Interrogation

When a person under questioning would prefer not to answer, almost all interrogation involves some degree of pressure.[1]

A good interrogator needs to know a lot of things, such as what questions to ask, when and how to ask follow-up questions, how to read body language, when to lie, how much factual information to provide and, of course, when to say nothing and just listen. In this article, we will cover none of those things. That's because they are subjects that can best be taught by experienced interrogators who have learned by trial and error, in the confines of dingy interrogation rooms, how to obtain the truth from a person on the other side of the table whose freedom, and maybe his life, depends on keeping the truth at bay. Instead, we will focus on a related subject that is just as important: the rules and principles that regulate the amount and type of pressure that officers may utilize.

It should be understood that, in the context of interrogations, the courts do not view "pressure" as a bad thing. In fact, they are quite aware that to obtain the truth from most perpetrators, interrogators will need to turn up the heat or, in the words of the Supreme Court, "unbend their reluctance."[2] The problem, of course, is knowing how much "unbending" is too much. And this can be difficult because the line between permissible and impermissible pressure is a "fine" one.[3] Moreover, it can be difficult to stay on the safe side of this line because the decision on how to interrogate a suspect—what to say and do—must be made under circumstances that seldom allow for calm and deliberate judgment. Instead, interrogators must respond quickly to the suspect's words, his changing moods, his various ploys, and many other things. To make matters worse, they must frequently deal with their own anger and frustration that may result from an "excess of zeal or aggressive impatience or flaring up of temper in the face of obstinate silence."[4]

The question arises: If the suspect waived his *Miranda* rights, why is pressure a problem? After all, if he knows he can stop the interview whenever he wants, it seems likely he would do so if he felt overwhelmed. That's true to some extent. As the Supreme Court noted, "[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare."[5]

Still, the courts do not hesitate to suppress coerced confessions and admissions since they are inherently unreliable;[6] and also because the use of coercion by officers "brutalizes the police, hardens the police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public."[7] As the Supreme Court explained in the case of *Spano v. New York*, "The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent untrustworthiness. It also turns on the deep-rooted feeling that the police must obey the law while enforcing the law."[8]

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[1] *People v. Anderson* (1980) 101 Cal.App.3d 563, 575.
[2] *Culombe v. Connecticut* (1961) 367 U.S. 568, 571.
[3] See *People v. Anderson* (1980) 101 Cal.App.3d 563, 576.
[4] *Culombe v. Connecticut* (1961) 367 U.S. 568, 574.
[5] *Berkemer v. McCarty* (1984) 468 U.S. 420, 433, fn. 20.
[6] See *Michigan v. Tucker* (1974) 417 U.S. 433, 448 [the voluntariness requirement protects "the courts from reliance on untrustworthy evidence"]; *Dickerson v. United States* (2000) 530 U.S. 428, 433 ["[C]oerced confessions are inherently untrustworthy."]; *People v. Boyer* (2006) 38 Cal.4th 412, 444 [coerced testimony is excluded "in particular, to ensure the reliability of testimony offered against him."].
[7] *Miranda v. Arizona* (1966) 384 U.S. 436, 448. Also see *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 225.
[8] (1959) 360 U.S. 315, 320-21.

Before we go further, a distinction must be made between the terms "coercion" and "voluntariness." A statement is "coerced" if a court concludes that interrogators utilized too much pressure. In contrast, a statement is "involuntary" only if, in addition to coercion, (1) the suspect's mental or physical state was such that he lacked the power to resist it, and (2) the coercion was the motivating cause of the suspect's decision to make the statement. It should also be noted that starting January 1, 2017 officers must record most interrogations of adult and juvenile murder suspects. This subject is covered on page 14 of the article "Significant New Legislation."

When Pressure Becomes Coercion

Over the years, the courts have tried to provide officers with useful ways of determining the point at which pressure becomes coercive. For instance, they have said that it happens if the pressure deprived the suspect of a "rational intellect and free will,"[9] or if it resulted in a confession that was not the product of an "essentially free and unconstrained choice."[10] Such language is not only unhelpful, it is misleading because, if criminals could give admissible confessions only if their minds were unburdened, officers would be lucky to obtain one or two admissible confessions in their entire careers.[11]

It is also misleading because, by focusing on the suspect's mental state, it diverts attention from where it belongs: the interrogating officers' words and actions.[12] As the Court of Appeal explained, "Involuntariness cases invariably involve misconduct directed, in one way or another, at compelling a defendant to confess. . . . Thus, cases talk, for example, of 'extracting' or 'wringing' confessions from a suspect."[13]

It might be argued that all police interrogation is coercive because, if the suspect is guilty, his mind will be in turmoil. For example, he must invent a plausible "innocent" story, then constantly revise it as he becomes aware of contrary physical evidence or statements from victims, witnesses, or accomplices. Furthermore, when each question is asked, he must mentally review his previous answers to make sure they correspond with what he is about to say. And because his story is composed of assorted lies, he must be able to quickly invent new ones when they are exposed. That is *real* pressure. But it's not the kind of pressure that concerns the courts. Instead, their only interest is whether the officers' actions, crossed the line between pressure and coercion.[14]

As we will now discuss, to make this determination it is necessary to examine, not only the officers' words and actions, but also the atmosphere in which the interrogation was conducted.

The surrounding circumstances

The general mood or atmosphere of the interview is significant because it will almost always give meaning and context to whatever is said or done. Consequently, the courts will frequently take note of the following.

