CHAPTER 6

Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters and Other Mindful Approaches

*Susan J. Bryant**

*Jean Koh Peters***

---

* Professor of Law and Director of Clinical Programs, CUNY School of Law. I thank my colleagues and students at the CUNY School of Law for their support and insights about the role that culture plays in our legal work on behalf of clients. The rich diversity in the faculty, staff and students of CUNY creates an environment where learning is a daily opportunity. I especially thank Lindsay Parker and Dorothy Mathew for their work on this chapter. Of course, one of the best parts of this ongoing work is the weekly phone calls with Jean where we share ideas about cross-cultural lawyering, writing and so much more. Her model for getting writing done inspires me to do more.

** Clinical Professor of Law, Yale Law School. I thank the Yale Law School for its generous support of this research, year in and year out, since its inception in 1998. David Bartels, Farrin Anello, Elaine Chao and Vanita Shimpi offered wise and generous research assistance on this project. Deborah Tropiano provided unfailingly good-humored and prompt word processing and transcription and Shan Tao labored mightily to try to salvage my dictation from my first forays with voice-recognition software. Mark Weisberg and Marjorie Silver offered warm support and helpful feedback during early drafts of this chapter. I still do not know how I landed the unparalleled pleasure of partnering with Sue Bryant on issues dear to my heart, but I remain grateful for the opportunity to work weekly with one of the finest teachers I know.

We also thank our families, Larry, Alison and Zach and Jim, Liz and Chris for their warm support of our collaboration.

Introduction

Joe, a young white male law student begins his first interview with a Nigerian client in her forties who is seeking asylum in the United States. The interview begins with promise, with the client telling him about her concerns about her family she left behind in her home country. The young lawyer listens attentively and, when the client gets to a natural stopping point, starts in on the questions which he carefully crafted before the meeting. The client lapses into silence, breaks off eye contact, and begins to look very sad. Joe begins to operate on two levels. He continues his questioning, but inside his heart is sinking. What went wrong? How can I get back to that easy conversation we had at the beginning? His mind begins swirling with ideas and his concerns about the interview grow. He feels he cannot sort out his confusion fast enough. He therefore sticks with his agenda and the meeting ends shortly after when his client is offering only monosyllabic answers. He sets up another meeting and goes back to his dorm room. "What do I do next?" he asks himself forlornly.

Harriet, an experienced South Asian-American lawyer, is in the middle of interviewing a Latino teenage boy whom she represents in a neglect case. From the beginning, the interaction is not easy. The client will not make eye contact, will not answer questions, and frankly looks like he doesn't want to be there. Harriet finds herself conscientiously trying different tacks to try to engage her client in conversation relevant to the legal case. After five or six unsuccessful approaches, she finds her client telling her the story that led to his removal from his mother's home. She is conscious to try to maintain the style and form of questioning that led to this change of pace in the interview.

Joe, still thinking about his client, takes out the Habit Four worksheet.[1] *He does his best to identify the concrete signs, the specific red flags that led him first to believe that the interview was going wrong and to examine carefully the moments in which the interview changed its timbre. Using the step-by-step process in the worksheet, he develops a number of theories about why the interview went sour, and for each theory, develops a number of changes of pace he could introduce into the interview. He takes a particular look at the part of the interview that went well, trying to understand what the dynamic was there and trying to*

1. This worksheet can be found in Appendix A.

brainstorm how to return the interview to that spirit. Armed with these thoughts, he enters his second interview. Although the interview has a similar change of mood after a cordial start, Joe tries various different approaches as brainstormed on his worksheet. While none of them is a complete success, he does find that the interview has changed its flavor, and has a more narrative feeling to it. Heartened, he plans to return to the Habit Four worksheet in preparation for the third interview.[2]

Joe and Harriet are engaged in one of the most challenging and rewarding aspects of the affective practice of law—building a genuine, respectful, and fruitful relationship with a client. The law can be a healing profession when we think deeply about the cultural implications of how we communicate with our clients and what we choose to be the subjects of our communication. By considering culture in our client interactions, we shape our definitions of both healing and healing approaches to legal representation. Our previous work, the Five Habits of Cross-cultural Lawyering,[3] gave lawyers approaches for examining the effect of culture and language on their lawyering. This Chapter focuses on six practices for promoting cross-cultural communication, including Habit Four, the habit that identifies moments of faltering communication, which may be based on cultural factors, and suggests ways to think about improving the communication. By using Habit Four and the other Habits, lawyers like Joe and Harriet can become more skilled and reflective practitioners when working with clients who come from cultures different from their own. Habit Four and the other practices discussed here can also address the ways in which shared cultural similarities between lawyer and client can lead to miscommunication.

---

2. The stories and examples in this article are based on real moments in real cases in our practices; we have altered names and details to honor our clients' confidentiality, but we have preserved the details (and the lawyer reactions) that we considered critical to the points illustrated.

3. We have written about the Habits in a number of different forums. Jean published materials about the Habits, set in the context of lawyering for children in child protective proceedings, in her book on the subject. JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (2d ed. 2001). Sue authored an article for law teachers describing the Habits. Susan J. Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001). We have co-authored a chapter, *Five Habits for Cross-Cultural Lawyering*, *in* RACE, CULTURE, PSYCHOLOGY & LAW (Kimberly Barret & William George eds., 2005). We have collected materials for students and practitioners wishing to learn the Habits on the CUNY Law School website, *available at* http://www.cleaweb.org/documents/multiculture.pdf (under resources for clinical teachers).

Although Habit Four is the focus of this chapter, a brief summary of the other four Habits will help the reader see connections among them. The other Habits involve analytical and reflective thinking about culture, and cultivating the ability to bring culture into the analysis of lawyer-client relationships, the lawyer's role, and its effect on a case. Habit One asks lawyers to identify similarities and differences between the lawyer and the client and to explore how those might affect issues of trust, role of the lawyer, and the content rather than the process of interviews. Habit Two explores how the culture of the courts and other legal players interact with the lawyer's and client's culture, suggesting that lawyers consider culture when designing theories of the case that meet clients' goals. Habit Three—Parallel Universe Thinking—is key to all of the others. Habit Three asks lawyers to imagine other possible explanations or meanings for clients' words and actions. Habit Three recognizes that cultural norms and practices may result in different interpretations of the same actions.[4] Finally, Habit Five recognizes that we approach this work with biases and stereotypes that consciously and unconsciously shape our work. Habit Five asks the lawyer to explore those belief systems without judgment and to take steps to eliminate them if possible and in any event, to minimize their effect.[5] And in those moments where the lawyer has actually, even flamboyantly, erred, Habit Five offers redemption—by looking clear-eyed and non-judgmentally at our mistakes, we can use our mistakes to learn about our hot button issues and the components of our optimal functioning, to aid our work with clients in the future.

Since all of the Habits help the lawyer identify assumptions that may permeate his representation, the reader is entitled to know the assumptions that permeated our reflection on the Habits generally, and Habit Four particularly. We have structured the Habits, taking as given that I) All lawyering is cross-cultural; II) A central goal of lawyering is to remain present with this client, ever respecting her dignity, voice, and story; and III) A cross-culturally competent lawyer must know himself as a cultural being.[6]

Three dynamics drive cross-cultural competence. First, *nonjudgment*—a focus on fact, observation, detail detached from evaluation, criticism, or generalization.[7] Cross-cultural competence requires the lawyer to practice non-

---

4. Parallel universe thinking plays a vital role in cross-cultural communication and Habit Four. *See infra* Section II, Part C.

5. See *supra* ch. 5: Paul R. Tremblay & Carwina Weng, *Multicultural Lawyering: Heuristics and Biases*, at pp. 169–81 (the authors explore the effects that bias and stereotypes can have on lawyers' work and suggest approaches that lawyers can take to minimize these effects).

6. PETERS, *supra* note 3, at 256–259.

7. Tremblay & Weng, *supra* note 5.

judgment with clients, with others in the case, and with herself, observing the actions of all as facts to be reckoned with, but not judged. The risk of negatively judging clients increases when you work cross-culturally due to the confusion inherent in working out of one's own cultural framework, the resultant anxiety, and the attendant loss of control and clarity the lawyer may feel.[8] Second, *isomorphic attribution*—to attribute the same meaning to behavior and words that the person intended to convey. Cross-culturally competent lawyers seek to understand the actions and words that they witness from the perspective of the actor or speaker, rather than from the lawyer's life experience.[9] Third, *daily practice and learnable skill*—through regular practice of simple habits, any lawyer can develop cross-cultural competence; cross-cultural competence is not reserved to the innately skilled, and can be steadily and incrementally learned through daily application.[10]

Habit Four focuses on cross-cultural communication between lawyer and client.[11] This chapter supplements, but does not substitute for, texts on legal interviewing and counseling.[12] As those texts detail, lawyers build or aggravate relationships and gather or miss important information for a number of reasons. Indeed, a lawyer in cross-cultural encounters may be quick to blame

---

8. For more on nonjudgment, in the context of mindful listening, see *infra* Section II, Part B.

9. Cross-cultural theorists have identified the capacity to develop isomorphic attribution as a critical cross-cultural skill. *See* HARRY CHARALAMBOS TRIANDIS, INTERPERSONAL BEHAVIOR (1977). A capacity to make isomorphic attributions requires the lawyer to focus on the differing connotations that a word or act may have in the different worlds inhabited by the client and the lawyer. This capacity is the essence of parallel universe thinking as described below.

10. PETERS, *supra* note 3, at 251–256.

11. In our first description of Habit Four, we offered some tips for improving attorney-client, cross-cultural communication and a way to analyze difficulties. We had not explored the cultural implications for some of the recommended suggestions of interviewing texts. This chapter looks at the interviewing process and points out ways to enhance understanding and connection in cross-cultural exchanges.

12. For students and lawyers wanting to know how to question, actively listen, or plan the structure and content of interviews, there are a wealth of articles and books to read. *See, e.g.*, STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., ESSENTIAL LAWYERING SKILLS (2d ed. 2003); DAVID A. BINDER, PAUL BERGMAN, SUSAN C. PRICE AND PAUL R. TREMBLAY, LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (2d ed. 2004); Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLIN. L. REV. 321 (1998); ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, & NEGOTIATING SKILLS FOR EFFECTIVE REPRESENTATION 334–38 (1990); Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990).

all interaction difficulties on culture. Habit Four helps the lawyer develop a permeating instinct to consider culture throughout interactions with clients.[13] Culture takes its rightful place as one but not the only explanatory theory for shaping and interpreting interactions with clients.

If the other habits encourage the development of cross-cultural *analytical skills* in a number of concrete settings, Habit Four focuses on the *in-the-moment interaction* between lawyer and client. In this Chapter, we explore how to plan for these moments, to engage mindfully during them, and to reflect and learn from them. We suggest six important practices for improving these moments:

(1) Employ narrative as a way of seeing the client within her own context;

(2) Listen mindfully to promote and understand the client's narrative;

(3) Use parallel universe thinking to explain client behavior and stories;

(4) Speak mindfully, taking into account the client's culture, especially as it relates to how she expects to interact with the lawyer and the legal system;

(5) Work with interpreters in ways that enable the development of genuine communication between lawyers and clients; and

(6) Apply the Habit Four analytical process continuously to identify red flags that the interaction is not working and corrective measures that the lawyer might take.

