

1-1-2003

Book Review [The Psychology of Interrogations and Confessions: A Handbook]

Santa Clara Law Review

Follow this and additional works at: <http://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Santa Clara Law Review, Book Review, *Book Review [The Psychology of Interrogations and Confessions: A Handbook]*, 43 SANTA CLARA L. REV. 1485 (2003).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol43/iss4/8>

This Book Review is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

BOOK REVIEW

The Psychology of Interrogations and Confessions: A Handbook, by Gisli H. Gudjonsson. New York, New York: John Wiley & Sons, Inc., 2003, Pp. 684. \$50.00.

Reviewed by **Cookie Ridolfi*** and **Marjorie K. Allard****

I. INTRODUCTION

With the recent media coverage of the Central Park jogger case,¹ publication of Gisli H. Gudjonsson's *The Psychology of Interrogations and Confessions: A Handbook* (Handbook)² could not be more timely. The past few months have seen an increase in media coverage regarding false confessions.³ On the heels of the overturned convictions in the Central Park jogger case came the news that Illinois Governor George Ryan was releasing four people from death row, all of whom had falsely confessed under police torture.⁴ Across the country, Innocence

* Director, Northern California Innocence Project & Associate Professor, Santa Clara University School of Law. J.D., Rutgers University Law School; B.A., Rutgers University.

** Staff Attorney, Northern California Innocence Project, Santa Clara University School of Law. J.D., Yale Law School; B.A., Yale University.

1. *People v. Wise*, 752 N.Y.S.2d 837 (N.Y. Sup. Ct. 2002); see also, Jim Dwyer and Kevin Flynn, *New Light on Jogger's Rape Calls Evidence into Question*, N.Y. TIMES, Dec. 1, 2002, at 1; Susan Saulny, *Convictions and Charges Voided in '89 Central Park Jogger Attack*, N.Y. TIMES, Dec. 20, 2002, at A1.

2. GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* (2003).

3. See, e.g., Alexandra Marks, *Why People Confess to Crimes They Didn't Do*, THE CHRISTIAN SCIENCE MONITOR, Dec. 5, 2002; Saul Kassin, *False Confessions and the Jogger Case*, N.Y. TIMES, Nov. 1, 2002, at A31; *FBI Agents Cleared in Probe of Witness*, NEWSDAY, Nov. 26, 2002; Jim Dwyer, *When the Crime Is Admitted, But Not Committed*, N.Y. TIMES, Oct. 20, 2002, at 28; Jode Wilgoren, *Confession Had His Signature, DNA Did Not*, N.Y. TIMES, Aug. 26, 2002, at A1; Margaret Talbot, *True Confessions*, THE ATLANTIC MONTHLY, July/Aug. 2002, at 24; *Man Jailed for 17 Years Exonerated of 1984 Rape, Murder*, THE ASSOCIATED PRESS, Aug. 26, 2002, available at http://www.ftlcomm.com/ensign/desantisArticles/2002_600/desantis686/CNNMan17years.pdf (last visited May 25, 2003).

4. See, e.g., John Crace, *Education-Learning-Lethal Injection*, THE GUARDIAN (Jan. 21, 2003); see also Steven A. Drizin, *The Problem of False Confessions in Illinois: A Report of the Northwestern University Legal Clinic's Children and Family Justice Center*

Projects have sprung up in law schools and journalism schools.⁵ Their hard work, coupled with increased availability of post-conviction DNA testing, has resulted in over 127 exonerations, more than thirty of which involved false confessions.⁶ Based on these numbers, the Innocence Project in New York has estimated that over twenty percent of wrongful convictions involve situations where an innocent person confessed to a crime he or she did not commit.⁷

In the midst of this growing public awareness, Gisli Gudjonsson's authoritative new Handbook arrives as a much-needed and invaluable resource. A professor of forensic psychology at King's College, London and a frequent expert witness in British and American courts, Gudjonsson is one of the world's leading authorities on the psychology of interrogations.⁸ His seminal work on suspect suggestibility in the late 1980s and

(June 19, 2002), available at <http://www.law.nwu.edu/depts/clinic/Articles/Illinoislistfin41.htm>.

5. See Innocence Project Website, at http://www.innocenceproject.org/about/other_projects.php (listing Innocence Projects across the country) (last visited May 25, 2003). Innocence Projects are non-profit legal clinics frequently affiliated with law schools or journalism schools which use post-conviction DNA testing and other post-conviction procedures to exonerate factually innocent inmates.

