

How the Courts View Interview and Interrogation Techniques

On a quarterly basis we publish on our website Legal Updates, providing our clients and readers with the latest in court decisions on a variety of interrogation and confession issues. In this article we will highlight some of those recent decisions regarding:

- Minimization
- Misrepresenting evidence to a subject
- Improper interrogation techniques
- The value of recording interrogations

Minimization

The emphasis of the interrogation process in 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 the interrogation:

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

We never teach to minimize the legal consequences of the subject's behavior – the courts have found that promises of leniency can jeopardize the voluntariness of the confession.

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 all agree with us, stating that future recommendations for interrogation procedures should "permit moral and psychological forms of minimization, but ban legal minimization."

Here are some recent court decisions that uphold the use of minimization re: the moral seriousness and psychological consequences of the subject's behavior:

Commonwealth v. Gallett (2019) Massachusetts Supreme Court

(...the officer's use of minimization and assurances, to the extent they were employed, were not improper.)

Gomez v. California (2019) US District Court, E.D. California

“A technique allowing the defendant to share the blame with the victim is permissible and does not render a confession the product of undue psychological coercion...”

US v. Wilder (2018) US District Court, D. Maryland

(Although Wilder claims that his confession was based on an assumption that he would receive a minor charge, it was only an assumption—the officers’ did not promise him leniency in exchange for his information or make any affirmative misstatements regarding his criminal liability....)

Commonwealth v. Cartwright (2017) Massachusetts Supreme Court

(... 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...)

Misrepresenting the evidence to a subject

In 1969 the United States Supreme Court upheld the use of misrepresenting evidence to the subject. The case was *Frazier v. Cupp*. In that case the Supreme Court upheld the 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.

In the Reid Technique we teach to exercise extreme caution about misrepresenting evidence to the suspect. From our book, *Criminal Interrogations and Confessions* we state the following:

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 while there are some cases in which statements elicited from a defendant in response to police deception were found involuntary, “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.”

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.

As a further illustration of this point, 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, which included 40 false confession cases. However, as pointed out by Dr. Deborah Davis and Dr. Richard Leo (referring to these 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.” *

Here are some recent court decisions that uphold the use of misrepresenting evidence to the subject:

State v. Kolts (2019) Supreme Court of Vermont
(falsely told the subject there was DNA to prove his guilt)

Anderson v. Vannoy, Warden (2019) US District Court, E.D. Louisiana
(falsely told the subject that they had fingerprint evidence and witness statements implicating him)

State v. Apodaca (2018) Court of Appeals of Utah
(“A defendant’s will is not overborne simply because he is led to believe that the government’s knowledge of his guilt is greater than it actually is.”)

State v. Johnson (2018) Court of Appeals of South Carolina
(“Misrepresentations of evidence by police, although a relevant factor, do not render an otherwise voluntary confession inadmissible.”)

Improper Interrogation Techniques

In our legal updates we include cases in which the courts found that the interrogator’s statements or behavior was coercive – here are a few of those cases:

US v. Davis (2018) US District Court, D. Maryland

(the defendant's incriminating statements should have been suppressed because the investigators did not honor his request for a lawyer)

Wilson v. State (2018) District Court of Appeal of Florida, Second District

(the defendant's confession should have been suppressed because he was not advised of his Miranda rights and promises of leniency were made to him during the interrogation)

Sander v. The City of Dickinson, ND (2017) US District Court, D. North Dakota

(Suggesting to plaintiff he likely would get nothing more than a slap on the wrist if he confessed (most likely probation with a requirement of restitution) but a long jail sentence if he did not. Suggesting to plaintiff that, if he came clean, he likely would be allowed to go home for the present, but he was facing immediate incarceration if he did not. Refusing to allow plaintiff to leave the interrogation room on more than one occasion as well as twice denying him the use of a bathroom after he requested he be allowed to do so.)

The Value of Recording the Interrogation

Several years ago we published a book entitled, Electronic Recording of Interrogations, in which we espoused the value of recording interviews and interrogations. On our website we consistently report on the value of recording interrogations for the courts to view in their assessment of the voluntariness of the subject's confession. Here are a few case examples.

Patrick v. State (2018) Supreme Court of Florida

(After reviewing the video of the interrogation, the court stated that, "there was no glaring behavior that would have led a reasonable judge or jury to believe that [Patrick] was under the influence of any drugs or alcohol or manifesting any drug withdrawal symptoms.")

Toudle v. United States (2018) District of Columbia Court of Appeals

(The court rejected the defendant's claims that interrogator statements undermined the advisement of rights, using the video recording of the interrogation as the basis for their assessment.)

Torres V. State (2018) Court of Appeals of Texas, El Paso

(After reviewing the video of the interrogation the court "rejected the defendant's claim that his waiver of Miranda rights was not knowing, intelligent or voluntary.")

State v. Baker (2017) Intermediate Court of Appeals of Hawaii

("Although the defendant only completed the 8th Grade, the DVD demonstrates that he answered police questions readily and responsively, unless he reasonably wanted to think about the question and his answer. He displayed no signs of any inability to understand questions or to respond appropriately to any given question.")

(For additional cases see How the Courts View the Reid Technique

<http://www.reid.com/pdfs/How%20Courts%20View%20the%20Reid%20Technique%20Dec%202016.pdf>)

* 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