

INTERVIEWING, COUNSELING AND NEGOTIATION

Professor Mitchell

Examination

Fall 1991

INSTRUCTIONS

1. This is an open book exam. You may have books, notes, outlines, and other written aids with you during the exam.
2. There are eleven (11) pages to the exam including this page of instructions. Please check to see that you have all of the pages.
3. Please write your exam number on each blue book you use. Double check this at the time you submit your completed exam.
4. This exam has three questions. Each question has been assigned a specific weight. The weight takes into account (a) the time it will take to read the question, (b) the time that it will take to answer the question, and (c) the scope of the course materials covered by the question.
 - Question One is worth 50% of the grade.
 - Question Two is worth 30% of the grade.
 - Question Three is worth 20% of your grade.
 - Your time should be divided accordingly,
5. Approach each question as follows.
 - (a) Read the "questions asked" which are either at the beginning or at the end of each of the three questions.
 - (b) Be sure you understand the "questions asked".
 - (c) Read the fact pattern.
 - (d) Reread the "questions asked".
 - (e) Answer the "questions asked".
 - (f) Answer only the questions asked. Please do not ask and answer your own questions.
 - (g) When appropriate refer to specific readings.
6. You have three hours to complete this exam.

QUESTION ONE (50%)

The following excerpt is taken from Tolstoy's Anna Karenina. The scene introduces a whole range of issues about interviewing. Read the following sequence and answer these questions:

Question Asked

1. What was the lawyer's view of the lawyer-client relationship?
2. Did the client's attitude toward lawyers affect the interview? Did the lawyer's conduct reinforce or alter this attitude? Could or should the lawyer have recognized or dealt with the client's attitude? How?
3. What impressions does his lawyer's waiting room, office and personal appearance create?
4. What important "facts" did the lawyer learn about Karenina's case? How effective was the lawyer in pursuing those facts?
5. How well did the lawyer explain Karenina's options to him?
6. What other interviewing issues can you identify in this excerpt? Discuss
7. If you were the attorney, what would you have done differently?

"Karenina Visits a Lawyer"

The famous Petersburg lawyer's waiting-room was full when Karenina entered it. Three women: an old lady, a young lady, and a tradesman's wife; and three gentlemen: one a German banker with ring on his finger, another a bearded merchant, and the third an irate official in uniform with an order hanging from his neck, who had evidently been waiting too long. Two clerks at their tables were writing, and the sound of their pens was audible. The writing table accessories (of which Karenina was a connoisseur) were unusually good, as he could not help noticing. One of the clerks, without rising from his chair, screwed up his eyes and addressed Karenina ill-humoredly.

"What do you want?"

"I want to see the lawyer on business."

"The lawyer is engaged," replied the assistant sternly, and indicated with his pen the persons, who were waiting.

"Can he not find time to see me?" said Karenina.

"He has no spare time, he is always busy. Be so kind as to wait."

"Then I will trouble you to give him my card," said Karenina with dignity, seeing the impossibility of preserving his incognito.

The assistant took the card and, though he evidently did not approve of what he read on it, went out of the room.

Karenina approved in theory of public trial, but for certain high official reasons he did not quite sympathize with some aspects of its application in Russia, and he condemned these applications as far as he could condemn anything that had been confirmed by the Emperor. His whole life had been spent in administrative activity, and, therefore, when he disapproved of anything his disapproval was mitigated by a recognition of the inevitability of mistakes and the possibility of improvement in everything. In the new legal institutions he disapproved of the position occupied by lawyers. But till now he had never had to deal with a lawyer and so had disapproved only in theory; now his disapproval was strengthened by the unpleasant impression he received in the lawyer's waiting-room.

"He will be here in a moment, said the assistant, and in fact, a minute or two later, in the doorway appeared the long figure of the elderly juris-consult who had been conferring with the lawyer, followed by the lawyer himself.

The lawyer was a short, thick-set, bald-headed man, with a black beard tinged with red, long light-colored eyebrows, and a bulging forehead. He was as spruce as a bridegroom, from his white necktie and double watchchain to his patent leather boots. His face was intelligent and peasant-like, but his dress was dandified and in bad taste.

