

# **Analyzing the Attorney-Client Relationship**

**What Do Criminal Defense Attorneys Owe Their Guiltiest Clients?**

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## **Abstract**

The profession of a criminal defense attorney is often seen as a controversial one, primarily due to the almost guarantee that they will be defending individuals who are guilty of committing egregious crimes. Several complicated and difficult questions arise in criminal defense work, especially regarding what the best approach is for interacting with the 'guiltiest clients.' To answer this question, I first go into what it means to be understood and why it's important for all humans. Once a definition for understanding and its importance have been established, I then go into a philosophical discussion that argues all humans inherently desire to be understood by those around them because it makes them feel equal to their peers. As a result, I argue that criminal defense attorneys have a moral obligation to make their guiltiest clients feel understood.

## 1 Introduction

Under the United States legal system, criminal defense attorneys assume a vital role within our society as advocates for some of the population's most vulnerable. They are tasked with the responsibility of safeguarding the rights and liberties of individuals whose liberties are at risk, likely for a heinous crime that they very well may be guilty for. There are several procedural intricacies and legal nuances that define their profession, but amongst these complexities stands one seemingly unanswerable question: how far does the moral responsibility a criminal defense attorney has towards their client go beyond the courtroom walls and does it still stand when their client is guilty beyond a reasonable doubt? I plan on answering this question by ascertaining that criminal defense attorneys have a moral obligation to make all their clients feel understood, even if doing so has no impact on the actual case at hand; *especially* for their guiltiest clients.

A criminal defense attorney is an attorney that specializes in defending individuals, organizations, and entities accused of criminal conduct. Their job is to represent their clients (also commonly referred to as defendants in legal jargon) and protect their rights by helping them build a defense that will reduce the negative consequences of being arrested and having allegations of criminal activity leveraged against them. Criminal defense attorneys tend to represent their clients at trial or attempt to discuss and negotiate a favorable plea bargain with the prosecution. In this paper I am going to argue that criminal defense attorneys have a moral obligation to make their individual clients going to trial feel understood. I am also going a step further and posit that these attorneys especially hold this moral obligation towards their clients that they know are guilty beyond a reasonable doubt.

There are two main charges that criminal defense attorneys are usually providing defense for their clients from: misdemeanors or felony charges. A misdemeanor, often considered less

serious than a felony, refers to criminal activity that is punishable by one year or less in a local jail. Examples of a misdemeanor could range from alcohol-related traffic offenses as a DUI or possession of controlled substances or drugs. A felony refers to serious criminal activity that is punishable by more than one year in the prison system. Examples of a felony charge could range from murder to rape.

When referring to clients or defendants, this thesis will mainly be referring to individuals who are guilty beyond a reasonable doubt of felony charges. That is to say, these are people who have committed serious offenses and their guilt is so certain that it must be accepted as fact by any rational person. Additionally, the term ‘guiltiest clients’ will be referring to clients who are guilty beyond a reasonable doubt of felony charges and also lack a justifiable explanation for why they have committed these crimes. As a result, these clients are likely to be taken to trial, given a guilty verdict by a jury of their peers, and subsequently given severe charges, an example of which could include imprisonment for life or worse.

In this paper I am going to argue that criminal defense attorneys have a moral obligation to try their best to understand their guiltiest clients. If this obligation proves too taxing or too difficult, I then argue that criminal defense attorneys must uphold this moral obligation by doing their best to earnestly make their guiltiest clients feel understood. To reach this argument, I will begin by first defining what it means to understand someone within the context of this thesis as well as the importance of being understood as a virtue. Then, I further elaborate on the importance of being understood for the ‘guiltiest clients’ specifically due to the mass social isolation they face as well as why I chose understanding in favor of other virtues. After, I discuss the virtue of equality and how what it is to be understood ties into what it is to be treated equal as well as why I’m positing the criminal defense attorney’s obligation to understand as a moral

obligation. Finally, I end the paper by bringing up any possible objections to my thesis as well as rebuttals to those objections and conclude my thesis.

## 2 Defining Understanding

In order to fully understand why criminal defense attorneys have this specific moral obligation to understand their guiltiest clients, we must first properly define what it means to understand/be or feel understood. Within the scope of this thesis, ‘understanding’ refers to a sincere interest in the client regarding their actions and behavior, their motives for committing the crime they are accused of, their background growing up, and anything else that may be notable or required in order to fully comprehend and perceive the client. Further, this thesis is concerned with both clients actually *being* understood as well as clients *feeling* understood. Whether or not clients are actually being understood versus being made to feel understood depends on a variety of factors. As a result, this distinction is important for two main reasons.

First, actually understanding a client may be a difficult or even impossible task depending on the context of the situation regarding the nature of the crime committed and the reasons behind committing said crime. Burdening criminal defense attorneys with a moral obligation that they may not be able to fulfill seems ineffectual. It would be senseless to task anyone with a moral obligation that cannot be fulfilled if they have a client that is acting wholly in bad faith and refuses to entertain the possibility of being understood no matter how hard the attorney tries.<sup>1</sup>

Second, all the benefits that come from being understood are still encompassed by feeling understood. Thus, if the client feels a sincere interest in their motives and background (and the comprehension of them) is being put forward, the same benefits would arise as though they were

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<sup>1</sup> The demandingness of the criminal defense attorney's moral obligation to understand will be further elaborated on later in this thesis but for now, we can understand this premise to mean that we cannot task anyone with a moral obligation that is impossible to fulfill.

fully and totally understood. Here, it is important to clarify that the main objective is to not deceive clients and solely make them feel understood without actually taking the time to try and understand them. Making clients feel understood is only in place once all other efforts to earnestly try and understand the client have been exhausted by the attorney.<sup>2</sup> It is also worth emphasizing that while understanding your client is likely to be beneficial for the attorney within the context of their job and for the client's trial, this thesis is primarily interested in establishing the importance of this obligation irrespective of its career-related benefits. In other words, the primary aim of this thesis is to prove the criminal defense attorney's moral obligation to make their guiltiest clients feel understood, regardless of whether or not doing so would be beneficial for the clients case. Any additional benefits to understanding that come up related to the client's case are irrelevant for the purposes of this thesis, the moral obligation to understand their client must be independent of the attorney's task to defend their client during trial.

