

## WHOSE STORY IS IT, ANYWAY? – GUIDING STUDENTS TO CLIENT- CENTERED INTERVIEWING THROUGH STORYTELLING

LAURIE SHANKS\*

*Persuasively telling a client's story is vital to meaningful and successful representation. This article explores both the challenges facing students as they try to master this skill as well as the challenges of teaching this skill through the lens of one simple exercise. This exercise has proven extremely effective in teaching law students critical lessons about client-centered interviewing. Conducted effectively, and coupled with directed discussion, the exercise has also been invaluable for teaching client-centered representation, interviewing techniques, attorney-client confidentiality and the impact of demographics on the attorney-client relationship. Through their experience with the exercise, each of these concepts acutely resonates with the students. By completing the exercise, law students come away with a commitment to telling their clients' stories, and the skills needed to do it well.*

“My job is to tell my client's story, and to do that I really have to get to know him.”<sup>1</sup>

### I. INTRODUCTION

“How to hear” is what I teach. It isn't easy. Law students don't know how to listen to a client's pain, fear, anger or despair. Such a connection isn't lawyer-like, they feel, or goes against the “issue, rule, analysis, conclusion” format drilled into them in their first year courses. Early in their law school experience, many students are consumed by the competitive academic environment—concerned exclusively with their grades, their future careers, and their present life

---

\* Laurie Shanks is a Clinical Professor of Law at Albany Law School. The author thanks Albany Law School student Molly Adams for her support and assistance.

<sup>1</sup> Lieutenant Commander Charles Swift, Attorney for Salim Hamdan, a Yemeni citizen declared an “enemy combatant” and incarcerated at Guantanamo. Swift successfully argued that Hamdan should have access to the court system in the U.S. Supreme Court, *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006). Jonathan Mahler, *Commander Swift Objects*, N.Y. TIMES, June 13, 2004 (Magazine), available at <http://www.nytimes.com/2004/06/13/magazine/13MILITARY.html?ex=1402545600&en=506e105e040960d9&ei=5007&partner=USERLAND>.

choices and challenges. For almost twenty years, I have sought to overcome these barriers. My goal is to change the students' focus to the client, to hear what the person across the desk, in the chair, or behind the lock-up bars is saying – what her story is, and what that story says about her and the law.

The need to listen empathically can be difficult even when the client is similar to the student. The problem is even more challenging if the client is “different” as defined by race, ethnicity, gender, age, economic background, or sexual orientation. It is also daunting if the client is accused of doing something “bad” such as committing a crime, particularly if the crime is considered especially reprehensible, such as assaulting or sexually molesting a child. Add to that issues of mental illness, drug addiction or mental retardation, and the project is harder still. It is often in the context of the initial client interview that these issues first manifest themselves.

Many practitioners, even experienced ones, are unable to meet their clients' needs. While more confident than law students, experienced lawyers often have a limited view of what is required for comprehensive representation. Practitioners commonly concentrate primarily on attempting to obtain the type of information they will need to draft legal pleadings or prepare for trial, while ignoring the skills necessary to establish a relationship with the client, even when they acknowledge and can articulate the importance of such a connection.

In teaching my law students, I want to produce lawyers who do better than this. I draw on my experience and have developed techniques to train law students to become client-centered attorneys from the start of their careers. This article describes one example I have used to teach the skill of client-centered interviewing. I have developed an exercise that I call “Whose Story Is It?” which requires students to learn for themselves what it means to be both a lawyer and a client. At the beginning of a trial practice course, students learn that the essence of the trial is the lawyer telling the story of another (the client) to the judge or jury. The exercise makes the concepts of confidentiality, self-disclosure, diversity, and theory and theme at trial come alive.

There are many barriers preventing attorneys from approaching their practice in a client-centered way, but there are techniques which are successful in teaching students and practitioners alike to confront these barriers. The exercise described in this article was developed as a tool to bring law students out of the competitive academic world and instill in them the value of truly listening to their clients. It is also useful to practitioners who must remember the importance of client-

centered interviewing, a skill which can get lost in a busy practice.

## II. RAPPORT BUILDING HURDLES: “THE DEPARTMENT OF MOTOR VEHICLES (DMV) INTERVIEW”

In addition to law school teaching, I teach nationally at Trial Practice Institutes<sup>2</sup> and CLE seminars. Some of these programs are broad-based state bar sponsored events, attracting civil and criminal defense practitioners in public and private practice; several are limited to criminal defense attorneys. Many of the attendees at these training programs are attorneys in Public Defender offices or those who handle a significant number of court-appointed cases in which they represent indigent persons facing criminal charges.

Client interviewing is a standard skill taught at Trial Practice Institutes. Generally, each lawyer/participant is asked to do a mock interview of an actor who is playing a client charged with a criminal offense. The actors are experienced professionals who are briefed on a simulated case and who stay in character throughout the exercise. The actors are given specific direction concerning the reactions and emotions they should express about various topics that are likely to come up during the interview.

The actors hired are various ages, races and ethnicities and play clients from different economic and educational backgrounds. Some are told to express pre-conceived notions about an attorney’s abilities based upon age, experience, or whether the attorney is court appointed or privately retained. Some actors are instructed to exhibit signs of depression or other mental illness or to be fixated on one issue confronting them, such as potential job loss, what happened to their car when they were arrested, or whether their attorney believes in their innocence.

Participants at the Trial Practice Institutes are asked to assume that they are meeting their client for the first time and are told to start the exercise by explaining what it is they wish to accomplish during the interview. Experienced lawyers tend to state their goal as “establishing rapport” by “gaining the trust” of the client. They understand that making a personal connection with the client is essential if they are to be successful in the subsequent representation.

Once they state their objectives, each attorney is given ten or fifteen minutes to meet with the “client” while the other members of the

---

<sup>2</sup> I have taught each summer for the past 19 years at the National Criminal Defense College (NCDC). The College attracts criminal defense practitioners from across the nation for intensive hands-on instruction and practice. The College is housed at Mercer Law School, Macon, Georgia under Professor Deryl Dantzler, Distinguished Professor of Trial Advocacy, Dean of NCDC, and Director of Trial Practice.

trial practice group and the faculty members observe the interaction. The actor/client responds to the attorney according to the instructions he or she has been given and stays in character throughout the exchange.

Of course, having and stating a particular goal does not mean it is attainable. Often an attorney's desire to establish rapport or gain trust does not translate into making such a connection. At the conclusion of the exercise, when the actors are asked, in character, how they feel about their attorney, the majority of them respond, "He doesn't care about me," "She doesn't believe me," or "If I had money, I could hire a good lawyer."

