Additional Details from *Dassey v. Dittmann* (December 2017) the U.S. Court of Appeals, Seventh Circuit

In their written opinion the dissenting judges made several references (in blue)to the Reid Technique:

"Many of the officers' tactics appear to be drawn from the "Reid Technique," which was for some time been the most widely used interrogation protocol in the country. The technique heavily relies on evidence ploys and other forms of deceit."

[In 1969 the US Supreme Court in *Frazier v. Cupp* found that verbally misrepresenting evidence to the suspect "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…."

In our book, Criminal Interrogation and Confessions (2013) and training programs we teach the following about misrepresenting evidence:

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.

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.

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." … 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",* (emphasis added) 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."

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.]

"Courts have long expressed concern about approaches such as the Reid Technique that rely on psychological coercion. Just four years after the first edition of the manual was published, (1962) the Supreme Court in *Miranda v. Arizona* "repeatedly sighted and implicitly criticized" the Reid approach."

"For many years, the Reid technique has been criticized by scholars and experts for increasing the rate of false confessions. As far back as *Miranda*, the Supreme Court warned that "[e]ven without employing brutality, the 'third degree' " used in the Reid technique "exacts a heavy toll on individual liberty and trades on the weakness of individuals," and 'may even give rise to a false confession.'"

[The *Miranda* court **did not say** that the Reid technique "exacts a heavy toll on individual liberty and trades on the weakness of individuals." Their comment was made in reference to custody. The US Supreme Court specifically stated, "…the very fact of custodial interrogation exacts a heavy toll on individual liberty, and trades on the weakness of individuals."

The Supreme Court's references to the Reid approach in the *Miranda* opinion were informational with respect to the current state of law enforcement interrogation practices at that time. In the *Miranda* decision the US Supreme Court referenced the book, Criminal Interrogation and Confessions by Fred Inbau and John Reid (1962) and the predecessor book Lie Detection and Criminal Interrogation (1953) a combined total of eleven times.

Here is the exact text from the *Miranda* decision and the corresponding footnotes which reference the Inbau/Reid books:

1st Miranda text reference:

These texts are used by law enforcement agencies themselves as guides. [Footnote 9] It should be noted that these texts professedly present the most enlightened and effective means presently used to obtain statements through custodial interrogation. By considering these texts and other data, it is possible to describe procedures observed and noted around the country.

Footnote 9:

The methods described in Inbau & Reid, Criminal Interrogation and Confessions (1962), are a revision and enlargement of material presented in three prior editions of a predecessor text, Lie Detection and Criminal Interrogation (3d ed.1953). The authors and their associates are officers of the Chicago Police Scientific Crime Detection Laboratory, and have had extensive experience in writing, lecturing and speaking to law enforcement authorities over a 20-year period. They say that the techniques portrayed in their manuals reflect their experiences, and are the most effective psychological stratagems to employ during interrogations. Similarly, the techniques described in O'Hara, Fundamentals of Criminal Investigation (1956), were gleaned from long service as observer, lecturer in police science, and work as a federal criminal investigator. All these texts have had rather extensive use among law enforcement agencies and among students of police science, with total sales and circulation of over 44,000.

2nd Miranda text reference:

The officers are told by the manuals that the "principal psychological factor contributing to a successful interrogation is *privacy* -- being alone with the person under interrogation. [Footnote 10]"

Footnote 10: Inbau & Reid, Criminal Interrogation and Confessions (1962), at 1.

3rd and 4th Miranda text references:

The officers are instructed to minimize the moral seriousness of the offense, [Footnote 12] to cast blame on the victim or on society. [Footnote 13] These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already -- that he is guilty. Explanations to the contrary are dismissed and discouraged.

The texts thus stress that the major qualities an interrogator should possess are patience and perseverance.

Footnote 12:

Inbau & Reid, *supra*, at 34-43, 87. For example, in *Leyra v. Denno*, 347 U. S. 556 (1954), the interrogator-psychiatrist told the accused, "We do sometimes things that are not right, but in a fit of temper or anger we sometimes do things we aren't really responsible for," *id.* at 562, and again, "We know that morally, you were just in anger. Morally, you are not to be condemned," *id.* at 582.

Footnote 13: Inbau Reid, *supra*, at 43-55.

5th Miranda text reference:

The manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt. Where there is a suspected revenge killing, for example, the interrogator may say:

"Joe, you probably didn't go out looking for this fellow with the purpose of shooting him. My guess is, however, that you expected something from him, and that's why you carried a gun -- for your own protection. You knew him for what he was, no good. Then when you met him, he probably started using foul, abusive language and he gave some indication that he was about to pull a gun on you, and that's when you had to act to save your own life. That's about it, isn't it, Joe? [Footnote 15]"

Footnote: 15 Inbau & Reid, *supra*, at 40.

6th Miranda text reference:

Having then obtained the admission of shooting, the interrogator is advised to refer to circumstantial evidence which negates the self-defense explanation. This should enable him to secure the entire story. One text notes that,

"Even if he fails to do so, the inconsistency between the subject's original denial of the shooting and his present admission of at least doing the shooting will serve to deprive him of a self-defense 'out' at the time of trial. [Footnote 16]"

Footnote 16: *Ibid.*

7th Miranda text reference:

When the techniques described above prove unavailing, the texts recommend they be alternated with a show of some hostility. One ploy often used has been termed the "friendly-unfriendly," or the "Mutt and Jeff" act:

". . . In this technique, two agents are employed. Mutt, the relentless investigator, who knows the subject is guilty and is not going to waste any time. He's sent a dozen men away for this crime, and he's going to send the subject away for the full term. Jeff, on the other hand, is obviously a kindhearted man. He has a family himself. He has a brother who was involved in a little scrape like this. He disapproves of Mutt and his tactics, and will arrange to get him off the case if the subject will cooperate. He can't hold Mutt off for very long. The subject would be wise to make a quick decision. The technique is applied by having both investigators present while Mutt acts out his role. Jeff may stand by quietly and demur at some of Mutt's tactics. When Jeff makes his plea for cooperation, Mutt is not present in the room. [Footnote 17] "

Footnote 17:

O'Hara, *supra*, at 104, Inbau & Reid, *supra*, at 58-59. *See Spano v. New York*, 360 U. S. 315 (1959). A variant on the technique of creating hostility is one of engendering fear.

