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THE EFFECT OF DELAY BETWEEN ARREST WITHOUT WARRANT AND PRELIMINARY HEARING UPON ADMISSIBILITY OF AD INTERIM CONFESSIONS

HAYFORD O. ENWALL

In the procedure leading up to the trial of persons charged with crimes under the laws of the United States, extra-judicial or pre-trial confessions of arrested persons constitute an important, and in many cases a vital and indispensable, portion of the evidence justifying conviction. It is, of course, well recognized that a voluntary confession or admission of guilt is one of the highest and most convincing forms of proof.

Under our system conflict arises frequently between the preservation of the safeguards created and intended for the protection of our society against the invasion or infringement of the rights of its members to freedom and property, and the burden of protecting such society from crime.

The members of the several criminal investigating agencies of the national government are, with few exceptions, honest, intelligent, and conscientious public servants, zealously and effectively performing their duties. A large number of these officers receive special and continuing academic training in the increasingly efficient techniques of crime detection. It is normally the object of all such agencies to ascertain the truth and the full facts about any alleged violation under investigation. These officers are trained and become experienced in the interrogation of witnesses and suspects. Dealing as they do with law violators, they recognize familiar patterns of conduct, cause, effect, and motivation. They frequently have extensive and precise knowledge of the manner of operation of reputedly law-violating members of a community, of their habits, movements, associates, and affiliations. They become familiar with the psychology of wrong-doers and proficient in recognizing signs of falsehood, evasion, hesitation, and other normal human reactions of those seeking to withhold or conceal the truth.

Prior to the decision in McNabb v. United States,¹ a confession by one in custody was considered by the Supreme Court of the United States as admissible in evidence unless it was proved to have been obtained by pressures so strong that it was in fact involuntarily made; in other words, that the individual will of the confessor had been overcome by tortures, mob

¹318 U. S. 332 (1943).
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violence, fraud, trickery, threats or promises.\(^2\) The bases for the exclusion of such involuntary confessions are the Fifth and Fourteenth Amendments to the Constitution.\(^3\)

The McNabb case was described by Mr. Justice Reed, dissenting in a later case,\(^4\) as a "sudden departure from the former federal rule as to the admissibility of confessions." The petitioners were convicted in the United States District Court for the Eastern District of Tennessee of the murder of a federal Alcohol Tax Unit investigator. The convictions were sustained by the Sixth Circuit Court of Appeals, and certiorari was granted by the Supreme Court. The extra-judicial confessions of the defendants constituted the crux of the Government's case against them.\(^5\)

In its decision the Court summarized as follows the pertinent facts regarding the manner in which the confessions were obtained from three of the defendants:\(^6\)

"Freeman and Raymond McNabb were arrested in the middle of the night at their home. Instead of being brought before a United States Commissioner or a judicial officer, as the law requires, in order to determine the sufficiency of the justification for their detention, they were put in a barren cell and kept there for fourteen hours. For two days they were subjected to unremitting questioning by numerous officers. Benjamin's confession was secured by detaining him unlawfully and questioning him continuously for five or six hours. [Benjamin McNabb was a third brother who surrendered voluntarily after the arrest of the other two]. The McNabbs had to submit to all this without the aid of friends or the

\(^3\)See Mr. Justice Reed, dissenting in Upshaw v. United States, 69 Sup. Ct. 170, 178 (1948).
\(^5\)As that decision involved the failure of the federal officers to take the defendants before a committing magistrate before certain confessions were obtained from them, reference is pertinent to the wording of the statutory requirement existing at the time of the arrest. Section 595 U. S. C., Title 18, provided in pertinent part as follows:

"It shall be the duty of the marshal, his deputy, or other officer who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States Commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial."

\(^6\)318 U. S. 332, 344-345 (1943).
benefit of counsel. The record leaves no room for doubt that the questioning of the petitioners took place while they were in custody of the arresting officers and before any order of commitment was made."

Following such summarization of facts the Court held:

"Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law. Congress has not explicitly forbidden the use of evidence so procured. But to permit such evidence to be made the basis of a conviction in the federal courts would stultify the policy which Congress has enacted into law."

