

# EDUCING INFORMATION

Interrogation: Science and Art  
Foundations for the Future

Intelligence Science Board  
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NATIONAL DEFENSE INTELLIGENCE COLLEGE

# 6

## **Custodial Interrogations: What We Know, What We Do, and What We Can Learn from Law Enforcement Experiences**

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## Abstract

This report explores both the literature and practice related to interrogation of suspects in custody, focusing almost exclusively – as the literature and practice do – on eliciting confessions to crimes. The theoretical literature lays the groundwork for interrogation practice by identifying the reasons why suspects do or do not confess to crimes, while empirical findings pinpoint factors associated with admissions and denials. Almost all manuals on interrogation techniques cover the same aspects of successful interrogation as the seminal Reid Technique: (1) characteristics/qualifications of the interrogator; (2) pre-interrogation fact gathering and analysis; (3) the interrogation setting; (4) pre-interrogation interview and rapport-building; (5) analysis of behavioral symptoms; (6) interrogation of the suspect; (7) detection of deceit; and (8) securing the confession. A comparison of theory and technique reveals that the interrogation techniques advocated in the literature take little account of the factors that the empirical research shows might affect a suspect's willingness to confess, and provide little or no guidance to varying approaches for different types of suspects.

Against this background, the report next reviews training and practice at the Federal Bureau of Investigation, the Federal Law Enforcement Training Center, and the Homicide Division of the Boston Police Department, as well as the personal experience of a senior detective in the MIT Police Department. Findings indicate that federal and local organizations provide little training specifically on interrogation; moreover, agencies do not collect data to establish whether their operatives actually apply the training they do receive, nor to evaluate the effectiveness of different interrogation approaches. Law enforcement officers report that innate personality traits and on-the-job learning, rather than formal instruction or guidelines, determine success as an interrogator.

The authors also interviewed senior officials in Northern Ireland to determine how practices in other countries differ from those in the United States. A detective superintendent of the Police Service of Northern Ireland noted that rules recently adopted in Great Britain almost preclude confessions by suspects; instead, interrogation is viewed as a part of an information-gathering process.

While few U.S. jurisdictions require that interrogations be videotaped, the law enforcement entities that use the practice report that it does not appear to reduce the effectiveness of interrogations. In fact, videotaping should benefit both the practice and outcome of interrogations by providing a record for the courts and allowing supervisors to review and if necessary correct the practices of their staffs.

The effectiveness of standard interrogation techniques has never been validated by empirical research. Moreover, techniques designed to obtain confessions to crimes may have only limited relevance to preventive investigations of terrorist-related activities. The authors recommend further research addressing both issues, and also suggest that the United States consider adopting the practice of providing intensive training to a select group of professionals who would then conduct all interrogations.

## Introduction

This paper has three primary purposes. First, it reviews the literature available on the topic of interrogation to offer an organized and cohesive survey of the available knowledge on the topic. Second, it seeks to present an overview of how several domestic and foreign law enforcement agencies handle interrogations, both in training and practice. Finally, the paper attempts to frame questions for further study and to discern some potential lessons to be learned from law enforcement for current and future terrorism-related situations in which interrogations might be a relevant component.

This paper, like the project that sponsored it, does not attempt to offer novel approaches to custodial interrogation, or to present groundbreaking psychological insights into this investigative tool. The scope of the paper is further limited by the subject matter it covers. It is decidedly not a general study on all possible aspects and issues of police interviewing; instead, it focuses on situations that conform generally to Inbau, Reid, Buckley, and Jayne's definition of interrogation: "the accusatory questioning of a suspect involving active persuasion that occurs in a controlled environment when an investigator is reasonably certain of a suspect's guilt, for the purpose of learning the truth."<sup>109</sup> Thus, interviews of witnesses and victims are outside the purview of this project; the paper deals only with interrogations of suspects who are in custody or otherwise in an environment controlled by the interrogators. Similarly, although there is a vast body of law relevant to custodial interrogations, analysis of the relevant legal precedents and rules is beyond the scope of this project. Finally, even though Inbau et al., as well as many other authors, suggest that the goal of an interrogation may be something

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<sup>109</sup> Fred Inbau et al., *Criminal Interrogations and Confessions*, 4<sup>th</sup> ed. (Sudbury, MA: Jones and Bartlett Publishers, 2004), 5–6.

other than obtaining a confession, the paper mainly focuses on literature, techniques, and practices aimed at eliciting confessions.<sup>110</sup>

To these ends, the paper is divided into three parts. Part I provides a survey and review of the literature on interrogations. Section 1 focuses on the theoretical and psychological literature about interrogations and confessions. Section 2 presents and analyzes the empirical data available to support the theoretical approaches and models. Section 3 surveys the practical literature on interrogations, covering the major techniques and practical manuals on the subject. Section 4 briefly describes how an interrogation can “go wrong,” and Section 5 discusses the extent to which the practical literature takes the empirical data into account.

Part II presents a survey of law enforcement training and practice with respect to interrogation. Sections 6, 7, and 8 review the Federal Bureau of Investigation (FBI), the Federal Law Enforcement Training Center (FLETC), and the Boston Police Department Homicide Division, respectively. Section 9 presents a case study of the training and practices of one very experienced U.S. interrogator, while Section 10 examines practices in other countries, specifically Great Britain and Israel. Section 11 then presents a survey of the arguments, issues, and practices related to the video-recording of interrogations, and Section 12 attempts to tie all of the practices together and compare them to the empirical and practical literature presented in Part I.

Finally, in Part III, we offer some general conclusions and recommendations for further study and research. Most important, we present some thoughts about the relationship between, and applicability of, law enforcement interrogation techniques and practices to the current terrorism problem.

## **PART I. LITERATURE REVIEW**

### **Section 1. Theoretical Approaches to Confessions**

Incriminating statements and confession in the context of a criminal investigation usually entail serious consequences, ranging from reputational and financial penalties to deprivation of liberty or life.<sup>111</sup> Nonetheless, a substantial number of interrogations yield a confession or some sort of incriminating statement. This section explores the possible explanations for this phenomenon offered by the psychological literature on interrogation and confessions.

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<sup>110</sup> Compare Inbau (noting that interrogation is best conceived as the psychological undoing of deception) with R. Leo, “Inside the Interrogation Room,” *The Journal of Criminal Law and Criminology* 86, no. 2 (Winter 1996), 279 (assuming that an interrogation is successful when the suspect provides the detective with at least some incriminating information) and Gisli H. Gudjonsson, *The Psychology of Interrogation and Confessions: A Handbook* (New York: Wiley, 2003), 2 (stating that interrogations, like interviews, are a way of gathering information for use in further enquiries, but are normally associated with criminal suspects).

<sup>111</sup> Gudjonsson, p. 115.

### ***Factors Inhibiting Confession***

Gisli Gudjonsson identifies five factors that make it difficult for people to confess to crimes they have committed. The first is the *fear of legal sanctions*.<sup>112</sup> Generally, the severity of the potential sanction is directly proportional to the seriousness of the offense and, as mentioned above, may include financial sanctions, deprivation of liberty, and even the death penalty. Additionally, the mere possibility of having a criminal record may be a powerful inhibitory force for first-time offenders.<sup>113</sup> Second, Gudjonsson points to *reputational concerns* as a factor that may inhibit suspects from confessing.<sup>114</sup> He suggests that the higher the person's standing in the community, the greater his or her reluctance to confess.<sup>115</sup> Third, Gudjonsson notes that an *individual's resistance to admit to him or herself what he or she has done* may also hinder confessions.<sup>116</sup> Thus, the more reprehensible the offense, the more likely offenders are to exercise denial when interrogated.<sup>117</sup> Fourth and somewhat related, a *subject's desire to keep his or her family and friends ignorant about the crime* may also affect his or her willingness to confess.<sup>118</sup> Finally, *fear of retaliation*, whether real or perceived, may influence a subject's decision.<sup>119</sup> In this context, a suspect may implicate others by confessing to a crime and, fearing retaliation, may thus refuse to confess. Indeed, Gudjonsson notes that in some cases the fear of retaliation may be greater than the fear of legal sanctions.<sup>120</sup>

### ***Theoretical Models of Confession***

A review of the available literature on interrogations and confessions reveals various theoretical explanations of why suspects confess during custodial interrogations. The following models examine confessions from different perspectives and, taken together, provide important insights into the subject.<sup>121</sup>

#### ***The Reid Model***

Drawing on the nine steps of interrogation devised by Inbau et al., Jayne provides a theoretical-psychological model for the so-called Reid Technique.<sup>122</sup> This model conceives of an interrogation as the psychological undoing of deception.<sup>123</sup> According to Jayne, in the context of criminal interrogation deception can be defined as "a selected behavior of distorting or denying the truth for the

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*, p. 116.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*, p. 116.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*, p. 117.

<sup>122</sup> Brian C. Jayne, "The Psychological Principles of Criminal Interrogation," in Fred E. Inbau, et al., *Criminal Interrogation and Confessions*, 3<sup>rd</sup> edition (Baltimore, MD: Williams and Wilkins, 1986), 327-347. For a full explanation of the practical aspects of the Reid Technique, see discussion below.

<sup>123</sup> Jayne, p. 327.

purpose of benefit to the individual.”<sup>124</sup> Furthermore, in this context the common motivation for all deception is avoidance of the consequences associated with telling the truth.<sup>125</sup> The two types of consequences of being truthful are labeled “real” and “personal.”<sup>126</sup> Real consequences generally involve financial penalties or the loss of freedom or life, while personal consequences involve lowered self-esteem and damaged integrity and reputation.<sup>127</sup> According to the model, successful deception is reinforced in accordance with operant conditioning principles whereby undetected lying is rewarding and increases the chances of further lying.<sup>128</sup>

However, successful socialization teaches individuals that it is wrong to lie, which in many people brings about internal conflicts comprising feelings of frustration and anxiety.<sup>129</sup> The model predicts that the increased levels of anxiety associated with lying induce a person to confess.<sup>130</sup> The level of anxiety is assumed to increase linearly from omission to evasion to blatant denial.<sup>131</sup> Jayne notes that subjects may try to reduce anxiety through body movements or physical activities, which work by displacement or distraction.<sup>132</sup> Additionally, the mind attempts to reduce anxiety through “a series of hypothetical constructs called defense mechanisms,” which operate within the individual by distorting or denying reality.<sup>133</sup> The two main defense mechanisms relevant to interrogation are *rationalization* and *projection*.<sup>134</sup> Rationalization is the “act of redescribing what a person does in such a way as to avoid any responsibility for the consequences of his behavior.”<sup>135</sup> Through the second defense mechanism, projection, a subject “shifts the blame for his own thoughts or actions onto another person, place, or thing” (e.g., the victim, alcohol use, etc.).<sup>136</sup> Although, as noted, the defense mechanisms of projection and rationalization function by distorting or denying reality, this “does not mean that the individual loses touch with reality; reality has merely been redefined.”<sup>137</sup>

According to the Reid Model, a suspect confesses when the perceived consequences of a confession are more desirable than the anxiety generated by the deception.<sup>138</sup> The basic tenet of the model is that the interrogator can psychologically manipulate both the perceived consequences of confessing

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*, p. 328.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*, p. 329.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*, p. 330.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*, 331.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*, p. 332.

and the suspect's anxiety to obtain a confession.<sup>139</sup> Thus, according to the Reid Model, the goal of an interrogation is to "decrease the suspect's perception of the consequences of confessing, while at the same time increasing the suspect's internal anxiety associated with his deception."<sup>140</sup> Jayne identifies three basic concepts relevant to the interrogator's manipulation of the subject's perception of consequences and anxiety: *expectancy*, *persuasion*, and *belief*.<sup>141</sup> Expectancy refers to "a want or goal perceived as desirable or inevitable." At the outset of an interrogation deceptive subjects expect that, if they confess, the consequences (as they perceive them at that time) are inevitable, and that the most desirable goal would be not to confess.<sup>142</sup> Persuasion is "a form of communication wherein the listener's attitudes, beliefs, or perceptions are changed."<sup>143</sup> Persuasion can change expectancies, i.e., a suspect's view of what is desirable.<sup>144</sup> Belief, in turn, is "the vehicle of persuasion," in that a suspect's beliefs are not fact and are therefore subject to interpretation and external influence.<sup>145</sup> In this context, an interrogator must strive to "change the suspect's *perception* of the consequences of confessing or the suspect's *perception* of the anxiety associated with deception by influencing the subject's beliefs."<sup>146</sup>

According to the model, there are four essential criteria for changing the suspect's expectancies and beliefs in order to garner a confession.

- First, the subject must perceive the interrogator as a credible source of information.<sup>147</sup> According to Jayne, credibility is based on sincerity, knowledge, and demeanor.<sup>148</sup>
- Second, the interrogator must develop insight into the subject's attitudes and weaknesses.<sup>149</sup> It is particularly important that the interrogator assess the consequences that the suspect is trying to avoid by denial, and evaluate the suspect's ability to tolerate anxiety.<sup>150</sup>
- Third, the subject must internalize the interrogator's suggestion, because this will change expectancies if the individual can be led to internalize the interrogator's message.<sup>151</sup> This involves a three-stage process.<sup>152</sup>
- First, the suspect must comprehend the interrogator's ideas (relating).<sup>153</sup>

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*, p. 333.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*, p. 334.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*, p. 334-335.

<sup>150</sup> *Id.*, p. 335.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*, p. 336.

<sup>153</sup> *Id.*

- Second, the suspect must agree and concur with the message communicated by the interrogator (acceptance).<sup>154</sup>
- Third, the suspect must internalize or believe the interrogator's suggestions (believing).<sup>155</sup> This last point underscores the importance of suggestibility in the confession process: the more suggestible the suspect, the easier it is, theoretically, to obtain a confession.<sup>156</sup>
- Finally, the interrogator must constantly monitor the subject's feedback to determine whether or not the subject accepts the theme, whether the subject's anxiety should be intensified, or if the timing of the presentation of an alternative question is right.<sup>157</sup>

In this context, Jayne suggests several manipulative ploys that interrogators can use to reduce the perceived consequences of confessing and increase the perceived anxiety associated with deception. According to Jayne, perceived consequences are generally reduced through the development of themes that employ *rationalization* and/or *projection*.<sup>158</sup> As defense mechanisms, rationalization and projection reduce anxiety by altering the suspect's perceptions of the likely consequences of self-incriminating admissions.<sup>159</sup> Jayne notes that these two mechanisms are most effective in reducing the perceptions concerning "real" consequences, whereas using sympathy and compassion as ploys is relatively more effective in overcoming inhibitions about the perceptions of "personal" consequences.<sup>160</sup> Similarly, Jayne notes that anxiety must be independently increased without increasing perceived consequences.<sup>161</sup> Statements or actions intended to increase anxiety "must be directed at the suspect's perception of himself within the interrogation environment."<sup>162</sup> Ultimately, the success of the interrogation depends on the extent to which the interrogator is successful in identifying psychological vulnerabilities, exploiting them to alter the suspect's belief system and perceptions of the consequences of making self-incriminating admissions, and persuading him to accept the interrogator's version of the "truth."

As explained in detail in Section 3, Jayne's psychological model has been incorporated into a comprehensive interrogation technique, the Reid Technique, which has been described as the "most influential practical manual" on interrogation.<sup>163</sup> According to Gudjonsson, the Reid Technique rests on the following basic assumptions:<sup>164</sup>

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*, p. 337.

<sup>156</sup> See interrogative suggestibility discussion below.

<sup>157</sup> Jayne, see note 122, p. 340.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*, p. 341.

<sup>161</sup> *Id.*, p. 342.

<sup>162</sup> *Id.*, p. 343.

<sup>163</sup> Gudjonsson, see note 110, p. 11.

<sup>164</sup> *Id.*

- Many criminal investigations can only be solved by obtaining a confession.
- Unless offenders are caught in the commission of a crime they will ordinarily not give a confession unless they are interrogated over an extended period of time in private, using persuasive techniques comprising trickery, deceit and psychological manipulation.
- To break down resistance, interrogators will need to employ techniques that normally would be seen as unethical by the public.

Given these assumptions, Gudjonsson notes that the technique is broadly based on two processes:<sup>165</sup>

1. Breaking down denials and resistance, and
2. Increasing the suspect's desire to confess.

More specifically, the Reid Technique employs two main psychological strategies throughout its nine steps of interrogation: *maximization* and *minimization*.<sup>166</sup> Maximization involves frightening suspects into a confession by exaggerating the strength of evidence against them and the seriousness of the offense.<sup>167</sup> Minimization, in contrast, involves tricking suspects into a false sense of security and thus into confessing by offering sympathy, providing face-saving excuses, partly blaming the victim or circumstances for the alleged offense, and minimizing the seriousness of the charges.<sup>168</sup>

Gudjonsson argues that the techniques advocated by Inbau and his colleagues are practically and ethically problematic because they are inherently coercive insofar as they communicate implicit threats and promises to suspects.<sup>169</sup> Although it is outside the purview of this paper, we note that Gudjonsson's main criticism of the Reid Technique and its underlying psychological model is that their coercive nature yields a far greater proportion of false confessions than is tolerable. This criticism and concern over false confessions has been echoed by other psychologists and experts in interrogations and confessions.<sup>170</sup>

The authors of the Reid Technique counter that the criticisms are better aimed at actual law enforcement practice and misuse of the technique. According to the John E. Reid and Associates official website, "the goal of the interrogation process is to develop the truth. It is not a process designed to obtain a confession by any means from any suspect."<sup>171</sup> The authors assert that by following the

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<sup>165</sup> *Id.*

<sup>166</sup> *Id.*, p. 21.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> For further criticism of the Reid Technique, see R. Leo and R.J. Ofshe, "The Consequences of False Confessions: Deprivation of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation," *Journal of Criminal Law and Criminology* 88, no. 2 (1998), 429-496.

<sup>171</sup> John E. Reid and Associates, *Defending the Reid Technique of Interrogation*, at [http://www.reid.com/educational\\_info/critictchniquedefend.html](http://www.reid.com/educational_info/critictchniquedefend.html), accessed 13 March 2005.

nine steps of their technique “[t]he interrogator [...] will be meeting all of the guidelines established by the courts in conducting proper interrogations to develop admissible confessions from guilty suspects.”<sup>172</sup>

### ***Decision-Making Model***

Hilgendorf and Irving have suggested an alternative concept of interrogations and confessions.<sup>173</sup> Their model provides a framework for analyzing “the circumstances in which any particular confession was made in terms of the decision-making task of the suspect, the information with which he is provided, the social pressures which are brought to bear on him, and the physical character of the interrogation.”<sup>174</sup> It conceptualizes interrogation as a complicated and demanding decision-making process.<sup>175</sup> The subject of an interrogation must make many choices, some of which include whether to speak or remain silent; whether to make self-incriminating admissions or a confession; whether to tell the truth, part of the truth, or lie; how to answer the questions asked by the interrogator; and what attitude to adopt toward the police.<sup>176</sup>

Hilgendorf and Irving’s model predicts that subjects will seek to make the best possible choice among the courses of action available by choosing “that course for which the product of (1) the probability of occurrence and (2) the value to him (or utility) of the consequences, is largest.”<sup>177</sup> The subject’s action will have consequences for him or her: criminal charges may be filed; he or she may be detained; the police may check the information provided for accuracy and truthfulness.<sup>178</sup> Thus, he or she will attempt to evaluate the probabilities of each consequence’s occurrence, and his or her decision about how to act will be a “result of some balancing of the likelihood of various consequences in relation to their utilities for him [or her].”<sup>179</sup> Consequently, an interrogation subject’s decisions are determined by:

- Perceptions of the available courses of action.
- Perceptions concerning the probabilities of the likely occurrence of various consequences attached to these courses of action.
- The utility values or gains attached to these courses of action.

Hilgendorf and Irving make clear that the subject’s decision making is governed not by the objective probabilities that given consequences may occur, but by the subjective probabilities of their occurrence.<sup>180</sup> In other words, decisions

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<sup>172</sup> *Id.*

<sup>173</sup> E.L. Hilgendorf and B. Irving, “A Decision-Making Model of Confessions,” in *Psychology in Legal Contexts: Applications and Limitations*, M.A. Lloyd-Bostock, ed. (London, UK: Macmillan, 1981), 67-84.

<sup>174</sup> *Id.*, p. 81.

<sup>175</sup> *Id.*, p. 69.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*, p. 70.

<sup>180</sup> *Id.*, p. 71.

are not based on what is objectively likely to happen, but on what the suspect believes at the time to be the likely consequences.

Hilgendorf and Irving argue that threats and inducements, even when slight and implicit, can markedly influence the suspect's decision to confess because of the perceived power the police have over the situation and the apparent credibility of their words. Similarly, they point to a number of social, psychological, and environmental factors that can affect or seriously impair the suspect's decision making during police interrogation. The most salient factors as listed by Gudjonsson are as follows:<sup>181</sup>

- The police can manipulate the social and self-approval utilities (like the suspect's feelings of competence and self-esteem) during interrogation in order to influence his decision-making.
- The interrogators can manipulate the suspect's perceptions of the likely outcome concerning a given course of action. For example, interrogators can minimize the seriousness of the offense.
- Interrogators can impair the suspect's ability to cope with information processing and decision-making through various means like social, psychological and environmental manipulation.

Hilgendorf and Irving conclude that, given the interrogator's considerable authority, the interrogation situation puts strong pressure on suspects to place excessive emphasis in their decision making on the approval or disapproval of the interrogator, and to be extremely sensitive to all communications, both verbal and non-verbal, that they receive from the interrogator.<sup>182</sup> Physical confinement supports and facilitates these pressures, and the effect becomes more pronounced the longer the detention lasts. The combined effect of these pressures and other forms of environmental and situational stress inherent in custodial interrogations can adversely affect "efficient performance on the complex decision-making task" confronting interrogation subjects.<sup>183</sup>

### *Psychoanalytic Model*

Gudjonsson points out that this model rests upon the assumption that "the feeling of guilt is the fundamental cause of confessions."<sup>184</sup> Based on Freudian concepts of the id and ego, Reik's work attempts to show that the unconscious compulsion to confess plays a seminal role in crime.<sup>185</sup> According to Reik, a confession is "an attempt at reconciliation that the superego undertakes in order to settle the quarrel between the ego and the id."<sup>186</sup> Thus, a confession primarily serves the role of relieving people of the overwhelming feeling of guilt occasioned

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<sup>181</sup> Gudjonsson, see note 110, p. 122.

<sup>182</sup> Hilgendorf and Irving, see note 173, p. 81.

<sup>183</sup> *Id.*

<sup>184</sup> Gudjonsson, see note 110, p. 122.

<sup>185</sup> Theodor Reik, *The Compulsion to Confess: On the Psychoanalysis of Crime and Punishment*, translated by Katherine Jones (New York: Farrar, Straus and Cudahy, 1959).

<sup>186</sup> *Id.*, p. 216.

by their crime. Following Reik's lead, Berggren espoused a psychological model that seeks to explain the need of individuals to confess. In general, the model postulates that people's knowledge of their transgression produces a sense of guilt, which is experienced as oppressive and depressing.<sup>187</sup> The confession relieves the individual from the guilt, producing important cathartic effects. However, as Gudjonsson points out, the model remains controversial at best, as its foundational theses have limited acceptance in the scientific community.<sup>188</sup>

### *Interaction Process Model*

This model proposes that, regardless of a suspect's actual involvement in a crime, the interaction among three main sets of factors determines the individual's initial response to an allegation and the eventual outcome of an interrogation.<sup>189</sup> These sets of factors are:<sup>190</sup>

- Background characteristics of the suspect and offense
- Contextual characteristics of the case
- Interrogator's questioning techniques

The first set of factors includes the suspect's age, sex, and criminal history, as well as the type and severity of the offense under investigation.<sup>191</sup> The second set encompasses the strength of the available evidence against the suspect and the suspect's access to legal advice.<sup>192</sup> According to the model, the interrogator's questioning techniques are influenced by his beliefs about and attitudes toward the characteristics of the suspect and the case, which in turn affect the suspect's initial response to an allegation.<sup>193</sup> The suspect's subsequent and final responses during questioning will be determined by his calculation of the relative advantages of response change (i.e., from an initial denial to an admission), brought about by the interrogator's reaction to the suspect's initial response.<sup>194</sup>

After analyzing 1,000 cases in which suspects were interviewed by police officers in England, Moston, Stephenson, and Williamson suggested that police interviewing techniques played a relatively minor role in influencing confessions for two main reasons.<sup>195</sup> First, most admissions were freely volunteered at the outset of interviews, and those suspects who denied an accusation at the outset typically maintained this denial throughout, even in the face of seemingly incontrovertible proof of guilt.<sup>196</sup> Second, the authors found that police interviewing skills were

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<sup>187</sup> E. Berggren, *The Psychology of Confessions* (Leiden, The Netherlands: E.J. Brill, 1975).

<sup>188</sup> Gudjonsson, see note 110, p. 122.

<sup>189</sup> Stephen Moston, "From Denial to Admission in Police Questioning of Suspects," in *Psychology, Law and Criminal Justice*, Graham Davies et al. eds. (UK: Walter de Gruyter, 1996), 92.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> S. Moston et al., "The Effects of Case Characteristics on Suspect Behaviour During Police Questioning," *British Journal of Criminology* 32 (1992), 23-40.

<sup>196</sup> Moston, see note 195, p. 92.

almost nonexistent and interrogators employed only a limited range of questioning techniques.<sup>197</sup> According to Gudjonsson, the main limitation of the model is that it does not focus on the mental state and cognitive processes of the suspect.<sup>198</sup>

### *Interrogation as Dialogue*

An alternate and less traditional view conceives of interrogation as a dialogue between suspect and interrogator, “characterized by an adversarial element.”<sup>199</sup> This model places great importance on understanding how the interrogation fits into the scheme of critical dialogues in which individuals engage every day so as to allow interrogators to overcome hurdles encountered in the interrogation process and to give them ideas of how to move the dialogue forward at stalled moments.

Although Walton suggests that the interrogation is a form of information-seeking dialogue, he recognizes that “to conduct an interrogation as if it were a persuasion dialogue, or a normal information-seeking dialogue, would result in argumentation that is inappropriate, and even useless for this purpose.”<sup>200</sup> Moreover, unlike a traditional critical conversation, broken into stages where both participants decide when to move from one stage to the next, the stages of the interrogation (formative, preparatory, argumentation, and closing) “proceed not by the agreement of both parties, but by the unilateral choices of the interrogator.”<sup>201</sup> Indeed, “interrogation is a type of asymmetrical dialogue in which one party tends to be very powerful and the other party tends to be very passive.”<sup>202</sup> Because of this, Walton argues that “the questioner must use tricky techniques to get any results.”<sup>203</sup> Walton’s recommendations for the questioner include to 1) “appear friendly and cooperative, even sympathetic to the respondent;” 2) “be very patient, and give plenty of time for answers;” 3) “be methodical, and go by a list of questions that have been previously prepared;” 4) “repeat questions that have not yet been answered;” and 5) have the interrogation “go on for a long, indefinite period of time.”<sup>204</sup>

Within the context of interrogation as dialogue, Walton then identifies a number of argumentation techniques that may be used in interrogations. The first suggested technique is “*the easiest way out*,” whereby the interrogator seeks to “wear the respondent down, and then inform him that if [he] just confess[es], or give[s] [the interrogator] the desired information, then [his] problems will be over.”<sup>205</sup> Similarly, the interrogator can use “*the only way out*” technique whereby he or she makes the conditions “unbearable for the respondent...such

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<sup>197</sup> *Id.*

<sup>198</sup> Gudjonsson, see note 110, p. 124.

