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FORMING AN AGENDA—ETHICS AND LEGAL ETHICS

*Robert E. Rodes, Jr.**

When John the Baptist was preaching in the wilderness, he had, in addition to general exhortations to his whole audience, certain specific instructions for specific occupational groups.¹ Tax collectors and soldiers, the groups singled out for this attention, were not any better than other people; indeed, at the time, they were generally considered worse.² So, when we set out to develop specific standards of conduct for lawyers, it should not be because we think lawyers are or ought to be better than other people. And when we talk about setting professional standards, we should not insult generations of decent business people by trying to claim that a profession is in some way inherently better than a business. We are all put here to love and serve, and that is what we must do whatever occupation we do it in.

But lawyers, even more than tax collectors and soldiers, have their own special problems in loving and serving well. Our profession is unique in the scope of the mandate it gives us to intervene in other people's affairs. Not only do we have to deal with people in their most vulnerable moments; we keep having to interject ourselves into their dealings—often their acrimonious dealings—with each other. Whether we are lawyers, doctors, merchants, garage mechanics, or architects, it is important for us to remember that the people we deal with have a transcendent destiny not reducible to the professional ser-

* Paul J. Schierl/Fort Howard Corporation Professor of Legal Ethics, Notre Dame Law School. This was my Inaugural Lecture for my chair, and I wish to express my profound thanks to Paul J. Schierl for establishing it. I am grateful to Tom Shaffer and John Noonan for serving as commentators on the lecture and to the Editors of the *Notre Dame Law Review* for publishing it in an issue dedicated to Tom. My intellectual debts to him are too numerous and varied to be put into a footnote, but on this subject at least, they should be obvious.

1 Luke 3:10–14.

2 See generally E. Badian, *Publicans*, in *OXFORD COMPANION TO THE BIBLE* 631 (Bruce M. Metzger & Michael D. Coogan eds., 1993); Denis Bain Saddington, *Roman Army*, in *OXFORD COMPANION TO THE BIBLE* 656 (Bruce M. Metzger & Michael D. Coogan eds., 1993).

vices they require. But remembering this often raises special problems for lawyers. Some years ago, I sat as legal advisor to a medical panel that was adjudicating the hospital privileges of a certain podiatrist. One of the witnesses who appeared on his behalf was a younger colleague whom he had supervised during her clinical training. She took particular note of his having told her always to remember that there is a human being on the end of that foot. But if you are a lawyer, you have to remember that there are human beings on both ends of the foot, and one of them is apt to be getting his butt kicked.

Another peculiarity of our profession is the variety of people who come to us not knowing what they want, or wanting something they cannot have and needing to be content with something else, or wanting something harmful and needing to be persuaded to change their minds. The first thing a lawyer must do when a client comes in is work out an agenda for the representation. The agenda will be indeterminate until they determine it together.

Here, then, are the chief reasons why the morality of our profession requires a distinctive and somewhat complicated set of reflections. We deal with people who are in the process of interacting with one another and often interacting as adversaries. We act on behalf of clients who entrust us with their particular concerns. But being sworn into the bar and hanging a shingle on the wall does not exempt us from treating non-clients as human beings too. And in the tension between clients and non-clients, moral discernment is as much required in formulating our objective as it is in determining how we are to achieve it.

While the moral problems we encounter in our profession are often unique, the moral standards and intuitions we must use in solving them are not. By the time we get to be lawyers, we will already have used them and seen others use them often—treat others as you would have them treat you; love your neighbor as yourself; render to everyone his due; do not lie, steal, cheat, or throw stones; treat people as ends, not means; or, simply, this does not pass the smell test: it just isn't right.

These standards and intuitions are all objective. I suppose it is theoretically possible to adhere to a philosophy of strict moral relativism, and say that all moral judgments are simply matters of taste like liking or not liking parsnips—that the only thing wrong with genocide, child abuse, cutting old growth forests, or torturing stray cats is that many people happen not to like them. I know a good many people who talk this way from time to time, but I do not believe I know anybody who adheres to the philosophical principle in all its rigor. In

any event, I will continue to insist that moral judgments are a matter neither of taste nor of choice, but of discernment.

They are also universal, or, better perhaps, universalizable. In ethical theory, the Principle of Universalizability is this: to act morally is to act in a way that one would be willing to have everyone act under like circumstances.³ This principle is given as a definition: it tells us what we mean when we talk about morality. Accordingly, expressions like "my morality" or "your morality" or "someone else's morality" are contradictions in terms. Anything that is really morality is everybody's.

Of course, to say that moral principles and moral judgments are the same for everybody is not to say that everybody agrees on them; that is certainly not the case. Alexander Pope says, "'Tis with our judgments as our watches, none/ Go just alike, yet each believes his own."⁴ But even if nobody's watch is accurate, there is a right time. So there is a right way to behave, even if it is difficult to discern in many cases, and even if people often discern it differently. We must each of us still discern it as best we can.

For many lawyers, myself included, service to others and moral discernment are religious duties. But that does not make moral discernment the same as religious discernment. The distinction is important because many faith traditions recognize some privileged source of religious discernment within their foundation documents, the community of their believers, or the polity of their church. But only a few such traditions claim a broad sweep of privileged moral discernment. In my own tradition, Roman Catholicism, the higher echelons of the polity claim privileged discernment of a few principles of general morality that Catholic lawyers have to take into account in their practice. Some faith traditions go farther, but most do not go even as far.

3 See Onora Neil, *Universalism in Ethics*, in 9 *ROUTLEDGE ENCYCLOPEDIA OF PHILOSOPHY* 535, 535–36 (Edward Craig ed., 1998). See also Kant's Categorical Imperative: "Act only on that maxim whereby thou canst at the same time will that it should become a universal law." *MORALITY AND MORAL CONTROVERSIES* 27 (John Arthur ed., 2d ed. 1986) (quoting IMMANUEL KANT, *FUNDAMENTAL PRINCIPLES OF THE METAPHYSIC OF MORALS* (Thomas K. Abbott trans., 1873)). Whether this is a sufficient condition for moral behavior has been much debated, but it is generally conceded to be a necessary condition. See JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 107–08 (1980); Peter Singer, *Ethics*, in 18 *ENCYCLOPAEDIA BRITANNICA* 492, 507, 511 (15th ed. 1995). See generally R.M. Hare, *Universalizability*, in 2 *ENCYCLOPEDIA OF ETHICS* 1258, 1258 (Lawrence C. Becker ed., 1992).

