

# Disputed Confessions and Miscarriages of Justice in Britain: Expert Psychological and Psychiatric Evidence in the Court of Appeal

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## I. INTRODUCTION

Only in the last two decades have scientists taken serious interest in false confessions made during custodial interrogations.<sup>1</sup> Many high-profile cases of false confessions have been reported,<sup>2</sup> but these are “only the tip of a much larger iceberg”.<sup>3</sup> As the frequency of false confessions is unknown and there is no adequate method of calculating precise incident rates, there continues to be perennial debate over the numbers.<sup>4</sup> Sigurdsson and his colleagues found a high prevalence rate history of reported false confessions (12 percent) among Ice-

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<sup>1</sup> Mark Powlson, “Guilty innocents: the road to false confessions”, Editorial (1994) 344 *The Lancet* 1447–50.

<sup>2</sup> Gisli H. Gudjonsson, *The Psychology of Interrogations and Confessions: A Handbook* (Chichester: John Wiley & Sons, 2003) [Gudjonsson, *Interrogations and Confessions*]; Saul M. Kassin & Gisli H. Gudjonsson, “The Psychology of Confessions: A Review of the Literature and Issues” (2004) 5 *Psychological Science in the Public Interest* 35 [Kassin & Gudjonsson].

<sup>3</sup> Steven A. Drizin & Richard A. Leo, “The Problem of False Confessions in the Post-DNA World” (2004) 82 *N.C.L. Rev.* 891.

<sup>4</sup> Kassin & Gudjonsson, *supra* note 2 at 48.

landic prison inmates<sup>5</sup> and among suspects interviewed at Icelandic police stations.<sup>6</sup> Recent research into false confessions of a large number of youths in Iceland revealed a prevalence rate of 7.3 percent among those who had been interrogated by police once or more in their lives.<sup>7</sup> The reported false confessions were significantly associated with the extent of involvement in delinquent activities, the involvement of friends in delinquency, and depression. Most important, however, were multiple exposures to unpleasant or traumatizing life events and substance misuse problems.<sup>8</sup>

False confessions sometimes result in wrongful confessions and miscarriages of justice. It is also evident that false confessions occur for a number of different reasons. Often a combination of custodial, interrogative, and psychological vulnerabilities must be interpreted within the broader circumstances of the case.<sup>9</sup> However, in the 1980s there was much resistance to the admissibility of psychological evidence in cases of disputed confessions. This resistance was overcome by persistence, research into false confessions and psychological vulnerabilities, and regular teaching to lawyers and judges.<sup>10</sup>

In this article 30 cases of miscarriage of justice in England, Wales and Northern Ireland involving convictions based on confessions are reviewed and discussed. These are all cases where the convictions were overturned by either the Court of Appeal or the House of Lords. Since the quashing of the convictions of the "Guildford Four" in 1989,<sup>11</sup> the Court of Appeal has overturned a

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<sup>5</sup> Jon F. Sigurdsson & Gisli H. Gudjonsson, "Psychological characteristics of 'false confessors': A study among Icelandic prison inmates and juvenile offenders" (1996) 20 *Personality and Individual Differences* 321.

<sup>6</sup> Jon F. Sigurdsson, Gisli H. Gudjonsson, Emil Einarsson & Gudmundur Gudjonsson, "Differences in personality and mental state between suspects and witnesses immediately after being interviewed by the police" *Psychology, Crime and Law* [forthcoming].

<sup>7</sup> Gisli H. Gudjonsson, Jon F. Sigurdsson, Bryndis B. Asgeirsdottir & Inga D. Sigfusdottir, "Custodial interrogation, false confession and individual differences: A national study among Icelandic youth" (2006) 41 *Personality and Individual Differences* 49.

<sup>8</sup> Gisli H. Gudjonsson, Jon F. Sigurdsson, Bryndis B. Asgeirsdottir & Inga D. Sigfusdottir, "Custodial interrogation: What are the background predictors of a false confession?" [forthcoming].

<sup>9</sup> Gisli H. Gudjonsson & James MacKeith, "Disputed Confessions and the Criminal Justice System" *Maudsley Discussion Paper No. 2*, (1997) London: Institute of Psychiatry.

<sup>10</sup> Gisli H. Gudjonsson, "Psychology Brings Justice: The Science of Forensic Psychology" (2003) 13 *Criminal Behaviour and Mental Health* 159.

<sup>11</sup> *R. v. Richardson; R. v. Conlon; R. v. Armstrong; R. v. Hill* (1989), *The Times* (20 October 1989) (C.A.) [*Richardson*].

number of other convictions, often in high-profile murder or terrorist cases.<sup>12</sup> In many of the cases, psychological and psychiatric evidence were crucial to the successful appeal of cases.<sup>13</sup>

## II. THE CASES

Table 1 shows 30 leading cases from 1989 to 2005 where convictions were quashed on appeal. In all cases the principal evidence was disputed confessions. In the “Birmingham Six” case there had been important forensic evidence, which was later discredited.<sup>14</sup> In 29 of the cases, the Court of Appeal quashed the convictions. In the case of Donald Pendleton the appeal had failed in 2000, but in 2001 the House of Lords quashed the conviction on the basis of Pendleton’s psychological vulnerabilities and uncertainties over his conviction.<sup>15</sup> The Pendleton case has important implications for how expert psychological evidence should be treated by the Court of Appeal.<sup>16</sup>

There were a total of 42 successful appellants, of whom 39 (93 percent) were male and three (7 percent) were female: Carole Richardson, one of the Guildford Four; Jacqueline Fletcher; and Judith Ward. The mean age of the 42 appellants at the time of the interrogation was 24.9 (SD = 8.5, range 14–45). Thirty-two (76 percent) were under the age of 25 and eight (19 percent) were under the age of 18.

Twenty-seven of the cases (90 percent) involved murder convictions. Six of the cases—Guildford Four, Birmingham Six, Judith Ward, Alfred Allen, Patrick Kane, and Robert Hindes and Hugh Hanna—were terrorist as well as murder cases. The cases of Alfred Allen, one of the “UDR Four”,<sup>17</sup> Patrick Kane (the case is known as the “IRA Funeral Murders”),<sup>18</sup> Iain Hay Gordon, Robert Hindes and Hugh Hanna, and Robert Adams were all heard by the Court of

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<sup>12</sup> Gisli H. Gudjonsson, “Unreliable confessions and miscarriages of justice in Britain” (2002) 4 *International Journal of Police Science and Management* 332.

<sup>13</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

<sup>14</sup> *R. v. McKenny & Ors.* (1991), [1992] 2 All E.R. 417, 93 Cr. App. R. 287 (C.A.) [McKenny].

<sup>15</sup> *R. v. Pendleton*, [2001] UKHL 66.

<sup>16</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

<sup>17</sup> Ian Paisley Jr., *Reasonable Doubt: The Case for the UDR Four* (Dublin: Mercier Press, 1992).

<sup>18</sup> Gisli H. Gudjonsson, “The IRA Funeral Murders: The Confession of PK and the Expert Psychological Testimony” (1999) 4 *Legal and Criminological and Psychology* 45 [Gudjonsson, “IRA Funeral Murders”].

Appeal in Northern Ireland. The Guildford Four,<sup>19</sup> Birmingham Six,<sup>20</sup> and Judith Ward<sup>21</sup> cases involved terrorist acts in England attributed to the Irish Republican Army (IRA). The three non-murder or terrorist cases involved: one offence of attempted rape and one of burglary with intent to commit rape (Shane Smith), conspiracy to rob (Kayed Antar), and attempted murder and sexual assault (Paul Blackburn).

Table 1 shows whether or not psychological or psychiatric evidence was presented at trial, and the nature of psychological vulnerability. This categorization is based on the grounds for quashing the conviction as stated in the judgments. In some cases, the distinction is arbitrary. This is because in most cases more than one reason contributed to quashing the conviction (e.g., often a combination of psychological vulnerability and police or professional impropriety). The categorization is nonetheless based on what can be interpreted from the judgment as the principal reason for quashing the conviction. In cases of police impropriety where the vulnerability was known and was of some relevance at the appeal, this has been included under the heading "Nature of vulnerability".

Table 1 shows that 20 (67 percent) of the cases involved convictions between 1952 and 1986 (i.e., PACE<sup>22</sup> was implemented in January 1986). The remaining convictions occurred between 1987 and 2003. The greatest number of successful appeals, seven, took place in 1992 (23 percent), followed by four (13 percent) in 2005 and three (10 percent) in 1997.

Twenty (67 percent) of the cases fall under the heading of psychological vulnerability (PV) and ten (33 percent) under police impropriety (PI) or other professional misconduct.

### A. Psychological/Psychiatric Evidence on Appeal

Oral evidence on appeal was heard in 15 (50 percent) of the cases. In two of the cases (Fletcher and Long), only psychiatric evidence was heard, although in the case of Fletcher the psychological evidence was available in a written form and was, according to the reasons of the Court of Appeal, important in demonstrating Fletcher's vulnerabilities during the interrogation.<sup>23</sup> In cases of psychological vulnerability, oral expert testimony was provided in 13 (65 percent) of the cases. In contrast, in cases of police impropriety, oral expert testimony was only

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<sup>19</sup> Patrick Victory, *Justice & Truth: The Guildford Four and Maguire Seven* (London: Sinclair-Stevenson, 2002).

<sup>20</sup> Chris Mullin, *Error of Judgement: The Truth about the Birmingham Bombings* (Dublin: Poolbeg, 1989).

<sup>21</sup> Judith Ward, *Ambushed: My Story* (London: Vermilion, 1993).

<sup>22</sup> *Infra* note 29.

<sup>23</sup> *R. v. Fletcher* (28 February 1992), (C.A.) [unreported].

