Homeland Security Investigations
Post-Arrest Obligations
ICE HSI Special Agent Training
ICE Academy
Your Job Doesn’t Stop with the Arrest...

- Arrest the individual for a crime. Post-Arrest consists of several required steps. If any of these steps are omitted, the government cannot fully prosecute the subject, and your hard work will have been in vain.
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Investigative Phases

HSI SA Case Assignment

Investigative Plan Development
Investigative Phases, cont’d
Agenda

• Post-arrest issues SA’s pretrial role
  Defendant’s Sixth Amendment rights
  Practice activity
Terminal Performance Objective

Given a law enforcement scenario with the arrest of a subject, determine and explain the post-arrest obligations; in accordance with the Sixth Amendment, Federal Rules of Criminal Procedure 4 and 5, and Section and Title 18 of the U.S. Code.
Enabling Performance Objectives

• Explain post-arrest obligations that arise immediately after arrest. Describe the SA’s obligations associated with matters pretrial. Describe the criminal defendant’s Sixth Amendment right to counsel. Explain the SA’s obligations associated with pretrial depositions, witnesses, and the Confrontation Clause.
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Post-Arrest Procedure

1. Crime
   Committed Investigation
   Arrest
   Initial Appearance
   Detention
   Hearing
   Preliminary Hearing
   Indictment/Grand Jury

8. Arraignment
   Discovery
   Pre-Trial
   Motions
   Plea
   Trial
   Conviction/
   Sentencing
   Appeal

See Student Guide p. 3
Pre-Arrest and Arrest

**Prompt Presentment**

- FRCrimP Rule 5(a) requires that law enforcement take the arrestee, without unnecessary delay, before a magistrate for the Initial Appearance. FRCrimP Rule 5(d) – USMJ advises defendant of criminal complaint; defendant’s right to counsel; pretrial release options; right to a preliminary hearing; right to remain silent; and right to consult with counsel. Juveniles presented “forthwith.”
Post-Arrest Statement

- 18 U.S.C. § 3501(c) – Six hour rule
  Corley Rule
  Hour Rule

See Student Guide p. 6
Post-Arrest Consular Notification

Law enforcement arresting a foreign national must notify the consular post of the arrestee’s home country and allow consular official to visit and consult with arrestee. Determine foreign national’s country. Offer, without delay, to notify consular officials. Notify foreign national’s country without delay if requested. If not requested, determine mandatory notification. Complete notification as required; inform arrestee. Document actions in ROI.

See Student Guide p. 8
Demonstration
Matters Pretrial

Fifth Amendment: “[N]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury…” Preliminary hearing (FRCrimP Rule 5.1) required unless the defendant waives, is indicted by grand jury, or a criminal information filed. Grand jury (FRCrimP Rule 6) responsible for issuing an indictment.
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Arraignment [FRCrimP Rule 10]

• Arraignment must be conducted in open court and must:
  - Provide defendant with copy of indictment or information
  - Read indictment or information to defendant
  - Ask defendant to plead to indictment or information
Pretrial Motions [FRCrimP Rule 12]

- Motion to Suppress Evidence
- Motion to Sever Charges or Defendants
- Motion for Discovery
Pretrial Discovery

- Brady and FRCrimP Rule
- 16Giglio material Henthorn
- Rule Jencks Rule ICE Policy

See Student Guide p. 13
Demonstration
Sixth Amendment: Right to Counsel

• “[l]n all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense.” Right to counsel Attaches only after adversary judicial proceeding initiated and at critical stages of offense specific May be waived by defendant
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Right to Counsel Analysis

**Fifth Amendment**

- Prior to Custodial Interrogation, subject must be advised of Right to Counsel (*Miranda*)
- Subject waives Right to Counsel
- Interrogation continues unless subject invokes

**Sixth Amendment**

- Sixth Amendment Right to Counsel attaches at critical stage (*Powell*)
- Critical stage: formal charging, preliminary hearing, indictment, information, arraignment (*Brewer*).
- Custodial interrogation (*Montejo*)
  - Mere act of participating in critical stage not an invocation of Right to Counsel
  - Accused invokes at critical stage event or subsequent police interaction

**Fifth Amendment**

- No subsequent interrogation until counsel present (*Minnick*)
- Unless subject approaches and waives (*Edwards*)

**Sixth Amendment**

- Accused waives
- Interrogation continues unless accused or attorney invokes
- Accused invokes at critical stage event or subsequent police interaction
  - Interrogation stops (*Edwards*)
  - Counsel present (*Minnick*)
  - Unless accused approaches and waives (*Edwards*)
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Demonstration
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Pretrial Depositions, Witnesses, and the Confrontation Clause

- Confrontation Clause – “In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him.” Crawford Rule – Testimonial statements of witnesses absent from trial will be admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine. Impact of Crawford Rule on SA – Material witness; 18 U.S.C. § 3144; FRCrimP Rule 15(a); 8 U.S.C. § 1324(d)

See Student Guide p. 18
Demonstration
Practice, cont’d
Practice, cont’d
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Practice, cont’d
Practice, cont’d
Summary

• A criminal complaint is needed. Promptly present criminal defendants before a magistrate judge. Provide foreign nationals with rights connected to consular notification. Defendants are entitled to a grand jury or a preliminary hearing. Provide defendant with certain information (discovery) prior to trial. In a criminal prosecution, the accused has the right to counsel. Defendant has a right to confront and cross-examine any witness against him.
Looking Ahead

• This lesson addressed obligations to be met after arresting a subject. Next lesson will discuss federal sentencing guidelines.
Protecting the Borders Against Illicit Trade, Travel, and Finance