

The (Mis?)Firing Likens v. Widget Corporation

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Exercise by
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This is a multi-stage simulation of a negotiation following the firing of an employee. The focus is on 1) representing a client in negotiating a dispute and 2) interviewing the client to gather the information needed to prepare for the negotiation (in what can be thought of as a negotiation with the client). The stages of the exercise are: an initial client interview, a negotiating session, a follow-up interview and discussion, a second negotiating session, obtaining client approval, and drafting an agreement. If you are interested in using this exercise, you may contact me at deason.2@osu.edu for a set of the instructions for students and my teaching notes. There is also a second version using the same names that can be used in alternate years to limit the information that passes among students.

The students do this exercise out of class, except for an in-class debriefing session that is held after everyone has completed the simulation and turned in a reflection. But it could be adapted for in-class use. I use this exercise to cap the section on negotiation in a dispute resolution survey course that is organized around the theme of the lawyer representing clients in dispute resolution processes. Time is very tight in this course, which is one of the reasons this exercise is held outside class.

The class has a combination of second- and third-year students and I recruit first-year students to play the role of the client. First-year students appreciate the break from doctrinal courses and my ulterior motives are to give them a brief exposure to what it feels like to be a client and to interest them in taking dispute resolution courses. It would be valuable to give the students in the class the opportunity to stand in the shoes of the client, but I have chosen to use one-Ls so that the students will have a client whom they do not know. In addition, because there is only time to do one exercise of this nature, if students in the class play the clients only half of them would get to experience the lawyer role. And, they have already had an opportunity to be a client in previous exercises. As a variation, C.K. Gunsalus did not use students as clients, but recruited friends and colleagues (adults) to play the role. This makes the interviews even more real and adds a level of difficulty.

The chart below shows the steps for this exercise, followed by descriptions of the stages.

Stage	Activity	Written Product	Instructor preparation
1	Lawyers conduct initial client interview		recruit clients; organize pairings; provide information sheets
2	Lawyers' negotiation session #1		
3	Follow-up client meeting		provide clients with supplemental information
4	Lawyers' negotiation session #2		
5	Obtain client approval & draft agreement	written agreement	
6	Debriefing process	Clients: feedback form to lawyer Lawyers: reflection	lead in-class debrief

1. The lawyers are given only bare-bones information about the situation. They must contact their clients and arrange an interview. I tell them that they will need to meet with their client at least once following the initial negotiation and that they should expect a second round of negotiations if their client does not agree to settle on the basis of the first round. I send the clients initial information for this interview with instructions about the character of the person they are playing: Bill Likens, the fired employee or Helen Stafford, the VP for Human Resources who fired him.

2. Based on what they learn in their interview, the lawyers negotiate with their assigned counterpart at a mutually-arranged time outside class. At this negotiation, they each encounter a few surprises and learn that their client did not reveal everything about the situation. They must return to their client for further fact-gathering and discussion about realistic goals.

3. I instruct the clients to let me know when they have finished the initial interview and then send them additional information that they can draw on in the second meeting.

4./5. The lawyers then return to their negotiation and, if they reach an agreement, they get approval from their clients and draft a written agreement. If they do not reach an agreement, they are asked to turn in a report of their final positions, indicating what they saw as the major obstacles to reaching an agreement.

6. I send the clients a feedback form on their lawyer's listening skills and the effectiveness of the interaction with their client. To encourage the 1-Ls to provide candid reactions to their lawyer, I

instruct them to send it to their lawyer, not to me. The lawyers write a reflection, which I regard as a stage in the debriefing process, and then we have a debriefing session during class time to enable them to further process their experience and to learn from each other.

Some of the learning points for this exercise center on interviewing: preparation, eliciting information, listening, and clarifying. I have not in the past required students to prepare any written product at this stage, but they could be asked to submit an outline of the information they hope to gather from their client. One of the challenges the student lawyers face is that they can feel undermined and blind-sided when they realize during the first negotiation that the client did not share all the relevant information with them. (In the exercise, this is information that a client would tend to assume is not relevant to the negotiation and likely would be uncomfortable discussing.) This allows a focus on professionalism; realizing that the client may have his/her own agenda and managing feelings with regard to the client; and negotiating effectively when there is information asymmetry. Students also typically have insights about balancing the client's interests with the lawyer's own interests, time management & the effect of time pressure, their role in educating the client in a process that can resemble a negotiation, and the importance of thorough preparation. The exercise can also be a vehicle for considering whether or not it would have been wise or advantageous to have the client present at either negotiating session (tying into the role of the client in the process, an ongoing question in my course). And it also lends itself to reviewing and reinforcing many of the topics we've covered earlier in the negotiation section of the course, as well as practicing finding an appropriate balance in the mix of distributive and problem-solving approaches.