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# SPIRITUALITY OF LAWYERING

PETER J. RIGA

## INTRODUCTION

For a believer, one of the most frustrating aspects of his or her profession is the inability to penetrate that profession with a sense of spirituality from *within*.<sup>1</sup> That is, whether the meaning of the profession itself has a spiritual significance and how.<sup>2</sup> While this problem may exist in any profession, it is most troublesome in the law, which has as its end justice itself.<sup>3</sup>

Proof of this may be found by looking towards our culture. Lawyers today are held in very low esteem in our society.<sup>4</sup> This

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<sup>1</sup> See Samuel J. Levine, *Introductory Note: Symposium on Lawyering and Personal Values – Responding to the Problems of Ethical Schizophrenia*, 38 CATH. LAW. 145, 145-46 (1998) (discussing how lawyers must separate their personal and professional lives because they do not feel they can incorporate their spirituality into their practice); see generally Samuel J. Levine, *The Broad Life of the Jewish Lawyer: Integrating Spirituality, Scholarship and Profession*, 27 TEX. TECH L. REV. 1199 (1996) (discussing the difficulty of incorporating the practice of Orthodox Judaism with a fulfilling legal practice).

<sup>2</sup> See Lucia Ann Silecchia, *Integrating Spiritual Perspectives with the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167, 172-74 (2000) (discussing how members of selected professions tend to feel more satisfied with their profession when it is integrated with a sense of spirituality, and how difficult it is to accomplish this inclusion).

<sup>3</sup> See Gerard V. Bradley, *Slaying the Dragon of Politics with the Sword of Law: Bork's Tempting of America*, 1990 U. ILL. L. REV. 243, 257 (1990) (book review).

<sup>4</sup> See Andrew R. Herron, *Collegiality, Justice, and the Public Image: Why One Lawyer's Pleasure Is Another's Poison*, 44 U. MIAMI L. REV. 807, 832 (1990) (“[T]he legal profession is currently faced with a significant image crisis [in that] . . . lawyers . . . seem interested in promoting their own interests over those of society or the profession . . .”).

A confused public, finding itself at odds with the results of particular judicial decisions, experiences increased cynicism about the law. Unfortunately, lawyers themselves sometimes feed that cynicism by joining a chorus of critics of the system, instead of helping to reform it or helping the public to understand the conflicting factual claims

is a serious problem since the very object of the lawyer is to seek justice and discover the truth<sup>5</sup> - a vocation with very few equals in importance and dignity.<sup>6</sup> Why is it that the profession of lawyering, a most noble profession in itself, has become so deeply distrusted and disdained in our day and age? Why has it become more feared than respected, particularly when the profession is needed more than ever?

I must admit that in all the Christian legal organizations which I have joined, seeking an answer to this question has proven futile. Generally what I received was a spirituality that goes along side of, or collateral to, the profession itself, without actually reaching within. Is there a spirituality for the profession which would reach the very act of lawyering that could then be understood as a spiritual mission, a vocation which could honor God and men? In those meetings, we spoke about how to deliver legal services to the poor and indigent; how our prayer life was to be kept focused for the people who are directed to us; and how our striving toward justice in particular cases was in and of itself a spiritual mission which could give our lives as lawyers meaning and strength (on target but not yet deep enough as a spiritual analysis). But how are we to think of it?

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and legal principles involved in particular cases.

Hon. Sonia Sotomayor & Nicole A. Gordon, *Returning Majesty to the Law and Politics: A Modern Approach*, 30 SUFFOLK U. L. REV. 35, 35-36 (1996).

<sup>5</sup> See *Freeport-McMoran Oil & Gas Co. v. F.E.R.C.*, 962 F.2d 45, 47 (D.C. Cir. 1992) ("[G]overnment lawyers have 'the responsibility to seek justice,' and 'should refrain from instituting or continuing litigation that is obviously unfair.'") (quoting MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-14 (1981)); *In re E.I. Du Pont De Nemours and Co.*, 918 F. Supp. 1524, 1542 (M.D.Ga. 1995), *rev'd on other grounds*, 99 F.3d 363 (11th Cir. 1996) ("[L]awyers are expected to . . . do their duty as officers of the court seeking the truth."); Justice Rosalie Silberman Abella, *Lawyers, Judges and Rights*, 36 Alberta L. Rev. 990, 998 (1998) (Speech Delivered at the Annual Alberta Law Review Banquet (Mar. 5, 1998)) ("The object of the . . . justice system is the delivery of justice."); John D. Bessler, *The Public Interest and the Unconstitutionality of Private Prosecutors*, 47 ARK. L. REV. 511, 520 (1994) (stating that the object of the court "should be simply justice.") (quoting *Biemel v. State*, 37 N.W. 244, 247 (Wis. 1888)).

<sup>6</sup> See *In re Applicants For License*, 55 S.E. 635, 642 (N.C. 1906) (Brown, J., dissenting) ("The profession of the law is one of the noblest and most important of all professions."); James A. Cohen, *Lawyer Role, Agency Law, and the Characterization "Officer of the Court"*, 48 BUFF. L. REV. 349, 368 n. 90 (2000) ("The dignity and importance of the Profession of the Law . . . can hardly be over-estimated.") (quoting George Sharswood, *An Essay on Professional Ethics*, in 32 REPORTS OF THE AMERICAN BAR ASSOCIATION 9 (1907)).

