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Mark K. Schoenfield

Barbara Pearlman Schoenfield

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## INTERVIEWING AND COUNSELING CLIENTS IN A LEGAL SETTING

MARK K. SCHOENFIELD\*

BARBARA PEARLMAN SCHOENFIELD\*\*

**T**HE ART OF interviewing is currently receiving attention in both law schools and continuing legal education programs. Lawyers have become interested in developing their interviewing skills for two reasons: to gather the pertinent data more efficiently and to increase client satisfaction.<sup>1</sup> The purpose of this article is to point out some of the factors that, in the experience of the authors, contribute to the success, or lack of success, of an interview and to help the attorney discover the source of any difficulties which s/he may have so that the impact of factors leading to unsatisfactory encounters with clients may be reduced or eliminated.

### I. THE CENTRAL GOAL

In any interviewing and counseling situation, the interviewer must keep in mind the central goal and not become lost in techniques and details. The central goal is to generate a flow of accurate information and reach a mutually agreed-upon decision. There are five basic concepts to be considered in attaining this goal. They are briefly described below and will be developed in succeeding sections.

First, the interviewer must communicate questions accurately and precisely. Asking "what else occurred" may not elicit the same response as inquiring "what was the very next thing that happened." The former question requires a judgment as to what else was important. The latter does not.

Secondly, the interviewer should maximize the client's ability and willingness to answer. For example, the client's frame of reference may be adopted to encourage further disclosure on a particular subject. In addition to certain interviewing techniques, the interviewer must develop a relationship of trust and understanding. While the attorney and client need not necessarily like each other, they should develop mutual confidence and respect. These attitudes help to generate an accurate flow of information. They also tend

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\*Associate Professor of Law, Northwestern University; member Chicago Council of Lawyers; J.D., Northwestern University.

\*\*Certified social worker; member National Ass'n of Social Workers; M.S.W., University of Illinois.

<sup>1</sup> Twenty-two percent of the complaints against Illinois attorneys do not relate to professional misconduct, but rather reflect a dissatisfaction with the lawyers as interviewers or counselors. Attorney Registration and Disciplinary Comm. of the Supreme Court of Illinois, Report to the Illinois Supreme Court, Apr. 15, 1976, at 6.

to increase client satisfaction, which often is based more on the quality of the relationship than on the ultimate results.

Thirdly, the interviewer must listen actively to determine the significance of statements. While a sponge-like ability to absorb information is useful, it alone is insufficient. Active listening requires a constant analysis of the conversation's contents to decide whether the information is important and accurate. Even if the information is not accurate, it may be a significant indication of the client's psychological position. The average person speaks at a rate of approximately 125 words per minute, but can listen to about 500 words per minute.<sup>2</sup> The gap should be filled with listening and considering what was said and what was left unsaid, silences, and body language. The interviewer should avoid thinking of "similar" situations in the past or anticipating the story to prevent the flow of information from being altered by the interviewer's preconceptions.

Fourthly, the interviewer should also probe to increase the validity, clarity and completeness of the responses. The client's statements should not merely be accepted. Careful probing may disclose, for example, that the client is merely speculating about certain actions and has no personal knowledge regarding them.

Finally, decisions must be made regarding the nature of the client's "problem" and any actions to be taken. Some decisions will be made by the interviewer due to his/her technical expertise. Others will be made by the client after the interviewer explains the strengths and weaknesses of various alternatives. Either type of decision must be based on mutual understanding and agreement regarding the decision making process.

## II. PSYCHO-DYNAMICS AND COMMUNICATION

### A. *What Does the Lawyer Need to Know?*

Interviews are a form of oral communication or conversation in which the participants are constantly learning about each other. Every person has goals, beliefs, anxieties, fears and hostilities which always interact with those of the other party to the communication.

The interviewer must know the psychological factors which impede an accurate flow of information. Because they are always present, s/he should be aware of these factors and try to recognize them. Lawyers lack the expertise necessary to make a psychological diagnosis and should not attempt such a task. In any event, a lawyer need not know the precise psychological classification in order to represent the client effectively. For example, the lawyer need not know whether a mother's belief that her

child hates her is caused by transference<sup>3</sup> or projection,<sup>4</sup> if that mother is represented in a custody case, it is important to know only whether the child actually does hate her. What the lawyer can do, however, is to note cautiously certain behavioral clues which indicate the underlying psychological factors. When a situation does not "feel" right, *i.e.*, when the interactions apparently are not fitting together in a normal pattern, attorneys can utilize a number or combination of approaches to deal with some of the psychological problems so that communication is improved. Severe psychological difficulties, however, may require the assistance of a psychotherapist in a consulting or treatment role.

### B. *Indicators of Psychological Interference With The Communications Process*

Responses will not be natural and appropriate if the participant's psychological operations interfere with the communication process. Such interference may result in the participant's responding not to what was said, but to something else. Some people behave this way so often that apparently unrelated situations result in similar, predictable, well-defined outcomes. By analyzing patterns of behavior, the interviewer may be able to avoid becoming trapped in the pattern. The following *may* indicate psychological interference, although not necessarily psychological disturbance or abnormal functioning:<sup>5</sup>

1. Negative statements at the start and the end. The client's first words are important indicators of attitude. S/he may say "you won't be able to help me but my caseworker told me to come. . . ." Statements made at the end of the interview are also especially significant. These remarks indicate both attitude and the client's understanding or lack of it.

