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Evidence—Injunction—Extension of the Federal Exclusionary Rule

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EVIDENCE—INJUNCTION—EXTENSION OF THE FEDERAL EXCLUSIONARY RULE —Petitioner Rea was indicted for the acquisition of marijuana in violation of federal law. After evidence obtained by a federal agent by means of an invalid search warrant had been suppressed in a federal district court, and the indictment dismissed, the federal agent swore out a warrant for Rea's arrest in a New Mexico state court. Rea's motion in the federal district court to enjoin the agent's testimony was denied, and the Court of Appeals for the Tenth Circuit affirmed.[1] On certiorari to the United States Supreme Court, *held,* reversed, injunction granted. In view of the Supreme Court's supervisory powers over federal law enforcement officers, a federal officer may be prevented from testifying or introducing illegally obtained evidence in either federal or state proceedings in contravention of the Federal Rules of Criminal Procedure governing searches and seizures. The injunctive relief is directed at the federal agent, and is not an attempt to disrupt the state forum. *Rea v. United States,* 350 U.S. 214 (1956) (Justice Harlan, with whom Justices Reed, Burton and Minton concur, dissenting).

Historically, the resentment of the American colonists to the notorious "writs of assistance"[2] ultimately led to the adoption of the fourth amendment to the Federal Constitution.[3] The first use of an exclusionary rule to enforce the fourth amendment was in *Boyd v. United States.*[4] However, in *Adams v. New York,*[5] the Supreme Court did not adhere to the *Boyd* decision, but utilized the common law rule that evidence which was pertinent to the issue was admissible, although illegally procured.[6] Though not expressly overruling the *Boyd* case, the Court refused to apply it to the facts of this case.

In 1914, the Supreme Court announced its definitive rule of federal exclusion in the case of *Weeks v. United States.*[7] Defendant's home had been entered and evidence illegally seized on two distinct occasions, once by state police officers, and again by state police in conjunction with a United States Marshal. The federal district court held that all the evidence was admissible, and the Supreme Court reversed, declaring that it was not error to admit the evidence seized by the state police officers acting independently, but that it was error to admit evidence illegally seized by the joint efforts of the state police and the federal officer.

The rule of the *Weeks* decision has been interpreted by the Supreme Court as a mere rule of evidence which could be changed by congressional

[1]Rea v. United States, 218 F.2d 237 (10th Cir. 1954).
[2]These were general warrants under which British officers were granted the power to search homes.
[3]"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.
[4]116 U.S. 616 (1886). The case concerned the constitutionality of a federal statute authorizing the courts to compel the production of a man's private books and papers, under the penalty of having the information taken as true if not produced. The statute was held unconstitutional as violating the fourth and fifth amendments, and the introduction of those books declared an error.
[5]192 U.S. 585 (1904). In this case an objection was made to the introduction of papers which were seized illegally by state officers for use in a state court. The Supreme Court upheld the state court conviction, and refused to apply the doctrine of the *Boyd* case.
[6]*Id.* at 596.
[7]232 U.S. 383 (1914).

enactment, and not as a constitutional mandate imposed by the fourth amendment.[8] The Court held that the exclusionary rule was not binding on the state courts, and in the interests of the federal and state coordinate system of courts, allowed the states to develop their own rules concerning exclusion. Tabulation of the states following or rejecting the *Weeks* rule of illegally seized evidence shows that the majority, twenty-six states, reject the exclusionary rule, and twenty-one states adhere to it.[9]

The majority based their opinion on the Court's supervisory powers over federal law enforcement agencies, rather than on a constitutional interplay between the fourth and fourteenth amendments.[10] Justice Harlan pointed out in his dissent that this was the first time it had been suggested that the Court share with the executive department responsibility for the federal agencies.

The majority opinion relied heavily on *McNabb v. United States*,[11] concerning the enforcement of the federal rules. However, that case involved a federal prosecution for the murder of a federal agent where a confession had been obtained and admitted in violation of a statute for the protection of prisoners. The Court enforced the federal statute and expressly stated that, as the court of ultimate review, it was not concerned with law enforcement practice, except as courts themselves become instruments of the law.

The use of injunctive relief in the instant case appears contrary to policies developed in previous decisions involving the balance between federal and state forums in criminal proceedings. In *Douglas v. Jeannette*,[12] the Supreme Court held that the power reserved to the states under the Constitution to provide for the determination of controversies in their courts may be restricted by federal district courts only in obedience to congressional legislation in conformity with article III of the Constitution. Therefore courts of equity should conform to this policy by refusing to embarrass or interfere with threatened proceedings in state courts other than in exceptional cases.

Another case showing reluctance of the federal courts to interfere by injunctive process with state criminal proceedings was *Stefanelli v. Minard*,[13] which involved a suit to enjoin a New Jersey court from utilizing in

[8]Wolf v. Colorado, 338 U.S. 25 (1949).

[9]*Id.* at 34, 38, listed thirty states as opposed to the *Weeks* holding, seventeen in agreement with it, and one which had not passed on the question. Since that time four states have changed their position to adopt the *Weeks* rule. See 5 UTAH L. REV. 115, 116 n.6 (1956). Prior to the formulation of the concept in the *Weeks* case, Montana opposed the doctrine of exclusion in State v. Fuller, 34 Mont. 12, 19, 85 Pac. 369, 373 (1906), but expressed adherence to it after the *Weeks* decision. In State v. Gardner, 77 Mont. 8, 249 Pac. 574, 52 A.L.R. 454 (1926), federal officers illegally seized defendant's whiskey-making apparatus and introduced the evidence in state court proceedings. It was held that the evidence was admissible in the state court, as no state agents were involved in the seizure.

[10]". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV § 1.

[11]318 U.S. 332 (1943).

