Chapter 2 HUMAN RELATIONS AND INTERVIEWING TECHNIQUES

* *If you aren't fired with enthusiasm, you will be fired with enthusiasm*.

—Vince Lombardi

Now combined with the Communications section of the CLA/CP® examination, human relations encompass professional contacts with employers, clients, and other office visitors; co-workers and subordinates; and persons outside the law office. For this reason, the legal assistant should be familiar with unauthorized practice of law prohibitions, ethics rules, practice rules, delegation of authority, consequences of delegation, and confidentiality.

   The interviewing techniques portion of the examination section covers basic interviewing procedures, as agreed upon by most authors on the subject; definitions of terms and basic principles; and handling of specialized interviews. Subject areas included in this portion are as follows:

* • General considerations for the interview situation: courtesy, empathy, physical setting, and body language
* • Initial roadblocks: lapse of time, prejudice, and so forth
* • Form and manner of questions
* • Use of checklists for specific matters
* • Situations involving the very young, the elderly and other persons who may require special handling.

Both initial and subsequent interviews are covered, as are interviews involving clients and other witnesses.

Human Relations

Human relations involve a wide range of associations between individuals, both positive and negative. Legal assistants must deal with all types of people in all types of situations, which demands superior human relations skills. The successful legal assistant is one who (1) has mastered the technical skills of his craft and (2) can relate to and work well with people from all walks of life.

   Human relations skills are measured by the legal assistant's ability to deal with others in a positive way. Those who possess this ability have several things in common: They genuinely like themselves, like what they are doing, and like people in general. They are interested in the well-being of others; they are compassionate without gushing. They practice courtesy and common sense in their professional relationships.

   The successful legal assistant is the one who observes ethics rules and office policies enthusiastically, who can be firm without being overly aggressive, and who is flexible enough to compromise or to try new approaches when situations warrant them. He strives to be a team player in relation to his employer and co-workers. He always is courteous in contacts with persons outside the office, realizing that he is an emissary for his employer. He protects client confidences and willingly assumes additional responsibilities connected with his position. He respects the contributions of others on the legal services team (lawyers, legal secretaries, law clerks, and messengers) and does not view himself as the most important contributor. A sincere interest in others, and the ability to generate empathetic understanding from them, are key ingredients in building the trust and confidence which engender positive human relations.

Contacts Outside the Office

The legal assistant frequently comes into contact with individuals outside the office in person, by letter, or by telephone as part of her responsibilities. These situations provide opportunities to foster long-term relationships based upon honesty, mutual respect, and professional cooperation. The legal assistant should strive to be congenial without being too familiar.

   When requests are made of others, provide sufficient lead time for them to comply. No one likes to be pushed with last-minute requests for information. When little lead time is possible, however, the clerk, court reporter, or other person is more likely to comply with a rush request when it is the exception rather than the rule. Convey appropriate thanks for a job well done. Better still, express appreciation to the person's immediate supervisor or employer.

   From time to time, every lawyer and legal assistant encounters a public official who is uncooperative or difficult in general (a court clerk, for example). Rather than further alienate such a person by demanding that he do his job, the experienced lawyer or legal assistant strives to gain his support. Ask how he prefers to have documents submitted or what is the best way to go about a certain task, even if you already know. Thank him for his time and for his help. Acknowledge him in the courthouse hall. Ask about his family and take the time to remember his wife's name if you happen to know it. It may take several months, but even the most surly court clerk can be converted to an ally over time. Having an ally in a position such as this can be an invaluable asset.

   When the legal assistant must contact a legal assistant, attorney, or other person aligned with the opposing party, she should avoid power games or tricks of one-upmanship. In the long run, these tactics are counterproductive and can result in retaliatory actions which cause additional harm or expense to this client or to a future one. When power tactics are used by the opposing side, the best advice is to sidestep and ignore them as much as possible without harm to the client—as difficult as this is to do at times. Power games are a ploy of insecure people, and nothing is more frustrating to an insecure person than to be ignored.

Office Politics

The only way to avoid office politics is not to work in an office. Office politics exist wherever there are two or more people working together in an office setting. Although office politics often carry a negative connotation, they provide the vehicle for beneficial changes as well.

   When a legal assistant is new to any law office, he is wise to form no firm alliances until he has had time to assess the “lay of the land” by determining where the power centers are. The power centers may or may not correspond with the firm's official hierarchy. For instance, if the senior partner's legal secretary carries great influence with the senior partner, the legal secretary (rather than the senior partner) may be a power center. An assistant to the administrator (rather than the administrator) may be the true power center in allocating assignments and general workloads. By the same token, an alliance formed too soon may be difficult to overcome.

* Bill is a new legal assistant at Samson & Woodward and knows no one except Jane Mitchell, the attorney who hired him. Another legal assistant in the firm, Betsy Barnes, invites Bill to join her for lunch on his first day. He accepts and also accepts two other invitations later in the same week. After about a month, Bill discovers that Betsy is regarded by nearly everyone in the firm as a gossip and a general troublemaker.

Bill may have difficulty extricating himself from the perceived alliance with Betsy, which can create unnecessary obstacles for a person without a proven track record of his own.

   Knowledge of the political structure of a particular law office is necessary to effect change when change is either necessary or desirable. (*See*[***Chapter 4***](https://jigsaw.vitalsource.com/books/9781305483002/epub/OPS/loc_006.xhtml#eid11770)*on judgment*.)

   Although office politics certainly have a role in developing and maintaining rapport within the law office, one seldom can go wrong by being a courteous, cooperative, and competent member of the legal services team.

Personal Recognition

Everyone needs recognition for his or her contributions. This may come as part of a formal evaluation process, by informal evaluation, or through feedback from the supervising attorney on a specific project.

   The first step in receiving recognition for a job well done is to do a good job, no matter how menial or insignificant that job may seem. As a general rule, one who can do a superior job of photocopying and marking voluminous exhibits will be given more challenging tasks in the natural scheme of things. If that does not happen within a reasonable time and if the legal assistant is certain that past and current tasks have been performed well and on time, she can ask to assist with a specific project which she knows is pending. Alternately, she might try her hand at drafting interrogatories or answers to interrogatories based upon information already in the file and then take the draft to the attorney for review. Most lawyers recognize the value of a self-motivated individual and, if the drafting job is done reasonably well, are quite willing to delegate other tasks to such a person.

   The legal assistant should keep track of major projects that he has completed and should review those prior to formal, scheduled performance evaluations. An appointment diary or calendar can be used for this purpose. Unless the project is recorded, it may be forgotten or overlooked—especially if it was completed early in the evaluation period.

   If formal evaluations are not performed regularly (which may be true in a very small law office), the legal assistant can visit informally with the supervising attorney concerning job performance and future goals. The exact approach may vary from one attorney to another, but most are willing to discuss these matters if the legal assistant asks to talk about them and specifically schedules a time to do so. Try to select a time that is likely to be more quiet than other times—if there is such a thing—based upon the lawyer's usual court and appointment schedules. Although it is a good idea to ask for the lawyer's advice or input concerning increased responsibilities, the legal assistant must have specific goals in mind as well. The attorney's needs and the legal assistant's goals generally can be combined in a way that benefits both of them.

   One of the best ways to receive deserved recognition is to give recognition when and where it is due. The person who is willing to share the limelight often finds it is reciprocated by others. Do not overlook legal secretaries and other key support staff members. Mutual respect, support, and goodwill between a legal assistant and a legal secretary can be invaluable in the success of future projects.

   A thorough analysis of all aspects of human relations skills required of legal assistants is beyond the scope of this *Review Manual*. The CLA applicant will be well served, however, by reviewing the materials from other chapters as they relate to ethics, judgment, and communications and by reviewing the human relations perspectives of the interviewing materials discussed immediately below.

Interviewing

Legal interviewing involves the exchange of information between individuals, the objective of which is to elicit relevant facts based on personal knowledge, leads to other witnesses who may possess relevant facts, and corroboration of facts.

   Interviews typically are conducted either in person or by telephone. The interviewer controls the process, assisted by checklists to facilitate collection of information and to keep the dialogue focused. A question-and-answer approach is used to obtain maximum details from the person interviewed, to separate facts from beliefs, and to provide clues to other sources that can be used to corroborate the facts supplied by the client or by the witness.

   Although checklists and forms can expedite the interview, no two legal interviews are exactly the same. Throughout the interview process, the interviewer must be sensitive and responsive to the reactions, attitude, and emotions of the client or the witness. This frequently puts the interviewer's best human relations skills to the test.

   The interview process requires preparation and flexibility from the interviewer. The facts and information obtained during the interview are collected and summarized in a memorandum or witness statement, which is essential in the lawyer's legal analysis of the case.

Types of Interviews

As a general rule, an interview is conducted with either a client or a non-client witness and may be conducted either in person or by telephone. Each situation presents different considerations and requires different techniques for interview management, although common themes do emerge.

**Client Interviews**     The client usually is the lawyer's first source of information, and the initial client interview should be conducted in person if at all possible. Because one interview may not provide the depth of information needed, subsequent interviews—either in person or by telephone—may be required before the attorney can complete a full analysis of the facts and legal issues of a particular case.

   The details of ascertainable facts must be complete, their accuracy must be verified, and resulting inconsistencies must be reported to the attorney. Probing the factual details of sensitive matters requires tact and diplomacy. An intense, confrontational interrogation is certain to escalate the client's discomfort. Depending on the sensitivity of the client and the subject matter, an interviewer can damage the attorney-client relationship irreparably. Should this occur, the fact that the interviewer obtained a complete factual account is of little value.

   The lawyer or legal assistant should explain the investigative process to the client as well as how each step lays the foundation for the next. The client needs to know that the legal assistant will interview others to corroborate the client's facts and to obtain additional facts. Not explaining the importance of corroborating evidence can strain the attorney-client relationship. If a client does not understand the process, she may infer that other people are being interviewed because the lawyer or the legal assistant did not believe her.