4 ALEXANDER POPE, *AN ESSAY ON CRITICISM*, stanza 2 (1711), reprinted in *PASTORAL POETRY & AN ESSAY ON CRITICISM* 239–40 (E. Audra & Aubrey Williams eds., 1961).

For the most part, what lawyers get from their faith communities is a heritage of thoughtful—but not privileged—reflection, plus the example of good people leading good lives. But this is just what we get from other communities, including our neighborhood, our workplace, our bowling league if we belong to one, and our county bar. It is also what we get from other communities to which we do not belong. We get it either from friends or acquaintances, or from reading. My friend Tom Shaffer, who has thought profoundly and written eloquently about the role of communities in lawyers' moral discernment,⁵ has gained insights from the Anabaptist tradition through our Mennonite colleague John Howard Yoder,⁶ from Jewish tradition through reading rabbinical texts and talking to rabbis,⁷ from Italian-American lawyers through research for a book on the subject,⁸ from Victorian English people through reading Trollope,⁹ from leaders at the bar through reading Auchincloss,¹⁰ from working in an Indianapolis law firm,¹¹ and from watching *L.A. Law*.¹² The point is that right and wrong are common human concerns—a perception we embody philosophically in the concept of natural law. Because right and wrong are common human concerns, we can learn discernment wherever we can see human beings discerning them.

One other point about the faith community as a source of discernment—before we can follow the example of good people, we have to decide which people are good, which requires some initial discernment on our part. This is a more complicated task in the mainline churches, where a broad range of unreconstructed sinners are encouraged to come in and mingle with the good folks, than it is in the gathered churches where the applicants for membership are screened, or only good people are attracted.

Even when we have good examples to follow, we cannot follow them blindly. No one is good enough never to do anything wrong. No one is wise enough to discern right from wrong correctly every time. My own chief mentor as a lawyer was a crusty Congregationalist

5 See, e.g., THOMAS L. SHAFFER WITH MARY M. SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES* (1991).

6 See generally Thomas L. Shaffer, *The Jurisprudence of John Howard Yoder*, 22 *LEGAL STUD. F.* 473 (1998).

7 See, e.g., Thomas L. Shaffer, *Jews, Christians, Lawyers, and Money*, 25 *VT. L. REV.* 451, 460 (2001).

8 SHAFFER & SHAFFER, *supra* note 5.

9 See, e.g., Thomas L. Shaffer, *A Lesson from Trollope for Counselors at Law*, 35 *WASH. & LEE L. REV.* 727, 727 (1978).

10 See, e.g., THOMAS L. SHAFFER, *AMERICAN LEGAL ETHICS* 367–415 (1985).

11 See, e.g., THOMAS L. SHAFFER, *FAITH AND THE PROFESSIONS* 132–36 (1987).

12 See, e.g., SHAFFER & SHAFFER, *supra* note 5, at 30–31.

from Maine who had worked his way up from the claims department to be second to the General Counsel of Liberty Mutual Insurance Company. His name was Ashley St. Clair, and I am very pleased to mention him, because after nearly fifty years, I am still drawing on what he taught me about being a good lawyer, a good Christian, and a good person. He made it very clear to me that the object of an insurance company is to pay claims—that the reason we resist claims we do not cover is so we will have enough money to pay the ones we do cover. He was never more pleased with me than when I showed him he had misread a policy form. He was meticulous in his work, ingenious in solving problems, generous with praise and encouragement, and fair in everything he did. But one day he wanted me to do something I thought was wrong. The problem is a bit esoteric, but I will try to describe it, because esoteric problems are among the difficulties of moral discernment in our profession.

There was an automobile accident involving a man driving his sister's car. We insured the driver, and another company insured the owner. Under the standard auto policy, the other company would pay any judgment up to its policy limit, and we would pay nothing unless the judgment exceeded that limit. But we had inadvertently put the wrong endorsement on our policy. On the actual wording of the endorsement we were liable for half of the whole judgment. After some research, I found that we had a pretty good case for having the policy reformed to cancel the endorsement we had used and to attach the right one instead. The other company had no vested right to take advantage of our mistake. So Mr. St. Clair suggested that we just not tell the other company that we put on the wrong endorsement. Then they would think we had put on the right one and would pay accordingly, and a just result would be painlessly achieved. As I look over the old file, I am not sure that would have been so bad, but at the time I was worried about it. So I thought it over overnight. I asked my wife what she thought, but she was not familiar enough with the insurance business to understand the problem very well. She encouraged me to do whatever I thought was right. I asked a priest I knew, but I could not make him understand the problem either. Anyhow, after a difficult night, I went in with fear and trembling in the morning and told Mr. St. Clair that I could not do as he suggested, but felt I had to give the other company a copy of our policy as written. Being the man he was, he said no more about it. The moral of the story as I see it is twofold. First, you take your moral mentoring where you find it, and second, in the end you are on your own, alone with your conscience.

Conscience is by definition the faculty of the intellect for distinguishing right from wrong—the faculty of moral discern-

ment.¹³ Everybody has one. Lawyers and clients have one apiece, and, like Alexander Pope's watches, they may not always discern alike.¹⁴ In working out an agenda for your representation, you cannot defer automatically to your client's conscience, nor can you expect your client to defer automatically to yours.

The first thing to do is talk about it. Make sure you both understand the situation. In a morally ambiguous situation—and many situations we encounter in the practice are morally ambiguous—the worst thing we can do is form our consciences prematurely. For one thing, moral questions are often bound up with practical and prudential questions that have to be understood before any effective moral discernment can take place. In my case of the two insurance companies, moral discernment required a good deal of acquaintance with liability insurance. I told you that neither my wife nor the priest understood the problem. Did you? The last chapter of *Lawyers, Clients, and Moral Responsibility* by Tom Shaffer and Robert Cochran¹⁵ has a case where the clients want to know what to do about a proposed zoning change that would permit a home for mentally disabled adults to be established across the street from their house. Moral discernment required a careful canvassing of the alternatives, consultation with neighbors, and a visit to the prospective inhabitants. I have a friend who does child custody cases. For her, moral discernment calls for reviewing the living conditions and the parenting skills of everyone involved, and working with the client to arrive at the best possible arrangement to propose to the court.

