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**Police “Science” in the Interrogation Room:
Seventy Years of Pseudo-Psychological
Interrogation Methods to Obtain Inadmissible
Confessions**

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Articles

Police “Science” in the Interrogation Room: Seventy Years of Pseudo-Psychological Interrogation Methods to Obtain Inadmissible Confessions

Brian R. Gallini*

Nearly all confessions obtained by interrogators nationwide are inadmissible, but nonetheless admitted. In the process, police arrest the wrong suspect and allow the guilty to go free. An unshakeable addiction to pseudo-scientific interrogation methods—initially created in the 1940s—is to blame. The so-called “Reid technique” of interrogation was initially a welcome and revolutionary change from the violent “third degree” method it replaced. But we no longer live in the 1940s and, not surprisingly, we no longer drive 1940s automobiles, practice early-twentieth-century medicine, or dial rotary phones. Why, then, are police still using 1940s methods of interrogation?

Moreover, the outdated Reid technique was premised on the very same principles that underlie the lie detector. At the time of its creation, then, the Reid technique was crafted from a “science” already discredited by nearly every court in the nation. From a policy standpoint, continued reliance on the Reid technique does a disservice to our justice system and unnecessarily risks obtaining inherently unreliable confessions. From an evidentiary standpoint, the methodology underlying the Reid technique fails every aspect of the Supreme Court’s standards governing the admission of expert evidence. This Article therefore contends that all confessions obtained pursuant to the Reid method are—and were—absolutely inadmissible.

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Introduction

Kill your woman and a good detective will come close to real tears as he touches your shoulder and tells you how he knows that you must have loved her, that it wouldn't be so hard for you to talk about if you didn't. Beat your child to death and a police detective will wrap his arm around you in the interrogation room, telling you about how he beats his own children all the time, how it wasn't your fault if the kid up and died on you. Shoot a friend over a poker hand and that same detective will lie about your dead buddy's condition, telling you that the victim is in stable condition at Hopkins and probably won't press charges, which wouldn't amount to more than assault with intent even if he does. Murder a man with an accomplice and the detective will walk your co-conspirator past the open door of your interrogation room, then say your bunky's going home tonight because he gave a statement making you the triggerman. And if that same detective thinks you can be bluffed, he might tell you that they've got your prints on the weapon, or that there are two eyewitnesses who have picked your photo from an array, or that the victim made a dying declaration in which he named you as his assailant.¹

How do detectives know these tricks? Intuition? Luck? On-the-job experience? Perhaps it is one or all of those reasons, but more than likely investigators learned these techniques from John E. Reid & Associates—

1. David Simon, *Homicide: A Year on the Killing Streets* 203 (1991).

teachers of "the leading interview and interrogation approach used today in both the law enforcement and business communities."² Premised on the use of nine specific steps, "the Reid technique," as it is known, is designed to identify the guilty without inducing false confessions.³ But how can the Reid technique *be sure* to distinguish true from false confessions? Moreover, what supporting data did John E. Reid and his colleague, Fred E. Inbau, have at the time they authored their interrogation manual that rendered them authorities on psychology in the interrogation room? The answers may surprise you: The Reid technique cannot distinguish between true and false confessions. Reid and Inbau had no supporting scientific or experimental data.

In other words, the so-called validity of the Reid technique is illusory; it is simply a medium to bolster interrogators' belief that they have an advantage over their suspect. And as to the backgrounds of Reid and Inbau, suffice it to say for now that they were no psychologists.

Created in a time when the "third degree" method of interrogation was waning in popularity,⁴ the Reid technique was initially a welcome and revolutionary change from the violent methods it replaced.⁵ Before the first iteration in 1942 of what became the Reid technique,⁶ officers interrogating suspects often got the suspect to "come clean" by resorting to barbaric tactics like using their bare fists, stripping the suspect naked, threatening the suspect, or depriving him of food and water.⁷

A classic example of the "third degree" appears in the Supreme Court's decision in *Chambers v. Florida*, which described the May 13, 1933, robbing and murder of an elderly white man in Pompano, Florida.⁸ Concerned about an increasingly "enraged community,"⁹ Broward County police rounded up and

2. John E. Reid & Associates, Inc., Company Information, http://www.reid.com/r_about.html (last visited Jan. 12, 2010).

3. Fred E. Inbau et al., *Criminal Interrogation and Confessions* 212 (4th ed. 2001) ("It must be remembered that none of the steps is apt to make an innocent person confess . . .").

4. The National Commission on Law Observance in Law Enforcement issued a Report on Lawlessness in Law Enforcement to President Herbert Hoover in 1931 documenting and decrying the use of the third degree. See Nat'l Comm. on Law Observance & Enforcement, *Report on Lawlessness in Law Enforcement* (1931) [hereinafter "Wickersham Report," named for its chair]; see also Richard A. Leo, *The Third Degree and the Origins of Psychological Interrogation in the United States*, in 20 *Interrogations, Confessions, and Entrapment* 37, 42 (G. Daniel Lassiter ed., 2004) ("The 'third degree' is an overarching term that refers to a variety of coercive interrogation strategies, ranging from psychological duress such as prolonged confinement to extreme physical violence and torture.").

5. Robert McG. Thomas Jr., *Fred Inbau, 89, Criminologist Who Perfected Interrogation*, N.Y. Times, May 28, 1998, at B9 (crediting Inbau for developing a method of interrogation to replace the "third degree"); see Jerome H. Skolnick & James J. Fyfe, *Above the Law: Police and the Excessive Use of Force* 51 (1993) (calling Inbau and Reid leaders of the reformist movement away from third degree practices); see also John F. Keenan, *Memories of Professor Fred E. Inbau*, 89 J. Crim. L. & Criminology 1281, 1281 (1999) ("Inbau was a giant in the field of criminal law who left a legacy that will be remembered well into the next millennium.").

6. Fred E. Inbau, *Lie Detection and Criminal Interrogation* 71-118 (1942) (outlining a series of techniques for criminal interrogations).

7. See, e.g., Wickersham Report, *supra* note 4, at 61-63.

8. 309 U.S. 227, 229 (1940).

9. *Id.* (quoting *Chambers v. State*, 187 So. 156, 157 (Fla. 1939)).

arrested between twenty-five to forty African Americans within twenty-four hours after the killing.¹⁰ The investigation gradually began to focus on the four petitioners who, along with the other arrestees, endured a weeklong interrogation.¹¹ During that time, officers repeatedly questioned petitioners, oftentimes in the presence of between four to ten white guards.¹² As the investigation wore on, officers elected to question petitioners during an “all night vigil.”¹³ At no point during their week-long interrogation were petitioners allowed to confer with counsel or chat with a friend.¹⁴ Instead, the evidence suggested that petitioners were denied food and sleep, continuously threatened, and mistreated until they finally agreed to confess.¹⁵ The Court, in condemning the officers’ methods as an unconstitutional violation of petitioners’ Fourteenth Amendment Due Process rights, scornfully emphasized that “no such practice as that disclosed by this record shall send any accused to his death.”¹⁶

The facts of *Chambers* nicely illustrate the brutal reality of interrogations in the early 1900s.¹⁷ The Reid method therefore filled a gaping hole in interrogation methods, or, perhaps more accurately, the *absence* of interrogation methods.¹⁸ In 1942, Northwestern University law professor Fred Inbau laid the foundation for what ironically became the Reid method in his publication titled *Lie Detection and Criminal Interrogation*.¹⁹ After John Reid began a working relationship with Inbau, the pair revised Inbau’s earlier work and published *Criminal Interrogation and Confessions* in 1962.²⁰ Now in its fourth edition,²¹ the jointly authored publication now often known simply as “the Manual” is widely viewed as the predominant interrogation training tool in the country.²²

10. *Id.*

11. *Id.* at 230.

12. *Id.* at 231.

13. *Id.* at 230. The interrogation sessions were so long that the supervising sheriff was unable to interrogate the arrestees at night because he was too tired. *Id.*

14. *Id.* at 231.

15. *Id.* at 233–35.

16. *Id.* at 241.

17. Indeed, the *Wickersham Report* documents 106 usages of the third degree from thirty-one separate state jurisdictions and four federal circuits. See *Wickersham Report*, *supra* note 4, at 53. Yet the *Report* cautioned that such numbers were hardly accurate given that learning about usages of the third degree was the exception rather than the rule. *Id.* at 53–54.

18. To be fair, W.R. Kidd published the first police interrogation training manual in American history in 1940. See Leo, *supra* note 4, at 39–40.

19. Inbau, *supra* note 6, at 71–118.

20. See Fred E. Inbau & John E. Reid, *Criminal Interrogation and Confessions* (1962).

21. Inbau et al., *supra* note 3.

22. See, e.g., Carol Tavis & Elliot Aronson, *Mistakes Were Made (But Not by Me): Why We Justify Foolish Beliefs, Bad Decisions, and Hurtful Acts* 141 (2007) (characterizing the Reid and Inbau text as “[t]he Bible of interrogation methods”); Welsh S. White, *MIRANDA’S Waning Protections* 25 (2001) (“Of all the interrogation manuals, the *Inbau Manual*, as it is commonly known, has been the most influential.”); Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 *Fordham Urb. L.J.* 791, 808 (2006) (“The interrogation method most widely publicized and probably most widely used is known as the Reid Technique . . .”); Leo, *supra* note 4, at 63

The Manual, and the techniques it teaches, are hardly without detractors. For the most part, scholars focus on the potential for certain interrogation methods endorsed by the Manual to induce suspects to confess falsely.²³ Yet no article has examined, on a more basic level, whether Reid and Inbau possessed the requisite background necessary to credibly author the "Bible" of interrogation manuals. Surely the Reid method's long-proffered contention that it brings science into the interrogation room correspondingly suggests that it is *rooted* in science.²⁴ Hardly.²⁵ This Article tells the story of Reid and Inbau's

(noting that the *Criminal Interrogation and Confessions* text is "the most well-known and influential in the United States"); Max Minzner, *Detecting Lies Using Demeanor, Bias, and Context*, 29 *Cardozo L. Rev.* 2557, 2560 (2008) ("The most influential current training method for law enforcement is the Reid technique, outlined in Reid and Inbau's book *Criminal Interrogation and Confessions*."); Charles Weisselberg, *Mourning Miranda*, 96 *Cal. L. Rev.* 1519, 1532 (2008) ("The largest national provider of training in interrogation techniques is Chicago-based John E. Reid & Associates."); Marvin Zalman & Brad Smith, *The Attitudes of Police Executives Toward Miranda and Interrogation Policies*, 97 *J. Crim. L. & Criminology* 873, 919 (2007) ("[W]e believe [that the training provided by Reid & Associates] is the largest and best-known training program for police interrogations."); see also Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 *Stud. L. Pol. & Soc'y* 189, 190 (1997) (referring to the Inbau and Reid manual as "the most popular police training manual"); John E. Reid & Associates Company Information, *supra* note 2 ("Our book, *Criminal Interrogation and Confessions* (4th edition, 2001) is considered by the courts and practitioners to be the 'Bible' for interviewing and interrogation techniques.");

23. See Brandon L. Garrett, *The Substance of False Confessions*, 62 *Stan. L. Rev.* (forthcoming Apr. 2010); Mark A. Godsey, *Reliability Lost, False Confessions Discovered*, 10 *Chap. L. Rev.* 623, 628 (2007); see also Hugo Adam Bedau & Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 *Stan. L. Rev.* 21, 58 (1987) ("The cases in which we believe an innocent person was convicted on the basis of a false confession range from those in which the police used 'third degree' methods to others where less brutal tactics were employed.");

24. See *United States v. Lanza*, 356 F. Supp. 27, 31 (M.D. Fla. 1972) ("By 1966, [Reid] began advocating the acceptance of polygraph tests as reliable scientific evidence."); Fred E. Inbau (1909–1998) Papers, Series 17/28, at 1 (Nw. Univ. Archives, 1930–1998) (unpublished papers) [hereinafter Inbau Papers] ("[E]very step in the promotion of scientific crime detection is a step towards the abolition of cruel and ineffective methods of establishing criminal identity, and also a step towards the realization of criminal trial unhampered by technical procedure and unreliable evidence." (quoting Fred E. Inbau, *Science Versus the Criminal*, NU Alumni News, Jan. 1935, at 25)), available at http://www.library.northwestern.edu/archives/findingaids/fred_inbau.pdf; see also, e.g., Inbau & Reid, *supra* note 20, at vii ("*Criminal Interrogation and Confessions* is devoted to a discussion of the psychological tactics and techniques of effective interrogation . . ."); Brian C. Jayne & Joseph P. Buckley, III, *Criminal Interrogation Techniques on Trial*, *Security Mgmt.*, Oct. 1, 1992, at 64 (arguing that Reid interrogation techniques represent necessary "highly sophisticated psychological techniques"); Leo, *supra* note 4, at 63 (observing that even Inbau's first interrogation text in 1942 "attempted to establish a scientific basis for police interrogation in order to eradicate the use of threatening or abusive tactics from interrogation").

25. See, e.g., Gisli H. Gudjonsson, *The Psychology of Interrogations, Confessions, and Testimony* 48 (1992) (observing that the Reid technique, among other manuals, is "based on experience rather than objective and scientific data"); Saul M. Kassin & Christina T. Fong, "*I'm Innocent!*": *Effects of Training on Judgments of Truth and Deception in the Interrogation Room*, 23 *Law & Hum. Behav.* 499, 512 (1999) (conducting a study on the validity of the Reid technique and concluding that it "may not be effective—and, indeed, may be counterproductive—as a method of distinguishing truth and deception"); Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 *Denv. U. L. Rev.* 979, 986 n.38 (1997) ("Police trainers and interrogation manuals mislead detectives into believing that they can divine whether a suspect is innocent or guilty from simple non-verbal and behavioral responses to their questions.");

work, individually and collectively, and concludes that *all* of it is, at base, premised on nothing.

The story of Reid and Inbau's work also reveals that the so-called nine-step Reid technique (and the Behavior Analysis Interview that precedes it) is no different from the lie-detector technique—also created by Reid and Inbau. Given courts' proper unwillingness to admit the results of a lie-detector test,²⁶ this Article contends that future courts should be similarly unwilling to admit confessions obtained pursuant to the Reid technique. This Article further asserts that all *past* confessions obtained pursuant to the Reid technique were based on "junk science" and therefore never should have been admitted against the confessing defendant.

Part I details the nine steps of the outdated Reid technique.²⁷ Part II details the biographical and professional stories of Fred E. Inbau and John E. Reid. In doing so, Part II takes a critical look at the empirical basis for their research on interrogation methods and their development of the polygraph

26. Federal courts are disinclined to admit polygraph evidence. *See, e.g.*, *United States v. Gill*, 513 F.3d 836, 846 (8th Cir. 2008) ("Our cases make clear polygraph evidence is disfavored."); *United States v. Gardiner*, 463 F.3d 445, 469 n.8 (6th Cir. 2006) ("Admission of polygraph evidence is disfavored in this Circuit . . ."); *United States v. Prince-Oyibo*, 320 F.3d 494, 501 (4th Cir. 2003) (reaffirming inadmissibility of polygraph evidence); *United States v. Messina*, 131 F.3d 36, 42 (2d Cir. 1997) (declining to admit polygraph results in sentencing proceedings); *United States v. Kwong*, 69 F.3d 663, 668 (2d Cir. 1995) (holding polygraph evidence inadmissible pursuant to Federal Rule of Evidence 403 because of its potential to mislead and confuse the jury); *United States v. Sherlin*, 67 F.3d 1208, 1217 (6th Cir. 1995) (disallowing polygraph evidence on Rule 403 basis); *Conti v. Commissioner*, 39 F.3d 658, 662–63 (6th Cir. 1994) (same); *Palmer v. City of Monticello*, 31 F.3d 1499, 1506 (10th Cir. 1994) (holding polygraph evidence inadmissible pursuant to Federal Rule of Evidence 403 because of its potential to mislead and confuse the jury).

State courts are equally skeptical. *See, e.g.*, *Bloom v. People*, 185 P.3d 797, 807 (Colo. 2008) ("Th[e] per se ban is an evidentiary rule rooted in the concern that polygraph evidence will prejudice the jury's evaluation of a witness's credibility."); *Thornton v. State*, 620 S.E.2d 356, 360 (Ga. 2005) ("The results of a polygraph examination are inadmissible except by stipulation of the parties . . ."); *Wilkins v. State*, 190 P.3d 957, 970 (Kan. 2008) ("[R]eference to [a polygraph] examination . . . is prohibited."); *State v. Foret*, 628 So. 2d 1116, 1128 (La. 1993) (excluding polygraph testimony because it would infringe upon the province of the jury); *State v. Jones*, 753 N.W.2d 677, 690 (Minn. 2008) ("Polygraph examinations are inadmissible."); *State ex rel. Kemper v. Vincent*, 191 S.W.3d 45, 49 (Mo. 2006) ("The results of a polygraph examination generally are inadmissible in Missouri criminal trials."); *State v. Hameline*, 188 P.3d 1052, 1055 (Mont. 2008) ("[P]olygraph results are inadmissible . . ."); *State v. Lyon*, 744 P.2d 231, 232 (Or. 1987); *Darling v. State*, 262 S.W.3d 913, 920 (Tex. Ct. App. 2008) ("The results of a polygraph examination are generally inadmissible for any reason because such testing is inherently unreliable."); *Fowlkes v. Commonwealth*, 663 S.E.2d 98, 101–02 (Va. Ct. App. 2008) ("[A] polygraph examination has no proper evidentiary use . . ." (quoting *Bennett v. Commonwealth*, 511 S.E.2d 439, 445 (Va. Ct. App. 1999))).

27. The techniques currently suggested by the Reid method are nearly identical to those promoted by Fred E. Inbau in 1942. *Compare* Inbau et al., *supra* note 3, with Inbau & Reid, *supra* note 20, and Leo, *supra* note 4, at 72 ("[T]he modern version of Inbau et al., manual (1986, 2001) has reorganized the interrogation techniques it advocates from the earlier individualized, trial and error or scattershot approach to a 'Nine-step' model of systematic and unfolding pressure, persuasion, deception and manipulation."). Perhaps it is hardly a stretch to suggest that modern interrogators are, at base, relying on techniques created in the 1940s. Yet surely the law, the sophistication of criminals, and, more importantly, psychological research has developed since then. The Reid method's failure to adapt to these critical developments provides an early indication of its infirmity.

technique.²⁸ From that examination, Part II first concludes that the backgrounds of Inbau and Reid reflect their inability to credibly create or suggest a "scientific" approach to interrogation. Part II then concludes that the Reid technique lacks empirical support.

With those conclusions as background, Part III tests the Reid method's claimed basis in "science." Given that the Reid technique mirrors a polygraph test by attempting to create *human* lie detectors²⁹ and that polygraph results are inadmissible in court, Part III first argues that confessions obtained pursuant to the Reid technique should similarly be inadmissible. Wholly apart from the relationship between the polygraph and the Reid technique, however, Part III further contends that the Reid method's claimed scientific basis requires that it comport with the Supreme Court's standards for admitting expert evidence any time prosecutors seek to introduce a confession obtained by an interrogator trained in that method. Given that the Reid technique is in fact *not* based on any generally accepted scientific method, Part III contends that all officer testimony about confessions obtained pursuant to the Reid technique was—and is—inadmissible. Regardless of the underlying theory, though, the startling final conclusion is obvious: all confessions taken pursuant to the Reid method are in fact inadmissible.

