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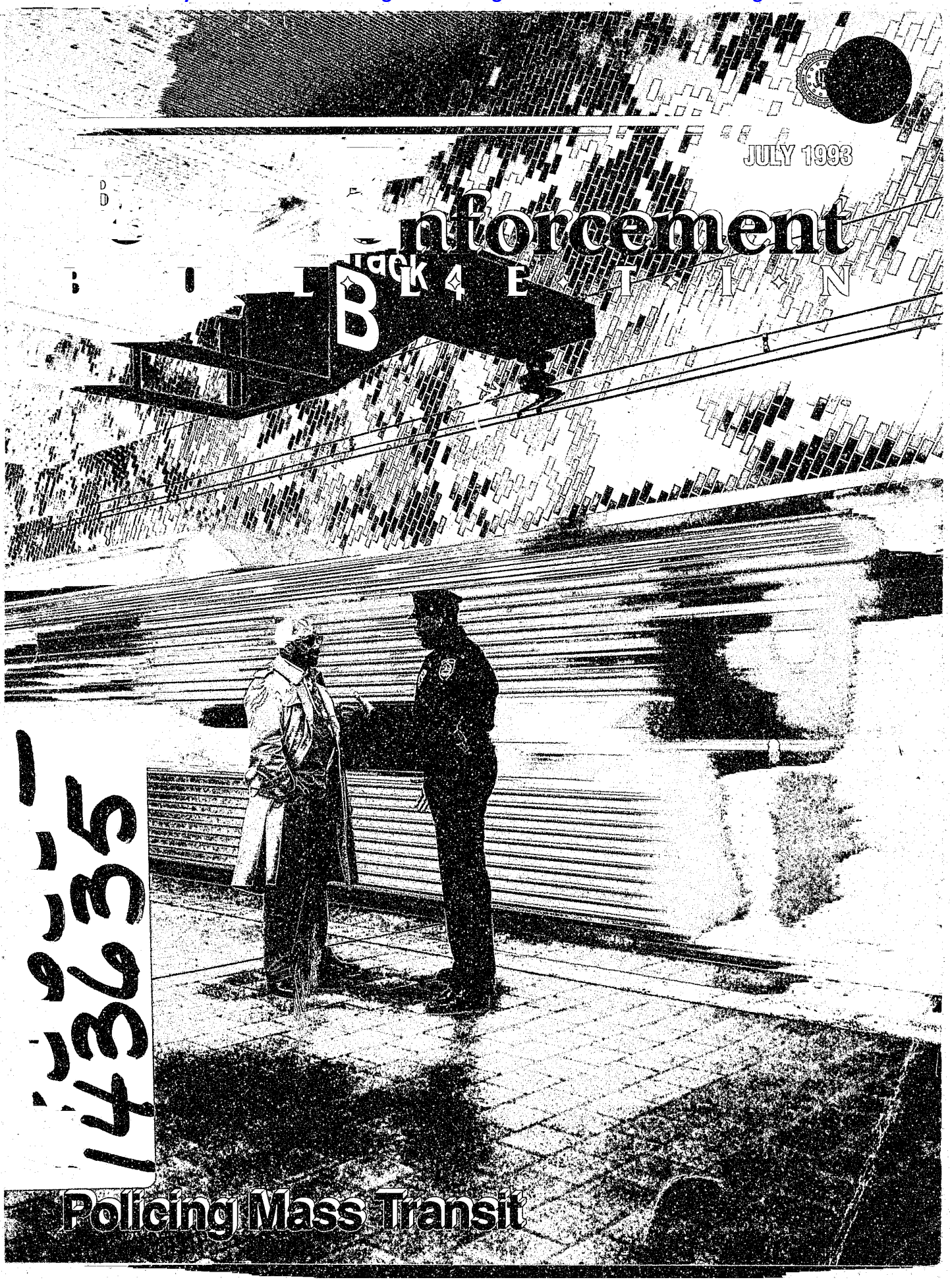
FBI Law Enforcement Bulletin



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FBI Law Enforcement Bulletin

