



Forging a New Legacy

Homeland Security Investigations

Post-Arrest Obligations

ICE HSI Special Agent Training

ICE Academy

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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

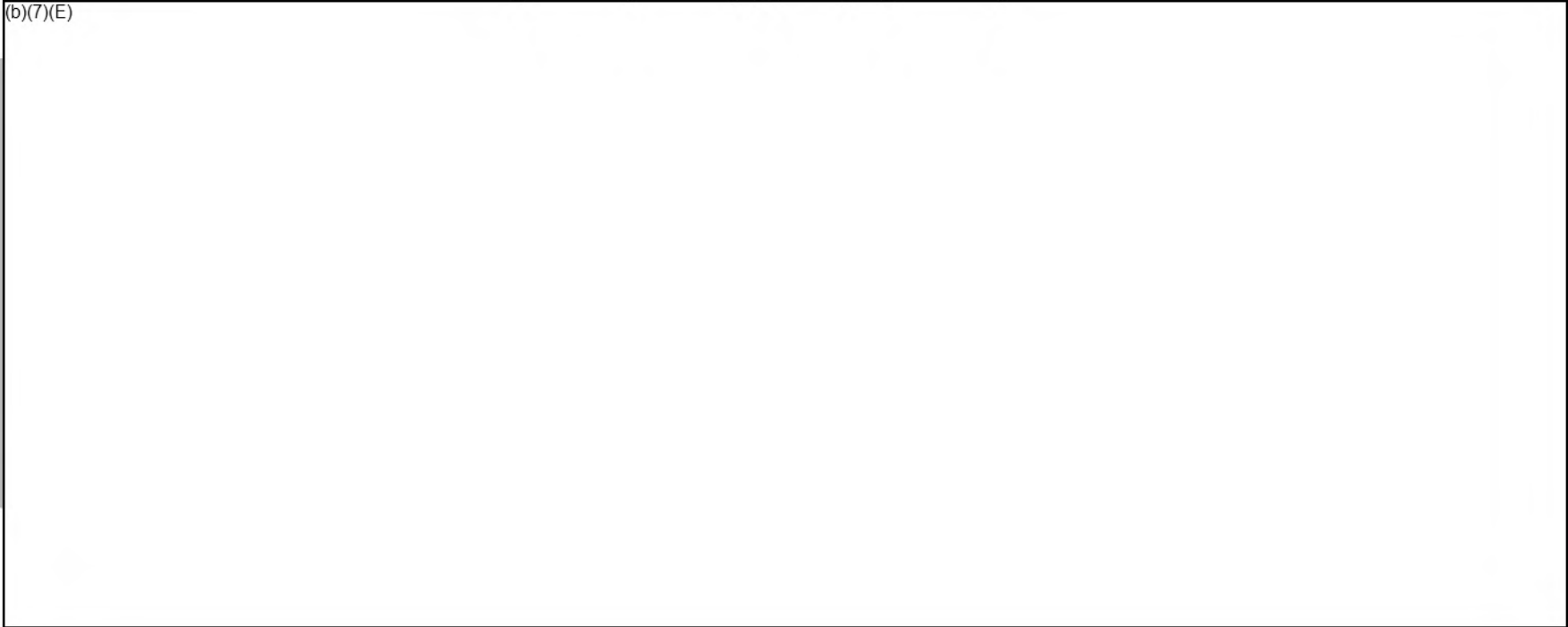
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Investigative Phases, cont'd



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Agenda

- Post-arrest issues SA's pretrial role
Defendant's Sixth Amendment rights
Practice activity

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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.

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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
on 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

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Pre-Arrest and Arrest

- Complaint ^{(b)(7)(E)} [redacted] Arrest Warrant ^{(b)(7)(E)} [redacted] with Affidavit of Probable Cause USMJ issues; SA signs under oath Execution Return executed warrant to USMJ Arrest without an arrest warrant DNA sample collection
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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.”

