

# NETPRALAT

## TRAIN THE TRAINERS GUIDE



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By: D.Amodeo, C.Driesen, A.Franquesa, R.Heemskerk,  
R.Horselenberg, S.Olivella, A.Pivaty.

With the contribution of: D. Verstegen

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Training'



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Contact information: Ms. Imma Sañé, e-mail: [manager@netpralat.eu](mailto:manager@netpralat.eu)

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# 1. Introduction

This guide is developed with the view to facilitate your role as a trainer of a professional training course for criminal defence lawyers developed under the NETPRALAT project.

The goal of NETPRALAT training is to promote the development of an *active, reflective and client-centred* culture of criminal defence at the early stages of criminal proceedings, namely at the stage of pre-trial detention and in the context of investigative interviews<sup>1</sup> of a suspect. It does so by developing *practical, skills-oriented training* for lawyers engaged in the provision of legal assistance at the investigative stage.

NETPRALAT training does not focus on the relevant law and legal knowledge. Instead, it places an emphasis on the requisite skills, such as identifying socio-psychic needs and building rapport with the client, or positive confrontation skills needed to intervene effectively during the suspect interview.

This guide consists of the following Sections. The first Section describes the background to the training, including the training needs and the topics covered in the NETPRALAT training. The second Section covers the educational philosophy and principles behind the NETPRALAT training. In the third Section, the necessary pre-conditions for an effective NETPRALAT training course are outlined. The fourth Section describes the general structure of the NETPRALAT training program. In the fifth Section, a detailed description of the training program as delivered during the NETPRALAT project is given, including its e-learning and face-to-face components. The sixth Section covers the various “tips and tricks” for trainers delivering NETPRALAT training. The seventh Section describes a proposed approach to evaluating the training. And finally, the Appendices include examples of supportive training materials used during the face-to-face NETPRALAT training, such the presentation used by trainers, as well as the relevant handout forms (session-per-session), roleplay scenarios, and evaluation forms.

## 2. Background

### 2.1. Relevant EU regulations

The overall objective of NETPRALAT training is to contribute to the effective implementation of the newly-adopted European legislation on the procedural rights of suspects and accused in criminal proceedings. The new European regulations are likely to result in significant changes in the laws and practices related to pre-trial proceedings in a number of EU Member States. The procedural rights of criminal suspects during police detention and suspect interview have

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<sup>1</sup> In the English-language version of the guide, the term “investigative interview” will be used to refer to questioning of a criminal suspect during pre-trial investigations in respect of (a) suspected criminal offence(s) by police, prosecutor or investigative judge. This term is free of the negative connotation associated with the word “interrogation.”

been strengthened throughout Europe, and in several Member States suspects have acquired new rights such as the right of access to a lawyer or the right to detailed information about the accusation before the first interview.

These changes will require lawyers to play a more active role at the pre-trial procedural stages. Lawyers will now be expected to claim and enforce the new rights already from the very outset of the criminal proceedings. If, on the other hand, lawyers remain inactive and fail to invoke the rights at the first procedural opportunity, this may irrevocably damage the position of their clients and legitimise the proceedings marked by a deficit of procedural rights.

In our earlier research (“Inside Police Custody: Training Framework on the Provision of Suspects’ Rights in the EU”),<sup>2</sup> we found that supportive professional cultures necessary to facilitate suspects’ rights were lacking especially at pre-trial stages of the proceedings. This gap was observed with respect to all procedural actors, including criminal defence lawyers. For instance, we found that lawyers often spent little time with their clients during pre-trial proceedings; they failed to verify whether clients were properly informed about the accusation and their rights; and did not attend suspects’ interrogations, or played a passive role during such interrogations. Lawyers also lacked crucial skills to fulfil their pre-trial role, such as how to explain the implications of using the right to remain silent to suspects; or how to protect clients’ rights during an interrogation.

The NETPRALAT project was designed to address this problem by developing practical training for lawyers, which will aim at: a) raising their awareness of the importance of suspects’ procedural rights, and their role in facilitating these rights; and b) training the skills necessary to apply them in practice.

## 2.2. The topics covered

The training combines insights from the law (on the European and national level), legal psychology and communication theory.

The following topics are covered in the training:

1. ***European/international laws and regulations*** on suspects’ procedural rights at the police custody stage and the lawyers’ formal role (the rights of the defence). This topic is covered through self-study.
2. ***Role of the lawyer at the investigative stage*** – Including the importance of active approach at this phase, centrality of the client’s interest, and the various tasks and functions at this stage.

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<sup>2</sup> Published in: Blackstock, J., Cape, E., Hodgson, J., Ogorodova, A. & Spronken, T.N.B.M. (2014). Inside police custody: an empirical account of suspects' rights in four jurisdictions (Ius Commune Europaeum, 113). Antwerp: Intersentia.

3. **Lawyer-client consultation at the police detention stage** - topics to be addressed during the consultation, legal counseling models, relevant communication skills (building rapport, active listening, questioning and summarising), dealing with “difficult” clients.
4. **Suspect interview (from the law and psychology and communication perspective):** police objectives and ethical standards, lawyer’s objectives, pressure at interview: two main interview models; overview of the different interview techniques and tactics; lawyers’ role with regard to the interview pressure and tactics; intervening during an interview (including the necessary skills).
5. **Communication skills:** Introduction to the skills crucial for lawyers in defending suspects’ rights at the investigative stage, namely: building rapport; effective verbal communication, including (active) listening, questioning, positive confrontation.
6. Identifying and addressing the **psycho-social needs** or vulnerabilities of the suspect in detention, and communication with a vulnerable suspect.
7. **Legal interpretation** in the context of pre-trial detention and investigative interview, the role of interpreter and of the lawyer in this regard.

### 3. The philosophy behind the training

#### 3.1. The nature of the training

The following elements are necessary for the development of active and client-centred defence:

- a) **Development of reflective practice:** emphasis on the *process* of identifying a solution (e.g. which behaviour is most in line with my professional values?) as opposed to the *outcome*, i.e. providing concrete practical guidance.
- b) **Inter-disciplinary knowledge base:** shifting the (exclusive) theoretical focus from the law on to other disciplines, e.g. communication and legal psychology.
- c) **Training communication skills in context:** i.e. placing an emphasis on *how* to deliver advice and intervene during the suspect interview, instead of focusing (only) on the content of advice or interventions.

#### 3.2. The underlying educational principles

The training is based on the following educational principles:

- Active learning

Learning new knowledge is more meaningful when you can immediately apply what you have learned in practice, in simulations (e.g. role plays), in discussions or in other exercises. Active



learning implies that participants are asked to do something, not to only read or listen. It will help them to remember what they learn (retention) and to transfer it to other situations in their daily practice (transfer).

Active learning can also increase the motivation of participants, especially if the learning activities address their own learning needs. One way to achieve this is to plan a moment at the beginning of the training to discuss with participants what they expect to learn and/or to discuss explicitly how the training can be relevant for their own daily practice.

- Authentic learning tasks

Complex tasks are best learned in an authentic setting: applying knowledge is more meaningful if the tasks that participants have to fulfil during the training are similar to the real tasks that they will have (or already have) in practice. One way to achieve this is to base examples and training exercises on real cases. Another way is to allow participants to bring in their own cases.

Variety in learning tasks is important to illustrate different situations that participants might encounter in their daily work. Learning tasks are usually ordered from simple to complex: first the standard, least complicated cases; later on, the difficult or exceptional cases.

- Blended learning

The target group of participants for this training are working professionals. Therefore, the amount of contact time is necessarily limited. To make the best use of the limited contact time, the face-to-face meetings are reserved for learning activities that require interaction between trainers and participants, for example discussions and role plays. Basic, theoretical knowledge is addressed beforehand in the e-learning modules.

However, to prevent fragmentation the coherence of the entire learning trajectory is important. Participants will be more motivated if they see the relevance of preparing with the e-modules and if trainers refer back to the content of the modules during the face-to-face session, when relevant. Another powerful mechanism is to use the input from previous activities in the next sessions, e.g. examples that participants have brought in, questions that they have asked in the e-modules or feedback they have provided during sessions.

- Collaborative learning

Learning is a social activity. We learn by asking questions and discussing ideas, but also by expressing what we have learned to other participants, by watching others and giving feedback during role-plays, etc. Collaborative learning can be relatively unstructured, for example during an open discussion, but it can also be structured, for example by giving group members different roles and/or responsibilities during specific exercises.

To stimulate collaborative learning, trust is important. Therefore, it is important to spend some time on getting to know each other and discussing some ground rules (which can be defined by participants themselves). It is the responsibility of the trainers to make sure that this happens and to address any problems that may come up.

- Reflexivity

Reflexivity is an important part of being a professional. Reflecting on one's actions, asking for feedback, and looking for ways to learn and improve should be an integral part of any professional's daily practice. Reflexivity also touches on your own values and attitudes: what do I feel is important for me as lawyer? Do the rules allow me to act in line with my beliefs? What is (un)acceptable to me?

Reflexivity is given explicit attention within this training because the role of lawyers in the police station is so new to them, and each day and interaction in the police station will be different; this makes it necessary for lawyers to consciously consider options and make strategic choices in the heat of the moment. Reflection and development of one's core values will enable better, and more grounded, decision-making.

### 3.3. Training in small groups

Because this is a skills training, it should be delivered in small groups. The ideal size of the training group is no more than 12 participants. A larger group may not be conducive to an atmosphere of confidence and trust between the participants.

In a larger group there is a risk that not every participant will have an opportunity to practice the skills trained and to receive feedback. There is also the danger of the so-called "audience effect". In the training context, the "audience effect" refers to a situation where participants act less naturally during simulation exercises due to the fact of being observed, thus reducing the potential training benefits.

## 4. Detailed description of the training

### 4.1. The overall training structure

The training program was designed to:

- be spread over time ('spaced learning'), to ensure for its greater effectiveness;
- include the e-learning and face-to-face (FtF) elements, to provide for the most optimal use of participants' (limited) time.

The e-learning activities preceding the FtF training pursue three objectives:

1. Introduce the trainers and the participants –

The goal is to develop some initial rapport before going into the core FtF sessions. Another objective is for the trainers to learn more about the background and expectations of the participants (which can be addressed in the beginning of the FtF training).

## 2. Distribute the theoretical modules -

The theoretical modules form the knowledge base for the FtF training. Participants should study them in advance of the FtF sessions.

## 3. Start-up the mindset of reflection -

Stimulating reflection about one's professional role and how to become a better professional is one of the cornerstones of the training. The idea is to start up the mindset of reflection already before embarking on the FtF training by asking participants to respond to a number of questions in the e-learning phase.

### 4.2. E-learning modules

The modules cover **seven topics**

MODULE 1: EU Procedural Rights of Suspects at the Investigative Stage  
Powerpoint Presentation

MODULE 2: Role of a Lawyer at the Investigative Stage  
Webinar Role of a Lawyer in England and Wales (Professor Ed Cape, University of the West of England)

MODULE 3: Lawyer-Client Consultation at the Investigative Stage  
Video Lawyer - Client Consultation  
Consultation Topic List  
Disclosure Topic List

MODULE 4: Suspect Interview at the Investigative Stage  
Powerpoint Presentation  
Webinar on the Ethical Police Interview and Role of a Lawyer (A. Griffiths, University of Portsmouth)  
Video Suspect Interview

MODULE 5: Communication Skills  
Powerpoint Presentation

MODULE 6: Psychosocial Approach  
Powerpoint Presentation

MODULE 7: Working with Interpreters at the Investigative Stage  
Powerpoint Presentation  
Video Working with Interpreters

Participants can go through the modules at their own pace during the preliminary e-learning phase.

### 4.3. E-learning: attention points for trainers

- One of your objectives at the outset is to facilitate building rapport and the sense of belonging to a group. The more you do to this end during the e-learning phase, the less time you will need for it during the contact days. Consider making a short introductory video of yourself (can be done with your own smartphone/computer camera), or at least posting your photo and introducing yourself. Consider other ways of promoting a bond between the participants: e.g. asking them to post their photo taken in an informal setting (e.g. reflecting their hobby), to tell why they decided to become criminal defence lawyers, etc.
- It is not mandatory for the participants to go through all the e-learning modules. However, they should be strongly encouraged to do so, unless they have had training in communication skills and/or law and psychology, because this will help them to get the most out of the FtF sessions. Most types of the LMS software allow you to track whether the participants have gone through the modules, so you can assess for yourself their motivation level. Consider reminding them about the importance of reviewing the modules, especially if you notice that few participants have done them in the first weeks.
- Try to get an impression already of who your participants are, and what is their personal communication style (read how they introduce themselves, look at their questions/discussion points).
- Use one or more short assignments in the preliminary e-learning phase. The goal is to activate participants already by asking input from them for the FtF sessions. For instance:
  - Ask them which questions they have about the e-learning modules
  - Ask them to give examples from their own experience
  - Ask them to define what they expect to learn or do during the face-to-face sessions.

You can also decide to ask questions aiming at stimulating reflection in relation to e-learning modules. Remember though not to overwhelm the participants, so that they remain motivated to complete the e-learning.

- Stay actively engaged throughout the e-learning phase: react (in an encouraging manner) to the people's introductions and learning goals; send (friendly) reminders urging participants to complete assignments, etc. You can also use this opportunity to manage expectations and delineate what will, and what will NOT be addressed in the training.

#### 4.4. Face-to-face practical training sessions

The face-to-face training is divided into **six sessions**, spread over the period of **two days**. Each session starts with a very short and compelling summary of the e-learning core messages to set the stage of the skills. The goal is to activate the learned material and to serve as an umbrella for that particular session.

We tried to be as complete as possible in describing each session, practice and exercise in terms of goals, instructions, tips and any other relevant points.

### **Sample programme of the FtF training sessions**

#### ***Day 1***

09.00 – 10.15:	Introduction / Role Lawyer
10.15 – 10.30:	Coffee break
10.30 – 12.00:	Communication skills
12.00 – 13.00:	Lunch
13.00 – 14.45:	Psycho-social approach
14.45 – 15.00:	Coffee / tea break
15.15 – 17.00:	Interpretation
17.00 – 17.15:	Wrap up / feedback

#### ***Day 2***

09.00 – 10.40:	Consultation
10.45 – 11.00:	Coffee break
11.00 – 12.30:	Interrogation
12.30 – 13.30:	Lunch
13.30 – 15.00:	Integration: Role play 1
15.00 – 15.15:	Coffee break
15.15 – 16.45:	Integration: Role play 2
16.45 – 17.15:	Summary & Evaluation

### **4.5. Session 1: Introduction/Role of a Lawyer**

#### **Session objectives:**

- Build rapport between the trainers and participants
- Explain the purpose, rationale and ‘rules’ of the training
- Stimulate deeper reflection on one’s professional role at the investigative stage: i.e., *why* do I do what I do? What *should* I be doing? What *prevents me* from doing, and how do I go about it?

## Session structure and timings:

**30 minutes: Part 1:** Introductions and building rapport

**30 minutes: Part 2:** Training rationale, objectives, setting the stage (explain rules)

**30 minutes: Part 3:** Reflection on the role of a lawyer

## Detailed session description:

Trainers should have flexibility in how to organise and lead this session, depending on the (projected) needs of participants, trainers' own preferences, individual style and expertise. However, they should keep to the three parts described above.

It is not advisable to move on to Part 3 before sufficient trust has been built in the group. Trainers should also try to address any apparent obstacles preventing participants from being open/comfortable with each other, such as e.g. concerns about confidentiality, lack of knowledge/experience, fear of being judged, etc.

### 1. Introduction and explaining the training background:

This is about building rapport: an opportunity to introduce the training, trainers and participants, explain the aim of the training and that there will not be ready-made answers or solutions.

Participants are first invited to introduce themselves. Questions such as (for example):

- If you could do it all over again, and you would have decided not to become a lawyer, what would you be doing now?
- Apart from the law, what is your greatest passion?

are asked to help the introduction along and break the proverbial ice. The idea is that the participants feel more at ease with each other, will have an impression of what the others are like, and will view each other not merely as colleagues, but as individuals with their own passions and dreams, who all happen to be defence lawyers. The idea is also, that it will give an impression of the different characters, and could help explain personal style.

Following the participants' introduction, the trainer continues with a longer presentation (about 15 minutes) explaining the principles, objectives and the structure of the training, and setting out the rules of working together as a group. (The latter is especially important for creating the atmosphere of confidence and trust within the group).

This is a good opportunity to introduce trainers and experts, briefly explain the training need (e.g. new responsibilities for lawyers) and the legal context (noting that it is *not* the plan to spend much time during the FtF sessions on debating/explaining legal provisions, but to train the necessary skills).

The following points should ideally be covered:

- Training objectives: The goal of the training is to become self-aware (of your own decision-making, choices, preferences, limitations and your individual style) – what do I do, how I do it, and why (e.g. when first meeting clients at police stations, giving advice, dealing with police officers, participating in an interview...) – also: what solutions/options “fit” me personally

- Another goal is to increase self-confidence – lawyers are usually alone when assisting clients at police stations and there is no reference point to know whether or not they do it “right”
- Gathering together a set of tools that can be used to achieve a better result or help the client better – Exchanging experiences between colleagues also belongs here.
- Group rules: everything discussed will be handled confidentially, trusting and being open with each other (not being afraid to show a vulnerable side), not about telling “war stories” but about sharing problems and dilemma’s, active contribution to the discussion, treating each other respectfully...
- Training structure and program: Explain the relationship between the e-learning and the FtF sessions; explain the program of the face-to-face sessions; take questions and concerns about the program.

## 2. Role of a lawyer at the investigative stage: reflective questions:

This is the most important part of the morning session. It will deal with questions on the how and why, and aim at better understanding of one’s own motives.

The aim is to ask certain type of questions so that the participants will learn, when trying to answer:

- why do I (re)act in a certain way,
- why do I choose to approach an issue in a certain way,
- what are my possible personal biases, as well as insecurities,
- how does this influence my role as a lawyer
- what can I learn to do differently?

