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## Habeas Corpus—Jurisdiction of a Federal District Court with Respect to State Prisoners

Douglas R. Hendel

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decides Congress must have intended pre-emption from the Court's finding that in the particular case the federal government can act more effectively single-handed.

BETTY B. FLETCHER

**Habeas Corpus—Jurisdiction of a Federal District Court with Respect to State Prisoners.** *Giron et al. v. Cranor*, 116 F.Supp. 92 (E.D.Wash. 1953), *aff'd sub nom. Cranor v. Gonzales*, 226 F.2d 83 (9th Cir. 1955), *cert. denied*, 350 U.S. 935 (1956) represents another significant step in the expanding supervision of state criminal proceedings by the federal courts. Petitioner was arrested without a warrant and held incommunicado for more than 24 hours by Seattle police. During this interval he was intensely interrogated and finally signed a statement which was offered as a confession at the murder trial of petitioner and his two alleged accomplices. Timely objection was made to the admission on the ground the statement was coerced, and, pursuant to established Washington practice, the trial court received evidence as to the circumstances under which the statement was made. The issue of *voluntariness* was decided by the trial court adversely to petitioner, the confession was admitted in evidence, and was submitted to the jury with instructions that the jurors were to consider the conflicting testimony regarding the circumstances of signing and were to determine whether the statement was made under the influence of fear produced by threats. In cases where the trial court has admitted a confession over objection, RCW 10.58.030 makes it a question of fact for the jury to decide whether or not the confession should be rejected as induced.

Apart from Gonzales' confession, there was substantial evidence that the murder was part of a conspiracy in which each of the three defendants took part. Both the federal district court which granted habeas corpus and the circuit court which upheld issuance of the writ tacitly assumed that a verdict based on other evidence alone would have been sustained. The defect inherent in the Washington procedure in this type of a case is the fact that a general verdict fails to disclose what, if any, use the jury has made of the confession. There are at least four distinct possibilities: 1) the jury may expressly have found the confession voluntary and used it as a basis for conviction; 2) the jury may have found the confession to be involuntary, and, in accord with the instructions, completely disregarded it and reached its verdict solely on the basis of the other evidence; 3) the jury may not have clearly decided the issue of voluntariness, simply returning an unanalytical and impressionistic verdict based on all the jurors saw and heard; (4) the jury may have decided not even to consider the question of the voluntariness of the confession, reaching a verdict on the basis of other evidence. As a practical matter, the problem is further complicated by the fact that no two jurors use the same mental processes in arriving at a verdict.

Following the verdict, Gonzales and his fellow defendants gave notice of appeal, but the appeal was never perfected and was subsequently dismissed by the Washington Supreme Court without consideration of the merits. Petition was later made to the Washington Supreme Court for writ of habeas corpus, and upon denial of the application without opinion, writ of certiorari was brought to the United States Supreme Court. Certiorari was denied without opinion, and the three prisoners petitioned the federal district court in Spokane for writs of habeas corpus. This petition alleged the confession was coerced by force and threats of further force, that it had been admitted in evidence over timely objection, and that it had been used by the jury to reach the general verdict of guilty. The federal court held an independent hearing on the issues raised by these allegations, passed upon the credibility of the various witnesses who had been subpoenaed—including several members of the Seattle police, resolved conflicts in the testimony of these witnesses, and made its own findings regarding the voluntariness of the confession. In granting the writ to Gonzales, Judge Driver held

that the evidence adduced at the hearing established that the confession was not voluntary, but was the product of force, fear and threats of further police brutality. The opinion of Judge Driver admits that evaluation of conflicting testimony depends upon imponderable factors which are at best difficult to analyze and more difficult to express. There is no discussion of the evidence, the opinion simply stating the conclusion that "it is deemed sufficient merely to say the Court is convinced that Gonzales was beaten by the Seattle police; that he was threatened with further physical violence if he did not do their bidding; and that the fear, produced by such treatment, caused him to make the confession which was used against him at the trial." 116 F.Supp. 95.

Thus, having found the confession coerced, Judge Driver was faced with the contention of respondent Superintendent of the Washington State Penitentiary that submission of the confession to the jury was harmless error since there was other substantial evidence to support the verdict. In this, respondent relied on the recent case of *Stein v. New York*, 346 U.S. 156 (1953), the facts of which closely parallel those of the instant case. However, the legal questions involved are entirely different, for the *Stein* case went directly to the U.S. Supreme Court for review of the affirmation of conviction by the highest New York court. There had, in *Stein*, been no attack upon the conviction by habeas corpus in either the state courts or in the federal district court, hence there had been no finding by any court that the confession was coerced, either physically or psychologically. The primary question in the *Stein* case was simply whether or not the New York practice of submitting the issue of voluntariness to the jury was constitutionally acceptable. This procedure is very similar to that used in Washington pursuant to RCW 10.58.030. The U.S. Supreme Court upheld the New York conviction and the challenged practice. Judge Driver appropriately held the *Stein* case was not determinative of the issues presented to him in *Gonzales*.