Habit Four creates this red flag structure for the lawyer to use either BEFORE (preparing for), DURING (in the moment with the client), or AFTER (reflecting upon)[14] the client meeting. In any of these timeframes, the lawyer can identify discrete moments of the client interaction and mine those moments for information about what aids and what hinders constructive lawyer-client communication. Used over time in all three timeframes, Habit Four creates a way for lawyers to improve incrementally their relationships with each client, while continually adding to their repertoire of ideas for future meetings and future clients.

In the examples above, Harriet remembers all too well what it was like to be Joe: conscientiously prepared in an interview that is not flowing smoothly, and feeling helpless to turn the conversation into a fruitful direction. Over

---

13. In our discussion of red flags and correctives, we suggest that lawyers identify a number of explanations for why the interview is failing with culture being one of many explanations. *See infra* Section III.

14. This staging process is referred to as planning, doing, and reflecting—the three stages involved in experiential learning. *See* Stacy Caplow, *A Year in Practice: The Journal of a Reflective Clinician*, 3 CLIN. L. REV. 1, 5 (1996).

many awkward moments with many clients, and many moments of puzzling over them, Harriet developed a repertoire of ideas for rerouting communication from dead ends to a free flow of information both ways. Habit Four, along with the other five practices, we believe, articulates what many thoughtful, experienced lawyers already do to adjust and tailor their communication with each client to that client's needs and culture. Joe was "consciously incompetent" in his communication with his client, and this is a deeply uncomfortable place to be. For the new lawyer, who has difficulty focusing on both the process and content of the interview at the same time, identifying signs of good communication, as well as "red flags" that signal that accurate, genuine communication is probably not occurring, can take the place of more "in the moment" observations. Habit Four offers a way to examine these tough moments of communications and strategize correctives that will improve the communications over time, until, like Harriet, Joe can become "unconsciously competent" at these relationships, due to steady, undiscouraged problem-solving over long experience.[15] We recommend the use of Red Flags as a way to develop a permeating instinct to consider culture throughout interactions with clients.[16]

The six practices—narrative, mindful listening and speaking, parallel universe thinking, effective work with interpreters together with Habit Four red flag analysis—provide an approach that lawyers can use in normal attorney-client tasks that may involve cross-cultural encounters. In a cycle of pro-activity and reactivity, the lawyer plans to use the six practices in upcoming meetings with clients, problem-solves tough interactions in the moment, and then debriefs these tough interactions during a reflective process employing red flag analysis. Based on that reflection, the lawyer can proactively plan for the next encounter and identify concrete strategies to use in the moment. This article discusses the six practices in turn, ending with a concrete description of red flag and corrective analysis.

I. Six Practices of Cross-Cultural Communication

The first practice, seeking narratives from clients, allows the client to shape and sequence the information that he offers to the lawyer. The second practice, listening mindfully, focuses the lawyer's full, nonjudgmental attention on

---

15. *See* Bryant, *supra* note 3, at 62–63. *See also* BINDER ET AL., *supra* note 12, at 41–63.
16. Exactly how a lawyer can do this is explored at length in Section III, *infra*.

the client's words and actions during the interaction. The third practice, parallel universe thinking, offers the lawyer alternative explanations for client words or actions which confuse or trouble the lawyer, to prevent the lawyer from filling in the gaps of ambiguity with his own assumptions and values. The fourth practice, speaking mindfully, structures the lawyer's questions and conversation with the client to avoid cultural pitfalls in his own actions and words. The fifth practice, effective work with interpreters, guides the lawyer's partnership with interpreters and translators so that the lawyer can understand the client fully despite a language barrier. And finally, Habit Four, Red Flags & Correctives, outlines a daily habit for client interaction to identify communication problems and fashion correctives for them to improve these interactions over time.

A. Narrative Mode

Ideally, a client is in narrative mode when she is telling a story or describing an experience relevant to the legal questions and case, with little or no prompting from the lawyer, so that the structure of the narrative is very much at the client's discretion. In general, seeking a client's narrative, told in her own voice, in a manner of her own choosing, most strongly vindicates the second principle of the Habits, the goal of being present with this client, ever respecting her dignity, voice, and story. It also promotes the second dynamic of the Habits, achieving isomorphic attribution, because it asks the lawyer to listen to the client's story told from her perspective, crafted and delivered in exactly the way she chooses. Nevertheless, narrative, for a number of reasons, may not always be the proper mode to pursue in an interview; at the end of this section, we suggest some alternate approaches.

1. Why Narrative is the Default Corrective for Habit Four

Habit Four, by default, seeks to elicit a narrative from the client and seeks to keep the client in narrative mode during as much of the client-lawyer interactions as possible. We recommend that lawyers seek to communicate with clients in narrative mode for ten separate reasons:

a. Narrative mode acknowledges the client's authority to tell the story.

In narrative mode, the client starts off with the power to shape her telling of her experience. The client decides what is important to discuss. A client makes decisions about what to tell the lawyer, independent of the questions

the lawyer thinks to ask. Because we ask questions based on our cultural frameworks, lawyers may miss important client information if they pursue a strategy of interaction structured by their questions rather than by a client narrative.[17] And finally, the client speaks in narrative without being censored by the lawyer.

b. Narrative mode allows the client to shape, sequence, and pace her disclosure as she will.

The client tells the story as a whole from her point of view. The client chooses the telling detail and lingers on the part of the story that resonates most deeply with her for whatever reasons. The client is also free to hold back what she is not yet comfortable offering. Several cultural factors may cause the client to be reluctant to disclose important facts. For example, the client may violate the high "insider-outsider" norms when she tells narratives that expose the culture or the client's family to legal scrutiny.[18]

c. The client's narrative may also provide the theory of the case.

Because the engine of all litigation and representation is the theory of the case (the story, which, if the fact finder were to believe it, would resolve the case favorably for the client), the client's narrative is an important first step in developing that story in any representation.

d. Many legal representations call for a narrative.

When the lawyer's final end product will need to be a narrative (for example: the affidavit in a asylum interview, the petition in VAWA case, a motion for summary judgment and the affidavits appended to it), starting with the client's narrative is a way to match the client's subjective understanding of her story (and achieving isomorphic attribution) and offers a first draft for how the lawyer will structure the narrative part of the written legal work

e. Narrative combines detail with the client's inner thought processes.

When a client tells a story, we are not only offered any fact and details that the client has chosen to highlight, but we also get insights into the way the

---

17. Habit One explores how a lawyer's culture shapes her questioning of clients. *See* Bryant, *supra* note 3, at 64; PETERS, *supra* note 3, at 262–276.

18. All cultures have people who are considered insider and outsiders. Norms attach to these individuals including who can be told what information and who can be trusted. Some cultures have high inside outside boundaries and newcomers are significantly distrusted. *See* Bryant, *supra* note 3, at 42.

client makes decisions with reasoning and facts on which those decisions were made. Therefore, relevant Storytelling by the client can be critical in helping the lawyer understand why the client acted as she did. Understanding why a client acted the way she did can be critical to drawing the correct inferences. For example, a client whose culture expects an "in your face" response to repression may engage in behavior that denies or defies fear. Both the lawyer and ultimately the fact-finder need to understand the client's actions within her cultural context.[19]

f. Storytelling is a mode that reaches across culture.

There are many ways to tell a story. When lawyers ask clients to tell the story of their experience, clients will resort to the narrative mode which comes most naturally to them, be it linear and chronological, reverse chronological, focused on a group of intertwined characters rather than one central figure, or the like.[20]

g. Storytelling allows the client, not the lawyer to fill in the gaps.

When a client tells her complete narrative, she, not the lawyer, fills in the initial spaces. Filling is a natural part of all communication. Because we fill in based on our experiences, culture shapes what we put in the interstices. When we are working cross-culturally, the odds are greater that we will fill in facts, visual images, and interpretations that are not accurate.

h. Storytelling highlights what important facts and questions need to be followed up on by the lawyer.

An initial narrative will help lay out an agenda for further clarification; once the lawyer has the overview of the narrative, the lawyer can follow up with questions focusing on closing other gaps of information.

---

19. Credibility and relevancy are very culturally driven. When we say a fact is circumstantial evidence proving a particular proposition, we are relying on implicit assumptions. *See* DAVID A. BINDER & PAUL BERGMAN, FACT INVESTIGATION: FROM HYPOTHESIS TO PROOF 178 (1984). Often these assumptions are embedded with cultural norms, beliefs and values.

20. Western legal culture favors linear and chronological story telling and lawyers will most often question clients in ways that ask the client for this kind of narrative. By encouraging the client to tell the story her way, the lawyer also is able to observe the amount of witness preparation time that may be needed for the client to tell a credible story to the fact finder.

i. Embracing the client's narrative takes the lawyer out of his own.

Immersing himself in the client's narrative helps the lawyer put aside his concerns and remain mindfully connected to the client's described experiences. Once the lawyer intervenes and shapes the information flow, it may be difficult to get the client to return to her narrative.[21]

j. Narrative mode acknowledges the client's power.

It bears repeating: Acknowledging the client's power to tell the story at the pace and in the sequence she chooses can be especially important in cases where the client, for legal purposes, must describe traumatic events. Research on avoiding re-trauma for traumatized clients suggests that service providers reverse the circumstances of the trauma.[22] Therefore, if clients in the traumatic event were helpless and disempowered, concretely acknowledging the client's primacy, power, and control in the lawyer-client relationship can help avoid re-trauma. Narrative mode may be critical to helping the lawyer create a safe environment, putting the client in charge of the flow of information.

* * *

For these reasons, we think that encouraging your client to provide a narrative is the best corrective to use when a red flag occurs. Think of narrative as the default corrective for most red flags.

2. When Narrative Mode is not Appropriate

Nevertheless, narrative may not be appropriate as a mode for conducting certain lawyer-client relationships, for the following reasons:

a. It simply may not be a mode with which this client feels comfortable.

This may be for personal, idiosyncratic, cultural (or a combination of) reasons. The client may prefer not to proceed in narrative mode. For some clients, the open-ended nature of narrative can create anxiety, involving as it does less feedback from the lawyer.

---

21. Especially with a client who may be unfamiliar with legal culture or may come from an authoritarian culture, any hints from the lawyer delivered through questioning that shapes the information flow may in fact limit the information flow. *See* Gellhorn, *supra* note 12, at 346.

22. See PETERS, *supra* note 3, at 483–485.

b. Narrative mode may intrude unduly into the client's life.

Where excellent legal representation is possible without narrative (e.g., filling out some immigration applications, completing financial eligibility forms), it may not be necessary to learn the client's entire story. Seeking the narrative from a reluctant client in those instances could be intrusive, voyeuristic, and ultimately disrespectful to the client.

c. Narrative may be culturally uncomfortable for the client.[23]

For some clients, normal cultural exchanges do not properly include stories because a client comes from a culture in which storytelling is not prevalent. Other clients may expect more direction and hierarchy in the lawyer-client relationship, more "leadership" from the lawyer. For still other clients, asking the client to tell certain stories may violate important cultural values. For instance, a woman asked to describe in full detail the abuse by her husband may be restricted by cultural norms from laying bare her husband's violent actions.

d. Narrative may be traumatic for the client.

