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The Doctrine of Collateral Estoppel in Parole Revocation

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THE DOCTRINE OF COLLATERAL ESTOPPEL IN PAROLE REVOCATION

I. Introduction

In recent years courts have shown more recognition of the rights of parolees and probationers. Spurred by a Supreme Court decision[1] that certain due process protections were applicable to parole revocation procedures, revocation hearings are now providing parolees and probationers some of the procedural protections available to criminal defendants at trial. Policy considerations have dictated, however, that the protections available at revocation hearings must fall far short of conferring upon the accused "the full panoply of rights due a defendant"[2] at trial.

In *Morrissey v. Brewer*[3] the Supreme Court held that the protections of procedural due process should attach to a parole revocation proceeding.[4] In so ruling the Court dismissed the argument that a parolee's "liberty" was only conditional on good behavior, and squarely held that deprivation of this liberty would constitute a "grievous loss."[5] Such a finding necessitated the imposition of at least minimal due process protections. The *Morrissey* Court, however, emphasized the differences between a parole revocation hearing and a full criminal proceeding.[6] Influenced by a desire to keep revocation hearings relatively informal,[7] the Court balanced the in-

1. Morrissey v. Brewer, 408 U.S. 471 (1972).

2. *Id.* at 480.

3. 408 U.S. 471 (1972). *See* Note, *An Endorsement of Due Process Reform in Parole Revocation: Morrissey v. Brewer*, 6 LOYOLA U. L.A.L. REV. 157 (1973); 22 CATH. U. L. REV. 715 (1973).

4. The Court stated that there were two stages involved. First, when the parolee is arrested, due process requires a preliminary hearing to determine whether probable cause exists to believe a parole violation has occurred. 408 U.S. at 485. The second stage requires the parolee be given an opportunity for a hearing, to be held prior to the decision on revocation. The Court set out the minimum requirements of due process as: (1) written notice of the claimed violations; (2) disclosure to the parolee of the evidence against him; (3) opportunity to be heard; (4) a limited right to confront witnesses; (5) a neutral hearing body; and (6) a written statement of reasons for the revocation. *Id.* at 487-89.

5. *Id.* at 482. The Court stated that it had rejected the concept of the right-privilege distinction and that due process could be applied flexibly, providing the particular protections which a situation required. *Id.* at 481.

6. *Id.* at 480.

7. "[T]he interest of both State and parolee will be furthered by an effective but informal hearing." *Id.* at 484-85.

terests of "the parolee in his continued liberty"[8] against the state's interest in being able to return a parole violator "to imprisonment without the burden of a new adversary criminal trial."[9] Less than a year later, in *Gagnon v. Scarpelli*,[10] the Court, after first stating that it discerned no relevant differences between due process requirements for parole revocation and probation revocation,[11] held that the question of whether a parolee or probationer is entitled to counsel at a revocation hearing was to be decided on a case by case basis.[12] The Court again stressed that "there are critical differences between criminal trials and probation or parole revocation hearings, and both society and the probationer or parolee have stakes in preserving these differences."[13]

As a result of the Supreme Court's emphasis on the difference between revocation hearings and criminal proceedings, lower courts have held that some constitutional protection available to defendants at trial do not apply at revocation hearings.[14] Thus, the exclusionary rule has been held inapplicable to revocation hearings.[15] In

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8. *Id.* at 482.

9. *Id.* at 483.

10. 411 U.S. 778 (1973). *See* 6 CONN. L. REV. 559 (1974).

11. The Court stated:

> Probation revocation, like parole revocation, is not a stage of a criminal prosecution, but does result in a loss of liberty. Accordingly, we hold that a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in Morrissey v. Brewer . . . .

411 U.S. at 782 (footnotes omitted).

For the purposes of this discussion the terms "parolee" and "probationer" can be considered interchangeable.

12. *Id.* at 790-91. In 1942 the Court had held in Betts v. Brady, 316 U.S. 455, 473 (1942) that the question of whether an indigent defendant in a non-capital felony trial had a constitutional right to have counsel appointed was to be determined on a case by case basis. In 1963 Gideon v. Wainwright, 372 U.S. 335, 344-45 (1963) abandoned this approach and held that in all felony cases an indigent defendant had a right to have counsel appointed for him. This rule was later extended to cover all misdemeanor cases which involve the risk of potential imprisonment. Argersinger v. Hamlin, 407 U.S. 25 (1972).

