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SHAKESPEARE IN LAW: HOW THE THEATER DEPARTMENT CAN ENHANCE LAWYERING SKILLS INSTRUCTION

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The lawyering skills program at Southern Illinois focuses on research, writing, and advocacy, and offers a basic introduction to interviewing, counseling, and negotiation. The course also deals with ethical issues arising in the practice of law, although it is not intended to substitute for the professional responsibility course.

In teaching the client interviewing and counseling segments of the two-semester, first-year course, we enlisted the assistance of the university's theater department. Specifically, we conducted simulated client interview and counseling sessions with our law students playing the role of attorneys and students from the theater department playing the role of the client.² The simulated experiences in interviewing and counseling are assessable parts of the course,

accounting for 15 percent of the student's grade each semester. The simulations have been a huge success, which is due to the enthusiastic participation of the theater faculty and their students, and especially to the ability of these students to role-play.

This article explains how we use theater students and faculty in the course, discusses the benefits of simulated experiences with theater students in a legal writing or skills course, describes problems encountered in our simulation experience, and offers suggestions for involving theater faculty in a legal writing or skills program.

Interviewing and Counseling Simulations

The simulated interviewing and counseling experience begins during the fall semester when students perform the client interview. They then research and write their open-universe memorandum based on the fact scenario presented in the simulated interview, and supplemented by an additional memo detailing the facts and issues presented for resolution.³ In the spring, students conduct the client counseling session based on the issue presented in the closed-universe memorandum from the fall.

Recruiting, organizing, and training theater students for the simulation process is no small task. First, a relationship between the theater department and law school must be established. When we began the program in fall 1998, the lawyering skills director contacted the theater department faculty and inquired about their interest in participating. We received an enthusiastic initial response, and the level of the theater department's involvement in this exercise has increased each semester. We now meet regularly with faculty from the theater department in order to plan upcoming simulations. Second, a system for scheduling the simulations must be created. In 1999–2000 we streamlined the scheduling procedure so that our teaching assistants now handle that task. Third, the theater students need a description of their fact scenario for the simulation. To meet this need, we created a document called the “client role sheet.”⁴

¹ I am grateful to Penelope Pether, formerly Director of Lawyering Skills and Assistant Professor of Law at Southern Illinois University School of Law and now director at American University, Washington College of Law, for her mentoring as well as for encouraging me to write about the value of using theater students for training simulations in a legal skills program. Also, many thanks to theater students Marlo Kennedy and Mollie Boliek for their helpful comments.

² See Dennis Turner, *Infusing Ethical, Moral, and Religious Values into a Law School Curriculum: A Modest Proposal*, 24 U. Dayton L. Rev. 283, 300 (1999) (describing use of third-year law students and members of the community as simulated clients in exercises at the College of William and Mary School of Law). Turner also suggests employing theater students to play simulated clients and the possibility that theater students could earn credit in one of their classes. *Id.* at 309 n.179. This is exactly what has happened at SIU. Theater students now receive course credit from the theater department for their participation in our simulation process. Medical schools have also recognized the value of theater students to their training programs. See Martha C. Nussbaum, “*Whether from Reason or Prejudice*”: *Taking Money for Bodily Services*, 27 J. Legal Stud. 693 (1998); Terri Kapsalis, *In Print*: Backstage at the Pelvic Theater, Chi. Reader, Apr. 18, 1997, at 46.

³ See *infra* Appendix A: Sample Initial Memo to Students and Appendix C: Sample Follow-Up Memo to Students.

⁴ See *infra* Appendix B: Sample Client Role Instructions.

Finally, theater students must be trained on how to be effective clients. Specifically, they need basic training on how much they can deviate from the client role instructions they are given, how much emotion they should display, how demanding or difficult they can be as a client, what types of questions they can ask the law student acting as attorney, how to respond to questions posed by the law student, and what kind of advice they can seek in the simulation. Our teaching assistants, working in cooperation with the theater faculty, have provided this training to theater students. For example, in training the theater students in how much they can deviate from the facts, we explain to them which facts are legally significant in the client role instructions. For legally significant facts, we ask them not to deviate in any way in their communication to the student attorney. For background facts that are not legally significant, we allow the theater students to change them to suit the character they are portraying.

