

# DEVILS DOWN UNDER: PERCEPTIONS OF LAWYERS' ETHICS IN NEW ZEALAND FICTION

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*Sophisticated fictional portrayals of lawyers facing ethical dilemmas can provide important insights into the nature of legal ethics and morality in the New Zealand legal profession. These insights can assist the legal community in addressing complex issues surrounding professional regulation. This article reveals legal characters who act contrary to legal ethics but with moral justifications and characters who act ethically but in a way that laypeople may view as amoral or immoral. While the depictions of lawyers are generally negative, a close analysis reveals that this is partly a result of confusion over what Dare has termed the standard conception of a lawyer's role. Fewer insights can be gained from superficial characterisations. While much has been written on this topic in other jurisdictions, more light can be shed on New Zealand's ethical landscape through the study of New Zealand's fictional texts. This article exposes a rich resource for the legal community because as Economides and O'Leary have argued in relation to legal ethics, stories matter. This dictum should apply to works of non-fiction and fiction.*

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## **I INTRODUCTION**

During and after the Christchurch High Court trial [of Clayton Weatherston], talkback callers, letters to newspaper editors and media commentators questioned how [Judith] Ablett-Kerr was "able to sleep" after agreeing to defend such a monster. ... [T]he barrister's car has been attacked with acid and she has been besieged with hate mail.<sup>1</sup>

The lawyer who brokered the return of war medals stolen from Waiouru Army Museum says he is being pressured by police to help them make an arrest. ... Mr [Chris] Comeskey told the *Sunday News* a

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1 Jonathan Marshall "Threats, acid attack on Weatherston lawyer" *Sunday News* (online ed, New Zealand, 9 August 2009).

detective working on Operation Valour had told him she was investigating whether police could lay money laundering charges against him.<sup>2</sup>

Key works of New Zealand legal fiction explore issues of ethics and morality in a way that challenges traditional clichéd representations. Authors can ensure a higher level of sophistication by having legal characters make ethical and moral decisions and by confronting them with complex issues. Many of the depictions are ultimately negative but characters also surprise with seemingly contradictory behaviour, for example, acting contrary to legal ethics but with strong moral justifications. Therefore, on close examination, the negative portrayals do not seem quite so devilish although New Zealand is still well short of its quota of hero lawyers. Sophisticated fictional portrayals provide insights into the relationship between legal ethics, morality and the New Zealand legal profession. As illustrated by the two quotations above, this is of particular assistance to the legal community, which grapples with these issues on a daily basis. These stories are also of great educational value to the general public who can struggle to interpret the reasoning behind legal ethics. As Economides and O'Leary have argued in relation to legal ethics, stories matter whether fictional or not.<sup>3</sup> Stories are at the heart of moral thinking<sup>4</sup> and:<sup>5</sup>

can make an important contribution to legal education by highlighting dilemmas of ethical practice, they may also offer more by way of exposing something of the truth of a life in law.

Fictional texts can be added to the existing research literature available on legal ethics in a New Zealand context. As will be argued in this article, fictional texts can be co-opted in order to shed light on complex concepts such as "legal ethics" and "morality". Fiction does not provide all the answers to difficult problems but if it can assist in some way, then it should be embraced by scholars and students of legal ethics. It is of course imperative to acknowledge the limitations of fiction in providing a reflection of reality. Authors of fiction have no duty to faithfully represent facts. Texts are fluid and subject to different readings by different readers. There can be no authoritative reading of a text, as numerous schools of literary theory have shown.<sup>6</sup> My perspective, which in turn influences my methodology, is that of a lawyer seeking insights into legal ethics and this in turn affects the textual interpretation found in this article. In this study there has been no specific implementation of literary or cultural theory but rather a focus on legal characters and content

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2 Nick Brown "Medals lawyer claims police pressure" *Otago Daily Times* (online ed, Dunedin, 12 October 2008).

3 Kim Economides and Majella O'Leary "The Moral of the Story: Toward an Understanding of Ethics in Organisations and Legal Practice" (2009) 10 *Legal Ethics* 5.

4 At 18.

5 At 24.

6 See for example Roland Barthes *Image, Music, Text* (Noonday Press, New York, 1977). This argument can also be seen in the work of Jacques Derrida and Luce Irigaray.

contained in fictional texts and what these representations might tell us about issues of law and ethics.

In the annals of New Zealand's legal fiction one can find several hundred lawyers. Some are old, some young, some good and some bad, most male and most white. Many specialise in criminal law while others toil away in offices drafting contracts and wills and advising clients. There is no Atticus Finch, no Tulkington, no Denny Crane and no Elle Woods. The ethical dilemmas facing fictional lawyers have captured academics' imaginations in other jurisdictions, especially the United States.<sup>7</sup> However, while the icons of the international law and literature/law and popular culture canon are well-known in New Zealand, this article proceeds on the basis that it is important that New Zealanders also acknowledge and analyse the characters that exist in their own law and literature texts.

Many fictional portrayals of lawyers can be described as stereotyping. This is understandable when creating a fictional legal story but beyond the stereotype can lie the most astute reflections on the New Zealand legal system. When a fictional lawyer is forced to make an ethical or moral choice in the course of his or her professional career or faces a complex professional challenge he or she displays a third dimension and moves beyond a stereotype. This issue can be approached from the perspectives of morality and legal ethics with the two concepts both overlapping and contrasting. If we are to enhance our understanding of these fundamental yet contentious topics we require fictional characters whose actions and thoughts go to the heart of the issues at stake. For example, should a lawyer have to represent a reprehensible client or how far can a lawyer take the duty to a client without undermining legal ethics and/or personal morality? Therefore to understand how these issues play out in the New Zealand legal system it is most helpful to use examples from New Zealand literature.

The title of this article suggests that perceptions of lawyers in New Zealand fiction are overwhelmingly negative. This is true if the test is a layperson's instinctive reaction to the actions of the characters under analysis. This article will argue that a more nuanced interpretation provides a challenge to this conclusion. These "Devils Down Under" are sometimes acting ethically despite the appearance of immorality. At other times their actions which are contrary to legal ethics are

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7 See Michael Asimow "Bad Lawyers in the Movies" (2000) 24 *Nova L Rev* 531; Paul Bergman "The Movie Lawyers' Guide to Redemptive Legal Practice" (2001) 48 *UCLA L Rev* 1393; Carrie Menkel-Meadow "Can They Do That? Legal Ethics in Popular Culture: Of Character and Acts" (2001) 48 *UCLA L Rev* 1305, as found in David Ray Papke and others *Law and Popular Culture: Text, Notes, and Questions* (LexisNexis, Newark, 2007); Roger Berkowitz "The Accusers: Law, Justice and the Image of Prosecutors in Hollywood" (2004) 13 *GLR* 131; Robert Batey "Race & the Limits of Narrative: Atticus Finch, Boris A Max, and the Lawyer's Dilemma" (2005-2006) 12 *Tex Wesleyan L Rev* 389; Laura Grosshans "Accurate or Appalling: Representations of Women Lawyers in Popular Culture" (2006) 4 *Cardozo Public Law, Policy & Ethics Journal* 457.

somewhat mitigated by moral justifications. A lawyer's perspective on these issues, bound by legal ethics, will often differ from that of a layperson.

