LAWYERS AS COUNSELORS: A Client-Centered Approach

Second Edition

By

David A. Binder
Professor of Law, University of California, Los Angeles

Paul Bergman
Professor of Law, University of California, Los Angeles

Susan C. Price, Ph.D.

Paul R. Tremblay
Clinical Professor of Law, Boston College

AMERICAN CASEBOOK SERIES®

THOMSON WEST

Mat #16366846
Chapter 2

MOTIVATION

1. INTRODUCTION

A hallmark of client-centered counseling is that clients are participants in the counseling process. For example, clients' roles commonly include disclosing non-legal concerns and identifying and evaluating potential solutions. However, the extent to which you achieve client participation may well depend in part on the presence or absence of the psychological factors that this chapter explores. One group of factors tends to inhibit clients' willingness to participate, while a second group of factors tends to motivate participation. This chapter offers strategies for limiting the impact of the inhibitors and expanding the impact of the motivators. Using such strategies increases the likelihood that clients will actively participate in interviewing and counseling. The chapter concludes by examining inhibitions that may arise when clients have cultural backgrounds that differ significantly from you.

2. A GENERAL DESCRIPTION OF MOTIVATION

A. THE NATURE OF HUMAN NEED

Human beings have a variety of needs. However, precise agreement about their exact nature or number is non-existent. In general, psychologists divide needs into two broad categories: (1) physical needs and (2) psychosocial needs. Physical needs are often called primary and include the need for food, shelter, sex, and the like. These needs are innate and common to all people, although the particular ways in which the

1. This chapter in no way relies on or adopts a particular theory of psychology or motivation that may be a subject of contention in the scientific community. Rather, the chapter sets forth broadly accepted ideas about human behavior.

satisfied are learned behaviors and consequently tend to show tremendous variation.

Psychosocial needs are often referred to as secondary. These needs are learned through individuals' associations or affiliations with particular societies or cultures. Included among these secondary needs are the desire for love, status, recognition, a winning basketball team, and so on. Attempts to enumerate all psychosocial needs and to arrange them in a hierarchy of importance have produced little consensus. Secondary needs vary greatly from one culture to another. In addition, they find unique organization and expression within each individual.

Although little agreement may exist as to the precise nature of psychosocial needs, there tends to be universal agreement that these needs, in combination with the primary ones, profoundly influence patterns of thought, attitude, and behavior. In general, individuals act (or refrain from acting) primarily to fulfill one or more primary or secondary needs. Thus, motivation to act exists principally when people perceive (either at a conscious or intuitive level) that their conduct will satisfy one or more of their needs.

Though these needs serve to energize and direct (motivate) human behavior, individuals may not be aware of their presence or the influence they exert. The needs are usually experienced in the form of feelings. Typically, the feelings involve some sort of longing or discomfort accompanied by a desire to find relief.3

B. CONFLICTING NEEDS

Needs of different types typically exist contemporaneously and are often in conflict. For example, assume that a client named John Bridgeport has consulted you regarding a potential divorce and bankruptcy. He is an aerospace engineer who has been unable to find employment for the past six months. His house and car are about to be foreclosed upon, and his wife is threatening to leave him because of their frequent disputes about debts. The local high school district has offered him a janitorial job on the swing shift. The job pays fairly well, but Mr. Bridgeport is in doubt as to whether or not to accept it. Though the income may indeed be sufficient to save his material possessions and his marriage, his needs for self-respect and esteem may not enable him to accept working as a janitor.

When needs are in conflict, motivation to act likely exists only when individuals feel that a course of action will satisfy one or more needs without unduly interfering with others. Thus, only when individuals perceive overall gain in terms of need satisfaction will there be sufficient motivation to act.

3. There are theories of motivation which postulate that not all behavior is motivated by a desire for relief from discomfort. See Abraham H. Maslow, Motivation and Personality 58–61 (3d ed. 1987).
As in Mr. Bridgeport's situation, some of the strongest needs that individuals experience have to do with feelings of self-esteem and self-regard. Individuals may even choose courses of action that produce little material satisfaction over those that provide greater material benefits if their perceived need for self-respect is of greater importance than whatever needs material gain might satisfy.

3. MOTIVATION IN LAWYER–CLIENT DIALOGUES

If people generally act (or refrain from acting) in order to satisfy needs, what needs might motivate clients to participate in, or withdraw from, the counseling process? Of course, clients are usually motivated to participate in interviews. After all, clients presumably seek you out because they believe that you can help them resolve their problems. However, even though clients may be generally motivated to talk with you, the interviewing and counseling process is typically fraught with motivational difficulties. Frequently, full participation is contrary to certain client needs. From a psychological perspective, clients often have psychological needs that disclosure of relevant information will undermine. For example, clients' needs to protect their self-esteem and to avoid marital stress and embarrassment may lead them to conceal that they were engaged in a romantic tryst with a paramour at the time of crucial events, even though revelation of the tryst would further the client's legal claims (for example, by showing that the client was not drinking in a bar shortly before getting behind the wheel of a car). Similarly, clients may not be motivated to share information that they perceive to be irrelevant to their legal claims.

Since psychological factors can affect the level of clients' participation in the interviewing and counseling process, it makes sense to examine common factors that may impact the effectiveness of your counseling conversations. These factors fall into one of two groups. "Interfering" or "inhibiting" factors tend to prevent clients from fully participating in counseling conversations, whereas "positive" or "facilitating" factors tend to assist full client participation. You can help


5. This is not always the case, however. A client who comes to see a lawyer about a will may be doing so simply to please a spouse. A businessperson about to enter into an agreement may want nothing more than for the lawyer simply to document the terms the parties have already agreed upon rather than to provide any counsel. In each of these situations, the client may well not be particularly motivated to participate in a full and thorough discussion.

6. These factors have been described in different ways. See RAYMOND L. GORDER, INTERVIEWING: STRATEGY, TECHNIQUES, AND TACTICS 70–95 (1998); Kahn & Cannel, supra note 4, at 45–53; Gay Gellhorn, Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews, 4 CLINICAL L. REV. 321, 344 (1997); THOMAS L. SHAPIFFER & JAMES R. ELKINS, LEGAL INTERVIEWING AND COUNSELING (3d ed. 1997).
clients to participate actively in describing and resolving their problems by minimizing inhibiting factors and maximizing motivating factors.