"Come in, please" said the lawyer to Karenina, and gloomily ushering his client in before him, he closed the door.

"Won't you take a seat?" He pointed to a chair beside a writing-table covered with papers, and himself took the principal seat, rubbing his little hands with their short fingers covered with white hair and bending his head to one side. But hardly had they settled down when a moth flew across the table. The lawyer, with a rapidity one could not have expected of him, separated his hands, caught the moth, and resumed his former position.

"Before I begin speaking of my case," said Karenina, who had followed the lawyer's movements with astonishment, "I must mention that the business about which I have to speak to you must be strictly private."

A scarcely perceptible smile moved the lawyer's drooping reddish moustache.

"I should not be a lawyer if I could not keep the secrets entrusted to me. But if you would like confirmation ...

Karenina glanced at him and saw that his intelligent grey eyes were laughing, as if he knew everything in advance.

"You know my name?" continued Karenina.

"I know you and, like every Russian, I know"--here he again caught a moth--"your useful activity," said the lawyer bowing.

Karenina sighed, collecting his courage, but having once made up his mind he went on in his squeaky voice without timidity or hesitation, emphasizing a word-here and there.

"I have the misfortune," began Karenina, "to be a deceived husband and I wish legally to break off relations with my wife--that is, to be divorced, but in such a way that my son should not remain with his mother."

The lawyer's grey eyes tried not to laugh but they danced with irrepressible glee, and Karenina saw that it was not only the glee of a man getting profitable business; there was triumph and delight, and a gleam resembling the evil-boding gleam he had seen in his wife's eyes.

"You want my assistance to obtain a divorce?"

"Just so. But I must warn you that there is a risk that I may be wasting your time. I have come only for a preliminary consultation. I wish for a divorce, but the form in which it can be obtained is of importance to me. It is quite possible that if the forms do not coincide with my requirements I shall forgo my legitimate desire."

"Oh, that is always so," said the lawyer, "that is always open to you."

The lawyer looked down at Karenina's feet, feeling that the sight of his irrepressible joy might offend his client. He glanced at a moth that flew past his nose and his hand moved, but did not catch it, out of respect for Karenina's situation.

"Although the general outline of our laws relating to this matter is known to me," continued Karenina, "I should like to know the forms in which such cases are conducted in practice."

"You wish me to state," the lawyer said, still not raising his eyes and adopting, with a certain pleasure, his client's manner of speech, "the various methods by which your desire can be carried out?"

And on Karenina's nodding affirmatively the lawyer continued, only occasionally casting a glance at Karenina's face, which had grown red in patches.

"Divorce, under our laws," he said, with a slight shade of disapproval of the laws, "as you are aware, may be granted in the following cases. You must wait" he exclaimed, addressing his

assistant who had looked in at the door; but he rose all the same, spoke a few words to his assistant and sat down again. In the following cases: physical defect in husband and wife; five years' absence without news--he bent one of his short hairy fingers--"and in cases of adultery," he uttered the word with evident pleasure. "These are best divided as follows," and he went on bending down his thick fingers, though the cases and the subdivisions evidently could not be classed together, "physical defects in husband or in wife, and adultery of husband or of wife." As all his fingers had been used, he straightened them all out and continued:

"That is the theoretical view but I suppose you have done me the honor of applying to me in order to learn the practical application of the law. Therefore, guided by the precedents, I have to inform you that cases of divorce all come to the following: adultery of husband or wife and the detection of the guilty party by mutual consent, or involuntary detection without such consent. I must add that the latter case is seldom met with in practice," and with a momentary glance at Karenin the lawyer became suddenly silent, like a man who when selling pistols has described the advantages of the different kinds, and waits for his customer's decision. But Karenin remained silent, and so he began again: "The most usual, simple, and reasonable way I consider to be adultery by mutual consent. I should not venture so to express myself were I talking to a man of undeveloped mind," said the lawyer, "but I expect it is comprehensive to you."

Karenin was, however, so much upset that he did not at once understand the reasonableness of adultery by mutual consent and his perplexity was expressed in his looks; but the lawyer immediately helped him.

