

1948

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Recommended Citation

Peter A. Dammann, Recent Federal Court Decisions on the Admissibility of Confessions, 38 J. Crim. L. & Criminology 627 (1947-1948)

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Third, legislative action might be taken.³⁴ Because of the success which the primer has met in other jurisdictions it is recommended that one of the methods be used for its adoption.

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The Inherent Coercion (Ashcraft Case) Rule

In *Haley v. State of Ohio*,¹ a fifteen year old negro confessed to a murder after having been questioned for five hours by Ohio police officers "in relays of one or two each." The trial court admitted the confession in evidence, along with some other rather substantial proof of defendant's guilt. His conviction was affirmed by the Ohio appellate courts. The United States Supreme Court, however, in a 5-4 decision reversed the conviction because the majority of the Court found that the "undisputed evidence suggests that force or coercion" was employed by the police interrogators, thus constituting a violation of the due process clause of the Fourteenth Amendment. The undisputed evidence relied upon by the Court was the fact that the fifteen year old defendant had been questioned about five hours by five or six police officers "in relays of one or two each." These circumstances the majority of the Court considered as suggestive of force or coercion. The use of the test of "suggestion" of force and coercion imparts the same notion as did the Court's previous expression of "inherent coercion" which was employed in the *Ashcraft* case.² In other words, what the Court did in both the instant case and in the *Ashcraft* case was to make a psychological appraisal of the interrogation and then decide whether it had a *tendency* to coerce a confession. The effect of the interrogation on the particular defendant was of no prime importance, nor did the Court concern itself with the trustworthiness of the confession. It was sufficient if the circumstances merely "suggested" coercion.

The *Haley* case is another illustration of an apparent effort on the part of the United States Supreme Court to compel state law enforcement officers to employ what it considers higher standards of interrogation practices. This the Court could not do directly because of the absence of supervisory power comparable to that which it has over lower federal courts and federal officers, but the same attempt is practically available by extending the Court's interpretation of due process to prohibit "inherently coercive" or "suggestively coercive" police practices.³

³⁴ The legislature would seem to have the power to institute such a procedure unless this is considered a change of an essential element of a jury trial. *People v. Kelly*, 347 Ill. 221, 179 N. E. 898 (1931); *People v. Bruner*, 343 Ill. 143, 175 N. E. 400 (1931). *Accord* *Baltimore and Carolina Line v. Redman*, 295 U. S. 654 (1934); *Walker v. New Mexico and Southern Pacific Railroad Co.*, 165 U. S. 593 (1896).

* For some of the research on this problem, the writer is indebted to one of his former classmates, S. Jay Baim.

¹ 68 S. Ct. 302 (1948).

² *Ashcraft v. Tennessee*, 322 U. S. 143 (1944).

³ For an analysis of the recent series of United States Supreme Court cases on confessions, in which the above stated conclusion is reached, see Inbau, F.E., *Lie Detection and Criminal Interrogation* (2d ed., 1948) 150-162.

Inconsistent Defenses Regarding Evidence of a Confession

Does an accused person lose his right to contend that a confession was coerced because of his testimony that the confession was in fact never made?

In *Lee v. State of Mississippi*,⁴ a seventeen year old negro was accused of assault with intent to rape. At his trial the prosecution offered in evidence the testimony of two police officers regarding an alleged oral confession obtained by them from the accused. Objection was made by the defendant to the admissibility of the confession on the ground that it had been secured by force. In a hearing out of the presence of the jury, defendant testified that he had been threatened prior to making the confession, and his testimony to that effect was uncontradicted. At this preliminary hearing, and later on during the trial, he also testified that he did not at any time admit that he committed the crime. His trial resulted in a verdict of guilty. In affirming the conviction the Mississippi Supreme Court said that if the accused had not denied having made the confession at all the case probably would have been reversed (because of his uncontradicted testimony during the hearing by the court on the admissibility of the confession), but that the conviction must be affirmed because "one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear."

Upon appeal to the United States Supreme Court the Mississippi court's decision was reversed on the ground that the defendant's denial of making the confession did not preclude him from asserting his constitutional right to due process of law. The Court was of the opinion that the defendant's denial of the confession "went only to the original issue of whether he actually made the confession," and the defendant still had the right to show that if a confession was actually made (as the police testified) he did so because of the coercive methods of his interrogators.

The Delayed Arraignment (McNabb case) Rule

The "civilized standards" rule for federal law enforcement interrogators, as originally stated in the *McNabb* case,⁵ seemingly required the rejection of confessions in any federal cases in which the officers neglected to comply with the statutory duty to take the arrested person before a committing magistrate "forthwith" (or "immediately," or "without unnecessary delay"). Subsequently the rule was modified somewhat by the Supreme Court in the *Mitchell* case⁶ which held that the *McNabb* case exclusionary principle would be invoked only when the confession was "induced by the illegal detention," and not in a situation such as in the *Mitchell* case where the confession preceded the illegal detention. Even after the *Mitchell* case some uncertainty still existed as to the effect of illegal detention of this sort on the admissibility of confessions. The still prevailing confusion upon this point is illustrated in the recent case of *Boone v. United States*,⁷ a decision of the United States Court of Appeals for the District of Columbia, the same

⁴ 68 S. Ct. 300 (1948).

⁵ *McNabb v. United States*, 318 U. S. 332 (1943).

⁶ *United States v. Mitchell*, 322 U. S. 65 (1944).

⁷ 164 F. (2d) 102 (1947).