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The Seismic Injustices Faced by Juveniles in the Criminal Justice System: The Impact of the Failed Reid Technique

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## Abstract

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## Introduction

Policing techniques have been at the forefront of political and social discourse for as long as people have been brave enough to speak out against injustice. The current political climate in the United States highlights that this country remains plagued by social issues brought on by a systemic abuse of power. But where does this power come from and how does it affect the American people? While overt displays of violence and injustice are easier to recognize and therefore more frequently covered in news forums, covert policing tactics often go undiscussed. As a result, the importance of other methods of policing is far from obvious. One of these policing techniques is a form of interrogation known as the “Reid Technique” (commonly known as the “Technique”). The “Technique” revolutionized how police officers interviewed and interrogated criminal suspects. However, while some aspects of criminal investigations were modernized and improved, many people were subjected to egregious violations of their fundamental human rights due to the accusatory nature of the interrogations. Designed by John E. Reid, a former policeman turned polygraph expert in the 1950’s, the “Reid Technique” became the standard interrogation method taught in police academies across the United States by the 1970’s. The technique was initially lauded for its ability to elicit information from even the most uncooperative suspects, but critics have noticed that the technique also elicits an offensively high number of false confessions. Juveniles and young adults appear to be the age groups most at risk for being taken advantage of, but why? Is the Technique ill-designed and broken, or are the officers engaging with it the ones at fault? As international countries have begun to distance themselves from this technique, the United States has firmly maintained its use. Through the use of case studies, this paper will provide a foundational understanding of confessions and their admissibility standards, examine the nature of

the Reid Technique and alternative methods of interrogation, and conclude with a discussion of the long-term effects of these poignant miscarriages of justice.

### Interrogations and Confessions

Police interrogations serve two essential functions: to gather information from possible witnesses and to elicit a confession from a suspect believed to be guilty of a crime. When tangible evidence fails to provide a clear link between a perpetrator and a crime, confessions can assist the triers of fact in bringing about justice. But what constitutes a confession and what criteria must be met for the statement to be admissible at trial? Subsection (e) of U.S. Code, *18 U.S. Code § 3501 (2012)*, defines a confession as “any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing”. No specifications are given as to whether this confession must be stated as “I committed the crime” or as a series of statements that, when carefully strung together, could be presented as self-incriminating to a jury. Already, this poses a threat to the integrity of the criminal justice system. Interrogations, such as those guided by the principles of the “Technique”, can be misdirected so that loaded questions confuse innocent suspects into giving what appears to be self-incriminating statements. Subsections (a) and (b) of the Code address the admissibility of a confession in a criminal prosecution. In order to be considered admissible, the trial judge must determine that the statements were given voluntarily, which can be done by “taking into consideration all the circumstances surrounding the giving of the confession” (*18 U.S. Code § 3501 (2012), Subsection (b)*). These circumstances can include the length of time from arrest to arraignment and when within that time period the confession was given, whether or not the person in custody was reminded of their Miranda Rights, and if they were adequately informed of the crimes they were being charged with. Though any of these factors

are recommended to be taken into consideration by a judge, they are not binding factors in determining a confession was given voluntarily.

### *Miranda Rights*

One of the most important considerations is whether a suspect received their Miranda Rights. A combination of the provisions of the Fifth and Sixth Amendments, the Miranda rights refer to a person's right to remain silent, have an attorney present during questioning, have an attorney appointed if they cannot afford it and cease questioning at any point. Choosing to waive these rights is The concept of Miranda Rights emerged because of *Miranda v. Arizona*, 384 U.S. 436 (1966), in which a rape and murder conviction was overturned on the basis that the defendant was not adequately informed of their rights to remain silent nor provided with an attorney when one was requested. The Supreme Court held in this case found that suspects must be informed of these rights prior to the start of police questioning for any statements made to be admissible at trial. Over time, this warning has become one of the most well recognized statements in popular media, but only in part. On television, police will only have the chance to recite a person's right to remain silent and have an attorney present while before the camera pans away. The overlooked and frequently misunderstood part of the warning is that a person has the right to cease answering questions at any point. Though television is a dramatized representation of criminal proceedings, this brings attention to where the emphasis is placed on citizen's fundamental protections in a criminal setting. Generally, once questioning has begun, few know or understand what it means to stop answering questions. Knowing this, a number of tactics in the Reid Technique are designed to take advantage of this ignorance and keep a suspect talking even when they might be aware that it is in their best interest to stop answering questions, conflicting with a core American ideal of "innocent until proven guilty".

