April 2012

Legal Ethics: Prime Time and Real Time

Deborah L. Rhode
Stanford Law School

Follow this and additional works at: https://scholarship.law.berkeley.edu/bjesl

Part of the Entertainment, Arts, and Sports Law Commons, Law and Society Commons, Legal Ethics and Professional Responsibility Commons, and the Legal Profession Commons

Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z38006H

This Essay is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of Entertainment and Sports Law by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
Legal Ethics: Prime Time and Real Time

Cover Page Footnote
* Ernest W. McFarland Professor of Law, Director of the Center on the Legal Profession, Stanford University.

This essay is available in Berkeley Journal of Entertainment and Sports Law: https://scholarship.law.berkeley.edu/bjesl/vol1/iss2/6
Legal Ethics: Prime Time and Real Time

Deborah L. Rhode*

This essay explores the rationale for teaching legal ethics through popular media. It begins by setting forth the justifications for looking at moral questions through film and television. Discussion then turns to some examples of how well-selected media excerpts can illumine recurrent dilemmas of legal practice.

I have been teaching through television for a quarter century, but this symposium has pushed me to think more deeply about when and why this method seems most effective. For me, it is not about the ratings. I use more clips from news programs and documentaries than from entertainment media. But some of the most memorable moments from my legal ethics course come from television series. This essay explores why, and offers some examples of how fictional accounts can illumine real-life dilemmas.

The first and most well-documented reason for using popular media in professional education is their power of communication. Because stories speak to our emotion as well as intellect, they can provide a deeper, sharper, and more intense understanding than traditional law school approaches. In the words of Harvard psychiatrist Robert Coles, a “compelling narrative . . . is . . . a gift of grace.” It can “prick our conscience,” and help shape the moral intuitions that guide decision-making. Heeding the “call of stories” is, according to Coles, “not a bad start for someone trying to find a good way to live this life.” Or, I would add, not a bad beginning for professors trying to help their students do the same.

One other justification for looking at legal ethics through a fictional lens is that it supplies a foundation for lifelong learning. In the final analysis, the best that any single course can offer students is a greater capacity for continuing growth. An ability to mine popular culture for broader lessons is an acquired skill that will pay dividends over an entire career. Central to that skill is self-reflection, and here classroom use of fictional portrayals can help. Asking students to consider not only why a television character acted the way he did, but also how and why they responded as they did, sheds light on their own values,

* Ernest W. McFarland Professor of Law, Director of the Center on the Legal Profession, Stanford University.

3. Id. at 197. See Gary Klein, Sources of Power: How People Make Decisions 177-96 (The MIT Press 1998).
4. Coles, supra note 2, at 205.
aspirations, and moral blind spots.\(^5\)

I am not, however, an uncritical consumer. I share the frustrations expressed by others at this symposium about the distorted portraits that Hollywood perpetuates. The moral choices of most television lawyers are jazzed up and dumbed down in ways that do not advance analysis. Depictions of legal ethical dilemmas in prime time frequently feature pure villains and victims in a simplified factual universe. By contrast, legal ethics in real time often involve contested facts, competing values, and moral compromises that arise not in moments of high drama, but in incremental rationalizations and self-deceptions. As commentators have often noted, the popular media generally flattens complex legal issues. That is part of why it is popular.\(^6\)

Fortunately, for those of us mining the media for classroom purposes, realism is not always essential. In the spirit of practicing what I preach, let me show, not tell, through two examples. The first comes from the television show *L.A. Law*, which, in its prime, presented a landscape littered with ethical landmines. In one episode, an African-American associate, Jonathan Rollins, is asked to join the defense of a white police officer accused of race brutality. A popular African-American community leader has made the case a cause célèbre, and the associate is understandably unhappy about the assignment. The second example comes from an episode of *The West Wing*, which depicts a flashback in which White House Communications Director Sam Seaborn is working as an associate poised to become a partner at a major Wall Street firm. The scene shows Sam in a meeting with oil company executives who are about to close a deal to purchase cut-rate tankers. Sam attempts to persuade the executives that buying newer boats better serves the company’s long-term interests and that the Exxon Valdez debacle is a cautionary tale. The senior partner pulls Sam aside and tells Sam to “cut it out.”