Taking advantage of elementary psychological principles in no way requires that you undergo psychological training or learn to develop complex profiles of each client's unique configuration of needs. Your professional task is to help clients resolve legal problems, not to provide psychological counseling. Unless you have specialized training you cannot expect to identify and remove deep psychological needs blocking clients' full participation. The process of uncovering unmet needs and conflicts is most appropriately undertaken by a trained mental health specialist. The following example illustrates the distinction between a lawyer's level of psychological understanding and that of a trained psychologist. As a lawyer, you may recognize that an unusually high degree of risk-aversion is at the root of a client's reluctance to file a lawsuit. However, only a trained psychologist is capable of delving into the reasons why your client is so abnormally risk-averse, and to help the client become more willing to take reasonable risks.

4. INHIBITORS

The seven inhibitors that this section describes are common in lawyer-client dialogues. While other phenomena may also inhibit active client participation, these seven operate across a wide range of client personality types. Though the discussion treats each inhibitor as a separate phenomenon, in practice each often intertwines with others.

Of the seven inhibitors, the first two—ego threat and case threat—probably play the most pervasive role in blocking full communication.

A. EGO THREAT

Clients tend to withhold information that they perceive as threatening to their self-esteem. The requested information may relate either to past or anticipated behavior, and the feelings that a question may arouse can range from mild embarrassment to a strong sense of guilt or shame. If clients believe that a truthful response will lead you to evaluate them negatively, such a response threatens their self-esteem; the response is "ego threatening." Rather than risk your negative evaluation, clients may answer falsely or evasively, or become reluctant to participate in that part of the conversation.

Consider two examples of how "ego threat" may arise during an interview. First, assume that you are consulted by Al, an experienced businessman. Al claims that he was fraudulently induced to invest in a large real estate venture. Despite his business experience, Al had ne-

7. Certainly, this book's brief discussion does not provide you with the training to uncover and resolve an individual's deep psychological needs and conflicts. However, some authors believe lawyers can be trained to engage in a fair degree of psychosocial analysis. See Andrew S. Watson, THE LAWYER IN THE INTERVIEWING AND COUNSELLING PROCESS 153-54 (1978).
8. Chapter 21 discusses techniques for referring clients to mental health professionals.
neglected to make even a cursory investigation of the venture before parting with his money. He had simply relied upon the smooth talk of the scam artist who presented him with "the deal." When you inquire about Al's knowledge of the venture at the time the investment was made, Al is reluctant to admit that he knew nothing. He believes that he was stupid and naïve. Additionally, he is afraid that you will think him stupid and a poor businessman if he admits to knowing nothing about the venture before investing. The "ego threat" posed by your inquiry thereby inhibits Al's full and open disclosure of the events leading up to his making the investment.

Next, assume that you have asked your client Barbara about what she sees as the advantages of proceeding to trial. Barbara may be reluctant to reveal that in her mind a major advantage of proceeding to trial is that it will cause the adversary great financial and emotional discomfort. Barbara is ashamed to admit that revenge is a principal motive. She believes that revealing her true motive will lead you to view her behavior as unconscionable.9

Countering the potential effects of "ego threat" depends in part on establishing an atmosphere of trust and confidence in the attorney-client relationship. For example, clients may reveal portions of ego-threatening information to gauge your reactions. By remaining non-judgmental, you may encourage clients to reveal further information. Another strategy that you can sometimes use is to mention ego-threatening information yourself. For example, you might say to Al something along these lines: "Even experienced and quite astute businesspeople can get involved in deals without checking them out adequately." Opening up the subject yourself may make it easier for Al to provide information he would have otherwise tried to conceal.

B. CASE THREAT

A second major factor tending to inhibit client communication is "case threat." As the term suggests, "case threat" may arise when clients believe that revealing information will hurt their case. For example, Susan may not want to reveal to you that she was near the scene of a crime because she fears that if the judge and jurors were to find out she will be convicted even though she is not guilty. Alternatively, Susan may fear that revealing the information will cause you to believe that the case is a loser and therefore fail to pursue it zealously.10 In either event, "case threat" is present. Similarly, assume that in a civil matter you ask Ernesto about the whereabouts of a business document.

9. Which, depending on her degree of her vindictiveness, very well may be true. The powerful truth about ego threat is that it is often grounded in reliable predictions about the perceptions and opinions of others. GORDEN, supra note 6, at 72-73.

10. In such situations, ego threat may be present as well. If the client believes that revealing that she was at the scene of the crime will cause the lawyer to disbelieve her claim of innocence, the potential loss of self-esteem may well inhibit a truthful response.
If Ernesto fears that information on the document contains damaging information, case threat may lead him not to reveal its whereabouts.

"Case threat" may also inhibit clients who have transactional matters. Assume that Jean consults you in connection with a proposal to lease space in an office building. During a conversation about negotiation strategy, you inquire about the maximum length lease that Jean will accept. Jean is willing to accept a ten year lease, but she hopes the owner will agree to a five year term. Jean may be unwilling to reveal her willingness to accept a ten year deal, fearing that once you know her "bottom line," you will not press as hard as you otherwise might for a shorter lease term.

Overcoming the "case threat" inhibitor typically involves helping clients to understand that sharing all information is generally in their best interests, regardless of whether the information is helpful or harmful. One potential strategy is to suggest that information that clients perceive as harmful often turns out to be helpful. (A "war story" drawn from your experience can be a helpful way of making the abstract principle more concrete and vivid.) A second strategy is to advise clients that the earlier you know about harmful information, the better prepared you will be to counter it if and when your adversary seeks to capitalize on it.

C. ROLE EXPECTATIONS

Role expectations often affect communication between lawyers and clients. Most of us have sets of beliefs about what kind of behavior is appropriate within the confines of particular roles and relationships. For example, most people think that there are certain ways that one should (or should not) behave when interacting with parents. Similarly, most people have beliefs about how employers should relate to employees. We may each have different sets of beliefs regarding proper behavior, but most of us do approach many relationships with preset viewpoints on what constitutes correct conduct in given relationships.

Beliefs about what constitutes proper behavior are "expectations." Since the expectations under discussion here pertain to what people

11. Contemporaneously reminding the client of your general duty of confidentiality can be helpful in this regard. For a more complete discussion of what you may say to clients regarding confidentiality, see Chapter 5.

