



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 42 | Number 1

Article 26

12-2-1963

Criminal Law -- Confessions -- Admissibility of Corroborative Evidence

George M. Beasley III

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

George M. Beasley III, *Criminal Law -- Confessions -- Admissibility of Corroborative Evidence*, 42 N.C. L. REV. 219 (1963).
Available at: <http://scholarship.law.unc.edu/nclr/vol42/iss1/26>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

ther, I see no reason why our courts would not follow the broad approach of the *Restatement of Trusts* and of the New York courts. There is no basis for a contentious approach.

Assuming that the North Carolina courts accept the Totten trust, the lawyer is faced with the problem of draftsmanship for the deposit. A simple deposit reading "John Doe in trust for Richard Roe" should prima facie establish a Totten trust, subject to the rules of evidence and proof regarding a contrary intent mentioned earlier. To add a variety of provisions on the card regarding right to control, etc., may result in the trust being held to be testamentary. On the other hand it is desirable, I believe, that direct evidence of the Totten intent appear on the deposit card as this may avoid a lawsuit after death. I would add the following in readable size type:

It is the intent of the depositor, John Doe, to establish a "Totten" trust. The depositor is to have full power to withdraw all or part of the funds deposited at any time, and to revoke at any time. On the death of the depositor, if the beneficiary be then living, the bank is authorized to pay the balance in the the account to such beneficiary, such beneficiary to then own the account fully and absolutely.

In my opinion the Totten trust is the sort of development that can best be worked out by the courts rather than by a state statute. The courts can mold and shape and give life and adapt. However, there is enough court history in other states for guidance, and so it may be that a statute would be the safe way out for this state. If there is to be a statute, I would suggest that the exact words of section fifty-eight of the *Restatement of Trusts* be used.²⁰

THOMAS W. CHRISTOPHER*

Criminal Law—Confessions—Admissibility of Corroborative Evidence

It is the general rule in the United States that a felony conviction may not be based upon a naked extrajudicial confession of guilt, uncorroborated by any other evidence.¹ Most decisions concerning

²⁰ General references on Totten Trust: 1 SCOTT, TRUSTS § 58-58.5; 1 BOGERT, TRUSTS AND TRUSTEES § 47 (1951); Annots., 157 A.L.R. 925 (1945); 168 A.L.R. 1324 (1947).

* Professor of Law, University of North Carolina.

¹ See, e.g., *Opper v. United States*, 348 U.S. 84 (1954); *Pate v. State*, 36 Ala. App. 688, 63 So. 2d 223 (1953); *State v. Skinner*, 132 Conn. 163, 43 A.2d 76 (1945). See generally Note, *Proof of the Corpus Delicti Aliunde*

such corroborative evidence deal with the problem of the *quantum* of evidence required to satisfy the rule. Another problem which sometimes arises in this area involves the *nature* or *quality* of evidence which may be used as corroboration of such confessions. In the recent case of *Wong Sun v. United States*² the United States Supreme Court dealt with the question of the quality of evidence used for corroboration in a case of first impression. The Court held that the extrajudicial confession of one defendant could not be used to corroborate a similar confession of a co-defendant.³ The Court held that the import of its previous decisions was that the hearsay statements of an alleged co-conspirator were never admissible against the accused, unless made during and in furtherance

the Defendant's Confession, 103 U. P. A. L. Rev. 638 (1955) and Annot., 45 A.L.R.2d 1316 (1956).

² 371 U.S. 471 (1963).

