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## Recent Decisions on the Admissibility of Confessions

Peter A. Dammann

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States requires a speedy trial.”<sup>59</sup> Whenever a collateral attack is made upon a state proceeding alleging a denial of a speedy trial, the issue would be whether the delay in trial under the circumstances so prejudiced the accused as to deny him his constitutional right to a fair trial. This formula would permit the federal courts as umpires of the federal system to apply a uniform test to all state and federal court proceedings. It would permit the federal courts to disregard a specific statutory definition of a speedy trial or any peculiar state procedural rules in the appropriate case.<sup>60</sup> It is sufficiently flexible to afford an accused protection where he has been prejudiced by unreasonable delays even in those states which have adopted the federal rules governing this right to a speedy trial; and it also could be used consistently to provide a collateral attack upon judgments of federal courts where necessary.

ARTHUR C. GEHR

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## Recent Decisions on the Admissibility of Confessions

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### *Supreme Court Review of State Convictions*

In *Taylor v. Alabama*,<sup>1</sup> decided June 21, the United States Supreme Court once again sharply disagreed concerning its function in reviewing state convictions obtained through confessions which had been allegedly coerced. Taylor, a nineteen-year old negro, who had confessed to the rape of a white girl, was convicted by a jury and sentenced to death. At the trial and on appeal to the Supreme Court of Alabama, which unanimously affirmed the conviction,<sup>2</sup> he was represented by able counsel. Before the trial Taylor told his counsel that he had not been mistreated in any way in reference to the confession and at the trial made no attempt to repudiate it. Nonetheless his lawyer diligently cross-examined the state's witnesses concerning the voluntariness of the confession but was unable to uncover any indication of coercion. After the unsuccessful appeal Taylor changed his lawyers and for the first time attempted to attack the confession by filing a petition in the state supreme court for permission to file a petition in the trial court for writ of error coram nobis.<sup>3</sup> Alleging that the con-

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<sup>59</sup> *United States v. McWilliams*, 69 F. Supp. 812, 815 (Dist. Ct. D. C. 1947), affirmed 163 F. (2d) 695 (App. D. C. 1947) cited *supra* note 11.

<sup>60</sup> In *United States ex rel. Hanson v. Ragen* the petitioner would not have been entitled to relief on this formula. His trial commenced within twenty-five days after the "Four Term" Act had run; the evidence permitted no question of his guilt; there was no evidence of prejudice resulting from the not too burdensome delay; on the contrary, the petitioner conceivably may have been benefited by the delay which might have permitted the high public tension to subside.

<sup>1</sup> 68 S. Ct. 1415.

<sup>2</sup> *Taylor v. State*, 249 Ala. 130, 30 So. (2d) 256 (1947).

<sup>3</sup> The writ of error coram nobis brings the error of fact directly before the trial court. In Alabama where a conviction has been affirmed by a superior court, a petitioner must secure permission of that court before he can file his petition for writ of error coram nobis in the trial court. In the *Taylor* case the Supreme Court expressly approved the Alabama procedure on the authority of *Hysler v. Florida*, 315 U.S. 411 (1942), which passed on a similar coram nobis procedure used in the state of Florida. For additional information concerning coram nobis see the comment entitled "Collateral Relief from Convictions in Violation of Due Process in Illinois" (1947) 38 J. Crim. L. & Criminology 139, also printed in (1947) 42 Ill. L. Rev. 329. See also Comment (1937) 31 Ill. L. Rev. 644.

fession had been induced by beatings and threats administered to him while detained in jail, he attempted to explain his statement to his counsel that he had not been mistreated on the grounds that he was "uneducated and ignorant" and "fearful of further reprisals" by the police. The only evidence in support of his allegations were affidavits of three persons who had been in jail with him. One of them purported to have seen the beatings and all three alleged to have heard them. Moving to dismiss the petition, the state filed an affidavit accompanied by eight photographs of Taylor in the nude, which were taken on each of the days of his detention after his arrest on June 29, 1946 and after his confession at 3 a.m. July 3. With one dissent, the Alabama Supreme Court dismissed the petition, saying, "We think it is asking entirely too much of the court to believe that this defendant, in the secrecy of consultation with his own able counsel, would say to counsel in substance that there was nothing upon which to base an objection to his confessions, solely because he was under fear generated by treatment which he claims were accorded him on July 3, nearly four months previous."<sup>4</sup>

