Denver Law Review

Volume 33 | Issue 5 Article 4

May 2021

Rea v. United States - Old Problems in a New Light

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REA v. UNITED STATES—OLD PROBLEMS IN A NEW LIGHT

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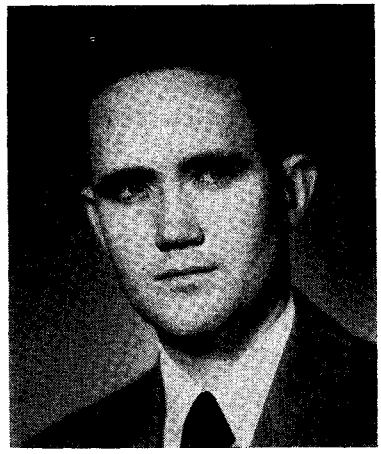

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In *Rea v. United States*,[1] petitioner was originally indicted in a federal court for the unlawful acquisition of marihuana in violation of a federal law. The indictment was based on evidence obtained by a search warrant issued to a federal officer by a United States Commissioner.

Rea moved under Rule 41 (e) of the Rules of Criminal Procedure,[2] to suppress the evidence on the ground that the search warrant was improperly issued. The District Court granted the motion and dismissed the indictment, although the evidence remained in the possession of the federal officer.

After the suppression of the evidence, the officer swore to a complaint before a New Mexico judge and caused a warrant for Rea's arrest to issue. He was charged with being in possession of marihuana in violation of *state* law.

Rea then moved in the District Court to enjoin the federal agent from testifying in the state case.

It was conceded that the case against Rea in the state court would be made by testimony of the federal agent based on the illegal search and on the evidence seized under the illegal federal warrant.

Relief was denied on the ground that the suppression of evidence in a federal court under Rule 41 and the Fourth Amendment to the Constitution of the United States applied only to proceedings in federal courts and did not govern the use of that evidence in a state court. Rea appealed to the Court of Appeals for the Tenth Circuit.

1 76 S. Ct. 292, 350 U. S. 214, (1956).
2 18 U. S. C. A.

The action denying relief was affirmed, Judge Huxman pointing out:

> The prohibition against the use of ((illegally seized) evidence is limited to trials in the federal courts and there only when it was unlawfully obtained by federal officers or agents. It has consistently been held that . . . evidence unlawfully obtained by federal officers may be used in state trials . . .[3]

Referring to *Stefanelli v. Minard*,[4] in which a state officer sought to use evidence obtained in violation of the Federal Civil Rights Act in a state proceeding, Judge Huxman alluded to the "delicate balance between state and federal judicial systems" and affirmed the principle adopted in the *Stefanelli* case, that "federal courts should refuse to intervene in state criminal proceedings to suppress the use of evidence even when claimed to have been secured by unlawful search and seizure."

Implying a recognition of the Tenth Amendment to the Federal Constitution,[5] he concluded that the effect of allowing the injunction would make impossible the prosecution by the state of its action against Rea, and that "such an order would constitute an interference with the state judicial process."

Rea obtained certiorari, and Mr. Justice Douglas, for the majority (Douglas, Black, Frankfurter, Clark, and Warren) of the United States Supreme Court put all constitutional question to one side. Rather, he concluded, was this a case "concerning our supervisory powers over federal law enforcement agencies."

He added that "we have here no problem concerning the interplay of the Fourth and the Fourteenth Amendments nor the use which New Mexico might make of the evidence."

In thus limiting what he perceived to be the issue, Justice Douglas ruled:

> The power of the federal courts extends to policing those requirements (governing searches and seizures) and making certain they are observed . . . To enjoin the federal agent from testifying is merely to enforce the federal Rules against those owing obedience to them. . . . The obligation of the federal agent is to obey the Rules.

On these bases the decision refusing the injunction was reversed.

Mr. Justice Harlan, for the dissenting four justices (Harlan, Reed, Burton, and Minton), argued that the majority view departed from the concepts which had theretofore governed state and federal relationships regarding the problem of admissibility of illegally seized evidence.

