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Shaping Eyewitness And Alibi Testimony With Coercive Interview Practices

The "Reid Technique" has become a common tool in the workshop of criminal investigators. Honed over the course of nearly 70 years, it has proven highly effective at eliciting confessions from criminal suspects worldwide. Since the establishment of the Innocence Movement, however, the Reid Technique and related coercive interview practices have been linked to wrongful convictions. Innocent suspects sometimes confess to crimes they did not commit. Approximately 25 percent of postconviction DNA exonerations entailed a false confession. Much has been written about the Reid Technique and its inherent risk of eliciting unreliable admissions. This article addresses a related problem: the impact of coercive interrogation practices on eyewitnesses and alibi witnesses.

The Reid Technique

The Reid Technique[1] is currently the most widely used police interrogation procedure in North America. It is based on the assumption that guilty suspects can be identified from telltale behavioral cues that are indicative of deceit.[2] A suspect who appears to lie during an initial screening interview is assumed to be guilty. Police rely on a wide range of (presumed) clues to deception including facial expressions, body language, gestures, and particular phrases.[3] Because the suspect is assumed to be guilty, the interrogation is not investigative in nature. Rather, its purpose is to elicit a confession. This is accomplished by means of a succession of tactics that are designed to persuade the suspect of the futility of denying responsibility.[4] The investigator uses "maximization techniques," which include repeatedly asserting the investigator's steadfast certainty of the suspect's guilt and managing denials and protestations of innocence. The training manual instructs officers to *prevent* the suspect from talking. Maximization tactics typically entail assertions that there is strong evidence of the suspect's guilt. This evidence may be real, exaggerated, promised to be forthcoming, or completely fabricated.

The interrogator also uses "minimization techniques."[5] These include downplaying the seriousness of the crime, exhibiting sympathy, offering "understandable" explanations for the suspect's conduct, and suggesting moral rationalizations for the crime. These tactics may encourage the witness to conclude that a confession will be met with more lenient treatment. The investigator cannot explicitly offer lenient treatment but is taught to induce the suspect to draw this conclusion on his or her own.

The combination of maximization and minimization techniques can cause the suspect anxiety, despair, and diminished cognitive capacity. The short-term benefit of ending the unpleasant interrogation through

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cooperation and capitulation begins to look preferable to the long-term benefit of invoking one's rights and attempting to tune out the investigators' relentless verbal assaults and feigned empathy. Because the investigator does most of the talking (particularly in the early part of the interrogation), there is ample opportunity to convey to the suspect the desired story that the suspect is supposed to tell, replete with details that "an innocent suspect would not know." This conveyance is known as "leakage" and can be deliberate or inadvertent on the part of the investigators. The end result is a full-blown confession, narrated by the suspect in view of the camera and delivered as a believable firsthand account. In many cases (but fortunately with decreasing frequency), only the confession narrative is recorded, leaving the coercive roadmap knowable only to the investigators and the suspect, whose word against the investigators is given little weight.

When Witnesses Are Interrogated

As noted above, coercive interrogation practices can cause innocent suspects to confess to crimes that they did not commit. That people will comply with the demands of the situation and confess falsely — and some will come to *believe* in their false confessions — is a dramatic testament to the power of coercive interrogation procedures. These innocent suspects are doing something directly opposed to their long-term interests and their personal freedom. If coercive interrogation procedures can get people to surrender their own autonomy, how difficult can it be to coerce nonsuspects to implicate a suspect and by doing so cooperate with law enforcement?

