

# GETTING PERSONAL

STEPHEN GILLERS\*

## I

### INTRODUCTION

So-called Legal Ethics is different from other courses in the standard law school curriculum. We use it to teach a greater variety of material in a greater variety of ways than is true for any other subject in legal education except perhaps law and literature or jurisprudence. This is both a blessing and a curse. It is a blessing because it offers so much choice. It is a curse because it offers so much choice. Torts is Torts in Florida and Idaho; Antitrust is Antitrust (or at least Trade Regulation) from California to the New York Island. Meanwhile, we lack a standard name for our subject—Legal Ethics? The Legal Profession? Professional Responsibility?—and all of the names we do have are inadequate. Do we wonder why we have a credibility problem?

Exactly what do we mean to teach when we teach this course? And how? We should know, shouldn't we, because we presume to require it.<sup>1</sup> Various readers of this essay will have different answers to these questions, perhaps profoundly different answers (from mine or each others'), which is partly my point. I will tell you my goals and how (with mixed success) I try to achieve them, but first I want to say what my goal is not.

I do not aim to prepare students to change the culture of the legal profession or its fundamental organization. Perhaps our society has deep structural problems in the way it packages and distributes legal knowledge, but it is beyond visionary to expect new graduates to be able to alter that structure. The organized bar and other more powerful social forces determine the kind of profession we have. Our students graduate to the institution's weakest positions. Any effort they might make through their law offices fundamentally to refocus the course and culture of the mighty institution called the American legal profession and the society it serves is unlikely to leave a visible mark, while putting them at significant personal risk.

Change may be needed—surely it is—but we elder folk, not freshly minted lawyers, must be its agents. I am not speaking here about modest advances

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\* Professor of Law, New York University.

1. Standard 302 of the American Bar Association's Standards for Approval of Law Schools provides that law schools

shall . . . require of all candidates for the first professional degree, instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure, and responsibilities of the legal profession and its members, including the ABA Model Rules of Professional Conduct, are all covered.

such as encouraging a firm to have an enlightened family leave policy or urging a bar committee to support an ethics rule against discrimination in law practice. These are things new lawyers can, with some courage, seek to accomplish early in their careers. But let the lawyers with tenure, the lawyers who become judges, the lawyers in local and national legislatures, and the lawyers who manage bar associations and potent law firms assume responsibility for more fundamental reform. In the fullness of time, our students may come to be members of these groups and may, dimly remembering the lessons we taught them, work their influence to improve the profession we helped them join. I hope that happens. If so, fine. But I do not aim for it. I would not know how.

Let me be clear, however, that I do not suggest that our classes be free of normative content or that we must remain uncritical of rules and social assumptions about the bar's role. We can and should challenge convention in this course as in any other. But we must avoid excessive cynicism for three reasons. First, we must save time for other goals that belong in the course. Second, we do not want to depress our students unduly by overplaying what may look like or even be our own disaffection. And, third, we want to be heard.

This last reason requires a further word. To whom are we talking? Twentysomethings who are about, at long last, to start their professional careers after many years of schooling. If the undertone of our course is the intellectual dishonesty or moral vacuity of the enterprise our students are about to enter (for the privilege of which they paid us many dollars, spent much time, and assumed large debts), if we who rejected practice for academic life convey abiding disrespect for the people our students are on the cusp of becoming, we should expect them to tune us out in favor of messengers more congenial. Our students need to have hope and, truth be told, there is much about which to be hopeful.

## II

### GOALS IN THE TEACHING OF ETHICS

Now to the goals of the course I teach and the way I try to accomplish them. This is no claim of success, only of effort. The goals are drawn from diverse experiences, which many share, plus one personal experience that may be unusual in our crowd: nearly a decade of practice before coming to teach. Less than five years out of law school, at age twenty-nine, I made the retrospectively terrifying decision (having opted to avoid bosses) to open my own law office in Manhattan, with no apparent source of clients. You learn fast that way.

