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Christopher L. Henry

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THE TRUTH (OF THE MATTER ASSERTED) IS OUT THERE: LAW AND THE PARANORMAL OUTSIDE THE FIRST AMENDMENT

*Christopher L. Henry, Esq.**

“We all know that just being a lawyer doesn’t make a man a magician or give him supernatural powers. Only an appointment to the federal judiciary can do that.”
- Dewitt Hale, former chairman of the Judiciary Committee of the Texas House of Representatives¹

“There are more things in heaven and earth, Horatio,
Than are dreamt of in your philosophy.”
- Hamlet (1.5.167-8), Hamlet to Horatio²

I. THE ROLE OF THE PARANORMAL IN THE COURTROOM:³ AN INTRODUCTION

Many of the oldest cases discussing the paranormal speak disdainfully of the then-recent past in which mental illness was believed to be a sign of possession by

* Christopher L. Henry, University of Louisville Brandeis School of Law, *magna cum laude*. He is currently a staff attorney at the Kentucky Court of Appeals. Special thanks to Hon. Judge Michael Henry.

1. GARY CARTWRIGHT, *DIRTY DEALING, DRUG SMUGGLING ON THE MEXICAN BORDER AND THE ASSASSINATION OF A FEDERAL JUDGE* 126 (1998).

2. WILLIAM SHAKESPEARE, *HAMLET* act 1, sc. V. (Harold Jenkins ed., Methuen Pub. Ltd. 1982).

3. The scope of this article requires some explanation. As a general rule, this article ignores constitutional law. The Free Exercise Clause and the Establishment Clause are the subject of a great deal of academic discussion elsewhere. See, e.g., Alan Stephens, Annotation, *Free Exercise of Religion Clause of First Amendment as Defense to Tort Liability*, 93 A.L.R. FED. 754 (1989). I have taken care not to retread too much scholarly ground. Because it is difficult to extricate these two topics entirely, the First Amendment is mentioned when necessary. The First Amendment was excluded from this article not only because it has been explored academically, but also because a court is unlikely to actually address a claim of the paranormal in the context of the First Amendment. This article will also generally not discuss intellectual property law or tax law. (As an aside, some interesting dicta on the supernatural and copyright is included in *Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor, Ltd.*, No. 96 Civ. 4126 (RWS), 2000 WL 1028634, at *14 (S.D.N.Y. July 25, 2000), *vacated*, No. 96 Civ. 4126 (RWS), 2004 WL 906301 (S.D.N.Y. Apr. 27, 2004) (“As a matter of law, it is irrelevant for copyright purposes whether Jesus wrote the Course.”)). This article does discuss many instances in which courts have decided matters dealing with litigants who profess a belief in the supernatural. This is because in these instances, as opposed to cases concerning tax or intellectual property, a person’s subjective belief in the paranormal might affect the merits of the underlying claim. In the section of the article concerning beliefs in the paranormal, there are many cases involving outlandish facts. These cases were chosen because they underscore the extent of the testator’s belief in the paranormal. It is also true that this article features lengthy quotations. This is because the article’s primary focus concerns how courts have treated the paranormal. In some cases, it is necessary to provide the court’s extended discussion if it is particularly illustrative of judicial attitudes towards the paranormal. These attitudes are best demonstrated through the text itself. Finally, this article discusses the “supernatural” and the “paranormal” interchangeably. This was not intended to offend anyone with religious sensibilities; this article merely discusses any subject that cannot be exchanged through conventional methods. For a brief article with a similar theme, see Christopher R. Brauchli, *From the Wool-Sack*, 24 COLO. LAW. 547 (1995).

the devil.⁴ In more recent times, of course, courts generally try to separate the supernatural from the courtroom entirely.⁵ Still, much of modern law has its origins in the supernatural.⁶

Perhaps the division between the supernatural and the law was best described in a dissent by one judge in an 1887 murder case. In *Parsons v. State*, the defendant claimed that she was under the supernatural influence of her husband at the time of the crime.⁷ The Alabama Supreme Court affirmed her conviction, but Chief Justice George Stone offered a particularly colorful dissent.⁸ Judge Stone pointed out the contradiction in calling one woman insane for believing something that was once generally accepted, but ultimately concluded that the inquiry was outside the realm of the justiciable:

Was her alleged delusion insanity? Was it, if it existed, a disease of the reasoning faculty? What say psychological experts on this subject? . . . Less than three centuries ago the whole English-speaking people labored under this delusion or superstition, and called it witchcraft. So firmly did they believe it that they made the practice of it a capital felony. Many unfortunates to whom this dark art was imputed paid the penalty by the most torturing of all known methods of inflicting the death sentence. Were our ancestors, from the king on his throne to the laboring peasant, all insane? Even the great and good Sir MATTHEW HALE was a believer in witchcraft. He said “that there were such creatures as witches he made no doubt at all; for, -*First*, the Scriptures had affirmed so much; *secondly*, the wisdom of all nations had provided laws against such persons, which is an argument of their confidence in such crime.” On the other hand, if the great, the noble, and the learned, two or three

4. See, e.g., *State v. Pike*, 49 N.H. 399, 436 (N.H. Super. Ct. 1870), *overruled in part by Hardy v. Merrill*, 56 N.H. 227 (N.H. Super. Ct. 1875).

Witchcraft and demoniacal possession were accepted as truths taught by miraculous inspiration. Cases of insanity were found, answering the biblical description of cases of demoniacal possession; but the suggestion that any of the latter might be cases of mental or physical disease, was received as an attack upon the infallibility of the scriptures.

Id. at 436. See also *Halderman v. Pennhurst State Sch. & Hosp.*, 446 F. Supp. 1295, 1299 (E.D. Pa. 1977) *aff'd in part, rev'd in part sub nom. Halderman v. Pennhurst State Sch. & Hosp.*, 612 F.2d 84 (3d Cir. 1979), *rev'd sub nom. Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981) (“Connecticut’s first house of correction in 1722 was for rogues, vagabonds, the idle, beggars, fortune tellers, diviners, musicians, runaways, drunkards, prostitutes, pilferers, brawlers and the mentally afflicted . . .”).

5. Even when a judge or court expresses approval of the supernatural, it is often done as passing reference, rather than in a situation in which one of the parties alleges that something supernatural had happened. See, for example, *Borders v. Rippey*, 184 F. Supp. 402, 406 (N.D. Tex. 1960), a desegregation case in which the court stated, “[q]uite different is the confused, latterday delinquent who now has no dream of immortality or no faith of his own and who thinks supernatural and superstition are twin words and that the devil and Santa Claus are one person and that’s nobody but pa.”

6. One example is the swearing in of the witness. “Instead of constituting a form of evidence, courts came to conceive of the oath as a vehicle for strongly reminding a witness of the supernatural punishment in store for him should he testify falsely, thus putting him in a frame of mind calculated to tell the truth.” *In re R. R.*, 398 A.2d 76, 81 (N.J. 1979).

