Rule 41 has been said to be a "crystalization" of the pre-existing equity practice. Smith v. Katzenbach, 351 F.2d 810 (D.C. Cir. 1965). This authority is not to be exercised whenever it exists, Hunsucker v. Phinney, supra, 497 F.2d at 34, but, if at all, only "with caution and restraint and in accordance with familiar limitations on the granting of equitable relief." Id.

As a consequence of the limitations on the granting of equitable relief, as well as the circumspection required in the exercise of the Court's anomalous jurisdiction, courts have declined to exercise their authority and have dismissed 41(e) actions on a number of grounds. See, Meier v. Keller, supra. Relief has been denied whenever the moving party is unable to demonstrate either irreparable injury, or the absence of an adequate remedy at law. Hunsucker v. Phinney, supra; cited with approval in Meier v. Keller, supra. An adequate remedy at law exists when a future proceeding is available in which the movant can vindicate his rights by challenging the seizure and moving for suppression of the evidence. See, e.g., Hunsucker v. Phinney, supra, 497 F.2d 29, 34 fn. 9. In this case, the possibility of administrative review or civil suit to contest any discharge or employment censure based upon the FBI documents or their fruits initially appears to furnish an adequate remedy at law. The Government has, however, consistently contended that in a subsequent civil or administrative proceeding brought by an employee challenging a discharge or censure, the employee would lack standing to raise the objection that the evidence was illegally obtained.[2/] Counsel for the Church, it should be noted, maintains that disciplined or censured employees would have standing. In view of the uncertainty, the Court will assume that no adequate remedy at law exists for challenging this evidence should it be the basis of a discharge or employment censure.

Beyond these problems, there is another obstacle to ordering the information restored and the FBI documents suppressed. At present, there is no clear

authority for extending the Court's anomolous jurisdiction to situations in which the only future proceedings are civil in nature. Hunsucker v. Phinney, supra, 497 F. 2d at 33. As the Court in Hunsucker noted, no case has held that the exercise of the anomalous jurisdiction is proper when the only likely future proceeding is civil in nature. Id. Those cases in which jurisdiction has been assumed, where the likely future proceeding is civil, have done so without discussion. United States v. Blank, 261 F. Supp. 180 (N. D. Ohio 1966). Other cases have suggested in passing that the exercise of such jurisdiction is not proper. See Lord v. Kelley, supra, 223 F. Supp. 684 at 689; Fifth Avenue Peace Parade Committee v. Hoover, 327 F. Supp. 238, 242 (S. D. N. Y. 1971); cf. Mayo v. United States, 425 F. Supp. 119 (E. D. Ill. 1975)(no monetary damages under 41(e)).

Extending this Court's anomalous jurisdiction to situations where the only future proceeding is civil in nature presents serious problems. Initially, it must be noted that Rule 41(e), upon which this action is predicated, is part of the Federal Rules of Criminal Procedure. These rules govern "the procedure in all criminal proceedings in the courts in the United States," Fed. R. Crim. P. 1, and they are intended "to provide for the just determination of every criminal proceeding." Fed. R. Crim. P. 2. Thus, the literal terms of Fed. R. Crim. P. furnish a strong reason to believe that the Court's anomalous jurisdiction is limited to, or should be exercised in, situations in which a future criminal indictment is likely, or at the very least possible. Moreover, as discussed more fully below, evidence obtained in violation of the Fourth Amendment may sometimes be used in subsequent civil proceedings. United States v. Janis, 96 S. Ct. 3021 (1976). In view of the limited application of the exclusionary rule to civil proceedings, the routine exercise of jurisdiction to consider suppression of evidence in advance of future civil proceeding appears to be of extremely dubious utility. Moreover, as the Hunsucker Court recognized:

. . . . . .

"where a criminal indictment is threatened one reason for early adjudication of the admissibility of evidence exists which is not present where only a civil proceeding is threatened; the criminal indictment itself carries a danger of stigmatization which may not be removed by a determination in the criminal trial that the evidence on which the indictment was based is inadmissible." Hunsucker v. Phinney, supra, at 33.

Finally, none of the justifications for the Court's anomalous jurisdiction, see supra, would be furthered by the extension of the Court's jurisdiction, or its exercise, in the context of subsequent non-criminal proceedings.

In this case, future criminal proceedings based upon the seized evidence or its fruits are presently barred by Order of this Court. The only possible future proceedings are civil or administrative proceedings. In these circumstances, this Court holds that the anomalous jurisdiction does not extend to restoration and suppression prior to a future civil or administrative proceeding, or in the alternative, if it does so extend, this Court declines to exercise jurisdiction in this situation.