6. See Innocence Project False Confessions Webpage, at <http://www.innocenceproject.org/causes/falseconfessions.php> (last visited May 25, 2003). As a result of lobbying efforts, twenty-seven states now have legislation that permits post-conviction DNA testing in cases where the evidence is likely to change the result in the underlying case. See ARIZ. REV. STAT. § 13-4240(A) (2002); CAL. PENAL CODE § 1405(a) (West 2002); DEL. CODE ANN. TIT. 11, § 4504(a) (2001); D.C. CODE ANN. § 4033 (2001 & Supp. 2002); FLA. STAT. ch. 925.11(1)(a) (2001); IDAHO CODE § 19-2719 (Michie 2002); 725 ILL. COMP. STAT. § 5/116-3 (2002); IND. CODE § 35-38-7-1 (2001); LA. CODE CRIM. PROC. ANN. art. 926.1(A)(1) (West 2002); ME. REV. STAT. ANN. tit. 15, § 2137 (West 2001); MD. CODE ANN., CRIM. PROC. § 8-201(b) (2001); MICH. COMP. LAWS § 770.16(1) (2002); MINN. STAT. § 590.01 (2002); MO. REV. STAT. § 547.035(1) (2002); NEB. REV. STAT. § 29-4120(1) (2001); N.J. STAT. ANN. § 2A:84A-32a(a) (West 2002); N.M. STAT. ANN. § 31-1A-1(A) (Michie 2001); N.Y. CRIM. PROC. LAW § 440.30(1) (Consol. 2001); N.C. GEN. STAT. § 15A-269(a) (2002); OKLA. STAT. tit. 22, § 1371.2 (2002); TENN. CODE ANN. § 40-30-403 (2002); TEX. CODE CRIM. PROC. ANN. art. 64.03 (Vernon 2002) (referring to "convicted person"); UTAH CODE ANN. § 78-35a-301(2) (2001); VA. CODE ANN. § 19.2-327.1(A) (Michie 2001); WASH. REV. CODE § 10.73.170(1) (2002); WISC. STAT. § 974.07(2) (2002).

7. See Innocence Project False Confessions Webpage, *supra* note 6. The Innocence Project Website also provides a list compiled by Professors Richard Leo and Steven Drizin of proven false confession cases. See *id.*

8. Bob Woffinden, *Confessions of a Forensic Psychologist*, THE GUARDIAN (Dec. 17, 2002), available at <http://www.guardian.co.uk/law/story/0,3605,861305,00.html> (last visited May 25, 2003).

early 1990s helped reform the British police system and changed the methods by which British police elicit confessions.⁹ His new handbook is similarly destined to be a catalyst for legal reform throughout Europe and North America.

This review examines Gudjonsson's insights and recommendations in light of the now known risks of false confessions, focusing on the Central Park jogger case. Part II first looks at the information the book provides, weighing its significance to the study of interrogations and police interviewing techniques as a whole.¹⁰ Part III gives the facts of the Central Park jogger case,¹¹ laying the background for the application of Gudjonsson's Handbook to the facts of the case in Part IV. Part IV's analysis shows how proper considerations of suspect susceptibility and coercive police interrogation tactics could have prevented the wrongful convictions in this case and how legal reforms such as mandatory videotaping might prevent such injustices in the future.¹²

II. THE BOOK AND ITS SIGNIFICANCE

In the last few decades, the theoretical and empirical social science research on confessions and interrogations has exploded, creating a wealth of information that, until now, has not been compiled or reviewed.¹³ Gudjonsson's Handbook aptly summarizes this research, analyzing the reasons that people confess, the tactics used to elicit confessions, and the risks of false confessions.¹⁴ The Handbook documents how common police interrogation techniques—particularly techniques widely used and accepted in the United States—can and sometimes do lead vulnerable suspects to confess falsely.¹⁵ The Handbook also debunks the common myth that only severely mentally ill or mentally retarded people are likely to confess falsely, explaining how common personality traits such as proneness to anxiety, high suggestibility, tendency to comply with people in authority, and eagerness to please, contribute to make an apparently "normal" person vulnerable to the risk of false

9. *Id.*

10. *See infra* Part II.

11. *See infra* Part III.

12. *See infra* Part IV.

13. *See, e.g.,* Woffinden, *supra* note 8.

14. *See* GUDJONSSON, *supra* note 2, at 115-215, 332-58, 360-412.

