

PHOTOGRAPHY BY BRADLEY SLADE

Confirm THY *Soul* IN SELF Control

by Elder D. Todd Christofferson

The following speech was presented to the Orange
County and Los Angeles Chapters of the J. Reuben Clark
Law Society on September 29 and 30, 2000.



It is an honor to address you, members of the J. Reuben Clark Law Society and guests. Thank you for the generosity of your invitation to speak on this occasion. As a theme for my remarks, I have borrowed a line from the well-known anthem "America the Beautiful." It is both a plea and a noble aspiration: "Confirm thy soul in self-control." While I hope that the thoughts I will offer are not inconsistent with my calling in the Church, I hasten to state that they are my own observations, opinions, and conclusions and should not be construed as a statement by or the position of The Church of Jesus Christ of Latter-day Saints.

My first job out of law school was as law clerk to the Honorable John J. Sirica, then chief judge of the u.s. District Court for the District of Columbia. It was August 1972, and within days the u.s. attorneys' office presented a grand jury indictment against Howard Hunt, Gordon Liddy, James McCord, and four Cuban-Americans for their role in the break-in at the Democratic National Committee headquarters located at the Watergate office complex in Washington. Thus began a two-year saga of legal proceedings under the rubric of "Watergate."

It was, as you can imagine, an incredible experience for one fresh out of law school, and not only for me. On one occasion in the midst of trials and hearings and White House tapes, Judge Sirica said to me, "I hope you appreciate this. Not many law clerks get an experience like this." Then after a momentary reflection, he added, "I guess not many judges do either."

I remember the feeling of pride I had in the legal profession during the argument over the grand jury subpoena to the president to produce his tape recordings of several meetings in the White House and Executive Office Building. It was an historic moment. Not since the time of Thomas Jefferson had a president of the United States been requested to produce evidence in a criminal proceeding. In Jefferson's case the matter had been resolved short of enforcement measures. There was really no precedent with respect to a contested subpoena. In the large ceremonial courtroom of the u.s. courthouse in Washington, with the statues of Solon and Moses looking on, special prosecutor Archibald Cox, representing the grand jury, and

Professor Charles Alan Wright, representing President Nixon, stood before Judge Sirica to present the case for and against the subpoena. I felt I was watching a battle of the Titans. Both were great men of the law, and in such moments I knew I had entered a noble profession. Indeed to a large extent, it was lawyers who successfully brought the nation through the Watergate crisis.

On the other hand, to some extent it was lawyers who made Watergate what it was in the first place. As I sat through the break-in trial, subsequent cover-up case, and other proceedings observing some of the defendants and witnesses who were lawyers with not so clean hands, I had moments of doubt. I began to ask myself what accounted for the difference between an Archibald Cox and a John Mitchell, both apparently decent men, both skilled in the profession, and yet one, Mr. Mitchell, apparently willing to approve a scheme of illegal electronic eavesdropping and wiretaps for a possible political advantage. I began to wonder what would protect me from succumbing to the pressures that might, in the future, come from clients or others to step over the moral and ethical line to secure a crucial advantage. I saw that, in one case, a junior White House officer about my age, in complying with his superior's orders to destroy certain files, had committed a criminal act without fully realizing it. Could I recognize in every instance, I asked myself, where the line is?

I found an answer to these concerns in the course of listening to the White House tapes. When President Nixon finally did produce the subpoenaed tape recordings of White House meetings and telephone calls, Judge Sirica screened them to identify those portions relevant to Watergate, which were, in turn, to be passed on to the special prosecutor and grand jury. With headphones, and using a tape recorder graciously provided by the White House (one of the recorders that had been used to record the tapes initially), the judge and I listened to hour after hour of meetings between Nixon, his aides John Erlichman and Bob Haldeman, legal counsel John Dean, and others.

In the course of listening in on these discussions, I became convinced that Richard Nixon had not had prior knowl-

edge of Gordon Liddy's scheming nor John Mitchell's acquiescence in those schemes. Not long after the arrests of James McCord and the Cuban-Americans at the Watergate office building, however, Nixon was informed of the relationship between the burglars and his reelection committee, learning that it had funded their activities. I deduced from the conversations that Nixon also had some information about the role of his good friend John Mitchell. It was at this point, I think, feeling the expediency of helping a friend and of avoiding embarrassment to his reelection campaign, if not to himself, that the president of the United States committed a criminal act: obstruction of justice. He approved his aides' recommendation that they get the CIA to intervene with the FBI in such a way as to throw the FBI off the money trail—the \$100 bills found in James McCord's pockets that would lead them to the Committee to Reelect the President. And so, in succumbing to the pressures of the moment, he stepped off the rock of principle.

