

US Immigration and Customs Enforcement Homeland Security Investigations Training

HSI Academy



HSI Interviewing 211311

Student Guide

HSI Academy Courses

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Evidence Processing

Motivation

Our job as criminal investigators is to provide prosecutors with a number of tools that meet the legal and ethical requirements for admission in court. The lessons you have taken in Ethical Behavior and Core Values have prepared you for the ethical challenges you will encounter in providing those tools. The lessons in law provide you with the constitutional framework necessary to legally obtain these tools so they are admissible in court.

This lesson provides the interviewing skills necessary to obtain information in an ethical and legal way. Remember, as sworn federal investigators, you are involved in the objective search for truth in every facet of our investigations, which starts in the critical process of interviewing.

Objectives

Terminal Performance Objective (TPO)

Conditions: Given simulated Homeland Security Investigations scenarios,
Behavior: conduct an interview after planning
Criterion: i in a manner that complies with the 5th Amendment, the HSI Interviewing Handbook, and is necessary for managing human behavior in law enforcement situations.

Enabling Performance Objectives (EPOs)

- EPO 1:** Explain the different interview types and discuss interview planning and considerations.
- EPO 2:** Demonstrate documentation of interviews and summarize the HSI Custodial Recording Policy.
- EPO 3:** Discuss advanced rapport strategies and techniques.
- EPO 4:** (b)(7)(E)
- EPO 5:** Demonstrate (b)(7)(E) interview skills.
- EPO 6:** Demonstrate confrontational interviewing skills.
- EPO 7:** Identify informant interviewing skills.
- EPO 8:** Discuss the use of interpreters in interviews.

Review of the Past

Prior to arrival at HSISAT, you received interview training through two primary means:

- CITP graduates have had ten hours of lecture about interviewing and five different labs (i.e., significant hours). This lesson builds on the basic interviewing mechanics you learned in CITP, and then concentrates on specific interviewing techniques, considerations, strategies, and applications thereof which you will be expected to master in your career as a HSI Special Agent.



- Individuals with previous law enforcement experience (“Add-on” interview classes) might not have had recent CITP experience – or any at all – but have probably practiced in the field.

You receive the legal background for conducting interviews during the legal lessons. Reference and reinforce the legal aspects as relevant. In general, the “Interviewing Handbook” provides the reinforcement.

Advance Organizer of Main Ideas

Special Agents will conduct investigative interviews to solicit information to further an investigation, knowing that this information has a high probability of being used as evidence in a judicial proceeding. Interviews may involve subjects, witnesses, informants, victims, aliens facing formal deportation proceedings and other law enforcement personnel.

Most SAs, during their initial law enforcement training, learned law enforcement interview mechanics consisting of the basic five steps of law enforcement interviews. While important, this mechanical structure is only a basic foundation.

This lesson goes beyond the basic foundational skills to give you, a SA, a set of methods, techniques and theories that you can effectively use when conducting investigative or informational interviews.

Agenda

In this lesson, you will discuss:

- Types of interviews, planning considerations
- Documentation of interviews and HSI Custodial Recording Policy
- Advanced rapport strategies and techniques
- (b)(7)(E) interviewing
- Confrontational interviewing
- Interviewing informants
- Use of interpreters in interviews

INSTRUCTION

Explanation

- A. EPO 1: Explain the different interview types and discuss interview planning and considerations.**
1. Interview Types and Purposes
 - a. Types of interviews
 - 1) Victim



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2) Witness

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3) Informant

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4) Suspect

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Notes:

2. Preparation for interviews

Note: Telephonic interviews require some of the same considerations as if planning for an in-person interview.

Planning incorporates:

a. Identifying the purpose of the interview and type of interview (i.e. victim, witness, subject, informant)

1) Interview parameters

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b. (b)(7)(E)
c.

d.

e. Interview attendees

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3. The Interview

Five Step Law Enforcement Interview

Victim/Witness*	Suspect
1. Introduction	1. Introduction
2. Rapport	2. Rapport
3. Questioning (b)(7)(E)	3. Questioning (b)(7)(E)
4. Summary	4. Summary
5. Close	5. Close

*Provide Victim/Witness pamphlet as appropriate.

a. Introduction Phase

1) Interviewer Identifies himself/herself

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2) Identify the interviewee

- a) May be done verbally, if followed up by document verification, e.g., driver's license (DL), passport, etc.

