Voluntariness Doctrine

Defensewiki.ibj.org explains:

Traditionally confessions have been considered the gold standard of evidence creating an almost irrebuttable proof of the defendant's guilt. This began to change in the 1800's when the U.S. Supreme Court first began to question strong-handed interrogation tactics:

> *A confession freely and voluntarily made is evidence of the most satisfactory character. But the presumption upon which weight is given; to such evidence -- namely that an innocent man will not imperil his safety or prejudice his interests by an untrue statement, ceases when the confession appears to have been made -- either in consequence of inducements of a temporal nature held out by one in authority, touching the charge preferred, or because of a threat or promise made by, or in the presence of, such person, in reference to such charge.* [1]

It wasn't until 1936 that the Supreme Court determined that involuntary confessions were abhorrent to the Due Process Clause of the 14th Amendment of the U.S. Constitution: [2].

> *Coercing the supposed state's criminals into confessions and using such confessions so coerced from them against them in trials has been the curse of all countries. It was the chief inequity, the crowning infamy, of the Star Chamber and the Inquisition, and other similar institutions. The constitution recognized the evils that lay behind these practices, and prohibited them in this country. . . . The duty of maintaining constitutional rights of a person on trial for his life rises above mere rules of procedure, and wherever the court is clearly satisfied that such violations exist, it will refuse to sanction such violations and will apply the corrective.* [3]

Confessions which are involuntary may be excluded from evidence unless the defendant opens the door to the admission of the confession. Recent studies have demonstrated that false confessions are a real and ever-present threat to fair adjudication of criminal cases.

The exclusion of involuntary evidence is premised on three principals. First, exclusion of involuntary confessions tends to deter police misconduct. Second, a confession should be freely made by a rational person. Finally, confessions obtained with duress are inherently unreliable.

Voluntariness is determined by a factfinder (judge or jury) by examining and taking into consideration the totality of the circumstances. [4]

Factors may include objective factors such as:

- Duration of the interrogation
- Length of pre-trial detention
- Place and conditions of interrogation
- Psychological threats
- Police conduct during interrogation
- Whether force or threat of force was used during interrogation.

Similarly, the factfinder must examine the defendant's subjective state of mind to determine whether given all those factors, the confessions was, in fact, involuntary. In doing so, they should consider the defendant's physical and mental characteristics: age, race, education, history and psychological state of mind during the interrogation.

Deception alone is usually not enough to warrant exclusion of a confession as involuntary. In Frazier v. Cupp [5], the U.S. Supreme Court upheld the admissibility of a confession when the police falsely told the defendant that his cousin had confessed to the crime. The Court held that

deception was just one factor in the voluntariness test and that deception in and of itself was not dispositive.

In certain circumstances, police misconduct may be so egregious that the confession evidence should be excluded without regard for how that conduct affected the defendant.
See Confessions, McNabb-Mallory Rule

Notes

1. Hopt. v. Utah, 120 U.S. 430 (1887)
2. Brown v. Mississippi, 297 U.S. 278 (1936)
3. Brown v. Mississippi, 297 U.S. 278 (1936) quoting Fisher v. State, 145 Miss. 116, 134 (1926)
4. Haynes v. Washington, 373 U.S. 503 (1963)
5. Frazier v. Cupp, 394 U.S. 731 (1969)

Research/Publications on the Voluntariness Doctrine

It's Not Just About Miranda: Determining the Voluntariness of Confessions in Criminal Prosecutions

Paul Marcus

40 Val. U. L. Rev. 601 (2006).
Available at: https://scholar.valpo.edu/vulr/vol40/iss3/4

Abstract

This Article seeks to answer several key questions: Are the voluntariness rules still being broadly litigated? Do they have weight in many major cases, or are they of note simply in fringe areas? Finally, is the law regarding voluntariness any better than it was before Miranda, and is there now more certainty for law enforcement personnel, lawyers, and judges? This Article does not seek to extend the earlier, thoughtful proposals that had been made as to ways in which more definite standards and rules could be used. Also, this Article does not seek to determine whether current Fifth Amendment law results in serious consequences as to innocent parties confessing or the police being unduly handicapped in the investigative process. Rather, the purpose of this Article is to evaluate the law on voluntariness. To accomplish this, I have reviewed every reported state and federal appeals decision on voluntariness of the past twenty years. Tens of thousands of opinions dealing with confessions in criminal cases were examined, a good number of which mentioned voluntariness, but they did not truly explore the due process principles. Ultimately, I have read a few thousand opinions on point, dating from 1985 to present. The forthcoming Parts show that the key conclusions can be stated concisely. The voluntariness considerations remain a major matter in criminal prosecutions, and the substantive law in this area has not improved or become more definite over the past four decades. To that end, the analysis will begin with several major United States Supreme Court decisions and then look to the way in which state and federal judges continue to construe and apply those decisions.