The main issue before the United States Supreme Court was whether the Supreme Court of Alabama, in denying Taylor's petition and thereby refusing him a hearing *de novo* on the admissibility of the confession, had deprived him of due process of law. The case also presented the broader question of whether, after a fair trial and an appeal, a state is under a duty to grant another hearing to a defendant simply because he alleged that he had been denied his constitutional rights. In an opinion by Mr. Justice Burton, the Court held that the state court was not limited to the allegations in the coram nobis petition but could conclude from an examination of the entire record that the averments of the petition were unreasonable and that there was no probability of truth contained therein. After an exhaustive analysis of the evidence, the Court affirmed the judgment of the state court. Mr. Justice Murphy, with whom Mr. Justice Douglas and Mr. Justice Rutledge concurred, dissented on the grounds that, since the petition was reasonable on its face, due process required that Taylor be given an opportunity to prove his allegations that the confession had been beaten out of him.<sup>5</sup> The dissenting opinion also represents the strong belief of those justices that the due process clause of the Fourteenth Amendment is not so much concerned with the protection of the innocent as with the imposition upon the states of civilized standards of police administration. In the minds of those justices, "coerced confessions are outlawed by the due process clause regardless of the truth or falsity of their content."<sup>6</sup>

Both the dissenting opinion and a special concurring opinion by Mr. Justice Frankfurter<sup>7</sup> pointed out that since Taylor had exhausted his state

<sup>4</sup> *Ex parte* Taylor, 249 Ala. 667, 670, 32 So. (2d) 659, 661 (1947).

<sup>5</sup> 68 S. Ct. 1415, 1425-1428.

<sup>6</sup> *Id.* at 1426.

<sup>7</sup> *Id.* at 1424-1425. Mr. Justice Frankfurter felt it necessary to say, "The dissenting opinion is written as though this Court were a court of criminal appeals for revision of convictions in the State courts. It is written as though we were asked to consider independently, and as a revisory appellate tribunal which had power to do so, whether a conviction in the courts of Alabama was based upon a coerced confession. One would hardly gather from the dissenting opinion that a trial was had in Alabama under the best safeguards to which a defendant in our courts is entitled; that he was defended by counsel concededly able who exerted all his professional skill on behalf of his client; that the trial judge guided the

remedies, the judgment of the Court was no bar against his filing a petition for a writ of habeas corpus in a federal district court.

*Admissibility of a Second Confession After a Prior One  
Had Been Obtained Through Force*

Where a defendant's confession has been induced by force and where he subsequently makes a "voluntary" confession, under what circumstances will the latter be deemed admissible? This question was recently passed upon by the Court of Criminal Appeals of Texas in *Holt v. State*,<sup>8</sup> where defendant had been convicted of burglarly and sentenced for a term of five years. At the trial it was clearly established that after defendant was arrested at Port Arthur he was unmercifully whipped and beaten until he confessed to some burglaries, whereupon he was taken to another county where he repeated his confession to the sheriff there. While admitting the beatings which preceded defendant's first confession at Port Arthur, the state contended that the second confession was voluntary. Defendant, however, testified that the authorities at Port Arthur "told me they were going to bring me over here, and if I did not sign a confession they would take me over there (back to Port Arthur) and finish me; they turned me over to the Sheriff here; and they said if I did not sign a confession they would carry me back and give me some more, and I would have signed anything." Since this testimony was not contradicted by the police authorities, the Court of Criminal Appeals held that the confession should not have been admitted under the rule "that when a prior confession of an accused is obtained as a result of improper influences, subsequent confessions will be received only when it is made to appear that the improper influences exercised in obtaining the first confession did not enter into or influence the making of the subsequent confession."<sup>9</sup>

The Texas court in the *Holt* case applied the same test of admissibility as is used by the United States Supreme Court<sup>10</sup> and the courts of other jurisdictions.<sup>11</sup> However, the *Holt* case did present a problem somewhat peculiar to Texas alone. Since the defendant in his second confession had told the sheriff where he had hidden the stolen goods and had subsequently assisted the police authorities to recover them, the state attempted

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proceedings with competence and scrupulosity; that then followed a careful review of the trial on appeal, resulting in an affirmance of the judgment of conviction by the highest court of Alabama."

