

HEARING AND MISHEARING: PSYCHOANALYTIC OBSERVATIONS ON THE ATTORNEY-CLIENT RELATIONSHIP

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This paper explores the attorney-client relationship through the lens of psychoanalysis and cognitive neuroscience. Our hope is that the perspectives offered will deepen the reader's appreciation of the psychological complexity inherent in the attorney-client relationship. It is our premise that a lack of understanding of the psychological forces that operate within the attorney-client relationship increases the likelihood of generating otherwise avoidable "psychological noise" that may further complicate an already complicated legal situation. This kind of psychological noise adds stress and may undermine the cognitive processing needed, by both the attorney and the client, to think through the issues presented by the case.

We will first present some observations on how people organize their approach to the interpersonal world. These ideas are mostly derived from modern psychoanalytic theory and have been strongly supported by recent findings from the cognitive neurosciences. The punch-line is that how people approach establishing new relationships and how they are inclined to understand these relationships are strongly influenced by mental processes that operate outside of conscious awareness. By reviewing and explaining some of the findings that demonstrate the ubiquitous presence of nonconscious, organizing tendencies at play in all human relationships, we hope to sensitize attorneys to relationship factors that might otherwise be confusing and/or burdensome. We will underscore that the emergence

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of “feelings” are often the indicator of such nonconscious processes at work.

Our goal is to help attorneys be even more effective in helping their clients be optimally useful collaborators in achieving their stated goals. In order to make our ideas clearer, our examples focus on litigation involving clients who are not experienced in the legal process. However, these ideas also apply to more sophisticated clients and/or transactions. Indeed, the ideas can be applied to all human interactions. We give special attention to learning how to manage “feelings,” both the attorney’s and the client’s, as they emerge at points during the unfolding of a legal process. We present perspectives and skills useful for the management of anxiety, anger, and sadness.

Q: What can lawyers learn from psychoanalysts?

A: Psychoanalysts have something to teach lawyers about how people hear and “mishear” what is said to them. Psychoanalysts have had long-standing interest in the readily observed phenomenon that in human communications, the message sent is not necessarily the one that will be received. Inevitably, the relationship between an attorney and a client involves more than rational verbal discussions about the realities of the legal problems presented.

Q: What do you mean?

A: People approach any new relationship with a set of basic presumptions and organizing tendencies derived from a lifelong process of learning how to participate in the relational world. Many of these appraisals are made nonconsciously, that is, outside of awareness. The cognitive neurosciences have established as fact that which Freud asserted almost 120 years ago: that we are much less the masters of our own minds and intentions than we believe ourselves to be. We all, each of us, possess brains that are perennially engaged in discerning, organizing, and initiating responses to emerging circumstance *without* the participation of consciousness.

Indeed, cognitive neuroscience experiments¹ have demonstrated the unsettling fact that brains have the capacity to initiate an action before “consciousness” emerges and claims for itself the already initiated “intention.” Or, as Freud asserted, we all possess an unconscious that can be thought of as active in the sense that this unconscious is always, to one degree or another, taken up with the task of orienting the subject to their immediate, emerging set of circumstances, whatever those might be.² Thus, from a certain point of view, we may all be much more the reactors (to unconsciously perceived circumstances) than the actors that we like to think of ourselves as being.

Q: How do these organizing tendencies get established?

A: Freud understood that many of the basic assumptions that people make about the interpersonal world become virtually hard-wired during childhood. He felt that many of these basic assumptions were shaped by the clash between childhood feelings, wishes, and desires and the socializing pressures exerted by the demands of society (channeled through the specifics of a given individual’s family system and moment in history). Thus, a psychoanalytic understanding of the person presumes that a person’s history of learning how to participate in the interpersonal world and how that history came to be laid down in memory provides the person’s initial, unconsciously initiated way of organizing and understanding a new set of circumstances (e.g., entering into a professional relationship with an attorney or a client).

So what people “hear” and how they construe a communication can be greatly influenced by their basic assumptions (i.e., memory) of how to relate to others. For example, if the client experiences the attorney as an authority (in the childhood sense), they may hear all

¹Benjamin Libet, *Unconscious Cerebral Initiative and the Role of Conscious Will in Voluntary Action*, 8 THE BEHAVIORAL AND BRAIN SCIENCES 529-66 (1985); Benjamin Libet, *Conscious Subjective Experience vs. Unconscious Mental Functions: A Theory of the Cerebral Processes Involved*, MODELS OF BRAIN FUNCTION 36 (Rodney M.J. Cotterill ed., 1989).

² SIGMUND FREUD, *The Ego And The ID*, THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD, VOL. XIX (James Strachey et al. trans., London, Hogarth Press 1956-1974) (1923).

communications from the attorney as unchallengeable dictums or directives, rather than as invitations to discussion. In addition, what a person hears, and their likelihood of mishearing, is also greatly influenced by the person's immediate "state of mind."³ Fatigue, hunger, time of day, endocrine factors, and strong feelings can all influence state of mind. Angry people hear differently, think differently, and are inclined towards different behaviors than depressed or anxious people.