LOCATION OF THE INTERROGATION: Most interrogations occur in police stations, usually in small, stark, and windowless interview rooms.[15] As the result, defense attorneys often argue that interviews in such places are necessarily coercive. These argument are almost always rejected because, as

[9] *Blackburn v. Alabama* (1960) 361 U.S. 199, 208.
[10] *Culombe v. Connecticut* (1961) 367 U.S. 568, 571, 602.
[11] See *Colorado v. Connelly* (1986) 479 U.S. 157 166; *Watts v. Indiana* (1949) 338 U.S. 49, 53.
[12] See *Colorado v. Connelly* (1986) 479 U.S. 157, 167, 169.
[13] *People v. Hall* (2000) 78 Cal.App.4th 232, 240.
[14] **NOTE**: In the past, the courts would rule that the "slightest pressure" would automatically result in coercion. But the "slightest pressure" test has been abrogated because the courts now consider the totality of circumstances, which means the existence of some pressure may be offset by other factors, including the suspect's ability to resist it. See *People v. Clark* (1993) 5 Cal.4th 950, 986, fn.10 ["slightest pressure" standard is contrary to *Arizona v. Fulminante* (1991) 499 U.S. 279, 285].
[15] See *Blackburn v. Alabama* (1960) 361 U.S. 199, 204.

the Supreme Court observed, "Often the place of questioning will *have* to be a police interrogation room because it is important to assure the proper atmosphere of privacy and non-distraction if questioning is to be made productive."[16]

In contrast, the least intimidating place in which to question a suspect is ordinarily his home because he is on his own turf. "An interrogation at a suspect's home," said the Court of Appeal, "is usually, but not always, deemed noncoercive."[17] What about questioning people who have been detained on the street? While detainees are aware that they are not free to leave or move about, this is seldom a significant circumstance because detentions, unlike arrests, are typically "transitory" and "comparatively nonthreatening."[18]

NUMBER OF OFFICERS: The number of officers who were present during the interview, and especially the number of officers who questioned the suspect are frequently noted by the courts.[19] For example, in *Blackburn v. Alabama* the Supreme Court noted that the defendant was interrogated in an interview room that was "literally filled with police officers."[20] Nowadays, however, this is seldom an issue because the number of officers who participate in interrogations is usually limited to two or so because, thanks to covert video technology, there is little need to have multiple witnesses in the room. Furthermore, having a group of officers asking questions is almost always counterproductive.

LENGTH OF THE INTERROGATION: This subject is discussed later in the section "Suspect's Power of Resistance."

BREAKS: Offering the suspect an opportunity to take a break—to have something to eat or drink, or to use the bathroom—is a circumstance that substantially reduces the level of pressure in an interview room. This is especially important if the interrogation was lengthy. For example, in discussing the circumstances surrounding an interview, the courts have noted such things as the following: the officers "provided [the suspect] with food and coffee, allowed her a cigarette, and brought her socks and other clothing after she complained of feeling cold,"[21] "the initial interview was spread over a four-hour period with the detectives offering defendant both food and drink,"[22] during an eight hour interview, "the police repeatedly offered defendant food and beverages, provided her with four separate breaks."[23]

THE OFFICERS' ATTITUDE: A very strong indication of the mood or atmosphere of an interrogation is the manner in which the officers posed their questions to the suspect and otherwise interacted with, him. For example, in rejecting claims of coercion, the courts have noted the following:

- "Their questioning was restrained and free from the abuses that so concerned the Court in *Miranda*."[24]
- "[The officers] posed their questions in a calm, deliberate manner," their voices were "very quiet and subdued."[25]
- "Everything totally aboveboard with the officers. No coercion, no harassment. No heavy-handedness. [They] were patient and even-handed."[26]

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[16] *Culombe v. Connecticut* (1961) 367 U.S. 568, 579. Edited. Emphasis added.
[17] *People v. Herdan* (1974) 42 Cal.App.3d 300, 307, fn.9. Also see *Michigan v. Summers* (1981) 452 U.S. 692, 702, fn.15.
[18] *Berkemer v. McCarty* (1984) 468 U.S. 420, 439-40 ["nonthreatening"]; *People v. Manis* (1969) 268 Cal.App.2d 653, 668 ["transitory"]. Also see *People v. Tully* (2012) 54 Cal.4th 952, 983.
[19] See *Spano v. New York* (1959) 360 U.S. 315, 322; *Haley v. Ohio* 1947) 332 U.S. 596, 598; *Reck v. Pate* (1961) 367 U.S. 433, 441 ["The questioning was conducted by groups of officers."].
[20] (1960) 361 U.S. 199, 207.
[21] See *People v. Coffman* (2004) 34 Cal.4th 1, 54.
[22] *People v. Cunningham* (2015) 61 Cal.4th 609, 644.
[23] *People v. Carrington* (2009) 47 Cal.4th 145, 175. Also see *People v. Peoples* (2016) 62 Cal.4th 718, 741 [Ten hour interview but defendant "was given numerous breaks, drinks, and food"]; *People v. Linton* (2013) 56 Cal.4th 1146, 1178 [two hour and 15 minute interview, "multiple breaks were taken"].
[24] *Fare v. Michael C.* (1979) 442 U.S. 707, 727.
[25] *People v. Perdomo* (2007) 147 Cal.App.4th 605, 618.
[26] *People v. Benson* (1990) 52 Cal.3d 754, 780 [edited quote from trial judge].

- "[The officers'] manner of presentation of evidence compared favorably with the presentation of evidence by well-behaved lawyers in court. Neither in tone nor tempo nor decibel does coercive pressure appear."[27]

This does not mean that officers must be friendly or dispassionate. On the contrary, the courts have consistently rejected arguments that coercion resulted merely because the officers were persistent, or because the suspect was subjected to "intellectual persuasion," "searching questions," "confrontation with contradictory facts," "loud, aggressive accusations of lying," "loud and forceful speech," "harsh questioning," or "tough talk."[28] As the Fourth Circuit observed, "Numerous cases reiterate that statements by law enforcement officers that are merely 'uncomfortable' or create a 'predicament' for a defendant are not ipso facto coercive."[29]

Threats and promises

Regardless of the general atmosphere of an interrogation, officers will almost always be deemed to have utilized coercion if they threatened to take some punitive action against the suspect if he did not make a statement, or if they promised him something he wanted if he did. But before we discuss specific threats and promises, it is necessary to take note of the following general principles pertaining to the subject:

