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Recommended Citation

Vincent R. Johnson, Lawyers, Mistakes, and Moral Growth, 12 *St. Mary's J. on Legal Malpractice & Ethics* 180 (2021).

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BOOK REVIEW

Vincent R. Johnson

Lawyers, Mistakes, and Moral Growth

The Man in the Ditch: A Redemption Story for Today

by Mike H. Bassett

The Man in the Ditch, LLC; www.themanintheditch.com

Dallas, Texas, 122 pages

(2021) Hardcover ISBN 1737235102

Author. Vincent R. Johnson is the South Texas Distinguished Professor of Law at St. Mary's University. He teaches and writes in the areas of torts, professional responsibility, legal malpractice law, and government ethics. Professor Johnson has served as a Fulbright Scholar in Burma, China, and Romania. An elected member of the American Law Institute and a former United States Supreme Court Fellow, he received a B.A. and LL.D. from St. Vincent College, a J.D. at the University of Notre Dame, an L.L.M. at Yale University, and an L.L.M. at the London School of Economics and Political Science. By appointment of the Texas Supreme Court, Professor Johnson is now serving his second three-year term as a member of the Texas Committee on Disciplinary Rules and Referenda.

In the literature of legal ethics, relatively little is said about the psychic turmoil that lawyers face while anticipating or defending a grievance, malpractice claim, or criminal charge.¹ Even less is said about how lawyers who are found guilty of violating professional standards should go about rebuilding their reputations and personal lives after such proceedings have run their course, often with embarrassing results having been made public.²

Yet, even though professionally related emotional anguish is often not discussed, it can be so great as to be debilitating. Indeed, “lawyers may be more susceptible to depression and suicide [than nonlawyers] because of external forces unique to the practice of law, including a heavy workload, financial strain, and an overly adversarial atmosphere.”³ A lawyer who has made a serious ethical mistake may find it nearly impossible to regain a sense of dignity and productivity because of self-doubts that are amplified by the natural but unfortunate tendency of other lawyers to scorn or ignore a colleague who has fallen short of what professional responsibility requires.⁴

Against this bleak backdrop, a dazzlingly introspective and hopeful book about lawyers and their mistakes—and about their suffering and possible moral growth—has been published. From the snazzy title—*The Man in the Ditch*—one might correctly guess that this is not some dull and ponderous legal tome, but rather a lively examination of pulse-racing issues. In the book, the author Mike Bassett, a Dallas lawyer, explores important questions arising from his own story of professional failure, personal struggle, and (ultimately) redemption.

1. *But see* Jennifer Knauth, *Legal Malpractice: When the Legal System Turns on the Lawyer*, 35 ST. MARY’S L.J. 963, 972 (2004) (“[F]or the lawyer accused of misconduct, there is no way to avoid the personal stress, pain, and hardship that comes with a legal malpractice claim.”). Another exception relates to approved lawyer assistance programs. *See* Gregory C. Sisk, *Public-Regarding Activities, Duties, and Rights § 4-13.1(c)*, in LEGAL ETHICS, PROFESSIONAL RESPONSIBILITY, AND THE LEGAL PROFESSION 689, 692 (2018) (“Every state bar association has created a program to encourage lawyers suffering from substance abuse or other addictive behavior to seek counseling and treatment. Such lawyer assistance programs allow lawyers to share their stories to provide support and personal evidence of successful recovery from addictive behavior.”).

2. *See* DVD: *From Disgrace to Redemption: A Tale of Two Lawyers* (Univ. Det. Mercy School Law 2006) (examining the emotional costs associated with professional discipline).

3. Melissa H. Weresh, *The Importance of Stress Management in the Formation of an Ethical Professional Identity § 3-2.1(b)(3)*, in LEGAL ETHICS, PROFESSIONAL RESPONSIBILITY, AND THE LEGAL PROFESSION 81, 86 (2018).

4. *Cf.* VINCENT R. JOHNSON, LEGAL MALPRACTICE LAW IN A NUTSHELL 9 (3d ed. 2021) (“Professional colleagues in other law firms might understandably be less inclined to refer a case to a lawyer who is the defendant in pending malpractice litigation, for negligent referral is itself a basis on which lawyers are sued for malpractice.”).

