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From **Criminal Interrogation and Confessions** 5th ed., 2011, Inbau, Reid, Buckley and Jayne Jones and Bartlett Burlington, MA

### *Deception*

Many of the interrogation techniques presented in this text involve duplicity and pretense. To persuade a guilty suspect to offer an admission against self-interest, the investigator may have to falsely exaggerate his confidence in the suspect's guilt, sympathize with the suspect's situation, and display feelings toward the suspect or his crime that are far from genuine. The investigator may suggest a face-saving motive for the commission of the crime, which he knows is not true. In some cases an investigator may falsely imply, or outright state, that evidence exists that links the suspect to the crime.

As these examples illustrate, trickery and deceit represent a continuum of false representations ranging from demeanor and attitude to outright lies concerning the existence of evidence. This latter behavior has been most criticized. Specifically, critics of interrogation argue that lying to a suspect about incriminating evidence may cause an innocent suspect to offer a false confession.

The important question to answer is whether it is human nature to accept responsibility for something we did not do in the face of contrary evidence. Upon checking a sales receipt a customer may discover that the clerk rang up the same item twice. Under this circumstance, certainly the customer would challenge the evidence (the sales receipt) rather than pay for something not purchased. When Internal Revenue Service correspondence indicates an error in a tax return that the taxpayer knows did not occur, he will challenge the evidence rather than pay the requested back taxes. The ordinary citizen is outraged and indignant when presented with supposed "evidence" of an act he knows he did not commit.

These common experiences involve relatively minor consequences. The same principle applies, to an even greater extent, when the fictitious evidence implicates the suspect in a crime that may involve years of incarceration. Consider an innocent rape suspect who is falsely told that DNA evidence positively identifies him as the rapist. Would this false statement cause an innocent person to suddenly shrink in the chair and decide that it would be in his best interest to confess? Would a suspect, innocent of a homicide, bury his head in his hands and confess because he was told that the murder weapon was found during a search of his home? Of course not!

However, consider that such false statements were then used to convince the suspect that regardless of his stated innocence, he would be found guilty of the crime and would be sentenced to prison. Further, the investigator tells the suspect that if he cooperates by confessing, he will be afforded leniency. Under these conditions it becomes much more plausible that an innocent person may decide to confess—not because fictitious evidence was presented against him, but because the evidence was used to augment an improper interrogation technique (the threat of inevitable consequences coupled with a promise of leniency).

It is our clear position that merely introducing fictitious evidence during an interrogation would not cause an innocent person to confess. It is absurd to believe that a suspect who knows he did not commit a crime would place greater weight and credibility on alleged evidence than his own knowledge of his innocence. Under this circumstance, the natural human reaction would be one of anger and mistrust toward the investigator. The net effect would be the suspect's further resolution to maintain his innocence. This presumes that the investigator does not engage in any of the previously mentioned improper interrogation techniques that would be apt to cause an innocent person to confess. This statement also assumes that the suspect is not mentally, emotionally, or intellectually impaired.

The authors offer these recommendations 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.

(Selection of a few cases illustrating court decision re the use of deception during the interrogation)

### **Misrepresenting Evidence**

Cases in support of misrepresenting evidence

**Lying about evidence such as minimizing the victim's injury, and telling the defendant gun shot residue and eyewitnesses showed that he was the shooter, would not cause an innocent person to confess** *People v. Boner* (Sept 2012) the Court of Appeal, Third District, California

**Incriminating statements admissible even though police deceived defendant about what offenses they were investigating** *US v. Whitfield* (August 2012) the U.S. Court of Appeals, Fourth Circuit

**Telling the suspect that the victim had accused him of a more serious crime is not a coercive tactic - even though the victim had not made such an assertion** *People v. Jaeger* (June 2012) the Supreme Court, Appellate Division, Third Dept., New York

**Court finds use of a videotape as a prop during an interrogation acceptable** *People v. Lewis* (March 2012) the Supreme Court, Appellate Division, Fourth Dept., New York