### *The Presumption of Innocence*

The presumption of innocence has long been a foundational component of the United States Justice System. This protection is secured in the writing of the Fifth Amendment, but in practice, it seems that a suspect is too frequently presumed guilty before a trial is even scheduled, as in the case of Darrel Parker. Police officers are often the first line of defense for the citizens of their jurisdiction who have suffered a criminal injustice perpetrated by another citizen, taking a pledge to safeguard the people and property of a city or country. They spearhead investigations and engage in most of the pre-trial fact-finding before a case reaches the District Attorney's office. Inundated with political and social pressures, sometimes finding the right perpetrator of a crime comes secondary to closing a case. When this occurs, police officers may sometimes cut corners or abuse their authority, to the detriment of the people they are supposed to serve and protect. A variety of tactics have been developed to assist police officers with conducting proper investigations and interrogations, but each is accompanied with a varying level of success and failure.

Despite the fact that confessions are one of the least concrete forms of evidence, they are frequently the most convincing evidence that can be presented to a jury. People have a fundamental interest in self-preservation, and generally will not confess to a crime they did not commit for no reason. This is what makes confessions such a persuasive piece of evidence, especially when they are presented on tape or video. Many people struggle to understand how false confessions can even occur at such a high rate.

### The History and Nature of the Reid Technique

On the surface, the methodology developed by Reid appears to be a good course of action. Prior to its adoption, "third degree" interrogation methods were the standard in police academies. Often referred to as a euphemistic analogy to the kind of torture war prisoners endured, these

methods involved physically and mentally abusing suspects until they gave into defeat. Suspects would be starved, beaten, and forced to stay awake for days without rest, all in the name of receiving a confession. Being unable to endure the extended suffering, suspects would break and tell police whatever they wanted to hear. In the 1930's, the Supreme Court effectively banned these techniques as part of their ruling in *Brown v. Mississippi*, 297 U.S. 278 (1936). In this case, defendants Ed Brown, Henry Shields, and Yank Ellington, were convicted of the murder of a man named Raymond Stewart and appealed this decision to the US Supreme Court. In the original trial, their confessions, brought about by the use of "third degree" tactics, were the only forms of evidence produced to support the conviction. Each of the defendants had been hung from tree branches by police officers until they agree to confess to the murder. The Supreme Court concluded that the use of a confession obtained by the physical torture endured by the three defendants as a basis for conviction constituted a denial of due process, and overturned the conviction, outlawing "third-degree" interrogation methods in the process.

Physical confrontation was not a cornerstone of the Reid Technique, but the underlying accusatory nature of the interrogation method remains similar. The steps of the Technique are detailed on the John E. Reid & Associates official website and can be summarized as follows. The "Technique" was designed to be a joint investigation and interrogation process, which is why the first two stages are named the factual analysis and the behavioral analysis interviews, respectively. The third stage consists of the interrogation of the suspect, which can further be broken down into nine key phases. A key distinction the creators of the "Technique" make is differences in an interview and an interrogation. These terms cannot be used interchangeably. Interviews are used as a non-accusatory questioning method, generally to serve the factual analysis and behavioral analysis stages. A key characteristic of an interview is a fluid dialogue between the interviewer

and interviewee with the goal of collecting information and evaluating the interviewee's general truthfulness and behavior. On the other hand, interrogations are an accusatory process that are designed to bombard a suspect with an affirmative monologue of their guilt.

*Stage One: The Factual Analysis*

During the factual analysis stage, the viability of suspects is evaluated by considering evidence found at the scene and information discovered about the individual suspect in order to rank them by their likelihood of being the perpetrator. Generally, no contact is made with an interviewee at this stage, because it is meant to serve as an entry into the investigation. This was a new technique, in which each suspect is individually considered before a criminal profile is developed. Analyzing suspects in this way requires investigators to use context clues to determine if a suspect is probably innocent or guilty of the crime that was committed. By using this method, police are able to more accurately narrow the subject pool by looking at who had the most access, ability, means and motivation to commit a crime, versus simply trying to determine a general criminal profile, which is still a common procedure. As such, a more refined list of people is considered for the behavioral analysis interview. The more outdated and less precise method of creating a subject pool is through criminal profiling. Criminal profiling is a method used by the police to build a virtual profile of the kind of person that would be likely to commit a given crime, based on estimated statistics and known personality traits of criminals.