The relationship between legal ethics and the concept of morality is of course highly contentious. "Ethics" and "morality" are strained terms that have provoked a vast amount of literature. For the purposes of this article the phrase "lawyers acting contrary to legal ethics" is used to clearly point out when a lawyer is breaching the formal professional code of conduct. In a New Zealand context the relevant code is the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. "Lawyers acting contrary to legal ethics" can then be compared and contrasted with perspectives from outside the world of legal ethics. By this I mean the way in which non-lawyers can instinctively view something as right or wrong, regardless of legal-ethical considerations. Sometimes there is overlap between these perspectives and legal ethics and other times there is not. The Ablett-Kerr and Comeskey examples show that there are instances when lay people view lawyers' actions as right despite ethical difficulties and other times when laypeople condemn lawyers' actions despite the lawyer acting in an ethical fashion. This distinction is discussed at length in Tim Dare's work on the standard conception of a lawyer's role.<sup>8</sup> In this context, the article uses the Conduct and Client Care Rules as the main criteria for whether an action is ethical. If an action breaches these rules but appears to be "right" or "correct" in some other way, this raises the possibility of a different perspective at work.

What therefore can sophisticated, fictional portrayals of lawyers tell us about law, lawyers, legal ethics and morality? To answer this question, I have chosen seven of the most comprehensive depictions of lawyers from recent<sup>9</sup> New Zealand written and visual fiction: Jethro West from the television serial *Outrageous Fortune*,<sup>10</sup> Zena Kepa from the feature film *The Waimate Conspiracy*,<sup>11</sup> Oliver West from the play *Tooth and Claw* by Greg McGee,<sup>12</sup> David Selesi from the television serial *Street Legal*,<sup>13</sup> Caroline Carstairs from the novel *Six Clever Girls Who Became Famous Women* by Fiona Farrell,<sup>14</sup> Stuart Chicane from the novel *Provocation* by Charlotte Grimshaw<sup>15</sup> and Lawrence Goodenough from the novel *The Crime of Huey Dunstan* by James

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8 Tim Dare *The Counsel of Rogues? A Defence of the Standard Conception of the Lawyer's Role* (Ashgate, Farnham, 2009).

9 All of the texts were produced in the last 17 years with the exception of *Tooth and Claw* (1984).

10 *Outrageous Fortune* (Dir Rachel Lang, DVD South Pacific Pictures, 2005).

11 *The Waimate Conspiracy* (Dir Stefan Lewis, DVD Dark Horse and Hazard Press, 2006).

12 Greg McGee *Tooth and Claw* (Victoria University Press, Wellington, 1984).

13 *Street Legal* (Dir Chris Bailey, TV Series Screenworks, 2000-2003).

14 Fiona Farrell *Six Clever Girls Who Became Famous Women* (Penguin Books, Auckland, 1996).

15 Charlotte Grimshaw *Provocation* (Abacus, London, 1999).

McNeish.<sup>16</sup> These portrayals are compared with two-dimensional, stereotypical examples such as Paul Malone from the novel *Cut and Run* by Alix Bosco.<sup>17</sup> The methodology adopted in choosing these texts is based on an in-depth knowledge of New Zealand legal fiction derived from constructing the New Zealand Law and Literature/Law and Visual Media Database, a comprehensive annotated bibliography of New Zealand written and visual fictional texts containing legal references. Not only are the texts discussed in this article among the most comprehensive depictions accessible but they are also relatively recent and represent a diverse range of legal characters in terms of age, race, gender and socio-economic background. In striving to choose the most relevant examples, it has proven necessary for the article to cover different forms of media: literature, film and television.

The examples chosen for discussion are amongst the most illuminating to be found in New Zealand literature. There are also many less substantive, even passing, references to the morality and ethics of lawyers. The crooked lawyer stereotype is alive and well in New Zealand fiction and is common enough to have some impact on public perceptions of the legal profession. This article has focussed on lawyers that appear in modern settings. A similar study could be conducted focussing on lawyers that appear in historical fiction, or in fiction written before the 1980s, though the study would say more about historical perceptions of lawyers than about modern perceptions.<sup>18</sup>

## **II DEVILS IN DISTRESS: ETHICAL DILEMMAS AND NEW ZEALAND'S FICTIONAL LAWYERS**

Analysing the most comprehensive portrayals of lawyers in New Zealand legal fiction reveals the danger of clichéd categories such as hero lawyers and legal villains. A complex picture emerges of lawyers who act contrary to legal ethics but with moral justifications and lawyers who act amorally or immorally but in line with legal ethics. It can also be argued that these amoral/immoral actions reflect morality but in a moral code that is not always clearly understood by laypeople. While it seems clear that many, if not most, of the portrayals of lawyers in New Zealand fiction are more negative than positive this assumption should and will be put to the test in the following discussion.

In Series One of *Outrageous Fortune* (2005), Jethro West, is faced with crises of conscience.<sup>19</sup> Torn between his budding career as a lawyer and his upbringing in a nest of thieves (that is, the

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16 James McNeish *The Crime of Huey Dunstan* (Vintage, Auckland, 2010).

17 Alix Bosco *Cut and Run* (Penguin Books, Auckland, 2009). Alix Bosco is a pseudonym for the author Greg McGee. This novel won the first Ngaio Marsh Crime Award in 2010.

18 See for example Michelanne Forster *Daughters of Heaven* (Victoria University Press, Wellington, 1992); Guthrie Wilson *Julien Ware* (Robert Hale, London, 1952); Nelle Scanlan *Kelly Pencarrow* (Whitcombe & Tombs, Auckland, 1958); Peter Smith *1951* (David Ling Publishing, Auckland, 2003).

19 *Outrageous Fortune*, above n 10.

West family), Jethro more often than not makes the incorrect moral and ethical choice. In Episode Three, Jethro, as a supposed Māori law clerk, is asked by a partner to provide a suitable Māori welcome for Māori clients of the firm.<sup>20</sup> Jethro struggles with this responsibility, principally because he is not Māori and was only hired by the firm after lying about his ethnicity. We can therefore condemn Jethro as deceitful despite his "charming rogue" veneer. In this instance Jethro is used by the scriptwriters to make a sly point about the dangers of political correctness for its own sake. As his nemesis at the firm, Hugh, states:<sup>21</sup>

You want to know what pisses me off Jethro? Someone that barely scrapes through his law exams and gets the best office, the best PA and all because of brownie points.

