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# Denial of Due Process by Use of Coerced Confessions

the same taxes as privately owned corporations when that property is not used for strictly charitable purposes,[25] the argument used by the Montana court loses much of its validity.

## CONSTITUTIONAL LAW

### DENIAL OF DUE PROCESS BY USE OF COERCED CONFESSIONS

After conviction of murder in the first degree for the killing of a police officer, appellant brought error, charging that the confession used against him at the trial had been obtained through coercion and violence and had been incorrectly admitted as evidence by the trial court. The undisputed evidence showed that appellant had been captured soon after the killing and had been severely beaten by the police who had arrested him. After the beating he was taken to police headquarters where he was questioned that night in the presence of several of the officers who had beaten him. The confession in controversy followed. At the time appellant made his confession he had neither been advised of his rights nor seen his counsel. In reversing the conviction the Indiana Supreme Court held that the circumstances warranted a finding by the court that the confession had been obtained through coercion and was therefore inadmissible as evidence. *Johnson v. State,* 78 N.E.2d 158 (Ind. 1948).

The problem confronting the court was one of determining whether the circumstances under which the confession was secured constituted a denial of due process of law as guaranteed by the Fourteenth Amendment.[1] By reviewing the means by which this confession was obtained, the court departed from the precedent set forth by previous Indiana cases which had stated the proposition that the circumstances attendant upon the securing of a criminal confession are issues of fact for determination by the trial court only, and that the findings so made should not be disturbed by appellate courts.[2] The position expressed by the Supreme Court of the

25. City Temple Institutional Society of Denver v. McGuire, 104 Colo. 11, 87 P.2d 760 (1939); Boston Symphony Orchestra v. Board of Assessors, 294 Mass. 248, 1 N.E.2d 6 (1936).

1. For the most comprehensive treatment of the subject generally see McCormick, "Some Problems and Developments in the Admissibility of Confessions" 24 Tex. L. Rev. 239 (1946).

2. "This court will not weigh the evidence given in the trial court upon the competency of the admission in evidence of a written

United States in a recent series of decisions culminating in *Malinski v. New York*[3] and *Haley v. Ohio*[4] was followed. This doctrine, which held that appellate courts might review the undisputed facts of the record to determine whether due process was denied, was established by Chief Justice Hughes[5] to enable the Supreme Court to examine the validity of protested confessions in the light of the Fourteenth Amendment.

Indiana appellate courts have been reluctant to review issues of fact upon which the trial court had reached a decision, contending that the direct evidence and testimony available to the lower court is more likely to create an accurate picture of the situation than is the cold recital of facts contained in the record before the appellate court.[6] The instant case does not completely discard this theory, for it indicates that the appellate court may not weigh the probative effect of conflicting evidence nor make new findings of fact for itself, but must confine its inquiry to the undisputed facts as shown by the record. The United States Supreme Court decisions have all been based solely on an examination of the undisputed facts,[7] although in each case where testimony was disputed the Court recited the conflicting evidence before resting its decision on uncontroverted grounds.[8] Because of the difficulty of finding undisputed evidence in all cases, there has been a marked tendency to require fewer and

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confession made by a defendant." Mack v. State, 203 Ind. 355, 374, 180 N.E. 279, 285 (1932); Caudill v. State, 224 Ind. 531, 69 N.E.2d 549 (1946); Hawkins v. State, 219 Ind. 116, 37 N.E.2d 79 (1941).

3. 324 U.S. 401 (1945).
4. 332 U.S. 596 (1948).
5. Brown v. Mississippi, 297 U.S. 278 (1936). This was not the first time this doctrine was proposed, however. In Frank v. Magnum, 237 U.S. 309, 347 (1915), Mr. Justice Holmes, dissenting with then Justice Hughes, said "When the decision of the question of fact is so interwoven with the decision of the question of constitutional right that the one necessarily involves the other, the Federal court must examine the facts."
6. Cox v. State, 49 Ind. 568 (1875); Winslow et al. v. State, 5 Ind. App. 306 (1892).
7. Haley v. Ohio, 332 U.S. 596 (1948); Malinski v. New York, 324 U.S. 401 (1945); Ashcraft v. Tennessee, 322 U.S. 143 (1943); Ward v. Texas, 316 U.S. 547 (1942); White v. Texas, 310 U.S. 530 (1940); Chambers v. Florida, 309 U.S. 227 (1940); Brown v. Mississippi, 297 U.S. 278 (1936).
8. Malinski v. New York, 324 U.S. 401 (1945); Ashcraft v. Tennessee, 322 U.S. 143 (1943); White v. Texas, 310 U.S. 530 (1940); Chambers v. Florida, 309 U.S. 227 (1940).