The majority decision was also questioned insofar as it held that the "policing" of federal laws was a duty imposed upon the Court. Said the dissent, "this is the first time it has been suggested that

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[3] *Rea v. United States*, 218 F. 2d 237 (10th Cir. 1954).
[4] 72 S. Ct. 118, 342 U. S. 117, 96 L. Ed. 138 (1951).
[5] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

the federal courts share with the executive branch . . . responsibility for supervising law enforcement activities as such."

While recognizing that the federal courts "undeniably have the power to issue an injunction in a case such as this," the dissent concluded that the power should not be exercised in the factual situationtion presented in the *Rea* case. Drawing attention to the *Stefanelli* case and the delicate balance there referred to, Justice Harlan pointed out that the injunction would stultify the state prosecution as effectively as if it had been issued directly against the state or its officials.

The dissent then considered the evidentiary problem. Calling attention to the *Wolf* case[6] and the *Weeks* case[7], Justice Harlan concluded that" . . . this Court has hitherto taken the view that the states should be left free to follow or not the federal exclusionary rule . . . The present decision . . . (is) a step in the opposite and wrong direction."

COMMENT

The path of the instant case, and the various theories adopted by the courts in which it was argued have been set forth above in some detail in order to illustrate the problems presented. Also, the case gives rise to many implications which are worthy of consideration.

EVIDENTIARY PROBLEM

Until about 70 years ago, the fact that evidence was obtained by an illegal search was no objection to its admissibility, and that is still the rule in a slight majority of the states.[8] However, in *Boyd v. United States,*[9] the Federal Supreme Court ruled that certain documents unlawfully obtained from the accused by a federal officer were not admissable in evidence in a federal court as a consequence of the Fourth Amendment.

The *Boyd* ruling remained unquestioned in the federal courts for eighteen years, but received frequent disfavor in the state courts. Colorado, for example, despite the provisions in the State Constitution securing freedom "from unreasonable search and seizure",[10] approved the common-law doctrine of admissibility, indicating that a sufficient remedy existed in favor of the one against whom the illegal search had been made, viz., an action for trespass.[11]

Then, in *Adams v. New York,*[12] in 1904, the exclusionary doctrine was virtually repudiated in the United States Supreme Court, and the orthodox rule of admissibility adopted by a majority of the state courts was expressly approved.

Next, in 1914, in the *Weeks* case, the Supreme Court, motivated by what Professor Wigmore has termed "misplaced sentimentality,[13] swung back to the doctrine of the *Boyd* case, but with a condition, viz., that timely motion for the return of the articles

6 *Wolf v. Colorado,* 117 C. 279, 187 P. 2d, 926; 69 S. Ct. 1359, 338 U. S. 25 (1949).
7 *Weeks v. United States,* 34 S. Ct. 341, 232 U. S. 383, 58 L. Ed. 652 (1914).
8 McCormick on Evidence 291, (1954).
9 116 U. S. 616, 6 S Ct. 524, 29 L. Ed. 746 (1886).
10 Colo. Const. Art. II, S. 7.
11 *Roberts v. The People,* 78 C. 555, 243 P. 544 (1926).
12 24 S. Ct. 372, 192 U. S. 597, 48 L. Ed. 575 (1904).
13 8 Wigmore on Evidence, § 2184 (Third Ed. 1940).

seized be made prior to trial. Since 1914 the federal courts have adhered to the exclusionary rule.

Justice Cardozo, later to become a leading figure on the Supreme Court, while a member of the New York bench described the effect of the Weeks doctrine in this manner: "The criminal is to go free because the constable has blundered."[14]

The Supreme Court has had many opportunities to re-examine its oft-criticized Weeks doctrine in recent years.

In the *Wolf* case, the Court refused to extend the doctrine to evidence seized by a state officer and used to obtain a conviction in a state court, although such evidence would have been inadmissible in a federal court if seized by a federal officer on the basis of the Fourth Amendment.

In *Irvine v. People of State of California*,[15] the same result was reached, the Court holding firm to the position that the admissibility of illegally obtained evidence by a state court in trial of a state offense did not violate the "due process of law" required by the Fourteenth Amendment.