TABLE 1  
THE 30 CASES INVOLVING DISPUTED CONFESSIONS

NAME OF CASE	CON- VICTION	AP- PEAL	OE <sup>a</sup>	PV <sup>b</sup>	PI <sup>c</sup>	NATURE OF VULNERABILITY
1. Guildford Four	1975	1989			✓	Not applicable
2. Birmingham Six	1975	1991			✓	Not applicable
3. Engin Raghıp	1987	1991	✓	✓		Borderline IQ, suggestibility, compliance
4. Stefan Kizsko	1976	1992			✓	Not applicable
5. Jacqueline Fletcher	1988	1992	✓	✓		Borderline IQ, undue feelings of guilt
6. Judith Ward	1974	1992	✓	✓		Personality disorder, suggestibility, confabulation
7. Alfred Allen	1986	1992	✓		✓	Compliance
8. David McKenzie	1990	1992		✓		Personality disorder, borderline IQ, suggestibility, compliance, serial confessor
9. Wayne Darvell	1986	1992			✓	Borderline IQ, suggestibility
10. Stephen Miller	1990	1992			✓	Borderline IQ, suggestibility, compliance
11. Idris Ali	1990	1994	✓	✓		Borderline IQ, compliance, habitual lying
12. George Long	1979	1995	✓	✓		Depression, personality disorder
13. Carl Bridge-water case	1979	1997			✓	Not applicable
14. Patrick Kane	1990	1997	✓	✓		Borderline IQ, compliance, anxiety proneness
15. Andrew Evans	1973	1997	✓	✓		Memory problems, confabulation, false internalized belief

<sup>a</sup> Cases where psychological or psychiatric oral evidence (OE) was heard on appeal.

<sup>b</sup> Cases where evidence of psychological vulnerabilities (PV) was the principal reason for quashing the convictions.

<sup>c</sup> Cases where police impropriety (PI) was the principal reason for quashing the convictions.

NAME OF CASE	CON-VICTION	AP-PEAL	OE <sup>a</sup>	PV <sup>b</sup>	PI <sup>c</sup>	NATURE OF VULNERABILITY
16. Derek Bentley	1952	1998	✓		✓	Epilepsy, educational and behavioural problems
17. John Roberts	1983	1998	✓	✓		Compliance
18. Ashley King	1986	1999	✓	✓		Borderline IQ, suggestibility, compliance
19. Darren Hall	1988	1999	✓	✓		Personality disorder, compliance, impulsivity, poor self-esteem, habitual lying
20. Donald Pendleton	1986	2000 <sup>d</sup>	✓	✓		Suggestibility, compliance, acquiescence, anxiety proneness
21. Iain Hay Gordon	1953	2000		✓		Suggestibility, confabulation, sensitivity about sexuality
22. Peter Fell	1985	2001	✓	✓		Personality disorder, compliance, attention seeking
23. Stephen Downing	1974	2002			✓	Not applicable
24. Anthony Steel	1979	2003		✓		Borderline IQ, suggestibility, compliance
25. Shane Smith	1993	2003		✓		Confabulation, suggestibility, compliance
26. Kayed Antar	2003	2004		✓		Suggestibility
27. Paul Blackburn	1978	2005	✓	✓		Youth, fatigue
28. Robert Hinds and Hugh Hanna	1977	2005			✓	Youth for both, suggestibility for Hugh Hanna
29. John Flanagan	1989	2005		✓		Personality disorder, habitual liar
30. Robert Adams	1976	2005		✓		Alcoholic, suggestibility, compliance

provided in two (20 percent) of the cases (Allen and Bentley). This difference is significant (Fisher exact probability test = 0.0251).

In the Allen case both psychological and psychiatric evidence was presented but the judges did not rule on it, in view of the strength of the evidence reveal-

<sup>d</sup> The Court of Appeal upheld the conviction in December 2000, but the House of Lords subsequently quashed the conviction on the basis of the psychological evidence presented at the appeal.

ing police impropriety. A similar situation arose in the Bentley case, which dated back to 1952.<sup>24</sup> He was executed in January 1953 for the murder of a police constable. His co-defendant, Christopher Craig, fired the shot that killed the officer, but escaped a death sentence because of his youth. Bentley's conviction was quashed posthumously in July 1998. In the case of Darvell, there was written psychological evidence of his suggestibility and submissive nature. Forensic evidence demonstrated his innocence as well as that of his brother, whom he had implicated.<sup>25</sup>

In the cases of Iain Hay Gordon, John Flanagan, Anthony Steel, Shane Smith, and Robert Adams, the fresh expert psychological evidence was accepted by the appeal judges in written form and was crucial in overturning the conviction. In the cases of McKenzie and Miller there had been psychological evidence presented at trial, which indicated significant psychological vulnerabilities. This evidence was available to the Court of Appeal in a written form and was cited as being relevant to the convictions being quashed.

## B. Psychological Vulnerability

In twenty (67 percent) of cases the psychological or psychiatric evidence, either in oral or written form, was the most important new evidence that resulted in the convictions being overturned.

The nature of the psychological evidence varied considerably across the cases. In the case of Engin Raghıp, borderline intelligence, combined with high suggestibility and compliance, were important.<sup>26</sup> This is the most important judgment on the issue of admissibility of psychological evidence. It extended the criteria for the admissibility of psychological evidence in several respects and has influenced the admissibility and weight of psychological evidence in other cases.<sup>27</sup> Therefore, a brief description of the ruling is provided in this article. Firstly, when deciding whether the psychological evidence would have been admissible before the jury the judges should ask themselves the following question:

Is the mental condition of the defendant such that the jury would be assisted by expert help in assessing it?<sup>28</sup>

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<sup>24</sup> Neil Corre, "Could Bentley have been convicted now?" (1998) 162 *Justice of the Peace* 776.

<sup>25</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

<sup>26</sup> *R. v. Raghıp; R. v. Silcott; R. v. Braithwaite* (1991), *The Independent* (6 December 1991), *The Times* (9 December 1991) (C.A.) [*Raghıp*].

<sup>27</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

<sup>28</sup> *Raghıp*, *supra* note 26.

If the answer is yes (as the appellate judges considered it was in the case of Raghip), then trial judges should admit such evidence before the jury. This mental condition included personality traits, like abnormal suggestibility.

Secondly, the ruling also broadened the criteria for defining "mental handicap" under section 77 of PACE.<sup>29</sup> The Court was "not attracted to the concept that the judicial approach to submissions under 76(2)(b) of PACE should be governed by which side of an arbitrary line, whether at 69/70 or elsewhere, the IQ falls." This contradicted the "judge for yourself" approach in respect of the jury, which read as follows:

Where the defendant however is within the scale of normality albeit as this man was, at the lower end of the scale, expert evidence in our judgment is not as a rule necessary and should be excluded.<sup>30</sup>

Thirdly, the court warned against the jury relying on a defendant's performance in the witness box when assessing personality traits such as suggestibility.

Fourthly, at the end of the judgment the court emphasized the need for solicitors to seek a further report if they believed the opinion of the previous expert was hostile or apparently defective. They concluded with regard to Raghip's case:

At the date of trial in this case two medical experts had been consulted on behalf of Raghip and because of the content of their reports, neither was called to give evidence. Yet at a much later stage, after having seen Dr Gudjonsson's report both experts changed the opinions they had previously given. . . . In those circumstances, it is demonstrated that the need of a third opinion was necessary in the interests of justice.<sup>31</sup>

The convictions of Raghip's two co-defendants, Silcott and Braithwaite, were also quashed though not on psychological grounds. Braithwaite had been unlawfully refused access to a solicitor in breach of section 58 of PACE and the relevant paragraph of the Code of Practice. The evidence against Silcott consisted of an alleged incriminating text in the last police interview, which police evidence said was contemporaneously recorded. The electrostatic detection apparatus (ESDA) showed irregularities with regard to the recording of the interview.<sup>32</sup>

In the cases of Judith Ward, Darren Hall, Peter Fell, and John Flanagan, diagnoses of personality disorders were the determining vulnerabilities, combined with other psychological problems such as confabulation, poor self-esteem and attention-seeking. In the case of Judith Ward, failure to disclose important material to the defence at trial was also an important reason for quashing the con-

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<sup>29</sup> *Police and Criminal Evidence Act 1984* (U.K.), 1984, c. 60, s. 77 [PACE].

<sup>30</sup> *R. v. Masih*, [1986] Crim. L. Rev. 395.

<sup>31</sup> *Raghip*, *supra* note 26.

<sup>32</sup> *Ibid.*

viction. In the judgment the Court of Appeal laid down important guidelines for the disclosure of exculpatory evidence.<sup>33</sup>

In the case of George Long, clinical depression at the time of his interrogations was crucial in overturning his conviction. The diagnosis of depression, which was corroborated by Long's military records and the self-degrading comments he made to police, functioned to make him act in a self-destructive way during the custodial interrogation. In the case of Evans it was a "memory distrust syndrome" and misdiagnosed psychogenic amnesia.<sup>34</sup> In the case of Iain Hay Gordon it was high suggestibility combined with sexual sensitivity.<sup>35</sup>

Borderline IQ was relevant in several of the cases (e.g., Raghip, Fletcher, McKenzie, Miller, Ali, Kane, Bentley, King, Steel), particularly when accompanied by other vulnerabilities such as abnormally high suggestibility, compliance, or anxiety problems. Interestingly, none of the appellants had IQ scores that fell clearly in the mild or moderate learning disability range. Their borderline intellectual abilities had often not been identified prior to their conviction or its significance to the case had not been recognized.

