

Case of Marsha Mudd and David Dunn – Overview

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This is a multi-stage simulation for negotiation of a marriage settlement agreement over the removal of the parties' children from Wisconsin to California between two attorneys, Kelly Stevens and Terry Baggins, who each represent one of the parents. David is the father of three minor children from his previous marriage with Marsha Mudd. David wants to take a new job out in San Diego, which is a promotion but also lets him be closer to his family.

Kelly Stevens represents David Dunn and Terry Baggins represents Marsha Mudd. One student will play Kelly and the other student will play Terry. Each attorney will be given a sheet of confidential information that is only disclosed to their party and then a sheet of general information that is the same for both parties. Other law students not in the class will play Marsha Mudd and David Dunn and they will be given their own set of confidential information. Each student will read the materials and then write a preparation memo on the relevant statutes, client interests, each lawyer's interests, and their strategy for the negotiation. This brief will be graded by the professor and constituted a substantial portion of students' grade for the semester.

This scenario offers participants the experience of presenting a negotiated agreement to a client who will not necessarily accept the lawyers' proposed agreement. It forces participants to confront the following issues: (1) why two representatives can agree upon something that the actual parties cannot; (2) how clients sometimes sabotage their own representative, and thus the representative's agreements, by failing or refusing to provide all information necessary reach a satisfactory agreement; (3) how and why clients change their priorities in the middle of the negotiation process; and (4) how to deal with a client who is not necessarily interested in negotiating an agreement. Some attorneys in this scenario will not convince their client to accept the agreement, even though it is not in any of the parties' best interests to force this issue into court. The cross-pressures placed upon the attorney's approach to the negotiation itself should produce a wide variety of results and reactions from participants.

You can get a copy of all the materials for this simulation by emailing me at andrea.schneider@marquette.edu.

The chart below shows the sequence of stages I used, followed by a brief discussion of each stage. This schedule is based on all out of class negotiations and then a final in-class debriefing where the entire class discusses their experience.

	Task	Assignment
1	Give packet of materials	Each student writes a preparation memo of 10 pages using 7-element preparation and students are given 2 weeks to finish the memo.
2	Initial Client Interview	After student turns in preparation memo, the student will conduct an in person, e-mail, or phone interview with their client. Clients are usually 1 st year law students and are given separate information.
3	Face to Face Negotiation with other party	After gathering information about client's interests, the student will meet with the other attorney to negotiate a settlement.
4	Discuss proposal with client	Student will discuss with client about the negotiation proposal.
5	Turn in final settlement or final proposal	After several rounds of negotiation, the final settlement is due in class 5 weeks after the packet was given to the students.
6	Debrief in class	Class will debrief about their experience
7	Out of Class Journal	This is a part of regular journaling. Students write a journal on their experience.

Logistics

Allow participants the following activity time allocations if the negotiation is done in class (and can have much more time if done out of class): (1) 60-120 minutes preparing, (2) 60-120 minutes negotiating, (3) 60-120 minutes advising client, (4) 30-60 minutes drafting stipulation, proposed or final, and (5) 30-60 minutes drafting reflection memorandum.

Four persons are needed for each group of participants.

The following materials are included for this negotiation: (1) General Instructions and General Information for all participants, (2) Confidential Information for David's attorney, (3) Confidential Information for David, (4) Confidential Information for Marsha's attorney, (5) Confidential Information for Marsha, (6) Marital Settlement Agreement for all participants, and (7) Findings of Fact, Conclusions of Law, and Judgment of Divorce for all participants.

Instructions

1. Distribute roles and ask participants to prepare individually in advance of the negotiation.
2. Outside the presence of participant-clients, allow participant-attorneys 30-60 minutes of negotiation.
3. Allow 30-60 minutes of confidential client counseling. Clients will not necessarily approve the negotiated agreement.
4. If the client rejects the negotiated agreement, allow participant-attorneys another 30-60 minutes of negotiation outside the presence of participant-clients.
5. If a second negotiated agreement is reached, allow another 30-60 minutes of confidential client counseling. Again, clients will not necessarily approve the negotiated agreement.
6. For participants whose group does not reach an agreement, allow each participant 30-60 minutes to prepare their individual proposed stipulation.
7. For participants whose group reaches an agreement, allow the group 30-60 minutes to prepare their agreed upon stipulation.
8. Allow 30-60 minutes for participants to prepare a memorandum of reflection.

Discussion

The basis for discussion of this negotiation will be the reflection memoranda and stipulations, proposed and final. Use the following questions to lead the discussion.

1. What did the parties' attorneys perceive their clients interest to be during the initial negotiation session?
2. Based on those perceived interests, what strategies did the attorneys employ?
3. What were the interests of the parties' attorneys?
4. Did the attorneys' interests affect the strategies employed during the first negotiation session?
5. What was each party's BATNA? (Careful reading of the parties Marital Settlement Agreement will reveal that the parties agreed to pursue mediation in the event something such as this occurs.)

6. If the attorneys reached an agreement, how did they generate the terms?
7. After the initial negotiation session, were the parties' attorneys confident that their client would accept their agreement? Why or why not? Did this affect the attorneys' strategy during the client counseling session?
8. Did the attorneys' perceptions of their client's interests change during the first client counseling session? Why or why not? If so, how?
9. How did the attorneys deal with any apparent inconsistency in their client's stated interests and the interests identified by the respective senior partners?
10. In the second negotiation session, did the attorneys' strategies change?
11. In the second negotiation session, how did the attorneys deal with any changes in the other attorney's approach?
12. Was it easier to negotiate with the other attorney or the client? Why?

Journal Questions

1. How has your thinking about Dunn and Mudd evolved since writing the preparation memo?
2. What did you learn about preparation?
3. What would you do differently in general and how would you handle surprise information next time?
4. How would you describe relations with your client?
5. What concerns do you have about this agreement for the future?
6. What did you learn about working with the other side?