15. *Id.* at 33-34; 403-04. *See also infra* Part IV.A.

confession under certain circumstances.¹⁶

The Handbook supplements its social science research with case studies of known false confessions.¹⁷ These case studies provide chilling insight into the manner in which innocent people become wrongly convicted. In certain jurisdictions, they also provided the catalyst for various legal reforms designed to prevent such injustices. As a result of several high-profile false confession cases in the 1980s and 1990s, Britain heightened its protections for mentally ill and mentally retarded suspects and imposed stricter guidelines on police interrogations.¹⁸ British police are now required to videotape all interrogations, ensure the presence of an "appropriate adult" at all juvenile interrogations, and provide additional safeguards for mentally ill and mentally retarded suspects.¹⁹ Unlike American police, British police are not permitted to use trickery or deceit to elicit confessions.²⁰

In general, the British system has moved away from viewing interrogations as a vehicle for obtaining confessions towards the more ethical position that police interviewing should be used to obtain reliable and truthful information. The term "investigative interviewing" is now commonly used in Britain to refer to both suspect and witness interviews.²¹ British courts similarly focus their inquiry on the "reliability" of a confession in the context of the investigation and permit experts like Gudjonsson to testify regarding a suspect's vulnerabilities

16. See GUDJONSSON, *supra* note 2, at 157, 243, 458-513. See also Richard A. Leo and Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429 (debunking the myth that only physical coercion leads to false confessions).

17. See GUDJONSSON, *supra* note 2, at 217-42; 445-58; 247-306.

18. In the most infamous case, an Irish Republic Army Bombing in the town of Guildford England in 1974, four Irish citizens were convicted and sentenced to life in prison based solely on their confessions. All four were eventually exonerated and their convictions overturned, after each spent more than seventeen years in prison. See *id.* at 445-52.

19. See *id.* at 55-56.

20. See *id.* This is not to say that British police are immune from the interrogation tactics used in the United States. Gudjonsson documents how in serious felony cases where there is an initial resistance to confess, British police officers sometimes resort to American style tactics such as trickery and deceit. However, in Britain—unlike in the United States—such tactics carry a high risk that whatever confession is ultimately elicited will be deemed inadmissible by the British courts. *Id.* at 114.

21. See GUDJONSSON, *supra* note 2, at 617.

and his or her susceptibility to certain psychologically coercive police tactics before a disputed confession can be admitted in court.²²

Gudjonsson contrasts these recent British reforms with the general lack of reform in the United States, where the police and courts remain largely skeptical of false confession claims and where the in-court inquiry tends to focus on police "misconduct" rather than a suspect's susceptibility to common police interrogation tactics.²³ American courts look first to the question of police misconduct: Did they properly *Mirandize*²⁴ the suspect? Did they deprive the suspect of food or water? Did they physically threaten the suspect? If the police are not guilty of misconduct, narrowly defined, the confession is generally deemed "voluntary" and admissible even if the suspect exhibits clear signs of mental illness or other vulnerabilities to police questioning.²⁵

Dispassionate, authoritative, and exhaustively researched, Gudjonsson's handbook is an impressive scholarly achievement. By compiling the research and case studies into one volume, Gudjonsson has created the ideal source book for understanding the risks of false confessions and provided clear practical guidance for law enforcement officials, courts, defense lawyers, forensic psychologists, and researchers who are struggling with the problems created by false confessions.

22. *See id.* at 252, 281-82.

23. In the United States, the courts generally do not permit expert testimony on the issue of suspect vulnerability. *See, e.g.,* *Beltran v. State*, 700 So. 2d 132, 133-34 (Fla. Dist. Ct. App. 1997) (affirming exclusion of expert testimony on false confessions and questioning whether expert assessment of confession involuntariness is ever admissible); *State v. MacDonald*, 718 A.2d 195, 197-98 (Me. 1998) (finding unreliable testimony about children of alcoholics suffering from a syndrome that might cause them to falsely confess); *Bixler v. State*, 582 N.W.2d 252, 254-55 (Minn. 1998) (affirming exclusion of expert testimony on personal characteristics that might render an individual susceptible to pleasing authority figures); *People v. Lea*, 534 N.Y.S.2d 588, 590 (N.Y. App. Div. 1988) (affirming exclusion of expert testimony that defendant's personality rendered him deferential to the wishes of others and rendered confession involuntary). *But see* *United States v. Hall*, 93 F.3d 1337, 1341-44 (7th Cir. 1996) (reversing district court's exclusion of expert testimony by Professor Ofshe on the susceptibility of the defendant to false confessions).

24. *See generally* *Miranda v. Arizona*, 384 U.S. 436 (1966).

25. *See* *Colorado v. Connelly*, 479 U.S. 157 (1986); GUDJONSSON, *supra* note 2, at 288-89.

III. CASE STUDY: THE CENTRAL PARK JOGGER CASE

In recent years, there have been a number of highly publicized American cases involving disputed, and most likely false, confessions. Four of these—Henry Lee Lucas, Waneta Hoyt, Joe Giarratano, and John Wille—are discussed in Gudjonsson's handbook.²⁶ Others—like Earl Washington²⁷ and Eddie Joe Lloyd,²⁸—have become known through the efforts of Innocence Projects and the results of DNA testing.²⁹ However, few cases have so captured the public's attention as the Central Park jogger case. Using Gudjonsson's handbook as a guideline, one can understand how the age, intellect, and suggestibility of the defendants, coupled with the police interrogation tactics used, led to false confessions in this case.