<sup>199</sup> Douglas Walton, “The Interrogation as a Type of Dialogue,” *Journal of Pragmatics* 35, no. 12 (December 2003), 1771-1802.

<sup>200</sup> *Id.*, p. 1798.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*, p. 1799.

<sup>203</sup> *Id.*, p. 1778.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*, p. 1784.

that he [finds] it intolerable to continue.”<sup>206</sup> Additionally, the interrogator can use his *authority* as a leverage mechanism, and Walton recommends that he or she interrogate “an uneducated or unintelligent criminal suspect as if [he or she] were questioning a child.”<sup>207</sup> Walton also points to other techniques such as use of hypnosis, catching the subject off guard, fostering the belief that the suspect is not being interrogated, misrepresenting the law, distorting the seriousness of the offense, using threats, leading the suspect to believe that the interrogators already know everything, and sympathizing with the subject.<sup>208</sup>

According to Walton, understanding the rules of dialogue that interrogation participants follow, whether consciously or unconsciously, should, in theory, help the interrogator understand both his approaches and responses to the suspect, as well as the suspect’s various approaches and responses during the course of the interview. This would allow the interrogator to adjust, take unexpected tacks, and generally conduct a more successful interrogation. Walton formulates ten rules for questioner (“proponent”) and suspect (“respondent”) in the interrogation dialogue, assuming “that the respondent does not want to give out the information, or at least all of it, but wants to appear compliant by taking part in the dialogue.”<sup>209</sup> Taking Walton’s assumptions, the “rules” of the interrogation dialogue for questioner and suspect are:<sup>210</sup>

1. The respondent needs to take care not to inadvertently say something that might give out the information he wants to conceal, or to allow the proponent to infer it;
2. The proponent may coerce the respondent to reveal the information through threats or sanctions, but only by the means allowed;
3. The proponent needs to pose questions to the respondent, and these questions can, and often should be, leading, loaded, and deceptive;
4. The respondent should answer in formulations that are vague, ambiguous, misleading, or confusing, if that will help serve his ends;
5. The proponent should probe critically into the respondent’s prior replies, and try to use them to extract information;
6. The respondent should take care to try to be consistent in his replies and in the commitments that can be inferred from them;
7. If the proponent finds inconsistencies in the respondent’s commitments, or implausible statements, or statements that are

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<sup>206</sup> *Id.*, p. 1785.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*, p. 1785-86.

<sup>209</sup> *Id.*, p. 1780.

<sup>210</sup> *Id.*

inconsistent with information from other sources, she should ask questions that critically examine them;

8. If the proponent extracts the information she wants from the respondent, then she has achieved her goal and the dialogue concludes in her favor;
9. If the proponent terminates the interrogation without getting the information she wants, and the respondent preserves his interests, the dialogue concludes in the respondent's favor;
10. The two parties can use any arguments, even ones considered irrelevant or fallacious from the viewpoint of a critical discussion, to achieve their ends.

Walton also points out that “appeals to fear and threats have long been known to be powerfully effective arguments,”<sup>211</sup> and that the “logically fallacious” character of such threats does not diminish their effectiveness in the interrogation dialogue.<sup>212</sup> Of course, if the suspect/respondent is totally unresponsive, Walton’s rules have little application, and one must turn to the Reid Technique or other techniques explored in this paper in order to obtain information from the suspect.

### ***Cognitive-Behavioral Model***

Mainly espoused by Gudjonsson, the cognitive-behavioral model views confessions as resulting from “the existence of a particular relationship between the suspect, the environment and significant others within that environment.”<sup>213</sup> It suggests that it is helpful to look at the “antecedents” and “consequences” of confessing behavior within the framework of behavioral analysis.<sup>214</sup> Antecedents are the kinds of events occurring prior to interrogation that may trigger or facilitate the confession.<sup>215</sup> Consequences refer to the effects of a confession or admission upon the subject. There are two major types: *short term* and *long term*.<sup>216</sup> Short-term consequences occur within minutes or hours of the suspect’s confession, while long-term consequences manifest themselves within days, weeks, months, or years of the confession.<sup>217</sup> The types of consequences depend on the nature and circumstances of the case and the psychological characteristics of the individual concerned.<sup>218</sup>

As explained below, antecedents and consequences are construed in terms of social, emotional, cognitive, situational and physiological events.<sup>219</sup> Though these are discussed in greater detail below, the following Table provides a

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<sup>211</sup> *Id.*, p. 1788.

<sup>212</sup> *Id.*

<sup>213</sup> Gudjonsson, see note 110, p. 124.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*, p. 125.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

useful yet non-exhaustive illustration of the typical antecedents and consequences associated with confessions.

Antecedents	Consequences	
	<i>Short-Term</i>	<i>Long-Term</i>
Social Isolation; police pressure	Police approval/praise	Disapproval
Emotional Distress	Feelings of relief	Feelings of guilt, shame
Cognitive “The police know I did it.”  “The truth will come out in the end.”  “Perhaps I did do it but I can’t remember it.”	“It’s good to get it off my chest.”  “My solicitor will sort it out.”  “How could I have done such a dreadful thing?”	“What is going to happen to me now?”  “This is very serious.”  “I’m now certain I had nothing to do with it.”
Situational: Nature of the arrest: Confinement? Solicitor present? Caution understood? Familiarity with police procedures?	Charged, allowed access to a solicitor	Judicial proceedings
Physiological Aroused physical state, inhibitions reduced by alcohol or drugs; drug withdrawal	Arousal reduction	Arousal returns to base level

**The antecedents and consequences of confessions.**<sup>220</sup>

Source: The authors.

<sup>220</sup> *Id.*

### *Social Events*

The first type of social influence that an interrogation exerts upon the subject is isolation from his or her family and friends.<sup>221</sup> Interrogation manuals commonly place great emphasis on isolating the suspect from any external influence that may reduce his or her willingness to confess.<sup>222</sup> The second kind of social influence, police pressure, relates to the nature of the interrogation itself.<sup>223</sup> As is illustrated by the Reid Model described above, the social process and interaction between interrogator and subject is an important factor in obtaining a confession. In this context, the immediate consequence of confessing is social reinforcement by the police interrogators, who might praise the subject for cooperation and for owning up to what he or she has done.<sup>224</sup> Additionally, the subject may be allowed access to visitors such as family members and, in some cases, may be allowed to go home.<sup>225</sup> The long-term consequences commonly involve the defendant's having to come to terms with social disapproval from the media and the general public.<sup>226</sup>

### *Emotional Events*

Being arrested and brought to a police station is an undoubtedly stressful event. Generally, suspects can be expected to experience considerable levels of anxiety and distress, caused mainly by the uncertainty of the situation, the fear of what will happen at the station, the fear of being locked in a cell, and the fear of the consequences regarding the offense.<sup>227</sup> There are two distinct emotional experiences relevant to confessions: guilt and shame.<sup>228</sup> Shame is best viewed as a degrading, humiliating experience, and it often accompanies a sense of exposure.<sup>229</sup> In contrast, guilt is associated with some real or imagined past transgression that is inconsistent with the person's internalized values and standards.<sup>230</sup> Whereas a feeling of guilt motivates people to confess, a feeling of shame has the reverse effect.<sup>231</sup> After confessing, suspects may experience a sense of emotional relief as the immediate pressure is lifted and they have greater certainty about their immediate future.<sup>232</sup> However, at the prospect that the subject's role in or commission of the crime will become known, a feeling of shame sometimes sets in or becomes exacerbated.<sup>233</sup>

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<sup>221</sup> *Id.*, p. 126.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*, p. 127.

### *Cognitive Events*

Cognitive factors comprise the suspect's thoughts, interpretations, assumptions, and perceived strategies of responding to the interrogative situation.<sup>234</sup> According to Gudjonsson, it is important to remember that the suspect's behavior during the interrogation is likely to be more influenced by his or her perceptions, interpretations, and assumptions about what is happening than by the actual behavior of the police/interrogators.<sup>235</sup> One possible cognitive antecedent to a confession occurs when the suspect perceives the evidence against him as being strong; he is more likely to confess if he believes there is no point in denying the offense.<sup>236</sup> Another possible cognitive factor involves suspects' "talking themselves into confessing" if they believe the interrogator will not relent until he has obtained a confession, or if they believe that the police have sufficient evidence to prove that they committed the offense.<sup>237</sup> An innocent person's faith that the truth will eventually come out through the criminal justice system can also facilitate a (false) confession.<sup>238</sup> Finally, innocent suspects who begin to doubt their own recollection of events in the face of pressing interrogation may eventually yield to the suggestions of the interrogator and come to believe that they committed the crime.<sup>239</sup>

The immediate cognitive consequences of confessing may relate to thoughts associated with the easing of the pressure.<sup>240</sup> For some suspects, especially innocent ones, the belief that their legal representative will sort everything out may predominate.<sup>241</sup> On the other hand, suspects who mistakenly accept guilt because of confusion about their recollection and acceptance of the interrogator's suggestions may come to wonder how they could have committed such a deed and have no recollection of it.<sup>242</sup> Eventually, after their confusion subsides, they may again become fully convinced that they had nothing to do with the crime to which they previously confessed.<sup>243</sup>

### *Situational Events*

These factors are potentially infinite. As Gudjonsson points out, "the circumstances of the suspect's arrest (e.g., being arrested suddenly in the early hours of the morning) may affect the suspect's ability to cope with the subsequent interrogation."<sup>244</sup> Similarly, the time and conditions of confinement prior to interrogation may affect the subject's performance: "being locked up in a police cell for several hours or days may 'soften up' subjects (i.e., weaken their resistance)

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<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

and make them more responsive to interrogation.”<sup>245</sup> Conversely, familiarity with police procedures and interrogation “is likely to provide suspects with knowledge and experience that make them more able to understand and assert their rights.”<sup>246</sup> The immediate situational consequence commonly associated with a confession is that the suspect is charged with the offense.<sup>247</sup> The long-term consequence is possible prosecution and judicial proceedings.<sup>248</sup>

### ***Physiological Events***

The physiological antecedent to a confession is “heightened arousal, which includes increased heart rate, blood pressure, rate and irregularity of respiration, and perspiration.”<sup>249</sup> These occur because “suspects are commonly apprehensive, worried and frightened.”<sup>250</sup> Once the suspect has confessed, “there is likely to be a sharp reduction in his level of physiological and subjective arousal because of greater certainty about the immediate future.”<sup>251</sup> Arousal may then return to its normal level, though Gudjonsson notes that uncertainty about the pending charge or prosecution “may lead to an increased subjective and physiological state of arousal.”<sup>252</sup>

### ***Interrogative Suggestibility***

Some experts, led by Gudjonsson and Clark, have dedicated considerable research to the application of suggestibility in police interrogation.<sup>253</sup> Interrogative suggestibility is central to the social-psychological model described above. There are two main theoretical approaches to interrogative suggestibility: the *individual differences approach* and the *experimental approach*.<sup>254</sup> Although they offer different perspectives, the models complement each other.<sup>255</sup> The former approach is best illustrated by the work of Gudjonsson and Clark<sup>256</sup> and the latter by the work of Schooler and Loftus.<sup>257</sup> The experimental approach places emphasis on “understanding the conditions under which leading questions are likely to affect the verbal accounts of witnesses.”<sup>258</sup> Thus, interrogative suggestibility is viewed as being “mediated by a central cognitive mechanism, referred to as discrepancy

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<sup>245</sup> *Id.*, p. 127-128.

<sup>246</sup> *Id.*, p. 128.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> Gisli H. Gudjonsson, “The Application of Interrogative Suggestibility to Police Interviewing,” in *Human Suggestibility*, John F. Schumaker, ed. (UK: Routledge, 1991), 279-288.

<sup>254</sup> *Id.*, p. 279.

<sup>255</sup> *Id.*, p. 279.

<sup>256</sup> Gisli H. Gudjonsson and N. Clark, “Suggestibility in Police Interrogation: A Social-Psychological Model,” *Social Behaviour* 1 (1986), 83-104.

<sup>257</sup> J.W. Schooler and E.F. Loftus, “Individual Differences and Experimentation: Complementary Approaches to Interrogative Suggestibility,” *Social Behaviour* 1 (1986), 105-12.

<sup>258</sup> Gudjonsson, see note 253, p. 279.

detection.”<sup>259</sup> The implication drawn from the model is that people are suggestible “when the conditions are such that they are unable to discriminate satisfactorily between what they observed and what is suggested to them.”<sup>260</sup>

On the other hand, the individual differences approach “has specific applicability to police interrogation and views suggestibility as being dependent upon the coping strategies that people can generate and implement when confronted with the uncertainty and expectations of the interrogative situation.”<sup>261</sup> The model tries to “explain individual differences in suggestibility,” and its main premise is that “people vary considerably in their reactions to police interrogation, even when the conditions of the situation are similar.”<sup>262</sup> Gudjonsson and Clark define interrogative suggestibility as “the extent to which, within a closed social interaction, people come to accept the messages communicated during formal questioning, as the result of which their subsequent behavioral response is affected.”<sup>263</sup> Thus, the definition implies the following five interrelated components:<sup>264</sup>

- A closed social interaction between interrogator and subject.
- A questioning procedure that involves two or more participants.
- A suggestive stimulus.
- Acceptance of the suggestive stimulus.
- A behavioral response to indicate whether or not the suggestion is accepted.

Given these characteristics, Gudjonsson argues that interrogative suggestibility differs from other types of suggestibility in four respects:<sup>265</sup>

- It involves questioning procedures within a closed social interaction.
- The questions asked deal mainly with past experiences and events, recollections, and remembered states of knowledge, as opposed to traditional types of suggestibility, which are primarily concerned with motor and sensory experiences of the immediate situation.
- It has a strong component of uncertainty related to the cognitive processing capacity of the individual.
- It typically involves a highly stressful situation with important consequences for the person being interviewed.

Thus understood, the Gudjonsson model is “essentially a social-psychological model, where interrogative suggestibility is construed as arising through a particular relationship between the person, the environment, and significant

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<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*, p. 280.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*, p. 280-281.

others within that environment.”<sup>266</sup> The model recognizes and incorporates the importance of feedback to interrogative suggestibility, and conceptualizes it as “a signal communicated by an interrogator to a witness [or suspect], after he/she has responded to a question or a series of questions, intended to strengthen [(positive feedback)] or modify [(negative feedback)] subsequent responses of the witness [or suspect].”<sup>267</sup> The interrogator can communicate feedback both implicitly and explicitly.<sup>268</sup> Repeated questioning is one example of *implicit negative feedback*.<sup>269</sup> *Implicit positive feedback* may consist of providing refreshments, praise, or sympathy to the subject after he or she begins to give desired answers to the interrogator’s questions.<sup>270</sup> *Explicit negative feedback*, on the other hand, consists of open statements by the interrogator to the effect that he or she thinks that the interviewee has made a mistake or is lying.<sup>271</sup> Similarly, an interrogator may offer *explicit positive feedback* by using responses like “good,” “that’s right,” or “now we are getting somewhere” to reinforce wanted or accepted answers by the subject.<sup>272</sup> Gudjonsson argues that feedback, and especially negative feedback, may have “dramatic effects upon the subsequent behavior of an interviewee.”<sup>273</sup> He suggests that negative feedback has two distinct effects: “it (a) makes interviewees change or *shift* their previous answers, and (b) heightens their responsiveness to further leading questions.”<sup>274</sup>

As mentioned above, Gudjonsson’s model states that interrogative suggestibility is “dependent upon the coping strategies that subjects can generate and implement when dealing with the *uncertainty* and *expectations* of interrogation.”<sup>275</sup> According to Gudjonsson, the three necessary prerequisites for the process of suggestibility are *uncertainty*, *interpersonal trust*, and *expectation of success*.<sup>276</sup>

The *uncertainty* derives from the fact that the subject does not know for certain the right answer to a question and is therefore potentially open to suggestion.<sup>277</sup> This may occur, for example, when the subject’s memory about the event is incomplete or nonexistent.<sup>278</sup> According to Gudjonsson, subjects can only be described as suggestible when they “privately accept the suggestion offered or at least believe it to be plausible.”<sup>279</sup> Thus, suggestible subjects are different from compliant ones, who “accept a suggestion contained in a leading question,

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<sup>266</sup> *Id.*, p. 281.

<sup>267</sup> *Id.*.

<sup>268</sup> *Id.*

<sup>269</sup> Gudjonsson, see note 110, p. 350.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*, p. 350-51.

<sup>274</sup> *Id.*, p. 351.

<sup>275</sup> Gudjonsson, see note 253, p. 281.

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> Gudjonsson, see note 110, p. 348.

<sup>279</sup> *Id.*

knowing that it is wrong, because they are eager to please the interrogator or are reluctant to disagree with the suggestion openly.”<sup>280</sup>

*Interpersonal trust* is important because, to yield to suggestion, the subject must believe “that the interrogator’s intentions are genuine and that there is no trickery involved in the questioning.”<sup>281</sup> According to Gudjonsson, interviewees who are suspicious of the interrogator’s intentions “will be reluctant to accept suggestions offered, even under conditions of increased uncertainty.”<sup>282</sup> Finally, Gudjonsson points out that although uncertainty and interpersonal trust are necessary to make people yield to suggestion they are not sufficient, because an uncertain subject can answer with “don’t know,” “not sure,” or “can’t recall.”<sup>283</sup> Consequently, it is important that the interrogator communicate, either implicitly or explicitly, an expectation of success about the subject’s performance: the goal is to make the subject feel that he or she should be able, and indeed is expected, to provide a definite answer to the interrogator’s questions.<sup>284</sup>

Ultimately, the model predicts that “most people are open to suggestion when the necessary conditions of uncertainty, interpersonal trust and heightened expectations are present.”<sup>285</sup> From these predictions, it can be hypothesized that “the three components, *uncertainty*, *interpersonal trust*, and *expectations* can be manipulated by the interrogator to alter the subject’s susceptibility to suggestion.”<sup>286</sup> Similarly, it can be theorized that “people who enter the interrogation with a suspicious cognitive set (e.g., those who do not trust the police or are suspicious of them) are less suggestible than those with a trusting cognitive set.”<sup>287</sup> Gudjonsson also hypothesizes that “people with poor memory recollection and low intelligence are generally more suggestible than those with high cognitive capabilities,” and that suggestibility is “related to such variables as low self-esteem, lack of assertiveness, and anxiety.”<sup>288</sup>

Gudjonsson developed a suggestibility scale to test his interrogative suggestibility model and the hypotheses derived from it. The Gudjonsson Suggestibility Scale can be used “to assess the individual’s responses to ‘leading questions’ and ‘negative feedback’ instructions when being asked to report a factual event from recall.”<sup>289</sup> The scale employs a narrative paragraph describing a fictitious mugging, which is read aloud to the subjects. They are then asked to report all they can recall about the story, after which each person is asked 20 specific questions, 15 of which are subtly misleading. After answering the 20 questions the person is told that he or she has made a number of errors, and

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<sup>280</sup> *Id.*

<sup>281</sup> *Id.*, p. 349.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*, p. 350.

<sup>284</sup> *Id.*

<sup>285</sup> Gudjonsson, see note 253, p. 282.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*, p. 283.

that it is necessary to ask the questions again. The person is also asked to be more accurate than before. Any change in the person's answers is noted as a "shift." The extent to which people give in to the misleading questions is scored as "yield." "Yield" and "shift" are typically added together to make up "total suggestibility."<sup>290</sup> According to Gudjonsson, two studies have shown that "it is possible to manipulate the expectations of the subjects (as described above) prior to interrogation in order to reduce or enhance suggestibility."<sup>291</sup>

In Gudjonsson and Hilton's study, a significant difference in suggestibility was found between three groups of people who were given different instructions about their expected performance.<sup>292</sup> One group of people (the "High expectation group") was told that they were expected to remember most of the story and give definite answers to all the questions. The second group was given no instructions about their expected performance. The third group (the "Low expectation group") was told that they were not expected to find a definite answer to all the questions. The most important implication of this finding for police interrogation is that interrogators "should be aware that certain expectations communicated to subjects prior to or during the interview can markedly affect the accuracy of the information obtained."<sup>293</sup> Gudjonsson also has noted that interrogative suggestibility "is significantly related to the coping strategies that subjects report using during the test."<sup>294</sup> According to his findings, subjects who proved most suggestible "tended to use 'avoidance' coping during the interrogation."<sup>295</sup> Gudjonsson notes that this means that they failed "to evaluate each question critically and gave answers that... seemed plausible and consistent with the external cues provided."<sup>296</sup> In contrast, non-suggestible subjects "were able to adopt a critical analysis of the situation which facilitated the accuracy of their answers."<sup>297</sup>

## Section 2. Empirical Findings

Most of the recent empirical studies on confessions have been conducted in England.<sup>298</sup> With the exception of the 1996 study by Richard Leo discussed below, most of the U.S. studies date back to the 1960s and have largely focused on studying the effects of the *Miranda* ruling on the frequency with which suspects waive their rights and confess.

### How Often Do Suspects Confess?

Research shows that many suspects interrogated at police stations confess to the crime of which they are accused and that a further proportion make

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<sup>290</sup> *Id.*, p. 283.

<sup>291</sup> *Id.*, p. 284.

<sup>292</sup> Gisli H. Gudjonsson and M. Hilton, "The Effects of Instructional Manipulation on Interrogative Suggestibility," *Social Behaviour* 4 (1989), 189-93.

<sup>293</sup> Gudjonsson, see note 253, p. 285.

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> Gudjonsson, see note 110, p. 130.

self-incriminating statements that fall short of a full confession.<sup>299</sup> Inbau et al. claim that in the United States the great majority of suspects initially deny their involvement in the offense, but, when the Reid Technique is used, about 80% of the denials change to confessions. However, there is no empirical evidence to support this claim.<sup>300</sup> In contrast to claims by Inbau et al., British research indicates that a confession or admission typically occurs at the beginning of an interview and the suspect usually sticks to his chosen position throughout the interview regardless of the technique used.<sup>301</sup> The table below lists British and U.S. studies that represent the available data on confession rates in both countries. Because Richard Leo's 1996 study stands as the only U.S. study of its kind since the 1960s, we will discuss it in further detail below.

Study	Country	Type of Data	Sample	Confession/admission (%)	Proportion having legal advice (%)
Baldwin and McConville	England	Crown Court files	282	76	N/A
Cassell and Hayman	USA	Survey	173	42	N/A
Irving	England	Observational	60	62	10
Irving and McKenzie	England	Observational	68 (1986)	65	29
			68 (1987)	46	31
Leo	USA	Observational	182	42	N/A
Mitchell	England	Crown Court files	394	71	N/A
Moston and Stephenson	England	Questionnaire	558	59	14
Moston, Stephenson, Williamson	England	Taped interviews	1067	42	41
Neubauer	USA	Case files	248	47	N/A
Pearse et al.	England	Taped interviews	161	58	56

<sup>299</sup> *Id.*, 133.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

Study	Country	Type of Data	Sample	Confession/admission (%)	Proportion having legal advice (%)
Phillips and Brown	England	Police documents/questionnaires	4250	55	33
Softley	England	Observational	187	61	9
Zander	England	Crown Court files	282	76	N/A

**Proportion of suspects who confess or make admission.<sup>302</sup>**

Source: The authors; data compiled from references shown sequentially in box below.

J. Baldwin and M. McConville, *Confessions in Crown Court Trials*, Royal Commission on Criminal Procedure Research Study No. 5 (London: Her Majesty's Stationery Office (HMSO), 1980).

P.G. Cassell and B.S. Hayman, "Police Interrogation In the 1990s: An Empirical Study of the Effects of Miranda", in *The Miranda Debate, Justice and Policing*, R.A. Leo and G.C. Thomas III, eds. (Boston, MA: Northeastern University Press, 1998), 222-235.

B. Irving, *Police Interrogation. A Case Study of Current Practice*, Research Studies No. 2 (London: HMSO, 1980).

B. Irving and I.K. McKenzie, *Police Interrogation: The Effects of the Police and Criminal Evidence Act* (London: The Police Foundation, 1989).

R. Leo, "Inside the Interrogation Room," *The Journal of Criminal Law and Criminology*, 86, no. 2 (Winter 1996): 266-303.

B. Mitchell, "Confessions and Police Interrogations of Suspects," *Criminal Law Review* (September 1983), 596-604.

S.J. Moston and G.M. Stephenson, "Predictors of Suspect and Interviewer Behaviour During Police Questioning," in *Psychology and Law: International Perspectives*, F. Loesel et al. eds. (UK: Walter de Gruyter, 1992), 212-218.

S. Moston et al., "The Effects of Case Characteristics on Suspect Behaviour during Police Questioning," *British Journal of Criminology* 32 (1992): 23-40.

<sup>302</sup> Id., 137

- D.W. Neubauer, "Confessions in Prairie City: Some Causes and Effects," *Journal of Criminal Law and Criminology* 65 (1974), 103-112.
- J. Pearse et al., "Police Interviewing and Psychological Vulnerabilities: Predicting the Likelihood of a Confession," *Journal of Community and Applied Social Psychology* 8, no. 1 (1998), 1-21.
- C. Phillips and D. Brown, *Entry into the Criminal Justice System: A Survey of Police Arrests and their Outcomes*, Home Office Research Study no. 185 (London: HMSO, 1998).
- P. Softley, *Police Interrogation. An Observational Study in Four Police Stations*, Home Office Research Study no. 61(London: HMSO, 1980).
- M. Zander, "The Investigation of Crime: A Study of Cases Tried at the Old Bailey," *Criminal Law Review* (1979), 203-219.

Even a cursory study of these data makes clear that the admission/confession rate is substantially (about 15%) lower in the United States than in England. However, Gudjonsson cautions against drawing any conclusions from this disparity for several reasons. First, he notes that generalizations from the available data may be unwise given "the scarcity of recent studies in the United States and the relatively low number of cases evaluated in each study."<sup>303</sup> Second, differences between England and the United States in confession rates "may relate to the greater impact of the Miranda rules on the confession rate than the restrictions imposed on British law enforcement."<sup>304</sup> Third, Gudjonsson suggests that many English legal representatives at police stations might be "passive and ineffectual in their role."<sup>305</sup> Finally, he notes that confession rate differences across nations "may be related to cultural factors influencing both police and suspects."<sup>306</sup> Additionally, it should be noted that the data cited in Table 2 for the most recent U.S. study (Leo, 1996) do not include suspects who made incriminating statements shy of an admission or confession. As explained below, inclusion of these figures would dramatically alter the results.