**Police lied about the existence of surveillance video.** *People v. Riley* (Jan. 2012) the Court of Appeal, Fourth District, Division 1, California

**Police lied about the nature of the victim's injuries** *State v. Fisher* (November 2011) the Supreme Court of South Dakota

..... Detective Bakke repeatedly told Fisher he spoke with the doctors who treated P.V. and these doctors told Detective Bakke falling or roughhousing could not cause P.V.'s injuries. Detective Bakke also told Fisher the doctors examined P.V.'s eyes and observed retinal detachment, which is a sign that P.V. was shaken. In fact, P.V.'s retinas were intact and Detective Bakke did not personally speak with P.V.'s treating doctors. Instead, Detective Webb spoke to the doctors who treated and examined P.V.

**Police lied about the suspect's blood being found on the victim's clothing** *Locust v. Ricci* (December 2011) the U.S. District Court, D. New Jersey

"The fact that the police lie to a suspect does not, by itself, render a confession involuntary." ... "[U]se of a psychologically-oriented technique during questioning is not inherently coercive[;] ... [t]he real issue is whether the person's decision to confess results from a change of mind rather than from an overbearing of the

suspect's will ." ... In order to render a confession involuntary, the suspect must have been subjected to "very substantial" psychological pressure.

**Police lied about the number of witnesses that identified suspect**

*Arrue v. Hedgpeth* (October 2010) the US District Court, C.D. California

**Lying to a suspect about the evidence against him does not render a confession inadmissible**

In the case of *State v. Perez* (October 2010) the Court of Appeals of Wisconsin upheld the admissibility of the defendant's incriminating statements even though the police lied to him about the extent of the inculpatory evidence, stating the following in their opinion:

On the issue of misrepresenting evidence the court pointed out that, "Of the numerous varieties of police trickery, however, a lie that relates to a suspect's connection to the crime is the least likely to render a confession involuntary. Such misrepresentations, of course, may cause a suspect to confess, but causation alone does not constitute coercion; if it did, all confessions following interrogations would be involuntary because "it can almost always be said that the interrogation caused the confession." Thus, the issue is not causation, but the degree of improper coercion.... Inflating evidence of [the defendant's] guilt interfered little, if at all, with his "free and deliberate choice" of whether to confess, for it did not lead him to consider anything beyond his own beliefs regarding his actual guilt or innocence, his moral sense of right and wrong, and his judgment regarding the likelihood that the police had garnered enough valid evidence linking him to the crime. In other words, the deception did not interject the type of extrinsic considerations that would overcome [the defendant's] will by distorting an otherwise rational choice of whether to confess or remain silent."

**Police falsely told suspect his DNA matched the sperm found on the victim's underwear and that the victim's sister had seen him having sex with the victim**

*Mata v. Martel*, 2009, the United States District Court, N.D. California,

**A fake polygraph test did not render involuntary the defendant's incriminating statement**

*People v. Mays*, (May 2009) the Court of Appeal, Third District, California found that "mock polygraph test administered to defendant after he requested a lie detector test during detective's questioning, and fake test results, did not render involuntary defendant's incriminating statement, after he received the fake test results.." From the court's decision:

Police deception during a custodial interrogation may but does not necessarily invalidate incriminating statements. A psychological ploy is prohibited only when, in light of all the circumstances, it is so coercive that it tends to result in a statement that is both involuntary and unreliable. [undercover law enforcement officer posing as fellow inmate was not required to give Miranda warnings to suspect.

As summarized in *People v. Chutan*: "Police trickery that occurs in the process of a criminal interrogation does not, by itself, render a confession involuntary and violate the state or federal due process clause. Why? Because subterfuge is not necessarily coercive in nature. And unless the police engage in conduct which coerces a suspect into confessing, no finding of involuntariness can be made.