The facts of the Central Park case are well-known: On the night of April 19, 1989, a twenty-eight year old white female jogger was brutally attacked and raped in New York City's

26. See GUDJONSSON, *supra* note 2, at 541-72. Gudjonsson served as an expert witness in all four of these cases. Interestingly, he did not testify in the Waneta Hoyt case because his examination of Ms. Hoyt failed to demonstrate any of the hallmarks of suggestibility that would mark a false confession. Although Gudjonsson was critical of the police methods used to elicit the confessions, his ultimate conclusion was that Ms. Hoyt's confessions were probably reliable.

27. In 1984, Earl Washington was convicted and sentenced to death for the murder of 19 year old Rebecca Williams in Culpepper, Virginia. His conviction was based largely on his confessions to the police despite the internal inconsistencies of the confessions and Washington's IQ of 69. In 2000 Earl Washington was finally pardoned, after the new DNA tests found no trace of his DNA on evidence from the crime scene. See The Case for Innocence, at <http://www.pbs.org/wgbh/pages/frontline/shows/case/cases/> (last visited May 25, 2003).

28. Eddie Joe Lloyd was convicted of a brutal 1984 murder of a sixteen-year-old girl in Detroit, Michigan. While in Herman Kiefer Hospital, Lloyd wrote to police with suggestions on how to solve various murders, including the murder for which he was convicted. Police officers visited and interrogated him several times in the hospital. During the course of these interrogations, police officers allowed Lloyd to believe that, by confessing and getting arrested, he would help them "smoke out" the real perpetrator. They fed him details that he could not have known, including the location of the body, the type of jeans the victim was wearing, a description of earrings the victim wore, and other details from the crime scene. Lloyd signed a written confession and gave a tape-recorded statement as well. The jury deliberated for less than an hour before convicting him of first degree felony murder in May 1985. On Monday, August 26, 2002, Eddie Joe Lloyd was exonerated and released from prison after DNA testing proved his innocence. See Innocence Project Case Profile Eddie Joe Lloyd, at http://www.innocenceproject.org/case/display_profile.php?id=110 (last visited May 25, 2003).

29. See Innocence Project False Confessions Webpage, *supra* note 6 (database of false confession cases).

Central Park.³⁰ Initial police investigations quickly focused on a group of African-American and Latino teenagers who had been arrested in the Park that night on unrelated criminal charges.³¹ After prolonged police questioning—some of which lasted off and on for more than thirty hours—five teenagers, ranging in age from fourteen to sixteen years old, confessed to being involved in the rape.³² None of the boys had legal counsel during the interrogations and many did not have a parent present during critical points of the interrogations.³³ Four of the boys permitted their confessions to be videotaped, but significantly, the questioning leading up to the confessions was not recorded.³⁴

In early 2002, twelve years after the convictions, Matias Reyes, a convicted murderer and serial rapist, admitted that he was actually the perpetrator of the Central Park rape and that he had acted alone.³⁵ DNA testing confirmed that Reyes was the source of the semen found in the victim.³⁶ DNA testing also proved that the hairs found on the victim were Reyes', not the defendants' as had been alleged at trial.³⁷ The testing further proved that the hairs found on the boys were not related to the victim or to the crime.³⁸ On December 19, 2002, with the support of the Manhattan District Attorney's Office, the court vacated the convictions of the five boys, now men of twenty-four to twenty-six years of age.³⁹ They had served between seven and

30. See, e.g., Dwyer, *supra* note 1, at 1; Kassin, *supra* note 3, at A31; Elaine Cassel, *How to Stop False Confessions Such as in The Central Park Jogger Case*, at <http://www.cnn.com/2002/LAW/12/17/findlaw.analysis.centralpark.jogger/> (last visited May 25, 2003); *Excerpts on District Attorney's Report on Reexamination of Jogger Case*, N.Y. TIMES, Dec. 6, 2002, at B6. See also Press Release, District Attorney, New York County, (Dec. 5, 2002) available at <http://www.manhattanda.org/whatsnew/index.htm>; The People of the State of New York against Kharey Wise, Kevin Richardson, Antron McCray, Yusef Salaam and Raymond Santana (Manhattan District Attorney's affirmation in response to motion to vacate judgment of conviction), available at <http://www.manhattanda.org/whatsnew/index.htm> (last visited May 25, 2003).