Freud also felt that people vary in the degree to which "adult" modes of functioning have superseded their more childlike wishes. People are much more likely to be forced back into more infantile and regressed modes of relating, behaving, and thinking when they are faced with a new, unpleasant, or frightening situation, i.e., when they are stressed. For example, a client who is inexperienced with legal processes or who is facing daunting personal or financial jeopardy may naturally revert to patterns of behavior affected by wishes, desires, feelings, and assumptions laid down earlier in life.

Moreover, Freud also observed that people are born into a position of radical egocentricity and wishful thinking. It takes a lifetime for most of us to come to grips with the degree to which how we wish things would go is not the way they will necessarily go. Freud also felt that these wishful tendencies persist across a person's lifespan and are likely to become louder in situations of stress and frustration. So, often included in any client's basic wishes about the world and their legal situation are childhood wishes and desires.

Q: But people learn from experience, don't they?

A: People do learn from experience...sometimes. The fact that humans have "neural plasticity" enables them to learn new behaviors and new ways of participating in the interpersonal world as

³ An individual's "state" can be thought of as a variable that affects the probability that a given set of neural networks will be activated in a given set of circumstances. Neural networks can be thought of as different patterns of the electrical activity of the brain that are associated with different kinds of behavior (and expressions of personality).

development unfolds. (In fact, the actual structure and functioning of our brains is altered by our experience.)⁴

Furthermore, thanks to the gift of a pre-frontal cortex and the associated capacity for directing one's attention and intentionally regulating behavior, most people have the capacity to recalibrate their initial organizing "pre-cognitions" in the face of incoming information that calls for such a recalibration – but within limits. For example, a typically distrustful person can come to trust some new person as data comes in that justifies such a shift in attitude.

Think of an accomplished outfielder breaking for a fly ball. He or she hears the crack of the bat and instantaneously starts to move, more often than not, in a direction that will lead to fielding the ball. These initial moves are not planned or intended by the outfielder. They aren't even conscious. They are reactions established by practice and repetition. (In cognitive neuroscience, these initial reactions to the ball might be described as reflecting the work of "procedural memory," or the memory system that is involved in the learning and encoding of processes.)⁵ Yet, as the outfielder goes back on the ball, he or she starts to modify, refine, or override his or her initial habitual reaction (by consciously attending to the trajectory of the ball) in order to complete the play. An experienced outfielder or a mature professional has the ability to make micro-adjustments to these initial reactions as the data accumulates and processes.

It is not too much of a stretch to say that people deal with the relational world in a similar way. They approach new interpersonal situations and organize them unconsciously and habitually. A person comes into a room and instantly assesses the situation without even thinking or intending to do so. Happily, like the experienced outfielder, most people can modify these initial appraisals and perceptions and make micro-adjustments based on new incoming information.

⁴ JIM GRIGSBY & DAVID STEVENS, *NEURODYNAMICS OF PERSONALITY* 39-53 (2000).

⁵ *See id.* at 92-4, 322-26.

Q: Are there clients who may never be able to come to grips with the realities of their legal situation?

A: People vary greatly in their capacity to allow new information to modify their unconscious understanding of the world. Or stated differently, people vary in their capacity to see a new interpersonal situation as actually new (rather than as a mere repetition of a situation previously experienced and now “recognized” as recurring). Stressed, brittle, or unwell people may be less able to override their basic organizing relational assumptions in a new situation. A person with paranoid schizophrenia may find malevolence in the “other,” no matter how benevolent that “other” may be. An outfielder who cannot make adjustments will make a lot of errors. A client who cannot make adjustments may misconstrue the significance of moments in their unfolding legal process and bring idiosyncratic and/or inaccurate interpretations to his or her legal situation.

So yes, there do seem to be people who, for whatever reason, appear to be unable to grasp critical aspects of the realities that confront them. In certain psychotic disorders, “reality” itself may be experienced as so threatening that the person seems to simply substitute a “story” of their own design in an effort to fend off the anxieties being generated by the actualities of their circumstances. In addition, some non-psychotic people can have a cognitive rigidity that precludes making those “micro-adjustments” based on incoming information. It is as though that “procedural memory” organizer – that first non-consciously, hard-wired understanding of a situation – is never allowed to be modified. The person sees it as he or she sees it, and nothing will change his or her view.

Q: I understand that basic relational patterns are set down in childhood and continue to influence us unconsciously throughout our lives. Do these patterns include feelings?

