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## **“LAWYERS” NOT “LIARS”: A MODIFIED TRADITIONALIST APPROACH TO TEACHING LEGAL ETHICS**

LONNIE T. BROWN, JR.\*

### INTRODUCTION

During the summer of 1998, I met a gentleman named Delroy Sheriffe. My wife and I were vacationing in Jamaica, and Delroy was the head bartender at the hotel where we were staying. Over the course of our weeklong visit, we got to know Delroy quite well, and he shared numerous entertaining tales with us. His most memorable comment, however, was uttered in response to my telling him that I was a lawyer. In a heavy Jamaican accent, Delroy mockingly proclaimed: “Ah, a lawyer! I tell you the truth and you tell lies for me.” Although this statement was surely made in jest, it was apparent to me that Delroy really believed that his characterization of an attorney’s role was accurate.

The timing of my encounter with Delroy was particularly fortuitous because it closely preceded my first semester teaching professional responsibility. His words served as a reminder to me of what I have come to recognize as the widely held, negative perception of lawyers by the public.<sup>1</sup> Clients can confidentially tell us their deepest, darkest, nastiest secrets, and it is our job to do everything in our power to obtain the outcome that they desire,

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1. See, e.g., DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 4 (2000) (observing that “[o]nly a fifth of those surveyed by the American Bar Association (ABA) felt that lawyers could be described as ‘honest and ethical’”); Harry T. Edwards, *A Lawyer’s Duty to Serve the Public Good*, 65 N.Y.U. L. REV. 1148, 1149 (1990) (“Lawyers certainly deserve all the criticism they can get. . . . Those are universally held feelings by everyone who has ever dealt with the legal establishment.”) (quoting Marlin Fitzwater, Press Secretary to President George H. W. Bush); Allen K. Harris, *The Professionalism Crisis—The “Z” Words and Other Rambo Tactics: The Conference of Chief Justices’ Solution*, 53 S.C. L. REV. 549, 561 (2002) (observing that it is well documented that “a disturbingly high percentage of the American public has lost confidence in lawyers”).

including lie.<sup>2</sup> The fact that Delroy and other non-lawyers consider this to be the true nature of my chosen calling troubled me, but not so much as my recognition that many within the profession itself cling to a similar misconception.<sup>3</sup>

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2. See RHODE, *supra* note 1, at 7 (noting that one of the most negative traits that the public associates with lawyers is a “willingness to manipulate the system on behalf of clients without regard to right or wrong”); see also ABA SECTION OF LITIGATION, PUBLIC PERCEPTIONS OF LAWYERS: CONSUMER RESEARCH FINDINGS 7–8 (2002), available at <http://www.abanet.org/litigation/lawyers/publicperceptions.pdf> (indicating that survey results suggest, among other things, “that lawyers have a reputation for winning at all costs” and “are believed to manipulate both the system and the truth”); Lonnie T. Brown, Jr., “*May It Please the Camera, . . . I Mean the Court*”—An Intrajudicial Solution to an Extrajudicial Problem, 39 GA. L. REV. 83, 134 (2004) (observing that the practice of attorneys making groundless statements to the media on behalf of clients may result in lawyers being “viewed as unscrupulous mouthpieces who will say almost anything to advocate their positions before the court of public opinion”); Kevin Cole & Fred C. Zacharias, *The Agony of Victory and the Ethics of Lawyer Speech*, 69 S. CAL. L. REV. 1627, 1667 (1996) (suggesting that “the more the public feels (correctly or incorrectly) that attorneys speak dishonestly on behalf of their clients, the less we can expect the public . . . to trust lawyers’ assertions”).

Although the ethics rules do not expressly use the pejorative term “lie,” various provisions clearly indicate that lying, in the fundamental sense, is prohibited. See MODEL RULES OF PROF’L CONDUCT R. 1.2(d) (2007) (“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. 3.3(a)(1) (“A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . .”); *id.* at R. 3.3(a)(3) (prohibiting lawyers from in any way participating in the knowing presentation of false evidence to the court and requiring the initiation of reasonable remedial measures in the event that the lawyer discovers the falsity after the evidence has been offered); *id.* at R. 3.4(b) (“A lawyer shall not . . . falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law . . .”); *id.* at R. 4.1 (“In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.”); *id.* at R. 7.1 (“A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.”); *id.* at R. 8.4(c) (“It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . .”). It should be noted, however, that “immaterial” lies are apparently not proscribed by the ethics rules. See, e.g., *id.* at R. 4.1 cmt. 2 (observing that “[u]nder generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact,” such as, “[e]stimates of price or value placed on the subject of a transaction and a party’s intentions as to an acceptable settlement of a claim . . .”).