In *Rochin v. People of California*,[16] however, the Court indicated that the rule recognizing admissibility in a state court of evidence seized unlawfully had certain limitations. Thus, where it appeared that state officers used a stomach pump on an accused person to obtain evidence which was later used in the state prosecu-

14 *People v. Defore*, 242 N. Y. 413, 150 N. E. 585 (1926).
15 74 S. Ct. 381, 347 U. S. 128, 98 L. Ed. 561 (1954).
16 72 S. Ct. 205, 342 U. S. 165, 96 L. Ed. 183 (1952).

tion, a judgment of conviction was reversed. The standard applied was whether the actions of the officers would "shock the conscience of the court." In the *Rochin* case, it was felt that the procedure did just that.

The state of the law, prior to the *Rea* case may be summarized in this fashion: (1) Generally, evidence illegally obtained by a state officer is constitutionally admissible in a federal court on the basis that "in the federal courts state officers are considered as strangers," [17] and thus the Fourth Amendment does not run against them. (2) Generally, evidence illegally obtained by a federal officer is constitutionally admissible against one prosecuted in a state court.[18] (3) Generally, evidence illegally obtained by a state officer is constitutionally admissible against one prosecuted in a state court.[19] (4) Generally, evidence illegally obtained by a federal officer is constitutionally inadmissible in a federal court prosecution, since "the effect of the Fourth Amendment is to put the courts of the United States and Federal officials . . . under limitations and restraints . . ."[20]

Examining the *Rea* case in the light of the above decisions, the conclusion is inevitable that the case is not, on its face, significant. In its terms it is not directly analagous to either the *Wolf* or *Irvine* cases, since federal officers were not involved in those cases. Nor can it be said that the *Stefanelli* case comes within its terms, despite the violation of the federal act in that case. While it may be noteworthy that the majority in the *Stefanelli* case ruled that "the federal courts should refuse to intervene in State criminal proceedings to suppress the use of evidence even when claimed to have been secured by unlawful search and seizure," it is clear in the *Rea* case that the facts are sufficiently different to account for the application of a different standard. The rule in the *Stefanelli* case should be restricted to the facts out of which it arose, namely, an illegal search by state officers for use in a state court.

However, it is submitted that the case is indicative of a frame of mind which someday will bring the Fourth Amendment within the concept of "due process" under the Fourteenth Amendment. In other words, the protection of "due process" against state action will *not* be limited to "procedures which shock the conscience of the court," but rather to all searches and seizures violative of an individual's rights.

PROBLEM OF PUBLIC POLICY

The minority doctrine of exclusion, as set forth in the *Weeks* case, has been criticized as an inexcusable obstruction of the administration of justice, in that it aids only the guilty.

The problem appears to be principally one of interpretation, either of the Fourth Amendment, of State constitutional provisions, or of federal or state statutory enactments. It is a question of inter-

17 20 Am Jur 358, Evidence s 397.

18 *Terrano v. State*, 59 Nev. 247, 91 P. 2d 67 (1939); *contra, Edwards v. State*, 83 Okla. Cr. Ct. of Appeals 177, 177 P. 2d 143 (1947).

19 *Stein v. New York*, 73 S. Ct. 1077, 346 U. S. 156, 98 L. Ed. 362 (1953); *Imboden v. People*, 40 C. 142, 90 P. 608 (1907).

20 *Weeks v. United States*, 34 S. Ct. 341, 232 U. S. 383, 58 L. Ed. 652 (1914).

pretation because the various provisos prohibit illegal searches and seizures, but make no mention of the evidence problem.

The cases indicate, especially those in which opinions by Justice Douglas have been written, that considerations of policy have entered into the Court's deliberations.

Dissenting in the *Stefanelli* case, for example, Justice Douglas referred to his dissent in the *Wolf* case, and affirmed his position that "to hold that the evidence may be admitted and . . . that its use may not be enjoined is to make the Fourth Amendment an empty and hollow guarantee so far as state prosecutions are concerned."

His language is strikingly similar to the language in the *Weeks* case, namely that "the tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures . . . should find no sanction in the judgment of the courts."

Significant also, we think, is the language in *Shinyu Noro v. United States*,[21] that "it is a federal judicial policy not to allow agents and officers of the United States to break the law themselves and then use information so acquired to prosecute others."

