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Five Lessons for Practicing Law in the Interests of Justice

Cover Page Footnote

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FIVE LESSONS FOR PRACTICING LAW IN THE INTERESTS OF JUSTICE

*Fred C. Zacharias**

I entered law school prepared to change the world for the better. The Civil Rights era in the United States, during which I was raised, had taught us that law was the prime tool for social evolution. Contrary to many of my classmates, I held firm to my desire to “practice in the interests of justice.”¹ I became a criminal defense and then a public interest litigator.

By the time I entered academia in the next decade, my perspective had matured. Foundation support for public interest law had eroded to virtual insignificance. Republican appointees to the bench stood squarely opposed to the use of law for societal change. Corporate America² and the Reagan Administration³ had proven beyond a shadow of a doubt that legal institutions developed for progressive reform can be used in the opposite direction as well.

In short, I had learned the first two lessons of lawyering for justice. First, law is not inherently good or evil. It is what we make of it, individually and collectively. Second, and far more significantly, I learned that we lawyers—even well-meaning lawyers—must accept our own insignificance. There is only so much that most of us can hope to do, through our practice, to bring about justice.

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1. This paper responds to a question posed to symposium participants, “What does it mean to practice law in the interests of justice in the twenty-first century?” The question itself is predicated on the title of Deborah Rhode’s recent book, to which I respond in the latter half of this paper. Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* (2000).

2. Fred C. Zacharias, *Reconciling Professionalism and Client Interests*, 36 *Wm. & Mary L. Rev.* 1303, 1321-25 (1995) (describing corporate America’s use and transformation of developments that occurred in litigation as a result of liberal Warren Court decisions).

3. See, e.g., Wash. Council of Lawyers, *Reagan Civil Rights: The First Twenty Months* (1982) (identifying changes in the goals of the affirmative litigation offices of the U.S. Department of Justice in the Reagan administration), *edited version in* Robert Plotkin, *Reagan Civil Rights: The First Twenty Months*, 1 *N.Y.L. Sch. Hum. Rts. Ann.* 117 (1983).

Along the route to this understanding, I learned several other lessons. The dream of every young criminal defense lawyer is to champion the rights of falsely accused suspects. One cannot practice criminal law without accepting that one's everyday function is not to defend the innocent. In most criminal cases, innocence is not even in question.

Once defense lawyers accept their own "insignificance" in the grand scheme, they learn to focus on the little things. Achieving *justice for one's client*, as opposed to achieving justice in the global sense, becomes the core. This justice does not necessarily mean exoneration of clients, nor does it ordinarily run counter to societal interests. Defendants and their actions reflect shades of guilt, responsibility, and need for punishment. For the lawyer, the quest for client justice requires doing the small things: obtaining information that might justify release on bail; finding diversion and sentencing alternatives; arranging incarceration in a location close to family. My rule of thumb—my third lesson for practicing law in the interests of justice—became an extension of the lesson of insignificance: a lawyer should strive to do at least one thing to improve the lot of each client that other lawyers might not do.

When one practices in an adversarial system—and I have no expectation that America will scrap the adversarial system anytime in the near future—I think that one has to accept most of Monroe Freedman's premises.⁴ It would be nice to believe that we can reconcile societal good with client interests, but that simply is not always possible. As a result, we need to rely on the legal system, at least to some extent, to rein in some of the worst results that our activities might produce.⁵ At root, for any system based on partisan advocacy to work, the lawyer's core job *is* to ally himself with his clients. It *is* to give effect to clients' autonomy by helping them make choices within the legal system. These premises hold true within the paradigm of criminal litigation and in other contexts as well.⁶

4. See generally Monroe H. Freedman, Understanding Lawyers' Ethics 123 (1990) (justifying a strong partisan position by advocates in the adversary system); Monroe H. Freedman, Lawyers' Ethics in an Adversary System 3-6 (1975) (discussing reasons for the lawyer's "obligation" to impose barriers to the discovery of truth); Monroe H. Freedman, *Professionalism in the American Adversary System*, 41 Emory L.J. 467, 470 (1992) (defining professionalism as serving client ends and assuming that "the fact that the lawyer is earning a living through the legal profession is immaterial").

