The Reid Technique of Interviewing and Interrogation

In this position paper we will address the following issues:

- The core principles of the Reid Technique
- Best Practices
- Why false confession experts criticize the Reid Technique and What they say
- What the courts say about false confession experts
- What the courts say about the Reid Technique
- The best way to guard against false confessions

The Core Principles of The Reid Technique

The Reid Technique consists of a three-phase process beginning with Fact Analysis, followed by the Behavior Analysis Interview (which is a non-accusatory interview designed to develop investigative and behavioral information), followed by, when appropriate, the Reid Nine Steps of Interrogation. All subjects in an investigation are interviewed; very few, if any, are interrogated.

The Reid Technique is built on a core of principles that include the following:

1. Always conduct interviews and interrogations in accordance with the guidelines established by the courts
2. Do not make any promises of leniency
3. Do not threaten the subject with any physical harm or inevitable consequences
4. Do not deny the subject any of their rights
5. Do not deny the subject the opportunity to satisfy their physical needs
6. Always treat the subject with dignity and respect
Best Practices

The successful interrogation is one in which (1) the suspect tells the truth to the investigator and, (2) persuasive tactics used to learn the truth are legally acceptable. With these goals in mind, the following are a list of best practices for applying the Reid Nine Steps of Interrogation, along with a brief discussion of each practice:

Conduct an interview before any interrogation. Absent a life-saving circumstance the investigator should conduct a non-accusatory interview before engaging in any interrogation. During the interview the investigator can establish rapport with the suspect, assess their credibility, develop investigative information and establish a behavioral baseline. Also, during the interview the suspect is more likely to reveal information that can be used to develop an interrogation strategy.

Conduct an interrogation only when there is a reasonable belief that the suspect is guilty or withholding relevant information. The belief that a suspect is guilty of a crime or is withholding relevant information may be based upon investigative information, evidence, the suspect's demeanor, or verbal responses to interview questions. The investigator should avoid conducting an accusatory interrogation as a technique to separate innocent from guilty suspects.

Consider a suspect's behavior in conjunction with case facts and evidence. The assessment of a suspect's credibility during an interview will be enhanced and likely more accurate if it is based not only on the suspect's verbal and nonverbal behavior, but also on case facts (the suspect's established opportunity, access, motive and propensity to commit the crime) as well as forensic or testimonial evidence.

Attempt to verify the suspect's alibi before conducting an interrogation. The most efficient means to prove a suspect's innocence is to verify his or her purported alibi. Conversely, when it is determined that the suspect provided a false alibi, this finding offers support for the suspicion of the suspect's probable guilt.

A single investigator should be the lead communicator. While it is often appropriate to have a third person in the room during an interrogation, perhaps as an observer or witness, there should only be one primary investigator communicating with the suspect at a time. A guilty suspect is more likely to offer a voluntary confession to a single investigator who has established a rapport and trust with the suspect. A tactic to be avoided is to have two or three investigators simultaneously bombarding the suspect with themes or alternative questions, or working as a "tag team" wearing the suspect down over an extended period of time.

When interrogating a non-custodial suspect, do not deprive the suspect from his freedom to leave the room. The room should be set up so that the subject's exit from the interrogation room is not blocked - the investigator's chair should not be between the suspect's chair and the door. The room should not be locked from the inside (requiring a key to open the door) and the room should not be in an area that requires a key or pass code to exit the building. Finally, the investigator should not make verbal statements implying that the suspect is not free to leave the room, e.g., "You're not going anywhere until we get this clarified!"

Do not conduct excessively long interrogations. In most instances, if the suspect is still adamantly maintaining his innocence and has not made any incriminating statements or
admissions after three to four hours of interrogation the interrogation should be re-assessed and most likely terminated.

Exercise extreme caution when interrogating juveniles, suspects with a lower intelligence or suspects with mental impairments. This class of suspects is more susceptible to false confessions and, therefore, the investigator should be cautious in utilizing active persuasion such as discouraging weak denials, overcoming objections or engaging in deceptive practices. Proper corroboration of a confession will be critical with this group of suspects.

When using interrogation tactics involving deception the investigator should not manufacture evidence against the suspect. Courts make a distinction between false verbal assertions, e.g., "We found your fingerprints in her bedroom." which are permissible and manufacturing evidence, which is not permissible. An example of manufacturing evidence is taking the suspect's fingerprints and transferring the prints to an evidence card, which indicates that the prints were found in the victim's bedroom.

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. While it is not uncommon for guilty suspects to feign memory loss, an overriding concern is an innocent suspect who experiences true memory loss for the time period when the crime was committed. Under this circumstance, if the investigator lies to the suspect about incriminating evidence and the suspect confesses, it may be argued that presenting false evidence caused an innocent suspect to believe that he had committed the crime.

Do not reveal to the suspect all information known about the crime. A legally admissible confession should include corroboration. One form of corroboration is information only the guilty suspect would know, e.g., the method of entry in a burglary, a memorable statement made to the victim, the denomination of money stolen, the murder weapon that was used, etc. When interviewing a suspect or offering information to the news media, the investigator should carefully guard this protected information so that the only individuals who would know it would be the investigator and the person who committed the crime.

Attempt to elicit information from the suspect about the crime that was unknown to the investigator. The best form of corroboration is information not known to the investigator about a crime that is independently verified as true. Examples of independent corroboration include the location of a knife used to kill the victim, where stolen property was fenced or the present location of a car the suspect stole.

