



THE
BOOK
OF
MORMON

AND
OF J

TRUTH, CIVILITY, AND ADVOCACY

THE LATTER-DAY SAINT LAWYER'S CALLING

Elder Evan A. Schmutz, '82, *General Authority Seventy*,
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

It is a distinct honor to speak with members of the J. Reuben Clark Law Society. I am impressed by the singular nature of our mission statement:

We affirm the strength brought to the law by a lawyer's personal religious conviction. We strive through public service and professional excellence to promote fairness and virtue founded upon the rule of law.

ILLUSTRATIONS BY CHRISTOPHER THORNOCK

Members of this society represent the best of our profession as they stand for the convictions of those who profess Jesus Christ in the way they live. As members of our society, we should not separate our identity as lawyers from our identity as disciples of Jesus Christ. In this way, we can truly look to Christ, who is “the Apostle and High Priest of our profession” (Hebrews 3:1). I am confident you will continue to exemplify the better angels of the legal profession through your own lives and standards.

I am not a scholar, and this is not intended to be a scholarly presentation. I was a practitioner for many years. And, like you, I am a disciple of Jesus Christ. I would like to reflect on some observations I have made and a few experiences I have encountered over the years, and I would like to invite you who are listening to consider on how we might with more fidelity combine our professional lives with our discipleship. I am especially mindful of the men and women who are now in law school or are recently graduated.

TRUTH IN WORD; TRUTH IN DEED

I remember early in my law school training reading a quote that is inaccurately attributed to Abraham Lincoln: “A lawyer’s time and advice are his stock in trade.” I want to take issue with that statement. As most lawyers in private practice would attest, time spent at work may be necessary to support a bill for legal services or important to elevate a young lawyer in the eyes of the senior partners, but it does not define the value of the lawyer, nor is it central to defining the character we possess or the contributions we make on behalf of those we represent.

In my experience, it is more correct to say that the words—the skillful use of reasoned language, both written and spoken—and the character of the lawyer are a more valuable stock in trade. Whether we focus on transactional law or litigation, we seek to persuade others to move their position in favor of our client’s position. And persuasion—though it must be built on a foundation of legal and procedural principles soundly applied to evidence, to facts—is always accomplished through the skillful use of words and phrases intended to influence thought and action in alignment with our client’s cause.

When the words we use are true and the way we use them aligns with the character of a disciple of Christ, we can “be the means of doing much good in this generation” (Doctrine and Covenants 6:8).

However, words and language are also the means people use to defraud and deceive. Hence, the Savior’s cautionary rebuke to the Pharisees should remain in our hearts:

[E]very idle word that men shall speak, they shall give account thereof in the day of judgment.

For by thy words thou shalt be justified, and by thy words thou shalt be condemned. [Matthew 12:36–37]

The lawyer who seeks to follow Jesus Christ must be vigilant to see that with this skillful use of language we do not cloud, shade, or abuse the truth. We must be honest in all our professional endeavors and communications, just as we must be honest in our personal and private activities. Honesty is entwined with covenant making and covenant keeping. There must be no deceit, and there should be no artifice used to obscure truth in the impressions we create.

We live in the day foreseen by Paul, when “perilous times shall come,” when people would be “ever learning, and never able to come to the knowledge of the truth” (2 Timothy 3:1, 7). We live in a day when misinformation is spread intentionally, when fake news abounds, a day when truth is both hard to find and difficult to discern. There is a public perception that lawyers cannot be trusted and that judicial determinations are often made by corrupt practices and political affiliation rather than by law and justice.

We must stand as a bulwark against deceit. If we are not steadfast in seeing that all our communications are truthful, we can be dulled by the lesser standards that we may see around us. As Elder Neil L. Andersen once observed:

The world would tell us that truth and honesty are difficult to define. The world finds humor in casual lying and quickly excuses so-called “innocent” deception. The contrast between right and wrong is dulled, and the consequences of dishonesty are minimized. [“Honesty—the Heart of Spirituality,” BYU devotional address, September 13, 2011; see Andersen, “The Divine Standard of Honesty,” *Ensign*, August 2017]

As an exclamation point to Elder Andersen’s statement, the Oxford University Press declared that the Oxford Dictionaries Word of the Year for 2016 was the hyphenated word *post-truth*. This recently minted word, according to Oxford, “is an adjective defined as ‘relating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief’” (“Word of the Year 2016,” Oxford Languages, Oxford University Press, languages.oup.com/word-of-the-year/2016).

