

Supplemental Teaching Materials

to be used in conjunction with the video

Interviewing the Child Client: Approaches and Techniques for a Successful Interview

Produced by the Children's Rights Litigation Committee of the American Bar Association
Section of Litigation

Interviewing the Child Client
Video Supplemental Notes

These supplemental notes are designed to assist you as you use the *Interviewing the Child Client* video to train lawyers. Below you will find a list of topics covered in the video, followed by the full text of the video script in the left-hand column, and supplemental notes in the right-hand column. The supplemental notes more fully describe a concept and/or provide you with concrete examples to assist you with your training session.

For your convenience, each * symbol within the text below corresponds to a marker within the video itself, so that you can skip ahead or go backward to illustrate a specific point (use the forward/backward button on your DVD controller to move to each marker).

Keep in mind that there are many subjects not specifically covered by this video. We encourage you to use this video and these supplemental notes as a starting point and as a general guide. However, you will find that, just as every child is her own unique individual facing her own specific legal issues, so too, every interview has its own unique qualities and challenges. Please see our website at <http://www.abanet.org/litigation/committees/childrights/> for links to related documents and a list of supplemental resources, as well as a copy of this supplemental guide. We encourage you to check out these resources to assist you in interviewing, and representing, child clients.

Sincerely,

The Children's Rights Litigation Committee of
The Section of Litigation of
The American Bar Association

The views expressed herein have not been approved by the Council of the Section of Litigation, or by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly should not be construed as representing the policy of the Section or the American Bar Association.

Topics Covered

Relationship Building

- * 1: Cross-Involved Clients
- * 2: Relationship Building
- * 3: Initial Client Contact
- * 4: Establishing boundaries through salutations and familiarity
- * 5: Contextualized Representation
- * 6: Differentiate Yourself
- * 7: Advance Preparation
- * 8: Physicality
- * 9: Multiple Meetings
- * 10: Active Listening
- * 11: Example of Building Rapport
- * 12: Managing Expectations
- * 13: Avoid Assumptions
- * 14: Graphic

Roles and Responsibilities

- * 15: The Role of the Attorney
- * 16: Example of Express Wishes
- * 17: Describing Court Officials and Concepts
- * 18: Honesty Builds Credibility
- * 19: Quality Lawyering Requires Multi-dimensional Preparation
- * 20: Using Graphics and Visual Aids
- * 21: Be Real
- * 22: Developmental Stages
- * 23: Explaining Your Role as an Express Wishes Attorney
- * 24: Attorney-Client Privilege
- * 25: Child Centered Interviewing
- * 26: Graphic

Communication Tools

- * 27: Keep It Simple
- * 28: Engage In Active Listening By Adopting Your Client's Use of Words
- * 29: Developmental Disabilities Among Children in the Juvenile Justice System
- * 30: Encourage the Client to Participate and Take Ownership
- * 31: Additional Tools for Facilitating Communication
- * 32: Desire to Please
- * 33: Basic Rights of Citizenship
- * 34: Encourage Your Child Client to Ask Questions

Successful Interview Techniques

- * 35: Follow the Child's Lead
- * 36: Building Trust Through Empathy and Active Listening
- * 37: Example of Active Listening, Child-Centered Interviewing
- * 38: Assisting With Peripheral Issues
- * 39: Accomplishing Your Goals Through Child-Centered Interviewing
- * 40: Pronouns
- * 41: The Funnel Technique, Stage 1
- * 42: The Funnel Technique, Stage 2
- * 43: Repetition as Form of Open-Ended Questioning
- * 44: Demonstration as a Form of Open-Ended Questioning
- * 45: Asking Children About Time
- * 46: Preparing versus Coaching
- * 47: Directing Your Client's Attention to a Particular Fact
- * 48: Children Are Suggestible
- * 49: Address Difficult Issues Directly
- * 50: Strong Foundations
- * 51: Empathy versus Emotion
- * 52: Repeated Reminders
- * 53: When Gathering Information Requires a Different Approach

Video Script

Supplemental Notes

<p>[Off camera] Cut! Great work. Let's take five.</p> <p><i>Amy Brenneman</i> <i>Title</i> Hi, my name is Amy Brenneman. You might remember me as Amy Gray, a juvenile court judge, in the television show <i>Judging Amy</i>.</p>	
<p>I had the pleasure of sharing stories that showed just how critical advocating for children can be.</p> <p>But I first learned about child advocates from my mother, Frederica Brenneman, a real juvenile court judge. In many ways, the show was based on her work.</p>	
<p>I was three years old when my mother became a judge. Throughout my childhood, I heard my mother talk about the problems that children in the justice system face.</p>	
<p>She taught me that the most critical factor in navigating that system is the child's lawyer. Because a child who is involved in the justice system has one spokesperson, one advisor, and one champion – her lawyer.</p>	
<p>Your work as a child's attorney has an enormous impact on the decisions that are made for your child client.</p> <p>Developing a relationship with your child client is vital and requires the greatest care a lawyer can give. You have to establish rapport, build trust, explain roles, and most importantly, help the child understand her own rights and responsibilities.</p> <p>Of course, those are steps required in any attorney-client relationship, but doing it successfully with children requires extra care on your part.</p>	
<p>You are taking an important step representing your child clients just by watching this video. The American Bar Association Section of</p>	

<p>Litigation has put together this video in order to assist you to develop the skills that are crucial when interviewing children.</p> <p>You'll hear from experienced attorneys about the techniques that they use with their own child clients.</p> <p>And you'll see examples of those techniques and principles in practice.</p>	
<p>While we're focusing on child welfare and juvenile justice representation, remember, the skills presented here are applicable in <i>any</i> setting between a lawyer and child client.</p> <p>Thank you for taking the time to watch this video. And thank you for your work with children.</p>	
<p>[Music]</p>	
<p><i>Children's Law Expert: Gail Chang Bohr Executive Director, Children's Law Center of Minnesota</i> <i>The key to successfully representing a child is how you approach the child interview.</i></p> <p>Interviewing a child client presents a unique set of challenges.</p> <p><i>Children's Law Expert: Mary Anne Scali, Deputy Director, National Juvenile Defender Center</i></p> <p><i>Children who come into the court system haven't been treated well by a lot of adults in their lives.</i></p> <p>* 1</p> <p>Building a relationship with your child client and communicating with them effectively gives them a voice in their proceedings and enables you to get the information you need to represent them effectively.</p> <p><i>[Mary Anne] We have to remember that perspective; we need to be empathic; we have to put ourselves in their shoes. And we have to</i></p>	<p>* 1: Cross-Involved Clients</p> <p>Children involved with the courts are children in conflict with the law, and thus may have been exposed to a number of State and court-related adult officials already. Your child client also may have had prior involvement with a different court or administrative body (e.g., child protection, custody, immigration, school discipline, status offenses, etc.).</p> <p>These encounters may have been unpleasant</p>

work on making this a process that children understand and can participate in.

for your child client, and may have left her with a distrust of adults. Knowing this, and approaching your representation in a manner that is mindful of your child client's past and/or concurrent involvement in other matters, will assist you in the crucial work of building a relationship with your child client.

This past or simultaneous system involvement also may have resulted in paperwork that documents vital information about your child's life, cognitive functioning and needs. It could be information that is adverse to your child client, thus you will need to be prepared to respond effectively if it arises during the course of your representation.

Less clear: *"Next, I would want to tell the judge what kind of school you would want to go to."*

Preferable: *"Next, I tell the judge what school you want to go to."*

To confirm that your child client understands what you are communicating to her, ask her to tell you in her own words what you just said. This is a tool that can be used repeatedly throughout your conversations.

*** 2**

This video provides examples of successful methods of achieving these goals as you interview a child. We'll be discussing the skills and concepts behind Relationship Building, Roles and Responsibilities, Communication Tools, and Successful Interview Techniques

*** 2: Relationship Building**

"The primary factor comprising the quality of interviews of defendants, witnesses and victims in juvenile court cases is the conflict between the adult's information-gathering agenda and the adolescent's desires to be liked and to finish the interview. This conflict is exacerbated by limited time and interview settings that lack privacy. Successful interviewing relies on the interviewer taking responsibility for reducing the [child's] anxiety and for building trust." Dr. Marty Beyer, *Suggestions for Interviewing Adolescents*.

Relationship building sounds simple but requires careful focus on some basic techniques we must pay special attention to with a child client.

Be friendly. Child clients are not necessarily familiar with typical professional relationships between a lawyer and client. The key is to put your child client at ease. If your child client seems nervous, try to lighten up the conversation until he is able to relax. This may not happen immediately, but as you build trust, your child client will feel more and more at ease.

Be honest. It is tempting to overstate the chances of success in an effort to make your child client feel better. However, absolute honesty, whether the news is good or bad, is crucial to your relationship.

Be clear. If you want your child client to understand what you are saying, you need to communicate clearly. Use short, simple, clear language.

Avoid Legalese. Avoid legal jargon and terminology whenever possible.

Avoid Negatives. Questions such as, “*Didn’t you see a boy in the alley?*” can be confusing and suggestive to a child. Instead, use an open-ended question, such as “*What did you see in the alley?*” or “*Did you see a boy in the alley?*”

Use Simple Sentence Structures. Avoid dependent clauses. Use short sentences.

