

"O.K. Chief - I done it!"  
Written June 26, 1944.

Collins

Ezra

Amer. Mus.

New York

Harpers.

N. Y. Times Mag - Dec 4, 1944. - Dec. 18, '44

N. Y. Herald Trib. - Dec. 29, 1944 - Jan 24, '45 from "This Week" Mag.

Common  
case:

Drunkenness = Try to draw a picture =

He couldn't  
bite his  
cigarette

His eyes were blood-shot and cloudy, his  
breath smelt like a bezzard, he made wand-  
like <sup>uncertain</sup> gestures with his hands, his speech was

He kept  
trying to  
sing  
"Whispering"

Official knowledge mumbled, Negative  
Inquiries:  
Tip-off etc. Squealer, etc.

General rule in Michigan is officer need not  
divulge source to defence on grounds of public policy.  
Laird, 102/135

Summarize:

Evidence must be lawfully obtained to be introduced:

Depressed drunk,  
Jovial,  
Ready to pass  
out;

Either by legal search warrant or as a lawful  
search following a lawful arrest or when consent to search  
is given. (Grove deer case // game warden)

He went to the  
toilet  
3 times in  
1/2 hr.

In larceny or robbery cases, well to sew up & check  
\$ or loot as soon as possible....

He wanted to  
show my own  
shots of his  
mouth in law

SYSTEM OR PLAN: Example: That a series of  
robberies occurred where the Dept. bound the victim with clothesline  
IDENTIFICATION =

When case depends upon identification, sew up  
witnesses on WHY they remember: VOICE, HAIR,  
COLD, LIMP, LISP or any peculiarities....

DEMEANOR ON STAND

CONTRADICTORY TESTIMONY:

Always correct = Frankly and rapidly: Frankness  
and fairness two greatest assets of an officer on the stand.  
Nothing to sell - No broom.

guilty actions gently admissible:

EVEN BY  
VICTIM

Res gestae = Acts, conduct, demeanor & conversation  
of a person shortly before, during or after are admissible.

Former Testimony or Inquest

Inquest evidence not admissible = Give case of  
dead bartender = Prelim exam. by people: Sex  
cases, etc. (Example: Ordovick libelous)

Be sure to sew up Defts. witnesses, either by statement in writing or by inquest or preliminary examination: Example:  
"witnesses whom the people are obliged to call by law to call as res gestae witnesses may be impeached the same as though such witnesses had been called by the respondents." Act 336, P. A. 1931

Confessions and Admissions  
In a 1938 case (288/417) it is finally held that silence of accused is not a confession. Evidence that accused tried to get witnesses to swear falsely to an alibi, are admissible against the accused as an admission:

Adm: What accused says or does at the time of his arrest is admissible at his trial. Example:  
① Offering corp \$500 to let him go. ② RESISTANCE to arrest. ③ Found hiding on a ladder. (Ross case.)

Adm: Flight or escape <sup>at or</sup> after arrest is adm. as bearing on D's guilt. Bears on purpose and intent:

CONFESSION: Must be voluntary =

Decist: See LIPSCINNSKA, 212/484.

COPIOS DILICTI cannot be established by confession alone.

### NEGATIVE DEFENSES:

Self-defense;

Alibi =

Drunkenness =

Definition: Is an acknowledgement of the guilt of the crime charged OR of the facts which constitute the crime:

Anything less is an admission: where it depends upon proof of other facts:

Admission is something tending to show guilt.  
"I did it because his car S.O.B." is an admission, not a confession.

"I hope to God I got him" - Confession.

"A fellow's got to get caught sometime" (Adm.)

"I'm glad you got me - this strain is killing me" (Adm.)

"I shot him" (Adm.)

"I was there when he was shot" (Adm.)

→ Generally adms. need not be voluntary.

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Don't get too much into confession

Don't allow hangers-on.

Don't notanize confession = Waste of time

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2 kinds of confession.

- (1) Judicial. Prelim, exam, inquest <sup>or trial</sup>
- (2) EXTRA = All other confessions made out of court.

Extra-jud.

VOLUNTARY

Emotions =

Set def. lead affairs over scene of crime:

→ Suggestions on signed confessions:

1) Have word or name <sup>near end</sup> misspelled and have defendant correct <sup>in</sup> his writing and sign in margin.

(Shows he read it.)

2) Put warning in written confession.

3) Good to use odd expression or grammatical logic

Warning the accused (CONFESSOR)

When not under arrest or in custody, not necessary, but safest to do so in every case.

Nature of warning: It is sufficient if the words inform the accused that he need not make a statement, and that anything he may say may be used for or against him. Rubel, 221/142

NEED NOT BE SIGNED:

→ Ideal confession: Made by talking showing pictures. Such was received in a Pennsylv. murder trial.

