

ETHICS AND PROFESSIONALISM WORKSHOP - PRACTICAL WISDOM: ETHICS, PROFESSIONALISM AND PERSONAL DECISIONS IN A TRIAL SETTING

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The premise

One of our goals in teaching ethics and professionalism as part of a trial skills course is to get participants to reflect on the thornier issues of practice. We teach through a process of learning by doing with participants mastering new skills by making mistakes and then correcting them through further practice. We can't afford to teach ethics and professionalism by allowing participants to do unethical or unprofessional things and then learn from these mistakes. Our job is to model ethics and professionalism from the start.

In the book, *Practical Wisdom: The Right Way to Do the Right Thing*, Barry Schwartz and Ken Sharpe, offer ideas on finding the path to ethical behavior and living well. Schwartz and Sharpe tell us that when we try to practice law as professionals, we generally reach for one of two tools. The first tool is a set of rules and administrative oversight mechanisms that tell people what to do and monitor their performance to make sure they are doing it - The Rules of Professional Responsibility and the disciplinary process. The second tool is the incentive of reward offered by a high paying position. The assumption behind carefully constructed rules and procedures, with close oversight, is that even if people do want to do the right thing, they need to be told what that is. And the assumption underlying incentive is that people will not be motivated to do the right thing unless they have an incentive to do so. Rules and incentives. Sticks and carrots. What else is there?

Schwartz and Sharpe acknowledge the need for both rules and incentives. But rules and incentives are not enough. They leave out something essential. It is what classical philosopher Aristotle called practical wisdom (phronesis). Without this missing ingredient, neither rules (no matter how detailed and well monitored) nor incentives (no matter how clever) will be enough to solve the problems we face. Aristotle's *Ethics* was about what we needed to learn to succeed at our practices and to flourish as human beings. We needed to learn certain character traits like loyalty, self-control, courage, fairness, generosity, gentleness, friendliness, and truthfulness--a list that today would also include perseverance, integrity, open-mindedness, thoroughness, and kindness (all traits spelled out in the Rules of Professional Conduct). Aristotle called these traits "excellences" (arete)-often translated as "virtues." But the master excellence--the virtue at the heart of Aristotle's *Ethics*--was practical wisdom. None of these other traits could be exercised well without it. Why "wisdom?" Why "practical?" Why not just a good set of rules to follow? Most experienced practitioners know that rules only take them so far.

Aristotle recognized that balancing acts like these begs for wisdom. Wisdom has to be practical because the issues we face are embedded in our everyday practice. They are not hypotheticals being raised in college ethics courses. They are quandaries that any practitioner must resolve to do her work well. Practical wisdom combines the will to do the right thing with the skill to figure

out what is the right thing. Sometimes this has to occur “on the fly” as decisions are made during trial. That is what we hope to instill in this workshop.

The Process

We want this workshop to be similar to other skills workshops in that each participant is expected to participate. To achieve that end we are offering the session by representational groups within each section. Group size will be approximately 12 participants and 6 instructors. Team Leaders will lead each session but discussion in smaller groups will be key to the process. We want participants to reach their own conclusions over whether the behavior violates ethical standards, meets with guidelines for professional conduct, and each individual’s own moral barometer.

Room set up should allow for all 18 people to be able to see the screen. At the end of watching a clip the group will divide into smaller groups of 6 participants and 2 instructors.

To replicate real life situations we use clips from popular movies and television shows about lawyers. Recognizing the liberties used in creating works of art, the selected vignettes present challenges that trial lawyers must confront in practice. Two of the selected clips will have two portions - the first showing the specific behavior and the second prefacing the behavior with information that colors the decision to act a specific way.

For each vignette portions of the Colorado Rules of Professional Conduct and the Colorado Principles of Professionalism are provided for review. These documents provide the rule and oversight provisions that “tell people what to do.” In each case the “rewards” portion will either be the prospect of success at trial (including fees to the lawyer or keeping their job) or other perceived benefits such as beating an opponent whom the lawyer does not like. Where we hope to generate even more discussion is the Practical Wisdom piece - even though you could do this - would you? What helps lead the individual to flourish as a human being?

The Moderator will introduce the topic area and briefly describe the movie and the specific scene. Everyone will then watch the initial clip. At the end of the clip we begin discussion. With your prompting, everyone should offer an opinion on whether the behavior was within the bounds of the Rules of Professional Conduct. Each participant must not only vote on whether the actions were ethical but offer a reason why they made their decision. Once each member offers an opinion we shift to the Colorado Principles of Professionalism and again have each person comment on whether the behavior was “professional.” This should take ten (10) minutes.

