

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

COOK COUNTY
STATES ATTORNEY
SEP 11 2012

People of the State of Illinois,

Plaintiff,

v.

Hyungseok Koh,

Defendant.

RECEIVED
SEP - 4 2012
Presiding Judges Office

No. 09 CR 9151

Hon. Garritt Howard

**DEFENDANT'S RESPONSE TO THE STATE'S MOTION
TO BAR THE TESTIMONY OF GREGG MCCRARY**

Defendant Hyungseok Koh, by and through his attorneys, hereby responds to the State's Motion to Bar the Testimony of Gregg McCrary ("State's Motion").

FILED
2012 SEP 14 PM 3:45
CLERK OF THE
CIRCUIT COURT
DISTRICT TWO
DOROTHY E. BROWN
CLERK

INTRODUCTION

The State's motion to bar Mr. McCrary from testifying at trial rests on a fundamental misunderstanding about the subject of Mr. McCrary's expert opinions. The State attempts to cast Mr. McCrary as an expert in false confessions. That is not correct. Mr. McCrary will testify, as a qualified law enforcement expert, about police investigation practices for a death investigation that are relevant to this case, including issues such as cognitive biases and proper interrogation techniques. Mr. McCrary absolutely will not testify on issues of witness credibility nor will he suggest that the alleged confession is either credible or "false." And, despite the State's misunderstanding to the contrary, Mr. McCrary will not testify about psychological factors relating to interrogations and confessions or about Mr. Koh's mental state.

Once properly understood, it is clear that Mr. McCrary's opinions are admissible. The State cites no authority—to our knowledge none exists—in which a court barred a qualified expert on law enforcement practices from testifying at trial to educate the jury about relevant

police practices in connection with a death investigation. Despite the lack of authority, the State takes the position in its motion that McCrary's testimony is inappropriate because his testimony is not beyond the ken of the average juror. That cannot be true. Take for example the fact that law enforcement officers undergo extensive training in how to properly conduct investigations and interrogations. Or consider that Illinois law requires that "[o]nly law enforcement officers who successfully complete the training program [required by statute] may be assigned as lead investigators in death and homicide investigations." 50 ILCS § 705/10.11. Every reported decision on this issue that the defense has located finds that this type of testimony will aid the trier of fact. (See Section I.A below.) Just this year, a federal court in Chicago admitted Mr. McCrary's expert testimony as to best police practices in a death investigation and rejected the same argument that the State makes here, specifically, that jurors do not need this testimony because it is common knowledge. See *Jimenez v. City of Chicago*, No. 09 CV 8081 (N.D. Ill. Jan. 13, 2012) (attached hereto as Exhibit A). The Court should do the same here. Indeed, Mr. McCrary alone has been admitted as an expert to testify on nine separate occasions, including regarding death investigations. (See Ex. B, Curriculum Vitae of Gregg McCrary.)

The State's argument that Mr. McCrary will improperly testify about witness credibility or the credibility of Mr. Koh's statements is without basis. In his report, Mr. McCrary never expresses an opinion regarding whether Mr. Koh's statements are true or false, and he will not do so before the jury. And the State's objection says nothing about the bulk of McCrary's testimony. If the State's only concern with McCrary's testimony is that he might directly comment on the credibility of Mr. Koh's statements, then the defense invites this Court to rule that Mr. McCrary's testimony is admissible to the extent he does not comment on credibility or that Mr. Koh's alleged confession is "false." In regards to the interrogation of Mr. Koh, Mr.

McCrary will testify only about certain tactics that law enforcement officers use during interrogations, including best practices to elicit only reliable statements. To be clear, Mr. McCrary will not opine that Mr. Koh's statements are "false" or that Mr. Koh is innocent.

BACKGROUND

Gregg McCrary is a retired former FBI Agent and former member of the FBI's elite Behavioral Science Unit in Quantico, Virginia. (Ex. B, Curriculum Vitae of Gregg McCrary.) He has been professionally involved in investigating and solving violent crimes more than 40 years, including 25 years with the FBI and another 15 years as a consultant to police departments. (*Id.*) Mr. McCrary's expertise repeatedly has been recognized publicly, including several documentaries regarding his work, and several of his cases were extremely high profile (such as the JonBenét Ramsey case, the Bernard Madoff prosecution, and the Norfolk 4 False Confession Case). (*Id.*)

From 1970 to 1988, Mr. McCrary investigated violent crimes, including numerous homicides, as a field agent in the FBI's Detroit, New York City, and Buffalo Field Offices. (*Id.*) In 1988, Mr. McCrary was promoted and transferred to the FBI Academy in Quantico, Virginia as a Supervisory Special Agent, where he worked in the National Center for the Analysis of Violent Crime (NCAVC). (*Id.*) There he was assigned to the operational wing of the Behavioral Science Unit where a primary responsibility was to provide expertise in investigative techniques and crime scene analysis in violent crime investigations, both to FBI field agents as well as to other law enforcement agencies around the world. (*Id.*)

In 1994, Mr. McCrary retired from the FBI, and in 1995, joined a private organization called the Threat Assessment Group, where he worked for approximately two and a half years before he founded Behavioral Criminology International, his own consulting firm. (*Id.*) Mr.

McCrary has worked with and trained numerous law enforcement agencies, both in the United States and around the world, including: New York City Police Department Homicide Squads, The New York State Police, The Texas Rangers, The Boston Police Department, The Florida Department of Law Enforcement, the California Attorney General's Office, Scotland Yard, The Metropolitan Toronto Police, and The Royal Canadian Mounted Police. (*Id.*)

Mr. McCrary also teaches a graduate-level course in forensic psychology and criminal justice at Marymount University in Arlington, Virginia and a course in criminal justice at DeSales University in Center Valley, Pennsylvania. (*Id.*) In addition to his teaching as an adjunct professor, Mr. McCrary has delivered over 85 presentations, lectures, and seminars around the world. (*Id.*) Mr. McCrary is a member of several organizations, including a Charter Member of the International Homicide Investigators Association, a Member of the International Association of Corrections and Forensic Psychology, and a Member of the Editorial Review Boards for both *Aggression and Violence* and the *Journal of Family Violence*, both professional journals.

In this case, Mr. Koh proffers Mr. McCrary as an expert in best police practices when conducting a death investigation, including the interrogation of suspects. (*See Ex. C, Expert Report of Gregg McCrary.*)

ARGUMENT

I. Mr. McCrary's Expert Opinions as to Proper Investigative Procedures Are Admissible.

In the face of the 70 law enforcement officers who the State intends to call at trial to testify about the investigation of Paul Koh's death and the interrogation of Mr. Koh, the defense is entitled to present evidence about police practices relevant to that investigation and interrogation. Mr. McCrary will explain to the jury best police practices based on his training,

education, and experience in conducting death investigations. Mr. Koh has a right to present that testimony to educate the jury about those issues because Mr. McCrary's testimony involves "knowledge which is not common to laypersons" and thus "will aid the trier of fact in reaching its conclusions." *People v. Miller*, 173 Ill. 2d 167, 186 (1996). Mr. McCrary's expert testimony will aid the jury to understand best police practices so that jurors can consider, whether in their view, the police followed proper procedures in this case when reaching their conclusions.

A. The Average Juror Does Not Understand Best Police Practices for Conducting a Reliable Death Investigation.

Mr. McCrary will opine on standard procedures that law enforcement agencies should follow to ensure an accurate and thorough investigation. (Ex. C, McCrary Report at 4-8.) For example, Mr. McCrary notes that a proper death investigation begins with "victimology," or investigating "to determine what, if anything, elevated a given individual's risk for becoming the victim of violence." (*Id.* at 5.) Similarly, a proper investigation involves gathering "all relevant facts, such as the results of the autopsy, forensic testing and all interviews, and other collateral information must first be gathered and assessed before attempting to classify the manner of death in an equivocal case." (*Id.*) Finally, McCrary opines that a number of "[c]ognitive biases such as tunnel vision, confirmation bias, anchor traps, organizational momentum and groupthink" can lead to erroneous conclusions in death investigations. (*Id.* at 6, 7-8.) All of those concepts are outside a typical juror's experience.

The State cites no case in which a court barred an expert in law enforcement practices from educating the jury about how the police should conduct a proper death investigation. Indeed, none of the cases the State cites even addressed testimony by a law enforcement official to educate the jury about proper police practices.

On the other hand, numerous courts have admitted law enforcement experts, including Mr. McCrary, to educate juries about proper police practices. Indeed, earlier this year United States District Court Judge Matthew Kennelly ruled that Mr. McCrary's expert testimony as to police practices and potential investigation bias was admissible. Ex. A, *Jimenez*, No. 09 CV 8081. In that case the arguments made in an attempt to bar McCrary are the same arguments that the State makes in its Motion. In *Jimenez*, Mr. McCrary intended to testify that the police failed to properly investigate alternative leads that would have shown that the defendant in that case (the plaintiff in the civil suit at issue) did not commit the crime as the police alleged. The defendant police officers moved to bar Mr. McCrary's testimony, arguing that Mr. McCrary's testimony was not outside the common knowledge of the jury and that the subject of police interrogation techniques is not well-accepted in the field. *Id.* The court rejected that argument, finding that McCrary "has sufficient background and expertise to opine on" whether the officers in that case "ignored . . . information" regarding other theories of the case and thus improperly focused their investigation on the plaintiff. *Id.* at 2. The court held that McCrary's opinion "does not simply involve . . . application of common sense." *Id.*

Here, McCrary opines that the investigating officers displayed a number of "[c]ognitive biases such as tunnel vision, confirmation bias, anchor traps, organizational momentum and groupthink" when they focused almost exclusively on Mr. Koh early in the investigation. (Ex. C, McCrary report at 6, 7-8.) The *Jimenez* court held that McCrary is qualified to offer those opinions and that they would assist the jury: "[B]ased on [McCrary's] background and expertise . . . he has the expertise and a sufficient foundation to testify that these sorts of biases may exist or sometimes influence how police investigations are conducted." Ex. A, *Jimenez*, No. 09 CV 8081, at 2. The court further held that "McCrary can appropriately testify regarding what these

concepts mean, how they can influence police investigations, and how a reasonable police investigator not influenced by these factors should have conducted the investigation at issue in this case.” *Id.*

Jimenez is no outlier. The only two reported decisions the defense has located by an Illinois state court regarding expert testimony on best police practices affirmed the admissibility of such testimony. *See Petraski v. Theodos*, 2011 IL App (1st) 103218, ¶ 19 (“police procedures expert” admitted); *Rivera v. Garcia*, 401 Ill. App. 3d 602, 607 (1st Dist. 2010) (permitting expert on the subject of police procedures). Other courts also have admitted similar testimony as to best police practices. *See Elmore v. Ozmint*, 661 F.3d 783, 804 (4th Cir. 2011) (admitting expert testimony that “there wasn’t much of an investigation conducted at all” because “within an hour or two . . . there was a suspect in this case” and “from that point in time the whole case was built around [the defendant] to the exclusion of anyone else”); *Maltby v. Winston*, 36 F.3d 548, 564 (7th Cir. 1994) (expert on “general police procedures” admitted); *Monfils v. Taylor*, 165 F.3d 511, 519 (7th Cir. 1998) (admitting expert in “police procedures”); *Ford v. Childers*, 855 F.2d 1271, 1272 (7th Cir. 1998) (expert on procedures for use of force by police admitted); *Kladis v. Brezek*, 823 F.2d 1014, 1019 (7th Cir. 1987) (same); *Gell v. Town of Aulander*, 2008 WL 4845823, at *7 (E.D.N.C. Nov. 4, 2008) (permitting expert on standard homicide investigation police procedure); *State v. Sanderson*, 2008 WL 624922, at *4 (Tenn. Crim. App. Mar. 7, 2008) (permitting an expert in the field of criminal investigations to testify regarding standards for homicide investigations).