Rethinking the Involuntary Confession Rule: Toward a Workable Test for Identifying Compelled Self-Incrimination

Mark A. Godsey

Cincinnati College of Law (2005). Faculty Articles and Other Publications. 92.
https://scholarship.law.uc.edu/fac_pubs/92

Abstract

For more than a century, the Supreme Court has interpreted the Bill of Rights as prohibiting the police from obtaining involuntary confessions from suspects through the use of coercion. If asked whether this involuntary confession rule is an understandable and

workable doctrine, however, a noticeable percentage of judges, prosecutors, police officers, criminal defense attorneys and law professors would answer with an unequivocal no.

Basic questions concerning voluntariness and free will - whether it exists, and if so, when it exists, etc. - have puzzled philosophers for centuries and represent one of history's Gordian knots. Not surprisingly, judges have fared no better than philosophers in solving this age-old enigma since the Supreme Court first adopted voluntariness as the touchstone for constitutional confession law in 1897. The problems with the involuntary confession rule are well-documented and legion.

Given the pervasive problems with the involuntary confession rule in application, it is surprising how little mainstream attention has been given to its ascendancy to power and current doctrinal legitimacy. Indeed, although it currently lies at the foundation of confession law, it is unclear from which provision in the Bill of Rights it emanates. Some believe the Fifth Amendment's Privilege Against Compulsory Self-Incrimination demands a rule that involuntary confessions are inadmissible. Others would claim that the involuntary confession rule is derived from the Due Process Clauses of the Fifth and Fourteenth Amendments. Still others would argue that both the Privilege and the Due Process Clauses are identical in this respect, and work in tandem to prohibit involuntary confessions. It is as if the voluntariness test has ruled the roost for so long that its source and doctrinal validity are no longer questioned by courts or practitioners.

The thesis of this Article is that, due to legal and historical errors, the Supreme Court has unduly relied on the involuntary confession rule in confession jurisprudence for the past century. This unexplained adherence to the voluntariness test has caused the Court to ignore other important values and principles that should be considered and ultimately infused into the equation. These principles should be used to forge a new test for confession admissibility that either replaces the involuntary confession rule outright, or, at a minimum, supplements existing doctrine.

Four essential points support this thesis and form the foundation of this Article. The first point is that nothing in the Bill of Rights requires, or even suggests, a voluntariness test as the primary test for confession admissibility. At no point did the Framers engraft a voluntariness standard upon us, and, like a cruel joke, make the unsolvable puzzle of free will the unavoidable sine qua non in courtrooms and interrogation rooms for time immemorial. Indeed, the word voluntary and its various permutations do not even appear anywhere in the Bill of Rights. Second, the involuntary confession rule exists today because of a series of mistakes and doctrinal complications, beginning with Bram v. United States, the Supreme Court's first constitutional confession case, and continuing even after Miranda v. Arizona seemingly rendered the rule obsolete. Third, the text of the Privilege Against Compulsory Self-Incrimination suggests a standard based on compulsion, where the focus is on the objective behavior of the interrogators, rather than voluntariness, where the focus is on the subjective state of mind of the suspect. Such a test would be more faithful and consistent with existing interpretations of the Privilege in non-interrogation contexts as well as the text and historical origins of the Privilege. Fourth, a test for confession admissibility properly based on compulsion and the Privilege would differ in many important respects from the involuntary confession rule. Although many scholars and even Supreme Court Justices who follow conventional wisdom might disagree, existing interpretations of the Privilege in non-interrogation contexts, the historical origins of the Privilege, the text of the Privilege, and relevant policy issues all argue to the contrary.

The Article then delineates a new confession test, called the objective penalties test, based on the Privilege, in which the touchstone for admissibility would be compulsion rather than voluntariness. This test would hold confessions inadmissible that had been obtained by imposing an objective penalty in any form on the suspect to punish silence or provoke speech. The Article develops the objective penalties test in detail through reference to the scholarly literature in the field of philosophy, where a rich standard has been created for determining when a coercive penalty has been imposed. Importing this philosophical literature into the realm of confession law, the Article attempts to create a workable standard for determining the admissibility of confessions. In an effort to demonstrate how this objective penalties test would work in practice, the Article sets forth numerous hypothetical interrogations and analyzes how these interrogation problems would be solved under the newly proposed test.