7. See *Parsons v. State*, 2 So. 854, 876–77 (Ala. 1887) (Stone, C.J., dissenting).

8. *Id.* at 867.

centuries ago, slaughtered men and women indiscriminately as the imputed possessors of this demoniacal power, and under all the forms of law and for the public welfare, is it right to make an example of one ignorant, superstitious woman, if she destroyed one life as the only means, to her benighted vision, of saving her own? Of course this is stated on the hypothesis that she really believed her husband possessed and was exercising this dangerous power.

Let us pursue this line of thought a little further. In the world are very many religious faiths, each, perhaps, asserting a divine or supernatural inspiration. Take three of the most prominent, the Christian, the Mohammedan, and the Buddhist, each numbering its adherents by the hundred millions. With each of these faiths the profession of the other two are mere superstitions or hallucinations. Are the invocations to Allah and to the Enlightened One any more an illusion to our comprehension than Christian worship is to theirs? Our faith, we maintain, is founded alike on Divine revelation and the inherent evidences of its purity and truth. Is their mental delusion a species of partial insanity? And if, in the zeal of the religion of Mohammed, propagation by the sword is believed to be a duty, is such act to be excused on the score of mental illusion? What of the believers in spiritualistic materializations, mind-reading, and the many other isms which live their brief day, and are not without a following? Are the believers in such supernatural power mentally diseased? Such inquiries may be amusing, if not interesting, to the visionary and speculative. They can only bewilder, when applied to the actual transactions of business life. Judicial administration is too real to enter upon such doubtful and dangerous speculations.⁹

Another case featured similar language concerning the supernatural in a preface to a discussion concerning beliefs in the supernatural and testamentary capacity:

[D]r. Carver, a very intelligent medical witness, who had been in the Western mines, testified: "I have seen hundreds of men in the mountains, who came there on dreams, including lawyers, doctors, and priests. Business men here in Monroe have been and searched for minerals under the direction of clairvoyants." Others believe in Christian Science; others in clairvoyance; others in the transmigration of souls, and others in witchcraft. To affirm or deny the truth of these things proves nothing, and demonstrates the individual to be neither a sage or a fool. Who shall be the judge whether the mind that accepts or reflects them is the truly sane mind? If we affirm that witches do not ride broomsticks and practice their evil arts upon us, and that there are no witches, then we have

9. *Id.* at 876.

Blackstone, the father of our common law, Chief Justice Mathew Hale, Coke, Sir Francis Bacon, Richard Baxter, John Wesley Martin Luther, Cotton Mather, and a host of other eminent jurists and savants, against us.¹⁰

By its very definition, the paranormal is outside the realm of accepted science.¹¹ How, then, can normally objective judges approach a situation in which the supernatural lingers on the fringes of a case? At least one court has directly addressed this problem, in which the appellant argued that the appellee should have been required to prove actual supernatural intervention in order to prove that an “act of God” occurred.¹² The court noted that “there are many jurors who may be so awestricken by the concept of a divine manifestation that they cannot give to the facts the down-to-earth, tangible, mathematical analysis and deliberation which is required for a secular verdict.”¹³ Furthermore,

[t]here is, or should be something inwardly disturbing about asking a jury to determine what part of an accident was caused by man and what part was wrought by the hand of God, and then to apportion the several liabilities. Is this within the capacity of twelve mortal men and women?¹⁴

The court seemed to ultimately conclude that it was not; it reversed the decision of the trial court with instructions to use language other than “act of God,” incorporating “the usual and expected operation of the machinery of the universe.”¹⁵

Many in law (and probably most) believe that the paranormal has no place in a legal discussion, as “[t]he law has often embraced a relatively uncritical view of science’s claims of universal truth.”¹⁶ The Pennsylvania Supreme Court noted that when all but one scientifically accepted explanation for a viewpoint is disproven,

it is idle to argue that there could possibly be another explanation which lies in the realm of the unknowable and unascertainable and then expect a jury to base its verdict on that mysterious something

10. Owen v. Crumbaugh, 81 N.E. 1044, 1052 (Ill. 1907) (quoting *In re Chafin’s Will Case*, 32 Wis. 557, 564 (Wis. 1873) (citations omitted)).

11. “Paranormal” is defined as “very strange and not able to be explained by what scientists know about nature and the world.” MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/paranormal> (last visited Mar. 18, 2016).

12. Goldberg v. R. Grier Miller & Sons, Inc., 182 A.2d 759, 760 (Pa. 1962).

13. *Id.* at 761.

14. *Id.*

15. *Id.* at 765.

16. Jeffery Atik, *Science and International Regulatory Convergence*, 17 NW. J. INT’L L. & BUS. 736, 746 (1997). For a discussion of the demarcation between “good science” and “junk science,” see Gary Edmond & David Mercer, *Trashing “Junk Science”*, 1998 STAN. TECH. L. REV. 3 (1998).

which exists only in the misty shadowlands of shrouded mystery and supernatural supposition.¹⁷

In fact, injecting religion into the courtroom might even be a basis for disciplinary action against a judge. For example, in one case, a judge was disciplined when he suggested in chambers that a juvenile defendant in a case “might be possessed by demons and that a local priest should examine him to determine whether an exorcism was required. Respondent then called a separate meeting with the boy’s parents and told them the same thing.”¹⁸ The judge also gave another defendant a card with a religious poem, and in a separate case, “Respondent, while wearing judicial robes, descended from the bench and physically embraced the defendant as a ‘brother in Christ.’”¹⁹

There is little law concerning the dividing line between the paranormal and professional ethics, and what little exists is not very instructive. The United States District Court for the Eastern District of California has stated that a client is not entitled to have counsel who believes in the paranormal in order to be effective.²⁰ Similarly, it is not ineffective assistance of counsel if counsel believes in the paranormal but does not act on those beliefs at trial.²¹ Perhaps a more interesting ineffective assistance of counsel scenario involves counsel’s failure to extricate references to a defendant’s work in the paranormal. In *United States v. Gent*, the court found no error where several prospective jurors in voir dire expressed skepticism as to whether they could fairly consider the defendant’s testimony, knowing that he claimed to have psychic abilities.²²

The view that the paranormal should be kept separate from the courtroom is perhaps best summarized in a law review article by Daniel M. Warner, a professor at Western Washington University. He compared those who profess beliefs in the paranormal and those who do not:

Now assume that one was able to choose between two groups of people to colonize a new territory or to serve as good citizens in a participatory democracy. This first group tends to be relatively less intelligent, less well-adjusted, less able to sort out fact from fantasy, less capable of critical thinking, and more gullible. Its members tend to have poor self-images and feelings of incompetence. Some members of the group have a tendency toward unhealthy cultism. The second group, necessarily by this comparison, is more intelligent, better adjusted, has a better self-image, is better able to engage in critical thinking, and so on. Which group to choose?

17. *Battistone v. Benedetti*, 122 A.2d 536, 539 (Pa. 1956).

18. *Judicial Inquiry & Review Bd. of Sup. Ct. of Pa. v. Fink*, 532 A.2d 358, 368 (Pa. 1987).

19. *Id.*

20. *See Lizarraga v. Pliler*, No. CIVS011062MCEJFMP, 2005 WL 1704371, at *17–19 (E.D. Cal. July 14, 2005).