5. One example from the criminal context is the obtaining of acquittals of truly guilty and dangerous defendants.

6. See Fred C. Zacharias, *The Civil-Criminal Distinction in Professional Responsibility*, 7 J. Contemp. Legal Issues 165, 182-84 (1996) (questioning common distinctions between civil and criminal settings for purposes of professional responsibility analysis); cf. Rhode, *supra* note 1, at 51 ("The degree of partisanship appropriate for criminal proceedings is not necessarily justifiable for civil litigation.").

But the need for some partisanship does not mean, to paraphrase Lord Brougham's words, that the lawyer must "know no one other than his client."⁷ What drove me from the practice of law into academia was an incident that exemplified the failure of lawyers to recognize their own responsibility for client actions that harm others. My firm represented dissidents of a labor union that we alleged had become infiltrated and controlled by organized crime. At an early deposition, one of our main witnesses, an honest union vice-president, testified to our surprise that he had never met with us, had never told us of corruption in the union, and, in sum, knew nothing relevant to the case except that he had found a dead pigeon inside his locked car.

What disturbed me so much was not that our witness had been scared into perjuring himself. Given the nature of the case, we were prepared for the possibility that such events might occur. I was, however, horrified to observe the attorneys for the union officers—members of one of Washington, D.C.'s most revered law firms—laughing at the deposition testimony and slapping themselves on the back for their good fortune. There was no doubt they knew what had happened (though I have no reason to believe they had participated in the wrongdoing), and they were happy about the events.

Soon thereafter, I packed up my bags—disillusioned with lawyers and the practice of law, and armed with my fourth lesson. As insignificant as lawyers may be, as limited as their functions sometimes are, the extreme extension of Monroe Freedman's paradigm is wrong.⁸ Lawyers do bear at least some responsibility for actions of their clients that are unambiguously wrong or injurious to others.⁹ I entered academia as idealistically as I entered law school, firm in my intent to pass on these lessons to students and to include in my writings suggestions that lawyers are not, and should not be, pure hired guns.

This self-indulgent history brings me to the question of this conference: What does it mean to "practice law in the interests of justice in the twenty-first century?" The four lessons that I have mentioned should make my initial reactions to the question obvious. For most lawyers, it would be a mistake to accept the question on its

7. See 2 *Trial of Queen Caroline* 8 (J. Nightengale ed., 1821) quoted in Stephen Gillers, *Regulation of Lawyers* 17 (5th ed. 1998) ("[a lawyer] knows but one person in all the world, and that person is his client").

8. Here, I do not refer to Monroe Freedman's actual position, for he is careful to note that lawyers have a responsibility to engage in moral dialogue with clients and to consider initially whether to accept representation. Instead, I refer to the total client orientation, without regard to societal and third-party interests, which many practitioners adhere to when implementing Freedman's teachings.

9. Of course, if one assumes that the lawyers in the union dissident case did not participate in the wrongdoing, my conclusion that they bore personal responsibility does not necessarily follow. My view, however, is that they were in a position, both before and after the fact, to do something about their clients' conduct and that, in closing their eyes to the problem, they fell short in a moral sense.

broadest terms. Although there are exceptions, attorneys engaged in the ordinary practice of law should not overemphasize their own significance. They should not think of their practice as an instrument for changing society in more than an incremental way.¹⁰ As representatives of individual clients, lawyers must think first in terms of "justice" for their clients, which may simply involve obtaining maximally-fair treatment given the client's situation. Where the "interests of justice" issue does have special meaning, however, is with respect to the fourth lesson. Lawyers should implement their ordinary role in a way that acknowledges their personal responsibility for the results the representation is trying to achieve.

