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I'M JUST AN ASSOCIATE . . . AT A NEW YORK FIRM

*Lawrence J. Fox**

Calvin Morris spent his entire career at Stuyvesant & Main, one of New York City's oldest and most prestigious firms. Paul Fortune remembered even now, in 1969—seven years after Paul had started at the firm—meeting “Mr. Morris” in the lobby of the firm. To greet the man, Paul waded through the deepest pile carpeting he had ever seen, passing the intimidating huge oil portraits of the firm's founders staring down from either side of the grand archway that framed the view across the East River. Paul was there for an interview for a possible job; Morris was the partner in charge of hiring—a tall, lanky fellow who always wore a three-piece suit, preferably pin-striped, a white shirt, and an elegant gray and white or blue and white silk tie with a perfect dimple where the knot met the body. This day, his suit was blue with a bold chalk stripe that only served to accentuate his forbidding height and added to Paul's insecurity that he, Paul, had no business seeking employment at the likes of Stuyvesant & Main.

Paul was of average height, more than ample girth, and never able to maintain the sartorial elegance of a Calvin Morris even fifteen minutes after he dressed. By the time he had arrived at the firm on this day, following a forty-five minute subway ride from his parent's home in Bay Ridge, Paul's curly hair was in ringlets, his shirt was half out of his pants, and both his suit and shirt exhibited wrinkles that looked like yesterday's *New York Times*.

“Good morning, sir,” Paul stuttered, offering his hand even as he worried that his sweaty palm would disqualify him before the interview.

“Welcome to Stuyvesant & Main, Paul,” Morris intoned, a half smile sneaking across his forbidding countenance, a look that was accentuated by his severe glasses and closely cropped haircut. “We've been looking forward to your visit. That Professor Reece sure thinks

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the world of you." Morris was referring to Paul's torts professor at Fordham Law School whose high regard for Paul was the only reason he could imagine that a white-shoe firm like Stuyvesant & Main would look at a poor Italian kid who had cobbled together scholarships, loans, and cafeteria duty to get himself through school.

Paul followed Morris down two long hallways, silently passing office after office in which Paul spied what he guessed were young associates hard at work, sharing quarters that were so small Paul wondered how they could get anything done. What particularly struck Paul was how quiet everything was; the incessant clicking of typewriters was the only sound to break the pervasive silence. Even as Morris passed people he obviously knew along this short journey, no words were spoken, only polite nods were exchanged. Paul smiled as he imagined his raucous family in this tomb, shattering the silence with their back-slapping irreverent boisterousness.

Morris' office was the antithesis of the associates'. From the doorway to his desk was a journey. Windows lined two walls, with the other two decorated with expensively framed plaques and sedate prints of waterfowl and hunting dogs, riders in pinks, and stately country mansions. One corner contained his massive mahogany desk, its surface totally clean save for a green leather blotter, a tasteful desk lamp, and a crystal horse.

Morris invited Paul to sit across from him on one of two matching sofas separated by a mahogany tray table with brass fittings, on which were neatly arrayed a number of current magazines. Paul felt like an elementary school student as he sank into the overstuffed chintz pillows.

Morris appeared stern and a model of rectitude. A Presidential citation suggested he had achieved high rank in the Marine reserves. Yet he approached Paul gently, asking questions about his background with interest and delicacy, putting Paul at ease. Then, Morris turned into the refined salesman, talking to Paul of the firm and its long traditions.

"We don't take our age as a firm, Paul, as simply a curious fact. We are proud of our heritage and our impeccable reputation, and we view working at Stuyvesant & Main as an extra responsibility to be the best we can be."

Paul was impressed, but he still felt out of place with Calvin Morris, and the forbidding nature of Morris' speech about the firm only reinforced the unease. Paul had decided he should lower his sights, find a friendly office on Brooklyn's Court Street and become a neighborhood lawyer, when Morris changed the subject yet again.

"I know what you're thinking," Morris began. "How will you fare at a firm like this when you would be our only Catholic?" There was a pause which Paul chose not to fill. "Well, that is a problem. We recognize that for too long this firm has perpetuated not only the

excellence of our founders, but their religion as well. We now know that is wrong. As we enter the sixties, we must reach out. That's why you're here, why I called Fordham to see if I could recruit their best student."

Paul was both appalled and thrilled. It hadn't occurred to him that he would be a pioneer, that an entire firm of eighty lawyers could be all male and all Protestant. On the other hand, Morris was being frank and offering him a real opportunity. Maybe he should reconsider.

"I appreciate your comments, Mr. Morris. If you are offering me a job, I'll certainly think about it long and hard."

"Oh no," Morris interrupted. "Only our hiring committee can offer you a job. But I wanted to get the issue out on the table early in the process. I hope you don't mind."

"Not at all," Paul answered. "Not at all."

Paul spent the rest of the afternoon at Stuyvesant & Main meeting associates and partners, being alternately grilled and embraced as each lawyer spent his allotted half hour meeting him.

Two weeks later the letter arrived, neatly typed on elegant ivory stationery, offering Paul a job either for that fall or, if he chose to clerk, whenever his clerkship ended. Paul had convinced himself he would accept. His dad's view was that Paul was being too "uppity" even considering a place that in the seventh decade of the twentieth century hadn't gotten around to hiring a Catholic. "They'll talk about you behind your back, and they'll never let you into their clubs, son. Don't go where you're not wanted. Let someone else be the first."

"But, dad," Paul pleaded, "someone has to."

"I didn't raise you to be a token, Paul. Just remember . . ." his voice trailed off.

But Paul was not deterred and, following his clerkship with Judge Palmieri on the Second Circuit Court of Appeals, he started at the firm in September 1963, closeted in one of those minuscule associates' offices with young Aaron Stuyvesant IV, a great-great-grandnephew of the firm's founder. While the accommodations were spartan and hardly conducive to work, Paul actually spent little time there. Instead, Paul found himself either buried in the books, taking over two carrels in Stuyvesant & Main's magnificent library, or entombed in a distant warehouse, reviewing endless documents. Paul had chosen the Stuyvesant & Main trial department, but was quickly learning that the group was badly named. The Stuyvesant & Main trial lawyers filed multiple motions, conducted myriad depositions, drafted all-encompassing discovery requests, and sifted through boxes of documents. The one thing they didn't do was try cases.

Nonetheless, Paul was quite pleased with his choice. The clients were household names, the issues were complex and fascinating, the stakes were extremely high, and there was always the possibility, just

the possibility, that these battles of corporate titans might end up in a courtroom. And though Paul himself didn't get to take the depositions or argue anything, he felt privileged to carry the bags of the Stuyvesant & Main partners and observe their eloquence, poise, and forceful advocacy as they confronted their counterparts at other prestigious law firms. Paul took no greater delight than when he worked with Calvin Morris, the most eloquent of them all. Paul concluded his career was on precisely the right track when after his second year he was asked to join the Morris Team, certainly the litigation group at Stuyvesant & Main that received the best assignments.

Paul was a third-year associate when the Morris team was assigned to handle what became known as The Case. Stuyvesant & Main's client was the National Gasoline Association ("NGA"), the trade association that represented the major petroleum refiners in Washington, D.C. NGA had been sued by a number of independent gasoline station owners on behalf of a class of all dealers, claiming price-fixing and other antitrust violations designed to shut out the independents from the market. The allegation, of course, was that NGA had been the vehicle that had made all these Sherman Act violations possible. The exposure of the defendants could be measured in the billions. The case involved six of the twenty largest corporate enterprises in the world and had received coverage on the front page of the *Wall Street Journal* and the cover of *Time* magazine. And the Morris team, on behalf of the association, had been designated lead counsel for the defense. What an opportunity, Paul thought; if not a ticket to partnership, The Case was at least an entrée to the best work.

Paul's expectations were more than fulfilled. Stuyvesant & Main assembled a huge team, including many first year associates, giving Paul a real opportunity, not to exercise responsibility, but at least not to be stuck exclusively in the library or the document center.

One of the key aspects of any antitrust case is the selection and preparation of expert economists that each side retains to substantiate its theory that the alleged collusive activities either did or did not have an effect on prices. The retention of NGA's experts was handled at the partner level. So was their briefing. But Paul was asked to work with two different economists, Dr. William Franklin, from the Wharton School of Business, and Dr. Upton Johnson, recently retired from the Federal Reserve Bank in New York. Calvin Morris summoned Paul to his office, the first time he'd been there since the day of his first visit.

"It is critical that we provide the experts everything they need, Paul," Morris began.

"Yes, sir," Paul gulped, sensing how serious this was.

"Your job is to keep in touch with them . . . or their assistants. Stay

on top of the documents we've gathered. Make sure they see all the evidence they need to support our theory." Morris almost barked.

Paul was surprised. What he was hearing didn't sound like the experts were acting independently. Certainly he had been taught that experts were credible because they weren't partisan. But he was hardly in a position to question Calvin Morris on the handling of the experts. The man had probably hired a hundred experts in his career. The important thing was that Paul was being given an assignment sufficiently important that he was receiving his instructions from Morris himself, not some seventh year associate as he had in the past.

The work proved fascinating. Paul repeatedly met with both experts, using the opportunity to learn as much as he could about their discipline and how they were approaching the case. Some days, Paul just couldn't believe he was actually being paid to learn sophisticated economic theory from two of the leading experts in the field. Moreover, Paul found he understood and enjoyed the study; in the hands of these two, economics was anything but a dull science. Paul was not about to switch fields, mind you. But on the other hand, if Paul decided to specialize in antitrust litigation, these encounters would surely stand him in good stead.