1st. draft  
1 in draft  
June 26, 1944.

and is on a par with the popular prejudice against circumstantial evidence.

# "OK. CHIEF - I DONE IT!"

by Robert Traver

As he is current not to mention dramatic nourished on detective literature, and by radio and movie, ~~script~~ of criminal procedure, the average citizen

Confessions of guilt by defendants charged with crime are, as common as true confessions in the love story magazines. This is due to the fact that the police generally ask a person if he did it or not. There is nothing sinister in such a practice, as a voluntary confession saves everyone time and trouble, not to mention the taxpayer's money. And it is sound psychology that the accused, fresh from his crime, in a mood of remorse, ~~reckless~~ or bravado, frequently talks all about it. Later, as the gray prison walls loom larger, he is less apt to open his heart and his mouth. So much for the theory of confessions.

While police officials have been known to use ~~however,~~ there is probably no phase of our law more misunderstood by the average citizen than the province and use of confessions. The normal citizen is apt to view

all confessions as ~~wrenched from~~ the accused by sheer torture. He pictures the defendant as someone like Humphrey Bogart, stoically covering in a sound-proof cell surrounded by a circle of leering flatfoots. Then follows hours and even days of physical and mental horror, during which the hapless

defendant is examined, badgered, harried, quizzed, queried and - not to forget that newspaper favorite - "grilled" and ~~all but~~ <sup>if not</sup> barbecued by the police. This comparatively mild procedure is frequently supplemented by a

periodic resort to physical torment ranging from the niceties of selected medieval torture down to the modern rubber hose, now presumably <sup>made of</sup> synthetic. Eventually the agonized defendant mumbles "OK. Chief - I done it!"

whereupon the D.A. calls in the reporters and <sup>his scoop:</sup> gleefully announces the solution of the latest murder. While the police officials have been known to use "third degree" methods of getting confessions, the practice is not, and never was, as prevalent as

good is a forgotten legend and Humphrey Bogart look good.

And this is not to glorify the police, who <sup>has been</sup> ~~is~~ like a shortcut as well as the next man. The public <sup>can</sup> ~~is~~ led to believe. The main reason ~~is~~ that a confession <sup>the vast majority of</sup> most police shun third degree methods <sup>they know that from bitter experience that</sup> is that a confession obtained by such means would not <sup>stand up for ten seconds</sup> be admissible in any court in the land. In addition, the <sup>public</sup> exposure of the <sup>attempts</sup> use of such methods <sup>is commonly</sup> ~~has been~~ known <sup>by police and prosecutors alike</sup> to build up such a wave of sympathy in the minds of <sup>American</sup> jurors that not only is the confession <sup>self-made</sup> inadmissible, but <sup>a guilty</sup> the defendant is frequently <sup>in apt to</sup> set free by the verdict of <sup>an</sup> ~~an~~ <sup>in</sup> ~~in~~ <sup>indignant</sup> jury. <sup>The jury's collective heart, respectful over at such times.</sup> In order to be used <sup>later</sup> in court a

Confession must be voluntary and made <sup>with</sup> <sup>out</sup> promise and hope of reward or benefit, or by <sup>That is the cold legal dope.</sup> compulsion, violence, threats or fear. <sup>Indeed,</sup> A confession may be rendered involuntary and <sup>accordingly</sup> unusable in court where the officers played <sup>only</sup> upon emotions of the accused <sup>— without any laying on of hands —</sup> as for example locking the accused at night <sup>in a</sup> <sup>candle-lit</sup> cell with the <sup>mutilated</sup> body of his alleged <sup>murder</sup> victim, or <sup>again</sup> where an alleged rapist was obliged to face <sup>both</sup> his hysterical wife and the girl <sup>throughout</sup> in a room for several hours. <sup>Such grim</sup> <sup>and</sup> <sup>terrible</sup> <sup>examples</sup> are <sup>approved</sup> <sup>by</sup> the law of confessions.

<sup>are</sup> In most states, also, a confession must not only be voluntary but the accused must under certain circumstances also first be warned of his <sup>constitutional</sup> rights, which <sup>are</sup> <sup>briefly</sup> <sup>namely,</sup> that he need not make a statement and that anything he says <sup>(contradictory to 14th)</sup> may be used against him.

A recent decision of the U. S. Supreme Court <sup>served to safeguard</sup> the rights of accused defendants, has further <sup>circumscribed</sup> the use of confessions or admissions, holding that confessions or admissions of crime made while the accused is in jail without having been <sup>promptly</sup> brought before ~~the~~ a judge as required by law <sup>later</sup> are <sup>in court against him.</sup> inadmissible. This is so regardless of <sup>were</sup> whether or not <sup>sharp</sup> <sup>the</sup> third degree methods ~~are~~ <sup>were</sup> used.