31. See Kassin, *supra* note 3.

32. See *id.*

33. See *id.*

34. See *id.*

35. See Dwyer, *supra* note 1.

36. See *id.*

37. See *id.*

38. See Saulny, *supra* note 1, at A1.

39. See Karen Freifeld, *Convictions Tossed/Judge Clears Verdicts of Central Park 5*, NEWSDAY, Dec. 12, 2002, at A03; see also District Attorney of New York Website, What's New, December 19 Press Release, at <http://www.manhattanda.org/whatsnew/index.htm> (Manhattan District Attorney

twelve years in prison.⁴⁰

The unraveling of the Central Park convictions came as a shock to the public and the legal community. The confessions had passed judicial scrutiny and been ruled admissible. Prior to trial, the court had found that they were voluntary and that the methods used to elicit them had been within proper police procedures. They had been accepted as incontrovertible evidence of the boys' guilt. But now the confessions demanded a closer look. How had this terrible injustice happened? Why did the boys confess to a crime that they did not commit?

IV. THE HANDBOOK IN ACTION: THE CENTRAL PARK JOGGER CASE

A. *Interrogation Tactics and the Suggestibility of Suspects*

Gudjonsson's handbook documents how juveniles and those with impaired intellectual functioning are particularly susceptible to psychologically coercive police tactics, and are most likely to be confused by deceptive police interrogation tactics.⁴¹ Specifically, the handbook documents how young people are more likely to be confused by police tactics and persuaded by police inducements. The use of drugs and alcohol, sleep deprivation, anxiety, absence of legal counsel, and absence of a legal guardian in the case of juveniles also has a significant effect on a suspect's vulnerability and suggestibility.⁴²

The five Central Park defendants exhibited characteristics that would make them vulnerable to police questioning and likely to admit to behavior under psychologically coercive police questioning even if they did not do it. All five of the defendants were young, ranging from age 14 to 16 years old.⁴³ At least one of them had borderline mental functioning—an IQ between 65 and 70—and also exhibited clear signs of delusion, referring to flying around the park in a blue bus.⁴⁴ All five boys exhibited signs of suggestibility, apparently interpreting police comments to indicate that they would be allowed to go home if they

Office press release supporting vacating of the convictions) (last visited May 25, 2003).

40. See Freifeld, *supra* note 39.

41. See GUDJONSSON, *supra* note 2, at 380-81.

42. See *id.* at 73-74, 157, 415-32.

43. See Kassin, *supra* note 3.

44. See Cassel, *supra* note 30.

confessed.⁴⁵ Finally, none of them had extensive prior experience with the criminal justice system, and all five were undoubtedly engaged in some form of criminal activity that night.⁴⁶

In light of these vulnerabilities, police interrogation tactics used against the boys were particularly problematic. Among other tactics, the police lied to all five boys, claiming that there was evidence that implicated them in the crime when none actually existed.⁴⁷ The police also tricked each boy into thinking that the other boys had confessed and named him as the primary perpetrator.⁴⁸ Not surprisingly, what resulted was a free-for-all, in which each boy attempted to minimize his own conduct while placing the primary blame on the others.⁴⁹ The fact that none of these stories were consistent and that each boy named a different boy as the primary perpetrator apparently did not trouble the police or the prosecution.⁵⁰ To the contrary, the videotapes show the prosecution trying to correct these inaccuracies by directly coaching the boys to change their stories to fit the crime scene.⁵¹

Most of these techniques derive directly from the Reid Model of Interrogation, the model of interrogation most widely used by American police.⁵² Gudjonsson devotes an entire chapter in his Handbook to the Reid Model and documents the dangers it poses for vulnerable suspects.⁵³ The Reid Model is built on maximizing the psychological advantages of police questioning.⁵⁴ Suspects are presumed guilty, and their denials of participation are to be ignored.⁵⁵ The police are encouraged to directly lie to suspects, exaggerating the evidence against them, and deceiving them about co-defendant statements.⁵⁶ They are also encouraged to play "hypothetical" games with suspects,

45. See Kassir, *supra* note 3.

46. See *id.*

47. See Cassel, *supra* note 30.

48. See *id.*

49. See *id.*

50. See Kassir, *supra* note 3.

51. See *id.*

52. See FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS (3rd ed. 1986); see also GUDJONSSON, *supra* note 2, at 10-21 (describing Reid Model of Interrogation).

53. See GUDJONSSON, *supra* note 2, at 10-21, 37, 118-20, 128, 153, 190.

54. See *id.* at 36-37.

55. See *id.* at 17-18.

56. See *id.* at 36-37.

forcing them to talk about “what might have happened” if they had been involved in the crime.⁵⁷

Another common Reid technique, which Gudjonsson calls “potentially the most dangerous part of the Reid Technique,” encourages the police to present the suspect with only two choices, both of which are incriminating, but one of which seems less incriminating (e.g., “did you touch her or did you just look?”).⁵⁸ The suspect is then forced to choose one of the two options. This technique is particularly effective when used on suspects with borderline intellectual functioning who are confused by the lack of options and drawn to the option that seems less incriminating.

