



Criminal Investigation



CJA-241

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Police Testimony

- We will be reviewing the required reading of chapter 17. "The Investigator As Witness and Ethical Awareness," pp. 357-363
- The student will be aware of:
 - The importance of investigator testimony in court proceedings following the completion of an investigation
 - Explain how investigators can serve as witnesses
 - Understand Supreme Court on police testimony
 - Understand Police discipline regarding ethics

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Police Testimony

- **KEY CONCEPTS**

- Role of a police officer in the court room
- Impact of the exclusionary rule on criminal investigations
- Impact of the Fifth and the Sixth Amendments of the U.S. Constitution on police officers' testimony
- Description of Testifying

Police Testimony

- **United States vs. Pina**

- Appeal case because of testimony of police officer/drug expert
- He affirmed that it was his opinion that the items seized were consistent with drug trafficking.
- The court agreed that he could possess that opinion due to his training.
- He could not opine that the items did not have a non-drug trafficking use.

Police Testimony

- **FEDERAL CODES of EVIDENCE**

- Rule 401. Definition of "Relevant Evidence"
- "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Police Testimony

- FEDERAL CODES of EVIDENCE
- Rule 702. "Testimony by Experts"
- If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if
 - (1) the testimony is based upon sufficient facts or data,
 - (2) the testimony is the product of reliable principles and methods, and
 - (3) the witness has applied the principles and methods reliably to the facts of the case.

Police Testimony

- FEDERAL CODES of EVIDENCE
- Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time
- Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.



Police Testimony

- The fifth amendment to the U.S. Constitution states that:
- No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Police Testimony

- The fifth amendment to the U.S. Constitution states that:
- “nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;”
- In grammar, the comma is used to separate items in lists or provide a pause.

Police Testimony

- The sixth amendment to the U.S. Constitution states that:
- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Police Testimony

- **Testilying** is U. S. police slang for the practice of giving false testimony against a defendant in a criminal trial, typically for the purpose of "making a stronger case" against someone they believe to be guilty, although it may also be for the purpose of framing an innocent defendant.
- The word and its meaning have been publicized by defense attorney Alan Dershowitz, notably in a 1994 *New York Times* article, "Accomplices to Perjury."

Police Testimony

- What does Probable Cause for a traffic stop mean?
 - Probable cause is such a level of suspicion of the contacted person having engaged in a particular criminal activity that an arrest is called for. (US vs. Sokolow (1989))
- Is this required to stop a vehicle?
 - A vehicle stop is a detention. It requires only reasonable suspicion of unlawful activity. (US vs. Hensley (1985))

Why sentence structure is so important:

The boss had to fire somebody, and he narrowed it down to one of two people, Debra or Jack.

It was an impossible decision because they were both super workers. Rather than flip a coin, he decided he would fire the first one who used the water cooler the next morning.

Debra came in the next morning with a horrible hangover after partying all night. She went to the cooler to take an aspirin.

The boss approached her and said, "Debra, I've never done this before but I have to lay you or Jack off."

"Could you jack off?" she says, "I feel like shit."

Police Testimony

- What constitutes reasonable suspicion?
 - Anon DUI report
 - Anon weapon report
 - Police observations
 - Training+experience
 - Criminal profile
 - Broadcasts
 - Known suspended
- Known wanted passenger
- Sudden flight in high crime area
- DUI checkpoint
- "hit" on plate check
 - Plate check not a search
- Traffic violation
 - May use violation as a pretext to stop vehicle.



Police Testimony

- Traffic violations provide adequate grounds to stop a vehicle and use that stop to check for additional crimes in the process. (Whren vs. US (1996) and Arkansas vs. Sullivan (2001)).
- A pedestrian stop is a **Detention**. (Florida vs. Bostick (1991)).
- A detention must be supported by a reasonable suspicion of illegal activity. (Terry vs. Ohio (1968) and the 4th Amend.)

Police Testimony



- Having reasonable suspicion to detain, does NOT automatically allow a pat-down search. (People vs. Dickey (1994)).
- Search requires an independent reasonable suspicion that the detainee may be armed and dangerous. (Terry vs. Ohio (1968)).
- Let's look at Terry vs. Ohio

- On October 31, 1963, a police detective saw two men (John W. Terry and Richard Chilton) standing on a street corner and acting suspiciously.
- One man would walk past a certain store window, stare in, walk on a short distance, turn back, stare in the store window again, and walk back to the other man and converse for a short period of time.
- The two men repeated this ritual alternately between five and six times apiece—in all, roughly a dozen trips. Each completion of the route was followed by a conference between the two on a corner, at one of which they were joined by a third man who left swiftly.
- Suspecting the two men of casing the store for a robbery, the officer followed them and saw them rejoin the third man a couple of blocks away.

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The officer approached the three men, identified himself as a policeman, and asked their names.

- When they “mumbled something” in response, The officer patted them down for weapons and discovered that Terry and Chilton were armed.
- He removed their guns and arrested them for carrying concealed weapons.
- When the trial court denied his motion to suppress, Terry pleaded not guilty, but the court adjudged him guilty and sentenced him to one to three years in prison.

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Homework

- STUDY

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