The whole broad field of this law of confessions <sup>the frequent incompatibility of a proper</sup> shows <sup>the</sup> concern <sup>for</sup> the <sup>legal</sup> rights of the individual defendant <sup>against</sup> <sup>which</sup> is opposed <sup>when considered</sup> <sup>with</sup> the <sup>equally proper</sup> concern of the law <sup>to</sup> <sup>find</sup> <sup>and</sup> <sup>punish</sup> the guilty.

when and where they  
still may exist,

The comic-strip methods of bludgeoning a confession of guilt from a defendant, present no great problem to our courts. Our judges blithely reverse convictions and as fast as they <sup>derive</sup> ~~find~~ them <sup>— when juries do not beat them to the punch.</sup> It is where experienced and cagey <sup>officials</sup> <sup>are</sup> aware of the legal requirement that a confession must be voluntary <sup>and all the rest,</sup> employ more subtle methods of exacting <sup>a confession</sup> the truths, that the our courts are faced with <sup>really</sup> perplexing problems. The <sup>Michigan</sup> case of People versus Durnigan <sup>nicely</sup> presented such a posed to the Michigan Supreme Court not so many years ago.

A ~~man~~ It came about this way.

A Two men, Knox and Smith, were in <sup>routine</sup> jail awaiting trial on a <sup>growing out of</sup> ~~murder~~ <sup>which occurred during a robbery.</sup> charge. The defendant Durnigan was arrested and <sup>deposited in</sup> ~~sent~~ into the same jail on a petty charge. <sup>By a coincidence</sup> This same Durnigan had earlier testified at the preliminary examination of Knox and Smith <sup>on the murder charge.</sup> his testimony had tended to incriminate ~~them~~ these two and <sup>to</sup> show his own <sup>innocence.</sup> ~~It was~~ <sup>had</sup> suspected that he might have known more about the murder than he told. <sup>on his petty charge,</sup> While Durnigan was languishing in jail the undersheriff and a deputy sheriff, <sup>acting on a hunch,</sup> conceived the bright idea to <sup>of sending</sup> ~~send~~ a barber called Wilcox, who was acquainted with Durnigan, into the latter's cell; this for the ostensible purpose of cutting Durnigan's hair, but for the real purpose of obtaining such information as he could from Durnigan and turning it over to the sheriff. Barber Wilcox fell in with this <sup>to and cut his hair.</sup> ~~clever~~ plan and for a fee entered <sup>the</sup> Durnigan's cell <sup>and</sup> suggested that if <sup>Durnigan</sup> the latter wished to communicate with his wife, he, Wilcox, would convey a letter to her. Acting on this suggestion and relying on the Wilcox's friendship and good faith of Wilcox,

\* 163 Mich 349, 128 N. W. 940 -



the unsuspecting Samson,  
Dunnigan wrote and delivered a letter <sup>to Wilcox</sup> addressed  
to Nora, his wife, which Wilcox instead immediately  
turned over to the sheriff. The <sup>fatal</sup> letter read as follows:

(Insert 'A to A' in quotes)

Largely on the strength of this letter,  
Dunnigan was <sup>promptly</sup> indicted for <sup>the</sup> murder and  
upon his trial the <sup>prosecution offered the</sup> damning letter ~~was offered and~~  
received in evidence as a confession of <sup>his</sup> guilt.  
Dunnigan's lawyer objected to the admission of  
the letter on several grounds, <sup>among others</sup> arguing strenuously  
that the so-called confession <sup>in that it</sup> was inadmissible  
because it was <sup>involuntary because it was</sup> procured from his client by artifice  
and fraud. Nevertheless the trial judge received the  
letter in evidence and the jury heard the case and  
<sup>have of smoke and</sup> retired to consider its verdict. In due course <sup>the jury came out</sup> it brought in  
with a verdict <sup>finding the defendant</sup> of guilty of first degree murder. Dunnigan was  
sentenced to life <sup>and went to prison while</sup> imprisonment ~~in the~~ and his lawyer  
promptly went to Lansing and <sup>and appealed</sup> appealed to the Michigan Supreme Court. <sup>ever</sup>  
The <sup>supreme</sup> court <sup>had never had quite this pose before it.</sup> reviewed the authorities on the law  
of confessions, and <sup>finally</sup> spoke as follows: "It would appear  
that the true <sup>reason</sup> for the exclusion of involuntary confessions  
that is, those obtained by improper threats or promises -  
is that, because of such threats or promises the  
accused is led to believe that it is for his interest to  
make the confession regardless of its truth or falsity.  
The use of artifice, ~~trickery~~ trickery, or fraud in  
inducing a confession will not alone render such a  
confession inadmissible in evidence. If the artifice used  
involved a promise tending to ~~operate~~ induce a  
false confession, it would operate to exclude, not because  
of the truth, but because, by use of the trick or artifice, an  
untrue confession had been obtained." (Italics ours.)