"So long as a police officer's misrepresentations or omissions are not of a kind likely to produce a false confession, confessions prompted by deception are admissible in evidence. [Citations.] Police officers are thus at liberty to utilize deceptive stratagems to trick a guilty person into confessing. The cases from California and federal courts validating such tactics are legion. [officer falsely told the suspect his accomplice had been captured and confessed]; [officer implied he could prove more than he actually could]; [officers repeatedly lied, insisting they had evidence linking the suspect to a homicide]; [wounded suspect told he might die before he reached the hospital, so he should talk while he still had the chance]; [police falsely told suspect a gun residue test produced a positive result]; [officer told suspect his fingerprints had been found on the getaway car, although no prints had been obtained]; and [suspect falsely told he had been identified by an eyewitness]. [defendant's confession to child molestation was not rendered involuntary by officer's failure to reveal he was conducting a criminal investigation and not just asking questions regarding placement of the children.

*People v. Smith*, held it was not impermissibly coercive for a **police officer to tell the defendant that a "Neutron Negligence Intelligence Test" (a sham) indicated he had recently fired a gun.**

*People v. Farnam*, held the defendant's confession to robbery and assault of hotel occupants was voluntary, despite the **police having falsely informed the defendant that his fingerprints were found on the victim's wallet.**

Courts in other states have held defendants' confessions/admissions voluntary where the police told the defendant he or she failed a polygraph test, when no real test was performed, or a real test was given but did not show deception by the defendant, or the police misled the defendant as to the accuracy of the test or its admissibility in court. [confession voluntary despite police (apparent) deception in informing the defendant that he failed a polygraph examination]; [confession voluntary where defendant was hooked up to a polygraph, but it was not turned on]; [affirmed conviction based on confession obtained after the police (perhaps) untruthfully told the 17-year-old defendant that he failed a computer voice stress analyzer, when in fact the test did not so indicate, or did so unreliably]; [police misrepresentations to defendant concerning performance on polygraph test did not invalidate confession].)

**Police falsely told the suspect that they could place him in Vanessa Claude's van during the month of the crime by dating hair and fiber evidence.** *State v. Hardy* (August 2009) the Court of Criminal Appeals of Tennessee, at Nashville

In *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420 (1969), police obtained a full confession from Frazier after they misrepresented to him that his co-defendant confessed. Viewing the totality of the circumstances, the Supreme Court upheld the admission of Frazier's statement, concluding that the misrepresentation was insufficient to make the otherwise voluntary confession inadmissible.

**Police lied by telling Thomas that the police had conducted a black light test of the house where Thomas was living. Detective Zacharias lied further by telling Thomas that this test uncovered traces of Thomas's semen throughout the house.** *Brown v. State*, Court of Appeals of Mississippi, June, 2008

**Police lied about the defendant being identified as one of the perpetrators by a survivor and lied about an accomplice passing a polygraph test after he named the defendant as the shooter.**

*People v. Moore*, the California Court of Appeal, Second District,

**Lying about evidence such as minimizing the victim's injury, and telling the defendant gun shot residue and eyewitnesses showed that he was the shooter, would not cause an innocent person to confess**

*People v. Boner* (Sept 2012) the Court of Appeal, Third District, California

### **Clarifying Misinformation about 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-confrontational interview designed to develop investigative and behavioral information), followed by, when appropriate, the Reid Nine Steps of Interrogation.

The following statements in **bold** are criticisms or misrepresentations by critics of The Reid Technique of Interviewing and Interrogation, as well as by the media and academicians, followed by the correct information from our training manual (referenced below as TM) or our books, including *Criminal Interrogation and Confessions*, 5<sup>th</sup> edition, 2011 (referenced below as CI+C).

### **The Reid Technique causes false confessions**

The Reid Technique is specifically designed to do everything possible to protect against a person making a false confession. In our training manual, courses and books we teach the following:

- 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
- 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.

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.