This will set the stage for sessions 2-6.

This part of the session is more trainer-led (than the second part of session). Trainers should prepare a number of questions or short “case scenarios”/hypothetical situations to lead in and structure the discussion.

***Note:** It is possible that the participants would have scenario’s they would wish to introduce, e.g. in order to showcase their successes, or to hear what others would have done. The trainer’s task is to keep the focus on stimulating critical reflection on one’s own actions, and not so much on the ‘success stories’ or ‘war stories’ from the participant. Thus, when participants wish to share their own stories or dilemmas, trainers should either diplomatically revert attention to the scenario being discussed, or ask WHY question(s) (i.e. aimed at identifying own motives, emotions, or possible bias) instead of trying to suggest or elicit ready-made answers).*

**TIP:** One way to structure this session is by organising the questions/scenarios from more general (e.g. how would you define your role? ...) to more specific (e.g. going through the different “stages” of the process: first contact with the police/arrival to the police station, requesting information from the police, pre-interview consultation, police interview, etc.)

Examples of questions to be asked/”scenarios” to be introduced:

***Note:** The questions below are given only as examples. Trainers should feel free to formulate their own questions and/or scenarios, as long as they aim at stimulating reflection on one’s professional role at the investigative stage.*

1. The role of a lawyer at the police detention stage in general -

- Is your role sufficiently clear to you?
- What possible pitfalls and consequences do you envision / or have you experienced for your client when the lawyer stays passive?
- What is the place of the law in defining your role?
- There are quite a few things that you need to do at the police station: Talk to your client, get pre-interrogation disclosure; prepare your client for the interrogation. In which sequence do you do them, and whether (how) do you prioritise?
- Do you see your role as strictly legal (giving legal advice and representation during interview), or also “social” (e.g. contacting relatives, employer, ensuring that your client’s needs are met while in detention, etc.)? And until where are you willing to go in ensuring the “social” needs of your client?

2. First contact with the police/ obtaining information (“disclosure”) about the case -

- Would you seek pre-interview disclosure, and why?
- What do you expect to get from that?
- How much information/what kind of information do you seek?
- You do not get a case file, but a police officer tells you the facts of the case, which are quite incriminating for your client. Does this knowledge affect how you approach your client / listen to his story? Is that a good or a bad thing?
- If you think that is a bad thing, how could you solve / circumvent this?
- What do you do if police tell you that they will not give you any information?

3. Pre-interview consultation -

- What are your objectives at the consultation?
- How important is it for you to build rapport with your client/get your client’s “trust”? Why is it important for you? How do you verify whether there is “trust”? And what about your own trust to your client? E.g. does this play a role in how you approach giving advice?
- Do you call your client by the first name or not? What does it depend on?
- Do you spend more time on getting the story out of your client, or do you spend more time on explaining the legal issues / implications of what your client has been accused of (why?)
- Do you keep the information that you give to the client limited / or do you offer as much information as you can? (why?) Do you first get your client’s story, or first tell the client what you have learned from the police? (Why the one or the other?)
- You meet your client, and he immediately annoys you: he does not listen to you, or questions your advice. How do you deal with that? (for example: do you question your communication skills? Do you try empathy? Will you defend yourself? Do you draw a line at some point? )
- Your client is suspected of armed robbery. He is young, slim, dressed in black jeans, an expensive looking hoodie (Abercrombie and Fitch) and baseball hat, of Moroccan descent/ has Moroccan roots. You have had many clients like him before. What do you think, when you first meet him at the police station? Are you biased? Does this influence how you listen to his story? Do you think your client will pick up on the



non-verbal communication? Will this influence your rapport with your client/ his trust in you? And to what extent do you think this will harm his defence?

- You meet with your client for the first time and you are separated by glass (you therefore cannot give your client a hand). How do you build rapport and is that important for you?
- Which factors play a role in what kind of advice you give to your client? For example, obtaining release from detention as soon as possible? (Short-term vs long-term considerations).
- How do you give advice: do you give options? Or do you (always/mostly) recommend/insist on one way of action (e.g. remaining silent, telling your story...)? Is remaining silent always the best advice? And what do you do if the client wants to tell his story, and you think it's not in his/her best interest?
- How do you prepare your client for the interrogation/interview?
- How important is it for you that your client follows your advice?

#### 4. Interview of a suspect -

- Can you give an example of a situation where you didn't intervene during the interview, and you later regretted it?
- A situation when you didn't intervene, and later thought that maybe you should have intervened?
- You are on call on a Friday. You have consulted your client late in the afternoon. He wants you to be present during the interrogation, and this takes place the next day (a Saturday), early in the morning. You need to take your child to a field hockey game, which starts at 11.00 hrs. If all goes according to your expectation, you will make it in time. Of course the interview does not progress as you expected. What does this do to you and does this affect your role during the interview?
- Your client will be interviewed for the fourth time in three days. You will not get remunerated for that, since the legal aid system only awards a certain lump sum for 'the interrogation', which basically covers one hours' work. What do you do?
- Your client is a woman, mid-forties, suspected of having conned her elderly neighbour out of his (substantial) fortune. She denies any wrongdoing. She seems clear-headed. When you ask her questions, you get all the 'right' answers: i.e. that confirm her innocence. During the police interrogation, she suddenly totally agrees with the police officers, she understands their point of view, and her story turns into a *mea culpa*. What is going on? And how do you react?
- You have a client who you think is very suggestible, but the police want to interview him/her nonetheless. What do you do?
- During the interview, you find fault with the way the police formulates the questions, their attitude towards your client, which is mainly non-verbal of nature, nothing you can point out as being conduct that obviously crosses the line, but it makes you uncomfortable. Do you intervene, and if you do, how (time-out, friendly, aggressive)?
- What possible motives play a role in your choice to intervene or not to intervene? For what reasons would you intervene at the interview? E.g. when there is excessive pressure, or also when client needs advice? Would you challenge certain (types of) questions posed by the police? (What kinds of questions?) And if your client remains silent – would you still challenge the questioning? (How would you define your clients' interest in this situation?)
- How do you intervene during the interview? What possible motives play a role in the way you would intervene?

- Do you always need a “legal” argument/reason to intervene during the interview?
- Would you try to enter into contact/ build a relationship with the interviewing officer(s)? Why (what would you try to achieve with that)?
- There are two possible models of relationship between the police and the lawyer: the “confrontational model” and the “consensus model”. What are the advantages and disadvantages of each? Which do you prefer/adhere to in practice, and why?
- Do you see your role in educating the police, e.g. how to communicate with the suspect?

### **ATTENTION POINTS FOR TRAINERS:**

- Address explicitly those points, which are likely to meet resistance from the participants:

- Participants may be apprehensive about the goal of activating a reflective mindset as opposed to giving solutions or teaching “best practices.” Allow them to express their apprehension, but state that these are the rules of the game that cannot be changed.
- Participants may want more information about the law to be given. Tell them that this is not the purpose of the training and refer them to the respective legal sources.
- Participants might be too focused on what they are explicitly allowed to do by law and fail to see the ‘extra-legal’ possibilities. Tell them that thinking ‘outside of the legal box’ may lead to a surprising result.

- Make it explicit in the beginning what you expect from the participants: i.e. that the objective is not to share the “war stories”, or for trainers to give solutions to various problems, but to become more aware of their own motives, individual styles, and possible limitations.

- If time allows, ensure closure to show relevance of the Session to the participants’ own learning/development: e.g. ask participants to name two aspects that they would now pay attention to/be more aware of (e.g. the way they perceive, or how they decide to do or not do certain things, etc.). [NB! This can also be done in the end of Day 1]

## **4.6. Session 2: Communication Skills**

### **Session objectives:**

- Become aware of one’s own and others’ communication styles
- Train the skills of using open and other types of questions appropriately
- Raise awareness of the importance of posing open questions in eliciting (detailed) information
- Train active listening skills
- Train summarising skills (avoid “ cliché” and technical language; provide appropriate level of detail; include information about the (emotional) context)
- Raise awareness of subjective differences in memorising and presenting accounts of the same events

### **Trainers will need:**

- Video playing facilities (check sound in advance!)
- Internet connection to play the Youtube video (test in advance!)
- Separate room(s) or space to enable giving instructions to three small groups (of four persons)
- Handout forms for Exercise # 3 (“Witness”)
- (Optional) Whiteboard (to note the outcomes of group discussions)

### **Session structure and timings:**

#### **Exercise # 1: 20 min**

Explain exercise: 5 min, including the questions: How would you describe your communication style

- With the police
- With the judge / judicial authorities
- With your client
- With others (f.e. client’s family)
- Do you differentiate?

Discussions between 2 group members (on any subject, goal: to learn most about each other’s preferences or tastes): 5 min

Discussion in each group concerning communication style of the other: 5 min

Discussion in the larger group concerning the communication style: 5 min

Are you aware of the different communication styles? Do you use different styles? What works best: formal or informal?

#### **Exercise # 2: 25 min**

In the entire group.

All participants are active during the session. One of the trainers sits in the middle of the group, others sit in a circle around him/her.

The goals are:

- Practice in using open questions
- That open questions became standard questions to the lawyers
- Create awareness of the difficulties of asking such kinds of questions
- Be critical to such questions

Instruction:

The trainer will be interviewed by the participants one by one. One lawyer starts asking questions to the trainer. These questions should be open inviting questions about anything the lawyer is interested in (see Tips for limits). After a closed question, the next lawyer should take over the interview. The whole group is instructed to judge the questions. The goal of the interview is to find out as much as possible about the trainer. This exercise will take 10 minutes for the question practicing part and needs about 10 minutes for feedback to the participants.

Tips:

- The trainer should not give too extensive answers – although that is a bit contradictory – and must be aware of the type of questions too.
- After more than three good open questions, the trainer should switch the interviewer.
- The participants should be instructed not to ask too intimate questions

### Exercise # 3: 45 min

The main objective is to train active listening and summarising skills. The secondary objective is to create awareness of issues around memory/recording: both are necessarily selective and subjective. All this will be done by using a short video fragment, for instance: <https://www.youtube.com/watch?v=FrKj3v8mYCo>

Another suitable video fragment may be used here. Ideally, the video fragment should be: a) recognisable but not overly familiar to the participants; b) it should contain a “plot” or a “story,” and should carry not only factual, but also emotional, information/give room for different interpretations of what has happened.

The goals are:

- Learning to summarise
- Learn about active listening skills
- Learn to invite, by using own words, asking for additions and by checking whether the summary is okay, the interviewee to share information

Note: For this exercise, one or two breakout rooms are needed.

Instruction:

- Divide the group into four smaller groups consisting of **witnesses, interviewers, observers** and **note-takers**. Give instructions concerning the different roles (see below)
- 3/4 participants (interviewers, observers and note-takers) leave the room
- The other 1/4 participants (witnesses) stay in the room to watch a video (Inform participants that the video will be shown only once to focus their attention)
- When the video is finished, bring together the four groups and begin exercise (20 minutes)
- 1/4 participants wait outside and get assignment to listen (actively) to the witness and summarise the story of the interviewee
- 1/4 participants wait outside at the same time and get assignment to take minutes of the summaries given by the interviewer
- 1/4 participants wait outside and get assignment to observe active listening skills of the interviewer and score those on the form.

A number of *small groups* (4 persons) will then be formed with a witness (i.e. persons who have watched the video), an interviewer an observer (of the group discussion), and a note taker.

A **witness** responds to the questions posed by the interviewer about what he/she has seen in the video. You might give special instructions to the witnesses: e.g. to give a more detailed answer if the questions are open/inviting and vice versa; or to play a “difficult” witness (e.g. unwilling to respond to the questions).

An **interviewer** gets an instruction to learn as much information as possible from the witness through building rapport, active listening and asking open questions.

A **note taker** is instructed to take notes and summarise the story told by the witness and elicited by the interviewer.

An **observer** observes the interview process and scores the rapport-building, active listening and summarising skills.

After listening and summarising, feedback will be given. *First* the note takers present the summaries and feedback is given on the summaries. There will be (many) differences between the summaries, so the trainers' role is to pick up on these differences. Do not forget to ask witnesses about whether they felt that the summaries were accurate or any important points were missed. Note whether the summaries are rich in detail, drafted in a language that is too technical (e.g. as a "typical" interrogation report), also contain information about the emotional state of the different characters, and personal interpretations of the witness (e.g. why the witness thought the character behaved in this way).

*Second* the interviewers should be asked how they experienced the interviewing process: Did they find it challenging to ask open questions, etc.? *Third*, observers provide feedback to the whole group based on the score sheets that they were asked to fill in. (Timing: 20 minutes exercise + 15 minutes feedback).

Tips:

- Make sure everyone understands this exercise
- Explain the observation forms to the observers
- Watch the movie beforehand
- Make sure that the skills trained during the previous exercise are used correctly
- Move around between the different groups
- When evaluating this exercise, make sure that the basic ideas behind giving and receiving feedback are used.

If time allows, trainers should summarise the main messages from this exercise, for example:

- Differences in the subjective interpretation and memory
- Importance of posing open and inviting questions to obtain information that is more accurate and rich in detail
- Importance of asking for/noting down information about feelings, emotions, subjective perceptions and reasoning (e.g. Why do you think he acted in this way?) to learn as much as possible about the context (only factual observations are insufficient).

## 4.7. Session 3: Psycho-Social Approach

**Session objectives:**

- Learn psychosocial tools to assess and deal with detainees' needs and personal situation during client consultation

- Raise awareness of the importance of detecting possible abuse or ill-treatment during detention
- Learn about the legal and psychological definitions of ‘vulnerability’
- Learn and train the use of the ‘exploratory guide’ of vulnerabilities during client consultation
- Learn which action to take when a possible ‘vulnerability’ is detected

**Trainers will need:**

- Hand-out for case scenarios’ practical exercise

**Session structure and timings:**

**20 minutes:** General introduction

**15 minutes:** Exercise # 4. Responding to verbalisation of emotional distress

**10 minutes:** Identification of abuse or ill-treatment situations

**5 minutes:** Vulnerable suspects, introduction to exercise 2

**15 minutes:** Exercise # 5 part 1. Case scenarios in small groups

**35 minutes:** Exercise # 5 part 2. Debate case scenarios altogether

**5 minutes:** Wrap-up

Note: The timings of this Session are approximate because this Session is more of a participant-led kind.

**Detailed session description:**

**1. General introduction (20 minutes)**

This third session will train the following psychosocial skills in general:

- Identifying personal needs and situations that could interfere with the assistance
- Responding to verbalisation of emotional distress
- Identifying possible abuse or ill-treatment situations
- Tackling possible vulnerabilities

All theoretical information needed for this session is found in the e-learning materials. Be sure to explain this during the introduction because there is not enough time for explaining all theoretical materials and it would not help the practical approach of the training either. In each part of the session, basic concepts must be reminded so all participants feel they can catch-up.

First of all, it is very important to explain what the object of this session is. Lawyers can be reluctant to psychological approach or might believe they already know and do well. It is important to state that you as trainer are not a psychologist, you are a lawyer like them and that our job is not being our client’s psychologist. Sentences like the following might help the participants understand the relevance of the session:

- *Assistance in pre-trial phase requires not only to build mutual trust and better communication skills but also being able to assess and identify our client's needs and personal situation.*
- *We all have our own tools to deal with odd or personal situations. I am not here to teach you a magical formula for your client to open up, to stop crying or make their personal problem go away but to bring awareness of your own tools.*
- *Have you ever felt like you were lacking tools to deal with some personal situation of your clients?*

After few minutes to make clear these two points, it is time to give the floor to the participants by making them recall or realize some situations they have faced that required psychosocial tools. Ask them about them. Be prepared to share some examples in case participants do not feel like sharing at that first moment:

- *How many of you have had, at least ones, a client crying that wouldn't stop?*
- *I had a client that the moment I entered the room he closed up, you could see his mistrust towards me. Have you?*
- *How do you give sensitive information (to client or family members)? Is your strategy to be more optimistic to give hope, more pessimistic to be sure your client is aware of reality...?*

This exchange will serve as an ice-breaker and will allow you to sum up stating that psychosocial skills are useful for an interview or conversation with any person in a difficult situation, and this is what this session is about.

## **2. Exercise # 4: Responding to verbalisation of emotional distress (15 minutes)**

This exercise allows to explain five psychosocial tools and give some specific examples. Start this part with an introduction/remainder of the five tools included in the e-learning:

- PREPARATION
- VOCABULARY ADAPTATION
- CONTEXTUALISATION
- REALISTIC MESSAGE
- ASK: HOW ARE YOU?

This can be done by explaining each one's main features or asking the participants if they recall.

When getting to the last one, it allows you to connect it with the exercise. It will depend on which has been the outcome of the interaction with participants but the main idea is that when a lawyer asks how are you, with the aim of getting his client to open up, must be ready to react properly to verbalization of emotional distress. Sometimes participants explain that they never ask that question precisely because they don't know how to deal with a possible answer.

The exercise consists in letting the participants read the six different examples, one by one, from the slides and answer if they believe the response has a psychosocial approach or not and have a small debate with each one. You'll see they are quite obvious but this makes the participants feel engaged in the first exercise and share own experiences.

- Example 1. Wrong. Minimizing pain
- Example 2. Wrong. Invalidation of pain
- Example 3. Right. Reflective message
- Example 4. Right. Paraphrasing

- Example 5. Right. Clarifying
- Example 6. Different effect of asking a direct or indirect question during emotional distress. First one is indirect which is well received while second is direct, which might make the client feel attacked.

### **3. Identification of abuse or ill-treatment (10 minutes)**

It is not the object of this session to deepen into the subject of ill-treatment. Make clear to participants that in the e-learning materials they have further information regarding legal definition and case law as well as materials related to the subject if they want to improve their knowledge about it.

