

Dr. Richard Leo Testimony

In *Jimerson v. State* (June 2016) Dr. Richard Leo testified about police interrogation techniques and specifically referenced the Reid Technique. The following is a discussion of several statements that Dr. Leo made during his testimony (as stated in the court's decision) and our response. Dr. Leo's statements are in italics.

According to Dr. Leo, the goal of interviewing is information gathering, and the goal of interrogation is to produce incriminating evidence from a person a police officer believes to be guilty of a crime.

The purpose of an interrogation is to learn the truth. Clearly investigators interrogate individuals that they believe, based on the available investigative information, are involved in committing the crime that is under investigation or at least have not told the whole truth about what they did or know about the incident at hand.

There are a number of possible outcomes of a successful interrogation other than obtaining a confession from the guilty party. Some of these are: (1) The subject is identified as innocent; (2) The subject did not commit the offense under investigation but lied about some aspect of the investigation (motive, alibi, access, etc.); or (3) The subject did not commit the offense under investigation but knows who did.

The overall strategies used in interrogation derived from the Reid method are two-fold: convince the subject that his or her continued resistance is futile and identify a benefit that the subject will gain from confessing.

Telling or suggesting to a suspect that continued resistance is futile is anathema to the Reid Technique. In our book *Criminal Interrogation and Confessions* (5th ed., 2013) we repeatedly point out that the investigator should never threaten the suspect with inevitable consequences. On page 295 we state that the investigator should never tell a suspect "confess to me or suffer this negative consequence." For example, it would be improper to threaten inevitable consequences in a noncustodial interrogation by saying, "Do you want to cooperate with me and confess or do you want me to lock you in jail where you can sit for the next two or three days?" The choice this suspect faces is to either confess or lose his freedom; he is not being offered the choice of rejecting both sides of the question without facing a real negative consequence.

Another example of an *improper* question that threatens an inevitable consequence is, "If you don't tell me about the sexual contact you had with your daughter, your kids will be taken away and you will never see them again." One of the guidelines governing confession admissibility is that the confession must be essentially the product of the suspect's free will. When the impetus for confessing is to avoid a jail cell or to be able to see one's children, the statement is clearly the result of compulsion.

With respect to the issue of offering the suspect any type of legal benefit if he confesses, we, in fact, teach the opposite. On page 296 we state the following: Courts have consistently ruled that a confession obtained in conjunction with a promise of leniency

was improperly obtained. Therefore, the following question is *improper*: “If you’ve done this dozens of times before, that’s one thing. But, if this was just the first time it happened I can explain that to the prosecutor and work out a deal for you.” Not only is it psychologically improper to bring up legal terminology during an interrogation (possible charges, the judge or prosecutor), but the mere mention of legal issues may invite a claim of an actual or perceived promise of leniency.

Dr. Leo described hallmarks of the method and provided some examples. An interrogation would typically take place in an isolated setting, where the officer might better be able to develop rapport with the subject.

We do encourage the investigator to conduct any interview or interrogation in a private setting, free from distractions or interruptions. However, we do not teach to detain non-custodial suspects or to isolate suspects and prevent them from contacting others. This would be blatantly illegal. In a custodial interrogation, the suspect is advised of his Miranda rights and if he invokes those rights the interrogation is immediately terminated.

The officer might confront the subject with real or false evidence, or a combination, to convince the subject that there is so much evidence against him or her, he or she is essentially “trapped.” Dr. Leo described this as an “evidence ploy.” The officer might also “spin a scenario,” such as an accident scenario, which might “imply mercy” would be forthcoming.

In 1969 the United States Supreme Court ruled that an investigator may misrepresent evidence to a suspect during an interrogation (*Frazier v. Cupp*). However, we teach not to lie to a subject about evidence during the investigative interview; do not misrepresent the existence of evidence when dealing with youthful suspects with low social maturity or a suspect with diminished mental capacity; and if such a tactic is to be used during an interrogation it should be a last resort effort. (See *Criminal Interrogations and Confessions*, page 352)

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

Our training is very specific that these excuses (interrogation themes) should minimize the moral seriousness of the suspect's crime by offering psychological excuses for the crime but not remove legal consequences.

“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.” (CI+C 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.” (CI + C 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.” (CI + C page 227)

For additional information on Dr. Leo’s description of the interrogation process (which is essentially how all “false confession experts” describe the process) consider the Investigator Tips that we published on our website:

“Responding to Defense Experts’ Characterization of Interrogation”

http://www.reid.com/educational_info/r_tipsprint.html?serial=127289635250178

“What Exactly is the Reid Technique of Interrogation?”

http://www.reid.com/educational_info/r_tips.html?serial=1309864251267367