

A General Outline of Richard Leo's Testimony/Followed by Reid Responses

The following are examples of the testimony Richard Leo has made in a number of cases and our responses.

(Please note that we have a more extended document describing what Critics (social psychologists, defense attorneys, academicians, etc.) say about the Reid Technique on our website under Investigator Tips - *What False Confession Experts Say About the Reid Technique and Our Responses*, that provides additional information on these and other issues.)

Leo uses four criteria to determine if a confession is false:

1. If you could show that the crime did not occur (an example of a person being charged with the murder of a missing person who later shows up alive)
2. or that it was physically impossible for the confessor to have committed the crime (for example if somebody has a time-stamped videotaped alibi of them in a store or a bank at the time -- at the exact time that you know the crime was committed, that that would be an example of a physical impossibility)
3. or the true perpetrator was identified
4. or there is scientific evidence that establishes the confessor's innocence

Leo "So, just to be clear, the risk factors for false confession, if they are present, create a risk that somebody will make a false confession; and if that person did make a false confession, they provide an explanation for why that person would have falsely confessed."

"The analysis of risk factors is, were they present? And if they were, they create a probabilistic risk or a greater likelihood of a false confession..... They don't determine whether it's a false confession, and therefore one can't look to the risk factors to say this is or is not a false confession."

Risk Factors:

- Physical abuse/coercion
- Threats of physical abuse
- Threats of inevitable consequences
- Promises of leniency
- Juveniles
- Sleep Deprivation
- Exhaustion/Fatigue
- Denial of the chance to use the washroom or to get something to eat or drink
- Psychological coercion
- Denial of rights
- Lengthy interrogation
- Presumption of guilt

- False Evidence Ploy
- Minimization
- Personality Traits - Suggestibility
- Contamination
- Violation of National Training Standards

Food Deprivation

Q. You mentioned food deprivation several times in your report.... How are you defining food deprivation for purposes of your opinions in this case?

A. Well, most people eat three meals a day, so it would be a disruption of a normal eating pattern. You know, usually the meals are, what, five, six, eight hours apart.... So my recollection is that he said he hadn't had anything to eat for the entire day, that he had gone 24 hours or longer without eating. And under any definition of a disruption of one's regular and normal food intake patterns, that would be food deprivation.

Q. To what degree does food deprivation increase the likelihood of a false confession?

A. I can't quantify that.

Q. So if you can't quantify generally how food deprivation increases the likelihood of a false confession, then I assume you can't quantify what the difference would be between a food deprivation that is essentially orchestrated by the interrogators to remove control, as compared with a situation where a person just simply goes without food by their own choice. You can't distinguish what the likelihood would be in either of those scenarios for a false confession; is that fair to say?

A. Again, we can't quantify it. If somebody has not eaten for 24 hours, it would -- the physical manifestations of that deprivation would be the same whether they requested or they didn't request food. What you're asking would just go to how it does or does not contribute to psychological coercion....-- there's no study that I can think of that's just on the relationship between food deprivation and false confession

Reid Response:

We teach not to deny the subject the opportunity to have something to eat or drink, particularly if he/she is there for several hours. If they choose not to eat or drink anything that is their decision.

As Leo stated you cannot quantify to what degree food deprivation (or any of the other risk factors) impact on the likelihood of a false confession.

Consensus in the scientific community about the Reid method

Q. You state that there's a consensus in the scientific community about the Reid method.

A. Correct.

Q. What is that consensus?

A. That the techniques taught by the Reid method sometimes lead to or are involved in false confession cases; that some of those techniques are risk factors for a false confession.

Q. And what are the specific sources from the scientific community that you're referring to

that draw this consensus?

A. There are a number of articles. The 2010 White Paper is an article that would review the literature. But there have been freestanding articles, there have been literature reviews, it's been written about in books. So, it's part of the generally accepted knowledge that the Reid method trains police in techniques that are associated with and believed to sometimes cause false confessions..... that the method can become -- can easily become psychologically coercive.

Q. And then you drop a footnote on page 46 of your report that the Reid interview method has been discredited?

A. Well, the Reid method -- the Reid Behavior Analysis Interview method, yes.

Q. Okay. And so what -- what piece specifically are you saying has been discredited?

A. So you -- I was previously describing the Reid method of interrogation. And this is a pre-interrogation investigative method that Reid & Associates calls behavior analysis, where you, if you follow the Reid method, you ask somebody fifteen to twenty hypothetical questions; and in the Reid training you're supposed to look at the person's body language and make a decision about whether or not, based on their body language in response to the questions, as well as the content of their answers, whether they're telling the truth or lying. And that can become the basis for interrogating somebody..... Essentially it is training the person to be a human lie detector. And that has been discredited, the behavior analysis interview method, pre-interrogation.

Q. Got it. So you're not asserting in this report that the actual Reid methods of interrogation have been discredited.

A. No. It's a different claim because the Behavioral Analysis Interview method is teaching investigators that, to a high level of accuracy you can tell whether they're innocent or guilty based on their body language and their response to these hypothetical questions.

The Reid method of interrogation is not about figuring out whether somebody is telling the truth or lying; it's not about human lie detection; it's about breaking down somebody's denials and getting them to make a confession. So, it's been criticized as causing and contributing to and sometimes leading to false confessions, but it hasn't been discredited as false because its goal is not to determine whether somebody is lying or telling the truth, its goal is to get a confession. So it's a different -- it's a different method, and therefore susceptible to a different kind of critique.

Reid Response:

So, what is Leo talking about when he says that there is “substantial empirical research that the Reid method can become psychologically coercive” and that “the Reid Behavioral Interview method has been discredited”?

Leo is talking solely about one factor – academic research that suggests investigators are no better than chance at determining if a subject is truthful or deceptive based on their verbal and nonverbal behaviors.....what is referred to as *misclassification*, which leads to the investigator interrogating an innocent person creating the possibility of a false confession.

Leo is trying to make the case that because Reid includes in their training programs information about evaluating a subject’s verbal and nonverbal behaviors during the investigative interview,

and because such an investigative assessment is unreliable, they are teaching techniques that can lead to the interrogation of innocent individuals and false confessions.

So, what is the Behavior Analysis Interview?

The Behavior Analysis Interview (BAI) is a non-accusatory, non-confrontational investigative interview that is our first contact with the subject. During the BAI the investigator is a neutral, objective, non-judgmental fact finder. The following is a description of the investigative interview (BAI) process that we follow and teach:

At the outset of the interview, the investigator must be sure to comply with all legal requirements, such as the appropriate advisement of rights. The investigative interview should consist of three types of questions: questions about the subject's background; questions relevant to the specific issue that is under investigation; and behavior-provoking questions.

The background questions generally focus on biographical information about the subject and may include questions about the subject's employment activities or if the subject is a student, their school activities; and, they may include some casual conversation about recent events (a news item, a sports event, a weather situation, etc.). The purpose of spending several minutes on these topics is to establish some rapport with the subject, to acclimate the subject to the interview environment, and, most importantly, to establish a behavioral baseline – the subject's normal behaviors (posture, eye contact, use of illustrators, etc.).

The investigative questions deal with the issue that is under investigation. One of the first questions that the investigator should ask is an open-ended question that invites the subject to tell their story. If it is a victim, what happened? If it is a witness, what did they see or hear? If it is a suspect, what were their activities on the day in question? After the subject relates their initial story or version of events the investigator will then ask a series of questions to develop additional details and to clarify the who, what, when, where, why, and how of the incident that is under investigation.

The investigative questions are the core of the interview process.