In some cases, of course, false confessions may be caused by the interrogator failing to properly modify their approach in view of the subject’s mental, emotional or psychological attributes. (See pages 8 and 9 of this document)

(See Chapters 13, 15 and 17 from *Criminal Interrogation and Confessions* which offer detailed discussion on all of the points enumerated above.)

**Critics suggest that the Reid Technique of interrogation consists of essentially three steps:**

("Suspect Interviews and False Confessions," *Current Directions in Psychological Science*, 20:33, 2011)

**1. Custody and isolation**

The Reid Technique does teach that an interrogation should be conducted in private. However, it does not teach to detain non-custodial subjects or to isolate subjects and prevent them from contacting others. This would be illegal. (CI+C Chapter 17)

**2. Confrontation**

The Reid Technique does teach that the interrogation should start with a confrontation statement such as, "Tom, our investigation indicates that you caused the death of your wife" or, "Jim our investigation indicates that you have not told the complete truth about the robbery of Jake's liquor store."

However, in the Reid Technique the first contact with a subject is always a non-

confrontational interview designed to develop investigative and behavioral information. When the results of the interview and subsequent investigation indicate the subject's probable involvement in the commission of the crime, an interrogation then becomes appropriate.

In many investigations dozens of subjects may be interviewed and but no one is interrogated. Interrogation is reserved for those situations in which a subject's guilt is reasonably certain based on the investigative information and evidence.

### **3. Minimization**

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 things as financial pressure, the victim's behavior, an accomplice, emotions, or alcohol.

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.

The Reid Technique teaches that the investigator should not offer any direct or implied promises of leniency to the subject. (CI+C pages 343-344)

The Reid Technique teaches that the investigator should not threaten the subject with worse consequences if he does not confess. (CI+C pages 343-344)

“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.” (CI+C 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.” (CI+C 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.” (CI+C page 227)

Regarding this approach 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*, 2000



**Some critics describe the interrogation process as follows:**

(Report prepared by Dr. Richard Leo on a contested confession case in Wisconsin (Brendan Dassey))

**“The sole purpose for custodial interrogation is to elicit a confession.”**

On page 4 of our training manual and page 5 of Criminal Interrogation and Confessions we state that the objective of an interrogation is to elicit the truth from a subject, not a confession. There are a number of possible outcomes of a successful interrogation other than obtaining a confession. Some of these are: (1) The subject is 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. Throughout an interrogation the investigator's goal is always to learn the truth.

**“The first step of successful interrogation consists of causing a suspect to view his situation as hopeless.”**

This is a false statement. This statement or goal never appears in our text books 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.

**“The second step of successful interrogation consists of offering the suspect inducements to confess - reasons or scenarios that suggest the suspect will receive some personal, moral, communal, procedural material or other benefit if he confesses to some version of the offense.”**

**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 type of inducements are clearly improper in the United States as well as Canada and we teach investigators not to use these tactics. There are multiple references to these inappropriate interrogation tactics in both our training manual as well as our text, Criminal Interrogation and Confessions.

“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.” (CI+C pages 343-344)

**The foundation of the Reid Technique is flawed – it is based on the investigator’s evaluation of the suspect’s behavior during the Behavior Analysis Interview – studies have demonstrated the inability of investigators to accurately assess a subject’s behavior, therefore, many innocent people are interrogated**

To the contrary, 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. (CI+C pages 102-103)

Unfortunately, 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 for a number of reasons:

- 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 which 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:

- 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.

(Strategic 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)

(See CI+C Chapter 9 for a detailed discussion of this topic)

## **The use of the Alternative Question forces the innocent person to say that they committed the crime**

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 this question forces the subject 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)

**The Reid Technique suggests motives to the suspect that eliminate criminal consequences from the act – such as the accident scenario – which is more likely to cause an innocent person to confess.**

In the case of *People v. Batiste* (Sept. 2011), the Court of Appeal, 1st District, Div. 3, California, the defendant claimed that his confession was coerced because it was the product of deception or implied promises of leniency by the officers. From the court's opinion:

"Batiste argued in the trial court that the officers made an implied promise of leniency when they suggested he might have acted in self-defense. That argument lacked merit. Here, as in *People v. Carrington* (2009) 47 Cal.4th 145, 171, "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. [Citation.] Moreover, any benefit to defendant that reasonably could be inferred from the substance of [the officer's] remarks was ' ' merely that which flows naturally from a truthful and honest course of conduct, ' ' because the particular circumstances of a homicide can reduce the degree of culpability, and thus minimize the gravity of the homicide or constitute mitigating factors in the ultimate decision as to the appropriate penalty. [Citation]."

