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The Admissibility of Confessions in Evidence in Criminal Courts

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THE ADMISSIBILITY OF CONFESSIONS IN EVIDENCE IN CRIMINAL COURTS

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I. South Carolina Criminal Courts

Scope. In South Carolina a "confession", in a legal sense, is restricted to an acknowledgment of guilt made by a person after an offense has been committed, and it does not embrace a mere statement or declaration of independent facts from which such guilt might be inferred.[1] This same rule was recently given in *State v. Miller*[2] which cited the same rule in *State v. Pittman.*[3] A confession includes an acknowledgment of all of the essential elements of the crime charged and is generally defined as an acknowledgment of guilt.[4]

A confession may be made by conduct or by words, may be expressed or implied or may be oral or written. It may be said or written in many forms.[5] A confession is either judicial or extrajudicial. A judicial confession is one made in conformity to law before a committing magistrate or in court in the course of legal proceedings. An extrajudicial confession is one made by a party elsewhere than before a magistrate or in court.[6]

History. In the early common law periods there were no restrictions at all upon the reception of confessions as evidence, but the courts came to realize that confessions induced by force or threats might be untrustworthy.[7] All the safeguards thrown around confessions by the law are to insure truth.[8] The courts also wished to keep involuntary confessions out of evidence in order to protect the suspect from torture and self-incrimination.[9] The rule developed that a confession had to be voluntarily given.[10] The general rule, in federal and state courts, finally came to be that the admissibility of

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1. State v. Epes, 209 S. C. 246, 39 S. E. 2d 769 (1946).
2. State v. Miller, 211 S. C. 306, 45 S. E. 2d 23 (1947).
3. State v. Pittman, 137 S. C. 75, 134 S. E. 514 (1926).
4. People v. Wynecoop, 359 Ill. 124, 149 N. E. 276 (1935).
5. 22 C. J. S. 1422, Criminal Law, § 816.
6. 22 C. J. S. 1423, Criminal Law, § 816.
7. Wigmore, Evidence, 3rd Ed., Vol. 3, § 816. See: 39 J. Crim. Law 743 (1949).
8. State v. Miller, *supra.* See: State v. Baker, 58 S. C. 111, 36 S. E. 501 (1900).
9. Bram v. U. S., 168 U. S. 532, 18 S. Ct. 183, 42 L. Ed. 568 (1897).
10. Bram v. U. S., *supra.*

confessions depended upon whether they were voluntary or involuntary.[11] This is ordinarily a question of fact.[12] The South Carolina Supreme Court held in *State v. Harris*[13] that a confession is not admissible in evidence unless it is voluntary. This rule has been given in almost every case that has come before the court concerning confessions and was stated in the early case of *State v. Kirby*.[14]

When the admission in evidence of a confession is regulated by statute the confession will not be admitted except in strict accordance with the statutory provisions. A South Carolina statute was approved on March 1, 1952[15] which states that unless a copy is furnished to a person who gave a written statement the person who gave the statement could not be questioned thereon. The Act provides that "when any person employed by the state, or any political subdivision thereof, takes a written statement from any person in any investigation, the person taking the statement shall give to the person making the statement a copy thereof and shall obtain from him a signed receipt for the copy. No witness in any preliminary hearing or criminal proceeding shall be examined or cross-examined concerning any such written statement unless it is first shown that he was given a copy of the statement at the time of its making and that before his examination or cross-examination the witness was given a copy of the statement and a reasonable time to read it. Unless all of the above provisions are complied with, no such statement shall be admissible in evidence in any case, nor shall any reference be made to it in the trial of any case."