Given Calvin Morris' instructions, it never occurred to Paul that he should withhold from the experts a study the NGA had commissioned from the Delaware Institute on the relationship between the price of oil at the wellhead and its price at the pump during the late 1950's. It was true that the report was marked "confidential—for internal use only" and the copies, limited to thirty, had been individually numbered. But it was included in the universe of documents the Stuyvesant & Main team had gathered for production to the plaintiffs, and Paul could not think of any basis on which it was going to be withheld from discovery. Besides, this was precisely the kind of information Paul's new friend from Wharton said would be particularly helpful to his work. "If prices behaved as I think they should have at the time of the French problems in Algeria, we'll be able to demonstrate how little control the majors exercise over the wholesale price to dealers in today's market," was how Professor Franklin had explained the point.

So Paul was more than a little surprised when he was again called to Calvin Morris' office the day after he had transmitted the Delaware Institute Report to both experts. Paul knew he was in trouble as soon as he greeted Mr. Morris' secretary. She barely looked at him as he gave his usual ebullient hello, and she mumbled "watch out" as she stepped aside to let him enter the vast domain.

"Who told you to send these materials to the experts?" Morris snarled, obviously holding Paul's cover letter in his shaking right fist.

"You did, sir," Paul tentatively responded. "Or at least I thought you did."

"I should say not. That's one of the most discredited, irresponsible pieces of research in history, son."

Paul stood silent, not knowing what to say next. Why was the quality of the report relevant? He just didn't understand. Finally, as if to fill the uncomfortable vacuum, Paul blurted out, "The plaintiffs are going to get it. Why shouldn't our experts know about it?"

Calvin Morris turned an even deeper shade of crimson. "Get it? This report? No sir. Our client thought all copies of that report had been destroyed. Years ago. And the day that report gets produced is the day Stuyvesant & Main loses this very important client."

"But, sir . . ." Paul began.

"No buts, young man. If you want to become a fourth-year associate around here, your first job is to get both those copies back and make sure no others have been made. Is that clear?"

"Yes, sir," Paul replied, a bit too eager to reach the sanctuary of his tiny cubicle with its panoramic view of the airshaft.

It was only a matter of days until Paul was able to complete this latest assignment. Indeed, he was able to reach Dr. Johnson before he had received the envelope. Trying to sound as nonchalant as possible, he simply identified the Delaware Institute Report and asked that each mail his copy back in due course. After all, the last thing Paul wanted to do was raise any level of concern on the part of these critical witnesses.

Calling Paul directly for the first time ever, Morris testily inquired, "Did you get them yet?"

"Yes, sir," Paul confidently replied, pleased he could give an affirmative answer a mere two days later.

"What did you do with them?" Did Paul detect a tremor in Mr. Morris' voice?

"I've got them right here, sir," Paul spun his desk chair around to reach into his briefcase where he had placed them for the while.

"Why don't you bring them up here?" Morris asked.

"Sure."

"Right now."

"Of course." Paul was on his way, both copies in hand when he realized he had forgotten to put on his jacket. Associates at Stuyvesant & Main never walked the halls in shirtsleeves—not even on weekends, as Paul had learned much to his dismay when he was roundly criticized for his attire following his first tieless weekend trapped in the library.

Paul was ushered into Morris' office immediately by a stern-faced secretary, who pointedly closed the office door behind him.

"You are a lucky young man," Calvin Morris began as Paul crossed to his desk.

"Yes, sir," Paul replied, unsure what else he could say.

"Your lapse in judgment turns out to be harmless error," Morris continued. "I guess this should serve as a good lesson for you, my friend. Lawyers must be extremely careful. You can never take anything for granted. Even the smallest matter can result in unfortunate consequences."

"Thank you, sir," Paul responded still clueless as to what he really should say at this moment.

"Now hand me the documents, son." Morris reached out his right hand. "I'll just put them in my bottom drawer for safekeeping." There was a long pause, then Morris began again. "Now, I'm sure you've got plenty to keep you busy on The Case, Paul. We must be sure the economists are fully prepared."

"Yes, sir," Paul replied. "I've got more than enough." Paul backed out of the room as quickly as he could, reaching awkwardly behind his back for the doorhandle and its promise of freedom.

* * * *

The incident involving the documents soon faded from Paul's thoughts, perhaps in part because he never discussed it with anyone. While he was disturbed that he had gotten in trouble, he still did not understand why what he had done was wrong. Yet, he was too embarrassed to pursue it further. One thing was certain: he had no idea how the documents would be handled in document discovery. Paul knew they were called for. By the same token, an entirely different group was working on the production. And whatever was decided, Paul was sure the captain of the ship, Calvin Morris, was going to be the final decision-maker. So Paul simply threw himself into his work, becoming more and more convinced that his part of the case, the presentation of the economists, would prove the perfect defense to these outrageous claims.

Paul never would forget when the matter first resurfaced. He was having lunch in the firm cafeteria with two of his classmates, now sixth-year associates. The conversation was football. Was Joe Namath really the best NFL quarterback? As they were about to return to their offices with that intriguing question unanswered, they were joined by Albert Perry, a seventh-year also assigned to The Case.

"Didja hear what happened?" he asked with the expectation of someone who relished sharing bad news.

"Isn't that why you're here?" Paul wisecracked back.

"They started the deposition of Dr. Franklin today," Albert hesitated, "Oh, Paul, of course you knew that."

For sure, Paul thought. He had been so disappointed that he wasn't able to attend. But the decision had been made that Stuyvesant & Main could only send five lawyers to this event, and when Calvin Morris decided to attend, Paul was unceremoniously bumped.

"Anyway," Albert continued, "the plaintiff asked Dr. Franklin what documents he had reviewed. Dr. Franklin had them all there in front of him. So he pushed the pile across the table. That's what I was told, anyway. Then, as the lawyer was leafing through the file, Franklin blurted out that there had been one other document he had seen, but it had been taken back. Something about oil prices in the 50's is all he could remember.

"During the deposition no one on our side flinched; not even when opposing counsel looked expectantly as if to request the document. The deposition just continued. But at the break, Morris went ballistic. He threw his briefcase against a wall, cursing a blue streak, and screaming about Dr. Franklin's memory. Swain thought he'd have a stroke."

The nausea in Paul's stomach competed with the deep cloud of depression that descended over him. He saw his future pass before him, his humiliated departure from Stuyvesant & Main, his inability to get a reference, his father telling him I told you so. But he still held his tongue, convinced there was no capital in sharing his story at a time like this, though he couldn't imagine that his flushed countenance didn't betray his high anxiety.

"What's got him so perturbed?" one of Paul's lunch companions asked, relieving Paul of any responsibility to respond.

"I guess Dr. Franklin wasn't supposed to remember anything about the document, whatever it was. You know anything about this, Paul?" Albert asked.

There was no hiding now. "Not me," Paul answered. "I didn't handle the document production," Paul told a half-truth. He certainly had nothing to do with the documents after the incident involving the Delaware Institute Report.

"Well, we haven't heard the last of this event. Of that I'm sure." Albert smiled the smug smile of the common scold he was. And as much as Paul hoped Albert was wrong, he knew that he was correct. There would be hell to pay and Paul thought he knew who would pay it.

But in the next several weeks, Paul heard nothing. No call from Mr. Morris. No discussions in the hall. Not even any gossip from Albert. It was as if the event had never occurred. Indeed, Paul wouldn't have learned that there had been any follow-up at all if he hadn't attended a team meeting to discuss the countdown to trial. Even then the information came to him by accident. As he was leaving the three-hour meeting, he gathered the papers in front of him. When Paul went through them back in his office, he saw a motion to compel filed by the plaintiffs, seeking production of the documents Dr. Franklin had identified in his deposition. Attached was the transcript, proving Albert's source to be an accurate reporter. The motion must have been left in the conference room by one of Paul's colleagues. As Paul

perused its short contents, he once again had that sinking feeling, the hollowness in his stomach, the undifferentiated malaise of depression.

How could Stuyvesant & Main defend this? What possible argument would the firm construct to resist producing the document? To explain why it hadn't been produced earlier? Paul's imagination yielded no real defense.

The motion was returnable the following Tuesday. Knowing Judge Templeton, there would be no postponement and he would hold oral argument. How Paul wanted to attend. Though he knew the less he learned about this matter the better off he would be, his curiosity was more powerful than his good sense. For the next twenty-four hours, however, Paul let the idea go; then he decided he would attend. This wasn't the only matter on Judge Templeton's motion list, and if anyone from the firm spotted him in the back, he would say he was there for a pro bono case. And he certainly wouldn't charge NGA for his time.

The day of the argument, Paul changed his mind three times, then finally succumbed, purposely arriving quite late after determining that this matter was thirteenth on Judge Templeton's list of forty-five motions. Not a good omen, Paul thought. Maybe court lists should be numbered like hospital floors, a small consolation for the superstitious. The courtroom was crowded, and Paul, knowing that Calvin Morris would have arrived a half hour early to assure himself a seat in the first row, purposely chose a seat on the far left buried in the next to last row. Paul even picked out a case, one in the 30's, with which he could associate himself in the event his colleagues noticed him. *Munoz v. Department of Social Services* sounded the right pro bono note, and Paul just might need it since Morris was accompanied by one partner, two associates, and a paralegal. Five pairs of eyes were a lot of firepower for a simple motion, Paul thought as he shifted uneasily in the uncomfortable pews that filled the back half of the courtroom.

Finally, the court clerk called the case, *Cities Service v. NGA et al.* A flock of lawyers raced forward, plaintiffs matching the defense lawyer for lawyer, briefcase for briefcase. A distinguished looking gentleman approached the podium. "May it please the court," he started, "this is a simple motion to compel."

"I've read your papers," Judge Templeton interrupted, sounding vaguely annoyed. "If they are correct, you can spare your breath. You are certainly entitled to these documents, though I can't for the life of me figure out why you brought so many colleagues with you. If there are any fees to be awarded in this case, I hope you don't think this court will consider a fee request that includes more than two lawyers for simple motions like this."

"But, sir," plaintiffs' counsel seemed more interested in the question of fees than winning the motion.