Eyewitness memory often plays a substantial role in solving the crime. The general belief is that a bystander eyewitness who is not motivated to distort the events will cooperate and describe what she saw. Sometimes, however, the eyewitness may be reluctant to say what she knows — or worse — may be motivated to deliberately deceive law enforcement in order to protect another person. Fred Inbau (a criminologist who specialized in developing interrogation techniques) and colleagues address this problem in the most recent edition of the Reid Technique manual: "Although a criminal investigator ordinarily will experience little difficulty obtaining information from witnesses to a crime or from persons in possession of information derived from some other source, there are instances when a witness or prospective informant will attempt to withhold whatever information is known concerning another's guilt."[6] They go on to recommend steps that investigators can take to ensure the safety and increase the compliance of reluctant witnesses (e.g., promising confidentiality, providing a police guard to protect the witness). These steps are not always successful, in which case the authors state that "[w]hen all other methods have failed, the investigator should accuse the subject of committing the crime (or of being implicated in it in some way) and proceed with an interrogation as though the person was, in fact, considered to have involvement in the crime. A witness or other prospective informant, thus, faced with a false accusation, may be motivated to abandon his efforts to protect the offender or to maintain antisocial or anti-police attitudes."[7] An alibi witness may be subjected to the same forces insofar as the alibi witness is an eyewitness. In other words, if the alibi witness is a friend of the suspect's and testifies that he was with the suspect at the time the crime was committed, the alibi witness is giving eyewitness testimony. While the alibi witness in this example may be unlikely to be subject to the errors of eyewitness identification (for he may know the suspect well), the alibi witness must rely on his memory about the suspect's whereabouts and actions at a specific time and location.

The research on eyewitness memory demonstrates that recall can be influenced by subtle postevent misleading information. There has been no research, however, on how the recall (or reports) of eyewitnesses might change in response to maximization and minimization techniques. If the default position to take with an assumed "uncooperative" witness is to treat him as a suspect, then it would be expected that the full range of maximization and minimization tactics described above would (at least potentially) be visited on the witness. These tactics would include accusations and confrontations on the one hand and empathy, sympathy, and offers of morally justified excuses for having been uncooperative on the other. As noted earlier, innocent persons can be induced to falsely confess to murder. It should not be a surprise, therefore, that a witness could be persuaded, using the same tactics, to transform, invent, or retract an eyewitness account so that it conforms to the inferred wishes of the interviewer.

What are the investigative advantages of interrogating an eyewitness or alibi witness as if she was a suspect? The benefits are numerous and they all stem from the initial assumption of the target suspect's guilt. An eyewitness who claims that the perpetrator that she saw was *not* the suspect is either mistaken or lying. An eyewitness's testimony is compelling even when incorrect, so such an eyewitness would weaken the case against the suspect. A positive identification of the suspect as the perpetrator, however, would strengthen the case. Likewise, an alibi witness who is a friend or acquaintance of the suspect and claims to have been with him at the very moment the crime occurred represents an inconsistency that weakens the case against the suspect. Again, assuming the suspect's guilt, the alibi witness must be mistaken or deceptive. The case against the suspect can be salvaged if the alibi witness "recalls" that he was with the suspect just before and maybe even just after the crime but perhaps not for the few minutes surrounding the time the crime actually occurred. Alternatively, an interrogation that reduces the confidence of any of these witnesses will help sustain a belief in the suspect's culpability. At the very least, an eyewitness who initially says "it's not him" and then later says "it might be him" can be neutralized on the witness stand through exposure of the inconsistency should she choose to revert to her original testimony. Likewise, an alibi witness who makes contradictory assertions can be discredited on the witness stand. There may be much to gain from getting the witnesses to offer inculpatory statements or retract their exculpatory statements for the camera, no matter how strong-handed the tactics, for research on the impact of confessions shows that it is the confession itself that matters to jurors. The coerciveness of the procedures is not on their radar.[8]

Lights, Camera, Action!

What follows is a description of some witness interviews that took place in the Toronto area in the course of a recent murder investigation. Mervyn Spence was shot to death in the parking lot of a Brampton strip mall at around 4 a.m. on the morning of Nov. 4, 2006. Eric Morgan (aka "Action"), the defendant, was an event promoter who had been hosting and celebrating his own birthday at a bar in the strip mall. At least 80 people, including the victim, had attended the party. Over the four years

following the shooting, police charged five men (not including Action) with either first degree murder or accessory to murder. All had their charges withdrawn for lack of a reasonable prospect of conviction. At each juncture, the theory of the police changed, and in June 2010 the police decided that Action was one of the shooters. He was charged with second degree murder. Sasha Allison had been interviewed in May 2009 because she had been in the parking lot in the vicinity of the shooting at the time that it happened. She was interviewed for a second time in June 2010. It was partly on the basis of Sasha's second statement taken in June 2010 that Action was charged. In an unrecorded interview after his arrest, Action named Brian Cox as an alibi witness. Action reported having been inside the bar with Brian at the time of the shooting. Action believed that his arrest was just some sort of "mix up." Shortly after Action's arrest, Cox was interviewed for eight hours. He had been interviewed previously, immediately after the shooting. At that time he reported having been inside the bar with Action. At the time of Cox's first interview, Action was not a suspect.

