

I am not going to spend much time on the issue of whether a 'true' Christian, a 'redeemed' Christian, a Christian experiencing a 'changed life', someone who Professor John W. Stanford of Regent Law School describes as a 'Spiritual Christian', can morally and ethically represent persons charged with reprehensible crimes while being a 'Christian lawyer'. The answer to this important and necessary question is an unequivocal, resounding 'yes'.

Today's question, posed by a career criminal defense lawyer, is *why should* a 'Spiritually Christian' lawyer practice criminal defense? My response: we are supposed to be *advocates* as lawyers, *particularly* if we profess Christ. Using Professor Stanford's term, 'Spiritual Christians' practicing law hunger to integrate true faith with their practice. At risk of offense where none is intended, I encounter brother and sister lawyers who do business law who have a hard time recognizing that they are 'doing the Lord's work'. I am blessed that I have never had a day go by that I have not recognized the Lord's work by the blessing of representing 'accused persons'. Christians doing criminal defense do not have to worry about (1) opportunities to share their faith; (2) ministering to person's significant problems in a spiritual way; or (3) having one-on-one relationships that are not simply transactional, where an individual gets, perhaps, their first opportunity to see someone who cares enough about them that they *advocate* for them.

C.S. Lewis said we are to be transformed to be like “little Christs”. Actually, the quote from Mere Christianity is: “Every Christian is to become a little Christ. The whole purpose of becoming Christian is simply nothing else.” Even lawyers? Even criminal defense lawyers? Yep. Where does C.S. Lewis get this idea? I like **Ephesians 5:1-2**: “Be ye therefore *followers* of God as dear children. And walk in love, as Christ also loved us, and hath given himself for us an offering and a sacrifice to God” ...and **1 John 2:6**: “He that saith he abideth in him ought himself also so to walk, *even as he walked*.”

It’s not a stretch that if we are to be followers of Christ, i.e. ‘little Christs’, that, as attorneys, we are ‘advocates’ for others, particularly those accused of wrongdoing. After all, Christ is our *advocate* with God his father, and our father: “My little children, these thing write I unto you that ye sin not. And if any man sin, *we have an advocate with the Father, Jesus Christ the righteous*.” **1 John 2:1**

We are called as ‘little Christs’ to be *advocates*. How?

This is ‘scotch-taped’ to my computer, where I see it every day;

Sen. Sam Ervin recalls a lesson learned in his youth:
Judge David Schenck, a North Carolina lawyer of a bygone generation, was once asked how he justified pleading for a guilty client. His answer merits preservation. He said,

“Someday I shall stand before the Bar of Eternal Justice to answer for deeds done by me in the flesh. I shall then have an advocate in the person of our Lord, who will certainly be pleading for a very guilty client.”

What Sam Ervin is saying, what Judge Schenck is saying, what *I* say to everyone who asks how I can possibly represent “those kind of people” is ‘*there but for God’s grace go I*’. Not trite. I *mean* it. I am blessed to know the seriousness of my sin. And “how costly grace was to God, who gave up his son” Dietrich Bonhoeffer, *Cost of Discipleship*.

The criminal defense ministry involved with accused persons is letting them know you *understand* their plight. You understand the power of addiction in its various forms: alcohol, drugs, anger, power over others, sex (have I missed anything?). The ‘Spiritual Christian’ understands that because I’m a sinner just like you, the wages of my sin is physical and spiritual death. **Romans 6:23**. I sometimes tell my clients that I’m a ‘capital case’, culpable for murder. Which I am many times over. I’ve shared that I’m grateful for God’s grace that I didn’t actually physically hurt somebody with my anger, which Jesus makes clear can hurt really bad, so bad that it is spiritual murder. **Matt 5:21-22**: “You have heard that it was said by them of old time, thou shalt not kill; and whosoever shall kill shall be in danger of the judgement (22). But I say unto you, that whosoever is angry with his brother without a cause shall be in danger of the judgment.” I have on occasion, particularly with domestic violence assault clients, made it very clear that I have really hurt people I care for with my anger.

Countless times I have heard client rationalizations and blame shifting for acts of domestic violence. I start with my own experiences where anger was very controlling

and caused hurt, and I didn't even punch anybody. As an *advocate*, I am indicating that I 'get' the origination of anger and its power, while not being *judgmental* or *condoning*. Which is easy if you are truly accepting of forgiveness; Jesus will return to *judge* those who haven't accepted him (**Matt 25:31-46, 2 Timothy 4:1, John 5:22**) and *advocate* to the Father those who have followed him (**1 John 21 and John 14:16**). Those followers are still *really guilty*.

