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J. Reuben Clark Law Society

J. Reuben Clark Law School

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C O N T E N T S

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Cover Painting of J. Reuben Clark, Jr., by Alvin Gittins, 1922-1981





HUMOR

I N L A W *Teaching*

.....

JAMES D. GORDON III¹

ONCE AT A CHURCH MEETING B.H. Roberts spoke for nearly an hour, leaving J. Golden Kimball only five minutes. Elder Kimball arose and said, "B.H. Roberts is the president of the Seventy and has taken all the time. Someday he will be dead, and I will be president. Then I will take all the time." Then he sat down.²

J. Golden Kimball stories like this one play a valuable role in LDS culture. Elder Kimball's use of wit in serious settings created incongruities that were somehow both startling and refreshing. The stories persist not only because they are

delightfully amusing, but also because they reveal Elder Kimball's genuine humanity in a colorful and memorable way. They teach us that although he was a church leader, he was very much like the rest of us. He too struggled with weaknesses and frustrations. Despite his apparent imperfections, the Lord obviously loved and approved of J. Golden Kimball enough to use him in remarkable ways. If that was true of J. Golden Kimball, the stories tell us, perhaps there is hope for us as well.

Like religion (although not nearly as important), the study of law is a serious enterprise. It is difficult, frustrating,

¹ Professor of Law, J. Reuben Clark Law School. I have not shown this article to the Dean. He would have urged me not to publish it, and I'm already in trouble with him. He says that I never listen to him (or something like that—I don't remember). Apologies and thanks to Dave Barry, Gyles Brandreth, Johnny Carson, Redd Foxx, Bruce C. Hafen,

Jeffrey R. Holland, Gregory Husisian, Jay Leno, Michael W. McConnell, Douglas H. Paiker, Bud Scruggs, Barry G. Silberman, Steven Douglas Smith, John S. Tanner, Mark Twain, Gerald R. Williams, and others.
² T. Madsen, *Defender of the Faith: The B. H. Roberts Story* 350 (1980).

and often intimidating. It constantly reminds us of our own inadequacies. There is exhilaration in discovering new ways of thinking,³ in learning about the world,⁴ and in feeling our understanding and abilities grow. However, there are also uncertainty, unease, and even fear. Law school has been compared⁵ to one of those movies in which somebody wearing a hockey mask terrorizes people at a summer camp and slowly and carefully slashes them all to pieces. Except it's worse, because the professors don't wear hockey masks, and you have to look directly at their faces.

Most students initially find the Socratic method intimidating, if not potentially humiliating.⁶ Students struggle as they learn about stare decisis,⁷ precedent,⁸ and legislation.⁹ They sometimes feel that their professors are being condescending¹⁰ or are out to get them.¹¹ The competitiveness of law school and the fear of failure¹² can create debilitating anxieties. Students are sometimes terrified by the possibility of getting poor grades,¹³ and when final exams¹⁴ approach they can feel about as happy as a nine-lived cat run over by an eighteen wheeler. These things explain why law school has been compared to a besieged city: everybody outside wants in, and everybody inside wants out.

³ Straight thinking is generally preferred, based on the assumption that we live in a Euclidean universe. Cf. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (implicitly assuming that every point on the surface of a sphere is unique). But cf. Tribe, *The Curvature of Constitutional Space: What Lawyers Can Learn from Modern Physics*, 103 Harv. L. Rev. 1 (1989).

⁴ I have always enjoyed learning about the world. When I was 18, I told my father that I wanted to join the Navy so I could see strange lands and meet strange people. My father replied, "You want to meet strange people? Go to St. Louis. Meet your mother's people."

⁵ By me. The passive voice is a remarkable device for avoiding responsibility. Cf. President Richard Nixon's announcement during the Watergate investigation that "justice would be pursued fairly, fully, and impartially, no matter who is involved." Bowers, *Using and Misusing the Passive Voice*, California Lawyer 63, 64 (Sept. 1984). Unfortunately for him, people did pursue it, and he was the one involved.

⁶ The Socratic method is the reason that law school is the only place where YOU LEARN TO HATE YOUR OWN NAME.

⁷ Latin, for "We stand by our past mistakes." Seventy percent of all legal reasoning is the logical fallacy of appeal to authority. The other forty percent is simply mathematical error.

Humor can relieve some of these tensions. It reminds students not to take everything (including themselves) so seriously, and to find more enjoyment in what they are doing. The ability to laugh at oneself and to find absurdities in everyday life can help a person cope with stressful situations and difficult challenges. Psychologists say that laughter makes people feel better both physically and psychologically.¹⁵

Several years ago Norman Cousins, an editor of the *Saturday Review*, wrote a now famous account of how he contracted an incurable and life-threatening disease of the body's connective tissues, which he believed was precipitated by adrenal exhaustion. In his article, *Anatomy of an Illness (as Perceived by the Patient)*,¹⁶ Cousins recounted how he decided to introduce more hope, faith, and laughter into his life. His theory was that laughter and other positive emotions could affect his body chemistry for the better. He obtained films of classic *Candid Camera* television shows and had a nurse read to him out of a trove of humor books. He discovered that the laughter sessions enabled him to get a few hours of sleep without pain. The nurses took sedimentation-rate readings (blood tests indicating infection levels) just before as well as several hours after the laughter episodes. Each time, there was a drop of at least five points. Cousins wrote, "I was greatly

⁸ Which is important because, in the law, anything that has been done before may legally be done again. J. Swift, *Gulliver's Travels* 242 (J. Ross ed. 19th printing 1964).

⁹ Congress's Gramm-Rudman deficit-reduction law has been described as a law saying, "Stop me before I kill again."

¹⁰ "Condescending" means when you talk down to people.

¹¹ This view may seem paranoid. However, just because you're paranoid doesn't mean that people are not out to get you. Also, some forms of mental illness are not so bad. For example, schizophrenia beats dining alone.

¹² My first-semester grades were four F's and a D. The dean called me into his office and said, "Kid, you've got to stop spending all your time on one subject."

¹³ It is alleged that law school grades have no predictive ability on success in law practice. Psychics have no predictive ability, either. If they do, why do you never see a headline that says "Psychic Wins Lottery"?

¹⁴ Law schools give only one exam at the end of the semester, the FINAL EXAM OF THE LIVING DEAD.

¹⁵ Talan, *Laughing on the Outside: Sick Humor May Be a Way We Release Our Tensions*, *Deseret News Magazine*, May 4, 1986, at 8.

¹⁶ *Saturday Review*, May 28, 1977, at 4.

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. . .

elated by the discovery that there is a physiologic basis for the ancient theory that laughter is good medicine¹⁷

Although laughter was not the only treatment used, it was a major part of the therapy. Eventually the connective tissues stopped deteriorating and began regenerating, and Cousins recovered. One endocrinologist was convinced that creativity produces brain impulses that stimulate the pituitary gland, triggering effects on the whole endocrine system.¹⁸ Humor's beneficial effects on a person's emotional and physical health¹⁹ can improve his or her ability to meet challenges and perform in stressful situations.

Humor can also improve the students' receptivity in the classroom. While humor helps students to feel more at ease, it also encourages them to listen more closely so that they don't miss the fun. Students are likely to be more alert if they enjoy what they are doing, and humor can make dry material more palatable. A study²⁰ at Stanford University has found that laughter causes significant increases in catecholamines, the so-called alertness hormones that include adrenaline.²¹ Humor's effect on alertness has been widely recognized. When President Francis Lyman complained about J. Golden Kimball's style of speaking, Elder Kimball answered, "Well, you see, Brother Lyman, you talk to send them to sleep and I have to talk to wake them up."²²

Humor can also help us to look at situations in new ways, break free of ordinary thinking, and challenge conventional wisdom. For example, humor has long been an effective tool of social and political commentators.²³ Writers such as Jonathan Swift, Mark Twain, H. L. Mencken, Art Buchwald, and Dave Barry have used satire to help us take critical and fresh looks at ourselves and our society. Their message would probably fall on deaf ears if they simply said, "Listen up, I think such-and-such-a-thing is dumb." Instead, they delightfully show us the sillier side of things.

For instance, although economic analysis is a powerful tool for evaluating legal rules, it does have critics. The allegation that some economic analysis rests on unrealistic assumptions is a standard one, almost perfunctorily made. However, the lesson is more memorable if illustrated with a story: An economics professor was walking across campus

¹⁷ *Id.* at 48.

¹⁸ *Id.* at 51.

¹⁹ Scientists have shown that a laugh a day is worth a pound of fiber.

²⁰ The study compiled lots of data. "Data" is a Latin word meaning "the plural of anecdote."

