

hazard lights and your low beam headlights so that you should have been visible to cars behind you. There were icy patches on the road that made driving any faster dangerous. The car that hit you was traveling at a much higher rate of speed when it plowed into you. Have I omitted anything?

A: *The only thing you didn't say is that it was snowing at the time of the accident.*

Q: *Is there anything else I have left out?*

A: *No, I think you got everything.*

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Q: *Let's go over how you felt when the other driver's insurance company denied coverage for the injuries you suffered. Initially you were angry. Then you felt that they didn't understand what had happened. When you tried to explain how fast their driver was going on the icy road, you felt they weren't listening to you. Have I understood what you said?*

A: *Yes, I think that about covers it.*

Generally, summary questions should only be used for the more important topics in the interview. They should not be a verbatim playback, but a paraphrase of your client's story. They act as a probe of your client's memory to verify that he has completely and accurately recounted the important facts for each topic. If summary questions are overused, they can unnecessarily prolong the interview with boring recapitulations of every detail your client has shared.

§ 4.06 INFORMATION-GATHERING TECHNIQUES

There are a number of special techniques that can facilitate efficient and comprehensive information-gathering in an interview. Lawyers have come to rely on five particularly helpful techniques: (1) the funnel, (2) the time line, (3) the strategic use of silence, (4) the use of probes to rouse failed memories, and (5) the use of writings or demonstrations to re-create events. The funnel and the time line incorporate the five types of questions discussed in § 4.05 into a framework that maximizes the retrieval of information. The strategic use of silence often helps to facilitate the disclosure of delicate information from the client to the lawyer, particularly when combined with empathetic understanding, active listening, and recognition. The fourth technique, the use of probes to refresh failed memories, helps the client remember events he has temporarily forgotten or suppressed. The last technique, the use of writings or demonstrations to re-create events, may be helpful to understand matters that may be difficult to picture from purely verbal descriptions.

[1] The Funnel Technique

Gathering valuable information in an interview may be likened to searching for valuable items in a dark room. Suppose you enter a dark room with three things to help you find your way: a floodlight, a regular flashlight, and a penlight. Naturally, you would first orient yourself to the entire room by using the floodlight. As you identified particular areas where valuables might be stored, you would explore with

your flashlight. When searching the smallest crevices or spaces, you would use your penlight. Similarly, in interviewing, skilled lawyers seek out valuable information by beginning with open questions (like a floodlight) to illuminate the client's overall story. They then use follow up and closed questions (like the flashlight) to explore and understand particular parts of the story. And finally, they use leading questions (the penlight) to pinpoint and clarify the finest details of the story. In interviewing, this method of obtaining valuable information is illustrated by a different metaphor, commonly referred to as the "funnel" technique.

When utilizing the funnel approach, a lawyer visualizes a common funnel as the structure of the questions she will ask on a particular topic. Each question corresponds to a place along the length of the funnel. The open questions, discussed in § 4.05[1], correspond to the open mouth of the funnel. The follow up questions, discussed in § 4.05[2], that pursue clarification of the answers given in response to the open questions, fit just below the mouth of the funnel. The narrower closed questions, discussed in § 4.05[3], correspond to a place one-half to two-thirds of the way further down the funnel. Leading questions, discussed in § 4.05[4], are toward the bottom of the funnel. Finally, summary questions that are asked at the end of a topic to make sure that all the information has been obtained, *see* § 4.05[5], fit at the bottom of the funnel. The summary questions correspond to a filter that strains and tests the information that has been winnowed down through the funnel. The diagram on the next page shows how these different types of questions fit along the length of the funnel.

The Funnel

Types of Questions

1. Open Questions

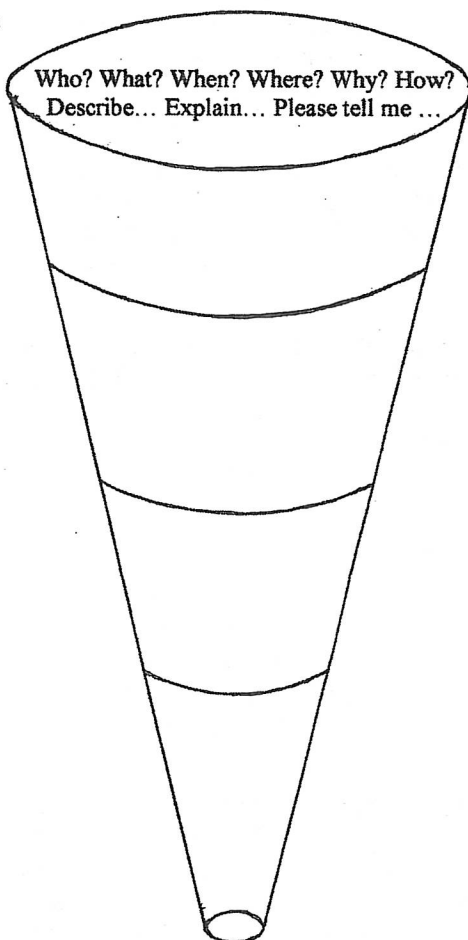
Who? What? When? Where? Why? How?
Describe... Explain... Please tell me ...