Richard Leo's 1996 study of interrogation practices in the United States involved nine months of observational work inside a major urban police department in the United States, where he contemporaneously observed 122 interrogations involving 45 different detectives.<sup>307</sup> Leo also viewed 30 videotaped custodial interrogations performed by a second police department, and another 30 videotaped interrogations performed by a third.<sup>308</sup> Generally, Leo sought to

<sup>303</sup> Gudjonsson, see note 110, p. 139.

<sup>304</sup> *Id.*, 139-40.

<sup>305</sup> *Id.*, 140.

<sup>306</sup> *Id.*

<sup>307</sup> Leo, see note 110, p. 268.

<sup>308</sup> *Id.*

observe and document the interrogation tactics used by interrogators and the suspects' reactions to them. For each interrogation, Leo recorded his observations qualitatively in the form of field notes and quantitatively with a 47-question coding sheet.<sup>309</sup> Leo noted that interrogations could yield four possible outcomes: (1) the suspect provided no information to the police that he or she considered incriminating; (2) the suspect (intentionally or not) provided some information that police considered incriminating, but did not directly admit to any of the elements of the crime; (3) the suspect admitted to some, but not all, of the elements of the crime; and (4) the suspect provided a full confession.<sup>310</sup> The table below displays the data from Leo's study.

<b>Subject's Response to Interrogation</b>	<b>Frequency (%)</b>
No incriminating statement	35.71
Incriminating statement	22.53
Partial admission	17.58
Full confession	24.18

**Outcome of interrogations in the United States.<sup>311</sup>**

Contrary to other authors such as Gudjonsson, who limit their scope to confessions and/or admissions, Leo operated under the assumption that an interrogation is successful "when the suspect provides the detective with at least some incriminating information."<sup>312</sup> Taking this assumption as given, Leo's studies reveal that "almost two-thirds (64.29%) of the interrogations [he] observed produced a successful result."<sup>313</sup>

However, that a substantial proportion of suspects subjected to interrogation end up confessing says nothing about the reasons behind those confessions. The next section attempts to shed some empirical light on why suspects confess.

**Factors Associated with Admissions and Denials**

*Background Characteristics of the Suspect*

Studies suggest that certain types of subjects are more likely to confess or make incriminating admissions than others. The more salient factors are:

1. *Age*: Age is often considered an indirect measure of maturity, and more mature suspects usually cope better with the unfamiliarity and demands of police interrogation than less mature suspects.<sup>314</sup> Gudjonsson notes that, although it

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<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> As noted in the text, Table 3 contains the data from Leo's study, and is adapted from Leo; see note 110, 280.

<sup>312</sup> Leo, p. 280.

<sup>313</sup> *Id.*

<sup>314</sup> Gudjonsson, see note 110, p. 141.

has not been found in all studies, there is some evidence that younger suspects are more likely to confess than older suspects.<sup>315</sup> A 1970 U.S. study found that 42.9% of suspects under the age of 25 in Colorado made confessions under police interrogation compared with 18.2% of older suspects.<sup>316</sup> A 1980 British study found that 53% of suspects over 21 years of age made confessions, compared to 68% of those below the age of 21.<sup>317</sup> Studies in 1989<sup>318</sup> and 1998<sup>319</sup> found a difference of 10.8% and 8%, respectively, between confession rates of juveniles and adults. Gudjonsson draws two interpretations from these findings: 1) the younger the suspect, the easier it is to obtain a confession from him or her, and 2) there appears to be no clear cut-off point with regard to age, i.e., suspects do not seem to reach a ceiling of resistance after a certain age.<sup>320</sup>

The literature reveals several factors that could be responsible for this phenomenon. First, it might be that, due to greater life experience, older suspects are better equipped psychologically to cope with the demand characteristics of the interrogative situation.<sup>321</sup> Another possible explanation is that older suspects are more likely to understand and assert their legal rights during interrogation.<sup>322</sup> Finally, Gudjonsson suggests that temperamental differences related to age may also be important.<sup>323</sup> For example, factors such as neuroticism and impulsiveness, which may make some suspects confess more readily than others, are negatively correlated with age.<sup>324</sup> Another potential factor is that adolescents find negative feedback and interrogative pressure from interrogators more difficult to resist than adults.<sup>325</sup>

However, the literature does not universally demonstrate this correlation between age and willingness to confess. In a study of 248 criminal defendants in Prairie City, California, Neubauer found no significant difference in confession rates between minors (16–20 years old) and adults (21 years and older).<sup>326</sup> Similarly, Leo did not find age to be “significantly related to the likelihood of obtaining incriminating information from the suspect.”<sup>327</sup>

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<sup>315</sup> *Id.*

<sup>316</sup> L.S. Leiken, “Police Interrogation in Colorado: The Implementation of Miranda,” 47 *Denver Law Journal* 1 (1970), 19-20.

<sup>317</sup> P. Softley, *Police Interrogation. An Observational Study in Four Police Stations*, Home Office Research Study no. 61 (London: HMSO, 1980).

<sup>318</sup> R. Leng et al., *Discretion to Charge and Prosecute*, Report to the Economic and Social Research Council (UK: 1989).

<sup>319</sup> C. Phillips and D. Brown, *Entry into the Criminal Justice System: A Survey of Police Arrests and their Outcomes*, Home Office Research Study no. 185 (London: HMSO, 1998).

<sup>320</sup> Gudjonsson, see note 110, p. 142.

<sup>321</sup> Leiken, see note 319, p. 19-21.

<sup>322</sup> J. Baldwin and M. McConville, *Confessions in Crown Court Trials*, Royal Commission on Criminal Procedure Research Study No. 5 (London: Her Majesty’s Stationery Office (HMSO), 1980), p. 195.

<sup>323</sup> Gudjonsson, see note 110, p. 142

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> W. Neubauer, “Confessions in Prairie City: Some Causes and Effects,” *Journal of Criminal Law and Criminology* 65 (1974), 104..

<sup>327</sup> Leo, see note 110, p. 291.

2. *Gender*: Gudjonsson notes that approximately 85% of persons arrested and detained at police stations in England are male.<sup>328</sup> However, several British researchers have found no gender differences with regard to the rate of admissions and denials.<sup>329</sup> Similarly, Leo found no significant relationship between gender and likelihood of confession or self-incrimination.<sup>330</sup> On the other hand, another researcher found a significant gender difference, with females confessing more commonly than males (73% admission rate of females versus 52% of males).<sup>331</sup>

3. *Ethnic Differences*: Phillips and Brown found that admission rates for whites, blacks and Asians were 58, 48 and 44% respectively.<sup>332</sup> Interestingly, the study also reflected that black and Asian detainees were significantly more likely than whites to request legal advice. Even when the analysis accounted for this variable, a significant difference remained between the confession rates of black and white detainees. However, Leo found no significant relationship between race and likelihood of confession.<sup>333</sup>

4. *Mental State and Psychological Factors*: Although the data is sparse, Gudjonsson has concluded that the only psychological/mental state factor that predicts a confession is when suspects admitted to having consumed an illicit drug 24 hours prior to their arrest.<sup>334</sup>

5. *Previous Convictions and Confessions*: Gudjonsson notes that suspects who have had several previous convictions are expected to be (a) more likely to know and assert their legal rights; (b) more familiar with the probable consequences of making self-incriminating admissions and confessions; and (c) more familiar with the police environment and interrogations.<sup>335</sup> Consistent with these expectations, Leo found that suspects with a previous felony record were four times more likely to invoke their *Miranda* rights than suspects without previous convictions.<sup>336</sup> Invocation of *Miranda* rights, in turn, implies the termination of interrogation. Consistently, Neubauer found that suspects with previous convictions were less likely to confess to the alleged offense than first offenders.<sup>337</sup> However, other studies have found no significant relationship between previous convictions and the rate of confessions.<sup>338</sup>

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<sup>328</sup> Gudjonsson, see note 110, p. 143.

<sup>329</sup> See Moston, note 195; also see J. Pearse et al., "Police Interviewing and Psychological Vulnerabilities: Predicting the Likelihood of a Confession," *Journal of Community and Applied Social Psychology* 8, no. 1 (1998).

<sup>330</sup> Leo, see note 110, p. 291.

<sup>331</sup> Phillips and Brown, see note 322, p. 105.

<sup>332</sup> *Id.*

<sup>333</sup> Leo, see note 110, p. 291.

<sup>334</sup> Gudjonsson, see note 110, p. 144.

<sup>335</sup> *Id.*

<sup>336</sup> Leo, see note 110, p. 286.

<sup>337</sup> Neubauer, see note 326, p. 103.

<sup>338</sup> See Leiken, note 316; Phillips and Brown, note 319; M. Zander, "The Investigation of Crime: A Study of Cases Tried at the Old Bailey," *Criminal Law Review* (1979), 203-219.

### *Characteristics of the Offense*

As explained previously, the more serious the offense, the greater the stakes in terms of perceived and real punishment, which most likely inhibits some suspects from confessing.<sup>339</sup> Thus, it might be theorized that the type and seriousness of the offense, as detailed below, of which a particular suspect is accused might influence his or her willingness to confess.

1. *Type of Offense*: Neubauer found that suspects interrogated about property offenses confessed more often (56%) than suspects of violent offenses (32%).<sup>340</sup> Mitchell found consistently that suspects confessed more readily to property offenses (76%) than to violent offenses (64%). Neubauer argues that the main reason for the greater number of confessions among alleged property offenders relates to the nature of the evidence that the police have at the time of interrogation.<sup>341</sup> In property offenses there is more often forensic evidence linking the suspect with the offense, which gives interrogators more persuasive evidence to convince suspects that denials are futile.<sup>342</sup> However, Moston, Stephenson and Williamson found no significant differences in confession rates between offense types.<sup>343</sup> Leo's findings also "do not support [Neubauer's] argument that there is a significant relationship between the type of crime and the likelihood of confession."<sup>344</sup>

2. *Seriousness of the Offense*: A number of studies have shown that suspects confess less readily to serious than to non-serious offenses.<sup>345</sup> Gudjonsson points out that the relative lack of incentive among suspects to confess to serious crimes may sometimes be compensated for by the fact that the more serious the crime, the longer suspects tend to be interrogated and the larger the number of interrogative tactics utilized.<sup>346</sup>

### *Contextual Characteristics*

1. *Access to Legal Advice*: Gudjonsson notes that despite evidence that receiving legal advice influences the confession rate, access to an attorney does not appear to reduce the overall confession rate.<sup>347</sup> In other words, even with a high proportion of suspects being provided legal advice, suspects still confess in more than half of all cases. However, the presence of legal counsel is an important predictor as to whether or not a particular suspect will confess.<sup>348</sup> For example, Moston, Stephenson and Williamson (1992) found that over 50% of those who received no legal advice confessed, in contrast to less than 30% of those who had

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<sup>339</sup> Gudjonsson, see note 110 p. 146.

<sup>340</sup> Neubauer, see note 326, p. 104.

<sup>341</sup> *Id.*, p. 106

<sup>342</sup> *Id.*

<sup>343</sup> Moston, see note 195.

<sup>344</sup> Leo, see note 110, p. 292.

<sup>345</sup> See R. Evans, *The Conduct of Police Interviews with Juveniles*, Royal Commission on Criminal Justice Research Report no. 8 (London: HMSO 1993).

<sup>346</sup> Gudjonsson, see note 110, p. 147-148.

<sup>347</sup> *Id.*, p. 150.

<sup>348</sup> *Id.*

legal advice.<sup>349</sup> Though not directly related to the access to, or presence of, legal counsel during an interrogation, Leo's findings regarding suspects' likelihood of invoking their *Miranda* rights are illuminating, because this action usually leads to access to an attorney and the automatic termination of interrogation. Even though invoking *Miranda* is a potentially powerful tool for suspects to avoid interrogation and, thus, confession or self-incrimination, Leo found that 78.29% of his sample chose to waive their *Miranda* rights, while 21.71% chose to terminate questioning.<sup>350</sup>

2. *Strength of the Evidence*: The Moston, Stephenson and Williamson study provides the strongest support for the theory that the strength of the evidence against a suspect is the best predictor of the likelihood of a confession.<sup>351</sup> Confessions were rare (less than 10% of cases) and denials common (77% of cases) when the evidence against the suspect was weak.<sup>352</sup> On the other hand, when the evidence was strong confessions were common (67% of cases) and denials infrequent (16% of cases).<sup>353</sup> However, Leo's findings do not corroborate the theory that the strength of the evidence prior to questioning "exert[s] a statistically significant effect on the likelihood that the suspect will provide incriminating information during interrogation."<sup>354</sup>

3. *Interrogation Techniques*: Evidence shows that the more serious the offense, the more police use persuasive techniques to break down resistance.<sup>355</sup> In his study of 156 videotaped interrogations, Gudjonsson found open-ended questions in 98% of the interviews, and leading questions in 73% of the sample.<sup>356</sup> The most common techniques of persuasion were the introduction of allegations against the suspect, seen in 74% of the cases, and challenges to a lie or an inconsistency, seen in 20% of the interviews.<sup>357</sup> Other types of challenges, emphasis on the seriousness of the offense, and psychological manipulation were individually noted in less than 8% of the cases.<sup>358</sup> Ultimately, 53% of the suspects in Gudjonsson's study made a full confession or a self-incriminating admission (i.e., an admission of involvement in the offense, but minimizing intent or role).<sup>359</sup> In 97% of cases the confession or admission occurred in the first interview.<sup>360</sup>

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<sup>349</sup> Moston, see note 195.

<sup>350</sup> Leo, see note 110, p. 276.

<sup>351</sup> Gudjonsson, see note 110, p. 150. See also M.L. Wald et al., "Interrogations in New Haven: The impact of *Miranda*," *Yale Law Journal* 76, no. 1519 (1967) (finding that suspects were significantly more likely to provide incriminating information during interrogation the stronger the evidence against them prior to questioning).

<sup>352</sup> Moston, see note 195.

<sup>353</sup> *Id.*

<sup>354</sup> Leo, see note 110, p. 292.

<sup>355</sup> See Evans, note 345; B. Irving and I.K. McKenzie *Police Interrogation: The Effects of the Police and Criminal Evidence Act* (London: The Police Foundation, 1989).

<sup>356</sup> Gudjonsson, see note 110, p. 69.

<sup>357</sup> *Id.*

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*, p. 70.

<sup>360</sup> *Id.*

According to Leo, the number of interrogation tactics employed by interrogators in a U.S. police station was one of the only two variables that were significantly related to the likelihood of a successful interrogation.<sup>361</sup> In Leo's study, interrogators employed a median of 5 and a mean of 5.62 tactics per interrogation, yet used some tactics more than others.<sup>362</sup> The twelve tactics most commonly used by interrogators were the following (with the percentage of cases where the tactic was used in parentheses):<sup>363</sup>

- Appeal to suspect's self-interest (88%).
- Confront suspect with existing evidence of guilt (85%).
- Undermine suspect's confidence in denial of guilt (43%).
- Identify contradictions in suspect's story (42%).
- Use Behavioral Analysis Interview questions (40%).
- Appeal to the importance of cooperation (37%).
- Offer moral justification/psychological excuses (34%).
- Confront suspect with false evidence of guilt (30%).
- Use praise or flattery (30%).
- Appeal to the detective's expertise/authority (29%).
- Appeal to the suspect's conscience (23%).
- Minimize the moral seriousness of the offense (22%).

Leo's findings reveal that, of these tactics, the four most effective in eliciting a confession, admission, or incriminating statement were (a) appealing to the suspect's conscience (97% success rate), (b) identifying and pointing out contradictions in the suspect's denial and story (91% success rate), (c) using praise or flattery (91% success rate), and (d) offering moral justifications or psychological excuses for the crime (90% success rate).<sup>364</sup>

4. *Length of Interrogation*: As noted above, Leo found that the length of the interrogation, along with the number of interrogation techniques used, was the only statistically significant indicator of the likelihood of obtaining incriminating information through a confession.<sup>365</sup> Leo's findings reflect that the longer interrogators interrogate suspects "the more likely they are to wear the suspect down and elicit incriminating statements."<sup>366</sup> Successful interrogations were six times more likely to last more than one hour than unsuccessful ones (36% vs. 6%),

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<sup>361</sup> Leo, see note 110, p. 292. The other variable was length of the interrogation, discussed below.

<sup>362</sup> *Id.*, p. 277.

<sup>363</sup> *Id.*, p. 278.

<sup>364</sup> *Id.*, p. 294.

<sup>365</sup> *Id.*, p. 292.

<sup>366</sup> *Id.*

while unsuccessful interrogations were more than twice as likely to be under 30 minutes than successful ones (58% vs. 27%).<sup>367</sup>

By contrast, Gudjonsson has concluded that only three variables seem to predict a confession: use of illicit drugs, prison experience, and presence of an attorney/solicitor.<sup>368</sup> Illicit drug use prior to the interrogation predicted the suspects' making a confession, while the other two variables were associated with suspects making a denial.<sup>369</sup> Gudjonsson found that the odds of a suspect's confessing were more than three times greater if that suspect had reported using an illicit drug within 24 hours of his or her arrest.<sup>370</sup> On the other hand, Gudjonsson also found that the odds of suspects' not confessing were four times higher for a suspect who had a legal representative.<sup>371</sup> With regard to prior prison experience, the likelihood of a denial was twice as great in cases where the suspect had already been to prison.<sup>372</sup> According to Gudjonsson's study, the greatest likelihood of suspects' making a confession occurred when there was no solicitor present and the suspect had consumed illicit drugs within 24 hours of arrest and had not been previously to prison.<sup>373</sup> The likelihood of a confession occurring under those circumstances was 92%, in contrast to the average confession rate of 58% for the entire sample.<sup>374</sup>

### *Gudjonsson's Self-Report Studies*

One distinct method for evaluating why suspects confess during custodial interrogations is to systematically ask suspects questions about what made them confess.<sup>375</sup> Gudjonsson has twice administered such questionnaires, once in Northern Ireland and another in Iceland.<sup>376</sup> These studies revealed three "facilitative" factors and one "inhibitory" factor for confessions.<sup>377</sup> The first facilitative factor, *external pressure to confess*, is associated with persuasive police interrogation techniques, police behavior, and fear of confinement.<sup>378</sup> Fear of being confined was rated as a very important reason for the confession in over 20% of the cases,<sup>379</sup> while fear of the police or threats of violence were rated as important in only 5% of cases.<sup>380</sup> Police pressure and persuasion were rated as very important in about 20% of cases.<sup>381</sup> The second facilitative factor, *internal pressure to confess*, is associated with the suspect's feelings of guilt about the crime and the consequent need to relieve him/herself of the guilt by confessing.<sup>382</sup>

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<sup>367</sup> *Id.*, p. 297.

<sup>368</sup> Gudjonsson, see note 110, p. 70.

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*, p. 70-71.

<sup>371</sup> *Id.*, p. 71.

<sup>372</sup> *Id.*

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> *Id.*, p. 140.

<sup>376</sup> *Id.*, p. 152.

<sup>377</sup> *Id.*

<sup>378</sup> *Id.*, p. 153.

<sup>379</sup> *Id.*

<sup>380</sup> *Id.*

<sup>381</sup> *Id.*

<sup>382</sup> *Id.*

Over 42% of subjects interviewed said they had experienced considerable relief after confessing and 40% said they had confessed because they felt guilty.<sup>383</sup> In relation to the third facilitative factor, *perception of proof*, 55% of subjects said that they had confessed because they strongly believed at the time that the police would be able to prove they had committed the crime.<sup>384</sup> Gudjonsson identified *fear of the consequences* of confessing as an inhibitory factor.<sup>385</sup> Of the three facilitative factors, Gudjonsson concluded that the single greatest incentive to confess related to the strength of the evidence against the suspect.<sup>386</sup>

### Section 3. Interrogation Techniques in the Literature

Turning from the theoretical and empirical literature to the practical, there are numerous guides available to the public concerning interrogation techniques. The majority of interrogation manuals, or “how-to” texts, are produced in the United States and are generally based on the practical experience of interrogators.<sup>387</sup> The most influential of these practical interrogation manuals is *Criminal Interrogation and Confessions*, written by Inbau, Reid, Buckley, and Jayne.<sup>388</sup> It is also perhaps the most comprehensive, unified approach to interrogation, laying out an overall schema for the entire interaction with the suspect. Inbau et al. take over 600 pages to describe the stages and requirements of a successful interrogation according to the Reid Technique. The Reid Technique was originally developed in the 1940s and 1950s by John E. Reid and the text has continually evolved since then, with the fourth and most recent edition published in 2004.<sup>389</sup> Other classic texts include Royal and Schutt’s *The Gentle Art of Interviewing and Interrogation*, as well as Aubry and Caputo’s *Criminal Interrogation*. A newer text that seems to be garnering some attention is Stan Walters’s *Kinesic Interview and Interrogation*. These, combined with a number of other, lesser known “how-to” guides, provide a basic outline of successful interrogation. To some degree, almost all cover the same aspects of the successful interrogation: 1) characteristics/qualifications of the interrogator; 2) pre-interrogation fact gathering and analysis; 3) the interrogation setting; 4) pre-interrogation interview and rapport-building; 5) analysis of behavioral symptoms; 6) interrogation of the suspect; 7) detection of deceit; and 8) securing the confession.

While some criticize the Reid Technique and most of the other available interrogation guides as relying too heavily on overly coercive persuasion methods,<sup>390</sup> those critics also acknowledge that some persuasion pressure is necessary, since most suspects are reluctant to admit their crimes or often even

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<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

<sup>385</sup> *Id.*, p. 152.

<sup>386</sup> *Id.*, p. 157.

<sup>387</sup> *Id.*, p. 7.

<sup>388</sup> *Id.*

<sup>389</sup> Inbau, see note 109, p. ix.

<sup>390</sup> Gudjonsson, see note 110, p. 7.

discuss them.<sup>391</sup> Moreover, one can hardly imagine a custodial interrogation that is not in some way “coercive,” as the interrogator “is part of a system that gives him or her certain powers and controls (arrest and detention, power to charge, power to ask questions, control over the suspect’s freedom of movement and access to the outside world).”<sup>392</sup>

Interrogators generally use persuasive methods to convince suspects that “their best interests are served by a confession.”<sup>393</sup> Some of the available manuals recommend strategies of deception, including concealment of police identity while trying to obtain a confession or admission, misrepresentation of the nature or seriousness of the offense during interrogation, and even trickery, such as presenting the suspect with false evidence of guilt.<sup>394</sup> Gudjonsson argues, however, that “the risk of false confessions is very real when psychologically manipulative and deceptive techniques are employed.”<sup>395</sup> Thus, interrogators must be aware of these dangers. They should also recognize the three general classes of stressors that are relevant to police interrogations, so that they can both understand what a suspect is experiencing and manipulate the stressors as needed:

- Stress caused by the physical environment at the police station;
- Stress caused by confinement and isolation from peers; and
- Stress caused by the suspect’s submission to authority.<sup>396</sup>

The following subsections summarize the various suggestions for interrogation techniques provided by the classic texts for each of the eight aspects mentioned above. The selected sources view interrogation as a method to both secure confessions and gather accurate information in a legal and ethical fashion. However, any such summary can only scratch the surface of “how-to” guides that contain hundreds of pages each. Nonetheless, we attempt to draw together those areas on which the authorities basically agree, as well as to point out some of the most salient suggestions made by each author in the various areas. We base the discussion on the Reid Technique, as it is the most widely used and accepted, and in many instances seems to be the basis for the other techniques as well.<sup>397</sup>

### **Characteristics/Qualifications of the Interrogator**

All authorities agree that not just anyone can be a successful interrogator. It takes an intense dedication to the art of interrogation, years of practice and study, and certain personality characteristics, only some of which can be learned.

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<sup>391</sup> *Id.*, p. 8.

<sup>392</sup> *Id.*, p. 25.

<sup>393</sup> *Id.*, p. 8.

<sup>394</sup> *Id.*

<sup>395</sup> *Id.*, p. 9.

<sup>396</sup> *Id.*, p. 26.

<sup>397</sup> Most of the discussion will refer to the interrogator and subject/suspect as “he.” This is done to accommodate the texts which almost uniformly use “he,” and of course is not meant to imply in any way that either party must be male.

According to the Reid Technique, the interrogator must be intelligent, with a “good practical understanding of human nature.”<sup>398</sup> He should “get along well with others, especially individuals from varying backgrounds.”<sup>399</sup> Patience and a “high index of suspicion” are both important attributes, as is “an intense interest” in the field of interrogation.<sup>400</sup> An interrogator should supplement this intense interest with continual study of “behavior analysis, related areas of psychology and psychopathology, as well as interrogation techniques. He should understand how to conduct a proper interrogation and be able to explain...the underlying concepts involved at each stage of the interrogation process.”<sup>401</sup> An awareness of the legal regulations surrounding interrogation is also indispensable.<sup>402</sup> Because one individual will perform the roles of both interrogator and interviewer, the authors suggest that the interrogator needs all of the characteristics of a good interviewer: a friendly, personable, nonjudgmental, and objective manner; a genuine curiosity and concern about other people; the ability to separate the suspect from the crime; comfort in asking questions; an “easygoing confidence;” and the ability to be a good listener.<sup>403</sup> Beyond this, the interrogator should also have “the ability to put aside any personal feelings” about the suspect, the ability to control his emotions in all situations, comfort with “using persuasive tactics that may be considered morally offensive,” and the ability to project confidence in both himself and the path of the investigation and interrogation.<sup>404</sup> Finally, the Reid Technique requires that the interrogator be a “skilled communicator,” with the “ability to monitor a subject’s behavior and respond effectively to the dynamics of the situation.”<sup>405</sup>

The other texts hew closely to the Reid requirements. Aubry and Caputo; Aubry, Royal and Schutt, and Walters echo and flesh out some of the Reid requirements. For instance, they suggest that the interrogator “must be possessed with a strong desire to become a skilled and competent interrogator[,] and this desire must be channeled into efforts which will culminate in capability.”<sup>406</sup> He must be confident and comfortable in his own skin;<sup>407</sup> “a hesitant manner, fidgeting around in the chair, stuttering and stammering, the use of profanity or vulgarity, and similar mannerisms would all be considered objectionable.”<sup>408</sup> He must be personable and able to relate to and get along well with others from all backgrounds.<sup>409</sup> He should be intelligent and well-educated, and have an interest in and understanding of human nature.<sup>410</sup> Indeed, Walters writes that the best interrogators are those “who have

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<sup>398</sup> Inbau, see note 109, p. 65.

<sup>399</sup> *Id.*, p. 66-67

<sup>400</sup> *Id.* p. 66

<sup>401</sup> *Id.*, p. 66.

<sup>402</sup> *Id.*, p. 66.