### **3 The Importance of Feeling Understood**

Once we've properly defined the virtue of understanding, it's important to further expand upon the importance of feeling understood and how it can positively impact another individual's living experience, especially 'guiltiest clients'. The notion of understanding can become a bit complicated, especially once it is coupled with a moral obligation asking for understanding of another person. To best understand where this obligation stems from, it is necessary to take into consideration the position the client is coming from. For those not facing allegations of committing a serious crime, being understood holds less importance. If they are not understood or even if they are largely misunderstood, it won't prevent them from having a decent life. For

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<sup>2</sup> Objections regarding whether or not it is deceitful to make a client feel understood will also be further expanded upon later in this paper in the objections section.

those coming from the position of the guiltiest clients, being understood holds a tremendous amount of value. There's a significant overlap between those who are vulnerable and those who are criminals. They stand more to gain from feeling understood but more importantly, they stand even more to lose from feeling misunderstood. Some minimal level of understanding is necessary for anyone to have a decent life and the criminal defense attorney is likely the only person willing and able to extend this virtue towards their clients.

Feeling understood entails only what the client deems is necessary for them to feel seen and heard. As a result, this has the potential to range from the client divulging their upbringing and hardships that came along with that or even something as seemingly trivial as their music preferences or favorite dessert. The objective is to serve the interests of the client and allow them to feel understood. Feeling understood is almost liberating for an individual who feels (and in this situation, quite literally is) alone and is suffering/struggling. When we take the opportunity to make someone feel understood, inherently this suggests that the person doing the understanding is allowing room for possibility. There's hope that the person being understood will feel that there is possibility for them to grow and change and have some semblance of compassion extended towards them. Having someone make the effort to try to understand you implies that they first and foremost feel as though you are worth the effort of being understood.

This is why being understood is important, because it makes us feel as though our life is important. From the clients perspective, being seen as worthy of understanding or even feeling as though they are being personally understood (regardless of whether or not they actually are) allows them to feel valuable, like they are being recognized as a human being. A great deal of the obligation behind making someone feel understood stems from the notion that all humans are equally valuable from a humanity perspective, we are all equally human and as a result we are all

equally worth understanding. The obligation to make someone feel understood is there because the client, regardless of the choices they have made, is still a human and thus deserves to be deemed worthy by at least one person of having their humanity recognized.

#### **4 Social Isolation**

Within the context of the relationship between a criminal defense attorney and their guiltiest client, the importance of understanding them is imperative. Of course, criminal defense attorneys should make an effort to understand all of their clients, but it is especially important and necessary that they understand their guiltiest clients due to the massive public scrutiny these clients are likely to receive. Clients that are deemed the ‘guiltiest’ do not just have to face the scrutiny of legal courts but also from the court of public opinion. Therefore, these individuals are likely to be alienated from those around and have little to no community if they even had one to begin with. These individuals are completely isolated, creating a specific moral burden on the criminal defense attorney to make an effort to understand these clients who otherwise will be at the mercy of the prosecution, the judge, and the jury who hold their fate in their hands.

Further, with potential imprisonment, reduction in social support from friends and family as well as a fall in social status are likely to immediately follow soon after. Regardless of whether or not people actually deserve to be forgiven, human behavior does not always align with ideal morality, and almost all of the clients being referred to in this thesis have made a great deal of bad decisions. As a result, we cannot fault their friends or family for making the decision to socially isolate these clients. Their rejections make sense. However, we can expect the lawyer as the person most well suited (perhaps due to their lack of personal connection to the person the client was ‘before’ their crime), to be tasked with the burden of having a moral obligation to make said person feel worthy and understood.



Empirical evidence suggests that social isolation is linked with poor health and mental health outcomes, including an increased risk of early mortality. Additionally, there is data that correlates isolation trauma with higher suicide rates, homicides, drug uses, etc. as direct consequences or ways to cope with those that were in isolation for long periods of time.<sup>3</sup> The path that lies ahead for many of these clients is not an easy path or one to be envied. This adds an additional level to the moral obligation placed on the criminal defense attorney, this is the last opportunity the clients may get to have any kind of virtuous attitude extended towards them for a very long time or potentially the rest of their life. Oftentimes, clients will begin to experience extreme social isolation before the trial is even set to begin, likely due to the considerable social transition potential imprisonment entails.

## **5 Why Understanding?**

Now that the virtue of understanding has been properly defined and expanded upon, it is only natural that subsequent questions arise regarding why understanding was chosen for the purposes of this thesis in favor of other virtues. The importance of being understood may not be clear to all, especially once it is linked with a moral obligation to make others feel understood. The fact is, being understood is important because deep down everyone wants to feel understood. This is not so as to say that everyone wants to actually *be* understood, as mentioned above there is a significant difference between being understood versus feeling understood. When we earnestly understand someone and fully comprehend them, we may find out things that we don't like.