Why the disconnect? The lawyer wanted to connect. The client wanted to connect. Yet, there was no bridge. The explanation, quite often, is the common experience of something I call "The Department of Motor Vehicles Interview" ("DMV Interview"). In attempting to analyze the problem of lawyers who want to establish rapport and trust in the attorney-client relationship but nonetheless fail to do so, I have been struck by one consistent observation. Virtually every attorney I have observed, from brand new lawyers to those with twenty years experience, initiates the attorney-client relationship with the "DMV Interview."

The "DMV Interview" has defining props: a legal pad or folder and a pen. The attorney sits down, pen in hand, almost always across the table from the client, and places the pad on the table. Some attorneys put the pen down in order to shake the client's hand, but a very high percentage cling to the pen from the moment they walk through the door to the moment the two part company.<sup>3</sup>

This interview generally starts in one of two ways. A substantial number of attorneys do not even tell the client their name or office affiliation before launching a pre-set series of questions. Another group of lawyers gives a "speech" at the beginning of each interview, explaining confidentiality in the attorney-client relationship and the nature of the charges or the legal difficulty they believe the client is confronting. These lawyers then proceed to the same set of questions that the first group asks.

The questioning by the lawyers is primarily aimed at gathering the client's personal identifying information. The questions generally follow this pattern: "What is your name?" "Address?" "Date of birth?" "Social security number?" "Are you married?" "What is your spouse's name?" "How many children do you have?" "What

---

<sup>3</sup> I hope in the new technological age that the DMV Interview is not newly defined by the use of a laptop computer or a "BlackBerry," either of which will create equal or more distance between the attorney and client than the pen and paper.

are their names and ages?” “Are you employed?” “Where?”

Rarely does the lawyer explain to the bewildered or apprehensive client why the questions are important or how the answer will be used. Typically, the lawyer’s eyes are focused on the legal pad as he or she writes down the responses, with darting glances toward the client’s face only as the next question is being asked. The lawyer is oblivious to a client’s rolling of the eyes, slouching in the chair, and stiffening of the jaw and arm muscles. Downcast eyes, tearing, and hand wringing are easily missed.<sup>4</sup>

More significantly, the script rarely changes even when the client changes. The client’s essential identity seems to have no impact on the questions asked or the “speech” delivered. Whether the actor playing the client is the same or a different race than the attorney, older or younger, exhibiting signs of mental illness, or has been told that, for the purposes of the exercise that he/she is illiterate or has a college education, the type and manner of the attorney’s questioning remains virtually the same.

Complex legal terms, such as indictment, bail, information, discovery, and predicate offenses are used without explanation or an attempt to determine the client’s level of understanding.<sup>5</sup> Persistent questions by the “client” about eviction, job loss, or other matters not considered relevant by the lawyer are generally ignored or met with irritation or explanations that those matters will be addressed at a “later” unspecified time.

When they listen to the actors being questioned afterward, the attorneys are dismayed to learn that their “clients” have a negative view of the initial interview. They are also defensive about the need

---

<sup>4</sup> I teach each summer at the New York State Defenders Basic Trial Skills Program, a program developed specifically for public defenders in their first years of practice. It is a very innovative program, in which each group of participants is “coached” by a team of instructors which includes both an experienced attorney and an actor or communication expert. These non-lawyer team members provide invaluable feedback to the participants about the “clients” in terms of their non-verbal communication and reactions to their attorneys. They point out the missed cues and discuss their significance, for example the downcast eyes may be the result of embarrassment or may signal the need to explore more serious considerations such as depression. Sensitivity to cross-cultural and economic disparity issues is stressed throughout the week-long program.

<sup>5</sup> See generally STEFAN H. KRIEGER & RICHARD K. NEUMAN, JR., *ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, AND PERSUASIVE FACT ANALYSIS* 262 (Aspen 3rd ed. 2007) (providing examples of how lawyers frequently miss verbal cues and body language from clients and how that can work against the development of a trusting attorney-client relationship); see also Gay Gellhorn, Lynne Robins & Pat Roth, *Law and Language: An Interdisciplinary Study of Client Interviews*, 1 *CLINICAL L. REV.* 245 (1994) (emphasizing the role of language and clear communication in establishing a trusting attorney-client relationship). The actors at the Trial Practice Institutes provide strikingly similar feedback when asked about the interview. They note that some attorneys never made eye contact, didn’t explain legal terms, or failed to listen to their concerns.

to quickly obtain demographic information.

*I can't help him unless I know something about him.*

*I only have ten minutes to see him in lockup.*

*If she wants to get out on bail, I need to know whether she has a job or not.*

*How will I know how strong the case is if I don't ask any questions?*

The attorneys are also quick to place any blame for lack of rapport on the client or “the system,” and express such sentiments as:

*I work my butt off for these guys and all I hear is that they want a 'real lawyer.'*

*I feel sorry for her, but the only way she is going to see her kids is if she cooperates with me.*

*I'm an attorney, not a social worker.*

*Our office isn't allowed to go to Family Court and that's all he wanted to talk about.*

*How am I supposed to know if someone is mentally ill?*

*The Judge is going to be on the bench in twenty minutes; if I'm not ready, I'm in big trouble.*

*When I go to the jail I have ten guys to see; I don't have time to hear a sob story from every one of them!*

These are typical reactions of experienced attorneys when presented with the dilemma of the need to quickly obtain information and establish rapport with their clients. The “DMV Interview” helps to explain this dichotomy between the lawyer wanting and needing to obtain information from a client and that client’s negative perception of the attorney as a result of the interview process. I use the DMV concept to help train attorneys to fulfill their goals of establishing rapport and trust with the client, while still eliciting the information they require.<sup>6</sup>

After the actors have left the room, I ask the lawyers to reflect for a few moments on who they are and where they stand in society. Although many of the lawyers I teach are young public defenders, and are therefore poorly paid in comparison to successful corporate attorneys and other attorneys in private practice, in a more global context they are all quite privileged. By definition, they have succeeded in undergraduate and law school, have passed the Bar exam, and have jobs. In addition, although some come from impoverished backgrounds, many acknowledge they are privileged in a more absolute

---

<sup>6</sup> See generally Linda F. Smith, *Client-Lawyer Talk: Lessons From Other Disciplines*, 13 CLINICAL L. REV. 505 (2006) (illustrating the importance of establishing trust with clients throughout the interview as a cooperative conversation).

Spring 2008]

*Whose Story Is It, Anyway?*

515

sense, having grown up in a middle or upper class family, having acquired a graduate degree, being a member of a profession, having a support network, and the like.

After discussing their relative prosperity and professional status, I ask the attorneys, “When was the last time that someone asked you the types of questions you asked your client in the exercise? When was the last time you were asked a series of pedigree questions like the ones you just asked?” The answers vary, “When I applied for a passport.” “When I filled out the application to come to the Trial Practice Institute.” “When I was getting a loan for my house.” “I just moved and had to re-register to vote.” “I bought my first car.”