Both scenes are improbable, but the underlying dilemmas are realistic and the dialogue instructive. The *L.A. Law* storyline sets up the persistent problem of “race or gender matching”: women attorneys and attorneys of color often receive work because of a particular aspect of their appearance rather than their interests or skills, in order to create the right “look” in courtrooms, client presentations, recruiting, and marketing efforts. Although this strategy sometimes creates helpful opportunities, it can also place lawyers in “showhorse” or “mascot” roles in which they have no substantive function and develop no useful skills.\(^7\) The practice is particularly problematic when lawyers are pulled from desirable work and trotted out to attract a client whom they will never see

---

again, or when they are assumed to have skills and affinities that they in fact lack. Representative examples include a Chinese associate who was given Korean-language materials to review, and a Latina associate who was assigned to review documents in Spanish even after she explained that she was not fluent in the language. “Oh you’ll be fine,” she was told. “[L]ook [anything unfamiliar] up in a dictionary.” However, when it comes to conventional assignments with client development possibilities, female and minority lawyers frequently report being out of the loop.

The television clips invite discussion about how the profession should respond to the problem. What would students do if they were in the situation of the African-American associate or the senior partner who advises taking one for the team? What role should race play in selecting attorneys in cases that are racially freighted? Would white prosecutors have had a claim if they lost opportunities in the O.J. Simpson case based on the color of their skin? Do minority lawyers have some special obligation to give back to their racial or ethnic communities and to avoid being used in ways that might ill-serve those groups? Are some corporate clients inadvertently contributing to the problem by insisting that a specified percentage of counsel handling their cases be wom-


11. In a study by the A.B.A. Commission on Women in the Profession, 43% of surveyed women of color, 55% of white women, and 24% of men of color, report having limited access to such opportunities, compared with only 3% of white men. Visible Invisibility, supra note 7, at 36. In a Minority Corporate Counsel study, lawyers of color were about twice as likely as their white counterparts to report exclusion from client development activities. Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms, 2009 MINORITY CORPORATE COUNSEL ASS’N 23, available at http://mcca.com/data/global/images/Research/5298%20MCCA%20Pathways%20final%20version%202009.pdf.


13. See David B. Wilkins, Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers, 45 STAN. L. REV. 1981, 1983-84 (1992-1993) (“[T]here is a significant risk that black lawyers who devote their professional energies to serving the needs of corporate clients will often fail to reduce, and may in some instances reinforce, unjustified inequalities between blacks and whites. . . . [O]ne important strategy for minimizing this danger is for black corporate lawyers to recognize that they have moral obligations running to the black community that must be balanced against other legitimate professional duties and personal commitments when deciding on particular actions and, more generally, when constructing a morally acceptable life plan. I call this strategy the obligation thesis.”).
There are no easy answers, and *L.A. Law* was ahead of the curve in raising the questions.

*The West Wing* excerpt also poses real ethical concerns, albeit in a wildly unrealistic setting. As students immediately perceive, a formal deal closing is not the time and place to unravel a transaction due to ethical concerns that were obvious from the outset. But do lawyers have a responsibility to raise those concerns at some more appropriate point? If the client ignores their advice, under what, if any, circumstances should they withdraw from representation, or, as in Sam Seaborn’s case, rethink their career choices?

A familiar adage among trial lawyers is that you take your plaintiffs as you find them. The same is true of prime time television. The scripts are seldom ideal for pedagogic purposes because that is not their purpose. But the question for professors is always, compared to what? If the alternative is the made-for-teaching legal ethics videos that the Bar or certain legal academics have released, I will take Aaron Sorkin any day. He knows how to get the students’ attention. Then, it is our job to keep it and move the discussion to a deeper level.

---

14. For discussion of these and related issues, see Deborah L. Rhode, *From Platiitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041 (2011).