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procedure, parole and probation statutes,[17] juvenile courts, and general rules of equitable relief, suspension of sentence seems to be out-of-date. The United States Supreme Court has said that this procedure virtually evinces a refusal of the judiciary to perform a duty resting upon it.[18] In fact, this practice seems to be at variance with a Florida statute.[19] The state has a right to demand and society requires that one who has been convicted of a violation of the law or one who has entered a plea of guilty should be punished as the law sets forth.[20] If a defendant may remain under a suspension of sentence for three years, there would seem to be nothing to prevent that sentence from continuing for fifteen years.[21]

EVIDENCE—ADMISSIBILITY IN FEDERAL COURTS OF CONFESSIONS OBTAINED DURING ILLEGAL DETENTION

Defendant was arrested and detained beyond the time allowed prior to being taken before a committing magistrate for the filing of a complaint against him.[1] During this period of illegal detention, a confession was obtained from defendant without the use of protracted questioning. *Held,* that since the confession was made during a period of illegal detention, it was inadmissible. *Upshaw v. United States,* 69 Sup. Ct. 170 (1948).

The principal case resolves the conflict between the *McNabb*[2] case and the *Mitchell*[3] case regarding the admissibility of confessions obtained during an illegal detention in the absence of additional coercive factors. In the *McNabb* case, federal officers arrested the defendant and detained him beyond the time legally allowed prior to presenting him before a committing magistrate.[4] A confession obtained from him during this illegal detention was held

17. Fla. Laws 1941, c. 20519, § 1, F. S. A. 947 (parole) (1941); Fla. Laws 1941, c. 20519, § 35, F. S. A. 948 (probation) (1941).
18. *Ex parte* United States, 242 U.S. 27 (1916).
19. Fla. Laws, 1941, c. 20519, § 20, F. S. A. 948.01-4 (1941): "In no case shall the imposition of sentence be suspended and the defendant thereupon placed on probation unless such defendant be placed under the custody of said parole officer."
20. People *ex rel.* Smith v. Allen, *supra.*
21. *See* people v. Reilly, 53 Mich. 260, 18 N.W. 849, 850 (1884) (dissenting opinion).

1. FED. R. CRIM. P., 5(a) (Requires an arresting officer to take one charged with offenses against the laws of the United States before the nearest committing officer without unreasonable delay).
2. McNabb v. United States, 318 U.S. 332 (1943) [This case also clearly points out that the basis of the exclusion or admission of confessions in federal courts is not any constitutional issue but rather the ability of the Supreme Court to establish standards of evidence. The admissibility of allegedly coerced confessions in state courts on appeal to the Supreme Court, on the other hand, is always dependent upon the absence or presence of due process. Haley v. Ohio, 332 U.S. 596 (1948); Malinski v. New York, 324 U.S. 401 (1945)].
3. Mitchell v. United States, 322 U.S. 65 (1944).
4. The rule upon which the illegal detention in the *McNabb* case was founded was the predecessor of the rule involved in the instant case. See note 1 *supra.*

inadmissible as evidence, because it was the result of the illegal detention.[5] Subsequently, in the *Mitchell* case, the Court commented on the *McNabb* case and stated that the illegal detention was there considered the cause of the confession *because of the protracted questioning during that illegal detention,*[6] thereby indicating that the *McNabb* confession would have been admissible despite the illegal detention had such detention not been accompanied by protracted questioning.[7]

The *Mitchell* case thus left open the question involved where a confession was obtained during an illegal detention without the use of protracted questioning.[8] The instant case posed such a question, and the Court affirmed the position taken in the *McNabb* case, saying: ". . . a confession is inadmissible if made during illegal detention due to failure promptly to carry a prisoner before a committing magistrate, whether or not the 'confession is the result of torture, physical or psychological. . . .' "[9]

Much criticism has been leveled at the *McNabb* decision,[10] principally on the ground that its result unduly weakens one of the most effective means of apprehending criminals—a reasonable time in which to interrogate suspects[11]—by confusing law enforcement officers as to the admissibility of any confession obtained before commitment.[12] Obviously, the instant case is subject to the same criticism. Such objections led to the introduction of the Hobbs Bill,[13] designed to legislate the *McNabb* rule out of existence. However, this bill was abandoned when the *Mitchell* decision seemed to qualify the *McNabb* rule by requiring protracted questioning in order to render inadmissible a confession obtained during an illegal detention. Yet the *McNabb*

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5. While the prisoner in the *McNabb* case was protractedly questioned by the detaining officers during the illegal detention, the Court based the inadmissibility of the confession on the fact of the illegal detention, not the protracted questioning.