All references to the “ethics rules” throughout this Article will be to the American Bar Association’s Model Rules of Professional Conduct, which is the principal rule set that I rely upon in teaching professional responsibility.

3. See, e.g., RICHARD ZITRIN & CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER* 3 (1999) (noting that “[w]hile the public looks to the legal system for the truth, lawyers often look to spin the truth from their clients’ perspectives”); Harris, *supra* note 1, at 551 (noting Georgia Supreme Court Justice Hardy Gregory’s observation in modern law

My personal experience in private practice revealed to me that more than a few members of the bar regard it as proper to abuse, berate, demean and intimidate opposing counsel, so long as they have their clients' wishes and best interests at heart.<sup>4</sup> Indeed, such legal warriors claim that it is their "ethical" duty to pull out all the stops, no matter what the costs.<sup>5</sup> According to them, if

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practice of "a new meanness and blind insistence on the rights of clients with a serious lack of a spirit of compromise and sometimes even common sense"); Jonathan M. Moses, Note, *Legal Spin Control: Ethics and Advocacy in the Court of Public Opinion*, 95 COLUM. L. REV. 1811, 1849 (1995) (noting Floyd Abrams's argument that "lawyers are justified in lying to the press about their clients" given the nature of the adversary process).

4. The concept of neutral partisanship or nonaccountability is resorted to in justification of such behavior, as it removes all elements of social responsibility from the lawyer's role. See MONROE H. FREEDMAN & ABBE SMITH, *UNDERSTANDING LAWYERS' ETHICS* 78 (3d ed. 2004) (noting Professor Murray Schwartz's principle of nonaccountability as providing that "[w]hen acting as an advocate for a client . . . , a lawyer is neither legally, professionally, nor morally accountable for the means used or the ends achieved"); see also DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 52 (1988).

5. The classic formulation of this client-centered, hyper-zealous posture is Lord Henry Brougham's famous quote regarding his representation in *Queen Caroline's Case*:

[A]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and, amongst them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of the consequences, though it should be his unhappy fate to involve his country in confusion.

FREEDMAN & SMITH, *supra* note 4, at 71-72; see also Harris, *supra* note 1, at 569-70 ("Zealous advocacy is the doctrine which excuses, without apology, outrageous and unconscionable conduct so long as it is done ostensibly for a client, and, of course, for a price.") (quoting from an order authored by Illinois Circuit Judge Richard Curry).

Of course, there are defined ethical limits for lawyers, as well as express prohibitions with regard to the very conduct in which certain zealous advocates feel legally compelled to engage. Specifically, Model Rule 3.4 provides in pertinent part as follows:

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

...

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused . . . .

MODEL RULES OF PROF'L CONDUCT R. 3.4 (2007); see also *id.* at R. 1.3 cmt. 1 (indicating that a "lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect").

an unfair advantage can be obtained in litigation or negotiation, they have no choice but to pursue and exploit it, particularly if that is what the client desires.<sup>6</sup>

I teach professional responsibility, in large measure, because I am deeply disturbed by the ubiquitous lay perception expressed by Delroy and even more appalled by the zealous excesses of counsel that provide evidentiary support for this tainted impression. My fear is that cadres of young lawyers will mistakenly identify with this flawed image and will misperceive that it is their legal duty to push the ethical envelope to its limits and beyond whenever necessary for the so-called “good” of the client. My mission as a teacher of legal ethics is to counteract this negative conceptualization of lawyers by emphasizing the nobleness of our profession, as best demonstrated by the enormously unique power and opportunity that we possess to serve and protect the public welfare, in pursuing our private clients’ interests<sup>7</sup> and otherwise.<sup>8</sup>

As attorneys, we undeniably should be faithful confidantes to, and staunch allies for, our clients,<sup>9</sup> but we must also never lose sight of the fact that we are not simply client representatives; we are concurrently officers of the court and

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Furthermore, Model Rule 2.1 makes it very clear that a lawyer’s role in serving a client includes an obligation to provide wise and candid counsel, even if that is not what the client seemingly wishes to hear. *See id.* at R. 2.1. In particular, Rule 2.1 indicates that “[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.” *Id.* Moreover, the comments to the rule provide that “[i]t is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice.” *Id.* at R. 2.1 cmt. 2.

