

Suggested Protocol for Client Interviewing in Confession Cases

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1. Pre-Arrest questions

Go through the client's activities in the hours before his arrest. Did the client work on the day of his arrest or the night of his arrest? How much sleep did the client get the night before his arrest? When was the client's last meal and what did he eat? Did the client take any drugs or imbibe any alcohol in the hours before his arrest?

2. Arrest

Go through the details of the arrest with the client, in particular if he was asked any questions about the case, told what they were arrested for and what would happen to them. Did client ask any law enforcement the penalty and what client was told. What was stated to the client at booking, what was told about what would happen to them, how long they would be in the lockup facility.

3. Medical History

Find out what medical conditions client has, what prescribed medications they normally take, where they given these medications during the time period in which they were being interrogated. If client did take medications, what was the regular dosage, did client ask for medication or medical care, what was the police response. Did client have any special dietary needs as a result of their medical condition. Did client have any special physical needs as result of medical condition. Obtain medical releases for medical records, including jail medical records.

4. Education Level

What is client's level of education. Any special education classes, ED or LD classes. What type of schools did client attend. Determine what client's literacy level is by having client read aloud to you. Determine if client can, in addition to pronouncing the words, comprehend the content of what is being read. Be sure to get release and obtain school records if available.

5. Mental Health

Has client ever sought or been provided any professional help for mental health issues, including school or any institutional counselors, social workers, psychologists or psychiatrists. Has client ever been told they should seek counseling or treatment for mental health issues. Was client ever evaluated as the subject of a CHIPS petition or other juvenile or family court related matters or removed from the parental home. Did client ever have a GAL. Obtain releases for records.

6. Family History

Does anyone in client's family have any mental health history or any disease which has resulted in cognitive or behavioral changes. Did client grow up outside of parental home? How was client disciplined as a child, how did client respond to authority figures.

7. Criminal/Juvenile History

What is client's juvenile and adult court history of arrests, charges, convictions. Has client even been questioned before by the police. What did client do when previously questioned? Has client ever asserted his constitutional rights before?

What was the length of questioning? Was the statement client gave on previous occasion truthful? What was the result of the questioning – e.g. did client give statement and then get released from custody. Was client brought up to respect and to trust police officers? Are there any previous experiences with police that made the client fear police? Did client know that police could lie to him about evidence?

8. Client custody status

Was client ever handcuffed? Was he told he was free to go? Did client ever ask to leave? Was the door to the interrogation room open or closed? Was it locked or open when officers were not in the room? Was client escorted to and from the bathroom when he asked to use the toilet? How were police officers positioned vis a vis the door in the interrogation room? Did client come into police building using public elevator/stairwell

9. Detention Conditions During Times of Questioning

Where was client held before and during interrogation periods. Specific description of lockup, including whether single cell, or bullpen type facility. Description of what was provided for sleep. Are lights out at night. Is there quiet or noise. What food is provided and when. Is client woken up for meal delivery. What did or didn't client eat. What was the temperature of the room where client was interrogated? Was client cold or hot? If cold, was he given a blanket?

10. Opportunities for communication

Was client permitted any communication with the outside world, others in custody, phone calls, etc. Did client request to make phone calls. In juvenile cases, find out if the client requested an opportunity to speak to his or her parents and how police officers dealt with this request. Also ask parents what, if any, attempts they made to speak with their children, and what if anything police told them.

11. Pre & Post Interrogation Conditions (relate to question of whether client was “in custody”)

When was client taken to and from interrogation. Who transported client. What conversations took place during that time. Was client left alone in interrogation room before or after interrogation, length of time left, who checked on client, what client did during that time. Was client handcuffed while left alone. Was client given bathroom breaks?

12. Beginning of Interrogation/Miranda warnings

Was client interviewed at all before Miranda warnings- e.g. family or personal history taken. If so, how long this took & specifics of what was discussed. Did client ask any questions before Miranda and police response. How were rights read to client? Did police pause after each right to ask client if he understood rights? Did they ask him if he wished to waive his rights after each right or only once at the end of reading of rights?. Did police present the rights to the client in a way that implied that the client would be better off talking to the police? With children, ask if the police asked them to explain the meaning of each of the rights in their own words. Did client sign waiver at time.

13. Pre-Interrogation Interview

Before beginning interrogation, did police ask questions in a mild tone, more open ended type questions. Did police ask client not only for their version of what occurred but questions such as what client thinks should happen to the person who committed the crime, does the perpetrator deserve a second chance, did the client ever think/fantasize about committing the offense, is client willing to take polygraph or voice stress analyzer test, what police told them about these tests. How police were positioned during this stage of questioning. How long did this type of questioning last. Did any officer leave the room and come back in, at what stage, did tone of questioning change when this happened.

14. Confrontation Statement

What did police say there were questioning client about. Did they tell client what they thought he did. Did they express certainty that client had committed the crime (or was involved in it). What words they used. Did they sit or stand while telling this to the client. What was the tone of voice. Did client attempt to interrupt, how police handled the interruption.

15. Bait Questions & Discussions of Evidence

What evidence did police claim they had against client or were likely to have – e.g. eyewitnesses, DNA, fingerprints, gunshot residue from hand swabs, evidentiary items seized. Did police directly tell client they had this evidence or ask it hypothetically such as “what would you say if I told you we have...(named evidence).” Did police tell client they had a strong case against them and what the case consisted of. Were any photos, reports, other evidence shown to client. What details were told to client about the offense. Were files brought into room even if not shown, or any other props used to give impression that police had strong case. Were misleading statements such as “we’re questioning so-and-so right now and they are talking to us, telling us the truth, etc.

