Interviewing and Counseling Older Clients

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Interviewing And Counseling Older Clients

By J.P. Ogilvy

In 1985, more than one fifth of the American population was 55 years old or older, and more than 11 percent were 65 or older. Projections estimate that by the year 2025 the elderly (65 and older) will comprise nearly 20 percent of the population.

These numbers suggest that over the next several decades an increasing proportion of lawyers' clientele may be elderly individuals and their families.

While the lawyering skills needed to respond competently to the needs of an elderly client are, for the most part, exactly the same as those skills needed for the representation of any client, there are some important differences as well. This article will focus on some of the problems faced by attorneys in interviewing and counseling the elderly client.

In order to be an effective interviewer and counselor, the lawyer must confront his or her own explicit and covert stereotypes and biases about the elderly.

Among the most persistent myths and stereotypes about the process of aging are: 1) age determines physical, mental, and emotional states; 2) the aged are unproductive; 3) the elderly prefer to disengage from life; 4) the aged are inflexible; 5) the elderly are senile, forgetful, and have reduced attention spans; 6) old age is a time of serenity; 7) the elderly are garrulous, rigid in behavior, and resistant to change; 8) the elderly are physically and mentally unhealthy; and 9) the aged are lonely and dependent.

Such preconceptions as those listed above can have a deleterious effect on attorney-client relationships. The most serious threat to the attorney-client relationship that may arise from an unexamined acceptance of the myths and stereotypes of the aging process is the likelihood that the lawyer will treat the elderly client as a less-than-competent person. The lawyer may tend to ignore the fact that the elderly client is an autonomous adult. As a consequence, the lawyer may tend to impose overly intrusive solutions for problems, the lawyer may be tempted to listen to family members rather than to the client and the lawyer, together with the elderly person's family, may even try to run the client's life.

Some commentators suggest that the lawyer's positive attitude toward the elderly client is more important than the client's positive regard for the lawyer.

Commonly held negative stereotypes can erect barriers to positive regard with the consequences that information collection is hindered and the lawyer is more inclined toward proposing palliative solutions — those that do not solve but rather conceal, disguise, or excuse the problem.

To maximize the potential for a productive and appropriate attorney-client relationship with an elderly client, the ABA Commission on Legal Problems of the Elderly recommends that lawyers 1) educate themselves about the process of aging, 2) learn to approach each elderly client as a unique individual, 3) become familiar with the physical and psychological barriers to communication between the client and lawyer, and 4) learn and improve techniques to enhance the effectiveness of interview and counseling sessions with elderly clients.

The Lawyer Should Educate Himself or Herself About Aging

The aging process is different for each individual. It has a variety of chronological, biological, economic, and psychological facets. The results of research into the aging process are available in both scholarly journals and the popular press and lawyers with elderly clients should avail themselves of this literature.

Lawyers who are informed about the aging process recognize, for instance, that some conditions once presumed to constitute irreversible senility are in fact treatable and reversible. What appears to be senile behavior in some individuals may be the result of medication, malnutrition, unrecognized physical illness, or emotional anxiety or depression. Awareness of the process of aging as well as society's impact on older people reduces the danger of stereotyping and facilitates the empathetic listening necessary to identify adequately and deal with the legal problem involved.

The Lawyer Must Know the Client as an Individual

The ABA Commission notes that the primary requirement for knowing any client is to develop an appreciation for him or her as a unique individual. However, with older individuals it is also important to understand the distinctions between biological, psychological, and social aging. Biological age has to do with how much longer a person will be able to live; psychological age refers to how well a person is able to adapt to demands of living; social age refers to the way people are expected to act because they are a certain age. These distinctions are important to the lawyer's ability to understand the client and what the client is trying to communicate. For instance, the biologically aged client physically confined to a bed in a nursing home may well be mentally competent and not need a conservator or guardian. On the other hand, stress or anxiety caused by the death of a spouse may temporarily incapacitate an older person, making him or her appear seriously psychologically aged. In this situation, if the lawyer recognizes the cause of the impairment and understands that it is different from a permanent biologically induced incapacity, he or she will be more able to determine the appropriately limited legal course. While a lawyer is not expected to make clinical diagnoses, those who are able to distinguish between biological, social, and psychological age can be more empathetic and respectful of clients as individuals. Every client has unique social, biological, and
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psychological histories and lawyers need to be sensitive to these.