"Mr. Lasky, I suggest you just sit down. Let's hear what Mr. Morris has to say. Mr. Morris?" The judge, clearly perturbed, peered down at defense counsel's table.

"May it please the court, my name is Calvin Morris on behalf of the National Gasoline Association. Not only have the true colors of the plaintiffs been shown on this most recent colloquy, Your Honor, but the fact that they have taken the time of the court to bring on this trivial matter reflects how frivolous their case really is. If they simply had called us, we would have informed them, Your Honor, that whatever documents they are seeking—and frankly Your Honor, we believe Dr. Franklin is mistaken about seeing any other documents—we have been unable to find anything that is close to that described in Dr. Franklin's testimony. If they ever existed, they have been destroyed. I might note we can't imagine how a document from the 1950's could possibly be relevant, which explains, perhaps, why we haven't been able to locate it . . . if it did exist."

Calvin looked totally composed, even smug as he shot a quick glance back to his colleagues at counsel's table while the judge contemplated how to deal with Morris' presentation.

"Then you agree the documents should be produced if you have them, Mr. Morris?"

"For the sake of argument, Your Honor."

"Well, you do agree that if your expert saw a document, the plaintiffs are entitled to see it."

"Not necessarily, Your Honor, but . . ." Morris sounded less confident now.

"Look, Mr. Morris. I am going to grant the motion. I understand the document is unavailable, but if anytime before this case is over you should find it, you are obliged to produce it. Is that clear?"

"Yes, sir," Morris answered.

Paul was already on his way out the swinging leather-covered doors of the courtroom as the last words were spoken, mumbling "excuse me" as he moved amidst the lawyers who crowded the back rows with their briefcases and overcoats. At this moment he was totally unconcerned with whether anyone from the firm spotted him. What he needed desperately was fresh air, something to relieve the constricted feeling of not being able to breathe. Yet the race to the exit only exacerbated the feeling of disequilibrium, and the very ground he occupied was slipping away from him. Pushing the door open, he suddenly realized that a visit to the men's room would interrupt his first mission, the cramps stabbing at his abdomen, forcing him to bend over, praying that nothing embarrassing would happen before he found the facilities.

It was only when he had cloistered himself in the old marble bathroom's etched wooden stall that he actually had a conscious thought. And that was the recognition that his reaction to what he

had just seen was entirely visceral, his body betraying his raw fear that what had happened in that courtroom would present him with an impossible dilemma. His conscious mind hadn't registered the problem, it had only processed the words. But somewhere his brain, in some fundamental, instinctual recess, triggered this demonstration of how weak he was.

What should he do? Calvin Morris had lied in court. He told the judge the documents were destroyed. He actually had the temerity to make a misrepresentation to a federal district court judge, Judge Templeton no less, a former partner at Trowbridge, Sims & Battle, another of New York City's most prestigious firms. All the talk of ethics and independence, the very essence of the Stuyvesant & Main's firm culture, cast aside because some client had failed to destroy copies of an old document, then threatened that if it were produced the client would go elsewhere.

Now that Paul was descending the courthouse steps, his mind was fully engaged and this problem had his undivided attention. Despite the cold, he decided to walk back to the office, hoping to avoid for as long as possible the need to talk to any of his colleagues.

Paul, of course, didn't know whether it was client pressure that caused the problem. He remembered Calvin Morris had said something about the day the report gets produced, but Paul didn't know whether that was a figure of speech, just a way of emphasizing the enormity of Paul's "mistakes."

Nothing could explain lying. That was the point to which Paul kept coming back. How important could the document be? Calvin Morris was right that, despite the fact that the expert had seen it, it was hard to argue the document was really relevant. But even if it were, how damaging could it be? The professional principle Paul had learned almost a decade ago at Fordham was that the facts are what they are. The lawyer's job was to argue from them. It was okay to resist producing documents for good faith reasons, but you didn't subvert the process by failing to produce what was required.

As Paul walked down Broadway, he passed the Old Trinity Church graveyard and stopped. This small oasis in the middle of a desert of commerce and high finance had always intrigued Paul: worn marble gravestones competing with 800-foot granite skyscrapers for the valuable few acres at the tip of Manhattan. Paul caught himself mesmerized by the barely discernible names and dates of some of America's first families. There were no answers here. But Paul did realize he would have to find the answer in some similar place. The one thing he knew now was that he could share his problem with no one. He couldn't imagine a single person he would feel comfortable talking to. Perhaps if Professor Reece were still around, but Paul knew he had retired to Hastings, and this was not the kind of matter to be discussed over the telephone.

Paul was back in his office with his door closed, trying to find another project to take his mind off the problem when a new thought occurred to him. What if Calvin Morris told the truth? What if the document really had been destroyed? Then Morris had done the right thing, not in the destruction of the report, but in his representation to the court. After all, it had been two years since Paul had seen the documents placed in Morris' lower left-hand mahogany desk drawer. Paul had assumed this entire time that they were still there. But what if they weren't? What if after Paul left the room Morris had chucked the copies in the waste basket? Morris had admitted they were destroyed "if they ever existed." But he hadn't said when they were destroyed. Indeed, he had admitted it was after the expert had seen them, long after the case had commenced. So if this was right, Morris had made full disclosure today, prepared to accept the consequences of document destruction.

Then, Paul realized how futile all this was. What were his choices? He could confront Calvin Morris, the best litigator at Stuyvesant & Main. As he thought about it, he realized that the conversation was a non-starter. Paul couldn't even imagine having the nerve to open his mouth. And what words would he utter? "Sir, you lied yesterday in court." "Sir, I just wanted to make sure the document isn't in your desk drawer." "Sir, I think you should tell Judge Templeton that you know our expert is right, that he did see a document that was not produced." All speeches Paul could conjure ended with the same result: Paul's prompt departure from the firm.

Nor was there anyone else with whom he could talk. The client had never even met Paul. Going to another partner was too intimidating and, in any event, hopeless. Here was Paul, recently celebrating his thirtieth birthday and still required to call all partners by their last name. They even had their own men's room. No partner at Stuyvesant & Main would break ranks to side with an associate. Not on a question like this.

For a fleeting second, Paul thought the judge was the answer. Paul would see him *ex parte* and explain the dilemma. But Paul could not imagine such contact to be proper. In any event, he did not have the courage to tell Calvin Morris. Wouldn't a meeting with the judge result in Paul's opening his mouth and no sound coming out?

Paul didn't sleep that night. Or so it seemed. He remembered being awake at all hours, haunted by depression whose cause he would forget and then remember. How could he make this go away? Was there any fix? Would the sleepless nights accumulate so long as . . . what? The case was pending? He was at Stuyvesant & Main? He remained a lawyer?

But then, like an effective advocate and what he thought demonstrated he was a mentally healthy person, Paul began to resolve it. Paul was placing too much responsibility on himself. This was not

his client. He was not the lead partner or even a partner on the case. It had not been his decision to get the Delaware Institute Report back. Nor had he made the representation to the court about its existence. He had not even been in court on that case. He was there for *Munoz v. Department of Social Services*. If Calvin Morris wanted to handle the matter this way, so be it. That's why he made the big bucks.

Paul began to feel better already. He had spent his whole life worrying about doing the right thing, feeling guilty when others transgressed. It had been true of his siblings. He still remembered the time his kid sister had lied to Paul's parents about the party she hosted when they went on a Caribbean cruise. It had been true of his classmates at St. Ignatius. Paul knew who had authored the scandalous April 1 issue of the *Torch*, the school newspaper, that had announced the fictitious resignation of the Pope, but never said a word. This, like those events, weren't his transgressions. Why should he feel so responsible?

Simply lecturing himself did not put the document incident out of his mind. But the passage of time did work wonders. He did think of it everyday. How could he not, as he and the rest of the Morris team worked nonstop as the trial approached? But it did traverse the distance from intense turmoil to a steady state of anxiety, to an intermittent concern that Paul could quickly dispel by turning his attention to other matters.

The trial opened on April 1. Jury selection lasted four days. Paul's first appearance in Judge Templeton's courtroom was the following Friday when the entire Stuyvesant & Main cast assembled to watch the opening arguments of both sides. This was Paul's first return to the courtroom since that awful day. Passing the entrance to the men's room, a rush of painful memories made him quiver. Calm down, he repeated for the hundredth time. It's not your issue.

Calvin Morris demonstrated why he had earned such a superb reputation. With nary a note, he delivered a twenty-minute oration in a voice that matched his elegant attire. Though Paul wondered how they could relate to this man whose dress ran to custom suits and who used a vocabulary that often sent Paul to the dictionary, the jury listened attentively to the rich choice of words Morris hadn't abandoned for this presentation. That Calvin Morris impressed Paul was an undisputed fact; whether he also impressed these fourteen residents of Manhattan and the Bronx remained to be seen.

By all accounts, the trial was going quite well, a view that prevailed even after Judge Templeton denied the defendants' motion to dismiss at the end of plaintiffs' case. The preparation of the economists became a focused activity, and Paul was able to enjoy the work and share the excitement as the three-week trial drew to a close. It was another Friday that Paul again returned to court, this time to watch

Hank Wilson, a younger partner at Stuyvesant & Main, question his two economists. How Paul wished after all that work that he was doing the direct examination himself. But Stuyvesant & Main had a rule: only partners signed pleadings, only partners opened their mouths in court.

The testimony went precisely according to plan with Dr. Franklin's direct exam concluding the day. There was nothing more for Paul to do on the case. With their last witness about to be cross-examined, the judge admonished the Stuyvesant & Main lawyers not to talk about the case with their witness. The only other remaining item was the closing argument, and if Calvin Morris was sharing that responsibility with anyone, it was not Paul.

