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NO OTHER GODS BEFORE ME

THE INFLUENCE OF RIGHTEOUS LAWYERS AND JUDGES

Most of us here share a great debt of gratitude to Rex Lee, but none more than members of the charter class of the J. Reuben Clark Law School. When he talked to me about joining the charter class in 1973, he said law school would change me as much as my mission. He was right, and he could have said the same thing about the practice of law as well. The question is whether the change is for good or ill. ♦ How you view yourself and what you aspire to become are monumentally important. You may see yourself, for example, as a successful litigator. That vision molds who you become depending on what you think that entails. If it means arrogant, adversarial, combative, uncompromising, and hard-hitting, then you will evolve in that direction, and you can't effectively compartmentalize it all. You can't be one way at work and another at home, at least not over the long haul. ♦ Brigham Young said: "The greatest and most important labour we have to perform is to cultivate ourselves."¹ At the end of the day, the questions won't be How much money did you make? or How successful were you as a lawyer? Rather, they will be What good did you do? and, especially, Who are you? Those are the questions. Who are you, and who are you in process of becoming? Jesus asked a similar question. He said, "What manner of men ought ye to be?" Then, answering His own question, He said, "Even as I am."²

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ILLUSTRATIONS BY RICHARD MIA

While there is much I don't like about the practice of law, one of its privileges is to know so many good, capable, and honorable people, usually fellow members of the bar. They have inspired me to be a better person. There are many who defy the sleazy-lawyer characterizations that prevail in the public domain.

Speaking of sleazy lawyers, just before we meet Zeezrom in the Book of Mormon, we have this troubling statement: "And now behold, I say unto you, that the foundation of the destruction of this people is beginning to be laid by the unrighteousness of your lawyers and your judges."³ Lawyers are not known for getting good press anywhere, at any time, including in scripture, but this is a startling statement, that the foundation of an entire people rests on the righteousness of its lawyers and judges. Why is that? Why lawyers and judges?

When I was called to serve as a General Authority Seventy, I had been practicing law for 33 years, minus a three-year hiatus as president of the Chile Santiago North Mission. As I looked back over those years, I made several observations. Four of them are relevant to the theme of this conference from Micah 6:8: "O man, what is good: and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?"

"DO JUSTLY"

First, "do justly." I interpret that to mean act justly or act honestly.

The Propensity to Lie

OBSERVATION NUMBER ONE was a quantum leap in people's willingness to lie, even under oath.

There weren't many white hats 44 years ago, but by the time I left the practice, I was hard pressed to find any. I wondered, *Is there anyone honest out there anymore?* I am not saying there were no honest people; I just didn't know many of them.

It isn't that lawyers are dishonest, rather that *people* are dishonest, and despite the belief of many to the contrary, lawyers are people too. The people who piously beat their chests and rail about dishonest lawyers are the same people who press to win by hook or crook when their iron is in the fire.

Honesty is highly valued in Sunday School class but not in the knock-down-drag-out everyday world of most people. I was never hired because people thought that I was honest. Conversely, I was not retained because they believed I was dishonest, rather because they believed I would represent them well. Honesty and ethics promoted on your firm's website are not going to bring clients through the door. If you are going to be honest, you have to do it for other reasons, and you can't pick and choose when and where to be honorable; you have to do it all the time.

Endless and Ordinary Opportunities to Compromise

Lawyers live and die by deadlines, especially in bankruptcy court. Once, in the press of the work, a filing deadline was missed, and a claim that should have been treated as secured was rendered unsecured with little prospect of payment. The caseloads from our clients were large enough for it to be impractical for the clients to track every case. No

one would ever know of the mistake, and it was uncertain how much would have been recovered had the claim been timely filed. It was easy to give it little thought, sweep it aside as a cost of doing business, and with a shrug of the shoulders, move on, saying, "Mistakes will happen. Look at the big picture and see what good service we are providing on the whole."

Instead, we wrote a check for the full value of the claim and sent it to the client with an explanation of our mistake. We didn't do it to impress the client. We weren't sure how a disclosure and admission of malpractice would be viewed. We did it because it was the right thing to do.

I am not trying to beat my drum or to say, as Little Jack Horner, "What a good boy am I." I offer this only as an ordinary example of one of the endless opportunities to compromise one's integrity, *almost without knowing it*.