So oriented by experience, I pursue four objectives in the teaching of legal ethics. First, I want to impress students with the special nature of their relationship to clients. This is the heart of legal practice, not all of it to be sure, but the heart from which so much else follows. The great majority of our students will spend all or most of their professional lives pursuing, through law, the goals of individual and entity clients. (I put to the side lawyers in non-law

jobs and government lawyers, mostly prosecutors, who have no client other than the policies of their office.) I spend a fair amount of time reviewing the demands of the fiduciary relationship. I emphasize that the very notion of being a lawyer presumes a client. I taught Agency Law for two years to learn more about the origins of the rules we teach. A client is not merely a convenient vehicle whose presence enables a lawyer to “do law” and earn money. No client, no lawyer.

Thus, I stress the need to care deeply about clients professionally regardless of what one may think of them personally. Lawyers can hate their clients as human beings, but as professionals they must have devotion. I talk at some length of the need to communicate with clients, to keep them informed, to respond to their anguish or pain. This all may sound elemental, but it is not. Not only is it not evident to new lawyers, but as I learned in ten years of practice, it is a truth that also eludes veteran lawyers. To encourage perspective, I urge students to substitute “patient” for “client.”

My second goal: I want students to understand the rules that will daily govern their professional lives, whether as associates, partners, corporate counsel, government lawyers, judges, defense lawyers, prosecutors, trial lawyers, or transactional lawyers. I do not want to see their names in the advance sheets after “In the Matter of . . .” I cannot teach them to be honest if they are not, but I can teach them the details that constitute honesty, integrity, and loyalty in law practice. As we all know, the law of lawyering is growing exponentially more complex. Many rules are not intuitively obvious. They have to be learned.

In pursuing this second goal, I want to enable students to recognize professional responsibility issues that may arise in their working lives. I do not expect them to be able to identify issues precisely. I am satisfied if they are able, first, to hone some instinct that enables them to sense a danger zone (“Issue here! Proceed with caution.”) and, second, to summon the research skills needed to clarify it. When the rules are ambiguous, as they often are, I want students to be able to identify the plausible alternatives and choose wisely from among them.

Achieving this second goal requires extensive classroom discussion. Students have to learn to be able to “talk” ethics. Ethics has a special language, just as torts, tax, and trusts do. But in legal ethics, talk is even more important because the subject is rules that will soon govern the behavior of the students themselves. This is personal. Ethics is about the “I” word. The first person singular. And the “I” should be each of them, not their professor. The less I talk the better (although I am not always able to keep that lesson in mind). I will sacrifice coverage for good conversation any day, or try to.

My third and fourth goals differ from the first two and receive less time. As my third goal, I want students to understand the organization, governance, and something of the history of the American legal profession. Who can sell “law?” Who can earn money from its sale? Rules limiting or forbidding unauthorized

law practice, nonlawyer equity ownership of law firms, ancillary law businesses, and division of fees between lawyers and non-lawyers all affect the cost and availability of legal services, as once did rules setting minimum fee schedules and rules forbidding lawyers to advertise. My casebook devotes all of one chapter and parts of a few other chapters to laws and rules governing the law marketplace.<sup>2</sup>

My fourth and final goal is to address issues of race and gender in law practice. Let me give several examples from among the video vignettes produced at my law school whose origins and pedagogical uses are more fully described in parts III and IV below. In one vignette, a female associate stops getting desirable assignments from a particular partner after she rejects his polite but persistent romantic overtures; in a second, a senior associate encounters a conflict between the demands of family life and the inflexible demands of her job; and in a third, a firm takes an associate off a big case because of fear that a female, Jewish lawyer will alienate a small-town southern jury.

I do not believe that it is essential to examine these questions in a legal ethics course. They are not bedrock topics like confidentiality and conflict of interests, so a respectable course could be taught without them. I choose to raise these topics for several reasons. First, our students will be affected by them. I know that is so because my hypotheticals draw on actual experiences, some from former students. Second, many jurisdictions have rules or case law dealing with discrimination and harassment in law practice.<sup>3</sup> Violation of these authorities can bring serious penalties.<sup>4</sup> Third, our students will someday be in positions to influence office policies on these matters. This is particularly true for the relentless conflict between family and work life.<sup>5</sup> Why not begin the discussion (and the personal reflection) now? Fourth, and I sometimes think most important, I want students to hear each other talk about these issues and to understand differing points of view.

