

**INTERNATIONAL CONFERENCE “POLICING IN CENTRAL AND EASTERN EUROPE:
ETHICS, INTEGRITY AND HUMAN RIGHTS”**

THE THIN LINE BETWEEN POLICE FUNCTIONS AND HUMAN RIGHTS

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Introduction

During the last century, the Argentine Republic suffered many changes in its political map, changing from democratic governments to dictatorial ones from 1930 to 1983. This kind of changes affected the people’ human rights and the scope that could involve police activities. Specifically in this report I am planning to explain the changes that the Argentinean Police Department has suffered since 1983. In that year, the last dictatorial government switched into a democratic one. I will try to find out which are the limits of the functions that the members of the police force may carry out without committing violations to the citizens’ human rights

Changes in the Argentinean Police Force

There are different changes that can be made in order to modify the police organization. That depends on the kind of country and on its history.

A “police reform may connote something different: depoliticization (e.g., in post-communist Eastern Europe), decentralization (e.g., in post-war Germany), increased responsiveness to ethnic concerns (e.g., in Los Angeles or Bosnia) or better oversight systems (e.g., in New York City). But in Latin America and the Caribbean, demilitarizing public security -- ending the extraordinary military control over and nature of policing -- is correctly viewed as a first step in the ability of elected civilian officials to exercise political power”.¹

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¹ POLICE REFORM, HUMAN RIGHTS AND DEMOCRATIZATION IN POST-CONFLICT SETTINGS: LESSONS FROM EL SALVADOR by Chuck Call Department of Political Science Stanford University <http://www.iadb.org/sds/utility.cfm/173/ENGLISH/general/533>

In my opinion, the Argentine case is a mix between depolitization and demilitarization of the police power.

Changes were made in the Argentinean Police Department little by little. We have to keep in mind that every country that suffered a dictatorial government had a very strong and tough police, in order to help the dictatorial governments control the people. That is why, trying to change the Police Department and its functions in these kind of countries, is similar to very acute and difficult surgery.

At the beginning of a democratic government certain crimes related with this new kind of “freedom” – for example drug consumption and prostitution - increased.

Therefore, the new administration and the Police face in Argentina a different problem. Argentina was a drug free country until 1983. Since then, drug consumption has been increasing day by day.

To fight this problem the government started with the most basic thing: education. A Seminar in Toxicology for police officers was given in February 14, 1984. Besides they improved the exchange of information with the Drug Enforcement Administration of the United States of America (D.E.A.). In this way some police officers were sent to Glynco, Georgia – U.S.A.- in order to take a seminar related with drug-dealers. A new department was created inside the Police Institution. It was called “Dangerous Drug Office” .

Drug crimes were declared federal crimes. This permits Federal Police to investigate drug crimes all over the country. Besides, using the mentioned law, they may ask for help to the provincial police power.

Related drug crimes appeared, as money laundering. Finally, after an incredible long discussion, the Congress approved the Money Laundering Law this year. Before that we did not have any regulation against Money Laundering.

Moreover new economic crimes were committed. Tax evasion and money laundering are increasing in the country. The government created a new law (23771) in which tax evasion was prosecuted with tough punishments. New computer related crimes appeared.

An important event happened in July 26 ,1984 . The Argentine Republic signed the Human Rights American Agreement - commonly known as Pacto de San Jose de Costa Rica - .

This landmark started the “big change” in human rights in Argentina forcing Police Officers to take many courses and seminars related to human rights problems.

The idea of the administration was – and is nowadays – to create into the police officers a new moral consciousness. This movement has had a great impact in the people of the country as well as in the police officers since this Human Right Agreement was included in the National Constitution.

In September 12, 1985, a new law was dictated by the Congress – Law # 23.098 – This law created an office that provides permanent service and information related to habeas corpus matters. Police officers must always be available in order to assist the judges to find quick solutions to any requirement made by lawyers or common people in missing people' cases.

Furthermore, police procedural rules were changed gradually.