3) Purpose of the interview

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4) Begin the Establishment of Rapport

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Notes:

b. Rapport Phase

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Notes:

c. Questioning Phase

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d. Summary Phase

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e. Closing Phase

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Notes:

B. EPO 2: Demonstrate documentation of interviews and summarize the HSI Custodial Recording Policy.

1. Interview notes must be sufficient to prepare subsequent report of investigation, written statement, or affidavit.

a. Determine best strategy for note taking.

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b. Take clear and concise notes.

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c. Lies

- 1) (b)(7)(E) Government obligated to disclose exculpatory materials even if interviewee “corrects.”
- 2) (b)(7)(E)

d. Basic Precepts: Interview notes/documentation

- 1) Tools used to build a case
- 2) Should supply information which, together with the statements and documents obtained during an investigation, facilitates preparation of a complete report (ROI).
- 3) SAs should maintain notes to be understood by another SA if case is reassigned.
- 4) When taking notes in shorthand or abbreviated form, SAs should promptly transcribe them.
- 5) Interview Notes are DISCOVERABLE.
- 6) All interview/interrogation notes MUST be PRESERVED in any case where criminal prosecution related to those notes is “even remotely possible.” (See section 8.5 in the HSI Interviewing Techniques Handbook.)
 - a) Short Answer: Never destroy original notes
 - b) Original Notes should go to original casefile and be kept in the custody of the case agent (Interviewing Techniques Handbook HSI HB 17-04 Section 8.2(F)).
 - (1) Notes are then available for AUSA review.
 - (2) Original notes are available for discovery disclosure.
 - c) Agent who generated the notes should keep copies of the original notes for reference/review purposes in the event of future proceedings.

2. Advisement of Rights

- a. “Miranda” Warnings – procedural safeguards



- 1) Right to Remain Silent
- 2) Right to be informed that anything said could be
- 3) Right to an attorney: Government appointed if indigent
- 4) Right to consult with attorney prior to questioning
- 5) Right to have attorney present during questioning
- 6) HSI policy and legal considerations:
 - a) Use Statement of Rights – ICE Form 73-025 – when advising an individual of rights under Fifth Amendment and when completing a written statement.

b. Administrative Warnings

- 1) No Right against self-incrimination in administrative setting
 - a) Irrelevant if Custodial or Non-Custodial
 - b) No right to Miranda Warnings
- 2) CAVEAT: Questioning must remain in administrative realm; if questioning strays into criminal inquiries – Miranda will be required
- 3) 8 CFR 287: Administrative Warnings for Civil Removal
 - a) Clearly differs from Miranda
 - b) No right to remain silent
 - c) No right to government provided counsel

Notes:

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f. Signed statements (See HB 17-04 Chapter 17 – entitled “Sworn Statements” but information there, some of which is highlighted below, applies to Signed Statements as well).

- 1) May be necessary at any time during the course of an investigation.
- 2) Always carry copies of Statement of Rights forms.
- 3) Document admissions and confessions with a written and signed statement – ensure the other SA witnesses the signed statement.
- 4) If unable to obtain statement, maintain detailed notes concerning the substance of relevant information developed during course of interviews.
- 5) When agents may obtain a signed statement, but develop additional information that is inappropriate to include in the statement, such as information obtained about unrelated criminal activity.

a) Notes should supplement the statement by documenting any pertinent information not included in the statement.

6) (b)(7)(E)

7) Formatting Considerations – (b)(7)(E)

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8) Signed statements – do not obviate the need for notes, ROI, or other methods of capturing the interview. (b)(7)(E)

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a) Overview – Formatting Considerations (Sec 17.3)

- (1) (b)(7)(E)
- (2)

b) Signed statement – preliminary Information (Sec 17.4)

c) Signed statement – body (Sec. 17.5)

(1) Corrections: Line through and have interviewee initial

(2) Do not use White-out or erase

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- d) Signed statement – signing and witnessing (Sec. 17.6)
- e) Avoiding claims of alteration or substitution (Sec 17.7)

Notes:

- 9) Electronic recordings of interviews
 - a) Custodial interviews
 - (1) On May 12, 2014, the Department of Justice (DOJ) issued its “Policy Concerning Electronic Recording of Statements.” DHS issued Policy Statement 047-03, “Policy Concerning Electronic Recording of Statements in Federal Criminal Investigations,” which became effective on March 31, 2016. ICE then issued Policy Number 10087.1, “Electronic Recording of Custodial Statements in Federal Criminal Investigations,” dated July 15, 2016.

