# Police Interrogations and The Psychology of False Confessions

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## Abstract

Interrogation by police officers is more art than science, an art that takes years to become proficient. However, even the most well-trained and well-intended officers elicit false confessions. Coercive interrogation techniques are infamous for eliciting false confessions, consciously or unwittingly. This paper analyzes the use of the omnipresent Reid Technique and the Mr. Big operation in light of the evolving case law and the overwhelming research that urge against the use of these interrogation and interviewing techniques. It becomes alarmingly clear that despite the replete of literature condemning the use of the Reid technique, it is overwhelmingly the dominant interrogation technique used in North America. Through an analysis of the laboratory research and police interrogation techniques in other Commonwealth countries, policy recommendations are made to supplant the Reid technique in an effective and reasonable manner, one that does not cause undue hardships to investigators.

L'interrogatoire par les policiers est plus qu'un art qu'une science, un art qui prend des années pour devenir compètent. Cependant, même les officiers les plus entraînés et qui ont les meilleures intentions suscitent de faux aveux, consciemment ou à son insu. Les techniques d'interrogatoire coercivités sont notoires pour obtenir de faux aveux, consciemment ou inconsciemment. Cette dissertation analyse l'utilisation de la technique omniprésente « Reid » et l'opération « Mr. Big » au vu de l'évolution de la jurisprudence et de la recherche écrasante qui poussent contre l'utilisation de ces techniques d'interrogatoire et d'entrevue. Il devient clair de façon alarmante que malgré le rempli de la littérature qui condamne l'usage de la technique Reid, c'est la technique dominante utilisée en Amérique du Nord. Par une analyse des techniques de recherche en laboratoire et d'interrogatoire de la police dans d'autres pays du Commonwealth, les recommandations politiques sont faites à supplanter la technique Reid d'une manière efficace et raisonnable, qui ne causent pas de difficulté indue aux enquêteurs.

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# Introduction

Coercive interrogation techniques have overwhelmingly led to false confessions. Despite the preponderance of evidence to corroborate this, officers are often encouraged and rewarded for the use of deceptive or coercive interrogation techniques[1]. Since 1989, more than three hundred people have been exonerated by the use of DNA evidence.[2] Over 30% were convicted in large part due to false confessions.[3] Even more worrisome is the fact that seventy-one (71) of the one-hundred and thirteen (113) exonerations for homicides involved a false confession. Thirty-three (33) of the persons exonerated actually pled guilty to a crime they did not commit.[4] The purpose of this paper is to analyze the police techniques that are likely to elicit false confessions and provide policy recommendations. There are three typologies of false confessions. Firstly, without police influence or suggestion, suspects provide a voluntary false confession.[5] Suspects will admit to crimes they did not commit or exaggerate their involvement in a crime to gain, for example, notoriety. In the Canadian criminal justice system there are safeguards that exist to prevent this from being the sole factor to convict somebody. The use of coercive interrogation tactics often leads to two types of false confessions: coercive-internalized confessions and coercive-compliant confessions.[6] These are equally dangerous in respect to bringing the administration of justice into disrepute. Canadian courts tend to frown upon the employment of coercive techniques and they are often, on a *prima facie* basis, inadmissible. The second type of false confession is coercive-compliant, where the accused knows that they are innocent, but still confess to the crime. The accused typically confesses in order to escape or avoid an aversive interrogation.[7] The last type of false confession is coerced-internalized confessions and they are the most unconceivable form of confessions; how would one come to believe they were part of a crime and create vivid memories of it? Innocent persons grow to believe that the story that the interrogator constructs is true, and believes that they were in fact involved with the crime.

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[1] Alpert, G. P., & Noble, J. J. (2009). Lies, true lies, and conscious deception: Police officers and the truth. *Police Quarterly*, *12*(2), 237-254.
[2] Innocence Project (2016, February 08). DNA Exonerations Nationwide. Retrieved February 09, 2016, from http://www.innocenceproject.org/free-innocent/improve-the-law/fact-sheets/dna-exonerations-nationwide
[3] Ibid 2016, p.2
[4] Ibid 2016, p.2
[5] Kassin, S. M. (2008). False Confessions: Causes, consequences, and implications for reform. *Current Directions In Psychological Science (Wiley-Blackwell)*, *17*(4), 249-253.
[6] Ibid, p. 249
[7] Kassin, S. M. (1997). The psychology of confession evidence. *American Psychologist*, *52*(3), 221- 233

Briefly, one factor that must be mentioned is the use of vivid imagery. The use of vivid imagination of events can lead people to incorrectly believe it had occurred.[8] To allow the use of any coercive interrogation technique encourages after-the-fact litigation well after the lives of innocent people have been destroyed. In addition to the imagery, the distinction between actual and artificial can become blurred and the suspect may genuinely confuse the two and admit to a crime that they did not commit. Coerced-internalized confessions also arise from "borrowed" features or experiences.[9] A suspect may confuse their involvement or lack thereof in a certain crime to that of a similar past experience, increasing the risk of false confessions for those with a criminal past. In 2015, fifty-eight (58) innocent people were exonerated of homicides in 2015.[10]

Historically, the confessions rule stems from a "fear of prejudice or hope of advantages exercised or held out by a person in authority" [11]The underlying principle for the confessions rule was that: coerced confessions, although not inherently false, could lead to convictions of the innocent. This principle has practical purposes when examining both Canadian and American jurisprudence as false confessions, as a result of coercive or deceptive interrogation, have received much needed attention over the past two decades.

## The Reid Technique

The Reid technique, formulated by John E. Reid and Associates, is an interrogation process designed to convince a suspect that they are caught and further that there is no possible avenue for persuading any member of the Criminal Justice System that they were not involved.[12] The Reid Technique is constructed with the purpose of increasing the anxiety associated with denial while reducing the anxiety associated with confession. The disproven hypothesis is that guilty offenders will confess because the anxiety associated with lying and denial of involvement is greater than that of the anxiety associated with confession.[13]

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[8] Thomas, A. K., Bulevich, J. B., & Loftus, E. F. (2003). Exploring the role of repetition and sensory elaboration in the imagination inflation effect. *Memory & Cognition*, *31*(4), 630.
[9] Henkel, L. A., & Coffman, K. J. (2004). Memory distortions in coerced false confessions: a source monitoring framework analysis. *Applied Cognitive Psychology*, *18*(5), 567-588.
[10] The National Registry of Exonerations. The National Registry of Exonerations. (2016, February 03). <http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2015.pdf> (February 07, 2016)
[11] *Ibrahim v. The King*, [1914] A.C. 599 p. 609
[12] *R. v. S. (M.J.)*, [2000] A.J No. 391 at para. 45 80 Alta. L.R. (ed) 159, 32 C.R. (5th) 378
[13] Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2001). Criminal interrogation and confessions (4th ed.). Gaithersburg, MD: Aspen.