12. For a powerful example of how one's assigned role can direct one's actions, see George Orwell, Shooting an Elephant and Other Essays 3-12 (1946). In this true account, Orwell, serving as a British police officer in Lower Burma, describes his killing an elephant which had escaped from its chains. By Orwell's account, no good reason existed to kill the elephant, but the eyes of the Burmese peasants, and his understanding of how a British officer was expected to act, led inevitably to his shooting the animal.

believe constitutes proper behavior in a particular relationship, the entire phenomenon may be labeled "role expectations." The effect of role expectations is that when people have preset expectations about others with whom they interact, those beliefs may (if only unconsciously) come into play and cause people to modify their behavior to conform to the beliefs.

Our role expectations are shaped by our life experiences, both actual and vicarious. For example, from our actual experiences of going to school, most of us develop patterns of how to interact with teachers. In addition, family, friends, associates, news media, popular culture and the like constantly deliver messages about what constitutes appropriate behavior. For instance, probably few of us have met England’s reigning monarch, but we probably have a good idea of how we should behave should our paths cross.

In most relationships, one person assumes a position of authority or leadership over the other. Therefore, when people initially enter into a particular relationship, they often expect to be in either a dominant or subordinate position. If one is a parent one expects to dominate; if one is a child, one expects to be dominated. Teachers often see their students as occupying subordinate roles. Again, these beliefs develop unconsciously from years of cultural infusion. Undoubtedly, people might be better off if they saw more relationships as involving shared responsibility, but the fact is that frequently they do not. Rather, they tend to see relationships in terms of dominant and subordinate positions.

The "role expectations" phenomenon means that clients will frequently enter your law office with a set of expectations about what constitutes appropriate "client behavior." For some clients, those expectations will be that lawyers occupy positions of authority. Such clients may be somewhat reluctant to communicate fully in the belief that you know what subjects are deserving of inquiry. Thus, if you fail to broach a topic that a client feels is important, the client may assume (again, either consciously or intuitively) that the topic is not a significant one. Similarly, such clients may think it outside their role to suggest potential solutions to their problems.

Strategies that might motivate such clients to participate more actively center on persuading them that you genuinely desire their input and that it is an important part of the counseling process. For example, if you sense that a client's role conception is likely to inhibit communication, you might include a message along these lines in a "preparatory explanation."


15. See Chapter 5 for a discussion of preparatory explanations.
Interestingly, many clients have an opposite set of beliefs. This second group of clients tends to believe that a lawyer’s role is limited to carrying out their wishes and that it is their privilege to speak their minds about any and all topics. In short, these clients see themselves in a dominant position vis a vis legal counsel, and they are often not interested in fully responding to inquiries they perceive as unimportant. For example, many corporate and business clients tend to want to dominate their lawyers.  

Strategies for motivating “dominators” to participate generally center on convincing them of the importance of the information you seek. For example, perhaps a client brushes aside your inquiries for more information about what took place during a particular meeting based on the client’s belief that she has already told you everything of importance. When you sense this to be the situation you might tell the client something like, “Marie, I want to be sure that we don’t run into any surprises down the line. Since this meeting was an important one, I appreciate your telling me everything else you can recall that occurred at the meeting.” Of course, the content of your message will necessarily vary depending on what subject a particular “dominator” deems consequential.

D. ETIQUETTE BARRIER

A fourth inhibitor is the “etiquette barrier.” ¹⁷ Often, individuals have information that they will freely provide to persons in a similar peer group but not to “outsiders.” For example, women may discuss topics with other women that they will be reluctant to discuss with men. Similarly, students may discuss some subjects with each other students but not generally with teachers or parents. The same phenomenon may affect communication among ethnic groups; for instance, Hispanics may discuss topics with other Hispanics that they’d be reluctant to discuss with Caucasians, African-Americans or other non-Hispanics. The etiquette barrier arises from our desire not to shock, embarrass, offend or discomfort others. It reflects our thinking about the effect of information on listeners, rather than concerns about how listeners will view us. Hence, loss of self-esteem is not a component of the etiquette barrier.

For example, assume that your client seeks recompense for injuries suffered in an automobile accident. You and the client are of different genders. You suspect from the nature of the injuries that they have probably caused your client to experience sexual dysfunction, but the client has said nothing about such problems in response to your questions about the impact of the injuries. The culprit might be the etiquette


17. The term is borrowed from Raymond L. Gorden. See Gorden supra note 6, at 76–78.
barrier; the client might be more willing to talk about sexual dysfunction with a person of the same gender.

When you sense that the etiquette barrier may be inhibiting clients’ participation in the counseling process, one strategy you may employ is to mention the importance of disclosure to your ability to help clients arrive at satisfactory outcomes. Another strategy, most notably employed by the “Kinsey Report” researchers, is for you to broach the uncomfortable topic. For example, you might have said to the client above that “Based on what I know about these types of injuries, I expect that you may be experiencing sexual dysfunction along with your other problems. That’s nothing to be embarrassed about, and it’s important to include that in our planning. What can you tell me about the sexual problems you may be experiencing?” When appropriate and a colleague is available, another possibility is to ask a client’s permission to include another individual with whom a client may be more comfortable in the discussion. In the above matter, for example, you might suggest that the client might be more comfortable were another lawyer or paralegal in your office who is of the client’s gender to sit in on at least the part of the discussion that is causing discomfort.

E. TRAUMA

This phenomenon occurs when you ask clients to recall experiences that evoke unpleasant feelings. Many events (especially those that clients relate to lawyers) cause people to experience negative feelings such as fear, anger, humiliation, and sadness. When you ask clients to recall such events, they may re-experience the negative feelings. Consequently, clients may avoid thinking and talking about the unpleasant events that give rise to those feelings. For example, a parent asked about a severe injury to a child may be reluctant to talk about the incident in an effort to avoid re-experiencing the anger, frustration, and sadness that the incident caused. Likewise, an estate planning client who is considering disinheriting a close relative may for similar reasons be reluctant to talk about the reasons for wanting to disinherit the relative.

When you sense that avoidance of traumatic events may be a source of client reluctance to participate, one strategy is to stress the importance of information to a satisfactory outcome. Another possibility is to postpone discussion of painful events, at least when those events are not so central that a meaningful discussion cannot otherwise take place. Finally, a third strategy is to ask clients to consider that discussion of traumatic events may be cathartic. However, recognize that overcoming

19. An important caveat about your responses to clients who have experienced tragedy and trauma: Not all persons who suffer terrible misfortune wish to avoid talking about it. Quite the contrary—many, and perhaps most, victims of catastrophes benefit and heal by talking to others about their experience, and the more sympathetic ears, the better. See, e.g., John A. Uplegger & Shelley E. Taylor, From Vulnerability to Growth: Positive and Negative Effects of Stressful Life Events, in LOSS AND TRAUMA: GENERAL AND CLOSE RELATIONSHIP PERSPECTIVES 3, 12 (John H. Harvey & Eric D. Miller eds.,
trauma may be outside your ability. For example, in extreme cases involving severe trauma, symptoms of post-traumatic stress disorder may leave people with no active memory of the traumatic events. Thus, you may need to consider referring severely-affected clients to a mental health professional.