The Court in *Gagnon* declined to enunciate specifically those situations where due process would require a parolee or probationer be granted the benefit of either appointed or retained counsel. 411 U.S. at 790. The Court has held, however, that there is a right to counsel at a post-trial proceeding combining revocation of probation and the imposition of a deferred sentence. Mempa v. Rhay, 389 U.S. 128 (1967).

13. 411 U.S. at 788-89.

14. *See* text accompanying notes 26-55 *infra*.

15. *See, e.g.*, United States v. Winsett, 518 F.2d 51 (9th Cir. 1975).

contrast is a recent district court decision, *Standlee v. Rhay*,[16] where it was held that because of the punitive nature of a revocation hearing, it should be treated in some respects as equivalent to a criminal proceeding. Therefore, the *Standlee* court held that collateral estoppel barred re-litigation at a revocation hearing of an issue decided in a prior criminal trial.[17] These contrasting results are not as inconsistent as they may seem at first glance, but may be harmonized, to some extent, through an analysis of the principles underlying the respective doctrines.[18]

II. The Exclusionary Rule in Revocation Hearings

The exclusionary rule had its origin in *Weeks v. United States*.[19] In essence the rule prohibited the use of illegally obtained evidence in federal cases.[20] In 1961 *Mapp v. Ohio*[21] made the rule applicable to state court proceedings. The primary philosophy behind the rule is that exclusion of such evidence is necessary as a deterrent against police officers' violations of the constitutional rights of individuals.[22] Recent Supreme Court decisions have indicated that the exclusion-

16. No. C-75-18 (E.D. Wash., Nov. 7, 1975).

17. *Id.* at 17.

18. It has been stated that the special relationship of parolee and his parole officer grants the officer considerable latitude in exercising control over the parolee. *See* United States *ex rel.* Randazzo v. Follette, 282 F. Supp. 10 (S.D.N.Y. 1968), *aff'd*, 418 F.2d 1319 (2d Cir. 1969), *cert. denied*, 402 U.S. 984 (1971). The exclusionary rule as now discussed, however, is specifically related to the situation where there has been a violation of the parolee's or probationer's constitutional rights by police officers which, if the evidence gained thereby were offered at trial, would result in the evidence being excluded. *See* U.S. CONST., amend. IV: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated . . . ." The exclusionary rule also operates to exclude statements by an accused obtained in the absence of *Miranda* warnings. Miranda v. Arizona, 384 U.S. 436 (1966).

Usually the grounds upon which revocation of parole is sought will include several reasons. *See* Wolin, *After Release—The Parolee in Society*, 48 ST. JOHN'S L. REV. 1, 32-33 (1973). The grounds for which a parolee or probationer faces a revocation hearing examined in this Note consists exclusively of alleged criminal activity.

19. 232 U.S. 383 (1914).

20. *Id.* at 398. The rule was specifically restricted to searches and seizures by federal officers in violation of the fourth amendment. Elkins v. United States, 364 U.S. 206, 223 (1960) extended the exclusion to illegal searches and seizures made by state officers when the evidence was offered in federal courts.

21. 367 U.S. 643 (1961).

22. An additional proffered justification for the exclusionary rule has been the doctrine of the imperative of judicial integrity as announced in Elkins v. United States, 364 U.S. 206, 222 (1960). *See* text accompanying notes 52-54 *infra*.

ary rule does not set out a constitutional right of the accused, but is a judicial standard imposed to encourage observance of constitutional rights.[23] Consequently, in those situations where no deterrent effect can be served by exclusion of the evidence the rule should not apply. In *United States v. Calandra*[24] the Court stated:[25]

> [T]he exclusionary rule has never been interpreted to proscribe the use of illegally seized evidence in all proceedings or against all persons. As with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served.

Generally, courts have refused to apply the exclusionary rule to probation and parole revocation hearings.[26] This attitude is typified by *State v. Caron*,[27] a case involving a probationer who was arrested and charged with "breaking and entering with intent to commit larceny."[28] At trial the defendant moved to suppress the evidence of the alleged stolen articles seized by the police.[29] The motion was granted on the ground that the police had acted without probable cause. The prosecutor then moved to dismiss the indictment and the motion was granted. At the subsequent probation revocation hearing, the defendant moved to suppress the same evidence on the same grounds.[30] The presiding judge[31] denied the motion.[32] The

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23. United States v. Calandra, 414 U.S. 338, 347-48 (1974). *See generally* Cole, *The Exclusionary Rule in Probation and Parole Revocation Proceedings: Some Observations on Deterrence and the "Imperative of Judicial Integrity,"* 52 CHI.-KENT L. REV. 21 (1975).

