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CONFESSIONS AND ADMISSIONS

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EVER since the terms "confession and admission" were coined for evidentiary use, courts have attempted to draw clear distinctions between them, and all too frequently, judicial opinions have mirrored slavish obedience to the authority of mechanical definitions. For the sake of clarity, a succinct, well-put definition may serve a utilitarian purpose in establishing ready comprehension of a segment of human experience, but, when detached from actual fact, and the many variables that fact situations produce, this same definition may stifle the imagination and inhibit appreciation of practical considerations. Stock definitions of admissions and confessions lead one to believe that the distinguishing characteristics are sharply outlined, and if one were to accept this impression as an absolute verity, problems of admissibility would rarely beg solution. It may be unfortunate that experience dictates otherwise, but it will readily be seen that a workable rule of admissibility will require more than a definition for its foundation.

As generally understood, a confession is an acknowledgement in express terms by a party in a criminal case of his guilt.[1] Thus defined, a confession implies an admission of every essential element necessary to establish the crime with which the defendant is charged.[2] An admission is something less. It is a statement of facts pertinent to the issue from which guilt may be inferred and which tends toward proof of the ultimate fact of guilt.[3] These definitions serve a worthwhile purpose in the sense that they aptly describe certain basic, abstract principles in a normal, conventional manner. However, in the utilization of definitions and the application of abstract concepts to live situations, one finds that resort to dogmatic, literal interpretations can lead to automatic distortion of common sense principles. It is dangerous, therefore, to assume that confessions are of greater evidentiary value than admissions, or that confessions should inevitably be received with greater caution than admissions. One must constantly be aware of the fact that all confessions and

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1. 2 Jones, Evidence § 398 (5th ed. 1958). Gulotta v. United States, 113 F.2d 683 (8th Cir. 1940); People v. Garcia, 124 Cal. App. 2d 822, 269 P.2d 673 (1954); Edwards v. State, 213 Ga. 552, 100 S.E.2d 172 (1957); People v. Sleezer, 9 Ill. 2d 57, 136 N.E.2d 808 (1956); State v. Cook, 188 Iowa 655, 176 N.W. 674 (1920); Whomble v. State, 143 Neb. 667, 10 N.W.2d 627 (1943).

2. Carter v. State, 90 Ga. App. 61, 81 S.E.2d 868 (1954).

3. Morton v. United States, 147 F.2d 28 (D.C. Cir.), cert. denied, 324 U.S. 875 (1945); People v. Connelly, 195 Cal. 584, 234 Pac. 374 (1925); People v. Wynekoop, 359 Ill. 124, 194 N.E. 276 (1935); State v. Behiter, 55 Nev. 236, 29 P.2d 1000 (1934).

admissions will not fit into a common mold, and that the competency of a statement offered in evidence cannot be determined on the basis of artificial classification.

Undoubtedly, recognizing that razor sharp distinctions cannot be drawn between confessions and admissions, Dean Wigmore imported some degree of flexibility into his definition of a confession. He defined a confession as an acknowledgement in express words, by the accused in a criminal case, of the truth of the guilty fact charged or of some essential part of it.[4] Acknowledgement of subordinate facts colorless with reference to actual guilt would not be included within that definition but would be relegated to the status of admissions. Admissions of incriminating force and persuasive of guilt would be treated as confessions, whereas all other admissions than those which touch the fact of guilt, would be without the scope of rules affecting the use of confessions. In expanding the definition of a confession from its generally accepted meaning as a direct acknowledgement of guilt to an acknowledgement of *some essential part* of the fact charged, Wigmore included within the scope of the confessions rule all statements which would raise a reasonable inference of untrustworthiness. According to the Wigmorean premise, there would be scant reason for assuming that acknowledgements of subordinate facts would be untrustworthy for the simple reason that strong motives to distort the truth would be lacking.

The labels "confession and admission" attached to a statement in any given case may determine whether the statement is admissible, if involuntarily given. These same labels may determine whether or not a preliminary hearing should be had on an issue of voluntariness. If a preliminary hearing is required in the instant situation, one may have to choose between labels to solve problems inherent in adjusting burdens of proof. Necessity of corroboration or of submission of proof establishing the corpus delicti may rest upon a decision as to whether the statement made should be categorized as a confession or admission. If a violation of due process be involved, an appellate tribunal may predicate reversal upon a determination that the statement in question is a confession instead of an admission. It can readily be appreciated that major policy

4. 3 Wigmore, Evidence § 821 (3d ed. 1940). See Louette v. State, 152 Fla. 495, 503, 12 So. 2d 168, 172 (1943), which states that the "better rule" is that the term confession does not apply to a mere admission or declaration of an independent fact which tends to prove guilt or from which guilt may be inferred. On the other hand, courts have ruled that all incriminating admissions, as distinguished from admissions of subordinate fact, should be subject to tests of admissibility applicable to full confessions. People v. Heide, 302 Ill. 624, 135 N.E. 77 (1922); Winchester v. State, 163 Miss. 462, 142 So. 454 (1932). See Notes, 39 J. Crim. L., C. & P.S. 743 (1949); 4 Kan. L. Rev. 108 (1955); 19 Temp. L.Q. 485 (1946).

decisions can be posited upon a choice of definition, and if the choice be carelessly arrived at, unfair judicial decisions inevitably result. Without doubt, judges and lawyers alike are inclined to seek refuge in a formula that offers solution in terms of precedent, but it is equally apparent that the abstract reasoning of a precedent may tempt a poor solution when analogies between fact situations are strained. Fundamental notions of fairness dictate that abstract rules and considerations, fathered by ill-fitting precedents, can never produce a just appraisal of even the ordinary fact situation. Analysis of case precedents reveals that far too much emphasis is placed upon the signficance of verbal distinctions at the expense of careful examination of basic issues. As conflicts of judicial opinion multiply, it is no wonder that just or unjust results must depend upon the accident of jurisdiction.

