You work in a general practice law firm that concentrates on personal injury cases, including medical malpractice. A client is coming for her first interview at the office. The client has already had an extensive telephone conversation with the lawyer who will be handling the case. The client is coming in to give you background and further information about the case, which is a medical malpractice case in which the client is the injured party. The client knows you are a law student. At the end of the interview, the lawyer who will be handling the case may be able to join you to review the information you have gathered and to answer any additional questions the client may have. If she cannot, she will set up a separate appointment with the client.

In their telephone conversation a couple of days ago, the lawyer provided legal information about medical malpractice cases in Massachusetts, with a general idea of how the case for this client is likely to proceed. Thus, you know that the client expects that the case will take 3 to 5 years to complete, that she will be required to give extensive information about her personal life and that, although settlement is a possibility, it will likely not occur, if at all, until very close to the trial date. The attorney has given you no other information about her discussion with the client but she did say that there was something "uncomfortable" in the phone conversation with the client and she would like to meet with you to discuss the case and your impressions after you meet with the client and do an intake interview.

Your assignment is to gain as much information as possible about the problem that has brought the client to the firm and about what the client wants the lawyer to do for him or her.

Keep notes on your interview and remember to check basic client information such as name, address, etc. Be thorough but sensitive in your questioning. Keep in mind the kinds of questions we have discussed (narrow, broad, leading, non-leading) and try to incorporate paraphrases and reflective statements.
Legal Interviewing and Counseling

Client Interview Exercise - Sayers

TO: The Client

This is your first visit to this small general practice law firm, although you have had an extensive telephone conversation with an attorney who will be handling your case and, from that conversation, you have a general sense of how a medical malpractice case proceeds in Massachusetts. The attorney has told you that at your interview, a law student will interview you first and then she will try to join you, once the basic information about your problem has been gathered. If she can’t, she will see you another day. Make up any details with which you are not provided, but do not volunteer any facts you are asked to withhold (see Facts below) unless the law student asks you about them and has made you comfortable enough that you feel willing to answer. That said, do not unfairly withhold the information if the interviewer asks a question that should elicit it.

The Facts:

You are Dorothy L. or David L. Sayers. You had your appendix removed five years ago. Following the surgery you had almost constant pain in your abdomen. You told your surgeon about the pain at your post-surgery check-up a couple of weeks after the surgery. He told you that the pain you were experiencing was normal for the first few weeks after surgery. You never went back to him. However, three months ago, you did see a new surgeon about the continuing pain. She sent you for an x-ray which showed a surgical clamp in your abdomen. She operated and removed the clamp; your abdominal pain is gone.

The information which you are not to divulge (unless asked) is that your first surgeon's spouse is an old and good friend of yours. Therefore, you are really only willing to pursue this case if you are assured it will settle; you are not willing to drag your friend's spouse into court and "smear" his or her reputation even though you are very angry about the years of pain you endured. Accordingly, you are to push the law student on the chances of settlement. Make it obvious, without directly saying so, that you have a problem with the idea of actually going to trial. See if you can get law student to guarantee (or practically guarantee) you that a trial will never happen. This is the only information you must know for sure; everything else can be made up if you don’t remember it. Therefore, do not take out this sheet during the interview and read from it. IN FACT, DO NOT TAKE THESE INSTRUCTIONS TO THE INTERVIEW WITH YOU. If you do, you will be tempted to read from them. Learn your part and then play it. It will be more realistic if you have to work from your memory.

One additional point: Tell the law student that you have heard that to sue a doctor for medical malpractice in Massachusetts, you must bring the suit within 3 years of the malpractice. Ask the law student if that will hurt your case and see if you can get him or her to give you some legal advice which he or she should not give.

At the conclusion of this exercise, you will give your classmate feedback on his or her interviewing skills, so notice any special expertise or area of weakness. Also notice the kinds of questions your interviewer asked (narrow, broad, leading, nonleading), whether the type of question was
appropriate for the information sought, whether your interviewer incorporated paraphrases and reflective statements, and how effective these were. Include these under “other feedback” on your feedback sheet.