

Department of Homeland Security



U.S. Immigration
and Customs
Enforcement

Office of Investigations

Interviewing Techniques Handbook

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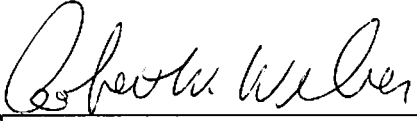
Foreword

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) Office of Investigations (OI) 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 OI field offices.

The following documents are hereby superseded: 1) Chapter 35 of the U.S. Customs Service (USCS) OI Special Agent Handbook, entitled "Interviewing Techniques" (May 20, 1992); 2) Chapter 12 of the Immigration and Naturalization Service (INS) Special Agent Field Manual entitled "Gathering and Maintaining Case Information" (undated) – a) Section 12.1, entitled "Notes"; b) Section 12.2, entitled "Interviews in General"; c) Section 12.3, entitled "Interview Techniques," and d) Section 12.4, entitled "Interrogation Techniques"; 3) and all other previous issuances on interviewing techniques issued by the former USCS or INS.

The Interviewing Techniques Handbook is an internal policy of OI and does not confer any right or benefit on any private person or party. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the OI Information Disclosure Unit, Mission Support Division, and the appropriate ICE Office of the Chief Counsel and/or 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 in civil discovery pursuant to the law enforcement privilege. Any further request for disclosure of this Handbook or information contained herein should be referred to the OI Information Disclosure Unit.

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



James A. Dinkins
Director, Office of Investigations

04/28/10
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) Office of Investigations (OI) Special Agents (SAs) when conducting investigative or informational interviews. This Handbook also applies to Task Force Officers when they conduct investigative or informational interviews as part of OI-led investigations, and to Criminal Research Specialists, Investigative Assistants, Auditors, and other OI non-1811 personnel, as directed by the Special Agent in Charge (SAC) or designee, when they conduct informational interviews only.

Note: Although Criminal Research Specialists, Investigative Assistants, Auditors, and other non-1811 personnel may conduct informational interviews, they are not authorized to conduct investigative interviews or take sworn statements.

Chapter 2. INTRODUCTION

No investigation is complete until every witness and all suspects have been interviewed. Proficiency in interviewing can ensure a high degree of reliability in the results achieved and can prevent surprise testimony from arising later.

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

- A. establish whether or not a crime actually occurred and, if so, the facts of the crime;
- B. verify or link prior information received from other individuals involved in the investigation or from physical evidence left at the scene;
- C. identify any potential witnesses;
- D. identify subjects and accomplices;
- E. secure additional evidence;
- F. develop background information on the specific violations of law;
- G. clear subjects of criminal involvement;
- H. discover details of other offenses;
- I. develop intelligence;

- J. determine the suitability of a source or potential source of information; and/or
- K. determine alienage and deportability of the subject.

Chapter 3. RESPONSIBILITIES

3.1 Director, Office of Investigations

The Director of OI has overall responsibility for the oversight of the policies and procedures set forth in this Handbook.

3.2 Special Agents in Charge

SACs are responsible for implementing the provisions of this Handbook within their area of responsibility (AOR).

3.3 Special Agents

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

Chapter 4. DEFINITIONS

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

4.1 Admission

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

4.2 Arrest

An arrest is the taking custody of a person, under real or assumed authority, for the purpose of holding or detaining that person to answer to a criminal charge or an administrative violation. To be lawful, an arrest must be based on probable cause to believe that the person has committed an offense against the United States, including illegal presence as an alien in the United States.

4.3 Coercion

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



4.4 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.

4.5 Custodial

Custodial is used to describe an interview or interrogation of a person by SAs, after a person 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.

4.6 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.

4.7 Duress

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

4.8 Electronic Recording

An electronic recording is a complete and authentic electronic reproduction created by motion picture, videotape, audiotape, or other electronic media.

4.9 Examination

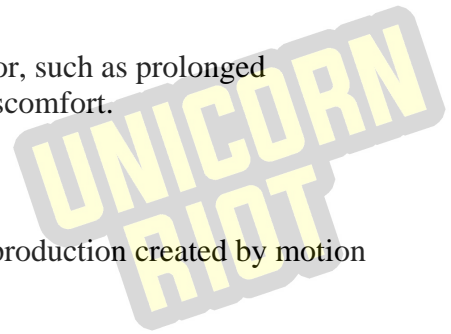
An examination, as the term is used in the Immigration and Nationality Act (INA), is the questioning of an alien by SAs to determine whether or not the person in custody is legally present in the United States.

4.10 Informational Interview

An informational interview is one that is conducted by any ICE employee with the intent of obtaining information for administrative purposes that will not likely be used in judicial proceedings.

4.11 Interrogation

An interrogation is a detailed and formal questioning designed to elicit specific information about a crime or an administrative violation from a subject.



4.12 Interview

An interview is a formal or informal questioning of a witness or other individual with knowledge of the matter under inquiry.

4.13 Investigative Interview

An investigative interview is one that is conducted by an SA 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 subjects of the investigation, witnesses of a criminal act, informants, or aliens facing formal deportation proceedings.

4.14 Juvenile

A juvenile is a person under the age of 18.

4.15 Subject

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

4.16 Waiver

A waiver is a subject'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 subject may revoke a waiver of rights (either orally or in writing) at any stage of the interrogation process.

