WILLIAM SHATNER AND THE WARNER THEATER CONTRACT NEGOTIATION

A Negotiation Simulation Exercise
1995

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William Shatner and the Warner Theater

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LOGISTICS

Number of Roles 2 or 4
Prep Time 15 minutes
Run Time 45 – 60 minutes (outside of class), plus time for drafting
Debrief Time 45 - 60 minutes
Level Intermediate
Does Not Include Law or Legal Analysis

Description This simulation focuses on a contract negotiation for actor William Shatner to appear in a Washington, D.C., production of “The Man of la Mancha.” It is a good simulation for interest identification, to show shared interests, and to practice contract drafting. A scoring system awards and deducts points for various terms the representatives obtain during their negotiations.

Role Assignment Assign students to portray Shatner’s Counsel and the Warner Theater representatives individually or in teams. Each team should receive a copy of the general information, preparation notes (optional), and confidential information for their role, including the appropriate scoring system sheet.

Room Set-Up
- No particular arrangement is required for this simulation.
- Students must have writing instruments and paper available to record any agreed terms.
- Negotiating groups should be separated enough so they don’t overhear information as it is revealed in other groups.
- Students may benefit from having a chalkboard, whiteboard or flip chart available.

Student Instructions
- Students should be cautioned not to reveal confidential information to anyone before the simulation.
- Students should be instructed to return at a designated time with a full or partial agreement and their score sheet.
- At the conclusion of the simulation, the confidential information sheets should be collected. Students should be cautioned not to reveal the information in the simulation to anyone outside the class to protect the viability of the simulation for future classes.

Reviewed September 2003
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GENERAL INFORMATION FOR ALL ROLES

William Shatner and the Warner Theater are negotiating to put on a production of “Man of La Mancha,” with Shatner playing the role of Don Quixote. The production will be in Washington, D.C. Representatives for both sides are meeting to work out the details of the production, including compensation, casting, scheduling, and perks.

Your job is to negotiate and draft the contract that will make this production happen. As both parties are interested in the deal, there is no non-settlement option for this problem. The only question is what the terms of the agreement will be. The contract must be acceptable to both sides, and the provisions must be unambiguous when given a plain English interpretation. You should score each provision in the margins, using the left margin for Shatner’s score, and the right margin for Warner’s score.

Any provision that is deemed ambiguous or unworkable by the instructor or by the class will be stricken from the contract and not scored for either side. Part of your score will be based on the writing of the contract itself. Each team will receive up to 10 points, depending on the quality and clarity of the drafting. Both teams will be equally responsible for the clarity, or lack thereof, of the agreement, regardless of who actually does the drafting.
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CONFIDENTIAL INFORMATION FOR SHATNER'S COUNSEL

Your client is strong-willed and has a very high opinion of both his talent and his value to this production. Therefore, he is inclined to demand quite a bit of control over several aspects of the production and to insist that Warner treat him in a manner consistent with his status in the profession. He believes that his previous experience with directing and producing in the movies entitles him to have input in these areas for this production as well.

Shatner has expressed some concern to you that he thinks Warner may have some sort of gimmicky approach planned for this production. Although he does not know exactly what the theater folks have in mind, he has instructed you to make sure that “Man of La Mancha” does not become some kind of “Star Trek” reunion. As much as Shatner hates to admit it, several members of the “Next Generation” and “Deep Space Nine” casts, such as Patrick Stewart, Avery Brooks, Brent Spiner, and Jonathan Frakes, have more recent and more extensive theater credentials than he does, so it is harder for him to object if Warner wants to put any of them in the cast. If any other “Star Trek” cast members are in the cast, he particularly wants a directing credit.

On the other hand, he does not have a great deal of theatrical experience, and wants to be sure that he does not embarrass himself in this production. Thus he wants plenty of preparation and rehearsal time. Since movie and television offers are not what they once were, Shatner has been thinking that the theater may offer new opportunities, and he would like to do everything possible to ensure that he gets good reviews of his work in “Man of La Mancha.”

Shatner would like to be guaranteed at least $15,000 per week for the run of the show. The show is currently scheduled to run four weeks, beginning in December. If the show is extended by popular demand, he would like at least $20,000 per week during the extension. He would also like a percentage of the profits.