On the same day as its decision in the McNabb case the Court decided the case of Anderson v. United States\(^7\) and applied to it the same reasoning and announced principle.

In the Anderson case the petitioners were convicted in the same district court of a conspiracy to damage the property of the Tennessee Valley Authority, a corporation in which the Government owned stock. The Sixth Circuit Court of Appeals affirmed the convictions. As in the McNabb case, the crux of the Government’s case consisted of confessions, but in this case they were secured by agents of the Federal Bureau of Investigation, after protracted questioning and while the defendants were in the admittedly illegal detention of the local sheriff, who had arrested them upon suspicion and without warrants.\(^8\)

\(^7\)318 U. S. 350 (1943).

\(^8\)In its opinion the Court stated (p. 356):

"Unaided by relatives, friends, or counsel, the men were unlawfully held, some for days, and subjected to long questioning in the hostile atmosphere of a small company dominated mining town. The men were not arrested by the federal officers until April 30th, and only then were they arraigned before a United States Commissioner, except for Ballew who was not arraigned until May 2nd or 3rd. [The sheriff had arrested them on April 24, 1940]. There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record. Therefore, the facts that the federal officers themselves were not formally guilty of illegal conduct does not affect the admissibility of the evidence which they secured improperly through collaboration with state officers. Gambino v. U. S., 275 U. S.
The next case involving the admissibility of confessions prior to hearing before a committing magistrate was that of United States v. Mitchell.\(^9\) The accused had been twice convicted of housebreaking and larceny in the District of Columbia. The evidence consisted in large part of confessions made to the arresting officers. The two convictions were reversed by the Court of Appeals solely on the ground that the confessions were rendered inadmissible by the McNabb decision.

The salient facts were stated by the Supreme Court in its decision as follows:\(^10\)

"In August and early October, 1942, two houses in the District of Columbia were broken into and from each property was stolen. The trail of police investigation led to Mitchell who was taken into custody at his home at 7 o'clock in the evening on Monday, October 12, 1942, and driven by two police officers to the precinct station. Within a few minutes of his arrival at the police station, Mitchell admitted guilt, told the officers of various items of stolen property to be found in his home and consented to their going to his home to recover the property."

It further appeared that it was eight days later before he was presented before a committing magistrate, Mitchell having remained in police custody during the intervening period.

The Court sustained the conviction and held the McNabb decision inapplicable, stating:\(^11\)

"It is these admissions and that property which supported the convictions, and which were deemed by the court below to have been inadmissible. Obviously, the circumstances of disclosure by Mitchell are wholly different from those which brought about the disclosures by the McNabbs. Here there was no disclosure induced by illegal detention, no evidence was obtained in violation of any legal rights, but instead the consent to a search of his home, the prompt acknowledgment by an accused of his guilt, and the subsequent rueing apparently of such spontaneous cooperation and confession of guilt."

\(^9\) 322 U. S. 65 (1944).
\(^10\) Id. at 69.
\(^11\) Id. at 70. (Italics supplied).

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https://scholarship.law.ufl.edu/flr/vol2/iss3/2
It having been urged that, however voluntary the confession of Mitchell might have been, its voluntary character was nullified by his subsequent illegal detention without arraignment for eight days, the Supreme Court stated further:

"Undoubtedly his detention during this period was illegal. . . . But in any event, the illegality of Mitchell's detention does not retroactively change the circumstances under which he made the disclosures. These, we have seen, were not elicited through illegality. Their admission, therefore, would not be use by the government of the fruits of wrongdoing by its officers."

In the case of Ashcraft v. Tennessee the accused was convicted by a Tennessee state court as an accessory to the murder of his wife. The State Supreme Court affirmed the conviction. Certain alleged confessions, without which the evidence would have been insufficient for conviction, were admitted. It was the admission of such confessions that the petitioner urged to be erroneous, claiming that they had been extorted from him in violation of the Fourteenth Amendment.