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 administrative proceedings. There are two separate advisements of rights that are applicable to the different proceedings: when criminal prosecution is contemplated, an advisement of the person's right against self-incrimination is mandatory before a custodial interrogation is conducted or additional questioning can continue; on the other hand, when administrative proceedings are contemplated, the person must be advised of his or her rights pursuant to Title 8, Code of Federal Regulations (C.F.R.), Section 287.

5.1 Criminal Proceedings

SAs often conduct interviews and interrogations for the purpose of determining the extent of a person'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 a suspect for one offense, SAs may develop investigative leads or admissions of involvement related to other offenses. This additional information may be of value to OI or to other law enforcement agencies.

The United States Constitution and statutory authorities require SAs to respect the rights of witnesses and suspects. Confessions, and testimony related to the confessions, 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 can SAs justify a violation of an individual's Constitutional rights.

5.1.1 Miranda Warnings

In its landmark decision, *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 at trial unless the defendant was given certain warnings. This advisement of rights has come to be referred to as the "Miranda warnings" or the "Miranda rights."

There are many versions of the Miranda warnings, but they all address the same basic statements. Prior to any custodial interview, SAs must advise the individual that:

- A. he or she has the right to remain silent;
- B. any statement that he or she makes may be used as evidence against him or her;
- C. he or she has the right to an attorney and to have the attorney present during questioning; and
- D. if he or she cannot afford an attorney, one will be appointed to represent him or her prior to any questioning.

5.1.2 Circumstances in Which Miranda Warnings Are Not Required

Custody is defined as a situation in which a person has been arrested or deprived of his or her freedom of action in any significant way. Miranda warnings are not required if an individual is not in custody. 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, then 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, so 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 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), SAs must provide the Miranda warnings. If they do not, the SAs 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.), Section 1325, 8 U.S.C. § 1326, or 18 U.S.C. § 922g(5)), then 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 7-3.0 entitled, "Consular Notification of Detained or Arrested Foreign Nationals," states that, "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 the Statement of Rights form (ICE Form 73-025). They should not attempt to 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.

SAs should always document the reading of the Miranda warnings by having the individual sign the Statement of Rights form in the designated location. Whenever possible, the reading and signing of the Statement of Rights form 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 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 an individual of the Miranda rights 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, the individual indicates in any manner a wish to remain silent, SAs should not initiate or must terminate the interview, as appropriate. Once the individual has invoked his or her right to remain silent, SAs should not ask any additional questions of the individual being interviewed. There are two circumstances when the interview may continue:

- A. If the individual requests that the interview 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 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, 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. U.S.*, 129 S. Ct. 1558 (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 wants to consult with counsel, SAs must not initiate or must terminate the interview, as appropriate. SAs should not ask any additional questions of the individual. A subsequent waiver of Miranda rights by a suspect who has previously invoked his or her right to counsel under Miranda, remains in custody, and is re-approached by SAs is presumed to be involuntary. Questioning of the suspect may continue only under certain circumstances:

- A. If the individual being interviewed re-initiates communication about the case with the SA and indicates that he or she wants to continue the interview without consulting counsel, the interview may be resumed.
- B. If a break in custody of 14 days occurs, it provides ample time for the suspect to get reacquainted to his or her normal life; to consult with friends, family, and counsel; and to shake off any residual coercive effects of prior custody. After a 14-day

break in custody, SAs may re-approach the suspect who is now back in custody. A waiver of Miranda rights then obtained is not presumed involuntary. (See *Maryland v. Shatzer*, 559 U.S. ____ (2010).)

- C. If a suspect invoked his or her right to counsel under Miranda 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.

5.1.7 The Brady Doctrine

The Brady doctrine 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 the Supreme Court case of *Brady v. Maryland*, 373 U.S. 83 (1963), 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 see 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 give the defense any prior statements of a trial witness that are in the possession of the government so that the defense can

conduct an effective cross-examination of 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 usually will give 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(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, 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; failure to do so 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)(2).)

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 respondent inadmissible in a deportation hearing. Thus, there is no need to provide Miranda warnings to an alien being processed for removal. However, SAs must provide aliens arrested on administrative immigration violations notice of their rights under the INA.

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 (see Section 4.9) by the second SA will be conducted when entering the information into ENFORCE. 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 the ICE memorandum entitled, “Superseding Guidance on Reporting and Investigating Claims to United States Citizenship” (November 19, 2009), signed by the Assistant Secretary of ICE. It states, in part, that “As the Immigration and Nationality Act (INA) provides numerous avenues for a person to derive or acquire U.S. citizenship, ICE officers, agents, and attorneys should handle these matters with the utmost care and highest priority. While some cases may be easily resolved, because of the complexity of citizenship and nationality law, many may require additional investigation and substantial legal analysis. As a matter of law, ICE cannot assert its

civil immigration enforcement authority to arrest and/or detain a [U.S. citizen]. Consequently, investigations into an individual's claim to U.S. citizenship should be prioritized and Office of Investigations (OI)...personnel must consult with the Office of the Principal Legal Advisor's... local Office of the Chief Counsel (OCC)...”

5.2.1 Advisement of Rights in Administrative Proceedings

If the individual is found to be an alien illegally present in the United States, the SA should advise him or her that (see 8 C.F.R. § 287.8):

- 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.