Delighted with the respite, Paul decided to call his mom to see if a home-cooked meal from the best Italian cook in Bay Ridge was a possibility. She, of course, was delighted, and Paul found himself back on the F train at 6:30, exhausted and pleased that another long night at the office wasn't in the offing. As the train wended its way to Brooklyn and loudly cruised through endless tunnels in search of the short lighted areas that were stations, Paul remembered back to his first train ride in the other direction from home to Stuyvesant & Main. The change in Paul and his views of the world had been profound. That recognition led him to wonder whether the Paul Fortune who got on the train back in 1961 would have done what Paul had done in 1969. That Paul was full of ideals, committed to law as a noble profession, dedicated to perpetuating the principles of Professor Reece. This Paul had compromised, deferred to a higher authority, let the concept of "officer of the court" be sullied. The closer he got to home, the more agitated he became. Perhaps it was the fact that today was the day Calvin Morris' transgression actually had a substantive effect. Would it have made any difference if the Delaware Institute Report had been produced? In the big picture it seemed unlikely. But the failure to produce it had surely had a transcendent effect, at least on Paul, if not Calvin Morris and anyone else who knew the truth.

Sitting in Paul's ancestral living room with its brocade couch, fringed lamps, and huge reproduction of a Renoir painting hanging on the wall, Paul found the excellent Borolo his father proudly brought out for "our honored guest," though robust and rich, did nothing to calm his renewed turmoil. It was one thing to defer to Calvin Morris for months, rationalizing the result based on less than certain knowledge and Morris' superior position. But to realize a day in court didn't go the way it was supposed to go; that was something very different, especially since it was the next to last day of the trial.

"How're things going at that fancy firm, son?" Mr. Fortune inquired as he passed Paul the heaped antipasto platter.

Paul hesitated a moment, then decided he could keep his story no longer.

"Pretty bad, Pop. Today was a real bad day." With that, Paul launched into a full description of the Delaware Institute Report, sparing no detail, ending with an explanation of how he had concluded that he did not need to act. Both parents listened with rapt attention, and their concern slowly reflected in their faces as the pace of eating slowed considerably.

When Paul ended, there was a long silence, an unheard of event at the Fortune household. Paul couldn't tell whether they understood fully or not. But he had no more to say.

"I'm sorry, Paul," his mother broke the silence. "I hope you won't get into any trouble."

There was another long silence. Paul didn't know what he was looking for, but whatever it was, he was not getting it. The recounting of the story to his parents had served only to highlight how weak his rationalization of his position had been. Just speaking the words, words he had never spoken before, left him embarrassed. But salving Paul's wounds was not what Paul's dad had in mind. Mr. Fortune took off his glasses and rubbed his eyes. Then, without replacing his bottle-thick bifocals, he turned to his son and began.

"You know I didn't want you to go to that firm. I was afraid you would never fit in and they would take advantage of your talent, while excluding you from their fancy eating clubs. Your Aunt Rita worked as a waitress at that Downtown Athletic Club for years. Those men treated her like dirt, such snobs, as if their ancestors came over like royalty on the Queen Elizabeth.

"The one thing I didn't think was that these lawyers would cause you to abandon everything we taught you, Father Carmen taught you, the sisters at St. Ignatius taught you. No fancy law firm, no big deal client is so important that you shouldn't do the right thing.

"Yet you tell me when that senior partner lied to the judge, you did nothing. How can you condone this conduct, keep taking their money, aspire to be a partner at Stuyvesant & Main, when Paul Fortune knows that he will never be proud to work at a place where things like this can take place?

"Son, I love you and I am sure there are good reasons why you've gotten yourself into this position, but there is no reason for you not to act now. The trial is not over. You can still correct this terrible mistake. It's not too late."

Paul was stunned. As his dad spoke, the tears welled up, and he felt pressure on his chest. Paul's body could not resist reacting to emotional upheaval. He looked over at his mother for some relief. He could see how distressed she was as well.

"Don't be hard on the boy, Vince." Paul's mother reached over and patted Paul's hand. "We don't know what it's like down there on

Wall Street. All that money, big companies, high finance”

“Maria, you are right. We don’t know. But that makes no difference. Lots of money is no excuse for not doing the right thing. I know he’s still your little boy, your favorite, but he’s a thirty-year-old lawyer who’s responsible for his conduct. Paul made a mistake. We all make mistakes. Thank God he told us about it. Now he has to do the right thing. Am I right?” His dad turned to Paul.

“Of course you are, dad. But you have no idea what you are saying. The case is almost at an end. If we disclose the document now, the plaintiffs will use the late disclosure in cross-examining our expert, and again in closing argument. They will make it seem sinister, a conspiracy, a cover-up, when the document is not that important.

“My career will be done. Finished before my eighth year shot at partnership. It’s a disaster all around—for our clients, for Calvin Morris, for me.”

Paul was in a renewed panic. The repast, so recently enjoyed, was in revolt. The room seemed slightly out of kilter. His mother’s face mirrored his own distress. But looking over at his dad he saw nothing but resolve, certainty, and steadiness. His father, while not always correct, had a highly refined sense of right and wrong that Paul had rarely challenged, but when he had, the incident was permanently etched in Paul’s memory. Paul recalled how exercised his father had been when he admitted he had written Tommy Fanelli’s history paper. Paul’s argument that Tommy needed the help because his mom was ill did not persuade Mr. Fortune that Paul’s conduct was justified.

Paul’s ruminations were interrupted. “Well, son. It’s your decision. And you know your mother and I will always support you. But I heard how pained you were as you spoke to us before. And I know that the only way that pain will disappear is if you are willing to endure some very real pain the other way.”

Paul looked out the window of the small apartment, a view that included a sliver of the Verazano Narrows Bridge stretching to Staten Island. His dad’s analysis was fair. But he didn’t know what he would do. All he knew was that it would be a long ride back to his Greenwich Village apartment on the F train.

Gazing at posters that said “U kn lrn spdrtnng in 60 hrs” and “Dentistry without pain” as the train retraced his earlier route back to West 4th Street did nothing to resolve Paul’s dilemma. Neither did staring at one, then another, of the bedraggled passengers slouched on the blue plastic seats of the graffiti-decorated car help Paul find a solution. He closed his eyes trying to imagine how Calvin Morris would react. That stern countenance would turn to rage, with Paul the object of his scorn. “You immigrant kids are not made of the right stuff. We should never have hired a Catholic,” Paul imagined Mr. Morris shouting. “You’ll never get another job as a lawyer after this demonstration of disloyalty.”

Paul just didn't have the courage to voluntarily take a right cross to the jaw. Forget it; too much pain, Paul thought. It was easier to disappoint his dad. Time would pass. Everyone would forget. Nothing like this would happen again. So he had one black mark. Even his father had conceded that everyone makes a mistake. Just because you *could* correct it didn't mean you *had* to.

By the time he opened the door to his fourth-floor walkup in an 1800s brownstone just off Washington Square, Paul's resolve to do the right thing had succumbed to his own cowardice. Better to live with years of low grade disquiet than launch a single cataclysmic event. As he threw himself across his unmade double bed, leafing aimlessly through the latest offerings from L.L. Bean, the phone rang.

"Son."

"Yes, dad."

"You got home all right?"

"When was the last time you checked on me? Something wrong with ma? She's given up the honor?" Paul managed a half smile thinking that no matter what his age or station in life, his mother would always treat him like he was seven.

"I'm the worried one this time, Paul. I've been thinking about your problem. I thought you might change your mind. So I just wanted you to know I called Father Carmen right after you left. He would be glad to talk to you, even if he hasn't seen you in years. He still remembers what a good student you were. Give him a call. I know he'll give you wise advice."

Paul hadn't seen Father Carmen since his fifth St. Ignatius reunion and hadn't been to Mass in three years. Was he entitled to seek comfort from a Church he had so cavalierly abandoned? "Sure, dad," he answered with no conviction. "I'll do just that."

"Good. Your mother sends her love."

"Thanks, dad." Paul sadly ended the call, filled with remorse that he had now transferred his pain to his parents.

But the idea of calling Father Carmen proved inspired. After Paul overcame his reluctance to impose on the good father so late at night, they chatted for over an hour, the first fifteen minutes re-establishing their original parish priest-honor student ties, then gently edging into the issue at hand. Father Carmen forced Paul to talk through the problem himself. Then in a totally non-judgmental way he explored with Paul the pluses and minuses of each course of action.

"I've enjoyed the law lesson," Father Carmen quipped. "Your profession certainly presents ambiguous situations."

"That's helpful," Paul joked back. "I know my father didn't urge me to call you so you could tell me how interesting the issue was. I need spiritual guidance."

"That's certainly true, Paul," Father Carmen came back, "and I'll

offer you that anytime you bestir yourself to return to St. Ignatius. You don't even need to take communion. Or make an appointment. But as for this, if you'll pardon the expression, you really need a lawyer. I am afraid the Lord doesn't address the issue of the associate who works for a partner in a fancy New York law firm who lies to a judge. The Lord has plenty of advice for the partner, just none for the associate. Ecclesiastical help may just be unavailing, though it pains me to concede my limitations."

A light bulb went on. "You know, Father Carmen, that is wise advice. You're right. We lawyers are so busy offering advice to clients that we're blind to situations where we need lawyers ourselves. I need my dad; I need you; and I need a lawyer. Someone to help me sort out the issues from a lawyer's perspective. Thank you, Father."

"You're welcome, Paul. And Paul . . ."

"Yes, Father," Paul responded obediently.

"We really would welcome you back to Bay Ridge. I still remember you in your white acolyte vestments, our star seventh grader. Your mother wondered if you'd become a priest. She had nothing to worry about."

"I guess that's what I should've done," Paul said wistfully.

"No, Paul, the priesthood offers no salvation for those who want to avoid difficult dilemmas, trust me," Father Carmen laughed easily as the conversation ended.

Who should Paul call? He had rejected Professor Reece earlier on the ground that this was no subject for a telephone consultation. But the conversation with Father Carmen had gone very well with Paul drawing on the years of trust to establish an easy rapport from this distance. Perhaps the same would happen with Professor Reece. If he could only locate him, the three hour time difference would permit the call to be made at a civilized hour. All one needed, Paul thought, was advisors strategically scattered through multiple longitudes and one could find aid and comfort twenty-four hours per day.

