QUESTIONING SUSPECTS

“[W]hen the police interview a suspect, they must skate a fine line.”

The “fine line” that officers must skate is the line between permissible interrogation methods and those that are so coercive as to render a subsequent statement involuntary. In fact, the term “involuntary” is simply a “convenient shorthand” that is used to describe any statement obtained by officers by means of impermissible interrogation methods.

As a practical matter, the problem of permissible versus impermissible interrogation methods arises in only one of the three types of interrogations. First are those rare interrogations in which the suspect really wants to give a full and truthful statement. This may occur, for example, if the suspect has figured that officers can prove he is guilty, so he might as well cooperate and hope for a some kind of a break, maybe a lighter sentence. Or the suspect may sincerely want to confess. This is sometimes the case when the person committed a particularly heinous crime. As one commentator observed, “The nervous pressure of guilt is enormous; the load of the deed done is heavy; the fear of detection fills the consciousness; and when detection comes, the pressure is relieved; and the deep sense of relief makes confession a satisfaction.”

On the other extreme are those suspects who will not give up anything. They may freely waive their Miranda rights but they will seldom say anything that is even remotely truthful.

Although officers who are questioning these two types of suspects probably won’t have to worry too much about their interrogation methods, the vast majority of suspects fall into a third category: These are the suspects who will reluctantly give officers some truth, maybe a lot of it, and occasionally all of it. But to get the truth, officers are going to have to, as the U.S. Supreme Court described it, “unbend their reluctance,” meaning they are going to have to work for it.

“Working” to obtain the truth invariably means pressuring the suspect to some extent. There is nothing wrong with this; pressure is an essential and proper interrogation tool. As the Court of Appeal observed, “When a person under questioning would prefer not to answer, almost all interrogation involves some degree of pressure.”

The problem is that too much pressure will render a statement involuntary—and therefore inadmissible. So the question is: How much pressure is too much?

If you look back in history you will find there were times when no amount of pressure was “too much”—suspects who did not confess were simply tortured until they did. Even in the early-to-mid 1900’s, interrogating officers were routinely utilizing brutal “third degree” tactics which included “beatings and physical abuse and the brainwashing that comes from repeated suggestion and prolonged interrogation.” The success rate of these interrogations was
remarkably high, although some of the people who “confessed” were undoubtedly innocent. As noted by the Court of Appeal, “[W]hen sufficient pressures are applied most persons will confess, even to events that are untrue.”

To modern society, such tactics are barbaric and “revolting to the sense of justice.” They are not tolerated, no matter how serious the crime or how despicable the suspect. If reasons for this intolerance are needed, there are plenty. Besides the sickening problem of false confessions, coerced statements are inherently unreliable. Moreover, the use of coercive tactics “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.” In the words of the United States Supreme Court:

“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; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.”

So, then, what interrogation methods—what forms of pressure—are permissible? The answer to that question is the subject of this article.

Keep in mind this can be a difficult area of the law for at least two reasons. First, there are no simple rules or “pressure gauges” that can be utilized to determine when things are starting to get coercive; there are just too many variables. As Justice Frankfurter observed in *Haley v. Ohio*, “Unhappily, we have neither physical nor intellectual weights and measures by which judicial judgment can determine when pressures in securing a confession reach the coercive intensity that calls for the exclusion of a statement so secured.”

Second, an officer’s decision as to how to interrogate a suspect—what to say and do—must be made under circumstances that seldom allow for calm and deliberate judgment. Officers must respond quickly to the suspect’s words, his changing moods, his various ploys, and all sorts of other intangibles. In addition, they must frequently deal with their own anger and frustration caused by “excess of zeal or aggressive impatience or flaring up of temper in the face of obstinate silence.”

Adding to these pressures on officers is their knowledge that a confession or admission may be essential to solving the case. As noted in *People v. Ditson*, “The perpetrator of a crime is normally the one who knows most about it, and his confession, voluntarily made, is often the best evidence of his guilt that can be obtained.” In other words, “confessions elicited during the course of police questioning often seal a suspect’s fate.”

Before we begin, a word about *Miranda*; specifically, how does the subject of voluntariness interact with *Miranda*? After all, if the suspect has been told he can stop the interview whenever he wants, shouldn’t that eliminate the problem of coerced confessions? In most cases, yes. As the U.S. 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.” But sometimes officers intentionally or inadvertently put so much pressure on a
suspect that *Miranda* is an insufficient pressure valve. In those cases, the courts look to the law of voluntariness to determine whether the suspect’s statement will be admissible. ¹⁸

**WHAT IS VOLUNTARINESS?**

Although the courts have been pondering the subject of voluntariness since at least the 18ᵗʰ Century,¹⁹ they have had difficulty defining the term.²⁰ The word “voluntariness” seems to suggest the statement must have been spontaneous or even impulsive. But that is not the case. As Justice Frankfurter observed, “A statement to be voluntary of course need not be volunteered.”²¹

The most common definition today is that a statement is “voluntary” if it was the product of a “rational intellect and a free will.”²² Another often-quoted definition is that a voluntary statement is one that was the result of an “essentially free and unconstrained choice.”²³

Not only are these definitions vague, they are misleading. If criminals could give voluntary statements only if they had “rational” and unburdened intellects, we would be lucky to get five or six admissible statements a year.²⁴ Moreover, as the U.S. Supreme Court observed in *Colorado v. Connelly*, to require that a confession be the result of a totally rational and unencumbered mind would “establish a brand new constitutional right—the right of a criminal defendant to confess to his crime only when totally rational and properly motivated.”²⁵

These definitions are also misleading because, by focusing on the suspect’s mental state, they divert attention away from where it belongs—on the interrogating officers; specifically, their words and actions.²⁶ The U.S. Supreme Court has been very clear on this point: for a statement to be deemed involuntary, there must be “police overreaching,” which is to say “coercive police activity.”²⁷ 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 . . . .”²⁸

For instance, a statement will not be deemed involuntary merely because the suspect was under the influence of drugs or alcohol, or was mentally unbalanced.²⁹ As we will discuss later, the suspect’s state of mind may be relevant in determining the coercive impact the officers’ words and actions may have had on the suspect. But without misconduct or coercive pressure attributable to the interrogating officers, a statement simply cannot be involuntary.

It could be argued that it is inherently coercive for officers to ask the perpetrator of a crime a question which, if answered truthfully, would incriminate him. Even if the perpetrator is going to lie, he will experience a lot of pressure. For example, he must quickly determine what to say, and he must mentally review his previous answers to avoid being inconsistent. He must also make sure his answers fit with any witness statements or physical evidence he knows about. This is *real* pressure. But it’s not the kind of pressure that is of concern to the courts.

What concerns the courts is the kind of pressure that causes the suspect’s decision-making process to short-circuit—the kind of pressure that *compels* him to answer a question and strips him of his ability to resist. Better yet, it’s the kind
of pressure that acts as a “suction process” that has “drained [the suspect’s] capacity for freedom of choice.”

An extreme example would be a threat to kill the suspect unless he confessed. A less extreme method (but also effective) would be a threat to arrest the suspect’s mother or wife if he did not confess. In each of these situations, the suspect’s confessions would be involuntary because, although he could have remained silent, the pressure to confess was too compelling.

**PSYCHOLOGICAL PRESSURE**

Although physical coercion was used, sometimes routinely, to obtain statements in the past, physical abuse of any sort is now considered so vile—so utterly indefensible—that it is almost unheard of. As the result, most claims of involuntariness are now based on alleged psychological coercion.

While not as brutal as physical coercion, psychological coercion is still coercion, which makes it illegal. As the U.S. Supreme Court noted, “[C]oercion can be mental as well as physical, and the blood of the accused is not the only hallmark of an unconstitutional inquisition.” Or, as the point is sometimes made, “[T]he efficiency of the rack and the thumbscrew can be matched, given the proper subject, by more sophisticated modes of persuasion.”

Although psychological coercion is not permitted, officers are free to apply “moral and psychological pressures to confess.” The question, then, is this: At what point does permissible psychological pressure become impermissible psychological coercion?

To answer this question, it is necessary to examine the totality of circumstances surrounding the interview. While there are rare cases in which one circumstance was so coercive that it rendered all subsequent statements involuntary, in most cases it takes a combination of circumstances. As the Court of Appeal wrote in *People v. Andersen*:

“Both the defense and the prosecution have extracted sentences and phrases from the interview and presented them in disembodied form separated from the remainder of the interview as evidence of the presence or absence of coercion. We do not think the interview can be properly analyzed in such piecemeal fashion. Rather it must be considered as a whole in the context of the development of the dialogue between interviewers and interviewee and in light of the totality of circumstances surrounding the confession.”

Consequently, to determine whether a statement was involuntary, the courts must examine the various circumstances surrounding the interview and the likely affect of these circumstances on the suspect.

**THE SUSPECT:**

**Mental and Physical Condition**

Although the voluntariness of a statement depends on what the interrogating officers said or did, the suspect’s physical and mental condition is a relevant circumstance because it tends to show the impact of the interrogation methods on the suspect. As the U.S. Supreme Court noted, “[A]s 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.”

For example, a suspect in good mental and physical condition has a greater “power of resistance”41 to the pressures of interrogation than a suspect who is physically or mentally drained. Consequently, the following circumstances are considered relevant.

**Suspect’s Age:** The suspect’s age usually becomes a factor only when the suspect is very young. As noted by the Court of Appeal, “The age of a minor may color all or most aspects of a court’s analysis of voluntariness” because interrogation methods and surrounding circumstances “are all likely to have a more coercive effect on a child than an adult.”

