

Procedure in the Trial Courts.—The Court has placed constitutional limitations upon the procedures followed by trial courts for determining the admissibility of confessions and other incriminating admissions. Three procedures were developed over time to deal with the question of admissibility when involuntariness was claimed. By the orthodox method, the trial judge heard all the evidence on voluntariness in a separate and preliminary hearing, and if he found the confession involuntary the jury never received it, while if he found it voluntary the jury received it with the right to consider its weight and credibility, which consideration included the circumstances of its making. By the New York method, the judge first reviewed the confession under a standard leading to its exclusion only if he found it not possible that “reasonable men could differ over the [factual] inferences to be drawn” from it; otherwise, the jury would receive the confession with instructions to first determine its voluntariness and to consider it if it were voluntary and to disregard it if it were not. By the Massachusetts method, the trial judge himself determined the voluntariness question and if he found the confession involuntary the jury never received it; if he found it to have been voluntarily made he permitted the jury to receive it with instructions that the jurors should make their own independent determination of voluntariness.⁴⁰⁷

The New York method was upheld against constitutional attack in *Stein v. New York*,⁴⁰⁸ but eleven years later a five-to-four decision in *Jackson v. Denno*,⁴⁰⁹ found it inadequate to protect the due process rights of defendants. The procedure did not, the Court held, ensure a “reliable determination on the issue of voluntariness” and did not sufficiently guarantee that convictions would not be grounded on involuntary confessions. Because there was only a general jury verdict of guilty, it was impossible to determine whether the jury had first focused on the issue of voluntariness and then either had found the confession voluntary and considered it on the question of guilt or had found it involuntary, disregarded it, and reached a conclusion of guilt on wholly independent evidence. It was doubtful that a jury could appreciate the values served by the exclusion of involuntary confessions and put out of mind the content

⁴⁰⁷ *Jackson v. Denno*, 378 U.S. 368, 410–23 (1964) (appendix to opinion of Justice Black concurring in part and dissenting in part).

⁴⁰⁸ 346 U.S. 156, 170–79 (1953). Significant to the Court’s conclusion on this matter was the further conclusion of the majority that coerced confessions were inadmissible solely because of their unreliability; if their trustworthiness could be established the utilization of an involuntary confession violated no constitutional prohibition. This conception was contrary to earlier cases and was subsequently repudiated. See *Jackson v. Denno*, 378 U.S. 368, 383–87 (1964).

⁴⁰⁹ 378 U.S. 368 (1964). On the sufficiency of state court determinations, see *Swenson v. Stidham*, 409 U.S. 224 (1972); *La Vallee v. Della Rose*, 410 U.S. 690 (1973).