

5th amendment



Fifth Amendment The exclusionary rule is a fifth Amendment's product that states that no object can be used as evidence in a court of law, if obtained illegally or without a search warrant (David W Neubauer. 2006). The 1921, US Supreme court case of *Gouled vs. United States*, greatly contributed to the rule as it held that although the Government could seize contraband, it could not seize property to simply use it as evidence. Therefore, police are not supposed to conduct warrantless searches, since such evidence will not be held admissible, unless when something is in plain view, at an airport, during an arrest as well as when there is no time to obtain a warrant. The rule could also be taken as to follow the Fifth Amendment's self incriminating command that " no person shall be compelled in any criminal case to be a witness against himself, and that no person shall be deprived of life, liberty or property without due process of law. (David W Neubauer. 2006)

During arrests, or any police interrogations, the court held in the 1897's *Bram v. United States* that involuntary confessions are inadmissible as evidence, though as Davies, Thomas (2003, pg679) commented, " The distinction between testimonials versus other self incriminating evidence is an issue of continuing debate". The Miranda rule therefore requires somewhat to be modified. This is on the basis that the Miranda warnings as mandated by the 1966 US Supreme Court decision in the *Miranda v. Arizona* case is a means of protecting criminal suspect's right of avoiding coercive self-incrimination. The modification would also be necessary to further strengthen the omission of the Miranda reading as the current rule stands i. e. the Miranda reading may be omitted during arrest e. g. when the evidence is already sufficient for indicting the suspect, or in cases when the suspect is talkative and volunteers information, without being asked. However, the

admissibility of conversations, as evidence is only considered for judgment on a case-by-case basis, and also subject to appeal (pg 810).

If the Miranda rule is modified to allow submission of statements obtained in violation of Miranda warnings, it will be more beneficial to the police and the general population because the exclusionary rule prevents the police to effectively solve crimes from violating the civil liberties of the general population. It makes the work of the arresting officers unbearable, since warrants are only issued by judges, on condition that there is "probable cause" to believe that evidence of the alleged crime will be found. The exclusionary rule prevents the police, in their zealotry to solve crimes, from violating the civil liberties of American citizens. Warrants can only be issued by judges if there is "probable cause" (Davies, Thomas 2003, pg 811)

Conclusion

Even if such institutional safeguards are what distinguishes United States from less civilized nations i. e. that the citizens civil liberties must be protected at all costs (Davies, Thomas 2003, pg 811), a person should not have a contraband in his/her possession to begin with. A police officer or an investigator who unconstitutionally uncovers contraband feels bound by the constitution that commands him/her to maintain law and order. Such a status quo, allows criminals to escape justice by loopholes such as those provided by the exclusionary rule.

References

David W Neubauer. (2006), America's Courts and the Criminal Justice System

(9 edition) Retrieved 10th august from <http://www.cas.sc>.

<https://assignbuster.com/5th-amendment/>

edu/crju/syllabi/fall07/221Brown. pdf

Davies, Thomas (2003). Farther and Farther from the Original Fifth Amendment;

The Characterization of right Against Miranda. Tennessee Law Review (73)
pp 679-811