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### Celluloid Legal Ethics: Discipline Redux (video review)

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# VIDEOTAPE REVIEW

## Celluloid Legal Ethics: Discipline Redux

A REVIEW OF *THE REST OF THE STORY: INTERVIEWS WITH TWO DISCIPLINED ATTORNEYS* by Gerald C. Sternberg and Dyann Hafner, Wisconsin Board of Attorneys Professional Responsibility, Madison, Wis. 1989 (47 minutes).

Vincent R. Johnson\*

The proliferation of texts,<sup>1</sup> monographs,<sup>2</sup> and treatises<sup>3</sup> on legal ethics during the past 15 years has been matched in many respects by a parallel expansion of video resources for teaching the same subject. Numerous dramatizations,<sup>4</sup> interviews,<sup>5</sup> and discussions<sup>6</sup> specially created for ethics audiences are now commercially available on videotape. And if these works

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This review benefited from the comments of two law students, Sara Murray and Patricia Barsalou.

1. See, e.g., T. SHAFFER, *AMERICAN LEGAL ETHICS: TEXT, READINGS, AND DISCUSSION TOPICS* (1985); S. GILLERS AND N. DORSEN, *REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS* (2d ed. 1989); J. SUTTON AND J. DZIENKOWSKI, *CASES AND MATERIALS ON THE PROFESSIONAL RESPONSIBILITY OF LAWYERS* (1989); T. MORGAN AND R. ROTUNDA, *PROFESSIONAL RESPONSIBILITY: PROBLEMS AND MATERIALS* (4th ed. 1987); M. SCHWARTZ AND R. WYDICK, *PROBLEMS IN LEGAL ETHICS* (2d ed. 1988); N. REDLICH, *PROFESSIONAL RESPONSIBILITY: A PROBLEM APPROACH* (2d ed. 1983); V. COUNTRYMAN, T. FINMAN, AND T. SCHNEYER, *THE LAWYER IN MODERN SOCIETY* (2d ed. 1976); M. SCHWARTZ, *LAWYERS AND THE LEGAL PROFESSION: CASES AND MATERIALS* (1979); M. PIRSIG AND K. KIRWIN, *PROFESSIONAL RESPONSIBILITY: CASES AND MATERIALS* (4th ed. 1984).

2. See, e.g., T. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* (1981); T. SHAFFER, *FAITH AND THE PROFESSIONS* (1987); M. FREEDMAN, *LAWYERS' ETHICS IN AN ADVERSARY SYSTEM* (1975); G. HAZARD, *ETHICS IN THE PRACTICE OF LAW* (1978); D. LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988); D. LUBAN, *THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS* (1983).

3. See G. HAZARD AND W. HODES, *THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT* (1988); C. WOLFRAM, *MODERN LEGAL ETHICS* (1986).

4. See, e.g., American Bar Association Special Coordinating Committee on Professionalism and Sections of Litigation and Tort and Insurance Practice, *Ethical Dilemmas and Professionalism* (1989) (five videotapes); American Bar Association Consortium for Professional Education, *Dilemmas in Legal Ethics* (1977) (six videotapes); American Bar Association Consortium for Professional Education, *Preventing Legal Malpractice* (1984-88) (seven videotapes).

5. See, e.g., State Bar of Texas, *Pro Bono: The Dallas Experiment* (1986); L. Dubin, *What Went Wrong?: Conversations with Disciplined Attorneys* (1985) (videotape) [hereinafter *What Went Wrong?*], reviewed in Johnson, *Conversations with Disciplined Attorneys: A Candid Discussion*, 1 *GEO. J. LEGAL ETHICS* 645 (1987) [hereinafter *Candid Discussion*]; L. Dubin, *Legal Heroes* (1988) (videotape), reviewed in Johnson, *Law-givers, Story-tellers, and Dubin's Legal Heroes: The Emerg-*

do not present a sufficient range of pedagogical possibilities, an American Bar Association committee recently compiled and distributed a book inventorying dozens of feature films, documentaries, educational tapes, and one television series raising issues of attorney conduct.<sup>7</sup> A professional responsibility professor with a taste for "celluloid legal ethics" faces a formidable task in selecting the best videos and films from among the wealth of available offerings.<sup>8</sup>

A recent and welcome addition to the field of video legal ethics is *The Rest of the Story: Interviews With Two Disciplined Attorneys*<sup>9</sup> (*The Rest of the Story*) produced by Gerald Sternberg, the Administrator of the Wisconsin Board of Attorneys Professional Responsibility, and Dyann Hafner, a Wisconsin lawyer. Focusing on two attorneys who have been through the disciplinary process, *The Rest of the Story* falls into the same genre as Lawrence Dubin's masterful 1985 work, *What When Wrong? Conversations with Disciplined Attorneys*<sup>10</sup> (*What Went Wrong?*): autopsies of the disciplinary process. It is against the high standard set by *What Went Wrong?* that *The Rest of the Story* must be judged.