²¹ *Id.*

²² C. Richards, *J. Golden Kimball* 97-98 (1966).

²³ See Note *Humor, Defamation and Intentional Infliction of Emotional Distress: The Potential Predicament for Private Figure Plaintiffs*, 31 *Wm. & Mary L. Rev.* 701, 723 (1990).

²⁴ J. Jones & W. Wilson, *An Incomplete Education* 125 (1987).

²⁵ *Id.* at 124.

²⁶ I will explain the objection to you slowly, because that's the way people always explain things to me.

²⁷ Cf. *The National Enquirer*. Calling the *Enquirer's* articles

with a student "Look," said the student, pointing at the ground, "a five-dollar bill." "It can't be," responded the professor. "If it were there, somebody would have picked it up by now."²⁴ One could add, "Economics is a closed system; internally it is perfectly logical, operating according to a consistent set of principles. Unfortunately, the same could be said of psychosis."²⁵

On the other hand, this example raises an objection to the use of humor:²⁶ humor can present unfair and distorted pictures.²⁷ However, reasonable listeners realize that a humorous observation is not intended to be taken completely at face value. Temporarily blowing things out of proportion sometimes helps us focus²⁸ on a particular aspect of a problem, much like looking at one area of a painting with a magnifying glass temporarily exaggerates that area and distorts the painting as a whole. Similarly, sometimes we are so busy scrutinizing details that we need to put the whole painting in a broader perspective; humor can help us step back and question the work's overall importance.

Humor also serves other analytical functions. It permits people to roam more freely, to be iconoclastic without being threatening, to express frustration, and to speak their mind without having to resolve all of their feelings on a subject. Humor can also remind us that the contradictions, contrasting viewpoints, and subtle ironies in a particular problem might not be ultimately resolvable, and that it is permissible for the world to be that way. It is not completely surprising that researchers have found a connection between a well-developed sense of humor and problem solving.²⁹ Each might cause the other: creative thinking can produce humor, and humor can help people to think more creatively.

Of course, humor can stop people from thinking, too. It can be derisive, mocking, or dismissive. It can be used to reinforce our own views by belittling the views of others, to exalt ourselves by tearing others down. The people in the great and spacious building in Lehi's dream were "in the attitude of mocking and pointing their fingers" at others.³⁰ Their scoffing and scorn caused some people to feel ashamed.³¹ The great and spacious building "stood as it were in the air, high above the earth,"³² making

"distorted" is much like calling winters in northern Alaska "cool." Recently the *Enquirer* published a diet that is supposed to raise one's IQ. This was pretty brave of the tabloid, since it risked losing most of its readership. However, the *Enquirer* doesn't know the meaning of the word "fear." It doesn't know the meaning of a lot of other words, either.

²⁸ Cf. the Hubble telescope, which cost a billion and a half dollars to build and send into orbit, but which, because of a design flaw, makes everything look fuzzy. However, perhaps there is no design flaw at all. Perhaps the universe really is fuzzy.

²⁹ Machan, *What's Black and Blue and Floats in the Monongahela River?*, *Forbes*, Nov. 2, 1987, at 216.

³⁰ 1 Ne. 8:27.

³¹ 1 Ne. 8:28, 33.

³² 1 Ne. 8:26.

it a particularly fitting image of human pride³³ Its inevitable fall was, said Nephi, "exceeding great"³⁴ While many human activities can foster pride, humor can present special dangers. It must therefore be used carefully and sensitively, and we should frequently examine both the purposes of our humor and its effects on ourselves and those around us. Like many other tools, it can be used in the service of both good and bad causes

Humor in the classroom must be used gently and responsibly, not in ways that inflict emotional injury or damage reputations.³⁵ Professor Kingsfield's³⁶ demeaning humor was designed to get a laugh at the expense of some poor victim in the class³⁷ His use of humor was selfish³⁸ and callous; humor must be used more lovingly, with a delicate touch Jokes based on racial or sexual stereotypes are also inappropriate; they injure people and relationships, reinforce uncharitable attitudes, and promote bigotry Similarly, vulgarity debases both the speaker and the listeners Before using humor, we must consider whether it will offend reasonably sensitive people To mix a couple of metaphors, offensive humor can find us skating on hot water, and that's when the sacred cows come home to roost with a vengeance.³⁹ Like other aspects of human relations, the boundary between appropriate and inappropriate humor is not always easy to discern;⁴⁰ one person's good-natured humor can be another person's offense.

While using humor in the classroom does present increased risks, I believe that this problem, like Wagner's music, is not as bad as it sounds⁴¹ The teacher can help control it by laughing at himself, by making it clear that he is only joking, by trying to avoid injuring people, and by presenting contrasting points of view Used appropriately,

³³ I Ne 11:36

³⁴ *Id*

³⁵ Cf slander ruining a law professor's reputation, which can usually be pursued in small claims court

³⁶ *The Paper Chase* is as accurate a depiction of law school as *Perry Mason* is of law practice I used to watch *Perry Mason*, but the ending was always predictable Mason would be brilliantly cross-examining a witness, and somebody in the courtroom would jump up and blurt out that he or she was actually the guilty party. I could never figure out why the murderers always attended the trial. Why weren't they halfway to Rio de Janeiro?

The long-running *Perry Mason* series left a generation of Americans believing that most criminal defendants are innocent, that district attorneys are whining incompetents, and that lawyers and private investigators have shoulders the size of sides of beef It also left them believing that lawyering is an exciting lifestyle, since Mason never answered interrogatories, supervised document productions, sat through endless depositions, or even spent much time at his desk Fortunately, these misconceptions were corrected by the *cinéma vérité* of *L.A. Law*.

³⁷ This can make students want to drop out, which would cause their student loans to become due The government has proposed withholding wages to recover student loan payments Under this program, for example, if you graduate with a Ph D in renaissance literature, every week the government can withhold some of the tips you earn as a waiter

humor can open minds, rather than close them In some cases, when a frontal assault would fail, humor can cause a person to open his mind voluntarily so he can come out and enjoy the sunshine with others. In a sermon that J Golden Kimball desired to be read at his own funeral, he asked what his general influence among his people was, and whether he had a special attraction for narrow⁴² and intolerant people.⁴³ Golden understood that most minds cannot be won by force, but instead must be gently led Humor can help people become more open to change.

While it may not be completely possible (or even desirable) to analyze something as spontaneous as a laugh, I believe that it is possible to identify some benefits of appropriate humor in the classroom Humor allows a professor to reveal his or her humanity to the students, which can improve teacher-student relations. It helps reduce tension and stress that can interfere with learning. It improves the students' receptivity and increases their alertness in class. In addition, as a form of provocative (and occasionally even outrageous) discourse, it can stimulate thinking in an imaginative and creative way All of these things make learning more enjoyable and can enhance the learning process

In some Hebrew schools a special ceremony occurs on the first day of class. The teacher places a drop of honey on the cover of a book and gives the book to the student, who licks the honey off The symbolic message is that learning is sweet Like anything that produces significant personal growth, legal education has both bitter and sweet elements I believe that a little humor in the classroom, and occasionally even a lot, can help law students savor the sweetness a little more

³⁸ Some people don't appear to care about self-interest Joe Louis said, "I don't like money actually, but it quiets my nerves"

³⁹ Cf *Sherbert v Verner*, 374 U S 398, 413 (1963) (Stewart, J, concurring) ("This case presents a double-barreled dilemma, which in all candor I think the court's opinion has not succeeded in papering over")

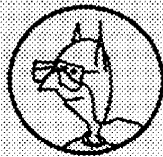
⁴⁰ However, "I know it when I see it" Justice Potter Stewart once joked that he thought that these words would be chiseled on his gravestone Cf the words on a hypochondriac's gravestone: I *told* you I was sick

⁴¹ Cf bagpipe music, which is Studies have shown that it is virtually impossible to distinguish the music of a world-class bagpipe band from the sound made by 300 cats and a blowtorch Hear also Yoko Ono's music (The Bluebook apparently left this signal out It also left out some other very useful signals, such as *read and weep and try to distinguish this one* For contrary authority, it omitted *disregard, ignore also, and for a really bizarre view, see*)

⁴² Some people are so narrowminded they can see through a keyhole with both eyes Cf my upper body, which is also too narrow. I once went to a gym to lift weights, but the laughter made it difficult to concentrate One weightlifter called me a wimp, which made me angrier than I have ever been in my entire life I was so angry that I almost said something I have concluded that the reason weightlifters wear those big leather belts is that, basically, they're invertebrates

⁴³ C Richards, *supra* note 22, at 136 What does this say about those of us who like him?