2. Association of seemingly unrelated ideas. For example, in a divorce case, the wife may demand that the husband be barred from visiting children because he is a "bad, wicked person," although he has always been good to the children who want to see him. The situation can be further complicated if the lawyer begins thinking of his own parents' divorce and unconsciously starts attributing aspects of his mother's personality to the

<sup>3</sup> Transference occurs when feelings and attitudes about one person are unconsciously associated with another person. *Id.* at 61. For example, a mother may feel that her child is like the mother's older brother who hated her and thus believe that the child hates her.

<sup>4</sup> Projection is the distortion of reality by perceiving one's own emotions or feeling as coming from another person. For example, a mother may not be able to admit to herself that she hates her child. She may then project that feeling on the child and believe that the child hates her instead. Some authorities treat projection as the defense resulting from transference feelings. *E.g.*, A. WATSON, *THE LAWYER IN THE INTERVIEWING & COUNSELING PROCESS* 24 (1976).

wife. The interviewer's counter-transference of his feelings toward his mother onto the client may trigger further undesired reactions in the client, who may then feel resentment or anger toward the interviewer whose tone of voice reminds the client of his/her parent who provoked similar reactions.

3. Conversation shifts. Shifts may indicate that the person is uncomfortable because s/he was revealing too much or because the subject was too mentally painful. For instance, in a neglect case the client may respond to questions regarding the insufficient amount of food being given his/her children by talking about low public assistance levels (factually accurate) to avoid discussing amounts spent for liquor. Such a change in topics may also occur, however, because the topics have an unconscious relationship to something else (see association of ideas above).

4. Repeated references. The client often returns to a certain subject or general theme to explain his/her problems in life. A client may blame financial difficulties on his business associates, alcoholism on his girlfriend, an ulcer on his mother, etc. S/he never takes responsibility for his/her own acts but consistently places blame elsewhere. Such clients often try to be very dependent on their attorney and blame the lawyer for any difficulties related to their "legal problem." The lawyer must make the client understand that the responsibility is shared, and that certain things must be done and decided by the client rather than the attorney.

5. Ability to remember only general feelings and not actions. The client may have been psychotically out of control, or the client may be consciously or unconsciously blocking any recall.

6. Inability to separate behavior from self. People who do not feel that they are basically good, important, and worthy are overly dependent on the other's reactions to their behavior. For example, telling some juveniles that their stealing was bad may simply reinforce their negative feeling that they are bad. This may cause interference with the attorney/client relationship in that such clients may then see the lawyer as just another person who believes that the client is evil and who therefore is not on the client's side.

7. Excessive protest or explanation. The conduct may be a quick covering move to camouflage a small, inadvertent release of information with which the client is uncomfortable. It can also be part of a deliberate attempt to deceive the interviewer.

8. Gaps and inconsistencies. The client's story has missing pieces and internal contradictions which s/he does not explain. This may be caused

by a fear of being criticized openly or silently by the interviewer, a fear of disclosure to others, a belief that the lawyer will only work well for innocent clients or deep psychological difficulties. On the other hand, if the client's account is absolutely consistent, without pauses or variations as the client tries to remember and communicate, the story may be distorted or rehearsed rather than an open attempt to communicate. Some gaps and inconsistencies are natural and inevitable for complex events.

9. Feelings regarding a psychologically related item. For instance, a man may oppose allowing a psychiatrist to talk to a family member because he is personally afraid this would result in his being involuntarily committed to a mental institution.

10. Body language. Lawyers too often tend to depend on words alone and ignore the message communicated by non-verbal behavior. Yet attorneys who have read transcripts after being present at trials are repeatedly struck by the inadequacy of mere words to convey what happened in the courtroom. To best evaluate these non-verbal cues, it is important to notice what body language is normal for the client and significant shifts from this norm. While every movement may not be important, non-verbal communications can contain silent messages which more accurately reflect the client's beliefs than mere words.<sup>6</sup> Both the interviewer and the client continuously express themselves with body language. Some body language is observed visually, such as expression, gesture, position, movement, eye-contact, and distance or proximity. Other body language is auditory, including pace, pitch, intensity, volume, and speech errors. Body language indicates like/dislike, relaxed/anxious, and dominance/submissiveness. Reliance on body language should be tempered by two factors. Personality may alter behavior. One who is shy or has been taught not to stare may not look the judge "square in the eye" even though telling the truth. Secondly, physical difficulties may cause certain behavior often associated with a body language message, *e.g.*, repeated blinking of the eyes may be due to new contact lenses rather than anxiety.

### C. *Reality-Orienting*

People often have certain apparently irrational ideas and beliefs. These can and should be accepted by the interviewer unless they cause distortion of essential communication. When this happens, the interviewer may be able to help the client see the situational realities although the client's underlying psychological problems remain unchanged.