In sum, McCrary’s testimony will aid the jury in understanding whether the police investigation in this case was conducted in such a manner as to warrant confidence that the

police identified the correct manner of death and the real killer, a topic far outside the typical juror's understanding. His opinions are admissible.

II. Mr. McCrary's Testimony as to Best Practices in Interrogations is Also Admissible.

As part of his testimony on best police investigatory practices, Mr. McCrary will opine on best practices for interrogating suspects.

A. The Average Juror Does Not Understand Best Police Practices for Interrogating Suspects.

The State argues, yet again, that McCrary's testimony "would not aid the jury as the testimony does not help to explain matters that the average layperson does not understand." State Mot. ¶ 8. But the State offers no evidence that the average juror understands which particular interrogation techniques police officers are trained to avoid and which they are trained to use. Indeed, if that understanding is common sense to the typical layperson, as the State claims, one wonders why law enforcement officials, including the interrogating detectives in this case, take special courses in interrogation techniques.

Courts allow expert testimony as to proper law enforcement investigatory procedures, *see, e.g., Petraski*, 2011 IL App (1st) 103218, ¶ 19; *Rivera*, 401 Ill. App. 3d at 607; *see also Elmore*, 661 F.3d at 804; *Gell*, 2008 WL 4845823, at *7; *Sanderson*, 2008 WL 624922, at *4, which includes how to interrogate a suspect in a manner that will elicit a reliable statement. The Court should admit McCrary's testimony for the same reason.

B. McCrary Will Not Opine on the Reliability of Mr. Koh's Statements, So His Testimony Will Not Invade the Province of the Jury.

The State also claims that Mr. McCrary's testimony would invade the province of the jury because he "opines that at best defendant's statement is unreliable." State Mem. at 13. The State is incorrect. Mr. McCrary will not give any opinion as to the credibility of Mr. Koh's

statements. Mr. McCrary has no intention of weighing in on disputed issues of fact. The State's objection fails to address what Mr. McCrary will testify about, namely, to educate the jury about best police interrogation practices so that the jury can decide in an educated manner how to weigh the evidence in this case. To the extent the Court has concerns about Mr. McCrary's opinion as to the reliability of Mr. Koh's statements, the Court should nonetheless admit Mr. McCrary's expert opinions that do not directly address the reliability of Mr. Koh's statements.

Put simply, Mr. McCrary is going to inform the jury what police interrogation techniques relevant to this case may have been proper or improper for the jury to consider when making its conclusions about the facts in this case. That is an appropriate subject for expert testimony.

CONCLUSION

For the reasons set forth above, Mr. Koh respectfully requests that the Court deny the State's Motion to Bar the Testimony of Gregg McCrary.

Dated: September 4, 2012

Respectfully submitted,

Defendant Hyungseok Koh

By: _____

One of His Attorneys

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EXHIBIT A

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Matthew F. Kennelly	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	09 C 8081	DATE	1/13/2012
CASE TITLE	Jimenez vs. Bogucki		

DOCKET ENTRY TEXT

The Court grants in part and denies in part defendant’s motion to preclude plaintiff’s expert Gregg McCrary and plaintiff’s motion to bar certain opinions of defendant’s expert Michael Bumcrot as described below.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Defendant has moved to preclude plaintiff’s police practices expert Gregg McCrary, and plaintiff has moved to bar certain opinions to be offered by defendant’s police practices expert Michael Bumcrot. The Court grants each motion in part and denies each in part as stated below.

Bumcrot. Plaintiff seek to bar Bumcrot from testifying that the police had probable cause to arrest and prosecute plaintiff for murder. Defendant says that “Bumcrot will not opine that the officers had probable cause,” Def. Resp. (dkt. no. 209) at 5, and the Court agrees that this opinion should be excluded. It is not inappropriate, however, for Bumcrot to testify that *if* one concludes that the police had probable cause to charge plaintiff, then proper police practice did not require them to further investigate others – in particular, Juan Carlos Torres – unless prosecutors directed them to do so. This is essentially the flip side of an opinion that plaintiff intends to offer via McCrary, and the Court sees nothing improper about it, because it involves a matter outside the ordinary ken of jurors on which an expert can contribute something meaningful that will assist the jury.

Plaintiff also seeks to preclude Bumcrot from testifying that the lineup in which plaintiff appeared was fair and not unduly suggestive. Defendant says that Bumcrot will testify only that because Tina Elder says the photograph she saw before viewing the lineup did not affect her, the lineup was fair. This goes a bit too far, because it amounts to a judgment of Elder’s credibility, which is inappropriate. Bumcrot may, however, testify that *if* Elder is correct that the photograph did not affect her – a judgment that is appropriately reserved to the jury – then the lineup was fair. This, again, is essentially the flip side of an opinion that plaintiff intends to offer via McCrary.

McCrary. Defendant seeks to bar McCrary from testifying altogether, on two grounds. First, he contends that McCrary has insufficient expertise to opine regarding murder investigations because he “has no police

STATEMENT

background.” Def.’s Mot. to Bar (dkt. no. 206) at 2 (heading). That is incorrect. McCrary worked as an agent of the Federal Bureau of Investigation for twenty-five years. Though some Chicago police officers perhaps might not view FBI agents as “police,” both are law enforcement officers. In addition, plaintiff notes, without dispute by defendant, that McCrary, regularly investigated violent crimes both as a law enforcement officer and as a consultant to police departments for fifteen years. For this and the other reasons noted in plaintiff’s response to the motion, McCrary unquestionably has sufficient expertise and background to testify regarding proper police practice in investigating a violent crime.

Defendant’s second general objection is that McCrary’s opinion is improper, and will not assist the jury, because it merely reiterates plaintiff’s theory of the case that defendant and others coerced witnesses and influenced witnesses to identify plaintiff as the perpetrator. The Court disagrees. Plaintiff says that McCrary will not opine that witnesses were coerced, tricked, or influenced, Pl.’s Resp. to Def.’s Mot. to Bar (dkt. no. 231) at 5, and the Court agrees that such testimony would be inappropriate. There is nothing inappropriate, however, in McCrary testifying – as plaintiff proposes – that if one believes certain witnesses and disbelieves others, then the defendant did not engage in proper police practices. It is likewise not inappropriate for McCrary to testify that *if* Tina Elder was permitted to see a photograph of plaintiff before seeing a lineup that included him, this was inappropriate police practice because it risked tainting the reliability of any resulting identification.

The Court also rejects defendant’s argument that it is inappropriate for McCrary to testify regarding the steps a reasonable police investigation would have involved given certain facts and assumptions. By way of example, one of the hotly disputed matters in this case involves whether, following receipt of information that implicated another person (Juan Carlos Torres), defendant ignored that information and instead maliciously caused plaintiff to be prosecuted. McCrary has sufficient background and expertise to opine on these points, as plaintiff argues. In addition, the Court finds that his opinion will assist the jury in understanding these issues, which are relevant regarding (among other things) the issue of malice, and that the opinion does not simply involve, as defendant contends, application of common sense.

Defendant argues that McCrary should not be permitted to opine regarding what led Cook County prosecutors to agree to vacate plaintiff’s conviction and what led Cook County judges to grant that motion and issue him a certificate of innocence. Plaintiff does not dispute this, and the Court agrees that these matters are outside McCrary’s expertise.

Defendant also objects to McCrary rendering an opinion that defendant, in pursuing charges against plaintiff and failing to investigate Juan Carlos Torres, may have been influenced by “[c]ognitive biases such as tunnel vision, confirmation bias, anchor traps, organization momentum and groupthink.” McCrary Report at 10. First of all, the Court is persuaded, based on McCrary’s background and expertise, that he has the expertise and a sufficient foundation to testify that these sorts of biases may exist or sometimes influence how police investigations are conducted. Second, the Court finds that McCrary can appropriately testify regarding what these concepts mean, how they can influence police investigations, and how a reasonable police investigator not influenced by these factors should have conducted the investigation at issue in this case. The Court agrees with defendant, however, that it is inappropriate for McCrary to testify that defendant or other police investigators actually were motivated by these or other factors. That would amount to an improper opinion regarding the state of mind of the defendant. *See generally Dahlin v. Evangelical Child and Family Agency*, No. 01 C 1182, 2002 WL 31834881, at *3 (N.D. Ill. Dec. 18, 2002).

Finally, the Court disagrees with defendant’s contention that he should be able to elicit from McCrary on cross examination an opinion that, as they put it, “a juvenile with plaintiff’s background is likely to engage in

STATEMENT

violent behavior.” ” Def.’s Mot. to Bar (dkt. no. 206) at 8 (heading). This is outside the subject on which plaintiff identified McCrary as an expert, and it is outside the scope of his report. In addition, permitting testimony on this subject would, as plaintiff argues, run headlong into the prohibition of Federal Rule of Evidence 404(b) regarding “propensity” evidence, not to mention the fact that it would violate an *in limine* ruling that the Court made after extensive briefing and argument.