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.
Why false confession experts criticize The Reid Technique and What they say

It’s too effective

False confession experts recognize the effectiveness of The Reid Technique in developing admissions of guilt from the guilty party. At a conference on false confessions at Temple University Law School in Philadelphia several years ago, Professor Saul Kassin made the statement that The Reid Technique is a perfect system to get confessions from the guilty. At a Dallas conference on wrongful convictions hosted by the Center for American and International Law in February 2015, Dr. Deborah Davis referred the Reid Technique as a “brilliant use of the psychology of influence.” In the case US v. Jacques, false confession Professor Alan Hirsch testified, “I want to be very clear that, number one, the Reid Technique is too effective. The problem is not that it's ineffective. It breaks down guilty suspects.”

False confession experts attack The Reid Technique because they erroneously (in some cases intentionally) attribute to it interrogation practices that contribute to false confessions. There are primarily five elements that contribute to false confessions:

- Excessively lengthy interrogations
- Threats of harm or inevitable consequences
- Promises of leniency
- Denial of a subject’s rights
- Juvenile subjects and mentally/psychologically impaired subjects

As we stated previously in this document in all of our training manuals, interrogation books and articles, we teach the exact opposite: do not conduct lengthy interrogations (see Best Practices re the 3-4 hour guideline); do not threaten the subject or make promises of leniency or deny the subject any of their rights. We have published in our book, Criminal Interrogation and Confessions (5th ed, 2013) and in our course training manuals, that the investigator must exercise special precautions when interviewing juvenile or mentally impaired individuals. A more detailed discussion of juvenile topics will be presented later in this paper.

On the following pages we will detail the criticisms made by false confession experts about the Reid Technique, and then detail the correct information from our training manual (referenced below as TM) or our books, including Criminal Interrogation and Confessions, 5th edition, 2013.
Misrepresenting evidence to the subject

False confession critics oftentimes testify that lying to subjects about evidence causes false confessions and that the Reid Technique encourages investigators to lie about evidence. Here is what we actually teach. In Criminal Interrogation and Confessions we state the following:

In 1969 the United States Supreme Court upheld a defendant’s confession that was the result of the police falsely telling the subject that his accomplice had confessed, implicating him in the commission of the crime. In their opinion, the court stated that “the totality of circumstances” must be considered in determining the voluntariness of a confession. *Frazier v. Cupp*

However, in the non-accusatory interview that should always be the first contact with the subject, we teach that the investigator should not lie to the suspect about non-existing evidence.

In an interrogation we recommend the following with respect to introducing fictitious evidence during an interrogation:

1. Introducing fictitious evidence during an interrogation presents a risk that the guilty suspect may detect the investigator’s bluff, resulting in a significant loss of credibility and sincerity. For this reason, we recommend that this tactic be used as a last resort effort. Clearly, there are disadvantages to introducing evidence, real or fictitious, during early stages of an interrogation.

2. This tactic should not be used for the suspect who acknowledges that he may have committed the crime even though he has no specific recollections of doing so. Under this circumstance, the introduction of such evidence may lead to claims that the investigator was attempting to convince the suspect that he, in fact, did commit the crime.

3. This technique should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement if the police tell them evidence clearly indicates they committed the crime.

It should also be noted that misrepresenting evidence in an otherwise proper interrogation does not cause innocent people to confess, but the “aggravating circumstances” within the interrogation can create an environment conducive to a false statement. Consider the court’s opinion in *US v. Graham* (June 2014) the US District Court, N.D. Georgia, in which the court pointed out that misrepresenting evidence is “one factor to consider among the totality of the circumstances in determining voluntariness.” … However, “[c]ourts have been reluctant to deem trickery by the police a basis for excluding a confession on the ground that the tricks made the confession coerced and thus involuntary.”

The court points out that there are a number of cases in which statements elicited from a defendant in response to police deception were found involuntary… but "these cases all involve significant aggravating circumstances not present here, such as, subjecting the
accused to an exhaustingly long interrogation, the application of physical force or the threat to do so, or the making of a promise that induces a confession.”

In other words, it is not the misrepresentation of evidence that is the genesis of a coerced or even false confession, but the "aggravating circumstances" present during the interrogation.

In a research paper published in the Criminal Law Bulletin, “A Test of the Unusual False Confession Perspective: Using Cases of Proven False Confessions,” the author studied the first 110 DNA exoneration cases reported by the Innocence Project. The author reported that, “This study failed to find a single false confession of a cognitively normal individual that did not include the use of coercive tactics by the interrogator...” The author identified coercive interrogation tactics as “the use of physical force; denial of food, sleep or bathroom; explicit threats of punishment; explicit promises of leniency; and extremely lengthy interrogations.”
Research demonstrates that lying to a subject about evidence causes false confessions

This claim is primarily based on two studies by Saul Kassin that were carefully examined in the case *US v. Jacques* (F.3d, 2014 WL 928857 (C.A.1 (Mass.)) in which the court stated the following:

“At the *Daubert* hearing, Professor Hirsch also mentioned two experiments in which researchers tested certain interrogation techniques—specifically, the techniques of confrontation and minimization, noted above—on college students. The first of these studies, commonly known as “the Alt-key Study,” required students to perform a data entry project and warned them not to hit the computer's Alt key, which would cause the computer to crash. The researchers forced the system to crash, falsely accused the students of hitting the Alt key, and confronted them with a “witness” who reported seeing them do so. Under these circumstances, some number of the students signed written confessions despite their innocence.

In the second study, students were given a set of assignments and told that in some assignments collaboration with classmates was acceptable, while in others it was prohibited. The researchers then accused innocent students of improperly collaborating on certain assignments, informed them that they had violated university rules prohibiting cheating, and, for some, minimized the extent of their wrongdoing and encouraged them to take responsibility for their actions. In the group subjected to the minimization techniques, the “confession” rate tripled.

Obviously, these “interrogations” were not conducted by law enforcement, were not part of a criminal investigation, did not involve actual suspects, and did not present the students with a serious penalty. As a result, Professor Hirsch readily admitted that these studies have “limited value,” which, in the context of this case, is an understatement.