Worst case scenario, we may take the time and effort to understand someone only to find out that

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<sup>3</sup> Aaron Allen. "Social Isolation Can Have A Negative Impact On The Incarcerated And Those Re-Entering Society." *Seattle Medium*, 2023, <https://seattlemedium.com/social-isolation-can-have-a-negative-impact-on-the-incarcerated-and-those-re-entering-society/>.

after all our hard work there is nothing redeeming behind the person we were trying to understand in the first place. It is worth mentioning that this is unfortunately entirely possible within the context of a criminal defense attorney and their guiltiest clients. The reality is, there is a subsection of people in the world who do bad things with no real reason or thought behind it. There is a large possibility that it may be emotionally taxing/burdensome on the attorney for them to fully understand their client. There is also an additional possibility that the client themselves may not be comfortable with being understood, this could be for a number of reasons but above all else they may simply claim that they just do not want to be understood.

With respect to those who have apprehensions regarding being understood because they claim they simply do not want to be, it is likely that rather than having a general aversion to being understood, these individuals are instead worried about being vulnerable, embarrassed, and/or misunderstood. The fear or worry of being understood is displaced, people want to be understood, they just fear what comes along with being understood. We can reasonably assert that people tend to like being understood because most people hold an intrinsic desire to be known for their true selves and who they are at their core. Additionally, being understood overall is a good thing that we can assume most people would want because it is good to be understood and there is much to benefit from being understood. We can point to mass media and the countless social media posts, tv shows, and films that depict people sharing their most vulnerable moments to further prove this. People show a strong bias towards people they see in the media that they deem 'relatable' for talking about or showing the things we do in secret. Seeing others (whether they are social media influencers, fictional characters, etc.) replicate our behavior or thoughts makes us feel more seen and understood. We like seeing the 'worst' or secret parts of ourselves in others with the caveat that it's not us having to put ourselves out there. There's a

sense of belonging that comes alongside seeing a character on screen that looks like you/talks like you/thinks like you/acts like you/etc. It provides us with reassurance and self-confidence in ourselves, that even though we are different we aren't *that* different.

This phenomena of parasocial attachment to characters that make us feel understood isn't just speculation, it's also backed empirically by research. In 2022, an associate professor at the University of Florida named Gregory Webster conducted an online anonymous survey<sup>4</sup> in which they asked more than 300 users of the social network Reddit to rate themselves on the Big Five traits (extraversion, agreeableness, open-mindedness, conscientiousness, and neuroticism) and all four Dark Tetrad traits (narcissism, Machiavellianism, psychopathy, and sadism). Then, they were asked to rate the 56 characters from Game of Thrones in the same way. This show in particular was used primarily because it's an incredibly popular show depicting 'very human and relatable' characters, with 'no perfect good guys or perfect bad guys' while still allowing room for change within each character.

The results showed that there is significant evidence to indicate that people project their personalities onto the characters they watch on screen. "...people do form parasocial relationships with these characters, and it's probably because they see more of their personality traits reflected in those characters. Which means, if they like the character, it's because of what they see of themselves," said Webster. A further example was given regarding those who see themselves as narcissists. The study revealed that those who see themselves as narcissistic are more likely to see more characters in Game of Thrones as more narcissistic. This is because people who freely admit to being narcissistic tend to project their narcissism onto others, *it makes them feel less odd about it*. When we say we like something, we're oftentimes projecting and describing ourselves

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<sup>4</sup> Cynthia Hernández. "Here's Why You Got Attached to Your Favorite Fictional Character." University of Florida News, May 2022, <https://news.ufl.edu/2022/05/why-you-got-attached-to-your-favorite-character/>

more than we are describing the thing we like. That character, social media influencer or post, etc. reflects ourselves and our preferences, outlooks, tastes, etc.- it reflects who we are.

In a similar vein, being understood allows us as humans to feel as though ourselves and our respective identities matter as well. Even when people don't consciously know it, they desire to be understood in a relevant way regardless of what that looks like. A study of first-year university students found that there was a strong linkage between a sense of belonging and their engagement in their coursework. For these students, a teacher going as far as even just remembering their name or encouraging their participation substantially increased motivation and achievement in their respective courses.<sup>5</sup> The study found that this was because these classroom practices allowed students to feel like their ideas and perspectives were important and mattered. We can allow ourselves to liken this to the attorney-client relationship and how even if the client seemingly does not desire to feel understood, they would still likely benefit greatly from feeling as though they matter at least solely on just a human level.

Outside of online or classroom interactions, we've also seen this need for understanding amongst individuals with felony charges levied against them and were subsequently deemed guilty. One of the most prominent examples of this is Gypsy-Rose Blanchard. Gypsy-Rose was 23 years old when her mother Claudine 'Dee Dee' Blanchard was found murdered in her bedroom from inflicted stab wounds. At the time, her mother was her caretaker and claimed that Gypsy-Rose had several chronic conditions such as leukemia, asthma, muscular dystrophy, and premature birth which resulted in her having severe brain damage and a significant gap in her mental capacity for someone her age. However, upon further investigation, it was discovered that Gypsy-Rose did not have any of the physical or mental health issues her mother claimed she had

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<sup>5</sup> "Academic Belonging." *MIT Teaching + Learning Lab*, <https://tll.mit.edu/teaching-resources/inclusive-classroom/academic-belonging/>.

and she was instead the victim of Munchausen syndrome by proxy: a condition in which the caretaker of a child (often the mother) makes up or causes symptoms to make their child seem sick. Dee Dee had been controlling Gypsy-Rose through physical and psychological abuse to pretend to be disabled and chronically ill. As Gypsy-Rose grew older, she gained more independence and awareness regarding the situation which came to a head when she recruited her online boyfriend Nicholas Godejohn to kill her mother. The two conspired regarding plans on how to kill Dee Dee, with Gypsy-Rose even going as far as to let Godejohn into her home the night of Dee Dee's murder and providing him with materials to carry out the crime. The pair were eventually caught and Gypsy-Rose pled guilty to second-degree murder, serving out eight years of a ten-year sentence and getting released at the end of December 2023.