EXHIBIT B

GREGG O. McCRARY
SUPERVISORY SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION (RETIRED)
NATIONAL CENTER FOR THE ANALYSIS OF VIOLENT CRIME
FBI ACADEMY QUANTICO, VIRGINIA, USA

EDUCATION

Bachelor of Fine Arts Degree, Ithaca College, Ithaca New York, 1967
Graduate studies, Criminal Justice, Long Island University 1975-1976
Additional Graduate studies at University of Virginia 1989-1990
Master of Arts in Psychological Services, Marymount University Arlington, VA 1992

EMPLOYMENT

Federal Bureau of Investigation, Special Agent (1969-1994)
Threat Assessment Group (1995-1997)
Behavioral Criminology International (1997-Present)

Independent Contractor for:

- Park Dietz and Associates, Newport Beach, CA
- Threat Assessment Group, Newport Beach, CA
- U.S. Investigative Services, Hyattsville, MD.
- Control Risks Group, London England

Faculty Positions:

- Adjunct Professor of Criminal Justice
DeSales University, Center Valley Pennsylvania
- Adjunct Professor of Forensic Psychology and Criminal Justice
Marymount University, Arlington, Virginia
Forensic Psychology (Graduate Level)

SPECIALIZED TRAINING

FBI In-Service Training:

Selective Operations Seminar (1978)
Drug Enforcement Administration Training (1979)
Labor Racketeering (1980)
Special Weapons and Tactics (1980)
Expert Firearms and Defensive Tactics Instructors School (1981)
Crisis Management (1981)
White Collar Crime/Fraud (1982)
Profile/NCAVC Coordinator (1985)
Narcotics Raid Planning (1986)
Advanced Profile/NCAVC Coordinator (1987)
Criminal Sexuality Instructor (1987)
Arson Investigation (1988)
Advanced Criminal Sexuality Instructor (1991)
Advanced Violent Crime Investigators Seminar (1992)

OTHER TRAINING

- Basic and Advanced Forensic Pathology
Armed Forces Institute of Pathology (1988)
- Reid School of Interview and Interrogation (1988)
- Black Belt Instructor Shorinjii Kempo (1984)
- Brown Belts in Judo and Aikido (1973-79)
- Scientific Content Analysis by Avinom Sapir Rockville, MD (1991)
- International Conference on Violent Crime, September 13-17, 1999, Barrie, Ontario
- Psychopathy and Crime: Dr. Robert D. Hare, FBI Academy, Quantico, Virginia (1999)
- International Homicide Investigators Seminar September 18-22, 2000, FBI Academy
- ICIAF training, Key West Florida May 20-24, 2001
- ICIAF training, Barre, Ontario, September 25-28, 2001
- CPTED Certification: National Crime Prevention Institute: University of Louisville
October 8-12, 2001
- Institute of Law Psychiatry and Public Policy, University of Virginia: Assessing Criminal
Behavior: The Importance of How the Crime was Committed September 26, 2003
- Reading People: Risk of Violence Predictions. October 12-14, 2005
- APA Seminar on False Confessions, San Francisco, CA August 19, 2007
- Youth and Young Adults: Violence Risk Assessment, Prevention and Threat
Management; San Diego, CA January 22-25, 2008
 - "The Structured Assessment of Violence Risk in Youth (SAVRY)"
 - "Assessing Risk of Juvenile and Young Adult Violence"
 - "Suicide Risk Assessment in Youth and Young Adults"
 - "Schools at Risk: Managing Bullying, Gangs and Violent Females"
 - "School Violence Threat Management"
 - "Pathways from Childhood Aggression to Adolescent Violence"
 - "Adolescent and Young Adult Mass Murder: Assessment and Management of
Catastrophic Risk"

- ICIAF training, Forsyth, Georgia, June 9-13, 2008. Crime Scene Reconstruction (Post Certified)
- American Psychology and the Law Society (AP-LS); March 5-7 San Antonio, Texas; False Confessions; Eyewitness Fallibility; SVP's and Sex Offender types, Child Molesters, Pedophiles and Pornography; Use of Informants
- Institute of Law, Psychiatry and Public Policy, University of Virginia, Charlottesville, VA. April 17, 2009; Risk assessment of Sexually Violent Predators: Paraphilias, NOS – Rape and Coercion. – Current Controversies
- Institute of Law, Psychiatry and Public Policy, University of Virginia, Charlottesville, VA. April 24, 2009; Assessing Malingering and Waiver of Miranda Rights. Implications for criminal and civil litigation
- ICIAF training, Myrtle Beach, FL May 3-7, 2010: Violence Progression in Paraphilics: False allegations; Sexual Homicide; Serial Murder; Victims' Reaction to Sexual Violence.
- Crimes Against Children Conference, Dallas, Texas August 9-12, 2010
- Assessing Risk for Violence in Juveniles: University of Virginia, Institute of Law, Psychiatry and Public Policy, February 25, 2011.
- Advanced: Police Custody and Interrogation of Juveniles. University of Virginia, Institute of Law, Psychiatry and Public Policy, November 4, 2011.
- American Society of Criminology Round Tables on Criminal Investigative Analysis and Wrongful Convictions. Washington, DC November 17-18, 2011
- Master Class; Investigative Interviewing using PEACE model; International Investigative Interview Research Group (iIRG) Toronto, Ontario, Canada May 22-23 2012

MAJOR PRESENTATIONS

Charles O. Bick College
Toronto, Ontario Canada 1986

State University College at Brockport, NY (1987)

Five State Peace Officers Association
Woodward, Oklahoma October 12-14, 1988

Bureau of Criminal Apprehension
St. Paul, Minnesota February 6-8, 1989

Harvard Associates of Police Science
University of Maryland Medical School
Chief Medical Examiner's Office
Baltimore, MD 1989

First Annual Governors' Conference on Violent Crime
Myrtle Beach, South Carolina
May 18, 1989

International Criminal Investigation and Training Program (ICITAP)
Criminal Investigative Analysis
Belize, Central America
Principal Instructor August 18-26, 1989

University of Virginia
Institute of Psychiatry and the Law
Featured Speaker 1989

Metropolitan Toronto Police
Principal Instructor; Criminal Sexuality Seminar 1990

Colorado Association of Sex Crime Investigators
Glenwood Springs, Colorado ; Principal Instructor May 15-18, 1990

Ontario Police College
Alymer, Ontario
Criminal Sexuality Seminar May 21-24, 1990

Southeastern Association of Criminal Investigators
Criminal Sexuality Seminar -Principal Instructor -Tampa, Florida September 15-20, 1990

Featured Speaker at Homicide Symposium,
Crime Scene Analysts Conference and King
County Police Sex Crime Investigators Training
Seattle, Washington
Olympia, Washington
Yakima, Washington May 6-10, 1991

New York City Police
Advanced Homicide Detective Training
Featured Speaker May 1991
New York, NY

FBI National Academy Retraining Seminar
Violent Crime
Rochester, New York, June 23-26, 1991

Marymount University
Psy Chi National Honor Society for Psychology
Guest Lecturer "Inside the Violent Mind".
Arlington, VA - October 1, 1991

FBI National Academy European Chapter
Violent Crime Investigation
Brussels, Belgium November 1992

First International Symposium on Criminal Investigative Analysis
Principal Instructor and Coordinator Vienna, Austria - October 1993

Policia Judiciare
National Police Academy of Portugal
Investigating Violent Crime
Principal Instructor
Lisbon, Portugal - November 1993

Cuerpo Nacional De Policia
National Police Academy of Spain
Investigating Violent Crime
Principal Instructor Avila, Spain - December, 1993

Hungarian National Police
Investigating Violent Crime
Principal Instructor
Budapest, Hungary - June 1994

French National Police
Investigating Violent Crime
Principal Instructor
Paris, France - June 1994

California District Attorney's Association
10th Annual Homicide Symposium
San Diego, California: January 1995

Defense Research Institute
Premise Liability re Violent Crimes
Boston, Massachusetts
May 25-26, 1995

Pacific Coast Labor Law Conference
Seattle, Washington
Workplace Violence Prevention
June 7-9, 1995

Grand Rounds
University of Virginia Medical School
Charlottesville, Virginia
November 8, 1995

Center for the Study of the Mind and Human Interaction
University of Virginia
Charlottesville, Virginia - January 17, 1996

Defense Research Institute
Premises Liability for Violent Crimes
San Diego, California March 27-29, 1996

Gregg O. McCrary
Page 6

Association of Trial Lawyers of America
Premises Liability for Violent Crimes
Mega Seminar
Las Vegas, Nevada
February 1997

Defense Research Institute
Premises Liability for Violent Crimes
New Orleans, Louisiana: April 10-11, 1997

FBI National Academy
International Retraining Symposium
Burlington, Ontario Canada
July 14 - 15, 1997

Northeastern Association of Forensic Scientists
White Plains, New York
October 17, 1997

Employers Reinsurance Corporation
Violent Crime Seminar
San Francisco, CA
Oct. 27, 1997

Atlanta Apartment Association
Premises Liability - Violent Crime Seminar
Atlanta, Georgia, May 20, 1998

“The Violent Mind”
Nova Southeastern University
(APA accredited)
Ft. Lauderdale, Florida
June 20 - 21, 1998

Association of Trial Lawyers of America
Inadequate Security Litigation Group
National Convention
Washington, D.C. - July 13, 1998

Institute of Continuing Legal Education in Georgia
Premises Liability-Violent Crime Seminar
Atlanta, Georgia – November 5, 1998

Annual Claims Exposition & Conference
Premises Liability – Violent Crime Presentation
St. Louis, Missouri – November 13, 1998

Eastern Analytical Symposium
Criminal Profiling
Somerset, New Jersey – November 18, 1998

American Academy of Forensic Sciences
Panel Member
Suicide and Equivocal Death Investigations
Orlando, Florida – February 15, 1999

Nova Southeastern University
The Violent Mind (APA Accredited)

Orlando, Florida - February 27-28, 1999
Miami, Florida – May 15-16, 1999

Burns International Security Seminar
Las Vegas, Nevada; September 13-15, 1999

Henry C. Lee Institute of Forensic Science
Cold Case Homicide Workshop
University of New Haven
January 11-13, 2000

Northern California Fraud Investigator's Conference
Monterey, California
April 11, 2000

Institute of Continuing Legal Education
Atlanta, Georgia
Premise Liability and Violent Crime – November 3, 2000

University of Virginia
Critical Incident Analysis Group
Religious Violence/Waco
November 14, 2000

California State Hospital at Atascadero
Presentation to Staff re Violent Sex Offenders
May 9-11, 2001

Marymount University
"The Violent Mind"
October 23, 2001

Institute for Continuing Legal Education
Atlanta, Georgia
Premise Liability and Violent Crime
November 2, 2001

Gregg O. McCrary
Pg. 8

DeSales University
Bethlehem, PA.
“The Violent Mind”: November 14, 2001

Violence Risk Assessment through Crime Analysis
DC Superior Court Pre-Trial Services
Washington, D.C.
December 6, 2001

Henry C. Lee Institute of Forensic Science
Cold Case Homicide Workshop
University of New Haven
December 10-12, 2001

Homicide: Behaviors, Motives and Psychology:
A Gathering of Leading Experts
Monte Carlo Hotel
Las Vegas, Nevada
March 11-13, 2002

University of Paris
Institut de Criminologie
Departement de Recherche
Premiere Conference Internationale
Sur L’Analyse Criminelle et le Profilage Criminel
391 Rue, de Vaugirard/75006 Paris, France
June 3-5, 2002

Conference of County Court Judges
Ft. Myers, Florida
Risk of Violence Prediction
July 12, 2002

Colorado Sex Crime Investigators Association
Aspen, Colorado
August 28-30, 2002

American University
Washington, D.C.
International Criminal Justice Seminar
September 6, 2002

Defense Research Institute
Sexual Torts: Rape and False Allegation of Rape
Hotel Del Coronado
San Diego, California
October 24-25, 2002

Gregg O. McCrary
Pg. 9

Canadian Association of Psychiatry and the Law (CAPL)
Annual Conference
Banff, Alberta Canada
October 31, 2002

Profiling and Crime Analysis:
Homicides, Sex Crimes and Other Crimes of Violence
A Program for Law Enforcement, Justice and Mental Health Professionals
Nova University, Ft. Lauderdale, Florida
November 8-9, 2002

Henry C. Lee Institute of Forensic Science
Cold Case Homicide Seminar
University of New Haven
January 6-9, 2003

