

Scene 8

SETTING: The offices of the State Legal Ethics Board, two months later. The bare minimum necessary to convey this would be an ugly office desk and an ugly chair behind it, and an equally ugly one in front of it. If the production's budget will run to it, additional ways of making this point would be scuffed white walls with zinc switchplates and cheap skirting at foot level, and an inexpensively-framed law school diploma on the wall. No windows, no amenities. Maybe one little row of books on a single shelf attached to the wall.

AT RISE: As the lights come up, TRACY is escorting HARRY into the office.

TRACY

Welcome to our humble quarters. You'll have to forgive us. We public servants don't get the splendor the private sector enjoys.

HARRY

(neither disarmed nor amused)

That's not the half of it. We private sector lawyers never have to fuss with filling out requests for government discounts at seminars or bar functions. Plus there's the daily thrill of all the entrepreneurial risks we take. Not to mention how almost every day we get to laugh along at a mean-spirited lawyer joke someone just feels they have to tell us. And, no, they're never about government lawyers.

TRACY

(not smiling)

Of course. Please take a seat. You haven't brought counsel with you?

HARRY

What for?

TRACY

Because in a minute I'm going to place you under oath, and start making a record in connection with the complaint

lodged against you with this agency. Under our rules, because of the seriousness of these proceedings, you would have the right to be represented by counsel and to obtain the advice of counsel, subject to certain conditions.

HARRY

Yeah, well, I am a lawyer myself, or we wouldn't be here. I'll give myself advice as needed.

TRACY

Are you sure? Every Legal Ethics Board inquiry is a serious matter.

HARRY

And I'm a serious guy. Ask me your questions.

TRACY

Well, all right, then. You were advised.

(Takes a recorder of some sort out of his desk and turns it on.)

Test 123, test 123.

(Plays it back satisfactorily, then hits the record button again.)

This is Tracy Burkoff, Esquire, Special Investigator of the State Legal Ethics Board. It is Friday, the 6<sup>th</sup> of November, 2015. The State Legal Ethics Board is an organ of the State Supreme Court, empowered to investigate and report to the Court on possible ethical violations by licensed attorneys. This interview is being conducted as part of the Board's inquiry into an ethics complaint brought against Harry Moore, Esquire by Shelley Dobbs, Esquire concerning Mr. Moore's actions while defending Winston Wright, deceased, in an action brought by a client of Mr. Dobbs against Mr. Wright. Mr. Moore's conduct is under review for possible violations of Rules of Professional Conduct 3.4 and 8.4. Present with me is Harry Moore, the subject of the investigation. Mr. Moore, would you please raise your right hand?

(HARRY complies.)

You do swear or affirm that you will answer all questions truthfully, and tell the truth, the whole truth, and nothing but the truth, so help you God?

HARRY

I do, though you could leave out the God part. I'm no believer.

TRACY

Let the record reflect the witness has been sworn. Mr. Moore, I also note for the record that you are here without counsel. Can you confirm that you were advised of your right to bring a lawyer to this interview to assist and advise you, and that you have not brought one?

HARRY

That's true.

TRACY

And you've been advised that these are serious charges, and that you could face sanctions up to and including disbarment, and that the Board recommends that all respondents be advised by counsel?

HARRY

I have.

TRACY

I'm also advising you now that while Rule 3.4 only civilly forbids lawyers to obstruct access to evidence, conduct which violates Rule 3.4 may also constitute obstruction of justice, which is a crime in our state. While the Board does not enforce the obstruction of justice law, a consequence of a court finding that you had violated Rule 3.4 might be that the District Attorney would bring a criminal charge against you for obstruction of justice.

HARRY

I know that.

TRACY

And I'm further advising you that counseling suicide has been deemed a felony in our state. Again, if the charges against you were sustained, you might be charged with such a crime by the District Attorney.

HARRY

I know that too.

TRACY

And in light of the advice I have just given you, do you still wish to proceed without counsel?

HARRY

Yes.