Requirement of Voluntariness: Decisions in Conflict

The injustice and cruelty resulting from the early practice of extorting confessions from accused persons eventually led to the development of certain precautionary rules aimed at controlling the admissibility of confessions. The theory employed for rejecting confessions improperly obtained is not always clear, though there are numerous statements in judicial opinions that the reason for rejection is the danger that confessions of this type will be untrustworthy or involuntary.[5] From a practical standpoint, it would seem that the choice of test would make little difference since the type of force, threat or promise considered to render a confession involuntary would in all probability be considered sufficient to render a confession untrustworthy.[6] Wigmore has contended that the inherent lack of trustworthiness of confessions lies in the fact that this type of statement is susceptible of being made "under the direct and palpable pressure of an inducement to substitute something else than the truth."[7] To some extent, the *lack of trustworthiness* theory is given support in the precedents allowing all or a portion of an improperly induced

5. Dean Wigmore has condemned the test of voluntariness as historically incorrect, contending that those who sponsor the test of involuntariness do so under the erroneous impression that there is an association between the confession rule and the privilege against self-incrimination. 3 Wigmore, Evidence §§ 823-27 (3d ed. 1940). Other authorities, including Dean McCormick, have established a kinship between the confession rule and the privilege against self incrimination, and therefore interpret the rule of voluntariness as an indication that rules of restriction are prompted by a desire to protect the subject against torture, as well as by a desire to safeguard trustworthiness of evidence submitted. McCormick, Some Problems and Developments in the Admissibility of Confessions, 24 Texas L. Rev. 239 (1946).

6. Inbau, Lie Detection and Criminal Interrogation 150 (1948).

7. 3 Wigmore, Evidence § 815, at 229 (3d ed. 1940).

confession to be received where subsequent investigation has revealed the truth of statements made.[8]

In 1936 the Supreme Court for the first time invoked the fourteenth amendment as a protection against the reception of involuntary confessions, and since that date the Court has progressively broadened the concept of involuntariness.[9] At this juncture, reception of an involuntary confession procured by practices violative of the fourteenth amendment may well void a conviction, no matter how persuasive other evidence of guilt may be. Despite strong sentiments expressed in favor of the accused faced with a confession of guilt, there are many who contend that rules of exclusion, whatever their basis, should not apply to the reception of involuntary admissions. It is regrettable that this point of view has obtained such unstinted support in judicial circles, and particularly so in light of an obvious failure to draw thoughtful distinctions between confessions and admissions.

In a majority of jurisdictions, admissions are received as competent evidence though tainted with involuntariness. For example, in *State v. Spencer*,[10] the accused had made certain incriminating admissions which were recorded on a wire recorder and played to the jury over his objections. Ruling that the evidence was competent, the Supreme Court of Idaho stated:

> We are not concerned here with the necessity on the part of the state of proving that a confession was voluntarily made before the same is admissible in evidence. . . . His statements did not constitute a confession but at most might be construed as admissions against interest . . . . There was no duty upon the state to put in proof of the voluntary nature of such admissions before the same became admissible in evidence.[11]

The California courts have consistently ruled that admissions need not be voluntarily made as a condition to being received in evidence. *People v. Garcia*[12] concerned a review of a conviction for possession of

8. When subsequent facts reveal the verity of an involuntary confession, courts disagree with respect to policies of admission. Wigmore appears to favor a rule admitting the entire confession to accompany the facts. 3 Wigmore, Evidence § 857 (3d ed. 1940). The English decisions generally admit only that part of the confession relating to the corroborating facts. Apparently, most American jurisdictions adhere to a rule admitting no part of the confession but only the facts discovered thereby. For case authorities, see Comment, 6 De Paul L. Rev. 277 (1957). On the other hand, if requirements of due process are not met, it is highly probable that reversal will be in order if a confession is admitted, regardless of other evidence pointing to the truth of matters asserted in the confession itself. These factors are amplified at page 112 infra.

9. Brown v. Mississippi, 297 U.S. 278 (1936).

10. 74 Idaho 173, 258 P.2d 1147 (1953).

11. Id. at 180, 258 P.2d at 1152.

12. 124 Cal. App. 2d 822, 269 P.2d 673, cert. denied, 348 U.S. 901 (1954), 350 U.S.

narcotics. The accused had made statements relating to where he had obtained the "stuff" and where he was taking it. The California court conceded that the statements reflected a consciousness of guilt, but held that they amounted only to admissions of fact which could not be characterized as a confession or outright acknowledgement of guilt of the offense charged. Under these circumstances, it was not necessary to show that the statements were freely and voluntarily made.

Many statements, though admissions in a strict sense since they fall short of a complete acknowledgement of guilt, have been admitted in spite of a strong aura of untrustworthiness. An Iowa decision, *State v. Cook*,[13] serves as an adequate example. The defendant was convicted of an attempt to break and enter a dwelling at night with intent to commit larceny. While he was allegedly trying to break into the house, a woman saw him and screamed, frightening the defendant away. Subsequently, the defendant was transported to the scene of the alleged crime, and while there, he was heard to say: " 'That is the house. I tried to get in, but was frightened away by the woman's scream.' "[14] The court ruled that the confessions rule was inapplicable because the statement supported no outright admission of criminal intent. Similarly, a Massachusetts court held that a statement by an accused, indicted for adultery, that he was guilty as charged was not to be treated as a confession but as an admission when the statement was later offered against him in a prosecution for incest based on the same act of intercourse.[15] In a New Mexico case, a defendant charged with bigamy stated that he had previously been married but did not know whether he had been divorced from his first wife. He made no admission with regard to a subsequent marriage. Since there was no direct admission of a second marriage, the statement was not a confession, and the court saw no need for a preliminary hearing on the matter of voluntariness.[16]

That the borderline between admissions and confessions is a shadowy one is well illustrated in a decision by the Supreme Court of North Dakota.[17] The defendant was on trial for the murder of her husband and

1000 (1956). See also People v. Shannon, 203 Cal. 139, 263 Pac. 522 (1928); People v. West, 34 Cal. App. 55, 93 P.2d 153 (1939).

13. 188 Iowa 655, 176 N.W. 674 (1920).

14. Id. at 661, 176 N.W. at 677. Assume that the defendant had said: "That is the house. I tried to break in to steal some money and I was frightened away." Would this statement be entitled to less credit than the statement actually made in the instant case? See Morgan, Admissions, 12 Wash. L. Rev. 181, 190 (1937).

15. Commonwealth v. Haywood, 247 Mass. 16, 141 N.E. 571 (1923). This statement was admitted without preliminary hearing as to its voluntary character. Apparently, the statement did not constitute an express acknowledgement of the precise crime charged since it did not contain the essential acknowledgement as to the degree of consanguinity.