The title of the book and its contents echo themes from the parable of the Good Samaritan.⁵ Bassett's use of the term "The Ditch" is flexible. In his view, "The Ditch" is sometimes a great and unwanted challenge or misfortune lurking just around the corner:

The Ditch is a place you don't want to end up, but in some cruel twist of fate, you do. Maybe it's through your own fault. Maybe it's not. For some, The Ditch may be a scary diagnosis. A job loss. A global pandemic that changes the fabric of your family's life. Maybe it's a run in with the law, a poor decision that spawns others and traps you in a cycle of addiction. . . .

But let me make one thing clear: People in The Ditch aren't bad people. At least, not any more than the rest of us. We all have the capacity to do great good and to work great evil. In my life, I've done both. And my experience in The Ditch humbled me enough to know that no one is blameless.⁶

With unnerving confidence, Bassett adds:

My time in The Ditch sobered me to a grim reality. *All* of us are just one left turn from The Ditch.⁷

Bassett's life-altering mistake involved a longtime friend⁸ who, as the Director of Risk Management for a large holding company with subsidiary trucking companies, provided substantial legal business to Bassett's law firm that generated significant annual revenue.⁹ The director blackmailed¹⁰ Bassett into cashing about \$10,000 in "bogus checks"¹¹ and turning the money over to him. After initially resisting any involvement with the scheme, Bassett complied¹² rather than face the threatened loss of the director's portfolio of clients and other legal business.¹³ That was a serious

5. See *Parable of the Man in the Ditch* (Luke 10:25-37), BROADWAY BAPTIST CHURCH (Nov. 20, 2016), <http://www.broadwaybaptist.org/sermon-posts/2016/11/20/parable-of-the-man-in-the-ditch> [https://perma.cc/V7LY-DS5D].

6. MIKE H. BASSETT, *THE MAN IN THE DITCH: A REDEMPTION STORY FOR TODAY 3* (2021).

7. *Id.* (emphasis in the original).

8. *Id.* at 35 ("In retrospect, I knew Sam had groomed me.").

9. *Id.* at 30-31.

10. *Id.*

11. *Id.*

12. *Id.* ("I (wrongly) convinced myself that I was stuck in some nightmarish zero-sum game. I could either cash the checks, risking not only criminal liability but also my livelihood, or face losing what I remember being about \$500,000 in annual revenue to our firm.")

13. *Id.* at 31-33.

mistake in contravention of clear ethics rules,¹⁴ not to mention criminal laws. It was not long before Bassett feared he would be going to federal prison.¹⁵

The Man in the Ditch is an engaging book. First, and most importantly, the story is morally compelling and vividly told. It is all about Bassett's struggle to figure out how he became ensnared in a web of criminal conduct and what he could do to make things right. The pages turn quickly because the discussion is not theoretical or hypothetical but painfully real and deeply personal. As Bassett explains, "My story involves a perfect storm of human pride and fear, involvement with the wrong people, misplaced trust, the sharp sting of betrayal, and ultimately, desperation."¹⁶

Second, the book is intellectually rich. It draws upon the wisdom and lessons of diverse fields, such as psychology, religion,¹⁷ and professional studies. Bassett never pretends that simple conformance to the provisions of some dry and dusty ethics code will illuminate a wise and hopeful course for leading a productive and positive life after a serious professional mistake has been made.

Third, Bassett is a natural storyteller. His language is modern and accessible, never opaque or convoluted. His analysis grows out of the facts

14. See MODEL RULES OF PROF'L CONDUCT R. 1.2(d) (AM. BAR. ASS'N 2021) ("A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent . . ."); *id.* at R. 8.4(c) ("It is professional misconduct for a lawyer to . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . ."); see also *id.* at R. 1.13 ("Organization as Client"). Rule 1.13 states in relevant part:

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action . . . that is a violation of a legal obligation to the organization, . . . then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization

Id.

15. BASSETT, *supra* note 6, at 2.

16. *Id.* at 3.

