

Working with Client Psychology

1. Injurious Realities

The judge is likely to ask about settlement in tomorrow's scheduling conference. Your client tripped over a cone by a convenience store entrance, suffering a concussion and cranial fracture. This caused cranial fluid to leak, which was extremely painful and required a horrific testing and internal cauterizing procedure. The defense has moved for summary judgment asserting the "Open and Obvious" doctrine as a bar to liability. You are concerned because you read case law as favoring the defense.

Your client had medical coverage but incurred out-of-pocket losses of \$8,000. Your complaint demanded \$500,000. The defense's response was "nuisance value" - \$5,000. Your client had previously talked about wanting \$300,000 or more. Of course, that was before discovery and the defense motion for summary judgment.

The defense counsel recently indicated that if your client was serious about settlement, he thought he could get client authority for a "fair and reasonable amount in the range of \$75,000." You see that offer as not bad and possibly negotiable up to \$85,000 or \$90,000.

Suggest to your client that settlement in the \$75,000 - \$90,000 range might be worth taking. Pay attention to the way you frame your suggestion.

2. Defensive Dollars

You are counsel for the defendant convenience store chain. Anticipating that the judge will ask about settlement, you decided to approach your client contact, the CFO, about increasing his offer to a number that should settle the case. You see the case as risky. While there is a pretty good chance of summary judgment under the "open and obvious" doctrine, if it does go to trial, a jury award could be VERY high. The plaintiff's injuries were serious and the treatment downright horrific. The idea of "leaking cranial fluid" will elicit jury emotion. The award could easily reach \$250,000 - \$300,000 or higher. Your fees could be in the \$40,000 range.

You want the CFO to authorize you to convey a reasonable settlement offer - \$75,000. You believe the plaintiff might accept something in that range. You would ultimately recommend settlement at \$100,000 or even a bit higher. (You want to leave some "wiggle room," but also want to present the \$75,000 as a serious offer to the plaintiff.) You anticipate client resistance.

Ask for authority to offer \$75,000 as a reasonable settlement figure. Pay attention to the way you frame it!

3. Imaginary Benefits

You have been working diligently to negotiate a separation between your client, a commissioned salesman and his employer, RSP Corporation, a provider of restaurant supplies. Your client owns a significant minority share of the stock and would like a release of his non-compete in exchange for his stock. Your client has indicated that he has a small number of reasonably significant client accounts that he brought with him to the RSP. He does not think they will stay with the RSP, even if he can no longer service them. There are, of course, many other client accounts initiated at RSP: a few of those might remain loyal to him, many would likely switch to his replacement RSP salesperson. RSP's President has offered to permit your client to compete for the client accounts he brought with him to RSP, and a very limited set of others, with a percentage of the revenues to be shared for two years. After three months, he would be permitted to compete for any new, non RSP clients in the territory. Your client rejects the offer out-of-hand because it is not the exchange of stock for competition he had wanted.

Use psychology to talk with your client. [Hint: the lawyers should be prepared to ask lots of questions! Clients, feel free to imagine more details and make up plausible numbers or other facts in response to the lawyer's questions. Lawyers, do use some of the readings and course material on psychology to work with the printed information and anything else you learn from your client.

4. Projecting Power

You are meeting with a potential client, the owner of Protection To Fit, Inc., aka "P2F," a small maker of custom covers and carriers for cameras and other portable delicate equipment. He had wanted to expand and diversify P2F by venturing into microscopes and portable medical equipment devices. At a Brussels trade show, he began discussing a possible exclusive contract with a major Swiss medical equipment manufacturer. Entering more formal negotiations and preparing custom prototype units required him to make major financial commitments such as applying for a higher credit line and adding staff for new designs and larger volume. During this time, the client declined to bid on contract for additional camera bags with a current customer. P2F couldn't handle both.

The client traveled to Switzerland, presented P2F's new prototypes, and negotiated further. Last week, he learned that a French company had been awarded the contract.

The client is livid: "They approached us at the trade show, saying our products were far superior and they wanted to work with a custom house. They knew we are a small business and had a lot riding on this! I told them we were going out on a limb by traveling to Switzerland and creating new designs, based on their good faith. Their negotiators insisted we show them we had finances and manpower plans for their larger volume. They never told me they were talking to a competitor. They lead us on intentionally so we would come up with great design for them. And now they're going to get the benefit with a big supplier. They knew I was relying on them. This is fraud!"

What psychological tendencies do you hear? Response?