21. *See Neelley v. Alabama*, 642 So. 2d 494, 498 (Ala. Crim. App. 1993) (Counsel testified that he was a mystic and had the ability to “sparkle” and send “blue beams of energy.”).

22. *See United States v. Gent*, No. 10–CR–90S, 2012 WL 1899159, at *11–14 (W.D.N.Y. 2012).

Obviously the second group, a group more likely to be successful and more likely to overcome the challenges of hard times. And if, instead of leaving one group behind, it was possible to change the mindset of the first group more toward that of the second group, such a change would seem worthwhile and beneficial. The law can do so²³

Finally, in at least one case, *In re Beale's Estate*, the Supreme Court of Wisconsin seemed to actually indicate that it believed that something paranormal had happened during the course of the judicial proceedings:²⁴

A few days before Christmas, 1959, Beale, who had returned to Madison, directed Mrs. Burleigh to re-type the altered pages 12 and 13 on the same typewriter she had used when she first typed the will. We may guess that Beale wanted pages which did not show they had been tampered with, as was apparent on the two original sheets now showing erasures and re-typed corrections. We may guess, further, that Beale intended to insert in the will without discovery the new pages without republication and re-execution of the will. This is no more than guesswork and is of no consequence. Before Mrs. Burleigh typed the two new sheets Beale's death intervened on December 27, 1959. Whatever his purpose, nefarious or not, he did not accomplish it. Mrs. Burleigh had not begun this final typing when she was told that Professor Beale had died. She then typed the two pages as Professor Beale directed and gave them to Beale's son, Henry. There were then no marginal initials on them. These pages are in evidence and, although Professor Beale never in his life had them or saw them, his initials are now on the margin of each of these pages and, as Mrs. Burleigh testified, are in his handwriting.

23. Daniel M. Warner, *Caveat Spiritus: A Jurisprudential Reflection upon the Law of Haunted Houses and Ghosts*, 28 VAL. U. L. REV. 207, 222 (1993).

24. Though not exactly alleged to be paranormal by the court, the United States Tax Court was tasked with determining whether money obtained in the following situation constituted "income":

Before the \$5,000 was handed over, petitioner requested that Thomas spit in the chicken's mouth. Petitioner explained that if the chicken then died, everything was going to be all right as far as the spirits were concerned. The death of the chicken would be a good omen. Thomas spat into the chicken's mouth and apparently a short time later the chicken did in fact die. Petitioner was holding the fowl at the time. There is no positive indication in the record as to the cause of death or whether or not Thomas was impressed thereby. However, after the chicken had expired and the omens were deemed favorable, he promptly turned over the \$5,000 to petitioner

Marks v. Comm'r of Internal Revenue, 27 T.C.M. (CCH) 80 (T.C. 1968).

We began with a consideration of the unnatural. At the end we are confronted by the supernatural. We consider ourselves fortunate that this weird addition to the facts turns out to be immaterial.²⁵

Regardless of the views of individual judges and academics, the paranormal presents a unique problem in law.

First, this article examines situations in which the paranormal has been the subject of a lawsuit but in which the court did not have to actually “reach the merits” of the actual claim of the paranormal. For example, this section includes situations in which a court is confronted with a question of a belief in the paranormal by one of the parties, and the court has evaluated the situation as affecting his or her legal mental capacity. The next section of this article discusses situations in which a court discussed some aspect of the paranormal in order to decide the underlying claim. Like many of the cases discussing the paranormal, this article does not have a conclusion as does a typical law review article. It is intended to be a thought exercise in order to challenge the reader to consider the appropriate scope of the law. It seeks to provoke the reader into considering two questions. First, how does a court focus its discussion of the paranormal when it is unnecessary? Second, should courts ever engage in such a discussion, even when such a claim concerns the merits of an action? In considering these questions, the reader must inevitably come to a conclusion regarding the appropriate role for courts of law in society.

II. NON-SUBSTANTIVE ASPECTS OF CLAIMS

A. Belief in the Paranormal as Affecting One’s Mental Capacity in Contexts Other than Criminal Law

Most jurisdictions hold that a belief in the paranormal does not invalidate a will as long as that belief does not affect the testator’s mental capacity.²⁶ Perhaps the most eccentric testator claimed to have owned a “book to work spells, cure fever and ague and raise spirits,”²⁷ as well as a “rod that would attract . . . money.”²⁸ The testator used this magic rod to find a pot of money but when he did, however, “a great black and white spotted bull came running over the hill,”²⁹ that “pawed and hooked the dirt

25. Estate of Beale v. Beale, 113 N.W.2d 380, 388 (Wis. 1962).

26. See, e.g., Rice v. Henderson, 83 S.E.2d 762, 767 (W. Va. 1954) (quoting 79 AM. JUR. 2D *Wills* § 86 (2016)).

A testator’s belief that he was saved from harm on several occasions by a guiding spirit does not establish insane delusions on his part. Indeed, it seems to be the settled law that testamentary capacity cannot be determined alone by what one believes, nor by the character of the tales he tells concerning spirits, spooks, and supernatural things. Even a belief in witchcraft is not necessarily conclusive evidence of insanity.

Id.

27. Thompson v. Thompson, 21 Barb. 107, 123 (N.Y. Gen. Term 1855).

28. *Id.*

29. *Id.*

as if he was mad.”³⁰ The bull looked “as big as a mountain”³¹ to the testator, and upon seeing the bull “[t]here [came] nearly a thousand cattle . . . that came and passed diagonally over another hill opposite, which acted just like that bull.”³² The court recounted another story in which the testator traded a pair of horses worth \$180 for an old horse “not worth ten dollars,” “in consequence of a dream” had by one of his relatives.³³ The testator also stated that if he was to “line a room with white Irish linen . . . and keep [a man] drunk six months on strong beer . . . at the end of six months, that man’s urine would be the water of life.”³⁴ The testator also claimed to know that there were spirits on the moon and in the sky and that he had been “hugged” by a ghost.³⁵ The court, in affirming the will, stated “[e]rroneous, foolish, and even absurd opinions upon certain subjects do not show insanity when the person entertaining them still continues in the possession of his faculties, discreetly conducting not only his own affairs, but the business of others.”³⁶

In another case, a man believed that upon his death “his soul would enter into the body of some animal, and that, influenced by that decision, he executed the will propounded, with a view to the better security of his future existence.”³⁷ The court upheld the will in this case as well, as the man’s beliefs were not evidence of his insanity.³⁸ Another court found a testator to be sane in the following circumstances:

[T]hat after he became a Spiritualist his social life changed; that he cared chiefly for the society of Spiritualists; that when talking upon the question of Spiritualism he sometimes became excited, and would often break down and cry; that he thought he heard the voices of the dead in the seance room and out of it; that he thought he saw the forms of the dead; that they stood before him and conversed with him, both in the seance room and out of it; that his dead mother came up through the floor in the seance room and put her arms around his neck and kissed him; that his son, whom he called ‘Bright Eyes,’ and who died at 6 weeks of age, came back to him in the form of a man and patted him on the cheek; that he thought he had a spirit guide, who directed him in his affairs, and who came to his bed each night and told him good night; that these conditions existed both before and after the signing of the supposed will . . .³⁹

The court noted:

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30. *Id.*
 31. *Id.* (emphasis removed).
 32. *Id.*
 33. *Thompson*, 21 Barb. at 124 (emphasis removed).
 34. *Id.* (emphasis removed).
 35. *Id.*
 36. *Id.* at 107.
 37. *In re Bonard*, 16 Abb. Pr. (n.s.) 128, 130 (Surr. Ct. 1872).
 38. *Id.* at 128.
 39. *Owen v. Crumbaugh*, 81 N.E. 1044, 1054 (Ill. 1907).