I. The Reid Technique Explained

The prevalence of the nine-step Reid technique—as taught in seminars and described in the *Criminal Interrogation and Confessions* text—cannot be overstated.³⁰ Indeed, John E. Reid & Associates is the largest, best-known provider of interrogation training in the United States.³¹ Officers from every

28. The technique in its modern day form "collects physiological data from at least three systems in the human body." American Polygraph Association, Frequently Asked Questions, <http://www.polygraph.org/section/resources/frequently-asked-questions> (last visited Jan. 12, 2010). First, "[c]onvolved rubber tubes that are placed over the examinee's chest and abdominal area will record respiratory activity. [Then,] [t]wo small metal plates, attached to the fingers, will record sweat gland activity, and a blood pressure cuff, or similar device will record cardiovascular activity." *Id.*

29. Leo, *supra* note 4, at 66 ("The Behavioral Analysis Interview is premised on the same behavioral assumptions and underlying theory as the so-called lie-detector: The Behavioral Analysis Interview teaches interrogators that it is their job to act, in effect, as a human polygraph—an endeavor that may be fraught with even more potential for error than the lie detector itself.").

30. Although there are of course competing training manuals, they too generally follow principles that are aligned with the Reid method. See Christine S. Scott-Hawyard, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 *Law & Psychol. Rev.* 53, 66–67 (2007) (stating that eighty-five percent of all interrogation manuals recommend a two-step process to determine guilt or innocence, just as the Reid method instructs). Indeed, in a recent survey of police investigators from California, Texas, Maryland, Massachusetts, Florida, and Canada, investigators cited to the same room setup and interrogation techniques listed by the Reid method, regardless of whether the respondent knew the Reid name. See Saul M. Kassir et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 *Law & Hum. Behav.* 381, 389 (2007).

31. See *supra* note 22 and accompanying text. The Police Law Institute, a proprietary school, trains and provides instructional manuals to police in Illinois, Ohio, Missouri, and Florida. See The Police Law Institute,

state and Canadian province use the Reid method.³² A recent nationwide survey of police departments revealed that two-thirds of state police departments train some or all of their department's officers in the Reid method.³³ The Reid technique also claims international reach: according to the most recent edition of Reid and Inbau's *Criminal Interrogation and Confessions*, "[t]he technique is now taught in seminars across the United States, Canada, Europe, and Asia."³⁴ Even the United States military law enforcement uses the Reid technique.³⁵ In total, Reid & Associates boasts that over 500,000 law enforcement and security professionals have attended its interrogation seminars since they were first offered in 1974.³⁶ It seems, then, that no critique of the Reid method could begin without first examining it in some detail.

The training seminars described in the preceding paragraph are of course grounded in the Reid textbook, *Criminal Interrogation and Confessions*.³⁷ The extensive 626-page interrogation training manual begins by distinguishing an "interview" from an "interrogation."³⁸ An interview, according to the text, is a nonaccusatory information gathering exercise that may take place at the beginning of an investigation and in a variety of environments.³⁹ The interview, more specifically described by the text as a "Behavior Analysis Interview,"⁴⁰ should be "free flowing and relatively unstructured" in order to allow the interviewer to collect unanticipated information and make a credibility determination by evaluating the suspect's behavioral responses.⁴¹ Along the way, the examiner should also "establish a level of rapport and trust with the suspect that cannot be accomplished during an accusatory interrogation."⁴²

<http://www.policelawinstitute.org/plims/> (last visited Jan. 12, 2010). More relevant to this Article, their police training businesses include John E. Reid & Associates. See Zalman & Smith, *supra* note 22, at 885 n.68.

32. John E. Reid & Associates, Inc., Interviewing and Interrogation, http://www.reid.com/training_programs/interview_overview.html (last visited Jan. 12, 2010).

33. Zalman & Smith, *supra* note 22, at 920.

34. Inbau et al., *supra* note 3, at ix; accord John E. Reid & Associates, Company Information, *supra* note 2 ("Our firm has been awarded contracts for training from NATO; the Bavarian and Berlin Law Enforcement communities in Germany; and have conducted training programs in Bosnia-Herzegovina; the Czech Republic; the United Arab Emirates; Singapore; Japan; Mexico; Canada; Belgium; and, South Korea.").

35. Peter Kageleiry, Jr., *Psychological Police Interrogation Methods: Pseudoscience in the Interrogation Room Obscures Justice in the Courtroom*, 193 Mil. L. Rev. 1, 9 (2007).

36. John E. Reid & Associates, Inc., Interviewing and Interrogation, *supra* note 32.

37. Weisselberg, *supra* note 22, at 1530.

38. Inbau et al., *supra* note 3, at 5.

39. *Id.* at 5–6. The interviewer should be someone who has "an easygoing confidence that allows the subject to feel comfortable telling the truth but uncomfortable lying." *Id.* at 67. That suggestion comes under the heading "Interviewer Qualifications," yet no substantive interviewer qualifications are mentioned. *Id.* at 66–67.

40. *Id.* at 173–91 (chapter describing the Behavior Analysis Interview).

41. *Id.* at 6–7.

42. *Id.* at 9.

By contrast, an interrogation takes place "only when the investigator is reasonably certain of the suspect's guilt," which certainty may arise from "the suspect's behavior during an interview."⁴³ The interrogation itself must occur in a controlled environment, during which the interrogator displays an air of unwavering confidence in the suspect's guilt.⁴⁴ The interrogator should employ the nine-step Reid technique, described below, during questioning.⁴⁵

The moment when a police officer elects to conclude an interview and commence an interrogation is critical. Given that interrogation is a "guilt-presumptive process,"⁴⁶ the investigators should make a determination during the Behavior Analysis Interview about the suspect's credibility *before* commencing a formal interrogation.⁴⁷ To do so, the investigator should establish the suspect's normal behavioral patterns and then—in response to "behavior-provoking questions"⁴⁸—evaluate the suspect's attitudes, verbal behavior, paralinguistic behavior (i.e., the suspect's speech characteristics), and nonverbal behavior.⁴⁹ In the words of Inbau et al., the examiner must give "analytical consideration" to the suspect's "behavioral responses."⁵⁰

From a suspect's responses to between ten to fifteen behavior-provoking questions, the investigator "will generally be able to classify the overall responses to those questions as either fitting the description of an innocent or guilty suspect."⁵¹ And, assuming the investigator is "unable to eliminate a suspect based on behavior assessments or investigative findings," that investigator should hastily follow up with a formal interrogation.⁵²

43. *Id.* at 8.

44. *Id.* at 7 ("Deceptive suspects are not likely to offer admissions against self-interest unless they are convinced that the investigator is certain of their guilt.").

45. The authors emphasize that not every interrogation will require the investigator to employ all nine steps. *Id.* at 214. "What is essential for success . . . is for the investigator to recognize what stage a suspect is in and to respond appropriately to the suspect's behaviors and psychological orientation at any given stage of the interrogation process." *Id.* at 216.

46. Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, Psychol. Sci. Pub. Int., Nov. 2004, at 33, 41.

47. See Inbau et al., *supra* note 3, at 9 (outlining the importance of interviewing a suspect before interrogating the suspect).

48. Inbau et al. suggest several behavior-provoking questions, such as the "purpose" question, wherein the interviewer asks the suspect about his understanding of the purpose for the interview. *Id.* at 173. Another example is the "history/you" question, in which the interviewer "should succinctly state the issue under investigation (history) and ask the subject if he was involved in committing the crime (you)." *Id.* at 175. Although Inbau et al. provide numerous other examples, *see id.* at 176–84, the overarching goal is for the investigator to discern deceptive responses from guilty suspects. *See id.* at 173 ("Research has demonstrated that innocent subjects tend to respond differently to these specialized questions than do deceptive subjects.").

49. *Id.* at 128–53.

50. *Id.* at 173.

51. *Id.* at 190.

52. *Id.* at 191. Somewhat confusingly, although the investigator is charged with making a determination about whether the suspect offers deceptive responses, for "court purposes," it is "not recommended that the investigator categorize a suspect's response to behavior-provoking questions as truthful or deceptive at the time each question is asked." *Id.* at 190 n.2. This type of testimony, according to Inbau et al., is "best left for an expert in behavior analysis" because a defense attorney could ask the investigator "to explain exactly why

The Reid technique's nine-step method comes into play as soon as our hypothetical investigator elects to follow his Behavior Analysis Interview with a formal interrogation.⁵³ Before the investigator commences an interrogation, though, Inbau et al. advise the investigator to set up a private soundproof room within the police station that is free from distractions and furnished sparsely with straight-backed chairs.⁵⁴ The room should also be equipped with a one-way observation mirror so that other detectives can evaluate the suspect's "behavior symptoms."⁵⁵ Arranging the room in this manner isolates the suspect and removes the suspect from any familiar surroundings, thereby heightening the suspect's anxiety while incentivizing the suspect to extricate himself from the situation.⁵⁶

The interrogator should then "allow the suspect to sit in the interview room alone for about five minutes."⁵⁷ Doing so will promote insecurity in the suspect and cause the suspect "[a]dditional doubts and concerns."⁵⁸ The investigator should also preliminarily "prepare and have on hand an evidence case folder, or a simulation of one."⁵⁹ Doing so will allow the investigator to make reference to the case file throughout the interrogation, even if the "file" contains nothing or simply contains blank paper.⁶⁰

At the outset of the formal interrogation,⁶¹ the investigator should enter with an air of confidence and, if the suspect is not seated, he should instruct the suspect to sit.⁶² Step one of the Reid technique then specifically directs the interrogator to "initiate the interrogation with a direct statement indicating absolute certainty in the suspect's guilt."⁶³ Immediately thereafter, the

he classified each response as he did, to explain the research findings supporting his classification, and to comment on the differential diagnosis of the response." *Id.* At the risk of asking the obvious, why should a defense attorney not ask this of a testifying investigator when it is the investigator, not a behavioral analysis expert, who determined that the suspect was not truthful during the interview?

53. In other words, at the point when the investigator becomes—in his opinion—"reasonably certain" of the suspect's guilt. *Id.* at 209.

54. *Id.* at 57–64.

55. *Id.* at 59.

56. See Kassin & Gudjonsson, *supra* note 46, at 42.

57. Inbau et al., *supra* note 3, at 216.

58. *Id.* at 217.

59. *Id.*

60. *Id.*

61. Inbau et al. assures the reader, without a supporting citation (as always), that "[i]t must be remembered that none of the steps is apt to make an innocent person confess and that all the steps are legally as well as morally justifiable." *Id.* at 212.

62. *Id.* at 217–18, 221 fig.13–2.

63. *Id.* at 218–19. "If the suspect perceives that the investigator is not certain of his guilt, he is unlikely to confess." *Id.* at 218. This is a "maximization" technique designed to intimidate and impress upon the suspect the futility of denial. See Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. Crim. L. & Criminology 219, 261 (2006). Maximization techniques condoned by the Reid method may also include confronting suspects with real and false evidence, refusing to accept denials, accusing suspects of lying, identifying inconsistencies in suspects' stories, and emphasizing the implausibility of suspects' claims. Richard A. Leo, *Inside the Interrogation Room*, 86 J. Crim. L. & Criminology 266, 277–79 (1996).

interrogator should pause and say, "I want to sit down with you so that we can get this straightened out. Okay?"⁶⁴ No matter what the suspect says in response, "the investigator will proceed to offer a reason as to why it is important for the suspect to tell the truth."⁶⁵

After directly confronting the suspect, step two of the Reid method directs the interrogator to begin developing a "theme."⁶⁶ The theme should present the suspect with a moral—not legal—excuse for committing the offense.⁶⁷ "The selected theme may be based upon a simple, common sense analysis of a suspect's background and probable motive that triggered the criminal conduct."⁶⁸ So, if a suspect admits during the Behavior Analysis Interview that he might be tempted to take money from someone at gunpoint if he were "desperate," then the interrogator should consider a theme justifying the suspect's commission of robbery out of dire financial need or possible drug addiction.⁶⁹ Or, if a suspect suggests during the Behavior Analysis Interview that certain circumstances may justify a homicide, then the interrogator should thematically condemn the victim of the suspect's crime.⁷⁰ Regardless, this "minimization"⁷¹ technique is designed to "offer a 'crutch' for the suspect as he moves toward a confession."⁷²

Often, however, the suspect meets the interrogator's theme presentation with a denial. The third step therefore counsels interrogators on how to handle a suspect's denials either after the direct positive confrontation (step one), or following the interrogator's theme presentation (step two).⁷³ Should a denial follow step one, Inbau et al. advise interrogators to ignore a suspect's "weak

64. Inbau et al., *supra* note 3, at 222.

65. *Id.* at 213.

66. *Id.* at 232.

67. *Id.*

68. *Id.* at 234.

69. *Id.* More specifically, the investigator might—during the Behavior Analysis Interview—ask the suspect the following: "[u]nder any circumstances do you think the person who killed George should be given some consideration?" *Id.* If the suspect responds that it "depend[s] on why it happened," then the text suggests this theme: "The suspect did not plan to kill the victim but rather acted on the spur of the moment because of the victim's behavior." *Id.*

70. *Id.* Assuming the interrogator cannot develop a theme from the suspect's interview behavior or comments, the Manual suggests seven fallback themes: (1) "Sympathize with the Suspect by Saying that Anyone Else Under Similar Circumstances Might Have Done the Same Thing," *id.* at 241; (2) "Reduce the Suspect's Feeling of Guilt by Minimizing the Moral Seriousness of the Offense," *id.* at 244; (3) "Suggest a Less Revolting and More Morally Acceptable Motivation or Reason for the Offense Than That Which Is Known or Presumed," *id.* at 247; (4) "Sympathize with Suspect by Condemning Others," *id.* at 254; (5) "Appeal to a Suspect's Pride by Well-Selected Flattery," *id.* at 268; (6) "Point out Possibility of Exaggeration on Part of Accuser or Victim, or Exaggerate Nature and Seriousness of the Event Itself," *id.* at 271; and (7) "Point Out to the Suspect Grave Consequences and Futility of Continuation of Criminal Behavior," *id.* at 278. Again, these are the very same unchanged techniques suggested in a somewhat less organized fashion by Inbau back in 1942. *Cf.* Inbau, *supra* note 6.

71. Kassir & Gudjonsson, *supra* note 46, at 43.

72. Inbau et al., *supra* note 3, at 232.

73. *Id.* at 305–06.

denial.”⁷⁴ Should the suspect offer a more forceful denial, then the investigator should “reassert his confidence in the suspect’s guilt” while directing the discussion back to the facts of the case.⁷⁵ Little changes in the context of a post-theme denial; the interrogator is advised to evaluate the veracity of the denial while returning to the interrogation theme.⁷⁶

Step four addresses how interrogators should respond when a suspect’s simple denial matures into an “objection.” An objection, according to the text, “will ordinarily take the form of a reason as to why the accusation is wrong.”⁷⁷ Although it will not contain evidence of innocence, the objection is designed to shake the interrogator’s confidence in the suspect’s guilt.⁷⁸ A suspect’s willingness to resort to objections is a good thing, though, say Inbau et al., because “the suspect’s move from a denial to an objection is a good indication of a concealment of the truth.”⁷⁹ Substantively, the interrogator should “act as though the statement was expected” (e.g., by saying “I was hoping you’d say that” or “I’m glad you mentioned that”) and thereafter “reverse the significance of the suspect’s objection and return to the interrogation theme without delay.”⁸⁰

Having instructed interrogators on how to handle denials and objections, the Manual turns its attention, at step five, to teaching the interrogator how to procure and retain the suspect’s attention.⁸¹ This step is particularly important given the propensity of suspects “to psychologically withdraw from the interrogation and ignore the investigator’s theme.”⁸² To avoid that result, interrogators are advised to (1) move their chairs physically closer to the

74. *Id.* at 306.

75. *Id.*

76. *See id.* at 314–28.

77. *Id.* at 330. More specifically, an “objection” surpasses a mere denial by offering a brief explanation, like “I couldn’t have done it,” “But I’ve got money in the bank,” or “I wouldn’t do a thing like that.” *Id.* at 333.

78. *Id.* at 331.

79. *Id.* (“An innocent suspect will usually remain steadfast with the denial alone and will feel no need to embellish it at all.”)

80. *Id.* at 334–35. Reversing the significance of the suspect’s statement requires the interrogator to agree with the suspect’s objection, while simultaneously pointing out the negative aspects were the objection untruthful. *Id.* at 336. The text offers as an example the suspect’s denial of “that’s ridiculous . . . I don’t even own a gun” in the context of a hypothetical armed robbery case. *Id.* at 336 tbl. 13-2. In response to the denial, the interrogator might say something like:

I’m glad you mentioned that, Joe, because it tells me that it wasn’t your idea to do this; that one of your buddies talked you into this, handed you the gun, and then the whole thing happened. You see, Joe, if you did own a gun and carried it in that night, ready to use it, to kill somebody if they got in your way, that’s one thing. But if the other guy stuck it in your hand, to use it just to scare everybody that’s something else again . . .

Id. (alteration in original).

81. *Id.* at 337–45.

82. *Id.* at 338.

suspect,⁸³ (2) establish eye contact,⁸⁴ (3) use visual aids,⁸⁵ or (4) ask hypothetical questions.⁸⁶

Step six then counsels interrogators on how to handle a suspect's passive mood.⁸⁷ In short, this step first advises the interrogator to tailor the general theme established at step two specifically to this suspect.⁸⁸ If, after hearing this theme restatement, the suspect "drifts into a passive mood," then the interrogator should move closer to the suspect and begin urging the suspect to tell the truth.⁸⁹ Working at the "peak of sincerity," the investigator should utilize "soft and warm"⁹⁰ eye contact while speaking in a low tone and encouraging the suspect to "tell the truth for the sake of his own conscience, mental relief, or moral well-being, as well as 'for the sake of everybody concerned.'"⁹¹ The investigator should continue with this process "until the suspect shows some physical sign of resignation, at which time step seven should immediately be employed."⁹²

At step seven, the officer should present to the suspect a so-called "alternative question," which provides the suspect "a choice between two explanations for possible commission of the crime."⁹³ One explanation is designed to be more "acceptable" or "understandable" than the other.⁹⁴ For example, in a theft case, the interrogator may ask "[d]id you blow that money on booze . . . or did you need it to help out your family?"⁹⁵ The interrogator should then follow with a statement supporting the more morally acceptable alternative.⁹⁶ Inbau et al. suggest that "the alternative question has allowed [the suspect] the opportunity to tell the truth while saving face."⁹⁷

Once the suspect accepts his involvement in the crime based on a morally understandable reason, step eight instructs the interrogator on how to deduce

83. *Id.* at 339.

84. *Id.* at 341.

85. *Id.* at 342.

86. *Id.* at 343.

87. *Id.* at 345-52.

88. *Id.* at 346.

89. *Id.* at 347.

90. *Id.* at 349.

91. *Id.* at 347.

92. *Id.* at 349.

93. *Id.* at 353.

94. *Id.* at 214.

95. *Id.* at 353. Alternatively, the interrogator might ask, "Joe, was this money used to take care of some bills at home, or was it used to gamble?" *Id.* at 360.