16. State v. Lindsey, 26 N.M. 526, 194 Pac. 877 (1921).

17. State v. Gibson, 69 N.D. 70, 284 N.W. 209 (1939).

claimed that the wound had been self-inflicted. She signed a statement in which she admitted that she killed her husband to protect her daughter. The court ruled that her statement was not an acknowledgement of guilt in express terms. Everything she stated could be taken as true, and yet, the defendant might not be guilty of any crime. If she had killed her husband while he was attempting to ravish her daughter, and the defendant reasonably believed that her daughter was in real danger, she would have committed no crime.[18] A recent decision by the Supreme Court of Delaware provides an interesting contrast.[19] Having been indicted for murder in the first degree, the defendant was found guilty of second degree murder and appealed her conviction. She had made a written statement in which she admitted shooting and killing her husband, but she indicated that she was afraid of the deceased because he was a knife-wielder and further stated that he threatened her life just prior to the killing. The trial judge, in instructing the jury, included the usual charge with respect to a confession of guilt, noting that the confession must have been given voluntarily. On appeal, the defendant maintained that she was prejudiced in the mind of the jury by the judge's characterization of the written statement as a confession. In effect, she claimed that her statement was exculpatory and made in justification of the homicide. The appellate court held that a statement by a defendant, containing admission of facts which together constitute proof of the commission of the homicide charged, was a confession. The confession would be admissible as such even though additional facts were asserted in the statement by way of justification of the crime, if the additional facts were insufficient as a matter of law to establish a defense. Had this been a "mere admission," proof of voluntariness would not have been necessary.

Several jurisdictions, undoubtedly a minority, hold that admissions and confessions are both subject to exclusion if given involuntarily. In a Florida case, *Louette v. State*,[20] the defendants, while under arrest and in custody, made certain highly incriminating admissions to an officer. At trial, the officer testified over the defendant's objection as to the statements made, and the question arose on appeal as to whether the trial judge erred in admitting this testimony without first, in the absence of the jury, inquiring into the circumstances under which the admissions were made. Holding that admission of these statements constituted error,

18. Subsequent legislation in North Dakota annuls the effect of this decision by providing that: "Any statement, admission, or confession procured from any person charged with crime in a state court, which was obtained by duress, fraud, threat, or promises, shall not be admissible in evidence against said person in any criminal action." N.D. Rev. Code § 29-21121 (Supp. 1957).

19. Brown v. State, 48 Del. 427, 105 A.2d 646 (1954).

20. 152 Fla. 495, 12 So. 2d 168 (1943).

the Supreme Court of Florida ruled that a preliminary showing of voluntariness must be made and that the question of voluntariness should be more stringently appraised when admissions are made to an officer, as distinguished from a private person. It was the duty of the trial court to make an independent investigation of voluntariness in the absence of the jury. Likewise, the Alabama decisions in point have consistently alluded to the fact that both confessions and inculpatory admissions are, prima facie, involuntary and inadmissible, thus assuming that the accused is entitled to a preliminary hearing as to the voluntariness of admissions made.[21]

The instant problem was brought to focus before the United States Supreme Court in the celebrated case of *Ashcraft v. Tennessee*.[22] The defendant's wife was murdered, and one Ware was convicted for the murder, Ashcraft being convicted as an accessory before the fact. Ashcraft was taken into custody and questioned for thirty-six hours. According to one officer's testimony, Ashcraft denied complicity in the crime for twenty-eight hours. Finally he confessed that he knew who killed his wife, but denied that he had done it. He stated that he had seen Ware force the victim into the Ashcraft automobile and drive away. Ashcraft indicated that his failure to inform the police derived from his fear of Ware. The confession was admitted in the state court, but the Supreme Court held that the confession was obtained in violation of due process and reversed the state conviction, remanding the case for a new trial. In the second trial, the state introduced testimony as to everything which took place during the thirty-six hour period of interrogation, eliminating, however, reference to the coerced confession. Evidence introduced at the second trial did include the admission by Ashcraft that he knew who killed his wife. The defendant was convicted as an accessory before the fact, and on appeal, conviction was affirmed by the state supreme court.[23]

On certiorari, the Supreme Court of the United States reversed and remanded for further proceedings, holding that the admission was obtained in violation of due process and that it was error to introduce it in evidence.[24] Mr. Justice Black, in a strong and assertive opinion, noted that, in the context of this case, the admissions made were the strongest possible evidence against Ashcraft who was charged with being an ac-

21. McGuire v. State, 299 Ala. 315, 194 So. 815 (1940) (inculpatory admission with respect to conspiracy to rob; defendant entitled to preliminary hearing as to voluntariness). However, when facts and circumstances clearly establish that statement was made without fear or hope of reward, necessity of laying a formal predicate is obviated. Greer v. State, 26 Ala. App. 522, 60 So. 2d 358 (1952).

22. 322 U.S. 143 (1944).

23. The opinion of the Supreme Court of Tennessee is unreported.

24. Ashcraft v. Tennessee, 327 U.S. 274 (1946).

cessory before the fact. No relevant distinction was drawn between introduction of this statement and the previous confession, except the possibility that the admission of long concealed knowledge was a more effective confession of guilt than the written confession itself.

A subsequent decision by the Supreme Court casts some doubt upon the validity of the holding in the *Ashcraft* case without specific mention of the prior decision. The majority opinion in *Stein v. New York*[25] noted that while the State of New York may impose the same requirements for admissibility on an admission as it does for a confession, such utterances are not usually subject to the same restrictions on admissibility as are confessions. The opinion by Mr. Justice Jackson concludes that, in the face of the weight of authority to the contrary, no such requirement [with respect to the admissibility of admissions] is imposed by the fourteenth amendment.[26]

In commenting upon the New York requirements for admissibility, the majority opinion referred to *People v. Reilly*.[27] The defendant in this case had been charged with assault. He was brought to the office of the district attorney, and in seeking to secure a statement, a Catholic priest, in the presence of an assistant district attorney, informed the defendant that there was no danger that any statement might be used against him. The defendant then made a lengthy statement which was subsequently used to point up a contradiction in his testimony at the trial. Holding that the statement could not be used against the defendant in such manner, the appellate division ruled that the statement was incompetent evidence regardless of the fact that it would be considered an admission as distinguished from an absolute confession. Section 395 of the New York Code of Criminal Procedure provides that a confession so induced shall not be admissible,[28] therefore the court had construed the language of this legislative restriction to include admissions. The court of appeals affirmed the decision of the appellate division but based its decision upon different grounds.[29] Apparently rejecting the confession-admission theory of the lower court, the court of appeals ruled that the defendant's statement was not to be construed as a confession within the meaning of Sec-

25. Stein v. New York, 346 U.S. 156 (1953).

26. Id. at 162 n.5.

27. 181 App. Div. 522, 169 N.Y. Supp. 119, aff'd, 224 N.Y. 90, 120 N.E. 113 (1918).

