



Homeland Security Investigations

Interviewing Techniques Handbook

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U.S. Immigration
and Customs
Enforcement

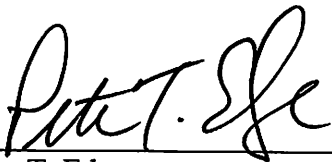
Foreword

The Interviewing Techniques Handbook provides a uniform source of national policies, procedures, responsibilities, guidelines, and controls to be followed by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents when conducting interviews as part of investigations and other enforcement-related activities within the scope of their authority. This Handbook contains instructions and guidance that will help ensure uniformity and operational consistency among all HSI field offices.

This Handbook supersedes ICE Office of Investigations Handbook 10-03, "Interviewing Techniques Handbook," dated April 28, 2010, and all other policies or other documents on interviewing techniques issued by the ICE Offices of Investigations, International Affairs, or Intelligence, or by HSI since April 28, 2010.

The Interviewing Techniques Handbook is an internal policy of HSI. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter, nor are any limitations hereby placed on otherwise lawful enforcement prerogatives of ICE. This Handbook is For Official Use Only (FOUO) – Law Enforcement Sensitive. It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with Department of Homeland Security policy relating to FOUO information and the ICE Directive on Safeguarding Law Enforcement Sensitive Information. This information shall not be distributed beyond the original addressees without prior authorization of the originator. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the HSI Records and Disclosure Unit, as well as the Office of the Principal Legal Advisor and/or the appropriate U.S. Attorney, are to be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public under the Freedom of Information Act, Title 5, United States Code, Section 552(b), and protected from disclosure pursuant to the law enforcement privilege. Any further request for disclosure of this Handbook or information contained herein should be referred to the HSI Records and Disclosure Unit.

The HSI Policy Unit is responsible for coordinating the development and issuance of HSI policy. All suggested changes or updates to this Handbook should be submitted to the HSI Policy Unit.



Peter T. Edge
Executive Associate Director
Homeland Security Investigations

MAY 10 2017

Date

**INTERVIEWING TECHNIQUES
HANDBOOK**

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INTERVIEWING TECHNIQUES HANDBOOK

Chapter 1. PURPOSE AND SCOPE

The Interviewing Techniques Handbook provides policy and procedures for U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents (SAs) when conducting investigative or informational interviews of individuals, such as suspects, witnesses, and/or experts, in support of criminal, civil, and administrative investigations. This Handbook also applies to Task Force Officers (TFOs) when they conduct investigative or informational interviews of individuals as part of HSI-led investigations.

Chapter 2. INTRODUCTION

During the course of an investigation, SAs conduct numerous interviews of individuals. Examples include, but are not limited to, suspects, witnesses, and experts. The interviews may be for informational or investigative purposes. Honing interviewing skills and developing proficiency in applying various interviewing techniques will ensure the proper collection of a reliable set of facts. The goal of the interviews is to obtain truthful responses to questions posed, including confessions or admissions.

SAs should consider multiple factors when conducting interviews, e.g., the time-sensitive nature of the scene of the crime; custodial vs. non-custodial interviews; interviewing suspects vs. witnesses or victims; interviewing adults vs. juveniles; enforcement during a search warrant vs. an arrest warrant; and investigative interviewing vs. intelligence collection.

The goals of interviews include the following:

- A. Establish whether or not a crime or a violation of law actually occurred and who the violators are;
- B. Ascertain the facts of the case, the case history, and determine the full scope of the case;
- C. Identify potential witnesses and/or suspects, including, where applicable, members of the criminal organization involved;
- D. Secure additional evidence including, where a criminal enterprise is involved, the logistical, financial, organizational, and communications infrastructure;
- E. Use the facts to probe a witness's story and investigate his or her credibility;
- F. Use the evidence to identify and arrest the perpetrators;

- G. Identify opportunities for proactive, disruptive, or intelligence development investigations, either in addition to pursuing prosecution or as an alternative; and
- H. Determine the suitability of a source or potential source of information.

(Note: SAs should contact the Victim Assistance Program/Management Oversight Unit for guidance on conducting forensic interviews (defined in Section 4.10.3).)

Chapter 3. DEFINITIONS

The following definitions are provided for the purposes of this Handbook only:

3.1 Admission

An admission is a self-incriminatory statement by a person that falls short of an acknowledgment of guilt.

3.2 Arrest

An arrest is an actual or constructive restraint or detention of an individual performed with the purpose of taking the individual into custody. To be lawful, an arrest must be based on probable cause to believe that the person has committed an offense against the United States.

3.3 Coercion

Coercion is the use or threatened use of mental or physical force directed towards the individual, his or her relatives, or his or her property in order to induce the individual to act against his or her free will.

3.4 Confession

A confession is an individual's oral or written acknowledgment of his or her guilt in having committed a particular illegal act or of having been an essential part of an illegal act.

3.5 Custodial

The term "custodial" is used to describe an interview or interrogation of an individual by SAs, after the individual has been taken into custody or has otherwise been deprived of his or her freedom in any significant way, conducted to elicit information about a crime or an administrative violation.

3.6 Custody

Custody is the formal arrest or restraint of freedom of movement which, when considered in the totality of the circumstances, would cause a reasonable person to believe that he or she is not at liberty to terminate contact with the SAs and leave.

3.7 Duress

Duress is the imposition of illegal restrictions on physical behavior, such as prolonged interrogation, deprivation of food, sleep, or excessive physical discomfort.

3.8 Examination

An examination, as the term is used in the Immigration and Nationality Act (INA), is the questioning of an alien by SAs to determine whether or not the individual in custody is legally present in the United States.

3.9 Interrogation

An interrogation is a detailed and formal questioning designed to elicit the truth relating to a crime or an administrative violation from a suspect. It is often accusatory in nature in order to contest any lies from the suspect.

3.10 Interview

An interview is a non-accusatory question and answer session with a suspect, victim, or witness with knowledge of the matter under inquiry. SAs will develop information, compare and contrast the statements to the known facts of the case, and assess the credibility of the individual.

3.10.1 Informational Interview

An informational interview is one that is conducted to obtain information pertaining to or in support of an investigation or inquiry. This type of information may be peripheral to the investigation but it is necessary to fully understand the circumstances associated with the violation of law.

3.10.2 Investigative Interview

An investigative interview is one that is conducted with the intent of soliciting information to further an investigation, knowing that this information has a high probability of being used as evidence in a judicial proceeding. This type of interview is typically conducted with suspects of the investigation, witnesses of a criminal act, informants, or aliens facing formal deportation proceedings.

3.10.3 Forensic Interview

A forensic interview is a fact-finding investigative interview that assists in determining whether or not a crime has been committed using a non-leading, developmentally-appropriate, and victim-sensitive approach. A forensic interview is conducted by a Forensic Interview Specialist or an SA who has been trained in conducting interviews of victims and witnesses of all ages. A forensic interview can be conducted with victims and witnesses of all ages, but it is primarily used for minors or for adults with a history of chronic abuse and those with disabilities or other special needs.

3.11 Juvenile

A juvenile is an individual under the age of 18.

3.12 Suspect

A suspect is a person believed to have committed a violation of law, regulation, or policy for which evidence is being sought.

3.13 Waiver

A waiver is a suspect's voluntary, knowing, and intelligent decision explicitly expressed to SAs, either orally or in writing, to forego a legal or constitutional right, such as the right to obtain the advice of counsel or the right to remain silent. A suspect may revoke a waiver of rights (either orally or in writing) at any stage of the interview or interrogation process.

Chapter 4. RESPONSIBILITIES

4.1 Executive Associate Director, Homeland Security Investigations

The Executive Associate Director of HSI is responsible for the oversight of the policies and procedures set forth in this Handbook.

4.2 Special Agents in Charge and Attachés

Special Agents in Charge and Attachés are responsible for implementing the provisions of this Handbook within their respective areas of responsibility.

4.3 Special Agents

SAs are responsible for complying with the provisions of this Handbook.

4.4 Task Force Officers

TFOs are responsible for complying with the applicable provisions of this Handbook when they conduct investigative or informational interviews of individuals as part of HSI-led investigations.

Chapter 5. LEGAL CONSIDERATIONS

SAs should have knowledge of the laws applicable to the specific offense(s) under investigation prior to conducting an interview or interrogation. This will assist them in evaluating the relevance of the information they receive as well as in detecting incriminating and relevant statements that may further support the Government's prosecution efforts.

It is also imperative that SAs understand the difference between criminal proceedings and civil or administrative proceedings. When criminal prosecution is contemplated, an advisement of the person's right against self-incrimination is mandatory before a custodial interrogation or interview is conducted or additional questioning can continue. This advisement is not required when only administrative proceedings are contemplated. In such circumstances, the person must only be advised of his or her rights, pursuant to Title 8, Code of Federal Regulations (C.F.R.), Section 287.3(c), after removal proceedings under INA § 238 or 240 are initiated.

5.1 Criminal Proceedings

SAs often conduct interviews and interrogations for the purpose of determining the extent of an individual's knowledge of, or involvement in, a crime. Cases are frequently won or lost in court by what witnesses and defendants said during these interviews and interrogations. However, when questioning an individual for one offense, SAs may develop investigative leads or admissions of involvement related to other offenses. This additional information may be of value to HSI or to other law enforcement agencies.

The United States Constitution and statutory authorities require SAs to respect the rights of witnesses and suspects. Confessions, testimony related to the confessions, admissions, and other self-incriminatory statements are inadmissible at trial if illegally or improperly obtained. It is of crucial importance, therefore, that information obtained during interviews and interrogations be obtained legally. Under no circumstances will SAs knowingly and/or willingly violate an individual's Constitutional rights.

5.1.1 *Miranda* Warnings

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that statements from the custodial interrogation of a defendant cannot be used in the government's case-in-chief at trial unless specific warnings were provided to the defendant. This advisement of Fifth Amendment protections has come to be referred to as the "*Miranda* warnings" or "*Miranda* rights." A crucial factor to consider when administering the *Miranda* warnings is

whether the suspect is in custody. If the suspect is in custody or reasonably perceives that he or she is in custody, advisement of the *Miranda* warning is required.