## THE SPIRITUAL ISSUES OF LAWYERING

Lawyer burn-out has become so bad that a recent survey by the North Carolina Bar Association found that: twenty-four percent would not become attorneys if they could make the decision again and only fifty-four percent wished to remain in law practice for the remainder of their careers. The survey reported "a severe level of dissatisfaction with law practice among some attorneys and lost dreams and idealism among many others."<sup>7</sup> I believe that this is directly related to a lack of spirituality and superior meaning in the profession.

The Code of Professional Responsibility, under which every state Bar operates, mandates that each lawyer has a moral responsibility to either take on cases for those unable to pay, or to charge a lesser fee for those who cannot bear the whole freight.<sup>8</sup> Of course, pro bono work can take on different forms:

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<sup>7</sup> Hon. Carl Horn, *Restoring the Foundations: 12 Steps Toward Personal Fulfillment in the Practice of Law*, SOUTH CAROLINA LAWYER (September 1998) available at [http://www.scbar.org/SC\\_Lawyer/1998/1998\\_September-October/SCL\\_articles\\_September-October\\_1998\\_article\\_4.htm](http://www.scbar.org/SC_Lawyer/1998/1998_September-October/SCL_articles_September-October_1998_article_4.htm).

<sup>8</sup> The ABA Rules of Professional Conduct suggest that a lawyer perform at least 50 hours of pro bono services a year, in the form of direct representation to indigent clients or to organizations- charitable, religious, civic, government or educational that address the needs of persons with limited means. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1993). States vary in whether they require or simply suggest pro bono hours. For example: New York's Ethical Cannons state, "Persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in appropriate activities designed to achieve that objective." N.Y. CODE OF PROFESSIONAL RESPONSIBILITY, EC 2-16; see also N.Y. CODE OF PROFESSIONAL RESPONSIBILITY, EC 2-25. In Massachusetts, an attorney must do a minimum of twenty-five hours pro bono service, most of which should be for free, the remainder can be at a reduced fee. This service can take the form of service to individuals, or organizations that address the needs of those with limited means. MASS. S. JUD. CT. R. 6.1. Although Illinois Rules do not state annual pro bono hours requirements, the preamble states that "It is the responsibility of those licensed as officers of the court to use their training, experience and skills to provide services in the public interest for which compensation may not be available", and that it may take many forms, not limited to direct representation of the indigent. ILL. SUP. CT. R. art. VIII pmb1. Kentucky encourages fifty hours of service per year. Ky. SUP. CT. R. 6.1. As of February 1, 1998, Indiana created a twenty-one member pro bono commission to encourage and facilitate participation in pro bono activities. INDIANA RULES OF PROFESSIONAL CONDUCT R. 6.5. The Wyoming rule is essentially the same as ABA Rule 6.1 except for the allowance to pay moneys in lieu of performing service. WYOMING RULES OF PROFESSIONAL CONDUCT R. 6.1 A number of states allow attorneys to buy their way out of the pro bono requirement as well, by

public service to civil and charitable causes; writing and speaking about the law to groups and in the media for the public's education and information; or work for the betterment of the Bar itself. But fundamentally, many of the poor and lower middle class lack the resources to gain access to the legal system.<sup>9</sup> It is these people who must be helped through free or near free services by lawyers.

The next question is why there is in fact so little pro bono given to the poor? I would venture that 90% of lawyers do not give any time to pro bono.<sup>10</sup> And if an empirical study were made of those who do give, the fundamental reason would be religious or theological.<sup>11</sup> Why has the Bar not done research in this

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donating a specified amount to a charitable organization. See NEW MEXICO RULES OF PROFESSIONAL CONDUCT R. 16-601.

<sup>9</sup> Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. L. REV. 531, 534-35 n.6 (1994) (explaining that Former President Jimmy Carter observed that "[n]inety percent of our lawyers serve 10 percent of our people. We are over-lawyered and under-represented."). Empirical studies at both the state and national level find that a large percentage of the critical legal needs of low income persons are not being met. See COMMITTEE TO IMPROVE THE AVAILABILITY OF LEGAL SERVICES, *Preliminary Report to the Chief Judge of the State of New York* 12 (1989); REPORT AND RECOMMENDATIONS OF THE CIVIL LEGAL SERVICES COMMITTEE OF THE STATE BAR ASSOCIATION OF NORTH DAKOTA AND THE NORTH DAKOTA TRIAL LAWYERS' ASSOCIATION AND THE NORTH DAKOTA SUPREME COURT, *A Workable Plan For Civil Legal Services For The Poor: A Practical, Equitable And Political Proposal For Bar Leadership* 17 (1988); see also Stephen Maher, *No Bono: The Efforts of the Supreme Court of Florida to Promote the Full Availability of Legal Services*, 41 UNIV. MIAMI L. REV. 973 (1996); Esther F. Lardent, *Mandatory Pro Bono in Civil Cases: The Wrong Answer to the Right Question*, 49 MD. L. REV. 78, 86 (1990); MARYLAND LEGAL SERVICES CORPORATION ADVISORY COUNCIL, ACTION PLAN FOR LEGAL SERVICES TO MARYLAND'S POOR (1988).