Paul found a William Reece on Pacific Palisades in San Francisco, and an immediate call summoned a poor quality answering machine and an elderly female voice saying the Reeces were unavailable. "If this is Professor Reece, from Fordham Law School," Paul responded, "could you please call Paul Fortune in New York. I was your student six years ago." Paul concluded by leaving his number.

He felt better already, and that view was only reinforced when a half-hour later his avid reading of the latest issue of *The New Yorker* was interrupted by his ringing phone. It was 1:00 a.m. in New York.

"Hello, Paul." Paul heard the still familiar voice of his favorite professor. "Still laboring at Stuyvesant & Main for Calvin Morris?"

What a memory, thought Paul. For how many students could Reece instantly recall their placements after this many years? "Yes,

sir. In fact, that's why I'm calling. I hate to bother you at this hour, but I need some legal advice, sir."

"I'm no match for those titans of Wall Street, Paul. And it's you who are talking at a late hour. It must be one o'clock in the morning where you are. But I'm happy to help you if I can. Just remember the advice is worth exactly what you're paying for it. Must be pretty urgent, though, if we're spending early Saturday morning on the phone with a superannuated law professor."

Paul proceeded to tell Professor Reece the full story, down to the unpleasant details of his body's fragile response to the continual trauma of the events in question. He must have gone on for almost one hour. Professor Reece interrupted just often enough so Paul knew he was paying careful attention to the story.

"That's where I am. Trial resumes on Monday. Dr. Franklin is on the stand. Plaintiff will probably close Monday afternoon and the case will go to the jury Tuesday. Not much time to decide what to do," Paul concluded.

There was a long pause. "You know I've had a love-hate relationship with these New York firms my whole life. We send our best and brightest to them. Their partners endow chairs and scholarships. Without them we wouldn't exist. Yet their unique way of doing business is a cause of great dismay. They use the lure of lucrative partnerships and the opportunity to participate in transactions that appear on the front page of the *Wall Street Journal*. They hire eight for every one who becomes a partner, they treat associates like recruits at Parris Island, and they throw a lot of outstanding lawyers on the scrap heap of in-house jobs with important clients. They make irrational judgments as to who shall be anointed, judgments made less on talent and more on the similarity between the new entrants and the existing WASP establishment. And in the process they create a two-level hierarchy, real lawyers and associates; the latter, like fraternity pledges, lose all dignity and self respect, not even able to sign a pleading. I love the special way New York firms perpetuate this division. All pleadings are signed Stuyvesant & Main by blank, a member of the firm.

"But that doesn't leave you off the hook, Paul, in my view. You are a lawyer. You have a plaque on the wall. Appellate Division, Second Department, I'll bet."

"Yes, sir," Paul interjected, wondering again how Professor Reece could remember he grew up in Brooklyn.

"And in the eyes of the New York Court of Appeals you are a full-fledged and fully responsible lawyer. Nonetheless, what I would do if I were you, first thing tomorrow morning, is call that Hank Wilson, the partner who did the direct of Dr. Franklin. I'll bet he has no idea those documents still exist. But once you divulge that information you will suddenly have a professional colleague who shares your

burden, someone else who will be required to act or not act as he sees fit. My bet is he will do so, but if not, you can call me back, and we can revisit the issue based on Wilson's response and the reasons he provides you."

Paul instantly felt better. In part that was because for the second time he had disclosed his course of conduct to someone who was not being judgmental. In part it was due to Professor Reece's take-charge attitude, acting exactly like a lawyer, dispensing advice with confidence. And in part, Paul was convinced the approach would work. Sharing information and responsibility had a certain delicate symmetry that appealed to Paul's sense of justice. Plus, by now Paul knew he was committed to doing something. There was no more wavering now. It was too late for that. "Thank you, sir, for the wise counsel. You've given me a plan. I'll be sure to call you one way or the other."

Paul surprised himself by sleeping soundly, the turmoil of recent events apparently lessened by the soothing responses of Father Carmen and Professor Reece. When he awoke on his own at 7:30, he was ready to contact Hank Wilson, something he could accomplish by arriving at the office anytime before dark. Paul knew Wilson, the workaholic, would be there all day Saturday, even if *The Case* were not about to come to a close.

Paul arrived unannounced in Wilson's office at 9:15. An outside observer, witnessing the scene, would have assumed it was a regular work day, given their formal attire on this early Saturday morning.

"D'y' have a minute?" Paul inquired tentatively as he gently tapped on the half-open door.

"Sure, Paul, what is it? I'm glad to see you anyway. The direct of Dr. Franklin was devastating to the plaintiffs' case. Everyone agrees. Particularly the client. I want to congratulate you on the splendid preparation. First rate. This could be a real feather in your cap as you approach the big day. Even Calvin complimented the way you prepared Dr. Franklin to simplify his presentation so that the jurors listened attentively. And those charts . . ."

Hank Wilson sounded so uncharacteristically expansive that Paul was afraid he wouldn't stop gushing to let Paul fulfill the reason he had stopped by. And as the flattering talk continued, Paul could sense his resolve start to waiver. But he was determined, even if it meant interrupting the best press notices Paul had received at Stuyvesant & Main. "Thank you, sir," Paul started. "That's why I stopped by."

"To find out how you did?"

"No. That's not what I meant. To discuss Dr. Franklin's testimony." Paul knew his demeanor was not echoing that of Hank Wilson. He could feel the strain across his forehead and the tension in his jaw.

"Well, did I forget something? I thought I followed your plan to a 'T.'"

"Oh, you did, sir. You sure did. But that's the point."

"What do you mean?" Now Wilson looked troubled.

"There's something I've got to tell you. Perhaps you'd like to sit down." Paul thought for a moment that this may have been the first time an associate had told Hank Wilson what to do. Then Paul reminded himself that for all the distance between them, only five years in law school and the difference between Harvard and Fordham really separated these two lawyers.

"Yes." Wilson's expectancy turned it into a two syllable word.

"Y' remember that document Dr. Franklin said he saw that was taken back from him?"

"Sure. The one that was the subject of the motion."

"Right. The one Mr. Morris told the judge was destroyed . . . if it existed at all."

"They never could find it," Wilson responded.

"That's because it's still sitting in the lower desk drawer in Mr. Morris's office." Paul used the "Mr." to demonstrate respect, though the irony of that reference was not lost on him.

"What!" Wilson shrieked, making Paul wish he had closed the door. "Do you know what you are saying?"

"Only too well, sir. Only too well."

"How do you know that?" Wilson's face was contorted in frenzy.

"I saw him put it there."

"And you never said anything? Even when Calvin went to court?"

"I wasn't in court," Paul lied, "and I wasn't going to question Calvin Morris."

"But you knew he told the court the document couldn't be located?" Wilson pressed on.

"I heard that."

"And you did nothing."

"Til now," Paul sounded just a little self-righteous.

"At the worst possible time," Wilson exclaimed.

"Only if I'm right," Paul replied.

"What d'y' mean?"

"Well, if Mr. Morris did destroy the document there's no problem. It's only a problem if it's still in his desk drawer."

"So you don't know. You're just stirring up trouble as we stand on the threshold of victory."

"I'm sorry. I couldn't bear it any longer. I just didn't know. But I couldn't ignore what I did know. So I thought I should disclose my information to another partner. Keep it in the Stuyvesant & Main family."

"And you picked me?" Wilson was showing how recently he had been an associate.

"You were the lawyer who offered the testimony."

"Lucky me." Wilson rubbed his brow. "So now what?" Wilson looked to Paul for the answer.

"I think it's time to find out if the document exists," Paul sounded more certain than he had at any time since he had confronted this dilemma.

Wilson looked down at the pile of papers strewn across the desk, as if the answer lay there. Then he stared at a point on the wall over Paul's shoulder apparently for the same purpose.

"And I suppose you expect me to do the discovery?" Wilson looked resigned.

"He's your partner, sir. I think it would come with more grace from a colleague."

"I'm not sure we're operating at that level of subtlety, Paul," Wilson concluded the conversation. "Will you be around?"

"Yes, sir. I'll wait in my office." They left Wilson's office together.

It was more than an hour later that Wilson now reciprocated Paul's visit, filling the doorway to Paul's cramped single office with his lanky former basketball star's frame. Paul knew from the length of time Wilson had been gone that the rumors of the document's destruction were just that. This was confirmed by the look on Hank Wilson's face, particularly the red eyes.

"I've never seen a partner cry before, Paul. Never. And I hope I never see it again. Calvin Morris pulled the document out of his lower desk drawer even before I had said a word. Just reached down and mumbled, 'this is what you're here for,' then he collapsed into a ball and started weeping, talking incoherently. On and on about the pressure of the practice, the demands of the client, the fear of losing the biggest case he'd ever had to a competitor firm, his wife's breast cancer, his kids' college tuitions. It was so painful and embarrassing, for the first several minutes all I could do was close his office door to protect his privacy. If it had been a member of my family I would've cradled him in my arms. But, of course, that would not be appropriate for Stuyvesant & Main."

Paul was shocked. No scenario he had ever imagined included a contrite Calvin Morris, let alone one wracked by pain. What had happened to the tyrannical Calvin Morris, the vengeful Calvin Morris, the haughty Calvin Morris? Paul could barely muster conversation, nor could he think of what to say. He tried to say something inconsequential just to urge Wilson to continue the tale.

"After he went on like that for what seemed an eternity, he told me how relieved he was that the secret was out. For two years he had lived with turmoil, turmoil initiated by an inconsequential document

the client was embarrassed not to have destroyed. One he told them to produce; one the client blamed you for. But he explained that if anyone was at fault it was the client."