This kind of discernment requires an openness between lawyer and client that does not seem to come naturally to either. People suddenly confronted with legal problems are apt to be disoriented, thrown off balance, unable to think beyond wanting their lawyer to make the problem go away. Lawyers at the same time are apt to barricade themselves with familiar professional categories behind a wall of familiar professional skills, and fail to address their clients' profoundest concerns.

Here is a case presented to a group of Indiana lawyers by a lecturer on mediation.¹⁶ The managers of a certain golf course were

13 Martin L. Hoffman, *Conscience*, in 7 *ENCYCLOPEDIA AMERICANA* 608, 608 (1986) ("In traditional theology, conscience is an innate or divinely implanted faculty enabling the individual to make correct judgments about moral issues.").

14 See POPE, *supra* note 4, at 239–40.

15 THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 116–34 (1994).

16 Terri Newman-Worrell, Lecture at Indiana Continuing Legal Education Forum (1993).

worried about people driving golf carts on their greens. They therefore put a six-inch-high fence around each of their greens. Soon afterward, one of the golfers tripped over one of the fences and hurt himself. His lawyer negotiated a highly favorable financial settlement with the club, took his percentage fee, and went home content. But the client went out again to play golf and was furious to find that the fences were still there. He already had plenty of money—it was an exclusive golf course—but he hated the fences. The lecturer pointed out that a good mediator would have found out that the injured golfer was more interested in getting rid of the fences than he was in compensation for his injury, and would have structured a settlement accordingly. But why should it have taken a mediator to do that? Why should the lawyer not have found out what the client wanted before setting out to negotiate?

A more serious manifestation of the same unfortunate mindset appeared in a documentary on pedophile priests that aired a few years ago.¹⁷ Time after time, when one of these cases looked as if it might have a legal dimension, the diocesan authorities turned it over to their lawyers, the lawyers said to stonewall, because that was the best way to avoid liability, and the diocese stonewalled because that was what the lawyers said to do. Nobody asked what approach to the problem would best carry out the pastoral mission of the diocese or meet the spiritual needs of the people involved. I believe the diocesan authorities were thrown off balance by the threat of a lawsuit, and the lawyers were thrown off balance by the potential for effective deployment of their forensic skills. Not all dioceses handled these cases that badly,¹⁸

17 I have a transcript of a *60 Minutes* segment that aired on May 15, 1994. I am not sure it is the documentary that I remember, but it makes the same point. *60 Minutes* (CBS television broadcast, May 15, 1994).

18 Mark E. Chopko, *An Interim Report of the General Counsel*, 39 CATH. LAW. 1, 3 (1999).

As lawyers in the [Diocesan Attorneys] Association, we have done much to restore trust, but we have much to do. In my view, we restore trust and renew faith and help bring our Church together by allowing our bishops to follow their best pastoral instincts. We cannot do that when we are preoccupied with the bottom line and advising “no comment.”

Id.; see also Mark E. Chopko, *Restoring Trust and Faith*, HUM. RTS., Fall 1992, at 22–23. Mr. Chopko is the General Counsel of the United States Catholic Conference. I am grateful to him for providing these references. He has pointed out to me in correspondence that many of the excesses of bottom line lawyering in these cases have been attributable to defense lawyers retained by the dioceses’ liability insurers. Under MODEL RULES OF PROF’L CONDUCT R. 1.8(f)(2) (2001), being paid by a liability insurer should not justify a lawyer in disregarding important client concerns other than the bottom line. But RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 134(2)

but enough did to make a pretty sad documentary in which our profession played a pretty sad part.

I believe that what the lawyers did or should have done in all these cases falls under the heading of moral discernment. In each case, the lawyer's job is to promote a fair, peaceful, and if possible, harmonious resolution of the difficulty, in accordance with the rights and as far as possible the legitimate wishes of everyone involved—to encourage the client to deal fairly with other people, and to require other people to deal fairly with the client. To do this requires profound moral discernment—all the more profound in that it is inextricably bound up with the prudential, psychological, and other aspects of the case.

But let us suppose that after the fullest possible discussion and a thorough examination of the alternatives, you and your client still do not reach a common discernment. Cases where this happens are probably somewhat out of the ordinary. There is no reason to suppose that the general run of your clients will not be as good and as perceptive morally as you are. Still, you may come to the point, as I did with my boss in the case of the two insurance policies, where the two of you see things differently. At that point you have to decide whether to buy into the client's agenda, terminate the representation, or threaten to do so unless the client will accept some agenda of yours.

In making decisions of this kind, standard Sunday school and catechism morality intersects with legal ethics. The principles governing your responsibility for what other people do wrong appear in the literature under the title of cooperation.¹⁹ There is nothing in either philosophy or theology to warrant not applying these principles to lawyers in the same way as to anyone else.

The principles are simple enough. Cooperation in wrongdoing, as the moralists define it, is anything you do to facilitate somebody else doing something wrong. If you recognize it as wrong, it does not matter that the person doing it thinks it is right. The cooperation is material if what you do enables the other person to do the wrong in question. It is formal if your very purpose in doing what you do is to enable the other person to do that wrong. For instance, if you help a client get a divorce because her husband beats her, you cooperate materially in whatever wrong she does by taking up with another man.

(2000) is more ambiguous. I gather that these conflicts of interest are in the process of being resolved.

19 See generally F.E. Klueg, *Sin, Cooperation in*, in 13 NEW CATHOLIC ENCYCLOPEDIA 245 (1967).

But if your object in getting the divorce is to help her get together with the other man, your cooperation is formal. Or suppose you negotiate a substantial personal injury settlement for a client who plans to contribute half his recovery to the local abortion clinic. If you negotiate the settlement because he has been injured and is entitled to the money, your cooperation with his support of abortion is only material. If you work especially hard for him so that the abortion clinic can expand its services, your cooperation is formal.

In any event, the rule is that formal cooperation in wrongdoing is always unacceptable, whereas material cooperation is acceptable for the sake of avoiding a greater evil or doing a greater good.²⁰ The greater evil formula gives a pretty clear answer in the case of the woman whose husband beats her.²¹ I am a little less comfortable in the case of the contributor to the abortion clinic, but I suppose that if it is a fair settlement, he is entitled to the money regardless of what he intends to do with it, and depriving accident victims of their rights is probably a greater evil than adding to the funds of an agency that will operate in about the same way whether or not it gets these particular funds.

