Legal Consequences of the Third Degree

Webster's New International Dictionary[1] defines "third degree" as, "severe examination or treatment of a prisoner commonly by continuous questioning over excessively long periods but at times by starving or physical torture by the police to extort an admission or confession." In common parlance, however, the term is limited to violence or other methods designed to cause physical suffering. Due to this misconception, the practice of the third degree is often vigorously denied where the accused is "grilled" continuously for hours without sleep or food. In police and criminal procedure and practice it is said that the "first degree" is practiced when the arrest is made; the "second degree" when the accused is confined; and the "third degree" when the accused is questioned in private quarters.[2]

A recent case indicates with startling clarity that brutality is still commonly practiced by our police and penitentiary officials.[3] In this case an inmate of the Illinois State Farm sued the superintendent as representative of the state for damages under the Civil Rights Act.[4] He alleged that he was struck over the head with a black-jack, resulting in an infection of the middle ear, kept in solitary confinement for 92 days, fed bread and water six days a week with one full meal every seventh day, for 92 days, and that he was compelled to sleep on a wet blanket. The court held that this stated a cause of action against the superintendent because of the failure of the superintendent to exercise care for plaintiff's well-being.

The third degree is a secret practice and one which is illegal, therefore, it is safe to assume that the number of cases referred to in judicial opinions is but a small fraction of the total number. The number that have been brought to light display such brutality and form such a pattern that there can be no doubt that the use of such methods is prevalent, if not wide spread.

What protection is there to a man who must submit to the indignities of the third degree?

Restrictions on Confessions as Evidence

Because of the widespread use of the third degree, confessions are carefully scrutinized by the courts and will not be accepted in

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[1] 2d ed. 1938.

[2] Address by Major Sylvester, before the International Association of Chiefs of Police, 1910. 3 Wigmore Evidence §851 (3d ed. 1940).

[3] Gordon v. Garrson, 77 F. Supp. 477 (E.D. Ill. 1948).

[4] 17 Stat. 13, 8 U.S.C. §§43, 47, 48 (1940).

evidence if there is slight proof that they were not voluntarily made.[5] A statement from a Massachusetts case is indicative of this attitude:

> This (confession), however, is a very doubtful species of evidence, and is to be admitted with great caution. Hasty confessions may be easily extorted by threats or promises from a person accused of crime, when in a state of agitation and alarm; and therefore all such confessions are excluded from the consideration of the jury. The slightest influence . . . is sufficient to exclude them.[6]

In the famous case aptly named the "Sweat Box Case", the accused was convicted of burglary. Without his confession there was not sufficient evidence to support the verdict of guilty. The defendant was incarcerated in a compartment 5 x 8 feet in size which was kept entirely dark. The court summarized the method employed by the state:

> For fear that some stray ray of light or breath of air might enter without special invitation, the small cracks were carefully blanketed. The prisoner was allowed no communication whatever with human beings. Occasionally the officer who had put him there, would appear, and interrogate him about the crime charged against him. To the credit of our advanced civilization and humanity it must be said that neither the thumbscrew nor the wooden boot was used to extort a confession. The efficacy of the sweat box was the sole reliance. This, with the hot weather of summer, and the fact that the prisoner was not provided with sole-leather lungs, finally after 'several days' of obstinate denial, accomplished the purpose of eliciting a 'free and voluntary' confession.[8]

After a severe castigation of the chief of police who submitted the defendant to these indignities, the court held that the confession was incompetent evidence.

Before the days of such refinements as the electric chair, the gas chamber, the rubber hose, and the rolled telephone directory that leave no tell-tale marks, a common method of obtaining a "voluntary confession" was to hang the accused by the neck. Such treatment renders a resulting confession involuntary.[9]

A confession obtained by striking, whipping or beating is ordinarily held to be involuntary and inadmissible as evidence.[10] The

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[5] It should be remembered, however, that confessions are presumed to be voluntary and the burden of proof is upon the defendant to show they were not. State v. Grover, 96 Me. 363, 368, 52 Atl. 757, 759 (1902); Ah Fook Chang v. United States, 91 F. 2d 805, 809 (C.C.A. 9th 1937).

