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MAYBE THAT'S WHY I DO THAT: PSYCHOLOGICAL TYPE THEORY, THE MYERS-BRIGGS TYPE INDICATOR, AND LEARNING LEGAL INTERVIEWING

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I. INTRODUCTION

Legal interviews are complex social interactions composed of many separate behaviors that can be difficult to master. Simultaneously building and maintaining rapport while obtaining complete and accurate information, the two primary objectives proposed by contemporary interviewing theory,[1] requires substantial skill. Published studies of actual client interviews suggest that lawyers often fail to meet these challenges effectively. These studies describe legal interviews as dominated by lawyers and routines. Rapport is ignored as clients are typically given little chance to respond to anything other than standard, often pointed questions. Lawyers control the topics discussed and the depth with which they are covered. Interruptions are frequent.[2]

Learning the skills needed to interview clients effectively also presents formidable challenges. Courses instructing students in these skills have only recently appeared in American legal education.[3] Recognizing the

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1. Clinical legal educators have developed models for lawyering and considerable attention has been devoted to the skills involved in interviewing effectively. *See, e.g.,* G. BELLOW & B. MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY 124-239 (1978); D. BINDER & S. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977); H. FREEMAN & H. WEIHOFEN, CLINICAL LAW TRAINING: INTERVIEWING AND COUNSELING (1972); K. HEGLAND, TRIAL AND PRACTICE SKILLS 192-216 (1978); M. SCHOENFIELD & B. SCHOENFIELD, INTERVIEWING AND COUNSELING (1981); T. SHAFFER & J. ELKINS, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL (2d ed. 1987); A. WATSON, THE LAWYER IN THE INTERVIEWING AND COUNSELLING PROCESS (1976).

2. *See, e.g.,* Bellow, *Turning Solutions Into Problems: The Legal Aid Experience,* 34 NLADA BRIEFCASE 106, 108 (1977); Hostika, *We Don't Care About What Happened, We Only Care About What Is Going To Happen: Lawyer-Client Negotiations of Reality,* 26 SOC. PROBS. 599, 604-05 (1979); Neustadter, *When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office,* 35 BUFFALO L. REV. 177, 229 (1986).

3. Surveys have shown a growth in the percentage of law schools accredited by the American Bar Association that offer courses in legal interviewing from 12% in 1964 to

significant amount of time lawyers spend interviewing[4] and the value of introducing students to these skills, an estimated sixty percent of American law schools now present some introductory training in this area. Many schools provide the bulk of this instruction through their clinical programs.[5] At the University of Florida College of Law, for example, the principal instructional unit in legal interviewing skills is found in the classroom component of the Virgil Hawkins Civil Clinic.

Students enrolled in this clinic receive academic credit equal to sixty percent of a normal term's load for successful completion of a classroom component and a fieldwork experience involving them in general civil practice that primarily emphasizes matrimonial litigation. Their classroom interviewing instruction consists of ten classes of two hours each. This unit assigns theoretical reading material about matrimonial interviewing[6]

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approximately 60% in 1982. Stillman, Silverman, Burpeau & Sabers, *Use of Client Instructors to Teach Interviewing Skills to Law Students,* 32 J. LEGAL EDUC. 395, 395 (1982) [hereinafter *Interviewing Skills*]. Very few of these courses, however, are required. Note, *Cross-Cultural Legal Counseling,* 18 CREIGHTON L. REV. 1475, 1496 n.113 (1985).

4. Studies of lawyers demonstrate the importance of interviewing and the need for these skills to be addressed in law school. One study reports that lawyers spend more time interviewing clients than they devote to any other professional activity. T. SHAFFER & J. ELKINS, *supra* note 1, at 7-8. Ninety-three percent of the lawyers surveyed in another study ranked fact gathering as an important skill and 58% of them ranked other aspects of interviewing as important. Zemans & Rosenblum, *Preparation for the Practice of Law — The Views of the Practicing Bar,* 1980 AM. B. FOUND. RES. J. 1, 5. The importance of interviewing skills was also confirmed by another survey of 1600 legally trained persons. *See* Baird, *A Survey of the Relevance of Legal Training to Law School Graduates,* 29 J. LEGAL EDUC. 264, 272-83 (1978).

5. Virtually every law school offers some form of clinical instruction. Kotkin, *Reconsidering Role Assumption in Clinical Education,* 19 N. MEX. L. REV. 185, 185 n.1 (1989). An informal survey in 1985 concluded that all law schools had at least one clinical program or practice-oriented course. *See* Wald, *Teaching the Trade: An Appellate Judge's View of Practice-Oriented Legal Education,* 36 J. LEGAL EDUC. 35, 35 n.2 (1986). Presumably most of these programs include formal instruction in interviewing skills.

6. Students read an assignment describing a rapport-centered approach to the selection, definition, and exploration of topics subjected to inquiry after clients have been encouraged to narrate broadly about their situations and objectives. This model is described in Peters, *You Can't Always Get What You Want: Organizing Matrimonial Interviews to Get What You Need,* 26 CAL. W.L. REV. 257 (1990). Its principal modification of the Binder-Price approach requires using topic-based inquiry immediately after the narrative phase ends. The intermediate chronological review phase recommended in D. BINDER & S. PRICE, *supra* note 1, at 53-54, 72-85, does not fit matrimonial practice for several reasons. First, no fault divorce and the forward-looking standards applied to protecting children and distributing property diminish the importance of inquiry recreating past events and instead, emphasize gathering information regarding what clients want to do now and in the future. Second, many critical topical categories in matrimonial interviews, such as financial and social situations, also have no inherent time relationships. Finally, using chronology also generates much information about actual and perceived misconduct between spouses that no longer

and requires them to observe and critique demonstration videotapes based on situations frequently encountered in local practice. The course work also requires participation in four simulated interviews where one student interviews another playing a client role for five minutes, stops and evaluates the performance, and then another student continues the inquiry. The unit ends with every student doing a complete simulated interview that is critiqued through both live observation and videotape review.

Contemporary legal interviewing theory suggests that the process pursues two goals simultaneously: (1) building and maintaining an effective working relationship with clients; and (2) acquiring complete and accurate information about their situations and desires.[7] The primary cognitive and behavioral components of these objectives are the numerous decisions lawyers must make regarding information acquisition and rapport building.[8] Models of effective interviewing suggest that these decisions include choices about what kinds of information to pursue,[9] what types of questions to use,[10] how to organize a line of inquiry to maximize rapport

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has legal relevance, and restricting lawyer-initiated post-narrative inquiry to germane topics is recommended as an accommodation to the economic and time pressures of matrimonial practice. Peters, *supra*, at 286-304.

7. The central value assumption in clinical interviewing literature is that lawyers conducting inquiry should seek to build effective working relationships with their clients. The relational goal is an interactive dynamic that facilitates the development of mutual trust, confidence, and respect. The approach recommended to reach this goal requires behavior sensitive to communication dynamics. This type of behavior facilitates disclosure of complete, accurate information. It also helps produce the ultimate use of this information in making decisions that pursue client, rather than lawyer, objectives. *E.g.*, D. BINDER & S. PRICE, *supra* note 1, at 6 (understanding human motivation facilitates learning why recommended techniques are likely to encourage client participation); *id.* at 147-53 (inability of lawyer to know client's values justifies maximizing client decision-making autonomy).

8. Rapport, a term borrowed from humanistic psychology, is used here, as elsewhere in clinical interviewing literature, to describe a harmonious, collaborative working relationship between client and lawyer. *See, e.g.*, G. BELLOW & B. MOULTON, *supra* note 1, at 139-40; D. BINDER & S. PRICE, *supra* note 1, at 14-15, 25-37; T. SHAFFER & J. ELKINS, *supra* note 1, at 73-87, 209-13. A working relationship characterized by rapport is one based on mutual respect and trust with its interactions free from excessive dependence or competition. In G. EGAN, THE SKILLED HELPER: A MODEL FOR SYSTEMATIC HELPING AND INTERPERSONAL RELATING (1975), rapport is described as encompassing the first stage of the helping process, which involves the client beginning to see the interviewer as an expert but also an ally. *Id.* at 36. The process is described also as involving the development of trust and a collaborative, rather than hierarchial, relationship. *Id.*

9. Preliminary information from the client is needed before determining what types of legal remedies might provide options or solutions for the situations presented. These options and solutions allow systematic testing of the viability of potentially applicable legal theories and remedies by asking questions about both the substantive elements and the factual possibilities they suggest. D. BINDER & S. PRICE, *supra* note 1, at 54, 92-99.

10. Inquiry usually takes the form of questions which may be phrased along a

development,[11] when to use responses other than questions,[12] and when and how to demonstrate that listening is occurring.[13]

Learning to make these decisions effectively is complicated by the reality that the models present only basic approaches which often need to

continuum based upon the breadth of information sought. Inquiry which allows clients to suggest either the topic or aspects of a designated subject is called open or open-ended. Questions can also be formed more narrowly by designating both the topic and the specific aspect of it that the inquiry seeks. These are usually referred to as closed or narrow questions. *See, e.g., id.* at 40. The other forms of inquiry commonly encountered are leading questions, which suggest the answer desired, questions phrased in such a way as to elicit only either a yes or no response, and compound questions that combine more than one interrogative objective in the same inquiry. *Id.* at 39-40.

11. In their leading text on legal interviewing, Binder and Price maintain that how inquiry is organized has predictable effects on both the relationship that develops and the information that is produced. They propose a multi-stage interviewing process that contains three separate explorations of the facts which form the basis of the client's concerns with each examination becoming increasingly more detailed. *Id.* at 38-52. The first phase, preliminary problem identification, seeks descriptions of why the client came to see the lawyer and solicits narrative responses on the general nature of the situation underlying the client's concerns, the basis of these concerns, and the ways in which the client would like to see them resolved. *Id.* at 53, 59-72. The next stage involves a chronological overview. Here clients are encouraged to provide a step-by-step description of the events that gave rise to the problem. *Id.* at 53-54, 72-85. Finally, the third stage, theory development and verification, suggests a mental review of the information known at this point to determine all potentially applicable legal theories, then systematically testing the potential viability of these theories by asking questions about the substantive elements of these approaches and the factual possibilities that they suggest. *Id.* at 54, 85-92.