I ask the attorneys what all of the answers have in common. Rarely do any of the lawyers see any connections. I point out that when privileged people are asked such questions, they consider them routine, even boring, and answering the questions typically results in something positive, e.g. obtaining a passport, renewing a driver’s license, approval of a home loan, registering to vote in the next election.

Our discussion moves to the other set of interactions where this questioning is common, which happen to be more often the experience of poor people: when probation is revoked, food stamps are denied, children are removed from their home, warrants are executed, family members are arrested, evictions occur, deportations are initiated. And who asks these types of questions? Federal, state, county or city employees with forms to fill out. These are officials who may be viewed by the clients as bureaucrats, at best, and bullies, at worst. They are police officers, probation officers, immigration officers, and social services workers. They are certainly not individuals whom the clients trust as their advocates.

How are these questions that result in terrible things happening to future clients of the students and practitioners asked? Generally, in the same rapid-fire manner, with little or no intonation, little or no reaction regardless of the answer, and with little or no eye contact, smiling or other non-verbal acknowledgment. And always, bingo, with a pen and paper on a desk in between the questioner and the client.

I then ask the attorneys to view their behavior from the client’s point of view. Why would their client have reason to believe that the attorney was any different from the police officer or probation officer? In fact, how would the client even know who the attorney was or why he or she was asking the questions? Was an introduction made? Was an explanation given? Why were the questions asked? Who would see the answers that were written on the pad of paper?

The lawyer knew what was necessary to open the file or to prepare the bail application, but how could he assume that the client would understand that?<sup>7</sup>

For those lawyers who begin the interview with a prepared speech about confidentiality and the nature of the proceedings, I ask how they can gauge their client's level of understanding. Do they know if English is their client's first language? If their client is literate? What their client's level of education is? Do downcast eyes signify understanding, mere acquiescence, or acute embarrassment? Are twitching limbs a sign of nervousness, mental illness or drug withdrawal?

If experienced practitioners, attempting to establish rapport with their clients, consistently use a technique that does exactly the opposite of what they intend, there is a need to teach them a more effective method. As a law school professor, however, I want to do more. I do not want to wait until I observe practitioners doing it "wrong" to help them learn a better way.

Law students require effective client interviewing skills *before* they become practitioners.<sup>8</sup> If lawyers are to be client-centered from the moment they begin their careers, both in their clinical work and when they graduate, the law schools must provide this training.<sup>9</sup> The storytelling exercise I have developed, "Whose Story Is It?" guides students from the DMV Interview to Client-Centered representation.

### III. TEACHING RAPPORT BUILDING: THE STORYTELLING EXERCISE

Twenty-four students enroll in my trial advocacy course each year. Each week, all students in the course attend a one hour lecture. In addition, each student is assigned to one of two afternoon lab sections of twelve students which meet for a two-hour period each week.

The first class of the semester is a lecture in which I explain the

---

<sup>7</sup> In preparing a bail application in New York state, for example, an attorney must include the following information: "(a) . . . the court must, on the basis of available information, consider and take into account: (i) The principal's character, reputation, habits and mental condition; (ii) His employment and financial resources; and (iii) His family ties and the length of his residence if any in the community; and (iv) His criminal record if any. . ." N.Y. Criminal Procedure Law § 510.30 (McKinney 1970).

<sup>8</sup> See Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369 (2006). See also DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT CENTERED APPROACH (West 1977) (discussing the value of client centered representation).

<sup>9</sup> See generally JAMES W. McELHANEY, McELHANEY'S TRAIL NOTEBOOK (American Bar Association 4th ed. 2005) (1981) (providing a comprehensive tool for students and trial attorneys alike). See also THOMAS A. MAUET, TRIALS: STRATEGY, SKILLS, AND THE NEW POWERS OF PERSUASION (Aspen 2004).

Spring 2008]

*Whose Story Is It, Anyway?*

517

class requirements and describe how the course will be structured throughout the semester. I then introduce the concepts of “Theory and Theme” in trial advocacy and briefly discuss the various aspects of trial work (*voir dire*, opening statements and closing arguments, direct and cross-examination) that will be covered in the course. Other than a few questions (usually regarding grading) the students tend to listen attentively, assiduously taking notes, and focusing almost exclusively on me.

I then tell the students that I would like them to separate into two groups on different sides of the room based upon their afternoon lab group assignment. Once they are in their groups, I ask them to pair off with another student. I tell them to choose someone that they did not know previously. Once the students have paired up, I give them these directions:

I would like all of you to take a few moments to think of something that has happened to you that changed your life. It must be something that does not relate to law school or why you came to law school. When I am finished speaking, I want each pair of you to find a quiet space in this room, away from the other students.

Once the students have selected a partner and rearranged the chairs to allow space between each pair, I give the following additional directions:

Decide who will go first. That student will tell his or her partner about his or her experience. You will have about ten minutes. When the time is up, I will say ‘switch.’ The other person will then have an opportunity to tell about his or her experience. After another ten minutes, I will say ‘stop.’

After a few blank looks, moans, and some nervous laughter, the students begin to talk with their partners. Within a moment or two, they are all quite engrossed in the exercise. Some students are wildly gesticulating with their hands, appearing to act out events, others are obviously telling humorous stories replete with laughter and groans, and still others have leaned in close to one another and appear almost grim.

I can observe some students listening intently, without interruption, as their partner tells a story. Other students appear to be asking questions or commenting on what they are hearing. I have never seen a student take out a pen and paper and take notes on the story that they are hearing. The students all choose to sit side by side or on chairs facing one another with nothing between them. Some of the

students touch one another during the course of the exercise.

During the exercise, I either stay in a part of the room away from any of the student pairs or leave the room, returning to give the “switch” and “stop” directions. At the conclusion of the allotted time, I dismiss the students.

I next see the students when they meet for their afternoon lab section. Once they have taken seats, I greet them and then call on one student. “Joe, who was your partner during the lecture class? Kathy? OK, please go to the front of the room and tell us Kathy’s story.”<sup>10</sup> I then take a seat with the students, and participate only to call on each student in turn. I give no further direction to the students until all of the stories have been told.

#### A. *The Stories*

The stories run the gamut from childhood misadventures, to “how I met my husband,” to brushes with death. Some are mundane, some inspiring, some excruciating. Students discuss childbirth, sexual abuse, and acts of heroism performed or witnessed. There are stories about parents, spouses, children, “coming out” sexually, religion, travel to foreign countries and trips to an amusement park. There are stories that take only a few minutes to tell and stories that take much longer than the students spent in their pairings. Most of the students are surprised that the exercise is something more than a “get to know you” party game. When called on, a few say, “I’m afraid I’ll forget something,” or “Can I tell about my own experience instead?” Some appear to be embarrassed or concerned at sharing another’s story, but no student has ever refused the direction to tell the story. Nor has any student requested that his or her story not be told. A few students have said, “Why didn’t you tell us that we would have to do this?”