It appeared from the facts that, after his arrest without a warrant, the accused was held incommunicado for thirty-five hours, during which time, without sleep or rest, while detained in the homicide investigating office of the county jail and surrounded by the usual paraphernalia of such an office, including high-powered lights, he was interrogated by relays of officers and investigators. Although no question was raised as to any failure to commit him formally, it did not appear that he was presented to a committing magistrate for a hearing before, during, or after his interrogation.

The Supreme Court reversed the conviction, saying:

"We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear. It is inconceivable that any court of justice in the land, conducted as our courts are, open to the public, would permit prosecutors serving in

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12Id. at 70.
13322 U. S. 143 (1944).
14Id. at 154.
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relays to keep a defendant witness under continuous cross examination for thirty six hours without rest or sleep in an effort to extract a 'voluntary' confession. . . . The Constitution of the United States stands as a bar against the conviction of any individual in an American court by means of a coerced confession."

In the case of Lyons v. Oklahoma,15 as in the Ashcraft case, the petitioner was convicted in the lower court for murder. His confession furnished material evidence to support his conviction, and he claimed error as to its admission, urging that it was involuntary.

Lyons was arrested without a warrant and was questioned immediately for two hours in the jail, thereafter remaining in custody. Eleven days later he was interrogated in the county prosecutor's office for between six to eight hours during a night and the early morning. Such interrogation resulted in an oral confession. There was conflicting testimony as to physical abuse and threats during these two interrogations. After his oral confession he was taken to the scene of the crime, questioned as to certain instruments used, and returned to the jail. Later that day he was taken to a nearby town and then to the penitentiary, where he signed a written confession — this being some twelve hours after his early-morning verbal confession. No question arose as to coercion at the time of his signed confession. It was urged, however, that because of the abuses incident to the earlier one a presumption of involuntariness existed as to the later, signed confession.

The Court held that, under the circumstances, the effects of any coercion which might have vitiates the earlier verbal confession had been dissipated prior to his second, signed confession, and that the latter was voluntary. It held, further, that the Fourteenth Amendment does not forbid the use of a subsequent voluntary confession by an accused from whom a confession may have been coerced.

In this case, as in the McNabb and other cases cited in this decision, the Court re-enunciated the rule that "the mere questioning of a suspect, while in the custody of police officers is not prohibited either as a matter of common law or due process."

Prior to the adoption of the Rules of Criminal Procedure17 for the

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15322 U. S. 596 (1944).
16Id. at 601
17Because of their current application to this discussion, Rules 5(a) and (b) are quoted in full:
district courts of the United States, effective March 21, 1946, the time within which a prisoner must be brought before a committing magistrate was defined differently in different statutes. Rules 4 and 5 superseded all conflicting statutory provisions defining the time within which a prisoner must be brought before a committing magistrate. A single standard was established — "without unnecessary delay." 

The first case involving confessions after delay that was considered by the Supreme Court after the adoption of the Rules of Criminal Procedure, including Rule 5(a), was that of *Upshaw v. United States.*

Pre-trial confessions, without which a conviction of the defendant for grand larceny in the District of Columbia could not have been properly had, were admitted in evidence over the objection that they had been obtained illegally in violation of Rule 5(a) and in violation of the principles announced in the *McNabb* case.

The facts in the case are not detailed with particularity in the opinion but are recited in the dissenting opinion of Mr. Justice Reed as follows:

"(a) Appearance before the Commissioner. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

"(b) Statement by the Commissioner. The Commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The Commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules."


See note 17 supra.

69 Sup. Ct. 170 (1948).

Id. at 181 n.25.
"Upshaw, a negro man able to read and write who had completed one year of high school, was arrested at his room by Detectives Furr and Culpepper on a charge of larceny of a wrist watch at about 2 A.M., Friday, June 6. He was taken to No. 10 precinct and questioned for about 30 minutes. Furr testified that petitioner was under the influence of alcohol at the time. Upshaw denied this. He was coughing sporadically at the time of his arrest and subsequently until his commitment. At approximately 10 A.M., June 6, he was questioned again by Furr, at which time he denied guilt. Culpepper questioned him through the bars in the cell block at 11 A.M. and again at 5:30 P.M. on June 6. Furr questioned him again for approximately 30 minutes at 7:30 P.M. on the same day. At 9:00 A.M., June 7, Upshaw confessed, and at 9:30 A.M. he signed a statement which he identified as his statement at 2 P.M., June 7. Thus some 31 hours intervened between the arrest and the confession. At 9:00 P.M. that night Upshaw was taken to the home of the complaining witness where he repeated his confession to her. The petitioner was taken before a magistrate for commitment on Monday, June 9. The officers testified that they had not had him committed sooner because they did not have a sufficient case against him to cause Police Court to hold him and because they wanted to continue their investigation."