Features

Departments

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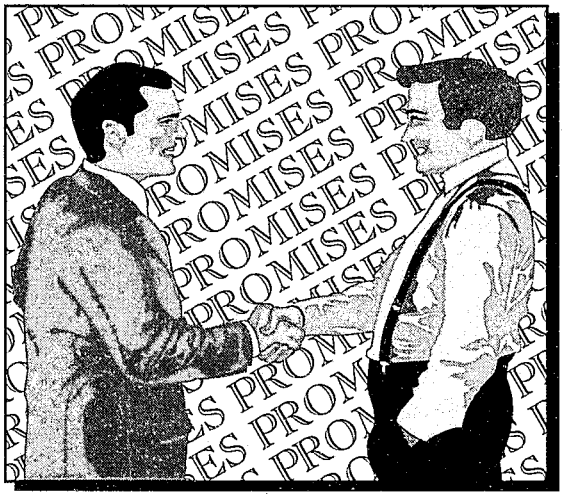
Lies, Promises, or Threats

The Voluntariness of Confessions

By
A. LOUIS DiPIETRO, J.D.



A confession is probably the most probative and damaging evidence that can be admitted against a defendant. To be admissible, due process mandates that, as a threshold requirement, a confession be voluntary and the product of an essentially free and unconstrained choice by its maker. This is in addition to the investigator's scrupulous compliance with *Miranda*[1] and other constitutional rights of an accused. If the Government obtains a confession by means that overbear the will of the accused, the resulting confession will be excludable on the grounds of a denial of due process of law.

In considering whether a suspect gives a confession freely and voluntarily, courts examine all the attendant circumstances on a case-by-case basis.[2] Police interrogation tactics that suggest overreaching, intimidation, or coercion may combine to defeat the free and independent exercise of the suspect's will, thus rendering the resulting confession violative of due process.

Some courts may tolerate an officer's limited use of lies, promises, or threats, so long as they do not overcome the free will of the suspect. However, other courts find an officer's use of such interrogation tactics *per se* violative of due process. This article discusses the extent to which the use of lies, promises, or threats affects the voluntariness of confessions.

INTERROGATION FACTORS

A suspect's vulnerability, as well as the interrogation tactics employed,[3] determines whether a particular suspect's will is overborne. By using a totality of the circumstances test to determine the voluntariness of a confession, courts recognize that different suspects are not equally susceptible to coercive police interrogation tactics.[4] Thus, police tactics permissible in one case might overbear the

will in another. Successful investigators can envision how various tactics in their interrogation arsenal will impact on the overall voluntariness determination and selectively employ only those tactics appropriate to the suspect and the circumstances.

Before using such potentially coercive interrogation techniques as lies, promises, or threats, officers should carefully assess the suspect's background and personal characteristics, such as age, education, mental impairment, and physical condition, any of which may render the suspect more vulnerable to coercion. However, mentally or physically impaired individuals can furnish a voluntary confession if interrogating officers do not take advantage of such impairments to overcome the suspects' free will.[5]

While officers have no control over a suspect's personal characteristics, they do have considerable control over the environment in which the questioning takes place and the interrogation tactics employed. Therefore, before interviewing a suspect, officers should learn as much as possible about a suspect's background and then choose the appropriate mix of interrogation tactics and environmental factors for questioning with the goal of convincing the suspect to admit culpability without overbearing the suspect's will.

THE USE OF LIES, TRICKERY, OR DECEPTION

The use of lies, trickery, or deception does not always render an otherwise voluntary confession inadmissible. However, the use of such tactics is an important factor considered by courts in the totality of circumstances.[6]

Even though some deception may lawfully be used in a given case without affecting the overall voluntariness of a confession, investigators must avoid tricking a suspect into waiving *Miranda* rights.[7] Based on its effect on voluntariness, deception can be categorized as 1) lies that relate to a suspect's connection to the crime and 2) trickery that introduces extrinsic considerations.

