UNITED STATES SUPREME COURT

Advance Opinion

EMIL RECK, Petitioner,
v
FRANK J. PATE, Warden
— US —, 6 L ed 2d 948, 81 S Ct —
[No. 181]
Argued April 19, 1961. Decided May 12, 1961.

SUMMARY

Under circumstances detailed in headnote 4, infra, an accused confessed to and was convicted of murder in a state court, and was sentenced to a 199-year prison term. Several years later, the accused filed a petition for habeas corpus in the United States District Court for the Northern District of Illinois, asserting that he was denied due process of law under the Fourteenth Amendment by the admission into evidence at the trial of his allegedly coerced confession. The writ issued, but after reviewing the circumstances surrounding the confession, the District Court ordered the writ quashed. (172 F Supp 734.) The Court of Appeals for the Seventh Circuit affirmed. (274 F2nd 250.)

On certiorari, the Supreme Court vacated the judgments of the District Court and the Court of Appeals and remanded the case to the District Court. In an opinion by STEWART, J., expressing the view of six members of the Court, it was held that under the circumstances the confession was coerced and that its admission into evidence at the state trial violated the due process clause of the Fourteenth Amendment.

DOUGLAS, J., joined by WHITTAKER, J., dissented on the ground that the confession was not coerced.

Constitutional Law Sec. 840.5 — due process — involuntary confession.

1. The question whether there has been a violation of the due process clause of the Fourteenth Amendment by the introduction of an involuntary confession into evidence is one which it is the ultimate responsibility of the United States Supreme Court to determine.

Evidence Sec. 682 — confession — coercion.

2. The question whether a confession was coerced depends upon whether the defendant's will was overborne at the time he confessed, for if such was the case, his confession cannot be deemed the product of a rational intellect and a free will.

Evidence Sec. 682 — confession — coercion.

3. In resolving the question whether a confession was coerced, physical mistreatment is but one circumstance, albeit a circumstance which by itself weighs heavily; other circumstances may combine to produce an effect just as impellingly coercive as the deliberate use of the third degree.

Evidence Sec. 685 — confession — coercion — interrogation.

4. The due process clause of the Fourteenth Amendment is violated by the admission into evidence in a state murder prosecution of confessions obtained from the accused, a 19-year-old youth of subnormal intelligence and without previous experience with the police, who was, for all practical purposes, held incommunicado for the four days preceding his first confession, during which time he was subjected daily to 6- or 7-hour stretches of relentless and incessant interrogation, and was intermittently placed on public exhibition in police "show-ups," where during the entire period he was physically weakened and in intense pain, and without adequate food, without counsel, and without the assistance of family or friends.

Constitutional Law Sec. 840.5; Courts Sec. 766 — due process — confession — precedents.

5. The determination of whether the confession of an accused was coerced, so as to render its admission into evidence in a state criminal trial a violation of the due process clause of the Fourteenth Amendment, requires more than a mere color-matching of cases.

Appeal and Error Sec. 1689 — remand — for re-trial — habeas corpus — coerced confession.

6. When vacating judgments of a Court of Appeals and a District Court denying a state prisoner's application for habeas corpus in a coerced confession case, the United States Supreme Court will remand the case to the District Court with directions to the District Court to enter such orders as are appropriate and consistent with the Supreme Court's opinion, allowing the state a reasonable time in which to re-try the prisoner.

APPEARANCES OF COUNSEL

Donald Page Moore argued the cause for petitioner.
William C. Wines argued the cause for respondent.

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WHEN AN ALIEN . . . (*Continued from page 259*)

desirable alien, it may be difficult or impossible to execute the order. For instance, if the said alien is "stateless," meaning he is "a man without a country," he cannot be deported. In such a case, he should be released from imprisonment, provided, however, that he posts the necessary bond and submits himself to reasonable surveillance of the immigration authorities. Such a person is entitled to release from imprisonment because of the theory that "after a reasonable length of time and in default of specific charges placed against him other than that he is undesirable alien, a vagrant, or the like, the deportation order becomes *functus officio* (cannot be executed or made effective) for lack of ability to execute it and there is no authority for further incarceration."

In almost all cases, the cost of deportation is shouldered by the government. However, when deportation proceedings are instituted within five years after the alien's entry, except when the reason for deportation arises subsequent to his entry, Section 39 of the Philippine Immgration Act of 1940 as amended provides that the cost of deportation from the port of deportation shall be at the expense of the owner or owners of the vessel by which the alien came. In case that is not practicable, the government foots the bill.

A procedure similar to deportation is exclusion. Should an alien brought to the Philippines be excluded, he would be sent back immediately to the country from where he came, on the same vessel that has brought him, and in accommodations of the same class by which he arrived. The owner or owners of such vessel is required to shoulder the expense of his return. In the event that the said vessel has left and if it should not be possible to return the alien within a reasonable time by means of another vessel owned by the same interests, the government may pay the cost of return and later charge it against the owner, agent, or consignee of the vessel.