Police Officers were allowed to stop and arrest people for twenty-four hours in order to identify them. They could keep this people in their precincts if they failed to show the proper identification document – after police request- or if someone was seen in a “suspicious behavior”². That law was clearly related with dictatorial governments.

A very important change happened in 1994 when the article 5.1 of the Organizational Police Law was changed. Nowadays Police only can stop and arrest people for identification for no longer than six hours. In this way it is not illegal for police officers to request an identification document to people on the street, as long as the people are free to leave after exhibit their ID.³

Many judges, including those of the Supreme Court, have ruled that many police Organizational Laws are against the National Constitution. Finally, in March 1998, the

² The “suspicious behavior” is not an objective question. People could be stopped for identification, because police functions include the prevention of crimes. The “stop for ID” must be done with prudence and fairness. See “Dell Aquila, S.G” Cámara Nacional en lo Criminal , Sala II. Published in Boletín de Jurisprudencia, 1991, Nro.3 “La detención de una persona con fines identificatorios , al resultar “sospechosa” su conducta al personal policial, aunque no se explicita la situación objetiva que llevo a tal estado de sospecha, no es inválida, pues dentro de las facultades legalmente acordadas a la policía de prevención y represión , se encuentra la de demorar a las personas a fin de indentificarlas, siempre que esta facultad sea ejercida dentro de un marco de prudencia y razonabilidad, respetando las garantías constitucionales protegidas.” Vázquez Acuña (en disidencia), Giudice Bravo y Ragucci (h) (National High Court Judges)

³ If it is not an abuse of police officers' duties they can stop people in the street for identification. Sometimes the abuse depends on how long are you stopped. See “M., M. y otro” Cámara Nacional en lo Criminal, Sala IV. Published in Boletín de Jurisprudencia , 1985, Nro.1 pag.59. “Debe revocarse la sentencia apelada y absolver a los procesados del delito de privación ilegítima de la libertad, por cuanto ninguna ilicitud configura la actitud de los procesados al interceptar en la vía publica a los sospechosos, interrogarlos y exigirles la exhibición de sus documentos identificatorios , sin que sea válido cuestionar el procedimiento por su extensión temporal mientras este no resulta a ojos vista totalmente desproporcionada e importe, por si sola, un lado abuso funcional ; situación que no se da en autos por que los jóvenes fueron prontamente autorizados a circular.” Valdovinos, Campos, Escobar. (High Court Judges)

Police Organizational Law was declared non valid and a new Cohabitation Code was in force in Buenos Aires City. Argentina is a Federal State and each Province has its proper procedural rules. On the contrary, Criminal Code is applied all over the country.

New rules were given related with misdemeanor procedures. The following rights were established for criminals after being arrested: 1) The criminal is allowed to make a phone call to whoever he want in order to let he/she know that he is under arrest and where he/she is, 2) He must be informed that he could remain silent, and that silence does not create any criminal presumption against him, 3) He must be informed of the crime he is indicted before answering any questions asked by police officers, 4) He must be informed of all the proof that police has against him, 5) He will be “invited” to make a statement with the possibility to refuse to speak. That does not create any negative consequence on him/her, 6) Finally, once the resolution is made, he/she may appeal it. This appellation must be sent to the Ordinary Justice in Correctional related crimes.

It is important to remark that for serious offenses police are not allowed to take any statement, neither to the criminal nor to the witnesses. Only the Judge with jurisdiction in this kind of crime can do it.

If police arrest someone because he/she is suspected of committing a serious crime, they have to give immediate intervention to the proper Judge. Any statement made by criminals in presence of police officers is not valid as a confession⁴. Nevertheless if the criminal does make a statement in presence of police officers, they inform the judge in charge about it. Judges are able to use the criminals’ statements in order to obtain evidence⁵, but not as a confession.