Lies that Connect Suspect to the Crime

Most courts view police trickery that simply inflates the strength of the evidence against a defendant as not significantly interfering with the defendant's "free and deliberate choice" to confess. Lies concerning a suspect's connection to the crime do not lead the suspect to consider anything beyond individual beliefs regarding actual guilt or innocence, a moral sense of right and wrong, and judgment regarding the likelihood that the police had garnered enough valid evidence to link the suspect to the crime.[8]

Thus, a court ruled a confession was not rendered involuntary when an officer falsely told the defendant that the department had received a report that a witness had seen defendant's vehicle where the victim had been raped and that he would have to explain why his vehicle was there.[9] Likewise, falsely telling an accused that a victim identified him[10] or that his fingerprints had been found[11] did not render the resulting confessions inadmissible. Therefore, lies that merely relate to a suspect's connection to a crime often do not render a confession involuntary.[12]

Trickery that Falsely Introduces Extrinsic Evidence

By contrast, trickery that introduces extrinsic considerations is far more likely to invalidate a confession. For example, in *Lynumn* v.

"...interrogators need to carefully tailor their tactics and surrounding circumstances to each individual defendant."

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Illinois,[13] police told a female suspect that she was in jeopardy of losing welfare benefits and custody of her children, but offered to recommend leniency if she would confess. The court ruled that the police impaired her free choice by going beyond the evidence connecting her to the crime and introducing a completely extrinsic consideration in the form of an empty but plausible threat to take away something to which she and her children would otherwise be entitled.

Another court likewise ruled a confession involuntary when an investigator told a suspect three times that he could *either* have an attorney present during questioning *or* cooperate with the Government, but not both. The investigator also told the suspect that if he asked for a lawyer, it would permanently preclude his cooperation.[14] These misrepresentations created in the defendant's mind a false sense that he must confess at that moment or forfeit forever any future benefit that might be derived from cooperating. The court held that the defendant's decision to confess was the product of trickery that became coercive, thus rendering the confession involuntary.

Another extrinsic factor where courts frequently find coercion is when investigators lead the accused to believe that failure to confess will result in adverse consequences for others. In *Spano* v. *New York*,[15] the suspect's friend, a police academy recruit, told the suspect that the officer would lose his new job if the suspect failed to cooperate. The defendant's subsequent statement was held involuntary.

THE EFFECT OF PROMISES ON VOLUNTARINESS

In *Arizona* v. *Fulminante*,[16] the Supreme Court used a totality of circumstances test to determine that a confession made to an informant in exchange for the promise of protection from other prison inmates was involuntary because it was coerced by a credible threat of physical violence. While some courts will not accept confessions induced by either direct or implied promises, other courts determine the coerciveness of an officer's promises based on the consideration of the following factors:

> **"...investigators have a great deal of room for creativity and ingenuity in devising a strategy for questioning a suspect."**

1) Whether the officer's promise is the proximate cause of the confession[17]

2) Whether the defendant relies on the promise in making the confession[18]

3) Whether the promise is fulfilled[19]

4) Whether the officer's statements come after police give *Miranda* warnings[20]

5) Whether the defendant is vulnerable to such statements, the delay between *Miranda* warnings and the confession, and how long it takes to obtain the confession[21]

6) Whether the accused solicits the promise[22] and

7) Whether the accused reasonably believes that the promisor has the power or authority to execute it.[23]

Moreover, not every statement an investigator makes to the accused is a "promise."

For purposes of determining the voluntariness of a confession, a promise is an offer to perform or withhold some future action within the control of the promisor that will have an impact upon the defendant; a promise is not the same thing as a prediction about future events.[24] Generally, an admonition that it will be in the accused's best interest to tell the truth will not render a confession involuntary.[25]

In *Miller* v. *Fenton*,[26] a police officer used a "good guy" approach to offer encouraging words of comfort regarding the suspect's need for psychiatric treatment and made frequent assurances designed to make the defendant feel more comfortable about speaking to unburden himself. The U.S. Court of Appeals stated:

> "[T]he interrogator may play on the suspect's sympathies or explain that honesty might be the best policy for a criminal who hopes for leniency from the state.... These ploys may play a part in the suspect's decision to confess, but so long as that decision is a product of the suspect's own

balancing of competing considerations, the confession is voluntary."[27]