It can never be held that because a testator believes in the doctrines of a particular church, and because of his preference for the one rather than the other he makes his will with a view of promoting the interests of his peculiar denomination, this fact is to be accepted as evidence of insanity.⁴⁰

The general rule that one's belief in the paranormal does not affect his or her legal capacity applies in other contexts as well. For example, one New York court found that a belief in the supernatural was not sufficient to grant a modification of a child custody order.⁴¹

B. Criminal Law

1. Belief in the Supernatural in Criminal Law

Today, an unreasonable fear (including fear of the supernatural) can provide a defense in a criminal prosecution.⁴² However, as in other contexts, a belief in the paranormal does not necessarily provide the basis of an insanity defense.⁴³ Similarly, the Superior Court of Rhode Island found that a man was competent to stand trial even though the man stated that “the judge and others involved in the trial might be influenced by the supernatural,”⁴⁴ and the Maine Supreme Court found that a criminal defendant was legally competent to give a voluntary confession even though the man believed he was an alien and had supernatural powers.⁴⁵

In the days prior to *M’Naghten*, witches were widely seen as being unable to demonstrate a state of mitigating mental culpability.⁴⁶ “Indeed, witches and wizards could never be exculpated on the ground of criminal incompetency because, by definition, they could distinguish between right and wrong. After all, these individuals who believed they possessed supernatural powers chose voluntarily to follow a course which was the very embodiment of evil.”⁴⁷ Today, of course, such a claim might raise a potential defense based on mental culpability.⁴⁸

40. *Id.* at 1055; see also *In re Hanson’s Estate*, 151 P. 264 (Wash. 1915).

41. *Sano v. Sano*, 949 N.Y.S.2d 780, 780 (N.Y. App. Div. 2012).

42. See, e.g., *People v. Cardenas*, 21 Cal. App. 4th 927, 940 (Cal. Ct. App. 1994) (defendant threatened victim with threats involving spirits).

43. See *People v. Kelley*, No. F035466, 2002 WL 501651, at *56 (Cal. Ct. App. Apr. 3, 2002).

44. *Bevilacqua v. Knight*, No. M.P. NO. 12451, 1979 WL 196116 at *12 (R.I. Super. Ct. Oct. 12, 1979).

45. *State v. Collins*, 297 A.2d 620, 628 n.7 (Me. 1972).

46. *United States v. Freeman*, 357 F.2d 606, 616 n.24 (2d Cir. 1966).

47. *Id.*

48. See C. Clifford Allen, III, Annotation, *Degree of Homicide as Affected by Accused’s Religious or Occult Belief in Harmlessness of Ceremonial or Ritualistic Acts Directly Causing Fatal Injury*, 78 A.L.R.3d 1132 (1977).

2. Persons Claiming Supernatural Powers

Fortune tellers have been subject to prosecution in the past in the United States,⁴⁹ and some states have only recently legalized fortune telling.⁵⁰ Witchcraft was also previously illegal in some states.⁵¹ Courts have generally held that it is within the purview of the legislature to regulate fortune telling and similar activities in order “to protect the gullible, superstitious, or unwary.”⁵² These laws have been upheld despite challenges “based on due process, equal protection, privileges and immunities, freedom of religion, freedom of speech, obligation of contract, enablement and preemption, and other grounds.”⁵³

Of course, persons who claim to possess supernatural powers may properly be charged with crimes in other circumstances, if those persons act fraudulently,⁵⁴ and no physical means of deception is necessary.⁵⁵ One court discussed the relationship between criminal prosecutions and those that profess supernatural powers as follows:

Criminal statutes which prescribe punishment for false representations primarily were intended to protect persons against those who report falsely with respect to their earthly and material possessions. Any legislative attempt to limit or regulate persons in their claims to the possession of exceptional spiritual power or knowledge would be rejected as a dangerous invasion of the state into the realm of religious freedom and privilege, which, from the beginning of our government, has been guarded by constitutional barriers. The framers of our criminal statutes had in mind material affairs and not spiritual matters nor the punishment of persons who claim or represent themselves, by divine favor, to be endowed with supernatural power, unless the intent to defraud is discernable in the pretense as to the possession of supernatural powers. This power in the instant case, according to the prosecution’s evidence, was claimed by defendant to be derived from God agreeable with His written word as recorded in holy scripture. That book is an open record and all who will may solve for themselves the extent or

49. See, e.g., *City of St. Louis v. Hellscher*, 242 S.W. 652 (Mo. 1922). For an in-depth discussion of this topic, see Gregory G. Sarno, Annotation, *Regulation of Astrology, Clairvoyancy, Fortunetelling, and the Like*, 91 A.L.R.3d 766 (2011).

50. See, e.g., N.C. GEN. STAT. § 14-401.5, *repealed by* 2004 N.C. Sess. Law 203, § 21 (effective Aug. 17, 2004).

51. See, e.g., *State v. Durham*, 58 A. 1024, 1024–25 (Del. Ct. Gen. Sess. 1904); see also Patti Wigington, *American Witchcraft Laws*, ABOUT.COM (last updated Feb. 16, 2016), <http://paganwiccan.about.com/od/wiccanpaganhistory/fl/American-Witchcraft-Laws.htm> (discussing previous laws against witchcraft).

52. Sarno, *supra* note 49.

53. *Id.* § 2[a].

54. See *United States v. Calwer*, 292 F. 1007, 1008 (D. Mont. 1923) (“Therein the weight of authority is that astrologers, conjurers, fakirs, magicians, mediums, and all variety of pretenders to supernatural power, and who assume to sell the same for money, are amenable to the criminal law of false pretenses.”); see also *New v. United States*, 245 F. 710 (9th Cir. 1917) (holding that religious freedom did not preclude such a prosecution).