<sup>403</sup> *Id.*, p. 66-67, 79.

<sup>404</sup> *Id.*, p. 78-79.

<sup>405</sup> *Id.*, p. 79.

<sup>406</sup> Arthur S. Aubry, Jr. and Rudolph R. Caputo, *Criminal Interrogation*, 40 (1965).

<sup>407</sup> *Id.*, p. 40-57, 150; Robert F. Royal, Steven R. Schutt, *The Gentle Art of Interviewing and Interrogation: A Professional Manual and Guide* (Englewood Cliffs, NJ: Prentice-Hall, 1976), 65-66.

<sup>408</sup> Aubry and Caputo, see note 406, p. 57.

<sup>409</sup> Royal and Schutt, see note 407, p. 65-67.

<sup>410</sup> Aubry and Caputo, see note 406, p. 41; Royal and Schutt, see note 407, p. 67.

learned to observe and interpret human communication behavior, are introspective enough to know themselves, [and] have developed a broad-based understanding of other personalities.”<sup>411</sup> Ideal experience, according to Aubry, includes years of field investigation, an “apprenticeship” as an interrogator with continual training and review, as well as studies in psychology, physiology, criminology, sociology, and basic physical sciences, literature, and English composition courses.<sup>412</sup> Aubry, however, concedes that a more realistic expectation is a high school diploma and at least five years of police experience, with at least two of those “spent in bona fide investigative duties of criminal violations, preferably as a Detective or Plainclothesman.”<sup>413</sup>

Finally, the other texts point out that excellent acting ability is also a requirement.<sup>414</sup> The interrogator must convey numerous emotions “without affecting his judgment or revealing any personal emotion about the subject...[and must] project sincerity” to conduct an interrogation successfully.<sup>415</sup> He should “have developed the skill to play ‘the game’ in the interview room and temporarily assume any other personality.”<sup>416</sup> The interrogator must not only be patient,<sup>417</sup> but also be capable of conveying infinite patience so that the suspect believes the interrogation will go on indefinitely.<sup>418</sup>

### **Pre-Interrogation Fact-Gathering and Analysis**

All of the authorities agree that a thorough investigation and analysis of the facts is essential to a successful interrogation. “An interrogation must be considered as the highlight and the final act of the investigation which has preceded it.”<sup>419</sup> The Reid Technique’s “fact analysis” provides a good example of the type and extent of investigation and fact-gathering that is required before an interrogation. According to the Reid Technique, when possible, the interrogator should conduct as much of the investigation as possible for himself and should not merely read the reports of others.<sup>420</sup> This is not a minor or easy task, as the Reid Technique (and many of the other texts) requires that the interrogator have information on:

- *The offense itself* (including the legal nature of the offensive conduct and the exact amount and nature of the loss; date, time, and place of the occurrence in accurate detail; description of the crime area and of the crime scene itself; the way in which the crime appears to have been committed and known details of its commission; possible motives for its commission; incriminating factors regarding a particular suspect);

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<sup>411</sup> Stan B. Walters, *Principles of Kinesic Interview and Interrogation* (UK: CRC Press, 1996), xi.

<sup>412</sup> Aubry and Caputo, see note 406, p. 51.

<sup>413</sup> *Id.* p. 51.

<sup>414</sup> *Id.*, p. 44; Royal and Schutt, see note 407, p. 65-66.

<sup>415</sup> *Id.*

<sup>416</sup> Walters, see note 411, p. xi.

<sup>417</sup> Inbau, see note 109, p. 66.

<sup>418</sup> Aubry and Caputo, see note 406, p. 60.

<sup>419</sup> *Id.*, p. 148.

<sup>420</sup> Inbau, see note 109, p. 12.

- *The suspect or suspects* (including personal background information; present physical and mental condition, as well as medical history, including any addictions to drugs, alcohol, or gambling; attitude toward investigation (such as hostile or cooperative); relationship to victim or crime scene; incriminating facts or possible motives; alibi or other statements that the suspect related to investigators; religious or fraternal affiliations or prejudices; home environment; social attitudes in general; hobbies; sexual interests or deviations, but only if directly relevant to the investigation; abilities or opportunities to commit the offense); and
- *The victim or victims* (including, for companies or other institutions, attitudes and practices toward employees and public; financial status; and for persons, nature of injury or harm and details thereof; age, sex, marital status, and family responsibilities; social attitudes regarding race, nationality, religion, etc.; gang affiliation; financial and social circumstances; physical and mental characteristics; sexual interests or deviations, but only if directly relevant to the investigation; blackmail potentialities).<sup>421</sup>

The investigative techniques that should be employed in gathering this information are beyond the purview of this paper, but it should be sufficient to note that gathering all of this information is no small task. In addition, all of the authors repeatedly stress the importance of this stage to ensure proper preparation for a successful interrogation.

### **The Interrogation Setting**

Each of the authorities focuses on the physical set-up and context-construction for the interrogation. The Reid Technique suggests that “the principal psychological factor contributing to a successful interview or interrogation is privacy — being alone with the person during questioning.”<sup>422</sup> This is based on the psychological premise that we, as humans, are more comfortable revealing secrets to only one person at a time.<sup>423</sup> Second only to privacy, according to the Reid Technique, is the need to minimize reminders of consequences by removing police paraphernalia from both the room and the interrogator’s person.<sup>424</sup> Beyond this, the Reid Technique provides suggestions on, among other things, selecting proper décor (“remove all distractions”), lighting (“good, but not excessive or glaring, illumination of the suspect’s face”), noise level (as low as possible), and even arrangement of chairs (“investigator and subject should be separated by about four to five feet and should directly face each other, without . . . any other object between them”).<sup>425</sup> All of these are meant to create an environment that the authors suggest will be conducive to eliciting responsiveness from the

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<sup>421</sup> *Id.*, p. 20-21.

<sup>422</sup> *Id.*, p. 51.

<sup>423</sup> *Id.*

<sup>424</sup> *Id.*, p. 56.

<sup>425</sup> *Id.*, p. 58-59.

suspect.<sup>426</sup> In addition, the authors recommend the use of a one-way mirror and a concealed microphone so that observers can see and hear the interrogation while maintaining the necessary privacy.<sup>427</sup> This allows fellow investigators to prepare themselves for later involvement by observing the suspect's behavior, protects the interrogator from false accusations of misconduct, and allows observation of the suspect when he is left alone in the room, both to evaluate his behavior and to prevent self-inflicted violence.<sup>428</sup>

Establishing a sense of privacy through the set-up of the interrogation room is the first recommendation of almost all authors.<sup>429</sup> "The removal of formal, police atmosphere, when combined with the illusion of remoteness, with quietness and the lack of sound and noise, and with privacy; can have a sudden, devastating effect upon the composure of the individual who has just come from the normal hustle and bustle of Headquarters."<sup>430</sup> Moreover, most authors agree on the psychological premise that it is easier to confide in or confess a secret to one other person.<sup>431</sup>

Aubry goes on to write that there must be a reception room adjoining the interrogation room where observers can be situated, and the only communication system between the two rooms should be a two-way buzzer, with the buzzer-button in the interrogation room out of the suspect's view.<sup>432</sup> "A state of quietness with an absolute minimum of sound also serves a useful purpose in helping to withdraw the suspect from his environment."<sup>433</sup> Like the Reid Technique, others also suggest the removal of all formal restraining agents and evidence that the suspect is in police custody, such as uniforms or shields.<sup>434</sup> In addition, Aubry suggests that the physical surroundings be "plain and simple," painted in a neutral shade of off-white, and with no windows that might "serve as a constant distraction and as a convenient psychological crutch upon which the suspect will lean to his own advantage."<sup>435</sup> Unlike the Reid Technique, Aubry recommends against the one-way mirror because it cannot be easily explained,<sup>436</sup> but suggests using a small picture on the wall to conceal the mirror.<sup>437</sup> In addition, he suggests using a sound and video recording mechanism, so long as it can be done without alerting or distracting the suspect.<sup>438</sup>

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<sup>426</sup> *Id.*, p. 51.

<sup>427</sup> *Id.*, p. 59.

<sup>428</sup> *Id.*

<sup>429</sup> See, e.g., Aubry and Caputo, note 406, p. 66.

<sup>430</sup> *Id.*

<sup>431</sup> Inbau, see note 109, p. 51; Aubry and Caputo, see note 406, p. 65.

<sup>432</sup> Aubry and Caputo, see note 406, p. 63-65.

<sup>433</sup> *Id.*, p. 65.

<sup>434</sup> *Id.*, p. 66.

<sup>435</sup> *Id.*, p. 66, 67.

<sup>436</sup> *Id.*, p. 67.

<sup>437</sup> *Id.*, p. 68.

<sup>438</sup> *Id.*, p. 71-72.

## Pre-Interrogation Interview and Rapport-Building

The Reid Technique recommends conducting an interview before beginning the interrogation to “establish a level of rapport and trust with the suspect,” as well as to learn information about the suspect that will help in the conduct of the interrogation.<sup>439</sup> The interview, which should last 30 to 45 minutes and is conducted with “only one investigator interacting with the subject,”<sup>440</sup> should be non-accusatory and designed to gather information, may be conducted early during an investigation and in a variety of environments, is free flowing and relatively unstructured, and should be documented in written notes taken by the investigator.<sup>441</sup> Like the preparatory investigation, the interview is designed to elicit information about the offense itself, the suspect or suspects, and the victim or victims.<sup>442</sup> More important, however, is building rapport, defined as “a relationship marked by conformity.”<sup>443</sup> The goals of building rapport at the beginning of the interview are: 1) give the suspect an opportunity to evaluate the investigator and ideally “conclude that the investigator is professional, nonjudgmental, and knowledgeable;” 2) allow the investigator to make an initial assessment of the suspect, such as his “communications skills, general nervous tension, normal level of eye contact, and a behavioral baseline;” and 3) allow the investigator to establish a “question-and-answer pattern” for the interaction.<sup>444</sup> At the same time, “efforts to establish rapport should appear natural and unassuming” so the suspect does not become “suspicious of the investigator’s motives.”<sup>445</sup> Small talk works for some suspects, while simply establishing the suspect’s background information and personal history may be enough for others.<sup>446</sup>

All authorities agree on the importance of this initial interview, with its dual purpose of gathering information and building rapport. Indeed, according to Aubry, “nearly all interrogations which eventually fail for whatever given reason, have actually failed during the first few moments of the questioning procedure.”<sup>447</sup> Royal and Schutt write that “resistance to the disclosure of [such] information is considerably increased if the interviewer is a total stranger, or if something is not done to establish a friendly and trusting attitude on the part of the suspect.”<sup>448</sup> To build that rapport, they suggest the following techniques:

1. Identify yourself.
2. Begin the discussion by commenting on a topic of apparent interest to the subject.

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<sup>439</sup> Inbau, see note 109, p. 9.

<sup>440</sup> John E. Reid and Associates, *Defending the Reid Technique of Interrogation*, at [http://www.reid.com/educational\\_info/critictchniquedefend.html](http://www.reid.com/educational_info/critictchniquedefend.html), accessed 13 March 2005.

<sup>441</sup> Inbau, see note 109, p. 5-6.

<sup>442</sup> *Id.*, p. 20-21.

<sup>443</sup> *Id.*, p. 93.

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

<sup>446</sup> *Id.*, p. 93-94.

<sup>447</sup> Aubry and Caputo, see note 406, p. 148.

<sup>448</sup> Royal and Schutt, see note 407, p. 61.

3. Establish confidence and friendliness by talking for a period about everyday subjects. In other words, have a 'friendly visit.'
4. Keep conversation informal and easy.
5. Display pleasant emotional responses and avoid unpleasant expressions.
6. Urge the subject, but never try to hurry him.
7. Do not ask questions that lead a witness or subject to believe you are suspicious of him, either by composition of the question or by method of asking.
8. Appear interested and sympathetic to his problems.
9. Do not begin the interview or interrogation until the subject appears to be quite friendly and cooperative.
10. Try to re-establish rapport at any time during the questioning if the subject appears to become reserved or hostile."<sup>449</sup>

Also important in building rapport is conveying the desired image of the interviewer to the suspect. The interviewer must appear sympathetic, sincere, impartial, empathetic, and firm, all at the same time.<sup>450</sup>

Aubry emphasizes the importance of even the investigator's entrance, writing that "he must [enter] with an intangible air which adds up to confidence, confidence in himself, and confidence in his ability to carry out a successful interrogation; he must exude this air of confidence."<sup>451</sup> To build rapport while maintaining this air of confidence, Aubry suggests the following techniques to be used at the initial phase of the interview/interrogation:

1. Have the suspect identify himself.
2. Use only the suspect's first or last name, and never use "Mr."
3. The interrogator should insist that the suspect call him "Mr." as this "aids the interrogator in securing and maintaining the psychological advantage over the subject."
4. The interrogator should approach the suspect with "an air of resolution and firmness" but not "be so forbidding that the subject quickly makes up his mind that the interrogator is 'out to get him at all costs.'"
5. The investigator must quickly size up the suspect, "rapidly and efficiently analyzing the personality, temperament, and make-up of the subject."

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<sup>449</sup> *Id.*, p. 61-62.

<sup>450</sup> *Id.*, p. 65-66.

<sup>451</sup> Aubry and Caputo, see note 406, p. 150.

6. Using the “size-up,” the investigator should then determine the approach that will be most useful for this type of suspect.<sup>452</sup>

Similarly, Vrij suggests that during the interview, the investigator must “avoid guilt assumption and belief perseverance,” must be open-minded and flexible, should establish rapport, and should provide little information about the case to avoid making it easier for the suspect to lie or come up with explanations.<sup>453</sup>

### **Types of Questions for the Interview**

As a complement to the various interview techniques, it is helpful to consider the types of questions that an investigator should ask. Most of the authorities agree on this aspect, which is laid out most clearly by Dillon in his work on *The Practice of Questioning*. He classifies several types of questions used during the various stages of the interrogation. According to him, the questions should be prepared beforehand and written down on paper (though no other author makes this suggestion, as it would seem to inhibit flexibility).<sup>454</sup> The questions, according to Dillon, should be asked in the following order, by type:

1. *Opening questions* – used at the start of the interview and designed to “get the respondent talking,” these should be yes-no questions that are easy to answer and are not about the crime;
2. *Free narrative questions* – the investigator names a topic and asks the suspect to tell what he knows about it, allowing the suspect to describe a topic in his own words while the investigator listens without interrupting;
3. *Direct questions* – follows up on narrative questions by asking about specific items while avoiding value-laden terms such as “murder,” “rape,” etc. The investigator should order his questions A) from the general to the specific, and B) from the known to the unknown;
4. *Cross-questioning* – questions designed to check and verify one answer against another, delving into problematic (i.e., contradictory or ambiguous) answers; the suspect is asked to repeat his statements “by means of questions asked in different ways and in no special order;”
5. *Review questions* – used to confirm previous answers, repeating the information and asking ‘Is that correct?’ and ‘What else?’<sup>455</sup>

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<sup>452</sup> *Id.*, p. 151-162.

<sup>453</sup> Aldert Vrij, “‘We Will Protect Your Wife and Child, but Only If You Confess’: Police Interrogations in England and the Netherlands,” in *Adversarial Versus Inquisitorial Justice: Psychological Perspectives on Criminal Systems*, Peter J. van Koppen and Steven D. Penrod, eds. (New York: Plenum, 2003), 57-79.

<sup>454</sup> J. T. Dillon, *The Practice of Questioning* (London: Routledge, 1990), 82.

<sup>455</sup> *Id.* p. 85-91.

At the closing, Dillon suggests again simply listening to the suspect.<sup>456</sup> “Their small talk often includes a casual fact or unguarded statement that contains new or different information,” because they feel that the questioning is over and their guard may be down.<sup>457</sup>

Reviewing Dillon’s five forms of questions, Walton warns the interrogator “to be aware of value-laden terms that occur in questions.”<sup>458</sup> While he approves of the use of so-called loaded questions (“a question that contains presuppositions such that when the respondent gives any direct answer to the question he concedes certain assumptions that are at issue and that are damaging to his interests”), the interrogator must recognize when he is using these types of questions so that if the suggestive terms in the question are “incorporated into the memory of the witness” the interrogator understands what is happening.<sup>459</sup> At the same time, the loaded question is a key component of the Reid Technique’s Step 7 (“Presenting an alternative question,” see discussion below), thus showing the utility of such questions in the interrogation setting. Indeed, Walton recognizes that loaded, complex questions should be used “provided that they come in the right order of questioning in a dialogue sequence.”<sup>460</sup>

Royal and Schutt echo this advice in their thoughts on the fundamental characteristics of good question construction:

1. Make the questions short and confined to one topic;
2. Make the questions clear and easily understood;
3. Avoid the use of frightening or super-realistic words; such as confession, murder, forger, dope addict, embezzler, etc. Use milder terms;
4. Use precise questions. A precise question is one that calls for a specific or an exact answer. It limits the requested answer to a definite item of information;
5. Use discerning questions. Discerning questions are questions designed to produce information directly bearing on the matter under discussion. They are questions that discriminate between what is relevant and what is irrelevant.<sup>461</sup>

### **Behavior Symptom Analysis**

Behavior Symptom Analysis (BSA) involves evaluation of the verbal, paralinguistic, and nonverbal channels of communication to identify possibly guilty and/or deceptive suspects.<sup>462</sup> BSA can be considered merely a part of the

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<sup>456</sup> *Id.*, p. 90.

<sup>457</sup> *Id.*

<sup>458</sup> Walton, see note 199, p. 1791.

<sup>459</sup> *Id.*

<sup>460</sup> *Id.*

<sup>461</sup> Royal and Schutt, see note 407, p. 32-33.

<sup>462</sup> Inbau, see note 109, p. 125.

pre-interrogation interview and not its own, separate stage. However, because the FBI places such emphasis on the use of BSA-like techniques (see discussion below), it is worth briefly discussing the Reid approach.

In essence, BSA evaluates a suspect’s answers to interview questions not for their substance but for the manner in which the answers are given. Part of the purpose of BSA is to determine whether to move from the interview stage to the interrogation stage. The Reid Technique offers several basic principles designed to enable the investigator to conduct effective BSA:

1. Recognize that there are no unique behaviors associated with truthfulness or deception.
2. Evaluate all three channels of communication simultaneously.
3. Evaluate paralinguistic and nonverbal behaviors in the context of the subject’s verbal message.
4. Evaluate the preponderance of behaviors occurring throughout the interview.
5. Establish the subject’s normal behavioral patterns.<sup>463</sup>

These basic principles are then combined with the following generalizations about the correlation between truthfulness/deceptiveness and a suspect’s attitudes when answering questions:

**Truthful Suspect**

**Deceptive Suspect**

*Spontaneous*

*Guarded*

*Sincere* (“openly expresses appropriate emotional states”)

*Insincere* (“may come across as phony”)

*Helpful* (“will openly discuss possible suspects and motives and may speculate on how the crime may have been committed”)

*Unhelpful* (“reluctant to talk about possible suspects or people who could be eliminated from suspicion ...may offer explanations...[or] take the position that no crime was committed”)

*Concerned* (displays “a serious manner and pays close attention to the interviewer’s questions”)

*Unconcerned* (“nonchalant and downplay[s] the significance of being a suspect...may engage in levity or answer questions inappropriately”)

*Cooperative*

*Uncooperative*<sup>464</sup>

<sup>463</sup> *Id.*, p. 125-127.

<sup>464</sup> *Id.*, p. 128-130.

The Reid Technique text then reviews various behavior symptoms that may be indicators of truthfulness and deception in each of the three communication channels.<sup>465</sup> While it would be duplicative to recite them all here, it is worth noting that they come with a warning to the investigator. The authors note that it is “*exceedingly important — indeed critical — that a suspect’s behavior symptoms are assessed in accordance with the following guidelines:*”

- Look for deviation from the suspect’s normal behavior... Once normative behavior has been established, subsequent changes that occur when the suspect is questioned about the crime will become significant.
- Evaluate all behavioral indications on the basis of when they occur (timing) and how often they occur (consistency).
- To be reliable indicators of truth or deception, behavioral changes should occur immediately in response to questions or simultaneously with the suspect’s answers. Furthermore, similar behavior responses should occur on a consistent basis whenever the same subject matter is discussed.”<sup>466</sup>

BSA is unique in several respects, the most important being its emphasis on using the baseline approach to behavior evaluation. Also unique is the Reid Technique’s emphasis on using BSA at a specific stage of the interrogation process. Aspects of BSA correlate with overall detection of deception suggested by other texts, but the Reid Technique uses a specific method at this stage of the interrogation — indeed, before the interrogation has actually begun — to help determine whether or not to move into the interrogation stage. The discussion below elaborates on other authors’ general prescriptions for detecting deception during an interrogation.

### **Kinesic Analysis**

The only other interrogation system that uses a similar pre-interrogation approach is the Kinesic Interrogation Technique. The process is called Practical Kinesic Analysis Phase (PKAP) and involves similar analysis of behavior to detect deception, discomfort, or unusual sensitivity.<sup>467</sup> Indeed, PKAP and BSA are so similar as to constitute basically the same technique. Like BSA, PKAP examines behavior related to verbal quality, verbal content, and nonverbal behavior.<sup>468</sup> During this phase the interrogator also develops a profile of the subject, which allows him to use a tailored interrogation approach for that subject.<sup>469</sup>

The basic principles of Kinesic Analysis Phase are strikingly similar to those of BSA:

1. No single behavior, by itself, proves anything.

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<sup>465</sup> *Id.*, p. 130-153.

<sup>466</sup> *Id.*, p. 153 (emphasis in original).

<sup>467</sup> Walters, see note 411, p. 1-3.

<sup>468</sup> See generally, Walters, note 411.

<sup>469</sup> *Id.*, p. 2.

2. Behaviors must be relatively consistent when stimuli (such as a particular area of inquiry) are presented.
3. The interviewer must establish what is normal or baseline behavior for each subject and then look for changes from the normal baseline.

This is done by asking non-threatening questions and observing the suspect's unstressed behavior.

4. These observed changes in the subject's baseline behaviors are diagnosed in clusters, not individually.
5. Behaviors must be timely (i.e., they must occur within three to five seconds of when the stress-provoking question is asked).
6. The subjects are watching interrogators while interrogators are watching them.
7. Kinesic interviewing is not as reliable with some groups as with the general population.<sup>470</sup>

The PKAP indicators of deception are also extremely similar to those listed in the BSA, and cover a range of behavioral and verbal responses.<sup>471</sup> As in the Reid Technique, it is only after this analysis — PKAP — and a determination that the suspect is either being deceptive or is responding to stimuli inappropriately that the investigator moves into the interrogation stage.<sup>472</sup>

### **Interrogating the Suspect**

“The interview and interrogation are distinctly different procedures, usually separated by several minutes.”<sup>473</sup> Once the investigator decides to shift from interviewing to interrogation, the Reid Technique advises investigators to “sit approximately four feet directly in front of the suspect” at the beginning; “remain seated and refrain from pacing around the room;” “avoid creating the impression that the investigator is seeking a confession or conviction;” “keep paper and pencil out of sight during the interrogation;” “not use realistic words such as ‘murder,’ ‘rape,’ ‘strangle,’ ‘stab,’ or ‘steal,’ except in certain situations;” “treat the suspect with decency and respect, regardless of the nature of the offense;” “not handcuff or shackle the suspect during the interrogation;” “not be armed;” and “recognize that in everyone there is some good, however slight it might be.”<sup>474</sup> These suggestions are based on both practical necessities and psychological principles; for instance, the authors recommend not being armed not only because the suspect might seize the weapon in close quarters, but also because the interrogator should approach

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<sup>470</sup> *Id.*, p. 8.

<sup>471</sup> *Id.*, p. 18-138.

<sup>472</sup> *Id.*, p. 2.

<sup>473</sup> John E. Reid and Associates, *Defending the Reid Technique of Interrogation*, at [http://www.reid.com/educational\\_info/critictchniquedefend.html](http://www.reid.com/educational_info/critictchniquedefend.html), accessed 13 March 2005.

<sup>474</sup> Inbau, see note 109, p. 79-84.

the suspect “man-to-man” rather than “police officer-to-prisoner” to create a more conducive environment for the interrogation.<sup>475</sup>

### ***The Reid Technique***

The heart of the Reid Technique is a nine-step approach to interrogation. The steps provide an over-arching schema that can be used to guide the interrogator through the interrogation process. It gives the interrogator signposts and helps him structure the interrogation in what the authors believe is an effective manner. The Reid Technique authors emphasize that not all of the steps are appropriate in every interrogation, and that the order in which the steps are presented is not dispositive — the investigator should carefully observe the suspect’s responses and adjust his questioning accordingly.<sup>476</sup> Indeed, the authors suggest that different approaches are needed for the “emotional offender” and the “nonemotional offender;” the first requires tactics and techniques based on a sympathetic approach (“expressions of understanding and compassion with regard to the commission of the offense as well as the suspect’s present difficulty”), while the latter requires a “factual analysis approach” (appeals to “common sense and reason”).<sup>477</sup>

The text provides both a brief and in-depth analysis of the nine steps. Here we attempt to condense that information into an even briefer introduction to the nine steps, with a recommendation to consult the text for a deeper understanding of the Reid Technique.

#### ***Step 1 – Direct, Positive Confrontation***

The interrogator confronts the suspect, asserting that he is “considered to be the person who committed the offense.”<sup>478</sup> The suspect’s verbal and nonverbal response at this point will determine much of how the interrogation proceeds, but in any event the interrogator also now offers a compelling reason for the suspect to tell the truth.<sup>479</sup>

#### ***Step 2 – Theme Development***

“The investigator expresses a supposition [called a theme] about the reason for the crime’s commission, whereby the suspect should be offered a possible moral excuse for having committed the offense.”<sup>480</sup> The investigator should “present to the suspect, in a monologue, reasons and excuses which morally (not legally) excuse the suspect’s behavior... The themes do not plant new ideas in the deceptive suspect’s mind, but allow the suspect to feel more comfortable talking about his crime by allowing him to reduce the perceived consequences associated with it — both real consequences (those affecting his freedom or livelihood) and personal consequences (those affecting the suspect’s self-esteem).”<sup>481</sup> This

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<sup>475</sup> *Id.*, p. 83.

<sup>476</sup> *Id.*, p. 212.

<sup>477</sup> *Id.*, p. 210.