Although all of the students comply with the direction to tell their partner’s story, some are obviously uncomfortable in the front of the room, others at ease. Most of the stories are told in the third person, but occasionally a student will use the first person. Often a student will “check facts” with his or her partner, e.g., “your sister’s name is Susan, right?” Sometimes the student whose story is being told will interrupt the “teller” to correct facts or add details.

Often the teller will add his or her own interpretation of the event, even going so far as to directly contradict how the participant in the story related it. For example, one student’s story was a poignant one of rejection experienced during his childhood. The teller expressed it this way,

---

<sup>10</sup> All of the students’ names have been changed for use in this article.

Spring 2008]

*Whose Story Is It, Anyway?*

519

*Robert told me that it didn't bother him that these boys weren't his friends anymore, but I don't think that is true. I think the fact that he told me about it so many years later means that it affected him deeply.*

Another student said,

*I could tell how much Tamara admired her sister and how she wished she could be as brave as Rachel was.*

The teller often speaks directly to the person about whom the story is being told. Other students make almost no eye contact with their partner and still others tell the story directly to me, essentially ignoring their partner as well as the other students in the class.

Many of the students add their own experiences and emotional reaction to the story they are telling.

*Brian told me that his father was his hero growing up. He told me how much he admired the fact that he fought in Viet Nam. I could understand that because I always thought my father could do anything. He didn't fight in a war, but he taught me to stand up for what I believed.*

Some of the students will “act out” the story, pretending to be in the car speeding down the highway or in the hospital room. Others will acknowledge the skill of their partner in describing the experience,

*When she told me how she felt when the baby came out, I started crying because it was so real.*

A few of the students will explicitly cite a “lesson” from the story, usually at the end of their recitation.

*What I learned from John was how important family is to him.*

Others will begin with a theme,

*Karloff told me about how he learned to swim - the hard way!*

One student even intoned,

*The moral of this story is: “Be careful who you trust.”<sup>11</sup>*

---

<sup>11</sup> See generally Phillis Gershator, WISE. . . AND NOT SO WISE TEN TALES FROM THE RABBIS (Jewish Publ'n Soc'y 2004) (illustrating the traditional use of storytelling to teach religious and moral lessons). See also Heather Forest, WISDOM TALES FROM AROUND THE WORLD (August House, Inc. 1996) (highlighting the diversity of cultures which historically

The student paused dramatically before pronouncing the moral to insure the class was listening and would absorb the “lesson.”

Many of the students give their impression of the story and/or their partner. Often, these observations contain a comparison with themselves:

*I think Nancy is one of the most courageous people I have ever met. I can't believe that she started law school while she was receiving chemotherapy. And she has two kids to take care of. I can barely take care of myself, and I still call my mom almost every day.*

Often, the student whose story is being told will look down at his or her desk while the story is being told, but will look up when it is over and thank the teller of the story. If it is a sad or heroic story, others in the class may comment during or immediately after the story is told. It is not unusual during humorous stories for the men in the class to “high five” the subject of the story for a daring or clever act described in the story. Twice, women students have asked their classmate to show a picture of the baby whose birth story was told.

### *B. The Aftermath*

Once all of the students have had an opportunity to tell their partner's story, I lead a discussion of the exercise. Although there is no assigned seating in the class and the students are given no direction as to where they should sit, most of the partner pairs are sitting together during the lab. I first simply ask them to notice and to think about why they chose to sit next to their partner in the exercise and whether they had ever before sat next to this person in a class.

I then bring them back to the class during which they shared their stories and ask the following questions:

1. How did you choose your partner?
2. Was it someone you knew before?
3. Was your partner the same gender?
4. Was your partner the same race?
5. Are you and your partner similar in terms of age?

I next ask the students who “went first” in telling their story and how they decided on which of their life stories to share. Did they choose their most important story? The easiest to tell? A funny one? One that showed them in a good light?

I follow up these questions by asking whether they believe that

their choice of stories was in any way influenced by the characteristics of their partner. In other words, would they have picked another story if their “audience” was another woman as opposed to a man, a person of a different race, an older or younger person, or if they knew the entire class would hear the story? Because I discuss issues of race, gender, and age, as well as power and status throughout the semester, this is an opportunity to let the students know that we all make demographic observations and that it is not only appropriate, but necessary, to discuss these factors and their impact on our behavior.

I ask each student to think about how they wanted their partner to feel about them as a result of the story they chose to tell. Did they want the other person to like them? To respect them? To feel sorry for them? To learn about their values? Their background?

I then turn to the students who told their story “second.” I ask them whether they changed the story that they had planned to tell based upon the story that they heard. Did they “mirror” the first story in subject matter or tone? For example, if the first story was “how I met my husband,” did the student then tell how she/he met his/her partner? If the first story was light-hearted or humorous, was the student then hesitant to tell a story of her child’s struggle with drug addiction?

I ask the students to think about how they felt about their partner while the story was being told.<sup>12</sup> Had they formed an opinion of their partner before the story began? Did that opinion change? Did they ask questions during the story? Why or why not? How did they respond during the storytelling to information that was funny, sad, or upsetting? What did they say to their partner about their feelings? Did anyone touch their partner? Why or why not? How are they now feeling about their partner? Closer? More distant? Are they a team in some way?

I ask the students to think about what they did with the stories between the time they heard them and the time they came to class. Did they think about them? Did they share them with anyone? If so, who? Did they think about how they would share them? Did they have further questions they would like to ask their partner about the story or the people or places described? How did they feel about the story that they told? Do they feel they disclosed too much about themselves? Not enough? Were they worried about what would happen to the information?

---

<sup>12</sup> See Filippa Marullo Anzalone, *It All Begins With You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection*, 24 *HAMLIN L. REV.* 324 (2001) (emphasizing the importance of the emotional component for creating a successful adult learning environment and engaging adult learners in the learning process).

Interestingly, many of the students say that they would feel very uncomfortable sharing any of the information that they learned in the class, particularly if it was very personal. One student last semester said,

*I normally tell my wife everything, but I told her that I didn't think that I should share the stories from this class. I really thought that what happened here should stay here. We didn't agree to that in advance, but I just think that should be the rule.*

His classmates all nodded vigorously in agreement and one said, "Let's vote on that." Everyone then raised their hands. This action on the part of the students, with no prompting from me, made for an easy transition to the discussion of Making Confidentiality Real.