[6] Commonwealth v. Knapp, 9 Pick. 495, 505 (Mass. 1830).

[7] Ammons v. Mississippi, 80 Miss. 592 (1902).

[8] *Id.* at 594.

[9] Strady v. State, 5 Cold. 300 (Tenn. 1868).

[10] Williams v. State, 88 Tex. Crim. Rep. 87, 225 S.W. 177 (1920); *See* People v. Tipscireska, 212 Mich. 484, 180 N.W. 617 (1920).

conduct of police officers in needlessly laying hands on a helpless man deserves the severest censure.[11]

The "water cure", consisting of pouring water into the nose of the accused so as to strangle him has also been used to force a confession and also renders the confession inadmissible.[12]

There are other means of employing the third degree not associated with direct acts of physical violence. Questioning may be coercive if it is excessive in length, or is accompanied by, or consists of, threats, or if it injects fear into the mind of the prisoner. The illegality of the arrest or custody will not of itself render a confession involuntary.[13] It has also been held that even if the accused's hands and feet were tied when the confession was made, this would not of itself render the statement inadmissible.[14] The same conclusion is reached when the accused confesses while handcuffed[15] or while tied with a rope if the tying is not painful and the confession is not made to procure relief.[16]

The attitude of Ohio courts on the third degree may not be so liberal, but is realistic in recognizing that the use of the third degree is the cause of as many unjustified acquittals as improper convictions. Usually, Ohio courts have admitted the confessions because, "We have not come to the place in our criminal jurisprudence that whenever the issue is the admission of a purported confession secured by police officers, while the prisoner is in their custody, their testimony on the subject is therefore to be disbelieved."[17]

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[11] People v. Trybus, 219 N.Y. 18, 113 N.E. 538 (1916); Missouri v. Ellis, 294 Mo. 270, 242 S.W. 952 (1922).

[12] White v. State, 129 Miss. 182, 91 So. 903 (1922).

[13] Balbo v. People, 80 N.Y. 484, 499 (1880); Gilmore v. State, 3 Okla. Crim. 434, 106 Pac. 801 (1910); State v. Raftery, 252 Mo. 72, 80, 158 S.W. 585 (1913).

[14] Franklin v. State, 28 Ala. 9 (1856).

[15] State v. Whitfield, 109 N.C. 876, 13 S.E. 726 (1891).

[16] State v. Cruse, 74 N.C. 393 (1876). For additional interesting cases giving police officials broad latitude in obtaining confessions see Coates, *Limitations on Investigating Officers,* 15 N.C.L. REV. 229, 233 (1936-37).

[17] State v. Collett, 44 Ohio L. Abs. 225, 58 N.E. 2d 417, 425 (1944); State v. Arnold, 44 Ohio L. Abs. 45, 63 N.E. 2d 31 (1945). *Cf.* Spears v. State, 2 Ohio St. 583 (1853). Compare the Federal view as set forth in Ashcraft et al v. Tennessee, 322 U.S. 143, 154 (1944), where Mr. Justice Black says, "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 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." Haley v. State, 68 S. Ct. 302 (1948); Chambers v. Florida, 309 U.S. 227, 237 (1940); Bram v. United States, 168 U. S. 532 (1897). *But see* Lisenba v. California, 314 U.S. 219, 241 (1941).