12. Although this often surprises many clinical students, and apparently remains unknown by many practicing lawyers, effective interviewing requires several responses in addition to questions. These include listening responses that demonstrate that what clients have said has been heard and understood, and remarks designed to motivate communication. Remarks proving listening, called active listening, are discussed later. *See infra* notes 73-82 and accompanying text. Motivating statements deal with predictable inhibitors of communication. Two approaches recommended by Binder and Price are: (1) providing positive feedback; and (2) making statements that both acknowledge that the information sought by the inquiry deals with a probable communication inhibitor (i.e., is potentially intrusive, embarrassing, or threatening), and express an expectation that disclosure will nonetheless occur. D. BINDER & S. PRICE, *supra* note 1, at 16-17, 76-77, 105-08; *see generally* H. FREEMAN & H. WEIHOFEN, *supra* note 1, at 18-19; M. SCHOENFIELD & B. SCHOENFIELD, *supra* note 1, at 14-17.

13. Listening skills have been categorized as both passive and active approaches to the task. Passive listening involves keeping silent to allow another to talk, maintaining attentive eye contact, and providing non-verbal and quasi-verbal (brief, non-committal verbal reassurances such as "mm-hmm") encouragement to communicate. D. BINDER & S. PRICE, *supra* note 1, at 23-24. Active listening involves verbal responses that paraphrase or reflect what the speaker said. It proves that the lawyer has both heard and understood what the client said about a particular fact, issue, or feeling. *Id.* at 23, 25-37; *see also* K. HEGLAND, *supra* note 1, at 202; T. SHAFFER & J. ELKINS, *supra* note 1, at 209-13; Barkai & Fine, *Empathy Training for Lawyers and Law Students*, 13 SW. U.L. REV. 505, 507 (1983).

be modified to meet the specific circumstances presented by particular clients and situations.[14] The instructional unit deals with this challenge by identifying exceptions to the general assumptions in the reading assignment, providing numerous opportunities to modify models when critiquing demonstration videotapes and student performances in simulated interviews, and encouraging critical evaluation of interviewing behavior throughout the semester.[15]

Another reality complicating the learning of interviewing skills is that students possess different preferences regarding cognitive approaches to information acquisition, decision making, and interaction with the external environment. Theories of psychological type describe ways people differ in their preferred approaches to acquiring information, using it to make decisions, and interacting with their external environment. Although the theoretical foundations of human typology reach back to the fifth century B.C.,[16] the recent impetus for using psychological type theory to understand fundamental differences came from the work of Carl Jung.[17] An indicator designed to make Jung's theory of psychological types understandable and useful emerged from the work of Katharine Briggs

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14. *See, e.g.,* D. BINDER & S. PRICE, *supra* note 1, at vi (lawyers must learn basic approach based on model while simultaneously remaining sufficiently flexible to modify it to meet special circumstances); Kreiling, *Clinical Legal Education and Lawyer Competency: The Process of Learning to Learn From Experience Through Properly Structured Clinical Supervision,* 40 MD. L. REV. 285, 311 (1981) (students should be encouraged to modify theories of action learned by evaluating them in terms of their experience).

15. Repetition is a critically important aspect of skill development. *See* G. BOWER & E. HILGARD, THEORIES OF LEARNING 10, 77-78, 446 (5th ed. 1981); Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education,* in CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS-AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 191, 205 (1980). Although it seems doubtful that a 20-hour unit provides an adequate number of repetitions to develop mastery, clinical students at Florida have additional opportunities to practice these skills by interviewing an average of 10 actual clients during their semester in the Virgil Hawkins Civil Clinic. These students were also required to represent clients in two-person teams with both members asked to attend all interviews. The student who was not the primary interviewer was encouraged to take notes and provide feedback to the interviewing student after the session.

16. The notion that behavior might be ingrained in psychological type started 25 centuries ago with Hippocrates and his theories of social temperaments. D. KIERSEY & M. BATES, PLEASE UNDERSTAND ME: CHARACTER & TEMPERAMENT TYPES 26-27 (1984).

17. *See* O. ISACHSEN & L. BERNS, WORKING TOGETHER: A PERSONALITY-CENTERED APPROACH TO MANAGEMENT 22-23 (1988). In 1921, Jung published the text *Psychologische Typen,* or *Psychological Types,* which provided a basic description of human typology. Jung concluded, after years of observing people in normal and clinical settings, that the population was composed of two basic human "types," the extraverted and the introverted. He believed the introverted to be an abstract type while the extraverted was object-oriented. He then considered the processes of thinking and feeling, and of intuition and sensation. *Id.*

and Isabel Briggs Myers. The Myers-Briggs Type Indicator (MBTI) was published by the Educational Testing Service in 1962 after verifying data was collected on more than 10,000 medical and high school students.[18]

Students enrolled in the Virgil Hawkins Civil Clinic are given the opportunity to take the MBTI early in their clinical semester.[19] The primary goal of using the MBTI in this clinical experience is to facilitate development of collaborative working skills.[20] A secondary objective is to enhance acquisition of interviewing and negotiating skills.[21]

This Article describes a pilot study investigating the value of using psychological type theory to enhance learning legal interviewing skills in a clinical setting. After first describing the type related preferences indicated by the MBTI, it will identify potential type related behaviors as they relate to effective and ineffective applications of the client-centered interviewing model presented by most clinical programs.[22] This preliminary

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18. McCaulley, *The Myers-Briggs Type Indicator: A Jungian Model for Problem Solving*, in DEVELOPING CRITICAL THINKING AND PROBLEM-SOLVING ABILITIES 37, 38 (J. Stice ed. 1987).

19. Students are encouraged but not required to use this measuring instrument. No one has refused and the pass-fail grading approach applied to this clinical experience probably minimizes the potential coercion generated by instructor-supervisor encouragement. Dr. Martha Peters is a certified administrator of the MBTI. Form G of the indicator is used and is computer scored at the Center for Applied Psychological Type located in Gainesville, Florida. The Law School pays the modest cost involved in purchasing and scoring these indicators. Many students have already taken it during their first semester as a tool for improving their study skills in connection with workshops and individual consultations offered by Dr. Peters. Students often retake it to see what effect two years of law training had on their preferences. Unfortunately, no data has been collected on this question.

20. The value of the MBTI in developing collaborative working skills between clinical supervisor and student has been described in Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M.L. REV. 163, 167-68 (1989), and Meltsner, Rowan, & Givelber, *The Bike Tour Leader's Dilemma: Talking About Supervision*, 13 VT. L. REV. 399, 426-27 (1989). The MBTI has been used effectively to improve collaborative working environments within law firms. *See* O. ISACHSEN & L. BERNS, *supra* note 17, at 11-12 (describing use of MBTI at King, Brewster, & Howe in San Francisco to reduce time spent on counterproductive interpersonal activities). It is used increasingly in business management. *Id.*; S. HIRSCH & J. KUMMEROW, LIFE TYPES (1989); Hartzler & Hartzler, *Management Uses of the Myers-Briggs Type Indicator*, 5 RES. PSYCHOLOGICAL TYPE 20 (1982); Pollitt, *Managing Differences in Industry*, 5 RES. PSYCHOLOGICAL TYPE 4 (1982); Sample & Hoffman, *The MBTI as a Management and Organization Development Tool*, 11 J. PSYCHOLOGICAL TYPE 47 (1986).

21. The use of the MBTI in the area of business management has a rich and growing literature. *See supra* note 20. Its value in learning and using negotiation skills in legal contexts is only starting to appear in print. *See, e.g.*, Barkai, Psychological Types and Negotiations: Conflicts and Solutions as Suggested by the Myers-Briggs Classification (1989) (preliminary draft on file with authors).

22. A recent survey showed that the Binder and Price text is currently used at approximately 90 law schools. Morris, *Power and Responsibility Among Lawyers and Clients: Comment on Ellmann's Lawyers and Clients*, 34 UCLA L. REV. 781, 782 n.4 (1987). This

analysis will examine only two behavioral aspects of client-centered interviewing: question formulation and listening responses. Data taken from twenty-three actual client interviews conducted by students in the Virgil Hawkins Civil Clinic over three semesters in 1986 and 1987 will also be presented. The Article concludes by describing the general value of using an MBTI-based introduction to psychological type as a way of gaining greater self-awareness[23] and an appreciation for difference as a rapport-building aid with clients.

II. PSYCHOLOGICAL TYPE PREFERENCES INDICATED BY MYERS-BRIGGS TYPE INDICATOR

Psychological type theory posits that everyone develops preferences regarding the way they choose to use their perception and judgment. Perception in this context involves information acquisition in terms of becoming aware of things, people, happenings, and ideas. Judgment involves decision making, or in other words, the ways people come to conclusions about what they perceive.

The MBTI is recognized as a useful and insightful instrument to provide quick understanding regarding which preferences people possess. The MBTI contains four separate bi-polar indexes which reflect one of four basic preferences affecting the use of perception and judgment. These indexes indicate what people prefer to attend to in given situations and how they prefer to draw conclusions from what they perceive. Two of the scales look at functions for perceiving and decision making. The other two measure attitudes of orientation toward an outer or inner focus and toward aspects of an external decision-making process.

The processes of perception, going back to Jung's insights, are measured by the Sensing-Intuition (S-N) scale. This index looks at a person's preferred mode of gathering information, distinguishing between those who prefer relying primarily upon the process of sensing (S) and those who prefer the process of intuition (N).[24] A sensing preference

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book has also been identified as the one used most often by schools participating in the client counseling competition conducted by the Law Student Division of the American Bar Association. Frank & Krause, Book Review, 18 CREIGHTON L. REV. 1427, 1427 n.3 (1985) (reviewing D. BINDER & S. PRICE, *supra* note 1). As indicated, students in the Virgil Hawkins Civil Clinic study a modification of the Binder-Price model adapted specifically for matrimonial practice. *See supra* note 6.

23. Self-awareness has been stressed as a principal component of effective, client-centered interviewing. *See, e.g.,* G. BELLOW & B. MOULTON, *supra* note 1, at 234; K. HEGLAND, *supra* note 1, at 214-15; T. SHAFFER & J. ELKINS, *supra* note 1, at 364.

