

Defense Interview Pointers

You have the right to have your advocate and prosecutor present.

The defendant will **NOT** be present

Talk with your advocate and prosecutor before the interview about what to expect and any concerns you may have.

The interview can be at a time and place that is agreeable to you. Often times a neutral place is the prosecutor's office. Let your advocate know what will work best for your schedule and needs.

Some defense investigators may try to contact you directly. You do not have to answer questions without your advocate and prosecutor present. You can also ask your prosecutor to contact defense early in the case to notify them your request to have all interview coordination go through the prosecutor's office.

You can choose whether or not you want the interview recorded. It is your decision and you do not have to give a reason why or why not. Talk with your advocate about the pros and cons.

Your advocate and prosecutor will talk with you about the rights you have regarding the interview and questions that may be asked.

Try to relax. You are not the one on trial. This is an opportunity for you to see what type of questions the defense attorney will ask you at trial. It is also your opportunity to tell the defense attorney in your words what happened.

During the Interview your advocate will remind you of your right to choose to answer or not answer specific questions or subjects if they come up in questioning.

If you don't understand a question, ask for clarification.

If you don't remember the answer to a question; it's ok to say so. This is not a test.

Tell the truth. There is no perfect case. The truth is always the best route to go. You have not done anything wrong. If you have specific concerns, talk with your advocate confidentially.

Answer only questions asked; you do not need to provide additional information. The prosecutor will step in if a question is needed to be asked.

Take a break anytime you need one. It is common for people to have an emotional response during interviews or find it difficult to concentrate without a break.

Attorneys sometimes argue during defense interviews. This is not about you or anything you said. The prosecutor and defense often have different opinions over specific legal approaches.

Defense interviews can be challenging. Take things one step at a time. Prepare with your advocate and prosecutor and utilize your advocate for additional questions and support.

You are not alone in this process.

Types of Defense Questions

Fishing Questions: Irrelevant questions. Sometimes defense will “fish” for information unrelated to the criminal case. Choose your battles. You can always refuse to answer a question. Defense may indicate that they will go to a Judge to order you answer the question. You can hold your ground until you receive notice that a Judge has ruled on it. This is often a defense tactic, but sometimes will result in a judge ordering the question be answered because it may be relevant to the case.

“Why didn’t you do ...x, y or z?” There may or may not be an answer to this question. There is no normal response for a victim. “Why didn’t you” implies that you should have done x,y or z and possibly to put you on the defensive. You do not have to defend your actions; you are not the one on trial. Focus on answering as completely and honestly as you can but remember there may not always be an answer to every question.

Misquote of something you said earlier Correct any misquote or misrepresentation of your answers. Then ask them to repeat the question, correcting the quote.

Putting words in your mouth An interviewer will often guess at your answer to a question. If the answer does not accurately reflect the truth, do not agree with their guess. Let the interviewer know you do not agree, and correct the answer to the best of your knowledge.

Repeat the same question over and over again You can answer the question again, or you can tell them you already answered this question and please ask another question.

The “off balance approach” This usually involves defense asking many questions about something more simple or bland then switching back to a more specific subject out of context from what you were just talking about. Sometimes may involve misquoting your previous answer. Listen to every question carefully. Take your time when answering. Correct any inaccurate information in regard to your answers.

“What was so and so thinking” question? You do not have to answer questions about what someone else was thinking or why they did something .It isn’t expected you would know what other people were thinking.

Condescending or patronizing tone Some defense attorneys or investigators are trying to push you to see if you will react, or if you will say something they can use to discredit you. Your advocate is present to assist you if you feel the interviewer is badgering or inappropriate. You can choose to not answer any irrelevant questions, or decide to leave at anytime if you are not being treated with respect.

Accusatory Questions For example the “Why didn’t you do x,y or z?” Or the “You were pretty drunk that night weren’t you?” type questions implying you have done something wrong. You do not have to defend yourself. You have done nothing wrong and are not on trial. Keep it simple, tell the truth and correct and misrepresentation of your answers or what happened. It’s always better to tell the truth, even when it may feel embarrassing or uncomfortable to talk about. Remember this happened to you; you did not have control over what happened. **It is not your fault.**