⁴ Police Officers are allowed to take statement to criminals only in misdemeanors. As I mention supra for serious offenses police could not take statements, and the criminal’s enunciation could not be taken as a confession. See “Loiacono Domingo s/inf. arts 293 3er párrafo y 189 bis del C.Penal” . C.C.C. Fed., Sala I. Published by Boletín de Jurisprudencia , 1989, Pag 286 “Si bien el inc.1 del art. 316 del C.P.M.P. establece que los dichos efectuados ante la autoridad de prevención carecerán de valor probatorio y no podrán ser utilizados en la causa , parece claro que esa restricción esta referida a los efectos legales de la de la confesión - como reza la primera parte del artículo citado- y que debe ser vinculada a la prohibición de cualquier cláusula que torne obligatoria la autoincriminación .” Costa, Rodríguez Basavilbaso-Cortezzi.(Federal High Court Judges)

⁵ In this way the Judges of the National High Court, # 4 ruled the case “Aisemberg Oscar”. “ Si bien nuestro Código de Procedimiento en Materia Penal impide acordar valor probatorio a la declaración espontánea para ser invocada per se, ello no la convierte en un acto contra la ley ni nulifica su contenido que puede muy bien ser aprovechado de existir pistas e investigaciones que la policía esta obligada a seguir, logrando en muchas oportunidades establecer sucesos ilícitos”. Campos, Escobar, Valdovino (Judges) C.N.Crim, Sala IV, Published in Boletín de Jurisprudencia, 1990 Nro.2

Traffic control was another field that shows the changes that have occurred in the police department. Some police functions were delegated to private corporations in 1986. For example, nowadays a private company is in charge of the surveillance of the transit of the City of Buenos Aires. This company can charge fines to the citizens of Buenos Aires City if they commit any traffic violations.

It turns out to be a very profitable business for the police department, because 50% of the amounts of the tickets that the private company collects goes to the Police Department.

Moreover, Police training was increased. In September 13, 1984, a new post-graduate course started up in the University of Buenos Aires related to Legal Chemical Tests.

New study plans were introduced into the police Federal School. Many credits in the fields of Criminal and Social Law are required in order to get the police degree.

On January 10, 1995, an agreement was signed between the Police Department and the University Of Moron, in order to permit police officers to take seminars in the School of Law and Engineering of that University.

Besides, many seminars were given related to counterterrorism tactics. The United Nations Peace Force sent some police officers to Slovenija.

Since 1996, psychological tests have been mandatory for police officers that take part in high-risk procedures.

Moreover, in 1996 a new internal norm was dictated by the Police Department: No one can be promoted to Chief Constable if they do not have twenty two years of service in the Police Department and a College degree.

In August 22 1997, by resolution number 1431, the National Department of Culture and Education created the New University Statute for the Federal Argentine Police. That statute states the rules of admission in order to achieve the Law Degree in the Federal Police College. Although high standards of entry into newly reformed police forces are generally important for the effectiveness and reputation of a new police force, relaxing such standards to ensure representation of important political, religious, gender, or ethnic groups into the police force may be worthwhile if such groups would otherwise be excluded or severely underrepresented in police forces.⁶

⁶ POLICE REFORM, HUMAN RIGHTS AND DEMOCRATIZATION IN POST-CONFLICT SETTINGS: LESSONS FROM EL SALVADOR by Chuck Call Department of Political Science Stanford University <http://www.iadb.org/sds/utility.cfm/173/ENGLISH/general/533>

Nowadays, new plans are being implemented in order to create new schools inside the Police Department. These plans consist of creating Schools of Biological Science, Business, Engineering in Telecommunications and Post graduates degrees as Bank, Hotel and Tourism, Ecology and Transit Safety.

I think that corruption is still within the Police Department – it is still common to see police officers trying to collect bribes off to ordinary people instead of making out a ticket to them- but, I also think that Police Officers are nowadays much more concerned about human rights because they could suffer very tough sanctions if they commit any violation in this field. In this way the people are more confident about the respect that police officers will give to people' human rights.

So far, Argentine democratic governments have done a good job but they have to continue making efforts in order to definitively eradicate corruption from the Police Department.

Mass Media as a controller of Police Activity

We are accustomed to watching violence on TV since our childhood. Nowadays the “fiction violence” gives place for the real violence. Reporters and the “yellow press” are needed for shocking news in order to obtain a great TV rating. I think that this is why they are looking for real violence instead of fiction.

