



524 West 57th Street, New York, NY 10019

Volume XX

Number 15

60 MINUTES

With CBS News Correspondents
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GETTING EVEN — Produced by Alan Welsman

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A FEW MINUTES WITH ANDY ROONEY

December 27, 1987

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Getting Even

MORLEY SAFER: If you ever felt you've been cheated or neglected by your lawyer and dreamed about getting even, pull your chair a little closer, you're gonna love this story. First of all, you're not alone. No less an authority than former Chief Justice Warren Burger once said he believed that perhaps half of all trial lawyers in the United States are incompetent. But what to do about them? Time was a lawyer could mess up your case or cheat you out of money and virtually nothing would happen. In the legal profession, the unwritten code of the club has been, "thou shall not sue a brother." But we found one attorney who has not only broken that code, he's made getting even his specialty.

[voice-over] Nothing offends Ed Friedberg more than a shoddy lawyer, and so like a

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fighter getting tough before a title bout, this 52-year-old California lawyer enjoys putting on his gloves and his game face to do what was once the unthinkable, sue other lawyers for malpractice. In the past 20 years or so, Friedberg's law firm has handled 39 malpractice suits on behalf of clients who felt their lawyers had either bungled their cases or cheated them. Of those 39, Friedberg says he won 37, worth more than \$12 million to his clients. He's made a handsome living and a not-so-handsome reputation among many of his colleagues to whom Friedberg is a recurring nightmare. Attorney Jerome Lewis.

JEROME LEWIS: He'll sue. If he has a— if he thinks he has a good case, he'll sue anybody, and I think that a lot of lawyers are afraid of him, yeah.

SAFER: Would you take his word for anything?

Mr. LEWIS: You want me to be perfectly honest, don't you?

SAFER: Mm hmm.

Mr. LEWIS: No.

SAFER [voice-over]: Attorney Rodney Klein.

[interviewing] You said of Friedberg, "He's vicious, he's a shark." How is he a shark?

RODNEY KLEIN: Well, a shark is an animal who lives in the sea and has no conscience and will eat anything in sight, including garbage cans.

ED FRIEDBERG: Well, if he's one of the fish in the sea, I'd just as soon be a shark, I guess.

SAFER [voice-over]: Friedberg insists that his unusual practice was not born out of any malice towards his profession. That, quite the contrary, when he hung out his shingle 27 years ago, lawyers were heroes to him.

Mr. FRIEDBERG: My mother kept telling me that I should become a lawyer, and I kept listening to "Gang Busters" on radio, and she kept saying that was the thing for me to do. It was just drummed into my head that I should be a lawyer, to be able to help those that need help. In other words, fight the battle for someone who can't protect themselves or fight for their own rights.

SAFER [voice-over]: But in the late '60s, Friedberg had to fight for his own rights. His ex-wife had decided she wanted more money than she had gotten from him in a divorce settlement, so she hired Jerome Lewis, a socially prominent Sacramento divorce lawyer, to try to prove that Friedberg had hidden some assets.

Mr. LEWIS: His first wife told me when she came and asked me to represent her, she said, "Everybody in town is afraid of my husband." She said, "I heard that you might not be." And I said, "Well, no, I'm not afraid of him," you know and I—

SAFER: You hadn't tangled with him yet.

Mr. LEWIS: I probably should have said that I— I was, you know.

SAFER: You think had you not tangled with him over that divorce in the very first place, you wouldn't have had any further trouble with him?

Mr. LEWIS: I— I really am convinced of that. He may deny that but I'm convinced of that.

Mr. FRIEDBERG: The case was— had no merit and I was offended that he would sue me, who was a nobody at the time, over such a claim, and ultimately we won the case. But the thing is, it took five years of litigation to win the case.

SAFER [voice-over]: He won but he did not forget. Friedberg waited and waited and waited for a chance to get even with Lewis. He saw himself as the poor nobody and Lewis as the establishment's upper crust. Lewis, after all, was president of the Sacramento Bar and later vice president of the California Bar Association. Filing a malpractice suit against him was unthinkable to everyone but Ed Friedberg. And when a former client of Lewis' charged that Lewis had failed to claim assets she was entitled to in a divorce settlement, Friedberg was only too happy to take her case, to sue Lewis for malpractice.

Mr. FRIEDBERG: And I was thinking, if I lose this case, they're going to ride me out of this town, you know, on a rail, and I'm going to be tarred and feathered. I mean, I was getting some bad vibrations from lawyers anyway. How can you do this to a

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colleague? Who the hell do you think you are? You know. He walked by the counsel table at a recess and he called me a fairy. That didn't bother me because that was—

SAFER: This was in open court.

Mr. FRIEDBERG: Well, no, it was at a recess, and he's walking by the counsel table and he says, "You fairy." And that was a novel accusation.

Mr. LEWIS: My terminology was "fruit." And the jury had left and I walked down and I said—

SAFER: With, I think, another adjective.

