

**Criminal Procedure--Confessions--New Procedure Governing
Admissability of Confessions Applied Retroactively (People v.
Huntley, 15 N.Y.2d 72 (1965))**

St. John's Law Review

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a serious crime, as it has now come to be understood, and which, under the present law, is ill-defined and arbitrarily applied.

Until the proposed revision is adopted the holding in the instant case will have a marked effect on prior precedent. Since the Court limited the applicability of the statute to kidnaping in the conventional sense, no longer will detention alone as in *Cowan*, or detention and asportation as in *Florio*, be sufficient to constitute the wholly independent crime of kidnaping. Rather, the Court limits the statute to conduct as that found in *Black* where the restraint constituted the completely separate crime of kidnaping. However, it is difficult to predict the effect of the instant decision to other factual situations since the Court expressly indicates that whether or not the conduct will constitute the separate crime of kidnaping depends on the facts and circumstances involved. In any event, the Court has sharply curtailed the applicability of the present penal statute. No longer will an individual be convicted of kidnaping, one of our most serious crimes, when his conduct is merely incidental to the commission of another crime.



CRIMINAL PROCEDURE — CONFESSIONS — NEW PROCEDURE GOVERNING ADMISSIBILITY OF CONFESSIONS APPLIED RETROACTIVELY. — In 1960, defendant was convicted of robbery in the first degree after a trial in which, pursuant to New York procedure, the issue of the voluntariness of his confession was submitted to the same jury that determined his guilt. The appellate division affirmed the conviction and the court of appeals, denied defendant's application for leave to appeal. Subsequently, the New York procedure was declared unconstitutional by the United States Supreme Court in the case of *Jackson v. Denno*.¹ The New York Court of Appeals, after favorably reconsidering defendant's application, held that although defendant ordinarily could claim no further appellate relief, he was entitled to a redetermination on the admissibility of his confession. The Court stated that a coram nobis motion is the appropriate procedure for contesting such prior convictions,² and that the "Massachusetts procedure" would be used in future trials to determine the admissibility of allegedly coerced confessions. *People v. Huntley*, 15 N.Y.2d 72, 204 N.E.2d 179, 255 N.Y.S.2d 838 (1965).

Whether retroactive application should be given to newly declared law is a problem to which history has not supplied

¹ 378 U.S. 368 (1964).

² For a detailed analysis of the coram nobis motion, see Comment, 57 Nw. U.L. Rev. 467 (1962).

a consistent answer.³ This issue has recently assumed added social significance due to the expanded concepts of due process in state criminal proceedings pronounced by the Supreme Court. These changes, coupled with the Court's refusal to issue a comprehensive statement on the issue of retroactivity, have raised the question of whether the state courts are required to apply these new concepts to prior convictions.

In the case of *Griffin v. Illinois*,⁴ the Supreme Court held unconstitutional a state court's denial of a copy of a trial record to an indigent defendant. However, the majority failed to mention the possible retroactive effect of this decision. Subsequently, the Supreme Court held, on similar facts, that a prisoner who had been convicted twenty-three years earlier was presently entitled to relief based upon *Griffin*.⁵ It is unclear whether, by this decision, the Court anticipated blanket retroactive application of its new decisions or simply applied *Griffin* to the exigencies of this particular situation.⁶ In any event, a contemporary constitutional concept was applied to an earlier factual situation.

Perhaps the most celebrated addition to the concept of due process occurred in 1961 in the case of *Mapp v. Ohio*.⁷ As in *Griffin*, the Court did not consider the effect of its holding upon prior convictions.⁸ However, in the case of *People v. Loria*,⁹ the New York Court of Appeals limited the retroactivity of *Mapp* to those who, at the time of that decision, were still within the "normal appellate process."¹⁰

³ For an historical analysis of retroactivity considered in light of contemporary case law, see Bender, *The Retroactive Effect of an Overruling Constitutional Decision: Mapp v. Ohio*, 110 U. PA. L. REV. 650 (1963). See also Stimson, *Retroactive Application of Law—A Problem in Constitutional Law*, 38 MICH. L. REV. 30 (1939); Note, 60 HARV. L. REV. 437 (1947).