Determination of Voluntariness. The question as to the admissibility of a confession is to be determined before its admission.[16] The determination of whether a confession shall be received is in the first instance for the court.[17] Where the evidence is susceptible of no other conclusion than that a confession was involuntary, it is error for the trial judge not to exclude it.[18] The jury, however, is the final arbiter of whether or not a confession is voluntary,[19] and the state, seeking to introduce a confession, has the burden of proving

11. Wilson v. U. S., 162 U. S. 613, 16 S. Ct. 895, 40 L. Ed. 1090 (1896).
12. Ward v. Texas, 316 U. S. 547, 62 S. Ct. 1139, 86 L. Ed. 1663 (1942).
13. State v. Harris, 212 S. C. 124, 46 S. E. 2d 682 (1948); 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1815 (1948).
14. State v. Kirby, 1 STROB. 155 (S. C. 1846).
15. SOUTH CAROLINA ACT, Ratification No. 861, Approved March 1, 1952. See: 4 S. C. L. Q. 575 (1952).
16. State v. Moorer, 27 S. C. 22, 2 S. E. 621 (1887).
17. State v. Carson, 131 S. C. 42, 126 S. E. 757 (1925).
18. State v. Goodwin, 127 S. C. 107, 120 S. E. 496 (1923).
19. State v. Branham, 13 S. C. 389 (1880).

that it was voluntary.[20] The *corpus delicti* must be proved *aliunde* prior to the prosecution offering in evidence the alleged confession of the defendant,[21] but the *corpus delicti* can be proved by circumstantial evidence.[22]

Where the court excludes the jury while hearing evidence on the question of whether a confession is voluntary or not, the state, on the jury being recalled, must, in introducing the confession, reintroduce the testimony presented to the judge, the jury being the final judges of the voluntary character of the confession.[23] It is necessary and proper to admit in evidence every part of a confession and to then instruct the jury not to consider it against anyone except the person making it.[24] A confession is evidence only against the one making it.[25] However, the admission of a confession of a co-defendant and accessory which only incriminates the defendant is not reversible error unless it is objected to in time.[26] The confession of a party is the highest evidence.[27] The decision of the judge and the jury on the question of fact as to whether or not a confession is voluntary will not be reviewed by the supreme court unless it is so manifestly erroneous as to show an abuse of judicial discretion.[28]

The courts uniformly hold that a confession is not voluntary, as a matter of law, if induced by force or threats, or by any direct or implied promises.[29] The rule requiring that a confession be voluntarily made before it is competent was not established to protect guilty persons against a truthful confession but to guard the innocent against a false confession made under duress, promise of reward or other inducement. A confession is admissible in a trial in the criminal court where it is shown that the confession was free and voluntary, was not obtained by coercion or hope of reward[30] or extorted by

20. State v. Rogers, 99 S. C. 504, 83 S. E. 971 (1914). See: State v. Hester, 137 S. C. 145, 134 S. E. 885 (1926). State v. Edwards, 173 S. C. 161, 175 S. E. 277 (1934). State v. Brown, 103 S. C. 437, 88 S. E. 21 (1916).

21. State v. Miller, *supra*. See: State v. Blocker, 205 S. C. 303, 31 S. E. 2d 908 (1944).

22. Bolland v. U. S., 238 F. 529, 151 CCA 465 (1916).

23. State v. Rogers, *supra*.

24. State v. Jeffords, 121 S. C. 443, 114 S. E. 415 (1922).

25. State v. Workman, 15 S. C. 540 (1881). See: State v. Dodson, 16 S. C. 453 (1882).

26. State v. Brown, 212 S. C. 237, 47 S. E. 2d 521 (1948); *Cert. den.* 335 U. S. 834, 69 S. Ct. 22, 93 L. Ed. 386.

27. Corp. of Columbia v. Harrison, 2 MILL. CONST. 213 (S. C. 1818).

28. State v. Brown, *supra* (1948). See: State v. Judge, 208 S. C. 497, 38 S. E. 2d 715 (1946).

29. 22 C. J. S. 1424, Confessions, § 817.