*The Rest of the Story*, interestingly, is not the rest of Dubin's story.<sup>11</sup> The two attorneys on the Sternberg and Hafner tape cover much the same ground as the four attorneys in *What Went Wrong?*: how the attorneys got into trouble; what the disciplinary authorities did; and what advice the attorneys would give to other lawyers. Thus, it is unlikely that a law professor would want to use both videos in the same class in a single semester. Doing so might well lessen the "shock value" of bringing to the classroom screen attorneys who in fact have been disciplined.

The question then is really one of choosing between *What Went Wrong?* and *The Rest of the Story*. In many respects, the former is superior: the physical setting of the interviews is more attractive; the editing keeps the

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*ing Dichotomy in Legal Ethics*, 3 GEO. J. LEGAL ETHICS 341 (1989); L. Dubin, *Professional Misconduct: Conversations with Victims* (1977) (videotape).

6. See, e.g., ALI-ABA COMM. ON CONTINUING PROFESSIONAL EDUCATION, *NIX V. WHITESIDE: SO YOUR CLIENT WANTS TO COMMIT PERJURY?* (1986) (videotape); STATE BAR OF TEXAS, *SOLICITATION AND LEGAL ADVERTISING: A PROFESSIONAL DILEMMA* (1986).

7. R. CRAMTON, *AUDIOVISUAL MATERIALS ON PROFESSIONAL RESPONSIBILITY* (1987).

8. At least one guide to the best trial films has been published. See Verrone, *The 12 Best Trial Movies*, 75 A.B.A. J., Nov. 1989, at 96. It seems likely that the same someday will appear with respect to the best legal ethics films and videos.

9. G. Sternberg and D. Hafner, *The Rest of the Story: Interviews With Two Disciplined Attorneys* (1989) (videotape) [hereinafter *The Rest of the Story*]. Copies of the videotape are available from: Gerald C. Sternberg, Supreme Court of Wisconsin, Board of Attorneys Professional Responsibility, 110 East Main St., Suite 410, Madison, WI 53703-3383, (608) 267-7274; or the State Bar of Wisconsin, 402 W. Wilson St., P.O. Box 7158, Madison, WI 53707.

10. Dubin, *What Went Wrong?*, *supra* note 5.

11. Presumably, the title refers simply to the fact that there is always a story behind the imposition of attorney discipline or that there is more to legal ethics than codified rules.

attention of the audience by shifting back and forth among the attorneys and juxtaposing their comments; and the closeup visual images are sufficiently large to show up well on classroom monitors. In contrast, in *The Rest of the Story*, the camera angle never varies, there are no close-ups, the setting is plain, and the action never shifts. First, one attorney talks for 26 minutes, then the other talks for 20 minutes. Consequently, the success or failure of the tape turns upon the impact of the spoken word. The ability of the featured attorneys as oral communicators is critical to the work. As an exercise in legal ethics "storytelling,"<sup>12</sup> *The Rest of the Story* succeeds—at least in part. The second attorney on the film—who was disciplined<sup>13</sup> for alcohol-related neglect of postconviction criminal representation—is animated, engaging, and believable. He is a man with personality, and he has the ability not only to maintain audience attention, but to persuade viewers that he is not so very different from them. His story makes clear that disciplinary perils are faced by the average practitioner and that many risks arise from the demands of law office management. Neglect of work, he cautions, is not the result of a single bad decision, but of a series of incorrect small steps which develop into a large problem. His description of the anxiety resulting from the disciplinary process is real. He states:

It's hard to isolate . . . the difference between the [effect of] the discipline itself and the impact of the investigation and the impact of getting sober. . . . [F]or literally two and one-half years, . . . I felt like a man on death row. I did not know what the [disciplinary] decision was going to be . . . I can remember every day going to the mailbox and . . . wondering if there was going to be a letter in there from the Board of Professional Responsibility. And it weighed on me heavily . . . I knew that I had made a mistake; I knew that I was taking corrective action . . . [I] just plain

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12. For a discussion of the "storyteller" movement in legal ethics teaching and scholarship, see generally *Law-givers, Story-tellers, and Dubin's Legal Heroes: The Emerging Dichotomy in Legal Ethics*, *supra* note 5. In contrast to legal ethicists who might be categorized as "law-givers" based on the primacy they accord to the "identification, transmission, and enforcement of uniform standards . . . [of attorney] conduct," *id.* at 342, this author has said that:

[S]tory-tellers place a higher value on persons and context than on principles and procedures, and on the cultivation of a deeper, less mechanical sense of professionalism than detailed rules can provide. If the result of these endeavors is to produce less certainty and greater subjectivity in the handling of ethical problems, the cost, they believe, is worth bearing. Among the story-tellers are those who teach or write about real or fictional lawyers (often referring to lawyer biographies or lawyers depicted in literature), and perhaps also those who endeavor to focus on the interpersonal, humanistic dimensions of law practice, and on the larger question of "What is just?" through the use of classroom simulations, videotapes which bring lawyers and clients into the classroom, and other, less traditional teaching techniques.