It is interesting, however, to mention the Convention and its definition and see if they know it or know how it is transposed under their own jurisdiction (should be the same if state is a signing party).

The goal of this part of the session is to raise awareness about how it is during detention that abuse or ill-treatment must be identified and brought to light for both two reasons: to prevent it and to maintain the credibility of a legal complain for abuse or ill-treatment.

The other aim is for the participants to know about Istanbul Protocol. After introducing it and explaining that although it is not applied by lawyers but by qualified psychologists, it is important for lawyers to know its basic elements. It is interesting to put practical examples; one is the fact that police officers should not be in the same room where a detainee is examined.

To close up this section, and if the participants are willing, it is interesting to open a debate where participants explain their experiences dealing with some of these cases or if they, otherwise, think in their country abuse or ill-treatment is residual or common. (Depending on participants background there could be a big variety of opinions and acknowledgment).

### **4. Vulnerable suspects, introduction to exercise # 5 (5 minutes)**

The goal of this section is to raise awareness about possible risk factors and learn some identification mechanisms providing insight into the following aspects:

- Why some clients are possibly vulnerable
- Which implications can vulnerability have on police interview – form the legal and psychological points of view
- Which other implications vulnerability has during criminal proceedings

Once again, state that all theoretical information is included in the e-learning. There is no common inter-disciplinary definition of a vulnerable suspect, which is why it is important to be able to assess your client's situation. Vulnerabilities are severely under-detected at early stages of criminal proceedings.

Show the definitions but don't go in detail. It is important though to explain two key concepts: Suggestibility and compliance.

Explain: Having awareness of what can create a vulnerability allows you to assess how to protect your client during interrogation. Then go over the exploratory guide slide stating that it will be deeper addressed during exercise 2.



It is interesting though to stop at points 1 and 2 and ask participants about examples (it is included in the e-learning so if they have read it they might know and anyway it is easy that they will be able to give some answers)

- What do you think could be a factor of vulnerability? Age, mental illness, language, gender, disability or other personal factors: circumstantial...
- What are the risks associated to vulnerabilities? Inaccurate account, false confession, miscomprehension of questions, communication difficulties, lack of credibility, risk of self-incrimination, waiving rights, less cooperation...

#### **5. Exercise # 5 part 1. Case scenarios in small groups (15 minutes)**

In front of the entire group you explain they have a hand out for exercise 2. In the hand-out there are two case-scenarios. They need to make two different groups and each of them will work on just 1 of the case scenarios.

Once there are two separate groups, they need to read the case scenario and debate the following questions to give an answer as a group.

Advance that later on we will put it together with the entire group.

When there are only 5 minutes left inform the groups so they have time to wrap-up their answers.

#### **6. Exercise # 5 part 2. Debate case scenarios (35 minutes)**

First of all, one group summarizes or reads its case-scenario out-loud to the other participants. Then share the answer to each questions. There is a hand-out version for the trainer with full answers or possible answers to help stimulate the debate and deal with all issues. Depending on the group and their degree of participation a small debate can be created after each question or just one bigger debate at the end. Afterwards the other group does the same with their own case-scenario.

Normally it is useful that one representative of each group is the one explaining their answers and internal debate. However, if they haven't reach a single opinion or answer it is important to give voice to other members of the same group with different opinions or outputs.

Keep in mind you have, approximately, 15 minutes per case scenario.

#### **7. Wrap-up (5 minutes)**

Sump up key elements that came up during the session and wrap it up referring to the main objectives of the session and how psychosocial approach is necessary and useful for a lawyer's work during pre-trial phase.

### **4.8. Session 4: Working with Interpreters**

#### **1.Introduction:**

In the spirit of the Fair Trial assessment tools on the directive 1 2010/64/EU, this guide aims at highlighting difficulties that a lawyer may meet when representing a client – be it a foreign national or a deaf person – who doesn't master the language of the proceedings. Its purpose is

to raise awareness of the fact that any interaction with his/her client, the police or other judicial staff will greatly depend on the professionalism of the selected interpreter.

As a practising lawyer, you will have to devise appropriate strategies and check, if necessary, on the interpreter's selection and his/her professional behaviour. Understanding the potential and limitations of interpreting in a legal setting is thus essential. This guide will suggest some concrete remedies against any risks of impairing fair communication.

## **2. Training structure and timing:**

### **Introduction (5 Minutes)**

This training will show how a qualified legal interpreter is a precious resource and not an obstacle, or a loss of time for the lawyer. It is up to you as a lawyer to create a rapport of trust with the interpreter recruited, and fulfil the interview's objective, e.g. the best defence of your client.

### **3. Questions and answers session (30 minutes)**

You may start asking your colleagues to talk about their experience – if any – with legal interpreters. Please also enquire about the language used then. Their answers will be useful for the next session of role play.

## **ASSESSING THE COMPETENCES, SKILLS AND QUALITY OF A LEGAL INTERPRETER**

### **CHECK-LIST**

Here below, you will find some more examples that can be useful when you need to verify whether the person recruited by the administration is the right one:

- Is it the right language? e.g. does the interpreter speak my client's language? Is it a language of lesser diffusion in that given area? (e.g. many languages and dialects are spoken in China, Mandarin is not always the right choice).
- Is the interpreter suitable for vulnerable defendants or children or victims? Does he/she has a previous experience of that kind?
- Do you feel that a question of gender has to be considered (taking religion or culture into account)?
- Is the interpreter qualified and adhering to a Code of professional ethics?

You will be able to assess these prerequisites to a fair interaction between your client, yourself and the interviewing party during the first consultation with your client. If you have any doubts:

- Ask the interpreter about possible difficulties in communicating with your client
- Assess the fluency of the interpreter in the language of the proceedings
- Assess the interpreter's behaviour according to the rule of professional ethics: does the interpreter introduce him/herself? Does he/she use the right pronoun while interpreting? (Please, note that a qualified interpreter will always translate questions

and answers in the first person, since in that moment he/she is the speaker. The use of the third person proves that the person recruited is not a professional interpreter.) Is he/she member of a professional association? Does he/she diplomatically address any problems with the interviewing party?

You will further on observe: the fluency of oral communication and the interpreter's command of the respective languages at the highest level (mastering of the language of proceedings by the interpreter may give a suitable indication) His/her mastering of interpreting technics and the best use of communication.

You will also verify if the interpreter respects ethical rules:

- a qualified interpreter will never interfere without urgent motives (e.g.: factual misunderstanding, risks deriving from suspect's health conditions)
- will ask for permission if in need of explanation, and only putting strict focused questions
- the professional interpreter will give strict focused explanation if required from the interviewers
- will diplomatically address any problems with the interviewing party

If you still have any doubt about the interpreter's quality, you will express a warning or even ask for his/her dismissal.

#### **4.Role play (30 minutes)**

You will find in Appendix 5 a few typical scripts and some indications on how to conduct the role play.

#### **5.Conclusion and discussion (10 minutes)**

Summing up discussion on trainees' impressions.

### **ATTENTION POINT END OF DAY ONE:**

It is useful to ask participants to write on a post-it note one or two main things they have learned from the day, or the "take-home" messages they have identified, or the elements of the day that they think will have the most impact on their current practice. You can place some of these messages on your powerpoint slides for the next day, so that participants see that they are all learning new things (this is especially impactful on those who might think that they do not have much to learn!), know that you are interested in their feedback and want them to learn, and begin to see the members of the group are opening up to the notion of reflection and self-assessment.

### **IN THE BEGINNING OF DAY TWO:**

- Summarise the feedback received from participants in the end of Day 1 (orally, or on a powerpoint slide). Address explicitly those expectations that will not be met.
- Describe the learning goals and the program for Day 2.

## 4.9. Session 5: Lawyer-Client Consultation

### Session objectives:

- Learn about examples of negative and positive lawyer behaviours during lawyer-clients consultation at the police station
- Train the skills of building rapport, active listening and posing appropriate questions in the simulated situation of a police station consultation
- Learn techniques of building rapport with different types of “difficult” clients
- Raise awareness of the importance of posing open questions in eliciting (detailed) information and building rapport

### Trainers will need:

- Video playing facilities (check sound in advance!)
- Video file “Lawyer-Client Consultation” or the equivalent used
- Separate room(s) or space to conduct roleplays in three small groups (of four persons)
- Handout forms for Exercise # 7
- (Optional) Whiteboard (to note the outcomes of group discussions)

### Section timing and structure:

**15 minutes:** Feedback from Day 1

**10 minutes:** Introduction + Explain exercise # 6

**20 minutes:** Exercise # 6

**55 minutes:** Exercise # 7

### Detailed session description:

The 3<sup>rd</sup> session will train the communication skills in the context of the lawyer-client consultation. The following issues will be addressed:

- Questioning client to stimulate cooperation and accurate recall
- Building rapport with “difficult” (including vulnerable) clients
- Dealing with undesirable behaviour

#### **1. Introduction (5 minutes)**

Central points based on the e-learning modules is that receiving and providing information is the core of the consultation in which lots of things happen and the previously acquainted skills need to be used to get what you want:

- Assessment client

- Informing about procedure and rights
- Strategy decision
- Explain lawyers role
- Preparation for interview

Remember that a consultation is not an interrogation! (Ask participants: Why do we say that it is not an interrogation?)

## **2. Exercise # 6 “I take with me to the consultation...” (25 minutes including instructions)**

Discussion in the entire group.

You have a limited time to meet with a new unknown client. What do you think is the most important to achieve in this meeting?

Each participant names their own most important objective. When one important objective is named, the next participant is asked to name another objective.

Here you can also discuss the general approach to the consultation, for example:

- What is the first thing that you do? Greet your client? (How do you do it? Give your hand? Do you use your client’s first name or a surname?) Explain your role?
- Do you use a checklist, and how strictly do you adhere to it? (You need some flexibility, but make sure that the necessary elements are covered. A checklist can also give you security, especially if you don’t have much experience.)
- How do you know/verify whether the client understands you/”trusts” you/agrees with your advice?

The next slide is the prelude to the first exercise of this Session. It’s about the do’s and don’ts during a consultation. It could start with a short round table discussion on their personal challenges: what did they already experience as a hindrance in the consultation phase.

## **3. Exercise # 7: The Lawyer-Client Consultation (55 minutes)**

In this exercise, participants are asked to analyse the videotaped lawyer-client consultation by using the observation form (communication as well as legal aspects). It is possible to use a national equivalent of a videotaped consultation for this exercise, instead of the video provided in the NETPRALAT package.

The goals are:

- To critically reflect on the legal choices of the lawyer
- To respectfully reflect on the basic communication skills of the lawyer
- To be aware of own choices and reasons for those choices in the video

Instruction:

The video of the “Lawyer-Client Consultation” exercise will be shown. Each participant should note what they see, would like to do different themselves and what they thought was good. These notes should be written down on a standard form. It will take about 5 minutes to give this instruction. The video itself takes 15 minutes, as will take their thinking and evaluating. After this, a group discussion of about 30 minutes will take place discussing their observations, their alternative suggestions and their evaluation of the lawyer depicted in the video.

### Tips:

- Since this is just watching a movie, try to keep the participants challenged. If you see nobody taking notes, pause the video and describe what you see.
- Distribute the observation forms, explain how to fill them in, and take any questions (you can divide the group into two, with one part focusing on the legal strategy and the other on the lawyer's communication skills to stimulate more discussion)
- Make sure that their evaluations are specific
- Challenge their choices by asking critical reflection: What made you decide to do this alternatively? How would you do it yourself? How would you formulate it differently, if you were a lawyer on this video?

## 4.10. Session 6: Suspect Interview

### Session objectives:

- Train the skills for appropriate intervening in the interview
- Raise awareness of the possible reasons for intervening (corresponding to the lawyer's goals at the interview, e.g. support client, prevent the use of inappropriate tactics, etc.)
- Train the skills of positive confrontation and building rapport with police officers during suspect interview
- Raise awareness of police tactics and techniques for interviewing suspects in the given jurisdiction
- Raise awareness of the importance of building and maintaining effective working relationships with the police

### Trainers will need:

- Video playing facilities (check sound in advance!)
- Video file "Suspect Interviews" or the equivalent used
- Handout forms for Roleplays
- Roleplay instructions for actors playing suspects, police officers and lawyers (printed out separately)
- (Optional) Whiteboard (to note the outcomes of group discussions)

### Session structure and timings:

**30 minutes:** Introduction and Group Discussion

**50 minutes:** Exercise # 8. Interventions During an Interrogation

**1 hour:** *Lunch break*

**3 hr 15 minutes (incl. 15 min. coffee break):** Roleplays

**30 minutes:** Wrap up of Day 2 and Evaluation

## **Detailed session description:**

In the 4<sup>th</sup> *session* skills necessary for participation in suspect interviews will be trained. Most importantly, *positive confrontation* as a way to intervene receives attention during the e-learning. A major objective of this session is to *raise lawyers' awareness of the role of the police in the interview* (and vice versa).

### **1. Introduction (30 minutes)**

Central points (short explanation and summary of e-learning modules):

- Awareness of and dealing with: tricks (“We ask the questions”, hypothetical questions, minimisation, maximisation, “Tell the truth”, repeating questions etc)
- Confrontations (with discrepancies or evidence)
- Support client according to/monitor chosen strategy

How to intervene using the Positive confrontation = a tool to intervene feeling comfortable:

- Denominate behaviour immediately
- Treat the person with the benefit of a doubt
- In neutral words using the rules for giving feedback
- Request rephrasing or changing of the behaviour
- Get yourself out of the conflict

Discussion of the tactics and techniques of suspect interview from the e-learning – Are you familiar with these tactics? Do you agree that the tactics on the left-hand side are problematic? Etc.

### **2. Exercise #8: “Interventions during an Interrogation” (50 minutes) [or national equivalent]**

In this exercise the participants need to be active lawyers: they have to interrupt the video that they will watch at in the whole group. They should argue as to why they intervene and also they have to speak out their intervention.

Goals:

- Being more aware of strategies used by the police during an interview
- Motivation of interventions; why do they want and based on what
- Actively practice positive confrontations

Instructions:

Participants watch the video of the interview and act as if they were his lawyer present in the interview room to assist the suspect. If they want to intervene, they mention “Stop” and the video will be paused followed by the intervention made by the participant. The participant is then asked to explain why s/he intervened. A discussion with the group is held. Why or why not would they intervene? If so, how and why? If not, why? Possible effects of each intervention will be discussed with the whole group.

Tips:

- If there are no interventions, the trainer will point at several possible occasions to intervene and lead the discussion

- Practice yourself beforehand with positive confrontations
- Depending on the materials used: prepare interventions yourself
- Remember that it is NOT an objective of this exercise to identify “right” or “wrong” moments/reasons for interventions (this is at discretion of each lawyer depending on a situation), and it is not the trainer’s role to give instructions to participants to this effect. If participants are looking for this kind of feedback (e.g. because they have little experience), trainers might give some *very general* guidance AND continue asking (reflective) questions (e.g. what could be the reasons for intervening in your view?)

Note: For Roleplays, 2 actors to play suspects and/or 1-2 actors (or police officers) to play interrogator(s) are needed.

### **3.Role plays (3 hrs 15 minutes including break 15 minutes)**

The roleplays will be conducted twice with two different scenario’s and therefore interrogators (preferably) and actors will differ as well. With two different participants in the role of the lawyer (they prepare their role during lunch and the afternoon coffee break). The actor(s) or police officer(s) in the training will do the interrogation. An actor will play the suspect. All other participant need to observe. During the role play, the actors are allowed to challenge the lawyers and/or police. They will receive a variety of suggestions for that.

*NB! The issues addressed in Sessions 3 & 4 should also be included in the roleplays: e.g. one should cover a vulnerable client and related issues, and another should include a foreign suspect and need for interpretation. If interpretation issues are covered as well, a professional interpreter should also participate in the roleplay.*

Goals:

- Practicing rapport-building and other skills in the lawyer-client consultation
- Testing sensitivity for interrogation tactics
- Testing sensitivity for needs of a client
- Practicing communication skills with the police as well as with the client
- *Practicing skills of working with intepreters and coomunicating with client via an interpreter*

Instructions:

*Timings:*

Explanation roleplay: 5 min

Contact lawyer-police (5 min)

Consultation with clientt (20 min) + feedback consultation (20 min)

Interrogation (30 min incl. possible breaks for confidential consultations) + feedback interrogation (25 min)

Part 1: Contact with police

Part 2: Lawyer-Client Consultation

! The interrogator is not present during the consultation and the feedback.



The lawyer only receives a short summary of facts and conducts the consultation in the way that he or she would do it in reality. S/he has 20 minutes for this. The actors receive a detailed scenario.

In the feedback phase, the lawyer first explains what kind of advice (s)he gave to the client and why. The actor is not present. Then the other participants discuss their preferred approaches.

### Part 3: Interrogation

The actors incarnate the scenario and react according to how the communication with the lawyer and the interrogator(s) develops. There are no specific scripts because this would make the exercise too superficial. The interrogation lasts for about 30 minutes; in case a confidential consultation is asked for, give no more than 5 minutes.

After the interrogation, conduct a feedback round of maximum 25 minutes with the entire group. The group should be divided into 3 groups in advance: those observing the behavior of interrogator(s), lawyer and suspect. They must also take account of their interaction with other actors. They then give feedback concerning the performance of these particular actors.

The actors are well prepared for the roleplays via a preliminary briefing by email. One of the trainers goes through the scenarios and the exercise with the actors during the preceding break (lunch: the actor must arrive at least at 12.30 and coffee break: the actor must arrive at least at 14.45). Actors should arrive on time and be met by someone so that the group does not see them.

In the end of day 1 explain the roleplays and different roles and ask for volunteers. In the beginning of day 2, choose 2 lawyers and explain the task in general terms.

The lawyers get a summary of the case, client and the chosen strategy during the interview. From the start on, the role play is set in the interrogation room. The police officers will act as if they are themselves. Note that the actor receives instruction to challenge both the interviewers as the lawyer. It is up to the lawyer to apply everything he learned during this training and e-learning.

