

NALP 2017 Panel Handout
Addressing Difficult Interview Questions in Public Sector Interviews
April 19, 2017, 2:15-3:30pm

Qualities We Seek

- Genuine interest in our work
- Practical experience, especially courtroom experience
- Multi-tasking abilities
- Good judgment, ethics, and instincts
- Excellent writing ability
- Ability to think on your feet
- Ability to work as part of a team and independently
- Appear professional, trustworthy, and thick skinned
- Ability to talk through legal or ethical issues coherently and succinctly

Examples of the Tougher Questions

Behavioral Interview Question Examples

- Tell me about a situation in which you had to deal with a very upset customer or coworker. How did you handle that situation and what was the result?
- Describe the most difficult person you had to deal with on a regular basis and tell me how you dealt with him or her and what the result was of that situation?
- Tell me about a time that you had to read another person and guide your actions by your understanding of his/her individual needs or values. How did you handle that and what was the result?
- Tell me about a time when you were faced with several different tasks at once, how did you handle that situation?
- Tell me about a time when you had to be quick in coming to a decision in a stressful situation. What was the result?
- Tell me about a time when you had to convince someone else of your point of view. How did you handle that and what was the result?

Discussing a Legal Issue in an Interview

- How to Respond
 1. Describe the Assignment (the assigned perspective; is it a neutral or advocacy piece)
 2. Relevant Facts
 3. Legal Question Presented
 4. Applicable Legal Framework or Standard
 5. Resolution
- Be Ready To
 - o Take the other side
 - o List your argument's strengths and weaknesses
 - o State whether you agree with the resolution and explain your reasoning
 - o Incorporate new or altered facts

Please see attached pages for a fact pattern for candidates to create an impromptu opening and an interview hypothetical.

OPENING STATEMENT EXERCISE

Your client is Rick Blaine, 21 years old and charged, as an aider and abettor, with assault with a dangerous weapon (gun). It is the morning of trial. You have selected a jury. Give an opening statement based on the scenario below.

The government's allegations are:

Background

In 2015, conflict existed between a small group of young men who lived in the Butler Gardens Apartments and a small group of young men who lived in the Arthur Capper Apartments. Whenever they encountered one another in 2015, the groups would argue and occasionally fight. These two apartment complexes no longer exist, but in 2015 they were 3 miles apart and took 10 minutes to drive from one to the other.

On September 5, 2015, at about 10:00 pm, the D.C. Metropolitan Police received a report for the sound of gunshots at Butler Gardens. At about 11:00 pm that same night, the police received a report for the sound of gunshots at Arthur Capper.

Butler Gardens Evidence

When the police arrived at Butler Gardens sometime after the 10:00 pm report, they saw that one of the buildings was struck four times by gunfire but they did not find any cartridge casings. Because there were no casings, the government will put on testimony that it is likely that a revolver or revolvers were used to shoot at the building.

Although the police found several people who heard gunshots, the spoke with only one person saw who anything: Louis Renault. The police said that they smelled alcohol on his breath, but that Mr. Renault was coherent enough to give a statement. Mr. Renault is a

government witness and will identify Mr. Blaine at trial. Mr. Renault said the following to the police:

I'm 45 years old and have lived in Butler Gardens my whole life. Earlier tonight, I heard some shots and looked out of my second-floor window. About half an hour later, I heard some voices and looked out again. Rick Blaine and another guy that I've seen before walked to the sidewalk under my window. I've known Rick for a few years. Rick and my daughter have a baby together. He is a good father, he has a good job, but he started disrespecting my daughter. He never hit her, but his disrespect made them break up and they are now fighting for custody of the baby. I don't know the other guy, I've just seen him once or twice, but I remember his shirt because it was so bright: a long-sleeved, neon green Seattle Seahawks shirt.

Rick and the other guy were about 30 to 50 feet away when I saw them. Rick was saying to the other guy "I know it was those f--ing Arthur Capper boys. We need to go *talk* to them, you know?" Rick was really mad. He was practically screaming. The other guy just nodded. The two of them then got into Rick's silver Honda Civic and peeled out. Rick was driving and going really fast. The other guy was the front passenger. I did not notice it during their conversation, but when the other guy got into the car, his shirt rode up a little and I saw that he had a gun in his waistband. Before tonight, I never suspected that Rick was one of the boys beefing with Arthur Capper. I guess I was wrong.