Upon Gypsy-Rose's release from prison, she immediately made numerous media appearances consisting of interviews with *Good Morning America*, *CNN*, *The View*, several podcasts, released an e-book entailing her story, and participated in a six part docu-series on Lifetime TV. Gypsy-Rose serves as an example that even the guiltiest of people still yearn to be understood by their peers and those around them. It isn't that people don't want to be understood, people instead fear the responses that may come from putting themselves out there in order to be understood. She is quoted by ABC News in stating that she is trying to share her story 'to bring awareness to mental health issues, to Munchausen by proxy, to abuse victims' as well as hoping that her story will serve as a cautionary tale for others.

In telling her story and making the effort to allow the general public to understand her and her story, several details integral to Gypsy-Rose making the decisions she made were uncovered such as her being sexually assaulted immediately after Godejohn murdered her mother, her mother chaining her to her bed for two weeks straight, and more. These details being

made known to the public largely assisted in Gypsy transitioning from an infamous public figure to a famous public figure, gaining the sympathy of the general public albeit her guilty charge and role in murdering her own mother. In another podcast interview, Gypsy-Rose said, “Before I didn’t even have that chance [to live her life, reinvent herself] to begin with. Let me show you guys who I am as a person before you just start slapping labels on me.”

This is not so as to say that since her release from prison, she was greeted with open arms and listening ears from everyone in the general public. Gypsy-Rose has even shed light on the pain that can come by letting people in and allowing yourself to be understood. In a podcast interview, she recounts a story from when she was being interviewed and the interviewer directly called her a murderer to her face. In the face of what is obviously a tense and uncomfortable situation, Gypsy-Rose simply stated that she knew this was something she was going to have to address and that she was keen on answering the question to clarify misconceptions people have about her and her case. (In her opinion, she simply assisted Godejohn but did not actually carry out the act of the murder itself therefore in her eyes, she is not a murderer.)

Discussion forums online have also been created with the sole purpose of discussing their skepticism regarding the circumstances surrounding Gypsy-Rose’s case, with many critics believing that she was more culpable for the murder than she made herself out to be. These critics have gone to great lengths to provide what they see as important nuance and context behind Gypsy-Rose’s case and overall actions, with many ultimately arguing that her ultimate objective behind killing her mother was not to be freed from her abusing living condition but instead to be able to run away and elope with her boyfriend. Evidence regarding these claims was mainly provided in the form of Facebook posts<sup>6</sup> (that were later confirmed have been posted

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<sup>6</sup> Hancock, Stan. *Greene County Sheriff's Department Casebook June 2015 (Redacted Version)*, 2015, <https://drive.google.com/file/d/1-AE-MDRbmvBin7A3h6rwfAGwZ6inD4N-/view>.

by Gypsy-Rose) made immediately after the death stating, “That \*\*\*\*\* is dead.” as well as “I \*\*\*\*\* slashed that fat pig and \*\*\*\*\* her sweet innocent daughter... Her scream was so \*\*\*\*\* loud lol” and finally “The girl is dead too...” Gypsy-Rose has also been accused of lying on multiple occasions regarding the intricacies of her case, with many citing no possible evidence behind her claims of undergoing chemotherapy as a result of her Munchausen by proxy. It is clear that the nature of Gypsy-Rose's innocence is unclear for many and is a case that requires a lot of nuance and context whilst going over the details of the case. It is also unclear if Gypsy-Rose had simply been released and opted to live out a quiet life instead, whether or not these details would have still emerged and garnered more criticism her way.

However, for Gypsy-Rose, the benefits that stemmed from being (or at the very least) feeling understood by some members of the general public still vastly outweighed the costs because it allowed her to tell her story in the way she wanted to as well as defend herself on numerous public platforms regardless of how uncomfortable or painful recounting the experience may have been. Although Gypsy-Rose may not serve as an exact example of the guiltiest client trying to feel understood, her case still serves to prove how people facing felony charges are often in vulnerable positions and feel the need to be understood by their peers no matter what the cost is.

Perhaps a better example of an individual who is guilty beyond a reasonable doubt and similarly to Gypsy-Rose, yearns to be or feel understood may be found in the case of Orenthal James (O.J.) Simpson and the criminal trial he underwent in 1994 regarding the murder of his ex-wife Nicole Brown Simpson and her friend Ronald Goodman. Simpson was eventually pursued, arrested, and put on public trial for both murders yet was rendered a ‘not guilty’ verdict by a jury over a year later. However, it is publicly acknowledged that it is highly likely that

Simpson was guilty for both murders. Almost 30 years later, Simpson has a public TikTok and Twitter account where he frequently interacts with users and discusses the murders (even at times making light of them) at great length. One of many examples on his TikTok account includes Simpson responding to a TikTok comment calling him the ‘slayer of the women’ in which Simpson jokingly responds, “You know, I don’t like to pat myself on the back. Oh, yes, I do.” His Twitter account covers a vast array of controversial issues from the Democratic presidential debates to legal advice on how to conduct yourself in a civil or criminal litigation (“Be quiet. Essentially shut up.”).

This desire for public recognition or acknowledgement was most emphasized in his 2007 book titled *If I Did It: Confessions of the Killer* in which Simpson wrote a hypothetical description of the murders of Simpson and Goodman. Shocking contents of the book aside, even the book cover is shocking and almost mocking by printing the word ‘if’ substantially smaller in comparison to the other words in an effort to give the effect that the book title is *I Did It: Confessions of the Killer*. In stark contrast to Blanchard, Simpson does not seem to display the same levels of remorse or accountability but both still share a similar trait in common: a desire to be understood and publicly acknowledged as human regardless of their circumstances.