The Court held that, despite the absence of the aggravation of a continuous questioning of this petitioner for many hours by numerous officers, as existed in the McNabb case, this case fell squarely within the McNabb ruling; and that his thirty-one hour police detention without a warrant, coupled with the failure of the officers to present him before a committing magistrate, as required by Rule 5(a), made his confession inadmissible. Accordingly, the Court reversed his conviction.

The argument was made to the trial court that this method of arresting, holding, and questioning people on mere suspicion was in accordance with "the usual police procedure of questioning a suspect." The Supreme Court, in referring to this argument, held that the confessions were obtained in violation of law and thus were inadmissible under the McNabb rule, however usual the practice might be. The lower court had held that the McNabb rule was inapplicable to this case; and in referring to the applicability of that case to the instant one the Supreme Court said further:22

22Id. at 171.
"In the McNabb case we held that the plain purpose of the requirement that persons should promptly be taken before committing magistrates was to check resort by officers to 'secret interrogation of persons accused of crime.'"

Varying impressions as to the rule that the McNabb case announces appear in the cases cited and are summarized in the dissenting opinion of Mr. Justice Reed in the Upshaw case. He suggests and reasons away the view that the McNabb confessions were barred as a punishment of, or penalty against, the officers because they were thought to have disobeyed the command of the committing statute. He suggests and reasons away the view that they were barred because unlawful imprisonment in and of itself is apt to be followed by an involuntary confession, justifying the exclusion of all confessions received before judicial commitment after a prisoner is kept in custody more than a reasonable time without being taken before a committing magistrate. He asserts what he expresses to be his understanding of the true rule of the McNabb case, namely, that "purposeful, unlawful detention illegally to extract evidence and the successful extraction of confessions under psychological pressure, other than mere detention for a limited period, makes confessions so obtained inadmissible."

Despite such interpretation in the Upshaw case, however, the majority decision specifically declared in the following words with reference to the McNabb case:

"The McNabb confessions were thus held inadmissible because the McNabbs were questioned while held in 'plain disregard of the duty enjoined by Congress upon Federal officers' promptly to take them before a judicial officer. In the McNabb case there were confessions 'induced by illegal detention.'"

There can, therefore, be but little doubt that the clear effect of the McNabb, Anderson, and Upshaw decisions is to extend the rule as to involuntary confessions theretofore held; and that the illegal detention of a person without taking him before a committing magistrate "without unnecessary delay" is, in and of itself, declared judicially such an improper inducement of a confession, obtained during the illegal detention, as to constitute it involuntary in character and hence inadmissible.

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2 Id. at 172.
3 Id. at 171.
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The essential distinction between the McNabb and the Mitchell cases lies in the fact that the Court held in the McNabb case that substantial illegal detention of the arrested person prior to his confession rendered his confession involuntary, whereas it held in the Mitchell case that the illegal detention subsequent to an otherwise voluntary confession did not operate retroactively to affect its voluntary character and hence its admissibility. Weight is lent to the interpretation of the McNabb decision stated above when Subsection (b) of Rule 5 is read in conjunction with Subsection (a).

Had the Court at the time of the adoption of the Rules of Criminal Procedure desired to avoid the possibility of involuntary pre-trial confessions prior to the commitment hearing, it might well have proscribed the admission in evidence of any confessions made by an improperly detained person prior to such a hearing. This it did not do, although the McNabb decision was then of very recent anterior date and in sharp focus.