As Gudjonsson fully acknowledges, these interrogation techniques are undoubtedly effective in eliciting confessions, but the reliability of the confessions they elicit are questionable.⁵⁹ Such techniques have been linked to false confession cases in Great Britain and North America.⁶⁰ Most Reid techniques are now prohibited in Great Britain and safeguards are in place to prevent police from using deceit in their interrogation.⁶¹ Among other safeguards, interrogations are fully videotaped to provide a record of what was said and ensure police compliance.⁶² However, in the United States, these techniques are still fair play.⁶³

B. *Checking the Post-Confession Narrative for Reliability*

Wrongful convictions based on false confessions strike at the very heart of public confidence in the criminal justice system. A person’s confession has generally been accepted as

57. *Id.*

58. *Id.*

59. See GUDJONSSON, *supra* note 2, at 36-37, 133.

60. See *id.* See also Jeff Smith, *Alcoholic Vietnam Vet Says Detective Badgered Him into Confession*, available at http://www.miami.com.mld.miamiherald/news/local/states/florida/counties/broward_county/4152140.htm (last visited May 25, 2003); Paula McMahan, *Judge Suggests Videotape Policy; Detective Says He Witnessed No Misconduct*; SOUTH FLORIDA SUN-SENTINEL, Oct. 3, 2002, at 3B.

61. See GUDJONSSON, *supra* note 2, at 10-21.

62. *Id.*

63. See *Frazier v. Cupp*, 394 U.S. 731, 739 (1969) (holding that deliberate police misrepresentations to a suspect did not necessarily make a subsequent confession involuntary); see also *Oregon v. Elstad*, 470 U.S. 298, 317 (1985); *Commonwealth v. Selby*, 420 Mass. 656, 664 (Mass. 1995) (holding that the use by police of false incriminating information during an interrogation does not render a confession involuntary).

incontrovertible evidence of his or her guilt.⁶⁴ Indeed, in the United States, a person can be convicted solely on the basis of his or her confession, without any other evidence linking him to the crime, as long as there is evidence that the crime has indeed occurred.⁶⁵

Gudjonsson's handbook illustrates how good effective police investigation incorporates a healthy skepticism towards suspect confessions and a sensitivity to the risks of false confessions. Gudjonsson warns that simple declarative statements such as "I did it" should not be treated as full confessions.⁶⁶ Instead, the police should elicit a full recounting of the crime, complete with details that only the perpetrator would know. Once the police have elicited those details—without any coaching—the details should be cross-checked against the crime and tested for accuracy and completeness.⁶⁷ If the details do not match, the confession should be viewed suspiciously and police investigation should continue regarding alternate suspects.

From the start, the defendants' confessions in the Central Park case were problematic. They differed in important details such as the time, location, and the names of the boys involved in the rape.⁶⁸ Later commentators would note that "it was almost

64. See Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979, 983-984 (1997) ("A confession—whether true or false—is arguably the most damaging evidence the government can present in a trial. As a result, when police elicit a false confession, they are likely to cause the wrongful conviction and imprisonment of an innocent person. Someone who confesses is presumed guilty and treated more harshly by every criminal justice official and at every stage of the trial process.").

65. The legal doctrine of "corpus delicti" protects people who falsely confess to crimes that have not occurred. Unfortunately, this protection is narrow and covers only those people who through severe mental illness hallucinate the existence of a crime and then "confess" to it. The vast majority of false confession cases occur in situations where a crime has occurred and the police pressure to find the perpetrator leads to vulnerable innocent suspects bending to police pressure and falsely confessing to the crime. The corpus delicti doctrine provides no protection to these people. See Corey J. Ayling, *Comments, Corroborating Confessions: An Empirical Analysis of Legal Safeguards Against False Confessions*, 1984 Wis. L. Rev. 1121, 1151-52 (1984) (quoting *State v. Lucas*, 152 A.2d 50, 60 (N.J. 1959)) ("Indeed, it is oft times more likely that persons giving false confessions because of mental disease or defect will confess to crimes where there is abundant proof of . . . the corpus delicti but where there is no proof as to the perpetrator.").

66. See GUDJONSSON, *supra* note 2, at 12, 179-80.

67. See *id.*

68. See Kassir, *supra* note 3.

as if they were describing different crimes.”⁶⁹ At trial, however, the jury found the videotaped confessions compelling evidence of the boys’ guilt. These assertions have since been proven untrue.⁷⁰ Nonetheless, based on this evidence, all five boys were convicted.

Contrary to the New York Police Department’s official position, there is every reason to believe that the confessions were false and that boys’ convictions were wrongful. In addition to the DNA evidence, there were signs that the boys were vulnerable to police suggestibility and that the confessions were unreliable from the start. These vulnerabilities should probably have been recognized at the time; but they certainly should be acknowledged now.