Relations between Jethro and Hugh reach a nadir when Hugh steals a key document Jethro needs for an important case. After Jethro discovers the reason for the document's disappearance he makes the interesting decision to refrain from telling the senior partner. This decision is based on Jethro's assertion that dobbing is wrong and against his family's code of honour.<sup>22</sup> The code of honour could be viewed as an alternative code of morality, alternative to the conventional ethical course of informing the authorities of wrongdoing. The action is perhaps moral, but does not accord with codified legal ethics. Jethro arranges for his twin brother to burgle Hugh's place to retrieve the stolen document. Jethro is a liar and a thief but he also refuses to tell the authorities about Hugh's actions despite the fact that Hugh is trying to destroy his legal career. Ironically, Jethro's refusal to do probably saves Hugh's legal career. Local police officer, Wayne Judd, remarks in relation to Jethro's admission to the bar, "You know, it struck me as odd that you can oppose someone becoming a lawyer on the ground that they are not of good character but have you ever met a lawyer that wasn't a ratbag?"<sup>23</sup> In this instance, by not dobbing, the ratbag Jethro acts in a way that viewers would probably respect but which puts him in direct conflict with legal ethics.

Jethro maintains his charm as the *Outrageous Fortune* story progresses but any integrity he possessed in Season One steadily erodes so that by Season Two he is more criminal than lawyer. When this degeneration is questioned by his mother, Cheryl, Jethro responds:<sup>24</sup>

I went to law school, Mum, to figure out the system. Play it smarter. Play it smarter than Dad, Grandad, all the Wests put together. I only went to law school, Mother, to figure out how to break the law better than them.

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20 At Season One Episode Three, 7 mins.

21 At 18 mins.

22 At 18 mins.

23 At Season One Episode Seven, 22 mins.

24 At Season Two Episode Seven, 35 mins.

In Season Two, Jethro leaves the big city law firm to become a barrister sole representing, in Cheryl's words, "the scum of the earth".<sup>25</sup> To the layperson Cheryl this appears immoral but to the lawyer it is completely ethical. This issue was prominent during the controversial Clayton Weatherston trial in 2009. Laypeople attacked Weatherston's lawyer, Judith Ablett-Kerr, for defending Weatherston, despite the fact that she was carrying out her ethical obligations. As Jethro argues in a later episode, "Everyone is entitled to the best defence their money can buy."<sup>26</sup>

Unfortunately Jethro's idea of "best defence" includes trying to convince a witness to lie in court,<sup>27</sup> money laundering<sup>28</sup> and allowing an innocent man to go to prison.<sup>29</sup> In terms of public perceptions of lawyers, Jethro is a disaster for the profession. He reinforces many of the negative stereotypes and his blatant dishonesty and criminality are masked by a glib charm, making the evil even more insidious. Jethro symbolises the worst aspects of the legal profession and the potential within it for corruption. In this way, the character of Jethro is useful as a warning. Jethro is a complex character in that he develops over time and has redeeming qualities despite his criminal lifestyle. Due to the complexity of the character his moral decline is made believable.

This believability is also seen in Zena, a freshly admitted lawyer, in *The Waimate Conspiracy*.<sup>30</sup> Zena is idealistic and obviously penned by the screenwriter to appeal to audiences. Despite these appealing qualities, she is corrupt and blatantly breaches legal ethics. More than any other lawyer discussed in this article, Zena experiences a clear crisis of conscience albeit a brief one. Her dismay is evident when her Uncle George tries to persuade her to present fabricated evidence in court.<sup>31</sup>

No George. That is fraud. No way! If it's not fraud it's manufacturing evidence and that can get us seven years in jail, okay? Seven years! We will not be offering up a forgery in a District Court.

Zena's moral posturing lasts exactly five minutes of film time and while she acknowledges that her assistance in the fabrication of evidence is wrong, she does it anyway. Following the Paul Malone QC dictum from *Cut and Run*, "I'm not evil but what I've done is,"<sup>32</sup> Zena helps her iwi address a historical grievance by blatantly misleading the court. A lawyer's primary obligation is to

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25 At Season Two Episode Two, 6 mins.

26 At Season Two Episode Five, 3 mins.

27 At 25 mins.

28 At 25 mins.

29 At Season Three Episode Six, 21 mins.

30 *The Waimate Conspiracy*, above n 11. Based on the novel Stefen Lewis *The Waikikumau Conspiracy* (Hazard Press, Christchurch, 1999).

31 At 42 mins.

32 *Cut and Run*, above n 17, at 276. This quotation is discussed further in Part IV.

the truth rather than to the underdog and it is not acceptable in legal ethics to mislead the court for a good cause.<sup>33</sup> While a layperson may see some morality in Zena's behaviour, a legal ethics perspective must condemn it in the strongest possible terms. Zena is one of only a handful of portrayals of Māori legal professionals in New Zealand fiction.<sup>34</sup> She is the most comprehensive which makes her dishonesty even more potentially damaging to perceptions of Māori lawyers in that there are few counter-examples to be found. It is unclear whether the screenwriter, Stefen Lewis, is attempting to evoke sympathy for Zena or reveal her as a fraudster, or both. The film is presented in mockumentary style and ends with a local citizen providing her opinion on the court's judgment in favour of Zena's iwi, "I think getting their land back is justice. Yes, it's the right thing to have happened. Definitely."<sup>35</sup>

The issue of questionable ethics in pursuing moral outcomes was prominent during the controversial return of war medals stolen from the Waiouru Army Museum in 2008. The police raised serious questions about lawyer Chris Comeskey's ethical actions in negotiating the return of the medals, despite the fact that he saved priceless artefacts, and in doing so earned the gratitude of many New Zealanders. As with the Jethro/Ablett-Kerr comparison in the previous example, these issues are of national significance and fictional examples help to shed light on real-life dilemmas.

To some extent, Zena's weakness as a role model is compensated for by her relative sophistication as a character. A more positive Māori legal role model appears in Apirana Taylor's *He Tangi Aroha*.<sup>36</sup> The novel is located in early 1990s Wellington and concentrates on the struggles of young urban Māori. Kohimarama is the beacon of hope in the book; confident, constant and articulate. She is nearing the end of her law studies and about to begin work at an up-market Auckland law firm. Despite her obvious qualities, Kohimarama lacks Zena's complexity. She is a vehicle through which Taylor can voice political criticisms. She is also a symbol of a positive Māori future, one in which educated young Māori fight to redress past wrongs. She prompts other characters, such as Atarau, to examine past injustices:<sup>37</sup>

When Atarau left Kohimarama, she felt both calm and disturbed. The strength of Kohimarama had seeped into Atarau and yet what Kohimarama said disturbed Atarau. Kohimarama spoke with the

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33 See Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 [Conduct and Client Care Rules], r 13.1 "A lawyer has an absolute duty of honesty to the court and must not mislead or deceive the court." Also r 13.10 "A lawyer must not adduce evidence knowing it to be false."