American College of Forensic Examiners
National Conference; Scottsdale, Arizona
October 9-11, 2003 – Violent Female Offenders

Marymount University
Profiling and Beyond
December 6, 2003
Arlington, Virginia

Ithaca College
Ithaca, New York
Department of Psychology
FBI Profiling and the Criminal Mind
March 1, 2004

Nova University
Homicide Presentation for Law Enforcement
Miami, Florida
March 26, 2004

Nova University
Homicide Presentation for Law Enforcement
Las Vegas, Nevada
April 2, 2004

Markle Symposium
Henry Lee Institute of Forensic Science
Foxwood Resorts
Ledyard, Connecticut
April 5-6, 2004

Gregg O. McCrary
Pg. 10

Advanced Markle Symposium
Cold Case Homicide Workshop
Henry Lee Institute of Forensic Science
University of New Haven
April 7-9, 2004

Atascadero State Hospital
Presentation to staff re violent offenders
Atascadero, California
May 3, 2004

Public Defenders Service
Washington D.C.
Interview/Interrogation Techniques
Dynamics of False Confessions
May 17, 2004

Delaware State Police
10th Annual Homicide Conference
Dover, Delaware December 5-9, 2005

Nova South Eastern University
Ft. Lauderdale Florida
Crime Analysis and Criminal Profiling
January 21-22, 2006

Henry C. Lee Institute of Forensic Science
Cold Case Homicide Seminar
University of New Haven
April 24-27, 2006

International Association of Women Police
Saskatoon, Saskatchewan, Canada
September 19-21, 2006

Office of the Attorney General
State of California Department of Justice
Violent Crime Conference
Anaheim, California
December 12, 2006

Henry C. Lee Institute of Forensic Science
Cold Case Homicide Seminar
University of New Haven
January 22-26, 2007

Gregg O. McCrary
Pg. 11

American Psychological Association National Convention
Invited Speaker – Criminal Profiling: Using Psychology to Catch Criminals
San Francisco, California August 18, 2007

Florida State University– Criminal Investigative Analysis;
Panama City, Florida January 31, 2008

National Center for Missing and Exploited Children (NECMEC)
National Seminar, Alexandria, Virginia
Training - July 22-24, 2008 and October 15, 2008

State Bar of Georgia; Premise Liability and Violent Crime
CLE – October 30, 2008

June 15, 2011 – OCDETF Fusion Center, Virginia, Investigations (14 Federal Agencies)

September 13, 2011 – Boulder Colorado – Investigator’s School

October 12, 2011 – Canadian Association of Psychiatry and the Law (CAPL) – *A Day in the Mind of a Murderer* (Accredited by the Canadian Royal College of Physicians and Surgeons and the Canadian Psychiatric Association)

October 17, 2011 – Regional Organized Crime Homicide Conference; Chattanooga, TN; Homicide presentation to 300 officers from 14 states.

November 4, 2011: *Advanced: Police Custody and Interrogation of Juveniles.* University of Virginia, Institute of Law, Psychiatry and Public Policy.

November 18, 2011: *American Society of Criminology*; National Symposium, Washington, DC; Panel participant discussing Crime Analysis and Criminal Investigative Analysis.

June 29, 2012 *American Professional Association on Abuse of Children (APSAC) – 20th Annual Colloquium*; Chicago, Illinois – Criminal Investigative Failures

OPERATIONAL SUPPORT OF MAJOR INVESTIGATIONS

Agent McCrary has been a consultant to law enforcement agencies both nationally and internationally in over 1000 cases involving sexual homicide, serial murder, rape, arson, child abduction, child molestation, threat assessments and other violent crimes.

October 24, 1987 On-site consultation, Toronto, Canada re the homicide of Margaret McWilliams

November 9-11, 1988 On-site consultation, Little Rock, Arkansas re the abduction of infant Christopher Michael Jones from a hospital.

November 21-23, 1989 On-site consultation, Toronto, Canada, re “The Scarborough Rapist”

January 12, 1989 On-site consultation with the Massachusetts State Police, New Bedford, Mass. re serial murder of prostitutes.

February 7, 1989 On-site consultation, prosecutive strategy re John William Doughty (kidnapping and attempted murder) St. Paul, Minnesota

April 26, 1989 On-site New Bedford, Massachusetts re serial killing of prostitutes.

April 27, 1989 On-site consultation re sexually sadistic rapist; Waterford, Connecticut

November 3-8, 1989 On-site consultation with Royal Bahamian Police re a serial murder investigation

November 12-18, 1989 ICITAP presentation and case consultation in San Jose, Costa Rica.

December 13-15, and 27-29, 1989 On-site consultation re serial killings of prostitutes, Rochester, New York.

December 26, 1989 On-site Consultation re mass murder of Harris Family, Ithaca, NY

September 4-6, 1990 Newark, New Jersey Multi-agency meeting re Eric Napoletano serial murder investigation.

January 9-11, 1991 Suffolk County New York Police, Kathy Woods Homicide

April 22-23, 1991 Multi-jurisdictional task force re Peter Stark, suspected serial killer, Province of Ontario, Canada

August 27-29, 1991 Phoenix, Arizona re the murders of nine individuals in a Buddhist Temple.

September 24-26, 1991 Greenville South Carolina State Organization of Victim's Assistance Multi-State Conference and case consultation with SLED re serial rapist

October 16-22, 1991 Vancouver, BC On-site consultation re a series of sexual homicides.

November 5-8, 1991 Charleston, SC consultation re a series of rapes (The North Charleston Rapist).

March 18, 1992 - April 3, 1992 On-site consultation re murder of FBI Agent Stanley Ronquist - Kansas City, Kansas

May - June of 1992

At Morristown, New Jersey re kidnapping of Sidney J. Reso, President of Exxon International

August 1992 Dr. Ernst Geiger and Magistrate Thomas Mueller, Vienna Austria re serial murder investigation (Signature Crime Analysis).

October 1992 Leslie Mahaffey, Kristen French homicides - Project Green Ribbon - St. Catherines, Ontario Canada.

November 1992, at Brussels Belgium and Amsterdam for FBINA presentation and case consultation re serial child molester.

March-April 1993 - At Waco, Texas re Branch Davidian standoff

May 1993 - At Vienna, Austria with Dr. Geiger and Thomas Mueller re three additional homicide cases

November 1993 - At Lisbon, Portugal re a serial murder investigation

December 1993 - At Avila, Madrid and Barcelona, Spain re unsolved homicide and serial rape investigations

December 1993 - At Babenhausen, Germany re abduction and sexual homicide of a two-year-old female.

March 1994 - In Florida and Alabama re Frank Potts serial murder investigation

March of 1994 - In Mexico City assisting Mexican authorities re assassination of Presidential Candidate Luis Donaldo Colosio

June 1994 - At Graz Austria - provided expert testimony re Jack Unterweger, Serial Murderer.

June 1994 - At Budapest, Hungary re unsolved homicides and rapes with Hungarian National Police and Budapest Homicide

June 1994 - At Paris, France re unsolved homicides

September 1995 - At Morristown, New Jersey re Nicholas Muscio homicide investigation

January of 1996 - At Somerville, Massachusetts re Edward O'Brien homicide investigation

April of 1997 - Testified the transfer hearing of Edward O'Brien in a homicide case for the Middlesex County Prosecutor

May of 1998 - At Ventameglia and San Remo Italy re on-going serial murder Investigation

July 29, 1998 – At University of Virginia, Institute of Psychiatry, Law and Public Policy, re serial murder investigation in Perth, Australia (Macro Task Force)

November, 1998 – At New Scotland Yard, London England re a series of rapes and a serial homicide investigation.

September 1999 – At Barre, Ontario Canada with an Australian Multi-Agency Task force investigating a series of sexually sadistic homicides committed by a group of offenders.

March 31 – April 3, 2000 – Testified in the Sam Sheppard civil trial in Cleveland, Ohio.

March 2003 – Testified in Alaska v. Wade, Anchorage Alaska. (Sexual Homicide)

May 4, 2004 – Testified in San Diego, CA in State v. Richard Raymond Tuite (Child Homicide)

Gregg McCrary
Pg.14

January 16-19, 2006 - State of Alaska v. Betsy Hester – Domestic Homicide
Kenai, Alaska

May 22-24, 2006 - United States Marine Corps v. Joyce – Equivocal Death; False Confession
San Diego, CA

June 13-22, 2006- Fukushima Prefecture, Koriyama City, Japan re unsolved homicide of Asemi
Yamagishi

September 6, 2007 – Testified before Governor Kaine’s Commission regarding the “Norfolk 4”
case in Richmond, Virginia

April 30, 2008 – Testified in hearing re signature crime analysis in Bridgeport, Connecticut on
behalf of the State of Connecticut.

February 10, 2010 – Testified before North Carolina Innocence Commission re State of N.C. v.
Gregory Flint Taylor, File 91-CRS-71728

February 19, 2010 – Testified in State of Ohio v. Yazeed Essa, Cuyahoga County Prosecutor’s
Office, Cleveland, Ohio

August 10, 2011 – Testified in Oslo, Norway in a hearing to reopen a double child homicide case
(The Banaheia Murders)

PUBLICATIONS:

Contributing author to *The Crime Classification Manual* Macmillan Inc. 1992

A Typology of Interpersonal Stalking, Co-authored with Dr. Ann Burgess and others; published in
the *Journal of Interpersonal Violence* - December 1996. Sage Publications.

The Unknown Darkness; Profiling the Predators Among Us. ISBN 0060509570: Co-authored
with Dr. Katherine Ramsland: Published by William Morrow in September 2003.

Who Killed Stephanie Crowe? Chapter 8 in *Criminal Investigative Failures*; ISBN
9781420047516; Edited by D. Kim Rossmo; Published by CRC Press 2009

PROFESSIONAL AFFILIATIONS:

Member of Editorial Review Board for *Aggression and Violence* a Professional Journal
Member of Editorial Review Board for *Journal of Family Violence* a Professional Journal
Member of the American Society for Industrial Security (ASIS)
Member of the International Criminal Investigative Analysis Fellowship (ICIAF)
Member of the Society for Former Special Agents of the FBI
Member of the International CPTED Association (ICA)
Charter Member of the International Homicide Investigators Association (IHIA)
Member of International Association of Campus Law Enforcement Administrators
Member International Association of Corrections and Forensic Psychology

PUBLIC RECOGNITION OF AGENT McCRARY'S EXPERTISE:

- Noted British Criminologist and author Colin Wilson dedicated his 1990 book, "The Serial Killers" to Agent McCrary.
- "Mind of a Serial Killer" which was an Emmy nominated production by NOVA for the Public Broadcasting system (PBS) in 1992.
- Agent McCrary's work in an international serial murder investigation was highlighted in the documentary "A Stranger Murder" produced by the British Broadcasting Corporation (BBC) in conjunction with the Arts and Entertainment Network (A&E) in 1995.
- Agent McCrary's expertise was featured in a documentary produced for Japanese National Television by FUJI Television Productions in 1995 entitled, "The Nonfiction Approach to Serial Killers"
- Agent McCrary's expertise was featured in two documentaries in 1998. One was titled "Born to Kill" and was produced for Discovery Magazine and aired nationally on the Discovery Channel. The second was a French documentary produced by *Sciences et Avenir* and aired internationally from Paris.
- Agent McCrary's expertise was featured in three documentaries in 1999. One for *Time Zone International*, a German Television Production a second for "The FBI Files" produced by the Discovery Channel which also produced a third documentary entitled "The Profilers."
- Agent McCrary's expertise in crime analysis was featured in an MSNBC documentary "The Jon-Benet Murder Mystery" which aired nationally on January 23, 2000.
- Agent McCrary's expertise in stalking behaviors was featured in a Documentary produced for Japanese Television the FUJI Television Productions in May of 2000.
- 48 Hours Investigates: "Cry Rape" Expert analysis in an alleged rape and assault. September, 2003
- TV ASAHI Tokyo, Japan – Murder of Asemi Yamagishi July 2006
- TV Norge, Oslo, Norway. Two cold case homicides and a child abduction. November, 2007
- TV Norge, Oslo, Norway. Four cold case homicides 2008
- CNBC Documentary "Madoff Behind Bars" 2010
- PBS Frontline Documentary "The Confession" Regarding the "Norfolk 4" case. 2010
- C-Span: One hour interview re FBI Crime Analysis and Profiling; August 19, 2011

Mr. McCrary has worked with numerous victims groups throughout the United States and has served as a member of the national advisory board for Parents of Murdered Children.

