

**Constitutional
Limitations of Interviewing
and Interrogations in
American Policing**

Constitutional Limitations of Interviewing and Interrogations in American Policing

Ross Wolf

Charles Mesloh

Robert H. Wood

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2013
Carolina Academic Press
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Wolf, Ross.

Constitutional limitations of interviewing and interrogations in American policing / Ross Wolf, Charles Mesloh, and Robert H. Wood.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-61163-193-7 (alk. paper)

1. Police questioning--United States. 2. Interviewing in law enforcement--United States. 3. Criminal investigation--United States. 4. Confession (Law)--United States. 5. Right to counsel--United States. I. Mesloh, Charles. II. Wood, Robert H. III. Title.

KF9625.W65 2013
342.7308'5--dc23

2012039144

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Contents

Preface	xi
Chapter 1 • Introduction	3
The Criminal Court System	3
Categories of Crimes	3
Federal Courts	4
State Courts	5
Attorneys	5
The Court Case	6
Interview versus Interrogation	8
The Interview	9
The Interrogation	10
Admissibility	11
Plea Bargaining	13
Discussion	14
Chapter 2 • Landmark Cases	15
Confession Law Genesis and Development	15
Case Summary of <i>Bram v. United States</i> , 168 U.S. 532 (1897)	15
Discussion	18
Case Summary of <i>Brown v. Mississippi</i> , 297 U.S. 278 (1936)	18
Discussion	23
Case Summary of <i>Rogers v. Richmond</i> , 365 U.S. 534 (1961)	23
Discussion	24
Note Cases	24
Case Summary of <i>Escobedo v. Illinois</i> , 378 U.S. 478 (1964)	25
Discussion	26
Case Summary of <i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	26
The Legacy of <i>Miranda</i>	29
The <i>Miranda</i> Rules	31

Chapter 3 • Clarifications on <i>Miranda</i>	35
Voluntary Confessions	36
Coerciveness to Gain Confessions	36
Case Summary of <i>Arizona v. Fulminante</i> , 499 U.S. 279 (1991)	37
Note Cases	39
Case Summary of <i>Colorado v. Connelly</i> , 479 U.S. 157 (1986)	39
Discussion	40
Note Cases	40
Variations on Reading <i>Miranda</i> Rights	41
Case Summary of <i>Duckworth v. Eagan</i> , 492 U.S. 195 (1989)	41
Case Summary of <i>Dickerson v. United States</i> , 530 U.S. 428 (2000)	43
Discussion	44
Interviews after Initial Reading of <i>Miranda</i> Warnings and Rights Assertion	44
Case Summary of <i>Edwards v. Arizona</i> , 451 U.S. 477 (1981)	45
Case Summary of <i>Davis v. United States</i> , 512 U.S. 452 (1994)	46
Case Summary of <i>Michigan v. Mosley</i> , 423 U.S. 96 (1975)	48
Case Summary of <i>Arizona v. Roberson</i> , 486 U.S. 675 (1988)	49
Case Summary of <i>Minnick v. Mississippi</i> , 498 U.S. 146 (1990)	50
Discussion	51
Location and Custody	51
Case Summary of <i>Oregon v. Mathiason</i> , 429 U.S. 492 (1977)	52
Note Cases	53
Case Summary of <i>Orozco v. Texas</i> , 394 U.S. 324 (1969)	53
Discussion	55
Case Summary of <i>Berkemer v. McCarty</i> , 468 U.S. 420 (1984)	55
Case Summary of <i>United States v. Wolak</i> , 923 F.2d 1193 (6th Cir. 1991)	56
Discussion	57
Case Summary of <i>Howes v. Fields</i> , 565 U.S. ____ (2012)	57
Discussion	58
Police Coercion and Custody	59
Case Summary of <i>Pennsylvania v. Muniz</i> , 496 U.S. 582 (1990)	59
Discussion	61
Note Cases	62
Case Summary of <i>Rhode Island v. Innis</i> , 446 U.S. 291(1980)	62
Case Summary of <i>Oregon v. Elstad</i> , 470 U.S. 298 (1985)	64
Discussion	65