What does my *advocate* (Jesus) do *for* me? What does the Holy Spirit do for my personal direction and guidance? There is truth in the expression "you are only as good as your advocate". We - Spiritual Christians who are attorneys - have *two* advocates. Jesus is speaking to God *for* me, and the *second* advocate is speaking *to* me to help me; like, should I take this case, should I make this argument, what can I do on this person's behalf that I really want to help? In **John 14:16**, Jesus says "And I will pray the Father and he shall give you another *comforter*, that he may abide with you for ever" KJV. Other translations have, instead of comforter "helper" or "counselor". The NIV uses "advocate" because the Greek word, *paraklete*, involves two different concepts in one word that are appropriately summarized by use of the term "advocate". 'Para' means *come alongside in order to support*. 'Klete' is *directing or calling someone*. This person takes an active, *not* passive, role while being sympathetic. Standing in someone's shoes. In a relationship. An attorney who represents someone in court is *all these things*.

What does an advocate do *for you*. Or, for our purposes, what is your criminal defense attorney to you when you are accused of a crime and you are in court.

The relationship of Christ to his people is that of a *legal advocate to a client*. The former personates the latter. The lawyer stands in the client's place. It is, while it lasts, the most intimate of relationships. You may not even have to appear in court! You are not heard. You are not regarded. You are lost in your advocate, who for the time being is your representative. The advocate, not you, is *seen*. The advocate, not you, is *heard*. The advocate, not you, is *regarded*.
Charles Hodge

The following is from a sermon on November 13, 1994 by Tim Keller, on **1 John 1:8-2:2**.

Keller explains that one “disappears into your advocate”. ‘Disappears’ is similar to ‘abiding in’, as we ‘abide in Christ’. By the way, abiding *belief* is the legal standard in the State of Washington for *proof beyond a reasonable doubt*; A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an *abiding* belief in the truth of the change, you are satisfied beyond a reasonable doubt. WA Instruction 4.01.

Keller illustrates *depending* on our advocate:

There is a sense in which, in court, your defense attorney is you. If you stammer, but your lawyer is eloquent, what do you look like in court? *Eloquent*. If you are ignorant, but your lawyer is brilliant, what do you look like in court? *Brilliant*. In some cases, you may not be required to speak or even to appear personally in court. Your attorney appears in your place, as your substitute. So what do you look like in court? You look like whatever your advocate looks like. If you advocate wins, you win. If

your advocate loses, you lose. In short, you're lost in your advocate – you are *in* your advocate.

I take away from this that I want to look perfect before God when I stand before his throne of justice. Before I panic upon reflection of the heavy responsibility associated with being a courtroom lawyer battling the state or the Government I remember: I have on many occasions been blessed with cases that appear impossible to defend, and, I realize *I have a perfect* advocate who is alongside me, next to me, who is helping my case for me to GOD. *My* advocate is perfect, telling GOD that *even though I am guilty, I go free*. He's taking my rap. Jesus doesn't just advocate for me, he's made my case by paying for my sins (**Colossians 2:3-14**) and substituting (**Mark 20:28, Roman 3:21, 2 Corinthians 5:24**) for me. When I go up against Goliath; the State or Government, I usually tell my clients there is one entity in all the universe more powerful: God. Which gives my client, and me, a peace that we are going to be okay. No panic!

I am convinced that God wants Spiritual Christians called as lawyers to advocate for persons accused of crimes to truly go to bat for them, regardless of whether they are 'guilty' under worldly standards.

Aims for the Criminal Lawyer with a Kingdom-Lens:

- Keep their identity in Christ, first and foremost (Matt. 6:33)
- Draw hope from Christ as our own Advocate (John 14:16)

- Uphold the Constitutional Rights and Presumption of Innocence (Model RPC 3.1) for all clients, just as every person is created in the image of God and Christ died for all (Gen. 1:26-27; Prov. 22:2; 1 John 2:1-2; Declaration of Independence)
- Seek to understand the life circumstances of each client (Model RPC 1.14; 2.1)
- Help foster connections with supportive people and organizations
- Fight to have their client's story understood and presented effectively

Grace is extended equally to those who...

Ask for repentance outright

➔ thief on the cross (Luke 23)

Are curious about repentance

➔ Zacchaeus in the tree (Luke 19)

Have not yet considered repentance

➔ woman at the well (John 4)

➔ adulterer brought to Jesus (John 8)

➔ Saul on the road to Damascus (Acts 8:1-3; 9:1-6)

Life-Cycle of a Criminal File

- pre- or post-arrest legal advice: do NOT give a statement!
- assistance with bail proceedings

considerations:

- defendant's criminal record
- severity of the alleged crimes
- strength of the evidence against them
- whether they have a stable job, address, family/friends they can live with
- how likely it is that they will show up for future court dates
- advocacy at arraignment
 - Probable Cause review

- No Contact Order considerations
- analysis of the law enforcement investigation materials
- defense investigation
 - alibi
 - identifying other witnesses
 - motivations to fabricate / unreliability of witnesses
 - mitigating circumstances
- assessment of the strengths and weaknesses for the client
- running a trial
 - Constitutional rights-based motions
 - motions to protect against admission of prejudicial evidence (ER 401-408; ER 701-705, especially ER 404)
 - become familiar with the witnesses of both sides
- sentencing
 - set them up early for success with non-profit resources
 - understand the client's background
 - advocate their potential for rehabilitation

So: how would you 'advocate' for your client as a Spiritual Christian in each of the three hypotheticals set forth below.

