

## How the Courts View the Reid Technique

### Topics:

- Core principles of the Reid Technique
- What is the Reid Technique?
- How the Courts View Minimization
- How the Courts View Misrepresenting Evidence to the Suspect
- How the Courts View Being Friendly and Empathetic with the Suspect
- How the Courts View the Alternative Question
- Several Courts have Admonished Investigators for Not Following Reid Guidelines
- Federal Court - No Basis for the Claim that the Reid Technique is coercive
- False Confession Expert Testimony About the “Coercive” Nature of the Reid Technique is Rejected
- Reid as the Gold Standard

### Core Principles

- Always conduct interviews and interrogations in accordance with the guidelines established by the courts
- Do not make any promises of leniency
- Do not threaten the subject with any physical harm or inevitable consequences
- Do not deny the subject any of their rights
- Do not deny the subject the opportunity to satisfy their physical needs
- Always treat the subject with dignity and respect
- Do not conduct excessively long interrogations
- Exercise caution when interrogating juveniles, suspects with a lower intelligence or suspects with mental impairments

### What is the Reid Technique?

- The Reid Technique consists of a three-phase process beginning with *Fact Analysis*
  - Fact Analysis involves reviewing the case evidence and facts to determine possible subjects to be interviewed;
  - The possible motive for the commission of the crime;
  - Whether or not the perpetrator needed any special knowledge or access;
  - The possible presence of any evidence implicating an individual person, etc.
- Fact Analysis is followed by conducting interviews of the victim, witnesses and possible suspects

- The investigative interview structure in the Reid Technique is called the *Behavior Analysis Interview*
  - The Behavior Analysis Interview is a non-accusatory interview in which the investigator maintains a neutral and objective fact finder role
  - The purpose of the interview is to develop behavioral and investigative information
  - This process is essentially what is called the PEACE model in Great Britain
- If the case evidence, facts and information developed during the investigation and the interview indicate that the subject committed the crime or is withholding relevant information, then interrogation becomes appropriate: *The Reid Nine Steps of Interrogation*
  - In the Reid Technique the core element of the interrogation process is called theme development in which the investigator offers the subject reasons and excuses that serve to psychologically justify the subject's behavior
  - These reasons and face-saving excuses for the subject's crime include projecting blame away from the subject onto such elements as financial pressure, the victim's behavior, an accomplice, emotions, or alcohol.
  - False confession experts oftentimes refer to this process as **minimization**
  - And suggest that minimization is tantamount to a promise of leniency

#### How The Courts View Minimization

- There are two types of acceptable minimization that can occur during theme development:
  - minimizing the moral seriousness of the behavior
  - minimizing the psychological consequences of the behavior
  - We teach **never** to minimize the legal consequences of the suspect's behavior
- In the White Paper written for the American Psychology-Law Society entitled, "Police-induced confessions: Risk factors and recommendations" (Law and Human Behavior 2010) the authors - Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard Leo and Allison Redlich - agree with us
  - Stating that future recommendations for interrogation procedures should "permit moral and psychological forms of minimization, but ban legal minimization."

- *Hayes v. Plumley* – death of an 18 month old child
- “The detectives presented the subject’s predicament in terms of two options: he could either continue to feign ignorance and, from his silence, be treated as a remorseless killer, or otherwise confess to an accident resulting from a brief fit of rage or lapse in judgment and receive mercy.”
- Confession admissible
  
- *State v. Fouts* – sexual abuse of a minor
- “The other possible statements in the record that arguably minimized Fouts's offense were the officer's statement that she believed he “made a mistake” and “mistakes can be fixed”, and her characterization of what might have happened the night before as “iffy.” However, we find nothing about those vague and indefinite statements that would render his confession involuntary.”
  
- *Williams v. State* – homicide
- Police officer's implication that defendant might see the outside again if he confessed to a robbery gone bad instead of a premeditated murder was not an inducement rendering his confession involuntary
  
- *Fundaro v. Curtin* – homicide
- The officers merely informed defendant that if what he did was self-defense then it was in his best interests to say so. While Petitioner testified that he understood the officers to be saying that he did nothing wrong, their testimony shows that they made no such representation.
- Confession admissible
  
- *US v. Hunter* – death of a 9 year old child
- While Agent David's repeated assurances that she understood how Hunter must have felt and that she (Agent David) believed the incident was an accident were no doubt persuasive and inducing, nothing in those statements constitutes a quid pro quo promise to Hunter in exchange for a confession.
- Confession admissible
  