Suppression of the Evidence

In view of the importance of the issues here raised, the Court has concluded that it must consider the fundamental issue presented, which, as will be seen, furnishes an adequate independent ground for the Court's denying suppression of these documents. The fundamental issue presented is, of course, whether the exclusionary rule extends to civil or administrative proceedings.

The starting point for the Court's analysis must be United States v. Janis, 96 S. Ct. 3021 (1976). In Janis, the Court held that the exclusionary rule should not be extended to forbid the use in civil proceedings brought by one sovereign of

evidence illegally seized by a criminal law enforcement agent of another sovereign. Respondent in Janis brought a civil suit seeking a refund of $4,940 which the Internal Revenue Service (hereinafter "IRS") had assessed and levied upon respondent for wagering excise taxes. The only evidence to support the assessment were wagering records which had been seized, pursuant to a warrant by the Los Angeles Police Department. The wagering records were turned over to the I.R.S. which then made the assessment and levied upon cash that had been seized along with the wagering records. In subsequent state criminal proceedings against respondent, the warrant was held to be defective and the seized items were ordered returned. Following an independent determination that the warrant was unconstitutional, the District Court quashed the assessment as being based upon evidence procured in violation of the Fourth Amendment, and granted judgment for respondent.

In determining whether to extend the exclusionary rule to civil proceedings the Court in Janis adopted the balancing approach of United States v. Calandra, 414 U.S. 338 (1974). The task before the Court was to balance the likely deterrent effect of extending the exclusionary rule to civil proceedings against the cost to society of excluding the evidence. Cognizant of the Rule's substantial cost to society's interest in law enforcement and the absence of any reliable empirical evidence of the Rule's deterrent effect, the Court carefully examined the possible added deterrence stemming from an extension of the exclusionary rule to this situation. It found that exclusion of this evidence from both federal and state criminal prosecutions was a substantial "punishment" and concluded that:

> exclusion from federal civil proceedings of evidence unlawfully seized by a state criminal enforcement officer has not been shown to have a sufficient likelihood of deterring the conduct of the state police so that it outweighs the societal costs imposed by the exclusion.

In response to the argument that prior cases have held that the exclusionary rule does apply to civil proceedings, the Court distinguished a situation involving a search by one sovereign and use by another ("intersovereign"), from the situation of a search and use by the same sovereign ("intrasovereign"). The marginal increase in deterrent effect in the intersovereign situation is so attenuated, according to the Court, that it is outweighed by the clear societal costs. Therefore, the Court declined to further extend the exclusionary rule to civil proceedings in the intersovereign situation.

Although Janis does not directly control this case because it involved the intersovereign situation, it does furnish the analytical approach for resolving this case. Clearly, the teaching of Janis is that in determining whether or not the exclusionary rule applies to civil proceedings, a court must balance the costs to society against the likely increase in deterrence of police misconduct. The Supreme Court has never resolved this balancing question in the intrasovereign situation as is here presented. While numerous federal cases have decided the question of the applicability of the exclusionary rule to civil proceedings, see, e.g., Pizzarello v. United States, 408 F.2d 579 (2d Cir. 1969), cert. denied 396 U.S. 986 (1969); Powell v. Zuckert, 366 F.2d 634 (D.C. Cir. 1966); these cases were all decided prior to Janis, and of course, did not employ a Calandra-Janis balancing approach. The parties have not cited, nor is the Court aware of, any post-Janis cases which have determined the application of the exclusionary rule in civil proceedings. Thus, this appears to be an open question for the Court.

Applying the Janis rationale requires the Court to balance the cost to society of extending the exclusionary rule against the likelihood that this will further deter police misconduct. The societal cost in suppressing the evidence from use in connection with employment review is substantial. Society has a substantial interest in government employees proper conduct in the course of

their employment, and in the full and complete investigation of possible malfeasance.

On the other hand, the likelihood of increased deterrence is minimal. As the Court of Appeals recognized:

> "The judicially created remedy was designed not to compensate for the unlawful invasion of one's privacy but to deter future unlawful conduct."

United States v. Winsett, 513 F.2d 51, 53 (9th Cir. 1975); United States v. Calandra, 414 U.S. 338 (1974).

The suppression of the seized documents and their fruits from use in any future criminal proceeding, already ordered by this Court, adequately serves the interest in deterrence. These officers have already been "punished." Moreover, the FBI agents appear to have acted in good faith in obtaining a warrant which was reviewed and approved by United States Magistrates in Washington D.C. and in Los Angeles. These agents followed the prescribed course of conducting the search and seizure only after they had obtained a warrant. Where, as here, the officers acted in good faith, the Supreme Court has recognized that the potential deterrent effect is reduced.[3/] Janis, 96 S.Ct. at 3034 fn. 35, citing Michigan v. Tucker, 417 U.S. 447; United States v. Peltier, 422 U.S. at 539.