In the case of Roberts, the Court of Appeal accepted "the emerging field of science relating to the phenomenon of false confessions", which included the psychometric measurement of suggestibility and compliance.<sup>36</sup> The Court laid down the principle that when deciding issues of reliability and the safety of a conviction the Court "must take into account" all that is known about the phenomenon of false confessions as well as expert evidence as to the "mental condition" of the appellant.<sup>37</sup> The ruling extended Raghip and Ward: there is now no need for a recognized diagnostic category, such as mental retardation (known in the United Kingdom as "learning disability"), mental illness or personality disorder, in determining a relevant mental condition at the time of the interrogation and confession. The abnormal results from relevant psychometric tests relating to personality, such as the Gudjonsson Compliance Scale or Gudjonsson Suggestibility Scale, are sufficient for determining a mental condition that has a bearing upon determining the safety of the conviction.

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<sup>33</sup> Ben Fitzpatrick, "Disclosure: Principles, Processes and Politics" in Clive Walker & Keir Starmer, eds., *Miscarriages of Justice: A Review of Justice Error* (London: Blackstone Press, 1999) 151.

<sup>34</sup> Gisli H. Gudjonsson, Michael D. Kopelman & James A. C. MacKeith, "Unreliable Admissions to Homicide: A Case of Misdiagnosis of Amnesia and Misuse of Abreaction Technique" (1999) 174 *British Journal of Psychiatry* 455.

<sup>35</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

<sup>36</sup> *R. v. Roberts* (19 March 1998), (C.A.) (Lexis).

<sup>37</sup> *Ibid.*

The Pendleton case further strengthens the weight of psychological evidence in the courtroom.<sup>38</sup> Pendleton's appeal had failed in 2000, in spite of the fact that the psychological evidence presented orally was accepted by the Court of Appeal. In December 2001, the case was heard by the House of Lords. The appeal was allowed and conviction was quashed.<sup>39</sup> Pendleton was free after having spent fifteen years in prison. The defence successfully argued on behalf of Pendleton that the Court of Appeal judges had taken upon themselves to conduct a retrial of a case.<sup>40</sup>

Lord Bingham, who delivered the judgment, thought that if the evidence of Dr. Gudjonsson had been available at the time of the trial the defence might in at least three respects have been conducted differently (i.e., the appellant might have been called to give evidence on his own behalf, there would have been more searching questions asked about the appellant's mental state during the police interviews, and there probably would have been more detailed questions into what passed between the police and the appellant which was not recorded).

Lord Bingham stated:

In light of these uncertainties and this fresh psychological evidence it is impossible to be sure that this conviction is safe, and that is so whether the members of the House ask whether they themselves have reason to doubt the safety of the conviction or whether they ask whether the jury might have reached a different conclusion.<sup>41</sup>

In the Smith case, an extreme tendency to confabulate on testing, combined with abnormal suggestibility and compliance, were influential in overturning the conviction.<sup>42</sup>

The judgment in Blackburn is important and ought to be noted. The psychologist in that case, Dr. Shepherd, had not directly assessed Blackburn for psychological vulnerabilities. He was nonetheless allowed to testify in the Court of Appeal about the phenomenon of false confessions and situational factors relating to interrogation and custody. The Crown challenged the admissibility of Dr. Shepherd's evidence. The Court of Appeal held that the topic of his evidence generally fell outside the normal range of experience of a jury and it was therefore admissible.<sup>43</sup> The conviction was quashed as a result. The key to Dr.

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<sup>38</sup> Anthony Heaton-Armstrong, Book Review of *The Psychology of Interrogations and Confessions: A Handbook* [2005] Crim. L. Rev. 672.

<sup>39</sup> *R. v. Pendleton*, [2001] UKHL 66 [Pendleton]; Robert Verkaik "Man freed after law lords quash murder conviction" *The Independent* [UK] (14 December 2001).

<sup>40</sup> *Pendleton*, *ibid.* at para. 24.

<sup>41</sup> *Ibid* at para. 28.

<sup>42</sup> *R. v. Smith*, [2003] EWCA Crim. 927.

<sup>43</sup> *R. v. Blackburn*, [2005] EWCA Crim. 1349 at para. 28.

Shepherd's testimony was the proposition that fatigue, created by prolonged interrogation, combined with an inability to control what is happening, gives rise to a "coerced compliant confession".<sup>44</sup> It was the circumstances of the confession, combined with Blackburn's youth, rather than personality traits, that were crucial to the case.

### C. Police Impropriety and Professional Misconduct

Police impropriety and professional misconduct do on occasion cause a miscarriage of justice. Impropriety and misconduct can take different forms, such as coercive or oppressive interviewing, failure to comply with the detainee's legal rights, alteration of interview records that mislead the court, or suppression of exculpatory evidence.

As shown in Table 1, in ten (33 percent) of the cases there was evidence of police impropriety or other professional malpractice. In the cases of the Guildford Four and Birmingham Six, a re-investigation into the cases discovered that the police had fabricated evidence concerning some of the defendants' interview records. In addition, exculpatory evidence was suppressed by the prosecution when the cases went to court and at their previous appeal hearings. All of the Guildford Four appellants made written confessions, which they subsequently retracted and alleged that they had been coerced by the police. This case was closely linked with another miscarriage of justice case, the "Maguire Seven", which was caused by flawed forensic evidence.<sup>45</sup> Four of the Birmingham Six appellants had made written confessions during their interrogations in 1974. The Birmingham Six all alleged that they were physically threatened and assaulted during their custodial interrogation in 1974. The Guildford Four also made allegations of physical threats and assaults, but of lesser severity than those reported by the Birmingham Six. The Guildford Four were convicted on the basis of uncorroborated confessions, whereas there was forensic science evidence presented at trial against two of the Birmingham Six (which was later found to be flawed, as in the case of the Maguire Seven).<sup>46</sup> The psychological aspects of these two cases have been reported elsewhere.<sup>47</sup>

Stephen Kiszko was wrongfully convicted in 1976 of the murder of an 11-year old schoolgirl. Fifteen years later, the West Yorkshire Police discovered during a re-investigation of the case that forensic evidence proving Kiszko's in-

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<sup>44</sup> *Ibid.* at para. 29.

<sup>45</sup> Victory, *supra* note 19.

<sup>46</sup> *Ibid.*

<sup>47</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

nocence had been suppressed at the original trial.<sup>48</sup> Semen found on the victim's clothing could not have come from Kiszko. In 1992 the Court of Appeal judges accepted that Kiszko was innocent of the murder.<sup>49</sup> This case also raises important issues about the ways in which the police and the Courts relied on the use of "special knowledge" about the murder, which the police claim came from Kiszko, but must have been communicated to him by the police.<sup>50</sup>

The case of Alfred Allen, known as the "UDR Four", involved the murder in 1983 of a member of a Republican family in Armagh, Northern Ireland. Four Ulster Defence Regiment (UDR) soldiers based in Armagh—Alfred Winston Allen, Noel Bell, Neil Fraser Latimer, and James Irwin Hegan—were arrested, interrogated, and convicted on 1 July 1986 of the murder. During their second appeal in 1992, the convictions of three of the men, including that of Allen, were quashed due to police impropriety. Fresh electrostatic detection apparatus (ESDA) evidence showed that the police had rewritten parts of notes taken in interviews with each of the four appellants.<sup>51</sup>

Wayne Darvell's 1986 confession to the police implicated him and his brother in a murder. A re-investigation of the case found that the original police records of their interview with Darvell had been rewritten with misleading consequences. Leading questions had been rewritten to make them appear non-leading. The re-investigation also cast doubts on the discovery of an earring in a police car used to transport Darvell, and revealed the non-disclosure of a blood-stained palm print at the crime scene, belonging to neither of the Darvell brothers.<sup>52</sup> The Court of Appeal judges concluded that the psychological evidence and background evidence supporting Darvell's vulnerabilities provided an explanation as to why he had gone along with the police suggestions and made a false confession.<sup>53</sup>

In terms of oppressive police interviewing, the case of Stephen Miller is a landmark case and has had a significant effect on police training.<sup>54</sup> The case of

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<sup>48</sup> Jonathan Rose, Steve Panter & Trevor Wilkinson, *Innocents: How Justice Failed Stefan Kiszko and Lesley Moleseed* (London: Fourth Estate, 1998).

<sup>49</sup> *R. v. Kiszko* (18 February 1992), (C.A.) [unreported].

<sup>50</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

<sup>51</sup> *R. v. Latimer, Hegan, Bell and Allen* (29 July 1992), (C.A.) (Lexis).

<sup>52</sup> Terry Kirby "Brothers freed over 'false evidence'" *The Independent [London]* (15 July 1992) (Lexis).

<sup>53</sup> *Ibid.*

<sup>54</sup> Tom Williamson, "Reflections on current police practice" in David Morgan & Geoffrey Stephenson, eds., *Suspicion and Silence: The Rights of Silence in Criminal Investigations* (London: Blackstone Press, 1994) at 107–116.

Carl Bridgewater represents serious police misconduct.<sup>55</sup> In 1978 the police faked a confession from a co-accused and lied about it in order to extract a written confession statement from another suspect in the same case, resulting in four men being convicted of the murder of a 13-year-old boy.

In the case of Derek Bentley most of the Court of Appeal's criticisms were directed at the trial judge, but the judges were also satisfied that Bentley's statement to the police had not been obtained in the way claimed by the police at trial, the implication being that the police officers had perjured themselves in Court.

