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## Casey Skit: A Pedagogical Tool for Interviewing Young Women and Proceeding Through a Judicial Bypass Hearing

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# CASEY SKIT: A PEDAGOGICAL TOOL FOR INTERVIEWING YOUNG WOMEN AND PROCEEDING THROUGH A JUDICIAL BYPASS HEARING

JAMIN B. RASKIN & ANN SHALLECK

## SCENE ONE: THE LAWYER'S OFFICE

APPLICANT: Hi.

LAWYER: Hi. I hope that it wasn't too hard to get here.

APPLICANT: It wasn't too bad. My sister came with me on the bus. She is waiting outside. The person I talked to on the phone helped a lot. Thanks for seeing me so late in the afternoon.

LAWYER: I know it's complicated to get here during school hours.

APPLICANT: I would have had to get a phony excuse. It's not so hard, but sometimes people get caught.

LAWYER: My assistant told me that you are here because you went to the Women's Center Clinic to get an abortion and found out there are a lot of legal requirements around getting an abortion here in Columbia. Did they give you my name?

APPLICANT: Yes. When I went to the clinic, I found out that I need to get the consent of a parent. I can't do that. They explained that I could go to court and

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see if the court would let me get an abortion anyway. They also said I could go to another state where the laws are different. They also said there are some lawyers who help out in these situations and that's how I found out about you.

LAWYER: When you were at the clinic did you see a counselor?

APPLICANT: You mean the person I talked to about whether I want an abortion and what's involved in an abortion and all of that?

LAWYER: Yes. Was it helpful?

APPLICANT: Yes. There was a lot I only sort of knew before I got there. There is lots of information around, but I never really paid so much attention to it. I guess I thought that there was a right to an abortion, so I just made an appointment at the clinic about a week after I did a pregnancy test and found out I was pregnant.

LAWYER: Did the counselor go over the choices you have about being pregnant?

APPLICANT: She did. Lots. I had made up my mind before I got there. The guy I had sex with when I got pregnant is a jerk. I would never want to have a baby with him. He said he would use a condom. He even had it there but when the time came, he didn't. And I didn't stop him. I feel really stupid. Do I have to go through this all over again?

LAWYER: Sounds like it's really hard to talk about. I'm sure the counselor told you that you have other choices. The counselor must have told you that a lot of things she said were required by state law?

APPLICANT: It was very confusing. She was very nice. She seemed to really want to help me, but there was a lot of awful stuff I had to listen to about all the bad

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things that could happen to me if I had an abortion. She said that the law made her go through all of that.

LAWYER: The law puts abortion counselors in a strange position. It tells them that what they have to do in the counseling so some of what they say is based on what they think helps young women make their decisions and some is based on the law. As for me, you don't have to go through everything again. But if you decide to go to court, I'll let you know what the judge may ask so you are ready for as many of the questions as possible. Then you can decide if you want to go over your answers with me so that we can anticipate any problems.

APPLICANT: Are you telling me I have to go to court? I have never been to court. I have never even been inside a courthouse. I'm scared.

LAWYER: I jumped ahead. I'm sorry. Let's go back over the possibilities. Here in Columbia, there is a law that says for a minor, anyone under eighteen, to get an abortion, she has to have the consent of one of her parents. They probably showed you the consent form at the clinic. A parent has to sign it and get it notarized. Then the clinic has to keep the form in your file. If they do the abortion without it, they are breaking the law. There are some underground clinics that do that. Most of them aren't really safe.

APPLICANT: What if I can't get a parent's consent?

LAWYER: You can go to court and I'll explain what that involves in a minute, or you can go to another state where the law doesn't require parental consent or parental notification.

APPLICANT: How do I get there? It's expensive. I would have to miss school. What would I tell my mom about being away?

LAWYER: One thing at a time. Let's go back to staying here and getting consent. Do you want to tell me about that possibility?

APPLICANT: My mother is pretty sick. She has diabetes and trouble with her heart. She works at a computer company. She went back to school and got training, but she is not great at computers. I can do more than she can. She wanted to be a musician, but there aren't many jobs that pay much. She does better at her computer job.