Similarly, in a recent Ohio case three minors suspected of murder were apprehended and before they were taken before any court and before charges were filed against them, signed confessions were obtained. The defendants claimed these confessions were obtained by duress and third degree methods and therefore were inadmissible. The court summarily rejected this argument saying, "This question . . . was submitted to the jury, which found against the accused. We are in accord with these findings."[18] On writ of certiorari the United States Supreme Court stated that the undisputed testimony showed that Haley, a 15 year old boy, was questioned by the police in relays for about five hours. During this time no friend or counsel was present. On these facts the Supreme Court reversed the Ohio courts and held that the confession should have been excluded as involuntary and as being violative of the due process requirements of the Fourteenth Amendment.[19]

There is no statute in Ohio which is specifically directed against the third degree, but there is one which regulates detention after arrest.[20] There is another the effect of which is to diminish police questioning of suspects.[21] Furthermore, after a person has been arrested in Ohio, any attorney is entitled, at the prisoner's request, or at the request of any of his relatives, to visit him and consult with him privately. Any violation of this request by an officer renders him punishable by fine and imprisonment.[22] In 1931, The National Commission on Law Observance and Enforcement published a report on *Lawlessness in Law Enforcement*[23] in which it examined in detail the existence of the third degree in the United States. A study was made of fifteen cities, among them Cincinnati and Cleveland. Compared with other cities throughout the country, Cincinnati was given a clean bill of health as to the practice of third degree methods. However, despite the statutory safeguards thrown around arrested prisoners, they can always be circumvented by the simple expedient of not reporting the arrest immediately and shunting the prisoner from precinct to precinct. At the time of the Commission's report, the third degree was prevalent in Cleveland and was practiced constantly by the Cleveland police.[24]

It can be stated with finality that there are few cases of in-

[18] Ohio v. Haley, 79 Ohio App. 237, 72 N.E. 2d 785 (1946) *appeal denied* 147 Ohio St. 340, 70 N.E. 2d 905 (1947).

[19] Haley v. State, 68 S. Ct. 302 (1948).

[20] OHIO GEN. CODE §13432-3 (1939).

[21] OHIO GEN. CODE §13432-22 1939).

[22] OHIO GEN. CODE §§13432-15, 13432-16 (1939); Thomas v. Mills, 117 Ohio St. 114, 157 N.E. 488 (1927).

[23] NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT 116 (1931).

[24] *Id.* at 118.

voluntary confessions and the use of the third degree to be found in the reported cases in Ohio. In one such case the accused contended that he had confessed after having been beaten on the way to the police station and beaten and kicked during the grilling of 25 or 30 hours. The trial court refused to permit the defendant to introduce evidence showing the violence used in eliciting the confession. Because of this, the court of appeals reversed the conviction.[25] Where the defendant confessed after a continued examination of 24 hours during which he was struck on the jaw several times and during which his lawyer was barred from the "confession room" the conviction was affirmed because the evidence was sufficient to support the verdict without the confession.[26]

The most common of the third degree methods is excessive questioning or "sweating" of the accused. Confessions so obtained are invariably excluded. As expressed by the court in a leading case, ". . . it appears that the officers transgressed the bounds of propriety by constantly questioning the appellant and making promises to him. . . . the court erred in admitting as evidence the statements made by appellant to the officers, and the case should be reversed for that reason."[27] No definite period can be said to be excessive. Because of the physical makeup of individuals and the variability of conditions and circumstances, the length of a permissive period must be determined from the facts of each case. Objectionable questions can, however, be more readily discovered. If the question contains a threat the confession thus obtained is vitiated.[28] Expressions such as "better tell the truth," and "it will be best for you to tell the truth" have generally been held insufficient to render a confession inadmissible.[29] But such language, coupled with other acts by the police officials, may render the admission, or confession, incompetent. Such statements may constitute a veiled threat or be held out as an inducement. Whether the

[25] Kosienski v. State, 24 Ohio App. 225, 157 N.E. 301 (1927).

[26] Snook v. State, 34 Ohio App. 60, 170 N.E. 2d 444 (1929). *See* Mosley v. State, 48 Ohio App. 554, 194 N.E. 2d 613 (1934).

