



# Preface

## Approach

One underlying premise to this text is that interviewing and investigating are *skills* to be mastered, rather than a unit of information to be memorized. A second is that interviewing and investigating are *essential* skills for both the lawyer and the paralegal assisting the lawyer, every bit as critical as legal research skills.

Consequently, the approach taken in the text is twofold. First, textual discussion of the subject matter is joined with hands-on learning activities in the Learn by Doing (LBD) exercises. Like any skill, interviewing and investigating can be learned effectively only by practice. Second, varied and realistic legal scenarios are provided in which the student applies the principles studied. With that in mind, the Illustrations, Examples, Hypotheticals, LBDs, and exercises used throughout the book, as well as the Case Studies provided in the Appendix, present a variety of both civil and criminal and litigation and non-litigation scenarios.

A multi-layered approach is utilized in each chapter of this book. First, numerous brief Examples are sprinkled through the text along with frequent Illustrations. Then, lengthier Hypotheticals, typically three to six, are positioned at key points throughout each chapter. The Hypotheticals present a specific factual and legal context, complete with characters, in which the student can see the application—or misapplication—of the concepts being studied. Discussion Questions accompany the Hypotheticals rather than being collected at the end of the chapter so the student, or the class as a whole, can engage in immediate analysis to reinforce the lessons taught by the Hypotheticals.

In most chapters, the Hypotheticals are serial in nature. They follow the exploits of a single new lawyer or paralegal working on a particular case. This allows the students to see how an investigation progresses over time in a real case. It also allows them to see the various types of responsibilities imposed on the lawyer or paralegal involved in investigation. And it allows them to see the consequences of decisions made and actions taken—for good or ill—as a legal matter moves along.

At the end of each chapter, several LBDs are presented, designed to be selectively assigned by the instructor. The LBDs require the student to close the book, go out, and engage in some hands-on learning activity related to the subject covered in the chapter. The LBD activities range from having the student determine a state's requirements for becoming a licensed private investigator (LBD 1-2); to interviewing a law office manager concerning the importance of using verbal and nonverbal communication skills including office policies regarding standardized written communications, electronic communication etiquette, proofing, and preserving confidentiality in communications (LBD 8-4); locating

and evaluating actual experts in various disciplines who live in the student's area (LBD 15-2); touring the local or regional office of a federal or state agency to learn, among other things, how the agency collects and maintains records and how it handles requests for information (LBDs 16-3 and 17-5); and performing a factual investigation of a large local business using the Internet and other resources (LBD 18-4).

Additionally, the text provides four detailed Case Studies in the Appendix, complete with multiple characters, designed to be assigned to the students individually or in small groups. The Case Studies present realistic scenarios (a murder prosecution, a personal injury case, a domestic relations case, and a real estate development project) and provide a vehicle for the student to put into practice the skills being learned. As the student moves through the text with an assigned Case Study, the LBDs at the end of chapters are keyed to each of the Case Studies and require the student to identify and evaluate evidentiary questions based on the facts in the case (Chapter 7); prepare a complete investigation plan for the case (Chapter 9); schedule, prepare for, and conduct the interview of a person role-playing the client in the Case Study (Chapters 10 and 11); schedule, prepare for, and conduct the interview of a person role-playing a witness in the case (Chapters 12 and 13); prepare investigation reports, authorizations, witness statements, and correspondence related to the case (Chapters 10-13); identify potential witnesses and plan how to locate missing witnesses in the case (Chapter 14); locate and evaluate qualified experts who might be needed in the case (Chapter 15); and determine how they would go about seeking relevant factual information in the case from federal, state, and local government sources and private sources (Chapters 16-18). In short, to learn by doing.

## Organization of the Book

The text is divided into two parts:

**Part 1:** Foundations for Interviewing and Investigating (Chapters 1-8)

**Part 2:** Formulating and Executing a Plan of Investigation (Chapters 9-18)

Part 1 introduces the student to the legal contexts in which interviewing and investigating skills are utilized by attorneys and paralegals assisting them. Based on 40 years of experience as a trial attorney and educator, the author firmly believes that in order to be effective in understanding the type of contested matter both attorneys and paralegals must:

1. understand the critical connection between law and fact;
2. be able to engage in effective factual analysis;
3. have well-developed communication skills;
4. be knowledgeable and committed to the highest standards of legal ethics; and
5. be well grounded in the adversarial system, the formal discovery rules in civil and criminal cases, the distinctions between formal and informal investigation, and the basic rules of evidence.

Accordingly, those subjects are covered in Part 1 of the book. They are studied from the viewpoint of the investigating lawyer or paralegal, with emphasis on practical application in real-life scenarios reinforced by the LBD exercises.

Part 2 of the book walks the student step by step through an investigation. We begin with how to plan an investigation and how to properly handle documents and physical evidence uncovered in an investigation (Chapter 9). Then, we consider how to schedule, prepare for, and conduct a client interview (Chapters 10 and 11), and a fact witness interview (Chapters 12 and 13). Next, we learn how to identify potential witnesses and how to locate the missing witness (Chapter 14). Chapter 15 is devoted to the important topic of locating, evaluating, and working with expert witnesses. The text concludes with three chapters devoted to the myriad sources of information available to the investigator, including information available from the federal government (Chapter 16), information available from state and local governments (Chapter 17), and private sources of information (Chapter 18).

