

# Why offenders confess

## *Understanding the many roads to success*

by Louis C. Senese

Threats and promises work in obtaining admissions, such as “Tell me you did this and you’ll keep your job” or “Tell me you did this or you’re going to jail right now; I have friends on the inside that owe me, get it?” are illegal. The obvious problem with these statements is that they may cause an innocent individual to admit to crimes they have not committed. To properly obtain a legally acceptable confession, such tactics must obviously be avoided.

The question then becomes, what would legally persuade a guilty offender to confess? In my three plus decades of experience and our firm’s six decades of practice we have observed 10 primary factors that contribute to a suspect’s decision to admit one’s wrongdoing. They are not mutually exclusive and, in fact, several may simultaneously affect a decision to confess. Understanding them will help investigators elicit legally acceptable confessions from guilty offenders.

Most criminal acts are stimulated by a variety of motives ñ greed, revenge, anger, passion, envy, etc. In developing an interrogational strategy, it is extremely important to try to ascertain during the interview process or from available investigative information, the offender’s probable motive for committing the crime in order to develop an appropriate strategy and “theme” during the interrogation.

A theme is a monologue the investigator presents where reasons and excuses are offered that serve to psychologically (not legally) justify or minimize the moral seriousness of the suspect’s criminal behavior. Generally themes are directed toward the offender’s motive(s) for committing the crime. As an example, Corey stole \$1,000 from his employer because he felt that he was underpaid, underappreciated and overworked. Since the motives are anger and job frustration, the primary theme would be to blame his employer for not paying Corey enough money. Additionally, his behavior could be minimized by contrasting one theft versus hundreds of different thefts or suggesting that it was only \$1,000 and not \$100,000.

The interrogation approach or strategy should focus on developing themes based on the offender’s likely motive(s) in combination with the factors that influence their decision to confess.

Themes presented in this manner will increase an investigator’s confession rate and ability to successfully resolve investigations. The ultimate goal of an interrogation is to learn the truth and obtain voluntary inculpatory and corroborated statements from the guilty offender.

### **Factors influencing a decision to confess**

1. Justification: Most individuals that commit a crime know they violated the law but, in



one form or another, they rationalize their behavior, in some cases believing that anyone else in the same situation would have done the same thing. The employee who steals from an employer may use the fact that they feel overworked, underappreciated and underpaid as justification. Likewise, the burglar may feel they cannot get a decent job due to prior criminal convictions and so has no alternative but to break into homes and businesses. The same would hold true for the child molester who rationalizes behavior because they, in their mind, were not hurting the victim, only showing love and affection.

Therefore, during the development of the theme the investigator should present several examples of psychological justification for the offense. Doing so will help to create an environment of empathy and understanding as well as the perception that most anyone, under similar circumstances, could have committed the same act.

2. Minimization: Offenders often times minimize the moral seriousness of their behavior, convincing themselves that their offense wasn’t really that terrible. Consequently, during the interrogation the investigator should contrast what the suspect did with a similar but much more heinous crime that they could have committed, thereby creating the impression that what they did is not really that bad. Someone who sexually touches a child understands that their conduct was inappropriate and illegal ñ that is why they tried to conceal it. This specific behavior could be minimized during the interrogation by contrasting simply touching with raping a child; the investigator can contrast this isolated incident with engaging in similar behavior on numerous occasions with many different children.

Furthermore, the investigator could contrast acting on impulse versus carefully premeditating and planning the act. Another minimization theme that may be appropriate would be to offer the idea that their intention was to sexually educate the child, not sexually harm them in anyway. These approaches do not relieve the suspect of criminal responsibility but offer a face-saving reason for their behavior, making it easier to acknowledge guilt.

3. Patience and persistence: Two of the key factors contributing to the successful conclusion of an interrogation are the patience and persistence an investigator exhibits. They cannot simply ask, “Did you do this?” and expect

a confession. Likewise, they cannot expect an explanation of the crime by asking “Tell me why you did this.” For most offenders it is not a single statement made during the interrogation that prompted their decision to tell the truth, but rather the cumulative effect of the entire process.

The interrogator’s confidence in the suspect’s guilt and knowledge about the crime can have a convincing effect. Some suspects simply get tired of living with their deceit and want to start fresh. Since the interrogation is essentially a monologue in which the investigator offers justification and engages in some minimization of the crime, the investment of time into the process is a major consideration. It is important that the investigator exhibits patience with the suspect’s denials and persistence in efforts to develop an effective theme.

4. Privacy: Are you more likely to discuss a personal problem with a close personal friend in a private setting or with a group of people in a public arena? Undoubtedly you would prefer the first option and the same principal holds true for the offender. In most cases it is easier for suspects to acknowledge their wrongdoing to one person in a quiet, private room that when several individuals are present, therefore there should be as few people in the room during an interrogation as possible ñ preferably only one investigator interrogating the offender. If there is a need to have a witness in the room (perhaps a second investigator), then this observer should not be seated in the suspect’s direct line of vision but rather off to the side and out of the way. Furthermore, any interruptions or distractions caused by phones ringing or people walking in and out of the room should be eliminated.