TRACY

And you are aware that all statements made under oath are recorded and may be used against you in subsequent proceedings?

HARRY

I've been so advised.

TRACY

Let me also advise you for the record that whatever confidential communications may have occurred between you and your client are not confidential for purposes of these proceedings. The need of the public to regulate the practice of attorneys preempts the normal confidentiality of attorney-client communications. Do you understand that?

HARRY

Of course. I've already provided you with the entire file, paper and electronic. You have everything I have, and everything my colleague Barbara Bogert had in her file.

TRACY

I know. And you can assume that I have read everything I've been provided, as well as the answers you and Ms. Bogert provided to the Board's written inquiries. I also have your written statement to the effect that every statement of fact made by you in the documents provided to the Board is true, and that all documents provided to the Board are what they purport to be. Is that statement still correct?

HARRY

It is.

TRACY

So we can dispense with a lot of the tedious preliminaries. The focus of the Board's concerns is your dealings with Mr. Dobbs and the last discussion you had with your client.

HARRY

(drily)

I'm aware.

TRACY

Now, in the lawsuit that Mr. Dobbs brought on behalf of the insurer, the contention was that Mr. Wright had murdered his wife and committed insurance fraud.

HARRY

That was the contention. But there was never really much evidence to support it.

TRACY

You had already secured Mr. Wright's acquittal on criminal charges arising out of the same facts.

HARRY

Yes. Because there was never really much evidence to support the notion that Winston had murdered his wife.

TRACY

So the one person who really knew for sure was Mr. Wright himself?

HARRY

Mrs. Wright was no longer available so -  
(he checks himself)

- yes.

TRACY

You're an experienced litigator and trial lawyer, are you not?

HARRY

(no false modesty)

I am.

TRACY

And you know that Mr. Wright could not decline to testify in the insurance lawsuit?

HARRY

I knew that.

TRACY

And you also know that a skillful cross-examiner can sometimes force even a reluctant witness to tell the true story?

HARRY

I've done it often myself.

TRACY

So with your knowledge and your experience, you would certainly have realized that Mr. Dobbs stood an excellent chance of strengthening that weak case you say he had

against your client if Mr. Wright could only be put under oath and made to discharge his duty to provide his testimony?

HARRY

I'm not denying it.

TRACY

So you can see why Mr. Dobbs was perturbed when he came to negotiate a possible settlement, got nowhere, and tried to schedule a deposition of your client, and you refused to agree to a date?

HARRY

Shelley Dobbs was perturbed because he was a bottom-feeder and there wasn't much left to scavenge at the bottom of his pond. And you mention negotiation. Shelley Dobbs wasn't negotiating. Shelley Dobbs doesn't negotiate. Shelley Dobbs indulges in anger and rancor and personal attacks in times and places where a real lawyer would negotiate. Shelley Dobbs was perturbed because being perturbed is what Shelley Dobbs does, that's all.

TRACY

Are you denying that Mr. Dobbs asked you to agree to a deposition date for your client, and you refused to comply?

HARRY

I never refused to comply. I told him I wasn't going to agree to a date that day.

TRACY

Why didn't you agree?

HARRY

More than one reason. First and foremost, because Shelley Dobbs is a prick, and I wanted to pull his chain. I was going to give him a date eventually. Second, I thought maybe he'd take matters into his own hands and just note the deposition, which actually would have been okay with me, and save me the aggravation of having to negotiate one. Third, I was concerned about how my client might perform in a deposition. I was trying to buy some time.

TRACY

So you admit you were acting partly out of pique at Mr. Dobbs?

HARRY

Yes.

TRACY

Do you think that's the way an attorney ought to behave?

HARRY

Probably not. Have you always behaved the way an attorney ought to behave?

TRACY

I'm not the one answering questions this afternoon.

HARRY

And yet we both know what the truthful answer would be. In any case, there's nothing in the rules against pulling someone's chain when that person is annoying you.

TRACY

You also said, though, that you were trying to buy time. How much time?