In other words, the developing standard for truth in our society is “difficult to define”; it is relative in its meaning, hewing to no fixed or immutable standard of

honesty in fact or intention. Under this definition, feelings and opinions are substitutes for actual truth. By this standard, if you want to achieve something you believe is right, you can be excused for not speaking truthfully so long as the outcome is expedient.

This shifting standard of truth has an especially pernicious impact on the judicial system and the legal profession.

Unfortunately, it seems that every reference to attorneys and most references to judges found in the scriptures are not flattering. But we can learn from them, and we can commit to scrupulously practice our profession with integrity and truth. One scriptural reference provides a case study.

In Alma 10, Amulek and Alma were confronted by a lawyer named Zeezrom who acted as surrogate for an informal jury of wicked citizens intent on spilling the blood of the prophets. Zeezrom began to question Amulek by cunning device so he could catch him in his words and “find witness against [him] . . . according to the crime which they could make appear” (Alma 10:13). In other words, where no crime existed, Zeezrom was determined to find one and to convict through false witness and crafty traps laid by words and questions. Zeezrom was a well-trained lawyer, “learned in all the arts and cunning of the people [and] . . . skilful in [his] profession” (Alma 10:15).

I will read the brief transcript of Zeezrom’s cross-examination:

[Question:] *Who is he that shall come? Is it the Son of God?*

[Answer:] *Yea.*

[Question:] *Shall he save his people in their sins?*

[Answer:] *I say unto you he shall not, for it is impossible for him to deny his word.* [Alma 11:32–34]

Turning to the crowd, Zeezrom said:

See that ye remember these things; for he said there is but one God; yet he saith that the Son of God shall come, but he shall not save his people—as though he had authority to command God. [Alma 10:35]

Of course, this was a classic case of Zeezrom deceptively twisting Amulek’s words to attack a statement Amulek had not made. In the strength of his righteous courage, Amulek exposed the lie in Zeezrom’s sophistry and ultimately brought Zeezrom “to tremble under the consciousness of his guilt” (Alma 12:1).

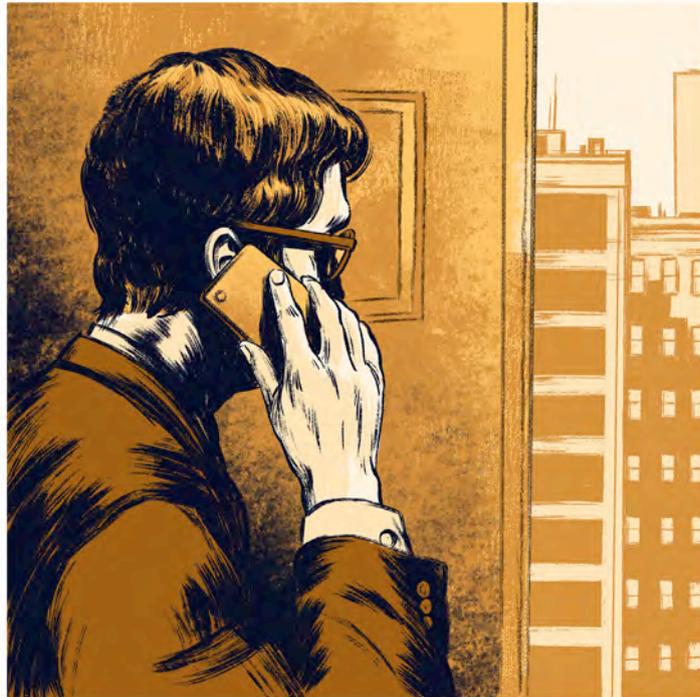
By using Zeezrom as a bad example, I do not mean to lessen the powerful role of an effective cross-examination, nor do I want to suggest that carefully prepared impeachment of a witness who has changed his testimony should not be in the effective advocate’s toolbox. However, fidelity to truth is a standard we must carefully guard, and we should not justify or rationalize any lowering of that standard just because we could gain an advantage in the contest.

