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EVIDENCE—CONFESSIONS IN THE SUPREME COURT OF THE UNITED STATES

The practice of limiting and guarding the use of confessions in criminal prosecutions began in the latter part of the sixteenth century, and developed because of civilized desire to show consideration for persons accused of crime who were treated harshly and severely. Before the sixteenth century there were no restrictions upon the use and admissibility of confessions. In the latter seventeen-hundreds confessions were more frequently recognized as unreliable. The principle of exclusion developed gradually, and today courts carefully scrutinize confessions and the manner in which they are obtained.¹

The first problem to be considered here is the admissibility of confessions in state courts. Courts and legislatures generally are free to develop their court procedure according to their own policy, but due process requires that state action shall not be contrary to the fundamental principles of liberty and justice. If the Supreme Court encounters practices that are not consistent with these principles it will consider the question of due process under the Fourteenth Amendment. The nature of the due process clause gives wide range to the reviewing power of the Supreme Court over convictions in state courts.

The question of admissibility of confessions in a state court was first considered by the Supreme Court in *Brown v. Mississippi*.² The State of Mississippi claimed it was free to regulate the procedure of its courts in accordance with its own conception of policy. There was evidence of spurious confessions obtained by brutal treatment. The beatings of the defendants were admitted by officers at the trial, and the defendants were convicted solely on the basis of the confessions so obtained. The convictions were reversed by the Supreme Court because of denial of due process. Chief Justice Hughes said,

"The State may abolish trial by jury. It may dispense with indictment by grand jury and substitute complaint or information. But the freedom of the State in establishing its policy is the freedom of constitutional government and is limited by the requirement of due process of law. Because a State may dis-

¹ Rule 505, American Law Institute Code of Evidence: "Evidence of a hearsay statement by an accused that he has done or omitted something the doing or omission of which constitutes a crime or an essential part of a crime is admissible against him in a criminal action if the judge finds that (a) the accused was not induced to make the statement by (i) infliction of physical suffering upon him or threats thereof, or (ii) threats or promises, likely to cause him to make such a statement falsely, which concerned action to be taken by a public official with reference to the crime and were made by a person whom the accused reasonably believed to have the power or authority to secure the execution of the threats or promises, and (b) the accused when making the statement was conscious and was capable of understanding what he said and did."

² 297 U.S. 278, 56 S.Ct. 461 (1936).

pence with a jury trial, it does not follow that it may substitute trial by ordeal. The rack and torture chamber may not be substituted for the witness stand. The State may not permit an accused to be hurried to conviction under mob domination—where the whole proceeding is but a mask—without supplying corrective process.”

Use by a state court of an improperly obtained confession may constitute a denial of due process as guaranteed by the Fourteenth Amendment. This was illustrated again in *Chambers v. Florida*³ where *Brown v. Mississippi* was followed. Undisputed evidence showed that compulsion was applied to secure the confessions involved. In one case the prisoner was taken out on nightly rides so that officers could talk to him, and because (the officers said) the jail was too crowded for proper interrogation. Local officers were not sure how many times the prisoner was taken on these “night persecution trips”. The State insisted that the confession was signed by the prisoner and therefore was voluntary. The Supreme Court held that a confession so obtained fell short of procedural due process guaranteed by the Constitution.⁴

Denial of due process is the failure to observe that fundamental fairness which is essential to our concept of justice. Where a prisoner is held incommunicado and subjected to questioning for long periods the Court will scrutinize the record of the trial to determine if use of the confession deprives him of liberty or life without due process. Law enforcement officers must realize that if they obtain confessions through oppressive means they defeat rather than further the ends of justice. In many cases the officers come close to the line. Where a prisoner exhibits coolness, self-possession and admits that no threats, promises, or acts of physical violence were offered during long periods of questioning, the Court may find that due process has not been denied.⁵ Each state has the right to prescribe the tests governing the admissibility of confessions. Every state may have a different test, but when the question is raised whether or not due process has been denied, the Supreme Court is not precluded by a jury verdict from determining whether the methods of obtaining the confession were such that admission might amount to denial of due process.⁶

An example of how prosecutors sometimes extract a “voluntary” confession is illustrated in *Ashcraft v. Tennessee*.⁷ Ashcraft, a citizen of excellent reputation was suspected of murdering his wife. For

³ 309 U.S. 227, 60 S. Ct. 472 (1940); *Canty v. Alabama*, 309 U.S. 629, 60 S.Ct. 612 (1940).

⁴ *White v. Texas*, 310 U.S. 530, 60 S.Ct. 1032 (1940), *Lomax v. Texas*, 313 U.S. 544, 61 S.Ct. 956 (1941); *Vernon v. Alabama*, 313 U.S. 574, 61 S.Ct. 1092 (1941).