Note: HSI Special Agents MUST comply with all provisions of ICE Policy Number 10087.1.
 - (2) Custodial recording can be made covertly or overtly
 - (a) Preference: Video/Audio recording
 - (b) Minimum: Must be Audio recorded absent extenuating circumstances related to the lack of access to recording equipment
 - (3) Recording preamble
 - (a) The electronic recording of a custodial interview or interrogation should include a preamble that captures the following:



- i. Day, date, place and time the recording commenced
 - ii. Identity of individual being questioned
 - iii. Identity of interviewing Special Agents
 - iv. Names of all others present (include TFOs, other LEOs, interpreters, etc.)
 - v. Case number, if applicable
 - (b) Preamble should also state whether or not the individual has been previously advised of his/her rights.
 - i. Best Practice: rights notification and waiver captured during recorded interview
 - ii. If previous waiver, consider referencing prior waiver in recorded interview; e.g. I understand you were previously advised of your rights by SA Jones and that you agreed to speak with us. Is it still your desire to do so? (or words to that effect).
- (4) Avoid stopping/starting recording
 - (a) Whenever possible, after a custodial recording has been initiated, it should not be stopped until the interview is completed.
 - (b) If it is stopped (i.e. for long breaks or to afford the interviewee the opportunity to consult with counsel), the Special Agent should record the time the recording was paused, for what purpose, and when it was re-initiated.
- (5) Concluding the recording
 - (a) SAs should wait until the subject leaves the room, note the time, and state that the interview has been concluded.
- b) Non-Custodial interviews
 - (1) HSI Special Agents may record non-custodial interviews (whether a confrontational suspect interview or otherwise) at their own discretion unless prohibited by local policy.



- (2) General Rule: when recording non-custodial interviews, HSI Special Agents should follow the same procedures as for custodial interviews, described above and in ICE Policy Number 10087.1.
 - (a) Should document same preamble information
 - (b) Document prior rights advisement and waiver (if applicable)
- (3) Non-custodial interview recordings are subject to the same handling policies and procedures as custodial interview recordings
- (4) Can be overt or covert
 - (a) HSI policy recommends obtaining consent from interviewee for OVERT non-custodial interview recording
 - (b) Covert recordings of non-custodial interviews

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- c) Preservation of electronic recordings
 - (1) SAs must ensure preservation of the original electronic recording.
 - (2) SAs must complete applicable chain of custody (6051S).
 - (a) Government generated
 - (b) "NOT IN SEACATS" (b)(7)(E)
- d) ELSUR's are NOT REQUIRED for recorded custodial interviews.



- (1) ELSUR may be required for covert non-custodial interview recording.
- 10) Recorded statement taken pursuant to a summons or subpoena
- a) Recorded statement provided by an interviewee whose attendance has been compelled by a summons, subpoena, or by a court order in support of such summons or subpoena
 - b) MUST include:
 - (1) Normal preamble matters
 - (2) That the statement is being provided pursuant to a summons or subpoena
 - (3) The object of the interview is to take testimony or receive other evidence concerning a matter that is material and relevant to the investigation of criminal or administrative violations of U.S. law.

Notes:

C. EPO 3: Discuss advanced rapport strategies and techniques.

1. Definition of rapport: harmonious, empathetic, relation, connection, accord or affinity to another

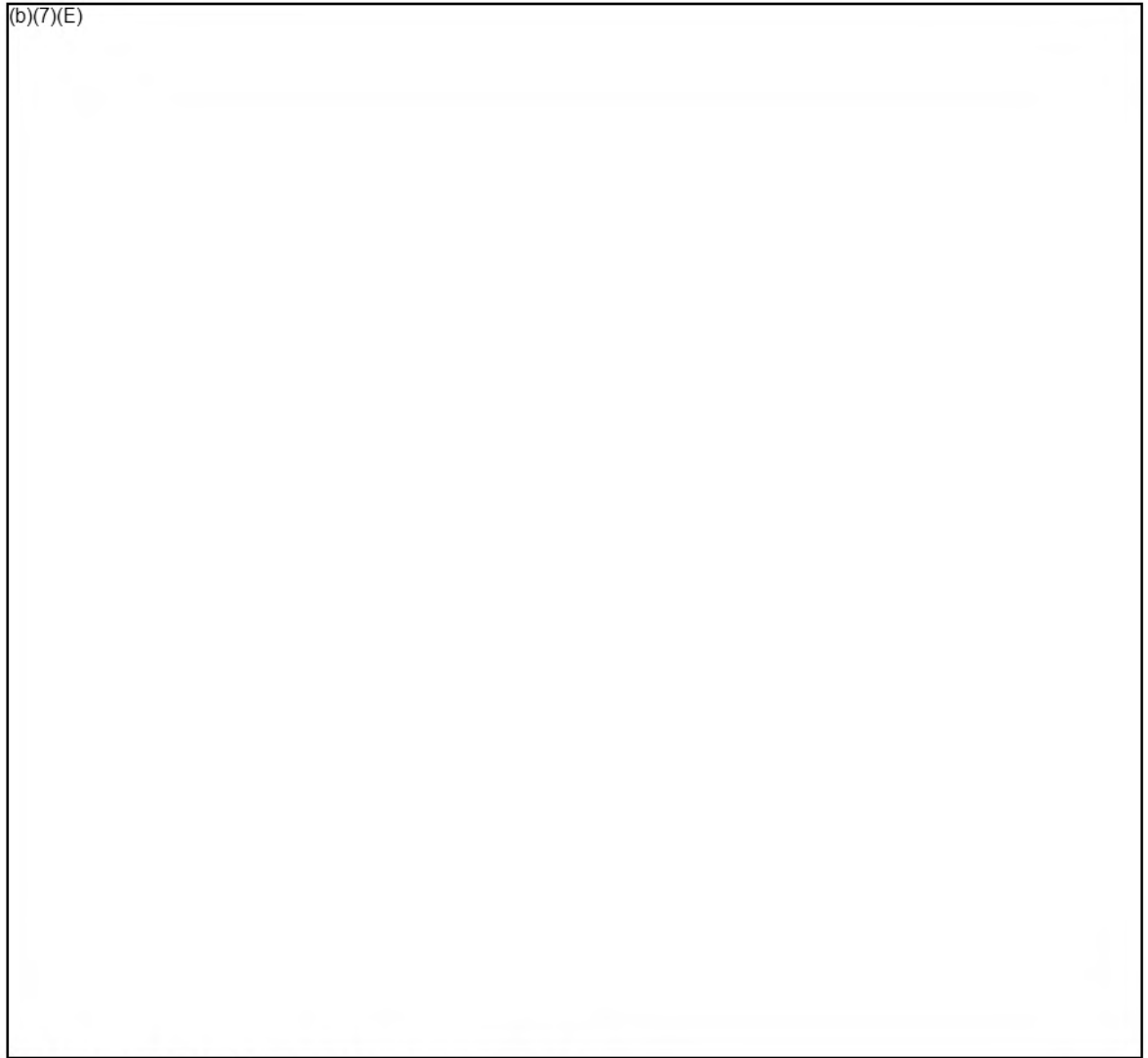
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2. Rapport fundamentals

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3. Methods for building and maintaining rapport

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F. EPO 6: Demonstrate confrontational interviewing skills.

1. Confrontational interviewing defined

- a. An interview in which the interviewee, most frequently a suspect in a criminal investigation, is positively confronted with information, evidence, and declarative statements regarding the investigation by the interviewer, that are designed to elicit admissions concerning his/her criminal culpability.

- 1) Commonly referred to as an “Interrogation” when involving a

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2. Key precepts of confrontational suspect interviews

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Notes:

5. Theories and Methods of Interrogations

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H. EPO 8: Discuss the use of interpreters in interviews.

1. Ascertaining the need for an interpreter
 - a. The need for an interpreter should be considered by HSI Special Agents whenever the individual to be questioned is a non-native English speaker
 - b. The interviewee's experience with English should be explored
 - 1) Length of time speaking English
 - 2) English speaking employment experience
 - 3) English speaking educational experience
 - 4) Interviewee's comfort using English in day-to-day conversation
 - c. Interviewee's experience and comfort with English should be documented in ROI.
 - d. Consider the need for an interpreter to conduct interview in interviewee's native language if there are concerns about the interviewee's ability to converse in simple English despite interviewee's willingness to do so.
 - 1) If interview will touch on complex or technical subject matter consider using an interpreter to preserve ability to explore all interview topics in both English and the interviewee's native language.
 - e. (b)(7)(E)
 - f. What kind of interpreter is required?
 - 1) Native language interpretation may not be enough as the ability to communicate in specific dialect(s) may be required.
 - g. Document in interview ROI the use of any interpreter as well as in what language (and dialect if any) the interview was conducted.
2. Role of interpreter
 - a. Remain subordinate to interviewer – a passive and impartial role.
 - b. Translate, word for word, only what is being said by both parties – no clarification or explanation of questions and answers.
 - c. Avoid distracting the interviewee in any way – may harm the interview process.
 - d. HSI Interviewing Technique Handbook suggests that the interpreters sit beside the interviewer or between, and to the side of, the parties.