A: Yes, indeed. Feelings are the first mode of communication for human beings. The capacity to feel emotions and express them is present for most humans from birth (lawyers included). Infants communicate their feelings to their parent or caretaker through facial

expressions, vocalizations, and other forms of physical expression. Parents or caretakers are prepared by evolution to understand these communications and to translate them into effective interactions and interventions, even though the communications come without words. The point here is that human beings have a “feeling” language as their first language that requires no words to be understood. This language creates an essential and primary linkage between parent and child. This affective communication is at the heart of attachment between parents and children.

Q: Is this “feeling” language universal or is it particular to a given culture?

A: A number of studies powerfully demonstrate the universal quality of the “feeling” language. A famous study by Paul Ekman and associates⁶ (subsequently replicated by many other researchers) demonstrates the cross-cultural capacity to recognize basic feeling states as expressed in the face. Expressions of happiness, anger, fear, surprise, sadness, disgust, and perplexity are recognized by people of all cultures, regardless of their culture’s structural idiosyncrasies. Other studies (e.g., by Martin Eimer and Amanda Holmes)⁷ have demonstrated the degree to which the human brain is activated on a neurodynamic level by encountering a face that has emotion. Furthermore, there is research which suggests that encountering faces without emotion – “blank faces” – appears to be disquieting. Edward Tronick and associates filmed infants playing with their mothers. At a certain point, the mothers were instructed to have their faces go “blank.” What Tronick noted was that there was an immediate breakdown of the playful rapport between the infant and the mother, with the infant showing signs of distress and withdrawal, often leading to turning away from the mother.⁸

⁶ PAUL EKMAN ET AL., UNMASKING THE FACE: A GUIDE TO RECOGNIZING EMOTIONS FROM FACIAL EXPRESSIONS, 21-28 (2003).

⁷ Martin Eimer & Amanda Holmes, *Event-Related Brain Potential Correlates of Emotional Face Processing*, 45 NEUROPSYCHOLOGIA (SPECIAL ISSUE: THE PERCEPTION OF EMOTION AND SOCIAL CUES IN FACES) 15-29 (2007).

⁸ EDWARD TRONICK, ET AL., *The Infant’s Response to Entrapment between*

Even though this feeling language is part of our human evolutionary endowment, specific cultures and family systems may have developed attitudes and traditions regarding the recognition and verbalization of certain feelings. The original non-verbal feeling language becomes wrapped in or expressed by words as an infant develops. The parent faced by a fussy baby is likely to put that fussiness into words (“Oh grumpy baby!” or “Honey you are wet!”). But the process of recognizing and verbalizing the child’s affects can misfire in a number of ways. For example, an angry baby who is also crying can be misconstrued and inaccurately described as sad. Or a child frustrated at encountering their own limitations might be misconstrued as selfish, disrespectful, or angry at the parent. In other situations, certain feelings and their expression may be taboo within that family unit. A child’s direct expressions of anger might be taboo and treated as sinful or as a lack of gratitude. Or a child’s expression of pleasure or competency might be described as conceit, or again, as sinful. In other families, expressions of sadness may be rapidly greeted with the responses: “oh, honey you’re not sad, it’s ok,” or “don’t cry, be strong” (suggesting that it is a weakness to be sad).

Q: What are the consequences for the child when feelings are misconstrued or are even taboo?

A: A child learns to adapt to its primary attachment figures. This may mean that a child learns to consciously or unconsciously suppress certain feelings. It may also mean the child learns to misconstrue his or her parents’ feelings as well as his or her own. This sort of adaptation to the particulars of a given family system may be useful and necessary for surviving within that system but may be highly maladaptive when applied to interpersonal situations outside of that family system. And yet, these adaptations are wired into the procedural memory of the person, and come to operate essentially non-consciously. As a result, these adaptations, developed during childhood, are apt to affect the way the adult understands the “feeling” language in interactions with other people.

The point of all of this is that as people grow up they internalize different kinds of relational operations or schema. How feelings are expressed and represented are an important part of these schemas.

Q: Why do psychologists and psychoanalysts make such a big deal out of feelings?

A: Feelings communicate by evoking an unconscious, reciprocal response in the other. When confronted with another's anger, we are likely to feel anger with an associated fight or flight response. When confronted with another's anxiety we are likely to feel anxiety, which in turn is likely to evoke our own nonconsciously organized, acquired strategies for dealing with anxiety, and so on. This is very important for attorneys to understand. Clients with intense feelings are likely to evoke feelings in the attorney. Those feelings will trigger the attorney's typical mode of dealing with such feelings. Furthermore, feelings can have a powerful influence on a person's "state of mind," and can affect the person's behavior and cognition. Angry people are more likely to see an obstructing or "misbehaving" world and react accordingly. Anxious people are more likely to see a world that appears to be on the brink of overwhelming their adaptive resources and feel an associated sense of urgency and pressure to do something, anything, to get rid of the anxiety.

Feelings and a person's acquired history of dealing with feelings can also have a strong impact on how a client hears or mishears. People vary considerably in their capacity to experience strong feelings and still retain the capacity to think clearly.