This is perhaps best described by the prosecuting attorney in *Malinski v. New York*, 324 U. S. 401, 407 (1945):

> "Why this talk about being undressed? Of course, they had a right to undress him to look for bullet scars, and keep the clothes off him. That was quite proper police procedure. That is some more psychology -- let him sit around with a blanket on him, humiliate him there for a while; let him sit in the corner, let him think he is going to get a shellacking."

8th Miranda text reference:

The manuals also contain instructions for police on how to handle the individual who refuses to discuss the matter entirely, or who asks for an attorney or relatives. The examiner is to concede him the right to remain silent.

"This usually has a very undermining effect. First of all, he is disappointed in his expectation of an unfavorable reaction on the part of the interrogator. Secondly, a concession of this right to remain silent impresses the subject with the apparent fairness of his interrogator. [Footnote 20]"

Footnote 20: Inbau & Reid, *supra*, at 111.

9th Miranda text reference:

After this psychological conditioning, however, the officer is told to point out the incriminating significance of the suspect's refusal to talk:

"Joe, you have a right to remain silent. That's your privilege, and I'm the last person in the world who'll try to take it away from you. If that's the way you want to leave this, O. K. But let me ask you this. Suppose you were in my shoes, and I were in yours, and you called me in to ask me about this, and I told you, 'I don't want to answer any of your questions.' You'd think I had something to hide, and you'd probably be right in thinking that. That's exactly what I'll have to think about you, and so will everybody else. So let's sit here and talk this whole thing over. [Footnote 21]"

Footnote 21: *Ibid.*

10th Miranda text reference:

Few will persist in their initial refusal to talk, it is said, if this monologue is employed correctly.

In the event that the subject wishes to speak to a relative or an attorney, the following advice is tendered:

"[T]he interrogator should respond by suggesting that the subject first tell the truth to the interrogator himself, rather than get anyone else involved in the matter. If the request is for an attorney, the interrogator may suggest that the subject save himself or his family the expense of any such professional service, particularly if he is innocent of the offense under investigation. The interrogator may also add, 'Joe, I'm only looking for the truth, and if you're telling the truth, that's it. You can handle this by yourself.' [Footnote 22] "

Footnote 22: Inbau & Reid, *supra*, at 112.

11th Miranda text reference:

From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: to be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must "patiently maneuver himself or his quarry into a position from which the desired objective may be attained." [Footnote 23]

Footnote 23: Inbau & Reid, Lie Detection and Criminal Interrogation 185 (3d ed.1953).

There is no coercion involved in the Reid Technique. We consistently teach that the investigator should follow these 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 the opportunity to satisfy their physical needs
- Always treat the subject with dignity and respect
- Do not deny the subject any of their rights

Click here for the U.S. Court of Appeals, Seventh Circuit complete decision in *Dassey v. Dattmann*

Dassey decision – negative comments about Reid in the dissent

p.43 "Many of the officers' tactics appear to be drawn form the "Reid Technique," which has for some time been the most widely used interrogation protocol in the country. The technique heavily relies on evidence ploys and other forms of deceit (FN's Kassin). It follows an nine-step approach (steps briefly described)

p. 44 Investigators are encouraged to start by accusing the suspect while emphasizing the importance of telling the truth. (ref our 2001 ed) They learn ways to build false empathy with suspects, such as shifting the blame for the offense to another person or expressing understanding for the suspect's actions. Investigators are encouraged to sit physically near the suspect, maintain "soft and warm" eye contact, and speak sincerely. When a suspect makes an admission implying guilt,

p. 45 investigators are directed to make statements of reinforcement. The technique builds on confirmation bias; the instructions assure investigators that while an innocent suspect will stay resolute in her denials, a guilty person will submit to the "theme" the investigator presents (ref Meissner)

Courts have long expressed concern about approaches such as the Reid Technique that rely on psychological coercion. Just four years after the first edition of the manual was published, (10=962) the Supreme Court in *Miranda v. Arizona* "repeatedly sighted and implicitly criticized" the Reid approach. *Miranda* commented that the Court for decades had "recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." – this is not a quote from Miranda but from Blackburn v Alabama

p. 47 referencing Kassin who criticizes "the Reid Technique maximization methods, or scare tactics, such as the false evidence ploy, in addition to its minimization methods, which "imply an offer of leniency" where police lull a suspect into a "false sense of security" by expressing sympathy, blaming an accomplice and underplaying the gravity of the situation… (also there is a reference to Meissner & Russano discussing the "coercive" nature of the Reid interrogation techniques and particular concerns for minors and suspects with low intelligence)

p. 67 "For many years, the Reid technique has been criticized by scholars and experts for increasing the rate of false confessions (FN Kassin) As far back as Miranda, the Supreme Court warned that "even without employing brutality, the 'third degree' used in the Reid technique "exacts a heavy toll on individual liberty and trades on the weakness of individuals,"** and "may even give rise to a false confession." [this statement was not in reference to Reid but was made in FN 24 in reference to a NY case]

** here is the exact quote – "Even without employing brutality, the "third degree" or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty, and trades on the weakness of individuals. [Footnote 24] FN 24 references the NY case