5.2.2 Invocation of Rights during Administrative Proceedings

As stated in Section 5.1.5 of this Handbook, if at any time prior to or during the interview the individual being interviewed indicates in any manner a wish to remain silent, SAs must not initiate or must terminate the interview, as appropriate. Once the individual being interviewed has invoked his or her right to remain silent, SAs should not ask any additional questions of the individual about the case. The interview may continue under two circumstances:

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

If the alien wants to consult with counsel, SAs must not initiate or must terminate the interview, as appropriate. SAs should not ask any additional questions of the individual. If the individual being interviewed reinitiates communication with the SA about the case and indicates that he or

she wants to continue the interview without consulting counsel, the interview may be resumed. This should be properly documented.

Chapter 6. PREPARATION FOR THE INTERVIEW

Provided that there is sufficient time, SAs will carefully study accumulated materials and prepare thoroughly 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:

- A. the proper individual to interview;
- B. the questions which the individual must answer to further the investigation;
- C. the probable degree of willingness of the individual to be interviewed;
- D. the probable degree of reliability of the individual's information, and any factors which may consciously or unconsciously influence, color, or distort such information;
- E. the manner of the interview and the techniques most appropriate to the individual's position, willingness, reliability, personality, and personal weaknesses; and
- F. questions to which the SAs already know the answers that they can use to test the truthfulness of the individual being interviewed.

Chapter 7. 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 7.5). Notes are frequently used to recall details when drafting a formal report, and they may also be of use in giving accurate court testimony. It should be noted that, when prepared in conjunction with an investigation that results in criminal prosecution, notes are discoverable.

7.1 Field Notebook

A notebook is virtually indispensable for SAs, and it should be one with which SAs are comfortable. OI 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.

7.2 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.
- 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.

7.3 When to Take Notes

There is no strict rule as to whether to take notes during the interview or afterwards, since the particular circumstances of each interview will vary. In some cases, the individual being interviewed may not feel at ease with note taking during the interview. When this occurs, it is best for SAs to wait until after the individual being interviewed has related all pertinent information. Otherwise, the individual being interviewed may withhold information that would have been given freely in an ordinary conversation. On the other hand, some individuals being interviewed may be disturbed or concerned that the SAs are not taking notes and may interpret it to mean that the SAs view the matter as unimportant or insignificant. SAs must therefore evaluate the situation and the individual being interviewed 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 to be interviewed at ease; in others, it may cause the person interviewed to become silent and “freeze up.”

Lengthy interviews may require taking notes long before the person being interviewed 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 interviewed 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. If the person being interviewed talks less freely in the presence of a notebook, SAs may cease taking notes and provide the substance of the interview at its termination. SAs should write their notes immediately after the interview while the conversation is still fresh in their minds and document the time and date the notes were recorded.

7.4 Friendly/Hostile Witnesses

In some instances, SAs will interview friendly witnesses; in others, SAs will face those 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.

7.5 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 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.

When requested, SAs may be compelled to turn case notes over to the prosecuting attorney and ultimately to a defendant through discovery rules or the Freedom of Information Act process. (See Sections 5.1.8 and 5.1.9 of this Handbook.)

Chapter 8. CONDUCTING INTERVIEWS

During the progress of an investigation, SAs may conduct numerous interviews. As stated in Section 4.12 of this Handbook, an interview is a formal or informal questioning of a witness or other individual with knowledge of the matter under inquiry. In an interview, individuals interviewed usually give in their own words their account of an incident under investigation or offer information concerning an individual being investigated. The interview is a conversation

conducted for the purpose of obtaining information. Notes should be taken and major points reviewed. The interview may involve virtually anyone: witnesses, informants, cooperating individuals, and the suspect.

It is always important to speak slowly, clearly, and in plain and simple language when conducting an interview. SAs must not permit the person being interviewed to take control of the interview. They should discourage any “off the record” statements. There is nothing “off the record.”

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

8.1 Establishing Credibility

When interviewing an individual, SAs should never set out to prove or disprove any preconceived opinion, but should seek only to get the facts. 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:

- A. hope of gain, e.g., a paid informant may deliberately concoct information to gain payment;
- B. prejudice, dislike, or hatred for an individual, race, organization, or principle;
- C. fear of implication in a crime or fear of publicity;
- D. hatred for law enforcement agencies, making it difficult to persuade the individual being interviewed to tell the truth unless another emotion dictates it; the reverse is also true, where an individual being interviewed enamored with law enforcement may deliberately or unintentionally say what he or she perceives the SAs want to hear;
- E. education, background, age, sex, political leanings, cultural differences, social and economic status, and preconceived opinions and judgments;
- F. physical conditions external or internal to the individual being interviewed at the scene of an incident, such as defective lighting or bad vision;
- G. strong emotions, such as fright, excitement, or anger, either at the time of an incident or while giving information;
- H. poor memory or gaps, which frequently cause an individual being interviewed who has forgotten or missed details to invent them; and

- I. constant repetition of ideas and mental images which frequently cause a person to accept such ideas and mental images as remembered facts, just as frequent repetition of hearsay and rumors may also cause a person to accept them as facts.

8.2 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.

8.2.1 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.

The success of any interview may be determined by attitudes formed during the initial contact between SAs and the witness. A strained or awkward initial encounter may undermine confidence to the point that cooperation is withheld. The witness may sense that the SAs do not like something about him or her, particularly if their remarks are sarcastic or rude. The SAs must make every effort to be professional in order to elicit a free exchange of information.