At the end of ten (10) minutes the second clip will be played. Discussion will then be whether the second clip changes anyone’s mind about the behavior and why. This should take five (5) minutes.

The final piece of the discussion is for each person to answer how they personally would behave in a similar situation. This should also take five (5) minutes.

This repeats three times, filling the entire time of the workshop.

The discussions for each segment should be no longer than twenty (20) minutes.

GENERAL INFORMATION FOR DISCUSSION

[NOTE: We are using the Colorado version of the Model Rules of Professional Conduct and the state's Principles of Professionalism. We do so as many participants are from Colorado and to create a uniform base for discussion. Other state rules and guides to professionalism will be substantially similar but may have variances.]

COLORADO ATTORNEY OATH OF ADMISSION

[Following is the Oath of Admission taken by all individuals at the time of their swearing-in and admission to the practice of law in Colorado]

I DO SOLEMNLY SWEAR by the Ever Living God (OR AFFIRM) that:

I will support the Constitution of the United States and the Constitution of the State of Colorado; I will maintain the respect due to Courts and judicial officers; I will employ only such means as are consistent with truth and honor; I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty; I will use my knowledge of the law for the betterment of society and the improvement of the legal system; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed; I will at all times faithfully and diligently adhere to the Colorado Rules of Professional Conduct.

COLORADO RULES OF PROFESSIONAL CONDUCT

PREAMBLE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not. These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment . . .

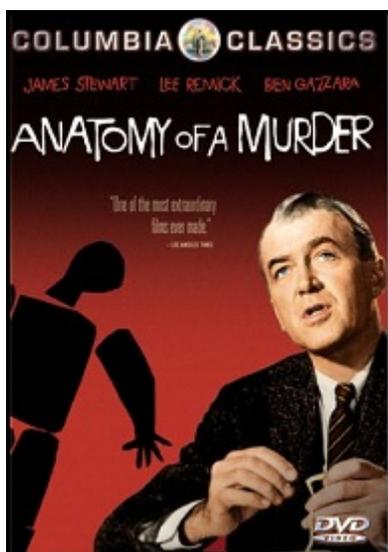
[The Rules of Professional Conduct establish the floor which we should not drop below.]

COLORADO PRINCIPLES OF PROFESSIONALISM

...[T]he principles have no coercive enforcement mechanism except those that have existed in our profession since the days of the quill pen and powdered wig: the fundamental commitment of attorneys to conduct themselves and their practices professionally and with integrity. Adherence to these principles brings its own rewards through the admiration of one's colleagues, and falling short of these high standards brings the opprobrium and condemnation of those same colleagues. The mark of a professional calling is that it aspires first and foremost to police itself.

[These are things we aspire to but have no enforcement mechanism behind them.]

VIGNETTE #1 - Anatomy of a Murder (1959 Columbia Pictures) - Client Counseling



Storyline

Frederick Manion (Ben Gazzara), a lieutenant in the army, is arrested for the murder of a bartender, Barney Quill. He claims, in his defense, that the victim had raped and beaten up his wife Laura (Lee Remick). Although Laura supports her husband's story, the police surgeon can find no evidence that she has been raped. Manion is defended by Paul Biegler (James Stewart), a rather humble small-town lawyer. During the course of interviews, Biegler discovers that Manion is violently possessive and jealous, and also that his wife has a reputation for giving her favors to other men. Biegler realizes that the prosecution will try to make the court believe that Laura was the lover of the bartender and that Manion killed him and beat her up when he discovered them together. Manion pleads "not guilty" and Biegler, who knows that his case is weak, sets his assistants to try to find a witness who will save Manion.

The scene chosen for this workshop presents lawyer Biegler counseling his client, Manion, on potential defenses for the crime of first degree murder.

COLORADO RULES OF PROFESSIONAL CONDUCT

Preamble: A Lawyer's Responsibilities

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.4 Communication

(a) A lawyer shall:

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 2.1 Advisor

In 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. In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution that might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

COLORADO PRINCIPLES OF PROFESSIONALISM

IV. Principle: In serving the client, a lawyer must be ever conscious of the broader duty to the judicial system of which both attorney and client are a part.

