

# Deception, Coercion, and the Limits of Interrogation

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**This column discusses the recent case of *U.S. v. Boskic* to highlight issues related to voluntariness—in particular, the voluntariness of a confession. At a meeting with U.S. government agents, Boskic, a Croat from Bosnia living in the United States, confessed to involvement in the 1995 Srebrenica massacre. The agents had deceived him about the meeting's purpose and did not disclose that they had a warrant for his arrest. The courts were asked to decide whether the confession was involuntary, and thus not admissible as evidence, on the basis of whether the deception was coercive. (*Psychiatric Services* 60: 422–424, 2009)**

When is an action voluntary? This seemingly abstract question can have decidedly concrete consequences in a variety of legal contexts, including criminal prosecutions. Defendants often seek to have confessions or other incriminating statements suppressed on the basis that they were given involuntarily, and they may attempt to exclude evidence seized in ostensibly consensual searches on similar grounds. Forensic psychiatrists and psychologists are sometimes asked to evaluate the voluntariness of defendants' decisions, making the question of more than academic interest to the mental health professions.

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Current judicial approaches to issues of voluntariness, including the extent to which deception can be considered coercive, are nicely illustrated by a recent pair of decisions from the federal courts in Massachusetts in a case called *U.S. v. Boskic* (1,2). This column discusses *Boskic* and the line of cases that led to the decision in *Boskic* to examine legal conceptions of coercion and deception.

## Boskic's confession

Marko Boskic is a Croat from Bosnia who immigrated to the United States as a refugee in 2000. When completing his application for refugee status, and later for permanent residency, he failed to indicate his previous service in the army of the Serbian Republic. In fact, Boskic had served in the 10th Sabotage Detachment of that force, which was responsible for the massacre of 8,000 Bosnian Muslim men and boys near Srebrenica in 1995. Had he responded honestly to the questions about his military service, Boskic would have been excluded from the United States and might have been open to prosecution for war crimes as well.

International outrage over the Srebrenica massacre and other atrocities during the war in Bosnia led to the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY), which began an investigation of acts by former combatants that might result in criminal charges. [More information is available at the tribunal's Web site at [www.icty.org](http://www.icty.org).] As evidence appeared of Boskic's involvement, an ICTY representative notified the U.S. government, hoping that an inquiry into Boskic's role might help in the development of evidence against higher-ranking Serbian officers. Ultimately,

representatives of the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), and the U.S. Attorney's office in Massachusetts, where Boskic had settled and was working in construction, became involved in the case. In concert with an ICTY representative, they developed a strategy to get Boskic to confess his involvement in the mass murders and to provide information that would incriminate other participants.

Boskic, who desired to travel outside the United States, had applied to the Immigration and Naturalization Service (which later became ICE) for travel documents that would allow him to return to this country. Taking advantage of the circumstances, the investigative team sent him a request to come for an interview, allegedly in connection with his application. In actuality, however, the team, which had already obtained a warrant for Boskic's arrest, intended to pursue an elaborate, sequential strategy for interrogating Boskic, beginning with an ICE agent who would pretend to initiate a discussion about the travel documents. The team then planned to introduce an FBI agent into the interrogation, on the pretext that Boskic's criminal record in Bosnia (which he had also failed to disclose) mandated FBI involvement before the travel documents could be issued. Finally, the war crimes investigator from the ICTY would be brought into the room, along with an interpreter, to question him directly about the Srebrenica massacre.

The plan unfolded in textbook fashion. Boskic, who was read his *Miranda* rights at the outset and reminded of them several times during the multihour interrogation, was taken in by the premise that the interview was for

the purpose of issuing him travel documents. At first, he continued to deny his involvement in the war in Bosnia, initially under questioning by the ICE agent and later with the agent from the FBI. The representative of the ICTY, however, confronted Boskic directly, showing him a DVD with footage of Boskic at an awards ceremony for the 10th Sabotage Detachment. Having been assured by the ICTY representative that higher-ups and not Boskic himself were the real targets of the investigation, Boskic identified himself in the video and provided an oral and later written account of the roles that he and others played in the massacre. Before the evening ended, Boskic had been arrested on charges of having lied on his immigration forms about his involvement in the Serbian Army and the Srebrenica murders.

Before trial in federal court, Boskic challenged the introduction of his statements as evidence against him, most notably on the grounds that he had not spoken voluntarily but had been coerced by the deceptions of his interviewers. Not only, he alleged, had the purpose of the interview been misrepresented to him, but the statement of the ICTY investigator that he was not the target of the war crimes investigation also led him to believe that he would not face immigration-related charges. Hence, Boskic claimed that the Fifth Amendment's provision that "no person shall . . . be compelled in any criminal case to be a witness against himself" had been violated by the government's actions.