- The courts consistently reject the claim from defendants that the investigator’s suggestion that the crime was an accident is a coercive tactic:
  - *Smith v. State*
  - *State v. Turner*
  - *Walker v. Davis*
  - *US v. Hunter*
  - *State v. Fundaro*
  - *Commonwealth v. Johnson*
  - *People v. Carrillo-Garcia*
  - *People v. Batiste*
  - *People v. Carrington*
  - *People v. Wroten*
  - *Bramley v. State*
  - *People v. Holloway*

- *People v. Flores* – homicide
- "This is your opportunity to tell the truth ... 'cause if you were with somebody and they did something stupid that you didn't know about, that's on them. Let them deal with that but don't make this about you by lying about it because you're only, not only trying to help yourself, you're trying to help the other person..."
- Confession admissible
  
- *Thlang v. Jacquez* – homicide
- The Court rejected the defendant's claim that his statements after the detective urged him to be a witness rather than a suspect were involuntary and inadmissible because this was an implied promise of benefit or leniency which induced him to admit he was present at the shooting
  
- *R v. Oickle* Canada Supreme Court
- "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."
  
- *State v. Belonga*
- "[Investigator] testified that he used an interrogation technique that involves "minimizing the actions [of defendants to suggest] that they are less culpable for their actions, whether it be due to a chemical dependence or being under the influence of alcohol or drugs or being [under] the stress of a single parent." Given that police are permitted to mislead a suspect, they are likewise permitted to use minimization techniques."
  
- *People v. Harrington*
- "suggestions that the ... homicide might have been an accident, a self-defensive reaction, or the product of fear, were not coercive; they merely suggested possible explanations of the events and offered defendant an opportunity to provide the details of the crime. This tactic is permissible."
  
- *State v. Fundaro*
- rationalizing a defendant's actions (self-defense/accident) in such a way that he "might hope that he would not be charged with murder" did not render the confession inadmissible

## How the Courts View Misrepresenting Evidence to the Suspect

- False confession experts oftentimes testify that misrepresenting evidence to a suspect is coercive
- Generally speaking the courts do not find misrepresenting evidence to be a coercive tactic
- *Frazier v. Cupp* United States Supreme Court
- Upheld a defendant's confession that was the result of the police falsely telling the subject that his accomplice had confessed, implicating him in the commission of the crime. In their opinion, the Supreme Court stated that "the totality of circumstances" must be considered in determining the voluntariness of a confession
- *Valle v. Butler*
- Court found confession was voluntarily given even though the police lied to the suspect about the victim being a federal informant; that his friends named him as the shooter; and that they had a recording of him bragging about the shooting
- Lying about DNA evidence is not coercive
- *Demarest v. Secty, Dept of Corrections*
- *Melendez v. Koehn*
- *Jefferson v. State*
- *State v. Smith*
- *Mata v. Martel*
- However, creating false documents purporting to be the official results of a state-police lab's DNA examination was coercive
- *Gray v. Commonwealth*
- Intrinsic falsehoods do not create a coerced confession
- *Marquez v. State*
- This court has distinguished between intrinsic falsehoods and extrinsic falsehoods.... Intrinsic falsehoods imply the existence of implicating evidence and are more likely to secure a truthful confession from a defendant....
- Extrinsic falsehoods involve issues that are collateral to the crime and are more likely to overbear a defendant's will and secure a false confession or "a confession regardless of guilt." (concluding that a confession was coerced when police threatened a defendant that "state financial aid for her infant children would be cut off, and her children taken from her, if she did not 'cooperate' ")
- *State v. Bates*
- Falsely telling a suspect that a witness placed him inside of the victim's car was not coercive
- *People v. Boner*
- Falsely telling a suspect that a gunshot residue test and statements from witnesses identified him as the shooter were not coercive
- *US v. Hunter*
- ..... courts have held that "trickery or deceit is only prohibited to the extent it deprives the

suspect of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them." Thus, "[t]he kinds of deception that are generally deemed to trigger suppression are lies about a defendant's legal rights ( i.e ., 'you must answer our questions'), false promises ( i.e., 'whatever you say will be just between us'), or threats ( i.e., 'if you don't talk, you won't see your family for a very long time') ."

- Additionally, the law in the Eleventh Circuit "is clear, that the police's use of a trick alone will not render a confession involuntary," unless there are "other aggravating circumstances" beyond the mere use of deceptive tactics...
- Along these same lines:
- *US v. Graham* 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 "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."
- *People v. Riley*
- Not coercive to lie about having an incriminating surveillance video
- *US v. Freeman*
- Not coercive to lie about having a witness and finding the suspect's fingerprints at the scene of the crime
- *People v. Smith* California Supreme Court
- It was not coercive for the police to administer a "Neutron Proton Negligence Intelligence Test" that purportedly showed the defendant had recently fired a gun
- *People v. Mays*
- The court found that " a mock polygraph test administered to defendant after he requested a lie detector test during detective's questioning, and fake test results, did not render involuntary defendant's incriminating statement, after he received the fake test results."
- *People v. Chutan:*
- "Police trickery that occurs in the process of a criminal interrogation does not, by itself, render a confession involuntary and violate the state or federal due process clause. Why? Because subterfuge is not necessarily coercive in nature. And unless the police engage in conduct which coerces a suspect into confessing, no finding of involuntariness can be made."
- So long as a police officer's misrepresentations or omissions are not of a kind likely to produce a false confession, confessions prompted by deception are admissible in evidence.... Police officers are thus at liberty to utilize deceptive stratagems to trick a guilty person into confessing. The cases from California and federal courts validating such tactics are legion.