PROFESSOR GORDON, I PRESUME



Whenever Batman bounds into a law school class to fight crimes against the English language, it's a safe assumption that the man in black is Professor James Gordon.

For several years Gordon has used humor to help his students better understand the issues involved with securities regulation, contracts, legal writing, and other aspects of the law. Sometimes he appears as a BYU football player in a "wimp size" uniform to tackle verbosity; other times he becomes a doctor who

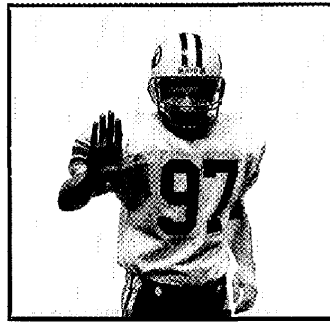
performs surgery on legal writing.

His humor also spills into his writing, and it's gaining attention in legal circles. This year alone his articles are appearing in six law journals: *Yale Law Journal*, *Vanderbilt Law Review*, *Texas Law Review*, *Arizona Law Review*, *California Law Review*, and *Cornell Law Review*.

"It's a remarkable accomplishment for any person to have work accepted in that many prestigious journals, but for him to have published so frequently in



PROFESSOR GORDON



PROFESSOR GORDON



PROFESSOR GORDON

the past three years is almost unbelievable," says H. Reese Hansen, dean of the Law School.

Some of Gordon's writings are designed as straight humor, typified by his "How Not to Succeed in Law School," a gentle poke at the pretensions and realities of attending law school. The article is scheduled for inclusion in the *Yale Law Journal* this spring.

Yet more often Gordon's humor is found in serious legal documents where the humor is placed in the abundant footnotes.

In his "Dialogue About the Doctrine of Consideration," published by Cornell, for instance, he uses his first footnote as an acknowledgment, apology, and thank-you to all those who provided inspiration for his humor

Having given credit—or blame—where due, Gordon then uses a free rein ranging from satire and irony to whimsy and deliberate incongruity.

No law subject seems too sacred or too corny. In comparing the legal term "consideration" with Elvis Presley, he writes in one footnote, "Consideration is to contract law as Elvis is to rock-and-roll: the King. Revisionists, however, have questioned Elvis's greatness. They have wrestled with one disturbing issue: if Elvis is so great, how come he's buried in his own backyard—like a hamster? They address the question openly, knowing that it is legally impossible to slander a dead hamster"

When the legal concept at issue is "invalid consideration," Gordon lets the reader know the contradictory nature of the term in a footnote that reads, "'Invalid consideration' is an oxymoron, like legal ethics, marital bliss, military intelligence, civil war, postal service, scholar athlete, Amtrak schedule, interesting professor and Justice (insert the name of your least favorite Supreme Court justice here)"

Rather than using humor for mere humor's sake, he sees his embellished footnotes as a way to get his legal opinions advanced

"The humor frees me from convention and provides me with a new means of expression," he says. "With humor as an outlet, I've found a way to get my articles read. For example, some professors at other law schools have made copies of the articles for their students. I have found more freedom to write about issues important to me if I augment them with humor"

Even when a manuscript is rejected, Gordon is likely to receive some interesting attention, such as that offered for his "How Not To Succeed in Law School" text from the *University of Chicago Law Review*. The letter read, in part, "We have worked long and hard to establish a grim and humorless reputation, and we are not about to let you threaten it"

Gordon feels his humor allows him a voice of reason outside traditional methods. He stands ready to jab inferior legal scholarship.

"It's proper to use humor in analyzing certain legal cases," he explains. "This year I satirized two opinions by the Supreme Court. Often the court opinions are excellent, but when they are shoddy—especially when I care about the issues—I consider them to be fair game for humor"

But he does not consider his students that way. "I never want to inflict emotional injury on any student, and when I wonder if I have offended someone, I seek him or her out to make sure that everything is all right

"A teacher needs to be careful and calculate the risks of humor," he adds. "In the class, I tell my students I only tease those I love, and the result is an environment that works well 99 times out of 100"

At least one of his students appreciates the humor but esteems the teaching even more highly.

"To the extent that his humor keeps one interested, it's helpful," says first-year student John Rooker. "He is funny both with planned and spontaneous humor. It's never disruptive and it is enjoyable. But independent of the humor is his great teaching. I would sit in any of his classes and want to be there. He can reduce complex issues so students can relate, and his enthusiasm shows his commitment to teaching. He exceeds my expectations and is an outstanding professor."

Gordon's use of humor both in class and in writing emerges from a life-long interest in humor. He collects humor books and maintains a card file on the subject. His parents, Doug and Jean Gordon, are both public school teachers who, he says, have provided him with "good role models for delightful teaching."

He begins his classes with a topical Johnny Carson-like monologue designed to encourage the students not only to be in class on time but also to begin listening from the moment they enter class.

He continues using humor during the lecture and explains its purpose by saying, "If humor is an active part of the class, students will want to pay attention. It also shows my humanity to them, which can improve teacher-student relations.

"Of course, helping students gain a clearer understanding of the law and its processes is the primary purpose of the class. The humor is secondary to that—if you make humor the primary point, then it's just entertainment, nothing more."

But whether he's teaching law or writing about it, James Gordon's humor does sweeten the experience.

—Charlene Winters



Values

ELDER DALLIN H. OAKS

The Quorum of the Twelve

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

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

THIS ADDRESS

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

WAS GIVEN AT THE

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

J. REUBEN CLARK

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

LAW SCHOOL ALUMNI

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

ASSOCIATION 1990 BANQUET,

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

OCTOBER 26, 1990

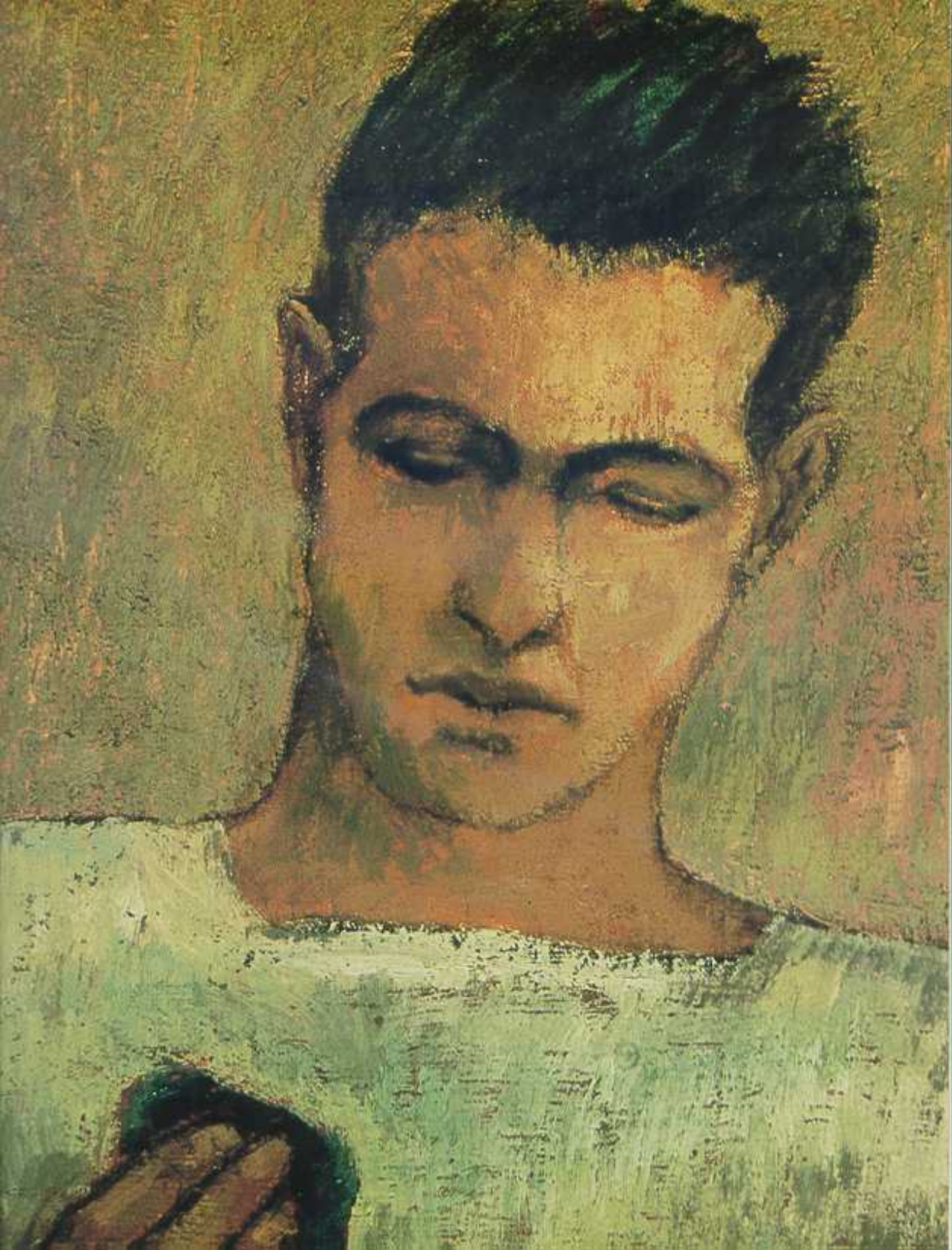
move sailboats, and dry hay for millions. • Applying that illustration to the world of ideas