24. 414 U.S. 338 (1974).

25. *Id.* at 348.

26. United States v. Winsett, 518 F.2d 51 (9th Cir. 1975); United States v. Farmer, 512 F.2d 160 (6th Cir. 1975); United States v. Hill, 447 F.2d 817 (7th Cir. 1971); United States v. Allen, 349 F. Supp. 749 (N.D. Cal. 1972); United States *ex rel.* Lombardino v. Heyd, 318 F. Supp. 648 (E.D. La. 1970), *aff'd*, 438 F.2d 1027 (5th Cir.), *cert. denied*, 404 U.S. 880 (1971); *In re* Martinez, 1 Cal. 3d 641, 463 P.2d 734, 83 Cal. Rptr. 382, *cert. denied*, 400 U.S. 851 (1970); People v. Dowery, No. 46890 (Ill., Nov. 25, 1975); State v. Caron, 334 A.2d 495 (Me. 1975); Stone v. Shea, 113 N.H. 174, 304 A.2d 647 (1973); Commonwealth v. Kates, 452 Pa. 102, 305 A.2d 701 (1973). *Contra*, Michaud v. State, 505 P.2d 1399 (Okl. Cr. App. 1973) involving the interpretation of a state statute. *See generally* Cole, note 23 *supra*.

27. 334 A.2d 495 (Me. 1975).

28. *Id.* at 496.

29. The dissenting judge raised the possibility that, because the trial had begun, the doctrines of double jeopardy and collateral estoppel might be involved in the subsequent revocation hearing, but since the matter was not raised affirmatively there was no need for decision on that point. *Id.* at 500 n.1 (Dufresne, C.J., dissenting).

30. *Id.* at 497. Although this was prior to the decision in Morrissey v. Brewer, 408 U.S. 471 (1972), Maine already had a statute requiring a revocation hearing before revoking probation. Act of Oct. 31, 1957, ch. 428, § 4, [1957] Me. Laws Spec. Sess. 16 (now ME. REV. STAT.

Supreme Judicial Court of Maine held there were no policy objectives to be served by extending the exclusionary rule to probation or parole revocation hearings.[33] The court agreed with prior decisions that the policy of deterrence implicit in the rule was amply served by exclusion at trial. It concluded that any incidental deterrence fostered by exclusion at the revocation hearing was far outweighed by the state's interest in keeping the hearing informal and efficient.[34] In *United States v. Winsett*[35] the Court of Appeals for the Fifth Circuit also found that the value of any additional deterrence was minimal.[36]

> Application of the exclusionary rule to the probation revocation proceeding in this case would achieve a deterrent effect speculative or marginal at best. Whatever deterrence of police misconduct results from the exclusion of illegally seized evidence from criminal trials, it is unrealistic to assume that application of the rule to probation revocation proceedings would significantly further that goal.

In *In re Martinez*[37] the California Supreme Court emphasized the possible dangers to society of allowing a parolee to remain at large when evidence has been discovered that he has again become involved in criminal activity.[38] In that case Martinez's parole was revoked after he was arrested, charged, and convicted of possession of heroin.[39] Conviction on this charge was subsequently reversed on

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ANN. tit. 17-A §§ 1205-06 (Spec. Pamphlet 1975)).

31. This was the same judge who presided at the earlier trial. 334 A.2d at 497. Under the Maine statute, revocation hearings were held in Superior Court. ME. REV. STAT. ANN. tit. 17-A, §§ 1205-06 (Spec. Pamphlet 1975).

32. 334 A.2d at 497.

33. *Id.* at 499.

34. *Id.* The court also held that the constitutional right of confrontation of witnesses did not preclude the use of hearsay evidence at the revocation hearing. *Id.* at 498. A revocation hearing is not a stage of a criminal proceeding and there is no reason for a "transposition to the proceeding of the entire body of evidentiary rules" applicable at trial. *Id.; see* United States v. Miller, 514 F.2d 41, 43 (9th Cir. 1975); United States v. Weber, 437 F.2d 1218, 1221 (7th Cir.), *cert. denied*, 403 U.S. 1008 (1971).

35. 518 F.2d 51 (9th Cir. 1975).

36. *Id.* at 54.