*Stage Two: The Behavioral Analysis Interview*

At the behavioral analysis interview stage, interviews are conducted with witnesses, victims and potential suspects. Reid recommended that these interviews be kept short and structured around behavior-provoking questions to maximize the interviewer's ability to glean truth and deceptive behaviors from the person being questioned. Coupled with the factual analysis.

Coupled with the factual analysis, the behavioral analysis interview provides insight into who is probably innocent and who is probably telling the truth. When it comes to eliminating suspects, officers are much more comfortable eliminating a suspect they determine to be probably innocent and probably telling the truth versus a person who is probably innocent but deceptive in the interview portion. The second person would likely continue in the process of the “Technique” while the first person may be released from custody. Not only does this stage assist officers in compiling a suspect list, it assists them in prioritizing certain interrogations over other interrogations.

### *Stage Three: Interrogation*

Interrogation is the third, final and longest stage of the “Technique”, as well as the section most critics have issues with. Complete with nine steps, the official website for John E. Reid & Associates gives the direction that an interrogation “should only occur when the investigator is reasonably certain of the suspect's involvement in the issue under investigation.” However, in practice, anyone can be detained upon “reasonable suspicion”, which opens the door for innocent people to be interrogated and produce false confessions out of ignorance, confusion or defeat. The first step of interrogating a suspect is positive confrontation, where an officer proclaims to the suspect that they possess evidence of guilt that leaves no room for doubting that the suspect committed the crime. Reid makes it clear that whether the suspect's negative responses to the accusations appear truthful or deceptive, “the investigator should not allow the response to deter him”. This step begins the snowball effect of false confessions. In the second step, officers are advised to develop moral themes, which would provide the suspect with an opportunity to morally justify the crimes and believe that the officer is understanding of their predicament. This might look like the officers trying to make the crime scene’s fact pattern look like it was an accidental

rather than intentional, so that a suspect feels more comfortable accepting the blame. Third, officers are taught how to handle denials of guilt. This would include refusing to accept all denials of guilt or the provision of possible alibis. In the beginning stages of an interrogation, suspects are often highly vocal about their innocence. Officers are instructed to not enable any statements of innocence, responding only with “proof” of the suspect's guilt.

The fourth step, overcoming objections, is when officers might attempt to use statements such as “But I would never do that, I love my job!” as a way to develop the theme they are building with suspicion. Once the theme starts to take hold in the suspect, which should be noted by physical cues given by the suspect, it is recommended that the police officer moves to step five. During this step, officers must retain a suspect’s attention on the theme being built rather than the punishment they may face for confessing. Sixth, officers need to find a way to handle a suspect's passive mood. These interrogations are often no less than six hours long, during which time a suspect will often become tired and lose focus, which could threaten the theme that an officer has built.

In the seventh stage, presenting alternative questions, officers provide the suspect with two options for how the crime came to fruition. This could look like “Did you plan this out or was it a spur of the moment decision?” Though it is unstated, there is a clear third option: maintain one’s innocence. When feeling tired, confused and berated, suspects are expected to overlook this option. At this point, suspects often internalize the guilt and tend to genuinely believe that they committed the crime despite subconsciously knowing they are innocent. This kind of gaslighting technique is a common experience for those who have decided to give false confessions. This kind of question is designed to trap a suspect into saying they had a hand in the crime, whether it was premeditated or not, and can escalate into other self-incriminating questions. Eighth, officers are advised to have the suspect orally relate various details of the offense. Alternative questions are also used here to

trap suspects and guide them into reciting details of the crime scene that was fed to them earlier in the interrogation. Questions regarding the weapon that was used, irrelevant details about the crime scene, or what the suspect did after the crime would all be asked here to compose an oral confession. Finally, in step nine, Reid taught that officers must convert an oral confession into a written and signed statement of guilt. In this written confession, Reid said that it was important for the Miranda rights to be repeated and clearly waived, like the suspect had done at the beginning of the session. While oral statements of guilt are admissible in court, written statements can be guided to say exactly what the jury will need to hear for a conviction while reinforcing the idea that the statement was given willingly.