An important first impression is created by the way in which SAs greet the witness to be interviewed. SAs should identify themselves at the outset of the conversation. They may choose to begin the conversation with some topic that is not directly related to the main purpose of the interview to establish rapport.

8.2.2 Questioning the Witness

Once the SAs have the witness in a communicative mood, they should first turn the witness's attention to the information they are seeking and steer the interview to the desired topic. SAs should allow the witness to give a complete account of whatever is being sought with minimal interruptions. Meanwhile, SAs should be alert for inconsistencies and omissions. At times, SAs may have to ask questions to keep the witness talking or to stay on topic.

SAs will find that, on many occasions, it is not what a witness says that is important, but the manner in which he or she says it, or what he or she does not say that is truly important. SAs must recognize and interpret symptoms indicating sensitivity to information. Also, it is important to read body language in the cooperating witness being interviewed.

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 SA. 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.

8.2.3 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.

8.3 Interviewing Informants

When interviewing an informant, SAs must be guided by the provisions of this Handbook to protect their own safety and also to protect information that they do not want revealed to the informant. SAs must control the interview and conduct it in such a manner as to receive maximum useful information.

The general process of the interview should follow the model of stimulating a free-flowing narrative, then reviewing details, asking increasingly specific questions, and taking notes. Additional factors to consider when interviewing an informant include the following:

- A. Sympathize with the informant about any personal difficulties he or she may be experiencing, particularly if they affect his or her performance as an informant.
- B. Encourage whatever motives may be causing the informant to provide information.
- C. SAs should not reveal that information received is known to be worthless or contradict certain known facts. It is very important that SAs protect their own secrets during the interview, keeping in mind the possibility that the informant may actually be attempting to obtain information from them about certain activities.
- D. SAs must be careful not to reveal their own knowledge through the phrasing of their questions. For instance, an inquiry about a specific individual or a particular smuggling site reveals that the SAs already know about that individual and site. SAs must develop an ability to move from general, purposely vague questions to the particular information that has value. The informant may react with interest to old information and thereby guide the conversation into areas where useful new

information might be obtained. Similarly, the informant may remain passive before important disclosures in order to solicit information already known by the SAs.

Informants may be motivated by revenge, jealousy, or the need for money, but, whatever the reason, when SAs end an interview with an informant, they should make it clear to him or her that they value the help that he or she has provided. SAs should always maintain a professional rapport with the informant and never refer to him or her in a derogatory manner.

8.4 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. SAs can properly use information obtained during the preliminary questioning if and/or when a case develops against the suspect.

Preparation for an interview of a suspect should include a review of all the important details of a case. The basic questions of who, what, when, where, how, and why should be considered by the SA. Any information that is available about the person to be interviewed should be studied carefully.

8.5 Custodial Interviews

A custodial interview is a systematic questioning of an individual to determine the extent of his or her involvement in criminal activity. The full Miranda warning should be read to the individual at the outset of the custodial interview. SAs should be fully prepared for the interview 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.

The SAs should also:

- A. ensure that the suspect is given the opportunity to use the restroom prior to beginning the interview;
- B. ensure that the suspect is given the opportunity to have water and make water available to him or her throughout the interview (include food if the suspect has been detained for several hours);
- C. inquire as to the suspect's health prior to beginning the interview, and whether or not the suspect is currently in need of any medication;
- D. ensure that no weapons are visible to the suspect individual; as a general rule, SAs should lock up their weapons in a separate room before conducting the interview; and

- E. ensure, if possible, that the suspect is not handcuffed or otherwise overly uncomfortable.

The interview is normally undertaken by two SAs. The second SA, while assisting in the interview, serves as a witness to statements made by the suspect. The two SAs should consult before the interview to establish their respective “roles” during the interview. It is often useful for one SA to pursue one type of approach while the other develops a contrasting style. The reaction of the suspect may then suggest an emphasis on an initial approach over the other. The selection of an initial approach depends largely on the circumstances of a case and the SAs’ impression of the suspect’s personality.

8.6 Interviewing Juveniles

SAs should exercise special consideration when interviewing juveniles, defined as persons under the age of 18 (see Section 4.14).

8.6.1 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 the SAs need to conduct a more formal interview, however, especially if the situation involves moving the juvenile to an office setting, the SAs should make every effort to contact and seek the consent of the juvenile’s parent or legal guardian in advance. If possible, the parent or legal guardian should be present during the interview.

8.6.2 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, then they may proceed with the interview.

8.7 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 establish loss of 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. If possible, SAs should make an electronic audio or video recording of the interview to create an accurate record of the interview. (See OI Handbook 08-01, "Denaturalization Investigations Handbook" (January 15, 2008).)

8.8 Inquiry as to Criminal Record as Part of an Interview

When it is necessary to question the individual being interviewed 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 9. INTERVIEWING TECHNIQUES

The following are some of the more commonly used interviewing techniques. Other techniques exist and some of those mentioned are also known by other labels. 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 SAs. Instead, it should be tailored to the circumstances of a particular case and the personality of the individual being interviewed.