**Witness Interviews**     In addition to the corroboration provided through documentary evidence (reports, contracts, leases, invoices, and so forth), personal interviews of witnesses often are used to verify factual details and to corroborate the client's allegations. A witness can be anyone with personal knowledge of facts related to the case. Witnesses generally are classified according to their relationship to the client or to matters involved in the client's case.

**A.**   **The Neutral Witness**     The neutral witness is one who has personal knowledge of facts relevant to the case but who has no relationship with either the client or the opposing party. Neutral witnesses with favorable facts are the most desirable, of course. Neutral witnesses might include a disinterested bystander to an assault or a driver who witnessed an accident while she was stopped nearby.

**B.**   **The Friendly Witness**     This witness generally shares the same perspective, business interests, or career as that of the client. He may be a social acquaintance of the client. The friendly witness often is willing to speak freely but may offer a slightly different perspective than the client. This witness, however, generally corroborates the client's claims; and his statement is used for comparison with statements made by the opposing party's witnesses.

**C.**   **The Official Witness**     A person is an official witness because of employment or because of a position held through election or affiliation with an organization. For instance, a police officer, a tax assessor, a city planning director, and a court clerk are official witnesses. In theory, official witnesses are impartial to both sides of a controversy. They generally provide factual background which neither advances nor restricts either side's legal theories in any dramatic way.

**D.**   **The Expert Witness**     An expert witness may be either friendly or hostile. As a practical matter, this may be influenced—at least in part—by which party retains the expert's services. An expert witness should be interviewed at length to determine his depth of expertise, his presentation skills, and his preparation abilities. An expert witness must have the ability to cope calmly with attacks on his general credibility and on the thoroughness of his conclusions. Examples of expert witnesses include real estate appraisers, architects, engineers, doctors, and other individuals with substantial training and experience in a technical area.

**E.**   **The Hostile Witness**     A hostile witness is not necessarily one who exhibits hostility. Rather, it is one who is unwilling to divulge information. A hostile witness may have knowledge of facts that support either side of the case but is reluctant to volunteer the information. Thus, an individual can be a hostile witness even though she supports the client's position in the case. Such a person technically is an objectively hostile witness, although the term *hostile witness* is used more commonly.

   As the term ordinarily is used, a hostile witness may be reluctant to provide information because of inconvenience to herself or because of uncooperativeness in general—not because of a personality clash between the witness and the client or between the witness and the interviewer.

   Less frequently, the term *hostile witness* is used to describe a witness who displays personal distaste for the client or for the interviewer. If the interviewer believes the hostility is directed toward him (rather than toward the client) and if adjustments in the interviewer's approach prove ineffective, someone else should interview the witness. Acknowledging a personality conflict early in the interview can save time and effort. Having another interviewer conclude the interview is not a failure of the initial interviewer; rather, it indicates maturity and strength in having recognized the incompatibility.

   All interviewers encounter personal hostility from a witness on occasion. If this situation occurs more frequently, however, the interviewer must reevaluate his interviewing style thoroughly and thoughtfully and must make constructive changes.

**Personal Interviews**     Personal interviews are those conducted face to face between the interviewer and the client or the witness. The law office generally is the most conducive location for personal interviews, because the environment is more easily controlled by the interviewer. Client interviews, especially initial client interviews, generally are conducted in the law office; witness interviews, however, frequently are conducted at the witness's place of employment or home. These types of interviews are called *field interviews*.

   When the legal assistant or the attorney must travel to the witness to conduct a personal interview (field interview), adapting to the witness's environment is critical in establishing rapport. This is where the flexibility of the interviewer pays its greatest dividends. Because the environment is foreign to the interviewer, using a prepared outline and planning the questions to ask create a measure of confidence that will benefit both the interviewer and the witness.

   The primary advantage of a personal interview is that it facilitates more personal interaction than a telephone interview does. The relationship of trust and confidence between the attorney and her client is fostered by personal contact. A personal interview allows the legal assistant or attorney to use all of her senses to evaluate the client (or the witness) and the facts related by him. Unusual physical characteristics, body language, and physical mannerisms are important in assessing credibility and the way in which the client or witness likely will be perceived by a jury. None of these things can be determined in a telephone interview.

**Telephone Interviews**     When a personal interview cannot be arranged, a telephone interview may be the next best option. At the beginning of every telephone interview of a witness, state the purpose of the interview and obtain permission to conduct the interview. In addition, clarify who the parties are in the case and who it is that the law firm represents.

   The legal assistant's telephone skills are tested regularly when dealing with individuals who are reluctant to divulge information. Making a simple inquiry such as “Can you help me?”, followed with an explanation of what information is needed, often opens the conversation. People usually want to help, and they certainly like to be asked.

   Although a telephone interview may not be the most desirable interview method, it is efficient and economical. Many individuals and agencies can be contacted by telephone in a short time, without great expense to the client. Those who have personal knowledge about the case can be scheduled for personal interviews. Even if an individual has little or no personal knowledge about the matter, she may provide leads to others who do have helpful information. Also, contacting a witness early in the case—even by telephone—may generate a psychological alignment of that witness with the client rather than with the opposing party.

   A major disadvantage of the telephone interview is the inability to see the witness. Being unable to observe the reaction and body language of the witness is an obstacle for the interviewer. The witness's reaction to questions can be revealing in evaluating the information provided by him. Nervousness, fidgeting, twitching, lack of eye contact, or similar conduct may indicate a problem with credibility; however, these exhibitions cannot be detected in a telephone interview.

   The decision to record or not to record a telephone interview is left to the supervising attorney. If the attorney approves the use of a recording device, the legal assistant must seek permission of the witness to record before any recording takes place. If permission is given, the legal assistant must follow the same rules that apply when recording a personal interview (*see below*).

The Interviewer's Role

Creating rapport and building trust throughout the interview are the responsibility of the interviewer, whether the interviewer is the legal assistant or the lawyer. Treating clients and witnesses with respect goes far in establishing and maintaining the requisite level of trust.

**Attitude**     The legal assistant often has significant contact with the client and with witnesses during the investigation period of a case. Thus, the legal assistant is a public relations representative for the firm; she has great impact on these important people. Courtesy, truthfulness, and discretion throughout this process are critical to the credibility of the legal assistant and of the firm. *The legal assistant****never****expresses personal opinions,****never****patronizes a client or a witness, and****never****is condescending*.

   On very rare occasions, one encounters a legal assistant or a lawyer who assumes an attitude of superiority, particularly when dealing with a client or witness with less education or with a lower economic position. This approach assumes that education or money equate to intelligence. Frequently, the exact opposite is true; and the fact that an educated person ever could make such an assumption proves the assumption wrong. The interviewer who views herself as superior to a client or witness cannot possibly hope to be successful in eliciting full cooperation from that person; her attitude will come across in a negative way no matter how much she tries to hide it. These types of interviewers seldom are found in private law offices for the simple reason that they cannot sustain themselves as effective members of the legal services team for very long.

**Concern**     For a client more than for a witness, a visit to the law office frequently is triggered by some traumatic event. Divorce, personal injury, death, rape, criminal charges, or business failure can produce intense stress. Although the situation may be minor, routine, or “old hat” to the interviewer, the client's perception is quite different. His problem is unique and traumatic for him, making it essential for the interviewer to exercise patience, understanding, and sensitivity to the client's plight. Generating a feeling of empathy shows concern for the client.

   Sensitivity to the client's situation provides countless benefits in establishing a solid attorney-client relationship. Studies indicate that it is not the lawyer's win-loss ratio that retains clients or that prompts them to refer others to a particular lawyer. Rather, it is the respect and genuine concern shown by the lawyer and the lawyer's staff. Despite all of the marketing techniques now available to lawyers, repeat and referral business ultimately make the difference between a lawyer who is successful and one who is not.

**Courtesy**     Courtesy always is a correct approach to dealing with people, no matter what the situation is. Extending small courtesies to a client or to a witness pays huge dividends. An open, communicative environment begins with common courtesy. For example, greet the client in the reception area and personally escort him to the conference room or to your office; this is a simple but essential client development technique. Remember and mention significant occasions previously referred to by the client (an anniversary, a birthday); this demonstrates personal interest. When the interview is over, escort the client back to the reception area as a common courtesy. It can be both embarrassing and awkward for the client to try to find his way out of the office unescorted. Every client wants to be assured that he is important to the law firm, and personal attention from the lawyer and from the legal assistant symbolizes a client's importance.

   During the interview and throughout the progress of the case, a simple way to demonstrate genuine interest in the client is to listen closely to what he has to say, whether in person or by telephone. People generally like to talk if they have an audience and will reveal information readily to a courteous, interested listener. This approach allows the legal assistant to hear what the client says, to relate the information to data gathered previously, and to formulate relevant questions at the appropriate time. The courtesy of listening is a powerful tool for building the attorney-client relationship.

   Return the client's telephone calls promptly. Although information may not be the positive news hoped for, the client expects and deserves to know all information related to her case. Delaying calls sends a negative message about the lawyer, which can extend to the legal assistant as well.

   Send courtesy copies of correspondence and periodic status reports to the client. These simple communications keep clients informed and happy. Lack of communication is the most frequent criticism of lawyers and sends a negative message. Inundating the client with relevant information is essential for maintaining a positive professional relationship.

**Avoid Legal Jargon**     Avoid technical legal terms as much as possible during an interview. Using a foreign vocabulary of legal jargon will not impress any client. More likely than not, it will be a source of genuine frustration, which can shatter all previous efforts to establish rapport with that client. Asking questions in plain English generally is one of the things that legal assistants do best; the interview process allows them to capitalize on this asset.

   If, on the other hand, the client uses technical terms connected with his expertise or profession, the legal assistant should seek precise definitions for those terms to ensure that she uses them in the same context as the client uses them. It is helpful for the legal assistant to adapt to the jargon of the client, but is unrealistic to expect the client to adapt to the jargon of the law office. To understand the technical terminology of a case better, the legal assistant should review available documents or materials as well as the attorney's notes prior to the interview. This will provide some familiarity with the terminology and will prepare the legal assistant to ask appropriate questions for clarification during the interview.