The supposedly simple solution did not suffice for long, nor did a continuing series of expedient measures that followed. The bandages, so to speak, were always inadequate. So what began as a small cut grew and festered until it became a mortal wound. President Nixon on many occasions could have said, "No, we will not do this. We must be truthful and, if a storm comes, ride it out." It would have required courage, but, had he done so, there would have been no Watergate as it came to be and no resignation under threat of impeachment.

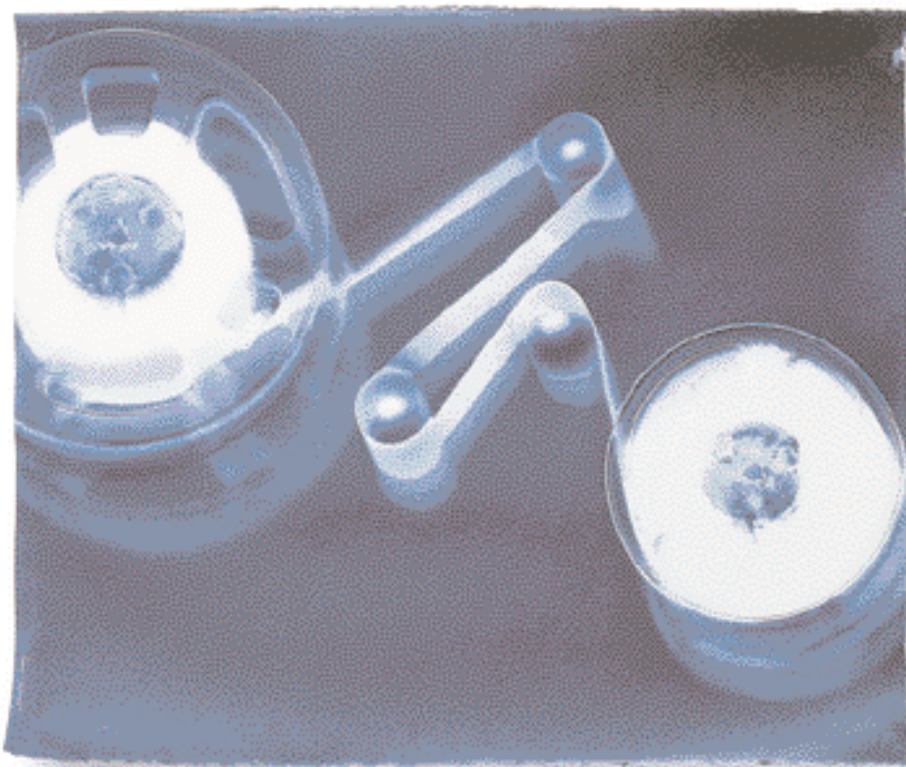
Some do "get away with" dishonest or unethical, even immoral conduct in this imperfect world, but there is no real security except in the consistent adherence to principle. If one ever makes an exception, as did the president with Watergate, his safety evaporates. Contrary to the opinion of some, I do not think President Nixon was a bad man nor that an evil nature accounts for his mistakes. I believe he was essentially a good man who allowed himself exceptions to the moral standard he generally lived by. Watergate taught me that any exception to moral principle, no matter how well reasoned or rationalized, poses a real danger to individuals, to the

rule of law, and to society. In the words of Pope John Paul II:

When it is a matter of the moral norms prohibiting intrinsic evil, there are no privileges or exceptions for anyone. It makes no difference whether one is the master of the world or the "poorest of the poor" on the face of the earth. Before the demands of morality we are all absolutely equal.'