24. The jargon may be confusing here because all of the preferences, with the exception of intuition, are indicated by the first letter of the descriptive word. A preference for intuition, however, is designated by an N, most likely because the preference for

signals primary reliance on observable facts or happenings through one or more of the five senses. Persons oriented this way tend to focus on immediate experience and specific, concrete details. Practical, fact-oriented approaches are preferred when attending to and collecting data.

An intuitive preference, in contrast, focuses on patterns, possibilities, and meanings when attending to and gathering information. Persons oriented this way enjoy abstract, symbolic, and theoretical uses of data.[25] It is estimated that three-quarters of the general population in the United States would report a preference for sensing while only one-quarter would indicate a preference for intuition.[26] The percentage of persons preferring intuition grows as the level of education increases, and fourteen of the twenty-three students in this pilot study chose N.

The Thinking-Feeling (T-F) scale measures the judgment process. These opposite preferences for making decisions are described as a primary reliance on deciding impersonally based upon logical consequences, i.e., "thinking" (T), and basing judgment primarily on personal or social values, i.e., "feeling" (F).[27] The thinking function links ideas together by making logical connections objectively. Persons oriented toward the thinking process prefer making decisions by analyzing situations, weighing facts and potential outcomes, and pursuing logical, objective, and often impersonal results. The feeling function, on the other hand, is one which makes decisions by weighing relative values subjectively. Persons oriented toward the feeling process prefer attending to what matters to others, the human as opposed to the technical aspects of problems, and preserving harmonious relationships when making decisions.[28] This index is the only one of the four that shows significant

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introversion uses I.

25. Using a sensing preference to observe and describe an apple will usually result in descriptive terms like "juicy", "red", or "granny smith". One using an intuitive preference, however, might react to observing an apple by thinking of New York City, William Tell, their grandmother's famous pie, or even a computer firm. *See* I. BRIGGS AND M. McCAULLEY, MANUAL: A GUIDE TO THE DEVELOPMENT AND USE OF THE MYERS-BRIGGS TYPE INDICATOR 12 (2d ed. 1985) [hereinafter MBTI MANUAL]; Barkai, *supra* note 21, at 4.

26. MBTI MANUAL, *supra* note 25, at 45.

27. The words used to describe psychological type preferences, like the language of many theories, are terms of art and have different meanings from the normal connotations given to them. The feeling orientation toward decision making is an example. Although the word feeling generally connotes emotions in normal language, and is used in that manner in this article when describing a type of active listening that reflects the emotional component of a client's previous statement, it has a different meaning in type theory. Here it primarily refers to a subjective, value-based criteria for making decisions which is neither exclusively nor necessarily based on emotion.

28. *See, e.g.,* S. HIRSCH & J. KUMMEROW, *supra* note 20, at 41. An apartment manager basing decisions on a thinking preference would give a delinquent tenant a precise, logical message that the rent was late and payment was needed immediately. A manager with a

gender differences, with sixty-five percent of the women surveyed reporting a feeling preference while sixty percent of the men measured indicated a thinking preference.[29] The pilot study had eleven students preferring feeling, nine of whom were female.

A major part of Jung's theory describes the opposite attitudes of extraversion and introversion,[30] and the MBTI measures this preference by an index (E-I) using these same terms. An attitude of extraversion (E) focuses attention externally to objects and people in the environment. Persons possessing this attitude prefer active involvement with people, think best when talking, tend to be action-oriented, and are prone to leaping into tasks with little preparation or planning. The contrasting attitude of introversion (I) focuses attention internally and describes persons who enjoy solitude, introspection, and careful planning before acting. Persons oriented toward this attitude tend to do most of their thinking before acting and focus inward on their thoughts and ideas. Studies estimate that about three-quarters of the general population are extraverted while only one-quarter are introverted.[31] The pilot sample is almost evenly divided between eleven students preferring extraversion and twelve indicating introversion.

The fourth MBTI scale was added by Myers and Briggs and measures attitudes of meeting the external world primarily in the manner of making decisions. These opposite processes are called judging (J) and perceiving (P). The "judging" attitude measures a person's preference for structured decision making, seeking closure, planning, and goal-setting. The "perceiving" attitude measures a person's enjoyment of unstructured, flexible approaches and postponing decisions to continue observing and receiving information. Persons oriented toward judging will tend to seek structure and choose closure over keeping options open. They prefer to make decisions quickly and firmly. Persons oriented toward perceiving, however, prefer to keep things open, fluid, unstructured, and spontaneous. Current estimates suggest that between fifty-five percent and sixty percent of the general population in the United States prefer judging.[32] Js were

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feeling orientation, in contrast, would worry that this message would be too cold and upsetting, and instead would express concern about problems while also advising that the rent had not been received. *Id.*

29. MBTI MANUAL, *supra* note 25, at 45.

30. These terms in type theory descriptions also should not be given their normal connotation in common language. Here the preference for an attitude of extraversion is spelled with an "a" which may help distinguish it from the word extrovert in normal usage. Although there are definitional similarities, there are also many important differences between the meaning given to this term by psychological type and the meaning commonly accorded to extrovert.

31. MBTI MANUAL, *supra* note 25, at 45.

32. *Id.*

substantially overrepresented in this study sample, with eighteen of twenty-three students indicating this preference.[33]

The primary goal of the MBTI is to identify preferences along these four indexes of SN, TF, EI, and JP. It is a device to reflect habitual choices between rival alternatives, analogous to a preference for either right-handedness or left-handedness. Every non-disabled adult presumably uses both their right and left hands, but often does certain things first with the hand they prefer.[34] Similarly, everyone uses both aspects of each of the four preference indicators, but type theory posits that an individual responds either first or most often with his or her preferred functions and attitudes. This may be particularly true when encountering new situations, which is what often occurs when students are introduced to client-centered models for conducting legal interviews.

The MBTI offers forced choices between preference poles. Its questions require choosing between seemingly inconsequential, normal events, and all inquiries reflect the two poles of the same Jungian preference. The indicator, while producing no right or wrong answers since it is designed to measure only different preferences, is scored in a moderately complicated fashion.[35] MBTI results produce a combination of four letters indicating a person's direction of preference on each bi-polar scale, such as INTJ or ESFP. With two options possible on each of the four indexes, there are sixteen possible preference combinations or types. In addition to indicating the preference directions, the MBTI provides points on each scale to show the strength of the preference in terms of how frequently it was reported.[36] The higher the score, the stronger the preference. A low score, on the other hand, shows almost equal votes for each pole of the preference.

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33. A survey of 2248 law students from five different schools in the mid-1960s showed this type distribution: .

E - 55%	S - 41%	T - 63%	J - 57%
I - 45%	N - 59%	F - 37%	P - 43%

Natter, *The Human Factor: Psychological Type in Legal Education*, 3 RES. IN PSYCHOLOGICAL TYPE 55, 56 (1981) (reporting data gathered by Miller in 1965 and 1967).

34. MBTI MANUAL, *supra* note 25, at 3.

35. Each of the responses for a question may be weighted 0, 1, or 2 points, depending upon its predictive value. *Id.* As the authors describe: "Responses that best predict to total type with a prediction ratio of 72% or greater carry a weight of 2; items that predict to type with a prediction ration of 63% to 71% carry a weight of 1; overpopular responses carry a weight of 0." *Id.*

36. This is not necessarily the same thing as how strongly the preference is felt. It also does not necessarily follow that a person with a strong preference has either developed the skills associated with that preference or suffers from the potential problems using that preference in inappropriate contexts can cause. *Id.* at 3, 52-61.

III. THE PILOT STUDY

The pilot study encompassed twenty-three actual interviews conducted by students with clients seeking to dissolve their marriages[37] during the 1986 summer and fall semesters and the 1987 fall term at Virgil Hawkins Civil Clinic.[38] All of these clients were eligible to receive legal services under applicable indigency standards[39] and consented to have their initial interview videotaped.[40] Twenty-two of these clients were female and one

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37. Florida now authorizes legal dissolution of marriage rather than divorce. *See* FLA. STAT. ANN. §§ 61.001-61.20 (West 1985). The lack of agreement among states regarding what legal terminations of marriage are called has generated the use of the term matrimonial to encompass all facets of what was formerly labeled divorce practice. The term matrimonial is used in this context in this article.

38. Author Don Peters was teaching and supervising in the Virgil Hawkins Civil Clinic during these three terms. Co-author Dr. Martha Peters administered the MBTI test to each class at the beginning of each semester and thereafter visited class sessions, explained the indicator's results, and participated in discussions regarding how this information could be useful within the clinic and the two-person case teams.

39. All clients were selected from a waiting list of applicants for legal services created by the local federally-funded legal aid program, Three Rivers Legal Services, Inc. All clients indicated in their initial applications that they wished to dissolve their marriage, and were interviewed briefly by a case intake worker at Three Rivers to determine financial eligibility before being placed on the waiting list.

40. All clients were contacted initially by the Clinic's office manager and advised of the opportunity to be represented by third year law students certified by the Florida Supreme Court to practice law as part of their clinical experience. Clients who agreed to be interviewed were asked during this telephone call if they would consent to having this interview videotaped. This inquiry included a statement that consent was optional and that the opportunity to leave the waiting list and receive Clinic representation was not conditioned on agreeing to be taped. This preliminary inquiry was done to alert clients that their consent would be solicited formally before their interview began and to insure that both the necessary equipment and a member of the Clinic trained to operate it would be present if the client had no objection to taping.

Several clients declined to be taped but were scheduled and interviewed nonetheless. This partially explains why the pilot study does not include one transcript from each of the 30 students enrolled in the Clinic during these semesters. Client consent was solicited again by the student interviewers prior to the interview by asking the client to sign a form acknowledging their consent. This form indicated that the tapes would not be viewed by anyone outside the Clinic and that any subsequent use of transcripts made from these tapes for research would be done with no attribution of names or other identifying details. This Article honors that commitment.