"Two people can no longer live together--there is the fact. And if both agree about that, the details and formalities become unimportant, and at the same time it is the simplest and surest method."

Karenina quite understood now. But he had religious requirements which hindered his acceptance of this method.

"It is out of the question in the present case," said he. "Only one measure is possible: involuntary detection confirmed by letters which I have."

At the mention of letters the lawyer pressed his lips together and gave vent to a high-pitched sound of pity and contempt.

"Please remember the cases of this kind, as you know, are decided by the Ecclesiastical Department, and the reverend Fathers in such cases are keenly interested in the minutest details," he said, with a smile that showed his fellow feeling with the reverend Fathers' taste. "Letters may certainly serve as a partial confirmation, but direct evidence from witnesses must be produced. In general, if you do me the honor to entrust the case to me, leave me to choose the means which should be used. He who desires a result accepts the means of obtaining it. "

"If it is so. ..." Karenina began, growing suddenly pale, but at that moment the other suddenly rose and went to the door to speak to his assistant, who had again come to interrupt him.

"Tell her we have not got a cheap sale on here!" he said and came back again.

As he was returning he furtively caught another moth. "A fine state of furniture will be in when summer comes@ he thought, and frowned.

"Yes, you were saying ... A he began.

"I will write and let you know what I decide," said Karenin, rising and holding on by the table. After a short pause he said, "I may conclude from your words that a divorce could be obtained. I would also ask you to let me know your terms?"

"It is quite possible, if you allow me full liberty of action," said the lawyer, without taking any notice of the late question. "When may I expect to hear from you?" he added, moving toward the door, his eyes and patent-leather boots shining.

It in a week's time. And you will be so good as to let me know whether you are willing to undertake the case, and on what terms

"Very well."

The lawyer bowed deferentially, let his client pass out, and being left alone abandoned himself to his happy mood. He felt so cheerful that, contrary to his custom, he allowed a reduction to the bargaining lady and gave up catching moths, having made up his mind to have his furniture recovered next winter with velvet.

QUESTION TWO (30%)

You are an associate in a six-person law firm. You have just interviewed Ruth Nielson, a 19-year-old student at Central University, which is located in your city. You and all of the members of your firm have received one or more degrees from the university and have supported various programs at the school.

Ms. Nielson informed you that ten days ago she was forced against her will to have sex with the school's star basketball player, Rick Jones. She claims that Jones visited her at her off-campus apartment on a recent weekend night while her roommate was out of town. The client and Jones had been casual friends for nearly a year; they shared the same major and had attended several classes together. According to Nielson, Jones had been drinking. When he arrived, she said he was upset about something and needed to talk. He made other intentions known very quickly, however, and overpowered Nielson, forcing her into intercourse. He then left abruptly. She did not know what to do; she felt angry, betrayed, humiliated, and confused. After

thinking about it overnight, she reported the incident to the police, but the investigating officers seemed to discourage her from going forward. They emphasized the unpleasantness she would encounter, how exposed she would be, and how much people around the city respected Jones. She has not yet decided whether to file a formal complaint. Nielson also contacted the basketball coach. He questioned Jones about the charge and then reported back to Nielson that the athlete she had consented to the sex. The coach said he did not know whom to believe or what else he could do. After that, Nielson went to see a counselor, who suggested to her that she contact you to discuss her legal rights and alternatives.

Central University has always maintained a strong academic reputation and boasts about its ability to keep its standards while also fielding successful sports teams. For example, it consistently ranks among the nation's leaders in the graduation rate of its student athletes, and many of them go on to graduate-level education. Moreover, the football and basketball revenues finance all of the university's sports programs, and there is usually enough money left over to lend support to special scholarship and research projects. This year looks particularly promising; the football team is headed for a bowl and the basketball team has placed in the top ten in all of the preseason rankings.

Jones led last year's team in scoring and figures to be considered for All-American honors and a lucrative professional contract at the end of this season. He has a squeaky clean reputation; he is a solid student, this year's team captain, and the son of a wealthy financier. The father is a leading figure in the state and has been a strong supporter of the university over the years, Ms. Nielson has a modest background, but has built an enviable academic record.