55. *People v. Bertsche*, 106 N.E. 823, 827 (Ill. 1914).

degree of divine power that mortals may hope to attain. Each person is at liberty to interpret it for himself. That a mere pretender who wittingly and fraudulently imposes upon the credulity of the weak in mind to their financial loss, is guilty of fraud, there can be no doubt. Persons mentally healthy will not be so imposed upon.⁵⁶

Some courts have held that state of mind is irrelevant for purposes of fraud when the legislature has regulated or prohibited these activities.⁵⁷ Gregory G. Sarno, the author of the A.L.R. annotation on the subject, noted that “attitude of judicial disfavor toward astrology, clairvoyancy, fortunetelling, and the like has perhaps been ameliorated by the changing attitude of the society at large, which has probably accounted for the fact that legislatures have repealed many of the older enactments governing such endeavors.”⁵⁸

In *People v. Memro*, the police utilized a sketch based on a psychic’s vision in their investigation in order to apprehend the defendant.⁵⁹ The California Supreme Court deferred to the trial court’s determination that the arrest was justified, stating “[t]he Court finds that the use of the psychic in this case was merely an investigative tool and cannot be relied upon by the officers in connection with justifying their arrest. However, it may be used to follow up additional leads.”⁶⁰ Conversely, in *State v. Nelson*, the Supreme Court of Hawai’i ruled that the circuit court properly suppressed statements made during a custodial interrogation in which an officer, among other things, extracted statements from defendant through “prayer[] and exorcism.”⁶¹

3. Performing Religious Ceremonies

Several cases have examined mens rea when a person has died while a defendant performed an exorcism. In *Clark v. State*, the Texas Court of Appeals found the elements for intentional murder were present.⁶² In *Carson v. State*, that same court found that a criminal defendant was entitled to a lesser included offense.⁶³ This is largely a fact-contingent analysis.⁶⁴

The Court of Appeals of North Carolina held that “[r]idding [a] child of demons” could constitute a culpable negligent act for the purpose of voluntary manslaughter.⁶⁵ The Court of Appeals of New York concluded that a defendant was entitled to an instruction on a lesser included charge of negligent homicide, when a defendant stated that he had religious powers:

56. *People v. Blackburn*, 5 P.2d 600, 604 (Cal. 1931).

57. Sarno, *supra* note 49.

58. *Id.*

59. *People v. Memro*, 11 Cal. 4th 786, 839 (Cal. 1995).

60. *Id.* at 842.

61. *State v. Nelson*, 748 P.2d 365, 371 (Haw. 1987).

62. *Clark v. State*, No. 11–10–00335, 2012 WL 5448189, at *1, *3, *4 (Tex. App. 2012).

63. *Carson v. State*, 422 S.W.3d 733, 748 (Tex. App. 2013).

64. *See id.* at 747–48.

65. *State v. Robinson*, 349 S.E.2d 317, 319 (N.C. Ct. App. 1986).

[The defendant] testified that he had been of the Sudan Muslim religious faith since birth, and had become one of the sect's leaders, claiming a sizable following. Defendant articulated the three central beliefs of this religion as "cosmetic consciousness, mind over matter and psysiomatic psychomatic consciousness." He stated that the second of these beliefs, "mind over matter", empowered a "master", or leader, to lie on a bed of nails without bleeding, to walk through fire or on hot coals, to perform surgical operations without anesthesia, to raise people up off the ground, and to suspend a person's heartbeat, pulse, and breathing while that person remained conscious. In one particular type of ceremony, defendant, purportedly exercising his powers of "mind over matter", claimed he could stop a follower's heartbeat and breathing and plunge knives into his chest without any injury to the person. There was testimony from at least one of defendant's followers that he had successfully performed this ceremony on previous occasions. Defendant himself claimed to have performed this ceremony countless times over the previous 40 years without once causing an injury. Unfortunately, on January 28, 1972, when defendant performed this ceremony on Kenneth Goings, a recent recruit, the wounds from the hatchet and three knives which defendant had inserted into him proved fatal. . .

The defendant's conduct and claimed lack of perception, together with the belief of the victim and defendant's followers, if accepted by the jury, would justify a verdict of guilty of criminally negligent homicide. There was testimony, both from defendant and from one of his followers, that the victim himself perceived no danger, but in fact volunteered to participate. Additionally, at least one of the defendant's followers testified that the defendant had previously performed this ritual without causing injury. Assuming that a jury would not believe that the defendant was capable of performing the acts in question without harm to the victim, it still could determine that this belief held by the defendant and his followers was indeed sincere and that defendant did not in fact perceive any risk of harm to the victim.⁶⁶

Similarly, the performance of an exorcism, in and of itself, is unlikely to result in an insanity defense.⁶⁷

66. People v. Strong, 338 N.E.2d 602, 605 (N.Y. 1975).

67. Lawson v. State, 966 N.E.2d 1273, 1282-83 (Ind. Ct. App. 2012).

C. Family Law

The Montana Supreme Court determined that the fact that one parent was a member of a church which performed exorcisms did not mean that the other parent was entitled to sole custody, so that the trial court's best-interests-of-the-child analysis was not clearly erroneous.⁶⁸

III. SUBSTANTIVE ASPECTS OF CLAIMS

A. Dismissal for Failure to State a Claim⁶⁹

Of course, a claim may also be dismissed if it is based on paranormal phenomena. Courts have, for example, dismissed claims as frivolous in the following circumstances: a claim in which the plaintiff alleged that the government implanted tracking devices in his body;⁷⁰ a claim asserting that the government inserted insects into the plaintiff's brain;⁷¹ a claim in which the plaintiff requested \$50,000,000 in compensation for providing psychic services for presidential administrations;⁷² a breach of contract claim in which the defendant offered \$1,000,000 in exchange for proof of the paranormal, and refused to pay the plaintiff when the plaintiff asserted that he had such proof;⁷³ a writ of habeas corpus alleging that the devil had forced the petitioner to commit a crime;⁷⁴ and a complaint alleging that FBI agents were monitoring and taping the plaintiff.⁷⁵

Of course, “[c]laims involving bizarre conspiracy theories or fantastic government manipulation of [one’s] will or mind are essentially fictitious and devoid of merit.”⁷⁶ It is also possible that a reviewing court could simply decline to address

68. *In re Marriage of Wang*, 896 P.2d 450, 451–52 (Mo. 1995).

69. For an interesting article concerning frivolous claims, see Gerald Lebovits, *The Devil's in the Details for Delusional Claims*, 75-OCT N.Y. ST. B.J. 64 (2003).

70. *Marino v. C.I.A.*, No. 11–813, 2012 WL 4482986, at *1 (D.D.C. 2012).

71. *Rogers v. Essex Cnty.*, 429 Fed. App'x 79, 81 (3d Cir. 2011).

72. *Bussie v. U.S.*, 96 Fed. Cl. 89, 93 (Fed. Cl. 2011).

73. *Simpson v. Zwinge*, 531 Fed. App'x 985, 986 (11th Cir. 2013).

74. *Hunter v. Douglas Cnty. Dist. Court*, No. 14–3048–SAC, 2014 WL 4538055, at *2 (D. Kan. 2014).

75. The court's discussion in that case was as follows:

Plaintiff alleges that he was taken hostage by a CIA agent that he has seen on television; that the police have been watching him for over a decade and have bugged his house; that his house is surrounded by “stake out” houses; that agents are leaving the stake out houses with their guns and breaking into his house while he sleeps; and that agents are giving him death threats. . . .

In addition, Plaintiff alleges that he is in possession of “federal camera’s [sic] that see threw [sic] clothes and walls”, which he ‘got from my ceilin [sic] fan they light sockets’; states that this is the reason his life is in danger; and alleges that he has been riding around with these cameras watching agents, who are having sex with each other in the stake out houses. He alleges that this is conspiracy to commit murder and unbecoming of an officer. He also alleges that the agents are violating the Fourth Amendment by using such cameras.

Watkins v. F.B.I., No. 3:14–CV–00585–JGH, 2014 WL 7342811, at *2 (W.D. Ky. 2014).

