

THERE ARE GOOD INTERROGATIONS AND THERE ARE BAD INTERROGATIONS

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Every day we read about law enforcement successfully solving criminal cases by a combination of talking to people; developing forensic evidence; interviewing and, when appropriate, interrogating suspects. In many cases, however, there is limited or no forensic evidence or witness testimony that implicates a specific person as the perpetrator so the investigators have to rely extensively on their interviewing skills to develop investigative information that can lead them to the offender.

Once the investigators make contact with the suspected offender, they will generally conduct a non-accusatory fact finding interview to develop investigative information, such as his activities at the time of the crime; his alibi; his relationship to the victim; his knowledge of the crime scene, etc. If the information developed during this interview and the subsequent investigation indicate the subject's likely involvement in the commission of the crime, the investigators will initiate an interrogation.

A good interrogation is characterized by the following elements:

- the suspect is treated with decency and respect
- the investigator follows the guidelines established by the courts for a proper interrogation
- the suspect's rights are honored
- the investigator does not engage in any coercive behavior, such as threatening the suspect or making promises of leniency
- the suspect is afforded an opportunity to satisfy their physical needs

In addition to the above, the investigator must be cognizant of those individuals who may be more susceptible to making a false confession, such as individuals with significant mental and/or psychological disabilities, and juveniles with low social maturity. Consequently, it is imperative that a good investigation and a good interrogation follow a set of Best Practices.

Conduct an interview before any interrogation.

Absent a life-saving circumstance, the investigator should conduct a non-accusatory interview before engaging in any interrogation. During the interview, the investigator can establish rapport with the suspect, assess their credibility, develop investigative information, and establish a behavioral baseline.

Conduct an interrogation only when there is a reasonable belief that the suspect is guilty or withholding relevant information.

The belief that a suspect is guilty of a crime or is withholding relevant information may be based upon investigative information, evidence, or verbal responses to interview questions. The investigator should avoid conducting an accusatory

interrogation as a technique to separate innocent from guilty suspects.

Attempt to verify the suspect's alibi before conducting an interrogation.

The most efficient means to prove a suspect's innocence is to verify his or her purported alibi. Conversely, when it is determined that the suspect provided a false alibi, this finding offers support for the suspicion of the suspect's probable involvement in the commission of the crime.

When interrogating a non-custodial suspect, do not deprive the suspect from his freedom to leave the room.

The room should be set up so that the subject's exit from the interrogation room is not blocked - the investigator's chair should not be between the suspect's chair and the door. The room should not be locked from the inside (requiring a key to open the door), and the room should not be in an area that requires a key or pass code to exit the building. Finally, the investigator should not make verbal statements implying that the suspect is not free to leave the room, e.g., "You're not going anywhere until we get this clarified!"

Do not conduct excessively long interrogations.

In most instances, if the suspect is still adamantly maintaining his innocence and has not made any incriminating statements or admissions after three to four hours of interrogation, the interrogation should be re-assessed and most likely terminated.

Exercise extreme caution when interrogating juveniles, suspects with a lower intelligence, or suspects with mental impairments.

This class of suspects is more susceptible to false confessions; and, therefore, the investigator should be cautious in utilizing active persuasion such as discouraging weak denials, overcoming objections, or engaging in deceptive practices. Proper corroboration of a confession will be critical with this group of suspects.

Do not reveal to the suspect all information known about the crime.

A legally admissible confession should include corroboration. One form of corroboration is information only the guilty suspect would know, e.g., the method of entry in a burglary, a memorable statement made to the victim, the denomination of money stolen, the murder weapon that was used, etc. When interviewing a suspect or offering information to the news media, the investigator should carefully guard this protected information so that the only individuals who would know it would be the investigator and the person who committed the crime.

Attempt to elicit information from the suspect about the crime that was unknown to the investigator.

The best form of corroboration is information not known to the investigator about a crime that is independently verified as true. Examples of independent corroboration include the location of a knife used to kill the victim, where stolen property was fenced, or the present location of a car the suspect stole.

The confession is not the end of the investigation.

Following the confession, the investigator should investigate the confession details in an effort to establish the authenticity of the subject's statement, as well as attempt to establish the suspect's activities before and after the commission of the crime.

When the above described procedures are followed, the criminal justice system will be well served with a truthful, reliable, and voluntary confession.

Unfortunately, there are occasions when an investigator conducts a “bad” interrogation, which is often characterized by the investigator engaging in coercive behavior, such as threatening the suspect with harm or inevitable consequences (“If you don’t confess you will never see your children again.”); making promises of leniency (“If you tell me you did this you can go home and that will be the end of it.”); ignoring the suspect’s rights (Suspect: “I am done talking, I want an attorney now.” Investigator: “We’ll get to that later. You don’t need an attorney now.”); or, denying the suspect the chance to use the washroom or to get something to drink or eat after an extended period of questioning.

Furthermore, to test the veracity of a suspect’s confession, it is imperative that the suspect provide the investigator with details about the crime that only the guilty person would know. Unfortunately, contrary to the best practices that we described previously, some investigators disclose details about the crime to the suspect so that when the suspect repeats those details in their confession there is no way to demonstrate that the suspect had independent knowledge of those facts, as opposed to simply repeating what he was told.

The courts consistently uphold confessions that were the result of proper interrogation procedures and reject those confessions that were obtained improperly – that were the result of coercive investigator behavior. Fortunately these are far and few between. Interrogation is a critical part of the search for truth, but it must be conducted properly – it must be a good interrogation.