During your interview, Nielson continued to express confusion about what, if anything, she wanted to do. She remains very hurt, angry, and distraught from the incident, but she is not sure she wants to endure the trauma of legal proceedings or public scrutiny (and, possibly vilification). She also told you that she has heard there have been several other occasions of improper conduct by Central athletes in recent years that city and school officials have either ignored or managed to resolve quietly.

Questions Asked

1. What feelings would you have in representing Ms. Nielson?
2. How might different turns of events in her case satisfy, or conflict with, any of your personal needs, values, or concerns.
3. Identify and discuss issues that do not present a conflict for you but might for others.

QUESTION 3 (20%)

The client is Anthony Selin. Mr. Selin owns a home in a quiet but modest residential section of Snydertown. His long-time close friend and neighbor, Ralph Kratzer, retired a year ago

from his job at a nearby auto plant. Shortly thereafter, Ralph's wife died, and he quickly grew restless with his uneventful, solitary routine. To combat his boredom, Kratzer remodeled his ranch-style home and converted the first floor of his house into a bar--"Ralph's Place," naturally--and moved his living quarters downstairs to his basement. His front yard was graveled into a parking lot. Ralph did inform his neighbors what he was doing, but no one in the neighborhood wanted to complain and upset him.

The bar opened six months ago and the neighborhood has never been the same. Ralph hires a local rock group three nights a week and they play raucous music until 2:00 a.m. Loud, drunken shouts emanate from the parking lot even past that time. Beer cans have collected on and around Ralph's property, and the parking lot is inadequate to handle the number of customers. Local residents have frequently lost their on-street parking and some have even complained that their driveways have been used or blocked. There have also been complaints that customers have been relieving themselves of the over-consumption of liquids at assorted outside locations in full public view. Mr. Selin and his neighbors have thus lost sleep, parking, and the general enjoyment of their property. The community's parents are also concerned about the impact that the bar and its associated revelries may have on the moral development of the children.

Although the neighborhood is largely residential, there is a gas station and a small quick-service grocery store within two blocks of the bar. A commercial district featuring a variety of retail stores and banks is about one mile away.

Mr. Selin wants to know if there is anything that can be done about the bar.

Research into the state code reveals no applicable statute. There are, however, many cases on nuisance law. The precedents evince a balancing approach that weighs the character of the community; the length of time that the offending establishment has been in operation; the notice to neighbors (including whether the establishment predated or postdated the residential development); the degree of intrusion into residential life; the effects on the health, safety, and morals of the community; and the availability of less alternatives. Upon balancing those factors, they have recognized a range of appropriate results, including complete and permanent injunctions, compromise or partial injunctions limiting the operations of the establishment, damages (either in addition to or instead of injunctive relief), and no relief. From the facts of the precedents, you can deduce that Mr. Selin would be entitled to at least a partial injunction and perhaps even a total injunction and damages.

Research into Snyderstown municipal code discloses the bar is in compliance with the rather loosely drawn zoning ordinance. Although it is possible to petition the Zoning Board to change the laws and zone out the bar, such a change could raise serious constitutional questions about its effects on preexisting uses.

Finally, research into the state's liquor laws instruct that a liquor licensee must, to retain his license, maintain his establishment in a clean, unobtrusive manner. Neighbors of liquor establishments have been accorded standing to challenge license renewals (which come up every

two years) for failure to meet that duty. In practice, though, the Liquor Board has been reluctant to revoke licenses and put operators out of business. Typically, the Board had imposed small fines and, occasionally, a short probationary period. A bar can generally clean up its act for the two or three months of the probation and then continue business as usual.

Questions Asked

You are now ready to counsel the client. Prepare the following lists to use when the client comes to the counseling session:

1. A list of the legal alternatives that can be identified.
2. A list of suggested non-legal alternatives.
3. A list of the legal and nonlegal consequences of each alternative. In compiling this list, remember that in identifying these, the lawyer must draw both on experience and common sense.