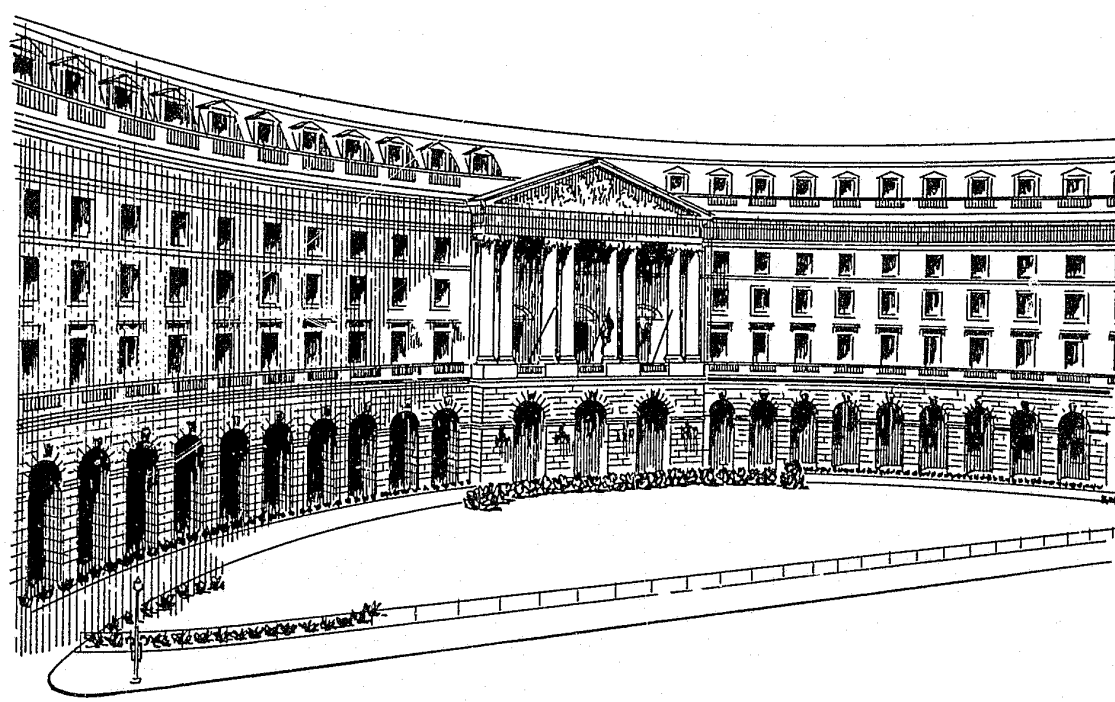
DEPARTMENT OF THE TREASURY
Bureau of Alcohol, Tobacco & Firearms

DUE PROCESS IN CRIMINAL INTERROGATION

(Special Agent Basic Training -

Criminal Enforcement)



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FOREWORD

It is now obvious to all law enforcement officers that among the more significant developments in the criminal law which have occurred in recent years are the court decisions holding that all persons accused of criminal offenses, State as well as Federal, have certain rights guaranteed by the Constitution of the United States. Among these rights are the right against self-incrimination, the right to assistance of counsel for defense, and the right to not be deprived of life, liberty, or property without due process of law. An accused who has been denied any of these rights by State officers may obtain redress in the Federal courts.

One of the several practical results of the law as it now stands is that in all criminal trials the law enforcement officer introducing into evidence a confession or admission of guilt must be prepared to show that it was obtained within the limitations imposed by the Constitution of the United States. These limitations are of critical importance. If they are violated the confession or admission is involuntary and not admissible in court. For that reason we have attempted in this volume to identify and discuss the principles of Federal constitutional law which control the practices and procedures of criminal interrogation.

John Edgar Hoover, Director

TABLE OF CONTENTS

DUE PROCESS IN CRIMINAL INTERROGATION

INTRODUCTION

"Due Process in Criminal Interrogation" is an analysis of those rules and circumstances pertinent to an officer's interrogation of a person under arrest which both Federal and State courts must use in determining whether a confession given to the officer is voluntary, and thus admissible in evidence, or involuntary and, for that reason, not admissible. The pertinence of these rules and circumstances to the law enforcement officer is that in attempting to obtain an admissible confession he has no choice other than to know the circumstances which the courts take into consideration and to follow the rules which they have laid down.

THE BASIC RULE

To admit into evidence in a Federal criminal trial against the defendant a confession (or admission) which he has given involuntarily is a violation of those portions of the Fifth Amendment to the Constitution of the United States which provide that "No person *** shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ***." In the recent decision of the Supreme Court in Malloy v. Hogan, 378 U. S. 1 (1964), the Court emphasized the self-incrimination clause as the constitutional basis for the inadmissibility of coerced testimony in Federal prosecutions. However, the decision is not to be read as obliterating the concept of due process as a constitutional basis for inadmissibility of such testimony. In a State trial, the involuntary confession (or admission) violates that part of the Fourteenth Amendment which provides that "*** nor shall any State deprive any person of life, liberty, or property, without due process of law; ***." In this discussion the term "due process" is used broadly to encompass all constitutional prohibitions against involuntary confessions.

The phrase "due process of law" covers more legal ground in the Fourteenth Amendment, which controls State officers, than in the Fifth Amendment, which controls Federal officers, but the rules which both types

of officers must follow to obtain a confession which does not violate due process or the privilege against self-incrimination are exactly the same. "...today the admissibility of a confession in a state criminal prosecution is tested by the same standard applied in federal prosecutions since 1897." Malloy v. Hogan, 378 U. S. 1, 7 (1964).

The reasons for the rule making coerced confessions inadmissible have been summed up in Jackson v. Denno, 378 U. S. 368, 12 L. Ed. 2d 908, 921 (1964):

> "It is now inescapably clear that the Fourteenth Amendment forbids the use of involuntary confessions not only because of the probable unreliability of confessions that are obtained in a manner deemed coercive, but also because of the 'strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will,' *** and because of the 'deep rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.'"

In legal technicality, the phrase "due process" in the Fourteenth Amendment is broader than that in the Fifth Amendment because, although it once meant the same thing in both amendments, Malinski v. New York, 324 U.S. 401 (1945), it has recently been broadened by Supreme Court interpretation to include the Fourth Amendment guarantee against unreasonable search and seizure, Ker v. California, 374 U. S. 23 (1963), (see Malloy v. Hogan, supra), the Fifth Amendment guarantee against self-incrimination, Malloy v. Hogan, supra, and the Sixth Amendment provision for right to counsel, Gideon v. Wainwright, 372 U. S. 335 (1963); Escobedo v. Illinois, 378 U. S. 478 (1964). This technical difference does not mean, however, that the State officer is subject to a set of rules more strict than those applied to the Federal officer. The latter must observe the pertinent requirements of the Fourth, Fifth and Sixth Amendments as much as the former; the only distinction is that these requirements apply to the Federal officer directly through the amendments mentioned whereas they apply to the State officer indirectly through being considered an inherent part of the "due process" clause of the Fourteenth Amendment. To repeat, the practical rules to be followed by both sets of officers are the same.

The question whether the confession was given voluntarily or involuntarily must, in both Federal and State cases, be settled originally by the trial judge, and he must make this determination before the confession, if admitted into evidence, goes to the jury. The jury is not allowed to decide whether the confession was voluntary or involuntary. Jackson v. Denno, 378 U. S. 368 (1964).

THE PROBLEM

The officer's problem is how to obtain criminal confessions and admissions without violating due process - how to so conduct the interrogation that the resulting confession or admission is not found by the courts to be one given involuntarily.

HISTORY OF DUE PROCESS; FIRST STAGE - THE PRIVILEGED FEW

The earliest known record of due process in criminal interrogation is found in the Bible. As recorded in the 22nd Chapter of the Book of The Acts, nearly 2,000 years ago the Apostle Paul was taken into custody by the Romans after a riot in the temple at Jerusalem. The Roman tribune, anxious to know why the people had rioted against Paul, commanded that he should be examined by scourging, which meant interrogation by whipping. This was the Roman way of forcing a prisoner to tell the truth about his crimes. To carry out the command, Paul's hands were tied, his back stripped bare, and a soldier prepared to lash him with a terrible whip known as the "flagellum."

Paul apparently knew the civil rights law of his time. Under Roman law most witnesses could be tortured to make them give evidence, and this was done by use of the whip, fire and the rack, as well as other methods, but certain classes of persons such as full citizens, soldiers, certain ranks of nobility, decurions, children under fourteen and pregnant women were exempted from torture by law.

Paul was a full citizen of Rome. He said to the centurion who stood guarding him, "Is it lawful for you to whip a Roman who has not been given a trial?" The officer was so startled by this question that he reported

it at once to the tribune. This high official came in person to Paul and said to him, "Tell me, are you a Roman?" Then, looking at Paul suspiciously, he added, "It cost me a great sum to obtain my citizenship," a reference to the fact that in those days it was possible to purchase the favored status of a Roman, and some foreigners like the tribune had done so at great cost to themselves. Paul answered, "I was born free." The Roman tribune was then certain that Paul spoke the truth, for the penalty for falsely claiming citizenship in the Roman Empire was death.

On hearing this conversation between Paul and the tribune, those who were to examine Paul went away. On the next day Paul was set free. Presbyterian Life, May 1, 1960.

Except for this elementary form of due process enjoyed by a few privileged Roman citizens alone, the concept of due process in criminal interrogation appears to have been unknown during the early centuries of Western civilization. The criminal law was enforced by the inquisitorial system, of which torture was a distinguishing feature. "The right of interrogation once established, it was not a long step to take to supplement interrogation by torture." See Williams, infra. The objective of an interrogation was to obtain a confession, and the end justified the means. If a man confessed, the confession was taken as adequate proof that he committed the crime and a vindication of the methods used to get it. Williams, The Function of Evidence in Roman Law - III, 19 Law Magazine and Review 279, Page 73, Note 142; Evidence in Roman Law, Iowa Law Review, Summer, 1961.

