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Illegal Detention Alone Is a Sufficient to Invalidate a Confession

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on the basis that the anti-assignment act is not applicable to suits by subrogees because the subrogation arises by operation of law rather than voluntarily.¹⁰

In reaching the decision in the instant case, the court reasoned that had Congress intended to exclude suits by subrogees they would have added such an exception to the twelve other definite exceptions which are included in the act, and that it was the intent of the legislature to relieve themselves of considering all these private claims as was necessary before the Federal Torts Claims Act, and were aware at the time of passing the act that suits by subrogees would arise. In the instant case, the court also refers to an opinion of the Attorney General¹¹ that the Small Torts Claims act which preceded the Federal Torts Claims act included suits by subrogees, and this opinion was consistently followed by Congress in appropriating sums for the payment of subrogated claims. The court reasons that as the language of the act was similar, and that act was the forerunner of the Federal Torts Claims act, that subrogation should also be allowed under the latter act.

In view of the fact that the only three decisions of the Federal Courts of Appeal on the subject have been reversals of District Courts which did not allow the suit by the subrogee, it seems to become more apparent that the matter might possibly become more or less settled before the opportunity or necessity for a decision by the United States Supreme Court arises.

It is submitted that the decisions of the Courts of Appeal have been correct in their interpretation and application of the act as to subrogees. The historical background and the reasons for the passage of the act, as well as the obvious probability that such suits would be brought and could have been excluded are considerations which could hardly be overlooked, and which were given insufficient attention by the Federal District Courts when they construed and applied the act strictly and thus denied the subrogee the right to sue on mere technicalities.

JOHN O. CALLAHAN

ILLEGAL DETENTION ALONE IS SUFFICIENT TO INVALIDATE A CONFESSION

Appellant, arrested for grand larceny, was held for three days without charges being filed against him; thus, his detention was illegal, because in violation of a statute requiring prompt arraignment. Appellant confessed to the theft during a thirty hour period after being taken into custody. Although he had been questioned five times before confession, the questioning was shown to have been neither coercive nor extensive. Appellant appealed from conviction on the sole basis that he had been detained an unreasonable time after arrest before the confession was made. *Held*, illegal detention alone is sufficient to invalidate a confession although

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10. *Grace to use of Grangers Mutual Ins. Co. v. U. S.*, 76 F. Supp. 174 (Maryland 1948); *Hill v. U. S.*, 74 F. Supp. 129 (N. D. Tex. 1947); *Wojciuk v. U. S.*, 74 F. Supp. 914 (E. D. Wis. 1947); *Town of Amherst v. U. S.*, 77 F. Supp. 80 (W. D. N. Y. 1948); *State Road Dept. of Florida v. U. S.*, 78 F. Supp. 278 (N. D. Florida 1948).
 11. 36 Op. Atty. Gen. 553, cited in *Employers Fire Ins. Co. v. U. S.*, 167 F. (2d) 655 (C. A. 9th 1948).

the confession was not induced by such detention and regardless of whether torture, physical, or psychological factors were present. *Upshaw v. United States*, 335 U. S. 410, 69 Sup. Ct. 170 (1948).

An involuntary confession, i. e., one which has been extracted through the use of physical violence or threats, induced by the promise of certain pardon, or obtained under mental stress, is inadmissible in evidence as being testimonially untrustworthy.¹ Hitherto, the courts have not excluded a confession, if voluntarily made, because of any *illegality* in the method of obtaining it or because of the confessor's peculiar temperament or situation at the time of confessing.² Thus, the mere fact that a confession was obtained while the confessor was under arrest did not invalidate the confession, but the arrest was considered by the court only as a factor involved in determining its nature.³ However, a Texas Statute requires confessions made while under arrest to be in writing.⁴

In 1943, the United States Supreme Court set forth the principle that a confession made while the confessor was in illegal custody was inadmissible, though otherwise trustworthy.⁵ The *McNabb* case was a sudden departure from the rule formerly applied in the Federal Courts as to the admissibility of confessions.⁶ Prior to this doctrine, stated in the *McNabb* case, it was immaterial whether there had been an unreasonable delay in arraignment, or illegal detention of the accused.⁷ A few of the state courts approved the *McNabb* doctrine,⁸ but most of the courts declined to be bound by the decision or to follow the court's reasoning.⁹ This was true even though most of the states had enacted prompt arraignment statutes.¹⁰ The lower Federal Courts were bound by the *McNabb* doctrine but through different interpretations of the holding in the case, have brought about antithetical results.¹¹