The Future of Confession Law: Toward Rules for the Voluntariness Test

Eve Brensike Primus

Michigan Law Review, Vol. 115, 2015

U of Michigan Public Law Research Paper No. 440

Abstract

Confession law is in a state of collapse. Fifty years ago, three different doctrines imposed constitutional limits on the admissibility of confessions in criminal cases: Miranda doctrine under the Fifth Amendment, Massiah doctrine under the Sixth Amendment, and voluntariness doctrine under the Due Process Clauses of the Fifth and Fourteenth Amendments. But in recent years, the Supreme Court has gutted Miranda and Massiah, effectively leaving suspects with only voluntariness doctrine to protect them during police interrogations. The voluntariness test is a notoriously vague case-by-case standard. In this article, I argue that if voluntariness is going to be the framework for confession law going forward, courts will need to disentangle the complex of values that is discussed under that heading and then use their clarified understanding as the basis for a judicially administrable rubric for regulating interrogation practices. As a matter of history and current practice, I argue that there are two different strands within voluntariness doctrine – one deontological strand that focuses on the offensiveness of the police methods used and one consequentialist strand that is concerned with the problem of false confessions. Courts could profit from disentangling those strands and creating different tests for each. Once the two strands are separated, voluntariness doctrine can move toward rules that are tailored to the distinctive values animating each strand. Toward that end, I propose different tests for determining the voluntariness of confessions going forward depending on which of the two strands is implicated in a given case.

Rethinking the Involuntary Confession Rule: Toward a Workable Test for Identifying Compelled Self- Incrimination

Godsey, Mark A.

University of Cincinnati College of Law Scholarship and Publications (2005). Faculty Articles and Other Publications. Paper 92.

http://scholarship.law.uc.edu/fac_pubs/92

Preview

This Article argues that due to legal and historical errors, the Supreme Court has unduly relied on the involuntary confession rule in confession jurisprudence for the past century. As a result, the Court has ignored other important values and principles that the Court should consider and ultimately infuse into the equation. These values and principles should

be used to forge a new test for confession admissibility that either replaces the in- voluntary confession rule outright or, at a minimum, supplements existing doctrine.

Four essential points support this thesis and form the foundation of this Article. First, nothing in the Bill of Rights requires, or even suggests, a voluntariness test as the primary test for confession admissibility. At no point did the Framers impose a voluntariness standard upon us and, like a cruel joke, make the unsolvable puzzle of "free will" the unavoidable sine qua non in courtrooms and interrogation rooms for time immemorial. Indeed, the word "voluntary" and its various permutations do not even appear anywhere in the Bill of Rights. Second, the involuntary confession rule exists today because of a series of mistakes and doctrinal complications, beginning with Bram v. United States, the Supreme Court's first constitutional confession case, and continuing even after Miranda v. Arizona seemingly rendered the rule obsolete. Third, the text of the self- incrimination clause suggests a standard based on compulsion, which focuses on the objective behavior of the interrogators, rather than on voluntariness, which focuses on the suspect's subjective state of mind. Such a test would be more faithful and consistent with existing interpretations of the self-incrimination clause in non-interrogation contexts as well as with the text and historical origins of the self-incrimination clause. Fourth, a test for confession admissibility properly based on compulsion and the self- incrimination clause would differ in many important respects from the in- voluntary confession rule. Although many scholars and even Supreme Court Justices who follow conventional wisdom might disagree, existing interpretations of the self-incrimination clause in non-interrogation con- texts, the historical origins of the self-incrimination clause, the text of the self-incrimination clause, and relevant policy issues all argue to the contrary.

Part I of this Article traces the development of the involuntary confession rule from its birth in the nineteenth century through 1936. Section A discusses how the Supreme Court first introduced the concept of voluntariness into constitutional confession law in 1897 in Bram. This Section argues that the Brain Court seemingly confused a common law, rule of evidence with the self-incrimination clause and, as a result, introduced the voluntariness rubric into constitutional confession law. In critiquing the Brain decision, Section B introduces the concepts and argues that both the text of the self-incrimination clause and its historical origins support the notion that the proper test for admissibility under the self-incrimination clause should be compulsion rather than voluntariness.