Contrary to popular belief, deportation proceedings are not criminal in nature and therefore deportation is not a punishment.

OPINION OF THE COURT

Mr. Justice *Stewart* delivered the opinion of the Court.

On the night of January 2, 1936, Dr. Silber C. Peacock, a Chicago physician, left his Edgewater Beach apartment in response to an emergency telephone call to attend a sick child. He never returned. The next day his lifeless body was found in his automobile on a Chicago street. It was apparent that he had been brutally murdered. On Wednesday, March 25, 1936, the petitioner, Emil Reck, and three others were arrested by the Chicago police on suspicion of stealing bicycles. Late the following Saturday afternoon Reck confessed to participation in the murder of Dr. Peacock. The next day he signed another written confession. At Reck's subsequent trial in the Criminal Court of Cook County, Illinois, the two confessions were, over timely objection, received in evidence against him. The jury found Reck guilty of murder, and he was sentenced to prison for a term of 199 years.

The conviction was affirmed by the Illinois Supreme Court, People v. Rock, 392 Ill. 311, 64 NE2d 526. Several years later Reck filed a petition under the Illinois Post-Conviction Hearing Act, alleging that his confessions had been procured by coercion and that their use as evidence at his trial had, therefore, violated the Due Process Clause of the Fourteenth Amendment. After a hearing, the Criminal Court of Cook County denied relief. The Supreme Court of Illinois affirmed the Criminal Court's finding that due process had not been violated at Reck's trial. Reck v. People, 7 Ill 2d 261, 130, NE2d 200. This Court denied certiorari "without prejudice to an application for a writ of habeas corpus in an appropriate United States District Court." Reck v. Illinois, 351 US 942, 100 L ed 1469, 76 S Ct 838.

Reck then filed a petition for habeas corpus in the United States District for the Northern District of Illinois. The writ issued, and at the hearing the District Court received in evidence the transcript of all relevant proceedings in the Illinois courts. In an opinion reviewing in detail the circumstances surrounding Reck's confession, the District Court held "the Due Process Clause not violated in the instant case." 172 F Supp 734. The Court of Appeals for the Seventh Circuit affirmed, one judge dissenting, 274 F2d 250, and we granted certiorari, 363, US 838, 4 L ed 2d 1725, 80 S Ct 1629. The only question presented is whether the State of Illinois violated the Due Process Clause of the Fourteenth Amendment by using an evidence at Reck's trial confessions which he had been coerced into making.

The question whether there has been a violation of the Due Process Clause of the Fourteenth Amendment by the introduction of an involuntary confession is one which it is the ultimate responsibility of this Court to determine. See Malinski v. New York, 324 US 401, 404, 89 L ed 1029, 1032, 65 S Ct 781; Thomas v. Arizona, 356 US 390, 393, 2 L ed 2d 863, 866, 78 S Ct 885; Watts v. Indiana, 338 US 49, 51 52, 93 L ed 1801, 1804, 1805, 69 S Ct 1347, 1357. After thoroughly reviewing the record in this case, we are satisfied that the district judge's summary of the undisputed facts is accurate and complete. Neither in brief nor oral argument did the respondent take issue with these findings. No useful purpose would be served by attempting to paraphrase the district judge's words:

". . . Emil Reck was at the time of this horrible crime but nineteen years old. Throughout his life he had been repeatedly classified as mentally retarded and deficient by psychologists and psychiatrists of the Institute for Juvenile Research in Chicago. At one time he had been committed to an institution for the feebleminded, where he had spent a year. He dropped out of school at the age of 16, never having completed the 7th grade, and was found to have the intelligence of a child between 10 and 11 years of age at the time of his trial. Aside from his retardation, he was never a behavior problem and bore no criminal record.

"Reck was arrested in Chicago without a warrant at 11:00 a.m. Wednesday, March 25, 1936, on suspicion of stealing bicycles. He was then shuttled between the North Avenue Police Station and the Shakespeare Avenue Police Station until 1:15 p.m., at which time he was returned to the North Avenue Police Station and there interrogated mainly about bicycle thefts until 6:30 or 7:00 p.m. He was then taken to the Warren Avenue Police Station where the night. The records shows that Reck was fed an egg sandwich and coffee at the North Avenue Station and a bologna sausage sandwich at the Warren Avenue Station.

"On Thursday, at 10:00 a.m., Reck was brought back to the North Avenue Station where he was interrogated some six or seven hours about various crimes in the District. Afterwards, he was sent to the Shakespeare Station and later that evening he was taken downtown to the Detective Bureau where he was exhibited at a so-called 'show-up'. The record does not indicate where Reck spent the night. The records shows that Reck was fed an egg sandwich and a glass of milk on Thursday but apparently nothing else.