THREATS VS. PROMISES: There is no significant difference between a threat and a promise. For example, a promise that a suspect will receive a lenient sentence if he gave a statement is an implied threat that he would get a harsh one if he refused.[30]

EXPLICIT VS. IMPLIED: A threat or promise may be explicit or implied.[31]

FALSE PROMISES: Although the courts sometimes speak of "false" or "broken" promises as being objectionable, it is the promise itself—not the failure to honor it—that generates coercion.[32]

DISCLAIMERS: Telling a suspect that officers do not have the authority to promise him anything with regard to charging, sentencing, or anything else is a circumstance that would tend to make it unreasonable for the suspect to believe he had been given a promise.[33] Nevertheless, such a disclaimer will have little, if any, effect if a promise can be reasonably implied.[34] For example, in ruling that a confession was involuntary, the court in *In re Roger C.* said, "While the interrogating officers used bare language informing Roger that they could not promise probation or parole, they made it crystal clear to him that he had no hope of anything other than incarceration if he did not confess."[35]

DISCUSSING POSSIBLE SENTENCES: This is where most of the problems arise because, regardless of whether sentencing was openly discussed, it is always lurking in the minds of perpetrators. It's also on the minds of the interrogators because, as one academic report described the problem, a "baffled questioner" who is getting nothing but "obstinate silence or evasive and impudent replies, is easily tempted to eke out his unsuccessful questions by threats."[36] Consequently, the subject of sentencing frequently arises, whether it was introduced by the perpetrator (who is looking for a deal) or by the officers (who are looking for a confession).

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[27] *People v. Andersen* (1980) 101 Cal.App.3d 563, 578.
[28] See *Haynes v. Washington* (1963) 373 U.S. 503, 515; *People v. Carrington* (2009) 47 Cal.4th 145, 175; *People v. Ditson* (1962) 57 Cal.2d 415, 433; *People v. Boyde* (1988) 46 Cal.3d 212, 242; *People v. Anderson* (1980) 101 Cal.App.3d 563, 576]; *In re Shawn D.* (1993) 20 CalApp.4th 200, 213; *In re Joe R.* (1980) 27 Cal.3d 496, 515.
[29] *U.S. v. Holmes* (4th Cir. 2012) 670 F.3d 586, 592-93.
[30] *People v. Cahill* (1994) 22 Cal.App.4th 296, 311.
[31] See *People v. Hill* (1967) 66 Cal.2d 536, 549; *People v. Vasila* (1995) 38 Cal.App.4th 865, 873.
[32] See *People v. Dominick* (1986) 182 Cal.App.3d 1174, 1192; *People v. Vasila* (1995) 38 Cal.App.4th 865, 875.
[33] See *People v. Groody* (1983) 140 Cal.App.3d 355, 359; *People v. Boyde* (1988) 46 Cal.3d 212, 239.
[34] See *People v. Anderson* (1980) 101 Cal.App.3d 563, 579.
[35] (1975) 53 Cal.App.3d 198, 203.
[36] IV National Commission on Law Observance and Enforcement, Report No. 11, Lawlessness in Law Enforcement, quoted in *Culombe v. Connecticut* (1961) 367 U.S. 574, fn. 7.

This does not mean that the subjects of charging and sentencing are off limits. It just means that officers must make sure that their comments about charging and sentencing are factual, which usually means noncommittal. That is because charging and sentencing decisions can be made only by prosecutors and judges respectively. For example, in ruling that an officer's comments pertaining to charging or sentencing were coercive, the courts have pointed out the following:

- "The clear implication of the officer's remarks was that unless defendant changed her story and confessed her true involvement in the crime, she would be tried for murder."[37]
- "They told him his only way out was to say [the shooting] was an accident. They implied by so saying he would not have to go to prison and would be out with his children."[38]
- "[D]efendant was given bald promises that, if he provided the necessary information, he would not be prosecuted federally and would be released from custody."[39]

In contrast, the courts ruled in the following two cases that the officer's remarks were noncommittal and were therefore not objectionable. In the first case, the officer said, "Well, it can go anywhere from, and this is just my opinion, I'm not telling you what's going to happen, it can go anywhere from 2nd degree murder to 1st degree murder. . . . If there's a trail of girls laying [sic] from here to Colorado, then it doesn't look too good for you."[40] In the second case, the court pointed out that the officer "merely offered his opinion that the person who committed a crime like the one for which defendant was under arrest would serve substantial time in prison, but probably less than 30 years. There was no mention of the effect of cooperation upon the time to be served."[41]

DISCUSSING THE DEATH PENALTY: While officers may inform a murder suspect that the crime under investigation may carry the death penalty,[42] they may not do so in a threatening manner or imply that he might avoid the death penalty by confessing.[43] Accordingly, the following remarks were deemed coercive:

- "[W]e can talk to the DA and you assist us in this investigation, you won't get the death penalty."[44]
- "Death penalty went back in today. Did you know that?"[45]
- "Right now the way it looks, it looks like robbery and murder. You know what robbery and murder is? Robbery and murder is a capital offense in California. An offense that you could go to the gas chamber."[46]

PROMISE TO RELEASE FROM CUSTODY: A statement motivated by a promise to immediately release the suspect from custody will ordinarily be deemed coerced.[47] For example, in *In re J. Clyde K.* the court concluded that the confession of a minor who had been detained for auto burglary was coerced because the officer promised him that if he told the truth he would be released with only a citation.[48]

THREATS AND PROMISES PERTAINING TO FRIENDS AND RELATIVES: A threat to take some punitive action against the suspect's friends or relatives is considered highly coercive, and so is a promise that a friend or relative would receive a benefit if the

