



Solo, Small Firms and General Practice News

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Yes, innocent people do confess.

Sadly, “[o]f the convicted people who have been conclusively cleared by DNA evidence, about one out of four had confessed to the crime—often due to clever ruses designed and promoted by the Reid school.”¹

Defense counsel must watch for the three fundamental phases of the Reid Technique when reviewing a client’s interrogation:

1. The suspect is brought into custody and isolated from his familiar surroundings. This was the birth of the modern interrogation room.
2. Next the interrogator lets the suspect know he’s guilty. The interrogator then floats a theory of the case, which the manual calls a “theme.” The theme is often supported evidence or testimony the investigator doesn’t really have.
3. In the final stage, the interrogator cozies up to the subject and provides a way out. This is when the interrogator uses the technique known as

“minimization.” Then the interrogator is instructed to propose themes that explain why the suspect committed the crime — one bad, and one not so bad, but both incriminating, as in “Did you mean to do it, or was it an accident?”

There is now compelling evidence that this Reid Technique is leading innocent people to confess. Even in 2016, most police officers and prosecutors are reluctant to believe innocent people will confess. That is understandable as John Reid himself once touted his technique as getting “better results than a priest.”

The John Reid Interrogation Method teaches that the hallmark of lying is anxiety. The interrogation of suspects therefore involves watching for alleged signs of anxiety and occasionally causing it.

In 2013, Douglas Starr wrote for the *New Yorker* Department of Criminal Justice an article about the Reid Method titled,

(continued on pg. 2)

“The Interview: Do police interrogation techniques produce false confessions?”

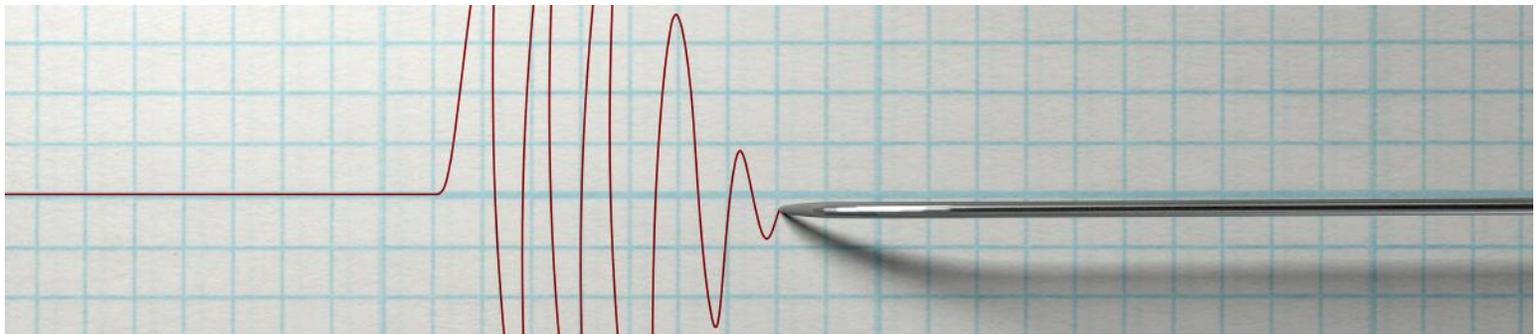
The Reid technique is the method designed by John Reid, a former Chicago street cop and polygraph examiner. Starr explains how Reid used his techniques in 1955 on Darrel Parker whose wife was raped and murdered:

[John Reid] had developed a reputation as someone who could get criminals to confess. Rather than brutalize suspects, as police often did in those days, he used modern science, combining his polygraphic skills with an understanding of human psychology.

The Reid Technique claims to be a sophisticated interrogation technique that starts with the Behavior Analysis Interview. This interview allegedly determines whether the suspect is lying. From the outset one can see that it starts with a presumption that the suspect is lying or may lie. While the interview may start with neutral questions, it moves to what are described as “behavior-provoking questions” such as “What kind of punishment should they give to the person who committed this crime?” The initial Behavioral Analysis Interview also uses a technique called “baiting” to try to provoke behavior in the suspect. For instance, the interrogator might say, “We’re in the process of analyzing evidence from the crime scene. Is

