

# Values

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*The Quorum of the Twelve*

**S**ome ideas and facts are more important than others. Perhaps it would be correct to measure the impor-

tance of ideas or facts in terms of their pervasiveness or breadth. In other words, the more

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things an idea or a fact can influence, the more important it is. For example, we could liken

WAS GIVEN AT THE

one idea or fact to a rock flying through the air. Within its own trajectory and within the area

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of its own small diameter, a flying rock can have quite an impact. But outside its own trajec-

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tory and diameter, a flying rock usually has no impact at all. In contrast, a wind, or even a

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gentle breeze, across a 50- or 100-mile front can be felt by many. It will turn windmills,

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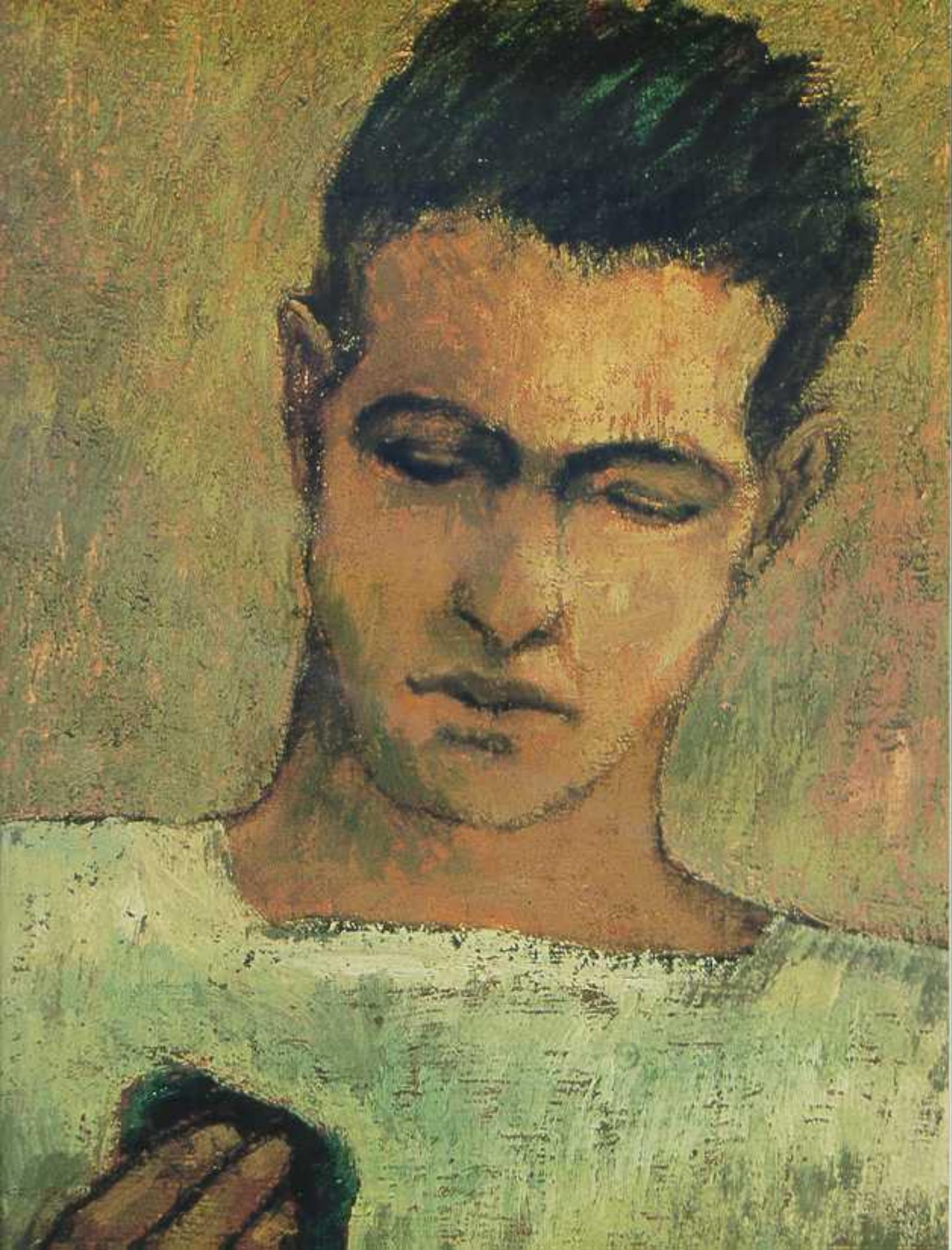
move sailboats, and dry hay for millions. • Applying that illustration to the world of ideas

*Illustration by*

and facts, I call attention to the contrast between the legal rule specifying the time for filing a

*Brian Kershnik*

notice of appeal and the gospel truth describing the eternal identity and nature of men and



women. Usually, the gospel truth is more important because its impact is broader, its influence is more pervasive.