The courts also understand, however, that chronological age is not always a reliable indicator of how the suspect dealt with pressure. Some minors are quite hardened and are not the least bit intimidated by officers or any other authority figures. Consequently, while age is noted, it is seldom a pivotal circumstance.

**Suspect’s Maturity, Composure:** A suspect’s maturity is frequently noted, especially when the suspect is a minor. Similarly, the suspect’s calmness and composure while being questioned are indications he was not unduly pressured. As the court noted in *People v. Johns*, “Defendant did not become confused, break down or lose his general composure under the detectives’ close questioning.”

**Suspect’s Education:** Although not an important circumstance, the courts often note the extent of the suspect’s education.

**Intelligence, Mental Disorder:** A suspect’s low intelligence or mental disorder are relevant mainly to the issues of whether he could understand his rights, whether his mental state would have caused him to view the surrounding circumstances as coercive, and (most importantly) whether officers exploited the suspect’s mental state to obtain a statement.

For example, in *In re Brian W.*, the court ruled the statement of a 15-year-old boy was voluntary even though he had an IQ of 80 and the understanding of a 10-year-old. As the court pointed out, the minor clearly understood his rights and “truly wanted to talk to [the officers].” Furthermore, the court noted, “There 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.”

Similarly, in *In re Anthony J.*, the defendant was a 16-year-old who, according to a defense psychiatrist, “was 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.” Nevertheless, the court ruled his statement was voluntary mainly because “there were no promises of lenient treatment, nor an unduly long interrogation. . . . [According to a prosecution expert], defendant was able to understand and waive his rights and was not a ‘suggestible’ individual.”

**Mental Fatigue:** Just as a suspect’s intelligence or mental disorder, might make the surrounding circumstances appear more coercive, so might more subtle and temporary mental and physical conditions such as depression, exhaustion, extreme nervousness, and hunger. For example, in ruling a
murder suspect’s statement was involuntary, the court in People v. Esqueda noted, among other things, “Esqueda was emotionally distraught and exhausted, yet [the interrogating officers] unremittingly pressured their prey until he finally yielded.”52

While mental fatigue might make a suspect more susceptible to coercive influences, his mental alertness may have the opposite affect. For example, in People v. Andersen the court pointed out, “[T]here is no evidence that defendant was overcome by exhaustion or worn down by physical pressures or physical deprivations which would exert a coercive effect on her will to resist.”53

Even if the suspect was not mentally alert, the affect may be counteracted by other circumstances. For example, in People v. Anderson54 the defendant, who was arrested shortly after he shot and killed a woman during a burglary, contended his confession was involuntary because he was suffering from sleep deprivation when he confessed. The court responded, “Although he 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.”

There are also certain things officers can do to reduce the affects of mental fatigue, such as making sure the suspect is not hungry or thirsty. For example, in People v. Boyd the court noted the suspect “was completely unnerved by an apparent attack of claustrophobia [in the holding cell], and in terror of being incarcerated in the Riverside County Jail. . . . [he was] very hyper, very nervous . . . .” Nevertheless, said the court, “The evidence does not indicate Boyde was so distraught that his will to resist confession was overborne. [A detective] testified that Boyde seemed to calm down after being removed to an interview room and being given coffee and a cigarette.”55

**DRUGS AND ALCOHOL:** The fact that the suspect was under the influence of drugs, alcohol, or both would certainly affect mental alertness, but such circumstances are not considered significant unless the suspect was severely impaired and the interrogating officers exploited his condition.56

**ILLNESS, INJURIES:** A suspect’s physical condition, such as illness, injuries, or pain, may make the suspect more mentally vulnerable to pressure, and is therefore a relevant circumstance.57

**Suspect’s Experience with Police, Courts:** The courts often note whether, and to what extent, the suspect had prior experiences with officers and courts. Of particular importance, is whether the suspect had been advised of their Miranda rights in the past and whether he had been questioned.58 These circumstances are relevant because suspects who have had some such experience may not be as susceptible to coercive influences as novices.59 As the court noted in upholding a confession in In re Aven S., “The minor, while young, was experienced in the ways of the juvenile justice system.”60

**Suspect Wanted to Talk:** The suspect’s willingness or even eagerness to talk is a circumstance that indicates the suspect is confident and more able to deal with pressure.61 For example, in People v. Bradford the trial court was
quoted as saying, “The tapes clearly indicate an eagerness to talk all right, and
just tell everything that probably could be told, so from that standpoint of
voluntariness, there isn’t any question about that.”

Also noteworthy is whether the suspect took an active role in the interview
by, for example, correcting the officers if they misstated something or
supplementing his answers. As the California Supreme Court pointed out in
People v. Mickey, “[I]t was generally defendant who was active and [the
officers] who were passive: he opened the discussion and directed its course;
they essentially responded.”

**LYING, CRAFTY SUSPECT:** The fact that the suspect lied to officers,
maintained his innocence, or was crafty in the way he handled the officers’
questions is inconsistent with the notion that he was overwhelmed by the officers’
interrogation methods and is, therefore, an indication there was no coercion.

For example, in People v. Johns the court pointed out, “[D]efendant admittedly
lied to the detectives throughout the interview. . . . This is not the behavior of one
whose free will has been overborne.”

Similarly, in People v. Belmontes the court noted, “Belmontes acknowledged
he lied in all three of his statements to police. He testified his intent during the
first statement was to deny everything: ’I was holding my mug.’ His intention in
his second statement was to tell enough of the truth so that he would be believed,
but no more than necessary. Defendant’s own behavior and testimony virtually
precludes a conclusion that his free will was overborne by the substance or
manner of the interrogation.”

**THE INTERVIEW:**
**Surroundings and Tactics**

We have now arrived at the heart of the issue. As a practical matter, the
voluntariness or involuntariness of a suspect’s statement is almost always
decided by just two things: the interrogating officers’ words, and their actions. All
the other circumstances—the suspect’s mental state, physical condition, and the
rest—are important, but only because they give meaning to what the officers said
and did.

To say that the officers’ words and actions must not be coercive is not to say
that officers must be friendly and dispassionate. Interrogation is not amiable
conversation; it is serious business with an urgent objective: to learn the truth
about a crime. Consequently, so long as officers are not coercive, they are free to
utilize all their experience, training, and skills to accomplish that objective. 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.” Or, as
the point was aptly expressed by the trial court in People v. Jones, “There is no
constitutional right to a clumsy or inexperienced questioner.”

On the contrary, suspects who are being questioned can expect
“determination and persistence,” “intellectual persuasion,” “searching
questions,” “confrontation with contradictory facts, even debate,” and other
forms of pressure. The problem, of course, is determining the point at which
rigorous but lawful interrogation becomes unlawful psychological coercion.
As we will now discuss, the following circumstances are highly relevant in making that determination.

Miranda waiver
The fact the suspect was advised of his Miranda rights and waived them is “a circumstance quite relevant to a finding of voluntariness." So is a supplementary Miranda advisement that the suspect has a right to terminate the interview at any time. “Indeed, it seems self-evident,” said the U.S. Supreme Court, “that one who is told he is free to refuse to answer questions is in a curious posture to later complain that his answers were compelled.”

Nevertheless, a Miranda waiver will seldom save a statement in the face of outright coerciveness. As noted by the Court of Appeal, “It cannot be seriously argued that such advice immunizes law enforcement officers from the legal effect of later coercive practices.”

Location of the interview
The location of the interview is a factor, but it is usually a rather insignificant one. Although police stations and interview rooms are considered “inherently coercive” this affect is usually sufficiently reduced or even eliminated by giving the suspect a Miranda warning and obtaining a waiver.

Length of the interview
The length of the interview is an important circumstance because lengthy interviews can wear down the suspect physically and mentally. However, the length of the interview is not nearly as significant as the surrounding circumstances. In the words of the California Supreme Court, “We are aware of no authority that would support a specific time limit on interrogation that would apply to all cases, regardless of their facts.”

For example, in People v. Hill the court ruled the questioning of a murder suspect for about eight hours over a 12-hour period was not unduly lengthy under the circumstances because, among other things, the questioning “took place during normal waking hours—from approximately 9:30 A.M. until 10 P.M. Defendant was promptly provided with food, beverages, and restroom breaks whenever he requested them . . . . The final session lasted only three hours.”

Moreover, any coercive affect of a lengthy interview may be eliminated if there were recesses or breaks. For example, in Hill, discussed above, the court noted the interview was conducted in five sessions with breaks between them that “were not of insignificant duration.” The court added, “defendant never once requested any break in the interrogation or asked that it be terminated. This weighs heavily against his claim of excessively long questioning.”

Number of officers
The number of officers who were present during questioning, especially the number of officers who actually questioned the suspect, are circumstances that are frequently noted by the courts because a relatively large number of officers may appear more coercive. Examples:
“[T]he eight- to nine-hour sustained interrogation [took place] in a tiny room which was upon occasion literally filled with police officers.”

“He was subjected to questioning not by a few men but [12 officers and two deputy district attorneys].”

“Five or six of the police questioned him in relays of one or two each.”

**Officers’ attitude**

The interrogating officers’ attitude and the overall tone of the interview are often noted by the courts. The following are examples:

“Everything totally aboveboard with the officers. No coercion, no harassment. No heavy-handedness. To the contrary, it was strangely cordial and somewhat light, and not at all heavy-handed in the approach that was taken. We don’t have any tough guy cop approach. We had to the contrary, officers who were patient and even-handed and fair in the way they approached their discussion.”