In January 2002, the Court of Appeal quashed the 1974 murder conviction of Stephen Downing. It was the failure of the police to caution Downing and provide him with a solicitor during several hours of interrogation that was crucial in overturning his conviction.<sup>56</sup>

In 1977 Hindes and Hanna pleaded guilty of murder and possession of firearms, apparently on the advice of their lawyers. Hindes allegedly had been bragging at school about the murder and during subsequent interviews confessed and implicated Hanna. The two men did not appeal their conviction and served nine years in prison before being released on a licence in 1985. Their convictions were based entirely on admissions made by the accused during police interviews. A subsequent police investigation into the case discovered a number of examples of police impropriety and raised concern about the safety of the conviction of the two youths and resulted in their conviction being overturned.<sup>57</sup>

### III. CONCLUSIONS

The case of the Guildford Four opened the floodgates in England for appeals involving cases of disputed and unreliable confessions. Two years later the convictions of the Birmingham Six were quashed and led to the setting up of the Royal Commission on Criminal Justice.<sup>58</sup> The thirty cases reviewed in this article do not represent an exhaustive list of cases of miscarriage of justice involving disputed confession evidence, but they include the leading cases. The findings highlight the importance of psychological vulnerabilities in the majority of the cases. With regard to the admissibility of psychological evidence in cases of

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<sup>55</sup> Paul Foot, *Murder at the Farm: Who Killed Carl Bridgewater?* (London: Headline Book, 1998).

<sup>56</sup> Don Hale, *Town Without Pity: The Fight to Clear Stephen Downing of the Bakewell Murder* (London: Century, 2002).

<sup>57</sup> *R. v. Hindes and another*, [2005] NICA 36.

<sup>58</sup> U.K., Royal Commission on Criminal Justice, *Report*, Cm 2263 (London: HMSO, 1993).

disputed confessions, the landmark decision in *Raghip* led the way to further legal developments that have more clearly set out the parameters of expert psychological testimony. The general thrust of the criteria developed over the past one decade has broadened the admissibility of expert testimony to include personality traits that fall outside the normal range (e.g., suggestibility, compliance, anxiety proneness, poor self-esteem, impulsivity), but these must be of the type to render a confession potentially unreliable. Admissibility of expert testimony is no longer restricted to conditions of mental or psychiatric disorder such as mental illness, mental retardation, or personality disorder. It is a mistake to assume that false confessions are confined to people with mental disorders. The unique circumstances of each case need to be considered.

Interrogations remain an important investigative tool. There are many differences between the current investigative interviewing techniques and conditions of custodial confinement as practiced in England, and those legally allowed and practiced in the U.S.<sup>59</sup> There are also differences in ways in which the law operates with regard to the admissibility of expert witnesses,<sup>60</sup> and how miscarriage of justice cases are dealt with judicially.<sup>61</sup>

Suspects typically confess for a combination of reasons, but perceptions of the strength of evidence is the single most important reason. This has important implications for investigators. Where the evidence against the suspect is weak or flawed, interrogative and custodial pressure increase the risk of false confessions. Investigators and lawyers, including prosecutors and judges, should be aware that false confessions do occur on occasion, and for a variety of reasons, including a suspect wanting to protect someone else, not being able to cope with the interrogative and custodial pressures, and being psychologically vulnerable.<sup>62</sup>

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<sup>59</sup> Tom Williamson, "Towards greater professionalism: minimizing miscarriage of justice" in *Investigative Interviewing* (Devon: Willan, 2005).

<sup>60</sup> Lawrence S. Wrightsman & Saul M. Kassin, *Confessions in the Courtroom* (London: Sage, 1993); Gregory DeClue, *Interrogations and Disputed Confessions: A Manual for Forensic Psychological Practice* (Sarasota, FL: Professional Resources Press, 2005).

<sup>61</sup> Robert Carl Schehr, "The Criminal Cases Review Commission as a State Strategic Selection Mechanism" (2005) 42 Am. Crim. L. Rev. 1289.

<sup>62</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

# APPENDIX A

## A Brief Description of the Cases

### 1. *Guildford Four*

On 5 October 1974, members of the Irish Republican Army (IRA) planted bombs in two public houses in Guildford, Surrey. Four people—Hill, Armstrong, Conlon and Richardson—were subsequently convicted of the offences, almost exclusively on the basis of confession evidence. In 1987 a delegation led by Cardinal Hume pressed the Home Secretary to look at the case again with particular reference to some new evidence concerning Carole Richardson's mental state at the time of her confession in 1974. On 16 January 1989, the Home Secretary announced in the House of Commons that the case of the Guildford Four was to be referred back to the Court of Appeal. The reasons given were related to new alibi evidence for two of the Guildford Four and questions over the mental state of Carole Richardson at the time of her interrogation in December 1974, who had been assessed in 1986 by Dr. MacKeith and Dr. Gudjonsson. A date for the Court of Appeal hearing was subsequently set for January 1990. That date was brought forward to 9 October 1989. The Avon and Somerset Police, who were appointed by the Home Secretary in 1987 to look at the confessions of the Guildford Four, discovered that crucial evidence concerning the confessions of Hill and Armstrong had been fabricated. The Director of Public Prosecutions responded by requesting that the Court of Appeal quash the convictions of the four. The Court of Appeal had to accept that police officers "had lied" at the trial of the Guildford Four. The convictions of the Four were accordingly quashed.<sup>63</sup>

### 2. *Birmingham Six*

On 21 November 1974, two public houses in Birmingham were bombed by the IRA. Twenty-one people were killed. Later six Irishmen—Hill, Hunter, Callaghan, McIlkenny, Power, and Walker—were convicted of the bombings. Four out of the six men signed written confessions. In March 1990 the Home Secretary had ordered a new inquiry into the case after representations from the men's solicitors challenging the police and forensic evidence. In August 1990 the Home Secretary referred the case back to the Court of Appeal, after a police inquiry had found discrepancies in the police interview record of one of the men. It seemed, as in the Guildford Four case, that the police had fabricated documentary evidence against the six men. The Director of Public Prosecutions

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<sup>63</sup> Richardson, *supra* note 11.

could no longer rely on either the police or forensic evidence that convicted the six men in 1975. The appeal was heard in March 1991 and the convictions of the six men were quashed.<sup>64</sup> All six men had been assessed psychiatrically and psychologically, respectively, by Dr. MacKeith and Dr. Gudjonsson,<sup>65</sup> but their evidence was not presented at Court as the focus of the appeal was on police impropriety.

### 3. *Engin Raghip*

This case, known as the “Tottenham Three”, arose out of a public disturbance on the Broadwater Farm Estate, Tottenham, London, on 6 October 1985. During the riot a police officer was descended upon by a mob of people and murdered. Three people—Raghip, Braithwaite and Silcott—were convicted of the murder. The key issue at the appeal was the fresh evidence concerning Raghip’s psychological vulnerabilities. He had made incriminating admissions to the police which were used to convict him. Three clinical psychologists gave oral evidence at the appeal with regard to Raghip: Dr. Gudjonsson, Mrs. Tunstall, and Mr. Ward. After hearing the psychological evidence in 1991, the Court of Appeal quashed Raghip’s conviction.<sup>66</sup> This was the first important legal judgment on the admissibility of psychological evidence in cases of disputed confessions. It broadened the criteria for the admissibility of psychological evidence to include personality traits, such as suggestibility and compliance, and has influenced many subsequent court rulings.

### 4. *Stefan Ivan Kiszko*

In October 1975, an 11-year-old girl was sexually assaulted and murdered. Kiszko confessed to the murder in December 1975. He was convicted at Leeds Crown Court in 1976. Following a re-investigation into the case in 1991 by the West Yorkshire Police<sup>67</sup> it emerged that the police had at trial suppressed crucial scientific evidence supporting Kiszko’s claims of innocence: Kiszko’s semen was void of sperm heads and it therefore did not match that found on the victim’s clothing. The conviction was quashed in 1992. The Court of Appeal judges accepted that Kiszko was innocent of the murder. This case also raises important issues about the ways in which the police and the Courts relied on the use of “special knowledge” about the murder, which the police claim came from Kiszko, but must have been communicated to him by the police.<sup>68</sup>

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<sup>64</sup> McIlkenny, *supra* note 14.

<sup>65</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

<sup>66</sup> Raghip, *supra* note 26.

<sup>67</sup> Rose, Panter & Wilkinson, *supra* note 48.

<sup>68</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

### 5. *Jacqueline Fletcher*

On 14 September 1988, in Birmingham Crown Court, Fletcher was convicted of the murder of her six-week-old infant son. He had died four years previously and at post-mortem his death was certified as Sudden Infant Death Syndrome (SIDS). In 1987 Fletcher had allegedly commented to her landlady that she had murdered her infant son. The landlady contacted the social services, which in turn contacted the police. When interviewed by the police she confessed to drowning her son. Dr. Gudjonsson assessed Fletcher psychologically in 1991 and found her Full Scale IQ score on testing to be 70. This finding resulted in her being allowed to appeal against her conviction. The Court of Appeal accepted that she was of borderline learning disability. A forensic psychiatrist, Dr. Bluglass, testified about Fletcher's feelings of guilt, which potentially rendered her confession unreliable. Her conviction was quashed in 1992.