Of course, if you do not understand that you have to file a notice of appeal within  $x$  number of days, and you fail to do so and your client loses the opportunity for an appeal, you will be in about the same position as a person who has been hit by a rock. To this person the idea that he can be hit by a rock is pretty important. But across a broad front and in the long view of human concerns, neither a flying rock nor a rule about the time for filing a notice of appeal is very important.

Of infinitely greater importance, because of its pervasive influence across a broad front, is the idea that all men and women are children of God. When we are convinced of that gospel truth, it can and should influence our attitudes about ourselves and our attitudes and actions toward others. The importance of that idea cannot be overemphasized.

Although not all the ideas I will address are of a dimension to affect all mankind, all of them are at least large enough to make their influence felt throughout the legal profession.

**W**hat is a profession? While I was serving on the Utah Supreme Court, I spoke about the idea of a profession in welcoming addresses to newly admitted members of the bar in October 1981 and April 1984. I described the five characteristics of a profession: (1) a substantial period of formal education to become familiar with a distinct body of theoretical knowledge; (2) formal requirements for admission; (3) personal and confidential relations with the individuals and groups being served; (4) some type of legal monopoly, with self-regulation by authorities within the profession; and (5) the idea that in the performance of their services, the members of a profession are guided by principles higher than mere financial remuneration.

This fifth characteristic—guidance by principles higher than personal advantage—is the important idea I wish to elaborate. This is perhaps the

most distinctive characteristic of a profession. The idea that the members of a profession are guided in the performance of their professional services by principles higher than personal advantage is not always attained in practice. Still, it is an ideal sought by most and attained by many members of the legal profession.

What are those higher principles? They include the lawyer's obligation to the Constitution and laws, to the courts, and to society. They also include obligations of fidelity, integrity, trustworthiness, and truthfulness.

The higher principles of a profession also include the obligation of service. Service includes the full performance of a responsibility rather than the mere sale of time or effort, without commitment to the outcome or the welfare of the person being served. That is a simple idea, but its application is difficult. The idea of service in a profession is important because its successful application has an enormous impact on an entire profession—indeed, on an entire society.

In my judgment, the reason the legal profession is in disrepute with some citizens is that many members of the legal profession do not measure up to their professional obligations. The only reason the profession survives is that so many members understand the obligations of professionalism and practice them with distinction.

The idea of obligations higher than mere personal advantage ties into two familiar scriptural principles. The Book of Mormon prophet Jacob taught:

*But before ye seek for riches, seek ye for the kingdom of God.*

*And after ye have obtained a hope in Christ ye shall obtain riches, if ye seek them; and ye will seek them for the intent to do good—to clothe the naked, and to feed the hungry, and to liberate the captive, and administer relief to the sick and the afflicted.* [Jacob 2:18–19]

Note that this scriptural principle is a teaching of sequence. Before we "seek for riches," we should seek for the kingdom of God. After we have

obtained "a hope in Christ," we will obtain riches (through an endeavor that involves more than merely obtaining essential food and lodging for ourselves and our families), if we seek them. And, if we have obtained "a true hope in Christ" we will seek them "for the intent to do good."

I quote a second scriptural principle, which appears in two books in the New Testament, in the Book of Mormon, and in the Doctrine and Covenants. In Matthew it reads: "But seek ye first the kingdom of God, and his righteousness; and all these things shall be added unto you" (Matt 6:33).

We usually read this commandment as sequential. We should *first* seek the kingdom of God and his righteousness, and *after* that, all the other things will be added unto us. I wonder whether we shouldn't read this great scripture as a commandment of *priority* rather than *sequence*—in other words, whatever the sequence of our activities, put the kingdom of God first. That interpretation ties into other concepts and covenants.