For example, if, in a homicide investigation we ask the subject when he last saw the victim and he says that he has not seen or visited the victim for several weeks, and yet we have a security video showing him entering the victim's apartment (with the victim) earlier on the day of the murder, the fact that he lied about that is extremely significant. During this segment of the interview, (the investigative questions) the investigator would explore for any precipitators that may have provoked the incident or any procedural or policy violations that may have contributed to the situation. The investigator should attempt to resolve any inconsistencies or contradictions that may have surfaced from other subjects' interviews or investigative information.

If the subject offers an alibi for the time period in question, every effort should be made to substantiate the alibi. In our book, *Criminal Interrogation and Confessions*, 5th edition 2013, we devote several chapters to the topic of Investigative Questions (Open-ended questions, Direct questions, Follow-up questions, Probing Questions, etc.)

The third type of question that we utilize in the interview is called a behavior-provoking question (BPQ). BPQs are questions that most truthful individuals tend to answer one way, while deceptive individuals oftentimes answer in a completely different manner. Here is an example of a behavior-provoking question, which is referred to as the punishment question - "Jim, what do you think should happen to the person who did this (issue)?" The principle of response is that most truthful subjects usually offer appropriately strong punishment. For example, in a homicide investigation, the truthful person may say, "He should spend the rest of his life in jail." Whereas, the deceptive individual, who is thinking about himself, may say something like "That's hard to say... I guess it depends on the circumstances." In *Criminal Interrogation and Confessions*, we discuss numerous behavior-provoking questions that can be asked during the interview. **

At the conclusion of this non-accusatory interview, the investigator will evaluate the investigative and behavioral information developed during the interview, as well as the information, facts, and evidence developed during the investigation up to this point, and then make one of several possible decisions:

- the investigator may eliminate the subject from further investigation
- the investigator may determine that the investigation of the subject should continue, or
- the investigator may decide to initiate the interrogation of the subject

So the Behavior Analysis Interview is much more than Leo's description that "...the investigator asks 15 or 20 hypothetical questions and evaluates whether the subject is telling the truth or lying based on their answers and body language, and that can become the basis for interrogating somebody."

For more information on the Investigative Interview process review the following video presentations on our YouTube channel, **The Reid Technique Tips**:

- *Preparing for the Interview*
- *Proper Room Setting*
- *Using Open-ended Questions Parts One and Two*
- *There is no behavior unique to lying*
- *The Value of Behavior-Provoking Questions*

** In the 1990s, John E. Reid and Associates was awarded two federal grants from the National Security Agency (NSA) to specifically investigate behavioral differences between truthful and deceptive suspects. In those two studies a total of 80 videotaped interviews of actual suspects were prepared under different conditions; this permitted trained evaluators to evaluate the subject's verbal, paralinguistic, and nonverbal behaviors separately and together. In the latter study, when evaluators were exposed to all three channels of communication together, their average accuracy, excluding inconclusive opinions, was 86% for truthful suspects and 83% for deceptive subjects. It should be pointed out that this finding was based on the evaluation of only 15 behavior-provoking questions asked during each interview...the evaluators did not have access to any of the investigative questions and answers from the interviews, and were not provided with any case information or background about the subjects. (Horvath, F., Jayne, B., and Buckley, J. (1994). Differentiation of Truthful and Deceptive Criminal Suspects in Behavior Analysis Interviews. *Forensic Journal of Science*, 39(3), 793–806).

What is the “substantial empirical research” that Leo says discredits the BAI?

When Leo states that there is “substantial empirical research that the Reid method can become psychologically coercive” and that “there is a consensus in the scientific community that the techniques taught by the Reid method sometimes lead to or are involved in false confession cases” and that “it's part of the generally accepted knowledge that the Reid method trains police in techniques that are associated with and believed to sometimes cause false confessions.....” he is referring to one singular factor – the concept of misclassification.

Almost all of the research studies that look at the investigator's ability to assess a subject's credibility indicate that investigators cannot identify, based on a subject's verbal and nonverbal behaviors, whether a person is telling the truth or is being deceptive at a level better than chance. Consequently, according to this research, Leo is suggesting that the investigator oftentimes misclassifies a subject's status by erroneously believing that the subject is lying when in fact he is innocent..... the result of this “error” being that the investigator is interrogating an innocent person, possibly leading to a false confession.

To put this research in context, a typical example of one of these research studies that they use would be to take a group of college students and ask half of them to steal money out of the professor's desk drawer and instruct them to deny it when they are interviewed – so the “test” is can the “investigator” accurately identify the innocent subjects and correctly identify the guilty persons?

We certainly acknowledge that the vast majority of academic research studies, which are typically laboratory creations, yield very poor results on the investigator's ability to determine whether the subject is truthful or deceptive.

One reason is that the vast majority of research studies do not mirror the context and structure of real-life interviews that are conducted in the field, and, as a result, have very little relevance to the real world. Here are a few of the problems with the laboratory studies referenced by social psychologists:

- The subjects (oftentimes college students) had low levels of motivation to be believed (in the case of innocent suspects) or to avoid detection (in the case of guilty suspects). In real-life interviews the consequences of not being believed or being detected as guilty are significant
- The interviews of the subjects were not conducted by investigators trained in investigative interviewing techniques
- The studies did not employ the type of structured interview process that is commonly utilized by investigators in the field
- In most studies, there was no attempt to establish a behavioral baseline for each suspect so as to identify changes from that baseline
- The research was based on the faulty premise that there are specific behavior symptoms that are unique to truth or deception – there are no behaviors unique to truth or deception
- There was little consideration given to evaluating behaviors in context. For example, identifying whether specific nonverbal behaviors are appropriate given the verbal content

of the suspect's response, identifying the consistency of a suspect's statements across time and with known evidence, and evaluating the consistency of behaviors across the 3 channels of communication – verbal, paralinguistic and nonverbal behaviors.

- There was no consideration or allowance for the various factors that can affect and influence a subject's behavior: the seriousness of the issue; the subject's level of social responsibility; the subject's mental capacity; their emotional and psychological well-being; their maturity; cultural influences and their physical condition at the time of the interview

Another example of these "behavioral studies" is one in which a number of inmates appear on camera two times to tell their stories about the crimes that they committed. One story is true and the other story is false.... After viewing the 2 videos for each inmate the reviewer is asked to determine which was the true crime story and which was the false statement. The results were generally poor in demonstrating the reviewers' ability to discern which was the true story.

In these were real-world interviews, the investigator would have engaged in conversation with the subject at the outset of the interview to develop some background information about the individual and to develop a behavioral baseline. After listening to the subject's story, the investigator would then ask the subject questions to clarify ambiguous statements, develop additional details, clarify inconsistencies, etc. In this "real world" process undoubtedly the reviewer's accuracy in identifying the true story would have significantly improved.

Also, all behavior must be considered in context.... an element typically lacking in these research studies. As an illustration of context, at a recent conference for defense attorneys, one of the speakers, a lawyer, was describing some of the behaviors that she said John E. Reid and Associates teaches as being suggestive of a deceptive person. One of the behaviors she said that Reid views as deceptive was the statement, "I don't know." What the attorney failed to say (or perhaps, even to consider) was that all behaviors must be viewed in context.

For example, if a person was asked what they did 7 weeks ago on Thursday night between 6:00 pm and midnight, it would be completely reasonable for the subject to respond, "I don't know." However, if a person was asked if they had anything to do with killing their next-door neighbor last night, and they responded, "I don't know," a very different assessment would be made.

