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the strict limitations of the exceptions to the Character Rule. In extending these exceptions the courts have discarded necessary safeguards against the indiscriminate use of this type of evidence. If not strictly confined the prejudicial effect of this evidence will far outweigh its legitimate probative value. A fairer trial would be had if the admissibility of other offenses were limited within the strict rules formerly adhered to, and legislative aid were invoked to protect society from this kind of sex offender.[34]

RAY JUSTAK

Federal Court Remedies Against State and Local Police Abuses
("Third Degree" Practices Enjoined)

The case of *Refoule* v. *Ellis*[1] declares that use of "third degree" practices by state or local police violates the due process clause of the Fourteenth Amendment and gives to the victim, against the offending officers, an original right of action in a federal district court for injunction and damages under the Civil Rights Act of 1871.[2] This statute provides for civil action at law or in equity for any person who has been deprived of any right secured by the Constitution and laws of the United States by public officials acting "under color" of law.

An injunction of this nature against arrest of a suspect under a valid state criminal law is unprecedented, as was the plaintiff's request for a federal court to suppress the use of evidence at a state criminal trial. The case presents important questions of the constitutional power of a federal court to interfere, not simply by appellate review, but by original action, with the right of a state to protect or punish its inhabitants. If valid the remedies involved in this case may become strong weapons against use of the third degree for the following reasons. Substantial damages against state officers are probably more readily

34 Minnesota has enacted a statute which comes fairly close to the type of conduct presented by the "masher case." 2 Minn. Stat., c. 617, §617.08. "*Indecent Assault.* Every person who shall take any indecent liberties with or on the person of any female, not a public prostitute, without her consent expressly given, and which acts do not in law amount to rape, an attempt to commit a rape, or an assault with intent to commit a rape, and every person who shall take such indecent liberties with or on the person of any female under the age of 16 years, . . . without regard whether he or she shall consent to the same or not, . . . shall be guilty of a felony." For a discussion of the problem generally, and for a consideration of proposed statutory enactments which embody certain provisions and desirable features lacking in the Minnesota statute, see (1948) 96 U. of Pa. L. Rev. 872.

1 74 F. Supp. 336 (N.D.Ga.1947). This case was the subject of a legal abstract in a recent issue of this *Journal,* (March-April, 1948) 38 J. of Crim. L. & Criminology 121.

Coercion to force confession may be outright physical torture, or deprivation of sleep, food or opportunity for bodily relief, with threats and intensive questioning, as under arc lights, to destroy mental resistance. It is usually part of an incommunicado and illegal detention, prior to arraignment. See *In re* Fried, 161 F. (2d) 453 (C.C.A. 2d, 1947) for recent bibliography on the subject.

2 "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 17 Stat. 13 (1871), 8 USCA 43 (1940). See extensive review of the Civil Rights Acts in Note (1948) 43 Ill. L. Rev. 105.

obtainable in federal than in state courts. The injunction goes beyond a writ of habeas corpus in that the latter can merely be used to procure release from an unlawful detention already in effect; it cannot prevent repetition of the unlawful arrest. Nor can habeas corpus prevent use of duress during a lawful detention, which the injunction can forbid. Perhaps the greatest significance of the use of the injunction against illegal questioning is that suppression of coerced evidence seems to be legally consistent with, and even required by, the same reasoning and authority which support the injunction. The possibility of suppression of coerced evidence by a federal court would, of course, be a tremendous deterrent of its use by state police.

In the *Refoule* case a French citizen, suspected of having murdered his wife, had been four times taken from his home at unusual hours by the defendant police officers of Atlanta, Georgia, and secretly questioned for periods of eighteen to thirty-one hours. The first three arrests were made without a warrant. On the fourth occasion a warrant was exhibited which charged him with sodomy,[3] but before he was finally, and for the first time, put in the county jail he was detained for eighteen further hours of questioning, including subjection to seven lie-detector tests.[4]

After being released on bail, Refoule brought suit in the Federal District Court for the Northern District of Georgia, alleging that all of these detentions had been carried on with intimidation, prolonged questioning in relays, denial of counsel, and violence to his person to coerce confession to uxoricide. After a hearing on motions to dismiss, the court held that it was unnecessary to decide a conflict in the evidence as to whether plaintiff had been physically intimidated or had submitted to the questionings and lie detector tests voluntarily, on the ground that the admitted circumstances of the lengthy and secret interrogations constituted an "inherently coercive" situation, within the formula of *Ashcraft* v. *Tennessee*,[5] which had violated the due process of law guaranteed to plaintiff by the Constitution. It granted a temporary injunction which restrained the police from further arresting plaintiff without a warrant and from further questioning him without counsel and against his consent.[6] The claim for damages was reserved for trial. However, the court ruled against plaintiff's claim for suppression of the statements allegedly extorted from him, holding that the admissibility of evidence was exclusively a matter for the criminal court to decide and therefore not determinable by a court of equity. Plaintiff's request for an injunction against further intimida-

