

The Fallacy of Defense Attorney Claims that the Reid Technique Causes False Confessions

In confession cases, the defense attorney and their false confession “expert” will oftentimes claim that the Reid Technique causes false confessions. Nothing could be further from the truth.

While the overwhelming majority of confessions are true and accurate, certainly false confessions can occur. With very few exceptions, false confessions are caused by the investigator engaging in coercive or inappropriate behavior.

J.P. Blair reviewed the first 110 DNA exoneration cases and reported that "This study failed to find a single false confession of a cognitively normal individual that did not also include the use of coercive tactics by the interrogator." Earlier in the article, the author defined coercive tactics as "the use of physical force; denial of food, sleep or the bathroom; explicit threats of punishment; explicit promises of leniency; and extremely lengthy interrogations." [J. Pete Blair, “A Test of the Unusual False Confessions Perspective: Using Cases of Proven False Confessions”. Criminal Law Bulletin (Vol 41, Number 2)]

The review of thousands of false confessions by the courts has found that the primary causes of false confessions are the result of the investigator engaging in such coercive behaviors as

- Physical abuse of the subject
- Threats of physical harm
- Threats of inevitable consequences
- Promises of leniency
- Denial of rights
- False confessions
- Denial of physical needs
- Excessively long interrogations
- Disclosure of crime details
- Failure to properly take into account the subject’s mental limitations and/or psychological disabilities
- Failure to properly modify approaches with socially immature juveniles
- Failure to properly corroborate confession details

We teach at our training programs and have published in our book, Criminal Interrogation and Confessions (5th ed, 2013) and in many of our Investigator Tips on www.reid.com, that to avoid false confessions, the investigator should conduct interrogations in accordance with the guidelines established by the courts, and to adhere to the following Reid Core Principles and Best Practices:

- Do not make any promises of leniency

- Do not threaten the subject with any physical harm or inevitable consequences
- Do not deny the subject any of their rights
- Do not deny the subject the opportunity to satisfy their physical needs
- Withhold information about the details of the crime from the subject so that if the subject confesses the disclosure of that information can be used to confirm the authenticity of the statement
- Exercise special cautions when questioning juveniles or individuals with mental or psychological impairments
- Always treat the subject with dignity and respect
- Conduct an interview before any interrogation. Absent a life-saving circumstance the investigator should conduct a non-accusatory interview before engaging in any interrogation
- Conduct an interrogation only when there is a reasonable belief that the suspect committed the issue under investigation or is withholding relevant information
- Attempt to verify the suspect's alibi before conducting an interrogation
- When interrogating a non-custodial suspect, do not deprive the suspect from his freedom to leave the room
- Do not conduct excessively long interrogations
- When a suspect claims to have little or no memory for the time period when the crime was committed the investigator should not lie to the suspect concerning incriminating evidence
- Electronically record the interview and interrogation
- The confession is not the end of the investigation.

Following the confession, the investigator should investigate the confession details in an effort to establish the authenticity of the subject's statement, as well as attempt to establish the suspect's activities before and after the commission of the crime.

The courts have found that when properly applied, the Reid Technique does not cause false confessions:

People v. Thomas (2004)

- **Jurisdiction:** California
- **Summary:** The court examined the admissibility of a confession obtained during a Reid Technique interrogation. The defense argued that the confession was coerced.
- **Outcome:** The court upheld the confession, emphasizing that the interrogation techniques were not coercive and that the defendant had waived their rights knowingly.

***State v. McGhee* (2001)**

- **Jurisdiction:** Ohio
- **Summary:** This case involved a challenge to the validity of a confession obtained using the Reid Technique. The defense contended that the psychological pressure applied during interrogation led to a false confession.
- **Outcome:** The court ruled that while the Reid Technique can create psychological pressure, the confession was deemed voluntary and admissible.

***Commonwealth v. Riggins* (2008)**

- **Jurisdiction:** Pennsylvania
- **Summary:** In this case, the defendant's confession was obtained using the Reid Technique. The defense argued that the techniques employed were overly manipulative.
- **Outcome:** The court found that sufficient evidence supported the confession's voluntary nature.

***State v. Hinton* (1992)**

- **Jurisdiction:** Alabama
- **Summary:** The defense challenged the use of the Reid Technique based on its potential to elicit false confessions. The case raised questions about the reliability of confessions obtained through such methods.
- **Outcome:** The court admitted the confession.