First, the interviewer must attempt to get facts from the client. If

these facts do not make sense or seem reasonable, the interviewer should initially probe for further information. S/he must remember that the client's statements may be factually accurate, but simply beyond the interviewer's experience and therefore outside of the interviewer's sphere of reality. For example, one somewhat paranoid and hysterical client charged that her husband, a quiet doctor with a fine reputation in the community, beat her and was engaged in the illegal sale of drugs. Although these charges were true, no one believed her for a long period of time. Instead, people thought that she was delusional. In other cases, the client may have a different but perfectly rational perspective. Caution should therefore be used in deciding what "facts" constitute reality.

If the attorney decides that the client does not comprehend the situational realities, the lawyer should attempt to explain them. The attorney should begin to help the client test his/her version by asking questions designed to elicit a response indicating a realization of the flaws in the initial version (Socratic method). Once the client begins to comprehend the conceptual problems, the lawyer can then explain the situational realities in simple logical terms. This explanation should be followed by questions which require the client to restate the situational realities in an attempt to ensure understanding.

For example, a client has been defrauded of \$3,000 by a home repair contractor. Because of problems in proving the fraud, the attorney assesses the probability of success as a forty per cent chance to recover. Proof of damages is not a problem. Opposing counsel makes a \$2,500 settlement offer. The client refuses even to consider the offer, stating: "One penny less than \$3,000 would not be an apology and could let those crooks think they can 'take' me!" The attorney decides that a refusal even to consider any compromise shows a lack of understanding regarding the situational realities and might raise the following points:

1. The primary purpose of the civil legal system and, more importantly, of this case is not to get apologies. The purpose is to recover money wrongfully taken by the defendants.

2. The judge was not there when the fraud occurred. S/he is not God and doesn't know what really happened. The reality of what occurred can never be actually recreated. All the judge knows is the evidence presented in court and s/he will decide the case based on his/her assessment of the admissible evidence presented in court.

3. The following problems in presenting the evidence make it difficult for us to prove fraud: oral contract, lack of witnesses, etc.

4. For this reason, the chances of success are approximately 4 in 10 (40%).

5. To calculate the fair settlement value of a case, one multiplies the monetary value of the suit by the chance for success.

6. Using that formula,  $\$3,000 \times 4/10 = \$1,200$ .

7. Since the offer (\$2,500) is more than the fair settlement value of the case (\$1,200), it should be seriously considered.

Once the client understands the situational realities, s/he can make an intelligent decision to accept or reject the offer. If the client still decides to reject the offer, s/he should be asked to articulate reasons for that decision. These reasons should be subjected to the same reality testing approach.

A second example is the client who plays the "yes but" game.<sup>7</sup> Every suggested course of action is met with the following response: "Yes that is O.K., but of course it won't work or won't get this or is too difficult or . . ." The interviewer will soon notice a pattern of unreasonable criticism which vetoes every possible course of action without offering any alternatives. The interviewer may attempt to break the pattern by stating that s/he feels the pattern is present, discussing whether the pattern really exists, and if so, explaining that the issue is choosing the best course rather than searching for some perfect plan which probably does not exist. Note that the interviewer recognizes and acts regarding patterns of behavior without attempting to determine the underlying psychological problem or label it with a socio-psychological term. The confrontation is handled in a non-judgmental manner, seeking to clarify rather than place blame.

A third example is an alcoholic seeking legal assistance in gaining the return of his/her children who are in the custody of a state agency. S/he tells how some "crazy" caseworker accused him/her of physically abusing the children. The alcoholic also blames the grandmother for both the way which she raised the alcoholic and her current interference in family life. According to the client, other people are responsible for all of the pressures which cause the alcoholic to drink. Some have tried to influence the alcoholic to stop drinking, but somehow that is not possible for any length of time. The alcoholic asks the lawyer to get the children returned.

At this point, the interviewer must realize that the alcoholic still is not accepting responsibility and is treating the attorney as a rescuer. Since the alcoholic is unconsciously determined to have rescuers fail for some unknown reason, the alcoholic will manage to sabotage the lawyer-rescuer's



plans. S/he may get drunk, be hung over, or attempt suicide at a crucial time. Therefore, the attorney must break the pattern by emphasizing his/her narrow role while making it clear that the alcoholic is responsible for his/her own behavior. As part of this non-judgmental confrontation, the alcoholic must understand that s/he must take certain specific actions if their case is to prevail in court. The conduct of the alcoholic, and not that of the lawyer, is the key to a return of the children. The steps may include individual and/or group therapy as a matter of legal tactics as well as individual improvement. Unfortunately, many alcoholics will not be able to accept success and will therefore fail anyway. However, if the attorney allows him/herself to be trapped in the role of a rescuer, failure is a virtual certainty.

### III. MINIMIZING INHIBITORS AND MAXIMIZING FACILITATORS

Clients do not resist cooperating with the interviewer simply to make life more difficult for the lawyer. They have subjectively valid reasons for their behavior. In the interviewing process, certain factors facilitate while others inhibit effective communications. By recognizing these factors, the interviewer can avoid many psychological clashes with clients.