5. Favorable Forecasts

You are representing a 57 year old client in connection with a divorce from her husband of the last 22 years. Their daughter is a high school junior – a difficult teenager who would prefer to live with his father. Your client was a certified architect but has not worked outside of the home for the last 15 years. While your client said she knew her marriage wasn't perfect (and their son is difficult!), she had no idea that he was planning to move out. At the moment, she doesn't know of any infidelity issues.

The state law contains a straightforward formula for division of marital assets, and permits most teenage children to choose which parent to live with. Most major property assets are to be divided equally, and some spousal support is provided, tied to the term of the marriage, but not past age 65. You have been trying to negotiate terms that will better meet your client's interests. The couple owns a modest ski "chalet," maybe worth \$125,000. (According to the husband's lawyer, the husband is the skier – your client rarely used the house). She also wants all of the marital home, currently worth \$325,000 (post market collapse), with a \$275,000 mortgage. Your client wants both properties and is sure their value will go way up. She is ready to give up most spousal support to keep the houses because she's confident of getting a job as an architect.

Psychological tendencies at work? How can you use psychology to counsel your client?

6. Hubby's Fantasies

You represent the husband in the divorce matter described above. Your client describes his former wife as a "shrew" who was consistently verbally abusive to him and his son. He has been waiting until his son would be old enough that a court would approve his choice to live with his father.

Your client is angry at the idea of paying spousal support to his soon-to-be-ex-wife for more than six months – a year at most. "She was the one who didn't want to work, opted for fancy lunches and zumba classes with her girlfriends. If she had worked, we would have real money in the bank to divide. Let the judge make her go be an architect, that's what I thought she was when we got married. What a sham!"

Your client told you that his recently divorced friend "Got away with paying NO spousal support to his wife of 15 years – a doctor and also a shrew. He just gave her the house and was done with it. "Make that happen for me!"

Psychology operating (in addition to emotion)? Antidotes?

Other Examples of Psychology in Action????

Ever-Present Ever-Real Emotion

1. Back Down Under

Charlie began working at the paper mill at the age of 16 and worked his way up over the next 12 years to become a foreman. He loved the work and was proud of his accomplishments. Two years ago, he suffered serious injuries when a 200 pound roll of paper spun off a turntable, pinning him against a wall. He received workers' compensation for the six months of treatment and recovery. After Charlie returned to the mill, things were never the same. He could not lift heavy things without re-injury, yet his supervisors accused him of malingering. He complained to Human Resources about unfair treatment and asked for time off to go to the doctor or physical therapist when his back flared up. Charlie also began to report safety hazards in the plant whenever he observed them. After a while, negative performance evaluations were filed and Charlie was terminated.

With a recession in manufacturing, a workers' comp history and no education, Charlie has been unable to find a job. Charlie's wife earns very little as a home health aide. He was humiliated recently when he had to ask his in-laws for a loan to make ends meet. A friend suggested he contact an attorney about his termination.

Take on the roles of lawyer and the client, Charlie.

If you are the lawyer, assume you know only that Charlie was terminated from a job as foreman at the paper mill, has been out of work for 6 months, and did not complete high school. Charlie walked in wearing a jacket and tie.

If you are Charlie, your demeanor should be tough and angry.

Before starting the conversation, consider what emotional concerns might be most salient for Charlie. Then conduct the first few moments of an initial client meeting.

2. Marrying Merits

Mary is a 38 year old woman of aristocratic bearing who has come to a well known divorce attorney for representation in her divorce from her husband of 16 years. In response to the attorney's question, "What brings you here today?" Mary explains:

She met her husband at her parents' country club while she was still in high school. Mary's father and her husband's father were both wealthy stock brokers at the same brokerage house. Mary's husband joined a high flying consulting firm after business school. Those were rich times.

Since then, the brokerage business imploded in an SEC investigation and both families' fortunes were lost. When Mary's husband failed to make partner in the consulting firm, he joined a business specializing in high tech business development. After the high tech bubble burst, his income dwindled to bare subsistence level and the marriage suffered. Her husband recently admitted to Mary that he had been having an affair a business colleague and demanded a divorce.

An English major in college, Mary had worked for three years as an editor in a literary publishing house. She had the first of their two children at age 25 and has not worked outside the home since then. Until the recent slip in her husband's business fortunes, Mary was active in the country club and as an organizer of high brow charitable events. She has been an avid member of the garden club and volunteer on local PTA and town beautification committees, etc. The kids are now age 13 and 11. Mary is adamant that she should not have to work and that her husband should pay hefty spousal and child support. She wants to remain in their large house (which also has a large mortgage).