Practical Considerations:

4.1 We are committed to the loyal and ardent representation of our clients, using our skills and training to seek their legitimate ends. We are equally committed to preventing the use of the legal system to cause unjust harm or to gain unjust advantage. We recognize that, just as legal action pursued for legitimate ends can accomplish great good, legal action pursued for improper

purposes or by unjust means can cause great harm. An unjust process can never lead to a just result, and a successful result cannot remedy the harm of an unjust process.¹¹

4.2 We will scrupulously refrain from making misleading statements of law or fact, whether by omission, inference, or implication.¹²

QUESTIONS TO ANSWER

1. Was Beigler's behavior ethical under the Rules of Professional Conduct?
2. Was Beigler's behavior professional under the Principles of Professionalism?
3. What would you do in similar circumstances?

Play Scene 2

This second scene occurs before Beigler meets with Manion at the jail. He is having lunch with his colleague, who suggests he give the client "a little counseling." He also needles Beigler by asking him if he is scared and reminding him that he needs the fee.

QUESTIONS TO ANSWER

1. Does viewing the second clip change your mind about Beigler's behavior?
2. Does viewing the clip change your mind about how you would behave?

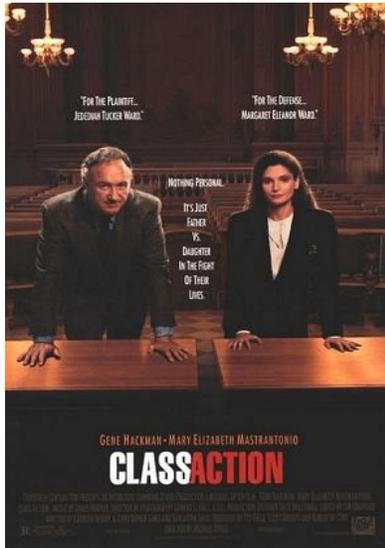
Notes for Faculty: Many of the lawyers with a civil practice will find this clip uncomfortable and indicate Beigler has crossed the line by suggesting a defense. Has he? He explains why the first three defenses are not appropriate and asks Manion if there may be facts to support the last defense. Remember on two occasions he says if the facts support Manion being mad. Beigler plans to talk with Manion's wife to determine more facts as part of his process of learning the facts. It does not help when Beigler says, " In the meantime, try to remember just how crazy you were." However, that is the drama of the scene.

The second scene occurs before the meeting with Manion. Beigler's colleague asks about giving him the "talk." Beigler then says will I coach him and says he won't. His friend also reminds him he needs the fee and says maybe he is scared of losing. Both are motivating factors that may suggest Beigler is crossing the line of ethical behavior.

VIGNETTE 2 - Class Action (Twentieth Century Fox 1991) - Conduct during discovery

Storyline

The film is about a lawsuit concerning injuries caused by a defective automobile. The suit takes on a personal dimension because the injured plaintiff's attorney, Jedediah Tucker Ward (Gene Hackman) discovers that the automobile manufacturer's attorney Maggie Ward (Mary Elizabeth Mastrantonio) is his estranged daughter. The central premise of the film is roughly analogous to the controversy surrounding the Ford Pinto.



Jedediah Ward is a liberal civil rights lawyer who has based his career on helping people avoid being taken for a ride by the rich and powerful; he's pursued principle at the expense of profit, though he has a bad habit of not following up on his clients after their cases are settled.

The auto manufacturer in the film also utilizes a "bean-counting" approach to risk management, whereby the projections of actuaries for probable deaths and injured car-owners is weighed against the cost of re-tooling and re-manufacturing the car without the defect (exploding gas tanks) with the resulting decision to keep the car as-is to positively benefit short term profitability.

The first scene is the deposition of the plaintiff by defense counsel. Maggie Ward. Jedediah Ward and a colleague are defending. The colleague makes most of the objections. [Remember, our focus is on lawyer conduct, not trial skills.]

COLORADO RULES OF PROFESSIONAL CONDUCT

Preamble: A Lawyer's Responsibilities

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, 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. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law. Zealousness does not, under any circumstances, justify conduct that is unprofessional, discourteous or uncivil toward any person involved in the legal system.

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 3.4 Fairness to Opposing Party and Counsel

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;

COLORADO PRINCIPLES OF PROFESSIONALISM

7.2 Conduct During Depositions

7.2.1 We will conduct ourselves in depositions with the same courtesy and respect as is expected in court.

7.2.2 We will not conduct examinations or engage in other behavior that is purposely offensive, demeaning, harassing or intimidating, or that unnecessarily invades the privacy of anyone.

7.2.3 If sensitive or controversial matters are to be inquired into in a deposition, counsel should consider discussing those matters with opposing counsel in advance. When appropriate, we will attempt to engage in meaningful dialogue with opposing counsel for the purpose of exploring agreements regarding the scope of the examination and the use of the information after the deposition.

