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LAWYER AS PEACEMAKER: A CHRISTIAN RESPONSE TO RAMBO LITIGATION

L. Timothy Perrin*

I. INTRODUCTION: TRIAL LAWYERS UNDER "THE CODE"

The traditional image of the trial lawyer comes from the Old West, the image of a hired gun. It is a telling image because it reveals a basic truth about the standard vision of lawyering — hired gun trial lawyers are "neutral partisans" who view their role as single-mindedly doing the client's bidding. The roots of this image of trial lawyers run deep. Nearly two centuries ago, Lord Henry Brougham described the trial advocate as one who "knows but one person in all the world, and that person is his client." According to Lord Brougham, the lawyer's "first and only duty" is "[t]o save that client by all means... and at all hazards and costs

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2. See id. at 8-10. Professor Joseph Allegretti describes the "standard vision of the lawyer's role" as "the Code" and suggests that the Code demands that the lawyer's primary responsibility is to represent his or her client effectively and to "leave questions of 'truth' and 'justice' to others." Id. at 8 (emphasis in original).

3. Accord MODEL RULES OF PROF'L CONDUCT, pmbl., ¶ 2 (2002) (noting that the lawyer’s role as advocate demands that "a lawyer zealously asserts the client's position under the rules of the adversary system").

to other persons” and to himself.5 Under this view, advocates should not concern themselves with the destruction that they bring on their opponents or third parties, but instead they should zealously represent the interests of their clients, “reckless of the consequences.”6 Professor Allegretti, in his book The Lawyer’s Calling, describes this standard vision of lawyering as “the Code” and refers to such a lawyer as an “amoral technician.”7

The principle of client loyalty is a cornerstone of the adversary system. Lawyers serve their clients and seek to achieve their clients’ objectives, not the other way around. The central role of client loyalty, combined with the built-in economic incentives of law practice, create strong motivations for lawyers to pursue their clients’ causes vigorously and relentlessly. Early in their legal education, lawyers are introduced to the language of “zealous representation,”8 an expectation that left unchecked leaves little room for concerns about justice or fairness or civility. This standard of zealousness can cause lawyers to behave in ways and pursue objectives that would be unimaginable in their life outside of law.9 They are limited in their pursuit of the client’s objectives only by the substantive law, rules of procedure and evidence, and applicable ethical rules.10

Under the influence of such a vision of the practice of law, lawyers can easily absolve themselves of any moral obligation for what they do in the office or in the courtroom by simply reciting the virtues of the adversary system. The line is well rehearsed: Vigorous advocacy is an indispensable part of the adversary system; and, if met with vigorous advocacy from the opponent it will lead, ultimately, to truth and justice. This focus on zealousness leads many lawyers to live out their professional commitments simply by being the best and most honest lawyers possible, and to pursue professional excellence and compliance with ethical standards with equal

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5. See FREEDMAN, supra note 4, at 65.
6. Id. at 66.
7. See ALLEGRETTI, supra note 1, at 9, 21 (noting that in the standard vision of lawyering, the lawyer is viewed as a “neutral partisan” or “amoral technician”).
9. See Richard Wasserstrom, Lawyers as Professionals: Some Moral Issues, 5 HUM. RTS. 1, 5-6 (1975) The author states:

Once a lawyer represents a client, the lawyer has a duty to make his or her expertise fully available in the realization of the end sought by the client, irrespective, for the most part, of the moral worth to which the end will be put or the character of the client who seeks to utilize it.

The ABA Model Rules of Professional Conduct do not require that the lawyer “press for every advantage that might be realized for a client,” but they do require that the lawyer “take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor,” and to “act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.” See MODEL RULES OF PROF’L CONDUCT R. 1.3 cmt. 1 (2002).
10. See Wasserstrom, supra note 9, at 6 (noting that in the traditional conception of the lawyer’s role, he has a duty to pursue the client’s objectives “provided that the end sought is not illegal”).
vigor. Lawyers give a nod to Abraham Lincoln for his honesty and another to Atticus Finch for his courage, and go about the business of lawyering according to the Code. Their commitment to ethics and honesty does not extend beyond the profession's code of ethics, however, and does not translate into any critique of those ethical rules or of accepted lawyering practices.

In this article I will examine and critique one outgrowth of such a morally neutral approach to the practice of law — the development and growth of the practice of Rambo lawyering. In the next section, I briefly describe the Rambo lawyer, including some recent examples of Rambo lawyers at work. I assume for purposes of this article that Rambo lawyers act within the constraints of the ethical rules, but otherwise are largely unconcerned with the consequences of their representation. My purpose in describing this approach to the practice of law is to consider whether Christians who take seriously the example and teachings of Jesus can in good conscience practice as Rambo lawyers. That is, should the faith commitment of a professing Christian lawyer cause that person to seek to exceed the bare ethical standards of the profession? Should such a commitment influence the tactics and strategies employed by trial lawyers? For initial answers to this question, I turn, in part three, to Jesus's teaching in the Sermon on the Mount, and in particular to Matthew 5:38-48. In that text, Jesus announces six transforming initiatives, including the love of one's enemy, which suggests that the lawyer should serve as peacemaker and healer instead of as hired gun or Rambo warrior. Finally, in part four, I suggest three ways that Jesus's teaching might inform and transform the Christian lawyer.

II. RAMBO LAWYERING

The modern incarnation of the hired gun comes in the form of the Rambo lawyer, derived from the John Rambo character played by Sylvester Stallone in the series of Rambo movies. If the image of a hired gun suggests a kind of unquestioning loyalty to the client, then the image of a

11. See, e.g., Charles J. Ogletree, Jr., Personal and Professional Integrity in the Legal Profession: Lessons from President Clinton and Kenneth Starr, 56 WASH. & LEE L. REV. 851, 867 (1999) (noting that Lincoln "was renowned for his unfailing honesty").
12. See, e.g., E. Norman Veasey, Corporate Governance and Ethics in a Post-Enron Worldcom Environment, 38 WAKE FOREST L. REV. 839, 853 (2003) ("Above all, I think the corporate lawyer should have the courage of a modern day Atticus Finch.").
13. See generally Matthew 5-7.
16. John Rambo was a fictional United States Green Beret, a trained killer, who brought death and destruction to the big screen in FIRST BLOOD (Orion 1982), RAMBO: FIRST BLOOD PART II (Tristar 1985), and RAMBO III (Tristar 1988).
Rambo lawyer represents one who maintains a kind of blind allegiance to the adversary system and its values. The attitude of a Rambo litigator is marked by three foundational premises: (1) A single-minded commitment to victory, a win-at-all-costs attitude;\(^\text{17}\) (2) A rejection of moral responsibility for the lawyer's actions in his role as an advocate;\(^\text{18}\) and (3) A belief that the duty of "zealous representation" justifies any and all (ethical) tactics that further the client's cause.\(^\text{19}\) The quintessential Rambo lawyer is one who terrorizes, intimidates, and obfuscates his way to victory in pursuit of the client's objectives,\(^\text{20}\) just as the Sylvester Stallone character laid waste to anything and everything in his way, killing and terrorizing the masses, in his effort to achieve vindication.\(^\text{21}\)

A Rambo lawyer views litigation as a form of warfare and maintains a romantic notion of himself as an old-fashioned warrior.\(^\text{22}\) One such lawyer described his role as follows:

I'm a trial lawyer. If you're my opponent, I don't care if you like me, or find me witty or engaging. We're not going out to dinner. We are not friends. All you really need to know about me is this: I'll beat you if there's any way the rules will let me. And I make no apologies for my attitude. I'm paid to win, and I don't get confused about my loyalties. They are to my clients—who pay me and expect to win—and to my family, which likes to eat. Trial practice

\(^{17}\) See Robert N. Sayler, *Rambo Litigation: Why Hardball Tactics Don't Work*, A.B.A. J., Mar. 1, 1988, at 79. Sayler identifies six characteristics of Rambo litigation, including:

- A mindset that litigation is war...;  
- A conviction that it is invariably in your interest to make life miserable for your opponent;  
- A disdain for common courtesy and civility...;  
- A wondrous facility for manipulating facts and engaging in revisionist history;  
- A hair-trigger willingness to fire off unnecessary motions and to use discovery for intimidation rather than fact-finding; and  
- An urge to put the trial lawyer on center stage rather than the client or his cause.

