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## Constitutional Law - Due Process - Judicial Review of Jury Determination on Coerced Character of Confession

James M. Potter S.Ed.  
*University of Michigan Law School*

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## RECENT DECISIONS

CONSTITUTIONAL LAW—DUE PROCESS—JUDICIAL REVIEW OF JURY DETERMINATION ON COERCED CHARACTER OF CONFESSION—Petitioner, suspected of the murder of his parents, was subjected to intensive police interrogation culminating in a confession to a state-employed psychiatrist. Petitioner had been allowed only a small amount of sleep and was suffering from a sinus condition when he was introduced to the psychiatrist, who was represented as a general practitioner. The questioning of the psychiatrist, who was skilled in hypnosis, was a subtle blend of threats and promises of leniency. Within the next three and one-half hours petitioner also confessed to a police captain, a business associate, and two assistant state prosecutors. The confession to the psychiatrist was held<sup>1</sup> to have been coerced and its admission in evidence violative of the due process clause of the Fourteenth Amendment,<sup>2</sup> but the finding of the jury in a second trial that the confessions subsequently given were voluntary was upheld and the conviction was affirmed.<sup>3</sup> In a habeas corpus proceeding, petitioner charged that the confessions used against him were coerced. On certiorari, the United States Supreme Court *held*, petition granted and conviction reversed, Justices Minton, Reed, and Burton dissenting and Justice Jackson not participating. The confessions used against petitioner were parts of one continuous process of protracted interrogation and psychological pressure on him, and their admission as evidence was violative of the due process clause of the Fourteenth Amendment. *Leyra v. Denno*, 347 U.S. 556, 74 S.Ct. 716 (1954).

In 1936 the United States Supreme Court first employed the due process clause of the Fourteenth Amendment to reverse a state court conviction in which a coerced confession was used against the defendant.<sup>4</sup> Succeeding cases have indicated that mental as well as physical coercion will justify overturning a conviction based wholly or partly upon a confession resulting from such coercion.<sup>5</sup> The traditional basis for exclusion of involuntary confessions is that they are lacking in probative value and are untrustworthy,<sup>6</sup> but the view accepted by the majority of the Supreme Court until 1953 was that coerced confessions are

<sup>1</sup> *People v. Leyra*, 302 N.Y. 353, 98 N.E. (2d) 553 (1951).

<sup>2</sup> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ." U.S. CONST., amend. XIV, §1.

<sup>3</sup> *People v. Leyra*, 304 N.Y. 468, 108 N.E. (2d) 673 (1952).

<sup>4</sup> *Brown v. Mississippi*, 297 U.S. 278, 56 S.Ct. 461 (1936).

<sup>5</sup> *Chambers v. Florida*, 309 U.S. 227, 60 S.Ct. 472 (1940). Other cases involving claims of coerced confessions are *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), a case similar to the principal case but with a contrary result; *Malinski v. New York*, 324 U.S. 401, 65 S.Ct. 781 (1945), in which the Supreme Court held that the conviction must be reversed regardless of the existence of other evidence sufficient to convict. For a thorough review of cases up to 1948, see Bader, "Coerced Confessions and the Due Process Clause," 15 BROOKLYN L. REV. 51 (1949). Representative of the same philosophy since 1948 are *Watts v. Indiana*, 338 U.S. 49, 69 S.Ct. 1347 (1949), and *Stroble v. California*, 343 U.S. 181, 72 S.Ct. 599 (1952).

<sup>6</sup> 3 WIGMORE, EVIDENCE, 3d ed., §822 (1940).

excluded to prevent "fundamental unfairness"<sup>7</sup> in the conduct of a criminal trial. In *Stein v. New York*,<sup>8</sup> decided in 1953, the majority of the Supreme Court, in an opinion written by Justice Jackson, made a number of rulings which have led to much comment.<sup>9</sup> The Supreme Court upheld the New York practice of submitting the issue of voluntariness of confessions to the jury,<sup>10</sup> even though the general verdict of guilt in the *Stein* case did not indicate whether the jury found the confession to be coerced. The Court said that as long as there was other evidence upon which the verdict could be based, the conviction would be upheld even though the jury may have found the confession to be coerced.<sup>11</sup> The majority thus seemed to be saying that as long as the defendant is not prejudiced he has not been deprived of due process of law. In addition, the majority opinion in the *Stein* case indicated that the proper basis for exclusion of coerced confessions is the "untrustworthy and lacking in probative value" test, and not the "fundamental unfairness" test.<sup>12</sup> Since in the principal case petitioner's conviction rested solely on the allegedly coerced confessions,<sup>13</sup> the principal case cannot be said to be a specific reversal of *Stein v. New York*, in which the Supreme Court found evidence other than the confession to support the conviction. However, certain aspects of the principal case may indicate that the Court has reverted to the approach utilized prior to the *Stein* case. Justice Black who dissented in *Stein v. New York* wrote the majority opinion in the principal case, and Justice Minton's dissent in the principal case contains language reminiscent of Justice Jackson's majority opinion in the *Stein* case. The dissent would affirm the conviction because the issue of whether the confessions were voluntary was submitted to the jury, a factor stressed also by Justice Jackson in the *Stein* case. The dissent also attempts to show that there was other evidence such as the testimony of the assistant district attorneys that petitioner was calm and relaxed when he made the last confession to them.<sup>14</sup> Finally, the majority opinion seems to assume that it is for the Supreme Court to make an independent determination of the issue of coercion, a view which was espoused in the decisions prior to the *Stein* case, whereas the majority opinion in the *Stein* case indicated tendency to accept the determination of the state court on the coercion issue, as did the dissent in the principal case. For

<sup>7</sup> Justice Roberts in *Lisenba v. California*, note 5 supra.

<sup>8</sup> 346 U.S. 156, 73 S.Ct. 1077 (1953).

<sup>9</sup> See, e.g., Gorfinkel, "The Fourteenth Amendment and State Criminal Proceedings—'Ordered Liberty' or 'Just Deserts,'" 41 CALIF. L. REV. 672 (1953); 39 CORN. L.Q. 321 (1954); 52 MICH. L. REV. 421 (1954).

<sup>10</sup> See 170 A.L.R. 567 (1947) for a collection of cases in point.

<sup>11</sup> See *Malinski v. New York*, note 5 supra, for the earlier position of the Supreme Court.

<sup>12</sup> To the same effect, see Justice Jackson's dissent in *Ashcraft v. Tennessee*, note 5 supra. See also Inbau, "The Confession Dilemma in the United States Supreme Court," 43 ILL. L. REV. 442 (1948).

<sup>13</sup> The trial court charged the jury that all other evidence was as a matter of law insufficient to support a verdict of guilty.

<sup>14</sup> In light of note 13 supra, this finding by the dissenters does not appear to have much support.

the above reasons the principal case may be construed as an unspoken overruling of *Stein v. New York*.

*James M. Potter, S.Ed.*