

Moral Advice and Professional Obligation: A Case Study

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My young client, Steven, has told me that he committed a homicide. Another man has been wrongly convicted of the crime and faces a sentence of up to 30 years. “What should I do?” Steven asks. “What would you say?” asks the hypothetical. “Would you give moral advice?”

As Steven’s lawyer I would feel bound, as a matter of professional obligation, to provide some forms of moral advice to Steven. Under my conception of my professional obligations, however, I would be reluctant to tell Steven, what, in my personal view, is the morally correct course of action for him, and would do so only if it were clear to me both that Steven wanted to hear that view and had no better sources of moral advice available to him. Let me explain why.

I. THE RELEVANT PROFESSIONAL OBLIGATIONS

Since one purpose of this symposium is to explore how different professions might answer the questions posed, it may be helpful to briefly describe my understanding of my professional obligations. As a lawyer, I am both Steven’s representative and an officer of the court. As his representative, I owe him duties of competence, loyalty, and confidentiality. In this case, the duty of confidentiality is not in issue. The relevant rules forbid me to disclose Steven’s confession voluntarily and also forbid a court from ordering me to do so.¹

The duty of competence requires me to deploy my professional knowledge, judgment and skill to achieve the best possible result for Steven consistent with his interests and values. In this case, the core of that duty is my obligation to provide accurate, candid, and comprehensible legal advice.

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¹ Under the law of California, where I live and practice, disclosure of client confidences is permitted only when a lawyer “reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.” CAL. RULES OF PROF’L CONDUCT R. 3–100 (2011). Failure to confess a past crime is not itself a criminal act. The same result would follow in the growing number of jurisdictions that permit disclosure, even in the absence of a criminal act, “to prevent reasonably certain death or substantial bodily harm,” unless that jurisdiction has construed the term “substantial bodily harm” as encompassing lengthy imprisonment or its incidents. See MODEL RULES OF PROF’L CONDUCT R. 1.6(b)(1) (2011).

The duty of loyalty requires me to place the client's interests ahead of my own or those of third parties, both in taking action on the client's behalf and in giving legal advice. My interests include pursuing or realizing my personal moral vision of what the client should do. So here, I believe that the morally correct course of conduct for Steven is to confess. So long as I am acting as Steven's lawyer, however, it is his view of the correct moral outcome that matters. If his view differs from mine, I may be free to decline or withdraw from the representation, but I am not free to pursue my preferred course. Nor may I alter the substance of my legal advice so as to encourage Steven to choose that course.

My ability to achieve Steven's objectives is constrained by my obligations as an officer of the court. At the risk of oversimplifying, criminal defense counsel, like all lawyers, are forbidden from counseling or assisting the client in conduct that is known to be criminal or fraudulent, including the destruction of evidence or the presentation of false testimony. They are also forbidden to make known false statements of fact or law. Criminal defense lawyers, however, differ from civil advocates and prosecutors in having a stronger obligation to press doubtful factual arguments, or put another way, a less stringent obligation to act as a gatekeeper based on the merits of the client's case.²

II. MY RESPONSE TO STEVEN'S QUESTION

Now to the questions posed. Counterfactually, I will assume that I have significant experience representing criminal defendants in the relevant jurisdiction, instead of my actual mixed bag of law teaching and civil litigation practice. Of course even an experienced lawyer may not previously have advised someone who is deciding whether or not to confess that he committed a murder for which an innocent man has been wrongly convicted.³ At the same time, Steven's case combines elements recognizable to any experienced criminal defense attorney. Many guilty clients want to confess, sometimes for reasons of conscience and sometimes simply to obtain an advantage, by, for example, turning state's evidence against a co-defendant. Sometimes clients want to confess for reasons of conscience even though there is little or no likelihood that they would otherwise be prosecuted or convicted. Often there is another suspect in the picture, whose life

² While a lawyer in a civil case cannot defend or take to trial a case that lacks evidentiary support, a criminal defense lawyer who knows his client to be guilty is nevertheless required to insist upon a trial if the client wants one, is sometimes obliged to press frivolous factual contentions, and, according to some authorities, may be obliged to present truthful evidence pointing to a factual conclusion that he knows to be false. One way of summarizing this body of law is that the criminal defense lawyer's ethical obligation to pass legal judgment on his client's defenses is significantly constrained by the constitutional right of even the guiltiest client to candid counseling and to present a defense before the trier of fact.