So much for the law, <sup>which is well supported and</sup> ~~which~~ seems sound enough as far as it goes. How did the Supreme Court apply this law to the case of the shorn Dunnigan? This is what the court said and decided:

Donna.  
(Insert 2.)  
A to A in quotes.)

In other words, the court ~~the~~ <sup>concluded</sup> decided that the fact Dunnigan may have been deceived, <sup>by his barber chum</sup> did not tend to show that his confession was untrue.

It is plain that this was <sup>seemingly</sup> a borderline case, and the <sup>troubled</sup> court was sorely beset to <sup>fairly</sup> resolve the riddle. Taking as its guiding star in <sup>viewing this</sup> confession, the <sup>inquiry</sup> court <sup>into its</sup> <sup>probable</sup> ~~of~~ truth or falsity, and the <sup>consequent</sup> conviction of the defendant. <sup>Without the letter they would have been no connection.</sup> At the same time <sup>the</sup> the court could not resist <sup>a judicial</sup> rapping of the knuckles of the over-zealous police officials. That is how close <sup>will</sup> Dunnigan came to <sup>beating his rap.</sup> ~~gaining his freedom.~~ <sup>The moral to all this seems to be: to her in jail let your hair grow.</sup> ¶ What man will now complain of the price he pays his barber for a haircut? Will Dunnigan <sup>for his</sup> paid with his freedom. The moral to all this seems to be: When in jail, let your hair grow.

"O.K. CHIEF--I DONE IT!"

by  
Robert Traver

Confessions of guilt by defendants charged with crime are nearly as common as true confessions in the love story magazines. This is due to the fact that the police, being normally curious fellows, generally ask a person accused of crime if he did it. There is nothing inherently sinister or unnatural in such a practice, as a voluntary confession saves everyone time and trouble--not to mention the taxpayers' money. And it is done in recognition of the sound psychology that the accused, fresh from his crime, and in a mood of remorse or reckless bravado, frequently feels disposed to tell all about it. Later, as his mind cools and the gray prison walls loom larger in his thoughts, he is less apt to open his heart and his mouth to the police.

There is ~~the~~ probably no phase of <sup>the</sup> ~~the~~ criminal law more misunderstood by the average layman than the province and use of confessions <sup>in our courts.</sup> This misconception is a curious American phenomenon and is on a par with the popular prejudice against circumstantial evidence. Nourished as he is on current detective literature, not to mention the ~~melodramatic~~ <sup>melodramatic</sup> radio and movie concepts of criminal procedure, the average citizen is apt to view all confessions as something wrenched from the accused by sheer torture. He pictures the defendant as someone like Humphrey Bogart, <sup>watchfully</sup> ~~stolidly~~ cowering in a sound-proof cell, surrounded by a circle of leering flatfoots. <sup>Camera!</sup> Then follows hours and even days of physical and mental horror, during which the hapless Humphrey is examined, badgered, harried, quizzed, quizzed and--not to forget that newspaper favorite--"grilled" <sup>when he is openly</sup> ~~not~~ barbecued by the police. There is no rest, no respite. Food is a forgotten legend--and <sup>alas!</sup> our Humphrey don't look good. This comparatively mild procedure is frequently supplemented, our citizen <sup>stoutly</sup> believes, by a periodic resort to physical torment ranging from the niceties of slyly selected medieval torture down through the half-Nelson to the modern abruptness of the rubber hose, now presumably made of synthetic. Eventually Humphrey, or rather the

agonized defendant, now on the verge of swoon, mumbles "O.K. Chief--I done it!"--  
whereupon the D.A. blandly calls in the <sup>photographers and</sup> reporters and gleefully announces his scoop:  
the solution of the latest murder. All so easy and kind of simple like.