The technique is typically conducted in two stages: a non-accusatory interview and an accusatory interrogation. The non-accusatory interview is a behavioural analysis interview and is often an amiable approach, where dialogue is encouraged and the suspect is being treated like a witness.[14] At this stage, the interviewers' goal is to build rapport and trust with the suspect and decide whether or not they believe the suspect is lying.[15] It is important to note here that deciding whether or not a suspect is lying becomes exceedingly dangerous and difficult. Investigators with substantive training in the Reid technique subsequently proceed confidently and aggressively to the second stage, with a firm conviction that the suspect is guilty. Wrongfully proceeding to the accusatory interrogation is identified as a "misclassification error"[16] and/or tunnel vision.[17] Reid and Associates claim that investigators can learn to accurately discriminate truth and deception 85% of the time.[18] However, and perhaps more convincing, police detectives and other professional lie catchers are accurate approximately 45%-60% of the time.[19]

The accusatory interrogation is comprised of a nine-step approach. Researchers propose that the interrogation stage can be summarized into three categories: "custody and isolation," "confrontation," and "minimization."[20] The first category, *custody and isolation*, is meant to create anxiety by leaving the suspect alone in the room or depriving them of food or water. Although proponents of the Reid technique adamantly insist that innocent people do not fall prey to these techniques[21], from a scientific approach, it seems reasonable that one may falsely confess. Many of the non-verbal cues that investigators are dependent upon when assessing the innocence of a suspect are identical to those who are under stress and are anxious. For example,

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[14] Snook, B., Eastwood, J., Stinson, M., Tedeschini, J., & House, J. C. (2010). Reforming investigative interviewing in canada. *Canadian Journal Of Criminology & Criminal Justice*, *52*(2), 215-229. doi:10.3138/cjccj.52.2.215

[15] Ibid, p. 217

[16] Leo, R. A., & Drizin, S. A. (2010). The three errors: Pathways to false confession and wrongful conviction. *Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations.,* 9-30.

[17] David Tanovich, "Judicial and Prosecutorial Control of Lying by the Police" (2013) 100 Criminal Reports (6th) 322

[18] Leo, R. A., & Drizin, S. A. (2010). The three errors: Pathways to false confession and wrongful conviction. Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations., 9-30., p.14

[19] Ibid, p. 14

[20] Moore, T. F., & Fitzsimmons, C. L. (2011). Justice Imperiled: False Confessions and the Reid Technique. *Criminal Law Quarterly*, *57*(4), 509-542.
*B.V.)*, *34*(1), 39-40.

[21] Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. (2005). *Essentials of the Reid Technique Criminal Interrogation and Confessions* (4th ed.). Sudbury, Massachusetts: Jones and Barlett.

investigators are trained to believe that, during the custody and isolation stage, when the investigator walks in, guilty suspects will be "startled and immediately indicate by their eyes and general appearance that they expect their deception to be revealed."[22] It is unreasonable to believe that an innocent person, in the dreary and drab walls of an interrogation room, will be "at ease" when an investigator first enters the room, as is suggested by the Reid technique.[23] This do not control for environmental, cultural[24] and temporal factors.

The second stage, *confrontation*, involves the presentation of evidence against the accused, fabricated or otherwise.[25] This is the most comprehensive and controversial stage; most confessions are elicited at this stage. Investigators are trained to bring an evidence file into the room with them for the sole purpose of suggesting to the suspect that it contains incriminating evidence about the case.[26] Although true that this may create a desirable effect on a guilty suspect, there is no meaningful discussion on the perverse effects it has on innocent persons. The suspect's anxiety levels continue to rise in the face of inculpatory evidence that points to them as the criminal.[27] To many, it appears inconceivable that an innocent person would give up their fundamental right to freedom by falsely confessing to a crime that they did not commit. In a contextual analysis, the two typologies of false confessions that may occur are coerced-compliant and coerced-internalized. Convincing an innocent person that there is insurmountable or incontrovertible evidence against them may lead an innocent person to confess through one of the two typologies.[28] Firstly, a suspect may believe that any further denial of involvement in the crime is futile and that the interrogation will continue until an admission of involvement is made, thus resulting in a coerced-compliant confession.[29] This is in an effort to be *compliant* or please the interrogator / police officer agree with a fabricated scenario. Secondly, a suspect presented

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[22] Ibid, p. 120
[23] Ibid, p. 120
[24] Cynthia J. Najdowski, "Stereotype Threat in Criminal Investigations: Why Innocent Black Suspects Are at Risk for Confessing Falsely" Psychology, Public Policy and Law 2011, Volume 17 (No 4) 562
[25] Moore, T. F., & Fitzsimmons, C. L. (2011). Justice Imperiled: False Confessions and the Reid Technique. *Criminal Law Quarterly*, *57*(4), 509-542. This technique has been taught to police officers at Peel Regional Police Service. See, Walter Skwarek "interviewing and interrogation", Peel Regional Police (undated), pp. 77 - 79
[26] Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2001). Criminal interrogation and confessions (4th ed.). Gaithersburg, MD: Aspen.
[27] Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. (2005). *Essentials of the Reid Technique Criminal Interrogation and Confessions* (4th ed.). Sudbury, Massachusetts: Jones and Barlett.
[28] *R. v. Oickle*, [2000] S.C.J. No. 38, [2000] 2 S.C.R. 3, at para. 43 (S.C.C.)
[29] *R. v. Oickle*, [2000] S.C.J. No. 38, [2000] 2 S.C.R. 3, at para. 122 (S.C.C.)

with such seemingly irrefutable evidence may start believing that they may have had some involvement in the crime leading to a coerced-internalized confession.[30] Those who are most susceptible to providing a coerced-internalized confession exhibit poor memories, higher levels of anxiety and low self-esteem.[31]

A suspect's likelihood of providing a false confession exponentially increases through prolonged sleep deprivation, most notably when the interrogation is conducted late at night.[32] The court speaks to this issue and warns against interrogations conducted over an "inordinate" amount of time, but does not comment on the time in which an interrogation occurs. A four-hour interrogation conducted at 12 p.m. does not have the same adverse physiological effect that a four-hour interrogation conducted at 12 a.m. on the subject of the interview and interrogation. Accordingly, the state of mind a suspect differs greatly.[33] Coerced-internalized confessions are arguably the most dangerous confessions, because at trial, innocent persons testify and corroborate the veracity of their initial confession. Moreover, in cases of coerced-internalized confessions, the suspect may start to believe that the evidence against them matches their distorted memories. An officer may discuss a hypothetical third person that engages in a crime that directly parallels the crime allegedly committed by the suspect.[34] In addition to the parallel, the suspect is often told to visualize the crime and to put themselves in the shoes of the victim. Over time, a suspect may start to believe that the imagined and visualized events took place and that they were a part of it.[35] This can result in a coerced-internalized confession. The problem is exemplified here: "as soon as a police-induced false confession is accepted as true by the police, the risk that the false confession will lead to a wrongful conviction is substantial."[36]

A third option, not discussed in any existing case law, falling under the typology of coerced-compliant is that a suspect may confess falsely to a crime because they believe that a judge and jury will accept the fabricated evidence over their own testimony. Even though the suspect knows that they are not guilty, they are willing to confess to receive a lesser sentence in