#### A. *Inhibitors Which Should Be Minimized*

1. Competing time demands. These can cause stress during an interview in two ways. First, the client may feel that the interview is not really important perhaps because s/he believes that the lawyer is an incompetent or untrustworthy person. The client then seeks to terminate the interview in a short time — by omitting important facts not considered legally relevant or significant aspects of the situation not viewed as being crucial—or begins to think of other matters during the interview. Secondly, if the attorney appears hurried, the client may think that the attorney does not want to spend time with the client or deal with his/her problems. This perception may make the client feel unimportant and prevent the development of a trusting relationship.

2. General anxiety or tension. Attorneys are often considered to be similar to dentists in that they are able to help with important problems but in a way that causes pain. Talking about a problem causes a trauma because the client "relives" the original unpleasant emotions that arise in any crisis experience.

3. Ego (self-esteem) threat. People generally are not open with strangers because of a fear of being judged or evaluated. A client's lack of openness may be based on individual personality traits or cultural differences which s/he believes could shock or alienate the interviewer if

expressed. Some clients withhold a candid answer because they consider it to be in poor taste or an expression of disrespect for the interviewer's status. Others focus on their motivations and frustrated efforts to justify their role in past events. To counter this attitude the interviewer must adopt a non-judgmental attitude.<sup>8</sup> S/he should not moralize regarding either significant issues or small ones (*e.g.*, the right to complain or be tired). The interviewer must be interested and must also convey the impression that s/he is interested in clients as people, respects them and understands their emotions and desires. If the attorney feels that it is necessary to criticize certain specific actions of the client, s/he should do so without criticizing the client as a person. Stating "you're really too smart to be doing something silly like that" is obviously different from saying "you're stupid." To lessen emotional pressure on the client to lie or repress, several tactics can be utilized:

- a. Withhold certain inquiries until a rapport is established.
- b. Explain in a morally neutral manner that the interviewer already knows certain information about which the client may be tempted to lie.
- c. Cautiously suggest the "true" answer if it would be highly unpleasant for the client to volunteer it.
- d. Avoid confrontation in a manner which "boxes in" the client and forces him/her to maintain a lie. Confrontations should be handled in a neutral manner, such as "the jury may wonder," "why do the police reports indicate," etc.
- e. Outline explicitly the decision making process within the attorney-client relationship. Once the client understands that s/he ultimately decides between options presented by the lawyer, s/he can begin to explore the situation with the counselor more freely because fear of coercion or pressure is reduced.
- f. Acknowledge that discomfort and an initial lack of complete trust is natural. By giving the client permission to admit or acknowledge emotions which s/he is experiencing, the interviewer shows an understanding of the client's feelings.
- g. Explain that questions are not being asked out of curiosity or a desire to invade the client's privacy, but from a legitimate need for the information. The interviewer should explicitly state the legitimate purpose for which the information is sought.
- h. Explain the requirement of confidentiality under the attorney-client

privilege so that the client need not fear judgment or evaluation by someone other than the interviewer.

4. Short-comings of human observation and perception. Physical defects, drugs or illnesses can cause defective observations. However, most inaccuracies are caused by erroneous perceptions, not faulty observation. Perception is the mental process which occurs after the sensory information reaches the brain and is interpreted. Certain perceptual phenomena occur frequently.<sup>9</sup>

5. Inability to recall the event. After a response of "I do not know," the first step in checking memory is to ascertain the meaning of that phrase. It may merely be an expression of diffidence, uncertainty or caution. The client may simply be stalling, either for more time to formulate a response or to avoid answering. The interviewer may remain silent and wait, indicating by physical expression that s/he assumes the client is thinking. Another approach is to preface the silence with an indication that the particular subject is very important.

The lawyer can also offer clues to stimulate memory, such as inquiring whether an event happened before or after another occurrence. In attempting to stimulate, the interviewer should consider that retrospection (thoughts during the past event) tends to be more reliable than introspection (present self-examination). To promote retrospection, the attorney should often refer to the stimulus and ask questions in the past tense. For example:

Client: "I thought we were about to collide."

Interviewer: "Try to put yourself back to that moment. What was in your mind at that time?"

Client: "I was thinking, 'Why is he going so fast?'"

The client's first statement indicated a present assessment and reaction. The second statement reflected the reaction at the time of the event.<sup>10</sup>

The lawyer should be aware that the amount of detail or the assertiveness with which a story is told does not guarantee an accurate memory.

<sup>9</sup> For a good description of these phenomena, see FREEMAN & WEIHOFER, *supra* note 2, at 40-42. One not mentioned there is "pragnanz," which is the tendency to perceive things as complete rather than incomplete or fragmentary. / - - - / may be perceived as /———/. The mind unconsciously supplies missing parts. Pragnanz is different from expectancy, which is based on a preconception. Instead, pragnanz is an attempt to derive meaning from something which is unsatisfactorily incomplete. It is difficult to detect since it is not dependent on bias but rather operates independently from the observer's specific personality traits. Pragnanz often occurs because of retroactive falsification, which is the reinterpretation of past events so they apparently make sense. It may also occur if the person believes s/he is expected to know something as a "good observer." Staten, *What People See and Why*, FED. INS. COUNSEL, Spring 1973, at 75.