<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

<sup>480</sup> *Id.*

<sup>481</sup> John E. Reid and Associates, see note 473.

includes creating a scenario whereby the suspect can blame either a third party, such as the victim or an accomplice, or can justify the offense based on particular circumstances.<sup>482</sup> The discussion below of Aubry's variations of interrogation approaches lists several of the themes that an interrogator might consider employing at this stage. Theme development is based on the argument that "in order to persuade the suspect to tell the truth, it is essential to reinforce their [sic] rationalizations for committing the crime versus focusing their attention on the possible consequences."<sup>483</sup> However, "at no time should the suspect be told that if he committed the crime for an understandable reason that the consequences would be less."<sup>484</sup>

### ***Step 3 – Handling Denials***

At this point the interrogator takes steps to discourage denials that the suspect may embark upon, and returns to the "moral excuse theme" of Step 2.<sup>485</sup> This stage is also important because, "depending on the nature and persistence of the denials," the interrogator "may become convinced of the suspect's actual innocence" or secondary role.<sup>486</sup> In general, according to the authors, an innocent person will not allow the denials to be cut off, while a guilty individual will eventually "submit to the investigator's return to a theme."<sup>487</sup> Thus, the investigator should cut off the denials, discourage them, evaluate the suspect's responses for indications of truthfulness, and attempt to return to the selected themes.<sup>488</sup>

### ***Step 4 – Overcoming Objections***

The guilty suspect, according to the authors, will now offer "reasons as to why he would not or could not commit the crime."<sup>489</sup> Instead of attempting to stop the suspect from voicing objections, as is done with denials, the interrogator should indulge the objections and then overcome them.<sup>490</sup> The technique is compared to that of a car salesman, with the interrogator "selling the suspect on the idea of telling the truth" and turning the objections around by incorporating them in the interrogation theme.<sup>491</sup> The interrogator must recognize the objection, reward it by acting as though the statement were expected and by not arguing with the suspect, and then turn the objection around by reversing the significance of the objection, pointing out the drawbacks if the objection was untruthful, and returning to the interrogation theme.<sup>492</sup>

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<sup>482</sup> Inbau, see note 109, p. 213.

<sup>483</sup> John E. Reid and Associates, see note 473.

<sup>484</sup> *Id.*

<sup>485</sup> Inbau, see note 109, p. 213.

<sup>486</sup> *Id.*, p. 305.

<sup>487</sup> *Id.*, p. 213.

<sup>488</sup> *Id.*, p. 305-330.

<sup>489</sup> *Id.*, p. 213.

<sup>490</sup> *Id.*, p. 331.

<sup>491</sup> *Id.*, p. 333.

<sup>492</sup> *Id.*, p. 333-336.

### ***Step 5 – Procurement and Retention of a Suspect’s Attention***

If the interrogator shows no signs of being convinced by the objections, the authors suggest the only strategy left for the *guilty* suspect who does not want to tell the truth is “to psychologically withdraw from the interrogation and ignore the investigator’s theme;” according to the authors, innocent suspects will not withdraw.<sup>493</sup> In order to procure and retain the withdrawn suspect’s attention, the interrogator should move his chair closer to the suspect, establish and maintain eye contact, use visual aids, and use hypothetical questions since “we are all conditioned to respond to questions.”<sup>494</sup>

### ***Step 6 – Handling the Suspect’s Passive Mood***

After the interrogator has gained the subject’s attention in Step 5, the guilty suspect now becomes “reticent and quiet,” often adopting a defiant posture, but at the same time becoming more willing to listen.<sup>495</sup> The interrogator should now start to distill the possible reasons for the crime presented in the theme and concentrate on the core of the selected theme.<sup>496</sup> This approach is supplemented by urging and advising the suspect to tell the truth, moving closer, and continuing to display understanding and sympathy.<sup>497</sup>

### ***Step 7 – Presenting an Alternative Question***

The interrogator now “offers the guilty suspect the opportunity to start telling the truth by making a single admission.”<sup>498</sup> The Reid Technique suggests that it is unrealistic “to expect a suspect to suddenly break down and tell the complete truth about his crime; [instead] it is often necessary to allow the suspect to initially make a first admission of guilt and then attempt to develop the full confession.”<sup>499</sup> The alternative question “presents to the suspect a choice between two explanations” for the crime, one much more attractive and morally acceptable.<sup>500</sup> At the same time, the alternative question is “loaded”; by accepting the alternative explanation, the suspect also acknowledges having committed the crime — the single admission that now leads to confession.<sup>501</sup> Some criticize this step as forcing the suspect to incriminate himself, but the Reid proponents point out that “the suspect always has a third choice, which is to say that neither alternative is true.”<sup>502</sup> An example of an appropriate alternative question is, “Did you plan this out months in advance, or did it pretty much happen on the spur of

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<sup>493</sup> *Id.*, p. 338.

<sup>494</sup> *Id.*, p. 338-345.

<sup>495</sup> *Id.*, p. 345.

<sup>496</sup> *Id.*, p. 346.

<sup>497</sup> *Id.*, p. 347-348.

<sup>498</sup> *Id.*, p. 353.

<sup>499</sup> John E. Reid and Associates, *Selecting the Proper Alternative Questions*, Monthly Investigator Tips, September 2004, at [http://www.reid.com/educational\\_info/r\\_tips.html?serial=1093984305141229&print=\[print\]](http://www.reid.com/educational_info/r_tips.html?serial=1093984305141229&print=[print]), accessed 13 March 2005.

<sup>500</sup> Inbau, see note 109, p. 353.

<sup>501</sup> *Id.*

<sup>502</sup> John E. Reid and Associates, *Defending the Reid Technique of Interrogation*, at [http://www.reid.com/educational\\_info/critictchniquedefend.html](http://www.reid.com/educational_info/critictchniquedefend.html), accessed 13 March 2005.

the moment?” with the suspect encouraged to accept the positive choice (spur of the moment).<sup>503</sup> An example of an improper alternative question would be, “Do you want to be charged with first degree murder, which will mean life in prison, or was it just manslaughter, where it happened [sic] on the spur of the moment?”<sup>504</sup>

### ***Step 8 – Having the Suspect Orally Relate Various Details of the Offense***

Even after the suspect admits guilt by accepting one of the choices presented in the alternative question, it still takes great effort, according to the authors, to draw out the rest of the details.<sup>505</sup> Once the suspect makes the initial admission the interrogator should move quickly toward eliciting further admissions, first through a “statement of reinforcement” and then through questions that call for longer responses and avoid emotionally charged terminology.<sup>506</sup>

### ***Step 9 – Converting an Oral Confession into a Written Confession***

See discussion below.

### ***Royal and Schutt***

Other authors make suggestions that are remarkably similar to the nine-step Reid Technique. However, few lay their approaches out in a similar step-by-step process that constantly moves forward toward the goal of eliciting a confession or information. Royal and Schutt come closest to an overarching schema when they suggest the following steps to a successful interrogation:

#### ***Undermine Suspect’s Confidence of Success***

The interrogator should “demonstrate the futility of [the suspect’s] position” by “blocking all non-cooperative avenues of escape.” The interrogator must detect deception, overcome alibis, and emphasize “the quality and quantity of incriminating evidence and other information derogatory to the subject.”<sup>507</sup> In essence, the authors recommend a verbal “trap.”<sup>508</sup>

#### ***Offer the Suspect a Mutually Acceptable Solution***

“Try to convince the suspect that: 1. He is confronted with a personal emergency; 2. Since he cannot escape, he must find a way out; 3. No available solution will be pleasant; 4. Your proposal [will] result in less unpleasantness than any of the other solutions.”<sup>509</sup>

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<sup>503</sup> *Id.*

<sup>504</sup> John E. Reid and Associates, see note 502.

<sup>505</sup> Inbau, see note 109, p. 365-66.

<sup>506</sup> *Id.*, 366-67.

<sup>507</sup> Royal and Schutt, see note 407, p. 119.

<sup>508</sup> *Id.*, p. 120.

<sup>509</sup> *Id.*, p. 121.

### *Make Submission Tolerable*

The suspect will be more likely to confess — which the authors suggest involves the surrender of “his very being and his own free will and destiny into the hands of the interrogator” — if the interrogator has conveyed objectivity, sincerity, and sympathy.<sup>510</sup>

### *Encourage Acquiescence and Pursue Indicators of Compliance*

At the first signs that a suspect is responding to the interrogator’s suggestions, the interrogator should “begin to diminish other confession-inhibiting factors and promote incentives to confess” through theme development such as that suggested by Reid (discounting fear, minimization, etc.).<sup>511</sup>

### *Consolidate Accomplishments*

“When a criminal violator does submit and agrees to cooperate, the gain should be immediately consolidated and rendered as irreversible as possible.”<sup>512</sup>

### *Aubry*

Aubry takes a far less standardized approach to the interrogation process, and indeed presents no schema for it. Instead, Aubry’s text lists the various approaches and then discusses the utility of each. Like the other authors, he observes that interrogation techniques “depend upon the subject’s degree of implication and participation in the crime; the facts pertinent to his apprehension; the amount and type of evidence that links him with the crime; and the manner in which he participated in the crime.”<sup>513</sup>

Aubry begins by listing what he calls the various interrogation approaches and explaining their respective utility. These are:

1. *Direct approach* – best “where the guilt of the subject is certain, or reasonably certain;”
2. *Indirect approach* – best “where the degree of guilt is indicated with something less than reasonable certitude;”
3. *Emotional approach* – depends on the personal qualities of the suspect — religious, emotional, etc.;
4. *Subterfuge* – “a very effective approach,” but should only be used if the guilt of the suspect is “reasonably certain,” the “so-called standard approaches have been tried and have failed,” and the interrogator is very skilled and experienced in interrogation.<sup>514</sup>

The variations on these broad approaches mirror many of the themes that the Reid Technique suggests in Step 2, and include:

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<sup>510</sup> *Id.*, p. 122.

<sup>511</sup> *Id.*

<sup>512</sup> *Id.*, p. 128.

<sup>513</sup> Aubry and Caputo, see note 406, p. 91.

<sup>514</sup> *Id.*, p. 75-77.

- Indifference
- Kindness
- Friendliness
- Mitigation
- “Hot and Cold”
- Magnifying the Degree of Guilt
- The “Fait Accompli”
- The Stern, Business-like Approach
- Pretense of Physical Evidence
- Mental Relief Through Having Told the Truth
- Appeals to Decency and Honor
- Tearing Down and Building Up
- Sympathy or Sympathetic
- “Too Great a Temptation”
- “Only Human to Have Acted That Way”
- Helpful
- Extenuation
- Shifting the Blame
- Lessening the Degree of Guilt
- Minimizing the Consequences
- Bluffing
- Compounding Falsehoods
- Repetition of One Theme
- Perseverance
- “What’s Your Side of the Story?”
- “Just Tell the Truth.”<sup>515</sup>

Each of these approaches and variations is explained in detail in Chapter 5 of the Aubry text. Aubry then lists several “general” interrogation techniques, including:

- Crumble defenses by establishing motive, premeditation, capability and opportunity of and to [sic] commit the crime.
- Establish and demonstrate intent.
- Hammer away at the subject hard and persistently.
- Nibble off little pieces of the interrogation cake. Concentrate on crumbs, don’t bite off pieces too big to chew.
- Ask concise, brief questions, trim off all extra words. Be specific. Be exact. Ask questions that can be answered by simple yes or no. Practice and seek for economy of words.
- Do not ask questions which request or invite the expression of an opinion.
- Avoid leading questions as well as opinion questions because both types are weak and ineffective techniques; leading questions are, in a sense, “unfair to the subject.”<sup>516</sup>

Aubry finally presents a list of specific interrogation techniques, with an entire chapter then devoted to the type of suspect with which each may be successful. The specific techniques include:

<sup>515</sup> *Id.*, p. 75.

<sup>516</sup> *Id.*, p. 104.

- The Singleness of Purpose
- The Business-like Attitude
- Calm and Matter-of-Fact
- Don't Be Shocked Whatever the Provocation
- Let the Subject Tell His Story
- Let the Subject Tell a Few Lies
- A Waste of Your Time and My Time
- You're Just Hurting Your Loved Ones
- Proven Lies So Tell the Truth
- Hammer at Right and Wrong
- How About Your Conscience?
- Establishing Motives
- Hate to Be in Your Shoes
- Things Look Awfully Bad for You
- Confusion by False Incidents
- Confession of Co-Defendant; and the Genuine Confession<sup>517</sup>

In many ways these lists mirror the type of theme development in Step 2 of the Reid Technique. Aubry leaves the impression, however, that despite his attempts to describe which approach or technique to use with which subject, an interrogator will only be able to choose the appropriate method after years of experience. In that sense, Aubry's list of specific interrogation techniques is in the end more descriptive than prescriptive. Indeed, as Aubry notes, "the approach (should) be adapted to the type, character, and general background of the person being interrogated; the known facts, events and incidents of the crime which has been committed; and the type, kind, nature and extent of the physical evidence available."<sup>518</sup> Because Aubry does not present an overarching schema for the interrogation like that of the Reid Technique, his presentation is more helpful in understanding the possible dynamics at play in an interrogation than in guiding the interrogator through the process.

### ***Kinesic Interrogation***

Like the other techniques, Kinesic Interrogation recognizes that the interrogator "cannot depend on a singular, standardized approach to the interrogation that is applied to all deceptive subjects."<sup>519</sup> The Kinesic Interrogation Phase is, like the Reid Technique, a continuation of the initial interview. First the interrogator makes the "interrogation attack," confronting the suspect with the accusation and

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<sup>517</sup> *Id.*, p. 105.

<sup>518</sup> *Id.*, p. 75.

<sup>519</sup> Walters, see note 411, p. 2.

perhaps the evidence.<sup>520</sup> Rapport building, in the Kinesic Interrogation, is only necessary if the suspect has an introverted personality, while the extrovert can be confronted in a more formal, business-like manner.<sup>521</sup> Either way, the suspect is expected to react with one of several “ego defense mechanisms” — denial, displacement, intellectualization, rationalization, minimization, etc. — that he uses to defend against the initial accusation.<sup>522</sup> The interrogator must then “disarm” each mechanism in turn.<sup>523</sup> The interrogator is able to do this by identifying the suspect’s “subconscious miscues” — verbalizations of the suspect’s internal monologue.<sup>524</sup> The interrogator then appropriates those miscues (though not word for word), incorporating them into his questions so as to match the suspect’s state of mind.<sup>525</sup>

It is at this point that the interrogator can “make the final push” for a confession.<sup>526</sup> Walters sets several rules and prescriptions for this stage:

1. An interrogator should never engage in any behavior which would force even the truthful subject to confess.
2. A false confession is most likely to have been obtained from a subject who is mentally deficient.
3. An interrogator will find that most subjects are prepared to blame alcohol or drugs for their behavior.
4. A successful attack on denial requires that the interrogator review real or circumstantial evidence with the subject every 3 to 5 minutes.
5. A successful practical Kinesic Interrogation requires the appropriate assessment and attack of the subject’s primary dominant personality (i.e., introverted or extroverted, as well as subtypes of extrovert).
6. A successful practical Kinesic Interrogation requires the interrogator to correctly identify and respond to the subject’s five basic stress-response states (anger, depression, denial, bargaining, acceptance). These progress in turn and the interrogator should shift techniques as each state arises.
7. Once the subject begins to break in small areas, the interrogator should begin to attack with reality-based comments.<sup>527</sup>

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<sup>520</sup> *Id.*, p. 209.

<sup>521</sup> *Id.*, p. 216-217.

<sup>522</sup> *Id.*, p. 208.

<sup>523</sup> *Id.*, p. 210.

<sup>524</sup> *Id.*, p. 210-211.

<sup>525</sup> *Id.*, p. 211.

<sup>526</sup> *Id.*

<sup>527</sup> *Id.*, p. 211-217.

## *Good Cop/Bad Cop*

One interrogation technique stands apart in the public consciousness as the prototypical approach to interrogations and so merits brief discussion here: the so-called good cop/bad cop technique (“GC/BC”). While there are few published studies of specific techniques, GC/BC has generated unique interest. Rafaeli et al. interviewed criminal interrogators and bill collectors, identifying five variations on GC/BC (the formal term they use is “emotional contrast strategies”) that they use to convey “a mix of expressed positive and negative emotions in order to wield influence over target persons.”<sup>528</sup>

### *1. Sequential good cop, bad cop*

The suspect is first exposed to an interrogator who “consistently displays either positive or negative emotion,” and then to a second interrogator who displays a “contrasting demeanor.”<sup>529</sup> Anecdotal evidence suggests that beginning with a display of negative emotions accentuates the suspect’s appreciation of the subsequent, more civilized approach.<sup>530</sup>

### *2. Simultaneous good cop, bad cop*

The suspect is exposed to two interrogators, each displaying either positive or negative emotions.<sup>531</sup> Interrogators may “not only present different demeanors to the suspect, but also create perceptual contrast by arguing with each other in front” of the suspect about what type of treatment he deserved.<sup>532</sup>

### *3. One person playing both roles*

A single interrogator “vividly displays” both emotions to a target person, alternating “between displaying a harsh, demanding demeanor and a pleasant, friendly demeanor.”<sup>533</sup> The difficulty with this approach is that each demeanor “must appear genuine if the interrogator wishes to wield influence.”<sup>534</sup>

### *4. Good cop in contrast to hypothetical bad cop*

The interrogator “playing the good cop role communicates to the [suspect] that if he or she does not comply with the good

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<sup>528</sup> Anat Rafaeli et al., “Emotional Contrast Strategies as Means of Social Influence: Lessons from Criminal Interrogators and Bill Collectors,” *The Academy of Management Journal* 34, no. 4 (December 1991), 749-775, 752; in each variation, “good cop” refers to roles conveying positive and supportive feelings such as warmth, friendliness, approval, respect, empathy, and sympathy, while “bad cop” refers to conveying negative and unsupportive emotions such as coldness, disapproval, lack of respect, and hostility (758).

<sup>529</sup> *Id.*, p. 761.

<sup>530</sup> *Id.*

<sup>531</sup> *Id.*, p. 762.

<sup>532</sup> *Id.*

<sup>533</sup> *Id.*, p. 762.

<sup>534</sup> *Id.*, p. 762-763.

cop's wishes, a nasty, humiliating, esteem-deflating, or even dangerous interaction with a bad cop will be the next step."<sup>535</sup> The hypothetical bad cop need not even be mentioned explicitly, but the threat should be clear.<sup>536</sup>

##### 5. *Good cop in contrast to expectations of bad cop*

The interrogator presents himself as warm and friendly to a suspect "who expects to encounter coldness and hostility;" this has the effect of "amplify[ing] the construed positiveness of the" interrogator.<sup>537</sup> This technique is most successful with those suspects who seemed scared, anxious, or suspicious of the interrogator.<sup>538</sup>

The strategy behind each of the variations was the same: "create a perceptual contrast for [the] targets, which is proposed to accentuate the construed positiveness of displayed positive emotions and the construed negativeness of displayed negative emotions" in order to induce compliance in the target.<sup>539</sup> According to Rafaeli et al., three mechanisms came into play that made GC/BC successful. First, the "accentuated anxiety" with which the suspect may respond to the bad cop leads to "accentuated relief" in response to good cops.<sup>540</sup> As a result, suspects may comply with the good cop's requests to escape from the anxiety or fear they feel during interactions with bad cops or expect to feel during future interactions.<sup>541</sup>

Second, the GC/BC contrast accentuates the suspect's perception that the good cop is kind and helpful, resulting in pressure "to reciprocate the kindness by complying with the good cop's wishes."<sup>542</sup> This occurs because the "actual or hypothetical contrasting unpleasant person" creates the impression that the good cop's positive feelings are "especially unusual and pronounced."<sup>543</sup>

Third, because the suspect develops "accentuated feelings of relief in response to [the] good cop," and (it is hoped) comes to believe he is kind and helpful, a feeling of trust develops.<sup>544</sup> Once the suspect believes that the good cop is truthful and "truly concerned for [the suspect's] well-being," it becomes easier for the interrogator to convince the suspect that compliance is in his own best interest.<sup>545</sup>

In essence, all five variations, as well as the three identified mechanisms, rely on building rapport between the good cop and the suspect, much like that

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<sup>535</sup> *Id.*, p. 763.

<sup>536</sup> *Id.*

<sup>537</sup> *Id.*, p. 764.

<sup>538</sup> *Id.*

<sup>539</sup> *Id.*, p. 752.

<sup>540</sup> *Id.*, p. 764.

<sup>541</sup> *Id.*

<sup>542</sup> *Id.*, p. 764-765.

<sup>543</sup> *Id.*

<sup>544</sup> *Id.*, p. 765.

<sup>545</sup> *Id.*

suggested by Inbau et al., Royal and Schutt, and Aubry. The only difference is that the rapport is built not only on the basis of the positive interaction between interrogator and suspect, but also on the fear, anxiety, or anger caused by the actual or perceived bad cop. However, the analysis of the GC/BC technique provides a window into the workings of rapport-building, and re-emphasizes its importance in any successful interrogation.

### **Detecting Deception**

The text describing the Reid Technique does not go beyond BSA in offering suggestions on detecting deception. However, BSA is an integrated system of analysis that can be incorporated at all stages of the interview/interrogation encounter (see discussion above). Similarly, the Kinesic approach is based on PKAP, which also can and should be integrated into the entire interrogation proceeding (see discussion above).

Traditional lie detection has focused on verbal and nonverbal communication. At various points, behaviors that were thought to indicate deceit have included speech hesitation, speech errors, changes in pitch of voice, changes in speech rate, frequency of pauses, pause durations, gaze, smiling, blinking, self-manipulations (e.g., scratching), illustration with hands and arms, hand and finger movement without the arms, leg and foot movements, head movements, trunk movements, and shifting positions.<sup>546</sup> For instance, in 1965, Aubry listed “flushing or paleness of skin,” “pulse rate increase or decrease,” and even “licking of the lips,” among a generous list of indicators of deception.<sup>547</sup> Obviously, many of these behaviors are exhibited by individuals in everyday conversation, and some even contradict others as supposed signs of deception.

In a survey of the empirical studies on behaviors exhibited during deception, Vrij has accumulated several results that will be useful to the interrogator searching for deception. The studies, when taken together in a meta-analysis, are mostly inconclusive for the exhibited behavior, and in fact only three general trends can be found.

#### Verbal Characteristics

1. Liars tend to have a higher-pitched voice than truth-tellers (probably caused by stress), but the difference is so small as to be detectable only with sophisticated equipment.<sup>548</sup>
2. Liars seem to pause for longer when they speak than do truth-tellers.<sup>549</sup>

#### Non-vocal Characteristics

1. Liars tend to move their arms, hands, fingers, feet, and legs less than truth-tellers.

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<sup>546</sup> Alberet Vrij, *Detecting Lies and Deceit: The Psychology of Lying and the Implications for Professional Practice* (New York: John Wiley and Sons, 2000), 33.

<sup>547</sup> Aubry and Caputo, see note 406, p. 123-134.

<sup>548</sup> Vrij, see note 546, p. 32-33.

<sup>549</sup> *Id.*, p. 33.

What is most striking about this list, according to Vrij, is everything it does not include. The findings “contradict[] the stereotypical beliefs that many people hold about non-verbal indicators of deception.”<sup>550</sup> It turns out that Vrij’s meta-analysis demonstrates that although “observers expect liars to show nervous behaviour and behaviours which indicate intense thinking,” this is not the case for the majority of liars.<sup>551</sup> Thus, “people are usually poor at detecting lies when they pay attention to someone’s behaviour.”<sup>552</sup>

Vrij does concede, as Inbau et al. argue, that experimental studies may not be the most conducive to actually observing deceptive behavior; as he notes, it may be that the subjects “simply [are] not nervous enough during these experiments.”<sup>553</sup> Moreover, in the majority of the studies the lie-catchers are college students who volunteer for the studies.<sup>554</sup> In a meta-analysis of those studies that used professional lie-catchers as observers, however, the professionals did no better than the college students.<sup>555</sup> One might also suggest that in the real world, where suspects are motivated to prevaricate for fear of losing their freedom, certain indicators of deception would be more obviously on display. However, not enough empirical studies of deception detection have been carried out in the field to know whether extra motivation to lie will increase indicative behaviors. Fortunately for interrogators, “it is possible to improve people’s ability to detect lies.”<sup>556</sup> Studies using various training procedures all revealed limited improvements in the ability to detect deceit, although, surprisingly, the studies show students benefiting more from the training than did police officers.<sup>557</sup> Vrij speculates that police officers may have scored lower because they did not believe the information they were being taught.<sup>558</sup>

In the end, Vrij concludes that the best hopes for lie detection are found in observing both emotional expressions and those behaviors influenced by content complexity (latency period, speech errors, speech hesitations, hand, arm, foot and leg movements).<sup>559</sup> He gives interrogators several “Guidelines for the Detection of Deception via Behavioural Cues:”

1. Lies may only be detectable via non-verbal cues if the liar experiences fear, guilt or excitement (or any other emotion), or if the lie is difficult to fabricate.
2. It is important to pay attention to mismatches between speech content and non-verbal behaviour, and to try to explain those mismatches. Keep

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<sup>550</sup> *Id.*, p. 38.

<sup>551</sup> *Id.*

<sup>552</sup> *Id.*, p. 57.

<sup>553</sup> *Id.*, p. 39.

<sup>554</sup> *Id.*, p. 74.

<sup>555</sup> *Id.*, p. 75.

<sup>556</sup> *Id.*, p. 95.

<sup>557</sup> *Id.*, p. 94-95.

<sup>558</sup> *Id.*, p. 95.

<sup>559</sup> *Id.*, p. 97.

in mind the possibility that the person is lying, but consider this as only one of the possible reasons for this mismatch.

3. Attention should be directed towards deviations from a person's "normal" or usual patterns of behaviour, if these are known. The explanation for such deviations should be established. Each deviation may indicate that the person is lying, but do not disregard other explanations for these deviations.
4. The judgement of untruthfulness should only be made when all other possible explanations have been negated.
5. A person suspected of deception should be encouraged to talk. This is necessary to negate the alternative options regarding a person's behaviour. Moreover, the more a liar talks, the more likely it is that they [sic] will finally give their lies away via verbal and/or non-verbal cues (as they continuously have to pay attention to both speech content and non-verbal behaviour).
6. There are stereotyped ideas about cues to deception (such as gaze aversion, fidgeting, and so on), which research has shown to be unreliable indicators of deception. The actual indicators are listed in Chapter 2 [see discussion above]. These can be a guide, but bear in mind that not everyone will exhibit these cues during deception, and the presence of such cues *may* indicate deception, but does not do so in every case.<sup>560</sup>

Based on his research, Vrij identifies the "seven aspects [that] characterize a good liar: (i) being well prepared; (ii) being original; (iii) thinking quickly; (iv) being eloquent; (v) having a good memory; (vi) not experiencing feelings of fear, guilt of duping, delight while lying; and (vii) being good at acting."<sup>561</sup> In theory, if the interrogator can recognize these character aspects, he can at least identify the suspect who will be better at lying, and thus can search more closely for clues to the occurrence of deception. Indeed, Vrij lays out guidelines for the interrogator who must overcome the good liar's deceit and detect the deceptions:

1. Be suspicious;
2. Be probing;
3. Do not reveal important information;
4. Be informed;
5. Ask liars to repeat what they have said before;
6. Watch and listen carefully and abandon stereotypes;
7. Compare liars' behavior with their natural behavior.<sup>562</sup>

Ultimately, Vrij comes to a similar conclusion as that implied by the BSA used in the Reid Technique: observe the baseline behavior of the suspect, and then

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<sup>560</sup> *Id.*, p. 98, Box 3.3.

