

What questions should be asked to determine the voluntariness and validity of a subject's confession? *

Most false confessions are caused by investigators engaging in inappropriate behavior such as, making promises of leniency; threats of physical harm or inevitable consequences; denying the subject their rights; denying the subject the opportunity to satisfy their physical needs; or conducting excessively long interrogations.

While there are numerous issues to consider in the process of evaluating the voluntariness and validity of a subject's confession, the following questions may be helpful in making this assessment.

The recording

Was the entire contact with the subject recorded, both the interview and the interrogation?

Was there any time when the discussion with the subject was not recorded? If so, what was the reason?

Subject Rights

Was the subject in custody or was he/she free to leave?

If in custody, was the subject properly advised of his/her rights?

Did the subject demonstrate a knowing and intelligent waiver?

Did the subject exercise any of their rights in an unequivocal manner at any time during the process? Was such an invocation honored?

If the subject is a juvenile, were the rights properly explained to the subject?

Were any of the subject's rights denied during the interrogation process?

Was the subject allowed to use the washroom facilities?

Was the subject provided any drink or food?

Was the subject allowed to sleep?

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Subject Attributes

Does the subject have or exhibit any mental or psychological factors that would affect his/her ability to make a voluntary and true statement?

Is there any language issue that may have precluded the subject's ability to properly understand the process, questions and situation?

Does the subject have prior experience with law enforcement?

Does the subject have the cognitive ability to make a knowing and intelligent waiver?

Was the subject under the influence of drugs or alcohol during the interrogation?

Was the subject suffering from any physical injury during the interrogation?

If the subject is a juvenile, does the law require that a parent or guardian be present during the interrogation? If yes, were they contacted?

Length of the interrogation

How long did the interview of the subject last?

How long did the interrogation of the subject last?

Did the interrogation take place during the subject's normal waking hours?

Did the interrogation exceed a reasonable length of time based on the statements made by the subject?

The interrogation process

Did the subject have access to the door? Was it unlocked?

Did the investigators make any threats of harm or inevitable consequences?

Did the investigators make any promises of leniency?

Did the investigators reveal details of the crime to the subject?

Did the investigators show the subject pictures of the crime scene?

Did the investigators engage in any coercive tactics?

Did the investigators deny the subject any invocation of their rights?

Did the investigators deny the subject the opportunity to use the restroom? to get something to drink or eat? to sleep?

The confession

Did the subject provide details that were consistent with the crime evidence?

Did the subject provide details that had been withheld by the police?

Did the subject provide details that the police did not know?

Did the subject write the written document? If not, did he read it or just sign it?

Did the subject provide the content of the written statement or was it written for him?