

• END NOTES •

Law enforcement officers have the obligation to convict the guilty and to make sure they do not convict the innocent.

— Justice White, concurring and dissenting, *United States v. Wade*, 388 U.S. 218, 256 (1967)

For centuries, torture has been a standard in interrogations. In the 1800s and early 1900s, physical abuse of suspects by police was routine in America. In 1936, the United States Supreme Court in *Brown v. Mississippi* ruled that confessions obtained through violence could not be introduced as evidence at trial. The case involved three black men who were accused of killing a white farmer. The three were whipped and beaten, and one was even hung by the neck, until they confessed.

Following the *Brown* decision, the police refined their interrogation methods into what was depicted in the movies as the “third degree”—a use of physical abuse that many times did not leave marks or disfigurement, as suspects were yelled at, threatened, blinded by bright lights, and punched, and had their heads shoved in toilets.

In the early 1960s, ex-police officer/polygraph expert John E. Reid and lawyer/criminologist Fred E. Inbau collaborated on a psychological method of interrogation called the Reid Technique. This method of interrogation would usher in a new era in accusatory interrogation. This new model is based on psychological manipulations utilizing isolation, confrontation, and minimization of culpability and consequences.

The accusatory method establishes control over the suspect by leaving them alone in a small claustrophobic room before interrogation, has the interrogator ask accusatory and closed-ended questions that reflect the police theory of what happened, and has the officers evaluate body language and speech, in order to determine if the suspect is lying.

Here is, in simple, plain terms, the Reid and Inbau Third Stage of interrogation, and its nine steps of psychological examination:

Step One: Direct Confrontation of the Suspect

The direct interrogation of the suspect is usually conducted by a team of officers, each playing a different role. However, there may be instances where one officer will do the entire interrogation. In the Crowe murder case there was a team of police officers from the Escondido Police Department and an officer from the Oceanside Police Department, a psychologist from Orange County, and at times, an observing deputy district attorney from San Diego County.

In Stage Three, the interrogation is very accusatory, with the officer telling the suspect that the investigation clearly shows they committed the crime. The entire interrogation is primarily a monologue of accusations with supposed evidence indicating the suspect's guilt. This typically involves presenting the suspect with false evidence of guilt. Such false evidence could include claims of a co-defendant having confessed, physical evidence existing connecting the accused to the crime, or lying about the results of a polygraph test (or, in the Crowe murder case, the results of a Computer Voice Stress Analyzer test). Thus, deceit is an essential part of the Reid Technique of interrogation.

While so confronting the suspect, the interrogator or team of officers will be observing the suspect's behavioral reactions. A passive reaction to the accusations is usually viewed as evidence of guilt or deception by the suspect. Spontaneous, forceful, and direct denials are considered indicators of innocence.

Step Two: Theme Development

Police interrogators are taught that they must present a moral justification or theme for the offense in an effort to shift the blame away from the suspect to some other person or set of circumstances. The interrogator presents, in a sympathetic, monologue manner, the themes which contain reasons that will psychologically justify or excuse the crime. The reason could be as simple as the youth of the accused. The objective is to give the suspect a way to accept responsibility for their wrong by either avoiding blame for their actions, or by allowing the suspect to minimize the seriousness of their actions. This kind of theme development is most effective with people who have a guilty conscience for some non-criminal reason, are emotional, had a bad childhood or upbringing, or are just young or immature or psychologically can't handle the situations they are in.

Step Three: Handling Denials

Denials by a suspect must be stopped. Every time a suspect starts to deny or tries to explain their denial, the interrogator must interrupt, pointing out the ridiculousness of the denial, or accusing the suspect of not listening to the evidence the police have gathered. If necessary, the police officer should change the subject, e.g., point out another piece of evidence of guilt. To not interrupt the suspect's denial gives the advantage psychologically to the accused.