F. PERCEIVED IRRELEVANCY

This inhibitor is often difficult to recognize, as clients may not signal feelings of discomfort or threat. The attitude involved here is a client’s feeling that there exists “no good reason to provide that information.” Clients who feel that they have nothing to gain by providing information may be reluctant to provide it.

An interview of a parent accused of child abuse provides an illustration. Although many factors may be present in any abusive situation, parents who maltreat their children often suffer from depression and tend to be individuals who have significant emotional problems of their own and/or were abused or neglected themselves as children. If you represent a parent accused of child abuse, therefore, you may wish to uncover information about the nature and extent of the client’s social contacts, emotional state and personal history. However, to a parent accused of child abuse, questions about the general nature of the parent’s social activities, well-being and childhood are quite likely to seem irrelevant, if not frivolous. The questions are seemingly not relevant to the relationship between the parent and the child. As a consequence, the client may feel little motivation to provide a detailed response.

“Perceived irrelevancy” is just as likely to arise in transactional contexts. Assume that you represent a partnership that has asked you to negotiate the purchase of a building. You may ask the partners for information about why the owner wants to sell, so that in problem-solving fashion you can structure the deal in such a way that it meets both your clients’ and the seller’s needs. But the clients, perhaps seeing little importance in exploring the seller’s needs, may provide only perfunctory information.

A straightforward strategy you can use when you perceive this phenomenon at work is to point out the reasons for your inquiries. For example, you might tell the partners in the instance above that knowing


See Diagnostic and Statistical Manual § IV (4th Revised ed. 2000).

See Chapter 21.


something about the seller’s needs can help you negotiate the sale while
saving time—and the partnership’s money. However, such a strategy can
give rise to ethical concerns. Your explanations may well signal to clients
your desired answers. For example, your disclosure to the alleged child
abuser that you want to know about his background so that you can
establish that he was not abused may cause the client to withhold
information. On the other hand, simply asking this client to tell you
about how his parents treated him may engender responses such as
“How I was raised? What does that have to do with anything?” Your
sometimes difficult task is to provide enough information to allow clients
to understand the relevance of your inquiries, but not such specific
information that you unduly influence clients’ stories.

G. GREATER NEED

The last of the common inhibitors is “greater need.” This situation
arises from clients’ needs or desires to talk about subjects other than the
one that is of immediate interest to you.24 As a consequence, clients do
not concentrate on your questions, and full and accurate information is
not forthcoming. For example, an incarcerated defendant concerned
primarily with bail or “own recognizance” release will often be unable to
turn full attention to questions relating to the underlying charge. Simi-
larly, a tenant threatened with eviction may be more concerned with
when and where he can move than with inquiries related to a potential
“habitability defense.”

In such situations, your questions are not perceived as irrelevant or
threatening. Rather, clients are simply concerned with subjects that
while perhaps secondary to you are primary to them.

One strategy for overcoming this phenomenon is simply to antici-
pate clients’ likely needs and invite clients to talk about them before
addressing topics of greater concern to you. For example, your statement
to the tenant might go something like this: “I’ll want to ask you some
questions about the conditions in your apartment, because they pertain
to a legal rule that we lawyers call ‘habitability.’ But first you may want
to talk about problems that the eviction process itself is causing you and
your family. Anything you’d like to talk about before we get into
habitability?” If you are uncertain about why clients seem distracted,
you might ask for explanations: “I’ve asked you some questions about
the conditions in the apartment, but my sense is that you might have
other concerns that at the moment are more important. Anything you
want to go over with me now? We can talk about conditions in the
apartment some other time if necessary.”25

24. Sometimes the phenomenon is pre-
 sent in the form of the interviewee wishing
to do anything other than talk. A potential
witness busy with his or her work is an
obvious example. For a discussion of com-
 peting time demands, see Gorden, supra
note 6, at 117–18.

25. Delaying inquiries in the service of
clients’ greater needs may not always be
sensible. For instance, if you need informa-
tion in order to prepare a pleading that you
must file by the end of the day, you may
need to pursue that information immediate-
dy despite the client’s perceived greater
5. FACILITATORS

The five facilitators described below encourage clients to participate fully in counseling dialogues. This section describes the facilitators and offers illustrations of how to employ them effectively. You may choose to employ facilitators without waiting for client reluctance to rear its annoying head. That is, you can incorporate facilitators into all counseling conversations as part of your routine style, whether clients are enthusiastic or reluctant participants.

A. EMPATHIC UNDERSTANDING

Empathic understanding may arouse in clients feelings of trust and confidence and thereby motivates clients to participate fully in conversations. Empathy probably cannot be defined or precisely described. Perhaps the following comments by Carl Rogers give some sense of what empathy involves:

Empathy in its most fundamental sense ... involves understanding the experiences, behaviors, and feelings of others as they experience them. It means that [lawyers] must, to the best of their abilities, put aside their own biases, prejudices, and points of view in order to understand as clearly as possible the points of view of their clients. It means entering into the experience of clients in order to develop a feeling for their inner world and how they view both this inner world and the world of people and events around them.

People have limited opportunities in our society to express their thoughts and feelings to someone who is willing to (1) listen, (2) understand, and (3) at the same time, not judge. People on the receiving end of a communication are often too busy to really listen, and too interested in their own ideas to avoid responses that include their own "two cents." The "two cents" can appear in a variety of forms, including:

(a) Advice on how to handle the situation: "Don't worry. You'll feel less angry as time goes on."

(b) Analysis of why the feelings have arisen: "You probably feel angry because you feel you should have seen through that smoke screen."

Providing advice or analysis, even if done with a genuine desire to be of help, ironically tends to give individuals little impetus to delve further into a subject. There is little point in expressing your ideas and feelings need to talk about something else. In such a situation, an empathic response that acknowledges clients' desires may be appropriate: "I understand that you're anxious to talk about how this has affected your working conditions, and we will certainly talk about that. But we need to file a written response with the court by this afternoon, so for the moment I need to ask you about ..."

