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Clarifying Misrepresentations About Law Enforcement Interrogation Techniques

Over the years social psychologists, defenses attorneys and some academicians have offered a number of criticisms of current law enforcement interrogation practices, and, in particular, the Reid Technique. Some of these criticisms are:

- the goal of an interrogation is to get a confession whether it is true or not
- investigators use minimization tactics in which they offer the suspect leniency if he confesses and harsher punishment (maximization) if he does not
- investigators oftentimes interrogate innocent people whom they have erroneously classified as guilty
- investigators use coercive tactics and procedures to secure confessions
- investigators feed crime details to the suspect so that the authenticity of their incriminating statements is difficult to assess
- investigators lie to the suspect about evidence
- investigators do not modify their tactics when questioning juveniles or mentally impaired individuals
- the interrogation is designed to make the suspect feel isolated and hopeless so that he sees no way out except to confess
- the Reid Technique is a guilt presumptive approach

In this paper we will address each of these criticisms and set the record straight as to exactly what we teach with respect to law enforcement interrogation techniques, and the Reid Technique of Interviewing and Interrogation in particular.

This document was written by Joseph P. Buckley, President, John E. Reid and Associates. (updated February, 2020)

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The Purpose of an Interrogation

The purpose of an interrogation is to learn the truth. In most instances this consists of the guilty suspect telling the investigator what he did regarding the commission of the crime under investigation. The obvious reason for this outcome is that interrogation should only occur when the investigative information indicates the suspect's probable involvement in the commission of the crime.

However, there can be several other successful outcomes:

- the suspect may reveal the fact that he did not commit the crime but that he knows (and has been concealing) who did
- the suspect may reveal that while he did not commit the crime he was lying about some important element of the investigation (such as his alibi – not wanting to acknowledge where he really was at the time of the crime), or
- the investigator determines the suspect to be innocent

Contrary to these potential outcomes, social psychologists consistently portray the purpose of an interrogation to be one of securing a confession at any cost:

> "The purpose of interrogation is … not to discern the truth, determine if the suspect committed the crime, or evaluate his or her denials."[1] "The goal of an interrogation is to get a confession."…. "And then they [Reid] lay out techniques that are not about getting the truth; they're about getting a confession. The techniques they lay out don't say, "Now stop and evaluate whether the person is telling the truth or whether the person is lying."

These statements ignore what we have been teaching at our training seminars and have published in our books for decades about the necessity for investigators to be aware of the possibility of an unreliable confession.

In the 2nd edition of *Criminal Interrogation and Confessions*, published over 50 years ago, the authors expressed concern for the possibility of false confessions, particularly from individuals with mental illnesses. "One method for checking the authenticity of a conscience-stricken confession, or one that appears to be the result of mental illness, is to refer to some fictitious aspects of the crime and test whether the subject will accept them as actual facts relating to the occurrence." [2]

Also in the second edition the authors caution that the investigator should not reveal all of the details of the crime to the suspect, because, "On those rare occasions when the subject may be a pathological liar, or when the interrogator may have some concern over that possibility, it is extremely helpful to be able to check what the subject says against known

[1] Saul Kassin, et al, "Police-Induced Confessions: Risk Factors and Recommendations" *Law Hum Behav* (2010) 34:3–38

[2] Fred Inbau and John Reid, *Criminal Interrogation and Confessions* (Williams & Wilkins, 1967).

facts which had not been disclosed to him and which he could know about only by reason of his having actually committed the crime."

In the 3rd edition of *Criminal Interrogation and Confessions*, published over 30 years ago, we state the following with respect to recognizing an innocent suspect's denials during the interrogation process:[3]

> " An innocent suspect, as a rule, will respond to the interrogator's first accusation (*Step 1*) with a spontaneous, direct and forceful denial of guilt. He will likely express or otherwise indicate anger and hostility over the accusation and may even insult the interrogator because of it. While making the initial denial, the innocent suspect will look the interrogator "straight in the eye" and may very well lean forward in the chair in a very rigid or aggressive posture. The verbal content of the innocent suspect's denial may be something like: "You're wrong. You've got to be crazy if you think I did something like that.!" (page 143)

(It should be noted that these behaviors may be different with many juveniles, individuals with significant mental disabilities or psychological impairments. These individuals will be discussed later in this paper.)

> "Innocent suspects disclose very little warning during the theme development stage that they are about to verbally deny involvement in the crime. They may give some general nonverbal signs that they are about to speak, such as shaking the head or leaning forward while making some hand gesture or arm movement, but they will usually give no verbal clues that a denial is forthcoming. Instead, they simply voice the statement, "I didn't do it," without any prefatory remark." (page 144)

> "In the majority of instances, innocent suspects will not allow the interrogator to stop their denials; in fact, the intensity and frequency of denials from the innocent will increase as the interrogation continues. An innocent suspect will become angry and unyielding and often will attempt to take control of the interrogation by not allowing the interrogator to talk until the suspect as made very clear the point that he did not commit the crime under investigation." (page 148)

> "Innocent suspects often emphasize their denials by distinctly enunciating their words....." (page 148)

> "An innocent person will remain steadfast in denying guilt, regardless of the attitude or statements of the interrogator." (page 149)

> "When the interrogator senses that the suspect may be innocent, he should begin to diminish the tone and nature of the accusatory statements." (page 149)

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[3] Fred Inbau, John Reid and Joseph Buckley, *Criminal Interrogation and Confessions* (Williams & Wilkins, 1986).

> "Whenever the verbal and nonverbal behavior exhibited by the suspect during an interrogation seems sincere and indicates that the suspect was not involved in the offense under investigation, no statement should be made immediately that he is clear of any subsequent investigation. The suspect should merely be told that as a result of cooperating with the investigator, other leads will be pursued in an attempt to substantiate the suspect's claim of innocence." (page 150)

Investigators are not perfect and the process of rendering opinions of guilt or innocence during an investigation is not an exact science. Because of this, innocent suspects will occasionally be interrogated. However, innocent suspects do respond differently to the interrogation process than guilty suspects. When a suspect's behavioral responses to the interrogation fit the description of an innocent person, the investigator should "step down" the interrogation and consider terminating it altogether.[4]

Guilt Presumptive Process

It is interesting to note that social psychologists refer to the Reid Technique as a "guilt presumptive" process – that investigators interrogate persons whom they believe to be guilty, and that they will stop at almost nothing to secure the confession. Dr. Leo has testified that, "…I think, for most police, and pursuant to police training, including the Reid method, a successful interrogation is where you get an incriminating statement. Even if that statement is not truthful, if it is incriminating, then it's successful, period. " [5]

What social psychologists ignore is the fact that all ethical investigators realize that there is the possibility of an innocent person being caught in a web of circumstantial evidence, and that we teach procedures to recognize those individuals.[6]

The opposite of interrogating individuals who the investigator believes to be guilty would be to interrogate all subjects, whether evidence indicated their possible involvement or not – such a situation that would be completely unacceptable.

We recommend that investigators should never use the interrogation process as the initial means by which to assess a subject's credibility – in other words, we recommend that after the initial non-accusatory investigative interview and the collection of evidence, only those subjects should be interrogated whom the investigative information suggests are most probably involved in the commission of the crime.

How Social Psychologists Describe the Interrogation Process

Social Psychologists oftentimes describe the interrogation process by using such

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[4] "Innocent Suspect's Response to Interrogation" Investigator Tip Jan/Feb 2012 http://www.reid.com/educational_info/r_tipsprint.html?serial=20120101

[5] Richard Leo Deposition Testimony *Caine v. Burge*

[6] Fred Inbau, John Reid, Joseph Buckley and Brian Jayne, *Criminal Interrogation and Confessions* (Jones & Bartlett Learning, 5th edition, 2013)

descriptions as:

- structured to promote a sense of isolation
- designed to increase the anxiety and despair associated with denial[7]
- manipulate and deceive suspects into believing that their situation is hopeless[8]

We do recommend that interviews and interrogations take place in a private setting, but we never teach investigators to detain non-custodial suspects or to isolate suspects and prevent them from contacting others. In a custodial interrogation the suspect is advised of his Miranda rights and if he invokes those rights the interrogation is immediately terminated.

We never teach or recommend that the interrogator should try to increase the suspect's feeling of despair or hopelessness. In fact, we teach that it is improper to tell the suspect that he is facing inevitable consequences. We reference numerous cases in our book in which threatening inevitable consequences can be a high risk factor in causing a false confession.[9]

It is interesting to note that the US Supreme Court understands the need for interrogations to be conducted in a private setting: "Often the place of questioning will have to be a police interrogation room because it is important to assure the proper atmosphere of privacy and non-distraction if questioning is to be made productive."[10]

The Use of Minimization Techniques

Social psychologists describe the Reid Technique as an interrogation process by which the investigator engages in minimization techniques by downplaying the seriousness of the offense while at the same time using maximization techniques in which the investigator exaggerates the strength of evidence against the suspect and the magnitude of the charges.