30. OP. ATTY. GEN. 255 (1936-1937).

threats and violence.[31] A confession or disclosure made under any promise or encouragement of any hope or favor[32] or gotten by persuasion and hope of immunity is inadmissible.[33] A confession may, in certain instances, be admitted under judicial compulsion. The testimony given at a coroner's inquest, at a time when the defendant was not charged with the crime, is admissible,[34] a confession made at a preliminary examination before a trial justice is admissible[35] and a statement under oath of an ordinary witness is admissible against him.[36]

Many different methods of taking confessions may be used, and, if the confession is free and voluntary, it is admissible in evidence. A confession is not rendered involuntary merely because a dictaphone or detectaphone was used.[37] Truth serums are narcotic drugs which induce unconsciousness and are about the same as hypnosis, consequently, such confessions are inadmissible because they are involuntary. The lie detector is a scientific instrument to record physiological phenomena.[38] Courts almost uniformly reject the results of lie detectors, however, voluntary confessions obtained from an accused have been held not to have been rendered inadmissible by reason of the fact that a lie detector was employed, it appearing that the record of the lie detector was not offered in evidence.[39] *People v. Sims*[40] states that a person cannot be made to take a lie detector test, and when a person is forced to take a lie detector test, with other coercive force present, the confession is inadmissible.[41]

In determining whether a confession is voluntary, the age, situation and character of the accused,[42] and the circumstances under which the confession was made,[43] should be taken into consideration.[44] A defendant's confession is not excluded from evidence as not volun-

31. State v. Bing, 115 S. C. 506, 106 S. E. 573 (1921). See: State v. Johnson, 137 S. C. 7, 133 S. E. 823 (1926). State v. Middleton, 69 S. C. 72, 48 S. E. 35 (1904).
32. State v. Kirby, *supra*.
33. State v. Motley, 7 RICH. 327 (S. C. 1854). See: State v. Vaigneur, 5 RICH. 391 (S. C. 1852).
34. State v. Senn, 32 S. C. 392, 11 S. E. 292 (1889).
35. State v. Branham, *supra*.
36. State v. Vaigneur, *supra*.
37. State v. Hester, *supra*.
38. 23 A. L. R. 2d 1306; See: 26 BOSTON U. L. REV. 264.
39. Commonwealth v. Hipple, 333 Pa. 33, 3 A. 2d 353 (1939). See: Commonwealth v. Jones, 341 Pa. 541, 19 A. 2d 389 (1941). *In Re Lie Detector*, 2 S. C. L. Q. 266 (1950).
40. People v. Sims, 395 Ill. 69, 69 N. E. 2d 336 (1946).
41. Bruner v. People, 113 Colo. 194, 156 P. 2d 111 (1945).
42. State v. Kirby, *supra*.
43. State v. Baker, *supra*.
44. State v. Judge, *supra*.

tary merely because the defendant was under arrest.[45] Such a confession made to a person in authority, although admitted under more stringent rules than when made to private persons, is admissible if free and voluntary.[46] In *State v. Brown*[47] the court held that a confession was not required to be excluded merely because it was made while the defendant was in illegal custody before any warrant was issued for the defendant's arrest or merely because the defendant was placed in jail in a county other than the county where the crime was committed, in violation of a South Carolina statute. A confession is admissible although it is elicited by questions, whether put to the defendant by a magistrate, officer or private person, and the form of the question is immaterial.[48] A confession is free and voluntary and admissible even though the manner of the officer was rude[49] and even though the defendant was cautioned to tell the truth.[50] A confession made under representations of the infamy which would attend the concealment of knowledge and made under great excitement, but without threats, promises or concealment of the consequences is admissible.[51]

To render a confession admissible in evidence it is not necessary that the prisoner should be forewarned of the effect his confession may have,[52] nor does the defendant have to be warned that he does not have to answer questions.[53] In *State v. Miller*[54] it was held that a confession is voluntary even though at the time made the defendant was under arrest, had not been formally charged with a crime, had not been informed that he was not compelled to incriminate himself and was not offered benefit of counsel. Confessions have been excluded in certain cases where the court has ruled that there was a coercive atmosphere. The taking of a confession from a person after he had been held in jail several days during which time he was questioned excessively, was not informed of his rights, had no preliminary hearing and was denied benefit of counsel, family and friends, was a denial of due process of law under the 14th amendment to