In one sense, the ABA's Model Rules and Code of Professional Responsibility work against us as we seek to adopt and guide by high moral norms without exceptions. They do this, at times, by focusing on very fine points and close distinctions, encouraging in some a tendency to rationalize and a propensity to walk as closely to the line as possible, though they hope not to cross it. In a 1996 article in the *Wisconsin Law Review*, Professor Marianne M. Jennings, a 1977 graduate of the BYU Law School, took a good-humored swipe at what sometimes comes across in the Code and the Rules as a search for loopholes and exceptions. She titled her article "The Model Rules and the Code of Professional Responsibility Have Absolutely Nothing to Do with Ethics: The Wally Cleaver Proposition as an Alternative."² Reviewing a series of headlines reporting the actions of certain lawyers that clearly violated basic moral standards of honesty and fairness, Professor Jennings observed:

Somehow I envisioned the practice of law as something a bit more noble than seeing how much I could get away with. And here we reach the central thesis of this piece: Can we move to a higher standard than how much we can get away with? [Footnote 19: I call this thesis the Cleaver proposition, named after the infamous Wally who said, "You know, Beaver, there's only so much junk you can get away with before you get creamed." Getting creamed at Mayfield Elementary meant something different than getting creamed as a lawyer. But the underlying principle is the same: sooner or later we get in trouble when we engage in junky behavior. The public perception is that lawyers have the emotional maturity and behavior of Beaver Cleaver. We're getting closer to being creamed every day. James H. Cossitt pro-



*Watergate taught me that any exception to moral principle,
no matter how well reasoned or rationalized, poses a real danger
to individuals, to the rule of law, and to society.*

*posed a less star-studded approach to lawyer ethics. He wrote that conduct by lawyers should survive the "smell" test. (See James H. Cossitt, "The Smell Test," Bus. L. Today, July-Aug. 1996, at 8.) Wally would put it this way: "Gee, that really stinks."*³

I am not suggesting that we abandon the Model Rules and Code of Professional Responsibility. These and the opinions of the ABA Standing Committee on Ethics and Professional Responsibility can be of significant practical help in supporting and reinforcing our commitments to speak truthfully, honor obligations, and respect confidences. They define a line that once crossed mandates disciplinary action. But we should not expect rules to perform a task that, by their nature, they

cannot achieve. They simply cannot fill the role of ultimate compass or guide.

Codes and rules can serve to strengthen praiseworthy commitments on the one hand or to encourage "what-can-I-get-away-with" lawyering on the other. The outcome depends on whether or not we remain loyal to the fundamental values or principles that underlie the rules. Cut loose from the core principles that have supported our civilization for centuries, ethical norms lose their vitality, just as a branch cut from a tree or a plant severed from its roots.

President J. Reuben Clark, Jr., had this concept in mind when he addressed religious educators of The Church of Jesus Christ of Latter-day Saints nearly 60 years ago. To these instructors of teenagers and young adults he said:

The teaching of a system of ethics to the students is not a sufficient reason for running our seminaries and institutes. . . . The students of seminaries and institutes should of course be taught the ordinary canons of good and righteous living, for these are part, and an essential part, of the Gospel. But there are the great principles . . . that go way beyond these canons of good living. These great fundamental principles also must be taught to the youth; they are the things the youth wish first to know about. . . .

. . . [W]e shall not feel justified in appropriating one further tithing dollar to the upkeep of our seminaries and institutes unless they can be used to teach the Gospel in the manner prescribed. The tithing represents too much toil, too much self-denial, too much sacrifice, too much faith, to be used for the colorless instruction of the youth of the Church in elementary ethics.⁴

President Clark correctly perceived that ethics do indeed become “colorless” without the foundation of moral principles that endow those ethics with life and vigor. These principles are often rooted in venerable religious doctrines like those embodied in the commands, “Thou shalt love thy neighbor as thyself” (Leviticus 19:18; Mark 12:31), “Thou shalt not bear false witness” (Exodus 20:16), and “Honor thy father and thy mother” (Exodus 20:12). Emanating from such teachings are the principles of service, compassion, honesty, fairness, loyalty, responsibility, and justice. These give essential vitality to codes and canons, which then can reinforce and help clarify the application of these guiding principles.

The great benefit of a life founded on principle is that it permits self-direction and self-government. The law that governs one’s conduct is within; external rules are secondary or supplementary. This affords maximum liberty in professional life and in life generally—not maximum license, but maximum liberty. When principles guide choices, few rules are needed. Principles can move from one situation to another providing a paradigm that focuses the facts and points a proper course. Rules alone are not up to that task. We can never conceive and draft enough rules to cover all events and circumstances, and, even if we could, who could ever read and remember them all? Model rules and a

code were not what Richard Nixon needed. He needed an unwavering commitment to honesty. In Nixon’s case, lodestar principles could have guided him successfully through the Watergate minefield, or rather would have enabled him to stop Watergate in its tracks at an early stage.