A. Torture

With the revival of Roman law, torture was introduced into the law of such continental European countries as France, Germany and Italy in the Fourteenth to the Sixteenth Centuries. It became a part of the law of Scotland. In England it was often used with official government permission to wring a confession from a prominent criminal suspect in murder, robbery and larceny cases, and especially in those involving treason against the Crown. Torture of prisoners during interrogation frequently was authorized by the Privy Council in connection with offenses against the state during the reigns of Elizabeth (1558-1603) and the first two Stuarts. The orders authorizing its use indicate that torture was employed before the victim's trial to extort confessions and evidence to be used in his conviction. It even crept into the New World officially,

being used in Massachusetts (?) and in New Amsterdam, now New York, under Dutch rule. The Massachusetts colonists created a privilege against self-incrimination but permitted a strictly limited use of torture, if not "barbarous and inhumane," after conviction of a capital crime "by clear and sufficient evidence," for the purpose of disclosing the names of accomplices and conspirators. The records of the colony for the first two decades, however, reveal no instance of torture having been applied although Governor John Winthrop in 1638 threatened a woman who refused to plead to an indictment with the ancient torture of peine forte et dure (under English law prior to 1772 an accused who refused to plead to the charge was subject to torture). In this form of torture the prisoner was put into a low dungeon into which no light could enter. He was laid down on his back, naked and on the ground. His feet and head and loins were covered and his arms and legs were drawn apart by cords tied to posts. A sharp stone was placed under his back and a heavy weight of iron or stone was placed on his chest. He was to have the next day three morsels of barley bread, without drink. The next day he was allowed three draughts, as much each time as he could drink, of the stagnant water nearest to the prison, without bread. Such was to be his diet on alternate days until he died. This form of torture was vulgarly called "pressing to death."

In determining whether torture should be used as a method of criminal interrogation, William Bradford, second governor of Plymouth, put to three ministers the question of how far a magistrate may go in extracting a confession from a delinquent to accuse himself of a capital crime, saying that "no one is required to incriminate himself" (Meno tenetur prodere seipsum?). Two of the ministers replied that the use of torture and other means to extract a confession is contrary to the principles of justice as based on Biblical experience. The third, however, stated that (I conceive that in the matters of consequence such as doe concerne ye saftie or ruine of states of countries, magistrates may proceede so farr to bodily torment as racks, hote-irons, Ic...)

After the middle 1600's torture disappeared insofar as official government sanction was concerned.

Other methods of torture were as varied and ingenious as man's inhumanity to man could devise, but the most notorious were those involving the use of the rack, the screw and the wheel. Chambers v. Florida, 309 U. S. 227 (1940). The rack was simply a wooden frame with rollers at both ends.

The criminal suspect was laid on the frame with his feet tied to the rollers at one end and his hands tied to the rollers at the other. He was then stretched from his normal height of, say, 5 feet, 6 inches, to a height or length somewhat greater. Perhaps this process originated the expression, "growing pains." The screw was equally simple. It consisted essentially of two boards with a space in between which could be narrowed by tightening huge, hand-turned screws. When applied to any part of the human body, something had to give. This may be the origin of the term, "putting on the pressure." The wheel was simply a wheel or a frame built in circular form. The criminal was strapped to it with his arms and legs extending beyond the perimeter. Each limb was then broken by striking it with an iron bar.

Other devices were equally effective. Robert Pitcairn, writing on Ancient Criminal Trials in Scotland, commented with reference to the confession to witchcraft of Elizabeth or Bessie Dunlop in 1576 that the prevention of sleep was probably more effective than physical torture in obtaining such confessions. Another method, called the "Spanish vigil," compelled a man to keep himself suspended in air (his buttocks?) for a space of seven hours lest he lean upon a sharpened iron which would puncture his rear.

For information on the use of torture, see Wigmore 3rd Ed., Sec. 818; The Judicial Use of Torture, 11 Harvard Law Review 293; Bouvier's Law Dictionary; Webster's Dictionary; Haskins, Law and Authority in Early Massachusetts, The MacMillan Company, New York, 1960, p. 202; Winthrop, Journal I, 282-283; Willison, The Pilgrim Reader, Doubleday and Company, Inc., Garden City, New York, 1953; Williams, supra; Iowa Law Review, supra.

B. Revolt Against Torture

Some centuries after torture was introduced into European law, the collective conscience of Western man, moving at its usual glacier-like speed, began to revolt against the use of physical cruelty as an instrument of criminal interrogation. England gave up the practice in the middle 1600's and Scotland abolished it by law in 1708. Montaigne, the French essayist of the 16th Century, inveighed against the use of torture on the ground that it was "a test of endurance, rather than of truth." U. S. v. Ragen, 172 F. Supp. 734, 739 (1959), aff'd 274 F2d 250, reversed sub. nom. Reck v. Pate, 367 U. S. 433 (1961). Montaigne's comment suggests another factor in the developing concept of due process in criminal interrogation, the deep distrust felt by some for any confession, no matter how it was obtained.

Over against those who considered a confession to be evidence of the highest type, there have always been others who thought it the lowest. Calpurnius Flaccus, a rhetorician in the reign of the Roman Emperor Hadrian, said, "Even a voluntary confession is to be regarded with suspicion." A little earlier Quintilian had stated that "A suspicion of insanity is inherent in the nature of all confessions." Blackstone, the celebrated authority on English law, said of confessions that "They are the weakest and most suspicious of all testimony; ever liable to be obtained by artifice, false hopes, promises of favor, or menaces; seldom remembered accurately, or reported with due precision; and incapable in their nature of being disproved by other negative evidence." More recently Dostoyevsky in his famous novel "Crime and Punishment" tells the now familiar story of innocent persons confessing to a murder which they did not commit, and for reasons something less than commendable. The history of Western civilization is studded with records of confessions that were both voluntarily given and demonstrably false.

In our own time this strong suspicion of the trustworthiness of confessions has become more pronounced owing in part to a revulsion against interrogation methods employed by totalitarian governments. We have seen ample evidence that prior to Stalin's death the Russian police made liberal use of the club as an interrogation technique, and that after his death they have developed techniques that are at once more refined and more effective by which a confession eventually can be obtained from any prisoner. Cardinal Mindszenty is reported to have said that he was questioned day and night without sleep. Robert T. Bryan, Jr. said he was given a spinal injection which took away his volition. Vogeler said he was subjected to a cold water bath. Edgar Sanders, one of Vogeler's co-defendants, was questioned for 34 hours at one time. See also Frank, Not Guilty, pages 165-86; Police Interrogation, Brooklyn Law Review, December, 1960, page 63; 4 Blackstone, Commentaries 357 (13th Ed. 1800); U. S. ex rel. Caminito v. Murphy, 222 F2d 698 (1955), cert. den. 350 U. S. 896.

SECOND STAGE: BASIC DUE PROCESS

In the second stage of due process, torture had been forbidden and confessions obtained by threats or promises were excluded from evidence on the ground that they were not entitled to credit. Although it had been in the process of taking form for some years, the new standard was first clearly stated by the English courts in 1783, in the following language:

> "A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, and therefore it is admitted as proof of the crime to which it refers; but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape when it is to be considered as the evidence of guilt, that no credit ought to be given to it, and therefore it is rejected." The King v. Warickshall, 1 Leach 263, 168 Eng. Rep. 234 (K. B. 1783).

Once the pendulum started swinging in favor of the defendant it went nearly all the way. By the beginning of the 1800's the English courts had adopted a general suspicion of all confessions, a prejudice against them as such, and an inclination to repudiate them on the slightest pretext. The trend reached a point of "sentimental irrationality" and a "perversion of normal reasoning" so complete that it was urged by some that a prisoner should be dissuaded from confessing. This condition lasted for half a century. 3 Wigmore (3rd Ed.) 820, 865; U. S. v. Ragen, supra.

By the time of the American Revolution it had become established English and American law that a confession or admission induced by torture, threats or promises was inadmissible in evidence for being inherently untrustworthy or involuntary, or both.

THIRD STAGE: DUE PROCESS IN AMERICAN LAW - FEDERAL AND STATE SEPARATELY

The rule excluding confessions obtained by torture, threats and promises was officially inaugurated in American law with the adoption of the Fifth Amendment to the Constitution of the United States which provides, in part, that "No person ... shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." (Underlining added). Although this language does not specifically mention involuntary confessions, it has been held by interpretation to exclude them.

As the various states adopted their own constitutions, due process clauses were inserted and these are subject to the same general interpretation as that given to the Federal clause.

For nearly a century after the Revolution, the due process clause in the Federal Constitution was of virtually no consequence to the State or local law enforcement officer interrogating a suspect to obtain a confession. The clause was in the Fifth Amendment only, and so located it was a restraint on Federal officers only. The State or local officer was concerned only with "due process" as specified in the Constitution of his own State, its laws and judicial decisions, for the State courts alone could rule his confession inadmissible for failure to comply with the requirements of due process.

FOURTH STAGE: UNIFORM DUE PROCESS

The obligation of State officers to comply with the requirements of due process changed completely with the passage of the Fourteenth Amendment shortly after the Civil War. That amendment again specified that life, liberty or property was not to be taken without due process of law, but this time the requirement was directed against the States and all officers who derive their authority from a State. From that time forward, the admissibility of a confession obtained by a State or local officer, for purposes of his own jurisdiction and for use in the courts of his State only, has been subject to the definition of due process as determined and applied by the Federal courts. Leyra v. Denno, 374 U. S. 556 (1954).

For approximately three-quarters of a century after the due process clause in the Fourteenth Amendment began to control confessions obtained by State and local officers the change was theoretical only, and State officers had little reason to pay any attention to it. Due process was still held by the Federal courts to exclude from evidence only the use of those confessions obtained by force, threats or promises, and this was no more than was already required by the due process provisions of the various State constitutions. That was still the test up to the comparatively late date of 1936 when the United States Supreme Court for the first time used the due

process clause of the Fourteenth Amendment to exclude from evidence confessions given to State officers in a State case. In Brown v. Mississippi, 297 U. S. 278 (1936), the Supreme Court said that certain confessions obtained as a result of beatings given to the prisoners while in police custody were inadmissible in the State courts in Mississippi and for that reason the convictions obtained by use of those confessions must be reversed. See also U. S. v. Ragen, 172 F. Supp 734, 739 (1959), aff'd 274 F2d 250, reversed sub. nom. Reck v. Pate, 367 U. S. 433 (1961), and Inherent Coercion, the American University Law Review, January, 1961. See also Hopt v. Utah, 110 U. S. 574 (1884), on the views of the Supreme Court with respect to involuntary confessions, prior to Brown.