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[30] Kassin, S. M. (1997). The psychology of confession evidence. *American Psychologist*, *52*(3), 221- 233
[31] Ibid, p. 226
[32] Ibid, p. 226
[33] Blagrove, M. (1996).Effects of length of sleep deprivation on interrogative suggestibility. Journal of Experimental Psychology: Applied, 2, 48-59.
[34] Perillo, J., & Kassin, S. (2011). Inside interrogation: The Lie, the bluff, and false confessions. *Law & Human Behavior (Springer Science & Business Media B.V.)*, *35*(4), 327-337.
[35] Brainerd, C. J. (2013). Murder must memorise. *Memory*, *21*(5), 547-555.
[36] White, Welsh S. (2001). *Miranda's waning protections: Police interrogation practices after Dickerson*. Ann Arbor: University of Michigan Press.

the face of such resolute, inculpatory evidence. Given that the Reid technique is designed to convince a suspect that they are caught, when working with guilty suspects, this is an effective and oft-sought out technique for both emotional offenders or non-emotional offenders, the tactic can be tweaked to work for either. Although backed by pseudoscientific proof, investigators have had success extracting valid and reliable confessions from criminals using the Reid technique. However, the end does not justify the means. In actuality, despite the anecdotal support for the Reid technique, the technique indiscriminately targets both innocent and guilty suspects. The use of the Reid technique is supported by the underlying belief that the innocent will not succumb to the same methods that expose the guilty. This assumption is fundamentally flawed, as the technique is aimed at preying on the vulnerabilities of the human psyche, eschewing any reliable scientific verifiability. Moreover, there is hardly any research that does not completely contradict the reliability of the assumptions made by proponents of the Reid technique.[37] A fair assessment of the reliability of the Reid technique requires a thorough examination of the commonalties within both coerced-internalized false confessions and coerced-compliant false confessions. It becomes quickly apparent that the commonalities are: (a) a suspect who is vulnerable due to, *inter alia*, interpersonal trust, naiveté, suggestibility, lack of intelligence, and stress and (b) the presentation of false evidence.[38] The court in *Oickle* cites Leo & Ofshe (1998) to claim that, "fortunately, false confessions are rarely the product of proper police techniques" and further that there is a preponderance of literature and case law to support the position that false confessions occur from certain improper police techniques.[39] However, they do this without discussing what actually would be considered a proper police technique. With the lack of reliable scientific verifiability, it is at the very least debatable as to whether or not the Reid technique could appropriately be categorized as a proper police technique. We will come back to the legality of this technique in a discussion around the evolution of the case law.

The third stage, *minimization*, is designed to alleviate the anxiety and guilt that built up. The interrogating officer minimizes the offence by claiming that the victim "deserved it" or that

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[37] Leo, R. A., & Drizin, S. A. (2010). The three errors: Pathways to false confession and wrongful conviction. *Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations.,* 9-30.

[38] Kassin, S. M. (1997). The psychology of confession evidence. *American Psychologist*, *52*(3), 221- 233

[39] *R. v. Oickle*, [2000] S.C.J. No. 38, [2000] 2 S.C.R. 3, at para. 43 (S.C.C.) para 45.

"its not a big deal."[40] The goal of the Reid Technique is to raise the anxiety levels in the suspect so that confessing is more appealing than continuing to feel the high level of anxiety. Empirical evidence shows that officers believe they have a "sixth sense" in determining deception, and subsequently have a greater proclivity to proceed to the second stage of the Reid Technique.[41] However it has been determined that officers are unable to determine deception with greater proficiency than anyone else.[42] If officers are to increase their likelihood of obtaining confessions from witnesses and/or accused persons, they must apply a scientific approach that has a significantly greater confidence level, rather than an approach that is anecdotal and not meaningfully connected to scholarship.[43]

Brian Cutler, an experienced expert witness, co-conducted an experiment involving sixty (60) university students.[44] A student and a researcher, posing as another student, were present in a room and were presented with math or logic problems distributed by a second member of the research team. After a few minutes, the second member returned to the room, asking if either participant had seen a cellphone left behind stolen, although no phone had been present. Thirty (30) of the participants were subjected to a Reid-style interrogation, where the interrogators exuded resolute confidence to the fact that the phone was stolen. Some participants were even threatened with academic misconduct.[45] Five of the thirty (30) students had revealed that the other participant had stolen the phone. The other thirty (30) students were asked a series of basic questions that acted more like a fact-finding mission rather than an attempt to elicit a confession.[46] With this technique, zero participants implicated the other student, or themselves in the fictitious theft. In the situation of a university, it is understandable why students fear academic misconduct and are willing to falsely recount an event. In the case of a police investigation, where threats of imprisonment are significantly more real and imminent, it should

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[40] Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2001). Criminal interrogation and confessions (4th ed.). Gaithersburg, MD: Aspen.
[41] Worrall, J. (2013). The Police Sixth Sense: An Observation in Search of a Theory. *American Journal Of Criminal Justice*, *38*(2), 306-322.
[42] Meissner, C. A., & Albrechtsen, J. S. (2009). Detecting lies and deceit: Pitfalls and opportunities (second edition). *Legal & Criminological Psychology*, *14*(2), 344-346.
[43] Chapman, F. E. (2013). Coerced internalized false confessions and police interrogations: The power of coercion. *Law & Psychology Review*, *37* 159-192.
[44] Loney, D. M., & Cutler, B. L. (2015). Coercive Interrogation of Eyewitnesses Can Produce False Accusations. *Journal of Police and Criminal Psychology J Police Crim Psych,* 1-89.
[45] Ibid,
[46] Ibid

be equally clear why innocent persons are willing to fabricate information. As discussed earlier, interrogations that are inordinate in length are likely to significantly increase the likelihood of eliciting false confessions. In the study, the entire duration of the interrogation was only a half hour long, while interrogations are often a few hours long. At the very least, use of the Reid technique is problematic, dangerous and entirely too coercive to be accepted as a modern police technique.

Legal scholarship and social science research acknowledge that some police interrogations are thoroughly and intentionally deceptive, ultimately trying to expose a suspect's vulnerabilities and force them to confess. In *Oickle,* the majority of the Supreme Court of Canada, citing the reliability of the psychological literature, cautions that there are in fact particularities and vulnerabilities of individual suspects and subsequently preying on these vulnerabilities may result in the statement being deemed inadmissible.[47] However, as aforementioned, these same particularities and vulnerabilities are what cause innocent persons to be susceptible to providing false confessions. It would seem then that it would be impractical and imprudent to continue to allow the discredited Reid technique to be the most influential and widely used police interrogation procedure in North America.