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Post-Arrest Statement

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

See Student Guide p. 6

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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 the 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

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Demonstration

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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

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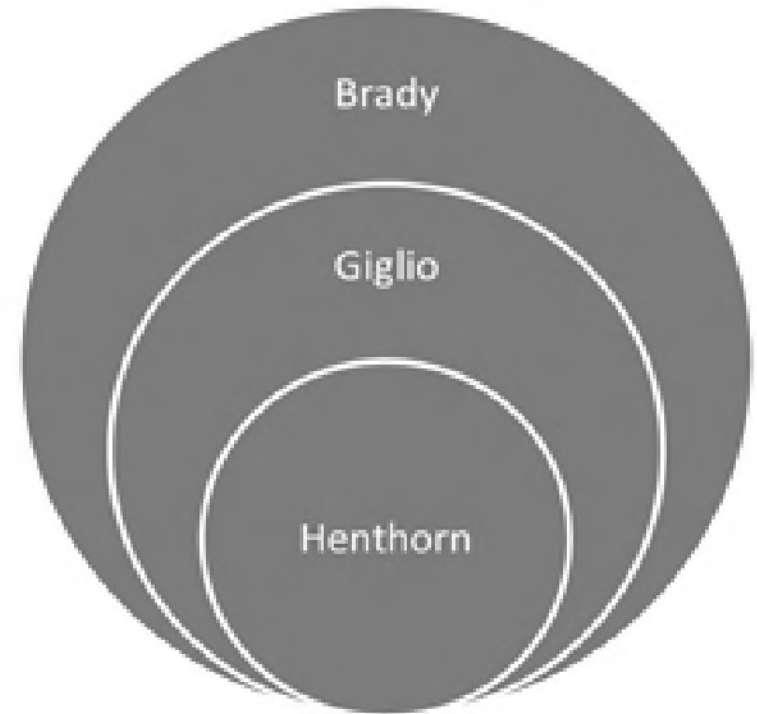
Pretrial Motions [FRCrimP Rule 12]

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

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Pretrial Discovery

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



See Student Guide p. 13

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Demonstration

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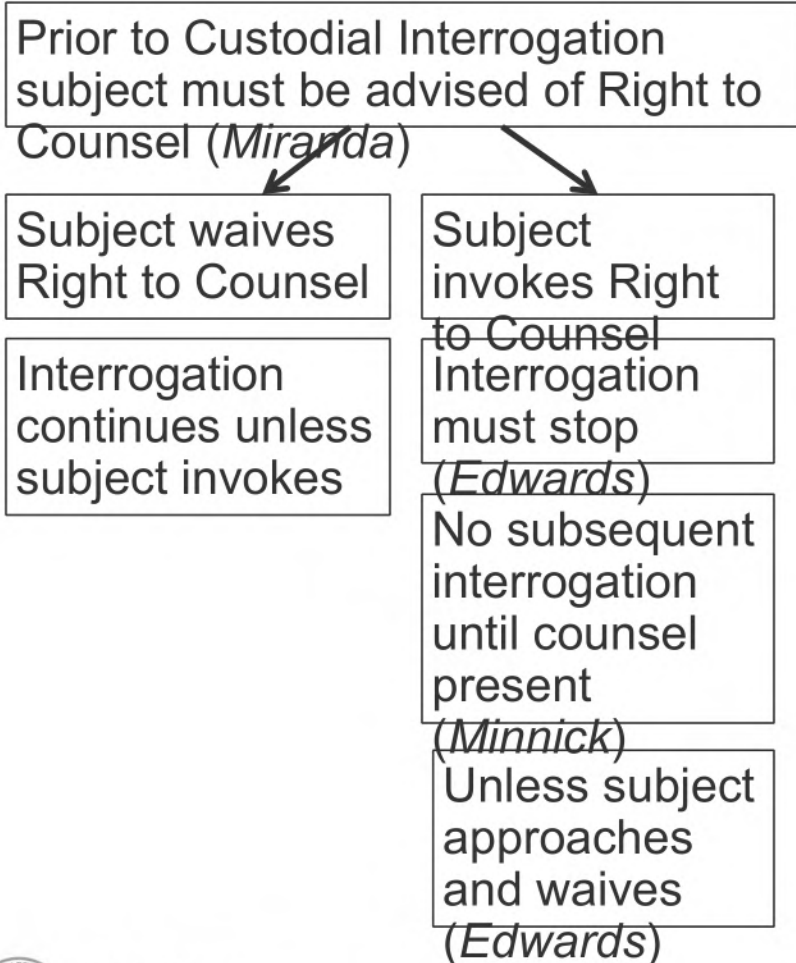
Sixth Amendment: Right to Counsel

