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The *Journal* records with deep
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BERNARD C. GAVIT.

1893-1954

Professor of Law, Indiana University School of Law, 1929-1954
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FEDERAL CONTROL OVER USE OF COERCED CONFESSIONS IN STATE CRIMINAL CASES—SOME UNSETTLED PROBLEMS

AUSTIN W. SCOTT, JR.†

In recent years the United States Supreme Court has decided a number of cases involving application of the due process clause of the Fourteenth Amendment to the use of coerced confessions in state criminal trials.¹ Confessions obtained by violence or threats of violence, and even confessions secured by interrogation conducted under certain circumstances,² are barred by the due process clause. This discussion is

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1. The principal cases, in chronological order, are: *Brown v. Mississippi*, 297 U.S. 278 (1936); *Chambers v. Florida*, 309 U.S. 227 (1940); *White v. Texas*, 310 U.S. 530 (1940); *Lisenba v. California*, 314 U.S. 219 (1941); *Ward v. Texas*, 316 U.S. 547 (1942); *Ashcraft v. Tennessee*, 322 U.S. 143 (1944), 327 U.S. 274 (1946); *Lyons v. Oklahoma*, 322 U.S. 596 (1944); *Malinski v. New York*, 324 U.S. 401 (1945); *Haley v. Ohio*, 332 U.S. 596 (1948); *Lee v. Mississippi*, 332 U.S. 742 (1948); *Watts v. Indiana*, 338 U.S. 49 (1949); *Turner v. Pennsylvania*, 338 U.S. 62 (1949); *Harris v. South Carolina*, 338 U.S. 68 (1949); *Gallegos v. Nebraska*, 342 U.S. 55 (1951); *Stroble v. California*, 343 U.S. 181 (1952); *Stein v. New York*, 346 U.S. 156 (1953). See *Rochin v. California*, 342 U.S. 165 (1952).

2. *E.g.*, persistent interrogation, especially if by relays of interrogators; unpleasant place of confinement; interference with rest and sleep; lack of proper food; absence of advice as to right to remain silent; imprisonment incommunicado without access to

not concerned with a determination of what conduct amounts to coercion or how coercion is proved. Rather, the problem is: Assuming that the confession is proved to be coerced, should the federal courts forbid its use by the states in some situations not yet passed upon by the United States Supreme Court? In order to resolve problems presented by these new situations, it will be necessary to have an understanding of the rationale underlying the coerced confession cases.

Trustworthiness. The most universally accepted reason for excluding coerced confessions from criminal trials is that as evidence they are unreliable, as likely to be false as true.³ This is Wigmore's sole test.⁴ Most of the cases which have spelled out the reasons for excluding coerced confessions have done so on this ground;⁵ and the United States Supreme Court has accepted this explanation as a reason why due process forbids states to use such confessions.⁶ Is it the sole reason?

Police deterrence. A second argument sometimes advanced is that the true reason, or at least an additional one, for excluding coerced confessions is to restrain police investigators from illegal conduct designed to extort confessions from recalcitrant suspects.⁷ Although this principle has been denied by Wigmore,⁸ the United States Supreme Court has recently advanced it as an additional reason for applying the due process clause to coerced confessions in state cases.⁹ The device of using rules of evidence to deter state officials from obnoxious conduct

family, friends, or counsel; failure to take suspect before a magistrate for a preliminary examination. All or some of these factors may add up to a "total situation" amounting to "torture of mind" or "psychological torture." *Watts, Turner, and Harris* cases, *supra* note 1.

3. Even noncoerced confessions are thought by most courts to be subject to enough danger of untrustworthiness to require corroboration to warrant conviction, WIGMORE, EVIDENCE §§ 2070-71 (3d ed. 1940), many requiring that the *corpus delicti* be independently established, *id.* at § 2071 and n.4 thereto.

4. *Id.* at § 822.

5. *Id.* at § 822 and n.2 thereto. Wigmore was a strong opponent of the use of rules of evidence to discipline police officials. See also Waite, *Police Regulation by Rules of Evidence*, 42 MICH. L. REV. 679 (1944).

6. See *Lisenba v. California*, 314 U.S. 219, 236 (1941) (reason is "to exclude false evidence," and "there is a fair risk the confession is false"); *Stein v. New York*, 346 U.S. 156, 182, 192 (1953) ("too untrustworthy to be received as evidence of guilt"; "illusory and deceptive evidence").