"The record is silent as to where Reck spent Friday morning but it is clear that interrogation was resumed sometime in the early afternoon. Friday evening over one hundred people congregated in the North Avenue Police Station where Reck was exhibited on the second floor. Shortly after 7:00 p.m. Reck fainted and was brought to the Cook County Hospital where he was examined by an intern who found no marks or bruises upon his body and rejected him for treatment. Reck was then taken directly back to the North Avenue Station where he was immediately again placed on exhibition. He again became sick and was taken to an unfurnished handball room, where a Sergent Aitken, assigned to the Peacock murder investigation, questioned him about the Peacock murder for a short period of time. Reck again became sick and a Dr. Abraham was called who later testified that Reck was extremely nervous, that he was exposed and that his shirt was unbuttoned and hanging outside of his pants. He was rubbing his abdomen and complaining of pain in that region. After an examination of 60 to 90 seconds, Dr. Abraham left and Reck was questioned intermittently and exhibited to civilians until approximately 9:30 p.m. when he became ill and vomited a considerable amount of blood on the floor.

"Reck was again brought to the Cook County Hospital at 10:15 p.m. on Friday where he was placed in a ward and given injections of morphine, atropine, and ipecac twice during the evening. At about 2:00 a.m. two physicians, Doctor Scatliff which has been assisting the police in the Peacock murder came at the request of Prosecutor Kearney to see if there were any marks of brutality on Reck. They found the door of Reck's room barred by a police officer. After securing permission from one, Police Captain O'Connell, they went in and found Reck asleep and therefore made only a cursory examination in the dark which revealed nothing conclusive. At 9:00 a.m. on Saturday, Reck told Dr. Zachary Felsher of the Cook County Hospital that the police had been beating him in the stomach. He also told Dr. Weissman of the same hospital that he had been beaten in the abdomen and chest over a three-day period. This was the first time since his arrest some 70 hours before that Reck had conversed with any civilian outside the presence of police officers. His father had attempted to see Reck on Thursday and Friday at the North Avenue Police Station and on Saturday at the Cook County Hospital. Each time he was refused.

"At 9:30 a.m. on Saturday, Reck was removed from the hospital in a wheelchair and was questioned about the Peacock murder as soon as he was transferred into Captain O'Connell's car to be transported to the North Avenue Police Station, where the questioning continued until the afternoon, when he was taken to the State's Attorney's office at approximately 2:00 p.m.

"Previously to this, on Friday evening, two of the boys, Nash and Goeth, who had been arrested with Reck, had confessed to the murder of Dr. Peacock, implicating Reck and one other boy, Livingston. At about 3:00 a.m. on Saturday, Livingston also agreed to sign a confession. (Upon arraignment, Livingston pleaded not guilty and alleged that he was subjected to physical abuse by the police.)

"On Saturday afternoon, Reck was questioned about the whereabouts of the gun which Goeth had told police that Reck possess-

ed. After intensive interrogation, Reck admitted that Goeth had told him of the Peacock murder. About 4:30 p.m. in front of a group of officers and prosecutors, Reck was confronted with Nash and Goeth. Nash told the story which became his signed confession. Reck denied participation in the crime. Goeth then made the statement that Nash was telling the truth and implicated Reck. At this point Reck stated that he was present at the crime but that Livingston and not he struck Dr. Peacock.

"At 5:55 p.m. of the same Saturday, March 28, 1936, a joint confession was taken, at which time Reck was very weak and sick looking. At this point, Reck had been in custody almost 80 hours without counsel, without contact with his family, without a court appearance and without charge or bail. The text of this joint confession reveals mostly yes and no answers in the case of Reck. The interrogation did not deal with the gun or the automobile used in the crime and was signed by all that Saturday night.

"On Sunday, Reck was again interrogated in the State's Attorney's office and at 4:30 p.m. his individual statement was taken which was more or less a reiteration of the joint confession. The boys then washed up and were given clean clothes. Thereafter, in a formal ceremony in front of numerous officers and prosecutors as well twelve invited civilians, the statements were read to the boys, they were duly cautioned and the confessions were then signed. The boys did not know there were civilians present and were not permitted counsel. At this time Reck had been without solid food since Friday when he had an egg sandwich. He was placed on a milk diet by the doctor Friday night at the hospital.

"Reck was held in custody Monday, Tuesday and Wednesday, March 30 through April 1. Why, is not revealed in the record. On Thursday, April 2, 1936, Reck was rearraigned in open court and pleaded *not guilty*. He had not seen his father or other relatives or any lawyer during this entire period."

As the district judge further noted, the record "carries an unexpressed import of police brutality, . . ." Reck testified at length to beatings inflicted upon him on each of the four days he was in police custody before he confessed. His testimony was corroborated. The police, however, denied beating Reck, and, in view of this conflict in the evidence, we proceed upon the premise, as did the District Court, that the officers did not inflict deliberate physical abuse or injury upon Reck during the period they held him in their custody. See Thomas v. Arizona, 356 US 390, 402, 403, 2 L ed 2d 863, 871, 872, 78 S Ct 885; Stein v New York, 346 US 156, 183, 184, 97 L ed 1522, 1541, 1542, 73 S Ct 1077; Ashcraft v Tennessee, 322 US 143, 152, 88 L ed 1192, 1198, 1199, 64 S Ct 921; Ward v Texas, 316 US 547, 552, 86 L ed 1663, 1665, 1666, 62 S Ct 1139.