\(^{18}\) See FREEDMAN, supra notes 4-6, and accompanying text (describing Lord Brougham's statement that the lawyer's duty to the client supersedes the safety of third parties or the lawyer himself).

\(^{19}\) See Jean M. Cary, *Rambo Depositions: Controlling an Ethical Cancer in Civil Litigation*, 25 Hofstra L. Rev. 561, 579 (1996) ("Rambo lawyers claim that their obligation to zealously advocate for their clients justifies their behavior.").


\(^{21}\) See supra note 16.

\(^{22}\) See Shawn Collins, *Be Civil? I'm a Litigator*, NAT'L L. J., Sept. 20, 1999, at A21. The author decries the creation of civility committees by bar associations as "stalking horses for legal wimpery" and states:

My objective has always been, and remains, to win for my client. Not by a little, but by a lot. And not tomorrow, but today if at all possible. . . . When all is said and done, only the rules should constrain a lawyer's drive to win, not some notion that you're supposed to like the person you're paid to beat.

\(^{Id}\)
is tough business. Face it: There aren’t many lines of work where you have an opponent paid to make you lose. There’s also the stark clarity of winning and losing: Most people prefer a bit more ambiguity about whether they’ve done a good job.\textsuperscript{23}

In this view, the lawyer does not bear any moral responsibility for “justice” or “truth” or for the consequences of his conduct on the opponent or third parties, but instead is only responsible for achieving a favorable outcome for the client.\textsuperscript{24} Litigation is viewed in terms of “winning and losing.” The lawyer’s loyalties are exclusively to the client.\textsuperscript{25} The lawyer’s job is to ensure that the opponent loses.\textsuperscript{26} And all of this is simply part and parcel of the tough \textit{business} of trial practice. Make no mistake about it: Rambo lawyers see themselves as acting squarely within the purported values of the litigation system.\textsuperscript{27}

After nearly twenty years of increasingly urgent calls for the restoration of civility to the practice of law, Rambo lawyering is still very much alive and well.\textsuperscript{28} Take, for example, the recent case of \textit{Hyperphrase Technologies, LLC v. Microsoft Corporation},\textsuperscript{29} in which Hyperphrase sought to strike Microsoft’s motion for summary judgment because it was filed four and-a-half minutes after the court’s

\begin{itemize}
\item\textsuperscript{23} Id.
\item\textsuperscript{24} See id.
\item\textsuperscript{25} See id.
\item\textsuperscript{26} See id.
\item\textsuperscript{27} See id.; Allen K. Harris, \textit{The Professionalism Crisis – The ‘Z’ Words and Other Rambo Tactics: The Conference of Chief Justices’ Solution}, 53 S.C. L. REV. 549, 569 (2002) (“The phrase ‘zealous advocacy’ is frequently invoked to defend unprofessional behavior and a ‘Rambo,’ or ‘win at all costs,’ attitude.”).
\item\textsuperscript{28} See, e.g., James A George, \textit{The ‘Rambo’ Problem: Is Mandatory CLE the Way Back to Atticus?}, 62 LA. L. REV. 467, 475-80 (2002) (describing examples of trial lawyers engaging in “some of the most uncivil and unprofessional conduct one can find anywhere”); Harris, \textit{supra note 27}, at 551-52 (noting that “Rambo and his progeny—discovery abuse, overzealous advocacy, excessive zeal, zealotry . . . incivility, frivolous lawsuits, and other forms of unprofessional or unethical conduct— are very much in our midst”).
\item I remember a colleague of mine from my days in practice who had a case against a lawyer with a well-deserved reputation for being abusive in depositions. My colleague hired a videographer and gave the appropriate notice, but instructed the person to keep the camera on the opposing lawyer, not on the witness. At the deposition, the lawyer refused to proceed with the deposition as long as the camera was focused on him. At a subsequent hearing, the trial judge ordered that my colleague had the right to video the lawyer if he desired to do so.
\item In a relatively recent example that made the news, a music-swapping Internet site called KaZaA was sued by the music industry for allowing Internet users of the company’s web site to illegally swap music. KaZaA claimed in a court filing that it had run out of money because of “the ‘Rambo-style litigation’ of the music industry.” One example was a filing to change a court conference date that included eighty-eight pages of documents. KaZaA claimed that the plaintiffs had “a ‘scorched earth’ policy designed to overwhelm small defendants.” See Michelle Kessler, \textit{Hollywood, High-Tech Battle Over Digital Content}, USA TODAY, June 24, 2002, available at: www.usatoday.com-tech/news/20020625/bonus-cover.htm.
\end{itemize}
deadline for filing such motions. Remarkably, the motion to strike came in the immediate wake of a court order that the parties should not “flyspeck each other.” This kind of “hyper-technical” lawyering represents a common tactic of Rambo lawyers.

In July of 2004, Federal District Judge Sam Sparks issued a scathing order in the case of Klein-Becker, LLC v. Stanley, in which the judge expressed his frustration with the tactics of the lawyers in the case. In the order, Judge Sparks described a case full of “antagonistic motions,” culminating with an emergency hearing to determine whether a deposition could continue until 6:30 p.m., and with an objection to the filing of an answer to a counterclaim that was allegedly filed four days late (even though the judge had authorized the “late” filing). Judge Sparks said: “Neither the world’s problems nor this case will be determined by an answer to a counterclaim which is four days late.” At his wits’ end with the contentious conduct of the lawyers before him, Judge Sparks said that he “want[ed] to scream to these lawyers, ‘Get a life!’ or ‘Do you have any other cases’ or ‘When is the last time you registered for anger management classes.’” The attitude of the lawyers in Klein-Becker, which confuses activity for effective advocacy, does not advance the client’s cause.

The discovery process is a frequent source of Rambo (mis)behavior, and depositions are particularly susceptible to such incidents. Perhaps the most widely known example is that of renowned trial lawyer Joseph Jamail who verbally attacked the opposing lawyer during the deposition of Jamail’s client. Yet, despite

30. Id. The deadline for motions for summary judgment, as established by the modified scheduling order, was midnight on June 25, 2003. Id. Documents could be filed electronically. Id. Microsoft filed its motion beginning at 12:04:27 a.m. on June 26, 2003, “with some supporting documents trickling in as late as 1:11:15 a.m.” See id. According to the court, it required nine lawyers to file the motion to strike on behalf of Hyperphrase, which suggests another common Rambo tactic of overstaffing a case. Id.

31. See id. at 1-2. In announcing its denial of Hyperphrase’s motion to strike, the court stated:

Wounded though this court may be by Microsoft’s four minute and twenty-seven second dereliction of duty, it will transcend the affront and forgive the tardiness. Indeed, to demonstrate the even-handedness of magnanimity, the court will allow Hyperphrase on some future occasion in the case to e-file a motion four minutes and thirty seconds late, with supporting documents to follow up to seventy-two minutes later.

See id. at 2 (emphasis in original).


