

Client Interview Training

A Reflection on the “Quantum Shift” in Legal Education

By Cara Cunningham Warren

In 2014, the American Bar Association revolutionized law school accreditation standards in what has been described as a “quantum shift” in legal education:¹ the ABA mandated that law schools prepare students to practice law effectively *upon* graduation.² This requirement transformed the traditional paradigm in which law schools taught students to “think like lawyers,” and graduates learned to practice law in the field.³ Now, law schools must train students regarding both the thinking and the doing, and this has not been a superficial adjustment. Students are now required to earn experiential course credits through clinics, field placements, or simulation courses,⁴ and the success of a law school’s legal education program is judged according to what students actually learn rather than what the law school teaches.⁵

This article illustrates the impact of these changes on one discrete aspect of legal skills training: client interviewing. In this context, I hope to share practical information that may be helpful to new attorneys and the practitioners who mentor them and to spark discourse between us regarding best practices. Open dialogue, in fact, can be mutually beneficial as law schools heed the ABA’s

mandate and delve deeper into practical skills training.

Client interviewing in the classroom

Let’s start with what has changed. When I began teaching first-year legal writing more than 15 years ago, my colleagues and I designed what was, at the time, a forward-thinking class period about client interviewing. It was one of the last classes of the year. It began with a lecture. Students then watched an upper-class student interview a professor, often with a healthy mix of promising work, awkward moments, and outright snafus. The goals were to introduce the topic, engage students at the end of a long year, and provide them with reference materials they could consult at some point in the distant future after they became attorneys and began to learn on the job how to interview clients. Students were entertained by the class, but, as passive audience members rather than active participants, it is highly unlikely that they transferred information to their long-term memory for later retrieval. (I even wondered if they would remember the packet of useful information.)

This year, in contrast, my first-year students have received detailed and repeated instruction about interviewing; ultimately, they will conduct four interactive interviews throughout the year. My objective is to help prepare them for the interviews they will conduct as upper-class students in one of Detroit Mercy Law’s required clinics and as new graduates. Understandably, my expectations are rather low during the first interview in August, but they increase as students practice, receive feedback, and hone their skills. As we progress, the interview groups get smaller, and I formally grade students’ work in the second term.

To promote deep understanding, students are exposed to and maneuver through some of the challenges they are likely to encounter. One of the most difficult tasks for any interviewer is creating an environment of trust and mutual respect while also delving deeply into the conflict that compelled the potential client to seek legal assistance. I help students address this specific challenge by focusing on facilitative communication and rapport-building behaviors and fact-gathering techniques. The approach is based on my experiences, conversations with students and practitioners,⁶ and several secondary sources.⁷

“Future of Law” is a regular column of the *Michigan Bar Journal*. Articles relating to legal education are edited by Ted Becker of the University of Michigan Law School. To suggest a topic or propose contributing an article relating to legal education, please contact Professor Becker at tbecker@umich.edu.

In 2014, the American Bar Association revolutionized law school accreditation standards in what has been described as a “quantum shift” in legal education.

When learning any skill, the process begins with knowledge and is perfected by engaging in a recursive cycle of practice and corrective feedback.

Facilitation and rapport

Experienced interviewers use a range of behaviors to facilitate interpersonal communication and build rapport. Several of the most important facilitative behaviors⁸ are identified below.

Listen actively.

- Be aware of verbal and nonverbal cues.
- Be comfortable with silence.
- Let the client tell the story at his or her pace.
- Be attentive to *how* the client tells the story.
- Recognize the client's efforts.
- Occasionally summarize to affirm understanding.
- Take notes to affirm interest.
- Sketch notes. Don't transcribe.
- Refer to notes in the interim when the client stops speaking, before asking the next question.

Empower the client to participate.

- Tell the client what to expect.
- Tell the client what information is needed.
- Confirm confidentiality.

Convey empathy.

- Maintain eye contact.
- Acknowledge the client's feelings.

These facilitative behaviors build rapport between lawyer and client. Once that connection is achieved, however, an interviewer's next challenge is to maintain it while continuing to gather facts.

Fact gathering

One of the most effective fact-gathering approaches is recognizing the different ways

a question can be posed and knowing when to use which type, as briefly summarized in the table below.⁹

Promoting mastery

As with any new skill, the learning process for client interviewing begins by acquiring knowledge and is perfected by engaging in a cycle of practice and corrective feedback. Those new to interviewing should seek to master these and other facilitative behaviors and fact-gathering techniques by completing three recursive steps:

- (1) Plan how to use the behaviors and techniques, thinking in advance of what one might do or say and identifying un-

der what circumstances one might take such action.

- (2) Prepare and use these techniques when conducting an interview.
- (3) Engage in a reflective process by evaluating the results and planning for the next interview. Specifically, ask yourself: Which behaviors and techniques were effective? What made them effective? Under what circumstances can I use them in the future? Which behaviors or techniques did I attempt that didn't have the desired effect? What could I do differently next time?

In addition to self-reflection, new lawyers who shadow mentors can evaluate the mentors' work to build their own judgment and personal style. For example, after carefully watching how mentors use facilitative behaviors and fact-gathering techniques, new lawyers should consider what they would do in similar circumstances and record their reflections for future use.