28. N.Y. Code Crim. Proc. § 395 provides: "A confession of a defendant . . . can be given in evidence . . . unless made under the influence of fear produced by threats, or unless made upon a stipulation of the district attorney, that [the defendant] shall not be prosecuted. . . . "

29. In 224 N.Y. 90, 120 N.E. 113 (1918), the court based its decision entirely upon the agreement which the assistant district attorney was held to adopt, thus insisting that the state had a duty to abide by its agreement.

tion 395 of the Code of Criminal Procedure. It further held that the statement was more in the nature of an exculpatory narrative.

Legislation exists in several jurisdictions, similar in content to the New York code provision, inhibiting oppressive or coercive practices designed to secure confessions.[30] As a rule, these statutes simply enact the common law doctrine that confessions induced by threat or fear are inadmissible and have, therefore, effected little change in traditional concepts of admissibility. Some serious legislative attempts have been made to soften the shock of coercive police investigation, and the very detailed provisions of the Kentucky and Texas statutes bear witness to the fact that reasonable standards may be effected through legislative action.[31] However, these statutes rarely make definite reference to admissions or incriminating statements not amounting to confessions; hence it is highly likely that admissions will not be excluded unless case precedent dictates otherwise.

For example, the Kentucky Anti-Sweating Act forbids peace officers to attempt to obtain information by "plying with questions" and expressly excludes confessions so obtained, but no mention is made of admissions.[32] The Texas statute refers to confessions only, yet the decisions in that state have ruled that inculpatory statements or admissions do come within the statutory rule prohibiting the use of confessions.[33] A Louisiana statute provides that confessions obtained by threat or promise are inadmissible, and by its own wording, the statute is not applicable to admissions not involving the existence of a criminal intent.[34] It naturally follows, therefore, that in Louisiana admissions involving the existence of a criminal intent are governed by the rules applicable to confessions.[35] A recent leg-

30. See statutes collected in 3 Wigmore, Evidence § 831 (3d ed. 1940).

31. Ky. Rev. Stat. Ann. § 422.110 (Baldwin 1955); Tex. Code Crim. Proc. Ann. art. 726 (1941).

32. The Kentucky Anti-Sweating Act excludes confessions obtained by prying peace officers, but does not ban questioning about the crime altogether. Ky. Rev. Stat. Ann. § 422.110 (Baldwin 1955). See McClain v. Commonwealth, 284 Ky. 359, 144 S.W.2d 816 (1940) (160 questions asked by a county attorney while visiting jail were held to be no violation of a provision against plying with questions). The Kentucky courts have drawn a distinction between confessions and admissions when considering provisions of state law requiring proof independent of confessions to convict. Hedger v. Commonwealth, 294 Ky. 731, 172 S.W.2d 560 (1943).

33. Any fact or circumstance involved in a statement made by a defendant in jail or under arrest, when he has not been cautioned, comes within the statutory rule pertaining to confessions, although the statement made may not be technically a confession or admission, Silver v. State, 110 Tex. Crim. 512, 8 S.W.2d 144 (1928); Stanchel v. State, 89 Tex. Crim. 358, 231 S.W. 120 (1921). 2 McCormick & Ray, Texas Law of Evidence § 1123 (1956).

34. La. Rev. Stat. §§ 15:449-54 (1950).

35. State v. Domino, 234 La. 950, 102 So. 2d 227 (1958).

islative enactment in North Dakota unambiguously provides that any statement, admission or confession obtained by duress, fraud, threat, or promise shall be inadmissible.[36] No distinction is made between admissions of an incriminatory nature and those relating to subordinate facts. Hence, it was probably the intent of the legislature to ban any shred of evidence procured by extreme measures in the hope that overly ambitious investigatory procedures would be discouraged.

Burden of Proof

When the prosecution offers a confession in evidence, the defendant may object on the ground that the confession was made involuntarily. The question then arises as to which party has the burden of proving voluntariness or involuntariness, as the case may be. Decisions are in conflict with respect to the proper allocation of the burden, and it would be very difficult to predict the trend of judicial support. In some jurisdictions, a confession is generally presumed to have been given voluntarily, in which case the burden of proof would be placed upon the defendant to prove that the confession was involuntary.[37] It is sometimes said that a confession of guilt made by a defendant to an arresting officer is deemed prima facie voluntary.[38] Other decisions to the contrary hold that the burden of proving voluntariness should rest upon the prosecution,[39] or that confessions are prima facie involuntary.[40]

Assuming that logic and a sense of practicality should place the burden upon the prosecution to prove the voluntariness of a confession, there is room for argument as to whether the same rule should apply for proving the voluntariness of an admission. It goes without saying that the usual preliminary hearing on issues of voluntariness is an expensive, time consuming procedure, and it cannot be denied that time expended in determining the voluntariness of a pressured confession is not time wasted. If it is assumed, however, that admissions are less likely to be induced by extreme pressures or threats and are less damaging to the interests of

36. N.D. Rev. Code § 29-21121 (Supp. 1957).

37. Wallace v. State, 235 Ind. 538, 135 N.E.2d 512 (1956); State v. Webb, 239 Iowa 693, 31 N.W.2d 337 (1948); State v. Hamer, 240 N.C. 85, 81 S.E.2d 193 (1954); Phillips v. State, 330 P.2d 209 (Okla. Crim. 1958).

38. Commonwealth v. Jokinen, 257 Mass. 429, 154 N.E. 189 (1926).

39. People v. Speaks, 156 Cal. App. 2d 25, 319 P.2d 709 (1957); Bruner v. People, 113 Colo. 194, 156 P.2d 111 (1945); State v. Lorain, 141 Conn. 694, 109 A.2d 504 (1954); People v. Rogers, 413 Ill. 554, 110 N.E.2d 201 (1953); Harris v. State, 162 Tex. Crim. 498, 286 S.W.2d 936 (1956). In People v. Stein, 346 U.S. 156, 173 (1953), the New York State jury was instructed that they must find beyond a reasonable doubt that the confessions submitted were voluntary before having a right to consider them as evidence. The burden to prove beyond a reasonable doubt was placed upon the state. See Annot., 102 A.L.R. 641 (1936); Annot., 38 A.L.R. 116 (1925).