Recent research efforts that have more closely attempted to mirror real-life interview circumstances have demonstrated a significant increase in an investigator's ability to evaluate accurately a subject's behavior symptoms. Consider the following:

- High-stake lies are detected at higher rates than low-stake lies.
- When an investigator understands the context in which an interview is taking place (for example the case facts and background information) accuracy in the assessment of a subject's behavior symptoms greatly increases
- Accuracy in detecting deception with real-life suspects is significantly higher than suggested by studies that use subjects/students in a mock crime scenario

- Training and experience in the field of behavior symptom analysis significantly increase the ability to detect true and false statements

Researchers are realizing the deficiencies in the typical laboratory research studies and are acknowledging the vital role of the investigator in using effective interviewing techniques:

“Eliciting cues to deception and truth: What matters are the questions asked The fact that cues to deceit are faint and unreliable implies that the only way to improve lie detection is by eliciting and enhancing such cues. We argue that the interviewers can achieve this by using appropriate, theoretically sound interview techniques...” (*Journal of Applied Research in Memory and Cognition* (2012) Aldert Vrij and Par Anders Granhag)

Research efforts that have more closely attempted to mirror real-life interview circumstances have demonstrated a significant increase in an investigator’s ability to evaluate accurately a subject’s behavior symptoms. When an investigator understands the context in which an interview is taking place (for example, the case facts and background information), accuracy in assessing a subject’s behavior symptoms greatly increases.

A study published in *Human Communication Research* by researchers at Korea University, Michigan State University, and Texas State University -- San Marcos found that using active questioning by trained investigators of individuals suspected of wrongdoing yielded 97.8% accuracy in detecting deception.

(Timothy Levine, David Clare, J. Pete Blair, Steve McCornack, Kelly Morrison and Hee Sun Park, “Expertise in Deception Detection Involves Actively Prompting Diagnostic Information Rather Than Passive Behavioral Observation” *Human Communication Research* (40) 2014)

The Distinction between “guilt and innocence” and “truth and deception”

Within the scope of detecting deception, there are two broad inferences that are made through behavioral observations. The first involves inferences of guilt or innocence, that is, “Did this person engage in a particular criminal act?” The second involves inferences of truth or deception, that is, “When this person says such and such, is he telling the truth?”

For case-solving purposes, it is important for an investigator to appreciate the distinction between “guilt” and “lying.” Consider the following exchange during an interview:

Q: “Have you ever thought about setting fire to your house for the insurance money?”

A: “Well sure. I think everyone has thoughts like that.”

This suspect’s verbal response to the investigator’s question is probably 100% truthful. Yet, the content of the response infers potential guilt with respect to setting fire to his house. Research in the field of behavior symptom analysis generally indicates higher accuracies in identifying guilt or innocence, than truth and deception.

When evaluating a suspect's behavior for detection of deception purposes, there are several essential principles that must be followed to increase the probability that subsequent inferences will be accurate. Failure to recognize any of these principles increases the probability of making erroneous inferences from a suspect's behavior.

None of these principles were followed in the majority of the "substantial empirical research" that Leo and others reference.

- ▶ *There are no unique behaviors associated with truthfulness or deception*
- ▶ *Evaluate the consistency between all three channels of communication – verbal, paralinguistic and nonverbal*
- ▶ *Evaluate the preponderance of behaviors occurring throughout the interview*
- ▶ *Establish the subject's normal behavioral patterns*
- ▶ *Evaluate the potential influence of various factors -the seriousness of the issue; the subject's level of social responsibility; the subject's mental capacity; their emotional and psychological well-being; their maturity; cultural influences and their physical condition at the time of the interview*

The Purpose of an Interrogation

In his testimony, Leo also stated that "the Reid method of interrogation is not about figuring out whether somebody is telling the truth or lying; it's not about human lie detection; it's about breaking down somebody's denials and getting them to make a confession." That is not accurate.

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 subject discloses to the investigator 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

Lengthy Interrogations

Q. You state that **lengthy interrogations** can increase the risk of a false or unreliable confession?

Q. How are you defining a lengthy interrogation?

A. Well, I think I describe in here that the -- the -- 95 percent of interrogations last less than two hours. So as a statistical matter, I would say anything in the range of two hours or longer is a

long interrogation. . . . And what we see in the studies of proven false confessions is that I think more than 50 percent of them last longer than six hours. . . So -- so that's how I would define a long interrogation. . . . And, by any measure, 15 hours is a very long interrogation, or period of interrogation, detention, and custody.

Q. Would you agree with me that a lengthy interrogation alone cannot cause a false or unreliable confession?

A. Yeah, I don't think it can cause a false confession or would likely cause a false confession, but it certainly would contribute to a false confession

Q. You claim in your report that even time that is not spent being interrogated, it's still important because the suspects are, I think you used the phrase "stewing"; is that correct?

A. Yeah, it contributes to the fatigue, just like the breaks in this deposition contribute to fatigue, or in a seminar, right? It's not the actual time of questioning that is affecting, by itself, the physiological effects of the duration of the event.

Q. And what studies support the idea that stewing can cause false confessions?

A. Well, I never said stewing can cause false confessions. And your last question about length of interrogation not causing false confessions of course recognizes that. The -- the classification of the entire time is the way in which researchers count length of interrogation. . . And that's based on an analysis of the effect of time on somebody's ability to resist. And that's discussed in a number of studies. . . There are some that are specifically about sleep deprivation, but there are others that are just about physiological mental regulation, so to speak, during an interrogation, and how a greater length of time in custody affects one's ability to comprehend and resist what's going on.

Q. What studies specifically address the idea that the length of interrogation should be defined as the total amount of time, regardless of the amount of breaks, that the individual is given, when determining whether it's a risk factor for a false confession?

A. It's discussed in a number of studies. I know it's discussed in my studies on proven false confessions. . . I think it's discussed in literature reviews, in books. . . But I can't point to you one study that is just about that. . . It's an accepted way of classifying one variable.

Q. You indicate on page 28 of your report that, quote, "The combined time period of custody and interrogation in most interrogations leading to a false confession is more than six hours." Is that correct?

A. I believe so.

Q. What percentage do you consider to be most interrogations?

A. More than 50 percent.

Q. Are there any studies that look into interrogations of the same length that did not result in an unreliable or a false confession?

Q. To what degree did the length of this interrogation increase the risk that Mr. Amor would falsely confess?

A. Again, I can't quantify that. . . I can just say that it is a well known risk factor, and this was a very long interrogation. . . But I can't -- I can't give you a statistic, a meaningful statistic.

Reid Response:

According to Leo, “The entire time the subject is with the police is the way in which researchers count the length of an interrogation.” They suggest that the reason for including the entire time is based on an analysis of the effect of time on somebody's ability to resist. According to Leo, “there are some studies that are specifically about sleep deprivation, but there are others that are just about physiological mental regulation, so to speak, during an interrogation, and how a greater length of time in custody affects one's ability to comprehend and resist what's going on.”

The courts (and practitioners) count the time that the subject is actually being interrogated as the interrogation time.

For example, the first hour may consist of the non-accusatory, non-confrontational investigative interview which as described above, consists of questions primarily designed to develop the subject's statement – the who, what, when, where, why, and how of the investigative issue. This may be followed by an interrogation, which after 60 minutes is temporarily terminated because the subject has told the investigator some information that they have to go out and investigate and/or verify so the subject may be left in the room for an hour or more waiting for the investigator's return. It may be during this delay that the subject is provided with food and drink.

Courts and investigators do not include the non-accusatory interview and the time period the subject is left sitting in the room while the investigators are out in the field attempting to continue the investigation based on information the subject provided as “interrogation time.”