[12]319 U.S. 157 (1943). Jehovah's Witnesses had successfully brought suit in a federal district court to restrain a city from enforcing an ordinance prohibiting them from soliciting without paying a license tax. It was held that the federal court should have refused to enjoin the threatened criminal proceedings in the state courts.

[13]342 U.S. 117 (1951).

a criminal prosecution evidence illegally secured by the state police. The Supreme Court refused the injunction, reiterating that the federal courts should refuse to intervene or interfere in state criminal proceedings, and the Court renewed the concept that equity does not enjoin a criminal prosecution.

Substantively, the instant case is at odds with the decision in *Wolf v. Colorado*,[14] where the Court held (6-3) that in a prosecution in a state court, for a state crime, the fourteenth amendment did not require the exclusion of evidence secured by an illegal search and seizure. The fourteenth amendment does subject the power of a state over life, liberty and property to the requirements of due process of the law, but in the *Wolf* case Justice Frankfurter concluded that due process of law did not command the court or the states to exclude illegally obtained evidence in state prosecutions for state crimes. Therefore in the *Wolf* case, as in previous decisions, the United States Supreme Court refused to force the exclusionary rule upon the states by interpreting the fourteenth amendment to require the exclusion of evidence seized in contravention of the fourth amendment.

It is submitted that the instant decision in effect accomplished by indirection what the United States Supreme Court could not achieve by direct and unequivocal action. Regarding procedure, the Court overrode a long list of astute decisions in which it had proclaimed that the federal courts should not use the injunctive process to intervene and embarrass state court proceedings. The use of the injunction here completely shackled the New Mexico trial proceedings, and operated as an enforcement of the federal exclusionary rule upon a state court. If the New Mexico court had initiated its proceedings prior to the federal district court action, would the result have been the same or would the *Wolf* decision have been followed? Very likely a "judicial race" would occur, as expressed by Justice Harlan in the dissent in the *Rea* case, between a state criminal prosecution and a federal injunction proceeding. If the government agent had transferred the illegally obtained evidence to state authorities prior to instituting suit in the federal court, would the federal court embarrass the state proceedings by demanding its return? The intervention of the federal courts in state criminal proceedings clearly leads to markedly difficult situations in the area of delicate federal-state relationships.

The Court, in refusing to base the decision on the interrelation of the fourth and fourteenth amendments, essentially avoided the troublesome decision of *Wolf v. Colorado* where the Court had said the exclusion of illegally obtained evidence was not an essential ingredient of due process.

Were the state judicial processes which were declared constitutional in the *Wolf* decision suddenly unconstitutional under a new concept of the interplay of the fourth and fourteenth amendments? Did the federal exclusionary rule, which had been considered a mere federal rule of evidence from its inception, suddenly become a constitutional mandate, without any reconsideration of views expressed in the *Wolf* decision? By alluding to its supervisory powers over federal law enforcement officers, the Court circumvented the *Wolf* decision, and disclaimed the presence of a constitutional question.

[14]338 U.S. 25 (1949).

Police lawlessness must be deterred, but the control of federal law enforcement agencies lies within the executive powers of the federal government, not within the judicial processes of the United States Supreme Court. Without directly overruling the *Wolf* and *Stefanelli* decisions, the Court effectively narrowed and limited their rulings. Pragmatically, the pronouncement of the *Rea* case imposed the federal exclusionary rule on a national basis, without regard to the viewpoint of the individual states on the question of admissibility, and represented a departure from the former policy of maintaining an equilibrium between the federal and state governments in law enforcement in criminal prosecutions.

Even if the decision is interpreted in an extremely narrow scope to mean that the federal injunction will issue against the offending federal agent only where he attempts in a state criminal prosecution to produce illegally obtained evidence which has been suppressed in a prior federal proceeding, the *Rea* decision to that extent broadens the federal exclusionary rule by encroaching on the rights of the individual states through the intervention of federal judicial legislation.

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NEGLIGENCE—LAST CLEAR CHANCE—Plaintiff brought an action for injuries suffered when he was struck by the defendant's car while crossing the street in the middle of the block in a negligently inattentive manner. The complaint, resting on the last clear chance doctrine, alleged negligence of the defendant based (1) on her failure to exercise the reasonable means available to avoid the accident after actually discovering the plaintiff in peril, and (2) on her failure to exercise reasonable vigilance to discover the plaintiff in peril due to inattention. The district court sustained a demurrer to both counts and dismissed the action. On appeal to the Supreme Court of Montana, *held,* reversed and remanded. The doctrine of the last clear chance is applicable both where the defendant did see and thereafter failed to exercise the reasonable means available to avoid injuring the plaintiff in peril, and also where the defendant negligently failed to see the plaintiff in peril due to inattention. *Sorrels v. Ryan,* 281 P.2d 1028 (Mont. 1955) (Chief Justice Adair dissenting).

The basic reasoning underlying the doctrine of the last clear chance is that the person who has the last clear opportunity to avoid an accident should bear the burden of the resulting injuries if he fails to take advantage of his opportunity.[1] There are four possible situations to which the doctrine can be applied. An overwhelming majority of the courts allow the plaintiff to recover in the first two situations: where a defendant is actually aware of the plaintiff's peril in time to avoid an accident by exercise of reasonable care and a plaintiff is either (1) in inextricable peril (physically helpless to escape injury), or (2) in peril due to inattention.[2] In the third situation, where a defendant who because of his inattention is unaware of the plaintiff's inextricable peril, a clear majority of the courts allow the plaintiff to recover.[3] This is supportable on the ground that the plaintiff's negligence

[1]PROSSER, TORTS § 52 (2d ed. 1955).
[2]Annot., 92 A.L.R. 47, 149 (1934).
[3]*Ibid.*