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Constitutional Law--Coerced Confessions--Length of Confinement as a Test

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Recent Decisions

CONSTITUTIONAL LAW — COERCED CONFESSIONS — LENGTH OF CONFINEMENT AS A TEST

Private citizens found a 21 year old Negro loitering in an alley in a white neighborhood of a small southern town. In an effort to solve a series of burglaries, some involving rape, the local police took the defendant to a state prison in a neighboring county for interrogation.[1] There he was held without arraignment for ten days until a satisfactory confession was obtained.[2] No close friends or counsel were permitted to see defendant until his father gained admittance on the eighth day. Defendant was represented by counsel from the time of arraignment. The trial resulted in a conviction for first degree burglary with intent to ravish, and the accused was sentenced to death. The Alabama Supreme Court rejected petitioner's plea that the methods used to obtain his confessions violated the due process clause of the fourteenth amendment to the United States Constitution.[3]

The United States Supreme Court, on certiorari, in the case of *Fikes v. Alabama*,[4] reversed petitioner's conviction on the ground that the state had violated due process of law. The majority disregarded the fact that the police had advised petitioner of his rights, because a person of his mentality could not be expected to appreciate the significance of such advice.[5] Although illegal delay in arraignment was common in Alabama and confessions obtained during the period of such detention were admissible in evidence, the Court insisted that delay was a telling circumstance in determining the voluntariness of the confession. The interrogations were not continuous, nor were they at odd hours, but prolonged delay in the taking before a magistrate plus petitioner's low mentality convinced the Court that the confession was involuntary and that its use

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[1] The reason given by the officers for transporting the petitioner outside the county was a threat of mob violence, although the record fails to justify this belief.

[2] A confession given during the fifth day proved unsatisfactory to the police because it consisted of short answers to leading questions. The second confession was obtained on the tenth day.

[3] Fikes v. State, 263 Ala. 89, 81 So. 2d 303 (1955) Other grounds considered and dismissed by the state court in a per curiam opinion were that Negroes had been systematically excluded from the grand jury, and that the trial judge had refused to let petitioner take the stand solely for the purpose of testifying to the involuntariness of the confessions.

[4] 352 U.S. 191 (1957)

[5] Petitioner is said to be "thick-headed." He started school at the age of eight and left at age sixteen while in the third grade.

at the trial violated due process of law.[6] The Court reiterated the test it had adopted in *Stein v. New York*[7] by weighing the circumstances of pressure against petitioner's power of resistance.

Physical brutality in obtaining confessions has long been condemned by the United States Supreme Court[8] and really presents no litigable issue.[9] The controversies of the past seventeen years have revolved about the elements of the more subtle mental coercion. The police practice of grilling a suspect intensively into the late hours, usually by relay teams of officers, has been given the label of "continuous interrogation" and has uniformly been held to constitute mental coercion and grounds for reversal of a conviction.[10] When continuous interrogation was not present, the Court failed to find mental coercion, and the state conviction was sustained.[11] The vigorous dissent in the *Fikes* case points out the absence of the usual grounds relied on for reversal in the past.[12]

The sole basis for reversal in the *Fikes* case is that the pressure of the delay in arraignment overcame petitioner's low mentality. The Court has enunciated a rule for federal courts which prohibits the use of a

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[6] The Court is in doubt as to whether the police methods themselves or the use at trial of confessions obtained by those methods constituted a denial of due process. At 352 U.S. 191, 197, the Court says, "The use of the confessions secured in this setting was a denial of due process"; but at page 198, "the circumstances of pressure applied against the power of resistance of this petitioner deprived him of due process of law."

[7] 346 U.S. 156 (1953).

[8] Brown v. Mississippi, 297 U.S. 278 (1936).

[9] Police brutality is still very much alive as a practical matter even though the practice is definitely unconstitutional: At the recent hearings on the new civil rights bill, Arkansas Attorney General Bruce Bennett testified that nearly every police department occasionally finds it necessary to resort to physical coercion. *Civil Rights Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary,* 85th Cong., 2d Sess., ser. 1, at 1176 (1957).