For example:

Less clear: “*Before the judge reads the charges and asks you if you understand them, he will ask everyone in the court to introduce themselves.*”

Preferable: “*First the judge will ask everyone in the courtroom to say their names. Then he will read the charges to you. Then he will ask you if you understand the charges against you.*”

Avoid Sarcasm. Even simple sarcasm can be

	<p>misunderstood. A child might misunderstand something as simple as: “Showing up late – that would be a great way to impress the judge, huh?” Instead, say, “Always be on time for court. If you are late, a judge may think that you don’t take this seriously.”</p> <p><u>Use the Present Tense.</u> Children, especially those at early verbal developmental stages, take longer to process information. Using the present tense will enable them to process information more quickly, and enhance communication. For example,</p>
<p>Relationship Building</p> <p>Building a solid relationship based on trust is essential in the interview process.</p> <p>* 3</p> <p>LAWYER</p> <p>Good morning, James. I'm Laurie. We spoke briefly on the phone the other day.</p> <p>This starts with the first meeting. A child needs to be comfortable with his advocate both personally and professionally.</p>	<p>* 3: Initial Client Contact</p> <p>You never get a second chance at a first impression. One of the first, and most important, actions you will take is contacting your child client for the first time. If possible, the attorney – not an assistant, law clerk, or other staff member – should call the child client him or herself.</p> <p>Get in touch with your child client as early as possible in your representation, and maintain regular contact with your child client. These communications are essential to establishing trust. Consistency is key.</p> <p>For example, set up a weekly, or bi-weekly, time to call your client, and follow-through. Your conversation may be short, but it will demonstrate to your child client that you are a person she can trust. It also will give you an opportunity to discuss any substantive matters you need to cover for your case.</p> <p>As noted by Kristin Henning, one of the experts interviewed for this video, when building rapport, <i>“the single most important thing is time. The single most important factor in building rapport with the kid is time and when I talk about time, we talk about it in two</i></p>

ways: time within each individual interview and time over the life of a case. You've got to dedicate and devote more time with the kid than you would with an adult often. So that means, maybe making a couple extra visits to see a client even when you don't have a particular question to ask, but just spending time unrelated to the case, to develop trust...It might mean spending extra time to allow the kid to ask questions, to allow yourself to be able to rephrase things, to make sure the kid really understands by repeating back to you, some what you are talking about just takes more time, more than anything else."

In this advanced technological age, there are many different ways to communicate. Keep in mind, however, that your child client may not have the same access to communication. You should ask your child client which method of communication is easiest for him -- e.g., land lines, text messages, cell phones, email or regular mail.

For children who do not have access to any of the above methods of communication, you might be able to work through their school, a caseworker, a social worker, or even a neighbor, to have regular contact with your child client.

Regardless of the method of communication, make sure – for purposes of the attorney client privilege (discussed more fully in * 24) that your child client is able to communicate privately. If not, avoid discussing the case at that time.

*** 4: Establishing boundaries through salutations and familiarity**

While you want to make your child client feel as comfortable as possible, you also need to set boundaries and remain professional. Prior to your initial meeting, think about how you would like your child client to address you. And ask the child how he would like to be addressed. Generally, first names are appropriate. Make sure, however, that the child knows your full name and/or knows

*** 4**

*Children's Law Expert: Joe Tulman
Clinical Director/Law Professor, University of
the District of Columbia*

*When you meet a person- and a client is a
person- the first thing you have to do is
demonstrate genuinely that you're focused on
that person and that you care about that
person.*

Children's Law Expert: Mary Anne Scali

Trust and rapport between a child and an attorney allows you to represent them in a way that brings their voice to the courtroom.

*** 5**

LAWYER

What are you reading about?

[Child client does not respond]

where to find it. You can help your child client do so by giving him your card each time you see him.

*** 5: Contextualized Representation**

“Effective representation requires attorneys to be self-aware and respectful of the full context in which the client lives. Contextualized representation is particularly important because there are often vast socioeconomic or racial gaps between the attorneys and the clients they serve. As a result of these disparities, attorneys may not appreciate all of the particular legal and social dimensions of the presenting problem that is the initial or primary subject of the representation; the importance of the child's family, race, ethnicity, language, culture, gender, sexuality, schooling and home; and the child's developmental status, physical and mental health, and other client-related matters outside the discipline of law.”

Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham, 6 Nev.L.J. 571, 593-594 (2006).

Whenever possible, meet your child client at a location that is comfortable for him. Keep in mind that he may not have access to reliable transportation, that entering a professional office space may be overwhelming for him, and that he may open up more if he is in a familiar setting.

In many cases – in particular child welfare cases – the attorney must do a home visit and assess the child client's living arrangements.

Let your conversations begin with a topic that your child client wants to discuss, and give your child client time and space to open up at his own pace, especially at the initial stages of your representation. This lawyer provides an excellent example by starting with showing interest in what the child client is reading. As time goes by, and your client learns to trust you, you will be able to delve more quickly

into specific legal issues that you need to cover for the case.

Logistics are important as well. To help your child client keep appointments, not only with you, but also with the court and other entities important to the case:

- Talk through logistics with your child client. Which form of transportation will she take to get to the appointment? How will she get home? Make sure she has the address, and that, where necessary, an adult also has the address.
- Talk to your child client about what she needs to do if she has to make a last minute change.
- Exchange the best phone numbers, or have a backup person that you could communicate through, for example a parent or guardian.
- Contact your child client the day before an appointment, court appearance, or other important meeting and remind her of the details (time, location, expected duration).

* 6

*Children's Law Expert: Marsha Levick
Legal Director, Juvenile Law Center*

Kids who come into the system are accustomed to, unfortunately, interacting with adults often in negative ways. They've often had negative experiences with adults, and I've worked with kids who've been involved with the system who've said to me, "When I see you walk into the room, to me you're just another adult that I don't think I can trust."

* 6: Differentiate Yourself

Prior to meeting with your child client, she already may have interacted with a number of different adult authority figures (police, youth officer, social worker, case worker, State's Attorney, etc.). Many may be lawyers. Often times, these adults do not identify themselves in a way that makes sense to a child.

Vinnie Herman, one of the experts in this video, explains it well in saying, "*I have to differentiate myself from the other players in the court because the more I know that child, the more that child is wanting to communicate to me, the more facts I have, the better I can be a lawyer in court, the better I can advocate for that child.*"

* 7

So while all interviews are about gathering information, the *first* meeting should focus on building trust and establishing rapport.

While gathering information, it is important to be engaged, but not too invasive.

Start with simple questions that allow the child to get comfortable with you.

Seat yourself so you can make eye contact with the child but are not invading their space.

And allow the child plenty of time to think about and respond to the questions.

As indicated above, it is important that you differentiate yourself by taking the time to clearly explain who you are, your role in the case (whether it is express wishes, best interest, or another role), and the attorney client privilege. You also should explain how your role differs from that of other adults they have and will encounter, such as judges, probation officers, and guardians *ad litem*.

Do not be afraid to share some details about your life – appropriate details such as your interests or what you are reading. Sharing information can help build trust and set you apart from the other adults in the system. However, be careful though not to focus too much on yourself.

* **7: Advance Preparation**

Schedule the initial interview as soon after you take the case as possible, and as far in advance of your first court appearance as possible. * that, depending on your practice area, you may need to have a screening interview (a short office visit or phone call) prior to accepting representation. On the other hand, you may only have a few minutes between the time you are appointed to a case and the time your case is called. In such a case, use what techniques you can to develop rapport and build trust in the short amount of time you have. You can continue to build on this short initial interview as your representation continues.

Prior to the initial interview, gather as much information about the child client as you can. You can do this through initial conversations with parents, caseworkers, or other officials already involved in the case. These individuals might be able to give you copies of some school records, case reports, medical history, and other historical documents that will give you background information about your client.

Gathering this information in advance will allow you more time to focus on building trust during the initial interview. And having this information will enable you to avoid

*** 8**

LAWYER

Do you feel like talking today?

CHILD CLIENT

I guess.

LAWYER

Where would you like to talk?

CHILD CLIENT

(Shrugs.)

Wherever.

potentially touchy subjects.

For example, if you have school records, and know in advance that your client is failing most of her classes, you will know not to start your initial meeting asking about school. On the other hand, if your client excels at school, talking about this first would be a great way to put her at ease.

You may not be able to access some records prior to your initial meeting. Obtaining this information may require releases your client and/or her parents need to sign. Think about when and where to introduce the releases, preferably after you have gained enough trust to ask the child to allow you access to what may be some very sensitive information. Get the releases as quickly as possible because you may need them very early on in your representation.

* that even when a release is not required, you should let your child client know in advance that you will be contacting the school, doctor's office, etc. to get records. Your child client or her family may prefer to get the documents for you themselves, and may be able to do it more quickly.

*** 8: Physicality**

Especially at the initial stages, a child may be more focused on your body language and non-verbal gestures than on the substance of what you say. In order to put your child client at ease and allow him to focus on your words, make sure you respect his physical space, but do not distance yourself too much. One option is to let the child client choose where you should sit. You can ask him up front where/how he is most comfortable. This shows respect and gives the child client a sense of control.

