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# Reflections on “*Can the Ordinary Practice of Law Be a Religious Calling?*”

Moshe Kushman\*

My name is Moshe Kushman and I am a partner with Skadden Arps here in Los Angeles. I wanted to tell you a little about my background, and then we can address the question of today’s seminar: Can the ordinary practice of law be a religious calling?

First and foremost, my short answer is, and hopefully the short answer for everyone here after the conclusion of this conference will be, how can it possibly not be? By the time that I complete the next six and one-half minute discussion, I hope to bring you there with me.

By way of background, the intensive aspect of my spiritual development began roughly at the age of 16, during which time I lived with a dying family member. According to Jewish tradition, and you will find a passage revealing this principle in the *Torah*, no person is permitted to see the face of God and live. One of the correlations of this principle is therefore that only a dying person is permitted to see the face of God.

I lived with this dying family member on a day to day basis for several years and, in effect, had the opportunity to go along vicariously with her on her spiritual voyage as she coped with her illness until the end of her life. As a result, I developed a heightened sense of spiritual and religious awareness of the presence of death in our lives. During that period, I was focusing on the possibility of her death every day of my life, and since that event I carry with me a persistent consciousness of death.

One of the implications of being aware of mortality is that, as I go through each day, I try to take every moment and put that moment to its highest and best use. During my college years, I was very religiously-

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minded and, upon graduation, I was determined to go to rabbinic school. I enrolled in the rabbinic school at the Jewish Theological Seminary in New York City, an approximate five to six-year program. It took me six years of course-work before I emerged as a rabbi. The Jewish Theological Seminary rabbinic program was Jewish law intensive, and it became self evident towards the end of my studies what law really is. Many portions of Jewish law are now mostly of historical interest, particularly, for instance, in the case of ritual sacrifice. But the principles of Jewish law continue to be quite relevant.

What I discovered in rabbinic school is that each Jewish religious and civil law, in essence, represents a concretization of values. But this is true not only in Jewish law; rather, the “law” that we live by today is also a concretization of values. When Congress passes a law, what Congress is effectively saying is that in its judgment the new law represents a rule that everyone must live by because there is a value underlying that rule. So the law itself is a concretization of values, and this is what ultimately drove me to law school. Towards the end of my rabbinic school training, I determined that rather than practice as a Jewish clergy, having acquired a background in Jewish law, I would rather participate directly in the process of law in today’s society. Thus, I enrolled and attended law school with a mission in mind: to practice law and have a sense of religiosity about that practice.

A second facet of my background which I want you to know of, because it is so much a part of me, is that my grandfather was born in a home with a dirt floor. Because he had to run from the anti-Semitic oppression occurring in Europe during his youth, he never had the opportunity to go to school. He immigrated to the United States and used virtually every moment of his time working as tailor so that my father could go to high school. The depression of the 1930’s was so severe that my father left high school prior to graduation and joined the U.S. Navy. He wanted to accomplish two goals: one was to relieve his parents of the economic burden of supporting him during the terrible depression years, and the second was to send home a paycheck to his mother every month.

After World War II, my father came back home to California and, with the help of his parents, went into business to provide for his future family. One of his major objectives was not only for his son to graduate from high school, but also for his son to have the opportunity to attend and graduate from college. I became very much aware of my father’s dream and I focused on graduating from high school, and then college, and then pursuing a graduate school education. My father has passed on, but one of the things I took away from my relationship with him is that so much of the purpose of my existence here on earth is to carry on the journey that my grandfather started from Europe. My grandfather devoted all of his time to give me, as a member of the third generation of our family to live in America, the opportunity to do what I have been able to do in my lifetime.

With this background in mind, I would like to offer the following statements: first, at the risk of preaching to the choir, I view the practice of law as offering one of the greatest opportunities to enhance spiritual or

religious consciousness. The reason for this is that the legal profession is an abyss – you will find every type of client and every type of attorney. If you are looking for an opportunity to minister or are looking for an opportunity to exert ethical leadership, the law firm is a target-rich environment. There is an expression in Jewish tradition, recorded in the book of *The Ethics of the Fathers*, which roughly translates: where there are no mature and responsible human beings, it is a spiritual imperative to strive to be a mature and responsible human being.<sup>1</sup> In this sense, the legal profession offers the monumental challenge to not become alienated from the profession, but rather to draw yourself close to it and strive to be a mature and responsible person when other professionals and clients fall short of the mark. So the legal profession is the precise profession you may want to go into if you are spiritually or religiously minded. The fact is that it is in the context of less than admirable practices that you can be most effective. You are in the position to develop a fellowship and impart to other professionals and to clients a sense of ethical or spiritual guidance.