96. *Id.* at 359. The alternative question might then be followed by a "negative supporting statement" like "[y]ou don't seem to be the kind of person who would do something like this in order to use it for gambling. If you were that kind of person, I wouldn't want to waste my time with you, but I don't think you're like that." *Id.* at 360. Or, the investigator might follow the alternative question with a "positive supporting statement" such as, "I'm sure this money was for your family, for some bills at home. That's something even an honest person might do, if he was thinking of his family." *Id.*

97. *Id.* at 353.

details about the offense from the suspect.⁹⁸ This step calls upon the interrogator to “employ a great deal of patience”⁹⁹ throughout several gradual stages, beginning with offering the suspect a “statement of reinforcement.”¹⁰⁰ The statement is a brief one like “[g]ood, that’s what I thought it was all along,” which should be followed by working to develop the suspect’s gradual acknowledgement of guilt.¹⁰¹ The interrogator should then “return to the beginning of the crime and attempt to develop information that can be corroborated by further investigation.”¹⁰² Finally, although only one interrogator should elicit the initial oral confession,¹⁰³ another person should witness that oral confession once the first investigator “is satisfied that adequate details surrounding the commission of the crime have been obtained.”¹⁰⁴

The ninth and final step counsels interrogators on how to convert the oral confession into a written one.¹⁰⁵ Step nine spans more than twenty pages of text and, in doing so, (1) emphasizes the importance of documentation,¹⁰⁶ (2) teaches how to again provide the warnings required by *Miranda v. Arizona*,¹⁰⁷ (3) instructs how to prepare and form the confession,¹⁰⁸ (4) outlines best practices for safeguarding the effectiveness of the confession,¹⁰⁹ and (5) suggests engaging in a postconfession interview with the suspect.¹¹⁰

98. *Id.* at 365–74.

99. *Id.* at 365.

100. *Id.* at 366.

101. *Id.* at 366–69.

102. *Id.* at 369.

103. *Id.* at 371.

104. *Id.* at 372.

105. *Id.* at 374–97.

106. *Id.* at 375. According to the authors, documenting the confession is exceptionally important because many suspects will later either deny that they confessed or claim that their confession was wrongfully induced. *Id.* A written and signed confession not only limits controversy about the believability of the confession, but also practically eliminates any argument about the existence of a confession. *Id.*

107. *Id.* at 376–77 (citing *Miranda v. Arizona*, 384 U.S. 436 (1966)). Before reducing the suspect’s confession to writing, the authors suggest reading *Miranda* warnings to the suspect. *Id.* at 376. Particularly where the suspect received warnings at the outset of interrogation, warnings should be repeated so as to “mak[e] reference to the fact that the suspect had received and waived them earlier.” *Id.*

108. *Id.* at 377–89. Although confessions may take a narrative form, Inbau et al. recommend a question-and-answer format in the presence of a stenographer. *Id.* at 377–78. In this format, the interrogator should ask the confessor, early in the confession, “a question that will call for an acknowledgement that he committed the crime.” *Id.* at 379. Doing so is designed to enhance the “psychological effect on the jury when the written confession is read”; indeed, say the authors, “[e]arly acknowledgment of guilt in a confession will serve to arouse immediate interest in the document by the jury as it is read.” *Id.*

109. *Id.* at 389–91. Interrogators should, say the authors, preserve (1) stenographic notes, (2) notes about the conditions under which the oral and written confessions were obtained, and (3) photographs or medical examinations of the suspect. *Id.* at 389–90.

110. *Id.* at 391–93. Given the willingness of suspects to discuss the reasons why they confessed, Inbau et al. suggest that a post-confession interview may present “an excellent opportunity for an investigator to improve upon his knowledge and skill.” *Id.* at 391.

II. Deconstructing the Reid Technique

With the impact of the Reid technique on the law enforcement community and its asserted basis in psychology in mind, one might justifiably wonder what backgrounds its creators possessed and how the Reid technique grew to such prominent heights. The surprising answer, as this Part details, is that there exists no basis in psychology to support the Reid technique. This Part therefore seeks to wholly deconstruct the validity of the Reid method by first briefly outlining in section A the backgrounds of its creators, John E. Reid and Fred E. Inbau. Section B thereafter examines and dissects, in detail, the historical rise of Inbau and Reid's work.

A. Who Authored the Reid Technique?

The most recent edition of *Criminal Interrogation and Confessions* credits four different authors: Fred E. Inbau, John E. Reid, Joseph P. Buckley, and Brian C. Jayne.¹¹¹ Given that Buckley and Jayne arrived on the historical scene well after the Reid method's original creation,¹¹² uncovering the genesis of the Reid method requires focusing almost exclusively on its original creators: Fred E. Inbau and John E. Reid, respectively.¹¹³ This brief section therefore offers a primer on their backgrounds.

1. Fred E. Inbau

Fred Edward Inbau was born on March 27, 1909, in New Orleans, Louisiana, and received his B.S. from Tulane University in 1930.¹¹⁴ After hearing from his father, a struggling shipyard worker, that lawyers make a

111. There is little information about the background of each author and, as a result, this section cobbles together the meager biographical information available for each individual by relying, in large part, on their scholarship.

112. Brian C. Jayne began working at John E. Reid and Associates in 1978. Fairfax County Criminal Justice Academy Biographies, Brian C. Jayne (unpublished document, on file with the Hastings Law Journal). He graduated with a B.S. in Criminal Justice from the University of Wisconsin-Platteville and received a "Master of Science in Detection of Deception" from the Reid College. *Id.* He also served as the Dean of Reid College from 1983 to 1988. *Id.* A few perhaps obvious points about Jayne's background bear mention. First, there is no accredited college known as "Reid College." See U.S. Dep't of Educ., Database of Accredited Postsecondary Institutions and Programs, <http://ope.ed.gov/accreditation/Search.aspx> (last visited Jan. 12, 2010) (search "Reid" under "Name of Institution"; no relevant results are produced). Second, this Author is aware of no graduate school that awards a Master of Science degree in "detecting deception."

Joseph P. Buckley is currently the president of John E. Reid & Associates. He received his B.A. from Loyola University Chicago and he too holds a "Master of Science in Detection of Deception" from the Reid College. See *Encyclopedia of Security Management: Techniques and Technology*, at xvi (John J. Fay ed., 2d ed. 2007).

113. Naming the popular interrogation method as "the Reid technique" is somewhat ironic given that it was Inbau who first developed the underlying interrogation techniques, see Inbau, *supra* note 6, whereas Reid's professional work focused almost exclusively on developing the polygraph method, see *infra* note 142 (providing list of Reid's publications about the polygraph method for lie detection). Perhaps the irony is better illustrated by the fact that it was Inbau who first coined the phrase "Reid technique," and did so in reference to Reid's approach to polygraph examinations. See Fred E. Inbau, *Lie Detection and Criminal Interrogation* 14 n.21 (2d ed. 1948).

114. Inbau Papers, *supra* note 24.

significant amount of money,¹¹⁵ Inbau attended Tulane Law School where he served as Editor-in-Chief of the *Tulane Law Review* and earned his LL.B. in 1932.¹¹⁶ Inbau then attended Northwestern University School of Law where he received his LL.M., and began a lengthy professional relationship with the School of Law.¹¹⁷

In 1933, Inbau began working as a research assistant in the Scientific Crime Detection Laboratory, a permanent laboratory then associated with Northwestern University School of Law.¹¹⁸ The lab focused on examining and preserving criminal evidence through media like photography and chemical analysis.¹¹⁹ It also offered practical experience in things like identifying firearms, conducting polygraph tests, and detecting forgeries.¹²⁰ Inbau's position thereafter became a joint one, requiring him to teach in the School of Law and to work in the lab.¹²¹ Inbau met John E. Reid in 1940 when Reid joined the lab that same year.¹²² Although the School of Law sold the lab in 1938, Inbau continued working there as its Director until 1941.¹²³

From 1941 to 1945, Inbau returned to private practice as a trial attorney until he rejoined Northwestern University School of Law as a full-time professor of law.¹²⁴ Inbau spent the balance of his career at the School of Law where, among other things, he established continuing legal education courses both for prosecuting and defense attorneys.¹²⁵ He also served as president of the American Academy of Forensic Sciences, worked as an editor for and published in the *Journal of Criminal Law, Criminology and Police Science*,¹²⁶

115. AELE Law Enforcement, Fred E. Inbau (1909–1998), <http://www.aele.org/Inbau.html> (last visited Jan. 12, 2010).

116. Inbau Papers, *supra* note 24.

117. *Id.*

118. *Id.*; *see also* Thomas, *supra* note 5 (“The laboratory was established in 1929 after the St. Valentine’s Day Massacre to give the police an edge in the fight against organized crime.”).

119. Inbau Papers, *supra* note 24.

120. *Id.*

121. *Id.*

122. *Id.* at 2.

123. *Id.* at 1.

124. *Id.*

125. *Id.*

126. *Id.* at 2. The *Journal of Criminal Law, Criminology, and Police Science* ran from 1951 to 1972 and served to continue the *Journal of Criminal Law and Criminology* (1931–1951). *See* Editorial, 42 J. Crim. L. Criminology & Police Sci. 1 (1951) (recognizing the *Journal*’s 1951 name change). The 1931 to 1951 version of the *Journal of Criminal Law and Criminology*, in turn, continued Dean Henry Wigmore’s original *Journal of the American Institute of Criminal Law and Criminology* (1910–1931). *See* Editorials, Announcement, 22 Am. Inst. Crim. L. & Criminology 3 (1931) (recognizing the *Journal*’s 1931 name change). A 1973 change divided the *Journal* into *The Journal of Criminal Law and Criminology* (1973–present) and a new periodical called the *Journal of Police Science and Administration*. *See* Editorial, 64 J. Crim. L. & Criminology 1 (1973). Northwestern published all iterations of the *Journal*, regardless of timeframe. To avoid confusion, the text of this Article treats all versions of the *Journal* as though they were published in the *Journal of Criminal Law and Criminology*.

and established a nonprofit organization called Americans for Effective Law Enforcement.¹²⁷

Inbau's work earned him credit for replacing the "third degree" method of interrogation in the early 1900s with "an approach to interrogation that relied on presenting a mass of damaging facts to persuade criminals that they had no choice but to confess, and that used subtle psychology in dealing with crimes of passion."¹²⁸ No matter the crime, though, Inbau's interrogation methods relied on sympathy for the criminal, trickery, deception, and sometimes outright lies.¹²⁹ To determine which of his methods was most effective, Inbau often interviewed prisoners after their conviction.¹³⁰

Inbau shared his expertise through his work as a prolific scholar both during his tenure at the School of Law and after his retirement from it in 1977.¹³¹ His impressive resume of publications includes more than forty-five journal articles and eighteen books,¹³² the first of which was *Lie Detection and Criminal Interrogation* in 1942.¹³³ And, as his friendship with Reid grew, the pair began working together and collaborated on several texts, including *Truth and Deception: The Polygraph ("Lie-Detector") Technique*¹³⁴ and, most notably for the purposes of this Article, the multiple, influential editions of *Criminal Interrogations and Confessions*.¹³⁵ Inbau died in May of 1998 from injuries he sustained in a traffic accident.¹³⁶

127. AELE Law Enforcement, Fred E. Inbau (1909–1998), *supra* note 115. Inbau established the Americans for Effective Law Enforcement (AELE) in order to counteract the Supreme Court's 1966 decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), by filing amicus curiae briefs in Supreme Court cases involving restrictions on police actions. See Inbau Papers, *supra* note 24, at 2.

Inbau also served as an officer and director of the Chicago Crime Commission and president of the Illinois Academy of Criminology (1951–1952) and of the American Academy of Forensic Sciences (1955–1956). *Id.* And, in addition to his founding of AELE, Inbau founded the Business Integrity Institute in order to lobby against laws restricting employers' ability to terminate employees at will. *Id.*

128. Thomas, *supra* note 5.

129. *Id.* Inbau was considered a "master" at using his own techniques:

When questioning a man suspected of killing his wife, for example, Mr. Inbau would feign such sympathy for the hapless man's plight, sometimes shedding real tears, and showing such contempt for the bullying wife who had driven him to the deed that by the time the man broke down and confessed, his main regret would be that he had not killed the woman sooner.

Id.

130. *Id.*

131. Marvin E. Wolfgang, *Commemorative Note on Professor Fred Inbau*, 68 J. Crim. L. & Criminology 176, 176 (1977) (commemorating Inbau's retirement).

132. See Thomas, *supra* note 5; *Biographical Sketch—Fred E. Inbau*, 68 J. Crim. L. & Criminology, at ix–xi (1977) (appearing in the Table of Contents).

133. Inbau, *supra* note 6.

134. John E. Reid & Fred E. Inbau, *Truth and Deception: The Polygraph ("Lie-Detector") Technique* (1966).

135. *Supra* note 132.

136. Note from the Editors, *Tribute to Fred E. Inbau*, 89 J. Crim. L. & Criminology 1269, 1269 (1999) (noting the date of death); Inbau et al., *supra* note 3, at ix (noting the cause of death).

2. John E. Reid

Materials providing biographical information for John E. Reid are scarce, to say the least. He was born on August 16, 1910, and obtained a law degree from DePaul University.¹³⁷ He joined the Chicago Police Department in 1936 and later accepted a position in the Chicago Police Scientific Crime Detection Laboratory where, as noted, he met Fred Inbau.¹³⁸ He was trained at the lab as a polygraph examiner and remained there until 1947 when he left to begin his own company, John E. Reid & Associates.¹³⁹

Reid thereafter dedicated his professional life to the polygraph examination.¹⁴⁰ He testified as a polygraph expert in numerous cases nationwide.¹⁴¹ And, as discussed in detail below, Reid also published several articles in Inbau's *Journal of Criminal Law and Criminology*,¹⁴² as well as coauthoring numerous texts with him.¹⁴³ Of particular interest, of course, he

137. John E. Reid & Assocs., Inc., Seminar Schedule & Product Catalog 2 (2009).

138. *Id.*

139. *Id.*

140. See *People v. Barbara*, 255 N.W.2d 171, 178 (Mich. 1977) (noting that Reid had been involved with the polygraph for over thirty years).

141. See, e.g., *United States v. Penick*, 496 F.2d 1105, 1109 (7th Cir. 1974); *United States v. Zeiger*, 350 F. Supp. 685, 689 (D.D.C. 1972); *United States v. Lanza*, 356 F. Supp. 27, 31 (M.D. Fla. 1972); *Barbara*, 255 N.W.2d at 178; see also *People v. Styles*, 220 N.E.2d 885, 887 (Ill. App. Ct. 1966) (noting Reid's testimony reporting the results of his interrogation of defendant).

142. See, e.g., Frank S. Horvath & John E. Reid, *The Polygraph Silent Answer Test*, 63 J. Crim. L. Criminology & Police Sci. 285 (1972) [hereinafter Horvath & Reid, *Polygraph Silent Answer Test*]; Frank S. Horvath & John E. Reid, *The Reliability of Polygraph Examiner Diagnosis of Truth and Deception*, 62 J. Crim. L. Criminology & Police Sci. 276 (1971) [hereinafter Horvath & Reid, *Reliability of Polygraph Examiner Diagnosis*]; George W. Harman & John E. Reid, *The Selection and Phrasing of Lie-Detector Test Control Questions*, 46 J. Crim. L. Criminology & Police Sci. 578 (1955) [hereinafter Warman & Reid, *Selection and Phrasing of Lie-Detector Questions*]; Richard O. Arther & John E. Reid, *Utilizing the Lie Detector Technique to Determine the Truth in Disputed Paternity Cases*, 45 J. Crim. L. Criminology & Police Sci. 213 (1954) [hereinafter Arther & Reid, *Lie Detector in Paternity Cases*]; John E. Reid & Richard O. Arther, *Behavior Symptoms of Lie-Detector Subjects*, 44 J. Crim. L. Criminology & Police Sci. 104 (1953) [hereinafter Reid & Arther, *Behavior Symptoms*]; John E. Reid, *A Revised Questioning Technique in Lie-Detection Tests*, 37 J. Crim. L. & Criminology 542 (1947) [hereinafter Reid, *Revised Questioning Technique*]; John E. Reid, *Simulated Blood Pressure Responses in Lie-Detector Tests and a Method for Their Detection*, 36 J. Crim. L. & Criminology 201 (1945) [hereinafter Reid, *Simulated Blood Pressure Responses*]; John E. Reid, *Police Science Legal Abstracts and Notes*, 34 J. Crim. L. & Criminology 69 (1943) [hereinafter Reid, *Police Science 1943*]; John E. Reid, *Police Science Legal Abstracts and Notes*, 33 J. Crim. L. & Criminology 97 (1942) [hereinafter Reid, *Police Science 1942*]; John E. Reid, *Police Science Legal Abstracts and Notes*, 32 J. Crim. L. & Criminology 259 (1941) [hereinafter Reid, *Police Science 1941*]. Reid also published a handful of articles in other journals. See, e.g., Fred E. Inbau & John E. Reid, *The Lie-Detector Technique: A Reliable and Valuable Investigative Aid*, 50 A.B.A. J. 470 (1964) [hereinafter Inbau & Reid, *Lie-Detector Technique: Reliable and Valuable*]; John E. Reid, *The Lie Detector in Court*, 4 DePaul L. Rev. 31 (1954); John E. Reid, *The Lie-Detector*, 15 Ins. Couns. J. 85 (1948).

143. See, e.g., Inbau et al., *supra* note 3; Fred E. Inbau, John E. Reid & Joseph P. Buckley, *Criminal Interrogation and Confessions*, at v (3d ed. 1986) [hereinafter Inbau, Reid & Buckley, *Criminal Interrogation* 3d ed.] (Although he died in 1982, Reid participated in authoring some of the manuscript for this third edition.); John E. Reid & Fred E. Inbau, *Truth and Deception: The Polygraph ("Lie-Detector") Technique* (2d ed. 1977) [hereinafter Reid & Inbau, *Truth and Deception* 2d ed.]; Fred E. Inbau & John E. Reid, *Criminal Interrogation and Confessions* (2d ed. 1967) [hereinafter Inbau & Reid, *Criminal Interrogation* 2d ed.]; Reid & Inbau, *supra* note 134; Inbau & Reid, *supra* note 20; Fred E. Inbau & John E. Reid, *Lie Detection and*

coauthored with Inbau the 1953 edition of *Lie Detection and Criminal Interrogation*, and the 1962, 1967, and 1986 editions of *Criminal Interrogation and Confessions*.¹⁴⁴ Reid died from cardiovascular illness on January 11, 1982.¹⁴⁵

B. How Were Two *LAWYERS* Able to Create Legitimate Interrogation Techniques Premised on *PSYCHOLOGY*? (Hint: They Were Not)

For an impressive and astonishing sixty-seven years, the work of two individuals with merely law degrees has entered nearly every interrogation room.¹⁴⁶ But how did they do it? How did Reid and Inbau—neither of whom had a background in psychology—become the two most noted resources for establishing psychological methods for obtaining confessions? To answer these questions, this section examines salient portions of their scholarship in detail while periodically considering the social climate at the time of publication.

As with all great stories, it began with good timing. At the time Inbau published his first text on interrogation in 1942, law enforcement's use of the "third degree" had grown so unpopular that nobody bothered to ask whether Inbau could authoritatively introduce psychology into the interrogation room.¹⁴⁷ Before that text, interrogators relied on harsh physically abusive tactics to obtain confessions and even the Supreme Court struggled to evaluate their validity. How did the Court struggle and why did it need Fred Inbau, you ask? Let us briefly digress to find the answers.