The costs of such trauma may outweigh the benefits that come from narrative mode. Unless the narrated trauma is central to the legal claim, lawyers should avoid insisting that a client recount difficult experiences.

---

23. *See* Tremblay & Weng, *supra* note 5 (the authors identify many of the cultural beliefs and practices that may make narrative a difficult cross-cultural approach). *See also* Diana Eades, *"I Don't Think the Lawyers Were Communicating With Me": Misunderstanding Cultural Differences in Communicative Style*, 52 EMORY L.J. 1109 (2003). In her article, Eades describes the story of Ms. Kina, an aboriginal woman who stabbed and killed her physically abusive boyfriend after he threatened to rape her fourteen-year-old niece and came after Ms. Kina with a raised chair. Eades discusses the cultural differences in communicative style that led to communication failures between Ms. Kina and her attorneys. For instance, Eades emphasizes that in situations where Aboriginal people want to find out what they consider to be significant or certain personal information, they do not use direct questions as it is important to respect the privacy of others and not to embarrass someone by putting them on the spot. "People volunteer some of their own information, hinting about what they are trying to find out about. Information is sought as part of a two-way exchange. Silence, and waiting till people are ready to give information, are also central to Aboriginal ways of seeking any substantial information." *Id.* at 1117. The lawyers representing Ms. Kina were frustrated because their client would not volunteer information and would only reveal information when questioned in detail. Ms. Kina's lawyers as a result decided that she was passive and uninterested in the entire process of the preparation of her defense while Ms. Kina thought the lawyers were disinterested. *Id.* at 1120.

For these clients, when Habit Four's default to narrative mode will place the client in an awkward situation, the lawyer can try the following alternatives to narrative mode.

3. Alternatives to Seeking Narrative Mode

What should a lawyer do if conversation is faltering but for one of the above reasons or another important reason, the narrative is not of the proper strategy? Here are a few beginning alternative ideas:

a. Ask the client to provide holistic details in a non-storytelling format.

For instance, if it is important to hear about the client's home, but the client does not want to tell you about his family, you can ask for a description of the home and critical locations in the client's story. This provides the lawyer with an integrated sense of the client's views of these important details without asking the client to reveal something he wants to keep private. This approach preserves the client's authority to decide how to describe, as a whole, an important component of his claim, without structure imposed by the lawyer. Other examples of holistic non-narrative-seeking questions include asking the client to describe i) a critical relationship, ii) his education, iii) his experience at his job, in ways that invite but do not require the client to tell stories. All of these alternatives, however, still offer the client an open-ended invitation to describe an important part of the case with little manipulation by the lawyer and with an opportunity for the client to take charge of the description and choose the important details.

b. Ask specific but open-ended questions about relevant issues.

This is actually for many lawyers the first instinct: to come into an interview with a list of questions that track the legal requirement. To avoid the interview devolving into an interrogation, the lawyer should generally prefer open-ended questioning.

c. Ask about the telling detail.

In a previous conversation with the client, the client may have brought up a specific fact, event, person who was particularly important to the client. Asking in further depth about that item of importance to the client will again help the lawyer to get a sense of the client's objective, values, and concerns without requiring her to engage in narrative.

In summary, fruitful narrative drives many cross-cultural interactions with clients. In seeking to improve interviewing and counseling skills, start with

widening your repertoire of narrative-seeking approaches. Where narrative is not appropriate, try some of the alternative approaches for starters. Once a client begins richly narrating her experience, the lawyer must next cultivate a second critical cross-cultural communication practice: Listening mindfully.

B. Listening Mindfully

Listening is perhaps the most important and most challenging of cross-cultural skills. Listening is also one of the least studied skills, although it is the most used during any day, the first learned in human development, and the least taught at any time in life.[24]

Mindful listening assists the lawyer in the critical and challenging task of remaining completely open to his client's story while skillfully assembling her legal case. Without mindful listening, lawyers may unconsciously measure their client's stories against story paradigms that the law favors. The lawyer listening to a refugee narrative may be resistant at first to listening carefully and open-mindedly to client explanations for actions that the lawyer believes will be damaging to her legal case. For instance, the lawyer may resist truly listening to a client's explanations for use of false travel papers or for leaving vulnerable children behind in the client's country of origin.

Thus the cross-culturally astute lawyer must figure out how to listen professionally, that is, within the confines of his legal agenda, while remaining extremely open-minded to a client's version of reality and the client's hopes for her legal claim.

With one exception,[25] listening has been largely ignored in lawyering literature. It would appear that the dynamics of listening seemed too obvious to

---

24. Cooper notes that listening, as compared to speaking, reading and writing, is first learned, used 45% of the time, and taught the least. PAMELA COOPER, COMMUNICATION FOR THE CLASSROOM TEACHER 38 (1995) (citing L. STEIL, YOUR PERSONAL LISTENING PROFILE 4 (1980)). For reflections on listening for teachers, see Jean Koh Peters & Mark Weisberg, *Experiments in Listening*, NYLS Clinical Research Institute Paper No. 04/05-5, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=601182 (last visited May 26, 2006).

25. Legal literature *has* focused on active listening techniques. *See, e.g.*, BINDER ET AL., *supra* note 12, at 41–63. This work has been significant to the training of many generations of new lawyers and takes an important first step in lawyers' thinking about listening. Our only concern about these active listening techniques is that they focus more on techniques that can be used to encourage client conversation by showing external pieces of listening (body language, repeating back client words, showing outwardly that you are listening) without also attending to the essential inner disposition of the lawyer during such

spell out and too basic to be discussed. This non-approach to teaching listening could be justified if we believed that our profession in general provided our clients the listening that they needed. In fact, lawyers as a profession are not reputed to be excellent listeners and many clients might be shocked to know that excellent listening is even a goal for most lawyers. In any case, perhaps it is time for us to break down the concept of listening into daily habits and learnable skills that could improve the quality of our listening throughout our profession.

What are the goals of legal listening? For practitioners seeking cross-cultural competence, the central goal of listening should be isomorphic attribution, understanding events, words, and decisions of the client in the client's own terms—as she experienced them and as she currently interprets them. This is the central agenda for the cross-culturally competent lawyer. Listening with a goal of isomorphic attribution is critical for achieving the second principle of the habits of cross-cultural lawyering: remaining present with this client, ever respecting her dignity, voice, and story.

Two major obstacles can block a lawyer's mindful listening. First, the lawyer's preoccupation with crafting the strongest legal case may skew the way she hears her client's narrative. Until the lawyer is confident that she understands this client's idiosyncratic view of his life, facts of his experience, and goals for the representation, the lawyer should be extremely wary of imposing other agendas even when she is altruistically focused on the client's legal benefit, to avoid distorting the proper hearing of the client's information. Even the most well-meaning lawyer, who "knows" what a successful refugee claim looks like, will be tempted—perhaps unconsciously—to distort her client's claim into a pre-conceived mold without the help of mindful listening discipline.

Second, the lawyer's own cultural makeup may throw up barriers to client-focused listening. Habits One and Two further explore the ways lawyers can identify similarities and differences with clients, and reorient their representations to focus on the interaction between the client and the law, rather than the interaction between the client and the lawyer's own culture, experience, and values. A lawyer focusing on mindful listening must develop strategies to keep her own cultural values from shaping the client interview.

---

listening. Too many lawyers know from good experience that it is possible to employ active listening techniques without a high quality of listening taking place. Tim Floyd, in his chapter below, moves beyond this focus on active listening to discuss "deep attentive listening," as well as the many barriers to such listening by lawyers. *See infra* ch. 16: Timothy Floyd, *Spirituality and Practicing Law as a Healing Profession: The Importance of Listening*, at pp. 486–92.

To overcome these obstacles to excellent listening, lawyers can use mindfulness[26] to refocus continually on the client's meanings and subjective understanding. If lawyers could make only one change in their listening now, a commitment to listen thoroughly and deeply to the client's story as the client understands it, would be one giant step forward in the quality of legal listening across our profession.

The leading American proponent of mindfulness and its practice, Jon Kabat-Zinn, defines mindfulness as "openhearted, moment-to-moment, nonjudgmental awareness."[27] Regular mindfulness practices, such as meditation, yoga, and tai chi, cultivate the mind's ability to maintain an extremely high level of paying attention in the moment. Mindful listening incorporates the four major signature characteristics of mindfulness: 1) awareness that is 2) openhearted, 3) centered in the present moment, and 4) nonjudgmental.

First, mindfulness is awareness, paying attention. Perhaps it should go without saying that we should pay full attention to our clients throughout all our interactions, but many of us ruefully acknowledge how difficult maintaining that attention can be. Who among us has never drifted off to thoughts of our "to do" list during a client meeting? Mindfulness practice focuses on supporting the mind's ability to remain focused, or return to a focus, on the client's expression of her concerns.

Second, mindful listening is openhearted. The mindful lawyer listens, open to the client's full experience, attentive to reason as well as emotion, and ready for the messy as well as the neat, the complex, as well as the straightforward. This lawyer puts aside the two obstacles posed by his preoccupation with crafting the strongest legal case and his own cultural makeup and experiences. These obstacles are fundamentally irrelevant to the client-centered task of thoroughly understanding the client's concerns and experiences in her own

---

26. Len Riskin offers a thoughtful introduction of mindfulness, with exercises, in another chapter of this book. *See generally infra* ch. 15: Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention.*

27. JON KABAT-ZINN, COMING TO OUR SENSES: HEALING OURSELVES AND THE WORLD THROUGH MINDFULNESS 24 (2005). Legal writers have explored the usefulness of mindfulness in the alternative dispute resolution context. Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002); C. J. Freshman, Adele M. Hayes, & Greg C. Feldman, *Adapting Meditation to Promote Negotiation Success: A Guide to Varieties and Scientific Support*, 7 HARV. NEGOT. L. REV. 67 (2002); Adele M. Hayes & Greg C. Feldman, *Adapting Meditation to Promote Negotiation Success: A Guide to Varieties and Scientific Support*, 7 HARV. NEGOT. L. REV. 67 (2002); William S. Blatt, *What's Special About Meditation? Contemplative Practice for American Lawyers*, 7 HARV. NEGOT. L. REV. 125 (2002).

terms, which forms the essential foundation upon which the legal representation is based.

Third, mindful listening takes place from moment to moment. Throughout the interview, the mindful practitioner remains present with the client in the now. As simple as this sounds, remaining present is neither easy to achieve nor maintain. Since our minds inevitably stray as we listen, remaining present requires the practitioner to cultivate ways to return her wayfaring mind back to total attention to the client.

Fourth, mindful listening is nonjudgmental. Nonjudgment remains one of the foundational dynamics of the Habits of Cross-Cultural Lawyering, and is essential to mindful listening because it puts aside evaluation, criticism, and valuation and adopts the attitude of "witness" rather than judge of the client's experience. Nonjudgmental listening accepts the client's communications first, and seeks to explore and understand it fully, before beginning the work of legal strategy. Kabat-Zinn notes that

> [m]indfulness is cultivated by assuming the stance of an impartial witness to your own experience. To do this requires that you become aware of the constant stream of judging and reacting to inner and outer experiences that we are all normally caught up in, and learn to step back from it.[28]

The Sufi mystic poet Rumi[29] offers this image for nonjudgment: "Out beyond ideas of wrongdoing and rightdoing, / there is a field. I'll meet you there." Mindful listening to the client takes place in that field.