When it comes to questions of justice, we are still bound by the same moral principles as anybody else, but we have special responsibilities in addressing the questions, first, because we are expected to bring professional expertise to bear on them, and, second, because we are expected to take part in a process for their authoritative resolution by the courts. It is the latter point that writers on the subject have in mind when they make periodic reference to our status as "officers of the court."²²

The reference generally appears in counterpoint with a duty of "zealous advocacy," to which lawyers are also obligated.²³ The counterpoint inheres in what is called the "adversary system," in which debatable questions of law or justice are to be dialectically resolved.²⁴

20 *Id.*

21 I wrote this before the Pope addressed the Roman Rota on January 28, 2002. Address of John Paul II to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota (Jan. 28, 2002), *available at* http://www.vatican.va/holy_father/john_paul_ii/speeches/2002/january/documents/hf/jp-ii_20020128_roman-rota_en.html. But after reading the transcript of his speech, I do not find it inconsistent with what I say. In saying "Pope John Paul II said . . . that civil lawyers who are Roman Catholic must refuse to take divorce cases . . ." Melinda Henneberger, *John Paul Says Catholic Bar Must Refuse Divorce Cases*, N.Y. TIMES, Jan. 29, 2002, at A4, goes too far.

22 See, e.g., MONROE H. FREEDMAN, UNDERSTANDING LAWYERS' ETHICS 9-10 (1990).

23 See *id.* at 65-86.

24 See *id.* at 13-42.

Each lawyer is to present considerations favoring his or her client. Then an impartial decisionmaker is to weigh all considerations presented and come up with a presumably just result. It is put this way in the Preamble to the *Model Rules of Professional Conduct*: "[W]hen an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done."²⁵

Fair enough if the case is really debatable. But I think you have to screen cases for debatability before you feed them into the process. Rule 11 of the Federal Rules of Civil Procedure,²⁶ the corresponding state rules,²⁷ and Rule 3.1 of the *Model Rules of Professional Conduct*²⁸ expect you to have a non-frivolous argument for any contention you raise regarding the law and fair evidentiary support for any fact you assert. In a number of states, including Indiana, the oath you take on admission to the bar goes farther.²⁹ That oath, derived from a form adopted by the American Bar Association in 1908,³⁰ binds you not to counsel or maintain any action, proceeding, or defense which shall appear to you to be unjust. That is, it requires you to deal justly regardless of what the law says. But even without the oath, it should be apparent that you have no business pursuing an objective that you recognize as unjust. Granted, if the question is debatable, it is your right, indeed, your duty, to bring forward your client's side of the debate. But if it is clearly unjust, you have no right to pursue it.

We need to add a warning: if your client's objective is a just one, you are bound by it. This warning is particularly needed by lawyers who serve poor people. They are shoveling against a very large tide with a very small shovel, and when it appears that a shift of their position could block a major injustice for many people instead of for just one, they are very tempted to make the shift.³¹ If a client agrees in advance to a test case or a class action, then Rule 1.2(c) permits you to carry out the agreement.³² Otherwise, while your client cannot ask

25 MODEL RULES OF PROF'L CONDUCT pmbl., ¶ 7 (1983).

26 FED. R. CIV. P. 11(b)(3), (4).

27 E.g., IND. TRIAL R. 11(A).

28 MODEL RULES OF PROF'L CONDUCT R. 3.1.

29 See IND. ADMISSION AND DISCIPLINE R. 22 ("I will not counsel or maintain any action, proceeding, or defense which shall appear to me to be unjust . . .").

30 See AM. BAR ASS'N, ANNOTATED CANONS OF PROFESSIONAL CONDUCT 128, 129 (1926). The ABA draft was changed in 1977 to eliminate the preclusion of unjust but legally tenable claims or proceedings. See "*Just Cause*" Clause Taken out of Oath, 63 A.B.A. J. 312 (1977).

31 See ARTHUR L. BERNEY ET AL., LEGAL PROBLEMS OF THE POOR 499-557 (1975).

32 See MODEL RULES OF PROF'L CONDUCT R. 1.2(c) ("A lawyer may limit the objectives of the representation if the client consents after consultation.").

you to promote an injustice, the choice between general and particular justice is your client's, not yours.³³

Rule 3.1 and the oath I have just mentioned both make special provision for criminal defense. In the words of Rule 3.1, a lawyer in a criminal case "may nevertheless so defend the proceeding as to require that every element of the case be established."³⁴ Criminal justice differs radically from civil justice in that in a criminal case the justice of the result is inexorably dependent on the justice of the proceeding. If someone steals my car and I sue to get it back, even if the thief's lawyer is drunk and the judge is illiterate, it is still my car, and a judgment returning it to me is just. But even though the thief ought to go to jail, it would be unjust to send him there after a trial conducted by that lawyer before that judge. Similarly, if someone steals my television set and I climb into his house through the window when he is not home and take the set back, I have not acted unjustly. But I have acted unjustly if I take him away and lock him up as a punishment. A criminal is not justly punished unless the elements of a crime have been proved against him in a proper trial.

This of course is the standard answer to the old cliché question about defending a person you know is guilty. However guilty a person is, it is unjust to administer punishment unless that guilt has been proved by admissible evidence in a fair trial. So your object in defending a guilty client is not to keep him from being punished, but to keep him from being punished unjustly.

There is extensive literature on how this principle plays out in practice. Can you put your client on the stand if you know he intends to lie?³⁵ Can you unleash the full force of your cross-examining skill to discredit a witness you know is telling the truth?³⁶ If your client brings forward witnesses to a spurious alibi, can you use them?³⁷ If the answer to any of these questions is "no," can you properly encourage your client to be frank with you regarding the facts of the case?³⁸ The prevailing interpretation of the rules permits the cross-examination,³⁹

33 Note particularly that clients who consent to class actions relinquish both their primary claim on the loyalty of the lawyer and their power to decide on the acceptance or rejection of a settlement. *Parker v. Anderson*, 667 F.2d 1204, 1211 (5th Cir. 1982).

34 MODEL RULES OF PROF'L CONDUCT R. 3.1. Indiana Trial Rule 22, after the language quoted *supra* note 29, says "but this obligation shall not prevent me from defending a person charged with crime in any case."