The Word of the Lord

From the dawning of time, one of the most fundamental commandments has been to tell the truth, live with honor, and do what you say you will do. In the same divine breath as "Thou shalt not kill," we have "Thou shalt not commit adultery," "Thou shalt not steal," and "Thou shalt not bear false witness against thy neighbour."⁴

Anciently, the swearing or taking of oaths was commonly employed in the ordinary interaction of people to attest to the truthfulness of a statement or one's intent to keep a promise. Such attestations were relied on with absolute assurance. We don't employ oaths in ordinary discourse today, but we routinely put people under oath in formal proceedings when presumably the stakes are higher. That is a pretty low standard for honesty. It implies you shouldn't lie under oath, but otherwise it is not so bad.

Christ taught a higher law:

Again, ye have heard that it hath been said by them of old time, Thou shalt not forswear thyself [meaning to not bear false witness, or perjure oneself], but shalt perform unto the Lord thine oaths:

But I say unto you, Swear not at all; neither by heaven; . . .

Nor by the earth; . . . neither by Jerusalem; . . .

Neither . . . by thy head. . . .

But let your communication be, Yea, yea; Nay, nay: for whatsoever is more than these cometh of evil.⁵

What is said under oath or otherwise should be the same. Your word, my word, should be enough, whatever the circumstances.

Nephi saw our day and described it with stunning detail. Among other things, he said:

And there shall also be many which shall say: Eat, drink, and be merry; nevertheless, fear God—he will justify in committing a little sin [small things evolve to big things]; yea, lie a little, take the advantage of one because of his words, dig a pit for thy neighbor; there is no harm in this [an apt description of how many live their lives and how some practice law]; and do all these things, for tomorrow we die; and if it so be that we are guilty, God will beat us with a few stripes, and at last we shall be saved in the kingdom of God.

Yea, and there shall be many which shall teach after this manner, false and vain and foolish doctrines, and shall be puffed up in their hearts, and shall seek deep to hide their counsels from the Lord; and their works shall be in the dark.⁶

In 1829 the Lord said of our day that Satan, “the father of lies,”⁷ would stir up the hearts of men, saying:

Deceive and lie in wait to catch, that ye may destroy; behold, this is no harm. And thus he flattereth them, and telleth them that it is no sin to lie that they may catch a man in a lie, that they may destroy him.

And thus he flattereth them, and leadeth them along until he draggeth their souls down to hell; and thus he causeth them to catch themselves in their own snare.⁸

I think the reason integrity looms so large in the grand scheme of things is because there can be no redemption without integrity. “No unclean thing can enter [the presence of God],”⁹ and repentance begins with honesty. You can’t be forgiven of sins for which you don’t repent, and you can’t repent of sins you cover or ignore. Repentance begins by owning, by acknowledging, our sins.

Who Is a Liar and Who Is Not?

Now, before we think we are all doomed and throw in the towel, I should say what I think the Lord means by “liars.” Not everyone and anyone who ever told a lie is swept into the same black bucket; otherwise, we are all doomed.

When the Lord speaks of liars, I think He is speaking of people who become dishonest because of their choices. Two bad things happen whenever we lie, shade the truth, or allow a falsehood to go unchallenged. First, the truth goes wanting, and second, we become more dishonest. That is the biggest problem. Dishonesty becomes more ingrained in your character, more a part of who you are.

You may live a life of deceit and later repent, but neither repentance nor forgiveness will make of you an honest person. Redemption will not instill in your soul that godly quality we call integrity. Character is forged one choice at a time and not because God forgives our sins, including our lies.

There is nothing of greater importance in all eternity than the Atonement of Jesus Christ, but obedience in the first place is a close second. Jesus Christ is not only the Redeemer; He is also the Way. He came not only to save us from our sins; He came to show us how to act and what to do in the first place. We can’t sit on our hands thinking all will be well in the end when we repent. That is “a false and vain and foolish” doctrine. We have to do our part now before “the night of darkness wherein there can be no labor performed.”¹⁰

Frivolous Claims, Delays, and Misrepresentations

I am grateful and take pride in being a member of a profession that collectively promotes and expects its members to embrace the values reflected in the *Model Rules of Professional Conduct*, not as an aspiration, rather as a minimum standard, a baseline course of conduct.

Rule 3.1 states in part: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.”¹¹

Rule 3.2 provides: “A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”¹²

Rule 1.2(d) states: “A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.”¹³

Frivolous claims, protracted litigation, and misrepresentation happen a lot, not always with the lawyer as instigator but certainly as facilitator.