3 This was an accusation apparently developed from the previous questionings, during which Refoule had been several times confronted with certain young women and a man, who had been similarly questioned. Written statements had been taken from all. The inquisition regarding his private life seems to have been used as a weapon of intimidation. No indictment ever issued against Refoule for murder, but one was subsequently issued charging sodomy. Shortly after this decision sustaining the damages suit, the morals charge was dropped; and the damages suit has not since been prosecuted. Atlanta Journal, June 17, Nov. 24, 1947.

4 See Inbau, Lie Detection and Criminal Interrogation (2d ed., 1948) p. 94, for discussion of admissibility of confessions elicited by use of lie-detector.

5 322 U. S. 143 (1944).

6 The court enjoined "the exercise of personal restraint over plaintiff by defendants without a warrant or confinement without lawful arrest, and from further questioning plaintiff without his consent after being afforded an opportunity of consulting with his counsel." Refoule v. Ellis, 74 F. Supp. 336, 343, (N.D.Ga. 1947).

tion of certain witnesses to produce evidence against him was summarily denied because their rights were not personal to him.[7]

The motions to dismiss which the police officers filed alleged no jurisdiction, no power to grant the relief requested and no violation of the Civil Rights Act. The court said that it clearly had jurisdiction under the allegations of diversity of citizenship, denial of due process, and violation of civil rights. Plaintiff was relieved of his duty to prove the jurisdictional amount of $3000 by the counter-part of the Civil Rights Act in the Judicial Code which exempts suits concerning civil rights from the jurisdictional amount requirement.[8] The emphasis of the opinion indicates that the court really rested the jurisdiction on the civil rights statutory basis.[9] The court dismissed the contention that there was no federal court power to grant the relief requested by its finding that the Fourteenth Amendment had been violated, which warranted use of the injunction, and by its finding that the allegations of the complaint which were admitted in the hearing constituted a violation of the Civil Rights Act, authorizing remedies under that act.

Cause of Action under the Civil Rights Act; Federal Right to Lawful Trial

To establish his cause of action under the Civil Rights Act, Refoule had to meet its two requirements. One is that there be a deprivation of a right, privilege or immunity secured by the Constitution and laws of of the United States, hereafter abbreviated to deprivation of a *federal right*. The second is that the deprivation be effected under color of a statute, custom or usage of any state or territory, referred to hereafter as *under color of law*. The court was certainly correct in its finding

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7 It would seem at least arguable that, if the police were attempting to force untrue statements from the witnesses concerning plaintiff, he would have a sufficient personal interest in preventing such police tactics to warrant protection by a court of equity.

8 Diversity of citizenship and the presence of a federal question are grounds for original jurisdiction in federal district courts only when the matter in controversy exceeds $3000. 36 Stat. 1091 (1911), 28 USCA 41 (1) (1927); 36 Stat. 1092 (1911), 28 USCA 41 (14) (1927). These provisions do not appear to be materially altered by their replacements in the new Judicial Code, §§1331, 1332, 1343, 62 Stat. ___ (1948).

9 While Refoule was suing for $50,000 (Atlanta Journal, July 6, 1947), the court neither mentioned this amount nor made any finding that the damages might reasonably be found to exceed $3000. Assuming the jurisdictional amount requirement to be satisfied, speculation on whether the same results could have been reached were the Civil Rights Act not in existence indicates the following conclusions. As a diversity suit, damages could be awarded by its being a common law action for battery and false arrest. But if jurisdiction were through federal question (due process), it is doubtful whether such acts would make state officers liable in damages simply for violation of the Fourteenth Amendment, without the special act of Congress providing for such damages. In *Bell v. Hood*, 327 U.S. 678 (1946), the Supreme Court said that it was still an open question whether damages incurred from violation of the Constitution (Fourth Amendment, illegal search and seizure) could be recovered in a federal court against federal officers, without special provision therefore by Congress. As to use of the injunction without reliance on the Civil Rights Act, see *infra* notes 31 and 32.