Think about other non-verbal communication. Try to be as natural as possible and take your cues from your child client. If he is uncomfortable making eye contact, don't force it. If he is fidgeting his hands, and looks

LAWYER

Would you like to stay in the house? Or do you want to go outside?

CHILD CLIENT

I'd like to stay in the house

LAWYER

O.K. That sounds great.

*** 9**

[Gail] Children that we meet who have been abused and neglected do have a hard time developing trust, and so that first meeting can be as short as 10 minutes, 15 minutes, 20 minutes and that's O.K.

Let the rapport build naturally. This can take time. You might save the tougher topics for the second meeting.

LAWYER

(Sits in a chair across from James.)

So, what do you think of this place?

CHILD CLIENT

It's all right.

LAWYER

It's all right?

CHILD CLIENT

It's the best place I've lived. But I miss being home.

nervous, you might consider giving him a pad of paper and pencil so he can doodle, or draw you a picture describing facts in the case.

Taking notes

During the initial interview, try not to take notes. It is distracting for your child client and can send him the wrong message about what is important. Your child client's interactions with bureaucracies in the past may well have amounted to a series of adults taking notes and then using them against him. In addition, he may start focusing so much on what you are writing down, that he is not able to participate fully in the interview.

If and when you do need to take notes, talk to your client about it first and get permission. This will help put him at ease.

*** 9: Multiple Meetings**

Your initial meeting with your child client may be quite short. Aim for many short meetings with your client, rather than one long meeting.

A short initial introductory meeting allows the child to observe you and then to have an opportunity to emotionally prepare for the next session. It might take some of the edge or fear out subsequent sessions, and make them more productive.

Even after the initial interview, try not to take copious notes while you are speaking with your child client in person. However, after you leave your child client, it may be helpful to create a memo for your file. In this way, you can document critical information. Such memos will assist you in your preparation of subsequent interviews. Remembering what you have already discussed, and being able to build on that, will help establish a strong relationship with your child client.

* 10

LAWYER

Miss being home.

CHILD CLIENT

I do.

Demonstrate to the child that you are willing to take the time to really listen to them.

* 10: Active Listening

Active listening is an invaluable tool in the representation of child clients. Following are some examples of active listening techniques.

Repeat key phrases. One way to engage in active listening is to repeat key phrases that your child client uses. Notice how, in the example that follows, the child client says to his lawyer, "I miss being home" and his lawyer repeats the phrase "miss being home". This type of repetition demonstrates to your child client that you are listening, and that you understand his feelings.

Respond Non-Verbally. If your child client turns to you, perhaps you lean in as you speak after she turns to you. Nodding your head is another positive non-verbal cue that lets your child client know you are listening and focusing on what he is saying.

Use Conversational Building Blocks. Base your next question on the last answer. For example, a lawyer might be seeking information about the child's progress in school and when she asks about it, the child answers, "I don't like school. I like video games." An active listener might respond, "Tell me what you like about playing video games?"

Observe. Observe physical responses and react accordingly. For example, a child client who never comes within a certain perimeter of you is obviously going to feel uncomfortable if you do. Respecting that boundary is a good way to build trust.

Ask Probing Questions. For example, "How did that make you feel?"

Comment on Feelings. For example, "That must be hard."

Be Positive. For example, instead of saying "why didn't you listen to your mom and go straight home after school instead of hanging

*** 11**

LAWYER

(Long pause. Lawyer and James exchange glances setting both at ease.)

Do you have any of your favorite things here with you?

CHILD CLIENT

Nope. (Pause) I had a notebook that I used to write things down in.

LAWYER

Did you write everyday?

CHILD CLIENT

I tried to.

*** 12**

LAWYER

Well, that's pretty important. Do you know where it is? Maybe I can go get it for you.

CHILD CLIENT

It should be in my room at my old foster home, if someone didn't take it, or throw it away.

LAWYER

Well, why don't I go talk to your caseworker and see if she can pick it up for you?

CHILD CLIENT

Don't let her read it!

LAWYER

Well, I'll do what I can, but I can't make any

out with your friends" you could say "it must be hard to go straight home after school when your friends stay there. How does that make you feel?"

*** 11: Example of Building Rapport**

In the conversation that follows, the lawyer asks the child client about his favorite things. Asking your child client these kinds of questions sends the message that you care, not just about the case, but about him as a person, which helps build rapport. It is important to do this honestly and not just to make a gesture for your child client's benefit. If it is not genuine, the client will sense it, and your efforts may do more harm than good.

*** 12: Managing Expectations**

One of the best tools for building trust is keeping promises. Breaking promises is one of the surest ways to lose your child client's trust. So, use great caution when talking to your child client about what you will do, or may do. In the following example, the lawyer says to the child client, "Maybe I can get [your note book] for you". Keep in mind that a child client might not hear the "maybe," so make sure that expectations are clearly set.

* how later in the conversation, the lawyer confirms that she'll do what she can, but she cannot make any promises. While it may be hard for the child to hear that, it is critical to your representation that you are up front and honest with your child client.

Promise only what you know you can deliver.

promises right now...

One essential element of managing expectations is avoiding a promise to control the actions of someone else. The lawyer's careful wording about the journal is one example. This can be particularly intense when the child client is desperately seeking some control over what can feel like an unreasoned and unpredictable system of justice. The child client also may want you to guarantee that the judge will listen to her or that the decision-maker will grant her request. Rather than giving what sounds like a guarantee, you do your client a greater service if you manage her expectations honestly and responsibly early in the relationship and continuously.

"Children have a very acute sense of fairness and they have an acute sense of apprehension about what adults they can trust or not trust and I think that that plays a role in how we deal with making promises to them and what kinds of promises we make to them. Oftentimes I think that lawyers who represent children have a natural inclination to want to be their friend but being their lawyer is not necessarily the same thing as being their friend and wanting to demonstrate to them that we care about them, that we are compassionate, that we are concerned for their welfare is not always best executed by promising them an outcome that we can't actually deliver. So I think that lawyers need to offer their child clients the very best advocacy that they can, I think we need to ensure our clients that we will tell the court what they want us to tell the court that we will make the best arguments that we can to help them achieve the outcomes that they are trying to achieve but we can't promise that they can go home, we can't promise that we will buy them a birthday gift, we can't promise that they will be in special place for Christmas because these are things that we can't deliver and then we end up being just another adult who has disappointed these kids." Marsha Levick, Legal Director, Juvenile Law Center

Building trust includes keeping promises. So never make promises you can't keep.

*** 13**

Children's Law Expert Vincent (Vinny) Herman, Staff Attorney, Children's Law Center

They don't know you. You're a new person in their lives. You may not share their background. You may not share their culture. That a child knows that when you say you will do something you will do it is crucial.

Children's Law Expert Kristin Henning, Deputy Director, Juvenile Justice Clinic, Georgetown University School of Law

So many of the kids that we represent have been disappointed by adults, and so you're way of showing, demonstrating, that you're different is by following through

[Mary Anne] There are many things you can't control as a lawyer. And the best judgment you can make is recognizing what promises you can keep and what promises you can't.

For example, you may want to assure this child that his journal will not be read. But a caseworker may have already obtained and read the journal. Be aware of any threat to the careful building of a trusting relationship with your client.

*** 14**

You must build a strong relationship with your client. That relationship will be the foundation for all other successful strategies you put to use.

Key elements include: building rapport first, starting with safe questions to engage the child, positioning yourself to make eye contact with the child, keeping the first meeting short, saving tougher topics for later meetings, and always keeping your promises.

*** 13: Avoid Assumptions**

You and your child client may come from very different backgrounds. The better you are at avoiding assumptions about your client, her neighborhood, her background, her family, her friends/gang, her school, etc., the better able you will be to hear what she is saying to you through her lens, rather than your own, and the better able you will be to empathize with your client and truly advocate on her behalf.

Some examples of assumptions a lawyer might make are:

- That the child client understood what was said in court. It is common for children to misinterpret what happens in court, even when it was presented in a very clear and seemingly developmentally appropriate manner.
- That the child client can read.
- That the child client has access to adult supervision to help her comply with school or court rules.
- That the child client has access to transportation and other basic services.

*** 14: Graphic**

- **Establish rapport**
- **Engage without being intrusive**
- **Physical position**
- **Keep the first meeting short**
- **Introduce tough topics gradually**
- **Always keep your promises**

Roles and Responsibilities

The roles of the attorney and other court professionals can be complicated legal concepts, especially for children.

An early interview in your relationship should aim to explain your role as the child's advocate.

*** 15**

LAWYER

How're you doing?

CHILD CLIENT

Hi.

FOSTER MOM

I'll leave you guys to talk.

[Vinny] Within seventy-two hours of a child being involved in a court system, the child's met anywhere from 5 to 15 different people; each of them having a different role, each of them asking probably the same or similar questions

Distinguishing your role as their attorney is a difficult but important task. It is different from a guardian ad litem. You must make sure the child understands her relationship with you.

LAWYER

Do you know why I asked to come see you today?

CHILD CLIENT

(Shrugs.)