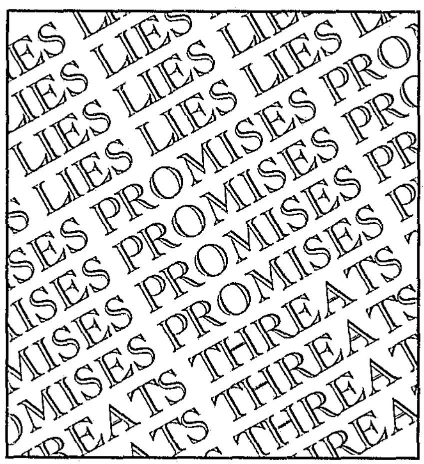
Promises of Leniency

Semantics become extremely important when determining whether an officer violates due process with a promise of leniency, as compared to a promise that simply causes a suspect to hope. Generally, courts hold that beliefs or hopes arising internally from the operation of a defendant's mind to be insufficient to establish that a promise of leniency induced the defendant's confession.[28] Conversely, a promise of leniency usually renders a confession involuntary when it is relied upon or prompts a defendant to confess.[29] Therefore, investigators should avoid making promises of mitigation of punishment. However, an officer's statements that simply suggest hope without promising leniency are generally considered by the courts to be insufficient inducement to render a subsequent confession inadmissible.[30]

Promises to Tell Authorities of Cooperation

Most courts hold that officers' promises to suspects that their cooperation will be brought to the attention of the prosecutor or court is merely one of the circumstances that determine whether a defendant's statement is freely and voluntarily given.[31] For example, in *United States* v. *Nash*,[32] an investigator told an arrestee that he would make the arrestee's cooperation known to the U.S. Attorney's Office but gave no guarantee of a reduced sentence. Although the agent also stated that cooperating defendants generally "fared better time-wise," these statements did not amount to illegal inducement.

However, it is important to note that other courts do not permit such statements.[33] Even in those jurisdictions that do permit an interrogating officer to promise that the defendant's cooperation will be communicated to the proper authorities, investigators should not assume that they are also permitted to represent that a defendant's *failure* to cooperate will likewise be communicated to the prosecutor. This latter promise is considered by the courts to be much more coercive.[34]



Promises of Collateral Benefit

Courts distinguish between promises of leniency in the criminal proceeding against the defendant from promises of help involving some collateral benefit.[35] While promises of a collateral benefit in combination with other coercive factors can render a confession involuntary, such promises are generally considered less coercive than promises directly relating to the criminal proceedings against the accused.[36] For example, courts have found confessions to be voluntary, even when interrogating officers promised the following collateral benefits:

1) Promise to release girlfriend who was being held in custody[37]

2) Promise to release brother[38]

3) Promise to see that defendant receives psychological help[39]

4) Promise that son would not be charged if defendant gave statement exculpating son[40]

5) Promise that defendant receive rape counseling[41]

6) Promise to secure treatment for withdrawal from drug addiction[42]

7) Promise to obtain treatment for alcoholism.[43]

Interrogators should understand that just because a court approved the above promises in the context of a particular interrogation does not mean that such promises would be approved in every case because voluntariness is a fact-specific determination made on a case-by-case basis. In that regard, courts found the following promises coercive and ruled the resulting confessions involuntary: 1) Promise to protect the accused;[44] 2) promise to protect accused's family;[45] and 3) promise not to arrest defendant.[46]

THREATS VIEWED AS INHERENTLY COERCIVE

Courts view an interrogating officer's use of threats as inherently coercive and a significant factor that

weighs heavily against a finding of voluntariness under the totality of circumstances test. However, if threats by police have nothing to do with the defendant's decision to confess, the confession may be admissible.[47]

The Supreme Court has held that a credible threat of physical violence is sufficient to render a confession involuntary. In a kidnaping case, the U.S. Court of Appeals for the Sixth Circuit held the defendant's confession to be involuntary because the officer's physical abuse of the co-arrestee created a coercive environment in which the defendant reasonably feared that he, too, was threatened with physical abuse.[48] Threatening additional or more serious charges to induce the defendant to confess is viewed as highly coercive, but confessions following such threats are not always held inadmissible.[49]

Courts usually find confessions inadmissible when extracted by threats to arrest or charge a relative or friend. However, the mere fact that an accused may be self-motivated to confess in order to exonerate or bring about the release of another is not always, standing alone, sufficient to make the confession involuntary.[50] Moreover, courts applying the totality of circumstances test have admitted confessions following threats to arrest or charge another,[51] especially where the police actually have probable cause to arrest.[52]