9.1 Logical

The logical approach is used when there is overwhelming evidence against the individual and SAs are attempting to appeal to the individual's respect for logical reasoning. The purpose of this approach is to present entirely logical reasons why the individual should provide SAs with additional information. An appeal is made to the individual's self-interest while SAs demonstrate that cooperation is the only logical alternative left for the individual. SAs should use a businesslike tone of voice and should carry themselves in a manner that suggests confidence. The individual's present condition is described in an unemotional manner, and future developments are presented as automatic impersonal certainties that follow from whatever decisions are made by the individual. SAs should make no promises of leniency nor can they suggest in any way that the individual will be "better off" if he or she cooperates. However, SAs can state that cooperation on the part of the individual in any continuing investigation will be brought to the attention of the court at the time of trial.

9.2 Sympathetic

If SAs determine that the individual will be affected by an emotional appeal, SAs may choose to pursue a sympathetic approach. The interview is conducted in low tones and includes expressions of sympathy and understanding for the individual. When talking to the individual, SAs may react to his or her body language in a sympathetic manner. SAs should attempt to generate feelings of guilt and self-pity in the individual who typically responds by blaming his or her problems on others. The SAs' sympathetic reaction should encourage the individual to further relieve his or her feelings of guilt by assisting the SAs.

9.3 Indifferent

In this approach, it is suggested that SAs do not really care if the individual is willing to cooperate further, but SAs must go through the motions of making this opportunity available to him or her. It is suggested that SAs would prefer to see the individual severely treated for his or her crime rather than receive any possible consideration for help he or she might provide to the case. Indifference is best used by in combination with a contrasting style that is exhibited by a different SA.

9.4 Face Saving

In this approach, SAs attempt to provide the individual with a psychological “way out” that will justify his or her participation in the crime. It is implied, but never stated, that a thorough understanding of the individual’s motivation may affect his or her degree of responsibility for the criminal activity. By systematically rationalizing the individual’s activities up to the point of the violation, describing them as natural consequences of some other difficulty or problem, SAs attempt to get the individual talking about his or her actions. SAs should occasionally interject comments that have the effect of diminishing the importance of the individual’s own criminal involvement.

9.5 Egotistical

Using this approach, SAs should play on the individual’s pride and sense of accomplishment. SAs should talk about the intelligence required to work out, for example, complex drug or human smuggling operations. SAs should pretend to be impressed by the efficiency of the operation or the amount of financial gain generated by it. The egotistical approach encourages the individual to brag about his or her activities and to provide additional details to further impress the SAs.

9.6 Exaggeration

In order to obtain information from an otherwise uncooperative individual, SAs may elect to exaggerate the charges that can possibly be brought against the individual. For example, SAs may suggest that they believe the individual is a much bigger smuggler than is actually the case. It is hoped that he or she will admit to his or her actual violation in order to protect himself or herself.

9.7 Indirect

The indirect approach is generally used with ready, willing, and able individuals. They are simply asked to tell their stories in their own way, and SAs are mainly “listeners,” asking questions only when needed to clarify the information furnished. Leading questions, which suggest an expected answer, are avoided.

9.8 Direct

The direct approach is where specific, direct questions are asked, and SAs become “questioners”; this approach is used when the individual is not ready, willing, or able to provide the information desired for one reason or another. Ideally, direct questions should not be asked until the individual has finished his or her narration.

Basic to this approach is the desire to find out answers to who, what, when, where, how, and why questions. Each question that SAs ask should be part of a sequence that guides their efforts in a particular direction.

The sequence of this type of questioning should progress from general to specific. Therefore, SAs' questions should move in the same direction. The following examples illustrate the progression from the general to the specific. So far, the interview has revealed that the informant helped to deliver some cocaine recently. The issue to be explored now is (1) who else was involved; (2) how much cocaine was involved; (3) who was the ringleader; (4) where it was taken; (5) when the act took place; (6) where it took place, etc.

Question: Where did the subject pick up the cocaine?
Answer: At Joe's house.

Question: Joe who?
Answer: Joe Fester.

Question: Where does Joe Fester live?
Answer: In a red brick house on the corner of 9th and L street, the one with yellow trim.

Question: Was anyone else there with you?
Answer: Yes, Joe Fester, Bill Jones, and Tom Smith.

Question: Did Bill and Tom also help deliver the cocaine?
Answer: Yes, we all did.

Question: Where did you deliver the cocaine?
Answer: We took it to Fred Bradley's house.

Question: How much did each bag weigh?
Answer: They weighed about 10 pounds each.

Question: Did each of you take the same number of bags?
Answer: Yes, except Bill; he took three bags.



This line of questioning would continue until all the issues have been resolved to the SAs' satisfaction.

SAs must use transition to connect their thoughts in order to obtain a logical progression to the unknown. SAs should mentally go over the known information and then frame their next question as a logical continuation of the previous fact.

SAs may not get the right answer the first time they ask for the quantity or number of anything. When descriptions and quantities are vague or indefinite, SAs can change the reference point and compare them to known similar items. For example: The person being interviewed has stated that "Joe is a big man." This statement can be made more specific if SAs ask, "Is Joe taller than you?", "Is Joe heavier than you?", etc.

9.9 Non-directive

The non-directive approach is a good technique used by many SAs when conducting an interview. In this technique, the individual's statements are turned into questions that call for more information by simply repeating the individual's last phrase. For instance, the individual says, "Then, we left the apartment." SAs would repeat, "You left the apartment and...?" In using this technique, SAs must not register surprise, but merely repeat the statement. The effect is that of drawing out further information without giving direction.