“The courtesy and politeness of the police officers was Chesterfieldian. Their manner of presentation of evidence compared favorably with the presentation of evidence by well-behaved lawyers in court. Neither the tone nor tempo nor decibel does coercive pressure appear. The conduct of the interview was so far removed from the third degree as it is possible to imagine.”

“Their questioning was restrained and free from the abuses that so concerned the Court in Miranda.”

“In the course of an interrogation the trial court found ‘low-key’ and ‘nonthreatening,’ defendant’s reply does not appear to have been coerced.”

“[The officer’s] role in eliciting the story was responsive rather than aggressive. . . .”

**Threats and promises**

Of all the circumstances that are relevant in determining whether a statement was voluntary, threats and promises cause the most problems. There are at least three reasons for this. First, the law on this subject is quite rigid: A statement is automatically involuntary if it was motivated by an express or implied threat or promise. As the court stated in People v. Vasila, “Where a person in authority makes an express or clearly implied promise of leniency or advantage for the accused which is a motivating cause of the decision to confess, the confession is involuntary and inadmissible as a matter of law.”

Second, threats and promises cause problems because, regardless of whether they are openly discussed, they are lurking behind virtually every interrogation. Suspects are frequently willing to give a true statement if they can get something in return, such as less prison time, reduced charges, or the release of a friend or relative. In other words, they want a promise.

Third, as officers become more and more frustrated with the suspect’s refusal to give a true statement, they may—sometimes without realizing it—resort to threats. As one report described the problem, “[T]he baffled questioner, getting obstinate silence or evasive and impudent replies, is easily tempted to eke out his unsuccessful questions by threats.”
Before discussing specific threats and promises, it will be helpful to briefly review certain general principles that pertain to the subject:

**GENERAL PRINCIPLES:** In determining whether a statement was motivated by a threat or promise, the courts apply the following general principles:

**EXPLICIT V. IMPLIED:** A threat or promise need not be explicit; an implied threat or promise will also render a statement involuntary.99

**THREATS V. PROMISES:** There is not a significant difference between a threat and a promise; they are simply opposite sides of the same coin. For example, a promise that a suspect will get a lenient sentence if he gives a statement is essentially an implied threat that will get a harsher sentence if he does not.100

**FALSE PROMISES:** Although the courts sometimes speak of “false” or broken promises as being objectionable,101 a statement motivated by any promise will be deemed involuntary regardless of whether the promise was kept or not.102 Note that almost all promises of leniency by officers are false because the district attorney determines which charges to file, and any sentence must be approved by a judge.

**DISCLAIMERS:** An officer’s statement to the suspect that he does 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 an express promise.103 Nevertheless, an officer’s disclaimer will have little if any effect if a promise can be reasonably implied. As the court stated in *People v Anderson*, “[A]n assertion that no promises are being made may be contradicted by subsequent conversation.”104

**HOT TOPICS:** Certain topics have such a strong emotional appeal that any discussion of them will be closely scrutinized by the courts and should be considered dangerous; e.g., discussions about the death penalty, the release of a spouse or other relative, and any appeal to religion. (These subjects will be discussed later in more detail.)

“FLOW NATURALLY”: Neither a threat nor a promise results when officers simply inform a suspect of the consequences that flow naturally from his decision to tell the truth.105 In the words of the California Supreme Court, “When the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity.”106

**OBJECTIVE OR SUBJECTIVE TEST?** The courts have not expressly decided whether the test for determining whether a promise or threat has been made is objective or subjective.107 It seems likely, however, they will eventually opt for the objective test; i.e., a statement is involuntary only if a reasonable person in the suspect’s position would have understood the officer’s comment as a promise or threat.108

**TOTALITY OF CIRCUMSTANCES:** In determining whether a statement was obtained as the result of a promise or threat, the courts will take into account the totality of circumstances, rather than zeroing in on certain words out of context.109
Having discussed the general principles the courts apply in determining whether officers utilized promises or threats to obtain a statement, we will now look at specific topics that have been analyzed by the courts.

**Talking about Charges, Sentencing:** Alleged promises and threats concerning sentencing and what charges may be filed against the suspect seem to cause a lot of problems for officers and courts. This is mainly because the topic of sentencing is usually a top priority for the suspect if he is guilty and thinks officers can prove it. So he is likely to directly or indirectly raise the issue to see if there is anything he can do to help himself. Officers are also aware of this and may be tempted to directly or indirectly raise the issue of sentencing in hopes it will motivate the suspect to talk.

For example in *In re Roger G.*, an officer told a suspect, “[A confession] is gonna help you out for a chance of probation or getting parole if you are honest about the thing. . . . Tell your side of it, because if you go in there hard-nosed and just lie and try to cover up do you thing we’d give you a change at probation or parole? No way.” The court ruled the defendant’s subsequent confession was involuntary mainly because the officer “made it crystal clear to him that he had no hope of anything other than incarceration if he did not confess.”

Whether the issue of charges or sentencing is raised by the suspect or officers, it is a dangerous subject to explore because any such discussion that occurs before or during questioning might appear to a court as a threat or promise. Consequently, officers should never discuss a particular sentence or charge that will or might result if the suspect cooperates. If the topic of charges or sentencing arises, and if officers decide it would be best to respond, they should limit their response to a general and truthful comment about sentences in similar cases. As the Court of Appeal explained, “[T]ruthful and commonplace statements of possible legal consequences, if unaccompanied by threat or promise, are permissible police practices . . .”

**Talking about Mitigating Circumstances:** It is not inherently coercive to point out to a suspect that there may be circumstances that would tend to reduce his criminal liability. Although there may be an implication that the suspect might be better off if he told the officers about any mitigating circumstances, such an appeal is not objectionable so long as nothing specific is promised or threatened.

For example, in *People v. Kelly* a detective told the killer of an 11-year old boy, “[I]t must have been someone else inside of you.” Kelly argued that the detective was essentially telling the suspect to admit the crime and claim he was not guilty by reason of insanity. The California Supreme Court, however, rejected the argument, stating, “The single, passing comment at issue here cannot reasonably be characterized as coercive . . . .”

On the other hand, in *People v. Andersen* a detective explained to a murder suspect that homicide is broken into degrees, “ranging from plot-and-scheme to heat-of-passion.” He added that if the shooting took place in the heat of an argument, she would be “better off explaining her intent to a judge or jury than persisting in a denial contrary to all the evidence, a denial which makes things go hard. A show of remorse makes things easier . . . ”
The court had no problem with the detective’s statement that a showing of remorse is a factor that mitigates punishment. Said the court, “This statement is no more than a truthful legal commonplace with which all persons familiar with criminal law would agree.” But when the detective added that “a denial makes things go hard,” the court said he was coming close to an implied threat and was, therefore, “venturing on thin ice.”

In *People v. McClary*[117] the interrogating officer told a murder suspect, “You can either be a direct participant, or you can be an accessory after the fact . . . Unless your story changes to where you can say something else happened and we can prove you true, then you’re going to be tried [as a principal].” In ruling the defendant’s subsequent statement was involuntary, the court noted, among other things, “[The officer] strongly implied that if defendant changed her story and admitted mere ‘knowledge’ of the murder, she might be charged only as an accessory after the fact.”

**Talking About the Death Penalty:** The death penalty is so terrifying to most murder suspects, that any discussion linking the death penalty to their refusal to give a statement will almost certainly result in a determination that a statement was involuntary.[118] For example, in *People v. Flores*[119] the interrogating officer told the suspect, “[R]ight 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.” The court ruled the suspect’s subsequent was involuntary mainly because the officer implied that “[o]nly by confessing his involvement in the decedent’s death could the appellant avoid the possible death penalty.”

**Talking About the Suspect’s Custody Status:** Telling a suspect he will be released from custody if he gives a true statement will likely render a subsequent statement involuntary. For example, in *In re J. Clyde K*[120] an officer detained three juveniles who were carrying boxes which the officer believed had been stolen. While questioning the juveniles about the boxes, the officer told them, “If you tell me a lie, and I find out the boxes are stolen, you will go to jail, but if you tell me the truth you will get a citation.” In ruling the juveniles’ subsequent statements were involuntary, the court said, “[N]o implication is necessary to determine whether [the officer’s] statement impermissibly led the young boys to expect more lenient treatment in exchange for their confession. The potential benefits that the boys could expect (lesser punishment and immediate release with only a citation) were clearly and expressly spelled out by [the officer] himself.”

**We’ll Tell the DA:** Rather than discuss sentencing and charging at all, it is better to simply tell the suspect that all decisions about sentencing are made by the DA and the judge.”[121] For example, in *People v. Andersen* the court noted, “Defendant posed a legal question—would she spend the rest of her life in jail? Undoubtedly, it would have been better police practice to parry this question or merely answer it with the statement that sentence and punishment are matters for the courts.”[122]

Officers may, however, inform the suspect that if he gives a truthful statement they would notify the DA or judge that he had been truthful or cooperative. There is, of course, an implication that such cooperation will result in some benefit.
Still, the courts have consistently ruled that this is not the kind of representation that constitutes an implied promise of lenient treatment. As the court noted in upholding a statement in People v. Hurd, “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.”

Similarly, in People v. Groody the court said, “[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. [The detective] expressly informed appellant that he could make no guarantees of leniency.”

Other comments by the courts in rejecting arguments on this point, include the following:

- “[The detective] repeatedly and clearly stated that he had no authority to make any promise of leniency regarding the pending robbery-kidnap charges, but could only pass information on to the district attorney.”
- “[The detective] testified he 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.”
- “[The detective’s] response that the juvenile court would be told that defendant had been cooperative was a truthful response to the defendant’s question [which was ‘what would he get?’ if he cooperated].”
- “[T]he detective’s offers of intercession with the district attorney [‘telling the district attorney that defendant had been honest’] amounted to truthful implications that his cooperation might be useful in later plea bargain negotiations.”