<sup>10</sup> According to surveys done by the American Lawyer, large firms did a median of 38.5 hours of pro bono work annually. See Jenna Greene, *Pressing In-Housers into Service*, LEGAL TIMES, Nov. 30, 1998, at 7. By contrast, the leading firm in the survey put in an average of 140 pro bono hours per attorney. See *Id.* According to Cassie Diaz-Bello, assistant staff counsel for the Center for Pro Bono of the ABA in Chicago, national data on actual pro bono hours worked by individual attorneys is scarce. See Janet L. Conley, *A Night of Agonizing Led Edenfield to New Firm*, FULTON COUNTY DAILY REPORT, Aug. 27, 1998. According to a 1995 ABA survey, 17% of 895,700 attorneys surveyed did pro bono work. *Id.* Most states do not have reporting requirements for bar members. See *id.* A sampling of state survey's reveals: of the 8% of Georgia bar members responding to a survey, 8% did pro bono work. See *id.* Half of the Florida Bar responded to a survey revealing they worked an average of thirty-five pro bono hours a year. See *id.* In Kentucky, 12% of the bar responded, revealing an average of forty-eight hours a year. See *id.*

<sup>11</sup> See Daniel O. Conkle, *Professing Professionals: Christian Pilots on the*

respect and on a more basic question: if there is a serious moral obligation to deliver free legal services to the poor, why do so few lawyers give such time? And for those who do, what compels them to do so?

The first and perhaps the most serious problem we face as believing lawyers is the terrible weight of the culture, and indeed of the profession itself as a product of that culture. For too many, lawyering has become not a profession, but a trade which is economically rewarding and where the bottom line and billable hours seem to control all they do.<sup>12</sup> This is not without its truth, since if we cannot make a living, we can't survive in this world.<sup>13</sup>

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*River of Law*, 38 CATH. LAW. 151, 160-63 (1998) (commenting on how Christian lawyers are driven by their faith to serve the poor); Panel Discussion, *Can We Find Common Ground As Religiously Committed Lawyers?*, 26 FORDHAM URB. L.J. 961, 973 (1999) (participant in a panel discussion stating that it is his faith that drives his feeling of obligation to society and his pro bono service); see also N. Lee Cooper, *Remarks: Religion and the Lawyer*, 66 FORDHAM L. REV. 1083, 1086 (1998).

<sup>12</sup> See Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 GEO. J. LEGAL ETHICS 547, 557-60 (1998) (citing increased numbers of lawyers, a win-at-all-costs mentality, lack of discipline, and failures in the legal education as being amongst the reasons that the public opinion of attorneys and the legal system is very low); Paul J. Kelly, Jr., *Remarks: A Return of Professionalism*, 66 FORDHAM L. REV. 2091, 2096 (1998) (citing elements such as contingency fees and joint and several liability as among the reasons that the legal profession is now more like a trade); Walter H. Bennett, Jr. & Judith Welch Wegner, *Law Alumni Service to the Public and the Law School*, 73 N.C. L. REV. 846, 873 (1995) (discussing the importance of the profession of law in our democratic society and expressing concerns about its image and the abuse of billable hours); Stephen Maher, *supra* note 9, at 993 (noting that the public service component of the law is what distinguishes it as a profession, as opposed to a trade).

<sup>13</sup> See Allison Marston, *Guiding the Profession: The 1887 Code of Ethics of the Alabama State Bar Association*, 49 ALA. L. REV. 471, 477 (1998) ("We cannot be blind to the fact that, however high may be the motives of some, the trend of many is away from the ideals of the past, and the tendency more and more to reduce our high calling to the level of a trade, to a mere means of livelihood, or of personal aggrandizement.") (quoting 31 REPORT OF THE THIRTIETH MEETING OF THE AMERICAN BAR ASSOCIATION, HELD AT PORTLAND, MAINE, Aug. 26-28, 1907, at 682 (1907)); Philip J. Havers, *Take the Money and Run: Inherent Ethical Problems of the Contingency Fee and Loser Pays Systems*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 621, 625 (2000) ("Because of this large personal financial stake, the attorney can no longer look upon his practice of law as one devoted primarily to justice . . . . [T]he system has given the lawyer a strong financial interest in the claim and, as such, the attorney has become almost a separate party in the litigation with his own interests and motivations.").

Lawsuits have become so expensive that few can afford them, particularly at the high prices lawyers must charge for their services (an average of \$125 an hour).<sup>14</sup> Without an eye to the bottom line, a lawyer will soon be out of business.<sup>15</sup> But this has turned into an excuse so that the exception - a legitimate worry about money and survival - has absorbed the rule, resulting in too many law firms becoming dominated by economic factors such as billable hours.<sup>16</sup> And while many such firms take on pro bono cases, the process seems to have little intellectual and spiritual foundations.<sup>17</sup>

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<sup>14</sup> See *Altman & Weil Releases Results: 1988 Survey of Law Firm Economics*, 51 TEX. B. J. 852, 852 (1988) ("For lawyers with six to 10 years of practice, the average rate for those in firms with fewer than nine lawyers is \$101 per hour. For lawyers in firms of 75 or more lawyers, the average is \$128 per hour."); see also Derek C. Bok, *A Flawed System*, HARV. MAG., 38, 40 (May-June 1993) (stating that "the cost of hiring a lawyer . . . discourag[e] most people of modest means from trying to enforce their rights."); Duncan C. Smith, *Total Quality Leadership: Building Your Team, Keeping Your Clients*, 19 L. PRAC. MGMT. 34, 35 (1993) (naming the "failure to charge fair and reasonable fees" as a reason for clients' dissatisfaction with their attorneys); *Pre-Paid Legal Services Announces Management Addition for Internet Development*, PR NEWSWIRE, Feb. 21, 2000. ("Most people . . . typically cannot afford current lawyer fees that average over \$160 per hour.")