33. See id. at 1. In the order, Judge Sparks commented on the inability of the lawyers to get along with each other, stating, “No one warned the undersigned that in many instances his responsibility would be the same as a person who supervised kindergarten. Frankly, the undersigned would guess the lawyers in this case did not attend kindergarten as they never learned how to get along well with others.” Id. at 4-5.

34. See id. at 6.

35. See id. at 5-6.


37. See Paramount Communications Inc. v. QVC Network Inc., 637 A.2d 34, 53-54 (Del. 1994). In the deposition excerpts that are included in the court’s opinion, Jamail repeatedly instructs his client not to answer pending questions and casts aspersions on the opposing lawyer. Id. Jamail told
the widely publicized, highly critical reviews of Jamail’s misconduct, little has changed in deposition practice in the intervening years. *Calzaturificio S.C.A.R.P.A. S.P.A. v. Fabiano Shoe Co.*, is a representative example. In that case the court described the conduct of the lawyer defending the deposition as follows:

[The lawyer] conferred with the deponents during questioning, left the room with a deponent while a question was pending, conferred with deponents while questions were pending, instructed deponents not to finish answers, suggested to the deponents how they should answer questions, rephrased opposing counsel’s questions, instructed witnesses not to answer on grounds other than privilege grounds, asserted the “asked and answered” objection 81 times, engaged in lengthy colloquies on the record, and made *ad hominem* attacks against opposing counsel.

In each of these examples, the lawyers suffered from the problem of misplaced loyalty. The lawyers apparently believed that they could gain an advantage for their clients by fighting tooth and nail on every procedural point, to the extreme of arguing over minutes and days. They bought into the idea that effective advocacy is a matter of ruthlessness and contentiousness. Instead of advancing their clients’ causes, the advocates actually impaired their credibility and elicited the ire of the presiding judges. More importantly, they allowed the cause of justice to become lost in their petty battles over minutiae and their efforts to obstruct the process.

Another indication of the extent of the problem with Rambo litigation is the veritable explosion of codes of civility for trial lawyers in recent years. In fact, most bar associations and lawyer groups have now adopted some kind of creed of professionalism or code of civility mandating that lawyers treat each other with basic courtesy and civility. The persistence of the problem suggests that aspirational codes may be of limited utility in curtailing over-zealous lawyering.

the lawyer, on the record, that the lawyer could “gag a maggot off a meat wagon.” *Id.* at 54. At another point, Jamail says:

> Now, you want to sit here and talk to me, fine. This deposition is going to be over with. You don’t know what you’re doing. Obviously someone wrote out a long outline of stuff for you to ask. You have no concept of what you’re doing. Now, I’ve tolerated you for three hours. . . . This is going to stop one hour from now, period. Go.

*Id.*

38. *See id.*
40. *Id.* at 39 (emphasis in original).
41. *See, e.g.*, Paramount, 637 A.2d at 34; *Fabiano*, 201 F.R.D. at 33.
42. *See id.*
43. In 1988, the federal district judges in the Northern District of Texas issued their opinion in Dondi Props. Corp. v. Commerce Sav. & Loan Ass’n, 121 F.R.D. 284 (N.D. Tex. 1988), becoming the first court to formally adopt standards of civility for lawyers practicing in the district. Shortly thereafter, the highest courts in the State of Texas adopted a statewide code of conduct, known as *The Texas Lawyer’s Creed*. *See* *The Texas Lawyer’s Creed*, at [http://www.txethics.org/reference_creed.asp](http://www.txethics.org/reference_creed.asp) (adopted by the Texas Supreme Court and Texas Court of Criminal Appeals on
III. THE SERMON ON THE MOUNT AND PEACEMAKING

Can a lawyer be both a committed Christian and still practice Rambo-style litigation? Is it possible to take seriously the counter-cultural life and teachings of Jesus and to simultaneously live by the Code as an amoral trial advocate?44

In seeking to answer those questions, I begin with Jesus’s words to his followers in the Sermon on the Mount.45 In that passage Jesus announces an ethic of conflict resolution for those in His Kingdom, an ethic that begins with loving one’s enemies.46 The principles espoused by Jesus are inconsistent with Rambo lawyering and its constant game of “one-upmanship” and instead suggest a kind of upside-down Kingdom ethics, creating the hope of transformation of the legal system.47

Jesus teaches as follows:

You have heard that it was said, “Eye for eye, and tooth for tooth.” But I tell you, [d]o not [retali ate revenge fully by] evil [means].48 If someone strikes you on the right cheek, turn to him the other also. And if someone wants to sue you and take your tunic, let him have your cloak as well. If someone forces you to go one mile, go with him two miles. Give to the one who asks you, and do not turn away from the one who wants to borrow from you.

You have heard that it was said, “Love your neighbor and hate your enemy.” But I tell you: Love your enemies and pray for those who persecute you, that you may be sons of your Father in heaven.... If you love those who love you, what reward will you get? Are not even the tax collectors doing that? And if you greet only your

November 7, 1989). Since that time most states have adopted something comparable, including, for example, the following: A Lawyer’s Creed of Professionalism of the State Bar of New Mexico, www.law.stetson.edu/excellence/litethics/newmexicobar.htm (“In all matters: ‘My Word is My Bond’”); THE NEW HAMPSHIRE LAWYER PROFESSIONALISM CREED, at: http://www.nhbar.org/about_text.asp?sectID=13&C=324 (adopted by the New Hampshire Board of Governors on April 4, 2001).

44. Cf. CAN A GOOD CHRISTIAN BE A GOOD LAWYER? (Thomas E. Baker & Timothy W. Floyd eds., 1998). In the Preface to this book, the editors write that their “editorial answer to the rhetorical title of our book, ‘Can a Good Christian Be a Good Lawyer?’ is ‘Yes! But only with the grace of God and the example of others.”’ Id. at xii.


46. See id. See also GLEN H. STASSEN & DAVID P. GUSHEE, KINGDOM ETHICS 136 (2003) (observing that Jesus’ teaching in the Sermon on the Mount is about making peace or “doing conflict resolution” and that as we engage in the practices taught by Jesus “we learn better and better ways to practice resolving conflict...”).

47. See id.

48. This phrase is traditionally translated “[d]o not resist an evil person.” Matthew 5:38. Nevertheless, a number of commentators argue that the more accurate translation is the one given above in light of the fact that the Greek word for “evil” can be translated as either “by evil means” or “the evil person” and that the gospel account is replete with instances of Jesus confronting evil, but never by evil means or out of a desire for revenge. See STASSEN & GUSHEE, supra note 46, at 137-38.
brothers, what are you doing more than others? Do not even pagans do that? Be perfect, therefore, as your heavenly Father is perfect.49

The Sermon on the Mount is explicitly countercultural.50 Each section of Jesus' teaching begins, "You have heard that it was said..." and then follows with the retort: "But I tell you...."51 Jesus announces a new ethic of love and conciliation that extends not just to those who treat us well, but also to those who treat us poorly, not just to our friends and allies, but also to our enemies and adversaries.52 The text forms the core teaching of many advocates for nonviolence, including, for example, Martin Luther King, Jr., who effectively resisted and overcame the entrenched power of his time, giving his life in the process. It is a text that is inextricably connected to peacemaking. In fact, one commentator has described this passage as the "Hired Dove" model of lawyering.53 Undoubtedly, this model requires a serious re-thinking of the role of lawyers in the adversary system, including their relationships with clients, opposing parties, lawyers, and judges, and their litigation tactics and strategies.54 What would it look like for a lawyer, and particularly a Christian lawyer, to live by these principles in practice?