### Tips:

- Set up the room in such way that all participants can see all actors!
- Make a wise decision on which lawyers will do the role play. Pick those who have shown improvement during the training. Try to choose two lawyers with different communication styles and personalities. Do not choose ONLY those participants who seem enthusiastic or are extrovert (talk a lot), but also those who are more introspective/reflective. Do NOT choose participants who are sceptical/antagonistic/critical or lack self-reflection: they might not take the exercise seriously, causing frustration of other participants
- Make sure that the feedback is according to the book
- Guard the time; don't stop in the heat of the moment
- But, make sure that if the role play does not go well, to intervene
- *Alternative:* you can provide for 1 'time-out' where the lawyer can ask for advice of his/her colleagues. They can give 3 suggestions about how to proceed with the roleplay, from which the lawyer can choose one.

### **ATTENTION POINTS END OF DAY 2:**

- If possible, reserve some time in the end of the day to evaluate and sum up

- Explain what will happen during the follow-up (see below) and the importance of handing in the assignment for the follow-up in the e-learning

## 5. Methodological tips for NETPRALAT trainers

### 5.1. General tips

- Prepare a “guidebook” or a document describing the sequence and timing of what you will do as the trainer in each of the face-to-face sessions (as well the division of roles between the trainers, and other decisions taken by the trainers).
- Manage the time strictly!!! Stop group discussions when the time is running out (e.g. announce that the point currently discussed is the last one or that you will take only one more question or comment), even if the group appears very involved. If the discussion seems very interesting, try to find other opportunity(ies) to follow up on it, e.g. during the break or in the e-learning course environment.
- Adjust the tempo and the amount of theoretical explanations to the (average) level of experience in the group. If some participants need further explanation or have questions, but the group wishes to continue, reserve some time to address these separately. If it appears from the questions posed that (some) participants do not have sufficient grasp of the theoretical materials, refer them to the respective module(s).
- Do not be tempted to shorten or to skip the group discussion exercises to incorporate more roleplays and opportunities to practice. It is possible that participants will note in evaluations that they would prefer more roleplaying than of group discussions. However, group discussion exercises incorporated in the NETPRALAT training are crucial from the educational standpoint. To benefit to the utmost from the roleplays, participants need a solid theoretical basis and understanding of the relevant skills, which is achieved through group discussion exercises.
- Try to maintain a fair balance in the (opportunities for) participation in group discussions. Some participants would want to always take the floor and make lengthy interventions, and some others would seem reluctant to participate. Prevent the situation where only a few participants monopolise the discussion (e.g. by telling that they have already made a number of good interventions and now it is time for others to contribute). Try to stimulate the more “reluctant” participants to contribute, but not too overtly or repeatedly (which may look like you are “picking” on them).

## 5.2. Stimulating reflection

- In some contexts, participants may feel resistance to the term “reflection”. Instead, you might use terms like “becoming aware”, “questioning yourself”, etc.
- Consciously ask questions to stimulate reflection: Why did you choose that line of action? Would you have done the same? If the situation was slightly different, what would you do?
- The highest level of reflection is reasoning by reference to the professional values (e.g. the centrality of the client’s interest.) Trainers should also try to stimulate this level of reflection by asking the right kind of questions (e.g. what do you think would in your client’s interest here?)
- Participants should be made aware of the role conflicts (if applicable): for example, building a working relationship with the police vs building rapport with the client. Trainers should be aware of the moments when role conflicts can be discussed (e.g. during a simulated suspect interview – a lawyer does not intervene because he or she fears the reaction from the police officer: is there a role conflict here?)
- When possible link to participants’ own experience (Have you ever seen (or heard of) a similar situation? Can you think of an example from your own experience? Can you describe a situation that you found difficult?)

## 5.3. Case scenarios

- Case scenarios should be **authentic**, i.e. adapted from the real-life cases and/or (preferably) developed by a practicing criminal lawyer.
- Using the same case scenarios throughout the training ensures continuity and helps participants to feel immersed in the cases discussed. Additional facts could be added to the scenarios as the training develops: e.g. facts needed for the client consultation (demeanor client/client’s story), facts about the circumstances of the client interview.
- Ideally, case scenarios should include problems that are typically encountered by lawyers when assisting clients at the investigative stage AS WELL AS situations that are *atypical* to stimulate lawyers to reflect by stepping out of their usual role. Try to ensure that each case scenario includes a couple of legal issues (e.g. lack of information to probe the client’s “self-defence” story, legal qualification of the offence unclear,

evidence issues) and a couple of communication-related issues (e.g. a client who seems “mistrustful” and does not listen well).

- Do not aim to cover all possible problems and issues that you think are important in the roleplay scenarios. Scenarios used for roleplays should not be overly complex, otherwise it will be difficult for the participants to play it out, as well as it is likely that the different problems will not be (sufficiently) addressed in the feedback round. Remember that the goal of the training is to stimulate a reflective mindset and provide lawyers with tools that they can use/activate themselves to search for solutions to the problems they encounter. *It is not the aim of this training to provide solutions to all possible problems and issues to be encountered by lawyers when assisting clients at the police detention stage!*

#### 5.4. Videomaterial

- To the extent possible, videomaterials used should be **authentic**, e.g. fragments of the real-life suspect interviews that took place in the given jurisdiction. This may however not be possible. For instance, lawyer-client consultations are confidential and are never filmed, or trainers might not have access to the videorecordings of suspect interviews.

If obtaining access to your own videomaterial is problematic for you, we included videofragments of lawyer-client consultations and suspect interviews that were available to or produced by us. Although this is not ideal, you might consider using these fragments (translated into your own language). You may also consider making your own recording based on the facts of a real case, played out (preferably) by real defence lawyers and investigators.

- Consider introducing each videofragment – e.g. give the background of the case - before playing the recording to ensure that participants are immediately immersed in what is happening on the video.

#### 5.5. Roleplays

- Give clear instructions to the participants about what their role entails and the purpose of each roleplay.
- Run feedback in the following order: first reflection on the own experience from the roleplay participants (lawyer, then suspect (actor), then interrogator(s)), then feedback from other participants, then from the trainers.

- Briefly explain to the participants the rules of giving and receiving feedback (see paragraph 6.5 below).

## 5.6. Feedback

Feedback will be given at various points of NETPRALAT training, both by you as a trainer and by participants. When asking for feedback on roleplay exercises, it is important to preserve the order of giving feedback: first the roleplay participants themselves, then the audience. Trainers should strive to give their feedback after it had been given by participants.

It is important to spell out the rules of giving feedback – either during the first session, or before the first practical exercises – even if you believe that your participants should be aware of them. Reminding of the importance of giving feedback in a respectful way also helps to enhance trust.

Some basic rules of giving feedback are:

- Be as concrete and specific as possible: comment on specific behaviours, give examples, and try to avoid generalisations, or commenting on someone as a person;
- Be supportive rather than judgmental or dogmatic (also in your non-verbal communication);
- Be positive as well as negative; critical feedback when expressed in a positive way is generally more conducive to personal or professional growth;
- Comment only on those aspects that the person can change;
- Be brief and to-the-point, limit your feedback to what the person can process at one time (usually two or three main points);
- Be direct: do not apologise for, undermine your (critical) feedback, or dress it up with beautiful phrases;
- If appropriate, ask the recipient or the audience to reflect on the feedback, as well as to brainstorm together on better or alternative ways to act in the given situation.

## 6. Evaluation

Evaluation is an important part of the NETPRALAT training, especially if it is organised for the first time in your jurisdiction. It would help to adjust the program to the specific training needs, but also to demonstrate to the local Bar associations or other training (funding) institutions that it is being found useful and necessary by the participating lawyers.

In the NETPRALAT training we opted for a straightforward approach to evaluation, combining a one-page written questionnaire for participants, and focus groups with participants and trainers. We tried to keep the questions meaningful, and at the same time not to demotivate the participants in providing feedback.

The formal evaluation of the training should be accompanied by a continuous informal evaluation. There should be an ongoing dialogue between the training developers, trainers, training participants and any other parties involved (e.g. representatives of the Bar association and/or funding authorities) with the view to adjusting the training program to the local needs, and improving its quality. One could think of convening a group of relevant stakeholders to advise on the training program, set-up and format, and to participate in the informal evaluation. It could also be beneficial to allow someone, who has not been closely involved in the development of the training, to observe and informally evaluate the training.

### **6.1. Evaluation questionnaire**

The questionnaires should be as short as possible so as not to discourage the respondents to give meaningful feedback.

We have developed a number of “standard” questions for the evaluation questionnaires, which can be used in any jurisdiction. Other questions can be added, depending on the specificities of your training program, and/or on the requirements placed by the training organisers/funders.

For the questionnaire used in the NETPRALAT training see Appendix 7.

### **6.2. Evaluation focus groups/interviews**

Focus groups/interviews result in more in-depth and useful feedback, than filling in lengthy (written) evaluation forms. Ideally, focus groups should be conducted with both the training participants and the trainers. If conducting a focus group with trainers is not practicable, it is also possible to hold individual evaluation interviews.

General tips for conducting evaluation focus groups:

- Ask an ‘outsider’ (someone who has not delivered the training) to conduct the focus group. Ideally, this should be someone who is sufficiently familiar with the training program. It could also be beneficial if he/she could observe at least some parts of the training.
- Trainers who delivered the training should not be present during the focus groups with training participants.
- Explicitly state that you value their input, both positive and negative, to further improve the NETPRALAT training. Explain that a short summary of the main points of the focus group will be sent to them, so that they will have the occasion to correct misunderstandings and/or add things that they think of later. Explicitly state that you will not use their names in this summary.
- Start the evaluation with a very open question (e.g. how did you experience the training?)

- Have 3-4 main questions prepared in advance. These questions should be broad and open. Suggestions are given below.
- You can, if you want, already specify more detailed sub-questions. You can ask them if the participants do not touch on specific issues by themselves. Pick up on the points raised by the participants (if relevant) and ask follow-up questions. Try to keep these questions open as well.
- Have a break between the last training session and the evaluation session – use the break to distribute questionnaires.
- Have someone else to take notes and prepare short summaries of each session (consider audiorecording for backup)

*Examples of focus group questions (no longer than 30 minutes)*

- How did you experience the NETPRALAT training?
- What parts of the training were the most useful? Which parts were the least useful?
- What did you think about the trainers?
- If the same training was delivered again in the future, what would you change?

Address these, or similar, points with respect to:

- Training content
- Structure/organization of the training
- Training format.

## Appendix 1. The role of a lawyer at the investigative stage

This document sets out certain assumptions concerning the role of legal advisors at the police detention stage of criminal proceedings, which were used as the basis for the NETPRALAT training. It is intended for the future trainers of the NETPRALAT course.

The document can be partly used in preparation for Session 1. It is NOT meant to be handed out to the participants.

### 1. THE LAWYER'S ROLE AT THE INVESTIGATIVE STAGE: GENERAL NOTIONS

The lawyer's main role at the police detentions stage (and in the criminal proceedings in general) is to *protect, advice and defend* their client, a criminal suspect.<sup>3</sup>

The interest of the client is paramount in the exercise of the lawyer's role. Thus, lawyers should not be required to do anything that undermines the interest of their client (for example, disclose confidential information given to them by the client). The client's interest should be defined by taking into account, to the extent possible, the client's own perspective and the client's wishes.<sup>4</sup> Thus, it is the lawyer's duty to identify the client's view on the case and the desired outcome. Lawyers must also strive to inform clients to the fullest possible extent about the options and consequences of procedural behavior to enable the latter to make informed choices.

The lawyer's role at the investigative stage is not limited to the purely "legal" tasks, i.e. informing and advising clients about the law and overseeing whether the procedures have been followed. The lawyer is there to provide moral and social support to the client, for example, by showing empathy, giving detailed information, or paying them additional visits if necessary; monitoring health risks or medical needs; and, where appropriate, addressing the broader clients' concerns (e.g. informing family).

In their relationship with the authorities, lawyers should strive to remain professional at all times. Lawyer' interactions with the authorities should be informed by their paramount professional objective: defending the best interest of their client. Although their professional objectives may differ, lawyers should not provoke, or engage into personal conflict with police officers. Likewise, the use of manipulative or deceptive tactics is strongly discouraged. Building an effective working relationship with the police is more conducive to defending clients' interests effectively in the long run. This does not mean though that lawyers should not react assertively to any illegal, unethical or unprofessional behaviour.

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<sup>3</sup> This follows from, *inter alia*, The Havana Declaration on the Basic Principles of the Role of Lawyers. It states that the lawyer's role is "advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients", and "assisting clients in every appropriate way, and taking legal action to protect their interests". See Principles 13 (a) and (b).

<sup>4</sup> These may be overridden only in the case of clients who are clearly incapable of taking rational procedural decisions, as demonstrated e.g. by an expert assessment, e.g. clients with serious mental illnesses or very young children.



## 2. IMPORTANT POINTS TO INCORPORATE/PUT ACROSS DURING THE TRAINING

### 1. Lawyer's role is not only to give advice on/enforce the points of the law, but also to provide moral support

Lawyers should strive to help their clients as human beings and not only as “walking cases”, which includes protecting clients from treatment, which is unfair in “human” terms, or which causes client’s suffering, and not only treatment that is manifestly illegal. One example is the use of certain pressure tactics during interrogation, which may not be outruled by the law, but which feel unfair and/or are visibly distressing for their client.

### 2. The importance of seeking detailed information

It is important for lawyers to strive to seek case-related information, as well as information about their client (e.g. potential vulnerabilities, criminal record) *before* the first lawyer-client consultation. Lawyers should be encouraged to do so also in those countries where there is no formal right of access to such information. In these countries, not all participating lawyers may see the importance of obtaining such information: you may need to spend some time in the training (e.g. the first session) to discuss this.

Lawyers should be equipped with communicative techniques to seek (detailed) information both from clients and police. Investigators may be trained to disclose as little information as possible, unless the lawyer asks for it. Suspects may have reasons for withholding information from the lawyer, including the potential embarrassment to admit certain things (e.g. lack of understanding, inability to read, existence of a criminal record, etc.) Lawyers may also fail to ask suitable (open) questions to obtain information, or to invest sufficient time in the information-gathering stage of the consultation.

### 3. The importance of making assessments independent from those of the authorities

This is linked to the point above that it is not always apparent at the investigative stage whether the client’s rights and needs have been adequately identified and taken into account. Investigative authorities may not always accurately spot the potential problems and issues. Thus, lawyers should not rely on police records/assessments, but always undertake their own evaluations of, for instance:

- client’s *vulnerability* and *special needs*
- client’s *ability to understand and speak* the language of the proceedings/*need for interpretation*
- client’s *understanding of rights*
- whether the client’s rights in police custody were respected, and whether the relevant procedures were followed.

### 4. Lawyer's role during suspect interrogation

Lawyers should be aware of *importance of attending interrogations*, even in seemingly trivial cases (e.g. providing emotional support, ensuring that no unfair questioning occurs, ensuring

that client's responses are properly recorded). A decision on whether a lawyer should attend an interrogation should be that the client and not of the lawyer.<sup>5</sup>

Lawyer might need to make a number of *representations before the interrogation* starts: e.g. on the client's fitness to be interviewed, access to medical care (if necessary, before any interrogation is held), on the interrogation conditions and arrangements, etc.

Lawyers *should not be limited in the legitimate exercise of their tasks* during the interrogation, including by making interventions and requesting to stop the interrogation. In those countries, where (unrestricted) exercise of these tasks is not possible due to restrictive regulations, lawyers should be encouraged to seek wider room to participate in an interrogation, than that provided by regulations.

Below are some examples of lawyer's tasks at interrogation:

- Informing and Advising Client
  - Includes the ability to take time-outs both by lawyer and the client
  - Advising clients to use their right to silence at any time
- Protecting and Supporting Client
  - Protecting from Oppression/Coercion
  - Providing Emotional Support to Cope with the Interrogation
- Assisting Client in Providing an Account
  - Acting to Clarify Questions
  - Acting to Clarify Client's Responses
  - Adding Information on Client's Behalf
- Challenging Police Behavior
  - Unlawful Pressure
  - Inappropriate Questions and Statements
  - Challenging Written Record of Interrogation
- Note-Taking During Interrogation/Keeping an Alternative Account of the Interrogation
- Representations (Immediately)

#### After Interrogation

Lawyers may need to make representations concerning, e.g. giving access to written evidence/other types of evidence to them and/or the suspect; or additional investigative actions to be carried out.

## Appendix 2. Sample roleplay scenarios

In this Appendix, we present the sample scenarios for roleplays that were used during the NETPRALAT pilot trainings. The scenarios presented here are more detailed than those used during the NETPRALAT pilot to enable the future NETPRALAT trainers to give optimal

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<sup>5</sup> In principle, lawyers should attend all interrogations, unless in very rare situations where the potential benefit of lawyer's attendance does not justify client's longer detention due to the time needed for the lawyer to arrive.

instructions to the roleplay participants. It is important to ensure that the roleplay scenarios used during NETPRALAT trainings are as authentic as possible. Therefore, future NETPRALAT trainers should adjust the proposed scenarios to their own national legal systems and practice.

### **CASE SCENARIO ONE**

#### **a. Instructions for the lawyer -**

Your client is a young female named Sarah Jones. She recently gave birth to her son, Michael, and she is still (exclusively) breastfeeding.

The information you get from the police is: “Suspicion of handling stolen items.”