**Personal Opinions**     The legal assistant never expresses his personal opinions or personal judgments about the case, the opposing party, the opposing party's lawyer, or anyone else connected with the client's case—not even if his opinions concur with those expressed by the client and not even if his motive is to show support for the client. Find some other way to show support.

   Limiting personal opinion during the fact-gathering process does not mean the legal assistant is not allowed to express personal feelings about any topic. It is appropriate to identify with a client's joy or frustration, as the case may be, as long as the legal assistant does not lose his objectivity. It would be insensitive, for example, not to show pleasure if the client relates that she has won a $30,000 lottery.

**False Expectations**     Never should the lawyer or the legal assistant give the impression that a client's case is a sure winner. Letting the client know that the law firm will work diligently on the client's behalf is the best message.

**Keep the Client Involved**     Describing the legal process and explaining the steps involved are basic to the client's understanding of her legal matter. The lawyer also should give the client a realistic explanation of the range of anticipated results, and the client should be involved in any decisions affecting the outcome of the case. When the lawyer shares authority with the client, the end result often is more positive for both.

   Whenever possible, involve the client in the fact-gathering process. In some situations, only the client can obtain privileged records. If the client is cost conscious (who is not these days?), she will feel she is contributing to the cost containment of her case. Keeping her involved by asking her to obtain some of the records and documents needed for the case produces a cooperative spirit between the client, on the one hand, and the lawyer and her staff, on the other.

**Ethical Limitations**     The lawyer should explain the legal assistant's function and role in the overall case management. If the lawyer has not explained the legal assistant's role, the legal assistant must explain her status to the client and the purpose of her involvement. The client must be informed, for example, that the legal assistant is not a lawyer and cannot offer legal advice, represent the client in court, or discuss fees. With these limitations, the legal assistant will be involved in all phases of the case and will work closely with the lawyer throughout the case.

   Any information conveyed to the legal assistant by the client is confidential, just the same as if the information had been conveyed directly to the lawyer. The legal assistant has a responsibility to furnish all information she obtains to the lawyer, even if the client requests that specific information be withheld. Everything must be shared with the lawyer. If a client asks the legal assistant not to tell the lawyer about a particular fact or situation, she should try to stop the client before he divulges the information and should remind the client of her ethical obligation to deliver all information to the lawyer. The client then can decide whether to provide the information or not. If the client elects not to discuss the matter, the legal assistant also has an obligation to inform the lawyer of the client's reluctance to share specific information.

## The Interview Environment

The setting of the interview should be conducive to the fact-gathering process. Ideally, this means a private interview in a controlled environment. Interviews conducted in the law office usually meet this criterion; field interviews seldom do.

**Office Interviews**     The interview should be conducted in a location which is completely private, orderly, and conservatively furnished. A private conference room is ideal if one is available. To avoid potential distractions, remove all other files and materials not associated with the client's case from the room. Anticipate any needs that the client or witness may have (beverages, tissues, and so forth) and bring those items to the conference room.

   If a conference room is unavailable, the legal assistant may conduct the interview in his office as long as his desk is clear and the office is neat. All files and loose papers other than those related to the client should be removed from sight. Nothing other than the client's materials and a notepad should be on the desk. This conveys the message that the client's case is the most important thing on the legal assistant's agenda.

   If the legal assistant's office is used for interviewing, the decor should be as understated as possible; any artwork, conservative; and the color scheme, muted. Male interviewers may find it helpful to incorporate a few plants or photographs of children into the decor; this indicates his nurturing side. Female interviewers should avoid having more than one plant in the office for the same but opposite reason. Females may benefit from a decor which incorporates a framed Bill of Rights, Gettysburg address, or similar items. Hopefully, sexual stereotyping is on its way to becoming an archaic social blunder. In the meantime, however, the legal assistant cannot ignore its impact—particularly when dealing with older people who are not ready for radical social changes.

**A.**   **Privacy**     Privacy is the most important environmental characteristic of a successful interview. When clients are interviewed, privacy underscores client confidentiality, which is critical to free exchange of information between the client and the legal assistant.

   Let the receptionist know when an interview begins and arrange for the telephone to be answered during the interview conference. Making these arrangements emphasizes to the client that her case is important and is taken seriously by the interviewer. As a practical matter, the information from the client will flow more easily if distractions and interruptions are held to a minimum.

**B.**   **Image**     First impressions count and frequently are difficult to displace. Just as the office setting creates a first impression, the appearance of the legal assistant leaves a distinct and lasting impression on the client.

   Clients and witnesses expect lawyers and those associated with lawyers to look professional; they should not be disappointed. Conservative, tailored business attire creates a favorable impression. Simple jewelry (no excessive number of rings, no gaudy tie tacks), conservative hairstyles, and only the most subtle perfumes or colognes (if any at all) likewise should advance the client's first impression of a conservative professional.

**C.**   **Seating Arrangements**     The seating arrangement is important to the interview process. For example, a particularly gregarious client or witness may need to be kept at a distance (such as across the desk) as an unspoken reminder that the legal assistant is in charge.

   In interviewing a shy client, it may be better for the interviewer to move her chair to the side of the desk (to minimize the authority symbol of the desk) to promote the client's sense that she and the legal assistant are much the same. Using an excuse of poor hearing or some other pretext, the interviewer even may move to a chair located on the same side of the desk as the client's chair, using care not to move so close as to invade the client's personal space—especially during a first interview.

   Many lawyers use a small, round table; a small sofa; or overstuffed chairs located away from the desk area, sometimes in the corner of the office, to create an impression of intimacy that is similar to a home environment. This frequently puts people at ease and helps to build trust and confidence with the client or witness. The more comfortable a person feels, the more information the interviewer will obtain.

**Field Interviews**     The environment in which a field interview is conducted is difficult for the interviewer to control. The interview may be conducted at a construction site, in a manufacturing plant, or at the home or office of the witness. Each of these locations is approached differently by the interviewer.

   It may be necessary, for example, to interview a witness at a construction site with heavy equipment operating in the background or at a manufacturing plant with assembly-line noise. The interviewer's ability to adapt calmly to these types of environments helps to establish trust and confidence with the witness.

   The legal assistant may be required to wear protective clothing, a helmet, or goggles in some field settings. At a construction site, a male legal assistant may elect to loosen or to remove his tie or to roll up his sleeves to bridge the identity gap with the witness more quickly. A female legal assistant in the same setting may want to wear flat shoes and a simple, open-collared blouse—perhaps with slacks or a denim skirt—that day. It will be easier for a witness to identify with an interviewer whose appearance in the field is somewhat similar to his own. The more information the interviewer can glean from the witness and from observing applicable procedures or processes at the field site, the better prepared the case will be for settlement or trial.

   If manufacturing procedures or processes are not an issue in the case, the field interview should be conducted in a private location, preferably one that is quiet enough to permit normal conversation. Avoid high-traffic areas, such as a lunchroom or a loading dock, where the curiosity of other workers may be aroused. More information will be obtained if the witness is comfortable that he will not be overheard by others. If no other quiet place is available to conduct the interview, an automobile may provide some privacy. Another option may be to invite the witness to lunch at a nearby restaurant or diner. Field interviews often test the interviewer's creativity as well as the soundness of her interviewing skills.

## Preparing for the Interview

A well-executed interview cannot occur without thoughtful preparation. In addition to planning the interview's general direction ahead of time, the legal assistant must gather all necessary files, paperwork, and equipment for the interview. This may include authorization or release forms, checklists, business cards, notepads, and recording devices (if appropriate). If copies of documents will be distributed during the interview, extra sets of these documents should be available. The organization and efficiency of the interviewer create a favorable impression in any interview setting.

**Review Relevant Data**     Well before the scheduled interview, the legal assistant should review carefully any information about the case and the client or the witness that may be available. This should include at least a brief conference with the supervising attorney to obtain her preliminary evaluation, analysis, and instructions.

   When it is possible to do so, initial interviews with clients should be preceded by a review of any applicable statutes and case law. This helps to define the legal issues as well as the elements of proof required in a particular type of case, which, in turn, helps to focus the direction of the interview.

**Checklists**     Select the appropriate checklists and related forms prior to the interview. Use checklists to help stay on track and to obtain the information needed but do not be a slave to them. Recognize that every interview flows differently because the person being interviewed is different; the checklist should facilitate—not obstruct—the interview process.

   Each practice area typically generates its own checklist, which should be revised frequently to hone the procedures and the interview style of the interviewer. Used appropriately, a checklist improves the interviewer's efficiency and effectiveness. It allows the interviewer to concentrate on what the client is saying rather than on the next item of information that the interviewer needs to obtain.

**Forms**     Determine whether any preprinted forms may be needed in connection with the client's matter and gather all such forms prior to the interview.

   If the interview relates to a personal injury claim, for example, authorizations or releases usually are required to investigate the claim. Several authorization or release forms should be signed during the interview. The signed forms then are presented to doctors, hospitals, insurance companies, and others to obtain privileged information.

   Each area of the law typically requires its own standardized forms for authorization or release of pertinent information. For instance, estate planning or probate administration requires releases to obtain financial information from various institutions; labor law requires signed forms to acquire personnel records; and real estate mortgage companies require releases from individuals before financial information is relinquished. Anticipating what forms may be necessary will save contacting the client again merely to sign forms.

**Notepad**     Use a notepad to record the client's or the witness's comments during the interview process. The legal assistant never should allow note-taking to impede the flow of the interview. Notes must be sufficient to allow the legal assistant to prepare a detailed memorandum or witness statement of the facts related to him. At the same time, however, the interviewer must be attentive to the client (or to the witness) by using frequent eye contact and other active listening techniques. This reassures the client that the legal assistant is listening and is interested.