Mentors have another important role to play. People can learn by osmosis, and new lawyers can gain something valuable by observing multiple interviews conducted by

Type of Question	When and How to Use
<p>Open Invite the client to answer with significant detail.</p>	<p>Start with open questions and use them for most of the interview to prompt the client to tell the story. Use facilitative behaviors noted above.</p>
<p>Follow-up Use the client's own words.</p>	<p>Use as needed to seek clarification, but try to limit interruptions. Couple with affirmations. Keep list of follow-up questions to raise at the end.</p>
<p>Closed Elicit short answers.</p>	<p>Use to obtain or clarify detailed information. Use sparingly, but when necessary. Avoid using too early in the client's story.</p>
<p>Summarizing List facts and feelings the lawyer has learned.</p>	<p>Use at the end of a discrete portion of the story and at the end of the interview to confirm understanding.</p>

experienced lawyers, but mentors also can take proactive measures to promote more effective learning. For example, mentors can take a few minutes to make their goals and processes explicit. They can strategize with mentees about how to achieve those goals. When debriefing after an interview, mentors can review which goals were achieved and discuss adjusting or improving their approach for the next interview. In this way, experienced lawyer-mentors reinforce a recursive learning process with mentees.

Conclusion

Client interviewing is a complex skill. This piece barely scratches the surface, but I hope it sparks dialogue regarding best practices. These conversations about client interviewing and other essential lawyering skills are critical as law schools continue their “quantum shift” in training students to think like lawyers and to practice law effectively. In particular, professors and practitioners should work together to identify new and evolving practical skills, pinpoint specific aspects of those skills that should be emphasized, and create realistic simulations and other learning experiences. ■



Cara Cunningham Warren is an assistant professor of law at the University of Detroit Mercy School of Law. Legal education is one of her areas of expertise. In addition to her scholarship, she has served as assistant dean of academic initiatives and curriculum director for the school's Canadian-American dual JD program, the only three-year comparative program of its kind.

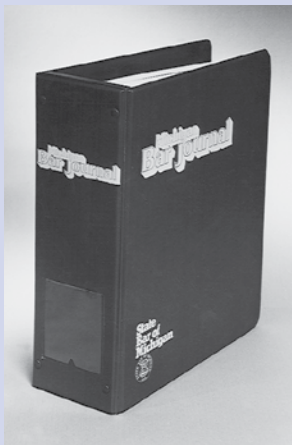
ENDNOTES

1. Cunningham Warren, *Achieving the American Bar Association's Pedagogy Mandate: Empowerment in the Midst of a 'Perfect Storm,'* 14 Conn Pub Int L J 67, 68 (2014) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477475>. All websites cited in this article were accessed November 5, 2017.
2. ABA, *2017-2018 Standards and Rules of Procedure for Approval of Law Schools*, Standard 301(a) <https://www.americanbar.org/groups/legal_education/resources/standards.html>.
3. Indeed, one scholar noted in 2007 that “[i]n the history of legal education in the United States, there is no record of any concerted effort to consider what new lawyers should know or be able to do on their first day of practice or to design a program of instruction to achieve those goals.” Stuckey & Others, *Best Practices in Legal Education* (United States: Clinical Legal Educ Ass'n, 2007), p 2, available at <http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf>.
4. *2017-2018 Standards and Rules of Procedure for Approval of Law School*, Standard 303(3)(a).
5. Law schools must create and publish learning objectives. *Id.* at Standard 301(b). These outcomes must promote competency in substantive and procedural law, professionalism, and a range of lawyering skills. *Id.* at Standard 302 and Interpretation 302-1. Moreover, law schools must assess whether students are achieving these goals. *Id.* at Standard 314, and regularly review and adjust their programs of legal education to promote such achievement. *Id.* at Standard 315.
6. Special thanks to Margaret Costello (Detroit Mercy Law) and Kyle Jones (Office of the General Counsel, Fiat Chrysler Automobiles) for their time and support.
7. Please consult these sources for additional information: Zwier & Bocchino, *Fact Investigation* (Boulder, CO: National Institute of Trial Advocacy, 2d ed, 2015); Aaron, *Client Science* (NY: Oxford University Press, 2012); Binder et al, *Lawyers as Counselors: A Client-Centered Approach* (St. Paul, MN: Thomson Reuters, 3d ed, 2012); Herman & Cary, *A Practical Approach to Client Interviewing, Counseling, and Decision-Making: For Clinical Programs and Practical Skills Courses* (San Francisco, CA: Matthew Bender & Co, 2009).
8. See Zwier & Bocchino, *id.* at 16-21; Aaron, *id.* at 100-123, 255; Binder et al, *id.* at 18-31, 40-62; Herman & Cary, *id.* at 28-34.
9. See Zwier & Bocchino, *id.* at 24-32; Binder et al, *id.* at Chapter 4; Herman & Cary, *id.* at 34-41.

SBM

Custom-Designed Binders

FOR YOUR MICHIGAN BAR JOURNAL



Attractive, durable binder will keep your *Bar Journals* accessible and provide easy storage for 11 issues (not including the Directory issue). Binders cost \$15.84 (includes sales tax), postpaid.

Please send _____ binders for the *Michigan Bar Journal* @ \$14.95 each plus 6% sales tax.

TOTAL ENCLOSED \$ _____ P NUMBER _____

NAME (PRINT) _____

ADDRESS _____ CITY _____

STATE _____ ZIP _____

Mail to: Finance Department, Michael Franck Building
306 Townsend Street, Lansing, MI 48933-2012