not deny a defendant due process to subject him initially to trial before a non-lawyer police court judge when there is a later trial *de novo* available under the state's court system.[1085]

Prosecutorial Misconduct.—When a conviction is obtained by the presentation of testimony known to the prosecuting authorities to have been perjured, due process is violated. The clause "cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance . . . is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation." [1086]

The above-quoted language was dictum,[1087] but the principle it enunciated has required state officials to controvert allegations that knowingly false testimony had been used to convict [1088] and has upset convictions found to have been so procured.[1089] Extending the

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ness of the confession); Holmes v. South Carolina, 547 U.S. 319 (2006) (overturning rule that evidence of third-party guilt can be excluded if there is strong forensic evidence establishing defendant's culpability). *But see* Montana v. Egelhoff, 518 U.S. 37 (1996) (state may bar defendant from introducing evidence of intoxication to prove lack of *mens rea*).

[1085] North v. Russell, 427 U.S. 328 (1976).

[1086] Mooney v. Holohan, 294 U.S. 103, 112 (1935).

[1087] The Court dismissed the petitioner's suit on the ground that adequate process existed in the state courts to correct any wrong and that petitioner had not availed himself of it. A state court subsequently appraised the evidence and ruled that the allegations had not been proved in *Ex parte* Mooney, 10 Cal. 2d 1, 73 P.2d 554 (1937), *cert. denied*, 305 U.S. 598 (1938).

[1088] Pyle v. Kansas, 317 U.S. 213 (1942); White v. Ragen, 324 U.S. 760 (1945). *See also* New York ex rel. Whitman v. Wilson, 318 U.S. 688 (1943); *Ex parte* Hawk, 321 U.S. 114 (1914). *But see* Hysler v. Florida, 315 U.S. 411 (1942); Lisenba v. California, 314 U.S. 219 (1941).

[1089] Napue v. Illinois, 360 U.S. 264 (1959); Alcorta v. Texas, 355 U.S. 28 (1957). In the former case, the principal prosecution witness was defendant's accomplice, and he testified that he had received no promise of consideration in return for his testimony. In fact, the prosecutor had promised him consideration, but did nothing to correct the false testimony. *See also* Giglio v. United States, 405 U.S. 150 (1972) (same). In the latter case, involving a husband's killing of his wife because of her infidelity, a prosecution witness testified at the *habeas corpus* hearing that he told the prosecutor that he had been intimate with the woman but that the prosecutor had told him to volunteer nothing of it, so that at trial he had testified his relationship with the woman was wholly casual. In both cases, the Court deemed it irrelevant that the false testimony had gone only to the credibility of the witness rather than to the defendant's guilt. What if the prosecution should become aware of the perjury of a prosecution witness following the trial? *Cf.* Durley v. Mayo, 351 U.S. 277 (1956). *But see* Smith v. Phillips, 455 U.S. 209, 218–21 (1982) (prosecutor's failure to disclose that one of the jurors has a job application pending before him, thus rendering him possibly partial, does not go to fairness of the trial and due process is not violated).