FIFTH (PRESENT) STAGE: DUE PROCESS IS BROADLY DEFINED

As due process now is defined, it is violated by any interrogation conduct which is coercive in any degree, whether by threats or violence, or direct or implied promises - however slight - or by the exertion of any improper influence, Malloy v. Hogan, supra. Such coercion may exist even if there is no torture, no beating, no threats and no promises. Example: Due process was violated where a murder suspect was questioned by officers working in relays for 36 continuous hours, at the end of which time he allegedly confessed. Ashcraft v. Tennessee, 322 U. S. 143 (1944). It was violated when a man under State arrest for murder asked, during police interrogation, without warning of right to remain silent and to answer no questions, to see his lawyer and the request was refused. Escobedo v. Illinois, supra.

This new standard of due process prohibits mental duress as well as physical duress. Blackburn v. Alabama, 361 U. S. 199 (1960). Also, anything that amounts to "fundamental unfairness." Lisenba v. California, 314 U. S. 219 (1941); Blackburn v. Alabama, supra. The standard of judgment is how the confession was obtained; the probable truth or falsity of it is of no importance. Rogers v. Richmond, 365 U. S. 534 (1961).

TOTALITY OF CIRCUMSTANCES

The courts reach a decision on whether the conditions under which the confession was obtained were "inherently coercive" by

making a broad inquiry into "the totality of circumstances" in the case. Fikes v. Alabama, 352 U. S. 191 (1957); U. S. v. Rundle, 221 F. Supp. 1003 (1963). This means, simply, that even when no single circumstance of police conduct toward the accused was bad enough to be a violation of due process in itself, the total weight of a number of improper circumstances can be such that due process is violated and the confession is involuntary -- not "an essentially free and unconstrained choice by its maker." Culombe v. Connecticut, 367 U. S. 568 (1961). "The application of these principles involves close scrutiny of the facts of individual cases." Gallegos v. Colorado, 370 U. S. 49 (1962).

What are the circumstances included in the totality?

I. RIGHTS OF THE ACCUSED

A. Notification of Charge

The arrested person must always - and promptly - be informed of the charge against him. Police failure to so advise is prominently mentioned in cases where the confession was held to be void. "No warrant was read to him and he was not informed of the charge against him." Harris v. South Carolina, 338 U. S. 68 (1949). Turner v. Pennsylvania, 338 U. S. 62 (1949).

B. Right to Remain Silent

Failure of the officers to give the accused timely warning of his right to remain silent, to answer no questions, and to sign nothing is an important circumstance. Haley v. Ohio, 332 U. S. 596 (1948); Turner v. Pennsylvania, supra; Harris v. South Carolina, supra; Payne v. Arkansas, 356 U. S. 560 (1958); Culombe v. Connecticut, supra; Haynes v. Washington, 373 U. S. 503 (1963); Escobedo v. Illinois, supra. Judicial comment has been favorable in those cases where it clearly appeared that such a warning was given. Ashdown v. Utah, 357 U. S. 426 (1958); Crooker v. California, infra. The defendant has an absolute right to not incriminate himself, Malloy v. Hogan, supra; Escobedo v. Illinois, supra, and must be advised of that right. It is clear that if (a) he is not advised by the officers of his right to remain silent and (b) he asked to see a lawyer and the request is denied, the confession then taken violates the defendant's right

to counsel, and his right against self-incrimination, and is not admissible in evidence. Escobedo v. Illinois, supra; Holland v. Gladden, 226 F. Supp. 654 (1963). The arrested person may waive his right against self-incrimination and his right to a lawyer after arrest, but no such waiver can be presumed when he was not first advised of those rights. See Escobedo, supra, Note 14. If he is clearly advised of both rights, and then volunteers a confession, the confession is admissible. Jackson v. U. S., 337 F2d 136 (1964); U. S. v. Konigsberg, 336 F2d 844 (1964).

C. Permission to Contact Lawyer Relative or Friend

Each person being interrogated after arrest, charge, indictment or information filed against him has a constitutional right to counsel of which he must be clearly advised at the outset of the interrogation. Massiah v. U. S., 377 U. S. 201 (1964); Escobedo v. Illinois, supra. But whether due process in criminal interrogation absolutely requires that the arrested person (or charged, indicted, etc.) be allowed to confer with a lawyer who asks to see him, before interrogation proceeds has not been decided by the courts. Until recently it was the rule that no such absolute right existed - it was not automatically and in all cases a violation of due process for the officers to refuse to interrupt interrogation to allow the defendant to talk with his lawyer. Stroble v. California, 343 U. S. 181 (1952); Cicenia v. LaGay, 357 U. S. 504 (1958); Crooker v. California, 357 U. S. 433 (1958); Ashdown v. Utah, supra. In the words of the Supreme Court in a State case, "Even in federal prosecutions this Court has refrained from laying down any such inflexible rule" that officers may not interrogate a suspect before giving him an opportunity to secure counsel. Cicenia v. LaGay, supra.

Doubt is cast on the rule stated above by the decision of the Supreme Court in Escobedo v. Illinois, decided June 22, 1964. In that case police officers arrested Escobedo and during the interrogation denied both his request to see his lawyer and the request of the lawyer to see him. They did not, however, explicitly and effectively advise him of his right to remain silent and to say nothing in response to questions. The Supreme Court held that "...under the circumstances here, the accused must be permitted to consult with his lawyer." The Court did not say, however, what the result would have been had the police "effectively warned him of his absolute constitutional right to remain silent" and then proceeded to question him and to obtain a confession before permitting him to talk with his lawyer. The Court did distinguish the Escobedo decision from that in Crooker v. California, supra, in which the confession was upheld, by the fact, among others, that in Crooker the defendant, who had asked for a lawyer and been refused, "...was

explicitly advised by the police of his constitutional right to remain silent and not to say anything in response to the questions." This distinction by the Court suggests the possibility that where such explicit advice is given at the outset of the interrogation, the resulting confession (otherwise properly obtained) may not violate due process despite the fact that the officers refused the defendant's request to see a lawyer or a lawyer's request to see him before or during interrogation. Such a possibility would exist, however, only in those cases in which the defendant is of sufficient age, education and mentality to understand the concept of an absolute right to say nothing. See Crooker v. California, supra, and the Court's comment on that case in Escobedo. See Gallegos v. Colorado, supra, in which the Court indicates a view that any interrogation of an arrested 14-year old boy, no matter what the other circumstances, without presence of a lawyer, relative or friend to advise him, would make the resulting confession one obtained in violation of due process. See also Eubanks v. Warden, 228 F. Supp. 888 (1964).

At least one clear rule does emerge from the Escobedo decision. This rule is that if the interrogating officers are to obtain an admissible confession from an arrested person after denying his request to confer with a lawyer, relative or friend, they must first effectively warn him of his absolute right to say nothing at all if he so desires and be in the best possible position to prove in court that the warning was actually given at the beginning of the interrogation.

Summarized, "The accused may, of course, intelligently and knowingly waive his privilege against self-incrimination and his right to counsel either at a pretrial stage or at the trial,"(see reference on page 13 to note 14 to Escobedo v. Illinois, supra, and Jackson v. U. S., supra) but if an admissible confession can be taken from him after denial of his request for counsel it must at least be shown that he was effectively warned of his absolute right to say nothing and that he was of sufficient maturity and understanding to comprehend that right. Even if the accused does not ask for counsel, and none asks to see him, he must be effectively advised at the outset of the interrogation of his constitutional right to counsel, in addition to his right to remain silent. Waiver of counsel cannot be presumed from a silent record nor can an inference of knowledge of right to counsel be based solely upon previous criminal experience. U. S. ex rel. Thomas v. Murphy, 227 F. Supp. 742 (1964). The accused must be advised of this right even though he has not requested counsel. Carnley v. Cochran, 369 U. S. 506 (1962).

Officers of State jurisdiction must also follow the requirements laid down by the statutes and court decisions of that jurisdiction. For example, the New York Court of Appeals already has revised the rule by holding that under New York law all police confessions obtained without presence or consent of counsel for the defendant are excluded from evidence when obtained after indictment, People v. Waterman, 9 NY2d 561 (1961); People v. Di Biasi, 7 NY2d 544 (1960), or after arraignment but before indictment, People v. Meyer, 11 NY2d 162 (1962), or after charge placed before a magistrate after arrest, People v. Rodriguez, 11 NY2d 279 (1962), or after arrest alone in any case in which either the defendant or an attorney requested permission to confer and permission was refused, People v. Donovan, 13 NY2d 148 (1963). See comment, Effective Law Enforcement and Constitutional Liberty: An Analysis of the New York Law on Confessions, 32 Ford. L. Rev. 339, 350-351 (1963).

Approximately one-fifth of the states have statutes concerning the right of an arrested person to confer with counsel, some providing a fine or imprisonment for failure of the officer to comply with the statute. In Michigan, a parent has a right to see and talk with his child in jail and accused of crime. People v. Cavanaugh, 246 Mich. 680, 225 N.W. 501 (1929). The same is true in Kansas, State v. Seward, 163 Kan. 136, 181 P2d 478 (1947), and possibly other states. Current information on such statutes and decisions should be obtained from the Attorney General of the State, the local prosecutor or other legal adviser.

D. Preliminary Hearing

It has been asserted that although nearly all states have enacted "prompt production" statutes, which require that all persons be produced forthwith before a magistrate, the statutes are repeatedly and consistently ignored by the police in order to secure confessions. See Way, The Supreme Court and State Coerced Confessions, 12 J. Pub. L. 53, 54 (1964). However, delay in holding a preliminary hearing (often referred to as an arraignment) for the accused beyond the time when State law requires that such a hearing be held is another important circumstance in the totality of circumstances considered by the courts in determining whether the confession was given voluntarily. Fikes v. Alabama, supra; Haley v. Ohio,

supra; Watts v. Indiana, 338 U. S. 49 (1949); Turner v. Pennsylvania, supra; Harris v. South Carolina, supra; Payne v. Arkansas, supra; People v. Hamilton, 359 Mich. 410 (1960), 102 NW2d 738; Culombe v. Connecticut, supra; Haynes v. Washington, supra; Gallegos v. Colorado, supra. Failure to take the arrested person before a magistrate for a hearing within the time required by State law does not in and of itself make the confession involuntary, however. Smith v. Heard, 315 F2d 692 (1963), cert. den. 375 U. S. 883; Crooker v. California, supra; Gallegos v. Nebraska, 342 U. S. 55 (1951); U. S. ex rel. Peterson v. LaVallee, 279 F2d 396 (1960); Stroble v. California, supra.