There are many versions of the *Miranda* warnings. It is recommended that SAs use ICE Form 73-025, “Statement of Rights,” for criminal cases. (See Section 5.1.4.) Prior to any custodial interview or interrogation, SAs must advise the individual as follows:

- A. You have the right to remain silent.
- B. Anything you say can be used against you in a court of law or other proceedings.
- C. You have the right to consult an attorney before making any statement or answering any questions.
- D. You have the right to have an attorney present with you during questioning.
- E. If you cannot afford an attorney, one will be appointed for you before any questioning, if you wish.
- F. If you decide to answer questions now, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting an attorney.

5.1.2 Circumstances When *Miranda* Warnings Are Not Required

Miranda warnings are not required if an individual is not in custody and is free to leave at any time. If SAs engage an individual in a consensual interview, defined as one in which the individual believes that he or she is free to terminate the encounter and leave at any time, the SAs may ask questions without providing the *Miranda* warnings.

Miranda warnings are not required when interviewing an individual if the sole purpose is to obtain evidence concerning the guilt of someone else, as long as the questions are not likely to elicit an incriminating response and the anticipated answer will not incriminate the individual making the statement. Thus, for example, if SAs wish to interview an individual about an alien smuggling ring in which he or she is not involved, it is not necessary to read the individual his or her rights.

Additionally, even after an individual has been taken into custody, questions pertaining to routine booking information, such as name, age, address, height, weight, eye color, and date of birth, do not have to be preceded by the *Miranda* warnings.

5.1.3 Circumstances in Which *Miranda* Warnings Are Required

If an individual is in custody and is subjected to questions that are likely to elicit an incriminating response (i.e., information or admissions relating to criminal conduct involving the individual being interviewed or interrogated), SAs must provide the *Miranda* warnings. If SAs

do not, they risk being unable to use statements made by the individual in a subsequent prosecution.

If criminal prosecution is being contemplated and alienage is an element of the crime (e.g., prosecution under Title 8, United States Code (U.S.C.), Sections 1325, 1326, or 18 U.S.C. § 922g(5), questioning about the individual's alienage should not proceed without first advising the individual of his or her rights. (Note: Section 8.1.1 of ICE Directive 10066.1 (former number: 7-3.0) entitled, "Consular Notification of Detained or Arrested Foreign Nationals," dated February 13, 2006, or as updated, states: "If the arresting official detains the foreign national for more than 4 hours, consular notification is required.")

5.1.4 Statement of Rights

SAs should read the *Miranda* warnings directly from ICE Form 73-025, "Statement of Rights," in criminal cases. They should not recite the warnings from memory. Reading of the Statement of Rights ensures that the warnings are recited in the same manner to each and every individual and supports the SA's claim that the entire Statement of Rights was presented to the individual. (See Section 5.1.1).

SAs should always document the reading of the *Miranda* warnings by having the individual sign ICE Form 73-025, "Statement of Rights," in the designated location. Whenever possible, the reading and signing of ICE Form 73-025 should be witnessed by another SA and documented by having the SA sign the form in the designated location. If another SA is not available, then another law enforcement officer or another reliable person may witness the reading of the rights.

Whenever possible, SAs should record all statements which may be used in criminal proceedings against the individual in a written sworn statement or in electronic media. This statement should reiterate the advisement of rights. It should also make clear that the individual's rights were explained fully, and that the individual freely waived his or her rights before the statement was recorded.

If there is a time lapse during the interview process, it is usually good procedure to re-advise the individual of the *Miranda* warnings and again obtain a waiver prior to resuming the interview. If not, at the very least, SAs should confirm that the individual still understands his or her rights and wishes to continue the interview.

5.1.5 The Right to Remain Silent

If, at any time prior to or during the interview or interrogation, the individual communicates that he or she chooses to remain silent, SAs should not initiate or must terminate the interview or interrogation, as appropriate. Once the individual has invoked his or her right to remain silent, SAs should not ask any additional questions of the individual. Additionally, SAs should not make any comments that could be construed as designed to encourage the individual to speak.

There are two circumstances when the interview or interrogation may continue:

- A. If the individual requests that the interview or interrogation be resumed; or
- B. After waiting a significant period of time, SAs may once again approach the individual in an effort to re-initiate the interview or interrogation but should advise the individual of his or her rights again.

(Note: In *Michigan v. Mosley*, 423 U.S. 96 (1975), the courts ruled that, even though Mosley had invoked his right to remain silent when initially advised of his rights, when interviewed again approximately 2 hours later and re-advised of his rights, his waiver of his right to remain silent after the second advisement of rights superseded his earlier decree.)

(Note: See 18 U.S.C. § 3501(c) and *Corley v. United States*, 556 U.S. 303 (2009). Generally, when a person is arrested and confesses within 6 hours of arrest, he or she must be presented to a magistrate judge for initial appearance unless a longer delay is “reasonable.” What is “reasonable” is determined on a case-by-case basis. However, SAs are reminded that statements obtained past the 6-hour window may be suppressed and deemed “involuntary” unless the delay is justified and deemed “reasonable” by the court.)

5.1.6 The Right to Counsel

If the individual communicates a desire to consult with counsel, SAs must not initiate or must terminate the interview or interrogation, as appropriate. SAs should not ask any additional questions of the individual. A subsequent waiver of the right to counsel by an individual who has previously invoked his or her right to counsel under *Miranda*, who remains in custody, and who is re-approached by SAs is presumed to be involuntary. Questioning of the individual may continue only under certain circumstances:

- A. If an individual in custody being interviewed or interrogated re-initiates communication about the case with the SA and indicates that he or she wants to continue the interview or interrogation without consulting counsel, the questioning may be resumed. The individual should be provided with “fresh” *Miranda* warnings at this time.
- B. If a break in custody of 14 days occurs, it provides ample time for the individual to get reacclimated to his or her normal life; to consult with friends, family, and counsel; and to shake off any residual effects of prior custody. After a 14-day break in custody, SAs may re-approach the individual who is now back in custody. A waiver of the right to counsel in this situation is not presumed involuntary. The rule that an individual who has invoked his or her right to the presence of counsel is not subject to further interview or interrogation until counsel has been made available does not

apply if a break in custody lasting 14 days has occurred. (*See Maryland v. Shatzer*, 559 U.S. 98 (2010).)

- C. If a suspect invoked his or her right to counsel while in custody and is then released, nothing prohibits SAs from approaching the suspect who remains out of custody, asking questions, and obtaining a statement from him or her without a lawyer present. However, the period of time between release from custody and subsequent questioning can be relevant.

Given that situations involving questioning of an individual who has previously invoked his right to remain silent or right to counsel (unless counsel is present) can be impacted by numerous factors, SAs should consult with OPLA embed attorneys in situations where the admissibility of responses to subsequent questioning could be challenged.

5.1.7 The *Brady* Doctrine

The *Brady* doctrine, stemming from the United States Supreme Court's decision in *Brady v. Maryland*, 373 U.S. 83 (1963), requires government disclosure to the defense of any exculpatory evidence known to the government. Exculpatory evidence is that which would cast doubt on the defendant's guilt or might lessen the defendant's punishment. The defense does not have to request the information; instead, if the government knows of it, it must be disclosed. *Brady* materials must be provided by the Assistant U.S. Attorney (AUSA) to the defense within a reasonable time in advance of trial so that the defense may have an adequate opportunity to decide how to use the information. To avoid jeopardizing a case or potentially incurring other negative consequences, SAs should consult with the AUSA regarding all potential *Brady* information. (Note: In *Brady v. Maryland*, the defendant was convicted and sentenced to death for first-degree murder committed in the course of a robbery. Although the government knew that Brady's accomplice had confessed to the actual murder, that information was not disclosed to the defendant. The U.S. Supreme Court later reversed Brady's conviction because this information was not disclosed to the defense.)

5.1.8 Disclosure under *Giglio* and *Henthorn*

The government is required to disclose information that tends to impeach any government trial witness (*United States v. Giglio*, 405 U.S. 150 (1972)). "Impeachment" is information that contradicts a witness or tends to make the witness less believable. The defense does not have an automatic and unrestricted right to view personnel files. The government, however, may be required to review files for *Giglio* information and produce documents for an *in camera* inspection (by the judge only). The judge will decide if the defense will get the information. To avoid jeopardizing a case or potentially incurring other negative consequences, SAs should consult with the AUSA regarding all potential *Giglio* information. (Note: The Ninth Circuit Court of Appeals extended this required disclosure to evidence of perjurious or dishonest conduct contained in the personnel files of government witnesses (*United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991)).

5.1.9 The Jencks Act

The Jencks Act, codified at 18 U.S.C. § 3500, requires the AUSA to provide the defense any prior statements of a trial witness that are in the possession of the government to allow the defense to effectively cross-examine the witness. The Jencks Act requires the AUSA to deliver prior statements only after a witness testifies and before cross-examination begins. However, to avoid unnecessary delays during the trial, the AUSA will normally provide Jencks Act statements to the defense in advance of trial. To avoid jeopardizing a case or potentially incurring other negative consequences, SAs should consult with the AUSA regarding all potential Jencks material.

5.2 Administrative Proceedings with Respect to Title 8

As set forth in INA § 287(a)(1), 8 U.S.C. § 1357(a)(1), and its implementing regulations at 8 C.F.R. § 287.5(a)(1), SAs may question, without a warrant, any alien or person believed to be an alien as to his or her right to be or to remain in the United States. Questioning alone does not constitute a Fourth Amendment seizure. The individual being interviewed or interrogated, however, must voluntarily agree to remain during the interview. If the individual refuses to speak to the SA, absent reasonable suspicion that the individual is unlawfully present, the individual may not be detained.

Nonimmigrants, including those legally present in the United States, must provide full and truthful information regarding their immigration status when requested to do so by SAs; willful failure to do so (regardless of whether or not the information requested was material) shall constitute a failure to maintain their nonimmigrant status under INA § 237(a)(1)(C)(i), 8 U.S.C. § 1227 (a)(1)(C)(i). (*See also* 8 C.F.R. § 214.1(f).)

If the SA is not seeking information that will be used to criminally prosecute the alien, the interview, including the taking of a sworn statement, should proceed pursuant to standard processing methods used for administrative (civil) processing for removal. The absence of *Miranda* warnings does not render an otherwise voluntary statement by the alien inadmissible in a deportation hearing. Thus, there is no need to provide *Miranda* warnings to an alien being processed for removal.