[27] Cobb v. Commonwealth, 267 Ky. 176, 179, 101 S.W. 2d 418, 419 (1936). For similar results see, People v. Goldblatt, 383 Ill. 176, 49 N.E. 2d 36 (1943) (where accused was subjected to three days of intensive questioning); Enoch v. Commonwealth, 141 Va. 411, 126 S.E. 222 (1925) (defendant was interrogated for 14 hours and taken to house where victim lay in coffin and was there questioned further); People v. Prestidge, 182 Mich. 80, 148 N.W. 347 (1914); Commonwealth v. McClanahan, 153 Ky. 412, 155 S.W. 1131 (1913); State v. Powell, 266 Mo. 100, 180 S.W. 851 (1915).

[28] Murphy v. United States, 285 Fed. 801, 811 (1923); People v. Pantano 239 N.Y. 416, 146 N.E. 646 (1925).

[29] Kelly v. State, 72 Ala. 244 (1882); State v. Kornstett, 62 Kan. 221, 61 Pac. 805 (1900); Hintz v. Wisconsin, 125 Wis. 405, 104 N.W. 110 (1905); State v. Jon, 46 Nev. 418, 428 (1923) where several examples of similar phrases are discussed.

statements were actually threats is not as important as whether the accused, at the time, thought they were.

A confession obtained by trick, if not calculated to prevent the accused from telling the truth, will be received as evidence.[30] Although a confession seems to be an unequivocal indication of guilt to the average newspaper reader, it is in reality an unsatisfactory and dangerous method of proof unless properly obtained. Aside from the humanitarian considerations, it often leads to acquittals on the grounds of fear and duress when legal evidence might have been secured that would lead to convictions.

CIVIL LIABILITY

Assuming that a person has been subjected to the brutality of the third degree and has been injured or suffers mental anguish, the perpetrators themselves are clearly liable, but can the injured person recover from their superiors? The liability of an officer for the wrong of a subordinate involves three aspects: the relation between the officer and his subordinate; the officer's liability under his bond; and public policy.[31] Ordinarily, an officer is not liable for the negligence or misconduct of his subordinates on the theory of respondeat superior, because it is said that the relationship of master and servant does not exist between them.[32] The denial of the application of respondeat superior seems invalid with respect to third degree methods practiced in police stations. For there, all of the requirements for the application of the doctrine of respondeat superior are met, since such officials have as much control over subordinates at the police station as any employer has over his employees. Frequently, these subordinate officers are appointed directly by the governmental unit and removable only at its pleasure; but even where they are appointed and removed by their official superior, the latter is not liable unless he himself has been negligent in their selection or retention, or directed, authorized, or cooperated in the wrong.

In a California case the widow of a man who died as a result of a beating administered by police officers of Oakland, sued the chief of police, the city manager, and their bondsman for the wrong-

[30] Commonwealth v. Spardute, 278 Pa. 37, 122 Atl. 161 (1923); Johnson v. State, 107 Miss. 196, 65 So. 218 (1914) (accused visited by a reporter who said he was a spiritualist and that a confession would be good for accused's soul).

[31] Comment, *Liability of Public Officials for the Defaults of Their Subordinates,* 13 ST. JOHN'S L. REV. 351 (1930) (Where the author discusses these same three aspects with reference to the liability of an officer entrusted with public funds for the defaults of subordinates).

[32] MECHEM ON AGENCY §1502 (2d ed. 1914). Where the author states that the reasons are "motives of public policy, the necessities of the public service, and the perplexities and embarrassments of a contrary doctrine."

ful death of her husband. In overruling the defendant's demurrer, the Supreme Court of California held that the power of a public official to suspend or discharge his subordinates and to start proceedings to remove them carries with it the duty to exercise that power vigilantly, and such official's negligent failure to act makes him answerable in damages.[33] Although the court expressly rejected the doctrine of respondeat superior in this case, the theory used was the defendant's negligent failure to suspend or discharge the officers for unfitness and brutality known to defendants. It would seem, therefore, that suit should be brought under one of the exceptions to the doctrine of respondeat superior, *i.e.* that the superior personally directed the third degree acts, or co-operated in the offense, or failed to use ordinary care in employing or discharging his subordinates.[34] Where the general rule of nonliability for torts of subordinates has been enunciated, courts and textwriters have taken great care not to imply immunization for officials who have, or should have had, knowledge of their subordinates' vicious propensities.