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[37] *People v. McClary* (1977) 20 Cal.3d 218, 223.
[38] *People v. Esqueda* (1993) 17 Cal.App.4th 1450, 1486.
[39] *People v. Vasila* (1995) 38 Cal.App.4th 865, 875.
[40] *People v. Bradford* (1997) 14 Cal.4th 1005, 1044.
[41] *People v. Clark* (1993) 5 Cal.4th 950, 989.
[42] See *People v. Holloway* (2004) 33 Cal.4th 96, 115; *People v. Ray* (1996) 13 Cal.4th 313, 340.
[43] See *People v. Williams* (2010) 49 Cal.4th 405, 443.
[44] *People v. Williams* (1997) 16 Cal.4th 635, 659.
[45] *People v. Nicholas* (1980) 112 Cal.App.3d 249, 265.
[46] *People v. Flores* (1983) 144 Cal.App.3d 459, 466
[47] See *People v. Vasila* (1995) 38 Cal.App.4th 865, 874; *People v. Flores* (1983) 144 Cal.App.3d 459, 471-72; *People v. Azure* (1986) 178 Cal.App.3d 591, 602.
[48] (1987) 192 Cal.App.3d 710, 722.

suspect was cooperative.[49] On the other hand, officers may inform the suspect that he might be able to reduce or eliminate his friend's legal problems by giving a statement if (1) the officers reasonably believed that the friend was implicated in the crime under investigation; and (2), by making a statement, the suspect might have been able to reduce or eliminate his friend's difficulties. In the words of the First Circuit, "[A]n officer's truthful description of the family member's predicament is permissible since it merely constitutes an attempt to both accurately depict the situation to the suspect and to elicit more information about the family member's culpability."[50] For example, in rejecting arguments that such remarks were coercive, the courts have noted the following:

- "Defendant's comments about his wife, mother, and brother made them legitimate subjects of conversation."[51]
- "The officers believed that Nichols, and he alone, could implicate [his girlfriend] or exonerate her. In justice to her it was their duty to learn, if they could, whether her further detention was warranted and this required the interrogation of Nichols."[52]
- The officer's remark that "defendant's mother and wife might be subject to prosecution if it appeared that they had concealed defendant's presence" was "far short of a threat."[53]
- Officer: "[I]nformation hasn't come forward at this time which would cause me to release [Lisa]. See what I'm saying?" Court: These comments "seem clearly proper" because the officer had reason to believe that Lisa was implicated."[54]
- Officer: "[A]fter I get through talking to her and comparing what you told me with what she says, if I have reason to feel she's not involved in it, I'm sure as hell not going to book her."

DISCUSSING MITIGATING CIRCUMSTANCES: Officers may point out to the suspect that the punishment for the crime under investigation may depend on the role he played in its commission and his state of mind. Although there is an implication that he might be better off if he explained any mitigating circumstances, such an appeal is not objectionable if nothing specific was promised or threatened. For example, in ruling that such comments were not coercive, the courts have noted the following:

- "[The detective's] suggestions that the Gleason homicide might have been an accident, a self-defensive reaction, or the product of fear, were not coercive; they merely suggested possible explanations of the events and offered defendant an opportunity to provide the details of the crime. This tactic is permissible."[55]
- "The comments explain the possible consequences, depending upon his motivation and involvement in the shooting, and as such do not constitute threats or false promises of leniency."[56]
- The officer's statement that "a showing of remorse is a factor which mitigates punishment" was "no more than a truthful legal commonplace with which all persons familiar with criminal law would agree."[57]

"WE'LL TELL THE JUDGE, DA": Interrogators frequently promise the suspect that they would notify prosecutors or the judge that he was cooperative and had given a truthful statement. Although there might be an implication that such cooperation will result in some benefit, it is not considered an implied promise of leniency so long as the officers did not indicate that the prosecutor or judge would

[49] See *People v. Steger* (1976) 16 Cal.3d 539, 550; *People v. Dowdell* (2014) 227 Cal.App.4th 1388, 1403.
[50] *U.S. v. Hufstetler* (1st Cir. 2015) 782 F.3d 19, 24.
[51] *People v. McWhorter* (2009) 47 Cal.4th 318, 350.
[52] *People v. Abbott* (1958) 156 Cal.App.2d 601, 605.
[53] *People v. Kendrick* (1961) 56 Cal.2d 71, 86.
[54] *People v. Thompson* (1990) 50 Cal.3d 134, 169.
[55] *People v. Carrington* (2009) 47 Cal.4th 145, 170. Also see *People v. Esqueda* (1993) 17 Cal.App.4th 1450, 1485.
[56] *People v. Maestas* (1987) 194 Cal.App.3d 1499, 1507.
[57] *People v. Andersen* (1980) 101 Cal.App.3d 563, 579.

do something specific in return.[58] For example, in rejecting arguments that such a remark constituted an implied promise, the courts have noted the following:

- "The interviewing officers did not suggest they could influence the decisions of the district attorney, but simply informed defendant that full cooperation might be beneficial in an unspecified way."[59]
- "Because none of the detectives' statements indicated that the district attorney would act favorably in specific ways if appellant cooperated, they did not constitute impermissible promises of favorable action."[60]
- [The detective's] promise to talk to the district attorney about 'special consideration' for appellant, and his statement that one such consideration might be for the district attorney to charge only one burglary, was no more than the pointing out of benefits which might result naturally from a truthful and honest course of conduct."[61]
- "[The detective] told defendant the district attorney would make no deals unless all of the information defendant claimed to have was first on the table. We conclude no implied promise of a 'deal' or leniency resulted from these conversations."[62]

In contrast, an implied threat may be found if officers told the suspect that they would notify the DA or judge if he *refused* to give a statement or *failed* to demonstrate remorse.[63]