45. State v. Brown, *supra.* See: State v. Henderson, 74 S. C. 477, 55 S. E. 117 (1906).
46. State v. Dodson, 14 S. C. 628 (1881). See: State v. Brown, *supra,* State v. Judge, *supra.*
47. State v. Brown, *supra.*
48. State v. Kirby, 1 STROB. 378 (1847). See: 1 GREENLEAF EVID., § 239.
49. State v. Branham, *supra.*
50. State v. Swygert, 130 S. C. 91, 124 S. E. 636 (1924).
51. State v. Crank, 2 BAILEY 66, 23 Am. Dec. 117 (S. C. 1831).
52. State v. Workman, *supra.*
53. State v. Simmons, 112 S. C. 451, 100 S. E. 149 (1919).
54. State v. Miller, *supra.*

the United States Constitution and on a subsequent prosecution for murder the confession was held to be inadmissible.[55]

In *State v. Motley*[56] it was held that so much of a confession as led to the discovery of a material fact may be given in evidence, although the confession is involuntary. The later case of *State v. Middleton*[57] held that where a confession is involuntary it is inadmissible, but evidence disclosed by such defendant is admissible and it may be stated that the evidence was found under the defendant's guidance. The United States Supreme Court in *State v. Harris*[58] held that the admission in evidence of an involuntary confession is a denial of due process of the law under the 14th amendment of the Federal constitution and in a subsequent prosecution the confession is inadmissible. The same court held in the *Ashcraft cases*[59] that the admission on a second trial of evidence concerning an involuntary confession was a violation of due process of law under the 14th amendment of the Federal constitution because it had the same weight upon the jury as the involuntary confession.

Admissions. Admissions are merely acknowledgments of one or more facts and fall short of an acknowledgment of guilt.[60] Admissions were not originally subject to the confession rule, however, some courts subjected them to the confession rule by holding that all incriminating evidence was subject to the same test as a confession.[61] In *State v. Pittman*[62] the court held that in South Carolina confessions are subject to the rule of voluntariness or involuntariness, whereas admissions are not subject to this rule and are admitted even though they are gotten involuntarily.

II. DUE PROCESS CLAUSE, 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION

The United States Supreme Court does not have supervisory powers over state criminal proceedings except to the extent of the due process of law clause of the 14th amendment of the United States Constitution which states: "No state shall . . . deprive any

55. State v. Harris, *supra.*
56. State v. Motley, *supra.* See: State v.Vaigneur, *supra.*
57. State v. Middleton, *supra.*
58. State v. Harris, *supra.*
59. State v. Ashcraft, 322 U. S. 143, 64 S. Ct. 921, 88 L. Ed. 1192 (1944). State v. Ashcraft, 327 U. S. 274, 66 S. Ct. 544, 90 L. Ed. 667 (1945).
60. Wigmore, EVIDENCE, 3rd Ed., Vol. III, § 821.
61. Luette v. State, 152 Fla. 495, 12 So. 2d 168 (1943).
62. State v. Pittman, *supra.*

person of life, liberty or property without due process of law".[63] The 14th amendment does not incorporate, as such, the specific guaranties found in the other amendments; however, it was held in *State v. Garcia*[64] that the denial by a state court of rights and privileges specifically embodied in the amendments, may, in certain circumstances or in connection with other elements, operate, in a given case, to deprive the litigant of due process of law in violation of the 14th amendment.[65] A confession which is not voluntary is not admissible in evidence under the 5th amendment to the Federal constitution, declaring that no person shall be compelled in a criminal case to be a witness against himself.[66] The United States Supreme Court now holds that no involuntary confession, whether obtained by force, threats, direct or implied promises, or by psychological coercion, can be admitted in a federal or state trial. The admission in evidence of an involuntary confession in a state criminal court is a violation of the 14th amendment of the Federal constitution and the admission on a second trial, after the reversal of a prior conviction upon the ground that the confession was involuntary, of oral testimony concerning the same facts stated in the involuntary confession constitutes a denial of due process of law to the same extent as the involuntary confession.[67]