For evidence that the Supreme Court of Alabama in an appropriate case will reverse a conviction of a negro based upon a coerced confession, see the splendid opinion of that court in *Huntley v. State*, 34 So. (2d) 216 (1948), discussed *infra* note 11.

<sup>8</sup> 208 S.W. (2d) 643 (1948).

<sup>9</sup> *Id.* at 645.

<sup>10</sup> *Lyons v. Oklahoma*, 322 U.S. 596, 603 (1944); *United States v. Bayer*, 331 U.S. 532 (1947).

<sup>11</sup> In *Huntley v. State*, —Ala.—, 34 So. (2d) 216 (1948), cited *supra* note 7, a young white woman had been raped by a masked negro. The only information that she could give the police was that the negro was apparently dressed in the garb of a gasoline station attendant and that she had seen a man so dressed ride past her house on a bicycle. Suspicion was directed at defendant who was arrested at 6 o'clock that evening and lodged in the Pell City jail, where he underwent much questioning. By midnight a lynch mob had gathered around the jail, had placed a ladder which reached to his cell upstairs, and had fired some shots into the jail. Defendant, who was hit and slightly injured in his arm and leg, was told to lie down on the floor, was later sneaked down stairs, and by 1 o'clock was

to invoke the rule previously applied in Texas<sup>12</sup> that a confession which is obtained through force will be admitted if it is confirmed by other evidence such as the finding of stolen property. Probably under the pressure of the United States Supreme Court opinions, the Texas court rejected the state's contention and held that the statute<sup>13</sup> incorporating this rule "has no application when a confession is obtained as a result of the infliction of physical or mental pain."<sup>14</sup>

### *Inroads Upon the "Civilized Standards" (McNabb Case) Rule*

In 1943 the Supreme Court, in a famous opinion by Mr. Justice Frankfurter in *McNabb v. United States*,<sup>15</sup> announced for the first time that the Court would exercise "the duty of establishing and maintaining civilized standards of procedure and evidence" in reference to the admission of confessions in federal cases. "Such standards," Mr. Justice Frankfurter said, "are not satisfied merely by observance of those minimal historic safeguards for securing trial by reason which are summarized as 'due process of law' and below which we reach what is really trial by force."<sup>16</sup> Relying in part upon its duty of supervising the administration of criminal justice in the federal courts and in part upon a statutory requirement that persons under arrest should be taken "forthwith" before a judicial officer, the Court there held that confessions, otherwise admis-

transferred by the Highway Patrol to the Birmingham jail. At Birmingham next morning a patrolman by the name of White told defendant that everybody believed that he had committed the crime and that "if he would tell the truth about it it might be better for him, that he would not have to be gone so long." (The court's language). Defendant then said he would confess. At 5 o'clock that afternoon White again talked with defendant and prevailed upon him to sign a confession. The Supreme Court of Alabama held that the defendant's first statement that he would plead guilty had been induced by White's suggestion that he would get off easier and by the terrifying experiences of the previous evening and that these influences invalidated the later confession. "The rule is well established that where a confession has been obtained, or inducement held out, under circumstances which would render a confession inadmissible, a confession subsequently made is not admissible in evidence, unless, from proper warning of the consequences, or from other circumstances, there is reason to presume that the hope or fear, which influenced the first confession, is dispelled." *Id.* at 219.

<sup>12</sup> *Greer v. State*, 116 Tex. Cr. R. 491, 32 S.W. (2d) 845 (1930). *Contra*: *Cooley v. State*, 158 S.W. (2d) 1014 (Tex. Cr. App., 1942).

<sup>13</sup> Art. 727, Code of Criminal Procedure, Vernon's Texas Statutes (1936).

<sup>14</sup> 208 S.W. (2d) 643, 646. *Accord*, *Cooley v. State*, 158 S.W. (2d) 1014 (Tex. Cr. App., 1942). The rule followed in most jurisdictions is that if, in consequence of a confession otherwise invalid, facts are discovered which confirm the confession in certain material respects, then the confirmed part of the confession is admissible, *State v. Garrison*, 59 Ore. 440, 117 Pac. 657 (1911); *Baughman v. Commonwealth*, 206 Ky. 441, 267 S.W. 231 (1924); *Patton v. State*, 29 So. (2d) 96 (Miss., 1947); *Harris v. Commonwealth*, 301 Ky. 818, 193 S.W. (2d) 466 (1946); *State v. Cocklin*, 109 Vt. 207, 194 Atl. 378 (1937).