### III

#### USE OF VIDEO VIGNETTES IN TEACHING LEGAL ETHICS

My first two goals and the final goal benefit from the use of dramatic video vignettes. I came to this realization slowly. I discovered early enough that

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2. STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS 603-23, 637-54, 661-73, 791-826 (4th ed. 1995) (dealing with admission to the bar, transient lawyers and multijurisdictional firms, unauthorized practice of law, and lay participation or investment in the law business).

3. See, e.g., *People v. Sharpe*, 781 P.2d 659 (Colo. 1989) (public censure of prosecutor for using derogatory ethnic term); MINN. R. PROF. CONDUCT Rule 8.4(g) (1994).

4. For a dramatic case in which a young lawyer was censured for vulgar conduct at a deposition, see *In re Schiff*, 599 N.Y.S.2d 242 (N.Y. App. Div. 1993). The court's opinion in *Schiff* does not fully describe the underlying conduct, but the disciplinary committee's opinion does. It is reprinted in STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS 755-60 (4th ed. 1995).

5. That conflict is a basis for the "Jane Loring-Kraft" vignette, which is described and analyzed in Stephen Gillers, *The Case of Jane Loring-Kraft: Parent, Lawyer*, 4 GEO. J. LEGAL ETHICS 115 (1990).

teaching Legal Ethics was different from teaching any of the other courses I taught. Although my emphasis in the course might be described as the law of lawyering, the techniques that worked to teach the law of federal jurisdiction or even the law of evidence were less successful with the law governing lawyers.

Why was that? For one thing, issues of legal ethics spark passion in practicing lawyers that often eludes students. I understand why. Students are as yet uninvested in the profession. They lack clients. Lawyers, by contrast, can see the implication of particular rules for their clients, their practices, their firms, their status, and their incomes. Legal ethics is about stories—stories in which lawyers have the principal roles. Except for cases on admission to the bar, the stories we tell in courses on the legal profession rarely have students in prominent roles. To teach the rules without a story is to lose something important. Students will respond intellectually where practicing lawyers will respond personally.

I have long been attracted to William Carlos Williams's dictum that there are "no ideas but in things."<sup>6</sup> I think that is especially true for Legal Ethics—the content of the course must be anchored in a thing, a story. Ethical issues need a real-world narrative. Legal ethics is a product of a special kind of human relationship, the one between lawyer and client (or the client's agent). We should not ignore that fact. Nor can we ignore the fact that human relationships encompass a subterranean world of emotion and instinct that can crowd any rule we may happen to produce in the antiseptic laboratories of our mind. Theory, here, will get us only so far. This stuff is personal.

"Personal" is the key word that distinguishes Legal Ethics from just about any other course in the curriculum. Legal ethics rules will govern our students as lawyers. Other courses teach students rules that govern their future clients. That is one step removed. But because the rules we teach will operate on students as lawyers, I encourage students to identify with the lawyers they are about to become and to address legal ethics issues not only intellectually, but personally. The way I try to do that is with stories.

Now, of course, we all tell stories in class, whatever we teach. We call them "fact patterns" or "hypotheticals." Perhaps we use these terms because our stories are often so puny. They are not true stories at all. "Lawyer Jones is retained by Clients Smith and Green, who ask her to . . . ." You have heard that one before. We end with, "Now, Mr. Miller, what would you advise?"

That does not cut it. It is not real. It does not go far enough toward duplicating the clutter and complexity of real professional dilemmas. Life is messy, ambiguous, harder to describe. And there are no people in these "hypotheticals," only names. (And usually the wrong names, too; they should be "Hawkins" and "Wong" and "Martinelli.") There are no relationships. There is no pain, no suffering, no anxiety, no threat to lawyer or client. No

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6. W.C. WILLIAMS, *Paterson*, in *SELECTED POEMS* 262 (C. Tomlinson ed., 1985).

mortgage to pay, credibility to assess, partners to worry about, courts to appease, adversary to confront. Nothing personal.