Formally Charged Defendants	65
Case Summary of <i>Massiah v. U.S.</i> , 377 U.S. 201 (1964)	66
Case Summary of <i>Maine v. Moulton</i> , 474 U.S. 159 (1985)	67
Case Summary of <i>Brewer v. Williams</i> , 430 U.S. 387 (1977)	68
Case Summary of <i>McNeil v. Wisconsin</i> , 501 U.S. 171 (1991)	70
Discussion	72
Case Summary of <i>Texas v. Cobb</i> , 532 U.S. 162 (2001)	72
Case Summary of <i>United States v. Henry</i> , 447 U.S. 264 (1980)	73
Note Cases	74
Case Summary of <i>Patterson v. Illinois</i> , 487 U.S. 285 (1988)	75
Discussion	76
Waiver of Rights	76
Case Summary of <i>North Carolina v. Butler</i> , 441 U.S. 369 (1979)	76
Note Cases	78
Case Summary of <i>Oregon v. Bradshaw</i> , 462 U.S. 1039 (1983)	78
Note Cases	79
Case Summary of <i>Colorado v. Spring</i> , 479 U.S. 564 (1987)	80
Case Summary of <i>Connecticut v. Barrett</i> , 479 U.S. 523 (1987)	81
Discussion	82
Note Cases	82
Impeachment	83
Case Summary of <i>Harris v. New York</i> , 401 U.S. 222 (1971)	83
Case Summary of <i>Michigan v. Harvey</i> , 494 U.S. 344 (1990)	84
Note Cases	85
Chapter 4 • Interviewing Juveniles	87
Constitutional Rights of Juveniles	88
Expansion of Juvenile Rights	89
Case Summary of <i>In re Gault</i> , 387 U.S. 1 (1967)	89
Discussion	90
Case Summary of <i>Fare v. Michael C.</i> , 442 U.S. 707 (1979)	90
Discussion	91
Current Approaches to Juvenile Waivers: Totality of Circumstances and <i>Per Se</i>	92
Discussion	93
Juveniles in Custody	93
Case Summary for <i>Yarborough v. Alvarado</i> , 541 U.S. 652 (2004)	93
Discussion	94
Case Summary for <i>J.D.B v. North Carolina</i> , 131 S.Ct. 2394 (2011)	95

Discussion	95
Chapter Conclusion	96
Additional Reading	96
Chapter 5 • Contact, Seizure, and Arrest	97
Investigative Contacts	97
Seizure with Reasonable Suspicion	99
Case Summary of <i>Terry v. Ohio</i> , 392 U.S. 1 (1968)	100
Discussion	101
Case Summary of <i>Minnesota v. Dickerson</i> , 508 U.S. 366 (1993)	102
Note Cases	103
Case Summary of <i>Dunaway v. New York</i> , 442 U.S. 200 (1979)	104
Note Cases	105
Consensual Encounters	106
Case Summary of <i>Florida v. Royer</i> , 460 U.S. 491 (1983)	106
Case Summary of <i>Ohio v. Robinette</i> , 519 U.S. 33 (1996)	107
Note Cases	108
Seizure of Persons in Vehicles	109
Case Summary of <i>Pennsylvania v. Mimms</i> , 434 U.S. 106 (1977)	109
Note Cases	109
Case Summary of <i>Maryland v. Wilson</i> , 519 U.S. 408 (1997)	110
Note Cases	111
The Arrest	111
Case Summary of <i>California v. Hodari</i> , 499 U.S. 621 (1991)	112
Chapter Conclusion	113
Discussion	114
Chapter 6 • Polygraph Testing and Privileged Communications	117
Lie Detectors	117
Types of Polygraph Testing	119
Criminal Investigations	119
Employment Testing	119
Scientific Research	121
Case Summary of <i>Frye v. United States</i> , 293 F. 1013 (D.C. Cir. 1923)	121
Case Summary of <i>United States v. Piccinonna</i> , 885 F.2d 1529 (11th Cir. 1989)	123
Note Cases	125
Privileged Communications	126

Case Summary of <i>Commonwealth v. Fewell</i> , 654 A.2d 1109 (Pa. Sup. Ct. 1995)	127
Case Summary of <i>Nickel v. Hannigan</i> , 97 F.3d 403 (10th Cir. 1996)	127
Case Summary of <i>Bishop v. Rose</i> , 701 F.2d 1150 (6th Cir. 1983)	128
Chapter Conclusion	129
Discussion	129
Further Reading	129
Appendix A: Constitutional Amendments	131
Appendix B: The Garrity Rule	133
References	135
Glossary	137
Index	139