There is no positive legislation or rule of court requiring that the arresting officer advise any arrested person of any of his rights, including that against self-incrimination. Over the course of time, however, a rule of practice or conduct has grown up whereby investigating and arresting officers usually advise the suspect against self-incrimination during or prior to their interrogation.

In Rule 5 (b), however, there is the specific direction that the commissioner shall acquaint the defendant with his several rights, including that against self-incrimination, and of his right to retain counsel. This directive, coupled with the requirement of the production of the prisoner before such magistrate “without unreasonable delay,” must logically lead us to the conclusion that it was not contemplated that the interval between arrest and hearing would be employed primarily by the arresting officers to coerce involuntary confessions or, in fact, to elicit any statements at all. Otherwise, the function and duty of the commissioner to acquaint the person with his rights would be an empty, meaningless form, devoid of benefit to the prisoner and too late to be of value to him in deciding what course to follow.

Accordingly, in accordance with the foregoing interpretation of Rule 5 and the import of the McNabb and Anderson cases as explained by the Upshaw case, and in accordance with the Mitchell case, it appears that the present rules of evidence with reference to the admissibility of confessions may be stated as follows:

1. Under the Fifth and Fourteenth Amendments to the Constitution, any confession is involuntary and inadmissible if wrung from an arrested person, whether before or after a preliminary
magistrate's hearing, under pressures so strong that the individual will of the confessor has been overcome by torture, mob violence, fraud, trickery, threats, or promises.

2. Any confession is involuntary and inadmissible when obtained from an arrested person during the interval between his arrest and his production before a committing magistrate if such interval is a period of time constituting an "unnecessary delay" in so producing him.

3. A confession otherwise voluntary is not to be considered involuntary merely because of the fact that after such confession an unnecessary delay, and hence an illegal detention, occurs in the production of the confessor before the committing magistrate.

This summarization of the presently conceived proper statement of the rules raises at once the need of a precise definition of the term "unnecessary delay." As Mr. Justice Reed pointed out, the Supreme Court in the several cases discussed failed to distinguish between necessary and unnecessary delay. Hence we must look to other precedents for guidance. What constitutes unnecessary delay is to be determined by the facts and circumstances of the particular case.

The question arose and has been decided in the cases hereinafter described, inter alia.

In 1930 a circuit court of appeals decided the case of Janus v. United States ex rel. Humphrey. The suit was one for false imprisonment, based on an alleged illegal arrest and detention of one Roy Humphrey by W. H. Jensen, purportedly acting under the orders of Stephen Janus, Superintendent of the Ft. Hall Indian Agency, Idaho.

Jensen arrested Humphrey for grazing sheep unlawfully on an Indian reservation. The arrest was made at about 11:30 A. M., July 13, 1927. Shortly thereafter they started for Pocatello, where the nearest United States Commissioner was located, proceeding at a rate consistent with the distance and mode of travel. Jensen put Humphrey in the sheriff's custody in the local jail and proceeded immediately to try to locate the United States Commissioner for a hearing. He was not then available, however, as he was out of town. Because of a variety of reasons, not necessary to detail here but some of which were occasioned by the prisoner, an arrangement was reached between all interested parties which resulted in the commissioner's ordering the release of Humphrey on the night of July 14th.

2538 F.2d 431 (C. C. A. 9th 1930).
At the trial a judgment was entered for the plaintiff, based upon the finding of the jury that an unreasonable period had elapsed before Humphrey was taken before the magistrate.

The defendant had requested the court to give the following instruction to the jury: 26

"What is a reasonable time for an officer to detain an arrested person before taking him before a United States Commissioner is impossible for comprehensive definition; it depends upon the circumstances of each case and is for you to determine upon consideration of all evidence; in such determination you should consider the accessibility of a commissioner; whether or not and when he was available for the purpose, his distance from the place, the safety with which the person arrested might be taken before him; and all other facts and circumstances then existing. During such time as you may find was reasonable the officer had the right and it was his duty to detain the arrested person in some safe and convenient place."

The trial judge failed to give such requested instruction, and the Circuit Court of Appeals reversed the judgment, holding the above instruction to be a proper one upon the theory on which the case was tried.