Although the background regarding both Simpson and Blanchard are both substantially different, their cases both serve to illuminate a profound human truth: an innate desire to be seen as worthy of being understood and acknowledged on a deeply personal level, even amidst guilt. This yearning touches on a universal need, specific to the ‘guiltiest’ of people, for recognition of inherent dignity and worth as a human. For Blanchard, her desire to be understood and publicly validated took her on a quest to reshape her narrative and offer insight into the complexities and abuse that led her down a tragic path. Conversely, Simpson’s attempts at engagement, underscore



that same fundamental craving for acknowledgement just manifested in a markedly different way. These two stories underscore that behind every action, no matter how condemnable, lies a person yearning for acceptance and validation.

Past research has been done to suggest that there is a neurological foundation behind the claim that people desire to feel understood and further, benefit from that feeling. A cognitive study conducted in 2014<sup>7</sup> found that feeling understood is tracked in neural regions previously associated with reward and social connection, as well as those associated with mentalizing (the process by which we make sense of each other and ourselves). In contrast, not feeling understood is tracked in neural regions related to negative affect and social pain as well as regions previously associated with mentalizing and thinking about dissimilar others. Consciously or not, our brains seek out that feeling that comes from feeling understood by our peers regardless of the situation we are in.

## **6 Equality**

A vast array of benefits arise once an individual is understood.. Being understood is undeniably intertwined with being equal and being treated as an equal as well. What it means to be or feel understood is connected to what it means to be or feel equal to your peers. On a surface level, it is easy to confuse the term ‘feeling understood’ as solely being associated with a cognitive process. However, the aforementioned 2014 cognitive study found that feeling understood is also an emotional process as well. Feeling understood evokes a strong emotional response in us, physically and neurologically. Building off of that, it’s important for people (but guilty clients primarily) to feel understood because it allows them to feel human. Being seen as worth understanding makes us feel as though we are on equal footing with our peers, we are their

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<sup>7</sup> Morelli, Sylvia A., et al. "The Neural Bases of Feeling Understood and Not Understood." *Social Cognitive and Affective Neuroscience*, U.S. National Library of Medicine, Dec. 2014, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4249470/>.

equals regardless of the circumstances we are in solely because we both share one thing in common: our humanity.

There is a notion in philosophy that is commonly referred to as moral equality (also known as moral egalitarianism), not to be confused with the ‘typical’ understanding of equality which is commonly defined as treating all people the same. Instead, moral equality refers to the concept that inherently there is something inside all humans that requires us all to fundamentally recognize and respect each other’s worth and dignity solely for the fact that we are all human. Therefore, these individuals can still be held accountable for their alleged crimes while still having their inherent worth and dignity as a human recognized by at least their lawyer if no one else through a feeling of being understood by another person.

Gregory Vlastos<sup>8</sup> argued that people have certain rights simply due to the fact that they are human; regardless of how unequal their merit may be, their human worth is still equal. Egalitarianism argues that all human beings have an equal worth, irrespective of their moral merit, which grants them rights to certain benefits. As a result, the fundamental purpose of our various institutions (political, moral, legal) should be to safeguard these rights in the name of justice and humanity. Ronald Dworkin wrote more on this topic, arguing in favor of the idea ‘justice as fairness’ in which equality to concern and respect resides in the natural right of man and woman, a right they are entitled to ‘not by virtue of birth or characteristic or merit or excellence but simply as human beings.’ The practical implications of this idea underscore how what it is to be understood is so strongly connected with what it is to be equal or treated as equal.

Equality is important as a virtue because it ensures that people are treated as equals, getting the dignity and respect that they deserve with their differences being celebrated. It’s a

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<sup>8</sup> Kekes, John. “Human Worth and Moral Merit.” *Public Affairs Quarterly*, vol. 2, no. 1, 1988, pp. 53–68. *JSTOR*, <http://www.jstor.org/stable/40435668>.

difficult ask to place a burden of making any individual feel obligated to make the guiltiest clients feel as their equal. However, there is a connection between what it is to be understood and what it is to be treated equally. As a result, in the same manner we can expect there to be a connection between being made to feel understood and being made to feel equal. This way, the guiltiest clients still have their innate human dignity and respect recognized by one of their peers without asking too much from the attorney and without taking away culpability for the crimes these clients have committed. They are still humans, and being recognized and treated as humans from a significant peer of their own, but they are still being held accountable for their actions as well which some could argue further recognizes their humanity.

## **7 Why the Attorney?**

It may be puzzling for some to understand why the moral obligation to make guilty individuals feel understood lies on the shoulders of the attorney. To be clear, outside of the context of the attorney-client relationship, it's a privilege to be extended the compassion to feel understood by another person. This rings especially true when taking into account the kinds of individuals we are speaking about and the types of crimes they specifically committed. It's a privilege to have the opportunity to explain yourself and grow, to be given leniency and grace and to become someone else through the extension of those virtues by others. It's a privilege to have the time and space and freedom to be understood by those around you. But when an individual is speaking to their attorney, they should get that privilege.

The nature of the relationship between an attorney and their client requires that the client should feel a certain level of comfort with their attorney. Speaking specifically within the context of the attorney's job, they are legally bound to try their hardest at cultivating an intimate relationship with their clients so that they can conduct the role of their job properly. As a result,

clients (irrespective of their guiltiness) should feel as though their attorney is motivated enough in who they are to provide them with quality legal representation. It should also not be too far of a stretch that outside the bounds of their job requirements, there is no one else but the criminal defense attorney who is better tasked with the moral responsibility of making these clients feel understood. Abbe Smith further expands upon this by stating<sup>9</sup>, “Defense lawyers represent a person, not the conduct attributed to that person. The person may be deeply flawed- he or she may be a seriously damaged human being who has done terrible things to innocent, vulnerable victims- but he or she is a person.” This is not so as to say that the attorney should feel in their heart that their clients deserve to be understood. But, for the sole reason that no one else can, the attorney is best suited for the moral obligation to make these individuals feel understood.