Now, let me offer a contrast. About 15 years ago, I was sitting in my office when a call came from a fellow attorney who was as close to me as my own brother, a man I admired greatly as a lawyer and as a man of faith. He was distraught because of a statement he had made in an oral argument during a judicial hearing the day before. He had stayed up all night fretting about it and then called me to discuss it the next morning. Having reflected on his argument as he reviewed the record of the case, he felt a correction was needed but wanted my advice.

As we reviewed the circumstances, what had been said, and what he had learned that made him feel his statement had been potentially misleading, I was convinced that his statement had not been intentionally made, had not violated any provision of the Rules of Professional Conduct, had not been material to the subject or issue of the hearing, and would not impact the decision of the court. I felt that a correction was not required but suggested he call opposing counsel and inform him of the misstatement.

In the end, however, my friend chose to request a telephone conference with the court and counsel so he could correct the statement and any incorrect impression that may have

*Remarks delivered at the
J. Reuben Clark
Law Society
Annual Fireside
on February
26, 2021.*



been left with the court or with counsel. The conference did not change the court's decision, but I am sure it enhanced my friend's reputation for honesty. It also cleared any concern in his mind that he had let stand an untruthful statement.

Elder Andersen described the higher standard followed by my friend:

[Because we are] disciples of Christ, the divine standard of honesty grows within us. . . . [Putting] off the natural man" is in part a call for a more heightened sense of honesty and truth. ["Honesty—the Heart of Spirituality"; see "Divine Standard of Honesty"; quoting Mosiah 3:19]

Our obligation to be truthful in our communications is not limited to the courtroom. Speaking truth should prevail in all our client communications, in the way we fulfill responsibilities to disclose information to attorneys for opposing parties, in the way we counsel witnesses to prepare for examination, and in the way we seek fairness in presenting the position of our clients or causes. We should hold to a standard of honesty-in-fact and honesty-in-principle in all that we do. We do this by letting our conscience guide us in our communications.

Members of this society, young and old, can benefit from the lesson Elder D. Todd Christofferson learned through his experience with the Watergate proceedings, which led to the resignation of President Richard M. Nixon. Elder Christofferson said:

The life lesson I took away from [Nixon's] experience was that my hope for avoiding the possibility of a similar catastrophe in my own life lay in never making an exception—always and invariably submitting to the dictates of an ethical conscience. [Quoted in Jason Swensen, "How the Watergate Scandal Taught Elder Christofferson to Always Follow His Conscience," Leaders and Ministry, Church News, November 30, 2018]

CIVILITY, KINDNESS, AND CHARITY

Let me now turn to another subject of importance. I speak of the need for civility, kindness, and charity in our professional relationships and discourse. As I look back on the more than 30 years of my legal career, spent mostly in the trenches of litigation, I recall many in our profession whom I came to admire and greatly respect. Many of these I met when we represented opposing parties. In these attorneys I saw examples of cooperation, fair compromise, civility, kindness, and charity. Adversarial representation often turned to long-lasting friendship.

However, I cannot avoid the conclusion that civility among attorneys has eroded since I began practicing. Certainly, there are many attorneys who are consummately professional and respectful in their bearing and communications and outstanding in their skills. But it seems to me that the incidence of sharp dealing, vitriolic rhetoric, less cooperation, and less civility has become more frequent. There is a temptation in our profession to impress clients by being mean and hard dealing, unwilling to extend courtesies or work toward fair compromise. With some, it seems the desire to win at any cost is paramount.

We must stand against that trend. We must remember we are disciples of Christ first and attorneys and advocates second. Or better still, we must be at the same time attorneys and advocates who are disciples of Christ. Thus, we can be effective *advocates* and gracious, effective *adversaries* at the same time.

THE [TELEPHONE] CONFERENCE DID
NOT CHANGE THE COURT'S DECISION,
BUT I AM SURE IT ENHANCED MY
FRIEND'S REPUTATION FOR HONESTY.