An alien arrested without a warrant and processed for removal shall be interviewed by the arresting SA; additionally, the alien shall subsequently be examined by another SA. Typically, the examination (defined in Section 4.8) by the second SA will be conducted when entering the information into the Enforcement Integrated Database Arrest Graphic User Interface for Law Enforcement (EAGLE). If no other qualified SA is readily available and waiting for another SA would result in an unnecessary delay, the arresting SA may conduct the examination (8 C.F.R. § 287.3(a)).

If, while performing their duties, SAs encounter aliens who are not certain of their status or who claim to be U.S. citizens, they should comply with the guidance provided in ICE Directive

16001.2, entitled, “Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE,” dated November 10, 2015, or as updated.

5.3 Advisement of Rights in Administrative Proceedings

If the individual is determined to be a removable alien, upon initiation of removal proceedings, the SA must advise him or her that (*see* 8 C.F.R. § 287.3(c)):

- A. He or she has been arrested because it is believed that he or she is an alien not lawfully entitled to be or to remain in the United States;
- B. He or she has the right to be represented by counsel of his or her own choice at no expense to the U.S. Government;
- C. Any statement he or she makes can be used against him or her in a subsequent administrative proceeding; and
- D. A decision will be made within 48 hours as to whether he or she will continue to remain in custody or be released on bond or on his or her own recognizance, in accordance with 8 C.F.R. § 287.3(d).

As set forth in 8 C.F.R. § 287.3(c), at the time SAs provide the individual with a charging document (Notice to Appear (Department of Homeland Security (DHS) Form I-862)), SAs shall provide the alien with a list of available free legal services. SAs should note on the Notice to Appear that such a list was provided to the alien.

Chapter 6. PREPARATION FOR THE INTERVIEW

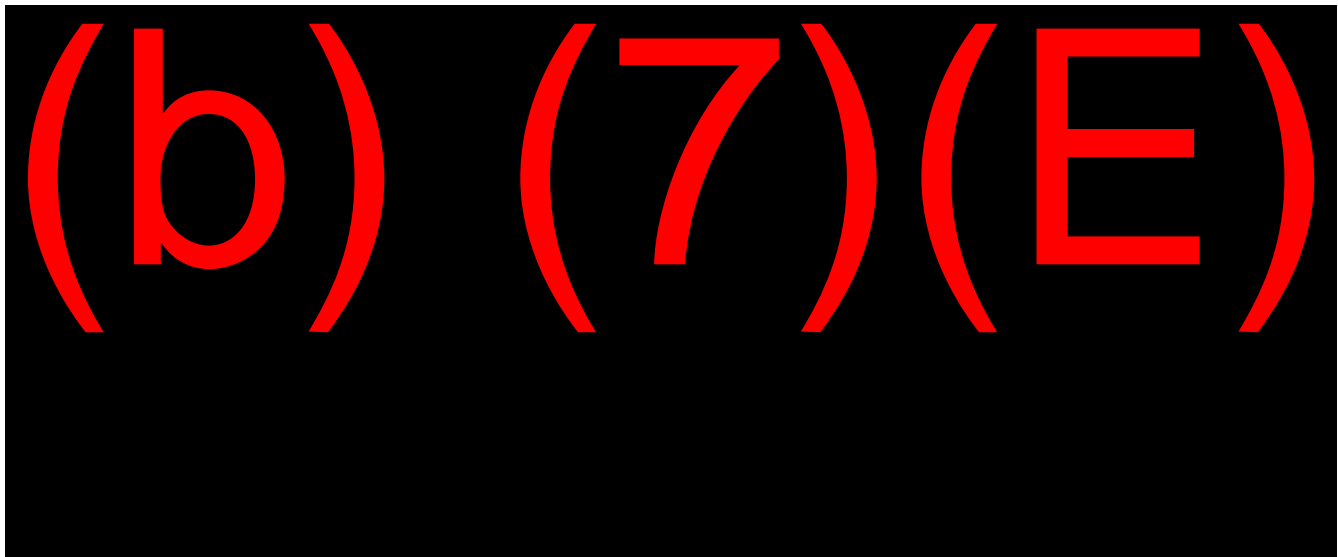
Provided that there is sufficient time, SAs will carefully study accumulated materials and prepare as thoroughly as possible before an interview to ensure that all pertinent details are covered. Complete familiarity with all factors will enable the SAs to prepare an interview properly, detect any discrepancies and falsehoods, and discourage the individual being interviewed from attempting to withhold or distort information. On the basis of such a detailed study, SAs will carefully determine to the extent possible:

- A. The proper individual to interview;
- B. The timing and setting of the interview;
- C. The questions which the individual must answer to further the investigation;
- D. The probable degree of willingness of the individual to be interviewed;

- E. The manner of the interview and the techniques most appropriate to the individual's position, willingness, reliability, personality, and personal weaknesses;
- F. The most effective strategy and sequence of interviews of multiple suspects and witnesses in order to draw the overall picture, identify specific roles and culpability, and the best use of the information against each suspect;
- G. The probable degree of reliability of the individual's information, and any factors which may consciously or unconsciously influence, color, or distort such information; and
- H. The questions to which the SAs already know the answers that they can use to test the truthfulness of the individual being interviewed.

Chapter 7. INTERVIEWING TECHNIQUES

The following are some of the more commonly used interviewing techniques. (Note: Other techniques exist and some of those mentioned are also known by other labels. For example, as of the date of issuance of this Handbook, the Federal Law Enforcement Training Center teaches a specific methodology called the Five Step Law Enforcement Interview. SAs who wish to know more about this should contact the ICE Academy.) The essential point to keep in mind is that numerous possible approaches to an interview can be utilized. The selection of one interviewing style over another should not be made on the basis of what is comfortable for the SA who is conducting the interview. Instead, it should be tailored to the circumstances of a particular case and the personality of the individual being interviewed.



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(b) (7) (E)

Chapter 8. NOTES

Notes are tools used to build a case. They should supply information which, together with the statements and documents obtained during an investigation, will facilitate the preparation of a complete report. SAs should maintain notes in such fashion that they can be easily understood and utilized by another SA should the case be reassigned. SAs should avoid taking notes that are too cryptic to decipher at a later date. Additionally, when taking notes in shorthand or abbreviated form, SAs should promptly transcribe them. They must not destroy the rough notes. (See Section 8.5.) Notes are frequently used to recall details when drafting a formal report, and they may also be of use in giving accurate court testimony. When prepared in conjunction with an investigation that results in criminal prosecution, notes are discoverable.

8.1 Field Notebook

A notebook is virtually indispensable for SAs, and it should be one with which SAs are comfortable. HSI has no specific recommendation or preference as to the type of notebook used. When choosing a notebook, SAs should take into consideration the probability that they will likely need to organize notes for more than one investigation at any given time. SAs should place some identification information on the inside cover of their notebooks in case of loss.

8.2 General Rules

Although the method of taking notes is left to each SA's discretion, all notes should be clear, complete, and accurate. SAs should observe the following basic rules in note-taking:

- A. Date all notes.
- B. Make all entries in ball-point pen or some other writing instrument that will leave a permanent record.
- C. Make every effort to ensure that the notes are sufficiently legible for another person to use, if needed.
- D. Identify each individual interviewed and include his or her residence and business addresses, occupation, nationality, and status under immigration law (if applicable), as well as the date and location of the interview.
- E. Describe the relationship between the individual being interviewed and the subject of the investigation, as well as the length and nature of that relationship.
- F. Retain originals in the case file (in compliance with the Case Management Handbook (Office of Investigations (OI) Handbook (HB) 08-02), dated February 1, 2008, or as updated).

- G. When making a correction to any notes, SAs should draw a single line through the items changed and initial the change. This ensures that all changes are acknowledged by the SA.

8.3 When to Take Notes

There is no strict rule as to whether to take notes during or after the interview or interrogation, since the particular circumstances of each interview or interrogation will vary. (b) (7)(E)

[REDACTED]

SAs must therefore evaluate the situation and the individual and determine the best timing for their note-taking. In some cases, a statement such as: “I think that what you’re telling me may be (helpful/significant/important, etc.); do you mind if I take notes?” may put the person being questioned at ease; in others, it may cause the person to become silent and “freeze up.”

Lengthy interviews or interrogations may require taking notes long before the person being questioned has covered all pertinent information orally. In such cases, SAs might produce a notebook or pad for the purpose of recording a number, name, amount, or similar information that they could not normally be expected to remember. Again, it may put the individual being questioned at ease to request permission to record the information before producing the notebook or pad.

SAs should never allow note-taking to impede the progress of an interview or interrogation. (b) (7)(E)

[REDACTED]. SAs should write their notes immediately after the interview or interrogation while the conversation is still fresh in their minds and document the time and date the notes were recorded.

SAs should be aware that all notes are discoverable by the defense at trial. Care should be taken that SAs conducting interviews or interrogations or the SA and AUSA conducting proffers do not each take notes; conflicts between the notes can cause problems for the case/trial.

8.4 Friendly/Hostile Witnesses

In some instances, SAs will interview friendly witnesses; in others, SAs will face witnesses who are hostile. Friendly witnesses are usually anxious to impart information and may not object to the taking of notes. They will frequently consider it to be an acknowledgment of the importance of what they have to say. On the other hand, a hostile witness may feel intimidated by note-taking and may withhold pertinent information. Ordinarily, a hostile witness is uncooperative; the presence of a notebook may make him or her even more reluctant to talk.

8.5 Retention and Preservation of Interview Notes

SAs will give care and consideration to ensure the accuracy of statements and comments recorded in the notes that are taken.

All interview and interrogation notes must be preserved in any case where criminal prosecution related to those notes is even remotely possible. SAs will place the notes in an envelope, appropriately label them, and place them in the case file.

8.6 Disclosure of Interview Notes

When requested, ICE may be required to disclose interview notes pursuant to a discovery request or a court order (see Sections 5.1.8 and 5.1.9). ICE may also be required to disclose the same records pursuant to a Freedom of Information Act (FOIA) request.

Chapter 9. CONDUCTING INTERVIEWS

SAs conduct interviews involving virtually anyone, e.g., witnesses, informants, cooperating individuals, and suspects. Critical to a successful interview is obtaining cooperation. In order to increase the likelihood of a successful interview, it is important for SAs to establish rapport with an individual. Building rapport with the individual will involve SAs in establishing credibility, respect, and fairness. If SAs have good rapport with the individual, they will increase the probability of learning the full scope of the crime and increase the chance for active cooperation in furthering the investigation.

