

Understanding Persons With Intellectual Disabilities in the Criminal Justice System: Indicators of Progress?

Robert Perske

In 1980, something happened in my town that drew me into our criminal justice system as never before. On October 14, in Darien, Connecticut, Jimmy Hafner, age 13, was strangled with his own belt. He was last seen standing on the sidelines of an after-school soccer game. His friend, the goalie, recalled him being there. "Jimmy was ragging me," he said. "He just kept kidding me. You, know, it was all in fun." The goalie also said that Jimmy was standing with a neatly dressed man with blond hair. He saw them conversing with each other. He figured that the man was either a coach or a college student.

The next morning Hafner's body was found in the woods next to the soccer field. The man who was standing with him never came forward. His identity remains a mystery today. Three days later at 7:30 p.m., a detective went to the home of 20-year-old Andy Burge. He asked Burge to come to the station and help him solve a crime. Burge jumped at the chance to help. For years, he had talked about wanting to be a policeman. His parents seemed to be a bit surprised by the detective's request, but they let him go. After midnight, Burge had signed "an admission" that he murdered Hafner. He told his dad later, "You'll be proud of me. I helped them solve the case."

At trial, three veteran officers presented Burge's signed admission as the keystone of their case. According to them, Burge "told them things that only the perpetrator could know." They admitted that no stenographic or electronic record was taken of three interrogations—except for a tape-recording of the last 10 minutes of the first session. Officers initially claimed that the recorder malfunctioned. Later they said they failed to turn it on. The prosecution emphasized that no man would ever sign a confession for a crime that he did not commit.

Defense experts described Burge as a young man with severe intellectual disabilities. Brain damage left him with uncoordinated movements, speech impediments, and a short attention span. He

usually spoke in three-word sentences. They testified that Burge's slight, 5'7" 140-pound build, and his physical disabilities rendered him unable to engage in a "scuffling" that killed Hafner.

According to defense experts, Burge possessed a rich fantasy life that "ranged from being a rock star to a sleuth who solved crimes." Consequently, when the police took Burge to the station, "they unwittingly provided a stage for his fantasies." Burge had an unabashed eagerness to tell the police what they wanted to hear.

The defense characterized the admission as a shaggy-dog story about many places that he did not go and things he did not do—with incriminating sentences seeded into the narrative. The defense claimed that the incriminating words in the "confession" were "spoon fed" by the interrogators.

State investigators and the FBI did not find a single shred of physical evidence that tied Burge to the crime. The defense argued that the police failed to do a serious search for the man standing beside Hafner at the soccer game.

Also important, his mother, brother, and grandmother testified that on the day of the crime, Burge left his regular day program at the Easter Seals Rehabilitation Center in Stamford at 3:00 p.m. He took the bus to Darien. He walked the short distance to his home. He arrived at 4:15 p.m. Burge watched TV until he fell asleep on theavenport. He was awakened for supper at 6:30 p.m. He remained in the house until he left the next morning for the Easter Seals Center.

The jury deliberated for 3 days. Then they came out and announced a deadlock. The judge refused to release the jurors. He ordered them back into the jury room. Two hours later, they reached a verdict: "guilty of second-degree manslaughter" (Barnard, 1983; Gold, 1983).

March 31, 1983, the day of Andy Burge's conviction, marked the beginning of some very dark days for him. His parents, once valued leaders in the community, were forced to live cautious and

limited lives. A large group of the town's citizens who really knew Burge and how he functioned found it hard to believe what had happened to him.

Through the years, the Burge case has driven me to follow, work with, and write about persons with intellectual disabilities who have encountered the criminal justice system. It has been an attempt to search for fresh movement in some very slow places.

Wrong Person Cases

Remember the 1989 "Camelot Couple" Murder in Boston?

Loving husband Charles Stuart, lost in the city, frantically called for help on a cellular phone in his car. He said a man had just killed his wife and shot him. Remember how he talked on the phone until the police could pinpoint his location? Remember the national uproar?

The police quickly zeroed in on Willie Bennett and got a confession. The media described the Stuarths as "the Camelot Couple" and called Bennett an "urban savage." The media managed to get Bennett's public school records—listing him as a "mental defective with IQs of 64, 65, and 62." Almost everyone in the country wanted Willie dead—until husband Charles, the real killer, suddenly committed suicide by jumping off the Tobin Bridge (Perske, 1991)

Remember the 1996 Daytona "Spring Break" Murder?