The Interviews Of Sasha Allison

Sasha was interviewed on May 29, 2009, and then again on June 14, 2010. During the initial interview, she reported noticing that one of the persons chasing the victim was dressed in black and wearing sunglasses, but she did not report knowing any of them, nor was she able to confidently match any of the culprits from the parking lot with video shots of people who were in the bar prior to the shooting. She was *certain*, however, that Action, whom she knew, was *not* one of the men in the parking lot. She spontaneously ruled him out:

Sasha: Oh Action, hmm.

Doherty: Do you know that name?

Sasha: Yeah, I know Action, but it's not Action, I know that.

Doherty: Sorry you know Action but who's not Action?

Sasha: The guy that did it.

Doherty: The guy that did it's not Action.

Sasha: No.

Doherty: Yeah, 'cause I've seen this video myself and I know Action from the video and he's wearing sunglasses, so I was just like ...

Sasha: No, no … it's not Action.

Sasha: I know who Action is.

Doherty: So you know, do you know his real name?

Sasha: No, I, I just know because he's a promoter and I've seen him at my Dad's shop before.

Doherty: Okay, so you definitely know who Action is?

Sasha: I know who he is.

Doherty: And the guy that you see outside is not …

Sasha: Not Action, no.

This interview lasted just under three hours. It was open-ended and relatively free of influence tactics. Sasha was interviewed again on June 14, 2010, by Detective Doherty. The interview, which was videotaped and transcribed, took a decidedly different tone from the first interview. It is clearly guided by the Reid Technique. Detective Doherty employed maximization and minimization techniques to encourage Sasha to identify Action as the perpetrator.

With respect to maximization techniques, he informed Sasha at the outset that another witness had come forward and identified one of the males involved in the shooting. He also informed her that she (Sasha) knew the male that had been identified, and "if we don't sort it out, you get yourself in trouble. I know it's scary." Detective Doherty instructed Sasha to "think back to your independent recollection of that night, think back to the memory you have of the male with the sunglasses. And then take that back further and try and make the connection to inside the club. And if you do that I'm confident you'll be able to tell me who that person is." Detective Doherty confronted Sasha with accusations that she was withholding information or lying. At various points in the interview, he either rejected Sasha's denial that she knew the perpetrator's identity or asserted that she did know this information. For example, after Sasha said she did not know who was involved in the shooting, Detective Doherty told her that she knew who the perpetrator was and that there was no doubt in his mind that she knew. After Sasha again said she was not sure who the perpetrator was, he told her that "this isn't as hard as you are making it out to be." He told Sasha that it was time to come clean, that she knew the name of the perpetrator, and that she wanted to say it.

With respect to minimization, Detective Doherty offered Sasha sympathy, justification, and excuses to explain why she was finding it difficult to disclose the perpetrator's identity. He told Sasha that he knew she was scared and said it was "difficult." He said he knew she did not want to be involved. He told her there were reasons why people do not want to get involved and he understood that. He explained the stigma associated with being an informer. Detective Doherty said he was concerned that a witness connected to the case was directing her in a certain way. Also, with respect to theme development, he appealed to Sasha's conscience. On multiple occasions and in various ways he told Sasha that she was a good person and should do the right thing. He made reference to her being a mom to two girls, a parent with values who instills them in her daughters, and an example for others. She was encouraged to do the right thing for Mikey (i.e., the murder victim) and his memory.

The impact was visible during a 12-minute period in which Detective Doherty left her alone. Sasha was in conspicuous psychological and physical distress:

Sasha: *I don't even know who he's talking about. God.*

I don't even know who he's talking about.

My kids, my kids.

Oh. Who's he talking about?

I don't know.

My stomach.

Oh my God.

I don't feel well.

Oh my God.

I can't do this.
Oh my goodness.