Interrogation tactics

In the course of an interview, officers will often employ standard or improvised interrogation tactics. While this might give them a psychological advantage, it is seldom deemed coercive because, as the California Supreme Court observed, "Although adversarial balance, or rough equality, may be the norm that dictates trial procedures, it has never been the norm that dictates the rules of investigation and the gathering of proof."[64] To put it another way, "There is no constitutional right to a clumsy or inexperienced questioner."[65] Some examples:

GOOD COP-BAD COP: The "good cop-bad cop" routine is not considered coercive,[66] unless the bad cop gets carried away and makes threats or utilizes some other form of coercion.[67]

SYMPATHY: An officer's expression of sympathy for a suspect will not render a statement involuntary because an understanding attitude, even when feigned, is not coercive.[68] As the Fifth Circuit noted, "[T]here is nothing inherently wrong with efforts to create a favorable climate for confession."[69]

ACCUSE OF LYING: It is not inherently coercive to accuse the suspect of lying.[70] "Loud, accusations of lying," said the California Supreme Court, "do not, in and of themselves, constitute coercive threats."[71]

LIES AND DECEPTION: With one exception (which we will discuss later), an officer's act of lying to the suspect will not render a subsequent statement involuntary even if the lie motivated him to talk.[72] Although certain kinds of lies—such as "We found

[58] See *People v. Ramos* (2004) 121 Cal.App.4th 1194; *People v. Jones* (1998) 17 Cal.4th 279, 298.
[59] *People v. Carrington* (2009) 47 Cal.4th 145, 174.
[60] *People v. Hurd* (1998) 62 Cal.App.4th 1084, 1091.
[61] *People v. Groody* (1993) 140 Cal.App.3d 355, 359.
[62] *People v. Seaton* (1983) 146 Cal.App.3d 67, 74.
[63] *U.S. v. Tingle* (9th Cir. 1981) 658 F.2d 1332, 1336, fn.5.
[64] *People v. Jones* (1998) 17 Cal.4th 279, 297.
[65] *People v. Jones* (1998) 17 Cal.4th 279, 297.
[66] See *Miller v. Fenton* (3d Cir. 1986) 796 F.2d 598, 607.
[67] See *Martin v. Wainwright* (11th Cir. 1995) 770 F.2d 918, 925 ["bad" cop "discussed the death penalty"].
[68] See *People v. Jablonski* (2006) 37 Cal.4th 774, 815; *People v. Bradford* (1997) 14 Cal.4th 1005, 1043.
[69] *Hawkins v. Lynaugh* (5th Cir. 1988) 844 F.2d 1132, 1140.
[70] See *People v. Enraca* (2012) 53 Cal.4th 735, 755; *People v. Johns* (1983) 145 Cal.App.3d 281, 292.
[71] *In re Joe R.* (1980) 27 Cal.3d 496, 515.
[72] See *Illinois v. Perkins* (1990) 496 U.S. 292, 297; *People v. Maury* (2003) 30 Cal.4th 342, 411; *People v. Lee* (2002) 95 Cal.App.4th 772, 785 ["it is sometimes necessary to use deception to get at the truth."].

your fingerprints on the gun"—will probably increase the amount of pressure on the suspect, the courts do not view these types of lies as inherently coercive. The following are examples of lies that were not deemed coercive:

- You've been ID'd by a witness.[73]
- We saw your car on a surveillance video that was taken near the murder scene near the time of the murder.[74]
- Your semen was found on the body of the victim.[75]
- Your fingerprints were found on the victim's neck.[76]
- Your accomplice confessed.[77]

EXPLOITING A PSYCHOLOGICAL VULNERABILITY: As noted, there is one exception to the permissible use of lies and deception. It is this: A statement motivated by an officer's lies will be deemed involuntary if (1) the officer employed a type of deception that was reasonably likely to "procure an untrue statement," and (2) the suspect's mind was so disordered that he was unusually susceptible to the influences of others.[78] Consequently, a court might rule that, under these circumstances, the suspect's lack of confidence in his mind's ability to apprehend reality might cause him to accept the officer's repeated lies as the truth.

In one of the rare cases in which this happened, *People v. Hogan*,[79] the confession of a rape-murder suspect was ruled involuntary mainly because, (1) he was "sobbing uncontrollably," and was so emotionally distraught that he had vomited; (2) the officers repeatedly suggested to him that he was unquestionably guilty and mentally ill; and (3) the certainty of his guilt "was suggested by deceptive references to nonexistent eyewitnesses."

RELIGIOUS APPEALS: Although the courts have sometimes expressed displeasure with an officer's use of a religious appeal, it is not apt to be deemed coercive unless officers were aware that the suspect was particularly vulnerable to a religious appeal and they exploited that vulnerability.[80]

PLAYING ACCOMPLICES AGAINST ONE ANOTHER: When two or more suspects have been arrested for a crime, officers are often able to make good use of a perpetrator's natural distrust of his accomplices.[81] For example, officers may be able to motivate a suspect into giving a statement by notifying him that his accomplice had already confessed and had implicated the suspect. As the court stated in *People v. Long*, "Good faith confrontation with the confessions of other accomplices is an interrogation technique possessing no apparent constitutional vice."[82]

Another option is to point out the relative legal difficulties between the suspect and his accomplice. In situations where an accomplice might have committed a more serious crime than the suspect, officers may sometimes tell the suspect that he would be better off if he admitted his "lesser" involvement.