I will not spend time repeating my previous writings that suggest ways for lawyers to implement this responsibility. Suffice it to say that the common view that professional conduct requires lawyers always to act in an ultra-partisan, ultra-aggressive fashion simply is wrong. More importantly, as Ted Schneyer and I both have observed,¹¹ it is not necessary to trash existing professional standards to sanction tamer lawyering "in the public interest." The current codes already allow it.

Lawyers have more influence on the conduct of lawsuits than they are ready to admit. They can refuse cases.¹² They can limit the scope of representation.¹³ Many nonlitigation settings do not fit the paradigm of partisan advocacy upon which the codes are based;¹⁴ lawyers are relatively free to adjust their approach to a case by

10. Of course, I do not mean to downplay other ways lawyers can seek to do good that have been identified in the literature by numerous commentators—including providing free services to indigent clients, participating in law reform activities, devoting themselves to public service, and avoiding representation of causes with which they disagree. My focus in this paper, however, is on the meaning of *practicing* law in the interests of justice in the everyday context of lawyers' activities when representing clients.

11. See Ted Schneyer, *Moral Philosophy's Standard Misconception of Legal Ethics*, 1984 Wis. L. Rev. 1529, 1531-32 (criticizing the overemphasis of some scholars on the tension between role-differentiation and moral practice); Zacharias, *supra* note 2, at 1327 (discussing the moral discretion of lawyers that is incorporated into existing codes of conduct).

12. See, e.g., Teresa Stanton Collett, *Speak No Evil, Seek No Evil, Do No Evil: Client Selection and Cooperation with Evil*, 66 Fordham L. Rev. 1339 (1998) (discussing the relevance of religious beliefs to client selection); Jennifer Tetenbaum Miller, Note, *Free Exercise v. Legal Ethics: Can a Religious Lawyer Discriminate in Choosing Clients?*, 13 Geo. J. Legal Ethics 161, 182 (1999) (discussing religion and client selection issues).

13. See, e.g., Model Rules of Prof'l Conduct R. 1.2(c) (1983) (allowing lawyers and clients to limit the scope of representation); see generally Fred C. Zacharias, *Limited Performance Agreements: Should Clients Get What They Pay For?*, 11 Geo. J. Legal Ethics 915, 926-27 (1998) (discussing the extent of lawyers' ability to limit representation and the appropriate scope of regulation of that ability).

14. See Fred C. Zacharias, *Reconceptualizing Ethical Roles*, 65 Geo. Wash. L. Rev. 169 (1997) (discussing the appropriateness of treating different categories of lawyers and practice differently for purposes of professional regulation).

advance agreement with the client.¹⁵ Once a case begins, attorneys have broad discretion in the actual implementation of representation.¹⁶ Even with respect to aspects that clients control, lawyers can encourage clients to act in an appropriate fashion.¹⁷ For as many types of conduct as the codes require of lawyers, there are more instances in which the codes impose permissive duties to serve societal interests or in which the codes grant lawyers ultimate decisionmaking discretion.¹⁸

The lingering problem, as I have suggested elsewhere¹⁹ and as Deborah Rhode recognizes in her book,²⁰ is that lawyers' personal incentives often lead them to ignore the option of practicing "in the interests of justice." An attorney who relies upon a stretched version of Monroe Freedman's paradigm can, without losing any sleep, take on unseemly cases and maximize his own fees simply by focusing exclusively on the client's financial or liberty interests. That lawyer can avoid discussing moral issues with clients. Moral dialogue is uncomfortable; it might disappoint the client or confuse the relationship. The lawyer also can assume that the client has no interest in being fair to the other side or to third parties—a callous and often counter-factual assumption, but one which ultimately enhances the lawyer's fee-generating capability and reputation for success (which tends to correspond to the size of his clients' recoveries). The lawyer can interpret permissive obligations in the codes—such as the occasional duties to disclose confidences²¹ and to

15. See Zacharias, *supra* note 13, at 921-26 (discussing limits placed by the professional codes on lawyers' ability to confine representation).