My father lives in Minnesota. I hardly ever see him. I don't even know his phone number or address. I could find out, but I could never talk to him about being pregnant or get his permission for an abortion. He works at an insurance company. He sends us money sometimes, but we don't have enough money unless my mom works. I can't tell her. I just can't. I'm afraid. It would kill her. She counts on me a lot. I can't even think about this.

LAWYER: I'm sorry to be asking you these questions. If you want to talk more about this possibility, we can, but you don't have to. If you decide not to get consent, there is court, like I mentioned before. There are some forms we need to fill out and file. We'll get a hearing date about two or three days later. You'll have to go in front of the judge. I'll be there with you. I'll ask that the hearing be in the judge's office, but we don't know what judge we'll get. Some will do the hearings in their office because it seems less scary; others will only do them in the courtroom.

APPLICANT: Will other people be there?

LAWYER: Several workers from the court, like clerks and a stenographer.

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APPLICANT: Great. So everyone will know.

LAWYER: Under the law, these hearings are supposed to be confidential. That means that none of the people at the court are allowed to talk about the case. The records are confidential. No one expect certain court employees can see them unless you give your permission for someone to see them.

APPLICANT: Yeah, sure. What if I see someone I know? What if someone recognizes me? How will I explain what I'm doing there?

LAWYER: I know some pretty backdoor ways to get to the part of the court where these hearings are held. I can't guarantee that no one will see you, but you can think of a cover story and we can get there without going through most of the public areas.

APPLICANT: Why won't all of the judges do the hearing in their offices?

LAWYER: They have different ideas about abortion. Some are opposed to it. Also, they have different ideas about teenagers making decisions without their parents.

APPLICANT: What does a judge do in this hearing?

LAWYER: It depends on the judge. Some will let me ask you questions to show that you meet the legal requirements to make the decision without a parent's consent. Others insist on asking the questions themselves. Some pry a lot. Some are nasty. I can try to stop improper things they do, but most are pretty smart about staying within the requirements of the law while still making things hard for you. Some are nice. They ask only the questions that let them make a decision required by law.

APPLICANT: So this sounds worse than horrible. How do we

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get one of the nice judges?

LAWYER: There is nothing we can do. I have tried over the years. The clerks are very strict about their system of assigning judges. Also, one of the judges appoints what is called a guardian *ad litem*, who is supposed to represent the interests of the fetus. The person is usually very anti-abortion and gets to ask you questions, too.

APPLICANT: What?

LAWYER: I have known only one judge to do that, even the ones opposed to abortion usually like to ask questions themselves. They don't want a guardian *ad litem* butting in.

If you didn't have a lawyer already. A judge might appoint a guardian *ad litem* for you, too. But you don't have to worry about anyone being appointed for you.

APPLICANT: What is the judge supposed to decide anyway?

LAWYER: If you are "mature and capable of giving informed consent to the proposed abortion." Also, if the judge finds that you are not mature enough, then the judge has to decide if it is in your "best interest" to have the abortion anyway. That's what the law says.

APPLICANT: How does the judge figure out if I'm mature?

LAWYER: The judge will probably first ask questions to see how responsible you are – your age, year in school, jobs, grades, activities. That sort of thing. Some of the questions aren't really about responsibility, but the judge wants to know the answers anyway. Then the judge will want to know why you don't want to get parental consent. Some judges ask a lot of questions about your family life, some of the questions are very private.

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Many of the judges will also ask about how well you understand the abortion procedure and about your decision to have an abortion, the kind of things that the counselor talked about with you. Some will go further and ask questions about the fetus. Last, the judge may ask a lot of questions about your personal life. Sex. Drugs. What kind of music you like. I have heard almost everything. We can go over these things if you want so you can be prepared for the questions.

APPLICANT: Well, just so you know, I'm no an angel. I have had sex, not just a few times, and I've used some drugs, mostly just marijuana, but I've tried other stuff. I've also been pretty drunk a bunch of times. I've kept this stuff from my mother. She knows about things like my job. I work ten hours a week at a pizza place. It gives me spending money. She is also proud of my grades. I have a B plus average. And we talk about colleges.

LAWYER: How old are you?

APPLICANT: I'm sixteen. I'm a junior. I have been getting all this mail from colleges. I would really like to go. What if the judge decides against me?

LAWYER: We can appeal the decision. Take it to a higher court. That all adds time.