I think so.

LAWYER

Can you tell me

*** 15: The Role of the Attorney**

Your role as an attorney for a child client will differ depending on the jurisdiction in which you practice and/or the role the judge has asked you to fill in a particular case.

The attorney you see here is representing the express wishes of the child. In other words, the attorneys take direction from the child and express the child's wishes to the Court. Such attorneys act in accordance with legal ethical rules and perform regular functions of a lawyer. See *Jean Koh Peters, How Children Are Heard in Child Protective Proceedings, In the United States and Around the World in 2005: Survey Findings, Initial Observations, and Areas For Further Study*, 6 Nev.L.J. 571 (2006).

A best interest representative is someone who advocates for a child's best interests. Depending on the jurisdiction, this may either be an attorney, a guardian *ad litem*, or a trained lay volunteer (i.e. CASA).

Some jurisdictions, such as Massachusetts, also have education advocates to advocate for special education services.

Demonstrating Respect. Children need to be educated constantly about the power they have to direct their relationship with their advocates. Children are used to adults telling them what to do – not collaborating with them to achieve a common goal. Even small indications through your language choice send the message that you respect their power in the relationship.

CHILD CLIENT

My foster mom told me you're a lawyer.

LAWYER

Do you know what that means?

CHILD CLIENT

Not really.

There is a significant difference, for example, between, "I decided to meet with you" and "I asked to come see you."

Working with Parents. Parents and guardians have access to vital information about your child client – information the child client himself might not know. In addition, parents and guardians often control the physical movement of your child client, and you may need to go through them to be able to meet with your client.

To facilitate your relationship with the parents or guardians of your child client, be open and honest about your role, the fact that the child is the client, and the sort of information you need from them.

At the initial meeting with your child client, consider conducting a two-part interview. The first part should include the parent(s) or guardian(s). During this first part of the interview, you should explain your role as the child's attorney, and why the child has an attorney. You also can discuss topics such as home life, siblings, family dynamics, interests, community involvement, extracurricular activities and other important issues that do not relate directly to the legal issue at hand.

Next, explain the concept of the attorney-client privilege, and tell the parent(s)/guardian(s) that you need to speak with your child client in private. If possible, get the child's consent by asking her if it would be OK for her mom/dad/guardian to step outside for a few minutes. And make sure there is a comfortable spot for the parent(s)/guardian(s) to wait while you speak with your client child alone.

Again, easing the child client into a one-on-one meeting with you will make her more comfortable, and more likely to open up.

*** 16**

LAWYER

Well, you're right. I am a lawyer. I am a

*** 16: Example of Express Wishes**

In this example, the lawyer is explaining to the child client that he works for the child and his directions should be directed by her wishes.

lawyer who represents children. I make arguments to the judge for you. I argue for what you want to have happen. Do you understand?

CHILD CLIENT

No.

LAWYER

Well, let me try and explain all the things I can try to do for you

He will advocate for her express wishes. In other words, he will tell the judge what she wants even when he, as an adult with an opposing judgment, disagrees with what the child is seeking.

In this “expressed wishes” model, a child’s judgment is valued over the lawyer’s judgment. A lawyer must advise and counsel his child client to urge her to make the best decisions. However, when the child client ultimately makes her choice about what she wants for the goal of the representation (how to plead, where to live, whether to engage in a legal process), the lawyer’s advocacy must be directed to identifying and implementing the strategy that will best achieve those goals. As with an adult client, the client controls the ends; the lawyer controls the means.

In a best interest model, the child’s wishes also are important, but not controlling. A best interest attorney must meet with everyone involved with the case, review all relevant records and consider the child client’s wishes prior to deciding what to recommend to the court. The best interest lawyer does not have a traditional attorney-client relationship, nor is his work on the child’s behalf covered by the attorney-client privilege. The lawyer must explain to the child that he will use the information he receives – whether it is from the child or another source – to advocate for the child’s best interest (which could be very different than what the child wants), and that their conversations are not protected by the attorney-client privilege.

Remember that lawyers may have different roles in different jurisdictions. In some places lawyers must follow what the child wants – this may be termed their "expressed wishes." In other locales and in certain types of cases, the lawyer must advocate for the child's "best interests."

Still other jurisdictions may require that a lawyer combine these roles.

In this example, the lawyer is appointed in

the child protection court under the "expressed wishes" standard and must explain his role in contrast to that of the judge.

*** 17**

LAWYER

The Judge's job is to decide what is best for you. To do that, she needs to learn what is good for you. Now, one of the things she will consider is what you want. It is my job to tell her what you want and she considers that too.

CHILD CLIENT

She decides what's good for me.

LAWYER

Yes.

*** 17: Describing Court Officials and Concepts**

In the conversation that follows, the lawyer is describing his role, the role of the judge, and how they differ.

Prior to going to court, explain to your child client who all of the different court officials are. Depending on the type of case and jurisdiction, such officials will include a judge, clerk, prosecutor, public defender, parents' attorney, guardian ad litem, attorney ad litem, case worker, social worker, administrative judge, agency lawyer, lawyers for other caregivers and parties, probation officer, court evaluator (mental health), witnesses, interpreter, stenographer and/or police officer.

In addition, you should anticipate the language of the courtroom setting, and define all of the terms and acronyms that your child client may hear while in court.

Examples might include:

- Names of people : Probation Officer ("PO"), Caseworker ("Worker"), Assistant State's Attorney ("ASA"), Assistant Public Defender ("PD")
- Names of documents: Presentence investigation Report ("PSI"), Petition, Discovery, Disposition Report, Caseworker Report
- Legal activities: Adjudication, Termination, Violation of Probation or Violation of Conditions of Probation

As you describe these roles to your client, remain positive or neutral with respect to the other court officials. If your client feels as though she got a "bad" judge or "particularly mean" prosecuting attorney, it is more likely

she will focus too much on this and resent the outcome of her case. It is easier for children to understand and accept the outcome if they feel as though the process and players were fair.

If possible, **visit the court** with your client prior to the actual court date. Show your client first hand where he will sit, where the judge will sit, where other court officials likely will sit. In so doing, you will eliminate a great deal of anxiety for your child client, and better help them grasp some of the legal concepts you have and will teach them.

*** 18**

CHILD CLIENT

How does SHE know what's good for me?

LAWYER

That's a good question, Kerri. She doesn't know what's good, or best, for you right now that's why she will talk with all of the lawyers, including me, your lawyer, before making her decision.

*** 19**

LAWYER

To do the best job I can I want to get to know you, and you can get to know me ... and while were getting to know each other, we'll talk about the things that are important to you. Does that make sense to you?

CHILD CLIENT

I guess.

LAWYER

Then we will decide what to tell her we think is best for you. We will tell her what you want.

*** 18: Honesty Builds Credibility**

Be honest with your client. If she asks you a question, and you don't know the answer, tell her that. If the information is obtainable, tell your client you will find out and then make sure you follow through. Your honesty will help solidify her trust in you and strengthen your rapport.

*** 19: Quality Lawyering Requires Multi-dimensional Preparation**

Following is a good example of a lawyer getting to know his child client, not just to prepare the case, but also to establish rapport and understand the broader story of his child client's life. This understanding is critical both to the attorney's ability to counsel his young client, but also to his ability to zealously advocate for his child client's wishes.

Gathering a vivid understanding of your child client's life and personality is valuable to a child's advocate in any area of practice. For example, in delinquency cases, this information is critical to the dispositional (sentencing) phase. In order to achieve the best disposition for your client, you will need background information about school, health, prior court involvement, family, neighborhood, gang involvement, extracurricular activity,

CHILD CLIENT

O.K.

[Vinny] It's a question of modifying how you explain the court and the court system in a way that they can comprehend...that you see in their eyes, you see it how they might move, you see how their attention is gauged or not.

In addition to your role, you must explain the roles of the other adults that will affect what happens to the child in court.

*** 20**

LAWYER

I want to explain to you the role of the court and the people in the court. It's important that you understand who everyone is and how he or she can affect you and your case. OK?

CHILD CLIENT

My probation officer will be there?

LAWYER

Yes. But it can be confusing about who's where ... so I have drawn a picture to show where everyone will be when we get back to court. You want to come over and take a look at it?

CHILD CLIENT

OK.

*** 21**

LAWYER

So, I'm a pretty bad artist, huh?

CHILD CLIENT

(Laughs and draws closer.)

LAWYER

community services and much more. In order to get the full picture, you need to start gathering this information as early in the representation as possible. This is why you want to make sure you have signed releases from the child client and parent or guardian as early on in your representation as possible.

*** 20: Using Graphics and Visual Aids**

Each child understands and processes information differently. For some, a verbal explanation may be enough. However, some children are better at processing information they see (as opposed to information they hear). Thus, consider using graphics and visual aids. For example, as you explain the roles of the different people in court, pull out a pad of paper and draw a picture of the courtroom, showing your child client who will be standing or sitting where. Similarly, the child client may want to draw where she was as she explains the incident she is describing.

*** 21: Be Real**

In the example that follows, the lawyer admits that she is not a very good artist. Admitting that you are not good at something can go a long way toward building rapport with your child client. It is better to be honest than to try to come across as something you are not.