³ The facts of the case were somewhat unusual. Federal narcotics agents, acting on the tip of an informer of unknown reliability, went to the home of petitioner Toy and, without benefit of a search or arrest warrant, broke in and arrested him when he attempted to flee. Toy then admitted he had smoked heroin with one Yee. At Yee's residence the agents found contraband narcotics. Yee implicated Toy and petitioner Wong Sun, who each gave the agents unsigned confessions implicating the other. The voluntary character of the confessions was not disputed. See *Wong Sun v. United States*, 288 F.2d 366 (9th Cir. 1961). Petitioners were tried by a federal judge and convicted of violating the narcotics laws. The government's evidence consisted solely of four items which were admitted over the objection that they were fruits of unlawful arrests or searches: (1) the incriminating statement by Toy when arrested; (2) the heroin found at Yee's residence; (3) Toy's confession; (4) Wong Sun's confession. The Court of Appeals held that the arrests were illegal but that these items were not "fruits" and were admissible to corroborate the confessions; it affirmed the convictions. *Wong Sun v. United States*, 288 F.2d 366 (9th Cir. 1961).

The Supreme Court held that the evidence other than Wong Sun's confession was inadmissible against Toy as "fruits" of the illegality. The Court held that the fourth amendment protected defendant against the overhearing of verbal statements as well as against the more usual seizure of papers and effects. 371 U.S. at 484-85. Stating that the settled principle of federal criminal law was that a conviction must rest upon firmer ground than the uncorroborated confession of the accused, the Court held that Wong Sun's confession was inadmissible against Toy for any purpose; therefore, Toy's conviction must be set aside for lack of evidence to corroborate his confession. As to Wong Sun, the Court held that his confession was corroborated by the seized heroin, since he had no standing to suppress it. However, since the trial court had overruled his objection to the admission of Toy's confession, the Court held that this confession *may* have been erroneously considered admissible against Wong Sun. As a result, Wong Sun was also given a new trial on the ground that in narcotics cases, where evidence of possession alone is sufficient to convict, the required corroboration should be found among evidence properly admitted against the accused.

of the conspiracy.⁴ Under this view, of course, a confession by one defendant could never be used to corroborate the confession of a co-defendant, since it would never be made during and in furtherance of a conspiracy. The Court thus adopted a rather rigid exclusionary rule in regard to the quality of such evidence, despite the fact that, as to the *quantum* of evidence, it had taken a more permissive view. In *Smith v. United States*⁵ the Court held that it was sufficient "if the corroboration merely fortifies the truth of the confession, without independently establishing the crime charged."⁶ The apparently conflicting philosophies underlying these two rulings suggest that the entire area may be in need of re-examination by the courts.

The rationale underlying the requirement that extrajudicial confessions be corroborated seems to be based upon two factors, which the courts often fail to distinguish.⁷ First, there is the possibility that the confession, though voluntarily given, is false. The accused might have been lying to establish an alibi, to obtain leniency in the face of apparently overwhelming evidence of guilt, or because of some delusion of guilt or psychological compulsion to confess falsely.⁸ Secondly, there is the possibility that a false

⁴The Court had previously held, in accordance with the general rule, that a confession admitted against the confessor is incompetent as evidence of the guilt of a co-defendant on a joint trial, and that the jury must be so instructed. See, *e.g.*, *Delli Paoli v. United States*, 352 U.S. 232 (1957); *Krulewitch v. United States*, 336 U.S. 440 (1949).

⁵348 U.S. 147 (1954).

⁶*Id.* at 156.

⁷The Supreme Court has stated that the foundation of the rule "lies in a long history of judicial experience with confessions and in the realization that sound law enforcement requires police investigations which extend beyond the words of the accused. Confessions may be unreliable because they are coerced or induced, and although separate doctrines exclude involuntary confessions from consideration by the jury . . . further caution is warranted because the accused may be unable to establish the involuntary nature of his statements. Moreover, though a statement may not be 'involuntary' within the meaning of this exclusionary rule, still its reliability may be suspect if it is extracted from one who is under the pressure of a police investigation Finally, the experience of the courts, the police, and the medical profession recounts a number of false confessions voluntarily made" *Smith v. United States*, 348 U.S. 147, 153 (1954).

In *Opper v. United States*, 348 U.S. 84, 89-90 (1954), the Court pointed out that "in our country the doubt persists that the zeal of the agencies of prosecution to protect the peace, the self-interest of the accomplice, the maliciousness of an enemy or the aberration or weakness of the accused under the strain of suspicion may tinge or warp the facts of the confession."