HARRY

The deposition would have happened before the close of discovery. I was hoping to spend more time preparing Winston.

TRACY

Do you have any proof that you intended for the deposition ever to happen?

HARRY

I don't have any documents that prove it. But the circumstances would hardly have permitted any other outcome. If I'd failed to agree to a date or resisted when Shelley acted on his own by noting the deposition, Shelley would surely have asked the court to sanction us, and the court would have done it. And that sanction might well have meant in effect losing the case before a jury was even picked. We might have been barred from putting on a defense.

TRACY

I understand that your client was seriously ill. Were you not concerned that he might die before a deposition could be taken?

HARRY

I'm a lawyer, not a doctor. But he seemed in no immediate danger from what I could see. It wasn't an eventuality I was thinking about. My working assumption was he'd survive through the trial.

TRACY

So your response is that you and your client were boxed in? That you thought he was going to survive, meaning he had to testify, and you were afraid that if he did testify, he might weaken the defense, and you might lose the case, but you were also afraid that if he didn't testify, you'd lose the case that way too because of the sanctions the judge would likely impose?

HARRY

(not liking where this is going but  
determined to be direct and honest)

I guess that's right.

TRACY

And you knew this before Shelley left the room that day?

HARRY

That's true.

TRACY

And you also knew that if you could somehow get out of that box, the case was quite winnable?

HARRY

If we could get out of that box.

TRACY

That's a yes?

HARRY

(reluctantly)

Yes.

TRACY

Mr. Moore, did you advise Mr. Wright to kill himself?

HARRY

I did not.



TRACY

Did you discuss with Mr. Wright what might happen in the case if he were not there?

HARRY

Mr. Wright raised it as a possibility. I did not.

TRACY

What did Mr. Wright say?

HARRY

He mentioned his medical condition, and asked what would happen to the case if his medical condition made him unable to testify.

TRACY

And what did you say in response?

HARRY

I told him that under that hypothetical the prospects of winning at trial improved, and the settlement value of the case went down.

TRACY

Leaving him to draw the obvious conclusion that -

HARRY

For most people, there's nothing obvious about the conclusion you're suggesting. And I would add that there are no facts to support the notion that that was the conclusion he drew.

TRACY

As I read the medical examiner's report, Mr. Wright could have taken a deliberate overdose of barbiturates. You've read the report?

HARRY

I haven't.

TRACY

Well, I represent to you that that's what the report says.  
(Pause.)

So it's possible that Mr. Wright heard your advice that he kill himself -

HARRY

I advised no such thing.

TRACY

How would you characterize your advice?

HARRY

At his request, I summarized what I thought the impact of his absence for medical reasons might have upon the case and its settlement value.

TRACY

You knew what he was likely to do when he heard that advice?

HARRY

I don't even know what he did do when he heard that advice. All I know is that he's dead.

TRACY

Wasn't it predictable that if you told him that if he testified he was far more likely to lose than if he didn't that he would decide to end his own life to avoid being required to give testimony?

HARRY

No. People generally choose to lose their money rather than their lives.

TRACY

That's people in general. What about this person in particular, this client?

HARRY

I had no idea. He was a human being. Human beings are complicated. And I repeat: we don't know how he died. Anyway, what was I supposed to do, once he asked the question?

TRACY

What do you mean?

HARRY

Well, can we agree that I had a duty of candor towards Winston?

TRACY

(not playing ball)

You had a duty not to suggest that he destroy evidence. You had a duty not to counsel him to kill himself.

HARRY

(not to be stopped)

I will take that as a yes to my question. I had a duty of candor. He asked me an important question about the case. I answered it. I was duty-bound to answer it.

TRACY

(also not to be stopped)

But you knew, didn't you, that there was a good chance that if you answered that question the way you did, that he might respond by destroying evidence, namely himself?

HARRY

I did not know that. And even if I had known it, my duty would still have been to give the honest answer.

