

Appendix 3-1: Sample Questions for Probable Cause and Preliminary Hearings

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These questions are not exhaustive, and are only a guide to help counsel think about what questions counsel should consider at the hearing. Counsel should make sure the answer to the question is complete. For example, if you ask an officer what the length of the incident was, and he answers 5 minutes, you can ask more detailed questions so that the officer is unlikely to change his answer later. “Officer, you say it was 5 minutes, could it have been longer/shorter than that?” “Well, how much longer/shorter?” “What makes you say that?” [Also consider whether your goal at the hearing is better achieved by the use of traditional cross-examination questions (closed, leading questions calling for a yes or no answer) or by the use of more open-ended questions].

Basic Identification Questions

Opportunity to observe – for each witness or complainant

1. Time, location and length of incident?
2. What was the lighting like? (Street lights? Where? Daylight?)
3. How long did each witness observe the incident and what drew its attention to scene?
4. How far was each witness from the scene?
5. Where was each witness standing in relation to assailant? (In front? To side? Behind?)
6. Were there any obstructions to the view?
7. Witness’s physical condition: Tired? Drinking/drugs? Age? Eyesight?
8. Was offender wearing a mask? A hat?
9. Was there a prior relationship between any witness and defendant?
10. For each witness and each suspect, what was the description given to police: age, height, weight, eye color, complexion, hair, clothing, build, facial hair, distinguishing features?
11. Was there a lookout? When? What was the lookout description?

Identification Procedure

1. What procedure was used? (Show-up, line-up, photo spread, second sighting?)
2. When? Where?
3. What did each witness say?

*Reprinted from [CRIMINAL PRACTICE INSTITUTE: PRACTICE MANUAL](#), Chapter 4 Appendix A (Public Defender Service for the District of Columbia, 2015).

4. Any non-identifications? Misidentifications?
5. Procedure done with all witnesses together? Separately?

Drug Cases

1. Did the lookout give a location for the suspect? Where was the suspect going?
2. What was recovered? Money? Pre-recorded money? Drugs? From defendant, ground or stash?
3. How many people were involved in transaction? What was defendant's role? Were other people around?
4. What was the time of arrest?
5. Identification questions, above.

Robbery

1. Was any property taken? From where? Was it recovered? From where/whom?
2. How was the property identified?
3. What was the number of victims?
4. What was the number of robbers?
5. How was the property taken? (Force? Snatch?)
6. Were any threats made?
7. What was the role of each robber?
8. What was said by each robber? To whom?
9. Were any weapons used?
10. Were any injuries sustained?
11. Identification questions, above.
12. Bias of witnesses?

UUV [unauthorized use of vehicle]

1. Driver or passenger?
2. How many people were in the car?
3. How long was the vehicle followed? Attempt to elude? How were vehicle occupants signaled about police presence?
4. Where was arrest made? What was the distance from car at the time of the arrest?
5. Was there any damage to car? What was the extent of the damage (or how was it damaged)? How visible was the damage? From what vantage point did police notice damage?
6. Were any keys in the ignition? Was there damage to steering column?
7. When was the car reported stolen? By whom?
8. Who talked to the owner? What did the owner say?
9. Were fingerprints removed from the automobile?
10. Was anything recovered from the car?
11. Identification questions, above.
12. Bias of witnesses?

Burglary

1. How were the premises entered?
2. Were any tools used? Recovered?
3. Were there any marks or damage to premises?
4. Was anyone inside premises?
5. Were there any witnesses? What did they see? How far were they from the scene?
6. Was property taken? What? Was it recovered?
7. Was the property identified? How? By whom? Basis for identifying?
8. Was property secreted by windows or doors? Any property found outside?
9. Identification questions, above.
10. Bias of witnesses?

Assault

1. Was the complainant injured? How did the injury occur? What is the nature of the injury? Was the complainant hospitalized?
2. Were any threats made?
3. Was there a prior relationship between defendant and complainant?
4. What was the cause of the altercation?
5. What did the complainant say? What did the offender say?
6. Were any weapons used? Were any weapons recovered from defendant or complainant?
7. Identification questions, above
8. Bias of witnesses

Sexual Offenses

1. What age is the victim?
2. Was there any hospital treatment? When?
3. What is the extent of the injuries? Where? How severe?
4. Lab test results?
5. Where did incident occur?
6. Was there a prior relationship between defendant and complainant?
7. What did assailant say? What did complainant say? Was there a struggle?
8. Was any weapon used?
9. Were any articles recovered from the scene?
10. When was the incident reported to police? Reported to anyone?
11. Circumstances of first report?
12. Identification questions, above.
13. Bias of witnesses?