Today (June 14, 2000) I have watched on TV how a criminal took a reporter as a hostage when he was covering the story and got to close. One of the criminals put a gun to the hostage's head and requested the TV reporters presence due to the fear of what police could do to him when he gave up. The criminal said to the press that the reporter's life is for press people more important than any other life. I was astonished with this kind of statement.

It is very hard to face this reality. Criminals are afraid of police, and in order to prevent themselves from a human right violation they call for the presence of TV reporters. In my opinion, this is not so wrong, because criminals are criminals but they want to preserve their physical conditions. They are not foolish. Anyway, it serves to demonstrate that police continue committing human right violations.

These external mechanisms of accountability for police conduct, such as the press, NGO's, legislative oversight, and the exercise of civilian courts' authority over cases of police abuses are useful. Sometimes these mechanisms have been more effective in bringing attention and subsequent action to human rights cases than internal mechanisms. These external instruments have frequently pushed authorities to investigate complaints.⁷

It is true that the press helps a lot in order to keep the human rights alive⁸, and that is why the free speech right is very important⁹. Nevertheless, sometimes the press crosses the boundaries of that "free speech" right, and instead of helping the society to defend a right it helps criminals to run away. This may happen when the press uses helicopters or cameras with zoom lenses for making a live TV transmission which allows criminals to see what is going on outside.

The Police in Argentina is under permanent surveillance by the mass media which believes that anything done by police is usually wrong, and that does not give a

⁷ POLICE REFORM, HUMAN RIGHTS AND DEMOCRATIZATION IN POST-CONFLICT SETTINGS: LESSONS FROM EL SALVADOR by Chuck Call Department of Political Science Stanford University
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⁸ First, Brazilian TV aired an amateur video showing Sao Paulo state police extorting money and torturing men at a roadblock, shooting two and killing one. A few days later, more amateur video showed Rio police lining up a group of slum dwellers and beating them. Brazilians are shocked to see their police abusing their power but not necessarily surprised. "I'm afraid it happens more than we want to admit," said one Brazilian woman. A report released this week supports her suspicions. According to the Human Rights Watch/Americas report, police violence is all too common in Brazil. "The police are routinely violent, and when they are violent, unfortunately the appropriate authorities do not investigate adequately," said James Cavallaro, the Brazil office director of Human Rights Watch/Americas. "It's precisely the impunity that is guaranteed police officers, which guarantees that their crimes will continue." Most of the policemen involved in those cases were never punished. However, after the Brazilian TV broadcast stunned the nation, Brazil's president signed a decree establishing a human rights watchdog, and sanctioned a bill making torture a crime for the first time in Brazil. Human rights groups say his actions are too weak to make a dent in police violence, partly because the police investigate their own crimes. That's "practically a guarantee of impunity," Cavallaro said. All of the policemen seen in the Brazilian TV broadcasts are now under arrest, and human rights groups are calling for civilian trials. They say being tried by the same courts that try other criminals would be a first step to ending the impunity that perpetuates police violence in Brazil. *April 11, 1997 Web posted at: 4:20 p.m. EST* From Correspondent Marina Mirabella
<http://www.cnn.com/WORLD/9704/11/brazil.brutailty/>

⁹ Several human rights organizations and activists have joined hands to undertake a thorough documentation of police excesses, including cases of illegal arrests, custodial torture and mass cremation of "unidentified" bodies during the peak of Punjab militancy. The study would also examine whether the country conforms to its commitment to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruelty. (Human Rights bodies to document excesses, Nov. 25 1997)
<http://www.rediff.com/news/nov/25punj.htm>

hand to police officers in order to show their results when they do a good job. Besides it increases the bad reputation that police has in the public opinion.

What do we have to do? I suppose that we have to find the limit that allows the freedom of speech without blocking police activities. We have to find the balance point between the press control over the police and the interference of the press in police matters. In my country, that balance point is nowadays almost impossible to find. Mass media is stronger than police is, the police is trying to change its image and they have to use the mass media to do it. This is the problem.

