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Reforming Model Rule 1.6: A Brief Essay from the Crossroads of Ethics and Conscience

Cover Page Footnote

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REFORMING MODEL RULE 1.6: A BRIEF ESSAY FROM THE CROSSROADS OF ETHICS AND CONSCIENCE

*Kevin M. Ryan**

It is a singularly good thing, I think, that law students, and even some lawyers and law professors, are questioning with increasing frequency and intensity whether "professionalism" is incompatible with human decency—asking, that is, whether one can be a good lawyer and a good person at the same time.¹

I count myself among those conferees who, with near religious zeal, invoked child empowerment as an essential denominator of the representational paradigm we strove to reform and refine during Fordham Law School's Conference on Ethical Issues in the Legal Representation of Children. During the discussions of the Working Group on Confidentiality, of which I was a participant, several of us measured reform proposals with an empowerment yardstick, opposing ideas that unduly drained the child client's prerogative in favor of the attorney, the guardian, the parent, or the court. This calculus involves a balancing of legitimate, polar concerns that should heavily favor the unimpaired child client. In the context of client confidentiality, striking the appropriate balance between the attorney's perceived moral responsibility to disclose certain information, and the child's necessary autonomy requires, in the end, a judgment call, of which the Working Group members expressed many variations.

Despite this diversity of perspectives, the group reached an important agreement to recommend the following amendment to the Model Rules of Professional Conduct:

Proposed addition to Model Rule 1.6:

A lawyer may reveal such information as to the extent the lawyer reasonably believes necessary:

1.6(b)(2) to prevent a client who is a(n) (unemancipated) minor from engaging in conduct likely to result in imminent death (or substantial bodily harm) to the client. The lawyer may reveal only the minimum information needed to prevent the

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1. Monroe H. Freedman, *Personal Responsibility in a Professional System*, 27 *Cath. U. L. Rev.* 191, 192 (1978).

harm, and shall do so in a manner designed to limit the disclosure to the people who reasonably need to know such information.²

The common law firmly adopted the general principle that lawyers should maintain their clients' confidences; its venerable first forms developed in the English common law as both an evidentiary privilege and a duty of general confidentiality.³ Both strains exist today, though the privilege is much narrower than the general duty since it merely precludes introduction of the information as evidence.⁴ The broader duty of nondisclosure has been well studied and affirmed time and again as an essential device to encourage the fullest communication between the client and her attorney.⁵ The law allows narrow and discretionary exceptions to this general seal. Under the present version of the Model Rules, an attorney may divulge confidences relating to the representation, over the client's objection, only to prevent grievous criminality, or to help the lawyer establish a claim or defense with regard to the client or the representation.⁶ In their narrow tailoring, these exceptions reveal the profession's strong preference for

2. The language in parentheses reflects alternative proposals, which the Working Group agreed to submit to the plenary session for discussion.

3. See David Luban, *Lawyers and Justice: An Ethical Study* 187 (1988).

4. See, e.g., Fed. R. Evid. 501; N.Y. Civ. Prac. L. & R. § 4503 (McKinney 1992); see also John Henry Wigmore, *Evidence in Trials at Common Law* § 2292, at 554 (rev. ed. 1961).

5. See Luban, *supra* note 3, at 186-87. Mr. Luban writes:

Lawyers, then, are expected to keep their clients' confidences. That is perhaps the most fundamental precept of lawyers' ethics, the one over which to go to the mat, to take risks, to go to jail for contempt if the alternative is violating it.

Id. at 186; see also Monroe H. Freedman, *Lawyers' Ethics in an Adversary System* 4-5 (1975); Henry S. Drinker, *Legal Ethics* 132-33 (1953). Henry Drinker cited Judge Taft who similarly described the purpose of the rule:

To require the counsel to disclose the confidential communications of his client to the very court and jury which are to pass on the issue which he is making, would end forever the possibility of any useful relation between lawyer and client. It is essential for the proper presentation of the client's cause that he should be able to talk freely with his counsel without fear of disclosure. . . . The useful function of lawyers is not only to conduct litigation, but to avoid it, where possible, by advising settlement or withholding suit. Thus, any rule that interfered with the complete disclosure of the client's inmost thoughts on the issue he presents would seriously obstruct the peace that is gained for society by the compromises which the counsel is able to advise.