When I returned to our firm after our mission, it quickly became apparent that the firm had acquired a toxic client, involving approximately 20 different matters, mostly litigation. Most of the cases were for debts he failed or refused to pay. His cases consumed a large portion of the firm's time, involving multiple attorneys. He paid the firm intermittently but was never current and owed \$400,000 in delinquent fees. That should not have been surprising; you have to assume if you represent a snake, you may get bit as well. He was fundamentally dishonest.

One can honorably defend the interests of a snake or monster because even snakes and monsters are entitled to a fair hearing and rights guaranteed under the Constitution, but it is wrong to represent clients who use the legal system to delay, avoid, or subvert their obligations under the law by wearing down opposing parties with the costs and burdens of protracted litigation. You can't serve both God and mammon.¹⁴ You need to know when to walk away and have the will to do it.

We began the painful process of withdrawing as counsel and ending our representation. The argument against withdrawal was that we would never collect what he owed us if we withdrew and writing off an account of that dimension posed a mortal threat to the viability of our small firm.

However, it was unlikely he would pay in full even if we continued, and worse, we would likely sell our souls in the process. As others have said, if you find yourself in a hole, the first thing you should do is stop digging. So, we stopped digging, and although we never collected those fees, we eventually got out of the hole, hopefully with some measure of honor still intact.

Honesty Toward the Tribunal and the Integrity of Evidence

Our judicial system is grounded in part on the foundation of two propositions. The first is that people generally tell the truth, especially under oath, and the second is that they will be punished if they don't. If both propositions fail, the whole system is threatened.

As I have already said, over the course of 30 years I have observed a dramatic and disturbing rise in people's willingness to lie, even under oath. Equally disturbing, I rarely witnessed consequences when they did. Better said, I never witnessed adverse consequences when people lied under oath or withheld or altered evidence. Never.

I recall one case in the late 1980s that was a judicial foreclosure of a mechanic's lien. There was an issue regarding ownership and the title to the property, which turned on a deed signed by the property owner. During the course of the trial, I proved beyond any doubt that the owner was lying about the conveyance and had altered and backdated the deed to his advantage.

The judge didn't raise even an eyebrow or shrug a shoulder. We prevailed on the claim and collected the judgment before the owner filed bankruptcy, but other than that, there was no consequence for his perjury and alteration of the deed.

Regrettably, that scenario is not unusual. If people are amoral and if there is little to no downside to lying, then lying becomes merely a tool of the trade, a tactic.

IN THE END, ALL
THAT REMAINS
IS CHARACTER,
KNOWLEDGE, AND
RELATIONSHIPS.

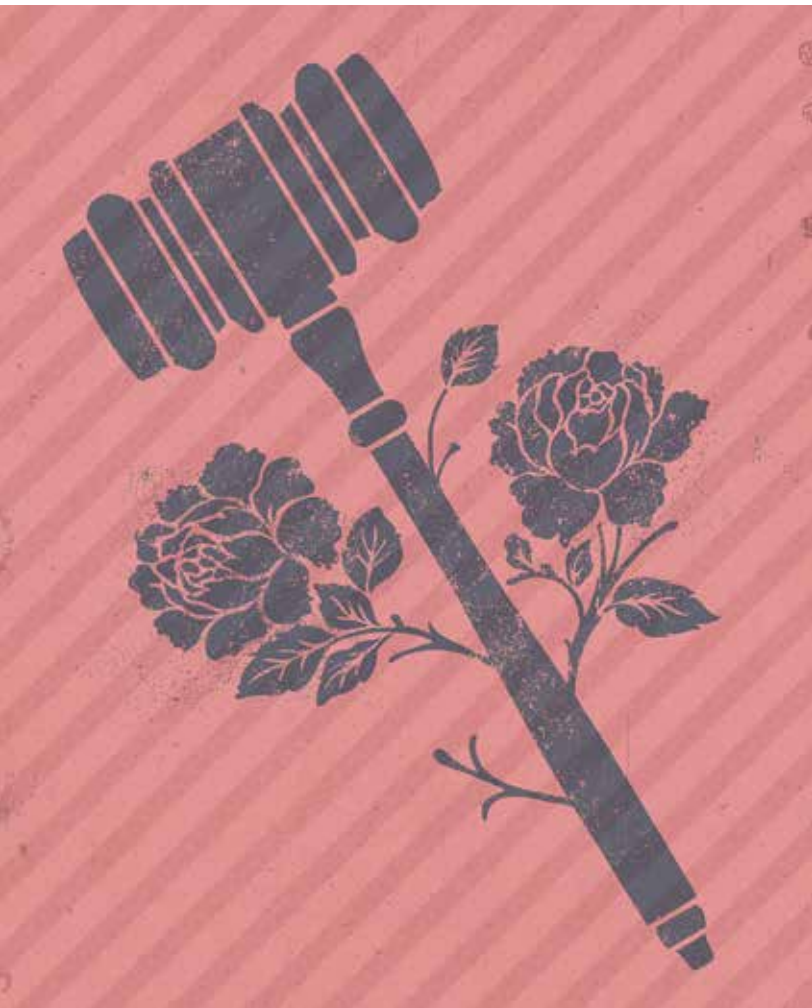
I represented a man in an adversarial proceeding in bankruptcy to avoid the discharge of a debt incurred by false pretenses. My client lived in another state, and although we didn't meet face-to-face, we spoke frequently by phone. He always bemoaned the default: how upset he was about it and how bad life was because of it. He was down and out and obsessed with this claim.