This is supposed to show where everyone is going to be in the courtroom. (*Pointing to the judge in the picture.*) Do you know who this is?

CHILD CLIENT

(*Not sure*)

The judge?

LAWYER

Exactly. Now the judge has many responsibilities in the court. The judge is the main person who makes the decisions about what happens to you

*** 22**

Roles and responsibilities must not just be explained to a child. A lawyer must *teach* her client these concepts. Depending on the child's age and cognitive abilities that explanation may take different forms.

*** 23**

LAWYER

I work for you. You're the client. You make all the big decisions. You decide whether we go to trial. You and I work together to decide what witnesses we want to call and what information we want to give the judge. We work as a team. Do you understand?

CHILD CLIENT

Are you like a public defender? I wanted a REAL lawyer.

LAWYER

I . . . I am a real lawyer. I want to get to know

*** 22: Developmental Stages**

You will need to approach each child client according to her developmental age, which may or may not be in line with her chronological age. For more information on developmental stages and interviewing children, see Anne Graffam Walker's *Handbook on Questioning Children, A Linguistic Perspective*, (2nd Edition), ABA Center on Children and the Law (1999).

*** 23: Explaining Your Role as an Express Wishes Attorney**

Following is an example of how you might describe your role as an express wishes attorney to your child client. Again, remember that each child will function at a different cognitive level, which may not correspond to the child's age, so tailor your explanation accordingly.

you and your case. We have to work together. Are you OK with that?

CHILD CLIENT

I think so.

The rules of your locale will affect whether communications are confidential. As you explain your role, you also need to explain important rules like the attorney-client privilege

*** 24**

LAWYER

Well, because I'm your lawyer, I have to follow special rules. What you and I say to each other is private – I am not allowed to tell anyone else unless you say it's ok. What do you think about that?

CHILD CLIENT

(Leans in to lawyer.)

You can't tell anyone what I say?

LAWYER

Lawyers aren't allowed to tell anyone what their clients tell them. It's called the attorney-client privilege. Does that make sense?

CHILD CLIENT

I think so.

LAWYER

Well, I want to make sure you understand. Can you explain it back to me?

CHILD CLIENT

Well, ... whatever we say is between you and me.

In addition to explaining the lawyer's role and the lawyer/client relationship, a lawyer

*** 24: Attorney-Client Privilege**

Remind your client about the attorney-client privilege at the beginning of every conversation, and have him repeat back to you what it means.

Your explanation of the attorney-client privilege will vary depending on your jurisdiction and role. For example, if you are an express interest attorney, the traditional attorney-client privilege applies. Your ethical obligations are the same as they would be with an adult client. However, if you are a best interest attorney, your client needs to understand that you cannot always keep the information he tells you confidential.

* that some states have exceptions to the attorney-client privilege for child abuse cases, making the attorney a mandatory reporter. This exception will apply to any lawyer-client model and in any substantive area. Thus it is crucial that you know the law in your jurisdiction, and that you explain this exception to your child client if it applies.

Key Point: You must know the rules of professional conduct and what is required of you as an attorney for a child in your state.

must show that he will help the client both inside and outside the courtroom.

*** 25**

LAWYER

The other thing I do as your lawyer is I'll share information with you about the court and what happens there. I will explain information about your case, like what you can expect to happen in your court hearings ... how your mother is doing ... about your brother ... and I need *you* to tell me things that you know. Do you think you can share your thoughts and feelings?

CHILD CLIENT

Maybe.

LAWYER

I know you miss your family, a lot, Kerri, and I'm sure you're wondering about them and we'll talk about how they're doing and we'll also talk about how you're doing here, in your new foster home, and in school.

CHILD CLIENT

I miss my Mom.

LAWYER

Well, I do have some information about your Mom...

*** 25: Child-Centered Interviewing**

The vignette that follows is an example of child-centered interviewing. The lawyer represents the child client in a delinquency matter, but takes time to ask her about issues not directly related to the case, like her family. In so doing, he works both on establishing rapport as well as gathering information for the disposition of the child client's case, should there be one.

Mary Ann Scali, one of the experts interviewed for this video, explained, *"I think it's critically important for attorneys to focus on children's strengths, so when they walk into the room and they kind of try and break the ice, talk about things that a child might be interested in – talk about sports, talk about media, talk about music, talk about something that a child gets excited about and he's interested in, or try and talk about things that a child is good at. Every child has something that they really enjoy doing and when an adolescent or a child enjoys doing something, they're good at that. It could be drawing, it could be poetry, it could be acting, it could be some basketball club that they did when they were 8 years old or 12 years old that they are excited about because they remember they won a game. So to really just try and talk with them about who they are and their strengths and to try and find some common ground."*

Through child-centered interviewing, you also can gather information about your client with respect to school, other proceedings she is involved with, important personal relationships and more.

Empathy. Empathy is an invaluable skill. It will help you build the foundation of trust and understanding with your child client, as well as facilitate communication -- essential elements to effective representation.

In order to show empathy, you must put aside any preconceived notions or judgments you may have about your child client, his family, his community, his friends, any prior court involvement and any other issue. Instead, truly stand in his shoes and see the world through his eyes. In addition, avoid making assumptions – about your client’s clothes, attitude, language choice, and other physical attributes. Instead, listen carefully and find out from your client what these things mean from his perspective.

Setting Boundaries. While you want to make your child client feel as comfortable as possible, you also need to set boundaries and remain professional. Showing empathy does not mean expressing unchecked emotion. No one needs a lawyer who is focused on his own feelings about the troubles in his client’s life more than the lawyer is focused on the child client’s own feelings about his life. Children facing the terribly important issues that are at issue in child protection, juvenile justice, immigration, expulsion and other areas need lawyers to empower them and to help craft solutions – not to become participants in the problem.

Focus on the Child. During each conversation, take time to observe your child client, including his body language.

The following is a quote from Vinnie Herman, one of the experts in our video, on gauging whether you are communicating effectively:
“Well, a lot of it is in terms of whether a child is understanding me or not, I'm gauging that by their body language, if they're even listening in the first place, maybe they're not listening, maybe they're distracted, maybe they're looking all over the place. Maybe they're looking all over the place but I know that they are actually taking it in. Sometimes especially with small children ... you can tell that the child simply has no comprehension of what's going on at all... You see in their eyes, you see it how they might move, you see how their attention is gauged or not. So, that's how I'm telling if they get it or don't get it.”

<p>* 26</p> <p>Explaining roles and responsibilities is a way to continue to build your relationship with your child client.</p> <p>Explain all roles and relationships. Introduce all decision-makers, explain important rules like the attorney client privilege and mandatory reporting, and know the laws of your jurisdiction.</p>	<p>* 26: Graphic</p> <ul style="list-style-type: none"> ● Explain roles and relationships ● Introduce all decision makers ● Explain important rules ● Know the laws of your jurisdiction
<p>Communication Tools</p> <p>As you're building a relationship with the child and explaining roles and legal concepts, you need to make sure you are using the most effective tools to communicate clearly with your client.</p> <p><i>[Joe] Well, I think it's good lawyering in general to keep it straightforward. Sometimes lawyers think that to be professional we have to use the bigger words and the more complicated, convoluted sentences. And, I don't think that's good lawyering in general.</i></p> <p>* 27</p> <p><i>[Vinny] You're going to be changing the way you're communicating based on the age of that client, based on the situation of that client, based on what that client's been through that day. So when you're dealing with a young person you're constantly modifying how you're communicating.</i></p>	<p>* 27: Keep It Simple</p> <p>Be aware of what your child client has been through prior to meeting with you. If you speak with your child client after he has been through a crisis, you will want to keep your meeting or conversation especially short and simple, and repeat important points several times. A child in crisis will be less able to understand and remember what you say.</p> <p>As noted above, in all conversations, avoid legal jargon and use developmentally appropriate language with your child client. Find short, simple, commonly used words to describe legal concepts.</p> <p>For example, tell your child client that your conversation is protected by the attorney-client privilege, and explain it in everyday terms. For instance, you might tell your client that there is a special rule– the attorney client privilege – that says that no matter what, you</p>

	<p>cannot tell anyone else, not even the judge or her mom, what she has said to you. The only way you can share this information with someone else is if you two, together, agree to share it.</p>
<p>* 28</p> <p>LAWYER</p> <p>I've told you that you have a lawyer on your side. That's me. Your brother will have a lawyer because he was arrested for the same thing.</p> <p>CHILD CLIENT</p> <p>Shorty was arrested too?</p> <p>Pay special attention to language in a child interview. Both yours and the child's.</p> <p>Use words and phrases that are clear and age appropriate.</p> <p>And use the child's terms for people and things.</p> <p>LAWYER</p> <p>You call Ricky, "Shorty?"</p> <p>CHILD CLIENT</p> <p>Uh-huh.</p> <p>LAWYER</p> <p>Yes. Shorty was arrested too but he has a lawyer to help him just like you have me. Make sense?</p> <p>CHILD CLIENT</p> <p>Yeah... but Shorty didn't do anything either.</p> <p>LAWYER</p> <p>That's why you have a lawyer and Shorty has a</p>	<p>* 28: Engage In Active Listening By Adopting Your Client's Use of Words</p> <p>As discussed above, one way to engage in active listening is to adopt your child client's use of words for people and things. In the example below, the lawyer learns that his child client calls her brother Shorty, and proceeds to refer to him as Shorty throughout the rest of the interview. In so doing, the lawyer demonstrates to his child client that he is listening and understands, and consequently helps to make her more comfortable.</p> <p>“Active listening is not just a nodding of the head, its making comments throughout a child's story that lets them know that you're hearing them. So if they're talking about being frustrated, you might say, ‘That sounds really frustrating’, and if they're talking about a really difficult situation at home, that you say ‘Wow, that must have been really hard’, or is they're talking about school, being a place where they have a lot of anger, to acknowledge with that, just you don't want to interrupt but then you want to make soft comments to them and say ‘that sounds really difficult’”. --Mary Ann Scali</p>

lawyer too.