*Id.* at 343-44.

13. The attorney received a stayed suspension from practice and was placed on probation with conditions.

didn't know [what the Board was going to do], and that taught me a very valuable lesson . . . . Frankly, you get this law license . . . [and] it's a lot of fun to be a lawyer. But it's very, very easy to lose . . . . [T]hat two and one-half years, . . . thinking about it day after day after day, wondering just what the folks in Madison [were] going to do with me, what the newspaper was going to say—my dad ran the bank in town—was just so scary that [I] learned you cannot stick your head in the sand when you have problems . . . and you can't take on more work than you can handle.<sup>14</sup>

The advice which the attorney gives is concrete and wide-ranging: how to recognize and deal with the “problem files” which just sit on the corner of your desk;<sup>15</sup> what to do when you are notified of a grievance;<sup>16</sup> how to cope with a drinking problem.<sup>17</sup>

In contrast, the first attorney in *The Rest of the Story* is not a person with whom it is easy to empathize and not a persuasive source of advice. To be sure, his story has instructional potential: it tells of how the attorney's misappropriation of client funds led to a decision to commit suicide, and to marital breakup, criminal prosecution, disbarment, and, ultimately, employment as a substitute school teacher. At a particularly interesting juncture in the story, the attorney explains that the partners in his firm discovered his misconduct while he was on vacation and reported him to the Board of Professional Re-

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14. *The Rest of the Story*, *supra* note 9 (comments of unnamed attorney) (brackets substituted or added).

15. The attorney comments:

Every lawyer has problem files that sit on the corner of the desk . . . . The first [step is] that you don't work on the file. The second step is, when the client calls, you make up excuses not to talk to him. Then the client sends you a letter, and you don't reply to that letter. He calls you again, usually at home at that point . . . . Recognize those problem files . . . and do something with them. If . . . you don't know what you're doing, admit your ignorance, and farm it out. Or call up your buddy . . . . Get that file moved out of your life.

*The Rest of the Story*, *supra* note 9 (comments of unnamed attorney) (brackets substituted).

16. The attorney states:

When you get notice that a grievance is about to be filed, first thing . . . hire a lawyer—because you need someone to tell the facts to . . . . Secondly, with [the disciplinary authorities], tell them the facts. The Board of Professional Responsibility . . . will grind the facts out of you. . . . You're not going to snowball them.

*The Rest of the Story*, *supra* note 9 (comments of unnamed attorney).

17. Concerning alcoholism versus social drinking, the attorney cautions:

[T]ake a look at [yourself]. [Ask yourself,] “Am I drinking because I cannot stand this job. . . .” There are lots of organizations to call. There is Lawyers Concerned for Lawyers. They are the ones I called. . . . The guy who came to my office . . . didn't come in and say, “You are an alcoholic.” He just told me his story, and I could then make my own decisions. . . .

*The Rest of the Story*, *supra* note 9 (comments of unnamed attorney) (brackets substituted or added).

sponsibility. When he returned, he was confronted by two partners and told that they expected him to take immediate steps to pay back stolen funds and to resign from the firm. The ethical clarity of the firm's stance would be a welcome voice in any law school classroom—especially when, as today, too many law students are exposed to questionable ethical practices while clerking for law firms. So, too, the attorney's comments provide insight into the family pressures which can give rise to theft of client funds. Still, in the end, one is left with a nagging suspicion that students would be unable to identify with the attorney. His story is more pathetic than gripping or memorable.

The simple, sequential structure of the tape affords the option of omitting the first attorney's story from classroom use. The second attorney's presentation is entirely free-standing; the tape can be played beginning in the middle. In this respect, Sternberg and Hafner's *The Rest of the Story* has an advantage over Dubin's *What Went Wrong?*—severability. *What Went Wrong?* must be used as a whole or not at all, for none of the four stories is completed until the very end of the film. This is not a serious failing, for Dubin's tape is worth showing in full, despite the fact that it runs more than 50 minutes. However, if the pressure to cover substantive rules in a Professional Responsibility course makes it impossible for a professor to devote an entire class period to a celluloid glimpse into the disciplinary process, it may be that Sternberg and Hafner's *The Rest of the Story* can still be used. The segment involving the second attorney runs a mere 20 minutes,<sup>18</sup> and there may not be a better way for a class to focus sharply on the human dimensions of the disciplinary process.

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18. For use of videotapes in the classroom, the general rule is "the shorter, the better." See generally Johnson, *Audio-Visual Enhancement of Classroom Teaching: A Primer for Law Professors*, 37 J. LEGAL EDUC. 97, 117 (1987).