I start from a basic but important premise: The Bible does not provide a detailed blueprint for Christian trial lawyers in their daily practices. It does not specifically answer each and every moral or ethical issue they may encounter. In the absence of a detailed blueprint, we are left to look for guiding principles that provide ethical and moral benchmarks, to identify those practices that we should imitate, and to follow Jesus's example as perfectly as possible. Jesus's teaching in this passage identifies two vicious cycles of retaliation and isolation and six transforming initiatives that provide the hope of healing and reconciliation.55 These teachings are not easy for American lawyers to hear or put into practice because they run counter to the deeply ingrained ethics of the adversary system. But that should not be surprising. Jesus's


50. See 1 WILLIAM BARCLAY, THE GOSPEL OF MATRTHEW 163 (Rev. ed. 1975) ("Few passages of the New Testament have more of the essence of the Christian ethic in them than this one. Here is the characteristic ethic of the Christian life, and the conduct which should distinguish the Christian from other men.").


52. See Matthew 5:38-48

53. See Mary C. Szto, Lawyers as Hired Doves: Lessons from the Sermon on the Mount, 31 CUMB. L. REV. 27, 28, 45-46 (2000-01) (identifying a lawyer who takes seriously the teaching of Jesus in the Sermon on the Mount a "hired dove"). The idea of lawyers as doves nicely invokes the concept of peacemaking, but it fails to capture the full range of Jesus's allegorical teaching. He encouraged his followers to take on traits of doves and serpents. See Matthew 10:16. In that passage, Jesus tells his followers: "Behold, I send you forth as sheep in the midst of wolves: be ye therefore wise as serpents, and harmless as doves." Matthew 10:16 (King James Version).

54. See Szto, supra note 53, at 28, 45-46.

original followers complained that his teachings were “hard” to understand and
difficult to put into practice.  

A. The Code: “An Eye for an Eye”

Our inquiry necessarily begins with consideration of the cultural norm referenced
by Jesus at the outset of the passage: “an eye for an eye and a tooth for a tooth.”
This principle, known as the Lex Talionis, has been called “the oldest law on the
books.” It is the law of tit-for-tat, the law of retaliation. It leads inexorably to a
vicious cycle of “revengeful retaliation.” Under this principle, everyone looks to get
even and no one ever finds real satisfaction.

Rambo lawyers live by the law of tit-for-tat. If one side files a motion for
sanctions, then the other side finds a reason, any reason, to file one too. If one side
refuses to extend basic courtesies, then the other side refuses to do so as well. If one
side objects to unduly burdensome discovery requests, the Rambo lawyer objects to
perfectly legitimate requests. Every perceived offense is met with an equally strong
(or stronger) response. In fact, some commentators advise that the way to deal with a
Rambo lawyer is for the victim lawyer to be equally aggressive in response in an
effort to “make [the] Rambo pay for his/her dirty tricks.” Trial lawyers do not
“love” their adversaries in court. Instead, they adopt their clients’ “us against them”
attitudes and take on the role of a warrior who views the opposition as an enemy to be
destroyed.

B. Transforming the Code: Love of the Enemy

The ethic described by Jesus is a radical departure from the tit-for-tat mentality of
“an eye for an eye.” It calls for ending the self-serving practice of reciprocal

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56. See John 6:60 (Jesus’s disciples, in response to Jesus’s teaching that they must “eat his flesh”
and “drink his blood,” respond by saying, “This is a hard [saying]; who can [listen to] it?”).
57. Matthew 5:38.
58. Id.
59. See BARCLAY, supra note 50, at 163. Black’s Law Dictionary defines “Lex Talionis” as
follows: “The law of retaliation; which requires the infliction upon a wrongdoer of the same injury
which he has caused to another.” BLACK’S LAW DICTIONARY 822 (5th ed. 1979).
60. See BARCLAY, supra note 50, at 163 (stating that the law appears in the Code of Hammurabi,
which provides, “If a man has caused the loss of a gentlemen’s eye, his eye one shall cause to be
lost”).
61. Eugene Peterson’s modern translation of this passage provides:
Here’s another old saying that deserves a second look: “Eye for eye, tooth for tooth.” Is
that going to get us anywhere? Here’s what I propose: “Don’t hit back at all.” If
someone strikes you, stand there and take it. If someone drags you into court and sues
for the shirt off your back, giftwrap your best coat and make a present of it. And if
someone takes unfair advantage of you, use the occasion to practice the servant life. No
more tit-for-tat stuff. Live generously.
EUGENE H. PETERSON, THE MESSAGE: THE NEW TESTAMENT IN CONTEMPORARY LANGUAGE 18
62. See STASSEN & GUSHEE, supra note 46, at 137.
63. See Marsha B. Elser, Making Them Pay for Dirty Tricks, 13 FAIRSHARE 6, May 1993, at 7
(advocating that lawyers keep a “Rambo file” which documents all of the abuses and seeks a court
order for costs and attorney’s fees from the opponent).
64. See BARCLAY, supra note 50, at 163.
kindness—I will be nice to you if you are nice to me—and for breaking the vicious cycle of revenge and retaliation. The path to peace and, ultimately, reconciliation is through six “transforming initiatives”: (1) turning the other cheek; (2) giving the tunic and cloak when sued; (3) going the second mile; (4) giving to one who begs; (5) loving your enemies; and (6) praying for those who persecute you.

Upon first glance these six initiatives may seem like a recipe for failure for a trial lawyer in an adversary system. Should a trial lawyer go into a case armed with nothing more than weakness, generosity, love, and prayer? In the “real world” where economic forces, client pressures, and adversary attacks are part of each and every day it is extremely difficult to resist the desire to respond to every attack and to retaliate against every perceived wrong. That difficulty is compounded by a popular culture that exalts those who argue the loudest and the longest and a legal culture that adopts without question the values of the adversary system.

1. Wimpy Lawyering?

Yet, it would be a mistake to assume that the lawyer who loves his enemy and turns his cheek will allow himself to be steamrolled by opposing lawyers. The ethic espoused by Jesus is not a recipe for weakness and ineffectiveness, but a show of strength by refusing to cooperate with evil. It is a means of bringing peace and healing into the midst of strife and hatred. This is not a proposal for wimpy lawyering. Jesus was most certainly not a wimp, as evidenced, for example, by his attack on the money changers in the temple.

The model proposed here is peacemaking, not revenge; peacemaking, not insisting on one’s rights; peacemaking,
A lawyer who put these words into practice would: 1) refuse to be drawn into the bitterness and anger of his client; 2) reject the gamesmanship and trickery of the opposing lawyer; 3) respond to the opponent's tactics of harassment and intimidation with civility and courtesy; 4) meet the opponent's contentiousness with good will; and 5) react to the adversary's unreasonable demands by giving them everything they were entitled to have.

The next section briefly examines the transforming practices announced by Jesus and identifies how each practice might affect the trial lawyer's work.

2. Transforming Initiatives

Jesus's remarkable pronouncement, "love your enemies," is the logical starting point in considering Jesus's teaching, because it is the central initiative from which each of the other initiatives springs. This simple call for lawyers to love those who oppose them, to wish the best for all of those nameless, faceless people they encounter, and to do so without regard for how the lawyer is treated in return, profoundly changes every encounter in a lawsuit. The lawyer's enemy may be the person who insults or oppresses her, the one who needs something from her, or the one who sues her. In each situation, the Christian lawyer's response should be agapē love, a love that always wishes the best for the other person whether they deserve it or not. It is the love that reflects God's own character, the kind of unconditional love that God has for his creation. This love is a matter of will, not emotion. It involves a decision to wish the best for another, even if the person is undeserving. It is not a feeling of the heart, but a decision of the mind.