⁴ 351 U.S. 12 (1956).

⁵ *Eskridge v. Washington State Bd. of Prison Terms & Paroles*, 357 U.S. 214 (1958). A New York prisoner convicted prior to the *Griffin* decision was granted similar relief in *Reatz v. United States*, 375 U.S. 16 (1963).

⁶ See Torcia & King, *The Mirage of Retroactivity and Changing Constitutional Concepts*, 66 DICK. L. REV. 269, 271-73 (1962).

⁷ 367 U.S. 643 (1961).

⁸ However, the *Mapp* case did contain an ambiguously phrased footnote which has given rise to various conflicting inferences regarding retroactivity. *Id.* at 659 n.9. For a discussion of the problems raised by the footnote, see Bender, *supra* note 3. See *United States ex rel. Angelet v. Fay*, 333 F.2d 12, 15 (2d Cir. 1964); *United States ex rel. Gregory v. New York*, 195 F. Supp. 527, 528 (S.D.N.Y. 1961).

⁹ 10 N.Y.2d 368, 179 N.E.2d 478, 223 N.Y.S.2d 462 (1961). See generally Note, 28 BROOKLYN L. REV. 345 (1962).

¹⁰ The appellate process is deemed at an end when leave to appeal is denied by the court of appeals. *People v. Muller*, 11 N.Y.2d 154, 182 N.E.2d 99, 227 N.Y.S.2d 421 (1962). To be eligible for relief, objection must have been raised at the trial to the introduction of the allegedly inadmissible evidence. *People v. Friola*, 11 N.Y.2d 157, 182 N.E.2d 100, 227 N.Y.S.2d

In New York, a coram nobis motion has been held inappropriate for prisoners who did not qualify for relief under *Loria*,¹¹ and only recently federal habeas corpus has been denied to pre-*Mapp* New York prisoners.¹² In addition, it is interesting to note that the federal courts apparently have not allowed collateral relief to prisoners convicted prior to *Weeks v. United States*,¹³ the federal equivalent and predecessor to *Mapp*.¹⁴

In the case of *Gideon v. Wainwright*,¹⁵ the Supreme Court once more added to its definition of due process in state proceedings. Subsequently, the Florida Supreme Court denied applications by several pre-*Gideon* prisoners seeking to set aside their convictions. The United States Supreme Court reversed in a memorandum opinion based solely upon *Gideon*,¹⁶ thereby applying *Gideon* retroactively.

The recent constitutional development which gave rise to the decision in the instant case was the holding in *Jackson v. Denno*,¹⁷ which deemed unconstitutional the New York procedure for determining the admissibility of confessions. This procedure consisted of the submission of the confession, for a determination of voluntariness, to the same jury who decided guilt. Only the dissent discussed the issue of retroactivity, and it did so disapprovingly.

In the instant case, the Court of Appeals provided the new procedure for determining the voluntariness of a confession as necessitated by *Jackson*, and considered its applicability to prior convictions. Chief Judge Desmond, speaking for the majority, stated that although the defendant had exhausted the *normal appellate process*, he was entitled to additional relief because *Jackson* apparently mandated such relief, inasmuch as Jackson himself had already exhausted his state appellate remedies.¹⁸

The Court stated that mere submission of the issue of voluntariness to the jury was a sufficient predicate for *Jackson*-type relief. This was in contrast to prior New York holdings which

423 (1962). Such objection must be raised specifically. *People v. O'Neill*, 11 N.Y.2d 148, 182 N.E.2d 95, 227 N.Y.S.2d 416 (1962).

¹¹ *People v. Eastman*, 18 App. Div. 2d 1102, 239 N.Y.S.2d 972 (2d Dep't 1963); *People v. Moore*, 34 Misc. 2d 228, 223 N.Y.S.2d 733 (Ct. Gen. Sess. 1962).

¹² *United States ex rel. Angelet v. Fay*, 333 F.2d 12 (2d Cir. 1964); *United States ex rel. Eastman v. Fay*, 333 F.2d 28 (2d Cir. 1964).