34 See "New Zealand Law and Literature/Law and Visual Media Database" (2009) <[www.victoria.ac.nz/lawlit](http://www.victoria.ac.nz/lawlit)>.

35 *The Waimate Conspiracy*, above n 11, at 85 mins.

36 Apirana Taylor *He Tangi Aroha* (Huia Publishers, Wellington, 1993).

37 At 93.

knowledge of one who knew her subject well, and Atarau felt that Kohimarama spoke the truth, yet it was an ugly truth and Atarau didn't like the ugly truth.

Kohimarama has no doubts about the righteousness of her cause or her ability to succeed in achieving justice for her people. Even the break-up with her boyfriend, Pitama, fails to dent her confidence. Potentially the reader/viewer could identify more closely with Zena than Kohimarama. Zena appears flawed but human, whereas Kohimarama is impressive but wooden. *He Tangi Aroha* does not provide examples of Kohimarama's actions as a lawyer but these actions are predictable, in that she will follow the correct path and fulfil her destiny as a Māori leader. As with Paul Malone in *Cut and Run*, limited character development undermines the ability of legal fiction to provide insights into the nature of legal professionals and legal ethics. The superficiality of the characters obstructs any attempt to portray the complex and contradictory issues that define discussions of professional ethics.

The temptations faced by the recently graduated New Zealand fictional lawyers discussed in this article, namely Jethro and Zena, are mirrored in American literature and especially in the works of John Grisham. Grisham's plot structures are generally formulaic and many of his novels involve a recently graduated young male lawyer who is faced with a crisis of conscience and/or temptation that will lead to corruption.<sup>38</sup> Mitch McDeere in *The Firm* will have riches beyond his wildest dreams if he sells his soul to the evil Memphis firm of Bendini, Lambert and Locke.<sup>39</sup> Rudy Baylor in *The Rainmaker* achieves a huge victory over a corrupt insurance company but soon after gives up the law in disgust to become a school teacher.<sup>40</sup> Unlike Mitch and Rudy, Clay Carter in *The King of Torts* knowingly accepts the Faustian pact but he soon pays the price and ends the novel in exile in the Caribbean.<sup>41</sup> Like Carter, Jethro allows himself to be corrupted and even embraces corruption and its attendant benefits. Zena may experience a clear crisis of conscience but she does not emerge heroically from it in the same way Mitch and Rudy do.

In terms of complexity, none of these characters reach the level of Oliver West in *Tooth and Claw* (1984) by Greg McGee, a complex play about the psychological crisis of a young lawyer.<sup>42</sup> It is gripping, intelligent and explores major jurisprudential issues.<sup>43</sup> The central character, Oliver

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38 Richard Posner *Law and Literature* (Harvard University Press, Cambridge, 1998) at 37–40.

39 *The Firm* (Dir Sydney Pollack, 1993 Film Paramount Pictures); John Grisham *The Firm* (Dell, New York, 1991).

40 *The Rainmaker* (Dir Francis Ford Coppola, 1997 Film American Zoetrope); John Grisham *The Rainmaker* (Doubleday, New York, 1995).

41 John Grisham *The King of Torts* (Doubleday, New York, 2003).

42 *Tooth and Claw*, above n 12.

43 A discussion of this play can be found in Howard McNaughton "Historical Elements in Recent New Zealand Drama" (1984) 2 JNZL 15.

West, is a young lawyer questioning his morals as well as the morals of his profession against the backdrop of a society descending into anarchy. Oliver evokes an empathetic response from the audience despite being an adulterer and fraudster.

Eventually his fraudulent action in stealing client money from the firm's trust account is discovered by the senior partner, Timothy Hartleton:<sup>44</sup>

HARTLETON: Then it would be a patently fraudulent document, would it not?

OLIVER: It wouldn't be the first time.

HARTLETON: I disagree. To my knowledge it would be. This is enlightening, I must say.

OLIVER: You know it's standard practice! This is the first time I've ever had to –

HARTLETON: The first time? Does that imply there may be a second?

OLIVER: Of course not!

HARTLETON: No. In any case, once is enough. Quite sufficient. I'm sure you'll get a fair hearing.

OLIVER: What do you mean?

HARTLETON: You're aware of the Law Practitioners' Act.

OLIVER: Yes but –

HARTLETON: You're aware of the provisions relating to the misappropriation of trust funds?

OLIVER: The money's there! You've lost nothing!

HARTLETON: But trust. I'm sure the Disciplinary Committee of the Law Society will take that into account.

The line between legality and white collar crime is often blurred for New Zealand's fictional lawyers. While Hartleton also turns out to be a crook,<sup>45</sup> he does have a point when he accuses Oliver of betraying his trust. As Hartleton summarises, echoing r 5.1 of the Conduct and Client Care Rules:<sup>46</sup>

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44 *Tooth and Claw*, above n 12, at 80. For New Zealand lawyers misappropriating client money see also Claude Evans *That Man Harlington* (Pegasus Press, Christchurch, 1952) and Judy Corbalis *Mortmain* (Random House, Auckland, 2007).

45 At 82. KELLY (to HARTLETON):

You wouldn't be into a bit of mixed business eh – a bit of the old off-shore investment? Joint ventures of a dubious nature, Queen Street farmer with a plot in Burma?

46 See Conduct and Client Care Rules, r 5.1 "The relationship between lawyer and client is one of confidentiality and trust that must never be abused."

There has been a breach of trust. The relationship of solicitor and client is one of trust. The practice of law is founded on the mutual trust of its practitioners. The public must also be able to look to the profession with confidence.<sup>47</sup>

The public's trust in lawyers has been betrayed too often and fictional characters such as Oliver West reflect this fact. The problem of corrupt lawyers became particularly prominent in New Zealand during the early 1990s with several major scandals, the most well-known concerning the Upper Hutt firm, Renshaw Edwards. Like Zena, Oliver commits an ethical breach as a result of pressure being applied by a friend or relative. In "borrowing" money from the firm trust account Oliver is trying to pay back a favour to a friend, which in lay terms could be construed as a moral action, in this case demonstrating loyalty. In terms of Western legal ethics and New Zealand's formalisation of them, it is inexcusable.