#### ***During the consultation, she tells you the following:***

She has been arrested along with her boyfriend, Wayne Saunders, who is also the father of their baby, in relation to a series of robberies and thefts. She was arrested for handling stolen items (those allegedly stolen by her boyfriend). She does not know anything about that. She got most of the designer clothes (Burberry etc.) and shoes for their son as presents from her mother and aunt. She hung them in her walk-in closet, arranged by size and wrapped in plastic, with the price tags still attached, so that they remain intact until their son can wear them. Her boyfriend also brought her some clothes at times, because he knows she loves all these pretty things. She never wondered where he got the money (or why he would not just get their son’s size). When you asked the client about what she would like to do at the interview, she did not give a straight answer, but it was clear that she was disoriented and frightened. She also told you that she wants to go home to feed her baby as soon as possible. Her breasts are literally exploding, they haven’t been emptied for 12 hours (she did not have a chance to say this to the police), and the baby must be very hungry by now!

#### **Note:**

According to the country’s law, a person is guilty of handling stolen goods if he/she could have reasonably suspected that the goods have been stolen.

It is yet unclear whether the clothes can be traced back to the stores that have been robbed, but this is not difficult to investigate, so it is possible that the police already have this information.

#### ***Decide what advice to give to the client and inform the client about it***

#### **General:**

- According to the country’s law, you are allowed to make a full range of interventions before and during the interview;
- The police officer may decide to stop the interview and contact a superior officer if he considers that the lawyer obstructs the interview (no further clarification in the law of what “obstruction” is);

- There is no formal right to disclosure, but there is case law stating that questioning that is misleading/based on false evidence or suppositions may be unlawful.
- According to the country's law, a suspect cannot be interviewed if his or her physical or mental state does not allow him or her to understand the questioning, or if it would cause excessive suffering. In practice, if there is a dispute about whether the suspect is "fit" for an interview, a medical certificate is required to certify this.

### **b. Instructions for the actor playing the client -**

You are a young female, Sarah Jones. You recently gave birth to your son, Michael, and you are still breastfeeding.

You were arrested along with your boyfriend, Wayne Saunders, who is also the father of your baby, in relation to a series of robberies and thefts. You were arrested for handling stolen items (those allegedly stolen by your boyfriend). You do not know anything about that. You got most of the designer clothes (Burberry etc.) and shoes for your son as presents from your mother and aunt. You hung them in your walk-in closet, arranged by size and wrapped in plastic, with the price tags still attached, so that they remain intact until your son can wear them. Your boyfriend also brought you some clothes at times, because he knows you love all these pretty things. You never wondered where he got the money (or why he would not just get your son's size). You tell the lawyer that you don't know what to do at the interview, you are very frightened by the whole experience. Your breasts are literally exploding, they haven't been emptied for 12 hours (you haven't had a chance to say this to the police yet), and the baby must be very hungry by now! You just want to go home to feed your baby as soon as possible.

#### ***Before the interview***

A police officer comes in to interview you. You are very frightened and silent. [*Normally, here a lawyer should bring to the officer's attention that you are breastfeeding and have a medical emergency (need to express your milk), and that your baby has not been fed for 12 hours.*]

You do not talk unless being addressed. If you are being asked about something, you respond in a very low voice, and acquiesce into anything being suggested.

#### ***During the interview***

The questioning starts off in a very dry, detached manner. The officer is not aggressive, but not very empathetic either.

He starts immediately by asking questions related to "the case": do you know Mr Saunders (your boyfriend), what's your relationship, how long you have been together, etc.

#### ***If the lawyer advised you to remain silent (Scenario A) -***

Initially you do not respond at all, just stare at the officer. [*The officer gets impatient, and here the lawyer should normally intervene to prompt you to give an answer, e.g. "no comment" or*

*“right to silence”, or should say that “my client is exercising her right to remain silent.” If the lawyer doesn’t intervene after 2-3 questions, you start answering them.]*

The questioning proceeds – did you get any presents from your boyfriend, how often, what kind of presents, did you know anything about the thefts and robberies and that your boyfriend might have been involved.

You respond in line with your lawyer’s instructions.

The officer then describes what has been found at your home – women’s designer clothes, all different sizes. They are still in plastic with their tags on. He asks – what would you respond if I said that the clothes were coming from thefts and robberies, in which your boyfriend is implicated?

*[Here the lawyer should hopefully intervene either to challenge the question, or to ask for further information about the evidence.]*

The officer then tells you that they also found baby clothes and shoes, arranged by size and wrapped in plastic, with the price tags still attached. Were they intended for your son?

When the officer mentions your son, you become very emotional (sobs and tears), are trying to collect yourself but can’t stop crying, and visibly can’t speak.

*[Here a lawyer would hopefully ask for a break in the interview to let you compose yourself, or alternatively enter into a discussion with the officer to stop the interview to let you feed your baby.]*

If no break in the interview –

The officer keeps talking to you – obviously using this as an opportunity to put some pressure on you – if you give a statement now, you can go immediately home and feed your baby. If you remain silent, you will “definitely” be placed in further detention.

*[If a lawyer is sufficiently firm here, you continue remaining silent. If not, then you start yielding into responding.]*

The officer then asks questions to ascertain whether you may have known that the goods were stolen – Did you ever wonder where they were coming from? Did you know how much they cost? Did you not ever ask yourself why the sizes of the clothes were all different? Etc.

You are at a loss, and look up at your lawyer after each question. Depending on whether you feel sufficient support from the lawyer, you either continue remaining silent, or start responding “I did not” to most questions.

***If the lawyer advised to respond to questions (Scenario B) -***

Initially you do not respond at all, just stare at the officer. *[The officer gets impatient, and here the lawyer should normally intervene to prompt you to give an answer. If the lawyer doesn’t*

*intervene after 2-3 questions, you start saying “I don’t know”, which visibly annoys the officer. The lawyer should intervene here.]*

The questioning proceeds – did you get any presents from your boyfriend, how often, what kind of presents, did you know anything about the thefts and robberies and that your boyfriend might have been involved.

You respond, but give elusive answers - a lot of “don’t know”, etc. The questioning becomes more and more tense. *[It is again up to a lawyer to intervene to “manage” this.]*

The officer then describes what has been found at your home – women’s designer clothes, all different sizes. They are still in plastic with their tags on. He asks – what would you respond if I said that the clothes were coming from thefts and robberies, in which your boyfriend is implicated?

*[Here the lawyer should hopefully intervene either to challenge the question, or to ask for further information about the evidence.]*

The officer then tells you that they also found baby clothes and shoes, arranged by size and wrapped in plastic, with the price tags still attached. Were they intended for your son?

When the officer mentions your son, you become very emotional (sobs and tears), are trying to collect yourself but can’t stop crying, and visibly can’t speak.

*[Here a lawyer would hopefully ask for a break in the interview to let you regain composure, or alternatively enter into a discussion with the officer to stop the interview to let you feed your baby.]*

If no break in the interview –

The officer keeps talking to you – obviously using this as an opportunity to put some pressure on you – if you say everything “honestly” now, without “I don’t know” answers, you can go immediately home and feed the baby. If you keep fooling around, you will “definitely” be placed in further detention.

*[If the lawyer intervenes and is sufficiently firm here, you act according to instructions. If not, you say something to the effect that you understand, and you would do anything, just let me go home.]*

The officer then asks questions to ascertain whether you may have known that the goods were stolen – Did you ever wonder where they were coming from? Did you know how much they cost? Did you not ever ask yourself why the sizes of the clothes were all different? Etc.

You are at a loss, again starting to respond “I don’t know” or “I did not” and look up at your lawyer after each question. The officer is increasingly building the pressure, and if the lawyer does not intervene, you admit that you suspected that the goods may have been stolen.

## General:

- Whatever happens, remain in/go back to your role;
- If at any point, the lawyer asks for a confidential consultation and changes his instructions, e.g. from remaining silent to responding to questions, switch from Scenario A to Scenario B (or vice versa).
- According to the country's law, a lawyer is allowed to make a full range of interventions before and during the interview.

### **c. Instructions for the actor playing the police -**

The suspect is a young female, Sarah Jones. She recently gave birth to her son, Michael and she is still breastfeeding.

She was arrested along with her boyfriend, Wayne Saunders, who is also the father of her baby, in relation to a series of robberies and thefts. She was arrested for handling stolen items (those allegedly stolen by her boyfriend). At her home, which she shared with her boyfriend and the baby, lots of women's and child's designer clothes (of different sizes!) were found in her closet, wrapped in plastic and with price tags on.

Her boyfriend was convicted of robberies and thefts many times before, and you have enough evidence (CCTV and DNA samples) to link him to a series of robberies and thefts of designer boutiques committed lately (involving the same brands as the clothes that were found in the suspect's home). A suspect's statement would be a "cherry on top of the cake".

You did not yet verify if the clothes came from the boutiques in question – your colleagues are dealing with this now.

#### ***Before the interview –***

You come to interview the suspect. She looks frightened and very silent.

*[At this point, the lawyer might inform you that the suspect is breastfeeding and she has not fed her son for 12 hours, and she has a medical emergency (needs to express her milk). You show some understanding, but initially insist that you will interview and deal with this afterwards. (You have little time to investigate...)]*

*Then ONLY if the lawyer is: a) polite and non-confrontational; b) proposes a concrete "action plan", you agree to suspend the interview for some time, e.g. to let the lawyer arrange that someone could bring a breastpump, or to bring the son over for the suspect to feed him.]*

If the lawyer does not ask for a break/after an imaginary break –

You start off the questioning in a very dry, detached manner. You are not aggressive, but not very empathetic either.

You start immediately by asking questions related to “the case”: do you know Mr Saunders, what’s your relationship? How long have you been together? etc.

The suspect first does not respond at all, just stares at you. You get obviously impatient [you can even remark that you are wasting your time here, while you have other more important things to do...Does she want to answer or not?]. [*Here the lawyer should normally intervene to prompt the suspect to give an answer, e.g. “no comment” or “right to silence”. If the lawyer doesn’t intervene, you continue questioning.*]

The questioning proceeds – did you get any presents from your boyfriend, how often, what kind of presents, did you know anything about the thefts and robberies and that your boyfriend might have been involved.

[*The suspect either remains silent, or responds vaguely and evasively (depending on the scenario given). If the suspect responds with a lot of “don’t know”, you get increasingly impatient and even angry: “Are you doing this on purpose? Etc.”*]

You then describe what has been found at the suspect’s home – women’s designer clothes, all different sizes. They are still in plastic with their tags on. You ask - what would you respond if I said that the clothes were from thefts and robberies, in which your boyfriend is implicated?

[*Here the lawyer should hopefully intervene either to challenge the question, or to ask for further information about the evidence. If the lawyer asks for details of evidence you initially say “we will tell you in due course”, if the lawyer then insists, you admit that you have NOT yet verified whether the clothes have come from the suspected offences, but ONLY if: a) the lawyer remains polite and non-confrontational; b) the lawyer explains why in his view (s)he should know the evidence. ]*

You then tell the suspect that you also found baby clothes and shoes, arranged by size and wrapped in plastic, with the price tags still attached. Were they intended for your son?

When you mention the suspect’s son, the suspect becomes very emotional (sobs and tears), and visibly can’t speak.

[*Here a lawyer would hopefully ask for a break in the interview to let the suspect pull herself together, or alternatively enter into a discussion with you to stop the interview to let the suspect feed your baby. Again, you are initially reluctant, but agree to give a break, if the lawyer remains polite and seems sufficiently convincing to you.*]

If no break in the interview –

You keep talking to the suspect –you found her “soft spot”, and you use this as an opportunity to put some pressure on her – “if you give a statement now, you can go immediately home and feed your baby...” “If you remain silent or keep fooling around, you will definitely be placed in further detention”

[*Depending on the lawyer’s behaviour, the suspect would either continue remaining silent or would start yielding into responding.*]



You then ask questions to ascertain whether the suspect may have known that the goods were stolen – Did you ever wonder where they were coming from? Did you not know how much they cost? There were price tags on each of them? Did you ever ask yourself why the sizes of the clothes were all different? Etc.

The suspect is at a loss, and looks up at her lawyer after each question. Depending on the proposed scenario, she either continues remaining silent, or starts responding “I did not” to most questions.

#### General:

- Whatever happens, stay in/come back to your role
- According to the country’s law, a lawyer is allowed to make a full range of interventions before and during the interview;
- The police officer may decide to stop the interview and contact a superior officer if he considers that the lawyer obstructs the interview (no further clarification in the law of what is “obstruction”);
- There is no formal right to disclosure, but there is case law stating that questioning that is misleading/based on false evidence or suppositions may be unlawful.
- According to the country’s law, a suspect cannot be interviewed if his or her physical or mental state does not allow him or her to understand the questioning, or if it would cause excessive suffering. In practice, if there is a dispute about whether the suspect is “fit” for an interview, a medical certificate is required to certify this.

#### **Instruction for the trainer**

*The objectives of this exercise are to:*

- *Reflect on one’s role in the context of the suspect interview-*  
  
*e.g. should I argue that the interview should not be held because the suspect is unfit? Should I ask for additional details of the evidence? Am I responsible for my client’s well-being during the interview? To what extent am I responsible for the client’s behaviour during the interview (e.g. what if (s)he starts responding despite advice to remain silent)?*
- *Train positive communication and positive intervention skills vis-à-vis the police*
- *Recognise/test sensitivity for police techniques and tactics*
- *Train skills involved in communicating with the client*

Note: *It is not the goal here to enter into a debate about what the law says and means, and how it defines what the lawyer does. If there are questions about the law, either refer to the*

*European regulations/case law, or say that the law in this area is open to interpretation, and would only provide limited assistance.*

## **CASE SCENARIO TWO**

*[3 groups; 1 lawyer, 1 client, 1 observer and 1 discussion leader]*

### **a. Instructions for the lawyer -**

You have been told by the police that the detainee, Timmy O'Reilly, was arrested at 2pm this afternoon on suspicion of cultivating cannabis. He has been detained. The police have told you that a search of the detainee's car was carried out at a police traffic checkpoint for tax and insurance. Having stopped the car at the checkpoint the officer on duty came to hold a reasonable suspicion that the detainee was in possession of a controlled drug, and to accordingly carry out a search. During the course of this search the police found what they believe to be cannabis waste in the two rubbish bags: two lamps, four filters, and some earth mixed with leaves. It is now 4.30pm and you have arrived for a consultation with your client.

Your client is 17 years old and while police have contacted his mother to inform her of his arrest and to request her presence at interview, she has told them that she is unable to attend as she has to mind her three young daughters aged 13, 9 and 4.

### **b. Instruction for the actor playing the client, Timmy O'Reilly -**

You are a 17-yr-old traveller (ethnic minority group). You left school at the age of 10. You live in a caravan with your widowed mother and your three younger sisters (aged 13, 9 and 4). You have never been arrested before. Your mother has a heart condition which is aggravated by stress and anxiety.

You hold a full driver's licence and you were driving your 2011 Ford Fiesta through the north inner city this afternoon when you were stopped at a police checkpoint. You were fully compliant in terms of car tax and insurance and all other requirements as a learner driver. When you were stopped at the checkpoint a policeman took a look at the discs on the windscreen and then came to your window. You rolled down the window and the policeman asked you where you were going. You replied that you were going home to see your mother. You are convinced that the minute the policeman heard you speak he recognised you as a traveller and that is why he decided to search your vehicle.

After telling him that you were on your way home to see your mother the policeman asked "What have you in the back there?" and you said "Ah, just a few bits for the dump." The policeman then told you that he wanted to take a look and he said something about the law but you didn't hear it properly or understand it. The policeman then opened the backdoor of the car and looked into one of the rubbish bags you had on the backseat. He said "This looks like cannabis waste to me. What are you doing with this?" and you told him that you had no idea what was in the bags, you were just getting rid of them for a friend.

The truth is that you did not know what was in the bags. A friend of yours, Frankie McCarthy, asked you to do him a favour and he would give you €200. All you had to do was get rid of the contents of a few bags. He didn't tell you what was in them but he wanted you to get rid of the contents without drawing any attention to them. You did not look in the bags yet. You had just collected them from Frankie and you were on your way home. There are four other similar bags hidden under your mother's caravan that you collected from Frankie two weeks ago but you still have not disposed of them.

You are worried that the police will want to search the caravan and you are very worried about your mother and her heart condition if this was to happen. You know that she has been informed of your arrest and you are already very worried about what affect that might be having on her. You hate the feeling of being detained and unable to leave as and when you please. You do not want to tell the police your friend's name, but you are prepared to make some statement if it means that you can leave sooner rather than later.

### **c. Instructions for the participant playing the police officer -**

The suspect, Timmy O'Reilly, was arrested at 2pm this afternoon on suspicion of cultivating cannabis. He has been detained. A search of the suspect's car was carried out at a police checkpoint for tax and insurance. Having stopped the car at the checkpoint a policeman spoke to the suspect who seemed very nervous despite having all valid documentation (tax, insurance etc.). The policeman then saw three black rubbish bags on the backseat of the suspect's car and believed that he had reasonable suspicion that the detainee was in possession of a controlled drug such as to allow for a search. During the course of this search the policeman found what appears to be cannabis waste in the two rubbish bags: two lamps, four filters, and some earth mixed with leaves.

The suspect is a 17-year-old traveller (ethnic minority group) who lives in a caravan with his widowed mother and three younger sisters at a halting site. His mother was invited to attend the interview but could not due to childcare concerns. His uncle, John O'Reilly, has come to the station though, and is being allowed to attend the interview.

Timmy has consulted with his lawyer for approximately 20 minutes prior to this interview.

It is now 5pm and you are going to interview Timmy O'Reilly, in the presence of his uncle and his lawyer.

You should try to build some rapport with Timmy at first – ask him some questions about himself and his home life etc. You should then ask him about the police checkpoint and what happened there. You should ask him about the rubbish bags on the back seat – whether he was aware of their contents, what he was planning to do with the contents, where he was bringing them from, where he was going etc. You should try to get an explanation from Timmy, and you should remind him of the anxiety that all of this might be causing for his mother. You should let him know that police are searching at the halting site, having obtained a search warrant this afternoon. You could say things like “Your mum must be worried about you

Timmy. Does she know you are mixed up in drugs?” You should also ask some questions repetitively if you are not happy with the answers being provided.