Of course, cross-checking a confession for accuracy and consistency is not a fail-proof system. A suspect may exhibit “special knowledge” of the crime based on things he or she was told by the police or sometimes by the real perpetrator. Gudjonsson’s handbook describes three British cases in which the courts later discovered that the suspect’s “special knowledge” of the crime came from the police interrogator’s who had suggested—and sometimes insisted—that the suspect include these facts in his confession.⁷¹ Similarly, in the Central Park jogger case, the police took one of the boys to the crime scene during his interrogation, thus eliminating any probative value that his “knowledge” or lack of knowledge of the crime scene could have had in their assessment of the credibility and reliability of his ultimate confession.⁷²

C. *Mandatory Videotaping of Interrogations*

An important safeguard to the system, therefore, is full videotaping of all interrogations. Only when the *entire* police interrogation is videotaped or recorded, can the techniques used to elicit the confession be evaluated and the source of the “special knowledge” properly assessed.

Opponents of videotaping frequently cite disruption to police interrogation tactics as the primary reason why videotaping is not cost-effective or socially beneficial.⁷³ But

69. Cassel, *supra* note 30.

70. *See id.*

71. *See* GUDJONSSON, *supra* note 2, at 523-37

72. *See* Kassin, *supra* note 3.

73. *See* Steven Drizin and Beth Colgan, *Let the Cameras Roll: Mandatory*

Gudjonsson's handbook dispels these myths. Contrary to what many experts predicted—including Gudjonsson himself—mandatory videotaping in Britain has *not* resulted in a decrease in reliable confessions from guilty suspects.⁷⁴ Moreover, after initial resistance, most British police departments and prosecutor's offices have embraced mandatory videotaping, discovering that the videotaping enhanced their investigation, increased their chances of a conviction or plea-bargain, and decreased the number of defense allegations of police misconduct.⁷⁵

Most legal experts agree that videotaping is the surest safeguard against false confessions.⁷⁶ Videotaping interrogations has been the law in Britain since 1984. Within the United States, however, only two states—Alaska and Minnesota—require full recording of police interrogations.⁷⁷ A number of smaller jurisdictions have also adopted mandatory videotaping requirements.⁷⁸

Rather than acknowledging the known benefits of mandatory videotaping, the New York Police Department's

Videotaping of Interrogations Is the Solution to Illinois' Problem of False Confessions, 32 LOY. U. CHI. L.J. 337 (2001) (describing opposition to legislative attempts to mandate videotaping in Illinois).

74. See GUDJONSSON, *supra* note 2, at 48.

75. See *id.* A 1993 Department of Justice study in the United States had similar findings. The study found that videotaped interrogations gave judges a greater ability to assess the voluntariness of confessions, increased the number of plea-bargains, led to higher sentences, and protected the police from false allegations of misconduct. Indeed, the study found that in 43% of jurisdictions where mandatory videotaping had been implemented, defense allegations of police misconduct decreased and increased in only 18%. The study also found that like British police departments, most American police departments grew to appreciate the full benefits of videotaping. See Ofshe, *supra* note 64, at n. 11.

76. See GUDJONSSON, *supra* note 2, at 21-24.

77. The Supreme Court of Alaska ruled in 1985 that the state constitution's due process clause required that police electronically record suspect interrogations when the suspect is taken into a place of detention and recording is feasible. See *Stephen v. State*, 711 P.2d 1156, 1158 (Ak 1985). In 1994, Minnesota's Supreme Court followed Alaska's lead, ruling that "all custodial interrogation... and all questioning shall be recorded where feasible and must be recorded when questioning occurs at a place of detention." *State v. Scales*, 518 N.W.2d 587, 588 (Minn. 1994).

78. Some counties have independently adopted mandatory videotaping. See, e.g., April Witt, *Prince George's Police to Videotape Interviews*, WASHINGTON POST, Feb. 1, 2002, at B1 (Prince George's County, Maryland) (Broward County, Florida). In addition, legislation requiring mandatory videotaping is pending in various states. See *The Power of the Printed Word*, CHICAGO TRIBUNE, Apr. 8, 2003, at 20 (Illinois legislature passes mandatory videotaping).

Report on the Central Park jogger case seems intent on increasing the known risks of selectively recording only the confession. The Report recommends that a "management team" be created to facilitate information sharing among the investigators in future complex cases like the Central Park jogger case.⁷⁹ The Report notes that "[h]ad this occurred, factual accounts provided by the suspects that lacked clarity or needed additional exploration could have been identified and resolved prior to videotaping."⁸⁰ In other words, had the police been able to identify the inconsistencies among the boys' stories prior to the videotaping, they would have been able to "correct" the inconsistencies before the taping and ensure that no evidence of the inconsistencies remained.