A short lesson in the history of politics might provide some guidance in how we can accomplish this. Vitriolic rhetoric when expressing differing political philosophies is not new to our country. In the earliest days of our nation's founding, politics was tumultuous. As one historian described it:

The politics of the 1790s was truly a cacophonous affair. . . . [I]n terms of shrill accusatory rhetoric, flamboyant displays of ideological intransigence, intense personal rivalries, and hyperbolic claims of imminent catastrophe, it has no equal in American history. [Joseph J. Ellis, *Founding Brothers: The Revolutionary Generation* (New York: Alfred A. Knopf, 2000), 16]

For those who have spent much time in the courtroom, that might sound familiar. How, then, did they do it? How did the luminaries of political dialogue and thought in the first decade of our nation's history manage to create from strongly held adversarial differences the foundation for a "new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal"—one that would pass the test proposed by Abraham Lincoln to see whether such a nation "so conceived . . . can long endure" (Abraham Lincoln, Gettysburg Address, November 19, 1863)?

There may have been many other factors that contributed to the successful establishment of this nation in such discordant circumstances, including divine design. But I would like to focus on one reason postulated by an esteemed historian. The founding fathers, this historian said,

all knew one another personally, meaning that they broke bread together, sat together at countless meetings, corresponded with one another about private as well as public matters. Politics . . . remained a face-to-face affair in which the contestants . . . were forced to negotiate the emotional affinities of shared intimac[y] produced by frequent personal interaction. [Ellis, *Founding Brothers*, 17]

Consider, then, the happy consequences that resulted from such personal interaction and familiarity among our founding fathers. It begat trust among political adversaries, which led to honest compromise.

We hope it could be so in our day and in our profession. While, admittedly, our busy professional lives do not permit frequent personal interaction with opposing counsel, we can seek to make the interactions that we do have become opportunities to set aside the adversarial veneer and connect in personal ways. Bar activities and committees provide one avenue for such connection. A kinder tone in telephone calls and correspondence can produce these benefits.

If we as attorneys will let our professional engagements be marked always by civility, courtesy, kindness, and even charity, we would perhaps discover that fair and genuinely held opinions on contracts and court cases, on evidence and law, can be debated by and between friends, resulting similarly in the fruits of trust and beneficial compromise.

I recall an experience I had in the earlier years of my practice that may illustrate the point. I think you will find it hard to believe. I was litigating an aviation crash case for an injured plaintiff. The attorney representing the defendants was much more experienced than I and worked for a well-respected firm. Through the course of the litigation, we enjoyed a remarkably civil and friendly, though adversarial, relationship.

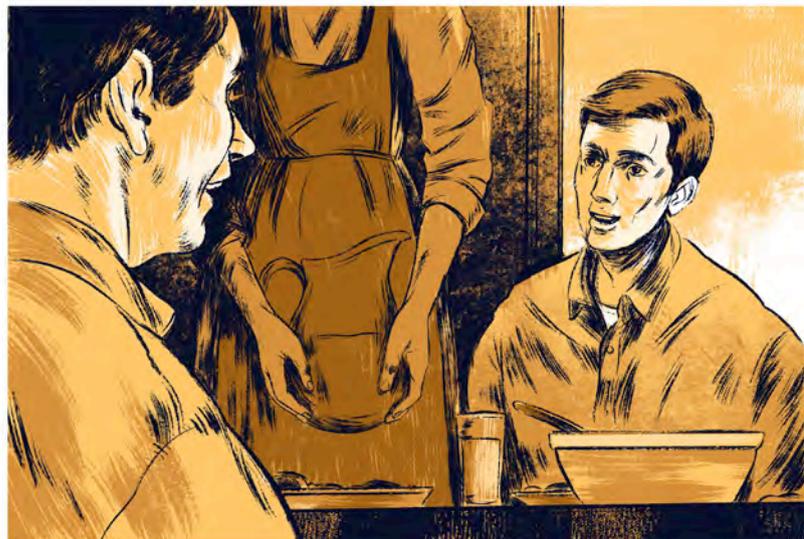
The time came to take several key depositions of experts. They were to be taken in St. George, Utah, which is where my parents lived. During a telephone conversation to plan and arrange for the depositions, the opposing attorney asked where I would be staying in St. George. I told him I was planning to stay at my parents' home, and then, without much thought, I invited him to stay there also and save some money. I assured him that he would enjoy my mother's cooking. To my surprise and his, he accepted the invitation.

