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the Canadian law. However, the complete scope of these provisions have not been determined.

HENRY W. CONNELLY

Constitutional Law—Injunction to Prohibit Use in State Courts of Evidence Illegally Obtained by Federal Agents

A federal narcotics agent seized petitioner's marihuana under a search warrant improperly issued under Rule 41(c) of the Federal Rules of Criminal Procedure. The United States District Court granted a pretrial motion to suppress this evidence under Rule 41(e), and on the Government's later motion dismissed the federal indictment. The federal agent then swore to a complaint before a New Mexico State judge and caused a warrant for the petitioner's arrest to issue. Petitioner was charged with being in possession of marihuana in violation of New Mexico law. In the United States District Court, petitioner sought to enjoin the federal agent from testifying in the state prosecution and to direct the agent to reacquire the evidence and destroy it or transfer it to other agents. The injunction was denied and the Court of Appeals affirmed.[1] Certiorari being granted, the United States Supreme Court, by five to four decision, reversed and directed that the injunction be granted by the United States District Court. *Rea v. United States*.[2]

The federal rule excluding evidence illegally obtained by federal officers was originally declared in the case of *Weeks v. United States*.[3] Under the *Weeks* decision, evidence obtained by illegal search and seizure in violation of the fourth amendment to the U. S. Constitution is not admissible in federal courts when obtained by the federal government or its agents. Since the fourth amendment protects the right of privacy only from invasion by the federal government, this exclusionary rule does not bar the use in federal courts of evidence illegally obtained by private citizens or state officers who were not acting in collaboration with federal officers. Although many states have adopted the exclusionary rule as applied to evidence illegally obtained by state agents for use in state courts,[4] the federal constitution does not compel them to do so.[5]

The states adopting the exclusionary rule as a means of suppressing

[1] 218 F. 2d 237 (10th Cir. 1954).
[2] 350 U. S. 214 (1956); noted in 24 TENN. L. REV. 605 (1956).
[3] 232 U. S. 383 (1914).
[4] A list of states adopting the exclusionary rule may be found in Annot. 50 A. L. R. 2d 531 at 536 (1956).
[5] Wolf v. Colorado, 338 U. S. 25 (1944). The due process clause of the 14th Amendment is not violated by the states' use of illegally obtained evidence provided the method of acquisition is not so harsh as to violate the basic concepts of such clause. Rochin v. California, 342 U. S. 165 (1952).

illegal search and seizure by state officers follow the federal government in admitting evidence illegally acquired by private citizens.[6] The admissibility in state proceedings of evidence illegally obtained by federal officers not cooperating with state agents is a subject on which there are divergent views. Among the states having the exclusionary rule, the majority of those which have acted on the question have held such evidence inadmissible.[7] The rationale of this majority is that the state judiciary is obligated by the Constitution to effectively give force to the fourth amendment's protection against the invasion of the right of privacy by the federal government; and as the most effective means of discharging this duty, the majority excludes such evidence. This is not to say that these states construe the fourth amendment as requiring the adoption of such an exclusionary rule.

How does the *Rea* decision affect the question of admissibility in state courts of evidence illegally acquired by federal officers? In permitting the injunction against the use of such evidence, the majority opinion stated that no constitutional issue is involved and declared that the Court's power to enjoin the federal officer from testifying stems from its power to police and enforce the Federal Rules of Criminal Procedure. As to the Court's power to control the possession of the contraband, the Court cited a federal statute which provides that: "All property taken or obtained under any revenue law of the United States shall not be repleviable, but shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof."[8] The majority opinion further stated that *Wolf v. Colorado*[9] is in no way affected, and carefully pointed out that no injunction was sought against a state official. Reliance on the Court's supervisory powers over federal law enforcement agencies seems to be the sole ground for the decision, and *McNabb v. United States*[10] was cited as authority for this view. The *McNabb* case declared inadmissible in a federal prosecution a confession obtained during a period of illegal detention in violation of a federal statute. The Court stated that in de-

[6] Chapman v. Commonwealth, 206 Ky. 439, 264 S. W. 181 (1924); Gilliam v. Commonwealth, 263 Ky. 342, 92 S. W. 2d 346 (1936); Hampton v. State, 132 Miss. 154, 96 So. 165 (1923); State v. Wilkerson, 349 Mo. 205, 159 S. W. 2d 794 (1942); State v. Barrett, 121 Or. 57, 254 P. 198 (1927).