16. For example, with some limits, the professional codes vest lawyers with the right to determine the means of, or tactics used in, the representation. *E.g.*, Model Rules R. 1.2(a).

17. See, *e.g.*, Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 Mich. L. Rev. 1469, 1478 (1966) (discussing a lawyer's obligation to discuss a client's desire to commit perjury); Robert P. Lawry, *The Central Moral Tradition of Lawyering*, 19 Hofstra L. Rev. 311, 316-17 (1990) (same); Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities*, 1986 Am. B. Found. Res. J. 613, 630-32 (noting the lawyer's obligation to engage in moral dialogues with clients); Thomas L. Shaffer, *The Practice of Law as Moral Discourse*, 55 Notre Dame L. Rev. 231 (1979) (same); William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 Wis. L. Rev. 29, 132-33 (advocating that lawyers engage in moral dialogues, but assuming that traditional legal ethics calls for such conversations); Zacharias, *supra* note 2, at 1357-62 (discussing the possibility of codifying a lawyer's duty to engage in moral dialogue).

18. See Fred C. Zacharias & Shaun Martin, *Coaching Witnesses*, 87 Ky. L.J. 1001, 1008 (1999) (discussing rules that give lawyers choices in selecting whether to use particular types of evidence).

19. Zacharias, *supra* note 2, at 1331-49 (discussing lawyers' incentives to misuse moral discretion granted under the professional codes); Fred C. Zacharias, *Waiving Conflicts of Interest*, 108 Yale L.J. 407, 433 (1998) (discussing lawyers' incentives to misapply conflict-of-interest waiver provisions).

20. Rhode, *supra* note 1, at 3, 13, 16.

21. *E.g.*, Model Rules R. 1.6(b)(1).

avoid using questionable evidence²²—in light of client interests instead of the third-party interests that the duties are designed to protect.

The challenge for lawyers and professional regulation in the twenty-first century is to counteract lawyers' natural incentives. I doubt that practicing law in the interests of justice in the twenty-first century will be much different than practicing law in the interests of justice in the twentieth.²³ The right and moral duty to practice justly has always existed. But as law practice becomes more business-oriented and regulated more on an economic basis²⁴ and as the provision of legal services becomes more tiered on a class basis,²⁵ the pressures on lawyers to succumb to personal psychological and financial incentives likely will increase. This is the phenomenon to which the future will need to react.

Which brings me to Deborah Rhode's most recent offering, her book *In the Interests of Justice*.²⁶ Much of the book addresses different, and broader, issues than the one I take to be the assignment of this conference. The differences between Professor Rhode and myself are not a function of age, for we were classmates in law school. Rather, I think they are products of our experiences, which have helped shape our perspectives. Professor Rhode has spent her long, illustrious career in academia, analyzing the big picture; I started my career by immersing myself in the nuts and bolts of practice. Thus her book, in large part, presents a thoughtful look from the outside at how the legal profession as a whole should be reformed,²⁷ how the role of lawyers should be redefined (both as a professional norm and in terms of the basic tenets of the professional codes),²⁸ and how legal services can be provided to a broader class of clients in the twenty-first

22. E.g., *Id.* R. 3.3(c); see also Zacharias & Martin, *supra* note 18, at 1009 (discussing implementation of Model Rule 3.3(c)).

23. In making this observation, I of course do not mean to suggest that the practice and regulation of law itself will not change. See generally Fred C. Zacharias, *The Future Structure and Regulation of Law Practice: Confronting Lies, Fictions and False Paradigms in Legal Ethics Regulation*, 44 *Ariz. L. Rev.* (forthcoming Oct. 2002) (offering predictions about the future shape of the legal profession and its regulation).