Q: Lawyers are often quite uncomfortable with feelings.⁹ One might argue that the purpose of the law is to take the “feeling” out of the system and to rely solely on logic and cultural norms. Why is it important for lawyers to understand and become comfortable with “feelings”?

A: It is impossible to “take feelings out of the system.” Feelings and a person’s history of learning how to recognize and deal with them are wired into the neural networks associated with procedural memory. Every interaction we have is influenced by feelings, even if those feelings are misidentified, disavowed, and therefore, operating essentially unconsciously.

There is some fascinating research being conducted on “mirror neurons” that further underscores the ubiquitous, ongoing emotional resonance that is always in play when two people interact. Marco Iacoboni¹⁰ was studying brain function in macaque monkeys when he stumbled upon a remarkable finding:

[E]lectrodes implanted in single neurons were being studied to identify the neurons’ roles in various motor behaviors. While one macaque with an implanted electrode was resting between experimental trials another non-implanted macaque was cracking a nut Surprising was the serendipitous finding that the implanted observing macaque exhibited neuronal firing in its premotor cortex. In short, the observing macaque’s brain was performing as though it were cracking the nut. In short, it was neurologically mirroring the behavior of the macaque it was observing. Thus, began massive investigations of mirror neurons in both non-humans and humans.¹¹

⁹ See, e.g., Melissa L. Nelkin, *If I had Wanted to Learn about Feelings, I Wouldn’t Have Gone to Law School*, 46 J. LEGAL EDUC. 420, 420-24 (1996).

¹⁰ MARCO IACOBONI, *MIRRORING PEOPLE: THE NEW SCIENCE OF HOW WE CONNECT TO OTHERS* 4-8 (2008).

¹¹ DONALD B. EGLOF, *HUMAN COMMUNICATION AND THE BRAIN* 89-90 (2012).

Much of this research supports the hypothesis that evolution has selected for primate brains. Primate brains are wired to encode and react to expressions of emotion in others, a capacity that is crucial for navigating, adapting to, and surviving the intricacies of the interpersonal world. These capacities for affect recognition exist long prior to the acquisition of language and argue for a neurologically based capacity for empathy.

As a professional relating to clients, it is useful for the attorney to understand his or her own history and approach to feelings and how they affect his or her approach to the world. Feelings are information and can be contagious. A client's feelings can affect the lawyer or vice versa. Like it or not, feelings are an essential element of human interaction.

Q: How do psychoanalysts make use of the perspectives on relationships that you are describing?

A: Psychoanalysts are typically attuned to the universal tendency of people to approach others with multiple “precognitions,” as well as with multiple concurrent and occasionally contradictory motivations. As with precognitions, many of these motivations may operate quite unconsciously. For example, Freud noted that if people were mostly organized by common sense and rationality they would, of course, freely disclose all of their symptoms and anxieties to their “head” doctor. But Freud also noted that people rarely fully disclosed what was really on their mind, “choosing” instead to screen out, minimize, or forget important facts when talking to their psychoanalysts.¹² He hypothesized that this kind of behavior resulted from the universal tendency for people's manifest communications to be shaped by complex, occasionally contradictory, and often disavowed and/or unconscious motivations. Rather than seeing their doctor as a doctor exercising his or her skill set with the intention of being useful, people seemed to be unconsciously motivated to regard the doctor in terms heavily influenced by their childhood experiences with

¹² SIGMUND FREUD, *The Dynamics Of Transference*, THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD, VOL. XII, (James Strachey et al. trans., London, Hogarth Press 1956-1974) (1912).

important attachment figures. Freud referred to this phenomenon as “transference.” Thus, a patient may fail to disclose an important symptom or difficulty to his or her doctor for fear of the doctor’s judgment or in an effort to be liked or admired (as though the patient were talking to a parent, for example), even though this difficulty is part of what may have led the patient to seek treatment in the first place.

Q: But how does this relate to what attorneys do?

A: Attorneys may encounter similar kinds of distortions in their client’s “narrative” as a result of transference. The attorney-client relationship is intrinsically asymmetrical. The attorney, like the psychoanalyst, may be perceived as an authority with a particular skill set, a skill set that the client seeks out when he or she needs help with a dispute or transaction. The asymmetrical and hierarchical nature of the attorney-client relationship, in conjunction with the fact that the client is seeking help and may, therefore, be under considerable stress, creates an interpersonal context that may pull for “transference,” i.e., a client may subtly conflate his or her perception and understanding of his or her attorney with figures from their past. For attorneys, such client “transferences” may be confusing or unexpected and are likely to be experienced as interfering with their client’s capacity to be an optimally effective ally in their legal process.