<sup>10</sup> FREEMAN & WEIHOFER, *supra* note 2, at 46.

Memory associations follow certain patterns<sup>11</sup> which can be used to evaluate the accuracy of a narrative.

6. Suggestive questions. Obviously, suggestive or leading questions tend to cause certain responses. Inquiries requiring induction or deduction can also lead to a distorted verbalization of a well preserved memory.

7. Identification with the interviewer. The client may unconsciously adopt the interviewer's attitudes or beliefs.

### B. *Facilitators Which Should Be Maximized*

Most clients are initially motivated to cooperate since they voluntarily come to persons from whom they expect assistance, but they continually modify their attitude based on their perceptions during the course of the interview. Certain factors usually will be perceived favorably by the client, thereby maintaining or increasing the motivational level. The interviewer should seek to maximize these facilitators.

1. Mutual agreement on expectations. If the interviewer and the client fail to understand and agree on their expectations, cooperation is virtually impossible. Verbal and non-verbal forms of communication can be used to convey expectations. Specific questions should be asked to ascertain whether the client comprehends and accepts these expectations.<sup>12</sup> The interviewer should explain what an attorney and the legal system can do in this case, as well as what the client must do him/herself to prevail. The interviewer's expectations must not be presented as demands unless absolutely necessary. Instead, the interviewer should adopt a flexible attitude. A creative reciprocity, culminating in true agreement regarding expectations, should develop during this discussion process.

2. Recognition. People "perform" and cooperate in exchange for recognition. The interviewer should convey the impression that the client is important, not an elitist attitude based on his/her feelings of professional dignity and importance. Active verbalizations by the interviewer reflect interest, which indicates that the client and his/her problem are important. Recognition can be given in two ways: approval (a positive attitude in response to a specific act) and esteem (a positive overall evaluation).<sup>13</sup>

3. Escape from dreary routine. Seeing a lawyer is a new or unusual experience for most people, which means that their levels of attention and interest will be high. Of course, the attorney should try to allay the client's

<sup>11</sup> *Id.* at 43-46.

<sup>12</sup> R. GORDON, *INTERVIEWING: STRATEGY, TECHNIQUES AND TACTICS* 124 (1969).

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fears arising from the fact that it is a new experience and the client does not know or feel comfortable in his/her role.

4. Sympathetic understanding. Usually clients come to attorneys because something unpleasant has occurred. An attitude of interest and sympathetic understanding can be conveyed verbally ("uh-huh," "mm-hmmm," "I see," etc.) or with body cues including nodding, smiling occasionally, and leaning forward. Such an attitude also helps to minimize the client's fear of being misunderstood or misjudged.

5. Catharsis. Talking can cause a release of unpleasant emotional tensions arising from guilt by allowing the client to discuss the source of the tension and express his/her feelings. Because this catharsis involves guilt feelings, an atmosphere of confidentiality as well as sympathetic understanding is required.<sup>14</sup> Although catharsis is generally very beneficial in developing a positive interviewer-client relationship, sometimes a detrimental delayed reaction occurs. Then the client resents the interviewer for forcing him/her to talk about an emotionally threatening subject. Resentment increases when the interviewer is no longer present to reassure the client that s/he understands the problem and that the information is confidential.

6. Search for meaning. Psychological tension is created when a person becomes aware of any incongruence of facts, assumptions, or interpretations. Then the person will be motivated to talk in an attempt to reconcile the apparent conflict so as to form a meaningful pattern.<sup>15</sup> The interviewer may facilitate communication by indicating an interest in the search for meaning. At times, it is necessary for the interviewer first to disturb the client's articulated sense of equilibrium. This tactic of disrupting equilibrium must be used with caution, since the interviewer should not precipitate a conscious psychological problem which is more serious than s/he can handle.

7. Extrinsic reward. The client will tend to cooperate if s/he views the interview as a means for achieving a positive goal outside of the interaction within the interview itself. This concept is not limited to the client's preconceived goal. For example, a client may enter the interview seeking to have a contract negotiated for the purchase of a particular house. The attorney suggests that the house first be examined by a structural engineer before any further actions are taken. The client then sees the extrinsic goal as the purchase of a structurally and mechanically sound home rather than this specific house.

8. Relationship with the interviewer. Each person considers certain relationships with others to be valuable because of personal feelings between

<sup>14</sup> GORDON, *supra* note 12, at 129-30.

<sup>15</sup> *Id.* at 131-33.  
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the people rather than any extrinsic rewards. If the client views his/her relationship with the interviewer as a positive one, cooperation will tend to result. However, while the interviewer may also feel that the relationship has a personal value to him/her, the interviewer must guard against becoming so involved that s/he loses an ability to evaluate tactics and strategy with professional detachment and objectivity.