Part II discusses confession law from 1936 to 1964, which was the golden era of the involuntary confession rule. During this period, the Supreme Court decided more than thirty confession cases based on volun-
tariness. This Part demonstrates that the voluntariness standard flourished in this period because the due process clauses rather than the self- incrimination clause controlled confession law. This Part further argues that existing interpretations of the self-incrimination clause in the non-interrogation context, such as trials and congressional hearings, as well as textual and historical analyses of the self-incrimination clause suggest that the proper test for compulsion should be objective, focusing primarily on the conduct of the interrogators.

Part III examines the Supreme Court's temporary departure from the involuntary confession rule in Miranda and the decisions that followed. This case returned the focus of confession law back from the due process clauses to its rightful home in the self-incrimination clause. It also seemingly rejected the involuntary confession rule, replacing it with a new, objective test for compulsion under the self-incrimination clause that is a

distant ancestor to the test for compulsion proposed later in this Article. Section B shows that as a result of political maneuvering, however, the incremental gains made by the Miranda Court were soon lost and the voluntariness test was allowed to creep back into confession law. Finally, Section C explains that with the 2000 case of Dickerson v. United States3, 5 in which the Supreme Court upheld the constitutional requirement for Miranda warnings, the political battles that caused the voluntariness stan- dard to be resuscitated post-Miranda may have lost steam. This Section argues that now that these battles are over the controversy over the Miranda warnings have subsided and the smoke has started to clear, the time is ripe for the Court to reassess the turbulent and unfortunate course its confession jurisprudence has taken over the past century.

Part IV then details a new path for the Court to consider. Drawing on the lessons learned in Parts I, II, and III, Part IV delineates a new confession test, called the "objective penalties test," based on the self-incrimination clause, in which the touchstone for admissibility would be compulsion rather than voluntariness. This test would hold inadmissible confessions that had been obtained by imposing an objective penalty in any form on the suspect to punish silence or provoke speech. Part IV develops the objective penalties test in detail through reference to the scholarly literature in the field of philosophy, where a rich standard has been created for determining when a coercive penalty has been imposed. Importing this philosophical literature into the realm of confession law, this Part attempts to create a workable standard for determining the admissibility of confessions. In an effort to demonstrate how this objective penalties test would work in practice, Part IV sets forth numerous hypothetical interrogations and analyzes how these interrogation problems would be solved under the newly proposed test.

The Article concludes by exploring what remaining role, if any, the due process clauses and the involuntary confession rule should play in future constitutional confession jurisprudence.

From whose perspective? Differences between actors and observers in determining the voluntariness of guilty pleas.

Fessinger, Melanie B. and Kovera, Margaret Bull.

Law and Human Behavior, Vol 46(5), Oct, 2022. pp. 353-371.

Abstract (English):

Objective: Valid guilty pleas must be made voluntarily, yet most defendants report that they did not feel part of the decision-making process or responsible for the decision. Defendants and judges both play a role in determining whether guilty pleas are voluntary. The actor–observer bias suggests that defendants and judges perceive the decision-making process differently given the nature of their roles. The present studies applied this framework to assess the complexity of voluntary plea decision-making. Hypotheses: We expected observers would rate pleas as more voluntary than would actors. We also expected participants to rate pleas made by guilty defendants as more voluntary than those made by innocent defendants and to view pleas made with voice as more voluntary than those made without voice. Finally, we expected the effect of guilt and voice on voluntariness to differ for actors and observers. Method: Participants were Amazon's Mechanical Turk workers (Study 1: N = 202, Study 2: N = 626) who had a history of high-quality performance on past tasks, were roughly evenly split between men (Study 1: 52%, Study 2: 53%) and women (Study 1: 48%, Study 2: 47%), and were primarily White/non-Hispanic (Study 1: 84%, Study 2: 75%). They watched video-recorded materials about a criminal case in which a defendant decided how to plead. The materials varied the

participant's role (actor, observer), the defendant's guilt (innocent, guilty), and whether the defendant had a voice in the decision-making process (no voice, voice). Participants then rated the voluntariness of the decision-making process. Results: In both studies, actors rated pleas as more voluntary than did observers. Participants rated guilty pleas as more voluntary when the defendant was guilty compared with innocent. Participants also rated pleas as more voluntary when the defendant had a voice in the decision-making process compared with when the defendant did not have a voice, but the difference was bigger for observers than for actors. Conclusions: Defendants and judges both determine whether a guilty plea is made voluntarily. These decision-makers are likely to perceive the plea decision-making process differently given their differing perspectives. There was also a large effect of voice on whether decisions were perceived to be voluntary. Individuals who play a role in the plea decision-making process should ensure that defendants have a proper opportunity to express their opinions and preferences about the decision.