⁵ *Lisenba v. California*, 314 U.S. 219, 62 S.Ct. 280 (1941).

⁶ *Ward v. Texas*, 316 U.S. 547, 62 S.Ct. 1139 (1942).

⁷ 322 U.S. 143, 64 S.Ct. 921 (1944).

thirty-six hours after his seizure, during which period he was held incommunicado, without sleep or rest, relays of officers, experienced investigators, and highly trained lawyers questioned him without respite. From Saturday evening at seven o'clock until Monday morning at nine-thirty, Ashcraft was not allowed to leave the room. Officers said they questioned him in relays because they became so tired from the questioning they were compelled to rest. It is inconceivable that any court of justice in the land could countenance such a situation. The Constitution of the United States stands as a bar against the conviction of any individual in an American court by use of a confession obtained by such coercion. Some nations allow and are dedicated to an opposite policy, but under our Constitution we should not have that kind of government.

Involuntary confessions may be given simultaneously with or subsequent to unlawful pressure, force, or threats. Whether the confession is voluntary or involuntary depends on the conclusion as to whether the accused is in possession of mental freedom to confess or deny his part in the crime. A confession may be obtained by improper means and later the accused may tell the facts of the crime to different persons. The second confession may be admissible and not a denial of due process if the accused had mental freedom when he confessed the second time. A frank admission to others, after an involuntary confession, under circumstances free of coercion may suggest that the accused concluded it wise to make a clean breast of his guilt.⁸

Here we are concerned with the requirement of due process in the enforcement of criminal law by the states. Due process expresses a demand for civilized legal procedure. It is not a stagnant formulation of what has been achieved in the past, but a standard of judgment in the progressive evolution of the institution of a free society. The question is not whether by means of a confession a prisoner was forced to self-incrimination, but whether the criminal proceedings which resulted in his conviction deprived him of the due process of law by which he was constitutionally entitled to have his guilt determined. If any coerced confession is used at the trial, subsequent confessions may not be considered as curing the error and the Court must regard such treatment as clear denial of due process.⁹

In Ohio a fifteen-year old boy was convicted of murder in the first degree in the state court and sentenced to life imprisonment. The boy was taken from his home at midnight and questioned until morning by relays of policemen. He confessed, and the typewritten, signed confession began with information of the boy's constitutional rights and

⁸ *Lyons v. Oklahoma*, 322 U.S. 596, 64 S.Ct. 1208 (1944).

⁹ *Malinski v. New York*, 324 U.S. 401, 65 S.Ct. 781 (1945).

by stating that the confession was free and no force was used. The Supreme Court could not square such a confession with due process. Involved here was a mere child and he was an easy victim of the law. A fifteen-year-old, questioned through the dead of night by relays of police, is an easy victim of inquisition. A boy needs counsel and support if he is not to become the victim of fear and panic. A boy of fifteen would not have full appreciation of police advice of his constitutional rights. The Fourteenth Amendment prohibits police from using the private, secret custody of either man or child as a device for wringing confessions from them.¹⁰

The due process clause invalidates a state court conviction grounded in whole or in part upon a confession which is the product of other than reasoned and voluntary choice. A conviction resulting from use of a coerced confession is no less void because the accused testified he did not confess at all. Such testimony cannot legalize a procedure which conflicts with due process. Inconsistent testimony regarding a confession should not and cannot prevent the accused from raising the constitutional issue of due process.¹¹

In *Watts v. Indiana*,¹² the accused was kept for two days in solitary confinement in a cell called "the hole" and interrogated in five nightly sessions. Denial of sleep and food were a part of the total situation from which the confessions came. The court reversed the convictions. In holding that the due process clause bars police procedure which violates basic notions of fair play, the Court discussed the due process clause in its historic setting as assuring appropriate procedure before liberty is curtailed or life is taken. Our system is not the inquisitorial one, but rather the accusatorial. This has been our system of criminal justice since the day of the Star Chamber, where an accused was secretly questioned for hours at a time. Under our accusatorial system society has the burden of proof against the accused and such proof is not to be out of his own mouth. The law should not allow a prisoner to be the instrument of his own conviction. If force has been applied to obtain a confession it will not be left to local determination whether the confession was voluntary or not. Force of body is not all the Court should look for because there is torture of mind as well as body. The will of man is affected by fear as much as by force. The Court should not be ignorant as judges of what they know as men.¹³

The power of the Supreme Court to review convictions in the federal courts is not limited to the determination of constitutional validity.

¹⁰ *Haley v. Ohio*, 332 U.S. 596, 68 S.Ct. 302 (1947).

¹¹ *Lee v. Mississippi*, 332 U.S. 742, 68 S.Ct. 300 (1947).