Illustration by

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

Brian Kershnik

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CRAFTSMANSHIP

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

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

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

CREATIVITY

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

SERVICE

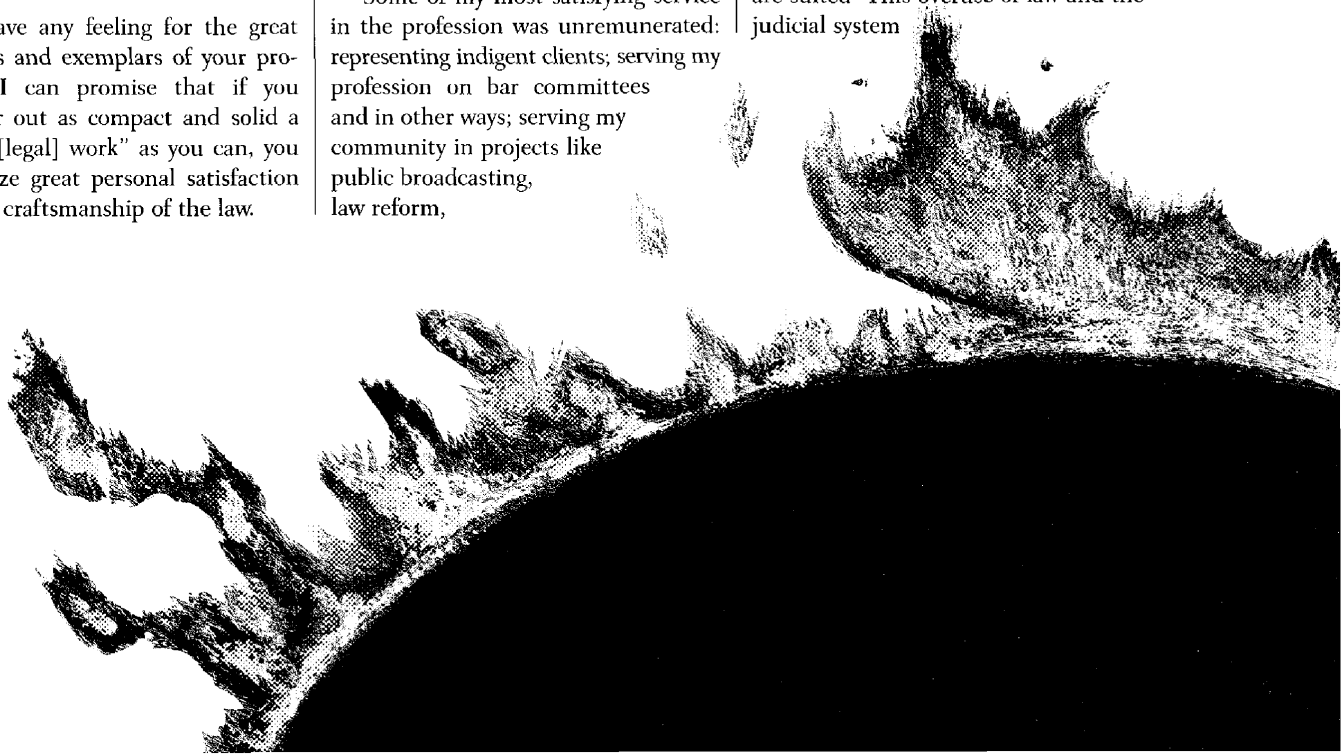
Service consists of working with a motive higher than self-interest. Such work can be remunerated or unremunerated, but, as I have indicated, the satisfactions of service are seldom in balance with remuneration. The rewards of satisfaction may even be inversely proportional to, or at least reduced by,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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

case' in this part of Asia."

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

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

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

General Almonte continues:

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

The General concludes with this paragraph:

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

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

There is nothing that we as citizens

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

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

Forty-two years later the list was:

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

—Harper's, March, 1985

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

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

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

HOW TO WIN

IT WAS REMARKABLE. Democrat Bill Orton, 58 percent, versus Republican Karl Snow, 37 percent Bill Orton didn't just

The Remarkable Campaign win the congressional election; he won it by one of the largest margins of any non-

incumbent contest in the U.S. —and it was in Utah's Third Congressional District, considered by experts the most rock-solid

FRIENDS AND

Republican region anywhere • But it is even more remarkable that BYU Law School graduate Orton ran for public office at

of Bill Orton all Just 10 months earlier the thought hadn't crossed his mind, ever • Most

Democrats in the political arena hadn't even heard of him After the election everyone was asking, "Who is this guy? Where

INFLUENCE

did he come from?" In answering those questions, one will find an uncommon story, a story of a uniquely prepared individual

by Charles D. Cranney who offers a cadre of talents to the 102nd U S Congress • At the age of 16,

Orton was a studious high school senior in Ogden, Utah, when the Internal Revenue Service opened up a large service center

REPUBLICANS



there. There weren't enough people to staff it, and so managers recruited at the local high schools for four-hour evening shifts Enter Bill Orton.

His experience with the IRS convinced him that he really wanted to be a tax attorney After serving a mission for the Church in Oregon, he finished his undergraduate studies at Brigham Young University in 1973 in anthropology and archaeology—the whole time working for the IRS.

"I didn't have a lot of money saved up to go to law school right after graduation," said Orton, "so I moved to Oregon and worked with the Internal Revenue Service. I planned on going to night law school at Lewis and Clark"

With training, traveling, and working, Orton never made it into night school After a four-year IRS stint in Oregon, the time of decision came

"I had a nice house, a little sailboat (I lived on a lake), and an airplane and was flying all over the place," he said "I realized that at 27 years old I had peaked out at the Internal Revenue Service I'd have to stay at my level for another 30 years before I could even think of retiring. That didn't strike me as very fun, so I quit and came to the BYU Law School in 1977." Most would consider Orton's law school experience atypical:

"Law school was purely pleasurable. I loved every minute of it. The first year in law school I didn't even check to see what my grades were I knew what I'd be doing when I graduated, and I didn't care about grades as long as I was passing"

With a clear vision of his law future, he took every law class offered in tax and business. While still in school he started a business in Oregon that provided tax and business law educational materials

Graduating in the top third of his class in 1980, his practice burgeoned, and he soon became of counsel at Parker, McKeown, and McConkie in Salt

Lake City and at Merritt & Tenney in Atlanta He also served as in-house counsel for a privately held forest-products company and taught tax seminars across the nation His clients were from all areas of the United States—"from Anchorage to Miami and from New York to Honolulu," he says.

His love for the law seems only exceeded by his love of teaching the law And he is a good teacher—as the more than 15,000 tax professionals who have now taken courses from him will attest In 1986 he served as an adjunct professor at the J Reuben Clark Law



BILL ORTON NEAR HIS HOME AT SUNDANCE.

School, teaching seminars on real estate tax planning and the 1986 Tax Act

Not a stranger to Washington, D.C., he has worked with congressional staff members of the House Ways and Means and Senate Finance Committees On the American Bar Association, he served on tax policy subcommittees that evaluated legislation before Congress Many of his clients also come from Washington, D.C.

So at the beginning of 1990 Bill Orton was going along at a fast clip. He loved his work. He was paid well He was satisfied. And he had no intention of running for any political office.

In February 1990 he was in Hawaii teaching a tax conference He mentioned the problems with tax legislation and the savings and loan debacle it helped create during the last decade,

glibly remarking that the United States needed elected officials with a broader vision, those who could see "more than just the tip of the iceberg"

After the conference several people, many of whom had been to Orton's seminars before, cornered him. They said, in essence, "We've been listening to you for years You understand what's going on You certainly have the knowledge and the ability You could do something about it."

