

The Role of the Interview in Civil Practice

MANY YEARS AGO, a middle-aged accountant came to my office with his wife. He had been swindled by a fast-talking salesperson and asked me whether he could recover his money. I gave my opinion, at which point his wife asked me sincerely, “Mr. Hollander, you appear to be quite young. Is this your first case?” It was. There was something about the way that I had conducted the interview that caused her to question my experience and, implicitly, my expertise. I had relied upon my law degree and membership of the bar to commend my skills to anyone approaching my desk.

That was foolhardy in 1978, and is still foolhardy as I write this in 2013.

In many cases, people who become lawyers do so because they like to analyze and argue. As all practising lawyers know, one can only argue once the facts are known, assumed, or fabricated. What they teach in law school is what to do with the facts that are already established; what they do not teach in law school is how to dig out the facts.

Lawyers go about their business by asking questions of clients and witnesses, and by reading, observing, and

listening. With the facts in hand, lawyers can research the law and marshal their arguments to form an opinion and to persuade others of the correctness of their point of view. Typically, lawyers interact with people by asking questions and reacting to the answers, either with more questions or with advice. It is through the process of conducting interviews with their clients and with other people—whether they be witnesses, opponents, officials, or each other—that lawyers get the information they need in order to properly advise their clients.

Good interviews lead to a deeper understanding of both a client's problems and possible solutions. Conducting successful interviews, however, requires knowing what questions to ask and how to ask them, along with a great deal of practice. As a trial lawyer, I have been asking people questions since my articling days in 1976: interviewing clients, witnesses, and prospective clients and witnesses; I have interviewed and then examined witnesses and cross-examined opposition witnesses.

Through frequent exposure to the trial courts and the judicial process, I have learned the many benefits of planning question sessions in advance. This led me to develop an analytical model for conducting interviews. This model involves creating and implementing a unique question plan for each interview that is designed to influence the outcome of the interview session.

Building on this experience, I have trained novice lawyers to ask questions. I was not trained to do this, as lawyers are not specifically taught how to ask questions—much less how to teach others how to do so. I have carefully thought about the way that people ask

questions and the way that questions, and possible answers, may affect outcomes.

In playing pool, when a cue ball strikes a triangle of fifteen balls at the end of the table, the results are unforeseeable. It is often equally as impossible to predict how someone will answer a question asked during an interview or at trial. That very issue—connecting question to answer, cause and effect—has compelled me to explore and analyze the underlying rules and principles of the questioning process.

This book is the result of that analysis, and admittedly a great deal of trial and error. So far as I can determine, it is the only book that presents a structured set of principles to train novice lawyers in respect of the skills required to ask questions with a purpose, as well as practical exercises demonstrating those principles in action. Most of the exercises have been assigned to lawyers in a workshop setting, and have been designed to improve the skill of communicating with one's client. Like all skills, practise improves performance. Accomplished athletes improve their performance by learning the correct technique, then by practising that technique and by adapting it to their own unique abilities.

I have often recited that, "Experience is learning to recognize your mistakes as you repeat them." As the wrong words pour out of your mouth, you should be able to identify the folly. Hopefully, you can avoid that one next time around. Recognizing mistakes and poor practices (whether your own or those of others) and developing the skills to intentionally influence the outcome of an interview requires both awareness of available techniques and practise, practise, practise.

I certainly do not intend for you to change the way you speak, or for you to change the way you chat with others. Use what you learn to improve your existing skills and techniques— not to remake yourself into something that you are not. This book will help you recognize what you are doing as you do it, and help you to develop the skills to plan to do whatever it is that you do, better.