9.10 Controlled Answer

Controlled answers or statements can be used to stimulate a desired answer. For example, to stimulate an admission by an informant that he or she has knowledge about some matter, SAs can use the following technique: "I understand that SAs were present when the cocaine was delivered. Would you please describe exactly what happened?" This will provide a stronger incentive for the individual to admit knowledge than if SAs had merely asked, "Were you present when the cocaine was delivered?" Another example is, "If you were not involved in this, then I am sure that you won't mind discussing it with me, will you?" This offers a much stronger incentive than if SAs were to ask, "Do you have any objections to telling me what you know?"

Chapter 10. ADMISSIONS AND CONFESSIONS

The difference between an admission and a confession can be perplexing.

An admission (defined in Section 4.1) is a self-incriminatory statement by the 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 the direct acknowledgment by the individual of his or her guilt in having committed a particular criminal act or of having been an essential part of the 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 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. Since an individual may be willing to speak of his or her involvement in a particular crime but may not be ready to have it taken down as part of a statement, SAs should not interrupt the verbal statement to ask for a written and signed statement. Instead, after they are finished soliciting the necessary information from the individual, SAs should ask him or her if he or she is willing to provide a written statement that basically covers the points just discussed. If the individual agrees to sign the written statement, the SAs will ask him or her to read it and make

and initial all needed corrections. Once the individual is satisfied that the written document is true and accurate, the SAs will ask him or her to sign the statement in the appropriate place. If the individual prefers to write the statement, SAs should ask him or her to read it and make and initial all needed corrections. Once again, once the individual is satisfied that the written document is true and accurate, the SAs will ask him or her to sign the statement in the appropriate place.

Intentional but harmless errors may be placed in the statement. As stated above, when the individual spots these mistakes or the accidental mistakes, he or she should be asked to initial the corrections. 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 rights 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's Fifth Amendment rights were protected.

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).

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. Vocal changes may occur when a person lies. The speech rate, the volume, and the voice pitch may increase. Other physical or “guilt” symptoms may include, but are not limited to:

- A. dryness of mouth – frequent requests for water;
- B. restlessness – frequent change in position, tapping of feet, fidgeting, chewing of fingernails, etc.;
- C. excessive sweating;
- D. avoiding direct contact with the interviewer's eyes (depending on the individual's culture); and
- E. excessive assertions of truthfulness, such as “I hope to die if I am lying” or “Standing on my dead mother's grave, I'll swear that this is the truth.”

Deceptive individuals may attempt to stall in order to gain time before answering. They stall to give themselves time to decide whether they should lie or tell the truth. If the individual being interviewed hesitates, stutters, stammers, or suddenly has a mental block during the interview, there is the possibility that he or she is lying in response to that question.

Deceptive individuals might give a misleading statement or tell an incomplete truth. They may admit only to what SAs can prove and deny what SAs can't. They will try to dodge the issue. They will slightly rephrase the question or ask to have it repeated. They might say, "I can't remember," or ask the SAs to clarify the question.

Deceptive individuals may attempt to use what is referred to as a false issue. This refers to the introduction of irrelevant topics such as how they have been treated by the government in the past. This type of individual will try to redirect the interview by evading the relevant issues at hand. For example, they may get indignant over little things SAs may ask them, such as how much money they make a year.

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 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, if there is any doubt, SAs should defer further action until an interpreter is available. Whether or not SAs use an interpreter, the record should reflect the questions SAs pose and the individual's responses concerning the need for an interpreter.

12.1 Documenting the Effectiveness of the Interpreter

The record 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 has many dialects, such as Chinese, 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 record what language and/or dialect is being used in the interview. At the outset, SAs should warn the individual to be interviewed 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, they shall include in it the number of times they stopped the interview 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 and play a passive, impartial role, translating 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 only need to turn his or her head when addressing either the SAs or the individual being interviewed. SAs should not allow the interpreter to move around or distract the individual being interviewed, as this may harm the interview process. SAs should continue to watch the individual being interviewed while the interpreter is talking; it is important to observe the action and reaction of the individual being interviewed before, during, and after the translation of the question.

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

- A. Advise the interpreter, away from the individual being interviewed, of the methods and procedures the SAs plan to adopt.
- B. Inform the interpreter that the SAs have prepared in advance clear, concise, simply-stated, and jargon-free questions. (Lengthy or complex questions are more difficult to translate and should be avoided if at all possible.)
- C. The interpreter should merely act as a vehicle for accurately translating and passing the information back and forth between the SAs and the individual being interviewed.
- D. The interpreter should imitate the SAs' voice inflection and gestures as much as possible.
- E. There should be no conversation between the interpreter and the individual being interviewed other than what the SAs tell the interpreter to say.
- F. No matter what the individual being interviewed says, the interpreter should pass it on to the SAs verbatim rather than evaluate its worth himself or herself. This includes even the most trivial remarks or exclamations.
- G. SAs will make it clear that the interpreter is to repeat, by translation into the target language (the language into which a statement is translated), the exact question or answer as expressed by the individual being interviewed. The interpreter should refrain from using phrases such as "he says...", "he claims...", or "I believe he is lying." If the individual being interviewed says: "I...", the interpreter will say "I...". If the interpreter's opinion is desired based on his or her knowledge of the culture, value system, and body language of the individual being interviewed, that opinion should be requested in private after the conclusion of the interview. A

common failing is to be too lax in prohibiting side conversations or explanations, and to accept a reply such as: “She says no.” after a lengthy conversation between the interpreter and the person being interviewed.