<sup>15</sup> See Jon Newberry, *Securing the Future*, A.B.A. J., April 1995, at 60-61 ("[M]ost lawyers cannot slow down, as some other professionals seem to be able to do, because of intense economic pressure . . ."); see also Daicoff, *supra* note 12, at 567 ("The more one works, the more money, prestige, and status one may garner . . . [An attorney's success] appears to be measured by money, prestige, and status.")

<sup>16</sup> See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1344 (1997) (recognizing "the underlying theory that law has become a 'business' rather than a profession, placing a heightened emphasis on materialism and money."); see also Laura Gatland, *Dangerous Dedication*, A.B.A. J., Dec. 1997, at 28, 29 (noting the "increasingly high billable-hour requirements" of "big firm associates."); Daicoff, *supra* note 12, at 557-58 (citing "increased numbers of lawyers . . . increased competition for clients. . . [and] increased emphasis on money" as factors producing "an unbearable level of competition and pressure in today's legal practice."); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 891-92 (1999) ("[A]n extensive survey by Altman Weil Pensa, a prominent legal consulting firm, found that the median number of billable hours for associates in firms of all sizes in 1995 was 1823; 25% of associates billed 1999 hours or more, and 10% billed at least 2166 hours.")

<sup>17</sup> Cf. Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415, 2430 (April 1999).

Other extrinsic factors also influence the likelihood of volunteer assistance. The rewards and costs of such involvement play the most

Admittedly, all these questions are difficult to resolve. Collaterally, this economic pressure has made lawyers more aggressive, more uncivil, and less cooperative.<sup>18</sup> The profession becomes unpleasant and “burn out” is common among lawyers.<sup>19</sup> “Burn out” is another way of describing the loss of meaning and significance that destroys the love and enthusiasm for what we do.<sup>20</sup> For there to be meaning in our profession, the work we do must inherently make a difference in our lives.<sup>21</sup>

Flowing from this first difficulty is the second. The profession, as a result of economics, has become much more adversarial, seeking conflict rather than mediation and

obvious role. Volunteer work presents opportunities to gain knowledge, skills, and personal contacts. It may also enhance a person’s reputation with peers and potential employers. Such possibilities generally increase the attractiveness of volunteering.

*Id.* “For lawyers themselves, [pro bono] work is similarly important in giving purpose and meaning to their professional lives.” *Id.* at 2416; *see, e.g.*, Charles W. Wolfram et. al., *Legal Ethics: An Informal Discussion on Legal Ethics*, 2 HOFSTRA J. INST. STUD. LEGAL ETHICS 427, 429 (1999) (Carol Langford, a private practitioner, describes the necessary motivations for doing pro bono work by stating that “[t]hey have to get something for doing it . . . Otherwise, there is not a lot of incentive to do it.”).

<sup>18</sup> *See* Daicoff, *supra* note 16, at 1422 (citing the economic pressures of increased competition for clients and fees as leading to “competitive, aggressive, hostile, and overreaching behavior in a tight market.”); *see also* Gatland, *supra* note 16, at 28 (stating that “[a]mong the pressures on lawyers are an emphasis on productivity, the commercialization of law practice, lawyer incivility, feelings of isolation, and decreased chances of making partner.”); Daicoff, *supra* note 12, at 549 (describing lawyers as “increasingly competitive, crass, commercial, discourteous, and rude.”).

<sup>19</sup> *See* Newberry, *supra* note 15, at 60 (noting “a burn-out rate that makes early retirement at times a medical necessity.”). In fact, burn-out is so common among lawyers that some states require lawyers, as a part of mandatory continuing legal education, to take courses on stress and substance abuse. *See, e.g.*, Randy Lee, *The Immutability of Faith and the Necessity of Action*, 66 FORDHAM L. REV. 1455, 1458 n.27 (1998) (describing the California Bar requirement that lawyers take at least one stress and substance abuse course every three years).

<sup>20</sup> *See* Nancy Blodgett, *Lawyer’s Rocky Mountain High*, A.B.A. J., Mar. 1988, at 34 (defining lawyer burn-out as “the phenomenon experienced by lawyers who have lost their zest for the practice of law.”); Kurt M. Hughes, *F.R.I.E.D. (Fatigued, Rushed and Incredibly Edgy Disorder): Data’s Congestion*, 25 VER. B. J. & L. DIG. 18 (1999) (defining lawyer burn-out as “an intellectual/emotional/spiritual flu.”).