The Supreme Court has long recognized—since 1884, to be exact—that "[a] confession, if freely and voluntarily made, is evidence of the most satisfactory character."¹⁴⁸ At first, the requirement that a confession be made voluntarily was construed narrowly as merely a common-law evidentiary requirement having no relationship to the Constitution.¹⁴⁹ Yet, in that context, an involuntary confession was one induced by a "threat or promise by or in the presence of such person, which, operating upon the fears or hopes of the accused, in reference to the charge, deprives him of that freedom of will or self-control essential to make his confession voluntary within the meaning of

Criminal Interrogation (3d ed. 1953) [hereinafter Inbau & Reid, *Lie Detection and Criminal Interrogation* 3d ed.].

144. See *supra* note 143 (providing list of coauthored titles).

145. Inbau, Reid & Buckley, *Criminal Interrogation* 3d ed., *supra* note 143.

146. See generally Weisselberg, *supra* note 22, at 1537 ("Whether or not the surveyed officers recognized the Reid name, they employed many of the same techniques.").

147. See *Chambers v. Florida*, 309 U.S. 227, 241 (1940); see also Leo, *supra* note 4, at 80 ("What is sociologically significant about the interrogation training manuals and seminars is not that they are founded on pseudo-scientific knowledge, but rather that Inbau, Reid and others have articulated and disseminated a professional ideology of interrogation that has sought to confer legitimacy on controversial police practices by invoking the cultural authority of modern science and technology.").

148. *Hopt v. Utah*, 110 U.S. 574, 584 (1884).

149. *Id.* at 584–85.

the law.”¹⁵⁰ The Court subsequently applied this early voluntariness rule to a number of cases in which the defendant was in custody, yet received no warnings about silence or counsel.¹⁵¹

Thirteen years later, in *Bram v. United States*, the Court merged its common law voluntariness rule into the Fifth Amendment privilege against self-incrimination.¹⁵² The “generic” language of the Fifth Amendment, the Court reasoned, “was but a crystallization of the doctrine as to confessions.”¹⁵³ Although, after *Bram*, involuntary confessions were inadmissible in federal criminal trials as a matter of constitutional law, the Fifth Amendment was not yet considered a fundamental right applicable to the states.¹⁵⁴ States were therefore free to ignore the *Bram* voluntariness requirement.

For roughly three decades thereafter, federal courts faithfully applied *Bram*,¹⁵⁵ a proposition aided by the Supreme Court’s extension of *Bram* in *Ziang Sung Wan v. United States*.¹⁵⁶ In *Wan*, an ill defendant confessed after enduring almost two weeks of relentless, incommunicado police interrogation.¹⁵⁷ Although the defendant’s resulting confession was motivated neither by threat nor promise, the Court nonetheless held that “a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise.”¹⁵⁸

Notwithstanding the extension of *Bram* in *Wan*, there remained no constitutional basis for excluding a defendant’s confession in *state* court until 1936.¹⁵⁹ In *Brown v. Mississippi*, the Supreme Court—adhering to principles of federalism¹⁶⁰—held that due process mandated invalidating a confession obtained by “officers of the State [using] brutality and violence.”¹⁶¹

150. *Id.* at 585.

151. *See, e.g.*, *Wilson v. United States*, 162 U.S. 613, 624 (1896); *Pierce v. United States*, 160 U.S. 355, 357 (1896); *Sparf v. United States*, 156 U.S. 51, 55 (1895).

152. 168 U.S. 532, 542 (1897).

153. *Id.* at 543.

154. *See infra* note 160 (discussing incorporation of the Self-Incrimination Clause of the Fifth Amendment).

155. *See, e.g.*, *Davis v. United States*, 32 F.2d 860, 863 (9th Cir. 1929); *Purpura v. United States*, 262 F. 473, 476 (4th Cir. 1919); *Sorenson v. United States*, 143 F. 820, 823 (8th Cir. 1906).

156. 266 U.S. 1 (1924).

157. *Id.* at 10–14.

158. *Id.* at 14–15.

159. *See Brown v. Mississippi*, 297 U.S. 278, 279 (1936). This was of course of particular significance given that the Court had yet to hold that the Fifth Amendment of the U.S. Constitution applied to the states.

160. Given the holding in *Bram*, it would seem reasonable for the Court to ground its holding in the Fifth Amendment. Yet, at that time, the Court had previously held on several occasions that the Fifth Amendment did not apply to the states. *See, e.g.*, *Adamson v. California* 332 U.S. 46, 50–51 (1947); *Palko v. Connecticut*, 302 U.S. 319, 322 (1937); *Twining v. New Jersey*, 211 U.S. 78, 98 (1908). That precedent was, however, overruled in 1964 by *Malloy v. Hogan*, 378 U.S. 1, 11 (1964), when the Court held that the Due Process Clause of the Fourteenth Amendment “incorporated” the Self-Incrimination Clause of the Fifth Amendment.

161. 297 U.S. at 279, 286. Interestingly, *Brown* was one of many confession decisions issued by the Supreme Court between the 1930s and 1940s disapproving of conduct by southern white interrogators questioning African American defendants. *See, e.g.*, *Ward v. Texas*, 316 U.S. 547, 555 (1942); *Vernon v.*

Specifically, in *Brown*, officers (with the aid of an angry mob) hanged one and severely whipped three "ignorant negroes" until the trio confessed to committing a murder.¹⁶² After analogizing the state's conduct to "the rack and torture chamber,"¹⁶³ the Court had little trouble concluding that "[i]t would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process."¹⁶⁴

What remained missing after *Brown*, however, was any meaningful insight into how to distinguish a voluntary confession from an involuntary one. Indeed, given that the facts in *Brown* so clearly mandated discarding the defendants' confessions, the Court had no occasion to offer any guidance to courts in future, closer cases. Yet, before leaving *Brown*, it is worth pausing to highlight what would grow into a thematic concern of the Supreme Court: the conduct of police during interrogation and, more specifically, the use of violence in the interrogation room to procure a confession.¹⁶⁵

The litany of post-*Brown* confession cases decided by the Court in the 1940s,¹⁶⁶ particularly those evaluating the propriety of *state* confessions, was arguably spurred on by the 1931 *Report on Lawlessness in Law Enforcement*, otherwise known as "the *Wickersham Report*."¹⁶⁷ The *Wickersham Report* exposed the use of "third degree" tactics (i.e., the use of physical or mental pain to extract a confession or statement from a suspect).¹⁶⁸ The report specifically documented, among other techniques, the use of hot lights, beating suspects with fists or phone books, and confinement in putrid rooms.¹⁶⁹ It likewise expressed concern over the use of psychologically coercive tactics like prolonged questioning in isolation without providing food or sleep to the suspect.¹⁷⁰

Alabama, 313 U.S. 547, 547 (1941) (mem.); *Lomax v. Texas*, 313 U.S. 544, 544 (1941) (mem.); *Canty v. Alabama*, 309 U.S. 629, 629 (1940) (mem.); *White v. Texas*, 310 U.S. 530, 532–33 (1940); *Chambers v. Florida*, 309 U.S. 227, 238–42 (1940).

162. 297 U.S. at 281–83.

163. *Id.* at 285–86.

164. *Id.* at 286.

165. *See, e.g.*, *Ziang Sung Wan v. United States*, 266 U.S. 1, 11 (1924) (describing the government's interrogation as "severe" and "excruciating"); *Bram v. United States*, 168 U.S. 532, 544 (1897) (reaffirming concern about police "temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions" (quoting *Brown v. Walker*, 161 U.S. 591, 596 (1896))).

166. *See e.g.*, *Haley v. Ohio*, 332 U.S. 596 (1948); *Ashcraft v. Tennessee*, 322 U.S. 143 (1944); *Vernon*, 313 U.S. 547; *Lomax*, 313 U.S. 544; *Canty*, 309 U.S. 629; *White*, 309 U.S. 631; *Chambers*, 309 U.S. 227.

167. *See* *Wickersham Report*, *supra* note 4.

168. *Id.* at 19.

169. *Id.* at 31, 47, 126, 149.

170. *Id.* at 118, 191–205.

Although the Court would refer to the *Wickersham Report* in several subsequent cases,¹⁷¹ it first did so in *Chambers v. Florida*.¹⁷² Relying on Fourteenth Amendment Due Process, the Court invalidated state confessions taken in 1933 from four young African American defendants convicted of murdering an elderly white man.¹⁷³ The Court again relied on the *Report* when echoing its condemnation of the “third degree” interrogation tactics in *Ashcraft v. Tennessee*, wherein the Court invalidated, on the basis of Fourteenth Amendment Due Process, uncorroborated 1941 state confessions taken from two suspects convicted of murder.¹⁷⁴

When it became clear that “third degree” interrogation tactics would no longer be tolerated, police began exerting psychological pressures on the suspect.¹⁷⁵ Enter Fred Inbau and his influential 1942 publication, *Lie Detection and Criminal Interrogation*.¹⁷⁶ He divided the book into two parts: the first on the polygraph and the other on methods for—and law governing¹⁷⁷—criminal interrogations.¹⁷⁸ In the first part, focusing on the polygraph, Inbau outlined, inter alia, the device’s history¹⁷⁹ and its utility,¹⁸⁰ and contends that it in no way represents a continuation of “third degree” practices.¹⁸¹ Ironically, Inbau also opined on what credentials a polygraph examiner should possess.¹⁸² Although strongly arguing for the polygraph’s utility, Inbau conceded that “a period of skillful interrogation after the completion of the [polygraph] tests is usually required before a confession is forthcoming.”¹⁸³

171. See, e.g., *Miranda v. Arizona*, 384 U.S. 436, 445 & n.5 (1966); *Culombe v. Connecticut*, 367 U.S. 568, 572–76 (1961); *Haley*, 332 U.S. at 605–06 (Frankfurter, J., concurring); *Stein v. New York*, 346 U.S. 156, 201–02 & n.* (1953) (Frankfurter, J., dissenting); *Ashcraft*, 322 U.S. at 150 nn.5–6, 152 n.8.

172. 309 U.S. 227, 238 n.11 (1940).

173. *Id.* at 238–42.

174. 322 U.S. at 154. The petitioners in *Ashcraft* were questioned in secret for thirty-six straight hours, after which petitioner *Ashcraft* gave an equivocal confession that he refused to sign once police transcribed it. *Id.* at 151–54.

175. *Miranda*, 384 U.S. at 445–48 (reviewing the history of interrogation techniques and emphasizing, post-*Chambers*, that “the modern practice of in-custody interrogation is psychologically rather than physically oriented”).

176. Inbau, *supra* note 6.

177. The section on the law would draw Professor Kamisar’s ire two decades later for its incompleteness. See Yale Kamisar, *What Is an “Involuntary” Confession? Some Comments on Inbau and Reid’s Criminal Interrogation and Confessions*, 17 Rutgers L. Rev. 728, 735 (1963) (commenting on the 1953 edition’s law section and noting “that anyone who attempts to set forth and analyze ‘the law’ on these subjects in 62 pages—which is all the space the authors take—strives for the near impossible”).

178. Inbau, *supra* note 6, at vii. Notably, Inbau also pauses to thank Reid in the preface. *Id.* at vi (“For their valuable comments on the manuscript, I am indebted to . . . John E. Reid.”).

179. *Id.* at 2–4.

180. *Id.* at 54–58.

181. *Id.* at 68 (“The temporary discomfort produced by the blood pressure cuff is too slight to warrant objection, and the test procedure is of such a nature that it is extremely improbable that it would encourage or compel a person to confess to a crime which he did not commit.”).

182. *Id.* at 58–59. According to Inbau, a polygraph operator “should have a fair understanding of psychology and physiology—and preferably an extensive knowledge of each—but it is not necessary that he be either a physician or an expert psychologist.” *Id.* at 58.

183. *Id.*

In the section on interrogation, Inbau outlined nineteen interrogation tactics—premised only on his criminal case experiences¹⁸⁴—and assigned a letter of the alphabet to each tactic.¹⁸⁵ Although otherwise relatively unorganized, Inbau recommended using techniques A through I on “emotional offenders”¹⁸⁶ and techniques J through N on “non-emotional offenders.”¹⁸⁷ Notably, none of the proffered techniques—many of which are still taught unchanged today¹⁸⁸—recommended that police rely on physical violence to obtain a confession.¹⁸⁹

For emotional offenders—i.e., those whose offenses produce in them a feeling of remorse—Inbau recommended the following techniques: (A) display an air of confidence in the subject’s guilt; (B) point out the circumstantial evidence indicative of guilt; (C) call attention to the subject’s physiological and psychological “symptoms” of guilt; (D) sympathize with the subject by telling him that anyone else under similar conditions or circumstances might have committed a similar offense; (E) reduce a subject’s guilt feeling by minimizing the moral seriousness of his offense; (F) sympathize with the subject by condemning his victim, or his accomplice, or anyone else upon whom some degree of responsibility might conceivably be placed for the commission of the crime in question; (G) express friendship in urging the subject to tell the truth; (H) indicate to the subject, as a reason for telling the truth, the possibility of exaggeration on the part of his accusers; and (I) rather than seek a general admission of guilt, first ask the subject a question as to some detail pertaining to the offense.¹⁹⁰

For nonemotional offenders—i.e., those who experience little or no feeling of remorse—Inbau recommended these techniques: (J) point out the futility of resistance; (K) appeal to the subject’s pride by well-selected flattery, or by a challenge to his honor; (L) point out to the subject the grave consequences and futility of a continuation of his offensive behavior; (M) where unsuccessful in obtaining a confession to the offense in question, seek an admission about some other minor offense; and (N) play one co-offender against the other when possible.¹⁹¹

Finally, Inbau recommended five additional interrogation techniques for emotional and nonemotional offenders alike when guilt is uncertain: (O) ask the subject if he knows why he is being questioned; (P) obtain from the subject

184. *Id.* at vi (“It was upon the basis of the actual criminal case experiences of the writer and his former colleagues that these various tactics and techniques were formulated.”).

185. *Id.* at 81–118.

186. *Id.* at 80.

187. *Id.* at 97.

188. *See supra* note 70 and accompanying text.

189. Leo, *supra* note 4, at 63 (“[Reid and Inbau’s] seemingly well-intentioned training materials appear to be at least partially responsible for the decline of third degree practices by American police in the 1940s and 1950s.”).

190. Inbau, *supra* note 6, at 81–95.

191. *Id.* at 97–104.

detailed information about his whereabouts before, during, and after the crime; (Q) ask the subject to relate all he knows about the offense, the victim, and other possible suspects; (R) where certain facts are known that suggest the subject's guilt, ask him about them casually and as though the real facts were not already known; and (S) at various intervals ask the subject certain pertinent questions as though the interrogator already knows the correct answers.¹⁹² Given how many of these techniques appear in the current 2001 edition of *Criminal Interrogation & Confessions*,¹⁹³ it is remarkable how little has changed in the approach to interrogation tactics since 1942.

In any event, after successfully quenching the judiciary's thirst for new interrogation methods by publishing *Lie Detection and Criminal Interrogation* in 1942,¹⁹⁴ Inbau rejoined Northwestern School of Law as a faculty member in 1945.¹⁹⁵ Having Inbau at Northwestern likely helped Reid to establish his own research on the polygraph. As Inbau grew fascinated with, and became persuaded by, Reid's polygraph work,¹⁹⁶ Reid's research gradually began to emerge in the Northwestern University *Journal of Criminal Law and Criminology*. With a name like Northwestern attached to Reid's publications and only a J.D. to support his "scientific" research, only winning the lottery could have offered Reid better luck.

192. *Id.* at 104–18.

193. See *supra* note 70 and accompanying text.

194. Leo, *supra* note 4, at 63. (“[*Lie Detection and Criminal Interrogation*] was a reformist document, representing a kind of dialectical synthesis between the polarities of third degree violence and civil liberties for protection of human dignity: Such a synthesis would have been progressive in the 1930s.” (alteration in original) (quoting Jerome H. Skolnick, *Deception by Police*, 1 *Crim. Just. Ethics* 40, 47 (1982))).

195. *Biographical Sketch—Fred E. Inbau*, *supra* note 132.

196. Inbau & Reid, *Lie Detection and Criminal Interrogation* 3d ed., *supra* note 143, at vii. In the preface to the third edition of *Lie Detection and Criminal Interrogation*, Inbau credits Reid with developing a new “control question” lie-detector test procedure. *Id.* Based on this new “development,” Inbau “invited [his] good friend and former colleague, John E. Reid, to join [Inbau] as coauthor, for it was his research and experimentation that effected this advancement in the lie-detector technique.” *Id.*

Significantly, the control question technique is hardly foreign to most polygraph examiners. See Shauna Fleming Askins, *United States v. Scheffer: An Anomaly in the Military or a Return to the Per Se Ban on Polygraph Evidence?*, 37 *Hous. L. Rev.* 175, 181 (2000) (“The Control-Question Test (CQT) is the most commonly administered polygraph test.”). Indeed, even the Department of Defense has relied on the technique. See Mark D. Maxwell et al., *Recent Developments Concerning the Constitutionality of Military Rule of Evidence 707*, *Army L.*, Dec. 1994, at 13, 14. Briefly stated, the control question technique involves the following procedure:

This technique involves the formulation of ten to twelve questions to elicit “yes” or “no” responses. In a [control question] polygraph, examiners ask irrelevant, relevant, and control questions. Irrelevant questions obtain a subject's normal truthful reactions and chart tracings. Relevant questions concern the matter under investigation. Control questions deal with “an act of wrongdoing of the same general nature as the one [sic] under investigation.”

Id. (quoting Paul C. Giannelli & Edward I. Imwinkelreid, 1 *Sci. Evidence* 65, 221 (1993) (quoting Reid & Inbau, *Truth and Deception* 2d ed., *supra* note 143, at 28)).

Reid's work on the *Journal* began slowly when, from 1942 to 1944, he wrote annual legal abstracts that summarized various evidentiary issues.¹⁹⁷ Then, in 1946—the year after Inbau rejoined Northwestern's law faculty and became Northwestern's Managing Director of Journals¹⁹⁸—Reid wrote his first article in the *Journal* titled *Simulated Blood Pressure Responses in Lie-Detector Tests and a Method for Their Detection*.¹⁹⁹ In the first footnote—one usually earmarked for the author to provide his or her credentials²⁰⁰—Reid declined to note his own credentials and, instead, dutifully thanked Inbau.²⁰¹ That thirteen-page article, supported by a mere seven footnotes (several of which were unaccompanied by citations),²⁰² reported Reid's experiments with a lie-detection device he created to perceive deceptive responses from suspects.²⁰³ Buried among unsupported claims like "[l]ie-detector tests have been compared to clinical examinations wherein similar physiological phenomena are recorded," Reid concludes that his new device would enable examiners to "separat[e] the true patterns of deception from the fraudulent ones."²⁰⁴ Given that Reid used himself to conduct the "experiments" in support of his conclusion,²⁰⁵ *Science Magazine* was likely not eager to solicit his findings for publication.²⁰⁶

197. Reid, *Police Science 1943*, *supra* note 142; Reid, *Police Science 1942*, *supra* note 142; Reid, *Police Science 1941*, *supra* note 142. Although Inbau was not yet part of the School of Law faculty, his role as an Associate Editor on the *Journal* presumably helped Reid earn these brief placements. *See, e.g.*, Masthead, 35 J. Crim. L. & Criminology 1 (1944) (listing Inbau as an Associate Editor and noting his professional role as "Counsellor at Law, Chicago"); Masthead, 34 J. Crim. L. & Criminology 1 (1943) (same); Masthead, 33 J. Crim. L. & Criminology 1 (1942) (same). Inbau would later serve as Editor-in-Chief for the *Journal* from 1965 to 1971. *Foreword to Biographical Sketch—Fred E. Inbau*, *supra* note 132. Inbau stepped down from serving as Editor-in-Chief in 1971 so that the *Journal* could grow into a student-run publication. *See id.*; James A. Rahl, *Fred E. Inbau: Professorial Fighter of Crime*, 68 J. Crim. L. & Criminology 175, 175 (1977).