<sup>561</sup> *Id.*, p. 210.

<sup>562</sup> *Id.*, p. 222-225.

observe how that changes once certain stimuli are introduced such as challenging questions and presentation of evidence.

### **Securing the Confession**

Step 9 of the Reid Technique covers “Converting an Oral Confession into a Written Confession.” The authors recommend several techniques that lead to confessions that will stand up both to the legal and practical requirements of the judicial system: the use of readable and understandable language, avoidance of leading questions (if the confession is a question-and-answer type), use of the confessor’s own language, inclusion of personal history, inclusion of intentional errors for correction by the confessor, a reading and signing of the confession with witnesses, only one written confession, and confinement of the confession to one crime.<sup>563</sup> Aubry recommends similar steps with no material variations.<sup>564</sup> Because there seems to be consensus on this point, Inbau et al.’s text can stand alone without further discussion.

## **Section 4. How an Interrogation Can “Go Wrong”**

Finally, it is worth considering how an interrogation can “go wrong.” An interrogation that has gone wrong is one that either elicits false information that the interrogator believes is true, or that has negative, long-term effects on the suspect or societal perceptions of law enforcement. Gudjonsson identifies several ways an interrogation can “go wrong,” many of which echo the warnings of Inbau et al., Aubry, and Royal and Schutt’s guidelines for interrogation:

- False confessions due to coercion,
- Inadmissible confessions,
- Coerced confessions resulting in resentment,
- Coercion resulting in post-traumatic stress disorder,
- Undermining public confidence, and
- “Boomerang Effect.”<sup>565</sup>

False confessions may result where interrogators assume the suspect is guilty, either by approaching the interrogation with pre-set assumptions or placing too much blind faith in their ability to detect deception.<sup>566</sup> “The greater the pressure during interrogation, the greater the likelihood of false confessions.”<sup>567</sup> Of course, a false confession is not only useless, but also actually harms the investigation, as the real perpetrator remains free and the investigation is closed. In addition, once word emerges of overly coercive interrogation techniques, public confidence

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<sup>563</sup> Inbau, see note 109, p. 377-389.

<sup>564</sup> Aubry and Caputo, see note 406, p. 195-207.

<sup>565</sup> Gudjonsson, see note 110, p. 34-36.

<sup>566</sup> *Id.*, p. 34.

<sup>567</sup> *Id.*

in the police may be undermined, which, according to Gudjonsson, encourages police corruption.<sup>568</sup>

Coercive and manipulative interrogation techniques may not only result in false confessions, but the confessions, even if true, may also be inadmissible if obtained in violation of legal standards. An additional, unintended consequence of an overly coercive interrogation is possible long-lasting resentment and bitterness among offenders.<sup>569</sup> Gudjonsson points to the additional possibility of post-traumatic stress disorder in especially coercive interrogations, although no studies directly support such a relationship.<sup>570</sup>

Lastly, the so-called “boomerang effect” may occur when suspects “who would have confessed in their own time refuse to do so when they feel they are being rushed or unfairly treated.”<sup>571</sup> The other possible boomerang effect is the eventual retraction of a confession by a suspect who confessed under overly coercive conditions.<sup>572</sup>

## Section 5. Theory vs. Technique in the Literature

The interrogation techniques advocated in the literature can for the most part be characterized as one-size-fits-all. They take little account of the factors that the empirical research shows might affect a suspect’s willingness to confess, and provide little or no variation for different types of suspects. While all of the technical guides point out that no single interrogation technique works with every suspect, and indeed that every suspect is different, for the most part they provide little guidance on how to adjust interrogation techniques for suspects of different ages, cultures, ethnicities, and criminal history, for crimes of greater seriousness, or for cases in which the interrogator has stronger evidence. The only factor that all of the texts cite as prompting confession is the length of the interrogation, a factor that seems to apply across the board and need not be adjusted for any particular suspect. Despite the variations discussed below, on the whole an interrogator exposed only to the “how-to” guides would have little sense of a need to adapt the techniques learned in the texts when confronting different types of suspects.

All of the texts account for seriousness of the offense and strength of the evidence, but only in indirect fashion. Reid and the other techniques are, to one degree or another, based on exploiting guilt, which for most suspects is proportional to the seriousness of the offense. While developing a theme and overcoming objections, interrogators are certain to use the seriousness of the offense as part of their “selling” of the idea of confession. At the same time, the use of minimization reflects the empirical findings that the more seriously the offense is perceived, the less likely it is that the suspect will confess. Similarly, interrogators will also use the strength of the evidence to convince suspects that

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<sup>568</sup> *Id.*, p. 36.

<sup>569</sup> *Id.*, p. 35.

<sup>570</sup> *Id.*

<sup>571</sup> *Id.*, p. 36.

<sup>572</sup> *Id.*

they have few alternatives but to confess. This argument can also be used indirectly in the context of the other motivating factor behind the interrogation techniques: fear. That said, the texts do not, for the most part, offer specific techniques that the interrogator should adjust if the crime is more or less serious, or the evidence stronger or weaker; they make few, if any, explicit recommendations for how to use these factors to elicit a confession in different situations.

Aubry draws the most distinctions among various types of suspects. Like the authors of the other texts, Aubry assumes that the basic structure of the interrogation translates equally from suspect to suspect, and only the specific approach within that structure should be altered. As previously noted, he lays out specific interrogation techniques (e.g., The Singleness of Purpose, The Business-like Attitude, Calm and Matter-of-Fact, etc.) and attempts to identify the type of suspect for which each should be used. While the prescriptions do seem to take into account the confession factors that the empirical studies found statistically significant, they do so in a haphazard way that does not seem useful for the interrogator in the field. Instead of suggesting adjustments to be made based on the various factors, Aubry instead seeks to prescribe a single technique for what he apparently considers a comprehensive list of the types of suspects one might encounter. The interrogator is left to memorize the various techniques and the circumstances in which they apply, instead of learning how to adjust techniques for specific confession factors. Thus, if an interrogator were to encounter a suspect of a different sort than those listed, Aubry's text would not help him to adapt techniques to that suspect.

The Reid Technique attempts to account for some of the confession factors, but ultimately fails to provide a guide on adjusting interrogation techniques for the various statistically significant factors leading to confession. Like the other texts, the Reid Technique assumes that the basic structure of the interrogation — rapport-building, theme development, alternative question, etc. — will work across the board for a variety of suspects, regardless of the specific characteristics of the individual. Only within that structure does the Reid text offer some adjustments to make, and then only in one particular area: for emotional and non-emotional offenders, who require either a sympathetic or factual analysis approach, respectively.<sup>573</sup> However, it should be noted that empirical studies have not identified the emotionalism of the suspect as a factor that affects a suspect's willingness to confess. At the same time, while such differentiation may be useful, it is also very basic. According to the empirical research, age, mental state, and previous convictions/confessions are the characteristics that might affect a suspect's likelihood of confession. While the emotional/non-emotional dichotomy may reflect some of those factors, one cannot assume that they do so across the board. Moreover, the non-emotional young offender may require a different approach than the non-emotional middle-aged offender, yet the Reid text makes no such distinction. Like the Aubry text, the Reid Technique gives very few specific prescriptions for how to adjust interrogation techniques in response

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<sup>573</sup> Inbau, see note 109, p. 210.

to the confession factors. Moreover, it gives no prescriptions at all for adjusting the overarching interrogation structure on the basis of the suspect's individual characteristics.

Although all the texts caution interrogators to remember that each suspect is an individual with his or her own unique traits, such generalized admonitions are practically worthless and are not reflected in the main thrust of the texts. Beyond the factors discussed above, the texts do not provide interrogators with shifts in tactics based on the traits that affect confession.<sup>574</sup> Indeed, they do not even acknowledge the statistically significant confession factors in any specific manner. Moreover, even when they do note that some factors may affect the interrogations (for example, Walters cautions interrogators to consider differences among cultures when attempting to detect deception), they rarely discuss specific techniques that should be tailored to the suspect. Instead, they give interrogators only general tactics without telling them how to adjust the techniques for the critical confession factors.

Finally, although the previously discussed Leo study has limited utility, the four techniques he identifies as most successful in obtaining confessions (appealing to the suspect's conscience, identifying and pointing out contradictions in the suspect's denial and story, using praise or flattery, and offering moral justifications or psychological excuses for the crime) are the same as or similar to techniques advocated in other literature. Since the texts all were written before the Leo study, it does not appear that they were based on any empirical work in the field — indeed, they make no claims that they are. However, if Leo is correct, it seems that the techniques they advocated are indeed among the most successful. An important caution, of course, is that Leo's study was conducted in a single precinct, with only Leo himself coding the interrogation techniques observed. Moreover, we do not know the specific characteristics of the suspects whose interrogations Leo observed, and thus do not know if important adjustments are necessary for success with suspects of varying characteristics.

Ultimately, empirical studies may show that there is no need to adjust to the techniques advocated in the literature on the basis of the various confession factors. Perhaps the Reid Technique in its basic form works as well for old and young, Latino and white, etc. However, as of now there is no proof that this is the case. At this juncture, we simply cannot say whether the techniques in the literature are effective across the board, or whether the confession factors that are statistically significant call for adjustments that the texts do not include.

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<sup>574</sup> The Royal and Schutt and Walters texts do not provide for adjustments based on specific suspect characteristics. They instead generally point out that the interrogator should be aware of differences among suspects and should take those into account.

## PART II: LAW ENFORCEMENT PRACTICES

The following sections of the paper review the interrogation training and practices of various law enforcement organizations. While not an exhaustive survey of all such organizations, the information provides a window into training available to federal, state, and city law enforcement officers in the United States. Additionally, to offer some comparative perspective, we provide an overview of interrogation training and practices in Great Britain and Israel.

### Section 6. Federal Bureau of Investigation (FBI Academy at Quantico, Virginia)<sup>575</sup>

The FBI Academy provides training to all future FBI agents. The new agent training consists of 17 weeks of instruction totaling 643.5 hours. As part of this training program, the FBI offers 15 classes, totaling 69 hours, on interviewing and interrogation. Of this program, 9 classes are devoted to interrogation, totaling 27 hours of training. The interrogation curriculum covers, if only generally, interrogation theory and practice. The training also offers two practical exercises on interrogation, each lasting about 25–50 minutes. Finally, the training pays constant attention to the documentation and forms that agents must complete and file in connection with interrogations. According to FBI Academy staff, this last element of the training — necessary filings and documentation — represents a substantial portion of the time and attention allocated to interrogation training. Four hours of training about detection of deception are also included in the aforementioned 69 hours of general interview/interrogation training.

According to literature provided to trainees, “a successful interrogation results in a guilty or involved criminal suspect’s making a confession or admitting participation in an illegal activity.”<sup>576</sup> However, this avowed goal of obtaining confessions is downplayed by other staff members of the FBI Academy, who clarify that interrogation is best conceived of as a means to lower resistance to telling the truth. FBI Academy staff add that entering an interrogation with the sole goal of obtaining a confession means setting oneself up for failure. Whatever the ultimate objective, the FBI has adopted what it calls the Direct Accusation Approach as its chosen method of interrogation. This approach, whose elements are described below, closely tracks the Reid Technique, with the major difference being that the FBI’s approach relies on confronting the suspect with the evidence available to motivate a confession.

Like Reid, the FBI training teaches agents to conduct a pre-interrogation interview. The FBI offers its agents the following eight-step process to guide them through the interview, which are the same steps followed in interviewing witnesses and victims:

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<sup>575</sup> Unless otherwise referenced, the information in this section is derived from a visit to the Federal Bureau of Investigation Academy, Quantico, Virginia, 8-9 March 2005. Our host during the visit was Brian Boetig, Supervisory Special Agent in the Bureau’s Law Enforcement Communication Unit.

<sup>576</sup> D. Vessel, *Conducting Successful Interrogations* (Quantico, VA: Interviewing and Interrogation Law Enforcement Communication Unit, FBI Academy, revised 14 October 2004), 70.

1. *Preparation:* Agents are urged to become thoroughly acquainted with the case and the subject's background prior to entering the interview room.
2. *Introduction:* Agents introduce themselves to the suspect and explain to him/her the nature of the interview.
3. *Rapport Building:* As is explained below, rapport building is the cornerstone of the FBI's entire interview/interrogation process. During this stage, investigators attempt to build a good relationship with subjects.
4. *Questioning:* The agent asks the subject questions following what the FBI calls a deductive funnel. This method of questioning starts with open-ended questions meant to foster narration on the part of the subject, followed by more closed questions such as indicator questions, identification questions, multiple choice questions, and leading (yes or no) questions.
5. *Verification:* Having concluded the questioning, the agent reviews everything the suspect has told him/her for accuracy and further recall.
6. *Catch all:* The agent allows the suspect to add anything he/she considers relevant or absent from his/her prior statements.
7. *Departure:* If the suspect will not be interrogated, arrested, or otherwise detained after the interview, the agent makes arrangements for future contact.
8. *Critique:* The agent evaluates the information obtained in light of the interview goals.

Though seemingly rigid, FBI Academy staff emphasized that this interview approach is meant as a roadmap rather than a strict list, and should be adapted as the situation requires.

FBI training emphasizes the importance of a non-accusatory pre-interrogation interview for a number of reasons. First, the interview provides interrogators with a behavioral baseline against which to evaluate the suspect's subsequent behavior and responses (both verbal and non-verbal) during the confrontational interrogation. Second, it provides investigators with the suspect's version of the events, which could later be used during interrogation to point out contradictions or lies. Finally, FBI staff noted that the pre-interrogation interview functions as the first contact between interrogator and suspect and, given its non-accusatory nature, offers a fertile opportunity to begin establishing rapport with the suspect.

After the pre-interrogation interview, the agents transition into the actual interrogation, which, as mentioned above, follows the Bureau's Direct Accusation Approach. Though not formulated as a strict step-based process, the method can

be divided into a four-step plan.<sup>577</sup> First, an interrogator confronts the suspect with the facts and evidence that implicate him, and accuses him of committing, or being complicit in, the crime. As in the training provided by the Federal Law Enforcement Training Center (FLETC; see below), this direct accusation is meant to present a picture of overwhelming certainty that the authorities know of the suspect's involvement in the crime. Conversely, this step sets the FBI's approach apart from the Reid Technique, which does not advocate such direct presentation of the evidence in the interrogator's possession.

As might be expected, suspects usually meet these direct accusations with denials; in fact, a suspect's failure to deny involvement is treated as a strong indicator of guilt. FBI training teaches agents to cut off or stop the suspect's denials by interrupting and preventing any additional attempts at denial, and underscores that a guilty suspect's denials will weaken as the accusations continue, while an innocent suspect's will normally grow in frequency and intensity. FBI training literature notes that an effective way to cut off denials "involves interrogators repeatedly acknowledging the subject's participation in the crimes while questioning only their motivations for committing the acts."<sup>578</sup> FBI training literature alerts future agents to the possibility that guilty suspects will offer protests, or reasons for their innocence, in response to the direct accusations after denials have failed. Because these protests usually have some factual basis and can be defended comfortably by the suspect, FBI training urges agents to redirect and incorporate them into the following step, rather than attempting to refute them.

During the third step, interrogators engage in what practically amounts to a dialogue through which they present themes and arguments meant to persuade the suspect to confess. In essence, this theme-building step depends on the three basic tools of rationalization, projection, and minimization to achieve its ends. This is consistent with the Reid Technique and the training provided to other federal law enforcement agencies in FLETC. The interrogator derives the themes and opportunities to rationalize, project, and minimize from a combination of information provided by the suspect during the pre-interrogation interview and interrogation, and from the interrogator's own general personal experience in relation to human behavior. FBI training literature notes that "the chances of obtaining a confession increase 25 percent for every hour (up to 4 hours) of interrogation."<sup>579</sup> Consequently, interrogators are encouraged to have enough themes and arguments to fill three to four hours of monologue. Throughout their monologue, interrogators should seek to prevent the suspect's mental withdrawal, which is often a response to the failure of their denials and protests. One suggested tactic to prevent the suspect's mental withdrawal is to move closer to him and use his name to gain the suspect's attention. Additionally, as the interrogator rationalizes, projects, and minimizes as part of his interrogation monologue, he

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<sup>577</sup> *Id.*, p. 73.

<sup>578</sup> *Id.*

<sup>579</sup> *Id.*, p. 74.

should also be attentive to signs of receptivity from the suspect. FBI training emphasizes nonverbal signs such as a drooping head, tears, and the body leaning forward. When these signs are perceived, interrogators are instructed to reduce their themes to a succinct concept and proceed to the next step.

The last step in the FBI's Direct Accusation Approach is the presentation of a bad/good option. This step of the FBI's method is identical to Reid's Step 7, "Presenting an Alternative Question." By offering the suspect two reasons for committing the crime, one of which would be unacceptable to the suspect, the interrogator gives the suspect an opportunity to make an admission. Interrogators are instructed to suggest that the suspect's actions were based on the "good" option rather than the bad, to ask the suspect to confirm this suggestion, and, if it is confirmed, to begin eliciting the confession. On the other hand, if the suspect fails to take up the good/bad option, interrogators should spend more time rationalizing, projecting and minimizing, and offering the suspect reasons to confess. Thus, it is clear that the interrogation process cannot depend solely on a strict list of steps, but must be flexible enough to adapt to the particular interrogatory situation at hand. It is equally clear that the FBI method of interrogation is extremely time intensive, and requires prolonged interactions between suspect and interrogator to work properly. Consequently, the Direct Accusation Approach might be ill-suited for time-constrained situations, such as a "ticking bomb" scenario.

With regard to detecting deception, future FBI agents are not taught to look for any specific physical or verbal signs of deception, since these can often be inaccurate and misleading. Instead, trainees are taught to consider clusters of behavior and note the context in which these behaviors arise. Additionally, students are urged to compare these behaviors with the baseline behavior shown by the subject in the non-accusatory pre-interrogation interview. Detection of deception is thus taught not as a determinative tool but as a means of helping the interview along and providing interrogators with clues to topics and themes that, if probed more deeply, might bring suspects closer to a confession.

According to the FBI Academy, rapport is the key element in motivating people to talk, be it during a non-accusatory pre-interrogation interview or an interrogation. As such, it is central to the Direct Accusation Approach that an interrogator be able not only to establish rapport with a suspect but also to maintain it throughout the interrogation. However, FBI instructors made clear that establishing and maintaining rapport is the most difficult skill to teach and learn through a standard training program. Building rapport takes time and dedication, prompting at least one instructor to recommend that his students attempt to engage with as many unknown people as possible during their free time. Additionally, FBI instructors suggested that many of the interpersonal skills necessary to build and maintain rapport might be innate, and thus highly dependent on the individual abilities of students. To paraphrase one instructor, rapport is a complex and constant dance between interrogator and suspect. This dance proceeds from information obtained through the pre-interrogation interview, common life experience, and general, sometimes intuitive, knowledge of human behavior and nature. It is common for agents to mistake rapport for facile chit-chat, which

suspects often recognize for what it really is: forced and fake. Unlike forced and spurious conversation, instructors emphasized that, in essence, rapport is based on mutual respect and fostered by treating suspects with dignity and humanity. As a general matter, FBI instructors mentioned that an effective interrogator is one who has strong communication, listening, and interpersonal skills, approaches interrogations with patience, and can pay close, simultaneous attention to the facts of the case as well as to external and internal factors during the interrogation.

As may be gleaned from the information above, and as was confirmed by FBI Academy staff, FBI training in interviewing and interrogation is deliberately general. This occurs by design rather than chance. The new agent training is meant to provide individuals who, as a general rule, have had no previous law enforcement experience with the tools necessary to become competent criminal investigators in a relatively short time frame. Given the broad range of experiences and skills each trainee brings to the program, training is therefore designed to reach what instructors referred to as the lowest common denominator. As an illustration, one FBI instructor noted that he must tailor his training to a 24-year-old ex-employee of an Internet company who has spent the last 4 years of his life working in a cubicle without any significant interpersonal contact. Thus, the training is designed to provide only the skills absolutely necessary to be a competent criminal investigator.

In theory, this problem could be remedied by future, more detailed training on specialized and complex subjects such as interrogation. However, continuing education, also known as “in-training services,” is sparse, and what little is available is optional and usually offered by independent contractors such as Reid and Associates.<sup>580</sup> The most instructors can do is provide a bibliography of books and articles on interrogation for further reading to guide future agents in their voluntary learning process. Consequently, with the exception of those who obtain additional interrogation training on their own initiative, most FBI agents rely only on their general FBI Academy training.

Like their counterparts at FLETC, FBI instructors admitted that it is unclear how much of the training agents actually apply in their interrogations, or how well they implement the techniques they employ. One instructor noted that he believed only 25–30% of agents follow what they learn during their interrogation training. FBI Academy instructors and directors have recognized this as a serious shortcoming and agreed that it is a pressing issue that requires future research.

To complicate matters further, the FBI, like all other law enforcement agencies we interviewed, lacks data as to the efficacy of the interrogation techniques it teaches. Although the instructors have a comprehensive knowledge and understanding of the literature and empirical studies, no systematic, empirical

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<sup>580</sup> The scarcity of training is even more evident at the state and city police department levels. With their experience in dealing with and training police officers from around the country and the world through the FBI’s National Academy, instructors underscored the fact that most police departments offer absolutely no formal interrogation training whatsoever. This observation is consistent with our own contact with the Boston Police Department and the Massachusetts State Police.

studies have tested the specific FBI approach. This lack of data may be a result of the FBI's not yet adopting a policy requiring that all interrogations be videotaped. FBI instructors noted that such recordings would serve an invaluable training and evaluative function, allowing them to learn from their mistakes as well as to monitor what agents actually do in the field.

## **Section 7. Federal Law Enforcement Training Center (FLETC)**<sup>581</sup>

The Federal Law Enforcement Training Center (FLETC) provides training to agents in 81 different federal agencies. It covers all federal criminal investigators (18–11 job series federal employees) except those in the FBI, Drug Enforcement Administration (DEA), and U.S. Postal Service. It is designed to provide individuals who have no law enforcement experience with the tools necessary to become beginning criminal investigators; the specific skill-sets needed for a particular agency are then taught by that agency. It has a basic curriculum applicable to all agents and then offers more advanced or specialized training as requested, either through “add-on” programs for the specific agencies or through private contractors. The FLETC basic curriculum must be approved by all agencies and is reviewed regularly on the basis of feedback from the students and the agencies.

FLETC's primary training in the area of custodial interrogations comes in the basic Criminal Investigator Training Program (CITP). The heart of the CITP's interview/interrogation curriculum is a 10-hour lecture class titled “Interviewing for Law Enforcement Officers/Criminal Investigators.” CITP also offers the course in 6- and 12-hour versions covering more or less the same aspects of interview procedures. The individual agencies choose the program most appropriate for their agents, and the 10-hour version is most commonly selected. The course is designed to “provide Federal criminal investigators (regardless of agency or position description) with foundational interviewing skills using proven questioning techniques coupled with an awareness of common behavioral responses. Emphasis is placed on planning the interview, formulating questions and following the five steps of the law enforcement interview.”<sup>582</sup> Of the 15 objectives of the course, two focus on interrogation: #14: Identify and apply planning considerations for a confrontational interview, and #15: Identify and apply the confrontational interview technique. These objectives are covered through a two-hour lecture class. Although FLETC uses the term “interview,” the confrontational interview basically amounts to an interrogation, since it is designed to elicit a confession from a party whom the agents believe to be guilty. The confrontational interview may or may not be conducted with the suspect in custody, depending on the agents' preferences for the particular situation.<sup>583</sup>

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<sup>581</sup> Unless otherwise referenced, the information in this section is derived from a visit to the Federal Law Enforcement Training Center at Glynco, Georgia, 12-13 April 2005. Our host during the visit was Mark Fallon, Deputy Assistant Director of the Naval Criminal Investigative Service.

<sup>582</sup> Syllabus, *Interviewing for Law Enforcement Officers/Criminal Investigators*, FLETC Course #4162, August, 2004.

<sup>583</sup> The confrontational interview will hereinafter be referred to as an interrogation for simplicity and to distinguish it from other interviews.

The CITP supplements the lectures with lab exercises (ungraded) and practical exercises (graded) where students conduct interviews and interrogations with role-playing actors. The number of overall exercises in which each student participates varies somewhat by agency, but those participating in the CITP Confrontational Interview Practical Exercise spend four hours in the session, with each student conducting an interrogation and receiving personalized feedback for about an hour of that time. In addition, FLETC offers courses in basic interviewing, communication in interviewing, response analysis, cognitive interviewing technique, multiple suspect elimination technique (through interviews), field interviewing, advanced investigative interviewing, and other suspect interview techniques. The goal behind this varied program is not to tie the students to a particular regimen, but instead to give them basic interview and interrogation tools that they can use flexibly in the field.

However, FLETC does provide its students with an overarching schema for the interview/interrogation process that closely tracks both the Reid School techniques and the FBI's Direct Accusation Approach, though not necessarily by design. The goal of any interview or interrogation, according to FLETC, is to elicit useful, truthful information. In an interrogation, the goal is to elicit a truthful confession or at least a detailed lie that can be used in a later interrogation or prosecution. The major distinguishing feature of the technique taught by FLETC is the detailed presentation of the evidence to the suspect, a tactic advocated by the FBI, but rejected by the Reid Technique. According to FLETC, because the agents trained at the Center generally deal with more sophisticated suspects than do the police, it is virtually impossible to get them to confess without showing them the evidence. Thus, as discussed below, FLETC trains its agents to make a monologue presentation of the evidence to the suspect as part of the interrogation.

Before starting the interrogation, FLETC students are taught to prepare a topical outline. The outline, meant to be used both in the practical exercises in class and in the field as preparation for actual interviews and interrogations, should include the following areas:

1. Interview/Interrogation Site
2. Objectives of the Interview/Interrogation
3. Purpose Statements (to be given to suspect)
4. Rapport Areas
5. General Questions
6. Possible Themes
7. Choice Questions

The topical outline not only prepares the agents for the encounter, but also forces them to examine their preceding research and identify gaps in their information. For instance, if they cannot write down a few areas where they will be able to establish rapport, they in theory have not learned enough about their suspect. The outline is meant to be used as a guide throughout the encounter with the suspect, but agents are taught that they should be ready to throw it out if the interrogation veers off in a different direction than expected.