Paul couldn't imagine that the whole time he was being haunted by the Delaware Institute Report, a similar response was affecting cool Calvin Morris. The thought had never occurred to Paul that Morris had given the entire matter the slightest attention. What Wilson was providing was a glimpse of a Calvin Morris Paul could not dream of. "Now what?" Paul inquired, looking at Wilson with a renewed sense of sympathy for the partners at Stuyvesant & Main.

"Calvin offered to tell the judge, to resign from the firm, to withdraw from the practice of law. By the end I was worried that he might be suicidal. He was so despondent, contrite, and contorted with pain. But I told him the important issue at the moment was to correct the error, contain the damage, try to preserve the client's victory, and then worry about these other matters. I urged him to go back to the preparation of the closing argument, while I agreed to tell the client that we were about to notify the other side that the document had never been destroyed. And as soon as I leave your office, that's what I'm about to do."

"Can I help?" Paul asked. His own emotional turmoil, as if on cue, triggered nausea, pressure on his chest, and an inevitable race for the men's room.

"No, Paul, I think we can handle this. Perhaps it would be best if you left now, before you run into Calvin in the hall. Not that he's angry at you, but something tells me that won't be helpful at this moment. For either of you."

"Yes, sir," Paul answered. "I'll be outta here in five minutes."

With an emergency detour at the non-partner men's bathroom, Paul, true to his word, left 20 Exchange Place in just over five minutes, the cool air providing a welcome and needed palliative for his overwrought state. Did he really want to be present for any of the events that would now cascade from this morning's confrontation? Hardly. Should one voluntarily look at an auto accident? Only maudlin curiosity could be satisfied by such an activity. And yet . . . and yet Paul felt a special responsibility, one that had obviously been missing for the last twenty-four months.

But as the next few days unfolded, Paul found himself ensconced in his office busying himself with all those tasks he had assiduously ignored as the Morris team devoted full time to the last days of The Case. As a result, he was totally dependent on the rumor mill at Stuyvesant & Main, a reliable and almost instantaneous broadcast vehicle that was busily at work by 9:00 a.m. Monday, bringing reports of Paul's meeting with Wilson, Wilson's confrontation with a crying Calvin Morris, the call to the client that preceded the production of the Delaware Institute Report to the plaintiffs, and the frenzied

activity as all on the defense side prepared for the onslaught that would be unleashed at 10:00 a.m., caused by the use plaintiffs would make of the sudden appearance of the destroyed document. Damage control were the watchwords of the day, with little speculation of what might occur after the case was over. Even Paul managed to avoid focusing on his future as he prayed spontaneously that defendants would prevail, that is, until Harold Worthington stopped by just before lunch. Before Paul had so much as acknowledged his visitor, Worthington closed the door and drew up the one armless oak chair Paul had room for in his quarters.

"You know, that was a really cheap shot," Harold, one of the ten associates remaining in Paul's class, began.

"What d'y' mean?" Paul asked.

"Well, I thought we agreed as a group before we ran this damn gauntlet that we wouldn't be like the others. The class of '61 would help each other; no backbiting; no undermining. We would all simply excel and force this firm to make us all partners."

"Sure," Paul answered, "that's our deal."

"And now you broke it."

"Broke it? What the hell are you talking about? I've never . . ."

"Not until now," Harold interrupted. "Now, you've set yourself up so that they have to make you a partner with that cheap sucker shot at Calvin Morris."

"You've got to be kidding," Paul shot back. "Cheap shot? I tore myself apart over this issue. For months, years."

"You'll never convince your classmates here, chum, that's the case. We just met in the Stuyvesant conference room. All of us. Your timing is too exquisite. It's like public blackmail. How can they deny a partnership to the man who discovered Mr. Morris's ethical lapse? Christ, the *New York Times* will be watching what happens!"

Paul was flabbergasted. "Partnership? I'll be lucky if I'm still a member of the bar in six months at the rate things are going. Believe me, partnership was the last thing on my mind."

"I'll bet," Harold rose abruptly. "And to think we trusted you."

Before Paul could respond, Harold was out of his office with not so much as a goodbye. How could this be? Paul was on the verge of professional extinction, and he was being attacked for concocting a plot to assure himself of a partnership. Accused by the colleagues from whom he most needed support! But Paul's reverie was interrupted by the latest call from the front, a vivid detailed description of how plaintiffs' counsel had used the suddenly appearing document to create maximum dramatic effect. As reported by Albert Perry, the colloquy went as follows:

"Your lawyer told you the document you saw was destroyed, is that correct?"

"Yes."

"And that lawyer is Calvin Morris, sitting right here?"

"Yes."

"And you believed him."

"Yes."

"And you trusted him."

"Yes."

"Because he was the lawyer for the defense?"

"Yes."

"And he lied to you?"

"Apparently."

"Had the document been in his desk drawer the entire time?"

"Apparently."

"But he didn't tell you?"

"No."

"And that's because if you saw the document you would have reached a different conclusion: that the defendants conspired to fix prices costing the plaintiffs hundreds of millions of dollars. Is that correct?"

"No, not at all," Dr. Franklin stammered.

"We'll just let the jury decide that question, Dr. Franklin. No further questions," at which point plaintiffs' counsel sat down with a flourish, disdainfully throwing a copy of the Delaware Institute Report on defense counsel's table.

That testimony was followed by an equally devastating delivery of plaintiffs' closing argument in which the Delaware Institute Report was mentioned no less than twenty times, as "proof" of a conspiracy that continued up to the next to last day of trial. As a result, Paul was in no way surprised when the jury brought in a verdict for plaintiffs in less than three hours, for \$65,000,000, before trebling, and the award of attorneys fees; nor was he surprised when both the *New York Times* and *Wall Street Journal* provided front page coverage, featuring the miraculous "undestroyed" document as the key to the plaintiffs' victory.

A pall fell over Stuyvesant & Main, whispering in the halls replacing work like sulfur dioxide clears high school hallways. But after the verdict, no one talked to Paul. He didn't hear from Calvin Morris; he didn't hear from Hank Wilson; he didn't hear from any member of the Morris team; he didn't hear from any of his classmates. It was as if his phone had been disconnected, as if he had been placed in Coventry.

Paul was doubly happy, therefore, when he returned to his apartment to learn his dad, Father Carmen, and Professor Reece all had called, each sounding an appropriately empathetic tone. Calling

each back at least permitted Paul to talk to someone about the events of the last few days.

"It's outrageous, you know," one conversation began. "The plaintiffs had no case. The judge should have granted a non-suit at the end of plaintiffs' proof. And that damn Delaware Institute Report changes matters not one whit. It's irrelevant. Can you imagine what bearing a report compiled in the 50's could possibly have on this case? Dr. Franklin thought it would help enhance his theory, if only by analogy. And if the client didn't have this irrational obsession with the damn thing"

"Can you win on appeal?" Professor Reece asked.

"Who knows?" Paul answered. "Certainly, matters will look a lot less hysterical on a cold record months from now. But it is a jury verdict we have to reverse."

"Some burden," Professor Reece observed wistfully. "But if any firm can do it, your firm can."

"My firm? What an odd expression. Something tells me it's not my firm now, and it won't ever be. Not after today. Not after I created the biggest loss in firm history. What a way to make the record books"

"You didn't create anything. The clients brought this on themselves. Don't be too harsh on yourself. It's unwarranted and self-defeating. Please stay in touch, Paul," Professor Reece concluded, "and if you ever need me" The rest of the thought went unstated.

The next day's *Times* and *Journal* both featured the case yet again, not simply because it had precipitated a sell-off of oil company shares that sent the Dow Jones average down by two percent. Both stories talked of the "reincarnated" (*Times*) or "magically appearing" (*Journal*) document. The Stuyvesant & Main pain was heightened by speculation as to the likely result in the case had the plaintiffs not received this "gift" (*Times*) or had the defendants not "shot themselves in the foot" (*Journal*).

Whispering in the halls and discussions behind closed doors reached epidemic proportions, though Paul was excluded from both. Each time he encountered the gossip mill in full force, eyes were averted, the subject was awkwardly switched, or people simply walked away. It was not until Paul attended a neighbor's party the following Saturday night that he finally overheard the substance of at least one discussion of the case. He was deeply engrossed in a conversation with a red-haired beauty who had just moved to New York to join Ogilvy & Mather, watching with rapt attention as she rolled a joint, while continuing to chat non-stop about how excited she was to be in New York. As Paul tried to decide whether this woman was too zany for further interest, he picked up at some distance the name of his firm. Suddenly, Paul found himself in the bizarre situation of having

the rich acrid smell of marijuana exhaled into his face, feigning interest in some long tale of how Margaret from Toledo had chosen advertising as her career, and straining to catch the drift of the debate going on across the room. The participants were certainly lawyers and the focus of their discussion was whether Paul had independent responsibility for what had happened.

"You don't understand these New York firms... associates are drones... no life... no responsibility... partners are Gods," were snippets from the statements of one.

The response from a lawyer, dressed in a blue work shirt, probably a public defender, thought Paul, was similarly picked up in phrases. "Everyone's a lawyer... all take oaths... Nuremberg defense..."

Paul was so unnerved by what he heard that he quickly jettisoned his flirtation with Miss Midwest USA, excused himself and without saying a word, left the apartment for a long walk, doubling back an hour later to return alone to his apartment.

Paul was the first to admit fame was one of the lures to joining Stuyvesant & Main. But he could never have imagined this was how he would become a public figure, the object of attention for an ethical lapse. Worse, he recognized that he would be forced in the not-too-distant future with facing not just the bad publicity, but the substance of these issues. It was only a matter of time before the disciplinary authorities would investigate the charges that would inevitably flow from the reappearance of the destroyed document.

Yet so many months passed in silence, and Paul began to be able to go an hour without thinking about the issue. He was assigned to new matters, and since Calvin Morris took an extended leave of absence within a week of the conclusion of the trial, a new team was formed to whose work Paul eagerly dedicated himself.

