

SOME INTERVIEWING TIPS

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INTRODUCTION

This compilation of interviewing “tricks of the trade,” with some sample approaches and questions, is being provided to help improve your interviewing abilities. Everything contained in this collection has been submitted by members of the National Alliance of Sentencing Advocates and Mitigation Specialists, a section of the National Legal Aid and Defender Association. The focus, therefore, is on gathering information to assist the defense team through contact with defendants, their families and other important people in the defendants’ lives.

Where a sentencing advocate working on a simple misdemeanor case might spend five or ten hours interviewing people, a mitigation specialist in a death penalty case might spend a thousand hours or more. Gaining trust, uncovering the vital information, earning credibility and then fashioning a coherent and persuasive plan to present to the court or the jury are just a few of the important tasks for the interviewer who works as a sentencing advocate.

Examples given by sentencing advocates are in **bold**. They are not the author’s.

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INTERVIEWING PRACTICES

Curiosity is what drives a good interviewer. He or she wants to learn *everything* in the hope of finding *anything* that might help the case. It is important that all the interviewer’s actions promote good communication.

It is unlikely that clients will trust the interviewer merely because they are told to or because the interviewer has said “You can trust me” or “I respect you.” Trust and respect are earned by building a relationship.

The interviewer must be “in the moment.” Thinking ahead to the next question will hamper the ability to hear the answer being given.

A good listener allows silences.

Pretend that you have a very sore throat and can interrupt only when absolutely necessary.

Attempt to empathize, to see the world through the client's eyes, to understand the client's feelings and ambitions, and to learn the client's means of dealing with the world. A nice definition of empathy is: "participating in the inner world of another while remaining yourself" (The Helping Interview by Alfred Benjamin, Houghton Mifflin Company, Boston, 1981, page 49).

Open questions work better than closed. "Were you abused as a child?" is closed, it allows a simple, unrevealing answer. Even worse would be "You weren't abused as a child, were you?" which begs for a negative answer. "What was it like growing up in your family?" is an open question that can produce a lot of information.

It is good to use indirect questions as well as direct ones. "What was it like growing up in your family?" is a direct question. "Tell me about your childhood" is a less direct approach. It does not even have a question mark at the end. It allows the client to feel more like someone who is having a conversation with someone who is interested in them as a person. Indirect questions begin with words and phrases such as "What" or "Tell me" or "I'd like to hear about . . ." or "It must have been hard when . . ."

Few things make a person more defensive than the word "why."

CLIENT INTERVIEWS

Setting up an interview

When scheduling interviews, whether in person, by phone or video conferencing, make sure you have time to accomplish the purpose of the interview.

Before you meet for the first time

It is important to remember that the client does not have a docket of cases. While waiting for the interview they may have focused on certain concerns that will need to be addressed in order to ease their anxiety and provide a meaningful forum for what needs to be accomplished later.

Consider wearing clothing that is dressy casual. Look professional but not intimidating.

I once had to interview a woman for a sentencing report. She had been battered, was a sex abuse survivor and had many other issues. At the end of the interview, she thanked me for taking time with her and not being in a hurry. She explained that she felt comfortable making all of these disclosures to me because I was dressed in average clothes and didn't carry a brief case like her lawyers (who she didn't want to burden and make late for court). That day I was dressed in a nice pair of jeans, a pullover and running

shoes. Her comments made a lasting impression on me. I guess the more casual garb tends to reduce any economic or educational differences that the client might perceive as barriers.

If you know in advance that your client is from another country, another culture, or has characteristics (gender, disability, etc.) that might require a different approach, research of the issue before the first meeting is important. For instance, men in many Middle Eastern countries are not comfortable having women in positions of authority or power. They may resist being represented by women in any capacity. People from countries that have oppressive criminal justice systems may have trouble trusting anyone associated with our criminal justice system.

I once worked with a client from Nigeria who never trusted his public defender or me. One reason he gave was that no one would be allowed to visit him in prison without the permission of the “authorities.” Anyone whom the “authorities” let into the prison must, therefore, be doing the “authorities” bidding.

Clients with active emotional or psychiatric problems present a number of communication challenges. If a diagnosis is known or suspected, consider consulting with a mental health professional for advice about the best approach to use. Even in the absence of such background information, there are a large number of defendants in the criminal justice system who suffer from emotional problems. It is beyond the scope of this project to coach anyone through the process of identifying, and then dealing with the effects of psychiatric problems. Yet it becomes a critical skill for a sentencing advocate to have, both for self-protection and for effectiveness in the work. Take every opportunity to learn more about it.