³ The situation does, however, arise. See *Morales v. Portuondo*, 154 F. Supp. 2d 706, 709 (S.D.N.Y. 2001); Arthur G. Powell, *Privilege of Counsel and Confidential Communications*, 6 GA. B.J. 333, 333-35 (1943); The Associated Press, *Confession Revealed, Freeing Prisoner of 26 Years*, N.Y. TIMES, Apr. 20, 2008, <http://www.nytimes.com/2008/04/20/us/20chicago.html?scp=1&sq=alton%20logan&st=cse>.

may be affected, for good or ill, by the confession. What makes this case compelling and arguably different is the severity and certainty of the consequences for the convicted innocent, the near certainty that Steven will escape punishment unless he comes forward voluntarily, and the consequent clarity of the moral issues.

Extrapolating from my experience in these more typical cases, I would feel duty bound to cover four subjects with Steven. Those subjects are Steven's freedom of decision, his conception of his interests and values in the matter, the legal consequences of each of the choices available to him, and how he might best go about deciding what to do. I will treat them in that order, though in any real conversation I believe they would weave and recur through the discussion in ways that could not be predicted in advance.⁴ Then I will say something about how moral advice, in each of its forms, might fit into that advising framework.

The first thing I would want Steven to understand is that the decision is his. The law of agency and the professional rules formally reserve to the client critical decisions like whether to plead guilty. The decision whether to confess to a crime, in the process waiving the constitutional privilege against self-incrimination, clearly falls in that category. One reason for this allocation of authority is that in such matters, the correct decision vitally depends on the client's interests and values, and that the client is therefore more likely to get it right. Another is that the stakes are high. Here, the whole course of Steven's life is at stake—only he can decide what that course should be.

Steven's request for me to tell him what he "should" do may reflect his desire or expectation that I will tell him what to do. If so, he needs to know that that is not how I conceive of my professional role.⁵ Rather, my task with a competent client is to help him decide what *he* wants to do. One might wonder why, if Steven is competent to make the decision whether to come forward, he is not also competent to pass that decision off to me. My view is that there may be situations where it makes sense for a lawyer to accede to the client's wish to delegate a highly consequential decision, perhaps because the client's interests are clear and the correct choice depends solely on matters within the lawyer's expertise. Not here, though. The stakes are too high, Steven's interests are not yet clear, and ultimately the wisdom of his choice does not depend centrally on legal considerations, but instead on how he will live with his choice over time.⁶

Sometime in the conversation about Steven's freedom to decide, I might want to remind him that my legal obligations of confidentiality create a protected space

⁴ It is also important to understand that actual advice would look and sound different, since it would be framed and phrased in whatever terms I judged would be most helpful to Steven given his existing knowledge and capacity to absorb information.

⁵ In general, lawyers dealing with laymen have an obligation to correct misunderstandings about the lawyer's role in the matter. See MODEL RULES OF PROF'L CONDUCT R. 1.13(g), 4.3 (2011).

⁶ For a similar argument, see William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 MD. L. REV. 213, 213 (1991).

in which we can think freely about his choice. What he has told me cannot be communicated to anyone else without his permission. So Steven's confession to me, as weighty as it may feel to him, does not create any additional risk that the decision whether to confess to the authorities will be taken from his hands. Rather it puts Steven in the position to use me in making the decision that he thinks is right for him.