The transition to the next phase starts with offering them a way out of what they have already been advised is overwhelming evidence. Even when the suspect denies any wrongdoing, you bat it away. “There’s absolutely no doubt that this happened,” you say. “Now let’s move forward and see what we can do.” If he asks to see the folder, you say no. “There’ll be time for that later. Now let’s focus on clearing this whole thing up.”⁵

From there is the phase of minimization, where the Reid interrogator offers alternatives to the suspect. One Reid instructor, John Senese, reports in his book *Anatomy of Interrogation Themes* that there are in excess of 2,000 excuse themes. Douglas reports that according



Reid hooked Parker up to the polygraph and started asking questions. Parker couldn’t see the movement of the needles, but each time he answered a question about the murder Reid told him that he was lying. As the hours wore on, Reid began to introduce a story. Contrary to appearances, he said, the Parkers’ marriage was not a happy one. Nancy refused to give Parker the sex that he required, and she flirted with other men. One day, in a rage, Parker took what was rightfully his. After nine hours of interrogation, Parker broke down and confessed. He recanted the next day, but a jury found him guilty of murder and sentenced him to life in prison.²

there any reason that your DNA would turn up there?” and then watch for “suspicious” responses.³

Criminal defense lawyers know what happens next. The Reid students are taught that when you conclude the suspect is lying, you move to the phase of convincing the suspect that the evidence is overwhelming. For instance, the students are taught that “[i]f you decide that the suspect is lying, you leave the room and wait for five minutes. Then you return with an official-looking folder. “I have in this folder the results of our investigation,” you say. You remain standing to establish your dominance. “After reviewing our results, we have no doubt that you committed the crime. Now, let’s sit down and see what we can do to work this out.”⁴

to Senese, “[n]o matter how repugnant the crime [...] you can come up with a rationalization that makes it easier for the suspect to admit it.”⁶

Even lay persons are familiar with the most basic excuse theme, namely, presenting the wrongful act as a lesser of two evils. For instance, the Reid investigator will offer the suspect who has thus far denied any wrongdoing and been confronted with false overwhelming evidence of guilt, the choice between two options, such as “if you needed the money for your children, that is understandable. Help us explain you’re not just a thief.”

In 2008, Dr. Saul Kassin, a professor of psychology at John Jay College of Criminal Justice and Williams College, examined the link between the Reid

Technique and false confessions by innocent persons. His research was premised on the sad reality that “[d]espite the commonsense belief that people do not confess to crimes they did not commit, 20–25 percent of all DNA exonerations involve innocent prisoners who confessed.” His study concluded that one of the reasons for false confessions was a function of certain interrogation tactics.⁷

In what Kassin describes as “compliant false confessions,” the suspect “acquiesces in order to escape from a stressful situation, avoid punishment, or gain a promised or implied reward.”⁸ He references the 1989 Central Park jogger case as a dramatic illustration of the concept. Therein five New York

keyboarders believed that they believed was an examination of reaction time. The students were instructed to avoid a certain key on the board. They were then accused of causing the machine to crash because of using that prohibited key. All were truly innocent.

In the instances where another student indicated she had witnessed the subject hit the prohibited key, the false confession rate doubled. Shockingly, it also increased the number of students who then falsely believed they had used the prohibited key. Similar studies show the dangers of the minimization tactic.

The danger of these Reid Techniques leading to false confessions is nothing short of tragic when one understands that lack of critical analysis by jurors of

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¹ www.psychologytoday.com/blog/witness/201403/storm-clouds-gathering-over-reid-interrogation-method-0 (May 6, 2016).

² www.newyorker.com/magazine/2013/12/09/the-interview-7

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ [web.williams.edu/Psychology/Faculty/Kassin/files/Kassin%20\(2008\)%20-%20APS%20CD.pdf](http://web.williams.edu/Psychology/Faculty/Kassin/files/Kassin%20(2008)%20-%20APS%20CD.pdf).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* citing Drizin & Leo (2004), The Problem of False Confessions in the Post-DNA World, North Carolina Law Review.

“[d]espite the commonsense belief that people do not confess to crimes they did not commit, 20–25 percent of all DNA exonerations involve innocent prisoners who confessed.”

teenagers confessed, believing they would be going home at the end of the argument. The boys were all convicted and imprisoned. They were exonerated in 2002 when the real attacker was identified by DNA evidence.