   Over time, most interviewers develop their own codes to record notes efficiently during the interview. Studies indicate that significant rapport is lost when answers are recorded by the longhand method while the client or witness sits quietly, waiting for the next question. Using a shorthand or speed writing method to take notes maintains spontaneity and rapport. Immediately after the interview, the legal assistant should dictate or otherwise prepare the memorandum—while the notes still are fresh (*see below*).

   A notepad also comes in handy if a field witness is willing to sign a written statement. When the witness agrees to sign a written statement during the interview, it is best to obtain his signature before returning to the office. In this situation, the statement ordinarily is written in longhand. After the interview is over, witnesses sometimes decline to sign statements. The lapse of time occasionally causes people to question their involvement or to be influenced negatively by the opinions of others. Some interviewers make it a practice to use the signed, handwritten statement to prepare a typewritten statement, which then is delivered to the witness for signature. This may seem less threatening, because the witness already will have signed one statement (the handwritten one) and can compare the two statements to be certain that nothing has been changed. *Additional information on witness statements is covered later in the chapter*.

**Recording Devices**     Lawyers differ in their views about recording interviews. Some lawyers believe that recording inhibits the client or witness, making her more concerned about how sentences are structured than about telling what she knows. Some witnesses feel uncomfortable about being involved if their every word is recorded at the first interview. (Recorded interviews of witnesses can be a disadvantage if the information is more beneficial to the opposing party than it is to the client.)

   Other lawyers believe that the benefits of a recording outweigh the disadvantages. A recording keeps the witness honest by providing an irrefutable record of the facts and events related by the witness; the witness becomes committed to that version of the facts contained in the recording; and subsequent, contradictory statements are minimized. A recorded interview occasionally is so convincing that it can be used as leverage to negotiate a favorable settlement for a client. Another advantage of a recorded witness statement is that it accurately reflects voice inflection and mood, which notes cannot do.

   If recording occurs, certain formalities must be observed.

* • The interviewer states his name, date, and the purpose and site of the interview.
* • The witness is introduced and is asked for permission to record the interview, and a statement is made or acknowledged by the witness that the interview is given voluntarily.
* • All persons in the room are identified, together with their connection to the litigation and their reason for appearance.
* • Any interruption is identified by time, date, and reason for the interruption. When recording recommences, the time, date, and those present are announced once again.
* • Some jurisdictions require that the witness receive a copy of the transcribed statement or of the taped interview.
* • The conclusion of the recording includes a statement that the recorded interview was given freely and that the witness was given the opportunity to make any changes.

   An indirect benefit of recording an interview is that it allows the interviewer to assess his own performance. This is particularly helpful for an apprentice interviewer. Allowing him to evaluate his interviewing style and verbal skills provides a means to improve his interviewing technique.

**Photocopy Equipment**     Photocopy equipment should be accessible at the interview site. If a witness brings useful information to the interview and is willing to share it, copies of everything should be made immediately. After the interview is concluded, the witness may misplace the information or may not feel as cooperative as he did during the interview.

   Before a field interview takes place, determine where the nearest photocopy machine is located. Timely access to valuable information through photocopies can affect the strategy of the case. Until a comprehensive analysis of the facts and legal issues is performed, all information potentially is relevant.

**Preparation for Field Interviews**     The preparation for a field interview proceeds in much the same way as preparation for an interview in the law office. One additional consideration in a field interview is transporting the interview items (file, forms, documents, tapes, recording devices, and business cards) to the interview site. A good leather briefcase is a status symbol in the corporate world and serves the legal assistant well, particularly in conducting field interviews. It enhances the legal assistant's professional image and solves the problem of transporting equipment and supplies.

   A business card identifies the interviewer to unfamiliar witnesses in the field. If a letter was mailed to the witness to arrange the field interview, show a copy of the letter to the witness to establish further identification. Provide as much information as is necessary to make the witness comfortable with the legal assistant's identity.

## Conducting the Interview

A successful interview requires planning, effective use of equipment and resources, and superior human relations skills of the interviewer. The ultimate purpose of an interview is to obtain the facts within the personal knowledge of the client or the witness. The way in which facts are gathered sets the climate and the tone of the interview; it directly affects the quality and quantity of facts that a client or witness may be willing to share. A successful interview depends on

* • the interviewer's demeanor or “bedside manner”;
* • the client's (or witness’) impression of the interviewer;
* • the interviewer's method of seeking information;
* • the interviewer's comprehension of the facts related by the client;
* • the client's expectations of the outcome of the case; and
* • the interviewer's ability to address the client's (or witness’) apprehensions.

   Interviewing skills are used in both litigation and nonlitigation matters. Preparing for litigation requires considerable client and witness interviewing. With proper discovery work and thorough investigation of facts before and during litigation, a case often can be settled without trial. This saves time and effort for the lawyer and saves money for the client.

   In addition, client interviewing is used extensively in (i) the corporate area to create new businesses, for mergers, consolidations, and acquisitions; (ii) the estate administration area to create estate plans and administer probates; (iii) the labor relations area to investigate discrimination matters and union/management disputes; (iv) the bankruptcy area to gather financial data and to investigate financial records; and (v) the real estate area in relation to closings and other transactions.

   Once the lawyer determines that she may be interested in accepting the case, the fact-gathering process begins.

   The time of the interview must be convenient for the client or the witness. Allocating sufficient time is essential to the interview's success, although planning around the schedules of professional people can be challenging. The interviewer's sensitivity to schedule demands will gain the cooperation of these busy people. To be effective, interviews should not be sandwiched too tightly between other appointments for either the interviewer or the client. Otherwise, needless time pressures and stress can result.

**Introductions**     Proper introductions are essential to establish the credibility and the roles of all those involved in the interview process. Especially in connection with an initial client interview, the lawyer should introduce the legal assistant formally to the client—either during or immediately following the lawyer's preliminary conference with the client. The lawyer should use the introduction as an opportunity to explain the involvement of the legal assistant to reassure the client of the legal assistant's competence and expertise.

   For example, the lawyer might call the legal assistant into her office and say, “*This is Chris Baker, my legal assistant, who works closely with me on several of my cases. I have asked him to assist me with your case as well. Feel free to discuss anything with Chris that you would discuss with me. If ever you need to reach me and if I am not available, do not hesitate to get in touch with Chris. He usually can locate me within a very short time and will be able to answer many of the questions that you might have. Since Chris is not a lawyer, your overall attorney fees will be reduced if we use him. Chris is extremely capable; and, fortunately, he has some time to help me with your case*.”

   If the legal assistant is not introduced at the initial conference but meets with the client alone at a later time, he must describe his role clearly and must explain that he is not a lawyer. At any subsequent meeting with the client, the legal assistant should be aware of how the client refers to him. Any confusion concerning the legal assistant's status should be corrected immediately. The client must understand that the legal assistant ***cannot***

* • *offer direct legal advice or interpret the law;*
* • *accept a case;*
* • *represent individuals before a court; or*
* • *set or adjust fees*.

Any inquiries concerning these subjects must be referred to the lawyer for response.

**Getting Started**     In the ideal situation, the lawyer will have introduced the legal assistant to the client (*see above*). After introductions are made, the legal assistant should escort the client to the location where the interview will take place, whether in a conference room or in the legal assistant's office.

   Offer to do something personal for the client (or the witness), such as getting a cup of coffee or a cold beverage. The interviewer should not ask someone else to do this but, rather, should do it himself. This small gesture often puts a nervous client more at ease, particularly when the client is a private person rather than a large corporation being interviewed through an officer or other representative. Even if the client is not nervous, everyone likes to receive special, personal attention. The process of building rapport begins the moment the legal assistant meets the client or the witness, and personal courtesies extended by the legal assistant will speed the process.

   On the way to the interview site, make small talk about whether the client was able to find the office easily, parking, the weather, travel conditions, or a newsworthy event of the day. This exchange allows the legal assistant to begin her assessment of the client's attitude and communication style. It also allows the client to size up the legal assistant and to become comfortable with the law office atmosphere (if that is the interview site).

**Explain the Process**     Early in the interview, explain the interview process to the client, including the fact that notes will be taken to record the information which the client provides. Also explain that questions will be asked to clarify facts. This type of explanation prepares the client or witness for those events when they occur.

   Because a lawsuit generates a winner and a loser, the environment of the client's interview can become strained when the legal assistant begins to probe for specific details. Questioning must be used to establish the factual basis for the client's claims or defenses. Nevertheless, an unintentional confrontation can arise if the client has not been properly prepared for extensive inquiries. Without a full explanation of the process and proper handling by the legal assistant, a client may regard extensive questioning as an affront to her integrity or to her powers of recollection. If the client knows what is going to happen, she will be more at ease during the interview.

**Framing the Questions**     The question-and-answer segment may begin with routine matters such as personal background information about the client. Background information is necessary for a complete factual picture, and this type of questioning allows both the client and the legal assistant to ease into the more substantive—and possibly more difficult—questioning that lies ahead. Background information generally includes the client's full name, address, telephone number, date of birth, social security number, place of employment, length of employment, job title, marital status, and so forth.

