

CT60A7001 - Critical Thinking and Argumentation in Software Engineering

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Daniel J. Solove: Nothing to hide
Presentation: Chapters 14 & 15



Chapter 14: Should We Keep the Exclusionary Rule?

- What is the exclusionary rule?
 - The rule ensures that the Fourth Amendment rights are respected
 - Any evidence that is obtained via unreasonable searches cannot be used in court
- Why?
 - The Fourth Amendment says that searches/seizures should not be unreasonable / warrants should be supported by probable cause
 - There are no built-in enforcement mechanisms in the amendment for the cases where it is violated

Chapter 14: Should We Keep the Exclusionary Rule?

- Points brought up for the rule:
 - It is simply fair that evidence that is obtained by unlawful means cannot be used against you
 - A motivation for law enforcement to follow the proper procedures
 - A reason for the defendants to raise disputes from wrongdoings

Chapter 14: Should We Keep the Exclusionary Rule?

- Points brought up against the rule:
 - Mistakes can lead to the loss of evidence, actual criminals may be able to dodge a bullet because of the rule
 - The rule has no proportionality, no matter how big the crime, the exclusionary rule applies
 - The rule only works as a "remedy for the guilty", i.e. innocent people do not benefit from the rule, even if their constitutional rights were broken
 - By nature, the rule undermines the strength of the Fourth Amendment in court
 - Generally speaking judges do not want to exclude evidence from trial, so they try to implement the scope of the amendment in minimum

Chapter 14: Should We Keep the Exclusionary Rule?

- The book argues that the current way that the rule is applied is flawed
- Currently there are problems that could be improved upon
 - Law enforcement training, supervision
 - Transparency of violations
 - Rewards from proper practices, fines for wrongdoings
- Does the rule even work?
 - Would a system with per-case discretion be better?

Chapter 15: The First Amendment as Criminal Procedure

- The First Amendment guarantees rights concerning freedom of speech, religion and expressing one's thoughts and beliefs
- Unlike the Fourth Amendment, not usually considered relevant to criminal procedure, i.e. used in the legal reasoning when in court
- Should there be a law to cover your First Amendment rights in similar fashion that of the Fourth Amendment?
 - Warrants, probable cause

Chapter 15: The First Amendment as Criminal Procedure

- The government can gather information about your First Amendment activities without actually prohibiting your rights
 - Doesn't the fear of this kind of eavesdropping effectively prohibit these activities, though?
- Especially problematic in the modern world where communication happens electronically
 - For example, activities that you do on your computer, in the privacy of your own house, cannot be considered private in the traditional sense anymore

Discussion