

Dialogue Education™ and the Attorney-Client Relationship

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Like the traditional student-teacher relationship, there is often a distinct power imbalance in many attorney-client relationships. When clients come to see attorneys, they are often afraid, uncertain and vulnerable. Into this mix steps the attorney who aligns with them, takes up their cause and becomes their champion. The attorney does this in large part by taking the client's facts, analyzing them for precedent and coming up with a legal "prescription" for the client.

However, in my experience, and especially since I began representing clients through Collaborative Practice, I find it rare that a client appears in my office with a purely "legal" problem. (Collaborative Practice is a relatively recent alternative to litigation, seen primarily in family law, in which there is full disclosure of relevant information, use of interest-based negotiations, engagement of other professionals by the parties, and withdrawal of the attorneys if the matter is not resolved and the matter has to be litigated.)

Unfortunately, at the very moment a client may need something more than just pure legal advice, and may be deep in a soup of primal emotions, he or she is faced with options described in black and white, legalistic terms in language which is entrapped within a rule-driven "box" full of sometimes strange and unknown procedures designed to determine right and wrong within an adversarial model.



For the first fifteen years of my practice, I largely "counseled" clients within this narrowly defined legal box with little consciousness of the larger view of what might be going on with the client. Law school had done its job through its Socratic methods and trained me to think in narrow legalistic terms, distilling a multitude of facts down to a series of legal rules which were then applied in a careful calculus of possible outcomes, all expressed in largely rights-based language. The client largely became an object carrying a certain set of facts with them, much like the "container" described by Paulo Freire. My style of interviewing was to bring the client in, let them talk and then begin to ask a series of largely leading questions which narrowed the issues into something for which I could apply precedent and write a "prescription", thereby become the "narrator" that Freire speaks of. The client largely listened, eyes often glazing over, while I talked away in my legal jargon. Though I did make an effort to put what I was saying



into plain English, I often wondered how much they really understood. In this interaction, reality was motionless, static, compartmentalized and supposedly predictable.

Meanwhile, opposing counsel in a particular case was probably doing the same thing. Reducing a client's problem to simple black and white, soon led clients to view the other side as inherently bad and in need of punishment. As the dispute progressed, attorneys engaged in traditional zero-sum bargaining in which there are winners and losers. At least that was the perceived outcome of any eventual litigation, although the true fact of the matter is that there are rarely any complete winners or complete losers in most litigated matters. Even where clients have "won" they have often lost many days and hours to their dispute and suffered emotional trauma, not to mention having spent sometimes enormous amounts of money. I wondered if, as a legal counselor, I did not have at least some greater obligation to keep my clients from plunging into this morass, or at least make sure they had fully considered the consequences and made a fully informed decision.

Having gone through a seven-day Dialogue Education™ class as part of a larger Masters program in Conflict Transformation, I was reminded of the importance of my client's stories. Each time I meet a new client, I remember that they are nervous, afraid, often angry and most of all, uncertain of their situation.

I now try to engage the client in a dialogue. I know that they have a story to tell me and I try to create an atmosphere in which they can do that. Rather than sitting at a square or rectangular table, I now try to meet with clients at a round table or sometimes with no table at all. In addition, I formerly took copious notes while interviewing clients, thereby missing much of their story. Now, while I still will bring a legal pad into the interview with me, I let them tell their story first and then go back and take notes as needed. The key to getting to the client's story is the open question. The responses to these open questions often lead to places I never would have gone in my former interviewing style, yet they regularly lead to places where I am able to help the client identifying their true interests, goals and needs.

Like Dialogue Education™ to the student, Collaborative Practice has empowerment as one of its guiding principles -- a belief that people have the inherent ability to resolve their own conflicts and that an attorney's role is to support, educate and create a safe space for that to occur. We still advocate but in a way that is forward-looking and focused on the restructured family rather than assessing blame. In studying a bit of the historical role of the attorney, I believe this approach is in some ways a return to our traditional role.

Under this role, the attorney asks open questions that attempt to educate and empower the client to create their own solutions and not to overwhelm them with the law. As we often say, the law is but the lowest floor to what clients can do with their conflict. Like the teacher beginning in Dialogue Education™, there is the fear of turning loose and letting the client guide the outcome; it may be an outcome that the lawyer might not normally recommend under a purely legal analysis. It is also about clients taking charge of their situation rather than "dumping" their conflict on the attorney and letting the attorney "fix" it in a way that may not



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serve the client's long-term interests, goals and needs. As I design, train and teach from a Dialogue Education™ model, I continue to see the parallels in how one can interact with students and clients alike. Deep down, I recognize that after a dialogue with my clients, many, if not most, do not want a purely legal answer to their questions, much like the student who does not want to serve merely as a container. The challenge to the “teacher” in both situations really is to raise the consciousness of the “student” through dialogue rather than didactic. For the lawyer, it means the freedom of letting go of the outcome and allowing the client to lead, something that I believe Paulo Freire would say is perfectly appropriate.



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