They further describe the minimization/maximization process as one in which the investigator suggests inducements that motivate the suspect by altering his or her perceptions of self-interest. Dr. Richard Leo testified: "So minimization is a recognized interrogation technique that -- whereby the interrogator tries to minimize the -- or

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[7] Saul Kassin, et al, "Police-Induced Confessions: Risk Factors and Recommendations" *Law Hum Behav* (2010) 34:3–38

[8] Dr. Richard Leo case report found at http://www.reid.com/pdfs/Leo-Desc-case-reports.pdf

[9] Inbau, *Criminal Interrogation and Confessions* (2013); also see "What Exactly is the Reid Technique of Interrogation?" at http://www.reid.com/educational_info/r_tipsprint.html?serial=1309864251267367. An excellent article on what the courts consider to be "appropriate pressure" during an interrogation was written and published by the Alameda County District Attorney's Office: "Interrogation" Winter 2017 Point of View

[10] *Culombe v. Connecticut* (1961) 367 U.S. 568, 579

downplay the seriousness or consequences of the alleged act to make it easier for the suspect to admit to it because it's less serious or perhaps portrayed as not even criminal at all. So, by minimizing the consequences or the outcome or the punishment, sometimes minimization communicates also, implicitly, a suggestion or promise of either leniency or reduced punishment in exchange for cooperation." [11]

Social psychologists describe the inducements that they say are used to entice the confession as low end, midrange and high end. At the low end are moral or religious inducements suggesting that confession will make the suspect feel better; in the midrange are vague assurances that the suspect's case will be processed more favorably if he or she confesses; at the high end are inducements that more expressly promise or imply leniency in exchange for confession or threaten or imply severe treatment if the suspect refuses to confess.[12]

In their White Paper prepared for the American Psychological Association (entitled "Police-Induced Confessions: Risk Factors and Recommendations") the authors reported that "Analyzing more than 125 electronically recorded interrogations and transcripts, Ofshe and Leo found that police often use techniques that serve to communicate promises and threats…. These investigators focused specifically on what they called high-end inducements —appeals that communicate to a suspect that he or she will receive less punishment, a lower prison sentence, or some form of prosecutorial or judicial leniency upon confession and/or a higher charge or longer prison sentence in the absence of confession….This is a variant of the ''maximization''/''minimization'' technique…."[13]

The problem with these descriptions is that the social psychologists are describing behaviors that **we teach investigators not to do**.

The emphasis of the Reid Technique is to create an environment that makes it easier for a subject to tell the truth. An essential part of this is to suggest face-saving excuses for the subject's crime which include projecting blame away from the subject onto such elements as financial pressure, the victim's behavior, an accomplice, emotions, or alcohol.

There are two types of acceptable minimization that can occur during an interrogation:

- minimizing the moral seriousness of the behavior
- minimizing the psychological consequences of the behavior

The third type of minimization is to minimize the legal consequences of the subject's behavior, which **we teach never to do**. The midrange and high-end inducements

[11] Richard Leo Deposition Testimony April 2013 *Caine v. Burge*
[12] Saul Kassin and Gisli Gudjonsson "Confessions: A Review of the Literature and Issues" *American Psychological Society* 2004
[13] Saul Kassin, et al, "Police-Induced Confessions: Risk Factors and Recommendations" *Law Hum Behav* (2010) 34:3–38

described by social psychologists are essentially threats of harm or more severe punishment, contrasted with promises of leniency or reduced punishment.

In the previously referenced White Paper the authors agreed with us, stating that interrogation procedures should "permit moral and psychological forms of minimization, but ban legal minimization."[14]

Our training is very specific that these excuses (interrogation themes) should minimize the moral seriousness of the subject's crime by offering psychological excuses for the crime but not remove legal consequences. Consider the following excerpts from *Criminal Interrogation and Confessions* (5th edition, 2013):

> "During the presentation of any theme based upon the morality factor, caution must be taken to avoid any indication that the minimization of the moral blame will relieve the suspect of criminal responsibility." (page 205)
>
> "As earlier stated, the interrogator must avoid any expressed or intentionally implied statement to the effect that because of the minimized seriousness of the offense, the suspect is to receive a lighter punishment." (page 213)
>
> "In applying this technique of condemning the accomplice, the interrogator must proceed cautiously and must refrain from making any comments to the effect that the blame cast on an accomplice thereby relieves the suspect of legal responsibility for his part in the commission of the offense." (page 227)

In November 2017, the Massachusetts Supreme Court stated that "….Nor have we concluded that an interviewing officer's efforts to minimize a suspect's moral culpability, by, for example, suggesting theories of accident or provocation, are inappropriate, or sought to preclude suggestions by the interviewers "broadly that it would be better for a suspect to tell the truth, [and] ... that the person's cooperation would be brought to the attention of [those] involved."[15]

The Supreme Court of Canada stated:

> "There is nothing problematic or objectionable about police, when questioning suspects, in downplaying or minimizing the moral culpability of their alleged criminal activity. I find there was nothing improper in these and other similar transcript examples where [the detective] minimized [the accused's] moral responsibility."[16]

In *Gomez v. California* (January 2019) the US District Court stated the following:

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[14] Saul Kassin, et al, "Police-Induced Confessions: Risk Factors and Recommendations" *Law Hum Behav* (2010) 34:3–38

[15] *Commonwealth v. Cartright*, 2017 WL 4980376

[16] *R. v. Oickle*, [2000] 2 S.C.R. 3, 2000 SCC 38

"Relevant considerations concerning whether an interrogation is coercive include the length of the interrogation, its location, and its continuity, as well as the defendant's maturity, education, physical condition, and mental health. In assessing police tactics that are allegedly coercive, courts have only prohibited those psychological ploys which are so coercive they tend to produce a statement that is both involuntary and unreliable under all of the circumstances. Investigators are permitted to ask tough questions, exchange information, summarize evidence, outline theories, confront, contradict, and even debate with a suspect… They may accuse the suspect of lying … and urge him or her to tell the truth. Investigators can suggest the defendant may not have been the actual perpetrator, or may not have intended a murder victim to die. They can suggest possible explanations of events and offer a defendant the opportunity to provide details of the crime…..Suggestions by investigators that killings may have been accidental or resulted from a fit of rage during a drunken blackout fall far short of promises of lenient treatment in exchange for cooperation." [17]

To reiterate, minimizing the moral seriousness of the suspect's behavior or the psychological consequences of their behavior are acceptable techniques, but minimizing the legal consequences of the subject's behavior or threatening inevitable consequences or more severe punishment if they do not confess is clearly unacceptable. [18]

Pragmatic Implication

Social psychologists have suggested that even though the investigator may not offer the suspect a direct promise of leniency or a threat of harm, the suspect may cognitively perceive threats or promises by the way the question is phrased. They refer to this phenomenon as pragmatic implication. "Interrogators are thus trained to suggest to suspects that their actions were spontaneous, accidental, provoked, peer-pressured, drug-induced, or otherwise justifiable by external factors…. basic research showing that people are highly influenced by perceived reinforcements and that people process the pragmatic implications of a communication suggests the possibility that suspects infer leniency in treatment from minimizing remarks that depict the crime as spontaneous, accidental, pressured by others, or otherwise excusable—even in the absence of an explicit promise."[19]

The courts have consistently rejected this suggestion, generally stating, "The most important decision in all cases is to look for a quid pro quo offer by interrogators, regardless of whether it comes in the form of a threat or a promise." [20]

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[17] *Gomez v. State*, 2019 WL 358631

[18] For additional information on how the courts view minimization see "How the Courts View the Reid Technique" at http://www.reid.com/newmedia/How%20Courts%20View%20the%20Reid%20Technique%20Dec%202016.pdf

[19] Saul Kassin, et al, "Police-Induced Confessions: Risk Factors and Recommendations" *Law Hum Behav* (2010) 34:3–38

[20] *R. v. Oickle*, [2000] 2 S.C.R. 3, 2000 SCC 38

The research that serves as the foundation for the suggestion that individuals perceive lesser punishment when an "understandable reason" (the accomplice talked the suspect into committing the crime) is suggested consists of having individuals, oftentimes college students, read transcripts of an interrogation and speculating as to the type of punishment that the suspect would receive.