that the acts of the defendant police, though done in violation of Georgia law,[10] were under color of law.[11]

A more difficult problem was the issue of whether or not Refoule had been deprived of a federal right. In seeking to show constitutional protection against the acts of the defendants, plaintiff could not look directly to the Bill of Rights of the first eight amendments, which were designed as protection only against action of the federal government.[12] Certain of the rights given in the first eight amendments, however, have been held to be protected against state action by the due process clause of the Fourteenth Amendment, such as the rights to freedom of speech, assembly and religion.[13] As regards state criminal trials, due process of law is interpreted by the Supreme Court as requiring observance of those rights "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[14] It has held the following to be among those rights: the right to counsel in capital cases,[15] the right to counsel in non-capital cases under certain aggravated circumstances,[16] the right to a trial free from mob pressure,[17] the right to be free from deliberate use of perjured testimony,[18] the right to a public trial and a reasonable opportunity to the accused to defend himself, including the right to examine witnesses against him, and the right to offer testimony.[19] In a long line of cases the

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10 Georgia law provides: "An arrest for a crime may be made by an officer, either under a warrant, or without a warrant if the offense is committed in his presence, or the offender is endeavoring to escape, or for other cause there is likely to be a failure of justice for want of an officer to issue a warrant." Georgia Code (1933) §27-207. "In every case of an arrest without warrant, the person arresting shall, without delay, convey the offender before the most convenient officer authorized to receive an affidavit and issue a warrant. No such imprisonment shall be legal beyond a reasonable time allowed for this purpose." Ibid. §27-212.

11 First established in *Ex parte* Virginia, 100 U.S. 339 (1879), the rule is now well settled that the act of a state officer done under cloak of authority given him by the state, but beyond his authority and in violation of state law, is not merely the unauthorized act of a private person. It is state action within the meaning of the Fourteenth Amendment; but the officer may be individually liable. Screws v. United States, 325 U.S. 91 (1944). Such redress is not considered a suit against the state within the prohibition of the Eleventh Amendment, since it is said that the individual is not made a party as the representative of the state and that the use of the name of the state to do an unconstitutional act cannot have the authority of the state and, therefore, does not affect it in its sovereign or governmental capacity. *Ex parte* Young, 209 U.S. 123, 159 (1908).

12 It has been urged in certain Supreme Court dissents that the rights therein listed were considered to be among the "privileges or immunities of citizens of the United States," in the protection extended against state action by this clause of the Fourteenth Amendment. Twining v. New Jersey, 211 U.S. 78 (1908); Adamson v. California, 332 U.S. 46 (1947); Bute v. Illinois, 333 U.S. 640 (1948). See Rotnem, "The Federal Right 'Not to Be Lynched'" (1943) 28 Wash.U.L.Q. 57, urging that the founding fathers understood that the Bill of Rights was simply a specification of the more important rights in the common law understanding of due process of law, and taking the position that the federal government has always had the constitutional power, independent of the Fourteenth Amendment, to prevent and punish abridgment of fundamental rights by states *and private persons* (lynching mob).

13 De Jonge v. Oregon, 299 U.S. 353 (1937); Hague v. C.I.O., 307 U.S. 496 (1939); Lowell v. City of Griffin, 303 U.S. 444 (1938).

14 Rogers v. Peck, 199 U.S. 425, 434 (1905).

15 Powell v. Alabama, 287 U.S. 45 (1932).

16 Townsend v. Burke, 334 U.S. 736 (1948).

17 Moore v. Dempsey, 261 U.S. 86 (1923).

18 Mooney v. Holohan, 294 U.S. 103 (1935); Pyle v. Kansas, 317 U.S. 213 (1942).

19 *In re* Oliver, 333 U.S. 257 (1947): Hovey v. Elliott, 167 U. S. 409 (1896).