In establishing rapport, SAs should speak appropriately to the individual and his or her circumstances. This may be speaking slowly, clearly, and in plain and simple language. SAs must not permit the person being interviewed to take control of the questioning. They should discourage any “off the record” statements. There is nothing “off the record.”

Additionally, SAs must ensure that they fully understand the information which the individual being questioned is providing, before reducing it to writing. At all times possible, the written statement should be taken at the end of the interview. The statement is one of the SAs’ most valuable tools, and SAs must exercise care to develop all material matters.

SAs should also be aware that, while they are interviewing the suspect, they are potentially divulging information related to the case the suspect may not know about. SAs must carefully consider their questions so as not to reveal facts of the case they do not want to reveal.

9.1 Roles and Responsibility of the Interviewers

SAs should always conduct interviews with another SA because it is the most effective means for applying various interviewing techniques, ensuring complete documentation, and providing the necessary accountability. There will always be times when SAs encounter individuals with

information; SAs should eventually conduct a thorough interview in order to fully appreciate and document the information.

The SAs must consider who will take the lead and who will take on the supporting role. This decision should be based not on whether someone is the case agent but on the capability of the interviewers and the circumstances surrounding the interview.

A. Roles of the Lead Interviewer

- 1) Take the lead and conduct the introduction;
- 2) Establish rapport;
- 3) Administer the *Miranda* warnings, if necessary;
- 4) Execute the investigative technique and line of questioning;
- 5) Take limited notes if necessary to help with the interview flow and coverage of topics; and
- 6) Bring in the supporting interviewer, as appropriate.

B. Roles of the Supporting Interviewer

- 1) Follow the cues and work in concert with the lead interviewer;
- 2) Act as primary note-taker and be mindful of key follow-up points and areas for additional clarification and explanation in support of the lead interviewer; and
- 3) Identify important areas or types of questions not covered by the lead interviewer.

9.2 Types of Questioning

SAs have the freedom to be as flexible and nimble as possible in delivering the right type of questions during an interview. SAs may have extensive as well as intimate knowledge and information on an individual based on a lengthy investigation. This could include intelligence based on informants, email search warrant information, consensual telephone calls and wire intercept communications such as telephone, email, and chats. At other times, SAs may have limited information on an individual based on the immediacy of the incident or situation. For example, in a seizure at a port of entry (POE), SAs will quickly gather as much information as possible after speaking with the seizing U.S. Customs and Border Protection (CBP) Officers and witnesses; however, the SAs will largely conduct the interview with limited knowledge of the suspect or of any criminal organization involved and its infrastructure, and may factor in any time-sensitive aspects of the investigation. Regardless of the circumstances, all SAs should approach interviews with four different types of questions:

- A. Open-Ended Questions. Open-ended questions allow an individual to provide an unrestricted response.
- B. Specific Questions. Specific questions help clarify, develop, or add to the information the individual has already given or the investigator already knows.
- C. Closed Questions. Closed questions are ones that provide the individual with a limited number of alternative responses.
- D. Leading Questions. Leading questions imply the answer or assume that something is a fact.

9.3 Interview Setting

SAs may not always have an ideal setting in conducting interviews. In all possible situations, SAs should conduct interviews in a private but quiet room where the interviewers can have the full attention of the individual. Ideally, interviews should be held in a room that is designated for interviewing. Criteria to be considered when selecting an interview location include:

- A. The safety of the SAs;
- B. Privacy so that the interview cannot be easily observed by others;
- C. Time for the interview to be conducted without interruption;
- D. Space to take notes and conduct required administrative activities; and
- E. The location's suitability for electronic recording.

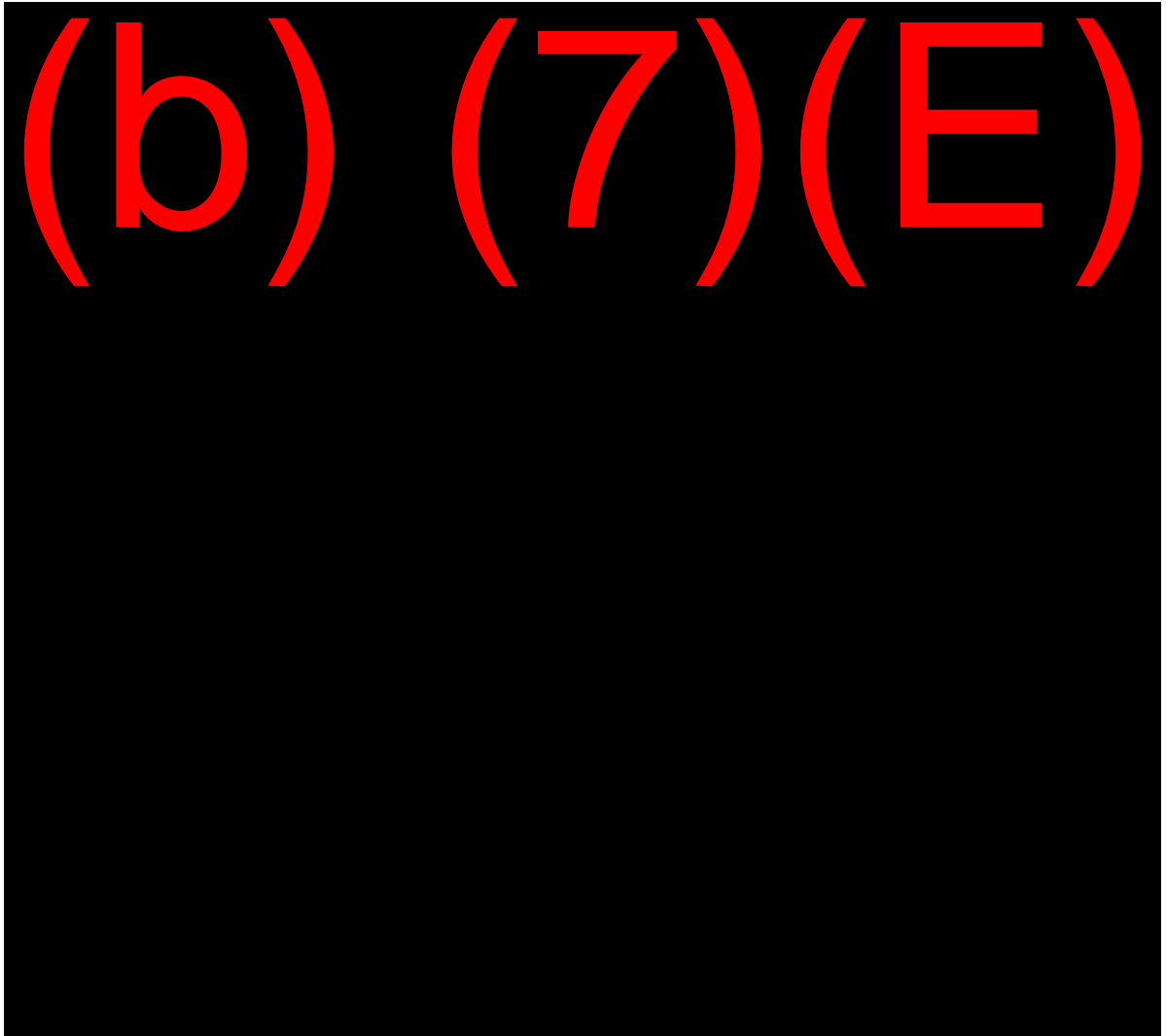
9.4 Interview Practices to Avoid

- A. Do not have more than two interviewers; individuals may perceive that they are under arrest or not free to go if there is an overcrowding by investigators or officers.
- B. In a non-custodial interview, do not place the individual in a corner where his or her movement is restricted; individuals may perceive that they are under arrest or not free to go if they are restricted in a corner of a room.



9.5 Prejudicial Factors Affecting the Interview

When interviewing an individual, SAs should seek out the facts and the contributing factors and not try to prove or disprove preconceived opinions. To accomplish this, SAs must be constantly on alert to sift the truth from what is false. In some investigations, the individual being interviewed may, for one reason or another, deliberately lie. In others, he or she may unconsciously color and distort facts. Some of the factors which may color or distort the information provided by an individual being interviewed include:



9.6 Multi-Suspect Interviews

In situations involving multiple suspects during an incident or crime scene, SAs can apply maximum leverage on the information gleaned from the suspects. For example, SAs can assess the criminal activity and cross check the roles and validity of the information. SAs can apply the information from each of the suspects as leverage to help identify the organizer and obtain an admission or confession from the primary organizers.

9.7 Interviewing Cooperating Witnesses

Cooperating witnesses are often interviewed at locations outside the office. More often than not, SAs may have a more fruitful interview when it is conducted at a location where the witness feels psychologically comfortable, such as in his or her own home or place of business or in a neutral setting, such as a restaurant or similar public area.

9.7.1 Establishing Rapport with the Witness

Uncertainty about what SAs expect and the novelty of the situation may tend to make the witness apprehensive and guarded. A degree of fear may develop which may cause the witness to withhold information. SAs' resourcefulness and personality will be tested during the preliminary phase of the interview. They must put the cooperating witness at ease and try to establish a rapport while trying to uncover any reasons for the witness's possible reluctance to cooperate in certain areas. SAs must also persuasively convince the witness that there is a real need for his or her cooperation.



9.7.2 Questioning the Witness

(b) (7)(E) SAs should allow the witness to give a complete account of whatever is being sought with minimal interruptions. (b) (7)(E)

(b) (7)(E)

Sudden silence on the part of the witness may indicate deliberation as to whether he or she should share information with the SAs. Uncertainty or sudden confusion may indicate that a sensitive area has been reached. Should a conversation reach this stage, it is advisable for SAs to review the sequence of topics preceding this apparent loss of memory. An attempt to withhold

information because of guilty feelings may also be found in sudden emotional outbursts of indignation or anger. A witness may unexpectedly shift from the topic of the conversation to a totally unrelated subject area. This may be an indication that information is being withheld. Probing that is conducted in a tactful, understanding, and sincere manner will often reveal the reason a witness wants to evade a particular topic.