Id. at 133 (citing William Howard Taft, *Ethics in Service* 31-32 (1915)).

6. Rule 1.6 of the Model Rules of Professional Conduct, which is entitled "Confidentiality of Information," states:

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

open communication between the lawyer and the client; in their very existence, they testify to the triumph of competing counterinterests when passivity might inure to an inequality or a social harm. Hence, where the client's criminal act will likely result in substantial bodily harm or death, the ethical rules permit attorneys to divulge the confidences.⁷ Similarly, where the client charges the attorney with professional misconduct, the Model Rules allow the attorney a full defense.⁸ The scope of this limited response does not extend to consider the wisdom of these exceptions. I will observe, however, that their promulgation indicates the susceptibility of a generally accepted, ethical norm to contextual qualification, particularly where strict adherence to the norm threatens some basic fairness values.

The Model Rules do not provide a confidentiality exception for the welfare interests of a client when his own behavior is imminently dooming, perhaps reflecting the view that as to matters of the client's welfare, the client knows best (unless such behavior involves a criminal act likely to result in imminent death or substantial bodily harm).⁹ When a child client confesses to the attorney an intention to engage in

(1) to prevent the client from committing a criminal act that the lawyer reasonably believes is likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Model Rules of Professional Conduct Rule 1.6 (1983) [hereinafter Model Rules].

7. *Id.* Rule 1.6(b)(1). This Model Rule departs from the Model Code of Professional Responsibility, which more broadly allows the lawyer to reveal the client's intent to engage in any criminal wrongdoing. *Compare id.* (stating that "[a] lawyer may reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm") with Model Code of Professional Responsibility DR 4-101(C)(3) (1981) (stating that "[a] lawyer may reveal [t]he intention of his client to commit a crime and the information necessary to prevent the crime"). This dichotomy is interesting since an early version of the Model Rules not only adopted a more permissive rule than the Model Code, but actually imposed an affirmative duty. As Bruce Landesman reported at the time:

The Code says that a lawyer *may* reveal a client's intention to commit a crime, and the information necessary to prevent it. According to the Model Rules, a lawyer *must* disclose information when necessary to prevent a client from causing death or serious bodily harm to another person. The Model Rules, therefore, make disclosure of potential violent acts mandatory, while the Code only brings it within the scope of a lawyer's discretion.

Bruce M. Landesman, *Confidentiality and the Lawyer-Client Relationship*, in *Ethics and the Legal Profession* 364-65 (Michael Davis & Frederick A. Elliston eds., 1986) (citations omitted).

8. Model Rules, *supra* note 6, Rule 1.6(b)(2).

9. In fact, the legislative history of the Model Rules does not suggest that the drafters even discussed the issue. See ABA Center for Professional Responsibility, *The Legislative History of the Model Rules of Professional Conduct: Their Development in the ABA House of Delegates* 47-55 (1987).

noncriminal behavior that could quickly lead to the child's death, the attorney typically may not reveal that information absent the client's consent. For example, in jurisdictions that have not criminalized attempted suicide, an attorney may not disclose the suicidal intentions of a child client if the information, in any sense, relates to the representation.¹⁰ To be sure, self-destructive behavior may be indicative of an impairment that requires the attorney to seek the appointment of a guardian *ad litem* for the child.¹¹ In exigencies where time and process are elusive, and the attorney cannot rely on a guardian's appointment, the decision to remain silent or to disclose and prevent the child's death takes on moral and ethical dimensions of extraordinary proportions.¹² To the extent that attorneys confront this dilemma, anecdotal evidence seems to indicate that many practitioners disregard the Model Rule.¹³ Such a tendency among lawyers does not call for an expansion of the Model Rules' nondisclosure framework, but the Rules' uncertain resemblance to practice does raise questions about their efficacy. The Working Group justified the proposed reform, principally, on the ground of the attorney's moral obligation as a fiduciary to respect not just the freedom of the client, but also the welfare of the client.¹⁴ Such a rationale resonates particularly well with the

10. *But see* New York State Bar Ass'n Comm. on Professional Ethics, Op. 486 (1978) (concluding that an attorney may disclose a client's suicidal intentions despite the decriminalization of attempted suicide in New York State). No provision of the New York State ethical rules supports the opinion, rendering it remarkably tenuous. The opinion resolves that "[h]aving noted society's general abhorrence of suicide, it may yet be observed that such feelings will on occasion admit to certain limited exceptions." *Id.* at 4.