Voluntary Rule. Generally, a confession is admissible if it is free and voluntary,[68] and without compulsion or inducement.[69] It must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influences.[70] It has been held that prolonged and relentless questioning is coercion.[71] In certain cases the questioning was coupled with other acts of coercion. In *Malinski v. N. Y.*[72] the defendant was stripped. In *Haley v. Ohio*[73] the defendant was a youth. In the three previous cases and in *Watts v. Ind., Turner v. Pa. and Harris v. S. C.*[74] the United States Supreme Court held that there was a "coercive atmosphere".

63. Buchalter v. N. Y., 319 U. S. 427 (1943).
64. State v. Garcia, 47 N. M. 319, 142 P. 2d 552 (1943).
65. 149 A. L. R. 1403.
66. Bram v. U. S., *supra*.
67. Ashcraft v. Tenn., *supra* (1944). Ashcraft v. Tenn., *supra* (1945).
68. 20 AM. JUR., EVID., 482.
69. Wilson v. U. S., *supra*.
70. Bram v. U. S., *supra*.
71. Ashcraft v. Tenn., *supra* (1944). Ashcraft v. Tenn., *supra* (1945).
72. Malinski v. N. Y., 324 U. S. 401, 65 S. Ct. 781, 89 L. Ed. 1029 (1945).
73. Haley v. Ohio, 332 U. S. 596, 68 S. Ct. 302, 92 L. Ed. 224 (1947).
74. Watts v. Ind., 338 U. S. 49, 69 S. Ct. 1347, 93 L. Ed. 1801 (1949). Turner v. Pa., 338 U. S. 62, 69 S. Ct. 1352, 93 L. Ed. 1810 (1949). State v. Harris, *supra*.

Whether the suspect has a right to counsel depends upon the pertinent constitutional provisions, statutes and judicial decisions of the particular jurisdiction. In the federal courts the 6th amendment to the federal constitution, providing *inter alia* that in all criminal prosecutions the accused shall enjoy the right to have assistance of counsel for his defense, has been construed as granting to an accused unable to procure the services of an attorney the right to have the court appoint competent and qualified counsel to assist him, and is effective whether convicted by confession or by jury.[75] The 14th amendment, however, does not incorporate, as such, the specific guaranties found in the 6th amendment.

In many state courts, subject to the limitations imposed upon the particular circumstances by the due process clause of the state and federal constitutions, the indigent accused's right to appointment of counsel depends upon his request therefor and also upon the nature of the crime involved.[76] When the defendant is denied counsel this fact will be considered by the United States Supreme Court in determining whether or not the confession is voluntary.[77]

The South Carolina Supreme Court has held that it is not error to admit in evidence a confession of the prisoner, over the objection that before making the alleged confession the prisoner had been refused an opportunity to communicate with counsel, where the confession was voluntary.[78] However, the jury should be told that they could take this into consideration to determine if the confession was voluntary or involuntary[79] because the jury is the final arbiter of whether or not a confession is voluntary.[80] However, other courts have held that the statutes or constitutions needed broad interpretation of the right to counsel,[81] upholding the old maxim: "The letter killeth and disregardeth the conclusion, while the spirit giveth life".