It should be noted that a statement will likely be deemed involuntary if it was motivated by an officer’s threat that he would tell the DA or judge that the suspect refused to give a statement or was otherwise uncooperative.

**Threats Affecting Friends and Relatives:** The courts take a dim view of threats to take some action against a friend or relative of the suspect if the suspect won’t talk. For example, in People v. Trout the court invalidated a confession for this reason, explaining, “Irrespective of what words may or may not have been used by the police, the reasonable conclusion to be drawn from the undisputed facts is that the police held [the suspect’s wife] in custody for the purpose of securing a confession from defendant.”

The courts understand, however, that when officers reasonably believe that a friend or relative of the suspect was involved in the crime under investigation, the custody status of the friend or relative may, in fact, depend on what the suspect says. In other words, if the suspect gives a statement that eliminates or reduces the friend or relative’s criminal responsibility, it may be appropriate, depending on the other evidence, to release the friend or relative, or seek less serious charges.

For example, in People v. Jackson the defendant shot and killed a man during a residential burglary. The next day, an officer spotted Jackson and his
wife in a car which matched the description of the getaway car. After arresting Jackson, the officer found a gun under the driver’s seat. He also searched Ms. Jackson’s purse and discovered bullets. Consequently, Ms. Jackson was also arrested. At the police station, Jackson said he wanted to make a statement “just to get my wife out of this.” An officer told him, “[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.” In ruling Jackson’s subsequent statement was voluntary, the court noted, “At most there was a simple statement of fact by the officer that defendant’s wife would be released if further investigation convinced him and his superior that she had no connection with the crime.”

Similarly, in People v. Kendrick the defendant, who had recently committed a burglary and robbery, was stopped by a CHP officer in Victorville for a routine traffic violation. During the course of the stop, Kendrick shot and killed the officer. He was subsequently arrested following a shootout with officers in San Luis Obispo. Later, officers arrested Reece and Sherilyn who had some limited involvement in Kendrick’s burglary and robbery. They also arrested two people who may have harbored Kendrick.

Kendrick and Reece were interviewed together. In the course of the interview, Kendrick “interrupted” to say he would “give a full statement only if all four of them were turned loose.” After Reece left the room, “the officers began negotiating with defendant about his offer.” After a lieutenant agreed to “take the matter up with some one else higher than himself,” Kendrick confessed. In ruling the confession was voluntary, the California Supreme Court noted, “No threats of harm were made to defendant nor promises other than to carry the matter of possible release of defendant’s friends to higher authorities.”

In People v. Thompson officers developed probable cause to arrest Thompson for murdering a 12-year old boy. When officers saw the defendant’s girlfriend, Lisa, get into a car and drive off, they followed her because they suspected (correctly) that Thompson was hiding inside. Lisa apparently spotted the officers because, according to the court, she “drove evasively, eluding the police tail.” Later that day, officers arrested Thompson and Lisa at a shopping mall. It appears Lisa was arrested because her evasive driving arguably gave officers probable cause to believe she was an accomplice.

While questioning Thompson, an officer told him he was “not convinced” of Lisa’s innocence, adding, “information hasn’t come forward at this time which would cause me to release her. See what I’m saying?” As noted earlier, such a comment was proper because, (1) the officer reasonably believed that Lisa was somehow implicated in the crime, and (2) the evidence against her was such that Thompson, should he decide to talk, might be able to convince the officer that she was not, in fact, involved. Accordingly, the court said the officer’s comment to Thompson seemed “clearly proper.”

But there is more to this case. Because the officer’s comment did not cause Thompson to talk, the officer went further, telling him, “I think if you truly loved her, you wouldn’t allow her to sit here in jail if you knew information that would help her. See what I’m saying?” The officer then referred to Lisa’s “fragile mental condition, and suggested that further incarceration could ‘really break her.’”
“Like I told you before,” he concluded, “unless something else comes forward that can show that she’s totally uninvolved. You know what I’m saying.” Thompson subsequently confessed.

The court said the officer’s comments came dangerously close to the line between a simple statement of fact and a statement implying that Thompson’s refusal to confess was responsible for Lisa’s incarceration.” But because Thompson did not confess until several hours later, the court ruled the confession was not the “fruit” of the officer’s comment and was, therefore, voluntary. (The subject of the “fruits” of an officer’s coercive words or actions is discussed later in this article.)

Accomplices: Playing one against the other

When two or more suspects have been arrested for a crime, officers are often able to make good use of a suspect’s natural distrust of his accomplices. For example, officers may be able to motivate a suspect into giving a statement by informing him ( truthfully or falsely, it doesn’t matter) that his accomplice has confessed. 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.”

Another option is to point out the relative legal difficulties between the suspect and his accomplice. When an accomplice may 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. It appears such an approach will not render a subsequent statement involuntary because officers are not promising leniency. They are merely pointing out a fact of criminal law that when two or more people commit a crime, sentencing may depend on the roles each person played.

For example, in People v. Garcia the defendant drove the getaway car used in a robbery-murder committed by 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 a trigger man.”

The California Supreme Court ruled the defendant’s subsequent confession was voluntary because 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. [A]n accomplice is far less likely to receive the death penalty than the triggerman.”

Similarly, in People v. Hill officers who were questioning another getaway-car driver “urged him to consider his own position as against that of his codefendants and, in effect, to desert a sinking ship and grab a lifesaver if he could, as he might expect his codefendants to do.” In ruling the suspect’s subsequent statement was voluntary, the court said, “The officers only pointed out those benefits which would naturally accrue to him if his true role in the crime was made known, but such benefits did not include leniency or favorable treatment by the state.”
Appeals to religion

The courts do not like it when officers utilize appeals to a suspect’s religious beliefs as a means of encouraging him to talk.139 As one court put it, “Religious beliefs are not matters to be used by governmental authorities to manipulate a suspect to say things he or she otherwise would not say.”140

Although a blatant religious entreaty is a circumstance that will be noted, it will not, in and of itself, render a subsequent statement involuntary unless the suspect was particularly vulnerable to a religious or emotional appeal.141

 Lies, deception

As a general rule, an officer’s act of lying to the suspect will not render a subsequent statement involuntary even if the lie motivated the suspect to talk.142 Although it is true that certain kinds of lies—such as, “We found your fingerprints on the gun”—will probably increase the amount of pressure the suspect feels, the courts do not view these types of lies as inherently coercive,143 although deception is a circumstance that is noted.144 As the Court of Appeal observed, “Police officers are at liberty to utilize deceptive stratagems to trick a guilty person into confessing. The cases from California and federal courts validating such tactics are legion.”145

The following are examples of lies were deemed not to render a subsequent statement involuntary:

Your fingerprints were found on the cash register,146 the getaway car,147 the victim’s neck.148

There were eyewitnesses to the crime.149

You’ve been positively ID’d by the victim.150

A gunshot residue test showed you recently handled a gun.151

Tire tracks from your car were found at the murder scene.152

Your accomplice has been captured and has confessed.153

We know a lot more than we’re telling you.”154

After an officer shot a cop-killer in the shoulder, he spoke with him at the emergency room, saying, “You may not come out of this and you should clear it up.”155

Although deception will usually not render a statement involuntary, there is an exception to this rule. A statement motivated by an officer’s lies will be deemed involuntary if the deception, in light of the surrounding circumstances, was “reasonably likely to procure an untrue statement.”156

As a practical matter, this is not likely to happen unless the suspect’s mind was so disordered that he was unusually susceptible to the influences of others, especially authority figures. Under such unusual circumstances, the suspect’s lack of confidence in the ability of his mind to apprehend reality may cause him to eventually accept the officer’s repeated lies as the truth.

In one of the few cases in which this has happened, People v. Hogan,157 the confession of a rape-murder suspect was ruled involuntary mainly because the interrogating officers had actually caused him to doubt his sanity. In addition, he was emotionally distraught, unable to control himself, and “was sobbing uncontrollably throughout his statement and vomited.” Under these
circumstances, said the court, the interrogating officers “repeatedly suggested to appellant that he was unquestionably guilty and that he suffered from mental illness. The certainty of his guilt was suggested by deception references to nonexistent eyewitnesses and proof of rape. . . . The question of appellant’s mental illness was raised by the interrogating officers and reinforced by appellant’s wife . . .”

Acknowledgement of voluntariness

When a suspect gives a written or taped statement, officers will often include an addendum in which the suspect acknowledges that he gave the statement of his own free will, not as the result of threats, promises, or any other sort of coercion. It is a good practice. For example, in rejecting a murder defendant’s argument that officers threatened him with the death penalty, the California Supreme Court noted, among other things, “The transcript of the second tape-recorded statement supports the officers’ testimony. Defendant indicated there in [one of the interrogating officers] had not coerced him into making a second statement . . . that he had not been threatened or promises anything to make a second statement . . .”

Although it is a good idea to seek such an acknowledgement, it should be understood it will have little or no weight with the courts if it appears the acknowledgement, itself, was coerced or if there were other circumstances that cast doubt on the voluntariness of the suspect’s statement. As the United States Supreme Court stated in *Haley v. Ohio*, “Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them.”

Immunity and plea agreements

An out-of-court statement or trial testimony of a suspect’s accomplice, witness to the crime, or any other person will be deemed involuntary if the person was required to give a certain statement or say certain things pursuant to an immunity or plea agreement. Although it is proper for an immunity or plea agreement to require a truthful statement or testimony, it must never bind the person to a particular story. As the California Supreme Court observed, “An immunity agreement that requires the witness to testify consistently with a previous statement to the police is deemed coercive, and testimony produced by such an agreement is subject to exclusion from evidence.”

