

In a recently published article (posted May 16, 2012), *The Problem of Interrogation-Induced False Confession: Sources of Failure in Prevention and Detection*, the authors, Dr. Richard Leo and Deborah Davis, continue the trend of “false confession experts” misrepresenting the tenets of The Reid Technique of Interviewing and Interrogation.

We have quoted below the misrepresentations from the article, followed by our response in blue. (All page references are to our text, *Criminal Interrogation and Confessions*, 5th edition, 2011. It is interesting to note that the authors ignore this 5th edition of our book, published in October 2011, when they discuss the Reid Technique).

On page 19 of the article the authors state, "Finally, specific investigations of the effects of training in the “Behavior Analysis Interview” developed and promoted by Inbau, Reid and colleagues in their manuals and training materials and seminars have shown that the training decreases accuracy relative to untrained controls (Kassin & Fong, 1999)."

The facts are exactly the opposite. When trained interviewers evaluated the responses of 80 different subjects in real-life Behavior Analysis Interviews they achieved an accuracy rate of 86% for truthful subjects and 83% for deceptive subjects (page 102 - NSA study). Furthermore, it has been demonstrated in the last several years that accuracy in detecting deception increases significantly with real-life subjects when the interviewer understands the context in which the interview was conducted, and when the interviewer has been properly trained in the in the field of behavior symptom analysis (Blair 2010 and Hartwig 2006 - details on page 103).

On page 24 the authors state that Reid teaches that the interrogation should unfold as follows: “To facilitate the impulse to confess to escape the interrogation, the interrogator is directed to encourage anxiety and discomfort for the suspect throughout the interrogation through use of a physically uncomfortable interrogation room (uncomfortable seating and temperature) and through encouraging emotions such as guilt and anxiety during the interrogation.”

The exact opposite is true – here are some quotes about the interview room from our book: “For noncustodial police or private sector interviews there should be no lock on the door of the interviewing room, nor should there be any other physical impediment to an exit by the suspect if he desires to leave the building.” (pages 46-47).

“The chairs [for the investigator and the subject] should be the type normally used as office equipment without rollers.... Avoid chairs with lowered front legs or other deviations that place the suspect in an ‘inferior’ posture or prevent him from making normal changes in his posture.” (page 47)

“Good interviewers have a genuine curiosity and concern about people, guilty or innocent, and sincerely enjoy talking to others. Perhaps most important, the effective interviewer is able to separate the suspect from the crime he may have committed; the interviewer perceives his role as ascertaining the truth, not passing

judgment on the suspect's behavior or attitude.” (page 56)

At no time in any of our publications or training programs or materials do we suggest that the room temperature should be manipulated in any way.

The authors go on with their description of the interrogation process: “Further, the interrogator is free to (and often will) continue the interrogation as long as the suspect fails to demand that it stop or to invoke his Miranda rights. Inevitably, the need to escape progressively increases as the interrogation continues, and the suspect becomes more fatigued or distressed. It remains to convince him that confession is the best way to escape, ideally while also convincing him that confession will be benign or beneficial.”

To the contrary, we teach how to recognize the possibility that the suspect we are interrogating maybe innocent: “When the interrogator senses that the suspect may be innocent, he should begin to diminish the tone and nature of the accusatory statements.” We then describe the process of “stepping down.” (page 268)

We also point out that, “Depending on the nature and persistence of the suspect's denials, the investigator may become convinced of the suspect's actual innocence and bring to a close the interrogation session.” (page 256)

The authors continue with their description of the interrogation process: “The interrogator then turns to the process of “theme development,” (Inbau, et al., 2001), in which he suggests “explanations” of how and why the crime was committed that appear noncriminal (such as self-defense), or less serious than other potential versions (e.g., accident versus intent; initiated by the victim or others rather than by the suspect; for noble motives such as protecting or helping others versus for personal gain, and many more).”

To the contrary, we state that “During the presentation of any theme based upon the morality factor, caution must be taken to avoid any indication that the minimization of moral blame will relieve the suspect of *criminal responsibility*.” (page 205)

“As earlier stated. The investigator must avoid any expressed or specific statement to the effect that, because of the minimized seriousness of the offense, leniency will be afforded.” (page 213)

“A caution is warranted concerning the use of a theme that suggests a morally acceptable motive for the crime. As previously indicated, an interrogation theme should not absolve the suspect from legal consequences associated with his crime. Consequently, an investigator should not suggest, as a *primary theme*, that the crime was committed accidentally.” (page 219)

The authors continue with their description of the interrogation process:

“While the process of theme development is designed to minimize the perceived seriousness of the crime, if any, and thereby lower the perceived costs of confession, it may be supplemented with tactics of “maximization,” whereby the perceived costs of failing to confess are raised. The interrogator may suggest that the suspect will be implicated in a more serious role if he fails to confess: for example, when he refuses to “explain” himself, and therefore the claims of others about him must be believed (e.g., he was the shooter rather than the get away driver). He may raise the issue of how the judge or jury will react to someone who insists on lying rather than taking responsibility for what he has done. And he may allude to the potential of the death penalty (which we have seen in many cases, despite prohibitions against it).