Psychoanalysts make their living dealing with the distortions, intense feelings, obfuscations, and mishearings that can result from being conflated with figures from the patient’s past. Indeed, the obfuscations and distortions of narrative caused by the influences of the transference can be important clues for the psychoanalyst as to the nature of the patient’s difficulties. Attorneys (and judges) also make their living working in an environment that includes being buffeted by client transferences. But unlike the psychoanalytic situation where transferences are a source of information, in the legal context, transferences are more likely to complicate the attorney’s job rather

than add value. Nevertheless, the attorney must recognize the possibility of a transference influencing the relationship.¹³

Q: But attorneys have personal histories and an unconscious too. How does that fact affect the attorney-client relationship?

A: Attorneys also bring an array of non-conscious organizing tendencies to any new interpersonal situation. In addition, attorneys, like all people, will vary in their capacity to make micro adjustments to changes in their emerging circumstances. Attorneys have also had developmental histories that challenged their original sense of being at the “center of things” and have been challenged to come to grips with the fact that their wishes and desires are not always met by unfolding circumstances. Finally, each attorney has his or her own approach to dealing with feelings, and such approaches are highly over-determined by the specifics of each individual’s specific developmental history.

But the attorney does, of course, occupy a different role in the asymmetric attorney-client relationship than does the client. The attorney is likely to have participated in many attorney-client relationships and also has had the advantage of experience and training in how legal processes typically go. Professionalism, training, and experience may help the attorney be somewhat less prone to having his or her typical “mode” of working high-jacked by psychological factors.¹⁴

The attorney’s specific role brings with it other tensions, some of which may subtly affect behavior without the attorney’s awareness of that influence. To practice law, an attorney necessarily places himself or herself into a position of having to manage and balance a complex array of relationships, each with its own demands. Relationships with the client, the opposing counsel, a judge, a jury, a fellow counsel, or with the attorney’s firm or partners all have their specific

¹³ Transferences can occur at multiple levels, e.g., between client and attorney, between client and judge, and between client and opponent or opposing counsel; add a jury to the mix and the dynamic may seem hopelessly complicated!

¹⁴ D. STEVENS, *The Construct of the Psychoanalytic ‘Working Ego’: Anachronism or Timely Medicine?* (2004).

psychological pressures and demands. Some or all of these relationships may be in play in any given case. In addition, each attorney also has relationships with family, friends, peers, and colleagues, all of whom may exert their own subtle effects on how the attorney conceives the case in question at any point in time. And finally, each lawyer can be thought of as also having a relationship with him or herself that may relate to self-interest or to the regulation of self-esteem as certain tensions are evoked in a given set of circumstances.

The diverse demands of these various relationships do not necessarily work in concert with each other and may well conflict. For example, demands related to one's relationship with a firm or partnership might work at cross-purposes with a client's interests (as when settling a case might lead to fewer billable hours). Or an attorney's self-concept and/or self-regard might work at cross-purposes with a client's interest as when the attorney values being perceived as "tough" and "no-nonsense" by his or her peers. This may perhaps make it more difficult for that attorney to see the value of compromise or assume a more conciliatory attitude in a given case. Or family pressures could lead an attorney to seek out the most expeditious resolution of a given case in the hopes of getting out from under certain time pressures.

These sorts of attorney-specific psychological pressures can affect how the attorney hears or mishears their client. In addition, conflicting role demands will increase stress on the attorney. And many of the conflicting role demands are likely to find their compromises in the unconscious, i.e., outside of awareness, as the stress level goes up.

Q: Okay, so I understand that both the attorney and the client have unconscious, wired-in predispositions and that complicated communications may occur through feelings and confusing distortions through transferences. Given this, what should the attorney hope for in a client?

A: The ideal client is one who is listening with only one set of ears – the set focused on the actual realities of the case. Unfortunately, as we have discussed, other ways of hearing are often in play. It could even be said that clients listen to every communication with multiple sets of ears – “wishful ears” – from childhood and “reality ears” earned during the crucible of development wherein the individual comes to accept the degree to which their personal wishes are not necessarily the organizers of how things go in reality.

Almost inevitably, there is a clash between that for which a client will wish and how the legal process will unfold. People don’t like it when either the process or the result doesn’t go according to their wishes. Lawyers are dealing with people who are often struggling with having to digest the clash between that for which they wish in terms of how the legal process “should” unfold and what the outcome “should” be, as opposed to the realities of how their legal process actually unfolds. Expressions of feelings are often the manifest sign that a client is struggling with coming to grips with this “clash.”-

If one of the attorney’s jobs is to help his or her client navigate an unfamiliar and often stressful legal process, then a very important level of “client management” boils down to an ongoing evaluation of the client’s capacity to grasp the actualities of his or her legal situation when that client seems stressed. When strong feelings appear to have undermined a client’s capacity to deal with and/or grasp the realities of their situation, the attorney should pause and attend to the affective storm through simple empathic communications. So the ideal client is really one who is able to metabolize the “realities” of his or her case and remain organized and focused on the task at hand, in spite of having a lot of feeling about his or her situation. And the almost ideal client is the one who can make use of the attorney’s recognition of his or her feelings to re-

establish his or her capacity to attend to the realities of his or her situation.