76. *Marino v. C.I.A.*, No. 11–813, 2012 WL 4482986, at *1 (D.D.C. 2012) (quotations omitted).

any part of a claim allegedly dealing with paranormal activity⁷⁷ or sanction the plaintiff.⁷⁸

B. Lawsuits against Fictional or Supernatural Entities

Many law students quickly become familiar with the case of *United States ex rel. Gerald Mayo v. Satan and His Staff*, in which a man sued Satan alleging that “Satan has on numerous occasions caused plaintiff misery and unwarranted threats, against the will of plaintiff, that Satan has placed deliberate obstacles in his path and has caused plaintiff’s downfall[]”⁷⁹ resulting in a deprivation of his constitutional rights.⁸⁰ The court denied the plaintiff’s motion to proceed in *forma pauperis*, as the plaintiff could not obtain personal jurisdiction over the devil or comply with the requirements for service of process.⁸¹ At least one habeas corpus suit has named God as a defendant.⁸² The court, in addition to citing *Mayo*, dismissed the suit because God “is not the immediate custodian of Petitioner’s present physical confinement.”⁸³ Furthermore, in *Jones v. God*, a civil suit against God and Jesus was also dismissed, with the court stating that due to a “question of service on the principal defendants, there is no factual basis for the exercise of this court’s subject matter jurisdiction.”⁸⁴

C. Psychologically Impacted Properties

In *Stambovsky v. Ackley*,⁸⁵ the New York Supreme Court Appellate Division held that a house in which the owner had previously advertised as being haunted was legally haunted in a claim rescission by a subsequent purchaser.⁸⁶ Despite this intriguing language in the opinion, the actual holding of the court was that home buyers were entitled a house’s history disclosed to them, when the house had a history of violence.⁸⁷ The opinion contains tongue-in-cheek statements such as: “if the language of the contract is to be construed as broadly as defendant urges to encompass the presence of poltergeists in the house, it cannot be said that she has delivered the premises ‘vacant’ in accordance with her obligation under the provisions of the contract rider[,]”⁸⁸ and “the most meticulous inspection and the search would not reveal the presence of poltergeists at the premises or unearth the

77. See, e.g., *State v. Gurath*, 847 N.W.2d 426 (Wis. Ct. App. 2014) (failing to address the defendant’s claim of the paranormal).

78. See *Maringo v. McGuirk*, No. H-07-0403, 2007 WL 7238940, at *3 (S.D. Tex. 2007) (warning the plaintiff that he could face sanctions); see also *Roller v. James Randi Educ. Found.*, No. 06-4702, 2007 WL 2892018, at *4 (D. Minn. 2007) (directing the clerk of court not to accept any further cases filed by the plaintiff unless the pleading is signed by an attorney).

79. *United States ex. rel. Mayo v. Satan and His Staff*, 54 F.R.D. 282, 283 (W.D. Pa. 1971).

80. *Id.*

81. *Id.*

82. *Harris v. Att’y Gen. of Pa.*, No. 11-766, 2011 WL 3652504, at *1 n.1 (W.D. Pa. 2011).

83. *Id.*

84. *Jones v. God*, No. 90-0742, 1991 WL 42399, at *1 (E.D. Pa. 1991).

85. *Stambovsky v. Ackley*, 169 A.D.2d 254 (N.Y. App. Div. 1991).

86. *Id.* at 256.

87. *Id.* at 260.

88. *Id.* at 260.

property's ghoulish reputation in the community."⁸⁹ The opinion even quotes the ghost in Shakespeare's Hamlet.⁹⁰

"Psychologically impacted" properties might include other paranormal events, such as sites of alien abductions.⁹¹ Other jurisdictions have held that psychologically impacted properties do not have "material defects[.]"⁹² or have abolished them by statute.⁹³

D. Subject Matter in Wills

In *In Re Kidd's Estate*, a man left a will which directed as follows: "[S]ell all my property which is all in cash and stocks with E. F. Hutton Co Phoenix some in safety box, and have this balance money to go in a research or some scientific proof of a soul of the human body which leaves at death[.]"⁹⁴

After holding that the language above created a valid trust, the Arizona Supreme Court then considered several different potential claimants who asserted they had such proof.⁹⁵ One "claim[ed] she saw her soul leave her body[.]"⁹⁶ Another based his claim of proof on biblical writings.⁹⁷ Another asserted that "he has engaged in the pursuit of scientific knowledge of psychical and spiritual phenomena including manifestations of the human soul."⁹⁸ The court dismissed one claimant who wished only to perform secular research, stating:

Kidd was not deluded by modern secularism into assuming that the Christian view of the world is so dull and pointless that it is not worth investigating. The affirmation of God as taught by the Christian Creed-the Communion of Saints, the Resurrection of the Body, and the Life Everlasting-is more satisfying to the intellect and more enriching to the human personality than its etiolated substitute, scientific humanism, the pursuit of which has led to materialism and the lack of moral responsibility.⁹⁹

89. *Id.* at 259.

90. *Id.* at 257.

91. Paula C. Murray, *Past or Present Environmental Contamination: Another Disclosure Duty for a Real Estate Broker?*, 25 REAL EST. L.J. 191, 193 (1996).

92. *Milliken v. Jacono*, 60 A.3d 133, 141 (Pa. Super. Ct. 2012), *aff'd*, 103 A.3d 806 (Pa. 2014).

While the murder/suicide may have been subjectively material to Buyer's decision, we hold that under common law fraud a seller of real estate is only liable for failing to reveal objective material defects. Psychological damage to real estate does not constitute a defect that the law is presently prepared to recognize as material.

Id.

93. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 93, § 114 (West 2015); MINN. STAT. ANN. § 82.68 (West 2014).

94. *In re Kidd's Estate*, 479 P.2d 697, 699 (Ariz. 1971).

95. *Id.* at 700.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* at 701.

The Arizona Supreme Court then instructed the lower court to make a determination as to which of the remaining claimants would be best suited to seek proof of the human soul.¹⁰⁰

E. Contracts¹⁰¹

In *Pando by Pando v. Fernandez*,¹⁰² a minor plaintiff agreed to pray for the defendant to win the lottery, buy a lottery ticket, and select the numbers.¹⁰³ In exchange, the defendant agreed to split her winnings with the plaintiff.¹⁰⁴ One of the plaintiff's tickets actually won \$2.8 million, and the defendant refused to split the proceeds with the plaintiff.¹⁰⁵

The defendant contended that it was impossible for the plaintiff to prove that a contract ever existed.¹⁰⁶ After stating that plaintiff's prayer was apparently a condition precedent for the fulfillment of any contract,¹⁰⁷ the court stated that "[i]t is not a sufficient answer that he prayed, and that one of the tickets he filled out was the winner. That would leave a gap in the proof, which must demonstrate not merely that winning followed prayer, but that plaintiff's prayer was the causative factor in winning."¹⁰⁸ In other words, "[t]o recover, plaintiff must demonstrate that his prayers caused the miracle to occur."¹⁰⁹ The court then stated as follows:

How can we really know what happened? Is a court to engage in the epistemological inquiry as to the acquisition of knowledge and belief through proof or through faith? Faith is the antithesis of proof. It is a belief which is firmly held even though demonstrable proof may be lacking. It is instinctive, spiritual, and profound, arrived at not through a coldly logical appraisal of the facts but, in Wordsworth's phrase, by "a passionate intuition". . . .