If Timmy repeatedly refuses to answer questions you may choose to advise him that he is better off answering the questions if he wants to get out of here faster.

If the lawyer questions any of your tactics you should stand your ground and explain to the lawyer that you are the one doing the questioning, that you are entitled to ask Timmy about the offence for which he has been arrested, that the cultivation of controlled drugs is a serious offence and you are taking it very seriously etc. You can accept certain interventions from the lawyer, but you should by no means accept all such interventions.

If the lawyer questions the legality of the search of the suspect’s car you should assure him that the policeman on duty at the checkpoint was entitled under current regulations to search the vehicle, having formed the reasonable suspicion that the suspect was in possession of a controlled drug. This suspicion was based on seeing the rubbish bags in the backseat, along with the apparent nerves of the suspect at the checkpoint. If the lawyer continues to question the legality of the search you should tell him that the judge at trial can decide on the legality of the search, but you are convinced that it was a reasonable and lawful search and that is the end of that.

**d. Instructions for the participant playing the client, Timmy:**

Your approach to the interview will have been determined in the consultation carried out in front of the group.

Your uncle, John O’Reilly, is going to be present at the interview because you are under 18. Uncle John has looked after you like his own son ever since your father died. You think a lot of him and value his opinions.

You continue to be very worried about your mother and you just want to go home.

**e. Instructions for participant playing the lawyer –**

Your consultation with your client (in front of the group) will have determined his and your approach to the interview. You should intervene whenever you feel it necessary to do so in order to assert your client's rights.

Your client's uncle showed up at the police station about 30 minutes ago and has been allowed to be present for the interview, as your client is under 18. You have not had a chance to discuss the details of the case with the uncle. You suspect that he may have consumed alcohol before his arrival at the station.

**f. Instructions for the participant playing the client's uncle -**

Your sister-in-law told you that your nephew Timmy was arrested this afternoon for something to do with drugs and was being held at the police station. You have looked out for him as if he was your own son since your brother died 3 years ago. You go to the police station, arriving there at about 6.30pm. The police have said that you can sit in on the interview as Timmy is under 18. You do not trust the police, and you do not trust lawyers either. You agree to sit in on the interview in order to look out for Timmy. You should leave most of it up to the lawyer, but at a certain point in the interview (maybe about 10 minutes in) you should get angry and start to accuse the police of picking on travellers and having it in for the O'Reilly family. You have had a few drinks earlier in the day which may add to your anger.

If the guards start to ask Timmy about his mother and putting her under stress etc. you should say something like "That poor woman has suffered enough." And "Her poor heart can't take it".

**CASE SCENARIO TWO**

**a. Instructions for the participant playing the role of the lawyer -**

Your client is a 21 year old male named Barry Lynch. He has been arrested and detained on suspicion of rape.

You were contacted by the Superior Officer of the Police Station in a small, rural town, and asked to attend the station to consult with Mr Lynch. You are not from the town and you are not familiar with the police station, the police officers or the detained suspect. It is a small rural town with a population of roughly 5,000. There is just one secondary school in the town, and there is a sense that everyone knows everyone else.

On arrival at the station the officer in charge informed you that a serious allegation of rape was made against your client and that the complainant, Andrea Nolan (aged 20), says that the rape occurred at a party last Saturday night. It is now 4.30pm on the following Saturday evening. The officer in charge tells you that the complainant made the allegation on Monday morning. You asked if she had attended a Sexual Assault Treatment Unit but the officer in charge said that he was not in a position to disclose anything further at this time. You asked if there was alleged violence or if you could be given further specifics of the allegation or evidence against

your client, but the officer in charge was defensive and reluctant to give you any information, he said “Oh I don’t know what they do in other places but we don’t show our hand too soon down here.”

You were then brought to meet with your client. You had a twenty minute consultation with him. You would have liked to have had a longer consultation as he seems quite emotional and anxious and it was difficult to assess if he would be good under pressure at interview or not. When you first went into the consultation room he was sitting with his head in his hands. You spoke to him and tried to reassure him that you were here to help and that you would be there to support him during the interview.

***During the consultation he tell you the following:***

He is a local 21 year old, who is studying Business in university in the capital city, but has been at home for the last two weeks as it is a study break. He told you that he and the complainant, Andrea, were in school together but never really hung out together much. They met up at Christmas as part of a St Stephens night reunion of the school year group and they got on really well together. They met up twice more over the Christmas break and they kissed on both of those occasions, but nothing more had happened. He went back to university for a week or two then and they were texting. He tells you that in the texts she was very forward about how much she liked him and missed him and wanted to see him. He says that the messages were flirty and funny, and there were also a few rather explicit sexual innuendos.

He says that they went to a party together last Saturday night, in a house in the town where three of the lads from school are living. They both had a few drinks, but nothing major and neither of them were overly drunk (or at least he didn’t think so at the time). He says that at around midnight she suggested that they should “go for a walk” around the house and so they left the kitchen, where most people were gathered, and ended up in one of the bedrooms. He says that they started to kiss and they lay on the bed and he proceeded to have sexual intercourse with her. He says that it was entirely consensual. You ask him if there was any indication at all that she might not be consenting, and he says that at one point she did say “get off” and give him a small shove, but then she didn’t say anything else like that and he thought that maybe she had been going to get sick or something, from drink (even though he didn’t really think she was all that drunk), but he never thought that she didn’t want to have sex with him. He goes on to tell you that when it was over he heard a noise at the bedroom door and it turned out that one of the boys from school, Paul Hyland, had opened the door slightly and was filming the whole thing. When Andrea realised what was going on she freaked out and kept saying “What the hell? Did he record that? Jesus! Get it off of him! Oh my God!” and she left the party in tears soon afterwards. He confronted Paul Hyland, who laughed and said “Too late buddy”. Barry thinks that he had sent it straight off to others, and he heard in the course of the past week that the video has been widely circulated. He says that he hasn’t seen it himself, but one of his friends who saw it told him that it is a short video, it’s pretty dark and grainy, not very good sound quality either.

That is the story that he told you but it was difficult to get it out of him as he seems very emotional and anxious. You tried to settle his nerves a little and tried to prepare him for the interview, to get him to focus on telling you the events as he saw them and you tried to reassure him that you are there to support him. However, you are worried about how he will perform at the interview. He told you, in the course of the consultation, that he does not deal well with stress and that he had a nervous breakdown last year when college work started to pile up and his part-time job kept giving him more hours than he wanted to take but he needed the money. He said that he couldn't really function properly for a while, that he had been put on serious anti-depressants and he had taken some counselling. He had to repeat a year of college but he had been doing ok again and he hasn't seen a counsellor for about 3 months. He said that this year had been going better but it looks like it is all "fucked up" again now.

***Advice given by you, the lawyer, to your client:***

You suggested to him, and he agreed, that the best approach to interview would be to start by stating that he did have sexual intercourse with the complainant, but that it was consensual. You agree that after making that very short opening statement he will say nothing further and will wait until the police reveal a little more about the complaint that has been made and the evidence that they have.

General:

- According to the country's law, you are allowed to make a full range of interventions before and during the interview;
- The police officer may decide to stop the interview and contact a superior officer if he considers that the lawyer obstructs the interview (no further clarification in the law of what is "obstruction");
- There is no formal right to disclosure, but there is case law stating that questioning that is misleading/based on false evidence or suppositions may be unlawful.

**b. Instructions for the actor playing the client (Barry Lynch):**

*This role-play will last for a total of 20 minutes, but will be broken into two 10-minute segments. At the end of the first 10 minutes we will swap the participant playing the role of the lawyer. We will immediately recommence from where you stopped with a new person playing the role of the solicitor (as if it was the same lawyer). [This is just to allow for more participants to play the lawyer role.]*

*We are training the lawyers in relation to their interaction with their clients, but also their interaction with the police, so please allow time for both types of interaction to occur and develop.*

You are a 21 year old from a small rural town who is studying Business at university in the capital city, but you have been at home for the last two weeks as it is a study break.

Your home town is a small rural town with a population of roughly 5,000. There is just one secondary school in the town, and there is a sense that everyone knows everyone else.

***Here is what you have told the lawyer during the consultation:***

You were in school with a girl called Andrea Nolan (aged 20), but you never really hung out together back then. You bumped into Andrea over Christmas during a St Stephens night reunion of the school year group and you got on really well together. You met up twice more over the Christmas break and you kissed on both of those occasions, but nothing more happened. You went back to university for a week or two then and you and Andrea were texting a lot during that time. The texts were pretty flirty and she was very forward about how much she liked you and missed you and she said that she couldn't wait to see you again. The messages were flirty and funny, and there were also a few rather explicit sexual innuendos.

Last Saturday night you went to a party with Andrea. She had heard about it from one of her friends and had asked you to go along. It was in a house in the town where three of the lads from school are living. You and Andrea both had a few drinks, but nothing major and neither of you were overly drunk (or at least you didn't think so at the time). Around midnight Andrea suggested that you should both "go for a walk" around the house and so you left the kitchen, where most people were gathered, and ended up in one of the bedrooms. You think that she went ahead of you up the stairs, holding your hand and leading the way, but your memory of that is a bit hazy. When you were in the bedroom (you don't know whose bedroom it was) you started to kiss and you lay on the bed. You don't remember who lay down first or how that all came about. You know that you then had sex with her, but you don't really remember who initiated it. It all seemed to happen quite quickly really. In your mind there was no question of this being an unwanted sexual encounter. You do remember, having been thinking about this since you were arrested this morning, that at one point she said "get off" and seemed to maybe give you a small shove, but then she didn't say anything else like that and you didn't give it much thought at the time but if you thought anything it was that maybe she had been going to get sick or something, from drink (even though you didn't really think she was all that drunk), and then she was ok again and you kept going.



Just after you finished having sex you heard a noise at the bedroom door. You turned around to see that one of the boys from school, Paul Hyland, had opened the door slightly and was filming the whole thing. When Andrea realised what was going on she freaked out and kept saying “What the hell? Did he record that? Jesus! Get it off of him! Oh my God!” and she left the party in tears soon afterwards. After she was gone you confronted Paul Hyland, who laughed and said “Too late buddy”. You think that he had sent it straight off to others, and in the course of the past week you know that the video has been widely circulated. You haven’t seen it yourself, but one of your friends who saw it told you that it is a short video, it’s pretty dark and grainy, not very good sound quality either.

You also told your lawyer that you do not deal well with stress and that you had a nervous breakdown last year when college work started to pile up and your part-time job kept giving you more hours than you wanted to take but you needed the money. You told him how you couldn’t really function properly for a while, that you had been put on serious anti-depressants and that you had taken some counselling. You had to repeat a year of college but you have been doing ok again and you haven’t seen a counsellor for about 3 months. You told him that this year had been going better but it looks like it is all “fucked up” again now.

***Advice given by the lawyer to you, the client:***

Your lawyer suggested to you, and you agreed, that the best approach to interview would be to start by stating that you did have sexual intercourse with the complainant, but that it was consensual. After making that very short opening statement the lawyer suggested that you should say nothing further and should wait until the police reveal a little more about the complaint that has been made and the evidence that they have.

You feel a little bit reassured by the consultation with the lawyer but you really are not feeling very emotionally strong. You can feel your anxiety levels bubbling up and you are starting to feel panicky. Anyone would understandably feel anxious in this sort of situation, but you are particularly prone to anxiety and you tend to get very flustered and hard on yourself when your anxiety gets out of control. You plan to try to keep it together in the interview, but you can feel yourself losing control very, very quickly.

***During the interview:***

At the beginning of the interview, you should not start to make any statement unless your lawyer prompts you to do so. You should be very nervous in making the statement and stutter through it a bit – “I know Andrea Nolan. I was seeing her for the last few weeks. We were at a party last Saturday night and we, we...I...em...” (maybe put your head in your hands, start to rock back and forth a bit, trying to gather yourself but nerves getting a hold of you – hopefully the lawyer might step in to reassure you, or maybe the police will try to move you along a bit...) if you get to go on with the statement say something like “Andrea and I, well, we had sex at the party and then she got (almost as if you are going to say she got upset, about the videoing, but then hesitate and remember that this is to be a short statement so catch yourself and say...) ...well, we had sex at the party and we were both ...em, it was...we... she wanted to. I thought she wanted to. She did. She did.”

Then, let them ask a few questions and either say nothing at all or give tentative “no comment” answers/muttering. You should look to the lawyer for help on almost every question. You are going to be a very needy client! And this might make you look guilty to the police to some extent. As the detail from the complainant’s statement starts to become clear and the police tell you that she says she tried to push you off and claims to have been struggling for two or three minutes with you on top of her, you should start to physically get more emotional and broken-down and nervous, shaking your head, maybe say “Oh God” or some other exclamation. (We want the lawyer to get pretty nervous about what you might say or how this might all go for you.)

The police might mention a witness statement that they have which tells you that one of Andrea’s friends says that Andrea was the drunkest she has ever seen her. You should protest strongly at this: “No way. She was not. Who said that? She is lying! Why would she lie like that? She had had a few drinks, but she is well able to handle her drink. She wasn’t that drunk. I would have known if she was.” (you might be getting yourself a bit tangled up here because you do remember a bit of a shove and her saying “get off” but you have decided that was because maybe she was going to get sick, because of drink, but you are saying no she wasn’t very drunk...) You should get more and more upset and anxious and actually get up from the chair, head in hands, pace around a bit, look to the lawyer for an indication of what to do, maybe actually saying “I don’t know what to do now. You told me to say nothing, but they are saying all these things that aren’t true...”...”It’s all getting fucked up again...I can’t deal with this....”

If the police start to ask about it being recorded, they might think that you were in on that. That you wanted it recorded. You were the one who suggested it... This should upset you also and make you nervous. Maybe say “no comment” to the first few questions along those lines, but then start to protest and say no no, you had nothing to do with that, you are horrified by that etc. In general in the course of the interview while you start with “no comment” you should start to make some statements and answer some questions as the time goes on.

### ***Introduction of new evidence:***

Sometime in to the interview the police are going to reveal to you that the video has been posted on youtube. They will tell you that it seems clear to them from that that Andrea is protesting and there is no consent, so it is rape. (As above, you had heard that the video is grainy and sound quality is bad and it is dark so we do not know if the police are telling the truth on this.) You should really get nervous about this. Look at your lawyer. Get up again and pace around a bit if you want, or put your head down on the table or something. You are getting very emotional and stressed.

At this point the lawyer should probably ask to view the video. The police will refuse to allow this, saying that they need to hear from you about what happened. The lawyer should press this issue with them. S/he might say that s/he will go online and find it themselves – the police will refuse to suspend the interview. They will say that the detention clock is ticking and they have

to press ahead with the interview. You are now beginning to question your own recollection of events. You should continue to be very needy and reliant on the lawyer.

In the course of all of this, if you get very worked up at any point, the lawyer might request, and be granted, a short break in the interview. This might also be refused. Stay in character and allow the lawyer to try to reassure you if you have the opportunity for a consultation with him/her.

General:

- Whatever happens, stay in/come back to your role.
- If the lawyer asks for a private consultation with you at any point, listen to his instructions, and follow them.
- According to the country's law, a lawyer is allowed to make a full range of interventions before and during the interview.

**Police Officers – general information:**

*This role-play is timed to last for 20 minutes, but will be broken into two 10-minute segments. At the end of the first 10 minutes we will swap the participant playing the role of the solicitor. We will immediately recommence from where you stopped with a new person playing the solicitor role (as if it was the same lawyer). [This is just to allow for more participants to play the lawyer role.] It might then work best for one police officer to take the lead in the first 10-minute slot, with the other playing a lesser, but still active, role and to then swap for the second half of the interview/role play.*

*In playing the role of an interviewing officer you do not need to know specifically what a police officer can or cannot say, because we want your interviewing to be a mix of acceptable and unacceptable tactics! We need the lawyers to be vigilant and to interrupt you with an objection if they are not happy with the way that you have phrased a question or with a comment that you have made, or an attitude that you are displaying. You should feel free to accept some of the lawyer's interventions and reject others. It would be good in the course of the role-play if you were very assertive with the lawyer at times so as to require him/her to be quite forthright in his/her communications with you. This could even go, if things unfold this way, to the point of you suggesting to the lawyer that you are about to ask him/her to leave the interview as s/he is interfering with the interview.*

**c. Instructions for the actors playing the role of police officers:**

You are stationed in a small rural town with a population of roughly 5,000. There is just one secondary school in the town, and there is a sense that everyone knows everyone else. You do not know the lawyer for this case. S/he is not local and has never been to your police station before. You are suspicious of defence lawyers in general, and particularly of those from out of town.

It is 4.30pm on a Saturday evening and you are about to interview Barry Lynch (aged 21), who is accused of raping Andrea Nolan (aged 20) on the previous Saturday night at a party in a house in the town. Both Barry and Andrea are from the town, though Barry is at University in the city. Andrea Nolan came to the police station last Monday morning and reported the alleged rape. Her statement is as follows:

“I was at a party last Saturday night with a guy that I have been seeing since Christmas, Barry Lynch. I know Barry from school, but we just started going out a few weeks ago, over Christmas. We went on a few dates and we had kissed, but nothing more than that, before Saturday night. Barry had been back up in the city, where he is in college, and we were texting and stuff. He was home for the weekend and I told him about a party in a house in the town where three of the lads from school are living. We decided to go along. We had a good few drinks and I was very drunk.

I can’t remember what happened really except that I remember being in a bedroom and Barry was on top of me and I realised he was in me and I tried to push him off. He held me down for another two or three minutes. I was saying “get off” and “stop” and “no” and starting to cry, and I was struggling to get out from under him but I was pretty drunk and I couldn’t push him off.

When he did get off I slid down behind the bed and then I heard him talking to someone at the bedroom door. I realised that Paul Hyland was after making a video on his phone. I didn’t know how long he had been there or what he recorded but I was very upset and I went downstairs. I was crying and I tried to find my friend, Anna, but she was gone, so I just left and went straight back to my flat.