[7] State v. Arregui, 44 Idaho 43, 254 P. 788 (1927); Walters v. Commonwealth, 199 Ky. 182, 250 S. W. 839 (1923); Ingram v. Commonwealth, 200 Ky. 284, 254 S. W. 894 (1923); Little v. State, 171 Miss. 819, 159 So. 103 (1935); State v. Rebasti, 306 Mo. 336, 267 S. W. 858 (1924); State v. Horton, 312 Mo. 202, 278 S. W. 661 (1925); State v. Hiteshew, 42 Wyo. 147, 292 P. 2 (1930). *Contra,* State v. Gardner, 77 Mont. 8, 249 P. 574 (1926); State ex rel. Kuhr v. District Court, 82 Mont. 515, 268 P. 501 (1928); Johnson v. State, 155 Tenn. 628, 299 S. W. 800 (1927).

[8] 62 STAT. 974 (1948), 28 U. S. C. § 2463 (1953).

[9] See Note 5 *supra.*

[10] 318 U. S. 332 (1943).

termining exclusionary rules of evidence the federal courts are not restricted to those powers derived solely from the Constitution.

The *Rea* dissenting opinion rejected the *McNabb* case as the basis for such extensive judicial power of supervision over federal law enforcement agencies and would have confined the Court's supervisory power over the admission of evidence to federal cases. In substance, the dissent takes the view that under the majority opinion the judiciary has invaded the executive responsibility for supervising law enforcement activities. In support of this position, the following was quoted from the *McNabb* decision: ". . . we confine ourselves to our limited function as the Court of ultimate review of the standards formulated and applied by the federal courts in the trial of criminal cases. We are not concerned with the law enforcement practices except in so far as the courts themselves become instruments of the law."[11]

Because of the strong dissenting opinion, it seems likely that the *Rea* decision may later be construed so narrowly as to reconcile the majority and minority opinions. It is submitted that since the federal court was an instrument of the law in issuing the invalid search warrant, such a reconciliation might be effected by narrowly construing the majority's position to mean that the federal court can control that which was obtained through federal judicial action. The dissent apparently anticipated this possible construction for it questions whether the Court's decision would have been different had the evidence been obtained without a search warrant.

The dissenting opinion further urged that the present decision violates federal policy as established by *Stefanelli v. Minard.*[12] In that case the Court refused to enjoin the use of evidence illegally seized by the state in a state prosecution on the grounds that the federal intervention in state criminal proceedings would be violative of the ". . . special delicacy of the adjustment to be preserved between federal equitable powers and the State administration of its own laws."[13] The minority in the *Rea* decision argued that while in the instant case the injunction was against the federal agent's testifying, it was in effect enjoining state criminal proceedings since the state's case appeared to depend wholly on the evidence in question. This criticism, like that against the Court's reliance on the *McNabb* case, can be reconciled with the majority decision by arguing that the federal judiciary's connection with the illegality was sufficient to justify the federal interference in this area of delicate adjustment.

The dissent also pointed out that since under the *Wolf* decision a conviction in state courts under evidence illegally obtained would not be reversed because of the illegality per se, the federal interference in the

[11] *Id.* at 347.

[12] 342 U. S. 117 (1951).

[13] *Id.* at 120.

present case would seem to be justified only if the federal injunction proceeding can be completed prior to the use of the evidence in the state prosecution.

In view of the fact that the injunction would seem to be of value only if issued prior to the use of the evidence in the state prosecution, and since the *Rea* decision could be narrowly construed to permit an injunction against the use in state courts of evidence illegally obtained by federal agents only where the federal judiciary was connected with the illegality, it would appear that the question of admissibility in state prosecutions of evidence illegally obtained by federal officers is still worthy of attention by state courts.

Assuming the issue remains one of importance, it might be well to consider the possible bases for the exclusion of such evidence in North Carolina. While no case has been found which indicates the position that our Court would take on this question, it would seem that there are three grounds upon which such evidence could be declared inadmissible.

The first argument which could be made in favor of excluding such evidence is that such a result is required by G. S. § 15-27 which reads as follows: "Any officer who shall sign or issue or cause to be signed and issued a search warrant without first requiring the complainant or other person to sign an affidavit under oath and examining said person or complainant in regard thereto shall be guilty of a misdemeanor; and no facts discovered by reason of the issuance of such illegal search warrant shall be competent as evidence in the trial of any action: Provided, no facts discovered or evidence obtained without a legal search warrant in the course of any search, made under conditions requiring the issuance of a search warrant, shall be competent in the trial of any action."[14]

The conclusion that this statute renders inadmissible in North Carolina courts evidence unlawfully obtained by federal officers would require that the word officer be construed to include both state and federal agents, and would further require an interpretation to the effect that the statute applies to all situations involving illegal acquisition of evidence.