198. Masthead, 36 J. Crim. L. & Criminology 2 (1945) (listing Inbau as the "Managing Director of Journals").

199. Reid, *Simulated Blood Pressure Responses*, *supra* note 142.

200. *See generally* Eugene Volokh, *Writing a Student Article*, 48 J. Legal Educ. 247, 267 (1998) (referring to the first footnote as an "author's note").

201. Reid, *Simulated Blood Pressure Responses*, *supra* note 142, at 201 n.* ("The writer is indebted to Professor Fred E. Inbau of Northwestern University . . .").

202. *See generally* Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. Rev. 445, 451 (1986) ("Essentially, each assertion of law or fact that you make in the body of your article will require a footnote.").

203. Reid, *Simulated Blood Pressure Responses*, *supra* note 142, at 211 & fig.11 (providing an illustration of the device). More specifically, Reid was fundamentally concerned with the possibility of suspects influencing the results of their lie-detector tests by increasing or decreasing their blood pressure or body movements in response to certain questions. *Id.* at 208. Reid's new device was designed to detect and eliminate the assertion of artificial blood pressure responses, thereby increasing the possibility of accurately determining whether a suspect proffered deceptive responses. *Id.* at 211–14.

204. *Id.* at 214.

205. *Id.* at 203–07. Reid assures the reader "that in these various experiments the writer used his full power of concentration to simulate guilt reactions without being burdened with the guilt complexes of an actual criminal suspect." *Id.* at 207.

206. *See* Science Magazine: General Information for Authors, http://www.sciencemag.org/about/authors/prep/gen_info.dtl#unpublished (last visited Jan. 12, 2010) (outlining article submission requirements

Reid continued his work in the *Journal* one year later when he published *A Revised Questioning Technique in Lie-Detection Tests*.²⁰⁷ An Editor's note at the outset of the article stated the following:

The author of this article, a member of the staff of the Chicago Police Scientific Crime Detection Laboratory, has had extensive experience in lie-detection examination of criminal suspects and witnesses. He has made two noteworthy contributions to the field of scientific lie detection, the first of which was described in a previous number of this Journal. See "Simulated Blood Pressure Responses in Lie-Detection Tests and a Method for Their Detection," 36 (3):201 (1945). The present paper describes Mr. Reid's second and equally important contribution.²⁰⁸

Reid correspondingly offered his thanks to Inbau in the article's first footnote.²⁰⁹ In this five-page article, unsupported by a single substantive footnote,²¹⁰ Reid argues in favor of questioning suspects undergoing polygraph examination using a "comparative response" method.²¹¹ Ordinarily, Reid indicates, "[t]he customary lie-detector questioning technique involves asking a number of pertinent questions along with several which are irrelevant to the matter under investigation but which are asked for the purpose of determining the nature of the subject's reactions to the test situation alone."²¹² The comparative response method, however, involves the use of a question "which the examiner knows or feels reasonably sure the subject will lie about" in order to "indicate the subject's responsiveness when lying."²¹³

Reid based his contention that "comparative response" questioning is superior to "conventional" questioning on additional unspecified "experiments" he performed with his colleagues at the Chicago Police Scientific Crime Detection Laboratory.²¹⁴ Apart from the quite apparent

and cautioning, "[c]itations to unpublished data and personal communications cannot be used to support claims in a published paper"); see also Julie Bosman, *Reporters Find Science Journals Harder to Trust, but Not Easy to Verify*, N.Y. Times, Feb. 13, 2006, at c1, available at <http://www.nytimes.com/2006/02/13/business/media/13journal.html> ("Among the most prestigious science journals that reporters consult regularly are Nature, Science, The New England Journal of Medicine and The Journal of the American Medical Association."). Notably, *Science Magazine* was first published in 1883 and thus was in circulation at the time of Reid and Inbau's publications. See About AAAS, History & Archives, <http://archives.aaas.org/exhibit/origins4.php> (last visited Jan. 12, 2010).

207. Reid, *Revised Questioning Technique*, *supra* note 142.

208. *Id.* at 542.

209. *Id.* at 542 n.* ("The writer gratefully acknowledges the assistance of . . . Fred E. Inbau, Professor of Law at Northwestern University . . . for his advice and assistance in the organization and preparation of this paper . . ."). Inbau was serving as Managing Director of the Northwestern journals at the time of Reid's second publication and therefore presumably had at least some role in crafting the Editor's note quoted in the above text. See Fred E. Inbau, *Change in Journal Editorship*, 37 J. Crim. L. & Criminology 540, 541 (1947) (noting his role as Managing Director).

210. The article has three footnotes, none of which contain citations to supporting experimental data. See Reid, *Revised Questioning Technique*, *supra* note 142, at 542 n.1, 546 n.2, 547 n.3.

211. *Id.* at 544-45.

212. *Id.* at 542.

213. *Id.* at 544.

214. *Id.* at 542, 546-47.

absence of an empirical basis to support Reid's thesis, the formula used for his emerging prominence is becoming clear: witness the use of an interesting device (a lie-detector device);²¹⁵ ostensibly improve upon its use; write articles about those improvements; and make friends with a prominent law professor in order to publish those articles in his well-respected legal journal. Although Reid (presumably subconsciously) would refine that formula in later years, he already had a firm foundation for his house of cards in 1947.

Reid, of course, was not alone in this endeavor. In 1948, Inbau published his second iteration of *Lie Detection and Criminal Interrogation*.²¹⁶ That text, like its 1942 predecessor, is divided into two sections: one on the lie detector technique and the other on criminal interrogation tactics.²¹⁷ Although, from a substantive standpoint, little changed between the two editions, Inbau did reprint both of Reid's essays on the lie-detector and credited the techniques espoused in them with providing "several distinct advantages over the procedure previously used."²¹⁸ In doing so, Inbau appeared to pass the proverbial torch to Reid for all things related to "the field of deception detection."²¹⁹ Indeed, in addition to crediting Reid's approach to polygraph examination, Inbau also indicated his retirement from the field of deception detection in 1941.²²⁰

Reid's approach to polygraph examination ultimately so influenced Inbau that Inbau invited Reid to coauthor the third edition of *Lie Detection and Criminal Interrogation*, published in 1953.²²¹ Like the two editions before it, the third edition remained separated into two sections: one addressed the lie-detector technique and the other dealt with criminal interrogation.²²² In this edition's preface, however, Inbau indicated that part one—addressing the lie-detector technique—was wholly the product of Reid's "research and

215. Reid, *Simulated Blood Pressure Responses*, *supra* note 142, at 202 fig.1 (noting Reid's use of a "modified pre-1939 model of the Keeler Polygraph" during his work at the Chicago Police Scientific Crime Detection Laboratory).

216. Inbau, *supra* note 113.

217. *Id.* at xi (Table of Contents).

218. *Id.* at 14; *see also id.* at vii–viii ("I am also greatly indebted to [Reid] for permission to include in the present publication a reprinting of his excellent article 'Simulated Blood Pressure Responses in Lie-Detector Tests and a Method for their Detection,' together with portions of his paper on 'A Revised Questioning Technique in Lie Detection Tests,' both of which contributions originally appeared in the *American Journal of Police Science* (incorporated in the *Journal of Criminal Law and Criminology*)."). Inbau continued to organize his comments on criminal interrogation in something of a scattershot manner by adhering to the alphabet structure he provided in the first edition. *See id.* at 107–38. Thus, although the revised text noted, for example, the Supreme Court's decisions in *McNabb v. United States*, 318 U.S. 332 (1943), *United States v. Mitchell*, 322 U.S. 65 (1944), and *Ashcraft v. Tennessee*, 322 U.S. 143 (1944), he continued to provide nineteen interrogation pointers organized from the letters A through S premised solely on his observations. *See* Inbau, *supra* note 113, at 151–52 nn.3–6, 162–69, 107–38.

219. Inbau, *supra* note 113, at 14.

220. *Id.*

221. Inbau & Reid, *Lie Detection and Criminal Interrogation* 3d ed., *supra* note 143.

222. *Id.* at xi (Table of Contents).

experimentation.”²²³ Other than discussing a relatively small flurry of Supreme Court confession cases decided since 1948,²²⁴ part two remained largely unchanged from the prior two editions.²²⁵

Reid continued his push for fame when, in 1954, he coauthored *Behavior Symptoms of Lie-Detector Subjects* with Richard O. Arther and again published in the *Journal*.²²⁶ Like Reid’s prior efforts, this piece was brief—four pages—and supported only by the authors’ assertions.²²⁷ In it, the pair reported the results of a five-year “study”—based solely on the authors’ observations²²⁸—purporting to reflect what behavioral symptoms guilty persons exhibit.²²⁹ Although the authors recognize that no specific type of behavior “should ever be considered proof of guilt or innocence,” the results of their study were nevertheless designed to aid lie-detector examiners in “consider[ing] the probable significance of a subject’s behavior pattern.”²³⁰

According to the authors, guilty subjects, inter alia (1) “frequently attempt to postpone the date for their examination,” (2) “look[] very worried and [are] highly nervous,” (3) “feel it necessary to explain before the examination why their responses might mislead the examiner into believing that they are lying,” and (4) “sometimes claim that the apparatus is causing them physical pain.”²³¹ The study also showed, according to Reid and Arther, that guilty subjects often sought to distort the results by, for example, wiggling their toes, coughing, or changing their breathing rate.²³²

In contrast, innocent subjects often eagerly approached the prospect of a lie-detector test because they were “usually very glad to be given an opportunity to prove their innocence.”²³³ Then, during the exam, “[i]nnocent subjects are often at ease, light-hearted, and talkative.”²³⁴ From this information, the authors conclude, “[a] definite advantage can be gained from

223. *Id.* at vii.

224. *Id.* at 205–07 (discussing *Stein v. New York*, 346 U.S. 156 (1953); *Stroble v. California*, 343 U.S. 181 (1952); *Gallegos v. Nebraska*, 342 U.S. 55 (1951); *Agoston v. Pennsylvania*, 340 U.S. 844 (1950) (per curiam); *Watts v. Indiana*, 338 U.S. 49 (1949); *Turner v. Pennsylvania*, 338 U.S. 62 (1949); *Harris v. South Carolina*, 338 U.S. 68 (1949); *Haley v. Ohio*, 332 U.S. 596 (1948)).

225. Again, part two set forth Inbau’s comments about how to effectively interrogate suspects over the course of nineteen separate points spanning assigned letters from A through S. See Inbau & Reid, *Lie Detection and Criminal Interrogation* 3d ed., *supra* note 143, at 153–85.

226. Reid & Arther, *Behavior Symptoms*, *supra* note 142. The addition of Arther to the byline *should* have done little to aid Reid in his quest for legitimacy. Arther held a B.S. in Police Administration and no additional academic credentials other than his pursuing “the study of scientific lie detection at John E. Reid and Associates for six months.” *Id.* at 104.

227. The article is not accompanied by footnotes or supporting experimental data. See *id.* at 104–08.

228. *Id.* at 104 (“During this time the behavior reactions and statements of these subjects were closely observed and immediately written into the case file.”).

229. *Id.*

230. *Id.*

231. *Id.* at 105.

232. *Id.*

233. *Id.* at 106.

234. *Id.*

observing and classifying a subject's behavior symptoms."²³⁵ Although the disturbing absence of empirical support for the authors' conclusions should have nullified the article's impact, it was nevertheless reprinted in the third edition of *Lie Detection and Criminal Interrogation*.²³⁶

Arther and Reid emerged in the *Journal* yet again just one year later in 1955, when the pair published *Utilizing the Lie Detector Technique to Determine the Truth in Disputed Paternity Cases*.²³⁷ This article, like those before it, is brief and is accompanied by little supporting data.²³⁸ The authors argue for the utility of forcing fathers who disavow paternity to take lie-detector tests.²³⁹ Doing so, they contend, will more efficiently resolve the cases, particularly where the court does not "have at its disposal the facilities for having blood-grouping tests made of the complainant, the defendant, and the child."²⁴⁰ Even if the court does have access to such tests, the authors reason, the tests only exclude the individual but cannot identify the father.²⁴¹ To aid their assertions, the authors state the following without citation support:

The latest estimation accords to the lie-detector technique, when properly used, an accuracy of 95%, with a 4% margin of indefinite (inconclusive) determinations and a 1% margin of maximum possible error. In other words, in the examination of 100 subjects the examiner can make a definite and accurate diagnosis as to the guilt or innocence of 95 of these subjects. The actual known error at the Reid laboratories for the past six years was less than .0007.²⁴²

235. *See id.* at 107.

236. Inbau & Reid, *Lie Detection and Criminal Interrogation* 3d ed., *supra* note 143, at 106–10.

237. Arther & Reid, *Lie Detector in Paternity Cases*, *supra* note 142.

238. This paper is eight pages and has eight footnotes. In the course of those eight footnotes, the authors rely on a total of three sources—one of which is the third edition of *Lie Detection and Criminal Interrogation*. *See id.* at 214 n.2, 216 n.5. The article also lacks supporting scientific data. *See id.* The authors instead rely on a six-year "study" conducted at John E. Reid & Associates, during which the authors administered polygraph tests in 312 disputed paternity cases. *See id.* at 214–15. From that study, "it was determined that 93 percent of the tested parties lied in some respect when they testified in court as to their sexual relationship!" *Id.* at 215.

239. *Id.* at 219.

240. *Id.* at 214.

241. *Id.* at 219.

242. *Id.* at 216 n.5; *accord* Reid & Inbau, *supra* note 134, at 234 (arguing that the percentage of known polygraph exam errors is below one percent). *But see* Paul C. Gianelli, *Polygraph Evidence: Post-Daubert*, 49 *Hastings L.J.* 895, 919 (1998) ("This error rate is suspect because it is based on the assumption that polygraph results are correct unless proven otherwise."). An inordinate number of studies contradict this (again unsupported) assertion of accuracy. *See, e.g.*, Gordon H. Barland & David C. Raskin, *An Evaluation of Field Techniques in Detection of Deception*, 12 *Psychophysiology* 321 (1976); Frank Horvath, *The Effect of Selected Variables on Interpretation of Polygraph Records*, 62 *J. Applied Psychol.* 127, 130–31 (1977); Benjamin Kleinmuntz & Julian J. Szucko, *On the Fallibility of Lie Detection*, 17 *Law & Soc'y Rev.* 85, 95–96 (1982) (finding that a leading polygraph firm incorrectly characterized thirty-nine percent of verified innocent examinees as guilty); *see also, e.g.*, U.S. Cong. Office of Tech., Assessment, *Scientific Validity of Polygraph Testing: A Research Review and Evaluation* 97 (1983) (noting polygraph studies that showed accuracy rates of approximately sixty percent); Douglas Carroll, *How Accurate Is Polygraph Lie Detection?*, in *The Polygraph Test: Lies, Truth and Science* 19, 22 (Anthony Gale ed., 1988) (highlighting lab results demonstrating a twenty-three percent chance that an innocent person will be classified as guilty); Kleinmuntz & Szucko, *supra*, at 87 ("[T]here is no reason to believe that lying produces distinctive physiological changes that characterize it

Reid's push to legitimize the lie-detector test continued in 1956 with his coauthored publication—again appearing in the *Journal*—*The Selection and Phrasing of Lie-Detector Control Questions*.²⁴³ This time collaborating with George W. Harman,²⁴⁴ Reid sought in this brief piece to clarify the utility and corresponding disutility of certain questions used in his “control question” approach to pre-polygraph examination interviews.²⁴⁵ The “control question” is one designed “to afford the examiner a valid means of comparing the subject’s responses to the questions pertaining to the matter under investigation with those induced by a question calling for an answer which is a known lie or one which the examiner may reasonably assume to be untrue.”²⁴⁶

Accompanied, as usual, by few footnotes and little (if any) supporting experimental data,²⁴⁷ the authors propose explaining the purpose of the control question to the test subject before asking a question—the answer to which must always be “no.”²⁴⁸ Examiners should craft a question concerning “a matter of lesser weight than the pertinent questions” and limit it to “the same general area as the offense for which the subject is being tested.”²⁴⁹ Asking effective control questions, conclude the authors, will allow the examiner to assess the subject’s behavior symptoms in the context of the pre-polygraph examination interview before beginning the substantive examination.²⁵⁰

Four years later, in 1962, the national media began to notice Reid’s work. That year, parents of a thirteen-year-old child asked Reid to speak with their boy.²⁵¹ Reid administered a lie-detector test, after which he elicited an eight-page confession in which the boy admitted to starting a fire that killed ninety-

and only it.”). The American Medical Association Council on Scientific Affairs also analyzed the validity of the polygraph in 1986. See Council Report, *Polygraph*, 256 JAMA 1172, 1175 (1986). The Council concluded that there existed “enough false-positives and false-negatives to make many applications [of the polygraph], perhaps even in criminal cases, of dubious value.” *Id.* at 1173. Even the NCAA’s infractions committee is unwilling to utilize polygraphs. See Ed Sherman & Joseph Tybor, *NCAA Skeptical About Polygraphs*, Chi. Trib., Feb. 27, 1990, at 1C.

243. Harman & Reid, *Selection and Phrasing of Lie-Detector Questions*, *supra* note 142.

244. Like Arther, Reid’s prior coauthor, Harman appears underqualified. The article credits Harman with receiving an undergraduate degree from the University of Pennsylvania and serving for four years as an officer in the Army Intelligence Corps before receiving lie detection training from Reid. See *id.* at 578. He thereafter served as a staff member in Reid’s Chicago office before leaving to become the director of the John E. Reid and Associates’ San Francisco Office. See *id.*

245. The article spans a total of five pages. *Id.*

246. *Id.* at 578.

247. The article is supported by three footnotes, each of which cites one of Reid’s prior publications. See *id.* at 578 n.1, 579 n.2, 582 n.3. Of course, the authors also thank Inbau in the author note. See *id.* at 578 n.*.

248. *Id.* at 578–79.

249. *Id.* at 579. There is no general example of a control question. Instead, the examiner should create questions tailor-made to the suspect’s background. See *id.* (noting the examiner should “select[] an area of the subject’s background from which to draw a tentative control question”).

250. *Id.* at 578 (“The introduction of the control question is best accomplished during the pre-test interview with the subject, when the examiner is discussing the questions pertaining to the investigation.”).