Again, in *Silverthrone Lumber Co. v. United States*,[22] the Supreme Court used like language in pointing out that the essence of a provision forbidding the acquisition of evidence in a certain way was not merely that the evidence so acquired should not be used before the court, but that *it should not be used at all.*

Professor Wigmore, however, criticizes what he refers to as "the indirect and unnatural method" resulting in exclusion, drawing the following analogy: [23]

> Titus, you have been found guilty . . .; Flavius, you have . . . violated the constitution. Titus ought to suffer imprisonment for crime, and Flavius for contempt. But no! We shall let you both go free. We shall not punish Flavius directly, but shall do so by reversing Titus' conviction. This is our way of teaching people like Flavius to behave, and incidentally of securing respect for the Constitution. Our way of upholding the Constitution is not to strike at the man who breaks it, but to let off somebody else who broke something else.

However, it is submitted that Professor Wigmore has taken an erroneous view of the actualities of the problem. Titus does not go free, but must face a new trial. And Flavius, if Congress or the legislature so wishes to provide, faces a penalty for his wrongful action. And, what is more important, Titus will not be deprived of his liberty by methods which "smell of the Star Chamber," but only by methods consonant with the traditional concepts of fair play as embodied in the "due process" concept.

The conclusion of Justice Douglas in the *Rea* case is that the policy designed to protect the privacy of the citizen "is defeated if the federal agent can flaunt . . . (the Rules) and use the fruits of his unlawful act either in federal *or state* proceedings."

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21 148 F. 2d 696 (Fifth Cir. 1945).
22 40 S. Ct. 182, 251 U. S. 385, 64 L. Ed. 319 (1920).
23 8 Wigmore on Evidence, s 2184 (Third Ed. 1940).

It is submitted that the *Rea* case is correct in answering in the affirmative the underlying policy inquiry, namely, whether one who *may be* guilty of a crime should be allowed to go free when the proof of his *alleged* guilt has been unlawfully obtained.

In the *Rea* case, the petitioner moved, as indicated above, under Rule 41 (e) of the Federal Rules of Criminal Procedure to suppress the illegally obtained evidence. The rules read:

> A person aggrieved by an unlawful search and seizure may move the district court . . . to suppress for use as evidence anything so unlawfully obtained . . . If the motion is granted the property . . . *shall* not be admissible in evidence at *any* hearing or trial.

From the cases have arisen two basic premises: First, the general rule is that a return or supression of evidence can be ordered by a federal court where and only where the property is in the possession of a federal officer. And secondly, state officers acting under state process cannot be compelled by a federal court to return articles taken from the prisoner. This latter view is consistent with the rulings of the Federal Supreme Court refusing to include the first eight amendments to the Federal Constitution within the concept of "due process" in the Fourteenth Amendment.

Thus, it appears clear that the Rule can be applied only against a federal officer. But is the phrase "any hearing" to be similarly construed to apply only to a federal hearing?

Indicative of the answer is the construction given a similar provision in the Federal Immunity Act of 1954,[24] which provides that testimony compelled under the act cannot be used "as evidence in *any* criminal proceeding . . . in *any* court."

In *Adams v. State of Maryland*,[25] and more recently in *Ullman v. United States*,[26] the provision was construed as binding upon state as well as federal courts, thus reversing what had been considered settled law, namely, that neither federal nor state enactments granting immunity from prosecution were capable of being applied to the government other than that which enacted it.

Therefore, the conclusion seems inevitable that Rule 41 (e) is

24 18 U. S. C. A. 3486.
25 74 S. Ct. 442, 347 U. S. 179, 98 L. Ed. 608 (1954).
26 76 S. Ct. 497, 350 U. S. 422 (1956).

susceptible of an interpretation which will bind both federal and state courts, insofar as the phrase "any hearing or trial" is concerned. The *Rea* case interpretation is only following where others have trod before.

PROBLEM OF CONSTITUTIONALLY APPLYING RULE 41 (E) TO FEDERAL OFFICERS WHEN THE EFFECT IS TO INTERFERE WITH A STATE PROSECUTION

From an analysis of our federal-state system of government, it seems to follow that federal courts, as a general rule, have no power to enjoin actions or proceedings in a state court.[27]

Indeed, the Federal Judicial Code expressly prohibits federal courts from granting writs of injunction to stay proceedings in any court of a state with but one exception not applicable to this discussion.