## How the Courts View Being Friendly and Empathetic with the Suspect

- In the Reid Technique we teach that the investigator should be understanding and empathetic with the subject
- Some critic's have suggested that this is misleading and coercive – the courts disagree
- *People v. Powell*
- There was no improper coercion here. It is no exaggeration to say that Sergeant Alexander came across more like a mentor than a police officer during the interview. He spoke about family, character, overcoming problems, accepting responsibility for wrongdoing, and becoming a better man.
- "But, at no point during the interview did either officer expressly or impliedly promise Powell that he might not be charged with, prosecuted for, or convicted of the murder if he cooperated.
- *US v. Sanchez*
- Obviously, interrogation of a suspect will involve some pressure because its purpose is to elicit a confession. In order to obtain the desired result, interrogators use a laundry list of tactics such as a raised voice, deception, or a sympathetic attitude on the part of the interrogator will not render a confession involuntary unless the overall impact of the interrogation caused the defendant's will to be overborne... "[T]here is nothing inherently wrong with efforts to create a favorable climate for confession."
- *State v. Parker*
- Excessive friendliness on the part of an interrogator can be deceptive. In some instances, in combination with other tactics, it might create an atmosphere in which a suspect forgets that his questioner is in an adversarial role, and thereby prompt admissions that the suspect would ordinarily only make to a friend, not to the police." Nevertheless, the 'good guy' approach is recognized as a permissible interrogation tactic.
- Also see *Beckwith v. US* and *Frazier v. Cupp* on this same point
- *Sanchez v. McDonald*
- "The Court is unaware of any Supreme Court authority where an officer building rapport with a suspect in a friendly manner would cause a resulting confession to be considered involuntary."
- *R v. Oickle* Canada Supreme Court
- In essence, the court [of appeals] criticizes the police for questioning the respondent in such a gentle, reassuring manner that they gained his trust. This does not render a confession inadmissible... To hold otherwise would send the perverse message to police that they should engage in adversarial, aggressive questioning to ensure they never gain the suspect's trust, lest an ensuing confession be excluded.

## How the Courts View the Use of the Alternative Question

- When a suspect appears ready to tell the truth during an interrogation, we teach to use an alternative question to develop the first acknowledgment of guilt
- An example of an alternative question would be, “Was this your idea or did your buddies talk you into it?”
- Some false confession experts view this type of question as minimizing the suspect's perception of the consequences of an admission if he chooses the “good” reason, thereby creating a promise of leniency – they refer to this as pragmatic implication
- The courts reject this view
  
- *People v. Wroten*
- Dr. Richard Leo testified that the interrogators suggested to the defendant "that the offense was accidental, thereby minimizing the suspect's perception of the consequences of an admission and implying that an accidental killing might result in leniency. This technique can increase the risk of a false confession." The court rejected this position and the jury convicted the defendant of first degree murder.
  
- “While the detective stated that knowing whether the murder was intentional or accidental might make a difference in "how we proceed," he did not say it would benefit appellant or that it would make a difference as to whether they would proceed.... There were no promises of leniency made to appellant
  
- *People v. Benson*
- "Here, Detective Rodriguez did tell defendant there was "a big difference between ... someone getting hurt and trying to shoot someone." However, the detectives made no promises or representations that defendant's cooperation would garner more lenient treatment or lesser charges. "No specific benefit in terms of lesser charges was promised or even discussed, and [the detective's] general assertion that the circumstances of a killing could 'make[ ] a lot of difference' to the punishment, while perhaps optimistic, was not materially deceptive."
  
- *R. v. Oickle*
- “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.”
  
- *Harris v. State*
- Harris claims that his admissions were obtained through police trickery, and the detectives "delude[d]" him by minimizing the dangers of admitting to the assault and robbery... They did not offer a quid pro quo bargain for a confession. Nor did the detectives indicate that murder resulting from a robbery is any less serious than intentional murder. They only inquired as to whether the boy had planned a robbery, as opposed to having grabbed the victim off the bike to intentionally beat him to death." Confession admissible.