The second thing I want to do is to inquire further about what Steven thinks his options are and how he feels about them. The duty of competence requires that my advice to Steven be informed by his situation, and both the duty of competence and the duty of loyalty require me to determine what his interests and values are. There is work to be done here. I have represented Steven before, but only in a single matter which may not have given me a strong sense of him. Moreover, this matter is many times more serious than the earlier charge and greater severity calls for more time and deeper inquiry.

The tone of Steven's confession and of his question to me both suggest that he may be seriously considering coming forward and confessing to his crime. I would want to find out if that was in fact the case, and also to have him convey more fully to me the strength and sources of his motivation to come forward, whether moral or prudential. I am going to assume that this further discussion reveals that Steven is strongly considering coming forward, that he believes that doing so would clear the innocent, and that at least a part of him is convinced that coming forward would be the right thing to do.

Third, I would provide legal advice. Candid advice is what the rules expressly require of me, and what most clients expect.⁷ Legal advice is also what I do best and am most likely to get right. This is not a case where my duties as an officer of the court appear likely to constrain my legal advice. If Steven were considering whether to destroy or alter evidence of the crime, for example, I would be obliged to give preemptive advice, simply ruling that option out of bounds as unlawful.⁸ Here, however, coming forward and remaining silent are both lawful options. Indeed, in our system of justice, remaining silent has strong constitutional sanction.

Nor is this a case where my duty of competence or loyalty clearly limits the required content of my advice. If Steven had clearly indicated that his sole concern was to avoid detection and punishment, my legal advice would be simple. Keep your mouth shut. For clients with that interest, and they are legion, this advice is so basic that Robert Jackson, one of the most broadly experienced and gifted lawyers ever to sit on the Supreme Court, expressed the view that "any lawyer worth his salt" would give it.⁹

⁷ See MODEL RULES OF PROF'L CONDUCT R. 2.1 (2011).

⁸ For a wonderful discussion of this phenomenon in the corporate setting, see GEOFFREY C. HAZARD, JR., *ETHICS IN THE PRACTICE OF LAW* 147-49 (1978). My view is that the obligation to give preemptive advice is limited to client conduct which constitutes a crime, fraud, or intentional tort.

⁹ *Watts v. Indiana*, 338 U.S. 49, 59 (1949) (Jackson, J., concurring).

Steven, however, has indicated that he is seriously drawn to the option of confessing, so he needs to hear both about the option of not confessing and the option of confessing. The content of the law matters in assessing both options, particularly the law of sentencing and of post-conviction relief. So does the behavior of legal institutions. Much of this behavioral knowledge is local: how would a particular court or district attorney's office respond to new evidence indicating that the system has erred? Sometimes the assessment is even more granular: how will this identified judge or prosecutor exercise her discretion? All these subjects are within an experienced defense lawyer's expertise. Beyond that, a veteran lawyer may also know something about how clients who are imprisoned, whether as a consequence of voluntary confession or otherwise, experience their punishment over time. Since that experience is relevant to both of Steven's options, and since he may not know much about it, sharing that knowledge may also be part of my professional obligation.

Looking more closely at Steven's options, what is the likelihood that Steven will be convicted if he fails to come forward? Assume that based upon my local knowledge I think they are low. The case is cleared, the police and prosecutors appear satisfied, and the trail is cooling. If he remains silent, Steven probably does not face any serious legal risk. The wrongfully convicted defendant, however, will stay in prison for life.

What will happen if Steven comes forward? If the authorities believe his confession, Steven will be convicted and will probably serve extensive time. Will his confession be effective in freeing the innocent defendant? If so, then certainly he should know that. It is more interesting, though, to consider a case in which the answer to that question is not as clear as a layman might reasonably hope and expect. Exoneration of the original defendant requires the system to admit a mistake, and both the system and the individual actors in it have reasons, both good and bad, for being reluctant to admit mistakes.¹⁰ For example, the prosecution may believe (or claim to believe) that there was more than one perpetrator.¹¹ There may, therefore, be a real risk that the system will treat Steven's confession as sufficient to convict him, but as insufficient to clear the wrongly accused. Depending on whether his confession clears the innocent, on the judge who is sentencing him, and on the relevant guidelines, Steven may not get as much credit as he expects for coming forward, either.