Certainly, this recommendation is likely to help the New York Police Department in future false confession cases, not by identifying false confessions when they occur or by ensuring that thorough investigations take place, but by ensuring that should a false confession occur in the future, it is unlikely to be discovered.

D. *Learning from Past Mistakes*

In a chapter entitled "Miscarriages of Justice and False Confessions," Gudjonsson observes that "once defendants are convicted, the criminal justice system is not good at discovering, admitting to and correcting the errors made."⁸¹ The aftermath surrounding the Central Park jogger case confirms this disheartening truth.

Despite the acknowledgement of the Manhattan District Attorney's Office and the courts that mistakes had been made, the New York Police Department refused to admit that they were responsible for any of the mistakes. Instead, it commissioned its own panel of experts to review the conduct of the police officers who had investigated the case. The Department then issued its own report, concluding "there was no misconduct on the part of the New York Police Department

79. See NYPD Panel on Central Park Jogger Case, at http://www.nyc.gov/html/nypd/html/dpci/jogger_case_panel.html (last visited May 25, 2003) [hereinafter Panel]; Karen Friefeld, *Cops' Jogger Scenario/Report: 5 Cleared in Case Probably Joined in Attack*, NEWSDAY, Jan. 28, 2003, at A07.

80. See Panel, *supra* note 79; Friefeld, *supra* note 79, A07.

81. GUDJONSSON, *supra* note 2, at 172.

in the arrests and interrogations of the defendants."⁸²

The Report went further than simply clearing the police of wrongdoing. It also asserted that the police had done a good job and that the confessions were reliable and probably true.⁸³ The Report argued that it was "likely" that *both* the original defendants and Matias Reyes had assaulted the jogger "perhaps successively."⁸⁴ The Report concluded that there were few, if any, lessons to be learned from the case and recommended only minor changes to police procedure, primarily related to ensuring proper chain of custody for physical evidence.⁸⁵

Shortly after the report was issued, the District Attorney's Office issued its response refuting the Police Department's Report, stating that there was "no evidence" to support the theory of successive rapes.⁸⁶ In this respect, the New York Police Department's response to the DNA evidence in the Central Park jogger case is not overly surprising. But it is deeply troubling. The Department's Report flatly refuses to consider even the possibility that the confessions were false and utterly disregards everything that is now known about false confessions and coercive police questioning.

The New York Police Department's insistence that the police were not guilty of "misconduct" in the Central Park jogger case misses the point. Precisely what is so disturbing about the Central Park jogger confessions is that they were the result of "normal" police procedure, fully accepted and condoned by American courts.

V. CONCLUSION

As Gudjonsson's handbook amply demonstrates, there is a lot to learn from cases that involve false confessions. Tracking how and why an innocent suspect confessed is critical to determining how to prevent such false confessions in the future and how to ensure that wrongful convictions do not result. Like the other high-profile false confessions cases described in Gudjonsson's handbook, the Central Park jogger case is likely to influence future debate about police interrogations and the risks

82. See Panel, *supra* note 79; Friefeld, *supra* note 79, at A07.

83. Friefeld, *supra* note 79, at A07.

84. *Id.*

85. *See d.*

86. See Michael Weissenstein, *Police Theory of Jogger Attack Countered*, THE ASSOCIATED PRESS, Jan. 30, 2003.

of false confessions.

Wrongful convictions based on false confessions, like all wrongful convictions, carry an enormous social cost that cannot be ignored. In addition to the unimaginable costs imposed on the person who has been wrongfully incarcerated, society also bears the public safety costs of the guilty perpetrator who has never been caught.

Indeed, if the New York police had been more critical of the boys' confessions, they might have continued their investigation into alternative suspects and may have discovered the real perpetrator, Matias Reyes, who had raped another woman in Central Park only two nights earlier. They might also have prevented the subsequent rapes of two women and the murder of a pregnant women committed by Reyes in the two years after the Central Park rape.⁸⁷

Some jurisdictions seem willing to learn the lessons that forensic psychology can teach us. As Gudjonsson's handbook documents, parts of Europe and North America have taken huge strides in confronting the risks created by false confessions.⁸⁸ Mandatory videotaping of interrogations, procedural safeguards for vulnerable suspects, and cross-checking of post-admission narratives are becoming accepted police practices.⁸⁹ Courts are also more willing to accept forensic psychological expert testimony on suspect suggestibility in cases where there is good reason to doubt the reliability of the confession.⁹⁰ These are all steps in the right direction.

87. See Chris Smith, *Central Park Revisited*, NEW YORK MAGAZINE, Oct. 21, 2002.

88. See GUDJONSSON, *supra* note 2, at 625.

89. See *id.*

90. See GUDJONSSON, *supra* note 2, at 621-26.