While police officials have unfortunately been known to use "third degree"  
methods of getting <sup>Hollywood</sup> confessions, the practice is not, and never was, as prevalent as  
the public has been led to believe. <sup>Such high jinks are distinctly ham in any policeman's league.</sup> And this is not to glorify the police, who  
like a shortcut as well as the next man. The main reason that the vast majority of  
police shun third degree methods is that they know from bitter experience that a  
confession obtained by such means would not stand up for ten seconds in any court  
in the land. In addition, the public exposure of the use of such methods is com-  
monly known by police and prosecutors alike to build up such a wave of sympathy in  
the minds of American jurors that not only is the confession itself made inadmissible,  
but a guilty defendant is frequently <sup>scot</sup> set free by the ~~verdict~~ <sup>of</sup> an indignant jury.  
The jury's collective heart is apt to runneth over, ~~at such times.~~ <sup>¶</sup> In order to be used  
later in court a confession must be voluntary and made without promise and hope of  
reward or benefit, or by compulsion, violence, threats or fear. <sup>This</sup> ~~That~~ is the cold legal  
dope. Indeed, a confession may be rendered involuntary and accordingly unusable in  
court where the officers played only upon emotions of the accused--without any laying  
on of hands--as for example, locking the accused at night in a candle-lit cell with  
the mutilated body of his alleged murder victim; or again, where <sup>an</sup> ~~the~~ alleged rapist  
was obliged to <sup>undertake the chore of facing</sup> ~~face~~ both his hysterical wife and <sup>his</sup> ~~the~~ <sup>accuser</sup> accusing girl in the same room  
for several hours. Such grim examples are sprinkled throughout the law of confessions.  
In most states, also, a confession must not only be voluntary but the accused must  
under certain circumstances also first be warned of his constitutional rights, which  
are briefly that he need not make a statement and that anything he says may be used  
against him. <sup>awaiting trial</sup> ~~If~~ <sup>would say nothing in seven languages, they would often</sup> ~~defendants~~ <sup>save themselves the trouble of talking to themselves later in prison.</sup>  
A controversial 1943 decision of the U.S. Supreme Court has further served to  
<sup>define and</sup> safeguard the rights of accused defendants, holding that confessions or admissions  
of crime made while the accused is in jail without having been promptly brought before

*an arraignment*

judge as required by law, are later inadmissible in court against him. This is so regardless of whether or not third degree methods <sup>are</sup> ~~were~~ used. <sup>The decision has been criticized by</sup> The whole broad field of the law of confessions shows the frequent sharp incompatibility of a proper concern of the law for the legal rights of the individual defendant when <sup>opposed to</sup> ~~considered with~~ the equally proper concern of the law to find out and punish the guilty.

The comic-strip methods of bludgeoning a confession of guilt from a defendant, when and where they still may exist, present no great problem to our courts. Our judges blithely reverse convictions and toss out <sup>such confession-based</sup> ~~such~~ <sup>third degree</sup> confessions as fast as they discover them--when <sup>irate</sup> juries do not beat them to the punch. It is where experienced and cagey officers, ruefully aware of the legal requirement that a confession must be voluntary and all the rest, employ more subtle methods of exacting a confession, that our courts are faced with <sup>more</sup> ~~really~~ perplexing problems. The case of People versus Dunnigan\* nicely presented such a poser to the Michigan Supreme Court not so many years ago.

*Summa.  
space*

It came about this way.

Two men, Knox and Smith, were in jail awaiting trial on a murder charge growing out of a routine robbery. The defendant Dunnigan was arrested and deposited in the same jail on a petty charge. By a coincidence this same Dunnigan had earlier testified at the preliminary examination of Knox and Smith on the murder charge. His testimony there had tended to incriminate these two and to show his own innocence. It was suspected, however, that he might have known more about the murder than he had told.

While Dunnigan was languishing in jail on his petty charge, <sup>The skeptical</sup> undersheriff and a deputy sheriff, acting on a hunch, conceived the bright idea of sending a barber called Wilcox, who was acquainted with Dunnigan, into the latter's cell; this for <sup>the</sup> ~~for~~ ostensible purpose of cutting Dunnigan's hair, but for the real purpose of obtaining such information as he could from Dunnigan and turning it over to the sheriff. Barber Wilcox

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*See my next summary, but there it is.*

*trim*

fell in with this clever plan and for a fee entered Dunnigan's cell to ~~cut~~ his hair. During <sup>*the subsequent shearing*</sup> this operation the guileful barber suggested that if Dunnigan wished to communicate with his wife, he, Wilcox, would <sup>*be happy to*</sup> convey a letter to her. Acting on this suggestion and relying on the friendship and good faith of Wilcox, ~~Dunnigan~~ the unsuspecting Samson wrote and delivered to Wilcox a letter addressed to Nora, his wife, which Wilcox instead immediately turned over to the sheriff. The fatal letter read as follows: *OK*

"Dear Nora: I want to tell you something. If they ask you any questions, tell them that I got home at 12 o'clock, and if they ask you if I had a watch that night, tell them no, or no ring, if they should ask you, for I have told them that ~~Will~~ Knox got the watch and ring, for I had to do it in order to clear myself, and I guess I can if you will help a little. It will mean five years for ~~Walter~~ Knox and life for Smith, and I don't know how much for myself. Now, don't forget to stick to what I have told you, will you, for it will help me a lot. Now, do as I have told you.

