

The Importance of F---- You

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Teaching Notes

I use the following simulation, “The Importance of F--- You,” to demonstrate how attorneys’ interviewing and counseling of their clients can either help or hinder problem-solving. Below I have listed two alternative ways to use the exercise. I have actually used the first alternative. Professor Lela Love suggested and has used the second alternative.

First Alternative: Using the Exercise for a Videotaped Simulation and Self-Critique

I use “The Importance of F--- You” in my Client Counseling class. Before they do “The Importance of F--- You,” my students conduct several client interviews and one counseling session. This preparatory counseling session is based on the “College Newspaper Editor” problem (pp. 249-252) in *Interviewing, Counseling and Negotiation* by Robert Bastress and Joseph Harbaugh. In this problem, a college newspaper editor is threatened with the loss of his/her position as editor-in-chief of the student newspaper and his/her tuition waiver if s/he publishes an article that the college president finds offensive. In order to conduct the counseling session based on this problem, the students must research students’ First Amendment rights within academic institutions.

“The Importance of F--- You” builds upon this counseling exercise and the earlier interviewing exercises. Each student selects a partner, and then is assigned to either the role of the attorney or the role of the client, Michael/Michelle Foster. The simulation is videotaped, and the student-

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attorney then takes and watches the videotape. S/He is then required to write a self-critique that includes the following:

A brief description of what occurred in the session (describing the process, not the case because I will know the facts of the case)

How the student-attorney and the client interacted with each other and/or reacted to each other

Based on these interactions and/or reactions, the student-attorney's identification of the legal counseling model that s/he used in the session

How the legal counseling model that s/he used helped and/or hindered his/her ability to a) understand the client's problem and b) assist the client in reaching the best resolution of the problem

Generally, what the student-attorney learned from observing his/her behaviors on the videotape and the feedback provided by the client

His/her goals for his/her performance in the future

Second Alternative: Using the Exercise to Demonstrate the Potential Pitfalls of Legal Interviewing

"The Importance of F--- You" also can be used early in a Client Counseling course. Three students play roles in front of the class. The first student plays the role of Michael/Michelle Foster. The second student plays the role of Mr./Ms. Foster's friend. The third student plays the role of the attorney.

First, Michael/Michelle Foster and his/her friend have a conversation in front of the class, in which Mr./Ms. Foster describes all that occurred. The conversation is likely to be easy and supportive. Mr./Ms. Foster is likely to be very forthcoming. The friend is likely not to interrupt or to use only "cooperative interruptions."

Then, in front of the class, Michael/Michelle Foster visits the attorney to discuss the case. This conversation (a/k/a interview) is likely to be more halting. Mr./Mrs. Foster may not be quite as forthcoming. And the attorney is likely to interrupt with narrow, legally-focused questions.

The class then debriefs the differences between the two conversations, discussing how well the friend and the attorney understand the "problem," why the conversations differed, how the attorney's more restricted view of the problem could affect his/her representation of the client,

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and how the attorney could interact differently in order to encourage the client to be more forthcoming.

Attachments

Attached to these Teaching Notes, you will find the confidential information for the student playing Michael/Michelle Foster and my memorandum for the student playing the role of the attorney (for the first alternative, above).

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SIMULATION: THE IMPORTANCE OF F---YOU_____

General Information for Michael/Michelle Foster

You are a single parent. Yesterday, your daughter, Shelley, was suspended from her public high school for three weeks. Shelley has never, ever been disciplined before. You believe that she is being punished for exercising her First Amendment right to free speech. You are consulting a lawyer to help you figure out what to do.

Shelley is 17 years old. She is a junior in high school. She is an “A” student, has lots of friends, is part of student government and participates actively in the volunteer activities of your church’s youth group. She is a good, smart, committed kid. She also has become more than a little headstrong in the last few months. You understand that this happens as kids near the end of high school.

One of Shelley’s friends is another junior, Paul. Shelley and Paul have known each other since nursery school and they have a joking relationship that sometimes involves friendly physical contact. Paul is a big, burly football player, much bigger than Shelley.

Two weeks ago, Shelley and Paul were working together on a project at school. According to Shelley, Paul started teasing her and getting physical with her. Shelley wanted to complete the project. In addition, she was uncomfortable with the physical contact that Paul was making. At first, she jokingly told him to stop. He didn’t. Then, she tried to pull away and said sharply, “Paul, I don’t like this. Stop it!” Paul did not stop. Finally, Shelley yelled, “Fuck you, Paul!!”

The school principal, Mr. Magnusen, happened to be passing by the door of the room where Shelley and Paul were working, and he heard Shelley’s remark. He was outraged. He said, “We do not use that kind of language around here, young lady! Come to my office immediately!” Shelley noticed that Mr. Magnusen did not say a word to Paul.

Once she reached Mr. Magnusen’s office, Shelley angrily tried to explain what had happened. The principal appeared not to listen. He told her that he was very disappointed in her and that she had to write a paper about the importance of using appropriate language and submit it to him the next day. If she failed to complete the assignment, she would be suspended for one day.

Shelley was fuming when she got home that afternoon. After she told you what happened, she

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disappeared into her room to write her paper. When she emerged, she shoved a draft into your hands. The title at the top of the paper was "The Importance of "Fuck You."" You sighed and read on. In the paper, Shelley acknowledged that polite language was appropriate most of the time, but she focused on the appropriateness of obscene language under certain circumstances. In particular, she argued that young women had to be ready and able to use such language when dealing with situations in which they were physically overwhelmed and needed to communicate strong negative feelings. Shelley wrote: "'Fuck You!' can be the verbal equivalent of a strong, effective punch." Then, she proceeded to list several other obscene remarks that might get a young man's attention.