<sup>21</sup> *See* Daicoff, *supra* note 12, at 575 (“[L]awyers cannot possibly be comfortable, happy, or fulfilled when they engage in behavior that conflicts with their values.”). “[P]erforming things against one’s own interests and values damages one’s soul.” *Id.* at 575 n.203 (citing to THOMAS MOORE, *THE CARE OF THE SOUL* 185-88 (1995)).

conciliation.<sup>22</sup> In our materialistic culture, clients are fired up by reading about other huge sums awarded here and there for sometimes the most trivial reasons. As a consequence, few clients are happy with almost any monetary resolution. Greed and materialism have infected the culture deeply.<sup>23</sup> The search for truth and the idea that justice may be done have been, in the words of the lawyer for Beatrice Foods, Inc. in the movie *A Civil Action*,<sup>24</sup> left at the courtroom door the moment a lawsuit enters the justice system. Therein lies the emptiness of any purely secular reason for lawyering or for delivering legal services to the poor.<sup>25</sup>

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<sup>22</sup> See Daicoff, *supra* note 16, at 1425 (discussing how lawyers engage in “Rambo litigation” tactics, in a desire to win, collect more legal fees, and attract more clients.”); see also Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 CASE WES. RES. L. REV. 531, 610-11 (1994) (describing the “fundamental conditions that have resulted in erosion of some aspects of traditional professionalism.”); Daicoff, *supra* note 12, at 550-51 (discussing “Rambo-style litigation tactics, a win-at-all-costs mentality; [and] the commercialization of the legal profession” as “evidence of the decline in professionalism” among attorneys); Schiltz, *supra* note 16, at 889 (discussing the “adversarial environment, in which aggression, selfishness, hostility, suspiciousness, and cynicism are widespread.”).

<sup>23</sup> See Daicoff, *supra* note 16, at 1424 (“[M]aterialism and financial motivation are widespread in the legal profession.”)(citations omitted); see also Alexander W. Astin, *Prelaw Students-A National Profile*, 34 J. LEGAL EDUC. 73, 82 (1984) (reporting that “being very well-off financially” is “essential” or “very important” to 65% of law students and 74% of prelaw students); Daicoff, *supra* note 12, at 559 (naming “greed” as one of the “negative values . . . associated with the legal profession” that make “practicing law . . . ‘no longer fun.’”).

<sup>24</sup> See *A CIVIL ACTION* (Touchstone Pictures 1998). It should be noted that some commentators argue that the cinematic, or “Hollywood” depiction of lawyers has contributed to the decline of professionalism in the legal practice. See, e.g., Daicoff, *supra* note 12, at 571-572.

Some believe that newer lawyers engage in unseemly conduct more frequently because they believe their clients expect it of them, because their ideas of lawyering have come from television and movies, which often portray lawyers as vicious, and because they are afraid, in these competitive times, that they will not be successful if they do not behave in this way.

*Id.*

<sup>25</sup> See Daicoff, *supra* note 16, at 1425 (“[L]awyers’ materialism likely discourages them from electing to do pro bono work and other nonlucrative community service instead of working on paying, private clients’ matters.”); Daicoff, *supra* note 12, at 559 (“Lack of time and competition are blamed for lawyers’ unwillingness to provide legal services to the poor or general public service to the community.”). “Increasing time spent on pro bono activities and community service will conflict with the extreme billable hour quotas expected of most lawyers in law firms.” *Id.* at 570. In general, “[c]ommentators charge that law has become too commercialized, too much a business, and too profit-

The third and final difficulty of the profession is the complex nature of procedural rules of evidence and admissibility.<sup>26</sup> Such requirements turn the legal profession into a treacherous mine field so that one who does not observe every rule waives it. This has destructive results on the search for truth and could result in lawyer malpractice actions or disciplinary proceedings.<sup>27</sup> What was once the very heart of the profession, with just enough rules to ensure notice and due process (truth seeking),<sup>28</sup> is now reduced to the procedural endurance of a huge morass of rules, deadlines, answers, and waivers.<sup>29</sup> The result is that the search for truth has been lost, while the procedural experts have become kings of the legal realm.<sup>30</sup> Instead of a simplified set of rules for discovery

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driven, which has led to greater potential for ethical difficulties.” Daicoff, *supra* note 16, at 1424.

<sup>26</sup> See Jeffrey W. Stempel, *A More Complete Look at Complexity*, 40 ARIZ. L. REV. 781, 835 (1998) (recognizing that lawyers have more difficulty dealing with their clients’ disputes because of the greater range of procedural issues in relation to their cases).

<sup>27</sup> See Daniel C. Draisen, *The Model Rules of Professional Conduct and Their Relationship to Legal Malpractice Actions: A Practical Approach to the Use of the Rules*, 21 J. LEGAL PROF. 67, 67-68 (1996-97) (stating that the development of legal malpractice actions have created a complex system of proceedings making lawyers often “accountable to their clients and to society generally.”); see also Ann Peters, *The Model Rules as a Guide for Legal Malpractice*, 6 GEO. J. LEGAL ETHICS 609, 610 (1993) (arguing for a comprehensive revision of the *Model Code of Professional Responsibility* that would expand the rigid reliance on ethics codes in legal malpractice actions).

<sup>28</sup> See, e.g., Grace M. Giesel, *The Legal Advice Requirement of the Attorney-Client Privilege: A Special Problem for In-House Counsel and Outside Attorneys Representing Corporations*, 48 MERCER L. REV. 1169, 1181 (1997). In this article, Geisel discusses how certain aspects of the attorney-client privilege can harm the legal profession as well as hinder access to the truth. See *id.* at 1180. She also considers how the privilege only creates benefits that are “all indirect and speculative” and causes “the burden of the obfuscation of the truth.” *Id.* at 1181.