### 6. *Judith Ward*

Ward was arrested in February 1974 and charged with three major terrorist offences, including the so-called "M62 Coach Bombing" which resulted in the death of 12 passengers. In 1975 she was convicted of the offences principally on the basis of her confession evidence. The appeal was heard in May 1992. The judges were invited to hear the appeal in three parts. These involved non-disclosure of evidence by the police, scientists, a prison doctor, and prosecution; the unreliability of Ward's admissions and confessions; and doubts about the validity of some of the scientific evidence presented at trial regarding Ward having been in contact with nitroglycerine. With regard to the expert evidence presented by Dr. MacKeith and Dr. Gudjonsson for the appellant, and Dr. Bowden for the Crown, the Court concluded:

At the conclusion of the fresh evidence and submissions of this head of appeal, we have received persuasive and impressive evidence that in 1974 Miss Ward was suffering from a personality disorder of such a nature that no reliance could be placed on any statement of fact made by her. Thus we concluded that none of the admissions or confessions she made before her trial could be relied upon as the truth; since the admissions and confessions were the core of the prosecution's case, it follows on this ground alone that Miss Ward's conviction was unsafe and unsatisfactory.<sup>69</sup>

### 7. *Alfred Allen*

This case, also known as the "UDR Four", involves the murder on 8 November 1983 of a member of a Republican family in Armagh, Northern Ireland.<sup>70</sup> Four Ulster Defence Regiment (UDR) soldiers based in Armagh—Allen, Bell, Latimer, and Hegan—were arrested, interrogated, and convicted on 1 July 1986 of the murder. During their second appeal in 1992, the convictions of three of

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<sup>69</sup> *Ibid.*

<sup>70</sup> Paisley, *supra* note 17.

the men, including that of Allen, were quashed due to police impropriety. Fresh electrostatic detection apparatus (ESDA) evidence showed that the notes of the police interviews with the four appellants had been rewritten in parts by the police. Dr. MacKeith and Dr. Gudjonsson provided oral psychiatric and psychological evidence, respectively, on behalf of Allen. However, no ruling was made with regard to this evidence. Latimer's appeal was not allowed due to identification evidence by "Mrs. A", which corroborated the confession he had made to the police.

In 2001 the Criminal Cases Review Commission referred Latimer's case back to Court of Appeal in Northern Ireland. The fresh evidence focused on the potential unreliability of Mrs. A's evidence, and secondly, Latimer's psychological vulnerabilities at the time of his extensive questioning by police in 1986. As far as Mrs. A was concerned, three consultant psychiatrists gave live evidence: two on behalf of the appellant (Dr. Browne and Lord Alderdice), and one for the Crown (Dr. Joseph). The Criminal Cases Review Commission had obtained a psychological report from Dr. Gudjonsson concerning Latimer's potential psychological vulnerabilities. In rebuttal the Crown obtained a report from Dr. H, a clinical psychologist. The appeal was heard between 17 and 26 November 2003 and the judges reserved their decision. The verdict was delivered on 9 February 2004<sup>71</sup> and the appeal was dismissed. The judges had found Mrs. A's evidence to be reliable, and were satisfied that in spite of the psychological evidence "the content of confession made by the appellant was true and reliable. This evidence is supported and reinforced by the identification evidence of Mrs. A . . . ."<sup>72</sup> One of the psychological factors put forward by Dr. Gudjonsson was Latimer's abnormally high level of compliance as measured by the Gudjonsson Compliance Scale.<sup>73</sup> The judges were dismissive of this finding and presented their own theory of Latimer's performance during the lengthy police interviews.

A very unusual aspect of this case is that the Crown attempted to undermine the utility of Latimer's high compliance score by asking their own expert, Dr. H, to complete the same test himself. Dr. H complied with this unusual request and obtained an abnormally high compliance score suggesting that he had problems coping with pressure. This finding was drawn to the attention of the Court during the end of Dr. Gudjonsson's cross-examination. Unfortunately for Dr. H and the Crown, shortly after commencing his examination-in-chief, Dr. H began to sweat profusely asked for a break as he was about to faint, then collapsed in the witness box and had to be taken to hospital. Dr. H did not return

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<sup>71</sup> *R. v. Latimer*, [2004] NICA 3.

<sup>72</sup> *Ibid.* at para. 9.

<sup>73</sup> Gisli H. Gudjonsson, *The Gudjonsson Suggestibility Scales Manual* (Hove: Psychology Press, 1997).

to the witness box. It was apparent that he had not been able to cope with the stress of testifying in the case and had indeed identified himself as being vulnerable prior to going into the witness box.

### 8. David McKenzie

At his trial at the Central Criminal Court in 1990, McKenzie was convicted of murdering two elderly women. He had confessed to both murders during police questioning. He had also confessed to many other murders, which the prosecution did not believe he had committed.<sup>74</sup> At trial, first during a voir dire and then again in front of the jury, Dr. Eastman and Dr. Gudjonsson testified on behalf of the defence. Dr. Bowden testified for the Crown. The trial judge had ruled the confessions to the two murders admissible, because they were not obtained by police pressure. The appeal was heard in July 1992. The main ground of appeal was that the jury's verdicts were unsafe and unsatisfactory, having considered the unreliability of McKenzie's confessions and the absence of other evidence of guilt. At the appeal there was also written evidence from a clinical psychologist, Dr. Hodge, that since the trial he had been able to assess McKenzie and was of the opinion that his inability to recall significant details of the crimes was not due to his suffering from amnesia. At trial one of the hypotheses put forward by the Crown psychiatrist was that McKenzie's inability to recall much about the offences could have been due to amnesia for the offences. The judges quashed the conviction.

### 9. Wayne Darvell

On 19 June 1986 at Swansea Crown Court, (Phillip) Wayne Darvell and Paul Darvell, two brothers, were convicted of murdering a 30-year-old woman who worked as a manageress of a sex shop in Swansea. Wayne Darvell had confessed to the police. The evidence at trial against the Darvell brothers related to sightings of them in the area of the murder at the relevant time, evidence of purchase of petrol, alleged discovery of an earring in the police car used to transport Wayne Darvell, confessions to the police of Wayne Darvell, alleged lies by Paul Darvell concerning his whereabouts (i.e., his persistent denials that he had been in Dillwyn Street on the day of the murder in spite of police evidence to the contrary). After the brothers' conviction in 1986, concerns about the safety of their conviction surfaced in a BBC television program, *Rough Justice*, and from the British organization Justice. The Home Secretary requested that the Devon and Cornwall Police conduct an investigation into the case. The outcome of that investigation cast grave doubts on the Crown's case. During the re-investigation ESDA evidence showed that a number of pages concerning Wayne Darvell's interviews with the police had been rewritten with different content. Some of the amendments showed that leading questions had been re-

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<sup>74</sup> *R. v. McKenzie* (1993), 96 Cr. App. R. 98.

written to make them appear non-leading. As a result of the ESDA and other findings from the re-investigation, the Home Secretary referred the case to the Court of Appeal. The appeal was heard in July 1992 and the brothers' convictions were quashed. The appeal judges stated that the ESDA findings and palm print evidence alone would have been sufficient to destroy the Crown's case. The other findings, including written psychological evidence from Dr. Fuller and Dr. Grebler, reinforced a pre-trial defence view that Wayne Darvell was a vulnerable person who was suggestible, submissive, and naive.

### 10. Stephen Miller

This case, known as the "Cardiff Three", involved the murder of a prostitute in Cardiff on 14 February 1988.<sup>75</sup> Three men were convicted of the murder in 1990. Much of the Crown's case was based on the confession that Miller had made to the police during nineteen tape-recorded interviews. The other two men had not made confessions, but Miller had implicated them during his interrogation. Dr. Gudjonsson gave evidence at the trial in 1990, highlighting Miller's borderline IQ score of 75 and his abnormally high suggestibility and compliance scores. The psychological findings appear to have been marginalized by the trial judge, Mr. Justice Leonard, who pointed out to the jury how well he thought Miller had coped with the police interviews and testifying in Court. In 1992 the convictions of the three men were quashed on the grounds of oppressive interviewing tactics used by the police on a psychologically vulnerable suspect.<sup>76</sup> In 2003 Jeffrey Gafoor pleaded guilty to the murder, having been linked to it via DNA evidence from the crime scene.

### 11. Idris Ali

This case involved the murder in 1981 or 1982 (a definite date of death was never established) of a teenage girl. The murder came to light in December 1989 while workmen were excavating an area at the back of a house in Cardiff. The case was featured on the television program *Crimewatch UK* in February 1990; Ali came forward and identified the girl as a result. He had been present during the murder, aged 16 at the time. He was interviewed extensively as a potential witness, but eventually confessed to participating in the murder with another man. Both were convicted of the murder. In 1994 the Court of Appeal quashed his conviction after hearing oral psychological evidence from two defence experts, Dr. Gudjonsson and Mrs. Tunstall, and rebuttal evidence from a Crown expert, Mrs. Burn, who had not actually assessed Ali herself, but commented on Gudjonsson's report. A re-trial was ordered and Ali plead guilty to manslaughter. There was no dispute that Ali had been at the crime scene. The

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<sup>75</sup> *R. v. Paris; R. v. Abdullahi; R. v. Miller* (1993), 97 Cr. App. R. 99.

<sup>76</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

question was the extent of his involvement and whether he had been coerced to participate in the incident, which was no doubt instigated by his co-accused. His downfall was that he was in the habit of lying as a way out of trouble, which had serious repercussions when the police initially interviewed him as a witness.

### 12. *George Long*

In July 1979 Long was convicted at the Central Criminal Court of murdering and bugging a 14-year-old boy in Deptford, South London in 1978. He was convicted entirely on the basis of his confession and was sentenced to life imprisonment. In July 1995, after Long had been in prison for 16 years, his case was heard in the Court of Appeal. His conviction was quashed on the basis of fresh medical evidence provided by two defence psychiatrists, Dr. MacKeith and Dr. Bowden, and a Crown expert, Dr. Joseph. Dr. MacKeith and Dr. Joseph gave oral evidence at the appeal, whereas Dr. Bowden provided only written evidence. All three doctors considered Long's confession to the police to be unreliable. The defence psychiatrists diagnosed depression as the crucial factor at the time of the interrogation in 1979, whereas the Crown expert focused on personality disorder. No psychological evidence was presented in evidence, although Dr. Gudjonsson had carried out an assessment and produced a report.