6. See note 5 *supra.*

7. Where the problem has arisen in state jurisdictions, illegal detention of itself has not been considered sufficient to render inadmissible a confession obtained therein in the absence of other coercive elements. People v. Alex, 265 N.Y. 192, 192 N.E. 289 (1934); People v. Vinci, 295 Ill. 419, 129 N.E. 193 (1920).

8. The leading case on what constitutes protracted questioning is Ashcraft v. Tennessee, 322 U.S. 143 (1944). This note concerns only the effect of illegal detention upon a confession obtained therein by or without the use of protracted questioning. The many leading cases involving coercive factors other than protracted questioning and illegal detention are, therefore, not discussed in the text. *Cf.* Haley v. Ohio, 332 U.S. 596 (1948); Chambers v. Florida, 309 U.S. 227 (1940); White v. Texas, 310 U.S. 530 (1940); Brown v. Mississippi, 297 U.S. 278 (1936).

9. *See* Upshaw v. United States, 69 Sup. Ct. 170, 172 (1948).

10. Notes, 42 MICH. L. REV. 679, 909 (1944), 56 HARV. L. REV. 1008 (1943).

11. Inbau, *The Confession Dilemma in the U.S. Supreme Court,* 43 ILL. L. REV. 442 (1948).

12. United States v. Klee, 50 F. Supp. 679 (E.D. Wash. 1943).

13. 89 CONG. REC. 9711 (1943) (which proposed that confessions admissible except for the fact of illegal detention should not be rendered inadmissible thereby).

decision has not been without supporters,[14] as was exemplified by criticism of the Hobbs Bill.[15]

While the decision in the instant case tends to keep the scope of criminal interrogation by federal officers within reasonable bounds, inflexible application of the rule may also have the effect of unduly restricting persons assigned the duty of protecting public interests, since it may not give them sufficient opportunity to question criminal suspects. This situation could be corrected by making the admissibility of confessions dependent upon legislative standards which bear greater logical relation to the validity of the confession than does the present standard of a commitment statute which, as its history reveals, was enacted for an entirely different purpose and had no such result within its purview.[16]

PROCEDURE—APPEAL EFFECTED BY BROAD APPLICATION OF THE DECLARATORY JUDGMENT ACT

In 1939, forty-seven years after an adjudication, in 1892, of the priorities and other rights of the parties in the waters of a creek, a suit was brought by lower riparian owners to enjoin plaintiff from taking more water from the creek than he was allowed under the 1892 decree. Judgment was rendered for plaintiff. On appeal, the judgment was reversed and the injunction granted. Plaintiff was also enjoined from asserting any claims contrary to the terms of the 1892 decree. Thereupon, plaintiff petitioned for a rehearing, which was denied. Plaintiff than petitioned the supreme court of the state for a writ of supervisory control. Again his petition was denied. Plaintiff then started an action in the lower court for a declaratory judgment as to his rights and for relief against the injunction. A demurrer by the defendants was sustained, and plaintiff appealed. *Held,* demurrer overruled. An action for a declaratory judgment and seeking relief from the injunction which restrained him from asserting claims contrary to the mandates of the 1892 decree could be maintained. *Perkins v. Kramer,* 198 P.2d 475 (Mont. 1948).

The Montana Supreme Court has given a persevering litigant the rare legal experience of having rights, defined on two previous occasions, reädjudicated,[1] explaining that application of the doctrine of res judicata will not

14. NOTE, 28 MINN. L. REV. 73 (1944) [commenting that the *McNabb* decision is the logical development of decisions excluding illegally obtained evidence as exemplified by Weeks v. United States, 232 U.S. 383 (1914) and Nardone v. United States, 308 U.S. 338 (1939)].

15. Note, 53 YALE L. J. 758 (1944) (criticizing the Hobbs Bill as an unwarranted interference with the judicial power of forming evidentiary rules).

16. 24 CONG. REC. 1107 (1893) (illustrating that the reason for the adoption of the former rule was to prevent officers in one part of a state from taking a prisoner the whole length of the state to have a hearing before a particular commissioner, thereby earning compensation for mileage).

1. Woodward v. Perkins, 116 Mont. 46, 147 P.2d 1016 (1944).