⁸Looking at confessions from this point of view, some courts have concluded that they are inherently untrustworthy. Thus in *State v. Long*, 2

confession might have been secured by means of physical or psychological duress, or even manufactured by the police. Dean Wigmore, in attacking the corroboration requirement as an "exhibition of sentimentalism toward the guilty,"⁹ reasoned that a confession is properly viewed in two aspects; that is, the confession as evidence should be considered apart from the evidence establishing the existence and content of the confession and its voluntary nature. He noted that the conflict of opinion as to the value of confessions could largely be explained by the fact that these ideas were confused. Wigmore believed the voluntary confession to be evidence of the highest order and discounted the danger of voluntary false confessions. He pointed out that it was the evidence of the genuineness and voluntary nature of the confession which was properly open to suspicion, and argued that the proper safeguard lay in exacting more testimony as to the manner in which the confession was elicited.¹⁰ Instead of a rigid rule requiring a set standard of corroboration which might be capable of abuse by the guilty, Wigmore suggested that the better procedure would be to receive all well-proved confessions in evidence and to leave them to the jury, subject to all discrediting circumstances, to receive such weight as may seem proper.¹¹ If considered necessary the jury could be warned by court or counsel of the possible dangers in such evidence.¹²

Few American courts have been willing to accept the Wigmore thesis. Judge Learned Hand, while reluctantly bowing to the fact that the weight of authority required corroboration, questioned the

N.C. 455, 456 (1797), it was said that "a confession, from the very nature of the thing, is a very doubtful species of evidence, and to be received with great caution. It is hardly to be supposed that a man perfectly possessed of himself would make a confession to take away his own life." A modern case representative of this viewpoint is *State v. Johnson*, 95 Utah 572, 83 P.2d 1010 (1938). On the other hand, some courts have stated that a confession is the highest kind of evidence. At one time this was the view of the Supreme Court. See *Hopt v. Utah*, 110 U.S. 574 (1884). Numerous cases to like effect are collected in 3 WIGMORE, EVIDENCE § 866 n.3 (3d ed. 1940) [hereinafter cited as WIGMORE].

⁹ 3 WIGMORE § 867.

¹⁰ 3 WIGMORE § 866. A similar position was taken by Ruffin, C. J., in *State v. Cowan*, 29 N.C. 239, 246 (1847): "Now few things happen seldomer than that one in the possession of his understanding should of his own accord make a confession against himself which is not true. Innocence or weakness is therefore sufficiently guarded by the rule which excludes a confession unduly obtained by hope or fear." Contrast this view with that taken in *State v. Long*, 2 N.C. 455 (1797).

¹¹ 3 WIGMORE § 867.

¹² 7 WIGMORE § 2070.

wisdom of the rule. "That the rule has in fact any substantial necessity in justice, we are much disposed to doubt . . . [I]t seems to us that such evils as it corrects could be much more flexibly treated by the judge at trial . . ."¹³ Despite such critics, the corroboration rule appears to be inextricably imbedded in the American criminal law. Only a handful of American jurisdictions allow a felony conviction to be based upon an uncorroborated extrajudicial confession.¹⁴

While most courts are in agreement that some corroboration is needed, they are divided on the question of how much extrinsic evidence is required and to what issues in the case it must relate. According to the overwhelming weight of authority, the evidence must relate to and tend to establish the *corpus delicti*.¹⁵ The *corpus delicti* under this rule includes only two of the elements of proof needed to convict, that is, proof that some injury was done and that it was done by a criminal agency; the third element, criminal participation by the accused, may be proven by the confession itself.¹⁶ A few American courts have rejected this rigid "*corpus delicti*" formula and require only that some facts be proven outside the confession which provide reasonable corroboration under the circumstances.¹⁷ The English view seems even more flexible. Generally the English courts require no corroboration of extrajudicial confessions; however, in cases involving homicide, larceny,

¹³ *Daeche v. United States*, 250 Fed. 566, 571 (2d Cir. 1918). Professor McCormick has taken a similar position opposing the inflexibility of the rule. See MCCORMICK, EVIDENCE § 110 (1954).

