



MOVIES!

A TOOL FOR TEACHING LAWYERS

By Janyce Katz and Geoffrey Stern

The use of a movie to teach substance abuse/mental and professionalism/ethics enhances the ability of an attorney to remember key rules that distinguish law as a profession from a business designed to maximize profit. One current method of teaching, a lecturer reading from a script, a voice droning on about lawyers being given time out from the profession for terrible behavior. The cases may not seem relevant, especially if the presentation is boring. But, a movie with a well-written script can be intriguing, at the same time illustrating what can happen when a lawyer acts contrary to the rules.

The Verdict provides a fine example of a movie that can be used as a basic tool in any legal educational class. While probably not intended, Sidney Lumet – director, David Mamet – screenplay author, and David Brown/Richard D. Zanuck – producers of the movie have created a tool for teaching lawyers how not to practice law, and why to control substance consumption as well other personal problems before trying to work with clients. Even though the movie is older than some currently practicing attorneys, *The Verdict* has an intriguing plot.

To give an easy example of how the movie can show an important principle of the legal profession, consider analyzing *The Verdict* for violations of Ohio Rule of Professional Conduct 1.2(a). Rule 1.2(a) that says a lawyer is to abide by a client's decision concerning the objectives of representation, and, as required by Rule 1.4, consult with the client as to the means by which they are to be pursued. The critical point of this rule says clearly that “[i]f a client wants to settle the case, the lawyer should follow the client's wishes.”

From the first moment in *Verdict*, when attorney Frank Galvin (Paul Newman) stumbles into a room, drunk and disheveled, lawyers watching the 1982 movie know Galvin may have problems providing competent representation to any client. Frank Galvin, alcoholic and former lawyer at an elite Boston law firm, is seen with a serious drinking problem, perhaps deep depression.

Attorney Galvin forgets a basic principle – respect for the wishes of a client, a requirement set forth in Rule 1.2(a). A friend and former partner, Mickey Morrissey (Jack Warden) gives Galvin a medical malpractice case involving a woman in a vegetative state, possibly from an anesthetic incorrectly given. Morrissey tells Galvin the case will probably settle. The women's sister and brother-in-law want a settlement to give them money to care for her. Galvin turns

down a \$210,000 offer without asking his clients what they would prefer. The lawyer has decided he will fight for justice, win for the woman, and prove his competence at the same time.

He doesn't ask his clients if they want the settlement before rejecting it, a clear violation of Rule 1.2(a). By luck and by participating in a bit of illegal tampering with mail, Galvin overcomes all obstacles. He somehow wins a huge verdict for his client, something much larger than the original offer, with little risk of appeal. This is, however, cinema, and it was made at a time when movies still had the good guys win, probably because audiences wanted to believe that happens.

The Verdict depicts exactly how dangerous not following the clients' wishes can be. Galvin's clients might not have been able to continue to pay for the comatose woman while he crusades forward with his case, and with the appeals that usually follow a major medical malpractice win. The movie shows how difficult it could be for a small law firm with limited resources to win a case against a wealthy opponent represented by a large, powerful law firm. Galvin's win turned out to be appeal-proof, getting his clients an amount of money far higher than the settlement offer. How probable is that one?

Presuming the woman became a vegetable in an Ohio hospital, and assuming Galvin is a real, practicing attorney here as well, he would probably be hearing from his local bar association discipline committee or the Office of Disciplinary Counsel of the Ohio Supreme Court. A lawyer is obligated to report the misconduct of another if he has unprivileged information of misconduct of another lawyer, Rule 8.3(a), and someone should have reported Frank Galvin for his failure to follow his clients' wishes.

Had his clients wanted the same quest for Justice as their lawyer, and had they urged him to pursue the hospital, Galvin would not face the disciplinary counsel on Rule 1.2(a). Of course, it would have been better if Galvin did not raid mail boxes for information – that was criminal behavior as well as a violation of Rule 8.4(b), a type of misconduct that occurs when a lawyer commits an illegal act that reflects on the lawyer's honesty or trustworthiness. Galvin should have known that subpoenas are permitted means of obtaining information and beat tampering with the U.S. mail,

Before beginning his crusade, Galvin should have explained to his clients (in writing) exactly what he thought he could

do, approximately how much it would cost them, and the options available to them. He should have obtained informed consent from his clients (preferably in writing at the time, but acceptable a few days later) for his actions before he went off tilting his lance against the hospital and the big law firm representing it. (See Rule 1.0, Terminology, which points out a lawyer must confirm client informed consent in writing if not immediately when the client gives consent, then within a reasonable time before the lawyer can act in reliance on that consent.) Above all, Galvin should have been advising his client to choose battles wisely.

When a client wants something other than a full trial, something quicker and more certain, why would an attorney unilaterally decide to crusade for truth, justice and a big win? Perhaps the decision to go against his clients' wishes and to be the legal Don Quixote, tilting against the big firm with lots of money and to bring justice to the injured woman, is based on his need to consume far too much alcohol. He could have had delusions of grandeur, a belief that a huge victory against the hospital and a large firm would wipe away his professional losses.

If he were an Ohio lawyer, Galvin's friend Morrissey could have referred him to the Ohio Lawyers Assistance Program (OLAP), 1-800-348-4343 for his alcoholic behavior or his illusions of greatness. OLAP is a private, non-profit charitable organization dedicated to helping Ohio's judges, attorneys, and law students obtain treatment for substance abuse, chemical dependency, addiction, and mental health issues. Galvin possibly could have benefited from OLAP's ability to get him confidential advice, help in arranging and implementing formal interventions, help in determining what kind of treatment is needed and where to get it.

Depression, anxiety, social isolation, alienation, hostility, paranoid idealization, and obsession-compulsive symptoms seem to be more frequent in attorneys than in the general population, according to Susan Daicoff, in her 1996 article, "Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes," 11 Geo. J. Legal Ethics 547, 549. Daicoff concluded that a greater than average percentage of attorneys (as a group) is psychologically impaired in some way. She also argues that the common personality attributes held by lawyers have led to incivility, unethical behavior and self-contempt. See, Daicoff, *Lawyer, Know Thyself: A Psychological analysis of Personality Strengths and Weaknesses* (Washington, D.C.: American Psychological Association, 2004). Galvin exhibits some of these characteristics. Again, OLAP can help find treatment for these mental health issues, assuming that the lawyer with problems is willing and able to make changes.

As to the penalty for Garvin's violations of the professional and ethics rules, a court may mitigate it under limited circumstances. Before lessening a penalty the court will look to see if the attorney has a diagnosis of a mental disability by a qualified health-care professional, a determination that the disability contributed to the misconduct, a sustained period of successful treatment, and a prognosis from a qualified health care professional that the attorney would be able to return to competent, ethical professional practice under specified conditions. See, e.g., *Disciplinary Counsel v. McShane*, 121 Ohio St.3d 169; 2009-Ohio-746. Galvin's redemption from alcoholism and a reversal of his lack of ethics/professionalism would also be mitigating factors for any punishment issued to him.

The Verdict also shows an attorney, Garvin's opponent, Ed Concannon (James Mason), who should expect not only to find himself without a license to practice for a long time, but also some time in a jail for his antics. A large firm attorney with assisting lawyers, Concannon defends the hospital and the doctor who allegedly gave the wrong anesthetic to the now comatose patient. Concannon's violations of the Ohio Rule of Professional Conduct would fill another chapter.

Using movies to teach points of law can be like using honey to sweeten a child's first day at school; in moderate amounts and when used with strong background material, the use of movies can enhance learning and make the process more enjoy



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