But it is hardly necessary to state that the question whether a confession was extracted by coercion does not depend simply upon whether the police resorted to the crude tactic of deliberate physical abuse. "The blood of the accused is not the only hallmark of an unconstitutional inquisition" Blackburn v Alabama, 361 US 199, 206, 4 L ed 2d 242, 247, 80 S Ct 274. The question in each case is whether a defendant's will was overborne at the time he confessed. Chambers v Florida, 309 US 227, 84 L ed 716, 60 S Ct 472; Watts v Indiana, 338 US 49, 52, 53, 93 L ed 1801, 1805, 1809, 69 S Ct 1347, 1357; Leyra v Denno, 347 US 556, 558, 98 L ed 948, 950, 74 S Ct 716. If so, the confession cannot be deemed "the product of a rational intellect and a free will," Blackburn, supra (361 US at 208). In resolving the issue all the circumstances attendant upon the confession must be taken into account. See Fikes v. Alabama, 352 US 191, 198, 1 L ed 2d 246, 251, 77 S Ct 281; Payne v Arkansad, 356 US 560, 567, 2 L ed 2d 975, 980, 78 S Ct 844. Physical maltreatment is but one such circumstance, albeit a circumstance which by itself weighs heavily. But other circumstances may combine to produce an effect just as impellingly coercive as the deliberate use of the third degree. Such, we think, were the undisputed circumstances of this case, as set out in detail by the District Court.

At the time of his arrest Reck was a nineteen-year old youth of subnormal intelligence. He had no prior criminal record or experience with the police. He was held nearly eight days without a judicial hearing. Four of those days preceded his first confession. During that period Reck was subjected each day to six or seven hour stretches of relentless and incessant interrogation. The questioning was conducted by groups of officers. For the first three days the interrogation ranged over a wide variety of crimes. On the night of third day of his detention the interrogation turned to the crime for which petitioner stands convicted. During this same four-day period he was shuttled back and forth between police stations and interrogation rooms. In addition, Reck was inmittently placed on public exhibition in "show-ups." On the night before his confession, petitioner became ill while on display in such a "show-up." He was taken to the hospital, returned to the police station and put back on public display. When he again became ill he was removed from the "show-up," but interrogation in the windowless "handball court" continued relentlessly until he grew faint and vomited blood on the floor. Once more he was taken to the hospital, where he spent the night under the influence of drugs. The next morning he was removed from the hospital in a wheel chair, and intensive interrogation was immediately resumed. Some eight hours later Reck signed his first confession. The next afternoon he signed a second.

During the entire period preceding his confessions Reck was without adequate food, without counsel, and without the assistance of family or friends. He was, for all practical purposes, held incommunicado. He was physically weakened and in intense pain. We conclude that this total combination of circumstances " is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear." Ashcraft v Tennessee, 322 US 143. 154, 88 L ed 1192, 1199, 64 S Ct 921.

It is true that this case lacks the physical brutality present in Brown v Mississippi, 297 US 278, 80 L ed 682, 56 S Ct 461, the threat of mob violence apparent in Payne v Arkansas, 356 US 560, 2 L ed 2d 975, 98 S Ct 844, the thirty-six hours of consecutive questioning found in Ashcraft v Tennessee, 322 US 143, 88 L ed 1192, 64 S Ct 921, the threats against defendant's family used in Harris v South Carolina, 338 US 68, 93 L ed 1815, 69 S Ct 1354, 1357, or the deception employed in Spano v New York, 360 US 315, 3 L ed 2d 1265, 79 S Ct 1202, and Leyra v Denno, 347 US 556, 98 L ed 948, 74 S Ct 716. Nor was Reck's mentality apparently so irrational as that of the petitioner in Blackburn v Alabama, 361 US 199, 4 L ed 2d 242, 80 S Ct 274. However, it is equally true that Reck's youth, his subnormal intelligence, and his lack of previous experience with the police make it impossible to equate his powers of resistance of overbearing police tactics with those of the defendants in Stein v New York, 346 US 156, 97 ed 1522, 73 S Ct 1077, or Lisenba v California, 314 US 219, 86 L ed 166, 62 S Ct 280.