¹⁴ See, *e.g.*, *Commonwealth v. Kimball*, 321 Mass. 290, 73 N.E.2d 468 (1947); *Potman v. State*, 259 Wis. 234, 47 N.W.2d 884 (1951). A few states construe local statutes requiring corroboration as being inapplicable to misdemeanors, and allow convictions of such offenses to be based upon uncorroborated confessions. See, *e.g.*, *People v. Erickson*, 171 Misc. 937, 13 N.Y.S.2d 997 (Magis. Ct. New York City 1939). North Carolina has applied the corroboration rule to reverse a conviction in a misdemeanor case; the court did not consider whether such cases should be distinguished from felony cases. *State v. Bass*, 253 N.C. 318, 116 S.E.2d 772 (1960).

¹⁵ See, *e.g.*, *United States v. Markman*, 193 F.2d 574 (2d Cir. 1952); *State v. Romo*, 66 Ariz. 174, 185 P.2d 757 (1947); *State v. Morgan*, 157 La. 962, 103 So. 278 (1925). Some states have adopted the rule by statute. See, *e.g.*, MINN. STAT. ANN. § 634.03 (1947). See generally Annot., 45 A.L.R.2d 1316 (1956).

¹⁶ See, *e.g.*, *State v. Benham*, 58 Ariz. 129, 118 P.2d 91 (1941); *Holland v. State*, 39 Fla. 178, 22 So. 298 (1897); *State v. Morgan*, 157 La. 962, 103 So. 278 (1925). *But see* *Smith v. United States*, 348 U.S. 147 (1954) (corroborative evidence must implicate accused if no tangible *corpus delicti*).

¹⁷ See, *e.g.*, *Logue v. State*, 198 Ga. 672, 32 S.E.2d 397 (1944); *State v. Cardwell*, 90 Kan. 606, 135 Pac. 597 (1913).

or bigamy, the trial court may either require independent corroborative evidence or warn the jury not to accept the truth of the confession too readily.¹⁸

In North Carolina the rule requiring corroboration of extrajudicial confessions has undergone radical transformations. In the early case of *State v. Long*¹⁹ North Carolina seemed to be unquestionably in accord with the general American rule requiring corroboration. Yet in *State v. Cowan*²⁰ Chief Justice Ruffin equated a "fully proved" and voluntary extrajudicial confession with a confession made in open court, and stated unequivocally that such a confession "which goes to the whole case is plenary evidence to the jury";²¹ that is, an uncorroborated confession may itself establish all the elements of the corpus delicti and thus support a conviction. In 1954, in *State v. Cope*,²² the court reaffirmed the earlier *Long* holding and again joined the majority in requiring corroboration. However, in a dictum the court attempted to lay down a rule to determine the quantum of corroborative evidence required: "[I]t is our considered judgment that in such cases there must be evidence *aliunde* the confession of sufficient probative value to establish the fact that a crime of the character charged has been committed."²³ After this decision North Carolina was considered to be among those jurisdictions having a rather stringent requirement as to the quantum of the extrinsic evidence.²⁴ In the recent case of *State v. Whittemore*,²⁵ however, the court again shifted its ground. *State v. Cope*²⁶ was construed as holding only that a naked extrajudicial confession will not support a conviction and the dictum quoted above was disapproved. *Whittemore* seems to stand for the proposition that it is not required to have full, direct,

¹⁸ See generally McCORMICK, EVIDENCE § 110 n.2 (1954) and 7 WIGMORE § 2070 and cases therein cited.

¹⁹ 2 N.C. 455 (1797):

²⁰ 29 N.C. 239 (1847). The court did not mention *State v. Long*, *supra* note 19, but instead relied upon English authorities.

²¹ *Id.* at 246. This led some writers to conclude that North Carolina, like Massachusetts, required no corroboration of extrajudicial confessions. See, e.g., STANSBURY, NORTH CAROLINA EVIDENCE § 182 (1946); 23 N.C.L. REV. 364 (1945).