So it is with the brotherhood and sisterhood of the bar. Ethical rules cannot replace moral principles. If a commitment to principles is lacking, we can never produce an adequate volume of rules as a substitute or a sufficiently large army of monitors and bureaucrats to enforce them. John Adams, our second president, is reported to have said, “Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”⁵ Similarly, if lawyers cannot largely govern themselves by principle, no written constitution or code will suffice to force us onto an ethical path.

The proliferation of rules of conduct in the profession and of rules and regulations in society is simply testament to the fact that our commitment to principles is diminishing. Self-control, and the sense of responsibility that engenders it, are not much emphasized. The tendency is rather to focus on rights and encourage individuals to see the rest of the world as responsible to affirm their rights. Responsibility is shifted to others.⁶

Not long ago I was a guest of the Museum of Tolerance at the Simon Wiesenthal Center in Los Angeles. One interactive exhibit focusing on personal responsibility is called the “Point of View Diner.” It is designed as a traditional 1950s diner complete with a counter and booths, red vinyl seats, and individual jukeboxes that are actually computer monitors. At one end of the diner is a large television screen showing a simulated nightly news program. The news program I saw was the report of a fictional accident in which a drunk teenage driver, returning from the prom with his date, ran into another vehicle and was killed. The screen shows the aftermath—a close-up of the death car where police and firemen are working to free the injured girlfriend. Looking on in anguish is the dead teenager’s mother.

On the jukebox screen one can see the players of this drama and hear them answer questions that the visitor selects from a list on the screen. For example, in one response, the injured girlfriend, who used a fake ID to buy liquor for Charlie, the deceased driver, says, “I loved Charlie; it’s not my fault! Everyone drinks. Give me a break! He asked me to get it; I didn’t make him drink it.” The liquor store owner asserts it is unrealistic to expect him to determine the validity of every ID. “The problem isn’t me. Don’t you think the responsibility lies with the kid who got drunk?” Charlie’s mother acknowledges that she knew about his drinking but is defiant in reaction to a question implying that her own lax parenting had something to do with the tragedy.

After having seen the news report and the answers to these interview questions, visitors use buttons on the jukeboxes to vote on the comparative responsibility of the players: Charlie, his date, his mother, and the liquor store owner. The levels of responsibility are ranked one through five, five being the highest.

My guide made a surprising comment about the reaction of high school students. The vast majority assign a very low level of responsibility to Charlie for what happened. They see the mother, the liquor store owner, and Charlie’s date as more at fault than Charlie himself, who chose to drink and who caused the accident in which he was killed. After reflecting about this attitude, it seems to me to reflect a philosophy that is gaining acceptance among all age groups in our society. It is a philosophy in which each person sees himself or herself more and more the victim of circumstance and other people’s choices, and therefore, less and less responsible for his or her own choices and their consequences.

If you can shift responsibility for your life to parents, friends, teachers, society, or even God, you can excuse in yourself any failing and will expect others to make right any trouble that comes your way or that you cause for others. This desire to evade responsibility is not a new phenomenon; throughout history people have been tempted to take this easy way out. When Moses returned from his 40 days on

Mt. Sinai and called Aaron to account for making the golden calf, Aaron responded:

Let not the anger of my lord wax hot: thou knowest the people, that they are set on mischief.

For they said unto me, Make us gods, which shall go before us: for as for this Moses, the man that brought us up out of the land of Egypt, we wot not what is become of him.

And I said unto them, Whosoever hath any gold, let them break it off. So they gave it me: then I cast it into the fire, and there came out this calf.⁷

No, seeking to avoid or deny the unpleasant demands of responsibility is not new in this world. What is new in our time is how widely the philosophy of irresponsibility is being accepted and even institutionalized. For example, current trends in tort law are modifying the traditional rules of negligence to require that every victim of an accident be compensated by people who have money, whether or not the people with money play any material role in causation. We seem to be heading toward the creation of some general right to be compensated by someone, somewhere, for every misfortune or disappointment that occurs in life. One wonders, when we have all become victims, who will be left to compensate us?

The doctrine found in the scriptures is something quite different. God requires those of us who are accountable, who have the capacity of choice, to assume responsibility for ourselves. He gives us our moral agency and expects us to guide our lives according to true principles. Among other things, this means that we are obligated to repent when we make mistakes. If we were not obligated to confess and change and make restitution, if our behavior was glossed over and God was responsible to handle the consequences, we would be nothing more than his puppets. Anything that happened in our lives and what became of us in the end would depend entirely on His interventions. That, you will recall, was Lucifer's idea about how things should operate. He, in fact, would have been more than happy to take care of everything and control our lives. He volunteered to do it. But if we jettison

responsibility, we also forfeit self-control and the liberty it makes possible.