[Marsha] *I think it's important first to recognize that children are not simply small adults. That children go through developmental stages, and that those developmental stages affect their ability to understand what we say to them.*

*** 29**

[Kris] *You know I think when we represent kids we've got to pay attention and use age appropriate language in talking with them. And, that does not mean talking to every 15, 16, and 17 year old like they're a baby. It means listening, paying attention, and being flexible to use the language that they're capable of using and capable of understanding.*

LAWYER

You know how I told you it's my job to tell the court your story?

CHILD CLIENT

Yeah. Like how the cops said I hit Oscar in the fight and all?

LAWYER

That's right. There will also be another lawyer on the other side - the prosecutor. It's the prosecutor's job to tell another story. He'll tell the judge why he thinks you did this and how you should be punished. The prosecutor is a lawyer but he doesn't work for you, he works against us on our case. Do you understand?

CHILD CLIENT

He's another lawyer?

LAWYER

Yes. Whose side is the prosecutor on?

*** 29: Developmental Disabilities Among Children in the Juvenile Justice System**

Be aware that many children involved in the juvenile justice system have emotional, behavioral, social, learning and/or physical disabilities. You will be more effective in building rapport with your child client and advocating on his behalf if your child client's special needs have been met. For example, if your child client is having difficulty in school, you should examine whether an evaluation is appropriate to identify any learning disabilities. Once your child client is placed in the proper educational setting, he will do better in school.

Note: Choose your evaluator carefully. For example, if you ask the court for an evaluation, that information likely is not confidential and may be shared with the court against your wishes and/or the wishes of your child client.

As explained by Joe Tulman, one of the experts interviewed for this video, "*Children who are incarcerated, children who have been arrested are much more likely to have disabilities than the general population of children. Many of the disability or disabilities we're not used to and we don't recognize, if we're just laypeople. So for example, we're all familiar with mental retardation but we're not necessarily able to say by simply looking at somebody or by having a conversation even to say this is a person who has mild mental retardation. More to the point, there are people, there are children and people, but there are children who have expressive and receptive language disorders. And that's the disability that qualifies the child for services under the Special Ed Law. These are children who you can talk with them and they're not*

getting what you're saying because they have a language processing problem for example. So most people are familiar with dyslexia and other written language based disorders, but they don't think of it in terms of receptive language and expressive language. And again the way to test that out is to look for cues like the kids saying what and hmmm and repeatedly asking him to say it again. But a lot of kids have learned, by the way they operate with their friends on the street, not to make it look like that they don't know what's going on. So they cover, they make it look like they understand what you're talking about. They don't want to look stupid, they don't want to look like that they're not with it. So again the way to test it is to say to the child, to the client periodically "explain that part back to me, what do you think that was" and that will give you understanding if the client is not getting or if the child's not getting it."

*** 30**

CHILD CLIENT

He's on my side ... (Pauses) ... oh ... no, never mind — he's not on my side so he's trying to make me look guilty.

LAWYER

That's right. Now there will be other people in the courtroom too so I want you to know who they are...

By avoiding legal jargon and confirming the child's understanding of his explanations, this lawyer is ensuring that he is communicating in a way that his client can understand.

*** 31**

[Gail] I always think of communication is being the burden of the lawyer's not the child. So you have to find a way to communicate and

*** 30: Encourage the Client to Participate and Take Ownership**

In this example, the lawyer encourages the child client to take ownership and responsibility for her case by allowing her to come up with the answer on her own. You want your child client to engage, to be an active participant in her case.

You also want to encourage your child client to tell you when she does not know the answer, or when a question is confusing.

*** 31: Additional Tools for Facilitating Communication**

Word choice is just one tool for facilitating communication with your child client. Additional tools include scheduling more

use the language that the child will understand.

It is difficult for anyone to admit that that they don't understand something to a stranger – that is no different for a teen or child. It is critical that you take the lead in creating a safe environment for the child to ask questions.

*** 32**

LAWYER

(As if continuing a thought.)

Do you understand what I mean by a right to remain silent?

CHILD CLIENT

I think so.

LAWYER

Tell me in your own words what "right to remain silent" means.

CHILD CLIENT

It means I don't have to talk if I don't want to and I can have my lawyer tell me whether or not I should talk.

meetings and phone conversations, using visual aids and other props, having your child client act out events, and using analogies.

*** 32: Desire to Please**

Keep in mind that children -- much more so than adults -- have a strong desire to please authority figures. So your child client may tell you he understands, or nod his head suggesting agreement, when he does not in fact understand. Be sensitive to this. To make sure that your child client understands, ask him to repeat back what you said.

* 33

LAWYER

What about a police officer, do you have to talk to him?

CHILD CLIENT

Well, I can't be rude but I can just tell them my name and address and nothing else if I don't want to.

LAWYER

That's right.

* 34

If you have any questions about that or anything else about your case, will you please ask me?

CHILD CLIENT

Yes.

LAWYER

Great...

[Kris] *Ask...Just be honest and say you know, "Did you understand," and giving them a safe space in which to say "I didn't understand." I might say to them, "You know people tell me I talk like a lawyer, and it's okay for you to tell me that too. If you don't understand what I'm saying, just tell me."*

Children need to come to sharing information in their own time. Don't be afraid of silence. If a child needs some time before talking, follow the child's lead.

LAWYER

Mmm – I am glad that you like muffins, it gives me a chance to treat myself too.

* 33: Basic Rights of Citizenship

One of your roles as the child's lawyer is to teach her about her basic rights as a citizen, and to better equip her to deal with the system. In a delinquency context, for example, she needs to understand that if the police arrest her again, she is not required to talk to them. She should be polite and give them her name and address, but nothing more. Any subsequent arrests could impact her pending case. It is your responsibility as her lawyer to teach her how to protect her rights.

* 34: Encourage Your Child Client to Ask Questions

Empower your child client to ask questions. She may hesitate to ask a question for fear of sounding stupid, so make her feel comfortable asking you questions, and encourage her to do so on a regular basis.

Do not be afraid of silence in the conversation. Sometimes, a child needs a lapse in the conversation to think about how to ask a question, or to get up the courage to do so. If you are too tied to an agenda, or too quick to move the conversation along, you may miss an opportunity for your child client to ask an important question and/or give you information about the case.

CHILD CLIENT

(smiles, barely.)

LAWYER

The last time I was here you said you were going to move in with your grandmother.

CHILD CLIENT

Yep.

LAWYER

That sounds like a plan. What happened?

CHILD CLIENT

I don't want to talk about it.

LAWYER

What would you like to talk about?

CHILD CLIENT

I don't want to talk, anymore. I am done talking.

LAWYER

OK.

Children need to know that you will be comfortable giving them the opportunity to share information when they are READY. Patience will go along way in building trust.

LAWYER

(Spills water on her lap)

What a mess I've made ...

LAWYER

Why don't I clean this up and then we can start talking again?

CHILD CLIENT

<p>OK.</p> <p>It is your responsibility as the lawyer to help the child understand what is happening during their case.</p> <p>Use developmentally appropriate words and sentences,</p> <p>Avoid legal jargon.</p> <p>Use words your client would use for people and things.</p> <p>And don't be afraid to allow for silence during your interview. Let the child take the lead on when they are ready to share information.</p> <p>Record ALT with "Follow the child's lead on when they are ready to share information."</p>	
<p>Successful Interview Techniques</p> <p>By the time a lawyer appears in court the lawyer needs to have gathered enough information to be able to try the case. To gather information effectively and clearly, you must plan the interview in advance and consider the strategies that best fit the child client, the case, and the relationship between the child and the attorney.</p> <p><i>[Mary Anne] There is always a conflict between the attorney having a list of things they want to find out and the child's interest in really just finishing this conversation because it's riddled with so much anxiety for them.</i></p> <p>There are some simple techniques that a lawyer can use when interviewing a child client. The first technique is called child-centered interviewing.</p> <p><i>[Joe] You have to be empathetic, you have to be focused on the client, and you have to demonstrate that.</i></p> <p><i>[Mary Anne] We really have to start where the client is. We have to begin the conversation</i></p>	

where they are.

When practicing Child-centered interviewing, start with basic relationship-building questions to encourage your child client to open up and share his concerns.

Use active listening techniques: acknowledge your client's feelings and concerns through supportive words or gestures.

