

CHAPTER 6

POLICE INTERROGATION AND CONFESSIONS

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1. THE "VOLUNTARINESS" TEST

Whatever the meaning of the elusive terms "involuntary" and "coerced" confessions in the 1950s and 1960s, for centuries the rule that a confession was admissible so long as it was "voluntary" was more or less an alternative statement of the rule that a confession was admissible so long as it was free of influences which made it "untrustworthy" or "probably untrue." Thus, Wigmore, the leading authority on evidence, reflected the law prevailing at the time when in 1940 he pointed out that a confession was not inadmissible because of "any *illegality* in the method of obtaining it" or "because of any connection with the *privilege against self-incrimination*." (The Court did not apply the privilege against compulsory self-incrimination to the proceedings in the police station and other "in-custody questioning" until its 1966 decision in *Miranda*.)

The "untrustworthiness" rationale, the view that the rules governing the admissibility of confessions were merely a system of safeguards against false confessions, could explain the exclusion of the confession in *Brown v. Mississippi*, 297 U.S. 278 (1936), the first Fourteenth Amendment Due Process confession case, where the deputy sheriff who had presided over the beatings of the defendants conceded that one had been whipped, "but not too much for a Negro." And the same rationale was also adequate to explain the exclusion of confessions in the cases that immediately followed the *Brown* case, such as *Chambers v. Florida*, 309 U.S. 227 (1940) and *Ward v. Texas*, 316 U.S. 547 (1942), for they too, involved actual or threatened physical violence. But as the crude practices of the early cases grew outmoded and cases involving more subtle pressures began to appear, it became more difficult to assume that the resulting confessions were untrustworthy.

The first case in this section, *Ashcraft v. Tennessee*, illustrates how the rationale for excluding confessions was changing. There was good reason to think that Ashcraft had indeed been involved in his wife's murder. Nevertheless, calling the extended police questioning to which Ashcraft had been subjected "inherently coercive," the Court ruled that the defendant's confession should not have been allowed into evidence. Under the circumstances, *Ashcraft* seems to reflect less concern with the reliability of the confession than disapproval of police methods which the Court considered to be dangerous and subject to abuse.

Although he joined Justice Jackson's dissent in *Ashcraft*, Justice Frankfurter soon became the leading exponent of the "police misconduct" or "police methods"

convictions involving the use of confessions obtained by impermissible methods, independent corroborating evidence left little doubt of the truth of what the defendant had confessed. * * * The attention of the trial judge should have been focused [on] whether the [police behavior] was such as to overbear petitioner's will to resist and bring about confessions not freely self determined—a question to be answered with complete disregard of whether or not petitioner in fact spoke the truth."^a

Justice Jackson strongly resisted the expansion of the grounds for excluding confessions. *Ashcraft* is a great case only because Jackson's dissent made it so. No piece of writing better illustrates his famed powers of advocacy and extraordinary directness of approach. The crucial question, maintained Jackson, was not whether other suspects might have been overcome by the prolonged questioning, but whether *this particular defendant* had been. Jackson insisted that he had not; *Ashcraft* "was in possession of his own will and self-control at the time of confession." *Ashcraft* had decided to match wits with the police and after accusing another who in turn accused him "he knew he had lost the battle of wits." What was wrong with that? If the state is denied the right to apply any pressure to get someone to confess which is "inherently coercive," what pressure *could* it apply? And if it could not apply any "pressure," how could it be expected to get any suspect to confess?

Concurring in *Watts* and dissenting in the two companion cases, Justice Jackson again manifested his resistance to the expansion of the rights of suspects. He articulated concerns that many critics of the Warren Court's "revolution" in criminal procedure would repeat decades later. He underscored the "dilemma" facing a free society: To subject one without counsel to police interrogation "is a real peril to individual freedom," but bringing in a lawyer "means a real peril to solution of the crime."