Arthur Capper Evidence

The police arrived at Arthur Capper shortly after the 11:00 report. No one was outside, but the police knocked on several doors. Several people heard shots, but nobody saw anything, with one exception: the complaining witness, Victor Laszlo. He is a government witness. Mr. Laszlo is a 19 year-old young man who opened his apartment door to the police and told them the following:

I was walking down the sidewalk when a silver car came around the corner. I didn't pay much attention to it, but noticed that it was going slowly. All of a sudden, a hand holding a gun comes out of the front passenger window, and it starts shooting at me. I had no idea why. I was right there near my apartment building when it started and I was able to run into the building and into my apartment. I didn't see the guys in the car, only that the shooter was wearing a bright shirt, blue or yellow or something. I didn't call the police because I didn't catch the license plate and I didn't see anyone's faces. I know people in my neighborhood are beefing with Butler Gardens, but I'm not involved in that at all. I just keep to myself.

Mr. Laszlo showed the police where the car was when the shooting started. The police recovered three spent cartridge casings. The government will call a ballistics expert to testify that, based on markings on the three casings, all of the casings were fired from the same gun and that the gun was a semi-automatic. The police did not test the casings for DNA or fingerprints.

Defense Investigation

You and your investigator found and interviewed two people, one from Butler Gardens and one from Arthur Capper. They both told you that neither the police nor the government has ever spoken to them, and they were never subpoenaed by the government.

The first witness, Sam Wilson, told you:

I'm 50 years old and have lived here at Butler Gardens over 20 years. I heard the shots at around 10:00 pm one night some time ago, but don't remember the date. I was home when the cops came by, but I didn't open the door. I don't trust them. Some time after the shots, after the cops were gone, I heard a car screeching to a stop and looked out of my window. I saw Rick and some other guy get out of Rick's silver car. I've known Rick since he was a boy. I've never seen the other guy before. When they got out of the car, Rick was really mad. He was yelling at the other guy, "What the hell was that? What the hell were you thinking? I told you we were just going to talk to them." I've never heard about any beefs between Butler Gardens and any other neighborhood. That's the only thing I saw or heard that night.

I know Louis Renault is going to testify in this case. He lives in the same building as me. He's a drunk so I don't spend any time with him.

The second person, Ilsa Lund, told you:

I'm 80 and have lived in Arthur Capper since I retired a few years ago. I just happened to be looking out of my window before the shots. A dark blue car stopped across the street and two guys got out. I don't remember what they looked like and can't remember anything unusual about what they were wearing. When they got out, I noticed that a young man from our neighborhood was walking down the sidewalk. He and the guys from the car all stood together and started talking. I couldn't hear what they were saying, but all of a sudden the guy from our neighborhood pulled out a gun. The other two ducked behind their car. The guy from our neighborhood started firing his gun and running away at the same time. He eventually made it into the apartment building across the street from me. One of the two guys was firing back. Those two guys then jumped into their car and sped away. Before I could even call the police, I heard sirens. No

police officers ever knocked on my door. I figured if anyone wanted me as a witness, they would find me.

Additional Anticipated Evidence and Legal Principles

Mr. Blaine was arrested a few weeks after the shootings. The police executed a single search warrant in this case for Mr. Blaine's apartment. Nothing was found or recovered.

After his arrest, Mr. Blaine asserted his right to silence and never gave the police any statements. Mr. Blaine told you repeatedly that he doesn't want to talk about September 5, 2015, and that he does not want to testify at trial.

The police were never able to identify, let alone arrest, the alleged shooter.

The police will be permitted to testify that there was conflict generally between young people from Butler Gardens and from Arthur Capper. The police will not be permitted to testify that Mr. Blaine was previously involved in this conflict.