My plea is that we do what we can to inspire principled conduct and acceptance of responsibility, first in ourselves, next at home, and then wherever our influence extends. This is not simply for the great decisions and moments in life, but most important, in the minutiae of daily life. In a commencement address delivered in April 1994 at Brigham Young University, John Q. Wilson, a political science professor at UCLA, noted that simple acts of personal responsibility are both the hardest and the most important work we have to do. He said:

Commencement speakers are supposed to urge you to rise to the highest challenge, pursue the impossible dream, excel at the loftiest ambitions. I will not do that. It is too easy, and too empty. The easiest thing to do is to support great causes, sign stirring petitions, endorse grand philosophies. The hardest thing to do—and it is getting harder all the time—is to be a good husband or wife, a strong father or mother, an honorable friend and neighbor.

Professor Wilson continued:

The truly good deeds are the small, everyday actions of ordinary life: the employee who gives an honest day's work; the employer who rewards loyalty and service; the stranger who stops to help someone in need; the craftsman who builds each house as if he himself were going to live in it; the man who unhesitatingly accepts responsibility for the children he has fathered; the father who wants the respect of his children more than admission to the executive suite; the mother who knows that to care for an infant is not an admission of professional failure; the parents who turn the television off even when their children want to watch just one more hour of some bit of Hollywood drivel; the neighbors who join together to patrol a neighborhood threatened by drug dealers; the hiker who carries his own trash out of the park; the landlord who paints out the graffiti without waiting for the city authorities; the juror who judges another on the basis of the principle of personal responsibility before the law. These are the heroes of daily life. May you join their ranks.⁸

There can be no substitute for self-control based on internalized true principles. By personal experience I know that, after all we can do, we may rely on One whose love we little comprehend to do what we cannot. I honor the Savior and bear witness of His grace. I pray His rich blessings upon you.

NOTES

¹ John Paul II, *The Splendor of Truth: Veritatis Splendor*, para. 96 (1993); cited in Robert J. Muise, "Professional Responsibility for Catholic Lawyers: The Judgment of Conscience," 71 *Notre Dame Law Review* 771 at 781–82 (1996).

² Marianne M. Jennings, "The Model Rules and the Code of Professional Responsibility Have Absolutely Nothing to Do with Ethics: The Wally Cleaver Proposition as an Alternative," 1996 *Wisconsin Law Review* 1223 (1996).

³ *Id.* at 1227.

⁴ J. Reuben Clark, Jr., "The Charted Course of the Church in Education," in *J. Reuben Clark: Selected Papers*, ed. David H. Yarn, Jr., BYU Press, Provo, Utah, 1984, pp. 249, 254.

⁵ Cited in *Teachings of Ezra Taft Benson*, Ezra Taft Benson, Bookcraft, Salt Lake City, Utah, 1988, p. 597.

⁶ The thoughtful Russian dissident and historian Aleksandr Solzhenitsyn, in an interview with *Time* magazine several years ago, responded to this question: "You have said the moral life of the West has declined during the past 300 years. What do you mean by that?" Solzhenitsyn responded:

*There is technical progress, but this is not the same thing as the progress of humanity as such. In every civilization this process is very complex. In Western civilizations—which used to be called Western-Christian but now might better be called Western-Pagan—along with the development of intellectual life and science, there has been a loss of the serious moral basis of society. During these 300 years of Western civilization, there has been a sweeping away of duties and an expansion of rights. But we have two lungs. You can't breathe with just one lung and not the other. We must avail ourselves of rights and duties in equal measure. And if this is not established by the law, if the law does not oblige us to do that, then we have to control ourselves. When Western society was established, it was based on the idea that each individual limited his own behavior. Everyone understood what he could do and what he could not do. The law itself did not restrain people. Since then, the only thing we have been developing is rights, rights, rights, at the expense of duty ("Russia's Prophet in Exile," *Time*, July 24, 1989, 60).*

⁷ Exodus 32:22–24.

⁸ John Q. Wilson, "The Moral Life," Brigham Young University commencement address, April 21, 1994.

Elder D. Todd Christofferson is a member of the Presidency of the Seventy of The Church of Jesus Christ of Latter-day Saints.