You can then encourage more productive communication by addressing your client's concerns before continuing with the interview.

*** 35**

LAWYER

Well, listen I want to talk to you about the meeting we are going to have about your special classes. What do you think about your new school?

CHILD CLIENT

I don't like it. It's too hard.

LAWYER

Well, what makes it hard?

CHILD CLIENT

I don't know. The other kids seem to be further ahead than me.

LAWYER

They do?

CHILD CLIENT

Yeah, that's how it feels.

*** 36**

LAWYER

*** 35: Follow the Child's Lead**

The following vignette is a good example of an attorney practicing child-centered interviewing, and showing empathy for her young client.

*** 36: Building Trust Through Empathy and Active Listening**

The following vignette is an example of how

Well, that must be hard for you.

CHILD CLIENT

(Nods.)

*** 37**

LAWYER

How long have you been at this school?

CHILD CLIENT

Since I moved in with my new foster parents.

LAWYER

How's that going?

CHILD CLIENT

OK. But I really miss my brother. I want to be with him. I don't know how he got to be at my grandma's and they put me here. I mean, I like my foster parents, but I want to be with my family.

*** 38**

LAWYER

I can tell your family is important to you. Maybe we can make arrangements for a visit and phone calls with your brother and grandma.

CHILD CLIENT

But, I don't know her number.

LAWYER

Well, I can get that for you and make the arrangements. OK?

CHILD CLIENT

(Smiles.)

you can build trust and show empathy through active listening.

*** 37: Example of Active Listening, Child-Centered Interviewing**

Following is an example of active listening and child-centered interviewing.

*** 38: Assisting With Peripheral Issues**

Whenever possible, you should help your child client with peripheral issues. In the example that follows, the lawyer offers to facilitate a visit and phone calls with her child client's family. The child client may not have the resources to do this himself, so a quick call from his attorney facilitating a visit is invaluable. If you can help your child client with the issues that are most pressing to him, it will free him to think about other matters – such as the case you are handling for him.

However, you need to know your limitations and make it clear to your child client when you cannot help him with such matters. Remember to avoid making promises you cannot keep.

OK.

*** 39**

LAWYER

Now let's talk about what you want to have happen at that meeting, OK?

CHILD CLIENT

O.K.

Not all children can articulate their needs clearly. You need to listen carefully not only to what a child is saying but to how the child is saying it for clues to what the child's concerns really are.

LAWYER

When did it all start?

CHILD CLIENT

It was like, a month ago. Me and my brother were staying with our foster mom, Deidre. And there was another kid there named Oscar. And he always got to go home – and he had just come from an overnighiter with his mother. And he didn't go to school that day cause *he* said he didn't feel good.

*** 40**

LAWYER

Sounds like you're upset that Oscar always gets to go home and...and you don't. How about if I talk to your social worker about a visit with your mom? OK?...

This lawyer recognized his client's concern about getting time with her mother.

A child-centered interviewer will always be an active listener. He will identify concerns and address them first, in order to allow the child to then focus on the subject of the

*** 39: Accomplishing Your Goals Through Child-Centered Interviewing**

Engaging in child-centered interviewing does not mean giving up strategy, or giving up your agenda. Rather, if you allow the child client to get his concerns out first, he will be better able to focus on the issues that you need to cover for his case. As in the vignette above, the lawyer scheduled this particular meeting with the child client to talk about school. Allowing the child client to discuss what was on his mind first helped the lawyer accomplish her goal.

*** 40: Pronouns**

Pronouns are difficult for children. Rather than using “he” “we” “they” “us” “it” and other confusing pronouns, take the additional time to use the actual names of the people, places and things you are talking about.

<p>interview.</p>	
<p>You can use an interviewing method called the Funnel Technique to encourage the child to give their account of what happened and to develop facts important to the case.</p> <p><i>[Kris] asking open-ended questions, letting the kid run with it, and then following up with narrow questions. And I find it to be extremely effective.</i></p> <p>In the first stage of the funnel technique, the lawyer allows the child to tell the story uninterrupted. In the second stage, the lawyer asks open-ended questions to further develop facts. In the third stage, the lawyer confirms facts through a series of narrow, close-ended questions.</p> <p>Here is an example of the first stage where the lawyer allows his client to speak uninterrupted.</p> <p>* 41</p> <p>LAWYER</p> <p>Why don't you tell me what happened when Oscar got hit.</p> <p>CHILD CLIENT</p> <p>There was one particular game we all wanted to play which was called "Wrestlemania" and you throw the person in a body slam by throwing them onto the floor ... [ad libs story based on info from next scene]</p> <p><i>[Kris] I let them tell me the story at least once if not more times all the way through without my asking any questions</i></p> <p><i>[Vinny] It shows the child that you're going to let them speak, that you're not going to cut them off, that you don't discredit their story because they're a child. But it also begins to reveal to you their view, where they're sitting in this whole narrative, in this whole story, their perspective on it, what's important to them.</i></p>	<p>* 41: The Funnel Technique, Stage 1</p> <p>When used properly, the funnel technique is an effective tool for gathering information from the child's perspective. As mentioned above, children have a natural inclination to please authority figures, so letting them tell their story from start to finish without any interruption or input is invaluable. The first time your child client tells her story, it may not make sense, and there may be many holes. Nonetheless, avoid the temptation to interrupt. During this stage, your role is to encourage your client to speak. To that end, use phrases as "tell me more" or "what happened next".</p> <p>In giving your client the opportunity to tell her story uninterrupted, you learn more than just the facts, you learn which parts of the story are important <i>to her</i>. These parts may not be critical to your case theory, but knowing them will enable you to better understand your client and build rapport. It also demonstrates to your client that you respect her and what she is saying, and encourages continued communication.</p>

Stage Two of the Funnel Technique is your chance to track back through the story using open-ended questions starting with who, what, where, when, why and how to clarify the story and continue to develop facts.

*** 42**

LAWYER

OK. Let's go over that again slowly so I can understand each part. When did it all start?

CHILD CLIENT

It was like, a month ago. Me and my brother were staying with our foster mom, Deidre. You know we had seen a show on TV called, "Wrestlemania."

LAWYER

Oh, what's Wrestlemania?

CHILD CLIENT

Wrestlemania is when you throw the person in a "body slam" by throwing them onto the floor.

LAWYER

Tell me more about that. Does it hurt?

CHILD CLIENT

No, because we had put pillows down on top of the rug that was in the room, so when you fell down it didn't really hurt that much, and we were all doing it to each other. I mean, Oscar was doing it too so...

LAWYER

Yeah?

CHILD CLIENT

Yeah and then, Shorty got mad, because he said we had thrown him down too hard and picked up a bat and he had hit Oscar with the

*** 42: The Funnel Technique, Stage 2**

In this stage, you should continue to use open-ended questions, though they can be directed at clarifying and filling-in missing information. Through the use of questions such as who, where, why, when and how, the child client retains control of how the information is disseminated.

If you focus in on your own series of pointed questions too soon, your client may think that those are the only issues that matter. As a result, you may lose a valuable opportunity to gather information.

bat ... and that was it. Then the police came.

LAWYER

What did Shorty do with the bat?

CHILD CLIENT

He had poked Oscar in the stomach with it.

*** 43**

LAWYER

"Poked?"

CHILD CLIENT

Yeah, "poked."

LAWYER

What happened to Oscar?

CHILD CLIENT

Well, Oscar sort of fell down holding his stomach ... crying.

*** 44**

LAWYER

Can you show me what Shorty did?

CHILD CLIENT

Yeah, he picked up a bat and said... "you threw me down too hard," and he poked him in the stomach with it.

[Kris] *Open-ended questions just allow the child to tell you what's most important to him. What did the child notice and observe.*

Stage Three of the Funnel Technique takes place deeper into the client relationship.

The lawyer has already heard each of the following facts from the child and is using narrow questions to reconfirm and clarify

*** 43: Repetition as Form of Open-Ended Questioning**

One way to ask an open-ended question and clarify a fact is to repeat a word that your client used. In this vignette, the lawyer is not certain whether his child client really meant to say "poked". So he simply repeats, "poked?", thus giving his client an opportunity to confirm.

Had the lawyer tried a different approach, for example asking his child client, "Did you really mean to say 'Poked'?", it might have suggested to the child client that she used the wrong word and should change her answer.

*** 44: Demonstration as a Form of Open-Ended Questioning**

Another technique for getting information in an open-ended way is to have your child client act out what happened. You can play one of the other actors in the scene, and ask your child client to show you how things transpired, as the lawyer does in the next vignette.

the facts that are most legally relevant to the case.

LAWYER

Did they leave you in that room?

CHILD CLIENT

Yes.

*** 45**

LAWYER

Did they leave you there for a long time?

CHILD CLIENT

Yes.

LAWYER

How long?

CHILD CLIENT

It felt like forever. Maybe a few hours?

LAWYER

Did they feed you?

CHILD CLIENT

No.

*** 46**

LAWYER

Did they let you see your Mom?

CHILD CLIENT

No.

LAWYER

They didn't?

*** 45: Asking Children About Time**

Use caution when asking children about how long something took. In stage two, you should have gotten a sense of the timing of things. Stage three is designed to make sure you know what the answer will be if your child client is asked about time on the stand. It is your job as the child's attorney to help him understand time.