- *Smith v. State*
- Appellant contends the trial court erred in admitting the videotaped confession into evidence because he contends it was induced by the slightest hope of benefit “as the hope of lighter punishment was clearly implied by the [detective's] excusable accident theory,”... We disagree.
- “A hope of benefit generally arises from ‘promises related to reduced criminal punishment—a shorter sentence, lesser charges, or no charges at all.’ ... At no point did detectives tell appellant that he would not be charged with murder, that he would be charged with a crime less than murder, or that he would receive lesser punishment if he confessed.

### Courts Admonish Investigators When They Do Not Follow Reid Guidelines

- *People v. Elias*
- In this case 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:
  - A non-accusatory interview was not conducted before initiating an interrogation
  - The investigator misrepresented the case evidence when questioning a 13 year old
  - There was no corroboration of the incriminating statement
  - There was contamination - disclosing details of the crime
  - The court quoted extensively from our book *Criminal Interrogations and Confessions*
- *US v. Preston*
- In reviewing the confession of “an intellectually disabled eighteen-year-old,” the court pointed out that the investigators did not follow our guidelines regarding the questioning of such an individual.
- “The officers, however, sometimes disregarded the manual's cautions about the tactics they used.”
- The court found the confession inadmissible and quoted extensively from *Criminal Interrogations and Confessions*

### NJ Court uses Reid book as Reference for Proper Interrogation Length

- *State v. Knight*
- New Jersey Appellate Court found that the trial court erred in admitting the defendant's confession. In their opinion the Appellate Court said that, “The length of the interrogation alone exceeded the bounds of due process. Gregory acknowledged that he questioned defendant for 'hours' before and after the written waiver was signed.
- While there is no hard-and-fast rule delineating when the length of an interrogation becomes coercive, '[w]hen fatigue, withdrawal, hunger, thirst, or a craving for other biological needs serve as the primary incentive for a confession, duress may be claimed.' Fred E. Inbau, et al, *Criminal Interrogation & Confessions*

### False Confession Expert Testimony that the Reid Technique is Coercive Has No Basis in Fact

- *U.S. v. Jacques*
- “In his declaration and at the hearing, Professor Hirsch [false confession expert] 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.”
- Confession admissible

### False Confession Expert Testimony About the “Coercive” Nature of the Reid Technique is Rejected

- *Shelby v. State*
- The Court of Appeals of Indiana rejected the defendant’s claim that his confession was involuntary, in part, because the police used the “Reid technique” to question him. The court stated, “Considering the evidence favorable to the trial court's decision and the reasonable inferences to be drawn therefrom, the trial court did not err in concluding that the totality of the circumstances show that Shelby's statement to the police was given voluntarily.”
- *State of New Jersey in the Interest of A.W.*
- The Supreme Court of New Jersey upheld the admissibility of a confession from a juvenile who was interrogated by investigators using the Reid Technique. In this case the defendant challenged the interrogation techniques that were used by the detective, "asserting that they failed to comport with "the highest standards of due process" as required by this Court
- In their opinion the Supreme Court stated that, "although it is certainly true that juveniles are more susceptible to having their wills overborne by adult authority figures, there is no evidence in this record that the interview techniques deprived A.W. of any of his rights or overbore his will."
- *People v Gallo*
- The court rejected the effort to suppress the confession, stating that the interrogator "used a technique [Reid Technique] he learned in his police training, and his use of it followed what the courts have deemed to be permissible."

- *US v. Senior Airman John S. Freeman, US Air Force*
- The U.S. Air Force Court of Criminal Appeals affirmed the conviction of Freeman for "one specification of false official statement and one specification of assault with a means or force likely to cause death or grievous bodily harm."
- In reviewing the investigator's interrogation techniques (which he had identified as The Reid Technique) which elicited an incriminating statement from Freeman, the Court found that "We find no basis to conclude that the AFOSI overbore the appellant's will in eliciting the incriminating statement."
- *State v. Myers*
- The Supreme Court of South Carolina upheld the admissibility of a confession by investigators utilizing The Reid Technique

### Reid as the Gold Standard

- In July 2014, at the National Association of Criminal Defense Attorneys conference there was a presentation entitled, "Theories and Advocacy Strategies in False Confession Cases."
- The presenters were Steve Drizin, Center on Wrongful Convictions, Chicago, IL; Laura Nirider, Center on Wrongful Convictions of Youth, Chicago, IL.
- In their presentation they stated that Reid is the gold standard on proper procedures, and that they regularly review reid.com and our materials to establish best practices and to point out what other investigators did that was improper. They specifically reference our cautions re the questioning of juveniles.
- For additional information on these and many other issues, visit [www.reid.com](http://www.reid.com)
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