Physical Setting

When interviewing clients, especially at a correctional facility or county jail, it may be useful to select a conference area where the client can be positioned with his or her back facing open areas. In the course of the interview, you may touch on highly sensitive issues, such as loss or abuse. When the emotional dam bursts, the client may be more inclined to talk out the incident in detail if the emotions are shielded in some way from the correctional staff, inmate trustees, law enforcement personnel, probation or parole agents and any other individuals who happen to be passing in or around that area. Privacy is a very precious commodity in jail.

First Meeting

Attempt to understand the client’s state of mind at *each* interview. Very early in the process, ask the client what is on his or her mind, whether it concerns the case, jail conditions or family matters. Take the time to deal with whatever is revealed. It will make the necessity of having to work together go more smoothly and productively.

State the purpose of the interview, who you are, your role in the entire process, how you go about doing what you do, what to expect, etc. Tell the client it will be your job to compile their complete life story. This will require learning anything and everything about them whether or not they think it might be significant. You may not use everything, but you need to know everything. A lot of clients are folks who have never been important to anyone in the world before. Spending a lot of time getting to know them may make them feel important.

The tone of the interactions at the first meeting might be much more important than the questions. The client finally has some quiet time with someone who is willing to pay close attention to them. They are with someone who is inclined to believe them, to ask follow-up questions, to keep the spotlight on them, and to be compassionate.

Model the behavior that is desired from the client, using descriptive words and talking about your own feelings. Tell the client that you will be there throughout the case. Let the client know if your office accepts collect calls, has video conferencing, and the possibility for discussions on evenings and weekends. Determine if the client has access to writing utensils and paper, and go over other aspects of procedures and tools necessary for effective communications.

The first interview is the beginning of what may be a long relationship. Start by asking for less threatening information first, such as date of birth and other identifiers, easing gradually into the more difficult areas. Topics that are either sensitive (e.g., medical or mental health), or need in-depth coverage (e.g., substance abuse problems and history), might be best covered at later interviews.

This is a description of one sentencing advocate's first contact:

I SLOW DOWN.

I shake their hand.

I ask them how they are doing, if they have been well, if the food agrees with them, if they have a cellmate they like.

I slow down a lot. I make a lot of eye contact. I respond to any questions they ask. Then I tell them I will be working on the sentencing part of the trial - with all the usual things that have been said already, about how we hope my work will be in vain, be for naught - that they will be found innocent, and not get sentenced. But that it shows their attorney is a good one, to have gotten someone like me to do this work. A bigger, stronger team etc.

Then I say that I am looking for three kinds of things, within the larger frame of their whole life story:

1. All the wonderful, good, kind, sweet, things the client may have done in their life - from childhood on - and I tell them I will be following up, tracking down the players in these stories, talking to their friends and family out there, coming back to the client to check facts, etc. I always give examples in the form of tiny little stories.

2. Hard Things: all the bad, tough, mean, sad, painful things that have happened to the client in their life - starting before they are born! (I give the example that someone's Mama may have been abusing substances while she was pregnant with that person. This lets them know that I know such stuff exists.) I tell them things that have been said here already about only using what will help, but that we can't know what will help until we know the stories - and that I will honor confidentiality among all his people, but that eventually to save his life, some parts may come out in court.

3. Diagnosable things like head injuries, etc. Here I talk about how lots of things run in families, and give examples, including alcoholism, etc.

Then I try to get a beginning list of important family members, with phone numbers, addresses if possible. Places to start - this always leads to the client telling me stories about these people. I ask if he/she can call anyone to let them know I am coming, and if so, when that call is likely to happen. (They often call on Sundays, if anyone will accept their charges.) Depending on the connection, level of trust, I either do release signing that day or the next - usually the next. (It is too business-like for that first day. The first day is almost sacred to me, like a slow dance, getting to see one another carefully, warily on their part, but with hope, and with honor, trust, truthfulness.) I usually read the release out loud, slowly, tracing along the words, explaining the reasons for the various clauses, so they know for sure what they are signing, and don't feel tricked. Unless, of course, the client is very proficient with such things, and can read it easily himself.

I tell the client that I will be seeing him/her a lot, I ask about the pattern of his/her days, when is a good time to visit, set a firm date for the next visit.

This all takes about three hours.

Another advocate takes a different approach:

At initial interviews, I begin by spending a half hour taking a detailed family/social history. I've tried the open-ended question approach, but find I'd rather do this after I've done my 30-40 minutes of history taking. If I begin with an open-ended question then I may have to interrupt later to find

such relevant data as 1) are parents still alive? 2) what sort of work history have you had? 3) when did you get divorced?