The silence which occurs when a conversation lags may lead unskilled interviewers to lose control of the situation if they become unnerved and put words in the witness's mouth. Also, SAs' impatience may make them lose their temper or dominate the conversation. Long periods of silence may even be embarrassing because SAs may feel that it is their responsibility to keep the conversation going and they must do something. Consequently, when a pause occurs, SAs should avoid the temptation to immediately try to fill the gap. Some witnesses are quick to realize that, if they remain quiet, SAs will do more of the talking.

Some questions cannot be answered with a simple yes or no. Explanations are necessary to learn all the facts. Yes or no questions may help reluctant witnesses since they determine what the witnesses will and will not answer and limit the witnesses to yes or no responses. However, some witnesses have a tendency to agree with the questioner just to be agreeable or because they may not understand the question or they are afraid to disagree.

Leading or suggestive questions have the same effect as yes or no questions because they may make the cooperating witnesses say something that they really do not mean. For example, the question "What did he do then? Hide the false import documents?" may result in an affirmative answer because the interviewee does not wish to appear forgetful or unobservant. The question should have been an open-ended one, such as: "What did the suspect do with the false import documents?" The witness might have answered that he or she did not see and thereby avoided giving false information. Other examples of open-ended questions are: "What happened then?" or "Tell me what she did."

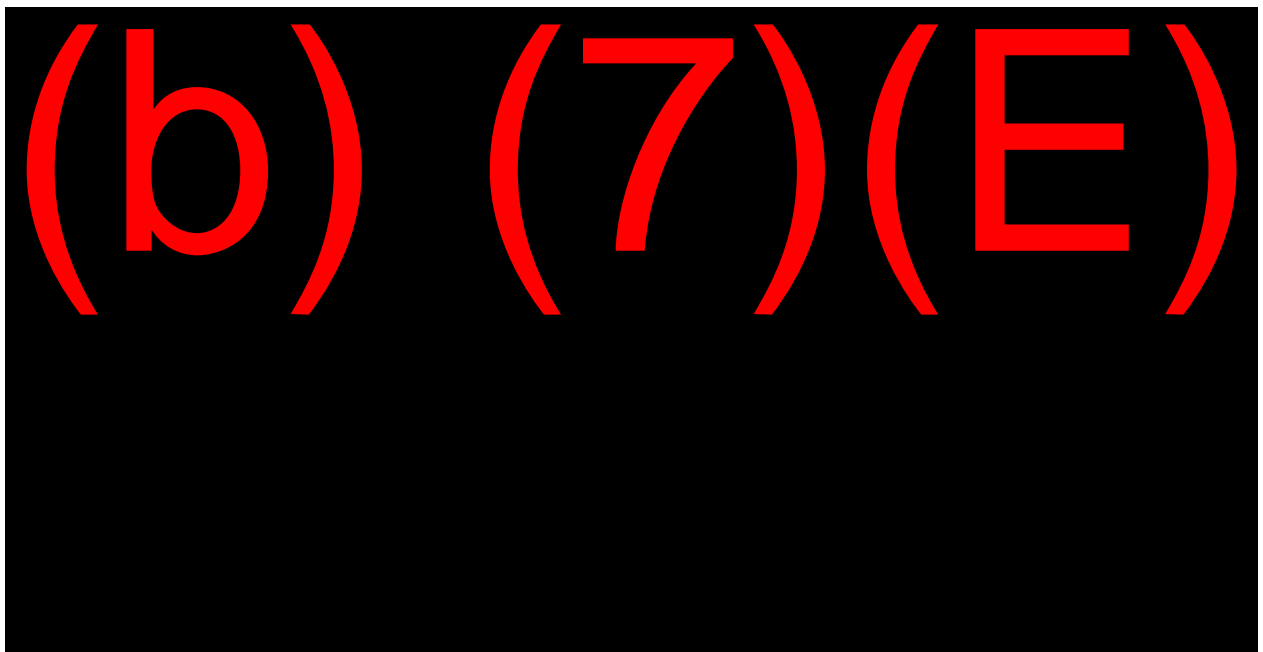
The use of rapid-fire questions should be avoided. Some feel that this technique yields results, but it may confuse the witness and create emotional tension. Asking a question before the preceding one can be answered may also allow a reluctant witness to avoid giving information by not allowing him or her to finish a statement. However, at times, a quick series of short direct questions may be more appropriate.

Once the witness has begun to talk freely, SAs should avoid interruptions. An attempt to take complete notes while a witness is narrating a story may interrupt the flow of information. The witness may become distracted and may forget important details. Furthermore, some people are uncomfortable in the presence of someone who is obviously recording everything they say. Naturally, SAs must take some notes, but they should do so inconspicuously and selectively during the initial narration. SAs can write down names, addresses, and/or certain phrases that will serve to outline the narrative for review. Most of all, SAs should listen carefully. When the witness has finished his or her narrative, SAs should review what has been said with the witness. Using this step-by-step process, they can proceed to ask direct questions and take careful notes.

The ideal interview process, therefore, begins with a favorable impression made by the SAs. A free-flowing narration from the witness, if prompted by a minimum number of questions from the interviewer, is most desirable. Questions, when asked, should be carefully nondirective. The statement is then reviewed carefully by the interviewing SA, at which time specific questions and detailed notes are produced.

9.7.3 Ending an Interview with a Cooperating Witness

No interview with a witness should be abruptly ended with a curt dismissal, such as: “Okay. You may leave.” As the interview ends, the conversation should be closed in a courteous and professional manner. A summary of what has been covered, for instance, can be given. Appreciation of what the cooperating witness has done should be made known by thanking the witness for his or her time and cooperation. Such expressions of courtesy during and after the interview create a favorable impression and will encourage further cooperation.



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(b) (7)(E)

9.9 Interviewing Suspects

During any investigation, it is normal for information to be obtained by the direct interviewing of a suspect. It is not at all unusual, for instance, that an individual who has been interviewed as a source of information during the course of an investigation becomes a primary suspect at a later date. (b) (7)(E)

When preparing to interview a suspect, SAs should first review all the important details of the case. SAs should consider the basic questions of who, what, when, where, how, and why and study any information that is available about the suspect to be interviewed.

9.10 Custodial Interviews

A custodial interview or interrogation (see the definition of “custody” in Section 4.6) is a systematic questioning of an individual to determine the extent of his or her involvement in criminal activity. The *Miranda* warnings must be read to the individual at the outset of the custodial interview or interrogation. SAs should be fully prepared for the interview or interrogation and take into consideration all the information obtained from the witnesses and informants.

Whenever possible, SAs should draw up a series of key questions and refer to them during the course of the interview or interrogation.

The SAs should also:

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(b) (7) (E)

(Note: ICE Policy Number 10087.1, “Electronic Recording of Custodial Statements in Federal Criminal Investigations,” dated July 15, 2016, establishes a presumption that custodial statements of an individual taken by an ICE criminal investigator in a place of detention with suitable recording equipment, following an arrest for a federal crime but prior to initial appearance, will be electronically recorded, subject to certain exceptions.)

9.11 Interviewing Juveniles

SAs should exercise special consideration when interviewing juveniles, defined as individuals under the age of 18 (see Section 4.11).

9.11.1 Non-custodial Interviews of Juveniles

Nothing prohibits SAs from encountering juveniles in a public setting and conducting brief, informal interviews relating to an investigation. If SAs need to conduct a more formal interview, however, especially if the situation involves moving the juvenile to an office setting, they should make every effort to contact and seek the consent of the juvenile’s parent or legal guardian in advance.

9.11.2 Custodial Interviews of Juveniles

According to 18 U.S.C. § 5033, prior to conducting a custodial interview of a juvenile, SAs must take the following steps:

- A. Immediately notify the U.S. Attorney’s Office.
- B. Immediately advise the juvenile of his or her *Miranda* rights using language that the juvenile can understand.
- C. Immediately notify a parent or guardian of the juvenile’s arrest, explain the nature of the charges, and notify the parent or guardian of the juvenile’s legal rights.

- D. If the custodial interview develops into an arrest, immediately bring the juvenile before the appropriate legal authority (i.e., magistrate or federal judge) for the juvenile's initial appearance.

(Note: SAs operating in the Ninth Circuit must also give the parents the opportunity to speak with the juvenile if they request it.)

SAs should document their notification of the U.S. Attorney's Office and all efforts, whether successful or not, to contact the juvenile's parents or guardian. If the SAs make a good faith effort to contact the parents or guardian but fail, they may proceed with the interview. (Note: Also see Section 8.13 of the Arrest Procedures Handbook (HSI HB 15-03), dated July 21, 2015, or as updated.)

9.12 Interview Related to a Denaturalization Investigation

Denaturalization is the revoking and setting aside of the order admitting a person to citizenship and cancelling the certificate of naturalization. In view of the high standard of proof required to revoke citizenship, when an investigation involves denaturalization, SAs must take a written, verbatim question-and-answer statement to support civil or criminal denaturalization proceedings in federal court. If there is any possibility that the individual may rely on the inability to understand English as a defense, SAs should use an interpreter. (See the Denaturalization Investigations Handbook (OI HB 08-01), dated January 15, 2008, or as updated.)

In criminal cases, SAs must comply with ICE Policy 10087.1, "Electronic Recording of Custodial Statements in Federal Criminals Investigations," dated July 15, 2016, or as updated, when recording such an interview or interrogation. In civil cases, if possible, SAs should make an electronic audio or video recording of the interview to create an accurate record of it.

9.13 Inquiry as to Whether There Is a Criminal Record as Part of an Interview

When it is necessary to question an individual as to whether he or she has a criminal record, SAs should exercise care to phrase questions in simple language that will permit neither a misunderstanding of the question nor evasion in the answer. They should phrase questions so as to include a possible arrest in the United States or in any foreign country. If the individual being interviewed is an alien who does not speak English and an interpreter is being used, SAs may wish to define the word "arrest" (see Section 4.2) to avoid a later claim that the alien was being truthful but did not understand the questions.

If there is any indication of an arrest, SAs should develop the record to show as specifically as possible:

- A. The relating violations of law;
- B. The date and place of the violations;

- C. Whether the charges were in federal, state, local, or foreign court;
- D. The nature of the violations and attendant circumstances; and
- E. The resulting actions such as dismissal or date and place of trial, verdict, and sentence, as appropriate.

SAs should include information on any subsequent actions, such as the granting of a pardon or a pending appeal of the conviction or sentence rendered.

