

A thirst to learn the truth

Jon Sutton talks to **Gisli Gudjonsson CBE** about false confessions and expert witness work

As a young detective with the Reykjavik Criminal Investigation Department, you once spent two days sifting through a rubbish dump looking for a murder weapon to verify a confession. Has your search for the truth been a lifelong quest?

Yes, it certainly has and it continues to be so. My work with the Reykjavik Criminal Investigation Department was the inspiration that laid the foundation for my interest in forensic psychology and false confessions. It is fortunate that I had this unique experience and I've have been able to utilise it throughout my career as a forensic psychologist.

You moved to the UK, learnt English and went on to become a Professor of Forensic Psychology and the world expert on false confessions. But when you started in the area, did people doubt that such a thing even existed?

When I started researching false confessions in the early 1980s there was great scepticism among psychologists, psychiatrists and lawyers that false confessions occurred with sufficient frequency to merit attention. It was a struggle to persuade the judiciary that false confessions do occur. I worked closely with a psychiatrist, Dr James MacKeith, and we soon learned that 'changing minds changes lives'. We began to educate colleagues and the legal profession about psychological vulnerabilities and the risk of false confession, whether elicited by police or offered voluntarily. This educational component to our work laid the

foundation for the release of the Guildford Four and Birmingham Six.

You've worked on some of the highest profile cases – e.g. the Guildford Four, Birmingham Six, Barry George, Derek Bentley. But do you have any idea how prevalent false confessions are?

It is difficult to provide specific rates, because this depends on so many different factors, including base rate of guilt of people interrogated, the age and education of the person interrogated, interrogative and legal practices, and cultural and regional variations. What we do know is that cases of false confession based on DNA exoneration are only the



Professor Gisli Gudjonsson (right) searches for a murder weapon on an Icelandic rubbish dump

'tip of the iceberg'. False confessions are easier to elicit than people think. Since 2004 I have been working with colleagues at Reykjavik University conducting large epidemiological surveys among students in Iceland and other countries in Europe. We've now collected data on over 70,000 young persons and their experience with police. This research shows that the base rate of guilt varies greatly across different

countries with the highest rate being in Iceland, about 67 per cent, and substantially lower in other countries in Europe, about 44 per cent. In addition young people, those still in mandatory education, have less frequently been arrested and questioned by police than the older students, about 10 per cent versus 20 per cent, but their rate of reported false confession per interrogation is considerably higher, demonstrating the particular vulnerabilities during questioning among younger persons.

And it's not just an issue for people with intellectual disabilities?

No, it's not just a question of learning disabilities; in fact most miscarriage of justice cases and our own research show that sometimes normal people give false confessions to crimes such as murder. You don't have to be learning disabled or mentally disordered to give a false confession to police. Given the right circumstances, next time it could be you! So don't be complacent about the risk of false confessions.

Do you remember the first false confession you received yourself?

Whilst working as a detective I inadvertently elicited a false confession from a man who accepted the allegation of a theft whilst having no real memory of committing the offence. Further investigation revealed that he was innocent but had accepted the allegation because he did not trust his own memory during police questioning. This case, and others I worked on in England with James MacKeith, led us to develop the concept of the memory distrust syndrome, which is now embedded in the scientific literature. Inadvertently eliciting a false confession and believing in its veracity at the time, was a real eye-opener and has made me aware of the dangers of taking the veracity of confessions for granted. It also demonstrated the power of belief. If you believe or are persuaded you have committed a crime of which you're innocent, you may admit it without having any memory of it. This 'false belief' may last many months, or even years.

Your work has led directly to numerous changes in police interviewing and the detention process – what changes are

you most proud of?

What has been most significant has been the change in attitudes among the British judiciary, police officers and colleagues, which was fundamental to all the other changes. The resistance and hostility I experienced in the 1980s is no longer apparent and was overcome by education and improved awareness. I am proud to have had the opportunity of being part of a criminal justice system that has responded to the need to review and improve practice. The Birgitte Tengs case I worked on in Norway in 1998 shows how other countries have also shown the capacity to make changes following a case of miscarriage of justice.

Now that your work has had that impact, is it 'case closed', job done?