It should also be noted that in the second study, the subjects were told that they should sign a confession that they cheated and then, when the video recording from a hidden camera was reviewed, if it showed that they did not cheat the confession would be destroyed.
The purpose of an interrogation is to get a confession

False confession critics oftentimes claim that the purpose of the Reid Technique is to get a confession at all costs – whether it is a true confession or not is immaterial. Here is what we actually teach (Criminal Interrogation and Confessions):

The purpose of an interrogation is to learn the truth.

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

Furthermore, some false confession experts, in this case Dr. Richard Leo, suggest that “And then they [Reid] lay out techniques that are not about getting the truth; they’re about getting a confession. The techniques they lay out don’t say, "Now stop and evaluate whether the person is telling the truth or whether the person is lying." The manual basically says they're lying, and you've got to get them to stop lying.” Deposition April 2013 Caine v. Burge

In our interrogation training materials and books we spend a considerable amount of time describing what to look for as a possible indication of innocence during the interrogation process. For example, as early as in the 3rd edition of Criminal Interrogation and Confessions published 29 years ago (1986), we state the following with respect to recognizing an innocent suspect’s denials:

"An innocent suspect, as a rule, will respond to the interrogator's first accusation (Step 1) with a spontaneous, direct and forceful denial of guilt. He will likely express or otherwise indicate anger and hostility over the accusation and may even insult the interrogator because of it. While making the initial denial, the innocent suspect will look the interrogator "straight in the eye" and may very well lean forward in the chair in a very rigid or aggressive posture. The verbal content of the innocent suspect's denial may be something like: "You're wrong. You've got to be crazy if you think I did something like that!"

"Innocent suspects disclose very little warning during the theme development stage that they are about to verbally deny involvement in the crime. They may give some general nonverbal signs that they are about to speak, such as shaking the head or leaning forward while making some hand gesture or arm movement, but they will usually give no verbal clues that a denial is forthcoming. Instead, they simply voice the statement, "I didn't do it," without any prefatory remark."

"In the majority of instances, innocent suspects will not allow the interrogator to stop their denials; in fact, the intensity and frequency of denials from the innocent will increase as the interrogation continues. An innocent suspect will become angry and unyielding and often will attempt to take control of the interrogation by not allowing the interrogator to talk until the suspect as made very clear the point that he did not commit the crime under investigation."

"Whenever the verbal and nonverbal behavior exhibited by the suspect during an
interrogation seems sincere and indicates that the suspect was not involved in the offense under investigation, no statement should be made immediately that he is clear of any subsequent investigation. The suspect should merely be told that as a result of cooperating with the investigator, other leads will be pursued in an attempt to substantiate the suspect's claim of innocence."

**Dr. Leo (from the same deposition):**

In response to the question, “Are you aware that what they [Reid] actually say is that the objective of an interrogation is to elicit the truth from a subject, not a confession?” Dr. Leo testified that, “They [Reid] started to say that after the 1997 articles that Richard Ofshe and I wrote.”

Dr. Leo chooses to ignore the fact that in the 2nd edition of Criminal Interrogation and Confessions, published 48 years ago (1967), the authors expressed concern for the possibility of false confessions, particularly from individuals with mental illnesses. “One method for checking the authenticity of a conscience-stricken confession, or one that appears to be the result of mental illness, is to refer to some fictitious aspects of the crime and test whether the subject will accept them as actual facts relating to the occurrence.”

Also in the second edition the authors caution the investigator not to reveal all of the details of the crime to the suspect, because, “On those rare occasions when the subject may be a pathological liar, or when the interrogator may have some concern over that possibility, it is extremely helpful to be able to check what the subject says against known fact which had not been disclosed to him and which he could know about only by reason of his having actually committed the crime.”

In our 3rd edition of Criminal Interrogation and Confessions, 1986, we clearly state that one of the investigators obligations is to identify innocent persons during the interrogation process.

"Professionalizing the interrogation function within a police department would have three benefits: 1) there would be a considerable increase in the rate of confessions from criminal offenders; 2) the confessions will be more likely to meet the prescribed legal requirements; and 3) there would be the expeditious and dependable elimination from suspicion of persons innocent of the crimes for which they have been incarcerated or subjected to questioning on a theory of their involvement in the offense."

We significantly expanded our discussion of these issues in the 4th (2001) and 5th (2013) editions of our book.
False confession critics often point out that in some confirmed false confession cases the confession contains details that only the guilt suspect should have known. We consistently teach that it is imperative for an investigator to conceal details of the crime so that the disclosure of that information by the subject can be used to assess the veracity of his statement (see Best Practices above).

There are two types of corroboration – dependent and independent. Dependent corroboration refers to details about the crime that the investigators knew but kept secret, such as the murder weapon, the location of entry into the building, the details regarding the stolen property, etc. Independent corroboration refers to details about the crime that the investigators do not know, but are provided by the suspect in their confession – such as the location of the murder weapon and/or the bloody clothes; the location of the stolen property, etc.

In our training courses and in our books we carefully demonstrate how to develop corroborating details and how to avoid leading questions that suggest the answer.
The Reid Technique starts with the presumption of guilt

The exact opposite is true. The Reid Technique (as we teach it) always begins with a non-accusatory investigative interview. During the interview the investigator should remain a neutral and objective fact finder. The objective of the interview process is to develop behavioral and investigative information so as to determine the subject’s possible involvement in the issue under investigation. In our book, Criminal Interrogation and Confessions, we devote six chapters to the interview process. It is only when the investigative information indicates that the subject is involved in the commission of the crime that an interrogation would be warranted. In the investigative process everyone gets interviewed, very few are ever interrogated.