Shooting at someone, unprovoked, is an assault with a dangerous weapon (gun). Shooting back at someone who initiated gunfire is self-defense, which is a complete defense to assault with a dangerous weapon (gun). One who drives another person to a location, knowing and sharing in the other person's intent to shoot someone else without provocation, is an aider and abettor to assault with a deadly weapon (gun).

**DEPUTY PUBLIC DEFENDER II ORAL BOARD INTERVIEW
DECEMBER 12, 2013**

FACT PATTERN

Your client, Edgar Martinez, is a lawful permanent resident charged by complaint with two misdemeanor charges: Count 1, a violation of Penal Code section 273.5(a) (corporal injury to spouse or cohabitant), and Count 2, a violation of Health and Safety Code section 11550(a) (under the influence of a controlled substance – methamphetamine). Pursuant to H&S §11550(b), the complaint also alleges two prior convictions for H&S §11550(a) within the past seven years. Mr. Martinez has no other record.

According to police reports, on December 15, 2012 at 11:30 p.m., Officer Jones of the Antioch Police Department is dispatched to the parking lot of the Whiskeyhouse Bar in Antioch on a report of a “domestic assault.” Officer Jones observes Mr. Martinez standing next to a car arguing with two women, Jasmine Green and Sarah Brown. He directs Mr. Martinez to remain by the car while he speaks to the two women.

Ms. Green is visibly upset. She tells Officer Jones that she called the police 15 minutes earlier because Mr. Martinez, her boyfriend of six months, assaulted her. She had been drinking at the bar since 9:00 p.m. with Mr. Martinez and their mutual friend, Ms. Brown. She and Mr. Martinez began arguing inside the bar about their relationship, and she asked Ms. Brown to leave with her and drive home. Mr. Martinez followed them outside and told Ms. Green to stop. When she refused, he grabbed her shoulder, turned her around, and slapped her in the face. Ms. Green called 911 from her cell phone. Mr. Martinez remained, continuing to yell at both Ms. Green and Ms. Brown until the police arrived. Ms. Green desires prosecution.

Officer Jones speaks to Ms. Brown separately. She provides the same account as Ms. Green about Mr. Martinez’s assault.

Officer Jones reads Mr. Martinez his *Miranda* rights, which Mr. Martinez waives. He yells that they were arguing because he suspected Ms. Green was cheating on him; he denies ever grabbing or hitting her.

Officer Jones observes redness on Ms. Green’s left cheek, which he photographs. He smells a moderate odor of alcohol on all three individuals. He also notices that Mr. Martinez is speaking fast, is sweating, and has a rapid pulse.

Officer Jones arrests Mr. Martinez for the PC §273.5(a) charge. Based on his extensive training and experience, he also suspects Mr. Martinez is under the influence of methamphetamine. He tells Mr. Martinez he can take either a blood or a urine test. Mr. Martinez chooses a blood test. The blood is collected by a phlebotomist in a medically-approved manner, and later tests positive for high levels of methamphetamine.

Mr. Martinez appears in court on August 15, 2013 for arraignment. He is out of custody, and you are appointed to represent him. Consistent with his statement to the police, he tells you

he did not hit Ms. Green. He also tells you they are back together and she wants to speak with you.

Three weeks prior to trial, your investigator speaks separately to Ms. Green and Ms. Brown. Ms. Green says she loves your client, that he never hit her, and that she is not coming to court. Ms. Brown says that she actually never saw your client hit Ms. Green; she made up the story to help her friend.

At the pretrial conference two weeks prior to trial, the prosecution offers to reduce the PC §273.5 charge to a PC §243(e) (battery on spouse or cohabitant); plead to the H&S §11550(a) charge; and to strike the H&S §11550 priors. The sentence would be three years' formal misdemeanor probation, PC §1203.097 terms, and ninety days jail. In lieu of jail, your client could serve the sentence on electronic home detention or in a minimum 90-day residential treatment program.

DEPUTY PUBLIC DEFENDER II - ORAL BOARD INTERVIEW

DECEMBER 12, 2013

EXAMINATION QUESTIONS

PRETRIAL MOTIONS

1. Assuming your client was lawfully arrested for the §273.5 charge, discuss any search issues relating to the collection of your client's blood.