For example, imagine your client is charged with battery for getting in a fight with another child at school. Asking your client how many minutes the fight lasted may result in an inaccurate answer. Children typically are not good at determining the length of time something takes to transpire. Instead, find a more concrete way to establish the amount of time. For example, ask your child client to act out the fight, and time it on your watch.

*** 46: Preparing versus Coaching**

While you want to make sure you know the answers to the questions your client may be asked at trial, or answers to questions you may be asked about your client by the judge, it is important to avoid putting words in your client's mouth. You do not want to influence your child client's testimony, and if your client sounds too rehearsed, the judge may not believe him at trial.

<p>CHILD CLIENT</p> <p>No.</p> <p>LAWYER</p> <p>Never?</p> <p>CHILD CLIENT</p> <p>Well later, after they wrote the statement.</p>	
<p>* 47</p> <p>LAWYER</p> <p>Did you give the statement – did you tell them things and they wrote them down?</p> <p>CHILD CLIENT</p> <p>Yes.</p> <p>LAWYER</p> <p>Why?</p> <p>CHILD CLIENT</p> <p>I don't know. I guess because I didn't think they would let me out of there.</p> <p>LAWYER</p> <p>What happened after they wrote it down?</p> <p>CHILD CLIENT</p> <p>They finally let me see my mom.</p> <p>LAWYER</p> <p>Did you know you that they would let you see your mom if you gave the statement?</p> <p>CHILD CLIENT</p> <p>Yes.</p> <p>LAWYER</p>	<p>* 47: Directing Your Client’s Attention to a Particular Fact</p> <p>In stage three of the funnel technique, you want to make sure that your client understands certain legal terms so that he can answer specific questions about his case if he testifies. In the next vignette, the lawyer wants to know whether or not Danny made a “statement”.</p> <p>Often, children think they did not make a statement unless they have undergone a very formal process whereby someone actually asks them to make an incriminating statement and they do. What most children do not realize is that <i>anything</i> they say to the police is a statement.</p>

<p>How did you know that?</p> <p>CHILD CLIENT</p> <p>That's what they told me. That's the only reason I signed the statement. They said I had to sign it to see my Mom.</p> <p>An attorney would never be this directive with a child client early in the relationship or with facts she did not already confirm in an open-question format. Directive questioning too early in the process could cause a child to assent to a statement that he did not believe to be true in an effort to please his lawyer or simply avoid confrontation</p> <p>* 48</p> <p>LAWYER</p> <p>What would happen when the police came in the room to talk to you?</p> <p>CHILD CLIENT</p> <p>They were talking and asking me questions.</p> <p>LAWYER</p> <p>Asking about what?</p> <p>CHILD CLIENT</p> <p>All kinds of stuff about what happened.</p> <p>LAWYER</p> <p>What did they ask you?</p> <p>CHILD CLIENT</p> <p>They asked me to say I did it.</p> <p>LAWYER</p> <p>How did they ask you?</p> <p>CHILD CLIENT</p> <p>They weren't really asking, I guess. They were</p>	<p>* 48: Children Are Suggestible</p> <p>Not only are children eager to please authority figures, they also are very suggestible. For example, if you ask the same question in many different ways, it may suggest to the child client that he has given the wrong answer, and cause him to change his answer. Your body language also could suggest the right or wrong answer to your child client. So be mindful of this as you probe deeper and deeper into the facts.</p>
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<p>telling me I had to.</p> <p>[Kris] <i>The narrow questions then are important for you to get the details that you need as a lawyer, you know what's important.</i></p>	
<p>Sometimes you are forced to discuss difficult topics with your child client. These conversations should only take place after you have built rapport and trust with your client.</p> <p>Address the issues directly and be truthful with your client. Allow the child to react emotionally and then help them to focus on the topic at hand.</p> <p>* 49</p> <p>[Mary Anne] <i>What brought them there is something that either frustrates them, angers them, embarrasses them, it instills a lot of emotions that don't help generate a productive interview.</i></p> <p>[Vinny] <i>When you know there's going to be an issue discussed that's difficult for a child, I feel, that that is a moment of great delicacy. And, I think it is a moment of great respect for the child. And, I think that you call the ball on that. You say, "I realize this is difficult to talk about."</i></p> <p>* 50</p> <p>LAWYER</p> <p>Jessica, I wanted to talk to you about the court hearing that is coming up next week.</p> <p>CHILD CLIENT</p> <p>Will my mom be there?</p> <p>LAWYER</p> <p>I hope so, but I don't know whether she will attend. She will get something in the mail telling her when the hearing is. I think you know Jessica that your mom has not been</p>	<p>* 49: Address Difficult Issues Directly</p> <p>Being honest and up front with your client will help make him feel more comfortable as you discuss difficult issues. Make sure you have these conversations at a time and place that is comfortable for your client.</p> <p>* 50: Strong Foundations</p> <p>Once you have built a strong foundation of trust with your child client, you will be able to discuss difficult topics without your client shutting you out. In the vignette that follows, the lawyer and her child client need to discuss a very sensitive topic – the child client’s mother’s drug use. The lawyer would not have been able to broach this subject with the child client if they had not already built a strong foundation.</p>

doing well lately -- she left her drug treatment program and may be using drugs again.

CHILD CLIENT

(Angrily)

Just because she left the drug program doesn't mean she's using drugs again – she wants to get me back. *(Beginning to cry.)*

*** 51**

LAWYER

Jessica, I know you love your mother very much and that she loves you and your brother.

CHILD CLIENT

Shut up.

LAWYER

But your mom has been using drugs for many years and it is very hard for people who use drugs to stop using.

CHILD CLIENT

(Yelling.)

I said SHUT UP!

*** 52**

LAWYER

I know this is hard. Please remember I am on your side. I have a couple more things to tell you. O.K.?

CHILD CLIENT

(Nods but still sniffing.)

LAWYER

*** 51: Empathy versus Emotion**

Showing empathy is crucial. You should not, however, show emotion. Your job is to provide a comfortable space for your client to show emotion. During this time, *you* need to remain professional.

Following is an example of how the lawyer uses active listening to read between the lines and show empathy. She knows her client well, and can hear that she is upset about her mother. She demonstrates her empathy by saying “I know you love your mother very much and that she loves you and your brother”

The lawyer does not, however, get emotional when her child client does. She does not take her child client’s comment to “shut up” personally. Rather, the lawyer lets her child client express her emotions, then finds a constructive way to move the conversation along – by reminding her child client that she is on her side.

*** 52: Repeated Reminders**

In difficult situations such as this one, it is especially important to remind your client that you are on *her* side, that you are *her* advocate, and that you need to discuss this difficult topic so that you can best represent her.

Jessica, I have to tell you that at tomorrow's hearing your social worker will report to the court that your mother's last drug screen from two weeks ago came back positive.

CHILD CLIENT

(Silent and staring at lawyer).

LAWYER

Jessica?

CHILD CLIENT

You're lying. My mom wouldn't do that to me!

LAWYER

I would not lie to you. I know this is upsetting and must be very hard for you to talk about.

CHILD CLIENT

(Nodding yes).

*** 53**

LAWYER

Jessica, I know you would prefer to change the subject but it's very important that we talk about this now because it may change what you and I tell the Judge at tomorrow's hearing.

CHILD CLIENT

(Yelling and crying): I want to go home, I told you this before but you're not listening to me.

LAWYER

I know you have told me. I will tell the Judge you want to go home, but the Judge may not agree. If the Judge says no, do you have a second choice about where you would like to live? Let's talk about it. . .

This lawyer faced a tough conversation in a straight forward and truthful way. By giving your client a chance to react emotionally, you can then help her to focus

*** 53: When Gathering Information Requires a Different Approach**

Sometimes, you have to forgo child-centered interviewing in order get information for a hearing, trial or other important court appearance. If you have built a strong and trusting relationship with your client, it is much easier to do this without damaging the relationship.

<p>on what to do about the situation.</p>	
<p>Techniques that can lead to a successful interview include practicing child centered interviewing. Be an active listener. Acknowledge the child's feelings and respond to the child's concerns.</p> <p>The Funnel Technique can help you get more complete information. Let the child tell their story without interruption, ask open-ended questions,, then follow up with more detailed questions.</p> <p>And when discussing difficult topics, be sure to build trust first. Be direct and truthful and allow the child to react emotionally before guiding them back to the discussion.</p> <p>Building relationships; Explaining roles and responsibilities; Using communication tools effectively and applying sound interview techniques can help you work successfully with your young clients.</p> <p><i>[Gail] There's nothing more rewarding than having a child say to you, even when things have not gone the way they wanted — "thank you for being my lawyer."</i></p> <p>Children involved in the justice system may be facing a time of significant crisis in their lives.</p> <p>It is essential that you, their lawyers, are the best advocates you can be.</p> <p>The strategies in this video will help you guide your clients successfully through our system of justice.</p> <p>On behalf of the young clients you serve and the justice systems you help improve, thank you for the work that you do for children.</p>	
<p>Music Fades Up</p> <p>[credits]</p>	

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