Oliver's moral and ethical dilemmas mirror the confusion existing in his society. He is torn between his class and professional loyalties on one hand and on the other his sympathy for those at the bottom of the social heap, those suffering the violence and mayhem beyond the secure sanctuary of his office. After being assaulted by a Māori radical, Oliver refuses to testify against his assailant. He eventually rebels against senior partner, Hartleton, and the self-serving elite, which Hartleton represents. As an audience, we find Oliver's search for what is right refreshing, especially in a lawyer. Caught between cynicism and the remnants of idealistic youth, Oliver shows that the high moral and ethical standards expected of lawyers can never be entirely undermined. Even Oliver's dismissal of the importance of high professional standards belies his frustration that these very standards are being compromised. In response to a request for assistance on a legal ethics essay Oliver responds:<sup>48</sup>

Take it to one of those innocents in the telephone booths down the hall! That's why they're here Lil – they still believe legal ethics amount to something more than an abstract philosophy.

Oliver is a morally compromised man who at the crucial moment chooses personal integrity over self-preservation in a legal context. Oliver refuses to testify against the Māori activist who assaulted and robbed him, despite being threatened by the police with charges of contempt.<sup>49</sup> This choice costs Oliver his career. When Hartleton offers Oliver a second chance on the basis that he is a white man, Oliver rejects it. Oliver redeems himself through this one final, if practically futile, action and through this cathartic process the character of Oliver West demonstrates a sophistication rarely seen in New Zealand legal fiction. Despite his breaches of legal ethics we discover that Oliver has a moral core.

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47 *Tooth and Claw*, above n 12, at 81.

48 At 40.

49 At 92–94.

A more recent example of this sophistication is Lawrence Goodenough, the criminal defence lawyer who appears in James McNeish's *The Crime of Huey Dunstan* (2010). Like Oliver, Lawrence is cognisant of the boundary between professional duty and unethical behaviour. Unlike Oliver, Lawrence is able to resist the temptation to cross that boundary and thus potentially serves as role model for both laypeople and lawyers. This potential is enhanced by McNeish's attempt to link the novel to recent real-life legal controversies concerning the partial defence of provocation and the use of repressed memories as evidence in sexual abuse cases.

Through two High Court trials and two appeal hearings, Lawrence uses all ethical means possible to reduce his client's charge from murder to manslaughter. When he discovers evidence of criminal wrongdoing by another party, which could harm Huey's case, he nevertheless reports it to the police. When criticised by his friend and expert witness, the psychologist Professor Chesney, Lawrence replies: "I had no option ... I have to play by the rules."<sup>50</sup> Following Dare's ideal definition of the standard conception of a lawyer's role, Lawrence demonstrates "mere zeal" rather than "hyper-zeal".<sup>51</sup> He works tirelessly on his client's behalf, including covering the costs of an expensive appeal, but the process of defending a criminal charge does not lead him into criminality.

On one hand, Lawrence's tenacious, and ultimately successful, defence of a young man who brutally killed an innocent older man could strike the layperson as amoral, despite conforming to legal ethical expectations. Chesney's wife, Lisbeth, reflects this lay view and is ready to condemn Lawrence for considering an appeal after Huey is found guilty of murder in the High Court:<sup>52</sup>

'My God. How can you justify appealing on behalf of a monster like that!' She went out and came in again. 'Of course he'll appeal. That's what Lawrence is good at, getting people off.'

Conversely, even the lay observer would be impressed by Lawrence's skill and consistency.

Lawrence is no Atticus Finch and is happy to manipulate the law or cut a backroom deal to assist his client. His creed alternates between the famous phrase displayed on his chambers' wall "Let justice be done though the heavens fall"<sup>53</sup> and his philosophical musing: "Justice, what we like to think of as justice, is a fickle thing. It's like art, I sometimes think. It happens. And usually by the back door. Everything has a back door."<sup>54</sup> From this contradiction comes complexity. Not only is Lawrence a sophisticated, multi-faceted, characterisation, he is also the most respectable, and the most plausible, fictional lawyer discussed in this article.

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50 *The Crime of Huey Dunstan*, above n 16, at 200.

51 See *The Counsel of Rogues? A Defence of the Standard Conception of the Lawyer's Role*, above n 8, at 159, Tim Dare advocates that lawyers display "mere-zeal" in assisting clients rather than "hyper-zeal".

52 *The Crime of Huey Dunstan*, above n 16, at 62.

53 At 194.

54 At 222.

Despite the quality of Oliver and Lawrence's characterisations, the most readily accessible portrayals of lawyers usually appear on the screen rather than in the playhouse and novel. The visual images of lawyers on the large and small screens have been responsible for, and reflective of, the glamour associated with the legal profession. In 2000, New Zealand's answer to *LA Law* and others was unveiled. *Street Legal* is New Zealand's most popular legal drama, running for four seasons.<sup>55</sup> The television series revolves around the adventures of David Silesi, a Samoan lawyer in Auckland. Silesi's in-tray is full of fascinating and bizarre cases, acting for underdog clients. Taking on these cases often involves the hero in romances, shoot-outs, car chases and punch-ups. A large segment of the show is set in Silesi's chambers, providing the viewing public with one view of a lawyer's working day. While Silesi's office is no ordinary one, it is a more accurate reflection of the reality for most lawyers than trial scenes. The portrayal of lawyer as deal-maker outside court is a welcome respite from the formulaic, trial-based plots found in much law in literature/law and popular culture.

The character of David Silesi provides the public with a peephole into the multifarious aspects of legal practice including criminal law, evidence, the mentoring of junior solicitors, reparation, drug law, the relationship between the police and the legal profession, the relationship between the media and the legal profession, the role of the Law Society, court procedure, law and religion (for example, withholding of medical treatment on religious grounds), family law, jury dynamics, law practice politics, judicial corruption and, most importantly for the purposes of this article, legal ethics (including client confidentiality).

Crises of conscience are a weekly occurrence for Silesi, for example in Episode 38 he is offered a substantial cash fee to represent a man who is being blackmailed. David is instructed to deliver money to the blackmailer. At first he refuses but after discovering his law practice is insolvent he accepts the fee. Blackmail is of course illegal<sup>56</sup> with a maximum prison term of 14 years.<sup>57</sup> In knowingly partaking in a blackmail situation David is breaching rr 2.4 and 11.4 of the Conduct and Client Care Rules.<sup>58</sup> Despite these obvious ethical breaches, audiences are invited to view the character of David as a flawed but essentially heroic lawyer. David is a charismatic and courageous lead character despite his rashness.

As the title of the series suggests, David is not above using tactics learned from the street to help his clients. In the pilot episode David is representing the family of a hit and run victim. David enlists

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55 *Street Legal*, above n 13.