- 1) Consider placing interpreter behind the interview subject if possible.
- 2) Eliminates distraction and removes barrier to interviewee eye contact with and orientation toward interviewer.

e. Key: (b)(7)(E)
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3. Preparation of interpreter – review of:
 - a. Review methods and procedures of this specific interview (away from the interviewee).
 - b. Reinforce that that Interviewer is in control of the interview
 - 1) Nothing can be said of which the Interviewer is not aware
 - c. Interpreter is conduit of information.
 - 1) No conversation with interviewee other than what interviewer says.
 - 2) Translates information without altering meaning from one language to another language.
 - 3) Translations/re-translations must be verbatim
 - a) Interpreter should repeat exact question or response into/from target language – verbatim
 - b) Interpreter should use 1st Person
 - (1) no “He said...” or “She said...” phrases
 - 4) Mimics interviewer’s voice inflection and gestures.
 - 5) Never edit any part of interview, no matter how trivial the remark.
4. Preparing to use interpreter
 - a. Think of what needs to be known.
 - b. Prepare clear, concise, simply stated, jargon-free questions.
5. Document interpreter’s effectiveness:
 - a. Interviewee and interpreter understand each other
 - b. Specific language and dialect used in interview
 - c. Interviewee advised at beginning of interview to tell interviewer if they do not understand the interpreter
 - d. Repeated confirmation throughout interview that interviewee and interpreter understand each other



6. Potential problems with using interpreters
 - a. Easy to miss shades of meaning. Interviewer must instruct interpreter about duties – act solely as a voice – and strictly limit his/her speech.
 - b. If necessary: interviewer may substitute another interpreter during interview. Repeating certain questions with the new interpreter can check the veracity and cooperativeness of interviewee, and the ability and performance of the first interpreter.

Demonstration

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CONCLUSION

Summary of Main Ideas

As stated in Section 4.12 of the HSI Interviewing Technique Handbook, an interview is a conversation conducted to obtain information, and may involve anyone: witnesses, informants, cooperating individuals, and the suspect. No investigation is complete until every person (witnesses or suspects) has been interviewed. Proficiency in interviewing increases the reliability of an interview's outcome. It can also minimize surprise testimony later in the prosecutorial process.

During the course of any investigation, SAs interview or interrogate individuals for a variety of reasons. For example, to:

- Establish if a crime actually occurred and, if so, the facts of the crime
- Verify or link prior information received from other individuals involved in an investigation or from physical evidence collected
- Secure additional evidence
- Discover details of other offenses
- Develop further intelligence

Statements gathered during interviews are powerful valuable tools in an investigation.

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Integration

Interviewing is a powerful investigative method to obtain information. It is useful at any time during an investigation and can trigger investigations. (b)(7)(E)

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Objectives

After completing this lesson, students are now able to conduct an interview after planning in a manner that complies with the 5th Amendment, the HSI Interviewing Handbook, and is necessary for managing human behavior in law enforcement situations.

In this lesson we:

- Explained the different interview types and discuss interview planning and considerations.
- Demonstrated documentation of interviews and summarized the HSI Custodial Recording Policy.



- Discussed advanced rapport strategies and techniques.

• (b)(7)(E)

- Demonstrated (b)(7)(E) skills.
- Demonstrated confrontational interviewing skills.
- Identified informant interviewing skills.
- Discussed the use of interpreters in interviews.

Motivation

Your job as criminal investigators is to provide prosecutors with tools that meet the legal and ethical requirements for admission in court. The lessons you have taken in Ethical Behavior and Core Values prepared you for the ethical challenges you will encounter in providing those tools. The lessons in law provided you with the constitutional framework necessary to legally obtain these tools so they are admissible in court.

This lesson provided the interviewing skills necessary to obtain information in an ethical and legal framework. Remember, as sworn federal investigators, you are involved in the objective search for truth in every facet of our investigations, which starts in the critical process of interviewing.

Test or Final Activity

The test for the interviewing lesson occurs during the practical exercises. The interviews are part of a weighted final examination. Instructors will evaluate students by using an interview checklist to ensure that they adequately perform the important aspects of the five-step interview process.



PLAN FOR SUSPECT INTERVIEW

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