11. *See, e.g.,* Peter Margulies, *The Lawyer as Caregiver: Child Client's Competence in Context*, 64 *Fordham L. Rev.* 1473, 1487 (1996) (discussing an increasing need for justification of a decision as the risk of harm increases). Professor Margulies writes:

The burden of justification for a decision rises with the gravity of the decision. In some instances, the risk of harm created by a given decision may be substantial and alternative decisions may not have a comparable downside. If, the client's reasons for the decision are trivial, . . . doubts about competence arise.

Id. at 1487.

12. This dilemma raises especially unwieldy issues since it presents what Margulies rightly labels the "false dichotomy" between autonomy and welfare. *Id.* at 1479.

13. Within the Working Group, many of us conceded that unauthorized disclosures do not occur infrequently within the professional community. Similarly, Fordham University Law School's Stein Scholars interviewed children's lawyers throughout the country in the Spring of 1995 and discovered that many attorneys disclosed information under circumstances far less exigent than the imminent death context. This reminds me of Kahill Gibran's prophecy to the lawyer, "You delight in laying down laws, Yet you delight more in breaking them." Kahill Gibran, *The Prophet* 40 (1971).

14. The second justification discussed by several group members stems from *Tarasoff v. Regents of The University of California*, 551 P.2d 334 (Cal. 1976), as a duty to disclose based in tort law. In *Tarasoff*, a psychologist learned during therapy sessions that a patient intended to kill a third party. *Id.* at 339-40. The psychologist did not disclose this information to anyone. *Id.* at 340. After the patient did in fact kill

narrow question of an "imminent death" exception because it moves the professional community toward a more holistic perspective of the child client as a person whose liberty and quality of life are mutually nourishing and equally valuable.

Our jurisprudence and its processes have undervalued, and often disparaged, the empowerment of children. It is academic excess, however, to suggest that our pursuit of integrity for child clients requires the professional community to empower children to death. Of what value is autonomy to a cadaver?¹⁵ To be sure, the Working Group did not intend to allow disclosure when a terminally ill child decides to end her life for reasons other than treatable depression; the drafters will necessarily have to compose a strong commentary to ensure that attorneys understand as much. Rather, the Working Group designed the amendment to address the dilemma sown at the crossroads of professional amorality and personal conscience, opting for discretion towards the latter when the client jeopardizes her life. Despite our studied embrace of professional amorality,¹⁶ we transgress a basic humanistic, moral standard when we sacrifice clients' lives in the name of their own volition, however short-sighted or impaired it may be.¹⁷ If, child empowerment aims to ensure fairness, the proposed reform

the intended victim, the psychologist was found negligent for failure to warn. The court wrote:

If the exercise of reasonable care to protect the threatened victim requires the therapist to warn the endangered party or those who can reasonably be expected to notify him, we see no sufficient societal interest that would protect and justify concealment.

Id. at 347. The case, of course, treated the narrow question of a professional's negligent failure to warn a third party when the intended victim of the harm has been clearly identified. *Tarasoff* and its progeny have never established that attorneys must make a disclosure to prevent a client's self-harm. Indeed, this proposition is a long way from the original notion in *Tarasoff* that confidentiality must yield to protect a third party. *See id.* ("The protective privilege ends where the public peril begins."). *Tarasoff* exposes the legal community to potential tort liability only to the extent that disclosure may prevent harm to a third party. No reported cases have found an attorney negligent for failure to disclose information to prevent harm to the client herself. The extrapolation of negligence theory led some Working Group members to make the tenuous—and unconvincing—argument that attorneys may have a duty to prevent a child client's self-harm.