As an example, Kassin and McNall conducted a study in which they had students read five different interrogation transcripts of a murder suspect. In the first, the investigator made an explicit promise of leniency, in the second the suspect was threatened with a harsh sentence, in the third the victim was blamed, and in the fourth the suspect was falsely told that his fingerprints were found on the murder weapon. The fifth transcript contained none of these variables. After reading each transcript the students rendered opinions as to how long the suspect would be sentenced.[21]

The Three Errors that Lead to False Confessions: Misclassification, Coercion and Contamination

Social psychologists oftentimes describe three investigator errors that they suggest can lead to a false confession:

- Misclassification – erroneously labeling an innocent person as guilty based on their demeanor and the behavior they displayed during the investigative interview
- Coercion – using tactics that offer reduced punishment if the suspect confesses, harsher punishment if they do not
- Contamination – revealing to the suspect details about the crime that only the police or the guilty person should know

Misclassification

According to social psychologists and a number of false confession experts, law enforcement oftentimes interrogate individuals whom they erroneously believe to be guilty because they mistakenly considered the behavior the suspect exhibited during the investigative interview to be indicative of deception. They refer to this "error" as misclassification. "Often, however, it [the decision to interrogate] is based on a clinical hunch formed during a preinterrogation interview in which special ''behavior-provoking'' questions are asked (e.g., ''What do you think should happen to the person who committed this crime?'') and changes are observed in aspects of the suspect's behavior that allegedly betray lying (e.g., gaze aversion, frozen posture, and fidgety movements). Yet in laboratories all over the world, research has consistently shown that most commonsense behavioral cues are not diagnostic of truth and deception (DePaulo et

[21] Saul Kassin and Karlyn McNall "Police Interrogations and Confession: Communicating Promises and Threats by Pragmatic Implication," *Law and Human Behavior* (1991)

al., 2003)."[22]

Most of the detection of deception research studies that are referred to by DePaulo involve studies that were conducted in the laboratory using students to commit mock crimes.

There are a number of reasons that laboratory studies are generally not applicable to real life situations:

- The subjects (students) had low levels of motivation to be believed (in the case of innocent subjects) or to avoid detection (in the case of guilty subjects)

- The interviews of the subjects were not conducted by investigators trained in interviewing criminal suspects

- The studies did not employ the type of structured interview process that is commonly utilized by investigators in the field

- In most studies there was no attempt to establish behavioral baselines for each subject so as to identify unique behaviors within a particular individual

- The research was based on the faulty premise that there are specific behavior symptoms that are unique to truth or deception

- There was little consideration given to evaluating behaviors in context. For example, identifying whether specific nonverbal behaviors are appropriate given the verbal content of the suspect's response, identifying the consistency of a suspect's statements across time and with known evidence, and so on

In fact, some researchers have recognized the deficiencies in these studies and have advocated a change in the research model to more effectively incorporate interviewing techniques utilized by experienced investigators in the field:

> "A turning point in our thinking about lie detection came in 2003. In that year, Bella DePaulo and her colleagues published a meta-analysis of deception research that demonstrated that nonverbal and verbal cues to deception are typically faint and unreliable. It made us realise that a new direction in deception research was required aimed at eliciting and enhancing cues to deceit. We will argue that interviewers play a vital role in achieving this"[23]

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[22] Saul Kassin, et al, "Police-Induced Confessions: Risk Factors and Recommendations" *Law Hum Behav* (2010) 34:3–38

[23] Aldert Vrij and Par Anders Granhag "Eliciting cues to deception and truth: What matters are the questions asked" *Journal of Applied Research in Memory and Cognition* (2012)

These same authors went on to state that "Accepting DePaulo, et al.'s conclusion that cues to deceit are faint and unreliable implies that the only way to improve lie detection is by eliciting and enhancing such cues. We argue that the interviewers can achieve this by using appropriate, theoretically sound interview techniques…"

Confirming these statements, when researchers attempt to design studies that more closely approximate the setting of real life field interviews, they show a marked increase in the ability of researchers to detection deception. Consider the following:

A study published in *Human Communication Research* by researchers at Korea University, Michigan State University, and Texas State University -- San Marcos found that using active questioning of individuals yielded near-perfect results, 97.8%, in detecting deception.

An expert using the Reid Technique interrogated participants in the first study - this expert was 100% accurate (33 of 33) in determining who had cheated and who had not. The second group of participants were then interviewed by five US federal agents with substantial polygraph and interrogation expertise. Using a more flexible and free approach (interviews lasted from three minutes to 17 minutes), these experts were able to accurately detect whether or not a participant cheated in 87 of 89 interviews (97.8%). In the third study, non-experts were shown taped interrogations of the experts from the previous two experiments. These non-experts were able to determine deception at a greater-than-chance rate -- 79.1% (experiment 1), and 93.6% (experiment 2).

"This research suggests that effective questioning is critical to deception detection," Levine said. "Asking bad questions can actually make people worse than chance at lie detection, and you can make honest people appear guilty. But, fairly minor changes in the questions can really improve accuracy, even in brief interviews. This has huge implications for intelligence and law enforcement."[24]

The Reid Behavior Analysis Interview

In our training programs and books we teach that the initial contact with any subject (victim, witness or suspect) should be a non-accusatory, non-confrontational interview in which the investigator is a neutral, objective fact finder. We refer to this process as the Behavior Analysis Interview (BAI) and discuss in detail how to structure the interview to include investigative and behavior provoking questions.[25]

Research which evaluates real-life subject interviews has demonstrated a very high degree of accuracy in the detection of deception in the BAI context. In one study the

[24] Timothy Levine, David Clare, J. Pete Blair, Steve McCornack, Kelly Morrison and Hee Sun Park, "Expertise in Deception Detection Involves Actively Prompting Diagnostic Information Rather Than Passive Behavioral Observation" *Human Communication Research* (40) 2014

[25] Frank Horvath, J. Pete Blair and Joseph Buckley "The behavioural analysis interview: clarifying the practice, theory and understanding of its use and effectiveness" *International Journal of Police Science & Management* 2008

evaluators were 85% correct in identifying truth or deception based on the answers from 60 real life subjects to 15 behavior provoking questions.[26]

In their publications and testimony social psychologists oftentimes try to discredit the BAI by referencing a study conducted in 2006 by Aldert Vrij in which he suggested that the BAI process did not develop significant distinctions between truthful and deceptive subjects. [27]

However, as we pointed out in a communication with Mr. Vrij and his publisher, it was obvious from his research design the Mr. Vrij had virtually no concept of the full nature and structure of the BAI process.[28] From our letter to Mr. Vrij:

> "One observation that I would like to make at the outset is that you have failed to understand the BAI in the full context of what an investigative interview is. In our book we have a section called Part 2 Interviewing Techniques. In that section we have six chapters [that address interviewing techniques and investigative questions].
>
> The reason that I have taken the time to point all of this out is that it appears to me that you have only read the chapter on the BAI [Chapter 11] and not the other chapters related to interviewing techniques. Consequently, there is a fatal flaw in your description and understanding of the BAI and, consequently, its application in the investigative interview process in the field." [29]

Another consideration that is oftentimes ignored by the social psychologists is that many, if not the majority of decisions to interrogate a suspect, result form the information developed during the investigation. For example, during the BAI a suspect may relate an alibi, and then subsequent investigation proves the alibi to be false; or the subject claims he never saw the victim at or near the time of the murder, and yet the subsequent discovery of video shows the suspect going into the victim's home moments before the murder.

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[26] Frank Horvath, Brian Jayne and Joseph Buckley "Differentiation of Truthful and Deceptive Criminal Suspects in Behavior Analysis Interviews" *Forensic Journal of Science* (1994). It should be noted that each of the 60 subjects went through a complete interview involving both investigative and behavior provoking questions.

[27] Aldert Vrij, Samantha Mann and Ronald Fisher "An Empirical Test of the Behaviour Analysis Interview" *Law and Human Behavior* 2006

[28] The Vrij research consisted of 40 undergraduate students committing a mock crime (stealing money from a wallet) and then being assigned roles as truthful or deceptive subjects. When they were interviewed they were asked 16 behavior-provoking questions – there were no investigative questions included in the interview.

[29] Letter to Aldert Vrij dated March 5, 2007 can be found at http://www.reid.com/pdfs/Vrij_letter.pdf

Coercion

Dr. Richard Leo described coercion as follows: "Social science researchers regard certain techniques as inherently coercive, like threats and promises, and interrogations that cause somebody to perceive they have no choice but to comply with the demands or requests of the authority figure, here interrogators. So this is a general understanding of what psychological coercion means. To, essentially, overbear somebody's will, in the legal language, or cause them to perceive they have no choice but to comply, in the social, psychological language. And then it's applied to the context of interrogation." [30] This quote essentially describes the second "error" that social psychologists say that investigators make – coercion.

The Reid Technique is built on a set of core principles that include the following:

1. Always conduct interviews and interrogations in accordance with the guidelines established by the courts

2. Do not make any promises of leniency

3. Do not threaten the subject with any physical harm or inevitable consequences

4. Do not deny the subject any of their rights

5. Do not deny the subject the opportunity to satisfy their physical needs

6. Always treat the subject with dignity and respect

As a result we teach never to engage in the coercive tactics described by Dr. Leo.