[Depending on the room, we will break out into smaller groups]

Domestic Violence Hypothetical

John and Jane married just after high school graduation. They met at a Young Life Club. John worked as a Seattle Firefighter. Jane was a waitress at a Seattle restaurant. In time they had a child but grew apart. John spent many hours at the station. He started to 'graze' on the internet and developed an online relationship with a woman. Eventually they exchanged nude images of each other. The stress of being the primary caretaker took a toll on Jane, and she began to drink. John would often find her intoxicated when he returned home from a shift.

One day, John left his cell phone on the couch. Jane located the phone and saw that John had exchanged several suggestive messages with another woman. She also found nude images that they exchanged.

When John returned from his shift, he was quite tired. John noticed Jane was again intoxicated. He decided to avoid her stating, "I gotta go to bed." Jane responded by "I bet that's what you say to her" while holding up his cell phone. John moved toward Jane with arms raised to retrieve his phone. Jane said, "get away from me" and threw the phone at him, hitting him in the shoulder. The couple's 12 year old daughter, Mary, saw her mother throw the phone. She saw her Dad pick up the phone and start walking toward her mother. John was yelling at her mother about being "shitfaced" and appeared extremely angry. Mary saw her mother throw a glass at John. John grabbed Jane's arm as she was reaching for another glass. Mary called 911. Both parents were screaming at Mary, "Stop!"

Seattle police officers arrived shortly after Mary's call. John let the officers into the house, stating, "I had an argument with my wife, and my daughter got scared." John would not give any more details. Officers then spoke to an obviously intoxicated Jane. Jane said, "I caught him cheating". The officers asked, "what did you do?" Jane replied, "I'm not answering any further questions". The officers interviewed Mary. Mary admitted her mom had been drinking and "probably threw Dad's cell phone at him". The police learned from Mary that her father's use of physical force was to restrain her mother from throwing another glass. They performed a mandatory DV arrest of Jane as they perceived her to be the primary aggressor. She was not able to bond out of jail due to the DV nature of the offense.

John located an attorney to represent Jane, Elisa Coates, who met with Jane, during the weekend.

1. First meeting pre-arraignment with Jane – what are the legal and spiritual issues?

2. Meeting with John – he is paying for lawyer and has his own agenda – how do you navigate this and potential tampering issues?
3. First appearance arraignment issues – assuming Jane will be released, how do you manage issues with family. Issues with No Contact Order?
4. Preparing for trial – issues with child witness, other proof issues, risks, etc.
5. Plea negotiations – is there a way to avoid trial and not forgo issues and objectives that might prevail in trial? How do you address treatment needs (of both Jane and John?)
6. Sentencing – this is a part of the negotiations, but how do you serve the interests of the family and the client at the same time?
7. Advice regarding post sentencing monitoring by probation, the court and the defense lawyer

Child Sexual Assault Hypothetical

Sarah has been married for 8 years to Leo. Their union resulted in two children, Bea and Charlie. Sarah separated from Leo, who was chronically underemployed or unemployed, spending most of his time in their bedroom on the internet ostensibly “looking for work”. This was usually while smoking a couple bowlfuls of marijuana. Sarah was fed up with Leo’s laziness, but she moved out when she started having suspicions about Leo’s behaviors toward Bea, who was age 7. Bea complained that her Dad was “lazy, good for nothing” and “I don’t like being around him”. Upon hearing Sarah’s complaints, a friend offered a room in his house. The friend was not fully prepared that Sarah took him up on his offer, bringing along Bea and Charlie one late evening. Leo woke up after a late night of too many bowlfuls to find Sarah and the children gone. He called the police and made a missing person’s report after 24 hours.

The day following Leo filing a missing person’s report, he was served with a sexual assault protection order (‘SAPO’) filed by Sarah on behalf of Bea and Charlie. Sarah testified in the SAPO affidavit that Bea was asked why she doesn’t like her dad. Bea supposedly said something like “I don’t like it when he comes in my bedroom when I’m dressing and sits on my bed.” Sarah asked Bea if he had “gone further” than sitting on her bed. Bea’s response was, “like what?” Sarah’s response was, “like touching you in a way that made you uncomfortable.” Bea said, “sometimes I don’t like it when I’m in my pajamas and he puts his arm around me.”