I don't know.

Eventually, after about an hour, Detective Doherty prompted her with this: "The person with the sunglasses that was outside involved in the shooting is ..." Sasha said, "Action." Listened to on tape, her statement was tentative and hesitant. The next day Action was charged with the murder.

The Interviews of Brian Cox

Constable Cooper first interviewed Brian Cox on November 6, 2006. At that time Brian reported being with Action when word filtered through the party that there had been a shooting outside. The music was turned off and people left. "I left with Action," he said. Detectives Giles and Cooper then interviewed Brian on June 23, 2010, for more than eight hours. Brian and Action were good friends, and his testimony provided an alibi. At the beginning of the second interview, Brian was 100 percent certain that Action had been standing with him in the club at the moment they learned of the shooting outside. For much of the interview, Brian did not waiver from this avowed belief. Following extensive use of Reid Technique tactics, Brian became less confident that Action was with him when he learned about the shooting. By the end of the eight-hour interview he had concluded (or at least reported) that Action was *not* standing beside him at the time he heard the news. Part of the interrogation also focused on the content of cellphone conversations that Brian had had with Action within hours of leaving the club.

With respect to maximization techniques, Detectives Giles and Johnstone repeatedly accused Brian of lying or withholding information. Consistent with Stages 3 and 4 of the Reid Technique, the detectives managed Brian's denials. The accusations and denial management tactics were very aggressive. For example, Detective Giles asserted that Brian was not telling him everything and that he strongly believed that Brian was trying to protect Action. He suggested that Brian take a polygraph, and accused him of providing a false alibi for Action. At one point Detective Johnstone entered the room and said, "I don't wanna sound angry" and then told him that he had been sitting outside listening to his "bullshit." Brian agreed to take a polygraph and accused Detective Johnstone of bullying him.

With respect to minimization techniques, Detective Giles offered Brian excuses for his apparent erroneous memory, suggesting that maybe there was something that Brian forgot to tell him. He offered Brian a way of saving face by suggesting that he had not put himself in this position but rather that Action had put him there. Detective Giles also appealed to Brian's conscience by reminding him of his responsibility as a community member (a responsibility that Brian took seriously).

The Reid Technique can be used to produce inculpatory statements from bystander eyewitnesses and retractions from alibi witnesses.

Two additional aspects of Cox's interrogation were particularly striking. The first is the extent to which Brian was threatened with legal consequences for his testimony, which he insisted was truthful. Brian was a witness. He was not under investigation, was not a suspect, and had not been read his rights. Detectives Giles and Johnstone threatened Brian with consequences for maintaining that he had been with Action when he learned of the murder. Detective Giles told Brian that if they uncovered contrary evidence, Brian would be arrested and prosecuted. Detective Johnstone informed Cox that he had evidence to convict Cox of obstructing the police. He alluded to cellphone records that purportedly showed conclusively that Action was *not* in the bar at the time of the shooting. (There were no such records.) Brian was told that this "concrete evidence" could lead to his being charged with being an accessory after the fact and that he could avoid this consequence if he came clean about "this alibi bullshit." Detective Giles told Brian that if he did not tell him the truth that day, he would be charged with accessory after the fact and would go promptly to jail. Giles said that "if you're an accessory … to first degree murder, buddy boy, let me tell ya, people hear that and you get kind of queasy and the room starts to go a little dark." Second, the detectives told him explicitly that retracting his alibi would solve his predicament. Brian asked what he was supposed to say to get him out of this mess. Detective Giles replied, "You need to tell me the truth, first of all, about [Action] *not being anywhere remotely near you* when Lady Shaba came in and told everyone that someone's been shot," and he needed to tell him everything Action had told him during the cellphone calls after the shooting. This is a clear example of the use of threats and inducements. The detectives were explicit about the statements they wanted to hear, threatened him with punishment if he did not supply them, and agreed to withhold the punishment if he complied.

Lessons From The Action Case

The Reid Technique is recognized to be effective for securing confessions from guilty suspects, but it has also been implicated for its role in producing false confessions from innocent suspects.[9] Sasha Allison and Brian Cox were not suspects; they were witnesses. Both of them changed their testimony on a pivotal point following extensive use of tactics associated with the Reid Technique.