17. See *id.* at 41 (discussing "what we Catholics call the Operation of Grace"); *id.* at 49 ("a lesson from the Jesuits"); *id.* at 64 ("I soaked in all I could from the Jesuits and attended Mass every Sunday."); *id.* at 67 (discussing a three-day silent Jesuit retreat).

of his upbringing, his values,¹⁸ and his family. The tale is deeply rooted in realities which most persons would understand and respect.

Bassett does nothing to obscure the mental turmoil that he suffered. He recounts in embarrassing detail the pain of breaking the news about his criminal conduct to his wife,¹⁹ his boys,²⁰ his lawyer,²¹ his psychiatrist,²² and his colleagues.²³ Recalling the day he learned the FBI had picked up his case,²⁴ Bassett explains:

Imagine you're still reeling from the most shameful day of your life, then thirty-eight of your colleagues call to ask why you walked out on your work and if something fishy is going on. For the next year and a half, *every time* my phone rang, my heart would drop to the depths of my stomach and I'd feel ill.²⁵

There were substantial monetary costs as well as emotional costs. Between hiring one lawyer to represent him on the criminal side and another lawyer to handle the grievance filed against him by his former partner, Bassett remembers that he “wrote a total of \$150,000 in checks for lawyers in just one week.”²⁶ To resolve the criminal charges, Bassett accepted a plea deal “that, miraculously, involved no prison time, but ninety days in a federal prison halfway house.”²⁷ The grievance was ended with a public reprimand.²⁸

The last half of the book is focused on how one moves forward from disgrace to a better future that includes a healthy attitude and dignity. According to Bassett, “every step I took toward redemption felt laborious and painful.”²⁹ But he sees the connection between pain and gain.

18. *Id.* at 20 (describing his values as “cultivating a practice that is others centered”); *id.* at 21 (explaining how he would “show up every single day and faithfully do the day’s simple, persistent work”); *id.* at 23 (“So much of what we do is listening, guiding, and sharing compassion . . .”).

19. *Id.* at 36–37.

20. *Id.* at 39–40.

21. *Id.* at 37–38.

22. *Id.* at 38.

23. *Id.* at 38–39.

24. *Id.* at 36.

25. *Id.* at 38–39 (emphasis in original).

26. *Id.* at 46.

27. *Id.* at 47.

28. *Id.* at 48.

29. *Id.* at 49.

“Suffering,” he contends, “is the singular path to true learning and growth.”³⁰

There are a few surprises. A frequent participant in Jesuit retreats, Bassett says the lessons he has learned in his “nearly twenty-year journey with the Jesuits continue to shape my life.”³¹ And in November 2019,³² he decided on “showing his scars” by taking his story on the road before a large audience.³³ Since 2020, Bassett has hosted a weekly podcast where his conversations with guests are focused on life, leadership, and law.³⁴

Bassett’s book, *The Man in the Ditch*, is a valuable addition to the literature that explores the professional responsibilities of lawyers. It is part of a great tradition which has long recognized that acting ethically as a lawyer presents moral challenges, and that sometimes there are no simple answers. Resolving such dilemmas often requires weighty deliberation and clear, mature judgment. Even then, the process can be arduous and uncertain. The consolation is that this type of ethical decision-making, and the pain it may entail, provides an opportunity for moral growth.³⁵ Bassett’s book will be a comfort and an inspiration to lawyers who have fallen into The Ditch.

30. *Id.* at 50.

31. *Id.* at 72.

32. *Id.* at 40.

33. *Id.* at 83–89.

34. Mike H. Bassett, *Legal Grounds: Conversations on Life, Leadership & Law*, APPLE PODCASTS, <https://podcasts.apple.com/us/podcast/legal-grounds-conversations-on-life-leadership-law/id1520015034> [<https://perma.cc/46SM-NW2C>].

35. See Vincent R. Johnson, *The Virtues and Limits of Codes in Legal Ethics*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 25, 25–26 (2000) (discussing Thomas L. Shaffer’s course on professional responsibility at Notre Dame Law School, where “the subject of legal ethics was tantalizing and inspiring, and the fulfillment of one’s professional obligations always threatened to be unachievable”).