





DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 265
March 20, 2003

PROMISE TO "GO OFF RECORD" DURING CUSTODIAL INTERROGATION RENDERS SUBSEQUENT CONFESSION INVOLUNTARY

Reference: Reginald R. Jones, Jr. v.

State of Alaska

Alaska Court of Appeals
Opinion No. 1860
_____P.2d_____

March 14, 2003

FACTS:

Jones and two of his male friends were arrested for the sexual assault of a fourteen-year-old female. Jones was advised of, and waived, his Miranda rights. At one point, two detectives were interviewing Jones, who continued to deny that any assault or sexual contact with the victim had taken place. Jones said he thought the detectives were trying to trick him. One of the detectives left the interview room taking the portable tape recorder with him. The other detective continued the interview. Jones asked if there was any way he could beat this or get around it. The detective told Jones that he could not promise him anything and that the charges would not be dropped.

Jones asked the detective if they could talk off the record--"between you and me." The detective assured him that they could and stated that the other officer had removed the recorder from the room. The detective said, "...this is off the record between you and I." Jones asked the detective on several other occasions if they were speaking "off the record." The detective assured him that they were. The conversation was actually recorded and Jones made several damaging statements which were used against him at his trial.

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.
- $\underline{2.}$ 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.
- $\underline{3.}$ In this case, Jones did not give incriminating information until $\underline{\text{he was assured by the police that his}}$ 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 $\underline{\text{can}}$ and $\underline{\text{will}}$ 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.