2. Follow Up

3. Closed

4. Leading

5. Summary



Examples:

1. What happened?

Please tell me
about your
injuries?

2. What time...?

What lane...?

3. Were you alone?

Was he injured?
Did you . . . ?

4. You were traveling less than 25 mph weren't you?

Your son was the
only passenger?

5. Let me make sure I have all the reasons the other driver was at fault:

a)...b)...c)...

As shown in this diagram, a lawyer will start with an open question to elicit a broad response. As the lawyer learns more about her client's situation, she will switch from open questions to follow up and then closed questions. When she thinks she has obtained a fairly clear picture of the situation, she then begins to ask a few leading questions to confirm that she has learned the necessary details. Finally, after she has a complete picture of her client's situation, she then asks some summary questions to verify that she does in fact have the complete picture and has not misunderstood or forgotten any of the important facts. By asking these five types of questions in an orderly pattern, she has "funneled" the information and ensured that she has gotten all the important details as well as the entire picture.

Each major topic of your client's situation may be "funneled." For example, if your client tells you he wants to discuss how he can recover for the personal injuries he suffered in the car accident as well as for the damages to his vehicle, he has presented two topics that should be funneled separately. Although many of the facts obtained by funneling the two topics will overlap because the personal injuries and the damages to the vehicle occurred in the same accident, each topic includes separate facts. Accordingly, you will need to conduct at least two separate funnels to exhaust the information your client has on these separate topics.

Many lawyers think of the first few open questions in the interview as a way to "get the list" of topics that will be funneled throughout the interview. Because you cannot effectively funnel two topics at the same time, it is usually a good idea to jot a note to yourself to return to the second topic after you have completed the first funnel.

The advantage of the funnel technique is that it presents an orderly framework for comprehensive information gathering. The disadvantage of the technique is that it is helpful only to the extent that the topic or topics you choose to funnel merit the time spent in inquiry. Therefore, efficient use of the technique requires that you choose which topics are sufficiently important to merit the time spent in funneling.

[2] The Time Line

Another technique for enhancing information-gathering is to construct a time line of your client's situation. Your client will often feel comfortable describing his situation with an opening sentence that begins with the phrase, "Well, the whole problem began with . . ." You can then encourage your client to recount his story in chronological order by asking open questions that focus on what happened next.

When using the time line technique, most lawyers attempt to get an overview of the client's story by asking open questions that reveal the beginning, middle, and end of the situation. They then go back to fill in the details with follow up and closed questions. After they have a fairly good picture of the situation, they then ask a few leading questions to verify information that appears to logically follow from the sequence of events. Finally, they ask summary questions to make sure there are no gaps in the time line picture they have obtained.

When you use the time line technique, make sure you understand where the story appropriately begins and ends. Too often clients and lawyers start the time line too late or end it too early. They tend to think the time line should start with a legally significant event, instead of with a factually significant event. For instance, in a personal injury case, the car accident that resulted in the injuries to your client is not the beginning event of the time line. Instead, you will want to inquire about the road conditions before impact, the condition of the cars before impact, and the physical condition of the drivers before impact. Likewise, the time line should include not only the present medical condition of your client, but also his future treatment needs.

The advantages of using a time line are that gaps or omissions in the story are easy to spot, and the time line is easy to follow for both you and your client. The disadvantages are that some topics do not flow sequentially and therefore may be omitted, and some clients think more topically than chronologically. For instance, in a contract dispute, the events leading up to the signing of the contract and the

subsequent breach may flow chronologically and be easy for your client to recount in a time line. However, the fact that the other party to the contract became insolvent may not occur to your client as part of the chronology of the overall story. Instead, that fact is more likely to be revealed in response to a topical question about the financial condition of the other party.

The time line method works particularly well when your client is trying to recall a specific sequence of events or when it would be useful to slow down what happened into a slow-motion description, as in a slow-motion movie. The time line can also aid a client who is reconstructing the important events in written form. If your client is having difficulty focusing on the time line during the interview, or if the interview time has drawn to a close before the client has finished recounting all of the key events to his story, you can ask your client to write out a time line at home. Most clients find the time line method easy to use on their own.