Culombe v. Connecticut, 367 U. S. 568, 584, N. 26 (1961), contains an excellent summary of cases and State statutes requiring the prompt taking of persons arrested before a judicial officer.

Confessions and admissions taken in Federal cases during unnecessary delay in preliminary hearing are made inadmissible in evidence by the McNabb Rule. See McNabb v. United States, 318 U. S. 332 (1943). The McNabb decision laid down the principle that a confession, even though voluntary, is inadmissible in a Federal prosecution if made during unduly delayed detention prior to bringing a prisoner before a committing magistrate. In substance this principle is now codified in Rule 5(a) of the Federal Rules of Criminal Procedure, which provides for arraignment after arrest "without unnecessary delay." It was held in Mallory v. United States, 354 U. S. 449 (1957), that a confession obtained during detention in violation of this Rule may not be admitted in evidence. Since the McNabb Rule is grounded primarily upon the Supreme Court's supervisory power over the administration of criminal justice in the lower Federal courts, and Rule 5(a) is in effect a statutory rather than a constitutional requirement, they will not be the subject of further discussion here.

II. PERSONAL FACTORS - STRENGTHS AND WEAKNESSES OF THE ACCUSED

A. Physical Condition

It is obvious that if the defendant is for any reason not in possession of sufficient physical strength to withstand interrogation, any confession obtained from him by lengthy questioning

at that time is involuntary. Reck v. Pate, 367 U. S. 433 (1961); Griffith v. Rhay, 282 F2d 711 (1960), cert. den. 364 U. S. 941; Stevenson v. Boles, 221 F. Supp. 411 (1963), aff'd 331 F2d 939.

B. Age

A minor must not be interrogated so long or so rigorously as an adult. A young child, for example, can hardly comprehend his constitutional rights well enough to "intelligently and knowingly" waive his right against self-incrimination - to say nothing - and his right to counsel. This is why he has a special need to have a lawyer or a mature relative or friend present during the questioning. Gallegos v. Colorado, supra.

The younger the minor, the more considerate must be the treatment of him in all respects. "And when, as here, a mere child - an easy victim of the law - is before us, special care in scrutinizing the record must be used... that which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." Haley v. Ohio, supra; Moore v. Michigan, 355 U. S. 155 (1957); Payne v. Arkansas, supra; U. S. ex rel. Peterson v. LaVallee, supra; Reck v. Pate, supra. It safely can be said that the same principle will apply, generally, to women. Lynumn v. Illinois, 372 U. S. 528 (1963).

C. Mentality

The lower the mentality of the accused, the more considerate must be the police treatment of him. As in the case of a young child, a mentally-deficient person may not understand his constitutional rights sufficiently well to make an intelligent and understanding waiver of them, and he may be unable to match wits with his interrogators. Fikes v. Alabama, supra; Payne v. Arkansas, supra; Spano v. New York, 360 U. S. 315 (1959); Blackburn v. Alabama, supra; Culombe v. Connecticut, supra; Reck v. Pate, supra; Townsend v. Sain, infra; Eubanks v. Warden, 228 F. Supp. 888 (1964).

D. Education

Police interrogation of the accused must be geared to his educational level; the lower his education the greater the solicitude that must be shown in his understanding of the charge against him, his ability to comprehend the questions, and his constitutional rights, as described above under "Age." Harris v. South Carolina, supra; Spano v. New York, supra; Fikes v. Alabama, supra; Payne v. Arkansas, supra; Blackburn v. Alabama, supra, Footnote 7; Culombe v. Connecticut, supra; Reck v. Pate, supra; Lynumn v. Illinois, 372 U. S. 528 (1963). The illiterate, the uneducated and the imbecile are "easy targets for overreaching by experienced questioners." U. S. v. Murphy, 208 F. Supp. 562 (1962). See also Stevenson v. Boles, 221 F. Supp. 411 (1963). But an obviously high intelligence and education on the part of the arrested person gives the officers somewhat more leeway. Crooker v. California, supra; Lisenba v. California, infra.

E. Criminal Experience

The police have wider latitude in questioning an experienced criminal than is permissible in the case of an accused who has little or no criminal experience. "The limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What will be overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal." Stein v. New York, 346 U. S. 156 (1953); Fikes v. Alabama, supra; Spano v. New York, supra; U. S. ex rel. Peterson v. LaVallee, supra; Gallegos v. Colorado, supra; Escobedo v. Illinois, supra; Stevenson v. Boles, supra. But there are limits even in the case of an experienced criminal. See Haynes v. Washington, supra.

F. Basic Needs: Sleep, Food, Clothing

The extent to which the police provided these things to the accused, consistent with normal needs, or deprived him of them, is a related circumstance as well as an important clue to how the police treated the accused in other respects. "Disregard of rudimentary needs of life - opportunities for sleep and a decent allowance of food - are also relevant, not as aggravating elements of petitioner's treatment, but as a part of the total situation out of which his confessions came and which stamped their character." Watts v. Indiana, supra; Payne v. Arkansas, supra; Spano v. New York, supra; Malinski v. New York, supra; Reck v. Pate, supra; U. S. ex rel. Johnson v. Yeager,

327 F2d 311 (1964); U. S. ex rel. Perpiglia v. Rundle, 221 F. Supp. 1003 (1963). See Crooker v. California, supra, for an example of more humane treatment as to food and drink.

G. Nationality — The nationality of the person being interrogated, or even the national origin of a naturalized citizen, may be an important circumstance, particularly where he is to some degree unfamiliar with the customs, language or legal rights of the person in this country. Gallegos v. Nebraska (Dissent), supra; Spano v. New York, supra; People v. Hamilton, supra. See also Escobedo v. Illinois, supra.

III. INTERROGATION PROCEDURES AND PRACTICES

A. Number of Questioners — The number of interrogators should be kept to a minimum in order to avoid the impression that the defendant was, in effect, so completely outnumbered as to be intimidated by the police and forced to make an involuntary confession. Chambers v. Florida, 309 U. S. 227 (1940); Ashcraft v. Tennessee, supra; Harris v. South Carolina, supra; Haley v. Ohio, supra; Spano v. New York, supra; Blackburn v. Alabama, supra; Lynumn v. Illinois, supra. Such a preponderance may not be so unfavorable where the accused is highly intelligent and well educated, Crooker v. California, supra, or where the interrogators are all known personally to the accused. Ashdown v. Utah, supra. The number of interrogators should be kept as low as possible.

B. Elapsed Time — The total time consumed by the interrogation is an important circumstance; the longer it is the more the courts are inclined toward finding the confession to be involuntary. Fikes v. Alabama, supra; Chambers v. Florida, supra; Haley v. Ohio, supra; Ashcraft v. Tennessee, supra; Watts v. Indiana, supra; Turner v. Pennsylvania,

supra; Harris v. South Carolina, supra; Spano v. New York, supra; Haynes v. Washington, supra; Blackburn v. Alabama, supra; U. S. ex rel. Johnson v. Yeager, supra. "Often prolongation of the interrogation period will be essential, so that a suspect's story can be checked and, if it proves untrue, he can be confronted with the lie; if true, released without charge. But repeated questioning, even though intermittent, over a period of 5 days and 4 nights without preliminary hearing or warning of rights is too much." Culombe v. Connecticut, supra. See also Reck v. Pate, supra. Note, however, that murder confessions have been upheld where received in an interrogation of 5 1/2 hours, Ashdown v. Utah, supra; 7 hours, Cicenia v. LaGay, supra; 10 hours, State v. Smith, 27 N.J. 433 (1958), 29 N.J. 561 (1959), cert. den. 361 U. S. 861. See also Smith v. Heard, supra.

C. Hour of Day or Night — Interrogation during the late night and early morning hours should be avoided unless reasonably required by the exigencies of the case. Haley v. Ohio, supra; Ashcraft v. Tennessee, supra; Watts v. Indiana, supra. During long nighttime interrogation, "mounting fatigue does, and is calculated to, play its part" in producing a confession. Spano v. New York, supra. But see Crooker v. California and State v. Smith, both supra, for situations in which long nighttime questioning was upheld.

D. Relay Questioning — Relay questioning is sustained pressure, a form of mental duress, and has been a key factor in several decisions finding a violation of due process in criminal interrogation. "A statement to be voluntary of course need not be volunteered. But if it is the product of sustained pressure by the police, it does not issue from a free choice." Watts v. Indiana, supra; Ashcraft v. Tennessee, supra; Harris v. South Carolina, supra; Reck v. Pate, supra; U. S. ex rel. Johnson v. Yeager, supra; Haley v. Ohio, 332 U. S. 596 (1948). Relay questioning should be totally avoided, despite the fact that use of the technique has not always been held to violate due process. Lisenba v. California, 314 U. S. 219 (1941).

E. False Inducements to Confess; Deception — An officer's false inducement to confess is a most important circumstance in the totality. Spano v. New York, supra; Turner v. Pennsylvania, supra; Leyra v. Denno, 347 U. S. 556 (1954). It may possibly be enough, by itself, to lead a court to hold

that the confession was involuntary. See Malloy v. Hogan, supra. A minor deception by the officer during the interrogation might be ignored by the courts if it stood alone, but a confession induced by the officer's false promises of assistance on a charge far less serious than the officer knew would actually be brought is not a voluntary confession. U. S. ex rel. Everett v. Murphy, 329 F2d 68 (1964).

F. Public Spectacle

A confession or re-enactment of the crime so managed by the police that it takes on the character of a public spectacle is a highly important circumstance. "Our sense of justice and fair play is offended by the spectacle of an accused being permitted, if not actively encouraged, to act out his sadistic and brutal crime of violence, which in this case had sexual overtones, in public before newspaper reporters and photographers who were invited to attend and allowed actively to participate in the whole sordid business. The presence of representatives of the press on the occasion served no legitimate public purpose." Fournier v. People of Puerto Rico, 281 F2d 888 (1960). See also Rideau v. Louisiana, 373 U. S. 723 (1963); due process required change of venue after sound film of defendant confessing to police was televised locally.

