Police Investigations

Constitutional Basics

Interviews & Interrogations

Photographic Line-Ups

UNIVERSITY OF South Carolina
School of Law

Constitutional Basics

Fourth Amendment

Fifth Amendment

Fourth Amendment

"The right of the people to be secure in their persons . . . against unreasonable . . . seizures[] shall not be violated[.]"

U.S. CONST. AMEND. IV.

Fourth Amendment

For each piece of evidence used against a particular defendant:

Was there a **search** or **seizure** of **this defendant**?

- No → No 4A issues
- Yes ↓

Was the search or seizure **constitutional**?

- Yes → No 4A issues
- No ↓

Was the unlawful search a **but for** and **proximate cause** of the discovery of evidence (i.e., Fruit of the Poisonous Tree)?

- No → No 4A issues
- Yes ↓

Is **this piece** of evidence subject to the **Exclusionary Rule**?

- No → No 4A issues
- Yes ↓

Evidence is not admissible in the state's case in chief, but may be used for impeachment.

Fifth Amendment

". . . [N]or shall [any person] be compelled in any criminal case to be a witness against himself . . ."

U.S. CONST. AMEND. V.

Fifth Amendment

For each piece of evidence used against a particular defendant:

Is the evidence **testimonial** or **derived from testimony?**

- No → No 5A issues
- Yes ↓

Was the defendant **in custody** at the time?

- No → No 5A issues
- Yes ↓

Was the defendant **interrogated** (express questioning or its functional equivalent)?

- No → No 5A issues
- Yes ↓

Was the defendant **properly warned** (comprehensive, comprehensible?)

- No → 5A issue!!
- Yes ↓

Did the defendant **validly waive** (implicitly or explicitly)?

- No → 5A issue!!
- Yes ↓

Did the defendant **unambiguously invoke**?

- No → No 5A issue
- Yes ↓

Evidence likely excluded.

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- Were all the relevant people **interviewed or interrogated**?
- Were the witnesses properly **separated**?
- Were the **right questions** asked?
- Were there any **misclassification errors** ?

Misclassification Errors

Distinguishing Honesty from Deception

Behavioral indicators are bullshit

"[O]bservers. . . holding popular stereotypical views on deceptive behavior, such as 'liars look away' and 'liars fidget' perform[] least effectively as lie catchers."

Aldert Vrij & Samantha Mann, *Telling and detecting lies in a high-stake situation: The case of a convicted murderer*, 15 Applied Cognitive Psych. 187 (2001).

CUES	ASSUMED RELATIONSHIPS	ACTUAL RELATIONSHIPS
VOCAL		
Hesitations (use of speech fillers, e.g., "ah," "um," "er","uh," and "hmmm")	✓	X
Speech errors (grammatical errors, word or sentence repetition, false starts, sentence change, sentence imcompletions, slips of tongue, etc)	✓	X
High-pitched voice	✓	✓
Speech rate (number of spoken words in a certain period of time)	X	X
Latency period (period of silence between question and answer)	X	X
Pauses (silent, filled, or mixed)	✓	X
VOCAL		
Gaze aversion (looking away from the conversation partner)	✓	X
Smiles (smiling and laughing)	X	X
Facial fidgeting (face touching or rubbing hair)	✓	X
Self-fidgeting (touching, rubbing, or scratching body or face)	✓	X
Fidgeting (undifferentiated)	✓	✓
Illustrators (hand and arm movements designed to modify or supplement what is being said verbally)	X	✓
Leg and foot movements	✓	X
Posture shifts (movements made to change seating position)	✓	X
Head movements (head nods and head shakes)	✓	X
Eye blinks (blinking of the eyes)	✓	X

✓ Associated with lying X No significant relationship ✓ Associated with truth-telling

Misclassification Errors

Distinguishing Honesty from Deception

Behavioral indicators are bullshit

"[P]eople appear deceptive when motivated to be believed."
Deceivers *feel* more nervous, but they do not display more nervous behaviors.

Charles F. Bond, Jr. & Bella M. DePaulo, *Accuracy of Deception Judgments*, 10
Personality & Soc. Psych. Rev. 214 (2006)

Misclassification Errors

- Distinguishing Honesty from Deception
  - Cognitive interviewing works imperfectly
    - Maria Hartwig et al., *Strategic Use of Evidence During Police Interviews: When Training to Detect Deception Works*, 30 L. & Human Behav. 603 (2006)
    - Aldert Vrij et al., *Sketching While Narrating as a Tool to Detect Deceit* 34 Applied Cognitive Psych. 628 (2020)

Interviews & Interrogations

- Were all the relevant people **interviewed or interrogated**?
- Were the witnesses properly **separated**?
- Were the **right questions** asked?
- Were there any **misclassification errors** ?
- Were there any **coercion errors?**

Coercion Errors

"Once interrogation commences, the primary cause of police-induced false confession is psychologically coercive police methods. Psychological coercion can be defined in two ways: police use of interrogation techniques that are regarded as inherently coercive in psychology and law, or police use of interrogation techniques that, cumulatively, cause a suspect to perceive that he has no choice but to comply with the interrogators' demands. Usually these amount to the same thing. . . ."

Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. Am. Acad. Pysch. L. 332 (2009).

Coercion Errors

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- Assertions of guilt
  - Reduced moral culpability
    - Pleas to conscience
      - Getting "your side of the story"
        - Suggestions of leniency
          - Other positive consequences
            - Negative consequences
              - Subject danger & protection
              - Assertions of dishonesty
              - Suggestions of possibility
            - Assertions of knowledge
            - Contradictory evidence
          - Investigatory honesty/fairness
        - Investigative conclusions

Coercion Errors

"All other things being equal, those who are highly suggestible or compliant are more likely to confess falsely. Individuals who are highly suggestible tend to have poor memories, high levels of anxiety, low self-esteem, and low assertiveness, personality factors that also make them more vulnerable to the pressures of interrogation and thus more likely to confess falsely. . . . Individuals who are highly compliant tend to be conflict avoidant, acquiescent, and eager to please others, especially authority figures."

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Interviews & Interrogations

- Were all the relevant people **interviewed or interrogated**?
- Were the witnesses properly **separated**?
- Were the **right questions** asked?
- Were there any **misclassification errors** ?
- Were there any **coercion errors?**
- Were there any **contamination** errors?

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Photographic Line-Ups

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Photographic Line-Ups

- Was the line-up properly **double-blinded**?
- Were the pictures **appropriate**?
- Were all the **appropriate instructions** given?

- The subject may or may not be depicted, so there is no obligation to identify
  - The investigator does not know who perpetrator is or which picture is them
  - Photographs will be presented individually in random order
  - Take as much time as needed
- You'll see all of them regardless of whether/when identification is made

Photographic Line-Ups

- Was the line-up properly **double-blinded**?
- Were the pictures **appropriate**?
- Were all the **appropriate instructions** given?
- Were any **inappropriate instructions** given?

- Who looks most like the suspect
  - One of these people is the suspect
  - Take another look at this one
- Are you sure?

Photographic Line-Ups

- Was the line-up properly **double-blinded**?
- Were the pictures **appropriate**?
- Were all the **appropriate instructions** given?
- Were any **inappropriate instructions** given?
- Was the line-up properly **sequential** or improperly **simultaneous**?
- How **confident** was the witness?

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