Denver Law Review

Volume 10 | Issue 6 Article 4

January 1933

Forced Confessions

George L. Longfellow Jr.

FORCED CONFESSIONS.

By George L. Longfellow, Jr., of the Denver Bar

WHILE the press and the public are criticizing and defending the use of the "third degree," or "shellacking" of persons accused of crime, and the Florida "sweat-box" case and the New York "fractured larynx" case of police brutality resulting in death of the victims are brought vividly to our attention, it is interesting to consider the matter with reference to the trustworthiness of confessions obtained by such methods.

The use of such methods is obviously in violation of the constitutional provision that no person shall be compelled, in any criminal case, to be a witness against himself. An editorial in a current magazine abhors the existence of this constitutional rule, contending that it shields the criminal. On the other hand, many opponents of the third degree abhor violations of the rule on the ground that such violations are in breach of public faith or of the rules of fair play.

We should remember, however, that criminal procedure is not a game, that the rules are not to be observed for the sake of good sportsmanship alone, and that the constitutional guarantees exist, not to shield the guilty, but to protect the innocent against forced and untruthful admissions of guilt. The real reason for the constitutional guarantee and for the rule of evidence excluding confessions so obtained is that experience has shown that no reliance can be placed upon such confessions. This is for the very obvious reason that they are not made because they are true, but because, whether true or false, the accused is led to believe it is for his interest to make them. "It is a mistaken notion," stated Nares, J., in Warickshall's Case, decided in England in 1783, "that the evidence of confessions and facts which have been obtained from prisoners by promises or threats is to be rejected from a regard to public faith. . . Confessions are received in evidence or rejected as inadmissible under a consideration whether they are or are not entitled to credit." Said Williams, J., in R. v. Mansfield, 14 Cox Cr. 639, "It is not because the law is afraid of having truth elicited that these confessions are excluded, but because the law is jealous of not having the truth." Wigmore, in his treatise on Evidence, states, "The

principle upon which a confession is treated as inadmissible is that under certain conditions it becomes untrustworthy as testimony." Experience, he says, has shown that "under certain stresses a person, especially one of defective mentality or peculiar temperament, may falsely acknowledge guilt. This possibility arises wherever the innocent person is placed in such a situation that the untrue acknowledgment of guilt is at the time the more promising of two alternatives between which he is obliged to choose; that is, he chooses any risk that may be in falsely acknowledging guilt, in preference to some worse alternative associated with silence. . . The principle then, upon which a confession may be excluded is that it is, under certain conditions, testimonially untrustworthy."

The peculiar trustworthiness of a confession as evidence of guilt lies in the natural presumption that such words would never be uttered by an innocent man in possession of his senses. While it may be presumed that an innocent man would not voluntarily declare himself to be guilty of a crime —and it is this presumption which gives a confession its value as evidence—many substantial inducements can be offered him for such a confession; such, for example, as the presence of a 200-pound officer standing erect upon the victim's torso, one heavily booted foot upon his Adam's apple and the other upon his abdomen, both feet jouncing jerkily up and down (See Literary Digest July 30, 1932.) We can easily conceive of a "confession" being gasped between spasms by an innocent man in such a predicament, provided he is able so to gasp. We can also conceive of a confession being obtained under much less spectacular circumstances, such, for example, as well directed and persistent blows, relentless ordeals of questioning conducted at all hours of night, and confinement in "the hole," (a dark, steel cell in the Denver City Jail, without bed, light, or water) for an indefinite period of time. But a confession so obtained is of no evidentiary value and should be excluded, as it obviously was not made because of a desire to tell the truth, but because of other inducements. Only by falsifying concerning the circumstances under which such a confession was obtained (a practice which is all too common) can it be used in evidence.

If, then, a confession obtained by means of threats and abuse is of doubtful trustworthiness, what justification exists

for the use of the third degree? To say that it is justified because the victim, having committed a vile or atrocious crime, only "got what he deserved," is to beg the question, for such reasoning commences with the presumption that the accused is guilty, and that the officers, therefore, are entitled to take the law into their own hands. To arrive at such presumption, the arresting officers must first constitute themselves a preliminary tribunal to pass upon the weight of the evidence, and thereupon may proceed to punish the accused before he has been accorded a trial by his peers. The fairness and impartiality of such a tribunal may well be doubted, as well as the judicial temperament and ability of such self-appointed "judges." A peculiar inconsistency on the part of the law enforcers who resort to this method is that they place great reliance upon a confession obtained in this manner as proof of the guilt of the confessor, but they place no credence whatsoever in the previous repeated denials of guilt as evidence of innocence of the accused. Such denials are never preserved in the police records, and a prisoner who persists in making them is invariably regarded as a stubborn and hardened criminal. In the famous "fractured larynx" case an assistant District Attorney quotes and describes the 200-pound officer as follows:

LITERARY DIGEST, *July 30, 1932, at Page 3:*

"I put one foot on his neck and one foot on his belly, and rocked back and forth. But I couldn't affect him! He's the toughest I ever saw!"

Mopping his brow, very hot and exhausted, a 200-pound police officer of Nassau County, Long Island, made this complaint to the young assistant district attorney, according to the testimony of the latter, subsequently reported in the newspapers.

Below-stairs, the prisoner, young Hyman Stark, was struggling for breath. Four hours later, removed finally to a hospital, this latest victim of the "third degree" perished of "asphyxia as a result of the fracture of the larynx."

During the "shellacking" (the police prefer this term, newspaper accounts assure us, to the ordinary term of "third degree"), the victim had been beaten, according to an autopsy, "with a smooth rubber hose and a piece of corrugated hose."

The conduct in that case appears to be an "improvement" on the ancient method of trial by wager of battle, for in that form of trial the accused was assured of an acquittal in case

he survived, whereas in the modern practice of the third degree, he is assured only of the doubtful glory of a reputation as a desperate and hardened criminal.

Furthermore, in case the evidence of guilt is so overwhelming as to leave no reasonable doubt as to the guilt of the accused, it is fair to say that a confession is not needed, for an admission on the part of the accused would, in such a case, be superfluous. But the third degree is usually resorted to when competent evidence of guilt is lacking. Its use usually is an admission on the part of the officers of the weakness of the case against the prisoner. It is generally asserted that the more efficient police departments are eliminating use of the third degree. In England the third degree is not resorted to and the accused often is not even questioned. The reason, no doubt, is that efficient police departments are able to trace the evidence, whereas the lazy and inefficient officer, unable to track the proof, but hoping that he has caught the criminal or someone else who will do as well, proceeds to "persuade" the prisoner to relieve him of his task by admitting that "the jig is up." Where the evidence is so shaky as to lead to the use of the third degree as a last resort, can anyone say that the prisoner "got what he deserved" because he committed the crime? Who has right to say with authority that he did commit the crime? Certainly not the detectives who cannot locate the evidence. And certainly not the newspapers, whose reporters know even less about the case than do the detectives.

It is obvious that the third degree should be abolished, not only for the purposes of fair play, but even more for the reasons that confessions obtained in this manner are valueless in the search for truth, and that the use of the third degree is an admission of inefficiency.

March 13, 1933.

Mr. Louis A. Hellerstein,
Editor-in-Chief, Dicta,
1020 University Building,
Denver, Colorado.

DEAR SIR:

I respectfully submit the following for "Dicta Observers."

HISTORY REPEATS
"CONSULT YOUR ~~BANKER~~ LAWYER"

Yours truly,

R. W. MCCRILLIS.