Lately, I have been thinking about the term "war stories." It is a pejorative term when used by law teachers. It describes what we do not want to occur in our classrooms. We especially worry that adjunct instructors, who have spent their professional lives practicing law, will be tempted to tell war stories about their experiences rather than teach law. I share that concern, but I think it can be overdone.

Every legal community circulates stories that may never get written down, at least not in their entirety. Few professions have a stronger oral tradition than law. War stories are a part of that tradition. Think of them as parables, which my dictionary defines as "a usu[ally] short fictitious story that illustrates a moral attitude or a religious principle."<sup>7</sup> War stories are not presented as fictitious, of course, but like "the fish I caught in the summer of '72," they tend to get embellished with the passage of time.

Embellished or not, war stories about legal ethics dilemmas are exactly what we should include in our classes. The fact that the story occurred, even in less exaggerated form, is a magnet for student attention. Furthermore, in telling the story, a teacher can present the legal ethics dilemma as it unfolded, not as a tidy appellate opinion might briefly and unambiguously retell it in retrospect. For these reasons, I try to collect war stories, sometimes through my own work,<sup>8</sup> but mostly by listening to the stories of other lawyers or by reading the legal press. While I rely on war stories, I am not a good enough storyteller and I have not collected enough to rely only on them. So I turned to video.

Who among us has not had this experience? After seeing lawyers in a television show or movie, students stop by to ask if the character they saw could do what he or she did and, if not, what the character should have done instead. It happened to me weekly when "L.A. Law" was broadcast. ("Can Arnie Becker do that?") Few of us are able to construct fact patterns or hypotheticals that spark the level of interest in legal ethics issues that popular culture can deliver when it is done well, which more and more often it is.<sup>9</sup>

One reason a professionally produced video works better than our classroom hypotheticals is that good actors with good dialogue will evoke a range of emotions, which then become part of the story. Like life. These are the very emotions that will confront our students when they become lawyers. Just as fiction can be truer than a "true" story, a television show or film or book about lawyers can be truer not only than the spare hypotheticals we bring to class, but truer even than the actual cases we ask students to read. The cases, while true, are lean, presenting the "facts" schematically, dryly, with all the juice gone. But "facts" do not confront the practicing lawyer that way. Further, appellate

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7. WEBSTER'S NEW COLLEGIATE DICTIONARY 823 (8th ed. 1981).

8. See Stephen Gillers, *Against the Wall*, 43 J. LEGAL EDUC. 405 (1993).

9. See Stephen Gillers, *Taking L.A. Law More Seriously*, 98 YALE L.J. 16 (1989).

decisions rarely recognize the human dimension of legal ethics issues. Amidst uncertainty in the facts, the rules, or both, one person is helping another person navigate a threatening world that the latter does not understand. Coming to terms with the human dimension is prerequisite to a lawyer's ability to detect and resolve an ethical issue and even to discuss what the governing rule should be. Legal Ethics may be two parts law, but it is also (at least) one part humanity. We ignore that ingredient at our peril.

For this reason, several years ago, I asked my generous dean to advance funds to produce a series of videos meant to depict legal ethics issues in a way more complex than my oral storytelling skills allowed. Across two summers, using real actors,<sup>10</sup> we made two videotapes containing a total of fifteen vignettes, nine the first summer and six the second. We eventually combined thirteen of the fifteen vignettes into a third tape. Sales of all three videotapes, mostly to law schools but also to law firms, enabled us to recoup costs fully and earn a profit larger than our original investment. We will use that profit to make another tape in 1996.<sup>11</sup>

