



# DETENTION DYSFUNCTION

## MEDIATION

### Teaching Note

This simulation is one of three created for a mediation training program for the Ontario Teacher's College. It is intended to focus mediators on "core emotional concerns" that might have been triggered in the parties – a mother whose child was sent to detention and the teacher who was the detention monitor. It references the "core concerns model" set forth in Fisher and Shapiro's *Beyond Reason: Using Emotions as You Negotiate* (Penguin 2006), adapted to a mediation context. The teaching point is that, when practicing "active listening," a mediator is wise to target paraphrastic restatements to the core concerns they hear in the parties' situation or statement.

To keep this teaching note brief, I'm including chapter 4 from my book, *Client Science: Advice for Lawyers on Advising Clients Through Bad News and Other Legal Realities*, (Oxford 2012). That chapter explains how lawyers can use "targeted active listening," attuned to the Fisher and Shapiro's core concerns. My advice to mediators is the same.

#### The basic plot line

A complaint has been made against a ninth-grade math teacher Regi Cluny resulting from a run-in with student Jan Miller, when the teacher serving as a detention monitor. Jan had received a detention that day from her science teacher. (A classroom teacher records detention and sends the name into the central office, which gives the list to the day's detention monitor.) When Jan arrived at the detention room, she immediately began saying that she "couldn't have a detention because my parent is a doctor who is very busy..." Cluny told her the detention would stand and she'd better sit down. Instead, Jan picked up her backpack and headed to the door, saying that "this would have to be changed." The teacher stood in the doorway but when it was apparent that Jan planned to charge through, the teacher stepped aside but put a hand up to try to stop her. The teacher's hand caught on Jan's ponytail, and she grabbed and yanked it away, whipping her backpack around and into the teacher's chest. An open felt tip marker flew out and put indelible ink on the teacher's favorite blouse/shirt. The teacher yelled something to the effect that leaving was a stupid decision and said Jan would have to pay for it (meaning the blouse).

Cluny marked Jan down for three weeks of detention. Jan did show up each day in the detention room after school for three weeks.

The teacher recognize three weeks was a steep punishment but thinks it important that detention rules are respected. It was problematic that Jan's display occurred in front of half a room of other students in detention that day.



The teacher had no idea whether this was an aberration for Jan or whether she had been a discipline problem before. had seen Jan occasionally in the hallways in the first week or so of school. The teacher had observed Jan struggling with the heavy backpack, and once commented about that. Jan is slightly built.

Dr. Miller, Jan's parent is a physician at the University's medical center. Recently divorced, Miller moved with two children for the University job. Jan is new to this large urban high school. While Jan enjoys the social openness and rigorous program, Dr. Miller finds it to be administratively repressive, based on speeches by the principal.

Early in the school year, Jan's seasonal allergies and mild asthma were exacerbated. One day, when the air quality was clearly unhealthy, Jan had a strange run-in with teacher Cluny. Jan is slightly built and was lugging a heavy backpack and breathing heavily. The teacher stopped her and said: "You're breathing loudly." Jan was embarrassed. She mumbled something about the long way between her two classrooms, and it being hot. Cluny said: "Well, stop breathing so hard." Dr. Miller thought it was strange but considered it fortunate that Jan didn't have Cluny as a teacher.

A few weeks later, Jan received a detention for the first time in her life. Apparently, her science teacher had a rule that if you were standing up or talking when the bell rang, you were considered late. If you were late three times within the first few weeks, you would receive a detention. The first two times Jan was a few minutes late, it was because she had trouble finding the classroom and getting there in the short time between bells. The third time, she was at her desk, but standing and chatting with a friend when the bell rang. Jan was upset but reported to the detention on time.

Jan tried to explain to Cluny, the detention monitor, why she couldn't stay late on Tuesdays and needed to do detention on another day. Ms. Cluny wouldn't listen. Jan didn't want to argue but knew that she HAD to get the bus on Tuesdays because you wouldn't be able to pick her up. (You had told Jan that she must be careful never to miss the bus on Tuesdays, because you would not be able to pick her up until after 7:00, long after the school would have closed.)