Stylistically, I see this as akin to beginning a painting by sketching in the lines in pencil before adding the color, beginning with the objective reality before adding the subjective.

Yet another:

When I begin my interview, I tell the client that my purpose is to give the judge an opportunity to get to know them as an individual, even though they will never share a conversation. I also tell them that I want the judge to look at them as not just another court file number, or the sum total of whatever crime for which they stand accused, but as a unique human being.

I then continue to explain that in order to accomplish that objective, I must be able to make the judge hear, see, touch, taste, feel and smell all of the key events that they are about to share with me. Thus, my questions, although prying and personal at first blush, are actually designed to tell the client's story and highlight any mitigating factors that may be present. The questions are not because I am snooping for the sake of curiosity or embarrassment.

Ending the First Interview

It will probably be necessary to obtain certain relevant documents, such as medical, psychiatric or educational records. The client will need to sign waivers. Explain what materials may be sought. Go over the waivers with the client and have clients sign them.

Let the client know what you will probably want to learn in the next meeting, especially if there is "homework" the client can do to help. This could include calling family members to let them know that it is safe to talk to you, or having them begin to write a time line of important events in their life.

My favorite question (usually at the end of an interview) is this (or some variation on this): What question(s) should I have asked you? or What did I forget to ask you? Sometimes very important stuff just pops out.

Good Things to Remember for Any Interview

Pay attention to the physical setting and amount of, or lack of, privacy available.

At each interview, tell the client what topics will be covered.

Remember: understanding the client's state of mind at *each* interview will make working together go more smoothly and productively.

Ask the client early in the interview what is on his or her mind.

Continually assess the client's mood and level of interest.

Find out what makes the client tick. Discover what is important to the client. Learn how the client feels about himself or herself.

When exploring an event, program, treatment, relationship, etc., with a client, ask them to tell you about what they liked or disliked about it, or what they wished would continue in the next program, event, relationship, treatment. Ask them what they wish they had revealed, or not revealed during the experience.

Sometimes I'll use role play to help the client remember more. Also, when appropriate, I'll ask the client to talk directly about our relationship as well as about the style of how we communicate. This oftentimes brings up their memories of the people in the client's life whom I might remind her or him about.

Don't be afraid to let your personality and humanity show. Clients will often be put more at ease if they are approached in a natural, compassionate, personable manner. Do practice your poker face, though.

I once had a client who disclosed pervasive incest in the home and was completely unaware that this wasn't the norm for every family across America. I think that the client could have suffered an emotional breakdown to suddenly learn from my reactions that this was not the case.

Time Lines

Constructing a time line often helps clients who are having difficulties with dates and sequences. Working on it with the client becomes a collaborative exercise. Time lines can be amazingly clarifying for the client as they fit the pieces in together with the interviewer.

Starting with recent events and working backwards can work out better than starting with childhood and moving forward. Clients are sometimes not good historians of their own lives. Remembering a more recent event can help them more easily recall the events that lead up to it.

Another technique would be to have them describe where they were, what was going on in their lives, at each birthday or at some favorite holiday. Having a specific marker may help with recall. Ask about such things as: Who was there? What did you eat? What presents did you

get? How did you feel? Who wasn't there that should have been? These questions are likely to generate other areas to explore. If there is not an event to remember, explore the reasons for not celebrating events and the feelings of the client knowing that other people *did* have such holidays.

Genograms (Family Trees)

Making a family tree often gives the client a very non-threatening opportunity to reflect on his or her family history without the interviewer having to ask anything directly.

A “participatory genogram” is good particularly with kids and teenagers. I ask them to help me draw a picture of their family. As we draw, we talk about the relationships among family members and I either note this on the diagram with appropriate lines, arrows, slashes and other symbols or else make a mental note. Genograms are not things most people are familiar with and they often find the idea of memorializing their family and the relationships therein on paper to be interesting and illuminating.

There are some useful computer programs for making genograms. An Internet search on the word “genogram” will reveal some commercial ones as well as many helpful ideas about constructing genograms.

Developmental History, History in General

Other areas of the assessment process are those associated with a comprehensive developmental history, i.e., the nature of the pregnancy, perinatal history, developmental milestones, family relationships, early attachments to other people, capacity for relationships, peer relationships, and social skills. The family assessment provides an opportunity to understand the early developmental and environmental context within which the client grew up. Information is obtained regarding the parents' personal and psychological history, their use of authority and discipline.