Of course, love is not the same as permissiveness; it does not entail allowing others to do what they want, for punishment and discipline may be the very thing the opponent needs. Being held accountable at the bar of justice may be not only appropriate, but necessary. As one commentator has noted: "[All] Christian discipline and all Christian punishment must be aimed, not at vengeance, but at cure."

Consider now the six transforming initiatives taught by Jesus.

(i) Turn the Other Cheek

Loving the "enemy" extends even to the one who delivers the most offensive of insults. The first transforming initiative relates to just such a situation: How should one respond to a serious personal insult, such as being slapped on the cheek? Jesus describes what his listeners would have understood to be a major insult, being slapped by the back of another's hand

72. See STASSEN & GUSHEE, supra note 46, at 138.
73. See generally BARCLAY, supra note 50, at 173-75. Barclay observes that "[a]gapē does not mean a feeling of the heart, which we cannot help, and which comes unbidden and unsought; it means a determination of the mind, whereby we achieve this unconquerable goodwill even to those who hurt and injure us." Id. at 174.
74. See C.S. LEWIS, MERE CHRISTIANITY 115 (MacMillan 1960) (1943) (noting that "love, in the Christian sense, does not mean an emotion. It is a state not of the feelings but of the will[] . . .").
75. BARCLAY, supra note 50, at 175.
across the right cheek.\textsuperscript{76} In Jesus' time, being slapped with the back of a hand was twice as insulting as with the flat part of the hand.\textsuperscript{77} How does one respond to a major insult? Our natural inclination is to strike back, to give the attacker a taste of his own medicine by responding in kind. But Jesus rules out retaliation.\textsuperscript{78} By turning the other cheek instead of raising a hand to strike back, the victim refuses to escalate the violence, refuses to cooperate with the evil doer, forces the attacker to confront the wrong that has been done, and insists on being treated as an equal.\textsuperscript{79} By turning the other cheek we do more than simply exercise self-restraint. We also say to the attacker, "Use the flat part of your hand when you touch my cheek; treat me the way I deserve to be treated. But whether you choose to do the right thing or not, I will treat you with respect and dignity."

(ii) Give Your Tunic and Cloak

The second transforming initiative brings to light a scene familiar to lawyers. Jesus describes a lawsuit in which the plaintiff seeks the other person's tunic, the inner garment worn during Jesus' day.\textsuperscript{80} A typical person in Jesus' day would have had at least two tunics so that the loss of one would not leave them without clothing.\textsuperscript{81} However, Jesus says that the defendant in such a situation should not only give up the person's tunic, but also the person's cloak, the outer garment which doubled as a blanket and coat and would have been irreplaceable.\textsuperscript{82} This admonition compels the listener to exceed the requirements of the law, to give up more than the law required, more even than the law could possibly demand (it was forbidden to touch anyone with the left hand, because it was viewed as dirty. Therefore, the deduction is that when Jesus refers to the right cheek in Matthew 5:39 he describes a slap with the back of another person's right hand).

\textsuperscript{76} See STASSEN & GUSHEE, supra note 46, at 138-39 (noting that it was forbidden during Jesus' day to touch anyone with the left hand, because it was viewed as dirty. Therefore, the deduction is that when Jesus refers to the right cheek in Matthew 5:39 he describes a slap with the back of another person's right hand).

\textsuperscript{77} See BARCLAY, supra note 50, at 166 (stating that according to Jewish Rabbinic law "to hit a man with the back of the hand was twice as insulting as to hit him with the flat [part] of the hand") (emphasis in original).

\textsuperscript{78} See Matthew 5:38-48. The notion that Christians should resist the urge to retaliate against their enemies is a recurring theme in the New Testament. See, e.g., Romans 12:19 ("Do not take revenge, my friends, but leave room God's wrath.").

\textsuperscript{79} See STASSEN & GUSHEE, supra note 46, at 138-39.

\textsuperscript{80} See Matthew 5:40. The tunic was a person's inner garment. See BARCLAY, supra note 50, at 167. The cloak was an outer-garment that served as a robe during the day and a blanket at night. Id. Even the poorest person would have had at least two tunics, but only one cloak. Id. Jewish law provided that a person's cloak could never be taken permanently from a person. Id. If taken as a pledge, it had to be returned to the owner before sundown. Id. In Jesus's example, the debtor does not stand on her legal rights, which would protect her cloak from seizure, but instead gives up the cloak as well.

\textsuperscript{81} See BARCLAY, supra note 50, at 167 (observing that "[t]he poorest man would have a change of tunics").

\textsuperscript{82} See id.
under Jewish law to take another's cloak unless it was returned the same night).  

A caveat is in order here. Jesus does not seem to be addressing the specific question of how a Christian should respond to the secular legal system under any and all circumstances. He is not describing the propriety of a Christian participating as either a litigant or an advocate in the legal system. Instead, he is providing an example of how his followers might bring peace to a serious personal conflict by doing more than the law required. Jesus describes the Christian response to the *Lex Talionis.* For Christians, decisions are not made based upon legal rights or entitlements, but based upon the principle of *agapē* love.

(iii) *Go the Second mile*

In the next initiative Jesus uses an example from life under Roman oppression that would have been all-too-familiar for his listeners in the first century. Under Roman law, the occupying forces of Rome could compel Jews to assist them in any number of ways, including by carrying a soldier's pack. However, the law was clear that the obligation to carry the pack extended to a maximum of one mile and not a step more. Jesús says that instead of walking only the legally mandated distance, while begrudging every step, the Christian should, once again, exceed the legal requirements and walk a second mile voluntarily. In doing so, the oppressed person turns the tables on the oppressor, refusing to allow either their “enemy” or the law dictate the terms of their relationship. By going a second mile voluntarily, the oppressed one creates the possibility that his enemy or oppressor will become a friend and a fellow traveler.

(iv) *Give to Those Who Ask*

Jesus completes his teaching about going beyond the strict requirements of the law by encouraging his followers to be known by their generous spirits. One means of transcending the petty insults, jealousies, and annoyances of life in the world is through selfless acts of generosity. Jesus describes a person who gives to those who ask, whether beggar or borrower, not because she is obligated to do so, but because she has the

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83. See id.; see also Exodus 22:26-27 (requiring that a person's cloak, if taken as a pledge, be restored to the person “by sunset”).
84. See *1 Corinthians* 6:1-6 (criticizing the members of the church in Corinth for taking their disputes with one another before secular courts, but not condemning the use of secular courts for any and all purposes).
85. See supra note 59.
87. See BARCLAY, supra note 50, at 168.
88. See *Matthew* 5:41. Soldiers in the Roman army had authority to compel Jewish subjects to carry the soldier's load for one mile. See STASSEN & GUSHEE, supra note 46, at 102.
89. See Matthew 5:41.
90. See Matthew 5:42.
means to meet another’s need. The question is not whether the beggar or borrower deserves the gift or loan or whether they have earned such consideration, but whether they need the help. Elsewhere in the gospel narrative Jesus teaches, “Freely ye have received, freely give,” reflecting the fact that everything one has is a gift from God. The Christian is a steward of God’s gifts and should be generous in the use of those gifts to help others in need. This principle has obvious implications for lawyers and their obligation to provide pro bono legal services to the poor and those who are under served. Christian lawyers should be known by their generosity. In each of these four examples, Jesus calls his followers to do more than the law requires and to do it joyfully.

(v) Love Your Enemy

The fifth transforming initiative is the centerpiece of Jesus’s message, as discussed above. Once again, Jesus draws a sharp contrast between the conventions of the day — extending kindness to those who are kind to us — and the ideal of the Kingdom of God. God’s example serves as a model for Christians to follow. God extends love and care to all of creation, both the righteous and the wicked. How much more should his fallen and imperfect followers seek to show agape love to all?