7. Perlman, *Due Process and the Admissibility of Evidence*, 64 HARV. L. REV. 1304, 1309 (1951).

8. WIGMORE, EVIDENCE § 823 and cases cited at n.2 thereto.

9. See *Rochin v. California*, 342 U.S. 165, 173 (1952): Use of coerced confessions in state criminal cases "is constitutionally obnoxious not only because of their unreliability. They are inadmissible under the Due Process Clause even though statements contained in them may be independently established as true. Coerced confessions offend the community's sense of fair play and decency." See also *Watts v. Indiana*, 338 U.S. 49, 50 n.2 (1949).

has been employed under the due process clause by the Supreme Court in other situations.¹⁰

Self-incrimination. A third principle advanced as a basis for excluding coerced confessions is that their use violates the privilege against self-incrimination found in the federal and most state constitutions. Wigmore vigorously denies that the privilege applies to confessions extorted by police officials,¹¹ but other leading writers on evidence just as positively assert its applicability.¹² There are conflicting state and federal cases,¹³ but the Supreme Court has never suggested this as a possible theory for excluding coerced confessions in state criminal cases. Even if the rationale for excluding forced confessions in federal criminal trials is based partly or wholly on the Fifth Amendment privilege, there is a difficulty in incorporating this aspect of the privilege into the due process clause of the Fourteenth in view of past Supreme Court decisions.¹⁴

10. To exclude trustworthy evidence forced from the defendant's stomach by forceable use of the stomach pump, *Rochin v. California*, 342 U.S. 165 (1952). To exclude *knowing* use of perjured testimony by state prosecutors, *e.g.*, *Mooney v. Holohan*, 294 U.S. 103 (1935), but apparently not the *unknowing* use thereof, *Hysler v. Florida*, 315 U.S. 411 (1942). (Since the testimony is equally untrustworthy whether used knowingly or unknowingly, its exclusion must be to deter the prosecutor from bad conduct.) On the other hand, the Supreme Court has refused to use the due process clause to deter state officials from objectionable conduct in other cases: *Wolf v. Colorado*, 338 U.S. 25 (1949) (evidence obtained by an illegal search and seizure); *Frisbie v. Collins*, 342 U.S. 519 (1952) (jurisdiction obtained by kidnapping from another state); *Schwartz v. Texas*, 344 U.S. 199 (1952) (illegal wiretapping).

The Supreme Court's utilization of procedural rules to discipline federal law enforcement officials has been applied even more widely, of course, in federal criminal trials: to prevent unreasonable searches and seizures, *Weeks v. United States*, 232 U.S. 383 (1914); to prevent entrapment, *Sorrells v. United States*, 287 U.S. 435 (1932) (Roberts, J., concurring opinion); to force a prompt preliminary examination, *McNabb v. United States*, 318 U.S. 332 (1943).

11. WIGMORE, EVIDENCE § 823.

12. AMERICAN LAW INSTITUTE, MODEL CODE OF EVIDENCE, Rules 203, 232 (1942); MAGUIRE, COMMON SENSE AND COMMON LAW 121 (1947); MORGAN AND MAGUIRE, CASES ON EVIDENCE 425-427 (3d ed. 1951); McCormick, *The Scope of Privilege in the Law of Evidence*, 16 TEX. L. REV. 447, 451-457 (1938); Morgan, *The Privilege Against Self-Incrimination*, 34 MINN. L. REV. 1, 27-30 (1949).

13. *E.g.*, state cases cited, MORGAN AND MAGUIRE, *op. cit. supra* note 12, at 426 n.6. For federal cases, see Rutledge, J., in *Wood v. United States*, 128 F.2d 265 (D.C. Cir. 1942) (dictum that privilege does not apply to coerced confessions); *Bram v. United States*, 168 U.S. 532 (1897) (self-incrimination clause of Fifth Amendment excludes coerced admissions in federal courts); *see also United States v. Carignan*, 342 U.S. 36, 41 (1951).

14. *Adamson v. California*, 332 U.S. 46 (1947); *Twining v. New Jersey*, 211 U.S. 78 (1908), holding that even if the Fifth Amendment's privilege against self-incrimination prevents comment by the judge or prosecutor in federal cases on the defendant's refusal to take the witness stand, the due process clause of the Fourteenth Amendment does not forbid a state judge or prosecutor from doing so in a state criminal trial.