Supreme Court has held that use as evidence of a confession obtained from the defendant by coercion violates due process of law.[20]

In one of the latter cases, *Ashcraft* v. *Tennessee,*[21] the Supreme Court established the well-known "inherent coercion" formula, in invalidating a conviction obtained through the use of a confession made after the suspect was secretly detained without warrant or arraignment and questioned continuously for thirty-six hours by relays of police, no physical blows or threats having been proved. The *Ashcraft* case has been criticized for being too indefinite since its coercion involved such a small amount of physical torture or harm, but it has been followed in two more recent cases, one being in 1948.[22]

The opinions in these confession cases induce belief that the acts of torture in secret detention were themselves a deprivation of due process, but it may be wondered if they sufficiently declared such acts themselves to be a denial of due process to make them authority for the cause of action in *Refoule* v. *Ellis,* where simply the coercion and not the *use* of the statements at trial has occurred. This doubt is largely resolved by the line of cases holding that coercion by arresting officers violates Section 20 of the United States Criminal Code.[23] This section subjects to criminal punishment any one who, acting under color of any law, deprives any person of any rights secured by the Constitution. The wording of the criminal section is almost identical with that of the Civil Rights Act. It is to be construed in the same way.[24] In these cases acts of coercion to force confessions are considered as being in themselves a crime, regardless of whether or not a confession was obtained or was used in prosecution.[25]

In the leading case of *Screws* v. *United States* Mr. Justice Douglas spelled out the right with which these cases are concerned in the following language: "It is plain that basic to the concept of due process of law in a criminal case is a trial—a trial in a court of law, not a trial by ordeal."[26] At this point in the *Screws* case Mr. Justice Douglas cited *Brown* v. *Mississippi,*[27] which is significant in that, being in the *Ashcraft*

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20 Brown v. Mississippi, 297 U.S. 278 (1936); Chambers v. Florida, 309 U.S. 227 (1940); Ashcraft v. Tennessee, 322 U.S. 143 (1944).

21 322 U.S. 143 (1944).

22 Malinski v. New York, 324 U.S. 401 (1945) (reversed conviction obtained partially by use of confession made after two days' confinement incommunicado in hotel room with persistent questioning); Haley v. Ohio, 332 U.S. 596 (1948) (all-night incommunicado questioning of 15 year old boy held denial of due process, invalidating conviction obtained by use of confession as evidence). See review of recent United States Supreme Court decisions concerning involuntary confessions in Note (March-April, 1948) 38 J. of Crim. L. & Criminology 627.

23 "Whoever, under color of any law, . . . wilfully subjects . . . any . . . inhabitant . . . to the deprivation of any rights, privileges, or immunities secured . . . by the Constitution and laws of the United States . . . shall be fined not more than $1000, or imprisoned not more than one year, or both." 35 Stat. 1092 (1909); 18 USCA 52 (1927).

24 Picking v. Pennsylvania R. Co., 151 F. (2d) 240, 248 (C.C.A. 3d, 1945); Burt v. City of New York, 156 F. (2d) 791, 792 (C.C.A. 2d, 1946).

25 Screws v. United States, 325 U.S. 91 (1945) (sheriff arrested young negro, charging theft of a tire, and beat him to death); Culp v. United States, 131 F. (2d) 93 (C.C.A. 8th, 1942) (sheriff and others arrested various persons on false charges and extorted "fines" by harsh treatment and illegal detention); United States v. Sutherland, 37 F. Supp. 344 (N.D.Ga.1940) (police officer convicted for threats and assaults on negro boy in effort to extort confession to a theft).

26 325 U.S. 91, 106 (1945), cited note 25 *supra.*

27 297 U.S. 278 (1936), cited note 20 *supra.*

line of cases invalidating convictions obtained by use of the confessions at trial, its employment in the Section 20 prosecution of the *Screws* case indicates that it would also be correct to use the formula of the *Ashcraft* case to determine what is sufficient coercion to deny due process—independent of any use of a coerced confession at a trial. This in turn enables application of the *Ashcraft* formula to such civil causes of action as *Refoule* v. *Ellis,* to which decision it was essential.[28]

In addition to the Section 20 cases,[29] it should be noted that in the case of In re *Fried,*[30] discussed below, the Second Circuit Court of Appeals held that the circumstances there alleged, of the same type of coercion as that of the *Ashcraft* case and of *Refoule* v. *Ellis,* would, if proved, constitute a case of violation of due process, warranting prevention of any legal use of evidence so obtained.