So, in this example, the social psychologist will state that the interrogation lasted 3 hours (1 hour for the interview; 1 hour for the accusatory interrogation; and 1 hour sitting in the room while the investigators are attempting to secure additional information in the field.). Practitioners would state that the interrogation lasted 1 hour.

Consider a few court decisions that do not consider the breaks between questioning as “interrogation time.”:

In *People v. Clark* the Supreme Court, Appellate Division, Fourth Department, New York rejected the defendant's contention that the [lower] court erred in refusing to suppress statements he made to the police during the 26-hour period of videotaped interrogation. From the court's opinion:

We reject defendant's contention that the court erred in refusing to suppress statements he made to the police during the 26-hour period of videotaped interrogation. It is axiomatic that the length of the interrogation period “does not, by itself, render the statement[s] involuntary” Instead, we must view “ ‘the totality of the circumstances surrounding the interrogation’ ” The detective ascertained defendant's date of birth, that he had completed the 10th grade and was obtaining his GED, that he could read and write, that he was not under the influence of alcohol or marijuana, and that he had never before been read his Miranda rights. The detective “did not restrict himself to a mere reading of the rights from a card ... [but][i]nstead ... described the rights in more detail and simpler language, verifying that defendant understood [them]” We further

conclude that his will was not overborne by coercive police tactics.... Contrary to defendant's contention, the tactics used by the police, i.e., telling defendant that they thought he was a "goodkid," stating that he would feel better when he told the truth, and challenging the inconsistencies in his statement with the evidence, were not improper or unusual where, as here, there is no evidence that defendant was of subnormal intelligence or susceptible to suggestion.

The record establishes that defendant was provided with food, water, cigarettes, and bathroom breaks throughout the period... The record further establishes that there were two breaks in the interrogation, approximately six and one-half hours and five hours long, respectively, when the police were pursuing leads and that defendant slept during those breaks..... Moreover, we note that the length of the interrogation was in large part owing to "the nature of the crime[s] and defendant's conflicting and constantly changing stories to the police," which the police investigated and attempted to verify.

In *Ross v. Miller* the US District Court, S.D. New York upheld the conviction of the defendant, rejecting his claim that the length of the interrogation was a coercive factor. From the court's opinion:

As to Ross's specific claims, Justice Farber noted that although this was a lengthy interrogation, it did not amount to coercion and Ross gave the statements voluntarily. Though the police arrested Ross at 6:30 a.m., Detective Byrne did not begin questioning him until nearly 1:00 p.m. Then, between 8:30 and 9:00 p.m., Ross began to confess. Therefore, though in custody for an extended period of time, Ross was only interrogated for approximately seven hours. Additionally, throughout this period, he was not handcuffed, he was offered food, drink, and cigarettes, and Ross admittedly did not ask to use the restroom. In similar situations, courts have concluded that the custodial circumstances did not render the interrogation coercive. See, e.g., *United States v. Shehadeh*, 586 F. App'x 47, 48 (2d Cir.2014) (voluntary statement after a four hour interrogation); *United States v. Smith*, No. 14-CR-485 (JFB), 2015 WL 7177190, at *2-3 (E.D.N.Y. Nov. 16, 2015) (voluntary statement after a seven hour interrogation); *United States v. Medina*, 19 F.Supp.3d 518, 541 (S.D.N.Y.2014) (find statements to be voluntary despite being in custody for seven to eight hours before being given Miranda warnings). Therefore, the Court concludes that the state court's decision to admit Ross's statements was not an unreasonable application of clearly established federal law, nor was it based on an unreasonable determination of the facts in light of the evidence in the state court proceeding.

In *State v. Segarra* (2007) "The circuit court found that Segarra had been interrogated for a total of about twenty-eight hours. The circuit court found that the police had advised Segarra of his Miranda rights appropriately and repeatedly during the time they had interviewed him. The circuit court also found that Segarra had "waived those rights, agreed to give a statement, was cooperative with the police in terms of giving statements, never asked for a lawyer, and never asserted his right to silence." The circuit court also found that the police had offered Segarra "creature comforts from water, to food, to cigarettes," and that he had been given time between the interviews to rest and "gather his thoughts."

The circuit court found that none of the police officers had acted in a coercive manner, and that there was no evidence that any of the officers had attempted to bring undue pressure on Segarra

during the interviews. The circuit court considered the circumstances of the interviews including, among other things, the location, who initiated the contact, and Segarra's age, physical condition, and prior experience with the police. The circuit court concluded that Segarra's statements were voluntary and denied the motion to suppress." The Court of Appeals agreed.

In our book, *Criminal Interrogation and Confessions* (5th edition 2013) we state the following:

“A properly conducted interrogation that lasts 3 or 4 hours, for the ordinary suspect, is certainly not so long as to cause the levels of emotional or physical distress that constitute duress. However, if physical coercion is involved, even a 30-minute interrogation may warrant such a bona fide claim. The following guidelines are offered to evaluate claims of duress:

1. Can the excessive length of interrogation be explained by the suspect's behavior? For example, did the suspect offer a series of different versions of events, before offering the first incriminating statement? A suspect who has maintained his innocence and has made no incriminating statements for 8 or 10 hours has not offered any behavior to account for this lengthy period of interrogation.
2. Did the suspect physically or verbally attempt to seek fulfillment of biological needs? If so, were such requests denied or used as leverage to obtain the confession (e.g., “You can use your asthma inhaler after you confess.”). A suspect who made no such verbal requests or physical efforts to bring the interrogation to a close has a much weaker case. In this instance, it would appear that only in retrospect, after reviewing the interrogation in his mind, or with an attorney, did the suspect decide that the conditions of the interrogation were intolerable.
3. Were there any threats made with respect to denying the suspect basic biological needs unless he confessed (e.g., “You're not leaving here until you confess—no matter how long it takes.”).

Sleep Deprivation

Q. You talk about sleep deprivation, and you state that substantial research shows that sleep deprivation would increase the likelihood that Mr. _____ would agree to a false or unreliable statement; correct?

A. Yes.

Q. How are you defining sleep deprivation?

A. As a disruption of one's normal expected sleep and sleep routines. Most people sleep 7 to 9 hours a night on 24-hour cycles. As documented in the report, Mr. _____ said he hadn't -- he had gotten two and a half to three hours of sleep the night before. If I'm remembering correctly, I think he said 4 on the intake form. And then, of course, he didn't get any sleep that night prior to the interrogation and final confession taken very early in the morning.

Q. So part of the relevant inquiry is whether the lack of sleep involved in a case is a deviation from the suspect's typical sleep pattern; correct?

A. Right.

Q. Because some people just go on less sleep than others; fair to say?

A. Yes. Although my understanding is that most people sleep within a range or need, in order not to be objectively sleep deprived, a range of 7 to 9 hours, most adults.

Q. Did you take any steps to explore how sleep -- the sleep dep- -- effects of sleep deprivation impact Mr. _____ personally?

A. I don't think that's possible. · So, no. I'm applying a general body of research that's very well documented on the effects of sleep deprivation, which is believed to apply, you know, to humans universally.....And recognizing the obvious fact that, by his description, he was incredibly sleep deprived, and connecting it to the literature on sleep deprivation and false confessions and pointing out that it is a recognized risk factor.

Q. So you mentioned that studies show that most adults need 7 to 9 hours of sleep per night?

A. That's my recollection, yes.

Q. So then is your understanding of the studies that if someone has received less than 7 hours of sleep on average, they are at an increased vulnerability to falsely confess to a crime?