Finally, police statements that threaten interference with normal family relationships are viewed as very coercive by the courts. For example, the Supreme Court held a confession to be coerced when officers told an accused that if she did not cooperate her children would be deprived of State financial assistance and taken from her.[53] Likewise, in *United States* v. *Tingle*,[54] investigators, in an effort to cause Tingle to fear that if she failed to cooperate she would not see her young child for a long time, told her that she might not see her child for a while if she went to prison. The U.S. Court of Appeals for the Ninth Circuit held that by preying upon the defendant's maternal instinct, the investigators exerted improper influence that coerced the defendant's confession.

> ***"Semantics become extremely important when determining whether an officer violates due process...."***

CONCLUSION

The Supreme Court has stated that "admissions of guilt by wrongdoers, if not coerced, are inherently desirable...."[55] Obviously, it is unrealistic to assume that most suspects will simply come forward to confess their guilt. The cases discussed in this article reflect that investigators have a great deal of room for creativity and ingenuity in devising a strategy for questioning a suspect.[56]

While courts may tolerate some police gamesmanship, so long as the games do not overcome the suspect's will,[57] interrogators need to carefully tailor their tactics and surrounding circumstances to each individual defendant. If Government coercion does not play a significant role in inducing the defendant's inculpatory statement, most courts will deem the confession voluntary under the totality of the circumstances.[58] Criminal investigators preparing to interview a suspect should carefully assess and discuss with their legal advisors whether the use of a coercive interrogation technique involving either lies, promises, or threats will render involuntary any confession obtained. ✦

Endnotes

[1] *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

[2] *Haynes* v. *Washington*, 373 U.S. 503 (1963); *see also Fikes* v. *Alabama*, 352 U.S. 191 (1957) (test for admissibility is whether the totality of the circumstances that preceded the confession deprived the defendant of "power of resistance").

[3] For a detailed discussion of the voluntariness determination under the totality of the circumstances, *see* Joseph G. Cook, *Constitutional Rights of the Accused*, 2d ed. (1986), sec. 5:2 & 3.

[4] *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 226 (1973).

[5] *United States* v. *Pelton*, 835 F.2d 1067 (4th Cir. 1987), *cert. denied*, 108 S.Ct. 1741 (1988) (despite claims of intoxication, suspect still made voluntary statements); *United States* v. *Yunis*, 859 F.2d 953 (D.C. Cir. 1988) (despite broken wrists, seasickness, language difficulties, poor accommodations, repeated interrogations, confession was voluntary); *People* v. *Hendricks*, 495 N.E.2d 85 (1986) (mere fact that a person has been without sleep for an extended period of time, prior to making a statement, does not render it automatically involuntary); *United States* v. *Macklin*, 900 F.2d 948 (6th Cir. 1990), *cert. denied*, 111 S.Ct. 116 (if mentally impaired citizens were to be regarded as lacking the free will necessary to make a voluntary confession, then logically they could also be denied other rights of citizenship, such as the right to testify, the right to make contracts, and the right to vote. Such a rule would not be in the interest of mentally impaired citizens generally).

[6] *Fraizer* v. *Cupp*, 394 U.S. 731, 739 (1969); *see also* Charles E. Riley, III, "Confessions and Interrogation: The Use of Artifice, Stratagem, and Deception," *FBI Law Enforcement Bulletin*, April 1982.

[7] *Miranda* v. *Arizona*, 385 U.S. 436, 476 (1966) ("Moreover, any evidence that the accused was ...

tricked ... into a waiver will, of course, show the defendant did not voluntarily waive his privilege.") While the confession itself must be voluntary to be admissible, the waiver of *Miranda* rights, where required, must not only be voluntary but also knowing and intelligent. Deception regarding the nature of rights being waived or the consequences of that decision denies suspects the requisite level of comprehension of their rights to make a knowing and intelligent *Miranda* waiver. *See Collazo* v. *Estelle*, 940 F.2d 411 (9th Cir. 1991); *Stokes* v. *Singletary*, 952 F.2d 1567 (11th Cir. 1992).