One day, in a moment of madness, and without any forethought, I said, "You know what? All of this doesn't matter very much." That is obviously not what a client wants to hear from his lawyer, nor is it something a lawyer would say while in full possession of his senses. But I thought I knew him well enough that I could get away with it. I then said, "Tell me about your family." He happily and proudly told me about his seven daughters, and the emotion of the litigation drained away.

"LOVE MERCY"

Let's talk about "love mercy."

After I returned to the practice of law following our mission, my perspective on the law had changed, which leads me to **OBSERVATION NUMBER TWO**: there is so much wrangling and haggling over stuff that doesn't matter. John summed it up in five words when he said, "And the world passeth away."¹⁵ It is all smoke and mirrors. In the end, all that remains is character, knowledge, and relationships. What does it profit a man if he gains the whole world and loses his soul in the process?¹⁶



The Lord said:

Lay not up for yourselves treasures upon earth, where moth and rust doth corrupt, and where thieves break through and steal:

But lay up for yourselves treasures in heaven, where neither moth nor rust doth corrupt, and where thieves do not break through nor steal:

For where your treasure is, there will your heart be also.¹⁷

I knew his family was his treasure; he just needed reminding. You may say, “That’s not the role of a lawyer.” And you may be right. But Rule 2.1, titled “Advisor,” does say:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other

considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.¹⁸

I wasn’t acting in the capacity of his legal counselor or therapist, rather as a friend. He stopped worrying so much, and we prevailed in getting not only a nondischargeable judgment but full payment as well. We remain friends today.

The Lawyer as Problem Solver

This brings me to **OBSERVATION NUMBER THREE**: the practice of law has become more business and less profession, and that is a tragedy. Although many occupations have appropriated the term “profession,” there really are only three: the clergy, doctors, and lawyers. They are supposed to occupy a special position in society. They are more about service than making money.

As a young law student, I had the privilege of interviewing with David K. Watkiss for a position with the firm Watkiss & Campbell in Salt Lake City. He said, “It is a sacred privilege to be a lawyer, to help people solve some of the great problems in their lives they can’t solve on their own.” That is the mindset of a professional.

I am grateful for partners who focused on the financial statements, but I was always more interested in the case management report. I believed if we focused on representing our clients well, we would get by financially and maybe even prosper. For us it was generally “[g]ive us this day our daily bread.”¹⁹ Every payday was a miracle. But we always had sufficient to meet our needs.

Lawyers can be problem solvers, yes, and even peacemakers. Finding solutions at minimal cost may at first blush appear to be to the financial disadvantage of the lawyer, but such a lawyer will never lack for clients, and the bottom line should never be the ultimate goal anyway.

Wringing a case dry for the sake of enrichment is wrong. In his famous condemnation of unrighteous lawyers, Mormon said, “Now the object of these lawyers was to get gain; and they got gain according to their employ.”²⁰

Abraham Lincoln encouraged mediation and compromise over litigation. “Discourage litigation,” he said. “As a peacemaker the lawyer has a superior opportunity of being a good man.” He counseled lawyers to “[p]ersuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser—in fees, expenses, and waste of time.” While recognizing that this would lessen the business revenue that lawyers received from litigation, he concluded, “There will still be business enough.”²¹

I wish the role of problem-solving were more clearly set forth in the *Model Rules of Professional Conduct*.

