Interviewing Challenging Clients – February 10, 2011 – Marquette Volunteer Legal Clinic

General Principles:

(1) Be Clear About the Scope and Purpose of the Meeting
(2) Professionalism Is Essential – Avoiding Key Errors
(3) Help Client Define Their Goals
(4) Explain What Help is Available
(5) Explain What Is Expected of the Client
(6) Distinguish Role of an Attorney From Others, i.e. friend, counselor etc.

Special Problems:

(1) Client is very talkative; can’t stay on track; can’t or won’t understand key issues
(2) Client is angry or abusive
(3) Client who won’t share information
(4) Client may have mental illness or be under the influence
(5) Client indicates an intention to break the law or discloses information about on going course of criminal conduct or abuse
(6) Client wants to develop a personal relationship i.e. asks for a date or comments inappropriately
CONSIDERATIONS FOR THE IN-DEPTH CLIENT INTERVIEW

by Deja Vishny

A. CONTENT

1. Explain Confidentiality and the Attorney-Client Privilege

2. Take a Social History

Age, education, parents, family, marriage, children, employment current and past, mental health history, alcohol and drug abuse, treatment history, medical problems, medications, who they can rely on in life or are close to (support system), income and poverty level, hobbies, religion, short and long term goals in life, any prior victimization due to physical and/or sexual abuse.

3. Explain the Charge

Define the allegation for the client. Give them their own copy of the complaint, police reports and jury instructions.

4. Get the Facts

Client explanation of events, everything client knows about what occurred, or why client has no knowledge. Witnesses to the event/non-event and how to locate. Background information regarding the accuser or witnesses, such as motives to fabricate or exaggerate, bias, prior record, mental illness, drug and alcohol use, prior violence, etc.

5. Ask About Character Witnesses for Client

6. Tell Client What You Will Do Next

Inform client how case will proceed with regard to investigation, obtaining experts, treatment plan, plea negotiations, motions, etc. Make appropriate referrals and advise client on how to conduct him/herself while case is pending. Let client know when you will see him/her again.
B. STYLE

1. Be Purposeful

2. Respect Client's Dignity

See client privately. Be honest and direct; demonstrate concern and interest; be aware of client's uniqueness as a person; don't stereotype. Maintain a professional demeanor.

3. Don't Give False Reassurances and Promises

Don't promise release if unlikely or guarantee to win case at trial or a sentencing result.

4. Communication Skills

a. Let client know you are on his/her side no matter what and that he/she can let you know the full truth.

b. Use open-ended questions to get the most unrestricted picture of client's story.

c. Use questions to redirect the client from extraneous to pertinent material.

d. Ask questions to clarify meaning.

e. Use close-ended questions to gather specific details and as clarification tool.

5. Communicate Empathy and Respect for Client's Positions, Difficulties and Point of View

6. Avoid Moralizing, Preaching, Condemning, Accusing and Condescending, but Set Limits and Remember Your Duty to Advise Client of the Law
C. SPECIAL PROBLEMS

1. I want a real lawyer, not a public defender.
2. The client who won't share information (refuses to give witness names).
3. The client who thinks he/she is the lawyer (File this motion).
4. The client who can't stay on track.
5. The client whose story is so bogus that ultimately a confrontation is necessary.
6. The indecisive client.
7. The competent but mentally ill (e.g. depressed, paranoid) client.
8. Cultural differences which give rise to communication problems.
9. The client who wants a date.
motives of the client and witnesses. That is the story that needs to be told in the courtroom to make the client’s truth believable.

B. The client frequently does not know his own story.

1. Clients are not often good storytellers.
2. Clients are unsure about what facts are important. Clients may not be aware of what is relevant or helpful.
3. Clients may not trust the lawyer enough to reveal their truth about relationships with other people, especially witnesses and victims. Relationships involve feelings and clients may be very guarded about sharing their feelings with their lawyer.

C. Despite the initial limitations of the client interview, the client needs to be viewed not as a barrier to preparing the defense, but as the fountain of information and creative ideas.

D. Building the case without the client’s testimony does not mean building the case without the client’s story. A decision to keep the client off the stand is not an excuse to prepare the defense case without the client’s story or input.

III. Getting at the story – Interviewing.

A. Clients must trust and respect the lawyer before they can reveal their story. Lawyers must earn the respect of the client. Establishing some connection between lawyer and client is essential. Lawyers can’t rely on one formula for all client interviews because then it becomes about the lawyer and not the client.

B. Allow the client to reveal and discuss their agenda without yielding control of the interview. Consider asking the question, “What do you need the most, right now?”

C. Going through the Criminal Complaint - Pros and cons. At some point the client needs to be informed about the accusation. But, reading the criminal complaint to the client can take an accusatory tone and can shut down the client interview. Consider asking for the client version first or ask the client what he/she knows about the charge.

D. Learn about the client’s family. People are often defined by their relationships with their family. Who are the parents, children and significant others of your client? Who are the allies and who are the enemies?

E. Where does the client live? Learn about your client’s home or residence. Understanding how your client lives reveals the client in an important context.

F. Putting the client on the spot. Preparing for testimony is a critical component of telling the story. Use techniques that will take the surprise and fear out of testifying in court. Practice situations that will put the client on the spot. Stage a courtroom witness box. Use other lawyers to practice cross-examination. Ask your client to take a different point of view. Be careful to avoid over preparing.

G. Group interviews. Interacting with other witnesses and supporters. Throw them all in one box. The police style is to separate and interrogate. Real life is more like the family dinner style. People talk and remember events in groups and refresh the story and others’ recollections.

H. Connecting the unrelated topics. How did we get there? A real case is not like an action movie that skips from one dramatic moment to another. Those things or circumstances that connect the action explain how we get from the chase scene to the bedroom. It is in the seemingly mundane moments of life that we can understand the drama that follows.