## Mr. Big

The Mr. Big technique, developed in Canada, is an oft-coercive, but non-custodial interrogation technique. At the outset of this contextual analysis, it should be remarked that this investigation technique, similar to the Reid technique, has been successful in "solving the unsolvable." In *Mack,* the confession elicited from the investigation provided investigators with undeniable inculpatory evidence namely the confession that led to the search of a fire pit containing fragments of bones and teeth later identified as belonging to the victim, and shell casings later determined to have been fired from a gun seized from Mr. Mack's apartment.[48]

This technique can be described in four steps. Firstly, the target is befriended by an undercover operative, usually meeting while the suspect is in custody or at their place of

[47] *R. v. Oickle*, [2000] S.C.J. No. 38, [2000] 2 S.C.R. 3, at para. 43 (S.C.C.) para 35.
[48] R. *v.* Mack, [1988] 2 S.C.R. 903

employment.[49] The operative then continues this relationship, showing off a lavish and generous lifestyle, buying the suspect gifts, taking them out to dinner and engaging in legal activities that the suspect enjoys (i.e. movies, concerts, strip clubs). Secondly, the operative then slowly lures the suspect into being part of a criminal organization, devised by the police, typically tasking them with performing small crimes for money.[50] Often the suspect would be a driver or a delivery person for the organization or counting large sums of money, furthering the appealing lifestyle of significant and frequent monetary gains.[51] The purpose of this step is to expose the suspect to the criminal lifestyle. It is not uncommon for the undercover operative and their team to engage in a fictitious crime in the presence of the suspect. In some cases, like *Smith*, the fictitious crime can be as extreme as disposing of fake corpses off a cliff. Thirdly, after lulling the suspect into a sense of security, the operative notifies the suspect that they are being promoted within the criminal organization. Contingent on their promotion is a meeting with "Mr. Big," the head of the criminal organization. This brings us to our fourth step; during the meeting, not uncommon in criminal organizations, *a quid pro quo* offer is made. In order for the suspect to be promoted to a higher level within the criminal organization, the suspect must confess to a crime so that if the suspect betrays the organization, it will have "dirt" to use against him/her.[52]

The false confessions that come from this technique are often a hybrid of voluntary and coercive-compliant. At first glance, this hybrid appears paradoxical, but is explained through the next few pages. The confession is not given because the suspect wants to avoid aversive interrogation as is the case with the Reid technique, they give the confession most often for their own personal gain to be accepted into the criminal organization and/or to inflate his/her involvement in the criminal subculture. The case of *Hart* epitomizes the problems of using this technique.[53] Nelson Hart was accused of killing his two daughters, but the police had insufficient evidence to convict him. After his daughters died, Hart and his wife became distant and he was not financially or emotionally stable. With no viable leads, investigators launched a Mr. Big sting, with Mr. Hart as the primary target. During the operation, officers preyed on his

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[49] Sands, A. (2005). Mountie sued by former suspect now heads Sherwood Park detachment, Edmonton Sun, January 20, 2005. Online<http://www.injusticebusters.com/05/Steinke_ Gary.shtml> (February 01st 2016).
[50] Smith, S. M., Stinson, V., & Patry, M. W. (2010). High-Risk Interrogation: Using the "Mr. Big Technique" to Elicit Confessions. Law & Human Behavior (Springer Science & Business Media B.V.), 34(1), 39-40
[51] Ibid, p. 39
[52] Ibid, p. 39
[53] R. *v.* Hart, 2014 SCC 52, [2014] 2 S.C.R. 544

vulnerabilities, and provided him with a sense of security, brotherhood and financial stability.[54] Before he was admitted into the criminal organization, he would have to admit to a crime he committed. After first denying involvement in any previous crimes, he confessed to killing his daughters. However, his versions of events were demonstrably different than what the physical evidence showed.

The court developed a two-prong solution to ameliorate the problems inherent in the Mr. Big operation: (1) The recognition of a new common law rule of evidence and, (2) "a more robust conception of the doctrine of abuse of process to deal with the problem of police misconduct."[55] The precedent *Hart* set, is simple; if the acts of the officers were unduly coercive, the confession is inadmissible.[56] The court also ruled that the Mr. Big technique as practiced today is *prima facie* inadmissible by adding a new evidence rule:

> Where the state recruits an accused into a fictitious criminal organization of its own making and seeks to elicit a confession from him, any confession made by the accused to the state during the operation should be treated as presumptively inadmissible."[57]

The two-prong solution places the onus on the crown to establish on a "balance of probabilities that the probative value of the confession outweighs its prejudicial effect."[58] This case also stated that the probative value must outweigh the prejudicial effect. In a case where the jury is the trier of fact, bringing in evidence that proves the suspect willingly participated in acts that the suspect thought were illegal causes a significant detrimental prejudicial effect. It is the responsibility of the Crown to outweigh and mitigate this effect by declaring that the evidence that came from the technique is much more significant than the inevitable prejudicial effect. For example, in a case like *Mack,* the probative value in the physical evidence that was attained irrefutably outweighs the prejudicial effect a trier of fact may have against Mack.[59] The court acknowledges that without this restrictive safeguard, it would be unsafe to rest a conviction.[60]

This coercive tactic has a heightened likelihood to elicit a false confession. In the Mr. Big Technique, the confessions are not organic. The officers manipulate cultural, temporal, and

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[54] Ibid, para 68
[55] Ibid, para 84
[56] Ibid, para 20
[57] Ibid, para 85
[58] Ibid, para 85
[59] *R. v. Mack*, [1988] 2 S.C.R. 903 (SCC)
[60] *R. v. Hart*, 2014 SCC 52, [2014] 2 S.C.R. 544 (SCC) para 146

psychological factors to elicit confessions encouraging the technique to be a breeding ground for suspects to provide false confessions.[61] Most often, the Mr. Big technique is coercive in nature and it is becoming increasingly difficult to perform a Mr. Big operation without having the entirety of the evidence excluded. However, the technique is not inevitably coercive and is not necessarily predisposed to elicit false confessions. A categorical prohibition should not be applied to this technique.

In *White,* four factors were identified for the determination of whether the principle against self-incrimination had been violated: (1) the lack of an adversarial relationship between the accused and the state at the time the statements were obtained; (2) the lack of real coercion by the state in obtaining the statements; (3) the absence of an increased risk of unreliable confessions as a result of the statutory compulsion; and (4) the absence of an increased risk of abuses of power by the state as a result of the statutory compulsion.[62] In our view, both the Mr. Big operation and the Reid technique fail all four factors and ultimately violate the principle against self-incrimination. Firstly, as it relates to the Mr. Big technique, *Hart* discusses that, in any Mr. Big operation, the relationship will be adversarial.[63] Secondly, the court concludes that there will almost always be some degree of coercion in a Mr. Big operation, and provides considerations to determine if the coercion is deemed too significant to be justified. The financial and social inducements in *Hart* did constitute as coercive in nature.[64] However, with a strong focus on financial and social prowess, even those who are law-abiding may engage in the small criminal activities provided by the criminal organization due to the glorification of high financial and social status. Perhaps, through this contextual analysis, it can be said that Mr. Big operations are inherently too coercive to ever abide by this factor. Thirdly, as mentioned earlier, confessions cannot be the sole inculpatory evidence to convict a suspect. In an attempt to reduce false confessions that lead to convictions, corroborating evidence is often a prerequisite to the admission of a confession. The significant inconsistencies in *Hart* coupled with the fact that as a vulnerable suspect, he had a motive to falsely confess casts doubts on the reliability of his confession, fitting the typology of the hybrid voluntary false and coerced-compliant confession.