Although the process of decision in this area, as in most, requires more than a mere color-matching of cases, it is not inappropriate to compare this case with Turner v Pennsylvania, 338 US 62, 93 L ed 1810, 69 S Ct 1352, 1357, where we held a confession inadmissible on a record disclosing circumstances less compelling. Decision in Turner rested basically on three factors: the length of detention, the amount and manner of interrogation, and the fact that Turner had been held incommunicado by the police. Turned had been in custody for four nights and five days before he confessed. He had been questioned intermittently, as much as six hours in a day, sometimes by one, sometimes by several officers. He had been interrogated a total of some twenty-three hours. Reck was held the same length of time, under basically the same circumstances, before his second confession. He was held some twenty-four hour less than Turner before his first con-

fession, but during that period he was subjected to more concentratedly intensive interrogation, in longer stretches. He also spent considerable periods of time on public display in "show-ups," a factor not present in Turner. In addition, Reck was weakened by illness, pain, and lack of food. Finally, unlike Turner, Reck must be regarded as a case of a least borderline mental retardation. The record here thus presents a totality of coercive circumstances far more aggravated than those which dictated our decision in Turner. See also Johnson v Pennsylvania, 340 US 881, 95 L ed 640, 71 S Ct 191; Fikes v Alabama, 352 US 191, 1 L ed 2d 246, 77 S Ct 281.

It cannot fairly be said on this record that "the inward consciousness of having committed a murder and a robbery and of being confronted with evidence of guilt which petitioner could neither deny nor explain seems enough to account for the confessions here." Stein v New York, 346 US 156, 185, 97 L ed 1522, 1542, 73 S Ct 1077. It is true that, as in Stein, Reck did not confess until confronted with the incriminating statements of his companions. But beyond this the circumstances in Stein bear little resemblance to those involved in this case. The defendants in Stein were questioned a total of twelve hours during a thirty-two hour detention. Part of that time was spent working out a "bargain" with police officers. Neither defendant was "young, soft, ignorant or timid." Stein, supra (346 US at 185). Nor were they "inexperienced in the ways of crime or its detection" or "dumb as to their rights." Id. 346 US at 186. By contrast, Reck was in fact young and ignorant. He was in fact inexperienced in the ways of crime and its detection. Moreover, he was subjected to pressures much greater than were the defendants in Stein. He was held incommunicado and questioned over a much longer period. He was physically ill during much of that time, in pain, and weakened by lack of food. Confrontation with the confessions of his companions in these circumstances could well have been the event which made further resistance seem useless to Reck, whether he was guilty or not. On this record, therefore, the fact that his confession came hard upon the confessions of others who implicated him has little independent significance.

The State has made no effort to distinguish between the Saturday and Sunday confessions. Nor could it properly do so. The coercive circumstances preceding the first confession existed through Sunday. Reck remained in police custody, without a judicial hearing. He was subjected to further interrogation. He did not see counsel, family or friends between Saturday afternoon and Sunday afternoon. There are no other facts in the record suggesting that the Sunday confession was an act independent of the confession extracted on Saturday. Both confessions are subject to the same infirmities. Under the Due Process Clause of the Fourteenth Amendment neither was admissible at Reck's trial.

The petitioner's detention is in violation of the Constitution of the United States, and he is therefore entitled to be freed therefrom. The judgments of the Court of Appeals and the District Court are vacated and the case remanded to the latter. On remand, the District Court should enter such orders as are appropriate and consistent with the opinion allowing the State a reasonable time in which to retry the petitioner. Cf Rogers v Richmond, 365 US 534, 549, 5 L ed 2d 760, 771, 81 S Ct 735; Irvin v Dowd, — US —, 6 L ed 2d 751, 759, 81 S Ct —.

Vacated and remanded.

SEPARATE OPINIONS

Mr. Justice *Douglas*, concurring.

Emil Reck at the age of twelve was classified as a "high grade mental defective" and placed in an institution for mental defectives. He dropped out of school when he was sixteen. Though he was retarded he had no criminal record, no record of delinquency. At the time of his arrest, confession, and conviction he was nineteen years old.

He was arrested Wednesday morning, March 25, 1936. The next day, March 26, his father went to the police asking where his son was and asking to see him. The police would give him no information. On March 27 his father came to the police station again but was not allowed to see his son. Later the father went to see his son at the hospital but was denied admission.

The father was denied the right to see his son over and again. The son was held for at least eight full days incommunicado. He was arraigned before a magistrate on April 12, 1936, only after he had confessed.

The late professor Alexander Kennedy of the University of Edinburgh has put into illuminating words the manner in which long continued interrogation under conditions of stress can give the interrogator effective command over the prisoner. The techniques — now explained in a vast literature — include (1) disorientation and dissolution; (2) synthetic conflict and tension; (3) crisis and conversion; (4) rationalization and indoctrination; (5) apologetics and exploitation.

"Production by conditioning methods of a state of psychological tension with its concomitant physical changes in heart, respiration, skin and other organs, the feeling being unattached to any particular set of ideas. This is later caused to transfer itself to synthetic mental conflicts created out of circumstances chosen from the subject's life-history, but entirely irrelevant to the reasons for his detention. The object is to build up anxiety to the limits of tolerance so as to invoke pathological mental mechanisms of escape comparable to those of Conversion Hysteria."