It is possible, however, that other sorts of violations of the privilege against self-incrimination (other than comment on failure of the accused to testify) may be in contravention of the Fourteenth Amendment.

Those writers who contend that the privilege against self-incrimination supports the rule excluding coerced confessions (even assuming they would make the theory a basis of federal control, by virtue of the due process clause, over state confessions) do not imply that this is necessarily the sole basis; doubtless they believe that the trustworthiness and perhaps deterrence principles also support the exclusion.

The task remains of applying the foregoing principles underlying the coerced confession cases to the following state court situations as yet not passed upon (or at least still unsettled) by the Supreme Court.

Use of coerced confession against nonconfessor.

A confession improperly extorted from A may contain passages implicating his confederate B, who may¹⁵ or may not¹⁶ be a codefendant with A. May a state, in view of the due process clause, introduce this confession as evidence against B?

Where A is not being tried jointly with B, the use of A's confession implicating B is so obviously hearsay that a state is not likely to permit its use as evidence against B. If it should overlook the hearsay rule and allow the evidence, the mere fact that it violates the hearsay rule would not contravene the due process clause.¹⁷ Where the confession has been coerced, however, it would violate the due process clause on the trustworthiness principle; for if the confession is untrustworthy evidence when used against A, the same confession is hardly more trustworthy when used against B. Insofar as coerced confessions are excluded to prevent police misconduct, they should also be excluded here; otherwise there is an incentive for officials to extort a confession implicating a confederate.¹⁸

15. *Stein v. New York*, 346 U.S. 156, 194-196 (1953); *Malinski v. New York*, 324 U.S. 401, 410-412 (1945).

16. *Turner v. Pennsylvania*, 338 U.S. 62, 65-66 (1949).

17. *See Stein v. New York*, 346 U.S. 156, 196 (1953): "The hearsay-evidence rule . . . will not be read into the Fourteenth Amendment." That state rules of evidence are not generally within the scope of the Fourteenth Amendment, see Scott, *Federal Restrictions on Evidence in State Criminal Cases*, 34 MINN. L. REV. 489 (1950).

18. The Court, in *Turner v. Pennsylvania*, 338 U.S. 62, 65-66 (1949), did not have to decide the due process question here considered, although it raised the question.

A different question is presented when A is coerced by improper means to appear at B's trial and testify against B. WIGMORE, EVIDENCE § 815 n.3, suggests that A may testify although the coercion aspects may be brought out on examination. Wigmore's suggestion that the coercive pressure is removed once the witness appears in court (since the court will protect him) is not borne out in the analogous case of a coerced guilty plea, which constitutes a denial of due process. *Waley v. Johnston*, 316 U.S. 101 (1942). And the practice of coercing witnesses approaches the situation of the prosecutor's knowing use of perjured testimony, a clear violation of due process. See note 10 *supra*. Perhaps the state of mind of the prosecutor who improperly coerces a witness into testifying against another is not that he knows the testimony is false,

The more common situation is where A and B are tried jointly. The fact that A has confessed, implicating B who has not confessed, may entitle B to a separate trial on his motion to sever, although most states hold that a ruling on the motion is within the discretion of the trial court and that a denial of the motion is not an abuse of discretion.¹⁹ What if the motion to sever is not made or, if made, is properly denied? It is common to introduce A's confession implicating B but to instruct the jury not to consider it against B²⁰ or (less frequently) to delete B's name wherever mentioned in A's confession.²¹ The Supreme Court has held that such state practices are not violations of due process even where A's confession is coerced.²² The theory is that since the jury presumably followed instructions (or did not suspect that the mysterious unnamed confederate was B), A's confession no matter how wrongfully obtained could not hurt B.²³ If, however, the jury was not instructed to avoid using A's confession against B (or some other device used to shield B), the fact that A's confession was coerced should constitute a violation of due process as to B on the principles of untrustworthiness or police deterrence,²⁴ unless perhaps B requested no such instruction or device.²⁵

but that he knows he does not know whether it is true or false—possibly a slightly more commendable frame of mind.

19. See AMERICAN LAW INSTITUTE, CODE OF CRIMINAL PROCEDURE § 312 (1931) and commentary thereon, listing states where in such circumstances defendant is entitled to a severance as a matter of right and states where severance rests in the trial judge's discretion. See also Notes, 70 A.L.R. 1171, at 1186 (1931), 104 A.L.R. 1519, at 1523 (1936), 131 A.L.R. 917, at 924 (1941).