On a Friday in March, Canadian student Mark Fyke was fatally shot in the back of the head. On Saturday, the police picked up odd, loquacious, happy-go-lucky, beach-loving, 18-year-old Donnie Shoup. The police said that by 3:00 a.m. on Sunday morning, they received a full confession. When the police gave the confession to the media, they added that Shoup had an IQ of 52 (Ditzler, 1996). Three weeks later, the real shooter and two accomplices were charged with the murder. Even so, Shoup was not released until August (Holland, 1996).

Remember the 1990 Murders of Five University of Florida Students?

The Gainesville police focused on freshman Edward Humphrey because records claimed him to be "manic-depressive." After long hours of interrogation, Edward confessed that his "alter ego John"

was the killer. One cannot help wondering whether this confession might have led to a conviction if DNA testing had not connected the crimes to Danny Harold Rolling (Rohter, 1994).

A Fresh Calling

Since 1980, I have followed closely or at a distance better than 100 wrong person cases involving those with intellectual disabilities. From these cases it is clear to see that these persons we work with and care about can be

- The easiest to bear false witness against
- The easiest from whom to coerce a confession
- The easiest to demonize in the press
- The easiest to ignore when it comes to fighting for constitutional rights.

A Truth-Telling Tool Called DNA

Now that DNA testing is being instituted, the bright light of this new truth-telling tool has laid bare an enormous amount of judicial misfires. Many of those affected have been persons with disabilities. Scheck, Neufeld, and Dywer (2000) claimed:

Sometimes eyewitnesses make mistakes, snitches tell lies. Confessions are coerced or prefabricated. Racism trumps the truth. Lab tests are rigged. Defense lawyers sleep. Prosecutors lie. DNA testing is to justice what the telescope is to the stars: not a lesson in biochemistry, not a display of the wonders of magnifying optical glass, but a way to see things as they really are. It is a revelation machine. And the evidence says that most likely many are in prison, beyond the reach of the revelation machine, just as there are more stars beyond the sight of the most powerful telescope. (p. XV)

Columnist George Will strongly believes that DNA is helping to curb our normal craving for retribution. Prosecutors and jurors are becoming much more cautious about letting themselves be shaped merely by what they want to be true (Will, 2000).

Another Truth-Telling Tool Called Electronic Recording

In "The Problem of False Confessions in the Post-DNA World," Drizen and Leo (2004) analyzed 125 recent wrong-person cases. They chose cases in which indisputably innocent individuals confessed to crimes that they did not commit (2004). Their conclusion:

The risk of harm caused by false confessions could be greatly reduced if police were required to electronically record the en-

tirety of all custodial interrogations of suspects. Unlike some potential reforms, the recording of police interrogation is not an adversarial policy suggestion. It favors neither the defense nor the prosecution, but only the pursuit of reliable and accurate fact-finding. For at least three reasons, American police should be required to electronically record the entirety of their interrogations.

First, taping interrogations creates an objective, comprehensive and reviewable record of the interrogation. With taping, it is no longer necessary to rely on subjective credibility judgments to resolve "swearing contests" between the police and the defendant about what occurred during interrogation. . . . Second, taping leads to a higher level of scrutiny (by police officials as well as others) that will deter police misconduct during interrogation. . . . Interrogators are less likely to resort to improper interrogation practices when the camera is rolling and thus they are less likely to coerce an innocent suspect into falsely confessing. . . . Third, a taping requirement creates the opportunity for various criminal justice officials to more closely monitor both the quality of police interrogation and the reliability of confession statements. (pp. 1000-1001)

Presently, the battles for and against electronic recording are raging between defenders and prosecutors. Even so, Alaska, Minnesota, and Illinois now require such recordings. Also, more than half of the state's legislatures are debating the issue this year.

Police Training

After 7 years of teaching a regular segment on understanding persons with intellectual disabilities in one of Connecticut's police academies, in Bridgeport, I find that today's recruits are eager to learn all they can about this population. On the first day, the students received an outline of propensities of individuals with developmental disabilities. I built this list on an initial compilation created by Ellis and Luckasson (1985).

