



The Privilege of Being a Christian Trial Lawyer

by Craig Shultz

I remember the feeling of exhilaration when my partner and I won our first jury trial. It was a criminal case and involved only a misdemeanor, but to us it was a chance to learn firsthand what it was like to try a case. Typical skirmishes occurred throughout the two-day trial but, in the end, the jury found our client not guilty – a just verdict in our opinion. It was all we could do to contain our excitement until we left the courthouse, and my partner let out a shout of joy that sticks in my mind to this day.

Twenty-nine years later, while there are many days when I feel overwhelmed by the responsibility and the deadlines, I still love being in trial. Since that first experience, I have had the privilege of trying approximately 120 jury trials of all different kinds. Many were short, some were long, and by now in my career I have tried many more civil than criminal cases, though I still enjoy working in both areas of the law. My practice consists primarily of the representation of individuals asserting claims for injury from accidents or professional negligence, as well as defending the rights of people accused of crimes – typically people with less power, from the world's point of view, than those on the opposing side.

Occasionally, I find myself wondering about the actual significance of being a lawyer who is Christian. Am I doing what I ought to be doing? Surely there must be something more, something better to do for God. Maybe the nature of the system contributes to the doubt. A pessimistic view suggests that, as a judge once lamented to me, at best it serves to determine a winner based on something other than

who has the fastest draw. Is that as good as it gets?

A positive response to this dilemma certainly cannot be found in any tremendous public respect for the process. Condemnation of our legal system is hugely popular today with simplistic criticism of the lawyers and parties running rampant, simply ignoring or masking the real root of the problems often identified with it. Admittedly, the system has faults, largely because of the common condition we all suffer in this world – hearts of men and women that, according to Jeremiah, are more deceitful than all else and are desperately sick. Sure, the justice system is capable of being and is sometimes misused, just like money, power and possessions, but it is equally capable of being powerful to help bring about justice.

The absence of encouragement is likewise evident in the lack of public respect for lawyers in general and trial lawyers in particular. Trial lawyers on either side of a case are often misunderstood and, while it is not just a question of us versus them, plaintiff's lawyers are the subject of particular disdain, with the worst negative descriptions frequently used for political advantage by those in my own, often uncompassionate, Republican party. Even well-intentioned articles written by other lawyers can be suggestive of such bias, at least implying some less-than-honorable motive on our part. Rodney Dangerfield would have understood the feeling.

My friend, Tim Smith, in a CLS workshop several years ago, summarized the concern when he asked, "What in the world am I doing representing plaintiffs in personal injury cases?"

His thoughts on the subject express my feelings well:

Often, my clients are the poor, the widow, the orphan, someone without any power in this world, someone dependent on an advocate in order to secure any justice or recompense for a wrong. My clients are almost always the victim of a tragedy, with no ability to make things right on their own.....They are surprised to be treated like a criminal or a liar. They don't understand that we have an adversary system in which personal injury defendants presume the worst about every claim and every plaintiff and every plaintiff's attorney. (edited with permission)

Most assuredly, representing innocent victims of tortious conduct is a legitimate and important part of our system of justice. Its genesis can be found at least as far back as the Levitical law requiring justice and compensation (what we call damages) to those who are injured by the fault of another. Our duty is to help those in need even when it means confronting others to reach the truth.

In my own experience, I've heard and felt the same presumptions described by Tim, often by other believers who seem to view my job as something less than what a "good" Christian would do. How can you defend someone you think is guilty? Personal injury verdicts are way too high! Why do so many people get off on "technicalities?" I often wonder why they never ask the prosecutor how he can prosecute someone he thinks may be innocent, how many jury verdicts end up way too low, or whether those "technicalities" might be

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what many of us refer to as the Constitution of the United States. Of a more telling nature, why is it that none of those questions arise when it is their child in trouble or their family member who was injured?