6. *But see id.* at R. 1.3 cmt. 1 (noting that although a lawyer should zealously represent the interest of a client, he or she “is not bound . . . to press for every advantage that might be realized”); *id.* at R. 4.4(b) cmt. 3 (providing that “[a] lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender” and may return the document voluntarily to the sender in the exercise of his or her professional judgment).

7. *See, e.g.,* Harry T. Edwards, *Renewing Our Commitment to the Highest Ideals of the Legal Profession*, 84 N.C. L. REV. 1421, 1426 (2006) (acknowledging Justice Louis Brandeis’s argument that “a lawyer must both participate in the political process and aim to influence private clients to view their interests in ways that are consistent with the public good”); *see also infra* note 10.

8. *See infra* notes 30–32 and accompanying text.

9. *See, e.g.,* MODEL RULES OF PROF’L CONDUCT R. 1.3 cmt. 1 (2007) (noting that “[a] lawyer must . . . act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf”); *id.* at R. 1.6 cmt. 2 (indicating that “[a] fundamental principle in the client-lawyer relationship is that, in the absence of the client’s informed consent, the lawyer must not reveal information relating to the representation”); *id.* at R. 1.7 cmt. 1 (stating that “[l]oyalty and independent judgment are essential elements in the lawyer’s relationship to a client”).

keepers of the public trust.<sup>10</sup> Though I strive diligently to make my students aware of the specific ethical duties owed to clients, I always stress even more intently the importance of these latter two components of their professional obligation. They are what set the practice of law apart from other occupations, and they are what should serve to inspire us to conduct ourselves in a manner befitting this grand calling.<sup>11</sup>

The problem, of course, is how does one go about teaching this beyond merely stating it as a lofty truism? Sophisticated law students will quickly be turned off by Pollyanna-toned lectures about some seemingly unachievable legal Utopia. As a result, I think that many legal ethics professors deploy innovative teaching techniques in an effort to place the subject matter in a context that can be taken seriously and perceived as real by students. For me, the most effective pedagogical approach for attaining these objectives has been to teach professional responsibility in a manner comparable to most mainstream substantive law school courses, with a few calculated deviations.

I endeavor to convey the critical nuts and bolts of the subject (the rules and the law) to students by way of the familiar case method, combined with Socratic dialogue. Though this is anything but pioneering, I suspect that I am

10. See *id.* at pmbl. ¶ 1 (noting that besides being a representative of his or her clients, a lawyer is also "an officer of the legal system and a public citizen having special responsibility for the quality of justice"); Lon L. Fuller & John D. Randall, *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A. J. 1159, 1162 (1958) (observing that "partisan advocacy is a form of public service so long as it aids the process of adjudication; it ceases to be when it hinders that process, when it misleads, distorts and obfuscates, when it renders the task of the deciding tribunal not easier, but more difficult"); Anthony T. Kronman, *The Law as a Profession*, in *ETHICS IN PRACTICE: LAWYERS' ROLES, RESPONSIBILITIES, AND REGULATION* 29, 32 (Deborah L. Rhode ed. 2000) (emphasizing that "[a] lawyer who is doing his job well dwells in the tension between private interest and public good, and never overcomes it. He struggles constantly between the duty to serve his client and the equally powerful obligation to serve the good of the law as a whole."); see also Robert F. Drinan, *New Horizons in the Role of Law Schools in Teaching Legal Ethics*, 58 LAW & CONTEMP. PROBS. 347, 348 (1995) (maintaining that "[o]ne of the deepest moral convictions of the American legal profession has been that lawyers, as officers of the court, have a duty to make certain that the administration of justice serves everyone, including the poor"); Edwards, *supra* note 7, at 1427 (observing that "great lawyers seek to serve their clients and the public good, and these commitments are not seen as mutually exclusive").