G. Psychological Pressures

Use of psychological pressures, such as bringing the subject's wife in to urge him to confess, or threatening to bring her in if he does not confess, is an important circumstance. Such pressures can be a form of duress and may be sufficient in themselves to make the confession involuntary. Culombe v. Connecticut, supra; Rogers v. Richmond, supra. See also Harris v. South Carolina, supra, threat to arrest subject's mother; Lynumn v. Illinois, supra, statement to defendant that her small children would be taken from her if she failed to cooperate with police, and Haynes v. Washington, supra, where officers told defendant that he could not call his wife until he "cooperated" by signing a written confession. See also Stevenson v. Boles, 221 F. Supp. 411 (1963), where the Court held involuntary a confession to murder given after police threatened to take the defendant - who pleaded with them not to do it - back to the scene of the crime; Malinski v. New York, supra, where the suspect was kept naked for hours so that he might suspect a beating was to be administered. See also Lyons v. Oklahoma, 322 U. S. 596 (1944), where a confession not introduced into evidence was obtained by various means, including the placing of a pan of the victim's bones in the lap of the accused.

But a confession to murder was held not the result of psychological coercion when given soon after the officer gave a short prayer at the request of the prisoner while he and the officer were talking in the cell. Davis v. North Carolina, 221 F. Supp. 494 (1963).

H. Moral Pressures

It has been held that moral pressures, such as appeals to integrity, conscience and patriotism, or an exhortation to tell the truth, are not improper coercion and do not make the resulting confession involuntary. Sparf v. U. S., 156 U. S. 51 (1895); Crooker v. California, supra; Ashdown v. Utah, supra; Scarbeck v. U. S., 317 F2d 546 (1963), cert. den. 374 U. S. 856, reh. den. 375 U. S. 874; U. S. v. Carignan, 342 U. S. 36 (1951).

I. Threat of Mob Action

An important circumstance occasionally present is an interrogating officer's act of indicating to the accused, directly or indirectly, that if the accused does not cooperate in solving the case the result may be lynching or other mob action which the officer is powerless to prevent. Moore v. Michigan, supra; Chambers v. Florida, supra; Payne v. Arkansas, supra; Ward v. Texas, 316 U. S. 547 (1942). A genuine threat by the mob itself, of which the prisoner is aware, would make the confession involuntary (see Moore v. Dempsey, 261 U. S. 86 (1923)) but not where the confession is given at another time and place after the threat seems unlikely to be carried out. Thomas v. Arizona, 356 U. S. 390 (1958); Hopt v. Utah, supra. See also Brown v. Mississippi, supra; Stroble v. California, supra.

J. Use of Drugs

"It is difficult to imagine a situation in which a confession would be less the product of a free intellect, less voluntary, than when brought about by a drug having the effect of a 'truth serum' (emphasis added)." Townsend v. Sain, 372 U. S. 293 (1963). See also Lindsey v. U. S., 237 F2d 893 (1956); Griffith v. Rhay, supra; 21 F.R.D. 199, 202. This rule does not mean that it is impossible to obtain a voluntary confession from a person who has drugs in his body at the moment. Confessions have been admitted in

evidence after proof that, despite the drugs in his body when he confessed, the defendant was in full possession of his faculties when he confessed. 69 ALR2d 384, 385; U. S. v. Ray, 183 F. Supp. 769 (1960); U. S. v. Moore, 290 F2d 436 (1961), cert. den. 368 U. S. 858; Palakiko v. Hawaii, 188 F2d 54 (1951); U. S. v. Robinson, 327 F2d 959 (1964). See Jackson v. Denno, supra.

K. Use of Liquor — The fact that defendant drank liquor shortly before his arrest, or even while in police custody after arrest, does not automatically make his confession involuntary and inadmissible. Proof may be required, however, that use of the liquor was not police trickery to obtain the confession and that, despite use of the liquor, the defendant was in full possession of his faculties when he confessed. U. S. ex rel. Burke v. Denno, 243 F2d 835 (1957), cert. den. 355 U. S. 849; Morton v. U. S., 147 F2d 28 (1945), cert. den. 65 S. Ct. 1015.

L. Use of Hypnosis — A confession obtained by hypnosis is inadmissible, being considered not voluntarily made. 21 F.R.D. 199, 202. See also Leyra v. Denno, supra.

M. Use of Polygraph — Although the results of a polygraph (lie detector) are inadmissible in evidence, a confession obtained by interrogation on the polygraph may be admitted in evidence. 21 F.R.D. 199, 202. Use of the lie detector does not make the confession involuntary. U. S. v. McDevitt, 328 F2d 282 (1964).

N. Miscellaneous — Removal of the arrested person "to lonely and isolated places for questioning" is an important circumstance. Ward v. Texas, supra; Fikes v. Alabama, supra.

O. Police Conduct Generally — Police conduct toward the arrested person in general, even that occurring after the confession has been obtained, is scrutinized by the courts for such light as it may shed on the question of whether the confession

was obtained by fair means or foul. See Haley v. Ohio, supra, where the Supreme Court said: "When the police are so unmindful of these basic standards of conduct in their public dealings, their secret treatment of a 15-year old boy behind closed doors in the dead of night becomes darkly suspicious." See also U. S. ex rel. Perpiglia v. Rundle, supra; Haynes v. Washington, supra.

VALUE OF A DISCLAIMER — The courts will give little weight to a recitation in a signed confession that it was given freely and voluntarily in a case where the totality of the circumstances indicates coercion. Haynes v. Washington, supra.

SUMMARY — The essence of due process in criminal interrogation under the "totality of circumstances" rule is that it is forbidden to twist the mind of the accused to obtain a confession just as the original concept of due process forbade the twisting of his body. Culombe v. Connecticut, supra. As a general rule, no single unfavorable circumstance of interrogation among those listed above is, in itself alone, a "twisting of the mind" sufficient to violate due process but, like the load of straw on the camel's back, personal fouls in a basketball game, or points on a driver's license, there comes a point at which the number of circumstances is too great, and the confession is thrown out for a violation of the due process clause. For a study of cases in which the number of unfavorable circumstances was not too great, see Crooker v. California, supra; Ashdown v. Utah, supra; Thomas v. Arizona, supra; State v. Smith, supra; Scarbeck v. U. S., supra.

NO ESCAPE — There is no escape from the Federal standard of due process in criminal interrogation. The accused may raise

the issue directly, or collaterally by habeas corpus. Rogers v. Richmond, supra, Fay v. Noia, 372 U. S. 391 (1963). When he raises the issue the Federal Court will make its own findings independently of any conclusion which may have been reached by the state court. Malinski v. New York, supra; Cicenia v. LaGay, supra; Reck v. Pate, supra; Haynes v. Washington, supra.

WHAT HAPPENS

A decision that the requirements of due process in criminal interrogation have been violated has a sixfold result: (1) It voids the confession in question and all other confessions made as a direct result thereof, Leyra v. Denno, supra; Reck v. Pate, supra; U. S. v. LaVallee, supra; U. S. ex rel. Johnson v. Yeager, supra, although otherwise admissible confessions made long after the coercion has ended have been admitted in evidence, Thomas v. Arizona, supra; (2) It reverses the conviction regardless of the quality and quantity of evidence extrinsic of the confession, Stroble v. California, supra; Jackson v. Denno, supra; (3) It makes inadmissible any other evidence obtained as a direct result of following up the information in the illegal confession, Wong Sun v. U. S., 371 U. S. 471 (1963); (4) It voids a conviction obtained on plea of guilty, induced by the confession, in open court, Moore v. Michigan, supra; Holland v. Gladden, 226 F. Supp. 654 (1963); Olive v. U. S., 327 F2d 646 (1964); (5) It may potentially subject the officers involved to the risk of suit for damages, Monroe v. Pape, infra; and (6) It may subject the officers to prosecution for deprivation of constitutional or civil rights. Williams v. U. S., infra.

SUING THE OFFICERS

Title 42, United States Code, Section 1983, provides in effect that any state officer who subjects any citizen or other person to the deprivation of any of the rights, privileges or immunities guaranteed to him by the Constitution or the law, or causes him to be so deprived, may be sued by the party injured. In Monroe v. Pape, 365 U. S. 167 (1961), 221 F. Supp. 635 (1963) (verdict for $13,000.00), the

Supreme Court decided that a person so deprived by action of police officers can sue the officers in Federal court regardless of any remedy he may have in state court. In a concurring opinion two members of the Court indicated that psychological coercion leading to a confession might be a violation for which suit could be brought, Note 5 at 365 U. S. 196. See also Hardwick v. Hurley, 289 F2d 529 (1961).

PROSECUTING THE OFFICERS

A police officer who extorts a confession by force and violence can be convicted of a Federal crime under Title 18, U. S. Code, Section 242. "Where police take matters in their own hands, seize victims, beat and pound them until they confess, there cannot be the slightest doubt that the police have deprived the victim of a right under the Constitution." Williams v. U. S., 341 U. S. 97 (1951).

HOW FAR?

It is logical to ask how far the trend toward broadening the definition of due process in criminal interrogation will go. Any answer given would necessarily be speculative. It is an obvious fact, however, that the nature of the cases to which the present definition is applied is gradually broadening. The pioneer cases to which the Court applied the "inherently coercive" standard were State murder cases, but the Court has more recently reversed convictions in a narcotics case (Lynumn v. Illinois, supra), robbery cases (Haynes v. Washington, supra), (Blackburn v. Alabama, supra) and a burglary case (Fikes v. Alabama, supra).

See also McNabb v. United States, 318 U. S. 332 (1943). The McNabb decision laid down the principle that a confession, even though voluntary, is inadmissible in a Federal prosecution if made during unduly delayed detention prior to bringing the prisoner before a committing magistrate. In substance, this principle is now codified in Rule 5(a) of the Federal Rules of Criminal Procedure, which provides for arraignment after arrest "without unnecessary delay." It was held in Mallory v. United States, 354 U. S. 449 (1957), that a

confession obtained during detention in violation of this Rule may not be admitted in evidence. This Rule has not, however, been applied to State cases.

Of recent developments, probably the most important is reflected by the concern shown by the Supreme Court in the Escobedo case, supra, for legal representation of an accused person after arrest and prior to indictment. It was in this decision that the Court considered and rejected the contention that if the accused is permitted to be represented by counsel prior to indictment, the number of confessions obtained by the police will diminish significantly, because most confessions are obtained during the period between arrest and indictment, and experienced lawyers are likely to advise their clients not to make any statements to the police.