DISCOVERY AND ETHICS

2. Do you disclose to the prosecution the statements your investigator took from Ms. Green and Ms. Brown? Discuss both legal principles as well as any tactical issues related to disclosure.

CASE EVALUATION FOR TRIAL

3. What are the strengths and weaknesses of the case from the defense perspective?

CASE NEGOTIATION AND CLIENT ADVISEMENT

4. Your client informs you he wants to resolve the case prior to trial. Do you advise your client to take the prosecution's offer? If no, what if any counter-offer do you propose?

MODEL ANSWER

The following is an overview of the major issues included in the PD II exam fact pattern.

Question 1 – Seizure of Edgar Martinez’s Blood (approximately 7-10 minutes)

The question directs the examinee to assume that the arrest of Mr. Martinez was lawful, and to focus discussion on the collection of his blood. The question is intended to elicit a discussion of the recent United States Supreme Court case, *Missouri v. McNeely* (2013) 133 S.Ct. 1552, and related cases.

The warrantless collection of blood from an arrestee implicates the Fourth Amendment and is unlawful absent consent or exigent circumstances. In *McNeely*, the defendant was arrested for a DUI and advised of Missouri’s implied consent law. When the defendant refused a breath test, he was taken to a hospital, where he refused a blood test. His blood was collected over his objection. The Supreme Court held that the natural metabolic elimination of alcohol from the blood does not *per se* constitute an emergency justifying a warrantless, nonconsensual blood draw.

Several issues are presented by these facts:

1. **Retroactivity**: The defense bar has been largely unsuccessful at employing *McNeely* in *DUI* cases to suppress warrantless, nonconsensual blood draws that occurred prior to *McNeely*’s issuance on April 17, 2013. The defense argues that *McNeely* is based on existing principles enunciated 47 years ago in *Schmerber v. California* (1966) 384 U.S. 757, where the Court employed a “totality of the circumstances” approach to determine the lawfulness of a forcible blood draw, rather than holding that dissipation alone equals exigency. Thus, the defense argues that *McNeely* is simply a restatement of *Schmerber*, and law enforcement should have been applying *Schmerber* / *McNeely* principles even prior to *McNeely*’s issuance. In support of this argument, the defense notes that a few days after *McNeely* issued, the Supreme Court remanded a case called *Brooks v. Minnesota* to the Minnesota Court of Appeals for reconsideration in light of *McNeely* – and *Brooks* involved a nonconsensual blood draw that occurred *prior* to the issuance of *McNeely*.

However, most courts have rejected this argument, citing *Davis v. United States* (2011) 131 S.Ct. 2419. *Davis* held that if the police rely on “binding precedent” that has subsequently been changed by the Court, suppression is not appropriate. Prior to *McNeely*, California courts had routinely allowed warrantless blood draws where the collection was done in a reasonable, medically-approved manner, was incident to a lawful arrest, and was based on a reasonable belief that the arrestee was intoxicated. (See, e.g., *People v. Ford* (1992) 4 Cal.App.4th 32.) Most courts have held that pre-*McNeely* nonconsensual blood draws were performed in good faith reliance on existing law and therefore are not subject to suppression under *Davis*.

Mr. Martinez’s blood draw occurred December 15, 2012, prior to the publication of *McNeely*. If this were a DUI case, it would be highly likely that the trial court would deny suppression

pursuant to *Davis*. However, given that this is an §11550 case, the likelihood of prevailing is far stronger, as described below.

2. Forcible blood draws vs. blood draws lacking express consent: Here, Mr. Martinez did not explicitly refuse the test. However, he had no burden to give consent; the burden is on the prosecution to establish consent. Officer Jones told Mr. Martinez that he could take either a blood or a urine test, and Mr. Martinez chose a blood test. The examinee should recognize that Officer Jones's statement was equivalent to a command; Mr. Martinez was not given an option to refuse. Mr. Martinez's choice of a blood test was a submission to Officer Jones' authority and does not constitute voluntary consent for the collection of his blood. The fact that the blood draw was unforced does not alter the fact that it was nonconsensual.

