

TEN “DO’S AND “DON’TS” FOR OBTAINING A RELIABLE CONFESSION

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Physical coercion, torture, duress, denial of rights, threats, and promises of leniency are the poison pills of legally admissible, reliable, and voluntary confessions. Obviously we should not engage in such behaviors or any tactics that could render a confession involuntary. This article is intended to assist the professional investigator by outlining statements and techniques that should be avoided so as to insure the integrity of the subject’s confession.

In August 2016 in the case *Dassey v. Dittmann* (which was highlighted by the popular Netflix television show, “Making a Murderer”) U.S. Magistrate, Judge William Duffin, ruled that the guilty verdict returned by a trial jury in 2007 against Brendan Dassey for the murder of freelance photographer Teresa Halbach was based on an involuntary confession that was obtained as a result of “constitutionally impermissible promises.”

In his order to the State of Wisconsin to either release or retry Dassey, Magistrate Duffin stated, “These repeated false promises (of leniency, sic), when considered in conjunction with all relevant factors, most especially Dassey’s age, intellectual deficits, and the absence of a supportive adult, rendered Dassey’s confession involuntary under the Fifth and Fourteenth Amendments.”

Also factoring into the finding of involuntariness was the Magistrate’s concern that Dassey’s confession may not have been reliable because some of the corroborative details described by Dassey could have been the product of contamination from other sources, including the investigators’ own statements and questioning, or simply logical guesses, rather than actual knowledge of the crime.

We recommend that following the “Do’s and “Don’ts” listed below will substantially aid in facilitating legally admissible confessions that are voluntary and reliable. There is a longstanding legal principle known as *corpus delicti* that translates to ‘body of a crime’ and is defined by Black’s Law Dictionary as “the substantial fact that a crime has been committed”. This principle suggests that a mere admission of culpability, standing alone, may not be sufficient to establish the substance or foundation of a crime. Instead, the *corpus delicti* is established through a more comprehensive confession within which the confessor, without prompting by the interrogator, affirmatively provides details of the crime that only the actual offender would know.

Two evidentiary elements that address the *corpus delicti* within legally acceptable confessions are:

1. *Independent evidence* – verifiable information known only by the perpetrator of a crime but not revealed until the confession, for example, the disclosure during the confession of the location of the murder weapon or body which had previously not been found.
2. *Dependent evidence* – verifiable information known by both the investigators as well as the perpetrator that had been withheld from the public, for example, disclosure during the confession of the specific cause of death by strangulation or the point of entry to a break-in such as a window-well on the east side of house.

Once the suspect admits to committing the crime the following suggestions will aid in obtaining a legally corroborated confession containing independent and dependent evidence that will firmly establish the authenticity of the statement. Throughout this process, bear in mind that an “admission”

is the offender's initial acknowledgement of participation in a crime, while a "confession" is a comprehensive statement made by the suspect that accepts personal responsibility for committing the offense and discloses the circumstances and details of the act.

Guidelines for asking the initial questions after the subject's first acknowledgement of guilt are:

1. Elicit a narrative account of the crime
2. Make questions short and brief
3. Phrase questions in such a way that will allow the suspect to initially give brief answers
4. Avoid legal or descriptive terminology

With these guidelines in mind when the investigator is obtaining corroborating information from the suspect after their initial admission, these 10 "Do's and Don'ts" should be followed. (To illustrate these points consider the case in which a suspect admits to a home break-in.)

1. Do not, during the development of corroborating details, ask leading questions which by definition are questions that suggest the answers – "You broke in through the sliding door at the rear of the residence, right?" Rather, ask open-ended questions that do not suggest the answer – "Where did you enter the house?" Another example of a leading question would be: "You entered the home through the kitchen right?" Rather, ask the open-ended question – "What room was it that you first entered?"
2. Do not ask questions at the outset of the confession that are too general, such as, "Tell me what happened." Rather, begin by asking questions that develop the statement point by point, for example, "About what time was it when you entered the house?"
3. Do not provide crucial dependent information to the subject, such as – "You stole jewelry from the house and discarded the costume jewelry in the Constantine Cemetery right?" (when this information had never been publicly divulged and was known only to the perpetrator and the investigators.)
4. Do not challenge or berate a suspect who describes a memory gap during a critical time line. During this process of obtaining the details of the crime, if the suspect responds to the investigators question with: "I don't remember", do not retort with a challenge such as "That's a bunch of garbage, don't lie to me, you do remember." Rather, do follow up with a question such as, "What's the next thing you do remember?" The subject will be brought back to the crime time line and will be less likely to get into an argument with the investigator.
5. Do ask the suspect what he did and who he saw prior to and after the commission of the crime - this will assist in developing a crime time line and possibly additional incriminating information to confirm the veracity of the subject's statement.
6. Do ask the suspect where he obtained the tools, weapons, keys, security code, etc.
7. Do ask the suspect to draw a sketch relating to the crime.
8. Do ask the suspect who else he told about committing the crime – this may assist in obtaining corroborating witnesses.
9. Do validate the offender's confession by asking the suspect at the conclusion: "If you are asked these same questions at a later date, what will your answers be?" The suspect that has legitimately confessed his crime will respond: "The same." Follow up with "Why is that?" The suspect response is generally, "Because it's the truth."
10. Do "size up" the suspect for intellectual capacity and emotional maturity as an appropriate guide for the investigator's approach during the interrogation as well as a key indicator to the validity and reliability of the information obtained during a questioning session.

It is critical that we do not, even inadvertently, reveal all of the details of the crime to a suspect during an interrogation, including after the initial admission. Instead, we should ask questions that allow the suspect, of his or her own volition, to voluntarily reveal critical independent and dependent evidence that will effectively establish the accuracy and voluntariness of their incriminating statement. Our goal during an interrogation is to obtain the truth by following legally acceptable practices.

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