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[61] Moore, T. E., & Keenan, K. (2013). What is Voluntary? On the Reliability of Admissions Arising From Mr. Big Undercover Operations. *Investigative Interviewing: Research & Practice*, *5*(1), 46-56.
[62] *R. v. White*, [1999] 2 S.C.R. 417 para 51
[63] *R. v. Hart*, 2014 SCC 52, [2014] 2 S.C.R. 544, p. 551
[64] Ibid, p.550

The fourth factor assess whether the investigators used their position of power in an unfair, abusive, or shocking manner. Furthermore, the court takes into account whether or not the police tactics exposed the suspect to physical or sociological harm. In *Hart*, the police conduct was deemed egregious as the officers exploited the vulnerabilities.[65] The court condemned the authorities and suggested that the case is tantamount to entrapment. Similarly, in *Smith*, the disposal of a fake corpses amounts to egregious conduct and unduly exposed Smith to psychological harm.

The Reid technique fails the four factors protecting against self-incrimination. Similarly, as discussed in *Hart*, there is always an adversarial relationship between the suspect and the interrogator. Secondly, as explained earlier, it is our position that the Reid technique is inherently coercive, and coercive to a great degree. Thirdly, the reliability of any confession elicited from fabricated evidence, deception or trickery casts significant doubt on the reliability of the confession. The doubt arises from possibility of producing either coerced-compliant of coerced-internalized confessions. Lastly, in addition to assessing the physical or psychological harm the suspect is exposed to, the court must scrutinize the technique, determining whether it unfairly, unnecessarily or disproportionately manipulates the suspect. It become overwhelmingly clear that the Reid technique does in fact fail this factor as the coda to the failure to protect against self-incrimination. Under the same contextual analysis, given that Mr. Big operation is *prima facie* inadmissible, the Reid technique should be too. In *Hart,* the court emphasizes the importance of exercising caution with irresponsible police techniques:

> Experience in Canada and elsewhere teaches that wrongful convictions are often traceable to evidence that is either unreliable or prejudicial. When the two combine, they make for a potent mix — and the risk of a wrongful conviction increases accordingly.[66]

The most damning finding of the reliability of coercive interrogative techniques is that there is no evidence to suggest that it elicits more confessions than a non-coercive technique. Police officers should be provided a well-stocked arsenal to prevent and react to crime and it would be unwise to attempt to cause undue hardship to investigators in this regard. This message has been *echoed* in the existing jurisprudence, both in common law and case law.[67] The most well-intended and scrupulous investigators will almost certainly act coercively when engaging in the

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[65] Ibid, p. 553
[66] Ibid, para 8
[67] See *R. v. Fearon*, 2014 SCC 77, [2014] S.C.R. 621 and R. *v.* Hart, 2014 SCC 52, [2014] 2 S.C.R. 544

Reid technique and the Mr. Big operation. It would then be wise for North American police forces to adopt a non-coercive interrogation technique similar to the PEACE model, widely used in the United Kingdom. This recommendation, amongst others, will be discussed towards the end of this paper.

## Evolution of Case Law

The confessions rule has been crystallized by three Supreme Court of Canada cases: *Oickle,* [68] *Spencer*[69] *and Singh*[70]. In the cases the courts have yet to put meaningful limits on police to prevent coercive interrogation tactics. Save extreme, blatantly illegal inducements, for example threats of violence, the confessions rule does not safeguard suspects from harmful or unfair interrogation techniques.[71] In order for the confessions rule to have a just and equitable meaning within the evolving jurisprudence, more categorical limits must be placed on police interrogation techniques.

*Oickle* discusses four factors in the preexisting confessions rule that the court must consider in assessing the voluntariness of a confession: threats or promises, oppression, the operating mind requirement and police trickery.[72] A *quid pro quo* offer may suggest an improper inducement, if it comes from a threat or a promise. The court did not discuss how explicit or implicit the promise must be.[73] It is our positon that if the "promise" is suggested or implied, as opposed to unequivocally communicated, its validity must be closely scrutinized. The concern for oppression cited in *Oickle* is concerning in light of the properties of the Reid technique. The court assesses oppression vis-à-vis, *inter alia,* deprivation of food, clothing, water, sleep, or medical attention; denied access to counsel; confronted with fabricated evidence; or questioned aggressively for a prolonged period of time.[74] The Reid technique is founded in the confrontation of fabricated evidence and deception, thus leading invariably to an egregious and often incorrigible level of oppression. The operating mind doctrine only requires that the accused knows what he is saying and that it may be used to his detriment and must not be

[68] *R. v. Oickle*, [2000] S.C.J. No. 38, [2000] 2 S.C.R. 3 (S.C.C.)
[69] *R. v. Spencer*, [2007] S.C.J. No. 11, 2007 SCC 11 (S.C.C.)
[70] *R. v. Singh*, [2007] S.C.J. No. 48, 2007 SCC 48 (S.C.C.).
[71] *R. v. Oickle*, [2000] S.C.J. No. 38, [2000] 2 S.C.R. at para 53 (S.C.C.).
[72] Ibid, para 47
[73] Ibid, para 56
[74] Ibid, para 60

compartmentalized or discrete from the entire confessions rule.[75] The last factor, police trickery, unlike the operating mind and the oppression doctrine, is a distinct inquiry. It is possible for the purpose of maintaining the integrity of the criminal justice system that "though neither violating the right to silence nor undermining voluntariness *per se*, is so appalling as to shock the community. In such cases, the confessions should be excluded."[76] It is likely that if the adverse effects of coercive and manipulative interrogation techniques such as the Reid technique and the Mr. Big operation were widely publicized, it would both abhor the community and have deleterious effects on the maintenance of the integrity of the criminal justice system.

In *Spencer*, the court prefaced its ruling with "at common law, statements made by an accused to a person in authority are inadmissible unless they are voluntary."[77] Elaborating on the confessions rule, the court discusses the validity and admissibility of inducements made by way of *quid pro quo*. Deschamps J. held that "it is the strength of the inducement having regard to the particular individual and his or her circumstances, that is to be considered."[78] The court does not set meaningful limits on what 'proper inducements' would look like, giving significant discretion to police officers. Thus it would follow, without meaningful limits, officers are unsure which inducements they can and cannot give to suspects and are left to follow the anecdotal support from their superiors.