   Once the client's personal background information is recorded, the interview can move to the substantive facts related to the client's case. Ideally, varied questioning techniques are employed by the legal assistant during the interview, with most of the following types of questions being used:

* • ***Open Questions***     An open question is one designed to elicit a narrative response. This type of question is particularly effective at the beginning of an interview but may be used at any time that a narrative description or explanation is sought. Examples of open questions include the following:
  + ▸ *Starting from the beginning, what do you remember about the accident?*
  + ▸ *Tell me something about* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(your business, your marriage, your son's problems at school, the way you want your property divided after your death)*.
  + ▸ *How did you happen to be in Cincinnati that weekend?*
* • ***Closed Questions***     A closed question is one which seeks a specific, narrow answer. Closed questions generally are used in combination with open questions—and much more sparingly—to obtain specific details or to verify details previously provided by the client. Examples of closed questions include the following:
  + ▸ *What color was the traffic light when you first noticed it?*
  + ▸ *Have you and your wife ever seen a marriage counselor?*
  + ▸ *Were you in Cincinnati on business?*
* • ***Leading Questions***     A leading question is one which either (1) suggests the answer desired by the questioner or (2) suggests a fact not stated previously by the client. Leading questions may be used to good effect during cross-examination of a witness at a deposition or at a trial. However, their utility is limited in a client or witness interview, where the objective is to elicit facts and information. Examples of leading questions include the following:
  + ▸ *Of course, you were wearing your seat belt at the time of the accident, weren't you?*
  + ▸ *Surely you don't believe that your wife is having an affair, do you?*
  + ▸ *Where did you and your girlfriend stay while you were in Cincinnati? (The client did not say that he had a girlfriend or that anyone accompanied him to Cincinnati.)*
* • ***Silent Questions***     A silent question is not a question at all; rather, it is a questioning technique by which the interviewer maintains an extended, expectant silence after an answer is given. The implication is that the interviewer is waiting for the rest of the answer. Faced with this situation, a client or a witness often will supply further details or explanation without being asked a specific question. This technique can be extremely effective in the right circumstance; however, because it creates some anxiety, it should be used judiciously.

Of all the questioning techniques described, open questions generally are the best method to obtain the most details about the facts known to the client.

**A.**   **Flexibility**     A successful interviewer adapts to the communication style of the client or witness as much as possible. The sensory terms used by the client during conversation reveal his communication style. For example, if he uses the phrase “I see what you mean,” he probably is a visual communicator. The most effective questions for this type of individual are those phrased in terms of vision, such as *“When you recall the accident, describe what you see.”* If a person uses a phrase such as “I hear what you say,” the interviewer should try to ask questions in auditory terms whenever possible, for example, “*Did you hear anything unusual in the way he spoke?*” **or** *“What sounds did the pump make before it stopped operating?”* Imitating the communication style of the client or witness minimizes misunderstanding of both the questions asked and the answers provided. A person is more comfortable and open with an interviewer when they both use the same communication style.

   Flexibility also includes the recognition that the words of a question can mean different things to different people. The legal assistant must be able to tailor questions to the background, cultural circumstances, and vocabulary of the client or of the witness. For example, a witness may not have *perceived* anything, even though he saw the entire incident. He may have no *acquaintances*; however, he may know many people.

   The questions should be phrased simply and clearly. Avoid multiple-part questions and limit those questions that which can be answered by a “yes” or “no” or by a single word. Above all, beware of using leading questions.

   Leading questions can turn a credible, honest person into an untrustworthy witness. Questions such as *“You did see John Blackhart deliberately crash into the department store window, didn't you?”* or “*You saw John's pals looting merchandise from the store, right?”* create an obligation to agree with the questioner rather than to provide an answer based on personal knowledge. Leading questions such as these plant ideas in the client's mind and put words into his mouth. The end result is that the interviewer supplies the facts, and the client merely agrees. The better practice is to use open questions as much as possible to obtain facts during the interview.

   Open questions produce narrative answers, which include fact details known by the client. The more details that are obtained, the more successful the interview and the easier it is to secure corroboration from other witnesses and sources.

   Finally, prepare for the unexpected. Although ultimate control of the interview rests with the legal assistant, she should allow the interview to take a natural course. This flexibility sometimes produces unanticipated, revealing information with tremendous impact on the case.

**B.**   **Seeking Sensitive Information**     As valuable as tact is to an interviewer, legal assistants and lawyers alike sometimes take this attribute too far when dealing with topics such as death, suicide, or sexual activities. Taken to its most extreme level, tact becomes evasion. An evasive question indicates the interviewer is uncomfortable with the subject matter or that the topic cannot be discussed candidly. Moreover, the most typical response to an evasive question is an evasive answer, which does nothing to advance the purpose of the interview.

   To illustrate, it is more direct to ask, *“How do you want your assets distributed at your death?*” than it is to ask, *“If you should pass on, how should your property be distributed?”* It is apparent that everyone will die one day. The client would not visit an attorney to discuss his estate plan unless he knew this to be true. The more direct question reinforces the client's perceived need for legal services and paves the way for a frank discussion of his specific situation.

   Direct questions are most effective when they are combined with the interviewer's sensitivity to a particular client's emotional state. The topic of death, for example, evokes a very different emotional reaction when a client discusses his own death in relation to an estate plan than it does when he discusses the situation which led to the death of his child. The death of a child is a traumatic experience. When a person has difficulty describing a traumatic experience, acknowledge the difficulty and move to a more neutral topic until the person regains enough composure to return to the difficult—but necessary—topic of the interview. It may be necessary to take one or more breaks during an interview related to a traumatic experience or to conduct the full interview in more than one session. The best way to gauge a particular client's emotional state during the interview process is to let the client talk.

**C.**   **Let the Client Talk**     Every individual has her own chain of beliefs concerning facts and events as well as her own, unique way of describing them. Allowing a client to describe a sequence of events freely and without interruption is an efficient way to measure her testimony in terms of both substance and style of presentation.

   It also permits a client to tell her story, very possibly for the first time, to someone who she is reasonably certain will be on her side. Many people are reluctant to discuss their most personal affairs or their financial situations even with close friends for fear of criticism, ridicule, or rejection. This may be especially true if they believe that they may be at fault in some way or if they believe that they have an obligation to protect someone close to them.

   While the client tells her story listen for and note those facts that require further clarification or verification. Encourage the client or witness to continue her narrative with active listening techniques (*see below*), with additional open questions, and with supportive comments such as, “*Please go on,*” “*That must have been difficult for you,*” or “*Anyone would have been worried at that point.*”

   A narrative allows the legal assistant to evaluate the client and her testimony style in a way that cannot be done with a series of closed questions. The legal assistant should assess the client's familiarity with details and her level of articulation: logical or rambling, composed or nervous, self-assured or shy, and so forth.

   Note any extraordinary physical characteristics (stuttering, a noticeable birthmark, a limp, extremely long hair on a man) or mannerisms (popping of knuckles, tugging at an ear, fidgeting) that may distract a juror from the client's testimony during a trial or that may create unfavorable bias or prejudice in a juror. These types of features generally are noticed when the lawyer or legal assistant first meets a client but are overlooked and quickly forgotten after a very short time. Noting them tactfully in the interview memorandum (*discussed below*) ensures that whoever prepares the case for trial will be reminded to address them during jury selection or during the opening statement.

   Long hair can be cut; but if the client stutters, for example, a jury is certain to notice it at trial—just as the legal assistant notices it during the initial interview. Some jurors may be so distracted by it that they will not hear the substance of her testimony. To avoid this result, a trial attorney might say during jury selection, *“My client, Mary Jones, is very embarrassed about this*—*and she probably will be a little upset with me for mentioning it*—*but Mary sometimes stutters when she gets nervous. I just want Mary to be reassured that you could render a fair verdict without being affected by her stuttering if it happens. Do you think her stuttering would affect your final verdict in the case?”* Of course, no one will answer “yes”; but the real advantage is that the jurors will expect Mary to stutter, will not be distracted by it, and may be even more supportive of her as a result of the explanation. If her stutter is not included as part of the original interview memorandum, it might be overlooked in the trial preparation.

**D.**   **Who, What, When, Where, How, and Why**     Encourage the client or witness to supply details through supportive questioning. After the initial story is told fully, questions are phrased to authenticate the details of the narrative. Brusque, interrogation-type questioning likely will result in brusque answers. Even if a witness is aligned with the opposing party there is no justification to alienate the witness further by terse questions or by an argumentative style. Tactful, carefully phrased questions will produce more information and a more cooperative spirit. After a case has been concluded, adverse witnesses—and sometimes adverse parties—have been known to seek assistance from the lawyer's office where they were treated well as adversaries rather than return to the lawyer who represented them originally.

   Questions phrased in terms of who, what, when, where, how, and why are more likely to produce detailed, narrative answers. This type of question encourages a storytelling atmosphere: *“Who delivered the box to the Trade Center?”; “What was the messenger wearing when the box was delivered?”; “When did you first meet your wife?”; “Where were you when you first noticed the messenger?”; “How would you describe the messenger?”; or “Why were you at the Trade Center that day?”* This form of question also may be used to ask follow-up questions to verify some previous answer.

   If statements seem to conflict, ask the client's help in resolving the misunderstanding. The client or witness never should have the sense that the legal assistant believes he is lying. Asking for clarification because of the legal assistant's (not the client's) confusion likely will produce the needed information. If the client senses that his integrity is being questioned, an opposite result can occur: he may recoil quietly or he may become obstinate and refuse to answer further questions.

**Use Checklists to Stay on Track**     Checklists should be designed and used to facilitate, not inhibit, the interview process. Used correctly, they serve as a map to a specific destination, allowing frequent side trips along the way. The legal assistant should be flexible enough to ask pertinent questions not listed on the checklist as the dialogue progresses. If the client or the witness wanders too far from the subject, however, the checklist provides focus to put the interview back on track.

   Forms or questionnaires completed by the client sometimes provide an efficient method to gather facts. They work best, however, after the working relationship already has been established between the lawyer and the client. A prospective client who has no previous working relationship with the law office may be offended understandably by forms or questionnaires sent to her for completion before the initial client interview. In this situation, the prospective client justifiably may conclude that she will be just another form in a vast sea of forms located somewhere in the lawyer's office. Each client prefers to believe her case is the most interesting one that the lawyer has, and she expects the lawyer and the legal assistant to feel the same way. A pre-interview questionnaire makes this belief difficult to maintain.

