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This paper is intended to promote discussion concerning client interviewing skills and taking instructions. There are many different approaches to take and the ideas set out below are simply some that may assist you.

## Groundwork

Before interviewing a client, it is of great value to obtain all the detail about a client's background that you can.

It is advisable to defer getting clients to provide you with instructions in respect to substantive issues until you have assessed the evidence that the Crown has available to establish offences beyond reasonable doubt. At times this will be readily apparent (e.g. from a Facts Sheet which details full admissions by a client).

Where possible, seek access to any prior reports that have been prepared. These may provide details of your client's social, cultural and educational background and their psychiatric, psychological and forensic history. Having access to such reports can save clients from again going through their life stories and recalling distressing experiences. Whilst details will generally need to be confirmed, at the very least, you will be informed of sensitive issues.

A criminal history, bail report and custodial history can tell you much about a person's background and provides leverage into their life story. They provide you with the opportunity to ask many questions about details of their history that are most likely indisputable. You can ascertain when their offending has started and obtain details in relation to their schooling, their work history, their drug use and their associates at the various times. It can provide insight into whether a client has a history of suffering from mental illness or being supervised. It can enable you to seek further details in relation to the client's family's history of criminal engagement and/ or mental illness.

## Rapport, the first meeting and bail

It is important to establish a rapport and trust with your client. Time should be taken to start to get to know your client. A more effective way to introduce yourself is via a face to face meeting. An audio-visual conference is a less satisfactory alternative but at times will have to suffice.

When meeting a client for the first time it is important to set the ground rules in relation to your interaction with them.

Explanations should be provided as to your role as an officer of the court and as their advisor, the requirement for you to act on their instructions and the confidentiality of the relationship. With some clients, it is also necessary to advise that you will treat them in a respectful manner and that you require them to treat you in a respectful manner.

When you first meet a client who is in custody, it is most likely that they will wish to raise issues in relation to bail. This is understandably a great concern for them as their immediate liberty is a pressing concern. Every effort should be made to carefully listen to their concerns and obtain all details that will assist you to make a well-prepared application. Follow up all the leads that they provide. Clearly let them know what areas need further attention. Following up those leads may help to give them an appreciation that you are seeking to assist them as best you can.

Your initial consultation with your client will focus on providing them with an understanding of the court procedures and time frames. Tell them of the delays that arise from the adjournments stemming from Practice Notes and court waiting lists (if applicable). Thereafter, the focus should be directed to listening to what they want to tell you, finding out their concerns and learning about their interests. Hopefully this may lead to their appreciation that you are interested in them as a fellow human being.

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The opportunity to engage with your client and indeed enquire of their personal details is a privilege that is to be appreciated. It results in our work being invariably interesting and provides us with insights into humanity that are not as readily available to others.

It can be rewarding to take an interest in a client's activities whilst in prison and their associations whilst in prison, what makes them happy, what they can look forward to on the outside, their interests (apart from crime) and what supports will assist them on the outside. Giving a client the opportunity to reveal a little about their interests and what may engage them upon release can be helpful and inspire a judge to see them in a different light.

If they have no support, it can be of value to find out the circumstances behind that lack of support and their own insight as to how this has come to be. Some clients are particularly non-cooperative, non-communicative, hardened and hard-headed. Patience, compassion, a genuine interest in their backgrounds and humour may assist in working with such clients.

As far as possible, oblige in undertaking requests that are not strictly related to your work as a lawyer. This may involve contacting people, following up lost property, letters seeking medical attention or in support of your client being transferred to another prison.

A client will frequently request you to provide them with an immediate analysis of evidence and the likely outcome of a trial (if they are thinking of going to trial) and the outcome of a sentence (if they are considering pleading guilty to some appropriate charge).

It is suggested that you delay providing your analysis of the evidence until your client has had some opportunity of knowing that they can trust you. It is usually feasible to indicate that you have not completed your analysis of the brief materials (This is unlikely to be effective if you have had the brief for months). It should be possible to delay the provision of an assessment until at least your second meeting, but this will depend on when you have been furnished with all brief materials. Before giving an assessment, arm yourself with maximum penalties, standard non parole periods and statistics of comparable cases.