Contamination

The contamination error is described as the police revealing crime details to the suspect. The reason this becomes important is because when the subject provides these details in his confession there is no way to determine if the suspect had independent knowledge of these details or if he is simply repeating what he has been told.

For over 50 years we have been teaching to withhold crime details from the media and subjects so that when an individual admits that they committed the crime in question and provides the details that only the guilty person would know, such information can be used to assess the authenticity of their admission.[31]

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[30] Richard Leo Deposition Testimony April 2013 *Caine v. Burge*
[31] Fred Inbau and John Reid, *Criminal Interrogation and Confessions* (Williams & Wilkins, 1967).

There is no question that contamination is a serious concern, particularly in light of the fact that in many DNA exoneration cases the cleared suspect's confession contained numerous details that should have only been known by the offender.[32] In his 2011 book, *Convicting the Innocent*, Brandon Garrett, a law professor at the University of Virginia, examined most of the case files for the first 250 DNA exonerations. Garrett pointed out that in 38 of 40 false confessions, the authorities said defendants provided details that could be known only by the actual criminal or the investigators, thus corroborating their own admissions of guilt by revealing secret information about the crime that could only have been provided by them.[33]

From our book, *Criminal Interrogation and Confessions*, we state the following:

> After a suspect has related a general acknowledgment of guilt, the investigator should return to the beginning of the crime and attempt to develop information that can be corroborated by further investigation. He should seek from the suspect full details of the crime and also information about his subsequent activities. What should be sought particularly are facts that would only be known by the guilty person (for example, information regarding the location of the murder weapon or the stolen goods, the means of entry into the building, the type of accelerant used to start the fire, and the type of clothing on the victim, etc.).
>
> When developing corroborative information, the investigator must be certain that the details were not somehow revealed to the suspect through the questioning process, news media, or the viewing of crime scene photographs. In this regard, it is suggested that early during an investigation a decision be made by the lead investigator as to what evidence will be withheld from the public, as well as from all suspects. This information should be documented in writing on the case file so that all investigators are aware of what information will be withheld.[34]

The best type of corroboration is in the form of new evidence that was not known before the confession, but yet could be later substantiated. Prior to conducting the interrogation, the investigator should consider what types of independent corroborative information should be sought. Examples include the present location of a murder weapon or the suspect's bloody clothing, where stolen goods were fenced, and who the suspect talked to about the commission of his crime.[35]

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[32] "Combating Contamination in Confession Cases" Laura Nirider, Joshua Tepfer, & Steven Drizin http://www.reid.com/pdfs/Confession-Contamination-Drizin-2012.pdf

[33] Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong,* Harvard, 2011

[34] Fred Inbau, John Reid, Joseph Buckley and Brian Jayne, *Criminal Interrogation and Confessions* (2013)

[35] Dr. Gregory DeClue "The Inside Information Checklist" (The Police Chief magazine August 2015)

Lying to a Suspect About Evidence

In 1969 the Unites States Supreme Court ruled in *Frazier v. Cupp* that misrepresenting evidence to a suspect (in this case falsely telling the suspect that his accomplice had confessed) "is, while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible. These cases must be decided by viewing the "totality of circumstances…."[36] Numerous court decisions have upheld the investigator's capacity to verbally misrepresent evidence during an interrogation.[37]

Dr. Richard Leo has testified that in the Reid Technique we teach that "If you don't have evidence, make up the evidence or allude to nonexistent evidence."[38] In reality we teach to exercise extreme caution about misrepresenting evidence to the suspect. From *Criminal Interrogations and Confessions*:

1. Introducing fictitious evidence during an interrogation presents a risk that the guilty suspect may detect the investigator's bluff, resulting in a significant loss of credibility and sincerity. For this reason, we recommend that this tactic be used as a last resort effort.

2. This tactic should not be used for the suspect who acknowledges that he may have committed the crime even though he has no specific recollections of doing so. Under this circumstance, the introduction of such evidence may lead to claims that the investigator was attempting to convince the suspect that he, in fact, did commit the crime.

3. This technique should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement if the police tell them evidence clearly indicates they committed the crime.[39]

It should also be noted that misrepresenting evidence in an otherwise proper interrogation does not cause innocent people to confess, but the "aggravating circumstances" within the interrogation can create an environment conducive to a false statement.

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[36] *Frazier v. Cupp*, 394 U.S. 731 (1969)

[37] Fred Inbau, John Reid, Joseph Buckley and Brian Jayne, *Criminal Interrogation and Confessions* (2013)

[38] Richard Leo Deposition Testimony April 2013 *Caine v. Burge* Dr.Leo refers to this to as the false evidence ploy.

[39] Fred Inbau, John Reid, Joseph Buckley and Brian Jayne, *Criminal Interrogation and Confessions* (2013) page 352

Consider the court's opinion in *US v. Graham* in which the court pointed out that misrepresenting evidence is "one factor to consider among the totality of the circumstances in determining voluntariness." … However, "[c]ourts have been reluctant to deem trickery by the police a basis for excluding a confession on the ground that the tricks made the confession coerced and thus involuntary."

The court points out that there are a number of cases in which statements elicited from a defendant in response to police deception were found involuntary… but the court stated, "these cases all involve significant aggravating circumstances not present here, such as, subjecting the accused to an exhaustingly long interrogation, the application of physical force or the threat to do so, or the making of a promise that induces a confession."[40]

In other words, it is not the misrepresentation of evidence that is the genesis of a coerced or even false confession, but the "aggravating circumstances" present during the interrogation.

According to social psychologists there are two sources of research that support their contention that misrepresenting evidence causes false confessions. "First, studies of actual cases reveal that the false evidence ploy….. is found in numerous wrongful convictions in the U.S., including DNA exonerations."[41] However, as pointed out by Davis and Leo (referring to DNA exoneration cases), "Many, and perhaps most, of the interrogations in the cases Garrett reviewed crossed the line of proper interrogation technique through the use of explicit threats and promises, feeding suspects crime facts, and/or other coercive practices."[42] This is consistent with the view expressed in the aforementioned *Graham* case.

"The second source of evidence is found in laboratory experiments that have tested the causal hypothesis that false evidence leads innocent people to confess to prohibited acts they did not commit."[43] The first of these studies, commonly known as "the Alt-key Study," required students to perform a data entry project and warned them not to hit the computer's Alt key, which would cause the computer to crash. The researchers forced the system to crash, falsely accused the students of hitting the Alt key, and confronted them with a "witness" who reported seeing them do so. Under these circumstances, a number of the students signed written confessions despite their innocence.

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[40] *US v. Graham* 2014 WL 2922388 (N.D.Ga.)

[41] Saul Kassin, et al, "Police-Induced Confessions: Risk Factors and Recommendations" *Law Hum Behav* (2010) 34:3–38

[42] Deborah Davis and Richard Leo, "To Walk in their shoes: The problem of missing, misunderstood and misrepresented context in judging criminal confessions" *New England Law Review* 2012

[43] Saul Kassin, et al, "Police-Induced Confessions: Risk Factors and Recommendations" *Law Hum Behav* (2010) 34:3–38

In the second study, students were given a set of assignments and told that in some assignments collaboration with classmates was acceptable, while in others it was prohibited. The researchers then accused innocent students of improperly collaborating on certain assignments, informed them that they had violated university rules prohibiting cheating, and, for some, minimized the extent of their wrongdoing and encouraged them to take responsibility for their actions. Half of the students were told that there was a hidden video camera in the room which would eventually reveal their guilt or innocence. Under this circumstance 93% of the guilty suspects confessed and 50% of the innocent suspects confessed. However, as it turned out, these innocent participants did not confess to helping the other person at all. Rather, they signed a prepared statement to that effect. Further, and most importantly, they were reassured that if the hidden camera exonerated them they would not get into any trouble by signing the statement.[44]

In *U.S. v. Jacques,* when discussing these studies, the court stated that "Obviously, these "interrogations" were not conducted by law enforcement, were not part of a criminal investigation, did not involve actual suspects, and did not present the students with a serious penalty. As a result, Professor Hirsch [the false confession expert in this case] readily admitted that these studies have "limited value," which, in the context of this case, is an understatement."[45]

Even one of the authors of these 2 studies, Saul Kassin, stated, "One needs to be cautious in generalizing from laboratory experiments."[46]

The courts have drawn a distinction between verbal misrepresentations of evidence and fabricated physical evidence, finding fabricated evidence unacceptable. For example, in *State v. Cayward*, [47] a sexual assault case, the defendant's incriminating statements were suppressed because the police fabricated scientific reports indicating that the suspect's DNA had been found on the victim.