251. Associated Press, *Boy Questioned in Fire: Said to Confess Setting School 1958 Blaze Fatal to 95*, N.Y. Times, Jan. 16, 1962, at 46.

five people in 1958 at Our Lady of the Angels School.²⁵² Reid's work, reported in the *Chicago Tribune*²⁵³ and the *New York Times*, prompted the *Times* to characterize him as "a nationally known expert on lie detectors."²⁵⁴

That same year was also a significant scholarship year for both Inbau and Reid, who published their first edition of *Criminal Interrogation and Confessions*.²⁵⁵ The text no longer divided the lie detector and interrogation techniques into separate subjects, choosing instead to focus exclusively on an expanded treatment of interrogation methods.²⁵⁶ Consistent with their prior writings on interrogation techniques, this book provides a laundry list of observations—this time spanning from A to Z.²⁵⁷ Included within this iteration are the authors' familiar suggestions that interrogators, inter alia: (1) question suspects in private and away from home,²⁵⁸ (2) display an air of confidence in the suspect's guilt,²⁵⁹ (3) minimize the moral seriousness of the offense by blaming the victim or society,²⁶⁰ and (4) resort to tricking the suspect into believing there exists more evidence of guilt than the investigators possess.²⁶¹

The legal world became intimately familiar with these and other of Inbau and Reid's interrogation techniques when, in 1966, the Supreme Court discussed and decried each of them in *Miranda v. Arizona*.²⁶² Indeed, the totality of techniques promoted by Inbau and Reid prompted the Supreme Court to conclude that, even in the absence of employing the "third degree," "the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals."²⁶³ Backed by an uncharitable view of Reid and Inbau's interrogation techniques,²⁶⁴ the Supreme

252. *Id.*

253. *See id.*

254. *Id.*

255. Inbau & Reid, *supra* note 20.

256. *Id.* at ix–xii (Table of Contents). The authors elected to focus exclusively on interrogations because "[a]n expanded treatment of *Criminal Interrogation and Confessions* and *Lie Detection* in one publication would have resulted in a book that would be too bulky and perhaps too costly for readers with an interest in only one or the other of the two separate subjects." *Id.* at vii.

257. *Id.* at ix–x (Table of Contents).

258. *Id.* at 1 ("The principal psychological factor contributing to a successful interrogation is *privacy*—being alone with the person under interrogation.")

259. *Id.* at 23 ("By an air of confidence we do not mean a supercilious or bullying attitude, but rather one which will convey to the subject the impression that the interrogator is sure of himself.")

260. *Id.* at 43.

261. *Id.* at 28. Equally as consistent with the authors' prior interrogation writings, this expanded edition relies on no psychological texts to support the assertions contained within. In fact, the text cites only two books, titled *Sexual Behavior in the Human Male* and *Sexual Behavior in the Human Female*, solely to suggest that interrogators rely on those books when seeking to minimize the moral seriousness of an individual's suspected conduct in a sex offense case. *Id.* at 36 n.2. The text otherwise contains only thirteen footnotes, most of which either offer author observations, or reference legal doctrines.

262. 384 U.S. 436, 448–55 (1966) (discussing in detail the interrogation techniques outlined by the first edition of Inbau and Reid's *Criminal Interrogation and Confessions*).

263. *Id.* at 455.

264. *See, e.g., id.* at 457–58 ("The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself.");

Court held that certain warnings must be provided to suspects before any custodial interrogation in order to safeguard the Fifth Amendment privilege against self-incrimination.²⁶⁵

Although the *Criminal Interrogation and Confession* text troubled the Supreme Court in 1966, it was the polygraph that fascinated the public two years earlier. In 1964, Reid and Inbau were called to serve as witnesses in a House Information Subcommittee inquiry into the federal government's use of lie detectors.²⁶⁶ In response to charges that the lie detector was "largely bunk," Inbau admitted "lie detector tests were 'not susceptible to actual statistical analysis'" yet still argued "'a high degree of accuracy' is attained when tests are properly conducted."²⁶⁷

In any event, Inbau and Reid's cumulative high-profile exposure clarified one thing: they were famous. The pair took advantage of their newfound fame by publishing the first edition of their collaborative work, *Truth and Deception: The Polygraph ("Lie-Detector") Technique* in 1966.²⁶⁸ Then, one year later, they responded to the *Miranda* decision by publishing the second edition of *Criminal Interrogation and Confessions*.²⁶⁹ As to the former, the publication sought again to establish the validity of Reid's control-question polygraph technique, the same technique he discussed in so many previous *Journal* articles.²⁷⁰

And, as to the latter, Inbau and Reid specifically sought to incorporate the warnings required by *Miranda* into their interrogation training techniques.²⁷¹ Although the pair began the new edition by promptly admonishing interrogators to provide the rights required by *Miranda* at the outset of any custodial interrogation,²⁷² the techniques discussed in prior editions—and condemned by the *Miranda* Court²⁷³—changed little in form or substance. Indeed, the 1967 iteration still counseled interrogators to (1) question suspects

Yale Kamisar, *The Importance of Being Guilty*, 68 J. Crim. L. & Criminology 182, 195 (1977) ("The *Miranda* opinion quotes from or cites the 1953 and 1962 Inbau-Reid manuals no less than ten times—and never with approval.").

265. *Miranda*, 384 U.S. at 472. The Court required the now familiar warnings:

[A]n individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation.

Id. at 471.

266. *Lie Detector Hearings Set*, N.Y. Times, Apr. 3, 1964, at L15.

267. John D. Morris, *House Unit Opens Polygraph Study: Rep. Gallagher, Denied Role, Charges a 'Whitewash'*, N.Y. Times, Apr. 7, 1964, at 17.

268. Reid & Inbau, *supra* note 134.

269. Inbau & Reid, *Criminal Interrogation* 2d ed., *supra* note 143.

270. Reid & Inbau, *supra* note 134, at 10–16; *accord supra* note 197 and accompanying text.

271. Inbau & Reid, *Criminal Interrogation* 2d ed., *supra* note 143, at 4, 125.

272. *Id.* at 4.

273. *See* 384 U.S. 436, 448–55 (1966).

in private and away from home,²⁷⁴ (2) display an air of confidence in the suspect's guilt,²⁷⁵ (3) minimize the moral seriousness of the offense by blaming the victim or society,²⁷⁶ and (4) resort to tricking the suspect into believing there exists more evidence of guilt than investigators possess.²⁷⁷ It seems, then, that if Chief Justice Warren thought his majority opinion in *Miranda* would materially change Inbau and Reid's approach to interrogation, he was woefully mistaken.²⁷⁸

Meanwhile, Reid continued his effort to bring the polygraph technique into the mainstream. This time collaborating with colleague Fred Horvath,²⁷⁹ the pair published—again in the *Journal*—*The Reliability of Polygraph Examiner Diagnosis of Truth and Deception* in 1971.²⁸⁰ Once again brief and characteristically unsupported,²⁸¹ this paper ostensibly reported the results of a "study" on whether "[p]olygraph examiners, working independently of each other, are able to successfully diagnose deception solely from an analysis of Polygraph records."²⁸² According to Horvath and Reid, experienced polygraph examiners successfully identified deception solely from polygraph results 91.4% of the time, whereas inexperienced examiners were correct in only

274. Inbau & Reid, *Criminal Interrogation* 2d ed., *supra* note 143, at 5.

275. *Id.* at 26.

276. *Id.* at 47.

277. *Id.* at 32.

278. Amazingly, notwithstanding the absence of any material change in the Reid technique (and the absence of credentials from its authors), the modern Supreme Court has cited the Manual with approval at least twice. See *Missouri v. Seibert*, 542 U.S. 600, 610 n.2 (2004) ("It is not the case, of course, that law enforcement educators en masse are urging that *Miranda* be honored only in the breach.") (citing Inbau, Reid & Buckley, *Criminal Interrogation* 3d ed., *supra* note 143, at 221); *Stansbury v. California*, 511 U.S. 318, 324 (1994) ("It is well settled, then, that a police officer's subjective view that the individual under questioning is a suspect, if undisclosed, does not bear upon the question whether the individual is in custody for purposes of *Miranda*.") (citing Inbau, Reid & Buckley, *Criminal Interrogation* 3d ed., *supra* note 143, at 232, 236, 297–98). Those citations are indeed unfortunate; the website for John E. Reid and Associates currently references the cites and boasts that the Supreme Court believes the Reid technique exemplifies "proper training." See John E. Reid & Associates, Inc., Company Information, *supra* note 2.

279. Frank Horvath graduated from Michigan State University with a B.S. in Police Administration. Horvath & Reid, *Reliability of Polygraph Examiner Diagnosis*, *supra* note 142, at 276. Following his graduation, he undertook "the Study of Scientific Polygraph testing at John E. Reid and Associates" and became a "Chief Examiner." *Id.* Horvath's dearth of credentials would later draw the ire of noted Professor of Psychology, Saul M. Kassin, after Horvath performed a study purportedly demonstrating that training in the Reid technique produced an eighty-five percent level of accuracy in detecting deception. Compare Frank Horvath et al., *Differentiation of Truthful and Deceptive Criminal Suspects in Behavior Analysis Interviews*, 39 J. Forensic Sci. 793 (1994) (evaluating sixty interview tapes from the Reid interview collection and concluding from the judgments of experienced in-house staff members that the Reid technique produced accurate results), with Saul M. Kassin, *The Psychology of Confessions*, 4 Ann. Rev. L. Soc. Sci. 193, 197 (2008) (noting that Horvath's study is "grossly out of step with basic science").

280. Horvath & Reid, *Reliability of Polygraph Examiner Diagnosis*, *supra* note 142. As always, Reid thanked Inbau "for his assistance and suggestions." *Id.* at 281.

281. The paper is five pages long and supported by five footnotes, two of which rely on prior Reid publications. *Id.* at 276–81 nn.4, 5. Moreover, the "data" utilized in this study is self-created. Reid asked polygraph examiners to analyze polygraph records—generated by Horvath—to assess deception. *Id.* at 276–77. Then, Reid or Horvath determined the accuracy of those determinations. *Id.* at 277.

282. *Id.* at 276.

79.1% of cases.²⁸³ From these numbers, the authors first conclude, “Polygraph examiners . . . can reliably diagnose truth and deception or detect the guilty and identify the innocent solely from an analysis of Polygraph records.”²⁸⁴ Additionally, say Horvath and Reid, the data reflects the importance “of practice experience in qualifying examiners as experts.”²⁸⁵

Reid’s work to establish the polygraph as a mainstream lie detection device paid off that same year. On November 21, 1971, the *New York Times* ran a lengthy front-page article discussing the rising popularity among employers—public or private—of using the polygraph to weed out dishonest prospective and current employees.²⁸⁶ In the article, Reid boasted that his company “get[s] better results than a priest does.”²⁸⁷ The article prominently featured his coauthored polygraph text with Inbau, *Truth and Deception*, and referred to it as the “standard text book on the lie detector.”²⁸⁸ Although the article concluded by observing that an emerging body of studies challenged the accuracy of polygraph test results, it never explored or commented on Reid’s background.

Reid published his final article in the *Journal* one year later, titled *The Polygraph Silent Answer Test*, again with Horvath.²⁸⁹ This lightly cited eight-page paper analyzed the “silent answer test,” in which “the subject is told to listen to each test question and to answer only to himself silently.”²⁹⁰ Given that individuals ordinarily answer questions aloud when asked, the silent answer test will ideally produce in the suspect an emotional reaction that will reflect truth or deception on the polygraph chart.²⁹¹ It should, say the authors, follow the oral test and the examiner should re-ask the questions in the exact same order.²⁹² If administered properly, the silent answer test “materially increase[s] the accuracy of the Polygraph technique.”²⁹³

283. *Id.* at 279.

284. *Id.* at 281.

285. *Id.* Presumably, the totality of this article is actually a thinly veiled effort to support Inbau and Reid’s long-held belief that blame for any inaccurate results produced by the lie-detector technique resides with the examiner rather than the machine or method of questioning. *See infra* note 355 and accompanying text; *see also* Morris, *supra* note 267 (reporting Inbau’s comments about the polygraph: “‘a high degree of accuracy’ is attained when tests are properly conducted”). In a separate earlier publication, Reid and Inbau went as far as to suggest that competent polygraph examiners should receive “instruction in the pertinent phases of psychology.” *See* Inbau & Reid, *Lie-Detector Technique: Reliable and Valuable*, *supra* note 142. Those comments are of course ironic when juxtaposed with Reid and Inbau’s own backgrounds.

286. Ben A. Franklin, *Lie Detector’s Use by Industry Rises; Rights Peril Feared*, *N.Y. Times*, Nov. 22, 1971, at 1.

287. *Id.* at 45.

288. *Id.*

289. Horvath & Reid, *Polygraph Silent Answer Test*, *supra* note 142.

290. *Id.* at 285. The paper contains five footnotes, one of which relies on the first edition of Reid’s coauthored *Truth and Deception* text. *See id.* at 285–90, 286 n.2.

291. *Id.* at 286.

292. *Id.* at 287.

293. *Id.* at 293.

Although Reid's effort again contained no scientific or empirical support, his work nevertheless progressively gained more credibility in the media throughout the 1970s for the polygraph's role in (1) the Watergate scandal,²⁹⁴ (2) discovering who leaked sensitive American Medical Association documents to reporters,²⁹⁵ and (3) shutting down a high-profile libel lawsuit filed by James Earl Ray (the convicted killer of Dr. Martin Luther King, Jr.).²⁹⁶ A second and final edition of *Truth and Deception* in 1976 helped further solidify the utility of Reid's approach to polygraph examinations.²⁹⁷

Although Reid passed away in 1982, he managed to collaborate on a portion of the 1986 third edition of *Criminal Interrogation and Confessions*.²⁹⁸ That edition is, in the words of its authors, "basically an entirely new book."²⁹⁹ The edition adds, revises, and rearranges a number of earlier published techniques and synthesizes them into "nine steps toward effective interrogation."³⁰⁰ According to coauthors Inbau and Joseph P. Buckley, "[t]hese developments are due primarily to the skill and ingenuity of . . . John E. Reid."³⁰¹ In addition to debuting the new nine-step interrogation technique, this edition for the first (and only) time included an appendix—written by someone without a degree in psychology³⁰²—to elaborate on the psychological principles of criminal interrogation.³⁰³

This final product—in the form of the nine-step Reid technique—completes the house of cards: authors with no empirical authority created the technique, it lacks supporting experimental data, and it is not recognized by the scientific community. Yet, as the current 2001 version implicitly notes, observations by Reid are evidently the only prerequisites necessary to create an interrogation training empire: "[a]s a result of many years of experience, primarily on the part of the staff of John E. Reid & Associates under the guidance of the late John E. Reid, the interrogation process has been

294. Christopher Lydon, *Colson Reported Passing a Lie Test on Watergate*, N.Y. Times, Apr. 8, 1973, at 1.

295. David Burnham, *4 A.M.A. Employes [sic] Quizzed on Leak: Lie Detector Tests Given to Discover the Source*, N.Y. Times, Aug. 6, 1975, at 13.

296. Associated Press, *Ray Files a Libel Suit Against Playboy but Is Told to Withdraw It*, N.Y. Times, Aug. 16, 1977, at 29.

297. Reid & Inbau, *Truth and Deception* 2d ed., *supra* note 143. Arguably, psychologist David Lykken's development of the "Guilty Knowledge Test" is one reason that no subsequent editions of *Truth and Deception* were published. See Richard H. Underwood, *Truth Verifiers: From the Hot Iron to the Lie Detector*, 84 Ky. L.J. 597, 630 (1995). Lykken criticized Reid's control question method, noting that subjects could beat the control question method by altering their physiological reactions to control questions. *Id.* at 630 n.139.

298. Inbau, Reid & Buckley, *Criminal Interrogation* 3d ed., *supra* note 143, at v.

299. *Id.*

300. *Id.*

301. *Id.*

302. Brian C. Jayne is the author credited with drafting the appendix. See *id.* at 327. As noted, he does not possess a recognized graduate degree and does not even have an undergraduate degree in psychology. See *supra* note 112.

303. Inbau, Reid & Buckley, *Criminal Interrogation* 3d ed., *supra* note 143, at 325–47.

formulated into nine structural components—the nine steps of criminal interrogation.”³⁰⁴

III. Why Confessions Obtained Pursuant to the Reid Method Are Inadmissible

The totality of the discussion of Inbau and Reid’s lifelong work in polygraph and interrogation techniques should unequivocally demonstrate one thing: *all* of their “scientific” and “psychological” work is collectively based on nothing more than the mere observations—rather than experimental data—of two people who possessed only law degrees.³⁰⁵ Reid’s work focused almost exclusively on revising how to conduct polygraph testing despite the judiciary’s continual and uniform rejection of polygraph results³⁰⁶—a rejection that began nearly twenty years *before* Reid began his work on the lie-detector technique.³⁰⁷ Although the foundation of that discredited technique underlies the modern nine-step Reid technique, police continue to learn it and obtain confessions by using it. Section A makes the perhaps self-evident assertion that if the results of a polygraph are inadmissible in court, then so too should be confessions obtained pursuant to the Reid method.

Section B then separately argues that the Reid method’s claimed basis in psychology requires that it comport with the Supreme Court’s decisions in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*³⁰⁸ and *Kumho Tire Co. v. Carmichael*.³⁰⁹ Those decisions provide the test for how to assess the validity of expert evidence. The Reid technique—premised exclusively on its creators’ observations—utterly fails that test. Section B therefore argues that all interrogator testimony about confessions obtained pursuant to the Reid method is inadmissible.

A. Polygraph Results Are Inadmissible in Court; So Too, Then, Should Be the Results of Confessions Obtained Pursuant to the Reid Method

The relationship between the polygraph exam and the courts has historically been a tumultuous one. The first appellate court to consider the admissibility of polygraph results was the D.C. Circuit in its 1923 *Frye v. United States* opinion.³¹⁰ In *Frye*, the defendant confessed to murder but

304. *Id.* at 212.

305. At least one justice has questioned the validity of the techniques espoused by the Reid technique on this exact basis. See *State v. Jackson*, 304 S.E.2d 134, 164 n.1 (N.C. 1983) (Exum, J., dissenting) (“Although [*Criminal Interrogation and Confessions*] has a section on the law governing the admissibility of confessions, the greater part of the book is nothing more than a police manual suggesting methods of interrogation.”), *rev’d sub nom.* *Jackson v. North Carolina*, 479 U.S. 1077 (1987).

306. See *supra* note 26.

307. *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).

308. 509 U.S. 579 (1993).

309. 526 U.S. 137 (1999).

310. 293 F. 1013.

subsequently sought to repudiate his confession.³¹¹ For support, he offered results from a primitive version of a polygraph test—better known then as the systolic blood pressure deception test³¹²—which supported his claim of innocence.³¹³ In rejecting the defendant's proffer, the *Frye* court held that results from the systolic blood pressure deception test were inadmissible given that the test was not sufficiently recognized in the scientific community.³¹⁴ In doing so, the court outlined a test that would govern the admissibility of expert scientific evidence for nearly seven decades: to be admissible, expert scientific evidence "must be sufficiently established to have gained general acceptance in the particular field in which it belongs."³¹⁵

Courts nationwide responded to *Frye* with uniform skepticism of lie detectors.³¹⁶ The majority of post-*Frye* courts imposed a per se ban on polygraph results out of concern that such results were unreliable and, moreover, could unduly invade the province of the jury as fact-finder.³¹⁷ A handful of courts, however, admitted polygraph results for limited purposes or upon stipulation of the parties.³¹⁸

In 1993, the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*³¹⁹ altered the standards governing the admissibility of expert scientific testimony. In *Daubert*, the Court concluded that the promulgation of the Federal Rules of Evidence—Rules 403, 703, and

311. James R. McCall, *Misconceptions and Reevaluation—Polygraph Admissibility After Rock and Daubert*, 1996 U. Ill. L. Rev. 363, 366 n.13.

312. *Frye*, 293 F. at 1013. The systolic blood pressure test, in the court's words, was premised on the notion

that conscious deception or falsehood, concealment of facts, or guilt of crime, accompanied by fear of detection when the person is under examination, raises the systolic blood pressure in a curve, which corresponds exactly to the struggle going on in the subject's mind, between fear and attempted control of that fear, as the examination touches the vital points in respect of which he is attempting to deceive the examiner.