Q: You refer to the “realities” of the legal process. What do you mean?

A: “Realities” are really those things that are somehow experienced by the client as being in opposition to his or her wishes and desires about how the process “should” go. These often psychologically jarring “realities” can be as mundane as the costs in terms of time, money and stress; the inevitable delays; the almost always irritating opposing counsel or the unsympathetic judge. In addition, some clients may be dissatisfied even if the outcome could be described as successful in real world terms, and they may *not* be conscious of the reasons for their dissatisfaction. To reiterate, expressions of feeling and manifest signs of emotional distress are often the indicators of a given client’s difficulty in coming to grips with the clash between what they wish for (consciously and unconsciously) and how their legal situation actually unfolds.

Q: Can you translate these ideas about the psychological complexities of the attorney/client relationship into some usable tips for attorneys as to how to most effectively manage this relationship?

A: It is important to remember that for you, the attorney, as for the psychoanalyst, a given client’s situation is mostly just a “situation,” an occasion for work. Important work, meaningful work, useful work, but mostly work nonetheless. This is really as it should be on some level. But for the client, this may well be the most psychologically significant and compelling situation in his or her life. The lawyer’s attentiveness to this fact, as it is expressed in timely expressions of empathy, will help the client bear the discrepancy between his wishes and desires vis-a-vis the legal process and the difficult realities of how legal proceedings typically unfold. If clients are like most people, it probably helps things go better if they somehow come to feel that their lawyer “gets” how the situation looks and feels from

their point of view, even if that point of view is not entirely relevant to the legal issues presented by their situation.

This, then, is the first and most important tip that I can offer. Attempt to give some thought to what it might be like for your client to be in the position or set of circumstances that led him or her to seek your counsel. “Understanding things from the client’s point of view” is essentially a psychological task, an empathic task. Empathy involves being able to put oneself in the position of the other and to imagine what it might feel like if that other’s experience were your own. The timely communication of your empathic understanding of the stresses that confront your client may be the single most powerful tool available for helping your client “settle down,” if he or she has been taken over by strong feelings of one kind or another.

Q: Well isn’t it obvious that sometimes we have to hold our client’s hands?

A: I don’t think of “hand holding” and the communication of empathy as equivalents. To my ear, “hand holding” has infantilizing and pejorative connotations, as though the client is a baby if he or she is in need of some help in getting oriented and psychologically adjusted to his or her legal situation. We “hand hold” children when they are anxious, upset, or otherwise insecure. But virtually all people hunger for some form of interpersonal support and understanding during highly stressful times. Typically adults, like children, do better when they feel that there is at least one other person who has some appreciation of what they might be going through during difficult times.

Q: Can you offer any “how to” suggestions for conveying empathy?

A: Timing matters. When people are showing a lot of feeling of one kind or another it is important to acknowledge that you see that they are upset. This may involve taking a timeout from discussing the specific issues of the case currently in play. Simple statements are often best. Comments such as “you seem upset” or “can you tell me

what is upsetting you?” or “these processes are difficult for everyone” can have a surprisingly salutary effect on an upset client. But don’t over-do it. Empathy that is offered when there is no felt need for it can seem gratuitous or patronizing. That said, even clients who seem pretty self-possessed and composed are likely to appreciate a low-key “how are you holding up through all of this?” at one point or another during the process.

An attorney’s capacity to empathize with his or her client is likely to be deepened if he or she remembers some of what we outlined above, i.e., that these people are likely to develop highly personalized understandings of the events that unfold in their lives, legal processes included. So when relating to your client, I think it is important to try to keep in mind that you are used to the “neighborhood” that you have been living in and that clients very likely are not. Attorneys come to be habituated to legal processes and the vagaries of their unfolding. This sort of familiarity with the unfolding of these processes allows the attorney to more reliably understand the actual significance of the various kinds of legal maneuvering that occur as a part of any adversarial legal process. Is this request for information merely predictable and routine (no need to sweat it)? Is the fact that this or that motion was granted or denied a big deal, or is it simply a prompt to “go back to the drawing board” to generate some sort of a counter-response? The answers to these and endless other questions are likely to be readily available to the attorney by virtue of training and experience.

For the attorney, participating in the legal process is somewhat akin to playing a game of chess in the sense that opening and closing “moves” as well as responses to certain emerging circumstances have traditional and ritualized responses. But for the client participating in this process, there is likely to be little, if any, sense of participating in a ritualized “game” that has a historical tradition of “moves.” As a result, the various moves in the “game” are more likely to be given a highly personalized and often misconstrued significance. Taking the time to help a client have a more realistic and less personalized sense of the significance of various “moves” in the process can yield a more organized and focused client. For example, helping a client to understand that a particular request for information is typical and

routine, rather than the client's inaccurate, "imagined" sense that the request is an ominous harbinger of some possible dark future, can be time well spent.