'From Will'"

Largely on the strength of this <sup>*letter*</sup> letter, Dunnigan was promptly indicted for the murder and upon his trial the <sup>*prosecutor*</sup> prosecution offered the damning letter in evidence as a confession of <sup>*the defendant's*</sup> ~~his~~ guilt. Dunnigan's lawyer <sup>*as lawyers are prone to do,*</sup> objected to the admission of the letter on several grounds, among others arguing strenuously that the so-called confession was inadmissible because it was involuntary in that it was procured from his client by artifice and fraud. Nevertheless the trial judge received the letter in evidence and the jury heard the case <sup>*and the judge's instructions. Finally the jury*</sup> and retired to ~~have a smoke and consider~~ <sup>*and have a smoke and exchange lodge grips and whatever else they do out there.*</sup> its verdict. In due course the jury came out with a verdict finding the defendant guilty of first degree murder. Dunnigan was sentenced to life and went to prison while his lawyer promptly went to Lansing and appealed to the Michigan Supreme Court.

The Supreme Court had never ever had quite this poser before it. The ~~Court~~ court reviewed the authorities on the law of confessions and finally spoke as follows: "It would appear that the true reason for the exclusion of involuntary confessions--that is, those obtained by improper threats or promises--is that, because of such threats or promises the accused is led to believe that it is for his interest to make the confession regardless of its truth or falsity. The use of artifice, trickery, or fraud

in inducing a confession will not alone render such a confession inadmissible in evidence. If the artifice used involved a promise tending to induce a false confession, it would operate to exclude, not because of the <sup>tricks</sup> trials, but because, by use of the trick or artifice, an untrue confession had been obtained. (Italics ours.)

So much for the law, which is well supported and seems sound enough as far as it goes. How did the Supreme Court apply this law to the case of the shorn Dunnigan? This is what the court said and decided:

"Applying these principles to the case under consideration, it is apparent that the promise of Wilcox to carry a letter from respondent to his wife could in no manner have operated upon respondent's mind to induce him to falsely admit his guilt. The record discloses the fact that the letter was written by respondent himself, and it does not appear that its contents were suggested by Wilcox or any other person. While we feel constrained to hold that the learned circuit judge did not err in admitting the document, we do not wish to be understood as setting the seal of our approval upon the methods used in securing it. Those methods were distinctly reprehensible. The presumption of innocence surrounds all persons charged with the commission of crime, and it is the duty of those charged with the custody and prosecution of such persons to treat them with fairness in order that the innocent may thereby be protected, and the guilty convicted and punished. When such a course is followed, the dignity of the law is upheld and its administration is, as it should be, above criticism.

"The conviction must be affirmed."

It is plain that this was pretty much of a borderline case, and the troubled court was sorely beset to fairly resolve the riddle. Taking as its guiding star in viewing this confession the inquiry into its probable truth or falsity, the court finally sustained the admissibility of the confession and the consequent conviction of the defendant. In other words, the court concluded that the fact Dunnigan may have been <sup>foully</sup> deceived by his barber chum did not tend to show that his confession was untrue. Without the letter, <sup>undoubtedly</sup> there would have been no conviction. At the same time the court could not resist a judicial rapping of the knuckles of the over-zealous police officials. That is how close ~~was~~ Dunnigan came to beating his rap.

What man will now complain of the price he pays his barber for a haircut? <sup>A man called</sup> Will Dunnigan paid for his with his freedom. The moral to all this seems to be: When in jail, <sup>keep your mouth shut and</sup> let your hair grow.

-THE END-

Written by:  
John D. Voelker  
Ishpeming, Michigan

"O.K. CHIEF--I DONE IT!"

by Robert Traver

Confessions of guilt by defendants charged with crime are nearly as common as true confessions in the love story magazines. This is due to the fact that the police, being normally curious fellows, generally ask a person <sup>suspected</sup> ~~accused~~ of crime if he did it. There is nothing inherently sinister or unnatural in such a practice, as a voluntary confession saves everyone time and trouble--not to mention the taxpayers' money. And it is done in recognition of the sound psychology that the accused, fresh from his crime, and in a mood of remorse or reckless bravado, frequently feels disposed to tell all about it. Later, as his mind cools and the gray prison walls loom larger in his thoughts, he is less apt to open his heart and his mouth to the police.