20. As done in *Stein v. New York*, 346 U.S. 156, 194-196 (1953). See also *id.* at 173-174 n.17. See AMERICAN DIGEST SYSTEM, "Criminal Law," Key Nos. 528, 673(4), for numerous cases holding that A's confession is hearsay as to co-defendant B (unless B was present when A confessed and agreed to it or made no objection) but that it is proper to use it against A with instructions to the jury to disregard it as to B.

21. As done in *Malinski v. New York*, 324 U.S. 401, 410-412 (1945), where "X's" were substituted for B's name wherever mentioned.

22. *Malinski v. New York*, *supra* note 21. See *Stein v. New York*, 346 U.S. 156, 194-196 (1953).

23. *Stein v. New York*, 346 U.S. 156 (1953), holds constitutional state procedure which leaves to the jury the problem of deciding whether the confession was coerced; if coercion is established, the jury is instructed to disregard the confession and decide according to the other evidence. Thus, it is not a violation of due process to furnish the jury with a coerced confession and instruct them to close their eyes to it. But Rutledge, J., dissenting as to B in *Malinski v. New York*, 324 U.S. 401, 430-432 (1945), thought that the "X's" so obviously referred to B that the fact that A's confession was coerced should warrant reversal as to B as well as A.

24. *Cf. Anderson v. United States*, 318 U.S. 350, 356 (1943), a federal prosecution, wherein A's improperly secured confession (under the *McNabb* rule, *supra* note 10) implicating B led to reversal as to B as well as A since the jury was not instructed to consider A's confession against A alone.

25. Where the judge did not limit the use of A's confession so as to shield co-defendant B, but B never requested such limitation at the trial, may B raise the question of denial of due process in a federal court, not having taken steps to protect himself in the state trial court? In *Jones v. State*, 185 Md. 481, 45 A.2d 350 (1946), the court said that where A confessed implicating B, but B failed to ask that A's

In analogous situations it has been held that one person cannot, at his trial, take advantage of the violation of another's rights. Thus, it may be that B, not a party to the telephone conversation between A and C overheard by reason of illegal wiretapping, may not object to the introduction of evidence against him obtained thereby;²⁶ B may not object to evidence against him obtained through an illegal search and seizure by the police of A's (not B's) premises.²⁷ Such decisions are at odds with the police-deterrence theory of exclusion of evidence, and the Supreme Court may not follow them when these problems arise in that Court; but at all events, in these cases the evidence involved was trustworthy, unlike the usual situation where A's coerced confession implicates B as well as A.

Use of evidence discovered by coerced confession.

Although all courts hold that a coerced confession (without more) is inadmissible in evidence against the confessor, apparently they would not hesitate to admit evidence discovered by means of such a confession.²⁸ Wigmore and some courts go further and admit not only the discovered facts but also the whole confession when thus verified by finding evidence (the gun, the booty, the body) where the confessor stated he hid it.²⁹ Other courts admit (in addition to the discovered evidence) only that part of the confession so verified,³⁰ and still others admit no part of the confession but only the fact that evidence was discovered as a consequence of information furnished by the confessor.³¹

If the rationale excluding coerced confessions were solely that of trustworthiness, then of course the facts discovered by such means (and doubtless, as Wigmore suggests, the whole confession) should be ad-

confession be limited to A, the trial judge later properly refused to strike out of A's confession all reference to B. Suppose that the confession in question had been coerced? In general, constitutional rights may be knowingly waived. Perhaps B's chances of successfully urging a denial of due process would depend on showing that he was unrepresented by counsel, *Gibbs v. Burke*, 337 U.S. 773 (1949); *Townsend v. Burke*, 334 U.S. 736 (1948), or, if so represented, that this mistake proves his counsel to have been woefully incompetent, *Scott*, *supra* note 17, at 503-504.

26. See *Goldstein v. United States*, 316 U.S. 114 (1942), which does not, however, go this far since it merely prevented B's objection to the testimony of A and C who turned state's evidence on being confronted with the record of their tapped conversation.

27. *United States v. Ebeling*, 146 F.2d 254 (2d Cir. 1944); Note, 58 *YALE L.J.* 144 (1948).