Once the agents have completed their topical outline, they are ready to conduct the interrogation. FLETC teaches a five-step interview/interrogation technique: 1) Introduction, 2) Rapport, 3) Questions, 4) Review, and 5) Closing. This approach is meant to be used in all federal law enforcement interviews, but has special application in an interrogation. For instance, to pass the CITP Confrontational Interview Practical Exercise, the students must “demonstrate comprehension of principles and use of skills competencies for the following:

- Introduction
  - Self
  - Partner
  - Suspect
  - Purpose
  - Credentials
- Rapport
  - Properly Established
  - Properly Maintained
- Questions
  - General Questions
  - Case Presentation — Monologue (Factual Presentation, Themes, and Choice Questions)
  - Recognize and Utilize Suspect’s Nonverbal Behavior
  - Demonstrate Effective Personal Nonverbal Behavior
  - Appropriate Use of Pauses
- Summary
  - Acknowledge Suspect’s Cooperation
  - Summarize Main Points from Notes
- Closing
  - Acknowledge Suspect’s Cooperation
  - Contact Information — Primary, Secondary, Suspect<sup>584</sup>

The case presentation step mirrors the FBI and Reid interrogation techniques, with the students taught the following: present the evidence they have gathered that implicates the suspects and thus overwhelm them with the evidence of their guilt; present the themes of rationalization, projection, and minimization, as appropriate; and then present a “choice question.” The emphasis is on the students’/agents’ doing all the talking in this phase of the interrogation; they are taught to cut off and overcome objections to avoid an argumentative exchange that would threaten to ruin the interrogation. FLETC instructors described the

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<sup>584</sup> Syllabus, *CITP Confrontational Interview Practical Exercise*, FLETC Course # 4179, February 2005.

presentation of evidence as a sort of poker game, where the agents hold most of the cards except one (the confession) and convince the suspect that they (the agents) can win (get a conviction) even without the last card. The themes presented to the suspect are the same as those recommended by most of the texts and the FBI, although FLETC focuses only on the major three (rationalize, project, minimize). In exactly the same manner as Reid's Step 7, "Presenting an Alternative Question" (see discussion above), this section of the interrogation ends with the agent's posing a question that posits a "good" and "bad" reason for committing the crime, thus offering the suspect two choices, both of which would constitute an admission of guilt. The students are discouraged from using trickery or deceit during the monologue, both because FLETC instructors believe that more sophisticated suspects will see through it and because they believe that suspects will closely watch the investigators, who might present some of the very indicators of deception that they are trained to look for in the suspect and thus "tip their hand."

According to the instructors, the most difficult skill to teach is rapport-building, mainly because not enough time is available to spend on the subject. Moreover, many instructors believed that some of the necessary traits of a good rapport-builder are innate, while others can be taught. Because the classes are designed for a wide variety of students, the instructors must again teach to the lowest common denominator. For instance, some students have a natural ability to establish rapport with almost anyone, while others engage in forced small talk that makes the suspect uncomfortable and wary. Thus, like the Boston Police Department (see discussion below), the instructors attempt to teach the students to establish rapport through an appearance of confidence and professionalism, and through the types of questions asked. If the agents are able to engage in small talk that is ideal, but they are taught not to force the rapport through such techniques. Instructors also try to focus on so-called "rapport-busters," meaning questions or statements that break the rapport that has been established by sending a different message than that established in the rapport-building stage (e.g., "We're here to ask you a few questions."). As part of that effort, and especially in the advanced interview classes and "add-on" programs conducted for specific agencies, FLETC instructors attempt to refine the agents' questioning skills by emphasizing the use of narrative questions, as well as direct and precise questions. In addition, FLETC emphasizes a constant focus on creating an impression of confidence, patience, and persistence as a necessary component of a successful interview. Indeed, according to one instructor, confidence is the key to a successful interrogation.

The students are also taught the basics of detecting deception. According to the FLETC instructors the teaching here closely follows the literature. Students are not generally taught to look for any specific physical or verbal signals of deception, but to focus on nonverbal, verbal, and symbolic communications that occur in clusters as the result of stimuli presented in the form of questions or evidence by the investigator. Students are taught to consider the culture of the subject (although they are not taught the ways in which members of a particular culture might respond to a particular stimulus), to look for clusters of behavior

that indicate deception, and to note the content of the question asked right before the cluster of behavior is observed. The curriculum emphasizes that there is no single indicator of deception, that students must observe all body language and speech presented by the subject, and that their ability to detect deception will grow with experience.

As noted, because 81 agencies are involved in setting the curriculum, and because each lecture class contains either 24 or 48 students, the instructors find that they must teach to the lowest common denominator. At the same time, many of the instructors echo the belief of other law enforcement personnel that the best way to learn is by doing and thus they place particular emphasis on the practical exercises. The exercises use role-players hired from the local community and are as realistic as possible. They are conducted in mock-up offices or other settings to give them a realistic feel, and the students are allowed to set up the furniture as they see fit. In addition, the scenarios for the various interviews are somewhat tailored to the specific agency for which the student will work (e.g., a Secret Service agent may face a scenario involving counterfeit currency); there are currently 16 different scenarios in use, each with a detailed case history, list of potential violations, and various pieces of evidence. The instructor sits in a corner of the room and silently observes the interview, while cameras overhead record the interactions from several angles. Generally one student takes the role of primary interrogator, with the other student acting as the secondary who takes notes, follows up with any additional questions, presents the summary, and in rare cases jumps in to take over the primary role if the other agent loses control of the interrogation. After the practical exercise is complete, the students receive individualized feedback from the instructor in the room. In addition, they have an opportunity to review the videotape of the interrogation and critique themselves (critiques that, according to one instructor, are usually harsher than those provided by the instructors). This allows for teaching at various levels based on individual students' needs, as opposed to the one-size-fits-all approach of the lectures.

The training provided by FLETC through the CITP and the other programs covers only the minimum requirements to be a competent federal law enforcement agent. The individual agencies then conduct "add-on" courses, either at their home facilities or through FLETC or private contractors. FLETC also provides advanced courses in interviewing and interrogation techniques. These courses are generally available to more senior agents from the various agencies on a voluntary basis, and are taught either by FLETC instructors or, more often, by outside contractors. The major contractor for many years was the Reid School, though recently FLETC has begun to use Wicklander-Zulawski and Associates. Wicklander-Zulawski, however, teaches the Reid approach as well, under a special license.

The FLETC instructors indicate that they do not know how much of the training provided in CITP and the other programs actually makes it to "the street." The only opportunity that instructors have to evaluate the efficacy of their programs (other than survey feedback from the students and agencies) occurs when former students return to FLETC for advanced training. At that point the

instructors can determine how much of the initial training the agents retained. However, the number of agents who come through FLETC for advanced training is minimal compared to the number of agents who graduate from the Center's basic training program. Moreover, FLETC conducts no systematic review of the students who do return for advanced training, and therefore only anecdotal evidence of the success of the initial training program is available. Even then the students who return for advanced training are generally a self-selected group that is likely to be more interested in interrogation techniques — and thus more likely to have retained the initial training.

In addition, as with all of the other law enforcement training programs, there has been no systematic, empirical study of the efficacy of the techniques taught at FLETC; it appears that most of the support for the techniques comes from anecdotal evidence. This is in part because, without videotaping interrogations, it is impossible to determine what techniques are actually used in the field. The FLETC instructors, noting the number of studies on British interrogation techniques, indicated that they would welcome videotaping of interrogations to determine what is and is not working, and also to establish how much of their training even makes it to the street, regardless of efficacy.

## **Section 8. Boston Police Department — Homicide Division**<sup>585</sup>

The Boston Police Department conforms to the general trend among local law enforcement organizations, focusing its training on the procedural aspects of interrogation. The officers and detectives receive very little, if any, formal training on interrogation techniques. The majority of the interrogation training that does occur is through the Reid School, which is offered as an option to detectives, most of whom do not choose to participate. The department has no formal manual on interrogation techniques, not even for divisions such as the homicide unit. Deputy Superintendent Daniel Coleman, who is currently in charge of the homicide unit, is putting together a protocol and checklist for interrogation techniques.

This situation can be contrasted with the issuance of guidelines and extensive training that immediately followed the decision in *Commonwealth v. DiGiambattista*,<sup>586</sup> which requires electronic recording of all interrogations conducted in Massachusetts and threatens a jury instruction that casts doubts on police procedures if no such recording is made. The difference results from the department's primary goal, which is to solve cases and obtain convictions, which in turn leads to an emphasis on the procedures necessary to protect suspects' constitutional rights, avoid suppression of evidence and suspect statements, and thus create the easiest path for a jury to convict. The detectives we interviewed noted that the procedures and training in place regarding interrogation are not geared toward training interrogators to elicit statements, but instead are

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<sup>585</sup> Unless otherwise referenced, the information in this section is derived from interviews with Deputy Superintendent Daniel Coleman of the Boston Police Department, who is also Commander of BPD's Homicide Unit, conducted on 11 and 21 March 2005.

<sup>586</sup> 442 Mass. 423 (2004).

implemented to ensure that any statement elicited can be presented in a court of law. This has created a situation where few members of the department receive any significant formal training in interrogation techniques.<sup>587</sup> Indeed, Deputy Superintendent Coleman reports that when he moved from a uniformed to an investigational unit he received no additional formalized training. Instead, he reports that 90% of a successful interrogation is based on intuition, which can only be developed through experience, on-the-job training, and mentoring.

At the same time, the department uses many of the general techniques advocated by the Reid School and others. They focus heavily on conducting thorough pre-interrogation investigations. Detectives stress the importance of gathering all of the information on the suspect, victim, crime scene, etc., before entering the interrogation room. In addition, they try not to commence the interrogation without a clear sense of their goals and objectives. Like all other law enforcement personnel interviewed, Boston detectives believe that building rapport and conveying empathy are the keys to a successful interrogation. The homicide detectives dress in suits every day, are clean-shaven, and work in a building that one described as looking like an “insurance office”; they note the importance of removing the suspect from the police station environment. The setting contains very few reminders that the suspect is in police custody, and the officers remove all signals that could remind suspects of the consequences of their actions. The interview/interrogation room is a small, plain room, with only a whiteboard on the wall and a few chairs and a desk. The room has a two-way mirror that “no one uses” because a) any time the door opens to the room with the observers, the people standing behind the mirror can be seen, and b) every suspect knows what the mirror is and asks to have the blinds closed.

However, the detectives report that the theme-development strategy advocated by the Reid Technique does not work with most of the suspects they encounter. They postulate that this is because the strategy is based on the idea that people feel guilty when they commit crimes, but many of the suspects the homicide division encounters feel little, if any, remorse for their crimes, are not afraid of jail, and are mainly concerned with protecting themselves from retaliation on the street. Instead, the detectives find that, after establishing rapport based on kindness and professionalism (as opposed to false friendship), a straightforward, no-nonsense presentation of the situation and evidence is the best approach to secure a confession.

Despite the lack of formalized training, there is a general pattern to interrogations conducted in the homicide division. The detectives begin with the procedural requirements. When the suspect is brought in, usually from the local police precinct, the detective lets him know that he is under arrest and informs him of the charges. He advises the suspect of his right to a telephone call, and

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<sup>587</sup> Supervisors in the BPD further believe that even the small amount of interrogation technique training that is provided is only somewhat useful, because it must be adapted for the various ages, cultures, and experiences of the trainees, resulting in a tendency to teach to the lowest common denominator.

then advises him of his Miranda rights. The detective then has the suspect sign a waiver of 6-hour arraignment, and informs the suspect of the opportunity to have the entire encounter recorded electronically. If the suspect elects to have the interrogation recorded, the detective re-reads the Miranda rights while the tape is recording. Even if the suspect declines to have the encounter recorded, the detectives are trained to get at least the declination on tape. According to Coleman, over 80% of suspects in general waive their Miranda rights, while only about 30% of murder suspects do so.

Once the procedural requirements are met, the interrogator moves to rapport-building. The rapport is built less on false friendship than on empathy, kindness, and professionalism. The straightforward techniques used by the department include dressing in a suit and tie to let the suspect know that the detectives are “not your average cops” and that they mean business; shaking hands with every suspect (also giving the detective an opportunity to examine the hands); speaking courteously and professionally, avoiding use of the suspect’s “lingo”; keeping the conversation friendly, casual, and not overly official; offering the use of the phone in a casual manner (e.g., “Do you want to let someone know where you are and that you are okay?”); and offering food and drink. The detectives believe that this approach is effective with homicide suspects because most of them understand the situation they are in; moreover, suspects will only cooperate if they believe the detective is not hiding anything from them, and can immediately spot attempts to downplay or minimize the crime and will respond in kind by “playing” with the interrogator.

Once rapport has been established, detectives prefer not to use trickery or deceit, though they are allowed to do so under Massachusetts law. According to them, beyond just being “wrong” this is also ineffective, since it insults the suspect’s intelligence and can often be exposed; it also is one of the interrogation tactics that they say can most easily lead to false confessions. At the same time, they do recommend using trickery to induce lies. This would include, for example, asking a suspect who has just mentioned a certain road about the tollbooth on the road, knowing full well that there is no tollbooth on the road and trying to catch the suspect in a lie. However, the detectives report rarely, if ever, making up evidence, witnesses, or statements that do not actually exist. At the same time, they are careful not to give the suspect any information he does not already have, saying that the entire interrogation procedure is “like a poker game.” This is done both to keep the suspect from knowing what the detective knows and to prevent the suspect from appropriating the information for possible false confessions.

The more experienced detectives argue that anyone who goes into an interrogation looking for a confession is inexperienced and “an idiot.” Such an approach leads to bias in the interrogation room, where what is needed is objectivity. The goal of an interrogation should be to gather information, and lies can often be as useful in an eventual prosecution as a confession. The detective should look for information that can advance the rest of the investigation, including information that the suspect does not realize might be useful for the investigation and prosecution, such as whether he is right-handed or left-handed,

or even a seemingly random phone number that can then be traced or tapped. The detectives are quick to point out that while a confession is useful to have, it must still be corroborated before a prosecution can move forward.

There is no formalized mechanism for supervision of, or feedback on, interrogations conducted by the detectives in the homicide unit. Instead, Deputy Superintendent Coleman or his deputies sometimes take home the audiotapes of interrogations and listen for problems, providing feedback as necessary. Feedback is usually given only if a problem is noted, and even then many of the more experienced detectives find it difficult to change their ways. Coleman also sends his detectives to court to listen to suppression motions argued by the District Attorney's office so that they become aware of potential problems with interrogation procedures. However, these motions are usually based on legal procedural issues instead of the actual interrogation techniques. Similarly, the detectives often go to court to hear cross-examinations of detectives from their division, as well as closing arguments in cases handled by their division, so they can understand the questions and tactics used by defense attorneys and better identify possible problem areas in their interrogations. The detectives note that one of the most important skills for an interrogator, now that interrogations are recorded, is to be able to explain his techniques to a jury so that the interrogation does not appear overly coercive or tainted.

Generally the Boston Police Department does not videotape its interrogations; the Supreme Judicial Court of Massachusetts decision, like most statutes and court decisions on the subject, only requires "electronic" recording. Prior to that decision, the Boston Police Department would conduct the full interrogation, obtain the confession, and only then start the tape to obtain a recording of the suspect's confession. Deputy Superintendent Coleman noted that he initially opposed the requirement that all interrogations be taped because he was afraid that both police and suspects would act differently, that the positive dynamics established through rapport-building would be diminished, and that generally the presence of recording equipment would inhibit interrogations. His view is slowly changing as he sees the results of taping. While not fully convinced, the detectives agree that taping interrogations offers numerous benefits, but they regard videotaping as a wholly different matter. Most agree that videotaping would assist training and review, and Coleman says that certain basic tenets of interrogation could be taught more easily through the videotaping of interrogations.

At the same time, Coleman worries that because under Massachusetts law the suspect would have to be informed that he is being videotaped, the interrogation would be inhibited, less rapport would be established, and less information and fewer confessions would be obtained. Part of the worry, especially when dealing with gang members and similar criminals, is that because the tapes are discoverable, suspects will be less likely to talk for fear that the tape might get back to the street, where retaliation for cooperating with the police has spiked in recent years across the country. Nonetheless, the detectives recognize that, in general, other police departments and agencies have had positive experiences with the videotapes, and see them as the inevitable next stage in interrogation requirements.

## Section 9. Case Study of One Detective<sup>588</sup>

Lieutenant Albert F. Pierce, Jr., currently with the Massachusetts Institute of Technology (MIT) Police Department and formerly with the Massachusetts Metropolitan Police and the Massachusetts State Police, reports a similar history. Pierce has been a police officer since 1978, working in various units and task forces on violent crimes, white collar offenses, homicides, and more. Most of his career has been spent in one capacity or another as part of the Massachusetts State Police, though he spent a significant portion of his time working on special assignment with the Suffolk County District Attorney's Office. Although he has taken classes all over the country on various policing techniques, including interrogation, the Massachusetts State Police Department does not seem to have any type of comprehensive training in interrogation techniques. Some in-service training exists, though this is provided mostly by outside experts (e.g., from the Reid School) brought in to lecture, and once in a while by more senior members of the department. The basic Police Academy training provided little, if any, information on interrogation techniques, although, as Pierce notes, this is because most police officers are not involved in conducting interrogations.

Instead, like most other law enforcement officials, Pierce reports that he learned most interrogation techniques on the job. Pierce also notes that all of the classes in the world are not nearly as useful as the skills learned in the field. His opinion should not be taken lightly, as he has participated in various interrogation training programs, including those provided by the Reid School and the New Jersey, New York, and Massachusetts State Police Departments, as well as various national academies. According to Pierce, if a young detective is lucky enough to be partnered with an experienced, successful mentor, that mentor will be the most useful source of interrogation training. As a corollary, one must assume that if the partner is not helpful or is inexperienced, young detectives will have to learn the techniques on their own. At the same time, the first thing Pierce did when he took over the MIT Police Department was send all of the detectives to the Reid School for what he referred to as Interview and Interrogation 101.

Echoing the literature, Pierce argues that it takes very special skills to be a good interviewer/interrogator. Most important among the characteristics of a good interrogator are a true liking of people, an ability to get along with people of all backgrounds, comfort in talking to people, and knowledge of how to do it. In addition, anyone who wants to be a successful interrogator needs to be a good actor: to convey sympathy, empathy, and other emotions that the interrogator does not really feel. As a young detective, Pierce would often just sit outside or in bars with his partner and observe and speak with people so that he could learn these skills and improve on whatever innate abilities he already possessed. He reports that this was one of the most useful techniques he found to build up knowledge of how people act and react in various settings. Finally, Pierce notes that the ability

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<sup>588</sup> Unless otherwise referenced, the information in this section is derived from an interview with Lieutenant Albert F. Pierce Jr. of the MIT Police Department, formerly of the Massachusetts State Police, on 5 April 2005.

to know oneself and one's limits cannot be overstated; successful interrogators must have the ability to restrain their own egos and take themselves out of a situation or interrogation that they cannot handle.

Pierce argues that interrogation techniques must be individualized for both the interrogator and the suspect and are very case-specific. Some of the variables he identified included the crime committed, the suspect's education level — both formal and within the judicial system — the suspect's economic and social status, etc. At the same time, no matter with whom one is dealing or what crime the person committed, the single most important aspect of the interrogation, according to Pierce, is to establish rapport and the appearance of friendship. This is done mainly to create an environment conducive to a successful interrogation, but also to maintain the suspect's constitutional rights while minimizing the likelihood that the suspect will ask for an attorney.

The typical interrogation in which Pierce is involved proceeds as follows:

1. Conduct the pre-interrogation investigation — gather as much information as possible about the suspect, the crime scene, the victim, etc.
2. Go through Miranda and other procedural requirements.
3. Build rapport:
  - a. Leave the suspect alone in a room and observe for signs of nervousness, fear, etc., through a two-way mirror or a window in the door to the room.
  - b. Approach with only a few detectives.

Pierce reports no standard procedure, but never more than three, and usually two so that one can do the questioning and another can take notes.
  - c. Begin talking, offer a smoke, food, and/or drink. Never begin by “going for the throat” with a direct accusation or attempt to overwhelm with evidence.
  - d. Have a two-way conversation and get to a comfort level with the suspect.
  - e. Only at this point move to discussion about the crime.

Once Pierce moves into harder questioning of the suspect, the procedure seems to break down to some degree in that there is no one path to follow. Generally, open-ended questions are used to keep suspects talking, to keep them off guard, and to avoid conveying any information to them. Depending on the suspect, themes such as those discussed in the Reid Technique (minimization, rationalization, etc.) may be appropriate. All, however, require sympathy and empathy according to Pierce, who indicates that he may be using theme development without being consciously aware of it. Indeed, he reports that the most successful interrogators can make

the suspect believe that the interrogator understands how the suspect feels about things, which is exactly the goal of Reid's theme development.

Pierce believes quite strongly that a good interrogator can sense deception. There are so-called "body-language schools" that teach techniques that Pierce finds effective. More importantly, however, is the ability simply to read people, and he argues that in real-world situations it is easy to pick up obvious signals that a suspect is lying if one has good people skills. At the same time, he believes it is sometimes useful for an interrogator to use trickery and deceit, such as telling the suspect that the authorities have evidence, phone records, witnesses, or statements that do not really exist. While one must be careful in using this technique, Pierce says that it is highly successful when appropriately used. Nonetheless, he reports that he never lies about the consequences of confession and tries to avoid the subject altogether, instead telling the suspect that he is just the fact-finder who writes the story, and that what happens to the suspect is in the hands of the court.

Until the recent SJC decision, the Massachusetts State Police did not use electronic recording of any kind. Pierce contends that if they had done so they would have had easier, smoother, and more successful results in court (i.e., convictions). While noting that the presence of the recording devices does affect the privacy of the interrogation, Pierce argues that the benefits outweigh the costs. Like Coleman, he finds it imperative that the detective be able to explain each technique used through the interrogation so that it does not appear overly coercive to a court or jury. In addition, he believes that recording the interrogations would aid in training; one of his chief complaints about the training he received is that it involved too much sitting in the classroom listening to lectures and not enough observation and role-playing.

## **Section 10. Interrogation Practices in Other Countries**

### **Interrogation in Great Britain**

#### *General Background*

Until the early 1990s, there was no national training on interrogation offered to British police officers.<sup>589</sup> Though the first and most recognized interrogation manual produced in Britain<sup>590</sup> was heavily influenced by the Reid Technique, it did not meet with much enthusiasm and does not appear to have had much impact on police training and practice.<sup>591</sup> According to Gudjonsson, the implicit rejection of Reid-based approaches to interrogation in Britain might be due to a combination of factors, including judicial decisions in cases involving oppressive police interrogation, research into false confessions and psychological vulnerability, and changes in police practice following the introduction of the Police and Criminal Evidence Act of 1984 (PACE) and the Codes of Practice for police officers, which

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<sup>589</sup> Gudjonsson, see note 111, p. 38.

<sup>590</sup> J. Walkley, *Police Interrogation: A Handbook for Investigators* (London: Police Review Publication, 1987).

<sup>591</sup> Gudjonsson, see note 110, p. 52.

reduced the scope of coercive questioning and barred the use of deception, trickery, and psychological manipulation in interrogation.<sup>592</sup>

Currently, Britain has a set of national guidelines on interviewing both witnesses and suspects, composed of five distinct parts (corresponding to the acronym “PEACE”):

*Preparation and Planning:* Interviewers are taught to properly prepare and plan for the interview and formulate aims and objectives.

*Engage and Explain:* Rapport is established with the subject, and officers engage the person in conversation.

*Account:* Officers are taught two methods of eliciting an account from the interviewee:

- Cognitive Interview: used with cooperative suspects and witnesses.
- Conversation Management: recommended when cooperation is insufficient for the cognitive interview techniques to work.

*Closure:* The officer summarizes the main points from the interview and provides the suspect with the opportunity to correct or add information.

*Evaluate:* Once the interview is finished, the information gathered must be evaluated in the context of its impact on the investigation.<sup>593</sup>

The PEACE approach was based on the idea of providing officers with an ethical foundation for police questioning.<sup>594</sup> It focuses on information gathering rather than obtaining confessions, and it relies on non-coercive interviewing and accurate recording of the interview to achieve its goals.<sup>595</sup> Officers adopting “oppressive” questioning would be in breach of the national guidelines, and would presumably find judges less willing to admit into evidence statements obtained through those means.<sup>596</sup>

It is useful to note that an overwhelming proportion of scholarship and research on interrogation comes from Great Britain. This is mostly because PACE requires that all interrogations conducted in Great Britain be video-recorded. These recordings, in turn, allow for more research and study opportunities.

#### *Detective Superintendent Colin Sturgeon: A Practitioner’s Perspective*<sup>597</sup>

Detective Superintendent Sturgeon of the Police Service of Northern Ireland has vast experience with interrogations both in typical law enforcement and terrorism-related investigations. During our conversation, he offered a historical

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<sup>592</sup> *Id.*

<sup>593</sup> *Id.*, p. 53.

<sup>594</sup> *Id.*

<sup>595</sup> *Id.*, p. 54.

<sup>596</sup> *Id.*

<sup>597</sup> The information in this section is derived from a discussion with Detective Superintendent Colin Sturgeon of the Police Service of Northern Ireland during his spring 2005 visit to Harvard Law School.

perspective of interrogation in the context of terrorist investigations in Northern Ireland, which included reference to past use of interrogation tactics such as sensory deprivation, rigorous exercise, withholding of food and water, and inducing cramps through prolonged stances in certain positions. Superintendent Sturgeon noted that although these techniques proved quite successful in gaining intelligence they also alienated a vast proportion of the population and gave terrorists a broader base of support from which to operate. Eventually, outrage about these coercive interrogation techniques led to significant legal reforms in the shape of the Police and Criminal Evidence Act (PACE) and the relevant Codes of Practice.

As mentioned above, PACE and its Codes of Conduct forbid interrogators to deceive subjects or to employ any sort of trickery to gain information from them. Similarly, interrogators may not use psychological ploys common to the Reid Technique, such as rationalization, projection, and minimization. In general, the interrogator may not offer or suggest any reason to a suspect as to why he/she should confess, but may tell a suspect that his or her cooperation would be formally made known to the judge. It is relevant to note that these restrictions on interrogation tactics apply with equal force to ordinary criminal investigations and terrorism-related investigations.

Superintendent Sturgeon noted that these legal restrictions on interrogation have made it impossible to secure a confession or incriminating admission from a suspect. In fact, he went so far as to say that he cannot recall ever obtaining a confession as a product of interrogation. Even though British law has attempted to bridge this gap by eliminating the right of a suspect to remain quiet during interrogation by allowing a judge to infer guilt from the suspect's silence, Sturgeon noted that judges rarely, if ever, exercise this discretion against suspects.

As a consequence of the legal restrictions imposed on interrogators in Britain and their resultant inability to garner confessions, interrogations are now seen as another step in the investigation process. According to Superintendent Sturgeon, the PEACE method of interrogation described above conforms well to the view of interrogations as a step in a broader investigation, and thus transforms the goal of interrogation from obtaining confessions to securing information to advance the investigation. In this context, Sturgeon highlighted the importance of thorough preparation prior to beginning the interrogation. This preparation includes an interview coordinator, whose job it is to read every document relevant to the person to be interrogated and to outline the topics that the interrogation should cover. The interrogation itself is conducted by two interrogators: the "lead," who is responsible for asking the questions, and the "sweeper," who covers anything left out by the lead. Sturgeon made clear that the *Engage and Explain* portion of the PEACE method relies heavily on rapport, which he described as being based on the concepts of reciprocity and respect. This last point is significant in that Superintendent Sturgeon sees the process of establishing rapport not as an attempt to engage in insincere chit-chat with a suspect, but as an opportunity to treat him or her humanely and with respect so as to foster some sense of reciprocity in the encounter.