(vi) Pray for Those Who Persecute You

The sixth transforming initiative is prayer, but not prayer for yourself or your future, but for those who seek to cause you harm. This is perhaps the most radical practice announced by Jesus. To be sure, it is not part of the “Code” to pray for the opposing lawyer or party. But here’s the point: If you really want what is best for another, then you will, in fact, be in prayer for them. One commentator on this passage said: “No man can pray for another man and still hate him.... The surest way of killing bitterness is to pray for the man we are tempted to hate.”

Jesus ends this passage with “[b]e perfect, therefore, as your heavenly [f]ather is perfect.” The word perfect here does not mean literally that we must be

91. See BARCLAY, supra note 50, at 169-72.
92. See Matthew 10:8 (King James).
93. See STASSEN & GUSHEE, supra note 46, at 154-55 (concluding that “[e]ach of these initiatives takes an action to oppose injustice, to stand up for human dignity and to invite to reconciliation. Each participates in the way of deliverance from vicious cycles of hate and resentment. We are to love our enemy, as God does.”) (citations omitted).
94. See supra notes 73-75 and accompanying text.
95. See Matthew 5:43-48.
96. See Matthew 5:44.
97. See BARCLAY, supra note 50, at 175.
perfect in everything that we do. It calls us to realize the purpose for which we were made, to be whole, integrated, complete, and mature. Eugene Peterson, gives this modern translation of Jesus’ teaching in this passage: “In a word, what I’m saying is, Grow up. You’re kingdom subjects. Now live like it. Live out your God-created identity. Live generously and graciously toward others, the way God lives toward you.” That is a message that powerfully addresses the childish behavior of too many Rambo litigators. They often act like children, arguing over the most trivial points and participating in juvenile reprisals.

Christian lawyers should be marked by their maturity. For example, at the heart of Jesus’ teaching and his life is the basic principle that we should be quick to forgive and slow to anger. And yet, the typical trial lawyer – and especially the typical Rambo – reverses that principle. He is quick to anger and slow to forgive. Imagine a world in which lawyers practiced the forbearance of Jesus, forgiving their adversaries instead of filing a motion for sanctions or firing off an angry letter. Imagine a world in which lawyers practiced Jesus’s remarkable restraint, refusing to allow the present circumstances to control their attitude or their conduct. Sometimes the motion for sanctions is sadly necessary, but many times it is nothing more than an attempt to gain a tactical advantage. While it may be extraordinarily difficult to exemplify the forgiving spirit of Jesus in the midst of litigation, the Christian lawyer should hold out that ideal. What is impossible for men and women is possible with God. Jesus’s teaching “judges us, challenges us, and calls us to do more.”

IV. THE TRIAL LAWYER AS PEACEMAKER

Blessed are the peacemakers, for they will be called [children] of God.”

These transforming initiatives, if taken seriously, have profound implications for those engaged in trial advocacy. At the very least, a Christian trial lawyer who made a serious effort to put into practice Jesus’s teaching would be forced to confront the reality that there is a higher standard, a greater expectation for them than is required under the “Code” as described by Allegretti. The “more” would begin with the recognition that as Christians lawyers are called to be more than technicians in the machinery of justice. They cannot serve as purely “neutral partisans;” they cannot be robotic “amoral technicians.” The “more” begins

99. Matthew 5:46-48 (cited in THE MESSAGE, supra note 61, at 19) (emphasis in original)).
100. See, e.g., James 1:19 (“Everyone should be quick to listen, slow to speak and slow to become angry . . .”).
101. See, e.g., Matthew 18:21-22 (Jesus tells his disciples that they should not merely forgive another seven times, but should extend forgiveness “seventy-seven times.”).
102. See Luke 18:27 (“What is impossible with men is possible with God.”).
103. See Allegretti, supra note 1, at 109.
104. Matthew 5:9 (emphasis added).
105. See Allegretti, supra note 1, at 8-10.
106. See id. at 9.
107. See id. at 21.
with the acknowledgment that they are called to be moral agents, to engage in moral deliberation, and to exercise moral judgment.

What would such a lawyer look like, particularly in contrast with the Rambo litigator? A complete answer to that question would require more space than is available here, but I note three aspects of what it might be like if one attempted to integrate Jesus' teaching into the "ordinary practice of law." First, lawyers would not hide behind their role as advocates to excuse Rambo tactics, but instead would be concerned with the justice and fairness of the means they used to achieve their client objectives. Second, lawyers would view their role in the litigation process as much more than simply serving as the instruments of their clients. They would seek to avoid the use of litigation as an instrument of revenge or retaliation and would engage their clients in conversations about the person's underlying motivations for pursuing the claim. Third, lawyers would have humble spirits, acknowledging their own imperfections and inadequacies, looking to the interests of others, depending on the power and wisdom of a sovereign and perfect God.

A. The Means Matter: Lawyers as Deontologists

For many lawyers, especially Rambo lawyers, the adversary system acts as a sort of shelter from moral accountability, protecting lawyers from responsibility for their conduct as advocates. The lawyer's duty is to the client and if the lawyer must abuse a witness, malign a third party, or destroy an opponent to achieve the client's objectives, then so be it. This approach to lawyering is based on a kind of role differentiation. In other words, lawyers excuse their conduct because it is simply part of the recognized code of conduct for litigation. Under such a view, the lawyer's job is relatively narrow: To represent the client diligently and single-mindedly, within the ethical rules.
The lawyer's job is not to ensure that justice is done or that the truth is discovered.\textsuperscript{115} Lawyers operating within the culture of the law can easily become pragmatists and cynics, believing that all manner of tactics are permissible, provided that they are within the rules of ethics, because the lawyer's duty runs solely to the client and not to the system. As described earlier, this mind-set serves as an excuse for all manner of outrageous, uncivil, and unacceptable conduct. The pragmatism that pervades the ethical standards of many lawyers fits what might be described as \textit{teleological} reasoning, an approach that believes the ends justify the means.\textsuperscript{116}

The alternative to teleological reasoning is \textit{deontological} decision-making, which recognizes that "achieving a good end is not enough; we also have to pay attention to principles of justice and fairness in how we go about trying to achieve a good end."\textsuperscript{117} The \textit{agapē} love ethic of Jesus, which values each and every person and refuses to view people as a means to achieve an end, however noble and valuable the end might be, suggests a \textit{deontological} approach to trial practice, an approach in which the lawyer's means — the legal tactics and strategies employed in a case — reflect the same kind of care and respect of others that Jesus demonstrated in his life.\textsuperscript{118}

A close examination of Jesus's teaching in Matthew 5 reveals that it is as much about the means as it is about the ends.\textsuperscript{119} He enjoins his followers to avoid retaliation by revengeful \textit{means} and he describes a series of specific practices that are designed to restore the peace and bring about healing and reconciliation.\textsuperscript{120} He advocates an ethic of care that first and foremost is concerned with people instead of with outcomes or objectives.

\textsuperscript{115} See \textit{id.}.
\textsuperscript{116} See \textit{STUSSEN & GUSHEE, supra} note 46, at 119. Teleological comes from the Greek word \textit{telos}, which means end or goal. Sometimes called "consequentialism," under this approach "[a]ctions are right or wrong depending upon whether or not they further progress toward an end (\textit{telos}) or goal that is worth striving for." \textit{See id.}
\textsuperscript{117} See \textit{id.} at 120. Deontological comes from the Greek word \textit{deon}, meaning "obligatory" or "binding." \textit{See id.} at 119. "We are obligated to refrain from using wrong means to our ends." \textit{Id.} at 119. Stussen and Gushee note that:

A deontologist is concerned about achieving good ends as long as rules or principles of fairness or rightness are obeyed... The difference between deontologists and teleologists is not whether they have rules, but whether they base their rules on the duty to do what is right or on the goal of achieving a good end.