Here are some examples:

- How are/was affection, tenderness, competition, aggression, love, sexuality, and lust expressed in your family/household?
- What do you remember most about growing up?
- What was your best, and (separately) what was your worst memory of any of your life experiences?
- When you were a child and really scared, where did you go to be safe? What was it that made you really scared? What else did you do to be safe?

- What stories did you hear from your mom about her pregnancy with you?
- What was your earliest memory as a child? What is your earliest memory of your father/mother?
- Who were your friends when growing up? How many friends did you have? How many did you consider a “best friend?” What did you do together, where did you 'hang out'? What did your family think about your friends? What did your friend's family think about you? Are you still in touch?
- When you were a kid, what were your dreams and hopes?
- What was an average day like for you? Let’s start first thing in the morning. You are about twelve years old or so. Tell me everything that happened. (Client says “I got up, went to school, came home, ate dinner and went to bed.” You ask for details: “what time did you usually get up?” “Which way did you go to school?”)
- What is the worst thing that has ever happened to you? The best?
- Tell me about your neighbors.
- What made your neighborhood safe/dangerous?
- What is your first memory of seeing the police?
- What were some of the reasons police picked up people in your neighborhood?
- What was the best thing about school? Worst?
- Where did you sit at lunch? What did you have for lunch?
- Tell me about times when you were teased by other kids.
- What are some of the reasons you missed school?
- Where have you lived? Begin with birth, note all the reasons for the moves.

I like to ask my client, who is obviously in a very stressful situation being detained awaiting trial, who he or she would most like to speak to for comfort right now (whether dead or alive). This will open up dialogue about relationships and, if the person is already dead, then you can talk about how that loss affected him or her. It also shows you what kind of person he or she looks up to. For example, it might have been his father who was in and out of

prison. What does that tell you?

To explore possible sexual abuse, it is helpful to ask "What were your first sexual experiences?" rather than directly, "Were you abused?" Sometimes, the responses are about clear sexual abuse that the client doesn't recognize as such - it's a much less threatening question when the word "abuse" is left out.

Client's Self Image

Ask clients to list ten things about themselves that they want the jury to know, things that will demonstrate who they are, their heart, rather than just looking like another defendant in an orange jumpsuit. Consider using their responses verbatim in the sentencing report.

Instead of asking a person to report directly on their behavior, ask her or him what others might say. For example, rather than asking "Do you have a bad temper," ask "Do other people think you have a bad temper?"

Goals, Future Plans

- What are your goals? What do you want to be?
- What do you need so you don't come back here? Are you getting that here? Are you getting that at home? In your community?

Have them describe what they would like their future to be, what they will be doing five, ten years from now. What needs to be done in the present to create that future? What help do they need to accomplish those things?

Health

- How are you feeling?
- How are you sleeping? What time do you go to sleep? Wake up? When you wake up during the night, what gets you back to sleep? What wakes you in the night? What do you do to help yourself sleep? Ask these questions at each visit, it's a good way to keep track of possible deterioration and mental health issues.
- Describe the last headache you had. Where did it hurt? Is it dull, sharp, pounding? How long to headaches last? What causes them? How old were you the first time you had a headache? How often do you have them? What medicine(s) have you taken, which works best?
- Do you use any home remedies rather than going to the doctor? Did your family or your mom or dad use home remedies? Who taught your mom/dad/etc., to make home remedies?

- Tell me about your last cold or flu. How did it make you feel? Where did you ache? What was your fever? How did you get better? How often do you get sick?
- Who in your family has or had asthma?
- How is your appetite? How long is the longest you have gone without eating? What was your favorite food as a child? What kind of food did you hate? What happened to you if you didn't eat food you hated?
- Tell me about a time when your mom/dad was not feeling well. What was wrong? How did they get better, if they did?
- Every family has a few kids or adults who need looking after by others. They might have trouble understanding things or being forgetful, for instance. Tell me about people in your family who were like that.

Ask about scars. This can bring up events, even traumas, that have been forgotten.

Always ask about head injuries, if a client has ever been hospitalized or lost consciousness for any reason.

Drugs and Alcohol

- Tell me about the first time you ever heard about alcohol. Drugs.
- Tell me about the first time you ever used alcohol. Drugs.
- How did you feel when you were high/using drugs?
- What do you think is the reason you use/used drugs?
- What makes people do drugs?
- What are hard drugs?
- What is an addict? Alcoholic?
- What did you do to keep from overdosing?
- Did you prefer to use alone or with other people?
- When you were not using drugs, what kept you from using?

