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and alumni on  
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Y BROTHERS AND SISTERS, I AM GLAD TO BE WITH YOU TONIGHT. Before I get to my prepared remarks, I want to say something about the faculty of our Law School. Soon after I went into law teaching, Edward H. Levi, who was then dean of the University of Chicago Law School (later a distinguished attorney general of the United States), became provost of the university and appointed me associate dean and acting dean of the law school. During the nine months I carried that responsibility, Edward Levi gave me a lot of tutoring and counsel. One thing he told me is appropriate for repeating in the wake of the "good old days" nostalgia that has characterized the Law School's 20th anniversary celebration.

"Don't refer too much to the early days and the great faculty members who were here when this law school was founded," Levi counseled. "You have to avoid talking too much about the great faculty members of the early days, lest the students and the public conclude that the great people who have taught at this law school were all in the early days and overlook the fact that the really great ones are those who are here now."

I concur in that counsel as applied to our own circumstance. We have a marvelous faculty at the J Reuben Clark Law School. I pay tribute to them—those who are here and those who have gone before.

That concludes the informal, unprepared part of my talk. Now I will share what I have written for this occasion.

## II



here are few words in the English language with any more beautiful connotations than the word *truth*. The scripture teaches us that "The glory of God is intelligence" and then adds "or, in other words, light and truth" (D&C 93:36). The Psalmist referred to God as the "Lord God of truth" (Ps 31:5).

The children of God have always been commanded to seek the truth and to say what is true. The Ten Commandments the Lord gave the children of Israel include: "Thou shalt not bear false witness against thy neighbour" (Ex. 20:16). Proverbs says, "Lying lips are abomination to the Lord: but they that deal truly are his delight" (Prov 12:22). The 13th Article of Faith declares that "We believe in being honest [and] true." To be "true" includes appearing to be what we really are. To speak the truth is to give an accurate account of the facts (see D&C 93:24).

There is no more authoritative or clear condemnation of the dishonest and lying person than the Savior's description of the devil as a liar and the father of lies (see John 8:44). Modern scripture refers to Satan as "that wicked one who was a liar from

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the beginning" (D&C 93:25). Jacob, the Book of Mormon prophet, declared that the liar "shall be thrust down to hell" (2 Ne 9:34). Similarly, in the great vision on the three degrees of glory, the Prophet Joseph Smith listed those who were to "suffer the wrath of God on earth," and be cast down to hell to "suffer the vengeance of eternal fire" (D&C 76:104–105). He included "liars, and sorcerers, and adulterers, and whoremongers, and whosoever loves and makes a lie" (D&C 76:103). Elsewhere in the Doctrine and Covenants the Lord commands, "Thou shalt not lie; he that lieth and will not repent shall be cast out" (D&C 42:21).

Our General Authorities have spoken repeatedly and sternly about the importance of telling the truth. Elder Mark E. Peterson called honesty "a principle of salvation" (*Ensign*, Dec 1971, p 72). In his stirring sermon titled "We Believe in Being Honest," Elder Marion G. Romney quoted Oliver Wendell Holmes' lines from "The Chambered Nautilus": "Sin has many tools, but a lie is the handle which fits them all" (*Ensign*, Nov 1976, p 36). Elder Gordon B. Hinckley preached against the widespread and fashionable dishonesty that threatens governments, institutions, and our personal dignity. His talk was titled "An Honest Man—God's Noblest Work" (see *Ensign*, May 1976, p 60).

Satan is the great deceiver and the father of lies, but he will also tell the truth when it serves his purposes. Satan's most effective lies are half-truths or lies accompanied by the truth. A lie is most effective when it can travel incognito in good company or when it can be so intermarried with the truth that we cannot determine its lineage.

Suppose, for example, we referred to Paul of Tarsus as "an apostle who went about to destroy the Church." Or suppose we referred to King David as

"an adulterer who was also a prophet." As students of the Bible we can recognize the elements of truth in each statement. Yet we know that each statement, by itself, conveys a lie. These examples show how easily a deceiver can discredit an individual or an organization by mixing different events or different times and packaging the mixture in innuendo.

