

**U.S. Immigration and Customs Enforcement
Homeland Security Investigations Training**

**HSI Academy
Legal Division**



Fifth Amendment: Due Process

Instructor Guide

2105108

HSI Special Agent Training

6th Edition (2018)

ENFORCEMENT LAW COURSE

Fifth Amendment: Due Process

INTRODUCTION

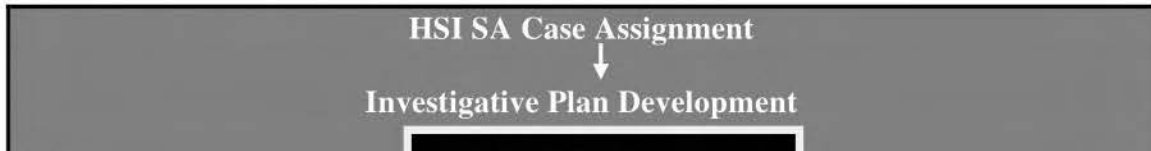
I. Motivation

In this lesson we will shift to a discussion of another Fifth Amendment protection – the Due Process Clause.

II. Review of the Past

The Self-Incrimination Clause of the Fifth Amendment prohibits compelling one from giving a statement against themselves in their own criminal case. This protection was meant to protect the accused from inherently coercive situations. The Miranda decision recognized the potentially inherently coercive nature of custodial interrogation so created the Miranda protocol which requires law enforcement to afford an accused Miranda Warnings prior to custodial interrogation.

III. Advance Organizer of Main Ideas



(b)(7)(E)

IV. Agenda

In this chapter, we will examine the Fifth Amendment’s Due Process Clause. We will then examine how courts apply the Due Process Clause Voluntariness Test. Finally, you will be given a past interview to determine if the statements taken were voluntary.

Demonstrations and examples will be provided throughout the lesson. The practice exercise at the end of the lesson is like the test questions on the legal examination.

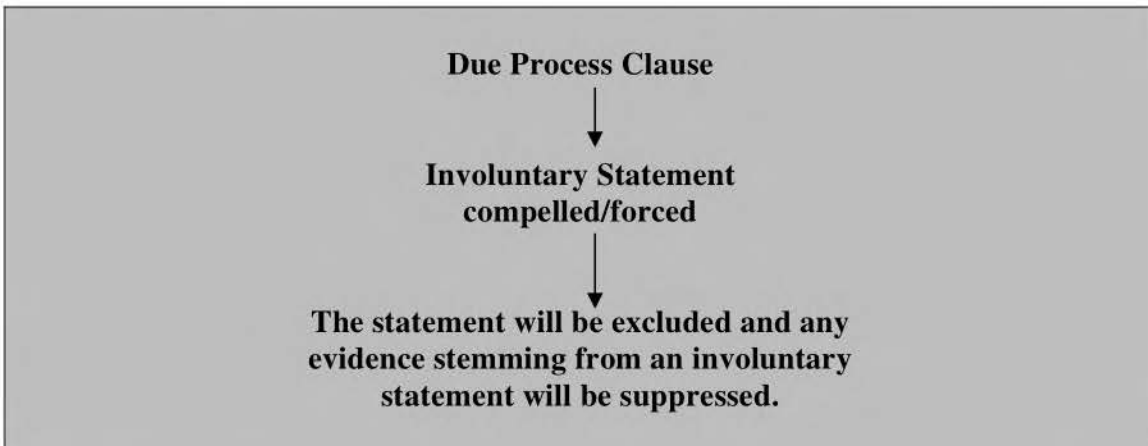
V. Objectives

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.

EPO	OBJECTIVE
1	Explain the Due Process Clause rule and protection.
2	Describe and apply the Due Process Clause Voluntariness Test.

INSTRUCTION

I. Explain the Due Process Clause rule and protection. (EPO 1)



- A. Due Process Clause – “No person shall be...deprived of life, liberty, or property, without due process of law...”
- B. Goal of Fifth Amendment’s Due Process Clause – To prevent fundamental unfairness in the **use** of evidence (*whether the evidence is true or false*) to

convict the subject. Statements that are the product of free and unconstrained choice should be admitted against the criminal defendant at trial, while statements that are the result of overbearing his will to resist violate the Fifth Amendment’s Due Process Clause and should be suppressed from trial. [*Culombe v. Connecticut*, 367 U.S. 568 (1961)].

C. Due Process Rule and Statements – The Supreme Court has determined that it is fundamentally unfair to **use** a statement that has not been **voluntarily** made or given to police. Therefore, if a statement is involuntarily made due to overbearing official conduct, the **use** of the statement to convict the defendant violates the Fifth Amendment’s Due Process Clause. [*See, Brown v. Mississippi*, 297 U.S. 278 (1936)].