²² 240 N.C. 244, 81 S.E.2d 773 (1954).

²³ *Id.* at 247, 81 S.E.2d at 776 (1954).

²⁴ See Note, *Proof of the Corpus Delicti Aliunde the Defendant's Confession*, 103 U. PA. L. REV. 638 (1955).

²⁵ 255 N.C. 583, 122 S.E.2d 396 (1961).

²⁶ 240 N.C. 244, 81 S.E.2d 773 (1954).

and positive evidence of the corpus delicti independent of the confession, so long as there are "such extrinsic corroborative circumstances, as will, *when taken in connection with the confession*, establish the prisoner's guilt in the minds of the jury beyond a reasonable doubt."²⁷ This view of the sufficiency of the extrinsic evidence seems to be in accord with the more permissive and flexible minority view.²⁸

Although it seems well established as a general rule in American courts that extrajudicial confessions must have corroboration of some sort, the question of the quality or competency of this evidence has seldom been raised.²⁹ The few cases which have dealt with the problem of whether otherwise incompetent evidence is admissible for the limited purpose of corroborating a confession are generally in accord with the principal case in refusing to admit such evidence for this purpose.³⁰ North Carolina has taken a similar position. In *State v. Cope*³¹ the court held that even though the pre-trial statement of the state's witness was admissible to impeach her inconsistent testimony, it was not admissible to corroborate the defendant's extrajudicial confession. Since there was no other corroborative evidence, the defendant's conviction was reversed.³² This decision is an extension of the rule laid down in prior decisions that

²⁷ 255 N.C. at 589, 122 S.E.2d at 401.

²⁸ See cases cited note 17 *supra*.

²⁹ See generally 7 WIGMORE §2071. Corroborative evidence may be either direct or circumstantial. *Allen v. State*, 230 Miss. 740, 93 So. 2d 844 (1957). Testimony by the defendant or by an accomplice may suffice. See, e.g., *People v. Manske*, 399 Ill. 176, 77 N.E.2d 164 (1948) (defendant's testimony); *Parsons v. State*, 191 Ind. 194, 131 N.E. 381 (1921) (accomplice's testimony).

³⁰ See, e.g., *Cohron v. State*, 156 Tex. Crim. 331, 242 S.W.2d 776 (1951); *Pepoon v. Commonwealth*, 192 Va. 804, 66 S.E.2d 854 (1951). In *State v. Johnson*, 31 N.J. 489, 158 A.2d 11 (1960), the court said by way of dictum that "It is . . . clear that admissions and confessions made by each defendant may not be used to corroborate the admissions and confessions of the others." 31 N.J. at 504, 158 A.2d at 19. But cf. *State v. Knight*, 19 Iowa 94 (1865) wherein the court stated that hearsay testimony as to statements made after the offense by a confederate was admissible for the limited purpose of corroborating defendant's extrajudicial confession; however, in this case there was other corroborative evidence which was clearly admissible and the court suggests that even if the admission of the hearsay evidence was error, it was not prejudicial error. See generally Note, *Proof of the Corpus Delicti Aliunde the Defendant's Confession*, 103 U. PA. L. Rev. 638 (1955).

³¹ 240 N.C. 244, 81 S.E.2d 773 (1954).

³² In a similar Tennessee case, the court reversed defendant's conviction on the same ground, despite the fact that the court was entirely convinced of his guilt. *King v. State*, 187 Tenn. 431, 215 S.W.2d 813 (1948).

ordinarily inadmissible evidence admitted to corroborate or impeach a witness may not be considered as *substantive* evidence against the accused.³³

The problem of the admissibility of such corroborative evidence had primarily arisen in regard to evidence barred by the rule against hearsay. For example, in the *Wong Sun*³⁴ case, each defendant's extrajudicial statement was barred by the hearsay rule as substantive proof of the guilt of his co-defendant, although competent against himself under the "admissions" exception to the rule.³⁵ It could perhaps be plausibly argued that, since hearsay evidence is not without probative value,³⁶ the Court should have relaxed the strict rules of evidence and allowed the two confessions to be mutually corroborative.³⁷ However, as the Court indicated, the circumstances