Injunction

Assuming the correctness of this conclusion that Refoule had been deprived of a federal right, and therefore had a valid cause of action for damages under the Civil Rights Act, it would seem that the court was also correct in issuing an injunction, the defendants having asserted that they had the right to continue to harass the plaintiff to force confession. Injunctions have many times been issued by federal courts against state officers to protect other federal rights, both property and civil rights.[31] Having before it a right previously recognized in other situations to be within the due process clause, there was no reason why the court could not extend the well-established injunction remedy to protect it. The fact that this injunction interferes with a state's exercise of its police power cannot alter the correctness of the court's action. No power of the state can authorize violation of the Fourteenth Amendment, and such violation can be forestalled by a one-judge federal district court where it is not the constitutionality of the state statute that is in question but only the constitutionality of particular acts of enforcement.[32]

28 Important also because to date United States v. Sutherland, 37 F. Supp. 344 (N.D.Ga.1940), cited note 25 *supra,* is the only successful conviction under 18 USCA 52 where the deprivation of the federal right was solely the intimidation to coerce a confession, and that case was decided by the same judge as in Refoule v. Ellis, nor was it appealed.

29 It should be noted that the criminal statute contains the word, "wilfully," creating a difficulty for conviction not present under the Civil Rights Act here involved, in which the absence of that word indicates that the cause of action is satisfied by a deprivation of a federal right in fact, whether or not done "wilfully."

30 161 F. (2d) 453 (C.C.A. 2d, 1947).

31 Mitchell v. Dakota Telephone Co., 246 U.S. 396 (1918) (district court held to have power to enjoin impairment of contract by state officers in violation of Article I, §10, of the Constitution); Hague v. C.I.O., 307 U.S. 496 (1939) (injunction issued against arrests by municipal officers in violation of the rights to freedom of speech and assembly); Burt v. City of New York, 156 F. (2d) 791 (C.C.A. 2d, 1946) (injunction and damages for denial of equal protection of the laws); Alesna v. Rice, 69 F. Supp. 897 (D.C. Hawaii 1947) (Norris-LaGuardia Act right to picket protected by injunction). See Moskovitz, Civil Liberties and Injunctive Protection (1944) 39 Ill. L. Rev. 144.

32 In recognition of the injunctive power, and to restrain its summary use by a single judge to supersede acts of state legislatures, Congress passed a law in 1910 which provided that the enforcement of a state statute should not be restrained by any district court on the ground of the unconstitutionality of such statute unless the application therefore was heard and determined by a district court of three judges. 36 Stat. 539 (1910), 28 USCA 380 (1928). The complete wording of this law seems to make it quite clear that a distinction was made by which a single

If not viewed simply as part of a course of conduct unconstitutional because of coercion,[33] it would seem that the court was incorrect in enjoining arrest of plaintiff without a warrant.[34] A position that merely arrest without a warrant was unconstitutional would result in an excess of cases under the Civil Rights Act, and it is a position not well supported by precedent.[35] In support of his conclusion that he had authority to forbid detention by state officials without a warrant, the court in *Refoule* v. *Ellis* cited the Georgia statutes prohibiting arrest without a warrant, and two cases: *Anderson* v. *United States*,[36] and *McNabb* v. *United States*.[37] But both these cases were prosecutions for federal crimes, involving illegal detention by federal officers. They were decided on the basis of federal rules for the admission of evidence, under the Court's supervisory power over federal prosecutions. Neither stated that an arrest by a state officer without a warrant was a violation of due process.[38] That injunction of arrest without a warrant could not rest on breach of Georgia law is illustrated by the statements of Mr. Justice Douglas in the *Screws* case: "There is no warrant for treating the question in state law terms. The statute does not come into play merely because the federal law or the state law under which the officer purports to act is violated. It is applicable when and only when someone is deprived of a federal right by that action."[39]

Similarly it would seem that the court was correct in enjoining denial of counsel only if regarded as one of the component features of this particular "third degree" course of conduct. For denial of counsel is not necessarily a violation of due process even at trial.[40] And it seems that pre-trial denial of opportunity to consult with counsel is deprivation of due process only where the fairness of the trial is affected.[41]

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district judge has power to enjoin enforcement of a state statute where it is the method of enforcement and not the statute itself which is attacked as unconstitutional. The law was reenacted in the new Judicial Code. 62 Stat. ___ (1948), 28 USC 2281. See Chicago, B. & Q. R. Co. v. Oglesby, 198 F. 153 (D.C.Mo.1912) (a federal court of equity may grant relief where a valid state law is unconstitutionally administered and irreparable injury is threatened). *Accord,* Gully v. Interstate Natural Gas Co., 292 U.S. 16 (1934) (validity of the *statute* must be attacked to require three judge court).

33 *Cf.* Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc. 312 U.S. 287 (1947) (injunction permitted to be extended to prohibit acts, normally within the rights of the union, because of previous course of violent conduct).