   If a follow-up form or questionnaire is given or sent to a client for completion after the client relationship has been established, it should be client friendly. It should be constructed simply with ample “white space” to provide answers. Questions should be phrased in a clear and concise way and should be couched in terms which demonstrate sensitivity to the typical situation addressed by the form. A bankruptcy questionnaire, for example, might include the following:

|  |  |
| --- | --- |
| POOR | List the name and address of each creditor holding a disputed, contingent, or nonliquidated claim against the debtor's estate: |
| BETTER | Give the name and address of anyone who claims you owe money if you think the claim is wrong (1) because you do not owe the money or (2) because you do not owe as much as the creditor says you owe (do not include claims that are part of a past or present lawsuit): |
| POOR | List all debts for which you have defaulted in payments: |
| BETTER | List each of the bills for which payments are not current: |

The second question in each group is better, because it states the instruction in simple English and because it avoids words that imply the client is to blame for his situation.

**Corroboration of Facts**     All relevant facts obtained during a client or witness interview must be corroborated. Corroboration is the process used to substantiate or to verify the accuracy of a particular fact. It assures the attorney of the client's (or witness’) credibility; it also provides supporting evidence which can be used during trial to assure the jury of the credibility of a particular witness or of the justness of the overall claim or defense raised by the client.

   After any interview, the legal assistant must verify the information gathered, distinguishing facts of personal knowledge from conjecture, opinion, or gossip. Clients and witnesses frequently are confused or mistaken about dates, times, events, distances, and other specific details (unless they are among those rare individuals who record everything that happens during the course of a day). Investigate outside sources for corroborating evidence to substantiate the client's recollection of facts and the lawyer's legal theory. Corroboration is essential for every factual statement made during the interview.

**A.**   **Identity of People**     Obtaining the complete name, address, telephone number, and place of employment of any person mentioned during a client or witness interview is important to the investigative process. For example, if a client relates that her neighbor was present when the defendant threatened her, the legal assistant must obtain as much identifying information about the neighbor as possible. After the interview, the neighbor is contacted to corroborate the client's story.

   A witness interview may reveal that a particular witness has little or no firsthand knowledge about the case. Although a witness may not offer the strong statement hoped for, she may be able to provide leads to others who have relevant information.

   Every lead must be checked. The person thought least likely to have relevant information may become the star witness in a case. In conducting the investigation, the legal assistant should determine why a particular person was in the area at the time of the event or incident, whether he frequented the area, how he may know the client, the person's relationship (if any) to the client or any witness, and whether he has given this or similar information to others. If a person seems to have useful information, a background check should be conducted to assure his credibility and reliability. Careful scrutiny of witnesses eliminates surprises at trial.

**B.**   **Identity of Documents**     The client generally is the first source of documents connected with a case, which he often brings with him to the initial interview. If there are other documents which may be relevant to the case but which the client does not have, the legal assistant must obtain as many details as possible about those documents from the client, including their location and the identity of the person who has them.

   If geography, weather conditions, technical structure, or similar conditions are relevant to an issue in the case, the legal assistant may need to obtain plat drawings from the city or county engineers, weather maps from the weather service, evaluation reports from technical engineers, or other documentation from appropriate specialists. If there is a charge for any of the information, authorization must be obtained from the supervising attorney.

   Keep documents produced by the opposing party separate from those supplied by the client. Compare documents in the two groups to determine if there is a “smoking gun” among the documents which may be detrimental to the client's case.

**Listen**     The legal assistant or lawyer must listen actively throughout the interview, which means more than simply hearing and recording the facts. Gathering facts is only one small part of active listening.

   Active listening requires the legal assistant to visualize the situation as the client relates it. This means being quiet and letting the client speak; it also means being actively engaged with the storyteller. An active listener places himself into the story and imagines being there as the events are described. This sometimes is called imaginative listening or ***empathy.*** An active listener feels what the client feels, and he is able to express those feelings in objective terms.

   The way to understand the meaning of words and the feeling behind them is to listen closely to the client. The client's story is central to the fact-gathering process. It delineates the experiences and expectations of the client. By allowing the client to talk freely, the legal assistant is able to see the situation or the problem from the client's vantage point.

   Equally important to active listening is the client's nonverbal communication (body language). The way she presents herself (relaxed or nervous, pleasant or angry) frequently communicates messages much more loudly than her words. If the client appears wary, distrustful, or guarded, the legal assistant needs to work harder at gaining the trust necessary for a good working relationship. Recognizing the client's unwillingness to talk or unwillingness to talk about a particular subject requires the legal assistant to be flexible enough to discuss more neutral topics until the client is ready to move back to the issues at hand.

   Active listening results in signals from the interviewer to indicate that she hears and understands what the client or witness is saying and that she wants to hear more. The signals include an attentive posture, the proper amount of eye contact, approving nods, and supportive comments such as “*please go on,*” “*I see,*” “*of course,*” “*it must have been very hard for you,*” and so forth.

**A.**   **Is That a Fact?**     As part of the interview process, the legal assistant records information, sorting it into broad categories according to whether it is a fact or not. Clients frequently inject opinions, speculation, conjecture, or assumptions as they relate facts. Without interrupting the natural flow of the narrative, the legal assistant segregates the facts and obtains as many details as possible about those facts during subsequent questioning.

   A ***fact*** is a situation, event, or occurrence which is within the personal knowledge of the client or witness. With the exception of an expert witness, clients and most other witnesses are permitted to testify about only those things they know personally; they cannot testify about their opinions, impressions, or assumptions. This distinguishes fact witnesses from expert witnesses. For example, a fact witness could not testify at trial that a particular thing tasted like dirt without first establishing that he had tasted dirt. Likewise, a fact witness generally could not testify that the defendant was intoxicated, because few fact witnesses are experts in the area of intoxication. The witness could testify about only what he saw, heard, smelled, and the like. He could testify that the defendant was unsteady on his feet (the witness could see this), that the defendant's speech was slurred (the witness could hear this), or that the defendant reeked of alcohol (the witness could smell this). Although it may be profitable to pursue a client's opinion statements during an interview to determine their factual basis, the legal assistant's ultimate objective is to obtain as many facts and details about facts as possible from the interview.

   A more complete discussion of segregation of facts is contained in [**Chapter 4**](https://jigsaw.vitalsource.com/books/9781305483002/epub/OPS/loc_006.xhtml#eid11770) on judgment and analytical ability in this *Review Manual*.

**B.**   **Does It Make Sense?**     Active listening means listening critically to what the client or witness says to determine if it makes sense. Sometimes people simply make errors or misstate the facts when they relate them (*see below*). Frequently, however, people determine ahead of time what it is that they think the interviewer needs to know; and that is the narrative they give. Generally speaking, facts obtained through this type of filtering must be explored by the legal assistant to ensure that all facts are exposed and to evaluate credibility of the facts provided based on principles of logic.

   Understanding the client's communication style is helpful in recognizing her pattern of logic. During an interview, answers fall into a pattern which tends to reveal more than their factual content. If the client talks in circles, the message may be that she is reluctant to face the issue. For example, a driver who hits a child pedestrian may have difficulty describing the sequence of events because of guilt feelings, even though the accident was not his fault. A battered woman who explains in detail how she acquired bruises through her clumsiness may not even mention her abusive husband's behavior toward her. The facts must be pieced together carefully to re-create an accurate chain of events. This is particularly important for jury trials, where the jury must be able to relate to a logical sequence of events. Showing how the pieces fit together is the lawyer's job, with the help of the client and the witnesses.

   Every interviewer has an obligation to practice active listening techniques. Devoting less than full attention to the dialogue is a disservice to the client. Attentive listening exposes not only the facts, but also groundless beliefs, false interpretations, misconceptions, and fears. When several people are interviewed about the same incident, their stories may contain inconsistencies even though all of them point to the same ultimate conclusion. All inconsistencies must be investigated to determine the true details and sequence of events.

**Contradictory Statements**     Stories filled with contradictions or inconsistencies present challenges to the legal assistant. The legal assistant must (1) recognize the inconsistency and (2) analyze the motive of the client or witness who is telling the story. Some inconsistencies may be simple misunderstandings or misperceptions; others may be deliberate deceptions.

**A.**   **Error**     Clients and witnesses frequently become confused about specific details of facts and events unless they can identify the event with a special occurrence. The confusion leads to errors or to misstatements of fact. For example, a client may be certain of the date of an accident because it happened on his birthday; his recollection that the day was a Wednesday may be wrong, however. The interviewer always should ask if there is anything special about the date that causes the client to remember it. If there is no special reason to remember it, be skeptical about details related to dates, times, and so forth. Most people cannot remember what they had for lunch last Wednesday unless there is a special reason to remember. They become confused and then convince themselves that it must have happened on a particular day or in a particular way.

   Interviews conducted soon after an incident provide the most accurate information. Memories fail after a period of time—the longer the time between the incident and the interview, the weaker the recollection of the witness. If the witness cannot remember the facts surrounding an incident, or if he knew only part (but not all) of the facts in the first place, he may engage in presumption and conjecture about what he thinks must have happened rather than report only what he knows to be the fact. It is more difficult for the legal assistant to separate fact from conjecture when statements are taken long after the incident because by then, the witness will have convinced himself that all of it is fact.

   A corollary to this problem is the witness who knows only a few facts and fills in the gaps with information that he thinks the interviewer wants to hear or that he thinks make his story more believable. This sometimes is called ***confabulation.*** Faced with a thorough and tactful interviewer, this witness may be able to back away from the fictional parts of his statement without losing face. This type of witness generally is somewhat easier to deal with than one who has become convinced that his conjecture is fact (*see above*).

**B.**   **Misperception**     Misperception and differences in perception sometimes occur because people perceive things differently. The differences in what two different people perceive may stem from the fact that each was located at a different vantage point when the incident occurred. If two different witnesses were standing on opposite corners of an intersection, for example, a comparison of their statements likely would show inconsistencies or contradictions. What each witness saw genuinely could be different, because each saw a different side of the accident scene.