The taping was done through a one-way mirror with the camera and technician in an adjacent room. The technicians were students enrolled in the Clinic trained to operate the video equipment. This procedure was designed to respect client privacy and to avoid losing the privilege of confidentiality through the presence of third parties not lawyers in the Clinic. *See* FLA. STAT. ANN. § 90.507 (West 1979) (confidentiality is lost if third parties are present when communication made). The camera was positioned to record only the student conducting the interview.

was male. All were separated from their spouses at the time of their interviews. Their situations varied in degree of legal complexity and controversy.[41]

The twenty-three students involved in this pilot study were all in their third year of law study and included fifteen women and eight men. In addition, eight of the ten students enrolled during the fall semester of 1986 participated in a pretest conducted on the first day of the term consisting of a simulated thirty minute interview with an actress. The students pretested included four men and four women. These pretest interviews provide a small measure of preexisting skills and, when compared with later interviews, imply growth as a result of the instructional unit.[42]

IV. PRELIMINARY SPECULATIONS ON TYPE-RELATED BEHAVIOR IN LEGAL INTERVIEWING

Several factors require characterizing the remaining portion of this Article as preliminary speculations. The small size of the pilot study may limit the value of any conclusions that can be drawn from it. Although the twenty-three students present a reasonably balanced grouping of basic preferences except for the underrepresentation of persons oriented to the

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Students who conducted an interview were required to review their videotape, write a paper evaluating their general performance, and prepare and critique a two minute verbatim transcript in detail. The videotapes were transcribed by Clinic secretaries.

41. None of the clients qualified for the simplified dissolution procedure created by Rule 1.611(c) of the Florida Rules of Civil Procedure which requires that no children of the marriage exist and that all property issues be resolved before the proceeding is filed. FLA. R. CIV. P. 1.611(c). Sixteen dissolution actions were filed as a result of these 23 interviews. Thirteen proceeded to final judgment. Seven of these 13 were uncontested except that proof of the other spouses' ability to pay child support was required along with notice of the final hearing so that this unliquidated issue could be resolved with both parties present if they desired. *See* Calder v. McNess, 427 So. 2d 393 (Fla. Dist. Ct. App. 1983); Tallman Pools, Inc. v. Wood, 399 So. 2d 112 (Fla. Dist. Ct. App. 1981); Turner v. Allen, 389 So. 2d 686 (Fla. Dist. Ct. App. 1980). Six of the 13 cases were contested and generated private counsel representing the other spouse. One of the six was a bitterly fought custody case that involved use of an optional mediation program, and included depositions of both spouses and a half-day hearing with testimony taken from competing expert witnesses. Four others required temporary hearings on support, custody, visitation, or a combination of these issues.

42. Comparing pretesting to later performances has shown that important behavioral skills of interviewing are learned effectively in clinical contexts. *See, e.g.,* Barkai & Fine, *supra* note 13, at 527; *Interviewing Skills, supra* note 3, at 401; Herman, A Study of the Effects of Legal Interviewing and Counseling Course on Law Students and their Milieu, 39/11-B Diss. Ab. Int'l (1978) (Ph.D. dissertation, George Peabody College) (referring to Krash, Training Law Students in Interviewing Skills, 36/05-B Diss. Ab. Int'l (1975) (Ph.D. dissertation, American University)).

perceiving attitude in decision making,[43] the numbers represented by any of the specific MBTI type profiles is very small. The richest understanding and uses of the MBTI perspective on psychological type theory come from assessing dynamic relationships between the four preferences.[44] Persons preferring intuitive information acquisition (N) and logical, orderly decision making (T), for example, demonstrate different tendencies depending upon the additional factors of whether they prefer an extraverted (E) or introverted (I) orientation toward the outside world. Most of the following speculations, however, are based upon characteristics associated either with only the four general preferences or

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43. This may not be surprising in view of empirical research showing that a perceiving preference is included in the two MBTI profiles with the highest rate of dropping out from law school, INFPs and ENFPs. *See* M. McCAULLEY & F. NATTER, PSYCHOLOGICAL (MYERS-BRIGGS) TYPE DIFFERENCES IN EDUCATION 201-02 (1980) (*reprinted·from* Report of the Governor's Task Force on Disruptive Youth, Phase II, Tallahassee, FL 1974); Miller, *Personality Differences and Student Survival in Law School*, 19 J. LEGAL EDUC. 460, 466 (1967). The pilot study's sample included only one INFP and no ENFPs.

Miller's research was based on an MBTI survey of 896 first year students who enrolled in four prominent law schools in 1963. He computed a dropout ratio for each of the 16 MBTI types by comparing the percentage of dropouts in the type compared to the percentage of that type in the entire sample. A ratio of more than 1.0 means that there are more than expected. Three of the four types that combined preferences for S and P had dropout ratios in excess of 1.0; only ESFP with a ratio of .8 fell below normal. M. McCAULLEY & F. NATTER, *supra*, at 201. Intriguingly, none of these four SP combination types are represented in the pilot study's sample.

The MBTI breakdown for the 23 students in this pilot study was:

MBTI TYPES (n=23)

| ISTJ 2 | ISFJ 2 | INFJ 2 | INTJ 3 |
| [1F,1M] | [2F,0M] | [1F,1M] | [2F,1M] |

| ISTP 0 | ISFP 0 | INFP 1 | INTP 2 |
| [0F,0M] | [0F,0M] | [1F,0M] | [1F,1M] |

| ESTP 0 | ESFP 0 | ENFP 0 | ENTP 2 |
| [0F,0M] | [0F,0M] | [0F,0M] | [1F,1M] |

| ESTJ 2 | ESFJ 3 | ENFJ 3 | ENTJ 1 |
| [1F,1M] | [3F,0M] | [2F,1M] | [0F,1M] |

44. Type theory postulates specific dynamic relationships between the preferences. Each type, for example, has a leading or dominant process while a second serves as an auxiliary. Each type also has its own patterns of dominant and auxiliary processes and attitudes (E or I) in which these are habitually used. The general preference-based characteristics of each type then follow from the dynamic interplay of these processes and attitudes. MBTI MANUAL, *supra* note 25, at 2-3.

with combinations of two of these indicators.

Another limitation flows from the fact that the MBTI only describes preferences based upon a self-reporting instrument. Students must individually determine the value of their MBTI results by comparing them to general descriptions of behavioral traits and characteristics typically associated with general preferences and individual types.[45]

Type theory holds that all types are valuable and that there are no good or bad, sick or well, preferable or nonpreferable MBTI profiles.[46] As a consequence, profile descriptions always contain positive traits and characteristics for each type. This aspect of type theory, coupled with the often lengthy descriptions of type-related characteristics typically found in MBTI literature, makes the approach vulnerable to an argument dismissing its value by analogizing it to astrology.[47]

This argument overlooks the extensive data base verifying the MBTI through users who find its preferential categorizing accurate and valuable in helping them understand themselves and others.[48] It also erroneously

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45. It has been estimated that clients in counseling sessions agree with their MBTI indicators 75% of the time. *Id.* at 52. Although it has never been a problem with the limited use we make of the MBTI in the Virgil Hawkins Civil Clinic, Dr. Peters has encountered situations when students felt that their results were not accurate measures of their type. Retesting and careful interpretation of the results may help. *Id.* at 57-58. The following common causes of inaccurate results have been identified: 1) conflicts felt between demands of work and individual preferences; 2) questions answered in terms of perceptions of the preferences of the authority administering the MBTI rather than one's own choices; 3) misunderstandings of the MBTI terms and accompanying rejections of negative everyday connotations such as interpreting introversion to mean neurotically shy, judgment to connote judgmental, or feeling to signify overemotional; and 4) confusion based on beliefs that type descriptions must fit an individual's characteristics perfectly rather than understanding that there are individual differences within any type or general preference. *Id.* at 57. The fact that the MBTI is administered in a pass-fail course may ameliorate tendencies to respond in terms of what an instructor-supervisor might be looking for.

The authors typically use a two-page handout from the booklet I. MYERS, INTRODUCTION TO TYPE (1984), to help students understand their MBTI indicator and then supplement it with a lecture and discussion as the results are distributed. Students are not required to share their type preferences, but are encouraged to do so, particularly within the two person case teams. Students are not paired in case teams by MBTI results, giving opposites a chance to use the insights of type theory to resolve conflicts in much the same way they may have to do in actual law firms. *See* O. ISACHSEN & L. BERNS, *supra* note 17, at 8; Cole, *supra* note 20, at 167.

46. I. MYERS & P. MYERS, GIFTS DIFFERING (1980) is an eloquent exposition of type theory claiming that each type has its peculiar gifts or strengths, and each has its predictable pitfalls in certain contexts.

47. Liz Ryan Cole notes that lawyers and judges frequently draw this analogy when initially presented with MBTI theory and explanatory material. Cole, *supra* note 20, at 167.

48. *See, e.g.,* Carskadon, *Myers-Briggs Type Indicator Characterizations: A Jungian Horoscope,* 5 RES. PSYCHOLOGICAL TYPE 87 (1982) (study of 129 psychology students showed subjects far likelier to pick their actual or closest type descriptions and their predictions of

assumes that the MBTI is a predictor of behavior or characteristics. The MBTI does not predict. It merely indicates preferences. These preferences lead to tendencies to behave in certain ways, but only if the individual chooses to follow his or her preference and to act that way. Many other factors contribute to behavioral choices besides type preferences. Even strong preferences reported by the MBTI mean only that the respondent, when forced to choose, reported what was preferred clearly.[49] While it may be reasonable to assume that persons reporting clear preferences exercise them more, and consequently engage in associated behaviors more frequently, it should be remembered that this remains an assumption.

Another limitation of these preliminary speculations is that MBTI data can seldom do more than suggest behavioral tendencies linked to type-based preferences. The MBTI does not measure skills because preferences do not equal skills. Introducing persons seeking to learn skills to an MBTI perspective on psychological type will not necessarily tell them either what they are doing or why they are doing it. It may, however, help them identify behavioral tendencies they have that may produce behavior that is effective in particular contexts and present problems in other situations.[50] If these tendencies are producing effective and ineffective types of behavior, a possibility occasionally open to

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preferences were significantly accurate); Carskadon & Cook, *Validity of MBTI Descriptions as Perceived by Recipients Unfamiliar With Type*, 5 RES. PSYCHOLOGICAL TYPE 89 (1982) (similar results). *See generally* MBTI MANUAL, *supra* note 25, at 27 (test-retest reliabilities show consistency over time with any changes typically occurring in only one preference where original preference was low).