To accomplish Step Three, the police will usually use a good-cop/bad-cop type of role playing. The purpose of the role playing is to get the suspect to be open and responsive to the friendly officer. This technique works well with quiet or unresponsive subjects.

Step Four: Overcoming Objections

When attempts at denial do not succeed, the suspect will often give various objections or reasons in support of their innocence.

For example: “I would never steal from my company because I love my job.” Such logic-based denials give the interrogator an opportunity to turn the denial against the suspect. Further, most police officers believe an innocent person will continually give the same denial or reasons, while a guilty suspect supposedly will continually attempt to reason their way out of the accusation. Once the accused sees their reasons are not being accepted, the suspect will usually start to withdraw and cease responding to the interrogator. For the psychological interrogation to be successful, this must not be allowed to happen.

Step Five: Retention of Participation

When the suspect becomes passive or starts to withdraw, the accused is at their lowest point psychologically. The interrogator looks for signs of surrender: an emotional outburst, the suspect placing their head in their hands, or shaking their head without speaking. In this moment of hopelessness, the officer reaches out to the suspect as an understanding ally. One way the interrogator can do this is to close the physical distance between the officer and the suspect. A simple consoling touch, along with reassuring statements of sympathy and understanding of why the crime was committed, will draw the suspect back to the officer. The officer should always look the suspect in the eyes and, using their first name, try to get the accused to re-engage.

Step Six: Handling the Suspect's Passiveness

As the interrogator re-engages with the suspect, the central theme of why the suspect committed the crime should be emphasized, along with statements of sympathy and understanding of why the crime was committed. The suspect should be told to tell the truth, be remorseful, and confess, because it is the right thing to do. Every effort will then be made to break down the suspect's remaining resistance, such as going through the evidence against them.

Step Seven: The Presentation of Alternatives

At this point, the interrogator presents two alternatives as to why the suspect committed the crime. The first alternative is more callous and socially unacceptable. The other is more understandable and face-saving but just as incriminating:

- 1) Isn't it true you needed the money because you could not find a job? or
- 2) Isn't it true you did not plan the crime out; it just happened spontaneously? or
- 3) Isn't it true you need psychological help to overcome the evil inside of you?

The interrogator may follow the more face-saving alternative with a supporting statement which encourages the suspect to choose the more understandable alternative. In any event, the suspect's choice is a confession and psychological acceptance of the interrogator's theme as to why the accused acted criminally.

Step Eight: Suspect Orally Confesses

The initial acceptance of either alternative, no matter how small the acceptance may be, must now be developed into a full confession. The police are taught that they should immediately respond with a statement acknowledging the admitted facts. The officer should then engage the accused in a basic review of the crime's events, obtaining statements which corroborate the validity of the accused's confession. The officer may make a suggestion as to how the crime was committed. This process may continue for as long as it takes to get a solid confession. It is important that the suspect is alone with the interrogator during this time. The presence of another person may discourage the suspect from talking about the crime.

Step Nine: The Written Confession

Since many suspects later deny their confession or say it was coerced, the police must attempt to get a signed written confession. In a court of law and to jurors, a signed confession is considered to be stronger than an oral confession. When the suspect appears averse to a written confession, the officer may ask the suspect to write a letter to the victim asking forgiveness for the crime committed.

Analysis

A key element of the Reid Technique is the interrogator's ability to detect when a suspect is lying. Thus, the emphasis is on getting to know the suspect and his or her background through a period of non-confrontational interviews and the necessity to observe how the suspect reacts throughout the period of interrogation.

However, various studies challenge the ability of a person, even a trained investigator, to discern truth from lying. This is particularly important when dealing with the young, the poorly educated, those under great stress, or suspects who have been traumatized. The mentally ill can be especially difficult to read, due to the inability to understand the motivation of their responses.

Reid and Associates responds by challenging the method of those studies and the motivation of the test subjects to lie. Further, Reid and Associates believes that police officers through training and experience have an increased ability to detect truth from lies, as opposed to social scientists conducting controlled studies.

