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Articles, Reports, and Notes OF THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION

[This section of the Journal has been added for the exclusive use of the National Association of County and Prosecuting Attorneys. The selection and editing of the material contained herein is the sole responsibility of Mr. Patrick Brennan, the Association's First Vice-President. However, neither Mr. Brennan, the Association, nor the Journal assumes any responsibility for the views expressed by the authors of articles appearing in this section.]

Editor: Patrick Brennan, Prosecuting Attorney, South Bend, Indiana

THE LAW OF ARRESTS, POLICE DETENTION, AND CONFESSION ADMISSIBILITY (A BIBLIOGRAPHY)

In the reported "Hearings Before the Subcommittee on Constitutional Rights of the Committee of the Judiciary of the United States Senate" (85th Congress, Second Session, pursuant to S. Res. 234), there appears a bibliography on the law of arrests, detentions, and confession admissibility. The bibliography covers the years 1940 through 1957, and it is a very complete compilation of the literature which has appeared during those years upon these various subjects. In view of its great potential value to prosecutors who are confronted with problems of arrests, detentions, and confession admissibility, the bibliography is here reproduced from pages 748-765 of the "Hearings." The bibliography was prepared for the Senate Judiciary Committee by the American Law Division of the Legislative Reference Service of the Library of Congress.

This report of the committee hearings also contains, among other valuable information and data, a collection of all the state and federal statutes dealing with confessions and arraignment (i.e., preliminary hearings), and a statement of the court rule in each jurisdiction with respect to the admissibility of confessions made before arraignment. [Copies of the Committee Report may be obtained from the U. S. Government Printing Office at a cost of \$2.50.]

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- (a) Been declared in New York that evidence illegally obtained, or unlawfully seized, is admissible.
- (b) Follows that voluntary confessions even if illegally obtained are admissible.
- (c) Courts define term “Unnecessary delay” (in arraignment) at the hour when the magistrate would ordinarily be at his office or court and in the meanwhile the defendant is entitled to give bail.

- (d) Would appear that today the Supreme Court may independently weigh the evidence of confessions obtained during illegal detention.

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- Ohio State Law Journal*, 10: 260-262. Spring 1949.
- Southwestern Law Journal*, 3: 452-457.
- Texas Law Review*, 28: 114-116. November 1949.
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- University of Detroit Law Journal*, 12: 173-174. May 1949.
- Wyoming Law Journal*, 3: 237-240. Summer 1949.
- Oklahoma Law Review*, 2: 337-351. August 1949.
- (a) History of McNabb rule:
1. Interpretations of McNabb rule by the lower Federal courts have been inconsistent and confused.
- (b) Purpose of the McNabb rule:
1. To force a compliance with the arraignment statutes.
 2. It was not intended as a rule by which the reliability of evidence may be made more certain.
- (c) Criticism of McNabb rule:
1. Will not stop police brutality.
 2. Deprives law officials of one of their most important sources of evidence especially when gangs and conspiracies are involved.
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- (a) Reviews different cases—Upshaw, Anderson, Mitchell, McNabb in connection with Rule 5a.

- (b) What is meant by "unnecessary delay" must depend upon the facts of each case.
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- (a) Discusses state rules similar to Rule 5 (a).
- (b) None have employed the "civilized standard" pronounced in *McNabb* case.
- (c) "State rule: illegal detention per se will not serve as a basis for excluding confession."
- (d) "State courts have not been reversed in their basic contention that the confessions taken during an illegal period are admissible unless they can be shown to have been coerced."
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- (b) Evils of third degree:
1. Involves danger of false confession.
 2. Impairs police efficiency.
 3. Impairs efficiency of criminal justice in courts.
 4. Brutalizes the police, hardens the prisoner.
- (c) Remedies for the third degree:
1. Statutory remedies.
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Federal courts' control of illegal conduct of State officers who aid in enforcement of Federal law. Min-