11. See Edwards, *supra* note 1, at 1151 (noting Professor Roger Cramton's observation that "[i]ncreasingly, many lawyers have lost a sense of obligation to courts, opponents, and the general public"); Edwards, *supra* note 7, at 1423 (suggesting that by virtue of our training, "the public has a right to assume that lawyers have attained a certain level of technical competence, share a commitment to a defined set of ethical norms, and accept the responsibility to interpret and practice the law in public-regarding ways"); see also ILL. RULES OF PROF'L CONDUCT pmbl. (2006) (stating "[t]he practice of law is a public trust [and] [l]awyers are trustees of the system"); Fuller & Randall, *supra* note 10, at 1159 (observing that "[a] profession to be worthy of the name must inculcate in its members a strong sense of the special obligations that attach to their calling").

likely among a minority of legal ethics professors who make extensive use of this teaching style. Part I of this Article explains the reasons for my choice, certain aspects of my specific case method, and the perceived benefits that flow from this manner of instruction.

While I fully believe that my traditional law school *modus operandi* is an efficient and effective way for me to communicate the substance of professional responsibility, the calculated deviations that I employ are what I consider most essential in enabling me to reach my students and memorably impress upon them the difficulties and virtues of being a lawyer. Part II reveals and elaborates upon the special nuances that I inject into the course as a change of pace and a complement to my rather straightforward study of ethics rules and cases.

Even more fundamentally, however, the goal of debunking the “Delroy myth” inevitably occupies the forefront of my mind when teaching professional responsibility; it informs my approach at all times and inspires my enthusiasm for the subject. “Lawyers” and “liars” may sound alike, but it is my hope that no one who encounters my former students will ever confuse the two.

## I. THE CASE METHOD AS A TOOL FOR PROVIDING CONTEXT AND RELEVANCE

One of the most common refrains that I receive from former students relates to how much more sense law school courses make to them once they become actively engaged in the practice of law. This reality is something with which all professors must contend. Within the confines of the classroom, how does one go about putting a law school course into a context that will cause students to appreciate and understand both the significance and relevance of the material to practicing law?

I think the short answer is we cannot, at least not fully. As with any endeavor, it is simply impossible to grasp completely what the law is really about without actual experience. My wife and I attended parenting classes and read various books to prepare for the arrival of our first daughter, but little of the information made sense until we ultimately became parents—in truth, some of it ended up making no sense whatsoever, but we would not have known any better absent being immersed in the actual parenthood enterprise.

Practice and experience truly are the best teachers, but few professors have the luxury of being able to place their students in authentic legal settings as part of their pedagogy. We have to figure out a meaningful alternative. For me, at least as a starting point and frame of reference, actual cases are the optimal tool. There are several reasons for this.

First, it is important for students to take the subject matter very seriously. I do not want them to view their required course in legal ethics as merely some tedious rite of passage. Students need to view professional responsibility in the same manner that they look upon constitutional law or civil procedure. Indeed,

I hope to impress upon them that professional responsibility is actually even more important because it concerns the law that governs lawyers specifically. It is the only course that focuses upon the legal rules of the profession; and what could possibly be more significant for an aspiring attorney? In any event, using the case method, at a minimum, causes students to equate legal ethics with their other substantive courses.

In addition, the use of cases resembles a narrative story, adding an element of reality to the content, causes, and effects of ethical lapses by counsel. While hypothetical problems are definitely useful, they can, at times, come across as unrealistic academic exercises, which may lead students to dismiss them as impractical, even when based on real life scenarios. The familiarity and genuineness of reported decisions, however, prevent them from being so easily disregarded.

I must concede, though, that even with cases, students have a tendency to view the offending lawyers as aberrational wrongdoers, and therefore, they find it difficult to relate the dilemma presented to themselves. In an effort to remedy this inclination, I frequently call upon a student to place himself or herself in the precise situation of the lawyer involved. Almost inevitably, the chosen student will initially proclaim a propensity to act differently under similar circumstances. Further questioning and probing, however, typically leads to greater understanding of the realities of the offending lawyer's situation and recognition of how difficult it probably was for him or her to avoid the ethical transgression in question. The best example of this is the young lawyer who fails to expose the professional misconduct of a supervisory attorney.<sup>12</sup> After discussing such a case, most students admit that they might very well have acted in exactly the same manner. These honest concessions then almost always lead to a meaningful exchange concerning alternative strategies for dealing with such a perplexing ethical conundrum.