Despite Cluny's refusal, Jan picked up her backpack and headed out. Ms. Cluny stood in front of the door and yelled at her. Jan said, "Excuse me but I really have to do detention another day, I can't miss the bus." According to Jan, Ms. Cluny stepped away, but then grabbed her by the ponytail to yank her back in. Jan yelled, Cluny let go and said, "you'll pay for this, you impudent idiot!"

Jan took the bus, but she was still crying when you got home from work. It took all evening to calm her down. Miller then learned Cluny had marked Jan for *three weeks* of detention.

Miller attempted to contact Ms. Cluny by email, received no response, and then filed a parental complaint against Ms. Cluny.



Miller feels terrible about this; it affected Jan's feeling about the new school. It wasn't fair for Jan to be torn between wanting to obey the teacher and needing to accommodate her parent's work constraints. Before the move, Jan could walk to school. Jan's other parent lives in their old town (with a new spouse) two hours away. They don't yet have neighbors or friends Jan could have called. None of this is Jan's fault.

To enable Jan to make the three weeks of detention (including Tuesdays), Jan's parent rescheduled patients or sent an office assistant to pick her up. Jan was humiliated.

### *The Core Concerns*

For Dr. Miller:

- Autonomy with escalated identity concerns. Dr. Miller wants to be a parent protector, not one who creates problems/constraints for their child. Dr. Miller feels powerless vs. the school, perhaps just as they felt powerless in the divorce. Dr. Miller feel their marriage "shortcomings" caused the move and hence Jan's suffering.
- Dr. Miller wants the power to protect Jan's reputation and will resist any implication that Jan may have contributed to the problem. Miller worries that Cluny might poison other teachers against Jan. Miller wants to protect Jan from ever having to face Cluny in the classroom.
- Affiliation. Dr. Miller feels no connection to Regi Cluny. To Dr. Miller, Cluny represents what is wrong with the school (and the world), which has no empathy for its students or its parents. Dr. Miller perceives that Cluny views them and Jan as enemies or inferiors to be disciplined.

For the teacher:

- Autonomy. This represents a challenge to Cluny's right to make judgments about running the detention room.
- Status. Cluny assumes that Jan's reference to the parent as doctor was intended to assert the parent's superior status. That angered Cluny.
- Role (meaning in Detention Monitor's position). Cluny will want an important role in the mediation.

In addition to the core concerns, this simulation creates opportunities for the mediator to encourage communication and perspective taking. The parties will be well served by recognizing how their [inaccurate] assumptions about the other impacted the incident and the dispute. Cluny can come to understand that Jan's reference to the parent doctor wasn't an effort to claim status; it was a kid trying to comply with the parent's instructions (and to have a safe way home). Dr. Miller can come to understand that, in the earlier encounter (about heavy breathing), was Cluny's (perhaps awkward) expression of concern. That may have colored Jan's and Dr. Miller's views of Cluny. Cluny can that Jan had never been in detention before and was living through the difficulties of a family divorce and move to a new city. That may lead Cluny to express some empathy. Cluny might have taken the time

to listen to Jan at that first detention, and Jan might have done a better job or articulating the problem.

### Behavioral “set-ups”

In order make this simulation more “real”, albeit without professional actors in client roles, the simulation suggests:

- to teacher Cluny, “When playing your role in the mediation: consider taking a rigid, authoritarian attitude, expressing disdain for the ‘undisciplined,’ characterizing the student as having an ‘attitude,’ and resist questioning of your judgment at the time”;

and

- to Dr. Miller, “You might be little bit irrational/not quite hysterical, not completely linear in presentation, indulge in bit of a rant. You may manifest upset and anger, accusing Cluny of having no humanity, no caring, etc.”