



# INFORMAL OPINION

BY ROBERT PERSKE

ences and come to believe, really *believe*, that they “have the man.” Some — but not all — question suspects relentlessly for long hours until a confession is squeezed out of them. They do it even though no physical or witness evidence connects the person with a disability to the crime. Fortunately, in the last 10 years, false confessions have been exposed to the light of day as never before.

## America’s Heightening Awareness of Actual Innocence

Law professor Steven Drizin and criminologist Richard Leo, authors of the groundbreaking monograph *The Problem of False Confessions in the Post-DNA World*,<sup>1</sup> have graciously shared the information on people with disabilities that was gleaned from their larger, all-encompassing list of all false confessors. This sharing of data led to the writing of *Search for Persons with Intellectual Disabilities Who Confessed to Serious Crimes They Did Not Commit*.<sup>2</sup>

At least 41 confessors with intellectual disabilities have been legally exonerated. This list continues to climb every year. These breakthroughs are happening because of the studiously detailed work of Drizin and Leo, as well as that of sociologist Richard Ofshe<sup>3</sup> and psychologist Saul Kassin.<sup>4</sup> Even so, another trailblazer from across the Atlantic Ocean is helping to light the way.

## Points Worth Pondering From England

Gisli Gudjonsson is a most remarkable man. After working as a young police officer in Reykjavik, Iceland, he moved to the United Kingdom in order to learn English. Later, he became a professor of forensic psychology at King’s College, London, and one of the world’s top forensic researchers and consultants. His writings touch me deeply because many of his points can be applied to the critical situations of people with intellectual disabilities.<sup>5</sup> A small sampling

from his vast repertoire deserves special mention here.

## Vigorous Corroboration

As a young detective with the Reykjavik Criminal Investigation Department, Gudjonsson became a stickler for verifying any confession that was uttered by a suspect. For example, he recalls how one man confessed to murder, but the weapon was not found. Consequently, he and his fellow officers sifted through refuse at the Reykjavik Corporation Rubbish Dump looking for it. Finally, after two long days of rummaging through trash, they found the murder weapon, enabling them to verify the confession.<sup>6</sup>

## Classifying Types Of Confessions

Gudjonsson vividly recalls how the first false confession he ever received came easy. He simply confronted a man regarding a certain crime. The suspect immediately said he must have committed it, even though he could not remember doing it. Later, Gudjonsson discovered that the man, though looking normal, possessed a psychological vulnerability.<sup>7</sup>

This case and others prompted him to identify and classify false confessions. He discovered three basic categories.

- ❖ Voluntary False (such as the one described above)
- ❖ Coerced-Compliant (trying to reduce the pressure by telling the interrogator what he or she wants to hear)
- ❖ Coerced-Internalized (the suspect comes to believe that he or she really must have committed the crime)<sup>8</sup>

## The Guildford Four and The Birmingham Six

On October 5, 1974, members of the Irish Republican Army (IRA) planted bombs in two pubs in Guildford, England — the Horse and Groom and the Seven

## Gisli Gudjonsson’s Penchant for Corroboration

Today, instructors in police academies never cease to hammer into the heads of recruit officers the proper steps needed for a successful criminal investigation.

1. Get evidence.
2. Get evidence.
3. Get evidence.
4. Get evidence.
5. Try for a confession.
6. Do everything possible to corroborate a confession.

Some investigators — but not all — fail to follow these steps with people who have intellectual disabilities. Some — but not all — misread the defendant’s differ-

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Stars. Five people were killed and 57 were injured. A month later, a bomb exploded in the King's Arms in Woolrich, South London, killing two and injuring 27. The explosions caused public outrage, and some 150 detectives went to work on the case. Four of the suspects that were rounded up confessed to the crimes. They were convicted and imprisoned. Gudjonsson, when asked to look at the case, joined others who eventually made it clear that the four had confessed to crimes they did not commit. After 15 years in prison, they were exonerated and released.

In the case of the Birmingham Six, two pubs — the Mulberry Bush and the Tavern in the Town — were bombed in Birmingham on November 21, 1974, killing 21 and injuring 182. Six more men were convicted and imprisoned due to confessions received in police interrogation rooms. Seventeen years later, their confessions were thrown out.<sup>9</sup>

## Interrogation Bias

The Guildford and Birmingham cases serve as excellent examples of investigator bias. The police had to be outraged by these senseless bombings. Their rage may have colored their “will to believe” regarding who was really guilty or innocent. Gudjonsson pinpoints this cloudy dilemma:

Interrogation bias may result in police officers being particularly vigilant and receptive to information that is consistent with their prior assumptions and beliefs, whilst ignoring, minimizing or distorting information that contradicts their assumptions. Information that does not support the interviewer's hypotheses may be erroneously interpreted as lies, misunderstanding, evasiveness or defensiveness.<sup>10</sup>

According to Gudjonsson, the stronger the interviewer's prior assumptions and beliefs, the greater the interrogator's bias.