This liberal construction appears to be unlikely. Prior to the statute, the common law rule admitting illegal evidence prevailed in North Carolina,[15] and since its adoption, the statute has received a strict construction. As originally enacted in 1937, the statute did not contain the proviso in the last sentence, and before the addition of the proviso by

[14] N. C. GEN. STAT. § 15-27 (1953), noted in 15 N. C. L. REV. 343 (1937), 29 N. C. L. REV. 396 (1951).
[15] State v. Wallace, 162 N. C. 622, 78 S. E. 1 (1913).

amendment in 1951, it was interpreted as not rendering incompetent evidence illegally obtained through a search without a warrant.[16]

This history of strict construction would favor a finding that the word officer as used in the statute included only state agents. Furthermore, since the statute declares incompetent only evidence obtained under an invalid warrant or obtained without a warrant where the acquisition was made under conditions requiring the same, a narrow construction might render admissible evidence illegally obtained where a legal method of acquisition not requiring a search warrant existed. For example, the use of a stomach pump, employed by force, as a means of carrying out a search incident to an arrest might render the method of acquiring evidence illegal. Such evidence might be admissible under the statute, however, because the search, being incident to the arrest, would not be one made under conditions requiring the issuance of a search warrant.

In addition, in North Carolina search warrants apparently may be issued only as authorized by statute, and it might be held that conditions requiring issuance of a warrant are confined to those circumstances in which a warrant is authorized on the theory that unless a warrant is authorized it can never be required[17] As an example of the application of this possible construction, consider a search and seizure, made without a warrant and not incidental to arrest, under which liquor was obtained which was illegally possessed solely for the purpose of consumption. Since search warrants apparently may be issued only where authorized by statute, the absence of such a statute covering this situation prevents the existence of conditions requiring the issuance of a search warrant. It might be held, therefore, that the search was not made under conditions requiring the issuance of a warrant, and the evidence so obtained is not excluded by the terms of the statute. This last construction would confine the exclusion of illegally obtained evidence to those situations where a legal method acquisition exists by a search warrant. Because of these possible narrow constructions of G. S. § 15-27, it would seem that even if the statute applied to federal officers, only a limited character of illegally obtained evidence might be held inadmissible.

[16] State v. Shermer, 216 N. C. 719, 6 S. E. 2d 529 (1940); State v. McGee, 214 N. C. 184, 198 S. E. 616 (1938).

[17] N. C. GEN. STAT. § 15-25 (1953) authorizes issuance of warrants for: (1) stolen property; (2) false or counterfeit coins, notes, bills, or bonds, and instruments used for counterfeiting them; (3) any personal property, tickets, books, papers, and documents used in connection with and in the operation of lotteries, gaming, and gambling. N. C. GEN. STAT. § 18-3 (1953) provides for search warrants for liquor illegally possessed for the purpose of sale. N. C. GEN. STAT. § 14-351 (1953) authorizes search warrants for deserting seamen. N. C. GEN. STAT. § 13-91(d) (1953) provides for search warrants for game taken in violation of the game law. N. C. GEN. STAT. § 80-28 (1950) authorizes search warrants for re-used beverage bottles.

As a second ground for the exclusion of evidence unlawfully obtained by federal officers, it could be argued that the Court should adopt a judicial policy barring all evidence illegally obtained by state or federal officers as a means of suppressing illegal search and seizure within the state. Such a policy might be deemed warranted on the basis of modern developments in this area and on the basis of G. S. § 15-27 as indicative of legislative intent in this direction. This would go further than the federal rule which excludes only evidence illegally obtained by federal agents.

As a third basis for declaring inadmissible in North Carolina evidence unlawfully obtained by federal officers, it could be urged that a rule excluding the same should be adopted as the most effective means by which the Court can discharge its obligation to uphold the fourth amendment. As has been mentioned previously, this argument has been adopted by some of the courts which have acted on the question.

Without regard to the alternative merits of the bases suggested above for declaring inadmissible in the state courts evidence unlawfully acquired by federal officers, it is to be hoped that North Carolina will exclude such evidence should the question arise. The suppression of illegal search and seizure by federal agents can be rendered truly effective only by making it known in advance that any evidence taken in an illegal manner will be inadmissible in proving the guilt of the accused in either state or federal criminal proceedings.

JAMES C. FOX.

Constitutional Law—Requisites of Notice of Governmental Action

The United States Supreme Court cast new light on the requisites of notice under the due process clause of the Constitution in the recent decision of *Walker v. City of Hutchinson.*[1] The defendant city, in the exercise of its statutory power of eminent domain,[2] condemned property of the plaintiff for purposes of street widening. In accordance with the provision of the statute, the property owners were notified by publication that the hearing was to be held to determine compensation.[3] The Court found that the notice provided by the act was not reasonably calculated to inform a known resident landowner of condemnation proceedings against his property, and, therefore, that Fourteenth Amendment requirequirements of due process of law were not met. "Even a letter," it was

[1] 352 U. S. 112 (1956).
[2] KAN. GEN. STAT. § 26-202 (1949).
[3] In accordance with the statute, there was one published notice given in the official city newspaper ten days before the hearing. The Court, however, laid no stress on this point, but based its decision upon the inadequacy of notice by publication generally when some better means of giving notice is readily available.