In determining the liability of superior public officials in this field, courts often confuse the issue by trying to ascertain whether the duties of such officials are ministerial or discretionary. It has been said that if the duty is absolute, imperative, and simply ministerial, the officer is liable in damages to anyone injured, either by his omission to perform his duty, or by performing it negligently. But if the official's power is discretionary, the official is not liable for neglecting to use those powers.[35] This distinction is not a valid one because it is conducive to judicial acrobatics; a vehicle admirably fitted to enable the court to reach the answer it feels is justified in the circumstances. Once the court has decided that the duties are either ministerial or discretionary, the riddle of liability or non-liability is solved. Where third degree tactics are practiced, the superior officer may have authorized such conduct or, if not, he is rarely free from negligence to some degree in retaining unfit subordinates, or in not carefully overseeing their conduct. If that premise be adopted, then we may forget the doctrine of respondeat superior, ignore the unsound distinction between ministerial and discretionary duties of the superior officer and permit recovery on a showing that these subordinates are instrumentalities under the control of the superior officers.

It is accepted in the law of torts that it is negligent to use an

[33] Fernelius v. Pierce, 22 Cal. 2d 226, 138 P. 2d 12 (1943). *See also,* Hale v. Johnson, 140 Tenn. 182, 203 S.W. 949 (1918).

[34] Strickfaden v. Greencreek Hwy. Dist., 421 Idaho 738, 763, 248 P. 456, 463 (1926). 2 SHEARMAN AND REDFIELD, NEGLIGENCE §330 (revised ed. 1941).

[35] Hale v. Johnson, 140 Tenn. 182, 203 S.W. 949 (1918) (Official was held liable for nonperformance of a ministerial duty).

incompetent or unfit instrumentality, whether a human being or a thing, which the user knows, or should know, to be so defective that its use involves a chance of harm to others.[36] This theory of recourse would not permit recovery where the superior officer himself was not at fault, and would impose no undue burden on public officers. Even though the subordinate officers who administer the third degree are themselves public officers, if their superior has the power to suspend or remove them, then that places on him a correlative duty to exercise that power to protect the public interest. There can be no adequate protection of the public against the brutality of the third degree unless the higher officials are answerable for their failure to discharge their duties.

It may be argued that even if a civil action were allowed against a superior officer, such as a chief of police, that it would, in most cases, afford an inadequate remedy so far as pecuniary compensation is concerned. The answer to such an argument lies in the amount of the bond which is required as condition precedent to his qualification.[37] The sureties on an official bond guarantee faithful performance of official duty and it is taken to secure any cause of action that may arise against an official for either misfeasance or nonfeasance.[38] The bond is required, and is given, for the express purpose of protecting the public from illegal and unwarranted acts of the officer in the discharge of his official duties.[39] Recovery directly from the bonding company has been allowed where the police officer failed to faithfully perform his duties.[40] Beyond the common-law duty which the law imposes to act carefully once the duty to act is assumed, are duties created by statute. In such cases, the extent of the liability incident to a statutory duty must be determined by the statute itself.[41] If an officer's duty is to an individual injured by a breach of that duty, the officer is personally liable. A breach of duty to the public may cause an action

[36] RESTATEMENT, TORTS, §307 (1934).

[37] OHIO GEN. CODE §§2399 (bond of county commissioners); 4219 (bond for all officers in village government fixed by council with approval of the mayor); 2824 (bond of sheriff); 1855 (bond for officers of state institutions) (1939).