¹³ 232 U.S. 383 (1914).

¹⁴ *Bender*, *supra* note 3, at 656.

¹⁵ 372 U.S. 335 (1963).

¹⁶ *Pickelsimer v. Wainwright*, 375 U.S. 2 (1963); see *United States ex rel. Durocher v. LaVallee*, 330 F.2d 303 (2d Cir. 1964).

¹⁷ 378 U.S. 368 (1964).

¹⁸ *People v. Huntley*, 15 N.Y.2d 72, 74, 204 N.E.2d 179, 181, 255 N.Y.S. 2d 838, 840 (1965).

had required objection to the allegedly inadmissible evidence at the trial level to be eligible for *Mapp* post-conviction relief.¹⁹

The majority further stated that hearings on the issue of voluntariness would be provided for those no longer in the appellate process by coram nobis motion. This procedure involves petitioning the trial court for a hearing, preferably before the same judge who presided over the conviction. The Court also provided that the trial record would be employed to re-examine the issue of voluntariness without prejudice to the submission of new evidence by either side. Should the judge find the confession voluntary, the conviction would stand, but if he found it to have been coerced, such finding would be added to the record for submission to the appropriate court.

With respect to future trials, the Court adopted the "Massachusetts procedure" which was sanctioned as constitutionally valid in *Jackson v. Denno*. Under this procedure, the trial judge, at a separate hearing, must find voluntariness *beyond a reasonable doubt* before submitting the confession to the jury.²⁰

In a vigorous dissenting opinion, Judge Van Voorhis claimed that the granting of federal collateral relief in *Jackson* did not necessitate the granting of similar state relief in *Huntley*. The states, he argued, have inherent power to limit the relief available to those outside the normal appellate process. Thus, although the scope of federal habeas corpus relief was expanded by the Supreme Court over a decade ago, the passage of time has necessitated no parallel enlargement of state collateral remedies. The dissent further indicated that if the Supreme Court considered it necessary to supplement the present state post-conviction relief, the federal system was a sufficient framework for such action. Finally, Judge Van Voorhis concluded that the protections produced by *Jackson v. Denno* were insufficient to justify the overburdening of the New York courts, and in this case, the Court should not attempt to have "the past . . . reformed in the image of the present,"²¹ but should limit *Jackson* relief to the normal appellate process.

It seems that the instant case is in consonance with the Supreme Court trend which has expanded the scope of due process in order to justify the issuance of a mandate that new law be applied to prior proceedings. The sequels to *Griffin* and *Gideon* indicate that the Court will order application of newly pronounced concepts to prior state convictions. However, these decisions

¹⁹ *People v. Friola*, *supra* note 10.

²⁰ The majority construed the New York Constitution (art. I, § 2) as requiring a jury trial on this issue, indicating that this was a dominant factor in the adoption of the Massachusetts procedure.

²¹ *People v. Huntley*, *supra* note 18, at 85, 204 N.E.2d at 188, 255 N.Y.S.2d at 850.

have not yet amounted to a blanket requirement of full retroactivity.

As previously indicated, the Court in the instant case distinguished the relief made available to pre-*Mapp* prisoners by the appellate procedures used in *Mapp* and *Jackson* themselves. Since *Mapp* arose on direct appeal, the states could limit its retroactive application to cases in the normal appellate process. On the other hand, *Jackson*, which was instituted by collateral attack after all state relief was exhausted, necessarily precluded such limitation on applicability.

It has been suggested, however, that the limited retroactivity afforded to *Mapp*, and the complete retroactivity directed by the courts for *Gideon* and *Griffin* as well as *Jackson*, is a manifestation of fundamental differences in the due process rights involved.²² In regard to *Mapp*, it is argued that although evidence seized in violation of the fourth amendment involves an unconstitutional invasion of privacy, there is no claim that such evidence is tainted by some fundamental unfairness, and thus a conviction based thereupon violates no element of due process.²³ *Mapp* was meant to serve, it is further maintained, primarily as a deterrent to oppressive police conduct, and to apply retroactivity would merely let "the criminal . . . go free because the constable has blundered."²⁴

Although the coram nobis motion, when employed as directed by the instant case, would offer many practical advantages,²⁵ it should be noted that, traditionally, coram nobis in New York has been limited, with a few exceptions,²⁶ to facts which could not be raised on appeal.²⁷ Additionally, one noted authority has speculated that procedural innovations necessitated by the instant case can only in full measure be met by statutory enactment.²⁸

²² Mr. Justice Frankfurter espoused a similar view: retroactivity should be determined in each case by the same "considerations that give prospective content to a new pronouncement of law." *Griffin v. Illinois*, 351 U.S. 12, 26 (1956) (concurring opinion).