- “[I]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 Is offense specific May be waived by defendant

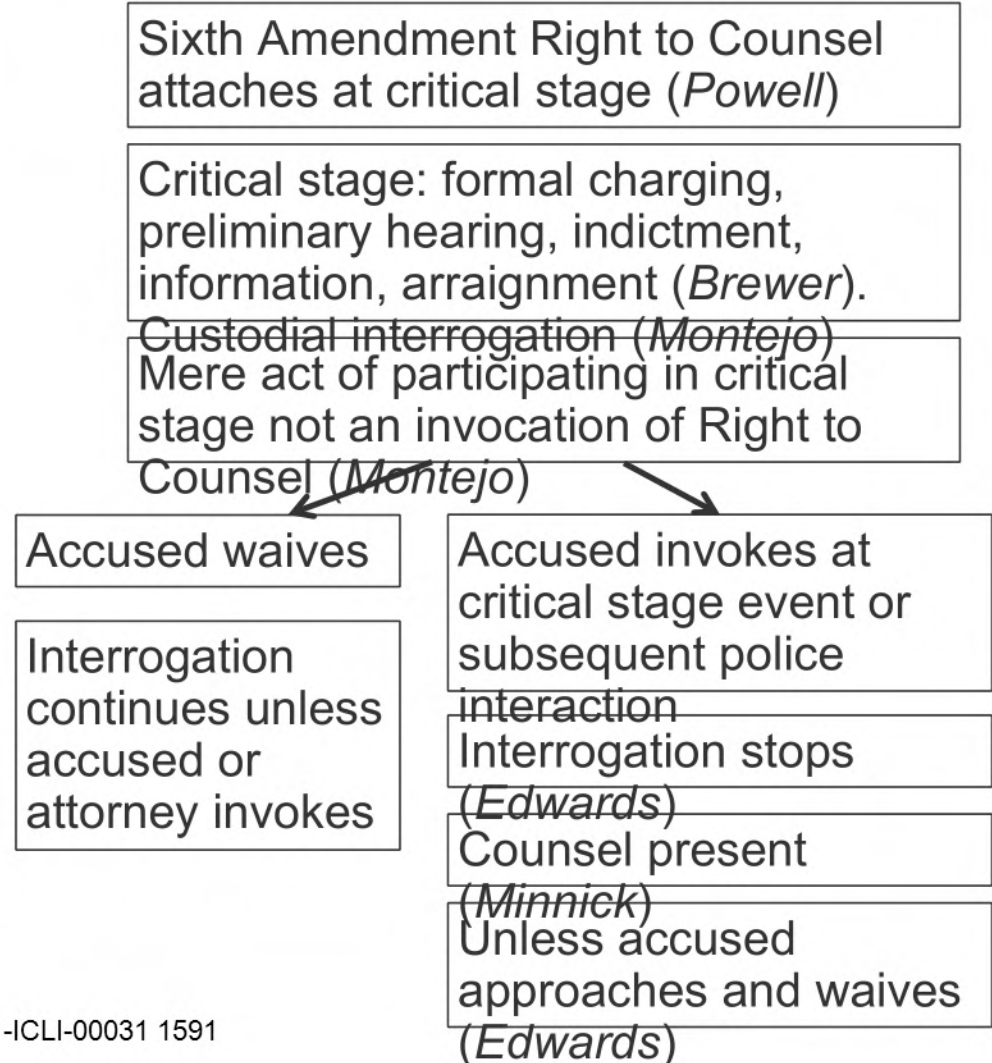
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Right to Counsel Analysis