¹⁰ For example, the hearsay rules have historically reflected distrust of third-party confessions that exculpate the accused. See FED. R. EVID. 804(B)(4) advisory committee's note; see also *Morales v. Portuondo*, 154 F. Supp. 2d 706, 716–17 (S.D.N.Y. 2001) (describing state court refusal to credit uncorroborated confession of true killer). For other vivid accounts of institutional resistance to proof of innocence, see David Luban, *The Conscience of a Prosecutor*, 45 VAL. U. L. REV. 1, 1 (2010) and Aviva Orenstein, *Facing the Unfaceable: Dealing with Prosecutorial Denial in Postconviction Cases of Actual Innocence*, 48 SAN DIEGO L. REV. 401, 402 (2011).

¹¹ This has been the prosecution's response in a number of cases involving evidence of actual innocence. See *Morales*, 154 F. Supp. 2d at 713–14; Luban, *supra* note 10, at 3.

It may be that some of this advice will be surprising to Steven. It may also be that the cumulative effect of this advice will make it less likely that Steven will come forward, even though many would regard that as the morally preferable outcome. If so, so be it. My single clearest professional obligation as a counselor is to explain the law and the legal system to my client. Presumptively such advice leads to client conduct in accord with public values. Even when the presumption fails in specific cases, it would be a betrayal to allow the client to proceed in such a consequential matter with a mistaken understanding of the system. Indeed, the more counterintuitive the legal system's response to conduct that seems morally correct, the more important as a matter of basic fairness for the lawyer to dispel the client's mistaken expectations about that response.¹²

Finally, and again as a matter of basic professional competence, I would want to talk to Steven about how he planned to make his decision. Experienced lawyers have watched and helped many clients make consequential decisions. Decisions that come once in a lifetime for a client, like whether to confess to a serious crime or whether to sell one's family business, are often part of the lawyer's daily routine. Experienced lawyers will likely have seen some clients make decisions that they later regretted, whether because they felt they had not deliberated sufficiently or because, in the end, they did not fully understand how they would feel about the option they chose. For Steven, who is young, inexperienced, and under great personal stress, my professional knowledge about decision making may be especially valuable. In this case, I would urge Steven to allow himself time to make the decision. I would emphasize that his choice has very serious long term consequences, and, in the case of confession, may be irreversible. The possibility of lasting regret from a decision made in haste is therefore very real. Because the wisdom of his decision turns so strongly on how he will feel about it in the long run, I would also urge Steven to allow time to reflect on that and to consider involving in the decision other people who know him better than I and whom he trusts.¹³

III. WOULD I GIVE MORAL ADVICE?

What about moral advice? An initial question is what counts as moral advice. In the course of drafting this paper, I asked a small sample of lawyers whether they ever gave their clients moral advice, and discovered that the question provoked different responses depending on what the lawyer understood the term to mean. The most common response assumed that moral advice was advice to the client

¹² For a fuller defense of this proposition, see Stephen McG. Bundy and Einer Elhauge, *Knowledge About Legal Sanctions*, 92 MICH. L. REV. 261, 305-06 (1993).

¹³ Some persons whom Steven is likely to consult, such as priests or psychologists, are likely to be within the circle of privilege. If Steven's trusted advisors lay outside that circle, I would want to work with Steven to ensure that such consultations were structured to take maximum advantage of his existing privileges.

about what third parties think is right. These third-party moral norms may be reflected in the law or may matter to people whose views in turn matter to the client, from judges and jurors to potential customers or suppliers. A smaller group thought of moral advice as advising the client about his own moral values or sense of right and wrong. No one identified the kind of moral advice that seemed most salient to me: advice about what the lawyer personally thinks is right. Upon reflection, it seemed to me that all three types of advice might legitimately be classed as moral advice, and that all three types should be considered in answering the question posed.