Mental Health

- Tell me about different doctors you have seen.
- What medications have you taken?
- Do you think that you think normally? Are you like other people?

Mental Status Examination

A brief mental status exam can indicate problems in cognitive function. Symptoms which might cause the interviewer to suspect cognitive problems could include: an unsteady gait, slurred speech or unusual difficulty in finding words, drowsiness or varying degrees of alertness, inability to focus or a very short attention span, irrational answers, and so on. There are a number of mental status exams available on the Internet (just search “mental status exam”). Some are scored to assist in interpretation of the results. Even without using a numerical score, answers to exam questions that suggest impairment should lead to an evaluation by a professional.

Examples of mental status exam tasks:

- What is the date (month, date, day and year?)
- What time of day is it?
- Can you tell me where you are right now? Be specific.
- Who brought you to this appointment?
- Who is the president of the United States?
- Name five large cities.

Name three objects slowly and clearly, then ask the person to name them (e. g., chair, apple, penny).

Ask the person to begin with the number 100 and subtract seven, then subtract seven again and again. Stop after five answers.

Ask them again to recall the three items above (chair, apple, penny). Most normal adults can do this.

Present a drawing of a cross and a cube. Ask the person to copy the designs onto a blank,

unlined piece of paper.

Note the presence of incoherent or irrelevant speech.

Miscellaneous Good Questions

- What do you think I'd be surprised to know about you?
- What would you be doing at home, if you were home now?
- What are your favorite television shows?
- What do you do for fun?
- What are you best at, what are you *really* good at?
- When it becomes clear that there is a pattern of behavior that leads to predictable negative consequences, ask "How did you come to believe that . . . ?" It can shed light on the client's thought processes but the question itself is therapeutic in that it implies that beliefs shape choices.
- What would you tell the judge if he or she was sitting in the room with you right now?

FAMILY INTERVIEWS

First Meeting

At the first meeting, explain to the family what your purpose is, what your role in presenting their relative's case is. Give a little history of yourself and ask them if they have any questions about you. Let them know that they should always feel free to ask why a question is being asked. Assure them it is not to pry or be nosy. Let them know right up front that you are asking them to share personal information that they might not have shared with their best friend or family.

To answer the question, especially common in capital cases, "Why are we starting the sentencing investigation prior to a finding of guilt?", explain that it is imperative that the process begins as soon as the case is received. An individual's life is complex. The abundance of information that must be ready to be presented to the trial court represents this individual's life and we must be prepared to have a complete time line. Explain to the client and the family members, friends, work associates, etc., that even though the case has just started, we have to put together a history for the judge and/or the jury. Explain to them that this process is never a waste of time and that you must be as thorough as possible and project the "human" side of the client whether it is at trial or at sentencing.

I begin the first meeting by stating what I know so far, e.g., "We spoke briefly on the phone and you told me that . . ." Then I say: "That is all the information I have, so a good place for us to begin would be with you giving me more details."

I begin with background information, easing gradually into the more difficult questions. I usually add that I can be their link to the attorneys so the family will be more informed about the case. I always indicate that the victim's family will usually have an advocate, whereas they typically have no one, so I want to work with them.

STRUCTURED INTERVIEWS

Many of the sentencing advocates who contributed to this project strongly feel that structured interviews are not productive. A checklist to be reviewed before an interview is conducted may be useful as a reminder of what to cover. It may help after an interview to discover areas that were missed. Subjecting the client to a "fill in the blanks" interview, however, will rarely allow a relationship to build and will rarely bring out as much information as a more "conversational" interview would.

This is a checklist that contains some areas to be investigated:

- Race and National Origin
- Marital Status
- Education
- Employment
- Income
- Recreational activities
- Religion, level of involvement
- Family history [Genogram]
- Developmental history
- Childhood activities
- Childhood problems
- Legal history
- Sexual Orientation
- Sexual relationships
- Health history
- History of injuries, assaults, neurological problems
- Psychiatric counseling history
- Current mental status in jail (by report from the client, observation, and jail records)
- Substance use history
- Feelings about self

Understanding of alleged crime
Mental state during the time of the alleged crime
Demeanor during interview
Clinical impressions
Collateral information

CONCLUSION

If you are an experienced interviewer, you probably have your own style. The contributors and I hope that we have been able to give you a little more to work with. If you are new to the social interviewing world, you may learn a lot if you work with a more experienced practitioner while using the material presented here. We wish you all the best.

The following NASAMS members have contributed to this project:

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