³³ See, e.g., *State v. Neville*, 51 N.C. 424 (1859) (prior inconsistent statement admissible only to impeach witness); *State v. Rogers*, 233 N.C. 390, 64 S.E.2d 572 (1951) (prior consistent statements admissible only to corroborate witness). Such corroborative extrajudicial statements can only corroborate the witness who made them. *State v. Lassiter*, 191 N.C. 210, 131 S.E. 577 (1926). It might be thought that to admit such evidence to impeach or corroborate a witness is necessarily to admit it against the accused despite limiting instructions, since without this evidence the jury might not believe the witness. See dissent by Judge Stacy in *State v. Davis*, 229 N.C. 386, 50 S.E.2d 37 (1948). However, such evidence is more trustworthy than ordinary hearsay, since here the person who made the statement is subject to cross-examination. See *Beaty v. United States*, 203 F.2d 652 (4th Cir. 1953).

³⁴ *Wong Sun v. United States*, 371 U.S. 471 (1963).

³⁵ It might be argued that each defendant's confession should be competent against the other under the "declaration against interest" exception to the hearsay rule. However, this exception makes admissible only those extrajudicial declarations of an unavailable declarant as to facts against his pecuniary or proprietary interest. Thus a confession would not qualify since the declarant usually is technically available, and the declaration is against penal, not pecuniary or proprietary interest. This view has been criticized as unnecessarily restrictive. See McCORMICK, *EVIDENCE* §255 (1954). Under the almost universal rule, even a confession by another person that he and not defendant committed the crime is barred by the hearsay rule. *Donnelly v. United States*, 228 U.S. 243 (1913). In an eloquent dissent in this case, Mr. Justice Holmes argued that such confessions should be admitted as declarations against interest. 228 U.S. at 277-78. North Carolina is in accord with the general rule that such evidence is inadmissible. *State v. English*, 201 N.C. 295, 159 S.E. 318 (1931).

³⁶ The weight of authority seems to support the view that if hearsay is admitted without objection, it is as strong as legally competent evidence. See, e.g., *Weil v. Free State Oil Co.*, 200 Md. 62, 87 A.2d 826 (1952); *White v. Newman*, 10 Utah 2d 62, 348 P.2d 343 (1960). Such evidence may be used to corroborate admissions of the accused. *Smith v. State*, 72 Fla. 263, 73 So. 188 (1916).

³⁷ See Note, *Proof of the Corpus Delicti Aliunde the Defendant's Confession*, 103 U. PA. L. REV. 638 (1955).

of this case give rise to certain policy considerations which militate against such a relaxation. What one participant says about his partner in crime may be based on spite, fear, pique, desire to stand well with the prosecution, or many other things not leading to truth.³⁸ Nevertheless, the Court goes further than the particular circumstances of the case seem to warrant when it supports its decision with the unexamined assumption that, since the hearsay rule goes to the admissibility of the evidence, evidence barred by the hearsay rule as substantive proof is ipso facto barred for corroborative purposes as well.³⁹ The Court fails to consider the possibility that it might be desirable to have different standards of admissibility for ordinary substantive evidence and evidence merely corroborative of a full confession of guilt.

Some of the principal difficulties in this area arise in cases involving joint trials. The problem consists primarily of the necessity of allowing evidence into the trial as to one defendant which may be prejudicial to the interests of a co-defendant. Where there is such a joint trial, the North Carolina court has followed the majority, holding confessions of one defendant admissible where the trial judge instructed the jury that such evidence could be used only against the confessor.⁴⁰ As the United States Supreme Court has

³⁸ *Levie, Hearsay and Conspiracy*, 52 MICH. L. REV. 1159, 1173 (1954). Cf. WILLIAMS, *PROOF OF GUILT* 135 (2d ed. 1958): "The accomplice may no longer have anything to fear or hope from the way in which he gives his evidence; yet he may mistakenly entertain such a fear or hope, or he may wish by his evidence against others to gratify some spite against them."