9. Acceptance of the client as s/he is. The client will be more willing to communicate if s/he does not fear that the interviewer is judging him/her. Acceptance may be accomplished by adoption of the client's frame of reference. If the client is frightened about confronting an insensitive, sarcastic public assistance caseworker, the interviewer should accept the fear as genuine rather than consider it frivolous or silly. Acceptance of the fear does not mean acceptance of the client's attitude that s/he cannot confront the caseworker. The interviewer may be able to help the client deal with the fear by pointing out the client's strengths and the caseworker's weaknesses. However, the fear, which is very real to the client, cannot simply be ignored.

#### IV. THE INTERVIEWER'S FEELINGS AND EMOTIONS

The interviewer's preconceptions and defenses interfere with accurate communication as often as those of clients. Therefore, the interviewer must be aware of interference that is generated from his/her side of the interaction and seek to minimize it.

##### A. *Acceptance of Feelings and Emotions*

The legal profession tends to pretend that it is somehow above all emotions. Trials are decided by cold, hard evidence—are they not? Appeals are determined on an intellectual level by strictly logical arguments based on “the law”—is that not correct? Such an attitude overlooks the important role that emotion plays in decision making. Indeed, some psychologists believe that all significant decisions are made emotionally-intuitively, and later rationalized with great logic to meet our own and other's expectations of objective decision making.<sup>16</sup> Many litigators directly utilize this theory in the legal arena in cases where the judge has some discretion; they see their most important function as providing emotional support (or a “hook”) for their case and a legal excuse with which the judge can rationalize and justify a decision in their favor.<sup>17</sup>

Lawyers too often treat their relationship with clients as though it

<sup>16</sup> T. SHAFFER, LEGAL INTERVIEWING AND COUNSELING 228-29 (1976).

<sup>17</sup> This is closely related to the theory of cognitive dissonance, which is the need to keep one's actions consistent with one's attitudes. See L. FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957).  
 Published in *Journal of Counseling and Development*, 1978, 56, 325-331. 13

exists only on an intellectual level when in reality emotional reactions to clients are unavoidable.<sup>18</sup> The attorney may not like some clients or may be uncomfortable dealing with them or their problems. Clients often consciously or unconsciously sense the presence of the lawyer's feelings.<sup>19</sup> More importantly, emotions may interfere with the interviewer's ability to relate to and interact with the clients. The attorney's personality can cause systematic differences in legal consultations due to varied views of, and therefore assessments of, individuals, relationships, problems and alternative courses of action.<sup>20</sup>

The interviewer's functioning will reflect his/her individual methods for dealing with all interpersonal relationships and emotional problems.<sup>21</sup> Therefore the interviewer must learn to acknowledge feelings, discover the reasons for them and try to deal with them. Since each person has psychological defense mechanisms which are used to avoid dealing with certain feelings, such recognition involves a risk. The risk is worthwhile in that emotions and defenses of the attorney can block communication on an intellectual level just as effectively as those of the client.<sup>22</sup>

A person can learn about his/her usual patterns of emotional reaction in several ways. One can reflect on behavior and feelings which occurred during past life experiences in an attempt to understand which stimuli cause certain reactions as well as the reasons for this cause and effect relationship. Parents, friends and other persons may be used as a source for comparison and for "objective" information regarding the situations being analyzed. Secondly, one can examine present emotions and reactions in response to simulated stimuli such as books, television shows, movies, and role-playing. If an open and honest discussion can be held with someone with whom the interviewer is emotionally close, in which reactions to actual or simulated stimuli are compared, the interviewer may develop increased sensitivity to his/her own biases and systematic self-distortions.<sup>23</sup>

This self-examination should include an attempt to ascertain which of the interviewer's needs are being met by his/her professional role as a lawyer. People become attorneys for money, power, the ego-trip of performing or "showing off" in court, because of relationships which develop with clients, or for innumerable other reasons. These reasons affect the

<sup>18</sup> FREEMAN & WEIHOFEN, *supra* note 2, at 99.

<sup>19</sup> *Id.* at 11.

<sup>20</sup> Redmount, *Attorney Personalities and Some Psychological Aspects of Legal Consultation*, 109 U. PENN. L. REV. 972 (1961).

<sup>21</sup> Watson, *The Lawyer as Counselor*, 5 J. FAM. L. 7 (1965).

<sup>22</sup> FREEMAN & WEIHOFEN, *supra* note 2, at 11.

<sup>23</sup> *Id.* <https://ideaexchange.uakron.edu/akronlawreview/vol11/iss2/4>

professional relationship with clients. Understanding these needs or reasons can increase the attorney's ability to communicate effectively with his/her clients.

The ability to comprehend and conceptualize psychodynamics also enables the interviewer to deal more comfortably with subjects which are intellectually understood. With such understanding, the interviewer can anticipate initial responses to given situations and consciously decide on a professional response rather than an inappropriate reaction. However, the interviewer must be alert to the fact that s/he may label some situations improperly and should not try to force the client into a preconceived mold that does not fit with reality.<sup>24</sup>

The interviewer must also learn to accept the existence of the client's feelings. Clients do not act simply to harrass lawyers and make lawyer's lives difficult. Their actions, like everyone's, are motivated by something and governed by a system of internal logic.<sup>25</sup> People behave "rationally" if they follow the probabilities as they see them by considering the consequences of alternative actions, establishing a preferential order for those consequences and choosing the course of action most likely to lead to the preferred consequences. Differences between the interviewer and client can arise from a failure to understand the client's frame of reference. Once this is understood, the attorney may be able to point out alternative courses of action which the client failed to consider or that a consequence, believed to flow from a particular course of action, is unrealistic.