I would also like to offer a second statement to the conferees here today: without a sense of ultimate purpose, without a sense of ultimate values, without a vision of the end point, you have nothing at the end of the day and you have nothing at the end of your life. What deeds are you going to account for when you reach the end of your life? How much have you represented zealously your client's interest without any regard for ethical reflection or without any assertion of spiritual leadership? If this is the case, you will condemn yourself to leading a deficient life, a life of abject poverty – perhaps with money in the bank, but nonetheless a life devoid of true accomplishment, resulting in a kind of spiritual bankruptcy.

So it is not how much wealth you generate in terms of the chips, but rather the question is how much wealth you can generate in terms of spiritual growth in your own life and helping others to grow with you spiritually as well. While it is true that the accumulation of wealth can signify a manifestation of God's grace on earth, so much depends what you do with your productivity. If you do strive to do good deeds with the results of your productivity, your productivity will indeed be a manifestation of God's grace on earth.

In connection with being on the panel today, I was asked to address the question of a religious calling and its connection to the particular area of law that I practice, namely, Federal income taxation. But I do not believe that I have too much to say on this topic. What I would like to say is that any apprehension that I may have does *not* stem from the demands of clients; rather, it is the demands – and the ethical implications of the demands – of

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1. See generally ETHICS OF THE FATHERS 17-18 (1984). This is a new translation of the ancient texts with commentary by Rabbi Meir Zlotowitz and Rabbi Nossan Scherman.

other attorneys that I frequently need to be concerned with. Do not worry about the client walking into your office, wanting to do something illegal. That is not a problem.

Conferring with a client about his desire to do something that is not within the boundaries of the law represents an opportunity for me to talk with the client at a deeper level. A discussion of this nature most frequently turns out to be an excellent discussion and helps me get the client from here to there – moving from the less than admirable objective to an objective within the boundaries of the law. Most clients are very susceptible to my guidance because, at the end of the day, they really do not want to do something terribly wrong – and if they do, that's the time to fire the client.

So dealing with a client is a relatively straightforward. Dealing with other attorneys, however, is a very different experience. By other attorneys, I refer to the attorneys representing the party opposing my client. It is the other party's tax attorney, or his professional tax advisor, that I all too frequently have a problem with. On many occasions, these individuals have been the ones pushing something that I either disagree with or terribly disagree with; these individuals, the other tax attorneys, are the ones that can give all the heartache.

In dealing with this situation, I would offer the following ethic which I would like more attorneys to adopt. You want to zealously accomplish your client's purpose – yes, absolutely. The California rules say so, and you cannot do otherwise. But I would rephrase the statement as follows: you want to zealously accomplish your client's purpose, but without inflicting unnecessary injury. If you believe that you must inflict injury, ask yourself if there is not another way to go about it. Inflicting injury can only be a last resort when all other efforts have failed. Your client always has the right to act in self defense which, sometimes, may clearly justify the infliction of injury. I frequently observe the conduct of many attorneys, who urge a course of action to inflict injury when viable alternatives remain at their disposal to achieve the client's purpose in another, less harmful manner. So I would strongly advise everyone to go about your pursuits zealously, go about your legal practice zealously on behalf of your clients, but without inflicting unnecessary injury.

As a final statement, for those of you here today who view yourselves as younger rather than older, a word of advice as you live your life: the most important thing that will happen to you is the people that you meet. The people that you meet will become the fundamental factor that determines what happens tomorrow or the next day. Choose well who you meet and interact with. It is not how much you work or how long or short your day is. Rather, it is all about the nature and the character of the people that are around from day to day. So choose well the people that you meet. They will be so important for your future.

For those of you here today that view yourselves as older rather than younger, you are in a position to offer spiritual guidance. Look around for younger people to offer spiritual guidance to and to give input to their lives

to create satisfaction for yourself, and you can become their treasured sponsor as they grow and mature.

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