

Reid and the Innocence Project

Over the years John E. Reid and Associates has assisted the Innocence Project (New York) on several cases as expert witnesses on proper interview and interrogation techniques, as well as the exoneration of one of their clients by obtaining a confession from the real offender. In fact, this case was detailed in the story, "I Did It" in New York magazine (<http://www.reid.com/pdfs/ididit.pdf>).

We have also assisted other attorneys (for example, Kathleen Zellner) in wrongful conviction cases.

The following are the Best Practices that we espouse in our work with the Innocence Project:

The successful interrogation is one in which (1) the suspect tells the truth to the investigator and, (2) persuasive tactics used to learn the truth are legally acceptable. With these goals in mind, the following is a list of best practices for interviewing and interrogating suspects:

Conduct interrogations in accordance with these principles:

- Conduct all interrogations in accordance with the guidelines established by the courts
- Do not make any promises of leniency
- Do not threaten the subject with any physical harm or inevitable consequences
- Do not conduct interrogations for an excessively lengthy period of time
- Do not deny the subject any of their rights
- Do not deny the subject the opportunity to satisfy their physical needs
- Withhold information about the details of the crime from the subject so that if the subject confesses, the disclosure of that information can be used to confirm the authenticity of the statement
- Exercise special cautions when questioning juveniles or individuals with mental or psychological impairments
- Always treat the subject with dignity and respect

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, the suspect's demeanor, 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 guilt.

A single investigator should be the lead communicator. While it is often appropriate to have a third person in the room during an interrogation, perhaps as an observer or witness, there should only be one primary investigator communicating with the suspect at a time. A guilty suspect is more likely to offer a voluntary confession to a single investigator who has established a rapport and trust with the suspect. A tactic to be avoided is to have two or three investigators simultaneously bombarding the suspect with themes or alternative questions, or working as a "tag team" wearing the suspect down over an extended period of time.

When interrogating a non-custodial suspect, do not deprive the suspect of 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.

When a suspect claims to have little or no memory for the time period when the crime was committed the investigator should not lie to the suspect concerning incriminating evidence. While it is not uncommon for guilty suspects to feign memory loss, an overriding concern is an innocent suspect who experiences true memory loss for the time period when the crime was committed. Under this circumstance, if the investigator lies to the suspect about incriminating evidence and the suspect confesses, it may be reasonably

argued that presenting false evidence caused an innocent suspect to believe that he had committed the crime.

Do not reveal to the suspect all of the 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.

Electronically record interviews and interrogation. Oftentimes there is a contradiction between what the suspect and investigator describe as to what took place during the interrogation – a video and/or audio recording of the interrogation would substantially assist in resolving those discrepancies.

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.