7.2.5 We will refrain from coaching deponents by objecting, commenting, or acting in any other manner that suggests a particular answer to a question.

FEDERAL RULES OF CIVIL PROCEDURE - 30 (B) (6)

(2) Objections. An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

30(d) (3) Motion to Terminate or Limit.

(A) Grounds. At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

QUESTIONS TO ANSWER

1. Was Ms Ward's behavior ethical under the Rules of Professional Conduct?
2. Was Ms. Ward's behavior professional under the Principles of Professionalism?
3. Was Ms. Ward's behavior acceptable under the Rules of Civil Procedure?
4. Was defense counsel's behavior acceptable under the Rules of Professional Conduct?
5. Was defense counsel's behavior acceptable under the Principles of Professionalism?
6. Was defense counsel's behavior acceptable under the Rules of Civil Procedure?
7. What would you do in similar circumstances?

Play scene two

The second scene takes place in advance of the deposition where Ms. Ward receives instructions on how she should conduct the deposition.

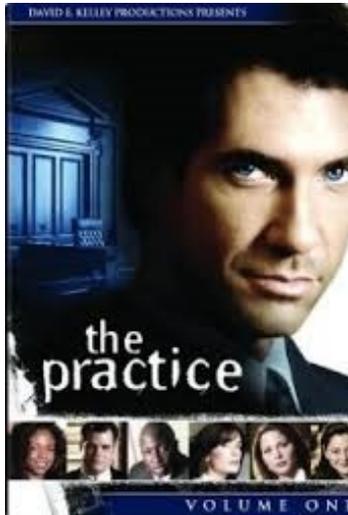
QUESTIONS TO ANSWER

1. Does viewing the second clip change your mind about Ms. Ward's behavior?
2. Does viewing the clip change your mind about how you would behave, recognizing that her job might be at stake?

Notes for Faculty: Most people will be uncomfortable with how Ms. Ward is questioning the deponent. She certainly presses on matters and showing the photographs is very uncomfortable. If the bounds of questioning in a deposition are to develop facts that may lead to relevant information then all of the questions she asks are fair - even the photographs. At trial, the plaintiff will likely present facts related to damages. It is possible those photographs will be introduced by the plaintiff to show pain and suffering. It is appropriate, and even important, for the defense to discover information related to this relevant information. Without any improper motivation Ms. Ward's questions are most likely ethical. Is she asking her questions to intimidate or harass the witness? If the answer is no, her conduct is acceptable. Are they professional? The Principles of Professionalism suggest the manner in which she raises the topics is not professional. It would be appropriate for her to let counsel know in advance that she will be showing the photographs. The behavior of plaintiff's counsel may also be in question. The instructions not to answer questions are improper as they do not relate to any matter of privilege. They are also most likely not covered by a protective order at the time of the deposition. Even if this behavior is not unethical it does violate the Rules of Civil Procedure. Leaving the deposition is appropriate as counsel is probably going to seek a protective order. Counsel should have made a record of why they are leaving the deposition.

The second scene raises issues of whether Ms Ward's behavior was in fact ethical. It calls into question her motivation in asking the questions - was she seeking to harass or intimidate the witness? It appears the answer to this question is yes. It also raises the question of the behavior of her supervisor and his intent. Certainly there is an implied threat that if she does not "take this witness out" her position at the firm is in jeopardy. The conflict between ethical behavior and financial reward (maintaining her job) is clear.

Vignette 3 - The Practice - Season 5, Episode 1 Summary Judgments (8 Oct. 2000)



Storyline

Bobby is called to defend his close friend, Scott Wallace, who is accused of killing his wife, and becomes overly involved in the case. Helen is concerned Richard has crossed the line in the case, when a witness coached by him lies on the stand.

The scene opens with two prosecutors talking with a witness about his upcoming testimony. Lead counsel, Helen, lets the witness know their case is not going well and the only way they have a chance for success is by getting the defendant to take the stand. That will only happen if this witness does a good job. At this point the second prosecutor, Richard, begins to coach the witness, including offering suggestions on how to avoid hearsay and suggesting answers. He is interrupted by the supervising lawyer who tells the witness they are not trying to put words into his mouth. Richard, the second lawyer then continues his coaching. When finished the witness indicates he "gets it" and leaves. At this point there is a discussion between the two attorneys about the efficacy of the coaching. This conversation concludes with the junior lawyer saying, "you do it, I do it, everyone does it. Be glad I coached the witness," implying the goal was to secure a win, not justice.

