

President's Message

FERN C. BOMCHILL

Adjusting Truth?

THE ADVERTISING POSTER for the movie “Michael Clayton” superimposes the words “Truth Can Be Adjusted” over a large picture of George Clooney. The public is not surprised that this is a movie about lawyers, because adjusting truth is what many think lawyers do.



Clearly, the movie is designed to entertain, and there is intrigue, deception and even murder to keep the audience's attention. (Of course, some don't need more than George Clooney to keep their attention.) Actually, however, the movie has little to do with “adjusting truth.” In fact, for the legal practitioner, the movie provides an excellent backdrop for a discussion of the real-life application of a lawyer's obligations and demonstrates that compliance with those obligations is not always simple. For those of you who have not seen the movie—or have forgotten the plot line—here is a short summary.

Michael Clayton purportedly serves as his law firm's “fixer,” although we never really see him “fix” anything. The top litigator at the firm, Arthur, is defending a large corporation in what appears to be one of many environmental tort claims. At a deposition, Arthur becomes erratic (I won't spoil the surprise for those who have not seen the movie). The firm's managing partner sends Michael to get control of the situation. We see Michael take Arthur into seclusion to get him back on his medication. We later learn that Arthur has contacted the young female plaintiff directly to help with her claim and has copied for public distribution a “damaging memorandum” signed by certain of the company's executives, including the former general counsel and current chief executive officer.

The corporate client's new general counsel is very nervous, especially around her boss, the CEO. We see her handling what appears to be the damaging memorandum, literally, with rubber gloves. She hires a “consultant” (who has been recommended by the CEO) and instructs him also to get control of Arthur. But this control is murder (this is Hollywood!).

Michael is flawed (he has a gambling addiction) and is not really happy with his work. (He asks the managing partner to let him try cases—“I am good at it”—but the managing partner reminds him that the firm “needs you doing what you are doing.”) But Michael has redeeming qualities. He wants money to get his brother out of trouble, and he is also loyal

to his friend Arthur. Michael ultimately pays off his brother's bookies, solves Arthur's murder, and brings down the corporate client's general counsel.

So who is the real legal hero? The general counsel was trying to help her company, but, obviously, someone who orders a hit on her lawyer can't be a hero. Arthur decided that the memorandum held the “truth” and should be distributed, but how many professional responsibility rules did he violate? He contacted a person represented by counsel, and he acted contrary to the interests of his client. We do not know if the memorandum is privileged, was called for discovery, or really showed that the company was responsible for the plaintiff's damages. We also don't know if the company's products continue to pose any risks. Nor do we know how Arthur obtained the memorandum. These facts are indispensable if we hope to evaluate the lawyer's conduct.

Michael caught the wrongdoer, but why didn't he report Arthur's mental condition to the firm before there were serious consequences? Why didn't he discuss his suspicions (and the copies of the damaging memorandum he found) with his managing partner or the actual client—the corporation's board of directors—before he shared the information with the police? Did he have any reporting responsibility to the state disciplinary authority? Some of my fellow lawyers who were in the audience felt that the managing partner was the least admirable of the lawyers because he concentrated on saving his law firm and allowed the company to settle without revealing the “truth.” But wasn't that his responsibility to his partners and his corporate client?

Maybe Hollywood doesn't care about legal niceties, but it does illustrate that the “right” action for the lawyer is not always easy to discern. **TFL**

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