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tinction between a statute which through a presumption altered the rules of evidence or shifted the burden of proof to the defendant and one which by definition destroyed the defense of lack of knowledge or participation in the crime; but the latter would appear even more violative of rights "implicit in the concept of ordered liberty."[22]

By applying Justice Cardozo's test of balancing the convenience to the public against the hardship on the individual defendant,[23] it can be argued that the rule permitting a principal to be held for the conduct of his employees, even though he did not participate in and did not know of the crime, should be limited to minor offenses involving the imposition of small fines. With many other regulatory devises available, there would appear to be no social need for subjecting a morally innocent principal to the risk of a jail sentence. But where the legislature determines that heavy penalties are required, the courts should insist on the right of the principal to establish his innocence by proving that he did not know and could not reasonably be expected to know the facts which constituted the alleged crime. Such a formula would recognize the requirements of administration while maintaining constitutional notions of criminal justice.[24]

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Admissibility of Confessions in the Federal Courts and the Hobbs Bill

The *Hobbs* bill[1] is designed, according to its author,[2] to "correct" the rule of the *McNabb* case[3] as to admissibility of confessions in evidence. That rule, as originally propounded, made a confession taken by federal officers, prior to a deliberately delayed arraignment of a person apprehended for the commission of a crime, inadmissible in evidence. The decision was not based upon the constitutional ground of a violation of due process,[4] but upon the power of the United States Supreme Court to supervise the administration of criminal justice in the federal courts.[5]

22 Cardozo, J. in Palko v. Connecticut, 302 U. S. 319, 324 (1937).

23 Morrison v. California, *op. cit. supra* Note 21.

24 Similar suggestion in Sayer, Public Welfare Offenses (1933) 33 Col. L. Rev. 55, 79; note (1943) 19 Ind. L. J. 265. *See* dissent in *Ex parte* Marley, ... Cal. ...., 175 P. (2d) 832, 836, 837 (1946).

1 Designated as H.R. No. 4, 1st Session 80th Congress.

2 Representative Hobbs of Alabama.

3 McNabb v. United States, 318 U.S. 332 (1943); An Internal Revenue Department Agent was killed in a raid on moonshiners, and the McNabb brothers were apprehended for the crime. Conviction was obtained largely on the basis of the confessions in question. The Supreme Court reversed on the ground that the confessions were inadmissible in evidence. On retrial of the case, it was found that the McNabbs had in fact been duly arraigned, and they were then convicted. McNabb v. United States, 142 F. (2d) 904 (C.C.A. 6th, 1944). In his dissenting opinion in the first McNabb case, Mr. Justice Reed pointed out that the record did not show failure to arraign, nor did counsel raise the issue. 318 U. S. 332, 349 (1943).

4 *See* Ashcraft v. Tennessee, 322 U.S. 143 (1944); Lisbenda v. California, 314 U.S. 219 (1942).

5 McNabb v. United States, 318 U.S. 332, 347 (1943).

The application of the rule is limited, therefore, to federal cases and to federal officers.

One of the manifestations of disapproval of the *McNabb* decision[6] was the first attempt to pass the *Hobbs* bill, in the 78th Congress.[7] The present bill, which recently died in the Senate Judiciary Committee, is substantially the same as the one which has thrice passed the House but has thus far failed to pass the Senate.[8] It provides that a failure to observe the requirements of law as to the time within which a person under arrest must be brought before a committing officer shall not render inadmissible any evidence otherwise admissible. The intention was obviously to negate specifically the rule of the *McNabb* case, and to confine the question of admissibility to its previous status.[9]

In the hearings on the bill before the House Committee, there was a lengthy discussion of the repercussion of the *McNabb* case rule on law enforcement problems.[10] Police officials throughout the federal system claimed to be seriously hampered in the performance of their duties. There were many instances in the lower federal courts of releases of accused persons, even though they had made confessions which would ordinarily have been admissible, but which did not meet the requirements of the *McNabb* case.[11] In some federal courts, however, the *McNabb* case rule was held to be limited quite closely to the particular facts of that case and was not followed in similar situations.[12]

While at the time of its introduction the *Hobbs* bill would have effectively removed these difficulties by nullifying the effect of the *McNabb* decision, the Supreme Court since then has apparently obviated the need for remedial legislation by its modification of the *McNabb* case rule in *United States* v. *Mitchell*.[13] There the Court phrased the rule of the *McNabb* case to stand for the proposition that the illegal detention of an accused person will invalidate his confession only when the detention itself acts as an inducement in the procuring of the confession.[14] Seemingly the voluntariness of the confession would thereby be destroyed and

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6 A rule to the same effect as the Hobbs Bill was originally incorporated in the preliminary draft of the proposed federal rules of criminal procedure, but after being subjected to adverse criticism, was dropped. Holtzoff, Proposed Rules of Criminal Procedure, (1943) 3 F.R.D. 420; Cummings, The Third Great Adventure, (1943) 3 F.R.D. 283.