### C. "Beachballing": Leading the Directed Discussion

The discussion portion of the exercise is crucial, and while my role in it is important, I have found that is equally important that I am not the focus. I use a teaching technique during the discussion portion of the exercise that I call "beachballing." I sit with the students rather than standing or sitting at the front of the classroom, thereby creating a more democratic learning environment in which adult-learners take a role in the learning process. By actively participating in the experience, a direct connection is made between the lessons learned and practical problems students will be faced with in practice.<sup>13</sup> I do not call on students. I ask a question and then remain silent until one of the students makes a comment. I then wait to see the response of the other students. I will make eye contact with particular students to encourage them to respond to their classmates' observations, but will respect their silence if they do not comment. If a student raises his or her hand, I will nod or make eye contact, but try to remain silent.

I conceptualize my role in asking questions as lobbing a beach ball into a group.<sup>14</sup> It is up to the group members to "keep the ball in the air." Once the conversation lags and the ball drifts to the ground, I pose another question. On the other hand, I let the students continue to make comments until it appears that everyone who wishes to contribute has done so.<sup>15</sup> Many of the students are hesitant to con-

<sup>13</sup> See generally Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37 (1995) (explaining the function and value of experiential based learning for adult students).

<sup>14</sup> See generally Anzalone, *supra* note 12 (explaining key components of the learning experience and the role of the professor as modeling self-reflection and facilitating discussion as a member of the group).

<sup>15</sup> See generally Deborah J. Cantrell, *Teaching Practical Wisdom*, 55 S.C. L. REV. 391 (2003) (emphasizing active participation and reflection as an integral part of adult legal

tribute at the beginning of the class but grow increasingly dynamic as the conversation progresses.

I use the beachballing technique because I want the students to understand that they will learn from one another and from their own experiences and interactions, not only from “top down” lecturing from their professor.<sup>16</sup> After the first few questions, the students understand and take on the responsibility for forwarding the discussion.<sup>17</sup> They encourage their partners first, and then their other classmates to share with them their thoughts about telling a personal story to someone they did not know before, someone who perhaps was very different from them in terms of race, gender, age, or previous experience.<sup>18</sup>

Once the students are comfortable in sharing feelings with their classmates, we move to the next level of discussion. Again, I lob “beach balls” into the group. I ask the students how they felt when their story was being told. The students are surprisingly forthcoming. Students tend to first disclose feelings of embarrassment and concern for what others will think of them. Next, they say that it “didn’t sound the same” when someone else was telling it. One student, Samantha, expressed it this way,

*Listening to someone else tell my story was really weird. The things that Debra emphasized made me re-evaluate the way I told the story and my reasons for telling the story. It showed me how powerful perception can be and how two people can perceive things so differently.”*

---

education.). See also Paula Lustbader, *Seven Principles for Good Practice in Legal Education. Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 J. LEGAL EDUC. 448 (1999) (discussing techniques for involving all types of adult learners, particularly through participation and reflection). Courses in trial advocacy typically draw students who are outspoken and assertive and may intimidate more passive classmates if the professor does not consciously provide an opportunity for the quieter students to have their say.

<sup>16</sup> Cantrell, *supra* note 15 at 391 (further demonstrating how providing opportunities for reflection on lessons learned is an essential part of experiential learning).

<sup>17</sup> See generally Quigley, *supra* note 13 (discussing the importance of experienced based learning and how active participation in a learning experience provides students with a much more concrete connection to practical problem solving rather than traditional passive learning). Although the students are initially discomfited by the silence and by the fact that I am not lecturing, they quickly rise to the challenge and begin to provide comments. Experiencing this learning technique early in the semester, allows the class to be much more comfortable in providing feedback later in the semester on simulated trial exercises.

<sup>18</sup> See generally Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School Teaching*, 32 WILLAMETTE L. REV. 541 (1996) (identifying the importance of discussing issues of diversity in the law school classroom to develop open minded attorneys who are better listeners and can therefore better represent their clients).

I ask if the person telling the story made any mistakes. Students begin by sharing factual details that were wrongly told, such as names, ages, or events that were out of order. The “teller” of the story often apologizes. I ask how the student felt when the mistake was made. Some students dismiss the inaccuracies as unimportant to the story; others express frustration that their partner was not paying enough attention or that they were not clear in describing the events. Most place the “blame” for inaccuracies on themselves, “*I don’t think I was very clear when I was telling you,*” or on the complexity of the information, “*Nobody could be expected to remember all the names of the people in my family.*”

On the other hand, the tellers of the story apologize for not paying close enough attention and for making mistakes. Tony summed up the feelings of many of the students,

*There is a lot of pressure telling someone else’s story. I wanted to make sure I did a good job. I wouldn’t have worried about telling my own story so much, but I wanted to let everyone know how much I thought about Umar and what I learned about his struggles to come to this country.*

Interestingly, the most animated conversations about accuracy involve not factual details, but the recitation of the emotional components of the stories. A student will say, “*You said that I admired my sister - but that is not what I told you. I said that she never took me seriously.*” The “teller” may respond, “*I know that is what you told me, but I could tell that you wanted her to take you seriously because you thought so highly of her.*” This type of comment invariably leads other students to express what “they could tell” that was either not “told” or is now being explicitly denied by their partner. Eventually, someone will say, in exasperation, “*So, you think you know better than I do what I was thinking? How do you know what I was feeling? It is my story, not yours!*”

This is a critical juncture in the exercise and leads naturally to a discussion of both interviewing skills and client-centered representation. “Whose story is it?” I ask the students. I inquire of the person who told the story how he or she “could tell” what the emotions were by listening to the story. The students will begin to discuss body language, tone of voice, and choice of words.<sup>19</sup>

It is important to give the person whose story was being told an

---

<sup>19</sup> See generally Jeffrey Kravis, *The Art of Attorney Mediation: 10 Ways to Improve Your Law Practice Using Negotiation Skills*, 62 J. DISP. RESOL. 22 (2007) (highlighting the importance of not only listening but using intuition to gather vital information from body language).

Spring 2008]

*Whose Story Is It, Anyway?*

525

opportunity to respond to the assertions about what his or her tone, body language and choice of words “told” the listener about his story. The student may accept the “trueness” of the emotions conveyed or may feel that unwarranted assumptions are being made. Occasionally, a student will express surprise at learning that a particular mannerism, gesture, tone, or choice of words conveyed an emotional message to others that the student believes is accurate but was deeply hidden, or continues to feel is inaccurate.

We discuss the stories in which the teller added observations about his or her own family, values, or observations. Did these additions change the original story? Make a new story? Did it become the story of the teller as opposed to the partner? Did the changes affect how the class felt about either partner? Both partners?