One other thing. There is no law requiring parental involvement in Franklin. The nearest abortion clinic in Franklin is about 500 miles away. I know that it's far and it's complicated to figure out how to have an abortion far from home. The trip makes it even more expensive and might add more time, but it's important that you know about this possibility.

Also, Clarion, which is closer, has a state law that makes you notify a parent that you are getting an



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abortion, but you don't have to get the parent's consent. It sounds like in your situation it doesn't make any difference which one you have to do.

APPLICANT: I have to think about it. I don't know which of these possibilities is worse or even possible at all.

LAWYER: Also, I know they must have told you at the clinic - time matters. The later an abortion is, the more medical risks there are. It's important to take the time you need to make your decision. It's also important that you understand that time matters. You don't have to tell me how pregnant you are, but the judge will probably ask you if you decide to go ahead with the hearing.

APPLICANT: I'm ten weeks pregnant. That's what they said at the clinic.

LAWYER: I know this has been hard. You have been great. If you feel up to it, let's take a little while longer and go over the possible questions for the court hearing.

APPLICANT: Okay.

#### SCENE TWO: THE COURT HEARING

JUDGE: Hello, Maggie, how are you today?

APPLICANT: Okay.

JUDGE: I see you are with counsel. You have a lawyer. I want to start by telling you that my own personal views about abortion are not an issue here. They are not relevant to my decision, which is an objective legal decision about whether you are mature enough or whether it's in your best interest to have an abortion.

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Now, I do have the power, I must tell you, to appoint a guardian *ad litem* to represent your baby, your fetus, essentially against you. But that often gets very contentious, heated and complicated. I have seen a lot of girls get extremely upset in that situation, so I'm not going to do that. I will be asking many of the same questions. You understand I need to ask these questions to arrive at a dispassionate legal judgment about what we should do at this point. How are you today?

APPLICANT: Um, a little nervous.

JUDGE: Well, let me tell you, Maggie is also my daughter's name and she just had a baby whose name is Jessica. I just wanted to tell you. I'm familiar with Maggies.

Now, let's start with basics. Do you know what you are doing here today?

APPLICANT: My lawyer explained things.

JUDGE: I see your parents are not here with you. Have you talked to them about the situation?

APPLICANT: No. I can't talk to my parents about this.

JUDGE: Your mother or your father?

APPLICANT: Right.

JUDGE: Why can't you talk to your mom about it?

APPLICANT: My mom's really sick and I just don't want to put all of this on her right now. I am afraid what would happen to her. She has heart problems. I just don't feel comfortable. My mom's, I don't want to ruin my mom's image of me. She doesn't know that I had sex.

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JUDGE: Do you have a fear that there actually could be adverse medical consequences if she learned that you wanted to have an abortion?

APPLICANT: Possibly.

JUDGE: Could the same thing happen if she learned that you had an abortion?

APPLICANT: Yes. Would she have to know that?

JUDGE: Well, I don't know. Sometimes these things come out later. You know we are operating under a cloak of confidentiality in this courtroom, but mothers find out about what happens with their kids, so I just want you to include that in your calculus. What about your father?

APPLICANT: I don't talk to my father that much. He left when I was young

JUDGE: Where is he?

APPLICANT: In Minnesota.

JUDGE: What kind of work does he do?

APPLICANT: He does something involving insurance. I really don't talk to him. I don't know so much about him. We're not close.

JUDGE: Do you know his views on abortion?

APPLICANT: He left when I was young. I guess he wouldn't want me to. I know he doesn't even know that I'm having sex or anything, not that I have sex. He would be unhappy and I don't want to tell him. We don't have a good relationship. I don't know, I just wouldn't want to tell him.

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JUDGE: All right. So you think your parents really can't be involved in this.

APPLICANT: Yes.

JUDGE: How old are you?

APPLICANT: Sixteen.

JUDGE: When's your birthday?

APPLICANT: In a month.

JUDGE: It's a pretty special day. Will your family celebrate?

APPLICANT: My mom usually bakes me a cake and my sister will be there.

JUDGE: How long have you known that you are pregnant?

APPLICANT: I found out like two weeks ago.

JUDGE: Have you ever been pregnant before?