He retorted, "I am I go back frequently and talk to Congress members and their staff and try to educate them and show them some solutions to the problems"

Then this group dropped the question, "Yes, but why don't you run for office?"

Orton scoffed "You must be kidding! No way in the world! You have to give up your private life. You have to take a cut in pay. Nobody likes you Everybody's always yelling at you You can't satisfy anybody You've got to run for election every two years I can't think of any reason I'd want to run for Congress"

After the conference, Orton stayed in Hawaii for a couple of weeks Trying to relax, he lay on the beach and went hiking through the rain

forests, but that conversation kept haunting him

"The whole time I kept thinking that maybe I had some sort of obligation to give back to the system, an obligation to serve the public"

Returning to his home above Sundance in Provo Canyon, Orton noticed the paper listed several people who had announced candidacy for the Third Congressional District He hadn't realized that Congressman Howard Nielson was retiring. (When Nielson had first run for office, Orton contributed to his campaign.)

He knew former Utah Governor Scott Matheson and lone Utah Democrat Congressman Wayne Owens (whom he took a legislative processes class from at the Law School in 1978), so he went to Salt Lake City to talk



AFTER ANNOUNCING HIS CANDIDACY, BILL ORTON SOON DEVELOPED AN EFFECTIVE CAMPAIGN.

about campaign prospects

"They were both extremely supportive and said, in essence, 'If you can find reasons to run for office other than winning, then we encourage you to do it, but you need to know that you probably don't have any chance at all of winning because of your district's political make-up'"

Orton's parents and friends were shocked he was considering a congressional campaign. His mother's first reaction was, "I don't like politicians."

"I'm not a politician," Orton rejoined, "but somebody's got to do it."

After gathering information from those in the political arena and members of his family, Orton went back to Sundance to think:

"I live in this district. I know the people here. I know their concerns because the same issues concern me. If I were to choose someone to be my representative in government, what would I want? I'd want someone young enough, excited enough, with fire in the belly about the process, and the de-

sire to go back and really get involved. Yet I would want someone with knowledge and experience. I would want someone who was mainstream on the issues—morally, legally, ethically. I would want someone who didn't engage in double-talk—just being honest with the people."

The problem with many politicians, Orton mused, is that if you ask them a question, at the end of the answer all you've heard is your question repeated back to you. "One thing I admired about Ronald Reagan (though I often disagreed with him) was that he would just flat out tell you yes or no. He was straightforward, and people love that, even if they disagree with you."

So Bill Orton decided to go for it, determined to be forthright and to work hard. After announcing his candidacy, a successful pattern soon developed.

He called chambers of commerce, county commissions, and city councils in the communities of Price, Moab, Payson, and others. Before a scheduled

appointment with these political groups, Orton would go into the cities a few hours earlier and visit impromptu with business owners. These businessmen would tell him their problems, how they felt about the federal government, what they thought the government should be doing or not doing. Then he would meet with the commissions and councils, talking about their communities. After the meetings he'd proselyte, walking up and down the streets, knocking on doors and talking to people.

"Most every group, when I finished with them, were warm and friendly, telling me, 'Yes, you understand these problems. We need people like you in Congress.'"

During the campaign Orton went through the district more than 10 times doing all the grass-roots campaigning that he could. He knew he couldn't raise much money for advertising and marketing. (He only spent about a third of what his Republican opponent spent.) Most of the financial

load was shouldered by Orton himself, spending thousands of his own money. "I went to some political action committees for money and support. Many of them didn't even wait until I was out of the office to laugh. They'd open the almanac of American politics and read the first line that says my district was the most Republican district in the United States. I tried to explain that it's one of the most *conservative* districts. Until now the Republicans

Snow and pushing his face in the mud. I've refused every opportunity to run a dirty campaign. I've not done it. I don't want to go to Congress that way. If the public wants a dirty campaign, then they don't want me. If I have to abandon my personal values to win, then I don't want to be a congressman."

Since the early summer, local polls had shown Orton gradually catching up with the Republican contenders, finally surpassing John Harmer right before the Republican primary in September. In the same poll, Orton was still trailing Karl Snow by a substantial 27 percentage points (Snow—53 percent, Orton—25 percent).

When John Harmer lost the Republican primary, some of his distraught devotees continued the barrage against Karl Snow that had been all-too prevalent in the primary campaign. "Republicans for Bill Orton" T-shirts started popping up everywhere.

Still, Orton's gradual rise in the polls didn't seem to dampen the confidence of



ORTON CELEBRATES HIS
VICTORY WITH HIS MOM AND
DAD. WHEN ORTON'S MOTHER
FIRST HEARD HER SON
WAS THINKING OF RUNNING
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"I DON'T LIKE POLITICIANS."
NOW THERE'S AT LEAST
ONE THAT SHE LIKES.

are the only ones that have put up conservative candidates. But I am conservative," he said. "The people will vote for me."

Orton's campaign was unwittingly aided by the in-house bickering and fighting among his Republican opponents that started even before the Republican convention and didn't end until weeks after the November election.

Early on Orton went to the press. "Look, the public deserves someone who cares more about the problems facing us in the future than the problems facing their opponents from the past. I simply won't get involved in that. I will not comment on it. I will not use it in an election. I won't debate it in a debate. I will deal with issues only."

Later, when Karl Snow became the Republican's choice of candidate, Orton commented to a local newspaper, "I decided I would not go to Congress walking over the back of Karl

some Republican strategists in Utah's third congressional district. They seemed to have read the almanac of American politics, too. A Democrat couldn't possibly win in this congressional district.

Orton was frustrated when his Republican opponent refused several debates and didn't show up at the KBYU television debate. KBYU aired the one-sided debate anyway, and it was rebroadcast later.

"I think that kind of arrogance turned people off," said Orton. "The people got tired of the sniping, and they got tired of someone who really wouldn't be straightforward and debate the issues."

On October 7 the local newspaper poll showed Karl Snow increasing his lead to 28 percent. "Our small internal polls showed that I was still gradually gaining," said Orton. He noted that the October poll gave Karl Snow some needed momentum to go to

Washington, D.C., and "come home with a suitcase full of money" that he couldn't get before.

"There was no way in the world I was that far behind Karl Snow. Never. Up until then I had had a lot of faith and trust in Dan Jones [the local pollster] This time he was cooking the books," a feisty Orton said "If he wants to justify his polls, I'd love to see his data—what districts they were testing"

During the final weeks the Republican strategists (not so much Karl Snow as everybody around him) and others engaged in an acrid attack against Orton, with even public officials getting involved in questionable "exposés" For example, the Utah State Tax Commission decided to disclose a six-year "dispute" they had had with Orton about paying a tax on his Mercedes-Benz.

"When I discovered last May that this problem had not been resolved, I went to the tax commission and said, 'Look, I don't want this to become a political issue I thought it had been resolved. What do we need to do to get it resolved?' They told me in order to get it back into the appeal process I needed to write a check for x amount of dollars and a letter requesting an appeal I wrote the letter, made out the check, gave it to them, and thought it was back in the appeal process"

One week before the election the Utah State Tax Commission publicly disclosed an "inaccurate description of what was taking place," according to Orton

"It was outrageous, absolutely outrageous! When a branch of the state government gets involved to destroy a federal campaign, that smacks of a Watergate-type action. If I were the governor, I would dismiss every one of them for that action alone I think it is a breach of their public obligation"

But he doesn't feel that was the only problem with the tax commission. "I've worked with state tax commissions in half the states of this country and for the IRS in nearly all the districts in this country. The *worst* government entity I have ever had to work with in any state or federal branch of

government is the Utah State Tax Commission. They completely ignore the rules. They completely ignore the facts."

It's true that Bill Orton, in the public view, stayed above the foofaraw, unwilling to capitalize on trivial, unclear allegations against his opponent. But when attacked personally, on groundless allegations, his attackers had better learn to duck.

Perhaps what frustrated Orton the most were the continual sorties against his marital status. The voters were annoyed, too.

The exploit-Bill-Orton's-marital-status strategy backfired His opponent, Karl Snow, seemed to focus more on his own marital status (married with children) in some of the debates but was often heard joking, tongue in cheek, about Orton's bachelorhood Others were more vocal and much more malicious.

Four days before the election, Karl Snow's financial chairman, a former Law School compatriot with Orton, in-

ORTON RECEIVES A
CONGRATULATORY
CALL FROM
HIS SISTER.

"would have been even further ahead without it" And it left a bitter taste in the mouths of the entire Third Congressional District.