“WALK HUMBLY WITH THY GOD”

Finally, “walk humbly with thy God.” This admonition is more than to be humble; it is also to walk with God.

Humility

As for humility, a journal entry I made several years ago must suffice:

This past weekend I presided at a conference. After one of the sessions a young man introduced himself to me as a trial lawyer. He knew I had practiced law and asked if it is possible to be a successful lawyer and a disciple of Christ. To him those are separate roads that may occasionally cross but ultimately lead in different directions. He referred to two dimensions of the practice of law he deems to be incompatible with gospel or Christian principles. The first is the hostility, rancor, bitterness, and antagonism that are products of the adversarial system. He thinks that you cannot really function effectively in a nasty system without being nasty. The second dimension is the expectation or need to compromise, cut corners, and outright lie in order to succeed.

I said success in the law and discipleship are not mutually exclusive, although many lawyers act as though they are. Zealous advocacy should not be construed as acrimonious or hostile advocacy. While acrimony and hostility often are by-products of the clash of opposing views and interests, they are not necessary tools of the trade. You can work in a hostile environment without being hostile. You can act with respect and dignity toward those who may not deserve it; you can sidestep or ignore affronts, even turn the other cheek, without weakening your case or cause. I refuse to believe that you have to be nasty to work within a nasty system. You can be a gentleman in the middle of a mud fight. You will get splattered, true enough, but you don't have to throw the mud yourself in order to win or to represent your client well.

I explained, however, that such an approach to the law is not the best way to grow the practice, satisfy clients, or fill the coffers. People are fickle. Most people loathe the mad-dog lawyer, but they want him to be their lawyer when their interests are at stake. The guy they want to be their attorney is the last guy they would want to marry their sister. The lawyer who acts with decorum may be perceived as weak and ineffective, but there are things more important than conforming to the expectations of others.

We also talked about the many opportunities to compromise, to shade or misrepresent the truth. I said those opportunities surfaced every day. I shared one example of a client who wanted me to not produce an addendum to a contract about which the opposing counsel and parties were unaware. The addendum adversely modified the obligations or rights of my client. I didn't draw a line in the sand but merely proposed another approach that included the disclosure of the addendum and how to deal with the consequences. The client got the message that while I was willing to vigorously represent his interests, I was unwilling to compromise the truth or act unethically in the process. I knew I risked an unhappy client, but there are things more important than happy clients.

Later another man approached who is also a lawyer but is one who represents everything good and uplifting in the gospel, the personification of everything the first man doubts you can be as a successful lawyer.

The grinding and grating of the law make some arrogant, abrasive, and argumentative while others are polished smooth, compassionate, incisive, persuasive, decent, and humble. What makes the difference?



At the end of the day, the questions won't be How much money did you make? or How successful were you as a lawyer? Rather, they will be What good did you do? and Who are you? Those are the questions. Who are you, and who are you in process of becoming?

Walking with God

OBSERVATION NUMBER FOUR: we tend to forget God. We think too categorically. Religion is not just another facet of life, but rather it is life. It shouldn't color only a part, but rather the whole.

To paraphrase a verse from section 121 of the Doctrine and Covenants, “[w]e have learned by sad experience that it is the nature and disposition of almost all men, as soon as they get a little [success],” they immediately assume credit and forget God.²²

I have long been haunted by the fact that Moses was precluded from crossing over Jordan and entering the promised land with Israel only because on one occasion he assumed credit for bringing water forth out of the rock at Meribah-Kadesh when it was God who had produced the water.²³ I am grateful to have had partners who allowed

prayer to begin our weekly management meeting. We didn't do that so much to give thanks as to remember God, from whom all blessings flow. On Mount Sinai, God delivered 10 commandments, the most basic of God's laws given to His children. The first is the most fundamental of all: "Thou shalt have no other gods before me."²⁴

This central principle is that only God can sustain us; provide for us; and prosper, prepare, protect, preserve, sanctify, and exalt us, and that He will do so if we remember and obey Him. More than anything else, it was this central principle that God endeavored to impress on the children of Israel throughout the entire history of the Old Testament.

That principle—to have no other gods before Him—was reintroduced in the gospel of Jesus Christ as the first principle of the gospel: "First, Faith in the Lord Jesus Christ."²⁵

Do you exercise faith first in Christ? What God do you worship? Here is how you can tell: *Your God is the standard by which you make choices.* It is the standard by which you decide what to think, see, hear, say, and do.