The vignettes, which average about eight minutes each, have a limited purpose. They are intended to present legal ethics issues in a dramatic context. They offer a platform for discussion that I hope is richer than a law school professor's hypotheticals. Part of the richness comes from the emotion and skill of the actors, who confront ethical problems or react to apparent misconduct of others. The vignettes provide no answers. Classroom talk is supposed to do that. (There are teacher's notes, however.) The objective is solely to bring the depicted problems closer to real life, closer to home.<sup>12</sup>

The videos are merely pedagogical tools, a means, not an end. Through monologues in the first set and dialogues in the second, and through generally good acting, the vignettes enable instructors or discussion group leaders to ratchet up the intensity of the debate. The vignettes enable teachers to get the audience to an emotional plateau that hypotheticals, in my experience, lack the capacity to deliver.

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10. The most enjoyable part of the video production was to see skilled actors turning roles and dialogue into characters, creating three dimensional people from a one-dimensional script. New York is an ideal place to find actors looking for work. Our notice in *Backstage*, offering union rates, drew one thousand glossy photographs and resumé's. About sixty were from lawyers who had switched to acting. We used some of the lawyers with much satisfaction. One applicant auditioned for the part of a senior partner in a corporate law firm. When he walked in, I exclaimed how well he fit the part. Well, yes, he said, that was because he was a senior partner of a corporate law firm. When he was sixty years old, he explained, he started taking acting jobs: summer stock, commercials, industrial videos. He had always wanted to act, but, with one thing or another, he could never afford the time. Now he could. We hired him.

11. We have sold about 225 copies of all three videos combined.

12. For a brief description of each vignette, see Deborah Rhode's bibliography in this issue. Deborah L. Rhode, *Annotated Bibliography of Materials on Teaching Legal Ethics*, LAW & CONTEMP. PROBS. 363 (Summer/Autumn 1995). Although the descriptions are inadequate to convey the quality of the acting, which varies, and the capacity of the particular vignette to generate debate, they do provide interested readers with a summary of the issues addressed.

That is when the work begins. It is the teacher's job to maintain the level of intensity. In my experience, that means continuing and extending the "performance." Teaching is, after all, a kind of performance. Some of us are more overt about it than others. But few if any of us stand in front of the class and read text in a monotone. Anything more is performance, from mild inflection of the voice at one extreme, to racing around the classroom engaging students directly at the other. It is toward this other extreme that the tapes provide a boost. Perhaps I should call them a tool for activist teaching, which is the kind of teaching I think the legal ethics course generally deserves.

#### IV

#### CLASSROOM RESPONSE TO VIDEO VIGNETTES

I find that I use my tapes best when I require students to react "in" rather than "to" the story. I resist their efforts to maintain distance. So after Karen Horowitz explains that she has been removed from a case about to go to trial in a small southern town because her firm feared local bias against a female Jewish lawyer, and after her boss offers the firm's justification, I may ask students to respond to Karen. Usually, the first answer goes something like this: "We should tell her that . . ." But that is not what I want. I want the student to talk to Karen directly. And so I interrupt and, approaching the student, say, "Look, I'm Karen. Tell me whether I am right or wrong and why. Talk to me." Or I might ask another student to play Karen and respond.

The tapes contain one pedagogical value that I had not anticipated. Most of the vignettes have more than a single issue buried in them. Indeed, some viewers found legitimate issues of which I was unaware. The tapes have density. They force students to listen to the speakers. Listening is an art. Some of us are better at it than others, but all lawyers must learn it. Students often miss issues because they do not listen closely. For example, one vignette is a first interview between a white-collar criminal defense lawyer and a Wall Street trader. The principal purpose of this vignette is to prompt discussion about whether it is appropriate for a lawyer to maintain "conscious ignorance" of a client's story. But the vignette has ancillary issues, too. For example, the lawyer casually mentions that a partner of his had previously done work for the trader's company. Is that a conflict? And the trader asks the lawyer about tape recording conversations with colleagues. Can the lawyer advise him to do so?