56 Crimes Act 1961, s 237.

57 Section 238.

58 See r 2.4 of the Conduct and Client Care Rules which states that a lawyer must not "assist any person in an activity that the lawyer knows is fraudulent or criminal" or "knowingly assist in the concealment of fraud or crime". Rule 11.4 states that "a lawyer must take all reasonable steps to prevent any person perpetrating a crime or fraud through the lawyer's practice".

the media to embarrass the driver's wealthy parents and successfully force an out of court settlement, despite the fact that the driver's culpability is unclear. David effectively manipulates language and the law to get a result for his client. A layperson may see this as immoral but legal ethics protect David and even encourage him to go to great lengths to assist his client. David does not actually lie and ultimately negligence is found on the part of the driver.

In Episode One David plants drugs in a drug dealer's car and tips the police off to search the vehicle. In Episode Eight a judicial complaint is laid against David for his behaviour in court. The tension between a lawyer's duty to the client and their duty as an officer of the court is evident in David's behaviour. David vociferously defends his clients in a manner reminiscent of Alan Shore in the top-rating American legal dramas, *The Practice* and *Boston Legal*.<sup>59</sup> While noting the bad behaviour we can admire the devotion to winning the client's case. If we were in the client's position we may want a David Selesi or Alan Shore to defend us.<sup>60</sup>

In many instances the viewer would accept that David's means justify the ends, such as in the drug dealer's car example above. That is, the action may be considered moral despite breaching legal ethics. In Episode 36 David attempts to hide unbilled files to aid in his purchase of the firm from senior partner, Peter Wyeth. This action is difficult to justify on any moral or ethical grounds but can be balanced against the many commendable choices David makes, for example, withdrawing from a case due to a familial conflict of interest<sup>61</sup> and acknowledging and endorsing the "cab rank" rule, that is, lawyers must accept clients regardless of whether they want to or not.<sup>62</sup>

David's crises act cathartically resulting in his realising mistakes and acknowledging personal weaknesses. In true hero fashion he usually ends up following the road of righteousness, both legally and morally. In the final episode of the final season David has documents that will incriminate a villain for murder and drug dealing. Despite pressure from his legal partner and love interest, Joni, David delivers the documents to the police although it puts both their lives in danger. Much of *Street Legal's* excitement and intensity derives from David's dilemmas but the audience is never in any real doubt as to the outcome. The hero will triumph over adversity.

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59 See *The Practice: Season Eight* (Created by David E Kelley, TV Series Twentieth Century Fox Television, 2003-2004) and *Boston Legal: Season One* (Created by David E Kelley, TV Series Twentieth Century Fox Television, 2004). Shore's passionate commitment to his clients is best demonstrated in the final season of *The Practice*. He repeatedly breaches legal ethics but always in the quest to assist his clients. His efforts almost always result in legal victories, albeit at a significant ethical cost.

60 David Silesi is an example of "hyper-zeal" and therefore breaches Dare's definition of the standard conception of the lawyer's role.

61 *Street Legal*, above n 13, at Episode Three.

62 At Episode 47. The "cab rank rule" is of course subject to exceptions. See Duncan Webb *Ethics, Professional Responsibility and the Lawyer* (2nd ed, LexisNexis, Wellington, 2006) for the most exhaustive discussion of legal ethics in New Zealand.

Fiona Farrell's *Six Clever Girls Who Became Famous Women* features New Zealand's most nuanced fictional female lawyer, Caroline Carstairs.<sup>63</sup> Unlike David Silesi, it is difficult to empathise with Caroline. She is not a particularly inspiring role model, especially for young female lawyers. She is vindictive and ruthless as evidenced by her treatment of others:<sup>64</sup>

Marika [Caroline's secretary] was smart and sharp but she lacked commitment. It wouldn't do. Caroline planned a steady assault of urgently required typing only a few minutes before five. She resolutely delayed signing documents until the last possible moment. There are many ways to skin a secretary.

Caroline also neglects to tell her friend about a vital phone call from a prospective employer.<sup>65</sup>

What makes Caroline fascinating to analyse is that she is also assertive, diligent and, by all accounts, a good lawyer. Despite this sadistic streak, there is no indication that Caroline breaches legal ethics. She may be manipulative but she is not obviously corrupt. Yet this is not enough to endear her to the layperson who would find David's inconsistent, but heart-felt, approach to legal ethics more appealing than Caroline's consistent, but calculated, approach.

Ethical dilemmas facing fictional lawyers have received academic attention in other jurisdictions such as the United States. The ethics of iconic hero lawyer, Atticus Finch, have been the subject of one particularly intense debate.<sup>66</sup> At the end of *To Kill a Mockingbird*, Boo Radley kills Bob Ewell while in the process of preventing Ewell harming Finch's two children.<sup>67</sup> To protect Radley from the public gaze Finch colludes in keeping the real cause of death a secret and instead maintains that Ewell fell on his knife. Morally, Finch's actions could be commended as he is attempting to help the man who heroically saved his children, despite the fact that Finch is participating in a lie. Legally, Finch is undermining the legal system by keeping the truth from the authorities. As a lawyer, Finch's first obligation is as an officer of the court and part of that obligation is to make sure the court, and the legal system it represents, is not misled. While initially unhappy with the cover-up, Finch eventually agrees that it is the right thing to do.

This scene from *To Kill a Mockingbird* reminds us that even the most saintly of lawyers will face moral conundrums in the course of their professional life. Some commentators have

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63 *Six Clever Girls Who Became Famous Women*, above n 14. For a review of the novel see Ruth Butterworth "Identity Crises" (1996) 6 *New Zealand Books* 12.

64 At 191.

65 At 193.

66 Steve Greenfield and Guy Osborn "The Double Meaning of Law: Does it Matter if Film Lawyers are Unethical?" in Michael Freeman (ed) *Law and Popular Culture: Legal Issues: Volume 7* (Oxford University Press, New York, 2005) 638; Batey, above n 7.

67 Harper Lee *To Kill a Mockingbird* (William Heinemann, London, 1960) at 280–305.

condemned Finch's actions.<sup>68</sup> If even Atticus Finch can be chastised for breaching legal ethics, perhaps we should not be too damning of New Zealand fictional examples.<sup>69</sup> The reading and/or watching audience will be far more forgiving of legal ethics breaches than a law society disciplinary committee as evidenced by the fact that Finch was voted the number one "Greatest Hero of American Film" in 2003 by the American Film Institute.<sup>70</sup> Like Zena, Finch acts contrary to legal ethics but with a strong moral justification.