Thus, the doctrine of the lower Federal Courts with regard to confessions obtained during a period of illegal detention had been vague and uncertain until

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1. 3 Wigmore, Evidence, secs. 822-826 (3d ed. 1940).
 2. *Ibid.*
 3. *Smith v. State*, 248 Ala. 363, 27 So. (2d) 495 (1946); *Wright v. United States*, 159 F. (2d) 8 (C. C. A. 8th 1947).
 4. *Vernon's Code Crim. Proc. of Texas, Ann.*, art. 727 (1948).
 5. *McNabb v. United States*, 318 U. S. 332, 63 Sup. Ct. 608, 87 L. Ed. 819 (1943). Defendants were arrested and taken directly to jail where they were subjected to questioning over a period of two days in violation of a Federal Statute requiring all persons arrested to be taken to the nearest magistrate. Held, a conviction obtained largely on the basis of a confession secured during the two days illegal detention should be reversed. Without deciding if the confession was voluntarily given, the court held it inadmissible as evidence, it having been obtained while the defendants were illegally detained.
 6. *McNabb v. United States*, *supra* note 5.
 7. *People v. Alex*, 265 N. Y. 192, 192 N. E. 289 (1934); *Joong Sui Noon v. United States*, 76 F. (2d) 249 (C. C. A. 8th 1935); *People v. Klyczek*, 307 Ill. 150, 138 N. E. 275 (1923).
 8. *Cavalzos v. State*, 146 Tex. Crim. App. 144, 172 S. W. (2d) 348 (1943); see *Foster v. State*, 79 Okla. Crim. 183, 152 P. (2d) 929 (1944).
 9. *State v. Ellis*, 354 Mo. 998, 193 S. W. (2d) 31 (1946), cert. denied, 328 U. S. 873, 66 Sup. Ct. 1374, 90 L. Ed. 1642 (1946); accord, *Ford v. State*, 184 Tenn. 443, 201 S. W. (2d) 539 (1945).
 10. See 22 C. J. S. sec. 301; and the respective state statutes.
 11. Cf. *United States v. Hoffman*, 137 F. (2d) 416 (C. C. A. 2d. 1943) with *United States v. Grote*, 140 F. (2d) 413 (C. C. A. 2d. 1944), and *United States v. Klee*, 50 F. Supp. 679 (E. D. Wash. 1943).

the present case was decided.¹² The *McNabb* rule was tempered by subsequent decisions. For example, in *United States v. Mitchell*,¹³ the Supreme Court rejected an interpretation of the *McNabb* decision to the effect that confessions are inadmissible, although made immediately after arrest, when there had been undue delay in subsequently arraigning the accused. And, although the *McNabb* case seemingly imposed a penalty for police misconduct, the court's opinion in the *Mitchell* case made it clear that the *McNabb* doctrine was not intended to be an indirect mode of disciplining such misconduct.¹⁴

The majority of the Federal Court decisions since the *Mitchell* case have indicated that the sole presence of illegal detention is not sufficient to render a confession inadmissible unless there are additional aggravating circumstances,¹⁵ in other words, that there must be a casual connection between the illegal nature of the detention and the procurement of the confession.

In view of the reception accorded to the *McNabb* decision, it is especially significant that the instant case is not only a reiteration but even an extension of that doctrine.

If this judicial rule of exclusion of all confessions obtained after illegal detention is followed, it must mean that illegal detention is itself construed by the court to be coercive, and for that reason it seems likely that this basis of exclusion will apply to both state and federal courts as a matter of due process.¹⁶ The instant case will cause the inquiry to shift from the question of whether the confession was voluntary, to the legality of the arrest and restraint. Thus, the effect of rejecting evidence of probative value so obtained is to punish society at the expense of affording added protection to offenders. The remedy as suggested by Mr. Justice Reed, dissenting in the instant case,¹⁷ is sounder police discipline, statutory punishment of offending officials, legislative acts to protect the accused from methods violating constitutional rights, and other enactments which will protect both the public and suspects. The rule of the majority opinion in the present case seems unnecessarily broad in that it permits an accused who has confessed his guilt to remain unpunished.