A. That would be my understanding of the general literature on sleep deprivation, yes.

Q. And, again, you can't quantify what that increased risk would be; correct?

Reid Response:

A subject's physical condition at the time of the interview and/or interrogation certainly is a legitimate consideration in assessing the voluntariness and truthfulness of a subject's confession. Here are two court decisions that address the issue of sleep deprivation.

In *State v. Strozier* the South Dakota Supreme Court upheld the admissibility of the defendant's confession, who claimed that he was too intoxicated to make a knowing and intelligent waiver of his Miranda rights. This case clearly illustrates the value of electronically recording an interrogation to diffuse such claims. In their opinion, the Supreme Court stated the following:

The court also stated, "Although Strozier also claims that he was deprived of sleep, he never indicated during the interrogation that he was tired. On the contrary, the video recording shows that he was alert and animated. We find that "there is no evidence that [Strozier] was so overcome by fatigue or stress as to prevent" a valid waiver of his rights.... Further, our review of the interrogation's video recording reflects that Strozier understood Detective Carda's advisement of rights and the consequences of waiving them. We conclude that under the totality of the circumstances, Strozier voluntarily, knowingly, and intelligently waived his Miranda rights.

In *State v. Decloues* (2011) the Court of Appeal of Louisiana, Fourth Circuit upheld the trial court's decision to admit the defendant's confession, even though the defendant claimed that "he was impaired from days of drug use and sleep deprivation at the time he gave his statement." In their opinion the court stated that:

"The defendant argues that his demeanor during the taped confession and his testimony at trial clearly show that he was impaired at the time he gave his confession..... Our review of the taped confession indicates that at the beginning of the interview the detective read the defendant his rights. The defendant appears attentive while those rights were being read, acknowledging each one individually. When asked whether he understood his rights, the defendant gave a definitive yes. The defendant is noticeably fidgety and sometimes had to be asked to speak up, but... he was easily calmed. His answers were responsive to the questions asked by the detective.... Moreover, the defendant's confession coincides with the physical evidence presented at trial."

Furthermore, if a subject confesses and provides independent corroboration, such as where he buried the murder weapon and the bloody clothes (information only the guilty person could know), then sleep deprivation becomes a mute issue.

Premature Presumption of Guilt

Q. Okay. Dr. Leo, we were talking about the different risk factors that you have identified in your report which you find to be present in Mr. _____'s interrogation. I'd like to move on to what you identify as number four on page 29 of your report, which is rush to judgment based on a premature presumption of guilt, presumption of guilty knowledge, and investigative bias. How are you defining the presumption of guilt that you find to be present here?

A. From Mr. _____'s description of what occurred during his interrogation, it is my opinion that the whole thing was a setup to get him to confess from start to finish, and so they had determined that it was an arson, and that he committed the arson intentionally. And that presumption of guilt is consistent with research on interrogation and on Reid-based interrogation.....

Q. And what about the approach does he describe that leads you to state that there is a presumption of guilt in this case?

A. Well, once he starts getting interrogated, he's describing a guilt-presumptive interrogation.....

Q. And you indicate, at the end of this section, "These type of biases have been documented in many psychological studies, and in cases of police-induced false confession and erroneous conviction of the innocent. The investigators' rush to judgment, and premature presumption of guilt substantially increased the risk that they would elicit false and unreliable incriminating statements, admissions, and/or confessions." Did I read that correctly?

A. Yes.

Q. So in one of your previous opinions we discussed as a risk factor, you criticized the officers for what you believed was an interrogation before there had been enough of an investigation. Do you remember testifying about that?

A. Yes.

Q. So is that the same rush to judgment that you're referring to in paragraph -- in the numbered paragraph 4 on page 29 of your report?

A. Yes.

Reid Response:

Leo states that investigators interrogate individuals on the presumption of guilt..... that investigators rush to judgment and that the premature presumption of guilt substantially increases the risk of false and unreliable incriminating statements, admissions, and/or confessions.

We teach that interrogation should only occur when the investigative information, facts, and evidence indicate the subject's probable involvement in the commission of the crime. So, we do interrogate individuals whom we believe committed the crime in question. To do otherwise would mean interrogating individuals whom we believe did not commit the crime, which, of course, would be absurd.

False Evidence Ploys

Q. So you identify two false evidence ploys in your report. The first one is the polygraph result, which you just testified a little bit about.

A. Correct.

Q. So I'm going to ask you about it in a minute, but I guess -- so I'm trying to understand, so in your report, you talk a little bit about how the polygraph is a false evidence ploy. Even if it was scored and the results were communicated accurately, do you still believe the polygraph to be a false evidence ploy? Am I understanding your report correctly?

A. That is correct, yes.

Q. And why is that?

A. Essentially because the polygraph is junk science. So the theory of the polygraph is that when people are lying, they experience differential emotions -- emotional arousal that are graphically registered -- there's four different, heartbeat, perspiration, et cetera -- that's graphically registered on the polygraph exam. And the reason why that's a theoretically -- theoretically flawed is because there's no unique physiological reaction in human behavior to lying.

Q. Are there studies that examine the impact of a communication of a failed polygraph on a suspect as a correlator to a false or unreliable confession?

A. There are studies about false evidence. I don't know that there are studies just about polygraphs as a false evidence ploy.

Q. Okay. To what degree do you believe this increased the likelihood of Mr. _____ providing a false or unreliable confession?

A. So again I would give the same answer I had given before, that I can't quantify, nobody in the world could quantify the number between zero and a hundred that I interpret your question to be asking for. It's simply not possible scientifically.

Q. You are not saying that it's inappropriate for an officer to confront a lying suspect; correct?

A. Of course not.

Q. Your research that led to your publication in 1996 of Inside the Interrogation Room suggests that false evidence ploys are fairly common. Would you agree with that?

A. Yes.

Q. And in your -- we can refer back to it, if you'd like to, but in your article, you reported that, of the interrogations that you observed, the suspect was confronted with false evidence of guilt in 30 -- 30 percent of the time; is that correct?

A. Correct.

Q. And again in that same study, with that same set of interrogations, you only found that 2 percent of the interrogations were coerced; correct?

A. Correct.

Reid Response:

Leo testifies that investigators oftentimes lie to the suspect about the evidence that they have in the case, for example, falsely telling a suspect a witness identified him as the offender; that his DNA was found on the victim; that his fingerprints were found on the murder weapon, etc.

In 1969 the United States Supreme Court upheld the use of misrepresenting evidence to the subject. The case was *Frazier v. Cupp* (394 U.S. 731). In that case, the Supreme Court upheld the admissibility of the defendant's confession, which, in part, was the result of the police falsely telling the subject that his accomplice had confessed. The Court held that the misrepresentations were relevant, but that they did not make an otherwise voluntary confession inadmissible. In reaching this conclusion, the Court judged the materiality of the misrepresentation by viewing the "the totality of circumstances."

Misrepresenting evidence to the subject does not cause a false confession in an "otherwise voluntary confession." It is typically the *aggravating circumstances* that occurred during the interrogation that created the coerced and/or false confession, 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.

For a detailed analysis of the Reid policy regarding the use of deception during an interrogation see the Investigator Tip dated June 26, 2023 on our website, www.reid.com.

Minimization

Q. All right.....you identify minimization as a risk factor in this case Correct?

A. Yes.

Q. And you only provide one instance of minimization, and that was minimization that you state was done by the polygraph examiner?