### **When is a confession involuntary?**

Legal rules regarding the exclusion of confessions on the grounds of their being obtained involuntarily have undergone some evolution. A 1960 U.S. Supreme Court decision in *Blackburn v. Alabama* (3) stated the essence of the common law rule that had developed over the centuries: a voluntary confession is one that is "the product of a rational intellect and a free will." By explicitly including rationality as a factor in the voluntariness of a confession, the formulation in *Blackburn* could be taken to support Boskic's argument that in deceiving him, the federal agents had

rendered his confession involuntary. Rational decision making, after all, would appear to be predicated on an accurate understanding of one's situation. Indeed, in a later decision in *Moran v. Burbine* (4), the Supreme Court explicitly characterized a voluntary confession as one that is "the product of a free and deliberate choice, rather than intimidation, coercion, or deception."

In 1986, however, the Court narrowed its approach to coercion in its landmark decision in *Colorado v. Connelly* (5). Connelly was suffering from paranoid schizophrenia when he approached a policeman on a street corner in Denver to confess to committing a murder. He later claimed that his statements had been involuntary because he had been commanded by auditory hallucinations, which he believed to be the voice of God, to confess the crime. Under the Blackburn "rational intellect" standard, Connelly's confession could be said to be involuntary. However, clarifying its view of what constituted coercion, the Court rejected Connelly's claim. "[O]nly confessions procured by coercive official tactics should be excluded as involuntary," the Court declared. Consistent with *Connelly* and the Court's other precedents, behaviors that might vitiate the voluntariness of a confession could include physical duress and illegitimate threats and such factors as the length and location of an interrogation, taking into account the person's physical and mental health. But in the absence of coercive behavior on the part of the interrogators, *Connelly* teaches that a confession will be presumed to be voluntary.

Boskic's confession clearly resulted from the "official tactics" of his interrogators. But is deception the kind of behavior that the courts will consider coercive? Wertheimer's (6) classic discussion of coercion argues that its essence lies in a threat by A to deprive B of something to which B is otherwise entitled, unless B does what A desires. An example from an actual case involved a threat by the police to take away a woman's child if she failed to cooperate with them (7). Even though the government's behavior in Boskic's case was deliberately mis-

leading, it would not appear to meet the definition of coercion, as no threat—actual or implicit—was made. Moreover, the courts have traditionally granted considerable scope to interrogators to deceive suspects, such as the time-honored approach of telling a suspect that a confederate has already confessed to the crime. As the Supreme Court has emphasized, "Ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within [the] . . . concerns" of Fifth Amendment challenges to the voluntariness of confessions (8).

### **Judicial approaches to deception**

Given U.S. Supreme Court precedents defining when confessions should be excluded as involuntary, the U.S. District Court in *Boskic* had little choice but to reject his attempt to suppress his statements. In addition to dismissing his claims of coercion, the court gave short shrift to his argument that the agents' deception had been fundamentally unfair (thus denying him substantive due process) by noting the high standard that such a claim had to meet: that the relevant behavior was "shocking to the universal sense of justice" (1). When the case went to trial, Boskic was convicted on two of the counts against him of having lied on his immigration forms. His subsequent appeal to the federal First Circuit Court of Appeals resulted in a decision upholding the district court's finding and his conviction (2).

*Boskic* and the line of cases on which the *Boskic* decision relies offer some important lessons regarding contemporary judicial approaches to determining when the voluntariness of an act is negated by coercion. In criminal justice settings, a defendant's behavior will be presumed to be voluntary in the absence of some external, intentional, and illegitimate action on the part of an official. (Similar rules may apply to civil settings where the voluntariness of a decision is in question [9].) Mere deception will not be deemed illegitimate unless it involves information directly relevant to a person's exercise of his or her rights (for example, misleading a defendant about the right to have coun-

sel present during a custodial interrogation). As the Supreme Court has noted, law enforcement officials are not obliged to supply information that would allow a suspect to make optimal decisions (4). Rather, official behaviors considered illegitimate generally will be limited to those involving the issuance of a threat or interrogation in circumstances that involve substantial physical or mental duress.

Issue might be taken with the courts' approach to voluntariness on the grounds that it is unfair to defendants to allow them to be manipulated and deceived by law enforcement officials. But the courts are well aware of the criminal justice system's difficult task of protecting society from wrongdoers, and whatever judi-

cial concerns might exist regarding fairness in these cases are outweighed by a reluctance to permit persons who have committed crimes to escape punishment.

### Conclusions

Mental health professionals who become involved in evaluations of defendants' voluntariness must recognize that they are not being asked whether a defendant has made a decision in a less-than-optimal manner—as many defendants do. Rather, when illegitimate actions have been committed by law enforcement agents, testimony by a mental health professional may be useful to demonstrate the extent to which defendants experienced coercion. But deception per

se will not be considered a sufficiently egregious action to invalidate confessions or lead to the exclusion of other evidence.

### References

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