### **III A DEVIL OF A CHOICE: TO FOLLOW THE LAW OR CONSCIENCE?**

Ethical dilemmas and moral conundrums do not always involve dramatic circumstances. Legal characters also reflect upon their choices in a more philosophical fashion. In Charlotte Grimshaw's novel *Provocation* one of the two main protagonists is Stuart Chicane.<sup>71</sup> An intelligently constructed character with an air of unpredictability, Stuart is a top criminal lawyer, devoted to his clients and meticulous in his work.<sup>72</sup> He is, "usually polite, occasionally fantastically rude, is also tough, charming, manipulative and sly".<sup>73</sup> Unlike most of the characters discussed in Part II of this article, Stuart faces no real crisis of conscience. He is neither hero nor villain but rather an excellent representation of the glamour that the New Zealand public associate with law, and criminal law in particular.<sup>74</sup>

Stuart's friends are lawyers, property dealers, stockbrokers, speculators and advertising executives. They are the money people, the champagne-drinking yachties, the pastel-shirted America's Cup good-time set. They are the ones who eat out in fashionable brasseries, drive their speedboats into yachts in the harbour, sing drunkenly in late-night restaurants, drive expensive cars and spend money loudly, insensitively, in front of everybody else.

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68 Michael Asimow "Bad Lawyers in the Movies" (2000) 24 Nova L Rev 97; John Jay Osborn "Atticus Finch-The End of Honor: A Discussion of To Kill a Mockingbird" (1996) 30 USF L Rev 1139. Dare encourages us to view Atticus as a tragic figure rather than a heroic lawyer in Tim Dare "Lawyers, Ethics, and To Kill a Mockingbird" (2001) 25 Philosophy and Literature 127.

69 A comparison between the New Zealand Lawyers: Conduct and Client Care Rules and the United States Model Rules of Professional Conduct reveals many fundamental similarities despite the many differences. Therefore it is viable to make comparisons between New Zealand and American fictional characters in certain circumstances.

70 American Film Institute "American Film Institute's 100 heroes and villains" (2010) <[www.afi.com/tvevents/100years/handv.aspx](http://www.afi.com/tvevents/100years/handv.aspx)>.

71 *Provocation*, above n 15.

72 A review of this novel can be found in Catharina Van Bohemen "Provoking self-knowledge" (1999) New Zealand Books 16.

73 *Provocation*, above n 15, at 6.

74 At 11-12.

Despite being deceitful in his personal life, Stuart is (outwardly at least) law-abiding:<sup>75</sup>

He feels no need himself to break the law, and when his clients try to pay him with stolen goods and favours (any legs you want breaking, Mr Chicane?), he politely but firmly declines.

This claim is compromised somewhat by the description of Stuart's bookkeeping habits:<sup>76</sup>

It's as if Stuart, having bought this house, ripped out the interior and rebuilt it inside and out, is now lining it with money. There are notes in the curtain linings, wads in the flower vases, even the couch cushions crackle with hastily concealed bundles of hundred-dollar bills. From his cash-lined palace Stuart fobs off the Inland Revenue with the help of his wily accountant.

In a lively, alcohol-inspired argument later in the book, Stuart distinguishes between a lawyer's obligation to be socially responsible and a lawyer's obligation to uphold the rule of law. This argument goes to the heart of this article's thesis. When one of his friends (not a lawyer) argues that lawyers are blinded by legalities and therefore fail to see the socially responsible solution in any given situation, Stuart, in line with r 2 of the Conduct and Client Care Rules, retorts "it would all be a shambles if lawyers didn't concentrate on the law".<sup>77</sup> While he may be a tax evader, Stuart instinctively adopts the practitioners' logic that anarchy would result if law officers were able to exercise personal discretion beyond the law. John Austin famously pointed out that the Augustinian dictum of "lex iniusta non est lex" would not prevent someone from suffering the penalty of the law after breaking it.<sup>78</sup> As Socrates argued in submitting to his unjust death sentence, adherence to the law is a moral position in itself.<sup>79</sup> It demonstrates a respect for the officially sanctioned process of law-making. In a New Zealand context this means the passing of legislation by Parliament and to a lesser extent the creation of precedent by the judiciary. The legislative process is directly reflective of New Zealand's democratic ideals. To effectively ignore the law and follow a personally deduced socially responsible solution could be to disrespect this democracy in action. While civil disobedience should always remain an option, Stuart's argument is convincing: as a general rule personal morals should not be placed before the law. Therefore, his ethical approach, which may seem amoral to the layperson, actually has a strong moral basis.<sup>80</sup>

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75 At 7.

76 At 4.

77 At 80. See Conduct and Client Care Rules, r 2 "A lawyer is obliged to uphold the rule of law and to facilitate the administration of justice."

78 John Austin *The Province of Jurisprudence Determined* (Weidenfeld & Nicolson, London, 1954).

79 Plato *The Last Days of Socrates*, H Tredennick (trans) (Penguin, London, 1969).

80 An in-depth analysis of this crucial issue in a New Zealand context appears in *The Counsel of Rogues? A Defence of the Standard Conception of the Lawyer's Role*, above n 8. While Dare co-opts fictional texts to support his thesis, he does not mention any New Zealand texts.

New Zealand's fictional lawyers are at their most sophisticated when arguing about the relationship between morality and law. The traditional jurisprudential theories of naturalism and positivism play out well in a literary setting. While not as dogmatic as Stuart, Oliver West in *Tooth and Claw*<sup>81</sup> takes time out from his crumbling professional and personal lives to muse upon legal theory with partner, Athol, and legal secretary, Lilly. Lilly is undertaking a legal executives course and is struggling with the esoteric question, "Establish or refute the following: Morality is secreted in the interstices of law."<sup>82</sup> Oliver talks Lilly through the traditional judicial decision-making process, that is, legal formalism or deductive reasoning. Judges discern the relevant legal issue or issues in a case, find the relevant law and apply it to the fact situation, leading to the result. Oliver then strays into the realm of legal realism or even critical legal studies as he questions the sacred objectivity of the judge:<sup>83</sup>

And if so, what is the judge's decision based on – his perception of the apple, whether it's ripe, its colour? What makes up the judge's perception? His conditioning, his genetic make-up? What if he's colour-blind?

Oliver acknowledges the indeterminacy of the law but seems unable to take his arguments beyond mere word-play and offer a robust critique of the limitations of the New Zealand legal system until his final moral stand, outlined earlier, where he demonstrates a deeper understanding of the relationship between law and morality. At this climax, Oliver realises the oppressive nature of law and the need to challenge it to protect the oppressed.

#### **IV A DEFINITE DEVIL: THE LIMITATIONS OF TWO-DIMENSIONAL CHARACTERS**

Devils and heroes appear amongst the lawyers depicted in New Zealand fiction. Paul Malone QC in Alix Bosco's recent Grishamesque thriller *Cut and Run* serves as a ready example of legal evil.<sup>84</sup> Malone is charming, smooth and a homicidal megalomaniac. He combines the eloquence and arrogance that many laypeople expect of lawyers. Bosco's cast of characters includes a solicitor, a law clerk and Anna, the main character, who is a "legal researcher" (akin to an American paralegal), but it is Malone that stands out as the reason why the public rank lawyers alongside used car dealers and politicians in terms of popularity. Malone, a married man, is sleeping with a young female celebrity, Mikky St Clair. When Mikky tires of Malone and starts another affair with a hunky professional rugby player, Malone murders the sportsman and frames an innocent man for the crime. When Anna starts showing signs of unravelling Malone's dastardly deed he attempts to

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81 *Tooth and Claw*, above n 12.