Chapter 10. ADMISSIONS AND CONFESSIONS

The difference between an admission and a confession can be difficult to distinguish.

An admission (defined in Section 4.1) is a self-incriminatory statement made by an individual that falls short of an acknowledgement of guilt. It is the acknowledgement of a fact or circumstance from which the individual's guilt may be inferred.

A confession (defined in Section 4.4), on the other hand, is an individual's oral or written acknowledgment of his or her guilt in having committed a particular illegal act or of having been an essential part of an illegal act.

Two types of improper behavior could adversely affect the admissibility of a confession: coercion and duress (defined in Sections 4.3 and 4.7, respectively).

When an individual makes an admission or a confession, SAs should document it by the use of a written and signed statement. This will depend on the amount and nature of the information to be recorded, the availability of a note taker, and the intelligence and temperament of the individual. (b) (7)(E)

[REDACTED]

[REDACTED]

(b) (7)(E)

Each page of the statement should also be numbered and initialed by the individual. This helps rebut any allegations at trial that SAs made the individual sign a blank sheet, or that the individual signed the statement without reading it.

SAs should use the appropriate sworn statement form (see the Note below) and the Statement of Rights (ICE Form 73-025) when advising an individual of his or her protections under the Fifth Amendment and when completing a written statement. ICE Form 73-025 has an acknowledgment and waiver of rights section that will show that the individual receives protection under the Fifth Amendment. (Note: The sworn statement forms are the Record of Sworn Statement in Criminal Proceeding (DHS Form I-263B); Record of Sworn Statement in Administrative Proceeding (DHS Form I-263C); and Record of Sworn Statement – Witness (DHS Form I-263W). It should be noted that DHS Form I-263A is the last page of DHS Forms I-263B, I-263C, and I-263W. As a result, DHS Form I-263A should also be used whenever any of the three other forms is used.)

Chapter 11. SYMPTOMS OF DECEPTION

The trained listener will hear responses to questions and statements that may form patterns of evasiveness and deception. With practice, SAs will be able to recognize these statements as possible lies. (b) (7)(E)

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Chapter 12. USE OF INTERPRETERS

When questioning a non-English speaking individual, SAs should first ascertain the need for an interpreter. In some cases, an individual being interviewed or interrogated may express a desire to communicate in the dominant language (e.g., English is the dominant language of the United States) despite a lack of proficiency in that language, because his or her culture ascribes derogatory characteristics to those unable to master the dominant language of a country. Even if the individual is willing to proceed without an interpreter, SAs should defer further action until an interpreter is available. Whether or not SAs use an interpreter, the record of the interview or interrogation should reflect the questions the SAs posed and the individual's responses concerning the need for an interpreter.

In spite of the difficulties involved in using an interpreter, very successful interviews and interrogations can be conducted, provided that they are well-planned and controlled.

12.1 Documenting the Effectiveness of the Interpreter

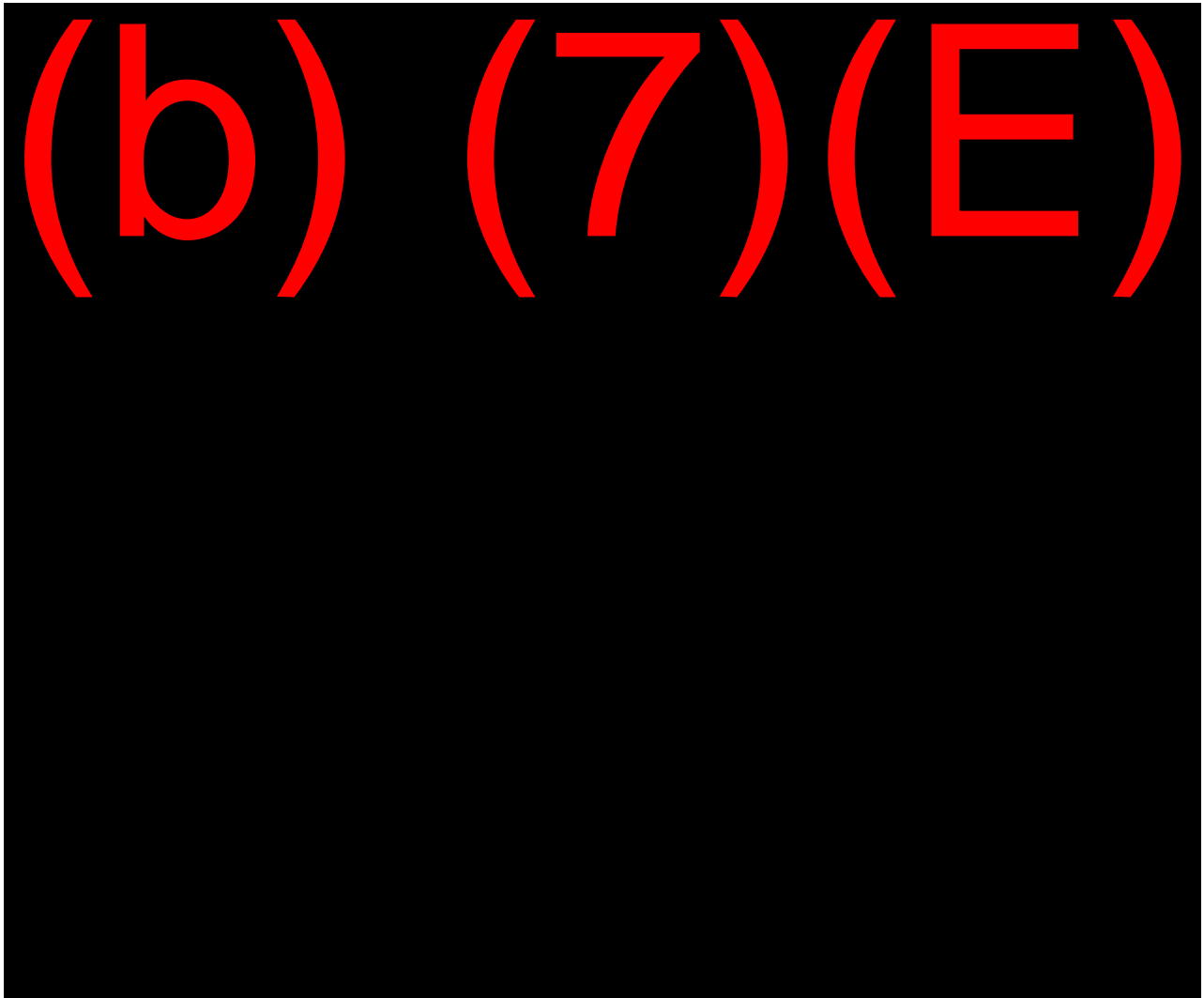
When an interpreter is used, the interview or interrogation should also show that the interpreter and the individual have conversed in the latter's language and that they understand each other. This is especially important when questioning individuals whose native language, such as Chinese, has many dialects, or when the individual's ethnicity differs from that of the majority, such as descendants of indigenous populations in Guatemala whose language is different from Spanish. SAs shall indicate in the interview or interrogation what language and/or dialect is being used in the interview. At the outset, SAs should warn the individual being questioned to advise the SAs whenever he or she has a problem understanding the interpreter. SAs should also check from time to time during the interview to make sure that the interpreter and the individual understand each other. Such checks should appear in the record. If SAs make the record subsequent to the interview or interrogation, they shall include in it the number of times they stopped the questioning to determine whether the individual understood the interpreter.

12.2 The Role of the Interpreter

The interpreter must accept the subordinate role in the interview or interrogation and play a passive, impartial role, interpreting only what is said by both parties without clarifying or explaining the questions and answers.

The interpreter may be seated beside the SAs or between and to the side of the parties. The interpreter will need to turn only his or her head when addressing either the SAs or the individual being questioned. SAs should not allow the interpreter to move around or distract the individual being questioned, as this may harm the interview or interrogation process. SAs should continue to watch the individual being questioned while the interpreter is talking; it is important to observe the individual's actions and reactions before, during, and after the interpretation of each question.

SAs should give an orientation to the interpreter prior to the interview or interrogation. This orientation will include the following:



(b) (7) (E)

SAs should address the person being questioned while looking directly at him or her, not at the interpreter. SAs should continue making eye contact with the person being questioned while asking each question slowly, clearly, and in plain English. Likewise, the person being questioned should be directed to look at the SA and not at the interpreter.

Even if the individual being interviewed or interrogated has some knowledge of English, or the SAs have some knowledge of the individual's native language, SAs should use the interpreter for all questions and answers once the decision has been made to use an interpreter. This consistency will help avoid misunderstandings and avoid confusion as to whom the individual being questioned should direct his or her answers.

12.3 Potential Problems with the Use of Interpreters

Interviews and interrogations through an interpreter are difficult. SAs may miss shades of meaning. It is imperative that SAs instruct the interpreter about his or her duties and that they strictly limit the interpreter as to speech. For example, if SAs ask a question and the individual being questioned answers, "I don't understand the question," the interpreter must say in English, "I don't understand the question." Under no circumstances is the interpreter to attempt an explanation of the answer provided by the individual being questioned. The interpreter must understand that he or she acts solely as a voice. It is a natural impulse for an interpreter to attempt to explain or clarify questions and SAs must constantly guard against this. SAs will lose control of the situation and be unaware of what is transpiring unless they insist that the interpreter repeat verbatim the answers of the individual being questioned. If any explanation is required, it is the function of the SAs and not of the interpreter to rephrase or change the questions. Therefore, once the interview or interrogation begins, there should be no extraneous exchanges between the interpreter and the individual being questioned. SAs will then know exactly what the individual being questioned is saying, not simply a summary furnished by the interpreter.

If necessary, SAs may substitute another interpreter part way through the interview or interrogation. By repeating certain questions using the new interpreter, the responses will serve as a check not only on the veracity and cooperation of the individual being questioned, but also on the ability and performance of the first interpreter.

SAs will not use interpreters with whom they have a personal relationship.

If relatives, friends, or acquaintances are present with an individual with limited or no English proficiency, SAs may ask the accompanying party about the primary language of the individual. However, absent exigent circumstances, SAs should avoid using family members (including

children), friends, acquaintances, or bystanders to provide interpretation services. (See the Language Access Plan for information on language services.)