49. MBTI MANUAL, *supra* note 25, at 58.

50. These objectives are offered frequently as justification for applying type theory to skill development. *See id.* at 4-5. Behavioral prediction based on type theory has not progressed far in reported research. *See* Carlson & Levy, *Studies of Jungian Typology: 1. Memory, Social Perception and Social Action*, 41 J. PERSONALITY 559 (1973); Moore & Carskadon, *Observing People, Observing Things: Does the MBTI E-I Scale Measure What We Assume It Does?*, 7 J. PSYCHOLOGICAL TYPE 41 (1984). Studies have shown that: (1) under normal circumstances introverts reserved more interpersonal space for themselves than extraverts did. *Id.* at 41 (citing unpublished master's thesis by Nechworth in 1979); (2) extraverts in speech exercise stood closer to judges, had less silence during their speeches, and remembered more of the judge's names than introverts did. Carskadon, *Behavioral Differences Between Extraverts and Introverts as Measured by the Myers-Briggs Type Indicator: An Experimental Demonstration*, 2 RES. PSYCHOLOGICAL TYPE 78 (1979); and (3) extraverts are likelier than introverts to notice people, but this may not apply to things. Moore & Carskadon, *supra*, at 44-45. A study more directly applicable to law practice found that introverts and intuitives, alone and in combination, were more prone to accept post-event information about an event they had witnessed. They would accept both misleading and consistent information and thus were more likely to be inaccurate when misled and accurate when given consistent data. Ward & Loftus, *Eyewitness Performance in Different Psychological Types*, 112 J. GEN. PSYCHOLOGY 191, 197-99 (1985).

dialogue in clinical legal education, they may also help students seeking to learn skills understand why both types of conduct are occurring.

A final and critical limitation of this pilot study flows from the few effective responses produced by all students in many of the categories analyzed. Comparatively few open questions were asked[51] and few active listening responses were used,[52] demonstrating that these students had considerable difficulty using types of behavior advocated by the client-centered model.[53] The totals were so small in these and related categories that meaningful statistical analysis comparing performance to a Myers-Briggs type was not possible. Nonetheless, this Article will present a few differences to identify potential type-related behavioral tendencies that affect question formulation and listening.

A. *Acquiring Information Through Questioning*

An obvious way to acquire information is to ask questions. Type descriptions suggest some behavioral tendencies that can directly impact on learning client-centered approaches to information acquisition. Type theory suggests that extraverts might ask more questions than introverts

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51. There were 1647 questions asked in the interviews and only 101 of them were open-ended, either phrased generally or directed broadly toward a specified topic.

52. Only 370 active listening responses were made during the 23 interviews in the pilot study, comprising 18% of all inquiry and active listening responses used by students during their interviews.

53. This comparatively modest use of open inquiry and reflective listening during the pilot study's interviews is troubling. It underscores the importance of repetition and feedback in skill acquisition. It also confirms the difficulty of learning skills, particularly when the slight use of open inquiry is examined. Students did not challenge the model's advocacy of open inquiry in their classroom discussions and critiques of performances on the simulated exercises. A final, tentative, and troubling observation is that many of these students may have experienced difficulty transferring behavior from simulated client interviews to actual client sessions. This speculation is based upon personal observations suggesting that many of the students produced much more open inquiry in their simulated classroom interviews than when they sat down with actual clients a few weeks later.

The eight students who received a pretest in the fall term of 1986 did show improvement in their average use of open questions. An average of two percent of their total inquiry responses were open when these eight students interviewed an actress in the same simulated matrimonial situation on the first day of the term. These same eight students then used an average of seven percent open inquiry in their interviews with actual clients. This modest improvement is consistent with other studies showing that students increase their use of open questions after receiving simulation-based interviewing instruction. *See, e.g., Interviewing Skills, supra* note 3, at 401; Herman, *supra* note 42, at 71. Herman, for example, found that after 36 hours of interviewing instruction, law students increased their use of open inquiry from an average of 7% to an average of 15% of all the coded behavioral categories he used in his studies. His categories did, however, include listening responses and advice given in addition to forms of inquiry. *Id.*

because inquiry focuses externally on others.[54] This situation occurred in the pilot study as students preferring extraversion averaged seventy-seven questions per interview while students choosing introversion averaged sixty-seven.[55] Type theory would also suggest that persons preferring sensing would ask more questions than interviewers choosing intuition because of the sensor's tendency to seek specific details.[56] That forecast was reflected in the pilot study: the nine students who preferred sensing averaged eighty-one questions per interview, more than any of the four bi-polar dimensions. The fourteen students who preferred intuition, in contrast, averaged only sixty-six questions per interview, perhaps responding to intuition-type tendencies of looking for and being more easily satisfied with patterns, possibilities, and "the big picture." Type theory would also posit that combinations of these scales would produce differences. Thus, extraverted sensors could be expected to use more questions during an interview than introverted intuitives. The pilot study confirmed this as the five ES students averaged ninety-nine questions per interview, the most of any of these four combinations, and the eight INs averaged seventy-two questions per interview.[57]

The number of questions asked relates indirectly to interviewing effectiveness via alternative hypotheses. Students asking a lot of questions, for example, may not be attending to the other types of responses suggested by client-centered interviewing models for building rapport and acquiring information.[58] Alternatively, students asking a comparatively smaller number of questions may not be developing an adequate factual basis to proceed effectively with decision making, planning, and counseling.[59]

A better measure of client-centered interviewing effectiveness concerns question formulation because the models advocate attending

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54. *See* S. HIRSCH & J. KUMMEROW, *supra* note 20, at 14.

55. The value of this measure is lessened by the fact that some interviews lasted longer than others. No systematic attempt was made to either time the interviews or compare how long each one actually took. Two-hour blocks were allotted for the interviews and most of them lasted about an hour.

56. *See* S. HIRSCH & J. KUMMEROW, *supra* note 20, at 27-28.

57. The six EN students in the pilot study averaged 65 questions per interview while the four IS students averaged 57. One IN student used 140 questions in an interview that ran for more than 90 minutes. If that is subtracted from the IN total, the average becomes 62 questions per interview.

58. *See supra* notes 11 & 13.

59. Clinical models of lawyering separate the process of interviewing from the skills related to helping clients decide what to do. When using the latter set of tasks and skills, called counseling, the lawyer looks at how options and their predictable consequences should be presented to clients. *E.g.*, D. BINDER & S. PRICE, *supra* note 1, at 5.

closely to how questions are phrased.[60] These models encourage frequent use of open questions which allow the client to select either the topic or aspects of a designated subject. Open inquiry is encouraged to take advantage of its potential to communicate that clients are important, essential resources in the information-gathering process. It also provides maximum opportunities for lawyers to listen to their clients and build rapport by demonstrating they heard and understood what was being said. Using open questions may avoid the damage to rapport resulting from focused inquiry posed prematurely on topics that are likely to threaten clients. Contemporary interviewing literature acknowledges that an effective interviewer must consider the motivational realities of human communication, and one of these realities is that questions seeking certain types of information can inhibit complete disclosure.[61] Open inquiry is also recommended because it has the information-gathering advantage of letting clients respond from their frames of reference and relevance.

Open inquiry is particularly suggested for beginning interviews when lawyers should invite their clients to talk freely about their situations and what they want to do about them. Client-centered interviewing literature uniformly suggests that beginning with this narrative stage is advisable.[62] Through this approach, answers to specific questions are often provided before they are posed, occasionally producing information about which lawyers would never think to ask.[63] The questions asked in the twenty-three interviews in the pilot study were coded into five categories: (1) general open questions where the topic was not identified, such as "what should I know" and "tell me more"; (2) topic-specific open questions where the subject was identified but the client was left free to discuss any aspect of it, such as "tell me about your children" and "what would you like to see happen as a result of this divorce"; (3) closed questions including yes/no formulations; (4) leading questions where the answer was

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60. *See id.* at 38-40, 59-64; H. FREEMAN & H. WEIHOFEN, *supra* note 1, at 16.

61. *See, e.g.,* D. BINDER & S. PRICE, *supra* note 1, at 6-19; H. FREEMAN & H. WEIHOFEN, *supra* note 1, at 18-19; K. HEGLAND, *supra* note 1, at 198-99; M. SCHOENFIELD & B. SCHOENFIELD, *supra* note 1, at 1-25. Binder and Price identify seven general communication inhibitors: 1) greater need; 2) ego threat; 3) case threat; 4) role expectations; 5) etiquette; 6) trauma; and 7) perceived irrelevancy. D. BINDER & S. PRICE, *supra* note 1, at 9-14. They also conclude that information threatening to a client's self esteem, which they call ego threat, and to a client's situational objectives, which they term case threat, "play the most pervasive role in blocking full communication." *Id.* at 10.

62. *See, e.g.,* D. BINDER & S. PRICE, *supra* note 1, at 53, 59-72; H. FREEMAN & H. WEIHOFEN, *supra* note 1, at 13-16; K. HEGLAND, *supra* note 1, at 196-205; M. SCHOENFIELD & B. SCHOENFIELD, *supra* note 1, at 55-56; T. SHAFFER & J. ELKINS, *supra* note 1, at 77-83; A. WATSON, *supra* note 1, at 36.

63. *See, e.g.,* H. FREEMAN & H. WEIHOFEN, *supra* note 1, at 14; T. SHAFFER & J. ELKINS, *supra* note 1, at 82-83; Elkins, *A Counseling Model for Lawyering in Divorce Cases,* 53 NOTRE DAME L. REV. 228, 234 (1977).

suggested; and (5) compound questions where more than one inquiry was joined in the same interrogative statement.

The average use of open inquiry (including both general and topic-specific open questions) measured against all interrogative responses (closed, leading, compound questions) throughout these interviews was six percent. This overall average is low[64] and conforms to the tendency of lawyers to control interviews by primarily using closed inquiry that has been identified by other observers.[65] The average percentage of open inquiry increased to sixteen percent during the first quarter of each interview, a period which roughly corresponds to the narrative stage recommended by client-centered approaches. The pilot study also confirmed that it is difficult to learn how to phrase simple, non-leading questions in the immediate and interactive situation that interviews present. The average use of compound questions in these interviews was twenty-one percent of all inquiry responses. The average use of leading questions was nineteen percent.[66]

Type descriptions suggest several behavioral tendencies that can affect

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64. No optimal average percentage of open as opposed to closed inquiry has been articulated. None probably exists because this, like much else about interviewing, needs to be determined individually and contextually. The relatively routine, non-contested nature of the situations presented by many of the clients in the sample interviews may partially justify a diminished use of open inquiry. Nevertheless, the review of the transcripts revealed countless situations where interviewers opted for closed rather than open questions. Moreover, students typically followed an open inquiry with closed questions. The transcripts show only 10 instances where the next inquiry after an open question was another open probe.