24. *Id.*

25. One can envision a variety of future phenomena based on current trends, but this is not the place to discuss them. They include the unbundling of legal services, the opening of the practice of some aspects of law to nonlawyers, the likelihood that government will become more involved in subsidized legal services for the poor and middle class, and the further development of legal insurance and legal plans developed along the lines of managed health care. All of these eventualities carry with them increased competition among lawyers and the prospect that the quality of services received will depend heavily on the ability to pay. See Rhode, *supra* note 1, at 2 (discussing the increasing gap in legal representation between the rich and poor).

26. Rhode, *supra* note 1.

27. Indeed, the subtitle of the book is "Reforming the Legal Profession," which leads Rhode to consider such megaquestions as the professional pressures on lawyers, *id.* at 23-48, the value of the adversary system itself, *id.* at 49-80, the role of law, *id.* at 117-35, and the role of legal education. *Id.* at 185-203.

28. *Id.* at 66-70, 143-68.

century.²⁹ My comments address the far narrower and more personal question that well-meaning lawyers face every day; namely, how can a lawyer reconcile his day-to-day activities with the notion that the purpose of law is, at some level, to achieve justice.

Rhode does, of course, devote considerable attention to the narrow question as well, just as my two decades of experience as an academic often drives me to consider the structural issues. In the end, the foci of the works we have presented to this conference merge in one important respect. With one exception, neither of us is concerned in our work with the big *social* picture—the way in which lawyers can, in my words, “change the world.”³⁰ Rhode does address the problem of the provision of legal services³¹ and she is correct that changes need to be made.³² To the extent we are discussing the actual “practice of law in the interests of justice,” however, we both concern ourselves with how lawyers should constrain their personal conduct in their legal activities.

And in our responses to this issue, we share far more agreement than disagreement. Most importantly, we concur on the root cause of the problem; namely, that the combination of the psychological comfort zone of lawyers and their economic incentives leads lawyers to misinterpret or abuse the role they are assigned by the professional codes.³³ Most state standards give lawyers leeway to exercise considerable moral discretion to take “the interests of justice” into account, but lawyers often avoid exercising that discretion.³⁴

29. *Id.* at 131-41.

30. *See supra* text accompanying notes 1-3.

31. Rhode, *supra* note 1, at 131-41.

32. *See* Fred C. Zacharias, *Reply to Hyman and Silver: Clients Should Not Get Less Than They Deserve*, 11 *Geo. J. Legal Ethics* 981, 984 (1998) (discussing the need for some unbundling of legal services and for opening the door to nonlawyer practitioners). Although I agree with Rhode on the basic premise that lawyers should not interfere with the provision of less expensive competitive services, I am not sure that I agree with her apparent view that lawyers have a *special* obligation—i.e., one greater than that of any other privileged service provider—to provide pro bono services. Rhode, *supra* note 1, at 45-47. In my view, that is a personal moral obligation lawyers share with many others, and with the tax-bearing society at large.

33. Rhode, *supra* note 1, at 13 (noting “two central conflicts: the tensions between lawyers’ economic and noneconomic interests, and the tensions between professional and public interests”); Zacharias, *supra* note 2, at 1327-50 (discussing the incentives of lawyers in a variety of contexts); *cf.* Rhode, *supra* note 1, at 2 (“[N]o matter how well intentioned, lawyers regulating lawyers cannot escape the economic, psychological, and political constraints of their position.”).

34. Zacharias, *supra* note 2, at 1328; *see also* Schneyer, *supra* note 11, at 1531. Professor Rhode acknowledges this reality, Rhode, *supra* note 1, at 67, but seems ambivalent about it:

Over the last century, the bar’s codes of conduct have progressively narrowed the ethical discretion that lawyers are expected to exercise once they have accepted representation. . . . In effect, an attorney’s obligation is to defend, not judge, the client. Under this standard view, good ethics and good business are in happy coincidence.