3. DUI vs. 11550: Two issues have significance in distinguishing this §11550 case from a *McNeely* DUI case.

a. No implied consent law in §11550 cases: While defenders do not concede (either pre- or post-*McNeely*) that California's DUI implied consent law constitutes consent for a warrantless, nonconsensual blood draw in DUI cases, the examinee should identify that this is an H&S §11550 case, not a DUI case. There is no "implied consent" in 11550 cases, nor is there any law stating that an §11550 arrestee must give a urine or blood sample. This strengthens the argument that the blood draw here violated the Fourth Amendment.

b. Delay to obtain warrant will not cause destruction of evidence: As discussed above, pre-*McNeely* law allowing nonconsensual blood draws in DUI cases was based largely on the fact that because of the evanescent nature of alcohol in the body, a delay involved in seeking a warrant could result in the destruction of evidence. (*Schmerber, supra*, 384 U.S. at 770-771.) However, unlike blood alcohol, most controlled substances are not eliminated quickly from the blood; a reasonable delay to obtain a warrant will not affect the utility of the blood collection for law enforcement.

Question 2: Discovery and Ethics (5 minutes)

The question directs the examinee to discuss both legal and tactical issues surrounding whether to disclose to the prosecution the statements the defense investigator took from Ms. Green and Ms. Brown three weeks prior to trial. Ms. Green said she loves Mr. Martinez, that he never hit her, and that she is not coming to court. Ms. Brown said that she actually never saw the client hit Ms. Green and she made up the story to help her friend.

Legal issues: Penal Code §1054.3 requires disclosure of the relevant statements of witnesses that the attorney reasonably expects to call at trial. If §1054.3 is triggered, and the statements are taken within 30 days of trial, disclosure is required immediately. (Pen. Code, §1054.7.)

Here, Ms. Green and Ms. Brown are *prosecution* witnesses, not defense witnesses. Although their statements to the defense investigator are helpful, their statements to the police

are not. If they testify at trial, the attorney will use the statements they made to the defense investigator for impeachment. Section 1054.3 does not impose an obligation on the defense to disclose impeachment of the opposing party's witnesses, unless the impeaching party reasonably has decided to call the witness in its own case. (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356; *People v. Tillis* (1998) 18 Cal.4th 284.) Accordingly, the defense has no obligation to disclose the statements.

It is possible, but unlikely, that Ms. Green or Ms. Brown might become defense witnesses. For example, if the prosecution cannot locate Ms. Green but is able to introduce her statements at trial as spontaneous statements (over a *Crawford* objection), the attorney might want to call Ms. Green for the defense to impeach her own statement to the police. In this situation, §1054.3 would require disclosure at the time the attorney makes the decision to call Ms. Green at trial.

Tactical issues: If the attorney is seeking an offer, the attorney may wish to disclose the witness statements during case negotiation to encourage a resolution prior to trial. On the other hand, the attorney may wish to avoid disclosure in order to maximize the impact of impeaching Ms. Green and Ms. Brown with those statements if and when either witness testifies at trial.

Question 3: Case Evaluation (5-8 minutes)

The following are some of the strengths and weaknesses of the case from the defense perspective.

Strengths

(1) §273.5

- Both victim (Ms. Green) and witness (Ms. Brown) are recanting
- Ms. Brown's bias, given her friendship with Ms. Green
- No truly independent witnesses
- Ms. Green may not come to court; if she does not, her statement to police might be excluded under *Crawford*
- Client denies hitting victim
- Mild injury (redness to cheek)
- Both victim and witness had been drinking

(2) §11550:

- Objective signs of UI (rapid speech, sweating, rapid pulse) can be given benign explanations; many other objective signs are not identified (e.g., abnormal pupil size, tooth grinding, etc.)
- No field sobriety tests conducted / no DRE exam
- No drugs or drug paraphernalia found
- No admissions of use
- Blood results may be suppressed at the §1538.5

Weaknesses

(1) §273.5:

- Ms. Green's statement to police establishes the §273.5
- Even if Ms. Green does not testify, the 911 call likely is admissible, and the at-the-scene statement may be admissible, despite a confrontation / *Crawford* objection, as non-testimonial, spontaneous statements
- Witness Brown confirms Ms. Green's statement when speaking to the police; and no indication Ms. Brown will resist testifying
- Both witnesses are likely to get subpoenaed and forced to testify
- Police observed the injury (redness to cheek) and took photograph

(2) §11550:

- If blood results not suppressed at the 1538.5, moderately strong case for DA given that the blood tested positive for high levels of methamphetamine, and the objective signs are consistent with being under the influence

Question 4: Case Negotiation and Client Advisement (5-8 minutes)

The client wants to resolve the case prior to trial. The examinee is asked whether to advise the client to take the prosecution's offer, and if not, what if any counter-offer to propose. The prosecution offers a PC §243(e) in lieu of the §273.5, and to plead to the §11550 without admitting the priors, for three years' formal probation, PC §1203.097 terms, and ninety days jail, which could be served on EHD or in a residential program.

The following issues have relevance to the discussion:

Immigration impact: Because the client is an LPR, any resolution must minimize the risk of deportability. A §273.5 is a crime of moral turpitude (CMT) and triggers deportability. A §243(e) is a CMT *unless* the plea is to offensive touching only. While the §11550 is not a CMT, it triggers deportability and inadmissibility as a controlled substance offense.

The examinee should also recognize that if the client goes into custody with any convictions that have an immigration impact, he risks an ICE hold being placed.

Reduction from §273.5 to §243(e): This has little benefit for the client outside the immigration context. Both charges trigger §1203.097 requirements and both have a one-year maximum.

Striking the §11550 priors: This also has little benefit for the client. It is true that pursuant to H&S §11550(b), an §11550 conviction within seven years of two other §11550 convictions raises the minimum term of confinement from 90 days to 180 days jail. However,

the 180 day minimum is triggered only if the client refuses to complete a licensed drug program. (H&S Code, §11550(b).)

Prop 36 Eligibility: If the client is convicted of the §11550 and the §273.5 (or a lesser non-drug offense such as a §243(e) or §242/243(a)), he will be ineligible for Prop 36 on the §11550. However, if the client is only convicted of the §11550 (with or without priors), he is eligible for Prop 36 and will not be subject to the 90- or 180-day minimums.

With these issues in mind:

The prosecution's offer: The offer is poor and should be rejected. It includes a plea to two serious charges (the §243(e) and the §11550), formal probation, a high amount of jail time, and §1203.097 requirements. The §273.5 charge is triable, and the §11550 will be highly triable if the §1538.5 is granted. The defense should not accept this offer and should litigate the §1538.5 motion. The *only* benefit to the prosecution's offer is that it includes a guarantee of EHD or a program, which will allow the client to avoid custody and a possible ICE hold if convicted; and it may permit a §243(e) for "offensive touching." These benefits does not merit accepting the offer without first making a counter-offer.

Making a counter-offer: The client has stated that he wants to resolve the case prior to trial. While the attorney is not obligated to obtain an offer, quality client-centered representation would suggest that the defense attorney should seek a more favorable offer on the client's behalf. In addition, since the client wants to resolve the case, there is a risk that if the attorney does not seek a better offer, the client will take the prosecution's poor offer despite the attorney's advice.

However, a counter-offer should only be made after litigating the §1538.5 motion, given the legitimate chance of prevailing. Aspects of a good counter-offer should include:

(1) A plea that is immigration-safe, such as a §415 or a §242/243(a) where the record of conviction does not reveal the domestic relationship, and dismissal of the §11550 charge. If a §243(e) is inevitable, the attorney can protect the client from it being a crime of moral turpitude by having the record of conviction only reference an "offensive touching."

(2) A plea that includes no jail time, or a short sentence that can be satisfied through Custody Alternative or treatment, to eliminate the risk of custody and an ICE hold.

(3) Court probation and no §1203.097 requirements given Ms. Green's attitude toward prosecution and the minor nature of the alleged conduct.