   Even if both witnesses were standing on the same street corner, they may give different accounts of the accident. A classic illustration of how this phenomenon works is used in evidence classes across the country. Shortly after the class begins, an unidentified person darts into the room, grabs something from the professor's podium or desk, and darts out again. Everyone is startled except the professor, who arranged for the incident to occur. The professor asks the students to write a description of the thief. None of the students has any reason to misrepresent the facts (who would not want to get a good grade?); yet, if there are 15 students in the class, there will be 15 different descriptions of the thief. He might be described variously as wearing a blue jacket, a black jacket, a navy blue jacket, or no jacket at all. The balance of the thief's description will be just as diverse as the information reported about his jacket. When the “thief” returns to the classroom for inspection, students generally are astounded to see for themselves how inaccurate most of their descriptions are.

   This type of inconsistency or contradiction occurs all the time, particularly in connection with a startling event. It has nothing to do with lying; different people simply perceive things in different ways.

**C.**   **Deception**     Occasionally, a legal assistant encounters a witness who misrepresents facts and events intentionally. The best efforts to establish rapport with a witness may not prevent her from telling distortions and lies. Probing with diplomatic questions will not accomplish much if the witness is intent on concealing the truth. The motive for such behavior may never be known, but this witness should not be dismissed lightly. An unscrupulous witness may align himself with the opposing party and can create havoc, at least for a short time. When such a witness is discovered in the investigation of a case, a second interview may be warranted—preferably conducted by the attorney and conducted with recording equipment.

   If it becomes clear during an initial interview that a client or witness deliberately is lying, the legal assistant should excuse himself tactfully and advise the lawyer immediately. If the lawyer is not available, the alternative is to end the interview on some pretext and to advise the lawyer when she returns.

**Verify Accuracy**     Factual contradictions and inconsistencies can arise through error, misperception, or deception. Because of this, every factual account must be verified. Those factual accounts provided by clients must, in addition, be corroborated through written documentation and the testimony of witnesses.

**A.**   **During the Interview**     During the interview and after the client has concluded her initial narrative, the legal assistant asks questions designed to verify what the client said and to fill the factual gaps left by the narrative. Empathetic questioning, rather than showmanship, reaps the greatest rewards in this process. For example, a question that begins, “*Isn't it true that* …?” is the worst way to obtain additional information. This type of leading question may be appropriate in a cross-examination during trial, but it serves no beneficial purpose in the interview process. If it is asked during an interview, the client or witness may become defensive and refuse to provide helpful information or may refuse to provide further information of any kind.

   Instead, phrase the question as a request for help or clarification. For example, questions that begin with “*Let me see if I understand* …” or “*I am confused about* …” are less intimidating and are more likely to be answered freely. Questioning has two purposes: (1) to obtain specific information and (2) to guide the discussion to meaningful details concerning that information. The client or witness usually is more willing to cooperate by helping if the interviewer is confused than if the interviewer seems to think that he (the client or witness) is confused or—even worse—that he is lying.

   The process of verifying facts and details with the client or the witness during the interview is sometimes called ***internal verification.*** In addition to probing gently for further facts to verify details previously supplied, the legal assistant may misstate a detail purposely. This gives the client an opportunity to correct the error, which tells the legal assistant how certain the client is about the facts. This technique is quite effective if it is used in moderation. Overused, the client may infer that the legal assistant was not paying attention at all while he was relating his problem.

**B.**   **After the Interview**     Once the interview is concluded, the legal assistant prepares a list of potential documents to acquire as well as a list of agencies, companies, and other witnesses to contact for supplemental information and documentation. In addition, ***external verification*** is used to check outside sources to verify the facts obtained from the client or witness.

   Accounts reported by newspapers and other media may verify or corroborate the client's claims. Other sources might include hospital records, photographs, police reports, employment records, business records, school records, military records, driving records, court records, and vital statistics records. If a case involves a personal injury claim related to employment, investigation of the employment background of the claimant may reveal a history of job-related personal injury claims. Investigation of the claimant's medical records for similar injuries previously sustained also may be useful. Even if these sources are not accessible early in the case because the claimant is the opposing party, anyone can check the records of those courts where prior cases would have been filed. If this type of information exists, the lawyer certainly will want to have it as early in the case as possible, without regard to which side she represents.

   The public also has access to weather maps, geography maps, demographics of a city, census information, engineer plats and surveys, real estate records, and similar types of official records. Depending on the issues involved in a particular case, this type of documentation can be helpful.

   Obtaining official records from a government agency or from a private organization can test the patience and perseverance of the most experienced legal assistant. Writing or telephoning the agency and asking for the record is the most direct approach. However, because some records are privileged, it may be necessary to obtain signed authorizations or releases from the client. Even with the client's written authorization, some information may not be available to the law office. Certain government agencies will release documents and information to the client only. One such agency is the Social Security Administration.

   Obtaining public and private records has its price. Agencies normally charge a fee for information. Always check with the supervising attorney first to determine if the record's benefit to the case justifies its cost. Clients generally are not happy about being charged to stockpile useless documents.

   Any individual named by the client or the witness should be contacted to learn what information this person has. Each lead needs to be thoroughly checked because the next lead could produce a key witness in the case. Some leads will be dead ends; a few will be worthwhile pursuing.

   The legal assistant searches for verification (whether internal or external) of every factual detail related to him. Gentle probing of the client or witness is necessary to seek additional information or to raise the client's awareness to remember other details and other witnesses. During the questioning and at the conclusion of the interview, the issues raised by the client or the witness are separated between personal knowledge and conjecture. The legal assistant has the responsibility to confirm (corroborate) those items of personal knowledge through witnesses and documentation.

**Complete All Required Forms**     Before the client leaves an interview, the legal assistant should have any appropriate forms available for the client's signature. Bringing anticipated forms to the initial interview reflects the organization, efficiency, and professionalism of the lawyer and her staff. These forms might include medical authorization forms, powers of attorney for tax information, or releases to obtain financial information from banking institutions. If the required forms are signed right away, work on the client's case can begin more quickly.

**Conclude the Interview**     The legal assistant should end the interview cordially, outlining any responsibility that either she or the client has to furnish supplemental data. An agreed deadline is set so that each knows the time frame, and the date is recorded on the calendar. If the client is to bring or to send additional documents to the law office, list them on a separate sheet of paper so the client can take the list with her when she leaves the office.

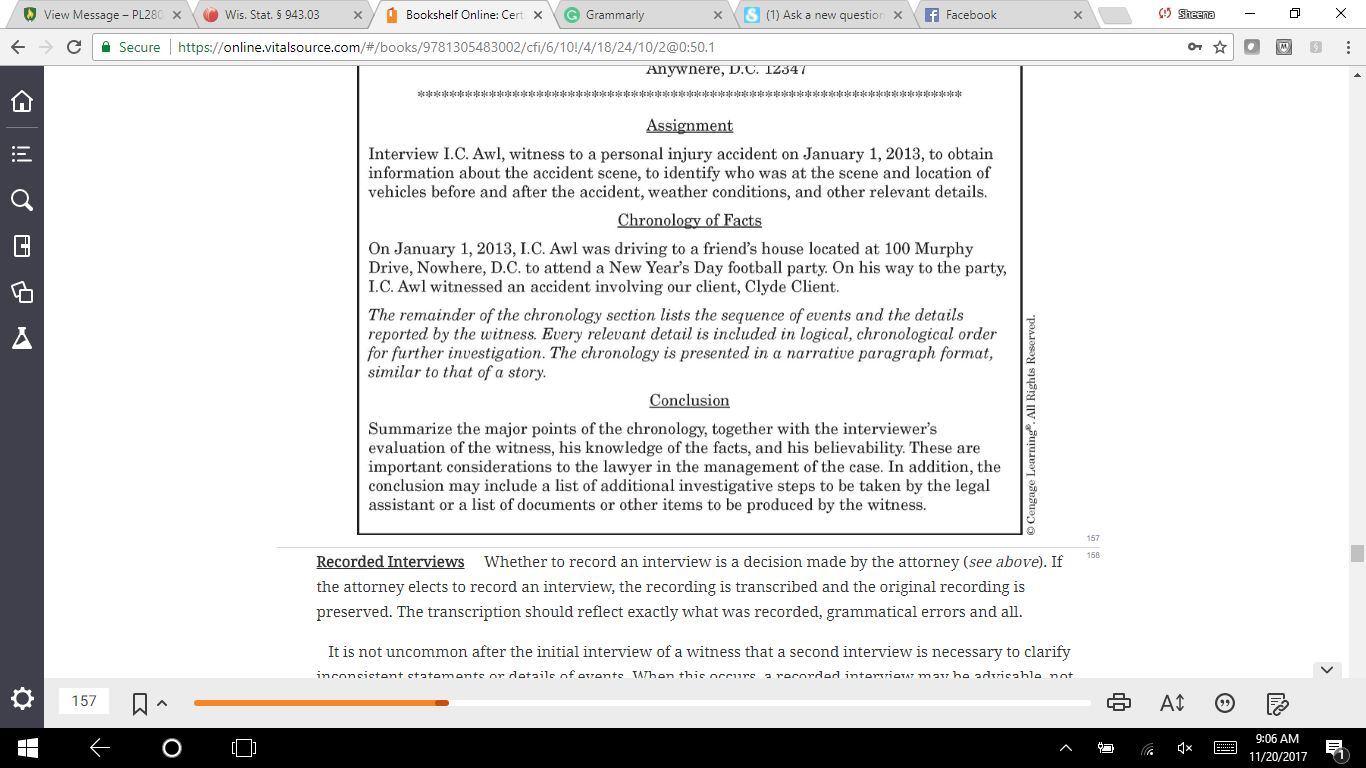
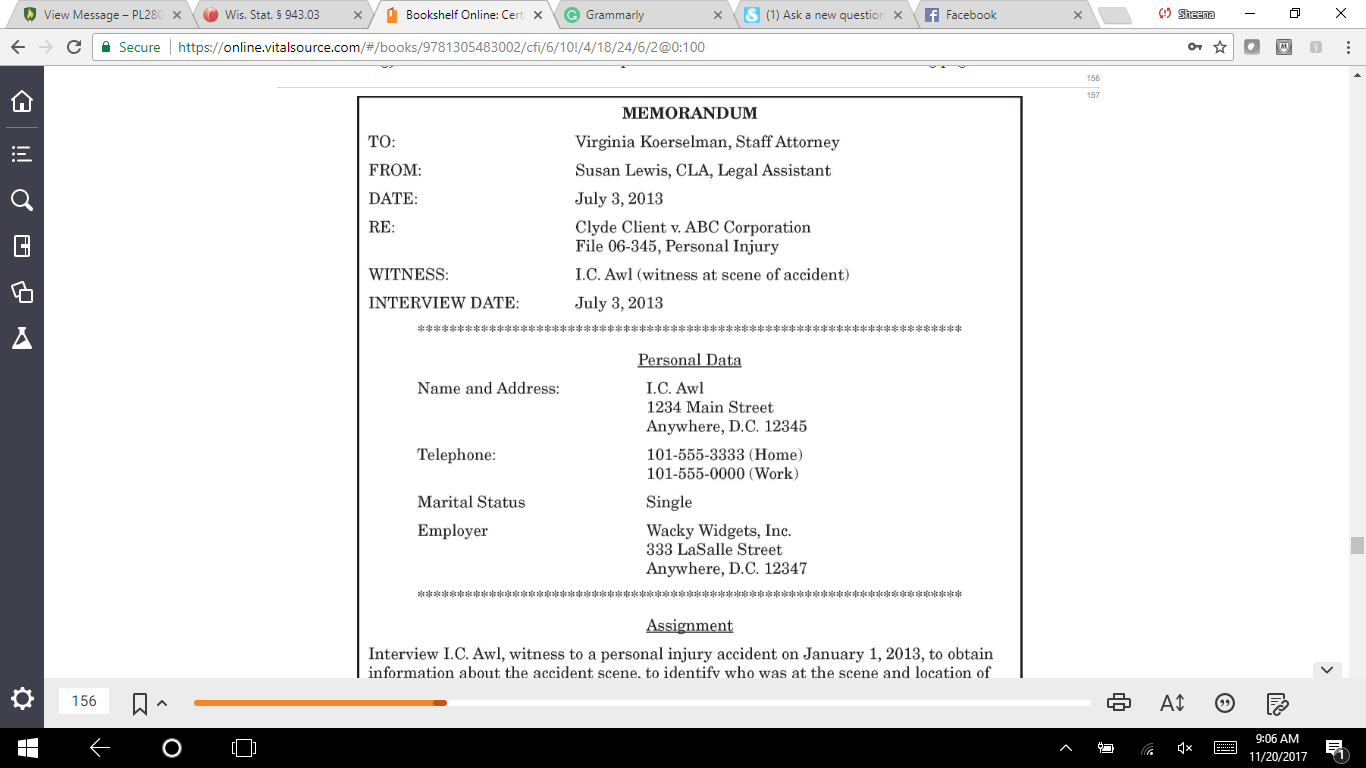
   If a deadline cannot be met, the legal assistant should inform the lawyer as soon as that fact is known. An explanation also may be necessary to the client if she is involved. Keeping the client informed and involved throughout the case is important in maintaining a positive attorney-client relationship.