27. Gerald Egian, The Skilled Helper 87 (3rd ed. 1986). In general see also Davis, supra note 26, at 7-12.
if all you get in return is lay psychoanalysis or advice on how to change or ignore your feelings.

However, in the presence of someone who exhibits non-judgmental understanding—a listener who provides empathic responses—people often are strongly motivated to continue communicating. Almost without realizing it, people tend to provide an ever-increasing amount of information. Precisely why non-judgmental understanding results in increased inducement to communicate is not known.28 However, many experts in the field of psychology have stressed the fact that it does have this self-propelling effect.29

The opportunities for you to utilize empathic understanding are endless. Clients almost always are emotionally involved in their problems, and thus repeatedly express feelings about what has occurred or is likely to occur. Their recitals of information are likely to be accompanied by and intertwined with feelings about such diverse matters as: (1) how they felt at the time an event occurred; (2) how they feel about people or institutions involved in their problem; (3) why events have unfolded, and why people have behaved as they have; (4) how they feel about an event at present; and (5) how they feel about what is likely to happen in the future. Consider these examples:

(a) “When the policeman told me she was dead, I was stunned. The week before, she told me she had made out a new will, but I didn’t attach any significance to it. And now those vicious people want to contest the will; they are the ones that must be crazy.”

(b) “Now I have to decide whether to accept the $35,000. If I don’t accept it, I may regret my decision for a long time. On the other hand, if I don’t go to trial I may always wonder if I could have gotten a lot more.”

(c) “My partner and I couldn’t believe it when we heard the building was for sale. We had been looking for a site in that area for years.”

As Chapter 3’s exploration of “active listening” explains in more detail, you can provide empathic understanding by acknowledging the feelings attached to factual descriptions such as these. So doing will enable you to receive information that clients might not otherwise disclose, develop clients’ trust, and encourage clients to participate actively in the solutions to their problems. For example, in response to the statements above, your empathic replies might go as follows:

(a) “You can’t understand how people can be so cruel.”

(b) “You feel torn about which way to go here.”

(c) “The two of you must have been on Cloud 9.”

28. Cf. Goodman, supra note 26, at 51: “When it comes to professionals ... There’s some debate about how reflections help healing or when they heal, and how often to employ them, but it’s unusual to find a practitioner who doesn’t use them at all.” See also Michael P. Nichols, The Lost Art of Listening Chp. 7 (1996).

B. FULFILLING EXPECTATIONS

The phenomenon of “fulfilling expectations” refers to people’s tendencies to want to satisfy the perceived expectations of those with whom they interact. As described by a leading psychologist,

One of the important forces in social interaction is the tendency for one person to communicate, verbally and nonverbally, his expectations to another person. The second person then tends to respond, consciously or unconsciously, to those expectations. This may be viewed as one manifestation of the more general human tendency to conform to the group of peers and to the suggestion of higher status persons in the society.30

Thus, you can motivate clients to participate actively by communicating (through verbal or nonverbal means) your expectation that they will do so.

For example, you may verbally communicate your expectations simply by telling clients at the outset of representation that you anticipate that they will tell you everything that concerns them with respect to their problems, regardless of whether they think it has legal significance. You might also explicitly encourage them to put forward ideas of their own, because in your experience clients often contribute to satisfactory resolutions of problems. You might repeat such expectations from time to time as matters progress, particularly when you sense that clients are reluctant to address particular topics.

“Silence” is a common non-verbal strategy you may use to convey expectations. For example, remaining silent after clients have spoken conveys your expectation that they will continue to talk about the same topic. A non-verbal strategy you might use to convey expectation when clients appear reluctant to speak is to lean forward and raise your eyebrows, thus conveying an expectant look.

The strategy of “fulfilling expectations” is one that you can also use to press clients to overcome memory difficulties. For example, assume that a client has indicated that she is having difficulty recalling what occurred at a meeting held two years earlier. You may respond by conveying your expectation that by probing her memory further, the client will be able to recollect more information:

“I understand how hard it is to recall; I’ve often had that difficulty myself. Often I find, however, that if I visualize myself back in the setting I am trying to recall, things start to come back. Why don’t you take a moment and try to picture yourself sitting at the meeting, and then let’s see what you can recall.”

30. GORDEN, supra note 6, at 84.
Your statement employs two facilitators. First, you empathize with the client’s difficulty. Also, you tell the client that you expect the visualization exercise to help her recall additional information.

Empathizing with clients’ memory difficulties may lead you inadvertently to convey negative expectations. For example, assume that in the example above you had said:

“I understand that it is difficult to remember the details of an event that happened so long ago.”

Here, you again empathize with the client’s inability to remember. Standing alone, however, the empathic response may convey an implicit message that “I don’t expect you to be able to recall any more than you’ve already been able to.” Thus, the more effective response to memory difficulties is to convey both empathy and a positive expectation of additional information.

C. RECOGNITION

Human beings often need attention and recognition from people outside their close circle of family and friends. They enjoy feeling important and seek the attention and esteem of outsiders. As a lawyer, you are likely to be an “outsider” whose statements providing “recognition” may motivate clients to be cooperative and open.31

You may supply “recognition” simply by sincerely praising clients’ cooperation or help: “Your giving me that information is very helpful.” “That was very important information you just gave me.” “You’re really doing a great job of getting the other employees to find the documents we need.”

D. ALTRUIISTIC APPEALS

People often need to identify with a “higher value” or cause that is beyond their immediate self-interest. This need may be a form of identification with the objectives of a large social group. Individuals’ performance of altruistic deeds usually increases their self-esteem. Thus, you may motivate clients to participate actively in counseling conversations by suggesting that topics have a significance beyond the clients’ immediate personal circumstances.32 For example to motivate a client to try to recall more information, you might ask the client whether “another advantage of pursuing the sexual harassment claim would be protecting the jobs of others who work in that department?” Similarly, you may tell a client who is planning to build a new shopping center that “almost the best part of this is the jobs you’ll be providing and the car trips you’ll be saving the people who live and work in that area.”