The Reid Technique is flawed in that the decision to interrogate is based on a faulty assumption

False confession experts often testify that the Reid Technique is flawed because it is based on an assumption of guilt – a conclusion reached by the investigator based on their assessment of the subject’s verbal and nonverbal behavior symptoms during the investigative interview. The false confession experts testify that almost all of the research suggests that investigators are very inaccurate in evaluating a subject’s behavior for indications of truth or deception.

In reality, most of the detection of deception research that “experts” refer to in making this criticism involves studies that were conducted in the laboratory using students to commit mock crimes. Laboratory detection of deception research studies do not produce helpful results.

In fact, in US v. Jacques, Professor Hirsch testified, in referring to two laboratory studies that tried to illustrate that misrepresenting evidence can cause false confessions, “these studies have limited value.” There are a number of reasons that laboratory studies are generally not applicable to real life situations:

- The subjects (students) had low levels of motivation to be believed (in the case of innocent subjects) or to avoid detection (in the case of guilty subjects)

- The interviews of the subjects were not conducted by investigators trained in interviewing criminal subjects

- 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 behavioral baselines for each subject so as to identify unique behaviors within a particular individual

- The research was based on the faulty premise that there are specific behavior symptoms that are unique to truth or deception (see discussion below)

- 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 so on
However, when researchers attempt to design studies that more closely approximate the setting of real life field interviews, they show a marked increase in the ability of researchers to detect deception. Consider the following:

- Research indicates a 97.8% accuracy rate at detecting deception

A recent study (2014) published in *Human Communication Research* by researchers at Korea University, Michigan State University, and Texas State University -- San Marcos found that using active questioning of individuals yielded near-perfect results, 97.8%, in detecting deception.

An expert using the Reid Technique interrogated participants in the first study - this expert was 100% accurate (33 of 33) in determining who had cheated and who had not. The second group of participants were then interviewed by five US federal agents with substantial polygraph and interrogation expertise. Using a more flexible and free approach (interviews lasted from three minutes to 17 minutes), these experts were able to accurately detect whether or not a participant cheated in 87 of 89 interviews (97.8%). In the third study, non-experts were shown taped interrogations of the experts from the previous two experiments. These non-experts were able to determine deception at a greater-than-chance rate -- 79.1% (experiment 1), and 93.6% (experiment 2).

"This research suggests that effective questioning is critical to deception detection," Levine said. "Asking bad questions can actually make people worse than chance at lie detection, and you can make honest people appear guilty. But, fairly minor changes in the questions can really improve accuracy, even in brief interviews. This has huge implications for intelligence and law enforcement.”


- High-stake lies are detected at higher rates than low-stake lies.

(O’Sullivan, M., Frank, M. G., Hurley C. M., and Tiwana, J. (2009). Police Lie Detection Accuracy: The Effect of Lie Scenario. Law and Human Behavior, 33, 6, 530–538 published February, 2009. The authors point out that their results “suggest that police professionals perform significantly better when they are judging material that is high stakes, and therefore, more similar behaviorally to what they experience on the job. . . . The results suggest that it is a mistake to generalize from mean lie detection accuracy estimates obtained from college students. . . .”

- 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.

(Blair, J., Levine, T., and Shaw, A. (2010). Content in Context Improves Deception Detection Accuracy. *Human Communication Research*, 36. The study demonstrated that when evaluators knew the context in which the interview took place “they performed significantly better than chance and significantly better than 40 + years of research suggests they would. Clearly,
knowledge of the environment in which deception occurs facilitates accurate deception judgments beyond what is possible based on observations of nonverbal leakage.”

• Accuracy in detecting deception with real-life suspects is significantly higher than suggested by studies that use subject’s in a mock crime scenario.

(In their research paper entitled, “Detecting True Lies: Police Officers’ Ability to Detect Suspects’ Lies,” (Journal of Applied Psychology, 2004) the authors asked 99 police officers to “judge the veracity of people in real-life high-stakes situations.” The authors describe this study as unique because they tested “police officers’ ability to distinguish between truths and lies in a realistic setting (during police interviews with suspects), rather than in an artificial laboratory setting.” The results were that “the “accuracy rates were higher than those typically found in deception research.

• Training and experience in the field of behavior symptom analysis significantly increases the ability to detect true and false statements.

(Strategy Use of Evidence During Police Interviews: When Training to Detect Deception Works. Law and Human Behavior, 2006 the authors report that trained interviewers “obtained a considerably higher deception detection accuracy rate (85.4%) than untrained interviewers.” Also see “Police Officers’ judgments of veracity, tenseness, cognitive load and attempted behavioral control in real-life police interviews,” (Psychology, Crime & Law, 2006)

In addition to the above, two studies conducted under federal grants from the National Security Agency identified significantly high degrees of accuracy for investigators identifying truthful and deceptive subjects during real life Behavior Analysis Interviews (Criminal Interrogation and Confessions).

Furthermore, in their research report entitled, “Eliciting cues to deception and truth: What matters are the questions asked” researchers Aldert Vrij and Par Anders Granhag state that future detection of deception research efforts should be conducted in a way that “better mirror the situations in which practitioners assess veracity” than they have in the past, and that “deception researchers should collaborate with experienced practitioners.”
The Use of Minimization Techniques

Some false confession experts describe The Reid Technique as an interrogation process by which the investigator engages in minimization in which he mitigates the offense and downplays its seriousness while also using maximization in which the investigator exaggerates the strength of evidence against the suspect and the magnitude of charges. It is argued by these experts that the use of these techniques causes false confessions.

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 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 theme development:

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

We teach never to minimize the legal consequences of the behavior.