[8] *Holland* v. *McGinnis*, 763 F.2d 1044, 1051 (7th Cir. 1992).

[9] *Id.*

[10] *Shedelbower* v. *Estelle*, 859 F.2d 727 (9th Cir. 1988).

[11] *State* v. *Haywood*, 439 N.W.2d 511 (Nev. 1989).

[12] However, a distinction can be made between false verbal assertions on the one hand and the fabrication of tangible or documentary evidence on the other. The latter police conduct is more likely to offend notions of fundamental fairness. In *Florida* v. *Cayward*, 552 So.2d 971 (Fla. App. 2 Dist. 1989), *review dismissed*, 562 So.2d 347 (Fla. 1990), police fabricated two scientific reports that established the semen stains on victim's underwear came from defendant, showed the reports to defendant, and explained their significance. Differentiating between verbal misrepresentations and actual manufactured evidence, the Florida court held that the police conduct overstepped the line, rendering the confession violative of due process.

[13] 372 U.S. 528 (1963).

[14] *United States* v. *Anderson*, 929 F.2d 96 (2d Cir. 1991).

[15] 360 U.S. 315 (1959).

[16] 111 S.Ct. 1246 (1991).

[17] *Layne* v. *State*, 542 So.2d 237 (Miss. 1989).

[18] *State* v. *Amaya-Ruiz*, 800 P.2d 1260 (Ariz. 1990), *cert. denied*, 111 S.Ct. 2044; *State* v. *McDermott*, 554 A.2d 1302 (N.H. 1989).

[19] *State* v. *Owens*, 436 N.W.2d 869 (Wis. 1989).

[20] *Green* v. *Schully*, 675 F.Supp. 67 (E.D.N.Y. 1987), *aff'd* 850 F.2d 894 (2d Cir. 1988) *cert. denied*, 488 U.S. 945; *United States* v. *Wright*, 696 F.Supp. 164 (E.D. Va. 1988), *aff'd* 878 F.2d 380.

[21] *Hamm* v. *State*, 757 S.W.2d 932 (Ark. 1988).

[22] *Ex Parte Siebert*, 555 So.2d 780 (Ala. 1989) *cert. denied*, *Siebert* v. *Alabama*, 110 S.Ct. 3297.

[23] *State* v. *Norris*, 768 P.2d 296 (Kan. 1989).

[24] *United States* v. *Fraction*, 795 F.2d 12 (3d Cir. 1986).

[25] *Rachlin* v. *United States*, 723 F.2d 1373 (8th Cir. 1983) (agents may have told suspect that it was in his best interest to cooperate—confession held voluntary); *United States* v. *Vera*, 701 F.2d 1349 (11th Cir. 1983) (agent told suspect that he could help himself by cooperating—confession held voluntary); *Smith* v. *Walton*, 769 P.2d 1017 (Ariz. 1989) ("Give yourself a chance," "To lie isn't going to help," and "It's nothing that can't be worked out," were not direct or implied promises that rendered confession involuntary).

[26] 796 F.2d 598 (3d Cir. 1986), *cert. denied*, 479 U.S. 989.

[27] *Id.* at 605.

[28] *People* v. *Foster*, 552 N.E.2d 1112 (Ill. App. 1990).

[29] *People* v. *Conte*, 365 N.W.2d 648 (Mich. 1985); *State* v. *Porter*, 455 N.W.2d 787 (Neb. 1990)(police interrogator admitted on cross-examination that confessions obtained by implied promises of leniency—court held confession inadmissible); *Finke* v. *State*, 468 A.2d 353, 371 (Md. App. 1983), *cert. denied*, 105 S.Ct. 529 (telling defendant that if he "tells the truth" then police will "go to bat for him" or help with the State's attorney is coercing a confession).

[30] *Neil* v. *State*, 522 N.E.2d 912 (Ind. 1988); *Collins* v. *State*, 509 N.E.2d 827 (Ind. 1987); *United States* v. *Rutledge*, 900 F.2d 1127 (7th Cir. 1990) (in response to defendant's question whether cooperation would be helpful, the officer responded, "All cooperation is helpful." The court held Government's conduct did not exceed permissible limits); *Miller* v. *Fenton*, 796 F.2d 598, 610 (3d Cir. 1986), ("Indirect promises do not have the potency of direct promises").