Over the course of the depositions, we battled over contested issues and tried to undermine (or defend) expert opinions and limit the scope about which they could testify. At the conclusion of each day, we packed our bags and drove to my parents' home together. There was a comfortable bedroom suite for each of us, where we could separately prepare for the depositions. But we also broke bread together, shared laughter at my mother's table, and

established a lasting friendship. Soon after the depositions concluded, we reached a fair compromise and settlement.

When we are courteous, civil, kind, and charitable in our interprofessional dealings, we remain true to our religious conviction and, thus, to the mission of this society. That obligation for kindness and charity extends to secretaries and office staff, just as it does to opposing parties and adverse witnesses. For example, the fact that we may have a professional duty to confront an opposing witness by pointed cross-examination to bring out evidence helpful to our own client's cause and hurtful to the opposing party does not nullify or create an exception to the second great commandment. The sobering truth of this well-known verse does not have a "litigation exception": "And the King shall answer and say unto them, Verily I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me" (Matthew 25:40).

Adherence to the standards of discipleship does not mean that we must sacrifice the fidelity we owe to our clients or to the cause we advocate. Nor does it mean that we compromise the persuasive logic of our argument or the skill displayed in our written and oral presentations. But it does mean that we can both elevate the dignity of the profession and show forth the attributes of our God by treating others with courtesy and respect.



ADVOCACY AND DISCIPLESHIP

To introduce some final thoughts, I would like to share an experience I once had during the reorganization of a young single adult stake. In our preparations with the stake president, we asked that he select a few of the young adults who were experiencing challenging circumstances in their lives and invite them to meet with us.

We met with a young man in his late 20s who had almost lost himself to drug addiction and criminal behavior linked to his addiction. For the sake of convenience, I will call him Tom. The stake president had informed me that Tom had made an amazing turnaround in his life and that he had a firm testimony of the gospel of Jesus Christ. The president had said I would be impressed by Tom's attitude and progress. But that did not prepare me for the experience we shared.

We sat down across a table from each other. Tom's countenance was shining! It was punctuated by a broad, cheerful smile that spread across a handsome face. But there was much more than a good smile. I felt joy and hope and faith streaming from Tom's countenance.

As we talked, I learned that Tom had been a good-enough athlete in high school to earn a scholarship to play on a university soccer team. However, at the beginning of high school, he had developed an addiction to hard narcotics, which had begun to dominate his life. Because of his natural abilities, Tom continued to play sports at a high level despite his worsening drug addiction. He accepted the scholarship and began to play for the university team. But on the side, Tom became involved with criminal drug distribution.

His life crashed down around him when he was arrested and charged with several felonies. He was ultimately convicted and sentenced to 10 years imprisonment. As he shared his story, Tom described a loving home and a religious upbringing. But as he became increasingly involved with drugs and the activities that went along with it, Tom turned away from the Church, from God, and from any spiritual feeling. By the time he was arrested, he had separated entirely from any feeling that God existed and from any thought that he needed God in his life.

I said, "What happened to change you into who you are now?"

With a bright smile, Tom said: "I started reading the Book of Mormon as soon as I got into prison, and I prayed to know if it was true. God showed me it was true, brought me the greatest joy I have ever known, and told me that if I remained true to what I had been given, He would

make prison a good experience for me. I have remained true, and He has kept His promise."

Looking into Tom's face and listening to his story, I wondered how this had happened. What had prompted Tom to spend his first days in prison reading the Book of Mormon?

When I gave voice to my questions, this is how Tom responded: "I owe everything to my defense attorney; he has influenced my life for good more than anyone else I have known."