Actually, you thought that the paper was pretty good. You urged her to remove the list of obscene remarks. After some resistance, she agreed to your suggestion.

Shelley handed the paper to the principal the next day. That afternoon, Mr. Magnusen called her to his office again. It was his turn to fume. He told her that he considered her paper to be a disgrace and a blatant show of disrespect. "Your mother/father will be very unhappy when s/he hears what you have done," he said firmly. When Shelley explained that you had reviewed the paper, Mr. Magnusen refused to believe it.

The next day, you got a call from Mr. Magnusen at work. You quickly explained that you knew about the incident and the paper. You agreed that "Fuck You" was not generally acceptable language but suggested that Shelley had made some good points. By the end of the conversation, Mr. Magnusen sounded unhappy but resigned. You thought that the incident was over.

It wasn't. Two days ago, Shelley spoke at a school assembly designed to highlight young women and their achievements. The high school counselor had asked Shelley (and several other female juniors and seniors) to speak about activities that the school's teachers considered particularly noteworthy. Shelley was going to talk about organizing her youth group to help several families who had lost all of their belongings in an apartment building fire. The counselor had reviewed and approved Shelley's speech.

When Shelley stood up at the podium, she began reading "The Importance of "Fuck You,"" rather than her prepared speech. There were a few snickers and nervous laughs, but generally the students were quiet. After Shelley finished, the next young woman rose and presented her speech.

After the assembly, the principal again summoned Shelley to his office. He summarily suspended

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her for three weeks.

You know that Shelley did not act wisely, but you do not believe that a three-week suspension is warranted. Shelley has never, ever been disciplined before. She did not hurt anyone; she did not do anything illegal; she just had an honest disagreement of opinion with the principal. As you see it, Shelley was exercising her First Amendment rights. For this, she is being punished more severely than classmates who have brought knives or marijuana to school.

In addition, it really angers you that Shelley has been singled out for punishment, while Paul -- whose conduct caused the whole incident -- has received no discipline whatsoever. You suspect that Paul is being treated very differently than Shelley because the principal does not want to do anything that might keep Paul from playing on the school's varsity football team.

Here are a few of your concerns:

1. You work as a dispatcher for the police department. You've been working a lot of overtime to get your annual income up to about \$30,000. You rarely get child support payments from your ex-spouse. You do not have the money to fund expensive legal action.
2. You also do not have the time to attend lots of meetings or hearings. Every hour of work that you miss shows up in a smaller paycheck.
3. You have a son in middle school. He will be entering the high school next year. He is more sensitive than Shelley. You do not want him to suffer any repercussions from this incident.
4. You do not have the money to send either of your children to college. Shelley had been doing so well in school that you figured she had a good chance of winning a scholarship somewhere. You are worried that a severe sanction (like this suspension) will hurt her chances for a scholarship.
5. You are concerned that your ex-spouse--who has become a minister in a born-again Christian denomination--will be motivated by this incident to try to take physical custody of the kids away from you. Normally, you would not worry about this, but you have been leaving the kids to fend for themselves quite a bit lately because of working overtime. Also, you have gotten involved in an affair with one of the married police officers. *You feel guilty and ashamed about both of these things.* In addition, if your ex-spouse decided

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to take you to court and dug around enough so that s/he found out about the affair and the amount of time that the kids are alone, you're worried that s/he could persuade a judge that you are not a fit parent.

6. You only have a high school education yourself. You have never challenged the action of one of your kids' teachers or principals. You are quite nervous about "taking on" Mr. Magnusen.
7. You are committed to doing *something*. Your daughter is not being treated fairly.

Michael/Michelle Foster's Personality

As suggested above, you are not very self-confident and dislike confrontation. You naturally view an attorney as an authority figure. With very little prompting, you will be willing to provide the attorney with the basic story line. However, you should wait for the attorney to probe before you provide him/her with all of the details. (You should feel free to provide verbal or non-verbal hints that invite a follow-up probe.) ***Importantly, you will not share the information about your affair with the police officer or the amount of time you are spending away from your children unless you feel you can trust the attorney, s/he makes you feel heard and understood, s/he asks appropriate questions, and s/he follows up on incomplete responses.***

You learned about this attorney from Josh Reade's mother, who is an acquaintance of yours. She was happy with the representation that this attorney had provided.

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MEMORANDUM_____

TO: Students in Client Counseling Class
FROM: Professor Welsh
RE: Upcoming Videotaped Client Counseling Session
DATE: March 30, 2000

In April, you will play the role of attorney in a videotaped interviewing and counseling session, watch the videotape, and write a short paper evaluating your own performance on the videotape. (You also will hand in the videotape.) The self-critique will be double-spaced and limited to four (4) pages in length. In your paper, you will include the following:

- A brief description of what occurred in the session (describing the process, not the case because I will know the facts of the case)
- How you and the client interacted with each other and/or reacted to each other
- Based on these interactions and/or reactions, your identification of the legal counseling model that you used in the session
- How the legal counseling model that you used helped and/or hindered your ability to a) understand your client's problem and b) assist your client in reaching the best resolution of the problem
- Generally, what you learned from observing your behaviors on the videotape and the feedback provided by the client
- Your goals for your performance in the future

You should *not* simply write a narrative or chronological description of what you and your client did.

For your role as attorney, you should make the following assumptions: You are an attorney in solo practice. You have been practicing for 18 months. You normally charge \$125 per hour for your services. You represented Josh Reade, the university newspaper editor described in your textbook at pp. 249-252, and successfully negotiated a settlement with the university president. Under the agreement, Josh maintained his position as editor and kept his tuition waiver. Josh graduated last month and is now working for a daily newspaper in a major metropolitan area. He is very happy.

You received the following note from your secretary. You will receive no additional information in preparation for the interviewing and counseling session.

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