Finally, Shatner would like to keep ticket prices at a somewhat reasonable level, because he knows that his audience is not likely to be traditional theater aficionados.
SCORING SYSTEM FOR SHATNER’S COUNSEL

For salary:
- 5 points for each $5000 per week in salary Warner agrees to pay. If Warner agrees to an increase for any extension, score only the increase (i.e., score 20 points total if Warner agrees to the $15,000 for the first four weeks and $20,000 for the extended run). You may not score more than 25 points for the salary.
- 2 points for each percentage point of gross profits Warner agrees to pay, up to a maximum of 20 points

For the following perks, add:
- 2 points for a private dressing room
- 2 points for top billing
- 5 points for a penthouse at the St. James
- 3 points for a chauffeured limousine
- 3 points for keeping two of his Dobermans at the hotel and bringing them to the theater
- 3 points for an agreement that among the souvenirs to be sold in the lobby will be his novels

For the rehearsal schedule, add:
- 2 points for each week of rehearsal time, up to a maximum of 12 points

For directing or production credits, add:
- 5 points each if Shatner can get a credit as director or assistant director and/or producer or assistant producer. Remember, he particularly wants a directing credit if any other “Star Trek” actors are involved.

For ticket prices, add:
- 5 points if the top ticket price will be no more than $50

For advertising, add:
- 5 points if Warner will agree that Shatner does not have to participate in any advertising for the production that makes any reference to “Star Trek” or “Captain Kirk”

For other “Star Trek” cast members deduct:
- 10 points if any other members of the original “Star Trek” cast are involved in this production
- 5 points if any members of the casts of “Star Trek: The Next Generation” or “Star Trek: Deep Space Nine” are involved
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CONFIDENTIAL INFORMATION FOR THE WARNER THEATER

Warner feels that name recognition is an important element of the niche they would like to carve in the Washington theater market. Thus, management is hoping to get some other recognizable names in the cast. They think it might be fun to get some other “Star Trek” actors involved in the production. Although Warner ticket prices have in the past been on the high side, management suspects that the audience for this production might not be willing to pay $75 for a ticket.

If they are successful in this endeavor, they will need to keep Shatner’s salary down. They might be willing to offer a small percentage of the take if the salary is not to his satisfaction. Warner also wants control over all promotional activities related to the production.

Warner has arranged a very talented and experienced director for the production. That contract is set so Shatner may not direct, but they may be willing to give him a credit as assistant director, since that doesn’t give him any real power. They also want complete control over production values and would prefer not to give Shatner any production credits.

Finally, Warner is concerned about the quality of the production and would like Shatner to agree to a long rehearsal period.
SCORING SYSTEM FOR THE WARNER THEATER

For salary, add:
• 10 points if you can keep Shatner’s original run weekly salary to $15,000 or below. You may agree without penalty to a modest increase in that amount if the show is extended by popular demand beyond its currently anticipated four-week run in December. (Under no circumstances may you agree to more than $25,000 in weekly salary. If you do, Warner executives will not sign the contract, and there will be no deal [i.e., you will receive 0 points])

For profits, add:
• 5 points if you can keep any percentage agreement of gross profits to 5% or below

For ticket prices, add:
• 5 points if top ticket price is no more than $50, but only if the salary and profit percentage falls within the guidelines above

For advertising, add:
• 10 points if Warner does not have to make any concessions regarding promotional activities for “The Man of La Mancha”

For rehearsal time, add:
• 3 points for each week of rehearsal time, up to a maximum of 18 points

For Shatner’s agreement to these other “Star Trek” cast members, add:
• 2 points each for
  – James Doohan (“Star Trek”) or LeVar Burton (“Next Generation”) as Sancho Panza
  – Marina Sirtis (“Next Generation”) as Aldonza
  – Denise Crosby (“Next Generation”) or Nichelle Nichols (“Star Trek”) as Quixote’s sister, Antonia
  – Avery Brooks (“Deep Space Nine”) as the Padre
  – Patrick Stewart (“Next Generation”) as the Innkeeper
  – Colm Meaney (“Next Generation” and “Deep Space Nine”) as the Barber

For production credits, deduct
• 5 points if Shatner receives any billing as producer or assistant producer

For assistant directing credits:
• No penalty if Shatner is given credit as an assistant director, since that doesn’t give him any real power. (Remember the contract with the director is already in place and will not allow Shatner to have a full director title.)
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PREPARATION NOTES