Mr. LEWIS: And there was another, rather descriptive adjective before that too, a heavy one.

SAFER [voice-over]: Both the jury and the appeals court found Lewis guilty of negligence and awarded the woman \$100,000, the largest legal malpractice award in Sacramento at that time. Friedberg then went after Lewis again, suing Lewis on behalf of another former client who claimed Lewis had fraudulently short-changed her in a probate settlement. Friedberg won that one too. Lewis is still cringing.

Mr. LEWIS: I was served with process the night of Christmas Eve at home when my lovely family was there. I— my wife was served on the day of my daughter's wedding with a subpoena to take her deposition, and there was nothing that they could get in her deposition.

SAFER: Not a gentlemanly thing to do.

Mr. LEWIS: Well, if— if it was an alleged gentleman, I would say that it was not a gentlemanly thing to do.

Mr. FRIEDBERG: Well, I wouldn't know when their daughter was getting married. I mean, you know, I don't know those things, you know. Christmas Eve, I've heard that, and it's quite possible we served somebody on Christmas Eve but I don't really recall the circumstances myself.

SAFER: I think you've said that if you get in there and beat a lawyer, if necessary you'll take his house and his car and, if possible, sell his wife as well.

Mr. FRIEDBERG: Absolutely. Well, he broke my client. What about my poor client who's destitute because of his fraud? I mean, who's going to have to pay the price? If he's liable, if that cost him everything, that's the way it goes.

SAFER: What about Rodney Klein?

Mr. FRIEDBERG: What about him?

SAFER: Would you hire Rodney Klein?

Mr. FRIEDBERG: Well, to do what? I mean, to sweep out my front lawn or something like that? Probably not.

SAFER [voice-over]: Rodney Klein handles personal injury, medical malpractice and product liability cases in Sacramento. But some former clients claim he either overcharged them or settled claims for less than they were worth. They hired Friedberg to sue Klein, not once, not twice, but three times and won more than three million dollars in settlements. Rodney Klein is not amused.

Mr. KLEIN: It is now the era of suing your lawyer. If you're not happy with the way he represented you, you go to another lawyer who may be able to outguess him. The errors that I may admit to were many times judgment errors, and they were the type of errors that, when you're in major litigation you're forced to have— to make every day. And there were— there's no allegation, never has been any allegation of any wrongdoing on my part.

Mr. FRIEDBERG: We've settled cases against him, and one of them is for the most outrageous fraud of a little girl who was almost totally blind, who has severe personality problems because of gross malpractice. And he handled her case and absolutely cheated her out of— turned out to be over \$293,000, which represents the overcharge of attorneys' fees plus interest for cheating this poor, crippled girl. Now the evidence in that case is absolutely gross, but yet I am— I am confident the state bar has done nothing.

SAFER: You admitted that you had conceivably overcharged by about \$100,000. Correct?

Mr. KLEIN: That— that's true and that was my error.

SAFER: But there was one case of yours where I think the total award is \$880,000, and you got a \$400,000 fee.

Mr. KLEIN: No, incorrect. It was 880,000.

SAFER: Poor baby.

Mr. KLEIN: Eight hundred eight thousand. One-third was awarded because the case was tried.

SAFER: And when Ed Friedberg sue you— sued you, he managed to get two and a half million out of you when you could only get 800,000 out of them.

Mr. KLEIN: Well, hurray for Ed.

SAFER: Rodney Klein and Jerome Lewis are still practicing.

Mr. FRIEDBERG: Right. And they will continue to practice in spite of fraud verdicts against both of them.

SAFER: There are about a hundred thousand lawyers in California and each year there are about 10,000 complaints against them, lawyers cheating their clients, lawyers mishandling cases, lawyers committing felonies and still practicing law. It's reached such an epidemic that the state has appointed a monitor to find out whether the responsibility for punishing bad lawyers should be taken away from the people who practice law.

[voice-over] That monitor is Robert Fellmath, who teaches law at the University of San Diego. He wrote a scathing report saying that the bar association cannot effectively police itself. He agrees with Friedberg that the woods are full of bad lawyers who go unpunished.

ROBERT FELLMATH: Well, they're bad in terms of abandoning clients, in terms of simply ignoring clients, from that and the range extends to misappropriation of client funds in a fairly gross manner and all gradients in between. I was very upset about the case of the attorney who was— who was dealing coke out of his office, telling everybody that it was a sanctuary and he couldn't be hurt there. And they— they did bust him and then he was— charged them with attempting to kill the state witness, and as a result of that, he was convicted and he served a sentence and he's out now and he's practicing and the bar is— the bar and the system, actually it's not just the bar, the bar and the supreme court together are trying to figure out whether or not there's— moral turpitude is involved. And I have a problem with any hesitation about the issue of moral turpitude in a situation like that.