Preface

About the Authors

Ross Wolf is Associate Dean in the College of Health and Public Affairs at the University of Central Florida in Orlando, Florida. He holds a Doctorate degree in Higher Education Administration and Educational Leadership, and also serves as a faculty member in the Department of Criminal Justice. In addition to his work in academe, he has over twenty years of experience as a full-time and reserve law enforcement officer and has worked various assignments including patrol, criminal investigations, special operations, specialized patrol, and a tactical operations unit. He continues to teach Criminal Justice courses at the University of Central Florida at both the undergraduate and graduate levels where he has been recognized with several university-level awards for his teaching, research, and service. Dr. Wolf continues to serve in a law enforcement capacity as Division Chief with the Orange County Sheriff's Office Reserve Unit and has worked in various capacities with the police in Florida, throughout the nation, in the Caribbean, United Kingdom, and Russia, and with the Volunteer Special Constabulary of Singapore. His areas of research include police administration and management, reserve and volunteer policing, comparative policing, international policing, and police use of force.

Charlie Mesloh is a Professor of Criminal Justice and Director of the Weapons and Equipment Research Institute at Florida Gulf Coast University in Ft. Myers, Florida. He holds a Doctorate degree in Public Affairs from the University of Central Florida and a Master's degree in Public Administration from Florida Gulf Coast University. He is a former law enforcement officer with twelve years of experience in a number of assignments including positions as a K-9 handler and trainer, narcotics investigator, polygraph examiner and a training officer in high liability areas. Dr. Mesloh has conducted a number of federally funded research studies in less lethal weapons and other law enforcement technology as well as locally funded research in Pre-Trial Services risk assessments and

corrections officer misconduct. His areas of research include use of force, canine utilization, forfeiture, and police misconduct.

Robert H. Wood is Associate Professor of Legal Studies at the University of Central Florida. He earned his Juris Doctor degree at the Georgia State University College of Law. He then attended Tulane Law School and earned a Masters of Law in Admiralty, graduating with highest honors from the program. For the next ten years, Dr. Wood practiced law in both Virginia and Louisiana, concentrating in maritime law and federal litigation, but also taking criminal cases on a pro bono basis. Dr. Wood entered academia by becoming a Visiting Assistant Professor of Law at the Appalachian School of Law in Virginia. After moving to Orlando, he joined the faculty of the University of Central Florida and presently teaches in the areas of Entertainment Law, Administrative Law, Sports Law, and World Legal Systems.

How to Use This Book

This book is designed to assist the reader to understand criminal justice case law regarding the constitutional considerations surrounding interviews and interrogations, stop and frisk, consensual encounters with the police, and polygraph testing by the police for criminal investigations. The text is organized so that the criminal justice student can first examine the case law leading up to and surrounding the *Miranda* decision, thoroughly inspect cases surrounding the *Terry* decision, and then finally gain an objective understanding of polygraph testing as used by law enforcement agencies and the issues surrounding privileged communication. This book examines how interrogations and interviews can lead to convictions in court. Additionally, it examines the police use of “Stop and Frisk,” or the authority of police, in certain situations, to stop an individual and search that person and the immediate surroundings for weapons, or contraband. Lastly, this book examines the importance of polygraph testing for interviewing and questions perceived notions of the polygraph as a testing tool.

Interviews and interrogations of suspects, witnesses, and victims are still the most important evidence available to police officers today. Crime scene evidence, including DNA samples, blood samples, fingerprints, and shoe tracks may be instrumental in making a case in court, but often physical evidence cannot be located without a properly conducted, thorough preliminary investigation which may include both interviews of witnesses and victims and interrogations of suspects. Statements made by witnesses, victims, and suspects

may lead to physical evidence, or even confessions, and should be treated by police with the same reverence as other forms of evidence. Finally, physical evidence may contradict testimonial evidence, showing that the information obtained in an interview or interrogation cannot be true. Just like the loss of “chain of custody” can affect the admissibility of certain physical evidence, inappropriate gathering of testimonial evidence can affect its admissibility.