In the White Paper written for the American Psychology-Law Society entitled, “Police-induced confessions: Risk factors and recommendations” (Law and Human Behavior 34,3-38 2010) the authors agree with us, stating that future recommendations for interrogation procedures should “permit moral and psychological forms of minimization, but ban legal minimization.”

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

“During the presentation of any theme based upon the morality factor, caution must be taken to avoid any indication that the minimization of the moral blame will relieve the suspect of criminal responsibility.” (Criminal Interrogation and Confessions, page 205)

“As earlier stated, the interrogator must avoid any expressed or intentionally implied statement to the effect that because of the minimized seriousness of the offense, the suspect is to receive a lighter punishment.” (Criminal Interrogation and Confessions, page 213)

“In applying this technique of condemning the accomplice, the interrogator must proceed cautiously and must refrain from making any comments to the effect that the blame cast on an accomplice thereby relieves the suspect of legal responsibility for his part in the commission of the offense.” (Criminal Interrogation and Confessions, page 227)

As the Supreme Court of Canada stated regarding the minimization issue:

"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." R v. Oickle, 2000

Regarding the issue of maximization, as stated earlier we never teach to threaten inevitable
consequences during an interrogation.

*The interrogation process as described by false confession experts: cause the suspect to view his situation as hopeless and then offer inducements*

Some false confession experts testify that the first step in the interrogation process is make a subject feel that his situation is hopeless and that the only way to get out of the situation is to confess.

Nothing could be further from the truth. This statement or goal never appears in our textbooks or seminar manuals and is never taught at our training programs. On page 49 of our training manual and in Chapter 15 of Criminal Interrogation and Confessions, we teach the opposite - that it is improper to tell the subject that he is facing inevitable consequences. We reference cases where innocent people falsely confessed because the investigator improperly convinced the subject that he would suffer consequences regardless of his denials.

These same experts oftentimes state that "the second step of successful interrogation consists of offering the suspect inducements to confess - these inducements include appeals that directly communicate that the suspect will receive less punishment, a lower prison sentence, and/or some form of police, prosecutorial, judicial, or juror leniency if he complies with the interrogator's demand that he confess."

These types of inducements are clearly illegal in the United States as well as Canada and we teach investigators never to use these tactics. There are multiple references to these illegal interrogation tactics in both our training manual as well as our text, Criminal Interrogation and Confessions. The following is an example:

“… the legal essence of coercion involves real or threatened physical activities. These tactics include harming a suspect or subjecting a suspect to threats of such harm. A similar claim may be made if the interrogator threatens the suspect with inevitable real consequences (e.g., “With the evidence we have, there is no doubt that you are going to prison. The only question is for how long.”) Promises of leniency in which the suspect is reassured that he will face less severe consequences with a confession may also fall under the category of a coerced confessions, because physical activities are referenced, such as freedom to leave or less prison time…Our long-standing position has been that interrogation incentives that are apt to cause an innocent person to confess are improper.”

(Criminal Interrogation and Confessions, pages 343-344)
The Alternative Question and the Issue of Pragmatic Implication

In the Reid Technique when the subject is quiet and listening to the interrogator and appears ready to tell the truth about what they did, the investigator will present the subject with an alternative question such as, “Was this your idea or did your buddy talk you into it?” Critics say that this question forces the subject even the innocent, to say that they committed the crime. However, there is always a third option, which is to deny committing the crime at all.

Some critics claim that offering the suspect a “soft choice” (such as his partner talked him into it) is tantamount to a promise of leniency – even though no actual promise of leniency was made the clear implication is that they will receive less punishment than if it was their own idea. Critics refer to this as “pragmatic implication.”

The courts have rejected this argument. Pragmatic implication is a theory proposed by Professor Saul Kassin which posits that a subject of an interrogation may cognitively perceive threats or promises even though the investigator never threatened the suspect or offered the suspect a promise of leniency.

In the case of People v. Benson (2010) the Court of Appeal, Third District, California the premise of this theory was rejected. In this case the court found the following:

"Here, Detective Rodriguez did tell defendant there was "a big difference between ... someone getting hurt and trying to shoot someone." However, the detectives made no promises or representations that defendant's cooperation would garner more lenient treatment or lesser charges. "No specific benefit in terms of lesser charges was promised or even discussed, and [the detective's] general assertion that the circumstances of a killing could 'make[ ] a lot of difference' to the punishment, while perhaps optimistic, was not materially deceptive." ( People v. Holloway (2004) 33 Cal.4th 96, 117.) The general assertion that the circumstances of a killing could make a difference was not materially deceptive. It is not deceptive to state that an accomplice to murder may be better off than the shooter. ( People v. Garcia (1984) 36 Cal.3d 539, 546-547.)"

The Supreme Court of Canada indicated that the type of alternative question we suggest does not create an inadmissible confession and offered a clear: “The most important decision in all cases is to look for a quid pro quo offer by interrogators, regardless of whether it comes in the form of a threat or a promise.” R. v. Oickle (2000)

Where some interrogators go wrong is to use alternative questions that are improper – that make explicit promises or threats, such as:

“Do you want to cooperate with me and tell me what happened, or spend the next five to seven years behind bars?” (improper)

“Do you want to be charged with first degree murder, which will mean life in prison, or was this just manslaughter?” (improper)

“Are you going to get this straightened out today, or do you want to spend a few days in jail to think about it?” (improper)
In Criminal Interrogation and Confessions we state the following:

“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 consequence associated with his crime. Consequently, an investigator should not suggest, as the primary theme, that the crime was committed accidentally.”