With two days to go a now infamous full-page ad appeared in the *Utah County Journal*. The ad showed a Karl Snow family portrait with the caption "Karl Snow and his family." Next to that picture was one of Orton, all alone, with the caption "Bill Orton and his family" The ad continued: "Some candidates want you to believe that their personal values don't [sic] matter. Most issues facing the United States Congress seriously affect our families. Values do matter! Vote Republican" And then, in smaller type at the bottom: "Paid for by the Utah Republican Party."

The ad proved to be an affront to the voters and was unapproved by Karl Snow (though it seemed to follow the general strategy mentioned earlier). Republican campaign specialists began playing the equivalent of "who stole



sisted on being quoted in the paper verbatim as saying that because of Orton's age (42) and his never being married, "Bill Orton is not fit for life, much less Congress"

"I'm very disappointed in him," said Orton "I liked him in law school. Those are the kinds of things in a campaign that hurt—when people you know make uncalled for comments like that It's discouraging, politically, to see that there are people around who will do absolutely anything [to get their candidates in office] I won't do that"

Orton insists, though, that the negative campaigning against either candidate didn't really help him. He felt he

the cookie from the cookie jar?" trying to find out who had placed the ad Prominent elected Republicans were quick to criticize. "I was totally offended by the ad," Senator Orrin Hatch said later. "I've seen a lot of stupid things in politics, but this ad was the stupidest thing I've ever seen."

Orton considered the ad a favorable sign. "The first time I felt that I was going to win was when I opened up the *Utah County Journal* on Sunday before the election and saw the ad against me on the back page." He felt that the Republicans must have been desperate to run such an ad.

The Dan Jones' poll showed that



JOINING SEVERAL UTAH POLITICIANS, CONGRESSMAN ORTON VISITS THE BYU MARRIOTT CENTER
DURING RONALD REAGAN'S ADDRESS THERE

Orton was 14 points behind Snow "The polling we were doing in-house showed me way ahead," said Orton "I thought, 'How on earth can our polling show us at 68 percent and Dan Jones has me 14 points behind?' Something was wrong." Again

The last days proved to be the grand crescendo to Bill Orton's campaign. He went to shopping malls, arranged honk-and-waves on the road, and went everywhere he could to find a crowd.

"On election day, 90 percent of the people I shook hands with knew me. They said, 'Bill Orton! I just went and voted for you! Hey, you're going to make it.' I thought if half of the people who told me they voted for me were actually telling the truth, I've got a chance of winning.

"On election night I thought that it would be close, that I had a chance of winning. When I heard the results of David Magleby's exit poll, it blew my socks off. I had no idea that I was that far ahead."

Many press reports that came after the Tuesday election concentrated on comments from dyed-in-the-wool political party bureaucrats. Some talked of trying to "convert" Orton to the one and only true party. Others felt the win thwarted Republican redistricting plans for Utah.

But Bill Orton's victory was mostly a triumph of the people, not of either political party. It was an indication that a common man with "fire in the belly" and a dream for his district had a chance of winning over an entrenched political bureaucracy. It meant that the people deemed vision more important than momentum. It showed the resilience of the American system—something many of Orton's constituents now have renewed faith in.

The two months after the election proved to be as hectic for Orton as the campaign.

First, setting up the office as a newly elected congressman can be quite a chore. From election until swearing in, there is no funding for the

transition. "There is no money for staff, phones, office space, or mail. After the election I got hundreds of letters from the constituency," said Orton. "There was no budget for it until January 3. It all came out of my pocket—secretarial work, staff people, computer equipment, mail, stationery."

Then there was the December orientation for the new members, where the Democrats and Republicans elected their leaders and looked at goals for the next session of Congress—talking about issues likely to come up and bills that might get passed.

"When we were introducing ourselves as freshmen congressmen, telling people our background, I was happy to tell them that I graduated from the BYU Law School," said Orton. "I'm proud to have gone to BYU and graduated from the BYU Law School. I can wear it as a badge of honor."

The LDS connection provided some association for Orton during the orientation. "There are three of us in

the House who are LDS that were elected this session: myself, Dick Swett from New Hampshire, and John Doolittle from California. We are friends and were spending time doing things together. Other members of Congress would look at us and say, "Wait a minute, we've got two Democrats and a Republican over here. What's happening?" I don't think anyone quite put together the Church connection."

Then for another week the freshmen traveled to Harvard, where the Kennedy School of Politics put on an issues seminar. Orton recalled, "They brought in the brightest and best minds in the country and the world to talk to us about the various issues of drug abuse, education, the homeless, macroeconomics, and the federal reserve. It was a tremendous opportunity." For example, "We sat down one evening at the home of John Kenneth Galbraith and talked about economic issues with him."

While all the staff selection, orientation, and constituent correspondence was taking place, Orton only had two months to wind up his law practice, transferring his clients and finishing scheduled seminars. The law prohibits him from these fiduciary activities while serving in the U.S. Congress.

After being sworn in, each congressman is allotted nearly \$1/2 million per year to run two offices—one in the district and one in Washington. The maximum staff that can be hired is 18 full-time and four part-time. Given some of the substantial wages needed for competent help in Washington, D.C., Orton feels the budget is "very austere," yet he feels committed to provide all the services possible given his resources.

With his background in tax law, Orton feels he belongs on the House Ways and Means Committee, one of the most difficult committees to get on. Since it was already filled before the election, he quickly vied for other committee assignments, hoping to get on the Ways and Means after the next election. While most members of Congress fill two committee assignments, a handful serve on three committees. Indicative his energy, his colleagues gave

him three assignments: small business, foreign relations, and banking.

The House increased the size of the Small Business Committee by one so that Orton could serve on it. When asked why he wanted to serve on that committee, his answer shows a sincere desire to represent his constituency well. "Most of the businesses in my district are small businesses," he said. "There are many regulations and tax issues where we're not helping small business."

Perhaps one of the most difficult decisions Orton has had to face so far was the congressional vote on the Persian Gulf War. Though some may disagree with his decision to support the president in war after all diplomatic solutions had failed, none could say he hadn't given all sides the most serious consideration. He held meetings with his constituency, where the divisiveness of opinion was so evident. He called President Rex E. Lee and other BYU Law School professors to check constitutionality issues. The somber mood of the Congress that day caused the members to lay aside the usual partisan politics. Then he, with the other elected officials, made what he called a "very personal" decision.

If Orton continues his energetic concentration on impending legislation, no doubt his constituency will feel their congressman always gives it his best shot.

After the election, some started fretting that Orton would soon turn into another politician practicing politics as usual—unable to move or change anything. All indications are to the contrary.

"I've told all my friends that if they see me changing and becoming a Washington, D.C., politician, they should hit me over the head with a two-by-four and tell me about it. Then I'll leave public office and go back into the private community."

When asked if one man can make a difference, he said, "Although I can't walk in there tomorrow with 15 bills and get them passed the next week, I can start building a coalition of colleagues who understand the problems. But the only way to do it is to start

with one person, myself, and then work outward. So I'm not discouraged by it; I'm not frightened by it or worried that I'll go back there and get bogged down and not be able to get anything done. I'm excited that we can get a lot done."

Though he is encouraged by his success, Orton has had to pay a personal price, giving up much of his cherished private life.

"Personally and socially I'm a private, quiet, and shy person," mused Orton. "The absolute worst thing about winning this election is that now everybody knows me. Everybody recognizes me. I go to a gas station or grocery store and everyone turns and looks. They come up to me and want autographs. I don't mind that people come up and talk to me about issues because I've placed myself in that responsibility to be their representative in Washington. What bothers me is seeing myself in the newspaper and on television. So I have a real stress between my private life and the public life that I have placed myself in."

Though it's a little early to see past Bill Orton's congressional stay (and, if his popularity continues, he will be there for some time), he has at least one idea:

"When I leave Congress, I'd very much like to talk to the BYU Law School and have a more direct teaching relationship with them. I love teaching law."

Meanwhile, Orton will be doing what just a year ago he thought was a most absurd notion.

It's true, as he predicted, that he has given up his private life, has taken a cut in pay, and has been battered by various opponents. And in two years he'll have to go through another election—and perhaps another two years after that—all with much personal pain. But Bill Orton didn't run for Congress for personal aggrandizement or for some sort of self-fulfillment. He simply felt a strong obligation to serve.

After his first remarkable and surprising campaign of winning friends, there is now great hope that Congressman Orton will have an equally remarkable and surprising impact in Washington.