Having read the affidavit, the officer who served Leo asked him if he wanted to “give his side of the story.” Leo said, “this is crazy. The only time I’m in Bea’s bedroom is to

tuck her in bed, which she looks forward to." The officer took a few notes, told Leo he could not contact his estranged wife and children (except email to Sarah about family finances) and that he had a return hearing to determine if the SAPO would be "permanent" (i.e. at least a year).

Leo emailed Sarah, asking "WTF - what's going on?" Sarah told him the judge issuing the temporary SAPO stated Child Protective Services would interview Bea. Leo was so hurt that he went to Bea's school to see her. Thinking the better of actually contacting her, he stood across the street from her bus stop at the parking lot of the school. Bea saw her Dad across the street, smiled at him and waved. She started to cross the street toward him, but Leo waved her off, communicating by waving his arms not to do so.

The CPS interview, conducted by a CPS caseworker with no forensic training, focused on Bea's father coming into her bedroom while she was changing into her pajamas. Bea said her father would ask, "are you dressed" and would not come in until she said she had her pajamas on. She did say that one time she didn't respond when he asked, and he came in as she was pulling up her pajama bottom. When asked about her father putting his arm around her, she said he would put his arm on her shoulder. "Sometimes he just leaves his arm there the whole time he's in my room."

Sarah and Leo had met at a Christian College. Both of them continued to attend Church, although Leo attended less frequently after losing his job at Microsoft. They had been in marriage counseling. Sarah disclosed her father was often inappropriate with her at bedtimes after he had spent the evening drinking heavily. Sarah's pastor also knows of her father's inappropriateness, which was learned in confidential pastoral meetings that Leo was asked to not participate in. Sarah also shared with her pastor that she was uncomfortable with some of the things her husband wanted to do sexually, like watch pornography together.

Leo hires Elisa Coates and Jan Olson to defend him in the SAPO hearing. These incredible attorneys are concerned that the case was turned over to local law enforcement by CPS. When contacting Seattle PD, they learn that the assigned 'SAU' (Sexual Assault Unit) detective scheduled a forensic interview specialist to interview Bea again. Leo is faced with 5th amendment issues if he responds to the accusations. If he doesn't respond, the civil court will almost certainly grant the SAPO under the civil standard of "preponderance of evidence." A stay of proceedings until the conclusion of the criminal case will last 4-6 months, due to a backlog of SPD criminal SAU investigations. Leo will not be able to see or hear from his children during this time.

What is a spiritual Christian attorney to do?

Violent Crime Hypothetical

Ryan grew up in a household with a lot of instability. His father was in and out of jail, as well as in and out of a relationship with his mom. Mom would frequently throw parties at their apartment where a lot of drinking took place, and adults would pass out on the couch to sleep it off. During a few such parties, a man that Ryan did not know well would sneak into Ryan's room and molest him, telling Ryan that he couldn't tell anyone what happened or he would be in big trouble. Very occasionally, Ryan's mom would end up in jail too for short stints and he would be sent to stay at his Uncle Mark's house, "a Gospel man" who was kind to him. He wished he could stay at Mark and his wife's home full-time, even if the house was crowded with other foster kids under Mark's care, but he was always returned to his mom.

In Ryan's high school years, he dropped out of school and began using alcohol and then street drugs to numb the painful memories, bouncing between different shelters, friends' couches, and "flop houses" or "trap houses." He was mostly able to stay out of trouble with law enforcement. Ryan met another fellow drug user, Kaitlyn, and was interested in pursuing a romantic relationship with her. They made plans to meet up the following day.

After getting a meal together the next day at a local soup kitchen for lunch, Ryan and Kaitlyn spent some time sitting in the park together having a good conversation about their childhoods and then wandering around downtown. In the evening, they went to a trap house where another man Ben was, and Ryan smoked what he thought was some crack. At some point, Ryan began to black out. He had foggy memories of Ben grabbing him and pulling him to the floor, and seeing blood on his hands and the floor, but his next clear memory was waking up at the police station. Ryan was told there he was under arrest for attempted murder.

Ryan spoke with the public defender 'of the day' the following morning who reviewed the Probable Cause statement with him. He was completely shocked to learn that at some point during the night he had turned on Kaitlyn, grabbed a nearby bookend and had bashed on the head repeatedly with it, yelling that he was going to kill her. Neighbors heard the screaming and called 911. Ben had pulled Ryan off her and given a statement to the police. Kaitlyn was now in the hospital on life support. Police also took photos of Ben and Ryan, showing that Ryan was the one covered in Kaitlyn's blood.

The prosecutor notes that Ryan does not have much of a criminal record but wants to hold him due to the severity of the crime, and if Kaitlyn passes away, the charge will be upgraded to second-degree murder.

What does the spiritual Christian attorney do in this situation?