Benefits to First-Year Law Students

The benefits of using simulated interviewing and counseling experiences are well worth the time and effort it takes to organize them. First and foremost, there is an integration of legal research, writing, and problem-solving skills with the areas of interviewing and counseling. Another advantage to the simulated experiences is that students encounter the skills of research, writing, interviewing, and counseling as they would in practice. The simulations allow students to be practitioners of law because they are encountering legal research and writing problems in practical ways. The typical legal-writing memo assignment does not adequately prepare students for practice because they don't receive any experience in fact gathering and thus often fail to grasp its role in the research and writing process. In simulations, however, the student begins to assume responsibility for the gathering and mastery of facts.⁵

Furthermore, in simulated experiences,

students deal with ethical issues in a practical context. Every simulation has an ethical issue built into the factual scenario. For example, in the simulation dealing with custody modification set out in Appendix B, the client seeking the modification has been denied a significant amount of visitation with his children. The theater student playing the role of the client is instructed to ask the student attorney in the interview whether he can keep his children an extra two and a half months after his next visit to make up for the visitation he claims he was wrongfully denied. The theater students are specifically instructed to pose questions like this to our students: "My wife isn't following the terms of the Marital Settlement Agreement that state that I get a certain amount of visitation, so why should I follow it? In the last year alone, she has denied me at least 80 days of visitation. Can I just keep them 80 days to make that up?" Students must then counsel and advise the client to obey the court's present order. Forcing students to grapple with professional conduct issues head-on does far more to promote ethical conduct than learning the rules of professional responsibility in isolation.

There are particular benefits that result when theater students are used for these simulations. Specifically, our first-year students benefit from the theater students' ability to portray realistic clients. When we first began the simulations, we didn't have enough theater students to serve as clients for all our simulations. As a result, we enlisted second- and third-year law students to assist. While the law students had the ability to role-play, their special training in the law prevented them from reacting to a client interview or counseling session in the way an actual client would. Professor Rebecca Fishel, a faculty member in SIU's Department of Theater, has explained why theater students are better "clients":

These exercises require much of the actor: skill in immersing into a character both intellectually and emotionally, skill in thinking on their feet, and skill in in-the-moment observation and retention that allows them to give valuable feedback after the simulation.

occasions, a client will deviate from the facts in a legally significant way. Even though a set of facts is provided to students after the simulation, they still take the gathering of facts seriously, as their ability to elicit the most important facts affects their interview assessment.

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⁵ We do provide a set of facts for all students to work from for the open-universe memorandum after all the interview simulations have been completed. See *infra* Appendix C: Sample Follow-Up Memo to Students. This is necessary because a small percentage of students simply fail at the interviewing process and do not elicit all the determinative facts. Additionally, on rare

“Theater students have special training in communication, and these feedback sessions allow us to exploit that knowledge base.”

The “thinking on their feet” goes beyond the traditional “improvisational” skill of a quick, appropriate answer. The exercise demands the actor think quickly, make training-based judgments, and respond in a way that maximizes the educational experience for the law student. For example, the actor is trained to listen to what is said and reply directly to the question without volunteering information that the law student needs to probe for as part of their training. This requires developing an instructional judgment on the part of the actor.

Another advantage of using theater students is the advice they can give during the feedback session.⁶ After the client interview is concluded, the theater student, with the assistance of the lawyering skills instructor, conducts a debriefing session in which the theater student identifies the body language and interpersonal communication skills used by the law student in the interview. One approach to the feedback session is to have the instructor pose questions such as these to the theater student after the interview: 1) How did the attorney make you feel as a client? 2) Did the attorney empathize with you and your legal problem? 3) What were the nonverbal messages sent by the student attorney? 4) What suggestions do you have for improving the communication exchange in the interview? Our students have found this type of information invaluable in improving their communication skills. Theater students have special training in communication, and these feedback sessions allow us to exploit that knowledge base. Our students have learned about communication concepts such as open versus closed body posturing, active listening, and nonverbal communication from these feedback sessions.