Agent McCrary has provided expert commentary for such media organizations as NBC, ABC, CBS, Cable News Network (CNN), The Today Show, Good Morning America, Nightline, 60 Minutes, Dateline, 48 Hours, Larry King Live, The Discovery Channel, BBC, RTL Television in Germany, Japanese National Television and other national and international programs. He has also provided expert opinions to print media including Time, Newsweek, U.S. News and World Report, The New York Times, The Washington Post, The San Francisco Chronicle, The Toronto Star, and "Psychologie" Magazine in the Netherlands among others.

FBI ASSIGNMENTS

FBI Academy, Quantico, Va. 1988-1994

Behavioral Science Unit

National Center for the Analysis of Violent Crime/Critical Incident Response Group

Types of Crimes:

- Threatening Communications and Extortions
- Product Tampering
- Homicide (Serial, Mass, Sexual, Domestic, etc.)
- Rape, child molestation and other sex crimes
- Stalking
- Arson
- White Collar Crime
- Foreign Counterintelligence
- Kidnapping and Abduction
- Bank Robbery
- Organized Crime and Drug Trafficking

Services:

- Criminal Investigative Analysis (Including Profiling)
- Threat Assessments
- Violence Risk Assessments
- Interview and Interrogation Techniques
- Expert Testimony
- Training and Research
- Investigative Strategy and Indirect Personality Assessments

Buffalo Field Division, 1977-1988

- White Collar Crime
- Foreign Counterintelligence
- Threats and Extortions
- Kidnapping and Abduction
- Bank Robbery
- Sex Crimes

Gregg O. McCrary

Pg. 17

Homicide
Hijacking
Undercover Assignments
Organized Crime
Drug Trafficking
Expert Firearms and Defensive Tactics Instructor
Special Weapons and Tactics Team Leader

New York City Field Division, 1971-1977

Foreign Counterintelligence
Organized Crime
Bank Robbery Homicide
Hijacking
Threats and Extortions
Kidnapping and Abduction
Undercover Assignments
Loan Sharking and Gambling

Detroit Field Division, 1970-71

Bank Robbery
Kidnapping and Abduction
Homicide
Threats and Extortion
Organized Crime
Hijacking, Loan-Sharking and Gambling

EXHIBIT C



GREGG O. MCCRARY
SUPERVISORY SPECIAL AGENT
F.B.I. (RETIRED)

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E-MAIL GREGGMCCRARY@MAC.COM

4121 PLANK ROAD, NUMBER 514
FREDERICKSBURG, VIRGINIA 22407

July 3, 2012

Mr. Andrew W. Vail
Jenner and Block
353 N. Clark Street
Chicago, Il. 60653-3456

Re: *People v. Koh, Case No. 09 CR 0951*
Cook County, Illinois

Assignment

In this matter I was asked to review relevant materials to: (1) Identify and assess the reasonableness and propriety of the interview and interrogation tactics used in questioning Mr. Koh; (2) Identify and assess the vulnerability factors that may have impacted Mr. Koh's capacity for free self-determination in responding to questioning by authorities; (3) Assess how the combination of those factors impacted and shaped the interrogation process and its results; (4) Discuss the defining characteristics of both true and false confessions, and explain how one may reliably establish the validity or invalidity of a confession; (5) Discuss the propriety of the investigation into the death of Paul Koh. This report may be amended upon the review of additional material.

Background and Experience

I have been professionally involved in violent crime investigations for over 40 years including 25 years as an FBI Agent. In that capacity I investigated violent crimes as

a field agent for approximately 17 years and then was promoted and transferred to the FBI Academy in Quantico, Virginia as a Supervisory Special Agent where I worked in the National Center for the Analysis of Violent Crime (NCAVC). There I was assigned to the operational wing of the Behavioral Science Unit where my primary responsibility was to provide expertise in investigative techniques including interview and interrogation techniques in addition to crime and crime scene analysis. This type of expertise was offered not only to FBI agents but also to any legitimate law enforcement agency around the world that requested FBI assistance. In addition to providing operational support, my other responsibilities included conducting research into violent crimes and offenders and providing training to law enforcement agencies nationally and internationally. I have trained and worked cases with New York City Police Department Homicide Squads, The New York State Police, The Texas Rangers, The Boston Police Department, The King County Police in Seattle, The Florida Department of Law Enforcement, the California Attorney General's Office, Georgia Bureau of Investigation and The Massachusetts State Police, among others. I have taught interview and interrogation techniques at the FBI Academy and in seminars for law enforcement investigators nationally and internationally.

Included among the international agencies with whom I have worked cases and/or provided training are; The Cuerpo Nacional De Policia in Spain, The Policia Judiciare in Portugal, The Hungarian National Police, Budapest Homicide, The French National Police, Scotland Yard, The Dutch National Police, Oslo Police Homicide, The Seguridad Publica in Costa Rica, The Belize Police Department, The Royal Bahamas Police Force, The Metropolitan Toronto Police, The Ontario Provincial Police, The Royal Canadian Mounted Police, The Austrian Federal Police, the Carabinieri in Italy, and serial murder task forces in Australia and Canada. I have offered expert testimony throughout the United States in Federal, State and local courts for both the prosecution and defense in criminal cases and for both plaintiff and defendants in civil matters.

My formal education includes a Bachelor's degree from Ithaca College and a Master of Arts in Psychological Services from Marymount University. I currently teach graduate level courses in forensic psychology and criminal justice at Marymount University in Arlington, Virginia and DeSales University in Pennsylvania.

Overview of Incident and Police Contacts with Mr. Hyungseok Koh

On April 16, 2009, Mr. Koh apparently awoke to his wife's screaming and came downstairs where he encountered the body of his only son gruesomely disfigured by a gaping wound to the neck. He first called 911 at 3:44 AM and then again shortly after that. He reportedly also called Ms. Nami Choi and her husband who are close friends with the Kohs. Ms. Nami Choi recalls being awakened around 4:00 AM on April 16, 2009 by her husband who was on the phone with Mr. Koh. She remembers her husband repeating the words the caller, Mr. Koh, was saying as, "someone snuck in and kill my son".

Mr. and Mrs. Koh voluntarily went to the police station after the police and emergency medical personnel responded to the scene. Initially Mr. and Mrs. Koh sat together in a conference room at the police department with blankets over their heads speaking to each other in Korean. At approximately 7:20 AM Mrs. Koh was taken to a different room so Mr. Koh could be interviewed.

Mr. Hyungseok Koh was given Miranda warnings by investigators at approximately 7:32AM and agreed to speak with investigators. He advised that he and his son, Paul, met his wife, Eunsook Koh, at a restaurant and ate dinner there. They left around 7:20 PM to go to their church for a Spanish class that started at 8:00 PM. He and Paul returned home together arriving around 10:15 PM. Mrs. Koh drove separately. He then told investigators that Paul left to get some cigars and returned within 5-10 minutes. He and Mrs. Koh went to bed. He awoke because his wife was

screaming, got up and went downstairs where he observed Paul's body. He believed Paul was still alive, called 911 and began pushing on Paul's chest.

Sergeant Glew and Detective Nieman of the Northbrook, Illinois Police Department interviewed Mrs. Koh, with the assistance of an interpreter. Mrs. Koh advised investigators that around 7:00PM on April 15, 2009 her son, Paul Koh, and her husband met her at a restaurant where she had been meeting with several members of their church. From there they went to their church for Spanish class at 8:00 PM and attended church services until approximately 10:00 PM. Then Mr. Koh and Paul drove home together in the same car while she drove home in her vehicle, arriving around 10:30 PM. Once they were all home they washed up and read the bible. Mrs. Koh advised that Paul went into his room and was watching a movie. Mr. and Mrs. Koh went to bed around 11:30 PM and set the alarm for 4:00 AM so they could attend sunrise service at their church. She noted that the clock was set a few minutes ahead of actual time.

When she awoke she noticed the downstairs lights were on and when she went to investigate this, she found her son lying on his back with his head towards the front door. She stated she ran to him, began pushing on his chest and screamed for her husband who came downstairs and called 911. She told investigators that she got her son's blood on her hands and clothing from pushing on his chest and hugging him. She stated that she moved the knife that was on the floor away from her son noting that she recognized it as being one kept in the kitchen drawer. She told investigators that she did not know of anyone who would want to hurt her son.¹

Investigative Issues

The first phase of a criminal investigation is to determine whether or not a crime has been committed. The manner of deaths varies from homicide, suicide, accidents or natural causes and death investigations should remain equivocal, that is, open to

¹ North Region Major Crimes Task Force Case Number 09-04

interpretation, until the relevant facts have been established, verified and a working classification can be made. The investigation into the death of Paul Koh should have been approached as an equivocal death, i.e. open to interpretation until all the facts were gathered.

Every meaningful analysis of an unexplained death begins with victimology, that is the study of the victim. "Victimology is often one of the most beneficial investigative tools in classifying and solving a violent crime. It is also a crucial part of crime analysis...One of the most important aspects of classifying an offense and determining the motive is a thorough understanding of all offender activity with the victim."² The purpose of victimology is to determine what, if anything, elevated a given individual's risk for becoming the victim of violence. This is done by closely examining the lifestyle and the situational dynamics of the deceased. The goal is to accurately place the individual on a risk continuum from low to moderate to high.

Additionally, all relevant facts, such as the results of the autopsy, forensic testing and all interviews, and other collateral information must first be gathered and assessed before attempting to classify the manner of death in an equivocal case. In this case the authorities indicate that they began this investigation believing it to be a suicide and then quickly re-classified it as a homicide prior to any actual investigation being conducted.