If you make decisions based on what is easiest, you worship the god of comfort and ease. That god will give you what he has to offer: hollow comfort and empty ease, and no more.

If you make decisions based on recognition, acceptance and praise of others, and winning at any cost, you worship the great god of popularity. That god will give to you all that he has to offer: fleeting popularity, but no more.

If you make decisions based on what will generate the greatest monetary gain and possessions, you worship the god of wealth. That god may give you a little of what he has to offer: fleeting wealth and possessions, but no more.

If you make decisions based on what you want to do and what best satisfies your desires, you worship the god of self. This god will grant you self-indulgence, and no more.

If you make decisions based on walking the line between right and wrong, weak and strong, light and dark, you worship the great god of mediocrity, walking with the crowd.

If you make decisions based on what Jesus did and what He would do, then you worship Him; you exercise faith in Jesus Christ. He will

give to you all that He and the Father have to offer: a character like His that will endure throughout eternity; peace, glory, dominions, power, infinite capacity, knowledge, light, and intelligence; a fullness of joy; the continuation of family and posterity throughout eternity; and every other good thing in this life and in eternity.

C O N C L U S I O N

I began by referencing Amulek's troubling statement that "the foundation of the destruction of this people is beginning to be laid by the unrighteousness of your lawyers and your judges"²⁶ and wondering why that would be the case.

Lawyers and judges are at the crossroads of conflict at all levels in society. They are the crew who run the fiery furnace of conflict resolution. They are where emotions and temptations run high. They make decisions that affect not only the litigants before the court but sometimes millions of people for years and decades to come, including unborn children who will never draw breath.

There is no group better positioned to have a more significant influence on society, whether positively or negatively, than lawyers and judges. If lawyers and judges individually and as a group were honest, fair, and civil; if they did to others as they would be done by; if they did what they said they would do; if they worked to find solutions more than compensation; if they said, "No, I won't go there; find someone else"; if their God were the God of Israel, the impact on society would be profound.

I have painted a fairly bleak picture of society and the law. Only he who is without sin should cast the first stone,²⁷ so I throw no stone. This, rather, is an invitation to say, "Let us make a difference." In the darkness, there is no reason for despair. You be the light. "Let your light so shine before men, that they may see your good works, and glorify your Father which is in heaven"²⁸—always, everywhere. Let it be said of you not that you are a great lawyer, rather that you are a good person, a disciple of Jesus Christ. cm

N O T E S

- 1 Brigham Young, in *Journal of Discourses* 10:2 (Sept. 28, 1862); quoted in Hugh Nibley, *Temple and Cosmos*, The Collected Works of Hugh Nibley: Vol. 12 (Salt Lake City: Deseret Book; Provo: Neal A. Maxwell Institute, 2002), 392.
- 2 3 Nephi 27:27.
- 3 Alma 10:27.
- 4 Exodus 20:13-16.
- 5 Matthew 5:33-37.
- 6 2 Nephi 28:8-9; emphasis added.
- 7 2 Nephi 9:9.
- 8 Doctrine and Covenants 10:25-26; emphasis added.
- 9 3 Nephi 27:19.
- 10 Alma 34:33.
- 11 Rule 3.1: Meritorious Claims and Contentions, American Bar Association, *Model Rules of Professional Conduct* (1983).
- 12 Rule 3.2: Expediting Litigation, *Model Rules of Professional Conduct*.
- 13 Rule 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer, paragraph (d), *Model Rules of Professional Conduct*.
- 14 See Matthew 6:24; Luke 16:13; 3 Nephi 13:24.
- 15 1 John 2:17.
- 16 See Matthew 16:26.
- 17 Matthew 6:19-21.
- 18 Rule 2.1 Advisor, *Model Rules of Professional Conduct*.
- 19 Matthew 6:11.
- 20 Alma 10:32.
- 21 Abraham Lincoln, Fragment: Notes for a Law Lecture, July 1, 1850(?).
- 22 Doctrine and Covenants 121:39.
- 23 See Numbers 20:10-12; Deuteronomy 3:25-26; 32:51-52.
- 24 Exodus 20:3.
- 25 Articles of Faith 1:4.
- 26 Alma 10:27.
- 27 See John 8:7.
- 28 Matthew 5:16.