<sup>29</sup> See David P. Leonard, *Power and Responsibility in Evidence Law*, 63 S. CAL. L. REV. 937, 952-68 (1990) (maintaining that evidentiary rules have a profound impact on the ascertainment of truth and the ability to establish substantive rights in a particular case). But see Thomas M. Mengler, *The Theory of Discretion in the Federal Rules of Evidence*, 74 IOWA L. REV. 413, 414-16 (1988) (noting that the drafters of the Federal Rules of Evidence built flexibility into areas of judicial discretion and admissibility).

<sup>30</sup> See William H. Simon, *Virtuous Lying: A Critique of Quasi-Categorical Moralism*, 12 GEO. J. LEGAL ETHICS 433, 442-45 (1999). In this article, Simon posed a hypothetical situation which many lawyers are more than likely to confront. If a lawyer takes a risk to potentially benefit a client and he turns out to be wrong, then that mistake would be widely detected. See *id.* at 443. Alternatively, “if the client moderates her course, disputes are unlikely to arise

and evidence, the legal profession utilizes complex requirements for the purposes of hiding, obfuscating, and papering-to-death, in an effort to make the other side settle, even when such a result would be neither just nor truthful.<sup>31</sup> In other words, instead of insuring a modicum of notice and due process, procedure has effectively stifled the truth seeking and justice, which is at the heart of the legal profession.<sup>32</sup> Some states, such as Texas,<sup>33</sup> as well as federal courts have begun to vastly simplify the discovery process<sup>34</sup> but much remains to be done.

These difficulties today surround the practice of law for every attorney, but in a sense they are difficulties that can be resolved. Yet even if they are resolved, this still would not shed light on the inherent problem of the spirituality (or if one wants a more secular word, the meaning) of being a lawyer who deals in the "goods" of truth and justice. Why become a lawyer at all in light of such difficulties? After five to ten years most lawyers, as evidenced in the North Carolina Bar poll, are so burnt out that they would leave if they could.<sup>35</sup> What does this tell us about the

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and any mistake by the lawyer is less likely to come to light." *Id.* at 443.

<sup>31</sup> See Carrie Menkel-Meadow, *Ethics and the Settlements of Mass Torts: When the Rules Meet the Road*, 80 CORNELL L. REV. 1159, 1164-69 (1995) (analyzing the ethical ramifications of a settlement in a class action tort suit and concluding that settlements offend traditional notions of justice and equity).

<sup>32</sup> See William H. Simon, *Ethical Discretion in Lawyering*, 101 HARV. L. REV. 1083, 1097-98 (1988) (noting that lawyers could promote justice by assisting the fervent pursuit of their clients' interests but are unable to due to the rigid nature of the procedural system); see also Committee on Prof'l Ethics and Conduct of the Iowa State Bar Ass'n v. Behnke, 276 N.W.2d 838, 840 (Iowa 1979) (holding that a violation of an ethical consideration will normally support disciplinary action).

<sup>33</sup> See *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 182 (Tex. 1999) (concluding that the primary objective of discovery is to guarantee that controversies that arise are determined by what the facts reveal, not what they conceal).

<sup>34</sup> See *Windsor Indus., Inc. v. Pro-Team, Inc.* 87 F. Supp. 2d 1129, 1132 (D. Colo. 2000) (stating that "duplicative discovery is neither economical nor convenient."); *Gardner v. Chrysler Corp.*, No. 91-1496-PFK, 1995 U.S. Dist. LEXIS 18015, at \*18 (D. Kan. Nov. 1, 1995) (criticizing the plaintiff's motion for further discovery as a "rambling and complex argument based on suspicion, innuendo and unsupported accusations.").

<sup>35</sup> See Harry T. Edwards, *A New Vision for the Legal Profession*, 72 N.Y.U. L. REV. 567, 570-71 (1997) ("Modern law firm practice has disenchanting many young lawyers. They see it as nothing more than a big money enterprise—resulting in insane hours, tedious work, and sometimes questionable ethical decisions."); see also Diane Vaksdal Smith, *The Honorable Karen S. Metzger*,

profession? What is so lacking in the practice of law that it does this to lawyers? There are few other professions that could make such a statement.

The short answer lies in a fundamental lack of any spirituality of lawyering about the inherent nature of the profession itself, a topic which is *never* addressed in law schools or in Continuing Legal Education (CLE) courses.<sup>36</sup> Most states now require approximately fifteen hours of such education a year to maintain a law license.<sup>37</sup> Yet, in all fifteen years of practicing law, I have never seen or heard of a CLE course addressing lawyer burn-out and its causes, much less lawyer spirituality. I believe that the difficulty lies here, but the Bar refuses to address the issue for fear of sectarianism, church/state implications, or simple embarrassment. But even the ABA is beginning to see the problem and has set up a committee to investigate this dimension.<sup>38</sup>

#### THE SPIRITUAL FOUNDATIONS OF LAWYERING

From the perspective of the *ends* of the profession, there is

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*Colorado Court of Appeals*, 71 DENV. U. L. REV. 27, 32 (noting the burn-out among lawyers these days); Hon. Carl Horn, *Restoring the Foundations: 12 Steps Toward Personal Fulfillment in the Practice of Law*, SOUTH CAROLINA LAWYER (September 1998) available at [http://www.sbar.org/SC\\_Lawyer/1998/1998\\_September-October/SCL\\_articles\\_September-October\\_1998\\_article\\_4.htm](http://www.sbar.org/SC_Lawyer/1998/1998_September-October/SCL_articles_September-October_1998_article_4.htm).