12.4 Telephonic Interpreters

If an interpreter is not available in person, SAs may use telephonic interpreters. Telephonic interpreters should be instructed and utilized the same as if in person, with the understanding by the SAs that any interview or interrogation by telephone is inherently more difficult. This holds true with or without an interpreter.

Chapter 13. COERCION AND DURESS

Under no circumstances should SAs mistreat an individual being interviewed or interrogated in a manner that may form the basis for a charge of coercion or duress. Wherever possible, and especially in important cases or where SAs suspect that the individual may allege coercion or duress as a defense or as a means of discrediting them, the SAs should have one or more witnesses present at every interview or interrogation. If necessary, SAs will keep a detailed log of all the activities of the individual during questioning.

In rare instances, a physical examination of the individual by an ICE Health Services Corps medical officer before and after the interview or interrogation may also be advisable so as to preclude any possibility of an allegation of physical mistreatment. One example of a case where this might be appropriate is that of an alien injured during the course of a human smuggling incident who may be a witness against the smuggler. A medical examination will ensure that the alien is physically able to give a statement, prevent an argument that delay in medical treatment was used as a means of coercing a statement, and ensure that no SA is accused of causing the injuries. Whenever an individual is given a medical examination, SAs will obtain a written report of the examination from the examining medical professional and place it in the individual's related file as a matter of permanent record.

SAs cannot compel an individual being interviewed or interrogated to answer questions that may be self-incriminating or that may be used against the individual in a court of law. No admission or statement can be used as evidence if the individual being questioned was induced to make the statement by infliction of physical harm or threats of physical violence or by threats and promises of violence that are likely to cause him or her to make a false statement. Furthermore, while no time limit is placed on an interview or interrogation, no one should be subjected to questioning for so long a period or under such adverse conditions that it may constitute coercion or duress. (Note: See the second Note in Section 5.1.5.)

Chapter 14. CALL-IN LETTERS REGARDING IMMIGRATION ISSUES

When issuing a Call-In Letter (DHS Form G-56) to request the appearance of an individual for an interview, SAs should have a specific goal in mind before issuing such a command. SAs will

obtain supervisory approval in writing prior to mailing a Call-In Letter to ensure that the request is appropriate and reasonable.

When sending a Call-In Letter to an alien who is known to be represented by counsel and who has filed a Notice of Entry of Appearance as Attorney or Representative (DHS Form G-28), SAs should always furnish a copy of the Call-In Letter to the attorney. SAs should obtain supervisory approval and consult their local Office of Chief Counsel (OCC) before making a decision not to notify counsel in cases where a completed DHS Form G-28 is in the alien's Alien Registration File.

Chapter 15. ELECTRONIC RECORDING OF CUSTODIAL STATEMENTS IN FEDERAL CRIMINAL INVESTIGATIONS

15.1 Electronic Recording of Custodial Statements in Federal Criminal Investigations (ICE Policy Number 10087.1)

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.

ICE Policy Number 10087.1 establishes a presumption that custodial statements of an individual taken by an ICE criminal investigator in a place of detention with suitable recording equipment, following arrest for a federal crime but prior to initial appearance, will be electronically recorded, subject to certain exceptions.

SAs must comply with all provisions of ICE Policy Number 10087.1.

15.2 Ninth Circuit Court of Appeals Decision in *Arnold v. Runnels*, 421 F.3d 859 (9th Cir. 2005)

In acknowledgment of the Ninth Circuit Court of Appeals decision in *Arnold v. Runnels*, 421 F.3d 859 (9th Cir. 2005) DOJ clarified its guidance to all federal investigators. *Arnold v. Runnels* held, in part, that after the *Miranda* warnings are given, if an individual unequivocally and unambiguously states that he or she is willing to speak to law enforcement, but only if the interview or interrogation is not electronically recorded, this constitutes a selective invocation of the *Miranda* warnings, specifically the arrestee's right to remain silent. This new guidance is applicable only to the aforementioned scenario and does not constitute any modification to ICE [Policy Number 10087.1](#), "Electronic Recording of Custodial Statements in Federal Criminal Investigations," dated July 15, 2016.

The new guidance sets forth the following: For post-arrest, pre-initial appearance custodial interviews and interrogations, if the arrestee is notified by an HSI SA and/or a TFO that the

questioning will be electronically recorded, and the arrestee subsequently indicates that he or she will only speak to investigators if it is not recorded, the recording should cease and the questioning should continue. For cases warranting an exception to this practice, when possible, SAs/TFOs should discuss the propriety of a ruse with prosecutors and their local Office of the Principal Legal Advisor HSI Embedded Attorney ahead of time to avoid any issue as to voluntariness or *Miranda* compliance, and to ensure that techniques used are proper under the circumstances. While SAs/TFOs retain their discretion during interviews and interrogations, early communication with the prosecutors will aid in identifying whether the use of a particular ruse during an interview or interrogation, even if lawful, is tactically advisable.

(Note: See HSI Broadcast Message from the Assistant Director of Investigative Programs, “Updated Custodial Record Policy Guidance for HSI Special Agents and Task Force Officers,” dated September 30, 2016.

Chapter 16. ADMINISTERING THE INTERVIEW OR INTERROGATION

16.1 Preamble

The electronic recording of a custodial interview or interrogation should include a preamble. At a minimum, the preamble should include:

- A. The day of the week, date, time of commencement, and place of the recording;
- B. The identity of the individual being questioned;
- C. The case number, if applicable;
- D. The identity of the interviewing or interrogating SA(s); and
- E. The names of all others present.

The preamble should state whether or not the individual has previously been advised of his or her rights. When the interview or interrogation is concluded, the time should be noted on the recording.

(Note: When the recording is being made covertly, one of the interviewing or interrogating SAs should dictate the preamble immediately before the suspect enters the interview or interrogation room, or work the preamble statements into the very beginning of the questioning.)

If consultation between the individual and his or her attorney interrupts the electronic recording of a custodial interview or interrogation, the recording SA will state on the recording the time when the taping was paused for attorney/client consultation. When the recording is resumed, the recording SA will state, for the record, the time of the resumption.

16.2 Concluding the Recording

After the important aspects of the case are covered, SAs should ask the individual who was questioned if he or she has anything to add to the statement. Before the SAs shut off the recorder, however, they should again give the names of all the individuals in the room and the time and date. SAs should wait until the individual leaves the room to shut off the recorder. The SA should specifically note on the recording that the interview or interrogation has been concluded. Once complete, the recording should be processed appropriately.

16.3 Preservation of Electronic Recordings

SAs must ensure both the preservation of the original electronic recording and the chain of custody. It is particularly important to secure the recordings of custodial interviews or interrogations conducted in places of detention that are not directly controlled by HSI, such as CBP facilities located at POEs or other law enforcement agency facilities. The original electronic recording shall not be altered in any manner. (Note: ELSURs are not required for custodial interviews.)

16.4 Disclosure of Electronic Recordings

When requested, ICE may be required to disclose electronic recordings, including audio and video recordings, of interviews and interrogations pursuant to a discovery request or a court order (see Sections 5.1.8 and 5.1.9). When disclosure is required for the purposes of FOIA, HSI and ICE FOIA will coordinate to determine the best format in which to produce the records.

16.5 Non-Custodial Interviews

SAs may record non-custodial interviews or interrogations at their own discretion unless prohibited by local policy. Generally, when recording non-custodial interviews, SAs should follow the same procedures as for custodial interviews and interrogations, described above and in ICE [Policy Number 10087.1](#), “Electronic Recording of Custodial Statements in Federal Criminal Investigations,” dated July 15, 2016. Although no *Miranda* warnings will be given in a non-custodial interview or interrogation, the recording should contain a preamble providing the day of the week, date, time of commencement, place of the recording, the identity of the individual being interviewed, case number (if applicable), the identity of the interviewing or interrogating SA(s) and the names of all others present. Electronic copies of non-custodial interviews or interrogations are subject to the same handling policies and procedures as recordings of custodial interviews and interrogations.

Prior to recording a non-custodial interview or interrogation, SAs should seek the verbal consent of the individual being questioned. As a practical matter, a consenting individual is more likely to speak freely and less likely to become nervous in the presence of the recording device. As a matter of legality, SAs should be aware that different states have different legal requirements regarding the recording of conversations. While some states only require the consent of one party, others require the consent of both. Some states grant exceptions for law enforcement

purposes; others do not. SAs should consult with their U.S. Attorney's Office and/or their local OCC embedded attorney to determine the consent requirements in the location where the interview or interrogation is to be conducted. (Note: Covert recordings of non-custodial interviews fall into the category of electronic monitoring. See the Technical Operations Handbook (HSI HB 14-04), dated July 21, 2014, or as updated, for more information on electronic monitoring.)

16.6 Recorded Statement Taken Pursuant to a Summons or Subpoena


When a recorded statement is provided by a witness whose attendance has been compelled by a summons or subpoena or by a court order in support of such summons or subpoena, SAs will specify, in addition to the usual preamble to the statement, that the statement is being provided pursuant to a summons or subpoena and that 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.

Chapter 17. SWORN STATEMENTS

17.1 Documentary Requirements

SAs should be mindful of the possibility that the taking of a sworn statement may be necessary at any time during the course of an investigation. Therefore, SAs should always carry copies of the Statement of Rights and Sworn Statement forms. However, a lack of the Sworn Statement forms should never preclude the taking of a sworn statement, particularly when it appears that the individual being questioned may be disinclined to talk if allowed time to contemplate his or her actions before SAs can return at a later time. In such a case, a clean sheet of paper will suffice as long as it reflects that SAs advised the individual of his or her rights under the Fifth Amendment where appropriate and placed him or her under oath.

If SAs are unable to take a written and signed statement, they are required to maintain detailed notes concerning the substance of relevant information they develop during the course of an interview or interrogation. (b) (7)(E)



17.2 Preparation

Before attempting to take any sworn statement, SAs should be acquainted with the background of the case and the elements they must cover. It is recommended that the SAs make a brief outline of the most important facts to develop. It cannot be emphasized strongly enough that preparation before taking a statement is an important and integral part of the investigation. SAs should remember that there may not be another opportunity to take a statement from that particular individual. SAs should also remember that they cannot dictate what the suspect or

witness writes or omits from his or her statement; as a result, it is highly recommended that SAs take careful notes during the interview or interrogation. (See Chapter 8.)