In total, the interrogation is recommended to last as long as necessary to produce a confession. Tactics such as lying about how much evidence the police truly have, preventing the suspect from speaking and objecting and extensive monologues and question all serve the sole purpose of the “Technique”: attaining a written confession. Table one compiles statistics gathered by Steven A. Drizin and Richard A. Leo in their 2004 paper “The Problem of False Confessions in the Post-DNA World” regarding proven false confessions elicited by the “Technique”. Seventy-three percent of the false confessions that were sampled for their study were given after suspects had endured between six to twenty-four hours of continuous questioning. John E. Reid & Associates, the creators of this method, have released numerous statements declaring that the “Technique” is not broken and instead it is the police officers who are to blame for failing to engage with it properly. But how can it be said that people’s fundamental rights were protected following an interrogation in which basic needs, such as sleep, rest, and honest conversation are not being met? The “Technique” encourages deception, gaslighting, interruption as key components. Constituents are expected to be truthful to the police, but police are not expected to

return that same standard during an investigation. Far too often, the police deception builds the foundations of a false confession.

<u>Length</u>	<u># People</u>	<u>%</u>
Less than 6 hours	7	16%
6 to 12 hours	15	34%
12 to 24 hours	17	39%
24 to 48 hours	3	7%
48 to 72 hours	1	2%
72 to 96 hours	1	2%

*Table One: Length of Interrogations in Proven False Confession Cases (Drizin & Leo, 2004)*

### Juveniles in the Criminal Justice System

#### *Youth as a Risk Factor*

Juveniles are one of the most vulnerable groups in society, and should therefore be one of the most protected, right? Due to their unavoidable innocence and often lack of interaction with the police, juveniles are the most at-risk group for producing a false confession by way of the

“Technique”. Feld, in his 2006 paper titled “Juveniles’ competence to exercise Miranda rights: An empirical study of policy and practice” emphasizes the how juveniles lack of knowledge or experience prevents them from truly understanding what it means to waive their Miranda Rights (Feld 47). Because they don’t understand the rights they are relinquishing and because of the truth they hold for police authority, they are one of the most easily taken advantage of groups in the criminal justice system. As can be seen in table two below, sixty-four percent of the false confessions sampled by Drizin and Leo in 2004 were given by juveniles aged twenty-four and below. At this age, most juveniles have never had a negative encounter with the police. Children are taught to call 911 when they are in danger and that the police will be there to protect them. This created a sense of blind trust and security in the police. Though these are not isolated examples, Darrel Parker and the teens of the Central Park Five case all serve as important illustrations of police taking advantage of the innocence of children in order to produce a confession.

<u>Age Range</u>	<u># People</u>	<u>%</u>
Under 10	2	2%
10-13	5	4%
14-15	15	13%
16-17	18	16%

18-24	31	27%
25-39	34	30%
40-54	7	6%
Over 55	1	1%

*Table 1: Age of Individuals who Falsely Confess (Drizin & Leo, 2004)*

*Darrel Parker*

To initiate the discussion of case studies, it is crucial to begin with Darrel Parker’s story, which was the first case used to initially support the “Technique”. On a winter afternoon in 1955, twenty-four years old Parker arrived at his Nebraska home to find his wife assaulted and strangled (National Registry of Exonerations). He was interrogated by John E. Reid, the creator of this failed “Technique”. After a 12-hour interrogation, Reid concluded that Parker had confessed to murdering his wife, despite Parker’s overt rejections. Parker immediately recanted all statements he had made, but he had already waived his rights. The evidence presented against Parker at trial was almost solely the confession with very little tangible evidence to corroborate the statement.

To most legal professionals, this clearly would not have satisfied the criteria to convict someone of guilt “beyond a reasonable doubt”. This burden of proof requires that an overwhelming amount of evidence leads the jury to arrive at one and only one logical conclusion. Despite numerous tangible pieces of evidence that suggested his innocence, a jury found him guilty in 1956. At only twenty-four years old, Parker was serving a life-sentence for a false murder

conviction. Thirty-five years passed before Parker was exonerated, when the confession of the true killer was released upon the killer's death. Another twenty-three passed before Parker was officially compensated by the state. The problem here is clear. The criminal justice system is inundated with cases and social and political pressures, so miscarriages of justice often aren't caught for decades. Despite this systemic failure, John Reid immediately used the "success" of this confession and conviction to establish his reputation and commercially market his interrogation method. Police went on to use this technique on countless other suspects, such as the infamous Central Park Five and the young Michael Crowe.