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

Even if the individual being interviewed 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 interviewed should direct his or her answers.

12.3 Potential Problems with the Use of Interpreters

Interviews 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 interviewed 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 interviewed. 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 interviewed. 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 begins, there should be no extraneous exchanges between the interpreter and the individual being interviewed. SAs will then know exactly what the individual being interviewed is saying, not simply a summary furnished by the interpreter.

If necessary, SAs may substitute another interpreter part way through the interview. 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 interviewed, but also on the ability and performance of the first interpreter.

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 by telephone is inherently more difficult. This holds true with or without an interpreter.

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

Chapter 13. COERCION AND DURESS

Under no circumstances should SAs mistreat an individual being interviewed 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. If necessary, SAs will keep a detailed log of all the activities of the individual during the interview.

In rare instances, a physical examination of the individual by a U.S. Public Health Service medical officer before and after the interview 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 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 interviewed 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, no one should be subjected to questioning for so long a period or under such adverse conditions that it may constitute coercion or duress.

Chapter 14. INTERVIEW LOCATIONS

Ideally, interviews should be held in a room that is designated for interviewing. Criteria to be considered when selecting an interview location include the following:

- 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, if needed.

Note: In some instances, for example when interviewing informants, the interviews are conducted away from the office. When interviewing an informant, the interview should not take

place at the informant's house or place of business. Instead, a neutral site such as a motel room should be selected. After an informant becomes active, SAs may receive information from him or her during brief encounters or over the phone.

Chapter 15. 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 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 16. ELECTRONIC RECORDINGS OF INTERVIEWS

16.1 Custodial Interviews

Electronic recordings of custodial (see Section 4.5) interviews may further an investigation and facilitate the successful outcome of a prosecution because they may obviate challenges to the voluntary character of self-incriminating statements. They further establish that the interviewing SA properly advised the individual being interviewed of his or her rights against self-incrimination (Statement of Rights) and that the individual understood such advisement and waived his or her rights without coercion or duress. SAs should be mindful that all such recordings are discoverable. Therefore, electronic recordings of custodial interviews should be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with OI's policy on evidence handling.

Confidential consultations between the individual being interviewed and his or her attorney **must not** be recorded.

16.1.1 When Custodial Interviews May Be Recorded

Electronic recordings of custodial interviews may be used on a case-by-case basis when a determination has been made that special circumstances (see Subsection B below) exist or when otherwise determined to be in the best interest of ICE, subject to the authorization of the SAC. SACs are authorized to delegate this authority to subordinate officials within their AOR.

The approving official may authorize the electronic recording of custodial interviews in any of the following instances:

- A. The approving official has made a determination that an electronic recording is in the best interest of ICE; and/or
- B. The approving official recognizes that one or more of the following special circumstances exist:
 - 1) A juvenile (defined in Section 4.14) needs to be interviewed;
 - 2) The individual refuses to be interviewed unless the interview is recorded;
 - 3) The individual's apparent ability to comprehend is questionable;
 - 4) The individual cannot read or write, or his or her knowledge of the language used to conduct the interview may be challenged;
 - 5) An investigation has produced limited evidence and the statements by the individual being interviewed are likely to be essential to the prosecution; and/or
 - 6) Local U.S. Attorney policies require the electronic recording of interviews.

Whenever possible, SAs should seek advice from their local OCC prior to conducting an electronic recording of an interview in an investigation that has no involvement by the U.S. Attorney's Office. In cases where the investigation has been assigned an AUSA, SAs should seek advice from the assigned AUSA.

16.1.2 Preamble

The electronic recording of a custodial interview 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 interviewed;
- C. the case number, if applicable;
- D. the identity of the interviewing 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. If the individual has not previously been advised of his or her rights, such advisement should be included in the preamble. If the individual has previously waived his or her rights, this should be stated in the preamble. When the interview is concluded, the time should be noted on the recording.

If consultation between the individual and his or her attorney interrupts the electronic recording of a custodial interview, 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.

16.1.3 Handling Objections to the Recording

If the individual being interviewed objects to the electronic recording of the interview, the SAs have the option of whether or not to record the interview; however, it is recommended that, whenever possible, the SAs consult with the appropriate AUSA or OCC attorney. The SAs will document the individual's objection in the Report of Investigation (ROI). If the objection occurs after recording has already begun, the SAs have the option of whether or not to continue the recording and will document the individual's objection and the time of that objection on the recording. The SAs will also note this information in the ROI.

16.1.4 Concluding the Recording

After the recording is made, the SAs will ask the individual who was interviewed to listen to the whole recording to confirm that it is a true representation of what he or she said during the recording session. A prolonged session may make it appear that the individual interviewed might have been under duress as the whole interviewing session might take several hours. Consequently, during the tape recording of the interview, the individual being interviewed should be asked if he or she wants something to drink or if he or she wants to go to the restroom.