A. · I believe so, yes. · Well, he suggested reasons why Mr. _____ would have set the fire, and so I think he give more than one reason; that he had acted out of character, or he had been drinking the night of the fire, or something just came over him..... Minimization can influence people's reactions even if they don't adopt the minimized account because oftentimes the minimized account is like a foot-in-the-door technique. So, if a suspect admits to a minimized account, that is then leveraged to get the suspect to admit to the more intentional account that the interrogator is driving for. If there had been a recording of this interrogation, then we could parse that out whether or not that occurred. Of course, we don't. So, it could be relevant, we just don't know; but regardless of whether it's relevant, it was a risk factor present in the -- in one of the interrogations over the course of the lengthy time that ultimately led to his statement.

Q. And it's not illegal or unconstitutional for an interrogator to minimize while interviewing a suspect; correct?.

A· Most minimization techniques, in my view, are not -- do not violate any constitutional stricture regulating interrogation.

Q. To what degree did the minimization tactics increase the likelihood that Mr. _____ would falsely confess?

A. Again you're asking for a statistical number. And I just want to make a comment here. · The same thing that I'm saying is true here I believe is true in other areas of risk factors. So we know that obesity and smoking and genetics and family history and diet are all risk factors for heart disease, and there are studies that have statistics. · But you can't even infer from those studies what the exact degree of risk is if somebody has one of those. You know, if somebody's obese, you can't say that they're 20 percent more likely to get a heart attack, even though there might be studies of obesity and the relationship between obesity and heart attack. So it's simply not

possible. You've asked this question about every risk factor so far, and I assume you're going to continue asking it about the remaining risk factors. It's not possible as a scientific or statistical matter to assign a number between zero and 100 and say, if there's a false evidence ploy he would have been 57 percent more likely, or 69, or 2, or 88. That's simply not possible as a scientific matter.

Q. But none of the studies -- so the studies that you've done have all looked at -- started with confessions that you believed to be false, and then worked backward to identify the risk factors that were present; correct?

A. The -- you're talking about the proven false confession studies. And they start with confessions that have been proven to be false, of course, after a process of vetting and studying cases and filtering out the nonconfession case -- the non-false confession cases or the ones that don't meet the classification.

But the -- the experimental studies which I'm relying on do have statistics where they, in controlled settings, can say what percentage of people who -- on whom the minimized techniques are used confess falsely. And what I'm telling you is that from those studies, those experimental studies, where there are numbers and percentages, I do not believe we can extrapolate to this situation. If 20 percent of the people who confessed falsely, in the experimental studies, for example, were interrogated with minimization techniques, that does not mean that Mr. _____ had a 20 percent risk of falsely confessing if there were minimization techniques present in his interrogation.

Reid Response:

Leo testifies that investigators suggest reasons to the suspect that minimize the seriousness of the offense, stating that minimization can influence people's reactions based on the understanding that if a subject admits to a minimized account (such as accident versus an intentional act) they will face less punishment.

Social psychologists describe the Reid Technique as an interrogation process by which the investigator engages in minimization techniques by downplaying the seriousness of the offense and the associated consequences, while at the same time using maximization techniques in which the investigator exaggerates the strength of evidence against the suspect and the magnitude of the charges.

They further describe the minimization/maximization process as one in which the investigator suggests inducements that motivate the suspect by altering his or her perceptions of self-interest. Dr. Richard Leo testified: "So minimization is a recognized interrogation technique that -- whereby the interrogator tries to minimize the -- or downplay the seriousness or consequences of the alleged act to make it easier for the suspect to admit to it because it's less serious or perhaps portrayed as not even criminal at all. So, by minimizing the consequences or the outcome or the punishment, sometimes minimization communicates also, implicitly, a suggestion or promise of either leniency or reduced punishment in exchange for cooperation."

Social psychologists describe the inducements that they say are used to entice the confession as low-end, midrange, and high-end. At the low end are moral or religious inducements suggesting

that confession will make the suspect feel better; in the midrange are vague assurances that the suspect's case will be processed more favorably if he or she confesses; at the high end are inducements that more expressly promise or imply leniency in exchange for confession or threaten or imply severe treatment if the suspect refuses to confess.

In their White Paper prepared for the American Psychological Association (entitled "Police-Induced Confessions: Risk Factors and Recommendations" by Saul Kassin, Steven Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard Leo and Allison Redlich [Law Hum Behavior 2010 Feb; 34(1):3-38]. the authors reported that "Analyzing more than 125 electronically recorded interrogations and transcripts, Ofshe and Leo found that police often use techniques that serve to communicate promises and threats.... These investigators focused specifically on what they called high-end inducements —appeals that communicate to a suspect that he or she will receive less punishment, a lower prison sentence, or some form of prosecutorial or judicial leniency upon confession and/or a higher charge or longer prison sentence in the absence of confession....This is a variant of the "maximization" / "minimization" technique...."

The problem with these descriptions is that social psychologists are describing behaviors that **we teach investigators not to do.**

The emphasis of 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 may 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 an interrogation:

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

The third type of minimization is to minimize the legal consequences of the subject's behavior, which we teach never to do. The midrange and high-end inducements described by social psychologists are essentially threats of harm or more severe punishment, contrasted with promises of leniency or reduced punishment. In the previously referenced White Paper, the authors agreed with us, stating that interrogation procedures should "permit moral and psychological forms of minimization, but ban legal minimization.

Consider the following excerpts from *Criminal Interrogation and Confessions* (5th edition, 2013):

- "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." (p. 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." (p. 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.” (p. 227)

In November 2017, the Massachusetts Supreme Court stated that “...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, or sought to preclude suggestions by the interviewers “broadly that it would be better for a suspect to tell the truth, [and] ... that the person's cooperation would be brought to the attention of [those] involved.”

The Supreme Court of Canada stated:

"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.”

In *Gomez v. California* (January 2019) the US District Court stated the following: “Relevant considerations concerning whether an interrogation is coercive include the length of the interrogation, its location, and its continuity, as well as the defendant's maturity, education, physical condition, and mental health. In assessing police tactics that are allegedly coercive, courts have only prohibited those psychological ploys which are so coercive they tend to produce a statement that is both involuntary and unreliable under all of the circumstances. Investigators are permitted to ask tough questions, exchange information, summarize evidence, outline theories, confront, contradict, and even debate with a suspect... They may accuse the suspect of lying ... and urge him or her to tell the truth. Investigators can suggest the defendant may not have been the actual perpetrator, or may not have intended a murder victim to die. They can suggest possible explanations of events and offer a defendant the opportunity to provide details of the crime.....Suggestions by investigators that killings may have been accidental or resulted from a fit of rage during a drunken blackout fall far short of promises of lenient treatment in exchange for cooperation.”

To reiterate, minimizing the moral seriousness of the suspect's behavior or the psychological consequences of their behavior are acceptable techniques, but minimizing the legal consequences of the subject's behavior or threatening inevitable consequences or more severe punishment if they do not confess is clearly unacceptable.

Threats and Promises

Q. Okay...you identify threats and promises as a risk factor that you believed to be present for an involuntary and/or a false confession in this case; correct?

A. Yes.

Q. You opine that Mr. _____'s description of promises and threats made by the officers, quote, "significantly increased the likelihood of eliciting an involuntary or false statement." Correct?

A. Correct.

Q. And is your analysis the same for both, eliciting an involuntary or false statement?

A. Yes.

Q. And what do you mean by "significantly increased"?

A. That there's a greater likelihood that the confession is false and that the confession would not be found to be voluntary.

Q. Can you quantify that at all, what a greater likelihood is?

A. No. I would give the same answer I just gave with regard to risk factors and statistics and studies and extrapolation. We cannot put a number on it.

Q. You state in this same section that promises of leniency and threats of harm are widely associated with police-induced false confessions, and believed to be one of the leading causes. What do you mean by "widely associated"?