Furthermore, we state in our text that “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.” (CI+C page 219)

Also see **Interrogator’s reference to mitigating circumstances, including the fact that the shooting may have been an “accident” or from a “fit of rage” “fall far short of being promises of lenient treatment in exchange for cooperation”** *People v. Carrillo-Garcia* (August 2012) the Court of Appeal, Third District, California

**“If for some reason you went in [the restaurant] to do a robbery and somehow the gun went off [accident]” was not a statement that suggested leniency** *Commonwealth v. Johnson* (August 2012) the Supreme Judicial Court of Massachusetts

**The Reid Technique does not make any allowance for changing their approach when dealing with juveniles or individuals with significant mental or psychological**

## impairments

Many false confession cases involve juveniles and/or individuals with some significant mental or psychological disabilities. Consequently, extreme care must be exercised when questioning these individuals and the investigator has to modify their approach with these individuals.

“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 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." (CI+C pages 254-255)

"This technique [introducing fictitious evidence] 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." (CI+C page 352)

### **Additional discussion on detection of deception research**

It is helpful to know that in most detection of deception research there appears to be a fundamental lack of understanding of how verbal and nonverbal behaviors exhibited by a subject during an interview are evaluated by practitioners in real life settings. Most academics conducting research seem to work on the underlying presumption that there is a behavior – verbal and/or nonverbal – that is unique to deception. There is not. Any attempt to evaluate a subject's behavior for indications of deception must be considered in the context of the situation and the potential influence of a variety of factors. To do otherwise would be a fruitless endeavor.

The following are some of the principles of behavior symptom analysis as practiced in the field as the foundation for assessing a suspect's behavior symptoms:

*There are no unique behaviors associated with truthfulness or deception.* The behavioral observations an investigator makes of a suspect do not specifically correlate to truth or deception. Rather, they reflect the subject's internal emotional state, cognitive processes, and internal physiological arousal experienced during a response. The emotional states most often associated with deception are fear, anger, embarrassment, indignation, or hope (duping). The cognitive processes may reveal concern, helpfulness, and confidence versus offering an unrealistic explanation for the crime, being defensive, or being overly polite. There are also internal physiological responses that cause external behavioral responses such as a dry throat, skin blanching, pupillary dilation, or blushing. Observed

in isolation, certainly none of these behaviors should cause an investigator to conclude that a subject is telling the truth or lying.

In real life situations investigating a subject's involvement in criminal behavior or whether or not they are concealing relevant information or intelligence, behavior symptom analysis involves the study of inferences made from the subject's behaviors. Within the scope of detecting deception, there are two broad inferences that are made through behavioral observations. The first involves inferences of guilt or innocence, that is, "Did this person engage in a particular criminal act?" The second involves inferences of truth or deception, that is, "When this person says such and such, is he telling the truth?" For case-solving purposes, it is important to appreciate the distinction between "guilt" and "lying."

Consider the following exchange during an interview:

Q: "Have you ever thought about having sexual contact with your step-daughter?"

A: "Well sure. Anybody in my position would have those thoughts."

While the suspect's verbal response to the investigator's question may be completely truthful, the content of the response infers guilt with respect to sexually abusing his step-daughter.

