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CRIMINAL LAW-CONFESSIONS OBTAINED PRIOR TO COMMITMENT-WHAT CONSTITUTES UNREASONABLE DELAY

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CRIMINAL LAW—CONFESSIONS OBTAINED PRIOR TO COMMITMENT—WHAT CONSTITUTES UNREASONABLE DELAY—Defendants were arrested on suspicion of murder and questioned by police. Defendants confessed after being held incommunicado for some hours during the night, but were not arraigned until the following morning. The confessions were admitted in evidence and defendants found guilty. On appeal, *held,* affirmed. There had not been an unreasonable delay[1] in producing defendants before a commissioner, because the length of time in hours was not unreasonable and because committing magistrates are not available late at night. *Garner v. United States,* (App. D.C., 1949) 174 F. (2d) 499.

[1] Rule 5(a), Federal Rules of Criminal Procedure (1946) provides: "An officer making an arrest without a warrant . . . shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States."

Prior to *McNabb v. United States*[2] the admissibility of confessions depended on whether duress or coercion could be found in the individual case. In the *McNabb* case the Court held that unlawful detention per se renders confessions obtained during the period inadmissible. This position was modified in *United States v. Mitchell*[3] to allow a confession obtained within a reasonable time after arrest to stand despite a subsequent unlawful delay in arraignment. This doctrine has been compared to the rule in the unlawful search and arrest cases.[4] The basic purpose underlying both types of decisions is to discourage unlawful police practices by voiding the results obtained. Justice Reed strongly dissents from this approach,[5] believing that illegal methods are best prevented by criminal sanctions and civil remedies against offending officers. It is doubtful if confessions obtained while in unlawful custody should be treated like other evidence obtained by unlawful methods. The probative value of documentary or real evidence is not affected by methods used in obtaining it, while confessions obtained during unlawful detention are likely to be untrustworthy.[6] The Court's approach appears from the *McNabb* and *Mitchell* cases to coincide with Wigmore's evaluation.[7] A confession voluntarily given immediately after arrest is likely to be accurate and trustworthy, since there is a natural tendency to relieve the mind of its burden of guilt. But police practices of unlawful detention for purposes of psychological and physical coercion do not necessarily produce results which may in fact be relied on.[8] Common use of "third degree" methods produces the "medieval psychology"[9] which makes a confession necessary in all cases, and which subverts

[2] 318 U.S. 332, 63 S.Ct. 608 (1943), excluding confessions obtained during unlawful detention.

[3] 322 U.S. 65, 64 S.Ct. 896 (1944). But see Upshaw v. United States, 335 U.S. 410, 69 S.Ct. 170 (1948), strongly reaffirming McNabb v. United States.

[4] See 47 COL. L. REV. 1214 (1947); 42 MICH. L. REV. 679 (1944). Evidence obtained by illegal search or search outside the scope of legal arrest is inadmissible. Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341 (1914); Agnello v. United States, 269 U.S. 20, 46 S.Ct. 4 (1925). But the strict position of the Weeks case has been modified by United States v. Rabinowitz, 338 U.S. 884, 70 S.Ct. 430 (1950), which states that the test used is whether the search is reasonable and not whether it would have been reasonable to procure a search warrant. Justice Black, dissenting, states that the search and seizure rule is not a "constitutional command," but merely an "evidentiary policy adopted by this Court in the exercise of its supervisory powers over federal courts," citing the McNabb case for comparison.

[5] See McNabb v. United States, 318 U.S. 332 at 347, 63 S.Ct. 608 (1943); Upshaw v. United States, 335 U.S. 410, 414, 69 S.Ct. 170 (1948). In the latter case he indicates that the McNabb rule should apply only where confessions are extracted by proved psychological pressure.

[6] McNabb v. United States, supra note 2, and United States v. Rabinowitz, supra note 4, tend to bear out the distinction.

[7] 3 WIGMORE, EVIDENCE §§851, 851a (1940, Supp. 1949).

[8] See 11 UNITED STATES NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, "Lawlessness in Law Enforcement," 202-206 (1931) (WICKERSHAM REPORT), indicating the high percentage of reversals in representative criminal appeals cases because of the proved falsity or unreliability of coerced confessions. Humane treatment, as indicated by the English practice, far more often elicits truthful statements. This requires the cooperation of the bar, however.

[9] 3 WIGMORE, EVIDENCE §851a (1940, 1949 Supp.). Since medieval doctrine on the Continent required confessions before convictions could be had, torture was used as a matter of course to wrest a confession from accused persons.

the use of available scientific criminal detection methods.[10] Because of difficulty in obtaining prosecution and establishing proof of maltreatment, civil and criminal remedies against individual officers in practice are worthless. The most practical method of discouraging the "third degree" is to exclude all confessions obtained under circumstances which favor the use of phychological and physical pressure, the most common circumstance being a long detention after arrest and prior to arraignment. If it be granted that the McNabb-Mitchell rule is sound, then the holding in the principal case emasculates it. The length of time of detention should not be the controlling factor,[11] but rather the length of detention in relation to the characteristics of the person unlawfully held.[12] Nor should reasonableness be made to depend on the availability of commissioners and magistrates on the basis of normal business hours.[13] A delay in arraignment under Rule 5(a) ought to be considered reasonable only if it be shown by the government that honest but unsuccessful efforts were made on the part of arresting officers to get the prisoner promptly before a commissioner or other person with equivalent powers.

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[10] 11 WICKERSHAM REPORT 130, supra note 8, indicates that use of third degree methods decreases as the use of modern criminology methods increases.

[11] In the principal case the majority of the court stressed length of detention almost exclusively, barely considering evidence of physical maltreatment of defendants which was pointed out by the dissent. The McNabb-Mitchell rule should not be a legal smokescreen shielding actual physical maltreatment from judicial examination.

[12] 11 WICKERSHAM REPORT 156-164, supra note 8, indicates that "third degree" practices are generally used on adolescents, members of minority racial groups, and persons without influence or means. Controverting police claim that these practices are used only on hardened criminals, in only 10% of the criminal appeals cases examined did the defendants have prior criminal records. Defendants in the principal case were young Negroes of limited capacity and education.

[13] In Akowskey v. United States, (App. D.C., 1946) 158 F. (2d) 649, 650, the same court as in the principal case had indicated that commissioners are available at any hour. 11 WICKERSHAM REPORT 38-155, supra note 8, indicates that "third degree" practices are most commonly carried on at night in secluded police quarters.