APPLICANT: No. No.

JUDGE: Do you plan on getting pregnant again?

APPLICANT: Not for a while. No.

JUDGE: I mean, do you plan on having a family at some point?

APPLICANT: I'd like to have a family when I'm older, but there are so many things I want to do. I'm only sixteen.

JUDGE: Do you know about the medical risks of an abortion in terms of sterility and infertility that some women experience after an abortion?

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APPLICANT: At the clinic they told me about the risks, but, if you go to a good doctor, then you should be okay.

JUDGE: It's a minor risk. There is no doubt about that. But you have to think about these risks in terms of your plans to have a family.

APPLICANT: I have thought about them. It's just I'm young. I don't want to have a baby. I don't want people at school to know that I'm pregnant. I can't tell my family. I can't do all of that right now.

JUDGE: You have, of course, considered the other serious risks that occur in a small portion of the cases, risks involving internal bleeding, hemorrhaging, stroke, even death in some cases. You have thought about those possibilities?

APPLICANT: I know about them. I haven't thought a lot about them.

JUDGE: You know that this is surgery?

APPLICANT: Yes. I'm aware of that.

JUDGE: I mean, it's not like going and —

LAWYER: Your Honor, my client has been to a clinic and they have counseled her about the risks.

JUDGE: I know, but I want to make sure she understands them.

What grade are you in?

APPLICANT: I'm a junior.

JUDGE: What are your favorite subjects, Maggie?

APPLICANT: I like science and gym and I like English literature.

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JUDGE: How are you doing in school?

APPLICANT: I do really well in school. I have a B plus average. I do really well in science.

JUDGE: Do you have plans for post high school?

APPLICANT: Yes. I want to go to college if I can. It's expensive and hard. But I hope I can get a scholarship or something from my grades.

JUDGE: Do you ever work?

APPLICANT: I work.

JUDGE: What do you do?

APPLICANT: I work at a pizza place.

JUDGE: Do you ever babysit?

APPLICANT: Yes. I used to babysit when I was younger, but it's not cool to babysit in high school.

JUDGE: Do you like kids?

APPLICANT: I do. I do like kids. I don't want one right now.

JUDGE: Have you ever smoked? Do you smoke?

APPLICANT: I don't smoke. I have smoked, I guess, a few times.

JUDGE: Smoked cigarettes?

APPLICANT: Yes. I have smoked cigarettes.

JUDGE: You know that could hurt your baby if you choose to have a baby?

APPLICANT: I know that.

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JUDGE: You wouldn't be smoking now?

APPLICANT: No.

LAWYER: Once again, my client has been to a clinic and she knows about the health risks.

JUDGE: I don't need to remind you that the ultimate outcome of this hearing remains in doubt. In other words, I'm here to make that decision.

Have you ever had beer or liquor?

APPLICANT: Would that be held against me because I'm sixteen?

JUDGE: No. No. This is not a criminal hearing. This has to do with your pregnancy.

APPLICANT: Yes. I have had beer before.

JUDGE: You had beer. And hard liquor, you have tasted it?

APPLICANT: Sure.

JUDGE: Do you know it could hurt your baby to be drinking beer and liquor?

APPLICANT: I don't do it right now. I haven't done it since I found out about being pregnant.

JUDGE: Have you ever used illegal drugs?

APPLICANT: Yes. Yes.

JUDGE: Do you know illegal drugs are against the law?

APPLICANT: I know that. You said that you wouldn't get mad if I told you these things.

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JUDGE: But, leaving aside the legalities, do you know that use of marijuana, cocaine, other serious drugs could harm fetal development as well.

APPLICANT: I know that. I know. I wouldn't do that. I promise.

JUDGE: What's the most important decision you have ever made in your life up until now?

APPLICANT: I haven't had a lot of decisions to make. Breaking up with my boyfriend, when I was fifteen – that was a really hard decision.

JUDGE: Let's talk about your boyfriend. Is he the father of your fetus?

APPLICANT: My ex-boyfriend is not the father of — I was just dating a guy and he is the father.

JUDGE: What's the name of the father?

APPLICANT: His name is Brian Strawson.

JUDGE: And have you talked to Brian about the decision about —

APPLICANT: No. I can't talk to him. I told him and he is just a bad guy. We don't talk anymore.