Id. at 1013–14.

313. McCall, *supra* note 311.

314. 293 F. at 1014.

315. *Id.*

316. See *United States v. Scheffer*, 523 U.S. 303, 312 n.7 (1998) ("Until quite recently, federal and state courts were uniform in categorically ruling polygraph evidence inadmissible under the [*Frye*] test . . .").

317. See, e.g., *People v. Baynes*, 430 N.E.2d 1070, 1079 (Ill. 1981) ("Polygraph evidence is not reliable enough to be admitted."); *Morgan v. Commonwealth*, 809 S.W.2d 704, 706 (Ky. 1991) ("The results of polygraph examinations are unreliable and are therefore inadmissible in evidence."); *People v. Leone*, 255 N.E.2d 696, 700 (N.Y. 1969) (concluding that reliability of the polygraph was unproven); *Fulton v. State*, 541 P.2d 871, 872 (Okla. Crim. App. 1975) (commenting on "the potential unreliability of polygraph examinations"); *Commonwealth ex rel. Riccio v. Dilworth*, 115 A.2d 865, 867 (Pa. Super. Ct. 1955) ("The reliability and scientific infallibility of the polygraph . . . must be more definitely established before our courts will accept their results as credible."); *Lee v. Commonwealth*, 105 S.E.2d 152, 155 (Va. 1958) ("[Polygraph] tests generally have not as yet been proved scientifically reliable . . .").

318. Timothy B. Henseler, *A Critical Look at the Admissibility of Polygraph Evidence in the Wake of Daubert: The Lie Detector Fails the Test*, 46 Cath. U. L. Rev. 1247, 1248 & nn.7–8 (1997).

319. 509 U.S. 579 (1993).

especially 702³²⁰—supplanted the *Frye* test.³²¹ In an effort to assist federal courts in applying Rule 702, the Supreme Court advised courts to consider the following nonexhaustive list of analytical factors: (1) “whether [the proposed scientific knowledge] can be (and has been) tested,” (2) “whether the theory or technique has been subjected to peer review and publication,” (3) “the known or potential rate of error,” and (4) whether the science has achieved “general acceptance” in the relevant scientific community.³²²

The Supreme Court’s decision in *Daubert* was of course binding only on federal courts; state courts remained free to continue utilizing the *Frye* test.³²³ Regardless of whether jurisdictions applied *Daubert* or *Frye*, though, the consensus among many was that *Daubert*’s logic might allow courts to reconsider the propriety of a per se ban on the admission of polygraph evidence.³²⁴ Although for a time that belief seemed prophetic,³²⁵ the trend died quickly.

320. *Id.* at 594–95 (noting that in addition to complying with Rule 702, judges must “be mindful of other applicable rules”). Then-applicable Rule 702, addressing the admissibility of scientific evidence, provided: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Fed. R. Evid. 702 (1993). The current version of Rule 702 largely incorporates *Daubert*’s factors:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Fed. R. Evid. 702.

321. *Daubert*, 509 U.S. at 587 (agreeing with petitioners’ contention that “the *Frye* test was superseded by the adoption of the Federal Rules of Evidence”).

322. *Id.* at 593–94.

323. *See, e.g.*, *State v. Harrod*, 26 P.3d 492, 500 n.7 (Ariz. 2001) (“We have long held [polygraph evidence] to be inadmissible under the *Frye* standard.”), *vacated on other grounds sub nom.* *Harrod v. Arizona*, 536 U.S. 953 (2002); *People v. Wilkinson*, 94 P.3d 551, 565 (Cal. 2004) (relying on state legislative ban on polygraph evidence); *People v. Lyons*, 907 P.2d 708, 712 (Colo. App. 1995) (observing that *Daubert* interpreted only the Federal Constitution and reaffirming Colorado’s per se ban on polygraph evidence); *State v. Porter*, 698 A.2d 739, 745 (Conn. 1997) (“Because *Daubert* was premised on an interpretation of a federal rule of evidence, its rejection of *Frye* is not binding authority on state courts.”); *State v. Trevino*, 980 P.2d 552, 557 (Idaho 1999) (rejecting defendant’s claim that *Daubert* requires a hearing on polygraph admissibility); *State v. Shively*, 999 P.2d 952, 955 (Kan. 2000) (“The general acceptance test of *Frye* governs the admissibility of expert scientific evidence in Kansas in those situations wherein such a test or standard is required.”); *see also, e.g.*, *Commonwealth v. Duguay*, 720 N.E.2d 458 (Mass. 1999); *Humphrey v. State*, 759 So. 2d 368 (Miss. 2000); *People v. Franks*, 761 N.Y.S.2d 459 (2003); *Paxton v. State*, 867 P.2d 1309 (Okla. Crim. App. 1993); *State v. Werner*, 851 A.2d 1093 (R.I. 2004); *State v. Council*, 515 S.E.2d 508 (S.C. 1999); *Ross v. State*, 133 S.W.3d 618 (Tex. Crim. App. 2004); *Wright v. State*, 154 S.W.3d 235 (Tex. App. 2005); *State v. Brown*, 948 P.2d 337 (Utah 1997); *State v. Beard*, 461 S.E.2d 486 (W. Va. 1995); *State v. Steven G. B.*, No. 93-1658-CR, 1996 Wisc. App. LEXIS 1032 (Ct. App. July 31, 1996).

324. McCall, *supra* note 311, at 365 (noting, in 1996, that some federal courts “have begun to reconsider and reject” a per se ban on polygraph testimony post *Daubert*).

325. *See, e.g.*, *United States v. Call*, 129 F.3d 1402, 1406 (10th Cir. 1997) (rejecting per se ban on polygraph in light of *Daubert*); *United States v. Cordoba*, 104 F.3d 225, 227 (9th Cir. 1997) (“[Per se rule]

Why did the polygraph fail to earn judicial acceptance? The Supreme Court's 1998 decision in *United States v. Scheffer*³²⁶ seemingly provides at least a partial answer. In *Scheffer*, the Court upheld the constitutionality of Military Rule of Evidence 707, which categorically disallowed the admission of polygraph evidence in courts-martial.³²⁷ In doing so, the Court clearly expressed the disdain it held for the polygraph by noting that "there is simply no way to know in a particular case whether a polygraph examiner's conclusion is accurate, because certain doubts and uncertainties plague even the best polygraph exams."³²⁸ Rule 707, said the Court, was "a rational and proportional means of advancing the legitimate interest in barring *unreliable* evidence."³²⁹ The *Scheffer* decision therefore offered additional ammunition to reviewing courts seeking to summarily bar polygraph evidence from their courtrooms.³³⁰

Wholly apart from *Daubert* and *Scheffer*, some courts continued to reason, like several post-*Frye* decisions had before them,³³¹ that introducing polygraph results divested the jury of the opportunity to evaluate witness credibility.³³² Regardless of the test employed, however, federal and state

excluding unstipulated polygraph evidence is inconsistent with the 'flexible inquiry' assigned to the trial judge by *Daubert*."); *United States v. Posado*, 57 F.3d 428, 433 (5th Cir. 1995) ("After *Daubert*, a per se rule is not viable."); *United States v. Crumby*, 895 F. Supp. 1354, 1361 (D. Ariz. 1995) ("The Court finds that polygraph evidence is sufficiently reliable under *Daubert* to be admitted as scientific evidence under Fed. R. Evid. 702.").

326. 523 U.S. 303 (1998).

327. *Id.* at 317.

328. *Id.* at 312.

329. *Id.* (emphasis added).

330. Indeed, at first, the *Daubert* factors seemingly offered the appropriate analytical roadmap for evaluating the admissibility of polygraph evidence. See David Gallai, *Polygraph Evidence in Federal Courts: Should It Be Admissible*, 36 Am. Crim. L. Rev. 87, 93-101 (1999) (collecting cases and evaluating polygraph's admissibility pursuant to the *Daubert* factors before concluding that polygraph results are inadmissible in federal court). Yet, based on the Supreme Court's unfavorable comments about the polygraph in *Scheffer*, subsequent reviewing courts seemed free to summarily dispose of arguments in favor of polygraph admissibility with little or no analysis. See, e.g., *Goel v. Gonzales*, 490 F.3d 735, 739 (9th Cir. 2007) (relying on *Scheffer* to summarily reject the use of polygraph reports in immigration proceedings); *United States v. Gardiner*, 463 F.3d 445, 468-69 (6th Cir. 2006) (relying in part on *Scheffer* to affirm the denial of disclosure to defendant that his codefendant failed a lie-detector test); *Ortega v. United States*, 270 F.3d 540, 548 (8th Cir. 2001) (relying on *Scheffer* to reverse government's attempt to base obstruction sentencing enhancement on polygraph's result); *United States v. Ruhe*, 191 F.3d 376, 388 (4th Cir. 1999) ("[*Scheffer*] recently held that such *per se* bans on polygraph tests are permissible."); *United States v. Godin*, 563 F. Supp. 2d 299, 300 (D. Me. 2008) (relying in part on *Scheffer* to summarily deny defendant's request for public funds to allow him to submit to a presentencing polygraph examination); *United States v. Canter*, 338 F. Supp. 2d 460, 464 (S.D.N.Y. 2004) ("While the Court is mindful that *Scheffer* involved a challenge to a military rule of evidence, the Court finds the *Scheffer* Court's rationale and discussion of the reliability of polygraph evidence no less germane or compelling.").

331. See *supra* note 317.

332. See, e.g., *United States v. Swayze*, 378 F.3d 834, 837 (8th Cir. 2004) ("When two witnesses contradict each other, juries, not polygraph tests, determine who is testifying truthfully."); *United States v. Call*, 129 F.3d 1402, 1406 (10th Cir. 1997) ("[Polygraph evidence] is often excluded because it usurps a critical function of the jury and because it is not helpful to the jury, which is capable of making its own determination regarding credibility."); *State v. Engelhardt*, 119 P.3d 1148, 1166 (Kan. 2005) (noting that the

courts most often thematically recognize one simple fact about polygraph evidence: it remains unreliable.³³³

Judges nationwide rightly reject polygraph evidence because there exists no “science” behind the detection of deception. The follow-up question seems obvious: why is all of this discussion about polygraphs relevant if this Article is about interrogation techniques? Answering that question should be equally as obvious: the Reid method of interrogation is designed to accomplish the same goal as the polygraph—to detect deception by subjects.³³⁴

Professor Richard A. Leo³³⁵ has previously argued that the Behavior Analysis Interview in particular is “premised on the same underlying theory as the polygraph: that the act of deception produces regular and discernable stress reactions in normally socialized individuals.”³³⁶ Yet, as Professor Leo observes, “[b]ecause no physiological or psychological response unique to lying (and never present in truthfulness) has ever been discovered, the theory of the polygraph and the Behavior Analysis Interview remains *prima facie* implausible, leaving both diagnostic methods especially prone to problems of interpreter bias, validity, reliability and false positive outcomes.”³³⁷ Most problematically, Professor Leo notes, “the data that Reid and Associates cite as support for the efficacy of the Behavioral Analysis interview *have never been made public*, and (assuming they even exist) they would appear to be little more than an accumulation of unsystematic, *post hoc* observations intended to verify their own preconceptions.”³³⁸

rule banning expert testimony about the polygraph is “attributable in part . . . to protection of the jury’s role as the factfinder”).

333. *See, e.g.*, *United States v. Scarborough*, 43 F.3d 1021, 1026 (6th Cir. 1994) (holding that polygraph results are “inherently unreliable”); *United States v. Cordoba*, 991 F. Supp. 1199, 1199 (C.D. Cal. 1998) (“The court finds polygraphy has not achieved general acceptance in the scientific community for courtroom use, the error rate for real-life polygraph tests is unknown, and there are no *controlling* standards for polygraphy.”), *aff’d*, 194 F.3d 1053 (9th Cir. 1999); *United States v. Black*, 831 F. Supp. 120, 123 (E.D.N.Y. 1993) (“[P]olygraph evidence is not sufficiently reliable to be admissible in a criminal trial or pre-trial hearing.”); *State v. Ulland*, 943 P.2d 947, 954 (Kan. Ct. App. 1997) (“Absent a stipulation of the parties, the results of a polygraph examination are too unreliable to be admissible at trial.”).

334. *See generally* Minzner, *supra* note 22 (describing the Reid technique as a method used for determining lie detection).

335. Professor Leo is an Associate Professor of Law at the University of San Francisco School of Law and formerly a professor of psychology and criminology at the University of California, Irvine. Richard A. Leo, Ph.D., J.D. Curriculum Vitae (Dec. 2009), *available at* <http://www.law.usfca.edu/faculty/fulltime/cv/leor.pdf>. He has written five books and more than fifty articles on police interrogation practices, false confessions, and wrongful convictions. *Id.* Professor Leo holds both a J.D. and a Ph.D. in Jurisprudence and Social Policy (with a specialization in criminology and social psychology). *Id.*

336. Leo, *supra* note 4, at 66; *see* Kassin, *supra* note 279, at 197 (“To help investigators determine whether their suspects are telling the truth or lying, Inbau et al. (2001) train investigators to use the Behavior Analysis Interview, or BAI.”); *see also* White, *supra* note 22, at 26 (“[T]he *Manual* instructs an interrogator as to how she can determine whether a suspect is guilty . . .”).

337. Leo, *supra* note 4, at 67; *accord* Kassin, *supra* note 279, at 197 (“[T]here is also no evidence to support the diagnostic value of the verbal and nonverbal cues that investigators are trained to observe.”).

338. Leo, *supra* note 4, at 67 (emphasis added).

The nine-step interrogation technique that would ordinarily follow the Behavior Analysis Interview—if the interrogator remains convinced of the subject's guilt—has garnered similar substantial criticism for its inability to accurately assess or detect deception.³³⁹ Psychology Professors Saul M. Kassin and Christina T. Fong performed an experiment in 1999 studying individuals' ability to accurately assess guilt or innocence.³⁴⁰ At the outset, the pair observed that, like the Behavior Analysis Interview, the nine-step interrogation method that followed was similarly designed to aid interrogators in detecting deception.³⁴¹

More substantively, Professors Kassin and Fong videotaped one group of participants interrogated pursuant to the Reid method to determine whether they committed a mock crime.³⁴² A second group of participants, some of whom were trained in the Reid method, watched the videos and opined on (1) the guilt or innocence of each subject, and (2) their confidence in their assessment of guilt or innocence.³⁴³ The results were as predictable as they were disturbing: First, judgment accuracy rates were comparable to chance.³⁴⁴ Second, "training in the use of verbal and nonverbal cues did not improve judgment accuracy."³⁴⁵ In an effort to explain why training did nothing to improve judgment accuracy, the authors stated pointedly, "there is no solid empirical basis for the proposition that these same cues reliably discriminate between criminals and innocent persons accused of crimes they did not commit."³⁴⁶

Finally, the authors reported, participants were over-confident in their assessment of guilt or innocence.³⁴⁷ In the authors' words:

[W]e found among both trained and naive participants that judgment accuracy and confidence were not significantly correlated, regardless of whether the measure of confidence was taken before, after, or during the task. Further demonstrating the meta-cognitive problems in this domain is that confidence ratings were positively correlated with the number of reasons (including Reid-based reasons) articulated as a basis for judgments, another dependent measure not predictive of accuracy. *Training had a particularly adverse effect in this regard. Specifically, those who were trained compared to those in the naive condition were less accurate in their judgments of truth and deception. Yet they were more self-confident and more articulate about the reasons for their often erroneous judgments.*³⁴⁸

339. *E.g.*, Kassin & Fong, *supra* note 25, at 514.

340. *Id.* at 499.

341. *Id.* at 500 (observing that the Reid technique specifically trains interrogators "on the analysis of verbal and nonverbal cues to deception").

342. *Id.* at 501.

343. *Id.*

344. *Id.* at 511.

345. *Id.*

346. *Id.* at 511–12.

347. *Id.* at 512.

348. *Id.* (emphasis added). The study's authors performed their experiments in 1999. Selection of this older study for this Article was intentional; indeed, one should feel uncomfortable knowing that society has

Accordingly, they conclude, “[w]ith regard to the finding that training in the Reid technique did not increase accuracy, the results are unambiguous.”³⁴⁹

This analysis should sound eerily familiar. The polygraph machine is designed to detect deception; remember, Reid himself once bragged that his company “get[s] better results than a priest does.”³⁵⁰ Remember also Reid’s claim that “when properly used,” the lie-detector technique has “an accuracy of 95%.”³⁵¹ And, of course, think back to the considerable attention Reid and Inbau collectively received in the media for their lie-detector method.³⁵²

Notwithstanding Reid and Inbau’s protestations of accuracy, think now of the judiciary’s response to their lie-detector technique: polygraph results are inadmissible. Why again? Because since 1923, polygraph examiners (Reid included) have been unable to consistently convince *anyone*—including the courts—that the “science” underlying the polygraph should translate into admissible evidence.³⁵³ Society should be particularly thankful for the appellate judiciary’s wisdom; if you remain unconvinced, then flip back a few pages and double-check the research underlying Reid’s lie-detector technique.³⁵⁴ The absence of research to support that technique confirms what seems uniformly obvious to professors, social scientists, and psychologists alike: there exists no physiological or psychological response unique to lying. One more obvious point bears mentioning: there is a difference between those who talk about science and psychology and those who are *credentialed* to do so.³⁵⁵

had access to this information for a decade now, yet courts continue to routinely admit confessions obtained pursuant to the Reid method. For those wishing to confirm that the results of Kassin and Fong’s study are far from anomalous, see Aldert Vrij, *Detecting Lies and Deceit: Pitfalls and Opportunities* (2d ed. 2008); Charles F. Bond, Jr. & Bella M. DePaulo, *Accuracy of Deception Judgments*, 10 *Personality & Soc. Psychol. Rev.* 214 (2006); and Aldert Vrij et al., *An Empirical Test of the Behaviour Analysis Interview*, 30 *Law & Hum. Behav.* 329 (2006).

349. Kassin and Fong, *supra* note 25, at 512; *accord* Kassin & Gudjonsson, *supra* note 46, at 38 (discussing psychological tests demonstrating that people who have undergone training in judging the accuracy of confessions are “significantly less accurate than those who did not [undergo the training]—though they were more confident in their judgments [of guilt or innocence]”).

350. Franklin, *supra* note 286, at 45.

351. Arther & Reid, *Lie Detector in Paternity Cases*, *supra* note 142, at 216 n.5.

352. *See* Associated Press, *supra* note 296, at 31; Burnham, *supra* note 295, at 13; Lydon, *supra* note 294, at 1.

353. *Compare* Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923) (rejecting primitive lie detector device because it had not achieved “general acceptance” in the scientific community), *with* United States v. Scheffer, 523 U.S. 303, 312 (1998) (“[C]ertain doubts and uncertainties plague even the best polygraph exams.”).

354. *See supra* notes 197–215 and accompanying text.