It strains credulity to believe that exclusion of this evidence in a subsequent civil proceeding will encourage FBI agents to draft search warrants more narrowly to avoid the problem which Judge Bryant detected. The Court has concluded that in this case the likelihood of any increase in deterrent effect from excluding fruits of the seizure from subsequent civil or administrative proceedings is so attenuated and conjectural that "exclusion would make precious little difference." United States v. Vandemark, 522 F.2d 1019, 1022 (9th Cir. 1975).

Lastly, the Court notes that the balance struck in this case is in harmony with recent Ninth Circuit cases facing the question of the applicability of the exclusionary rule. The Court of Appeals has recently held that in nearly all cases the exclusionary rule will not apply in probation revocation hearings, United States v. Winsett, 518 F.2d 51 (9th Cir. 1975), nor will it apply when a court imposes a sentence, United States v. Vandemark, 522 F.2d 1019 (9th Cir. 1975). In both of these cases, the Courts refused to extend the exclusionary rule despite the fact that these cases occurred in intrasovereign situation and in quasi-criminal proceedings.

SUMMARY

In conclusion, the Court declines to order the FBI internal correspondence suppressed from use in connection with a non-criminal investigation by the FBI of possible malfeasance by its employees. The Court's conclusion is based upon two distinct, self-sufficient reasons: (1) the Court's equitable "anomalous jurisdiction" either does not extend to, or should not be exercised, when the only possible future proceedings are civil or administrative, and (2) the exclusionary rule does not extend to subsequent civil or administrative proceedings when the officers have demonstrated "good faith" by obtaining a warrant. In the absence of any request for further relief, the Court hereby dismisses this action with prejudice.

Dated: September 9, 1977

Malcolm M. Lucas
United States District Judge

FOOTNOTES

1/ Although the August 8, 1977 Order has been superseded by an Order, issued August 24, 1977, the issue raised by the Government has not been resolved.

2/ In oral argument, counsel for the Government claimed that no one has standing to move for suppression of these documents. Aside from the logical incongruity of this position, the Church of Scientology appears to have standing either as owner of the premises searched, or as owner of the seized documents from which the FBI memoranda are derived. Brown v. United States, 411 U.S. 223 (1973).

3/ In concluding that these officers appear to have acted in good faith in obtaining a warrant prior to the search, the Court is not deciding, and indicates no view as to, whether or not the FBI agents conducted themselves properly in conducting the search and seizure. This issue, raised by the Church, has been mooted by Judge Bryant's holding as to the constitutionality of the warrant.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. VARIOUS DOCUMENTS SEIZED FROM THE CHURCH OF SCIENTOLOGY OF CALIFORNIA, AND CEDARS-SINAI COMPLEX, Defendant, CHURCH OF SCIENTOLOGY OF CALIFORNIA, Moving Party.	NO. CV-77-2565-MML JUDGMENT

This action came on for hearing before the Court, Honorable Malcolm M. Lucas, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that judgment is rendered in accordance with the Orders of August 8, 1977, August 24, 1977, and September 9, 1977.

Each side to bear its own costs.

IT IS FURTHER ORDERED that the Clerk shall serve, by United States mail, copies of this Judgment on counsel for the parties.

Dated: September 12, 1977

Malcolm M. Lucas
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA PLAINTIFF(S) vs VARIOUS DOCUMENTS SEIZED FROM THE CHURCH OF SCIENTOLOGY, ETC. DEFENDANT(S)	CASE NUMBER CV 77-2565 MML NOTICE OF ENTRY

TO THE ABOVE NAMED PARTIES AND TO THEIR ATTORNEY(S) OF RECORD:

You are hereby notified that Judgment

_____

_____

_____ in the above entitled case was entered in the docket on September 13, 1977.

You are also notified that if this case was tried and you introduced exhibits into evidence, they must be claimed at this office after the expiration of thirty days from the receipt of this notice. (After sixty days in cases in which the United States, its officers or agencies were parties) Unless they are claimed within thirty days after the expiration of the above period, they will be destroyed pursuant to Local Rule 20(a). If an appeal is taken they will, of course, be held until the Appellate Court finally determines the matter. Exhibits which are attached to a pleading will not be destroyed but will remain as a permanent record in the case file.

(over)