Q: We talked earlier about the importance of feelings and I mentioned that I thought lawyers as a group were pretty uncomfortable in dealing with feelings. Do you have any specific tips for attorneys on how to deal with particular feelings?

A: Attorneys are likely to have a deep, experience-based appreciation for the old adage "none love the messenger who brings bad news" (Sophocles). Attorneys are often the bearer of "reality" news (which is often experienced as 'bad' news by the client). As a result, attorneys may find themselves having to sit with clients who are upset. This may, in turn, be psychologically activating for the attorney, evoking all of their own historically standard ways of dealing with feelings (maladaptive or otherwise). On occasion, the attorney may be the direct "target" of the client's strong feeling, which is likely to be even more stressful for the attorney.

To deal effectively with a client's feelings "storm," it helps if the attorney can avoid falling into an equally intense, reciprocal affective storm of their own, kindled by their client's intensity (as a result of the neurodynamic and psychological factors described above). Intense affect tends to beget intense affect. The attorney needs to work hard to contain the impulse to respond with an excessively intense response reciprocal to the client's intensity coming their way. This is not always easy. An attorney may be able to maintain their own sense of perspective by remembering that even if they are actually the "target" of the client's feeling, they are, more often than not, merely in the position of being the "messenger." Try to remember that it is not personal, even if it sure feels like it is personal. Rather than responding in the same affective key as the client, simple empathic statements can be useful for starting to diffuse heated moments.

Q: Do different feelings call for different responses from the attorney?

A: I think that most clients will respond to these moments of frustration and disappointment with one of three feelings: anxiety, sadness, and anger or some mixture of the three.

Anxiety is a highly activating and contagious affect. It can be useful to think of anxiety as a response to the felt sense that one's adaptive resources are on the verge of being overwhelmed by emerging circumstances, potentially rendering one helpless, with no available response to whatever threat is perceived to be on the horizon. Anxious people behave anxiously and may be inclined to seek relief from the feeling of being on the brink of being overwhelmed through urgent actions. They may exhort their attorney to work "harder" or "smarter" in order to reduce the felt sense of threat. The client may implicitly or explicitly seem to hold the attorney responsible for the anxiety that he or she feels, i.e., if the attorney were any good at all, the client wouldn't have to deal with such painful uncertainty. The client may deny the realistic threat that confronts them and seek to get the attorney to reframe a realistically difficult issue in less realistic terms. This may make the client feel momentarily less anxious, but at the cost of not really grasping the issue that confronts them.

Anxious clients typically do better with contact and information, even if the information initially seems to disturb them. But it can be taxing to deal with anxious people. Often no amount of reassurance can seem to soothe them for long. Furthermore, the aversive quality of being in contact with the anxious client can lead the attorney to consciously or unconsciously avoid interacting with that client or reluctantly share information, for fear that all new information will simply increase the client's anxiety. But with anxious clients, avoidance of contact and withholding or parsing of information is likely to further exacerbate their level of anxiety.

In addition, given that anxious people fear being rendered helpless, it is especially important when conveying difficult information to include that there are or will be strategies for responding to the difficulties that confront the case, i.e., the situation

is difficult but not hopeless. I had a patient bemoan the fact that his divorce attorney seemed to only focus on the difficulties and weaknesses that his case presented, rarely advising what the possible strategies might be for dealing with these difficulties. My patient would say to me: "I think I can handle that my case is difficult, I just need to know that we have not run out of possible responses and that my attorney is trying to think those through...even if they are a long shot." My patient's attorney appeared excessively concerned about elevating false expectations. He, apparently, was not appreciating that my patient only needed to know that even though things looked difficult, there were responses that could be made to those difficulties, i.e., my patient needed to know that the weaknesses in the case did not equal being rendered completely helpless.

Q: What about dealing with people who seem depressed?

A: If anxious people are inclined to feel that "disaster" is about to strike and render them helpless, sad and/or depressed people are likely to feel that disaster has already struck. They are already defeated. Feelings of hopelessness, despair, and an associated sense of helplessness may be palpable, pervasive, and interpersonally infectious. Furthermore, depressed people are often slowed down cognitively, frequently impairing their ability to assimilate and process new information. As a result, depressed people can have a great deal of difficulty mobilizing on their own behalf and engaging in effective problem solving. Depressed people may believe that a bad outcome is inevitable, essentially foreordained, and thus are likely to feel that all effort is essentially futile. This well documented psychological phenomenon of collapsing into a state of helplessness has been described by Seligman¹⁵ and others. For the depressed client, the "die is [already] cast." Thus, the depressed client is likely to be an unreliable ally in helping with the development of his or her case.