[3] The Strategic Use of Silence

As mentioned previously, lawyers often talk too much. They are accustomed to oral presentations. Words are their stock and trade. They forget that others are not as accustomed to verbalizing facts and feelings. Consequently, lawyers sometimes forget that a client may need time to think through an event in order to organize and formulate the words to completely describe it. To be an effective interviewer, you must be a patient listener; and one technique of patient listening involves the strategic use of silence.

Novices in the use of open questions sometimes mistake silence on the part of the client as a misunderstanding of the question. They then ask a second narrower question to clarify the first open question. The client then answers the second question. The broad initial question that invited expansive information remains unanswered.

In contrast, effective interviewers resist the temptation to prematurely ask a second narrower question. They patiently wait while the client organizes his thoughts to answer the broad question. They do not attempt to fill the silence. As a result, they are often rewarded with a detailed answer to the broad question.

In addition to using silence to permit your client to organize his thoughts to respond to a question, you may also use silence as a probe when no question is pending. Psychologists and psychiatrists have learned that people will often volunteer important information to fill an uncomfortable silence. This information might otherwise be withheld due to embarrassment or fear. Accordingly, just as a therapist uses silence to encourage her patient to reveal information, you can strategically use silence to encourage your client to reveal additional information.

[4] Failed Memory Probes

At times, a client may “shut down” during the interview. The client may say, “I don’t remember” in response to a question; he may switch to another subject without finishing the particular story he was relating; or he may just sit back in uncomfortable silence. Before the interview can continue, you must diagnose what has caused this momentary interference or interruption in the dialogue. Clients usually shut down due to memory lapse, discomfort with the topic, or exhaustion.

If you conclude that your client has merely forgotten details that he once knew, you can use either a time line or visualization to refresh his memory. For instance, if your client says he can't remember whether he was wearing his seatbelt at the time of the collision, you might try the time line technique to jog his memory:

• **Time Line Probes:**

- Q:** *Where was the last rest stop you took before the collision?*
- A:** *We stopped for gas and a snack in Hickory, NC.*
- Q:** *Describe each thing you did right before you got back onto the highway.*
- A:** *Well, first I unlocked the car. Then, I opened the door and got into the driver's seat. I was carrying a cup of coffee that I placed in the drink holder between the two front seats.*
- Q:** *What happened next?*
- A:** *I guess, I put on my seatbelt and started the car, but I don't really remember.*
- Q:** *Where was your son when you started the car?*
- A:** *He was in the backseat. Oh, I remember now. He wanted me to put his half-finished can of Coke in the drink holder between the front seats because he wanted to take a nap. I had to unbuckle my seatbelt to reach the can. I took the can, placed it in the drink holder and buckled the seat belt back. I remember because we joked that he always waited until I had already buckled my seat belt before he asked me to take something from the backseat. That's the conversation we had as I was buckling my seatbelt for the second time.*

With some clients you can also try to use visualization to probe failed memory. When using this technique, you ask your client to visualize a certain event and describe the details as if he were experiencing the event in the present. For instance, if your client says he can't remember if he was wearing his seat belt at the time of the collision, you might try the following:

• **Visualization Probes:**

- Q:** *Imagine yourself immediately after the collision. Visualize that time if you can. The guy behind you has just plowed into the rear of your car. I know this may be difficult for you, but try to go back in your mind to that time and tell me exactly how you feel.*
- A:** *I'm stunned. Then the pain hits. I can't move. My right leg is bleeding and the pain seems unbearable. The entire weight of the front of the car seems to be on my leg.*
- Q:** *What else do you feel?*
- A:** *Well, I'm panicked about my son. I call out his name. He answers. He says he's scared. He wants to know what happened. Then he starts crying when he sees the blood on my leg. He gets real upset when he realizes I can't move.*
- Q:** *Is he hurt?*
- A:** *He says his knee hurts, but he'll be okay. He's scared about me.*

- Q:** *What else do you feel?*
- A:** *My head and neck hurt from being thrown forward and then backward. My chest also hurts.*
- Q:** *Why does your chest hurt?*
- A:** *I don't know. I guess from hitting the steering wheel. No, wait a minute. I know why it hurts. It's from the seat belt. I remember now. I did have on my seat belt because the next day I had a big bruise across my chest where the seat belt was.*