### 13. *The Carl Bridgewater Case*

This case involved the conviction in November 1979 of four men—Michael and Vincent Hickey, Robinson, and Molloy—for the murder by shooting on 19 September 1978 of a 13-year-old newspaper delivery boy, Carl Bridgewater. Of great importance to the case was the confession made by Molloy on 10 December 1978, where he implicated himself and the other three co-accused in robbery and murder. Until his death in June 1981, Molloy had always insisted to his lawyers that the confession statement was false and had been given to the police for at least two reasons.<sup>77</sup> First, he claimed to have confessed after the police had shown him a signed confession statement from Vincent Hickey implicating him in the murder. The police always denied the existence of any such statement, but it later became evident that the police had fabricated a confession from Hickey in order to put pressure on Molloy to confess. Secondly, Molloy had wanted to take his revenge on Vincent Hickey for implicating him in the case.

In July 1996 the Home Secretary referred the case to the Court of Appeal. There were two grounds for appeal. First, in 1994 evidence had come to the attention of the defence that two unidentified fingerprints found on the murdered boy's bicycle, which had not previously been disclosed by the prosecution, could not be matched to the appellants. Secondly, there apparently had been breaches of the Judges Rules in relation to the interrogation and detention of Molloy.

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<sup>77</sup> Foot, *supra* note 55.

The appeal took place in July 1997; the convictions of the four men were quashed and no re-trial was ordered.

This is an extreme case of police impropriety. If the jury had known about the fabricated confession they would undoubtedly have become suspicious of the remaining police evidence. In addition, Molloy's confession statement and the subsequent confessions he made would have been ruled inadmissible by the trial judge, as the police deceit would have rendered the confession oppressive and involuntary.

#### 14. *Patrick Kane*

This case, known as the "IRA Funeral Murders", involved the murder in 1988 of two British soldiers who drove erratically towards an IRA funeral procession. The crowd stopped the car; the soldiers were dragged out of it and taken into Casement Park, where they were beaten and stripped before they were taken by taxi to waste ground and shot dead. Three men were convicted at Belfast Crown Court of the murder in 1990, including Kane. No application was made by the defence at the trial to exclude Kane's confession and no challenge was made to the admissibility of the confession. Instead the defence submitted that no weight should be given to Kane's confession, because he was illiterate, of low intelligence, and had hearing problems. Shortly before the trial Dr. Gudjonsson had assessed Kane and provided a report. His findings were highly favourable to the defence,<sup>78</sup> but were not offered to the court at the time or during a subsequent appeal hearing. This was apparently due to the fact that the defence team did not think the psychological findings would be allowed in evidence: there was no evidence that Kane suffered from mental illness or learning disability, in spite of his being disadvantaged due to other psychological vulnerabilities. In May 1997 the case was referred to the Court of Appeal by the Secretary of State for its opinion as to the admissibility in evidence of Dr. Gudjonsson's report. In the event that the court were to find the evidence admissible, the Secretary of State expressed a wish that the matter should be treated as a referral for hearing the psychological testimony. Dr. Gudjonsson testified in Belfast on 28 May 1997. No testimony was called on behalf of the prosecution. In their ruling, the judges quashed the conviction of Kane, concluding:

We take the view that in the light of Doctor Gudjonsson's evidence a sufficient cloud is cast on the reliability of Kane's confession to create a situation of unfairness if it were to be admitted in evidence against him. We say this for two reasons. Firstly, Doctor Gudjonsson's evidence (which this court found to be authoritative and compelling) clearly demonstrated the disadvantages under which Kane laboured as an interviewee. The high level of anxiety which Doctor Gudjonsson considered Kane would have experienced in the interview setting predisposed him to produce explanations to please

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<sup>78</sup> Gudjonsson, "IRA Funeral Murders", *supra* note 18.

his interviewers rather than to give a truthful account. Secondly, it is clear that Kane was of limited intelligence.<sup>79</sup>

### 15. Andrew Evans

On 7 June 1972, a 14-year-old girl was battered to death in a field near Wiggington in Staffordshire. On 9 October 1972 Evans, who had recently been discharged from the Army on medical grounds, walked into a police station and persuaded himself and the police that he had committed the murder. Evans was convicted of the murder at Birmingham Crown Court in 1973 and remained in prison until his conviction was quashed on 3 December 1997. Dr. Gudjonsson and Dr. MacKeith were commissioned by Justice in 1994 to review the case and assess Evans. Following the submission of their reports, and a psychiatric report from Prof. Michael Kopelman, an expert on amnesia, the prosecution commissioned a psychiatrist, Dr. Joseph, to assess Evans and prepare a report. All four experts agreed that Evans's alleged amnesia had been misdiagnosed by the pre-trial doctors and that his confession was unreliable. The appeal was heard in November 1997 and all four experts gave oral evidence. The judges pointed out that the prosecution case against Evans at trial rested entirely on his own confession.

In their judgment they stated:

We must also accept that the appellant's confessions were, as confessions, entirely unreliable. Such was the consensus among four very distinguished experts called to give evidence before us. While these experts did not enjoy the advantage enjoyed by the doctors who testified at the trial of examining the appellant within months of this offence, they were at one in regarding the diagnosis of amnesia as unsound.<sup>80</sup>

### 16. Derek William Bentley

This case dates back to 2 November 1952. It involved the shooting and murder of a police officer by Christopher Craig, aged 16, while on the roof of a warehouse in Croydon, Surrey. With Christopher Craig on the roof was 19-year-old Bentley, who had a history of educational and behavioural problems. At the trial, which took place at the Central Criminal Court, both men were convicted of murder. Bentley was sentenced to death, whereas Craig, who was too young to be sentenced to death, was sentenced to be detained at Her Majesty's pleasure. Bentley was executed on 28 January 1953. On 29 July 1993, Her Majesty the Queen granted a pardon limited to the sentence of death. The conviction still stood, until 1998 when it was quashed posthumously. The main grounds on which the conviction was quashed were:

... the failure of the trial judge to direct the jury on the standard and burden of proof, the prejudicial comments made about the defendants and their defences, the assertion

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<sup>79</sup> *Ibid.*

<sup>80</sup> *R. v. Evans* (3 December 1997), (C.A.) [unreported].

that the police officers' evidence was more worthy of belief than that of the defendants, and an insufficient direction on the law of joint enterprise.<sup>81</sup>

Their Lordships were also concerned about how Bentley's Statement under Caution had been obtained by the police and found it difficult to accept that it was obtained in the way the officers described in their evidence.

### 17. *John Roberts*

In February 1983, Mr. Roberts, aged 20, was convicted at Shrewsbury Crown Court, along with a co-defendant, of a murder that took place in October 1980. In 1994 Roberts was seen by a clinical psychologist, Miss Bryony Moore. She had found Roberts to be abnormally compliant on the GCS, but his suggestibility score was within normal limits. She concluded that his high compliance and the nature of the interrogation made his confession potentially unreliable. At least partly on the basis of her report, the Home Secretary referred the case to the Court of Appeal. The case was heard in March 1998. At appeal two psychiatrists, Dr. George and Dr. Joseph, and two clinical psychologists, Miss Moore and Mr. Bellamy, were available to give evidence. In the end, the Court only heard from the two defence experts. The Crown experts were not called, because their evidence was in agreement with that of the defence experts.

The Court accordingly quashed Roberts's conviction from 15 years previously. In their final paragraph the judges concluded:

Medical science and the law have moved a long way since 1982. We hope that the safeguards now in place will prevent others becoming victims of similar miscarriages of justice. The courts must ensure that lessons learnt are translated into more effective protections. Vigilance must be the watchword of the criminal justice system if public confidence is to be maintained.<sup>82</sup>

### 18. *Ashley King*

In June 1986 King was convicted at Newcastle Crown Court, along with a 12-year old co-defendant, of murdering a 58-year-old woman. In 1993 King had been seen by a psychologist, Mrs. Ann Scott Fordham. King was found to be of borderline IQ (with a Full Scale IQ of 77) and obtained an abnormally high Shift score on the Gudjonsson Suggestibility Scale. Mrs. Olive Tunstall carried out further testing in 1998 and concluded that during the police interviews in 1985 King would have been psychologically vulnerable, and his vulnerabilities would have been exacerbated by the absence of legal advice throughout his period of detention, the absence of an appropriate adult, and physical and mental fatigue. Dr. Gudjonsson was commissioned by the Crown Prosecution Service to evaluate Mrs. Tunstall's report and conclusions. Having studied the material

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<sup>81</sup> Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

<sup>82</sup> *R. v. Roberts* (19 March 1998), (C.A.) (Lexis).

provided, he agreed with Mrs. Tunstall's conclusions and expressed serious reservations about the reliability of the confession King had made to the police in 1985. The appeal was heard in December 1999. Mrs. Tunstall gave evidence, which was undisputed. Dr. Gudjonsson was not required to give evidence. The focus was on King's abnormally high suggestibility and compliance scores and his conviction was quashed. The judges concluded:

There is, however, the additional finding that the appellant was suggestible and compliant to an abnormal degree. That was not a matter which could, practically speaking, have been tested, assessed or qualified in 1985 to 1986. Although there had been some published work on the subject, this was a new and embryonic science. Nor was the appellant's suggestibility and compliance a matter which it would have been at all easy for a jury to judge because when they saw him in the witness box he was not accepting suggestions made by the prosecution and was not setting out to do what they wanted.<sup>83</sup>

### 19. Darren Hall

This case relates to a murder in Cardiff in 1987 of a 52-year-old man. Three men were arrested. Hall made a confession which was instrumental in convicting all three men. The case is unusual, similar to the Ward case in that Hall did not retract his confession and proclaim his innocence until several years after conviction. The convictions of all three men were quashed in 1999, following psychological and psychiatric oral testimony concerning Hall's personality disorder. The defence experts were Dr. Gudjonsson, Prof. Kopelman, and Mrs. Olive Tunstall. The Crown expert was Dr. Thomas-Peter. The judges carefully considered the expert testimony and concluded:

Despite the differences between the views of the experts we heard, we are satisfied that Hall is and was a person having traits in his personality of the kind associated with those who make false confessions. Dr Gudjonsson gave evidence that Hall showed a very high level of compliance, to an extreme degree found in only about 2% of the population. All the experts were agreed that Hall was a man with low self-esteem but a high degree of impulsivity. The presence of these traits did not mean that the admissions Hall made and the evidence he gave were untrue; they rendered those admissions and evidence potentially unreliable.<sup>84</sup>

### 20. Donald Pendleton

Pendleton was convicted at Leeds Crown Court in 1986 along with a co-defendant, Thorpe. His appeal in 2000 was unsuccessful; however, the House of Lords quashed his conviction in 2001 on the basis of psychological evidence presented at the appeal. Pendleton was arrested in the early morning of 23 March 1985 and he was extensively interviewed and detained for three days

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<sup>83</sup> *R. v. King*, [2000] Cr. App. R. 391 (C.A.).

