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## CONSTITUTIONAL LAW--DUE PROCESS-FEDERAL RESTRICTIONS ON THE USE OF CONFESSIONS IN STATE CRIMINAL PROCEEDINGS

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CONSTITUTIONAL LAW—DUE PROCESS—FEDERAL RESTRICTIONS ON THE USE OF CONFESSIONS IN STATE CRIMINAL PROCEEDINGS — Undisputed evidence established that petitioner, a negro boy of fifteen, was arrested at about midnight, October 19, 1945 and taken to police headquarters. He was questioned by the police with no friend or counsel present. He was not informed of his right to counsel or of his right to refuse to answer. At about five in the morning, October 20, he confessed. He was then informed of his rights and his statement taken and transcribed. He was photographed by a newspaper photographer, and then placed in jail. On October 23 he was, for the first time, taken before a magistrate and charged with murder. While the accused was in jail, prior to arraignment but after confessing, a lawyer twice attempted to see him and was refused admittance. His mother was not permitted to see him until October 25. There was ample evidence for a conviction had the confession not been used. The jury which found the confession to be voluntary returned a verdict of guilty. Conviction was affirmed by the court of appeals, and appeal to the Supreme Court of Ohio was dismissed. On certiorari, *held*, reversed. The confession was not voluntary and its use at the trial violated the Due Process Clause of the Fourteenth Amendment. *Haley v. State*, (U.S. 1948) 68 S.Ct. 302.

In determining whether the confession was voluntary, a majority<sup>1</sup> of the Court resolved the question solely on the basis of the undisputed evidence. In effect, they held that as a matter of law the undisputed evidence proved the confession was involuntary. The dissenting justices<sup>2</sup> insisted that to find a violation of due process the confession must be found to be involuntary in fact, that this required consideration of all the evidence, and that the jury verdict controlled unless unsupported by the evidence. They concluded that the undisputed evidence did not require that this confession be found involuntary. In four of the cases<sup>3</sup> applying the due process clause to the use of confessions in state criminal proceedings, some of the justices have voted to affirm, holding that the confession could be found to be voluntary. They relied on much the same reasoning as that of the dissenting justices in this case. The justices who

<sup>1</sup> Justice Frankfurter in a separate opinion; Justice Douglas joined by Justices Black, Murphy and Rutledge.

<sup>2</sup> Justice Burton joined by Chief Justice Vinson and Justices Reed and Jackson.

<sup>3</sup> *Lisenba v. California*, 314 U.S. 219, 62 S.Ct. 280 (1941); *Ashcraft v. Tennessee*, 322 U.S. 143, 64 S.Ct. 921 (1944); *Lyons v. Oklahoma*, 322 U.S. 596, 64 S.Ct. 1208 (1944); *Malinski v. New York*, 324 U.S. 401, 65 S.Ct. 781 (1945).

voted to reverse held that the undisputed evidence proved that the confession was involuntary. Justice Douglas and the justices who joined in his opinion have been relatively consistent in finding violations of due process.<sup>4</sup> Justices Jackson and Reed have been as consistent in finding no violation.<sup>5</sup> Chief Justice Vinson<sup>6</sup> and Justice Burton were not on the Court when these cases were decided. Justice Frankfurter found no violation in the first three of these cases but did in the last. In the principal case Justice Frankfurter again found a violation. This might indicate that there has been a shift in his attitude. The inference is strengthened by his reasoning in each of these cases. In separate opinions, he returns to the fundamental principles embodied in due process and bases his decision on them. This shift would establish, in the present Court, a majority of justices who have tended to find that confessions were involuntary. *Lisenba v. California*<sup>7</sup> and *Ashcraft v. Tennessee*<sup>8</sup> have set forth rough limits as to the secret interrogation permissible for adults. The principal case sets an upper limit for boys. Application of the time limit thus set to interrogation of adults is made questionable by the emphasis on the age of the accused. However, in the *Lisenba* case, Justices Black and Douglas found the confession involuntary. Justice Murphy has so found in all subsequent cases. Justice Rutledge has found the confession involuntary in every case he has heard. Apparently, Justice Frankfurter has joined this group. Even if they are not prepared to reverse the *Lisenba* case, it may be that they would find that much less than thirty-six hours of interrogation would violate due process.<sup>9</sup>

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<sup>4</sup> Justice Black voted to reverse in all four; Justice Rutledge heard only the last three and voted to reverse in each; Justice Murphy voted to affirm the first, to reverse the last three; Justice Douglas voted to affirm the third, to reverse the other three.

<sup>5</sup> Justice Jackson voted to affirm all four; Justice Reed voted to reverse the second, to affirm the other three.

<sup>6</sup> "Except in those cases in which the Court was unanimous, his vote in every instance was against the claim that liberty had been infringed." Fraenkel, "The Supreme Court and Civil Rights: 1946 Term," 47 COL. L. REV. 953 at 953 (1947).

<sup>7</sup> 314 U.S. 219, 62 S.Ct. 280 (1941), (7-2).

<sup>8</sup> 322 U.S. 143, 64 S.Ct. 921 (1944), (6-3).

<sup>9</sup> In general, see McCormick, "Some Problems and Developments in the Admissibility of Confessions," 24 TEX. L. REV. 239 (1946); Boskey and Pickering, "Federal Restrictions on State Criminal Procedure," 13 UNIV. CHI. L. REV. 266 (1946).