[10] Leyra v. Denno, 347 U.S. 556 (1954); Harris v. South Carolina, 338 U.S. 68 (1949); Turner v. Pennsylvania, 338 U.S. 62 (1949); Watts v. Indiana, 338 U.S. 49 (1949); Haley v. Ohio, 332 U.S. 596 (1948); Ashcraft v. Tennessee, 322 U.S. 143 (1944); Ward v. Texas, 316 U.S. 547 (1942); Chambers v. Florida, 309 U.S. 227 (1940). As an interesting aftermath of the *Turner* case, see *The Saturday Evening Post,* March 2 1957 The defendant is still in jail while an appeal from his fifth trial is going through the courts. In another case, *Malinski v. New York,* 324 U.S. 401 (1945), there were threats of physical violence; this was held to be sufficient ground for reversal of a conviction even though there was no continuous interrogation.

[11] Stein v. New York, 346 U.S. 156 (1953); Brown v. Allen, 344 U.S. 443 (1953); Stroble v. California, 343 U.S. 181 (1952); Gallegos v. Nebraska, 342 U.S. 55 (1951); Lyons v. Oklahoma, 322 U.S. 596 (1944).

[12] Justice Harlan wrote the dissent which was joined in by Justices Reed and Burton. The dissenters also argued that the power of review of state decisions was narrower than a case from the lower federal courts and that this decision overstepped the bounds of federal interference with state police power.

confession obtained through illegal delay in arraignment.[13] This federal rule has had a haphazard existence, as the Court has held it inapplicable when the defendant is arraigned on some minor charge while being questioned about a major crime,[14] or when the delay takes place after a confession.[15] The federal doctrine has definitely been rejected by the Court when considering state decisions,[16] although the *Fikes* case seems contra in applying the spirit, if not the letter, of the federal rule to a state proceeding.[17]

In the past, the Supreme Court has made a distinction between the illegal police methods themselves and the use of a confession which was involuntary. With three possible exceptions,[18] the Court has held that the denial of due process consisted of the use of an involuntary confession.[19] Illegal police methods used to obtain confessions have been considered only as they influence the voluntariness of the confessions. The *Fikes* case seems preoccupied with the police methods of illegal delay in arraignment, and the conviction seems to have been reversed in order that police officers will be deterred from using such methods again, rather than because the defendant lost his power to resist the pressure.

It is readily comprehensible that physical brutality will sap the will of the accused and actually render his confession involuntary. Although the effect of mental coercion is less obvious, it would also be safe to say that modern society recognizes that mental coercion can have the same result. But every police activity cannot be labeled as mental coercion; to constitute such, the activity should be of such a nature that the accused has no will to resist the suggestion of guilt. To say that mere

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[13] McNabb v. United States, 318 U.S. 332 (1943)

[14] United States v. Carignan, 342 U.S. 36 (1951)

[15] United States v. Mitchell, 322 U.S. 65 (1944) For a complete discussion of the federal rule, see Anno., 19 A.L.R. 2d 1331 (1951)

[16] Gallegos v. Nebraska, 342 U.S. 55 (1951); Watts v. Indiana, 338 U.S. 49 (1949)

[17] Only one prior case expressed such disfavor of delay in arraignment in a state conviction, and this was obviously dicta. "This Court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protracted questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. Any one of these grounds would be sufficient cause for reversal. All of them are to be found in this case." Ward v. Texas, 316 U.S. 547, 555 (1942)

[18] Watts v. Indiana, 338 U.S. 49 (1949), wavers between "use" and "methods." Haley v. Ohio, 332 U.S. 596 (1948) discusses police methods as violating due process, but the case is finally decided on the use of the confession. Ashcraft v. Tennessee, 322 U.S. 143 (1944) seems to be decided on the premise that the police methods themselves violated due process.

[19] Even the famous physical brutality case, Brown v. Mississippi, 297 U.S. 278 (1936), reversed the conviction only on the ground that the use of the confession violated due process of law.