Cultivating mindfulness in listening and, as discussed below, in speaking, thus dovetails with the three dynamics of the Habits: nonjudgment, isomorphic attribution, and daily habit and learnable skill. Nonjudgment is a central component of mindful practice. Isomorphic attribution is the goal of mindful listening: client/lawyer communication that achieves a deep understanding of the client on her own terms. And mindfulness is best nurtured in reg-

---

28. Jon Kabat-Zinn, Full Catastrophe Living: Using the Wisdom of Your Body and Mind to Face Stress, Pain and Illness 33 (1990).

29. COLEMAN BARKS & JOHN MOYNE, THE ESSENTIAL RUMI 36 (Coleman Barks trans., Harper Collins 1995). The remainder of the poem reads:

> When the soul lies down in that grass,
> the world is too full to talk about
> Ideas, language, even the phrase *each other*
> doesn't make any sense.

ular practice. Not only will engaging in other mindful practices, such as meditation, yoga, tai chi, and the like, strengthen the lawyer's ability to listen mindfully, but listening mindfully to this client will also strengthen the lawyer's ability to listen mindfully in general.

Here are some concrete ideas for listening mindfully. Consciously choose to be present fully in the client interview. Put aside other distractions; clear your desk, ask your office to hold non-essential calls and interruptions, face your client, and give her your undivided attention. Once the meeting starts, divest yourself of other agendas besides understanding the client's story from her point of view. Pay full attention to the client's words and actions. In times of confusion, focus on observation ("What is the client's body language? What words is she using?") and fact-gathering.[30] Remind yourself that "there is no bad fact," that a deep and rich understanding of your client's point of view will yield the strongest, most authentic theory of the case. Employ strategies that have worked for you before (e.g. note-taking, eye contact, recapping the client's words, and the like) when your mind inevitably wanders, to bring yourself consciously back to listening. One way to do this is to observe yourself during the interview—remain aware of your attitudes, judgments, and inner processes. Use these observations (e.g., "oh no, I hope she's not going to tell me that she left her children behind and fled to the US on her own") to observe your tendency to drift from attending to the client's narrative to your own preoccupations with legal strength and strategy, so that you can bring yourself back to full listening (e.g., *"here I go again, jumping ahead to strategy—why don't I save that for later, and focus right now on what she is saying and how she is saying it?"*).[31]

While mindful listening is essential to excellent cross-cultural communication, it is not alone sufficient. Mindful listeners will move closer to isomorphic attribution and an in-depth understanding of their client's point of view, but even the perfect listener may not fully understand and ascribe the correct meaning to the language she has heard and the body language she has observed. Where ambiguity remains, the lawyer must employ the remaining four processes of cross-cultural communication: parallel universe thinking, speaking mindfully, proper use of interpreters, and Habit Four analysis.

---

30. This lays the groundwork for Habit Four analysis. *See infra* Section II, Part F.

31. Note that the nonjudgment the lawyer shows here to client is paired with the nonjudgment he shows himself. If the lawyer starts internally chastising himself during the interview, he has left the interview as surely as if he had stood up and walked out the door.

C. Parallel Universe Thinking[32]

Hans, a second-generation German-American clinical professor at a Northeast law school represents Francoise, a West African woman seeking asylum in the United States. His practice is full of African cases, and he "knows what this means": clients who constantly show up late, if they show up at all. He makes an appointment with Francoise to come to his office. Sure enough, she does not appear at the appointed time. Angry and resigned, he calls her again and sets up a second appointment. She does not arrive again. The next day, Francoise arrives without an appointment. Furious, Hans goes to see her in the reception area. Francoise explains that she has just been released from the hospital, and came straight to see him because she was so concerned about her case.

Parallel universe thinking, or Habit Three, asks the lawyer to identify alternatives to assumptions or interpretations he may make about his client's behavior. The Habit itself is simple. When faced with a client behavior, a lawyer should force himself to brainstorm multiple explanations for the actions or words rather than settling on a specific interpretation. To use science fiction terminology, the lawyer should brainstorm the various parallel universes in which the lawyer and client may be interacting, not only to search for open mindedness about the meaning of the client's behavior, but also to avoid rushing to judgment or conclusion about a particular event. Parallel universes also confront a lawyer with the vastness of his ignorance about the client's life and circumstances.

Parallel universe thinking can be done anywhere, anytime, in a matter of seconds. The "no-show" client is a classic example of a situation in which a lawyer has very little information except for his client's actual absence. The lawyer, who immediately jumps to the conclusion that the client doesn't care

---

32. Parallel universe is a concept borrowed from science fiction and quantum mechanics. *See, e.g., Parallel Universe, at* http://en.wikipedia.org/wiki/Parallel_universe (last visited May 26, 2006):

> Parallel universes started as a plot device in science fiction. The idea is that every possible decision in the stream of history actually went every possible way, and that all of those possibilities still exist as part of a multiverse. This is one of the classic versions of alternate history ....
>
> In science, the Many Worlds Interpretation of Quantum Mechanics employs a similar idea. This is often seen as providing a method of reconciling the paradoxical aspects of time travel as predicted by general relativity using the probabilistic nature of quantum mechanics.

about her case, should stop and consider the parallel universe explanation. Maybe the lawyer wrote the time down wrong, perhaps the client got the time of the meeting wrong, perhaps she is delayed and still on her way. Here, Francoise's lawyer jumped to conclusions about his client's failure to come to meetings, assuming, even predicting, that she would be like "all his other African clients." He proceeded with a false certainty about the meaning of her absence as a result. Assuming that the client is indifferent to the case, when many other explanations could be equally true, pushes the lawyer forward to what may well be a false assumption about the client's view about her legal matters. It also prevents him from understanding her behavior on her own terms.

Raymonde Carroll beautifully encapsulates the essential importance of parallel universe thinking.

> Very plainly, I see cultural analysis as a means of perceiving as "normal" things which initially seem "bizarre" or "strange" among people of a culture different from one's own. To manage this, I must imagine a universe in which the "shocking" act can take place and seem "normal," can take on meaning without even being noticed. In other words, I must try to enter, for an instant, the cultural imagination of the other.[33]

Parallel universe thinking is a reactive habit triggered when the lawyer finds herself beginning to make a judgment either negative or positive about the client's behavior. Habit Three asks the lawyer to describe the behavior, but to hold back on interpretations based on an incomplete set of facts. Even a single parallel universe explanation for behavior can jar a lawyer out of a mistaken certainty about his client's motive or intentions. When we are attributing negative meanings to a client's behavior, we should explore other reasons for the behavior. This reminds us that we must explore with the client the actual reason for the behavior rather than operating on our false assumptions.

Another important trigger for parallel universe thinking is certainty. When a lawyer finds herself thinking "I am sure that my client did that because" the lawyer should challenge that assumption with a parallel universe. Note also

---

33. RAYMONDE CARROLL, CULTURAL MISUNDERSTANDINGS: THE FRENCH-AMERICAN EXPERIENCE 2 (1987). As Carroll demonstrates, parallel universe thinking connects directly to the critical dynamics of non-judgment, in its refusal to prejudge confusing behavior, and isomorphic attribution, it its search for the client's understanding of her own behavior. The ease of a parallel universe provides the third dynamic, in that it is easy to learn and integrate into daily life, and thus makes it the ideal habit: essential in its lessons and simple to perform.

that it is not necessary or even expected that the parallel universes generated include the actual explanation for the behavior. While it can be somewhat confusing, in that it offers a multiplicity of explanations for a single event, it is also efficient; it prevents the lawyer from charging forward based on an assumption that is not necessarily true.

Parallel universe thinking opens the lawyer back up to the client, to the vastness of our lack of knowledge about her world, and to a sense of humility in perspective about our relative importance in her life. Its critical quality of nonjudgment is a welcome antidote to the default tendencies of our profession. Our clients may have experienced many events in which they felt wrongly and hastily judged; parallel universe thinking can prevent us joining the ranks of those who have betrayed them in this way. By preventing us from acting mistakenly on false judgment, and lawyering based on a misguided uncertainty about a reality which we do not yet apprehend, parallel universe thinking is a tremendous ally in our ongoing struggle to understand our client in her own terms and not ours.

Habit Three is extremely easy to put into daily practice. When finding that one is making a judgment about a client's behavior, take a moment, and think of a parallel universe, and most of the work is done. Even just the effort of starting to figure out what parallel universes exist will soften a lawyer's dedication to his singular interpretation of a client's behavior. A healthy incorporation of Habit Three into the life of even the busiest lawyer could itself be the singular act that, day to day, increases the cross-cultural awareness that enables the lawyer to practice based on fact and not assumption.

D. Speaking Mindfully—Communicating Within the Client's Context

Lawyers must speak mindfully in beginning interactions with clients in explaining the legal system and the law and in engaging the client to confirm the client's understanding. Lawyering texts alert lawyers to the significance of these tasks in all attorney-client interactions: in cross-cultural interactions, they deserve special attention because they are heavily culturally laden tasks. Below are some concrete suggestions for applying the four components of mindfulness—awareness, openheartedness, a focus on the moment-to-moment, and nonjudgment—to crafting your speaking with your client.

1. Begin your Interactions Thoughtfully

A lawyer working with a client from another culture must pay special attention to the beginnings of communications with the client. Each culture has

introductory rituals or scripts that create a sense of welcome and respect as well as trust-building exchanges that promote rapport and conversation. To learn culturally appropriate beginnings, a lawyer can read about the client's culture or, if an interpreter who is familiar with the client's culture will be involved with the interview, the lawyer can consult with the interpreter on appropriate introductory behavior. In addition to learning culture-specific knowledge,[34] a lawyer should pay careful attention to the verbal and nonverbal signals the client is giving to the lawyer from the beginning of the interview.

How will the lawyer greet the client? The lawyer should learn whether any introductory behavior would be viewed as particularly welcoming or as insulting or violating a cultural norm. Take, for example, a strong handshake as a method of greeting and welcoming the client. How will a client interpret it? In some cultures, men and women who are not married to each other do not touch. A handshake offered in that setting might create an awkward beginning. It is also possible that a client from that culture has learned that an "American" greeting involves a strong handshake. Other clients expect more physical exchanges as they come to know a lawyer—a hug, a kiss on each cheek—while others would be horrified by such behavior even by a lawyer that they had known for years. Other cultures expect a bow and a business card exchange as the introductory ritual. Many cultures require different introductory rituals for men and women.

Lawyers should try to identify the range of introductory rituals that might be expected. A lawyer can ask clients if handshakes are appropriate. Clients who come from cultures where touching is not appropriate will usually feel respected by such a question. Lawyers can also let the client take the lead in setting the introductory ritual, waiting to see if the client offers a hand to shake or a cheek to kiss.