When a person arrested and detained who invokes his charter right to silence and his charter right not to self-incriminate, on instructions of a lawyer, it does not follow that the person committed an offence. It is for the person's self-preservation. *Singh* has provided noteworthy mention on the evolution of case law surrounding the confessions rule. Singh asserted his section 7 pre-trial right to silence 18 times during the interrogation before admitting involvement in the homicide.[79] Looking at this case, it appears that Singh was a victim of a coerced-compliant confession; he falsely confessed to the interviewer to cease the incessant questioning. However, the court ruled that the statements were made voluntarily and without any inducements or coercion. The section 7 pre-trial right to silence does not provide any protection to the accused beyond the protection offered by the confessions rule and since a violation of the confessions rule did not occur, there is no basis for excluding the confession. It would cause significant and

[75] Ibid, para 63
[76] Ibid, para 6
[77] *R. v. Spencer*, [2007] S.C.J. No. 11, 2007 SCC 11 (S.C.C.)
[78] Ibid, para 15
[79] *R. v. Singh*, [2007] S.C.J. No. 48, 2007 SCC 48 at para. 58 (S.C.C.).

undue hardship to investigators if they were unable to continue asking questions to a suspect even after they assert their section 7 pre-trial right to silence, within reasonable limits. The issue is that, the court still does not clarify or provide meaningful limits on the realm of fairness and legality for officers to work within. The court is constantly made to balance the competing interests between the state to adequately and effectively investigate crimes and the constitutional and human rights of citizens. It must be fairly analyzed then that continuing the interrogation for an inordinate amount of time after the section 7 pre-trial right to silence has been invoked could then question the voluntariness of the confession.

The court in *J.-L.J,* citing the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*[80], sets out four helpful guidelines for "evaluating the soundness of novel science:" [81]

(1) whether the theory or technique 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 or the existence of standards; and,
(4) whether the theory or technique used has been generally accepted[82]

As it relates to the first criterion, the theory has been tested by both proponents and opponents of the Reid technique. There is a replete of scientific proof that discredits the reliability of the Reid technique, it's methodology and its very rudimentary principles. Mentioned earlier is the study co-conducted by Cutler and Loney that shows that applying Reid technique style interrogation tactics leads to false confessions,[83] and concomitantly wrongful convictions. Admittedly, the Reid technique has been effective, most prolifically in the case of Colonel Russell Williams.[84] However, the fact that the Reid technique is based in pseudoscience overrides it's perceived effectiveness. As abovementioned, there is a preponderance of peer reviewed research analyzing the Reid technique, discrediting its reliability.[85] In *Daubert*, the court declares that submission to

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[80] *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)
[81] R. *v*. J.‑L.J., [2000] 2 S.C.R. 600
[82] Ibid, para. 33
[83] Loney, D. M., & Cutler, B. L. (2015). Coercive interrogation of eyewitnesses can produce false accusations. *Journal of Police and Criminal Psychology J Police Crim Psych,* 1-89.
[84] Porter, S. (2011, June 20). The Confession Interview. Retrieved February 15, 2016, from http://www.difa.utoronto.ca/sites/files/difa/public/shared/Program/ResearchProjects/DIFA2011-The Confession Interview.pdf
[85] Moore, T. F., & Fitzsimmons, C. L. (2011). Justice Imperiled: False Confessions and the Reid Technique. *Criminal Law Quarterly*, *57*(4), 509-542.; Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. (2005).

the scrutiny of the scientific community is a component of "good science," in part because it increases the likelihood that substantive flaws in methodology will be detected."[86] A technique that unequivocally fails this criterion should not be one that is accepted by police, the court or any aspect of the criminal justice system. There is no unanimous rate of error for the Reid technique. However, as proven by Cutler and Loney, sixteen (16) percent of those subjected to Reid technique style interrogation tactics falsely confessed. It would be irresponsible to rely on a technique that elicits false confessions at such a high rate. Lastly, we would claim that, despite being the most commonly used interrogation technique in North America, it has absolutely not been generally accepted within the scientific community. The research in this paper does not grasp the entirety of that which refutes the reliability of the Reid technique. In *Daubert,* the court then cites that "a known technique which has been able to attract only minimal support within the community. . . may properly be viewed with skepticism."[87] The Reid technique falls within this category; despite it's support from practitioners.

The concern for wrongful convictions is one that is ubiquitous in legal scholarship and existing jurisprudence. The failure of both the Mr. Big operation and the Reid techniques to be reliable, fair and congruent with the principles set out by the court may call for immediate systemic reform. Interestingly, the Mr. Big operation is not used in the United States, perhaps raising doubt as to it's efficacy and reliability.[88]

## Policy Recommendations

Contemporary researchers have provided scientifically verified approaches to interrogation that do not pose the risks for eliciting false confessions. It would of course be naïve to believe that there is a way to completely eliminate false confessions; as mentioned earlier, people may falsely confess for notoriety. However, the options set out here are meant to eliminate the factors and elements that increase the likelihood of inducing false confessions. To develop an in-depth understanding of each of these alternatives, please review the literature cited in the footnotes.

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*Essentials of the Reid Technique Criminal Interrogation and Confessions* (4th ed.). Sudbury, Massachusetts: Jones and Barlett.

[86] [86] *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)

[87] Ibid, para 594

[88] R. v. Osmar, 2007 ONCA 50 para 54

The PEACE model is an alternative, less coercive interrogation technique compared to the Reid Technique. PEACE is an acronym, representing a five stage investigative interview: (1) Preparation and Planning, (2) Engage and Explain, (3) Account, (4) Closure and (5) Evaluation. It is premised on building rapport and trust between the interviewer and the suspect.[89] The use of open, non-leading questioning is encouraged and it allows the suspect to provide a comprehensive account of the events. The suspect, throughout the interview is more comfortable with the officer and confesses with similar frequency. As mentioned earlier, false confessions derived from coercive interrogation techniques are one of the leading causes to wrongful convictions. The PEACE model does not include lying to the suspect or the presentation of fabricated evidence.[90] The research that PEACE model proponents rely on is that if evidence is presented that the suspect is positive cannot exist; the integrity of the justice system is not brought into disrepute. The suspect is likely to know that the investigator is lying, and it may result in a loss of faith in effective police work, or suggest corruption within the police force.[91] The PEACE model decreases the likelihood of eliciting a false confession by avoiding many of the coercive facets that exist in the Reid Technique such as: leading questions, manipulation and fabricated evidence.[92] Officers who initially apply the PEACE model, but later adapt principles of the Reid Technique throughout the interrogation are more likely to elicit information and confessions that are unreliable and false.[93] An approach that avoids the pitfalls of the Reid technique, but does not require a significant change in approach is likely the most appropriate to supplant it.