On February 25, 1947, Chief Justice Laws, of the District Court of the District of Columbia, rendered an opinion in the case of United States v. Boone. His opinion was not reported, although by decision of the Court of Appeals of the District of Columbia the appellant's conviction for robbery was affirmed. 27 Mr. Justice Laws' opinion was considered so significant that it was extensively quoted in the report of the Attorney General: 28

"The defendant was arrested at 9 o'clock on Saturday morning, September 28, 1946, in connection with the robbery of a hotel which had taken place three hours earlier. He was taken to a police precinct, was 'booked,' and between 11 and 11:30 was identified in the 'line-up' by the hotel night clerk.

"The arresting officer talked to defendant for about twenty minutes at the time of the arrest, for about the same period at the

26 Id. at 437.
27 164 F.2d 102 (C. C. A. 9th 1930).
time of the line-up, and for about a half hour at 5 in the afternoon. Between 9 and 11 that evening defendant sent for the officer and made certain admissions. This was repeated at 1 o’clock the following (Sunday) afternoon.

"The defendant was not taken before a committing magistrate until Tuesday, October 1. In support of his motion for a new trial he urged that this should have been done immediately after the line-up on Saturday morning, and that his subsequent admissions occurred during a period of illegal detention and were therefore inadmissible.

"The court said that the rule of the McNabb and Mitchell cases goes no further than to require the police to take an arrested person before a committing magistrate with reasonable promptness. It quoted Rule 5(a), pointing out that the phrase ‘without unnecessary delay’ is used rather than ‘forthwith’ or ‘immediately.’ In determining what is an ‘unreasonable’ or ‘unnecessary’ delay, said Judge Laws, the court will consider the circumstances of the detention. Since the case is not reported, the following language is believed important enough to warrant quotation:

"The question of what is an unreasonable detention or a detention under aggravating circumstances is one which must be decided upon the facts of each case. After the arrest of one accused of crime, police officers should have opportunity to make further investigations of facts beyond those made before the arrest. Such investigations may be as decidedly in the interests of an innocent person who has been arrested as in the interests of efficient law enforcement. The preliminary hearing before a committing magistrate is provided in order to determine whether the arrested person should be held to bail and if found he should be held, the amount of the bail is fixed. While the testimony at such hearing usually is only that adduced by the prosecution, yet in the discretion of the committing magistrate, defense witnesses may be heard. A fair opportunity to obtain the presence of prosecution witnesses at this hearing should be granted.

"It is a matter of common knowledge that certain procedures customarily have been followed by police in the District of Columbia for many years. Those procedures have never been questioned. Upon the arrest of a person, he is conducted to one of the police precincts or to the Detective
'In an arrest book kept by the police is entered the name, address, color, and nationality of the party arrested, the charge made against him, the name of the arresting officer, and a list of property taken from the prisoner. Information with respect to bond is also recorded. The suspect is then fingerprinted and photographed. If the suspect desires to make a statement he is given the opportunity. If not, he is questioned. In cases where an alibi is given, the police often seek to verify the truth of the alibi. Witnesses are summoned if available. If there were eye witnesses to the crime and there is a question of identity, a line-up is arranged. In order that individuals of a similar description may be obtained for the lineup, the police sometimes find it necessary to send for prisoners confined at other precincts. If identification is made as a result of the line-up, it is the practice of the police to question the suspect further, particularly when his identification clashes with a statement previously given.

'These procedures by the police in some cases may be completed within a short time. In other cases, they may take a longer time. When completed and the witnesses to go before the committing magistrate are available, the arrested person should be promptly taken before the committing magistrate. If this is not done and the suspect is held solely in order to build up an insufficient case or to afford opportunity to harass him or subject him to continued questioning or other pressures, the delay is unreasonable and aggravating.