Just as Paul had lulled himself into a state of merely modest anxiety, the Complaint was served—certified mail from the Second Department Disciplinary Counsel. Paul anxiously ripped open the envelope, consumed with curiosity as to the exact nature of the charges. "Respondent knew a lawyer lied to the tribunal and failed to correct the lawyer's misstatement when he knew it was false."

Paul had spent so much time constructing his defense that the litany of its elements raced through his mind. This he could defend, Paul thought, though he knew counsel would be required, counsel for which Stuyvesant & Main had assured him the firm would pay.

It was good counsel that Paul received. Daniel Coleman, a former chair of the City Bar's Ethics Committee, a frequent lecturer on topics of professional responsibility, met with Paul within days, coming to Stuyvesant & Main where Coleman and Paul spent hours in a small conference room. Coleman alternatively acted as lawyer and psychiatrist, constructing a complete defense to what had occurred and calming Paul's nerves as Paul focused on the thought that he

might actually be suspended, if not expelled, from the practice of law for his transgressions.

"I don't know what possessed me," Paul lamented. "My gut told me I should do something, but I was paralyzed."

"Now, now, Paul," Coleman responded, looking most sympathetic. "It was not your responsibility as a mere associate. You didn't lie to anyone. You didn't refuse to produce the document. There is no basis for challenging your conduct. If it weren't for you, the whole unfortunate situation would never have been disclosed."

"But if I had only acted earlier . . ." Paul's voice trailed off as he looked down at his tassel loafers.

"That's irrelevant. The point is you didn't have to act," Coleman explained, probably for the tenth time.

Paul knew Coleman was good, but Paul's regret and remorse plus the uncertainty of facing Bar charges, all coupled with the pain of sensing everyday he went to work that he was the object of pity and scorn, left Paul overwhelmed with disquiet. He was easily distracted, his finely-honed sense of humor had disappeared, and sleepless nights replaced his usual solid seven or eight hours of deep unconsciousness. Suddenly the noises of the Village, instead of lulling him into restful sleep, punctuated every hour of tossing and turning. Paul was sure he had not missed one passing siren in the last six weeks.

Paul's social life took a dramatic turn as well. He wasn't sure whether it was his own reluctance to call others that was simply being reciprocated, but the telephone seemed to stop ringing. Paul, a man who was either at work (most of the time) or out (the few days he got home at a decent hour), found himself at home alone far too many nights. Paul's quotient of trips to Bay Ridge on the F train soared as he used his folks both as succor at a time of strife and to fill in the gaps with home-cooked meals, though his Mom's excellent cooking did not generate the same robust effect on his appetite as it used to.

Coleman prepared a written submission to the Disciplinary Counsel that was a model of restrained advocacy, casting Paul as a hero in one sentence and as a victim of a large-firm, large-case hierarchy in the next. Paul read it with great interest, wincing only once or twice as he uncomfortably read a third person's writing about him. This was not the coverage he had deliciously contemplated when he hoped that someday his accomplishments might be heralded in a bar association publication.

The weeks of waiting for a decision did little to dull Paul's emotional pain. Each day he looked expectantly at his "in" box, hoping to find exoneration and, at the same time, dreading that it would contain censure, suspension, or worse. The anxiety-intense moment would pass, then Paul would go through the motions of another Stuyvesant & Main day, giving it his best, but recognizing that the enthusiasm just wasn't there.

When the decision finally arrived, Paul didn't learn of the result from the daily mail at all. Before the day's correspondence was even distributed, a telephone call from Coleman told him the good news. While the Disciplinary Counsel did not give Paul the ringing endorsement Coleman had predicted, the decision was good enough. "After thoroughly investigating the charges, disciplinary counsel has recommended that the file be closed." Coleman explained that these recommendations were always followed.

"Congratulations. Quite a victory I say," Coleman concluded the call. "You should feel completely vindicated."

"Thank you, sir," was the best Paul could muster. Paul didn't know quite what to make of his response to this news. It certainly didn't feel like any victory he had ever won before. He didn't even know whom to call. No one at the firm had discussed the matter from the time counsel was hired. Paul had never told his parents because he was so concerned that they would overreact. He hadn't even told Professor Reece, though Coleman and he had considered calling Reece as an expert witness, if it ever got to that, on the subject of New York law firm structure because Paul vividly recalled Reece's exegesis on the subject in their initial phone call.

Eventually, lawyers at Stuyvesant & Main were informed of the result, presumably from Coleman who no doubt sent some partner the decision along with his bill for professional services. Paul learned that because one of his classmates stopped by to congratulate him. In the ensuing days, only two other lawyers acknowledged the result. They, too, offered kudos for the fortunate decision. Yet the fact that only three people mentioned the exoneration served to reinforce the notion that this was anything but a triumph.

While the anxious peeks at the mail each morning were a thing of the past, Paul's state of mind remained mired in the doldrums as his flat affect mirrored his continuing depression. It was nice to know his license to practice law was intact, but that was certainly not sufficient to snap him out of his funk. Moreover, casting his eye to the horizon, he couldn't find what would. Paul smiled at the irony of Harold Worthington's view that his disclosure of the hidden document was a ploy for making partner. A partnership under these circumstances, as unlikely as it seemed, would hardly represent the coronation he had always dreamed it could be. No trumpets blasting; no congratulatory telegrams. If anything, it would be just a change of status behind closed doors as a footnote to an enormous jury verdict.

Paul also ruminated on how unflattering was the defense they had mounted to achieve this "victory." Paul the pawn, Paul the young intimidated associate, Paul the morally obtuse. While the New York associate defense certainly had the ring of truth for outside consumption, in the end it left Paul besmirched; he may have avoided the ultimate quicksand, but he had ended up badly muddled by his

evasive action. This wasn't how Paul had been raised. These weren't his values. He did not duck from the moral fray.

A long discussion with his parents did not help, as his father simply reiterated how he did not want Paul to go to "that fancy firm" in the first place. A call to Professor Reece, though comforting, did not lift Paul's spirits.

Paul's search finally led to a call to Father Carmen.

"Can I come see you, Father?" Paul inquired, feeling every bit the eight-year-old acolyte.

"Of course, anytime," Father Carmen replied.

"Now?" Paul sounded a note of urgency.

"Fine."

Paul was on the F Train in less than an hour, determined to solve his problem with the help of the good pastor. Thirty-five minutes later, Paul was seated on a hard maple chair across the crowded desk of Father Carmen, the late afternoon sun breaking through the leaded glass arched window to Father Carmen's right, bathing a portion of his desk and wall in rich white light. Paul brought Father Carmen up to date on it all, right through the disciplinary proceeding, the much appreciated resulting decision, and finally, his current malaise and uncharacteristic melancholy.

"Do you want to be a lawyer?" Father Carmen startled Paul with his first question.

"I certainly did," Paul replied.

"That doesn't answer my question," Father Carmen pressed on.

There was a long pause. Paul noted how perfectly the slender shape of the window was reflected on the desk and wall. Negative space, he thought, recalling art history class. "No. I do. Of course, I do. I love the law. Besides, what else would I do?" Paul hoped Father Carmen wouldn't suggest he become a priest.

"Well, you can't stay at Stuyvesant & Main. So you better think of what kind of law you wish to practice. And where. I don't know whether it will solve your present predicament, but I am certain that you've got to let go of that big firm dream."

As much as Paul had assumed he would never make partner, the thought of leaving before he was "up for partner" had never occurred to him. But as Father Carmen spoke the words, Paul realized he was right. "I know I could never go to another firm," Paul observed.

"There are other ways of practicing law, I am sure. Right in this neighborhood we've got thirty, maybe forty lawyers, helping people everyday."

The thought was so refreshing Paul could feel his shoulders lift slightly as the tension in the back of his neck abated. It was not the idea of practicing on Flatbush Avenue that inspired Paul, mind you,

but getting a clean start in a new office where Paul would not be just an associate in a New York firm.

"That's what I need, Father. A place where I can never again hide behind the judgment of others, where I am a full-fledged lawyer. I can recapture my dignity, use my skills, and help some people who deserve help."

"Now, Paul. All clients deserve help. But I think I'm right. A life away from Stuyvesant & Main is the right approach. That and coming to see us at St. Ignatius someday when you're not in trouble." Father Carmen rose and gave Paul a hearty pat on the back.

"Thank you, Father," Paul sounded his most earnest as he took his leave from the cloistered office. "I'll do that."

As Paul walked down Bay Ridge Avenue he felt a spring come to his step as he contemplated all the possibilities. An office on Court Street. A stint in the U.S. Attorney's Office. Working for that new Office of Economic Opportunity Legal Services Program. The possibilities were vast, if not endless. And just the process of considering them was lifting the burden from his shoulders.

REFLECTIONS

The two professors put down their issues of the Fordham Law Review.

"Didja read it?" Professor Cooper, the author of the story, inquired.

"What a monumental waste of time," Professor Arnow responded with disdain.

"What d'y' mean?" Professor Cooper shot back, obviously hurt.

"Reading that long story... Teaching ethics... This whole professional responsibility thing."

"Thanks a lot. First you attack my work. Then you attack my course. Next thing y'know, you'll recommend I teach legal writing."

"Would if I could."

"Let's take them one at a time."

"Fine."

"Why the jaundiced view toward ethics?"

"I don't think it's something we should be forced to teach."

"So it's the ABA mandate that bothers you."

"For starters. It's not a real course. At best, it ought to be taught pervasively—in other classes."

"How can you say that?"

"Easy. I didn't take it, and I became an ethical lawyer."

"By running off to the academy."

"No. While I was in practice. It was a couple of years y'know."

"But that was true of half the courses law schools teach today. Bet you didn't have a chance to learn common market law, computer law,

even environmental law back in those prehistoric days when mammoths stalked the earth."

"But is ethics a real discipline?"

"Well, we have a code; we have case law; now we even have a Restatement."