Anyway I think is preferable a mass media “government” to a police one, but the balance point must be found if we want to preserve our society.

Limits for Police Activity

Where is the limit of criminal human rights? When does the Police violate them? . For example, can the police beat or shoot a kidnapper who has hostages? In which situations may the police apply brute force over the criminals? Can we compare the police to criminals when police force uses the same methods as criminals to fight them?

It is hard to apply common sense to these situations. As everybody knows “common sense is the less common of the senses”.

Sometimes we have heard “The police is badly trained and under paid, and they're not respected, ... Instead of enforcing the law, they're raising the level of violence in this society.”¹⁰ Moreover, sometimes that is true.

Criminals, without doubt, have the same rights as everybody else. The difference is that they put themselves in a risky situation and do not respect the human rights of the rest of the population.¹¹

¹⁰ Emir Sader of the Sao Paulo Center for the Study of Violence. CNN Brasil <http://www.cnn.com/WORLD/9704/11/brazil.brutailty/>

¹¹ Following Thursday's resignation of the government of Prime Minister Sher Bahadur Deuba, Amnesty International is calling on whoever comes to power in Nepal to take prompt and effective measures to prevent human rights violations continuing in the context of the Maoist “people's war”. Today, the human rights organization is publishing a report, *Nepal: Human rights violations in the context of a Maoist “people's war”*. The report resulted from a visit by an Amnesty International delegation to the country in late 1996. “Since our visit, we have continued to receive reports of killings by police in disputed circumstances during so-called “encounters” between police and armed Maoist activists,” Amnesty International said . “We are increasingly concerned by evidence that police may have used lethal force in situations where such force was clearly unjustified, or was used as an alternative to arrest.” Deliberate and arbitrary killings of civilians by Maoist armed activists have also continued to be

If I do not respect the human rights, could I expect that my human rights be respected?¹²

I think that each country must guarantee the human rights in its territory. The contrast between the police and criminals should be this one: Police respect human rights, criminals don't.

If the Police does not respect human rights, there are no differences between cops and criminals.

However, you may think that this is a utopia. You might think that if the police respects human rights, then the criminals have an advantage. Well, this is true. Anyway, I think that it is a risk that we have to take in order to live in a safe social structure.

United States Legal Strategies – An overview -

In the American legal system many rules related with Police power and the possibility to arrest and take statements have a constitutional range. As a common law country, the interpretation that judges give to essential rights binds the decisions of other judges, as precedents. In that way I will briefly explain the most important cases.

For example in United States v. Robinson¹³ the Police, as a result of previous investigation determined there was reason to believe that respondent was operating a motor vehicle after the revocation of his operator's permit. Jenks signaled respondent to stop the automobile, which respondent did, and all three occupants merged from the car. At that point, Jenks informed the respondent that he was under arrest for "operating

reported. Amnesty International is repeating its call to the leadership of the Communist Party of Nepal (Maoist) to give clear orders to their members prohibiting such killings. Amnesty International is also calling on whoever comes to power to ensure those responsible for human rights violations are promptly brought to justice. "This serious deterioration in the human rights situation in the country needs urgent attention. Nepal is a party to several international human rights treaties and it is imperative that its leadership lives up to the state's obligations to its people and the international community," Amnesty International said. News Service 41/97 AI INDEX: ASA 31/04/97 EMBARGOED UNTIL 22.00 HRS GMT 10 MARCH 1997 Nepal: New Government Should Strive to Prevent Human Rights Violations <http://www.amnesty-usa.org/news/1997/33100497.htm>