12. Note, *The McNabb Rule Transformed*, 47 Col. L. Rev. 1214 (1947).

13. *United States v. Mitchell*, 322 U. S. 65, 64 Sup. Ct. 896, 88 L. Ed. 1140 (1944). The defendant was arrested for housebreaking and larceny; and, immediately upon his arrival at the police station, he admitted his guilt. After this oral confession, the defendant was illegally detained for eight days prior to his arraignment before a committing magistrate. At the trial, defendant's oral confession was admitted in evidence. Held, this case was distinguishable from the *McNabb* case because here the disclosure was not made during the illegal detention and, hence, his confession was properly admitted in evidence.

14. *Ibid.*

15. *Boone v. United States*, 164 F. (2d) 102 (App. D. C. 1947); *Ruhl v. United States*, 148 F. (2d) 173 (C. C. A. 10th 1945); *Akowskey v. United States*, 158 F. (2d) 649 (App. D. C. 1946).

16. See Judge Cooley's widely accepted definition that, "Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights, as those maxims prescribe for the class of cases to which the one being dealt with belongs." Story on the Constitution (5th Ed.) sec. 1945." *Dukich v. Blair*, 3 F. (2d) 302 (E. D. Wash. 1925), appeal dismissed, 270 U. S. 670, 46 Sup. Ct. 469, 70 L. Ed. 791 (1925).

17. *Uphshaw v. United States*, 335 U. S. 410, 69 Sup. Ct. 170 (1948).

Such a rule of exclusion as set forth in the present decision represents a judicial determination that policies under the due process clause outweigh the policy underlying the rules of evidence in criminal cases. There is serious doubt as to the wisdom of such evaluation.

BERNARD E. COLE

TAXATION OF INCOME OF A SHORT-TERM TRUST

The petitioner, beneficiary under a testamentary trust established by his father, Sam Farkas,¹ on January 8, 1943, set up an inter-vivos trust, transferring to his brother, Mark Farkas, as trustee, all petitioner's right, title, and interest to the profits, dividends, or income from the Estate of Sam Farkas, such income to be used by the trustee to educate petitioner's nieces and nephews, and for their other needs. The trustee was given absolute discretion in determining to whom and in what amounts the income was to be paid, with authority to dispose of all or any part of it, provided no portion was to go to petitioner. The trust was to terminate in ten years or upon the death of the trustee. The trustee, at the termination of the trust, was to dispose of the balance in any manner he saw fit, except that none was to go to petitioner. Petitioner retained no control whatever over the corpus, income, or trustee. In 1943 he filed a gift tax return, reporting a gift of his interest in the testamentary trust; during the same year he reported on his individual income tax return the income paid to him from this trust before he set up the inter-vivos trust, while the trustee of the latter reported as trust income the amount received during the balance of the fiscal year. The Commissioner of Internal Revenue determined that the full amount of income distributed by the testamentary trustee as petitioner's share was taxable to petitioner,² and therefore imposed additional taxes. The Tax Court sustained the Commissioner; petitioner asks for a review. *Held*, that the petitioner is not taxable on the whole amount.

(a) The interest transferred was an equitable interest in the testamentary trust estate; (b) there was a complete renunciation by petitioner of any benefits or control of the property; (c) the trust was for a large portion of the petitioner's life expectancy; (d) the transfer was a substantial disposition of property and not merely the anticipatory assignment of future income. *Farkas v. Commissioner of Internal Revenue*, 170 F. (2d) 201 (C. A. 5th 1948).

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1. See *Farkas v. Farkas*, 200 Ga. 886, 38 S. E. (2d) 924 (1946), on determination of a friendly suit brought by present petitioner against the trustee to determine the validity of this inter-vivos transfer. Also, 166 A. L. R. 1312.
 2. 52 Stat. 457 (1938), as amended, 26 U. S. C. A. sec. 22(a) (1948). "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service . . . , of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried in for gain or profit, or gains or profits and income derived from any source whatever. . . ."