37. 1 Cal. 3d 641, 463 P.2d 734, 83 Cal. Rptr. 382, *cert. denied*, 400 U.S. 851 (1970).

38. *Id.* at 650, 463 P.2d at 740, 83 Cal. Rptr. at 388.

39. *Id.* at 644, 463 P.2d at 736, 83 Cal. Rptr. at 384. The grounds listed for the revocation included, in addition to the new conviction, driving without permission from his parole officer and excessive drinking. The court here, however, was deciding solely on the propriety of the Adult Authority having based its finding partially on evidence obtained through an illegal search. *Id.*

appeal because the fruits of an illegal search had been used at trial.[40] The charges were eventually dismissed.[41] The parole authority nevertheless refused to restore Martinez to his parole status. The Supreme Court of California decided that the evidence[42] that had been excluded at trial in deciding whether Martinez had engaged in illegal conduct justified revocation of parole. The court agreed that extending the exclusionary rule to parole revocation hearings would further deter police officers from violating constitutional rights. However, it termed the effect of this increase to be "slight"[43] and found the social consequences of excluding the evidence to be "disastrous."[44] Application of the exclusionary rule in parole revocation hearings would pose "a risk of danger to the public which . . . outweighs the competing considerations of a problematical gain in deterrence."[45]

In addition to finding a risk to the public in extending the exclusionary rule to revocation hearings, courts have concluded that such an extension would interfere with the parole board's function of guiding the parolee's rehabilitation and re-adjustment into society.[46] In *United States ex rel. Sperling v. Fitzpatrick*[47] the court indicated that application of the exclusionary rule to parole revocation proceedings "would tend to obstruct the parole system in accomplishing its remedial purposes."[48] Moreover, the *Sperling* court noted the existence of federal and state statutory penalties that could be imposed on police officers for violating an individual's

40. People v. Martinez, 232 Cal. App. 2d 796, 43 Cal. Rptr. 197 (1965).

41. 1 Cal. 3d. at 644, 463 P.2d at 736, 83 Cal. Rptr. at 384.

42. The evidence in question involved both evidence gained from an unconstitutional search, and a confession that was improperly obtained. *Id.*

43. *Id.*

44. *Id.* at 650, 463 P.2d at 740, 83 Cal. Rptr. at 388. The dissent argued that the social consequences of excluding illegally gained evidence in revocation hearings would be no greater than the consequences of excluding it at trial. *Id.* at 657, 463 P.2d at 745, 83 Cal. Rptr. at 393 (Peters, J., dissenting).

45. *Id.* at 650, 463 P.2d at 740, 83 Cal. Rptr. at 388.

46. United States v. Winsett, 518 F.2d 51, 54 (9th Cir. 1975); United States *ex rel.* Sperling v. Fitzpatrick, 426 F.2d 1161, 1164 (2d Cir. 1970); United States *ex rel.* Lombardino v. Heyd, 318 F. Supp. 648, 651 (E.D. La. 1970), *aff'd*, 438 F.2d 1027 (5th Cir.), *cert. denied*, 404 U.S. 880 (1971).

47. 426 F.2d 1161 (2d Cir. 1970).

48. *Id.* at 1163-64.

constitutional rights.[49] Although the Supreme Court in *Mapp v. Ohio*[50] had found such penalties to be an insufficient deterrent against illegal police actions to gain evidence for use at a trial, the *Sperling* court reasoned that it had not yet been shown that such penalties would be ineffective in the context of revocation hearings.[51]

The exclusionary rule has also been supported by the argument that courtroom use of illegally obtained evidence would be a violation of the imperative of judicial integrity.[52] In rejecting this argument, as applied to revocation proceedings, one court indicated that several Supreme Court decisions[53] have sustained limited courtroom use of illegally obtained evidence in certain circumstances. Thus this "imperative" was "not an ironclad principle."[54]

The primary reservation expressed by some courts when declining to apply the exclusionary rule to revocation hearings is the possibility of police harassment of parolees and probationers.[55] These courts have indicated that a showing of such deliberate harassment would tip the balance in favor of excluding the evidence.

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49. *Id.* at 1164 n.10. The statutes referred to by the court are 18 U.S.C. §§ 242, 2236 (1970); N.Y. PENAL LAW § 195.00 (McKinney 1975).

50. 367 U.S. 643 (1961).