I conclude this part of the class discussion by asking the students whether they would have changed the story they picked if they knew it would be told to the entire class. Interestingly, it is generally the students who told the more mundane or amusing stories who now want to tell a more serious or revealing one. One student said,

*I am always the class clown and I told a story that I knew would make everyone laugh. But when Christa told my story, I just thought ‘why don’t I just grow up?’ I wish that I had told an important story, so that people would know that I’m not just a joke.”*

Another student, a black, single mother, wrote this reflective note to me,

*I feel like I should have shared a more personal experience because other people did. Most of my life experiences have been negative, or at least perceived by me to be negative. I wanted to share a positive experience and that’s what I did. But, after hearing the people in the group tell stories I felt bad because their stories were negative, about loss, but were told in a positive manner, about how they learned or bounced back. I wish I had told a story like that about my life.<sup>20</sup>*

I ask the students whether they now feel differently about their classmates and, if so, how? The students are aware that the exercise makes them see their classmates more as individuals. Danielle put it this way,

---

<sup>20</sup> In addition to the class discussion, I tell students that they may come to see me, call me, or send me an e-mail at any time to discuss anything about the exercise or anything else that happens in class. In addition, one of the questions on the end-of-semester evaluation asks the students to reflect on the storytelling exercise. Some of the comments I have quoted in this article come from these evaluations.

*I never really care who is in my classes. There is always the jerk who knows everything, the suck-up, the idiot who never gets anything, and then a whole bunch of people that I can't even remember. This is different. Now when I see these people in class and in the cafeteria, I'll remember their stories"*<sup>21</sup>

Another student commented,

*We learned a little bit about each person as an individual and it made strangers into acquaintances immediately. This made it easier to strike up friendships and work with each person later.*

#### *D. Teaching Client-Centered Representation*

Once the students have had an opportunity to process their classmates' comments, I ask them how they think the exercise relates to what we will be doing in the trial advocacy class.<sup>22</sup> Almost always, the students who respond indicate that speaking in front of an "audience" will make them more comfortable or skilled in the courtroom simulations. A few even draw an analogy between the listening group and a jury.

At least one or two students each semester comment that they are "bonded" with classmates as a result of the experience, and that this feeling of closeness will make it easier to perform the lab exercises. "Now that everyone here knows what a fool I made of myself when I asked my wife to marry me, I won't be so embarrassed if I screw up on my opening statement."

By and large, the students see the exercise as an "ice-breaker" or party game designed to give them a "taste" of oral advocacy skills and an opportunity to get to know their classmates a bit better. A couple have even thanked me for allowing them this "gradual" immersion into the class, as opposed to "throwing them right in" by requiring a direct examination or opening statement during the first class periods.

In short, during the reflective discussion period immediately following the exercise, the students are focused exclusively on themselves and their prospective ability to succeed in the class.

On their own, the students do not make the connection between the person whose story they told and the client in a trial. I specifically tell them: "What we do as lawyers, inside a courtroom and out, is

---

<sup>21</sup> This point is exemplified by an ancient Chinese proverb, "Tell me, I forget. Show me, I may remember. Involve me, and I understand." Fran Quigley, *supra* note 13, at 50.

<sup>22</sup> See generally Linda S. Anderson, *Incorporating Adult Learning Theory Into Law School Classrooms: Small Steps Leading to Large Results*, 5 APP. J. L. 127, 145-46 (2007) ("Adults learn better when they can actively participate in and reflect on the skills they are seeking to gain.").

Spring 2008]

*Whose Story Is It, Anyway?*

527

function as the “teller” of our client’s story.” When I say those magic words, I can see the “light bulb” go on, and students nod and murmur in agreement.

Drawing on the comments the students made in the earlier discussion, the class is then able to have a more focused conversation about what it means to represent someone and to tell their story.<sup>23</sup> I point out that the students were all able to choose the story about themselves that they wished to tell. Although we only had, in essence, a “snapshot” of their life at a given moment in time, each student was able to go through his or her “photo album” and select an image that showed them in a positive light. In addition, each student could insure that the only details that we had about the event were those they chose to divulge, i.e., they could “crop” the picture before it was shown.

In contrast, I explain to the students, our clients generally come to see us about a particular “story” or legal problem. Often, the client is upset, embarrassed, or devastated by the circumstances. In most cases, there will be an adversary painting the client in an unflattering light and evidence which either corroborates or contradicts the client’s version of the events. The “snapshot” of our client is one over which he or she may have very little control, and which may be out of focus or distorted. Further, the picture may not be at all representative of the rest of the client’s life.

I take this opportunity to go back to the demographic issues we discussed earlier and how similarities and differences can affect the attorney-client relationship. Did they choose which stories they told or change their stories in any way due to their partner’s race, age, gender, or other real or perceived similarity or difference? Were any of them surprised at the story their partner told? Did they change their impression of their partner as a result of the story? Did they worry that their partner might have biases that would affect how they heard the story?

One student in my class a few years ago, Jalessa, was an outgoing, full-bodied black woman with a booming voice. Her partner, Mara, was a willowy, soft-spoken white woman, who sat with her head bent, her long brown hair covering her eyes, while Jalessa empathically told her story. When I asked if anyone changed their impression of their partner during the exercise, Jalessa shared the following:

*I picked Mara because you told us to find someone that we didn’t*

---

<sup>23</sup> See Anderson, *supra* note 22, at 127 (illustrating the importance of providing students with immediate feedback and reflection to facilitate understanding of the material in context).

*know. I have seen Mara in the halls the last two years, and she was in one or two of my classes, but I never spoke to her before the night of the lab. I figured we had nothing in common. She's white, she's beautiful, and she wears expensive clothes. When she started telling me about her problems with food, I couldn't believe it. We are the same person! It was like, 'I don't believe this. You felt this way, too?' Obviously, she has dealt with it a lot better than I have, but she really encouraged me to keep working at losing weight, not for other people, but for myself. I felt so much better after talking to her. Quite frankly, I never thought a white girl would understand me. I still don't think a white man would.*

Age differences and prior work experience are very significant to most law students. One student commented,

*Anne is as old as my mother. I kept expecting her to say the things that my mother would have said if I told her about drinking and almost crashing the car.*

Another student expressed his feelings about his partner's story in relation to his own lack of experience,

*Robert has already had two careers and I haven't even figured out what I want to do when I graduate.<sup>24</sup>*

Although we have a number of "non-traditional" law students in the class every year, a majority of the students are in their twenties. We discuss the fact that, at least for the first decade of their practice, many of the people they come in contact with, including senior partners, jurors, court personnel, and particularly, clients, will all be older than they. What impact will that fact have on their representation? On their clients' trust? On their comfort level? On their ability to relate?

Once the students finish discussing how their feelings about their partners changed as a result of the storytelling exercise, I ask how they would have felt if, instead of saying "switch" at the end of the first ten minutes, I had ended the exercise at that time with only one partner in the pair having told his or her story. How would they then have felt about the exercise, particularly the "sharing" of the story with the rest

---

<sup>24</sup> See generally Anderson, *supra* note 22 (discussing the value of timely peer to peer feedback and how that can deeply resonate with adult learners). Students also begin to recognize that what they learn from the experiences of their classmates can be used by them in the future in working on behalf of their clients. For example, a young student with no previous work experience may develop techniques to discuss business matters and an older student may learn tips on "connecting" with juvenile clients from his much younger classmates.