<sup>84</sup> *R. v. O'Brien*; *R. v. Hall*; *R. v. Sherwood* (2000), *The Times* (16 February 2000), *The Independent* (27 March 2000) (C.A.).

without the presence of a solicitor. During the interviews he was placed under great pressure and eventually confessed, exhibiting a great deal of distress during the interviews. In 1998 the Criminal Cases Review Commission referred the case to Dr. Gudjonsson, who assessed Pendleton and produced a report which served as the main ground for appeal. As far as the police interviews and Pendleton's self-incriminating admission were concerned, Dr. Gudjonsson concluded that in 1985 Pendleton was a psychologically vulnerable individual. He was extremely anxious and found it difficult to cope with life. Medical records confirmed this. The record of police interviews gave an indication of his immense distress and agitation concerning his arrest and questioning. This appeared to have been accompanied by a lack of concern or thought about the consequences of his admissions. His anxiety proneness seemed less pronounced when assessed psychologically in 1998 than it had been at the time of his arrest in 1985. He nonetheless still proved to be abnormally suggestible, compliant and acquiescent. These vulnerabilities were likely to have been present, and possibly more marked, in 1985. Finally, it was evident from the transcripts of the police interviews that Pendleton was subjected to considerable pressure to confess, pressure he was clearly having difficulties coping with.

During the appeal in June 2000 Dr. Gudjonsson testified and in rebuttal the Crown called a consultant psychiatrist, Dr. Badcock, who had interviewed Pendleton prior to his trial in 1986. Dr. Badcock agreed with Dr. Gudjonsson's conclusions that at the time of the interrogation in 1985 Pendleton had been psychologically vulnerable. However, Dr. Badcock was clearly hesitant about challenging the reliability of Pendleton's confession. He appeared to have provided the judges with grounds for rejecting the appeal in stating that from his reading of the record of the police interview, the confession elicited after the crime scene visit had a "spontaneous and authentic flow". This comment appeared to have an immediate effect on the view of the judges, who made use of it in their judgment. In their comments on the police interviews the judges ruled:

Professor Gudjonsson's evidence that the appellant was vulnerable in the manner described is unchallenged but the Court must make an assessment whether that vulnerability did, or may have, led the appellant, in the interview and statements given, to have made false admissions. Professor Gudjonsson could not definitively answer that question, as he frankly and fairly admitted. He expressed his open-mindedness as to whether the accounts given were true or guesswork. Dr Badcock's 'niggle' about the truth of the appellant's accounts was narrowly expressed and followed by evidence that the appellant's accounts appeared informed, natural and genuine. We bear in mind Professor Gudjonsson's analysis, and that of Dr Badcock, along with submissions made by counsel on each side and the other material.

Given the accounts of the appellant's statements to the police, and the manner in which they were elicited, we have no doubts as to the reliability of the admissions made by the appellant as to his presence at the scene of the murder. None of the vulnerabilities described by Gudjonsson can, upon consideration of the interviews as a whole, put a flavour of falsity upon the admissions made. We find it inconceivable that his accounts were imagined or invented. Unless there is material, extraneous to the in-

interviews and the issues surrounding them, which otherwise cast doubt upon the admissions, they provide a sound and sufficient basis for the safety of the conviction.<sup>85</sup>

In December 2001, the case was heard by the House of Lords. The appeal was allowed and conviction was quashed.<sup>86</sup> Pendleton was free after having spent 15 years in prison. Michael Mansfield, Q.C., had successfully argued on behalf of Pendleton that the Court of Appeal judges had taken upon themselves:

... the task of assessing the fresh psychological evidence and so trespassing on the exclusive domain of the jury. The Court of Appeal was in effect undertaking the retrial of a case.<sup>87</sup>

Lord Bingham, who delivered the judgment, stated:

No one can now be sure what would have happened had the evidence of Professor Gudjonsson been available at the time of the trial. But the defence might in at least three respects have been conducted differently. First, the appellant might have been called to give evidence on his own behalf. ... Secondly, there would have been much more searching investigation of the appellant's mental state during the [police] interviews ...

Thirdly, it seems likely that there would have been much more detailed enquiry into what passed between the appellant and the police that was not recorded. ...

In the light of these uncertainties and this fresh psychological evidence it is impossible to be sure that this conviction is safe, and that is so whether the members of the House ask whether they themselves have reason to doubt the safety of the conviction or whether they ask whether the jury might have reached a different conclusion.<sup>88</sup>

## 21. Iain Hay Gordon

On 12 November 1952, the 19-year-old daughter of a High Court judge in Belfast was murdered. Gordon was soon to become a suspect in the case because he had lied to the police about his alibi and he was acquainted with the victim's family. He was a Scotsman who was doing his National Service with the Royal Air Force in Northern Ireland. Gordon eventually confessed to the police and was convicted of the murder in 1953. He was found insane, which saved him from the death penalty.

In 2000, the Criminal Cases Review Commission referred the case to the Court of Appeal in Belfast after having considered a report from Dr. Gudjonsson, which cast doubt on Gordon's conviction. The Criminal Cases Review

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<sup>85</sup> *R. v. Pendleton* (22 June 2000), (C.A.) [unreported]; see also Gudjonsson, *Interrogations and Confessions*, *supra* note 2.

<sup>86</sup> *Pendleton*, *supra* note 39.

<sup>87</sup> *Ibid.* at para. 24.

<sup>88</sup> *Ibid.* at paras. 27–28.

Commission obtained a report from Professor Kopelman, a neuropsychiatrist. He also expressed concern about the safety of Gordon's conviction. The Crown prosecutor sought the services of a clinical psychologist, Mr. Hanley, who did not interview Gordon himself, but agreed with Dr. Gudjonsson that at the time of his interrogation in 1953, Gordon was psychologically vulnerable to making a coerced-internalized false confession. The appeal was heard in Belfast in December 2000. No witnesses were called. The psychological and psychiatric evidence was discussed in detail in the judgment. The Court also had reports from two linguistic experts, Prof. Coulthard and Dr. French, both of whom also cast doubt on the police account that Gordon's confession had been taken by dictation rather than questions and answers. The conviction from 1953 was quashed and no retrial was ordered.

## 22. *Peter Fell*

This case involved the murder by multiple stabbing of two women in May 1982, who were walking their dogs on common land on the outskirts of Aldershot. In 1985 Fell was convicted of both murders. The principal evidence against him at trial came in the form of self-incriminating admissions he had voluntarily made to the police, during a series of telephone conversations in 1982 and 1983, and subsequent admissions during lengthy custodial interrogation. In October 1983 Fell was charged with the two murders and in August 1984 he was convicted at Winchester Crown Court. In September 1999 the Criminal Cases Review Commission referred the case to the Court of Appeal. The referral was mainly based on new evidence concerning material non-disclosure and fresh psychological evidence of Fell's vulnerabilities during the interrogation and their effects on the reliability of the admissions he made to the police in 1984.

With regard to the expert evidence, Lord Justice Waller stated for the Court of Appeal:

So far as the psychological evidence was concerned statements had been provided by Dr Gudjonsson and Professor Kopelman. Those statements were before the Commission. The Crown obtained evidence from a Dr Joseph. His conclusions were to the same effect as those of Dr Gudjonsson and Professor Kopelman that the admissions were unreliable.<sup>89</sup>

This evidence was supported by the testimony of Dr. Illbert, a prison doctor who had seen Fell on a number of occasions after he was remanded in custody at Winchester prison in 1983. Dr. Gudjonsson, Dr. Illbert, and Dr. Joseph gave oral evidence at the appeal. The testimony of the three experts focused on Fell's psychological vulnerabilities at the time he made the telephone calls and when he was interviewed by the police. The conviction was quashed and no re-trial was ordered.

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<sup>89</sup> *R. v. Fell*, [2001] EWCA 696 at para. 7.

### 23. Stephen Downing

Downing was convicted in 1974 at Nottingham Crown Court of the 1973 murder of a woman in a cemetery in Bakewell. The Court of Appeal quashed his conviction in January 2002. Counsel for the Crown at the appeal agreed that there had been significant and substantial breaches of the Judges' Rules concerning the failure of the police to provide the caution at the appropriate time and to advise him of his legal right to have access to a lawyer. No psychological report or evidence was presented at the appeal, but the defence described Downing as being of below-average intelligence, 17 years of age at the time of his detention and the police interrogation, and being of previous good character.

### 24. Anthony Steel

Steel was convicted in 1979 at Leeds Crown Court of the 1977 murder of a 20-year-old female. The Court of Appeal quashed his conviction in June 2003 on the basis of experts' psychological reports prepared for the defence (Mrs. Tunstall) and Crown (Mr. Burdett) respectively. The Court accepted the defence submission that Steel was of low intelligence (Full Scale IQ scores ranged from 64 to 74 at different times), and was also highly suggestible and compliant. These three psychological vulnerabilities, in combination, were crucial to the judges' decision to quash the conviction.