Another element of the Reid Technique is the investigator's suspicion that the suspect is guilty. Such an assumption may affect the investigator's interpretation of the suspect's responses and what is the truth or a lie.

Other critics challenge the coercive nature of the interrogation process through psychological manipulation and the

contamination of the interview due to misrepresentations or outright lies about the existence of incriminating evidence. They conclude that these efforts may lead a suspect to incorporate such information into a confession.

Reid and Associates responds to such criticism by stating that false confessions are the result of the investigator not following the tenants of the Reid Technique. By way of example, Reid and Associates cites situations of police making promises of leniency in return for the confession, threatening or intimidating the suspect, or excessively long periods of interrogation as factors which will cause a suspect to give a false confession.

To read further, see Richard A. Leo, *Why Interrogation Contamination Occurs*. 11 Ohio State Journal of Criminal Law 193 (Fall 2013); Timothy E. Moore and C. Lindsay Fitzsimmons, *Justice Imperiled: False Confessions and the Reid Technique*. 57 Criminal Law Quarterly 509 (2011); John E. Reid and Associates, Inc. (website), <http://www.reid.com/>. For a detailed defense of the Reid Technique, see John E. Reid and Associates, Inc., *Clarifying Misinformation about The Reid Technique*, <http://www.reid.com/pdfs/20120311.pdf>.

Other Methods of Interrogation

There are other types of psychological methods of interrogation that are not as confrontational as the Reid Technique and do not use deception.

The Kinesic interview method has some similarities to the Reid Technique in that it requires the interviewer to analyze the suspect's behavior in order to determine if he or she is lying. Kinesics is communication through human body motion and was first used by anthropologists to study human posture, gestures, and movements. In 1970, Professor Ray L. Birdwhistell published a book titled *Kinesics and Context*. From this publication and subsequent research, the Kinesic interview method of analyzing nonverbal human behavior was devised.

Author Stan B. Walters, in his book *Principles of Kinesic Interview and Interrogation, Second Edition* (CRC Press, 2003), describes four fundamental stages of a suspect's interview: (1) orientation, (2) narration, (3) cross-examination, and (4) resolution (Id. at 25-29).

During the orientation and narration period, the interrogator studies nonverbal communication traits of the suspect. Walters refers to this phase as the "Analysis Phase." The interrogator uses information gathered during this phase in order to tailor the confrontational cross-examination stage. Walters describes thirty-some human traits as guides to evaluating a suspect's responses. These body language movements help the police determine when the suspect is lying. According to the Kinesic method, denials by the suspect should be confronted with only real or circumstantial evidence, not lies.

To read further, see D. Glenn Foster, *The Kinesic Interview Technique*, International Due Diligence Organization, <https://www.international-due-diligence.org/wp-content/uploads/2015/08/IDDO-The-Kinesic-Interview-Technique.pdf>

The PEACE method of interrogation is taught in England through the College of Policing, which refers to itself as "the professional body for everyone who works for the police service in England and Wales."

PEACE stands for Preparation and Planning, Engage and Explain, Account, Closure, and Evaluate. Under the PEACE method of interrogation, the suspect is presumed innocent and, as a consequence, is allowed to tell his or her story without interruption or accusations. The investigator may ask the suspect questions about the narration in order to clarify what is being told. The investigator then confronts the suspect with inconsistencies or contradictions between the suspect's version of events and the evidence. The investigator may even point out the implausibility of or inconsistencies in the suspect's own statements

or story. However, in the PEACE method, the officer is prohibited from deceiving the suspect.

To read further, see College of Policing (website), **<https://www.app.college.police.uk>**.

For a comparative analysis of interrogation techniques, see Christian A. Meissner, et al., *Interview and interrogation methods and their effects on true and false confessions*. Campbell Systematic Reviews (2012; 2013).

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