One view of the question is that there are no professional standards for giving moral advice, so that both the form and content of that advice is wholly up to me. The argument starts (and ends) with the text of Model Rule 2.1, which says that in giving legal advice a lawyer “may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation.”¹⁴ Some have read the Rule’s use of the permissive “may” as establishing that a lawyer’s decision to give moral advice is governed by “purely personal and idiosyncratic considerations.”¹⁵ On this view, while it might be possible to criticize a lawyer’s decision to offer or withhold moral advice from some extra-professional point of view, there would be no basis within professional ethics for doing so.

I think it would be a mistake to read Model Rule 2.1 as limiting the scope of professional obligation in that way. After all, the Comments to the Model Rules themselves justify their permission to refer to “moral considerations” on the ground that there are some cases where such considerations “impinge” on a legal question or “decisively impact how the law may be applied.”¹⁶ When that is so, the Comments state, legal advice that ignores moral considerations may be of “little value to the client” or “inadequate.”¹⁷ If leaving out moral considerations would sometimes result in inadequate or worthless advice, however, then there is a very strong tension between any reading of Model Rule 2.1 which would make moral advice wholly optional and other Rules expressly requiring that a lawyer provide “competent representation” and explain matters “to the extent reasonably necessary to permit the client to make informed decisions.”¹⁸ To me, this is sufficient to suggest that the argument that professional standards have nothing to say about when to give ethical advice is implausible.

A narrower and more plausible reading of Model Rule 2.1 would start with the recognition that the Model Rules are designed as minimum standards to be enforced through professional discipline. From this perspective, the choice of the

¹⁴ MODEL RULES OF PROF’L CONDUCT R. 2.1 (2011).

¹⁵ Fred C. Zacharias & Bruce A. Green, *Reconceptualizing Advocacy Ethics*, 74 GEO. WASH. L. REV. 1, 48 (2005).

¹⁶ MODEL RULES OF PROF’L CONDUCT R. 2.1 cmt. (2011).

¹⁷ *Id.*

¹⁸ *Id.* at 1.1, 1.3(b) (2011).

word “may” is best understood as taking decisions with respect to moral considerations outside of professional discipline, but not as leaving such decisions wholly unregulated by professional standards. Particularly in criminal cases, where the requirement of effective assistance of counsel arises from federal law that can trump state disciplinary rules, this reading seems quite compelling.

Alternatively, even if a lawyer were to read Model Rule 2.1 as eliminating any enforceable legal obligations with respect to the giving of moral advice, he might as a matter of conscience decide that his decisions about providing moral advice should not be based on “purely personal and idiosyncratic” considerations, but instead guided by his professional duties to his client and the court.

Under either of these approaches, a lawyer would be obliged to consider whether giving moral advice was consistent with professional obligation. Since I find both approaches persuasive, I would want to answer the question of whether to provide ethical advice to Steven in light of my professional duties. Using that approach, I will argue, one can identify considerations that may weigh heavily, perhaps decisively, for or against providing moral advice in particular cases. Moreover, the balance may well be different for different kinds of moral advice.

For starters, the duties of competence and loyalty will often require advice about moral norms that matter to third parties. Certainly that is true when explaining such norms is necessary to give adequate content or force to required legal advice relevant to the client’s situation. These would include the cases discussed in comments to Model Rule 2.1 in which moral considerations “impinge” on a legal question or “decisively impact how the law may be applied.”¹⁹ As noted, the norms could fall across a spectrum from those incorporated into the fabric of the law itself, to those held and acted upon by actors in the legal system or in other communities who matter to the client. At the “fabric of the law” end of the spectrum, such advice may sometimes be better viewed as part of required legal advice. The reasons for the salience of third party norms could also vary. They might bear importantly on how the client will be treated or the client may simply care about and wish to be guided by the views of others. Thus, in advising Steven about the consequences of a decision to come forward, I would surely have been obliged to explain how moral norms reflected in formal sentencing guidelines or held by individual judges or district attorneys would influence both his treatment and that of the wrongfully convicted defendant.