“Outside Miranda”

The term “outside *Miranda*” is used to describe the continued questioning of a suspect after he has clearly invoked his *Miranda* rights. Proponents of going “outside *Miranda*,” while acknowledging that the suspect’s answers are inadmissible in the prosecution’s case-in-chief, argue that the tactic is justified because any statement the suspect makes may be used to impeach him if he testifies at his trial.

The courts, however, have had other ideas. They have usually ruled that such a tactic is so inherently coercive that it renders the suspect’s statement involuntary—and therefore inadmissible for any purpose. It may also result in a lawsuit against the officers and their agency.
Miscellaneous circumstances

So long as officers do not make threats or promises, or utilize any of the other coercive tactics discussed earlier, the courts give them a great deal of latitude in questioning suspects. The following are examples:

**“Tell the truth”**: Officers will frequently say something to encourage the suspect to tell the truth. There is nothing objectionable or coercive about urging a suspect to stop lying and tell truth, or in employing any of the variations on this theme, such as, “Get the burden off your conscience,” “You’ll feel better if you tell the truth.”

**“Help yourself”**: Although there may be a slight implication that the suspect will receive something in return for talking, appeals such as “Tell us what happened and help yourself,” “It’ll be in your best interests to tell the truth,” and “A cooperative attitude will be to your benefit,” are not objectionable so long as officers do not promise anything in particular will result from giving a statement. Similarly, the Court of Appeal has ruled it is not objectionable to tell a suspect that “a showing of remorse is a factor which mitigates punishment.” This is because such a statement “is no more than a truthful legal commonplace.”

**Reveal incriminating evidence**: It is not inherently coercive to review with the suspect the evidence pointing to his guilt.

**Explain theories**: It is not inherently coercive for officers to explain to the suspect their theories as to how the crime occurred. This is true even if some of their theories would necessarily result in a greater sentence than others.

**Confront with evidence of guilt**: It is not inherently coercive to confront the suspect with evidence of his guilt. In other words, “Good faith confrontation is an interrogation technique possessing no apparent constitutional vice.”

**Accuse of lying**: It is not inherently coercive to confront the suspect with evidence that he is lying.

**Leading questions**: A “leading” question is one that suggests the answer the officers want to hear. **Leading**: “You were the one who fired the gun, right?” **Not leading**: “Who fired the gun?” Although a “leading” question is somewhat more coercive than one that does not suggest an answer, it is not a significant circumstance.

**Withholding information**: A statement cannot be deemed involuntary merely because officers failed to provide the suspect with information, such as the nature of the crime under investigation, his status as a suspect, or the evidence pointing to his guilt. In other words, a failure to keep the suspect informed is not coercive.

**Court procedure**: What gets suppressed, and how it’s done

The following procedural rules are applied by the courts when a suspect contends a statement he gave to officers was involuntary:
**Burden of Proof:** The prosecution has the burden of proving a statement was voluntary by a preponderance of the evidence.\(^{180}\)

**Legal Basis of Suppression:** An officer’s act of coercing a statement from a suspect constitutes a violation of the Fifth Amendment right not to be compelled to testify against oneself.\(^{181}\) The conviction of a defendant by means of an involuntary statement constitutes a violation of the Due Process clauses of the Fifth and Fourteenth Amendments.\(^{182}\)

**Special Suppression Motion:** Although, as discussed earlier, the suspect’s vulnerable mental state will not render a statement involuntary, such a mental state may warrant the suppression of the statement on grounds the suspect’s mental state was so impaired that the reliability of the statement was substantially outweighed by the possibility it would mislead or prejudice the jury.\(^{183}\)

**Suppression of True Statement:** An involuntary statement will be suppressed regardless of whether it was unquestionably true.\(^{184}\)

**Suppression Procedure:** A motion to suppress a statement on grounds it was involuntary should be filed pursuant to Evidence Code § 405.\(^{185}\) The court, not the jury, determines the voluntariness of a statement.\(^{186}\)

**No Good Faith Rule:** If a statement was involuntary, it will be suppressed regardless of whether officers believed in good faith that they were acting properly.\(^{187}\)

**Standing:** A defendant may challenge the admissibility of a statement made by any person on grounds it was involuntary and, therefore, unreliable.\(^{188}\)

**Confessions v. Incriminating Statements:** If a statement is ruled involuntary, it will be suppressed regardless of whether it constituted a confession or was merely an admission.\(^{189}\)

**Motivating Cause Requirement:** A statement may be suppressed on grounds it was involuntary only if it was motivated by the officers’ coercive interrogation tactics.\(^{190}\) To determine the suspect’s motivation, the courts will usually examine the following circumstances: (1) the suspect’s words, (2) the time lapse between the coercive tactics and the making of the statement, and (3) the existence of any independent intervening act.\(^{191}\)

**The Suspect’s Words:** In some cases the suspect will actually say something to indicate the officers’ tactics were not the motivating cause of his decision to make a statement. For example, in *People v. Mickey* the court ruled the suspect’s words demonstrated that he made his statement because of his “desire to justify, excuse, or at least explain his problematic conduct.”\(^{192}\) The same idea was expressed in *People v. Benson:* “The [trial] court effectively determined that defendant spoke not because of coercion applied by the police but as a result of compunction arising from his own conscience. After independent review, we agree.”\(^{193}\)

**Time Lapse:** A significant time lapse—such as a few hours or a day—between the officers’ coercive tactics and the suspect’s decision to make a statement is an indication that the statement may have been motivated by something other than the officers’ conduct.\(^{194}\)

**Independent Intervening Act:** Occasionally, the suspect’s decision to make a statement will be the result of something that happened after the
officers utilized coercive tactics. If so, and if the prosecution can prove it, the statement may be deemed voluntary on grounds the officers’ coercive tactics were not the motivating cause of the statement. For example, in *People v. Williams* the defendant, who was a suspect in a contract killing of four people, claimed he was not at the scene of the murders. One of the interrogating officers then made an implied threat concerning the death penalty but the defendant did not change his story. A little later, one of the officers asked him if he’d received any of the money for the “hit.” In what the court termed an “apparent slipup,” Williams responded that he didn’t get any of the money because he “ran out” on his accomplices—thus inadvertently admitting he had been at the scene of the murders. Because it was this “slipup”—not the officer’s threat—that resulted in the admission, the court ruled it was not motivated by the officer’s threat and was, therefore, voluntary. Similarly, in *People v. Thompson* the court ruled an officer’s somewhat coercive comment did not render the defendant’s subsequent statement involuntary because, in addition to the fact the defendant did not make his statement until “several hours” after the officer made his comment, the suspect “twice declined the interrogators’ suggestion that the discussion stop.” Said the court, “From this fact the trial court concluded, and reasonably so, that defendant’s incriminating statements were not induced by any implied threat or promise made hours earlier.”

**LEGAL CONSEQUENCES OF INVOLUNTARINESS:** The following are the legal consequences that flow from a court’s determination that a suspect’s statement was motivated by an officer’s coercive conduct:

**SUPPRESSION OF STATEMENT:** An involuntary statement is inadmissible to prove the suspect’s guilt, and it cannot be used to impeach the suspect’s testimony at trial.

**SUPPRESSION OF PHYSICAL EVIDENCE:** Physical evidence obtained as the result of an involuntary statement by the defendant may be suppressed. However, physical evidence obtained as the result of an involuntary statement by a third person may be suppressed only if the coercion was such that it rendered the evidence unreliable.

**SUPPRESSION OF THIRD PERSON’S STATEMENT:** A defendant may challenge the admissibility of an out-of-court statement made by a third person on grounds the statement was involuntary, but the statement will not be suppressed unless the defendant can prove it was also unreliable.

**SUPPRESSION OF TRIAL TESTIMONY:** If officers had coerced a statement from a person who later became a prosecution witness against the defendant, the witness’s testimony at the defendant’s trial will not be suppressed as the result of the earlier coerced statement “unless the defendant demonstrates that improper coercion has impaired the reliability of the testimony.” In other words, such testimony will not be suppressed merely because it was the “fruit” of the witness’s prior involuntary statement.
SUPPRESSION OF SUBSEQUENT STATEMENT: If the suspect made a statement after he made his involuntary statement, the courts will presume the subsequent statement was also involuntary. In other words, the courts presume “the subsequent confession to have been made and influenced by the same hopes and fears as the first.” Consequently, the subsequent statement will be suppressed unless the prosecution can prove “the influences under which the original confession was made had ceased to operate before the subsequent confession was made.”

In determining whether the coercive influences surrounding the first statement had ceased to operate, courts will consider the surrounding circumstances, especially the following: the suspect’s waiver of Miranda rights, the length of time between the first and subsequent statements, the presence of any intervening circumstances, whether the interrogators at the first and second interviews were the same or different, whether the first and second interviews occurred at the same place, and especially the purpose and flagrancy of the officers’ misconduct in obtaining the first statement.

5 People v. Andersen (1980) 101 Cal.App.3d 563, 575. ALSO SEE New Jersey v. McKnight (1968) 52 NJ 35, 52 [“(T)he Fifth Amendment does not say that a man shall not be permitted to incriminate himself, or that he shall not be persuaded to do so.”].
8 See Brown v. Mississippi (1936) 297 US 278, 286.


11 Spano v. New York (1959) 360 US 315, 320-1. ALSO SEE *Blackburn v. Alabama* (1960) 361 US 199, 206-7 ["(I)mportant human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will."]; *Watts v. Indiana* (1949) 338 US 49, 55 ["But the history of the criminal law proves overwhelmingly that brutal methods of law enforcement are essentially self-defeating."].