I remember reading an article a few years ago by Ben Stein, who observed that our culture always blames the other guy. There is some truth to that claim; however, I was admittedly disheartened by his broad brush implication that plaintiffs (and their lawyers?) are the ones in the wrong, that they stifle innovation with lawsuits, and that corporate America deserves our sympathy in the judicial system. Sure, some plaintiffs need to admit their responsibility and I often have the opportunity to suggest just that. I can't begin to provide the number of people I have told that they do not have a case because there is either no fault at all or the fault is primarily theirs. And, believe it or not, most people seem satisfied with that explanation. They just need someone to tell them. Even their close friends won't often do that. What is more disturbing to me, however, at the risk of some generalization similar to that about which I complain, is how often defendants blame the plaintiff when there is virtually no basis to do so. Defendants, in my experience, hardly ever come to court and admit, early on, they were wrong. When defendants ignore the warning signs of potential damage, I have a hard time feeling much sympathy for them. And it is rare to talk about settling a case until long after the defendant has spent a large amount of money, often trying to justify the unjustifiable. Is it wrong to suggest that defendants should more frequently accept their responsibility early in the process rather than blame the plaintiff or the other guy?

The problem doesn't end there. One juror in a case I had about five years ago did not want to compensate my client, who was injured in a rear-end collision, because "stuff happens." The rest of the jury (it takes 10 of 12 jurors to agree on

civil verdicts in Kansas) fairly compensated my client. It was a small case and I don't think anybody would suggest the award was too large, given the nature and severity of my client's injury. But I doubt that same juror would have thought that "stuff happens" if the defendant had then complained about a "high" verdict. Or if she were the victim of an accident or crime, would she say, well, "stuff happens?" Wasn't her position most likely a mere "cop out" to avoid her own responsibility to honestly deal with the issue before her?

I would suggest that criticism of plaintiffs is often just a diversion tactic used to deflect an honest assessment of this issue of personal responsibility, a standard we as plaintiff's lawyers – indeed lawyers in general – ought to hold high. This tendency toward the denial of responsibility permeates much of life and is a concern to which we in the legal system are particularly susceptible. The problem lies on either side of a controversy with those who refuse to accept it, instead denying it to the bitter end. Like speaking the truth in love, justice inherently demands true accountability in this area.

Tim Smith explains his thoughts on the situation as it applies to representing plaintiffs:

God has a tremendous heart for the orphan, the widow, the alien, the poor, and the oppressed. Deuteronomy 10:18, 14:29; Psalm 10:18; Isaiah 1:18. In Isaiah 10, we are told of woes to those who "deprive the needy of justice and rob the poor of My people of their rights." Similarly, Jeremiah 5:28-29 prophesies against those who "do not plead the cause of the orphan" and "do not defend the rights of the poor."

We are told that God's perspective on justice has to do with how these people are treated. Christian attorneys have the opportunity to bring integrity, honesty, and excellence to the litigation process on behalf of someone who desperately needs an able advocate. That is the way the adversary system works. In

order to ethically and honorably secure justice in this environment, the victim needs an able, ethical, experienced advocate.

The adversary system is, in the end, intended to let a jury or judge decide the facts. Being a good advocate for our clients within that system and for that purpose doesn't have to mean that we hate or mistreat the other side. Many of the trials I'm in are rather pleasant and friendly experiences. It is not always a full blown battle. And certainly that's where the Christian trial lawyer – including plaintiff's lawyers – can play such an important role. Writing in the last issue of *The Christian Lawyer*, David Schlachter with Peacemaker Ministries challenged us to "intentionally avoid following the world's pattern of power and manipulation to win at all costs," and to apply Biblical principles in our advice to clients, all the while seeking opportunities "to encourage reconciliation..." That is certainly applicable in the trial setting.

I'm proud to be a plaintiff's lawyer, despite society's instinctive bias against us. It is indeed an honorable calling to work for individuals who have been injured or damaged through the actions of another, not to be greedy, but to seek fair and honest compensation. We can treat people well in the process, contribute to the integrity, honesty and excellence necessary to improve the system and, as Tim succinctly concludes, use it as "a great opportunity for Christian attorneys to show how to fully represent Christ and the client at the same time." As I often tell juries in my closing argument, it is both a responsibility and privilege to represent my clients in that process.

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