***U.S. v. Jacques* (2011)**

- From *U.S. v. Jacques* (*United States v. Jacques*, 784 F. Supp. 2d 48 (2011)) “*In his declaration and at the hearing, Professor Hirsch [the false confession expert in this case] explained that the primary cause of “coerced compliant” confessions are certain interrogation methods employed by law enforcement, including a widely used method known as the Reid technique....Beyond his own intuition, however, Professor Hirsch offered no basis for concluding that these tactics had any tendency necessarily to cause false, rather than true, confessions.*
- ... *Professor Hirsch's declaration offered no other evidence of the danger of certain police interrogation tactics, and the Reid technique in particular, except to say that “the use of these tactics [employed in the Reid technique] and their correlation with false confessions are extensively documented in the literature....Despite this broad statement, he did not provide any further explanation...”*

- *In sum, the proffered expert testimony to the effect that the Reid technique enhanced the risk of an unreliable confession lacked any objective basis for support whatever. Although Professor Hirsch insisted that “there is a wealth of information about the risks of the Reid technique,” he could point to none.”*

***State v. Belaunde* (2019)**

The Superior Court of New Jersey, stated in their opinion that "No case supports the contention that using the Reid technique renders an adult's confession inadmissible. A suspect will have a "natural reluctance ... to admit to the commission of a crime and furnish details." ...Therefore, "an interrogating officer ...[may] dissipate this reluctance and persuade the person to talk ... as long as the will of the suspect is not overborne."

Defense attorneys and their false confession experts, such as Richard Leo, oftentimes describe the Reid Behavior Analysis Interview as a process in which “....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.”

When Leo and others state 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.....” they are referring to the concept of “misclassification.”

“Misclassification” is a term used by social psychologists to refer to when an investigator erroneously identifies an innocent person as the guilty suspect based on their verbal and nonverbal behaviors during the investigative interview. And social psychologists reach this conclusion based on the fact that almost all of the “scientific” research studies regarding an investigator’s ability to accurately assess a subject’s credibility indicate that investigators cannot identify whether a person is telling the truth or is being deceptive at a level better than chance.

The overwhelming majority of research studies are significantly flawed in their design

For example, in many of the “scientific” studies, students are used as the "subjects." They are assigned different roles - some are "guilty" of the crime, such as stealing money from a teacher's desk drawer, and others are "innocent." A number of the “guilty” students are instructed to lie about their status when they are subsequently interviewed by one of the research staff about their possible involvement in the theft. In reaching their conclusions as to who was a truthful subject and who was a deceptive subject, the evaluators were generally no better than chance at determining the subject's status - "innocent" or "guilty".

In a number of research studies there was no opportunity to ask the subject follow-up questions after the subject told the investigator their story, which would not be the case in a real-life investigative interview. For example, in one study, several inmates are on camera describing two different crimes that they committed - one which they actually did commit, and one which they are lying about - they did not commit. The viewer/investigator is supposed to then determine which is the crime that they committed. The evaluators were generally no better than chance at

determining which was the crime the inmate actually committed. In an actual case investigation, after the subject tells us their story the investigator would ask a series of questions to develop additional details to clarify or expand on some of their statements, etc. during which the subject's deception would oftentimes become apparent.

Here are some additional problems with the overwhelming number of such “scientific” studies:

The subjects (students/prisoners) had low levels of motivation to be believed or to avoid detection... there were no significant consequences if their deception was identified.

The interviews of the subjects were not conducted by investigators trained in investigative interviewing techniques...there were very few, if any, follow-up questions to probe for additional details.

The studies did not employ the type of structured interview process that is commonly utilized by investigators in the field.

The research studies did not follow the established protocol for the evaluation of the subject's behaviors, such as:

- In most studies, there was no attempt to establish a behavioral baseline for each subject so as to identify changes from their normal behavioral pattern as they answered investigative questions.
- The research was based on the faulty premise that there are specific behavior symptoms that are unique to truth or deception...in fact, there are no behaviors unique to truthfulness or deception.
- There was no consideration given to the various factors that can affect a person's behavioral responses, such as age, maturity, cultural influences, mental capacity, emotional and psychological stability, and the subject's physical condition at the time of the interview (drugs, alcohol, medical issues, etc.).
- Furthermore, in most research studies, the interview is evaluated in a vacuum, whereas in the real world, the investigative interview of a subject takes place in the context of an investigation. For example, by the time the investigator interviews a suspect, they may already have developed information about the subject's relationship with the victim, their whereabouts at the time of the crime, their financial situation, and/or other relevant background information.