   When the interview is over, accompany the client or witness back to the reception area of the law office. Abandoning visitors in the hallway is a poor practice (*see above*).

Documenting the Interview

Immediately following the interview, the legal assistant must summarize the interview and record the facts obtained, based on her interview notes. The less time that elapses between the conclusion of the interview and its documentation, the more accurate the documentation will be. All relevant information (whether it is helpful or is damaging) is included in a written memorandum, which is provided to the lawyer, with a copy placed in the client file.

**Notes and Memorandum**     In addition to a neatly typed file memorandum to summarize the interview, all handwritten notes are preserved in the client file. The file memorandum should follow a standardized format established by office policy, which typically includes heading, personal data, stated assignment, chronology of facts, and conclusion. A sample memorandum is shown on the following page.



**Recorded Interviews**     Whether to record an interview is a decision made by the attorney (*see above*). If the attorney elects to record an interview, the recording is transcribed and the original recording is preserved. The transcription should reflect exactly what was recorded, grammatical errors and all.

   It is not uncommon after the initial interview of a witness that a second interview is necessary to clarify inconsistent statements or details of events. When this occurs, a recorded interview may be advisable, not only to provide clarity but also to determine the basis or motivation for the inconsistent or contradictory facts provided. A witness usually is eager to correct the record, particularly if he knows the information will be used in a court proceeding.

**Witness Statements**     Witness statements  may take various forms:

* • Handwritten statement
* • Typewritten statement
* • Questionnaire completed by the witness
* • Tape-recorded statement in a question-answer format
* • Statement recorded and transcribed by a court reporter in a question-answer format.

The purpose of a witness statement is to memorialize the exact events recalled by a witness in a form which may be used in court, without violating evidence rules related to hearsay and privilege. A witness statement is a different document than the interview memorandum prepared by the legal assistant. Both types of documentation can result from a single witness interview.

   A witness statement should identify the witness, the date and place of the interview, and the interviewer. Additional information may include the address of the witness, her place of employment, or any other identifying information.

   The interviewer may guide the witness to present the events in sequential order and to give the statement focus and organization. However, the words should be those of the witness. At its end, a witness statement should contain specific language to show that the witness made the statement voluntarily.

   A handwritten statement may be prepared either by the interviewer or by the witness. The important factors are to record the information accurately as the witness stated it to be and to have the witness review and sign the handwritten statement. If the interviewer handwrites the statement, he may make an intentional error of fact so that when the witness reviews the statement, the error is discovered, corrected, and initialed by the witness. The initials and correction in the handwriting of the witness show that the witness reviewed the statement.

   In a typewritten statement, everything is transcribed exactly as the witness stated. An impartial investigator (someone other than the legal assistant) may seek some insignificant information so the witness has an opportunity to make unfavorable statements about the client. This reinforces the investigator's objectivity.

   At the conclusion of a typewritten statement, a sentence similar to the following should be included: *I have read* **\_\_\_** *pages of this statement, and the information recorded is correct to the best of my knowledge*. Asking the witness to initial each page provides further evidence that she had the opportunity to review the entire document and that no pages were substituted. The witness signs the statement and is provided with a signed copy.

   Taking witness statements soon after an incident is the best practice. Recollection of events is clearer and usually is more accurate at that time. During trial, properly recorded witness statements may be used as a source for refreshing the memory of the witness.

## Special Interview Challenges

Because each interview is unique, it can present a unique set of challenges to the interview process. Among the challenges encountered by legal assistants with some frequency are clients or witnesses with special communication needs. Interviewing persons who do not speak fluent English, persons with disabilities, very young children, or persons of advanced age requires special accommodation and consideration.

**Foreign-Born Persons**     A client or a witness who does not speak English (or who does not speak English as her first language) may require an interpreter to translate information during the interview. A friend or family member may not be the best choice if the case involves an estate plan, a proposed guardianship, relinquishment of parental rights, or similar matter. If an independent interpreter is arranged, use care to ensure that his or her reputation for reliability is above reproach. If the firm has not used an independent interpreter in the past, an immigration lawyer in the community may be able to provide possible sources.

   If the person speaks enough English to communicate in an interview setting, special care must be taken to ensure that she understands fully the questions asked of her and that the legal assistant understands the answers given. An interview with this type of individual usually requires more time and planning than the typical client interview.

**Disabled Persons**     The client (or witness) with a physical or mental disability affecting her sight, speech, hearing, or level of comprehension presents a special set of challenges. This individual may require a sign interpreter, a Braille expert, or special equipment to communicate. The legal assistant must make arrangements prior to the interview to accommodate the person's special communication needs.

   The legal assistant must be especially sensitive to this person's situation in planning and in conducting the interview.

**Young Children**     When a child is interviewed, the permission of at least one parent is required to conduct the interview.

   The best situation is to interview the child without a parent in the room if he is old enough to engage in an interview on that basis. With or without a parent, additional time generally is required to gain a child's trust before the substantive portion of the interview begins—how much time depends on the age of the child and the interviewer's expertise in working with children. Because a young child's attention span is extremely short, it may be necessary to schedule more than one session to complete the interview.

   If the child is too young to be interviewed effectively without his parent, arrange the seating so that the parent is nearby but the child cannot see the parent during the interview (perhaps by seating the parent in a chair next to the child's chair but placed slightly back). If the child cannot see his parent's reaction to the questions, he is more likely to give his own account of the events. Otherwise, he may rely on the parent's facial expression to respond in whatever way he thinks will please the parent.

**Elderly Persons**     Clients and witnesses of advanced age may present an entirely different set of challenges. As much as possible, the legal assistant should determine this client's general physical and mental condition well before the interview. It may be that no special accommodation is required. If that is not the case, however, the interview should be planned in whatever way best accommodates the client or witness.

   As a general rule, an elderly person tires more easily; his attention span is relatively brief; and his powers of concentration are not as sharp as those of a younger individual. Interviews scheduled in the middle of the morning are more successful than those scheduled in the late afternoon or evening. These factors must be taken into account in planning an interview with an elderly client.

   If the client is hospitalized or if he resides in a nursing home, a field interview may be the only type of interview that is possible. Even if an elderly client is ambulatory, a field interview nevertheless may be advisable. Traveling to the law office can be an exhausting endeavor, which reduces the amount of energy left for the interview itself.

   A client who is hospitalized (whether aged or not) frequently is taking some type of prescribed medication. If it is a type which substantially impairs mental clarity, the interview should be postponed if that can be done effectively.

   Even in the very best of circumstances, interviewing is an inherently imperfect art which has many styles. The objective of each interview is to find the truth. The legal assistant who enjoys people, challenges, and changes will find interviewing gratifying. *See the bibliography for additional study references*.