How, then, in a court of law, set up to require tangible proof, in a mundane setting, can a litigant establish that his faith and his prayers brought about a miracle? Perhaps they did, but there is no way to prove that in a modern courtroom.¹¹⁰

After a brief discussion of the history of "proving" miracles through the law, the court concluded that such proof in modern courts would be impossible:

100. *In re Kidd's Estate*, 479 P.2d at 704.

101. See C. S. Patrinely, Annotation, *Undue Influence in Nontestamentary Gift to Clergyman, Spiritual Adviser, or Church*, 14 A.L.R.2d 649 (1950).

102. *Pando v. Fernandez*, 485 N.Y.S.2d 162 (N.Y. Sup. Ct. 1984). For an article that discusses this case in more detail, see Robert Birmingham, *Proving Miracles and the First Amendment*, 5 GEO. MASON L. REV. 45 (1996).

103. *Pando*, 485 N.Y.S.2d at 164.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 167.

108. *Id.*

109. *Pando*, 485 N.Y.S.2d at 168.

110. *Id.*

The argument for ignoring the condition essentially is that plaintiff has done all he humanly could. He has performed as completely as he was able, and he should not be penalized because he cannot demonstrate that he brought about heavenly intervention. But heavenly intervention is exactly what defendant bargained for—that her pious young friend would bring about a miracle. It was not an incidental part of the agreement—it was its essence, its very heart and soul. Is she to be deprived of half the return on her investment, and plaintiff rewarded, because she was naive and gullible? Elision of the unprovable condition (tantamount to proof by default) would result in a rewriting of the contract into something other than what the parties intended. Defendant did not bargain for a propitious coincidence but for a miracle. If she believed it to have happened, she was free to show her appreciation or to withhold it, but a court could not compel her to do so. “There are no guarantees in life, and good fortune . . . does not invariably bring with it a life-long annuity.”¹¹¹

“Conjuring” and “performing incantations” over a sick man in order to cure him has also been held insufficient consideration for a promissory note.

Our conclusion is that “conjuring” over a sick man “to make him well” is not a valid consideration for a promissory note; and that no man with a healthy mind would voluntarily give a note for \$250, with interest at two per cent[] a month, for the services of a conjurer, who proposes to cure a lingering disease by conjury or incantations.¹¹²

Another court refused to consider that anything supernatural could ever be the subject of a contract, in a case in which the defendant promised to join a religion.¹¹³ The New York Supreme Court stated,

[r]eason cannot encompass the supernatural. Divine faith is supernatural. It seems that the recognition of the alleged fraud in this case eventually would require the civil courts to undertake to solve problems and to answer questions which are outside the civil aspects of marriage and should be left with the parties and their respective religious affiliations for possible solution.¹¹⁴

111. *Id.* at 169.

112. *Cooper v. Livingston*, 19 Fla. 684, 694 (1883).

113. *Nilsen v. Nilsen*, 66 N.Y.S.2d 204, 207 (N.Y. Sup. Ct. 1946).

114. *Id.*

Finally, a person who claims to have supernatural powers might give rise to a claim of undue influence if the person exercises this control over an unduly susceptible person.¹¹⁵

F. Torts

Of course, persons claiming to possess supernatural powers might properly be the subject of a claim of fraud.¹¹⁶ In *Haimes v. Temple University Hospital*, the plaintiff began experiencing frequent headaches after she received an x-ray from the defendant physician,¹¹⁷ and she allegedly lost her psychic abilities.¹¹⁸ The court remanded the case for a new trial¹¹⁹ after the jury awarded the plaintiff a \$600,000 verdict.¹²⁰ Though the court had previously disallowed any proof of the loss of the plaintiff's psychic abilities, the court reasoned that the jury likely did not follow these instructions.¹²¹

In *Glatzel v. Brittle*, the defendant provided a “non-fiction” account of the plaintiff's “demonic possession” to an author,¹²² which was published in the book *The Devil in Connecticut*.¹²³ The court dismissed the plaintiff's claim for invasion of privacy, stating that publication of the facts alleged would not be highly offensive to a reasonable person.¹²⁴ The court next dismissed the plaintiff's suit for libel as he had not alleged that the events described in the book were false.¹²⁵ The court also dismissed the plaintiff's claim under intentional infliction of emotional distress because the court found that the publication of the book did not rise to the level of extreme and outrageous conduct.¹²⁶

The Texas Supreme Court has held that there could be no recovery for the “laying of hands” by a plaintiff who had suffered no physical damages, stating that “determining the circumstances of [the plaintiff]'s emotional injuries would, by its very nature, draw the Court into forbidden religious terrain”¹²⁷ The United States Court of Appeals for the Ninth Circuit held that an allegation that a person has had an exorcism performed upon him or her is also insufficient to support a claim for intentional infliction of emotional distress.¹²⁸

115. *Fleischmann Distilling Corp. v. Distillers Co.*, 395 F. Supp. 221, 231 (S.D.N.Y. 1975).

116. *See, e.g., Mahler v. Beishline*, 46 Colo. 603 (Colo. 1909) (defendant claimed to have supernatural healing powers).

117. *Haimes v. Temple Univ. Hosp.*, 39 Pa. D. & C. 3d 381, 385 (Pa. Ct. Com. Pl. 1986).

118. *Id.*

119. *Id.* at 414.

120. *Id.* at 392.

121. *Id.* at 397–98.

122. *Glatzel v. Brittle*, No. DBCV084008461S, 2010 WL 4620975, at *1 (Conn. Super. Ct. 2010).

123. *Id.*

124. *Id.* at *2–3.

125. *Id.* at *3.

126. *Id.* at *3–4.

127. *Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 12–13 (Tex. 2008).

128. *Bodett v. CoxCom, Inc.*, 366 F.3d 736, 747 (9th Cir. 2004).

Another unique problem is presented when one libels another using the paranormal.¹²⁹ Though some courts have allowed a recovery when the defendant has ascribed a belief in Satanism or the occult to the plaintiff,¹³⁰ others have not.¹³¹ Such a statement, even if taken as true, might not be libelous. “On their face, we do not find that the words ‘voodoo practitioner’ and ‘practicer of voodoo magic’ are defamatory. These words are ambiguous in that while they might create connotations of evil and wrongdoing, they might also create a connotation of mysterious power and special ability.”¹³² These statements might also be a constitutionally protected opinion.¹³³

Finally, a court might hold that a recovery by a plaintiff is barred because such allegations could not possibly be true if the words impute the supernatural. For example, in one case the defendant stated of the plaintiff, “[w]hen one hisses as she does, they are possessed of the devil and she and her brother surely are evil looking.”¹³⁴ The Court held that there could be no recovery, and added “one finds a definition of the supposed evil which collides head-on with a present-day wonderment that witchcraft could ever have been practiced. Yet, this is the innuendo asserted.”¹³⁵

G. Evidence¹³⁶

Another unique problem is presented when a party seeks to introduce evidence which was allegedly obtained through paranormal means. Though early case law provided that a court should not allow a person to demonstrate his or her supernatural powers,¹³⁷ witnesses would occasionally testify regarding the paranormal.¹³⁸ Even before *Daubert*, appellate courts would generally still decline to consider any evidence that was allegedly obtained through the paranormal.¹³⁹ *Daubert*, no doubt, was adopted in order to prevent rulings such as this one:

129. For a much more in-depth discussion of this topic, see Gregory G. Sarno, Annotation, *Imputation of Allegedly Objectionable Political or Social Beliefs or Principles as Defamation*, 62 A.L.R.4TH 314.