Another aspect of knowing the client is being able to recognize physical or psychological barriers to communication between the client and lawyer. Physical impairments such as loss or diminution of hearing or vision and reduced mobility must be evaluated carefully and responded to appropriately. More difficult to recognize and respond to are such psychological barriers as fear, anger, depression, and related emotional conditions, but effective interviewing and counseling often depend upon the ability of the lawyer to be sensitive to these conditions.

While most clients will inform their attorney of sensory loss problems, some will not. A hearing impairment can be recognized by certain symptomatic behavior such as bending of the head, lack of expression when listening, apparent inattentiveness, and inappropriate responses that indicate that the communication is not being correctly received. Sometimes, because of embarrassment, a hearing impaired person will pretend to hear rather than ask for repetition or clarification. If a lawyer suspects hearing problems, he or she should check in a sensitive way to learn whether communications are being heard.

Because of the commonplace existence of eyeglasses, people generally are more willing to admit to a vision problem. However, where an unexpressed vision problem is suspected, the lawyer may check for an abnormal appearance of the eyes, difficulties with balance, inability to see peripherally, and difficulties in moving around obstructions as signs of impaired visual activity.

As with physical barriers to communication, psychological barriers can interfere with the creation of an appropriate level of confidence and trust necessary to an efficient attorney-client relationship. Some older people may express fear or anxiety resulting from shrinking independence. Depression, anger or distrust may lead the elderly client to withhold information from the lawyer. Extra effort by the lawyer may be necessary to work through various psychological barriers to gain the elderly client’s confidence. It will be essential that the lawyer demonstrate understanding of the client as a unique individual with a complex personal and cultural history. It may also be necessary to exercise an extra degree of patience with some older clients.

In learning to recognize the client’s individual needs, special attention should be given to major subgroups within the elderly community. These groups include ethnic, racial or religious groups, widows, minorities, frail clients, and nursing home residents. Widowed or divorced women who have been dependent on husbands for financial income and management may need special attention. There may be language barriers which can be dealt with either by knowing the language, by translation, or through written messages. Lawyers should learn about the traditions of local ethnic groups. In addition, lawyers need to be alert to historical racial barriers which may exist to the open communication necessary for good legal counseling. Heightened sensitivities to the needs and cultures of major subgroups is an important goal for lawyers who have a professional commitment to serve all their clients well.

Practical Techniques to Enhance the Effectiveness Of the Client Interview

Much has been written on techniques for achieving good client interviews and counseling sessions. Some of the most important sources of information on interviewing and counseling are listed in the bibliography that follows this article. This article is intended as a reminder to the busy lawyer of the need to reflect periodically on his or her interpersonal skills, and therefore, will not attempt to discuss or even to catalog the many skills and techniques necessary in the helping interview. Rather, it will outline some of the more important techniques for working with elderly individuals.

We all recognize the importance of the initial interview as a time for setting the tone for the course of the attorney-client relationship that will follow. In addition to effective verbal skills and other tools for identifying the client’s legal problems, the lawyer working with an elderly client needs to be familiar with special techniques for dealing with sensory losses that could interfere with communication.

It is a mistake to assume that every elderly person suffers from some form of hearing or vision loss. As noted above, such stereotyping can interfere with the development of an appropriate attorney-client relationship. However, where such an impairment is manifest or apparent, there are a number of special techniques the attorney may employ to assist the hearing- or vision-impaired client.

If the client’s hearing is impaired, the lawyer may compensate by using one or more of the following techniques:

1. Eliminate background noise.
2. Sit so that the client can see your lips. Do not block the view of your face, particularly your mouth. Do not seat the client facing a source of glare.
3. Speak in a low pitch.
4. Speak slowly, enunciate clearly; however, do not speak loudly unless the client asks you to.
5. Avoid legalese and Latin words and phrases.
6. Do not mention important points merely in passing. Develop methods of rephrasing important points in a way that does not sound patronizing but does check on communication gaps.
7. Use written information where possible to supplement or substitute for oral communication.

If the client’s vision is impaired, the lawyer may compensate by using one or more of the following techniques:

1. Double or triple space all written communication. Use all upper case letters. Make sure that copies are clear.
2. Allow ample time for the client to read printed materials. You may want to read aloud as the client follows visually.
3. Do not seat the client where he or she faces a source of glare, such as shiny table or desk tops, or windows.