No, there is much more work to be done. For example, our current research at an English police station shows that even with the increase in mental health staff at police stations following the Bradley recommendations for reform, vulnerable detainees are no better identified now and provided with an appropriate adult than they were when we conducted similar research over 20 years ago. We need to find a way of translating knowledge into practice. This is fundamental to change.

Presumably some countries have adopted your research more readily than others? When I think of the Reid technique of interrogation, which seems such a staple of TV cop dramas, it must be hard for the individuals who have been so immersed in that culture to change.

In contrast to the PEACE model, which was developed in the early 1990s in England after collaborative work of police officers, psychologists, academics, lawyers, the 'Reid technique' encourages interviewers to use deception and psychological manipulation to break down resistance of suspects where the interrogator assumes them to be guilty. The problem is that interrogators are not as good as they think they are at detecting who is lying and who is telling the truth, and therefore often misclassify them as suspects. This increases the risk of false confession. The recent exoneration of Darrel Parker in Nebraska raises questions about the Reid technique. It was the author of the Reid technique, John Reid, who had in 1956 obtained the false confession from Mr Parker. Mr Parker was a college graduate with no criminal background, so they can't blame his false confession on learning disability.

The guilt-presumptive and confrontational processes inherent in the

Reid technique should be replaced by the PEACE model or a similar noncoercive technique. Such a reform will be strongly resisted by American police authorities, because the Reid technique has a deep-rooted history and its prescriptive nature and apparent effectiveness in breaking down resistance make it attractive.

Authorities in the United States have been less responsive than those in the UK in addressing issues associated with the negative aspects of deceptive police interview techniques and in actively doing something to reduce the likelihood of miscarriage of justice resulting from police-induced false confession.

As far as police interviewing is concerned, the main challenge for the future is to develop transparent and accountable interview techniques that maximise the number of noncoerced true confessions while minimising the rate of false confessions.

Have other scientific advances, such as DNA evidence and CCTV footage, rendered confessions less important and therefore false confessions less of an issue?

There have been over 300 DNA exonerations in the USA since the late 1980s and of those over 20 per cent involve a false confession or a false plea, but in spite of these changes there appears to have been little appetite in the USA to address the issue of false confessions. This has been different in England. There have been few DNA exonerations in the UK, but DNA has been found to support my evidence. The Cardiff Three case is one example. The convictions of all three defendants were quashed by the Court of Appeal in 1992 on the basis of oppressive interviewing. In 2003 the real murderer, Jeffrey Gafoor, pleaded guilty to murder and was given a mandatory life sentence after being identified by DNA evidence. I have had other similar experiences. This has been rewarding. I am not aware of a case where my evidence of unreliability was later contradicted by DNA evidence.

Unfortunately, DNA evidence is only available in a small number of cases and therefore in a great majority of cases does not overcome the issue of false confessions. The position regarding CCTV footage is less well known. Good DNA and CCTV evidence is likely to encourage suspects to give a genuine confession (i.e. increase the likelihood of confession) and in some case it will help to exonerate the wrongly convicted.

You've actually saved lives, by stopping executions. You must be incredibly**proud of that, but do you ever worry you have freed the guilty?**

What makes me the proudest is that I continue to feel the thirst to learn and improve my knowledge base and the quality of my work. Each case is a huge learning experience, indeed it is an opportunity to learn from our success and failures, and combined with extensive research this has made me the expert I am in the area of confessions. The work on confessions focuses on the 'reliability' and safety of the confession, based on all the available relevant evidence, including the psychological evaluation. It is usually unwise to focus on guilt or innocence; this is an issue for the court, not for the expert witness. No, I don't worry about freeing the guilty – my evidence only forms a part of the picture, and in some cases it is the most crucial evidence.

Where is that thirst to learn taking you now?

I'm very excited about the work we have been doing, and are currently doing, into the vulnerabilities of people with attention deficit hyperactivity disorder. There is growing evidence that ADHD symptoms are related to offending, susceptibility to giving false confessions during police questioning, ineffective coping with the trial process, and disruptive behaviour in prison. I work closely with Dr Susan Young, who is the leading expert in the UK into ADHD and offending, and Professor Jon Fridrik Sigurdsson and other colleagues in Iceland. We are currently conducting two studies, one in Inverness and one in Iceland among prisoners, which should help in identifying the specific pathways of ADHD suffers into offending.

'Semi-retirement' is going well then?!