I employ a similar technique with regard to coverage of the Rules of Professional Conduct. Whenever we cover a case, I invariably spend a significant amount of time parsing through the pertinent Model Rules, whether or not they were actually discussed in the decision.<sup>13</sup> Often, a superficial reading will suggest a straightforward resolution of the dilemma involved.

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12. One of the classic vehicles for discussing this topic is the tragic case of Joseph Fortenberry, a talented associate at the New York law firm of Donovan, Leisure, Newton & Irvine, whose career was derailed by his decision to remain silent after witnessing a senior partner falsely claim to the court and opposing counsel that relevant documents had been destroyed. See GEOFFREY C. HAZARD, JR. ET AL., *THE LAW AND ETHICS OF LAWYERING* 1101-05 (4th ed. 2005).

13. See Thomas B. Metzloff, *Seeing the Trees Within the Forest: Contextualized Ethics Courses as a Strategy for Teaching Legal Ethics*, 58 *LAW & CONTEMP. PROBS.* 227, 230 (1995) (noting that "[a] central goal of any ethics course must be to learn to read the rules rigorously and critically").



Careful dissection, however, uncovers subtle ambiguities that frequently add surprisingly confounding levels of complexity. Model Rule 1.13 is my favorite example of this phenomenon.

On the surface, Rule 1.13 appears to be a very powerful and demanding rule for lawyers representing organizational clients, but closer examination can lead one to conclude that the Rule, in actuality, can be interpreted to require very little, if anything, from a lawyer faced with perceived organizational wrongdoing.<sup>14</sup> This then allows me to engage the students in a dialogue about what attorneys in such situations *should* do, which in turn leads to a broader discussion concerning the concept of professional responsibility. Specifically, in many instances, the ethical rules ultimately leave lawyers with the task of exercising their discretion to decide upon the appropriate course of action

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14. See MODEL RULES OF PROF'L CONDUCT R. 1.13 (2007). The pertinent portion of Model Rule 1.13 provides as follows:

(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, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury 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, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

*Id.*

when faced with an ethical quandary.<sup>15</sup> The process of addressing these types of questions in practice is truly the essence of professional responsibility. How we choose to act in such circumstances defines both who we are individually and collectively as a profession.

I could recount further instances of the educational benefits of the case method in teaching professional responsibility, but suffice it to say that when combined with exacting coverage of the rules, this approach provides an effective and efficient way for me to contextualize legal ethics and to create a sense of relevance for students. Admittedly, though, if used in isolation, this instructional formula is a woefully inadequate mechanism for getting students excited and inspired about the subject matter and the legal profession in general. For this reason, I incorporate a few modifications to my otherwise conventional style.

## II. CALCULATED DEVIATIONS THAT ENHANCE CONTEXT AND RELEVANCE

In an effort to excite and inspire my students, I complement my traditionalist approach with certain calculated deviations that accentuate my ability to accomplish the overall objectives of the course. First, and perhaps foremost, I try to make the class entertaining.

One of the most well-received attempts at entertainment is my use of movie clips to supplement our coverage of several topics. The two most effective clips that I show are from *A Time to Kill*<sup>16</sup> and *The Rainmaker*.<sup>17</sup> I utilize *A Time to Kill* in connection with my treatment of the attorney-client privilege and the duty of confidentiality. The specific scene upon which I concentrate is an exchange that takes place between Carl Lee Hailey (Samuel L. Jackson), the protagonist father whose young daughter has been brutally raped, and Jake Brigance (Matthew McConaughey), a local criminal defense lawyer.<sup>18</sup> Their discussion occurs in Jake's office following the apprehension

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15. See *id.* at pmb1. ¶ 9 (indicating that "[w]ithin the framework of [the Rules of Professional Conduct] . . . many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules").

16. *A TIME TO KILL* (Warner Bros. 1996).

17. *THE RAINMAKER* (Paramount Pictures 1997). I also use clips from *THE VERDICT* (Twentieth Century Fox Film Corp. 1982) and *ANATOMY OF A MURDER* (Columbia Pictures Corp. 1959) when discussing the topics of client perjury and witness coaching.