35 See FREEDMAN, *supra* note 22, at 109-41.

36 See *id.* at 161-71.

37 See *id.* at 123-24.

38 See *id.* at 109-14.

39 See STANDARDS FOR CRIM. JUSTICE § 4-7.6(b) (1986).

forbids the spurious alibi,⁴⁰ and adopts an uncomfortable compromise on perjury by the accused.⁴¹ Many of the criminal defense bar, if they had their way, would allow all three.⁴² They believe that frankness and trust between lawyer and client are essential to a fair trial, and that such frankness and trust cannot arise unless the client can be assured that nothing he tells the lawyer will adversely affect the lawyer's handling of the case.⁴³ Professor Monroe H. Freedman, a vigorous advocate of such a view, deals with the moral question of perjury by saying that the right to a fair trial is essential to human dignity, and human dignity is a higher value than truthfulness.⁴⁴ Some people who are not satisfied with that rationale point out that for many moralists the essential element of a lie is that it deceives someone who has a right to the truth and that, given the Fifth and Sixth Amendments, a judge and jury have no right to the truth from a criminal defendant or his lawyer.⁴⁵

For my own part, I am skeptical of the claim that human dignity is served by an honest person establishing rapport with a criminal through embracing the criminal's standards of veracity. Also, when it comes to cross-examining the truthful witness, I am concerned about the human dignity of the witness. Here is another element of the oath I have mentioned: "I will . . . advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged"⁴⁶ As will be apparent from what I have been saying, I do not interpret "justice of the cause" to mean the same as "favorable outcome." Accordingly, I would allow a fairly searching examination of the memory and powers of observa-

40 See *id.* § 4-7.6(a).

41 FREEDMAN, *supra* note 22, at 109-41.

42 See Comm. on Prof'l Responsibility, *The American Lawyer's Code of Conduct* ch. 1 (i)-(j), ch. 6 (The Roscoe Pound—Am. Trial Lawyer's Found., 1982), in *SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY* (Thomas D. Morgan & Ronald D. Rotunda eds., 2002) (discussing client perjury and spurious alibi, respectively). On the cross-examination, see *MODEL RULES OF PROF'L RESPONSIBILITY* R. 2.1, requiring the lawyer to "give undivided fidelity to the client's interests as perceived by the client, unaffected by any interest . . . of any other person"

43 See Comm. on Prof'l Responsibility, *supra* note 42, ch. 1 cmt.

44 FREEDMAN, *supra* note 22, at 96-98.

45 See 4 SAMUEL PUFENDORF, *ON THE LAW OF NATURE AND NATIONS* 457-90 (C.H. Oldfather & W.A. Oldfather trans., Hein & Co. 1995) (1688). The *Catechism of the Catholic Church* embodied this view when it was first put out: "To lie is to speak or act against the truth in order to lead into error someone *who has the right to know the truth.*" *CATECHISM OF THE CATHOLIC CHURCH* § 2483 (1994) (emphasis added). But the italicized words were deleted in 1997. See *Vatican List of Catechism Changes*, 27 *ORIGINS* 257, 262 (1997).

46 *IND. ADMISSION AND DISCIPLINE* R. 22.

tion even of a witness I knew to have observed and remembered correctly. But I would rule out attacking the honor or reputation of a witness that I knew was not being dishonorable or disreputable on the stand.

All this material about truth telling and perjury comes from criminal cases. In a civil case, if you know the truth about a matter, you have no right to put it in issue. Professional Responsibility Rule 3.1,⁴⁷ Civil Procedure Rule 11,⁴⁸ and the oath⁴⁹ are all to the same effect on this. It follows that your client will have no occasion to say anything you know to be false, because if you know it to be false, you should not assert it in the pleadings. And you should have no occasion to cross-examine a witness whom you know to be telling the truth because, if you know something to be true, you should not make your adversary bring forth witnesses to prove it.

Here is an obvious case.⁵⁰ Others, less obvious, will turn out on reflection to be morally indistinguishable from this one. Abraham Lincoln was representing the plaintiff in an action on a note. The defendant's defense was that he had already paid. Under the common law, that is an affirmative defense: the defendant has the burden of proof.⁵¹ In this case, he sustained the burden with a receipt signed by the plaintiff. Lincoln asked his client if he knew about the receipt, and the client said that he did but that he thought the defendant had

47 MODEL RULES OF PROF'L CONDUCT R. 3.1 ("A lawyer shall not bring or defend a proceeding or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous. . . ."). The rule goes on to say that "a lawyer for the defendant in a criminal case may nevertheless so defend the proceeding as to require that every element of the case be established." *Id.* I take this to mean that a lawyer for the defendant in a civil case may not so defend.

48 Under Federal Rule 11(b)(3), a lawyer's signature on a pleading constitutes a certification that "the allegations and other factual contentions have evidentiary support," or are likely to have such support after further investigation or discovery. FED. R. CIV. P. 11(b)(3). Federal Rule 11(b)(4) is to the same effect regarding denials. *Id.* R. 11(b)(4).

49 IND. ADMISSION AND DISCIPLINE R. 22 ("I will not counsel or maintain any action, proceeding, or defense which shall appear to me to be unjust, but this obligation shall not prevent me from defending a person charged with crime in any case. . . ."). As with Model Rule 3.1, the express exception for criminal cases indicates the breadth of the restriction in civil cases.

50 See FREDERICK T. HILL, *LINCOLN THE LAWYER* 239 (1906); 2 CARL SANDBURG, *ABRAHAM LINCOLN: THE PRAIRIE YEARS* 60-61 (1926).

51 See BENJAMIN J. SHIPMAN, *HANDBOOK OF COMMON-LAW PLEADING* 570 (Henry Winthrop Ballantine ed., 3d ed. 1923). I assume that the debt was evidenced by a sealed instrument, a "specialty"; otherwise, Lincoln's client would have had to testify that he had not been paid and could have been convicted of perjury on the basis of the receipt.

lost it. Lincoln walked out of the courtroom, and when the judge sent for him to come back and finish the trial, he said he was busy washing his hands. The case became known in Logan County as the Dirty Hands case. The principle it illustrates is that in a civil case a litigant has no right to raise an issue contrary to the actual facts of the case even though his adversary has the burden of proof, and he thinks his adversary will not be able to meet that burden. Today, of course, a case like this one would be disposed of by discovery before it ever got to trial. But you cannot even require your adversary to use discovery to establish something if you know that it is true.