Modifying Techniques When Questioning Juveniles and Individuals with Mental or Psychological Disabilities

It is important to note that when questioning juveniles and individuals with significant mental or psychological disabilities the investigator has to make a number of modifications in their approach.[48] Here are a few of these modifications that we discuss

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[44] For additional details see "Research Review: The Lie, the Bluff and False Confessions" at http://www.reid.com/educational_info/r_tips.html?serial=129407139948903

[45] 784 F.Supp.2d 59

[46] Saul Kassin, et al, "Police-Induced Confessions: Risk Factors and Recommendations" *Law Hum Behav* (2010) 34:3–38

[47] 522 So.2d 971 (1989)

[48] See Brian Jayne and Joseph Buckley, *The Investigator Anthology* (2nd edition 2014) for a more detailed discussion of interview and interrogation issues with persons with personality disorders. Also see, *Reducing Risks: An Executive's Guide the Effective Juvenile Interview and Interrogation*, published by the International Association of Chiefs of Police (2102). You can access the document on the Reid website at http://www.reid.com/pdfs/20160116whatsnew.pdf

in *Criminal Interrogation and Confessions:*

> "As earlier suggested in the text, caution must be exercised in evaluating a youthful person's behavioral responses. Due to immaturity and the corresponding lack of values and sense of responsibility, the behavior symptoms displayed by a youthful suspect may be unreliable." (page 250)
>
> "A general distinction can be made between childhood (1–9) and adolescence (10–15). While both groups will be motivated to lie to avoid consequences associated with acts of wrongdoing, psychologically they are operating at quite different levels. It is our general recommendation that a person under the age of 10 should not be subjected to active persuasion techniques during [clarification] (themes, alternative questions). At this age the child is susceptible to suggestion and is motivated to please a person in authority. The interaction between the investigator and child should be limited to a question and answer session which is centered on factual information and simple logic. Although children in this age group generally have good memory skills, it is selective and the investigator must be cautious in forming opinions of deception based on inconsistent recall. In this younger age group the primary difficulty with respect to [the clarification process] is the child's undeveloped level of social responsibility and inability to comprehend the concept of future consequences; their lives focus around "here and now" concepts.
>
> On the other hand, most adolescents have developed a sense of social responsibility to the extent that they know if they admit committing a serious crime they will suffer some future consequence. For this reason a confrontational [approach] may be used with this age group involving some active persuasion. The extent of persuasive tactics should not be dictated by the seriousness of the crime, but rather the maturity of the child.
>
> When a child is taken into custody and advised of his or her *Miranda* rights, the question of whether the child is capable of making a knowing and voluntary waiver of those rights may arise. Certainly a child under the age of 10 is incapable of fully understanding the implications of waiving *Miranda* rights. Younger adolescents also may fall into this category. When a juvenile younger than 15, who has not had any prior experience with the police, is advised of his *Miranda* rights, the investigator should carefully discuss and talk about those rights with the subject (not just recite them) to make sure that he understands them. If attempts to explain the rights are unsuccessful, no [clarification process] should be conducted at that time. The same is true for a person who is mentally or psychologically impaired.
>
> Courts routinely uphold the use of trickery and deceit during [the clarification process] of adult suspects who are not mentally impaired. Within the area of trickery and deceit, clearly the most persuasive of these tactics is introducing fictitious evidence which implicates the suspect in the crime. As we state in Chapter 15, this technique should be avoided when [questioning] a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects

> may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement if the police tell them evidence clearly indicates they committed the crime. Factors such as the adolescent's level of social responsibility and general maturity should be considered before fictitious evidence is introduced.
>
> The ultimate test of the trustworthiness of a confession is its corroboration. The admissions, "I shot and killed Mr. Johnson" or, "I forced Susie Adams to have sex with me" may be elicited from an innocent juvenile (or adult) suspect. These admissions only become useful as evidence if they are corroborated by (1) information about the crime the suspect provides which was purposefully withheld from the suspect, and/or, (2) information not known by the police until after the confession which is subsequently verified." (pages 254-255)

With the above discussion in mind, the following represents some factors to consider in the assessment of the credibility of a suspect's confession. These issues are certainly not all inclusive, and each case must be evaluated on the "totality of circumstances" surrounding the questioning process and confession, but nevertheless, these are elements that should be given careful consideration:

1. The suspect's condition at the time of the [questioning]
    a. Physical condition (including drug and/or alcohol intoxication)
    b. Mental capacity
    c. Psychological condition
2. The suspects age
3. The suspect's prior experience with investigations
4. The suspect's understanding of the language
5. The length of the questioning
6. The degree of detail provided by the suspect in his confession
7. The extent of corroboration between the confession and the crime
8. The suspect's behavior during the questioning
9. The effort to address the suspect's physical needs
10. The presence of any improper questioning techniques

Courts and Attorneys Use Reid as the Benchmark for Proper Procedures

In view of our discussion of juvenile and mentally disabled suspects, it is interesting to note several cases in which the courts used our guidelines for the questioning of such individuals as a means by which to measure the validity of confessions in their respective cases.

In *People v. Elias*[49] the Appeals court pointed out several prescribed Reid procedures that were not followed by the investigator, resulting in a confession that was found to be involuntary:

1. A non-accusatory interview was not conducted before initiating an interrogation
2. The investigator misrepresented the case evidence when questioning a 13 year old
3. There was no corroboration of the incriminating statement
4. There was contamination - disclosing details of the crime

In *US v. Preston*[50] the US Court of Appeals reviewed the confession of an eighteen-year-old with an IQ of sixty-five. The court pointed out that the investigators did not follow the cautions we suggest when interviewing individuals with mental limitations. Quoting from the court's opinion:

> Among the police tactics used here were several recommended by a manual on police interrogation, see Fred E. Inbau, John E. Reid, Joseph P. Buckley & Brian C. Jayne, Criminal Interrogation and Confessions (5th ed. 2013) ("Reid manual"), from which both the officers who interrogated Preston were trained. The officers, however, sometimes disregarded the manual's cautions about the tactics they used.
>
> For example, using one of the recommended approaches, the two officers asked Preston a number of questions that presented him with two alternatives as to how the crime was committed… These questions were derived from similar exemplars in the Reid manual... The manual, however, suggests that the inculpatory alternatives technique recommended may be unduly coercive when used for suspects of seriously impaired mental ability…

In July 2014, at the National Association of Criminal Defense Attorneys conference, the attorneys were encouraged to use the information on our website (www.reid.com) and our book, *Criminal Interrogation and Confessions* as a reference for proper police practices that should be followed when interrogating a suspect.[51]

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[49] 2015 WL 3561620; Also see *People v. T.F.* (October 2017) which quoted the *Elias* case regarding the precautions we list in Criminal Interrogation and Confessions

[50] F.3d ----, 2014 WL 1876269 (C.A.9 (Ariz.))

[51] "Theories and Advocacy Strategies in False Confession Cases" presented by Steve Drizin, Center on Wrongful Convictions, Chicago, IL; Laura Nirider, Center on Wrongful Convictions of Youth, Chicago, IL.

During the presentation Attorney Nirider told the audience that "There's a lot of gold in the Reid interrogation manual and on reid.com and we really…. encourage you guys to go there and cite that material."[52]

Causes of False Confessions

Social psychologists oftentimes try to suggest that the Reid Technique causes false confessions, but such statements are clearly not supported by the evidence.

From *U.S. v. Jacques*:

> "In his declaration and at the hearing, Professor Hirsch explained that the primary cause of "coerced compliant" confessions are certain interrogation methods employed by law enforcement, including a widely used method known as the Reid technique….Beyond his own intuition, however, Professor Hirsch offered no basis for concluding that these tactics had any tendency necessarily to cause false, rather than true, confessions.
>
> ... Professor Hirsch's declaration offered no other evidence of the danger of certain police interrogation tactics, and the Reid technique in particular, except to say that "the use of these tactics [employed in the Reid technique] and their correlation with false confessions are extensively documented in the literature....Despite this broad statement, he did not provide any further explanation..."
>
> In sum, the proffered expert testimony to the effect that the Reid technique enhanced the risk of an unreliable confession lacked any objective basis for support whatever. Although Professor Hirsch insisted that "there is a wealth of information about the risks of the Reid technique," he could point to none."

In *State v. Belaunde* (December 2019) the Superior Court of New Jersey, stated in their opinion that "No case supports the contention that using the Reid technique renders an adult's confession inadmissible. A suspect will have a "natural reluctance ... to admit to the commission of a crime and furnish details." …Therefore, "an interrogating officer ... [may] dissipate this reluctance and persuade the person to talk ... as long as the will of the suspect is not overborne." …Recognizing that the "[q]uestioning of a suspect almost necessarily involves the use of psychological factors," our Supreme Court held that "appealing to a person's sense of decency and urging him to tell the truth for his own sake

[52] Over the years John E. Reid and Associates has assisted the Innocence Project (New York) on several cases as expert witnesses on proper interview and interrogation techniques, as well as the exoneration of one of their clients by obtaining a confession from the real offender. In fact, this case was detailed in the story, "I Did It" in New York magazine (http://www.reid.com/pdfs/ididit.pdf).We have also assisted other attorneys (for example, Kathleen Zellner) in wrongful conviction cases.

are applications of psychological principals," that are permissible……Likewise, "[t]he fact that the police lie to a suspect does not, by itself, render a confession involuntary."