51. 426 F.2d at 1164. The court suggested that if these penalties were to be found ineffective it would be sounder policy to strengthen the penalties than "to vitiate the penological effectiveness of the Parole Board through the imposition of an inflexible exclusionary rule." *Id.*

52. Elkins v. United States, 364 U.S. 206, 222 (1960); United States v. Hill, 447 F.2d 817, 840 (7th Cir. 1971) (Fairchild, J., dissenting); *In re* Martinez, 1 Cal. 3d 641, 652, 463 P.2d 734, 742, 83 Cal. Rptr. 382, 390 (Peters, J., dissenting), *cert. denied*, 400 U.S. 851 (1970).

53. The Supreme Court has held use of illegally obtained evidence permissible for purposes of grand jury proceedings in United States v. Calandra, 414 U.S. 338 (1974). *See also* Harris v. New York, 401 U.S. 222 (1971) (admissible for impeachment purposes); United States v. Schipani, 435 F.2d 26 (2d Cir. 1970), *cert. denied*, 401 U.S. 983 (1971) (use is permissible at sentencing proceedings).

54. People v. Dowery, 20 Ill. App. 3d 738, 743, 312 N.E.2d 682, 686 (1974).

55. *See* United States v. Winsett, 518 F.2d 51, 54 n.5 (9th Cir. 1975); United States v. Farmer, 512 F.2d 160, 162 (6th Cir. 1975); United States *ex rel.* Sperling v. Fitzpatrick, 426 F.2d 1161, 1166 (2d Cir. 1970) (Lumbard, C.J., concurring); United States *ex rel.* Lombardino v. Heyd, 318 F. Supp. 648, 651 (E.D. La. 1970), *aff'd*, 438 F.2d 1027 (5th Cir.), *cert. denied*, 404 U.S. 880 (1971).

Chief Judge Lumbard in *Sperling* indicated that:

> The time may come when the balance will shift. Proof of widespread police harassment of parolees would cause such a shift since the exclusionary rule is a deterrent which should be used when the need for deterrence is clearly shown.

426 F.2d at 1166.

III. Collateral Estoppel in Revocation Hearings

In refusing to extend the exclusionary rule to revocation hearings, courts have emphasized the difference between these hearings and criminal trials. In contrast, *Standlee v. Rhay* bases its application of the collateral estoppel doctrine on the similar nature of revocation hearings and criminal proceedings.[56] *Standlee* held that where the question of the truth of the defendant's alibi had been decided in his favor at a criminal trial, the state could not relitigate the issue at a subsequent revocation hearing.[57]

The phrase "collateral estoppel" was defined in *Ashe v. Swenson*[58] as meaning "that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit."[59] In the context of revocation hearings it has been asserted that this doctrine bars a parole board or similar authority from examining, as the basis for revoking parole, the question of a parolee's participation in a crime once he has been acquitted at trial of committing that crime.[60]

Collateral estoppel traces its conceptual basis to the constitutional guarantee against double jeopardy.[61] However, collateral estoppel[62] only works to block relitigation of an issue,[63] while the prohibition of double jeopardy bars the entire cause of action.[64] Nevertheless, preclusion of an issue by virtue of the prior criminal judgment may effectively bar any subsequent revocation action.[65]

In *Ashe*[66] four participants in a card game were robbed by a group

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56. No. C-75-18, at 15-16 (E.D. Wash. Nov. 7, 1975).

57. *Id.* at 16.

58. 397 U.S. 436 (1970).

59. *Id.* at 443.

60. *See, e.g.*, Standlee v. Rhay, No. C-75-18 (E.D. Wash., Nov. 7, 1975); People v. Grayson, 58 Ill. 2d 260, 319 N.E.2d 43 (1974).

61. Ashe v. Swenson, 397 U.S. 445 (1970).

62. The doctrine will apply only when there has been a final judgment. 1B J. MOORE, FEDERAL PRACTICE ¶ 0.441[2] (2d ed. 1974); 5 J. WEINSTEIN, H. KORN & A. MILLER, NEW YORK CIVIL PRACTICE ¶ 5011.28 (1975).

63. McDonald v. O'Meara, 473 F.2d 799 (5th Cir.), *cert. denied*, 412 U.S. 906 (1973); *see* United States *ex. rel.* Fidtler v. Hendrick, 411 F.2d 840 (3d Cir. 1969); Glass v. United States Rubber Co., 382 F.2d 378 (10th Cir. 1967).