None of what I am saying here calls for usurping the function of the judge. You are entitled to believe your client's account of the case unless experience or investigation makes it clear that he is lying. You are entitled to interpret the law in your client's favor unless there is overwhelming authority against your interpretation. And even if there is such authority, you are entitled to argue that it should be overruled. If a case is fairly debatable on either the law or the facts, your client has the right to have it decided by a court.⁵² Canon 30 of the *Canons of Professional Ethics* adopted by the ABA in 1908 puts the lawyer's obligation better, I think, than the more recent formulas do: a lawyer's "appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination."⁵³

In civil litigation, there are questions of just means as well as of just ends. Delays, oppressive discovery, frivolous motions, and the rest of the bag of tricks have all been discussed at length; I will not take them up here. I believe the bottom line is that you and your client are entitled to have the case decided by an informed and impartial decisionmaker. Nothing more. It is your job to see that all considerations favoring your client are presented as persuasively as possible to the decisionmaker. It is not your job to stop other legitimate considerations from reaching the decisionmaker, or to keep the decision from being made. No client can make it your job to do either.

52 The standard for factual assertions under Federal Rule of Civil Procedure 11(b)(3) is quoted in note 48, *supra*. Rule 3.1 of the *Model Rules of Professional Conduct* permits a "good faith argument for an extension, modification or reversal of existing law." MODEL RULES OF PROF'L CONDUCT R. 3.1. Rule 11(b)(2) of the Federal Rules of Civil Procedure is to the same effect, except that it requires the argument to be "non-frivolous." FED. R. CIV. P. 11(b)(2). I suppose an argument before a panel that had decided the other way last week could more easily be stigmatized with frivolity than with bad faith.

53 CANONS OF PROF'L ETHICS canon 30.

So far, what I have said both as to ends and as to means presupposes that the law itself is not unjust—that is, that a result fully in accord with the law and the facts of the case will be a just result. In fact, though, that cannot always be counted on. Lawyers who serve the poor are particularly apt to encounter cases in which their clients are being overreached or oppressed in ways that the law has not yet learned to prevent. I cannot help feeling that a certain amount of procedural creativity is appropriate in defending such cases, that a pro bono lawyer may legitimately defend such a case so meticulously that the paid lawyer for the other side finds it is no longer cost-effective to continue. My colleagues in Notre Dame's own Legal Aid Clinic have responded effectively in this way to the fact that health care providers tend to charge uninsured poor people much more than they charge rich people with insurance for the same work. My colleagues think this disparity is unfair. They try, therefore, to make the bill collectors prove in court exactly what treatment was administered and that the price billed was no more than reasonable. Do not misunderstand my point. Though I have advocated a preferential option for the poor in other contexts,⁵⁴ I am not claiming that the poverty of clients as such entitles lawyers to cut procedural corners on their behalf. In the unlikely event of a case arising in which the law unjustly favors the poor over the rich, it would be the rich person's lawyer who could properly seek to avoid a decision.

Lawyers who are in a class by themselves when it comes to creative dilatoriness are the anti-death penalty advocates.⁵⁵ They tend to feel that anything they can do to postpone the death of their clients is legitimate, as is anything they can do to run up the cost to taxpayers so that prosecutors will be reluctant to set capital cases in motion. If they are right in their discernment of the injustice of the death penalty, I cannot see that they are wrong in their response to it.

What I have been saying here is really pretty simple. It is that we who are lawyers have the same duty as anybody else to discern right from wrong, to form our consciences, and, having formed them, to follow them. Neither our education, our expertise, nor our unique relation to the power of the state authorizes us to do anything different. In forming our consciences, we have a special tradition upon which to draw and a special body of experience. And because we

54 See, e.g., ROBERT E. RODES, JR., *PILGRIM LAW* 91–111 (1998).

55 See Richard W. Garnett, *Sectarian Reflections on Lawyers' Ethics and Death Row Volunteers*, 77 NOTRE DAME L. REV. 795 (2002) (discussing the ethical dilemmas faced by lawyers representing inmates who elect not to pursue their appeals or who otherwise "volunteer" for death).

serve people who have consciences of their own, we have a responsibility to enter into careful and respectful dialogue with the people we serve—to be open to their moral discernment, as we expect them to be open to ours. But in the end, when our consciences are formed, we have to follow them.

Professor Freedman insists that the time to exercise your conscience is when you are deciding whether to take a case or not. That decision is a moral one, for which you “can properly be held morally accountable.”⁵⁶ But Freedman believes that once you have undertaken the case, although you may still try to form your client’s conscience through dialogue or persuasion, the final decision on any moral question that arises regarding the representation is for your client’s conscience, not yours.⁵⁷ The comment to Model Rule 1.2 is to somewhat the same effect. It says the lawyer “should defer to the client regarding such questions as . . . concern for third persons who might be adversely affected.”⁵⁸ Most of the time the Model Rules are susceptible to a morally acceptable interpretation, but here, I am afraid, they are not.

Freedman recognizes two alternatives to the position he takes. One, which he characterizes as at once amoral and standard, is “that the lawyer has no moral responsibility whatsoever for representing a particular client or for the lawful means used or the ends achieved for the client.”⁵⁹ The other, he says “holds that the lawyer can impose the lawyer’s moral views on the client by controlling both the goals that are pursued and the means that are used during the representation.”⁶⁰ While I feel that terms like “impose” and “control” are a bit tendentious, I think the last of these alternatives is a pretty fair statement of my position. Freedman rejects it because he thinks it curtails too much the autonomy of the client.

My problem with the first alternative, the one Freedman accepts, is that it violates the Principle of Universalizability. That principle, as I stated it earlier, precludes turning down a case on moral grounds

56 FREEDMAN, *supra* note 22, at 68.

57 See *id.* at 50–52.

58 MODEL RULES OF PROF’L CONDUCT R. 1.2, cmt. 1 (1983). A revision of the Model Rules proposed on November 20, 2000 by the ABA’s Commission on Evaluation of Professional Standards drastically alters the wording of this comment, and says that Rule 1.2 “does not prescribe how such disagreements are to be resolved.” ABA COMM. ON EVALUATION OF PROF’L CONDUCT, report 12 (2000).