There are two short pieces to this Vignette. The first scene shows the discussion with the witness and the coaching. The second piece is the discussion about the coaching behavior.

COLORADO RULES OF PROFESSIONAL CONDUCT

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(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;

Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyers will be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved;

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.2 Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

COLORADO PRINCIPLES OF PROFESSIONALISM

IV. Principle: In serving the client, a lawyer must be ever conscious of the broader duty to the judicial system of which both attorney and client are a part.

Practical Considerations:

4.1 We are committed to the loyal and ardent representation of our clients, using our skills and training to seek their legitimate ends. We are equally committed to preventing the use of the legal system to cause unjust harm or to gain unjust advantage. We recognize that, just as legal action pursued for legitimate ends can accomplish great good, legal action pursued for improper purposes or by unjust means can cause great harm. An unjust process can never lead to a just result, and a successful result cannot remedy the harm of an unjust process.

4.2 We will scrupulously refrain from making misleading statements of law or fact, whether by omission, inference, or implication.

4.6 Justice is not achieved where short-term victory plants the seed of future conflict. The satisfactory completion of a transaction or the settlement of an adversarial dispute through mutual agreement creates a foundation for future cooperation. The just resolution of a dispute begins a process of reconciliation for the parties.

4.7 Neither we nor our clients are the sole possessors of truth or righteousness in any circumstance. While we may strive zealously for our clients' rights, our zeal also must be directed to achieving justice in the process. Zealous representation is not a justification for failure to act with professionalism.

V. Principle: A lawyer owes to the profession a duty to counsel, mentor, advise, educate, and guide less experienced lawyers. Mentoring should encompass not only the practical and substantive aspects of the practice of law but also the fundamental role of professionalism. As a mentor, a lawyer should encourage those lawyers to whom guidance is provided to engage in activities that enhance the image of lawyers in the eyes of the public, including becoming involved in volunteer service to the community, educating the public about the American legal system, and fostering respect and trust among lawyers. An experienced lawyer should demonstrably impart the intangible qualities of the profession of honor, duty, and pride.

Practical Considerations:

5.1 We will emphasize through mentoring, practice, and guidance the importance of collegiality and of the exercise of ethical and civil behavior.

7.3 Motions And Conduct In Court

7.3.1 We will scrupulously avoid misleading the court in our presentation of the law, facts, case history, or procedure.

XI. Principle: A lawyer owes to the public a devotion to the public good and to public service; a commitment to the improvement of the administration of justice; a duty to abide by and, subject to a good-faith reservation as to existence of a violation, to report violations by others of any disciplinary rules; and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

QUESTIONS TO ANSWER

1. Was Richard's (junior counsel) behavior ethical under the Rules of Professional Conduct?
2. Was his behavior professional under the Principles of Professionalism?
3. Was Helen's (senior counsel) behavior acceptable under the Rules of Professional Conduct?
4. Was her behavior acceptable under the Principles of Professionalism?
5. As public prosecutors do these two have a higher duty than simply prosecuting this case?
6. What would you do as supervising attorney?
7. After the rebuke from your supervisor, what should you do?

Play scene two

The second scene takes place after the witness leaves the room and before the examination begins.

QUESTIONS TO ANSWER

1. Does viewing the second clip change your mind about Helen's (lead counsel and the supervisor) behavior?
2. How do you feel about the "winning at any cost" mentality?
3. "You do it, I do it, everyone does it. Be glad I coached the witness." How does that make you feel?

Notes for Faculty: Witness preparation is a slippery slope with the differences between ethical preparation of a witness so he or she understands the nature of the proceeding, their role in the case, and helping with recollection of facts, word choice, and presentation. In this situation letting the witness know how important his testimony is to the success of the case may be acceptable. Where things cross the line is the insinuation the witness change the facts to assist the prosecution "win" the case. When the witness leaves the room it is clear he has the idea he must alter his testimony so the defendant is forced to take the stand.

As supervisor, lead counsel makes a limited attempt to correct the behavior of junior counsel but at the same time appears to ratify the suggestion the witness alter his testimony to the extent that the defendant has an incorrect belief about the victim's state of mind.

When the witness leaves the room the initial discussion hints the behavior was improper but never truly offers corrective action. The subordinates comments show he believes his behavior was appropriate and in future he will continue to coach a witness in the same way. His belief that all lawyers follow similar improper behavior signals a lack of understanding of the rules and his desire to win at all costs. Is this mentoring correct or incorrect as he violates the rules to get a just end. Does winning take precedence over ethical and professional behavior?