Benefits to the Theater Department

The partnership that has formed between the two disciplines is beneficial not only to our students but also to theater faculty and students.⁷ When asked about the value of the simulations for her students, Professor Fishel commented, “From a practical standpoint, this exercise gives the actor an

experience that can be used in a variety of venues. Any practice in moment-to-moment give-and-take between people is directly applicable to the development of their skills in interpersonal communication. The opportunity to hone their skills in observing, making judgments, and responding from an educator’s viewpoint will also be applicable to work in educational theater, whether it is the traditional venue of primary and secondary education, or the growing field of business theater education. Learning to work as an actor is an invaluable experience that opens the way for work in medical personnel training, a variety of training work in law, and first-person interpretation work.” Additionally, theater students report that the simulations give them unique opportunities to refine their skills of improvisational acting, reinforce their training in nonverbal communication through the feedback session, and practice working with a small audience. Finally, at least in our program, theater students receive a course credit from the theater department for their participation in the simulations.

Problems and Troubleshooting

After our initial experiences with using theater students in simulations, we met with faculty and students in the theater department to determine how we could improve the process. Some items, like having refreshments and a place for theater students to relax between simulations, have been easily dealt with. However, we are still experimenting with the best way to resolve other problematic issues. One area of concern posed by theater students is how they should go about relating the facts of their case in the simulated client interview. Some theater students simply began the client interview with a complete recitation of their factual scenarios. Others told part of the facts and then forced the law student to ask appropriate questions to fill in the gaps in the story. This is an area of real concern to us as instructors since we want each law student to

⁶ These feedback sessions began as an informal discussion between the instructor, the law student, and the theater student. Once we realized how much solid feedback the theater students had to offer our students, we began formalizing and structuring the sessions.

⁷ When making initial contact with the theater department, you might want to mention the specific benefits

theater students can derive from participation in law school simulations. We were fortunate to receive an enthusiastic response to our initial inquiry to the theater faculty; you might need to “sell” your theater department on the idea. If you aren’t successful in recruiting theater students, you might try community theater groups as an alternative.

receive an equally simple or challenging experience in interviewing. Consequently, we plan to restructure the way in which theater students are trained as clients for future interview simulations. We will instruct them on which facts should be directly communicated to the law students and which facts the law student must obtain through appropriate questioning techniques.

Another problem related by the theater students was that some of our factual scenarios for the simulations were not fertile ground for them to develop their acting and improvisational skills. The theater students found it much easier to get into character when something personal to the client was at stake. Our simulations dealing with a family law problem were most beneficial to the theater students. In the last set of simulations, we had a few scenarios in which a large business was sued and the acting president of the company was the client for the interview. The theater students told us that it would have been much easier for them to play their role as client if we made the business a small, family-owned one. In future simulations we will tailor the facts to create an issue of personal concern to the client. This will not only accommodate the theater students' concern, but also better enable us to evaluate our student's ability to empathize with the client and his or her legal problem.

Enhanced Involvement

We continue to discover more ways to involve theater in our lawyering skills program. There is much about its discipline that can help our students become more effective practicing attorneys. One area that we will try to address with the help of the theater faculty is how to effectively use nonverbal communication, including how to dress professionally. Perhaps it is our changing society or the influence of television's Ally McBeal, but a fair number of our students do not dress professionally for their simulations. Some wear unironed shirts, and extremely short skirts are a frequent occurrence. With the help of the theater faculty, we plan to produce a video displaying various styles of dress for both sexes and discussing the effects of dress on client perception.

In the spring semester we cover appellate advocacy and provide training in both verbal and nonverbal communication skills. We will continue to enlist the assistance of theater faculty in developing this training for our students. We have found the theater faculty to be a tremendous resource for materials and ideas to help equip our students with better communication skills. Last spring, faculty from the theater department hosted a workshop aimed at overcoming fears in public speaking. We targeted this workshop to precede the first-year oral advocacy rounds. Our students learned basic relaxation techniques and other presentation tips that were useful to them in preparing for their first argumentation experience.

