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Abstracts of Recent Cases

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fession will not be automatically voided without a careful consideration of the effect of the coercive practices upon the accused. On the other hand, the conviction will be affirmed when the accused knows "the dance is over and the time has come to pay the fiddler."⁷⁷

The best guide for the states is a list of just what factors the Court will look at to balance against the defendant involved. They were well sum-

⁷⁷ Stein v. New York, 346 U.S. 156, 186 (1952).

marized by another writer: "1) Number of questioners; 2) health, age, education and race of the defendant; 3) time held incommunicado; 4) delay before arraignment; 5) length of questioning, deprivation of refreshment, rest or relief during questioning; 6) threats or promises of benefit made; 7) hostility of questioners; 8) defendant's experience in ways of crime; and 9) living conditions during detention."⁷⁸

⁷⁸ 33 NEB. L. REV. 507, 508 (1954). See also 1954 WASH. U. L. Q. 82, 83 n.9. (1954).

ABSTRACTS OF RECENT CASES

Double Jeopardy: State Conviction Following Federal Acquittal; Federal Conviction Following State Conviction—Petitioner was tried and acquitted in a federal district court for the robbery of a federally insured savings and loan association. He was subsequently tried and convicted in an Illinois court on an indictment reciting facts substantially identical to those recited in the prior federal indictment. The evidence gathered by the Federal Bureau of Investigation for the federal prosecution together with evidence gathered subsequent to the acquittal was turned over to the state authorities. The sentencing of confessed accomplices, who had testified against petitioner in the federal prosecution, was delayed until after they had testified in the state prosecution. Mr. Justice Frankfurter, speaking for the majority, reiterated the Court's position that the fifth amendment prohibition against double jeopardy is inapplicable to the states. While the record showed close cooperation between federal and state authorities, it did not "sustain a conclusion that the state prosecution was a sham and a cover for a federal prosecution, and thereby in essential fact another federal prosecution." *Bartkus v. Illinois*, 359 U.S. 121 (1959).

Two dissenting opinions were registered. Justice Black, who was joined by Chief Justice Warren and Justice Douglas, insisted that the fourteenth amendment guarantee of due process prohibited the state prosecution. Whether the historical justification for the abhorrence of double prosecutions is the "injustice inherent in two punishments for the same offense" or the "dangers to the innocent from allowing the full power of the state to be brought against them in two trials," the fact that two separate sovereignties conducted the prosecu-

tions should not alter the result. Justice Brennan, who was joined by the Chief Justice and Justice Douglas, insisted that the state court conviction violated the double jeopardy provision of the fifth amendment because it was so dominated by federal officers that it was in actuality a second federal prosecution.

In a case decided the same day, *Abbate v. U.S.*, 359 U.S. 187 (1959), the Court upheld a conviction for conspiracy to destroy parts of a federally operated and controlled communications system. Petitioners had previously been convicted in an Illinois court, on identical facts, for conspiracy to destroy the facilities of the telephone company. The majority, through Justice Brennan, held that the double jeopardy clause did not bar successive state and federal prosecutions, insisting that if "state prosecutions bar federal prosecutions based on the same acts, federal law enforcement must necessarily be hindered." The defendant's acts were thought to "impinge more seriously on a federal interest than on a state interest." If successive state and federal prosecutions were prohibited, the state convictions resulting in prison sentences of three months would bar federal prosecution which could result in five years imprisonment. In that event, the federal interest, *i.e.* national security, would be inadequately protected. The dissent, however, insisted that Congress could adequately protect the federal interest, without forcing defendant to undergo double prosecutions, either by taking exclusive jurisdiction over the crime or by allowing the states concurrent jurisdiction and setting minimum penalties which would be applicable in both state and federal courts.

Unsworn Statements of State's Witnesses Taken by Prosecutor During Investigation Leading

to Indictment on Information Is Not Subject to Compulsory Process—During trial petitioner filed application for a subpoena *duces tecum* to compel the production of stenographic notes of statements made by the state's witness to the prosecutor during his investigation to determine whether charges should be filed against defendant on information. The trial judge denied the subpoena. The denial was affirmed on appeal to the circuit court. The defendant here petitioned for *certiorari* and the court held that the statements taken by the prosecutor "were in effect the work product of the solicitor and were not subject to production." *Bedami v. State*, 112 So.2d 284 (Fla. 1959).

Petitioner claimed that he needed the statements held by the prosecutor to impeach the state's witness and claimed his right to compulsory process under the Florida Constitution. The court held that the petitioner's right under compulsory process ran to records "regularly made in due course of legal procedure." Here the solicitor took an *unsworn statement* of the witness thus rebutting the premise that the information was gathered in due course of legal or judicial procedure. In Florida the prosecutor is not limited to file indictment only on information sworn to but may also rely on other information. The court stated that prosecutor's notes could not have been offered as direct evidence but could have been used by him for cross-examination or to refresh the witness's memory.

Confessions Obtained in Post-indictment Interrogations Are Subject To Careful Scrutiny For Coercion—Defendant was convicted of first-degree murder in a New York court. Admitted into evidence at the trial was a confession made after he had been indicted for the crime. The confession was secured without the presence of a previously retained counsel and after almost eight hours of continuous night-time relay questioning. Other factors cited as evidencing that the confession was neither voluntary nor trustworthy were that petitioner was of foreign birth, had a meager education and a history of emotional instability, that the confession was in the form of questions and answers, and that a large number of officials, including a skillful prosecutor, were present at the interrogation.

The defendant had called a fledgling police officer, a childhood friend, to relate that he wished to surrender. At the time of the interrogation, the

police officer was instructed to falsely state that the phone call had placed his job in jeopardy, the loss of which would be disastrous to his three children, his wife and his unborn child. The United States Supreme Court, on *certiorari* to the Court of Appeals of New York, reversed, holding that the use of the confession was inconsistent with the fourteenth amendment under traditional principles since "petitioner's will was overborn by official pressure, fatigue and sympathy falsely aroused." *Spano v. New York*, 27 U.S. L. WEEK 4483, (U.S. June 22, 1959).

Crucial to the Court's decision appeared to be the absence of a laudable motive on the part of the authorities for questioning the defendant. Since an eye-witness was available and petitioner had already been indicted, the police were said to be not merely attempting to solve a crime or to exonerate a suspect but to convict petitioner. Motive and not method now appears to be the most significant test of whether a confession is voluntary. The concurring opinions emphasized that the failure to summon the defendant's counsel to the interrogation session, upon petitioner's request, was by itself sufficient grounds for reversal.

Delinquency Proceedings Must Safeguard Constitutional Rights—Barkus, a minor, was committed to a training school for a period not to exceed his minority in a special statutory proceeding. He was accused of trespassing upon railroad property and of placing a cement block upon the railroad tracks. The statute provided that an inquiry into alleged delinquency should be conducted in a "summary manner." Petitioner was brought before the juvenile court without a summons and was not advised of his right to obtain legal assistance nor of his right to refuse to testify against himself. Admitted into evidence at the hearing were the results of an *ex parte* investigation, conducted by the juvenile authorities, which consisted exclusively of hearsay statements taken without benefit of oath. Upon appeal, the Supreme Court of Nebraska reversed the order of commitment, holding that the essential procedures established to aid the court in determining contested issues of fact could not be dispensed with in juvenile proceedings. *State v. Barkus*, 95 N.W.2d 670 (Neb. 1959).

The court insisted that the issue upon appeal was not petitioner's innocence or guilt but whether the procedures utilized to obtain and present the