18. See *A TIME TO KILL*, *supra* note 16. Given the violent nature of the subject matter of the movie and the offensive language that is utilized, I am always very careful to warn my students ahead of time. Students who are uncomfortable viewing the clip, privately communicate this fact to me and are excused from that class session. After class I meet with them to discuss the scenario so that they can follow and participate in future discussions concerning it.

of the two men suspected of committing the rape.<sup>19</sup> Here is the critical substance of the conversation:

*Carl Lee:* You remember them four white boys raped that little black girl in the Delta?

*Jake:* Yeah.

*Carl Lee:* They got off, didn't they?

*Jake:* Yeah.

*Carl Lee:* If I was in a jam, you'd help me out, wouldn't you Jake?

*Jake:* Sure Carl Lee. What kind of jam you talkin' about?

*Carl Lee:* You got a daughter Jake; . . . what would you do?<sup>20</sup>

When Jake arrives home from work that evening, he conveys the details of this exchange to his wife, and it is apparent that Jake suspects Carl Lee might do something violent to the accused men.<sup>21</sup> On the following day, Carl Lee, in fact, guns down the two defendants while they are en route to their arraignment, and he is subsequently arrested and charged with first degree murder.<sup>22</sup>

The first rather obvious question that I raise with my students is whether the conversation between Jake and Carl Lee is protected by the attorney-client privilege, putting aside for the time-being the crime-fraud exception to this doctrine. Students invariably struggle with this question because their gut tells them that the exchange should not be covered by the privilege, but they really want it to be protected because they like and sympathize with Carl Lee. In subsequent classes, we refer back to this same scene in discussing waiver of the attorney-client privilege, the crime-fraud exception, and the duty of confidentiality.

Use of the clip from *A Time to Kill* has a number of educational benefits. First, it grabs the students' attention. Second, it makes them think about the material in a dynamic and challenging fashion. Third, it is highly memorable. I would venture to guess that almost every student who has taken my course cannot encounter an attorney-client privilege question without having at least a momentary flashback to our discussion of *A Time to Kill*, and I am positive that none of them can watch the movie again without focusing, perhaps obsessively, on the privilege issue.

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19. *Id.*

20. *See id.*

21. *Id.*

22. *Id.*

With regard to *The Rainmaker*,<sup>23</sup> I use several of its opening scenes as a backdrop for discussing unauthorized practice of law and solicitation. The chosen scenes are much lighter in tone than the clip from *A Time to Kill*, and typically generate a good bit of laughter throughout the viewing. Most of the examples of misconduct that are portrayed seem fairly egregious on the surface and are obvious to the students. For example, Danny DeVito's character, Deck Shifflet, is engaged in the active practice of law even though he has been unsuccessful in passing the bar despite numerous attempts—he humorously refers to himself as a "paralawyer."<sup>24</sup> More subtle, however, is the fact that Deck's in-person solicitation of a hospitalized, incapacitated accident victim is actually not professional misconduct for the very reason that he is not an attorney. Rather, the attorney for whom he works, Bruiser Stone (Mickey Rourke),<sup>25</sup> is the one who should be held ethically responsible for Deck's misbehavior.<sup>26</sup> Other blatant and not so blatant lapses in professional responsibility pervade the scenes, and we typically have a lively and entertaining discussion about them.

As with *A Time to Kill*, I consider *The Rainmaker* to be extremely valuable for the purpose of making the lesson memorable. I also find that it serves as a good exam-simulation exercise because it requires students to spot and explain issues. Perhaps, the most significant benefit, however, is the simple injection of some humor into the course. The subject of legal ethics is extremely serious, but if the mood and tone of the classroom are not periodically lightened, I fear that the course may drift towards being perceived as sanctimonious drudgery. And if that happens, students will definitely leave the class with the wrong perspective on their professional responsibility as lawyers.

Another variation that I incorporate into my traditional approach is the utilization of a group assignment. In the past, I have used two different subjects for this portion of the class: (1) the propriety of admitting (or not admitting) avowed white supremacist Matthew Hale to the bar;<sup>27</sup> and (2) the

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23. See *THE RAINMAKER*, *supra* note 17.

24. *Id.*

25. *Id.*

26. See MODEL RULES OF PROF'L CONDUCT R. 5.3(c)(1) (2007) ("[A] lawyer shall be responsible for conduct of [a nonlawyer] that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved . . ."); *id.* at R. 8.4(a) ("It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another . . .").