It is highly improbable that the use of coercive interrogation procedures and threats of punishment improve the accuracy of witnesses' recall. Coercive practices are designed to make the individual being interrogated highly anxious. High anxiety inhibits concentration and diminishes cognitive capacity. In contrast, memory accuracy is better facilitated by open-ended, noncoercive interviewing techniques that facilitate communication and attentiveness. Memory is also more likely to be accurate with shorter delays between the time of the crime and the interview. These witnesses changed their "recollections" nearly four years after the crime had occurred.

The Action case clearly demonstrates that the Reid method for securing confessions from suspects can also be used to produce inculpatory statements from bystander eyewitnesses and retractions from alibi witnesses. Such techniques undoubtedly pressure guilty suspects to confess but also sometimes lead innocent suspects to falsely confess. While proponents of the Reid Technique claim that it can be used to get reluctant or deceptive witnesses to tell the truth, there is no empirical evidence to support this assertion. It is well established that eyewitness testimony can be altered and shaped through very subtle suggestive practices.[10] There was nothing subtle,

however, about the interview tactics that were used with Allison and Cox. Could their use seriously distort and corrupt the statements obtained? Yes.

Prevention and Remedies

Transporting Reid-like techniques to the domain of witness interviewing is inherently risky. The problem is that a witness whose testimony does not coincide with the police theory of the crime is not inevitably lying or withholding relevant information. The discrepancy could be a warning sign that the investigation has gone off the rails. It is true that some witnesses may be unhelpful or even obstructive in order to protect themselves or another suspect and that some level of cajoling may be necessary to garner their cooperation. When the full force of the Reid Technique is used — including forceful accusations that the witness is lying, managing her denials, threatening her with legal consequences (without even apprising her of her custodial rights), offering excuses for her uncooperativeness, and leading her to the "right answer" (be it the identification of a suspect or the retraction of an alibi) — the resulting witness statement hardly reflects memory retrieval. More likely, the resulting statement is simply what the investigator wanted the witness to say after the witness's arm was twisted hard.

Who would believe the testimony of a witness who was coerced in this fashion? The answer is, unfortunately, the jury. Research on jury decision making shows that (1) confident witnesses are persuasive[11] and (2) confessions are persuasive, even when they were elicited through coercion.[12] More generally, decades of research in social psychology shows that people overlook situational influences when explaining behavior and over-attribute the cause of others' behaviors to personal factors. Consequently, the testimony of a coerced witness, if given confidently, will be influential in the eyes of the jury, even after the coercion is exposed. What, then, is the solution? One remedy is to discourage the coercion of witnesses in the first place. This could be accomplished through the use of a more evidence-based investigative approach containing the appropriate checks and balances for protecting against confirmation biases and tunnel vision.[13]

Additional guidance has been provided in the recent, groundbreaking decision by the Oregon Supreme Court in *Oregon v. Lawson*.[14] The Oregon court rejected the inherently flawed balancing

test that courts had been using for 30 years to establish the admissibility of eyewitness identification. The new Oregon framework requests that courts consider the breadth of factors that may have influenced the reliability of the eyewitness identification. When reliability may be in question, the courts are instructed to use remedies such as limiting the witness's testimony and/or permitting expert testimony about the relevant science so that jurors can better understand how to evaluate reliability. The court was particularly concerned with the impact of suggestion on eyewitness identification. Critically, the Oregon decision shifts the burden of proof. Instead of the defendant having to establish unreliability, now the state must prove that eyewitness testimony is reliable enough to be admissible. Even when the state meets this burden, the judge may employ one or more of the aforementioned remedies if reliability of eyewitness identification remains in question. If the Oregon framework for evaluating eyewitness identification was extended to eyewitness testimony and adopted nationwide, the prosecution would at the very least have a challenge on its hands to demonstrate the admissibility of statements procured by the methods described above. Even if coerced statements were admitted, remedies may be available to the defense.

Viable interviewing methods exist for both suspects and witnesses that do not rely on confrontational or accusatory tactics. As a result of some notorious wrongful convictions in the United Kingdom approximately 20 years ago, aggressive interrogations were replaced with a more inquisitorial approach to interviewing that is both research-based and investigative in nature. The PEACE procedure[15] is grounded on the empirically established principles of the cognitive interview.[16] The cited authorities contain details of these alternative practices.