fewer facts to establish coercion and a denial of due process.[9] But where the evidence is entirely conflicting as to whether the confession is voluntary or not, the appellate court must accept the findings of the trial court unless by so doing an obvious injustice would result.[10]

Each case raising the issue of denial of due process in the securing of criminal confessions must be considered separately in the light of its facts, for the Supreme Court has stated that it is practically impossible to define precisely the limits of what constitutes a violation of due process through coercion.[11] Coercion itself has been measured subjectively, the courts basing their findings upon the impact of surrounding circumstances on the mind of the defendant. The age,[12] race[13] and intelligence[14] of the accused is considered together with the actual physical or mental strain imposed upon him. In *Lyons v. Oklahoma*[15] the Supreme Court ruled that coercive circumstances leading to one confession do not necessarily influence a subsequent confession made after these circumstances had been removed and the accused advised of his rights. Applying the above test of measuring the effect of the intimidating treatment on the mind of the individual to the instant case, it is readily apparent that the confession was coerced. The interval between the beating and the time of the confession was not sufficient to preclude the inference

9. Brown v. Mississippi, 297 U.S. 278 (1936) (brutal physical punishment); Chambers v. Florida, 309 U.S. 227 (1940); Ward v. Texas, 316 U.S. 547 (1942) (instilling a fear of lynching); White v. Texas, 310 U.S. 530 (1940) (repeated removal from jail to a lonely wooded area for purposes of interrogation at night); Ashcraft v. Tennessee, 322 U.S. 143 (1943) (thirty-six hours of continuous grilling); Malinski v. New York, 324 U.S. 401 (1945) (humiliation while questioning); Haley v. Ohio, 332 U.S. 596 (1948) (five hours questioning).

10. Lyons v. Oklahoma, 322 U.S. 596 (1944); Lisbena v. California, 314 U.S. 219 (1941). See also the dissenting opinion in Malinski v. New York in which Chief Justice Stone criticizes the majority opinion for accepting as testimony the remarks made at the trial by the prosecuting attorney. Since all the evidence was conflicting, the Court seized upon statements made by the state attorney in summary and used them as the undisputed facts. 324 U.S. 401, 434 (1945).

11. "No formula to determine this question by its application to the facts of a given case can be devised." Lyons v. Oklahoma, 322 U.S. 596, 602 (1944).

12. Haley v. Ohio, 332 U.S. 596 (1948).

13. Haley v. Ohio, 332 U.S. 596 (1948); Ward v. Texas, 316 U.S. 547 (1942); Chambers v. Florida, 309 U.S. 227 (1940).

14. Lisbena v. California, 314 U.S. 219 (1941).

15. 322 U.S. 596 (1944).

that the effects of the previous beating influenced the confession. Equally significant are the facts that appellant was not advised of his right to see his counsel until after the confession had been taken, and that the interrogation leading to the confession was attended by several of the police officers who had helped administer the beating. Undoubtedly this contributed to the psychological factors influencing the mind of the appellant when he made the statement. But illegal acts committed by police officers in the process of obtaining a confession are not of themselves a denial of due process.[16] Other factors must be considered. The illegally obtained confession must actually be used in evidence against the accused as a means of obtaining his conviction.[17] It is not necessary, however, that it be the sole evidence leading to the conviction—the constitutional guarantee makes mandatory a review of all decisions where the admissibility of a criminal confession is questioned on due process grounds, even though the evidence before the trial court was sufficient to warrant a submission of the case to the jury without the confession.[18] In determining this problem the court is not concerned with the guilt or innocence of the accused, and a just result stemming from an unfair trial is as much a violation of procedural due process as is an unjust decision.[19]

Coercion in the securing of a confession which is later used to convict the accused is a denial of due process. To this end the Fourteenth Amendment guarantees the accused a fair and impartial trial free from unreliable and improper evidence.[20] The due process clause is satisfied only when coerced confessions are excluded from admission as evidence against the accused.

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16. Lisbena v. California, 314 U.S. 219 (1941).
17. Lisbena v. California, 314 U.S. 219 (1941); Chambers v. Florida, 309 U.S. 227 (1940); Brown v. Mississippi, 297 U.S. 278 (1936).
18. Malinski v. New York, 324 U.S. 401 (1945); Lyons v. Oklahoma, 322 U.S. 596 (1944); present case at 160.
19. Snyder v. Massachusetts, 291 U.S. 97 (1934).
20. Apart from the guarantee of due process a coerced confession would be held inadmissible as evidence for other reasons. Such admissions are rarely accurate and are completely unreliable as a source of competent evidence. 3 Wigmore, "Evidence" §822 (3d ed. 1940); 2 Wharton, "Criminal Evidence" §604 (11th ed. 1935).