Clients may have other physical limitations that merit sensitive attention by the lawyer. For instance, sitting for long periods may be difficult for some people. The lawyer should be willing to schedule more frequent but shorter meetings or to conduct more business by telephone if possible. Lawyers must learn to be patient without being patronizing. Where clients speak slowly or repeat themselves, the lawyer should be careful not to finish sentences for clients or cut them off abruptly and jump to conclusions that may prove unwarranted.

Accessibility to the office is another area where laywers should be sensitive to the needs of elderly clients. Lawyers should endeavor to make offices safe for older clients. Slippery floors and throw rugs are to be avoided. Providing for wheelchair access to offices and restrooms may also be required. Where no elevator access exists in multi-story suites, the lawyer should interview the elderly client on the ground floor. In some cases, lawyers may need to make ‘house calls.’ Home visits may be necessary when the client is housebound because of physical or emotional impairments or when safe and accessible public or private transportation is unavailable. Nursing home residents will often require home visits.

Where the client is mobile, there still may be a need for special transportation arrangements. The lawyer who is committed to working with the elderly should be aware of ways in his or her community to arrange for special transportation.
Information regarding “senior vans” or special public transportation should be available from the local Area Agency on Aging and the local or regional public transportation authority. United Way information and referral services may also be a source of information on transportation.

Suggestions for Psychological Aspects Of the Lawyer–Client Relationship

In addition to knowing effective techniques for dealing with sensory, physiological, and access problems, the lawyer must concentrate on building a rapport that will continue throughout the case. A primary goal must be to build the client's trust and confidence in the lawyer. Clients may not follow through with a case if they are not confident that anything will be accomplished as a result of their efforts. Entanglement in legal processes may make some uncomfortable. If the lawyer fails to instill some degree of confidence in the initial interview he or she may not hear from the client again.

Trust in the confidentiality of the attorney-client relationship is also essential for a good working relationship. Many of today's generation of older persons were brought up to be stoical and may be uneasy about sharing their personal concerns with others. Clients may be afraid that by sharing their problems they may risk the loss of benefits or independent control over their own affairs. In order to overcome this reticence, the lawyer should stress the confidentiality of their relationship both at the outset of the relationship and periodically throughout the initial stages, until the lawyer is confident that the client understands that the discussion of legal affairs with the lawyer will not be repeated to others, such as social workers, family members or medical personnel without the client's explicit permission.

The lawyer should be aware of nonverbal communication, both his or her own and the client's that may either facilitate or inhibit the development of a good working relationship. The lawyer should be aware of his or her posture while talking to the client. Does it convey a sense of openness and attentiveness or is the lawyer expressing impatience, distance, disbelief, disinterest or even disgust by his or her posture and gestures? Even if the lawyer has good verbal communication skills that should make the client feel at ease in discussing the problem with the lawyer, nonverbal cues that are interpreted by the client as disinterest or judgmental may threaten the development of the relationship.

In most cases, appropriate eye contact by the lawyer with the client will communicate that the lawyer is sincerely interested in the client's story. Where eye contact is broken significantly by note taking, several techniques are possible. At a minimum, the lawyer should explain the need for note taking at the outset of the interview. If the client is particularly worried about confidentiality, permission to take notes should be sought and explained in advance. Where the concern with confidentiality is not obsessive, the lawyer may wish to obtain the permission to use a small, unobtrusive tape recorder so that physical note taking may be reduced to an absolute minimum. The lawyer may wish to include a secretary, paralegal or law clerk in the interview with the permission of the client. The associate can take copious notes while leaving the lawyer free to devote undivided attention to the client.

Confidence and trust in the lawyer is also enhanced by careful planning of the sessions. The lawyer should plan shorter sessions for clients who tire easily. The lawyer should allow sufficient time for all tasks such as filling out forms or executing documents that must be reviewed. Sending clients written questions or documents to review in advance of personal meetings...
has the advantage of avoiding long sessions and tends to enhance the sense of participation in the process by the client.

The manner in which the lawyer solicits information or communicates opinions or advice may either facilitate or inhibit the exchange with the client. To be an effective interviewer or counselor, the lawyer must be willing to evaluate periodically his or her verbal communications with the client to assure himself or herself that an appropriate attorney-client relationship is being maintained.