Custody. The mere fact that the accused is in custody does not necessarily make a confession involuntary.[82] The federal courts and most state courts determine the admissibility of a confession entirely upon whether or not it is voluntary, even though it is ob-

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75. Evans v. Rives, 126 F. 2d 633 (1942).
76. 3 A. L. R. 2d 1003. See: 4 S. C. L. Q. 595 (1952).
77. State v. Harris, *supra.*
78. State v. Pittman, *supra.*
79. State v. Robinson, 263 Mo. 318, 172 S. W. 598 (1915).
80. State v. Branham, *supra.*
81. Welk v. State, 99 TEX. CRIM. REP. 235, 265 S. W. 914 (1924).
82. Wilson v. U. S., *supra.*

tained illegally.[83] The illegality has been held relevant only in subsequent civil actions against the misfeasant officials.[84]

Exercising its supervisory power over the federal courts, the United States Supreme Court in the case of *McNabb v. U. S.*[85] held that a confession obtained while the accused was in illegal custody was inadmissible as a matter of law, whether the confession was voluntary or involuntary, and in *Anderson v. U. S.*[86] the supreme court held that a confession obtained by state officers in violation of a state statute requiring that the accused be promptly arraigned was inadmissible in federal courts as evidence.[87] The McNabb rule was a departure from the standard of voluntariness. The court said that a violation of the prompt arraignment statutes tainted the confession secured during illegal detention so as to make its admission reversible *per se*. However, the case was not decided as a violation of the due process clause of the 5th amendment of the United States constitution. The doctrine applied only to federal courts and turned upon whether or not the accused was promptly arraigned, which was derived from Rule 5(a) of the Federal Rules of Criminal Procedure by authority of the United States statute which states: ". . . an officer making an arrest . . . shall without unnecessary delay take the person arrested before the nearest available committing magistrate".

The state courts, rejecting the McNabb rule, continued to follow the rule that the admission of confessions was determined by their voluntariness or involuntariness.[88] The majority of state courts held that mere delay in arraignment did not vitiate a confession *per se* even when the delay preceded the confession. Even in federal courts it still was not clear whether illegal detention of itself barred a confession. Some federal courts wrote a "Rule of Reason" into the rule and said that the McNabb rule operated only to exclude a confession where the accused had not been promptly taken before a committing magistrate.[89] Others held that the McNabb rule operated only where the detention was illegal and where the confession was produced by psychological coercion.[90] Other courts held that

83. See: 19 A. L. R. 2d 1335; 23 A. L. R. 2d 919.
84. See: 73 YALE L. J. 758 (1949).
85. McNabb v. U. S., 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819 (1943).
86. Anderson v. U. S., 318 U. S. 350, 63 S. Ct. 599, 87 L. Ed. 829 (1943).
87. See: 23 TULANE L. R. 577 (1949). 37 GEO. L. J. 609 (1949).
88. State v. Folkes, 174 Ore. 568, 150 P. 2d 17 (1944).
89. Gros v. U. S., 136 F. 2d 878, (CCA 9th 1943).
90. Ruhl v. U. S., 148 F. 2d 173, (CCA 10th 1945).

any type of illegal detention of the suspect precluded the admissibility of a confession.[91]

In 1944 the United States Supreme Court, in the case of *Mitchell v. U. S.*,[92] began the process of setting definitive boundaries to the McNabb rule. The court rejected the retroactive illegality test by holding that spontaneous confessions were not inadmissible in evidence because of subsequent illegal detention and said that inexcusable detention and the successful extraction of a confession by continued questioning for many hours under psychological pressure were the decisive features in the *McNabb* case.[93] In *Upshaw v. U. S.*[94] the supreme court, by a 5 to 4 decision, affirmed the McNabb rule but did little to clear up the misunderstanding. The majority held that a delay in arraignment contrary to express statutory provision rendered a confession inadmissible as a matter of law. Four justices, dissenting, wanted the Mitchell rule extended and said that psychological pressure was the rule of the McNabb case and not the bare fact of illegal delay in arraignment.