There is probably no phase of the criminal law more misunderstood by the average layman than the province and use of confessions in our courts. This misconception is a curious American phenomenon and is on a par with the popular prejudice against circumstantial evidence. Nourished as he is on current detective literature, not to mention the melodramatic radio and movie concepts of criminal procedure, the average citizen is apt to view all confessions as something wrenched from the accused by sheer torture. He pictures the defendant as someone like Humphrey Bogart, watchfully cowering in a sound-proof cell, surrounded by a circle of leering flatfoots. Camera! Then follows hours and even days of physical and mental horror, during which the hapless Humphrey is examined, badgered, harried, quizzed, queried and--not to forget that newspaper favorite--"grilled" when he is not openly barbecued by the police. There is no rest, no respite. Food is a forgotten legend--and alas! our Humphrey don't look good. This comparatively mild procedure is frequently supplemented, our citizen stoutly believes, by a periodic resort to physical torment ranging from the niceties of slyly selected medieval torture down through the half-Nelson to the modern abruptness of the rubber hose, now presumably made of synthetic. Eventually Humphrey, or rather the agonized defendant, now on the verge of



swoon, mumbles "O.K. Chief--I done it!"--whereupon the D.A. blandly calls in the photographers and reporters and gleefully announces his scoop: the solution of the latest murder. All so easy and kind of simple like.

While police officials have unfortunately been known to use "third degree" methods of getting confessions, <sup>and undoubtedly still do,</sup> the practice is not, and never was, as prevalent as the public has been led to believe. Such Hollywood high jinks are distinctly ham in any policeman's league. And this is not to glorify the police, <sup>are as lazy and prone to take</sup> who ~~like~~ a shortcut ~~as~~ <sup>shown to have been</sup> as the next man. The main reason that the vast majority of police shun third degree methods is that they know from bitter experience that a confession obtained by such means would not stand up for ten seconds in any court in the land. In addition, the public exposure of the use of such methods is commonly known by police and prosecutors alike to build up such a wave of sympathy in the minds of American jurors that not only is the confession itself made inadmissible, but a guilty defendant is frequently set scot free by the verdict of an indignant jury. The jury's collective heart is apt to runneth over.

In order to be used later in court a confession must be voluntary and made without promise and hope of reward or benefit, or by compulsion, violence, threats or fear. This is the cold legal dope. Indeed, a confession may be rendered involuntary and accordingly unusable in court where the officers played only upon emotions of the accused--without any laying on of hands--as for example, locking the accused at night in a candle-lit cell with the mutilated body of his alleged murder victim; or again, where an alleged rapist was obliged to undertake the chore of facing both his hysterical wife and his girl accuser in the same room for several hours. Such grim examples are sprinkled throughout the law of confessions. In most states, also, a confession must not only be voluntary but the accused must under certain circumstances also first be warned of his constitutional rights, which are briefly that he need not make a statement and that anything he says may be used against him. If defendants awaiting trial would say nothing in seven languages, they would often save themselves the trouble of talking to themselves later in prison.

A controversial 1943 decision of the U.S. Supreme Court has further served to define and safeguard the rights of accused defendants, holding that confessions or admissions of crime made while the accused is in jail without having been promptly brought before an arraigning judge as required by law, are later inadmissible in court against him. This is so regardless of whether or not third degree methods are used. The decision has been criticized by heavyweight lawyers, but there it is. The whole broad field of the law of confessions shows the frequent sharp incompatibility of a proper concern of the law for the legal rights of the individual defendant when opposed to the equally proper concern of the law to find out and punish the guilty.

The comic-strip methods of bludgeoning a confession of guilt from a defendant, when and where they still may exist, present no great problem to our courts. Our judges blithely reverse such confession-based convictions and toss out third degree confessions as fast as they discover them--when irate juries do not beat them to the punch. It is where experienced and cagey officers, ruefully aware of the legal requirement that a confession must be voluntary and all the rest, employ more subtle methods of exacting a confession, that our courts are faced with more perplexing problems. The case of People versus Dunnigan\* nicely presented such a poser to the Michigan Supreme Court not so many years ago.

It came about this way.

Two men, Knox and Smith, were in jail awaiting trial on a murder charge growing out of a routine robbery. The defendant Dunnigan was arrested and deposited in the same jail on a petty charge. By a coincidence this same Dunnigan had earlier testified at the preliminary examination of Knox and Smith on the murder charge. His testimony there had tended to incriminate these two and to show his own innocence. It was suspected, however, that he might have known more about the murder than he had told.