64. 1B J. MOORE, FEDERAL PRACTICE ¶ 0.418[2] (2d ed. 1974); 5 J. WEINSTEIN, H. KORN & A. MILLER, NEW YORK CIVIL PRACTICE ¶ 5011.24 (1975).

65. This is so where an essential element of the second action cannot be asserted because the prior action conclusively determined an issue adversely to the state.

66. 398 U.S. 436 (1970).

of men at gunpoint. Ashe was brought to trial on the charge of robbing one of the other participants in the game. Three of the card players were unable to identify Ashe as one of the robbers. The fourth player identified Ashe, but only on the basis of a similarity in height and weight. The jury found this evidence insufficient and acquitted Ashe. The state subsequently convicted Ashe for the robbery of another of the card game participants. After the Supreme Court of Missouri affirmed the conviction,[67] the United States Supreme Court held that the jury in Ashe's first trial had determined that Ashe was not one of the robbers.[68] This determination was binding on the state in the second prosecution. Although the charge was different, the state could not relitigate the issue of whether the defendant had been one of the participants in the robbery.[69]

Generally where one party in a civil action seeks to preclude from litigation an issue decided in a prior criminal proceeding, the doctrine of collateral estoppel does not apply.[70] Some courts[71] have not applied the doctrine where the government[72] brings a subsequent civil action[73] against a party acquitted in a prior criminal proceed-

67. State v. Ashe, 350 S.W.2d 768 (Mo. 1961).

68. 397 U.S. at 446.

69. *Id.*

70. Vestal & Coughenour, *Preclusion/Res Judicata Variables: Criminal Prosecutions*, 19 VAND. L. REV. 683, 701-16 (1966). A primary reason for not giving preclusive effect to issues in this situation is that the standard of proof is different in the two proceedings. This is an especially important consideration where the defendant was acquitted in the prior criminal proceeding.

> When a jury acquits, it decides only that an accused is not proven guilty of the offense charged beyond a reasonable doubt, and the Commissioner is not foreclosed thereby from attempting to show fraud in the civil counterpart against the same defendant by a fair preponderance of the evidence . . . . This burden of proof factor alone is sufficient to demonstrate that the "bundle of legal principles" applicable in a civil suit differs significantly from that in a criminal trial.

Neaderland v. Commissioner, 424 F.2d 639, 642 (2d Cir.), *cert. denied*, 400 U.S. 827 (1970).

71. *See* Annot., 27 A.L.R.2d 1137 (1953).

72. Since it is the government which brings the subsequent civil suit, this satisfies any objection to application of the doctrine of collateral estoppel based on lack of identity of the parties. *See generally* 1B J. MOORE, FEDERAL PRACTICE ¶ 0.411 (2d ed. 1974).

73. The situation described here can arise in a civil action to fix a penalty in a tax case after a prior acquittal of a criminal charge of willful evasion of income tax. *See, e.g.*, Helvering v. Mitchell, 303 U.S. 391 (1938); Neaderland v. Commissioner, 424 F.2d 639 (2d Cir.), *cert. denied*, 400 U.S. 827 (1970). It can also arise in cases where the government institutes an action for condemnation or forfeiture of property alleged to be the subject matter or instrument of a crime after the defendant has been acquitted of the crime. *See, e.g.*, One Lot Emerald Cut Stones v. United States, 409 U.S. 232 (1972).

ing. Other courts have drawn a distinction based on the nature of the sanction sought. These courts have held that collateral estoppel bars relitigation of an issue in a subsequent government civil suit where the sanction sought is punitive in nature, but the doctrine will not apply where the sanction sought is merely remedial.[74]

The district court in *Standlee* relied heavily on this distinction in concluding that because of the punitive nature of revocation hearings, a prior acquittal in a criminal trial must have preclusive effect in a subsequent revocation hearing.[75]

Standlee was on parole when he was arrested for an alleged abduction with intent to rape. A parole revocation hearing was commenced and was continued pending the outcome of the trial on the new charges.[76] At trial Standlee was acquitted of all charges with the trial judge stating that the persuasive testimony of an alibi witness had been the decisive factor in the defendant's favor.[77] Subsequently the Parole Board reconvened the revocation hearing and considered the same evidence which had been presented at trial.[78] The hearing officer found Standlee guilty of the charges by a preponderance of the evidence.[79] As a result of his involvement in the crime, Standlee was re-incarcerated for violating his parole conditions.[80] The denial of Standlee's writ of habeas corpus was affirmed by the Washington Supreme Court.[81]

The federal district court, in a habeas corpus proceeding, overturned the state court decision. The court analogized the situation

74. Helvering v. Mitchell, 303 U.S. 391 (1938); Coffey v. United States, 116 U.S. 436 (1886); Neaderland v. Commissioner, 424 F.2d 639 (2d Cir.), *cert. denied*, 400 U.S. 827 (1970). The Supreme Court has held constitutional criminal safeguards applicable to forfeiture suits where the sanction sought is punitive in nature. *See* United States v. United States Coin and Currency, 401 U.S. 715 (1971); One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965); Boyd v. United States, 116 U.S. 616 (1886).