False confessions are not caused by the application of the Reid Technique, they are usually caused by interrogators engaging in behavior that the courts have ruled to be objectionable, such as threatening inevitable consequences; making a promise of leniency in return for the confession; denying a subject their rights; conducting an excessively long interrogation; denying the suspect an opportunity to satisfy their physical needs, etc.

In one research effort the author studied the first 110 DNA exoneration cases reported by the Innocence Project. The author reported that, **"This study failed to find a single false confession of a cognitively normal individual that did not include the use of coercive tactics by the interrogator…"** The author identified coercive interrogation tactics as "the use of physical force; denial of food, sleep or bathroom; explicit threats of punishment; explicit promises of leniency; and extremely lengthy interrogations."[53]

The best way to avoid false confessions is to conduct interrogations in accordance with the guidelines established by the courts, and to adhere to the following practices:

- Do not make any promises of leniency
- Do not threaten the subject with any physical harm or inevitable consequences
- Do not conduct interrogations for an excessively lengthy period of time
- Do not deny the subject any of their rights
- Do not deny the subject the opportunity to satisfy their physical needs
- Withhold information about the details of the crime from the subject so that if the subject confesses the disclosure of that information can be used to confirm the authenticity of the statement
- Exercise special cautions when questioning juveniles or individuals with mental or psychological impairments
- Always treat the subject with dignity and respect
- The confession is not the end of the investigation – investigate the confession details in an effort to establish the authenticity of the subject's statement

[53] J. Pete Blair, "A Test of the Unusual False Confession Perspective: Using Cases of Proven False Confessions" *Criminal Law Bulletin* (Vol 41, Number 2)

Appendix A – Behavior Symptom Analysis

At a recent conference for defense attorneys, one of the speakers was describing some of the behaviors that she said John E. Reid and Associates teaches as being suggestive of a deceptive person. One of the behaviors she said that Reid views as deceptive was the statement, "I don't know." What the attorney failed to say (or perhaps, even to consider) was that all behaviors must be viewed in context. For example, if a person was asked what they did 7 weeks ago on Thursday night between 6:00 pm and midnight, it would be completely reasonable for the subject to respond, "I don't know." However, if a person was asked if they had anything to do with killing their next door neighbor last night, and they responded, "I don't know," a very different assessment would be made.

In our discussion of the "misclassification" issue earlier in this document we pointed out that one of the problems with detection of deception research was that "The research was based on the faulty premise that there are specific behavior symptoms that are unique to truth or deception."

In May 2016 we published on our website an Investigator Tip entitled, "There is no behavior unique to lying" which addresses the issue of behavior symptom analysis in some detail. We have reproduced the Tip here:

People oftentimes associate specific behaviors with deception, such as lack of eye contact. But there are many reasons a person may not have eye contact with the individual whom they are speaking to, that have nothing to do with deception; for example, cultural considerations. In this Investigator Tip we will address the underlying principles for the proper evaluation of a subject's behavior during the investigative interview. *

Behavior symptom analysis involves the study of inferences made from observing another person's behaviors. On a daily basis we make dozens, if not hundreds, of inferences based on behavioral observations, such as that man is angry, that girl likes me, my child is hungry, my son did something wrong, that driver is lost, those two people don't like each other, Aunt Martha is not taking her medications. This is such a natural phenomenon that it is easy to forget that there is an underlying process leading to these inferences. For example, a six-week-old child is heard crying in the nursery. The child was last fed four hours ago and eats about every four hours. The nature of the crying in the past has been relieved by feeding the child; ergo, the child is hungry. To be completely accurate, when making these behavioral assessments our mind should be thinking, "That man is probably angry," "I think that girl likes me," "I believe that my child is hungry."

This article addresses behavioral inferences relating to detection of deception, primarily in a clinical, controlled environment. Within the scope of detecting deception, there are two broad inferences that are made through behavioral observations. The first involves inferences of guilt or innocence, that is, "Did this person engage in a particular criminal act?" The second involves inferences of truth or deception, that is, "When this person

says such and such, is he telling the truth?" For case-solving purposes, it is important for an investigator to appreciate the distinction between "guilt" and "lying." Consider the following exchange during an interview:

Q: "Have you ever thought about setting fire to your house for the insurance money?"

A: "Well sure. I think everyone has thoughts like that."

This suspect's verbal response to the investigator's question is truthful. Yet, the content of the response infers guilt with respect to setting fire to his house. Research in the field of behavior symptom analysis generally indicates higher accuracies in identifying guilt or innocence, than truth and deception.

Finally, it is important to understand that some behavioral inferences have a higher probability of being correct than others. Consider that a suspect can clearly be seen on a surveillance video leaving the hotel room in which a woman was found raped and murdered. Upon questioning, the suspect denies ever being in the room. The fact that the content of his verbal behavior is contradicted by the video evidence strongly suggests the suspect's guilt regarding the commission of the crime. During this interview, the suspect's posture was rigid and frozen and, when asked if he had ever met the victim, he dusted off imaginary lint from his trousers. Furthermore, the suspect was wringing his hands and sweating even though the temperature in the room was set at a comfortable level. Although these behaviors are suggestive of the subject's deception and possible guilt, they are much less so than the documented lie, as evidenced by the videotape.

To appreciate the nature of these inferences, it must be realized that communication occurs at three distinctly different levels:

1. *verbal channel*—word choice and arrangement of words to send a message

2. *paralinguistic channel*—characteristics of speech falling outside the spoken word

3. *nonverbal channel*—posture, arm and leg movements, eye contact, and facial expressions

When evaluating a suspect's behavior for detection of deception purposes, there are five essential principles that must be followed in order to increase the probability that subsequent inferences will be accurate. Failure to recognize any of these principles increases the probability of making erroneous inferences from a suspect's behavior.

There are no unique behaviors associated with truthfulness or deception. The behavioral observations an investigator makes of a suspect do not specifically correlate to truth or deception. Rather, they reflect the subject's internal emotional state, cognitive processes, and internal physiological arousal experienced during a response. The emotional states most often associated with deception are fear, anger, embarrassment, indignation, or hope (duping). The cognitive processes may reveal concern, helpfulness, and confidence

versus offering an unrealistic explanation for the crime, being defensive, or being overly polite. There are also internal physiological responses that cause external behavioral responses such as a dry throat, skin blanching, pupillary dilation, or blushing. Observed in isolation, certainly none of these behaviors should cause an investigator to conclude that a subject is telling the truth or lying.

Evaluate the consistency between all three channels of communication. When a suspect sends behavioral messages that are consistent within all three channels of communication, the investigator can have greater confidence in his assessment of the credibility of the subject's response. However, when inconsistencies exist between the channels, the investigator needs to evaluate possible causes for this inconsistency.

Evaluate paralinguistic and nonverbal behaviors in context with the subject's verbal message. When assessing the probable meaning of a subject's emotional state, the subject's paralinguistic and nonverbal behaviors must always be considered in context with the verbal message. Consider the following two examples:

Question: Mike, have you ever been questioned before concerning theft from an employer?

Response: Well, um, two years ago I worked at a hardware store and they had an inventory shortage so all of the employees were questioned and, in fact, I did take some things from there. [Subject crosses his legs, looks down at the floor, and dusts his shirt sleeve.]

Question: Joe, did you steal that missing $2,500?

Response: No, I did not. [Subject crosses his legs, looks down at the floor, and dusts his shirt sleeve.]

These two subjects displayed identical paralinguistic and nonverbal behaviors during their responses. However, the interpretation of the behaviors is completely different. In the first example the subject is telling the truth, but he feels embarrassed and possibly even threatened in revealing his prior theft. In the second example the verbal content of the subject's response does not explain the accompanying nonverbal behaviors, so the investigator should consider these behaviors as reflecting possible fear or conflict—emotional states that would not be considered appropriate from a truthful subject, given the content of the verbal response.

Evaluate the preponderance of behaviors occurring throughout the interview. One of the findings learned through research is the importance of rendering opinions based on evaluating the subject's behavior throughout the course of an entire interview. When evaluators in research studies were only exposed to individual questions within the interview, their accuracy was considerably less than when evaluating the subject's responses to all of the interview questions. Similarly, the confidence of assessing

behavior over a five-minute interview will be considerably less than if the behavioral assessments were made over a 30- or 40-minute interview.