Spring 2008]

*Whose Story Is It, Anyway?*

529

of the class?

The students begin to protest.

*That wouldn't be fair.*

*That would be terrible!*

*I would never have come back to class.*

*They would have power over us.*

*That would make the ones who told so much more vulnerable.*

*I would resent you (referring to me as the professor).*

*I would resent my partner.*

*Well, we wouldn't be partners if only one person told!*

Once the shouts of indignation subside, I ask, "How do you think our clients feel when they share with us and we do not reciprocate?" Again, light bulbs, and a connection is made about what it is that we do as attorneys, and how what we do can affect our clients. We briefly talk about power considerations in the attorney-client relationship, and what and how much is appropriate to share with clients. I let the students know that the answers to these questions involve issues of confidentiality and professional standards of behavior as well as issues of trust and establishing rapport. I tell them that we will not be able to explore all of these issues within the time constraints of our class, but that they need to be aware of them as they begin their legal careers.

We then continue the discussion with questions about whether the exercise would be different if the two participants spoke different languages and an interpreter was needed to assist in the communication; how the conversation would be different if one of the participants was free to leave at any time but the other was confined to the chair or room; and what impact it would have if the story being told had no meaning to the listener because of cultural or background differences.<sup>25</sup>

We discuss different client populations that students might encounter in the law school clinics, in their field placements (externships), or when they are in practice. Many of the students will be dealing with immigrants, non-native English speakers, clients with physical and mental disabilities, and clients who are incarcerated. Students will also be dealing with clients who do not share their cultural

---

<sup>25</sup> See generally Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001) (emphasizing the importance of respecting and preparing for cultural differences between attorneys and their clients). It is important in this context not to limit the discussion to racial or ethnic differences, but to make the conversation as broad based as possible, touching on issues such as religious background, developmental or mental disabilities, educational disparity and language barriers.

or class background.

Again, I stress to the students that we are barely scratching the surface of the types of considerations that are crucial to establishing and maintaining a rapport with clients that will allow for meaningful representation. The students must understand that the skills and techniques which they are using for the first time will be modified and refined throughout their professional careers. The ability to be both self-aware and empathic to clients is a life-long endeavor, a skill that the best attorneys are constantly striving to improve.

### *E. Making Confidentiality Real*

The stories shared in class can be very personal and sensitive in nature, and the students are sometimes hesitant to tell them. I ask the students, "Did any of you feel uncomfortable telling the story?" Almost always, a student will say, "*I didn't think I should tell. It was John's story and I didn't know if he would want the whole class to know.*"

When I ask why the student told the story if he or she felt that it shouldn't be shared, the invariable response is, "*Because you told me to.*" I then inquire, "What do you think would have happened if you said, 'no'?" Silence. "Is that the test? If someone tells you to disclose something that is a secret, do you do it?" Silence. "Do you think you could have asked John's permission to tell the story?" Silence. Then, "*If John thought I wouldn't tell, then I shouldn't have told.*"

The students' realization of the disclosure problem effortlessly leads into a discussion of the ethical requirement of attorney-client confidentiality and the importance of the client's subjective expectations.<sup>26</sup> We discuss under what circumstances an attorney might be pressured to reveal a confidence and what the ethical response should be. In addition, we talk about how to explain the concept of confidentiality and its waiver to our clients in terms that they can understand.

I also share with the students that I feel ambivalent at times about utilizing the exercise, even though I believe that it has great pedagogic value. Once, a student, John, was glowering at me, arms locked across his chest, slumped in his seat, hat pulled low over his eyes, after the exercise in which he told his partner's story of a painful divorce involving infidelity. "John, would you like to share how you are feeling?"

---

<sup>26</sup> See Model Rules of Prof'l Conduct R. 1.6 (1983); see generally Gregory C. Sisk, *Change and Continuity in Attorney-Client Confidentiality*; *The New Iowa Rules of Professional Conduct*, 55 *DRAKE L. REV.* 347 (2007) (highlighting the importance of confidentiality as the foundation of a trusting attorney-client relationship).

Spring 2008]

*Whose Story Is It, Anyway?*

531

*You tricked us! You should have told us why we were hearing the stories. You knew what was going to happen, but we didn't. It isn't fair!*

Fair. Ethical. Professional. Moral. We discuss the difference between these terms, both from a legal and from a practical and ethical standpoint. We discuss the power differential between me as a professor and them as students and compare it to the roles of attorney and client. Usually, at least one of the students shares that he or she was willing to give me the “benefit of the doubt” and trusted that I had a “good reason” for the exercise, and that was justification enough to go along with the instructions. This conversation, their perception that the exercise would lead to a benefit for them, leads naturally to the next topic, specifically instructing the students in interviewing skills and avoiding the pitfalls of the DMV Interview.

*F. Teaching Interviewing Skills: The “DMV Interview” Revisited*

It is always the case that none of the students take notes during the storytelling exercise. I ask them whether that was a conscious decision on their part. Usually a student will say, “*Well, if I knew that we were going to have to tell the story, I would have, so that I wouldn't make any mistakes or forget anything.*” Most of the students, though, comment that they wanted to pay attention or that it would be distracting to take notes. One student expressed,

*I think that would have made the whole thing useless. The important thing was to understand who Jessica was. I got more out of her facial expressions than her words, and I wouldn't have been able to write those down. If I had been writing the words, I would have missed the expressions.*

Having already drawn the connection between the storytelling exercise and representing real clients, the students want to know if they “should” take notes when the exchange involves an attorney-client exchange. They understand that they may have to refer back to the information collected, that they may have dozens of clients and that their representation of a client may extend over a long period of time.

Again, I share with my students that the difficulties that they perceive between the desire to make a connection with a client and the need to obtain and retain information is one that is experienced by attorneys on a regular basis.<sup>27</sup> I stress that they need to develop the

---

<sup>27</sup> See generally Melissa L. Breger, Gina M. Calabrese & Theresa A. Hughes, *Teaching Professionalism in Context: Insights From Students, Clients, Adversaries, and Judges*, 55

skills to find a balance between these seemingly competing goals.

Students are generally frustrated by the tension between the lawyer wanting and needing to obtain and preserve detailed information and the client's potential negative reaction to note-taking during the interview process. We brainstorm. We discuss the DMV Interview. "Why aren't you offended when you are asked questions by the bureaucrat at the DMV office?" "*Because I got a driver's license.*" The students appreciate that they are not offended or suspicious when asked for demographic information which might otherwise seem intrusive if they perceive that they are receiving a benefit, e.g. a driver's license.