Understanding the client's frame of reference can be made more difficult by the client's lack of familiarity with the client role. People naturally have problems communicating in unfamiliar situations. The interviewer must not only accept that the client has a right to have feelings and emotions, but also that the burden for communicating about these matters is on the interviewer since the client is less familiar with the roles.<sup>26</sup> Therefore, early in the interview the attorney should begin assessing the client's frame of reference, level of knowledge, and degree of vocabulary sophistication.<sup>27</sup>

However, while the interviewer carries the heavier burden for communication, the client shares that responsibility. No one can really know what is in another person's mind. As lawyers, we can explain the necessity

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<sup>24</sup> WATSON, *supra* note 4, at 93.

<sup>25</sup> G. NIERENBERG, *THE ART OF NEGOTIATING, PSYCHOLOGICAL STRATEGIES FOR GAINING ADVANTAGEOUS BARGAINS* 34 (1968).

<sup>26</sup> *LEGAL SERVICES TRAINING PROGRAM, supra* note 8, at III-8.



for open communication and help facilitate that process. Only the client, however, can tell us his/her feelings and beliefs. We are not psychics or fortune-tellers.

### B. *Self-images and Perceptions of Others*

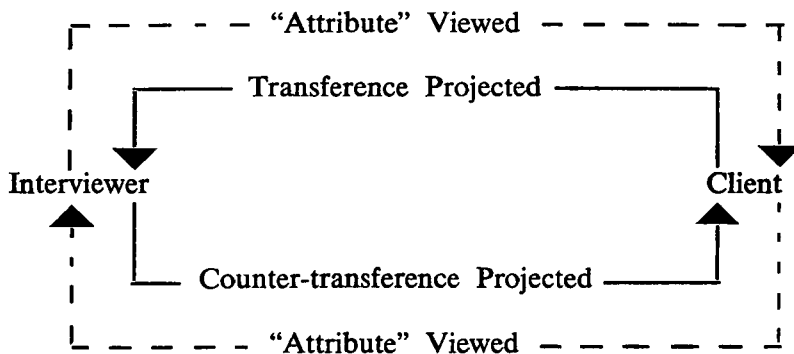
In attempting to recognize and deal with feelings and emotions, the interviewer should consider the inherently varied perceptions of the participants. Each person only knows how s/he appears to him/herself, and how each perceives the other person. In any interaction between two persons, these perceptions can be graphed as:

<u>A</u>	<u>B</u>
(1) Real Person A	(2) Real Person B
(3) A's self-image	(4) B's self-image
(5) B's appearance to A	(6) A's appearance to B

During any two person interaction, Real Person A (1) and Real Person B (2) are nonexistent in the sense that they do not influence either actor. A and B each act according to their perception of themselves (self-images (3) and (4)) and their perception of the other ((5) and (6)).

Some of the difference in perceptions may be explained by the lawyer's and the client's role expectations for him/herself and the other in this situation.<sup>28</sup> Other differences may be due to transference and counter-transference.<sup>29</sup> These are unreal attributes that the observer believes are present in another, and which are unconsciously drawn from a superficial resemblance to an important person in the past.<sup>30</sup> They are part of the general human tendency to judge new things on the basis of past experience.<sup>31</sup>

This psychological phenomenon can be illustrated as:



<sup>28</sup> Watson, *Professionalizing the Lawyer's Role as Counselor: Risk-Taking for Rewards*, 1969 ARIZ. ST. L. J. 34.

<sup>29</sup> J. COLEMAN, *ABNORMAL PSYCHOLOGY AND MODERN LIFE* 665-67 (4th ed. 1975).

Role expectations and the transference/counter-transference model can be useful to the interviewer in understanding certain communication difficulties due to misperceptions. The problem arises when the self-images, (3) and (4), differ from the other's perception, (5) and (6), causing corresponding differences in views of roles and functions. If the interviewer fails to recognize the inherent probability of such differences, s/he may feel that the client is stupid or insensitive. This attitude of "I'm right; you're wrong" often leads to power struggle ultimata and a break down of dialogue. Instead, the interviewer should re-examine his/her self-image and the client's perception of him/her with an open mind. If the interviewer believes that a disparity exists between self-image and the client's perception and that this disparity is impeding their communications, the interviewer may note this observation to the client. Hopefully, the client will respond and the distortion will be clarified by a dialogue. If the client instead does not respond or avoids the issue, the interviewer should respect "where the client is at" and not push the client. Even if the disparity in views is not eliminated, the interviewer's openness may have a positive effect on the relationship.