59 Monroe H. Freedman, *The Lawyer’s Moral Obligation of Justification*, 74 TEX. L. REV. 111, 116 (1995).

60 *Id.*

unless I would be content if no lawyer took that case.⁶¹ I can turn it down on some other ground—I am too busy, I am not competent, or I just don't feel like it. But I cannot say it would be immoral to take it unless I would be willing for no one to take it.

Having rejected Freedman's view that moral judgments differing from those of the client may be made only at the threshold of the representation, I have to address the question of where else to make them. The question is easier to answer in some cases than in others. Every case is different, but I think I can offer a few categories that will cover most of the ground.

The first category consists of cases where some error or inadvertence on the part of opposing counsel would give a serendipitous benefit to my client if I were to take full advantage of it. Freedman gives an example where lawyers preparing a contract between their client and yours forget to take out of the document a clause favorable to your client that you had agreed after heavy negotiating to omit.⁶² An ABA ethics videotape on negotiation, *Valdez v. Alloway's Garage*,⁶³ has another example. An insurance defense lawyer negotiates a ridiculously low settlement with a scruffy plaintiff's lawyer because the plaintiff's lawyer does not know that the legislature has just done away with contributory negligence. In both of these cases, I would correct the other lawyer's mistake, and I would not feel I had to consult my client before doing so.⁶⁴ My client had no legitimate expectation that these mistakes would be made and, therefore, has no legitimate expectation that I will take advantage of them. For the same reason, I would make my own decision on how much slack to cut for an opposing lawyer who inadvertently missed a deadline. On the negotiation cases, I am supported by section 153 of the Second Restatement of Contracts, which makes a contract voidable for a mistake of one party known to the other.⁶⁵

Freedman seems to think that in these cases my client is improperly deceived if he thinks he has hired a sonofabitch and I am unwilling to be one.⁶⁶ I would respond that since no one has a right to be a sonofabitch, no one has a right to hire one, and since no one has a right to hire one, no one has a right to believe he has done so.

61 See *supra* note 3 and accompanying text.

62 FREEDMAN, *supra* note 22, at 51.

63 Videotape: Dilemmas in Legal Ethics: Negotiation (Am. Bar Ass'n 1984).

64 In fact, if I were the client in either of these cases, I would feel insulted if my lawyer asked whether to take advantage of another party in this way, and I would have serious misgivings about the lawyer's ethical standards.

65 RESTATEMENT (SECOND) OF CONTRACTS § 153 (1981).

66 See FREEDMAN, *supra* note 22, at 52.

My next category involves cases where the client's objective is a clear violation of commutative or one-on-one justice. If I pursue the objective, I will be complicit in the injustice. If I cannot get the client to agree to a different objective, I must withdraw. In most such cases, the decision can be made at the threshold. If a prospective client comes to me with an unjust objective, I will not take his case. Here, Freedman and I will both be satisfied. Freedman will say that I am not bound to implement the client's agenda because I never accepted the case.⁶⁷ I will be comfortable rejecting the case on moral grounds because I would be content if no lawyer took it. Here again the crucial distinction between civil and criminal matters comes to the fore.

But not all questions of unjust agendas can be dealt with at the threshold. You may start working on a case and only discover after investigation that your client's objective, although legal, is unjust. A friend of mine told me of a case in which she was retained to have her client appointed guardian of his mother's estate. This is generally an easy proceeding: a verified petition and an affidavit from a doctor are about all it takes. But my friend decided to interview the mother before setting this process in motion. On visiting her in her nursing home, my friend found her perfectly lucid and told her client that she could not in conscience proceed with the guardianship. As it turned out, the client sent her back for another interview. On this occasion, the mother was highly disoriented, so my friend went ahead with the guardianship. But note that both she and her client understood that it was her conscience, not the client's, that governed her participation in the case.

I am not sure the same principles apply when it comes to informing my client of the applicable law rather than taking action under it.⁶⁸ I can think of cases where I would refuse to raise defenses like minority or Statute of Frauds on behalf of a client, but I do not think I would feel free not to tell the client about them. On the other hand, going back to Lincoln's Dirty Hands case, I do not think I would tell the holder of a note that has been paid that if the debtor has lost the receipt he can sue to make him pay again.

In some cases it is a question of distributive justice or social justice that concerns us. These cases constitute a third category. Distributive justice is concerned with a fair distribution of common benefits and

67 See *id.* at 49–50.

68 See *id.* at 143–47. Freedman's analysis is persuasive. He, of course, applies it only where the client plans to do something illegal, whereas I would apply it in the same way to something unjust.

burdens among the members of the community,⁶⁹ social justice, with a right ordering of the institutions of society.⁷⁰ Unlike commutative, or one-on-one, justice, they cannot be implemented by an individual acting alone. If a law is unjust in either of these ways, your only clear obligation is to support appropriate initiatives for changing it. Until it is changed, you do not necessarily act unjustly by taking advantage of it if it operates in your favor the way it stands. What, if anything, you should do in such a case to make up for the underlying injustice of the law is very debatable and very case-specific. There is room here for moral dialogue between lawyer and client, but not for the lawyer to foreclose or supersede the client's decision.

Consider for instance this question, raised in an article by Professor Richard Wasserstrom: "Suppose a client can avoid the payment of taxes through a loophole only available to a few wealthy taxpayers. Should the lawyer refuse to tell the client of a loophole because the lawyer thinks it an unfair advantage for the rich?"⁷¹ Wasserstrom at least hints that the answer might be yes.⁷² Freedman takes strenuous issue because he believes that the decision, like all moral decisions that arise once the representation has been undertaken, belongs to the client not the lawyer.⁷³ Here, I agree with Freedman, although for rather different reasons. I believe Wasserstrom misstates the issue. The fact that a tax loophole should not exist does not put a taxpayer under a moral duty to give the government more money than it asks for. If I think I am not contributing my fair share to the common burdens of society, I will increase my contribution to the United Way or to Catholic Relief Services. I will not make a gratuitous contribution to the Internal Revenue Service. If I were to find a tax loophole that was egregious enough, I might suggest that my client should contribute the savings to some worthy cause. But I would make the suggestion only with great diffidence.

A comparable matter came up on one of my occasional ventures into the real world. A client of the firm I was working for had been using an industrial process that turned out to be carcinogenic. They had not used the process for some years, but the particular cancer took a long time to develop and was only then beginning to appear. I found that, under the occupational disease law of that state, diseases

69 See generally Brad W. Hooker, *Justice*, in CAMBRIDGE DICTIONARY OF PHILOSOPHY 395 (Robert Audi ed., 1995).

70 RODES, *supra* note 54, at 14-17.

71 Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1, 7-8 (1975).