The Court said (12 L. Ed. 2d at 984-985):

> "This argument, of course, cuts two ways. The fact that many confessions are obtained during this period (between arrest and indictment) points up its critical nature as a 'stage when legal aid and advice' are surely needed. ***The right to counsel would indeed be hollow if it began at a period when few confessions were obtained. There is necessarily a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice. Our Constitution, unlike some others, strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against self-incrimination.
>
> "We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation."

The conclusion reached in the Escobedo decision that the statement elicited by the police in that case could not be used against the defendant rested on the following circumstances (12 L. Ed. 2d at 986):

1. The investigation was no longer a general inquiry into an unsolved crime, but had begun to focus on a particular suspect;

2. The suspect had been taken into police custody;

3. The police carried out a process of interrogation that lent itself to eliciting incriminating statements;

4. The suspect had requested and was denied an opportunity to consult with his counsel; and

5. The police had not effectively warned the suspect of his absolute constitutional right to remain silent.

See earlier discussion of Escobedo on pages 14 and 15.

SOCIAL PROBLEM

The Supreme Court is not unaware of the social problem involved in tightening the definition of due process so that the police find it more difficult to obtain admissible confessions. Deep concern with this problem is shown, for example, in Cicenia v. LaGay, supra, where the Court referred favorably to a statement made by the late Justice Jackson in commenting on Harris v. South Carolina, supra; Watts v. Indiana, supra, and Turner v. Pennsylvania, supra, in which he said:

> "In each case police were confronted with one or more brutal murders which the authorities were under the highest duty to solve. Each of these murders was unwitnessed, and the only positive knowledge on which a solution could be based was possessed by the killer. In each there was reasonable ground to suspect an individual but not enough legal evidence to charge him with guilt. In each the police attempted to meet the situation by taking the suspect into custody and interrogating him. This extended over varying periods. In each, confessions were made and received in evidence at the trial.

Checked with external evidence, they are inherently believable, and were not shaken as to truth by anything that occurred at the trial. Each confessor was convicted by a jury and state courts affirmed. This Court sets all three convictions aside.

"The seriousness of the Court's judgment is that no one suggests that any course held promise of solution of these murders other than to take the suspect into custody for questioning. The alternative was to close the books on the crime and forget it, with the suspect at large. This is a grave choice for a society in which two-thirds of the murders already are closed out as insoluble."

Also, in Culombe v. Connecticut, supra, where the Court said:

"The occasion which in December 1956 confronted the Connecticut State Police with two corpses and an infant as their sole informants to a crime of community-disturbing violence is not a rare one. Despite modern advances in the technology of crime detection, offenses frequently occur about which things cannot be made to speak. And where there cannot be found innocent human witnesses to such offenses, nothing remains - if police investigation is not to be balked before it has fairly begun - but to seek out possibly guilty witnesses and ask them questions, witnesses, that is, who are suspected of knowing something about the offense precisely because they are suspected of implication in it.

"The questions which these suspected witnesses are asked may serve to clear them. They may serve, directly or indirectly, to lead the police to other suspects than the persons questioned. Or they may become the means by which the persons questioned are themselves made to furnish proofs which will eventually send them to prison or death. In any event, whatever its outcome, such questioning is often indispensable to crime detection.

Its compelling necessity has been judicially recognized as its sufficient justification, even in a society which, like ours, stands strongly and constitutionally committed to the principle that persons accused of crime cannot be made to convict themselves out of their own mouths."

And see Haynes v. Washington, supra, where the Court said:

"And, certainly, we do not mean to suggest that all interrogation of witnesses and suspects is impermissible. Such questioning is undoubtedly an essential tool in effective law enforcement. The line between proper and permissible police conduct and techniques and methods offensive to due process is, at best, a difficult one to draw, particularly in cases such as this where it is necessary to make fine judgments as to the effect of psychologically coercive pressures and inducements on the mind and will of an accused."

THE POLICE PROBLEM

The problem of the police is essentially one of following a line between two conflicting demands, as stated by one Federal judge, that "Pressures of society and of public opinion in one breath demand that a crime be promptly solved and in the next seem to condemn any interrogation of suspects by the police." U.S. v. Ragen, 172 F. Supp. at 739, supra.

SUGGESTED POLICE ACTION

1. Change your Police Manual to require police practices which conform to the law on such points as advising the arrested person of his rights, including the right to remain silent and to be

represented by counsel, and giving him a preliminary hearing within the time required by law, etc.

2. More police training on the law of due process in criminal interrogation.

3. Less dependence upon confessions; more investigative effort to establish proof of the crime outside the confession.

4. Through speeches and other contacts, increase public awareness of the problem involved here so that citizens demanding solutions to crime will not expect the police to do what the law forbids and will realize that the entire problem of criminal detection and apprehension is not a police problem only, but a problem for society in general.

APPENDIX

TABLE OF CASES - DECISIONS OF THE SUPREME COURT OF THE UNITED STATES PERTINENT TO INTERROGATION METHODS - WITH FACTS SYNOPSIZED

ASHCRAFT V. TENNESSEE, 322 U. S. 143 (1944)

Officers took Ashcraft into custody on Saturday evening, transported him to the fifth floor of the county jail, and then interrogated him constantly, one relay of officers coming into the room when the other went out, until about 9:30 a. m. on Monday morning. The officers testified that Ashcraft then gave an oral confession, which Ashcraft denied. It was conceded that during the 36-hour interrogation Ashcraft never left the room. The Supreme Court of the United States reversed the conviction, holding that if Ashcraft did in fact confess, the confession was "not volunteered but compelled," and thus was in violation of due process.

ASHDOWN V. UTAH, 357 U. S. 462 (1958)

Ashdown was suspected of having murdered her husband by poison. Immediately after the interment she came to the county courtroom, by request of the sheriff, and was interviewed by the sheriff, a deputy, and the district attorney, all known personally to her, for the next 5 1/2 hours. The sheriff described the evidence to Ashdown and within the first half hour the district attorney advised her that she did not have to answer any questions and that she was entitled to consult with a lawyer. She did not ask for a lawyer. The officers let her talk without interruption about family matters and this account took up about half the time of the interview. Several times she asked the officers if they wanted her to confess to something that she had not done, and they told her they did not. About 4 1/2 hours after the interview began she confessed to poisoning her husband and

became emotionally upset, crying and sobbing. She would not say where she obtained the poison, but gave this information after the sheriff said she might as well tell it "and get this over with." The request of her father and uncle to see her was refused during the interview, but allowed when it was over. A written confession was taken the next day. She was first told that she need not sign and that she could make changes. Making numerous changes, she signed. Conviction affirmed. The Court said the interview was "temperate and courteous."

BLACKBURN V. ALABAMA, 361 U. S. 199 (1960)

There was strong evidence that Blackburn, charged in an Alabama court with robbery, was insane. After arrest he was interrogated by sheriff's personnel for 8 to 9 consecutive hours (with one hour out for dinner) in a room about 4 by 6 or 6 by 8 feet in which as many as three officers were sometimes present. No lawyer, friend or relative was present. The language of the confession was composed by a deputy sheriff. Confession inadmissible; conviction reversed.

BROWN V. MISSISSIPPI, 297 U. S. 278 (1936)

Brown and two others were convicted in the Mississippi courts of the crime of murder. When one of them at the scene of the crime, and in custody of a deputy sheriff, denied participation in the crime, a crowd gathered there hanged him to the limb of a tree, let him down, hanged him again and let him down. Still protesting his innocence he was tic) the tree and whipped and then allowed to go home. Later he was arrested, taken into nearby Alabama and whipped until he confessed. Two others, in jail and before a crowd, "were laid over chairs and their backs cut to pieces with a leather strap with buckles on it." They confessed and "as the whippings progressed and were repeated, they changed or adjusted their confession in all particulars of detail so as to conform to the demands of their torturers." When

the mob left, the defendants were told that the process would be repeated if they changed their stories in the least detail. Confessions inadmissible; convictions reversed.

CHAMBERS V. FLORIDA, 309 U. S. 227 (1940)

Four men were convicted in the Florida courts of murder and sentenced to death. Over a period of a week after arrest, they and other suspects were questioned several days and all one night. Most of the questioning occurred in the jailer's quarters on the fourth floor of the jail in Fort Lauderdale. In what appeared to be one continuous operation over the period, each was led out, questioned by 4 to 10 officers, and then taken back to his cell to await another turn. The prisoners were not permitted to confer with anyone. At one point several of the men, including petitioner, were taken to the Miami jail, and as this trip was in progress the sheriff told a motorcycle policeman who rode up alongside that he was taking the prisoners "to Miami to escape a mob." In one final session which began at 3:30 p. m., the interrogation was constant and, just before sunrise, the confessions were at a stage apparently acceptable to the district attorney. He was called in and took the confessions used at trial. The accused men had not previously been charged and for the first five days of interrogation they constantly denied their guilt. Confessions inadmissible; convictions reversed.

CICENIA V. LaGAY, 357 U. S. 504 (1958)

Cicenia, suspected of murder, reported on the advice of his lawyer to the Orange, New Jersey, Police Station at about 9:00 a. m. and was taken from there to the Newark police. At about 2:00 p. m. Cicenia's father, brother and the lawyer arrived at the Newark Police Headquarters and asked to see Cicenia, who was then under interrogation.

This request was refused, as well as Cicenia's several requests to see his lawyer. They were not permitted to confer until 9:30 p. m., by which time Cicenia had made and signed a written confession. Interrogation occupied about 7 hours. Cicenia was arraigned the next day. Confession admissible; conviction affirmed.

NOTE: To the extent that this decision disagrees with Escobedo v. Illinois, infra, it has been overruled.

CROOKER V. CALIFORNIA, 357 U. S. 433 (1958)

Crooker, a 31-year old college graduate who had attended the first year of law school, was arrested for murder at 1:30 p. m. in Los Angeles. At the police station he was asked to take a lie detector test. He refused and said he wanted to call an attorney. He was not offered the use of a telephone. Aside from sporadic questioning earlier, interrogation began at 8:30 p. m. and ended at 9:30 p. m., four officers participating. Crooker again asked to call a lawyer but was told he could not do so during the investigation. He was then transferred to another police station where 5 officers questioned him from 11:00 p. m. until shortly after midnight. Booking then occurred and the same 5 officers questioned Crooker from 1:00 a. m. to 2:00 a. m. During the next hour he wrote and signed a confession. After that he re-enacted the crime and was put back in jail to sleep at 5:00 a. m. During the entire period Crooker was allowed to smoke when he liked, given coffee, and given lunch a few hours after his arrest. Before being taken to the second police station he was told, "You don't have to say anything that you don't want to," and the record showed that he did refuse to answer many questions. Confession admissible; conviction affirmed.