¹² Cops say it's a kinder, safer bullet, but it certainly isn't gentler. The new expanding hollow-point bullets city. Cops will be getting soon don't ricochet and are less likely to hit innocent bystanders in a street shootout. What the bullets do is expand and slow to a stop when they hit flesh or bone with the hollowed-out tip filling instantly with human tissue and blood. Civil Rights advocates have long criticized them for their brutal power and activist Al Sharpton complains city cops will be carrying out "on the street death penalties." Cops say the first delivery of the new bullets--to replace the old full metal jacket ones--is expected any day. Tuesday March 4th 7:08 AM EST New Bullets To Be Issued To Police By Newsradio 88 Staff

http://ny.yahoo.com/external/wcbs_radio/stories/8574772853.html

¹³ United States v. Robinson , Supreme Court of the U.S., 1973 , 414 U.S. 218

after revocation and obtaining a permit by misrepresentation”. Jenks then began to search respondent. During this patdown, Jenks felt an object in the left breast pocket of a heavy coat that respondent was wearing, but he testified that “ he couldn’t tell what it was” and also “that he couldn’t actually tell the size of it”. Jenks reached into the pocket and found a “crumpled up cigarette package. Jenks testified that at this point he still did not know what was in the package. The officer opened it and found 14 gelatin capsules of heroin.

The American Supreme court decided that the Police officer’s determination as to how and where to search a person of a suspect whom he has arrested is necessarily a quick “ad hoc” judgment which the 4th amendment does not require to be broken down in each instance into an analysis of each step in the search. Besides, they said that a custodial arrest of a subject based on a probable cause is a reasonable intrusion under the fourth amendment, that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest, a full search is not only an exception to the warrant requirement of the 4th. Amendment, but it is also a “reasonable” search under that amendment.

Furthermore in other case Justice Powell argues that once an arrest is made there is a “legitimate and overriding governmental concern” to which “ the privacy interest guarded by the fourth amend is subordinated”

In New York v. Belton¹⁴ The Supreme Court of the U.S.A. faced the problem related with if when the occupant of an automobile is subject to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to this arrest include the passenger compartment of an automobile in which he was driving. That is the question at the issue in the present case.

They hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as contemporaneous incident of that arrest, search the passenger compartment of that automobile. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment and within reach of the arrestee. Such a container may, of course be searched whether it is open or closed, since the justification of the search is not that the arrestee has no privacy interest in the container, but the lawful custodial arrest justify the infringement of any privacy interest the arrestee may have.

In this way we can conclude that Belton and Robinson doctrine give police officers the right to conduct certain searches on the basis of the stop and arrest for a minor offense, such as traffic offense, but, what happened in cases of serious offenses?

In US v. Causey¹⁵ the Fifth Circuit reversed a panel opinion and adopted the objective reasonableness approach by the majority of the federal courts, because the majority found that Causey's confession on the major offense was admissible, because his arrest in the minor offense was permissible. In US v. Whren¹⁶ the judges adopted the majority "could have" test: The objective *could have* standard provides a more principle method of determining reasonableness for two primary reasons. First, it eliminates the necessity for the court's inquiring into an officer's objective state of mind. At the same time in response to the appellant's legitimate concerns regarding the police conduct, the "could have" test provides a principle limitation on abuse of power. Officers cannot make a traffic stop unless they have a probable cause to believe a traffic violation has occurred or reasonable suspicion of unlawful conduct base upon articulable facts - requirements which restrain police behavior

In Horton v. California¹⁷ the plain view question was discussed. "...The plain view doctrine may not be used to extend a general explanatory search from one object to another until something incriminating at last emerges...". Justice Steward described the two limitations on the doctrine that he found implicit in its rationale: First " that plain view alone is never enough to justify the warrantless seizure of evidence", and second, "that the discovery of evidence in plain view must be inadvertent."

The fact that an officer is interested in an item of evidence and fully expects to find it in the course of the search should not invalidate its seizure if the search is confined in area and duration by terms of a warrant or a valid exception to the warrant requirement. If the officer has knowledge approaching certainty that the object will be found, we see no reason why he or she would deliberately omit a particular description of the item to be seized from the application for a search warrant. On the other hand, if she or he has a valid warrant to search for one item and merely a suspicion for the second, whether or not it amounts to a probable cause, we fail to see why the suspicion should immunize the second item from seizure if it is found during a lawful search of the first.

¹⁴ New York v. Belton , Supreme Court of the U.S., 1981 453 U.S. 454

¹⁵ United States v. Causey, 834 F.2d 1179 (5th Cir.1987)

¹⁶ United States v. Whren , 53 F.3d 371 (D.C. Cir 1995) (cert. granted 116 S.Ct.690, 1996)

¹⁷ Horton v. California, Supreme Court of the U.S. 1990 496 U.S. 128.