¹² 338 U.S. 49, 69 S.Ct. 1347 (1949).

¹³ *Turner v. Pennsylvania*, 338 U.S. 62, 69 S.Ct. 1352 (1949); *Harris v. South Carolina*, 338 U.S. 68, 69 S.Ct. 1354 (1949).

The Court has judicial supervision in addition to review of constitutional questions. Congress has explicitly commanded that arresting officers shall have the duty of taking accused immediately before the nearest United States Commissioner or nearest judicial officer having jurisdiction for a hearing, and commitment or the taking of bail.¹⁴ The tests as to confessions in the state courts vary, but the Supreme Court has formulated those tests which are to govern in trials in federal courts. The requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by threat or promise. A confession obtained by compulsion must be excluded whatever may have been the character of the compulsion.¹⁵ In formulation of rules of evidence for criminal trials in the federal courts, the Court has been guided by considerations of justice and has not been limited as with a state court confession to the due process issue.¹⁶

In *McNabb v. United States*,¹⁷ the Government urged that the Constitution proscribes only involuntary confessions, and that judged by appropriate criteria of involuntariness, the confessions were voluntary and hence admissible. The McNabbs were arrested in the middle of the night at their home. Instead of being brought before an officer for commitment as the law requires,¹⁸ they were put in a barren cell and kept there for fourteen hours. They were subjected to unremitting questioning for two days. Plainly a conviction based on evidence obtained by such flagrant disregard of the command of Congress could not be allowed to stand. Rules of evidence for criminal trials in the federal courts are made a part of the living law and should not be treated as a mere collection of wooden rules in a game.¹⁹

But where illegal detention is subsequent to admissions of guilt, use of such admissions is not a denial of due process. The Supreme Court reasoned in *United States v. Mitchell*²⁰ that the disclosures were were not elicited through illegal conduct by officers. Here the prisoner admitted his guilt to a charge of burglary a few minutes after his apprehension. He was detained for eight days in an attempt to clear up previous similar crimes. The detention was illegal, but the illegality did not act retroactively to invalidate a confession made under proper circumstances.

¹⁴ 18 U.S.C. section 595.

¹⁵ *Bram v. United States*, 168 U.S. 532, 18 S.Ct. 183 (1897); *Wan v. United States*, 266 U.S. 1, 45 S.Ct. 1 (1924).

¹⁶ *Funk v. United States*, 290 U.S. 371, 54 S.Ct. 212 (1933); *Wolfe v. United States*, 291 U.S. 7, 54 S.Ct. 279 (1933).

¹⁷ 318 U.S. 332, 63 S.Ct. 608 (1942).

¹⁸ *Supra*, note 14.

¹⁹ *Anderson v. United States*, 318 U.S. 350, 63 S.Ct. 599 (1942).

²⁰ 322 U.S. 65, 64 S.Ct. 896 (1943).

The rule of the *McNabb*²¹ case was followed in *Upshaw v. United States*.²² It was conceded that the confessions were "the fruits of wrongdoings" by the officers. The accused was detained for at least thirty hours for the purpose of securing the confession. He was held by officers because there wasn't sufficient evidence for the courts to hold him. The arresting officer stated that even if the court would hold the prisoner, custody would be lost and the questioning would be impossible. Since the *McNabb* rule bars admission of confessions in federal courts when there is a delay before commitment, the confessions were held to be inadmissible. There was a vigorous dissent by Justice Reed who felt that the detention alone, even for the purpose of obtaining information, should not be sufficient to justify the exclusion of a confession after unnecessary delay and before commitment. The *McNabb* rule is that illegal detention alone will bar a confession. Justice Reed said that this was an improper extension of the rule, and it should not make any difference if a voluntary confession was obtained during illegal detention.

When not inconsistent with a statute or the Constitution, there is no doubt of the power of the Supreme Court to institute, on its own initiative, procedural reform in the federal courts.²³ The *McNabb* rule that illegal detention vitiates any confessions obtained during that time governs in the federal courts, but the procedure regarding confessions used in the state courts searches for a denial of due process. To declare that there is a denial of due process the court must find that the trial was infected by an absence of fairness. Such unfairness is present when a coerced confession is used. It is the duty of the court to hear and consider evidence as to whether a confession was freely and voluntarily made. The court should consider the condition, situation, character of the prisoner, and the circumstances under which the confession was made. The courts of the land owe a high duty and responsibility to translate into law and maintain a constitutional shield for the benefit of every human being subject to our Constitution.

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²¹ *Supra*, note 17.

²² 335 U.S. 410, 69 S.Ct. 170 (1948).

²³ 18 U.S.C. section 687. Rule five of the Rules of Criminal Procedure for the District Courts of the United States.