For example, in *People v. Garcia*[83] the defendant drove the getaway car used in a robbery-murder that was committed by a friend named Orlando. After Garcia was arrested, an officer told him, "If you guys were doing a robbery, he shot the guy, he panicked or whatever, that's the price he's going to have to pay. We're going to focus our thing on him—Orlando. But there's no sense you going down the way he is, that far down with him as the trigger man." In ruling that the officer's remarks did not render Garcia's subsequent confession involuntary, the California Supreme Court pointed

[73] *People v. Williams* (2010) 49 Cal.4th 405, 442-43. Also see *People v. Richardson* (2008) 43 Cal.4th 959, 993.
[74] *People v. Johnson* (2010) 183 Cal.App.4th 253, 295.
[75] *People v. Davis* (2009) 46 Cal.4th 539, 601, fn.5.
[76] *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1241.
[77] *Frazier v. Cupp* (1969) 394 U.S. 731, 739; *In re Shawn D.* (1993) 20 Cal.App.4th 200, 213.
[78] See *People v. Felix* (1977) 72 Cal.App.3d 879, 886.
[79] (1982) 31 Cal.3d 815.
[80] See *Brewer v. Williams* (1977) 430 U.S. 387, 403; *People v. Montano* (1991) 226 Cal.App.3d 914, 935.
[81] See *People v. Ditson* (1962) 57 Cal.2d 415, 433.
[82] (1970) 6 Cal.App.3d 741, 748. Also see *People v. Robinson* (1969) 274 Cal.App.2d 514, 520-1.
[83] (1984) 36 Cal.3d 539.

out that the officer's comment "does not constitute an offer of leniency on the part of the police or the prosecution in return for a confession; it advised defendant that an accomplice is generally better off than a triggerman. That was sound advice."

CONFRONTING WITH EVIDENCE: Officers are, of course free to confront suspects with evidence that proves or tends to prove they are guilty. "[G]ood faith confrontation," said the Court of Appeal, "is an interrogation technique possessing no apparent constitutional vices."[84]

WITHHOLDING INFORMATION: A statement is not involuntary merely because officers withheld information from the suspect that might have made him less apt to confess or otherwise talk with them; e.g., that witnesses were unable to ID him at a lineup.[85] Similarly, it is not inherently coercive to warn a suspect that he might be charged as an accessory if he withheld information about the crime or the perpetrator.[86]

LEADING QUESTIONS: A question is "leading" if it suggested a certain answer, usually an incriminating one; e.g., "You were the one who planned the holdup, weren't you?" (leading); "Who planned the holdup?" (not leading). While it is relevant that the suspect made the statement in response to an officer's leading questions, it is not a significant circumstance.[87]

The Suspect's Power of Resistance

If a court finds that an officer's words or actions constituted coercion, it will then determine whether there were any circumstances that would have increased the suspect's ability to resist it.[88] If so, the statement might be deemed voluntary. Similarly, if the court determines that the officer's words or actions were on the borderline, the suspect's ability or inability to resist may determine whether the suspect was coerced. As the Supreme Court observed, "As interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the 'voluntariness' calculus."[89] In making these determinations, the courts will consider the following:

Reduced ability to resist

YOUNG SUSPECTS: The suspect's young age may be a factor because interrogation methods and surrounding circumstances "are all likely to have a more coercive effect on a child than an adult."[90] The courts understand, however, that chronological age is not always a reliable indicator of how the suspect was able to deal with pressure, as some minors are quite hardened and are not the least bit intimidated by officers or other authority figures.

It should be noted that, as we reported in the Fall 2015 edition, a certain California court, in a highly irregular case, attempted to establish a *per se* rule that all statements by minors were involuntary or at least presumptively unreliable.[91] The court's analysis of the facts was, however, so distorted that it has so far had no persuasive power on any other court. Consequently, we think California courts will continue to apply the principle announced in *In re Jessie L*, that "[a] minor has the capacity to make a voluntary confession. The admissibility of such a statement depends not upon his age alone but a combination of that factor with other circumstances such as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statements."[92]

LOW INTELLIGENCE, MENTAL DISABILITY: A suspect's low IQ or mental disorder are relevant to the issues

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[84] *People v. Andersen* (1980) 101 Cal.App.3d 563, 576. Also see *People v. Thomas (2011)* Cal.App.4th 987, 1011-12.
[85] See *Colorado v. Spring* (1987) 479 U.S. 564, 577; *People v. Boyette* (2002) 29 Cal.4th 381, 411.
[86] See *People v. Hernandez* (2009) 178 Cal.App.4th 1510, 1539.
[87] See *People v. Cox* (1990) 221 Cal.App.3d 980, 986.
[88] See *Yarbrough v. Alvarado* (2004) 541 U.S. 652, 667-688; *People v. Rundle* (2008) 43 Cal.4th 76, 114.
[89] *Colorado v. Connelly* (1986) 479 U.S. 157, 164.
[90] *In re Aven S.* (1991) 1 Cal.App.4th 69, 75.
[91] See *In re Elias V.* (2015) 237 Cal.App.4th 568.
[92] (1982) 131 Cal.App.3d 202, 215.

of whether he could understand his rights, whether his mental state would have caused him to view the surrounding circumstances as more threatening or coercive, and also whether officers exploited the suspect's mental state to obtain a statement.[93] As the Eighth Circuit observed, "Although lack of education and lower-than-average intelligence are factors in the voluntariness analysis, they do not dictate a finding of involuntariness, particularly when the suspect is clearly intelligent enough to understand his constitutional rights."[94]

For example, in rejecting claims that a mental deficiency rendered a statement involuntary, the courts have noted the following:

- Although the suspect "suffers from ADHD and other mental disabilities," there is "no evidence that [he] was, in fact, suggestible or confused."[95]
- Suspect was 16-years old "functioning as an 11-year old, thinking in concrete, not abstract terms," had a "borderline normal IQ," and "could not simultaneously handle several variables, such as the *Miranda* warnings"; but his statement was voluntary mainly because "there were no promises of lenient treatment, nor an unduly long interrogation."[96]
- Even though the suspect had an IQ of 80 and the understanding of a 10-year old, "[t]here was no atmosphere of coercion, no prolonged questioning or coercive tactics, no threats or promises of leniency. He was not threatened, tricked or cajoled into a waiver by any promise of the police."[97]
- "Here although defendant's intelligence was very low, there is no showing whatever that he truly did not want to talk, or that his desire was in any way overcome by reason of the police or anyone else taking unfair or unlawful advantage of his ignorance, mental condition, or vulnerability to persuasion."[98]

DRUGS AND ALCOHOL: While a suspect's consumption of drugs, alcohol, or both will affect his mental alertness, it is not a significant circumstance unless he was severely impaired.[99] Thus, in *U.S. v. Coleman* the Ninth Circuit noted that "[a]lthough Defendant's heroin withdrawal caused lethargy and physical discomfort, such symptoms alone are insufficient to establish involuntariness."