ELDER MARLIN K. JENSEN

First Quorum of the Seventy

I am both grateful and anxious about being here this evening. Grateful—because to be in the company of good people is one of life’s greatest blessings. Anxious—because I recognize in this exceptional faculty and student body qualities of intellect and spirituality that are remarkable. Thus, my desire to say something of worth is great. • I must observe that I am well acquainted with Bruce Hafen, your former dean, having once served briefly but joyfully as his junior missionary companion in Germany. His influence on my life has been significant and much appreciated. Your current dean, Reese Hansen, and I

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J. REUBEN CLARK
LAW SCHOOL
ON NOVEMBER
18, 1990.



were fraternity brothers at Utah State University for one year in the early 1960s. Maybe the only truly honest thing to say about our association of that brief period is that he was probably about as surprised by my call as a General Authority as I was by his as dean of the Law School! Lest you misinterpret this, I hasten to say that it is difficult for two 18-year-olds to look 30 years downstream and have even the slightest idea of what the future may hold. Certainly, he is today a man of great capacity, spirituality, and good

of unconsciousness.” I feel a deep yearning tonight for the Spirit of the Lord, because, in Nephi’s words “when a man speaketh by the power of the Holy Ghost, the power of the Holy Ghost carrieth it unto the hearts of the children of men” (2 Nephi 33:1).

What I wish to share with you may seem prosaic and ordinary. You may even feel that you already know it. If so, you may want to ponder this insight contained in some intriguing lines by T.S. Eliot: “We shall not cease from explora-

today. We do not need to search endlessly for our self-worth—we brought it with us.

Notwithstanding the beauty and simplicity of the Gospel plan given us by God, it is not always easy to follow. Though we know our origin and potential destiny, we can easily lose our way and wander aimlessly for years, even for a lifetime, trying to get “someplace” and become “somebody.” The danger of this may be even greater for lawyers than for most.

How well I remember those early

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sense. If you had been in his home earlier tonight where we have been, and felt of the Spirit there, you would realize that you have much more to learn from Reese and Kathryn Hansen than rules of law. They are fine people. To work with them and associate with them daily will be one of your great blessings in life.

Because of the significance of this occasion for me, I have done something I do not ordinarily do—I have reduced my remarks to writing. This is in sharp contrast to my usual speaking style, something my supportive wife has occasionally described as “stream

tion. And the end of all our exploring will be to arrive where we started and know the place for the first time.” T.S. Eliot’s words, if I understand them correctly, need not describe the condition in which we find ourselves. As Latter-day Saints, we shouldn’t have to arise every morning and ask ourselves the existential questions over and over again. We know—on the strength of modern prophets, the scriptures and our own spiritual impressions—that God lives, that He is our Father, that He is interested in us, and that His gospel has been restored and is here on this earth

months as a first-year law student. My head was full of rules of law, cases, procedures, and an increasing awareness of a new world made up of “issues.” I even recall once responding to my wife’s cheery “Good morning, Dear,” with “That’s not the issue.” I’m certain I reached the peak of my intellectual powers by the end of that first year. If I had been unleashed on the legal community then, I’m certain no problem would have gone unsolved. I hope it’s a healthy commentary on my personal development to admit that I have become a little less knowledgeable and a little more tentative every year since

that first one.

Because one result of a legal education is to make one more questioning, more analytical, perhaps even more critical, it is important that Latter-day Saint lawyers keep certain eternal truths firmly in mind. This may be the Gospel equivalent of indulging in some spiritual "presumptions." As you know, this is a helpful device employed by the law that allows inference of a fact on proof of circumstance that usually or necessarily attends such a fact.

The "presumption" of which I wish to speak tonight is of the everlasting nature of life and the gospel. Some interesting words appear in scripture concerning this idea: Words such as *everlasting*, *eternal*, *forever*, and *from everlasting to everlasting*. There are also statements about the Lord's course being one eternal round. I am certain that there is nothing you could do for your happiness, now or hereafter, any more important than to cling tightly to this truth and to keep it ever present in your minds.

The scriptures are full of commentary concerning this matter. Often the prophets stress its importance by directing our minds back toward our origin with God, and by asking us to reflect ahead on our possible future with Him. Abraham, for instance, refers to our beginnings as our "first estate," and teaches that "They who keep their first estate shall be added upon; and they who keep not their first estate shall not have glory in the same kingdom with those who keep their first estate" (Abraham 3:26). To me, "keeping our first estate" may well mean keeping our spiritual perspective about the everlasting nature of life and the gospel. Retaining such a frame of reference can have significant eternal consequences.

Alma is an example of a prophet who asks us to look ahead and to visualize our future with God to remind us that there is life after life. (By the way, visualization is presently a popular psychological device and my only regret is that it is more frequently used to improve one's free-throw shooting than one's Christian behavior.) Alma asks us: "Do you look forward with an eye of

faith, and view this mortal body raised in immortality, and this corruption raised in incorruption, to stand before God to be judged according to the deeds which have been done in the mortal body?" (Alma 5:15).

This ability to see so clearly the eternal nature of life and the gospel is, I think, a distinguishing characteristic of a seer. It may even be one reason King Limhi remarked that "a seer is greater than a prophet" (Mosiah 8:15). Ammon explained that "a seer can know of things which are past, and also of things which are to come" (Mosiah 8:17). This may also be the reason the redemption of the dead is so often on the minds of the prophets near the end of their lives. Joseph Smith, for example, wrote in 1842, Doctrine and Covenants 128, that: "I now resume the subject of the baptism for the dead, as that subject seems to occupy my mind and press itself upon my feelings the strongest." It was toward the end of his life that Joseph F. Smith had his great vision of the redemption of the dead, which is recorded in Doctrine and Covenants 138. Can it be that as their lives drew to a close, these great seers were worried about those in their past who were also shortly to be in their present?

This sweeping and eternal view of life, which the prophets clearly possess, must be grasped and retained by each of us. Almost everything of worth in life, I think, follows this realization—honesty, empathy, the setting of proper priorities, balance, consistency, even the will and strength to change our lives and to endure to the end.

A practical illustration of the value of getting firmly in mind that life and the gospel are everlasting can be found in our view here on earth of property and other material things. We have had an interesting experience concerning this matter in our own family in recent years.

Several Christmases ago, my parents asked if we would like to receive a gift of a 1978 Malibu automobile that had been driven only 35,000 grandmotherly miles. Since we had several teenage drivers and lived a considerable distance from the high

school, we gratefully accepted their offer and the car was delivered. Though mechanically sound, it really wasn't an attractive means of transportation and our older children did not drive it if any other vehicle was available. They gave it the nickname "Black Bullet," and it was reported to us that it was always parked in the outermost recesses of the high school parking lot. Even the younger children were apparently embarrassed by the Black Bullet because when I would drive them to elementary school in it, they would say, "Dad, don't stop, just slow down and we'll just jump out."

My wife and I had never really discussed our feelings about the car until one evening when we had had dinner together at a nice restaurant. We were just leaving and about ready to get into the "Bullet" when we spotted a prominent couple approaching us from across the parking lot. In that moment, my wife's feelings concerning the car surfaced rapidly, and she asked, "Should we just walk past the Bullet as though we don't own it?" Not being nearly so proud, I replied, "No, let's just get in and hope they don't see us!" As we settled into our seats, the couple stopped along side the car and we exchanged pleasantries. While the husband and I talked, I noticed his wife's eyes roaming over the Black Bullet's peeling vinyl and missing hubcaps. They walked on into the restaurant, and I strained mightily to read their lips in the rear view mirror. If I read correctly, I believe the wife said to her husband, "Can you believe that car the Jensens are driving?" All the way home, my wife and I had one of those conversations that married couples should have with greater frequency. Our conclusion: In the eternal scope of things, in the lives of two parents and eight children who believe that the Gospel and life are everlasting, the car being driven at any given moment in time has absolutely nothing to do with anything of lasting value.