Investigative failures are primarily caused by how investigators think. From the first exposure to a crime scene, an investigator begins to construct a story, narrative or hypothesis about the crime. This narrative frames or defines how a crime is perceived and is born from the union of the chaos that is the crime scene as well as the models and mindsets of the investigators. Framing can create a perilous sway, as once investigators have framed the problem and created a narrative, it fundamentally alters how they perceive the crime from that point forward,

²Douglas, J., Burgess A. et al: *Crime Classification Manual* 1992; Pgs. 7-8, Lexington Books, New York.

jeopardizing objectivity. What follows is unconscious psychological pressure to look for that evidence that fits within the frame and to reject evidence that does not. This makes investigators increasingly vulnerable to a host of other cognitive biases. The problem arises most frequently when investigators label or frame a crime prematurely, based on incomplete evidence, inaccurate assumptions, faulty beliefs or untested hypotheses.

The investigation then becomes an exercise in validating the dominant hypothesis rather than a search for truth. Once a hypothesis becomes fixed, it creates organizational momentum, which, like a boulder rolling down a mountain, gains enough force to crush anything in its way.

Cognitive biases such as tunnel vision, confirmation bias, anchor traps, organizational momentum and groupthink are among the subtle hazards and traps that commonly cause investigators to make avoidable mistakes and jeopardize the successful resolution of their investigation. Unlike airplane crashes or building collapses where exhaustive efforts are made to understand what went wrong, criminal investigative failures are rarely examined, and, therefore, these biases often remain undetected.³ “A growing body of research reveals that our behavior and decision making are influenced by an array of such psychological undercurrents and that they are much more powerful and pervasive than most of us realize. The interesting thing about these forces is that, like streams, they converge to become even more powerful.”⁴

Tunnel vision is a narrow focus that unduly limits the range of alternatives. It is insidious and can result in the elimination of other suspects who should be investigated. Events that could lead to other suspects are eliminated from the officers’ thinking as well. Getting locked into a mindset is a consistent thread in analytical and investigative failures.

³ The *Innocence Protection Act of 2001*, a bipartisan bill that failed to make it through Congress, would have required states to investigate reasons for wrongful convictions, publicize them, and find ways to prevent such errors from reoccurring.

⁴ Brafman & Brafman (2008); *Sway; The Irresistible Pull of Irrational Behavior*; New York; Crown Publishing p 16

Premature closure, which is closely associated with tunnel vision, results when investigators make early judgments about the resolution and then defend those initial judgments tenaciously, limiting the scope of the investigation. Premature closure “can lead an investigator to select subsequent evidence that supports the favored solution and to reject evidence that conflicts with it.”⁵ There is a tendency to put more weight on evidence that supports our hypothesis than evidence that weakens it and we remember those things that support what we believe. “Arresting the first likely suspect, then closing the investigation off to alternative theories, is a recipe for disaster; tunnel vision has been identified as a leading cause of wrongful convictions.”⁶ Belief perseverance, the stubborn embrace of a belief in the face of disconfirming evidence, and tunnel vision are both closely related to *confirmation bias*.

Confirmation bias is a type of selective thinking in which an individual is more likely to notice or search for evidence that confirms his/her hypothesis while ignoring or refusing to search for contradicting evidence. When police have a “prime suspect,” information regarding other suspects tends to become marginalized. Secondary suspects are often ignored because they did not fit the dominant theory at the time. Anchor traps occur when “a person does not consider multiple possibilities, but quickly and firmly latches on to a single one, sure that he has thrown his anchor down just where he needs to be. You look at your map, but your mind plays tricks on you (confirmation bias), because you see only the landmarks you expect to see and neglect those that should tell you that in fact you’re still at sea. Your skewed reading of the map ‘confirms’ your mistaken assumption that you have reached your destination.”⁷

In this case the dominant theory or hypothesis quickly evolved from a suicide to homicide with no independent corroborative evidence to reliably support either hypothesis. When investigators asked Mr. Koh if he knew if his son had any suicidal

⁵ Clark, Robert M. (2007) *Intelligence Analysis: A Target Centric Approach*; CQ Press; Washington, D.C.

⁶ FTP Heads of Prosecutions Committee Working Group (2004) *Report on the Prevention of Miscarriages of Justice*. Ottawa Department of Justice.

⁷ Goopman, J. (2007) *How Doctors Think*. New York; Houghton Miffling in “

tendencies, was depressed or had intentionally injured himself, Mr. Koh said that he was unaware of him being suicidal or intentionally injuring himself, but stated that his son seemed, "...pretty much depressed."⁸ This line of questioning was most appropriate and while Mr. Koh did not believe his son to be suicidal or to have intentionally injured himself, it is not an investigator's job to believe or disbelieve anyone. It is an investigator's job to find facts. In this particular instance, it appears that the investigators simply chose to believe that Mr. Koh's lack of knowledge of any suicidal ideations or history of self-inflicted injuries meant there were none. Thus, in spite of Mr. Koh's assertion that Paul seemed depressed, investigators neglected to conduct any independent investigation into the possibility that Paul Koh's death might have been a suicide. Rather, they quickly concluded that it was a homicide. Once the incident was framed as a homicide, investigators were compelled to identify a suspect and immediately focused on Mr. Koh as the sole suspect. As noted above, problems arise most frequently when investigators label or frame a crime prematurely, based on incomplete evidence, inaccurate assumptions, faulty beliefs or untested hypotheses. This then became a case where an interrogation based on the untested hypotheses (1) that this was a homicide and (2) that Mr. Koh was the perpetrator, became a substitute for a thorough investigation. These untested hypotheses formed the basis for the interrogation of Mr. Koh.

Factors & Facts Bearing On Voluntariness of Mr. Koh's "Confession"

Based on my law enforcement experience of having conducted and/or reviewed thousands of interviews and interrogations, I have found four specific factors that need to be assessed when determining the voluntariness /involuntariness (and reliability/unreliability) of confessions. These factors can be organized into four different groups and competent law enforcement officers need to be cognizant of them. They are:

⁸ Interrogation transcript of Mr. Koh, pg. 46, lines 6-17; pg 51, lines 3-15; pg. 61 lines 5-6

- (1) Characteristics of the Specific Suspect;
- (2) The Context of and Environment Where Interrogation Occurs;
- (3) The Suspect's Mental, Emotional & Physical State During Interrogation;
- (4) Interrogation Techniques and Examiners.

Factor (1): Characteristics of the Specific Suspect

- ❖ *Naïveté in dealing with law enforcement* – Mr. Koh had no prior adversarial contact with law enforcement or the criminal justice system. It has been my experience that people who are naïve in their dealing with law enforcement tend to go along and be compliant with law enforcement officers during interviews and interrogations.

Factor (2): Context Of and Environment Where Interrogation Occurs

- ❖ *Timing of Interrogation:* Mr. Koh was interviewed in the immediate aftermath of having found his son's body, with little sleep or sustenance. Based on my law enforcement experience, the existing professional literature and customary police training, this is not the best time to interview or interrogate anyone.
- ❖ *Police Presence & Control:* Mr. Koh was subjected to a constant police presence at the police department
 - Adversarial contact with the police was initiated by the police, not by Mr. Koh.
 - Police took steps to enhance their power, control and/or authority over Mr. Koh while interrogating him by placing him in a closed room and isolating him from others. For example, they would not allow him to communicate with his wife or pastor during a break in the

interrogation even though all of them were at that police department, nor did they allow Mr. Koh to make any telephone calls.

- Three police officers were present during the interrogation, one with a firearm. The video of the beginning of the interrogation shows Detective Ustich and the lead interrogator, Detective Graf of the Northbrook Police, sitting across the table from Mr. Koh. Officer Kim, who acted as a translator, sat directly to the left of Mr. Koh. The interrogation became increasingly more accusatorial and adversarial as it continued. Beginning at 00:45:12 in the third section of the videotaped interrogation lead interrogator Graf stands up, walks around the table and sits directly to the right of Mr. Koh, stating that, "I'm going to move over here because I don't know if you can understand me well." This is followed by occasions when Detective Graf touches Mr. Koh while making emotional appeals to him.
- Well-trained law enforcement officers understand that they cannot learn anything when they are talking. Therefore, well-trained officers do not dominate and they refrain from interrupting the person being interviewed. Approximately 80% of a professional law enforcement interview consists of statements by the person being interviewed. The other 20% consists mostly of questions posed by the interviewers. In this case the officers spoke, on average, 65% of the time. More importantly, is the increase in dominance that occurred over the course of the interview. In the first interview (Pages 1- through the top of page 62) law enforcement officers accounted for 57% of the spoken content. In interview two, that increased to 65% and in the final part of the interview (Pps. 133-155) the interviewers spoke approximately 79% of the time.
- During the course of these interviews, law enforcement interviewers told Mr. Koh what they thought, including their belief that Mr. Koh

murdered his son⁹. This violates standard interview and interrogation procedure, as it is not the duty of the police to tell a suspect that he's guilty; it is their duty to gather evidence. That law enforcement officers should not dominate an interview or interrogation is well understood within the law enforcement community dating back to at least 1940 when Lt. W.R. Kidd of the Berkley, California Police Department published "Police Interrogation." In that seminal work Lt. Kidd wrote, "Let HIM talk. Don't tell *him* the story. How often we see alleged interrogators proceed to tell the suspect most of the known facts and also insist upon doing most of the talking through what they consider clever questions. Generally, when these officers are through, the suspect knows more about them and what they know than the officers know about the suspect."¹⁰

Factor (3): The Suspect's Mental, Emotional & Physical State

As noted above, Mr. Koh was subjected to an interview and interrogation in the immediate aftermath of finding his son's bloody body. It has been my experience, and that of sound social science research, that the mental and emotional impact of such an event can be destabilizing and make an individual vulnerable to law enforcement interrogation techniques. This is especially true for those individuals who have had no prior contact with law enforcement. For example, "Suspects who are accused of murdering someone close to them, such as a spouse, an offspring or a close friend, are often especially vulnerable during interrogation. This is irrespective of their guilt or innocence and relates to the fact that loss of a close one results in grief and bereavement. The manipulation of feelings of guilt, particularly in suspects who are accused of murdering loved ones, can markedly increase the

⁹ See transcript pages 90-92, 103, 108, 110, 114, 118-119, 121, 125-126, 142 and 145.

¹⁰ Police Interrogation Kidd, W.J. (1940) R.V. Basuino Publication, New York, NY pg.

likelihood of an unreliable statement.”¹¹ Well-trained police interrogators are aware of these vulnerabilities and use great caution when interviewing or interrogating anyone in this circumstance. Additional relevant circumstances include:

- ❖ *Deprivation of Food and Sleep:* Mr. Koh had approximately 4 hours sleep in the 24 hours preceding his admissions.
- ❖ *Stress, Anxiety or Overt Emotional Distress:* The totality of the circumstances that befell Mr. Koh from that Wednesday evening through the following morning were overwhelmingly stressful and clearly created a good deal of anxiety and emotional stress for Mr. Koh.
- ❖ *Recent Bereavement:* Mr. Koh found his only son dead with his throat slashed with extensive bleeding only hours before being interrogated.

