring the knowledge that would have told you what you were looking at. You acquired that knowledge. You looked at the presentation. You named it accurately in your own notes. And

then you inverted it and signed your name to the inversion and put it in a file that followed that person through every subsequent decision made about them.

You are not a person who didn't know. Ignorance requires absence of information. You had the information. You had the training. You had the credential that exists for the specific purpose of preventing exactly what you did.

You chose the other thing.

I have heard the evidence about what that report produced. How the word manipulative travelled. How many doors it closed before they opened. How many people read it and made their decision before the person in front of them had spoken.

You did that.

You, specifically. With your qualification and your notes and your signature.

I do not have a sentence commensurate with that. I am not sure one exists.

What I have is this: you will stand in a room. Someone with authority over what happens to you next will assess you. They will watch how your words form. They will note whether you seem nervous. They will apply the framework you spent your career administering.

I hope your words form.

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### **To the officer who used that word.**

A person who could not always walk had been stripped, was alone, was in acute distress, was sitting in their own vomit after asking for cleaning products and being refused, and had no power, none, over anything that happened to them in that space.

You chose that moment to tell them what you thought they were.

I am not going to perform uncertainty about what that word communicates. We both know what it communicates. You chose it because of what it communicates. You wanted that person to know what you had

decided they were worth.

You had absolute power over another human being and you used it to reduce them further than the cell had already reduced them.

I have been asked to consider the conditions of your work. The difficulty of the role. The culture of the institution. I have considered them.

They do not move me.

Every person in that facility on that day was working under the same conditions. Most of them did not use that word. You made a choice that most of your colleagues did not make. The conditions do not explain the choice. You explain the choice.

You will be sentenced to a period of imprisonment.

You will be processed on arrival. Someone will assess you. Someone will decide, based on how you present, what you are worth. Someone will have complete power over what happens to you in that space.

I want you to remember, when that moment comes, that you have stood where they are standing.

And I want you to remember what you chose to do with it.

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**To the officer who left the vomit.**

A person asked you for something to clean their cell.

You decided not to provide it.

I have nothing elaborate to say to you. I have only that fact, which will remain in this record long after everything else about this proceeding is forgotten.

A human being asked you for something to clean their cell.

You decided not to provide it.

You will be sentenced to community service. You will spend that time in direct contact with people in the circumstances of the person you left in that cell. You will learn their names. You will hear what they need. You will be required, at the conclusion of your service, to stand before this court and demonstrate that you understand what you withheld and from whom you withheld it.

If you cannot demonstrate that understanding, you will return to service until you can.

### **To the training officer who taught the Reid Technique.**

You stood in front of rooms full of people who were about to be given authority over other people's lives and you taught them a methodology we have known produces false confessions at a rate of between 12 and 30 percent.

You taught them to read hesitation as guilt. To read gaze aversion as deception. To read the authentic presentation of a person trying to tell the truth as evidence that they are lying.

You produced them. Class after class. Year after year. Each one equipped with a compass that points south, trained to be maximally confident in exactly the direction that is maximally wrong.

I want you to understand the arithmetic of what you did.

Every investigator you trained conducted hundreds of interrogations. Every one of those interrogations was conducted with the tools you provided. Every false confession extracted by your graduates, every person convicted on the basis of a credibility assessment made using the framework you taught – you are in those outcomes.

Not metaphorically. Causally.

You trained the person who broke the person who confessed to something they did not do. You are in that cell. You are in that conviction. You are in every year of every sentence served by every person processed by every investigator who sat in your classroom.

You will be sentenced to a period of imprisonment equal to the aggregate of false conviction time produced by the first cohort you trained.

The Tribunal acknowledges we cannot calculate that number precisely.

The Tribunal notes that imprecision of this kind did not prevent the system from sentencing others.

**To the prosecutor who advanced the confession.**

You read the file. You saw how the confession was obtained. You knew how long the person had been in custody before they signed it. You knew the conditions. You knew, or in the exercise of your professional duty ought to have known, what those conditions do to a person's capacity to resist.

You advanced it anyway.

You stood before the jury and you said: this person confessed. You let that sentence do its work. You knew what it would do. You have stood in enough courtrooms to know what a jury does with a confession. You let them do it.

I have heard the argument that your role is to advance the evidence and that assessment of its admissibility belongs to the judge. I have heard it. I find it to be a description of a conveyor belt, not a professional. You had discretion. You had judgment. You had an ethical obligation that preceded and exceeded your institutional role.

You did not exercise it.

You will be sentenced to imprisonment for a term to be served consecutively for each wrongful conviction your prosecutions produced.

You will have the right of appeal.

It will be heard by a judge operating at 54.1% accuracy.

You always considered that a fair process.

**To the judge who signed the orders.**

You had everything. You had the authority to exclude the confession. To direct the jury on the limitations of credibility assessment. To refuse to participate in a process whose foundations the evidence had undermined.

You had more power than anyone else in these proceedings to stop what happened to the people in those cells and you used that power to make it formal. To make it legitimate. To put the seal of the court on it and call it justice.

The judge tried at Nuremberg said they were applying the law as it existed. That reforming the law was the role of others. That their function was the correct application of established legal frameworks.

The tribunal that heard that submission did not find it persuasive.

I do not find it persuasive.

Your sentence is imprisonment.

Before you are taken down I want you to hear one thing.

The people who appeared before you in your courtroom – the ones who hesitated, who looked away, who said I don't know, who whose voices changed, who whose narratives were fragmented – they were showing you what honesty looks like.

You read it as guilt.

You had the research. You had the exoneration data. You had everything you needed to know that you were reading it wrong.

You sentenced them anyway.

I will not make you wait for this sentence. I make it clear now.

Life.

Not because the law requires it.

Because the aggregate of what you authorised requires it.

**To those who remain.**

The officers. The administrators. The clerks. The ones who processed the paperwork and managed the rosters and ensured the institution functioned.

I will not address each of you individually because you are too many and because the individual address would take longer than the harm took to produce.

I will say this.

You made it run. Without you it does not run. A system requires people to operate it. You were those people.

Some of you had very little choice. The Tribunal sees that. The caseworker with forty clients. The legal aid lawyer with seventeen minutes. The interpreter called at short notice. The junior officer in their first month.

The Tribunal takes those circumstances into account.

The Tribunal does not fully accept them.

At some point – and the Tribunal acknowledges that point is different for each of you and not always clearly visible – a person inside a system producing documented harm has an obligation that exceeds their obligation to the institution.

The Tribunal finds that point was reached.

The Tribunal finds it was reached before most of you would like it to have been reached.

Your sentences will be determined individually, according to your proximity to the mechanism, your access to knowledge, and your capacity to have acted differently.

You will be assessed in this court.

Someone will observe how you present.

The Tribunal notes that 91.3% of the cues they will use to assess you point in the wrong direction.

The Tribunal finds this an appropriate condition under which to be judged.

You built it.

You maintained it.

Now you will stand in it.

This court is adjourned.

The record is permanent.

It will not be expunged.

It will not be suppressed.

It will be read again.

By people who will know, when they read it, that this is not history.

That this is yesterday.

That this is today.

That somewhere right now there is a person in a cell asking for something to clean it with.

And someone is deciding.

*These remarks are entered into the permanent record.*

*They require no footnotes.*

*The evidence is what was done.*

*To human beings.*

*By people who went home afterward.*

*And came back the next day.*

*And did it again.*