<sup>36</sup> See Lucia Ann Silecchia, *supra* note 2, at 192-93 (2000) (stating that law students do not acquire the spiritual perspective in school that is so vital to their future careers).

<sup>37</sup> See AMERICAN BAR ASSOCIATION, *ABA Center for Continuing Legal Education: Summary of MCLE State Requirements*, available at <http://www.abanet.org/cle/mcleview.html> (Oct. 6, 2000) (summarizing the MCLE requirements for all states that require it); see also N.Y. COMP. CODES R. & REGS. tit. 22 § 1500.22(a) (1999) (explaining that the minimum continuing legal education requirement for attorneys is 24 credit hours for each biennial cycle); STATE BAR OF TEXAS, *Texas MCLE Regulations*, available at <http://www.texasbar.com.attyinfo.mcle/regulations.html> (Oct. 6, 2000) (setting forth in section 3.0 that the minimum continuing legal education requirement for attorneys is 15 hours per year); Wash. St. Reg. 00-09-016, Rule 11.2(a) (2000) (setting forth that the minimum continuing legal education requirement for attorneys is 45 hours for every three years).

<sup>38</sup> See Sherry M. Karabin, *Love It Or Leave It: Dissatisfied Lawyers Are Seeking Stress Outlets – and New Careers*, A.B.A. SEC. GEN. PRAC. 6 (1989); see generally Carl Horn, *Redefining Lawyers' Work: Twelve Steps Toward Personal Fulfillment in Law Practice*, 25 A.B.A. LAW PRAC. MANAGEMENT 36 (October 1999).

no profession that is more noble or sublime in the natural order than the practice of law, since its ultimate goal is to seek truth so that justice may be done.<sup>39</sup> What this is, is an implicit search for God and for the eternal.<sup>40</sup> How so?

Even those who do not accept my thesis that it is God who makes us one can readily accept the conclusion I have come to: that the seeking of God and/or meaning in life, the desire for true freedom, the passionate search for truth and justice - all these spiritual dimensions are part of all religions in a very basic sense.<sup>41</sup> These deep aspirations may serve as a widening basis for a meaningful practice of law for all.<sup>42</sup>

In other words, my conclusions as to the implicit search for these deepest aspirations have universal and ecumenical applications to all religions.<sup>43</sup> Perhaps they are applicable even to those who have no sense of religion, but who desire to be decent human beings in the practice of law and to escape the present dehumanization of law through materialism, bottom lineism, and the winning/losing phenomenon so common in the

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<sup>39</sup> See Andrew R. Herron, *Comment: Collegiality, Justice and the Public Image: Why One Lawyer's Pleasure Is Another's Poison*, 44 U. MIAMI L. REV. 807, 813 (1990) ("[T]he lawyer's duty to advance his client's interests must be subordinated to the ultimate goal of truth-seeking which brought the relationship into being.").

<sup>40</sup> See Michelle L. Mack, Note, *Religious Human Rights and the International Human Rights Community: Finding Common Ground-Without Compromise*, 13 NOTRE DAME J.L. ETHICS & PUB. POL'Y 455, 480 n.99 (1999) ("[O]bjectively speaking, the search for truth and the search for God are one and the same.") (quoting POPE JOHN PAUL II, *If You Want Peace, Respect the Conscience of Every Person* (Jan. 1, 1991) (Message of His Holiness for the XXIV World Day Of Peace)).

<sup>41</sup> See Rodney K. Smith, *The Role of Religion In Progressive Constitutionalism*, 4 WIDENER L. SYMP. J. 51, 77 (1999) (discussing how people of many religions search their sacred texts to uncover truths that can be relied upon).

<sup>42</sup> See Silecchia, *supra* note 2, at 174 ("[B]oth professionals and those they serve derive substantial benefits when spirituality shapes service and practice."); see also Jack L. Sammons, Jr. & Linda H. Edwards, *Honoring the Law in Communities of Force: Terrell and Wildman's Teleology of Practice*, 41 EMORY L. J. 489, 494-95 n.14 (1992) (discussing how Georgian lawyers in the early twentieth century integrated morals, such as the search for truth and justice, into the practice of law and thereby created harmony between their individualism and professionalism).

<sup>43</sup> See Warren K. Anderson, Jr., *Ecumenical Cosmology*, 27 TEX. TECH. L. REV. 983, 984 (1996) (describing the new universe as a common sense wisdom which can be shared by all traditions and how this common sense wisdom gives us a sense of interconnectedness).

legal profession.<sup>44</sup> The basic thrust of every human being that makes us profoundly human in the first place is a solidarity in the search for these values and aspirations which are spiritual in nature,<sup>45</sup> i.e. they cannot be exhausted but are infinite in reach. This endeavor is as valid for non-believers as it is for believers in God because in the search for these values we meet each other at the most profound depths of our humanity.<sup>46</sup> Believers go further in faith and believe that this foundation of our being is a mystery, whom for lack of a better word, we call God.<sup>47</sup> But even if non-believers cannot go so far, they and we are agreed on the values themselves.<sup>48</sup>

The lawyer's work is therefore really the very work of the Spirit who raises our hearts to seek truth and justice with all our being, since truth is only another word for God.<sup>49</sup> This *is* inherently good work "not along side of" the profession but implied in its very nature.<sup>50</sup> In conscientiously doing our work as lawyers, we energize the work of the Spirit precisely by seeking

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<sup>44</sup> See Silecchia, *supra* note 2, at 186-90 (discussing how a kind of spirituality can increase lawyers' satisfaction with their work); see also Calvin G.C. Pang, *Eyeing The Circle: Finding a Place for Spirituality in Law School Clinic*, 35 WILLAMETTE L. REV. 241, 270 (1999) ("[S]pirituality in . . . the work of lawyers would . . . affirm that the professional activities of . . . lawyers can transcend narrow, mechanical, self-interested concerns and become life-affirming.").