*Cf.* *Garcia v. State*, 210 S.W. (2d) 574, 577 (Tex. Cr. App., 1948) (defendant is not in position to complain of the admission into evidence of his written statement on the ground that it was not voluntarily made, when he has given practically the same evidence from the witness box).

<sup>15</sup> 318 U.S. 332 (1943). For a comprehensive evaluation of the *McNabb* case see Inbau, *Lie Detection and Criminal Interrogation* (2d. ed. 1948) 162-169. See also Comment (1947) 38 J. Crim. L. & Criminology 136.

<sup>16</sup> 318 U.S. at 340. Mr. Justice Reed in a vigorous dissent said, "Now the Court leaves undecided whether the present confessions are voluntary or involuntary and declares that the confessions must be excluded because in addition to questioning the petitioners, the arresting officers failed promptly to take them before a committing magistrate. The Court finds a basis for the declaration of this new rule of evidence in its supervisory authority over the administration of criminal justice.

sible, were rendered invalid by the failure of the officers to take the defendants before a committing magistrate prior to the long period of interrogation which preceded their confessions. Criticism of the opinion by law enforcement officers, lower federal judges, and Congressional committees lead to a retreat from the rule in *United States v. Mitchell*,<sup>17</sup> decided the following year. In the *Mitchell* case, the Court held that the *McNabb* rule did not apply to confessions made shortly after the arrest and that prolonged illegal detention subsequent to the confession did not retroactively invalidate the confession. The illegal detention under aggravating circumstances—"continuous questioning for many hours under psychological pressure"<sup>18</sup> for the purpose of inducing the disclosures—were said to be the decisive features of the *McNabb* case.

Lower federal courts have had considerable difficulty in administering the *McNabb* rule, even as modified by the *Mitchell* case. Recent opinions of the United States Court of Appeals, District of Columbia, indicate that that court, at least, reads the rule as being no different from the standard imposed by the Supreme Court in reviewing state convictions under the due process clause of the Fourteenth Amendment; namely, that the confession must not be obtained under circumstances which are "inherently coercive."<sup>19</sup> In *Upshaw v. United States*<sup>20</sup> the United States Court of Appeals, District of Columbia, has recently passed upon a case very similar to the supposed facts in the *McNabb* case.<sup>21</sup> Upshaw was arrested under suspicion of theft at 2 a.m. on Friday, June 6, 1947, and shortly after 9 o'clock the next (Saturday) morning he confessed. He was not taken before a committing magistrate until Monday, June 9. Upon the appeal from Upshaw's conviction, the government attorneys filed a written confession of error and conceded that the confession was inadmissible. The Court of Appeals, however, held that the confession was valid and affirmed the conviction. "A confession voluntarily given is admissible in evidence," the court said. "We do not read the *McNabb* and *Mitchell* cases, and the recent *Haley* case,<sup>22</sup> as holding otherwise."<sup>23</sup> Relying upon the *Mitchell* case, the court held that Upshaw's confession was not "induced by illegal detention." The Supreme Court has granted

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I question whether this offers to the trial courts and the peace officers a rule of admissibility as clear as the test of the voluntary character of the confession. I am opposed to broadening the possibilities of defendants escaping punishment by these more rigorous technical requirements in the administration of justice. If these confessions are otherwise voluntary, civilized standards, in my opinion, are not advanced by setting aside these judgments because of acts of omission which are not shown to have tended towards coercing the admissions." *Id.* at 349.

<sup>17</sup> 322 U.S. 65 (1944).

<sup>18</sup> *Id.* at 67, 70.

<sup>19</sup> The "inherent coercion" formula in regard to state convictions was first announced in *Ashcraft v. Tennessee*, 322 U.S. 143, 154 (1944).

<sup>20</sup> 168 F. (2d) 167 (1948).

<sup>21</sup> Actually in the *McNabb* case defendants had been promptly arraigned, but the trial court record did not disclose that fact and the Supreme Court assumed that there had been a violation of the arraignment statute. In a petition for a rehearing, the government brought the fact of arraignment to the Court's attention, but to no avail. The conviction of the *McNabbs* upon their second trial was affirmed, 142 F. (2d) 904 (C.C.C. 6th, 1944).