JUDGE: Were you a victim of sexual assault?

APPLICANT: No. No. I knew what I was doing.

JUDGE: You knew he was a bad guy?

APPLICANT: Well, at the time I thought he was a good guy. Then, after it, I don't feel so good about him.

JUDGE: How many sexual partners have you had?



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APPLICANT: Do I have to answer that question?

JUDGE: I'm trying to determine your level of maturity and whether you are capable of making —

APPLICANT: I'm mature.

JUDGE: Do you know anyone who ever had an abortion?

APPLICANT: I heard about this one girl. She left school for the semester when we were freshmen.

JUDGE: Were there complications?

APPLICANT: I don't know. I wasn't friends with her and she transferred during her sophomore year. I never really talked to her.

JUDGE: Did she regret her decision?

APPLICANT: I don't know.

JUDGE: Look, I'm going to express two opinions and I want you to know that I'm neutral between them. I don't ask you to support either one. One is pro-choice, one is pro-life. The pro-choice people think that abortion is a fundamental right and that you should have the right to have an abortion for any reason or no reason at all. And the pro-life people think that abortion in most circumstances, though perhaps not all, is murder of your unborn child. Many people find themselves somewhere in between these two views. Where do you place yourself on this spectrum?

APPLICANT: I have heard of this debate before in my government class at school. I mean I guess I'm pro-choice. I mean, it's a hard decision, but I know that I'm sixteen. I can't have a baby right now. My mom is really religious and so I guess she

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- would probably be pro-life. She would think this was killing a baby.
- JUDGE: What is your religious affiliation?
- APPLICANT: I think there is something like a God but I don't know. My dad was different than my mom.
- JUDGE: How would you feel about the abortion or have you thought about how you would feel about the abortion afterwards in terms of your religion or your own belief system?
- APPLICANT: I tell myself that I don't think it's a baby yet. I heard it's just little and cells. I don't know all the scientific stuff. I don't think I'll regret it. I wish that this never happened. I feel bad that it happened.
- JUDGE: Do you think you are mature enough to take care of a baby if that's the ultimate decision?
- APPLICANT: No. I'm sixteen. I have to work to help support my family. My father is gone. My mom is sick. What happens if something happens to her? I don't want to put this extra burden on her. We both need to work. My sister is younger than I am. No one can really help me. How would I afford a babysitter?
- JUDGE: There is another option that people often forget, which is adoption.
- APPLICANT: I can't do that. I can't do that.
- JUDGE: I'm not asking you to adopt a child.
- APPLICANT: No. I can't put a child up for adoption. I can't do it. I couldn't have other people raising my child. I can't do it.

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JUDGE: All right.

Now let's look at it not just from your perspective but from what you say is the child's perspective.

APPLICANT: I didn't say the child's perspective. You said that.

JUDGE: I thought you said that you couldn't have someone else raising your child.

APPLICANT: I was talking about adoption.

JUDGE: So, my question is from the child's perspective or the fetus' perspective, however you want to depict it, what do you think is the best outcome here?

APPLICANT: That depends. I don't think that what I have inside of me right now is a baby, so I don't think it has a perspective. But if I had a child, I think that it could be happy with other people. I just can't put up a child for adoption. It's just my decision. I think women, don't they have their own choices?

JUDGE: Let's go back to Brian for a second. Do you know that Brian would be responsible financially in the event that you decided to have this baby, that Brian would be responsible for making payments for raising the child?

APPLICANT: He would never — he wouldn't give me any money.

JUDGE: Legally he would have to.

APPLICANT: It doesn't mean he would. He doesn't do anything he is supposed to do.

JUDGE: Let me ask you a hard question, and this is a tough one, but, in the event that I grant this petition, will you be back here in three months or six months seeking another abortion?

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APPLICANT: No. I'm never having sex ever again. This was the last time.

JUDGE: Yes. All right. I'm going to have to spend some time thinking about this. I understand there is some urgency in the matter, and we'll get in touch with you within a day or two.

APPLICANT: You won't say anything to my parents. No one will know about this?

JUDGE: No. This is a totally confidential proceeding, and it's done in your interest. We'll contact your lawyer.

Court recessed.

THE END