40. White v. State, 260 Ala. 328, 70 So. 2d 624 (1954).

the accused, one may validly assert that the burden of producing evidence of involuntariness should be allocated to the defense. It is Dean McCormick's opinion that courts may mean no more than this when they hold that an admission need not be proved to have been made voluntarily, or that preliminary hearings need not be held on voluntariness when admissions are offered.[41] It is to be regretted that the purpose of decisions in point is so rarely defined. It is the opinion of this writer that problems of allocating burden of proof with respect to admissions are resolved by precedents which either require or do not require proof of voluntariness as a condition for offering extrajudicial admissions. In Alabama, for example, confessions and inculpatory admissions are prima facie involuntary and inadmissible, and preliminary proof of voluntariness must be submitted by the state.[42] No magic lines are drawn between confessions on one hand and admissions on the other, and the prosecution must prove the absence of undue pressures in both instances. However, in a jurisdiction such as Utah, where preliminary showings of voluntariness with respect to admissions are unnecessary, it can often be assumed that neither the prosecution nor the defense has the burden for the simple reason that admissions are received despite a strong aura of involuntariness.[43]

CORROBORATION

In order to prevent error in convictions based upon untrue confessions, the great majority of American jurisdictions have ruled that confessions must be corroborated to sustain a conviction.[44] Though it is not necessary that a confession be corroborated by independent proof in all its details and particulars, corroborating evidence must confirm and strengthen the

41. McCormick, Evidence § 113 (1954).

42. Davis v. State, 257 Ala. 447, 59 So. 2d 592 (1952). Inculpatory admissions as to collateral facts, however incriminating, have been held admissible without preliminary proof of voluntariness. Whitehead v. State, 16 Ala. App. 427, 78 So. 467 (1918).

43. "Although there are some cases to the contrary, the great weight of authority and the better-reasoned cases hold that before receiving an admission—as distinguished from a confession—in evidence, it is not necessary that a preliminary showing be made to the effect that the statement was voluntary." State v. Masato Karumai, 101 Utah 592, 602, 126 P.2d 1047, 1052 (1942).

44. Daeche v. United States, 250 Fed. 566 (2d Cir. 1918); Gallegos v. State, 152 Neb. 831, 43 N.W.2d 1 (1950); People v. Louis, 1 N.Y.2d 137, 134 N.E.2d 110 (1956); State v. Johnson, 95 Utah 572, 83 P.2d 1010 (1938); Annot., 45 A.L.R.2d 1316 (1956). Formerly in England, a defendant's confession was sufficient by itself to support a conviction. However, later English cases have required some independent confirming evidence to support confessions in homicide, larceny and bigamy cases. Massachusetts and Wisconsin, alone among American jurisdictions, disclaim any rule requiring corroborating evidence. Commonwealth v. Kimbal, 321 Mass. 290, 73 N.E.2d 468 (1947); Potman v. State, 259 Wis. 234, 47 N.W.2d 884 (1951). See 7 Wigmore, Evidence §§ 2070, 2071 (3d ed. 1940); Note, 103 U. Pa. L. Rev. 638 (1955).

force of the confession.[45] Whereas decisions are practically unanimous in their acceptance of the corroboration requirement, there is considerable divergence of sentiment among the various jurisdictions as to the quantum of proof required to corroborate. Currently, evidence of proof of the corpus delicti in addition to the defendant's confession is required by statute in at least nine states.[46] An identical requirement is imposed by judicial decision in a majority of states and federal circuits.[47] Those jurisdictions requiring proof of the corpus delicti will generally define corpus delicti as including the first two elements of the crime, *i.e.*, the injury and the criminality,[48] yet, some decisions can be found defining corpus delicti as composing all three elements of the crime, including the defendant's participation.[49]

Some courts have perpetuated a strict, inflexible rule of procedure which requires that proof of the corpus delicti be completely independent of the defendant's confession.[50] Many of the decisions following this inflexible rule have imposed an added requirement to the effect that independent proof of the corpus delicti must precede the introduction of the confession.[51] On the other hand, reversal of the order of proof will

45. People v. Lueder, 3 Ill. 2d 487, 121 N.E.2d 743 (1954).

46. Ark. Stat. Ann. § 43-2115 (1947); Ga. Code Ann. § 38-420 (Rev. ed. 1954); Iowa Code Ann. § 782.7 (1950); Ky. Crim. Code Ann. § 240 (Baldwin 1953); Minn. Stat. Ann. § 634.03 (1947); Mont. Rev. Codes Ann. § 94-2510 (1949); N.Y. Code Crim. Proc. § 395 (1958); N.D. Rev. Code § 12-2729 (1943); Ore. Comp. Laws Ann. § 26-937 (1940).

47. See, e.g., United States v. Angel, 201 F.2d 531 (7th Cir. 1953); United States v. Markman, 193 F.2d 574 (2d Cir. 1952); Pate v. State, 36 Ala. App. 688, 63 So. 2d 223 (1953); People v. Mehaffey, 32 Cal. 2d 535, 197 P.2d 12, cert. denied, 335 U.S. 900 (1948); People v. Cuozzo, 292 N.Y. 85, 54 N.E.2d 20 (1944); Commonwealth v. Lettrich, 346 Pa. 497, 31 A.2d 155 (1943); Campbell v. Commonwealth, 194 Va. 825, 75 S.E.2d 468 (1953).

48. Peoples v. State, 256 Ala. 612, 56 So. 2d 665 (1952); People v. Bradford, 95 Cal. App. 2d 372, 213 P.2d 37 (1949); People v. Manske, 399 Ill. 176, 77 N.E.2d 164 (1948); People v. Deacons, 109 N.Y. 374, 16 N.E. 676 (1888); Commonwealth v. Turza, 340 Pa. 128, 16 A.2d 401 (1940).

49. As to crimes in which there is no tangible corpus delicti, such as income tax evasion, it has been held that corroborative evidence must link the accused in order to show that a crime has been committed. Smith v. United States, 348 U.S. 147 (1954). See 7 Wigmore, Evidence § 2072 (3d ed. 1940).

50. Manning v. United States, 215 F.2d 945 (10th Cir. 1954); People v. Kinder, 122 Cal. App. 2d 457, 265 P.2d 24 (1954); Commonwealth v. Bishop, 285 Pa. 49, 131 Atl. 657 (1926). There is no agreement among the various jurisdictions as to quantum of proof required to prove the corpus delicti. Pennsylvania is the only state requiring the corpus delicti to be proved beyond a reasonable doubt without using the confession. Gray v. Commonwealth, 101 Pa. 380 (1882). Most jurisdictions require proof by a preponderance of the evidence or simply state that prima facie independent proof of the corpus delicti must be presented. See Note, 103 U. Pa. L. Rev. 638, 659 (1955).