We know that people, especially these kinds of vulnerable people, want to feel understood and benefit from being understood. Yet, we cannot ask the general public to make these people feel understood. This is too demanding of a requirement for them, but it is not for the attorney who isn't required to fully understand their clients but rather just make them more at ease in their humanity by helping them feel understood. There is empirical evidence to support the claim that the criminal defense attorney is the only individual best suited for this moral obligation towards these kinds of (very vulnerable) people. The same cognitive study conducted in 2014 that was cited above also found that behavioral ratings parallel the aforementioned neural findings: feeling more understood predicted increased interpersonal closeness, while not feeling understood is associated with feeling socially distant from others. Additionally, when getting feedback that was not understanding, rejection-sensitive individuals felt less understood and showed amplified neural responses in regions related to negative affect.

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<sup>9</sup> Smith, Abbe. "Defending Defending: The Case for Unmitigated Zeal on Behalf of People Who Do Terrible Things" (2000). *Georgetown Law Faculty Publications and Other Works*. 216. <https://scholarship.law.georgetown.edu/facpub/216>

## 8 Why is this a Moral Obligation?

When a virtue like understanding others is levied as a moral obligation, this implies that not upholding this obligation is not only wrong but also should be seen as something to feel guilty about, almost like a moral failure. Regarding the scope of this thesis, this begs the question: Why is it a moral failure for criminal defense attorneys to not make their clients feel understood? The answer lies in an argument somewhat similar to what Joseph Raz lists out in his book *Value, Respect, and Attachment*<sup>10</sup>. Raz lists out an argument in favor of the idea that if an individual's personal life is not 'intrinsically and unconditionally' good for them, then those whose lives are intrinsically and unconditionally good cannot forgo the requirement to respect the life of others. That being said, Raz provides this claim with a major caveat that he does not believe the requirement to respect the life of others should be extended to murderers. Instead, he argues, we do not owe the same respect to murderers that which we owe to each other.

However, I firmly disagree with this restriction on Raz's argument. I believe that the moral obligation to respect the lives of others and understand others (or at least make them feel understood) should be extended to murderers (and others) if you are a criminal defense attorney. As Raz argued, if your life is intrinsically and unconditionally good, you cannot underpin the requirement of respecting the lives of others. There is a strong argument to be made that to a certain extent, criminal defense attorneys get to enjoy an intrinsically and unconditionally good life mainly because they get to enjoy the privilege of having job security and a steady income. It is also worth noting that these privileges are enjoyed because criminal defense attorneys can count on people committing crimes and subsequently gaining clients as a result. Using Raz's argument, in comparison to their guiltiest clients, the criminal defense attorney's life is more

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<sup>10</sup> Raz, Joseph. "Respecting People." *Value, Respect, and Attachment*. Cambridge: Cambridge University Press, 2001. 124–176. Print. The Seeley Lectures.

intrinsically and unconditionally good. As a result, it would be a moral wrong for them to not indulge in their moral obligation to respect their clients and make them feel understood because they are ‘better off’ at the hands of their own clients who in stark contrast, are experiencing extreme suffering.

## **9 Addressing Objections**

It is plausible that while it’s good to be understood as a general principle, there are worries about this specific claim. It may not be obvious that being understood is typically a good thing to individuals concerned that the process of being understood may be painful, an invasion of their privacy, or even a violation of their autonomy. Other objections regarding the nature of this thesis in the form of critiques regarding the demanding nature of the moral obligation to understand, the moral objections some may have to understanding the ‘guiltiest clients’ as well as the nuances and complexities behind truly understanding someone versus making them feel understood. That being said, understanding is still overall largely a good thing and it is still better to be understood than to not be.

### **9.1 Objection A: Being Understood May Be Too Painful**

When we further take the above concerns into account within the context of an attorney-client relationship many of these worries can still easily be dispelled. Many of the aforementioned worries don’t apply within the scope of this particular relationship. For instance, those who worry that the process of being understood may be painful for them are likely worried that recounting what they have been through may retraumatize them. However, the nature of the attorney-client relationship entails some level of vulnerability that clients have to engage with regardless. Clients have to answer difficult questions from the attorneys such as whether or not they did the crime they committed and what the details of the incident were. Further, even if their

attorney does not ask them these questions it is guaranteed that the clients will be forced to interact with uncomfortable aspects of their case against their will regardless. Examples of this include having to go through the painful process of hearing other testimonies of victims or those associated with victims, having to watch/listen to incriminating evidence being introduced by the prosecution, having to hear the prosecution's villainization of them, etc. Compared to a difficult conversation with your attorney, this seems even more traumatizing especially when you take into account the added impacts of this occurring in a public setting with a crowd.

Unfortunately, due to the nature of the situation the clients are in it is likely that it will be an uncomfortable process for them regardless. Since the criminal defense attorney in this situation is likely to be one of the only people earnestly attempting to understand the client, it is prudent that they allow room for some uncomfortability. The same can be said for clients who are unwilling to be understood because they consider the process an invasion of privacy. Their privacy is likely to be infringed upon in a courtroom setting regardless. So, although there are some understandable worries that come with being understood, they are not exactly relevant in this particular situation especially when being understood is to the clients benefit.

## **9.2 Objection B: A Moral Obligation to Understand is too Demanding**

Some may say that tasking criminal defense attorneys with a moral obligation to understand their guiltiest clients is an obligation that is too demanding. That is to say, some may see this obligation as asking too much of the defense attorney because it is difficult and perhaps emotionally taxing as well as time consuming. To that, I reply that of course it should be acceptable for any criminal defense attorney to weigh their own personal costs of understanding their clients and if it's too much- then they are allowed to take up the caveat of making their clients feel understood. Of course, if time constraints are holding the attorney back from being

able to properly understand their client then they have not committed a moral failure of any kind by being unable to fulfill their moral obligation. This would be a case in which (for the most extreme example) it would take perhaps years that the attorney does not have to properly be able to understand their client. It is pertinent that for each client, the attorney is able to make sense of how long it will take to make their clients feel understood and what it will require for this to happen.