Satan can use truth to promote his purposes. Truth can be used unrighteously. Severed from their context, true facts can convey an erroneous impression. True statements made with an evil motive, such as to injure another, are used unrighteously. A person who preaches the truths of the gospel "for the sake of riches and honor" (Alma 1:16) commits the sin of priestcraft. Persons who receive facts under obligations of confidentiality, such as lawyers or bishops who have heard confessions, are guilty of wrongdoing if they reveal them. And a person who learns an embarrassing fact and threatens to reveal it unless he is paid commits a crime we call blackmail, even if the threatened disclosure is true. It is not enough merely to refrain from lying. We must be righteous in the way we use the truth.

Up to this point, I have stated what I understand to be the doctrine of our Church. I will now suggest some applications of that doctrine, relying on my personal and prayerful conclusions.

## III.



had a sobering duty as a judge. During my period of service on the Utah Supreme Court, the first case that came before us for the disbarment of an attorney involved a graduate of the Brigham Young University J Reuben Clark Law School. What had he done? Not to put too fine a point on the sordid matter, he had stolen money from a client, and to conceal his crime he had repeatedly lied to his client and the court. That disbarment made an impression on me. I will never forget it, and I hope you won't, either.

On the subject of what lawyers should know about lying, I wish to quote the words spoken by a prominent lawyer in a law school graduation this spring.

*The reputation you develop for intellectual and ethical integrity will be your greatest asset or your worst enemy* [quoted in *Washington Post National Weekly Edition*, August 23–29, 1993, p 7]

*Following the bar exam, your most difficult test will not be of what you know but what is your character. Some of you will fail. The Class of 1971* [this was the speaker's own class and he had ranked first in it] *had many distinguished members who went on to achieve high public office. But it also had several who forfeited their license to practice law. Blinded by greed, some served time in prison. I cannot make this point to you too strongly. There is no victory, no advantage, no fee, no favor which is worth even a blemish on your reputation for intellect and integrity* [quoted in *Salt Lake Tribune*, July 27, 1993, p A6]

Those words, spoken at the University of Arkansas Law School graduation, are true. The sad sequel is that just a few months after he spoke those words, Vincent Foster, Jr., left his law office in the White House and drove to a lookout point over the Potomac River, took out a revolver, and ended his life. We may never know the exact reason for his action, but his words and his action provide a poignant reminder of the vital role of truth in the life of the law and its practitioners.

While no one deplores lawyer lying more than I do, I believe that the sins of the legal profession should be seen in context. In our society the members of many groups are notable for lying, but none is punished more severely than lawyers. What is unique about lawyer lying is not that it is more widespread or more important than the lying of members of other groups, but that it is more severely condemned and more severely punished.

We have no way of measuring the extent of lying among the members of society's different groups, but it is prob-

ably true that the category of lies most highly publicized are those told by public officials. Hardly a day passes without a newspaper article concerning deceptions by public officials, including (to cite only a few examples that come to mind) law enforcement personnel, prosecutors, county commissioners, mayors, presidents, governors, legislators at every level, and an assortment of government administrators too numerous to list. The lies of public officials may be the most damaging lies in terms of the number of people they mislead and the consequences of the deception.

*wonder that business has garnered a reputation for being less than honest?* ["Do the Right Thing in Business," *Wall Street Journal*, June 21, 1993, p A10]

A petroleum industry publication responded to this editorial by predicting that global competition will compel more honesty in the practices of both industry and service companies:

*Companies are discovering that when they do the right thing, their integrity is beneficial in subtle ways. Employees feel proud of their company simply*



The lies of public officials, like the lies of religious leaders, are also extremely damaging in the way they degrade the moral tone of the entire community. Officials' lies and clergymen's lies are especially damaging to impressionable young people.