Advice to the client about what the client thinks is right can also sometimes be obligatory. As explained above, as a matter of basic competence, a lawyer often must find out what the client’s moral views are, at least if they are not obvious and the lawyer has reason to know they are relevant to the ends to be pursued or the means used in pursuing them. Once the lawyer knows those views, he is obliged to draw the client’s attention to those aspects of the situation that are salient given those views. To the extent that his professional experience indicates the kind of decision-making process most likely to result in decisions consistent

¹⁹ *Id.* at 2.1 cmt. (2011).

with those views, he may have an obligation to recommend that the client use that process. The efforts that I described above to draw Steven out on his views of the alternatives that he faces and to encourage him to include others close to him in his decision-making process reflected compliance with those duties.

Does the lawyer have an obligation to go further and tell the client how to apply his moral views? In an ordinary case, I think not. The lawyer's understanding of the client's moral framework is normally inferior to the client's understanding. Even if the lawyer is dead right in assessing the client's views, in many instances, such advice might be so offensively paternalistic that the lawyer should not give it out of concern for the health of the attorney-client relationship. Still there may be cases where the net benefits of such advice are sufficiently clear that it should be given. Suppose that the lawyer reasonably believes, whether because he knows the client well or has observed many other clients making similar decisions, that the client is about to make a decision that he will subsequently regret because it is inconsistent with his basic values. Perhaps, for example, the client is in a towering rage or deep emotional funk and needs to be brought up short.²⁰ In such cases, a competent lawyer has an obligation to pose the question of consistency between the chosen course and the client's values and to urge reconsideration. Short of that, there may be cases where the lawyer can accurately read the client's confusion or uncertainty about her moral views, and determine that some clarification would be helpful.

It is not possible to say whether either situation is present in this case on the facts given. Even if my interview with Steven indicated that the client would benefit from a conversation about his own values, however, I would still want to be cautious in taking the role of helping the client decide what he thinks is right. That caution might in turn cause me to recommend either that he should have that conversation in the first instance with someone who knows him better, or if that is not possible or prudent, that such a person be included in any such conversation between us.

Finally, there is advice about what the lawyer himself personally believes to be the morally best course. There are a number of reasons to be wary of such advice. First, it may add little to the substance of the lawyer's legal advice, particularly if the lawyer has already laid out the way that moral norms are woven into the fabric of the law itself and highlighted aspects of the decision that are salient within the client's moral framework.

Second, such advice may damage the attorney-client relationship, by reducing trust between lawyer and client. Damage seems most likely when the lawyer-client relationship lacks deep roots and the lawyer's moral advice explicitly or implicitly criticizes the client's moral position. The resulting distance may mean

²⁰ One could characterize such cases as involving a form of diminished capacity requiring the lawyer's intervention. *Cf. id.* at 1.14 (2011) (setting out standards for representing clients with diminished capacity). Where the client's conduct is in addition a crime or fraud, giving such advice may also be required by the lawyer's duty to the court.

that the client will not fully hear or trust the lawyer's required legal advice—which could well disserve the public interest in compliance with law, the client's interest, or both. This concern may well loom large in criminal cases. Many criminal defendants are all too aware that they lack the kinds of financial, social, and cultural capital that clients customarily rely upon to command competent and loyal representation. That awareness creates rich potential for mistrust. Recognizing this, responsible criminal defense lawyers might well choose to withhold critical moral advice to increase the likelihood that the client will trust them, confide in them and hear their legal advice.

Third, in those cases where the lawyer's own personal views add something new to the mix, because they differ from those of third parties or the client, the lawyer may legitimately worry that his views may be given too much weight. Though some clients may perceive otherwise, in the realm of personal morality, lawyers cannot claim special expertise. Moreover, more than most societies, America is committed to moral pluralism—the idea that across a range of human choices there may be a number of equally correct moral approaches.²¹ Modesty is particularly appropriate where lawyer and client have very different backgrounds and life experiences, as will often be the case in criminal matters.