RECOMMENDED CONTRACT FORMAT

1. Description of Instrument – “Contract of Employment”
2. Caption – party names, legal action
   a. If you will use shorthand throughout, signal that in the caption: The Warner Theater Co. (Warner)
   b. Include a date the contract will be valid
3. Transition - Insert the language of the agreement
4. Recitals
   a. Background to the agreement
   b. This section often begins with the word “Whereas.” There is no legal or grammatical reason for that, it is merely established as traditional form. To simplify, use the term “Background” instead
5. Definitions
   a. Use if necessary to achieve clarity without repetition and where meaning is critical
   b. Golden rule for drafting: “Never change your language unless you wish to change your meaning, and always change your language if you wish to change your meaning.”
6. Operative Language
   a. A contract is a set of promises, here you will state the obligations of each party
   b. Use active voice to make clear who has undertaken the obligation
   c. Where meaning and performance are critical, provide for determination by specified party or third party if a definition is found to be insufficient or unclear
   d. State consequences of failure to perform
   e. Where custom and usage supplies meaning, or where problems are unlikely, such thoroughness may not be necessary
   f. “Constructive ambiguity” on peripheral points not likely to result in dispute may be a good way to finalize agreement – should provide for how to work out later disputes
   g. State any crucial assumptions, representation of existing fact on which contract is based, or warranties made by any party to avoid future conflict or misrepresentation claims
   h. Declare governing law
   i. Provide for significant contingencies by addressing “what if” scenarios
   j. Make sure that someone who was not present at the negotiations would be able to determine:
      i. Who has promised to do what by when
      ii. How to calculate any contingent amount, including principal, rate, and type of interest if applicable
7. Closing
   a. Include dates and signatures
   b. No particular language is required
CONTRACT DRAFTING SKILLS

1. Use plain English, not legalese
   a. The goal is clarity. Generally, shorter words and sentences are better
   b. Know the law
   c. Identify the problem - what is the goal of the document?
   d. Outline a solution - organize around issues or other logical sequence; use subheadings if helpful or if document is long
   e. Read for precision; avoid possibilities of misinterpretation
   f. Read for style
      i. Eliminate: twofers (as and for, on or about); junk antiques (hereunder, said); wordiness (in the event that)
      ii. There are a few terms of art, but most legal language is peculiar rather than precise
   g. Use of plain English is good business. It will make the contract easier to follow and more durable. There is a strong international movement toward simple language and it is increasingly required by statute.

2. Use present tense

3. Use active voice
   a. Active voice example: “On delivery, the Buyer shall pay the Seller the reasonable value of the goods. The Seller shall notify the Buyer within ten (10) days if the amount of payment is not satisfied. If the parties cannot agree on the payment amount, the parties shall choose a third party who will determine the amount.”
   b. Passive voice example: “It is mutually agreed that on delivery, the Seller shall be paid the reasonable value of the goods. The Buyer shall be notified within ten (10) days if the amount of payment is not satisfactory. If the parties cannot agree on the payment amount, the amount shall be determined by a third party to be chosen by the parties.”

4. Use “shall” to state obligation; “shall not” to negate discretionary authority

5. Use “may” to indicate authorization; “may not” to negate discretionary authority

6. Use “must” to indicate the need to do one thing before doing something else; “is not required to” or “need not” to negate duty or condition precedent

7. Use “is entitled to” to create a right; “is not entitled to” to negate a right.

8. In practice, a good idea is to draft the agreement yourself because you get to control any subtleties. If you do not draft the agreement, read it carefully. Do not hesitate to edit or redline provisions during the exchange process. For example, you could put [deletions in brackets] and underline additions.
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TEACHING NOTES

This simulation may be used to demonstrate negotiation skills and contract drafting. Before conducting the simulation, you should cover some basic principles of drafting with the students, including the recommended format for contracts and drafting tips. The preceding pages may be used in class preparation and distributed to students if you choose.

This simulation is best run between class periods to allow students time to draft their contract. Each student or team of students should prepare a contract. During debrief, you should ask for one or two groups to read their clauses for each term including:

- Shatner’s salary
- Shatner’s percentage of profits
- Shatner’s perks
- Rehearsal schedule
- Ticket price
- Advertising terms
- Other “Star Trek” cast members
- Shatner’s credits for directing or producing

Discussion should cover:

1. Does the student or team who negotiated with the drafter agree that it fairly represents the terms they agreed to? If not, the corresponding team should offer their clause instead. Any team whose clause is not agreed to by the corresponding team should not score for that clause.

2. Is the clause drafted clearly? Does it include all the necessary terms? If not, no score should be given.

3. Range of acceptable agreements:
This simulation offers an opportunity to highlight the elements of a quality agreement. Each side has a large set of needs, desires, and concerns, accurately portraying the complex balance of interests in such a negotiation. Students may focus on comparing the difference in one or more elements of their final contracts, such as salary or number of “Star Trek” cast members. You may want to discuss with the representatives at the ends of the spectrum whether their agreement met the articulated needs of their client. This will allow students to focus on the fact that the quality of an agreement is based on its acceptability to the party rather than on comparison to some ideal result.

4. What negotiation or drafting lessons came out of the exercise?

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