75. No. C-75-18, at 14.

76. *Id.* at 1.

77. Standlee's alibi witness testified that Standlee was with her in Portland the night the crime was committed in Seattle. *Id.* at 2.

78. The alibi witness did not appear in person. Instead, the transcript of her testimony was read. *Id.* Standlee also asserted that he was denied equal protection of the laws because of his inability to pay the travel costs of his alibi witness in order to enable her to testify in person at the hearing. *Id.* at 3. The court found it unnecessary to reach this claim. *Id.* at 17.

79. *Id.* at 2.

80. *Id.*

81. Standlee v. Smith, 83 Wash. 2d 405, 518 P.2d 721 (1974).

to *Coffey v. United States*.[82] *Coffey* had held that a prior acquittal in a criminal case was res judicata[83] and barred a subsequent forfeiture suit, punitive in nature, brought by the government based on the same alleged criminal activity.[84] The *Standlee* court reasoned that the act of revocation was equally punitive[85] and that the proceeding was "quasi-criminal"[86] in nature. The court noted:[87]

> [W]hile the parole revocation procedure has retained its civil label, the parolee has increasingly enjoyed the rights of a defendant in a criminal trial, albeit in a modified form. The existence of such constitutional protections is itself indicative of the punitive nature of the proceeding . . . . The Supreme Court [in *Morrissey*] plainly did not characterize revocation of parole as a remedial sanction, but rather emphasized the grievousness of the loss inflicted . . . .

The court also emphasized that the revocation hearing here was "imbued . . . with the aura of a criminal trial,"[88] with the defendant represented by counsel and the State by the Attorney General, and with the parole board assuming a role " 'more akin to that of a judge at a trial.' " The district court stated:[89]

> Under these circumstances the State cannot be allowed to rely on the different labels attached to the two proceedings to justify their action, which in any other context would constitute a gross violation of the collateral estoppel doctrine.

Therefore, the court held, Standlee's acquittal of the charges at trial must be considered as binding at the revocation hearing.[90]

The *Standlee* court's characterization of revocation hearings as quasi-criminal in nature appears to be inconsistent with the nature of these hearings as perceived by the courts which have refused to apply the exclusionary rule.[91] *Standlee* emphasized similarities be-

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82. 116 U.S. 436 (1886).

83. It is not completely clear whether the doctrine employed by the court was that of res judicata or collateral estoppel. *See* 1B J. MOORE, FEDERAL PRACTICE ¶ 0.418[3] at 2855 n.13 (2d ed. 1974).

84. 116 U.S. at 443.

85. No. C-75-18, at 14.

86. *Id.* at 13.

87. *Id.* at 14.

88. *Id.* at 16.

89. *Id.*

90. *Id.* at 17.

91. *See* text accompanying notes 26-55 *supra*.

tween revocation hearings and criminal proceedings while the exclusionary rule cases emphasized differences. More fundamentally, the exclusionary rule decisions showed a reluctance to bind the hearing body with procedural restraints while *Standlee* chose to apply the restraint of the doctrine of collateral estoppel. Both these views have employed language from *Morrissey*.[92] The weighing test used by the *Morrissey* Court balanced the interests of the state against the interests of the parolee.[93] The decisions in *Standlee* and the exclusionary rule cases are outgrowths of the approach taken in *Morrissey*.