However, the provision does not prevent a Federal court from enjoining proceedings in state courts which would defeat or impair the *jurisdiction* of the Federal court.[28]

With this general background before us, an analysis of the argument of Justice Douglas in the *Rea* case indicates that his premise is correct.

Most persuasive is the language of the Court is *Wise v. Henkel*,[29] in which it was held that:

> . . . it was within the power of the court to take *jurisdiction* of the subject of the return . . . as the result of its inherent authority to consider and decide questions arising before it concerning an alleged unreasonable exertion of authority in connection with the execution of the process of the court.

Again, the Supreme Court decided in *Brown v. Walker*,[30] that Congress could constitutionally provide immunity from prosecution in *state* courts through its immunity laws.

It is clear that the granting of such immunity by Congress could have the same effect upon a state action as Rule 41 (e) had in the *Rea* case.

And in the *Ullman* case the majority concluded: "Here the State is *forbidden* to prosecute. But it cannot be contested that Congress has power to provide for national defense and the complementary power "To make all laws . . . necessary and proper for carrying into execution the foregoing powers . . ."

Therefore, if the Federal government has the power to *forbid* a state prosecution, can it reasonably be contended that it has not the power to exercise jurisdiction over its officials when such will only *incidentally* affect the state prosecution?

To answer this question affirmatively, one would have to ignore the power of Congress "to ordain and establish inferior

27 28 Am Jur 401, Injunctions § 218.
28 *Ex parte Young*, 28 S. Ct. 441, 209 U. S. 123, 52 L. Ed. 714 (1908).
29 31 S. Ct. 599, 220 U. S. 556, 55 L. Ed 581 (1911).
30 16 S. Ct. 651, 161 U. S. 607, 40 L. Ed. 819 (1896).

courts,"[31] the Constitutional provision extending the judicial power "to all cases, in law and equity, arising under . . . the laws of the United States,"[32] and the all engulfing "necessary and proper"[33] clause of the Federal Constitution.

To conclude, it should be noted that Rule 41 (e) was a part of the body of rules prescribed by the Supreme Court of the United States and made effective only after submission to and approval by Congress. Therefore, it seems clear that Congress, the policy-making body, has laid down "an intelligible principle" to which the inferior courts in this case are directed to conform. That Congress has such power seems undeniable.

PROBLEM OF DELEGATION OF POWER

Justice Douglas, in the *Rea* case, stated that "the power of the federal courts extends to *policing* . . . (the Rules) and making certain that they are observed."

The dissenting opinion latched on to the phrase, which appears to be extraneous to the decision, and argued that this was the first time that it had been suggested that the federal courts shared with the executive branch responsibility for supervising law enforcement agencies as such.

Assuming, *arguendo*, the validity of the dissenting premise under consideration, it is nonetheless well settled that "a statute is not invalid as conferring executive powers where the actual power of the executive department is not diminished."[34]

Here, it clearly appears that Congress, in enacting Rule 41 (e) has not diminished in any real sense any powers previously vested in the executive branch. Indeed, it only seems that quasi-executive or administrative powers were given to the District Courts in an incidental capacity, the real powers lying in the authorization to determine when a search warrant had been improvidently issued, and decreeing rights flowing from such unlawful action. Both of these latter powers appear to be judicial, rather than executive, in nature.

On these bases the conclusion follows that there has been no real delegation of powers of a type forbidden by our system of government. Rather, there appears only to be an enhancing of the judicial function, with no resulting loss of powers by any other branch of the government.

PROBLEM OF ENCROACHMENT ON STATES' RIGHTS

As indicated in the materials above, and as pointed out in the dissent in the *Rea* case, the problem of federal-state relationships is one of the utmost significance. It is felt that this problem, perhaps more than any other problem in the case, spotlights the myriad difficulties facing a court in resolving conflicting considerations.