355. Paradoxically, although Reid and Inbau lacked the psychology training presumably required to create psychological interrogation methods, they nevertheless suggested that polygraph examiners possess a variety of credentials before courts should accept the results of their testing into evidence. *See* *People v. Leone*, 255 N.E.2d 696, 699 n.4 (N.Y. 1969) (“Reid and Inbau suggest that before permitting the results of a polygraph examination into evidence, the courts should require that (1) the examiner have a college degree; (2) that he have six months of internship training; (3) that he have at least five years’ experience as a specialist in the field of lie detection; and (4) that the examiner’s testimony be based upon polygraph records that he produces in

But an illogical disconnect persists. Like the polygraph or lie-detector technique, the Reid method of interrogation is designed to detect deception. And, like studies reflecting that the polygraph is about as accurate as flipping a coin,³⁵⁶ other studies reflect similar rates of accurate guilt or innocence assessments by interrogators trained in the Reid method.³⁵⁷ Yet, *unlike* the judiciary’s unwillingness to admit polygraph evidence, judges routinely admit confessions taken pursuant to the Reid method, without inquiring into the basis for Reid and Inbau’s claim that their methods introduced “science” into the interrogation room.³⁵⁸

The admission of confessions obtained by quasi science is problematic given the simple analysis that should lead courts to wholly reject the Reid interrogation method. If courts since 1923 have consistently rejected the polygraph exam,³⁵⁹ then logic dictates rejecting the Reid method of interrogation for identical reasons. Similar logic dictates one final troubling conclusion: because the judiciary had already firmly rejected the polygraph method long before Inbau utilized similar methodology in 1942 to formulate what is now the Reid technique, no court should *ever* admit a confession obtained pursuant to the Reid method against a confessing defendant.

B. Apart from the Polygraph, the Reid Technique Itself Is Premised on Inadmissible Junk Science

Most defense challenges to confessions focus on the possibility that methods endorsed by the Reid technique induced their client to confess falsely.³⁶⁰ Intuitively, this makes sense: a warehouse full of research reflects

court and which are available for cross-examination purposes.”); see Arther & Reid, *Lie Detector in Paternity Cases*, *supra* note 142, at 216 n.5 (“Far less accuracy will prevail, however, when the examiner is lacking in basic qualifications, adequate training, sufficient experience, general competence, or complete honesty.”).

356. See *supra* note 242 and accompanying text.

357. *E.g.*, Kassin & Fong, *supra* note 25, at 512; Kassin & Gudjonsson, *supra* note 46, at 40.

358. See *supra* note 24 and accompanying text; see also, *e.g.*, *People v. Gonzalez*, No. B154557, 2003 Cal. App. Unpub. LEXIS 11981, at *51 (Ct. App. Dec. 19, 2003) (upholding confession taken pursuant to the Reid technique despite noting that it “undoubtedly pressured appellant to admit his involvement”); *State v. Cobb*, 43 P.3d 855, 863 (Kan. Ct. App. 2002) (rejecting defendant’s argument that application of the Reid technique rendered his confession involuntary); *State v. Gevan*, No. C9-02-443, 2002 Minn. App. LEXIS 1014, at *9 (Ct. App. Sept. 3, 2002) (“While deceit and trickery are not condoned police practices, confessions obtained with this technique are admissible so long as the specific practices used do not ‘shock the conscience’ or risk inducing a false confession.”); *State v. Gentry*, No. C9-96-2344, 1997 Minn. App. LEXIS 1064, at **10-11 (Ct. App. Sept. 16, 1997) (rejecting defendant’s voluntariness challenge); *State v. Gardner*, 80 P.3d 1262, 1270 (Mont. 2003) (upholding Reid confession where defendant failed to preserve the issue); *State v. Ulch*, No. CR-00-1461, 2002 Ohio App. LEXIS 1866, at *11 (Ct. App. Apr. 19, 2002) (rejecting defendant’s challenge that application of the Reid technique violates due process); *State v. Isola*, No. 42472-6-I, 1999 Wash. App. LEXIS 2018, at *4 (Ct. App. Nov. 29, 1999) (discussing Reid technique).

359. *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923) (“We think the systolic blood pressure deception test has not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the courts in admitting expert testimony deduced from the discovery, development, and experiments thus far made.”).

360. See, *e.g.*, *People v. Son*, 93 Cal. Rptr. 2d 871, 883 (Ct. App. 2000); *State v. Ritt*, 599 N.W.2d 802, 810-11 (Minn. 1999); *State v. Davis*, 32 S.W.3d 603, 608 (Mo. Ct. App. 2000).

the potential for the Reid technique to produce false confessions.³⁶¹ Professor Leo in particular has extensively documented the potential for modern interrogation methods to produce false confessions.³⁶² Professor Leo observes that modern interrogation methods are “developed to manipulate the decision-making of a person who committed a crime,” yet false confessions arise because of the “inappropriate, improper and inept use of the methods of psychological interrogation.”³⁶³ For example, Professor Leo argues that police “too frequently become so zealously committed to a preconceived belief in a suspect’s guilt or so reliant on their interrogation methods that they mistakenly extract an uncorroborated, inconsistent, and manifestly untrue confession.”³⁶⁴

Rather than dwell for too long on the Reid technique’s propensity to cause false confessions, however, this section focuses more basically on the admissibility of a confession obtained pursuant to the Reid method. In doing so, it argues that interrogators certified in the Reid technique must be qualified as experts before any confession obtained from a defendant pursuant to the Reid method may be introduced against that defendant in court. Of course, given the absence of an empirical scientific basis to support the Reid method, no interrogator should be so qualified and, as a result, no confession obtained pursuant to the Reid method should ever be admitted in court.

Reid and Inbau long claimed that their methods introduced “psychological tactics” and “science” into the interrogation room.³⁶⁵ The belief, by now no doubt familiar to the reader, was that interrogators could learn to perceive deceptive responses in suspects merely by learning how to discern deception from their behavioral responses.³⁶⁶ That view remains unchanged today. Indeed, promotional materials for seminars given by John E. Reid & Associates boast the ability to—in three-days, no less—teach students “[h]ow to *psychologically* profile suspects for the interrogation.”³⁶⁷

361. See *infra* notes 362–63.

362. See, e.g., Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891 (2004); Richard A. Leo et al., *Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First Century*, 2006 Wis. L. Rev. 479, 484–85; Richard A. Leo, *False Confessions and Miscarriages of Justice Today*, in *The American Criminal Justice System* 169 (Richard A. Leo ed., 1997); Richard A. Leo, *Miranda and the Problem of False Confessions*, in *The MIRANDA Debate: Law, Justice and Policing* 271 (Richard A. Leo & George C. Thomas, III eds., 1998); Richard A. Leo, *Miranda’s Revenge: Police Interrogation as a Confidence, Game*, 30 Law & Soc’y Rev. 259, 269 (1996); Richard A. Leo, *Some Thoughts About Police and Crime*, in *The Crime Conundrum: Essays on Criminal Justice* 121 (Lawrence Friedman & George Fisher eds., 1997); Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. Crim. L. & Criminology 429 (1998); Richard A. Leo & Richard J. Ofshe, *Missing the Forest for the Trees: A Response to Paul Cassell’s “Balanced Approach” to the False Confession Problem*, 74 Denv. U. L. Rev. 1135 (1997); Ofshe & Leo, *supra* note 25; Ofshe & Leo, *supra* note 22, at 189.

363. Ofshe & Leo, *supra* note 22, at 190.

364. *Id.* at 193.

365. See *supra* note 24 and accompanying text.

366. Inbau et al., *supra* note 3, at 6–7.

367. John E. Reid & Assocs., Inc., Seminar Schedule 4 (2009) (emphasis added), available at http://www.reid.com/training_programs/2009seminarbrochure.pdf.

Taking the federal standard as an illustrative example,³⁶⁸ the first question is whether the Reid technique's attempted introduction of "psychological tactics" into the interrogation room implicates *Daubert's* applicability to "scientific evidence." Stated differently, is psychology a "science" such that psychological testimony or evidence must comport with Federal Rule of Evidence 702? That question is particularly important given that *Daubert's* limited holding "left open questions about whether [its] gatekeeping function and reliability/relevance factors applied to such expert witnesses as airplane pilots, beekeepers, real estate appraisers, accountants, auto mechanics—all of whom have particular expertise and experience that might help a trier of fact, but who are clearly not scientists."³⁶⁹

At first, some post-*Daubert* courts were skeptical that *Daubert's* standards for admitting scientific evidence would extend to psychology.³⁷⁰ Rightly or wrongly, psychology was grouped with so-called "soft sciences," along with psychiatry, economics, anthropology, and sociology.³⁷¹ These, of course, are to be contrasted with the "hard sciences" like biology, physics, and chemistry.³⁷² The former, so the rationale went, were incapable of controlled empirical testing and instead involved clinical or experiential data.³⁷³ Despite the dissimilarities between them, however, some courts drew no distinction between the two and applied *Daubert* to all expert testimony.³⁷⁴ Those courts, as it turned out, were prophetic.

In 1999, the Supreme Court held in *Kumho Tire Co. v. Carmichael* that the trial judge's role as "gatekeeper" applies not only to "scientific" testimony, but to *all* expert testimony—including that premised on "'technical' and 'other specialized' knowledge."³⁷⁵ More specifically, *Daubert* applied to all "expert

368. This section relies on the federal judiciary and the Federal Rules of Evidence solely as an illustrative example. Each state of course has its own rules of evidence, which include rules governing the admission of expert evidence.

369. Thomas Regnier, Barefoot in *Quicksand: The Future of "Future Dangerousness" Predictions in Death Penalty Sentencing in the World of Daubert and Kumho*, 37 Akron L. Rev. 469, 496 (2004).

370. See, e.g., *United States v. Bighead*, 128 F.3d 1329, 1330 (9th Cir. 1997) (holding that the *Daubert* analysis did not apply to a psychologist who testified on child sexual abuse because her testimony was a result of interviewing many abuse victims, not on any scientific knowledge); *Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287, 1297 (8th Cir. 1997) (doubting the applicability of *Daubert* to "soft sciences" like psychology because "there are social sciences in which the research, theories and opinions cannot have the exactness of hard science methodologies"); *United States v. Hall*, 93 F.3d 1337, 1342–43 (7th Cir. 1996) (remanding to lower court to determine whether *Daubert* would allow psychiatric and social psychology testimony); *United States v. DiDomenico*, 985 F.2d 1159, 1171 (2d Cir. 1993) ("[S]oft science' expertise is less likely to overwhelm the common sense of the average juror than 'hard science' expertise . . ."); *United States v. Starzeczpyzel*, 880 F. Supp. 1027, 1041 (S.D.N.Y. 1995) (holding that *Daubert* was inapplicable to forensic document examination testimony).

371. Janine M. Kern & Scott R. Swier, *Daubert, Kumho, and Its Impact on South Dakota Jurisprudence: An Update*, 49 S.D. L. Rev. 217, 244 n.309 (2004).

372. *Id.*

373. David S. Caudill & Richard E. Redding, *Junk Philosophy of Science?: The Paradox of Expertise and Interdisciplinarity in Federal Courts*, 57 Wash. & Lee L. Rev. 685, 723 n.220 (2000).

374. E.g., *United States v. Posado*, 57 F.3d 428, 432 (5th Cir. 1995).

375. 526 U.S. 137, 141 (1999).

matters described in Rule 702.”³⁷⁶ The Court reasoned that expert testimony might include specialized observations, theory, or the application of a theory to a particular case.³⁷⁷

As a prerequisite for admission, said the Court, there must exist a valid connection between the testimony and “the pertinent inquiry.”³⁷⁸ And, when a litigant challenges the “factual basis, data, principles, methods, or their application,” the trial court “must determine whether the testimony has ‘a reliable basis in the knowledge and experience of [the relevant] discipline.’”³⁷⁹ Significantly, the Court suggested that a trial court could consider the factors it outlined in *Daubert* “when doing so will help determine that testimony’s reliability.”³⁸⁰

Analyzing the Reid technique from here seems straightforward. Given the Reid technique’s claimed basis in “science” and “psychology” alongside *Kumho Tire*’s reach into “soft sciences,” it is time for defense attorneys nationwide to challenge the Reid method’s “factual basis, data, principles, methods, or [its] application.”³⁸¹ Assuming they do so, even a cursory look into how the *Daubert* factors might apply to the Reid technique foretells the defense bar’s success.

Daubert first suggests that trial courts evaluate “whether [the proposed scientific knowledge] can be (and has been) tested.”³⁸² Given that there exists no physiological or psychological response unique to lying, testing the Reid technique’s claimed ability to detect lies is a tough proposition. To begin with, the inability to determine what constitutes ground truth suggests that testing the Reid technique borders on the impossible. Moreover, as this Article has gone to great lengths to note, there is no basis for the Reid method—scientific or otherwise.³⁸³ Even if the Reid technique were grounded in sound scientific or

376. *Id.* at 149.

377. *Id.*

378. *Id.* (quoting *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 592 (1993)).

379. *Id.* (alteration in original) (quoting *Daubert*, 509 U.S. at 592).

380. *Id.* at 141.

381. *Id.* at 149.

382. 509 U.S. at 593.

383. To be fair, Professor Leo recognizes that the Reid method relies on psychological techniques. *See* Ofshe & Leo, *supra* note 22, at 190. The problem, however, is that the Reid technique stumbled into psychology rather than basing the method on it. *Cf. id.* (blaming false confessions on the Reid method’s “inept use of the methods of psychological interrogation”). Perhaps this sheds some light onto the false confession problem; in other words, Inbau and Reid never reasonably considered the potential for their method to induce false confessions simply because they could not. Given that the method itself was generated solely on observations—rather than *education*—it seems eminently reasonable to assume that Inbau and Reid simply lacked the training to consider whether their techniques could induce subjects to falsely confess. Notwithstanding a similar absence of psychological or academic credentials, the modern Reid method authors steadfastly maintain that the technique, if administered correctly, cannot produce false confessions. *See* Jayne & Buckley, *supra* note 24, at 72 (“A psychologically healthy suspect will not engage in behavior that will jeopardize [his] self-interests.”). *But see* *People v. Melock*, 599 N.E.2d 941, 951–52 (Ill. 1992) (reversing defendant’s conviction—premised on a false confession—where interrogator obtained defendant’s confession only after he falsely told defendant that he failed a polygraph exam).

psychological principles, how do we know that confessions—*especially* those left uncorroborated—obtained pursuant to the Reid method are not false?

Second, *Daubert* suggests that trial courts evaluate “whether the theory or technique has been subjected to peer review and publication.”³⁸⁴ The first question, of course, is who constitutes the relevant peer group? If it is interrogators trained in the Reid method, then peer review naturally favors admission. If, however, the relevant peer group is social psychologists, then peer review disfavors admission.³⁸⁵ And, although Reid and Inbau have published significantly on the Reid technique, their publications have not appeared in any relevant journal recognized by the American Psychological Association.³⁸⁶ It bears noting, however, that critics of the Reid technique *have* consistently published in some of the most recognized psychology journals in the nation.³⁸⁷

The final two *Daubert* factors require equally little discussion. The third factor counsels courts to consider “the known or potential rate of error.”³⁸⁸ Determining known error rates for the Reid technique is likely impossible given that the technique itself was not premised on published error rates. Assessing known error would in any event require knowing the actual or ground truth to determine whether interrogators successfully elicited a true confession. Yet, as noted, studies reflect that training in the Reid technique did not enhance an interrogator’s ability to detect deception in an individual.³⁸⁹ Recall Professor Kassin’s study revealing that learning the Reid technique may be “counterproductive[] as a method of distinguishing truth and deception.”³⁹⁰

Finally, trial courts should consider whether the science has achieved “general acceptance” in the relevant scientific community.³⁹¹ Given Reid and Inbau’s claim that the Reid technique is premised in psychology, the relevant scientific community would appear to be psychologists. It would be hard indeed to justify a group composed solely of Reid-trained interrogators because the very fact that they use the Reid technique indicates that they accept the “science.” Yet, as previously noted,³⁹² psychologists may agree with Inbau

384. 509 U.S. at 593.

385. See Kassin & Fong, *supra* note 25, at 512.

386. Although Northwestern’s *Journal of Criminal Law and Criminology* is a giant in academic legal circles, it is unsurprisingly not a publication recognized by the American Psychological Association. See APA and Affiliated Journals, http://www.apa.org/journals/by_subject.html#social (last visited Jan. 12, 2010).

387. See, e.g., Kassin & Fong, *supra* note 25 (publishing in *Law & Human Behavior*); Kassin et al., *supra* note 30 (same); Saul M. Kassin et al., “I’d Know a False Confession if I Saw One”: A Comparative Study of College Students and Police Investigators, 29 *Law & Hum. Behav.* 211 (2005) (same). The *Law and Human Behavior Journal* has a rejection rate of seventy-six percent. See Summary Report of Journal Operations, 2008 (2008), available at <http://www.apa.org/pubs/journals/features/2008-operations.pdf>.

388. 509 U.S. at 594.

389. See *supra* note 349.

390. Kassin & Fong, *supra* note 25, at 512.

391. *Daubert*, 509 U.S. at 594.

392. See *supra* notes 362–64.

that the Reid technique utilizes “psychological tactics,” but they dispute the method’s claim that it can successfully avoid eliciting false confessions. In sum, the Supreme Court has provided a test to assess the validity of expert evidence and the Reid technique utterly fails that test. Any truly scientific technique should, at a minimum, satisfy *Daubert*’s factors with ease.

The question of where to go from here is best saved for another day and another article. Suffice it to say for now, though, that Reid and Inbau’s service to this country cannot be overstated; indeed, suspects owe a debt of gratitude to these two giants who successfully eradicated the “third degree” from interrogation rooms nationwide. But we no longer live in the 1940s, and, not surprisingly, we no longer drive 1940s automobiles, practice early-twentieth-century medicine, or dial rotary phones. Why, then, are police still using 1940s methods of interrogation? The time has come to shut down the profit-based John E. Reid & Associates and replace it with an interdisciplinary effort that relies on work published in credible *psychology* journals, written by *credentialed* scholars.³⁹³

Conclusion

As my criminal procedure professor observed, “To question the propriety of some of the interrogation methods recommended by Inbau and Reid in 1953 and ‘63 is not to deny that we owe the senior author a great deal for antiquating the interrogation practices of ‘23 and ‘33.”³⁹⁴

I have no training or background in psychology. Common sense of course suggests that I am therefore unqualified to teach even a basic psychology course. Like me, Fred Inbau and John Reid have no psychological training or background. They too, then, presumably could not have taught even a basic psychology course. How then could they author the “Bible” for interrogation training? The answer is as simple as it is disconcerting: they could not.

What then is the solution? Dispense with criminal interrogations as a tool? Of course not. Instead, common sense should dictate that the Reid method—although perhaps a helpful stopgap in 1942—is no more able to reliably separate the innocent from the guilty now than it was at the time of its creation. Just like any other profession, only individuals qualified in psychology can opine on appropriate psychological interrogation methods.

Accordingly, the time has come to dispense with the Reid method’s sweeping and unsupported presume-guilt approach in favor of creating a newer

393. The Author of this Article cannot help but wonder in passing what Reid and Inbau would think of the modern John E. Reid & Associates. The company’s website suggests that its focus is more on financial gain than anything else. Several aspects of the site push marketing phrases, seminar costs, or certification fees on the viewer. See John E. Reid & Associates, <http://www.reid.com/> (last visited Jan. 12, 2010) (“If it doesn’t say ‘The Reid Technique®’ . . . it’s not John Reid & Associates!” (alteration in original)). That focus arguably dishonors the tremendous social service both Reid and Inbau performed by professionalizing the police force and moving it away from harsh “third degree” methods of interrogation.

394. Kamisar, *supra* note 177, at 733.

more collaborative approach to interrogation methods. Only by assimilating the experience of law enforcement and prosecutors along with criminal and social psychologists can we create interrogation methods designed to produce *reliable* and *admissible* confessions. Until then, all we can do is lament the disconnect between the outdated Reid technique and the standards of evidentiary admissibility.