Establish the subject's normal behavioral patterns. Certainly there are non-deceptive reasons for a suspect to exhibit poor eye contact, respond to questions quickly or slowly, to scratch themselves, yawn, clear their throat, or change their posture. Before any of these behaviors can be considered a criteria of deception, the investigator must first establish what the subject's normal behavioral patterns are. Consequently, at the outset of each interview the investigator should spend several minutes discussing nonthreatening information (perhaps casual conversation or collecting biographical information) so as to establish a behavioral baseline for the particular subject. Then, as the interview progresses and the subject exhibits behavioral changes when the issue under investigation is discussed, these changes may take on added significance.

The evaluation of a subject's behavior for indications of truth or deception is a complicated endeavor and should be considered only one factor in the assessment of the subject's possible involvement in the issue under investigation.

* Some of the text above is from our book, *Criminal Interrogation and Confessions*, 5th edition, 2013

Appendix B – Best Practices

(In July 2013 we published on our website an Investigator Tip entitled, "A Quick Guide to Best Practices for the Reid Nine Steps of Interrogation" which we have reproduced here.)

The successful interrogation is one in which (1) the suspect tells the truth to the investigator and, (2) persuasive tactics used to learn the truth are legally acceptable. With these goals in mind, the following are a list of best practices for applying the Reid Nine Steps of Interrogation, along with a brief discussion of each practice:

Conduct an interview before any interrogation. Absent a life-saving circumstance the investigator should conduct a non-accusatory interview before engaging in any interrogation. During the interview the investigator can establish rapport with the suspect, assess their credibility, develop investigative information and establish a behavioral baseline. Also, during the interview the suspect is more likely to reveal information that can be used to develop an interrogation strategy.

Conduct an interrogation only when there is a reasonable belief that the suspect is guilty or withholding relevant information. The belief that a suspect is guilty of a crime or is withholding relevant information may be based upon investigative information, evidence, the suspect's demeanor, or verbal responses to interview questions. The investigator should avoid conducting an accusatory interrogation as a technique to separate innocent from guilty suspects.

Consider a suspect's behavior in conjunction with case facts and evidence. The assessment of a suspect's credibility during an interview will be enhanced and likely more accurate if it is based not only on the suspect's verbal and nonverbal behavior, but also on case facts (the suspect's established opportunity, access, motive and propensity to commit the crime) as well as forensic or testimonial evidence.

Attempt to verify the suspect's alibi before conducting an interrogation. The most efficient means to prove a suspect's innocence is to verify his or her purported alibi. Conversely, when it is determined that the suspect provided a false alibi, this finding offers support for the suspicion of the suspect's probable guilt.

A single investigator should be the lead communicator. While it is often appropriate to have a third person in the room during an interrogation, perhaps as an observer or witness, there should only be one primary investigator communicating with the suspect at a time. A guilty suspect is more likely to offer a voluntary confession to a single investigator who has established a rapport and trust with the suspect. A tactic to be avoided is to have two or three investigators simultaneously bombarding the suspect with themes or alternative questions, or working as a "tag team" wearing the suspect down over an extended period of time.

When interrogating a non-custodial suspect, do not deprive the suspect from his freedom to leave the room. The room should be set up so that the subject's exit from the interrogation room is not blocked - the investigator's chair should not be between the suspect's chair and the door. The room should not be locked from the inside (requiring a key to open the door) and the room should not be in an area that requires a key or pass code to exit the building. Finally, the investigator should not make verbal statements implying that the suspect is not free to leave the room, e.g., "You're not going anywhere until we get this clarified!"

Do not conduct excessively long interrogations. In most instances, if the suspect is still adamantly maintaining his innocence and has not made any incriminating statements or admissions after three to four hours of interrogation the interrogation should be re-assessed and most likely terminated.

Exercise extreme caution when interrogating juveniles, suspects with a lower intelligence or suspects with mental impairments. This class of suspects is more susceptible to false confessions and, therefore, the investigator should be cautious in utilizing active persuasion such as discouraging weak denials, overcoming objections or engaging in deceptive practices. Proper corroboration of a confession will be critical with this group of suspects.

When using interrogation tactics involving deception the investigator should not manufacture evidence against the suspect. Courts make a distinction between false verbal assertions, e.g., "We found your fingerprints in her bedroom." which are permissible and manufacturing evidence, which is not permissible. An example of manufacturing evidence is taking the suspect's fingerprints and transferring the prints to an evidence card, which indicates that the prints were found in the victim's bedroom.

When a suspect claims to have little or no memory for the time period when the crime was committed the investigator should not lie to the suspect concerning incriminating evidence. While it is not uncommon for guilty suspects to feign memory loss, an overriding concern is an innocent suspect who experiences true memory loss for the time period when the crime was committed. Under this circumstance, if the investigator lies to the suspect about incriminating evidence and the suspect confesses, it may be argued that presenting false evidence caused an innocent suspect to believe that he had committed the crime.

Do not reveal to the suspect all information known about the crime. A legally admissible confession should include corroboration. One form of corroboration is information only the guilty suspect would know, e.g., the method of entry in a burglary, a memorable statement made to the victim, the denomination of money stolen, the murder weapon that was used, etc. When interviewing a suspect or offering information to the news media, the investigator should carefully guard this protected information so that the only individuals who would know it would be the investigator and the person who committed the crime.

Attempt to elicit information from the suspect about the crime that was unknown to the investigator. The best form of corroboration is information not known to the investigator about a crime that is independently verified as true. Examples of independent corroboration include the location of a knife used to kill the victim, where stolen property was fenced or the present location of a car the suspect stole.

The confession is not the end of the investigation. Following the confession the investigator should investigate the confession details in an effort to establish the authenticity of the subject's statement, as well as attempt to establish the suspect's activities before and after the commission of the crime.

Appendix C – Research Supporting the Reid Technique

(In May 2015 we published on our website a document entitled, "International Research Validates the Core Elements of the Reid Technique," which is reproduced here. You can access the studies referenced in this document on our website at http://www.reid.com/pdfs/20150511.pdf)

International Research Validates the Core Elements of the Reid Technique

Over the years numerous international research studies have been conducted on the Reid Technique – here are a few that include research from Japan, Korea, Spain, Canada and the US. All of the studies establish the validity of various core elements of the Reid Technique.

High Value Detainee Group research validates the core principles of The Reid Technique

From the Scientific American (Vol. 26, Issue 23; 2014) an article entitled, "How to Extract a Confession...Ethically" confirms the basic tenant of the Reid Technique - always treat the subject with understanding and empathy.

In 2009 President Barack Obama convened the High Value Detainee Interrogation Group (HIG), made up of cognitive and social psychologists and other experts. This winter the HIG released its findings in a special issue of Applied Cognitive Psychology.

The research concluded the following:

- Coming across as empathetic causes interrogation targets to open up more

Since 1947 the core principle of the Reid Technique has always been to treat the suspect with empathy and understanding. In our book, Criminal Interrogation and Confessions (5th edition, 2013) in Chapter 6, Qualifications, Attitude, and General Conduct of the Investigator, we state the following:

Treat the suspect with decency and respect, regardless of the nature of the offense. No matter how revolting or horrible a crime may be (such as a sexually motivated, brutal killing of a small child), the suspect should not be treated or referred to as a despicable, inhumane individual. A sympathetic, understanding attitude and interrogation approach is far more effective. In one of many cases that could be used to illustrate this point, a sex offender, after his confession, said, "I would have told the officers about this earlier if they had only treated me with some decency and respect."

Many of the findings of the HIG research confirms the Reid Technique, including their conclusion that the investigator should "tell your target a story about what he or she did, leading the person to believe you already know what happened." This is exactly what we do in the development of our interrogation theme. In Chapter 13, The Reid Nine Steps of

Interrogation, we state that the theme development should focus on describing the suspect's behavior in light of reasons and motives that will psychologically justify or excuse his behavior - reinforcing "the guilty suspect's own rationalizations and justifications for committing the crime."

Japanese research confirms Reid approach

In the Reid Technique of Interviewing and Interrogation we have always espoused a nonjudgmental, neutral and objective demeanor by the investigator during the interview and an empathetic, understanding approach during the interrogation - building rapport with the suspect and letting the suspect now that anyone in similar circumstances might have done the same thing.

Recent research in Japan (2014) confirms that building relationships with the suspect "gets the best results" and minimizes the chances of a false confession.

Research indicates a 97.8% accuracy rate at detecting deception

A recent study published in Human Communication Research (2014) by researchers at Korea University, Michigan State University, and Texas State University -- San Marcos found that using active questioning of individuals yielded near-perfect results, 97.8%, in detecting deception.

An expert using the Reid Technique interrogated participants in the first study, this expert was 100% accurate (33 of 33) in determining who had cheated and who had not. That kind of accuracy has 100 million to one odds. The second group of participants were then interviewed by five US federal agents with substantial polygraph and interrogation expertise. Using a more flexible and free approach (interviews lasted from three minutes to 17 minutes), these experts were able to accurately detect whether or not a participant cheated in 87 of 89 interviews (97.8%). In the third study, non-experts were shown taped interrogations of the experts from the previous two experiments. These non-experts were able to determine deception at a greater-than-chance rate -- 79.1% (experiment 1), and 93.6% (experiment 2).