12 (1963) 373 US 503, 515 ["The line between proper and permissible police conduct and techniques and methods offensive to due process is, at best, a difficult one to draw."]; *Jackson v. Denno* (1964) 378 US 368, 390 ["(T)he high degree of proof which the English law requires—proof beyond reasonable doubt—often could not be achieved by the prosecution without the assistance of the accused's own statement."] Quoting Sir Patrick Devlin


14 NOTE: In the context of voluntariness, admissions are treated the same as confessions. See *People v. Atchley* (1959) 53 Cal.2d 160, 169-70.

15 (1962) 57 Cal.2d 415, 434. ALSO SEE *Culombe v. Connecticut* (1961) 367 US 568, 576 ["(T)he high degree of proof which the English law requires—proof beyond reasonable doubt—often could not be achieved by the prosecution without the assistance of the accused's own statement.""] Quoting Sir Patrick Devlin


18 See *Dickerson v. United States* (2000) 530 US __ [147 L.Ed.2d 405, 420] ["The requirement that *Miranda* warnings be given does not, of course, dispense with the voluntariness inquiry."].

19 See *Dickerson v. United States* (2000) 530 US __ [147 L.Ed.2d 405, 412].


"Thompson (1980) 27 Cal.3d 303, 327 ["A confession is voluntary if the accused's decision to speak is entirely self-motivated."].

23 See Schneckloth v. Bustamonte (1973) 412 US 218, 225; People v. Cahill (1994) 22 Cal.App.4th 296, 311. ALSO SEE NOTE: In some cases the courts have said the "slightest pressure" on the suspect will render his statement involuntary. See, for example, People v. Jiminez (1978) 21 Cal.3d 595, 606; People v. Berve (1958) 51 Cal.2d 286, 291. This "slightest pressure" standard has been rejected by the U.S. Supreme Court. See Arizona v. Fulminante (1991) 499 US 279, 285; People v. Clark (1993) 5 Cal.4th 950, 986, fn.10.

24 See People v. Cox (1990) 221 Cal.App.3d 980, 986 ["The thrust of Cox's argument is not that the police were coercive, but that his mental condition was such as to preclude a knowledgeable and voluntary decision to make incriminating statements. Exclusion of evidence on this grounds was conclusively rejected by the United States Supreme Court in Colorado v. Connell."]; People v. Kelly (1990) 51 Cal.3d 931, 951 [although defendant's IQ was in the "low normal to borderline range" and there was evidence of "atrophy of brain tissue" and a "variety of cerebral deficits, including learning disabilities, attention-deficit disorder and impulsivity," the court said, "[S]tanding alone such evidence does not establish that the waiver was involuntary."];

People v. Williams (1984) 157 Cal.App.3d 145, 152 ["Although undereducated and virtually illiterate, experiencing difficulty expressing himself, particularly in written form, Williams was neither insane nor incompetent when questioned."]; In re Jessie L. (1982) 131 Cal.App.3d 202, 216 [statement voluntary when suspect had an IQ of 89 and was "functioning below his age level"]; People v. Lara (1967) 67 Cal.2d 365, 386 ["the mental subnormality of an accused does not ipso facto render his confession inadmissible . . . ."]

25 (1986) 479 US 157 166. NOTE: The Court added that the defendant's mental condition, "by itself and apart from its relation to official coercion," cannot "dispose of the inquiry into constitutional 'voluntariness.'" At p. 164.

26 See Colorado v. Connelly (1986) 479 US 157 163, 167 ["We hold that coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' . . . ."]. ALSO SEE People v. Hogan (1982) 31 Cal.3d 815, 841; People v. Thompson (1990) 50 Cal.3d 134, 166; People v. Esqueda (1993) 17 Cal.App.4th 1450, 1483; People v. Benson (1990) 52 Cal.3d 754, 778; People v. Mayfield (1997) 14 Cal.4th 668, 759 ["A finding of coercive police activity is a prerequisite for a finding that a confession was involuntary . . . ."];


30 See Culombe v. Connecticut (1961) 367 US 568, 576. ALSO SEE In re Aven S. (1991) 1 Cal.App.4th 69, 75-6 ["the ultimate question [is] whether the individual's free will was overborne."]; People v. Andersen (1980) 101 Cal.App.3d 563, 581 ["The critical element in coerced confession is compulsion, an overcoming of the will of the suspect which forces or tricks her into saying something she would not otherwise be willing to say."].

31 See Brown v. Mississippi (1936) 297 US 278.

32 See Schneckloth v. Bustamonte (1973) 412 US 218, 224 ["(A)ll incriminating statements—even those made under brutal treatment—are 'voluntary' in the sense of representing a choice of alternatives."].


See Schneckloth v. Bustamonte (1973) 412 US 218, 226 [suspect’s mental state relevant to assess the “psychological impact on the accused”]; Fenton v. Miller (1985) 474 US 104, 109 [interrogation techniques “either in isolation or as applied to the unique characteristics of a particular suspect” may violate Due Process]; Colorado v. Connelly (1986) 479 US 157 163; ALSO SEE Proctor v. Atchley (1971) 400 US 446, 453 [consider the “setting in which actual coercion might have been exerted to overcome the will of the suspect.”]; People v. Hill (1992) 3 Cal.4th 959, 981 [consider “both the characteristics of the accused and the details of the interrogation”]; In re Aven S. (1991) 1 Cal.App.4th 69, 75 [“Threats, promises, confinement, lack of food or sleep, are all likely to have a more coercive effect on a child than on an adult.”].


In re Aven S. (1991) 1 Cal.App.4th 69, 75. ALSO SEE People v. Johnson (1969) 70 Cal.2d 469, 479 [“The evidence shows that defendant was a minor. This fact alone would not invalidate a confession knowingly and intelligently made but it is relevant to the question of his maturity and awareness of rights.”]; Haley v. Ohio (1947) 332 US 596, 599 [“What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child [15 years old]—an easy victim of the law—is before us, special care in scrutinizing the record must be used.”].

In re Jessie L. (1982) 131 Cal.App.3d 202, 215 [“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 statement.”].

In re Shawn D. (1993) 20 Cal.App.4th 200, 212 [“At the time he was questioned, appellant was 16 year old. He had prior contact with the police but was described as ‘unsophisticated’ and ‘naïve’ in the probation report. . . .”]; People v. Hinds (1984) 154 Cal.App.3d 222, 238 [“The record shows appellant was 19 year old, immature and relatively unsophisticated . . . .”]; In re Aven S. (1991) 1 Cal.App.4th 69, 75-6; People v. Montano (1991) 226 Cal.App.3d 914, 936; In re Anthony J. (1980) 107 Cal.App.3d 962, 972; People v. McClary (1977) 20 Cal.3d 218, 229 [“Defendant, while doubtless sophisticated for her years, was a 16 year old . . . .”]; In re Brian W. (1981) 125 Cal.App.3d 590, 601.


["(D)fendant had received only a fifth or sixth grade education . . . "] COMPARE People v. Williams (1984) 157 Cal.App.3d 145, 152 ["Although undereducated and virtually illiterate . . . Williams was neither insane nor incompetent when questioned."]


49 (1981) 125 Cal.App.3d 590. ALSO SEE Colorado v. Connelly (1986) 479 US 157 160-2 [suspect suffered from “chronic schizophrenia and was in a psychotic state at least . . . the day before he confessed. . . . [He] was following the ‘voice of God . . . [who told him] either to confess to the killing or to commit suicide; but, on the day he confessed, his answers were intelligible and there was no police coercion].


51 See Mincey v. Arizona (1978) 437 US 385, 398-9 [suspect was “depressed almost to the point of coma,” he was “evidently confused and unable to think clearly” and some of his answers were “on their face not entirely coherent.”]; Payne v. Arkansas (1958) 356 US 560, 567 [suspect “was denied food for long periods”]; Davis v. North Carolina (1966) 384 US 737, 746 [Davis’s “diet was extremely limited and may well have had a significant effect on Davis’ physical strength and therefore his ability to resist.”]; Spano v. New York (1959) 360 US 315, 322 [”(S)lowly mounting fatigue does, and is calculated to, play its part.”]; Watts v. Indiana (1949) 338 US 49, 53 [“Disregard of rudimentary needs of life—opportunities for sleep and a decent allowance of food—are also relevant, not as aggravating elements of petitioner’s treatment, but as part of the total situation out of which his confessions came and which stamped their character.” Opinion of Frankfurter, J.; Reck v. Pate (1961) 367 US 433441-2; In re Shawn D. (1993) 20 Cal.App.4th 200, 209; People v. Hinds (1984) 154 Cal.App.3d 222, 238 [suspect was “distracted and remorseful; on several occasions during the interrogation he broke down and sobbed . . . [he testified] he was ‘deathly scared’ while making statements to the officers.”]; People v. Montano (1991) 226 Cal.App.3d 914, 936 [“... his pleas of fatigue and lack of sleep ignored ... ”]. COMPARE People v. Maestas (1987) 194 Cal.App.3d 1499, 1503 [‘Appellant also suggests that the intentional or inadvertent disregard for appellant’s nutritional needs’ contributed to ‘the coercive environment,’ and the ‘reward of a burrito and coke after appellant finally started to incriminate himself was an effective method of softening him up and obtaining further damaging information.’ We find this factor is insignificant. . . .’]; People v. Simpson (1991) 2 Cal.App.4th 228, 233 [suspect “freshly rested”].

