



Forging a New Legacy

Homeland Security Investigations

Fifth Amendment: Due Process

HSI Special Agent Training

ICE Academy

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How Do You Lawfully Collect a Statement?

- Governed by laws and policies Must be in compliance with the Due Process Clause

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Review of the Past

- Self-Incrimination Clause Prohibits compelling one from giving a statement against themselves in their own criminal case Meant to protect the accused from inherently coercive situations Miranda Decision Recognized the potentially inherently coercive nature of custodial interrogation Created the Miranda protocol

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Investigative Phases

HSI SA Case Assignment



Investigative Plan Development

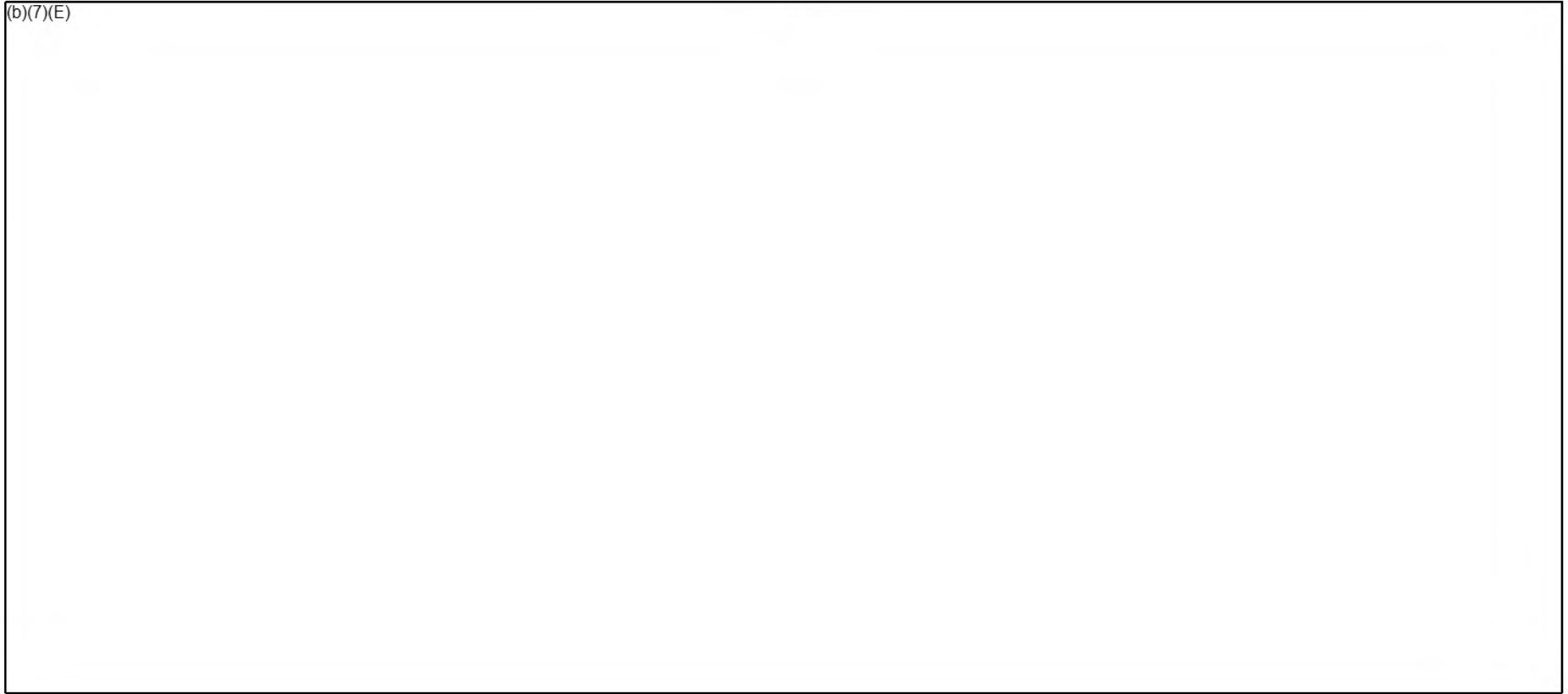


(b)(7)(E)

Investigative Phases, cont'd



(b)(7)(E)



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Agenda

- Protections found in the Fifth Amendment How courts analyze Fifth Amendment issues Due Process Clause How courts apply Due Process Clause Voluntariness Test Interview to determine if statements taken were voluntary Practice activity

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Terminal Performance Objective

Given statements provided by subjects in interviews or as part of a scenario, determine if the statements provided by the subject were voluntary as defined by the Supreme Court's Due Process Voluntariness Test.

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Enabling Performance Objectives

- Explain the Due Process Clause rule and protection. Explain the Due Process Clause Voluntariness Test.

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Right of Due Process

- Due Process Clause – “No person shall be...deprived of life, liberty, or property, without due process of law...”Goal – To prevent fundamental unfairness in the use of evidence (whether the evidence is true or false) to convict the subject. Due Process Rule and Statements – The Supreme Court has held that it is fundamentally unfair to use a statement that has no been voluntarily made or given to police.

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Due Process Rule and Statements

- Protects all people (citizens and aliens) Applies from the start of the criminal investigation to the conclusion of all appeals following conviction Applies to physical evidence and statements Due Process Clause: impacts the actions of the government only

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Due Process Field Application

- Evidence in the form of Statements – Statements used in a fundamentally unfair way violate the Due Process Clause. Example:

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

Example scenario in Student Guide

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Demonstration

(b)(5); (b)(7)(E)

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Due Process Clause Voluntariness Test

- Courts determine whether law enforcement's actions were fundamentally unfair by way of the Due Process Clause Voluntariness Test. Due Process Voluntariness Test – When we look at all the circumstances surrounding the giving of the statement (totality of the circumstances) and we determine that the statement from the accused was wrung out against his will, then the use of that statement to convict him violates the Due Process Clause.



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Totality of the Circumstances

Courts look at five primary factors to determine voluntariness:

- Physical and mental state of the person
- Maturity and education of the person
- The diverse pressures which sap a person's powers of resistance and self-control
- Duration of the detention and interview, conditions of the detention and interview, and location of the detention and interview
- SA's attitude toward the subject

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Demonstration

Cisneros-Hernandez was convicted of importing 100 kilograms of marijuana into the U.S. after being shipwrecked on San Nicolas Island (off California). He was interviewed by HSI SAs at a U.S. Navy facility. Agents spoke calmly and professionally throughout the interview. Only two agents conducted the interview. The interview lasted one hour. He was told he could contact the Mexican consulate or an attorney at any time. He declined both options. Before he was interviewed, Cisneros–Hernandez was given food, water, a blanket, and a place to sleep for several hours in a heated room. Medical personnel cleared him for questioning.

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Student Practice:

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

Read the (b)(6); (b)(7)(C) fact pattern and make notes regarding voluntariness

Group 1: Identify all facts that impact Factors 1 and 2

Group 2: Identify all facts that impact Factor 3

Group 3: Identify all facts that impact Factor 4

Group 4: Identify all facts that impact Factor 5

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

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Summary

- Two protections found in the 5th Amendment impact the way in which the SA takes statements from individuals for use in a criminal prosecution: (1) Due Process Clause and (2) Self-Incrimination Clause
Due Process Clause applied when determining if subject's statements are voluntary or involuntary and whether they are permissible in court
Goal of Due Process Clause is to prevent unfairness in the use of evidence to convict a subject: Courts will look at the totality of the circumstances (five factors) when applying the Due Process Voluntariness Test



Protecting the Borders Against Illicit Trade, Travel, and Finance