Dealing with a depressed client may affect the attorney in a number of ways. The depressed client's sense of the inevitability of a

¹⁵ Martin E.P. Seligman & Steven F. Maier, *Failure to Escape Traumatic Shock*, 74 J. EXPERIMENTAL PSYCHOL. 1 (1967).

bad outcome and the futility of struggle can be infectious. Once again the attorney's non-conscious strategies for dealing with depressive affect are likely to be mobilized. Futile efforts to exhort the client into a greater level of activity may ensue. A subtle "signing on" to the notion that a bad outcome is inevitable may undermine an attorney's confidence and his or her more standard, creative, and strategic approach to working through the difficulties that a given case might present. A sort of infectious cognitive dullness may start to afflict the attorney.

Depressed people often respond to some empathy and reassurance. Once again a straightforward acknowledgement of the depressed atmosphere that envelopes the client may help to evoke a somewhat more engaged client. Simple statements can help, such as "you seem to think that we are doomed, but I'm not so sure that things are as dire as you believe"; "going through the legal process is trying and depressing for a lot of people . . . but I've noticed that often people come to see that things aren't necessarily as awful as they feared"; or "I know this feels awful now, but one thing about the legal process is that it eventually comes to a conclusion, and it is possible to recover, re-group, and move on from all of this . . . people usually do."

Depressed clients may be receptive to advice about "survival strategies." Encouraging the client to make use of these social supports may be helpful. If anxious clients tend to want information about the details of the process and how their attorney intends to respond, depressed clients may become overwhelmed with too much information. Talking with the client directly about how much contact and information they want about the twists and turns of the legal maneuvering taking place is likely to be useful. Being attentive to the fact that the depressed client may need to hear the same information more than once and being aware that the depressed client may fatigue quickly in meetings and may no longer be able to take in more information is important. Some depressed clients may do better with having contact on a "need to know" basis, perhaps enabling them to distance themselves from the process to the greatest degree possible. If the depression seems immobilizing enough, the attorney should directly inquire whether or not the client has considered seeking some

form of psychotherapy to provide some additional support and perspective during these obviously and understandably difficult times.

Q: What about the angry client?

A: The angry client (especially the chronically angry client) is one of the most taxing and unwelcome client management situations for most attorneys. It is stressful to be in the presence of readily angered people, and it can be especially hard to be a frequent target of another's anger. Very angry people are highly activating on neurodynamic and psychological levels, typically engendering some sort of "fight or flight" response in the other. Being angry, being near an angry person, or being the target of another's anger can be very disruptive to one's capacity to think clearly. As we all know, a person who is typically rational and reasonable may say or do stupid and impulsive things if they become angry enough.

It is useful to think of anger as a response to a sense of threat to one's being able to act on one's wishes or in terms of maintaining one's self-esteem. Anger and angry behavior often represent an effort to reestablish some felt sense of control over the unfolding of the now threatening circumstances. Legal processes can make many clients feel like they have very little control of their unfolding. The readily angered client seeks to establish control (maladaptively) through "insistence" and dominance. Things must go the way that they wish if someone (perhaps the attorney) is doing their job.

It is difficult to feel empathy for a person who is yelling at us. Responding angrily ("fight") or becoming withholding or avoidant ("flight") towards the angry client will typically escalate the situation further. Remember, intensity begets intensity. Fortunately, angry people often respond to basic empathic statements of the kind discussed above. Statements such as: "you seem upset . . . could we take a few minutes for you to help me understand what is so upsetting?" or "I wonder if you are taking things more personally than they really are . . . this is just how things go in this sort of legal process" or "I think you are more upset than you need to be . . . we can develop a response to this situation" can be very helpful.

Sometimes a client may become so unrelentingly angry and accusatory that some sort of limit-setting is necessary. Useful statements would include: “I know you’re angry but it is hard for me to think clearly if you are yelling at me”; “I think it might be useful for us to take a break so that we both can re-group”; “I understand that you are angry but it is not okay to take it out on me”; or “it would be more useful to us if you could take your anger and try to direct it towards helping us think through how we might respond to this situation.”

Q: What are the key points to take away from this discussion?

A: A single person is wonderfully unique and complex. Put two or more together and the complexity increases exponentially. The interaction of two people automatically creates the risk of mishearing and dysfunction.

We all act and react on an unconscious level much more than we might wish to believe. This is particularly true in new situations, such as a new attorney-client relationship, where the stress, the intense feelings, and the unknown will tend to drive us back toward our own developmental histories and our most basic ways of understanding and acting in the world. Our level of functioning often depends on how far we have developed our capability to make adjustments in our behavior (and even in our feelings) based on new information.

The good news is that the attorney can make a difference. Professionalism, training, and experience help the attorney to be less prone to being “hijacked” by unconscious psychological factors and feelings. As a professional, the attorney can, in turn, help the client avoid being hijacked. Instead of being activated by the client’s strong feelings, the attorney can recognize, respect, and defuse those feelings. This will help the client to deal with the stressful situation in a conscious way, make adjustments, and collaborate in the effective handling of his or her case.