In the Action case, the trial judge of the Ontario Superior Court of Justice ruled on the admissibility of the statements of Sasha Allison and Brian Cox.[17] Sasha Allison had already recanted her identification of Action, explaining that she was "just trying to help the police, but it was not the truth." Similarly, Brian Cox had recanted his recantation of the alibi, explaining that he just wanted the interrogation to end and wanted to avoid the threat of criminal charges. The prosecution intended to put the out-of-court, prior inconsistent statements of Allison and Cox before the jury "for the truth of their contents" — notwithstanding refusals by the witnesses to adopt the statements at trial. The defense argued that the psychologically coercive techniques of interrogation rendered the witnesses' statements involuntary and unreliable and therefore inadmissible.

Applying the relevant law in the jurisdiction, in a 140-page ruling, the judge sought to balance Action's right to a fair trial with society's right to a trial on the merits. Under the criminal law of Canada, out-of-court prior-inconsistent statements are presumptively inadmissible hearsay. To put such a statement before the jury "for the truth of its contents," the prosecution must establish on a balance of probabilities that the hearsay statement meets the twin criteria of necessity and reliability. In *R. v. K.G.B.*,[18] the Supreme Court of Canada stated specific factors of reliability to consider in admitting a prior inconsistent statement. These include (1) the statement is made under oath or solemn affirmation, (2) the statement is videotaped in its entirety, and (3) the opposing party has opportunity to cross-examine the witness.

In the Action case, despite the presence of these three factors, the judge was left with serious concerns about the reliability of the witness statements after having watched the videos of the interrogations. In his ruling, the judge found that during the last part of his interview Brian Cox had been psychologically broken down. His will was overborne by persistent threats that he would be charged with serious criminal offenses if he did not change his position, and he finally capitulated. The judge held that the impugned portion of the Brian Cox interrogation was inadmissible. The judge also excluded the Sasha Allison interrogation "for the truth of its contents." His Honor did, however, permit the prosecution to use the statement for the limited purpose of testing the witness's credibility during examination, with the jury being expressly prohibited from relying on it to make any findings of fact.

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Just as confessions are disproportionately persuasive to juries — even when they are elicited through coercion — a remedy excluding a Reid Technique-induced witness statement that only goes halfway carries a grave risk that it may be misused by even a reasonable, properly instructed jury. As the judge noted, "Some of the things [Detective Doherty] did which could have an impact on the reliability of Allison's identification of Eric Morgan may be difficult for the jury to appreciate, despite the best efforts of counsel and my instructions." Informing jurors that they should view a witness's statement but ignore the facts contained therein is a "mixed message" with which many jurors would struggle.[19]

In cross-examination, when Elaine Morrison, the sole remaining eyewitness, was asked how anyone could ever be 100 percent certain of something they observed for "one to two seconds," she replied, "I've never said I was 100 percent sure." As a result of her uncertainty, the prosecution reassessed their "reasonable prospect of conviction," closed its case, and — along with defense counsel and the trial judge — instructed the jury to find Mr. Morgan not guilty of second degree murder.

When eyewitness testimony is part of the case against a defendant and the eyewitness is to be interviewed in the manner of a suspect interrogation, such interviews should be videotaped. The recording makes available a full picture of the interview dynamics that would be lost in written notes or investigator free recall. Judges and juries can be aided in appraising reliability if they can be shown what to look for with the help of lawyers and expert witnesses. Videotaping holds police officers accountable given that they are aware that their actions may be viewed later by others and it thereby has a deterrent effect against the most obviously coercive practices. Recording of witness interviews is essential for all of the same reasons that it is critical in the confessions context. In Canada the practice is effectively mandated by the provincial courts and the Supreme Court of Canada. The lack of recording is a significant factor favoring the exclusion of a statement. Consequently, with rare exception, it is customary for all police services in Canada to videotape. In the United States, electronic recording is becoming more common.[20] More than one-third of the states and the District of Columbia have adopted electronic recording as a statewide practice. The current status of the statutory and case law in each state can be found at http://www.nacdl.org/electronicrecordingproject.