Dishonest business practices are also widespread. From time to time someone speaks out on that subject. A recent *Wall Street Journal* opinion piece gives this harsh assessment:

*Deception and dishonesty in business surround us. We find them in the half-truths and distortions of fact in advertising, in package labeling, and in merchandise markdowns. We find them in shoddy goods that fail when still new. Is there any*

*because they can feel proud of themselves. An honest company is one you can depend upon. While it may keep some doors closed to new business, your current customers will give repeat business, and your client list will grow.*

*Half-truths, distortions of fact in advertising, package mislabeling, merchandise markdowns, and shoddy merchandise are no longer acceptable business practices. In the new world of globalized markets, only those companies which incorporate integrity and honesty as a by-product of their goods and services will survive* ["World Energy Update," June 30, 1993, p. 12]

The same should, could, and I hope will be said of lawyers and law firms.

## IV



ome have suggested that it is morally permissible to lie to promote a good cause. For example, some Mormons have taught or implied that lying is okay if you are lying for the Lord. There is ancient precedent for this argument, and it will not surprise you to know that Professor Hugh Nibley brings it forward and condemns it in his discussion of the use of "fabrication" in the writing of early Church history. I quote him:

*Just as physicians must sometimes tell fibs to patients to help them along, and as those tending small children or the feeble-minded can handle them and help them more effectively by making up stories as*

*It was common practice for Christian scholars in the Middle Ages both "without scruple [to] put forward older texts, with slight alteration, as their own compositions," and to put forth their own compositions without scruple as ancient texts [Mormonism and Early Christianity, The Collected Works of Hugh Nibley, vol. 4 (Salt Lake City: Deseret Book Co., 1987), pp 220-221]*

As far as concerns our own church and culture, the most common allegations of lying for the Lord swirl around the initiation, practice, and discontinuance of polygamy.

It is clear from the record of history that Joseph Smith introduced the doctrine and practice of polygamy to a select few in the 1830s and 1840s, but it was not announced publicly by the Church until the revelation was read

a season. It appears that polygamous marriages also continued for about a decade in some other areas among leaders and members who took license from the ambiguities and pressures created by this high-level collision between resented laws and revered doctrines.

The whole experience with polygamy was a fertile field for deception. It is not difficult for historians to quote LDS leaders and members in statements justifying, denying, or deploring deception in furtherance of this religious practice.

My heart breaks when I read of circumstances in which wives and children were presented with the terrible choice of lying about the whereabouts or existence of a husband or father on the one hand or telling the truth and seeing him go to jail on the other. These were not academic dilemmas. A

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*they go, so the Christian priest was to cultivate a useful deception as an essential tool in dealing with the laity, according to John Chrysostom. "When Jacob deceived his father," he explains, "that was not deception but oeconomia [economy]"*

*Jerome admits to employing "a sometimes useful deception," and admires others for the same practice: "how cunning, how shrewd, what a dissimulator!" And he cites Origen as teaching that "lying is improper and unnecessary for God, but is to be esteemed sometimes useful for men, provided it is intended that some good should come of it."*

Nibley condemns this theory and then describes some of its manifestations

aloud at a Church conference in Salt Lake City in 1852. It is also clear that during the federal prosecutions of the 1880s, numerous Church leaders and faithful members were pursued, arrested, prosecuted, and jailed for violations of various laws forbidding polygamy or cohabitation. Some wives were even sent to prison for refusing to testify against their husbands, my grandfather's oldest sister being one of them.

It is also clear that polygamy did not end suddenly with the 1890 Manifesto. Polygamous relationships sealed before that revelation was announced continued for a generation. The performance of polygamous marriages also continued for a time outside the United States, where the application of the Manifesto was uncertain for

father in jail took food off the table and fuel from the hearth. Those hard choices involved collisions between such fundamental emotions and needs as a commitment to the truth versus the need for loving companionship and relief from cold and hunger.

My heart also goes out to the Church leaders who were squeezed between their devotion to truth and their devotion to their wives and children and to one another. To tell the truth could mean to betray a confidence or a cause or to send a brother to prison. There is no academic exercise in that choice!