82 At 37.

83 At 38.

84 *Cut and Run*, above n 17.

murder her. Several times in fact. At one point Malone even attempts to use a helicopter as a murder weapon.<sup>85</sup>

Malone is of interest to the law and literature scholar as an example of how many lawyer clichés can be combined in one character. His physical appearance and demeanour are predictable.<sup>86</sup>

His opaque green eyes have stared down a thousand cops, criminals and innocent witnesses in cross-examination.

Paul's voice is surprisingly light, with a silvery liquid quality to it. If he sang, he'd be a tenor. Lots of light and shade in it. Seductive, right now.

He has that magnetic barristerial presence, cultivated assiduously no doubt, and he's successful, rich and powerful.

Malone is motivated by at least four of the seven deadly sins; greed, pride, lust and anger.

In the book's final scene, Malone confronts Anna (whom he tried to seduce in the book's opening pages) with a pistol and attempts to convince her to commit suicide.<sup>87</sup> In his long monologue, it is clear Malone is trying, like Zena and Oliver, to separate his inherent self from the actions he performs, "I'm not an evil man, Anna, yet what I've done is. Evil. I do acknowledge that."<sup>88</sup> Malone is sane enough to acknowledge the difference between right and wrong but at no point does he actively struggle with that difference. He chooses wrong, or evil, because it is the most efficient means to an end. Malone embodies two stereotypes – the successful legal professional and the villain. As a plot device, Malone works. As a three dimensional legal character, he does not. Is this a problem? It is for the reader looking for insights into the way lawyers think and act. As argued earlier, if we are attempting to obtain insights into legal ethics from legal fiction then depth of character is necessary for subsequent depth of analysis. Jethro, Zena, Oliver, Lawrence, David, Caroline and Stuart provide us with this opportunity, Paul Malone and Kohimarama do not.

A superficial characterisation is also problematic for the way in which lawyers are perceived by the public. While the vast majority of readers can tell the difference between reality and fiction, there are too few positive portrayals of lawyers in New Zealand fiction to provide a balance to the negative portrayals.<sup>89</sup> Whereas Lawrence Goodenough and Caroline Carstairs show the potential of a multi-faceted portrayal of a lawyer, Bosco's Malone is an example of how sophistication is lost

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85 At 226.

86 At 9, 10 and 11.

87 At 275.

88 At 276.

89 See "New Zealand Law and Literature/Law and Visual Media Database" (2009) <[www.victoria.ac.nz/lawlit](http://www.victoria.ac.nz/lawlit)>.

when there is no comprehensive effort to delve into a legal character's motives and contradictions. It should be noted that the writers mentioned in this article are writing in a variety of genres. *Cut and Run* is formulaic crime fiction and could perhaps be excused from some of the criticism noted above.<sup>90</sup> However, as Richard Posner has argued in relation to John Grisham, populist legal fiction may provide some insights into popular stereotypes but offers limited help in exploring important legal issues.<sup>91</sup>

## V CONCLUSION

Lawyers are public figures bound by an ethical code. To laypeople some of the rules governing lawyers' conduct may seem far removed from conventional morality, for example, the expectation that criminal lawyers, like Judith Ablett-Kerr, will represent all clients whether or not the lawyer has developed an opinion regarding innocence or guilt. Zena Kepa appears to live a completely blameless life as she selflessly gives her time to assist her hapū. Whereas a strict legal ethics perspective may focus on the public sphere where breaches of legal ethics determine the worth of a character, a layperson may think otherwise, as in the case of Chris Comeskey and the Waiouru war medals. Zena is a type of popular hero in *The Waimate Conspiracy*, prepared to bend the rules to achieve real justice for the disenfranchised. In comparison, Farrell's portrait of Caroline is ultimately unflattering. Caroline seems to be an ethical lawyer but an unpleasant, even immoral, individual. It is as if the lay perspective is either ignorant of, or ambivalent towards, the ethics that regulate legal practice. With the exception of the murderous Paul Malone, Zena commits the most flagrant ethical breach cited in this article. In the world of fictional law though, the end can justify the means and validate the character.

To the extent that the public are influenced by popular representations of lawyers, the more sophisticated portrayals are often the most convincing. Where the author or screenwriter has made the effort to balance positive and negative the audience actually has the chance to think about the real challenges involved in being a lawyer. What would they do in a similar situation? Readers and viewers can make comparisons with other professions, for example, police, teachers and doctors also make important ethical and moral decisions in their daily work. Through a sophisticated treatment such as a crisis of conscience, comes depth. As shown by the Ablett-Kerr and Comeskey examples, the observations emanating from this analysis can inform ethical debates taking place in the legal community, for example, the validity of the standard conception of a lawyer's role. As posited at the beginning of this study, fictional texts, to varying degrees, can be co-opted in order to shed light on complex legal and ethical debates.

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90 Greg McGee is the creator of the most impressive character discussed in this article, Oliver West, and also of the most limited, Paul Malone.

91 Posner, above n 38, at 39. For a convincing discussion regarding the potential of examining fictional lawyers in an American context see James R Elkins "Reading/Teaching Lawyer Films" (2004) 28 *Vt L Rev* 813.

Other jurisdictions have a plentiful supply of fictional lawyers to draw upon, some good and some bad and many mixed. This can provide a more balanced menu for audiences to peruse. New Zealand fiction lacks this plentiful supply and therefore portrays a relatively skewed picture of the profession. Despite having one of the highest lawyer to citizen ratios in the world,<sup>92</sup> New Zealanders do not seem as fixated on their own lawyers as say Americans or the British. An argument could be made that New Zealanders are fixated on lawyers, but only on American ones. As mentioned earlier in this article, if this is true it is of limited help for any debate about, or increased understanding of, issues specific to the New Zealand legal profession.

The fictional lawyers discussed in this article illustrate the complex nature of ethics and morality in the context of the New Zealand system. We see ethical lawyers acting in ways that could be viewed as immoral and crusading lawyers acting contrary to legal ethics. While the portraits portrayed in the chosen texts do not necessarily inspire, they do show the potential for the exploration of important ethical issues relating to the New Zealand legal profession through fiction.

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92 "New Zealand world leader in per capita lawyer stakes" *The New Zealand Herald* (Auckland, 15 July 2010).