In *Carignan v. U. S.*[95] the McNabb rule, as defined by the *Upshaw* case, was upheld; however, in *Haines v. U. S.*[96] the court modified the McNabb rule. The court held that the brief delay in arraignment was not resorted to for the purpose of getting a confession. The court referred to the *Carignan* case and said that in that instance the defendant could have been arraigned more promptly. Where it also appeared that coercive measures were used to obtain confessions, it has been held that the confessions were inadmissible under the McNabb rule.[97]

Most state courts have refused to apply the McNabb rule, saying that it did not apply to state courts. In *State v. Bunk*[98] the court held that a confession was not *ipso facto* inadmissible by reason of the fact that the defendant had not been arraigned without unnecessary delay as provided by statute, but had been detained one to two days without a hearing prior to his confession. In refusing to apply the McNabb rule as interpreted by the *Upshaw* case the court pointed

91. Johnson v. U. S., 333 U. S. 10 (1948).
92. Mitchell v. U. S., 322 U. S. 65, 64 S. Ct. 896, 88 L. Ed. 1140 (1944).
93. See: 62 HARVARD L. R. 696 (1949).
94. Upshaw v. U. S., 335 U. S. 410, 69 S. Ct. 170, 93 L. Ed. 100 (1948).
95. Carignan v. U. S., 185 F. 2d 954, (CA 9th, Alaska, 1950); *Cer. Gr.* 341 U. S. 934, 71 S. Ct. 853, 95 L. Ed. 1363.
96. Haines v. U. S., 188 F. 2d 546, (CA 9th, Cal. 1951).
97. Anderson v. U. S., *supra.* Gros v. U. S., *supra.* Smith v. U. S., 187 F. 2d 192 (1950); *cert. den.* 341 U. S. 927, 71 S. Ct. 792, 95 L. Ed. 1358.
98. State v. Bunk, 4 N. J. 461, 73 A. 2d 249 (1950); 19 A. L. R. 2d 1316; *cert. den.* 340 U. S. 839, 71 S. Ct. 25, 95 L. Ed. 615. State v. Brown, *supra.*

out that the aforesaid decisions had involved the interpretation and application of a federal statute rather than a state statute or rule and that it would continue to apply the voluntariness test in determining the admissibility of confessions. In *U. S. ex rel Mayo v. Burke*[99] the court held that the McNabb rule was not based on constitutional grounds and that the rule in the state courts remained that a confession is admissible in evidence if voluntarily made. Confessions have been ruled inadmissible in a number of cases where a delay in arraignment has been only one of several factors which combined to create a coercive atmosphere which most of the courts have found to be violative of the due process clause of the 14th amendment of the federal constitution.[100]

Summary. The McNabb rule is sound and should be extended to protect the individual from illegally obtained confessions and illegally obtained evidence in violation of his right of due process of law under the 14th amendment of the United States Constitution. It has been suggested that the enactment of a uniform arrest act would provide a solution, in permitting necessary inquiry and questioning before commitment, under strict court supervision.[101]

Mr. Justice Holmes first expressed the rule in *Olmstead v. U. S.*[102] when he said that we must make a choice between two conflicting desires: First, that all available evidence is to be used in the detection of criminals, and second, that the government should not itself foster and pay for other crimes in order to secure evidence. Such evidence should be inadmissible because "it is far less evil that some criminals should escape than that the government should play an ignoble part". The McNabb rule establishes definite judicial safeguards for the rights of the individual though in no way hampering police protection for organized society against the unlawful acts of individuals.

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99. U. S. *ex rel* Mayo v. Burke, DC Pa., 93 F. Supp. 490; *affd.* CA 3d, 185 F. 2d 405 (1950); *cert. den.* 341 U. S. 922, 71 S. Ct. 739, 95 L. Ed. 1355.
100. Ashcraft v. Tenn., *supra* (1944). Ashcraft v. Tenn., *supra* (1945). Malinski v. N. Y., *supra*. Haley v. Ohio, *supra*. Watts v. Ind., *supra*. Turner v. Pa., *supra*. State v. Harris, *supra*. Johnson v. Pa., 340 U. S. 881, 71 S. Ct. 191, 95 L. Ed. 640 (1950).
101. Warner, *The Uniform Act*, 28 VA. L. R. 315 (1942).
102. Olmstead v. U. S., 277 U. S. 438 (1928).