How defense attorneys describe the Reid Technique in the courtroom – and where they go wrong

In *Radilla-Esquivel v. Davis* (December 2017) US District Court, W.D. Texas the defense attorney made a number of erroneous assertions about the Reid Technique. His statements (taken from the US District Court opinion) are in blue below, with the correct information detailed thereafter.

Case background: Petitioner was indicted for six counts of aggravated sexual assault of a child, three counts of indecency with a child by exposure, and three counts of indecency with a child by contact. He pleaded not guilty to each offense and on August 22, 2014, a jury found him guilty of two counts of aggravated sexual assault of a child and six counts of indecency with a child. After the jury found him guilty, the State waived three counts of the indecency with a child by contact. The jury assessed punishment at 50 years' imprisonment for each aggravated sexual assault offense, and 20 years for each indecency with a child by contact offense. The trial court ordered the sentences to run concurrently.

On June 15, 2015, the Third Court of Appeals affirmed Petitioner's conviction in an unpublished opinion…. On January 11, 2017, the Court of Criminal Appeals refused his petition for discretionary review…. The Supreme Court denied Petitioner's petition for writ of certiorari on June 26, 2017…. Petitioner did not file a state application for habeas corpus relief.

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Defense: The Reid technique is designed for one purpose and one purpose only, and that is to elicit a confession regardless of the facts of the case. And you can tell because he right away lies to him about DNA.

Correction:

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

With respect to the reference to the investigator lying to the suspect about DNA 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…." Numerous court decisions have upheld the investigator's capacity to verbally misrepresent evidence during an interrogation.

We teach in out training courses and books that the investigator must exercise extreme caution about misrepresenting evidence to the suspect. From Criminal Interrogations and Confessions (5th edition 2013):

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.

In *US v. Graham* (2014 WL 2922388 (N.D.Ga.)) 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.

Defense: Well, we have the Reid technique in full force now in the second interview. I mean, it is textbook. We know you did it, you know. We already know it happened. We already know it happened. We already know it's you. We don't have any other thing to talk about other than just tell us why you did it, just tell us why you did it. All the evidence says you did it.

Correction:

The suggestion above is that the Reid Technique requires that the investigator be adamant about the suspect's guilt – this is what social psychologists refer to 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. Richard 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."

What defense attorneys and 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, emphasizing in any confession the importance of the suspect offering corroborating details.

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. 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.

Defense: Police can lie, use techniques designed to elicit confessions, that they can rely on a technique that other countries don't allow to be employed.

Correction:

The suggestion that the Reid Technique is prohibited in any country is a false statement. In some countries, for example, Great Britain, it is prohibited for investigators to lie to a subject about evidence in a case. In the United States the Supreme Court has ruled that it is acceptable for investigators to misrepresent evidence to a subject during an interrogation (*Frazier v. Cupp* – referenced above). Great Britain has prohibited investigators from lying to a subject about the evidence in the case – they

have not prohibited the Reid Technique.

Defense: So Detective Torres then employs the Reid technique. I spent a lot of time on the Reid technique. I didn't know much about it before this trial, to be quite honest with you. But let me tell you something about the Reid technique. Make no mistake, it is the modern day rack of our time. It is a way to get somebody to tell you something that they wouldn't otherwise confess, a way to get an innocent person to tell you something that you want to hear. It is no different than strapping somebody on a rack and stretching them until they tell you or confess to something you're accusing them of. The only difference is it's not a physical sort of manipulation or torture, it is a mental one.

Correction:

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

- 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

As the court stated in *U.S. v. Jacques*:

> "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."

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; denting the suspect an opportunity to satisfy their physical needs, etc.

In fact, several courts have admonished investigators because they **did not** follow our suggested guidelines for the interrogation of juveniles or individuals with mental disabilities (*People v. Elias* 2015 WL 3561620 and *US v. Preston* F.3d ----, 2014 WL 1876269 (C.A.9 (Ariz.))

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 (5th ed. 2013) as a reference for proper police practices that should be followed when interrogating a suspect. (" Theories and Advocacy Strategies in False Confession Cases" made by Steve Drizin, Center on

Wrongful Convictions, Chicago, IL; Laura Nirider, Center on Wrongful Convictions of Youth, Chicago, IL.

Undoubtedly there are other misrepresentations of the Reid Technique by defense attorneys, but in all cases the correct information can be found on our website or in our books.