### *The Central Park Five*

During the Spring of 1989, a group of approximately thirty teenagers were spending time in Central Park in New York City. At the same time, Trisha Meili was out for what a jog that would quickly become the worst experience of her life. Not long after the police were called on the teenagers in the park, Trisha was found beaten and raped inside the park. Kevin Richardson, 14, Raymond Santana, 14, Antron McCray, 15, Yusef Salaam, 15, and 16-year-old Korey Wise became immediate suspects, but none of them committed the crime. They were immediately arrested and taken for questioning. Each boy was detained, without their parents and without legal counsel, for no less than seven hours while they were berated with leading questions about the crime that had been committed, despite the fact that none of the boy's DNA matched the semen that was found at the scene. Recently, the interrogation tapes were release for public viewing and it is clear to see that each boy who admitted to the crime was relentlessly deceived, coerced and intimidated by the police by way of the Reid Technique. Each boy was convicted on numerous counts of rape, robbery, and attempted murder. An immediate outcry by the public lead to their case being brought up on appeal, but even this happened after numerous years of their sentences

had already been served. The true perpetrator confessed years down the line, but as the statute of limitations had passed, he has never formally convicted of the crime. Their story is not isolated but serves as one of the most infamous failures of the Reid Technique to find the true criminal.

### The Stance of the International Community and Alternative Methods of Interrogation

Due to the problems associated with the Reid Technique, numerous countries have taken dramatic steps to move away from this method and reform their criminal justice systems. Some countries have publicly renounced essential elements or the use of the technique entirely, while others have developed new models of questioning that are far less combative and aggressive. Germany, Canada, and Britain have led the charge, though they are not alone. One of the countries that has firmly stood against the principles of the Reid Technique is Germany, who barred the use of deception and intimidation in criminal interrogations in §136a of the German *Strafprozessordnung* (StPO, "code of criminal procedure"), finding the use of deception to be a fundamental failure to serve their citizens with honor and integrity. In addition, concerns about the use of the Reid Technique in Canada were voiced in 2012 by Provincial Court Judge Mike Dinkel. In his opinion in *R. v. Chapple*, 2012 ABPC 229, he cites Provincial Court Judge Philip G.C. Ketchum's declaration that "stripped to its [bare] essentials, the Reid technique is... a guilt-presumptive, confrontational, psychologically manipulative procedure whose purpose is to extract a confession". Though police academies in Canada still use the "Technique", the courts have become increasingly aware that it is designed to take advantage of suspects.

### *PEACE Method*

One of the most well-known alternative questioning methods, The PEACE (Preparation and Planning, Engage and Explain, Account, Closure and Evaluate) method is the standard for police interrogations in England and has gained the attention of the international community. This method allows a suspect to convey their complete version of the story before any interruptions or inconsistencies of facts are pointed out. As a result, this method is far less confrontational and susceptible to being misapplied. In addition, England has banned the use of deception in criminal investigations just like Germany, which further enhances the ability of the method to find the right perpetrator without as much error.

### The Long-Term Effects of False Convictions and Improper Interrogation Methods

Issues of police brutality and abuses of power have always been a prominent issue in this country. Recent revivals of movements to fight against police brutality have been met with very controversial opinions by this country's most prominent leaders. The cries for reform are deafening from the American people, and it can start with a change in how suspects are addressed when they are in custody. When people fear the police, they often refuse to seek assistance even with they have suffered egregiously. This country was founded on a primary principle of assuming a person's innocence rather than assuming their guilt. While the blame cannot be entirely placed on this Technique, the design and training that police officers receive as a result this practice is a root cause of the false confessions that are seen today. Once children become part of the criminal justice system, it is often very hard for them to get out, and they are branded with their crimes for the rest of their life, affecting their job and housing opportunities. They also lose years of their life serving time for a crime they had no part in. In order to preserve the integrity of the American criminal justice system, it is imperative we protect our most vulnerable citizens and comprehensively change our approach.

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