CULOMBE V. CONNECTICUT, 367 U. S. 568 (1961)

Culombe, convicted in Connecticut courts of murder, was taken into police custody for questioning on February 23. During

the next 10 days in custody he confessed five times. During early interrogation Culombe said he wanted a lawyer but gave no name. The officer said he could have any lawyer he wanted if he named one. The officer knew that Culombe was illiterate and could not use the telephone directory. Culombe was not given a hearing within the time required by State law and was not warned of his right to remain silent. The officers brought in Culombe's wife, who told him that he should tell the truth if he were responsible for the killings. Culombe became emotionally upset but did not confess. The next day he took the officers to where the guns had been thrown away and he confessed. Other confessions followed. Culombe was 33 years old, wholly illiterate, a mental defective of the moron class, mental age 9 to 9 1/2 years. He had been in trouble with the law since he was an adolescent, escaped from a training school for mental defectives, and had since been in prison at least twice. During the preceding two years he had adequately performed a freight handler's job and supported his family. Confession inadmissible; conviction reversed.

ESCOBEDO V. ILLINOIS, 378 U. S. 478 (1964)

Escobedo, a 22-year old man of Mexican extraction, with no record of previous experience with the police, was arrested by Chicago officers on a charge of murder. He was not advised of his constitutional right to remain silent and to answer no questions, neither by the officers who obtained the first admissions nor by the prosecutor who subsequently took a statement of confession. During the police interrogation Escobedo asked to see his lawyer and his lawyer asked to see him. Both requests were denied. Confession inadmissible and conviction reversed.

FIKES V. ALABAMA, 352 U. S. 191 (1957)

Fikes, charged in an Alabama court with burglary with intent to commit rape, had been arrested about midnight on Saturday.

He was 27 years old, started school at 8, left at 16 while in the third grade, said to be schizophrenic and "thick-headed." Interrogation, principally by one officer only, began on Sunday and continued Monday, for a two to three-hour period. He first was warned of his right to remain silent and his right to a lawyer. Fikes saw the sheriff of his home county on Sunday and his employer on Monday. On Monday afternoon he was driven to the State Prison, 55 miles from the scene of the crime and 80 miles from his home, allegedly for his own protection. He was questioned on Monday evening, Wednesday and Thursday. On Thursday his father tried to see him but was turned away. On Thursday evening he gave a confession in yes-and-no answers. He was questioned again on Saturday, and on that day a lawyer's request to see him was refused. On Sunday his father was allowed to see him. On the next Tuesday Fikes gave a second confession in yes-and-no answers. Confession inadmissible; conviction reversed.

GALLEGOS V. COLORADO, 370 U. S. 49 (1962)

Petitioner, a child of 14, was a participant in an assault and robbery perpetrated on an elderly man. Petitioner was arrested and immediately admitted his guilt orally. The victim died later and the charge and conviction were for murder. Petitioner was held from arrest on January 1 to January 7 in Juvenile Hall. The written confession introduced at trial was obtained from him on January 7. He was advised of his right to counsel but did not ask for a lawyer, and had no adult visits or advice of any kind. His mother tried to see him on January 2 but was turned away on the ground that no visiting hours were allowed on that day of the week. Confession inadmissible; conviction reversed.

GALLEGOS V. NEBRASKA, 342 U. S. 45 (1951)

Petitioner, a 38-year old Mexican farmhand who could neither speak nor write English, was arrested by Texas officers on September 19 on a charge of vagrancy. He was questioned for identity,

gave a false name, and was jailed for 21 hours. He was questioned again on September 20, without result, and then left alone for 48 hours. On September 22 he admitted that he had been in Nebraska and was then confined again for 24 hours. On September 23 he admitted killing his paramour in Nebraska, of which he ultimately was convicted on a manslaughter charge, and signed a confession written in English and read to him. He was kept in Texas until September 27, arrived in Nebraska on September 29, and gave another confession, and was for the first time brought before a magistrate on October 13. Nebraska law commands the police officer to take the accused before a magistrate. Both confessions were admitted. Confessions admissible; conviction affirmed.

HALEY V. OHIO, 332 U. S. 596 (1948)

Petitioner, a 15-year old boy, was arrested for murder at midnight and questioned by five officers, working in relays of one or two, from then until 5:00 a. m. when he confessed. No friend or counsel was present and he was not advised of his right to remain silent or his right to counsel until those rights were recorded in the written statement. He was held incommunicado for the next three days, during which a lawyer retained by his mother twice was refused permission to see him. He was not taken before a magistrate until 3 days after the confession and it was five days before his mother was allowed to see him. A newspaper photographer was allowed to see him and to take his photograph shortly after the confession was given. Confession inadmissible; conviction reversed.

HARRIS V. SOUTH CAROLINA, 338 U. S. 68 (1949)

Suspected of murder, Harris was taken into custody by South Carolina officers on Friday. No warrant was read to him and he was not advised of the charge against him. He first learned on Monday afternoon that he was suspected of the murder. He was briefly

interrogated by the sheriff and the jailer. On Monday night at least 5 officers, working in relays to permit respite from the stifling heat in which the prisoner was held, began interrogation in earnest. The questioning continued the same way on Tuesday from 1:30 p. m. until past 1:00 a. m., with one hour out for dinner. Some questioning was done on Wednesday, and after 6:30 p. m. the sheriff threatened to arrest Harris's mother for handling stolen property. Harris asked that his mother not be "mixed up in it" and then confessed. Harris was an illiterate, was not given a hearing, was not told of his right to remain silent or of his right to a lawyer, was not allowed to see relative or friend, and was questioned by as many as a dozen officers. Confession inadmissible; conviction reversed.

HAYNES V. WASHINGTON, 373 U. S. 503 (1963)

Haynes, of unstated age but well into adult life, and an experienced criminal, was arrested for robbery and orally admitted the crime en route to the Spokane Police Station. He was booked for "investigation," gave another oral confession during 1 1/2 hours of interrogation, and was identified as the robber by witnesses present at a lineup. In similar questioning the next day he gave two confessions, one of which he signed, refusing to sign the second. At about 4:00 p. m. he was given a hearing. Nothing in the record indicated that Haynes was told of a right to a lawyer, or a right to remain silent, or that his answers might be used against him. The record supported Haynes's claim that he had asked to talk to the prosecutor and to his wife and that he was told he could not do these things until he had cooperated by giving a signed confession. Also, that even after he gave the signed confession used at trial the officers continued to hold him incommunicado in an effort to obtain still another signed confession. Confession inadmissible; conviction reversed.

HOPT V. UTAH, 110 U. S. 574 (1884)

Hopt, convicted in the Utah territorial courts for the crime of murder, had been arrested at a railroad depot by a detective.

The father of the deceased was present at the time and may have drawn a revolver on Hopt, or it may have been that the detective prevented him from drawing. The testimony on this point was not clear. A large crowd gathered around Hopt at the time of the arrest but the detective sent Hopt off to jail in custody of a police officer, the detective remaining with the crowd. The detective joined Hopt and the officer a very few minutes later and Hopt immediately began to confess. There was no evidence of promises or threats by the detective or the police officer. Confession admissible; conviction reversed for other reasons.

JACKSON V. DENNO, 378 U. S. 368 (1964)

New York City police officers questioned Jackson concerning a murder while he lay wounded in a hospital. Two drugs, demerol and scopolamine, had been administered to Jackson immediately prior to the interrogation. He admitted the killing, first to the officers and then to the Assistant District Attorney. There being a reasonable question as to whether the confession was voluntary, the trial judge, acting pursuant to New York law, left the question of voluntariness to the jury, which found it voluntarily given. The Supreme Court of the United States reversed the conviction, holding that it is a violation of the due process clause of the Fourteenth Amendment to allow the jury to decide this question. The judge must decide it.

The Court also held that a confession obtained from a hospitalized suspect who was given doses of the mentioned drugs is not, as a matter of law, involuntary where the State's evidence was that the drugs neither had nor could have had any effect upon the suspect's ability to give a confession.

LEYRA V. DENNO, 347 U. S. 556 (1954)

Leyra was convicted of murdering his parents. After the New York City police officers had questioned Leyra intensively for long day and night periods reaching through 4 days,

and without result, he was returned to the police station from his hotel. Leyra had been suffering from an acutely painful attack of sinus and the police officer in charge had promised to get medical help. In the police station Leyra was introduced to "Dr. Helfand" under circumstances indicating that the doctor was a medical practitioner of the usual type. Instead, he was a psychiatrist with a considerable knowledge of hypnosis, in the employ of the State. With the officer and a district attorney listening in an adjoining room through a concealed microphone, "Dr. Helfand" proceeded to "treat" Leyra talking with him and working constantly in the direction of relief through confession. After 1 1/2 hours or more of the "treatment," the doctor called the police officer and Leyra gave a confession. Shortly thereafter he gave another confession to his business partner and a third to two Assistant State Prosecutors. All confessions inadmissible, the second and third being the fruit of the illegal first; conviction reversed.

LISENBA V. CALIFORNIA, 314 U. S. 219 (1941)

Lisenba, charged in a California court with murder of his wife, was arrested on Sunday and questioned intermittently, twice for long periods by officers working in relays, for three days. He did not confess. During the following ten-day period, during which he was not interviewed, his lawyer told him that he would be indicted for the murder and that he should answer no questions without his lawyer present. At the expiration of this period Lisenba was confronted with his codefendant and refused to say anything. About noon he was taken to the District Attorney's Office for questioning. He asked for his lawyer. Inquiry determined that his lawyer was out of town. No other lawyer was summoned. About midnight, after supper and cigars, Lisenba confessed to the District Attorney and his assistant, two police officers, two deputy sheriffs, and a stenographer. Lisenba was described by the Supreme Court of the United States as a "man of intelligence and business experience." Confession admissible and conviction affirmed.