In general, the lawyer should not tell the client what to do by giving orders or moralizing. The lawyer should not give the client more advice than is requested or needed. Either course of action may result in either resentment or overdependence. The lawyer should avoid leading or loaded questions as these tend to control the client’s responses and inhibit accuracy.

The lawyer must recognize that the real problems of the elderly client may not be those that are articulated initially. Only by exercising patience, sensitivity, and persistence will the attorney be able to detect and explore the real problem faced by the client. To enable the relationship to develop to the point where the client feels confident enough to express his or her fundamental concerns, the lawyer must show respect for the client without judging, manipulating, or being condescending toward him or her.

A lawyer who wishes to be an effective interviewer and counselor should be aware of and be able to deal with a variety of other communication inhibitors and facilitators. Among the inhibitors are 1) ego threat, 2) etiquette barriers, 3) unpleasant emotions associated with an earlier event, 4) forgetting, and 5) confusion. Facilitators include 1) the client’s desire to fulfill the interviewer’s expectations, 2) the client’s need for approval and esteem, 3) appeals to altruism or the client’s value system, 4) extensions of empathy, 5) a client’s need for catharsis, 6) a client’s need for meaning, or 7) the possibility of extrinsic rewards.

Building the Relationship

Maintaining regular contact with older clients is crucial. Both the lawyer and the client benefit. The client feels that he or she is valued and has not been forgotten. Among all client groups, noncontact by the lawyer is the most frequent complaint. Contact also reassures the client and alleviates anxiety or feelings of desertion that can result in giving up. The lawyer benefits by controlling the time and frequency of contacts. If the client knows that the lawyer will apprise him or her of the status of the matter on a more or less regular basis, he or she is much less likely to place unnecessary demands on the lawyer’s time. The lawyer can easily accomplish regular contact by using a tickler system to review all active files on a regular basis for communication with the client. Many lawyers have found that setting aside a block of time each week during which they will do nothing but communicate with active clients by telephone or written correspondence is time and cost effective.

While it is not the role of the lawyer to act either as social worker or psychiatrist, he or she should be aware of the importance of encouraging independence, enhancing self-esteem, and teaching the client to be assertive.

The lawyer must emphasize to the client that he or she is the ultimate decision maker, not the lawyer. As easy as it might be for the lawyer to accept the preferred role of decision maker for the client, the lawyer should resist. To do otherwise may foster a continuing dependence on the lawyer and a corresponding loss of self esteem by the client. The lawyer may prevent the client from becoming too dependent on the lawyer by not acceding to unreasonable client requests and by not giving help that is not needed.

The lawyer can foster independence and self-esteem in the client by maximizing the client’s role in working out a solution to the client’s legal problems. Involving the client actively in the solution not only demonstrates to the client that the lawyer appreciates the individual’s personal worth and abilities, but greatly increases the chances of the client’s satisfaction with the results. The need of the elderly to assert their capacity by taking an active role in decision making requires that client responsibility be defined broadly. Preparing the client for participation in decision making involves helping clients to develop a full range of options — even if some are inconsistent with expressed desires — in order to give the client a basis for rational choice. It is especially important for the lawyer to value the choice ultimately made by the client, even though the lawyer would not have made the same choice for himself or herself. The elderly are often more vulnerable to the effects of an unstable environment and, therefore, the need for stability, as expressed in the choice of a less disruptive course of action, even though less productive in the economic sense, may be the best alternative for the elderly client.

The elderly client should be encouraged to be appropriately assertive in his or her relationships with government agencies or service providers. Assertiveness is the skill of being able to say things that an individual believes need to be said without either fear of reprisal or of alienating the listener. Older individuals, just as all people, have the right to have their needs met without intrusion from others. Some principles for assertive behavior are important. To the extent that the attorney can teach the elderly client these principles, both the attorney-client relationship and the client’s relationships with other service providers benefit. Some of the principles for assertive behavior are:

1. Be persistent. Your needs matter; stick with it until they are met.
2. Do not be drawn into side issues. Stay on the topic.
3. Do not be defensive. You need not apologize for being assertive.
4. Do not allow yourself to become aggressive. Screaming and threats are not necessary to get needs met.
5. Do not feel guilty. It is OK to say no.
6. Do not blame. Talk about yourself, not the other.
7. Be specific. Describe the behavior that is troublesome, not the whole person.