To appreciate the nature of these inferences, it must be understood that communication occurs at three distinctly different levels:

1. *verbal channel*—word choice and arrangement of words to send a message
2. *paralinguistic channel*—characteristics of speech falling outside the spoken word
3. *nonverbal channel*—posture, arm and leg movements, eye contact, and facial expressions

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

*Evaluate the consistency between all three channels of communication.* When a subject sends behavioral messages that are consistent within all three channels of communication, the investigator can have greater confidence in his assessment of the credibility of the subject's response. However, when inconsistencies exist between the channels, the investigator needs to evaluate possible causes for this inconsistency.

*Evaluate paralinguistic and nonverbal behaviors in context with the subject's verbal message.* When assessing the probable meaning of a subject's emotional state, the subject's paralinguistic and nonverbal behaviors must always be considered in context with the verbal message.

Consider the following two examples:



**Question (Q 1):** Mike, have you ever been questioned before concerning theft from an employer?

**Response (R 1):** Well, um, two years ago I worked at a hardware store and they had an inventory shortage so all of the employees were questioned and, in fact, I did take some things from there. [Subject crosses his legs, looks down at the floor, and dusts his shirt sleeve.]

**Q 2:** Joe, did you steal that missing \$2,500?

**R 2:** No, I did not. [Subject crosses his legs, looks down at the floor, and dusts his shirt sleeve.]

These two subjects displayed identical paralinguistic and nonverbal behaviors during their responses. However, the interpretation of the behaviors is completely different. In the first example the subject is telling the truth, but he feels embarrassed and possibly even threatened in revealing his prior theft. In the second example the verbal content of the subject's response does not explain the accompanying nonverbal behaviors, so the investigator should consider these behaviors as reflecting possible fear or conflict—emotional states that would not be considered appropriate from a truthful subject, given the content of the verbal response.

*Evaluate the preponderance of behaviors occurring throughout the interview.* One of the findings learned through field work is the importance of rendering opinions based on evaluating the subject's behavior throughout the course of an entire interview. When evaluators are only exposed to individual questions within the interview, their accuracy will be considerably less than when evaluating the subject's responses to all of the interview questions (potentially dozens of questions). Similarly, the confidence of assessing behavior over a five-minute interview will be considerably less than if the behavioral assessments were made over a 30- or 40-minute interview.

*Establish the subject's normal behavioral patterns.* Certainly there are non-deceptive reasons for a subject to exhibit poor eye contact, respond to questions quickly or slowly, to scratch themselves, yawn, clear their throat, or change their posture. Before any of these behaviors can be considered a criteria of deception, the investigator must first establish what the subject's normal behavioral patterns are. Consequently, at the outset of each interview the investigator should spend several minutes discussing nonthreatening information (perhaps casual conversation or collecting biographical information) so as to establish a behavioral baseline for the particular subject. Then, as the interview progresses and the subject exhibits behavioral changes when the issue under investigation is discussed, these changes may take on added significance.

*Evaluate behavior in conjunction with the case facts and evidence.* The evaluation of a subject's behavior symptoms should only be one factor to consider in the assessment of the subject's possible involvement in the crime under investigation. The investigator must always consider the degree to which the case evidence of facts may implicate the subject.

“In summary, although the verbal and nonverbal behavior displayed by a subject during an interview may provide valuable and accurate indications of possible innocence or guilt, the investigator should evaluate the behavior according to the guidelines states in Chapter 9. Furthermore, the following factors, which may affect the validity of behavior symptoms, should be considered: the perceived seriousness of the offense, the mental and physical condition of the subject, any underlying psychiatric or personality disorders; level of intelligence; degree of maturity; and the extent or absence of social responsibilities.” (CI+C page 152)

Unfortunately, most of the research conducted on an investigator’s ability to detect deception (typically using students in a laboratory experiment) does not take any of the principles outlined above into consideration.

You will find detailed discussion of all of these issues in *Criminal Interrogation and Confessions*, Inbau, Reid, Buckley and Jayne, 2011 5<sup>th</sup> edition, as well as at [www.reid.com](http://www.reid.com).