In order for an alternative to be considered instead of the Reid technique or the Mr. Big technique, it must be scientifically sound. The *strategic disclosure of evidence* has proven to be an effective method of detecting deception.[94] With this method, investigators withhold crucial

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[89] Moore, T. F., & Fitzsimmons, C. L. (2011). Justice Imperiled: False Confessions and the Reid Technique. *Criminal Law Quarterly*, *57*(4), 509-542.
[90] Ibid, p. 540
[91] Leo, R. A., & Drizin, S. A. (2010). The three errors: Pathways to false confession and wrongful conviction. *Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations.,* 9-30.
[92] Shawyer, A., & Walsh, D. (2007). Fraud and peace: Investigative interviewing and fraud investigation. *Crime Prevention & Community Safety*, *9*(2), 102-117.
[93] Gudjonsson, G., & Pearse, J. (2001). Suspect interviews and false confessions. *Current Directions In Psychological Science (Print)*, *20*(1), 33-37.
[94] Moore, T. F., & Fitzsimmons, C. L. (2011). Justice Imperiled: False Confessions and the Reid Technique. *Criminal Law Quarterly*, *57*(4), 509-542.

evidence until later in the interrogation. Suspects do not tend to intentionally release incriminating evidence against themselves, for example, it is unlikely that they will admit they were at the victim's house near or around the time of the incident. An exemplar of this technique is an officer investigating a bank robbery asks "Have you ever been to this bank?" A guilty suspect is likely to deny ever being there with absolute confidence. Here, an investigating officer will strategically disclose that there is security footage of the suspect at the bank around the time of the robbery. This would cast serious doubt on the credibility of the suspect and it will be indicative of deception.[95] In one research study, investigators were able to identify deception with greater accuracy when the strategic disclosure of evidence method was used in comparison to releasing the information earlier in the interview.[96] It is cited as being promising because it "has an empirical basis and a sophisticated theoretical rationale,"[97] a stark comparison to that of the Reid technique or the Mr. Big operation.

Cognitive-based interventions also offer a scientifically sound technique to detect deception. This analysis is founded in the fact that lying can be more cognitively demanding than truth telling.[98] In liars, these cognitive interventions have proven to produce, for example, stutters, pauses, slower speech and a decrease in movements.[99] The proven hypothesis is that, liars will need more cognitive resources than truth tellers and will subsequently have less cognitive resources to address the heightened requirement cognitive interventions.[100] Unlike the Reid technique, this approach acknowledges that information gathering interviews will yield more information and provide a greater, more comprehensive understanding of the event. Amongst other reasons, information-gathering interviewing is most desirable because it provides the interviewer with an ability to detect deception based on the comparison of available evidence to that of the Reid technique.[101] The cognitive demands must be significantly tasking, for example, explaining their alibi in reverse order. Although tasking for both truth tellers and liars, it would be exceptionally tasking for a liar who is already exerting significant cognitive energy in lying. The physiological effects are also enormous; liars blinked more and made more leg and

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[95] Ibid, p. 538
[96] Ibid, p. 538
[97] Ibid, p. 538
[98] Vrij, A., Granhag, P. A., & Porter, S. (2010). Pitfalls and Opportunities in Nonverbal and Verbal Lie Detection. *Psychological Science In The Public Interest (Sage Publications Inc.)*, *11*(3), 89-121.
[99] Ibid, p. 98
[100] Ibid, p. 98
[101] Ibid, p. 105

foot movements, indicative of nervousness.[102] However, the researchers do acknowledge that speculation must be made for the nervousness. It can be a product of deception or a matter of self-consciousness on making a mistake.[103] An innocent person who is not certain that they got the reversed order of their story may feel heightened nervousness because they feel it may indicate guilt. We would argue, although it is yet to be researched, that a combination of the cognitive-based intervention and the strategic disclosure of evidence method could be reasonably applied. However, prior to giving the cognitive-based intervention any semblance of practicality, empirical evidence must be produced; this approach has been strictly limited to the laboratory.

Providing amendments to the Mr. Big operation is a difficult task and it would be nearly impossible to completely replace the operation. The court in *Hart* places a significant onus on the state to act responsibly and within strict limits, providing greater protection for innocent persons. The court took an approach that assessed the *subjective* particularities of the target. Hart was unemployed and socially isolated, and the undercover operatives preyed on this and ensured to provide him with monetary and social inducements.[104] However, it may be advisable that the court also look at the *objective* particularities of the majority. As was the case in *Hart*, staying in expensive hotels and dining in expensive restaurants is appealing to both the innocent and guilty. Subsequently, innocent persons may fall prey to monetary or social inducements. In an attempt to continue living the lifestyle, an innocent person may confess to a crime that they know they were a suspect in. Within the scope of the ruling, the court should assess to what extent the police exploited this particularity. Someone seeking to fulfill these objective particularities may feel that committing the low level crimes (e.g. counting money, being a lookout) is inconsequential. Therefore, rather than preying on what both the innocent and guilty may seek to gain, practitioners should determine, within the limits of the law, what inducements can be made without putting the administration of justice into disrepute. Further research in this field is necessary.

[102] Ibid, p. 90
[103] Ibid, p. 109
[104] R. *v.* Hart, 2014 SCC 52, [2014] 2 S.C.R. 544 para 117

## Adding Racial and Ethnic Origin to the Mix Makes for A Greater Likelihood of False Confessions

It is well-documented that Blacks are disproportionately more likely to be arrested, charged and convicted than their White counterparts. For example, white jurors believe that Black suspects are more likely to be violent in the future and that it is in their *nature*, or an immutable characteristic of Black people (i.e. childhood, youthfulness etc.), ignoring circumstantial evidence.[105] There is a strong nexus between harsh sentences and what is identified as "Afro-centric features," such as "darker skin, fuller lips and a broader nose."[106] Judges are susceptible to reading these immutable characteristics as character flaws.[107] The question then follows: do police investigative techniques disproportionately target or negatively affect racial minorities? In the Reid technique as described above, officers may infer from the non-accusatory stage that Black suspects are likely guilty and subsequently continue to the interrogation stage. Amongst others, there are three significant reasons that Black people will be more likely to confess. Firstly, officers may have a conscious bias towards minority groups and with malicious intent, proceed to the accusatory interrogation stage, trying to elicit a confession.[108] Fortunately, this is not represented in the research as a common reason for false confessions as it relates to race. Secondly, an officer may proceed to the accusatory interrogation technique because of cross-cultural differences in communication, officers may take certain non-verbal communications as indicative of guilt.[109] The leading cause for wrongful convictions is eyewitness misidentification testimony, with at least forty-three (43) percent of exonerations being a product of cross-racial identification.[110] The theory of cross-cultural differences puts into disrepute the validity of the Reid technique and distinguishes it as a technique that is wrongfully applied to all persons. The Reid technique is founded in the idea that all guilty suspects indicate guilt or deception in the

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[105] Taslitz, A. E. (2006). Wrongly Accused: Is Race a Factor in Convicting the Innocent?. *Ohio State Journal Of Criminal Law*, *4*(1), 121-133.
[106] Blair, W. V., Pizza, I. T., & Judd, C. M. (2005). Discrimination in sentencing on the basis of afrocentric features. *Michigan Journal of Race & Law, 10*, 327-353.
[107] Ibid, p. 130
[108] Taslitz, A. E. (2006). Wrongly accused: Is race a factor in convicting the innocent? *Ohio State Journal of Criminal Law, 4,* 121–133.
[109] Vrij, A. (2008). *Detecting lies and deceit: Pitfalls and opportunities.* Chichester, England: Wiley.
[110] Innocence Project (2016, February 08). DNA Exonerations Nationwide. Retrieved February 09, 2016, from http://www.innocenceproject.org/free-innocent/improve-the-law/fact-sheets/dna-exonerations-nationwide

same way, which is scientifically unsound. This dangerous thinking leads to a third reason that Black people will be more likely to confess; while some suspects may be "at ease," in the face of allegations, Black suspects often react to false accusations with denials, hostility and defensiveness, all indicative of guilt.[111]