When the interrogator feels the time is right, he is taught to try to prompt the first admission from the suspect through the use of the “contrast” principle of influence incorporated in the tactic known as the “alternative question” (Inbau, et al., 2001). The interrogator offers two versions of the crime, one more apparently legally serious than the other (such as self-defense versus unprovoked attack), and asks the suspect which of the two was what happened.”

The exact opposite is the case: “The alternative question [the question we ask to develop the initial admission of guilt] should not make any mention of legal charges. An alternative question that violates this guideline, and is therefore *improper*, is: ‘Did you plan on killing her, in which case it will mean first-degree murder and life in prison,, or did this just happen in the heat of passion, which would just be manslaughter?’ (page 295)

“The alternative question should not threaten inevitable consequences. A suspect must be able to reject both sides of an alternative question without fear of facing adverse consequences because of that decision..... An *improper* alternative question that threatens inevitable consequences in a noncustodial interrogation is, ‘Do you want to cooperate with me and confess or do you want me to lock you in jail where you can sit for the next two or three days.’” (page 295)

“Another example of an *improper* alternative question that threatens inevitable consequences is, ‘If you don’t tell me about the sexual contact you had with your daughter, your kids will be taken away and you will never see them again.’ One of the guidelines governing confession admissibility is that the confession must be essentially the product of the suspect’s free will. When the impetus for confessing is to avoid a jail cell or be able to see one’s children, the statement is clearly the result of compulsion.” (page 295)

The authors continue with their description of the interrogation process:

“During this process, the interrogator is admonished to prevent suspects from voicing their innocence or evidence supporting it, to interrupt with his own statements and themes, to maintain the attention of the suspect through invasion of personal space if necessary, and to generally control the interaction completely. It is not until the interrogator becomes convinced that the suspect is approaching readiness to provide

admissions that he allows the suspect to talk more freely. These intrusive behaviors add to the aversiveness and stress of the situation, and contribute to the suspect's conviction that he will not be believed."

In Step 3 of the Reid Nine Steps of Interrogation, we discuss how to handle the subject's denials. "One of the primary goals of Step 3 is to discourage denials that distract from the investigator's theme and subsequent efforts to persuade the suspect to tell the truth." (page 257)

We also point out that, "Step 3 of the interrogation process is important for another reason. Depending on the nature and persistence of the suspect's denials, the investigator may become convinced of the suspect's actual innocence and bring to a close the interrogation session." (page 256)

The authors continue: "All the while, the interrogator will remind the suspect that he can't "help" him if he fails to tell the "truth." But what this means is if the suspect fails to tell the truth as the interrogator perceives it, the accusations, implied threats and promises continue until the suspect provides an account the interrogator approves of or assumes is the best he can get. This process can produce many versions of the suspect's story, and renders it very difficult to evaluate the validity of the details of the confession, in addition to its general validity, as we discuss more fully in the next section."

The exact opposite is the case: "Avoid interrogations centered on "helping" the suspect." Some courts have ruled that such statements as, "I want to help you out on this thing," or "I can't help you unless you help me first," represent an implied promise of leniency and, therefore, investigators should refrain from any references to "helping a suspect out." (page 331)

Obviously "implied threats" should never be used.

Finally, as they conclude their article, the authors state, "For example, some forms of "minimization," (called "theme development") which is one of the cornerstones of the Reid technique (Inbau et al., 2001), have clearly been shown to convey expectations of leniency, and to be implicated as causes of false confession in both real- world case studies and laboratory experiments (see Leo, 2008; Kassin & Gudjonsson, 2004 for reviews)."

What the authors fail to point out is that this conclusion was reached by students reading transcripts of interviews and speculating as to what type of punishment the suspect would receive. They fail to consider how the courts view this issue:

"Insofar as the police simply downplayed the moral culpability of the offence, their actions were not problematic." *R v. Oickle* (2000) (page 326)

"Although the officers might have helped him rationalize his actions in such a way that he might hope that he would not be charged with murder, the evidence does not

demonstrate that these tactics so affected Fundaro that his will was overborne or his capacity for self-determination was critically impaired." *State v. Fundaro* (Jan. 2012) www.reid.com

"At the suppression hearing, Maher testified that he used an interrogation technique that involves "minimizing the actions [of defendants to suggest] that they are less culpable for their actions, whether it be due to a chemical dependence or being under the influence of alcohol or drugs or being [under] the stress of a single parent." Therefore, this interrogation technique does not entail the use of outright falsehoods, but rather the use of subtle subterfuge. Given that police are permitted to mislead a suspect, they are likewise permitted to use minimization techniques." *State v. Belonga* (March 2012) www.reid.com

As one U.S. District court stated, "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." *US v. Jacques*, May 2011, the US District Court of Massachusetts

False confessions are not caused by the application of the Reid Technique; they are usually caused by interrogators engaging in improper behavior that is outside of the parameters of the Reid Technique – using improper interrogation procedures – engaging in behavior that the courts have ruled to be objectionable, such as threatening inevitable consequences; making a promise of leniency in return for the confession; denying a subject their rights; conducting an excessively long interrogation; etc.