ILLNESS, INJURIES: Illness or injuries may make the suspect more vulnerable, especially if he was also under the influence of medication that would have caused a significant impairment in his mental faculties; e.g., the suspect had been shot and had arrived at the hospital depressed almost to the point of coma" and he "complained to [the officer] that the pain in his leg was 'unbearable.'"[100]

DISTRAUGHT, DEPRESSED: It is relevant, but seldom significant, that the suspect was distraught or depressed because he had committed a heinous crime or was upset because he had been apprehended.[101]

FATIGUE: Just as a suspect's intelligence or mental disorder might make the surrounding circumstances appear more coercive, so might physical and mental fatigue.[102] Like the other relevant circumstances, however, some circumstances may

[93] See *United States v. Mendenhall* (1980) 446 U.S. 544, 558 ["respondent, who was 22 years old and had an 11th-grade education, was plainly capable of a knowing consent"]; *Yarborough v. Alvarado* (2004) 541 U.S. 652, 668 [relevant circumstances include the suspect's education].
[94] *U.S. v. Vinton* (8th Cir. 2011) 631 F.3d 476, 482.
[95] *In re Joseph H.* (2015) 237 Cal.App.4th 517, 535. Also see *People v. Thomas* (2012) 211 Cal.App.4th 987, 1013.
[96] *People v. Anthony J.* (1980) 107 Cal.App.3d 962.
[97] *In re Brian W.* (1981) 125 Cal.App.3d 590.
[98] *In re Norman H.*,(1976) 64 Cal.App.3d 997, 1003.
[99] See *People v. Perdomo* (2007) 147 Cal.App.4th 605, 617; *People v. Cox* (1990) 221 Cal.App.3d 980; *People v. Garcia* (1964) 227 Cal.App.2d 345, 350-51 *People v. Brewer* (2000) 81 Cal.App.4th 442, 456.
[100] *Mincey v. Arizona* (1978) 437 U.S. 385, 398. Also see *Reck v. Pate* (1961) 367 U.S. 433, 441-42; *People v. Adams* (1983) 143 Cal.App.3d 970, 985. Compare *People v. Barker* (1986) 182 Cal.App.3d 921, 934.
[101] See *People v. Spears* (1991) 228 Cal.App.3d 1, 27-28; *People v. Richardson* (2008) 43 Cal.4th 959, 993.
[102] See *Spano v. New York* (1959) 360 U.S. 315, 322; *People v. Hensley* (2014) 59 Cal.4th 788, 814.

reduce the significance of fatigue. As the California Supreme Court said in *People v. Anderson,* "Although [defendant] testified that he had been awake for 30 hours prior to confessing, other facts support a finding of voluntariness, including his age at the time of the offense (27), his high IQ (136), and his reflective actions during the course of the offenses charged, including the careful and methodical way in which he obtained entry into [the victim's] house only a few hours prior to his confession."[103]

LENGTHY INTERROGATIONS: While the length of the interview is related to physical and mental fatigue, it is seldom a significant factor if the suspect was not particularly vulnerable, and if he was given periodic breaks. This subject of breaks is covered under "Increased ability to resist," below.

LENGTHY PRE-INTERVIEW DETENTION: It is sometimes necessary or desirable to keep a suspect waiting in an interview room before questioning him. Like the length of the interview itself, this is seldom a significant circumstance unless the wait was excessive, or if officers neglected to check with him occasionally to see if he needed anything, or if the suspect was especially vulnerable to being left alone.[104]

Increased ability to resist

In contrast to the circumstances that tend to increase a suspect's vulnerability, the following tend to indicate that the suspect had an increased ability to resist the pressures of interrogation.

RATIONAL ANSWERS: The suspect's answers to the officers' questions were responsive and coherent. For example, in rejecting claims of coercion, the courts have noted that "his answers were intelligible,"[105] "[e]ach of appellant's answers is appropriate to the question asked,"[106] and that the suspect's answers to the officers' questions were "clear" and "responsive."[107]

COMPOSURE: The suspect seemed composed during questioning. Thus, the courts have noted that the suspect "spoke with confidence,"[108] he appeared to be "calm, prepared, and intent on presenting a coherent and sympathetic version of his [defense],[109] he "did not become confused, break down of lose his general composure."[110]

HARDENED, "STREET WISE": The suspect was "a street kid, street man, in his 'early 20's, big, strong, bright, not intimidated by anybody. [111] It is also relevant that the suspect had been arrested on numerous occasions and had therefore become accustomed to interacting with officers.[112]