Together these considerations suggest that in many cases advice to the client about one's own moral views may be either incompetent, disloyal, or both. Still, there may be some situations where the lawyer is obliged to offer his personal moral views in the matter without being solicited to do so. First, such advice might be required, as a matter of duty to the court, when one of the client's options is so clearly illegal and harmful that preemptive legal advice is required, but such advice leaves the client unmoved. Because the conduct involved is so clearly wrongful, the lawyer need not worry so much that his views will carry excessive weight. Because the lawyer will be unable to continue representing the client if the client insists on proceeding (and may also be empowered to take even more damaging actions, like disclosing the client's plans), he need not worry about damage to the relationship: if the advice fails the relationship will end in any event. Hence, if the lawyer's own moral views offer any real prospect of changing the client's mind, professional conscience would certainly permit, and sometimes might require, that he offer them up.²²

Second, and closely related, are cases where the client's conduct is at least arguably lawful, but the lawyer personally regards it as repugnant or imprudent and intends to exercise his right of permissive withdrawal on that ground.²³ In such a case, fairness to the client would seem to require the lawyer to explain both

²¹ See Norman W. Spaulding, *The Rule of Law in Action: A Defense of Adversary System Values*, 93 CORNELL L. REV. 1377, 1389–91 (2008).

²² These cases may often overlap with those where the client's conduct also deviates from the client's own moral standards in a way that requires a lawyer to raise the issue whether the decision is consistent with the client's own standards.

²³ MODEL RULES OF PROF'L CONDUCT R. 1.16(b)(4) (2011).

that the client runs a grave risk of losing his lawyer and why he is in danger of doing so.

Finally, there could also be situations where the lawyer can conclude that sharing his moral views would clearly strengthen the attorney-client relationship or enhance the client's capacity to decide. An example would be a situation where the client has a moral position that is not widely shared (or that takes some courage to assert). In such circumstances, the fact that the lawyer shares the client's view may actually be important to building trust with the client or to allowing the client to fully accept and act on her own convictions.

I do not think this is a case where I would be required to volunteer my own moral views. Neither of Steven's options is illegal. Nor, in this context, would I find a decision not to confess sufficiently repugnant to compel withdrawal as a matter of personal conscience. Indeed, because refusals to confess are so common in criminal defense practice, I would worry that withdrawal on those grounds, even if technically consistent with the ethical rules, would be a breach of faith with Steven and unfairly coercive.

Conversely, many of the affirmative reasons for caution in advancing moral views are present. My moral views are arguably superfluous here. In addition, this is a serious criminal case and my professional relationship with Steven is neither deep nor long established. I can legitimately worry that introducing my own moral views could work a disruption in our relationship. Finally, although the morally correct answer may seem obvious in the abstract, I would worry about the risk of imposing my own views on the situation, particularly given that Steven and I inhabit very different worlds and I will not be walking his chosen course with him.

I might conclude differently, however, if it became apparent that Steven wanted to hear my moral views, that he was confident they would not be superfluous, unwelcome or irrelevant, and that he did not have others to whom he could safely turn to engage in honest moral dialogue. I can imagine that these factors might sometimes combine so strongly as to indicate that sharing my own views would be professionally obligatory, whether because such advice advanced our professional relationship or enhanced Steven's capacity to make the decision that is right for him. In others, I believe they could indicate that it was otherwise morally right to share my views, and not inconsistent with professional obligation. Even then, in offering my views, I would still want to reflect and protect my professional relationship with Steven. Thus I would want to clearly identify my views as a non-professional contribution to Steven's internal deliberations about what he thinks is right. I would want him to understand that those views are not offered in a spirit of judgment, but to the contrary in full recognition of the high stakes and difficulty of the decision. Finally, I would want to acknowledge the fundamental bravery and decency of a decision to come forward.