32. Altruism is distinct from recognition, since a person may feel altruistic even if his or her actions never become public knowledge. See Gordon, supra note 6, at 87-88.
E. EXTRINSIC REWARD

You are undoubtedly aware from everyday experience that people tend to act in their self-interest. Thus, you can often motivate clients to participate actively by pointing out how disclosure of information is likely to help them achieve more satisfactory outcomes.23

For example, clients who want you to draft estate planning documents may nevertheless be reluctant to provide information about their financial situation. Hence, you may facilitate cooperation by making a statement along the following lines before beginning to explore that topic: “Mr. Bonds, next let’s talk about your general financial situation. Now, I don’t need chapter and verse at this point about specific bank accounts or investments. But if we can go through them generally, we can talk intelligently about whether we need to draft the trust in such a way as to minimize taxes, assuming that’s something you’d like to do.”

6. SUMMARY

The book refers to the common inhibitors and facilitators described above frequently. Thus, you may want to refer back to the summary list below as you read through other chapters.

<table>
<thead>
<tr>
<th>INHIBITORS</th>
<th>FACILITATORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ego Threat</td>
<td>Empathic Understanding</td>
</tr>
<tr>
<td>Case Threat</td>
<td>Fulfilling Expectations</td>
</tr>
<tr>
<td>Role Expectations</td>
<td>Recognition</td>
</tr>
<tr>
<td>Etiquette Barrier</td>
<td>Altruistic Appeals</td>
</tr>
<tr>
<td>Trauma</td>
<td>Extrinsic Reward</td>
</tr>
<tr>
<td>Perceived Irrelevancy</td>
<td></td>
</tr>
<tr>
<td>Greater Need</td>
<td></td>
</tr>
</tbody>
</table>

7. PERSONALITY CONFLICTS

This chapter has explored a number of psychological phenomena without mentioning a factor that all of us recognize as important to the interaction of any two people—their personalities. As the common phrase “we just hit it off” connotes, all of us are more comfortable with some people than we are with others. Thus, personality conflicts can potentially influence clients’ willingness to participate actively in counseling conversations. If clients for whatever reason perceive you as someone with whom they are not comfortable, or someone who is too aggressive or too passive to handle a matter effectively, they are likely to be reluctant to participate fully. By the same token, if you perceive clients as too aggressive, passive, unscrupulous, or disorganized, your perceptions may inhibit your interactions.

Luckily for most of us, an ideal personality type necessary to be an effective attorney does not exist. Whatever your personality, you can practice law effectively and competently. Moreover, what may be a

23. This approach has been called “persuasive framing” since it motivates individuals to participate more fully by explaining why participation is in their best interests. See Jay Conger, The Necessary Art of Persuasion, 76 Harv. Bus. Rev. 84-96 (1998).
pleasing personality to one client may be abrasive to another. With self-examination and specialized training, you may develop greater awareness of how clients are likely to perceive you. However, intensive training is not readily available to most law students and lawyers. Moreover, no amount of personality restructuring or self-awareness will enable you or any other lawyer to work effectively with every client.

Nevertheless, even in the absence of specialized training, you can interact more successfully with most clients by learning to relate to them in an open and supportive manner. Whatever your individual personality, you can undoubtedly employ the elementary facilitators described above. By combining these facilitators with the skills described in subsequent chapters, you can develop the sensitivity and ability necessary to maintain satisfactory rapport with most clients.

8. MOTIVATION IN INTER-CULTURAL CONTEXTS

The United States is increasingly a multi-ethnic society. In contrast to the older image of the country as a “melting pot” in which people of different backgrounds shed their differences and became “just plain Americans,” a newer image envisions the country as a “stew” in which members of ethnic subcultures often retain at least aspects of cultural distinctiveness. That is, clients’ values, understandings, attitudes and traditions may reflect distinct subcultures with which the clients identify.

The presence of cultural diversity means that it is likely that many of your clients will have their roots in cultural backgrounds that differ from yours. Although most of us interact regularly and successfully with individuals whose cultural backgrounds are different from our own, cultural differences do have the potential to inhibit clients’ participation in interviewing and counseling conversations. For example, clients’ cultural traditions may inhibit participation by leaving them uncertain about how open they should be when counseling they are asked to express their concerns. This section examines common dimensions of inter-cultural differences that might inhibit active client participation in the interviewing and counseling process, and offers suggestions for how you might respond should you believe that such differences are inhibiting clients’ participation.

A. THE RISK OF STEREOTYPING

An undeniable aspect of the dominant American culture historically has been a tendency to stereotype members of ethnic minority groups...
according to presumed attitudes and behaviors. "Lawyer literature" sometimes reflects this history. Most Americans these days explicitly eschew stereotypical thinking. However, even seemingly benevolent efforts to overcome inter-cultural differences can easily resurrect the stereotypes of bygone days. The reason is that in an effort to develop rapport and empathy with clients whose cultural backgrounds differ from yours, you may make two types of assumptions. One assumption concerns the values and practices associated with a particular cultural heritage. The second assumption is that clients who come from a particular cultural heritage share the values and engage in the practices associated with their culture. Of course, either of your assumptions may be wrong. That is, your knowledge of a culture's values and practices may be faulty. And any two people from the same cultural background may well have divergent levels of understanding, values, and concerns. Another way of saying this is that "communication always takes place between individuals, not cultures."

For example, assume that you are a New York lawyer and that you are about to meet a client who hails from North Carolina. A sophisticated consumer of material on cultural difference, your image of North Carolinians is that they "are very religious; they have developed fierce loyalties to family, their land and church." However, even if the stereotype is generally accurate, it may not apply to your client. Thus, were you to try to develop empathy with the client and motivate the client to participate actively by, for instance, sprinkling the conversation with religious references, you might well end up creating a barrier to full communication if your client is not like the "typical" North Carolinian.

Thus, broad assertions regarding cultural differences are at best tentative. Cultural patterns constantly evolve, especially as countries' populations increasingly consist of people from different cultural back-

35. See, for example, Joseph Kelner and Francis E. McGovern, Successful Litigation Techniques Student Edition Edition 10–10 (1981). ("German, Irish, Swedish and Norwegian jurors are supposed to be conservative, less emotional and hence pro-defendant in their sympathies.")

36. See, e.g., Jack Scarbrough, The Origins of Cultural Differences and Their Impact on Management 255 (1998) ("[K]eep in mind the need to avoid stereotyping, the mistake of assuming that every Indian, Filipino, Arab or German we meet conforms to the profiles described in preceding chapters."). Alex J. Hurder, The Pursuit of Justice: New Directions in Scholarship About the Practice of Law, 52 J. Law, Econ. 167, 173 (2002) (referring to the danger that learning general information about communities will produce stereotypical assumptions about individuals).