Fifth Amendment



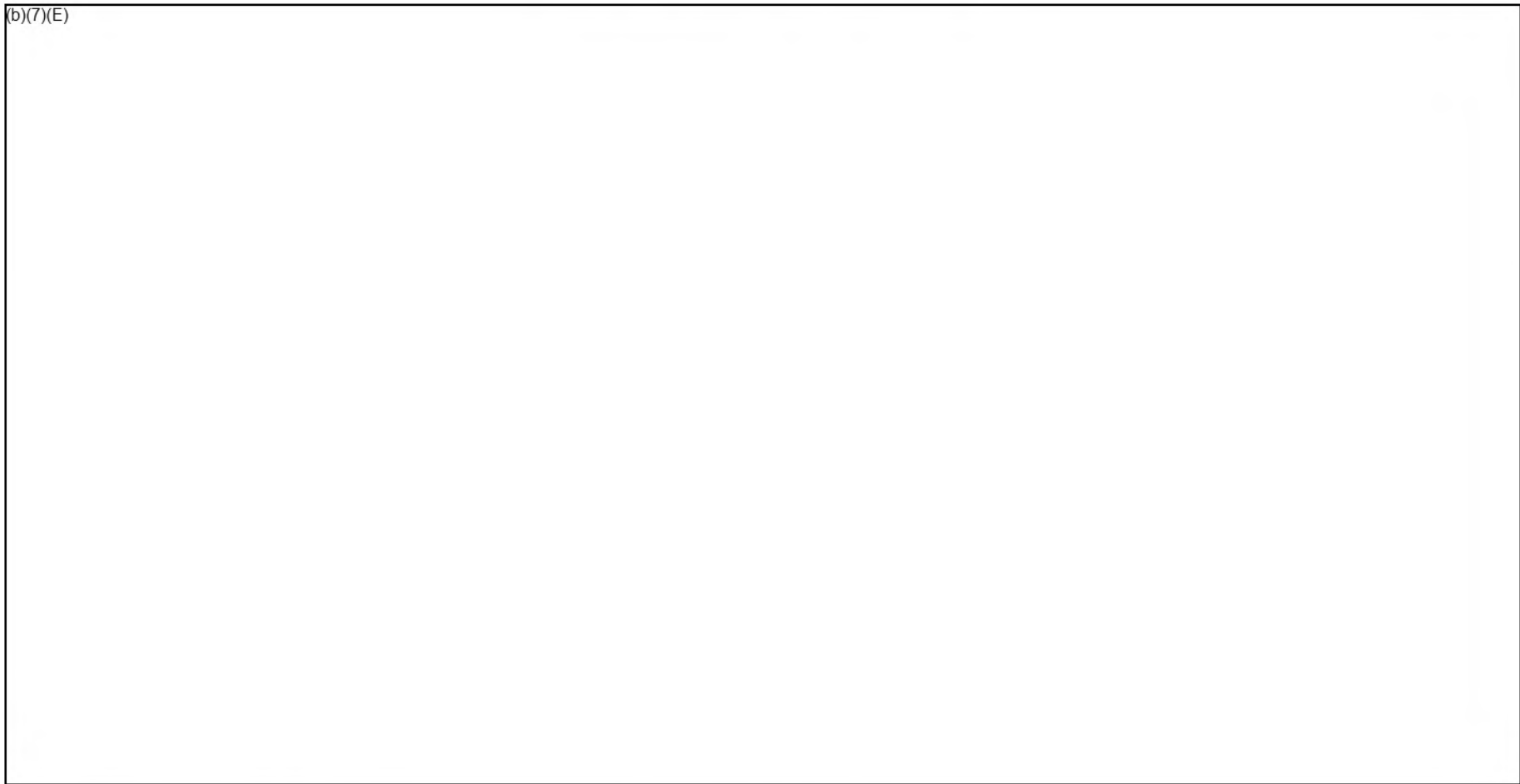
Sixth Amendment



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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



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Demonstration

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Practice

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Practice, cont'd

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Practice, cont'd

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Practice, cont'd

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Practice, cont'd

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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

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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