That being said, while this moral obligation is not too demanding it is certainly not an easy obligation. It's especially important that the criminal defense attorney does not simply cast aside this moral obligation by only looking at how hard the obligation is. They must distinguish how difficult the obligation is relative to how important the obligation is. The criminal defense attorney must be able to understand that fulfilling this obligation will certainly come at a cost, and require giving something up. It is up to them to fairly and objectively be able to weigh their own personal costs and how significant what they are giving up is in order for them to recognize the weight of the obligation they are not properly fulfilling. To understand someone is to treat them like a person, for that reason alone this obligation should not be treated as 'too demanding' unless in the most extreme and unique circumstances. The types of clients who are going to make fulfilling this obligation the most difficult are also the types of clients who need this obligation fulfilled the most. These individuals are not going to be granted leniency from anyone else, oftentimes they will be treated as a spectacle of sorts, having all eyes on them with accusations and tough questions being thrown at them left and right for perhaps hours at a time. It is of the utmost importance that the people who have seemingly lost their humanity the most (by committing these vile acts) are still treated as human. As a result, this moral obligation to



understand is so important that it's permissible for it to be difficult (even incredibly difficult) at times).

### **9.3 Objection C: It is Immoral to try and Understand the Guiltiest Clients**

Perhaps one of the most, if not the most, common question that people have when they contemplate what a criminal defense attorney is: How, in good conscience, could anyone defend someone who they know is guilty? This question is especially applicable for the scope of this thesis which is almost certainly referring to individuals that are not only guilty, but guilty of heinous crimes. Accordingly, many people may object to the entire nature of this thesis and the idea that some of the guiltiest members of our society should be granted any compassion, no matter who it comes from and no matter what form it comes in. These individuals may feel as though guilty people being given a good lawyer is enough, any kind of moral obligation goes too far and may be deemed unnecessary or even immoral in their eyes. Furthermore, these individuals may feel that 'punishing' guilty people is actually recognizing their humanity by holding them accountable to their actions.

To that, I would like to bring up an idea that Abbe Smith mentions in her book *Guilty People*<sup>11</sup>, that there is a false dichotomy between innocence and guilt that is deliberately structured in a way to position guilty people as an exotic other. When society creates such a large gap between general members of the public and criminals, it is easy for the rest of us to look past their humanity and alienate them. In this way, it is easy for us to forget that many of these people are someone's loved one, someone who has possibly lived a harsh life prior to their crime, someone who had done at least a small amount of good at some point in their life before, the list goes on. The entire concept behind guilt is a construct, designed in a way to make incarcerating members of society and treating them poorly as not just palatable but justifiable. We aren't

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<sup>11</sup> Smith, Abbe. *Guilty People*. United States, Rutgers University Press, 2020.

supposed to see guilty people as one of us, as members of society or even as humans which in turn internally validates us for treating them poorly. But guilt is a universally applicable experience for all human beings, who among us isn't guilty? "The guilty are not a separate species," Smith points out<sup>12</sup>. They are around us, among us, they *are* us. Who hasn't cheated once in school, shoplifted even if it was by accident, or even just lied about not doing something that we most certainly did. The difference here is that many of us have more privilege or fortune (or maybe even a combination of both) than those who get caught. It is true that the crimes that are being discussed in this thesis are not crimes that should be taken lightly or crimes that all people commit in their day to day lives. But it is important that we do not forget the humanity of any members of our society, even the most egregious ones. If you still find yourself unable to extend even this to guilty people, then at least allow their lawyers to do so.

#### **9.4 Objection D: It is Deceitful to Make Someone Feel Understood in Favor of Understanding Them**

When dealing with the nature of the guiltiest clients a criminal defense attorney may have, it is possible that at a certain point the criminal defense attorney will simply be unable to ever fully understand their guiltiest clients. This could be for a variety of reasons but the main two we can chalk up to: a lack of time and a fundamental disconnect. The first reason is simple enough, due to the nature of the case or the complexities of the person it may just not be logistically possible for the attorney to reach a full understanding of their client due to time constraints. The second reason is trickier, there are several drawbacks on the side of the attorney that may arise from wholly understanding their guiltiest clients which are mentioned above in Objection B. However, for one reason or another, the attorney may reach a point in which they are just fundamentally unable to ever be able to truly understand their guiltiest client. To rule this out as a possibility

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<sup>12</sup> Smith, 6.

would be silly and irresponsible, the kinds of individuals we are discussing by using the term 'gUILTIEST clients' was done on purpose. It is not completely out of the question for some of these individuals to have committed inconceivably heinous crimes for no good reason at all.

If the criminal defense attorney is truly unable to find any humanity at all in said client and their actions, and all efforts have been exhausted, then in order to fulfill their moral obligation it is permissible for them to try and make the client then feel understood if they cannot truly understand them. It is worth emphasizing that this is a last case scenario option, definitely not ideal and not something to be sought after in the face of minor drawbacks or difficulties in the road to understanding difficult clients. However, some may object to this premise and argue that it is inauthentic and otherwise deceitful to make someone feel understood rather than truly understanding them. For many, this may seem almost disrespectful but this is not the case.