"Yeah. And you have a bunch of suspect opinions written by bar association flunkies who are anything but impartial when it comes to judging their fellow miscreants."

"Some of the best teaching materials can be found in those opinions; how dare you insult so many hard-working volunteers."

"You don't get pro bono credit for volunteering to protect your own turf. Moreover, ethics has no real giants—Prosser or Williston or Charles Allen Wright."

"True enough. But we're getting them. Maybe someday that's the way law students will talk of Hazard and Hodes, Wolfram, and Rhode."

"You know what it makes me think of? That little book you have to read before you get your driver's license. How far must you park from a fire hydrant? What does a double line down the middle of the road, solid on your side, broken on the other, mean?"

"Spare me the insult. This is much harder stuff."

"Fifty-four rules; precious few cases; it's hardly the heart of the law school curriculum."

"I say it should be."

"And why? May I be so bold as to inquire?"

"Because this is one of those key subjects where students deal with questions that relate to their own conduct. Like civil procedure."

"As opposed to?"

"Contracts, constitutional law, tax, all of which define the work of serving clients—clients entering into transactions, clients injured or alleged to have injured others, clients who want to order their affairs before they die."

"But lawyers are supposed to put the client's interests ahead of their own."

"You picked up some ethics along the way, whether you meant to or not. But just because that's true does not mean law students shouldn't demonstrate a little self-interest, learning how to conform their conduct to the applicable standards of the profession. And that's not the only reason."

"Really?"

"Tell me another course where lawyers study a topic whose content they can influence so profoundly once they are out."

"Hmmm . . ."

"See. I'm right. In ethics class, half the discussion can be on what the rule should be. Great debates can swirl over the proper scope of

confidentiality or whether screening lawyers is an effective way to solve conflicts problems."

"Interesting, yes; but do they really care?"

"They will if I can convince them that if they are interested in the rules and want to shape their future direction, when they're outta here, they can get involved directly in the rule-making process."

"Right. First-year associates telling state Supreme Courts how to amend the code."

"Well, maybe I went a little overboard. But in the long run, it's true. The rules are really written by lawyers, for lawyers, in a way the law of contracts certainly is not. Unless you're going on the Supremes, there may be no better way to influence the profession than by getting involved in rule debates."

"But for students this stuff is so abstract."

"I agree with you there."

"You tell a student the ethical crises are mostly caused by their own clients, and they look at you with a blank stare because they can't imagine having a real client who seeks their advice, let alone one that relies on them. And the notion that a client could cause a lawyer trouble just won't register."

"That's where the use of stories can help."

"But fiction?"

"Fiction based on fact."

"Now I know you treat ethics as a light-weight course."

"Nothing of the kind."

"It smacks of undergraduate school to me. Character; plot; the search for symbolism. We're training lawyers, not screenwriters."

"I know, I know. But if done correctly I think stories can be very effective. First, stories can help them understand that ethics is everywhere. It's not divorced from practice, but right at the heart of it. These questions arise daily. Take 'I'm Just an Associate . . . at a New York Firm.' Y'did just read it."

"I did. Not exactly a show-stopping title."

"Okay. I'll concede that, but it conveys my point. In the context of difficult discovery questions, I wanted to craft a story that helped teach Rule 5.2."

"The supervisory lawyer rule."

"That very one. You'll remember there was no similar rule in the Model Code."

"I guess that's right."

"Well, some say the origin of the rule was a case involving a New York associate in a major firm who knew the senior partner was lying to the court when he announced that certain documents were destroyed."

"Just like the story."

"Well, on that point, yes. And just like the story, the associate stood silent."

"Then what happened?"

"When the existence of the documents was disclosed, the associate escaped disciplinary action on the ground that he was just an associate . . . in a New York law firm."

"Again, just like the story?"

"Yes. But when that case occurred, the ABA commission, then amending the Model Rules, decided that lawyers couldn't escape responsibility just 'cause they worked for someone else. A lawyer is a lawyer is a"

"Not in New York."

"Well, surprisingly, New York did not adopt the rule right away. But almost everyone else did. So now the rule provides that an associate can stand silent only when the issue presented is a reasonable resolution of an arguable question of professional duty. Otherwise, the lawyer must act."

"And the story."

"Well, I tried to imagine how this could really play out. Just stating the basic facts of the relevant cases wasn't enough. You have a stark ethical dilemma. You decide whether the chosen course is reasonable. Not very exciting stuff."

"But if I could develop a character the students would relate to, one who had just traveled the path they envision for themselves, then they might better understand how the vectors line up—the interplay between the ethics rules and the economics of the practice; the relationship between partners and associates; the role of the client."

"Why set it in the 1960s?"

"I started with a contemporary story, but then I thought if I set it back when the original ground-breaking case occurred, at a similar firm with an austere senior partner, I could do two things: show how much the profession has changed and how much it is the same."

"Almost nothing's the same today, which is why I think students won't relate to it."

"Well, it is true the jobs are plentiful right now and the students quickly figure out that in the year 2000 they are in a seller's market. Still, in the beginning of the hiring process, these firms look like intimidating places. And they still are treacherous in terms of making partner, maybe even more treacherous than back then. Which means the partners are still forces to be feared."

"And that Italian Bay Ridge stuff. How hokey."

"Maybe. But it had a purpose. Now we take it for granted that white males of any ethnic background, by and large, have broken down the barriers. But the profession still faces the same issues for blacks, Asians, Hispanics, and we're not winning any awards among

women either. Not the way their numbers decline as they go up the seniority ladder. It's good for professional responsibility students to see how far we've come and yet how far we have to go."

"But you stated the problem in such stark terms, everyone knows what the partner did was unethical."

"That may be so in part and, as I teach it, I vary the facts to make the hypo more and more 'arguable.' But in some other ways, it's still quite complicated. Remember Calvin Morris is a partner . . . in a New York law firm; that status carries its own real politick."

"You better explain. All I see is a big shot doing the wrong thing."

"Well, think about this. The rule imagines an ideal situation where the matter is being handled by one supervisory lawyer and one subordinate, happily (or not so happily) working together. But that so often is simply not the case, particularly in large practice settings. Here, our associate is not working on the document production at all. He hasn't met the client. He hasn't prepared or signed any pleading. He doesn't go to court (except to sneak in the back). He barely even talks to the partner in charge except when summoned. He just knows what happened when he was asked to get the document back, an event he recalls with fear and trepidation."

"Such conduct itself may raise ethical questions."

"Now you are getting into the spirit of the story. Did he really act properly when he asked for the document back? How about when he watched the document ceremoniously deposited in the partner's desk drawer? But aside from that issue, this lawyer's duty is ambiguous because his role is not very clear."

"Also, he doesn't really know the facts. Maybe the document was destroyed."

"Which brings up another aspect that the story permits the teacher to highlight. It's easy to jump from reading the story to asking students how they imagine initiating certain conversations. With the story as a backdrop, you can ask the students to act out what they would say in various situations."

"Now we've gone from fiction to play-acting. I think you've proved my point."

"No. Stay with me. As soon as the students are asked to undertake certain roles, they then realize that some conversations are awfully hard to launch. They quickly recognize it's easy enough to write a rule; it's quite another to conjure up the discussion that will implement its terms. Take, for example, telling Calvin Morris that you know he lied. Or the conversation insisting that the partner must produce the document. Or the partner's call to the client itself delivering news the client doesn't want to hear. All are non-starters, particularly after the students focus on the fact that Paul Fortune has invested seven years of 2,500 billable hours each on becoming a partner himself."

"Your story just glosses over the real villain of this piece."

"That's true. I wanted the story to focus on what happened in the law firm. But you see, the client pressure that brought this on is sketched just enough to trigger a good class discussion. Big case. Important client. Successful partner. And the client says if that document is produced, they are going elsewhere—elsewhere where you know that the document will never be mentioned again. Even if the successor counsel calls to find out why the client departed, the tension is enormous."

"Is it realistic that the document involved isn't all that relevant?"

"That's the great irony. But for the client's paranoid attitude, this document is benign. Every litigator will tell you to produce the document and that they'll handle its marginal impact with no problem. But clients don't buy that. Otherwise they'd always be forthcoming . . . and we know that's not true."

"But don't produce it and if the truth ever does come out, there will be World War III."

"Precisely the lesson here. But the lawyer succumbed to client pressure, and I hope the story helps the students to recognize that such pressure is brought to bear all the time and lawyers do compromise as a result. This recognition can lead to an excellent discussion of how many of our lawyer obligations depend entirely on the integrity of the lawyer whose conduct otherwise is unreviewed and unreviewable. This is particularly true of discovery where the obligation to disclose so often runs into a conflicting duty to protect the client. It's easy to say the former trumps the latter, but in practice, the priorities don't seem so clear-cut. We all know cases can turn on whether one document is discovered or whether one meeting is revealed."

"You're right. Only the intervention of dad, the professor, and the parish priest saved the day here, and not every lawyer has such a capable trio available at times like these."

"Did it ever occur to you that he shouldn't have even been talking to his family about this?"

"No. I never thought of that."

"But it's another embedded issue that leads to a general discussion about pillow talk; about the need for associates to find a 'rabbi' or 'priest' within their law office with whom they can ethically share their troubles. It's also a great way of demonstrating why the Model Rules should be amended to explicitly let a lawyer consult an outside lawyer on an ethical matter."

"After this discussion, I wonder whether it's clear Paul had to do what he did?"

"Precisely where I wanted you to be right about now. As my class discussion ebbs and flows, I can really bring the students up short by

making the bottom line duty—did he have to do this under the present rule?—final question.”

“Well, I’ll grudgingly concede you had me sweating with him the whole time.”

“Then you’ll concede stories can be a useful educational tool?”

“Well, if we have to teach ethics, and we have to teach it in a separate course, and the students are bored . . . I suppose so.”

“I’ll take it. I’ll take anything I can get. So long as you’ll let me continue teaching ethics. And writing my short stories.”

Notes & Observations