The courts consistently reject the claim from defendants that the investigator’s suggestion that the crime was an accident is a coercive tactic:

State v. Fundaro (2012)
Commonwealth v. Johnson (2012)
People v. Carrillo-Garcia (2012)
People v. Batiste (2011)
People v. Carrington (2009)
People v. Wroten (2007)
Interrogating Juveniles and Mentally/Psychologically Impaired Individuals

Some false confession expert testify that the Reid Technique does not make any allowance for changing their approach when dealing with juveniles or individuals with significant mental or psychological impairments. In our course training manual we include a section entitled, Take Special precautions When Interviewing Juveniles or Individuals With Significant Mental or Psychological Impairments. – see Appendix A.

In Criminal Interrogation and Confessions we state the following re the interrogation of juveniles:

Precautionary considerations

A general distinction can be made between childhood (1–9) and adolescence (10–15). While both groups will be motivated to lie to avoid consequences associated with acts of wrongdoing, psychologically they are operating at quite different levels. It is our general recommendation that a person under the age of 10 should not be subjected to active persuasion techniques during interrogation (themes, alternative questions). At this age the child is susceptible to suggestion and is motivated to please a person in authority. The interaction between the investigator and child should be limited to a question and answer session which is centered on factual information and simple logic. Although children in this age group generally have good memory skills, it is selective and the investigator must be cautious in forming opinions of deception based on inconsistent recall. In this younger age group the primary difficulty with respect to interrogation is the child's undeveloped level of social responsibility and inability to comprehend the concept of future consequences; their lives focus around "here and now" concepts.

On the other hand, most adolescents have developed a sense of social responsibility to the extent that they know if they admit committing a serious crime they will suffer some future consequence. For this reason a confrontational interrogation may be used with this age group involving some active persuasion. The extent of persuasive tactics should not be dictated by the seriousness of the crime, but rather the maturity of the child.

When a child is taken into custody and advised of his or her Miranda rights, the question of whether the child is capable of making a knowing and voluntary waiver of those rights may arise. Certainly a child under the age of 10 is incapable of fully understanding the implications of waiving Miranda rights. Younger adolescents also may fall into this category. When a juvenile younger than 15, who has not had any prior experience with the police, is advised of his Miranda rights, the investigator should carefully discuss and talk about those rights with the subject (not just recite them) to make sure that he understands them. If attempts to explain the rights are unsuccessful, no interrogation should be conducted at that time. The same is true for a person who is mentally or psychologically impaired.

Courts routinely uphold the use of trickery and deceit during interrogations of adult suspects who are not mentally impaired. Within the area of trickery and deceit, clearly the most persuasive of these tactics is introducing fictitious evidence which implicates the suspect in the crime. As we state in Chapter 15, this technique should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible
involvement if the police tell them evidence clearly indicates they committed the crime. Factors such as the adolescent's level of social responsibility and general maturity should be considered before fictitious evidence is introduced.

The ultimate test of the trustworthiness of a confession is its corroboration. The admissions, “I shot and killed Mr. Johnson” or, “I forced Susie Adams to have sex with me” may be elicited from an innocent juvenile (or adult) suspect. These admissions only become useful as evidence if they are corroborated by (1) information about the crime the suspect provides which was purposefully withheld from the suspect, and/or, (2) information not known by the police until after the confession which is subsequently verified.
What the courts say about false confession experts

Here are some court comments about the testimony of false confession experts.

Re: Dr. Richard Leo

• "...the Court will exclude Dr. Leo's testimony because his theories are both unreliable and irrelevant to the facts of this case, and any limited probative value they might have is substantially outweighed by the potential dangers of undue prejudice and misleading the jury.... Dr. Leo's theory, at least at this stage in its development, provides neither a useful nor appropriate basis to assist a jury in assessing whether a particular confession, or even incriminating statement, was false. US v. Deuman (2012)

• "Of particular significance to the Daubert analysis here, Dr. Leo has not formulated a specific theory or methodology about false confessions that could be tested, subjected to peer review, or permit an error rate to be determined. Dr. Leo's research on false confessions has consisted of analyzing false confessions, after they have been determined to be false..... “ State v. Wooden (2010)

• “[Leo] starts with the conclusion that the confession is false and then he works backwards.... He doesn't take into consideration why someone might falsely confess, other than because of a police interrogation technique.... [A]nd there are reasons why people would falsely confess, they might be trying to protect someone.... He hasn't determined a reliable means to have a study group consist of innocent people who wrongfully confess that weren't mentally ill or youth. With regard to the data underlying Leo's testimony, the circuit court reasonably determined that its sources were unreliable because they were prone to inaccuracy or bias and, in nearly all instances, had not been subjected to the rigorous standards of scientific peer-review. Additionally, the circuit court raised multiple legitimate concerns about the "manner in which [Leo] interpret[ed] and extrapolat[ed] from those data." The unreliable methodology, as the circuit court described, resulted in conclusions consistent with Leo's own preconceived beliefs rather than testable results consistent with an objective, scientific process.” People v. Kowalski (2012)

Re: Dr. Richard Ofshe

• "Dr. Ofshe's testimony at the Daubert hearing suggested that there was no methodology about false confessions that could be tested, or that would permit an error rate to be determined. In this area of research, the result of the lack of any reliable testing format to establish predictors of when a false confession might occur is a methodology consisting of analyzing false confessions only after a confession has been determined to be false.” State v. Lamonica (2010)

• "Dr. Ofshe's testimony did not contain 'sufficient evidence to confirm that the principles upon which the expert based his conclusions are generally accepted by social scientists and psychologists working in the field. Therefore, his anticipated testimony that psychological coercion was employed during the interrogation of defendant, ......, which in his opinion would induce a person to falsely confess, does not meet the Frye standard for admissibility." People v. Rosario (2008)
• "In essence, the military judge found that Dr. Ofshe's theory regarding coercive interrogations was not based on rigorous scientific analysis or even subject to scientific testing but was rather Dr. Ofshe's own subjective review of a group of particularly selected cases. By way of example, at one point Dr. Ofshe testified that his theory concerning the impact of certain police interrogation techniques on the danger of false confessions was as intuitive as the fact that the sun will come up each day." US v Wilson (2007)