5. Trust: Most suspects are more likely to confess to someone they trust or feel understands their situation. Conducting a non-accusatory interview prior to any interrogation is an absolutely crucial step in the investigator’s effort to establish rapport and trust with the suspect. Even if there is overwhelming evidence against the offender, an interview should be conducted so that the investigator has the opportunity to portray an objective, neutral and non-accusatory demeanor, thereby creating some level of trust and rapport and creating a comfortable environment. Throughout the interview the investigator should remain relaxed, cordial and polite while avoiding any skeptical tone of voice when responding to

the suspect's responses.

During the interrogation the investigator should be very careful about lying to the suspect about evidence or other aspects of the investigation. If an investigator is caught or is perceived to be lying they may lose any credibility or trust that has been established. As an example, if during the interrogation of a suspect regarding a very serious or heinous crime, the investigator says, "I would have done the same thing you did," most offenders would not believe the statement, thereby breaking any bond of trust that was established.

Modifying this statement, however, could maintain some element of rapport and trust. For example, if the investigator had said, "If I was under the same set of circumstances you were under, I'm not sure how I would have reacted. I don't know what I might have done," this allows the investigator to maintain his credibility with the suspect.

The same is certainly true with regards to physical evidence. If the investigator tells the suspect they are on video surveillance running out of the building before the bomb exploded and the suspect knows he was the look out while his partner placed the bomb, he knows he is being lied to and we will lose any credibility developed up to that point.

6. Conscience: Most people have a conscience or moral compass that helps them differentiate right from wrong. Some suspects admit their guilt because they want to atone for what they did and hope to relieve themselves of the tremendous burden of guilt. In some instances a feeling of remorse for the victim also factors into the motivation to confess, as the offender's moral conscience begins to outweigh their ability to comfortably live with their lies.

Themes that focus on rationalization, justification and minimization will be very effective with this offender. On the other hand, some suspects with significant psychological problems have to be approached in a different way.

Sociopaths, who lack any sense of social responsibility, require more specific motivation to confess. They conceal crimes for fear of being caught and the related punishment, not for feelings of guilt or remorse. Therefore, they would be more susceptible to a factual approach in which the investigator presents evidence developed during the investigation that points to their guilt, suggesting that if it's presented to a group of reasonable people, most would be convinced they committed the crime. The implication would be that this is the suspect's opportunity to explain any mitigating circumstances that should be considered regarding acknowledgment of the crime.

7. Leniency: Clearly the investigator cannot make any promises of leniency to a suspect in an effort to solicit a confession. However, the courts have stated that a suspect "engaging in wishful thinking" (i.e., believing that giving a good reason for committing the crime will mitigate their punishment) will not invalidate the confession.

The primary factors that many offenders believe will impact on possible leniency regarding their subsequent punishment include: a) being cooperative during the interview and interrogation, b) making restitution if asked, c) explaining the unique and extenuating circumstance for committing the crime, d) showing atonement or remorse for their actions and e) minimization believing that they did something that was wrong but that it could have been much worse. These

areas should be considered when developing a strategy for the best themes to use during the interrogation.

During the non-interview that precedes the interrogation, a suspect may be asked the behavior-provoking question, "What do you think should happen to the person who did this?" If they respond, "Probably get some help," this would suggest what they would like to happen to them. Furthermore, if the suspect responds to the behavior provoking question, "Do you think the person who did this deserves a second chance?" by saying, "Well, if he is sorry for what he did then maybe he should get counseling," he is signaling to the investigator an approach that may be effective in the interrogation. Specifically, he is indicating that a theme suggesting the suspect was sorry for what they did might be a factor to be considered before any final decision on punishment is made.

8. Evidence: The more evidence a suspect believes is against them the more likely they are to confess to the crime they have committed. In the US, the supreme court has stated police can misrepresent to a suspect the evidence that they have against them (for example, falsely saying an accomplice has confessed or that their fingerprints were found at the scene); it can be a risky ploy, as outlined in point five.

Consequently, the most effective interrogation is armed with substantial evidence developed from a thorough investigation.

9. Status: Being incarcerated is a status symbol for some, providing the proverbial street PhD. Many offenders are revered by their counterparts based upon their crimes. For some, being caught and incarcerated is viewed as a

positive rather than a negative. Since the offender did not "rat out" or "snitch" on anyone else and accepted the consequences, this validates their trustworthiness. Complimenting this offender during the interrogation as being bold, clever and daring would further serve to confirm their ego. Minimizing the offense may not be advisable.

10. Promise: There will always be some that will wait until a "legal promise" of leniency is presented, such as a plea bargain admitting to a lesser included offense in exchange for a less severe sentence. This is generally not an option the interrogator can propose. If the crime is very serious and co-conspirators are involved, another "legal promise" is suggesting the offender might qualify for the witness protection plan. Even though such "legal promises" are used to ultimately acquire a confession, the interrogator should not feel that the technique was ineffective. Conversely, in all probability it was the cumulative effect of appropriate interrogation themes in tandem with incorporating many of the factors why offenders confess that persuaded the suspect to tell the truth.

There are no guarantees that investigators can persuade every offender to confess but incorporating these strategies into an interrogation may pave additional paths on the road to the ultimate goal of obtaining a legally acceptable confession.

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