TRACY

So you're saying that when you said what you said, you were doing your duty?

HARRY

I am.

TRACY

Be the consequences what they might?

HARRY

That's right.

TRACY

Well, let's talk about consequences. Your firm was hired by Mr. Wright to perform an additional assignment, was it not?

HARRY

You're referring to a last will and testament?

TRACY

That's right. You were aware of that?

HARRY

I was.

TRACY

Who was the primary legatee?

HARRY

A boy named Greg LaFave.

TRACY

Who was young Mr. LaFave to Mr. Wright?

HARRY

Greg was - is Winston's son.

TRACY

Did Mr. Wright have any other sons or daughters?

HARRY

None that I know of.

TRACY

Are you aware of the size of the estate?

HARRY

Approximately three million dollars, I'm told.

TRACY

Which happens to be the same amount that the life insurance company wanted back from Mr. Wright?

HARRY

That's true.

TRACY

So that lawsuit was, in effect, a fight over young Greg's legacy?

HARRY

You could put it that way.

TRACY

I am putting it that way. Winston Wright wanted to leave a legacy to his one and only son. If the insurer represented by Mr. Dobbs prevailed, there would have been no legacy because the insurer would have taken it instead. That is the size of it?

HARRY

I think so.

TRACY

And you were aware of all this when you had that discussion with Mr. Wright?

HARRY

I didn't put it in those terms to myself, but -

TRACY

But you were aware of it?

HARRY

Yes.

TRACY

And you're telling me that when you gave him that advice, knowing how important that legacy was to Mr. Wright, that legacy to his one and only son, it never crossed your mind that he might decide to kill himself rather than testify?

HARRY

That's what I'm telling you.

TRACY

I find that hard to believe.

HARRY

I find it hard to believe I'm being held to account for answering a client question honestly. But nonetheless it's happening.

TRACY

(after staring at HARRY for a few moments)

Who wrote the will?

HARRY

My colleague Barbara Bogert, not me.

TRACY

How long have you known Ms. Bogert?

HARRY

We've been colleagues for at least twenty years.

TRACY

How well do you know her?

HARRY

(bluffly, not knowing what TRACY knows)

Very well. We're good friends.

TRACY

In your experience, is she a truthful person?

HARRY

(with a flicker of relief at the  
apparent direction of the  
questions)

A very truthful person. Barbara is the salt of the earth.

TRACY

(a flicker of malice)

And in fact she was your mistress for a while? While you  
were a married man?

HARRY

(staunchly)

Is that what you heard from Shelley Dobbs?

TRACY

It doesn't matter where I heard it. Is it true?

HARRY

I don't see what relevance this has to the complaint against  
me.

TRACY

It's relevant. I'm sorry to embarrass you, but -

HARRY

To use your phrase, I find that hard to believe.

TRACY

I'm still waiting for an answer.

HARRY

Yes. It happened.

TRACY

For how long?

HARRY

Two years.

TRACY

Did your wife know?

HARRY

I would have liked to have made a clean breast of  
everything. But that would have been self-indulgent.

TRACY

And were you ever deceptive to prevent your wife from knowing?

HARRY

(in torment)

Yes.

TRACY

Still?

HARRY

Yes.

TRACY

So we know that, notwithstanding the salt-of-the-earth talk, Ms. Bogert was someone who would break the rules and endanger some other woman's marriage. And we know that, for all your talk about your duty of candor, there's a subject about which you still lie to your wife. And this Board is supposed to believe your testimony?

HARRY

Yes!

TRACY

Why?

HARRY

The truth has a certain ring to it. And I've been totally truthful with you. If you're listening, you'll hear that ring. If you're not listening, then, I guess, you won't. But I have a duty of candor with you, just as I had a duty of candor to my client.

TRACY

And a duty of candor to your wife as well.

(Eyeing him with contempt)

Thank you, Mr. Moore. We're done for the time being. End of interview.

(Snaps off the recording machine.)

(BLACKOUT.)

(END OF SCENE.)