51. Hines v. State, 260 Ala. 668, 72 So. 2d 296 (1954); State v. Guastamachio, 137 Conn. 179, 75 A.2d 429 (1950); People v. Lay, 336 Mich. 77, 57 N.W.2d 453 (1953); Taylor v. State, 191 Tenn. 670, 235 S.W.2d 818 (1950), cert. denied, 340 U.S. 918 (1951).

rarely constitute reversible error provided sufficient proof is introduced at some point.[52] In fact, there is strong reason for believing that the trial judge may best determine the order in any given case, and recent decisions evidence a growing faith in the supremacy of judicial discretion.[53] Decisions are not uncommon which allow confessions to be used to fill in gaps in the independent proof by lending significance to otherwise unimportant facts.[54] In a select minority of jurisdictions, a more flexible doctrine, resembling the English practice, simply requires that some facts be proven outside the confession which under the circumstances give it reasonable corroboration.[55]

As a general proposition, uncorroborated admissions of incriminating facts are not sufficient in themselves to sustain a conviction. A recent California decision, *People v. Cullen*,[56] typifies the holdings of many courts that have required corroboration of an accused's admissions. Here it was held, as a settled rule, that the corpus delicti must be established independently of an admission of the defendant. Thus a conviction could not be had on the basis of an extrajudicial admission without other proof of the corpus delicti. The opinion also noted that upon a prima facie showing that the alleged victims met death by a criminal agency, the admission would be received, the order of proof being discretionary. The court stated that its purpose in so ruling was to protect the defendant against the possibility of fabricated testimony which might wrongfully establish the crime and the perpetrator. It is interesting to observe that the California court requires the corpus delicti to be proved by evidence independent of such admissions while holding that involuntary admissions need not be excluded.[57]

The Supreme Court of the United States has recently declared that an accused's subsequent admissions of essential facts or elements of the crime are of the same character as confessions and corroboration should be required.[58] The court declined to draw any distinction between in-

52. Tingle v. United States, 38 F.2d 573 (8th Cir. 1930); People v. Seymour, 54 Cal. App. 2d 266, 128 P.2d 726 (1942); Commonwealth v. Lettrich, 346 Pa. 497, 31 A.2d 155 (1943).

53. See, e.g., Manning v. United States, 215 F.2d 945, 952 (10th Cir. 1954), which quoted from 7 Wigmore, Evidence § 2073, at 404, to the effect that the better view is that the trial judge may determine the order of evidence.

54. People v. Gavurnik, 2 Ill. 2d 190, 117 N.E.2d 782 (1954); Gallegos v. State, 152 Neb. 831, 43 N.W.2d 1 (1950); People v. Badgley, 16 Wend. 53 (N.Y. 1836); Wheeler v. Commonwealth, 191 Va. 665, 66 S.E.2d 605 (1951).

55. Logue v. State, 198 Ga. 672, 32 S.E.2d 397 (1944); State v. Campisi, 42 N.J. Super. 138, 126 A.2d 17 (1956). See cases collected in 7 Wigmore, Evidence § 2071 n.3 (3d ed. 1940).

56. 37 Cal. 2d 614, 234 P.2d 1 (1951).

57. See cases cited note 12 supra.

58. Opper v. United States, 348 U.S. 84 (1954). The following cases have made no

culpatory and exculpatory statements, concluding that the latter might call for corroboration to the same extent as other statements material to guilt or innocence.[59] Statements or admissions, immaterial with respect to the guilt or innocence of the accused, were not included within the scope of the corroboration requirement.

It is almost too clear for argument that an improperly induced admission from which guilt may be readily inferred is no more trustworthy than an outright statement of guilt. Furthermore, in all probability a confession will be reduced to writing and signed by the confessing party, thus providing some guarantee against fabrication. However, it is not likely that the average admission will appear in written form, and opportunities for exaggeration, if not outright fabrication, are considerable. Obviously, there are many admissions entering the stream of evidence which scarcely hint at incriminatory inferences, and no one should suggest that these admissions be compared with confessions in terms of corroboration requirements.[60] On the other hand, this does not gravitate against a firm policy of excluding incriminating admissions which remain uncorroborated by other convincing evidence. Despite the appeal of the argument in favor of a corroboration requirement with respect to incriminating admissions, one still encounters a hard core of decisions which applies the rule of corroboration to confessions alone.[61] As a rule the distinction between confessions and admissions is drawn strictly on the basis of definition, and policy considerations absorb little, if any, consideration.

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distinction between confessions and admissions with respect to corroboration requirements. United States v. Alker, 260 F.2d 135 (3d Cir. 1958); Gulotta v. United States, 113 F.2d 683 (8th Cir. 1940); State v. Romo, 66 Ariz. 174, 185 P.2d 757 (1947); People v. La Coco, 406 Ill. 303, 94 N.E.2d 178 (1950); State v. Jones, 150 Me. 242, 108 A.2d 261 (1954); Vanderheiden v. State, 156 Neb. 735, 57 N.W.2d 761 (1953); People v. Aparo, 285 App. Div. 1171, 140 N.Y.S.2d 542 (1955); East v. State, 146 Tex. Crim. 396, 175 S.W.2d 603 (1942). The Supreme Court has ruled that corroboration is unnecessary when admissions offered in evidence were made prior to the crime inasmuch as they contain none of the inherent weaknesses of confessions and admissions made after the fact. Warszower v. United States, 312 U.S. 342 (1941).

59. Some decisions have pointed up a distinction between inculpatory and exculpatory statements, holding or implying that the latter need not be corroborated. Ercoli v. United States, 131 F.2d 354 (D.C. Cir. 1942); Braxton v. State, 17 Ala. App. 167, 82 So. 657 (1919).

60. See, e.g., State v. George, 93 N.H. 408, 43 A.2d 256 (1945) (distinguishing between admissions touching the fact of guilt and the acknowledgment of subordinate facts).

61. See, e.g., State v. Fortune, 196 Iowa 995, 195 N.W. 740 (1923) (interpreting Iowa Code Ann. § 782.7 (1946)); Hedger v. Commonwealth, 294 Ky. 731, 172 S.W.2d 560 (1943) (interpreting Ky. Crim. Code Ann. § 240 (Baldwin 1953)); Cazalas v. State, 227 Miss. 546, 86 So. 2d 497 (1956). In Massachusetts and Wisconsin, neither confessions nor admissions require corroboration. Commonwealth v. Di Stasio, 294 Mass. 273, 1 N.E.2d 189 (1936), cert. denied, 302 U.S. 683 (1937); Potman v. State, 259 Wis. 234, 47 N.W.2d 884 (1951).