Although these two views have different perceptions as to the nature of the revocation hearings, they are not directly conflicting. The *Standlee* decision limits itself expressly to those situations "where the Parole Board deliberately accedes to the criminal prosecution."[94] The court states that in all other circumstances the hearing body can continue to use its flexible procedures, including the lax rules of evidence and the preponderance of the evidence standard of proof.[95]

Nevertheless, there are some serious practical problems. As the Court in *Morrissey* indicated, law authorities often prefer the revocation procedure to bringing a parolee or probationer to trial on a new charge.[96] The revocation procedure is faster, cheaper, and less complex, and the standard of proof required is lower. Thus, it is utilized if the new offense is not serious enough for the authorities to prefer a trial or if there is considerable time left to be served on the parolee's or probationer's original sentence. In addition, where the exclusionary rule would prevent important evidence from being

92. The exclusionary rule cases have emphasized the language in *Morrissey* that "the revocation of parole is not part of a criminal prosecution . . . ." Morrissey v. Brewer, 408 U.S. 471, 480 (1972). *See* United States v. Farmer, 512 F.2d 160, 162 (6th Cir. 1975); People v. Coleman, 13 Cal. 3d 867, 876-77 n.8, 533 P.2d 1024, 1033 n.8, Cal. Rptr. 384, 393 n.8 (1975); State v. Caron, 334 A.2d 495, 497 (Me. 1975); Commonwealth v. Kates, 452 P.2d 102, 118, 305 A.2d 701, 710 (1973). In contrast, *Standlee* emphasizes the "grievous loss" that the Supreme Court stated a parolee suffers when his parole is revoked. Standlee v. Rhay, No. C-75-18, at 14 (E.D. Wash., Nov. 7, 1975), *citing* Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

93. 408 U.S. at 482-84.

94. No. C-75-18, at 17.

95. *Id. See also* People v. Grayson, 58 Ill. 2d 260, 264-65, 319 N.E.2d 43, 45 (1974).

96. 408 U.S. at 479. *See also In re* Martinez, 1 Cal. 3d 641, 653, 463 P.2d 734, 742, 83 Cal. Rptr. 382, 390 (1970) (Peters, J., dissenting).

available at trial, the inclination to bring a revocation hearing is even greater.

The rationale of the *Standlee* case appears to provide an additional incentive to postpone the trial where the state believes it may not be able to prove its case beyond a reasonable doubt and the alleged crime is the only parole violation asserted. The result of such procedure is clear. The parolee may be punished for a crime which the state could not prove in a court of law. The protection of proof beyond a reasonable doubt has been obviated.

Although the punishment is conceptually based on the individual's original conviction and sentence, the parolee is actually being punished for a wholly unrelated new offense, and is accorded treatment different from a non-parolee solely because of his original conviction and his parolee status.

Judge Utter, who dissented in the state supreme court decision in *Standlee v. Smith*,[97] argued that under the circumstances of the case, the evidence in favor of revocation should meet the "beyond a reasonable doubt" standard of proof.[98] This approach, like the one taken in the federal district court in *Standlee v. Rhay*,[99] is basically grounded on the view of the revocation proceeding as a punitive sanction.

IV. Conclusion

Although revocation hearings often present both exclusionary rule and collateral estoppel problems, these are essentially distinct legal concepts. The exclusionary rule is an artificial construct aimed not at achieving a full trial of the merits, but at suppressing otherwise probative evidence in the hope of deterring infringements on constitutional rights. In the context of revocation hearings, the deterrence theory becomes tenuous.

In contrast, the collateral estoppel doctrine, in terms of criminal proceedings, traces its conceptual basis to the constitutional guar-

97. 83 Wash. 2d 405, 410, 518 P.2d 721, 724 (1974) (Utter, J., dissenting).

98. *Id.* at 414, 518 P.2d at 726.

99. No. C-75-18, at 10-11. One area left unresolved by the court in *Standlee* is the situation where the government deliberately avoids giving the parolee the benefit of a criminal trial and seeks to imprison him by virtue of the revocation hearing alone. A further consideration involved is that a requirement of a guilty verdict at a criminal trial prior to revocation of parole would give the parolee the benefit of the exclusionary rule and the other protections which courts have found not to apply to revocation hearings.

antee against double jeopardy. Whether this justifies giving preclusive effect to issues raised during a criminal trial in a subsequent revocation hearing depends on the particular situation. One factor to be considered is whether the exclusionary rule had been used at trial. If evidence which may have been determinative on a certain issue were excluded at trial, that issue should not be precluded from reconsideration at the parole or probation hearing. However, if the state has had an opportunity to present all its evidence at the trial, the court should generally recognize that issue as finally determined and binding in a subsequent revocation hearing. In such a case the revocation hearing is bound by the same standard of proof as applied at the trial. This appears to be justified, however, since the issue involved is whether the accused has committed a criminal act and thus may face imprisonment, either through the revocation of his parole or the imposition of a new sentence.

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