²³ United States *ex rel. Angelet v. Fay*, *supra* note 12, at 17-20.

²⁴ *People v. Defore*, 242 N.Y. 13, 21, 150 N.E. 585, 587 (1926).

²⁵ Under this procedure, the appellate courts are not burdened with numerous petitions for relief; there is less procedural "red-tape" and the issue is considered by the same judge (if still available) who presided at the original trial.

State habeas corpus relief was found unsuited to effect the hearings necessitated by *Jackson v. Demmo* because, *inter alia*, the writ is returnable only in the county where defendant was detained which, in many cases, will not be the county of trial. *People v. Huntley*, *supra* note 18, at 76, 204 N.E.2d at 182, 255 N.Y.S.2d at 842.

²⁶ Coram nobis relief has been held available to contest convictions involving a denial of counsel. *Id.* at 79-80, 204 N.E.2d at 184, 255 N.Y.S.2d at 845 (dissenting opinion).

²⁷ *Ibid.* See generally Comment, 57 Nw. U.L. Rev. 467 (1962).

²⁸ Shapiro, *Confessions in Criminal Cases*, pt. 2, 153 N.Y.L.J., Feb. 16, 1965, p. 1, col. 4, p. 4, col. 8.

The use of the *coram nobis* motion raises several noteworthy problems. For example, while the majority assumed that the trial judge will be available for the hearing, there is no such guaranty. Moreover, all other parties originally involved might likewise be unavailable because of death, incompetency, change of residence, or the like. Thus, when only one aspect of a trial is reconsidered from the cold record of a case long since concluded, the adjudication might well be unreliable. In addition, the record may have been lost, destroyed, or discarded. Without a record, who is to challenge the prisoner's claim that there was a coerced confession? The prosecutor may well have relied upon the confession, and now—five, ten, or twenty years later—is unable to make out a *prima facie* case.

Aside from the difficulties of administering the procedure directed in *Huntley* (*coram nobis*), there appear to be further problems in the application of the "Massachusetts procedure" regarding the voluntariness of confessions. It may well be argued that the new procedure will afford fewer protections to the prisoner than the old. The trial judge, long accustomed to the New York procedure, may have a tendency to continue to submit all confessions to the jury where conflicting inferences could be drawn, rather than determining voluntariness beyond a reasonable doubt.²⁹ Furthermore, the jury might become aware of the judicial finding of voluntariness and then be reluctant to set it aside.³⁰

The decision in *Huntley*, and its foreboding of possible complete retroactive application, could have severe effects on the prosecutor. In the future, rather than risk a new trial, the prosecutor may induce the defendant to plead guilty to a lesser offense, thereby compromising his obligation to the community. Furthermore, to compound the prosecutor's dilemma, the defendant may employ the *coram nobis* motion in an attempt to challenge prior convictions for which his sentence has already been served, in an attempt to mitigate the penalty for a present conviction.

It is more than likely that state legislation will ensue to mitigate the limitations imposed upon the prosecutor by this case. The *Mapp* case brought about the enactment of the "stop and frisk" and "no-knock" laws, and one might well expect an analogous result as a development of *Huntley* in the not so distant future.³¹



²⁹ *People v. Huntley*, *supra* note 18, at 85, 204 N.E.2d at 188, 255 N.Y.S.2d at 850 (dissenting opinion).

³⁰ Shapiro, *supra* note 28, p. 4, col. 7.

³¹ See S. Int. 2750, Pr. 2891, A. Int. 4752, Pr. 4875 (1965).