^a At least in its advanced stage (the early 1960s), some commentators thought that the "due process" or "voluntariness" test had *three* underlying values or goals, barring the use of confessions (a) which were of doubtful reliability because of the police methods used to obtain them; (b) which were produced by offensive police methods even though the reliability of the confession was not in question; and (c) which were obtained from a person whose volitional power was seriously impaired (e.g., a drugged, extremely intoxicated or "insane" person), even though the confession was neither untrustworthy (because impressively corroborated) nor the product of any conscious police wrongdoing. However, in *Colorado v. Connelly*, 479 U.S. 157 (1986), upholding the confession of a mentally ill person (according to expert testimony, "God's voice" told defendant he had only two options: confess his murder or commit suicide), the Court, per Rehnquist, C.J., rejected the third value or goal:

"[All the 'involuntary' confession cases] have contained a substantial element of coercive police conduct. Absent police conduct causally related to the confession, there is simply no basis for concluding that any state action has deprived a criminal defendant of due process of law.

" * * * The flaw in respondent's argument is that it would expand our previous line of 'voluntariness' cases into a far-ranging requirement that courts must divine a defendant's motivation for speaking or acting as he did even though there be no claim that governmental conduct coerced his decision.

" * * * We think the Constitution rightly leaves [inquiries into the state of mind of one who has confessed quite apart from any state coercion] to be resolved by state laws governing the admission of evidence and erects no standard of its own in this area. A statement rendered by one in the condition of respondent might be proved to be quite unreliable, but this is a matter to be governed by the evidentiary laws of the forum and not by the Due Process Clause * * *."

Jackson voiced strong doubts that prohibiting the police from taking a suspect into custody and questioning him about an unwitnessed murder without advising him of his rights was "a necessary price to pay for the fairness which we know as 'due process of law.'" He recognized that the Bill of Rights, "even if construed as these provisions traditionally have been, * * * contain an aggregate of restrictions which seriously limit the power of society to solve such crimes as confront us in these cases," but he considered that "good reason for indulging in no unnecessary expansion of them."

A majority of the Court, however, was unpersuaded. As perhaps he knew, Jackson was swimming against the tide.

ASHCRAFT V. TENNESSEE

322 U.S. 143, 64 S.Ct. 921, 88 L.Ed. 1192 (1944).

JUSTICE BLACK delivered the opinion of the Court. * * *

[Early in the evening of Saturday, June 14, nine days after Ashcraft's wife had been murdered,] the officers came to Ashcraft's home and "took him into custody." In the words of the Tennessee Supreme Court,

"They took him to an office or room on the northwest corner of the fifth floor of the Shelby County jail. This office is equipped with all sorts of crime and detective devices such as a fingerprint outfit, cameras, high-powered lights, and such other devices as might be found in a homicide investigating office. * * * It appears that the officers placed Ashcraft at a table in this room on the fifth floor of the county jail with a light over his head and began to quiz him. They questioned him in relays until the following Monday morning, June 16, 1941, around nine-thirty or ten o'clock. It appears that Ashcraft from Saturday evening at seven o'clock until Monday morning at approximately nine-thirty never left this homicide room on the fifth floor."

Testimony of the officers shows that the reason they questioned Ashcraft "in relays" was that they became so tired they were compelled to rest. But from 7:00 Saturday evening until 9:30 Monday morning Ashcraft had no rest. One officer did say that he gave the suspect a single five minutes' respite, but except for this five minutes the procedure consisted of one continuous stream of questions.

As to what happened in the fifth-floor jail room during this thirty-six hour secret examination the testimony follows the usual pattern and is in hopeless conflict. Ashcraft swears that the first thing said to him when he was taken into custody was, "Why in hell did you kill your wife?"; that during the course of the examination he was threatened and abused in various ways; and that as the hours passed his eyes became blinded by a powerful electric light, his body became weary, and the strain on his nerves became unbearable. The officers, on the other hand, swear that throughout the questioning they were kind and considerate. They say that they did not accuse Ashcraft of the murder until four hours after he was brought to the jail building, though they freely admit that from that time on their barrage of questions was constantly directed at him on the assumption that he was

the murderer. Together with other persons whom they brought in on Monday morning to witness the culmination of the thirty-six hour ordeal the officers declare that at that time Ashcraft was "cool," "calm," "collected," "normal," that his vision was unimpaired and his eyes not bloodshot; and that he showed no outward signs of being tired or sleepy.