D. Due Process impact

1. Protects all people (citizens and aliens).
2. Applies from the start of the criminal investigation to the conclusion of all appeals following a conviction.
3. Applies to physical evidence and statements.
4. The Due Process Clause impacts the actions of government only. The most outrageous behavior by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible under the Due Process Clause.

E. Due Process Field Application

(b)(7)(E)

F. Demonstration

(b)(7)(E)

(b)(7)(E)

II. Describe and apply the Due Process Clause Voluntariness Test. (EPO 2)

- A. Courts determine whether law enforcement's actions were fundamentally unfair by way of the Due Process Clause Voluntariness Test.
- B. 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 police wrung out that statement from the accused against his will, then the **use** of that statement to convict him violates the Due Process Clause. [*Culombe v. Connecticut*, 367 U.S. 568 (1961)].

Instructor's Note:

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

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

- C. Totality of the Circumstances – Remember the definition of the Due Process Voluntariness Test requires the courts to look at "all of the circumstances surrounding the giving of the statement." Of course, you know this refers to the concept of *totality of the circumstances*. The courts look at five primary factors to determine voluntariness.
1. Physical and mental state of the person [Factor 1].
 2. Maturity and education of the person [Factor 2].
Familiar with criminal justice system
 3. The diverse pressures which sap a person's powers of resistance and self-control [Factor 3].
 4. Duration of the detention and interview, conditions of the detention and interview, and the location of the detention and interview [Factor 4].
 5. SA's attitude toward the subject [Factor 5].
- D. Subjective Test [*Dickerson v. U.S.*, 530 U.S. 428 (2000)]
1. The inquiry takes into consideration the totality of all the surrounding circumstances—*both* the characteristics of the accused *and* the details of the interrogation.”

- 2. Understanding an interviewee’s mental state is a subjective endeavor and the mental state of involuntariness on which the due process question turns can never be affirmatively established other than circumstantially—that is, by inference.

E. Test Application: Indicate whether the factors would weigh for or against voluntariness.

Instructor’s Note: (b)(5); (b)(7)(E)

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

1. Factor 1: Physical and Mental State of the interviewee

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

(b)(5); (b)(7)(E) The person’s physical state would be a factor that the court would consider in determining whether a statement taken from this person now was voluntarily given. [*See, U.S. v. Hallford, 103 F. Supp. 3d 1 (2015)*].

Note: The court specifically remarked that the agents who conducted the interview in *Hallford* “amazingly made *no* effort before summoning him for an interview to determine either his medical status, or the status of his psychological condition, prior to requesting the interview.” Statement was deemed involuntary.

- b. Mental State of Interviewee: (b)(5); (b)(7)(E)

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

(b)(5); (b)(7)(E) The person’s mental state would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

Intellectual Capacity of the Interviewee: (b)(5); (b)(7)(E)
 (b)(5); (b)(7)(E) The person's intellectual capacity would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

2. Factor 2: Maturity and education of the person being interviewed

a. Maturity of the Interviewee: (b)(5); (b)(7)(E)
 (b)(5); (b)(7)(E) The person's maturity would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

(b)(5); (b)(7)(E)
 (b)(5); (b)(7)(E) The person's lack of maturity would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

b. Education of the Interviewee: (b)(5); (b)(7)(E)
 (b)(5); (b)(7)(E) The person's educational background would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

(b)(5); (b)(7)(E)
 (b)(5); (b)(7)(E) The person's lack of educational background would be a factor the court would consider in determining whether a statement taken from this person was voluntarily given.

3. Factor 3: The diverse pressures which sap a person's powers of resistance and self-control

a. (b)(5); (b)(7)(E)
 (b)(5); (b)(7)(E) The pressures employed by law enforcement will be a factor considered by the court in determining whether a statement taken from this person was voluntarily given.

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

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

Rule: Interrogating officers can make false representations concerning the crime or the investigation during questioning without always rendering an ensuing confession coerced. [See, *Frazier v. Cupp*, 394 U.S. 731 (1969)].

But the Supreme Court has said that “the test of voluntariness” is “whether the confession was extracted by any sort of threats or violence, or obtained by any **direct or implied promises**, however slight, or by the exertion of any improper influence...” so such a promise would result in an involuntary statement. [See, *Hutto v. Ross*, 429 U.S. 28 (1976); and, *Bram v. U.S.*, 168 U.S. 532 (1897)].