15. I concluded that autonomy that extended to the point of the death of a child client did not benefit that client at all, and so voted with 22 fellow conferees in the plenary session to recommend to the larger legal community that the Model Rules be amended. To my disappointment, the conferees overwhelmingly supported "further study" of the reform in lieu of an affirmative recommendation, after a close 23 to 17 vote revealed more support than not for the proposed amendment to Model Rule 1.6.

16. *See, e.g.,* Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities*, 1986 Am. B. Found. Res. J. 613, 614 (1980); *see also* Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 Hum. Rts. 1, 5-6 (1975).

17. Gerald Postema has convincingly criticized role differentiation among attorneys—that is, a set of personal moral values operative in one role and a set of ethical, amoral values operative in another role. Gerald J. Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. Rev. 63 (1980). Amorality does not connote mere

of Model Rule 1.6 makes good sense because of, and not in spite of, our commitment to justice and liberty for children.

The proposed amendment nuances the attorney-child client relationship. However slightly, the rule prioritizes the child's welfare over his directions in limited emergencies. Through an existentialist prism, something real is taken from the child and given to the attorney, and that something is prerogative and choice. Our legal processes and substantive laws accomplish this thievery on a grander scale every day. Yet, neither the pervasiveness of these affronts, nor the objective recognition that the child may lose control of limited information, requires the conclusion that the proposed rule disables children, much less that it proves imprudent.

When lawyers speak of empowerment, we usually mean that bold proposition which urges professional respect for the client's autonomy. This takes two forms in the context of children: The allocation of decision-making control to the child, and the demand for a substantive responsiveness from legal and quasi-legal actors. The nature and purposes of child empowerment have been refined within many of the articles contained in this volume. These insights, though not conclusively summarized here, provide at least one principal justification for child empowerment—that of fairness. For instance, Katherine Hunt Federle, who reminds us of the potential for professional manipulation, calls child empowerment “essential to the creation of an equal relationship between lawyer and client.”¹⁸ Welcoming the competent child's voice, Peter Margulies cites “reciprocity”¹⁹ as a fairness value, and explains that, when society places burdens on individuals, they “are entitled to input on how society allocates those burdens.”²⁰ That voice is important, argues Catherine Ross, because others who usually speak for the child, like a parent for example, may be unable to do so

neutrality in attorney conduct, but rather a professional ethos, which undermines the attorney's best instincts.

Maintaining a hermetically sealed professional personality promises to minimize internal conflicts, to shift responsibility for professional “knavery” to broader institutional shoulders, and to enable a person to act consistently within each role he assumes. . . . [I]n compartmentalizing moral responses one blocks the cross-fertilization of moral experience necessary for personal and professional growth. . . . [A] sense of responsibility and sound practical judgment depend not only on the quality of one's professional training, but also on one's ability to draw on the resources of a broader moral experience. This, in turn, requires that one seek to achieve a fully integrated moral personality.

Id. at 64.

18. Katherine Hunt Federle, *The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client*, 64 *Fordham L. Rev.* 1655, 1656 (1996).

19. Margulies, *supra* note 11, at 1482.

20. *Id.*

in certain civil litigation.²¹ And Martin Guggenheim, who develops a model for the representation of child clients in criminal contexts, defines the authority of the child to direct the litigation as necessarily flowing from the child's due process interests.²²

Although human development gains implicit in an empowerment paradigm may be realized,²³ the legal community trains most lawyers (and so lawyers prefer) to think in terms of fairness. Our ethics of confidentiality derive from the fairness value to which empowerment contributes. For instance, the adversarial scheme demands attorney-client confidentiality in order for the client to reveal herself as fully as possible to reap maximum benefit from her representative. Furthermore, where the Model Rules allow disclosure, they do so to be fair to a potentially disadvantaged party. When other interests compete with client autonomy, such that fairness to an individual is compromised, our ethics sanction the abeyance of professional deference to client autonomy and empowerment. Observers and commentators, then, ought to consider whether the attorney acts fairly toward the child client by remaining silent, as a measure of whether our ethics of autonomy might yield in the posited exigency.