LYNUMN V. ILLINOIS, 373 U. S. 528 (1963)

Petitioner, a woman with two children aged 3 and 4, and without previous experience with the law, was convicted of the unlawful possession and sale of marijuana. Through the aid of a cooperative confederate, she was arrested in her apartment, allegedly in the act of the crime. Three Chicago police officers interrogated her at that time and place, and she gave an oral confession which was used in evidence. She testified at trial, however, that she did not confess until the officers had told her that she would get 10 years, that her children would be taken away from her even after she was released from prison, that the officers would see that the children were not taken away if she would cooperate, and that an officer would recommend leniency. The officers did not deny that the confession was given under these circumstances, and their own testimony largely corroborated what she said. Confession inadmissible; conviction reversed.

MALINSKI V. NEW YORK, 324 U. S. 401 (1945)

Malinski was arrested shortly before 8:00 a. m. for murder, immediately stripped and kept naked until about 11:00 a. m. He was then given shoes, socks, underwear and a blanket and kept in that condition until 6:00 p. m., when he confessed. He was not allowed to see a lawyer, although he asked for one, and he was not allowed to see anyone else except an old friend (a criminal serving a sentence) who had implicated him in the crime. Comments made by the prosecutor at trial indicated that Malinski was kept naked so that he might fear that a police beating was forthcoming. Confession inadmissible; conviction reversed.

MOORE V. MICHIGAN, 355 U. S. 155 (1957)

In a Michigan court in 1938, Moore entered a plea of guilty to a charge of murder and was then sentenced to life imprisonment. Moore was 17 years old and had a 7th grade education. Arrested

on October 26 and questioned "from time to time," he confessed orally on October 28. Moore expressly waived the aid of counsel in open court before entering his plea, but the Supreme Court of the United States found this waiver not intelligently and understandingly arrived at in view of the fact that during the interrogation the sheriff indicated to Moore that mob violence was an imminent possibility and that he had better get away from town before it started. Confession inadmissible; conviction reversed.

PAYNE V. ARKANSAS, 356 U. S. 560 (1958)

Payne, a 19-year old youth with a fifth grade education, was arrested without a warrant on October 5, on suspicion of murder, and confessed on October 7. During that period he was not advised of his right to remain silent nor of his right to a lawyer, as required by State statute, was not given a preliminary hearing, was held incommunicado although members of his family tried to see him, was refused permission to make a telephone call, was denied food repeatedly and for periods up to 25 hours, the food that he was given consisted principally of sandwiches, and was taken for a 45-mile trip to Little Rock for a lie detector test without shoes and socks (they were being examined in the laboratory). In addition, he was given to understand by officers, at least twice, that a crowd of 30 to 40 people was outside wanting "to get to" him. Confession inadmissible; conviction reversed.

RECK V. PATE, 367 U. S. 433 (1961)

Reck, arrested by Chicago police for murder, was 19 years old, had no prior criminal experience, had left school at 16 without completing the 7th grade, had the intelligence of a child 10 to 11, had spent a year in an institution for the feebleminded, and had throughout his life been repeatedly classified as mentally retarded and deficient. He was held virtually incommunicado for the 4 days preceding

his first confession and during that time he was subjected daily to 6-7 hours of vigorous interrogation and placed in lineups. He was physically weakened in condition, in intense pain, was not given sufficient food, and had no opportunity to obtain advice from a lawyer, relative or friend. Confession inadmissible; conviction reversed.

ROGERS V. RICHMOND, 365 U. S. 534 (1961)

Rogers was arrested for murder and convicted in a Connecticut court. Police questioning began at 2:00 p. m. and continued until 8:00 p. m. The police chief then pretended to order other officers to stand by to bring Roger's wife to the police station. The wife allegedly suffered from arthritis. After about an hour, Rogers confessed. The Supreme Court of the United States reversed the conviction, without saying whether such a confession violates due process, on the ground that the Connecticut courts used the wrong test in admitting the confession. The Connecticut courts believed the confession to be true and, for that reason, admissible. The Supreme Court said the test of a confession challenged as a violation of due process is not the probable truth or falsity of the confession but how it was obtained. Before the confession can be weighed in court for truth or falsity it must first be determined that the manner in which it was obtained is consistent with due process.

SPANO V. NEW YORK, 360 U. S. 315 (1959)

Petitioner was convicted of murder and sentenced to death. He fled after the act, was indicted, and a bench warrant was issued. Two days later petitioner called a boyhood friend who was then a fledgling officer attending the New York City Police Academy and said he would turn himself in. He did so the next day at 7:10 p. m. with his lawyer, who cautioned him to answer no questions. Questioning by an Assistant District Attorney and police officers began at 7:15 p. m. and

continued for 5 hours, with no admissions. Petitioner was transferred to another place shortly after midnight and questioning was continued. On four separate occasions the interrogators then sent the young police officer, mentioned above, in to tell petitioner that the latter's telephone call had gotten him (the officer) "in a lot of trouble" and to ask petitioner to cooperate and get him out of this trouble. After the fourth such session, lasting an hour, petitioner gave the Assistant District Attorney a confession at 3:25 a. m. Petitioner had been under interrogation by a total of 14 persons for 8 hours and had several times asked to call his lawyer and had been refused. He was a foreign-born citizen, 25 years of age, a graduate of junior high school, had a history of emotional instability and, at least on the record, no previous criminal experience. Confession inadmissible; conviction reversed.

SPARF V. UNITED STATES, 156 U. S. 51 (1895)

Sparf, one of three sailors accused of murdering the second mate of their vessel, contended that the confession given to the captain was not voluntary. The evidence showed that the captain had told the sailor that he should "tell the truth." It was held that telling a man in custody to tell the truth is not advising him to confess anything of which he is not really guilty. Confession admissible; conviction affirmed.

STEIN V. NEW YORK, 346 U. S. 156 (1953)

Defendants were convicted of murder. Two of them had confessed after 12 hours of intermittent questioning, stretched out over a 32-hour period. They were questioned by many officers. Arraignment was abnormally delayed for purposes of questioning. Both confessors were described by the Supreme Court of the United States as "not inexperienced in the ways of crime or its detection, nor were they dumb as to their rights." One bargained with the Parole Commissioner as to

the terms (involving relatives) on which his confession would be made and the other said nothing until implicated by the confession of the other. Convictions affirmed.

STROBLE V. CALIFORNIA, 343 U. S. 181 (1952)

Petitioner, convicted in the California courts of the sex murder of a small girl, was arrested by police about noon. He orally admitted the crime and was then slapped hard by a park foreman who was with the officer. He admitted the crime again on the way to the District Attorney's Office. In the latter place, at which petitioner arrived about 1:00 p. m., the District Attorney questioned petitioner in the presence of 19 police officers and Assistant District Attorneys. The interview lasted two hours and a confession was obtained. The request of a lawyer to see the petitioner during the interview was refused but the lawyer was allowed to see him that evening. Petitioner was not given a hearing within the time required by State law; the hearing was held on the morning following the arrest. Confession given in District Attorney's Office admissible; conviction affirmed.

TOWNSEND V. SAIN, 372 U. S. 293 (1963)

Townsend, convicted in the Illinois courts of the crime of murder, was 19 years old, a confirmed heroin addict and a user of narcotics since the age of 15, and a near mental defective "just a little above moron." He had taken a dose of heroin 1 1/2 hours before arrest. He was interrogated about 2 hours after his arrest in the early hours of the morning and again for about an hour in the evening. Shortly after 9:00 p. m. Townsend clutched convulsively at his stomach several times and gave other evidence of withdrawal symptoms (he usually took a dose every 3 to 5 hours). A doctor was called and he gave Townsend

an injection of Hyoscine (scopolamine) which is alleged to have the qualities of a "truth serum." The doctor left about 10:30 p. m., and Townsend then responded to questioning. At about 11:15 p. m. he gave a confession to an Assistant District Attorney and two officers. The next day he signed the confession in the Office of the District Attorney. An expert testified, in effect, that a person injected with the drug used would not be in his right mind. Confession inadmissible; conviction reversed.

TURNER V. PENNSYLVANIA, 338 U. S. 62 (1949)

Turner was arrested by Philadelphia police on June 3, on suspicion of murder, without a warrant and without being told the reason for the arrest. He was questioned during periods of up to 4 hours each on that day and succeeding days up to, and including, June 7. On the latter day Turner was falsely told that other suspects had "opened up" on him. At 11:00 p. m. he confessed. The next morning the confession was partially reduced to writing, the process was interrupted for a preliminary hearing, and the confession then was completed. Petitioner had not been permitted to see relative or friend, he was not informed of his right to remain silent until after he had been under the pressure of a long period of interrogation and had yielded to it, he was held without preliminary hearing beyond the period required by State law, and the District Attorney admitted that a hearing was withheld until interrogation had produced a confession. Confession inadmissible; conviction reversed.

WARD V. TEXAS, 316 U. S. 547 (1942)

Ward, convicted in Texas courts of the crime of murder, was illegally arrested and not taken before a magistrate for a hearing. Instead, he was removed to a county more than 100 miles away and for three days was driven from county to county. During all this time he

was questioned continuously by various officers who told him of threats of mob violence despite the fact that there was insufficient probability of such event to justify his removal from the county of arrest. Confession inadmissible; conviction reversed.

WATTS V. INDIANA, 338 U. S. 49 (1949)

Petitioner was arrested for criminal assault but quickly was suspected of murder. At State Police Headquarters he was questioned by officers working in relays for periods up to ten hours and lasting until the small hours of the morning. This occurred on Wednesday, Thursday, Friday, Saturday, Monday and on Tuesday when he confessed at about 3:00 a. m. A skilled prosecutor then came in and took a more incriminating statement than that given to the officers. For the first two days petitioner was kept in solitary confinement - in "the hole" - and during the entire period he was given no advice of constitutional rights, no hearing as required by Indiana law, and no opportunity to talk with lawyer, relative or friend. Confession inadmissible; conviction reversed.

WILLIAMS V. UNITED STATES, 341 U. S. 97 (1951)

A lumberyard which had suffered numerous thefts hired Williams, who operated a detective agency, to find the thieves. Williams held a special police officer's card issued by the City of Miami, Florida, and had taken an oath and qualified as a police officer. He and three others over a period of 3 days took 4 men to a paint shack on company premises where "each was beaten, threatened and unmercifully punished for several hours until he confessed," by use of a rubber hose, a pistol, a blunt instrument, a club, a sash cord, fists, a blinding light and other instruments. A police officer sent by his superior was present. Williams was convicted of violating Title 18, U. S. Code, Section 242. Conviction affirmed.

INDEX OF CASES CITED

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