I do not know what to think of all of this, except I am glad I was not faced with the pressures those good people faced. My heart goes out to

them for their bravery and their sacrifices, of which I am a direct beneficiary I will not judge them That judgment belongs to the Lord, who knows all of the circumstances and the hearts of the actors, a level of comprehension and wisdom not approached by even the most knowledgeable historians

I ask myself, "If some of these Mormon leaders or members lied, therefore, what?" I reject a "therefore" which asserts or implies that this example shows that lying is morally permissible or that lying is a tradition or even a tolerated condition in the Mormon community or among the leaders of our Church That is not so

I suppose most mortals employ some exaggeration and a little of what someone called "innocent after-mind-ness" But does this mean we condone deliberate and important misrepresentations of fact in a circumstance in which they are clearly intended to be believed and relied upon? Never! Lying is sinful, as it has always been, and there is no exempt category for so-called "lying for the Lord" Lying is simply outside the range of permitted or condoned conduct by Latter-day Saints—members or leaders



## V.

Some of those who have commented on the alleged lies told in connection with polygamy have failed to distinguish between the wrongfulness of asserting something that is untrue and the very different circumstance of not telling everything one knows I wish to comment on that distinction because it is an important one for the legal profession and indeed for all participants in commerce and public affairs

I begin with an example from Church history About ten years after the event, a friend of the Prophet Joseph Smith recalled a statement Joseph made on the morning of the day he was murdered. According to Cyrus Wheelock, the Prophet said

their lives had been jeopardized by revealing the wicked purposes of their enemies He counseled that they not make such complete disclosures in the future Joseph affirmed that all they had said was true, but he observed that it was not always wise to recount such truths (Cyrus H Wheelock to George A Smith, Dec 24, 1854, Church Historical Department; the substance of this statement is found in *Teachings of the Prophet Joseph Smith*, p 392 )

When I read this suggestion of the prophet, I thought of the Savior's teaching his disciples: "Give not that which is holy unto the dogs, neither cast ye your pearls before swine, lest they trample them under their feet, and turn again and rend you" (Matt. 7:6 ) The Savior also instructed his newly called apostles: "Behold, I send you forth as sheep in the midst of wolves: be ye therefore wise as serpents, and harmless as doves" (Matt. 10:16 ) Also important on this subject are the many instances in the scriptures where a prophet was instructed by the Spirit of the Lord not to teach or write some important truth (e.g., 1 Ne 14:28; Ether 3:21; D&C 10:34-37)

These scriptural instructions establish that the obligation to tell the truth does not require one to tell everything he or she knows in all circumstances The scriptures teach that there is "a time to speak," and "a time to keep silence" (Eccl 3:7) Indeed, we have a positive duty to keep many things secret or confidential But this principle does not condone violating the ninth commandment, "Thou shalt not bear false witness" (Ex 20:16) When the truth is constrained by other obligations, the outcome is not falsehood but silence for a season

Nibley discusses the Christian origins of this distinction. While criticizing the clergy's censorship of early Christian documents, Nibley quotes St Augustine as saying:

*It is permitted for the purpose of building up religion in things pertaining to piety, when necessary, to conceal whatever appears to need concealing; but it is not permitted to lie, of course, and so one*

*may not conceal by way of lying.* [Nibley, *Mormonism and Early Christianity*, vol 4, pp 228]

(I believe that statement of St Augustine would have been clearer if he had said, "so one may not lie by concealing")

In a quoted document, to omit parts of the quote without noting the omission is to perpetrate a lie Earlier standards of authorship may not have required this, as the above quotes suggest, but the standard is clear today A lie is also furthered when one remains silent in a circumstance where he or she has a duty to speak and disclose. In other words, a person lies by concealing when he or she has a duty to reveal Some relationships and some circumstances create such a duty

In contrast, when there is no duty to reveal all and when one has not made an affirmative statement implying that all has been revealed, it is simply incorrect to equate silence with lying Nibley explains this distinction He justifies the withholding of some religious knowledge, such as the Savior directed when he told his disciples not to cast their pearls before swine Nibley writes:

*A well attested Logion preserved in the Clementine writings quotes Peter as saying, "Let us remember that the Lord commanded us saying, 'Guard those secret things [mysteria] which belong to me and the sons of my house'" "The Mysteries of the Faith," says Clement of Alexandria, "are not to be disclosed indiscriminately to everyone, since not all are ready to receive the truth"*

Nibley continues:

*There is a sound pedagogical principle involved here: "The teaching of all doctrine," says Peter in the Recognitions, "has a certain order, and there are some things which must be delivered first, others in the second place, and others in the third, and so all in their order; and if these things be delivered in their order, they become plain; but if they be brought forward out of order, they will seem to be spoken against reason" That is why he*

**It requires a sophisticated analysis of the circumstances and a finely tuned conscience to distinguish between the situation where you are obliged by duty to speak and the situation where you are obliged by duty, commandment, or covenant to remain silent.**

*rebuked the youthful Clement for wanting "to know everything ahead of time" [Nibley, *Since Cumorah, The Collected Works of Hugh Nibley*, vol 7, pp 96-97]*

Consistent with that direction, there are many sacred things we do not discuss. I will give two illustrations, and you can easily supply many more.

Before the Saints came to the Rocky Mountains, Wilford Woodruff saw in a dream that he would come west with the Saints, that a great temple would be built of cut granite stone, and that he would attend the dedicatory services. He wisely kept that knowledge confidential—even when his file leader Brigham Young was speaking of building the Salt Lake Temple of adobe or brick. He revealed his dream in 1880, when a granite temple was under construction. (See *Journal of Discourses*, vol 21, pp 299-300.) As we now know, it was Wilford Woodruff who had the high and holy duty, as president of the Church, of dedicating the Salt Lake Temple. I suspect this was also part of his dream, but he left it unsaid in 1880, since another was then president of the Church.

To cite a more personal example, many of us have had the experience of having the spirit whisper that we would be called to a particular position. Quite a few of the stake presidents I have installed, and some of their wives, have had that foreknowledge. Did they tell me in the initial

interview? Obviously not. To share that knowledge out of season would be seen of men as aspiring and could be seen of God as trifling with sacred things.

These examples contain important lessons for Church members. There are things we simply should not discuss or reveal. Sometimes we are silent out of loyalty to those we love. Sometimes we are silent because the Lord has confided in us, and we know we are not appointed to be the means of disseminating the knowledge to others. Sometimes there are other reasons.

There is an important scriptural instruction on this subject. It appears in the revelation the Lord gave the Prophet Joseph Smith about the loss of the initial 116 manuscript pages from the Book of Mormon translation. Here the Lord warned the Prophet Joseph Smith not to retranslate those manuscript pages.

The Lord explained that the "wicked men" (D&C 10:8) who had taken the manuscript had altered the words from what Joseph had translated and caused to be written, "And, on this wise, the devil has sought to lay a cunning plan, that he may destroy this work" (v 12). Specifically, if Joseph retranslated the record and brought forth the same words, the plotters would produce what they would say was the original, show contradictory words, and say "that he has lied in his words, and that he has no gift, and that he has no power," all for the purpose of destroying Joseph Smith and his work "that [they] may get glory of the world" (vs. 18-19; also see vs 13 and 31).

The Lord used these words to describe Satan's plan:

*Yea, [Satan] saith unto them: 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 [v 25]*

The Lord's answer to Satan's teaching is, as the lawyers say, "on all fours" as a precedent on the subject of lying versus not telling all you know.

First, the Lord said: "Verily, verily, I say unto you, wo be unto him that lieth to deceive because he supposeth that another lieth to deceive, for such are not exempt from the justice of God" (v 28).

Second, the Lord instructed the Prophet what he should do next. He should not retranslate the words that had gone forth out of his hands (v 30), but he should proceed to translate "the remainder of the work" (v. 3). Then the Lord gave this interesting instruction: "show it not unto the world until you have accomplished the work of translation . . . that you may be preserved" (vs. 34-35). "Hold your peace," the Lord concluded, "until I shall see fit to make all things known unto the world concerning the matter" (v 37).