Rhode, *supra* note 1, at 15.

To some extent, we differ on the ramifications of that conclusion. Rhode seems to call for a basic reformulation of the lawyer's role—both in the consciousness of lawyers and in professional regulation.³⁵ She seems to call for a redirection of the codes.³⁶ Like me, she is dissatisfied with the status quo, but she demands major, global change.

Driven by my lesson of insignificance, I am less convinced that such changes are capable of being achieved. Nor am I sure that they are even necessary. For purposes of regulation, I would favor, instead, the development of concrete mechanisms to counteract lawyers' venal incentives and to forcefully educate lawyers and the public concerning the role lawyers can (and cannot) and should (and should not) individually play in pursuing justice.³⁷ That may in fact be what Professor Rhode really is suggesting, because she recognizes the difficulty and costs inherent in reforming the whole system.³⁸ In any event, I doubt she would disagree with the steps that I advocate, though she may well wish to go further.

At root, I think, the differences that we do have reflect Professor Rhode's sharp, though limited,³⁹ disapproval of the adversary system⁴⁰—a position she shares with many academics.⁴¹ While I have

35. Rhode, *supra* note 1, at 2, 16 (calling for "structural reform" in professional regulation and noting that "[t]he central premise of this book is that the public's interest has played too little part in determining professional responsibilities"). The book is somewhat ambiguous on whether Professor Rhode expects change to come through regulation requiring change or simply through better understanding on the part of lawyers. Despite otherwise strong language condemning lawyers' failure to accept responsibility for third party interests, by recognizing the existence of "hard cases" in which lawyers might need to subordinate third party interests to selfish client interests, Rhode seems to suggest that the answer must rely on a flexible application of lawyer discretion. *Id.* at 71-80; cf. William H. Simon, *Ethical Discretion in Lawyering*, 101 Harv. L. Rev. 1083, 1088-91 (1988) (advocating a flexible approach in which lawyers are free to exercise "moral discretion").

36. Rhode, *supra* note 1, at 21 (calling for "more specific and more demanding standards"). Indeed, Rhode goes further to call for regulation by presumably outside regulators who are less "self-interested" than the bar and will thus provide "public accountability for professional regulation." *Id.* at 19.

37. See Zacharias, *supra* note 2, at 1351-77 (describing a few possible regulatory responses).

38. Rhode, *supra* note 1, at 51, 71 (recognizing "hard cases" and arguing for reform, rather than abolition of the adversary system).

39. Ultimately, Professor Rhode would not abandon the adversary system, but simply argues—correctly I think—that the "commitment to partisanship has its limits." *Id.* at 74. Accordingly, she argues for a "contextual moral framework." *Id.* at 79.

40. *Id.* at 50 (arguing that, "[i]n many contexts, the moral justifications for zealous advocacy are unconvincing" and that the adversary model, when combined with lawyers' personal incentives, produces "a professional role that compromises public interests"); cf. *id.* at 51-66 ("Any socially defensible conception of the advocate's role will require more ethically demanding professional codes and institutionalized practices.").

41. See, e.g., David Luban, *The Adversary System Excuse*, in *The Good Lawyer: Lawyers' Roles and Lawyers' Ethics* 83, 89-90 (David Luban ed., 1983) (identifying the tension between role-differentiated conduct and morality and questioning at least

no abiding affection for the way the system often is implemented,⁴² I am not prepared to debunk it to the same degree as Professor Rhode, at least not until we find a better systemic alternative. As Rhode seems to acknowledge in her discussion of “hard cases,” no one has yet done so.⁴³

Once we commit lawyers to the task of representing client interests, I despair of incorporating a free-standing secondary role that requires lawyers to focus on protecting third-parties.⁴⁴ But I have not lost all the idealism that I possessed as a young man. I believe that becoming Rhode’s paradigm—the lawyer who acts morally responsible despite personal incentives⁴⁵—is not only permissible within the existing professional norms, but also possible. The keys to my vision are two: first, a trust that lawyers are capable of exercising self-restraint, *given the realities* of their job; second, a belief that realistic regulators can develop institutional structures to foster lawyer objectivity and to help lawyers overcome the sense that the system and their role require them to act amorally.