I should add that commitments of *priority* are a great deal more pervasive and therefore a great deal more influential than commitments of *sequence*. For example, if you interpret the Matthew 6:33 commandment as simply a sequential commandment, some may discount its effect as vague or unrealistic. Must I do my home teaching or my visiting teaching before I report to my place of labor? Must I finish *all* my Church assignments before I do any of my professional or community work? However, if we interpret this as a commandment of priority, putting the commandments and values of the kingdom of God first in all aspects of life, regardless of the sequence in which they occur, the meaning of this commandment is clear and pervasive.

**I** suggest that the commandment to seek first the kingdom of God has the same relationship to our personal life as the idea of principles higher than personal advantage has to our professional life. As one illustration of the role of higher principles in the legal profession, I would like to suggest

that in your professional activities you pursue satisfaction as well as remuneration. Remuneration will come. As an old lawyer told me once, "Working for compensation is one of the grandest traditions of the Bar."

Fortunately, the practice of law offers ample opportunities for satisfaction, as well as remuneration. If you pursue one to the exclusion of the other, you will starve either your body or your spirit. You can and should have both; but do not expect your satisfaction to equal your remuneration in a given task. The two are almost certain to be out of balance. My greatest satisfactions in the legal profession came from factors that had no direct relation to remuneration. These factors are craftsmanship, creativity, and service.

#### CRAFTSMANSHIP

*Craftsmanship* is the diligent and effective application of one's talents in the best traditions of the profession. Speaking to his Harvard classmates in 1913, Justice Oliver Wendell Holmes, Jr., gave this memorable description of craftsmanship in describing what he called "the best service that we can do for our country and for ourselves":

*To see so far as one may, and to feel the great forces that are behind every detail . . . ; to hammer out as compact and solid a piece of work as one can, to try to make it first rate, and to leave it unadvertised*

If you have any feeling for the great traditions and exemplars of your profession, I can promise that if you "hammer out as compact and solid a piece of [legal] work" as you can, you will realize great personal satisfaction from the craftsmanship of the law.

#### CREATIVITY

Craftsmanship becomes *creativity* when it is illuminated by originality, such as by new applications, new combinations, or new ideas. There are many opportunities for creativity in the legal profession. For example, we all have a sense of rightness, fitness, or justice. For most of us, that sense is rooted in religious faith, as well as professional tradition. As commonly applied, rules of law do not always produce a result that squares with those ideals. The outcome may fit the legal rule but not our sense of rightness, fitness, or justice. The task of finding, creating, or applying rules to harmonize with that sense, and then creating sound and workable precedents for the future, is a high order of creativity for lawyers, legislators, and judges. Many other examples could be cited. Find your own. Few satisfactions can compare with the joys of creativity, and there are many such opportunities in the profession of the law.