When I got to my flat my room-mate Geraldine was there and I told her what was after happening. Then yesterday I heard that Paul Hyland was after sending the video to loads of people. I haven’t seen it but I am so upset about all that has happened. Barry Lynch raped me and now everyone is watching a video of it.

I didn’t come straight to the police on Saturday night because I was too upset, I just couldn’t. And even yesterday, I couldn’t leave the flat. Especially when I realised that half the town has seen the video. I only barely managed to come here today.”

Andrea refused to go to a Sexual Assault Treatment Unit. She told police that she did not want to go as she was just worn out from the whole thing and she did not want to be poked and prodded. She just wanted to go home, and she wanted the circulation of the video to be stopped.

You also have a witness statement from Andrea’s friend Anna, who was with her at the party. Anna’s statement says that Andrea had been slurring her words at the party and that Andrea was the drunkest Anna has ever seen her.

***During the interview:***

At the beginning of the interview you should introduce yourselves and explain that you are investigating the allegation of rape, that you have a statement of complaint from Andrea Nolan,

and that you want to question Barry about it. His lawyer might state that he wants to make a statement at the beginning. You should allow this statement to be made, but you can be quite impatient with the suspect if he is getting upset or stuttering over the making of the statement. You can jump in and try to finish sentences for him or ask questions even before he is finished his statement (it will be a rather short statement). [The lawyer might object and ask you to wait to hear what the suspect has to say] After the statement has been made you should go on to question Barry about the events of last Saturday night and surrounding details: do you know Andrea Nolan? Is it true that you were going out with her since Christmas? Who said to go to the party? How much did you have to drink? Who suggested going upstairs to the bedroom? Even if you get “no comment” answers, keep throwing questions at him. Repetitive questions are ok [as they may prompt the lawyer to intervene].

You should specifically mention that in her statement Andrea says that she tried to push Barry off of her and that she said “get off” but that he held her down for two or three minutes. Ask him if he has any recollection of anything like that happening? Does he remember her trying to push him off? Does he think it is ok to keep on having sex with someone if they try to stop him? [Lawyer might object, and suspect might start to get upset here – good – for the purposes of this role play we want the suspect to get upset and stressed, to see how the lawyer handles that].

After a few minutes you should mention the statement from Anna saying that Andrea was very drunk. Be sure to suggest that she was too drunk to consent and that Barry must have known that. How could he think she was consenting if she was out of it with alcohol...?

As the interview goes on you should get tougher and tougher with Barry [we want him to get very stressed out in order to see how the lawyer deals with that]. You should suggest that there was no way that he could have thought that Andrea was consenting. You should also accuse him of knowing that the video was being made, of coming up with that idea, and say that it was all a joke to him... [Lawyer might object that this is not relevant to the rape allegation].

*[If the lawyer asks for a suspension of the interview at any point because the suspect is getting very upset you should not allow it (at least not initially). Tell him that the detention clock is ticking and you have to get on with the interview. Speak to the suspect directly and tell him to calm down and just tell you what happened. But then very quickly go back to barracking him and stressing him out.]*

About 12 minutes into the interview [soon after the new “lawyer” has taken over] you will get some new information from a “colleague” – the video of the alleged rape has been posted to youtube. [We will just interrupt the role play to say that this has occurred and that you have now viewed the video, and the interview will go on from there then]. The video is not very good quality but you think it shows clearly that this is a case of rape. You think you can see Andrea Nolan protesting and struggling with Barry Lynch on top of her. You tell Barry that this is what the video shows and that there is no way that she was consenting.

- The lawyer might ask for a suspension for him/her to view the video. You should not allow this. Tell him/her that the detention clock is ticking and that you need to get on

with the interview, especially in light of this new, damning evidence. If s/he objects or suggests that s/he will go online on his/her own laptop in the interview room to view it you should say that that is entirely inappropriate and you will not allow it.

If Barry says that she did try to push him off but he thought it was because she was going to get sick, from drink, and then she stopped so he kept going, you need to say that if she was in that state from drink then it must be true that she was really drunk, too drunk to consent.

If things get very heated again and the lawyer asks for a short break to consult with his/her client, you should not allow it very readily, but you could allow it after a bit. Just leave the room for two minutes while they consult, and then insist on beginning again.

#### General:

- According to the country's law, a lawyer is allowed to make a full range of interventions before and during the interview;
- You may decide to stop the interview and contact a superior officer if you consider that the lawyer obstructs the interview (no further clarification in the law is given of what is "obstruction"). However, you are in charge of the interrogation. If you feel your authority is being undermined, that could be considered obstruction.
- There is no formal right to disclosure of information about the evidence to the lawyer/suspect, but there is case law stating that questioning that is misleading/based on false evidence or suppositions may be unlawful.
- According to the country's law, a suspect cannot be interviewed if his/her physical or mental state does not allow him/her to understand the questioning, or if it would cause excessive suffering. In practice, if there is a dispute about whether the suspect is "fit" for an interview, a medical certificate is required to certify this.

### **CASE SCENARIO THREE**

#### **a. Instructions for the participant playing the role of the lawyer -**

Your client – Mark O'Sullivan (23) – was arrested on suspicion of possession of a firearm. You have not acted for Mark before, but his uncle is a client and has decided to call you rather than Mark's usual lawyer. You agree to attend at the police station.

#### Information from Police

On your arrival at the police station, at 7.00pm, you meet with the investigating officer who gives you the following information:

- Mark was arrested at 5.45pm, having been sitting in his car in the city centre. He has been arrested for possession of a firearm in suspicious circumstances.

- The police also arrested two other men, Freddie Flaherty and Dean Dunne. They have been taken to two different police stations.
- The police believe that Mark was involved with Freddie, Dean, and one other suspect, who has thus far evaded arrest, in an attempted robbery on a cash-in-transit van collecting money from a bookmakers shop.
- Police had a tip-off in relation to a planned armed robbery and had been undercover at the scene. The undercover officers spotted Mark because he was sitting in his car trying to look inconspicuous, with dark glasses on and a scarf wrapped “casually” around his face.
- No robbery in fact took place as a local police officer, having received a call from a nervous local shopkeeper about a suspicious car parked outside her florists, pulled up beside Mark in his squad car, flashing the blue light, just as Freddie and Dean were about to point their (imitation) weapons at the cash-in-transit man, who had exited the bookies with a full cashbox.
- The undercover police moved in immediately at this point and arrested Freddie and Dean, and Mark. A fourth suspect drove off in a car suspected to be the planned getaway car.
- Mark was in an Opel Corsa, which it turns out belongs to his cousin Lisa, a beautician. In the footwell on the passenger side of the car was an imitation gun that looks exactly like a Glock 9mm handgun. A balaclava was also found on the passenger seat.

The investigating officer says the following to you:

“We will be putting it to Mark that he was clearly involved in an attempted robbery, having been found at the scene with a firearm in suspicious circumstances. We are currently following up on all of the CCTV in the area and all it takes is us to get him in the frame with the other two suspects. We have arrested his associates and will be questioning them, as we will be questioning him. We will put it to him that the plan was for one of those two to grab the cashbox and throw it in to the car he was driving, before getting into the second car to make their getaway. So he was an essential part of this attempted robbery. By the way, the car is not his, he is not insured on it, and so we will be following up on that too.”

***During the consultation he tells you the following:***

Mark is a bit wary of you, as you have not met him before. He asks how you know his uncle, and how many times you have been in police interviews before. He tells you he has been arrested and held for questioning a few times before, mostly in relation to stolen cars, and one assault. He has never been prosecuted. He does not seem to be afraid of the police, but he does seem somewhat agitated. When you ask him if he knows why he has been arrested he says “No idea. I was doing nothing. Just sitting there in my car.” You tell him that he has been arrested for possession of a firearm and he says “That wasn’t mine. I have no idea what that was doing in the car. I was just sitting in the car, waiting to pick up a mate from the bookies there, and next thing I’m being lifted out of the car, handcuffs, the whole lot.” You explain to him what the investigating officer told you and you tell him that it is really important that he understands

that this is a serious situation, and that your conversation is privileged. You tell him that you are here to give him legal advice and to represent his interests during the interview. He repeats to you his version of events, which is that he got a call at 5pm from a friend of his who had lost all his money in the bookies and asked for a lift home. So Mark borrowed his cousin Lisa's car, as he often does, and went down to pick up his pal. This appears to be his story and he is sticking to it.

Before the consultation ends you tell him that he can ask for a consultation with you at any point in the interview should he need to do so, and that you will be happy to discuss his options again at any point as things go on.

General:

- According to the country's law, you are allowed to make a full range of interventions before and during the interview;
- The police officer may decide to stop the interview and contact a superior officer if he considers that the lawyer obstructs the interview (no further clarification in the law of what is "obstruction");
- There is no formal right to disclosure, but there is case law stating that questioning that is misleading/based on false evidence or suppositions may be unlawful.

**b. Instructions for the actor playing the client, Mark O Sullivan -**

*This role-play will last for a total of 20 minutes, but will be broken into two 10-minute segments. At the end of the first 10 minutes we will swap the participant playing the role of the lawyer. We will immediately recommence from where you stopped with a new person playing the role of the lawyer (as if it was the same lawyer). [This is just to allow for more participants to play the lawyer role.]*

*We are training the lawyers in relation to their interaction with their clients, but also their interaction with the police, so please allow time for both types of interaction to occur and develop.*

You are 23 years old and you have been arrested on suspicion of possession of an (imitation) firearm. You have been arrested and held for questioning several times before, mostly in relation to stolen cars, and one assault, but you have never been prosecuted. You are not afraid of the police, but you know that you may be in deep water this time if they can prove that you were involved in attempted armed robbery (which you were).

Your uncle has called the lawyer that he usually uses to come and represent you. You are a bit wary of the lawyer as you have never met him/her before. You don't know if he/she will be any good, and you are in quite a bit of trouble! You were arrested in the city centre at 5.45pm. It is now nearly 8pm and you are about to be interviewed by the police.



***Here is what you have told the lawyer during the consultation:***

He/she asked you if he knew why you had been arrested. You said “No idea. I was doing nothing. Just sitting there in my car.” When he/she told you that you were arrested for possession of a firearm you said “That wasn’t mine. I have no idea what that was doing in the car. I was just sitting in the car, waiting to pick up a mate from the bookies there, and next thing I’m being lifted out of the car, handcuffs, the whole lot.” You tell your lawyer that you got a call at 5pm from a friend of yours who had lost all his money in the bookies and asked for a lift home. So you borrowed your cousin Lisa’s car, as you often do, and went down to pick up your pal. You agreed with your lawyer that you would say “no comment” in response to all of the questions the police will ask you. Your lawyer told you that you can ask for a consultation with him/her at any point in the interview should you need to do so, and that he/she would be happy to discuss your options again at any point as things go on.

The truth, of course, is much worse than the story you have told your lawyer: you *were* involved in an attempted robbery, but it all went wrong. Your pals Freddie Flaherty and Dean Dunne were supposed to hold up a cash-in-transit man as he brought the cashbox full of the days’ takings out of the betting shop at about 5.40pm. They both had imitation guns, and you had one in the car with you too. They were supposed to hold the guy up, grab the cashbox, throw it in to your car and you were to speed off to a safe house with the money. Meanwhile, Freddie and Dean were supposed to jump into another waiting car, driven by Wayne Nugent (a friend of yours), and drive off in the opposite direction.

You were sitting in your cousin Lisa’s car, waiting for the cashbox to be thrown in through the passenger window, when a squad car pulled up beside you. You didn’t actually notice at first because you were watching the street where Freddie and Dean were *just* about to point their weapons at the cash-in-transit man who had come out of the bookies. Then you heard the siren *right* beside you and looked around to see the squad car. Suddenly there were police everywhere and you, Freddie and Dean were all arrested and taken off to different police stations. Wayne sped off and you think he got away, but you don’t know for sure.

You were in your cousin Lisa’s car. She lets you use it every now and again and she thinks you are “a sweetheart”. You told her that you have a full licence and that you are covered under your pal’s insurance policy through his mechanic garage. Neither of these are true. Lisa, who is only 20, works in a beautician’s shop, doesn’t earn much and the car is her pride and joy.

In the car you had an imitation gun, that looked like a Glock 9mm handgun, and a balaclava. You were supposed to just sit there and wait, inconspicuously, but you had the imitation firearm and the balaclava in case Freddie and Dean needed any back up.

***The interview:***

When the interview begins you should reply “no comment” to all questions. The police will start by pressuring you about the car. They slowly reveal that they know it belongs to Lisa. Then they start to suggest that maybe Lisa was involved; if it’s not your gun or balaclava then

it must be Lisa's etc. You definitely do NOT want Lisa to get in any trouble over this, so although you continue to say "no comment" you should get a bit agitated or worried and maybe look to your lawyer for some support. After a few minutes of this sort of questioning, look at your lawyer and say "Can they arrest Lisa?" (as if you are thinking that you will start to talk if the answer to that question is Yes). And say, to your lawyer, but clearly in earshot of the police "She's got nothing to do with any of this." The police will try to press you further on this. You should be a little more nervous in responding, but stick with "no comment" for a few more answers. Then say "Look, Lisa let me use her car. But none of this has anything got to do with her alright? Leave her out of it. It's nothing to do with her. I just had to pick up a mate from the betting shop and for no reason at all I got arrested. I did nothing."

The police officers will talk about the gun, and why did you have a gun for picking up a mate? Just say nothing or give the odd "no comment".

### ***During the interview:***

At a certain point the police will reveal that they now have even more evidence – Wayne has just been arrested, and the car he was driving has been found. The officers start to suggest that this car will be forensically tested and will link you to the attempted armed robbery. You should say something like "Sure that'll be burnt out". The policeman will capitalise on this and make out that there was a plan to burn out the getaway car, and you knew it, so you must have been involved. You should say "I don't know what you're talking about. They always burn out cars on telly, that's all. I was just waiting for a mate outside the betting shop."

The police officers may also start to suggest that they know the plan because Freddie has a big mouth and was telling anyone who would listen in his local pub that himself, Dean and you, Mark, were going to "do over" the Paddy Powers. You know that Freddie does have a big mouth with a few pints on him so this is likely to be true. Stick with "no comment" for these questions.

In general, if the lawyer is not intervening much you should, at some point, say to him/her "Can they ask me these questions? They haven't got anything on me. Are you going to say anything or are you just going to sit there?" As the lawyer attempts to deal with this the officer will make a snide comment about the lawyer, suggesting that he/she is not very competent and almost suggesting that you having this lawyer is beneficial to the police. This should make you very nervous and uncomfortable, and you should say something to the lawyer like "Are you friends with these guys? Whose side are you on?"

### **c. Instructions for actors playing the role of police officer -**

*This role-play is timed to last for 20 minutes, but will be broken into two 10-minute segments. At the end of the first 10 minutes we will swap the participant playing the role of the lawyer. We will immediately recommence from where you stopped with a new person playing the lawyer role (as if it was the same lawyer). [This is just to allow for more participants to play the lawyer role.] It might then work best for one officer to take the lead in the first 10-minute slot, with the other playing a lesser, but still active, role and to then swap for the second half of the interview/role play.*

*In playing the role of an interviewing police officer you do not need to know specifically what a police officer can or cannot say, because we want your interviewing to be a mix of acceptable and unacceptable tactics! We need the lawyers to be vigilant and to interrupt you with an objection if they are not happy with the way that you have phrased a question or with a comment that you have made, or an attitude that you are displaying. You should feel free to accept some of the lawyer's interventions and reject others. It would be good in the course of the role-play if you were very assertive with the lawyer at times so as to require him/her to be quite forthright in his/her communications with you. This could even go, if things unfold this way, to the point of you suggesting to the lawyer that you are about to ask him/her to leave the interview as s/he is interfering with the interview.*

The suspect – Mark O'Sullivan (23) – was arrested on suspicion of possession of a firearm. You are really more interested in quizzing him about his part in an attempted armed robbery. You have already provided the details below to his lawyer, who has consulted with Mark in advance of the interview which is about to begin at 8pm:

- Mark was arrested at 5.45pm, having been sitting in his car in the city centre. He has been arrested for possession of a firearm in suspicious circumstances.
- The police also arrested two other men, Freddie Flaherty and Dean Dunne. They have been taken to two other police stations.
- The police believe that Mark was involved with Freddie, Dean, and one other suspect, who has thus far evaded arrest, in an attempted robbery on a cash-in-transit van collecting money from a bookmakers shop in the city centre.
- Police had a tip-off in relation to a planned armed robbery and had been undercover at the scene. The undercover officers spotted Mark because he was sitting in his car trying to look inconspicuous, with dark glasses on and a scarf wrapped "casually" around his face.
- No robbery in fact took place as a local policeman, having received a call from a nervous local shopkeeper about a suspicious car parked outside her florists, pulled up beside Mark in his squad car, flashing the blue light, just as Freddie and Dean were about to point their (imitation) weapons at the cash-in-transit man, who had exited the bookies with a full cashbox.

- The undercover officers moved in immediately at this point and arrested Freddie and Dean, and Mark. A fourth suspect drove off in a car suspected to be the planned getaway car.
- Mark was in an Opel Corsa, which it turns out belongs to his cousin Lisa, a beautician. In the footwell on the passenger side of the car was an imitation gun that looked exactly like a Glock 9 mm handgun. A balaclava was also found on the passenger seat.

You told his lawyer that you will be putting it to Mark that he was clearly involved in an attempted robbery, having been found at the scene with a firearm in suspicious circumstances. You also told the solicitor that you are currently following up on all of the CCTV in the area and if you can get Mark in the frame with the other two suspects then you will be able to charge him with attempted armed robbery.

You believe that the plan was for Freddie and Dean to hold up the cash-in-transit man with their imitation 9mm Glock handgun, grab the cashbox and throw it in to the car that Mark was driving, before getting into the second car to make their getaway.