SAFER: Every lawyer I know is going to say to me after watching this, "Yeah but everything— why did you just pick on the bad apples? Why did you just pick on the horror stories? That, generally speaking, the law does a good job." True or false?

Mr. FELLMATH: I'd say false.

SAFER: Ed Friedberg says if you have a problem with a lawyer, forget going to the bar, sue him. Good advice?

Mr. FELLMATH: No, go to the bar and sue him.

SAFER [voice-over]: But even when a client sues his lawyer and wins a settlement, neither the public nor the bar may ever know about it. Five years ago, Ed Friedberg, on behalf of a client, sued two prominent California attorneys for fraud and breach of contract. The attorneys settled out of court on condition that all the files of the case be forever sealed, that the entire matter be characterized as a contractual dispute and not a fraud case, and that everyone involved kept his mouth shut, keeping Friedberg from crowing about a big case he had won.

Mr. FRIEDBERG: And it's sealed by court order, and I cannot discuss it.

SAFER [voice-over]: But lawyers for 60 Minutes, arguing that the public has a right to know about such cases, succeeded in getting the files unsealed. And they showed that the two lawyers Friedberg sued had allegedly overcharged their client by almost a million and a half dollars. Robert Fellmath agrees the public should have access to such information, to protect itself from lawyers who may be guilty of wrongdoing.

Mr. FELLMATH: There probably should be a statute which requires all malpractice filings and all malpractice judgments to be sent to the bar automatically.

SAFER: Never mind the bar, what about us?

Mr. FELLMATH: Well, the public ought to be able to know what's going on too.

Mr. FRIEDBERG: Today, in this deposition, you're admitting that you were negligent in a number of things that you failed to do in handling their case.

1st MAN: I was trying to express just that thought. Yes, I do think that.

Mr. FRIEDBERG: You admit that here today here in this testimony?

2nd MAN: That's been asked and answered. You're badgering the witness.

SAFER [voice-over]: Ed Friedberg at work, taking a deposition from a lawyer who blew his client's case by letting the statute of limitations run out. The clients have retained Friedberg to sue him for malpractice.

Mr. FRIEDBERG: What is your explanation for why this case sat in your office for three years and there was no work done on it?

1st MAN: Mr. Friedberg, I have no good explanation. I have no excuses. My— the only thing I can say is that I was— I am very busy. That's one to look out for, *manana*, and I probably *manana'd* it one many too [*sic*] times.

SAFER [voice-over]: Many lawyers, like most doctors, are covered by malpractice insurance, but Ed Friedberg himself no longer chooses to carry insurance. The rates are too high, he says. Of course, Ed Friedberg is one reason they are so high.

Mr. FRIEDBERG: So I guess, in some respects, a lawyer who is willing to take legal malpractice cases and gets good results is going to, as an effect, increase the rates that lawyers are going to pay. So I guess, in some respects, I'm responsible, but the root cause of the problem is the lawyers who commit malpractice and fraud.

SAFER: But don't you have a certain advantage when you go into a court suing another lawyer and it's a jury trial and the jury — chances are in 1987 doesn't mind seeing a lawyer get beaten up?

Mr. FRIEDBERG: You bet. That's right.

SAFER: Lawyers don't have a great reputation.

Mr. FRIEDBERG: They've always had a bad reputation. Didn't Shakespeare say that all lawyers are asses or let's go out and kill all the lawyers? I mean, that was in Shakespeare's time.

SAFER [voice-over]: Friedberg won't say how much he makes from bruising his brethren, but his horse farm is a testament to his success. He generally takes one-third of whatever he wins for his clients and will only take cases in which he thinks the malpractice is fairly clear and the potential payoff is at least six figures. And like some soap opera, those old wounds and vendettas continue. Attorney Klein is currently suing Friedberg on behalf of a client who says Friedberg mishandled his personal injury case.

[interviewing] Do you think Klein might have taken this case because he saw Ed Friedberg's name?

Mr. FRIEDBERG: You bet I do.

SAFER [voice-over]: And Friedberg is currently suing Lewis for maliciously prosecuting him in yet another case.

[interviewing] Is it a personal thing between you and him? I mean, would you love to get him?

Mr. LEWIS: It's not as far as I'm concerned, honestly. I just want to get on and live my life. I don't—

SAFER [voice-over]: Where will it all end?

[interviewing] Can you blame the public for being disillusioned about lawyers when here we are, we're talking about the— these endless convolutions of lawyers suing lawyers suing lawyers?

Mr. FRIEDBERG: Well, it's not quite that endless. I mean, a lawyer fouls up and another lawyer sues him. Now if that lawyer who sues and fouls up, then you can have another lawyer sue him. I have a case like that too in which the lawyer who is suing the lawyer for malpractice let the five-year statute run and now I'm going to be suing him. So you're right. We've got three stages of lawyers involved. When will it end?

SAFER: And then he might sue you for malicious prosecution.

Mr. FRIEDBERG: Only if I lose the case.