Whether the police used this technique on Emil Reck no one knows. We do know from this record that Emil Reck was quite ill during his detention. He was so ill that he was taken to a hospital incommunicado. He was so ill he passed blood. What actually transpired no one will know. The records coming before us that involve the relations between the police and a prisoner during periods of confinement are extremely unreliable. The word of the police is on the side of orderly procedure, non-oppressive conduct, meticulous regard for the sensibilities of the prisoner. There is the word of the accused against the police. But his voice has little persuasion.

We do know that long detention, while the prisoner is shut off from the outside world, is a recurring practice in this country — for those of lowly birth, for those without friends or status. We also know that detention incommunicado was the secret of the inquisition and is the secret of successful interrogation in Communist countries. Professor Kennedy summarized the matter:

"From the history of the Inquisition we learn that certain empirical discoveries were made and recognized as important by a thoughtful and objective minority of those concerned. The first was that if a prisoner were once induced to give a detailed history of his past and to discuss it with his interrogators in the absence of threat or persuasion or even of evidence of interest, he might after an emotional crisis recant and confess his heresies. The second discovery was that true and lasting conversion could never be produced by the threat of physical torture. Torture not infrequently had the opposite effect and induced a negative mental state in which the prisoner could no longer feel pain but could achieve an attitude of mental detachment from his circumstances and with it an immunity to inquisition. The most surprising feature was the genuine enthusiasm of those who did recant. While these results were necessarily ascribed at the time to the powers of persuasion of the Inquistadores, it is evident in retrospect that something was happening which was often beyond their control. The same facts come to light in the long history of Russian political interrogation. In the Leninist period, the success of the immensely tedious method of didactic interrogation then in use was similarly ascribed to the appeal of Marxist doctrine to reason. The fact is that in conditions of confinement, detailed

history-taking without reference to incriminating topics and the forming of a personal relationship with an interrogator who subscribes to a system of political or religious explanation, there may occur an endogenous and not always predictable process of conversion to the ideas and beliefs of the interrogator."

Television teaches that confessions are the touchstone of law enforcement. Experience however teaches that confessions born of long detention under conditions of stress, confusion, and anxiety are extremely unreliable.

People arrested by the police may produce confessions that come rushing forth and carry all the earmarks of reliability. But detention incommunicado for days on end is so fraught with evil that we should hold it to be inconsistent with the requirements of that free society which is reflected in the Bill of Rights. It is the means whereby the commands of the Fifth Amendment (which I deem to be applicable to the States) are circumvented. It is true that the police have to interrogate to arrest; it is true that they may arrest to interrogate. I would hold that any confession obtained by the police while the defendant is under detention is inadmissible, unless there is prompt arraignment and unless the accused is informed of his right to silence and accorded an opportunity to consult counsel. This judgment of conviction should therefore be reversed.

Mr. Justice *Clark*, whom Mr. Justice *Whittaker* joins, dissenting.

Twenty-five years ago a jury found Reck guilty of the savage murder of Dr. Silber C. Peacock. His first attempt to upset that conviction came nine years later when he sought a writ of error to the Supreme Court of Illinois. It was denied by opinion, People v. Reck, 392 Ill 311, 64 NE 2d 526 (1945). This Court denied certiorari. Reck v Illinois, 331 US 855, 91 L ed 1862, 67 S Ct 1742 (1947). In the same year the Illinois Supreme Court again denied Reck's application for discharge. The next year the United States District Court for the Northern District of Illinois did likewise. Then, in 1952, an application under the Illinois Post Conviction Hearing Act was filed to test the validity of Rock's 199-year sentence imposed by a jury 16 years previously. His application was denied after a full hearing by the trial court, and the Illinois Supreme Court affirmed by a unanimous opinion. Reck v People, 7 Ill 2d 261, 130 NE 2d 200 (1955). Petition for certiorari was again denied, without prejudice to the filing of appropriate proceedings in Federal District Court. 351 US 942, 100 L ed 1469, 76 S Ct 838 (1956). This case was then filed in the United States District Court where no witnesses were heard, the court being satisfied with reviewing the record. Once again relief was denied, 172 F Supp 734, and the Court of Appeals affirmed. 274 F2d 250.

Today — 25 years after his conviction — this Court overturns the decision of the original trial judge, the judgment and findings of a state trial judge on post-conviction hearing, the unanimous opinion of the Supreme Court of Illinois on that appeal, decisions of both the Supreme Court of Illinois and a federal district judge on separate applications for habeas corpus and, finally, those of a federal district judge and Court of Appeals in this case. All of these courts are overruled on the ground that "a totality of coercive circumstances" surrounded Reck's confession. The Court second-guesses the findings of the trial judge and those of the only other trial court that heard and saw any of the witnesses, both of which courts impartially declared the confession to be entirely voluntary.