[38] State v. Newman, 2 Ohio St. 567 (1853).

[39] Rischer v. Meehan, 11 Ohio C.C. 403, 5 Ohio C.D. 416 (1896). For an interesting discussion of the liability of a bondsman see Fernelius v. Pierce, 22 Cal. 2d 226, 138 P. 2d 12 (1943).

[40] Maryland Casualty Co. v. McDiarmid, 116 Ohio St. 576, 157 N.E. 321 (1927); U.S. F. & G. Co. v. Samuels, 116 Ohio St. 587, 157 N.E. 325 (1927); Fidelity & Casualty Co. of New York v. Boehnlein, 202 Ky. 601, 260 S.W. 353 (1924).

[41] POLLOCK, TORTS 26 (13th ed. 1929). It may be that the Civil Rights Act has been so broadly construed as to permit an aggrieved person to utilize this federal statute in an action for damages in a state court. See footnote 3.

against the officer by the governmental unit representing the public. It is not clear how the courts determine the nature of the duty, but it seems to depend on certain policy factors. The argument is made that if officers were held liable to individuals for every negligent act committed by them, capable men would not accept public office. This argument does not seem too strong since the officer has affirmatively accepted a position of public trust and responsibility. If an individual is injured through the brutal third degree tactics of subordinates whom the superior officer knows to be, or should know to be, inclined to commit such illegal acts of violence, then that superior officer should be liable to the person injured as a consequence of his failure to perform his duty as a conscientious public official.

In Ohio, public officers are not liable for the acts, negligence, or omissions of subordinate officials, whether appointed by them or not, unless they direct the act complained of, or acquiesce in the conduct from which the injury results.[42] Where they have employed persons of sufficient ability and have not been negligent in their selection, they are free from liability. This indicates that if a superior public officer retains in office a subordinate known to be vicious, or who with reasonable diligence could be ascertained to be of such a nature, recovery would be allowed in Ohio. However, in one case in which the superintendent of a city workhouse was sued for cruel and inhuman treatment of the plaintiff while a prisoner, the petition was dismissed as not stating a cause of action because the superintendent owed his duty to the public and not to the individual.[43]

Where the superior officer is a sheriff, it seems that the doctrine of respondeat superior will apply to render him liable for the wrongful acts of his deputies. The Ohio statute provides, "The sheriff shall be responsible for neglect of duty or misconduct in office of each of his deputies."[44] This statute has been interpreted to "place upon a sheriff the responsibility of seeing to it that his choice of deputies be wisely made, and that trustworthy and dependable peace officers be chosen as his aides. It was well recognized that deputies might be over-officious, and might carelessly or wantonly disregard the rights and liberties of those whom they were selected to serve. It was therefore proper to repose responsibility in the appointing officer, to the end that his appointee would

[42] Conwell v. Voorhees, 13 Ohio 523 (1844). It should be noted that this was an action against a 'mail contractor' for the carelessness of his agents. It is assumed that the principle involved would carry over to an action against an officer for the third degree methods employed by his subordinates.

[43] Rose v. Toledo, 1 Ohio C.C. (N.S.) 321 (1903).

[44] OHIO GEN. CODE §2831 (1939).

not prostitute his office and that the people should be well served."[45] There does not seem to exist in Ohio sufficient means whereby a person injured by subordinate officers by the use of third degree methods may bring a civil action against the superior officer and recover damages.[46] The doctrine of respondeat superior is not applicable, and public officers are usually not liable for the acts of their subordinates in public service, unless, as courts and text writers have pointed out, the superior officer negligently, or wilfully, employs or retains, unfit or improper persons, or refrains from suspending them if he has not the power to discharge them.