4. Factor 4: Duration, conditions, and location of the detention

a. Duration: (b)(5); (b)(7)(E)
(b)(5); (b)(7)(E)

b. Condition: (b)(5); (b)(7)(E)
(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)
c. Location: (b)(5); (b)(7)(E)
(b)(5); (b)(7)(E)

5. Factor 5: The manifest attitude of the police toward the subject

a. The method/techniques used may be considered by the court. For instance, (b)(5); (b)(7)(E)
(b)(5); (b)(7)(E)

Example: (b)(5); (b)(7)(E)

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

Note: Failure to inform a defendant of the charges against him does not constitute coercion within the meaning of the Fifth Amendment [See, Colorado v. Spring, 479 U.S.564 (1987)].

Note: The courts will determine the answer to the Due Process issue (whether the statement is voluntary or involuntary) even though Miranda warnings were given and waived. It is only after the courts determine that the statement was voluntary that the courts will then determine whether the Miranda protocol was properly applied.

F. 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. One of the two interrogating DHS agents—who is also an Emergency Medical Technician—checked Cisneros-Hernandez again and found that he appeared to be in good condition; did not exhibit signs of dehydration or confusion; and was cooperative, coherent, and responsive to questioning. Cisneros-Hernandez claims he was handcuffed during the interview, but agents say otherwise.

HSI did not overcome Cisneros-Hernandez’s will to resist and his waiver and confession were voluntary. U.S. v. Cisneros-Hernandez, 597 Fed. Appx. 933 (2015).

G. Exercise: (b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

Instructor’s Note: (b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E) **Explain to the students that as they read the fact pattern make notes of the facts that might impact the court’s decision as to voluntariness of the statements given. The students can use the form at the end of the student guide to make notes. After 15**

minutes, create four groups of six students. Instruct the groups to do the following:

Group 1 = Identify all facts that impact Factor 1 [Physical and Mental State of the Interviewee] and Factor 2 [Maturity and Education of the Interviewee]. Select a group representative to report out group findings.

Group 2 = Identify all facts that impact Factor 3 [Diverse Pressures]. Select a group representative to report out group findings.

Group 3 = Identify all facts that impact Factor 4 [Duration, Condition and Location of Interview]. Select a group representative to report out group findings.

Group 4 = Identify all facts that impact Factor 5 [Law Enforcement’s attitude toward Interviewee]. Select a group representative to report out group findings.

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

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Withheld pursuant to exemption

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

of the Freedom of Information and Privacy Act

Page 1626

Withheld pursuant to exemption

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

of the Freedom of Information and Privacy Act

Page 1627

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

of the Freedom of Information and Privacy Act

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

III. Student Practice

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

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

CONCLUSION

I. Summary of Main Ideas

- A. Two protections found in the Fifth Amendment that 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.
 - 1. Compelled statements are inadmissible because of both protections.
 - 2. Voluntary Statements are inadmissible if collected in violation of *Miranda*.
- B. The goal of the Due Process Clause is to prevent unfairness in the use of evidence to convict a subject.
- C. Courts will look at the totality of the circumstances (five factors) when applying the Due Process Voluntariness Test.
 - 1. Physical and mental state of the person.
 - 2. Maturity and education of the person.
 - 3. The diverse pressures which sap a person's powers of resistance and self-control.
 - 4. Duration of the detention and interview, conditions of the detention and interview, and location of the detention and interview.
 - 5. SA's attitude toward the subject.

II. Integration

In the previous lesson, we examined the self-incrimination protection provided by the Fifth Amendment – the Self-Incrimination Clause, and we discussed how to collect a statement for use in a criminal prosecution in compliance with the Self-Incrimination Clause.

In this lesson we examined the protections provided by the Fifth Amendment and focused on the Due Process Clause. More specifically, we discussed how the Due

Process Clause is applied when determining if the statements provided by subjects are voluntary or involuntary, and whether or not they are permissible in court.

III. Motivation

As a SA, the statements you collect from subjects and witnesses are important to the case the attorneys build. But the way you collect those statements could adversely impact the decisions by the court. Thus, it is imperative that you conduct yourself within the parameters of the Fifth Amendment, especially where the Due Process Clause is concerned.

IV. Objectives

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.

EPO	OBJECTIVE
1	Explain the Due Process Clause rule and protection.
2	Describe and apply the Due Process Clause Voluntariness Test.

V. Test of Final Activity

You will be tested on your ability to determine the voluntariness of an individual’s statement on the legal multiple-choice exam after the Sentencing Guidelines lesson. However, your ability to address this issue will be tested each time you take a statement from a subject.

5th DP Lesson Student Drive Reference Index

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