In the Reid Technique, we teach that there are several rules that all investigators should follow in the evaluation of a subject's verbal and nonverbal behavior symptoms:

- Establish the subject's normal behavioral pattern/baseline and then look for changes from that norm or baseline.

- Read all behavioral responses across all three channels of communication: verbal, paralinguistic, and nonverbal.
- Read behavioral clusters - the overall behavioral pattern - not single, isolated observations
- Consider timing and consistency for all nonverbal responses
- Always evaluate behavior symptoms in conjunction with the case evidence and facts
- Always evaluate the potential impact of possible factors, such as the subject's mental capacity, psychological stability, maturity, culture, and physical well-being at the time of the interview on their behavior symptoms

If these rules are followed, a subject's verbal and nonverbal behaviors can help in the assessment of a subject's credibility.

Almost without exception, these assessment rules were not followed in any of the research studies conducted by social psychologists/researchers to evaluate the value of verbal and nonverbal behavior symptoms.

Contrary to the statement that false confession experts oftentimes make, namely that the Reid Behavior Analysis Interview as a process in which "...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," the Reid 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. At the outset of the interview, the investigator must be sure to comply with all legal requirements, such as the appropriate advisement of rights, contacting a juvenile's parents or guardian as required by law, etc.

The BAI consists 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 for the subject – their normal behavioral patterns (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 essential element to evaluate during an investigative interview is whether or not the case facts and evidence support the subject's story or contradict what the subject has stated.

The investigative questions are the core of the interview process, and the subject's answers can be critical. For example, if in a homicide investigation, we ask the subject when was the last time that he was over at John's home (the victim) and the subject responds that he has not been over to John's apartment for several weeks, and yet the police have a security video showing him entering the victim's apartment with John on the day of the murder, the fact that he lied about that outweighs any verbal, paralinguistic or nonverbal behavioral responses that he might make during the interview.

This underlying principle is almost always ignored by social psychologists, defense attorneys, or academicians who are critical of interrogation techniques in general and the Reid Technique specifically.

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 the investigative information. If the subject offers an alibi for the time in question, every effort should be made to investigate the alibi. The investigative questions constitute most of the interview.

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.)

At the conclusion of the non-accusatory investigative interview (BAI), 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

Researchers are realizing the deficiencies in the created "scientific" research studies and are acknowledging the vital role of the investigator in using effective interviewing techniques. In the article, "Eliciting cues to deception and truth: What matters are the questions asked" *Journal of Applied Research in Memory and Cognition* (2012) authors Aldert Vrij and Par Anders Granhag, point out 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..."

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.

To underscore the hypocrisy in the statements that defense attorneys and their false confession experts make about the Reid Technique, consider the fact that while on the one hand, Leo (and others) suggest that "the Reid method sometimes lead to or are involved in false confession cases, and that some of those techniques are risk factors for a false confession" while on the other hand he has testified in several cases that the police acted improperly, that they violated national standards and specifically, that they engaged in coercive behaviors that resulted in a false confession, and to bolster his position, he oftentimes refers to John E. Reid and Associates as setting the national standards for proper interrogation techniques.

Leo has testified that "the Reid & Associates manual is sort of the bible of interrogation in America. It was then, and it is 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.

Leo also testified that "..... 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 confess.'"

Given the fact that Leo and others use Reid and Associates as the standard for proper procedures, it is clearly disingenuous to suggest that we engage in and teach behaviors that cause false confessions.

As referenced earlier, in the case *U.S. v. Jacques* the court stated that "the proffered expert testimony to the effect that the Reid technique enhanced the risk of an unreliable confession lacked any objective basis for support whatever. Although Professor Hirsch (the false confession expert in this case) insisted that "there is a wealth of information about the risks of the Reid technique," he could point to none."

For additional information on this topic visit our Investigator Tips at www.reid.com

A General Outline of Richard Leo's Testimony on False Confession Issues and Reid Responses

What False Confession Experts Say About the Reid Technique and Our Responses