Factor (4): Interrogation Techniques by the Examiners

- ❖ Detectives Graf and Ustich and Officer Kim were fresh when they began the interrogation of Mr. Koh.
- ❖ Detectives advised Mr. Koh of his rights under Miranda, but did not advise Mrs. Koh of her rights under Miranda, suggesting they were predisposed to believe that Mr. Koh was criminally liable, but Mrs. Koh was not.
- ❖ Because of Mr. Koh’s limited ability to comprehend and speak the English language, it was important that the interviewing officers ensured that Mr. Koh understood his rights under Miranda. Once a vulnerable individual has been advised of his rights, or states that he knows his rights, it is important to validate this. A common way this done by law enforcement is to ask the person about to be interviewed to explain these rights to the interviewing officer. The officers interviewing Mr. Koh did not ask this simple question, but launched directly into the interview instead.

¹¹ The Psychology of Interrogations, Confessions and Testimony Gudjonsson, G. (1996) Wiley & Sons; New York; (Pg. 67; 232; 259; 301-302; 304)

- ❖ Mr. Koh gave an account consistent with his wife’s account, but investigators apparently did not believe him. Mr. Koh’s original denials of guilt were ignored and not investigated.
- ❖ Investigators minimized the moral and possibly legal seriousness of the offense with assertions such as, “...We think it was all just an accident. We don’t think you would do something on purpose.” and asked forced choice questions such as, “Did he come after you with a knife? Hyungseok, come on, he came after you with a knife, didn’t he?....”¹² This type of question suggests interviewer bias as to what the investigators believe happened and offers Mr. Koh a moral and possibly legal justification (self defense) for killing his son.
- ❖ Detective Graf accused Mr. Koh of lying numerous times during the course of the interrogation and appeared convinced of Mr Koh’s guilt. When they returned around 11:35AM to continue the interrogation, Detective Graf became much more accusatorial. For example: Detective Graf stated that he knew the truth. He told Mr. Koh that, “...I think you know more than what you’re saying. You know more than what, what – you – I don’t think -- I don’t believe that you went to bed at 10:40 and never heard anything until you woke up at 4:00. I don’t believe that...”¹³ When asked where he was when Paul came home the night of the incident, Mr. Koh responded, “I think I was sleeping at the time. I can’t remember that (inaudible), to which Detective Graf responds, “Hyungseok, we know and now you’re lying to us again.” Mr. Koh denied that he is lying as he responded, “No, I, I...”¹⁴ Later, Detective Graf asserts that,

- Q: *...Hyungseok. I know you did it. Know you did it.*
- A: *I did it?*
- Q: *I know you did, you did.*
- A: *I did it?*

¹² Interrogation of Mr. Koh, Pg. 142

¹³ Interrogation Transcript of Mr. Koh, Pg 90

¹⁴ IBID pps 139-140

- Q: Yes. You did it, Hyungseok. And I know that and I need to know why you did it.”¹⁵

- ❖ The police also put emotional pressure on Mr. Koh as they accused him of being untruthful” Q: “...You’re telling me stuff that’s not true. This is your son. Your son laying on the floor and you’re telling me stuff that’s not true. Why would you do that? If, if that happened to my son I would remember everything. You know what I mean? And you got to do this for Paul, okay, you have to do it for Paul. You have to do this for him.”¹⁶

- ❖ The police provided details of what they perceived to be a crime in the process of interrogating him. In effect they told Mr. Koh who had assaulted Paul, (He had); Where he hurt Paul (at their residence); When he hurt Paul (In the early morning hours of April 16); Why he hurt Paul (He was angry that Paul had gone out that evening).

- ❖ All of the results of the interview and interrogation of Mr. Koh may have been further compromised if Mr. Myong-Hun Kim’s opinions are true that Officer Kim’s, “...command of the Korean language is extremely rudimentary....severely limited and that (Officer Kim) struggles with usage of even the most basic terms. In addition, his lack of interpretation experience, which is in evidence throughout the interview, hinders him further from utilizing what little command of the Korean language he possesses.”¹⁷

This police interrogation proceeded systematically with one goal: to obtain a confession from Mr. Koh and is typical of the method taught by the Reid School of interview and interrogation and in which Detective Graf has been trained. The Inbau-Reid School, which began publishing training manuals in 1942, has become

¹⁵ IBID Pg. 145

¹⁶ Interrogation of Mr. Koh, Pg. 123

¹⁷ Report of Myong-Hun Kim in this matter dated April 20, 2012

the definitive police training school for interview and interrogation in the United States.

Currently, the Reid School utilizes a “nine-step” model of systematic and unfolding pressure, persuasion, deception and manipulation. The interrogation techniques are presented as a sophisticated social psychological process mode. An unfolding temporal logic emerges, through which the suspect’s active resistance is neutralized as he is transformed into a passive actor who has been persuaded by the interrogator’s messages and is eventually manipulated into confessing, (or at least to agreeing to a minimizing ‘theme’) to having committed the underlying act with an exculpatory motive.¹⁸ The nine-steps are:

- *Direct Positive Confrontation* (confront the suspect with his or her guilt)
- *Theme Development* (offering face-saving scenarios that justify the crime)
- *Handling Denials* (interrupt all statements of denial)
- *Overcoming Objections*(i.e. overcome all factual, moral, and emotional objections to the charges)
- *Procurement and Retention of Suspect’s Attention*
- *Handling Suspect’s Passive Mood* (show sympathy and understanding; urge the suspect to tell the “truth.”)
- *Present Alternative Questions* (one face-saving, one repulsive, both incriminating)
- *Get the suspect to recount the details of the crime*
- *Convert the statement into a full written confession.*

Three major concerns regarding the Reid technique have been identified by law enforcement professionals and researchers. The first is that police officers cannot detect deception at greater-than-chance odds and training programs purported to increase the ability to do so have been unsuccessful in increasing accuracy.¹⁹

¹⁸ Interrogations, Confessions and Entrapment (2004) Edited by Daniel Lassiter; Perspectives in Law and Psychology, American Psychological Association; Kluwer Academic Publishers, New York; Pg. 86

¹⁹ Meissner, Christian A. and Sault M. Kassin (2002) “He’s Guilty!”: Investigator bias in judgments of truth and deception. *Law and Human Behavior* 26: 469-480

Further, police officers are more likely to be biased toward a suspect's guilt and deception than non-police officers.²⁰

The second concern is that in spite of the Reid School's assertions and generalizations regarding the efficacy of the nine-step approach in eliciting confessions, there is little, if any, research supporting such assertions.²¹ The third concern is the argument made by numerous law enforcement professionals, academics and legal scholars that the minimization and maximization tactics inherent in the Reid technique are overly coercive, creating psychological pressure that persuades suspects, whether innocent or guilty, to provide information they might otherwise not. For example, there are empirical findings that minimization themes such as offering face-saving scenarios can elicit false confessions.²²

"Kassin and McNall (1991) explain that the interrogation techniques embodied in the above nine steps variously combine to produce two main strategies, which they refer to as 'maximization' and 'minimization.' The strategy that the Reid School recommends for non-emotional suspects involves the interrogator frightening the suspect into a confession by exaggerating the strength of evidence against him or her and the seriousness of the offense. The 'minimization' strategy, by contrast, is recommended for emotionally vulnerable suspects. Here the interrogator tricks the suspect into a false sense of security and confession by offering sympathy, providing face-saving excuses, partly blaming the victim or circumstances for the alleged offense, and minimizing the seriousness of the charges."²³

²⁰ IBID

²¹ King, Lesley and Brent Snook (2009) Peering inside the Canadian interrogation room: An examination of the Reid model of interrogation, influence tactics, and coercive strategies. *Criminal Justice and Behavior* 36: 674-694

²² Russano, Melissa, B. Christian A. Meissner, Fadia M. Narchet, and Saul M. Kassin (2005) Investigating true and false confessions within a novel experimental paradigm. *Psychological Science* 16: 481-486

²³ Kassin, S. M. & McNall, K. (1991) Police interrogations and confessions. *Law and Human Behavior*, 15, 233-251 as cited in The Psychology of Interrogations and Confessions; A Handbook (2003) Gudjonsson; West Sussex, England; Wiley Pg. 21

At a 2004 conference on police interviewing, John Buckley, current president of the Reid School (John E. Reid and Associates) was asked if his persuasive methods did not at times cause innocent people to confess. His reply was, "No, because we don't interrogate innocent people."²⁴ In reality, law enforcement officers routinely interrogate innocent suspects. It has been my experience that, when taken collectively, the interviewer's inability to detect deception, the assumption that the interviewee is guilty, and the use of coercive techniques not only have the potential to induce false confessions, but have done so.

It is clear from reviewing the recordings and transcripts of the police interviews and interrogation of Mr. Koh that the officers utilized the interview and interrogation techniques as taught to them by Reid and Associates, and applied them in a "minimization" strategy, which was highly likely to produce the psychological coercion needed to overcome Mr. Koh's consistent statements of innocence.

Proper Law Enforcement Approach to Evaluating the Reliability of Statements

In criminal law, a confession is generally considered to be the most damaging and potent form of evidence produced at a trial.²⁵ Finding the truth is arguably the most important goal of a police interrogation. While some guilty suspects confess, others do not. The assertion by the president of the Reid School -- that the techniques they teach cannot result in false confessions "because we don't interrogate innocent people" as suspects -- is false. In reality, law enforcement officers routinely interrogate innocent suspects, and some of those innocent suspects falsely confess

²⁴ The Psychology of Confessions: A Review of Literature and Issues: Kassin, S., Gudjonsson. Psychological Science in the Public Interest Vol. 5 No. 2 Pg. 36. American Psychological Society

²⁵ Wrightsman, L.S. & Kassin, S.M. (1993) Confessions in the courtroom. Newbury Park, CA; Sage

to crimes they did not commit.²⁶ I know this from over 43 years of experience in dealing with criminal investigations.

Types of False Confessions

Law enforcement has identified three types of false confessions and they have been buttressed by social science. The three types are; voluntary, coerced-compliant and coerced-internalized, which is sometimes referred to as a persuaded false confession.²⁷

A *Voluntary False Confession* is a self-incriminating statement given freely and not police-induced. *Voluntary False Confessions* are often motivated by an exaggerated or pathological desire for notoriety or for some perceived secondary gain. There is no information known to me which suggests that this concept applies in this case.

Coerced-Compliant False Confessions occur when suspects confess, knowing that they are innocent. This type of false confession is usually motivated by a desire to achieve some immediate gain such as bringing the interrogation to an end, being allowed to go home, etc. Suspects “may naively believe that somehow the truth will come out later, or that their attorney will be able to rectify their false confession.”²⁸

Here, there were multiple immediate gains, offered by the police and by the circumstances, which could have produced a false confession. The police assertions that unless Mr. Koh told “the truth,” the interrogation would go on for days and days, could generate a coercive impulse for Mr. Koh to confess to achieve the immediate end to the stress of the interrogation and to allow him to better grieve for the loss of his son.

²⁶ Over 200 people confessed to the Lindbergh kidnapping; over 30 others to the “Black Dahlia” murder in Los Angeles, etc.