65. *See, e.g.*, Bellow, *supra* note 2, at 203; Hostika, *supra* note 2, at 606; Neustadter, *supra* note 2, at 229.

66. Research suggests that the distorting potential of leading questions is strongest when the client is unsure of the answer. *See generally* G. BELLOW & B. MOULTON, *supra* note 1, at 210-11; D. BINDER & S. PRICE, *supra* note 1, at 47; Marshall, Marquis & Oskamp, *Effects of Kind of Question and Atmosphere of Interrogation on Accuracy and Completeness of Testimony*, 84 HARV. L. REV. 1620, 1628 (1971). However, leading questions regarding areas where clients sense that the truth may harm their litigation objectives or their self-esteem, pose a strong risk of distortion because internal pressures may tempt them to accept a favorable suggestion rather than acknowledge a threatening fact. D. BINDER & S. PRICE, *supra* note 1, at 47. Leading questions may also harm rapport because clients may feel uncomfortable correcting their lawyers or may believe that the suggestions contained in these questions means that their lawyers have no confidence in their ability to give adequate answers. A steady diet of leading questions can also deprive clients of any meaningful opportunity to express themselves.

Although this pilot study produced many leading questions, it compares favorably to Hosticka's finding that over 25% of the average lawyer's questions were leading in the almost 50 legal aid interviews he observed. Hosticka, *supra* note 2, at 605. Few of the leading questions produced observable distortion. *See* G. BELLOW & B. MOULTON, *supra* note 1, at 211 (general prescriptions against leading questions in interviewing "greatly overstated"). Many, however, could have harmed rapport.

question-forming skills. For example, MBTI theory implies that persons oriented toward extraversion can become so energized by interacting with others that they tend to act impulsively without taking the time necessary to think about what might be appropriate action.[67] Persons oriented toward introversion, however, may tend to react introspectively to a situation and thus take the time necessary to think about and plan their next action. This could mean that introverts have type tendencies that facilitate their integration of the theoretical values of open inquiry into their interviewing behaviors.[68]

This relatively high percentage of ineffective questioning use suggests that inquiry often results from a cognitive process that focuses first on specific rather than general notions. The categorical nature of doctrinal law, appropriately used as a basis for generating questions after initial periods devoted to narrative solicitation and general chronological reviews,[69] appears to generate thoughts of: "it probably happened this way or that way," rather than "did this occur?" Students were encouraged to inject a moment of silence between thought and the verbalization of the question, and to use this time to choose and organize the next response. If students chose a question as their next response, they were also encouraged to select the form that would be the most effective for the particular context they were confronting.

Type theory suggests that introverts, because of their natural orientation toward introspection and planning, may find this easier to do than extraverts who tend to act first and think later. The introverts, for example, averaged seven compound questions per interview while the extraverts averaged eleven. The introverts also averaged five leading questions per interview while the extraverts averaged eight.

The sensing-intuitive (S-N) measure also has implications for learning question formulation skills. Persons preferring sensing tend to focus on concrete, specific, detailed aspects of information, and this tendency easily

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67. *See, e.g.,* S. HIRSCH & J. KUMMEROW, *supra* note 20, at 13-14; I. MYERS & P. MYERS, *supra* note 46, at 53-56; Heinrich & Pfeiffer, *Using the MBTI to Personalize the Teaching of Interviewing Skills,* 8 INT'L CONF. ASS'N FOR PSYCHOLOGICAL TYPE 77, 79 (1989). The point is often made with non-malicious humor that extraverts don't understand what they think about an issue until they hear themselves talk about it.

68. · The 12 students preferring introversion used an average of 8% open inquiry for their entire interviews and 21% during their narrative stages. The 11 students choosing extraversion, on the other hand, used an average of 5% open inquiry during their entire interviews and 12% during their narrative stages. As indicated, the low use of open inquiry by all students makes it impossible to conclude that these differences are not the result of random chance. The 12 introverts, for example, asked only 56 open questions total; an average of 5 per interview. The 11 extraverts asked 45 open questions; an average of 4 per interview.

69. *See* D. BINDER & P. BERGMAN, FACT INVESTIGATION: FROM HYPOTHESIS TO PROOF 162-64 (1984); D. BINDER & S. PRICE, *supra* note 1, at 54, 85-89.

can produce behavior that emphasizes closed questions designed to "get the facts" at the expense of open inquiry.[70] Students oriented toward intuition, in contrast, tend to look for patterns, possibilities, and big pictures when gathering information. This may make them more facile at using open inquiry because broadly phrased questions relate more to big pictures than does detailed inquiry. Students oriented toward intuition compiled an eight percent average use of open inquiry during their entire interviews while students preferring sensing posted a five percent average use of open questions. Sensing students, however, averaged a nineteen percent use of open inquiry during the narrative phase as opposed to intuitives who averaged fifteen percent during the first quarter of their interviews. This may be attributable to one student, an ISFJ, who asked only one question during the first quarter of her interview. That question, "I'd like to hear about your situation," produced a rambling narrative response that extended over six double-spaced pages of transcript. The student made three additional responses during the first quarter of her interview, but they were all active listening summaries. If this 100% average is excluded from the sensing totals, the average use of open inquiry during the narrative stage drops to nine percent.

These same type-related tendencies may also affect development of skills at formulating and asking questions that are neither compound nor leading. A hypothesis might be developed that the sensory tendency to focus strongly on specific details can easily produce questions that combine them in compound inquiry. The students preferring sensing averaged eighteen compound questions per interview; the students choosing intuition averaged fourteen. Moreover, the tendency to focus on specifics associated with a sensory preference can also easily produce

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70. The comparatively low use of open inquiry by all students supports the general belief that lawyers and law students are focused primarily on specific facts during interviews. *See* Baernstein, *Functional Relations Between Law and Psychiatry — A Study of Characteristics Inherent in Professional Interaction*, 23 J. LEGAL EDUC. 399, 408-09 (1971) (law students tended to ask more specific problem-solving questions when interviewing clients than medical residents did when interviewing patients); Barkai & Fine, *supra* note 13, at 505-06. Moreover, much of the anecdotal literature about matrimonial interviewing suggests immediate and exclusive use of specific and focused inquiry. Lawyers interviewing matrimonial clients, for example, are urged to begin their interviews immediately with "more detailed questions and a strong start." N. HUROWITZ, SUPPORT PRACTICE HANDBOOK § 1.06 (1985). Specific, fact-oriented questions framing the situation in legally relevant perspectives are recommended at the beginning to help lawyers evaluate cases quickly. Moss, *The Initial Interview in a Domestic Relations Case*, 22 PRAC. LAW. 59, 61 (1976). Lawyers are told to interrupt rambling descriptions of domestic atrocities at the beginning of interviews to get the basic facts. Kerr, *How to Conduct the Initial Divorce Interview*, 3 BARRISTER 29 (1976). They are also told to direct client digressions regarding matrimonial problems by having them focus only on "critical matters." Moss, *supra*, at 61. One wonders if these authors are oriented toward sensing rather than intuition.

questions that suggest that fact. The sensory students averaged fourteen leading questions per interview, while the intuitive students averaged twelve.[71]

Type theory also suggests that the interaction of extraversion and sensory preferences would produce the strongest tendencies to formulate compound and leading questions. The extraverted sensing students averaged twenty-five compound questions and nineteen leading questions per interview. The eight students preferring introverted intuition, in contrast, averaged fifteen compound and eleven leading questions per session. Students preferring introverted intuition used the most open questions, an average of six per interview. This combination also contained the only two students who used ten or more open questions during their interviews.

B. Listening Effectively

Asking questions is only part of the information-gathering process that occurs during effective interviews. The other part requires effective listening. Like inquiry, listening affects both information acquisition and the development and maintenance of rapport. Client responses to inquiry must be heard and understood to gather information accurately. Listening is the set of skills that approaches that task. These skills include not talking and refraining from interrupting clients, a large part of what clinical scholars call passive listening,[72] as well as making responses that paraphrase what has been communicated, labeled active listening by client-centered interviewing models.[73]

Active listening responses which verbally reflect what the speaker said show that the lawyer has heard and understood what the client conveyed about a particular fact, issue, or feeling. According to client-centered interviewing theory, these responses can and should be directed at both content (objective dates, places, names, facts, and details) and feeling (subjective emotional reactions that clients have to their situations).[74] Active listening confirms, clarifies, and solicits objective information because these statements are often heard as requests to share more detail

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71. An intuitive preference, however, has been described as one that makes leaps and asks questions based on hunches. *See* Heinrich & Pfeiffer, *supra* note 67, at 79. These aspects of the N preference can easily produce question formulations that are either compound or suggestive.

72. D. BINDER & S. PRICE, *supra* note 1, at 23-24; *see supra* note 13.

73. D. BINDER & S. PRICE, *supra* note 1, at 23, 25-37. Binder and Price borrowed the term "active listening" from T. GORDON, PARENT EFFECTIVENESS TRAINING 49-50 (1970). D. BINDER & S. PRICE, *supra* note 1, at 23. *See also* K. HEGLAND, *supra* note 1, at 202; Barkai & Fine, *supra* note 13, at 507.

74. *E.g.*, D. BINDER & S. PRICE, *supra* note 1, at 21-23.

about the topics paraphrased.[75] Active listening also helps develop effective working relationships because it invokes the widely accepted assumption that being heard and understood makes speakers feel better both about the person with whom they are talking and the process of communicating with her or him.[76] The greatest value of active listening, however, flows from the potential these responses have to convey empathy by reflecting a client's emotional reactions.[77] A review of the pilot study interviews suggests that students generally listened effectively to their clients from the perspective of not interrupting them. Although refraining from interrupting is a gross way to measure passive listening effectiveness, there were only seventeen interruptions in the twenty-three sessions for an average of less than one per interview. This compares favorably with a study of fifty legal aid interviews which reported an average of ten interruptions per interview with one occurring about every three minutes.[78]

Comparing average and total use of active listening responses also suggests the potential value of using type descriptions to understand tendencies that can lead to both effective and ineffective behaviors. The average use of active listening responses for the entire interviews, compared to all inquiry and other listening responses,[79] was seventeen

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75. *Id.* at 15. Barkai and Fine predicted that active listening would generate additional information in legal aid settings. Barkai & Fine, *supra* note 13, at 509-10, 514. This prediction was confirmed by this pilot study. Although content reflections were not coded, most of them produced either confirmation or clarification and then additional information. Client responses to active listening statements reflecting feeling were evaluated. Sixty-seven percent of them produced additional information.