What information should be exchanged before the lawyer and client "get down to business?" How do the client and lawyer define "getting down to busi-

---

34. Cross-cultural researchers have identified two different kinds of cultural knowledge: culture general and culture specific. Culture general knowledge is knowledge about concepts and experiences that are likely to occur across cultures. Some culture general concepts include collective and individual culture, time, direct and indirect communication, social role and hierarchy, insider-outsider, categorization, and attribution. *See* Kenneth Cushner & Dan Landis, *The Intercultural Sensitizer, in* HANDBOOK OF INTERCULTURAL TRAINING 189 (Dan Landis & Rabi S. Bhagat eds., 2d ed. 1996); Bryant, *supra* note 3, at 50–51. Culture specific information includes information about the general topics applied to the specific culture as well as history, politics, and geography.

ness?" For one, the exchange of information about self, family, status, or background is an integral part of the business of building a relationship of trust that must precede any genuine discussion of legal issues. For another, it may be introductory chitchat before the real conversation takes place.[35] Of course, these exchanges are especially important for the first meeting with clients when the relationships are first developing. Even if the lawyer and client have a relationship of trust, however, the client may still expect a different kind of interaction at the beginning. These clients expect the lawyer to ask how things are going for them, to inquire about their family and their well being. Again, a mindful lawyer explores culture-specific information, through reading, talking with others who come from the client's culture, and most importantly, taking her cues from the client.

2. Gather Culture Specific Information Before Explaining the Legal Process

An important aspect of attorney-client communication involves providing information to clients about the law and the legal system and the ways the law might be used to solve clients' problems. Before providing this information, a lawyer needs to understand the client's culture and experience to know how to explain the legal system and the lawyer's role. A lawyer needs to know how the client will experience the lawyer's suggestions for handling the problem. Will the concepts and solutions that the lawyer suggests be familiar and comfortable or will they require a stretch for the client to understand and accept within her cultural context?

As described above, narrative provides a good window into exploring the client's values, perspective, and cultural context. When the client is in narrative mode, the lawyer can actively observe the client and her culture and the client's approach to the problem. When the narrative fails to reveal the cultural context or the lawyer wants to confirm his understanding of that context, the lawyer can ask a series of questions that seek to identify the cultural context of the problem and expose differences that will help the lawyer understand the client's worldview.[36] Suggested questions might include the fol-

---

35. See Gellhorn, *supra* note 12, at 325. Gellhorn warns us that even introductory chitchat reveals important clues about client concerns. Often concerns are revealed in response to questions that might be considered "throw away" questions like "how did you get here?"

36. Medical interviewers have described this as developing a medical ethnography of the client. *See* Arthur Kleinman et al., *Culture, Illness and Care: Clinical Lessons from Anthropologic and Cross-Cultural Research*, 88 ANNALS OF INTERNAL MEDICINE 251 (1978).

lowing:[37] Who else has the client talked to and what advice did they give; did they like the advice they were given?[38] Who else besides the client will be affected and consulted?[39] What are the client's ideas about the problem; what would a good solution look like; what are the most important results?[40] Are there other problems caused by the current problem? Does the client know anybody else who had this problem; how did they solve it; does the client consider that effective?[41]

In addition to gathering culture-specific information about the client's problems, lawyers should gather culture-specific information about the client's experiences with legal systems. If the client has come from another country, the lawyer should ask about her experiences of lawyers and judges in her home country, and how problems would be handled in her country of origin.[42] Lawyers need insights about how clients think about conflicts and possible resolution mechanisms.[43] Lawyers should explore what clients understand about the American legal system. Concepts like "prosecutors, jury, or judge" may be strange ones for clients who have not attended high school in the United States

---

37. A similar set of questions are suggested for doctors working in cross-cultural encounters. *See* ANNE FADIMAN, THE SPIRIT CATCHES YOU AND YOU FALL DOWN: A HMONG CHILD, HER AMERICAN DOCTORS, AND THE COLLISION OF TWO CULTURES (2001).

38. This helps the lawyer see whom the client considers involved in the decision and an important decision maker as well as what kinds of solutions to similar problems have been developed within the client's community.

39. These tell you whether the client considers "her" problem actually to belong to a larger collective group. While the American legal system might regard her problem as limited to her rights and responsibilities, a client who comes from a collective culture might see her issue as involving many other people and therefore is not one that she alone can resolve. For example, a client may expect that her mother or father will have a say in what happens to their grandchildren in a custody case or a disabled client may want her adult children to be involved in discussions about her disability case.

40. These are standard client-centered questions that are especially important when the answers are culturally imbedded and inaccessible to the lawyer.

41. These questions allow the lawyer to understand the client's expectations and goals without requiring the client to answer those questions more directly. The solutions might also be new ones for the lawyer to consider.

42. For example, imagine that a client being represented in a divorce action told her lawyers that in her home country she would have to have a trial-reconciliation with her husband before any divorce would be final. This information provides a context for understanding a client's initial reaction to the suggestion that she file for a divorce as a way to deal with spouse abuse.

43. The United States is identified as a very litigious society. The lawyer should explore the client's comfort with pursuing litigation.

or been exposed to the popular culture about lawyers by watching TV shows. These questions also give the lawyer some information about the expectations that the client has for the lawyer. For example, in many legal cultures, the lawyer is the "fixer" or the person-in-charge. In contrast, many law students are taught client-centered lawyering which puts the client in charge and sees the lawyer at most as a partner.

3. Communicate Information Tailored to the Client

Understanding the client's context about what she expects from the lawyer can help shape the information that the lawyer provides to the client. Many lawyers develop scripts for providing this information. Common scripts include ones that lawyers use to open the interview and inform the client about a variety of topics including the purpose of the initial interview, what confidentiality means, the role of various players in the legal system, and other topics common to the lawyer's practice. Lawyers use stock stories or metaphors to explain these concepts to increase a client's understanding of what is going to happen. However, a mindful lawyer uses these scripts cautiously, especially in cross-cultural encounters, and instead, develops a variety of explanations to replace scripts that are tailored to each client's expectations, knowledge of the American legal system, and prior experiences with the law in other countries.[44]

Instead of scripts, a lawyer should have a list of important points they know they want to convey but write them out as concepts to be addressed during the interview, rather than as a script. The lawyer could give the client an opportunity to ask questions about the process of representation before the lawyer launches into his own explanations. The lawyer could fill in any important introductory points not covered by the answers to the client's questions after answering those questions.

4. Confirm Understanding

Both clients and lawyers in cross-cultural exchanges will likely have high degrees of uncertainty and anxiety when they interact with someone they per-

---

44. Perhaps the reader is thinking that the individualized approach takes too much time and thought and those scripts are useful ways for lawyers to communicate efficiently. However, one need only recall all the times lawyers listen to judges' scripts that are used to explain rights to clients to understand that the scripts are often not understood by the clients and that taking the time to give information tailored to the client may reduce client resistance to the lawyer's suggestions and save time in the long run.

ceive to be different.[45] The lack of predictability about how they will be received and their capacity to understand each other often leads to this uncertainty and anxiety. To lessen uncertainty and anxiety, both the lawyer and client will be assisted by using techniques that consciously demonstrate that genuine understanding is occurring and that helpful and expected information is being provided. Active listening techniques, including continuers like, "go on," "Uh-huh," and "yes" communicate that the client is providing useful information.[46] Thanking the client for the information provided is another way to give feedback that the client is giving information that is expected. Feedback that includes rephrasing client information may be used to communicate to the client that the lawyer understands what the client is saying.[47]

In addition to giving the client feedback, the lawyer should look for feedback from the client that the client understands the lawyer or is willing to ask questions if the client does not understand. Until the lawyer knows that the client is very comfortable with a direct style of communication, a lawyer should refrain from asking the client if she understands or agrees. A client who has difficulty telling the lawyer that she does not understand may also have difficulty telling the lawyer she disagrees with the lawyer's suggestions. Instead the lawyer should probe for exactly what the client understands and thinks is a sensible solution.

E. Working with Interpreters

Working with clients who speak a language other than English challenges the lawyer's ability to accomplish the goals of cross-cultural interactions—building relationships and communicating with understanding and accuracy. Relationship building can be difficult when lawyers and clients are "outsiders" to each other. The inability to communicate with a client in her language reinforces to the client that the lawyer is an outsider to her culture. Even when the lawyer speaks the client's language, the difficulties of communicating legal concepts in a language other than English may still make the client feel like

---

45. As described below, this anxiety is heightened even more when communication occurs with an interpreter.

46. Explicit feedback that the client is giving useful information may avoid possible cultural misunderstandings from facial expressions or continuers.

47. *See* Gellhorn, *supra* note 12, at 346. Gellhorn suggests that feedback to clients that rephrases client concerns should not be used too early in an interview as this will limit the client or steer the client in the direction that has been repeated. The client may only be beginning to lay out a host of concerns.

she is an outsider in the legal culture. If clients and lawyers do not share a common language, accurate communication between lawyers and clients depends on the competence of another—the interpreter—and the lawyer's and interpreter's capacities to communicate concepts that may have no easy correlate in the client's language and culture.

To accomplish these goals, a lawyer must focus on developing ways of working with interpreters that enable lawyers to gain a client's trust and that result in good communication between the lawyer and client. To ensure that accurate communication occurs, a lawyer should take these five steps:

1. Assess whether an interpreter is needed;
2. Make sure that the interpreter is competent;
3. Form a professional relationship and prepare the interpreter;
4. Work in ways that lessen the interpretation challenges; and
5. Use Habit Four analysis to plan for, identify, and correct the problems as they occur in the interview.[48]

To take these steps, the lawyer should first develop a basic understanding of languages and the interpretation process.[49] Interpretation is a complex cognitive task requiring the interpreter to capture every element of the message, including the context and integrity, and transfer it wholly and fully to the listener. Lawyers and clients need more than a summary of what each other says; nuance is important and cases are won and deals are made based on those nuances. Credibility determinations may be made based on prior inconsistent statements.[50] Because accuracy and precision are needed, lawyers often tell interpreters that they want "a word for word" interpretation. An accurate, faithful interpretation however is not usually possible by interpreting "word for word." Language is inherently ambiguous and many words are closely related to each other. No two interpreters will interpret the same phrase exactly the same. To convey the meaning of a single word in English, an interpreter may need several words to convey the concept in the client's language. A good interpreter does not summarize and instead focuses on conveying (to the extent

48. *See infra* Section III.

49. We are indebted to Angela McCaffrey who first introduced us to the importance of understanding the interpretation process. Her work continues to be mandatory reading for people interested in exploring issues about interpretation. *See* Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLIN. L. REV. 347, 375–376 (2000).

50. See Fed. R. Evid. 613.

possible) the whole message and capturing the meaning the client and lawyer intend.

Consecutive interpretation achieves the highest degree of accuracy and faithfulness.[51] The speaker pauses and the interpreter interprets in the other language; the speaker speaks again and the process continues. Because precise wording and accuracy is promoted, most lawyers use consecutive interpretation. Simultaneous interpretation (occurring without pausing) requires greater skill and is used in conferences at the United Nations and in court at counsel table to enable a party to know what is occurring.