### 25. Shane Stepon Smith

In November 1993 Smith was convicted at the Central Criminal Court of one offence of attempted rape and one of burglary with intent to commit rape.<sup>90</sup> There was no forensic evidence and the two victims had failed to identify him. Smith was sentenced to five years imprisonment for the first offence, and three years imprisonment on the second, to be served consecutively, making a total of eight years, which is what he served. At trial the only evidence against Smith was his confession to the police. He appealed against his conviction and sentence but his appeal was refused. After leaving prison Smith was seen by two clinical psychologists, Dr. Gudjonsson for the defence and Dr. Craissati for the Crown. The evidence of both psychologists was that on testing the appellant "produced abnormally high confabulation scores, both on immediate and delayed recall."<sup>91</sup> Smith was also found to be abnormally suggestible and compliant. These personality characteristics were highly relevant to the police interviews and Smith's confession. The two expert reports were placed before the Court and were not contested. The conviction was not considered safe and was quashed and no re-trial was ordered.

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<sup>90</sup> *R. v. Smith*, [2003] EWCA Crim. 927.

<sup>91</sup> *Ibid.* at para. 9.

### 26. *Kayed Kevin Antar*

Antar was convicted in 2003 at Blackfriars Crown Court of one count of conspiracy to rob and was sentenced to three years' imprisonment. The defence at trial was that Antar had been present at the robbery and only participated due to being under duress by a co-defendant. He was 18 years old at the time. Psychological evidence presented during a *voir dire* showed Antar to be significantly intellectually impaired and having scored highly on both the Yield and Shift parts of the Gudjonsson Suggestibility Scale. After hearing the psychological evidence the trial judge ruled that the issue of the Antar's low IQ was irrelevant to the issue of duress, but failed to address evidence regarding the appellant's high suggestibility scores. The Court of Appeal quashed Antar's conviction on the basis that the trial judge should have ruled the psychological evidence regarding the suggestibility scores admissible and put it before the jury as it was relevant to the issue of duress.<sup>92</sup>

### 27. *Paul Blackburn*

In 1978 a nine-year-old boy was sexually assaulted before being kicked repeatedly, stabbed and then left, presumably to die, under a board with a large amount of heavy bricks on top. On 18 December 1978, Paul Blackburn, aged 15 at the time, was convicted of attempted murder and attempted buggery. This conviction was based entirely upon verbal and written admissions made by Blackburn during police interviews. Blackburn made numerous applications for leave to appeal against his conviction. Two were rejected in 1981. In 1996 the Secretary of State refused another. In August 2004 the CCRC referred the case to the Court of Appeal. The main reasons for the appeal were the contention that Blackburn's confession had been false, and that it had only come after three hours and ten minutes of intense police interviewing. In addition, at no point was Blackburn cautioned as to his right to legal advice, and neither his parents nor his allocated social worker were present. Written evidence was provided by a linguistic expert, Prof. Coulthard, that there had been significant police involvement in the wording of Blackburn's written confession statement. There was further evidence given at the appeal by Dr. Shepherd, a consultant forensic psychologist, the admissibility of which was challenged by the Crown. Dr. Shepherd did not assess Blackburn or his possible vulnerabilities; rather his evidence was a guide to the court as to the phenomenon of false confessions and the circumstances in which vulnerable individuals may give a "coerced compliant confession". The Court of Appeal thought this topic generally fell outside the normal range of experience of a jury and it was therefore admissible. The conviction was quashed as a result. The key to Dr. Shepherd's testimony was the proposition that fatigue, created by prolonged interrogation, combined with an inability to control what is happening, gives rise to a "coerced compli-

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<sup>92</sup> *R. v. Antar*, [2004] EWCA Crim. 2708.

ant confession". It was the circumstances of the confession, combined with Blackburn's youth, rather than his particular personality traits, that were crucial to the case.

### **28. Robert James Hindes and Hugh Richard Hanna**

On 17 September 1976, Peter Gerard Johnston was found shot dead in his home in Belfast. On 22 June 1977, Hindes and Hanna pleaded guilty of the murder and possession of firearms, apparently on the advice of their lawyers. Hindes allegedly had been bragging at school about the murder and during subsequent interviews confessed and implicated Hanna. The two men did not appeal their conviction and served nine years in prison before being released on a licence in 1985. These convictions were based entirely on admissions made by the accused during police interviews. Following an initial refusal in 1997, in October 2003 the CCRC referred the case to the Court of Appeal following a report by Assistant Chief Constable (ACC) Kinkaid, who had carried out a comprehensive investigation into the case. The investigation had discovered a number of examples of police impropriety and raised concern about the safety of the conviction of the two youths. In addition to the boys being questioned without an appropriate adult present, ACC Kinkaid also made reference to the length of their detention before charge (in Hindes's case, over 75 hours). There were also numerous examples of the police failing to disclose vital information to the boys' legal advisors. One instance of this is the fact that it was assumed that the murder had been commissioned by the Ulster Defence Association, yet it was known by the police that neither Hindes nor Hanna had any affiliation with that group. Furthermore, fingerprints that were found at the scene were compared with those of the accused and were proven to be negative. There was also the evidence of a group of soldiers who heard gunfire at 3:02 a.m. on the day that Johnston was murdered. This vital evidence contradicted the statements made by the accused as to the time of the murder, and also fit in more closely with the pathologist's estimated time of death. In spite of its importance, this evidence was never disclosed to the defence. It also emerged that Hanna was refused access to prescribed medication during his confinement and that he was refused access to a doctor when he fainted. The court also had written reports from two psychologists. Mr. Colin McClelland examined Hindes and found him to be intellectually "low average" and raised doubt as to his ability, at the age of 14, to deal with complex and skilful questioning. Hanna was assessed by Mrs. Olive Tunstall who concluded that he was abnormally suggestible and likely to change his answers when put under pressure. Finally the court received two reports from Dr. Carson, consultant forensic pathologist, who concluded that Johnston had numerous other injuries to his head suggesting physical abuse that was sustained prior to death. These injuries and physical abuse were not mentioned in the statement of either of the accused at the time of their arrest. The Court of Appeal quashed both convictions in September 2005. Tragically,

Hanna committed suicide in March 2004 and so did not live to see his name cleared.

### 29. *John Patrick Flanagan*

Flanagan was convicted in 1989 at Liverpool Crown Court of the murder of a drug addict. He had a long-term drug addiction problem himself and had allegedly confessed to other drug addicts that he had committed the murder. He made no confession to the police during lengthy police interviews, but prior to his arrest he had confessed on tape to another drug addict whilst they were injecting with drugs during a covert police operation. The other drug addict questioned him about the murder at the request of the police. The Court of Appeal quashed his conviction in September 2005 on the basis of a psychological report prepared by Dr. Gudjonsson for the Crown. Mrs. Olive Tunstall had prepared a defence report, which focused on Flanagan's borderline IQ score and abnormally high suggestibility. It had not addressed the relevance and importance of his personality disorders, which became a central issue on appeal. When giving the reason for quashing the conviction, the Court cited Dr. Gudjonsson's two main conclusions:

- (i) The tape-recorded conversation between Mr. Kinsella and Mr. Flanagan lasted for over 27 minutes. The beginning of the conversation about the murder is apparently not recorded, which makes it impossible to know exactly what was said prior to the tape being switched on. Mr. Kinsella is leading in his questioning of Mr. Flanagan and seems knowledgeable about the case. In contrast, Mr. Flanagan, who is generally vague in his answers, asks Mr. Kinsella to repeat himself, gives very short answers, displays little interest in the conversation about the murder, and frequently generally goes along with Mr. Kinsella's suggestions, although there were times he did not agree with Mr. Kinsella. His focus of attention is clearly on the drugs. There is considerable prompting needed for Mr. Kinsella to be able to elicit answers.
- (ii) At the time of the confession to Mr. Kinsella, Mr. Flanagan was a psychologically vulnerable individual, whose priority in life was to feed his drug addiction and he had very little insight into his vulnerabilities or behaviour. He is of borderline intellectual abilities, and suffers from antisocial and negativistic personality disorders, which drive him towards self-destructive behaviours. His history of boasting and making false confessions is undoubtedly a feature of his very poor self-esteem, and functioned to make him feel important and acknowledged.<sup>93</sup>

### 30. *Robert Adams*

On 4 June 1976 William Herbert Spring was found shot dead in a derelict house in Waterproof Street, Belfast. Adams was subsequently convicted of murder in a Diplock trial on 30 September 1977, after which he served nine years in prison. Also convicted was the co-accused Ivan Kelly, who pleaded

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<sup>93</sup> *R. v. Flanagan*, [2005] EWCA Crim. 2286.

guilty to grievous bodily harm. The case against Adams was based entirely on confessions, both verbal and written, that he had made to the police at the time of his arrest. On 26 March 2003, following an investigation into the case history and a psychological evaluation by Dr. Gudjonsson, the CCRC referred the case to the Court of Appeal in Northern Ireland. Adams was also assessed by Mr. Hanley for the Crown, who agreed with Dr. Gudjonsson as to Adams's psychological vulnerabilities and the impact that these would have had on his behaviour under interrogation. During the course of the appeal, new evidence came to light that the police had altered a statement and that there were also errors in the schedule (or "log") of police interviews. This was coupled with the fact that at the time of his arrest and interrogation, Adams was only 16 years of age, and yet at no time was there an appropriate adult present during his police interviews. In light of this new decisive evidence, and the agreement by both experts, the Court quashed the conviction.<sup>94</sup>

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<sup>94</sup> *R. v. Adams*, [2006] NICA 6 at para. 26.