<sup>22</sup> *Haley v. Ohio*, 332 U.S. 596 (1948) (editor's footnote). The case was briefly noted in a recent issue of this journal, (February-March 1948) 38 J. Crim. L. & Criminology.

<sup>23</sup> 168 F. (2d) 167. In a vigorous dissent, Mr. Justice Edgerton disagreed with the majority that the case was distinguishable from the *Mitchell* case and contended that Upshaw's confession fell within the ban of that case forbidding an

certiorari<sup>24</sup> and will have an opportunity next term to reexamine the rules governing the admissibility of confessions in federal cases. One can at least hope that the Court will rephrase its troublesome "civilized standards" rule in the terms of the familiar test that a confession will not be admitted which was obtained under circumstances which would indicate that it was untrustworthy. However much one might sympathize with the attention which the Court devotes to "psychological factors" in confession cases, these factors might well be brought within the traditional trustworthiness test: that is, whenever a defendant confesses under inducements or pressures which might have led him, even if innocent, to confess, the confession should not be admitted.

In line with most state courts which have had occasion to pass upon the *McNabb* rule,<sup>25</sup> the Supreme Court of Pennsylvania recently held that the *McNabb* case was limited to the federal courts and would not be applied to state cases. In *Commonwealth v. Turner*,<sup>26</sup> that court held that detention by defendant for five days and interrogation each day by police officers before he was taken before a magistrate or allowed an opportunity to consult with counsel did not invalidate the confession. "Any method of extracting confessions by means which would cause a prisoner to falsely confess guilt in order to be relieved of unendurable immediate suffering will not be tolerated in any civilized state. On the other hand, for a court to hold that a confession made by a well fed and decently cared for prisoner after he has been held in custody a few days without counsel or contact with friends and after he has been questioned a few hours every day by police officers in reference to a crime of which he is suspected, is inadmissible as being a coerced confession would be unrealistic and impractical. . . . In the unending warfare between the criminal and society a due regard for the latter's safety requires that officers should have a reasonable time within which to interrogate an accused while he is in their custody and being fairly treated and without their efforts to elicit the truth being frustrated by persons interested in saving criminals from the just consequences of their crimes."<sup>27</sup>

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"inexcusable detention for the purpose of illegally extracting evidence," *United States v. Mitchell*, 322 U.S. 65, 67 (1944). To meet the argument of the majority that *Upshaw* had not contended that the confession had been induced by the detention and prolonged questioning, the dissenting opinion pointed out that "nothing suggests that the confession would have been obtained if the illegal detention had not occurred." 168 F. (2d) 167, 169, 170.

The *Upshaw* case is a logical culmination of several recent opinions by the same court which indicated its disinclination to apply the rule of the *McNabb* and *Mitchell* cases literally: *Boone v. United States*, 164 F. (2d) 102, 103 (1947); *Wheeler v. United States*, 165 F. (2d) 225, 229-230 (1947); and *Alderman v. United States*, 165 F. (2d) 622, 623 (1947).

<sup>24</sup> *Upshaw v. United States*, 68 S. Ct. 1505 (1948).

<sup>25</sup> *State v. Browning*, 206 Ark. 791, 178 S.W. (2d) 77 (1944); *People v. McFarland*, 386 Ill. 122, 53 N.E. (2d) 884 (1944); *State v. Smith*, 158 Kan. 645, 149 Pac. (2d) 600 (1944); *State v. Lawder*, 147 Ohio 530, 72 N.E. (2d) 785 (1946); *State v. Sandord*, 193 S.W. (2d) 35 (Mo., 1946); *Fry v. State*, 147 Pac. (2d) 803 (Okla., 1944); *Foster v. State*, 152 Pac. (2d) 929 (Okla., 1944); and *McGhee v. State*, 183 Tenn. 26, 189 S.W. (2d) 826 (1945).

<sup>26</sup> 58 A. (2d) 61 (1948).

<sup>27</sup> *Id.* at 68. The court quoted extensively from 1 Wigmore, *Evidence* (3d. ed. 1940) 318, 319 which takes the view that lengthy interrogation in seclusion, immediately after arrest, in many instances is a necessary part of law enforcement.