EVIDENCE-FEDERAL CRIMINAL PROCEDURE-ADMISSIBILITY OF CONFESSION OBTAINED DURING ILLEGAL DETENTION

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EVIDENCE—FEDERAL CRIMINAL PROCEDURE—ADMISSIBILITY OF CONFESSION OBTAINED DURING ILLEGAL DETENTION—Petitioner was arrested without a warrant on suspicion of larceny. He was held without commitment for a period of thirty hours during which he was intermittently questioned but was not subjected to any form of physical coercion. At the end of this period, he signed a confession which was the basis for his conviction in the district court. On certiorari to the United States Supreme Court, following affirmation in the court of appeals,\(^1\) held, reversed. The detention was unlawful as a violation of rule 5 (a) of the Federal Rules of Criminal Procedure,\(^2\) and the confession thus obtained was inadmissible in evidence. *Upshaw v. United States*, (U.S. 1948) 69 S.Ct. 170.

For thirty-five years the federal courts have made an exception to the common law rule that admissibility of evidence does not depend on the manner in which it was obtained.\(^3\) Thus it seems well accepted that evidence will not be received in a federal court which has been obtained through unlawful search and seizure,\(^4\) by means of wire-tapping,\(^5\) or in deprivation of due process.\(^6\) Though much condemned as an unjustified effort to regulate the police\(^7\) and as a case of "misplaced

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\(^2\) 18 U.S.C. following §687 (Rules of Criminal Procedure) rule 5 (a) (1946); “An officer making an arrest . . . shall take the arrested person without unnecessary delay . . .” before the nearest available committing magistrate.

\(^3\) 8 Wigmore, Evidence, 3d ed., §2183 (1940).

\(^4\) *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341 (1914); cf. *Harris v. United States*, 331 U.S. 145, 67 S.Ct. 1098 (1947). It should be noted that the prohibitions considered here and in note 5, infra, apply only when the action was by federal officials.


\(^6\) *Brown v. Mississippi*, 297 U.S. 278, 56 S.Ct. 461 (1936); *Ashcraft v. Tennessee*, 322 U.S. 143, 64 S.Ct. 921 (1944). This prohibition applies to actions either by state or federal government officers.

sentimentality," the doctrine was extended in McNabb v. United States to deny admission of a confession obtained during a detention unlawful under rule 5 (a). The wisdom of such a policy, which is based expressly on the legislative mandate rather than the Constitution, has been much debated. Critics of the McNabb case were encouraged by a later Supreme Court holding in United States v. Mitchell, where a confession was admitted although there was a subsequent unlawful detention. Language in that opinion indicated that the real inquiry was still, as at common law, whether the confession was trustworthy. It is submitted that any such explanation of the Mitchell case is dissipated by the instant case, and that the full force of the McNabb rule is reasserted. The qualification of the Mitchell case seems to do no more than limit the ban to evidence which was “the fruit of the poisonous tree,” a concept already developed in the wire-tapping and unlawful search situations. From the standpoint of stare decisis, the holding seems unimpeachable; but, as indicated above, from the standpoint of policy, there is more room for doubt. The decision reiterates that this is not a constitutional point, so it would seem that policy can best be served by a legislative enactment. However, at least one state court has followed the rule without benefit of statute, and the trend of federal decisions leaves a strong possibility that very nearly the same result can be reached on the basis of due process. If the matter is to be governed more explicitly by statute, there appears to be much value in the English system providing comprehensive rules for interrogation of prisoners.

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8 8 Wigmore, Evidence, 3d ed., §2184 (1940).
9 318 U.S. 332, 63 S.Ct. 608 (1943); see also the companion case, Anderson v. United States, 318 U.S. 350, 63 S.Ct. 599 (1943). Based on a federal statute, this limitation is applied only to federal arrest.
10 McNabb v. United States, 318 U.S. 332 at 341, 63 S.Ct. 608 (1943): “Quite apart from the Constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded.”
18 Many cases have denied admission of confessions for deprivation of due process on very meager showings that anything further than detention was involved. Haley v. Ohio, 332 U.S. 596, 68 S.Ct. 302 (1948) (tender years); Ashcraft v. Tennessee, 322 U.S. 143, 64 S.Ct. 921 (1944) (lack of sleep); Malinski v. New York, 324 U.S. 401, 65 S.Ct. 781 (1945) (psychological fears).