## Measuring the Level of Suggestibility in Mentally Vulnerable Suspects

Gudjonsson spent great amounts of time observing how some people in an interrogation room tend to internalize the suggestions of the interrogator and claim them in their own points of view. According to him, there are three types of interrogative suggestibility responses:

(1) responses to negative feedback, (2) responses to leading questions, and (3) responses to repeated questions. These responses, of course, are the goals in any skilled interrogation.

Even so, Gudjonsson began to wonder whether or not interrogative suggestibility could be reliably measured. He concluded that it could, and he developed an elaborate testing instrument called the *Gudjonsson Suggestibility Scale*. The scale shows that some suspects are more “suggestible” than others.<sup>11</sup>

## Measuring the Level of Compliance in Mentally Vulnerable Suspects

Compliance is different from suggestibility. Gudjonsson stated:

I offered a theoretical distinction between suggestibility and compliance. The main difference, it was argued, was that suggestibility, unlike compliance, implies personal acceptance of the information provided or request made. . . . In its broadest sense, compliance refers to the tendency to go along with propositions, requests or instructions for some immediate instrumental gain.<sup>12</sup>

For people with intellectual disabilities that I have known, the immediate gain is to find a way to get out of that pressure cooker of an interrogation room. First, they try to do anything possible to please the police officer. Second, they do everything possible to avoid conflict or confrontation with him or her.<sup>13</sup>

## Concerns Over the Use Of Trickery to Get a Confession

Gudjonsson is critical of police trickery techniques. He eschews lies by the police who claim to have physical or witness evidence that implicates the accused in the crime. Gudjonsson is disdainful of dual “Mutt and Jeff” antics by interrogators. He feels that “police trickery and deception deprive suspects of the opportunity of making informed and rational decisions about their right not to incriminate themselves.”<sup>14</sup>

## Dependence on Superstar Interrogators

Gudjonsson noted:

Every police officer has heard of a “macho star performer” who had a reputation for being able to obtain a confession from even the most resistant suspect! . . . The problem with interviewing as an art is that it undermines professionalism and objectivity. A successful police force cannot rely on the intrinsic quality of individual “star performers.” What is required is an interaction between theory and practice, with emphasis on awareness, objectivity, hypothesis testing, training, quality control evaluation and research. The objective should be that every police officer views these qualities as being within his or her reach, subject to training. Knowledge about skillful interviewing and appropriate training must not be confined to a few educated senior officers.<sup>15</sup>

Gudjonsson feels strongly that the heyday of such artistic “confession getters” must end. He argues that good police investigation is not an art. It is a thorough-going science.

## Passion for the Truth

These points only touch the surface of Gisli Gudjonsson's vast experience as a law officer and a clinician. From them, however, one can sense that he is a diligent and passionate man. He is diligent at getting down to fine details within the criminal justice system's functioning. He is passionate about finding the truth. Passionate people like him discover fresh truths that ordinary people never even begin to see. Because of Gudjonsson's observations and writings, the people we work with and care about will come closer to receiving the same justice that all American citizens are entitled to receive.

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## Notes

1. S. Drizin & R. Leo, THE PROBLEM OF FALSE CONFESSIONS IN THE POST-DNA WORLD, 82 N.C. L. REV. (2004).

2. R. Perske, *Search for Persons With Intellectual Disabilities Who Confessed to Serious Crimes They Did Not Commit*, 43 MENTAL RETARDATION 58-65 (2005).

3. R. Ofshe & R. Leo, *The Decision to*

*Confess Falsely: Rational Choice and Irrational Action*, 74 DENVER UNIV. L. REV. 979-1122 (1997); R. Ofshe & R. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 STUD. L. POL. & SOC'Y, 189-251 (1997).

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5. G. Gudjonsson, *The Psychology of Interrogations, Confessions and Testimony*, John Wiley and Sons (1992); G. Gudjonsson, *The Psychology of Interrogations and Confessions: A Handbook*, John Wiley and Sons (2003); G. Gudjonsson, *Psychology Brings Justice: The Science of Forensic Psychology*, 13 CRIM. BEHAV. & MENTAL HEALTH 159-167 (2003); and L. Clare & G. Gudjonsson, *Interrogative Suggestibility, Confabulation and Acquiescence in People With Mild Learning Disabilities (Mental Handicap): Implications for Reliability During Police Interrogations*, 32 BRIT. J. CLINICAL PSYCHOL., 295-301 (1993).

6. G. Gudjonsson, *The Psychology of Interrogations, Confessions and Testimony*, page xi, John Wiley and Sons (1992).

7. *Id.*

8. *Id.* at 234-259.

9. *Id.* at 260-273.

10. *Id.* at 14.

11. *Id.* at 131-164.

12. *Id.* at 137-141.

13. *Id.* at 138-139.

14. *Id.* at 294-295.

15. *Id.* at 331. ■

## About the Author

Robert Perske is a citizen advocate who tracks, works with, and writes about people with intellectual disabilities who were coerced into confessing to serious felonies they did not commit. He has followed over 100 of these cases. Perske is the author of *Deadly Innocence* and *Unequal Justice*. In 2002, he became the first nonlawyer to receive the American Bar Association's Paul Hearne Award for Services to Persons with Intellectual Disabilities.



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