Semi-retirement has been busier than I had anticipated!

I'd like to turn to expert witness work now. What distinguishes an 'expert' witness from an ordinary witness?

The main difference between an 'expert' witness and an ordinary witness is that the former is allowed to give an opinion. Ordinary witnesses are only allowed to give factual evidence and have to keep their opinion to themselves. In addition, expert witnesses can, with the permission of the court, sit in court and listen to other witnesses give evidence prior to their own, including that of other expert witnesses and a defendant.

So it's quite a powerful, responsible position?

It's a privileged and a responsible position

to be in and should be taken seriously. The duty is to the court, not to the client or the lawyer commissioning the report. At all times act with integrity.

Who decides whether you are qualified to act as an expert witness?

It is up to the judge to determine the relevance and the reliability of the expert's proposed evidence. In England the reliability of a particular expert's testimony is rarely challenged, but in countries like America there are more strident criteria used, referred to as a 'Daubert' analysis. The issue is not just the qualifications of the expert, but also the science and methodology behind his or her evidence.

Do you find the process intimidating?

Yes it is an intimidating experience. In the early days I often experienced a great deal of hostility from prosecutors and judges when testifying, but the courts are now more accepting of psychological evidence. With experience, testifying becomes less intimidating.

Is there a danger of straying from your area of expertise? How do you guard against that?

My practice has been to stay within my own area of expertise and competence, and when necessary seek advice and supervision. In the case of Barry George, I was the first psychologist to interview and test him. My assessment suggested that he might have neuropsychological problems, and I recommended a qualified neuropsychologist, Dr Susan Young, and a neuropsychiatrist, Professor Michael Kopelman. The three of us worked on the case as an effective team. I love working on cases with colleagues rather than on my own, it is much more fun and there is added strength in team work. During the first trial, Barry George suddenly lost his eyesight during legal arguments, and the three of us were asked by the trial judge to bring his sight back, otherwise the trial could not continue. We had two hours to achieve this and nothing seemed to work.

Suddenly I asked Barry if he would mind my hypnotising him to restore his sight. He agreed and it worked! The trial could now commence. What a sense of relief. When working on cases you need to be really innovative and quick in your thinking.

It's not always easy to know what the latest evidence in an area of psychology is, or how reliable it might be. How do you ensure that evidence is good enough?

Expert witnesses have to keep up to date with their field and expertise. They also have to ensure that they use the most appropriate and up-to-date psychological tests and do not interpret the findings in isolation to other relevant material. The internet has made it easier to keep up to date with the literature.

Say it's the day before you're due to appear as an expert witness. What are your top tips?

The top tip is to prepare well for your testimony. There is no substitute for good preparation. In addition, use each case as a learning

experience and try to continually improve the quality of your work. Learn both from your successes and mistakes. If you discover an error in your report don't cover it up. Declare it to the court at the beginning of your testimony.

There are risks inherent in serving as an expert witness, and in some ways you're putting your reputation and career on the line. So why do you do it?

When testifying in court you are leaving yourself open to public scrutiny and any mistakes and criticisms can be very unpleasant. In the early years, I did sometimes ask myself 'So why do it?' I saw it as an opportunity to make a real contribution to psychology and court proceedings. My ambition was to further the development of forensic psychology having been inspired during my clinical training by the late Professor Lionel Haward, the father of British forensic psychology. It has been challenging but enormously rewarding. It is an experience that I would not like to have missed.



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Nobody I have talked to about expert witness work seems to mention money! Is it lucrative, and is that a motivation?

Money has never been the main issue for me. My court work has been combined with my clinical and academic work. I don't take on a case because it pays well. I take on a case when I think I can really make a contribution.

Presumably now that the Society is no longer the regulator, there is an opportunity to shift the emphasis around expert witness work to that of support and CPD?

In my experience it is not always easy, because some experts are very defensive about their reports and testimony, even when of poor quality. Court work is no place for arrogance or complacency. Our aim should be to provide the best-quality work possible and not to be so naive as to think that we know it all and need no feedback, guidance and supervision.

The process is by its very nature adversarial, so how do you deal with the situation where you are, for example, openly criticising another psychologist?

Any criticism of other expert witnesses should not be personal or disrespectful; it should only focus on the problems and limitations identified in the other expert's testimony.

How might you increase resilience in those undertaking expert witness work?