Conclusion

The theme for the Legal Writing Institute 2000 Conference is preparing students for life after the first year. If we truly desire to equip students with the ability to perform research, think analytically, and write with precision, then we must teach these skills in a practical context. Students who have simulated client interviewing and counseling experiences, especially with theater students playing the role of clients, are better able to ascertain the connections between these various skills, which in turn eases the transition from law school to practice.

Appendix A: Sample Initial Memo to Students

To: Law Clerk #3329
From: Melissa Shafer
Date: October 28, 1999
Re: Rathford

I would like you to meet with Jordan Rathford, a prospective client, on an initial consultation basis sometime between November 1 and 4, 1999. Jordan is seeking our firm's assistance regarding a possible modification of child custody. Attached you will find a copy of 750 ILCS 5/610. You should review this statute prior to the interview. The statutory provision will give you a basic understanding of what is at issue as well as assist you in asking the client questions. However, this statutory provision will not give you all the answers and you should not advise the client about matters to which you have no legal knowledge or informed opinion.

“The theater students told us that it would have been much easier for them to play their role as client if we made the business a small, family-owned one.”

Appendix B: Sample Client Role Instructions⁸

General instructions:

Thank you for agreeing to play the role of Jordan Rathford in this client interview simulation. Please make sure you do all of the following in preparation for this simulation:

1. Attend the training session.
2. Call Melissa Shafer at 453-8647 if you have any questions.
3. Bring your role to the simulation so that you can refresh your memory in the event you forget important facts. If necessary, you may take this sheet into the simulation with you and refer to it.

Specific instructions for playing your role:

Your name is Jordan Rathford. You will be meeting with Attorney_____. (Each law student will be introducing themselves to you at the beginning of the interview.) Three years ago, you and your wife, Kelly, divorced. Custody was not contested in your divorce from Kelly and you agreed that she would be the sole custodian of the children and that you would have visitation of every other weekend and one week night per week in addition to four weeks in the summer and alternating holidays. You were also ordered to pay \$500.00 per month child support for your two children, Jimmy and Sarah. Jimmy is ten years old and Sarah is nine. Jimmy and Sarah visited with you regularly for the first two years following your divorce. One year ago, Kelly remarried and since that time you believe your visitation has been purposely limited by Kelly. Kelly has allowed the children to visit with you only about 25% of your court ordered time over the past year. There have been various reasons Kelly has given for her denial of visitation to you, including that the children are sick, have school activities they must attend, and finally that the children don't want to see you. You have kept a record in your diary of each time Kelly has denied you visitation as well as the reason she gave for the denial. To your knowledge, the children have not gone to the doctor for anything

other than regular check-ups or common colds over the last year. You have copies of all the children's medical bills for the last year. Also, you feel that over the last year the children have acted excited to see you when you arrived to pick them up. Jimmy and Sarah always run to greet you and tell you they have missed you since the last visit. You believe that Kelly's new husband is trying to poison the children's minds against you. You believe this is what is occurring since Jimmy recently told you that his stepfather said you were a bad person and didn't love Jimmy or Sarah as much as Kelly does.

You are outraged at this point since you have regularly paid your child support for the last three years and now Kelly isn't holding up her end of the bargain. For a year now, you have begged Kelly on many occasions to let you have your scheduled time.

You have decided that Kelly will not change and that the only way to prevent the children from growing further apart from you is to file for custody yourself. If you aren't successful in your custody suit, you would at least like to know if you can stop paying \$500.00 a month in support for the two children if they continue to refuse to visit.

In the last year alone, Kelly has denied you at least 80 days of scheduled visitation time. You will be picking them up for visitation this weekend. You want to know whether you can just not return the children this weekend to make up for the 80 days Kelly has denied you visitation time. You want to express to your attorney that "Kelly isn't following the terms of the Marital Settlement Agreement that state that I get a certain amount of visitation, so why should I follow it? In the last year alone, she has denied me at least 80 days of visitation time. Can I just keep them 80 days to make that up?"