Finally, Sturgeon mentioned that although videotaping interrogations in Britain has drastically reduced the number of complaints filed by subjects against interrogators, some suspects are more reluctant than others to talk when being recorded. However, British law allows for recorders to be turned off at the suspect's request.

## Section 11. Videotaping Interrogations: The Law and Practice

Law enforcement officials around the country are currently debating whether or not videotaping of custodial interrogations should be required. Electronic recording of interviews and interrogations, when feasible, has been required by judicial opinion in Alaska since 1985<sup>598</sup> and in Minnesota since 1994,<sup>599</sup> although neither specifies videotaping. Illinois recently passed a statute requiring electronic recording, when feasible, of all custodial interrogations of suspects,<sup>600</sup> a District of Columbia statute requires it for all suspects in violent or dangerous crimes,<sup>601</sup> and a Maine statute requires electronic recording of interrogations for serious crimes.<sup>602</sup> The Supreme Judicial Court of Massachusetts recently ruled that while it would not require electronic recordings of interrogations, where such recording did not take place “the defendant is entitled (on request) to a jury instruction advising that the State’s highest court has expressed a preference that such interrogations be recorded whenever practicable, and cautioning the jury that, because of the absence of any recording of the interrogation in the case before them, they should weigh evidence of the defendant’s alleged statement with great caution and care.”<sup>603</sup> As noted previously, this has led to all interrogations conducted in Massachusetts being recorded whenever feasible.<sup>604</sup> Various similar legislative proposals are currently or have previously been before legislatures around the country, including in New York City, Maryland, Connecticut, Oregon, and Missouri.<sup>605</sup>

Electronic recording of interviews is quite common in other countries. As noted, Great Britain has required it since 1984.<sup>606</sup> Australian police must tape-record their interrogations where feasible, and in federal prosecutions, where a contemporaneous recording cannot be made, the law requires an electronic

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<sup>598</sup> *Stephan v. State*, 711 P.2d 1156 (Alaska.1985).

<sup>599</sup> *State v. Scales*, 518 N.W. 2d 587 (Minn.1994).

<sup>600</sup> 725 ILCS 5 § 103-2.1, effective 18 July 2005.

<sup>601</sup> D.C. ST § 5-133.20, effective 4 April 2003.

<sup>602</sup> Maine LD 891.

<sup>603</sup> *Commonwealth v. DiGiambattista*, 442 Mass. 423, 447-48 (2004).

<sup>604</sup> Interview with Boston Police Department Deputy Superintendent Dan Coleman, in Boston, MA (11 March 2005) [hereinafter Coleman Interview].

<sup>605</sup> See *Report on the Electronic Recording of Police Interrogations*, submitted jointly by the American Bar Association Criminal Justice Section and the New York County Lawyers' Association, (2002), 9, at <http://www.reid.com/pdfs/NYlegalarticleonvideotaping.pdf>, for a non-updated list, site access 22 April 2005) [hereinafter Report]

<sup>606</sup> Police and Criminal Evidence Act of 1984.

recording of the statement's being read to the suspect, with the suspect's being given an opportunity to refute anything in the written account.<sup>607</sup>

A 1993 study, conducted before many of the statutes previously mentioned were adopted, found that only 16% of police agencies in the United States overall, and one-third in jurisdictions with populations over 50,000, videotaped interviews, interrogations, and confessions, and that the most common circumstance in which a videotape was made was following the confession.<sup>608</sup> "During this process, the investigator would recap the interrogation in the presence of the suspect and continue with the formal confession being recorded."<sup>609</sup> This study reported that 82% of respondents said that the number of defense claims of improper interrogation techniques remained the same or decreased once videotaping of confessions began.<sup>610</sup> At the same time, 60% of respondents "reported no significant difference between a suspect's willingness to tell the truth whether or not the conversation was videotaped."<sup>611</sup> Inbau et al. argue, however, that these results are meaningless because the study did not include data on whether the agencies videotaped the entire interrogation or only the confession that resulted after a successful interrogation conducted in a private setting.<sup>612</sup>

Anecdotal evidence suggests that, since the 1993 study, many police agencies around the country have adopted videotaping procedures, either because it is required by local ordinances or through voluntary adoption programs.<sup>613</sup> Fort Lauderdale, Miami, Denver, Tulsa, San Diego, Kankakee County, and DuPage County are among the many localities that have begun videotaping interrogations.<sup>614</sup> Most of these agencies seem to report positive experiences with the procedure.<sup>615</sup> Indeed, a 2004 study of 238 police and sheriff's departments that voluntarily videotaped interrogations found that "[v]irtually every officer with whom [the authors of the report on the study] spoke, having given custodial recordings a try, was enthusiastically in favor of the practice."<sup>616</sup> Noted benefits included reduced defense motions to suppress statements, more guilty pleas, better evidence for use at trial, increased public confidence, and use as an interrogation-technique teaching tool for detectives.<sup>617</sup> In addition, the study found that recording did not inhibit rapport-building and did not result in suspects' refusing to cooperate or

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<sup>607</sup> See *Australia's Third Report under the International Covenant on Civil and Political Rights*, March 1987 – December 1995, Art. 14 Par. 816.

<sup>608</sup> Inbau, see note 109, 393-395, and Report, 6, both citing W. Geller, *Videotaping Interrogations and Confessions*, *National Institute of Justice Research in Brief* (March 1993).

<sup>609</sup> Inbau, see note 109, p. 395.

<sup>610</sup> *Id.*, p. 394.

<sup>611</sup> *Id.*, citing W. Geller.

<sup>612</sup> *Id.*, p. 394.

<sup>613</sup> Coleman Interview; see also; "Police to Tape Suspects' 'Quizzings,'" *South Florida Sun Sentinel*, 1 February 2003, 1B; "Will the Senate seek justice?," *Chicago Tribune*, Editorial, 4 March 2003, 12.

<sup>614</sup> "Will the Senate seek justice?," 12.

<sup>615</sup> *Id.*

<sup>616</sup> Thomas P. Sullivan, *Police Experiences with Recording Custodial Interrogations*, presented by Northwestern School of Law's Center on Wrongful Convictions, Summer 2004, 6, at <http://www.law.northwestern.edu/depts/clinic/wrongful/documents/SullivanReport.pdf>, accessed 4 March 2005.

<sup>617</sup> *Id.*, 6-12, p. 16

confess at lower rates than those not recorded, whether or not the suspects were aware of the videotaping.<sup>618</sup>

The authors of the Reid Technique, however, continue to argue that guilty suspects are less likely to tell the truth and/or confess if they are electronically recorded.<sup>619</sup> In addition, they believe that videotaping interrogations would ultimately harm investigations and especially prosecutions.<sup>620</sup> They contend that unless the videotaping can be done surreptitiously (which it cannot in states that require two-party consent for electronic recording), the presence of a video recording device, or simply the knowledge that the session was being taped, would undermine the sense of privacy that is a prerequisite to a successful Reid Technique interrogation.<sup>621</sup> They point to a study by one of the authors, who surveyed investigators in Alaska and Minnesota and found that when the recording device was never visible the investigators obtained an 82% confession rate as opposed to a 43% rate when the device was visible.<sup>622</sup> This, they argue, is the foremost reason not to require videotaping of interrogations.

Inbau et al. acknowledge that videotaping interrogations may help reduce doubts as to the trustworthiness or voluntariness of the confession, help jog the investigator's memory while testifying, and defend against allegations of improper interrogation tactics.<sup>623</sup> They do not mention the possibility that videotaping will help in training interrogators. Ultimately, the authors argue that the costs of videotaping outweigh the benefits. They point to the possibility of "numerous occurrences where a defense expert would offer the opinion that, based on analysis of the videotaped interrogation, the defendant's will appeared to be overcome, or that in the defendant's mind he perceived a promise of leniency or a threat to his well-being (even though none was stated)."<sup>624</sup> They also argue that a requirement for videotaping is too great a burden for police and prosecutors, who already have a difficult time maintaining the integrity of all pieces of evidence. Defense attorneys could unfairly exploit the possibilities of the electronic device failing, portions of the recording fading or being lost due to mechanical failure, gaps because of the need to change a tape, the loss of the tape, inadvertent erasure of the tape, or the unavailability of electronic recording in a particular location to place doubts about the entire circumstances surrounding the interrogation in the minds of the judge and jury.<sup>625</sup>

Aubry, however, writes unequivocally that a "requirement for the interrogation room [is] an adequate and efficient sound and tape recording system."<sup>626</sup> He continues: "motion picture records...are exceedingly valuable" because they

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<sup>618</sup> *Id.*, 19-20

<sup>619</sup> Inbau, see note 109, p. 397.

<sup>620</sup> *Id.*, p. 393-397.

<sup>621</sup> *Id.*, p. 397.

<sup>622</sup> *Id.*, n.23

<sup>623</sup> *Id.*, p. 394.

<sup>624</sup> *Id.*, p. 396.

<sup>625</sup> *Id.*, p. 396-397.

<sup>626</sup> Aubry and Caputo, see note 406, p. 71.

objectively show what happened during the interrogation.<sup>627</sup> Such recordings, Aubry argues, “should definitely be made of the entire interrogation procedure, if for no other reason than to demonstrate conclusively that the confession was secured in conformity with legal safeguards.”<sup>628</sup> He mentions no downside to the recording of interrogations, though he does suggest that the recording devices be hidden, perhaps indicating he would agree with some of Inbau et al.’s concerns if the suspect were made aware that he is being recorded. Similarly, the American Bar Association Criminal Justice Section and the New York County Lawyers’ Association argue that it is “time the practice of videotaping complete interrogations is mandated in all state and federal jurisdictions.”<sup>629</sup> Concerns about false confession frame their argument: worries that as interrogators convince a suspect that confession is rational and appropriate they may convince the innocent individual to confess as well.<sup>630</sup>

Despite Inbau et al.’s arguments, the videotaping of interrogations is coming to be seen as a positive development by both law enforcement and the defense bar. The National Association of Criminal Defense Lawyers supports the practice as “a simple procedure that would deter human rights violations, reduce the risk of wrongful convictions due to false confessions, and greatly enhance the truth-seeking process by resolving factual disputes concerning interrogation.”<sup>631</sup> Law enforcement personnel — even those who initially opposed taping — are beginning to recognize it as an effective means of countering false allegations of misconduct and confirming the testimony of the police officers at a time when juries have increasing mistrust of police testimony.<sup>632</sup> They also see the tapes as an important training tool in three respects: first, they allow supervisors to review and give feedback on the interrogations; second, they enable the individuals conducting the interrogations to critique themselves; and third, because the tapes will be shown to juries, the interrogators will have to be able to explain — and thus better understand — the techniques they use to elicit confessions (e.g., theme development, presentation of alternative questions, etc.).<sup>633</sup>

## Section 12. Summary: Interrogation Literature vs. Law Enforcement Practice

Like the practical literature on which it is based, the interrogation training provided by the U.S. law enforcement organizations consulted for this paper generally fails to incorporate the factors that, according to empirical research, might affect a suspect’s willingness to confess, and provides little or no training

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<sup>627</sup> *Id.*, p. 72.

<sup>628</sup> *Id.*

<sup>629</sup> Report, p. 2.

<sup>630</sup> Report, p. 3-4.

<sup>631</sup> National Association of Criminal Defense Lawyers, *NACDL Federal Legislative Priorities - 2004*, at <http://www.nacdl.org/public.nsf/Legislation/Priorities?opendocument>, accessed 16 April 2005.

<sup>632</sup> Coleman Interview.

<sup>633</sup> *Id.*

variation for different types of suspects. While all agencies underscored the general caution that no single interrogation technique works with every suspect, and indeed that every suspect is different, they provide little guidance on how to adjust one's interrogation techniques for suspects of different ages, cultures, ethnicities, and criminal history, or for crimes of greater seriousness or cases for which the interrogator has stronger evidence. The only confession factor that most agencies seemed to focus on is length of the interrogation. Consistent with Leo's empirical study, discussed above, the FBI training literature and the instructors at the FBI Academy noted that the length of interrogation was a determinative factor in obtaining a confession or incriminating information from the suspect.

Similarly, both FLETC and the FBI take account of the seriousness of the offense and the strength of the evidence against the suspect in their training, if indirectly. As noted, these two factors appear to be statistically significant in predicting the likelihood of a confession. Like the Reid Technique upon which they draw so heavily, FBI and FLETC training make use of theme development based on rationalization, projection, and minimization. These tactics, in turn, center on manipulating the suspects' perception of the seriousness of the crime they have committed. In addition, FBI and FLETC rely heavily on presentation of the evidence to convince the suspect that denial is futile and there is no other option but to confess. Consequently, the stronger the evidence, the more effective this FBI and FLETC interrogation step will be. These modifications to the Reid Technique notwithstanding, the agencies do not, for the most part, offer specific techniques that the interrogator should adjust if the crime is more or less serious, or the evidence stronger or weaker; they give few, if any, explicit prescriptions on how to use these factors to elicit a confession in different situations.

As noted, those officers and agents who do receive some interrogation training learn tactics that closely track those advocated in most of the literature. The emphasis in all programs is on investigating the case thoroughly prior to interrogation, projecting an air of confidence and fairness, and building some sort of rapport with the suspect. However, practice diverges from the literature in two seminal respects: interrogator qualifications and, in the case of the FBI and FLETC, the importance of confronting the suspect with the evidence against him.

Although the literature recommends that only highly skilled, motivated, educated, and specialized individuals be chosen as interrogators, the reality is that, for the most part, interrogations are conducted by law enforcement personnel of widely divergent educations and experience levels. Our research uncovered no U.S. law enforcement agencies or departments that have a dedicated cadre of interrogators to use in their counterterrorism investigations. Interrogators in U.S. law enforcement agencies and departments are not required to have any specialized training or education beyond that required to fulfill the general requirements of their respective training courses. In some of the federal agencies, interrogations are conducted by whichever team of agents happens to be investigating the case, regardless of experience or expertise. In police departments it appears that interrogations are conducted by detectives, who are by definition more experienced,

but who do not necessarily have any specialized interrogation training. It thus appears that U.S. law enforcement does not perceive interrogation as a specialty, but instead as one of the many skills required by a general investigator's job.

Both the FBI and FLETC teach trainees to present suspects directly with the evidence linking them to the crime. The literature generally shies away from such an approach. Although Reid's Step 1 involves direct, confrontational accusation, it does not appear to advocate the exhaustive presentation of evidence taught by the FBI and FLETC. However, law enforcement personnel repeatedly observed that unless the authorities present the evidence in a comprehensive way, more sophisticated suspects will have no reason to confess. In an argument that appears a logical extension of Reid, they noted that theme presentation is useless unless the suspects truly believe that they will be prosecuted and convicted. The Boston Police Department's experience with gang members seems to be similar, especially because detectives note the lack of guilt or remorse among suspects. At the same time, the literature does suggest that with this type of more rational (as opposed to emotional) suspect, a straightforward presentation is appropriate. However, as opposed to the qualified application of this technique advocated in the literature, FBI and FLETC training prescribes the presentation of evidence to all suspects, regardless of their personality traits.

The reliance on presentation of evidence by law enforcement personnel points to an underlying factor in Reid and its variations that no one — either in the literature or among those conducting interrogations — seems to discuss directly: fear. Although the literature, the training, and the discussions with law enforcement personnel heavily emphasize rapport-building as the main tool for interrogators, it appears that without some underlying fear interrogations will rarely succeed. It seems that, in practice, law enforcement personnel rely on fear of prosecution and conviction as the major motivator for a confession. Perhaps this is not mentioned explicitly because it is such a basic assumption, but it is worth noting that rapport-building alone, at least in the opinion of many interrogation trainers, does not seem to convince suspects to confess unless they have some underlying fear of the consequences of refusal to cooperate.

Because of its importance both in the literature and in practice, rapport-building should be carefully examined for what it is and what it is not. Inexperienced trainees, and those who only read the classic texts, seem to understand rapport-building as an attempt to establish what almost constitutes a friendship between interrogator and suspect. This view encourages chit-chat and small talk in essence to build a relationship based on good will. The rapport-building encouraged by experienced practitioners is more often based on respect for the interrogator and on professionalism. Hence the Boston homicide investigators dress in suits and shake hands with the suspects, and FBI instructors state that they try to be one of the few decent people with whom the suspect has interacted in his lifetime. In practice, attempts to build rapport based on friendship and good will are often perceived as forced and false, and, thus, it is more useful simply to treat the suspect as an equal human being. Some texts note that many suspects will be immediately

suspicious of an overly friendly investigator, but will be pleasantly surprised by the respectful, professional interrogator who does not shout at or insult them.

Another important point of tension between literature and practice lies in the concept of the purported goal of an interrogation. While the practical literature counsels against entering an interrogation with the sole purpose of obtaining a confession — advice that is echoed by instructors during training — most of the psychological studies related to interrogations focus on confession rates and confession-inducing factors. The individual interrogation techniques and training programs implicitly reinforce this focus by urging prolonged interrogations and psychological ploys meant to undo deception and obtain a confession. Although the literature occasionally refers to incriminating statements, and law enforcement officers often referred to the value of obtaining a detailed lie through an interrogation, most attention focuses on obtaining a detailed confession from a suspect to bolster the chances of a future conviction.

Currently, those law enforcement agencies and departments that teach interrogation techniques train their officers and agents in tactics that have not been proven successful through any empirical studies. Neither the FBI nor FLETC has ever studied the efficacy of its techniques in garnering confessions or incriminating statements. Generally the agencies use variations of the Reid Technique, or subcontract the training to the Reid School or its spin-off, Wicklander-Zulawski. Although the Reid School claims an 80% confession rate for those who use its techniques, no independent, empirical study has confirmed those numbers. Given the dearth of empirical evidence to support the agencies' training and techniques, it seems that reliance on them is based mostly on the reputation of the Reid approach and on anecdotal evidence of its utility. Another explanation might be the institutional inertia characteristic of most large government agencies such as the FBI and other federal law enforcement agencies.

As noted, one reason why only anecdotal information exists on the efficacy of the Reid Technique and its variations is because very little, if any, review of actual interrogations is conducted in the field in the United States. As discussed in Section 11, unlike in Britain, most U.S. interrogations are still not videotaped. Even in the minority of jurisdictions that now mandate electronic recording, most law enforcement agencies use audiotapes instead of videos. Moreover, we found no evidence that superiors systematically observe interrogations conducted by officers and agents; instead, it appears that those personnel who initially receive training in interrogation are then sent into the field with little direction or supervision, and learn the majority of their skills on the job and, if they are lucky, from more experienced officers or agents. Even the most formalized programs, like those at the FBI and FLETC, do not follow up with their students to determine the utility of the techniques taught or whether those techniques are actually being used in the field. There has not even been a comprehensive attempt to gather evidence through surveys of, or self-reports by, the interrogators and/or suspects.

At the same time, it appears that those agencies and departments that use Reid or its variations, such as the FBI and FLETC, are a step ahead of most

law enforcement around the country, like the Boston Police Department, which does not train its officers and agents in interrogation techniques at all. Local law enforcement departments do not offer the training in the police academies because most officers will never conduct interrogations, and those who then become detectives or other investigators are almost never required to receive additional training in this area. Reid and other outside courses are sometimes offered as options to those who want them, requiring the officers or agents to take the initiative to pursue such training. Some individuals, such as Lieutenant Pierce, take advantage of the opportunities. However, although we hypothesize (and anecdotal evidence suggests) that the majority of investigators do not participate in such voluntary training, there has been no empirical study to determine the actual percentage of senior officers who are trained in interrogation techniques through such voluntary programs. Such training may be somewhat superfluous, however, as many senior law enforcement personnel develop and use many of the techniques used in Reid and its variations on their own. Deputy Superintendent Coleman argues that Reid does not offer anything that people with brains, people skills, and some experience could not figure out on their own. He and others note that senior investigators may not be able to identify the various steps of the interrogation but generally use the same approaches: thorough pre-interrogation investigation, rapport-building, and some sort of theme presentation. However, everyone seems to know an investigator who uses ineffective techniques (e.g., trying to overwhelm the suspect with the evidence), which suggests that, though intuitive to some, these tactics do not necessarily flow from pure logic.

In sum, the few law enforcement agencies consulted for this project that provide any training on interrogation at all do so through very general programs. Like the practical literature upon which they are based, the training programs fail to account for, or recommend adjustments in response to, the various confession-inducing factors identified by available empirical research. The training takes a “one-size-fits-all” approach and fails to instruct interrogators on how, or whether, to adapt the techniques to differences in age, ethnicity, or culture of the suspect, seriousness of the offense, or strength of the available evidence. Aside from the dearth of nuance, there is no available evidence to evaluate whether the techniques upon which training is based actually yield favorable results in practice. None of the agencies we contacted had any idea of whether the training they offered was in fact implemented by agents and, if it was, whether it worked.

## **PART III: RECOMMENDATIONS AND IMPLICATIONS FOR TERRORISM**

### **Section 13. Recommendations for Future Research**

Further theoretical and empirical independent study is needed in the following areas:

1. Whether the Reid Technique and its variations currently being taught to law enforcement personnel are effective;
  - Consider the confession rate and accuracy of information obtained through those techniques.
2. Whether law enforcement agents actually apply the interrogation training they receive;
3. Whether particularly effective techniques and systems for elicitation of truthful information and confessions exist in other countries;
  - Compare U.S. interrogation data with data on interrogation techniques and results in Britain, Japan, Israel, and Australia.
4. Whether the effectiveness and applicability of interrogation techniques employed by U.S. law enforcement agencies, and the theories underlying them, remain constant across cultures; and
5. Whether it would be feasible and effective to resort to a dedicated cadre of specially trained interrogators as opposed, or in addition, to training all criminal investigators on interrogation.

Such studies will be extremely difficult until U.S. law enforcement organizations begin to videotape all of the interrogations they conduct. Clearly the availability of videotapes would allow for feedback and constructive criticism by superiors, thereby breaking bad habits before they take root. Similarly, videotaping would encourage supervisors at various agencies and departments to begin more regular observations of the interrogations conducted by their personnel so as to offer feedback on their performance.<sup>634</sup>

## **Section 14. Implications for Investigation and Prevention of Terrorism**

Interrogation will likely play a seminal role in the prevention and investigation of terrorist threats and incidents. It would therefore be useful to evaluate whether organizations dealing with terrorism can learn anything from current interrogation practices used by law enforcement agencies. In this context, this section raises questions and issues to be pondered and evaluated by more experienced and qualified individuals.

At the outset we note that, despite claiming the contrary, the available literature on interrogations and the related training provided by law enforcement agencies are generally geared toward obtaining a confession. In contrast to ordinary law enforcement investigations, which are predominantly reactive and preeminently concerned with obtaining a conviction, a preventive terrorism investigation has the sole objective of preventing an attack, and is thus a hybrid of intelligence collection and interrogation. Although the literature occasionally refers to incriminating statements, and law enforcement officers often refer to the value of obtaining a detailed lie through an interrogation, it is unclear how

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<sup>634</sup> Additional study on the effects of videotaping on the interrogations being taped would also be useful.

well, or whether, these aims would translate into a preventive investigation. For example, in comparison to a law enforcement officer, an interrogator working on a preventive investigation would most likely have less information against which to evaluate a given lie, or even to judge whether a suspect is lying at all during the interrogation. Consequently, this potential difference in goals must underlie any assessment of the value of law enforcement interrogation practices in preventing terrorism. Similarly, all current law enforcement techniques operate under the assumption that confessions obtained must meet certain legal and evidentiary requirements. Some adjustment might be needed in purely preventive situations or when legal requirements are inapplicable.

It is difficult to arrive at any fixed conclusions about the applicability of law enforcement interrogation techniques to the terrorism context because we do not know whether they in fact are effective. As mentioned in Section 13, much research is needed into the actual effectiveness of law enforcement interrogation techniques, since individual agencies keep no statistics on confessions or any data on other measures of interrogation success. Even if the techniques prove effective, we would still have to evaluate whether they would be equally effective in the terrorism context in particular. Although law enforcement agents with experience in both regular law enforcement and terrorism investigations have noted that current techniques work well in both contexts, they also recognize that their effectiveness largely depends on having vast amounts of time to devote to the investigation and interrogation. Thus, current law enforcement interrogation techniques have little applicability to a ticking-bomb, or otherwise time-constrained, investigation scenario. Additionally, other aspects endemic to the terrorism phenomenon must be taken into account when evaluating the relevance of law enforcement interrogation techniques to that arena. For example, current interrogation techniques and training programs make no mention of, or consider adjustments for, the possibility that suspects have been trained in counter-interrogation techniques. Such training is common practice for terrorist organizations and must be taken into account when fashioning interrogation techniques to be used with terrorism suspects.

Another feature that might make both the literature and law enforcement techniques difficult to adopt in the terrorism prevention context is the conspicuous omission of any cultural adaptation. All psychological literature and interrogation techniques seem either to ignore the potential impact of culture on the outcome of an interrogation or to assume that it does not matter. Because the current terrorist threat is so intricately tied to culture and religion, failing to study the impact of those factors on the efficacy of interrogation techniques seems like a glaring oversight. Additionally, cultural awareness and adaptation would appear to be central elements of the rapport-building upon which the current techniques rely so heavily. Though by no means an exhaustive list, areas for possible study include whether culture in fact is a statistically significant predictor of the outcome of interrogations, and, if so, whether shame-based approaches to interrogation work better among certain cultures than fear- or guilt-based approaches. To this end, it may be worth bringing together interrogation experts from around the world

to discuss and exchange techniques, thereby giving everyone more appropriate interrogation tools.

Finally, a note on interrogator training and qualifications. Although the literature and training agencies agree that not everyone can be an effective interrogator, the prevailing approach in practice is to train everyone, as opposed to having a dedicated cadre of interrogators. Given the heterogeneous nature of the group of people who become law enforcement agents, the few agencies that offer any training do so at a basic and general level, catering to the lowest common denominator. A different approach — employing a group of highly educated and specially trained interrogators in a counterterrorism squad and entrusting them with terrorism-related interrogations — would not be unprecedented in U.S. law enforcement. Many police departments and federal law enforcement agencies have highly trained and dedicated personnel whose sole, or primary, responsibility is to act as hostage negotiators during a hostage crisis. Given the psychological and behavioral complexity of interrogations in general, and the sensitivity of terrorism-related interrogations in particular, we think it prudent to evaluate the possibility of adopting such a model and insist on better trained and dedicated interrogators.