As to whether Ashcraft actually confessed there is a similar conflict of testimony. Ashcraft maintains that although the officers incessantly attempted by various tactics of intimidation to entrap him into a confession, not once did he admit knowledge concerning or participation in the crime. [The] officers' version of what happened, however, is that about 11 P.M. on Sunday night, after twenty-eight hours' constant questioning, Ashcraft made a statement that Ware had overpowered him at his home and abducted the deceased, and was probably the killer. About midnight the officers found Ware and took him into custody, and, according to their testimony, Ware made a self-incriminating statement as of early Monday morning, and at 5:40 A.M. signed by mark a written confession in which appeared the statement that Ashcraft had hired him to commit the murder. This alleged confession of Ware was read to Ashcraft about six o'clock Monday morning, whereupon Ashcraft is said substantially to have admitted its truth in a detailed statement taken down by a reporter. About 9:30 Monday morning a transcript of Ashcraft's purported statement was read to him. The State's position is that he affirmed its truth but refused to sign the transcript, saying that he first wanted to consult his lawyer. As to this latter 9:30 episode the officers' testimony is reinforced by testimony of the several persons whom they brought in to witness the end of the examination.

In reaching our conclusion as to the validity of Ashcraft's confession we do not resolve any of the disputed questions of fact relating to the details of what transpired within the confession chamber of the jail or whether Ashcraft actually did confess.⁷ Such disputes, we may say, are an inescapable consequence of secret inquisitorial practices. And always evidence concerning the inner details of secret inquisitions⁸ is weighted against an accused, particularly where, as here, he is charged with a brutal crime, or where, as in many other cases, his supposed offense bears relation to an unpopular economic, political, or religious cause.

Our conclusion is that if Ashcraft made a confession it was not voluntary but compelled. We reach this conclusion from facts which are not in dispute at all. * * *

We think a situation such as that here shown by uncontradicted evidence 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. It is inconceivable that any court of justice in the land, conducted as our courts are, open to the public, would permit prosecutors serving in relays to keep a defendant witness under continuous cross examination for thirty-six hours without

⁷ The use in evidence of a defendant's coerced confession cannot be justified on the ground that the defendant has denied he ever gave the confession.

⁸ State and federal courts, textbook writers, legal commentators, and governmental commissions consistently have applied the name of "inquisition" to prolonged examination of suspects conducted as was the examination of Ashcraft. * * *

rest or sleep in an effort to extract a "voluntary" confession. Nor can we, consistently with Constitutional due process of law, hold voluntary a confession where prosecutors do the same thing away from the restraining influences of a public trial in an open court room.

The Constitution of the United States stands as a bar against the conviction of any individual in an American court by means of a coerced confession. There have been, and are now, certain foreign nations with governments dedicated to an opposite policy: governments which convict individuals with testimony obtained by police organizations possessed of an unrestrained power to seize persons suspected of crimes against the state, hold them in secret custody, and wring from them confessions by physical or mental torture. So long as the Constitution remains the basic law of our Republic, America will not have that kind of government. * * *

JUSTICE JACKSON, with whom JUSTICE ROBERTS and JUSTICE FRANKFURTER join, dissenting. * * *

As we read the present decision the Court in effect [departs from] well-established principles. Instead, it: (1) substitutes for determination on conflicting evidence the question whether the confession was actually produced by coercion, a presumption that it was, on a new doctrine that examination in custody of this duration is "inherently coercive;" (2) it makes that presumption irrebuttable—i.e., a rule of law—because, while it goes back of the State decisions to find certain facts, it refuses to resolve conflicts in evidence to determine whether other of the State's proof is sufficient to overcome such presumption; and, in so doing, (3) it sets aside the findings by the courts of Tennessee that on all the facts this confession did not result from coercion, either giving those findings no weight or regarding them as immaterial. * * *

The burden of protecting society from most crimes against persons and property falls upon the state. Different states have different crime problems and some freedom to vary procedures according to their own ideas. Here, a state was forced by an unwitnessed and baffling murder to vindicate its law and protect its society. To nullify its conviction in this particular case upon a consideration of all the facts would be a delicate exercise of federal judicial power. But to go beyond this, as the Court does today, and divine in the due process clause of the Fourteenth Amendment an exclusion of confessions on an irrebuttable presumption that custody and examination are "inherently coercive" if of some unspecified duration within thirty-six hours, requires us to make more than a passing expression of our doubts and disagreements. * * *

This Court never yet has held that the Constitution denies a State the right to use a confession just because the confessor was questioned in custody where it did not also find other circumstances that deprived him of a "free choice to admit, to deny, or to refuse to answer." The Constitution requires that a conviction rest on a fair trial. Forced confessions are ruled out of a fair trial. They are ruled out because they have been wrung from a prisoner by measures which are offensive to concepts of fundamental fairness. Different courts have used different terms to express the test by which to judge the inadmissibility of a confession, such as "forced," "coerced," "involuntary," "extorted," "loss of freedom of will." But always

where we have professed to speak with the voice of the due process clause, the test, in whatever words stated, has been applied to the particular confessor at the time of confession.