Previous studies with "experts" usually used passive deception detection where they watched videotapes. In the few studies where experts were allowed to question potential liars, either they had to follow questions scripted by researchers (this study had no scripts) or confession seeking was precluded. Previous studies found that accuracy was near chance -- just above 50%.

"This research suggests that effective questioning is critical to deception detection," Levine said. "Asking bad questions can actually make people worse than chance at lie detection, and you can make honest people appear guilty. But, fairly minor changes in the questions can really improve accuracy, even in brief interviews. This has huge implications for intelligence and law enforcement.

Spain study demonstrates 97.9% accuracy for behavior provoking questions

In a study out of Spain (2010), researchers demonstrated the value of using behavior provoking questions during investigative interviews.

Participants were 85 students from the University of Spain. Thirty-five were assigned a naive group, and received no instruction on interpreting behavior-provoking questions. Forty-eight were assigned an informed group and received instruction on response models to the BAI questions. When reading the verbal response to 15 behavior-provoking questions from a verified innocent and guilty suspect in the same case, all but one (97.9%) of the informed group correctly identified the innocent suspect. While the naive group identified the innocent person above chance levels, there was a statistically significant difference in accuracy rates between the naive and informed group. This study clearly points out the value in using behavior provoking questions and being trained in the proper evaluation of the responses.

Research confirms detection of deception substantially better than chance if viewed in context

In their research article, "Content in Context Improves Deception Detection Accuracy" (2010) the authors (J. Pete Blair, Timothy R. Levine and Allison S. Shaw) report on 10 studies that they conducted regarding the investigator's ability to detect deception when the interview is placed in context. They conclude that " Nonverbal leakage in the studies presented here is constant across conditions because only contextual information was varied (except in Study 6). The results of the tests presented here are overwhelming. When judges were asked to make deception judgments with some meaningful contextual information, they performed significantly better than chance and significantly better than 40 + years of research suggests they would. Clearly, knowledge of the environment in which deception occurs facilitates accurate deception judgments beyond what is possible based on observations of nonverbal leakage. Given the large amount of variation explained by the differences in environments (context), deception theories will be enhanced by explicitly recognizing the impact of context."

In the Reid Technique we teach that there are four rules to be followed in the evaluation of a subject's behavior symptoms:

1. Establish the subject's normal behavioral pattern and then look for changes from that norm or baseline
2. Read all nonverbal behavior for timing and consistency
3. Read behavioral cluster -the overall behavioral pattern -not single, isolated observations
4. Always evaluate behavior symptoms in conjunction with the case evidence and facts.

Clearly the high accuracy rates we achieve is based on the fact that a subject's behavior

should never be evaluated as a single determining factor, but always in context - always in conjunction with the case facts and evidence.

Research confirms Reid Behavior Analysis Interview (BAI) structure

In our book, Criminal Interrogation and Confessions, we devote Chapter 8, Formulating Interview Questions, to the topic of the importance of asking open-ended questions in the investigative Interview (BAI). The chapter contains such sections as:

- Asking an initial open question
- Phrasing open questions
- Eliciting a full response
- Evaluating the response to an open question
- Clarifying the open account
- Asking direct questions
- Asking follow-up questions

In the training manual that we provide to the students who attend our seminar on The Reid Technique of Interviewing and Interrogation we devote several pages to the Cognitive Interview process (which is designed to help enhance the victim and/or witness' memory of the event) as well as the importance of evaluating a witness or victim's account by beginning with a broad, open ended question, such as:

"Please tell me everything concerning your injuries."

"Please tell me everything that you did after 6:00 p.m. last night."

Research has confirmed the value of these techniques. In a study conducted by Dr. Brent Snook and Kathy Keating of the psychology department at Memorial University of Newfoundland (2010), their results, which will be published later this year in the journal Legal and Criminological Psychology, conclude, in part, that "officers interviewing witnesses are potentially reducing the amount of information retrieved by talking too much, asking too many closed-end questions, and failing to adhere to science-based methods for mining memory." The authors furthermore state that "only about 6% of the interviewers' questions were considered open-ended; that is, encouraging a broad range of response beyond a simple yes or no or other narrowly restricted replies. "We estimate that between 20 and 30% of all questions asked should be open-ended," the researchers state.

Study of False Confession Cases Confirms Reid Position

False confessions are a rare phenomena, but they have occurred. One of the interrogation techniques that the United States Supreme Court has sanctioned is the verbal misrepresentation of evidence to a suspect during an interrogation. It has been the Reid position that misrepresenting evidence, in and of itself, was not going to make a "normal" person falsely confess (obvious care must be exercised with juveniles and mentally

impaired individuals), but that it was always some other element that was the triggering mechanism for the false confession, such as illegal interrogation tactics (physical abuse, threats, promises of leniency, denial of physical needs, denial of rights, etc) and/or excessively long interrogations. A study published in the Criminal Law Bulletin, "A Test of the Unusual False Confession Perspective: Using Cases of Proven False Confessions" confirms this position.

After reviewing numerous false confession cases the author, J.P. Blair, states that "This study failed to find a single false confession of a cognitively normal individual that did not also include the use of coercive tactics by the interrogator." Earlier in the article the author defined coercive tactics as "the use of physical force; denial of food, sleep or the bathroom; explicit threats of punishment; explicit promises of leniency; and extremely lengthy interrogations." In other words, if these illegal tactics are not employed then the likelihood of obtaining a false confession is almost nil.

Court confirms that The Reid Technique consists of proper interrogation procedures

In *US v. Jacques* (March 2014) the US Court of Appeals, First Circuit, upheld the lower court's opinion that a confession obtained by interrogators using elements of the Reid technique was voluntary and admissible. (We reported on the lower court's opinion in the Legal Updates Fall 2011.) In this opinion the US Court of Appeals stated the following:

"Finally, Jacques claims that Mazza and Smythe overbore his will through their use of the "Reid technique," including exaggerating their evidence and minimizing the gravity of his suspected offense, in obtaining a confession. Extreme forms of deception or chicanery by the police may be sufficient to render a confession involuntary.... Nevertheless, "the use of chicanery does not automatically undermine the voluntariness of a confession." Id. This court has consistently recognized that "some degree of deception ... during the questioning of a suspect is permissible."

Specifically, "a confession is not considered coerced merely because the police misrepresented to a suspect the strength of the evidence against him." *Clanton v. Cooper*, 129 F.3d 1147, 1158 (10th Cir.1997); see also *Frazier v. Cupp*, 394 U.S. 731, 739 (1969) (finding that the police's "misrepresent [ations]" of a co-defendant's alleged incriminating statements were, "while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible."); *Holland v. McGinnis*, 963 F.2d 1044, 1051 (7th Cir.1992) (finding "the fact that the officermisrepresented ... the strength of the evidence" to be "one factor to consider among the totality of circumstances in determining voluntariness"); *Green v. Scully*, 850 F.2d 894, 903 (2d Cir.1988) (finding police officer's "assert[ion] that he already had a strong case against petitioner" insufficient to render the ensuing confession involuntary). As the Seventh Circuit has noted, "[o]f the numerous varieties of police trickery, ... a lie that relates to a suspect's connection to the crime is the least likely to render a confession involuntary." *Holland*, 963 F.2d at 1051.

In this case, the agents' statements exaggerating the quality of their evidence, minimizing the gravity of Jacques's offense, and emphasizing the negative media attention that would attend Jacques's trial all fall safely within the realm of the permissible "chicanery" sanctioned by this and other courts. Jacques points to no federal authority supporting a finding of an involuntary confession under similar circumstances.... Considered in the full circumstances of this case, Mazza and Smythe's interrogative tactics did not amount to coercion in violation of Jacques's Fifth Amendment rights."

Detection of Deception: Research vs. Reality

Over the years researchers in the academic community have conducted a number of research studies on an investigator's ability to detect deception; more specifically these studies have attempted to determine if the nonverbal and verbal behavior symptoms that are used by practitioners to help them assess the credibility of suspects are, in fact, reliable indicators of truth or deception.

In the overwhelming majority of these studies the results have been rather dismal, essentially suggesting that nonverbal behaviors (and to a lesser extent verbal cues) offer little value in assessing a suspect's credibility. (Bond and De Paulo," Accuracy of deception judgments", *Personality and Social Psychology Review*, 2006.)

In light of these results, why would field practitioners place any reliance on the behavior displayed by a suspect during an investigative interview for indications of truth or deception? One reason is that the vast majority of research studies do not mirror the context and structure of real life interviews that are conducted in the field, and, as a result, have very little relevancy to the real world.