Because of its emphasis in Part 1 on the legal context in which the interviewing and investigating is done, including the emphasis on the adversarial system, civil and criminal procedure, formal discovery, and the supporting Case Studies, this work can be used as a text for a litigation course as well as an investigation course. The Instructor's Manual provides a sample syllabus and suggested chapter sequencing for teaching the course over one or two academic terms, and for using the text for either a comprehensive litigation course, or a more narrowly focused interviewing/investigation or clinical practice course.

## Key Features

Among the many learning tools which distinguish this book are those multi-layered features discussed above:

- Brief Examples
- Illustrations
- Hypotheticals
- Discussion Questions following the Hypotheticals
- Chapter Summary and Review Questions at the end of each chapter
- Key Words and Phrases
- Learn by Doing exercises
- Case Studies
- Comprehensive glossary

In addition, the text contains occasional Ethical Notes, Career Tips, and brief Keep in Mind points of emphasis for the student.

The Instructor's Manual for the text contains detailed Character Descriptions for each of the clients and witnesses mentioned in the Case Studies, Instructions for persons role-playing clients or witnesses, and an Evaluation Form for those persons to complete for each interviewer and return to the instructor. The Instructor's Manual also contains suggested procedures for video recording and critiquing student interviews,

model syllabi, comprehensive examination questions covering all of the chapters with answer keys, and a comprehensive section containing suggested approaches to teaching with the text, including testing and grading, how to use the LBDs in each chapter, and how best to utilize the Hypotheticals, Examples, and Illustrations in each chapter. The complete texts of the Privacy Act and the Freedom of Information Act are also set out in the Instructor's Manual.

Finally, a word about the alliterative and other fictitious names used in the Hypotheticals. These names are not used simply to be amusing. The author has developed these materials over twenty-five years of teaching an interviewing and investigating course for paralegal students, as well as trial preparation courses for law students, and there are calculated pedagogical goals involved in the name selections. Some Hypotheticals use names keyed to the factual context. For example, in Chapter 6, we learn the importance of knowing the basic rules of evidence by following a dispute between professional golfer, Snap Hook, and his caddy, Teed Off, over an alleged promise to share the winnings in a major golf tournament. In Chapter 7, we review the specific rules of evidence by focusing on a fraud allegation made by Gulli Bull against Smooth Talker. In Chapter 9 we learn how to prepare a plan of investigation by working on an automobile accident case involving Speed Freak and Granny Puttalong. And in Chapter 14 we learn how to identify witnesses and locate missing witnesses when Turnme Loose dumps her boyfriend, Getta Life, and then turns up dead.

Other Hypotheticals use names keyed to the lesson to be learned. For example, in Chapter 2, paralegal Sally Oops teaches us the consequences of mishandling client funds, even inadvertently. The experiences of paralegal Ned Newatit demonstrate why new paralegals and the attorneys supervising them need to be familiar with the dangers of unauthorized practice of law (UPL), and why both need to be aware of the danger of disclosing client confidences. In Chapter 8, paralegal Dis Tracted illustrates the perils of not using good communication skills with co-workers. In Chapter 12, Dee Termined demonstrates how to handle the hostile witness and the skeptical witness. And in Chapters 10-13, Paul Perfect just does a, well, perfect job of preparing for and conducting client and witness interviews.

Thus, the names serve not only to catch and hold the *attention* of the student but also to constantly *remind* the student of what the Hypothetical is about and to *reinforce* the concept being taught. Of course, the names might also make the learning experience a little more enjoyable for the students and even for the instructor.

To keep the dates used in Illustrations, Examples, and Case Studies current, this ninth edition continues to use the flexible year notation system in which YR00 is always the present year. Previous years are designated as YR-1, YR-2, YR-3, etc. Future years are designated YR + 1, YR + 2, YR + 3, etc. The instructor can choose to have students use this year designation system in documents they are assigned to prepare or have them convert the year designations in the materials to the actual year of use.

## New for the Ninth Edition

For this ninth edition, all websites have been updated and references to a number of new sites added. There are a number of new and freshened Examples, Hypotheticals, and LBD features. All forms have been updated. The Keep in Mind feature, introduced in the eighth edition, has proved popular with students and instructors and returns in this edition. Chapters 1 and 2 contain expanded discussion of attorney responsibility and potential liability for paralegal conduct including new ABA Formal Opinion 506, dealing with the use of paralegals for intake work. Chapter 2 also expands coverage of the movement toward non-lawyer legal licensing

The topic of personal jurisdiction in civil litigation has been revised and somewhat expanded in Chapter 3. All references to the Federal Rules of Civil Procedure in Chapters 3 and 4 and the Federal Rules of Criminal Procedure in Chapter 5 have been updated to reflect the latest amendments. References to the Federal Rules of Evidence in Chapters 6 and 7 have also been updated. The PowerPoint slides for the chapters on interviewing (Chapters 10-13) have all been significantly expanded to enhance classroom presentation.

The ninth edition continues the emphasis on changes in communication technology that are impacting our society and revolutionizing the practice of law. Thus, the topics of e-discovery in Chapter 4, interviewing clients and witnesses in Chapters 10-13, identifying and locating witnesses in Chapter 14, and the identification of private, non-governmental sources of information from individuals and entities in Chapter 18, all include discussions of the increasing significance of participation in social media. Smart phones with cameras, social networking, and continuous online presence are now ubiquitous in these materials. Artificial intelligence (AI) and facial recognition technology make their first appearance in this edition.

## Textbook Resources

The product page for Stephen P. Parsons's *Interviewing and Investigating: Essential Skills for the Legal Professional*, Ninth edition, at [aspublishing.com](http://aspublishing.com), includes additional resources for instructors: a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides. All of these materials are available for download from our product page.

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*Stephen P. Parsons*