* * * Interrogation per se is not, while violence per se is, an outlaw. Questioning is an indispensable instrumentality of justice. It may be abused, of course, as cross-examination in court may be abused, but the principles by which we may adjudge when it passes constitutional limits are quite different from those that condemn police brutality, and are far more difficult to apply. And they call for a more responsible and cautious exercise of our office. For we may err on the side of hostility to violence without doing injury to legitimate prosecution of crime; we cannot read an indiscriminating hostility to mere interrogation into the Constitution without unduly fettering the States in protecting society from the criminal.

It probably is the normal instinct to deny and conceal any shameful or guilty act. [The] term "voluntary" confession does not mean voluntary in the sense of a confession to a priest merely to rid one's soul of a sense of guilt. "Voluntary confessions" in criminal law are the product of calculations of a different order, and usually proceed from a belief that further denial is useless and perhaps prejudicial. To speak of any confessions of crime made after arrest as being "voluntary" or "uncoerced" is somewhat inaccurate, although traditional.

A confession is wholly and incontestably voluntary only if a guilty person gives himself up to the law and becomes his own accuser. The Court bases its decision on the premise that custody and examination of a prisoner for thirty-six hours is "inherently coercive." Of course it is. And so is custody and examination for one hour. Arrest itself is inherently coercive, and so is detention. When not justified, infliction of such indignities upon the person is actionable as a tort. Of course such acts put pressure upon the prisoner to answer questions, to answer them truthfully, and to confess if guilty.

But does the Constitution prohibit use of all confessions made after arrest because questioning, while one is deprived of freedom, is "inherently coercive?" The Court does not quite say so, but it is moving far and fast in that direction. The step it now takes is to hold this confession inadmissible because of the time taken in getting it.

[Some] men would withstand for days pressures that would destroy the will of another in hours. Always heretofore the ultimate question has been whether the confessor was in possession of his own will and self-control at the time of confession. For its bearing on this question the Court always has considered the confessor's strength or weakness, whether he was educated or illiterate, intelligent or moronic, well or ill, Negro or white. * * *

If the constitutional admissibility of a confession is no longer to be measured by the mental state of the individual confessor but by a general doctrine dependent on the clock, it should be capable of statement in definite terms. If thirty-six hours is more than is permissible, what about 24? or 12? or 6? or 1? All are "inherently coercive." Of course questions of law like this often turn on matters of degree. But

are not the states entitled to know, if this Court is able to state, what the considerations are which make any particular degree decisive? How else may state courts apply our tests? * * *

Apart from Ashcraft's uncorroborated testimony, which the Tennessee courts refused to believe, there is much evidence in this record from persons whom they did believe and were justified in believing. This evidence shows that despite the "inherent coerciveness" of the circumstances of his examination, the confession when made was deliberate, free, and voluntary in the sense in which that term is used in criminal law. This Court could not, in our opinion, hold this confession an involuntary one except by substituting its presumption in place of analysis of the evidence and refusing to weigh the evidence even in rebuttal of its presumption. * * *

This Court rejects the testimony of the officers and disinterested witnesses in this case that the confession was voluntary not because it lacked probative value in itself nor because the witnesses were self-contradictory or were impeached. On the contrary, it is impugned only on grounds such as that such disputes "are an inescapable consequence of secret inquisitorial practices." We infer from this that since a prisoner's unsupported word often conflicts with that of the officers, the officer's testimony for constitutional purposes is always *prima facie* false. We know that police standards often leave much to be desired, but we are not ready to believe that the democratic process brings to office men generally less believable than the average of those accused of crime. * * *

This questioning is characterized as a "secret inquisition," invoking all of the horrendous historical associations of those words. Certainly the inquiry was participated in by a good many persons, and we do not see how it could have been much less "secret" unless the press should have been called in. Of course, any questioning may be characterized as an "inquisition," but the use of such characterizations is no substitute for the detached and judicial consideration that the court below gave to the case.

