Teaching Active Listening: Flipping Roles in Client Interviewing Exercises

By Tenielle Fordyce-Ruff

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Last fall, I found fifty extra minutes in my syllabus. The free time was a luxury I wanted to use well to prepare my students for their summer activities. I promptly knocked on the door of our Director of Experiential Learning and asked her: what single skill should the students have more exposure to? "Client interviewing," she answered—but not because of externships. Turns out, she was in the process of setting up a spring semester street law clinic. Even before the summer, therefore, many of our first-year students would conduct client interviews.

Like many legal writing programs, ours introduces students to a variety of skills. Client interviewing was already one such skill. Our Director of Experiential Learning, however, wanted the students to come away with something extra: a deep understanding that good interviews include not only fact gathering but also relationship building.  

But early in the fall semester, I could not give students sufficient substantive knowledge to help them become great information gatherers. Though attorneys would be present at the street law clinic, the students would interview actual clients alone and would ask the attorneys only for advice about additional information to seek. The students were basically being thrown in the deep end.

I therefore chose to impress on the students the importance of active listening and empathy as the first step to a successful interview. After all, empathy is a core lawyering skill and the students would soon be interviewing low-income clients who wanted to be heard by someone in the legal system. I aimed to help the students empower the clients and develop relationships with them, even if I couldn't train them extensively in every necessary client interviewing skill.

Curricular Goals

Thus, I set out to design an exercise that would both introduce students to client interviewing in context and give them a firsthand understanding of why active listening matters to a client. I began by looking into creating a role-playing exercise.  

Traditional role-playing exercises certainly allow students to practice interviewing skills. Such exercises, however, seemed a poor way to help my students truly understand the importance of active listening in the short amount of time I had. I wouldn't have time to help them analyze success based on whether or not they used active listening. Nor would they have time to debrief a client and to determine how the client reacted to certain choices. I worried also that they would

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1 We wanted the students to be successful and recognized that to do so they would need many basic skills: permitting the clients to give a narrative or timeline in their own words, avoiding interrupting the client, engaging in active listening and showing empathy, questioning the clients about certain topics after the client finishes the narrative, organizing the interview and using particular types of questions, and finally, ending the interview in an orderly way. Linda F. Smith, Was It Good for You, Too? Conversational Analysis of Two Interviews, 96 Ky. L. J. 579, 579-80 (2007-2008).


3 The use of role-playing to introduce client interviewing is common. The students are introduced to the basic skills of interviewing and then an actor portrays the client while the student conducts a simulated interview.
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I wanted to do much more than simply lecture about rules, patterns, and formulas for client interviews. Rather, I wanted to help students feel what an actual client interview could be like for a client. I wanted to give them a firsthand experience of how a client, by feeling heard and understood, can feel more comfortable with the attorney and more willing to continue a conversation. Finally, I wanted them to begin to develop an emotional intelligence that could help them become better lawyers on many levels.

My solution was to flip the traditional role-play: The students’ first client-interviewing activity is a role-play in which the students act as the clients while the practicing attorneys conduct the interview.

Nuts and Bolts of Flipping the Role-Play Activity
To start, I developed a basic story for the student-clients. I tied this story loosely to the factual problem and legal issues they would have to research and write about in their final memorandum assignment. I worked to create realistic characters that the students could identify with. I included the basic facts to set up the legal issue and a backstory that was important for the client to have the attorney hear. I also created facts that would allow the students to be interviewed as a small group, and I instructed the students that they could ad-lib answers if I hadn’t included the necessary facts to respond to a question. Finally, the interview would include more than one client. I used an adverse possession problem, so the three-person family had a stake in the legal issue and attended the interview together.

I then introduced the students to client interviewing in a traditional manner. They read about client interviewing, and we discussed the skills in class, heavily emphasizing listening. Next, the students met with a practicing attorney for 45 minutes: a 30-minute interview followed by time for the students to ask questions of the attorney about the interview.

Before the interview, I sent the attorneys basic information about the exercise, the reading assignment on client interviewing, and a short article outlining adverse possession law in Idaho. I did not send the attorneys the factual scenario. I gave them only a bit of background knowledge—the type they would have from an administrative assistant who asked a few basic questions when scheduling an appointment—but not enough to make the interview canned. I also met with the attorneys to orient them to the exercise and my goals for it.

After the interview, I met with both the students and attorneys in class to determine how the interview went and asked them to reflect on how they felt during the interview.

Results
The exercise was a success. First, both the students and the attorney volunteers enjoyed the exercise. The attorneys enjoyed meeting the students and helping them develop interviewing skills. They also enjoyed the opportunity to discuss the choices they made during the interview with the students. The students, too, appreciated meeting practicing members of the bar and seeing how to conduct a client interview. They enjoyed, also, the ability to ask the attorneys questions about how the interview was conducted.

4 Concordia University School of Law has a very active mentoring program, and some of the first-year students have the opportunity to attend a client interview with their attorney-mentor. But, because we cannot control the activities of the students when they meet with their mentors, I could not rely on this program to ensure that the students would see an attorney conducting a client interview.

5 This follows generally Peggy Cooper Davis and James Webb’s advice for using process drama in the classroom by creating interesting and fully developed characters so that the interaction between the “client” and “attorney” is tied to a motivation and goal. Peggy Cooper Davis & James Webb, Learning from Dramatized Outcomes, 38 Wm. Mitchell L. Rev. 1146, 1151-1153 (2012).

6 Students also reported that because the activity was based on the facts they had to research for their open research memorandum, the client interviewing activity had the added benefit of helping them develop and execute a research plan. It also made them more motivated to find an answer that would help the client instead of simply trying to find the “right” cases for the assignment.
Second, students learned firsthand the value of listening to clients. Many students reported that they didn't understand how difficult it would be to have someone ask them questions. Even though the subject matter—property law—was not particularly emotional or controversial, the students quickly realized that they felt an investment in the outcome and wanted the attorney to be able to help them. Moreover, those whose attorneys asked them more open-ended questions and allowed them to talk at first felt the interview went very smoothly. They all appreciated when they were allowed to answer and received signals from the attorneys (both verbal and nonverbal) that indicated the attorneys were listening.

Building on Success

I plan to build on the success described above. I will add a panel discussion with attorneys, and it will address active listening and emotional intelligence. I also will focus on various interviewing techniques in class and move the actual role-playing interview to an out-of-class time activity. In addition to debriefing the students in class, I will have them draft a short, guided reflection paper after they are done meeting with the attorney.

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Another Perspective

“Attorneys learn about clients in many ways—from reading the indictment and police report on the defendant they are appointed to defend, to reviewing the comprehensive intake form regarding family relations, assets and goals of the client seeking an estate plan. Nevertheless, client-lawyer interviews are significant interactions for both lawyers and clients. The initial interview permits the lawyer to learn the nature of the client's problem and/or goal, its history, and various legally relevant facts. The interview also permits the lawyer and client to establish 'rapport.' The lawyer may be able to advise the client during their initial consultation, or may need to schedule a follow-up counseling session to do so. These are the essential truths that are recognized in all texts that attempt to teach legal interviewing to law students and practitioners. However, one essential insight is missing: The client-lawyer interview is a conversation and, as such, an essentially cooperative activity.”