Language abilities are domain specific—we learn language related to context. For example, a person who learns and uses English in school and in legal practice and another language in the home will no doubt know the many words for mother, father, refrigerator, or kitchen appliance in the home language and in English. They will know how to describe complex cultural concepts of familial love and family strife in the language used at home and perhaps less well in English. They will experience, however, difficulty explaining legal concepts in the language of the home, lacking the vocabulary and linguistic understanding of how to express those ideas in the home language. Thus, an interpreter often needs to have the particular, context-specific experience to find the words to explain the client's story and the lawyer's conversation.[52]

In addition to having bilingual capacity, interpreters must be effective listeners and predictors, with excellent memory skills. Effective listening requires attention to the meaning of words as well as the meaning derived from their juxtaposition, their context, the intonation and stress of the utterances, and the pace.[53] The same words can have radically different meanings depending on these factors. Consider these examples:

---

51. *See Modes of Interpretation*, Interpreters Office, United States District Court, Southern District of New York, *available at* http://sdnyinterpreters.org/ (last visited May 27, 2006). This site is a wealth of information for working with interpreters in courtroom settings.

52. Consider a client who spoke fluent English when talking about his current living conditions but was much less fluent when speaking about torture that had occurred in his home country. He searched for the words in English to describe what happened. Because these actions and their effect had "occurred" in a different language, his capacity to tell the story in English was severely challenged. Similarly, if an interpreter has never worked with lawyers, she may have difficulty finding the words to explain the concepts in the client's language even where the lawyer is using plain English to explain the concepts.

53. ROSEANN D. GONZALEZ ET AL., FUNDAMENTALS OF COURT INTERPRETATION: THEORY, POLICY AND PRACTICE 380–383 (1991).

- Intonation gives clues to meaning: For example, does the speaker intend a literal interpretation of the spoken word or not? When a client says, "I was surprised to see him," is she surprised? Or is she expressing the opposite emotion by delivering the comment as sarcasm? The stress or intonation will give clues to meaning.
- Context matters—consider legal terminology and ordinary English differences. If I say, "I sent you a pleading in the mail," as a result of your legal training, you might picture a document, relating to a lawsuit, with a stylized beginning and ending, with a back cover. To anyone else, it might mean a request given with an imploring quality.
- Dialects of the same language may cause a similar misunderstanding because the same word may have different meanings in the different dialects. For example, the Spanish language has 19 different dialects. Consider the word, "Ahorita." For Spanish speaking[54] people from the Caribbean, "Ahorita" means "a little later" while for Mexicans it means "right now."
- If the speaker hesitates or emphasizes a point, what is the meaning? In some cultural/lingual traditions, hesitation communicates a lack of commitment whereas in other traditions it communicates respect or normal pacing and nothing more.[55]

What the listener expects to hear based on prior experiences and conversations is also an important part of listening and determining meaning. We fill in stories based on limited information and we fill in even if we do not actually hear the whole conversation. The cell phone user that loses every few words due to connection problems experiences this. We fill in what we do not hear and are not really aware that we did not hear it. We remember and process chunks based on preexisting schemas. So if you hear me say, "hi, I am in the _____, driving to _____ ..." You will hear, "I am in the car, driving

54. Sue's colleague Maria Arias, who is originally from the Dominican Republic, offered this example of possible dialect confusion that occurred when she went to work for California Rural Legal Services and encountered a dramatically different meaning to the word "Ahorita."

55. SUSAN BERK-SELIGSON, THE BILINGUAL COURTROOM: COURT INTERPRETERS IN THE JUDICIAL PROCESS 182–83 (2002). The author compares Latin Americans communication patterns to North Americans and notes that hedging is a manifestation of speaking indirectly and indirection is considered positively by Latin Americans. Latin Americans consider North Americans rude for their desire to get to the point.

to...." We also predict what will follow by listening for conjunctives such as "but" or "however."

Interpreters in the quest for meaning can predict wrong. Like all of us, they may not be aware that they are filling in based on predictions. When people listen to a language other than their native tongue, it takes longer to process the information. Making predictions in the newer language is harder and causes the interpreter to have to hold the original message in her memory for a longer period, making the task more difficult and slower. This is one of the reasons that mistakes are more likely to be made in the non-native language.

In addition to determining meaning correctly, the interpreter must hold on to the meaning and search for the words to communicate the same meaning in the other language. Actually the interpreter is using her memory in three important ways: (1) to determine the meaning of the speaker's words, using prior experiences to determine meaning; (2) to remember this meaning; (3) to determine the appropriate terms to express this meaning in the listener's language, again relying on prior experiences in that language.[56] Experienced interpreters take notes to aid this complicated memory task.[57].

Other factors that influence the interpreter's capacity to remember include the speed and complexity of the conversation as well as prior experience with the material being discussed. When we are listening to something that is meaningful to us, we are more likely to remember it. For example, if someone rattles off ten single digit numbers, we may not remember them. But what if they are identified as a telephone number that uses an area code that we know—then we really are only remembering seven numbers. And what if we know the exchange numbers—then we only have to remember four.

We hope that understanding some of the complexity of cross-lingual communication convinces you that interpretation is not a job for an amateur. Clients who need interpreters to communicate fully should be offered them and should not be asked to bring relatives or friends to interpret. In addition to recognizing that family members may not have the requisite interpretation skills, the use of relatives or friends creates additional issues. They may be confused about their role in an interview. They may see themselves as protectors, as fact witnesses, as decision makers, as well as interpreters. Clients may also censor themselves in front of family and friends. For these reasons, relatives and friends should only be used in emergency situations. Bar Associations that

---

56. GONZALEZ ET AL., *supra* note 53, at 383.

57. If you want to experience the difficulty of holding on to information and to repeating it, try the shadowing exercises in Appendix B.

have considered the ethical issues posed by lawyers working with interpreters have recognized that both the rules and model codes require use of qualified interpreters to communicate with some clients. Failure to do so may implicate lawyers' obligations to maintain confidences, provide unbiased representation, and perform legal work competently. To meet his ethical obligations, a lawyer should determine if an interpreter is needed and arrange for a competent interpreter.[58]

1. Assess Whether an Interpreter is Needed

A client can appear fluent in English and still not have the fluency to tell a full and coherent story. Many people who came to this country as adults have learned English at a conversational level. They can interact with English speakers and make themselves understood in everyday events like shopping, eating out, and taking the bus. When people with this level of language skills call the office for assistance, staff may not recognize that an interpreter is needed. Conversational English, however, is not proficient enough for clients to engage with legal concepts or conversation in the courtroom.[59]

In evaluating the need for an interpreter, the lawyer should ask the client what language the client would like to use. A lawyer should also make an independent assessment as to whether the client needs an interpreter.[60] Can the client tell the story as richly and fully in English? Can she understand the lawyer's colloquy? To assess English proficiency, a lawyer should look for grammatical structure, vocabulary, and ease of delivery in listening to a client's story. Sometimes the lack of fluency causes clients to become anxious or hostile and creates difficult interactions in the office and in the Court.[61]

---

58. *See* Association of the Bar of the City of New York Comm. on Prof'l and Jud. Ethics, Formal Op. 1995-12 (1995); Pa. Bar Association Comm. on Legal Ethics and Prof'l Responsibility, Informal Op. 93-122 (1993); Utah State Bar Ethics Advisory Op. Comm., Op. 95-06 (1996).

59. McCaffrey, *supra* note 49, at 375.

60. New York City, Pennsylvania, and Utah Ethical Opinions, *supra* note 58.

61. For example, consider a "difficult" Russian client who quickly made enemies of court personnel, social service workers, and her student lawyers. The client had lived in this country for six years and spoke English at a comprehensive level. In a frank conversation with the client about how she came across to others and why she was getting the unfavorable reactions that she was getting, the client explained that this happened because communicating in English made her very anxious; she sounded angry even when she was not, and she found herself talking louder and more emphatically for fear that she was not making herself clear.

Some clients will resist the use of an interpreter. Even if the client would prefer to communicate in English in the office and courtroom, a lawyer who determines that the client lacks sufficient proficiency has an ethical duty to explore the client's reluctance to work with an interpreter. In most situations, a client appreciates having someone who speaks her language as part of the lawyer's team and will view this person as a friend in the interview room. Sometimes the story the client has to tell, however, is shameful to the client or to the client's culture. In these situations, having to tell the story in front of her countryman and requiring an interpreter to repeat it is doubly shameful. Other instances where there may be reluctance include: a client who has been belittled by an abusive spouse for her English skills; a refugee who is worried that people in this country who speak his language will not be sympathetic to his actions; or a client who fears that the interpreter has a view that "all people who come from her province lie." In situations like these, the lawyer will have to assess whether the communication can go forward without an interpreter and whether court appearances and testimony can take place without one. If possible, the lawyer should attempt to answer the client's concerns and if the client insists on not using an interpreter, the lawyer should explain the risks involved.

Similarly, if you speak the client's language, you need to consider whether an interpreter is needed. Depending on your language skills, you may feel comfortable talking with the client about how to get to the office but uncomfortable explaining a legal concept in the client's language. Even if all aspects of the interview can be competently conducted in the client's language—the best alternative for the client—the lawyer should use an interpreter to prepare for court if the client will testify through the use of an interpreter.

2. Work with Competent Interpreters

As we noted above, interpretation is a complex task not suitable for amateurs. How does the lawyer fulfill the ethical duty to work only with a competent interpreter who has the necessary language and listening skills? To determine competence, the lawyer should probe about prior experiences and certifications. Ask how many times and for whom the interpreter has done interpretations. Remember that legal terminology and concepts are domain-specific, thus the subject matter of the interpretations is an important point of

inquiry. Is the interpreter certified and by whom?[62] Interpreters should be asked which language is their first language and how they came to know their second language.

Explore the issue of dialects with the interpreter and with the client, making sure to take dialect into account. Clients who come from different countries or different parts of the same country than the interpreter may find the communication incomprehensible or simply more difficult because of a different dialect. To explore bias issues with the interpreter, the lawyer should ask whether there are any historical relationships in the home countries of the client and the interpreter that might influence the interaction.

Community organizations are beginning to form relationships with lawyers to provide competent interpreters with connections to the client's community.[63] Lawyers can increase the competence of these interpreters by participating in interpreter training. In working with the organizations, lawyers should ask what testing is used to ensure that interpreters have the language competence and the needed memory and listening skills.

Working with community-based interpreters can have other advantages: They may connect clients to community support and be a cultural broker for the lawyer, bridging any cultural gaps and misunderstanding between lawyer and client. Lawyers can increase legal knowledge in a community by using

---

62. Certification occurs based on testing of the interpreter's competence in both languages. However, different certifications denote varying degrees of rigor. Sue recalls an interview with a "certified" interpreter with significant interpretation problems. When the interpreter left the room for a break, the client who had established a good relationship with her lawyers using other interpreters said in English, "you speak English up here (gesturing high above her head) and she (the interpreter) speak English down here (gesturing below her knees). Upon investigation, it turned out that the interpreter's "certification" was by the agency employing her.