We conclude that even going behind the state court decisions into the facts, no independent judgment on the whole evidence that Ashcraft's confession was in fact coerced is possible. And against this background of facts the extreme character of the Court's ruling becomes apparent.

I am not sure whether the Court denies the State all right to arrest and question the husband of the slain woman. No investigation worthy of the name could fail to examine him. Of all persons he was most likely to know whether she had enemies or rivals. Would not the State have a constitutional right, whether he was accused or not, to arrest and detain him as a material witness? If it has the right to detain one as a witness, presumably it has the right to examine him.

Could the State not confront Ashcraft with his false statements and ask his explanation? He did not throw himself at any time on his rights, refuse to answer, and demand counsel, even according to his own testimony. The strategy of the officers evidently was to keep him talking, to give him plenty of rope and see if he would not hang himself. He does not claim to have made objection to this. Instead

he relied on his wits. The time came when it dawned on him that his own story brought him under suspicion, and that he could not meet it. Must the officers stop at this point because he was coming to appreciate the uselessness of deception?

Then he became desperate and accused [Ware]. Certainly from this point the State was justified in holding and questioning him as a witness, for he claimed to know the killer. That accusation backfired and only turned up a witness against him. He had run out of expedients and inventions; he knew he had lost the battle of wits. After all honesty seemed to be the best, even if the last, policy. He confessed in detail.

At what point in all this investigation does the Court hold that the Constitution commands these officers to send Ashcraft on his way and give up the murder as insoluble? If the state is denied the right to apply any pressure to him which is "inherently coercive" it could hardly deprive him of his freedom at all. I, too, dislike to think of any man, under the disadvantages and indignities of detention being questioned about his personal life for thirty-six hours or for one hour. In fact, there is much in our whole system of penology that seems archaic and vindictive and badly managed. Every person in the community, no matter how inconvenient or embarrassing, no matter what retaliation it exposes him to, may be called upon to take the witness stand and tell all he knows about a crime—except the person who knows most about it. * * *

No conclusion that this confession was actually coerced can be reached on this record except by reliance upon the utterly uncorroborated statements of defendant Ashcraft. His testimony does not carry even ordinary guaranties of truthfulness, and the courts and jury were not bound to accept it. Perjury is a light offense compared to murder and they may well have believed that Ashcraft was ready to resort to a lesser crime to avoid conviction of a greater one. Furthermore, the very grounds on which this Court now upsets his conviction Ashcraft repudiated at the trial. He asserts that he was abused, but he does not testify as this Court holds that it had the effect of forcing an involuntary confession from him. On the contrary, he flatly insists that it had no such effect and that he never did confess at all.

Against Ashcraft's word the state courts and jury accepted the testimony of several apparently disinterested witnesses of high standing in their communities, in addition to that of the accused officers. One of the witnesses to Ashcraft's admission of guilt was his own family physician, two were disinterested business men of substance and standing, another was an experienced court reporter who had long held this position of considerable trust. Another was a member of the bar. Certainly, the state courts were not committing an offense against the Constitution of the United States in refusing to believe that this whole group of apparently reputable citizens entered into a conspiracy to swear a murder onto an innocent man, against whom not one of them is shown to have had a grievance or a grudge.

This is not the case of an ignorant and unrepresented defendant who has been the victim of prejudice. Ashcraft was a white man of good reputation, good position, and substantial property. For a week after this crime was discovered he was not detained, although his stories to the officers did not hang together, but was at large,

free to consult his friends and counsel. There was no indecent haste, but on the contrary evident deliberation, in suspecting and accusing him. * * *

The use of the due process clause to disable the states in protection of society from crime is quite as dangerous and delicate a use of federal judicial power as to use it to disable them from social or economic experimentation.

SPANO V. NEW YORK

360 U.S. 315, 79 S.Ct. 1202, 3 L.Ed. 1265 (1959).

CHIEF JUSTICE WARREN delivered the opinion of the Court.