52 (1993) 17 Cal.App.4th 1450, 1485. ALSO SEE People v. Hogan (1982) 31 Cal.3d 815, 839 ["Appellant was sobbing uncontrollably throughout his statement and vomited. The police were forced to terminate the interrogation due to appellant’s inability to control himself or answer coherently."]; People v. Adams (1983) 143 Cal.App.3d 970, 985.


54 (1990) 52 Cal.3d 453, 470.

See People v. Cox (1990) 221 Cal.App.3d 980 [suspect was apparently under the influence of methamphetamine but the questioning was "short and simple."]; People v. Johns (1983) 145 Cal.App.3d 281, 289-90 [suspect, who had been shot, had been administered Demerol but he waived his rights, his answers were responsive, and he later recalled much of the interview]; People v. Brewer (2000) 81 Cal.App.4th 442, 456 [suspect under the influence of marijuana; no coercion]. COMPARE Townsend v. Sain (1963) 372 US 293, 307-8 ["truth serum"].

See People v. Adams (1983) 143 Cal.App.3d 970, 985 [suspect was "feeling very weak and her chest was very tight."]]

See Spano v. New York (1959) 360 US 315, 322 ["no past history of law violation or of subjecttion to official interrogation"];

Reck v. Pate (1961) 367 US 433, 441 ["He had no prior criminal record or experience with the police.”]; People v. Montano (1991) 226 Cal.App.3d 914, 935 "There tactics succeeded because the officers were not employing them on a person who had a history of experience with police interrogation . . . ."

See Fare v. Michael C. (1979) 442 US 707, 726 ["He was a 16 ½-year-old juvenile with considerable experience with the police. He had a record of several arrests. . . . “]; People v. Hinds (1984) 154 Cal.App.3d 222, 238; In re Jessie L. (1982) 131 Cal.App.3d 202, 216 ["Appellant asserts that he lacked prior experience in dealing with the police, but the probation report showed that he had a prior arrest for arson."]]. COMPARE Reck v. Pate (1961) 367 US 433, 442; Lynnum v. Illinois (1963) 372 US 528 534 ["no previous experience with the criminal law”; In re Anthony J. (1980) 107 Cal.App.3d 962, 969 ["(The interrogating officer) knew that defendant had no previous experience dealing with law enforcement authorities."]; People v. Spears (1991) 228 Cal.App.3d 1, 27 ["minimal prior experience with the police”]; In re Shawn D. (1993) 20 Cal.App.4th 200, 212 ["He had prior contact with the police but was described as ‘unsophisticated’ and ‘naïve’ in the probation report.”].

See People v. Andersen (1980) 101 Cal.App.3d 563, 581 ["the suspect sought out the police to talk to them, rather than vice versa, as is usually the case”]; In re Brian W. (1981) 125 Cal.App.3d 590, 601 [suspect gave “three prior statements that he wanted to talk to the officers”]. COMPARE People v. Esquenda (1993) 17 Cal.App.4th 1450, 1486 ["(E)squenda really did not want to talk.”].

See People v. Williams (1997) 16 Cal.4th 635, 660 ["During the greater part of the interrogation, defendant maintained his innocence. Even when he later admitted his presence at the scene of the murders, he insisted that he had played no role in the killings. The record belies defendant’s claims that his admissions were the product of police coercion.”]; People v. Johns (1983) 145 Cal.App.3d 281, 290 ["(D)efendant categorically denied having any knowledge of, or of having planned or participated in either the robbery or murder. Therefore, there is no basis in fact or in logic for concluding that any of his statements were coerced . . . ”]

See People v. Ditson (1962) 57 Cal.2d 415, 433.
See People v. Ditson (1962) 57 Cal.2d 415, 433.


People v. Clark (1968) 263 Cal.App.2d 87, 91; People v. James (1984) 157 Cal.App.3d 381, 385. ALSO SEE Berkemer v. McCarty (1984) 468 US 420, 433, fn.20 ["We do not suggest that compliance with Miranda conclusively establishes the voluntariness of a subsequent statement. But cases 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."]; People v. Azure (1986) 178 Cal.App.3d 591, 601 ["The fact defendant was given Miranda warnings and made physically comfortable does not excuse other coercive aspects of the interrogation."]; In re Anthony J. (1980) 107 Cal.App.3d 962, 971 ["A reading of the Miranda rights is not enough to satisfy the requirements of due process."].


See, for example, Spano v. New York (1959) 360 US 315, 322 ["Petitioner was questioned for virtually eight straight hours before he confessed . . .”]; People v. Esqueda (1993) 17 Cal.App.4th 1459, 1485 ["The police questioned Esqueda for eight hours. He, of course, received no rest during his processing and received little, in any, respite from the constant police pressure to confess.”]; Haley v. Ohio (1947) 332 US 596, 598 ["Beginning shortly after midnight this 15-year-old lad was questioned by the police for about five hours.”]; Blackburn v. Alabama (1960) 361 US 199, 204 ["The examination had begun at approximately one o’clock in the afternoon and had continued until ten or eleven o’clock that evening, with about an hour’s break for dinner.”]; People v. Simpson (1991) 2 Cal.App.4th 228, 233 ["The [three- to four-hour] interrogation was not extraordinarily lengthy.”]; People v. Maestas (1987) 194 Cal.App.3d 1499, 1505 ["Although he was in custody for more than one and one-half hours before he finally admitted his involvement in the murder, he was not interrogated during a significant portion of this time . . .”]; Schneckloth v. Bustamonte (1973) 412 US 218, 226 [courts consider “the repeated and prolonged nature of the questioning”]; Frazier v. Cupp (1969) 394 US 731, 739 ["The questioning was of short duration, and petitioner was a mature individual of normal intelligence.”]; Gallegos v. Colorado (1962) 370 US 49, 52; People v. Azure (1986) 178 Cal.App.3d 591, 601 [four hours]; People v. Williams (1997) 16 Cal.4th 635, 660 [questioning “lasted less than an hour”]; In re Aven S. (1991) 1 Cal.App.4th 69, 77 ["He was interviewed for only an hour before making his taped confession.”].

85 (1992) 3 Cal.4th 959.
90 People v. Benson (1990) 52 Cal.3d 754, 780 [quote from trial judge]
95 See People v. Thompson (1990) 50 Cal.3d 134, 169 [“The line between a threat (or a promise) and a statement of fact or intention can be a fine one.”].
98 See People v. Hill (1967) 66 Cal.2d 536, 549 [“The offer or promise of such benefit need not be expressed, but may be implied from equivocal language not otherwise made clear.”]; People v. Vasila (1995) 38 Cal.App.4th 865, 873; People v. Andersen (1980) 101 Cal.App.3d 563, 579 [“(P)romises can be implicit as well as explicit.”]; People v. Nicholas (1980) 112 Cal.App.3d 249, 266.
100 See, for example, People v. Andersen (1980) 101 Cal.App.3d 563, 575.
103 (1980) 101 Cal.App.3d 563, 579. ALSO SEE In re Roger G. (1975) 53 Cal.App.3d 198, 203 [“(W)hile 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.”].
104 See People v. Vasila (1995) 38 Cal.App.4th 865, 874 [“(A) crucial distinction is drawn between simple police encouragement to tell the truth and a promise of some benefit beyond that which ordinarily results from being truthful.”]; In re Roger G. (1975) 53 Cal.App.3d 198, 202.
106 See People v. Benson (1990) 52 Cal.3d 754, 780.
107 See, for example, People v. Steger (1976) 16 Cal.3d 539, 550 [“(A) suspect’s belief that his cooperation will benefit a relative will not invalidate an admission.”]; People v. Wimberly (1992) 5 Cal.App.4th 773, 787-8. NOTE: If the courts adopted the subjective test, a suspect could have a statement declared involuntary by simply testifying, “I felt coerced”—even if his feeling was objectively unreasonable. Because this would effectively result in the suppression of any and all incriminating statements, regardless of the objective circumstances, the subjective test will undoubtedly be rejected by the courts if the issue ever arises.
108 See People v. Andersen (1980) 101 Cal.App.3d 563, 582 [“Although isolated sentences and phrases in the interview can be viewed as implied threat or implied promise, we do not believe the
interrogation as a whole, put in its context, carries sufficient implication of threat or promise to
make it a compelled confession . . . ”].

111 See People v. Cahill (1994) 22 Cal.App.4th 296, 311 [“The critical question is: when does a
representation in the course of an interrogation about the penal consequences of silence or
untruthfulness amount to a threat or promise?”].
112 See People v. Clark (1993) 5 Cal.4th 950, 986 [“(The officer’s) statement 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.”]; People v. Esqueda (1993) 17 Cal.App.4th
1450, 1485 [after noting that the officers “suggested various mitigated and non-mitigated
scenarios again and again,” the court said, “this by itself could be considered merely pointing out
the consequences which would naturally flow from a truthful and honest course of conduct.”];
U.S. v Ballard (5th Cir. 1978) 586 F.2d 1060, 1063 [“A truthful and noncoercive statement of the
possible penalties which an accused faces may be given to the accused without overbearing one’s
free will.”].
113 People v. Flores (1983) 144 Cal.App.3d 459, 469.
1, 27-8.
115 (1990) 51 Cal.3d 931.
117 (1977) 20 Cal.3d 218.
Johnson (1969) 70 Cal.2d 469; People v. Bradford (1997) 14 Cal.4th 1005, 1044; People v. Johns
121 See People v. Maestas (1987) 194 Cal.App.3d 1499, 1507 [“Although the officer erred when he
stated that Youth Authority time would be a maximum of four years, the police made no promise
that he would be sent to the Youth Authority or what kind of sentence he would receive, stating at
one point, ‘I don’t know I’m not the judge.’”].
129 See U.S. v. Tingle (9th Cir. 1981) 658 F.2d 1332, 1336, fn.5.
130 People v. Steger (1976) 16 Cal.3d 539, 550 [“A threat by police to arrest or punish a close
relative, or a promise to free the relative in exchange for a confession, may render an admission
202 Cal.App.2d 668, 673 [“Where a confession is coerced by a threat to arrest a near relative, it is
not admissible.”]; People v. Howard (1988) 44 Cal.3d 375, 398 [“The interrogating officers did
not imply that the fate of defendant’s son and of [Howard’s girlfriend] depended upon defendant
stating what they wanted to hear. They repeated that they did not want to involve Gary, Jr., and
that their primary focus was on defendant . . . ”]. COMPARE People v. Wimberly (1992) 5
Cal.App.4th 773, 787-8 [“If the police do not, either expressly or impliedly, threaten to arrest or
punish a close relative or promise to free a relative in exchange for a confession, a suspect’s belief
that his cooperation will benefit a relative will not invalidate an admission.