Although the interrogation techniques may be equivalent, constitutional protections for suspects do not automatically extend to witnesses. What is the legal basis for challenging the admissibility of a witness's statements before trial? The defendant could argue that his right to a fair trial is jeopardized by the admission of any coerced (and thus unreliable) testimony — whether it arises from the defendant himself or from a witness. In sum, criminal defense lawyers should be warned that coercive interrogation practices are not restricted to suspects. Their use with eyewitnesses is condoned and encouraged in the Reid manual. There is no way to know how often nonsuspect witnesses are subjected to coercive interrogation practices, but as the Morgan case demonstrates, their use threatens the defendant's right to a fair trial and invites judicial remedies.

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Notes

1. F.E. Inbau, J.E. Reid, J.P. Buckley & B.C. Jayne, Criminal Interrogation and Confessions (5th ed. 2012).

2. Numerous reviews have concluded that the method is based on faulty operating assumptions that jeopardize the reliability of the admissions that are elicited. See, for example, B.L. Cutler, K.A. Findley & T.E. Moore, *Interrogations and False Confessions: A Psychological Perspective*, 18(2) Canadian Criminal L. Rev. 153–170 (2014); D. Davis & R. Leo, *Interrogation-Related Regulatory Decline: Ego Depletion, Failures of Self-Regulation, and the Decision to Confess*, 18(4) Psychol. Pub. Pol'y & L. 673–704 (2012); S. Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?* 60 Am. Psychol. 215–228 (2005); S.M. Kassin, S.A. Drizin, T. Grisso, G.H. Gudjonsson, R.A. Leo & A.D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Human Behav. 3–38 (2010); R.A. Leo & S.A. Drizin, *The Three Errors: Pathways to False Confession and Wrongful Conviction*, in D. Lassiter & C. Meissner (eds.), Interrogations and Confessions: Current Research, Practice, and Policy Recommendations (2010); T.E. Moore & L. Fitzsimmons, *Justice Imperiled: False Confessions and the Reid Technique*, 57(4) Crim. L. Quarterly 509–542 (2011); A.D. Redlich & C.A. Meissner, *Techniques and Controversies in the Interrogation of Suspects: The Artful Practice Versus the Scientific Study*, in J.L. Skeem, K.S. Douglas & S.O. Lilienfeld (eds.), Psychological Science in the Courtroom (2009).

3. Regrettably, such clues are not trust-

worthy indicators of deception, but this flawed vetting exercise is pivotal because it means that some innocent (and truthful) suspects will subsequently be subjected to a guilt presumptive and accusatory interrogation that is aggressive, confrontational, and psychologically manipulative. *See* A. Vrij, P.A. Granhag & S. Porter, *Pitfalls and Opportunities in Nonverbal and Verbal Lie Detection*, 11(3) PSYCHOL. SCI. PUB. INTEREST 89–121 (2010); K. Watkins & J. Turtle, *Investigative Interviewing and the Detection of Deception: Who Is Deceiving Whom? (Problems With Deception)*, CANADIAN J. POLICE & SECURITY SERVICES 115 (2003).

4. A full description of the Reid Technique is beyond the scope of this article. It should be noted, however, that the Fred Inbau et al. handbook describes a nine-step sequence: (1) direct positive confrontation; (2) theme development; (3) handling denials; (4) overcoming objections; (5) procurement and retention of the suspect's attention; (6) handling the suspect's passive mood; (7) presenting an alternative question; (8) having the suspect orally relate aspects of the offense; and (9) converting the oral confession into a written confession. The handbook further explains that in any given interrogation all steps may not be necessary and the steps need not follow the order prescribed. There may be variation in the training and implementation of the Reid Technique between investigators and jurisdictions.

5. Minimization techniques do not explicitly promise leniency in exchange for a confession but have been empirically demonstrated to create this belief in the suspect. S. Kassin & K. McNall, *Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication*, 15(3) L. & HUMAN BEHAV. 233–251 (1991); R. Ofshe & R. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENVER UNIV. L. REV. 979–1122 (1997).

6. *Supra* note 1, at 335.

7. *Id.* at 337.

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