Innocent people like these teenagers confess because American interrogations are a “psychologically oriented process.”⁹ The stages of the Reid Technique are designed to isolate the suspect, confront the suspect with false allegedly overwhelming evidence, and then minimize the offense to encourage the suspect to confess as the lesser of two evils.

Kassin’s research demonstrates that accepted and lawful practice of police lying about evidence can alter a suspect’s memory, beliefs and perceptions. Kassin had tested this theory in 1996. College students were engaged in a

such confessions. Kassin cites a 2004 study that concluded that 81 percent of innocent confessors were ultimately convicted by juries.¹⁰

The reality of false confessions is something rather well accepted in those who study the topic. For police officers, prosecutors and judges who have not been forced to critically evaluate the issue, the argument that an innocent person would confess remains unbelievable, though the research shows that clearly the risk is real and the effects on jurors overpowering. Defense counsel too must critically examine a client’s confession and be prepared to address in pretrial proceedings and very directly at trial. Innocent people do confess—your client may just be one of them.

By Joseph R. Klammer, Esq.

MESSAGE FROM THE “OUTGOING” CHAIR

This is my last column as Chair of the OSBA Solo, Small Firm & General Practice Section. A new leadership took over on July 1, 2016. Projects and section membership dividends will continue to be explored and, where feasible, added or expanded. The section has benefitted from working with its contemporary section at the American Bar Association with several council members active in leadership roles.

Two dates to save on your calendars are the Sept. 29, 2016, reception in Cincinnati hosted by the Section for the ABA Solo Small Firm and General Practice Section’s Fall Meeting at which OSBA’s Solo Small Firm & General Practice Former Section Chair Dave Lefton of Cincinnati will be honored.

The second date is Dec. 8-9, 2016, for the OSBA Technology Conference in Columbus with an approved section member discount for either one-day or two-day attendance on a pro rata basis. The conference planners are developing an exciting and information-filled agenda for all technology and practice levels. I would be remiss if I didn’t recognize the work of council members, council officers, OSBA staff and long-time Convention co-sponsor OBLIC for their assistance and support during my term. Thank you!

Best wishes for an enjoyable summer and a productive practice. *Illegitimi non carborundum.*



By Theodore M. Mann Jr., chair of the OSBA Solo, Small Firms and General Practice Section.

Ernie’s tech tips for attorneys



Forms updates

Look for more form changes in the wake of the U.S. Supreme Court case of *Obergefell v. Hodges*, which struck down Ohio’s statutory and constitutional bans on the issuance of marriage licenses to same-sex couples. Revised forms replace gender-specific words such as “mother,” “father,” “husband” and “wife” with gender-neutral words like “spouse.” So far there have been updated uniform domestic relations, guardianship and adoption forms. I expect the child support worksheets won’t be far behind. Speaking of which, keep an eye on SB 262—current status referred to committee—which proposes the most substantial overhaul of the child support guidelines since their first enactment in 1987. In a brief telephone conversation with the primary sponsor Ohio State Senator Shannon Jones’ office, I was informed that the bill has encountered some opposition related to its effect on low-income families, but proponents remain optimistic.

Windows 10

If you are currently running Windows 8, accept the free update to Windows 10. If you’re running Windows 7, stick with it and don’t take the bait. Some common sense reasons for keeping Windows 7 are embodied in the survival principle of “safety in numbers” and “running with the pack.” Don’t be misled by Microsoft about Windows 10. I recently received an email from an attorney stating, “I along with everyone in the world am using Windows 10.” That’s not true. As of April 2016, when the latest figures were available, Windows 7 was the most popular operating system and its users outnumbered Windows 10 users by about 2 to 1. Part of the reason for Windows 7’s preponderance is that most business offices, and law offices in particular, try to avoid what is jokingly referred to as the bleeding edge of technology. Law offices

are busy being law offices and don’t have time to scale an unnecessary learning curve and sort through the issues that arise adopting new technology.