28. WIGMORE, *EVIDENCE* § 859; 22 C.J.S. 1454 n.20 (1940); *McQueen v. Commonwealth*, 196 Ky. 227, 244 S.W. 681 (1922); *State v. Cocklin*, 109 Vt. 207, 194 Atl. 378 (1937).

29. WIGMORE, *EVIDENCE* § 857.

30. *Ibid.*

31. *Id.* at § 858.

missible. But if, as the Supreme Court has said, the exclusion of involuntary confessions is based in part on a rationale of police deterrence, then not only the confession (in whole or in part) but the discovered facts themselves should be inadmissible; otherwise there is still strong incentive for law enforcement officials unlawfully to force a confession from a suspect.³² The Supreme Court has stated quite clearly (although in dicta) that the due process clause forbids use at a state trial of a confession even though statements contained therein are independently established as true.³³ It would seem that not only the whole confession but also the verified part and even the discovered facts apart from the confession are in danger of exclusion by the Court.³⁴

Use of coerced admission.

Some courts have drawn a distinction between a "confession" and an "admission" and have held that the latter is admissible in evidence even if coerced,³⁵ leaving to the jury the determination of the weight to be given such an admission. Some courts define "confession" as a statement admitting all the essential elements of a crime; anything less is an admission only, not subject to the rules regarding confessions.³⁶ Others (and Wigmore) define confession more broadly to include a statement admitting any essential part of the crime.³⁷ A number of states (and Wigmore) do not apply coerced confession rules to admissions of doing the act charged if coupled with a defense negating guilt—such as, "I killed him, but I did it in self-defense."³⁸ Practically all courts exclude from the term "confession" (and from the rules regarding coerced confessions) admission of facts not constituting an essential element of the crime charged but which may tend to tie the accused in with the crime—

32. AMERICAN LAW INSTITUTE, *op. cit. supra* note 12, at Rule 243, states: "There is a well-founded belief that in the cases where the police use forbidden means to obtain confessions, they do so more for the purpose of discovering clues than for the purpose of manufacturing admissible evidence."

33. See note 9 *supra*.

34. The wiretapping cases in the federal courts are analogous; not only the overheard conversations but also the clues discovered thereby are inadmissible in evidence in federal trials. *Nardone v. United States*, 308 U.S. 338 (1939) (the discovered clues are "the fruit of the poisonous tree").

35. Cases are collected in MORGAN AND MAGUIRE, *op. cit. supra* note 12, at 528 n.28; 22 C.J.S. 1250 (1940); *e.g.*, *People v. Trawick*, 78 Cal. App.2d 604, 178 P.2d 45 (1947); *Commonwealth v. Haywood*, 247 Mass. 16, 141 N.E. 571 (1923); *State v. Gibson*, 69 N.D. 70, 284 N.W. 209 (1939). *Cf. Louette v. State*, 152 Fla. 495, 12 So.2d 168 (1943) (same test as to coerced admissions as with confessions).

36. AMERICAN LAW INSTITUTE, *op. cit. supra* note 12, at Rule 239.

37. *Id.* at Rule 505; WIGMORE, EVIDENCE § 821.

38. AMERICAN LAW INSTITUTE, *op. cit. supra* note 12, at Rule 239; WIGMORE, EVIDENCE § 821 (exculpatory statements).

such as admitting ownership of the weapon used to commit a crime or admitting presence at a certain time and place.³⁹

Does a state deprive the defendant of due process if it allows in evidence coerced statements admitting an essential part of the crime charged (but not the whole guilt), admitting all the essential elements of the crime but coupling the statement with a defense negating guilt, or admitting some fact which may tend to connect the defendant with the crime charged? The Supreme Court has not given a clear answer since most of the cases coming to the Court from the state courts were cases of confessions admitting all elements of the crime charged.⁴⁰ However, one case does hold that under the circumstances of the case a statement denying guilt but admitting knowledge of the crime comes under the coerced confession rules of the due process clause.⁴¹

On principle it would seem that incriminating statements extorted from a suspect by coercive means should be treated in the same manner as coerced confessions admitting guilt. Applying the test of trustworthiness, a damaging admission which has been coerced is as likely to be unreliable as a coerced confession. On the police-deterrence principle, if such admissions are allowed, the police are encouraged to use uncivilized means to extort admissions to aid in the prosecution. If the privilege against self-incrimination is a proper basis for the rule excluding coerced confessions, admissions of facts tending to incriminate the defendant (*i.e.*, facts constituting much less than total guilt or even an essential element of the crime) would be excluded.