CONSTITUTIONAL LIMITATIONS

In 1931 the Wickersham Commission reported that the extortion of confessions by the police through the employment of "third degree" tactics was a common practice.[62] In connection with state criminal trials, the Supreme Court in 1936 for the first time invoked the fourteenth amendment as a protection against the reception of involuntary confessions.[63] Undisputed evidence in this case pointed to the use of extreme physical force, and in reversing the convictions, the Court held that the use of confessions thus obtained as a basis for conviction and sentence was a clear denial of due process. During the next several years, the Court stood firm in its policy that physical coercion or threats of physical violence constituted a violation of due process, and convictions obtained through the employment of physical pressures faced certain reversal.[64]

As police methods of interrogation became more subtle and refined and coercions less obvious and physical, need arose for a more precise definition of coercion. The opinion by Mr. Justice Black, in *Ashcraft v. Tennessee*,[65] filled that need in rejecting a confession obtained after thirty-six hours of continuous questioning. Through independent examination of the petitioner's claims, the Court determined unequivocally that psychological, as well as physical, pressures could be declared "inherently coercive," and thus violative of fundamental concepts of due process. A year later, in *Malinski v. New York*,[66] the Court ruled that if the undisputed evidence suggested that force or coercion was used to extract a confession, a judgment of conviction would not stand even though without the confession there might have been sufficient evidence for submission to the jury. This strong position, demanding automatic reversal, was to continue unassailed or unquestioned for the greater part of the ensuing decade.[67] Obviously, trustworthiness alone would not be sufficient to

62. IV Reports of National Commission on Law Observance and Enforcement (1931).

63. Brown v. Mississippi, 297 U.S. 278 (1936) (obvious physical pressures, including ropings and mob domination).

64. Ward v. Texas, 316 U.S. 547 (1942) (prisoners held incommunicado and threatened with mob violence); White v. Texas 310 U.S. 530 (1940) (prisoner handcuffed and whipped); Chambers v. Florida, 309 U.S. 227 (1940) (protracted and searching examination, though there was conflict upon the issue of physical violence).

65. 322 U.S. 143 (1944). A similar result obtained on subsequent appeal, 327 U.S. 274 (1946). For further discussion of the case, see page 102 supra.

66. 324 U.S. 401 (1945) (four Justices dissenting). See also Haley v. Ohio, 332 U.S. 596 (1948) (negro boy of fifteen questioned by police for thirty hours; conviction reversed in a 5-4 decision).

67. It should be noted that reversal of conviction does not spell absolute acquittal of the defendant. Subsequent to reversal, the Court has returned all such cases for retrial without benefit of the coerced confession. The Supreme Court has never had occasion to decide whether inherently coercive treatment alone without introduction or consideration of a coerced confession or other incriminating evidence at trial will supply reason for

sustain the validity of a confession obtained by pressures violative of due process. Given inherently coercive treatment and an extracted confession, reversal of conviction followed as a matter of course regardless of the degree of convincing power of the confession and regardless of the validity of corroborative evidence.

In *Stein v. New York*,[68] Mr. Justice Jackson, speaking for the majority, affirmed the conviction of three defendants despite their objection that the confessions of two of them were the products of police brutality. Under New York procedure—one employed in many jurisdictions—the trial judge holds a preliminary hearing on the issue of voluntariness.[69] If he finds that the confession was involuntary, he must exclude it. If he believes that there is an issue of fact as to whether the confession was coerced, the confession will go to the jury with instructions that they may not consider the confession in determining guilt or innocence unless they find that it was voluntarily given. In the *Stein* case, the trial judge determined that there was an issue for the jury to consider and submitted the confession. There was substantial evidence other than the confessions pointing to the guilt of the defendants, and the state's evidence on the issue of coercion was virtually unchallenged, because the defendants chose to remain silent rather than risk almost certain impeachment. In appraising the jury verdict of guilty, it was impossible to determine whether the jury had found the confessions coerced and rejected them, but predicated guilt on other evidence, or whether they found the confessions voluntary and relied upon them in arriving at their verdict. In spite of this uncertainty, the Court found the New York practice constitutional and evidence of coercion was examined only to determine whether the question was properly submitted to the jury.

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reversal. The same uncivilized conditions might well prevail, but if police efforts aimed at obtaining incriminating evidence are unsuccessful, there will be no occasion for discovery of trial error. Minus trial error, it is highly doubtful that reversal could be predicated upon inhumane police investigatory procedures, because reversal in this instance would spell absolute acquittal. Thus, coercive compulsion might supply a reason for reversal if evidence obtained thereby be admitted or considered, but the same quantum of coercion, though shocking the conscience, would not be ground for reversal for lack of trial error.

68. 346 U.S. 156 (1953). The decision has been widely criticized in legal periodicals. See Meltzer, Involuntary Confessions: The Allocation of Responsibility Between Judge and Jury, 21 U. Chi. L. Rev. 317 (1954); Paulsen, The Fourteenth Amendment and the Third Degree, 6 Stan. L. Rev. 411 (1954); Note, 39 Cornell L.Q. 321 (1954).

69. Under orthodox procedure the trial judge determines whether the confession is voluntary or involuntary. If he admits the confession, his decision as to voluntariness is final and is not re-examined by the jury. Under New York procedure, if the judge determines that a fair question of fact is presented, the issue of voluntariness is submitted to the jury. Massachusetts procedure is similar to that of New York, except that in Massachusetts admissibility results only if the judge resolves that question in favor of the prosecution.

In dissenting, Justices Black, Douglas and Frankfurter contended that the Court had deviated from its prior decisions by affirming a conviction in which a coerced confession was present. On the other hand, one may reasonably infer that the Court assumed that the jury rejected the confession, and excluded it from their deliberations if they found it to be coerced. If so, the case could be treated as if the trial court had excluded the confession.[70] This rationalization of the *Stein* decision may extend unbounded credit to the jury's ability to sift prejudicial evidence, yet no other rationalization seems feasible if one is to support the thesis that *Stein* does not represent a radical departure from its immediate precedents.