***The interview:***

You should start by asking Mark about the car he was driving. Was it his car? Did he like the pink dice hanging from the rear-view mirror? Isn't that a bit girly for him? There was a lovely smell of perfume in the car? Is he properly insured to drive the car? Is it actually his cousin Lisa's car? It is, because you have looked it up the chassis number and the insurance details. Does his cousin know he was using her car? Was it his imitation firearm in the car? If not his then it must be hers, as it is her car. Did she know he was driving around with a gun in her car, hanging outside bookies when cash was being collected? What would she think if she knew that was where he was in her car? Would the guards need to pay her a visit to ask her about all of this? They'd have to arrest her if they suspected that the gun and the balaclava found in the car belonged to her. If Mark is not taking responsibility for the gun then it must be Lisa's, surely...? – Mark will generally respond “no comment” to all of this, but he will then ask his solicitor if Lisa can be arrested by you, and he will tell the solicitor that Lisa has nothing to do with “all of this”. You should follow up on that. What do you mean “all of this”, Mark? All of what? Do you mean, the plan to hold up a cash in transit van and take off with the money? Armed robbery, Mark, is it? We know all about your plan, with Freddie and Dean. Did Lisa know you were going to use her car for an armed robbery Mark?

Mark will tell you he was just picking up a mate from the betting shop. You begin to ask him why he needed a gun and balaclava with him for that. Continue to press him about the gun. He will respond with “no comment”.

***During the interview:***

You will then get some new information – the getaway car has been found, partially burnt out, and Wayne (getaway driver) has been arrested. You tell Mark that the getaway car has been found (don't mention burnt out), and that Wayne has been arrested. Tell Mark that your forensic

team are working on the car now and if they get forensics that match him that will be another sign of his involvement in the armed robbery, and conspiracy to commit armed robbery. He will say “Sure that’ll be burnt out” and you home in on this – Was that the plan Mark? Wayne would drive off with Freddie and Dean, and then dump the car and burn it out? You were off with the cash, high and dry, at the same time is it? Meet up later to divide up the proceeds? That’s certainly what Freddie was saying to his pals in the Sunset House pub the other night. Freddie likes to talk when he has a few pints on him, doesn’t he? A great talker is Freddie. Telling everyone the plans he had with you, and Dean, and Wayne. He’s probably talking to my colleagues now. Telling them all about your role in this. You’d be better off to tell me now, not have me waiting to hear it from them.

Mark is going to get annoyed with his solicitor at some point. Let this play out between them, briefly, but you could make some sarcastic comment to Mark along the lines of “Oh, you’ve a good one there Mark. Don’t worry. One of my favourite solicitors! You’re in good hands!” The solicitor is likely to object to this. You can retract your comments and apologise for any offence (rather insincerely).

## Appendix 3. Handout materials Session 2 (Communication Skills)

This Appendix contains handout materials that were used by NETPRALAT pilot trainers in Session 2 on Communication Skills.

- Observation form for Exercise # 3

### Exercise #3: “Witness”

<p>Asking Questions:</p> <p>Open or closed questions? Suggestive questions? Multiple choice questions? Double questions?</p> <p>On which topics?</p> <p style="padding-left: 20px;">Facts?</p> <p style="padding-left: 20px;">Context?</p> <p style="padding-left: 20px;">Practical issues?</p>	
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<p>...</p> <p>Questions within the topic, or are new topics (implicitly) introduced?</p> <p>Questions to clarify or to support and motivate answers?</p>	
<p>Active listening</p> <p>Eye-contact</p> <p>Nodding</p> <p>Empathic</p> <p>Supporting utterances (huhum etc.)</p> <p>Follow-up questions</p>	
<p>Summarising</p> <p>a. What?</p> <p>b. When?</p> <p>c. How?</p> <p>d. Remarks:</p>	

## Appendix 4. Handout materials Session 3 (Psycho-Social Approach)

*The following exercises are provided to act as a simulation of possible real life situations that criminal lawyers attending police interviews may find themselves.*

*The goal in carrying out these exercises is to apply the concepts we have discussed and encourage participants to engage in a reflexive mindset in their approach to this training.*

*Providing exercises which simulate real life situations will, hopefully, encourage you to retrospectively apply these concepts to your own personal, professional experiences.*

## **CASE 1:**

Ms. A. is suspected of causing bodily harm to a passer-by on the street. She is assisted by you at the police station. During lawyer-client consultation it becomes clear that Ms A. has a communication impairment. She talks incessantly with no pauses, jumps from one topic to another; her speech is at times unintelligible. You have difficulty catching A.'s attention. For the rest of the consultation, Ms A. complains to you about her various health problems and inability to find work. She also states that police officer are lying and plotting against her with her ex-partner, because they do not want her to have custody over her children.

### Questions:

- a) **Factors present to suggest that A. may be vulnerable?**
- b) **What are the risks that A. is facing at the given stage of the criminal proceedings because of her potential vulnerability?**
- c) **How can you substantiate the argument concerning A.'s vulnerability?**
- d) **What are the legal implications of A.'s potential vulnerability?**
- e) **What would you do next as A.'s lawyer?**

## **CASE 2:**

You are requested to assist a detainee at the Police station. Upon entering the room, you find Mr B and you sense he is very tense and has a frightened look. When, after introducing yourself, you ask him "how are you?" he begins to cry disconsolately and reports that the police officers hurt him during detention and begs you to take him out of there. When you start asking questions about what is happening, you have problems understanding his answers and he has an unclear speech about what happened: he is constantly changing the topic and he goes back and forward in time, which makes it difficult for you to clarify the facts. At that moment you even doubt his credibility because of his contradictions.

If you understand properly, he explains how he was only identified for racial reasons and after identification police officers proceeded to his detention. At that moment one slapped him on the face making him fell on the floor and the other kicked him two or three times on the legs and back. Once at the Police station, nothing more happened. He shows you wounded legs and back. He also remembers humiliating comments made during detention in relation to his physical appearance and racist comments such as "go to your country" "you are all criminals".

### Questions:

- a) **In the case scenario is when the lawyer asks "how are you" that Mr B. starts explaining the alleged ill-treatment. Do you believe you would have asked that first question?**
- b) **How would you act when the person starts crying inconsolably?**
- c) **Do you think you could be facing a case of ill-treatment by Police officer?**

- d) **What proceeding should you follow when receiving this information from your client?**

## **Appendix 5. Handout materials Session 4 (Working with interpreters)**

### **UNDERSTANDING THE INTERPRETING ESSENTIALS**

The Directive's provisions can only be fulfilled if all parties are aware of the basic requirements for an interpreter's mediated communication. To avoid any misunderstandings some caveat has first to be addressed:

#### **a. Word by word translation**

Word by word translation is only possible by unambiguous contents (e.g. technical subjects). It is rarely appropriate in the usually rather heterogeneous legal settings, consisting partially of common language, technical or even scientific terminology and legal language describing facts or concepts belonging to a specific judicial system. Depending on the judicial structure, equivalent terms may not exist in the target language. Think, for example, of countries where no written code exists, law being orally transmitted. All language registers are also to be dealt with: from rude insults to highly technical or sophisticated messages, and relating to different sociocultural areas.

#### **b. Interpreter vs. Translator**

In some languages these two words are represented by one only syntagma. In the praxis, however, we have to distinguish between a translator, i.e. a professional who translates in writing a written text, from an interpreter, who translates orally what is said, using different interpreting techniques according to the circumstances. Both have to be highly qualified for working in legal domains.

According to art. 3,7 of Directive 2010/64, ' .... as an exception to the general rules .... an oral translation or oral summary of essential documents may be provided .... on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings'.

See also on this subject the Opinion of AG Yves Bot in case Covaci, C/216/14 (Court of Justice of the EU)

#### **c. Interpreter's skills and required qualifications**



In order to know what the (minimum) requirements are to become a qualified legal interpreter, you'll find here below some useful information.

Please do not forget that interpreting (and translating) require professional training, especially when human life and rights may be at stake. Unfortunately, as reminded above, this is not always possible, especially when languages of lesser diffusion are involved.

**The following competences and skills are to be mastered:**

***Command of at least two languages!***

***Intercultural Competences:***

Languages are interwoven with culture: a professional interpreter is therefore aware of the cultural factors of both languages, including - but not limited to - behaviour and gestures, tone, values, roles, institutions, as well as linguistic differences and similarities. It is very important to keep in mind that some cultures do not allow, for example, a man to talk to a woman without a previous consent of her father/brother/husband. If your client is a woman of a certain cultural origin, check with her if a female interpreter were preferable. The opposite is also valid: a man coming from certain countries would not accept a female interpreter.

***Special knowledge in legal terminology:***

Legal operators normally use a specialised language that they have learnt during the course of their studies. In order to correctly interpret (and translate) in a legal setting, and without necessarily having themselves a law degree, legal interpreters should, however, have a comprehensive knowledge of the legal system(s) and administration of justice in the countries of their source and target languages; an understanding of the relevant fields of law (substantive, procedural, criminal, civil, administrative, etc.) and be able to demonstrate a thorough understanding of the roles of lawyers, judges, judicial officers, prosecutors, and interpreters.

***Adhering to the principles of an interpreter's Code of professional ethics (Appendix III)***

Professional ethic is essential to all influential professions. Even if, in most countries, interpreting and translating are no regulated profession, qualified interpreters and translators adhere, however, to a professional code of ethics, a condition all national legal interpreters' associations have to fulfill before their admission as EULITA members. The trustful relation between you and the (qualified) interpreter finds its strongest foundation on these ethical rules.

### ***Mastering all interpreting techniques:***

As already indicated above, a professional interpreter has to master several interpreting techniques that she/he will apply according to the situation.

- **Consecutive interpreting:**

The interpreter renders the interpretation after the source-language speaker has finished speaking or signing. Spoken-language interpreters can use specific note-taking techniques to help in the rendering of lengthy passages. This is the most common technique used at the police stations.

- **Simultaneous interpreting:**

The interpreter transfers the message from the source language into the target language while the source-language speaker speaks or signs continuously. This is the mode commonly used in sign language interpreting as well as in conference settings. It needs some basic infrastructure and devices, such as booths, microphones, earphones. It is also used in case of remote and relay interpreting (see below).

- **Whispering (chuchotage):** Simultaneous interpreting without the use of interpreting booths, usually provided for a maximum of three people. The interpreter normally sits near the addressees of his/her message, without micro and earphones.

- **Sight translation:** It is required for the ad hoc oral translation of documents. The source-language document is rendered orally or signed in the target language without any hesitation, as if written in the target language (see art. 3,7 of Directive 2010/64, already quoted).

- **Remote interpreting:**

Information and communication technology enable interpreting even when parties are in different locations. The interpreter can be at the same location as either the speaker or the end user or at a third location. It is normally used in simultaneous mode.

- **Relay interpreting:** It occurs when an interpreter's source input comes from another interpreter's rendition and not from the speaker directly. It is normally used in simultaneous mode.

### **ROLE PLAY**

The interpreter has to choose where to sit when he/she enters the room: a qualified interpreter will usually sit between the police officer and your client in order to understand well their questions and answers. According to the situation, the interpreter will decide which is the best interpreting mode to be used (see above, point 2.3).

During this exercise, it will be possible to show how whispering and consecutive interpretation work only if a qualified legal interpreter, members of one of the national associations existing in your country, has been recruited.

EULITA will try its best to let that happen.

You can take one or more examples you are familiar with and choose four of your trainees: one will act as a police officer, one as the suspect/victim, one as a lawyer and one as the interpreter (unless a real interpreter is present)

Try to let them apply the rules you have already explained (you could also decide to do that now, before this exercise): the ‘lawyer’ has to start assessing the interpreter’s skills, etc. (see above, point 3).

In order to create a realistic role play, and having already in mind how a proper interview runs (remember your experience at the TTT and the film posted on the project’s webpage), suggest, for example, the ‘suspect’ to use a language the ‘interpreter’ doesn’t know – although he/she pretended to master it during the initial consultation with the lawyer – and see how the ‘lawyer’ reacts.

Let then the ‘police officer’ talk directly to the ‘interpreter’ in the language the suspect is not supposed to understand, asking him/her what he/she thinks about the suspect: *‘Does the victim lies? Do you think that the suspect is 16 years old, as he has announced?’*, etc.

Ask the ‘lawyer’ how to proceed, knowing that a qualified interpreter wouldn’t answer such questions since he/she has to be neutral and impartial, and not allowed to give opinions.

On the other hand, a professional interpreter may reply to factual questions on cultural or social specificities, as language and culture are closely connected. In such cases ethics require nevertheless some caution and modesty. For instance, a language spoken in several countries relates to different cultures: a Spanish interpreter brought up in Mexico may not know all the sociocultural traditions of Barcelona. In the same vein, if the interpreter needs a clarification to better understand an ambiguous suspect’s declaration, he/she first asks the police officer for permission, signalling the doubts (the interpreter needs to clarify the date of birth, or the cousin’s name, or the port of arrival, etc.) .Duly authorised, he/she then put the question to the point and translates exactly the answer

## Appendix 6. Handout materials Session 5 (Lawyer-Client Consultation)

This Appendix contains handout materials that were used by NETPRALAT pilot trainers in Session 3 on the Lawyer-Client Consultation.

- Observation form Exercise # 6

### Exercise #6: Lawyer-Client Consultation

*In the right-hand column, please describe the behaviour that you observe (give concrete examples!). Please use the remaining space on the sheet if necessary.*

<p><i>I. Building rapport</i> Note lawyer's behaviour that relates (positively or negatively) to:</p>	
<ul style="list-style-type: none"> <li>• Establishing rapport at the first contact</li> </ul>	
<ul style="list-style-type: none"> <li>• Showing respect to client</li> </ul>	
<ul style="list-style-type: none"> <li>• Showing empathy</li> </ul>	
<ul style="list-style-type: none"> <li>• Active listening</li> </ul>	
<p>What would you have done differently to establish rapport with the client in this video?</p>	
<p><i>II. Obtaining the client's story</i></p>	

Was the client willing to disclose information to the lawyer?	
What kind of questions did the lawyer ask: e.g. open or closed questions? Leading, inviting, accusatory, etc.? ( <i>Note examples</i> )	
Note lawyer's behaviour that relates (positively or negatively) to: <ul style="list-style-type: none"> <li>• Obtaining accurate information from the client</li> <li>• Clarifying questions for the client</li> <li>• Summarising and/or paraphrasing</li> </ul>	
What would you have done differently to obtain the client's story?	
<i>III. Advising client</i>	
Which of the three counselling models did the lawyer follow, and why? ( <i>Lawyer-centred, client-centred, or collaborative model</i> )?	
What did the lawyer do well in respect of advising the client?	

What would you have done differently to advise the client?	
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## Appendix 7. Handout materials Session 6 (Suspect Interview)

This Appendix contains handout materials that were used by NETPRALAT pilot trainers in Session 6 on Suspect Interview:

- Observation form roleplays

<p>Asking Questions: <i>The police</i></p> <p>Make notes on the type of questions asked, especially those which you think ought to be challenged, and why.</p> <p>Be aware of the following possibilities also:</p> <p>Open or closed questions Suggestive questions Multiple choice questions Repetitive questions Irrelevant questions</p>	
<p>Are the police actively listening? Give examples of how you know that they are/are not.</p>	
<p>Are the police seeking to place pressure on the suspect? Is it acceptable or unacceptable? Give examples.</p>	

<p>What is your opinion of the general quality of the interview?</p>	
<p><b>The Role of the Lawyer</b></p>	
<p>Did the lawyer intervene?</p> <ul style="list-style-type: none"> <li>• When?</li>   <li>• What? (type of intervention, e.g. question, clarification, advice...)</li>   <li>• How? (manner, style, tone, etc.)</li> </ul>	
<p>Example of good intervention</p> <p>When?</p> <p>How?</p>	



<p>What would you have done differently?</p> <p>What?</p> <p>When?</p> <p>How?</p>	
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## Appendix 8. Sample evaluation form

Below you will find a sample evaluation form that was used during the NETPRALAT pilots. Future NETPRALAT course organisers may adapt the form to reflect their own needs, or the needs/requests of the course accrediting institutions.

### I. Questionnaire for participants of NETPRALAT training

Please rate on a scale of 1 to 5 to what extent you agree with the following statements:

	Fully disagree		Neutral		Fully agree
During the NETPRALAT training I learned a lot.	1	2	3	4	5
The content of the NETPRALAT training suited my needs.	1	2	3	4	5
The NETPRALAT training has encouraged me to reflect on my new role.	1	2	3	4	5
The NETPRALAT training has prepared me for my new role to assist suspects at police interview OR  I became more confident in my (new) role of assisting suspects at police interview after the NETPRALAT training.	1	2	3	4	5
The NETPRALAT e-learning modules were useful to me.	1	2	3	4	5
The first face-to-face part 'Role of a lawyer at the police detention stage' was useful to me.	1	2	3	4	5

The second face-to-face part 'Communication Skills' was useful to me.	1	2	3	4	5
The third face-to-face part 'Psycho-Social Skills' was useful to me.	1	2	3	4	5
The fourth face-to-face part 'Working with interpreters' was useful to me.	1	2	3	4	5
The fifth face-to-face part 'Lawyer-Client Consultation' was useful to me.	1	2	3	4	5
The sixth face-to-face part 'Suspect Interview' was useful to me.	1	2	3	4	5
The connection between the different elements of the NETPRALAT training was clear to me.	1	2	3	4	5
The combination of training formats (online and face-to-face) was suitable.	1	2	3	4	5
The trainers of the NETPRALAT training were competent.	1	2	3	4	5

How much time did you spend on the NETPRALAT training outside of the face-to-face sessions (i.e. on the e-learning modules, assignments and preparation)?

Less than 3 hours	3-4 hours	5-6 hours	7-8 hours	More than 8 hours
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Comments:

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