A. That in the real world studies they're -- they're at a very high percentage of those studies. That when innocent people falsely confess, there's almost always some threat and/or some promise. And threats and promises imply one another. So, for example, here, according to Mr. _____, Detective _____ said he was going to kick his fucking ass, and that he would be charged with first degree murder if he did not confess. That implies the promise that if he did confess, he would not get his ass kicked and he would not be charged with first degree murder. So threats and promises typically go together, and in the proven false confession cases, they are in a very high percentage of those cases. And that's what I mean by "widely associated." And off the top of my head, I don't know what percentage they're in, in the studies.

Q. What studies reflect those percentages?

A. There's -- I don't recall if my 1998 study did. That is one of the exhibits, The Consequences of False Confessions, or if my 2004 study with Steve Drizin did. It may be that that was reported qualitatively. Those are two studies that come to mind. It may also be reviewed in the review essay that I've called the White Paper, the 2010 Law and Human Behavior article. I just have review that. I don't know that percentages have been reported as opposed to qualitative observations. But it is -- it is a generally accepted view in the field.

Q. You note that Mr. _____ was given a false promise that he would be able to go home if he confessed.

A. Correct, that's what he asserts.

Q. Where in your review of the record --excuse me. Where in your review of the record did you see some -- did you see Mr. _____ state that he was told that if he confessed, he could go home?

A. I don't recall specifically. I'm assuming that it would have been in my review of his deposition, or in his pretrial testimony or trial testimony, or in something he said to someone in the case that's reflected in a different document, but I can't tell you where.

Q. So you don't recall, as you sit here today, whether _____ ever stated elsewhere that no promises were made to him.

A. Correct.

Q. And if there is a place in the record where he contradicted his deposition testimony, is that a discrepancy that you would want to address in your report?

A. Well, it depends, because oftentimes what happens is at the end of coercive interrogations, interrogators will sanitize the interrogation and get the suspect to admit that there were no promises or threats even if that's false.

Reid Response:

We teach that investigators should never make promises of leniency or threats of harm or inevitable consequences. Here are our Core Principles:

- Always treat the subject with dignity and respect
- Always conduct interviews and interrogations in accordance with the guidelines established by the courts
- Do not make any promises of leniency or threats of harm or inevitable consequences
- Do not conduct interrogations for an excessively lengthy period of time
- Do not deny the subject any of their rights
- Do not deny the subject the opportunity to satisfy their physical needs
- Do not engage in or threaten the use of physical force
- Exercise special cautions when questioning juveniles or individuals with mental or psychological impairments

Leo uses our book to emphasize this point: In another case, Richard Leo stated in his report that:

“the officers, in this case, violated national police interrogation standards, protocols, and best practices.....police are taught to avoid the use of implicit or explicit threats of harm or threats of punishment and implicit or explicit promises of leniency or freedom to elicit incriminating statements, admissions and/or confessions because threats and promises are understood by law enforcement to be psychologically coercive and thus lead to involuntary and/or false confessions. The Reid and Associates training manuals and programs have always from the 1st edition in 1942 to the current edition in 2022, repeatedly implores police investigators not to use any interrogation technique that is “apt to make an innocent person to confess.”

Psychological Coercion

Q. How are you defining psychological coercion?

A. As either involving techniques that are presumed to be inherently psychologically coercive, like threats and promises, or cumulatively the effect of the interrogation techniques causing somebody to perceive they have no meaningful choice but to comply and confess.

Q. So is psychological coercion, in your methodology, treated as an independent risk factor for a false confession?

A. It would stand to reason that, yes that if interrogations are psychologically coerced when people perceive they have no meaningful choice, that, yes, they are at greater risk for making a false or unreliable confession.

Q. My question's a little different. So we've -- you've identified, we've walked through several risk factors that you've indicated are risk factors present in this case that increase the likelihood of a false confession; correct?

A. Correct.

Q. And now we're talking about psychological coercion, which you're also saying was present here, and increased the likelihood of a false confession; correct?

A. Correct.

Q. Do the other risk factors that we have discussed have to work together to reach the level of psychological coercion for you to believe that the risk of a false confession is present?

A. No. No. If I understand your question correctly.

Q. Okay. So you do consider this to be a separate risk factor that happens to combine several other risk factors that we've discussed?

A. Correct.

Reid Response:

We teach that investigators should not engage in any psychologically coercive behaviors.... Specifically, we state that investigators

- Should not make any promises of leniency or threats of harm or inevitable consequences
- Should not conduct interrogations for an excessively lengthy period of time
- Should not deny the subject any of their rights
- Should not deny the subject the opportunity to satisfy their physical needs
- Should not engage in any physical abuse of the subject

Specific Personality Traits

Number nine gets into specific personality traits that you attribute to Mr. _____ that you believe created a risk factor for a false or unreliable confession; correct?

A. Correct.

Q. And as far as I can tell, you identify three traits with Mr. _____ that you believe put him at a heightened risk. And that's suggestibility, anxiety, and depression; is that correct?

A. Correct.

Q. These are the three factors of his personality that you believe put him at a greater risk for a false or unreliable confession?

A. Correct.

Q. And this is based on your review of the record; correct?

A. Correct, yes.

Q. You cannot diagnose Mr. _____ with depression or anxiety; correct?

A. Correct.

Q. Where has it been established in the studies of the literature that depression is a risk factor for false confessions?

A. So I cite on, I think footnote 70, the studies I was relying on for those rates.

Q. Do those studies also address anxiety as a risk factor for false confessions?

A. That's my recollection.

Q. And what do the studies say? I mean, what is it about a person's depression or anxiety that puts them at a heightened risk for providing a false confession to a crime?

A. I don't recall what the studies say specifically about that, but somebody who's depressed would have a harder time asserting their will, and somebody who's anxious would cave for quickly in the face of pressure.

Q. And you also note that Mr. _____'s suggestibility was a risk factor for a false confession; correct?

A. Yes.

Q. And how are you defining suggestibility in your report?

A. Well, the way the Gudjonsson Suggestibility Scales would have defined it, that somebody will shift their response into -- by -- as a result of pressure from an authority figure in response to misleading information. So it's -- it's yielding and shifting to the pressures of an authority figure, and changing your answer. And that can be tested and compared to the population according to the testing manual. And, as you know, I'm describing here a test by Dr. _____ where he said that Mr. _____ was more suggestible than 98 percent of the population.

Q. Have you ever administered the Gudjonsson Suggestibility Scales?

A. No, I have not. · So I'm -- as you asked earlier, I'm not a clinical psychologist, and so I do not administer that test.

Q. Have you had other cases where you've had to interpret the Gudjonsson Suggestibility Scales?

A. Yes.

Q. So I want to walk through with you your understanding of how the Gudjonsson Suggestibility Scales are administered. So can you -- are you familiar with -- I know you said you haven't administered the test, but in the course of -- you said you have interpreted it before. · So are you generally familiar with how the test is administered?

A. Yes. But I just want to be really clear. When I say I've interpreted, I don't mean I've actually interpreted the test results. I'm that I'm familiar with the literature on the test, and have incorporated that into my analyses in other cases. So the proper person to interpret the results would be a clinician who administer the test. The test, my understanding, is really a memory test. So you read a fact pattern, and then you -- you're asked factual questions and you say -- you give the answers, and then the administrator will tell the person that they got some wrong answers, and try to get them to shift their answers to, even though the correct answers, to incorrect answers, and from that process there are different scores. · I think there's a yield score and a shift score. And those are computed, and then they are normed so that the scores, or the combined scores, will tell you how suggestible the person is in the definition that we just discussed relative to different populations. · A normal population, a population of false confessors. · And that's where those percentages come from.