Use of confession coerced by others.

So far the Supreme Court has dealt only with confessions coerced by law enforcement officials of the state which has jurisdiction over the crime charged. What if the unlawful coercion is applied by private persons (*e.g.*, private detectives or a mob) or by the police of another jurisdiction? If such persons were cooperating with or instigated by the prosecuting state officials, to use the confession as evidence would clearly violate due process.⁴² What if they obtained the confession on their own initiative?

39. AMERICAN LAW INSTITUTE, *op. cit. supra* note 12, at Rule 240; WIGMORE, EVIDENCE § 821 (acknowledgement of subordinate facts colorless with reference to actual guilt).

40. See note 1 *supra*.

41. *Ashcraft v. Tennessee*, 327 U.S. 274 (1946) (defendant's statement that he did not kill his wife but knew who did constituted "the equivalent of a confession" of the crime charged—accessory before the fact to murder of wife).

42. Federal cases involving evidence secured by illegal searches and seizures are analogous: Evidence obtained not by officers of the federal government but by others

On principle it would seem that for a state to use a coerced confession would violate due process no matter who performed the coercion. On the trustworthiness rationale, a confession is no more reliable when extorted by one person than by another.⁴³ On the basis of the police-deterrence principle, however, the confession would not be excluded, since by hypothesis the police had nothing to do with obtaining the confession. On the basis of self-incrimination, the confession also would not be excluded as this privilege only protects one from *official* action.⁴⁴

Use of confession obtained by promises.

Thus far the Supreme Court has invoked the due process clause to exclude confessions secured by unpleasant means—physical violence, threats thereof, or interrogation amounting to psychological torture. It is generally recognized that confessions obtained as a result of pleasanter inducements—such as promises of pardon or of lighter punishment if the suspect confesses—are likewise inadmissible.⁴⁵ The rationale is that such confessions are untrustworthy. Suppose the confession is proved trustworthy by independent evidence establishing its verity; would due process be violated if a state admitted it?

While the policy of using the Fourteenth Amendment to civilize state officials has been applied in extreme cases, such as those involving physical violence and psychological torture, the Supreme Court probably would not use it to discipline state officials guilty only of making promises likely to cause false confessions where (by hypothesis) the confession is in fact shown to be true. At least one state has by statute drawn a distinction between confessions given under the inducement of fear and those given under other coercive circumstances.⁴⁶

cooperating with or instigated by them is excluded. *Byars v. McDowell*, 273 U.S. 28 (1927).

43. AMERICAN LAW INSTITUTE, *op. cit. supra* note 12, at Rule 505, draws no distinction between state officials and others in cases of physical suffering or threats thereof.

It may be, however, that if the confession were proved trustworthy by discovery of independent facts establishing the truth of the confession, the confession would be admissible since the police-deterrence and self-incrimination principles do not warrant its exclusion.

44. *But cf. Bram v. United States*, 168 U.S. 532 (1897) (coerced confession obtained by foreign official excluded in federal court under Fifth Amendment privilege).

45. WIGMORE, EVIDENCE §§ 834-836; AMERICAN LAW INSTITUTE, *op. cit. supra* note 12, Rule 505. The confession is excluded if the inducement was likely to cause a false confession and if the inducement was given by a person reasonably believed by the confessor to be in a position to carry out the promised inducement.

46. *State v. Winters*, 39 Wash.2d 545, 236 P.2d 1038 (1951), upholding WASH. REV. CODE 10.58.030 (1951): "The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him, except when made under the influence of fear produced by threats. . . ."

Conclusion

Thus, it seems probable that the Supreme Court will outlaw some present state practices in the area of confessions. It seems likely that the almost universal state practice of authorizing the use in court of evidence obtained through leads furnished by coerced confessions will eventually be forbidden. Use of coerced admissions falling short of confessions, allowed by a number of states, will probably be condemned as well. The Supreme Court's extension of its present rulings to these new situations will not stamp out police lawlessness altogether, for there will still be an incentive to coerce confessions and misrepresent the circumstances (thus having the confession admitted as voluntary); but such an extension by the Supreme Court, armed with the due process clause, should help to bring about a serious curtailment (and perhaps the ultimate demise) of "third degree" methods presently employed by state enforcement agents.

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