Thus, in the end, Professor Rhode and I fully agree on the narrow question of what it means to practice in the interests of justice. Lawyers must take responsibility for their own actions, particularly their participation in actions that hurt others. Taking responsibility involves recognizing that the adversary system does not require blindness to moral issues. It simply requires lawyers to take systemic considerations into account in determining what conduct is moral.⁴⁶ Thus, a responsible lawyer must be willing to remain objective, exercise that discretion which he has, attempt to influence conduct by clients or others that seems improper, and limit his willingness to engage in representation that is likely to bring his personal and professional morality into conflict. I am sure that all professional

the current operation of the adversary system).

42. See, e.g., Fred C. Zacharias, *Rethinking Confidentiality*, 74 Iowa L. Rev. 351, 363-67 (1989) (questioning some of the traditional premises of attorney-client confidentiality and the adversary system).

43. Rhode, *supra* note 1, at 72-73 (noting that while “restraints on advocacy seem reasonable in theory, they are likely to prove deeply problematic in practice. . . . Proposals to curtail advocacy for criminal defendants . . . risk reinforcing the practical pressures that already work against effective assistance of counsel”).

44. Cf. *id.* at 18 (“Lawyers have a responsibility to prevent unnecessary harm to third parties, to promote a just and efficient legal system, and to respect core values such as honesty, fairness, and good faith on which that system depends.”).

45. *Id.* at 17 (calling for “lawyers to accept personal moral responsibility for the consequences of their professional acts”).

46. See Zacharias, *supra* note 2, at 1327-28 (arguing that “role-differentiation is consistent with objective moral decisionmaking. It simply requires lawyers to order their conduct with a view to the effects of the conduct on the legal system.”); cf. Rhode, *supra* note 1, at 67 (“Attorneys should make decisions as advocates in the same way that morally reflective individuals make any ethical decision. Lawyers’ conduct should be justifiable under consistent, disinterested, and generalizable principles.”).

responsibility teachers inform their students that “legal ethics” as portrayed in the professional codes does not represent morality in any traditional sense. Lawyers must be prepared to reconcile the two.

Let me finish with a fifth, and final, lesson that I learned from practice. In Professor Rhode’s analysis, and occasionally in that of mine and others as well, the notion of client orientation as a paramount principle has taken a pounding. But none of us mean to suggest, I think, that helping clients is a bad thing. My experience as a lawyer and the process of incorporating the lesson of my own insignificance highlighted for me the importance of remembering the human aspects of representing clients, including guilty ones.

One of my fondest memories as a practitioner is of representing prisoners in post-conviction matters. Unlike in any other area of my practice, these clients appreciated my efforts on their behalf—despite the fact that I typically accomplished less for them than for my other clients and often told them there was nothing I could do. Why? I suspect it was because I was one of the few people in their lives who treated them with respect and took their concerns seriously. What I learned was that Monroe Freedman’s paradigm is right in its essence: individuals enmeshed in the legal system—by their own choosing or otherwise—may not deserve to win, but they have legitimate fears and worries that need to be addressed. Lawyers are the system’s conduits for providing that attention.

The lesson? Justice exists on a small and human level. So long as law involves individual clients and adversaries,⁴⁷ practicing law in the interests of justice in the twenty-first century—as in past centuries—will require lawyers to remember the humanity of their calling. It is the job of academics and those who set the profession’s standards to both remind and persuade lawyers of that essential fact.

47. Cf. Zacharias, *supra* note 6, at 188 (arguing that the professional norms of behavior should, perhaps, vary for different clients and contexts).