Second, the suggestion that the inadvertence requirement is necessary to prevent the police to conduct general searches, or converting specific warrants into general warrants, it is not persuasive because that interest is already served by the requirements that no warrant should be issued unless it “particularly describes the place to be searched and the persona or things to be seized”

If the scope of the search exceeds the permitted by the terms of validity issued warrant or the character of the relevant exception from the warrant requirement, the subsequent seizure is unconstitutional without more.

The prohibition against general searches and general warrants serves primarily as protection against unjustified intrusions on privacy. But reliance on privacy concerns that support that prohibition is misplaced when the inquiry concerns the scope of an exception that merely authorizes an officer with a lawful right to access to an item to seize it without a warrant.

After that, in 1987, in Arizona v Hicks¹⁸ Justice Scalia wrote for the court as it squarely held for the first time that probable cause is necessary to justify a search that precedes a plain view seizure. Justice Scalia describe the plain view doctrine as “*desirability of sparing police, whose viewing of the object in the course of a lawful search is as legitimate as it would have been in a public place, the inconvenience and the risk - to themselves or to preservation of the evidence - of going to get a warrant.*”

Besides the Supreme Court made a decision in The plain Touch Doctrine in which they stated that the 4th Amendment permits the seizure of contraband discovered through the sense of touch during the course of a lawful search, but with the limits establishes in Minnesota v. Dickerson.¹⁹

Furthermore in America we can find The Special Federal Standard for Confessions, which stated that a coerced confession that violated the due process clause of the fourteenth amendment also violated the Due Process Clause of the Fifth Amendment. However, in Federal court, a confession may be rejected even without a finding coercion.

The most famous and important case related to the limitations on confessions is Miranda v. Arizona²⁰. In *Miranda*, the court declared that the Fifth Amendment is the touchstone for determining the admissibility of any statements obtained through

¹⁸ Arizona v. Hicks, 480 U.S. 321 (1987)

¹⁹ Minnesota v. Dickerson , 113 S.Ct. 2130 (1993)

²⁰ Miranda v. Arizona, Supreme Court of the U.S., 1996, 384 U.S. 436

custodial interrogation by government officials. The prosecution may not use statements whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrated the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation they mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed unless other fully effective means are devised to inform accused persons of the right of silence and to assure a continuous opportunity to exercise it, the following measures are required. *Prior to any questioning the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed.* The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If however he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning.

No effective waiver of the right of counsel during the interrogation can be recognized unless specifically made after the warnings we here delineate have been given.

Conclusion

In almost all over the world, the police activity has a bad reputation. We are able to watch on TV police excesses from different countries everyday.

No doubt, the police are necessary in every society. Not only necessary, it is essential. No social order could be kept if the police were not there. "*Homo homini lupus*" as Thomas Hobbes said in *Leviathan*.

Commonly police officers are badly trained and under paid. This is the first step that we have to change. If we are trying to improve the moral strength of police and if we like to get the best men and women for that institution we have to pay for it. Nobody can expect a highly moral sense, a hard working and the best talented men and women for nothing. No one likes to work for free. Let alone in police activity, because it is a highly risky one. They are exposed to criminals, with the possibility of being wounded or dead everyday.

I know that to be a police you need a vocation for service and that people who have this vocation are usually the best people. It is our duty to promote and to encourage this kind of people. If we do it, and if we want a safe police department we have to have a serious admission process. Then, we have to prepare these men and women with proficiency, giving them a high training and education.

If we are able to do it, the police departments will start to change from the inside. I realized that this is not a quick solution. We will have to wait at least twenty years in order to see changes. We will forget the “fat police pizza man” that tries to get an advantage for him everyday instead of society.

Finally, we have to control them. We can do it using the Judiciary Power, the Mass Media and the people. If we are able to find that balance point I think that police will be once again the respectful institution that it used to be.

September 2000