

ISSUE:

Was Jones' statement involuntary?

HELD: Yes--the statement was plainly induced by the officer's agreement that the conversation would be off the record.

REASONING:

1. Promises that a statement will remain confidential or will not be used against the declarant appear similar to promises of leniency or immunity from prosecution.

2. There can be no such thing as an off the record discussion. A request to speak off the record cannot constitute a knowing and intelligent Miranda waiver.

3. In this case, Jones did not give incriminating information until he was assured by the police that his statement was off the record. (emphasis added)

NOTES:

If a defendant wants to "go off the record," you must inform him that you cannot comply with that request and that whatever he tells you can and will be used against him.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section P, "Right to Counsel and Waivers During Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 265 numerically under Section R of the manual.