Re: Professor Saul Kassin

• "The judge concluded that [Saul] Kassin's testimony did not meet the requirements set forth in the Lanigan case. We agree. As the judge stated, Kassin conceded that his opinions are not generally accepted, require further testing, and are not yet a subject of "scientific knowledge." One of his own publications admitted as much. Accordingly, his proposed testimony that certain interrogation techniques have previously produced false confessions does not meet either the general acceptance or reliability criteria established by the Lanigan case.” Commonwealth v. Robinson (2007)

For an extensive listing of court comments re the testimony of dozens of false confession experts, visit our website at www.reid.com - on the Home page click on the Search button and type in the name of the expert.
What the courts say about the Reid Technique

The courts consistently uphold the core elements of the Reid Technique. In fact, when investigators do not follow the guidelines that we have published in our book, Criminal Interrogation and Confessions, the courts may reject the incriminating statements (see *US v. Preston* F.3d, 2014 WL 1876269 (C.A.9 (Ariz.) and *People v. Elias* 2015 WL 3561620.) For example, in the *Elias* case (June 2015) the Appeals court pointed out several prescribed Reid procedures that were not followed by the investigator, resulting in a confession that was found to be involuntary:

1. A non-accusatory interview was not conducted before initiating an interrogation
2. The investigator misrepresented the case evidence when questioning a 13 year old
3. There was no corroboration of the incriminating statement
4. There was contamination – disclosing details of the crime

From *U.S. v. Jacques* 784 F.Supp.2d 59:

“In his declaration and at the hearing, Professor Hirsch 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. The Reid technique is a trademarked interrogation method developed by the firm of John E. Reid & Associates, Inc....” 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.”

In the appeal of this decision the US Court of Appeals stated the following:

“In this case, the agents' statements exaggerating the quality of their evidence, minimizing the gravity of Jacques's offense, and emphasizing the negative media attention that would attend Jacques's trial all fall safely within the realm of the permissible “chicanery” sanctioned by this and other courts.”

Regarding the technique of minimizing the moral seriousness of the offense, the Supreme Court of Canada stated the following:

"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." *R v. Oickle*

Also on the technique of minimizing the moral seriousness of the offense, in *State v. Belogna* the court stated:

“[Investigator] 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."

With respect to the issue of rationalizing the subject’s behavior, “suggestions that the ... homicide might have been an accident, a self-defensive reaction, or the product of fear, were not coercive; they merely suggested possible explanations of the events and offered defendant an opportunity to provide the details of the crime. This tactic is permissible.” *People v. Harrington*

Along these same lines, the court in the case of *State v. Fundaro* found that rationalizing a defendant's actions (self-defense/accident) in such a way that he "might hope that he would not be charged with murder" did not render the confession inadmissible.

On the issue of whether or not it is coercive for the interrogator to portray an empathetic, understanding and friendly demeanor to the subject, in *People v. Powell* the court said that "There was no improper coercion here. It is no exaggeration to say that Sergeant Alexander came across more like a mentor than a police officer during the interview. He spoke about family, character, overcoming problems, accepting responsibility for wrongdoing, and becoming a better man. He urged Powell to "walk the righteous path, to "do the right thing," to "tak[e] control of your life."

In *Sanchez v. McDonald* the court stated that, "The Court is unaware of any Supreme Court authority where an officer building rapport with a suspect in a friendly manner would cause a resulting confession to be considered involuntary."

Finally, the Supreme Court of Canada, in their decision to overturn a lower court’s ruling, stated the following:

"In essence, the court [of appeals] criticizes the police for questioning the respondent in such a gentle, reassuring manner that they gained his trust. This does not render a confession inadmissible. To hold otherwise would send the perverse message to police that they should engage in adversarial, aggressive questioning to ensure they never gain the suspect's trust, lest an ensuing confession be excluded." *R v. Oickle*

Several courts have admonished investigators for not following the guidelines we published in our book, Criminal Interrogation and Confessions, regarding the questioning of juveniles or individuals with impaired mental abilities. See *US v. Preston* (May 2014) and *People v. Elias* (June 2015).

To review additional cases in which the courts support the core principles of The Reid
The best way to guard against false confessions

The best way to avoid false confessions is to conduct interrogations in accordance with the guidelines established by the courts, and to adhere to the following practices:

• Do not make any promises of leniency

• Do not threaten the subject with any physical 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

• Withhold information about the details of the crime from the subject so that if the subject confesses he can reveal information that only the guilty would know

• Exercise special cautions when questioning juveniles or individuals with mental or psychological impairments

• Always treat the subject with dignity and respect

• The confession is not the end of the investigation – investigate the confession details in an effort to establish the authenticity of the subject’s statement

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 core principles 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.

On our website we provide numerous examples in which electronically recording the interrogation preserved the admissibility of the confession by allowing the judge or jury to see the process and to be able to determine for themselves that the statement was voluntarily made.
Appendix A

Take special precautions when interviewing juveniles or individuals with significant mental or psychological impairments

Every interrogator must exercise extreme caution and care when interviewing or interrogating a juvenile or a person who is mentally or psychologically impaired. Certainly these individuals can and do commit very serious crimes, but since many false confession cases involve juveniles and/or individuals with some significant mental or psychological disabilities, extreme care must be exercised when questioning these individuals and the investigator has to modify their approach with these individuals.

Furthermore, when a juvenile or person who is mentally or psychologically impaired confesses, the investigator should exercise extreme diligence in establishing the accuracy of such a statement through subsequent corroboration. In these situations it is imperative that the interrogator does not reveal details of the crime so that they can use the disclosure of such information by the suspect as verification of the confession’s authenticity.