Under the Federal Constitution, it seems clear that "the National Government may not, in the exercise of its powers, prevent a state from discharging its ordinary functions of government."[35] But

[31] U. S. Const. Art. III, § 1.
[32] U. S. Const. Art. III, § 2.
[33] U. S. Const. Art. III, § 8, cl. 18.
[34] 11 Am Jur 888, Constitutional Law, § 189.
[35] 11 Am Jur 870, Constitutional Law, § 174.

equally true is it that no state can interfere with the free and unembarrassed exercise by the Federal Government of all powers possessed by it.

Many cases have illustrated the principle that the mere fact a federal law has an adverse, incidental, effect upon states' rights will not vitiate it.

Illustrative is *Ex parte Siebold*,[36] in which the United States Supreme Court held:

> The regulations of Congress being constitutionally paramount, the duties imposed thereby upon the officers of the United States, so far as they respect the same matters, must necessarily be paramount to those to be performed by the officers of the state. If both cannot be performed, the latter are pro tanto superseded and cease to be duties.

Regarding the effect of the Tenth Amendment, upon which the dissent in the *Rea* case appears to be based, it should be noted at the outset that the Amendment has been gradually limited in scope and importance by the Supreme Court. And it was finally reduced to an almost meaningless phrase in *United States v. Darby*,[37] in which it was held that "the Tenth Amendment . . . (does not deprive) the national government of authority to resort to *all* means for the exercise of a granted power which are appropriate and plainly adopted to the permitted end."

It is noteworthy that the Supreme Court, in one of its earliest

[36] 100 U. S. 371, 25 L. Ed. 717 (1880).
[37] 61 S. Ct. 451, 312 U. S. 100, 85 L. Ed. 608 (1941).

decisions concerning federal-state sovereignty, namely, the celebrated case of *McCulloch v. Maryland*,[38] held that "states have no power, by taxation *or otherwise*, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government."

It is significant to note that the majority opinion in the *Stefanelli* case conceded that "the power to grant the relief (against a state officer using evidence in a state court obtained in violation of a federal act) . . . may fairly and constitutionally be derived from the . . . act."

[38] 4 Wheat. 316, 4 L. Ed. 579 (1819).

Equally significant, we think, is the fact that the Court of Appeals in the *Rea* case "assumed without deciding" that the court had the authority under its general equity power to suppress the evidence.

And finally, even the dissent in the *Rea* case was forced to conclude that the "federal courts *undeniably* have the power to issue an injunction in this case."

The majority opinion in the *Stefanelli* case, however, argued quite persuasively that the granting of the motion to suppress would disregard the power of courts of equity to exercise discretion "when the balance is against the wisdom" of using such power.

It argued that:

> . . . the considerations governing that discretion touch perhaps the most sensitive source of friction between States and Nation, namely, the active intrusion of the federal courts in the administration of the criminal law for the prosecution of crimes solely within the power of the States. Discretionary refusal to exercise equitable power . . . is one of the devices we have sanctioned for preserving this balance.

Reference was also made in the *Rea* dissent to *Douglas v. City of Jeannette*,[39] in which the Supreme Court of the United States held that

> . . . courts of equity in the exercise of their discretionary powers should (refuse) . . . to interfere with or embarass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent.

It should be noted, this writer believes, that Rule 41 (e) in no wise indicates that its provisions are to be enforced only in the discretion of the court. Rather, there is every reason to believe that Congress, in setting forth the standards contained in the Rule, was establishing a policy for federal agents, a policy which was to be carried out by proper judicial action.

Secondly, even if the language of Rule 41 (e) be considered dis-

[39] 63 S. Ct. 877, 319 U. S. 157, 87 L. Ed. 1324 (1943).

cretionary, it seems clear that a pending conviction in a state court for a serious crime is "an irreparable injury which is clear and imminent" so as to come within the terms of the rule expressed in the *Douglas* case.

That the federal-state relationship is perhaps altered may be conceded. And that the state has again come away "second best" in its continuing joust with the Nation may also be conceded. But that the "authority of the United States government is supreme in its cognizance of all subjects which the Constitution has committed to it,"[40] is indisputable.