37. One common reason is that what looks from a distance to be a single culture may be in reality a number of sub-cultures with divergent values and practices.

38. See Scarbrough, supra note 36, at 6. ("Any individual, regardless of cultural origin, can fall anywhere on any [cultural] continuum."). It is especially likely for two people from the same non-United States culture to have diverse values if one person has been in this country significantly longer than the other person.


grounds. Moreover, any single culture reflects a continuum of values; core values in essence lie at the mean of a normal distribution of the population of a particular culture. Finally, people vary markedly in the extent to which their values and behavior reflect those of the culture to which they belong.

B. DIMENSIONS OF POTENTIAL CULTURAL DIFFERENCES

If you cannot assume that cultures are stable and that clients' values and practices are consistent with their cultural backgrounds, neither can you be oblivious to the potential for inter-cultural differences to affect clients' thinking and behavior. A sensible middle ground approach is to combine the information that you learn about clients through the interviewing and counseling process with awareness of common dimensions of cultural difference. Your awareness of the ways in which values may differ from one culture to another can sensitize you to possible explanations for clients' lack of active participation in interviewing and counseling conversations. When cultural differences do inhibit clients' participation, use of the strategies described in the next subsection may help you motivate clients to participate more fully. However, to begin thinking about the dimensions of culture that may inhibit clients' participation in the counseling process, consider the following cultural dimensions identified by a prominent cultural researcher, Geert Hofstede. Hofstede's dimensions provide you with a heuristic for thinking about culture differences without requiring that you attribute cultural attitudes or practices to people from specific ethnic, religious or national origins.

"Uncertainty Avoidance" is one dimension that may vary from one culture to another. This dimension refers to people's tolerance of unpredictability. People from high-uncertainty avoidance cultures prefer formal rules and structured situations. They may also have higher levels

41. See for example, Chulwoo Lee, 'Us' and 'Them' In Korean Law, in EAST ASIAN LAW: UNIVERSAL NORMS AND LOCAL CULTURES, (Arthur Rose, Lucie Cheng & Margaret Y.K. Woo eds., 2003). Similarly, racial categories are increasingly indeterminate. For a personal account of the impact of traditional social categories about race on multi-racial individuals, see Judy Scales-Trent, NOTES OF A WHITE BLACK WOMAN (2003).

42. See Fons Trompenaars, RIDING THE WAVES OF CULTURE: UNDERSTANDING DIVERSITY IN GLOBAL BUSINESS (2d ed. 1998).


44. See GEERT HOFSTEDE, CULTURE'S CONSEQUENCES: COMPARING VALUES, BEHAVIORS, INSTITUTIONS AND ORGANIZATIONS ACROSS NATIONS (2d ed. 2001). These works by Hofstede have set the agenda for much of the current research into cultural differences. See for example, Eckhardt, supra note 43.

of anxiety and engage in behavior that may seem compulsive. By comparison, people from low-uncertainty avoidance cultures are more flexible and comfortable in situations in which bright line rules don't exist. 46

"Power Distance" is a second dimension of cultural difference. This dimension refers to people's willingness to accept unequal distribution of power. People from large-power distance cultures tend to be obedient; they feel dependent on authority figures and generally accept their rules. These people tend to believe that those in authority have earned their positions, either by superior expertise or birth. People from low-power distance cultures, by contrast, tend to expect to have more control over their lives and to be included in decision-making. 47

"Individualism/Collectivism," a third dimension of cultural difference, refers to people's preference to work alone or as a part of groups. Individualists tend to view life as a competitive zero-sum game, and generally seek to maximize their wealth. Collectivists however feel more loyalty to group than to personal interests, and may sacrifice their own interests for the good of others. 48

"Masculinity/Femininity" is a dimension that refers to the relative importance in a culture of traits generally associated with masculinity and femininity. People from masculine cultures tend to prefer well-defined gender roles, place primary value on work done outside the home, to be task oriented, and competitive and aggressive. People from feminine cultures tend to favor interchangeable gender roles, prefer to settle conflicts through negotiation and compromise, and value teamwork and relationships. 49

"Long Term/Short Term Orientation" is a fifth dimension of cultural difference. People from long term cultures tend to be less attentive to time considerations and to emphasize tradition. They are also more likely to adopt long-term goals, sacrificing immediate benefits in order to build strength in the future. People from short term cultures are more likely to try to make every moment productive; they are punctual, less interested in relationship-building and tend to insist on immediate returns on investments. 50

"High Context/High Content Communication" is a sixth dimension of cultural difference. People from high content cultures tend to draw meaning from the contents of communications. They are comfortable with written communications, the accuracy of which is crucial for understanding. People from high context cultures tend to draw meaning from unspoken cues such as facial expression and posture. People from these cultures may see precise verbiage as insulting or condescending,

46. See SCARBOROUGH, supra note 35, at 10.
47. Id. at 9.
48. Id. at 7.
49. Id. at 11.
50. Id. at 7.
and they prefer to communicate face to face so that the entire context can be understood.\footnote{51}

Differences between you and clients with respect to these dimensions can become important in a variety of counseling contexts. For example:

- A client's attitude with respect to what constitutes a satisfactory outcome may differ from yours. For instance, perhaps you have a short term orientation and a client has a long term orientation. If so, you may consider a lawsuit as the best method to force a manufacturer to compensate your client, a wholesaler, for losses your client incurred as a result of receiving damaged goods. However, the client may be hesitant to sue, in view of the negative impact of a lawsuit on future dealings between the client and the manufacturer.\footnote{52}

- A client's understanding of language may differ from yours. For instance, if a client's cultural background has conditioned the client to rely heavily on the non-verbal context in which words are used, the client's understanding of the terms of a written agreement may differ from yours. Or a client's having been raised and educated in a different society from yours may prevent a client from understanding common terms such as "corporation," "internet," "web page," or "SEC."

- A client's attitude with respect to appropriate problem-solving processes may differ from yours. For instance, a client who is culturally conditioned to prefer structured situations may not be comfortable negotiating a deal until familiar rituals have been observed.

Part of successfully overcoming problems such as these may be due to inter-cultural differences is understanding your own core values.\footnote{53} Reminding you of the earlier proviso about the difficulty inherent in identifying broad cultural characteristics and in particular the dangers of stereotyping, consider core values that have been linked to the United States as well as to other countries or ethnic groups.\footnote{54} The outline of values below again reflects Hofstede's work.\footnote{55}

\footnote{51} Id. at 8.