Good training and knowledge base, practice and experience, learning from previous and current cases, and appropriate supervision are the key factors in improving resilience.

Does expert witness work have the potential to reach all corners of the discipline, or will your area continue to dominate?

I think that expert witness work will broaden to other areas of psychology beside clinical and forensic psychology. But these two areas will dominate, because they are fundamental to many pre-trial, trial and sentencing issues. Clinical training is the best foundation for forensic work, followed by specialised forensic training and experience. Lots of issues in court relate to mental health issues rather than offending *per se*. Clinical and forensic qualifications don't make you a good expert witness. These are basic qualifications and specialised training courses, CPD and appropriate supervision are also essential.

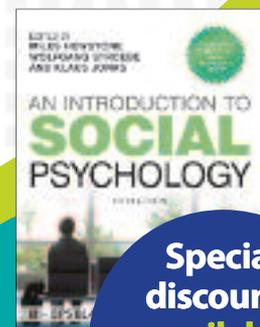
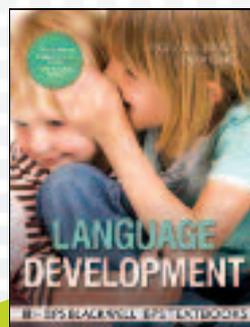
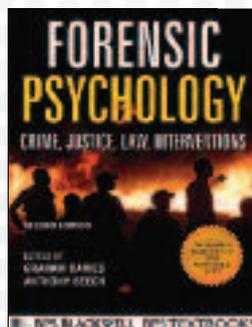
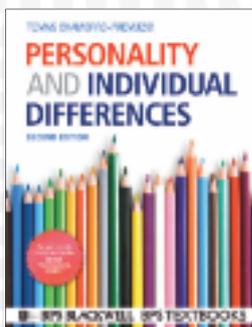
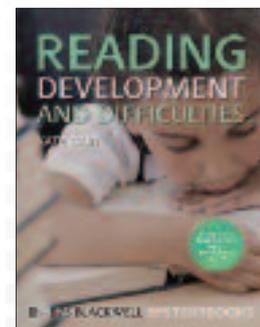
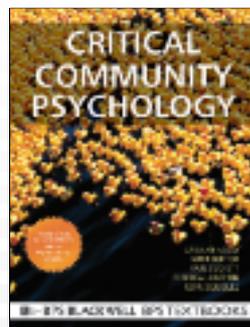
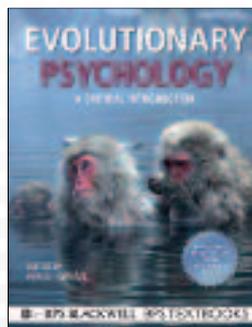
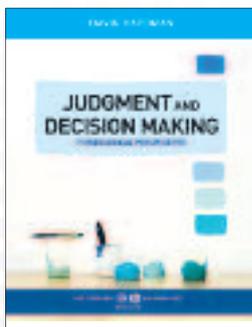
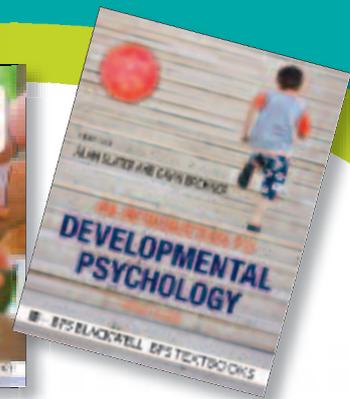
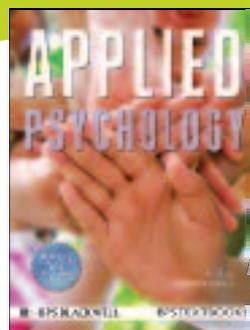
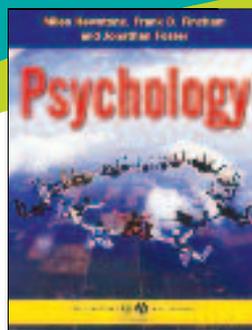
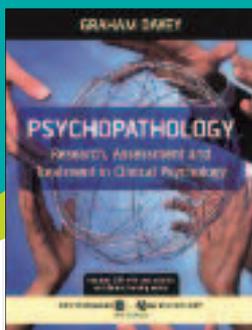
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