**Handout #3: Attorney Questions in DUI Case**

**(Client responses not included)**

1. Mr. Wells, these warrants show that you were driving while impaired and also driving while your license was revoked. I want to hear what happened but before that can you tell me a little bit about yourself and your background please?
2. Did you graduate?
3. OK. Do you have any education beyond that?
4. OK. What kind of work do you do?
5. How long have you been there?
6. Do you have any good friends or supervisor who might be willing to come to court and speak up for you if it came to that?
7. OK, do you know his last name?
8. OK. Does he know about the trouble you are in?
9. OK. Would it cause a problem if you told him about the fact that you got these charges and had previously had a DUI?
10. Good, good. Tell me about your family.
11. How old is he?
12. Does he live with you?
13. And do you support him?
14. I am sorry to ask you all these personal questions, but I never know when I might find something that will help.
15. OK. Now you’re currently married to your second wife, is that right?
16. And how long have you been married to her?
17. Does she know about this, this charge?
18. How is she reacting to the fact that you were charged with this offense?
19. OK. Is she upset because you are in trouble, or is she concerned about the drinking? Or both?
20. OK. How long have you been drinking heavily enough to get in this kind of trouble?
21. So that would be since you were about 31, is that right?
22. Ok, that is what the warrant says. Why don’t you tell me what happened on this evening.
23. Um…the offense we are talking about is the one you have to go to court on next month—the second offense. Then, we will go back and talk about the first offense.
24. Well, that is what I want to do is try to help you …to figure out a way, first of all, if we can, to get you out of this. And, if we can’t get you out of this, we can’t avoid a conviction on these charges, then to minimize the impact on you.
25. And, I can tell you now that one of the ways to do that is going to be to get treatment for your alcohol problems, and for any other problems that led to you drinking and to your continuing to drink, …and it will be my goal to try and make sure that you don’t get some kind of long sentence and imprisonment.
26. Have you ever been convicted of anything else?
27. Well, it depends on how good you are about going into treatment. If you go into it with sincerity then the people who are dong the treatment will come to court and say, “Phillip Wells came to us and he is working on his problem and we think he’s a good risk to be out on the street.” And the whole object is to convince the judge that you shouldn’t be locked up and that you are not a danger to the community. That’s the only reason that a judge would put you in jail—is if you are a danger to the community or continue doing what you have been. So, if the facts that you tell me about lead me to conclude that you are going to get convicted or you are going to have to plead guilty to driving while impaired then I’m going to recommend that you do everything you can to convince a judge that you shouldn’t be locked up. And there are some things you can do—like going into treatment. Unfortunately, there are some people go into treatment and they just do it so they can keep driving or for reasons other than sincerely trying to work on their alcohol problems and that generally gets reported back to the judge and will hurt you rather than help you.
28. OK, so what we need to do first is talk about what happened that night, because one of the first issues is whether the police officer had probable cause to stop you. Police can’t just stop anybody driving down the street and get them out of their car and smell their breath. They have to see something that gives them probable cause to believe that something illegal has happened.
29. Tell me what you drank that night and what you heard the policeman say and what you think you did that gave him cause to stop you. Did he tell you why he stopped you?
30. Did the policeman tell you that you were weaving when you first met him and had a chance to talk with him… or did he tell you later when you were at the law enforcement center?
31. OK. Did you feel like you had been weaving or driving improperly?
32. OK. Did the officer give you any field sobriety tests—the ones where he makes you touch your nose and walk in a straight line?
33. Did he tell you how he thought you did on that test?
34. Did you sense that you did well or poorly on the test?
35. Did anybody at any time give you any of the other tests—like walking a straight line, or walking toe to toe, or touching your nose?
36. OK. Did you notice whether any other police officers pulled up out there when the first officer stopped you?
37. When did you first learn that he knew you didn’t have a driver’s license?
38. OK. Where had you been drinking that night and do you remember what you had to drink?
39. And, when did you get there. Do you remember?
40. And when did you leave? Right before this happened?
41. OK. Tell me what you drank if you remember?
42. Do you remember what you were drinking?
43. Is there a particular thing that you normally drink when you drink?
44. OK. But you have no idea how much you had that night?
45. OK. Were there other people there with you drinking that might be able to tell us how much you had?
46. What’s his name?
47. Gary… so that’s two people?
48. OK. Um…When you got down to the law enforcement center, what happened?
49. OK. Do you have any idea how much time elapsed between when you arrived at the law enforcement center and when you took the breathalyzer?
50. OK. The police report shows that you blew .19 twice within 5 minutes of each other and that’s within an hour after your arrest. So, it looks like your blood alcohol content was higher than .19 when you were stopped.
51. Did the police tell you prior to the arrival of the interpreter that you were entitled to have a neutral, independent witness for the breathalyzer test?
52. Do you know if the interpreter worked for the police or was an independent interpreter?
53. And, did the interpreter tell you that you were entitled to an independent witness or a member of your family to come down and see the test?
54. OK, well, that may be something we can work with. Because there are some requirements about informing you of which witnesses can be present if they can get to the breathalyzer room quickly enough to witness the breathalyzer test.
55. We may have some trouble because they had to put you in a holding cell for a while, but it would be worth looking at whatever records they had down at the jail, and talking to any deputies who saw what happened, and we may be able to use that to block admission of the breathalyzer result.
56. I don’ t know. There are two problems. First, you can be convicted of driving while impaired without the results of breathalyzer, if the judge believes beyond a reasonable doubt that you were impaired based on testimony of people who saw you. And, it may be enough if the police officer testifies that he saw you driving erratically and that you were fumbling and you had a strong odor of alcohol about you…and any other observations he made about you either out on the road or down at the law enforcement center.
57. So that even if we’re able to keep the breathalyzer reading out of evidence, you still could be convicted. So, one of the things that would be helpful to do is talk to the police officer and see what he is going to say and I’ll do a little research on that before we make any decisions. But, it is possible that we can at least keep the breathalyzer out.
58. And, of course, with your prior conviction, that would be worth it.
59. The other part of that is that if we’re able to convince the district attorney that he’s not on firm ground with this case because the breathalyzer may not be admissible, the district attorney may