SAs should expect new areas of inquiry to reveal themselves as the statement progresses. These will be areas of questioning that SAs did not anticipate in preparing for the statement. To ensure that SAs do not lose these opportunities as the dialogue continues, they should keep a notepad to record reminders.

17.3 Formatting Considerations When Taking Sworn Statements

Sworn statements may be in question-and-answer format or in narrative form. The term “affidavit” is frequently used to refer to the narrative sworn statement. Technically, the term “affidavit” can be applied to both, since both are taken under oath. The question-and-answer format is generally preferable when the issues are controversial or complex. It should be noted that the answers of the individual being questioned may change the nature and extent of the questions at any time. As discussed below, when answers to questions change, SAs will document this change in the sworn statement.

The question and answer format of the sworn statement is good evidence of the fact that it was given freely and voluntarily, since it is a verbatim record of the questions asked and the replies given. It leaves little ground for misinterpretation or claims that the SAs omitted important information. SAs should avoid introducing immaterial and irrelevant factors into the record. Additionally, it is important to accurately record exactly what the individual being questioned says. Thus, when the individual being questioned refers to a passport but does not give the passport number, SAs should not include the passport number as part of the answer. Instead, SAs should use follow-up questions to clarify and confirm the identity of the object, e.g., by asking the individual being questioned to describe the passport to which he or she refers, using such features as color and content. If SAs give the passport to the individual being questioned so that he or she can provide information such as the passport number, the SAs should note in the statement that they are showing the object to the individual.

Another point to consider is whether the sworn statement should be in the SA’s handwriting or that of the individual being questioned. Statements in the SA’s handwriting are more likely to be questioned if coercion or duress is later claimed. Conversely, if the sworn statement is in the handwriting of the individual being questioned, this is a good indication that he or she made the sworn statement freely and voluntarily. However, SAs may encounter reluctance on the part of the individual being questioned to write the sworn statement.

If the individual being questioned agrees to prepare a written sworn statement, SAs should take into account the legibility of the individual’s handwriting and any language barriers. SAs should consider reproducing the sworn statement in typewritten form below the individual’s handwritten portion. As part of the signature block, SAs will have the individual being questioned swear or affirm both that the typewritten portion is a reproduction of the handwritten sworn statement and that the sworn statement is accurate. The SA who prepared the written sworn statement and at

least one other SA or other law enforcement officer will then witness the signature. (See Section 17.6 below.)

If SAs are taking the sworn statement in written form, they will use a permanent pen rather than a pencil or a pen with erasable ink. Occasionally, when an individual being questioned reviews a sworn statement prior to signing, he or she may discover errors in the text of the sworn statement. Should this occur, SAs shall correct but not erase the errors. Rather, they will cross out the erroneous information, insert the correct information, and have the individual being questioned and all witnesses initial as close to the correction as possible. Using whiteout and/or failing to initial changes may subject the document to allegations that it was wrongfully altered and diminish its value in criminal or administrative proceedings. If SAs feel that the individual has deliberately changed information during the course of the interview or interrogation to mislead or impede the investigation, they will indicate this in their notes on the interview or interrogation.

17.4 Preliminary Information

Whether the statement is to be used for removal proceedings or for criminal prosecution, SAs must follow the procedures for taking written and recorded statements contained in this Handbook. They should document the exact wording of the oath as part of the record. For example, if SAs ask the question: “Do you solemnly swear or affirm that all the statements you are about to make will be the truth, the whole truth, and nothing but the truth?” This question should appear verbatim as part of the record. In addition, SAs will include at the outset:

- A. The date and place the SAs take the statement;
- B. The name and address of the individual giving the information and any other pertinent identifying information such as the individual’s date of birth and the languages spoken/used during the interview or interrogation;
- C. A clause that the statement was given freely and voluntarily (if the individual is testifying under a subpoena);
- D. The identification of the individual as the individual on whom the subpoena was served; and
- E. The specific purpose of the interview or interrogation.

After addressing and resolving these matters, SAs should develop other factors that may be pertinent, such as, in the case of aliens, the marital status of the alien, his or her parents’ citizenship, and pending applications for relief.

SAs should avoid threatening statements in describing the purpose of the interview or interrogation. At the same time, SAs should be as descriptive as possible about the purpose of the questioning.

17.5 Body of the Sworn Statement

Generally, the chronological order of the information contained in a sworn statement is important in a criminal investigation, particularly one that may be somewhat complex. The sworn statement should provide all pertinent details and the incidents surrounding the act under investigation. This will help to ensure clarity and completeness. SAs should carefully identify individuals and documents discussed in the sworn statement so that a third party unfamiliar with the case can identify them. For example, when the individual being interviewed or interrogated mentions an individual identified as “Joe,” SAs should make an attempt to obtain the last name, alias(es), age, physical description, and any other available information about Joe and include that information in the sworn statement. Thus, SAs should identify Joe as “Joe, last name unknown, age 47, from Sunnyvale, California, also known as ‘Iceman’.” Likewise, if the individual being questioned does not remember a specific date, ascertaining the month or even the season provides additional detail that validates the sworn statement and its contents.


SAs should also try to address all the elements of the crime believed to have been committed.

(b) (7)(E)



Even if SAs write or dictate the statement, it is essential to use the particular phraseology of the individual questioned. SAs will use the questioned individual’s exact words, if possible.

Otherwise, it could be alleged that the individual questioned did not understand what he or she signed; it could be argued that the statement was not made freely and voluntarily; or it could be asserted that it does not represent a true record of what was said. (b) (7)(E)



In doubtful cases, the SAs should thoroughly cover background information for the purpose of positive identification. Background information, because of intimate details it may contain, indicates to a certain degree that the statement was given freely and voluntarily.

If a statement is made through an interpreter, it should bear a certification by the interpreter that he or she is fluent in the languages used during the course of the interview or interrogation and that the questions and answers were interpreted truly and correctly. In certain instances, it is also prudent to incorporate in the text a statement by the individual who was questioned that he or she understood the interpreter in order to preclude future claims that the individual was misunderstood.

17.6 Signing and Witnessing

All statements to be used in ICE proceedings must be in writing and, if possible, signed on each page by the individual furnishing the information. If the individual refuses or is unable to sign a statement, the SAs will affix an attachment to the unsigned statement reflecting the events surrounding the refusal or make a note outlining the circumstances, and will insert it in the file or include it in a report.

If possible, the individual who was questioned should sign the statement immediately after it is taken. When it is necessary to transcribe notes into a formal written statement, the SAs will do so immediately and obtain the signature of the individual who was questioned before he or she leaves the office. If this is impossible because of the length of the sworn statement or for other reasons, the SAs will obtain the individual's signature as soon as possible after completion of the sworn statement. When a delay occurs, the SAs will note the time and date of signing, as well as the fact that the individual being questioned has reviewed the information and it remains true and correct. It is particularly important that a sworn statement be signed if there is any likelihood of it being used in a court action or contested hearing.

The individual who was questioned should sign the sworn statement in the presence of the SA executing the oath or affirmation (normally, the one taking the statement) and at least one witness. Another SA or law enforcement officer who observed the signing of the sworn statement may sign as a witness. Witnesses should be prepared and available to testify that:

- A. The individual who was questioned reviewed the entire statement with the SA;
- B. The changes, if any, were made with the knowledge and consent of the individual who was questioned and were initialed by that individual;
- C. The individual who was questioned appeared to understand the contents of the statement;
- D. The individual who was questioned knew what he or she was doing during the interview or interrogation process;

- E. The individual who was questioned acted of his or her free will when being questioned; and
- F. The individual who was questioned confirmed the sworn statement to be true and correct.

Therefore, the SAs will make sure that the individual signing as a witness is someone who can be located at a later time.

If the individual who was questioned is unable to sign the sworn statement (for example, because the individual is illiterate or physically impaired) but indicates approval, he or she may sign by using a mark. It is recommended to have two witnesses to the signature in such a case. The SA should write the given name of the individual who was questioned before the mark and his or her surname after the mark. The SA will place the word “his” or “her,” as appropriate, over the mark and the word “mark” below.

17.7 Avoiding a Claim of Alteration or Substitution

As discussed above, in order to avoid claims of alterations or substitutions in a question-and-answer or narrative sworn statement, the SAs will take the sworn statement in ink or typed and have the individual who was questioned sign or initial each page. The individual who was questioned shall also initial any change or corrections that were made when reviewing the sworn statement. If there are pages which contain blocks of unutilized space, the SAs will draw a diagonal line through the space and have the individual who was questioned sign above the line. Finally, wherever possible, the SAs will have the individual who was questioned use the same pen to draft, make corrections, and sign the document.

17.8 Safeguarding Non-Related Information

Witnesses and informants often furnish information or names in the course of an investigation that are not related to the subject matter of the investigation. SAs safeguard such information to prevent inappropriate disclosure of facts unrelated to the specific subject matter of the investigation. This is particularly important when there is the likelihood that a witness’ or informant’s statement may subsequently be introduced in a court hearing. In such cases, SAs will:

- A. Conduct a preliminary or exploratory discussion with the witness or informant to develop as far as possible the extent of the witness’s or informant’s knowledge concerning the subject matter of the investigation;
- B. Execute a short sworn statement setting forth in general terms the information necessary to establish the basis for the case, pursuant to the above guidelines;

- C. Under no circumstances include information concerning individuals other than those involved in the subject matter of the investigation in the sworn statement provided by the witness or informant; and
- D. Separate information related to the subject matter of the investigation from non-related information. For information related to the subject matter of the investigation, prepare a detailed report setting forth all the information supplied by the witness or informant concerning the subject matter of the investigation, appropriately identified and/or classified and made part of the file on the subject matter of the investigation. For information not related to the subject matter of the investigation, SAs should prepare separate reports and/or statements on any information supplied by the witness or informant concerning other individuals within the jurisdiction of HSI.

ACRONYMS

AUSA	Assistant U.S. Attorney
CBP	U.S. Customs and Border Protection
C.F.R.	Code of Federal Regulations
DHS	Department of Homeland Security
DOJ	Department of Justice
EAGLE	Enforcement Integrated Database Arrest Graphic User Interface for Law Enforcement
ELSUR	Electronic Surveillance
FOUO	For Official Use Only
HB	Handbook
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
OCC	Office of Chief Counsel
OI	Office of Investigations
POE	Port of Entry
SA	Special Agent
TFO	Task Force Officer
U.S.C.	United States Code