63. The Asian Pacific American Legal Resource Center (APALRC) in Washington, D.C. has created a multilingual referral hotline and a language interpreter project to facilitate access to legal services within the Asian Pacific American community. The hotline is staffed by law student volunteers who speak up to ten Asian languages. When a client calls the hotline, the staff volunteer conducts a thorough intake of the client's legal problem in his or her native language and then identifies the appropriate legal referral and facilitates the client's placement with one of its legal partners, a legal services organization or a pro bono organization. The Language Interpreter Project supplements this referral process by recruiting and training members of the community in conducting legal interpretation. Once a client is referred to a legal service provider by the hotline then APALRC matches that client with a trained legal interpreter who will then provide interpretation services throughout the legal representation. *See* Asian Pacific American Legal Resource Center (APALRC), *at* http://www.charityadvantage.com/apalrc/home.asp (last visited May 27, 2006).

community members to interpret. Through the training and interpretation process, interpreters learn about the law. By building trust not just with this individual client but also with communities to which the client is connected, the lawyer creates other opportunities for clients and social change lawyering.

3. Prepare Interpreters to Avoid Role Confusion and Increase Accuracy

Another important step to ensuring accurate communications is to make sure that the role of the interpreter is clear. Role confusion can occur for many reasons. Some interpreters work in lawyers' offices and perform multiple functions. They may have independent relationships with the clients—answering the phone, setting up meetings, or assisting clients to fill out basic office forms. In addition to interpreting, this person may be the face of the community in the office, offering a welcoming presence to the client as well as presenting the attorney in the best light.

Sometimes role confusion occurs when both the client and the lawyer try to have side conversations with the interpreter. From the client an interpreter might hear, "Why is the lawyer asking me this? Do I really have to answer?" Or from the lawyer, she might hear, "I am trying to find out why she did that? Can you think of a better way to ask that?" Sometimes the interpreter is embarrassed by what the client has to say or the way the client says it; sometimes the lawyer behaves in culturally inappropriate ways. In these situations, interpreters often are pulled into different roles that are sometimes in conflict with the role of interpreter.[64]

To lessen role confusion, the lawyer should clarify exactly what is expected from the interpreter.[65] If the interpreter has not done legal interpretations, the role should be explained in detail. In addition to explaining the role, the lawyer should take the time to explain why it is important for the interpreter to provide faithful interpretation and the consequences of intentionally or unintentionally altering the client or the lawyer's conversation. For example, where a client will testify in court hearings with a court appointed interpreter, the lawyer wants to know how the client will answer the same question. If the

---

64. In training we have done on these topics, interpreters working in legal offices readily confess that they shorten clients' answers to lawyers' questions because the client gives more information than the lawyer asked for. They also change lawyers' communications when they think the lawyer is committing unintentional cultural faux pas. They "clean" up language for lawyers as well as clients. These interpreters are performing a different role than interpretation.

65. Early in the interview, the client should also be told about the role of the interpreter. McCaffrey, *supra* note 49, at 384.

office interpreter is "helping" the lawyer or client out by speeding up communication by deleting irrelevant information, the lawyer will not have an accurate assessment of how the client will respond to questioning. An interpreter who is not employed as a regular office employee should sign a formal contract with the office that spells out the role expectations and the confidentiality requirements.[66]

In addition to clarifying the role, other important preparatory steps with the interpreter includes explaining the case theory, the information you are seeking from the client, and the information you will be providing to the client. Explain the terms that you will use and put as much as possible in writing so that the interpreter can read it as well as hear it. Remember that if the interpreter has heard the terms and information before, she is more likely to have the right terms ready in the moment. The lawyer can also explore whether the interpreter knows the words in the other language that capture the plain English explanation.

Remind the interpreter that the goal of an interpreted interview is to have a real conversation with someone, not a conversation about them. To accomplish this and promote accuracy, interpreters should be encouraged to use first person pronouns when interpreting. For example, assume that in response to a question, the client says in her language "I do not want to settle this case." By repeating "I do not want" rather than "she does not want," the interpreter remains faithful to the client's voice. The interpreter improves clarity because the pronoun refers to the client. "She" could refer to a number of people. The first person recounting is less likely to be a summary of what has been said. In addition, by using the first person, the repeated conversation is one conversation between the lawyer and client rather than two conversations—the first, between the client and interpreter and the second, between interpreter and the lawyer. Finally, the client who understands some English (and many do) will not hear the repetition as an objectification of her story.

4. Promote Accuracy Through Attention to Process

What can a lawyer do to increase the accuracy of the communication? First, follow the suggestions for communicating with English speaking clients: Use plain English and explain legal terms. The interpreter's job is to interpret the explanation not to explain legal terms. If lawyers avoid speaking too fast and using complex sentence constructions, interpreters will have the time they need to determine meaning. Even excellent interpreters have trouble remembering too much material; thus, a careful communicator pauses to allow interpretation.

---

66. A sample agreement is attached as Appendix C.

The challenge for the lawyer and client is to not pause so often that the flow of an idea is chopped up and, at the same time, pause enough to allow interpretation. A lawyer working with an interpreter for the first time should remember to ask the interpreter if the pace is working to insure accuracy. Lawyers should avoid using words or concepts that are difficult to interpret. For example, idiomatic speech or metaphors are difficult to interpret. Thus, in explaining why a client might not want to take a particular procedural step, a statement like "we might win this battle but lose the war," will make the interpretation difficult.

At the same time that the lawyer uses plain English and pacing that promotes accuracy, a lawyer should be sure that she is not giving the client a "lean" version of the lawyer's normal conversation and that the client is not giving a "lean" version of his story. Interpreted conversations take at least twice as long as other conversations. Cross-cultural and cross-lingual communication requires a lawyer to do more checking to make sure that everyone is understanding each other and all aspects of the communication must be repeated twice. Without careful monitoring by the lawyer, these conversations can become oversimplified, losing the complexity that an English speaking client would get.

In the introductory conversations with the client, the role of the interpreter should be explained. To the extent that the role of the office interpreter will be different than the court interpreter, those differences, too, should be explained at some point, if courtroom appearances are expected. In both the explanation of role and throughout the interview, the lawyer should remember that in most situations the interpreter will be viewed by the client as a natural ally. A lawyer should think about how respect is shown in the client's culture and how to accomplish the interpretation goals showing that respect. Some difficulties may occur if the interpreter is ignored when the lawyer looks at the client rather than the interpreter or the conversation is between two people when three people are in the room. In most offices, interpreters are an important part of the trust building between lawyers and clients, and lawyers should describe the process in detail to avoid misunderstanding and engage in the conversations in ways that promote that trust.

II. Habit Four: Red Flags and Correctives

The final practice is Habit Four, Red flags, and Correctives. How does a lawyer plan for, participate in, and analyze cross-cultural encounters in a way that takes culture into account without attributing all communication difficulties or misunderstandings to cross-cultural differences? An approach which

we have used is to pinpoint difficulties—red flags—and identify other possible approaches—correctives—that respond to tentative theories about why the communication difficulty occurred. Some of these difficulties we hypothesize are caused by cross-cultural misunderstandings and other difficulties are rooted in other communication patterns. By using the red flag corrective approach, we hope to be able to communicate better across language and culture.

Habit Four invites the lawyer to bring the wisdom of three interacting timeframes to cross-cultural interactions with clients.

A. Three Time Frames

1. Prepare—Beforehand/Make a Game Plan

In preparing for initial client interactions, lawyers plan their mindful speaking and organize their legal analysis in considering what topics they will encourage their clients to address and how they will open up space for the client's concerns. Preparation also includes consciously thinking about how the lawyer will recognize when the communication is or is not working, identifying red flags, and correctives.

2. Do—in the Moment

During these interactions, the lawyer watches for red flags while listening mindfully to the client. When communication appears to be faltering, the lawyer reaches into her repertoire of ideas for moving back to engaged conversation, beginning with the default of seeking narrative mode.

3. Reflect—After—What Worked, What Didn't

Debriefing the interaction, the lawyer looks at red flag moments, as well as moments of smooth communication, to problem-solve tricky moments of the past interview. Using Habit Four analysis, the lawyer brainstorms some concrete ideas for use in the next interview, should the same red flags arise. This in turns adds to the lawyer's repertoire for in-the-moment problem-solving.

Over the course of a lawyer-client relationship, this third timeframe merges with the first timeframe—debriefing the last interview becomes the concrete fodder for preparing the next interview. During this Habit Four analysis, the lawyer reflects upon what went smoothly and what faltered in the last meeting, and consciously brainstorms new ideas for use in the next interview. In a sense, the lawyer does the in-depth analysis of the client interaction that he was unable to do in the moment. The central time traveling aspect of Habit Four requires you to think about these tough interactive moments and pre-

pare yourself for reentry into the moment. Despite planning, the need for correctives often happens at a time when very little reflection can take place; Habit Four allows the lawyer to reflect after one incident as a way of preparing beforehand for the next incident. Thus, debriefing becomes preplanning for the new event.

B. The Three Steps of Habit Four[67]

1. Describe Red Flag Incidents

Whether you are planning for the interview, in the middle of the interview, or reflecting on the interview, the first step is to identify the concrete signs that communication is faltering. If you are planning for an initial client meeting, you are predicting possible red flag moments. If a meeting has occurred, this step of Habit Four takes place after a critical moment in a relationship. The lawyer identifies a moment in which the client's words or actions troubled or confused them. This first step simply requires the lawyer to describe the actual or predicted moment with some particularity. If you are planning for a follow-up meeting with a client, can you identify a recurrent pattern in those interactions that you've wondered about?

For example, your list might include the following:

- Client appears bored or distracted;
- Client reacts in ways that inhibit development of an important topic by getting testy or withdrawing or changing eye contact;
- Lawyer is doing most of the talking;
- Client is asking no questions;
- The client talks in generalities without providing specific information;
- The lawyer is judging the client negatively;
- The client appears angry; or
- The lawyer is distracted and bored.

2. Brainstorm Possible Reasons for the Red Flag

In our attempt to address the red flags in the interview, we use a corrective based on assumptions about why the communication has reached a red flag moment. In the moment, we do not have time for deep thought about why

---

67. A worksheet that can be used for Habit Four analysis is attached to this chapter as Appendix A.

the communication is faltering and instead jump unconsciously to correctives that we have planned or intuitively use. In reflection, we have the time to think more expansively about why the communication faltered. This step asks the lawyer to do Habit 3 parallel universe thinking about the incident. The goal is to generate as many possible alternate explanations as quickly as possible (to go "for numerosity"), and to write them down as fast as possible.

By brainstorming multiple explanations that include cultural explanations and others, the lawyer does not think about culture in a reductionist fashion. It is not enough to blame the red flags on "culture" generally; instead the lawyer is encouraged to think about cultural explanations that are specific to the client's culture and to culture-general concepts that may be influencing the communication.[68] Similarly, the lawyer must not be too quick to attribute the difficulty to the "cultural" differences and similarities. By identifying the multiple reasons for the failures, we can identify a number of correctives that respond to the causes of the red flags.