#### SERVICE

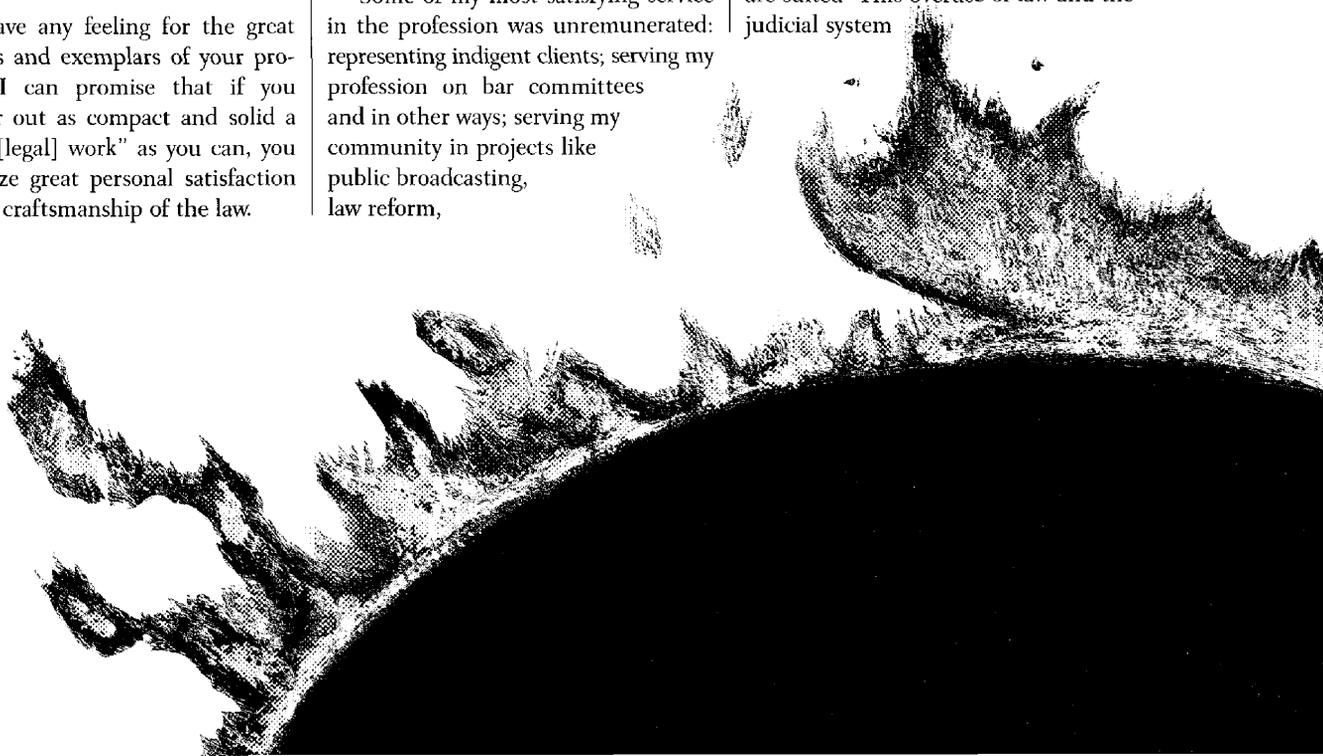
*Service* consists of working with a motive higher than self-interest. Such work can be remunerated or unremunerated, but, as I have indicated, the satisfactions of service are seldom in balance with remuneration. The rewards of satisfaction may even be inversely proportional to, or at least reduced by, remuneration.

Some of my most satisfying service in the profession was unremunerated: representing indigent clients; serving my profession on bar committees and in other ways; serving my community in projects like public broadcasting, law reform,

education, and medical care; and serving my church and its members in the activities of my faith. Do not impoverish your professional and personal life by limiting your professional activities to those that are remunerated.

In the perspective of our religious faith, satisfaction and success in professional or personal lives should not be measured on the scale of worldly values, such as money, power, position, and worldly acclaim. Cream rises to the top, but so does scum. Don't allow your elevation on the ladder of success—as defined by these deceptive values—to trick you into thinking you can look down on anyone. Don't set your affections on the transitory values and treasures of this world to the point that you cease to pursue things of real and lasting value. Don't let these fundamental truths fade into the background as you progress in the profession of the law.

Along with concerns about professionalism, I urge you to consider another powerful idea. While you are busy practicing law, don't forget that the law cannot solve all problems. Don't burden the legal system with problems that are beyond its ability to solve. Lawyers and litigants who impose on the legal system to resolve differences and injustices the law cannot resolve lay burdens on our courts that threaten to disable them from performing the vital tasks for which they are suited. This overuse of law and the judicial system



is at least partly stimulated by a spirit of self-interest and divisiveness. That same spirit prompted what a Florida lawyer friend of mine called "The Young Lawyer's Prayer": "Lord, foment strife among thy people, that thy humble servant may survive"

**A** 1982 issue of the *American Bar Association Journal* briefed a good illustration of the misuse of law. Disappointed parents and fans went to court to challenge a Georgia referee's assessment of a penalty for roughing the kicker in a high school football game. After concluding that it had jurisdiction, the trial court found that all administrative remedies had been exhausted, that the plaintiffs had a property right in the game's being played according to the rules, and that the referee's erroneous decision violated equal protection and deprived them of property without due process. The court then entered an order requiring that the two teams meet on the football field (on a date the court specified) to complete the game. The court further ordered that the contestants

*resume play at the Lithia Springs 38-yard line with the ball being in possession of R L Osborne High School and that it be first down and ten yards to go for a first down and that the clock be set at seven minutes one second to play and that the quarter be designated as the fourth quarter.* [68 A.B.A.J. 85 (1982)]

Happily, the Georgia Supreme Court reversed that decision, holding unanimously that the "decisions of football referees . . . do not present judicial controversies" (*Georgia High School Association v. Waddell*, Ga., 285 S.E.2d 7, 9 [1981]).