This can best be illustrated through an example using a therapist and their patient. The vulnerable, intimate relationship between a therapist and their patient is in many ways similar to the relationship between a criminal defense attorney and their client. Additionally, similar to the criminal defense attorney, it would be impossible to ask a therapist to be able to fully understand each of their clients. However, if a therapist is unable to ever understand their client, the therapist still makes their patients feel heard by listening emphatically and doing their best to treat them in the only way they can. Surely this cannot be seen as any kind of deceit, but rather as a working professional trying their best to help the people who need their services the most. To use another example that is perhaps simpler, when parents have children that are especially young and unable to properly speak, it is common for parents to play along with their children and pretend they are able to understand them. These parents are not intentionally deceiving their children, they are instead doing their best with the information they have to make their child feel understood and

not alienated from them. The same could even be said for pets and their owners, seeing as there is never 100% confirmation that owners exactly understand what their pets are saying, this doesn't mean they are deceiving their pets but instead doing their best to make their pets feel comfortable with their needs catered to. With the nature of how complex beings are, it is only natural that at some point we will not be able to wholly understand those around us but in an attempt to help them we make them feel understood. To make someone feel understood is not to deceive them, but to instead try our absolute hardest to make them feel better.

Further, there is a common psychological phenomenon known as the paradox of authenticity and attachment<sup>13</sup>. Attachment signifies a need to feel contact, attention, love, a sense of belonging, etc. within society, social groups, families, colleagues, friends and so on. Authenticity, on the other hand, is the ability to be able to express who you truly are by properly identifying and feeling your personal emotions and feelings without fear, shame, or guilt. This paradox claims that there are two basic human needs: authenticity and attachment. However, in their interpersonal relationships, people are often forced to choose one of their two basic needs. Surprisingly, when forced to make that decision, people opt for attachment over authenticity. The thought process behind this decision is that people will forgo being authentic towards themselves and their wants in lieu of attachment in the form of approval and recognition from others via personal relationships. In other words, anthropologically speaking, it is far more important for humans to feel as though others like them than it is for them to do whatever it takes for them to like themselves. By choosing attachment, humans inherently prioritize others' respect and acceptance, holding it in much higher regard than their own self-respect and self-acceptance. Obviously, this is not an ideal phenomenon and the goal, in theory, should always be for

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<sup>13</sup> Stevens, F. L. (2017). Authenticity: A mediator in the relationship between attachment style and affective functioning. *Counselling Psychology Quarterly*, 30(4), 392–414.

authenticity to rule over attachment to others. That being said, within the context of this thesis, this psychological paradox has an entirely different role than it would otherwise normally.

If the two basic human needs are authenticity and attachment, with attachment being defined as stated above, it has already been clearly demonstrated that the guiltiest clients in question are lacking in one of their two basic human needs. If you refer to the social isolation section of this paper above, it is clear that once felony charges of any kind have been levied against an individual (especially charges they are guilty of) their attachment to those around them immediately decreases more often than not, to zero. Their ability to create attachments to those around them in the form of interpersonal relationships with their desired social groups (colleagues, friends, families, society, etc.) is virtually impossible now, with the exception of their criminal defense attorney. The goal would ideally of course be to have these individuals feel secure both authentically and attachment wise. However, considering the circumstances behind their situations this is likely unable to take place. As a result, the best case scenario is allowing the client to form some version of secure attachment with their criminal defense attorney and the only way to make this possible is to at least make them feel understood if it is not otherwise possible to fully understand them. And as we have already proven above with the paradox of authenticity and attachment, even feeling understood by someone around you is preferable to a form of authenticity which would allow you to be fully understood if forced to choose between the two options.

## **10 Conclusion**

In this paper, I have displayed that criminal defense attorneys do have a moral obligation to understand their guiltiest clients. In order to properly reach this conclusion, I first took the time to wholly define understanding as a sincere interest in someone regarding their actions and

behavior. I clarify that this thesis is concerned with both actually understanding these kinds of clients as well as making them feel understood, depending on the circumstances and various factors that the attorney is a part of. I also underscored the fact that the importance of the aforementioned moral obligation is independent of whether or not it is actually beneficial for the client's case. Next, I went over the importance of being understood and that this kind of moral obligation stems from the vulnerable and unique position both the client and attorney are in regarding this specific situation. I further elaborate on what it means to be understood by elaborating that being or feeling understood from the client's perspective is solely defined by what the client feels is necessary in order for them to be/feel seen and heard. As a result, the moral obligation to make someone feel understood is there because it inherently recognizes the humanity of another person regardless of their past or present choices or behavior.

Then, this thesis covers the position that the clients are in and how once felony charges are placed against an individual they face severe social isolation in all aspects of their life. This social isolation will only worsen if these clients actually end up facing time in prison. As a result, the criminal defense attorney has this moral obligation to understand them because it may be the last opportunity these individuals have for anyone to lend any compassion towards them.

Afterwards, I emphasized the reasoning behind choosing understanding for the purposes of this thesis by detailing how important being understood truly is for all humans because it makes us feel seen and recognized as our truest selves. I further expand on this with my section on equality and how being understood ties into being treated as an equal or as a peer which is important for all humans to experience regardless of their moral merit. I begin to wrap up the thesis by explaining that the moral obligation to understand falls specifically on the criminal defense attorney due to the nature of the attorney client relationship. I also explain why I chose for the

obligation to understand to be specifically moral because it is otherwise a moral failure on the part of the attorney if they do not properly fulfill this obligation. Finally, I address several objections to my thesis such as how being understood may be too painful for the client, how the criminal defense attorney's obligation to understand is too demanding, how it is immoral for the attorney to try and understand the guiltiest clients, and how it is deceitful to make someone feel understood in favor of understanding. I address each objection with a rebuttal, respectively, stating that being understood is necessary for these clients and is likely inevitable based on their unique positioning, an obligation to understand someone cannot be too demanding because that's what is required to treat someone as a person, it's essential for the criminal defense attorney to understand these kinds of clients because they are people, and sometimes the nature of understanding is impossible which necessitates making someone feel understood instead.

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