Tom went on to explain that his defense attorney had been an effective advocate, but the circumstances of his crimes and the strength of the proof against him was conclusive, so he had pled guilty. However, his attorney's "advocacy" of Tom as a person was much more impactful. Tom's attorney took time to understand and befriend him. He spoke to Tom about his life, where it was going, and how it would end if Tom did not make real changes.

Tom's attorney was devout in his faith, and when Tom showed a willingness to learn, the attorney explained the power of the Atonement of Jesus Christ. The attorney gave Tom a copy of the Book of Mormon, testified that it was true, and encouraged Tom to take it with him to prison and read from it every day.

WE ALSO BROKE BREAD TOGETHER, SHARED
LAUGHTER AT MY MOTHER'S TABLE, AND
ESTABLISHED A LASTING FRIENDSHIP.

You have heard the rest of the story. Tom is wholly converted and is confident that the Lord will guide him and bless him as he keeps the commandments.

As we concluded, I asked Tom this question: “If you were given a choice to return to your life on the college soccer team without changing what you were doing with your life but with the assurance that you would not be arrested or imprisoned—in other words life could go on the way you were living it—or to go through all that you have experienced—five years of imprisonment, the loss of your personal freedoms, and the lifelong mark of an ex-convict on your record—but possess what you have come to know spiritually, what would you choose?”

Without hesitation and with tears springing to his eyes, Tom said, “I would not trade what I have experienced and what I have come to know for anything else this world has to offer. I would gladly go through prison for the gift of coming to know Jesus Christ and receiving the gift of His Atonement.”

Since that conversation, I have been thinking about Tom's attorney. I suppose he has an ordinary criminal defense practice, but he had an extraordinary impact on Tom, and I can imagine he has impacted others who have come within the influence of his advocacy. Tom's attorney is a disciple of Christ who exemplifies the mission statement of the J. Reuben Clark Law Society: “We affirm the strength brought to the law by a lawyer's personal religious conviction.”

own moral and religious conviction within the context of legal advice.

We are attorneys and advocates. The definition of *advocate* is “one who pleads the cause of another; *specifically*: one who pleads the cause of another before a tribunal or judicial court” (*Merriam-Webster Dictionary* online, s.v. “advocate”). Note that in this worldly definition, neither the righteousness of the advocate nor the purity of the cause is an element of the definition.

But remember that I began this discussion with an invitation to consider how we might with more fidelity combine our professional lives with our discipleship of Jesus Christ. The perfect example of advocacy is Jesus Christ, and the pattern of perfect advocacy is revealed in His own words as He counseled us, those for whom He advocates:

Listen to him who is the advocate with the Father, who is pleading your cause before him—

Saying: Father, behold the sufferings and death of him who did no sin, in whom thou wast well pleased; behold the blood of thy Son which was shed, the blood of him whom thou gavest that thyself might be glorified;

Wherefore, Father, spare these my brethren that believe on my name, that they may come unto me and have everlasting life. [Doctrine and Covenants 45:3–5]

In these sublime and heavenly words, Jesus set forth His qualifications to advocate, identified the Supreme Judge and tribunal before whom He advocates, and revealed His selfless, merciful efforts to plead in our behalf, that we may receive the greatest gift of God: eternal life. The Redeemer's advocacy will lift and repair broken lives. It will give the power of His grace to obtain a reward we cannot obtain by ourselves. It will fulfill our fondest hopes and desires to bring to pass the destiny for which God created us.

With this perfect pattern before us, we can improve our advocacy. When our life of discipleship is coupled with skill and diligence in the discharge of our professional responsibilities, we will “affirm the strength brought to the law by [our] personal religious conviction” and make an impact on those we serve beyond the normal limits of our legal representation.

I invite you, as attorneys and members of this society and as disciples of Jesus Christ, to be an example of His attributes:

- ♦ Be truthful in all your communications: be honest in fact and honest in principle.
- ♦ Be civil, kind, and charitable in all your dealings.
- ♦ Make an impact for good on all whom you represent by your own example and conversation.

I close with a witness of my religious conviction. Jesus is the Christ. I bear witness of His name and His power and His Resurrection. In the name of Jesus Christ, amen. cm