Sometimes when your client shuts down, it is not the result of a loss of memory, but from a feeling of awkwardness about the topic. Use your active listening skills to diagnose if the reason for the sudden change of topic or claimed lack of memory is truly from a memory lapse or from your client's discomfort with the topic. If you sense that your client is attempting to avoid the topic, you can either come back to it after you have established greater rapport with him, or you can pursue the topic by acknowledging the difficulty in discussing the issue. For instance, if your client is uncomfortable discussing what happened to his son after the accident, you might empathetically acknowledge the difficulty of the matter as follows:

• **Acknowledging the Difficulty of the Topic:**

- Q:** *It must have been hard to care for your son when you were in such pain. What happened to your son when the ambulance arrived?*
- A:** *It was terrible. I didn't know what to do. They let him go with me to the hospital, but I was really in too much pain to think much about his needs.*
- Q:** *Earlier, you said you were divorced. It must have been hard to call your ex-wife after the accident happened.*
- A:** *You're not kidding. She was fit to be tied. She hadn't wanted me to take him on the visit to Kentucky. She had been worried about the weather conditions. I called her just before I went into surgery. She was furious. I felt terrible because our son had to stay with a social worker until his mother could get to the hospital to pick him up the next day. My ex blamed me for putting our son at risk.*

Finally, a client may shut down during an interview from exhaustion. If your client has been recounting the facts of his case for a period of time, he may lose his focus and need a break. Suggest a break, or offer him a cup of coffee or water. If your client still has trouble focusing on your questions after the break, you might need to schedule a follow-up interview at a later time.

[5] Using Writings or Demonstrations to Re-create Events

Some events are difficult to understand from purely verbal descriptions. For example, in an automobile accident case, a diagram of the accident scene and the positions of the vehicles will often provide the best picture of what happened. When there are numerous heirs to a will, a diagram of a family tree may be helpful in understanding potential beneficiaries. A written time line of the phases of a construction project may be helpful in drafting a contract governing the parties' obligations in developing a residential subdivision. A physical demonstration may help explain a key event, such as how a person was injured or how a person acted.

Accordingly, when appropriate, you should not hesitate to have your client recreate an event on paper, whether a drawing, chart, or written summary. Similarly, having your client physically demonstrate an event will often help you better understand what happened.

§ 4.07 EXPLORING YOUR CLIENT'S OBJECTIVES

When your client first enters your office, he has at least one objective or goal in mind. He is seeking legal representation for a reason. Often he comes to the initial interview with several objectives. He may be able to articulate one or more of his objectives, but others may not yet be fully formed in his mind. As mentioned previously, one purpose of the initial interview is to begin the process of identifying your client's objectives. A second purpose is to begin the process of translating your client's objectives into a concrete plan of action.

Your client will often indicate his objective in the first few sentences of the initial interview. For example, he may say, "I need a will," or "I have been sued," or "I want help in recovering for my injuries." Each sentence articulates a reason why he scheduled the initial meeting with you. However, many times the reason initially expressed for seeking legal representation will be only the beginning of the process of identifying his objectives. For instance, when your client says he has been sued, you will realize that you have to analyze the lawsuit, explore possible defenses, investigate potential counterclaims, and discuss settlement prospects. In other words, your client's initial expression of his objective is only the first step in a lengthier process of clarifying objectives and arriving at potential solutions.

A good starting point for identifying your client's objectives is to focus on his actual needs. By using open questions to explore your client's feelings and concerns about his situation, you can begin to discern a picture of his overall needs. As you learn more about those needs, you can employ either the funnel method to explore specific topics or the time-line method to establish a framework for understanding important events. Once the factual picture becomes clearer, you can then ask more direct questions to find out what your client wants to accomplish.

It is also helpful to encourage your client to express his objectives in terms of factual results instead of legal remedies. For instance, if your client says he wants to declare bankruptcy, you should ask him to articulate his objective factually. What, exactly, does he want to protect? If he says he wants to protect his home from creditors, then protection of his home, not bankruptcy, is his factual objective.

By encouraging your client to define his objectives factually, you may be able to broaden the legal remedies that may be available to accomplish those objectives. For instance, you and your client may be able to explore several methods of protecting your client's home and not be limited to the single remedy of bankruptcy. That is, as an alternative to bankruptcy, it may be possible for you to draft a notice that the client claims his homestead exemption as a means of protecting his home, or you may be able to negotiate a debt repayment plan with your client's creditors that will both save his home and extinguish the need for bankruptcy. In sum, exploring your client's objectives in terms of his needs and what factual results he wants to obtain will help clarify his objectives and the most appropriate means that may be available for achieving them.