After the important aspects of the case are covered, SAs should ask the individual who was interviewed if he or she has anything to add to the statement. Whenever possible, SAs should then state that they are going to shut off the recorder so that the individual who was interviewed can listen to and verify the contents. Once the individual who was interviewed has listened to the recording, the recorder should be turned on and the individual should verbally acknowledge that the contents accurately represent his or her statement. The individual who was interviewed should also state that the recorder was not stopped other than during the time when he or she was allowed to review the recording. The recording should then state that this concludes the session. 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. Once this is completed, the recording should be entered into evidence and processed appropriately.

SAs must ensure both the preservation of the original electronic recording and the chain of custody. The original electronic recording shall not be altered in any manner.

16.2 Non-custodial Interviews

SAs may record non-custodial interviews at their own discretion unless prohibited by local policy. In general, when recording non-custodial interviews, SAs should follow the same procedures as described above for custodial interviews. Although no Miranda warnings will be given in a non-custodial interview, the recording should still contain a preamble providing the day of the week, date, time of commencement, place of the recording, case number, if applicable,

and names of those present. Electronic copies of non-custodial interviews are subject to the same evidence handling policies and procedures as recordings of custodial interviews.

Prior to recording a non-custodial interview, SAs should seek the verbal consent of the individual being interviewed. 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. Some states require the consent of one party only. Some states require the consent of both parties. Some states grant exceptions for law enforcement purposes; others do not. SAs should consult with their U.S. Attorney's Office and/or the local ICE OCC to learn the consent requirements in the location where the interview is to be conducted.

Note: Covert recordings of non-custodial interviews fall into the category of electronic monitoring. SAs should comply with OI policy on electronic monitoring.

16.3 Recorded Statement Taken Pursuant to a Subpoena

When a recorded statement is provided by a witness whose attendance has been compelled by a subpoena or by a court order in support of such subpoena, SAs will specify, in addition to the usual preamble to the statement, that the statement is being provided pursuant to a 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 interviewed 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. If SAs obtain a signed statement but develop additional information that is inappropriate to include in the statement, such as information about unrelated criminal activity, their notes should supplement the statement by documenting any pertinent information not included in the statement.

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 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 interviewed 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 interviewed says. Thus, when the individual being interviewed 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 interviewed 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 interviewed 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 being interviewed.

Another point to consider is whether the sworn statement should be in the SA’s handwriting or that of the individual being interviewed. 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 interviewed, 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 interviewed to write the sworn statement.

If the individual being interviewed does agree 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 interviewed 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 interviewed 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 interviewed 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 to mislead or impede the investigation, they will indicate this in their notes on the interview.

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 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 process;
- 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.

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. At the same time, SAs should be as descriptive as possible about the purpose of the interview.

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 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 interviewed 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. For example, when taking a sworn statement concerning the possible removal of an alien, SAs should develop the pertinent factors in a logical sequence. In such a case, the most important factors are alienage and qualification for removal. SAs should begin with the date and place of birth, country of citizenship, citizenship of parents, and possible derivation or expatriation to establish alienage. Then, they should develop evidence of qualification for removal based on relevant provisions of the INA. Many factors are involved in arriving at this determination, such as:

- A. the details about the alien’s last entry into the United States (date, place, manner, intention, status of admission, documents, maintenance of status, etc.);
- B. the alien’s possible previous lawful entry for permanent residence;
- C. the alien’s possible abandonment of domicile, if previously lawfully admitted for permanent residence;
- D. the alien’s employment; and
- E. the alien’s departures or previous removal(s).

Even if SAs write or dictate the statement, it is essential to use the particular phraseology of the individual interviewed. SAs will use the interviewed individual’s exact words, if possible. Otherwise, it could be alleged that the individual interviewed 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. Thus (as in the example in Section 17.3), if the individual being interviewed states, “I used my passport,” the SAs will not record the passport number as part of the answer, because this deviates from the individual’s

statement. Rather, they should show the passport to the individual being interviewed, confirm for the record that it is his or hers, and ask him or her to read the passport number for the record. Recording these questions verbatim ensures that relevant information is gathered and that the statement will survive scrutiny.

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 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 interviewed 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 interviewed 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 interviewed 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 interviewed 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 interviewed 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 interviewed reviewed the entire statement with the SA;
- B. the changes, if any, were made with the knowledge and consent of the individual who was interviewed and were initialed by the individual who was interviewed;
- C. the individual who was interviewed appeared to understand the contents of the statement;

- D. the individual who was interviewed knew what he or she was doing during the interview process;
- E. the individual who was interviewed acted of his or her free will when being interviewed; and
- F. the individual who was interviewed 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 interviewed is unable to sign the sworn statement, 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 interviewed 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 interviewed sign or initial each page. The individual who was interviewed 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 interviewed sign above the line. Finally, wherever possible, the SAs will have the individual who was interviewed 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 do not relate 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 observe the following procedures:

- 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 guidelines above;

- 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 OI.

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ACRONYMS

A

AOR Area of Responsibility
AUSA Assistant United States Attorney

B

C

CFR Code of Federal Regulations

D-H

I

ICE U.S. Immigration and Customs Enforcement
INA Immigration and Nationality Act
INS Immigration and Naturalization Service

J-N

O

OCC Office of the Chief Counsel
OI Office of Investigations
OPLA Office of the Principal Legal Advisor

P-Q

R

ROI Report of Investigation

S

SA Special Agent
SAC Special Agent in Charge

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T

U

USC United States Code

USCS U.S. Customs Service

V-Z

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