[31] *State* v. *Tapia*, 767 P.2d 5 (Ariz. 1988) (under some circumstances, direct promises that officers will tell prosecutor or judge if defendant cooperates are permissible); *Lord* v. *State*, 531 N.E.2d 207 (Ind. 1988)("[I]f I can get [prosecutor] down here, would you tell the truth, if he would cut you a deal?" did not constitute a promise that coerced defendant's confession); *State* v. *Janice*, 565 A.2d 553 (Conn. App. 1989); *United States* v. *Hernandez*, 574 F.2d 1362 (5th Cir. 1978); *Williams* v. *Johnson*, 845 F.2d 906 (11th Cir. 1986) (Secret Service agent's statement that he would inform appropriate authorities if defendant cooperated held not the kind of statement that would render confession involuntary).

[32] 910 F.2d 749 (11th Cir. 1990).

[33] *Pennsylvania* v. *Gibbs*, 553 A.2d 409 (Pa. S.Ct.) *cert. denied*, 110 S.Ct. 403 (1989) (police improperly induced confession by answering suspect's question about what good his confession would do by stating that his cooperation would be brought to the prosecutor's attention); *United States* v. *Mottl*, 946 F.2d 1366 (8th Cir. 1991) (suggesting that a statement that the suspect's cooperation would be brought to the attention of the prosecutor is different than saying cooperation would be made known to the court).

[34] A defendant may not be made to suffer for his silence because of the 5th amendment privilege against self-incrimination. There is no legitimate purpose for such a statement. Telling an accused that failure to cooperate will be reported is coercive, and courts disapprove of same. *See United States* v. *Tingle*, 658 F.2d 1332, 1336 (9th Cir. 1981).

[35] *See, e.g., Miller* v. *Fenton*, 796 F.2d at 610.

[36] *Id.*

[37] *United States* v. *Scarpelli*, 713 F.Supp. 1144 (N.D. Ill. 1989).

[38] *State* v. *Holloman*, 731 P.2d 294 (Kan. 1987).

[39] *Williams* v. *Com.*, 360 S.E.2d 361 (Va. 1987), *cert. denied*, 484 U.S. 1020; *Smith* v. *State*, 500 N.E.2d 190 (Ind. 1986); *Coates* v. *States*, 534 N.E.2d 1087 (Ind. 1989).

[40] *Bruno* v. *State*, 574 So.2d 76 (Fla. 1991), *cert. denied*, 112 S.Ct. 112.

[41] *Free* v. *State*, 732 S.W.2d 452 (Ark. 1987).

[42] *McCarthy* v. *Bronson*, 683 F.Supp. 880 (D.Conn. 1988).

[43] *Quandrini* v. *Clusen*, 864 F.2d 577 (7th Cir. 1989).

[44] *Payne* v. *Arkansas*, 356 U.S. 560 (1958). *See also Arizona* v. *Fulminante*, *supra*, note 17.

[45] *Stokes* v. *Singletary*, 952 F.2d 1567 (11th Cir. 1992).

[46] *State* v. *Tamerius*, 449 N.W.2d 535 (Neb. 1989).

[47] *Weidner* v. *Thieret*, 735 F.Supp. 284, *aff'd* 932 F.2d 626 (7th Cir. 1989), *cert. denied*, 112 S.Ct. 883.

[48] *Cooper* v. *Scroggy*, 845 F.2d 1385 (6th Cir. 1985).

[49] *Lindsey* v. *Smith*, 820 F.2d 1137 (11th Cir. 1987), *cert. denied*, 489 U.S. 1059 (confession voluntary where defendant initiated discussion with police and knowingly and voluntarily waived rights despite threat of capital murder charge). *See also People* v. *Thompson*, 785 P.2d 857 (Cal. 1990) *cert. denied, Thompson* v. *California*, 111 S.Ct. 226; *State* v. *Strain*, 779 P.2d 221 (Utah 1989) (despite detective's improper threat of first-degree murder charge and possible execution and "guarantee" of second-degree murder charge if defendant admitted his involvement, case remanded to determine whether officer's improper statements induced confession).