In considering the civil remedy for abusive treatment at the hands of public officials, it must be kept in mind that a municipality is not liable for torts committed by police officers in making arrests, or for assaults upon prisoners in their custody.[47]

The maintenance of a police department by a municipality is done in the exercise of its governmental function and the municipality is not, in the absence of statutory provision, liable in damages for the negligent or tortious acts of the members of its police department.[48] In Ohio, no statutory remedy against a municipality is provided.

Criminal Liability for Abusive Treatment

At common law a police officer indulging in third degree practices was criminally liable.[49] In a number of states express legislation has imposed criminal liability for the acts of an officer in coercing a prisoner to confess.[50] The legislature of Ohio has seen fit to enact at least two criminal statutes which could be invoked.[51] Although they provide a penalty for an officer who injures or oppresses one by color of his office, the sanction invoked is pitifully inadequate. However, even if the penalty were more severe the difficulty would not be lessened, because of the tendency of fellow officers to give perjured testimony in order to clear a member of the force. Moreover, the prosecuting attorney who by acquiescence,

[45] Hanratty v. Godfrey, 44 Ohio App. 360, 184 N.E. 842 (1932); See also 1939 Ops. Att'y. Gen. (Ohio) No. 1289.

[46] Rose v. Toledo, 1 Ohio C.C. (N.S.) 321 (1903).

[47] Abvord, Adm'r v. Village of Richmond, 3 Ohio N.P. 136, 4 Ohio Dec. (N.P.) 177 (1896); Rose v. Toledo, 1 Ohio C.C. (N.S.) 321 (1903); see Hunter and Boyer, *Tort Liability of Local Governments in Ohio,* 9 Ohio St. L. J. 377 (1948).

[48] Similarly where a Board of County Commissioners is sued for injuries received by a prisoner while in a county jail, the county is not liable. Besser v. Board of County Commissioners, 58 Ohio App. 499, 16 N.E. 2d 947 (1938).

[49] 33 Mich. L. Rev. 451 (1934).

[50] These statutes are collected in 2 National Commission on Law Observance and Enforcement 213 (1931).

[51] Ohio Gen. Code §§ 12915 and 12925 (1939).

if not approbation, encourages officers to procure confessions is not likely to be over-zealous in prosecuting official lawlessness which lightens the burden of his office. The deterring influence of criminal liability is not a very forceful one.

Perhaps a more direct action against offenders could be taken by an action to oust such offenders from public office by means of a quo warranto proceeding.[52]

This recourse possesses a distinct advantage in that it provides an immediate penalty—the loss of the wrongdoer's job, the threat of which is quite likely to have a certain deterrent effect. In Ohio such an action may be brought in the name of the state against a public officer who "does or suffers an act which, by the provisions of law, works a forfeiture of his office."[53] Where the cause of removal from office is given by a statute which also provides a special procedure for the removal, then the statutory remedy is exclusive and an action of quo warranto will not lie.[54]

Neither statutes nor regulations can stifle the third degree. The community must insist on high standards in police and other officials. If this is done, this infamous treatment will cease to be condoned and can be wiped out. A vocal press can help the cause by publicity of violations. The third degree degrades the very people who practice it, hardens and embitters the prisoner against society and gives him a fear and contempt of law enforcing agencies; and it lowers the esteem in which justice and its administration is held by the public. The people must demand and expect to provide adequate compensation for intelligent law enforcement officers highly skilled in techniques of scientific crime detection. Strong arm methods of extracting admissions are a poor substitute utilized by lethargic police officials who are not trained in the modern art of compiling evidence. Proper training is an important responsibility of the police profession and should be conducted at a true professional level. To adequately cope with our complex society, the police service and the taxpayer must take advantage of the strides made in scientific crime detection.

Don W. Sears.

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[52] State *ex rel.* Boynton v. Jackson, 139 Kan. 744, 22 P. 2d 118 (1934).

[53] OHIO GEN. CODE §12303 (1939).

[54] State *ex rel.* Att'y Gen. v. McLain, 58 Ohio St. 313, 50 N.E. 907 (1898).