People v. Berve (1958) 51 Cal.2d 286, 291 [“It has been held that the threat of mere arrest of one’s mother is sufficient to taint a confession extracted thereby . . . ”]; In re Shawn D. (1993) 20 Cal.App.4th 200, 213-4. NOTE: A statement is not involuntary merely because the suspect “hoped” it would result in the release of a friend or relative. See People v. Thompson (1980) 27 Cal.3d 303, 328; People v. Boggs (1967) 255 Cal.App.2d 693, 701.

People v. Berve (1958) 51 Cal.2d 286, 291 [“It has been held that the threat of mere arrest of one’s mother is sufficient to taint a confession extracted thereby . . . ”]; In re Shawn D. (1993) 20 Cal.App.4th 200, 213-4. NOTE: A statement is not involuntary merely because the suspect “hoped” it would result in the release of a friend or relative. See People v. Thompson (1980) 27 Cal.3d 303, 328; People v. Boggs (1967) 255 Cal.App.2d 693, 701.


NOTE: In a case in which officers did not have grounds to arrest the friend, and so advised the suspect, the court found his subsequent statement was voluntary even though officers agreed not to charge the friend. This was because “[the detective] made clear the fact that he had no warrant for [his friend’s] arrest and did not even have sufficient evidence to implicate her in the crime.” People v. Barker (1986) 182 Cal.App.3d 921, 933.

Also see People v. Jackson (1971) 19 Cal.App.3d 95, 100 [“At most there was a simple statement of fact by the officer that defendant’s wife would be released if further investigation convinced him and his superiors that she had no connection with the crime . . . ”].

See People v. Ditson (1962) 57 Cal.2d 415, 433 [officer’s “trying to get [the accomplice] to help himself by clearing up the details as to Ditson’s dominant control, appears to have been a straightforward, honest procedure.”].

Also see People v. Ditson (1962) 57 Cal.2d 415, 433 [officer’s “trying to get [the accomplice] to help himself by clearing up the details as to Ditson’s dominant control, appears to have been a straightforward, honest procedure.”].

See People v. Kelly (1990) 51 Cal.3d 931, 953 [“To be sure, the tactic of exploiting a suspect’s religious anxieties has been justly condemned.”]; People v. Jones (1998) 17 Cal.4th 279, 298. ALSO SEE Davis v. North Carolina (1966) 384 US 737, 750-1 [“(The lieutenant) asked Davis if he had been praying. Davis replied that he did not know how to pray and agreed he would like [the lieutenant] to pray for him. The lieutenant offered a short prayer. At that point, the prayers of the police officer were answered—Davis confessed.”].


Also see People v. Adams (1983) 143 Cal.App.3d 970, 989 [“(The sheriff) was aware of no more compelling fear for one who sincerely believed in the tenets of their shared religion that the fear of God’s turning his back on that person”]; People v. Montano (1991) 226 Cal.App.3d 914, 935-6. COMPARE People v. Jones (1998) 17 Cal.4th 279, 298.

See People v. Thompson (1990) 50 Cal.3d 134, 167 [“Numerous California decisions confirm that deception does not necessarily invalidate a confession.”]; People v. Cahill (1994) 22 Cal.App.4th 296, 315; People v. Musselwhite (1998) 17 Cal.4th 1216, 1240 [“Lies told by the police to a suspect under questioning can affect the voluntariness of an ensuing confession, but they are
not per se sufficient to make it involuntary.")]; Amaya-Ruiz v. Stewart (9th Cir. 1997) 121 F.3d 486, 495.


145 People v. Chutan (1999) 72 Cal.App.4th 1276, 1280. ALSO SEE People v. Felix (1977) 72 Cal.App.3d 879, 886 [The general rule throughout the country is that a confession obtained through use of subterfuge is admissible, as long as the subterfuge used is not one likely to produce an untrue statement.”].


148 People v. Castello (1924) 194 Cal. 595, 602; Amaya-Ruiz v. Stewart (9th Cir. 1997) 121 F.3d 486, 495.


151 People v. Pendarvis (1961) 137 Cal.App.3d 529, 537. People v. Jones (1947) 332 US 596, 601. ALSO SEE Haynes v. Washington (1963) 373 US 503, 513 [“Common sense dictates the conclusion that if the authorities were successful in compelling the totally incriminating confession of guilt . . . they would have little, if any, trouble securing the self-contained concession of voluntariness.”]; People v. Andersen (1980) 101 Cal.App.3d 563, 579 [“(A)n assertion that no promises are being made may be contradicted by subsequent conversation.”]; People v. Rand (1962) 202 Cal.App.2d 668, 674.

152 People v. Allen (1986) 42 Cal.3d 1222, 1252, fn.5 [“Although we have never directly addressed the issue, it seems clear these principles are equally applicable when the accomplice testimony is obtained pursuant to a plea agreement rather than a grant of immunity.”].


154 People v. Badgett (1995) 10 Cal.4th 330, 358. ALSO SEE People v. Allen (1986) 42 Cal.3d 1222, 1251-2; People v. Daniels (1991) 52 Cal.3d 815, 862 [“We have insisted that the arrangement
require the witness to tell the truth, not to present a previously agreed-upon story."]}; People v. Douglas (1990) 50 Cal.3d 468, 502.


165 See Cooper v. Dupnik (9th Cir. 1992) 963 F.2d 1200.

166 See People v. Andersen (1980) 101 Cal.App.3d 563, 578 [“It is settled that admonitions to tell the truth do not amount to coercion.”].


168 See People v. Hill (1967) 66 Cal.2d 536, 549; People v. Spears (1991) 228 Cal.App.3d 1, 27-8; People v. Boyd (1988) 46 Cal.3d 212, 238; People v. Jackson (1980) 28 Cal.3d 264, 298-9; People v. Johns (1983) 145 Cal.App.3d 281, 292; People v. Ditson (1962) 37 Cal.2d 415, 433 [“We do find searching questions and exhortations to help himself by revealing the acts of others. But absent something more than mere questions, or exhortations to tell the truth or clear his conscience or help himself by revealing facts as to the dominant part of Ditson or some other person in the criminal enterprise, there appears to be nothing on the face of the record which would support a finding of overreaching or coercion.”].


177 See People v. Williams (1997) 16 Cal.4th 635, 672.

178 See People v. Cox (1990) 221 Cal.App.3d 980, 986 [“The fact that the questions were somewhat leading does not equate to a conclusion that they were coercive.”]. COMPARE Spano v. New York (1959) 360 US 315, 322 [along with other coercive circumstances, the suspect “did not make a narrative statement, but was subject to the leading questions of a skillful prosecutor in a question and answer confession.”].


court: "The tapes clearly indicate an eagerness to talk all right, and just tell everything that probably could be told . . . ".

[90x275]317. Thus, we are not persuaded that a police offer of release about her release. . . . Thus, we are not persuaded that a police offer of release.

[90x187]196 (1990) 50 Cal.3d 134, 169. ALSO SEE People v. Vasila (1995) 38 Cal.App.4th 865, 873; People v. Ditson (1962) 57 Cal.2d 415, 436. NOTE: A conviction will not automatically be reversed if it was based in part on an involuntary statement by the defendant; instead,


206 See Oregon v. Elstad (1985) 470 US 298, 310 [“When a prior statement is actually coerced, the time that passes between confessions, the change in place of interrogations, and the change in identity of the interrogators all bear on whether that coercion has carried over into the second confession.”]; People v. Montano (1991) 226 Cal.App.3d 914, 938; Brown v. Illinois (1975) 422 US 590, 603-4; Oregon v. Elstad (1985) 470 US 298, 310; People v. Johns (1983) 145 Cal.App.3d 281, 293 [“(T)he causative nexus between the detective’s [coercive] comments during the second interview and defendant’s admissions four days later during the third, is extremely attenuated, if not nonexistent.”]; People v. McClary (1977) 20 Cal.3d 218, 229 [court said that four-hours was “a relatively short time span between the two interviews.”]; People v. McElheny (1982) 137 Cal.App.3d 396, 402 [two to three hour time span; coercion during first interview was extreme]; People v. Jimenez (1978) 21 Cal.3d 595, 614; People v. Brommel (1961) 56 Cal.2d 629, 634; People v. Hogan (1982) 31 Cal.3d 815, 843. NOTE: Other relevant circumstances include the suspect’s mental state during the second interview and whether he lied to officers during the subsequent interview (lying “is not the behavior of one whose free will has been overborne”). See People v. Johns (1983) 145 Cal.App.3d 281, 293.