1. Relying on authority figures for solutions to everyday problems
2. The desire to please persons in authority
3. The inability to abstract from concrete thought
4. Watching for clues from the interrogator
5. The longing for friends
6. Relating best with children or older persons
7. The plea bargaining by accomplices (to get lighter sentences by testifying against the person with the disability)
8. Bluffing greater competence than one possesses
9. An all-to-pleasant façade
10. Abhorrence for the term *mental retardation*
11. Real memory gaps
12. A quickness to take blame
13. Impaired judgment
14. An inability to understand court proceedings
15. Problems with receptive and expressive language
16. Short attention span

17. Uncontrolled impulses
18. An unsteady gait and struggling speech
19. Seeing persons with disabilities as less than human
20. Exhaustion and surrender of all defenses (Perske, 1991)

Real cases are attached to each of these categories. Then, interestingly, the students share cases they know about. By day's end, the teacher listens, and they become the preceptors! Other complex issues follow this exercise, but by then enthusiasm is high.

Gudjonsson (1992), one of the world's foremost forensic evaluators, clarified why law officials need rigorous training in understanding persons with disabilities:

1. Some persons with a mental handicap appear superficially to have satisfactory social functioning, which disguises their vulnerabilities.
2. Persons with mental handicap see their vulnerabilities as being private and personal. As a consequence, many would not inform the police of their limitations and they may even deliberately attempt to hide them.
3. Many police officers do not seem knowledgeable about the "signs" that should alert them to the possibility that they are interviewing a person with a mental handicap.
4. Even when police officers are aware of certain background information that should alert them to persons' vulnerabilities (e.g., hospital admissions, "special" schooling), they may fail to appreciate the importance of the information. (p. 325)

The Death Penalty

On June 20, 2002, in the case of *Atkins v. Virginia* (No. 00-8452), the United States Supreme Court ruled, by a vote of 6 to 3, that the execution of persons with mental retardation violated the Eighth Amendment on "cruel and unusual punishment." Justice John Paul Stevens delivered the opinion. He recognized that a consensus of 18 death penalty states plus 12 nondeath penalty states banned such executions. Stevens also provided an enormous list of "diminished capacities" that can be found in these criminals. He concluded:

Our independent evaluation of the issue reveals no reason to disagree with the judgment of "the legislatures that have recently addressed this matter" and concluded that death is not a suitable punishment for a mentally retarded criminal. . . . Construing and applying the Eighth Amendment in the light of our "evolving standard of decency," we therefore conclude that such punishment is excessive and that the Constitution "places a substantive restriction on the State's power to take the life" of a mentally retarded offender.

Interestingly, the Court did not define *retardation*. Consequently, many states are embroiled in arguments over what mental retardation really is.

Most, however, have adopted a definition that alludes to significant limitations in intellectual functioning and in adaptive behavior, as expressed in a list of conceptual, social, and practical skills. The disability originates before age 18 and an IQ of 70 (± 5) tend to be indicators as well.

Before *Atkins*, 44 persons with retardation were executed after the death penalty was instituted in 1976 (Keyes, Edwards, & Perske, 2002). The Death Penalty Information Center estimates that 300 of the 3,500 persons on death row have mental retardation. Also, since *Atkins*, 7 additional states have banned these executions (Liptak, 2004).

Arguments in courts and state legislatures over this issue have been beneficial. To my knowledge, not one person legally described as having mental retardation has been executed since *Atkins*.

Conclusion: Has Their Been Progress?

Actual movement is hard to discern in such a brief paper. Even so, indicators are offered that just might be worth pondering.

- The Supreme Court has been slowly moving forward in the valuing of our nation's citizens.
- In 1857, The Supreme Court ruled in *Dred Scott v. Sanford* that "The Negro might justly and lawfully be reduced by slavery for his benefit."
- In 1896, The Court ruled in *Plessy v. Ferguson* that African Americans should be "separate but equal."
- In 1927, in *Buck v. Bell*, the legal sterilizing and limiting of persons with retardation in society was called for.
- In 1954, *Brown v. Board of Education in Topeka* swept away more than a century of denigrating and devaluing racist law.
- In 2002, the Court ruled that executing persons with retardation to be inconsistent with the "evolving standard of decency in civilized society."

Another way to discern movement: Suppose we predicted in 1980 that by 2004, we would

- Uncover a massive number of wrong-person convictions
- Find many prisoners innocent because of their genetic make-up
- Call for the electronic recording of police interrogations
- Teach courses on violence in schools
- Ban the execution of persons with certain diminished capacities
- Recognize a "rising standard of decency" toward persons with disabilities

If we predicted all that in 1980, hardly anyone would have believed us.

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Author:

Robert Perske, Citizen Advocate and Author, 159 Hollow Tree Ridge Rd., Darien, CT 06820. E-mail: Rperske@aol.com