³⁹ 371 U.S. at 491. A similar unexamined assumption is made by the North Carolina court in *State v. Cope*, 240 N.C. 244, 81 S.E.2d 773 (1954), discussed in text accompanying note 32 *supra*.

⁴⁰ The trial judge must instruct the jury that "the confession so offered is admitted as evidence against the defendant who made it but is *not evidence* and is not to be considered by the jury *in any way* in determining the charges against his co-defendant(s)." Bobbitt, J., in *State v. Kerley*, 246 N.C. 157, 161, 97 S.E.2d 876, 879 (1957). (Emphasis added.)

North Carolina does allow the confession of a co-participant in the crime to be used indirectly against another, where the other "adopts" such a confession made in his presence; the rationale being that by adoption the accused makes the confession his own. See, *e.g.*, *State v. Murray*, 216 N.C. 681, 6 S.E.2d 513 (1940). A few courts have held that a confession thus made in the defendant's presence and not denied by him may be admitted together with his adoptive conduct to corroborate his own confession. See, *e.g.*, *Sutton v. Commonwealth*, 207 Ky. 597, 269 S.W. 754 (1925). *Contra*, *State v. Ferry*, 2 Utah 2d 371, 275 P.2d 173 (1954). See also, *United States v. Calderon*, 348 U.S. 160 (1954). It has been held that a *corroborated* admission by the accused may suffice to corroborate his confession. *Smith v. United States*, 348 U.S. 147 (1954).

pointed out, it is highly doubtful that a jury can perform such mental legerdemain with any degree of success;⁴¹ therefore, the only truly satisfactory solution lies in granting a severance to the defendant who would be unduly prejudiced. However, it has long been held that this is a matter within the sound discretion of the trial judge.⁴² Due to the crowded condition of most courts the refusal of a motion for severance is seldom held an abuse of this discretion.

As recognized by the United States Supreme Court in *Smith v. United States*,⁴³ the rule requiring extrinsic corroboration even of admittedly voluntary confessions infringes on the province of the trier of fact; consequently, "its application should be scrutinized lest the restrictions it imposes surpass the dangers which gave rise to them."⁴⁴ It has been suggested that if the appellate court were given the power of review on the facts and justice of the result even if there be evidence to support the lower court decision, it would lessen the urge to resort to such mechanical and inflexible rules for reversing an unjust result.⁴⁵ It has also been suggested that it would be more in accordance with the public interest to rule that, where corroboration of the evidence for the prosecution would otherwise be required, it shall be dispensed with if the accused does not give evidence in his own defense.⁴⁶ In regard to the admissibility of the evidence required by the corroboration rule, the principal case illustrates the difficulty often encountered in reconciling a strict rule of evidence with the public interest that criminals should be convicted. It seems clear that insofar as the corroboration rule is concerned, the American courts have failed to achieve such a reconciliation.

GEORGE M. BEASLEY, III

⁴¹ The whole doctrine is severely criticized yet grudgingly followed in *Krulewitsch v. United States*, 336 U.S. 440 (1949).

⁴² The difficulty in securing a severance in situations like that in the principal case is shown by the recent case of *State v. Johnson*, 31 N.J. 489, 158 A.2d 11 (1960), which held that the trial court did not abuse his discretion in refusing to grant severance since (1) the confessions were not in dispute as to the essential facts of the crime; (2) separate trials would create difficult problems of administration; (3) the trial judge gave ample instructions to the jury limiting the confessions to the respective confessor.

⁴³ 348 U.S. 147 (1954).

⁴⁴ *Id.* at 153.

⁴⁵ See generally McCORMICK, EVIDENCE § 75 (1954).

⁴⁶ See WILLIAMS, PROOF OF GUILT 140 (2d ed. 1958).