We discuss again how our clients, because of who they are and what experiences they may have had with the police, immigration, probation, or other agencies, might feel or react differently to the same types of questions.<sup>28</sup> "Why might they be afraid?" "Who could get the information?" "What could it be used for?" We then brainstorm. "So, how do you think you could make your client feel better?" "*Explain why I needed to take notes?*" "Yes!"

In fact, when questioned, in character, at the Trial Practice Institutes, the actors all told their lawyers that they wanted them to make eye contact, LISTEN to them, explain why they were asking questions, show them what they were writing down, and explain what was going to happen next. In short, they were seeking a human connection, so that their stories could be told.<sup>29</sup>

I use beachballing again to let the students discuss what they liked about the exercise. They appreciate how much information they were able to glean in ten minutes. How much they learned from eye contact, body language, facial expressions, and word choice. They comment on how much they would have missed if they were taking notes and how nervous they would have felt if someone were taking notes when they spoke.

---

S.C. L. REV. 303 (2003) (illustrating the challenges of balancing professionalism with the need to build trust with the client through different interviewing techniques). I also share with my students that I use this same exercise at Trial Practice Institutes attended by very experienced attorneys and that those lawyers exhibit the same difficulties.

<sup>28</sup> See generally Susan Bryant, *supra* note 25 (demonstrating the danger in assuming that clients attach the same cultural meaning to legal vocabulary and illustrating how such assumptions must be overcome to develop better client rapport through earnest listening and cultural awareness). Again, the conversation needs to be broad enough to also address client assumptions based on additional factors such as, educational level, language skills, and developmental or mental disability.

<sup>29</sup> See generally Linda F. Smith, *Client-Lawyer Talk: Lessons From Other Disciplines*, 13 CLINICAL L. REV. 505 (2006) (emphasizing the importance of deep listening to establish a trusting attorney-client relationship in the context of the client interview as a cooperative conversation).

On the other hand, we talk about how difficult it must be if you have dozens of clients and need to keep all of their files organized and how much information you need to do a proper investigation and meet with witnesses. What type of demographic or factual information is necessary for pleadings such as a bail application or motion to suppress? How is it possible to reconcile these competing demands?

Inevitably, the students come up with almost identical solutions to those suggested by the actors at the Trial Practice Institutes. We identify what would make them feel comfortable and respected.

Here are the rules that my last class developed: First, make eye contact and introduce yourself to the client. Shake hands or touch the client in some way to establish a human connection. Make sure that the client understands that you are his or her attorney and are there to help and be his or her advocate; don't assume that the client knows. Give the client a card with your name and phone number. Then, listen to the client without looking away or taking notes. Pay attention not only to the client's words but to his or her tone, body language and affect.<sup>30</sup> Try to determine the client's level of education, sophistication and understanding and whether he or she is suffering from any physical or emotional problems.

Then, explain to the client why it is necessary to take notes and what the notes will be used for, e.g. "to ask the judge to let you go home to your children." Let the client see what is written on the legal pad. Ask permission. Say to the client, "I need to go see the witnesses. Is it O.K. with you if I write their names down so that I can give them to my investigator?" Tell the client who will see the notes, e.g. "only the other attorneys in our firm and our investigator." Read what you have written back to the client and ask if it is correct. Thank the client. Tell the client when you will be back to visit if he or she is in custody or make another appointment if the client will be coming to your office. Ask the client if he or she has any questions or if he or she would like to take any notes or write anything down before you leave. Tell the client how to get in touch with you if he or she has questions or concerns. Let the client know if a family member can call and speak with you and what information you can or cannot share.

### *G. Student Reflections on the Exercise*

At the end of the semester, the students complete an extensive evaluation of the trial advocacy class. One of the questions on the

---

<sup>30</sup> See generally Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLINICAL L. REV. 321 (1998) (emphasizing how important it is to be aware of non-verbal cues from clients, and how missing such cues can negatively affect the ability to establish a trusting relationship with the client).

evaluation concerns the storytelling exercise. The students are asked to describe what they learned from the exercise and if they felt it was useful to have the experience at the beginning of the semester.

The responses from the students are wide-ranging. We spend a great deal of time during the semester discussing interviewing skills, client-centered representation, issues of diversity, use of theory and theme in trial, and the power of detail and description in conveying emotion in witness examination, opening statements and closing arguments. As these topics are discussed, I relate them back to concepts of telling the client's story to the jury, using verbal and non-verbal communication, and being aware of ethical considerations at all times.

Some students see the direct correlation between these classroom discussions and the initial storytelling exercise. Tony expressed it this way in his evaluation,

*I learned to be attentive, as a lawyer should, listening to a client's problem for the first time. I tried to learn to place myself in the role of a lawyer meeting with my client for the first time and tried to hone in on listening skills.*

Many of the students value the storytelling exercise because it helps them present more persuasive examinations or arguments.

*I knew that I had to make my closing argument into a story so that the jury would remember it. I still remember the stories from the first day of class. I remember you telling us that seeing something from a different perspective is key and I wanted the jury to see it from my client's perspective because it was his story, not mine.*

A few students persist in viewing the exercise as a party game for the first day of class.

*I like that it was at the beginning of the semester. I think that it made me feel closer with my class. I have never before said hello to everyone in the hallway from a class after such a short amount of time.*

Many students value the lessons on confidentiality. Mark wrote,

*I learned that if you think something you are being asked to do by the judge is questionable, or may harm your client or relationship with them, don't be afraid to challenge (nicely of course).*

The comments on telling the client's story demonstrate that the students are able to learn this critical concept. Sabrina wrote,

*I felt it gave me a wonderful perspective on what it would be like to*

Spring 2008]

*Whose Story Is It, Anyway?*

535

*be a client. Having my story told and told wrong made me cringe even though it was unimportant in the scheme of things. It will make me more careful with real clients.*

John put it this way,

*It was an experience where we got to see our story told by another advocate – exactly the same situation our clients will be in.*

Curtis specifically addressed interviewing techniques,

*Sharing personal information with your client helps facilitate/establish rapport with your client. It establishes a common bond with your client and makes you more approachable. Also, it takes the spotlight off them and turns you from an inquisitor to a conversationalist.*

#### IV. CONCLUSION

Experienced practitioners know that establishing rapport and gaining trust is critical to effective client representation. Unfortunately, even though they are able to articulate these goals, many are unable to effectively achieve them in an initial client interview. Teaching these skills in the law school environment will enhance both clinical representation and future practice. Guiding students away from the pitfalls of the “DMV Interview” to effective Client-Centered Representation through the use of Storytelling is one way to “turn them from an inquisitor to a conversationalist” and move them along the path to effective and successful client-centered representation.