This outcome reminds me of one of my favorite aphorisms. Remember it when a client seeks your assistance to use the law to solve problems it is not fit to solve: "If a thing is not worth doing, it is not worth doing well."

I close with one more important idea, one which reaches beyond the legal profession. It is fundamental to all persons, to all organizations, to all human activity. It is the importance of

honesty and integrity. Though taught this principle from my youth, I first became aware of its fundamental importance to all society during my undergraduate studies at BYU. A wise teacher had us read a small book by a noted financier and thinker, Roger Babson. I kept that book and I have it today, complete with the pencil and crayon scribbles added by one of our children over 35 years ago.

I quote the words that were so influential on me as a college student almost 40 years ago:

*While on a recent visit to Chicago, I was taken by the president of one of the largest banks to see his new safety-deposit vaults. He described these—as bank presidents will—as the largest and most marvelous vaults in the city. He explicated on the heavy steel doors and the various electrical and mechanical contrivances which protect the stocks and bonds deposited in the institution.*

*While at the bank a person came in to rent a box. He made the arrangements for the box and a box was handed to him. In it he deposited some stocks and bonds which he took from his pocket. Then the clerk who has charge of the vaults went to a rack on the wall and took out a key and gave it to the man who had rented the box. The man then put the box into one of the little steel compartments, shut the door, and turned the key. He then went away feeling perfectly secure on account of those steel doors and various mechanical and electrical contrivances existing to protect his wealth.*

*I did not wish to give him a sleepless night, so I said nothing; but I couldn't help thinking how easy it would have been for that poorly-paid, humpbacked clerk to make a duplicate of that key before he delivered it to the renter of that box. With such a duplicate, the clerk could have made that man penniless within a few minutes after he had left the building. The great steel door and the electrical and mechanical contrivances would have been absolutely valueless.*

*Of course, the point I am making is that the real security which that great bank in Chicago had to offer its clientele lay not in the massive stone columns in front of its structure; nor in the heavy*

*steel doors; nor the electrical and mechanical contrivances. The real strength of that institution rested in the honesty—the absolute integrity—of its clerks.*

*That afternoon I was talking about the matter with a business man. We were discussing securities, earnings and capitalization. He seemed greatly troubled by the mass of figures before him. I said to him: "Instead of pawing over these earnings and striving to select yourself the safest bond, you will do better to go to a reliable banker or bond house and leave the decision with him."*

*"Why," he said, "I couldn't do that."*

*"Mr. Jones," I went on, "tell me the truth! After you buy a bond or a stock certificate, do you ever take the trouble to see if it is signed and countersigned properly? Moreover, if you find it signed, is there any way by which you may know whether the signature is genuine or forged?"*

*"No," he said, "there isn't. I am absolutely dependent on the integrity of the bankers from whom I buy the securities."*

*And when you think of it, there is really no value in all the pieces of paper which one so carefully locks up in these safety-deposit boxes. There is no value at all in the bankbook which we so carefully cherish. There is no value at all in those deeds and mortgages upon which we depend so completely. The value rests, first, in the integrity of the lawyers, clerks, and stenographers who draw up the papers; secondly, in the integrity of the officers who sign the documents; thirdly, in the integrity of the courts and judges which would enable us to enforce our claims; and finally, in the integrity of the community which would determine whether or not the orders of the court will be executed.*

*These things which we look upon as of great value—the stocks, bonds, bankbooks, deeds, mortgages, insurance policies, etc., are merely nothing. While fifty-one percent of the people have their eyes on the goal of Integrity, our investments are secure; but with fifty-one percent of them headed in the wrong direction, our investments are valueless. So the first fundamental of prosperity is integrity. Without it there is no civilization, there is no peace, there is no security, there is no safety. Mind you also that this applies just*

as much to the man who is working for wages as to the capitalist and every owner of property.