\textit{Id.} at 120.
\textsuperscript{118} See \textit{id.} at 121.
\textsuperscript{119} See \textit{Matthew 5:21-48}.
\textsuperscript{120} See \textit{Matthew 5:38-48}.
For more than a decade, judges, lawyers, and commentators have been decrying the decline of civility in the practice of law. The rise of incivility represents the triumph of a certain kind of Rambo pragmatism: The end (client victory) justifies whatever means are necessary to achieve it (including abuse and mistreatment of the other side). Unfortunately, the legislative and judicial efforts to reduce or eliminate uncivil conduct in litigation do not seem to have been particularly successful in eliminating incidents of rude and intemperate conduct by trial lawyers. While there are many reasons offered to explain the perceived increase in incivility, there is only one genuine solution to this chronic problem and that is a change of heart by the lawyers, a fundamental shift in how they view their work and in how they view their adversaries.

Jesus is a stranger to this kind of pragmatism. He advocates and exemplifies a life in which people always come first, before programs, tactics, legal rights, or personal successes. He announces a transforming principle, the love of enemy, that puts consideration of the other and that person’s needs ahead of one’s own interests. Basic principles of respect and courtesy and fair play do apply in the midst of hotly contested lawsuits. Instead of always insisting on one’s technical legal rights, lawyers should consider giving the other side more than they asked for, more documents, fuller interrogatory answers, and comprehensive depositions. They should not object for the sake of objecting, but only when necessary to preserve the client’s important rights. They should readily agree to reasonable time extensions requested by the opponent. They should not respond to the opponent’s Rambo antics with retaliatory tactics of their own.

In contrast with the “client-first” model, Jesus calls lawyers to a “justice-first” model of lawyering, in which the lawyer acts as an officer of the court and considers his obligation to see that justice is done in the course of his competent and diligent representation of his client. In the “justice-first” model, Christian lawyers seek to do more than merely advance their clients’ desires or serve as their clients’

121. See, e.g., Helen Wilson Nies, Rambo Lawyering, 87 TRADEMARK REP. 131, 132 (1997) (expressing concern about the increase of Rambo lawyering and calling for a return to civility); Enoch, supra note 20, at 203-10 (describing the birth and rise of Rambo lawyering).
122. See Harris, supra note 27, at 556-58 (describing “decline in lawyer professionalism”); George, supra note 28, at 473-86 (describing problems of incivility and Rambo lawyering).
124. See, e.g., Kathleen P. Browe, A Critique of the Civility Movement: Why Rambo Will Not Go Away, 77 MARQ. L. REV. 751, 757 (1994) (observing that the most commonly cited reasons for increasing incivility are: “(1) the growth of the bar, (2) the growing commercialism of the profession, (3) the increased use of Rule 11 sanctions, (4) the abuse of the discovery process, and (5) the poor preparation of incoming lawyers”).
125. See Richard S. Plattner, Lawyering: Beyond the Adversary System, ARIZ. ATT’Y, July 1994, at 8 (noting that in contrast with traditional “client-first” model of lawyering, the ethical paradigm should be “justice-first” because the lawyer’s first duty is to the justice system).
Rather than imagining oneself as a hired gun doing the client's bidding, these lawyers see their role as healers and peacemakers. Thus, the lawyer enters into dialogue with the client to examine possible options and considers not just the legality of each option but the morality of it as well. The lawyer does not impose his moral judgment on the client but helps the client identify potential consequences and make a decision fully informed about them. Alternatives to litigation are carefully explored, including less adversarial means of resolution, such as mediation or negotiation. The lawyer helps the client understand the real costs and risks of litigation — the physical and emotional toll as well as the potential damage to the relationship with the opponent and the potential impact of the process on the client and the client's family.

B. Motivations Matter: Asking the "Why" Question

Just as lawyers under "the Code" do not concern themselves with the morality of what they do in pursuit of their client's legitimate objectives, they also take little or no responsibility for the motivations of themselves or their clients. The client's motivation to sue or defend a suit simply does not matter to the lawyer. Lawyers are not psychologists or priests. As the ethical rules proclaim, lawyers do not bear any responsibility for the "political, economic, social, or moral views or activities" of their clients. Lawyers also spend little time considering their own motivations. Undoubtedly, they seek to comply (or at least appear to comply) with the rules that prohibit filings for an "improper purpose," but they do little else.

By redefining the advocate's first duty as being to the system, "winning" is redefined from achieving maximum advantage for the client to properly achieving a fair result for the client under the circumstances. As a result, the "zero-sum" game (one wins, one loses) of litigation is transformed into a "win-win" process: The clients get what they are entitled to or pay what they owe, the cost and delay of moving through the process is reduced (which produces savings for the clients as well as for society), and lawyers are uplifted from gunslingers to guardians of justice.
lawyers. If a client has a valid claim or defense, the lawyer has no need to ask about any underlying motivations of the client in pursuing the claim.\textsuperscript{135} The formal, ethical obligations of lawyers certainly do not require any such inquiry. Further, under the traditional view of the adversary system, in which the lawyer pursues the client’s objectives without question, such an inquiry would seem strangely out of place.

And yet, for the lawyer who understands his role as that of a moral agent, motivations are important, even critically important. In his teaching, Jesus repeatedly refuses to divorce the heart from the head or the hands.\textsuperscript{136} In other words, the “why” is just as important as the “what” and the “how.”\textsuperscript{137} John Calvin identified this distinctive teaching of Jesus in his writing nearly five hundred years ago.\textsuperscript{138} Litigants, he said, should pursue their claims “without bitterness,... while far from any wish to hurt or take vengeance — far from bitterness or hatred —..., he is rather disposed to yield and suffer somewhat than to cherish hostile feelings towards his opponent.”\textsuperscript{139} It is not enough to pursue good ends, using good means; we should do it for the right reasons.

Accordingly, lawyers should examine their own motivations and the motivations of their clients. Lawyers should ask themselves: Why am I filing this lawsuit or pursuing this defense? They should ask what motivates each pleading, each motion, and each line of questioning. Is the purpose to serve the ends of justice and to uncover the truth, or is the purpose to retaliate, obfuscate, or gain an unfair advantage?

I don’t pretend that motivations are easy to discern or that they are always, or ever, singular. Motivations are complex and sometimes it is impossible to know what motivates a person to make a particular decision or engage in certain conduct. Nonetheless, for the Christian lawyer it is important to make the inquiry. Lawyers serve as peacemakers when they have a conversation with their clients about their motivations and when they spend some time evaluating their own motivations. That does not mean that lawyers should refuse to represent those clients who have less than pure motives. They would have very few, if any, clients. However, they should talk about those motivations with clients and they should help their clients

\textsuperscript{135} See, e.g., FED. R. CIV. P. 11(b) (providing that by signing a motion or pleading a party certifies that “to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” the claims or defenses “have evidentiary support” or are likely to have such support after discovery).

\textsuperscript{136} See, e.g., Matthew 5:21-22 (stating that it is not just killing another that is wrong, but that anger toward the other may be just as destructive); Matthew 5:27-28 (stating that it is not just adultery that is wrong, but looking at a woman with lust in the person’s heart is equally destructive).

\textsuperscript{137} See id.


\textsuperscript{139} Id.
understand that litigation is a poor tool for revenge or retaliation. They should point out that a lawsuit is unlikely to bring any real satisfaction or any lasting sense of relief or closure, particularly for those who are seeking to get even. Perhaps the lawyer should share with the client their own motivations for taking on the case, their desire to serve the client and to participate in the pursuit of justice. Lawyers should refuse to be a tool of vengeance for their clients.