7 H.R. No. 3690, 78th Cong. (1st Sess.). The bill met lively opposition on the House floor. The principal objection expressed was that the bill, indirectly authorized violations of the extant federal arraignment statutes. Several representatives argued that such legislation would tend to break down those requirements and sanction the use of "third degree" methods of interrogation. 80 Cong. Rec. February 24, 1947, at 1430 *et seq.*

8 Passed House, 80 Cong. Rec., Feb. 24, 1947 at 1440. Referred to Senate Committee on the Judiciary, 80 Cong. Rec., Feb. 26, 1947 at 1476.

9 See *infra*, note 15.

10 Hearings before Sub-Committee No. 2 of the House Committee on the Judiciary on H.R. No. 3690, Ser. No. 12 (1944).

11 Gros v. United States, 136 F. (2d) 878 (C.C.A. 9th, 1943); United States v. Haupt, 136 F. (2d) 661 (C.C.A. 7th, 1943).

12 United States v. Grote, 140 F. (2d) 413 (C.C.A. 2d, 1944); United States v. Keegan *et al.*, 141 F. (2d) 248 (C.C.A. 2d, 1944).

13 United States v. Mitchell, 322 U. S. 65 (1944).

14 *Id.* at 68.

its admissibility would be open to due process objections, which would of course override any statutory sanction.[15]

Mr. Justice Reed's interpretation of the revised *McNabb* case rule, as expressed in his concurring opinion in the *Mitchell* case, is that a confession is made inadmissible by illegal detention and other improper conduct "even though the detention plus the conduct do not together amount to duress or coercion."[16] This would mean, then, that something less than a due process violation is still sufficient to prevent the admission of a confession in federal cases. The present rule, therefore, seems to represent a compromise between the basic due process test and the original *McNabb* case principle. Apparently it would be unaffected by the *Hobbs* bill, which was designed primarily to nullify the *McNabb* case rule, and not necessarily to force the Court back to the due process test.

The problem underlying the opposing views of the original *McNabb* case rule and the *Hobbs* bill is one of reconciling the interest of the individual in security from inquisitorial methods of criminal investigation with the public interest in effective methods of apprehension and prosecution of criminals. While the individual should have the benefit of a prompt arraignment, efficient law enforcement necessitates a reasonable period of interrogation of a suspected criminal prior to the making of formal charges.[17]

The "Uniform Arrest Act"[18] suggests a solution to the problem thus posed. This proposal would permit law enforcement officers a period in which to question suspects before their arraignment, and, at the same time, enable courts to exercise some supervision over their activities, by requiring close adherence to the prescribed periods of custody. Another possible solution would be the partial adoption of the system employed in England. There the judges of the King's Bench prescribe rules for the custody and interrogation of suspects, and thus closely supervise this phase of the criminal process.[19] The Federal Rules of Criminal Procedure,[20] while removing the previous conflict among federal statutes as to time of arraignment,[21] have not solved this basic problem.

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15 Prior to the McNabb case, the rule as to admissions of confessions in evidence was to the effect that, if an accused was induced to confess by the infliction or threat of physical suffering, or by threats or promises which were likely to cause him to make a false statement, the confession was not admissible. Wilson v. United States, 162 U. S. 613 (1895). Similarly, circumstances of prolonged questioning and detention have been held to be so coercive as to invalidate confessions. White v. Texas, 310 U. S. 530 (1940); Chambers v. Florida, 309 U. S. 227 (1940); Wigmore, Evidence, (3rd ed. 1940) §882. These tests of constitutionality also applied to cases appealed from state courts on due process grounds. See Ashcraft v. Tennessee, 322 U. S. 143 (1944); (accused questioned almost continuously for 36 hours. Questioning held inherently coercive and therefore violative of the Fourteenth Amendment).

16 322 U. S. 65, 71.

17 Wigmore, The Science of Judicial Proof (3rd ed. 1937) §276.

18 The Uniform Act, proposed by The Interstate Commission on Crime, has been adopted by two states, Rhode Island and New Hampshire. R. I. Pub. Laws 1941, c. 982; N. H. Laws 1941, c. 163. Discussed in Warner, The Uniform Arrest Act, (1942) 28 Va. L. Rev. 315.

19 Report of the Royal Commission on Police Powers and Procedure, March 16, 1929, Cmd. 3297; Mc Cormick, Some Problems and Developments in the Admissibility of Confessions, (1946) 24 Tex. L. Rev. 239.

20 5 F. R. D. 573 (1946).

21 Rule 5(a), 5 F. R. D. 581 (1946).