Q. So as you sit here, do you have any understanding of what specifically about an individual's suggestibility the shift score would tell us?

A. Just a general understanding, that shift -- shift combines with yield to tell you how suggestible somebody is; that shift would be the shift in their answers; yield would be about yielding to the pressure of the interrogator.

Q. Are you aware of any laboratory studies where both true and false confessions have been induced to compare the conditions that led to each?

A. · Yes.

Q. · What studies have done that?

A. · There's a number of studies that have done that. And many of them are cited in the report. I guess what I would tell you is that up to 2010, the -- if you look at footnote 3 see the Saul Kassin, et al. review article that I've referred to as the White Paper, that would describe all such studies up to 2010. And then there's a few others after 2010. · I'm just looking through the footnotes to see if some of them were cited.

Q. · Are you still looking or --

A. · I'm sorry, I'm still looking. · I'm almost through the report. I thought that some of these studies were cited, and I don't see that they are. There are three studies I can think of in particular. So one of the studies is called Minimization and Maximization Techniques Assessing the Perceived Consequences of Confessing and Confession Diagnosticity..... and Modeling the Influence of Investigator Bias on the Elicitation of True and False Confessions. · And the third one I was thinking The Lie, the Bluff, and False Confessions

Reid Response:

Suggestibility, anxiety and depression become a mute issue if the subject provides corroborating details as they describe their commission of the crime. Details about the Gudjonsson Suggestibility Scales can be found on our website at the What's New entry dated September 29, 2012.

<https://reid.com/resources/whats-new/2012-what-is-the-gudjonsson-suggestibility-scale-gss>

Violation of National Training Standards

A. So I do say that they **violated national training standards** as they existed in 1995.

Q. And the only cite that you source for what police standards existed in 1995 is an article written by you and a manual from Reid & Associates?

A. Correct. · So the Reid & Associates manual is sort of the bible of interrogation in America. · It was then, and it's now. And so they pretty much set the standards. And that's why I mentioned the Reid manual. I've read all of their manuals going back to 1942. I've read every published manual I could get my hands on, including a lot of unpublished manuals. So I'm using that manual as an exemplar of the standards that they violated

Q...what actions did the officers in this case take that you are opining violated national police interrogation standards in 1995?

A. Right. So one would be the use of promises or threats, which is also disputed, according to my understanding or recollection. Another would be the deprivation of essential necessities; food, drink, sleep, rest. And you might characterize that as disputed too because everybody, that I recall, that's deposed said, you know, he always looked fine, he never looked tired, we offered him food. The four hours of interrogation that Reid & Associates says don't go beyond four hours, and this clearly went beyond four hours.

Reid Response:

There certainly is a paradox involved in the testimony of false confession expert Richard Leo when on the one hand he testifies that the Reid technique is associated with false confessions, and yet at the same time uses John E. Reid and Associates as the benchmark for proper procedures.

Leo has testified as a false confession expert in a number of cases in which he stated that the police acted improperly, and specifically, that they engaged in coercive behaviors that resulted in a false confession. To bolster his position, he oftentimes refers to John E. Reid and Associates as setting the national standards for proper interrogation techniques.

As stated above, Leo has testified in several cases that the police violated national training standards and stated that “the Reid & Associates manual is sort of the bible of interrogation in America. It was then, and it's now.” When he was asked, “What actions did the officers in this case take that you are opining violated national police interrogation standards?”, he responded, “one would be the use of promises or threats” which Reid has advised investigators not to do for over 60 years.

In another case, Richard Leo stated in his report that “the officers, in this case, violated national police interrogation standards, protocols, and best practices. First, police are taught to avoid the use of implicit or explicit threats of harm or threats of punishment and implicit or explicit promises of leniency or freedom to elicit incriminating statements, admissions and/or confessions because threats and promises are understood by law enforcement to be psychologically coercive and thus lead to involuntary and/or false confessions.

Second, the investigators violated commonly accepted standards with respect to the length of (subject’s) police interrogation. As discussed earlier, the 1986 Reid and Associates police interrogation training manual book specifically recommends that police interrogate suspects for no longer than 4 hours absent “exceptional situations” and that “most cases require considerably fewer than four hours.

Third, police interrogators are trained to avoid contaminating a suspect by leaking or disclosing non-public case facts to him or her but, instead, to hold back unique case information and let the suspect volunteer case details in order to demonstrate inside knowledge of the crime details to corroborate the accuracy of any incriminating statements.

Fourth, and finally, the Reid and Associates training manuals and programs have always from the 1st edition in 1942 to the current edition in 2022, repeatedly implores police investigators not to use any interrogation technique that is “apt to make an innocent person to confess.”

When Leo states that “Second, the investigators violated commonly accepted standards with respect to the length of (subject’s) police interrogation. As discussed earlier, the 1986 Reid and Associates police interrogation training manual book specifically recommends that police interrogate suspects for no longer than 4 hours absent “exceptional situations” and that “most cases require considerably fewer than four hours” **he is not quoting exactly what we say in our book.** What we actually say in the 3rd edition of our book from 1986 is the following:

“Moreover, as to the time factor, rarely will a competent interrogator require more than approximately 4 hours to obtain a confession from an offender, even in cases of a very serious nature. Nevertheless, there should be no hard and fast rule in this respect because in exceptional situations, there may be a need for a somewhat longer period. Most cases, of course, require considerably fewer than 4 hours.”

In our book, *Criminal Interrogation and Confessions* (5th edition 2013) we state the following: “A properly conducted interrogation that lasts 3 or 4 hours, for the ordinary suspect, is certainly not so long as to cause the levels of emotional or physical distress that constitute duress.

However, if physical coercion is involved, even a 30-minute interrogation may warrant such a bona fide claim. The following guidelines are offered to evaluate claims of duress:

- Can the excessive length of interrogation be explained by the suspect's behavior? For example, did the suspect offer a series of different versions of events, before offering the first incriminating statement? A suspect who has maintained his innocence and has made no incriminating statements for 8 or 10 hours has not offered any behavior to account for this lengthy period of interrogation.
- Did the suspect physically or verbally attempt to seek fulfillment of biological needs? If so, were such requests denied or used as leverage to obtain the confession (e.g., "You can use your asthma inhaler after you confess."). A suspect who made no such verbal requests or physical efforts to bring the interrogation to a close has a much weaker case. In this instance, it would appear that only in retrospect, after reviewing the interrogation in his mind, or with an attorney, did the suspect decide that the conditions of the interrogation were intolerable.
- Were there any threats made with respect to denying the suspect basic biological needs unless he confessed (e.g., "You're not leaving here until you confess—no matter how long it takes.").

In *United States v. Begay* (497 F.Supp.3d 1025, 1068-69 (D. N. Mex 2020) the court found "there is no scientifically reliable means of determining whether a given confession is false." The court also stated that "crucially, there does not appear to be a reliable estimate of how many confessions are false confessions, regardless of the interrogation tactic employed." Also, "false confession theory cannot reliably determine whether a given confession is false." Additionally, the court found that a further limitation on false confession science "is that false confession theory does not appear to be based on significant empirical data," and "instead appears to be based primarily on anecdotal evidence, small-sample-size studies, or extrapolations from inapposite situations." Further, "the empirical data limitations similarly produce a high error rate. See also, *United States v. Phillipos*, 849 F.3d 464, 471-72 (1st Cir. 2017) (affirming district court decision to exclude false confession testimony from Richard Leo because the district court's finding was reasonable that it would "introduce the jury... to a kind of faux science.").