

論實務蒐證違法態樣與證據排除 —兼論私人不法蒐證應否證據排除

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Keywords：Illegally Obtained Evidence, Exclusionary Rule, Due Process of Law, Search and Seizure, Reasonable Expectation of Privacy, Privilege of Silence, Probable Cause, Entrapment, Polygraph

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摘 要

我國證據排除法則之制定，沿革於美國聯邦最高法院所創設之「證據排除法則（Exclusionary Rule）」，其主要目的，旨在抑制違法偵查，嚇阻警察機關不法，促使能遵循正當法律程序，俾維護司法之正潔性。又該法則具有憲法第 8 條規定之「正當法律程序」內涵，除已成為偵、審機關應遵循之法則外，實已提昇為憲法原則。

實務上常發生之蒐證違法態樣，因此而取得證據，固分為「供述證據」與「非供述證據」，然其中「供述證據」重在供述者其供述之任意性與真實性，倘供述證據取得之方法，存有違法成分，則被告之供述任意性業已動搖，其供述之真實性與可信度即可能受影響，已存有高度虛偽可能性，故應證據「絕對排除」；但「非供述證據」因其本身性質、形狀，除遭破壞或滅失外，其物理性始終不變，是違法取得之「非供述證據」，法院尚應本於人權保障與社會安全之均衡維護精神，而適用證據「權衡排除」。

A Study on Illegally Obtained Evidence and Exclusionary in Practice --- Whether the Evidence Unlawfully Obtained by an Individual should be Excluded

I-Lin Shih

Abstract

The Exclusionary Rule in Criminal Procedure Law in Taiwan is based on the "Exclusionary Rule" originally coined by the Supreme Court of United States. The main purpose of the Exclusionary Rule is to restrain the investigator, such as police officer, from illegal investigation. In this way, the investigator should and will comply with the due process of law. Thus, this rule maintains the judicial integrity and is in agreement with the Article 8 of Taiwan Constitution. Moreover, the Exclusionary Rule has become not only a guideline during investigation and trial but also a principle of the Constitution.

The evidence could be classified into two categories of testimonial evidence and real evidence. Testimonial evidence should reflect the true fact. Therefore, if the testimonial evidence is procured illegally, it could be considered as perjury and should be completely excluded from the trial because the free will of defendant and the true fact would be unreliable. In contrast, to protect human rights and to maintain social security, those evidence which are not viewed as testimonial evidence may still hold the original physical characteristics even with disfiguration or destruction of property, so they could reflect the true fact, and should be sometimes prudently considered as the evidence of crime against the defendant in the trial although they are obtained in violation of law.