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Constitutional Law--Denial of Due Process--Power of Supreme Court to Review Convictions Obtained by the Admission of Allegedly Coerced Confessions

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From the above short discussion, it would seem fair to state that plaintiff is entitled to injunctive relief against defendant. To this end Plaintiff Schwartz has filed a Petition for Rehearing, dated July 9, 1954, but the outcome has not yet been determined. Thus, there is still a hope that the court will ultimately admit the correctness of plaintiff's position. However, if this decision stands, the future of trade-names and trade-marks in California appears dim.

Ollie M. Marie-Victoire

CONSTITUTIONAL LAW. DENIAL OF DUE PROCESS—POWER OF SUPREME COURT TO REVIEW CONVICTIONS OBTAINED BY THE ADMISSION OF ALLEGEDLY COERCED CONFESSIONS.

Since 1936 many state criminal convictions involving the admission of allegedly coerced confessions have come before the United States Supreme Court.[1] These cases have produced much disagreement among the members of the Court and a good deal of law review comment.[2] With the exception of cases involving confessions obtained by severe physical or mental torture, the Court has been sharply divided in its decisions.

The case of *Leyra v. Denno*,[3] decided on June 1, 1954, illustrates this conflict of opinion. In that case, the Supreme Court reversed a New York conviction by a five to three decision. The accused, charged with murdering his parents, was questioned by police intermittently for two days and deprived of sleep. He confessed after being interrogated for an hour and a half by a skilled psychiatrist posing as a physician. Subsequent confessions were made within three and a half hours to a police captain, Leyra's business partner, and two assistant state prosecutors.

Petitioner's first conviction was reversed by the New York Court of Appeals[4] on the ground that the first confession to the psychiatrist, which was admitted in evidence at the trial, had been coerced and was violative of the due process clause of the Federal Constitution.[5] The Court remanded the case to the trial court with directions to submit the question of coersion of the later confessions to the jury. The *first confession* was not offered in evidence and the *later ones* were found to be voluntary. This conviction was upheld by the Court of Appeals,[6] two justices dissenting. The court held there was evidence to support a finding that the subsequent confessions were free from the coercive influences of the first, made to the psychiatrist. The United States Supreme Court denied certiorari.[7] Petitioner then filed habeas corpus proceedings in the United States District Court. It denied the

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[1] See Stein v. New York, 346 U.S. 156 (1953), Watts v. Indiana, 338 U.S. 49 (1949), Chambers v. Florida, 309 U.S. 227 (1940), Brown v. Mississippi, 297 U.S. 278 (1936).

[2] See Allen, *Due Process and State Criminal Procedures: Another Look*, 48 NORTHWESTERN U. L. REV. 16 (1953); Gorfinkel, *The Fourteenth Amendment and State Criminal Proceedings —'Ordered Liberty' or 'Just Deserts,'* 41 CALIF. L. REV. 672 (1953), Inbar, *The Confession Dilemma in the U. S. Supreme Court*, 43 ILL. L. REV. 442 (1948); Comment, 50 MICH. L. REV. 567 (1952).

[3] 347 U.S. 556 (1954).

[4] People v. Leyra, 302 N.Y. 353, 98 N.E.2d 553 (1951).

[5] U. S. CONST. AMEND. XIV, § 1. ". . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

[6] People v. Leyra, 304 N.Y. 468, 108 N.E.2d 673 (1952).

[7] Leyra v. New York, 345 U.S. 918 (1952).

petition.[8] That decision was affirmed by the Court of Appeals for the Second Circuit, one judge dissenting.[9] The Supreme Court then granted certiorari,[10] and in setting aside the conviction, held the subsequent confessions *involuntary as a matter of law* and that use of them to secure a conviction was a violation of the due process cause. Mr. Justice Black, in the majority opinion, said:

> " the undisputed facts in the case are irreconcilable with petitioner's mental freedom 'to confess to or deny a suspected participation in a crime' and the relation of the confessions is 'so close that one must say the facts of one control the character of the other ' All were simply parts of one continuous process."[11]

The dissenting opinion of Mr. Justice Minton points out that there was evidence which would support a conclusion that the later confessions were voluntary, namely, that the confession to Leyra's partner was admittedly voluntary; that in the opinion of a psychiatrist appearing as a witness for the state, the effect of the prior coercion was not carried over; that in the opinion of the assistant district attorneys, to whom the last confession was made, Leyra seemed quite normal and relaxed and relieved to talk to them.

The principle that the use of a coerced confession in a state criminal trial is forbidden by the Fourteenth Amendment has been declared on several occasions by the Supreme Court. In *Brown v. Mississippi*,[12] confessions were extorted from ignorant Negro defendants by brutal floggings and threats of mob violence. In *Chambers v. Florida*,[13] defendants were Negro youths arrested without warrants, denied access to counsel, family, or friends and interrogated singly for five days by large groups of white police officers. The convicitions in these cases and in others,[14] equally shocking, were reversed by unanimous decisions.

The doctrine that the United States Supreme Court has jurisdiction to review the judgments of state criminal trials was first pronounced in 1821 in the case of *Cohens v. Virginia*.[15] In reviewing such proceedings, where a federal right is in issue, the Court is not bound by the trier of fact's finding when the record shows the *findings to be without evidence to support it*.[16] Where the evidence as to the fact in question is conflicting, the Supreme Court will accept the determination of the jury unless it is *so lacking in support as to deprive the accused of the fundamental fairness accorded by the due process clause*.[17] It is not the function of the court, however, to reverse convictions merely because the *weight of evidence* is against the verdict.[18] The Court's function then, is to insure a fair trial but not to act as a super-jury

The issue then can be stated thus: To what extent should the Supreme Court exercise its power of review when deciding whether a confession, held by the trier of fact to be voluntary, is as a matter of law involuntary?