There is a misconception by the general public, due largely to “real TV” shows (such as *COPs*, *The First 48*, and *Forensic Files*), fictional television shows (*C.S.I.*, *Southland*, *The Shield*, and *N.Y.P.D. Blue*) and movies (*Dirty Harry*, *Lethal Weapon*, and *The Usual Suspects*) about the way police officers conduct themselves while investigating criminal activity. Some of these shows tend to perpetuate the misconception that even the seemingly insignificant clues found at the scene of the crime will, through clever scientific study, result in the identity of the criminal. And, once confronted with the evidence, the suspect will immediately confess to the crime and beg the judicial system for forgiveness. The entertainment audience also supports the “good guy” who exploits and condones illegal and unethical methods to gain a confession to the crime. If the police officer must threaten the bad guy with a gun to find out where the innocent victim is being held, the audience fully endorses that behavior; depending on the genre, some even expect this behavior. Other television shows make the audience feel anger toward the criminals and feel sympathy for the victim or society, therefore condoning any behavior by the police to gain a conviction in court. In real life, however, interviewers must be cognizant not only of the legality of certain police actions, but must also understand the reason behind the laws to keep from violating the constitutional rights of suspects in new and uncharted factual situations.

In many, if not most, criminal cases, even with available clues, law enforcement agencies do not have the resources to match a suspect with the crime. Contrary to what television, media, and the movies would have us believe, most robbers, murderers, and rapists do not leave their wallet at the crime scene or taunt the police to solve the criminal activity by mailing riddles and clues to the police station. Even if the police have the time, resources, and ability to collect all possible evidence at the scene of a crime, most of it will be either entirely useless or merely circumstantial evidence. Although the lower standard of proof “probable cause” is used to make an arrest, in reality the police must have enough evidence to prove “beyond a reasonable doubt” that a crime has been committed and that the suspect is the perpetrator in order to bring a crime forward to prosecution. This is why a confession or admission, and other testimonial evidence, can be so important to the successful resolu-

tion of a case. Testimonial evidence can support physical evidence, can provide legally justifiable reasoning for actions, or create conflicting interpretations of events.

Those who commit criminal acts, even those caught in the criminal act itself, often will not readily admit their actions unless investigators competently interrogate them. A confession should never be gained by the use of “any interrogation tactic or technique that is apt to make an innocent person confess” (Inbau, Reid, & Buckley, 1986, p. xiv; See also, Inbau, Reid, Buckley, & Jayne, 2005). Therefore, interviewers must understand the law regarding the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, lest they force inadmissible, or even false, confessions from the interviewee.

The toughest penalty for law enforcement non-compliance with the laws concerning interviews and interrogations, stop and frisk, and polygraph testing is the suppression of the evidence at trial. Misuse of statements or failure to comply with the law may allow an otherwise “guilty” party to go free from prosecution. If an officer purposefully acts unscrupulously to attain statements, and purposefully violates the law and constitutional protections, civil or criminal penalties may also be imposed. Students using this book should familiarize themselves with the certain U.S. Constitutional Amendments and with the case law presented herein so that they can better understand the expectations and limitations placed on the police when conducting criminal investigations.

How Can This Book Help?

This book has been compiled to provide practitioners and those who study criminal justice with the resources necessary to fully understand Supreme Court interpretations of how the police can and must utilize case law in collecting testimonial evidence, evidence from stop and frisk encounters, and polygraph testing. This book presents federal case law, and discussions of those cases, to develop an understanding of laws concerning police encounters, interviews and interrogations, and polygraph testing. Additionally, this text utilizes “Bottom Line” discussions that focus on the applications of the case law to police conduct.

In American Criminal Justice, however, it is important for students and practitioners alike to realize that understanding case law is a “moving target.” Court cases in state-level and federal-level courts of appeal can make confusing a myriad of opinions which shape the way that police and law enforcement agencies operate. It is difficult for the most seasoned criminal lawyer to keep

up with the various interpretations of law; yet law enforcement officers are tasked with not only being able to comprehend decisions and how they impact their processes and the rules of criminal procedure, but to diligently and correctly interpret those rulings into rapidly-evolving situations on the street or in an interrogation room. Attorneys are given the benefit of years of educational training to prepare them for the review of a case, often months or years after the incident took place. Minimum standards for law enforcement officers in most states include a high-school education or General Education Diploma (although certainly many far exceed the minimum standard).

This book contains only summaries of cases and should be used only as a guide regarding case law. The authors encourage reference to the full case when necessary or competent legal counsel. The purpose of this book is *not* to teach a student how to become a successful interviewer at recognizing deceit, nor how to circumvent the law, but rather to understand the intricate nature of working within the boundaries of case law when collecting testimonial evidence. Lastly, this book provides a foundation of case law for practitioners and criminal justice students regarding the collection and use of testimonial evidence. This case law is organized to simplify for the reader the constitutional issues surrounding police interviews and interrogations.