Instead, lawyers should actively seek resolution of their clients' conflicts, without regard to the financial implications for themselves. This may seem entirely too obvious, but a hallmark of the Rambo lawyer is to run up the fees in a lawsuit, filing every motion, pursuing every investigative lead, and challenging everything the other side does whether that approach is best for the client or not. As Abraham Lincoln wisely advised his fellow lawyers:

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often [the] real loser. . . . As peacemaker, the lawyer has a superior opportunity of being a good man. . . . Never stir up litigation. A worse man can scarcely be found than one who does this."

Of course, the very idea of examining our motives and encouraging our clients to seek means of settlement stands in stark contrast to the culture of the Rambo lawyer. A Rambo's motivation is not hard to ascertain, it is to win at almost any cost, including, if necessary, the destruction – or attempted destruction – of the other side. Rambo lawyers are quick to demonize their adversaries, feeding their clients' often unhealthy desires for revenge and retaliation. Rambo lawyers would not consider it pertinent or even appropriate to inquire into their clients' motivations for pursuing or defending a claim. As long as the objective is legally permissible, Rambo lawyers do not consider client motivations as any of their business. In fact, the “scorched earth” tactics of a Rambo lawyer bring the greatest satisfaction to litigants motivated by hate and disdain. And similarly, the Rambo lawyer views the decision to resort to alternative dispute resolution

142. See Beverly Balos, comment, The Bounds of Professionalism: Challenging Our Students; Challenging Ourselves, 4 CLINICAL L. REV. 129, 140 (1997) (describing a Rambo lawyer as one who demonstrates “hostility toward opponents and witnesses, incivility, and a view of litigation as a game”); See also Sayler, supra note 17, at 79 (identifying six characteristics of a Rambo lawyer).
143. See Lincoln, supra note 140.
144. See Peter M. Appleton, Is Winning Everything?, OR. ST. B. BULL., April 2002, at 22 (observing that for the Rambo, “Winning is everything. Losing is nothing. . . . Winning, not ethical behavior, is the moral imperative.”).
145. See supra, Section II on “Rambo Lawyering.”
146. See ALLEGRETTI, supra note 1, at 8-9 (using the image of a “hired gun” to describe a Rambo type lawyer).
147. See id. at 8.
148. See Browe, supra note 124, at 755, 774-75 (noting that “the competitive nature of the business leaves attorneys fighting for clients” causing lawyers to use hardball tactics when the client wants them to do so).
opportunities as a sign of weakness. Such a lawyer might go to mediation for the purpose of obtaining some “free” discovery from the other side, or because the judge ordered them to do so, but they are unlikely to invest themselves fully in the process unless they are assured complete victory.

Jesus’s call to love the enemy—to wish the best for them—demands that lawyers go beyond the bare ethical and procedural requirements imposed by the law and that they look beyond the legal and factual sufficiency of their clients’ claims and defenses. It is an “against culture” approach to lawyering to be sure.

C. Modesty Matters: An Antidote for “the Deadly Disease of Arrogance”

The stereotypical image of lawyers would most certainly include a healthy dose of arrogance. One can see it in the swagger of the gunslinger and the defiance of the Rambo. And in light of the circumstances, it is perhaps hardly surprising that lawyers are a prideful bunch. They hold positions of power, prestige, and privilege. They hold the keys to the courthouse and to the halls of government. They often possess substantial economic resources. They have special expertise in the law. The combination of power, prestige, and privilege creates ideal conditions for “the deadly disease of arrogance.”

The Rambo lawyer is perhaps more susceptible to this affliction than the ordinary lawyer. After all, Rambo lawyers are hyper-competitive. They see litigation as a matter of winning and losing. Pride is, of course, “competitive by its very nature.” Call it what you will, but chutzpah is viewed by many as an essential ingredient for trial lawyers. And yet, that very character trait can deceive lawyers into believing that they are in control of things and that they have the answers to life’s most perplexing problems. The great Christian apologist C.S. Lewis wrote that pride is “the essential vice, the utmost evil,... It is the complete anti-God state of mind.”

Jesus describes his follower as a person who is “poor in spirit,” mournful, and merciful. These three traits suggest the foundation for an attitude of humility: (1) Recognition of one’s dependence on God; (2) Sorrow for the sin in the world, including one’s own; and (3) An appreciation of one’s need for and acceptance of God’s mercy. The appropriately humble lawyer affirms that “I am not God. I am not all-knowing. I am not the creator.” Such lawyers understand

151. See Starr, supra note 150, at 48.
152. See LEWIS, supra note 74, at 109.
153. Id.
154. See Matthew 5:3, 4, & 7.
their relationship to the creator and their place in the universe. The ideal of loving one's enemy, steeped as it is in the notion of agapé love, is possible only when a person recognizes his or her own limits and fallibility.

This reality should shape every aspect of how Christians engage in the practice of law, and in their relationships with clients, opponents, judges, and colleagues. As lawyers we must acknowledge that "we know less than we claim to know, and we are not as smart as we claim to be." We approach clients not as gurus, but as fellow travelers. We approach opposing parties and lawyers not as enemies, but as fellow human beings. "[H]umility always sees the possibility of its own mistake." This kind of authenticity and vulnerability does not compromise our relationships with clients, but makes them stronger as it creates the possibility of a moral conversation and the prospect of real friendship. It does not put lawyers in a position of weakness with their opponents, but in a position of strength because honesty and authenticity are powerful tools for healing and peacemaking.

V. CONCLUSION

Trial lawyers are entrusted with critically important responsibilities, serving as guardians of justice and seekers of truth. For Christian trial lawyers those responsibilities have sacred dimensions. At the very least that means that such lawyers of faith must avoid the tactics and objectives of Rambo lawyers, including the temptation to elevate victory over doing justice or seeking the truth. Those who take seriously the teaching and example of Jesus are called to exceed the ethical standards of the legal profession, not to merely comply with them, to show agapé love to their adversaries, and to be peacemakers.

Jesus teaches his followers to break the never-ending cycle of insult and retaliation, which leads to mutual destruction, through a number of transforming initiatives, which, when practiced, bring hope and healing. The image of the lawyer as hired gun or the lawyer as Rambo lawyer gives way to the image of the lawyer as peacemaker. In that image there is hope for real change and transformation.

St. Thomas More, the great English Chancellor who went to his death rather than to betray his conscience, provides a wonderful example of one who successfully withstood the pressure to conform to the demands of the King. His prayer stands in stark contrast to the win-at-all costs ethos of the Rambo lawyer:

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155. See Lewis, supra note 74, at 114. C.S. Lewis says that the first step to humility "is to realise that one is proud." Id. He says that "if you really get into any kind of touch with Him [God] you will, in fact, be humble — delightedly humble, feeling the infinite relief of having for once got rid of all the silly nonsense about your own dignity which has made you restless and unhappy all your life." Id.


157. See id. at 1745. In discussing humility, Professor Stuntz states: "[Humility] implies not blindness to the errors and injustices that attend the status quo, but awareness that proposed solutions must be tentative, subject to revision as experience dictates." Id. at 1745. Humility does not mean "that strong arguments are out of bounds, only that hard legal questions should be seen for what they are." Id. at 1744-45.
Give me the grace, good Lord, to set the world at naught; to set my mind fast upon Thee and not to hang upon men's mouths. To be content, to be solitary. Not to long for worldly company but utterly to cast off the world and rid my mind of the business thereof. 158

May it be so.

158. See Stephen F. Smith, Cultural Change and “Catholic Lawyers”, 1 Ave Maria L. Rev. 31, 55 n.75 (2003).