Janet Chaplan, whose interviews with six former child clients are contained in this issue, reminds those of us who represent young people that we are, as Margulies writes, "caregivers as well as agents."²⁴ Chaplan summarizes her interviewees' ideas:

Regarding issues of confidentiality, . . . [t]hey all believed their lawyers kept their secrets, but most of them also believed that their lawyers had a stronger duty to protect them than to keep their secrets or to follow their wishes.²⁵

21. Catherine J. Ross, *From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation*, 64 *Fordham L. Rev.* 1571, 1585 (1996).

22. Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 *Fordham L. Rev.* 1399, 1414-16, 1420-21 (1996).

23. See Wallace J. Mlyniec, *A Judge's Ethical Dilemma: Assessing A Child's Capacity to Choose*, 64 *Fordham L. Rev.* 1873, 1884-85 (1996). For example, Dean Mlyniec writes:

Decision making and judgment, like most other activities in life, are learned skills. As Piaget and others have noted, learning is a dynamic process. Information is processed by adding new information to one's cognitive structures and then reformulating the cognitive structures to account for new, different, and more complex information. Knowledge develops through contextual interactions and increases when an individual tests it against a set of circumstances, reformulates it in relation to the current experience, and stores it for further use. Each test refines the knowledge or skill and serves to improve performance if it is used again. It is not surprising that most people, subject to hereditary limits, improve a skill each time they use it. Making judgments or decisions is no different.

Id. at ?.

24. Margulies, *supra* note 11, at 1475.

25. Janet A. Chaplan, *Youth Perspectives on Lawyers' Ethics: A Report on Seven Interviews*, 64 *Fordham L. Rev.* 1763, 1767 (1996).

On the limited question of disclosure to prevent imminent death, anecdotal evidence suggests that our clients' expectations of fairness may beg a different result than our present ethics of autonomy allow. Empowerment—which should be a humanizing process that gives ear to the child's dreams, plans, and aspirations—becomes a counterhuman force when lawyers invoke it as a rationale against rescuing a child in immediate danger of dying who also demands confidentiality. Passivity and silence work a fundamental unfairness to the child client because they indulge a despair, a gross recklessness, a short-term consciousness,²⁶ which threaten to destroy children's lives. Unlike transformative mistakes with adverse consequences that can yield valuable lessons, life-threatening behavior risks an irreversibility that demands intervention. To do otherwise, the attorney affirms behavior that screams out: "I am worthless; I do not deserve nor want a future." The attorney can never act neutrally in this context; the child client has too much at stake. The lawyer becomes, even in her passivity, a source of affirmation, nodding in assent that the child does not deserve tomorrow. Nothing could be less fair to the child client.

The Model Rules' inflexibility, and their proponents' invocation of empowerment, do not call attorneys to great heights of professionalism when the child threatens suicide. In such emergencies, the Model Rules do not prod the attorney up the high road of superhuman agency and ethical commitment.²⁷ On the contrary, the Model Rules impose an inhumane disrespect for children's lives. Consider what the attorney's response should be if an adolescent client, having just learned some very bad legal news that would tremendously upset any reasonable person, places himself on the ledge outside of the attorney's seventh story window in a jurisdiction where attempted suicide has not been criminalized. The child orders the lawyer to stay away from him, and not to call for help. The client is unsure whether he wants to jump, but he also knows that if his behavior is discovered by others, it may result in a more restrictive placement. When it becomes plain that the child is unmoved by the attorney's repeated pleas to

26. See Margulies, *supra* note 11, at 1475 (stating that "[society] views the child as prone to particular kinds of mistakes, most prominently a preference for short-term over long-term thinking"); Mlyniec, *supra* note 23, at 1881-83 (summarizing research on stage theory in child development).

