Values and Lawyering Skills

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by
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Law school classes may effectively teach how values influence policy decisions and the role of values in the management of law as a profession. Apart from reflective clinical experiences, however, they are ill-equipped to show the effect that personal values will have on students in their daily work as attorneys. This article describes an exercise that, along with other lessons, demonstrates how students' personal values will influence the character and quality of their representation of clients. I developed the exercise to serve as a vehicle for teaching students about the importance of client decision-making in the counseling process. In using the exercise, I have found that it teaches much more and may be used in a wide variety of skills courses, clinical courses, professional responsibility offerings, and other courses in which the instructor is interested in teaching about the effect of values upon lawyering skills.

The Exercise

At the beginning of the exercise, I tell the students they will need to play two roles. For one role I ask them to imagine they are all partners in a small law firm looking for a pro bono project. As partners, they will listen to potential clients present their cases. They will not be able to ask the clients questions, but, after hearing the clients' stories, they, as the firm's partners, will have to decide upon one client to represent. They are to assume that none of the clients can afford an attorney or arrange to have the case handled on a contingency basis.

In addition to having the students play firm partners, I assign each student to a client group. In a class of about twenty, the groups are usually made up of two or three students, and each group is to plan on how best to present the client's case to the firm. They must also decide on one or more students in the group to role-play the client before the firm. Each client group is given a written description of less than a page outlining its client's problem.

A wide variety of client cases may be developed for the simulation, and faculty members might create some in their areas of substantive law interest. In my simulation, one of the clients is a married couple with a young child. A neighbor made an abuse complaint to the state's child protection agency, and a social worker from that agency removed the child. The agency has not yet scheduled a hearing. The parents want to require the state to hold an immediate hearing, and they wish to get the child back. Another client is a single mother with three young children. She and her children receive public assistance. In the past the father of two of the children has given her some money, but he no longer does. The department of public welfare, apparently aware of the father's past contributions, is terminating the family's public assistance. The client's only income
now is public assistance, and she doesn't know how she'll get by without it. Other client cases I have used include a man who has been charged with battering his wife and needs representation, researchers who have come up with a drug they believe will block the development of AIDS but cannot afford to fight the Food and Drug Administration on licensing, and a group of women who have been discriminated against in hiring and promotion by a large local employer.

The class proceeds as I call upon the various groups to present their clients' cases before the firm (full class). After all the groups have presented their cases, I ask the full class to decide which client the firm will represent.

**Observations and Lessons**

While the class decides on a client to represent, I take copious notes on the decision-making process, focusing on how students who have played various clients behave when their clients' cases are discussed. Following the role-play, I make some observations about student behavior during the exercise and the effect of values on that behavior. I try to do much of this through questions, but I resort to comments when appropriate or needed.

Although the order in which I handle topics will vary from class to class, I usually try to cover points on client behavior, advocacy, decision-making, and how the students' values affected their behavior during the exercise. I consider the observations and conclusions about how values affect advocacy to be the most important lesson that students can learn. Students whose values support taking the case of the client that they have played in the exercise will most often be strong advocates for that client after switching to the role of firm partner. Those students whose values would oppose taking the case of the client they played will disassociate from that client in the firm role. A student, for example, might yell out during the decision process, "Get rid of the child abusers." The association and disassociation that occur in the exercise mirror that of the practicing bar. Real-life lawyer-client identification and disassociation are often more subtle, but they are no less real. Many of us who have practiced have seen lawyers sabotage their clients' cases by allowing their own views of right and wrong to damage the chance for a positive outcome. We have also seen lawyers blinded to opposing positions by myopic allegiance to their clients' cause. By having students experientially come to understand the effects that values can have on a lawyer's performance, I hope they will be able to anticipate these effects in their own practices and correct for them. This is the main lesson of the exercise, but there are others as well.

One very positive aspect of the exercise is that an instructor neither needs to nor should make judgments about the relative importance of the values expressed. An implicit lesson may be that it is important to respect, within certain limits, others' values and not be overly critical because of these differences.

Another lesson for the students is in understanding client motivations and behavior. The students, in having to put themselves in the roles of clients, are in a better position to understand client behavior in the interview process. Some students, in playing the client roles, omit facts that may result in their cases not being accepted by the firm. Others exaggerate the facts to ensure that their cases get accepted. In general, this form of advocacy exists mostly with students who sympathize with their assigned client. I hope that by seeing how some students playing clients will stretch the truth, the class members overall will have more understanding of their own future clients' willingness to do the same thing. Students may also find that simply having played the client may cause a student to develop a loyalty through the association, albeit a fictional one. This behavior mirrors that of the practicing attorney, who, having spent time with a client, will begin to develop a similar kind of loyalty.

Another lesson concerns the types of arguments that lawyers make. This fundamental lesson is an implicit part of many law school classes. It is possible, though, through the exercise to provide students with an
explicit understanding by discussing how, as clients, they appealed to the law firm decision-makers and how, as law firm partners, they advocated having the firm accept a particular client. Students may discuss advocacy points including the need to evaluate the decision-maker and the use of emotional appeal, detail, posture, and self-interest. Taking detailed notes, including quotations, during both parts of the exercise makes it easier to lead a discussion afterward on the types of arguments that students made and to provide specific examples of arguments and their effectiveness.

During the decision-making process, students may discuss the appropriate role of pro bono cases and the factors attorneys should consider in deciding whether to take them. Occasionally, students weigh in heavily with points about how a case will require minimal effort, might bring the firm helpful publicity, or not be troublingly controversial. Other students invariably argue against considering these factors, and some will even declare them inappropriate.

During the decision-making process, students inevitably make assumptions about the clients and the clients' cases. For example, students have suggested that the welfare termination case will be easy. They have suggested that both the man accused of domestic violence and the couple whose child was removed are culpable. Another point that can be raised during the discussion of the decision-making process is about our willingness to make unwarranted assumptions. While working hypotheses are needed, relying upon untested assumptions causes incorrect decisions and poor advocacy.

Applications in the Law School Curriculum

Used in an interviewing and counseling course, the exercise highlights why attorneys need to foster client-centered decision-making. As students discern how their values have affected the ways they select particular pro bono cases, they become more aware that attorneys must not impose decisions upon clients who may have different values. In alternative dispute resolution courses, the simulation can help mediation students see both why they need to determine what is of value to the parties and why the outcome they, as mediators, might want to impose may not be best for the parties involved.

Professional responsibility is another course in which the exercise might be used to foster the lesson of client-centered decision-making. The simulation could lead to a discussion of how dissonance between a professional responsibility requirement and attorney values may affect behavior.

The exercise could easily become a part of the classroom component for a clinical course. Having taken students through the simulation, a clinical professor could more easily address issues raised when they come up in clinic cases; for example, a student's failure to pursue a client's case aggressively when that student's values are in conflict with the client's behavior or desired remedy.

The exercise may help some of our students avoid the flaw Gerald Brenan ascribed to intellectuals. "Intellectuals are people who believe that ideas are of more importance than values. That is to say, their own ideas and other people's values." (E.F. BRENASA, THOUGHTS IN A DRY SEASON, Life).

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