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Criminal Law—Coerced Confessions

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court, affirming the Board's action, declared, "[I]t is enough to say that we are wholly without jurisdiction to review such questions." *Barsky v. Board of Regents of University of New York*, 305 N. Y. 89, 99, 111 N. E. 2d 222, 226 (1953). Thus, even in the disciplinary area, the court refused to widen its scope of review. See 3 BFL. L. REV. 56.

The declaration by the court, in the instant case, of the power of review which it possesses over S. C. A. D. transcends the accustomed view of judicial review in New York. The statute setting up this agency declares that "the court shall have the power to grant such temporary relief of restraining order as it deems proper, and to make and enter . . . an order enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission." N. Y. EXECUTIVE LAW § 298. The court indicates that it is this statute which instigates a departure from the ordinary type of judicial review as provided for in C. P. A. Art. 78. However, reference to this Article reveals very little difference, if any, in the scope of review provided therein. It states that "the court may annul or confirm, wholly or partly, or modify the determination reviewed, . . . and may direct appropriate action or inaction by the respondent (administrative agency)." N. Y. C. P. A. Art. 78, § 1300.

It is submitted that, because of the striking similarity of wording in the two sections, little precedent value should be placed upon the court's declaration of its broader scope of review in the instant case.

Vincent A. DeLorio

CRIMINAL LAW—COERCED CONFESSIONS

Defendants were convicted of murder. At their trial, confessions, alleged to have been coerced, were admitted in evidence. The question of coercion was left to the jury under the charge to consider them only if they were found to be voluntary. *Held* (6-3) affirming: (1) the jury could reasonably have found that the confessions were voluntary; (2) it was not a violation of due process for the judge to refuse to charge that the jury must acquit if it found that the confessions were coerced. *Stein v. New York*, 346 U. S. 156 (1953).

The first case in which the United States Supreme Court reversed a state conviction involving the use of a coerced confession held that due process, guaranteed by the Fourteenth Amendment,

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is violated when a conviction rests solely upon a confession coerced by torture and threats. *Brown v. Mississippi*, 297 U. S. 278 (1936). By 1944 the grounds of reversal had been broadened to the use of confessions procured under "inherently coercive" circumstances, including prolonged questioning without sleep. *Ashcraft v. Tennessee*, 322 U. S. 143 (1944).

While the court will not weigh disputed evidence as to the voluntary nature of a confession, *Lisenba v. California*, 314 U. S. 219, 238 (1941), the findings in lower courts do not preclude the court from independently examining the undisputed evidence to determine whether a confession was coerced. *Chambers v. Florida*, 309 U. S. 227, 229 (1940).

If the court finds that a confession was coerced, and it was introduced at the trial, the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict. *Malinski v. New York*, 321 U. S. 401, 404 (1945). Despite the weight of other evidence, if the jury may have been influenced by the introduction of a coerced confession, due process is violated and a new trial is required. *Stroble v. State of California*, 343 U. S. 181, 190 (1952).

Under the New York type of procedure the jury determines whether doubtful confessions are voluntary. In its terms the holding of the principal case is limited to the proposition that, where other evidence is present, a jury need not *acquit* if it finds that a confession was coerced. If this position necessarily implies that an appellate court need not *reverse* if it finds that a confession was coerced, then the *Malinski* case is overruled. The defendant then would have to prove that because the jury had to some extent *based* their verdict on the confession its introduction was prejudicial to him. With such an attenuated concept of due process prosecutors would be free to introduce confessions procured by any means of coercion so long as there is also other untainted evidence to sustain the conviction.

It is not believed that the United States Supreme Court will feel bound by such logical subtleties but that it will continue to apply the *Malinski* rule.

Jules Gordon