34 The court said that "detention without a warrant is generally unlawful and defendants therefore proceeded in disregard of plaintiff's constitutional rights." Refoule v. Ellis, 74 F. Supp. 336, 342 (N.D.Ga.1947).

35 The best authority for this proposition is given by Picking v. Pennsylvania R. Co., 151 F. (2d) 240 (C.C.A. 3d, 1945), in which arrest without a warrant under color of state law was named as the federal right for a suit for damages under the Civil Rights Act. But since this issue was complicated by the fact that the plaintiff had been denied the writ of habeas corpus, and had also been transported interstate under color of extradition proceedings, the case is not good authority for a position that simply arrest without a warrant is a denial of due process.

36 318 U.S. 350 (1943).

37 318 U.S. 332 (1943).

38 In fact, in the McNabb case Mr. Justice Frankfurter pointed out that the Court was not passing on the due process aspect of the arrests because it did not wish to make a rule which would be applicable to state arrest cases. *id* at 337.

39 325 U.S. 91, 108 (1945).

40 Bute v. Illinois, 333 U.S. 640 (1948) (due process clause does not prohibit a state from accepting a plea of guilty in a non-capital case from an uncounseled defendant).

41 Avery v. Alabama, 308 U.S. 444 (1940). *But see* English case, Cox v. Coleridge, 1 B. & C. 37 (1882).

Suppression of Coerced Confession

The court decided the important issue of plaintiff's request for suppression of the alleged extorted statements in a single sentence, simply saying that equity was without power to pass on the admissibility of evidence in a criminal case. It cited one case, *Eastus* v. *Bradshaw*,[42] decided by the Circuit Court of Appeals for the Fifth Circuit in 1938. It thus failed to consider the significant factors present in *Refoule* v. *Ellis* which were not present in the situation dealt with in *Eastus* v. *Bradshaw*. In *Eastus* v. *Bradshaw* the statements sought to be suppressed had been yielded under the threats of income tax agents, apparently merely oral threats not accompanied by such an extended and intensive amount of physical and mental coercion as to constitute a denial of due process. In *Refoule* v. *Ellis* there had been such a violation of due process. Secondly, *Eastus* v. *Bradshaw* apparently did not involve a threatened criminal indictment. In any event neither that court nor that of *Refoule* v. *Ellis* considered the irreparable damage to reputation consequent of a false indictment for crime based solely on a coerced confession.

The important case of In re *Fried*[43] placed these objections to the decision in the *Refoule* case on the suppression issue beyond the level of speculation. In this case the Circuit Court of Appeals for the Second Circuit held that circumstances of Ashcraft-type coercion violated due process, that an erroneous indictment grounded only on a coerced confession would cause irremediable damage, and that where these two factors were present there was a right to suppression of such evidence by a federal district court. *Eastus* v. *Bradshaw* had treated the suppression of the statements there involved as merely a problem of the administration of federal criminal justice, stating this in terms of traditional limitations on the power of equity. Judge Learned Hand would have liked to settle the *Fried* case on this basis but felt that the constitutional issue controlled, and that equity's power to fully protect the plaintiff's constitutional rights included the power to suppress evidence unconstitutionally obtained. The decision of the court in that case was a clear holding to that effect. It would seem that the instant court should have decided *Refoule* v. *Ellis* on the basis of In re *Fried* (which had been decided earlier in 1947 but apparently not brought to the court's attention) and not *Eastus* v. *Bradshaw*, since it had been able to grant the injunction and to retain the cause for trial as to damages only because of its finding that the plaintiff had been deprived of his constitutional right to be free from coercion applied to force a confession.

That *Refoule* v. *Ellis* involved state officers and state crimes instead of federal officers should not make any difference, since constitutional rights were at stake, and state criminal proceedings have many times been enjoined in their entirety to prevent irreparable damage through a denial of federal rights.[44] Suppression is interference only with one

42 94 F. (2d) 788 (C.C.A. 5th, 1938), *cert. den.* 304 U.S. 576.

43 161 F. (2d) 453 (C.C.A. 2d. 1947), *cert. granted* 331 U.S. 804 (1947), writ dismissed on motion of petitioner, 332 U.S. 807 (1947). Note (January-February, 1948) 38 J. of Crim. L. & Criminology 509.

44 Tuchman v. Welch, 42 F. 548 (C.C. Kan. 1890) (plaintiff was the victim of harassment by repeated arrests and indictments for violation of Kansas liquor laws, despite his interstate commerce rights under the original package doctrine; injunc-