[50] *Vogt* v. *United States*, 156 F.2d 308 (5th Cir. 1946)(the fact that an accused undertakes to shoulder the entire burden in order to exculpate someone else, does not, of itself, render the confession involuntary); *Jackson* v. *State*, 280 A.2d 914, 917 (Md. 1971); *People* v. *Steger*, 546 P.2d 665 (Cal. 1976).

[51] *Phillips* v. *State*, 139 N.W.2d 41 (Wis. 1966) (threat to take girlfriend into custody did not render confession involuntary); *People* v. *Gamble*, 353 N.E.2d 136 (Ill. 1976) (threat to charge wife with murder did not invalidate confession).

[52] *Allen* v. *McCotter*, 804 F.2d 1362 (5th Cir. 1986) *reh'g denied* 808 F.2d 1520 (threat to file charges against defendant's wife did not render confession involuntary where officer, in fact, had probable cause to arrest wife). *See also Martini* v. *Kemp*, 760 F.2d 1244 (11th Cir. 1985).

[53] *Lynumn* v. *Illinois*, 372 U.S. 528 (1963).

[54] 658 F.2d 1332 (9th Cir. 1981).

[55] *United States* v. *Washington*, 431 U.S. 181, 187 (1977).

[56] *People* v. *Anderson*, 364 N.E.2d 1318 (N.Y. 1977) ("[T]he test of involuntariness may be easier to apply than to verbalize. A series of circumstances may each alone be insufficient to cause a confession to be deemed involuntary, but yet in combination they may have that qualitative and quantative effect ... and, considering the variety of techniques that may suggest themselves to interrogators, it may be undesirable to prescribe inflexible and all-inclusive limitations in advance to guide interrogating law enforcement officers on all occasions. Failure to do so would not necessarily permit resort to coercion with impunity. Such tactics, when applied, tend to tell their own tale.").

[57] *State* v. *Carrillo*, 750 P.2d 883, 894 (Ariz. 1988).

[58] *People* v. *Branch*, 805 P.2d 1075 (Col. 1991); *McCall* v. *Dutton*, 863 F.2d 454, 459 (6th Cir. 1988), *cert. denied*, 490 U.S. 1020 (1989) (three-factor test for confession to be "involuntary" under due process requires 1) objectively coercive police activity that 2) was sufficient to overbear the will of the accused (considering subjective state of mind) and 3) because of the coercive police activity the defendant's will was overborne).

Law enforcement officers of other than Federal jurisdiction who are interested in this article should consult their legal advisor. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their exemplary service to the law enforcement profession.

Patrol Officer Kevin Lunsford of the Midwest City, Oklahoma, Police Department responded to a 911 call during the early morning hours. Upon arriving at an area residence, Officer Lunsford observed evidence of a forced entry. When he contacted the female occupant, Officer Lunsford sensed that she was being threatened by a subject standing behind the door. Officer Lunsford quickly pulled the victim from her assailant and convinced the man to relinquish his weapon. Officer Lunsford then took the suspect into custody without further incident.

Patrol Officer Lunsford

A distraught man entered a New York City Transit Police Department (NYTPD) station to report that his baby had fallen through the elevated rail tracks. Although not yet on duty, Sgt. John Skolnik of the NYTPD secured a portable radio and responded to the scene. Upon arrival, Sergeant Skolnik observed the badly injured infant lying in a track bed between two live rails. Sergeant Skolnik climbed down 50 feet through high-voltage tracks to the infant and administered first aid. He then directed rescue units to a side portal and carried the child 200 yards across multiple sets of live rails to the entrance. The infant was treated for critical injuries at a local hospital.

Sergeant Skolnik

Officer Paul Driscoll of the Tampa, Florida, Police Department observed flames shooting into the air from the rear of a multiresident dwelling. After broadcasting a radio dispatch, he entered the burning building to evacuate the predominantly geriatric residents. Then, Officer Driscoll repeatedly entered the burning home, locating disoriented residents and guiding them to safety. He and another officer completed a final sweep of the dwelling just as the ceiling collapsed. Officer Driscoll's relentless efforts averted a great tragedy.

Officer Driscoll

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