Problem of Equitable Intervention Where A Legal Remedy Is Available

The general rule is that equity acts only where the remedy at law is inadequate, the "office of equity being to supply defects in the law."[41]

The Supreme Court of the United States has adopted the general rule in the expression that "equity jurisdiction will be sustained unless the remedy at law is complete and will secure to the litigant the whole right in a manner as just and perfect as that which is attainable in a court of equity."[41]

Thus, it appears clear that "it is not sufficient, in order to exclude the jurisdiction of equity, that there be a remedy at law; such a remedy must also be adequate."[42]

The traditional view has been that the use of illegally seized evidence would not be enjoined because an "adequate" remedy existed at law. Typical of the views of most jurisdictions, including Colorado,[43] is the language in *Williams v. State*: "If the constituitonal rights of a citizen are invaded . . ., the most that any branch of government can do is to afford the citizen such redress as is possible, and bring the wrongdoer to account for his unlawful conduct."[44]

It should be noted that in the *Rea* case, the Supreme Court acted under its equity powers. And, it seems quite possible that the Court has finally recognized the actualities of the situation, namely, that affording civil redress for the trespass is not an adequate remedy for one who has been convicted of a crime on the basis of evidence illegally taken from him.

It is submitted that the *Rea* case, if it stands for such a proposition, is in keeping with the best traditions of equity. An adequate remedy for one who has been deprived of his liberty by means violative of his constitutional rights is not afforded by allowing him to slap the hand of the wrongdoer.

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40 11 Am Jur 40, Equity, § 3.
41 *Clements v. Macheboeuf*, 92 U. S. 418, 23 L. Ed. 504 (1875).
42 19 Am Jur 109, Equity § 101. See also *Schoenthal v. Irving Trust Co.*, 53 S. Ct. 50, 287 U. S. 92, 77 L. Ed. 185(1932); *Green River v. Fuller Brush Co.*, 65 F. 2d. 112 (10th Cir. 1933); and *Denver & S.F.R. Co. v. Englewood*, 62 C. 229, 161 P. 151 (1916).
43 *People v. Kinnison*, 94 C. 350, 30 P. 2d. 249 (1934).
44 100 Ga. 511, 28 S. E. 624 (1897).

CONCLUSION

Legally, it is believed that the *Rea* ruling must be confined to the facts out of which it arose. So confining it, the principal significance lies in the restriction it places upon the rule that evidence illegally seized by federal officers is admissible in a state court, viz., under a federal court judge, under Rule 41, feels the federal officer acted unlawfully, even though the seizure "does not shock the conscience of the court," or in any way violate state constitutional commands.

However, the real significance of the case appears to lie in its rationale, which quite clearly indicates many revolutionary changes may be expected regarding the solution to old problems as analyzed with the new light of the *Rea* case.

Among the changes which may be expected is the inclusion within the "due process" clause of the Fourteenth Amendment of the prohibitions contained in the Fourth, and probably the eventual inclusion of the first eight amendments within the concept, thereby overruling the *Wolf* and *Irvine* cases.

Secondly, it seems probable that the federal courts will take a dim view of the argument that the application of the exclusionary rule to the states will result in an obstruction of justice, insofar as it will limit the means which may be used to reach the desired end. That there are considerations of public policy and a tradition of 180 years of "silent acquiescence" by the federal government is true, but equally true and more persuasive is it that we appear to be in a "laissez-faire" era regarding the protection of individual liberties.

Thirdly, the *Rea* case may indicate an increased activity upon the part of Congress in enacting legislation, the ultimate effect of which will result in increased federal powers and decreased state powers.

Fourthly, increased assertions of equitable jurisdiction by the federal courts may be seen, in order that an adequate remedy may be provided according to the actuality of the situation, rather than according to some theoretical concept having no real basis in fact.

Finally, that the Constitution will continue to receive an increasingly broad interpretation, thereby enhancing the powers of the three branches of the federal government seems clear. That the powers of the states will thereby be reduced may be argued, but it seems that there is little left upon which the government of the United States can encroach, since, in view of the *Darby* case, the states today appear to be merely in the position of "residuary legatees."

If the securing of personal liberties weakens the powers and rights of the state, then perhaps the *Rea* decision constitutes an encroachment upon states' rights. But it should be pointed out that the Tenth Amendment also secures to the *people* those powers not delegated in the Constitution to the federal government. The Tenth Amendment being what it is today, we will accept an incidental encroachment upon non-existent state rights, in order that a more perfect individual freedom may be realized!