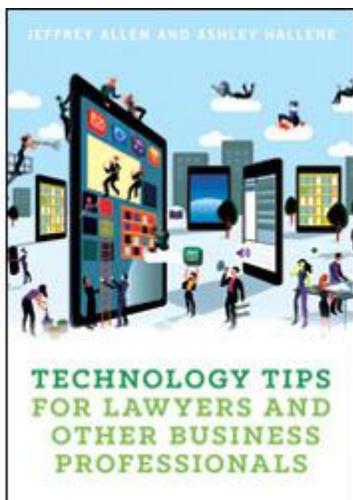
Here are the platform statistics published by W3School, a developer information website, as of April 2016:

Operating System	% Users
Windows 7	41.2%
Windows 10	21.2%
Windows 8	14.1%
Mac	10.6%
Windows XP	1.9%
Others	11.0%

While I’m on the subject, I’ve received a few reports from law offices that complained that their computers had been upgraded from Windows 7 to Windows 10 without their permission. Join the club. It happened in my office as well. We’re reasonably sure that no one on our end authorized the free Windows 10 upgrade that Microsoft keeps nagging us about. Worse still, the wee hours upgrade did not go well, and when I arrived in the morning, the computer was frozen and requesting permission to reinstall Windows 7! The entire process killed a half day. My solution was to reconfigure the upgrade settings from “automatic” to “only on approval.”

Troubleshooting computer problems

Calling the Geek Squad costs money. This is the Information Age. If you’ve got a problem with your computer, you can be sure tens of thousands have had that same problem, and a thousand of those have left their solution on the world wide web. Therefore, the first step is searching



Technology Tips for Lawyers and Other Business Professionals is a rapid-fire quick tips guide that almost certainly offers some tidbit that will sharpen your practice. Jeffrey Allen and Ashley Hallene wrote the compilation of practice technology tips, drawing from their many CLE presentations on technology for attorneys. The American Bar Association Solo, Small Firm and General Practice Division published the book. It hit shelves in April 2016, and you can purchase a copy at the ABA bookstore.¹

The book presents roughly one tip per page, making it easy to fill a spare moment by picking it up, reading a tip and then getting back to it at your earliest opportunity for the next tip. The table of contents lets you quickly peruse the tip topics, identify some of particular interest and jump to the appropriate page to find your answer.

It starts with a gentle reminder that courts across the country have recognized a duty for attorneys to exhibit a basic level of competency when it comes to their dealings with technology. The ABA Model Rules have recognized this duty for years. To aid lawyers concerned with using technology responsibly, the authors regularly conduct several CLE programs across the country and online on the subject matter. Over time, they compiled the tips and advice from their programs into this easy-to-reference guide.

Book review: *Technology Tips for Lawyers and Other Business Professionals*

Tips are grouped by category, including:

- **Hardware and equipment tips** – To aid you in selecting technology tools that offer a good value, user-friendliness and improved efficiency.
- **Software tips** – These include advice not only on helpful software, but also on ways to improve your use of common practice software.
- **Security and ethics tips** – This section offers a wealth of information for lawyers concerned with the responsible use of technology, as all lawyers should be.
- **Travel tips** – This section is designed to help readers get the most out of their travel experience, whether it is for professional or personal reasons.
- **Miscellaneous tips** – This section captures any tips that do not fit neatly into the prior categories.

Hardware and equipment tips

The authors have sampled a variety of technology over the years, and offer helpful advice for the next time you are looking to add or upgrade a piece of equipment. Tips here range from cellular hotspots to tablets, scanners and more. Some of the tips explore how to use your equipment to build your own cloud storage or backup system. Other tips focus on the accessories that allow you to take the equipment you already have to another level. This section is sort of like reading a *Consumer Reports* issue dedicated to law practice hardware.

Software tips

This section offers tips on how to use software more effectively in your practice. It also offers recommendations on some

less known software that could make your work life a little easier. Some of these tools can help save you the embarrassment of forgetting an attachment to your email, or help you organize your thoughts and strategy before going into trial. Other tips offer insight into full suite practice management, front-end and back-end, saving you the time and hassle of going through product demonstrations to evaluate all your options.

