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## Police Science Legal Abstracts and Notes

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Confession Held Involuntary When Accused Not Advised of Right of Counsel—*Carignan v. U. S.*, 185 F. 2d 954 (9th Cir. 1951) well illustrates the difficulties federal law enforcement officers encounter in obeying the mandates of *McNabb v. U. S.*, 318 U.S. 332 and *Upshaw v. U. S.*, 335 U.S. 410. The defendant, a youth of 22 who had spent most of his boyhood in juvenile detention homes, was arrested on a charge of attempted rape. Without unnecessary delay he was taken before a magistrate, advised of his rights and given a preliminary hearing. He was then questioned about another crime, a murder which had been committed six weeks prior to the attempted rape and under very similar circumstances. The interrogation regarding the murder was carried on by a United States Marshal who was kind to the defendant and in general acted as his confidant and friend. Three days after the questioning began, the prisoner confessed to the murder. At no time did the officer advise the accused of his right to counsel regarding the murder case.

Two of the three Circuit Court judges, Judges Healy and Bone, ruled the confession inadmissible but on different grounds. Judge Healy held the confession involuntary because all the circumstances indicated the United States Marshal had so inculcated himself upon the youthful defendant that he had become his "father confessor," and thus owed the duty of advising him of his right to counsel. The failure to take the defendant for a preliminary examination was one of many factors indicating the confession was tainted with wrongdoing.

Judge Bone held the confession inadmissible solely because the defendant was not promptly taken, charged and arraigned in the murder case, even though he was already in custody and had been formally charged and promptly arraigned in the rape case. Judge Bone interpreted the *McNabb* and *Upshaw* cases as permitting no exception to the rule that a delay in arraignment nullifies a resulting confession.

Judge Pope dissented on the grounds that the *McNabb* and *Upshaw* cases did not require a prisoner to be promptly brought to a magistrate before his confession be received if he was in lawful confinement when his statement was taken. The dissenter also believed the confession to be unassailable on the grounds of coercion.

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Evidence Other Than Confession Required to Prove Corpus Delicti—The defendant in *Roberts v. State*, 50 S. 2d 356 (Miss. 1951), had confessed to the poisoning of his granddaughter. At the trial and on appeal it was contended that the evidence was insufficient outside of the confession to establish the corpus delicti. The external evidence proved that on several occasions, including her last moments, the deceased behaved as if she had been administered drugs; the defendant had insured the deceased's life and had insisted on immediate payment of the policy; the defendant had at times purchased drugs of the type believed to have been administered to the deceased; and three months after death, an autopsy revealed some lead in the putative victim's body. These facts were held sufficient along with the confession to prove death had resulted from a criminal agency.

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