130. *Id.* at § 20[a] (citing *Stow v. Converse*, 3 Conn 325, 325, 342 (1820)); *New Testament Missionary Fellowship v. E.P. Dutton & Co.* 112 A.D.2d 55 (N.Y. App. Div. 1985).

131. See Sarno, *supra* note 129, at § 20[b].

132. *Id.* (citing *Buller v. Pulitzer Pub. Co.*, 684 S.W.2d 473, 479 (Mo. Ct. App. 1984)).

133. *Id.* (citing *Holy Spirit Ass’n for the Unification of World Christianity v. Sequoia Elsevier Pub. Co.* 75 A.D.2d 523 (N.Y. App. Div. 1980)).

134. *Stickles v. Manss*, 114 A.2d 771, 774 (N.J. Super. Ct. Law Div. 1955).

135. *Id.* at 775.

136. See George L. Blum, *Admissibility and Prejudicial Effect of Evidence, in Criminal Prosecution, of Defendant’s Involvement with Witchcraft, Satanism, or the Like*, 18 A.L.R.5TH 804 (1994); see also *Hughes v. State*, 508 N.E.2d 1289, 1297 (Ind. Ct. App. 1987) (Testimony that defendant believed another person was possessed by a demon was admissible to show defendant’s attitude.).

137. *United States v. Ried*, 42 F. 134, 136 (W.D. Mich. 1890).

138. See *Geffert v. Kayser*, 192 N.W. 26, 30 (Wis. 1923) (“There is some testimony . . . in regard to having the exact place of the accident indicated to her by some supernatural force, that bears upon the weight and credibility of her testimony. It is not repeated here, because [it is] not deemed material upon the questions presented.”); see also *Chapa v. United States*, 261 F. 775, 776 (5th Cir. 1919) (“[T]he refusal of the court to permit more than 13 witnesses for the defense to testify that they had been cured by defendants’ daughter . . . was material . . . [to] . . . defendants’ good faith, as showing their own belief in the possession by their daughter of the occult power claimed for her.”).

139. One court said as follows:

No further attempt was made to develop the exact nature of these whisperings, so whether such development would have shown these to be merely the promptings of conscience that come to all of us, or that the victim actually believed she heard supernatural voices, we know not, but, giving the defendant the benefit of the doubt, and conceding that the evidence shows his victim believes she hears or has heard supernatural voices, she is not the first one to claim to have heard such voices, there are others, for example: Moses, Socrates, Saul of Tarsus, Mohamet, Emanuel Swedenborg, the second Earl Grey of England, Joan of Arc, Bernadette Soubirous, etc. We are neither prepared or disposed to go into an extended discussion of this, but the citation of these names of persons who, by what they have said and done, have affected the lives of vast numbers of mankind, is enough to show that such a claim does not render one incredible. All of this was for the jury to consider in determining whether or not to believe her testimony.¹⁴⁰

“Human polygraphs,” or those who claim to instinctively know when a person is lying, are generally prohibited as evidence.¹⁴¹ At least one court has held that impeachment evidence that a witness participated in Satanic worship, including that the witness had been possessed by a demon and had previously given his soul to the devil to save a child’s life, was within the discretion of a trial judge.¹⁴² Furthermore, a federal court in Michigan ruled that there was no violation of a defendant’s Sixth Amendment Confrontation Clause right when he was disallowed from questioning the complaining witness in regards to statements that she was sexually assaulted by a demon.¹⁴³

If a man comes into court claiming to possess supernatural powers and brings with him witnesses who swear he has done for them that which we know is impossible, we are not required to believe such evidence. Here was a woman, who perhaps believed what she said, who testified that by a mental process of one of these plaintiffs, transmitted to her through a letter several hundreds of miles away, she was entirely cured of a cancer of the breast. The fact that the plaintiff, who was supposed to have transmitted the influence from Nevada, was not there at the time does not add to the absurdity of the statement. And the testimony of other witnesses, perhaps also sincere, to the effect that they were cured of otherwise incurable diseases by such mysterious process can have absolutely no lodgment in our intelligence.

Sexton v. Metro. St. Ry. Co., 149 S.W. 21, 25 (Mo. 1912). *See also* Elsworth v. Glindmeyer, 234 So. 2d 312, 321 (Miss. 1970) (“No court is required to believe, or should be bound by improbable, incredulous, or unreasonable evidence supporting a verdict, as in the case at bar, which is violative of physical laws, human experience and common sense, and which intrudes into the realm of the supernatural.”).

140. McPerkin v. Commonwealth, 33 S.W.2d 622, 624 (Ky. Ct. App. 1930).

141. Flynn v. State, 847 P.2d 1073, 1075–76 (Alaska Ct. App. 1993).

142. State v. Ware, No. 03C01-9705CR00164, 1999 WL 233592, at *18 (Tenn. Crim. App. 1999).

143. Piscopo v. Michigan, No. 2:07-CV-15398, 2010 WL 4942660, at *7-8 (E.D. Mich. 2010).

IV. CONCLUSION

There is little place for discussion of the supernatural within the hallowed halls of academia, and some in academia have expressed their outright hostility to the subject.¹⁴⁴ In many of the cases in which one of the parties has a subjective belief in the paranormal, the court chooses not to engage in a substantive analysis of the paranormal.¹⁴⁵ This, presumably, is to preserve the integrity of the legal process.¹⁴⁶ However, occasionally a non-frivolous claim will implicate the paranormal.¹⁴⁷ In these instances, some courts mention the fact that subjects of religion are commonly accepted, with the seeming implication that such occurrences are not outside the realm of remote possibility.¹⁴⁸ Other courts, such as the New York Superior Court, simply ask, “How can we really know what happened?”¹⁴⁹

Similarly to the cases discussed herein, there is no real conclusion to this article. The subject matter of these claims is too subjective and unprovable. Regardless, by studying this subject, lawyers and judges might look inwardly to discover not only the appropriate boundaries of the legal system generally, but also the extent to which the unprovable can ever be proved in a court of law.

144. See Warner, *supra* note 23.

145. See Goldberg v. R. Grier Miller & Sons, Inc., 182 A.2d 759, 761 (Pa. 1962).

146. *Id.*

147. See, e.g., Pando v. Fernandez, 485 N.Y.S.2d 162, 164 (N.Y. Sup. Ct. 1984).

148. McPerkin v. Commonwealth, 33 S.W.2d 622, 624 (Ky. Ct. App. 1930).

149. Pando, 485 N.Y.S.2d at 168.