72 *Id.* at 12-13.

73 FREEDMAN, *supra* note 22, at 45-46 nn.56-57.

were not compensable if more than seven years had passed between the last exposure and the first onset. As a result, our client was off the hook with respect to practically all victims of its process. After explaining this to the officers of the client, I added that even though they had no legal obligation, they might want to do something for people who had incurred a major risk of cancer working for their company. They thought that was a good idea and made suitable arrangements.

I think it was important for me to make this suggestion, because when people come to consult lawyers they tend to lock themselves into a legalistic mindset from which you have to extricate them before their normal processes of moral discernment can take hold. If the client's officers had decided not to do anything for the cancer sufferers, I would have been disappointed, but I don't think I would have regarded them as unjust. This case involved social justice, as the tax case involved distributive justice. In a rightly ordered society, employers will pay the costs of industrial diseases and pass them on to users of their product, for the health of the worker is part of the cost of the product. Social justice calls for adopting arrangements to make this happen. But what the employer should do when no such arrangements are in place is, again, debatable and case-specific. There is room for moral discernment and moral dialogue, but no justification for the lawyer's discernment superseding the client's. Furthermore, in a case like this, there would be no way for the lawyer's discernment to be implemented unless the client agreed with it, nor would the lawyer be complicit in anything the client decided to do or to leave undone.

This brings me to my final category of cases—those in which, as in the ones I have just taken up, the moral discernment is debatable and case-specific, but the nature of the representation is such that the lawyer is inescapably complicit in the final outcome. The case that comes most readily to mind is child custody. In such a case, you may be far into the representation before you get a clear picture of the different personalities, lifestyles, and home situations of all the people involved. When you do, you may find that your client is seeking in all good faith an outcome that you believe would be disastrous for the child. What is needed to be prepared for this possibility, is an upfront use of Rule 1.2(c) at the beginning of the representation.

Rule 1.2(c) says, "A lawyer may limit the objectives of the representation if the client consents after consultation."⁷⁴ It can be used

74 MODEL RULES OF PROF'L CONDUCT R. 1.2(c) (1983). The revision referred to in note 58, *supra*, would change this wording without making any significant change in its effect.

for cases where the lawyer feels competent in only one aspect of what the client needs, where the lawyer works for a legal aid office and only part of the case is within its guidelines, or where the lawyer is conflicted out of some aspect of the case. It can also be used, I believe, to reserve for the lawyer the right to part company with the client if their consciences should become irreconcilably opposed.

The trick is to gain the consent required by the rule without addressing the subject in a way that the client will find either priggish or threatening or both. Perhaps the best approach is to recognize that you and your client both have consciences and that if a disagreement should arise you must follow yours. I think that can be put to the client with dignity and respect. I have only handled two child custody cases, and I think I blew both of them, so I cannot speak from experience here. But I think if I were to start now on a child custody case, I would probably begin with something like this: "I believe that in a case like this the child has to be our first priority. We are now in agreement on what's best for the child, and that's what I'm going to work for. I hope that as the case develops we will keep on being in agreement. But if it should come to the point where we really can't agree, I might have to pull out." I do not know how good that sounds in this context, but I think that in a real case with a real client I could put it in a way that the client would accept and, thereby, keep my option open under Rule 1.2(c).

This brings me to the end of this brief survey of my thoughts on the subject in which I am newly chaired. I have tried to show that we lawyers have the same responsibility as anyone else to practice moral discernment, to form our consciences, and, having formed them, to follow them. In carrying out this responsibility in our professional lives, we have to recognize that our clients have consciences too. As the formation of one's conscience is a matter of rationality and discernment, differences between people's consciences can often be worked out in dialogue. If they cannot be, I have suggested that the line between your client's conscience and your own gets drawn differently in different kinds of cases.

In all this, I have freely used Professor Freedman as a person with whom to disagree. He is a good choice because he is always thoroughly decent and thoroughly lucid even when he is, in my opinion, thoroughly wrong. Our disagreement is basic, which is why I bring it up in conclusion. He is profoundly committed to human dignity. Here is what he offers as a summary of his approach:

One of the essential values of a just society is respect for the dignity of each member of that society. Essential to each individual's dignity is the free exercise of his autonomy. Toward that end, each

person is entitled to know his rights with respect to society and other individuals, and to decide whether to seek fulfillment of those rights through the due processes of law.

The lawyer, by virtue of her training and skills, has a legal and practical monopoly over access to the legal system and knowledge about the law. The lawyer's advice and assistance are often indispensable, therefore, to the effective exercise of individual autonomy.

Accordingly, the attorney acts both professionally and morally in assisting clients to maximize their autonomy, that is, by counseling clients candidly and fully regarding the clients' legal rights and moral responsibilities as the lawyer perceives them, and by assisting clients to carry out their lawful decisions. Further, the attorney acts unprofessionally and immorally by depriving clients of their autonomy, that is, by denying them information regarding their legal rights, by otherwise preempting their moral decisions, or by depriving them of the ability to carry out their lawful decisions.⁷⁵

I say in response that the free exercise of autonomy is not essential to any person's dignity. Human dignity is inherent and indestructible. The only thing essential to it is to be human. But, while human dignity cannot be lost or taken away, it can be disrespected; it can be belied. It can be belied by what people do to themselves in the exercise of their autonomy or by what other people do to them in the exercise of theirs. It can be belied by coercion, or it can be belied by choice. It can be belied by a lawyer who will not help you collect your medical insurance or by a lawyer who will help you collect an exorbitant price for shoddy merchandise.

There is no magic formula for intervening in other people's affairs. If I were to put in one word what is required, it would be reverence. Reverence for whole human beings cannot be reduced to reverence for their autonomy or for any other separate aspect of their whole being. Your license to practice law does not authorize you to reduce it in this or any other way. Nor does it authorize you to express reverence for one person—even your client—at the cost of the reverence you owe all the other people whose lives you touch. It is complicated guiding our clients through a maze of conflicting demands, giving due reverence to everyone involved, ourselves included. But we are lawyers, and complication is what we do.

75 FREEDMAN, *supra* note 22, at 57.