While Dunnigan was languishing in jail on his petty charge, the skeptical undersheriff and a deputy sheriff, acting on a hunch, conceived the bright idea of sending a barber called Wilcox, who was acquainted with Dunnigan, into the latter's cell; this for the ostensible purpose of cutting Dunnigan's hair, but

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for the real purpose of obtaining such information as he could from Dunnigan and turning it over to the sheriff. Barber Wilcox fell in with this clever plan and for a fee entered Dunnigan's cell to trim his hair. During the subsequent shearing the guileful barber suggested that if Dunnigan wished to communicate with his wife, he, Wilcox, would be happy to convey a letter to her. Acting on this suggestion and relying on the friendship and good faith of Wilcox, the unsuspecting Samson wrote and delivered to Wilcox a letter addressed to Nora, his wife, which Wilcox instead immediately turned over to the sheriff. The fatal letter read as follows:

"Dear Nora: I want to tell you something. If they ask you any questions, tell them that I got home at 12 o'clock, and if they ask you if I had a watch that night, tell them no, or no ring, if they should ask you, for I have told them that Knox got the watch and ring, for I had to do it in order to clear myself, and I guess I can if you will help a little. It will mean five years for Knox and life for Smith, and I don't know how much for myself. Now, don't forget to stick to what I have told you, will you, for it will help me a lot. Now, do as I have told you.

'From Will''

Largely on the strength of this letter, Dunnigan was promptly indicted for the murder and upon his trial the prosecutor offered the damning letter in evidence as a confession of the defendant's guilt. Dunnigan's lawyer, as lawyers are prone to do, <sup>loudly</sup> objected to the admission of the letter on several grounds, among others arguing strenuously that the so-called confession was inadmissible because it was involuntary in that it was procured from his client by artifice and fraud. Nevertheless the trial judge received the letter in evidence and the jury heard the case and the judge's instructions. Finally the jury retired to consider its verdict and have a smoke and exchange lodge grips and whatever else they do out there. In due course the jury came out with a verdict finding the defendant guilty of first degree murder. Dunnigan was sentenced to life and went to prison while his lawyer promptly went to Lansing and appealed to the Michigan Supreme Court.

The Supreme Court had never ever had quite this poser before it. The court reviewed the authorities on the law of confessions and finally spoke as follows: "It would appear that the true reason for the exclusion of involuntary

confessions--that is, those obtained by improper threats or promises--is that, because of such threats or promises the accused is led to believe that it is for his interest to make the confession regardless of its truth or falsity. The use of artifice, trickery, or fraud in inducing a confession will not alone render such a confession inadmissible in evidence. If the artifice used involved a promise tending to induce a false confession, it would operate to exclude, not because of the trick, but because, by use of the trick or artifice, an untrue confession had been obtained. (Italics ours).

So much for the law, which is well supported and seems sound enough as far as it goes. How did the Supreme Court apply this law to the case of the shorn Dunnigan? This is what the court said and decided:

"Applying these principles to the case under consideration, it is apparent that the promise of Wilcox to carry a letter from respondent to his wife could in no manner have operated upon respondent's mind to induce him to falsely admit his guilt. The record discloses the fact that the letter was written by respondent himself, and it does not appear that its contents were suggested by Wilcox or any other person. While we feel constrained to hold that the learned circuit judge did not err in admitting the document, we do not wish to be understood as setting the seal of our approval upon the methods used in securing it. Those methods were distinctly reprehensible. The presumption of innocence surrounds all persons charged with the commission of crime, and it is the duty of those charged with the custody and prosecution of such persons to treat them with fairness in order that the innocent may thereby be protected, and the guilty convicted and punished. When such a course is followed, the dignity of the law is upheld and its administration is, as it should be, above criticism.

The conviction must be affirmed."

It is plain that this was pretty much of a borderline case, and the troubled court was sorely beset to fairly resolve the riddle. Taking as its guiding star in viewing this confession the inquiry into its probable truth or falsity, the court finally sustained the admissibility of the confession and the consequent conviction of the defendant. In other words, the court concluded that the fact Dunnigan may have been foully deceived by his barber chum did not tend to show that his confession was untrue. Without the letter undoubtedly there would have been no conviction. At the same time the court could not resist a judicial rapping of the knuckles of the over-zealous police officials. That is how close Dunnigan came to beating his rap.

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A man called Will Dunnigan paid for his with his freedom. The moral to all  
this seems to be: When in jail, keep your mouth shut and let your hair grow.

- THE END -

RAYON'S  
CORPUSCULE  
LOND  
USA  
111

Written by:  
John D. Voelker  
Ishpeming, Michigan

"O.K. CHIEF--I DONE IT!"

by Robert Traver

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SEASONS  
CORPORATION  
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