27. Matthew Hale applied for admission to the Illinois State Bar in 1998, and his application was initially denied based largely on the white supremacist agenda that he intended to pursue with his law license. See *In re Hale*, Committee on Character and Fitness for the Third Appellate District of the Supreme Court of Illinois (1998), reprinted in HAZARD ET AL., *supra* note 12, at 1037–46. This raised some obvious First Amendment concerns, but his case eventually became

propriety of the professional discipline imposed upon President Bill Clinton for his conduct in connection with the Paula Jones/Monica Lewinsky matter.<sup>28</sup> I divide the class up into randomly selected groups and assign them the task of meeting (outside of class time) and reaching a consensus, if possible, with regard to the chosen subject. Though these matters are addressed in the casebook that I use,<sup>29</sup> I require the students to do additional research to better inform their group discussions. Each group must elect a spokesperson to convey the sentiment of its members to the entire class, and that person is then subject to follow-up questions from me, as well as comments and critiques from other classmates.

Although this can be a time-consuming endeavor, taking up the better part of two class sessions, I find that it is a very effective vehicle for discussing the process of admission and the structure and nature of the disciplinary system. Politics and racial attitudes inevitably come into play in our discourse, but fortunately rarely in a destructive manner. Besides the substantive educational benefits that flow from the group discussions, this format also usually has the added effect of making students, thereafter, more comfortable about volunteering their thoughts and opinions to the class. For this reason, I always employ this deviation towards the beginning of the course.

There are several additional modifications to my traditionalist style that I make use of, but I will conclude by simply discussing the one that I feel is the most meaningful and important. Lawyers, by virtue of their training and their role, occupy a very unique niche within society. As the Preamble to the Model Rules states, a lawyer is "a public citizen having special responsibility for the

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much less controversial when Hale's undisclosed arrest record came to light. See Bob Van Voris, *Muddying the Waters—III. Racist's Free Speech Case is Complicated by His Arrest Record*, NAT'L L.J., Feb. 21, 2000, at A1. The nondisclosure itself would have provided an adequate basis for denying Hale admission, even apart from the arrests themselves. See *id.*; see also MODEL RULES OF PROF'L CONDUCT R. 8.1 (2007) (providing that "[a]n applicant . . . to the bar . . . shall not: (a) knowingly make a false statement of material fact; or (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter . . ."). In addition, Hale most likely forever doomed his admission efforts when he was convicted and sentenced to forty years in prison for soliciting the murder of a federal judge. See Jodi Wilgoren, *40-Year Term for Supremacist in Plot on Judge*, N.Y. TIMES, Apr. 7, 2005, at A16.

28. President Clinton voluntarily accepted a five-year suspension from the Arkansas State Bar in 2001 for having provided false and misleading testimony during his deposition in the Paula Jones litigation. See *Talk Back Live: President Clinton Strikes a Deal with Independent Counsel* (CNN television broadcast Jan. 19, 2001) (transcript available at <http://edition.cnn.com/TRANSCRIPTS/010119/tl.00.html>). The disciplinary action arose out of Judge Susan Webber Wright's contempt finding with regard to President Clinton and her subsequent referral of the matter to the Arkansas Supreme Court's Committee on Professional Conduct. See *Jones v. Clinton*, 36 F. Supp. 2d 1118, 1135 (E.D. Ark. 1999).

29. HAZARD ET AL., *supra* note 12, at 1037–52, 1147–48.

quality of justice."<sup>30</sup> The Preamble later elaborates upon this point in the following manner:

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. . . . A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.<sup>31</sup>

Model Rule 6.1 takes this notion a step farther by expressly codifying for lawyers the aspirational goal of fifty hours of voluntary pro bono service on behalf of or in relation to individuals who are unable to afford legal representation.<sup>32</sup> The special ability that we possess to fulfill this commitment is central to what makes the practice of law such a noble undertaking. If we fail to live up to this aspect of our calling, then the worth of our profession is, in my mind, diminished. As a result, above all else, I want to educate my

30. MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 1 (2007).

31. *Id.* at pmbl. ¶ 6.

32. *See id.* at R. 6.1. Model Rule 6.1 provides:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

- (1) persons of limited means or
- (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

- (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
- (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
- (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

*Id.*

students about this most essential element of their professional responsibility as lawyers.