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[103] (1990) 52 Cal.3d 453, 470.
[104] See *People v. Dykes* (2009) 46 Cal.4th 731, 753; *In re Aven. S.* (1991) 1 Cal.App.4th 69, 77.
[105] *Colorado v. Connelly* (1986) 479 U.S. 157 160-62.
[106] *People v. Perdomo* (2007) 147 Cal.App.4th 605, 618.
[107] *U.S. v. Dehghani* (8th Cir. 2008) 550 F.3d 716, 721.
[108] *People v. Carrington* (2009) 47 Cal.4th 145, 175. Also see *People v. McWhorter* (2009) 47 Cal.4th 318, 360 defendant's "maturity and ability to again handle himself in a fashion that reflects maturity and sophistication and articulation served to cleanse any taint"]; *People v. Higareda* (1994) 24 Cal.App.4th 1399, 1409 ["appellant appeared calm, not frightened or scared"]; *In re Aven S.* (1991) 1 Cal.App.4th 69, 77 [minor "remained calm and in control of himself throughout the interview process"]; *People v. Bradford* (1997) 14 Cal.4th 1005, 1041 [the trial judge said, "There isn't any excitement in the voice. There isn't any nervousness particularly. There isn't any outward sign of stress. It is just a straight account of what happened"].
[109] *People v. Storm* (2002) 28 Cal.4th 1007, 1036.
[110] *People v. Johns* (1983) 145 Cal.App.3d 281, 293.
[111] *People v. Williams* (1997) 16 Cal.4th 635. 659. Also see *Stein v. New York* (1953) 346 U.S. 156, 185-86 ["These men were not young, soft, ignorant or timid."]; *In re Juan H. v. Allen* (9th Cir. 2005) 408 F.3d 1262, 1273 ["Juan H. stood his ground. The minor remained in control of his responses during the interrogation"].
[112] See *United States v. Watson* (1976) 423 U.S. 411, 424 ["There is no indication in this record that [the suspect] was a newcomer to the law"]; *Stein v. New York* (1953) 346 U.S. 156, 185 ["What would be overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal."]; *People v. Cunningham* (2015) 61 Cal.4th 609, 644 [defendant had "served two prior prisoner terms and one prior county jail term"]; *People v. Dowdell* (2014) 227 Cal.App.4th 1388, 1404 ["Because of his sophistication and experience with the criminal justice system, Lincoln knew the officers' implicit promises were hollow."]; *People v. Vance* (2010) 188 Cal.App.4th 1182, 1211 ["defendant was hardly a terrified novice"].

LYING, CRAFTY SUSPECT: The suspect lied to officers or was crafty in his responses to their questions. Some examples:

- "Satterwhite effectively parried the [detectives'] accusations and questions."[113]
- "[D]efendant was deceptive throughout the five-hour session and admitted to wrongdoing only when confronted with evidence or caught in a lie."[114]
- "Defendant admittedly lied to the detectives throughout the interview. This is not the behavior of one whose free will have been overborne."[115]
- Defendant "was keen enough to change his story" to fit the facts.[116]

SUSPECT LATER INVOKED: That the suspect subsequently invoked his *Miranda* rights tends to indicate that he was aware that he could stop the interview at any time, in which case it might be inferred that he did not feel unduly pressured when he spoke with the officers.[117]

The Motivating Cause

Even if the court rules that officers utilized coercion, a statement will not be suppressed if it reasonably appeared that it was not made in response to the coercion.[118] As the California Supreme Court explained, "Although coercive police activity is a necessary predicate to establish an involuntary confession, it does not itself compel a finding that a resulting confession is involuntary. The statement and the inducement must be causally linked."[119] To be more specific, a statement will not be suppressed unless the coercion played a "dominant role" in the suspect's decision to speak.[120] How do the court's determine the motivating cause of a statement? The following circumstances are especially relevant.

THE SUSPECT'S WORDS: In some cases, the suspect's own words will prove that he was not motivated by coercion; e.g., the suspect said he confessed because of his "desire to justify, excuse, or at least explain his problematic conduct,"[121] or because of "compunction arising from his own conscience,"[122] or because he wanted to "unburden himself."[123]

TIME LAPSE: It is significant that the suspect did not immediately respond to the coercive tactics but instead gave a statement after the passage of a significant amount of time and under circumstances that were not coercive.[124]

NO EXPLOITATION: The existence of coercive circumstances or a reduced ability to resist might be less apt to motivate the suspect to make a statement if officers did not exploit these circumstances.[125]

SUSPECT ACKNOWLEDGES VOLUNTARINESS: When a suspect gives a statement, officers will often ask him to acknowledge in writing or on a recording that he was not pressured or coerced. This is a good practice.[126] But such an acknowledgement will have little or no weight if it appeared the acknowledgement, itself, was coerced; or if there were other circumstances that cast doubt on the voluntariness of the statement.[127] POV

[113] *People v. Thomas* (2012) 211 Cal.App.4th 987, 1013.
[114] *People v. Nelson* (2012) 53 Cal.4th 367, 380. Also see *People v. Perdomo* (2007) 147 Cal.App.4th 605, 618.
[115] *People v. Johns* (1983) 145 Cal.App.3d 281, 293. Edited.
[116] *People v. Lewis* (2001) 26 Cal.4th 334, 383-84.
[117] See *People v. Richardson* (2008) 43 Cal.4th 959, 993; *U.S. v. Boskic* (1st Cir. 2008) 545 F.3d 69, 81.
[118] See *Colorado v. Connelly* (1986) 479 U.S. 157, 164; *People v. McCurdy* (2014) 59 Cal.4th 1063, 1088.
[119] *People v. Maury* (2003) 30 Cal.4th 342, 404-405.
[120] See *People v. Neal* (2003) 31 Cal.4th 63, 84.
[121] *People v. Mickey* (1991) 54 Cal.3d 612, 650. Also see *People v. Cunningham* (2015) 61 Cal.4th 609, 644.
[122] *People v. Benson* (1990) 52 Cal.3d 754, 782. Also see *People v. Ray* (1996) 13 Cal.4th 313, 341.
[123] See *People v. Rundle* (2008) 43 Cal.4th 76, 117. Also see *People v. Linton* (2013) 56 Cal.4th 1146, 1177.
[124] See *People v. Linton* (2013) 56 Cal.4th 1146, 1177; *People v. Scott* (2011) 52 Cal.4th 452, 480.
[125] See *People v. McWhorter* (2009) 47 Cal.4th 318, 360; *People v. Dykes* (2009) 46 Cal.4th 731, 753.
[126] See *People v. Belmontes* (1988) 45 Cal.3d 744, 772.
[127] See *Haynes v. Washington* (1963) 373 U.S. 503, 513; *People v. Andersen* (1980) 101 Cal.App.3d 563, 579.