The more I use the videos, the more effectively I use them. One reason is that I know them better. A second is that my pedagogical skill with them improves. A third is that other viewers see themes, issues, and solutions that I missed but which then become part of my repertoire. These advantages permit me to show students how what they may have thought was a fairly simple matter, requiring little thought, is actually a good deal more complicated.

Let me offer an abbreviated example. In the Karen Horowitz video, mentioned above, Karen's firm has taken her off the trial team of a case on which she has been working for two years. It fears that a Jewish woman will

antagonize a biased southern jury. The tape features Karen, speaking directly to the camera, describing the situation as she sees it, followed by the senior partner, J. Blair Thomas, who offers the firm's explanation, including demographic evidence about the county in which the case will be tried.

Almost always, the first students to speak side with Blair. They accept his claim that the firm cannot risk putting Karen before a biased small-town southern jury. The client stands to lose \$30 million. Karen should get real. When I ask how students know the jury is biased, they repeat Blair's evidence. But Blair may not be a reliable reporter. The tape provides reasons to doubt him. His evidence is conclusory and thin. Despite his protests, he does not seem to take Karen seriously. How certain should Blair be before he makes an assignment based on religion and gender? How certain would the students be?

I then ask students to assume that Blair is right after all. There is a risk. Most students will then say that Karen is wrong to complain. Perhaps so. But why? This question can be discussed in terms of rules governing conflict of interest between lawyers and clients. (I show the tape when I cover that material.) Perhaps Karen should subordinate her career interests to enhance her client's trial prospects. We discuss when, if ever, discrimination should be tolerated to avoid courtroom bias, when we do not tolerate it to appease the bias of customers or clients.

Blair is still likely to be ahead at this point (and maybe he should be—maybe he is right). So I then ask whether, if it is acceptable to remove Karen to avoid juror bias against the side with a Jewish woman lawyer, it is also acceptable (as Blair argues on the tape) to add a lawyer to the trial team to appeal to juror bias in favor of one's side? And I ask about the practice of hiring local counsel, an issue that arises on the tape as well.

Next, I tell the class what happened to Karen after the tape ended. She was removed from the case. The firm won. Karen did well in other matters and advanced at the firm, but two years later her husband, who is a chemist, was offered a prestigious research position in the very same county in which Karen's firm had tried its case. When Karen interviewed with local firms there, she was told that although they would hire her, they could not send her into court on big cases for the very same reason that her former firm had removed her from its trial, a reason that most members of the class (or at least most who have spoken) will have supported. Karen is unemployable in the county for the work she is most qualified to do. How can we justify this result?

I conclude with an issue I had not recognized when I wrote the script. My colleague Tony Amsterdam has pointed out that, as it appears from the video, Blair and the client had reviewed the matter themselves and had decided to take Karen off the case. Then they gave her the news. Karen was not invited to participate in making the decision. Yet, until she was removed, Karen had been consulted as a member of the trial team on other tactical choices. Why not this one? Perhaps if she had been consulted, she could have provided a perspective Blair missed. Perhaps she would have been able to show Blair that

his evidence of jury bias was unreliable. Even if the decision then went against her, perhaps she would have been better able to accept it.

The discussion can move in various directions. The one listed above is only an example. Students often surprise me, on this vignette and others, with insights that had not occurred to me. After the discussion has ended, the class will not have identified the "answer." No answer exists. The goal of the lesson is the discussion, not a solution. Even those who do not join the conversation hear it, react to the comments of others, and articulate positions amongst themselves.

## V

### LAWYER RESPONSE TO VIDEO VIGNETTES

Showing the videos to lawyers often reaps stories I can then use as part of the discussion of the video. The Karen Horowitz tape elicited the following stories, among others.

A Chicago lawyer told me that he was representing a plaintiff in a big products liability case. On the first day of trial, while picking the jury, it became evident that one member of the panel would be a Korean-American. The next day, the defense firm had a Korean-American associate sitting at counsel table between the jury and the lead lawyer for the defense. The new associate had never worked on the case and, as far as the speaker knew, was not even a litigator.