76. D. BINDER & S. PRICE, *supra* note 1, at 15; C. ROGERS, COUNSELING AND PSYCHOTHERAPY 131-51 (1942); Barkai & Fine, *supra* note 13, at 507 n.13, 513.

77. Reflecting the emotional content of a client's situation accurately and non-judgmentally communicates that the lawyer can enter the client's world and see it from that perspective. It proves that the lawyer is, in a sense, feeling with, not for, the client — a crucial distinction between empathy and sympathy. Barkai & Fine, *supra* note 13, at 507 n.12; *see* D. BINDER & S. PRICE, *supra* note 1, at 25; D. HAMMOND, D. HEPWORTH, & V. SMITH, IMPROVING THERAPEUTIC COMMUNICATION 3 (1977); C. ROGERS, ON BECOMING A PERSON 329-37 (1961). Research does not clearly identify why skillful feeling reflections build rapport so powerfully. Perhaps this is because it is an unusual experience to have someone hear and reflect feelings accurately without either judging them or substituting other agendas. Clients undergoing a divorce may possess an intense need to have their feelings heard and understood rather than analyzed, judged, or minimized because it is a time when they typically experience excessive self-doubt and receive negative feedback from family and friends. *See* K. KRESSEL, THE PROCESS OF DIVORCE 84 (1985). Surveys of lawyers engaged in matrimonial practice identify client emotionalism as both the most common and difficult aspect of their professional interactions. *E.g.,* H. O'GORMAN, LAWYERS AND MATRIMONIAL CASES 82-92, 113-17 (1963) (survey of New York City lawyers); Feiger, *That Highly Emotional Client,* 9 FAM. ADVOC. 28 (1987) (referring to a survey of California attorneys).

78. Hosticka, *supra* note 2, at 605.

79. This category of ineffective listening responses consisted primarily of statements

percent. The average during the first quarter of these interviews, a time presumably devoted to soliciting client narratives,[80] was also seventeen percent. Although seventeen percent is an undeniably low percentage,[81] the pretest of eight students during one of the semesters confirmed the findings of other studies that active listening skills can be learned.[82] These students used an average of seven percent active listening responses during the pretest simulated interviews and increased that to a seventeen percent average in the actual interview in this pilot study. They also averaged six percent during their narratives in the pretest and nine percent in their actual interviews.

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that echoed precisely what the client just said. The habit of repeating in the exact language what has just been said is often encountered in witness examination classes and actual presentations at both deposition and trial. It is probably less harmful in interviewing than in a witness examination context because it usually involves some aspect of an understandably spontaneous response. It is not fully effective listening, however, because it makes no attempt to paraphrase what was said to ensure that the speaker correctly received the message. Instead, it simply parrots what the client said and may convey the impression that the first answer was either not heard or not believed. *See* D. BINDER & S. PRICE, *supra* note 1, at 25, 30. This category also included an occasional remark that clearly demonstrated that what the client had just said had not been heard. Here is a dramatic example of that type of ineffective listening:

    L: . . . you said earlier that he's living with another woman . . . .
    C: Has two children.
    L: And he has two children by her?
    C: Uh huh.
    L: Now these are their children, his and hers?
    C: Uh huh.
    L: Children of the father?
    C: Uh huh.

80. Central to the three stage approach to client interviewing advocated by Binder and Price is the belief that the beginnings of interviews should focus on building rapport by listening, both passively and actively, to content and feelings communicated by clients to get a general sense of the situation that underlies the client's concerns, the basis of these concerns, and the ways in which clients would like to see them resolved. *Id.* at 6-52. Matrimonial interviews typically generate numerous opportunities to reflect feeling aspects of client statements because the emotional issues typically present are both numerous and central. An extensive active listening response essentially summarizing content is also recommended as a technique for marking the end of the narrative stage and starting the transition to the next phase of the interview. *Id.* at 60-61. The general failure of students to do this in the pilot study forced an arbitrary decision to treat the first quarter, as determined by pages of transcript, as the narrative phase of these interviews.

81. Binder and Price anticipated that law students would find active listening a difficult skill to develop. *Id.* at 32-36. The students in the pilot study clearly experienced these difficulties because even though there is no optimal percentage figure for balancing active listening responses against questions, the percentages used in the pilot study are undeniably low. This is particularly true for the narrative stage of the interviews.

82. *See* B. POPE, THE MENTAL HEALTH INTERVIEW 358 (1979) (empathy is teachable); Barkai & Fine, *supra* note 13, at 527.

The different orientations explained by the E-I preference that may influence questioning ability also may affect learning reflective listening, a predictably new and unfamiliar concept for many law students. The tendency introverts have to pause, reflect, and plan before responding gives them greater opportunities to choose a non-interrogative response such as active listening. Extraverts, on the other hand, may have a harder time assimilating the new skill of using paraphrases rather than questions because of their tendency to respond quicker to client remarks. For example, introverts averaged seventeen active listening responses per interview while extraverts averaged fifteen responses. One student, an ENTJ, used twice as many listening responses (primarily content summaries) during a lengthy session that consumed most of two tapes. If his total is subtracted, the remaining ten extraverts averaged only ten active listening responses per interview.

The S-N scale also suggests tendencies that relate to learning and using active listening. The tendency of the sensing preference toward focusing on specific facts may make it more difficult for students with this preference to substitute active listening paraphrases for questions aimed at details. Conversely, students preferring information-gathering approaches that emphasize possibilities and patterns, such as intuitives, may find it easier to use active-listening paraphrases that pursue broader meanings than those obtained by focused questions.[83]

Scholars have predicted that when lawyers and law students gather information, they will focus more on the objective content of client situations than on emotional reactions clients have to these events.[84] Consistent with these predictions, the student interviewers in this pilot study made considerably more content than feeling reflections when they used active listening. An average of seventy-five percent of the active-listening responses in all interviews combined paraphrased content while only twenty-five percent reflected feelings. The ratio increased slightly during the narrative stage to an average of approximately eighty percent content and twenty percent feeling reflections.

Research in counselor education has suggested that persons preferring extraversion may more easily learn empathic skills like reflecting feelings.[85]

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83. *See supra* text accompanying notes 67, 68, 70, 80, & 82. The nine students preferring sensing averaged 15 active listening responses an interview; the 14 choosing intuition averaged 17 per session. Combining the preferences did not agree with type predictions, however, because the highest average use of active listening responses, 21 per interview, was obtained by the introverted sensors. While the extraverted sensors had the lowest, 11 per interview, the introverted intuitives averaged 16 and the extraverted intuitives averaged 18.

84. *See* D. BINDER & S. PRICE, *supra* note 1, at 21; Barkai and Fine, *supra* note 13, at 505-06. Of the 370 active listening responses made during the 23 interviews, 312 reflected content and 59 reflected emotional aspects of the client's situation.

85. *See* Hogan, *Development of an Empathy Scale,* 33 J. CONSULTING & CLINICAL

This presumably results from the outer, rather than inner, focus of tendencies flowing from this preference.[86] Research has also suggested that an intuitive preference is particularly valuable in discerning the implied-feeling messages of others.[87] This is presumably the result of tendencies to look for patterns and possibilities when acquiring information, and emotional meanings in law offices are often implied rather than expressed directly.[88] Type theory also suggests that persons preferring feeling will be more sensitive to another's affective agenda and presumably be better able to translate that into more feeling reflections.[89]

PSYCHOLOGY 307, 312 (1969).

86. This suggestion was not reflected in this study. *Id.* The 12 introverts, for example, made 38 feeling reflections during their interviews for an average of three per session. They also made an average of 26% of their listening responses reflections of feeling during their entire interviews and 21% during their narratives. The 11 extraverts, on the other hand, made 21 feeling reflections, an average of two per interview. They made an average of 25% of their listening responses reflections of feeling during entire interviews and 10% during their narratives.

87. *See* DiTiberio, The Strength of the Sensing-Intuition Preference on the Myers-Briggs Type Indicator as Related to Empathic Discrimination of Overt or Covert Feeling Messages of Others, 37/5599-A Diss. Ab. Int'l (1976) (Ph.D. dissertation, Michigan State University) (in a study of 139 volunteer undergraduate students who judged the feelings expressed in audiotaped vignettes which had been judged by professional psychologists, intuitives more accurately identified the feeling messages than sensing students did with the difference coming from feelings which were covertly rather than overtly expressed).

88. See *supra* text accompanying notes 75, 77, 80, 86, & 87. Again, the very limited number of feeling reflections used by all students make comparing the average numerical differences between types of scant value. The 14 intuitive students, for example, made 38 reflections of feelings in their interviews, an average of three per session. The nine students preferring sensing used only 21 feeling-based active listening responses in their interviews, an average of two per interview.

89. *E.g.,* Heinrich & Pfeiffer, *supra* note 67, at 80; *see also* Barkai & Fine, *supra* note 13, at 506 n.6 (speculating that students preferring feeling will be more adept at feeling-based active listening). *But see* Kim, The Relationship Between Discrimination Accuracy of Counselor Trainees, Fidelity of Stimulus Presentation and Verbal Content Demand Characteristics, 42/3441-A Diss. Ab. Int'l (1981) (Ts slightly better than Fs at ability to discriminate among levels of counselor skill demonstrated by written and audiotaped materials encompassing both content and feeling). Type theory would describe a feeling orientation as tending to produce behavior good at establishing rapport and getting a subjective view of client dilemmas. It would also warn persons with a thinking preference that this orientation tends to produce behavior not sufficiently attentive to client feelings and affective components of client situations. Heinrich & Pfeiffer, *supra* note 67, at 80. The 12 students preferring thinking made 35 feeling reflections in their interviews, an average of three per interview. The 11 feeling students, on the other hand, made 24 feeling reflections, an average of two per interview. Three students preferring feeling, all female, made no feeling reflections in their entire interview while only one student preferring thinking, a male, avoided this type of active listening response for his entire session. This may partially reflect the concern that traditional legal education powerfully teaches students the value of not following preferred orientations toward decision making in law practice.