Client independence and self-esteem are frequently put at risk in the elderly client by the actions of family members. The lawyer for an older client must guard against being used as an agent by the family members against the client. While family and friends of the client may often assist in discovering information unavailable or unknown to the client and may even be helpful in resolving the legal problem, the lawyer must keep firmly in mind who his or her client is and not let some third person speak for that client.

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Termination and Referral

A final aspect of a lawyer's relationship with older clients that needs attention is closure of the individual interview and of the relationship as a whole. Some older clients may be very insistent that the lawyer spend more time than is professionally necessary. The source of this insistence may be factors such as loneliness or fear that the lawyer will not return after the initial contact. In response the lawyer may feel frustration or guilt. Barbara Engram, a specialist in therapeutic communication skills, offers some useful suggestions:

a. Set a time limit for the visit or conversation when it begins.

b. Focus on the fact that this separation is only temporary (if in fact this is true). Let the older person know that you will be back. If possible, say when you will visit again. That is more reassuring than saying you will visit or chat again "sometime."

c. Let people know that you understand and care how they feel. Even though you cannot make their bad feelings go away, and you are going to leave, understanding how they feel about it helps.7

Attention also needs to be paid to the closure of the attorney-client relationship. Because of the many separations and losses that older clients may have experienced, they may be more upset by the end of the working relationship than the lawyer expects. The lawyer can help by warning clients ahead of time that their business is close to being finished. This gives the clients time to prepare themselves. The lawyer can also review both accomplishments and disappointments. This helps to provide a sense of completion and closure for the client. The lawyer should also be prepared to hear any feeling of loss that clients may have and be willing to express his or her own feelings. This helps older people recognize that the lawyer cares about them as individuals and may make it easier for them to express their own feelings. The lawyer will also want to make it clear that he or she is available if other legal questions arise. Awareness of the difficulties some older people have in ending relationships should ease the discomfort of both the lawyer and the client and lead to more constructive and less frustrating closures.

Referral

In the course of representation of an elderly client, a lawyer may be faced with problems that are not legal and for which the client may benefit from referral to an appropriate service agency. If the lawyer does not know of an appropriate agency, the local information and referral service of the United Way organization or Area Agency on Aging may be helpful. If there is no such service, the lawyer will need to make his or her own investigation. Many public and private organizations provide services to the elderly. The lawyer should be familiar with those in his or her community and should be familiar with senior centers and nutrition sites, private and public social service agencies, and churches and other religious organizations that have programs for elderly people.

Generally it is not sufficient simply to give the client, for whom a referral is appropriate, the telephone number of the local information and referral service or social service agency. Unless the lawyer is confident that the client can articulate clearly the nature of his or her problem for which referral is sought, the lawyer should either help the client formulate the request for assistance or otherwise help initiate the contact. Too often a client is simply given a telephone number for referral, finds himself or herself shuttled from agency to agency without getting any assistance until, in frustration and anger, the client gives up. If possible, the problem should be clearly understood by the lawyer, and the referral should be made to a specific person at a specific agency. For this purpose, the lawyer should maintain an up-to-date file of addresses, phone numbers, and names of key persons at each agency.

The referral must be handled sensitively. When the lawyer talks to the client about a referral, the lawyer should let the client express his or her feelings about the idea. Letting the client express the hesitance or uneasiness about a referral can help reduce his or her nervousness about it. It also communicates to the older person that the lawyer cares about his or her feelings and does not demand that the client be completely comfortable and enthusiastic. The lawyer must be alert to any signs that the client feels the lawyer is trying to get rid of him or her. Honestly telling the client that the lawyer does not feel that he or she has the skill or training to help the client with a particular problem should, in most cases, relieve the client of the feeling that the lawyer just does not want to be bothered with the client.

A major problem with serving older people occurs when clients insist they have a legal problem when in fact they do not. Knowing where to make a referral and how to discuss it with the client is an invaluable skill for any lawyer.

Conclusion

Over the coming years, lawyers will begin to serve an increasing number of elderly clients. Lawyers committed to giving the best service to these clients must be willing to spend time in acquiring the special skills and sensitivities that enhance their working relationships. They need to focus on knowing their own feelings about the process of aging, how these attitudes might affect their work, and what special qualities and problems occur more frequently in the elderly community. Lawyers need to know techniques for easing the impact of sensory loss on communication, and they must recognize and appreciate that empathy and genuine caring are crucial to
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