\footnote{52} See Chapter 18 for further discussion of responding to value conflicts during the decision-making process.


\footnote{54} Your values may differ from those generally ascribed to people from your cultural background. If so, that will help you appreciate the need to avoid stereotyping individual clients according to the ascribed values of the cultures from which they come.

\footnote{55} Geert Hofstede, Cultural Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations, (2d ed. 2001); Cultural Differences in Teaching and Learning, 10 INTERNATIONAL JOURNAL OF INTERCULTURAL RELATIONS 301-319 (1986). Not all cultural researchers necessarily agree that cultures can be seen along these dimensions. For example, some researchers argue that difficulties in sampling undermine the accuracy of Hofstede's approach. See e.g. Robert Bonetempo, Blindfolded: Culture Is Not a Useful Independent Variable (Paper presented at a meeting of the Academy of Management, Atlanta, Ga. 1993). Other scholars argue that taxonomic
This chart can serve as a reminder that not only are some of your core values and norms likely to differ from people who come from other societies, but also that people from other cultures are quite likely to have stereotypes about Americans, American lawyers and the American legal system.  

C. STRATEGIES FOR RESPONDING TO INTER-CULTURAL COMMUNICATIONS DIFFICULTIES

Identifying dimensions of inter-cultural difference is somewhat easier than providing strategies that have a track record of overcoming inhibitions that may be due to such differences. However, some principles seem readily apparent:

- From the perspective of client-centeredness, not all differences are appropriate for you to overcome. For example, if a client’s cultural background helps impel the client to an outcome that you personally disfavor, at the end of the day the client’s values trump yours.

- If your practice regularly brings you into contact with clients from cultures that differ from yours, you may take explicit steps to familiarize yourself with those cultures. For example, you may study the history of a community and its relations with outsiders. Another possible approach is to accompany clients to community meetings and events where other people who share a client’s cultural background will be present.

- When you can reasonably do so, conduct counseling conversations in a way that anticipates the preferences of clients from other cultures. For instance, if you recognize that a client’s cultural background inclines the client towards formality, you might sit at your desk even though your usual preference is to talk to clients at an informal table. Similarly if you anticipate that a female client would be uncomfortable discussing a topic with you (a male), you might ask, “would you be more comfortable discussing this with another woman present?”

- When you sense that a client’s background and experiences may have left the client unaware of the practices in a legally complex legal system such as exists in the United States, you may need to explain the reason for those practices rather than simply assuming that the client will accept them. Assume for example that a client who was raised in a non-legally complex society consults you in connection with a proposed business deal. The client brings you the lengthy draft agreement proffered by the lawyer for the other party, and is mystified by the assortment of terms and conditions pertaining to possible future occurrences. You may need to explain American lawyers’ predilections for anticipating

---

56. See RUSSELL KOREN, NEGOTIATION THEORY AND STRATEGY 270–272 (2002). Recognize also that law-related American movies and TV shows are shown all over the world and tend to shape people’s images of American lawyers and the legal system. See PAUL BERGMAN AND MICHAEL ASMOW, REEL JUSTICE (1996).


and trying to resolve in advance contingencies that may never occur.

- At the same time, do not be so afraid of trampling on a client’s cultural preferences that you cease to represent clients effectively. Give clients credit—if they have strong cultural preferences, they are likely to inform you about them. For example, if a female client is strongly disinclined to discuss case-related sexual matters with you, a male, you might reasonably expect the client to ask that another female (perhaps a colleague of yours or a friend of the client) be part of the conversation.

- Similarly, do not abandon your need for pertinent information in an effort to avoid encroaching on a client’s cultural preferences. Your ability to help clients arrive at satisfactory outcomes will generally entail their understanding what you have to say about American laws and processes rather than your understanding their cultures’ alternatives.

As you know, client-centered counseling suggests that you take reasonable steps to motivate all clients to participate actively in the problem-solving process. In the inter-cultural context, one strategy you can follow is to modify your use of language. For example, you can explain terms that may be unfamiliar to clients, and ask them to explain terms that may be unfamiliar to you. Since visual images are more universal than language, also look for opportunities to illustrate points with charts, diagrams and the like. While you can’t draw a picture of “due process,” you can use boxes and arrows to illustrate the effect of the provisions in a will.

Another strategy you can pursue is to look upon your clients as resources rather than guessing at the reasons for their seeming reluctance to participate actively or to seek outcomes that strike you as strange or perhaps even improper. As a counselor, you can probably learn more about clients by asking them questions than by making assumptions based on their cultural backgrounds. For example, questions you might ask include:

“Before we talk about what happened in more detail, is there anything you can tell me about your background that will help me represent you more effectively?”

“Is there any reason that you might find it difficult to discuss this problem with me?”

“I realize that I’m having some difficulty explaining what I mean in a way that is clear to you. Would you prefer bringing in a friend who can translate what I’m saying?”

“I realize that you grew up in China and not in the United States and that I cannot speak Chinese. I may from time to time use an

See Hurder, supra note 36, at 173. See also James W. Leigh, Communicating For Cultural Competence 43–50 (1998) (explor-
English word that you do not fully understand. If I do use a word that you don’t understand, please tell me. I’d really appreciate that because it will help me make myself clear as we talk. Will you feel comfortable letting me know if I use some words you don’t know?”

“Can you help me understand why you think it would be best if we first have a preliminary meeting with his lawyer before we start the real negotiations?”

Of course, a risk always exists that clients’ cultural backgrounds incline them not to answer such questions directly, perhaps for fear of offending you or fearing that you will think them rude. However, clients are likely to appreciate your efforts to overcome the communication difficulties that cultural differences may create. As the attorney-client relationship continues and rapport grows, clients may develop sufficient confidence in you to override the inhibitions that cultural differences may initially create.

D. EXAMPLE FOR ANALYSIS

Consider the following remark that a client has made. What possible dimensions of culture may be playing a role in the client’s thought processes?

“I’m concerned about accepting their offer. I’ve talked it over with both my wife and with my father. My dad comes from the old school; he ran a successful business for years and he thinks I shouldn’t accept. He keeps raising the point, which I tend to agree with, that they have not lived up to the letter of the contract and we should hold them to what they’ve promised. But my wife sees it differently. She thinks that if I go to trial and lose we’ll look bad in the eyes of her relatives. She also thinks that the offer is a sure thing that we ought to take and set aside for the kids’ college tuition.”