The following are excerpts from our book, Criminal Interrogation and Confessions, 5th edition, published in 2013, on this topic.

“As earlier suggested in the text, caution must be exercised in evaluating a youthful person’s behavioral responses. Due to immaturity and the corresponding lack of values and sense of responsibility, the behavior symptoms displayed by a youthful suspect may be unreliable.” (CI+C page 250)

“A general distinction can be made between childhood (1–9) and adolescence (10–15). While both groups will be motivated to lie to avoid consequences associated with acts of wrongdoing, psychologically they are operating at quite different levels. It is our general recommendation that a person under the age of 10 should not be subjected to active persuasion techniques during interrogation (themes, alternative questions). At this age the child is susceptible to suggestion and is motivated to please a person in authority. The interaction between the investigator and child should be limited to a question and answer session which is centered on factual information and simple logic. Although children in this age group generally have good memory skills, it is selective and the investigator must be cautious in forming opinions of deception based on inconsistent recall. In this younger age group the primary difficulty with respect to interrogation is the child's undeveloped level of social responsibility and inability to comprehend the concept of future consequences; their lives focus around "here and now" concepts.

On the other hand, most adolescents have developed a sense of social responsibility to the extent
that they know if they admit committing a serious crime they will suffer some future consequence. For this reason a confrontational interrogation may be used with this age group involving some active persuasion. The extent of persuasive tactics should not be dictated by the seriousness of the crime, but rather the maturity of the child.

When a child is taken into custody and advised of his or her *Miranda* rights, the question of whether the child is capable of making a knowing and voluntary waiver of those rights may arise. Certainly a child under the age of 10 is incapable of fully understanding the implications of waiving *Miranda* rights. Younger adolescents also may fall into this category.

When a juvenile younger than 15, who has not had any prior experience with the police, is advised of his *Miranda* rights, the investigator should carefully discuss and talk about those rights with the subject (not just recite them) to make sure that he understands them. If attempts to explain the rights are unsuccessful, no interrogation should be conducted at that time. The same is true for a person who is mentally or psychologically impaired.

Courts routinely uphold the use of trickery and deceit during interrogations of adult suspects who are not mentally impaired. Within the area of trickery and deceit, clearly the most persuasive of these tactics is introducing fictitious evidence which implicates the suspect in the crime. As we state in Chapter 15, this technique should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement if the police tell them evidence clearly indicates they committed the crime. Factors such as the adolescent's level of social responsibility and general maturity should be considered before fictitious evidence in introduced.

The ultimate test of the trustworthiness of a confession is its corroboration. The admissions, “I shot and killed Mr. Johnson” or, “I forced Susie Adams to have sex with me” may be elicited from an innocent juvenile (or adult) suspect. These admissions only become useful as evidence if they are corroborated by (1) information about the crime the suspect provides which was purposefully withheld from the suspect, and/or, (2) information not known by the police until after the confession which is subsequently verified.” (CI+C pages 254-255)

With the above discussion in mind, the following represents some factors to consider in the assessment of the credibility of a suspect’s confession. These issues are certainly not all inclusive, and each case must be evaluated on the “totality of circumstances” surrounding the interrogation and confession, but nevertheless, these are elements that should be given careful consideration:

1. The suspect’s condition at the time of the interrogation
   a. Physical condition (including drug and/or alcohol intoxication)
   b. Mental capacity
   c. Psychological condition
2. The suspect’s age
3. The suspect’s prior experience with law enforcement
4. The suspect’s understanding of the language
5. The length of the interrogation
6. The degree of detail provided by the suspect in his confession
7. The extent of corroboration between the confession and the crime
8. The presence of witnesses to the interrogation and confession
9. The suspect’s behavior during the interrogation
10. The effort to address the suspect’s physical needs
11. The presence of any improper interrogation techniques

Basic Law Enforcement training manuals oftentimes point out specific precautions that should be exercised when dealing with mentally impaired persons. For example, the state of North Carolina basic law enforcement training manuals specifically point out the following:

Mentally impaired (retarded) individuals have poor judgment; are easily influenced by authority figures; may be unable to formulate thoughts and answer questions readily; may not always understand their rights; have an impaired ability to reason and understand the consequences of their actions; Consequently, when an investigator is dealing with a mentally impaired individual, they should “consider whether the person they’re interviewing understood the question being asked”…. “go slowly and that rapid questions during an interview or confrontation may confuse or frighten the person” … “the use of suggestive questions must be avoided because such questions tend to produce erroneous answers”…

The Supreme Court holds that a child's age properly informs the Miranda custody analysis

In this case, J.D.B. v. North Carolina, (June 2011) the United States Supreme Court ruled that a juvenile’s age must be a consideration in the determination of custody and the subsequent advisement of Miranda rights. The Court stated that “Reviewing the question de novo today, we hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. This is not to say that a child's age will be a determinative, or even a significant, factor in every case.”

From the Court’s opinion:

“In some circumstances, a child's age “would have affected how a reasonable person” in the suspect's position “would perceive his or her freedom to leave.” ….. Courts can account for that reality without doing any damage to the objective nature of the custody analysis. A child's age is far “more than a chronological fact.” ….. It is a fact that “generates commonsense conclusions about behavior and perception,” that apply broadly to children as a class. Children “generally are less mature and responsible than adults,” they “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,” and they “are more vulnerable or susceptible to ... outside pressures” than adults, ….. In the specific context of police interrogation, events that “would leave a man cold and unimpressed can overawe and overwhelm a” teen….. The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Legal disqualifications on children as a class— e.g., limitations on their ability to marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.”