Another measure also correlates to the thinking-feeling type preference as it might apply to feeling-based active listening. Type theory posits that a thinking preference, particularly when combined with a judging attitude, creates tendencies for verbal behaviors that inflict more harm on another than the speaker either realizes or intends.[90] Theorizing that this could relate to missed chances to use a feeling-based listening response, the transcripts in the pilot study were examined to find instances where the language used by a client strongly suggested that reflecting emotion would have been appropriate. Forty of these missed opportunities to reflect feelings were identified in the twenty-three interviews, and students preferring thinking missed almost twice as many feeling-reflection opportunities as those students choosing feeling did.[91]

Some of these missed opportunities were dramatic and thus particularly likely to convey an insensitive, exclusively fact-oriented impression of the interviewing process. For example, in describing the death of her baby who had fallen to the floor just after delivery, a client concluded, "and the baby still lived in that hospital for like fifteen hours with no help of any kind." The student, an ESTJ, responded, "This was in [a neighboring state]?"[92] Another client, after complaining that her husband left her for another woman, concluded by stating, "He can't seem to be married." Her student lawyer, an ISTJ, simply responded, "That's understandable."

V. CONCLUSION

Integrating an introduction to a complex theory of psychological type with interviewing instruction takes time, which is often a very limited

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The problem may be particularly acute for female students who may feel an excessive need to emulate the logical, objective orientations toward law which often tend to produce abrupt "just the facts ma'am" approaches to interviewing. *See* Barkai & Fine, *supra* note 13, at 505-06.

90. *See* I. MYERS & P. MYERS, *supra* note 46, at 65-66, 86-87.

91. Admittedly, reviewing only words on a typed transcript misses the non-verbal context through which much emotional nuance is conveyed. Nevertheless, the transcripts revealed two clients demonstrating an emotional reaction intense enough to cause their lawyers to suggest that a short recess might be appropriate. Two others used language suggesting that they were having moderate to strong emotional reactions to the inquiry. The absence of more obvious missed opportunities, given that dissolving a marriage often generates intense feelings of anger, sadness, anxiety, and guilt, may be explained partially by the fact that all of these clients were physically separated from their spouse when these interviews were conducted. It is also explained by the very slight amount of reflecting emotions that the lawyers did. Failing to paraphrase emotions sends a strong message that they are irrelevant and should not be brought into the interviewing agenda.

92. This example came from a transcribed interview not included in the pilot study but conducted by one of the students who also performed an interview later in the term that has been included with this data compilation.

commodity in skills classrooms.[93] Not surprisingly, we believe that this approach is worth this time because it accomplishes several valuable objectives.

Applying type theory to interviewing helps demonstrate the complexity of the two seemingly simple tasks of asking questions and listening. Both require skillful exercise of all eight functions and attitudes measured by the MBTI. Asking questions effectively, for example, requires attending to a sensory orientation to identify the immediate situation with sufficient specificity to decide what the next response should be. If a closed question is appropriate, the detailed focus of this function helps determine what specific aspect of which concrete topic should be pursued. The contrasting intuitive preference is needed to grasp the conceptual merit of using an appropriately formed and phrased inquiry. It also has immense value in developing possibilities and hypotheses when interviewing reaches the stage where possible remedies, legal theories, and factual scenarios need to be tested by inquiry. Using the thinking function allows assessment of the logical consequences of the various possibilities and facilitates phrasing questions in logical, precise language. The feeling orientation permits assessment of the effect the question is likely to have on clients and the relationship that emerges with them as the process unfolds. Skills flowing from an extraverted attitude then produce the external interaction needed to pose the questions and monitor non-verbal responses to them. The introverted attitude, as emphasized previously, creates the time to engage in pre-act planning. The judgmental attitude facilitates following an organized, moderately structured approach to questioning and achieving appropriate closure. Skills flowing from a perceiving attitude allow flexibility in structure and organization, and adaptability to new information when and if it surfaces.[94]

A similar typology can be developed and applied to listening. The same sensory function is needed to attend to the immediate situation to address the issue of what the next response should be, and to paraphrase

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93. Kotkin, *supra* note 5, at 201. Type theory also contains important theoretical concepts of dominant, auxiliary, tertiary, and inferior functions that affect how the preferences interact. *See* MBTI MANUAL, *supra* note 25, at 15-19. American psychologist David Kiersey has introduced a temperament theory of behavior that has been adapted to the MBTI. *See* D. KIERSEY & M. BATES, *supra* note 16, at 29-31. The authors, seeking to present only basic understandings of type theory, typically do not present these additional aspects when they use the MBTI in their clinical classes.

94. For a similar analysis of type and inquiry, defined more broadly in educational terms, see Lawrence, *Teaching for Thinking: A Jungian Extension of Dewey's Ideas*, 12 J. PSYCHOLOGICAL TYPE 38, 41 (1986). An analogous use of type theory has also been advocated for teaching problem-solving skills. *See* McCaulley, *supra* note 18, at 44-45, 47-52. The most effective use of this approach to type encourages using each of these preferences sequentially rather than simultaneously. *Id.* at 44. This is obviously difficult to do in the spontaneous dynamic interviews present.

accurately whatever content or feeling was communicated by the client. The intuitive preference helps identify the possibilities. This is particularly important when implied emotion is reflected accurately to build rapport with the client. The thinking function assesses the consequences of actively reflecting what was said and facilitates phrasing a logical, precise, reflective statement. The feeling function permits orientation toward the other's agenda making reflection of it valuable from that perspective, embraces the need to build rapport by reflective listening, and permits focus on the affective aspects of the situations clients recount. Extraversion is useful in producing the external action needed to reflect, and in running the personal risks that using these skills initially present to those who have not developed them. Introversion again permits the momentary pause and the inward reflection needed to plan how best to reflect what has been communicated. The judgmental attitude allows moving toward appropriate closure while the perceiving attitude facilitates openness to new information revealed by the paraphrase and an accepting reception of it.

Lawyering often rewards those who acquire comprehensive, accurate data. Clients obviously use their preferences when they relate information that they have acquired. An introduction to type theory thus can also increase awareness of and appreciation for the complexity of transferring information accurately from one person to another by acknowledging the likelihood of type differences between interviewer and client. This acknowledgment can help students develop rapport-building skills by giving them an appreciation for fundamental differences in the way humans acquire and use information.

Students may, for example, gain better understandings of why some clients narrate more easily and skillfully than others. An unwillingness to narrate has been identified as one of the challenges students can expect to confront.[95] They may begin to appreciate why some people are not able to present the level of specific detail the students either want or the law may ultimately require.[96] Students may also appreciate the role that type

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95. *E.g.*, D. BINDER & S. PRICE, *supra* note 1, at 104-08. This was not a problem in the pilot study. None of these 23 clients responded initially to their lawyers with silence, verbal indications of discomfort, or evasive remarks suggesting an unwillingness to narrate. Most of them were also willing to narrate during the infrequent times their lawyers gave them the chance to do so. One, for example, provided an initial narrative response that lasted approximately eight minutes and covered more than six pages of transcript. All of the clients responded fully to the predominantly closed inquiry that they received. This willingness to narrate equates with the authors' personal experiences that most clients who wish to dissolve their marriages are eager to talk about it.

96. Type theory suggests that persons with a sensing (S) orientation communicate easily about actual facts and details. Intuitives (Ns), in contrast, tend to be more global and vague. *E.g.*, S. HIRSCH & J. KUMMEROW, *supra* note 20, at 27-30; McCaulley, *supra* note 18, at 48. An S, for example, will predictably give locational directions in a very detailed and

differences may play when clients persist in giving chaotic subjective responses when the interviewers either want or need to keep inquiry logical, orderly, and objective.[97] An introductory knowledge of type theory encourages an expectation of personality differences and provides tools for dealing with them constructively.[98]

A final value of type theory and the MBTI affects both the learning and lawyering processes. Students may find this knowledge a valuable vehicle for self-awareness. While it will not predict behavior, it can identify tendencies related to type that affect behavior. Making these connections can help students identify what aspects of these tasks they do well and what components they need to improve. These connections can also help students understand and accept why others seem so facile at tasks they find hard to do effectively. Finally, the need to pursue self-awareness remains in practice if students seek to continue to learn from their experience, a central goal of clinical legal education. The insights offered by type theory and the MBTI may help students travel this path.

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specific way. An N, on the other hand, will predictably talk about the big gas station on one of the corners and use other vague descriptions. *See* S. HIRSCH & KUMMEROW, *supra* note 20, at 29-30. Law is usually practiced in the realm of details as elements of potential remedies must be identified before they are alleged in pleadings, used in negotiation initiatives, and proven at trial through witnesses and documents. An interviewer oriented toward sensing seeking to verify all of the specific elements required by the law of fraud, dealing with a client who strongly prefers intuition and who remembers the details vaguely, may have a difficult time either believing or building rapport with this client. *See* I. MYERS & P. MYERS, *supra* note 46, at 124. This lawyer also may ultimately lose the case because of an inability to develop the kind of specific proof the court or jury finds persuasive.

97. This presumably happens frequently in matrimonial practice when clients need to talk about the relational (F) aspects of their situations and neither applicable law nor a T lawyer's orientation make these issues legally relevant. For example, all states now allow some form of no-fault divorce so the client's marriage will predictably be dissolved if she wants it to end. *See* Freed & Walker, *Family Law in the Fifty States: An Overview*, 21 FAM. L.Q. 417, 440 (1988). An extensive study of matrimonial practice identified this conflict between the lawyer's orientation of what the law makes relevant and the client's emotional needs. *See* Sarat & Felstiner, *Law and Strategy in the Divorce Lawyer's Office*, 20 LAW & SOC'Y REV. 93, 112, 116-17, 122-23 (1986). This phenomenon is not limited to matrimonial practice. A study of lawyers and law students found that they focused substantially on the facts and issues in situations rather than on the clients and what they were experiencing. T. SHAFFER & R. REDMOUNT, LAWYERS, LAW STUDENTS AND PEOPLE 114-15 (1977).

98. *See* I. MYERS & P. MYERS, *supra* note 46, at 117-25.