Rather than lecture to them or regale them with heartwarming stories of personal experiences of attorneys who have volunteered their services, I have chosen to place them in precisely the same situation (almost) in which they will find themselves during practice. On the first day of class, I inform them that I will give students modest extra credit for providing at least six hours of volunteer service to any organization or endeavor that is designed to help those who are less fortunate.<sup>33</sup> I provide students with some helpful reference resources, but beyond that, it is up to them to ascertain an appropriate volunteer opportunity. By a certain date, they are required to submit to me in writing a description of their proposed volunteer activity for my approval. Following the completion of their work, students must submit a written report to me that describes what they did, why they selected it, and most importantly, what they got out of it. Here is a small sampling of the types of organizations and activities that students have chosen: (1) Habitat for Humanity, (2) Sexual Assault Center, (3) Boys & Girls Club, (4) Athens Justice Project (which provides pro bono legal representation, support, and guidance to criminal defendants who exhibit a sincere desire to change their lives), (5) Project Safe (which provides safe haven to female victims of domestic violence and their children), (6) elementary school tutoring, (7) working in soup kitchens, (8) volunteering at homeless shelters, and (9) visiting adult assisted living facilities.

Typically, a large percentage of the class will successfully complete the assignment and receive some level of extra credit. The vast majority have extraordinarily positive experiences, often communicated to me in genuinely heart-warming prose. One of my favorites is from a student who chose to volunteer in a homeless shelter, and his reflections capture very nicely what I have found to be the general sentiment of those who undertake the extra credit project:

The experience was a reality check for [me]. Life in law school is very demanding and sometimes I, like other classmates, feel as if I'll never make it through. I have also found myself commiserating with others about our job searches and not getting the results [for which] we had hoped. This experience, though, reminded me that no matter how hard my life in law school gets, or no matter how many rejection letters I might receive, there are many, many less fortunate people in the world. This experience put all of my problems into perspective. Things that I thought were the most important in my life took a back seat for this time. After seeing what others go through on a

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33. In light of unauthorized practice restrictions, students' volunteer efforts need not be related directly to any sort of legal representation. The critical requirement is that whatever they select must be geared towards helping the less fortunate in our community. In addition, it should be noted that many of my students exceed the six-hour minimum volunteer requirement.

daily basis, just to survive, I was reminded just how fortunate I have been in life.

If there is one important lesson to take from this experience, it is that I should never take the things I have for granted. I must appreciate what life gives me, but at the same time, I must give something back. Taking time out of my life to help others in need really should not be the result of an extra credit assignment. This is one experience that I will take from law school and not soon forget.<sup>34</sup>

Not even the most adept instructor could effect such a profound and lasting impression upon a future member of our profession. I view such an experience as the quintessential complement to the remainder of my teaching efforts. It is the capstone that enables students to comprehend the true magnitude of their professional calling and hopefully whets their appetites with regard to the enormous good that they can accomplish within the legal system, as well as society at large. This is the essence of a lawyer's professional responsibility, and as a teacher, this is what I strive to convey by word, example, and experience, above all else.

### CONCLUSION

In teaching professional responsibility, professors must select the approach that most appropriately suits them, their perspective, and their audience. Regardless of chosen pedagogy, however, we all share a common goal that unifies our mission. Simply put, we must prepare our students to disarm unflattering perceptions of lawyers as ethically void by instilling in them a desire to always do what is right, along with a commitment to serve the public good,<sup>35</sup> treat others with dignity and respect, and restore honor to this most noble profession.<sup>36</sup> It is an uncomplicated premise with which few can reasonably disagree. Nevertheless, comments such as those by Delroy vividly display that teachers of legal ethics have an extraordinarily challenging and complex task, but one that could not possibly be more worthwhile.

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34. Student Pro Bono Extra Credit Report (on file with the author).

35. See Fuller & Randall, *supra* note 10, at 1216 (noting that "[p]opular misconceptions of the advocate's function disappear when the lawyer pleads without a fee, and the true value of his service to society is immediately perceived").

36. See Edwards, *supra* note 7, at 1429 ("[W]hen students graduate from law schools, they should have more than a good understanding of the ethical standards of the profession. They should also have a clear sense of our highest ideals."); see also Edwards, *supra* note 1, at 1161 (observing that "if academicians abdicate their duty to communicate the profession's traditional commitment to the public good, they deliver students by default to the forces supporting an unbridled corporatizing of the profession").