Even after the initial contact, the interviewer should not adopt a fixed view of the client. As noted by Carl Rogers:

If I accept the other person as something fixed, already diagnosed and classified, already shaped by his past, then I am doing my part to confirm to this limited hypothesis. If I accept him as a process of becoming, then I am doing what I can, to confirm or make real his potentialities.<sup>32</sup>

### C. *Danger Signals Regarding One's Own Emotions*

Once the interviewer can accept that his/her own emotions can cause communication difficulties, s/he can begin to identify signs that such situations are occurring. Since each person's emotional set is different, each must consciously develop an ability to recognize an inner feeling that one's own emotions are actively influencing the interactions. There are some danger signals which may indicate the presence of such interference:

1. The interviewer is unable to identify with the client who seems unreal or mechanical. The interview itself seems unreal at times.
2. The interviewer has general feelings of anxiety, irritation or discomfort which do not relate to any single specific incident.

<sup>30</sup> Watson, *The Lawyer and His Client: The Process of Emotional Involvement*, PSYCHIATRY FOR LAWYERS 4 (1968).

<sup>31</sup> *Id.*

3. The responses of the interviewer to the client are unduly emotional. An unreasoning, strong dislike or admiration/attraction is felt.

4. The interviewer has difficulty concentrating or focusing on the interview.

5. Unusual, prolonged, or unrewarding arguments or bickering repeatedly occur.

6. The interviewer feels unusually defensive or sensitive and vulnerable to the client's comments.

7. A significant portion of the communications are misunderstood by either the interviewer or the client.

8. The interviewer uses approaches such as anger or fear calculated to elicit negative responses from the client.

9. After the interview ends, the interviewer is unduly preoccupied with it.

#### D. *Dealing With One's Own Emotions*

If the interviewer recognizes that something is happening which indicates emotional interference with the communication process and that the blockage is due to his/her own feelings, the next step is to deal with the underlying emotions. This may be accomplished by using a heightened intellectual understanding of perceptions and processes as an aid in self-observation of our own reactions.<sup>33</sup> For example, the interviewer accepts the fact that feelings of annoyance with clients can arise and notices them in a particularly tense interview with a client who seems hostile. S/he then reflects to decide whether his/her own annoyance is due to temporary factors such as physical/mental/emotional fatigue or a pre-existing reaction to people who behave in a hostile manner. This self-observation and inner verbalization of the reaction can decrease the intensity of the feelings and make them easier to control.<sup>34</sup> In this manner, "getting in touch" with feelings (the ability and willingness to recognize them) will allow the interviewer to deal more effectively with his/her own emotions and minimize emotional interference with the communication process.<sup>35</sup>

Another approach is to refocus from real negative feelings to real positive ones.<sup>36</sup> For example, the interviewer may strongly disagree with a client's beliefs or morals. An intellectual conceptualization that good in-

<sup>33</sup> M. SKLANSKY, S. SILVERMAN & H. RABICHOW, *THE HIGH SCHOOL ADOLESCENT* 177 (1969).

<sup>34</sup> *Id.*

<sup>35</sup> J. STEVENS, *AWARENESS* 2-3 (1969).

<sup>36</sup> SKLANSKY, SILVERMAN & RABICHOW, *supra* note 33, at 180.

interviewers are non-judgmental may not ease the emotional tensions generated by such strong philosophical disagreements. The interviewer can instead refocus, concentrating on gathering information and appreciating the client's candor which facilitates this task. The emotions may no longer interfere when the focus is altered.

Some interviewers may need to concentrate on increasing their understanding or ability to deal with their own emotions. Various exercises can aid this process.<sup>37</sup> For example, transactional analysis focuses on the life script "written" by the important people in one's life, using past and present relationships as aids to understand one's present state. In contrast, Gestalt therapy focuses on the here and now and examines inner feelings and present awareness rather than past relationships. Both Gestalt and transactional analysis exercises may be combined.<sup>38</sup>

Certain interviewers will find that while they can recognize emotional interference, they are consistently unable to deal effectively with their feelings. When such intrusive feelings are consistently aroused in the same types of situations, counter-transference may be impeding the interviewer from performing his/her function. These interviewers may need psycho-therapy to help them understand and deal with their emotional problems. A clinical social worker, clinical psychologist or a psychiatrist should be consulted.

#### CONCLUSION

Interviewing and counseling are part of the lawyering process in which information is acquired, evaluated, interpreted for clients and used as the basis for decisions.<sup>39</sup> This article offers alternative approaches and structures for lawyers, law students and legal paraprofessionals. As each of us has different strengths and weaknesses, no one method is "correct." Development of a personal style is essential since the same techniques will not work for everyone. Moreover, the interviewer must be flexible and must remember that diverse problems, calling for varying responses, will be encountered. The most important thing is to experiment and evaluate so that one's own strengths may be discovered and fully developed.

<sup>37</sup> J. FAGEN & I. SHEPARD, *GESTALT THERAPY NOW* (1970); V. SATIR, *MAKING CONTACT* (1976); J. STEVENS, *supra* note 36.

<sup>38</sup> M. JAMES & D. JANGEWALD, *BORN TO WIN* (1973). This book includes Gestalt self-experiments and transactional analysis regarding traits, experiences and past relationships.

<sup>39</sup> Watson, *supra* note 28, at 34.