*Integrity, however, is very much broader than the above illustration would indicate. Integrity applies to many more things than to money. Integrity requires the seeking after, as well as the dispensing of, truth. It was this desire for truth which founded our educational institutions, our sciences, and our arts. All the great professions, from medicine to engineering, rest upon this spirit of integrity. Only as they so rest, can they prosper or even survive.*

*Integrity is the mother of knowledge. The desire for truth is the basis of all learning, the value of all experience, and the reason for all study and investigation. Without integrity as a basis, our entire educational system would fall to the ground; all newspapers and magazines would become sources of great danger and the publication of books would have to be suppressed. Our whole civilization rests upon the assumption that people are honest. With this confidence shaken, the structure falls. And it should fall, for unless the truth be taught, the nation would be much better off without its schools, newspapers, books, and professions. Better have no gun at all, than one aimed at yourself. The cornerstone of prosperity is the stone of Integrity. [Roger W. Babson, *Fundamentals of Prosperity* (New York: Fleming H. Revell Co., 1920), pp. 13-18]*

I think that little chapter is one of the great statements written in the English language in the last century. It is surprising how many people don't believe it. How do I know they don't believe it? Because of the way they behave, the arguments they make, the things they favor, the things they do not do that they should do, and the things they do that they should not do.

A contemporary illustration of Babson's premise is worthy of note. I read in the *Manila Bulletin* (Sunday, May 1, 1988) the text of a speech that Brigadier General Jose T. Almonte gave to his fellow citizens at the Asian Institute of Management. He analyzed the causes of the Philippine economy having become what he called "the 'basket

case' in this part of Asia."

"Why did this happen to our country?" he asks. It was not that the Filipino work ethic was flawed or that the Filipino is lazy. Neither of those causes exists. I quote his assessment:

*Our experience in the bureau [the Economic Intelligence and Investigation Bureau] suggests that one of the clues lies in graft and corruption that has become endemic and systemic in our society and culture. This social cancer has reached such magnitudes and proportions that I am persuaded to conclude it is a major cause of our present economic problems.*

He then reviews figures on smuggling and tax evasion as examples. He observes that the smuggling that goes on in the Philippines is not smuggling under dark of night or to hidden ports. Ninety-five percent of the smuggling in the Philippines is because of a bribe given in the public place where goods come into the country. Smuggling depends on bribery of public officers by regular importers.

General Almonte continues:

*The fault lies not only in our chosen leaders and our technocrats but, more significantly, in all of us. We either participated in graft and corruption or for years allowed our political and business leaders to do so. It is a cancer that has metastasized the body politic. I believe ours is a case of failure of will or moral weakness.*

The General concludes with this paragraph:

*Toward this end, what this nation needs is another revolution, and this revolution must necessarily be a moral one. It is through this moral revolution that the nation can hope to wield people power once more against the enemy. And that enemy is ourselves.*

That is a sobering contemporary demonstration of Babson's proposition that integrity is the foundation of prosperity.

There is nothing that we as citizens

or as professionals should be more interested in than the moral tone, the integrity, that prevails in the United States of America. In case you doubt that, I will give you a few indices of where we are going in this country in terms of these fundamentals. Not long ago, Harper's published a scorecard on the top discipline problems in public schools in 1940 and in 1982. The results were derived from contemporary surveys. In 1940 the list was:

*Talking, chewing gum, making noise, running in the halls, getting out of turn in line, wearing improper clothing, not putting paper in the wastebaskets.*

Forty-two years later the list was:

*Rape, robbery, assault, burglary, arson, bombings, murder, suicide, absenteeism, vandalism, extortion, drug abuse, alcohol abuse, gang warfare, pregnancy, abortion, venereal disease.*

—Harper's, March, 1985

I began these remarks by pointing out that some ideas are more important than others. The gospel incorporates the most important ideas in time and in all eternity. Its commandments, its covenants, and its teachings were established and shared by God our Heavenly Father, the Creator of us all. He desires that we be happy in this life and exalted in the life to come. There are many things in this life that are not wrong. They can make us happy or comfortable, but they have no power to save us in eternity.

The most important idea for any of us is that this life, with all its advantages and disadvantages, is only temporary. It is part of a larger whole. Our challenge is to develop the perspectives to realize and the strength to act upon the realization that the really important achievements of this life are those that carry enduring, favorable consequences for the eternities to come.

I hope that great idea, which has the pervasive impact of a solar wind, is firmly entrenched in the consciousness and behavior of the alumni of the Brigham Young University J. Reuben Clark Law School.