

Fall 1960

Evidence of Guilt: Restrictions Upon Its Discovery or Compulsory Disclosure, by John MacArthur Maguire

Edward W. Cleary
University of Illinois

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Evidence Commons](#)

Recommended Citation

Cleary, Edward W. (1960) "Evidence of Guilt: Restrictions Upon Its Discovery or Compulsory Disclosure, by John MacArthur Maguire," *Indiana Law Journal*: Vol. 36: Iss. 1, Article 9.
Available at: <http://www.repository.law.indiana.edu/ilj/vol36/iss1/9>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.

EVIDENCE OF GUILT: RESTRICTIONS UPON ITS DISCOVERY OR COMPULSORY DISCLOSURE. By John MacArthur Maguire. Boston: Little, Brown and Company, 1959. Pp. xi, 295. \$12.50.

The appearance of a book by Professor Maguire must always be an occasion for throwing of hats into the air, and the present book is no exception. All who remember *Evidence: Common Sense and Common*

12. Feldman v. United States, 322 U.S. 487, 501-2 (1944).

† Associate Professor of Law, University of North Carolina.

*Law*¹ for its scholarship, good sense, question raising, and happy phraseology will know what to look for in Professor Maguire's new volume, and they will not be disappointed. The uninitiated had better get busy.

The book is a critical, penetrating, imaginative, and provocative examination, on a comparative basis, of the great civil liberties-evidence axis of the privilege against self-incrimination, involuntary confessions, the *McNabb-Mallory* rule,² and illegally obtained evidence. In a chapter entitled *Protection of Individuals and Other Persons Against Official Misconduct*,³ the author dealt with these matters in the earlier book. However, any notion that the book is merely a *Readers Digest* condensation in reverse should be dissipated at once by the ten-fold increase in coverage and by the intervention of 12 years' development in perhaps the fastest growing field of the law. This is no rehash. Still, it is interesting to turn back to the earlier chapter after reading the matured product.

The comparative approach is effectively presented not only by parallel treatment, where appropriate, but also by ingenious utilization of similar section numbering under the various topics. Thus, under the privilege against self-incrimination § 2.03 (page 14) deals with "Types of proceedings in which privilege against self-incrimination is effective, and types of liability which permit its invocation," under involuntary confessions § 3.03 (page 109) deals with "Types of proceedings, liability, and disclosure as to which the exclusion of involuntary confessions doctrine is effective, and persons whom it protects," and under illegally obtained evidence § 5.03 (page 179) deals with "Types of proceedings in which the rule excluding illegally obtained evidence is effective, and types of liability and utilization of evidence which permit its invocation." In like parallel fashion the reasons for each of the protective doctrines, as well as the evidentiary consequences of violation are explored. Sections dealing with aspects which depart from the common thread are numbered and arranged accordingly. Consistencies and inconsistencies are explored, not only with rare perception but in a manner easily followed by the reader.

Traditionally an introduction is written last, although placed in the front of the book. Professor Maguire's introduction, by that label, is devoted merely to an explanation of the organization of the book. The grand design and purpose are set forth in the concluding chapter. The

1. (1947).

2. *McNabb v. United States*, 318 U.S. 332 (1943); *Mallory v. United States*, 354 U.S. 449 (1957).

3. MAGUIRE, *EVIDENCE: COMMON SENSE AND COMMON LAW*, 102 (1947).

reader might be well advised to turn to it first and then to peruse it again in the sequence contemplated by the author.

Few books convey a greater sense of awareness of the on-going nature of the law. Never one to say, "This is the law," Professor Maguire rather says, "Here is what has happened. Here are some things to think about. Where do we go from here?" As a result, important current developments which have taken place between the preparation of his manuscript and the writing of this review fit easily and naturally into the picture. For example, in treating the troublesome problem of "standing" to object to or move to suppress unlawfully seized contraband, the Supreme Court⁴ has followed Professor Maguire's lead in noting the inconsistency in the position of the accused charged with possession, but attaching greater weight to the inconsistent attitudes of the prosecutor who relies upon non-possession to justify seizure but upon possession to establish guilt, thus solving the "braintwister" posed at page 217. Again, the repudiation of the "silver platter" doctrine,⁵ which rendered admissible in federal courts evidence unlawfully seized by independently acting state officers, fits readily into the text treatment at pages 210-211, where repudiation is foreshadowed.

Professor Maguire is a master question-raiser. It would, of course, be unreasonable to expect an answer to be furnished to every question. After all, the law is not a spectator sport. Nevertheless, on occasion the reader may be justified in some small sense of frustration at being denied the benefit of the author's thinking in a particular area where the clues are somewhat less than adequate. Thus the *Shapiro*⁶ dilemma of squaring compulsory production of required records with the privilege against self-incrimination, while thoughtfully explored at pages 102-104, is left relatively intact and untouched. How does Professor Maguire really feel about it?

Again one might wish that more emphasis had been placed on *Spano v. New York*⁷ as alleviating the discomfort produced in lovers of civil liberties by *Stein v. New York*,⁸ which seemed to permit the actuality of whether a confession was involuntary, but nevertheless considered, to be screened behind the impenetrable surface of a general verdict. (See pages 151-152.)

These criticisms are modest to the point of being captious, mere concessions to the reviewer's art. They cannot detract from the stature of

4. *Jones v. United States*, 362 U.S. 257 (1960).

5. *Elkins v. United States*, 364 U.S. 206 (1960).

6. *Shapiro v. United States*, 335 U.S. 1 (1948).

7. 360 U.S. 315 (1959).

8. 346 U.S. 156 (1953).

this fine, provocative, and stimulating book, which is essential reading for all, students, teachers, judges, and practitioners who are interested in the problems of evidence and civil liberties. Professor Maguire's *emeritus* status has not seduced him from productivity, as is evident, and we will expect more from him.

EDWARD W. CLEARY†

† Professor of Law, University of Illinois.