### Statistics

It is helpful to have statistics available in relation to the offences so that a client will get some idea of what sentences have been imposed when others have been sentenced for a comparable offence. The statistics can be compared with the maximum penalty and the standard non parole period for an offence so that your client is not terrified by the maximum penalty and SNPP (unless they are likely to get such an outcome).

### Go through the Instruction Sheet

A template of standard instructions is attached and itemises all those areas of instruction that are important to detail. It should be adjusted to best suit your needs. It seeks to cover various contingencies and may be better trimmed down. Whilst methodically going through this document may be efficient, consideration should be given to whether that approach is going to be suitable for your client. Some clients who have been through the system on several occasions may appreciate a more conversational approach.

### Not guilty pleas

Where a client is indicating that they do not accept the allegations as described in the facts sheet and complainant's statements, thorough details will need to be obtained as to what they say has occurred, the location of participants in an event and what conversation has taken place.

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## Approach to be taken in respect to Not guilty pleas

It is helpful to be equipped with diagrams, maps, and photographs of the crime scene to enable your client to precisely mark where different participants have been located at various moments during an incident. Diagrams, maps and photographs should be clearly labelled, dated and signed. Frequently clients will have little experience in providing drawings to scale or from a bird's eye perspective. It will be of assistance to provide them with a demonstration of what they are required to do before you request them to embark on the exercise. Otherwise you will have inferior materials with which to understand the layout of the scene and cross examine witnesses who may also be asked to label their whereabouts at various moments during an incident.

Before a conference, it is beneficial to forewarn a client that they will be required to provide you with precise details in respect to witnesses, phone numbers, locations, chronologies, time frames and conversations as best can be remembered (It will be necessary to promptly follow up all witnesses and obtain detailed accounts of their versions of an incident and conversations that have occurred in their presence).

Once a client has provided a full account of their version of events, a statement should be prepared and presented to your client for review and adoption. It should be signed and dated.

## Remorse

Whilst some clients have clearly thought about how their actions have affected others, there will be some who have had little experience in considering the consequences of their actions from another person's perspective. Upon a client accepting responsibility for the commission of an offence, it may assist to encourage them to consider what they have done from the perspective of a victim. Whilst clients may not wish to dwell on this exercise, it will frequently be of some assistance to encourage reflection so that when the time comes for them to provide a court with an indication of their remorse, their thoughts will be hopefully somewhat more mature than an initial response along the lines of "It was bad what I done".

## Mental health

When getting a client's medical history, authorities should be obtained to request records of medical treatment. (It is also useful to seek authorities covering drug rehabilitation and at times, school records.)

Some clients will be hesitant to disclose histories of mental illness. Clients may be asked for details of hospitalization, medications and injections received and whether they have ever seen things that are not real or heard voices that are not real.

Where mental health issues are apparent from the factual scenario, it is extremely important to confer with clients at the earliest possible opportunity and, in most instances, before you are provided with a brief of evidence. If they have been incarcerated and possibly placed within a mental health pod or forensic hospital, a justice health authority should be obtained to secure contemporaneous notes reflecting their state of mind at the time that they had been first observed by mental health professionals.

It will be important to consider what the optimal outcome will be for your client if mental health issues are likely to give rise to the availability of a mental illness defence. Depending on the gravity of the charge, your client may need to be provided with advice as to whether they are going to be better off as a forensic patient or pleading guilty to an appropriate charge and receiving a known sentence. This will frequently depend on how the client responds to medications provided once they have been placed in a hospital setting.

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## Bugmy issues

As you will be aware, a client's history can be presented to argue that their moral culpability is lessened because of their early exposure to drug and alcohol use, sexual abuse, violence and/or traumatic circumstances. It is important to carefully and sensitively inquire into a client's background to see if these issues arise.

## Sex abuse and disclosure of trauma

Understandably a victim of sexual abuse, inhumane treatment or trauma may find it difficult and distressing to disclose their experience. You may be the first person to be told of their trauma. If this occurs, criminal lawyers are obliged to make inquiry into these most personal matters. We need to be ready to listen and provide support and reassurance and details of where clients can access professional support. These are times when you will have good reason for being late for your next engagement. It is preferable to have details of support services on hand just in case. You may also need to debrief, being sure to maintain confidentiality as required.