A southern lawyer told me another story after seeing Karen Horowitz and siding with Blair. The second of the four names in the name of his prominent firm is obviously a Jewish name. Let's say it is "Levine." The firm tries cases in small cities throughout the South. Often, the opposing lawyer will dwell on the name of the firm, emphasizing "Levine" to the jury. My informant told me that his firm had considered changing its name to avoid this gambit, but it finally decided not to do so. Clients were aware of the problem and could make their decisions accordingly.

When a description of the Horowitz tape appeared in a legal publication, a West Coast lawyer called to tell me the following story, which I now use in class. His firm had represented a successful company for many years. The lawyer with daily responsibility for the client changed from time to time, as lawyers came and left the firm or turned their attention to different areas of practice. The president of the company was content with this arrangement. It came to pass that the firm assigned a new lawyer, a senior associate, to the client. The president, as was his custom with a change of lawyers, suggested lunch so they could meet. By coincidence, the president's wife had planned to have lunch at the same restaurant on the same day. Introductions were made. It happens that the associate was a very attractive woman, a fact that did not escape the notice of the president's wife. That night she told her husband, "Either she goes or I do." The next day the president called the senior partner

of the law firm (the man who was telling me the story) and asked that a different lawyer be assigned to his company's matters. What should he do?

Other vignettes, especially when shown to lawyers, have yielded other good stories. I freely use them. In this way, showing the tapes can be like passing a magnet through a container of iron filings or tossing a baited hook into a stocked pond. The stories I collect are often far better than the modest tale that attracted them.

I do not want to burden this undertaking by claiming too much. The tapes have their limitations. I have only modest ability to create a scene and write credible dialogue. We shall never be able to afford Hollywood's production quality. The vignettes must be short or they will not be usable in a fifty-minute class. Some areas—malpractice and contingent fees, for example—are difficult to dramatize. Nevertheless, where they do work and where the teacher is willing to invest the energy, the tapes enliven the lesson and enhance the discussion. In a course like Legal Ethics, that achievement should be enough to earn us two thumbs up.

## VI

### CONCLUSION

Even here, there is no free lunch. Whatever pedagogical advantage legal ethics videos may afford comes at a cost: credibility among one's peers. At many schools the subject already has stepchild status. One of my very own peers recently remarked that the study of legal ethics was a "wasteland." A dean I know told a new law teacher who had some interest in the area to "stay away from it" to avoid harming her tenure chances.

The use of video may exacerbate this low regard. Videos may appear to underscore the course's distance from theory and its proximity to practice. Yet it is away from practice and toward theory that legal academia has, of late, been striving so mightily to aspire. Who needs a poor distant relative to evoke memories of his modest roots?

I have two replies. The first is that the accusation that stories, whether presented through video or otherwise, trivialize theory is simply wrong. Storytelling and theory are not mutually exclusive. If they were, how could we explain literature, history, theology, and aesthetics? Rather, storytelling is an effective means by which one can bring theoretical ideas to life. Critical study of stories allows free movement between detail and theory, between the concrete and the ideological. Beginning with a story does not mean one must stop with one. No able teacher would do that.

My second reply defends the study of detail by relying on an obligation of the legal ethics course itself—competence. American law schools produce about

40,000 new lawyers annually.<sup>13</sup> We as law professors can teach in the clouds, but nearly all of our students will work on the ground, if not in the trenches. Whatever we may do to advance the theory of the law, we also have an obligation to constituents of the legal system to produce graduates who are competent in their professional responsibilities. These constituents will mostly be future clients, but they also include judges, adversaries, colleagues, and even the justice system itself. Unless classroom lessons are brought to bear on the dilemmas practicing lawyers actually face, law schools will not fulfill their obligation to train competent professionals. This danger is especially acute when the subject being taught is the body of rules governing the conduct of lawyers themselves. Teaching legal ethics through videos and stories that present real world situations is one particularly effective way to avoid this unacceptable danger.

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13. *A Review of Legal Education in the United States, Fall 1994, 1995 A.B.A. SEC. L. ED.* 67 (Rick L. Morgan ed.).