In a recent decision,[71] the Supreme Court reversed a conviction where a coerced confession constituted part of the evidence before the jury. The Court ruled that the coerced confession vitiated the judgment of conviction despite the fact that there may have been sufficient evidence, apart from the coerced confession, to support a judgment of conviction. The majority opinion noted that there was patent coercion and carefully pointed out that its decision was not contrary to *Stein* inasmuch as the Court, in the latter case, did not find that the confession was coerced.[72] Without doubt, this decision solidifies the position of the Court with respect to its insistence upon observance of constitutional procedures. Where the undisputed facts indicate unduly coercive physical or psychological compulsion in the obtaining of confessions, the interests of the state must yield to the individual's right to freedom from fear, regardless of the convincing power of corroborative evidence pointing to certainty of guilt.[73]

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70. The majority opinion inferred that the rule of automatic reversal will be invoked if a confession is admitted under the orthodox procedure. If the judge, therefore, makes a final determination that a confession is admissible, and the ruling admitting the confession is declared erroneous on review, the conviction should fall with the confession. 346 U.S. 156, 192-93 (1953).

71. Payne v. Arkansas, 356 U.S. 560 (1958).

72. The procedure followed in the state court was comparable to the New York procedure. At the beginning of the trial, petitioner moved to suppress the confession and the trial judge overruled the motion after a hearing upon the motion. The same evidence was repeated to the jury and the judge instructed the jury to disregard the confession if they found that it was not voluntarily made. There was, however, substantial evidence of coercion which the facts in the Stein case did not reveal.

73. Several decisions since the Stein case have reflected a concerted effort to control the conduct of criminal trials in state courts. See, e.g., Fikes v. Alabama, 352 U.S. 191 (1957); Leyra v. Denno, 347 U.S. 556 (1954); Cranor v. Gonzales, 226 F.2d 83 (9th Cir. 1955), cert. denied, 350 U.S. 935 (1956). In Thomas v. Arizona, 356 U.S. 390 (1958), the Court, with four Justices dissenting, affirmed a conviction despite a strong aura of threats and pressures. The trial judge had rejected two written confessions but had admitted a third confession which was made in relative quiet before a justice of the peace. The

CONCLUSION

Whether the rule prohibiting reception of coerced confessions will apply with equal force to the coerced admission remains to be considered. If the rule is to be extended, reception of the coerced admission into evidence would constitute ground for reversal despite the fact that evidence, outside the admission, strongly suggests guilt. If the criterion for action is posited upon the judicial will to discourage unbridled investigatory practices, then there is no wisdom in a suggestion that distinctions be drawn between confessions and admissions. Coercion of an admission by brutal tactics is no less shocking than coercion of a confession by the same means. The Supreme Court has many times emphasized its concern for the dignity of the individual, and this concern would be meaningless if the right to judicial protection were to be predicated upon a choice of definitions.

It cannot be denied that the prosecutor's side of the argument also has merit. The rule of automatic reversal would appear doubly frustrating if every coerced admission posed a potential threat to successful conviction. Chances of failure would be even greater in federal court if extended delay, resulting in admission of subordinate facts, were to constitute ground for reversal.[74] Obviously, there are compelling arguments on both sides. Nevertheless, except for the second *Ashcraft* case[75] and a footnote discussion in *Stein*,[76] authoritative appraisal of the problem has been lacking.

Objectively considered, the distinction between a confession and an admission is one of degree and not of kind. While it may be true that certain admissions are of little consequence in terms of their effect upon the rights of the individual defendant, a difference in degree does not justify a separate test for admissibility in all cases. If the defendant has

majority opinion by Justice Clark stresses the fact that nothing in the undisputed record substantiated the contention that fear of violence overbore the defendant's free will at the time he appeared before the justice of the peace.

74. Fed. R. Civ. P. 5(a) requires that an arrested person be taken before a committing magistrate "without unnecessary delay." Accordingly, the Supreme Court has announced that extended delay, resulting in a confession, will constitute ground for reversal of conviction if the confession so procured was utilized in procuring conviction. Mallory v. United States, 354 U.S. 449 (1957); McNabb v. United States, 318 U.S. 332 (1943). Reversal is in order despite lack of coercive police action or lack of the usual elements pointing to untrustworthiness. Though Congress has not explicitly forbidden the use of evidence so procured, the Supreme Court in supervising the administration of criminal justice in federal courts has established a definite procedure to be adhered to in all courts within the federal system. Neither the due process clause nor the equal protection clause affords any control over state action in this respect. State v. Smith, 158 Kan. 645, 149 P.2d 600 (1944); State v. Lowder, 147 Ohio 530, 72 N.E.2d 785 (1946).

75. Ashcraft v. Tennessee, 327 U.S. 274 (1946). See discussion at page 102 supra.

76. Stein v. New York, 346 U.S. 156, 162 n.5 (1953).

made several admissions, it is quite probable that the statements in aggregate would be as damaging to his cause as an outright confession of guilt. In this latter instance, the collective force of several admissions would most certainly raise strong inferences of guilt, and who can validly assert that the accused will receive a fair and impartial trial if the jury is permitted to consider his involuntary admissions in arriving at the verdict of guilt.

If admissions received are truly insignificant, in that they have slight tendency to incriminate, there is scant reason for requiring a preliminary showing of voluntariness. By the same token, it would seem unnecessary to require the prosecution to assume the burden of proving voluntariness in each instance. Even though undue coercion enters the picture, it would appear that jury consideration of a minor admission would have little effect upon the defendant's receiving a fair trial. Once it is agreed that fundamental constitutional rights are not abridged by violence alone without the incidence of substantial trial error,[77] the accused can be assumed to have received a fair trial, despite the fact that statements of subordinate import have entered the stream of evidence.

In any case, the trial judge should be granted the discretion to determine whether the traditional rules of exclusion applicable to confessions should be applied to the reception of admissions. If he, in his discretion, finds that an admission strongly suggests an inference of guilt, he should require a preliminary showing of voluntariness, and in most instances, it would be proper to relegate the burden of proving voluntariness to the prosecution. Involuntary admissions of this order are likely to be untrustworthy, hence subtle distinctions between confessions and admissions fail to provide an adequate guide for selecting a sound policy of admissibility. Furthermore, under certain conditions, a coerced admission may be just as incriminating as a confession, and there are few who would claim that the reception of such an admission into evidence would be consistent with contemporary standards of due process. A workable standard of admissibility necessitates abandonment of the textbook stereotype which has long perpetuated the belief that confessions and admissions possess clear and distinguishable characteristics.[78] Practical solution of the instant problem not only invites serious consideration of all factors surrounding the making of an admission but compels the conclusion that substance shall prevail over form.

77. See note 66 supra.

78. The Uniform Rule of Evidence 63(6) makes no distinction between confessions and admissions but speaks in terms of a "previous statement" by the accused relative to the offense charged. Statements obtained as a result of compulsion, threats and like pressures are inadmissible under the rule. However, no attempt is made to distinguish between statements that are definitely incriminating and those relatively colorless with respect to incriminating content.