27. Professor Charles Fried has written of lawyers as "Special Purpose Friends" with regard to the legal system. Charles Fried, *The Lawyer As Friend: The Moral Foundations of the Lawyer-Client Relationship*, 85 Yale L.J. 1060, 1071 (1976). The lawyer is one "who enters into a personal relation with you—not an abstract relation as under the concept of justice." *Id.* Just like a friend, the lawyer "acts in your interests, not his own; or rather he adopts your interests as his own." *Id.* This is a healthy distance from the professed amorality of role differentiation that Richard Wasserstrom first acknowledged, and later commentators embraced in the name of client autonomy. See Wasserstrom, *supra* note 16; Pepper, *supra* note 16. For a critical response to Charles Fried, see Edward A. Dauer and Arthur Allen Leff, *Correspondence: The Lawyer as Friend*, 86 Yale L.J. 573 (1977).

come down from the ledge, what is the attorney to do? To obey the client's directions, as Model Rule 1.6 requires, indicates a stunning disrespect for humanity, regardless of the motivation.

An example where the child's life is in imminent danger is not a foray into hyperbole: The proposed reform should be limited to such life-jeopardizing situations. Critics of the proposal expressed a fear during the Conference that a slippery slope, lubricated with poor judgment, might undermine the child client's autonomy on a grand scale. The concern is valid. One conferee, however, described, in defense of the amendment, a scenario where a child client reveals that he is on a dangerous street corner where there has been recent gang violence. Surely, the conferee continued, this situation cried out for intervention. Many of us could not agree. This difference results from attorneys' culturally and geographically distinct interpretative experiences. For this reason, the alternative proposal, which would allow disclosure to prevent "substantial bodily harm," may be too permissive. The judgment as to "imminent death" should require a high showing of threat and immediacy, not merely a circumstantial possibility, as with the young person on the street corner.²⁸ The estimation of imminent death raises a discrete question, and the professional community deserves a rigorous commentary, which ought to emphasize that attorneys may disclose only when an imminent threat to the child exists.

The ideals of empowerment further inform the proposed amendment in another important way. Two of the Working Group's recommended comments to Model Rule 1.6 strive to mitigate the reordering of informational control. The first comment instructs that "[w]here practical, the lawyer should seek to persuade the client to take suitable action prior to making disclosure pursuant to 1.6(b)(2)."²⁹ To empower children to take responsibility for themselves in litigation, attorneys must consult with their child clients. The proposed amendment should not be read blindly as an invitation for the professional community to disregard clients' wishes; when possible, disclosure should be a last resort after a dialogue in which the attorney encourages and urges the client toward more suitable behavior. Only when

28. The February 1983 Midyear Meeting of the ABA House of Delegates addressed this question in an analogous context. The delegates discussed a proposal to amend Model Rule 1.6 (b)(1):

Paragraph (b)(1) was additionally amended to permit disclosure to prevent death or substantial bodily harm only where the risk was "imminent." Professor Hazard noted that this additional qualification was unnecessary since the proposed rule allowing disclosure only "where reasonably . . . necessary . . . to prevent" the harm, by definition, took into consideration the elements of realness and directness of the harm. He noted further that a lawyer who reasonably believes that harm is likely to result should not have to speculate whether the harm is "imminent."

Center for Professional Responsibility, *supra* note 9, at 49.

29. See *Report of the Working Group on Confidentiality*, 64 Fordham L. Rev. 1367 (1996).

the attorney is unable to persuade the client to refrain from the self-destructive conduct may the attorney disclose to save the child's life.

The second proposed comment keeps the profession honest:

At the outset of the relationship, lawyers should carefully explain to their clients the extent to which their conversations are confidential and under which conditions they are allowed, or may be compelled, to disclose confidential information told to them by the client.³⁰

If clients know in advance that life-threatening information may be disclosed, they ultimately retain informational control. A later decision to reveal such a confidence to the attorney conveys an implicit waiver. Concededly, clients may be more reluctant to reveal themselves fully. To the extent that their conversations about life-jeopardizing behavior would otherwise remain confidential and force attorneys into an ethical and moral conundrum, perhaps slightly more constrained dialogue would benefit both the attorney and the child client.

In the end, the reform's modest proposition stands for this: Respect for humanity is a transcendent ethical value, which is more important than the rules of agency, our devotion to client autonomy, and our predisposition to the voice of client over the voice of conscience. That we should affirm the reform of Model Rule 1.6 in the name of humanity is rational and just; that we should second it in the name of empowerment is a matter of basic fairness.

30. *Id.* at 1372.