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[8] Leyra v Denno, 113 F.Supp. 556 (S.D. New York 1953).
[9] Leyra v Denno, 208 F.2d 605 (2d Cir. 1953).
[10] Leyra v. Denno, 347 U.S. 926 (1954)
[11] 347 U.S. at 561. Subquotation from Lyons v Oklahoma, 322 U.S. 596, 602, 603 (1944).
[12] See note 1 *supra*.
[13] See note 1 *supra*.
[14] Ward v. Texas, 316 U.S. 547 (1942), White v. Texas, 310 U.S. 530 (1940).
[15] 6 Wheat. 264 (U.S. 1821).
[16] Fiske v Kansas, 274 U.S. 380 (1927), Ward v Texas, *supra* note 14.
[17] Lisenba v California, 314 U.S. 219 (1941).
[18] 346 U.S. at 180.

The extent to which the Court has gone can be demonstrated by examining cases less clear cut than those discussed above. The case of *Lyons v. Oklahoma*[19] is similar, on the facts, to the *Leyra* case. There, a conviction for murder was affirmed, two justices dissenting. The report shows that Lyons was questioned for two hours upon arrest, then held in jail for eleven days; after which time, he was interrogated by officials for about eight hours before he confessed. The officials admitted having placed a pan of the victim's bones in Lyons' lap to elicit the confession. In addition, Lyons' claim of physical abuse was supported by the testimony of disinterested witnesses. After this confession, he was transported to a state penitentiary in another town. Some twelve hours later he confessed to the warden. The first confession was admittedly coerced and was not offered in evidence. The Supreme Court held that the question of whether the subsequent confession was voluntary depends upon the "inferences as to the continuing effect of the coercive practices which may fairly be drawn from the surrounding circumstances."[20] Furthermore, the triers of fact were to draw these inferences *where the evidence would justify a conclusion that the coercive effects employed had dissipated before the second confession.*

In *Haley v. Ohio*,[21] the defendant, a fifteen year old Negro boy, was arrested about midnight and confessed after being questioned for five hours by relays of officers. No counsel, friends, or family were present. The boy claimed he was beaten; but there was much credible testimony to the effect that he was given very considerate treatment. *After* confessing, Haley was placed in jail and held incommunicado for three days. His mother, and a lawyer whom she had retained, were refused permission to see him; but a news photographer was allowed to take his photograph just after he confessed. The judge instructed the jury to disregard the confession if they concluded that it wasn't made of his own free will. They concluded that it was. The Supreme Court, in a five to four decision, held that the confession was involuntary and reversed the conviction. A novel aspect of this case is that the Court based its decision partly upon Haley's ill-treatment *following* his confession by reasoning that *such methods were indicative of what the boy was probably subjected to prior to confessing*. Other cases further illustrate the division of opinion on the Court when considering the admission of confessions.[22]

It is apparent from these decisions that no definitive basis can be formulated for determining at what point, despite contrary findings by the trier of fact, the Supreme Court will declare a confession involuntary The question is one of balancing the interests between the states' right to conduct their law enforcement

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[19] See note 11 *supra*.

[20] *Id.* at 602.

[21] 332 U.S. 596 (1948).

[22] In Malinski v. New York, 324 U.S. 401 (1945), accused confessed after being kept stripped of his clothing for several hours though questioned only occasionally. Reversed by five to four decision. In Lisenba v. California, *supra* note 17, accused was questioned almost continuously for two days until he fainted, or fell asleep. He was then held in jail for two weeks and confessed after about 12 hours interrogation. Affirmed by seven to two decision. See also Stein v. New York, *supra* note 1, affirmed by six to three decision, and Stroble v. California, 343 U.S. 181 (1952), and Gallegos v. Nebraska, 342 U.S. 55 (1951), both affirmed by six to two decisions. For an analysis of the factors considered in evaluating the voluntariness of a confession and a record of how the individual Supreme Court justices have voted on the issue, see Note, 33 NEBR. L. REV. 507 (1954).

programs and the Supreme Court's duty to maintain those safeguards to life and liberty traditionally afforded by the constitution.

Two aspects of policy should be considered in this connection. First, a fundamental reason for a trial by jury lies in the fact that the jury sees and hears the witnesses, examines the evidence, and is familiar with local conditions and practices. Therefore, it is in a more advantageous position than is an appellate court to pass on the credibility of evidence and the contentions supported thereby [23] Secondly, the states have the right, and the duty, to administer their own laws for the protection of their citizens.[24] Review of state proceedings should be done with the utmost discretion and respect for the states' decisions.[25] In pursuance of its duty to maintain constitutional protections, the Supreme Court must proceed with caution so that these traditional functions, trial by jury and conscientious state law enforcement, are not rendered impotent or meaningless.

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[23] Stein v. New York, *supra* note 1, Haley v. Ohio, *supra* note 21.
[24] Franklin v. South Carolina, 218 U.S. 161 (1910).
[25] Akins v. Texas, 325 U.S. 398 (1945), Stein v. New York, *supra* note 1.