For example, what explanations might we come up with for a red flag of "the client talking in generalities without providing specific information" where the client is seeking legal status in this country based on abuse by her citizen husband? A brainstormed list of possibilities might look like this:

- Client is embarrassed by the abuse;
- Client may consider it a violation of her culture to reveal the nature of the abuse to someone outside the culture;
- Something in the way the lawyer asks the questions or looks at the client communicates that the lawyer is not ready to hear about the abuse;
- The client is uncomfortable showing emotion and talking about the details causes emotional reactions;
- Client suffers from post-traumatic stress and telling her story is difficult;
- Client is not talkative; her culture is one where silence and relationship building precede any kind of storytelling;[69]
- She is making up the story and has no specifics; and

---

68. In our five habits materials we identify a number of culture general concepts that might be at play in this example including: insider-outsider status, collective and individual cultures, indirect and direct speech, social role and hierarchy, categorization, attribution, and time. *See supra* note 34. *See also* Tremblay & Weng, *supra* note 5. Tremblay and Weng identify a number of culture specific approaches to clients that may improve or interfere with lawyer and client communication.

69. See Eades, *supra* note 23.

- Client and lawyer share culture and client is embarrassed by the lawyer's success in contrast with her "mistakes."[70]

3. Identify correctives

The third step involves identifying correctives to the red flags. Before interviews, a lawyer identifies potential red flags and correctives based on experience with this particular client or with others based on these explanations. After interviews, the lawyer plans for what he would do if the same or similar incident were to happen again. In a sense the lawyer is thinking on behalf of his future interaction with this client and others.

In creating a corrective, the lawyer should be careful to use a different approach than the one that has led to the red flag. For example, if the client is not responding to a direct approach, try an indirect approach. The corrective should address the most likely explanations for the red flag. For example: We might develop the following correctives to address "the client talks in generalities without providing specific information:"

Parallel Universes	Correctives
Client suffers from post-traumatic stress disorder	Refer client for treatment with someone who can help her remember incidents in a safe environment.
Cultural loyalty	Work with supportive community organization to put client's concerns at ease. Give client the time and space to see lawyer as less of an outsider.
Lawyer's questions or body language communicates that the lawyer is not ready to hear about the abuse	Change the approach. If making eye contact before look away; if asking open-ended before ask closed-ended. Address the issue directly and tell client why you need to hear the information.

70. Consider a client one of us represented who was reluctant to reveal spousal abuse that she suffered to a lawyer who came from her country and with whom she had much in common. When asked why she was willing to tell a social worker who did not speak her language or share her cultural heritage, the client explained that she was embarrassed that she had not accomplished all that the lawyer had accomplished and instead had poorly chosen her husband and had not progressed educationally as a result.

Other general suggested correctives that might encourage communication include:

- Turning the conversation back to the client's stated priority;
- Seeking greater detail about the client's priority;
- Giving the client a chance to explain in greater depth her concerns;
- Asking for examples of critical encounters in the client's life that illustrate the problem area;
- Exploring one example in some depth;
- Asking the client to describe in some detail what a solution would look like; and
- Using the client's words.

These are again only a few examples of many correctives that can be fashioned. Encounter by encounter, the lawyer can build a sense of the red flags in this relationship and the correctives that "work" for this client. Client by client, the lawyer can gain self-understanding about her own emblematic red flags and correctives that specifically target those flags. Red flags can remind the lawyer to be aware of the client and focused on the client in the moment. With reflection, the red flags can help the lawyer avoid problems in the future.

4. Use Red Flags and Correctives to Assist in the Communication with Interpreters

Prior to the interview the lawyer should identify red flags that indicate problems with the interpretation. These might include:

- Answers are not responsive to questions;
- Conversations back and forth between client and interpreter or lawyer and interpreter are not being interpreted;
- Long conversations get interpreted with short statements;
- English used by interpreter has grammatical errors or evidences a limited vocabulary;
- Interpreter is not taking notes;
- Client or lawyer is only looking at the interpreter not at each other;
- Inconsistent information is provided by the client; or
- Interpreter starts providing his own facts.

When interpretation difficulties occur, the lawyer should engage in parallel universe thinking about what is causing the difficulty. Sometimes actually

taking a break provides the client and the interpreter the opportunity to regroup and gives the lawyer the space to think about what is happening. Is the lawyer or client talking too fast or too much? Are the lawyer and client pausing? Does the interpreter have the necessary skills? Is there role confusion? Is the client's dialect interfering with communication? Is the lawyer's use of terms confusing? Has the client's lack of comfort level caused the client to pull back? Has the client or the lawyer formed a relationship with the interpreter rather than with each other?

Correctives:

- Refer back to the preparatory conversation with the client or the interpreter about role;
- Take a break. Remember that a conversation that occurs through interpretation is difficult for everyone. Federal court interpreters change every 30 minutes because they find that accuracy decreases as fatigue sets in;
- Perhaps reschedule and get a different interpreter;
- Constantly confirm your understanding by repeating what you hear and ask the client to do the same;[71]
- Ask the interpreter if they have suggestions;
- Ask the interpreter to clarify differences in what you are hearing the client say—make sure your conversation with the interpreter is interpreted if it occurs during the attorney-client interview.[72]

Conclusion

Cross-cultural interactions with clients provide endless challenges and endless rewards to the thoughtful lawyer. Building on the thoughtful writing

---

71. Clients need reassurances that we understand their story. Lawyers need reassurance that the clients understands what we are asking or telling. Explain to the client that you are doing this to ensure accurate communication.

72. For example, in one case, the interpreter interpreted the client's statement as "she was burned by a needle on the hand." In prior interpretations of the story, the client story had been that she was burned by a skewer on the arm and her affidavit included these facts. When the interpreter was asked during a break whether it was "on the hand" or "on the arm"—the interpreter explained that in her language the arm below the elbow and the hand were one word. However, given that English had two words to describe this same area, her interpretation was inaccurate.

on legal interviewing, this chapter has identified six essential practices for cross-cultural legal interactions, ending with a permeating strategy of identifying and problem-solving difficult moments in these interactions, before, during, and after they occur, to create a cycle of incremental improvement in these important meetings over time. The practices and the red flag analysis rely, ultimately, on the commitment to nonjudgment that animates all of the Habits. No strategy will protect us from the inevitable mistakes that we will all make, despite our most conscientious planning for narrative interviews, mindful listening and speaking, parallel universe thinking, and work with interpreters. Thankfully, clients are forgiving, as is Habit Four itself, fueled as it is by the redemptive dynamic of examining today's mistakes for ideas about tomorrow's improvements. In the end, Habit Four asks us to work nonjudgmentally with both our clients, and ourselves, to look thoughtfully at the tough moments, and to trust that, over time, we will develop a repertoire of sensitive responses and sophisticated practices in working with our clients from other cultures.

Appendix A

Habit Four Worksheet

Describe Red Flag Incident: Think about a client, or case personage, with whom you have interacted on a number of occasions recently. Can you identify a recurrent pattern in those interactions that you've wondered about? (For instance, the client appears bored or distracted, the client grows testy at certain points in the interview, you find yourself doing all of the talking at certain points, etc.)

I. Brainstorm parallel universes to explain the red flag.

A.	F.
B.	G.
C.	H.
D.	I.
E.	J.

II. Pause to consider culture: Is it accounted for by your parallel universes? Add more parallel universes if necessary.

III. Circle the 2 or 3 parallel universes you consider most likely to account for the red flag (being sure to include at least one which takes culture into account).

IV. Brainstorm Correctives for each universe.

	Parallel Universe 1:	Parallel Universe 2:	Parallel Universe 3:
Possible Correctives			

V. Pause to consider culture; add more correctives if necessary.

VI. Circle the two or three you will try the next time the red flag occurs (being sure to include at least one which takes culture into account).

Appendix B[73]

This appendix contains three short exercises designed to allow the participants the opportunity to play various roles in interpreted conversation. It is called a shadowing exercise and requires that the person in role as interpreter repeat what they have heard from the lawyer to the client. It is designed to give the person playing interpreter the experience of having to remember and repeat what has been said, replicating a small part of the interpreter's task in a real interpretation. There are role plays for three exercises so that each person in a group of three will get to play client, interpreter, and lawyer once.

Person A

Exercise 1—Lawyer

In this exercise, you are a lawyer explaining some rights of workers so you start the exercise. Please read the following all at once without stopping:

All workers have the right to receive pay stubs showing the pay period, the hours worked, the rate you were paid, or if piece rate, the amount of pieces and the rate per piece, any deductions, including those for taxes, FICA, and any other deductions you have authorized. It is very important that you keep your pay receipts. They can assist you in proving that you were employed and what you were paid.

* * *

73. Professor Shin Imai from Osgood Hall Law School introduced this exercise to us at an Association of American Law Schools Clinical Teachers Conference. *See also* McCaffrey, *supra* note 49, at 379.

Exercise 2—Interpreter

In this exercise, you play the role of interpreter. You will hear the statement in English (lawyer speak) and your job is to interpret it word for word while retaining meaning for a non-law trained person. You should wait for the lawyer to pause before interpreting.

* * *

Exercise 3—Lawyer

In this exercise, you are listening to a client explain her case.

Person B

Exercise 1—Interpreter

In this exercise, you play the role of interpreter. You will hear the statement in English and your job is to interpret it word for word while retaining meaning for a non-law trained person. You should wait for the lawyer to pause before interpreting.

* * *

Exercise 2—Client

In this exercise, you are a client listening to a lawyer whose statements are being interpreted.

* * *

Exercise 3—Client

Please read the following all at once—you take the lead in this exercise. Do not stop unless stopped:

I worked at the Bloomfield's Department store as a buyer in the men's department. I was being bothered by my store manager, Mr. David Bryant, almost everyday. He was mean and nasty and told me that if I did not sleep with him, he would fire me. I tried to tell my first supervisor, Susan Jones, but she told me I should just keep quiet about it and that my boss was all talk but would not fire me. I put up with his nastiness for 1 year, I developed migraines and felt lousy for almost a year, and then he fired me after all. He called me into his office and told me he had given me plenty of chances and he was giving me no more. Now I have no job. I do not know what to do.

Person C

Exercise 1—Client

In this exercise, you are a client listening to a lawyer explain the law.

Exercise 2—Lawyer

In this exercise, please read the following, pausing for the interpreter to interpret as necessary:

The EPA requires equal pay for equal work on jobs that require equal skill, effort, and responsibility, and which are performed under similar working conditions. The plaintiff must demonstrate the "equal-ness" of the two jobs by showing "substantial equality," not identicalness. Minor differences in the job tasks are viewed as de minimis if the percentage of job time on those tasks is not substantial.

Exercise 3—Interpreter

You will hear a statement in English and your job is to repeat it word for word while retaining meaning. You may interrupt the speaker if necessary.

Appendix C

INTERPRETER CONFIDENTIALITY AGREEMENT[74]

I, _____
(name of the interpreter), by my initials and signature, agree to the following:

Initials

_____ I respect and understand the importance of the attorney-client relationship and agree not to do anything that interferes with that relationship.

_____ I agree to protect and hold confidential all privileged and confidential information relating to WCL cases and clients.

_____ I will not discuss the content of the interpreted interview with anyone other than the lawyer.

_____ I will not comment publicly on the case for any reason.

_____ I will not disclose information learned during the interview to others.

I understand that, in addition to breaching the Interpreter Code of Ethics, there may be legal consequences if I break this agreement.

_____
Signature

74. This agreement is reprinted with the permission of Professor Susan Bennett of the American University Law School clinical program. The AU clinical faculty, especially Susan Bennett and Muneer Ahmad, have been leaders in the clinical community on issues involved with interpretation.