The Court has quoted at length and with approval the summary of the evidence by the United States district judge. I quote in the margin the findings of the two state judges who saw the witnesses and heard the evidence, one a few weeks after the events, and the other sixteen years thereafter. A casual comparison of the three findings shows that the federal judge — to say the least — has imported conclusions and added embellishments not present in the cold record of the trial. I need only cite one example, where he finds that his "cold summary . . . carries an unexpressed import of police brutality . . ." While the Court of Appeals at least sub silentio, overturned some of these findings, the State does not take issue with the basic facts in the summary but does strenuously object to its conclusory findings. Perhaps the explanation for these differences is best explained by the federal judge himself, when he finds that he has read "[t]he record . . . in the light most favorable" to Reck; and further that "Reck's confession was tested before a judge and jury who had the opportunity to observe witnesses and weigh other fresh evidence at first hand while I must make my decision on the basis of a cold and ancient record, *which can appear misleading*." (Emphasis added.)

Although the Court says that it proceeds "upon the premise, as did the District Court, that the officers did not inflict deliberate physical abuse or injury upon Reck," it nonetheless finds the confession to have been coerced. I assume, therefore, that the Court bases its reversal on psychological or mental coercion. In so doing it goes far beyond the holding of any of the prior cases of this Court.

I shall not repeat the facts except to note that Reck was arrested on Wednesday; he was not interrogated concerning Dr. Peacock's murder until Friday, when he immediately became ill, and was hospitalized; later that night all three of his confederates confessed; confronted with them on Saturday — each accusing him of participation in the murder — he confessed. There was no evidence of physical brutality, no request for counsel, nor, unlike Turner v Pennsylvania, 338 US 62, 93 L ed 1810, S Ct 1352, 1357 (1949), for relatives and friends. Nor did he ask for food or make any indication of any desire or need therefor, showing, in the light of the record, nothing more than the lack of interest in food of one who had suffered from stomach ulcers for years. How the Court can now — 25 years later — find on this "cold" record that these circumstances amounted to mental or psychological coercion is beyond my comprehension. I agree with the score of judges who have decided to the contrary.

Since mental coercion is the keystone of its rationale, the Court properly sets to one side the cases involving physical brutality, e. g., Brown v Mississippi, 297 US 278, 80 L ed 682, 56 S Ct 461 (1936). While they dealt with factors bearing upon the mental state of the defendants, the Court properly distinguishes cases involving threats of mob violence, the wearing down of the accused by protracted questioning, threats against members of the defendant's family, and those in which deception was practiced. Nor can Reck be classified as mental defective, as was the case in Blackburn v Alabama, 361 US 199, 4 L ed 2d 242, 80 S Ct 274 (1960).

The Court relies heavily on Turner v Pennsylvania (US) supra. I do not agree that it presented this Court with "a totality of coercive circumstances" significantly less "aggravated" than the situation presented here. In Turner the Court reviewed the Pennsylvania Supreme Court's affirmance of petitioner's conviction by a jury. In the present case no claim is made that the codefendants' confessions, with which Reck was confronted, were in fact not made and did not in fact implicate Reck in the murder of which he was convicted. In Turner, however, the petitioner" was falsely told that other suspects had 'opened up' on him." 338 US, at 64. Such a falsification, in my judgment, presents a much stronger case for relief because at the outset Pennsylvania's officers resorted to trickery. Moreover, such a psychological artifice tends to prey upon the mind, leading its victim to either resort to counter charges or make "further resistance useless," and abandonment of claimed innocence the only course to follow.

I

Paulino Garcia, petitioner vs. the Honorable Executive Secretary, and Juan Salcedo, Jr., in his capacity as Acting Chairman of the National Science Development Board, respondents, G. R. No. L-19748, September 13, 1962, Barrera, J.

1. CIVIL SERVICE; ADMINISTRATIVE INVESTIGATION; PREVENTIVE SUSPENSION; AS PROVIDED IN THE NEW CIVIL SERVICE LAW AND REVISED ADMINISTRATIVE CODE; LIFTING OF PREVENTIVE SUSPENSION PENDING ADMINISTRATIVE INVESTIGATION NOT FOUND IN ADMINISTRATIVE CODE. — Section 35, Republic Act 2260 (Civil Act of 1959) is a new provision in our Civil Service law. In the Revised Administrative Code, in its Article VI on "Discipline of Persons in Civil Service", is found the same power of preventive suspension exercisable by the President and the chief of a bureau or office with the approval of the proper head of department, as is now provided in Section 34 of Republic Act 2260, but there is no counterpart in the Administrative Code, of Section 35 pending administrative investigation.

2. ID.; ID.; EVILS OF INDEFINITE SUSPENSION DURING ADMINISTRATIVE INVESTIGATION. — The insertion for the first time in our Civil Service law of an express provision limiting the duration of preventive suspension is significant and timely. It indicates realization by Congress of the evils of indefinite suspension during investigation, where the respondent employee is deprived in the meantime of his means of livelihood, without an opportunity to find work elsewhere, lest he be considered to have abandoned his office. It is for this reason that it has been truly said that prolonged suspension is worse than removal. And this is equally true whether the suspended officer or employee is in the classified or unclassified service, or whether he is a presidential appointee or not.