The Reid technique as mentioned earlier preys on increasing a suspect's anxiety in an effort to make confessing an easier option. Black suspects may be susceptible to what is identified as *stereotype threat*. Stereotype threat "is the apprehension one experiences when at risk of being perceived in light of a negative stereotype that applies to one's group."[112] Being aware of the stereotypes and systemic issues that Black people face in interrogations and by the police, Black persons may experience greater anxiety compared to their White counterparts.[113] Even more troubling is innocent Black persons, who feel this anxiety, are even more susceptible to stereotype threat and attempt to control and exude qualities of an innocent person.[114] When they attempt to control these verbal and non-verbal communications in an attempt to appear truthful, Black suspects appear less truthful to their trier of facts.[115] Moreover, police officers believe that when suspects attempt to control their behavior and speech, they are lying.[116] The value of the Reid technique is substantially diminished in light of the research on race; when it is the case that Black innocent persons may exude the same qualities that investigators look for in a guilty person, there needs to be a change in the investigative techniques used by the police. This point is irrefutably exemplified by the fact that minorities are at particular risk for wrongful convictions. Of three-hundred and thirty-six (336) exonerees, two-hundred and five (205) are African-American.[117]

Notwithstanding the fact that African-Americans' are disproportionately represented in the prison population, they are significantly more overrepresented in exonerations. Young black boys are at a great risk of falsely confessing when the Reid technique is used; the combination of

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[111] Taslitz, A. E. (2006). Wrongly accused: Is race a factor in convicting the innocent? *Ohio State Journal of Criminal Law, 4,* 121–133.
[112] Steele, C. M., & Aronson, J. (1995). Stereotype threat and the intellectual test performance of African Americans. *Journal of Personality and Social Psychology, 69,* 797–811.
[113] Ibid, p. 567
[114] Ibid, p. 565
[115] Ibid, p. 565
[116] Mann, S., & Vrij, A. (2006). Police officers' judgements of veracity, tenseness, cognitive load and attempted behavioural control in real-life police interviews. *Psychology, Crime & Law, 12,* 307–319.
[117] Innocence Project (2016, February 08). DNA Exonerations Nationwide. Retrieved February 09, 2016, from http://www.innocenceproject.org/free-innocent/improve-the-law/fact-sheets/dna-exonerations-nationwide

stereotype threat, psychological tactics imposed in the Reid Technique, seeing no light at the end at the tunnel forces them to confess falsely. Coerced-complaint confessions are especially difficult to overcome for Black persons. The issue is two-fold; as mentioned earlier, investigators are less likely to accept denials of involvement in a crime from Black persons, and take their denials and hostility as indicative of guilt.[118] Investigators are then confident in the legitimacy of a confession when one is elicited. Secondly, jurors may see that the confession is in fact true because the alleged crime fits the "true character" of the Black person.[119] When Black persons assert that they only confessed to a crime to escape isolation and pressure from interrogators, only to be met with conscious or subconscious racial biases about the "true character" of Black persons, we run into a concerning issue of the reality of how Black persons are dealt with in the system. The question then is: is it that Black suspects are committing serious crimes at a greater rate or is that both the criminal justice system and the public both believe this to be the case, so their tunnel vision limits them to focusing on serious crimes with Black persons in mind.

The research on the Reid technique suggests that the use of this technique is a violation of the Ontario Human Rights Commission. In deciding *Peel Law Association v. Pieters*,[120] the tribunal cited *Parks*[121]:

> "Racism and in particular anti-black racism, is a part of our community's psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes."

The court continues with:

> "…Racial profiling is that police officers, *like all members of society*, develop unconscious stereotypes about racial groups and subconsciously act on those stereotypes during routine police investigations."[122]

It becomes overwhelmingly clear that racial biases, stereotyping and profiling play a significant role in policing, criminal trials (by both the judge and jury), and wrongful convictions. It is

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[118] Taslitz, A. E. (2006). Wrongly accused: Is race a factor in convicting the innocent? *Ohio State Journal of Criminal Law, 4,* 121–133.
[119] Ibid, p. 126
[120] *Peel Law Association v. Pieters*, 2013 ONCA 396, para. 113.
[121] *R. v. Parks* (1993), 1993 CanLII 3383 (ON CA), 15 O.R. (3d) 324, 84 C.C.C. (3d) 353 (C.A.), at para. 54
[122] *Nassiah v. Peel (Regional Municipality) Services Board*, 2007 HRTO 14; *Peel Law Association v. Pieters*, 2013 para. 113 ONCA 396

therefore irresponsible for techniques that undeniably produce wrongful convictions towards Black persons to be used by police, especially in the face of reasonable policy recommendations.

## Conclusion:

It is clear that there is no shortage of case-law, literature and research to support the fact that false confessions exist and that they are often a direct product of common police practices. Although the purpose of this paper is not to provide an extensive analysis on the psychological principles underlying false confessions and the techniques that produce them, it is clear that immediate systemic reform is required. With the undeniable research condemning the use of coercive tactics, academics have been disappointed at the impact of psychology on the law.[123] In a country founded on the principles of justice and fairness, strides must be made in Canada to eliminate wrongful convictions. The pursuit of justice should not be subsumed by the pursuit of accountability; as a matter of principle, investigators must be most concerned with the pursuit of justice rather than allaying the fears of the public. Police are under tremendous pressure by the public to apprehend criminals, and their police techniques represent this. Legal scholars and academic research must continue to condemn techniques that elicit false confession and must continue to provide alternatives. In addition to this, police forces must take initiative and adopt policies that substantially reduce the likelihood of false confessions. Defence lawyers have their role in this process as well. That role is to vigorously defend a client, challenge the admissibility of any statements obtained by the police from an accused person that contravene the Charter or that is obtained in a manner that would bring the administration of justice into disrepute. Further, defence counsel has a role in challenging statements provided by witnesses obtained by police using coercive or deceptive means in order to secure convictions in Court. Judge's role in the administration of justice cannot be understated as they are the arbiters of what evidence is admissible. There is a two stage process concerning the admissibility of documents (where admissibility and reliability are processed on two different levels). In any event, even in the adversarial system where proceedings are counsel driven, a judge's role in ethics, fairness and impartiality is fundamental to ensuring that potential tainted and discredited evidence that is

[123] Moore, T. F., & Fitzsimmons, C. L. (2011). Justice Imperiled: False Confessions and the Reid Technique. *Criminal Law Quarterly*, *57*(4), 509-542.

likely to result in miscarriages of justice and wrongful convictions has no place in determining the innocence or guilt of an accused person.

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*Ibrahim v. The King*, [1914] A.C. 599 p. 609

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