'In the case before me, the defendant was not at any time questioned over a long period of time. Arrested at 9 o'clock Saturday morning, he was not identified by the victim of the robbery until sometime around 11 or 11:30 the same morning. It thus appears that not until nearly 12 o'clock noon had the police completed their usual procedures incident to the arrest of the defendant. Under the Code of Laws for the District of Columbia, after twelve o'clock noon on Saturday is declared to be a holiday in the District of Columbia "for all purposes." (Title 28, Sec. 16). The Judges of the Municipal Court and the United States Commissioner who serve as committing magistrates in the District of Columbia usually are not in their offices on afternoon Saturday holidays.
In my judgment therefore, the police had the right to assume that no committing magistrate would be available after their investigation of the defendant's case had been completed.

"The court held that defendant's admissions were properly received in evidence because it was undisputed that he was not subjected to any coercion prior to the time when the last admission was made at one o'clock Sunday afternoon. There was unreasonable delay, according to the court, in taking him before the committing magistrate; that should have been done on Monday instead of Tuesday. But this did not alter the fact that at the time the admissions were made defendant's detention was legal; hence they were properly submitted to the jury. The motion for a new trial was accordingly overruled."

In *Wheeler v. United States*, decided by the Court of Appeals, District of Columbia, in which the appellant and one Patton were convicted of murder, the court held:

"It is true that in holding Patton from 3:00 o'clock Sunday morning until Tuesday without taking him to the nearest available commissioner, the officers violated Federal Criminal Rule 5(a), 18 USCA following Section 687. Patton relies upon the following cases as showing that, on that account, he is entitled to a reversal... [The *McNabb* case was included in those cited]. Those authorities do not help him, as the facts of this case render them inapplicable. While the officers acted wrongfully in failing to present Patton to a commissioner more quickly than they did, it does not appear that the delay induced the confession which he made Monday night." [Patton had been arrested on a Sunday and was first questioned at 7:00 P. M. on the day following, when he confessed the crime].

Further, in *Alderman v. United States*, decided by the same appellate court, a case in which appellant was convicted of housebreaking and grand larceny, the court held:

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29165 F.2d 225 (C. C. A. D. C. 1947).
30*Id.* at 230.
31165 F.2d 622 (C. C. A. D. C. 1947).
32*Id.* at 623 (Italics supplied).
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"Alderman insists, however, that to detain him from the time of his arrest at about 1:00 A. M. on November 19th until November 21st without taking him before a magistrate was a violation of Rule 5(a) of the Federal Rules of Criminal Procedure, 18 U. S. C. A. following Section 687, and rendered his confession inadmissible. It will be noted that Alderman confessed the first time between 11:00 o'clock and noon on November 19th, after a brief interrogation. As he had been arrested shortly after 1:00 o'clock A. M., and had been accused of housebreaking by Scott during the interview which began at 9:15 that morning, it cannot be said that his detention until 11:00 A. M. was unreasonable. The subsequent delay of two days before carrying him before a magistrate, even if it were in violation of Rule 5(a), which we do not decide, did not retroactively invalidate the confession made before noon on the 19th. . . . [citing cases]. It should not be necessary to repeat what is so clearly pointed out in the Mitchell and Boone cases, that unreasonable delay, without accompanying aggravating circumstances, in presenting a prisoner to a magistrate, though itself unlawful and inexcusable, does not render inadmissible the prisoner's confession, unless it be found that the disclosure was induced by the detention. It is not here claimed that Alderman's statements were the fruit of detention alone; and his contention that it was aggravated by police brutality which extorted his admissions was submitted to, and rejected by the jury. He was entitled to no more than to have the jury pass on the conflicting evidence concerning his alleged ill-treatment."

The foregoing cases announce the rule, in substance, to be that, in order for unlawful detention or unnecessary delay to invalidate an otherwise voluntary confession, such disclosure must have been induced by the wrongful detention, and that what is meant by "unnecessary delay" must depend upon the facts of each case; yet such cases all ante-date the Upshaw decision of the Supreme Court in December, 1948, which neither defines "unnecessary delay" nor qualifies the rule announced in the McNabb decision. Although such cases are most logical and persuasive, until the Supreme Court defines "unnecessary delay" doubt must continue to exist as to the admissibility of an otherwise voluntary confession in any case in which the arrested person is not presented to the committing magistrate with the greatest of promptness and expedition.