Before any role-playing, consider what emotional concerns might be most salient for Mary.

One reader should take on Mary's role and one the attorney's role.

For those playing the attorney's role, assume that you and your spouse have always worked, are from solidly middle class backgrounds, had part-time jobs through college and law school. You find it difficult to deal with people who have an unearned sense of entitlement.

Then, imagine that Mary is now finished with her initial "information spill." The attorney did not interrupt, except for an encouraging murmur or two.

Next, take on the attorney and the client roles. Now, continue with the meeting and the conversation. (Those playing the client can reprise some of her story to set up the next phase.)

3. Shaw Hank Rebellion

The Shaw family owns a manufacturing business. Sam Shaw, the father, owns 40%. The remaining 60% is split between his sons, Hank and Peter. Two years ago, Sam made Peter the president and James the head of sales. (Hank has an Ivy league MBA, but Sam thought Hank was a better salesman and Peter had more business smarts.) Sam declared himself semi-retired, worked a light schedule, and took off winters in Florida.

At the recent "annual shareholders' meeting in a delicatessen, over Hank's objections, the "majority" (Sam and Peter) voted to maintain Sam's salary level and to give Peter a salary raise. Hank would still be paid on commissions, sometimes earning more and sometimes less than Peter.

Hank hired an attorney and sued his father and brother for violating duties to a minority shareholder and various types of mismanagement. He demanded records of all shareholder meetings and all ledger expenses for every employee and officer.

Sam and Peter were outraged. They stopped speaking to Hank and locked him out of the business. They have heard via the grapevine that Hank is going to work for their largest competitor. They suspect Hank has been talking to their competitor for months and divulging company trade secrets. That may be why the company lost a large customer a few months ago.

Sam went to talk to a lawyer. He wants nothing more to do with Hank and wants him off the letterhead as a director. The corporate documents say nothing about a forced sale or surrender of stock if one of the family directors leaves the company.

Note that: as a matter of law, Hank is entitled to see the corporate records. Without knowing all of the facts, Sam's and Peter's decision to lock Hank out could, at least on its face, be characterized as a violation of various legal obligations to Hank. It is also doubtful that Sam or Peter have the right to force Hank to sell or surrender his minority share, though they could theoretically vote to dissolve the company.

On the other hand, Hank's suspected disclosure of trade secrets would violate his shareholder duties. As a matter of equity, that argument is easier to make if the disclosures occurred before Hank was forced out.

Before any role-playing, consider and discuss the emotional concerns most salient for Sam, and consider Sam's possible meta-emotions. Time permitting, you might also consider and discuss Hanks' emotional concerns.

Next, do take on attorney and client roles. Play out the meeting between Sam and his attorney. (Those playing Sam's role can reprise some of the story before the conversation moves to the attorney's response.)

Time permitting, switch roles and play out a conversation that might have occurred between Hank and his attorney.

5. Elder Berry Whine

LB. Newman is a 27 year old first year associate at a downtown firm. His undergraduate work was in computer engineering and he worked in computer programming before law school. The firm is trying to develop a transactional practice for high tech clients. LB. has been working with Ed Berry, the corporate department head, on a joint venture between the firm's computer engineering client and a transportation company.

The attorneys for both companies have met several times to work on the documents. Ed Berry was called away unexpectedly in the last round, and LB. covered the discussion, with the understanding that he would review any significant decisions with Ed.

During that last meeting, opposing counsel suggested changes in Ed's draft on the systems engineering specifications. LB. agreed because the changes made sense and frankly, Ed's draft reflected his lack of understanding of the technical aspects of the deal.

The next day, Ed marched down to LB.'s office. "How dare you make these changes... the language I had in there has been used by generations of lawyers in this office because experience tells us that it works. Now you call the guy on the other side, tell him he shouldn't have tried to take advantage of you, and he must change it back."

Before any role-playing, consider and discuss the emotional concerns most salient for Ed Berry, including possible meta-emotions. Time permitting, you might also consider and discuss LB's emotional concerns.

Next, do take on attorney and client roles. Play out the meeting between Ed Berry and LB. (Those playing Ed Berry's role can reprise or paraphrase some of his comments above to set the stage.)

How should LB. respond?

What would have been a better way for Ed to start?

How could L.B. have managed the circumstances more adeptly?