16. Client’s Denials

Did client give or repeat denial. Was client given an opportunity to voice denials fully or did police interrupt and cut them off. If interruptions, what police said, did they raise their voice, stand up, etc. Did police take notes when client gave denial. Did police accuse the client of lying? Did they claim to be able to tell the client was lying by looking at him?

17. Theme Development

Aside from telling client the evidence police had, did the police talk for lengthy period of time, almost like a monologue. Did police weave together a story of what they thought had occurred in the offense. As part of this story, in case involving violence, did they put blame on the victim – e.g. victim was violent, a drug dealer, client had reasons to be angry at or afraid of victim. If a sex crime, that victim was sexually seductive, started things. Did police hypothesize as to why client committed crime in a way that minimizes client involvement, motive, intent. If a property crime, that client not a dishonest person but just in desperate condition, had good reason to need money, etc. If a drug crime, either need for money or client has drug problem. Did police contrast this minimized intent or involvement with how the case would look without it – in other words that the facts look very bad, intentional, serious, but this scenario or reason for client’s involvement mitigates the case and if client “tells the truth” how things will go better for them.

Did police suggest the crime was an accident, or that it was impulsive, not premeditated, did they suggest it was provoked or that the suspect acted in self-defense? In cases of multiple perpetrators, did they suggest that the suspect was merely a witness, or was in the wrong place at the wrong time, that the suspect tried to stop the others, or that the suspect was a follower, not a leader.

As part of this phase of interrogation, what did police say what they would tell other players in the system – DA, court, probation officer. Did they tell client that the DA etc. would need to know client's account and take it into consideration, or that crime looked much more severe. How if DA etc. don't know "the truth" they will think worse of client, see things in a worse light, increase penalties, etc. Did police puff up their influence with the DA and the court, implying that their recommendation would be taken seriously by judge or prosecutors.

Did police tell stories as part of this persuasion – either of something they had done wrong as a young person and how they overcame it, of other cases they worked on and how the person who confessed was given leniency compared to those who didn't confess, or of highly publicized cases in which a person who confessed or cooperated was given leniency. Did they talk about how they or the person they are telling the story about needed "help", received help, turned their lives around.

Did police suggest that the suspect would feel better once he confessed, that the "truth" would set him free, or that the suspect needed to confess to get right with God. What, if any, discussion about religion, was there?

Did police use language that would be vague or softer than the crime – for example, calling what happened "this thing" or refer to it as having sex instead of a rape or homicide.

Did the police express sympathies for client's stresses, drug or alcohol or psychological problem and talk about how client would be able to get help. In juvenile cases, did the police suggest that the system was not designed to punish but to rehabilitate; did they suggest that the system helps only those who cooperate or help themselves by confessing?

18. Client's resistance to interrogation

Did client ask to leave or for attorney at any point. How police responded to this. Did police use delaying tactics or offer to no longer interrogate but talk about another subject instead. Did police say client was free to leave or to get lawyer, but this might harm client because then the DA, etc. would not have access to client's side of story and case is more harmful to client then.

Did client become passive and try to disengage from police during the interrogation – but looking down, trying to tune them out, close eyes, etc. How did police respond to this. Did police move closer, touch them at all, tell client to look at them directly, etc.

19. Physical Positioning

Did police go in & out of room, move in room, move closer to client, remove table from room, touch client in any manner including in empathetic way or otherwise. When did police leave room and why. What was client told about breaks and when

they would be back or break would be over. Were officers positioned between the suspect and the door? Was the suspect backed into a corner?

20. Admission

When did client decide to make an admission. Why. How did the police obtain the admission. Did the police ask a double edged question in which both answers would point to guilt, but one choice would be of lesser severity than the other, such as “was this an intentional thing or was it an accident”. Did police give feedback to client about admission or give client privileges as a result.

21. Obtaining Details & Written Statement

How did police get the details of the statement. Did they ask leading questions. Did they ask many questions in which they posed two possible answers, letting client choose one of the two responses. If they disliked client’s response, did they attempt to change the answers or information given. Did they tell client that what he said contradicted the evidence or show photos of physical evidence to get client to make change. Did they write down what client said as he was talking or go over it first and go over it again and write down later. Did they allow client to see what they were writing as they did it. Did client ask to be allowed to write out what happened himself instead of police doing it. Was it read back to client. Did they tell client to initial it in various places and why they said to do it. If client didn’t initial or sign, why he didn’t and what police said to try and get him to do so. If client signed it, why. If client had previous unsigned statements that were denials, why he refused to sign then and did for the confession. Did police suggest that client write an apology statement at the end and what would be good to say in that statement.

22. Client Requests

Did client ever ask to stop the questioning. Say he was tired or put head down. How police responded when client said he was hungry, thirsty, needed to use bathroom, wanted to use phone to talk to someone else. If client is a smoker, was he allowed to smoke. Were his requests met as needed or given as a “reward” for information. Was he given breaks as a result of his request or did breaks occur for convenience of the police.

23. Police Personalities

Ask about the personalities and approaches of the different interrogators. If more than one officer present, who did most of the questioning. How they individually responded to client denials, admissions, requests. Any “good cop/bad cop” role playing. Did they smoke at all during interrogation. Did they eat in front of the client?

24. Multiple Interrogations

If there is more than one interrogation in the case, be sure to elicit details of all of the interrogations. Did the interrogations in second interrogation on refer to the previous interrogations. Did they read the previous statements to client. Did they disclose new information or change interrogation style. What they told client about why he was being interrogation again.

25. “Lie Detector” Tests

Use of polygraph or voice stress analyzer test? How was idea of truth detection device introduced into the interrogation? Did client ask for the test or did police suggest the test? What was client told about the test? Was the suspect ever told results of the test would be admissible or inadmissible in court? After the test was given, was the suspect told that he passed or failed? Did police imply that he failed or act like he had failed? How did news of this failure affect the client?