²⁷ The Psychology of Evidence and Trial Procedure (1985). Kassin, S. M & Wrightsman, L.S. Beverly Hills: Sage (Pg. 67-94)

²⁸ The Psychology of Interrogations, Confessions and Testimony Gudjonsson, G. (1996) Wiley & Sons; New York; (Pg. 226-228)

Coerced-Internalized False Confessions, sometime referred to as *Persuaded False Confessions*, occur when innocent but vulnerable suspects are persuaded that they have committed a crime through interrogative pressure and manipulation. Gudjonsson and MacKeith (1982)²⁹ say that this kind of false confession results from a memory distrust syndrome, where the suspect distrusts his own memory and begins to rely on external sources of information. They find that one type of memory distrust syndrome relates to suspects who, at the beginning of the police interview, have a clear recollection of not having committed the alleged offense, but, because of subtle manipulative influences by the interrogator, they gradually begin to distrust their own recollections and beliefs.³⁰ It has been my experience that Richard Ofshe's observation that *Persuaded False Confessions* are typically characterized by tentative expressions, such as "I guess I must have", and "I think I did this next"³¹ is correct.

Throughout his interrogation Mr. Koh expressed such speculation multiple times. For example, toward the end of the interrogation the following exchange occurred:

Q: Did you go grab the knife from the kitchen or did you have the knife when he came home?

A: No, no.

Q: You didn't have the knife?

A: No.

Q: When he came home? Did you guys—after he pushed you down did you run-

A: Yeah, I think so, yeah.

Q: -into the kitchen?

²⁹ Gudjonsson, G. H., MacKeith, J.A. (1982) False Confessions, Psychological Effects of Interrogation. A discussion paper in The Psychology of Interrogations, Confessions and Testimony Gudjonsson G. (1996) Wiley & Sons; New York (Pg. 228)

³⁰ The Psychology of Interrogations, Confessions and Testimony Gudjonsson, G. (1996) Wiley & Sons; New York; (Pg 228-230)

³¹ Ibid Pg. 232

A: Maybe.

Q: Not maybe. What happened?

A: Yeah.

Q: Hyungseok. What happened? I think that's what happened. Did he push you down and you ran and grabbed the knife?

A: (Inaudible)

Q: Hyungseok. Tell us what happened, come on. No more I think. Just tell us how it happened so we can be done with Paul, okay? We can do this for Paul, okay? And maybe, maybe, maybe this was an accident, maybe it wasn't I don't know. But that's what you have to tell me. You have to tell me was it an accident. I know you did it. I already know you did it. But I need to know how it happened so tell us how it happened.

A: That's that's he pushing me and then maybe throw the floor.

Q: He threw you on the floor?

A: Yeah, I—

Q: In which room did he throw you on the floor, you would remember, Hyungseok?

A: Over there, right over there.

Q: Right by the door. Did you meet him by the door?

A: Right, yeah.

Q: Okay. Was the door open or did the door get closed?

A: I think it's—

Q: Okay, regardless, okay, so he pushes you down on the ground, you fall down?

A: Yeah.

Q: What happens next? This -where does -do you run to the kitchen? Do you get up and run to the kitchen?

A: No, because I—

Q: Or do you get up and-

A: (inaudible) that time but it's – I don't know.

Q: Okay, then what happen when after he pushed you down, what happened?

A: (inaudible)

Q: Did he jump on top of you, did he hit you?

A: Yeah, I think so, I think so.

Q: Not I think so, tell us what happened.

A: Yeah, that too.

Q: Hyungseok, you know what happened.

A: Yeah.

Q: Tell us what happened.

A: That—

Q: He pushed you down in your own words, your words.

A: Okay.

Q: He pushed you down then what happened?

A: And then it's –he (inaudible) chest and push it in.

Q: He pushed you in the chest?

A: (inaudible) and then makes it fall down.

Q: Okay.

A: Like it's a (inaudible) (indicating)

Q: Throws you down?

A: Yeah. And then I think it's happen.

Q And then what happened?

A: I don't know....³²

The above motivation-categories are consistent with my experience in conducting, monitoring and reviewing thousands of interviews and interrogations. For example, I testified for the prosecution in a homicide case in California in 2004 regarding the murder of 12-year-old Stephanie Crowe. The initial investigators had coerced an internalized-false confession from the victim's older brother and one of his friends. A follow-up investigation by the San Diego County Sheriff's Office identified the true murderer, Richard Tuite, who was tried and convicted based largely on compelling DNA evidence. The boys, who had falsely confessed, had most of the characteristic vulnerabilities known to be associated with individuals who make *coerced-internalized false confessions* and were subjected to coercive interrogation techniques. A judge found their "confessions" to have been coerced, and subsequently the boys were completely exonerated and all charges against them were dismissed.

Another case that I actively investigated was the murder of nine individuals at a Buddhist Temple outside of Phoenix, Arizona. During the course of that investigation, investigators received a call from a man in Tucson who said he could tell them who committed these murders. Officers went to Tucson and interviewed Michael McGraw, who initially denied making the call, but eventually admitted to being involved in the murders. He implicated four other men. Police interrogated all four and three of them confessed. They subsequently recanted their confessions claiming to have been deprived of sleep and food, and interrogated for hours. Their initial alibis checked out. They were in Tucson on the night of the murders. One had a videotape of himself at a party in Tucson the night of the murders. Shortly thereafter, investigators located the true killers, recovered the murder weapon and items stolen from the temple, and matched their boots with boot prints recovered at the crime scene. The Tucson suspects, who had falsely confessed to this mass

³² Interrogation of Mr. Koh; Pps 149-151

murder, dutifully fed back crime scene information provided by investigators during their interrogation and the investigators took this as proof of guilt.³³

Interrogations, which are predicated upon the presumption of guilt, and during which the interrogator manifests extreme confidence in the suspect's guilt, are designed to get a suspect to confess. A problem arises when that presumption is incorrect, since interrogation might result in a false confession. Even if no confession is obtained, what is often produced is the appearance of guilt. Based on my experience of having conducted, supervised, monitored and reviewed thousands of interviews and interrogations, the greater the predisposition of, or confidence in, the perceived guilt of the suspect, the more coercive are the techniques that tend to be employed, and the more "guilty" even an innocent suspect appears during questioning. My own experience and opinions are consistent with current research in this area: "Recent research into investigative bias indicates that a predisposition to presume suspects guilty may set into motion a process of confirmatory hypothesis testing in which evidence of deception is perceived and coercive interrogation techniques are applied. Such a bias toward presuming guilt may thereby limit the diagnostic value of an interrogation and increase the likelihood that a false confession is ultimately obtained."³⁴

One study found that trained investigators and students performed no better than chance in detecting deception in a controlled experiment, although the investigators were significantly more confident in their judgments. Consistently, the most pressure-filled interrogation sessions, as rated by all participants, were those that paired investigators who *presumed guilt* with suspects who were *actually innocent*. In short, these results suggested that the presumption of guilt, which often underlies a criminal interrogation, sets in motion a process of behavioral confirmation by

³³ The Unknown Darkness; Profiling the Predators Among Us McCrary, G. Ramsland, K. (2003) Harper Collins

³⁴ Interrogations, Confessions and Entrapment (2004) Edited by Daniel Lassiter; Perspectives in Law and Psychology, American Psychological Association; Kluwer Academic Publishers, New York; Pg. 86

which expectations influence an interrogator's behavior, and ultimately the judgments of judges, juries and other neutral observers. Although the empirical results were obtained in a laboratory paradigm, they may well underestimate the risks incurred by innocent suspects in criminal justice settings.³⁵

Capable law enforcement investigators understand that obtaining a confession is not the end of the investigation -- every confession must be subjected to a vigorous post-confession investigation to determine if it is reliable. There are a number of features, which reliable confessions have in common. A true confession typically contains a wealth of specific details. These details must be consistent with the crime scene, autopsy, and other investigative information. These details must be independently verified -- corroborated -- or, at the very least, must be checked to see if they are false. To have real value, the details should include information reflecting the suspect's guilty knowledge -- that is, the confession should contain facts which were not known by the police, and which could not have been learned other than by presence at the commission of the crime or communication with someone who was present.

When corroborated by a thorough post-confession investigation, the validity of such a confession is strengthened. For example, I was involved in a serial murder investigation where the suspect confessed to the eleven murders under investigation. He not only provided a wealth of accurate details for each of the eleven homicides, but also provided other details that were unknown, including leading investigators to the location of a missing victim's body. That post-confession investigation served to validate and strengthen the offender's original confession and that became a powerful tool during trial.

³⁵ Kassin, S. M. , Meissner, C. & Norwick, R. (2003) July. The post-interrogation safety net: "I'd know a false confession if I saw one." Paper presented at the psychology & Law International, Interdisciplinary Conference, Edinburgh, Scotland

In this case however, none of the reliability features is present. Few details were contained in the “confession.” Indeed, all of the who, what, when, where, and why questions were “answered” by the investigators, then fed to the suspect. No incriminating information provided by Mr. Koh was verified, corroborated, or indicative of guilty knowledge. To the contrary, there appears to be a fundamental gap between the “confession” that interrogators elicited from Mr Koh, and the crime, which the prosecution apparently believes occurred.

Conclusion

Investigators are the gatekeepers for the rest of the criminal justice system. At their best, investigators can protect us from some of society’s most dangerous predators. At their worst, they can create and perpetuate egregious injustices. “Investigators must keep an open mind about how to interpret data and evidence until they have gathered as many facts as possible. At its inception an investigation should be multidimensional. No single hypothesis should be either embraced or eliminated until all pertinent facts and evidence have been collected and thoroughly examined.”³⁶ The two best ways for investigators to keep the proper investigative focus is to be aware of the cognitive biases that can ensnare and misdirect investigations and to have a complete understanding of their own knowledge base. This case should have been investigated as an equivocal death and any conclusion regarding the ultimate classification should have been withheld until all the evidence was collected, examined and ready for interpretation.

Once investigators concluded that Paul Koh was a homicide victim and his father, Mr. Koh, was the perpetrator, tunnel vision set in. That was followed by other cognitive biases such as confirmation bias and premature closure. All of this led to the use of psychological interrogation techniques, which, combined with Mr. Koh’s personal and situational vulnerabilities, resulted in a constellation of circumstances that were

³⁶ McCrary, G. (2009) *Who Murdered Stephanie Crowe* in Criminal Investigative Failures; New York; CRC Press

highly likely to produce an involuntary confession. These circumstances included investigators dominating the interview and interrogation as well as engaging in practices that are major concerns in any law enforcement interview and interrogation. The interrogators interrupted Mr. Koh, used short answer questions, engaged in rapid fire questioning, gave opinion statements, topic hopped, over talked Mr. Koh and finally two officers physically bracketed him in the interrogation room. There was never any meaningful attempt by these investigators to explore alternative hypotheses, validate Mr. Koh's denials or investigate the case further, especially once investigators had secured what they believed to be a confession from Mr. Koh. At best, Mr. Koh's involuntary confession should be considered unreliable.

Sincerely,



Gregg O. McCrary
Behavioral Criminology International