Finally, you want advice on the following three questions: 1. Will you be able to obtain custody of Jimmy and Sarah? 2. If you fail in trying to obtain custody, can you stop paying child support if the children refuse to visit? 3. Can you keep the children 80 days past this Sunday to make up for the time Kelly has wrongfully denied you?

⁸ As discussed in this article, we will be revising these client role instructions for the next set of simulations. Specifically, we will break the role instructions into two parts: (1) facts that the theater student should automatically recite to the attorney, and (2) facts that the theater student should withhold unless the attorney asks questions pertaining to them.

Appendix C: Sample Follow-Up Memo to Students

To: Law Clerk #3329
 From: Melissa Shafer
 Date: November 5, 1999
 Re: Rathford

Thank you for conducting the intake interview in this matter. I conducted a short additional interview of the client yesterday, and we are going to act for him.

As you know, Jordan and his wife, Kelly, divorced three years ago. By consent of the parties, Kelly was awarded sole custody of the children and Jordan was awarded visitation of every other weekend and one week night per week in addition to four weeks in the summer and alternating holidays. Jordan was also ordered to pay \$500.00 in child support for the two children, Jimmy and Sarah. Jimmy and Sarah are aged ten and nine, respectively. Jimmy and Sarah visited regularly with Jordan for the first two years following the divorce. One year ago, Kelly remarried and since that time Jordan claims his visitation has been purposely limited by Kelly. Jordan claims that Kelly has allowed the children to visit only about 25% of the time over the past year. Jordan stated that Kelly has claimed the children are sick, have school activities, or that they don't want to come for the visit. Jordan has a record in his diary that lists each time Kelly has denied visitation as well as the reason given for the denial. Jordan states that to his knowledge, the children have not gone to the doctor for anything other than regular physicals or a common cold over the last year. Jordan has copies of all the children's medical bills for the last year. He further states that the children are always excited to see him when he has had visitation over the last year. Jordan said the children always run to greet him and said they have missed him since the last visit. Jordan believes that Kelly's new husband is trying to poison the children's minds against him. He believes this is what is occurring since Jimmy recently told Jordan that his stepfather said he was a bad person and didn't love Jimmy or Sarah as much as Kelly does.

Jordan is outraged since he has regularly paid his child support for the last three years and now Kelly isn't following the terms of their agreement.

Jordan has pleaded with Kelly on many occasions to see the children over the past year.

Jordan has decided that Kelly will not change and he wants custody of the children, since he fears they will just grow further apart from him if the present situation persists. If we did decide to file a petition on his behalf, it would be filed in Jackson County. If his modification of custody petition fails, Jordan wants to know whether he can just stop paying his child support if the children refuse to visit. Additionally, Jordan asked whether he can just not return the children this weekend to make up for the time Kelly has denied him. Jordan will be picking up the children this weekend for visitation. Jordan said, "Kelly isn't following the terms of the Marital Settlement Agreement that state that I get a certain amount of visitation, so why should I follow it? In the last year alone, she has denied me at least 80 days of visitation time. Can I just keep them 80 days to make that up?"

I would like you to research the following issues:

1. In Illinois, what are Jordan's chances for succeeding on a petition to modify custody in his favor? Are there additional facts that we will need to gather to make a firm prediction? If so, what facts would we need to gather?

2. If the modification action fails, can Jordan simply stop paying child support if the children refuse to visit or would that constitute contempt? If he cannot unilaterally stop paying support, can we petition for a termination or reduction of child support based on the children's refusal to visit?

3. In Illinois, can we advise Jordan not to return the children after the scheduled visitation and keep them 80 days as make-up visitation or will such an action constitute contempt? In terms of ethical misconduct, do the Illinois Rules of Professional Conduct address this type of situation? If advising Jordan to keep the children would constitute contempt or unethical conduct, can we pursue some other alternative for Jordan to regain the visitation time he has lost?

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