<sup>45</sup> See Pang, *supra* note 44, at 260-61 ("[O]ur spirituality is the animating dimension of our humanity . . . It points us toward something higher, orienting us toward virtue and the search for transcendent meaning and purpose.").

<sup>46</sup> See Melissa M. Weldon, *Honoring the Spirit in the Law: A Lawyer's Confession of Faith*, 26 FORDHAM URB. L.J. 1167, 1171-72 (1999) (discussing how the author reconciles her work as an attorney and her religious beliefs "by being truly present for others").

<sup>47</sup> See Samuel J. Levine, *supra* note 1, at 1202-05 (discussing how an Orthodox Jew seeks to incorporate spirituality into his daily works as a lawyer); see also Weldon, *supra* note 46, at 1171-72.

<sup>48</sup> See Gordon L. Gray, *Personal Values Within Our Profession*, 38 CATH. LAW. 279, 284 (1998) ("[P]ersons of all faiths (or even without religious faith) have values.").

<sup>49</sup> See Michael P. Schutt, *What's a Nice Christian Like You Doing in a Profession Like This?*, 11 REGENT U. L. REV. 137, 142-44 (1999) (discussing how a Christian can maintain his faith and practice in the legal profession by reforming the system so that it reflects a moral view of process and the substantive law).

<sup>50</sup> See Timothy W. Floyd, *The Practice of Law as a Vocation or Calling*, 66 FORDHAM L. REV. 1405, 1409 (1998) ("God cannot be compartmentalized into the religious sphere of our lives while being irrelevant in our work lives. We simply cannot relegate our obligations to God and neighbor to the 'nonlawyer' parts of our lives.").

truth so that justice may be done.<sup>51</sup> This is not only spiritual work, but also the spiritualization of our work, if we approach it prayerfully, with integrity, and honesty, knowing that each client who approaches us is our brother and sister and is owed our dedication and talents if we choose to accept him or her as a client.<sup>52</sup> We thereby cooperate with the Spirit in the world to render this justice visible and real, which is the very core of why we are lawyers in the first place.<sup>53</sup> There is tedium in that work, as with every form of work, coming from demanding clients, incivility of other lawyers, the arbitrariness of some judges, the demands of money to survive, and the painful choice of good and bad cases (not just lucrative/non lucrative cases).<sup>54</sup>

Such a spirituality can add a joyful dimension to lawyering as well as elevate it to a true inherent spirituality in what we do as lawyers.<sup>55</sup> When reflected on in this way, lawyering can become a vocation and not just a profession, or worse, a job.<sup>56</sup>

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<sup>51</sup> See John L. Cromartie, Jr., *Reflections on Vocation, Calling, Spirituality and Justice*, 27 TEX. TECH L. REV. 1061, 1061-62 (1996) (the author discusses how legal aid work and working for justice helped him gain spirituality and faith commitment, which in turn convinced him to embrace religion).

<sup>52</sup> See JOSEPH G. ALLEGRETTI, *THE LAWYER'S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* 37 (1996) (discussing how the relationship between a lawyer and his client is extraordinary and unique—"two people, each a child of God, each sinful yet redeemed, come together and for better or for worse each is moved and shaped and changed by the other").

<sup>53</sup> See Charles R. DiSalvo & William L. Droel, *Reflections on the Contents of the Lawyer's Work Three Models of Spirituality—and Our Struggle With Them*, 27 TEX. TECH L. REV. 1069, 1070 (1996) (describing a study of how lawyers understand the relationship between their work and faith. The authors propose three models of spirituality to answer the question "Who is your employer?" – "The client is my employer." "God is my employer." and "I am my employer."); see also Panel Discussion, *Models of Successful "Religion and Lawyering" Programs*, 26 FORDHAM URB. L. J. 917, 923-28 (1999) (Professor Joseph Allegretti discussing his experience with lawyers who are facing a crisis of meaning or identity in their work – "a spiritual crisis").

<sup>54</sup> See Joseph G. Allegretti, *Neither Curse Nor Idol: Towards A Spirituality of Work for Lawyers*, 27 TEX. TECH L. REV. 963, 965 (1996) (describing how law should be thought of as a calling rather than a curse so that we may pursue a career in law to serve God in and through our work for the rest of our lives).

<sup>55</sup> See ALLEGRETTI, *supra* note 52, at 35.

<sup>56</sup> See *id.*; see also Joseph A. Morris, *Personal Values and the Character of the Lawyer*, 8 CATH. LAW. 241, 244 (1998) (arguing that it is inherent in the vocation of a lawyer to "root[] out injustice and oppression from our world.").