This is another in the long line of cases presenting the question whether a confession was properly admitted into evidence under the Fourteenth Amendment. As in all such cases, we are forced to resolve a conflict between two fundamental interests of society; its interest in prompt and efficient law enforcement, and its interest in preventing the rights of its individual members from being abridged by unconstitutional methods of law enforcement. * * *

[Spano was drinking in a bar when he got into an altercation with another patron. Spano then went home, got a gun, found the patron, and shot him. Spano was charged with first-degree murder. After retaining an attorney, Spano turned himself in. Officers took him to the district attorney's office where questioning began at 7:15 p.m.] The record reveals that the questioning was both persistent and continuous. [Spano,] in accordance with his attorney's instructions, steadfastly refused to answer. [Spano asked one officer if he could speak to his attorney, but that request was denied.]

[A]fter five hours of questioning in which it became evident that [Spano] was following his attorney's instructions, * * * [he] was transferred to the * * * Police Station [where] questioning was resumed at 12:40 [a.m.] [Spano] persisted in his refusal to answer, and again requested permission to see his attorney * * *. His request was again denied.

[Spano had a close friend named Gaspar Bruno who worked for the police department. Spano had gone to school with Bruno and had been close friends with him for 8-10 years. Spano had called Bruno before turning himself in to tell him what had happened. When Spano continued to refuse to answer questions,] those in charge of the investigation decided that [his] close friend, Bruno, could be of use. * * * Although, in fact, his job was in no way threatened, Bruno was told to tell [Spano] that [Spano's earlier] telephone call had gotten him "in a lot of trouble," and that he should seek to extract sympathy from [Spano] for Bruno's pregnant wife and three children.

[Bruno tried on three different occasions to develop this theme with Spano to no avail. Spano continued to refuse to answer questions and ask for his attorney.] Inevitably, in the fourth such session directed by the Lieutenant, lasting a full hour, [Spano] succumbed to his friend's prevarications and agreed to make a statement. * * * The statement was completed at 4:05 a.m.

rationale for barring the use of confessions. According to this rationale, in order to condemn, and deter, offensive or otherwise objectionable police interrogation methods, it was necessary to exclude confessions produced by such methods regardless of how trustworthy they might be.

Thus in *Watts v. Indiana*, 338 U.S. 49 (1949), and two companion cases, the Court reversed three convictions resting on coerced confessions without disputing the accuracy of Justice Jackson's observation (concurring in *Watts* and dissenting in the other cases) that "checked with external evidence [the confessions in each case] are inherently believable and were not shaken as to truth by anything that occurred at the trial." Justice Frankfurter, who wrote the principal opinion in *Watts*, commented: "In holding that the Due Process Clause bars police procedure which violates the basic notions of our accusatorial mode of prosecuting crime and vitiates a conviction based on the fruits of such procedure, we apply the Due Process Clause to its historic function of assuring appropriate procedure before liberty is curtailed or life is taken." (Emphasis added.)

Three years later, speaking for the Court in the famous "stomach-pumping" case of *Rochin v. California*, discussed fn. a, p. 38, Justice Frankfurter viewed the coerced confession cases as "only instances of the general requirement that states in their prosecution respect certain decencies of civilized conduct." Involuntary confessions, he pointed out, "are inadmissible under the Due Process Clause even though statements contained in them may be independently established as true" because they "offend the community's sense of fair play and decency."

The second case in this section demonstrates how the totality of the circumstances voluntariness test was applied in a world where the Court was more focused on police methods than reliability. Whereas the Court in *Ashcraft* adopted a *per se* prohibition on thirty-six hours of continuous questioning as inherently compulsive, the Court in *Spano v. New York*, 360 U.S. 315 (1959), relied on the more traditional totality of the circumstances approach to conclude that the methods used by the police to obtain a confession were sufficient to overbear the suspect's will.

Perhaps the most emphatic statement of the "police methods" rationale appears in *Rogers v. Richmond*, 365 U.S. 534 (1961), one of Justice Frankfurter's last opinions on confessions. After more conventional methods had failed to produce any incriminating statements, a police chief pretended to order petitioner's ailing wife brought down to headquarters for questioning. Petitioner promptly confessed to the murder for which he was later convicted. The trial judge found that the police chief's pretense had "no tendency to produce a confession that was not in accord with the truth" and in his charge to the jury he indicated that the admissibility of the confession should turn on its probable reliability. But the Court, speaking through Justice Frankfurter, disagreed:

"[Convictions based on involuntary confessions must fall] not so much because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law; that ours is an accusatorial and not an inquisitorial system. * * * Indeed, in many of the cases [reversing] state