Security and ethics tips

The authors designed this section to help readers use technology to practice law safely and ethically. For lawyers, these tips will help you stay in compliance with Model Rule 1.1, regarding the duty of competence. In 2012, the ABA amended comment 8 to Model Rule 1.1, which now reads:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

The tips in this section offer a range of guidance, from protecting the metadata in your documents to setting up office backups to protecting yourself from cell phone viruses and more. Comments to Model Rule 4.4, also amended in 2012, explore the lawyer's ethical responsibility when unintentionally in possession of metadata, information that is embedded in electronic documents. The latest commentary indicates lawyers have the

duty to notify the sender if they know, or reasonably know, that the metadata was inadvertently sent. The goal of Comment 8 to the model rule was not to add on to lawyers' obligations, but rather to remind them that they need to remain aware of technology, its benefits and risks as part of a more or less general ethical duty to remain competent in their practices.

Travel tips

In the latter part of the 20th and certainly throughout the 21st century, lawyers (and people in general) have become more mobile than ever. At the same time, the growth of the Internet has substantially reduced (and arguably eliminated) our dependence on travel agents to plan and coordinate trips. Today we have a multitude of tools offering virtual assistance that can make your trip planning and execution run smoothly. In this section of the book, the authors guide you to sampling those tools to help get you on your way.

Miscellaneous tips

The last section is one of the larger ones. It acts as a catchall, since most of the tips can arguably fall into more than one category, and some really do not fall into any of those used in the book. These tips consist of general technology-related practice advice. The guide explores virtual assistants and receptionists, tips to improve your Microsoft Outlook utility, tips on setting up a digital filing system that mirrors your physical filing system and more. For instance, you can essentially hire an inexpensive editor for any of your contracts, correspondences or pleadings by employing an inexpensive add-on to Microsoft Word called WordRake. If you are running a lean solo practice and find yourself almost, but maybe not quite ready, to employ a full-time receptionist, you can bridge the gap with low risk by employing a virtual receptionist through a service such as Ruby Receptionists. For those of you inundated with email, which is quite possibly all of you, there are tips on writing better emails and building in safety nets to prevent you from mistakenly

emailing the wrong party, or hitting send at the wrong time. The idea here is the same concept that echoes throughout the book. Lawyers have a duty to their clients to use technology competently and efficiently.

Overall, this book makes for an easy, but exceptionally useful and helpful read. The tips can benefit lawyers as well as many other professionals, including law clerks, paralegals, receptionists, assistants and more. It makes for a good read or a great gift to any of the lawyers or professionals in your life.

Ohio State Bar Association members may receive a 20 percent (20%) discount off the purchase price of this book from the ABA by contacting Brandon Wilhelm, Manager of Product Marketing at Brandon.Wilhelm@americanbar.org

Endnotes

¹ shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=240513346&term=Technology%20Tips.

2016 ABA Solo & Small Firm Summit

Former chair of the OSBA Solo, Small Firms and General Practice Section David H. Lefton of Cincinnati, current chair of the American Bar Association Solo, Small Firm and General Practice Division, will host the ABA Solo & Small Firm Summit in Cincinnati Sept. 29 – Oct. 1, 2016, at the Westin Cincinnati, 21 E 5th St.

The Solo & Small Firm Summit is one of the main annual events for solo, small firm and general practice attorneys across the nation. Plan to attend and learn new skills, expand your knowledge and take away strategic solutions to promote a thriving solo and small firm law practice. The summit features continuing legal education and practice management courses, prominent

national speakers, networking events, vendors exhibiting products and services and more—all designed to assist you in being “All the Attorney You Can Be.”

In honor of Chair David H. Lefton, the Ohio State Bar Association Solo, Small Firms and General Practice Section is sponsoring the welcome reception on Sept. 29, 2016, from 6 to 8 p.m. at the Westin Cincinnati in the Fountain Room Level 2.

The OSBA Solo, Small Firms and General Practice Section meeting will be held in conjunction with the Solo & Small Firm Summit on Sept. 29 starting at 4 p.m. in the Grant Room at the Westin Cincinnati.

As a thank you to OSBA Solo, Small Firms and General Practice Section members, the ABA Solo, Small Firm and General Practice Division is offering a \$100 registration discount off the ABA member price when you register by Sept. 7. In order to take advantage of the discounted registration price, OSBA Solo, Small Firms and General Practice members should use the following discount code when registering: **GP1609OSBA**.

Visit www.americanbar.org/gpsolo for more information about registration, the division and its meetings. If anyone has a question about the ABA Solo & Small Firm Summit or the registration process, please contact Michael P. Hurley at (440) 357-5558.

About *Solo, Small Firms and General Practice News*

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