On appeal from the district court decision, the principal argument by the state was that the federal court had no jurisdiction to try anew the question of whether Gonzales' confession was the product of physical coercion, since this issue had been properly submitted to the state court jury and Gonzales, while there, had been accorded his full constitutional rights. The court of appeals approached this issue as one of first instance, and used as its chief authorities the language of *Brown v. Allen*, 344 U.S. 443 (1953), a case in which the writ was denied by a federal district court in much the same factual setting, and the wording of Section 2241 of Title 28 U.S.C.A. which gives to the district courts the power to grant writs of habeas corpus within their respective jurisdictions. The statute contains the express limitation that a writ may not extend to a state prisoner unless he is being held in violation of the U.S. Constitution. Section 2254 of Title 28 U.S.C.A. specifically states that the power to hear applications of state prisoners is conditioned upon exhaustion of state remedies. It is readily apparent that none of these authorities discussed by the court of appeals expressly states that district courts have the power to sit in judgment upon state courts in cases like *Gonzales* through the habeas corpus mechanism. However, these authorities do not deny that possibility in a proper case.

In a habeas corpus hearing the burden generally is upon the petitioner to prove that his constitutional rights have been denied or invaded. In the instant case, the court of appeals indicated its awareness of the fact that the petitioner could not actually prove that the jury had not concluded the confession was involuntary and had not thus wholly disregarded it as instructed and brought in the verdict solely on the basis of the other substantial evidence. The appellate court felt that requiring the petitioner to prove that the coerced confession was used by the jury created an insurmountable burden, and since the constitutional rights which he claimed were so important, it concluded that this burden should not be imposed on him. The correct rule to be

applied in situations such as this was stated by the court of appeals as follows: when it appears that the confession was coerced physically, habeas corpus must issue, notwithstanding the conceivable possibility that the jury rejected the confession and disregarded it. 226 F.2d 89-90.

Using again the language of *Brown v. Allen*, *supra*, the court of appeals held the adjudication in state court that the confession was not coerced was to be given some weight, but it need not be conclusive, or no way is left open to redress violations of the U.S. Constitution. Pursuant to Federal Rules of Civil Procedure 52 (a), 28 U.S.C.A., the appellate court refused to disturb the finding of physical coercion made by the district court since it was not clearly erroneous. Evidence which was sufficient to convince the district court that Gonzales had been coerced warranted the intervention of that court to decide the constitutional issues when this evidence was considered along with "the inherently unsatisfactory character of the state court proceedings." 226 F.2d 94.

The *Gonzales* case raises several difficult, but by no means insoluble, problems for state law enforcement officers. As Judge Driver points out, the chief defect in the Washington procedure is that the general verdict does not indicate whether or not the jury made use of the confession. This factual information can be secured simply by submitting interrogatories, in addition to the general verdict, to the jury. Answers to these interrogatories will indicate whether the jury found the confession voluntary and used it in reaching a verdict, or whether the jury found it involuntary, disregarded it, and arrived at a verdict upon the basis of other competent evidence. In case of appeal or attack by habeas corpus, these answers will be in the record. Rule of Pleading, Procedure and Practice 43(b), 34A Wn.2d 107, sets forth the method of submitting interrogatories to a jury. While this rule is not expressly limited to use in civil cases, it was probably not intended as a rule of criminal procedure, nor has it been so used. To clarify this area of the law, the rules should be amended to specify the method of using interrogatories in criminal cases, especially where there is an issue concerning the voluntariness of a confession. Neither of the opinions in the *Gonzales* case specifically states that a definitive answer on this question would necessarily be conclusive, so there remains the possibility that a federal district court could still retry the issue of voluntariness on application for habeas corpus in spite of the fact that the state court jury has indicated what, if any, use it has made of the confession.

A more decisive method of solving the problem of *Gonzales* can be achieved by submitting the issue of voluntariness to the jury in advance of the main trial. All of the factual circumstances surrounding the execution of the statement, together with appropriate instructions, can be presented to the jury for a decision on the sole question of admissibility. The virtue in such a practice lies in the fact that the jury decides the issue of voluntariness before any of the jurors see the statement or learn its contents. In addition, the issue of admissibility is settled separately from that as to guilt or innocence. Of course, a procedure of this type would have to be implemented by legislation or court rule.

A minority of states place the entire responsibility for deciding the issue of admissibility upon the trial judge, leaving to the jury merely the question of the weight to be given to the confession. This approach coincides with that pertaining to virtually all other questions of admissibility of evidence. The difficulty with a procedure which allows the judge to determine the issue of voluntariness is that this issue is primarily factual, whereas all other problems of admissibility of evidence are substantially questions of law. Hence, it would seem more appropriate to allow the jury to decide the issue of voluntariness under one or more of the procedures discussed above. Even if the judge alone were to decide the factual question of voluntariness, there is always

the possibility that a federal district court could, upon application for writ of habeas corpus, retry this issue and reach a different result.

Congress could solve the problems raised by the *Gonzales* case merely by amending Sections 2241 and 2254 of Title 28 U.S.C.A. to deprive district courts of the power to grant writs of habeas corpus in cases where state prisoners have had full jury trials on all of the issues, with the question of voluntariness squarely presented to the jury for its decision. Although various congressional bills have been drafted with this aim, it is somewhat doubtful that any significant changes will be made. In all probability, the states will have to work out the procedural problems raised by the *Gonzales* case without the aid of Congress.

DOUGLAS R. HENDEL