Here we see that although a man is not justified in lying to detect a liar, he is justified (indeed, Joseph Smith was commanded!) to withhold things from the world in order to preserve himself and safeguard the work in which he is involved. In other words, we must not lie, but we are free to tell less than we know when we have no duty to disclose.

It should hardly be necessary to point out that these principles also apply to the legal profession. If you tell everything you know about a client's affairs, you will not be praised for honesty. You will be disciplined for professional misconduct. The attorney-client privilege and the comparable privileges

of other professionals safeguard confidential disclosures and give legal recognition to the principle that one is not a liar when one remains silent in a circumstance in which there is no duty to disclose.

I will conclude with some summary thoughts suggested by the familiar oath by which a witness in a formal proceeding is sworn to "tell the truth, the whole truth, and nothing but the truth"

To tell the truth is a general religious obligation, whether we are sworn or not. "Thou shalt not bear false witness against thy neighbour" (Ex. 20:16) The apostolic letters command: "Lie not one to another" (Col 3:9), and "Wherefore, . . . speak every man truth with his neighbour" (Eph 4:25) In his condemnation of the lawless and disobedient, the apostle Paul listed liars and perjured persons (see 1 Tim 1:9-10)

to matters relevant to the proceeding. It does not extend to other subjects The duty to tell the whole truth is also limited by special legal protections, such as the privilege against self-incrimination

Whether a speaker is morally or legally obliged to speak "the whole truth" is therefore determined by the extent of the speaker's duty to disclose. Such a duty can be imposed by the speaker's relationship to the person(s) addressed or by other circumstances A lawyer obviously has a duty to his client to reveal the whole truth about any matter pertaining to the representation, such as a potential conflict of interest or the receipt of settlement offers Failure to do this can result in professional discipline A public official has a duty to reveal to the public the whole truth about many matters of public concern. A trustee has a duty to make full disclo-

disclose, we are morally responsible to do so Where there is no duty to disclose, we have two alternatives We may be free to disclose if we choose to do so, but there will be circumstances where commandments, covenants, or professional obligations require us to remain silent

In short, my brothers and sisters, the subject of lying is clear cut in a majority of instances But there are a lot of situations where people are sometimes charged with lying where the charge is not well founded You will read that kind of charge in the literature and in current commentary, as if a person were under a duty to tell everything he or she knew, irrespective of any other duties or obligations

I urge you who are lawyers and lawyers-in-preparation to be sophisticated as you think about these subjects Be unqualified in your commitment to the truth Be unqualified in your determination to tell the truth and nothing but the truth But also be prepared for circumstances that may be painful and contrary to your personal interest and comfort where you must keep confidences, even if someone calls you a liar It requires a sophisticated analysis of the circumstances and a finely tuned conscience to distinguish between the situation where you are obliged by duty to speak and the situation where you are obliged by duty, commandment, or covenant to remain silent

I'm grateful to be with you tonight I know that the work in which we are involved as members of The Church of Jesus Christ of Latter-day Saints is the work of God. It is a work carried out by mortals, and is therefore bound to have a fringe of imperfections around the edge that may unravel here and there because of mortal weakness or mistake When this happens, I am glad that the whole garment can be put back together by the glorious principle of repentance, owing entirely to the atonement of our Lord and Savior

May God bless you in the wonderful work you are doing May we be committed to truth and to duty and to service, I pray in the name of Jesus Christ, amen



To tell "nothing but the truth" is a clear and invariable application of that principle Proverbs says, "A false witness shall not be unpunished, and he that speaketh lies *shall not escape*" (Prov 19:5; emphasis added)

In contrast to the obligation to tell the truth and nothing but the truth, the obligation to "tell the *whole* truth" is subject to an important qualification. In a judicial proceeding, the sworn duty to tell the whole truth is confined

sure to the trust beneficiaries of all matters pertaining to the trust property. Many other examples could be given

In the matter of lying, the essential question is not whether we have a duty to tell the truth and nothing but the truth We clearly have that duty We must not lie. I know of no category of justified lies.

The difficult question is whether we are morally responsible to tell the whole truth When we have a duty to