3. ID.; ID.; NO DISTINCTION BETWEEN PREVENTIVE SUSPENSION OF OFFICER APPOINTED BY THE PRESIDENT AND SUSPENSION OF SUBORDINATE OFFICERS OR EMPLOYEES.—There is nothing in Section 35, Civil Service Act, which distinguishes between the preventive suspension of an officer appointed by the President and the suspension of subordinate officers or employee undergoing administrative investigation.

4. ID.; ID.; LIFTING OF PREVENTIVE SUSPENSION PENDING ADMINISTRATIVE INVESTIGATION APPLICABLE TO OFFICERS AND EMPLOYEES SUSPENDED BY THE PRESIDENT.—The phrase "officer or employee" used in Section 35, Civil Service Act, is not modified by the word "subordinate" as employed in Section 34 when speaking of the preventive suspension ordered by the chief of a bureau or office. In fact, the last sentence of Section 35 which provides that, "if the respondent officer or employee is exonerated, he shall be restored to his position with full pay from the period of suspension", is undeniably applicable to all officers and employees whether suspended by the President or by the Chief of office or bureau, or investigated by the Commissioner of Civil Service, or by a presidential investigating committee.

5. ID.; ID.; DISCIPLINARY ADMINISTRATIVE CASES SHOULD PASS THROUGH SCRUTINY OF COMMISSIONER OF CIVIL SERVICE; APPEAL OF DECISION TO CIVIL SERVICE BOARD OF APPEALS.—The first sentence of Section 35, Civil Service Act, stating that "when the administrative case against the officer or employee under preventive

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Further, the issue of voluntariness of the confession in Turner was submitted to the jury, but the trial judge refused to charge "that in considering the voluntariness of the confession the prolonged interrogation should be considered." At p. 65. And the appellate court considered it an indifferent circumstance that "convicted murderer" was held five days in jail. 358 Pa 350, 357, 58 A2d 61. Finally, in Turner the Supreme Court of Pennsylvania affirmed the conviction in an opinion stressing the probable guilt of the petitioner and assuming that the alternatives before it were either to approve the conduct of the police or to turn the petitioner " 'loose upon [society] after he has confessed his guilt.' " 338 US, at 65. This Court might well have disagreed in that case with findings so made, and, with less hesitation than is appropriate here, where the determinations of voluntariness have been so constant and so numerous, have reached an opposite conclusion. In this case we are not considering the validity of a conviction by certiorari to the court affirming that judgment. Voluntariness has not been here inadequately tested by a standard which refuses to take account of relevant factors. Cf. Rogers v Richmond, 365 US 634, 5 L ed 2d 760, 81 S Ct 735 (1961). To the contrary, a proper standard has been successively applied by at least two trial courts and several appellate courts, no one of which felt itself forced to choose between what it considered equally undesirable results, and with whose conclusions this Court may not so lightly disagree.

Similarly, in Fikes v Alabama, 352 US 191, 196, 197, 1 L ed 2d 246, 250, 251, 77 S Ct 281 (1957), also relied on by the Court, the confession was wrung from an "uneducated Negro, certainly of low mentality, if not mentally ill." Fikes "was a weaker and more susceptible subject than the record in that case reveals Turner to have been." Unlike Reck, Fikes was removed from the local jail to a state prison far from his home and the Court recognized that petitioner's location was a fact "to be weighed." So, too, in Fikes the petitioner's lawyer was barred from seeing him, unlike the situation here, where no request for counsel was made.

Of course, I agree with the Court that confession cases are not to be resolved by color-matching. Comparisons are perhaps upon occasion unavoidable, and, may even be proper, as in a case "on all fours" whose facts approach identity with those of one claimed opposite. I do not find that to be the situation here, however. In my view, the Court today moves onto new ground, and does not merely retread the steps it took in Turner. In my judgment, neither the elusive, measureless standard of psychological coercion heretofore developed in this Court by accretion on almost an ad hoc, case-by-case basis, nor the disposition made in Turner requires us to disagree with more than a score of impartial judges who have previously considered these same facts. Perhaps, as these cases indicate, reasonable minds may differ in the gauging of the cumulative psychological factors upon which the Court bases its reversal, but in what case, I ask, has a court dealing with the same extrinsic facts, a quarter of a century after conviction, overturned so many decisions by so many judges, both state and federal, entirely upon psychological grounds? When have the conclusions of so many legal minds been found to be so unreasonable by so few?

Certainly, I walk across this shadowy field no more surefootedly than do my brothers, but after reading the whole record and the opinions of all of the courts that have heard the case I am unpersuaded that the combined psychological effect of the circumstances somehow, in some way made Reck speak. The fact is, as the Court of Appeals said, when confronted with and accused by all three of his confederates, Reck knew the "dance was over and the time had come to pay the fiddler," quoting from Mr. Justice Jackson's opinion for the Court in Stein v New York, 346 US 156, 186, 97 L ed 1522, 1543, 73 S Ct 1077 (1953).