



Forging a New Legacy

Homeland Security Investigations

Fifth Amendment: Self-Incrimination

ICE HSI Special Agent Training

ICE Academy

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Investigative Phases

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

Investigative Phases, cont'd



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

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Agenda

- Custody and interrogation in the context of
Miranda if a subject has waived or invoked his rights
Differences between administrative and Miranda
warnings
Practice activity

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Terminal Performance Objective

Given an interview scenario, determine if the subject's statements are voluntary and/or admissible in court; according to the Fifth Amendment's Self-Incrimination Clause and the Supreme Court's *Miranda* decision.

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Enabling Performance Objectives

- Identify 5th Amendment protections that impact the taking of a statement and distinguish Voluntary Statements from the Miranda protocol; and determine if a subject is in custody for Miranda purposes. Distinguish between interrogation and non-interrogation for Miranda purposes. Determine if a subject has waived his rights after Miranda warnings are provided. Determine if a subject has invoked his rights to silence and/or counsel after Miranda warnings are provided. Explain the purpose of an administrative warning and how it differs from a Miranda warning.

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Self-Incrimination Clause

“No person shall be...compelled in a criminal case to be a witness against oneself.” General Rule Exceptions Self-Incrimination Clause Test

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Statements as Evidence in Criminal Case

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

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Miranda Protocol

- Prosecution may not use statements stemming from custodial interrogation of the subject unless procedural safeguards were used to secure the privilege against self-incrimination.

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

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



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Miranda Applied

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



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Custody Defined

- *Miranda definition – Questioning by law enforcement officers after person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Modified by Thompson v. Keohane – Formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.*

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

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Custody Determination

1. What facts and circumstances surround the interrogation? Given those facts and circumstances, would a reasonable person believe he or she was unable to terminate the encounter – Was the person seized at the time of the interrogation? “Ultimate Inquiry” – Was the government’s seizure a formal arrest or restraint on one’s freedom of movement of the degree associated with a formal arrest?

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Factors Courts Consider in Determining Custody

1. Extent to which person is confronted with evidence of guilt
Duration of detention
Manner and scope in which pressure is being applied
Location of interrogation
Time of day
Number of officers involved
Degree and manner of force used
Information provided to subject about reason for interrogation
Subject's age
Nature of the questions asked

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Demonstration

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

See Student Guide p. 10

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Encounters at the Border

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



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Encounters at the Border, cont'd

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

See Example in Student Guide p. 12

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Test of Custody for *Miranda* Purposes at the Border

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

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See Examples in Student Guide p. 13



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Demonstration

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

See Student Guide p. 15

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Interrogation or Non-Interrogation for *Miranda*

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



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Interrogation Defined

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

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Interrogation v. Non-Interrogation

- Volunteered statements – Any statements a subject makes without any prompting from the SA will be admissible at trial. Biographical questions exceptions – Routine “booking questions” or biographical questions have been found to fit into this exception. Public safety exception – Miranda warnings not required for subject in custody for public safety.

See Examples in Student Guide p. 18



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Demonstration

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

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Rights Waived After *Miranda* Warnings

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

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Miranda Waivers

“[I]f the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.” Relinquishment of right must be voluntary – uncoerced choice. With full awareness of nature of right and consequences of decision – level of comprehension of the right waived.

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Waivers

- Express waivers – An express statement that the individual is willing to make a statement and does not want an attorney. Implicit waivers – Defendant understands rights and conduct indicates waiver. Partial waivers – Subjects can agree to waive their rights to discuss certain topics, while at the same time invoking their rights as to others. -- Breaks in interrogation – If lengthy break occurs, re-Mirandize.

See Student Guide p. 22



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Demonstration

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

See Student Guide p. 23



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Subject Invokes Rights after *Miranda* Warnings

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



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Invocation of Fifth and/or Sixth Amendment Rights

- Once warnings given, if individual indicates in any manner before or during questioning, that he wishes to remain silent, interrogation must cease. If the individual states that he wants an attorney, interrogation must cease until attorney is present. At that time, individual must have an opportunity to confer with attorney and have attorney present during any subsequent questioning.

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Invoking Right to Remain Silent

- If subject chooses to exercise his right to remain silent he, should not be interrogated. Right to remain silent must be asserted unambiguously and clearly before terminating interrogation. Choice to remain silent must be “scrupulously honored.” Second interrogation would not violate Miranda if first request to remain was silent was honored, and subject re-Mirandized. But subject can again invoke right to remain silent.

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Invoking Right to Counsel

- Edwards Rule: When subject invokes right to counsel during custodial interrogation, interrogation must cease, except if accused initiates further communication, exchanges, or conversations with SA [Edwards v. Arizona]. Minnick Rule: Once subject states he wants a lawyer, interrogation must stop until an attorney is present [Minnick v. Mississippi]. Ambiguous request for counsel – Court will assess if right was waived. Subject initiates communication, exchange, or conversation with police – Not initiated by subject if preceded by interrogation or inducement of waiver. Arizona v. Roberson – When right to counsel invoked, subject cannot be questioned with respect to any crime. Maryland v. Shatzer – Can re-approach subject after 14 days.*



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Edward / Minnick / Shatzer Rule

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

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Demonstration

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

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Administrative Warnings (Form I-214A)

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

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Content of Administrative Warnings

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

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Administrative Warnings vs. *Miranda* Warnings

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

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Demonstration

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

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Practice

1.

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

See Student Guide p. 29



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Practice, cont'd

2.

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

See Student Guide p. 29

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Practice, cont'd

3.

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

See Student Guide p. 30

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Practice, cont'd

4.

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

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Practice, cont'd

5.

(b)(5), (b)(7)(E)

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Summary

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



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Looking Ahead

- This lesson addressed 5th Amendment's Self-Incrimination Clause Next lesson addresses Due Process.



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