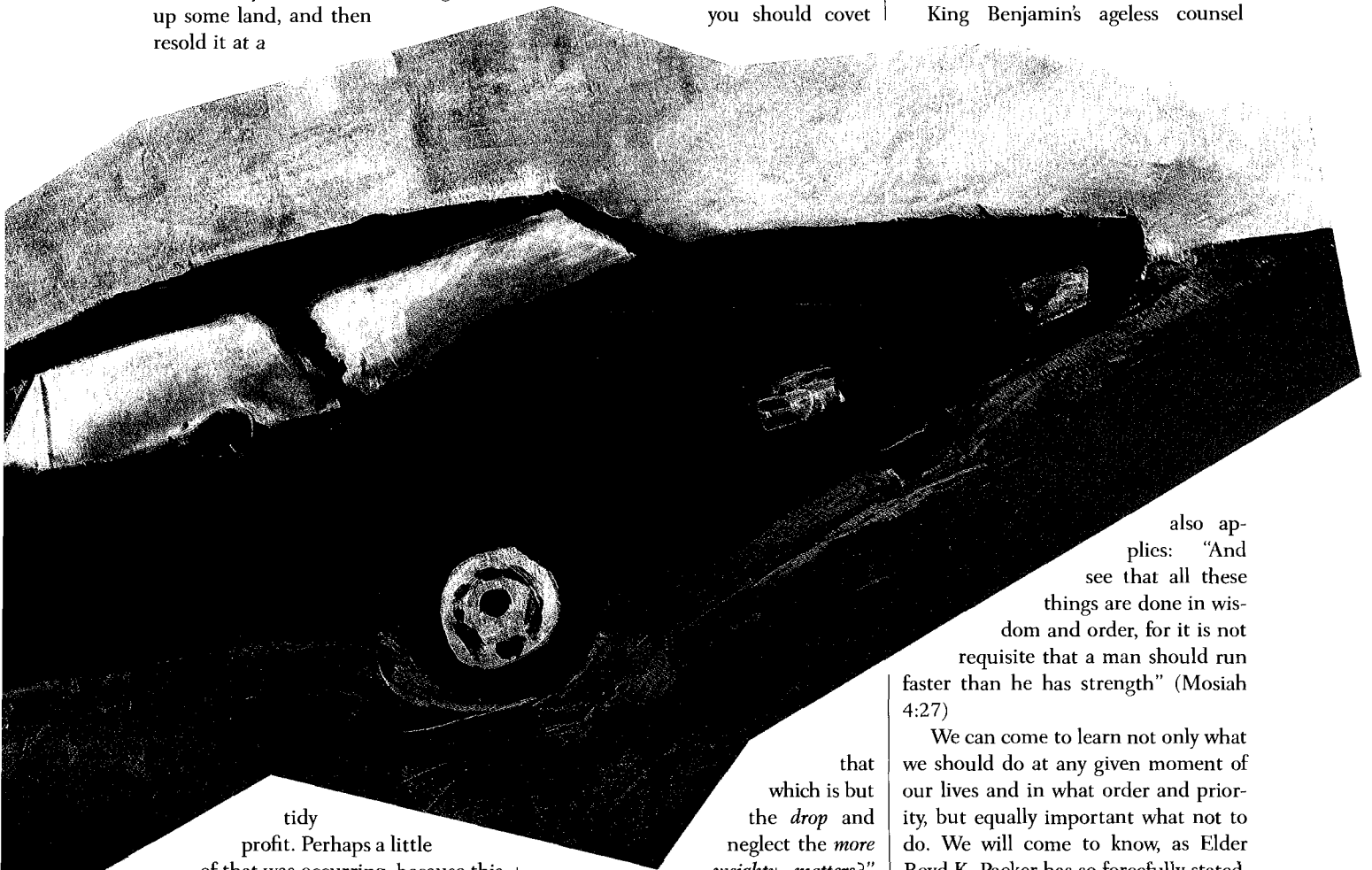
Shortly after that experience, I came upon a passage in the Doctrine and Covenants which further encouraged our resolve to always have a Black Bullet of some type in our lives and to

ensure that our children enjoy that privilege also. In Doctrine and Covenants 117:4, the Lord poses an interesting question. I do not know much about the background of this scripture, but believe it has to do with that early period in the history of our Church when the Latter-day Saints were moving frequently I have sometimes thought about the possibility that if one were a sharp real estate agent one might have preceded the Saints to a new area by a few months, bought up some land, and then resold it at a

made the earth? Do I not hold the destinies of all the armies of the nations of the earth?" Isn't that an interesting passage for those who are in Saudi Arabia tonight? Verse seven continues, "Therefore, will I not make solitary places to bud and to blossom and to bring forth in abundance? saith the Lord" Verse eight is the clincher: "Is there not room enough on the mountains of Adam-ondi-Ahman and on the plains of Olaha Shinehah, or the land where Adam dwelt, that you should covet

more clearly other important issues of life For example, we struggle often with the challenge of striking an appropriate balance among family, church, and professional responsibilities With the duration of eternity in mind, the wise teaching in Ecclesiastes becomes much more meaningful: "To everything there is a season, and a time to every purpose under the heaven; . A time to get, and a time to lose; a time to keep, and a time to cast away" (Ecl 3:1, 6).

King Benjamin's ageless counsel



tidy profit. Perhaps a little of that was occurring, because this section is directed in part at least to the land agents of the time, to whom in verse four the Lord says, "Let them repent of all their sins and of their covetous desires." And then he poses this interesting question: "For what is property unto me? saith the Lord"

He then answers his question in verse six: "Have I not the fowls of heaven, the fish of the sea, and the beasts of the mountains. Have I not

(emphasis added).

Lawyers, like many others, can easily lose sight of the everlastingness of life and spend too much time and energy coveting that which is but the drop, and thereby neglect the more weighty matters These, the Savior taught, are justice (can you imagine a lawyer neglecting that), love, and mercy.

With the concept of eternity firmly fixed in our minds, we can also see

that which is but the drop and neglect the more weighty matters?"

also applies: "And see that all these things are done in wisdom and order, for it is not requisite that a man should run faster than he has strength" (Mosiah 4:27)

We can come to learn not only what we should do at any given moment of our lives and in what order and priority, but equally important what not to do. We will come to know, as Elder Boyd K. Packer has so forcefully stated, that "The choice of life is not between fame and obscurity, nor is the choice between wealth and poverty The choice is between good and evil, and that is a very different matter indeed" (*Ensign*, Nov. 1980, 21).

I met a couple recently who exemplify the life of pace and balance that the gospel, I think, prescribes I meet such individuals frequently Almost all of them are unremarkable except for

their quiet goodness and the inner calm and happiness they seem to radiate. These two are in their early 70s and have just been called to preside over the operation of a regional family history center. They have raised a solid family and own a well-kept, if modest, home. The husband was known, before his retirement as a dependable and capable employee at a government installation. They have no great net worth but possess properties sufficient for their needs. They have raised a garden each year, made many of their own home and car repairs, and somehow arranged things so that their children had the opportunity of perspiring while engaging in activities other than just jogging or tennis. (Notice, by the way, how I carefully avoided the use of the word *sweat*, which was mentioned by the Lord to Adam, but is now quite unacceptable in most social circles.)

During all their lives, this couple's love for one another and their family has been nourished and deepened. They have carefully provided their children and themselves with good friends, good books, good music, and good conversations. Life has not spared them challenges or trials, but with their view of eternity, so far they've had what it takes. Service has been important to them, some in the community, some in the Church. He has been a bishop, she has been a teacher and leader in the auxiliaries of the Church. Most recently they have served a mission together, spent some years as temple ordinance workers, and are now becoming more seriously involved in family history. They are actively involved with their children and grandchildren. There is nothing noticeably hectic or stressful about their existence, though one does sense a definite feeling of constancy and even of mild urgency, particularly in matters concerning their family and the gospel. When I come to know people such as these, I feel inspired and I realize that President Snow's catchy couplet is not just good verse, but is a description of reality: "As man now is, God once was. As God now is, man may be" (*Biography and Family Record of Lorenzo Snow*, 46)

We are not left alone in all this, brothers and sisters, with merely our "presumptions" to guide us. The prophet Nephi promised: "For behold, again I say unto you, that if ye will enter in by the way and receive the Holy Ghost, *it will show unto you all things that you should do*" (2 Nephi 32:5; italics added). Jacob said it just as plainly, and maybe even more beautifully: "For the Spirit speaketh the truth and lieth not. Wherefore, it speaketh of things as they really are, and of things as they really will be; wherefore, these things are manifested unto us plainly, for the salvation of our souls" (Jacob 4:13). I cherish that phrase, "things as they really are, and things as they really will be." It is for me an expression of ultimate reality and can only be fully appreciated when we keep the everlasting nature of life and the Gospel fully in mind. It's also similar to Joseph Smith's definition of truth, which is a "knowledge of things as they are, as they were, and as they are to come" (D&C 93:24). I feel that "these things" can and must be known now and that despite T.S. Eliot's view, expressed earlier, we who have the Gospel need not explore endlessly for this much-needed knowledge about life.

Finally, the challenge for us all, and maybe especially for lawyers, is to apply what we know to what we do. But

some of us never get around to it. We are always in the contemplation of it. Emerson said, "We never live, we are always in the expectation of living." And so it is. We like to know about things, we like to read about them, to analyze them, to study them, and especially as lawyers, to talk about them. But we never get around to really practicing them.

What is it then that our knowledge should lead us to do? Simply this:

Be good

Love your spouse and family

Study the scriptures

Say your prayers

Seek the Spirit

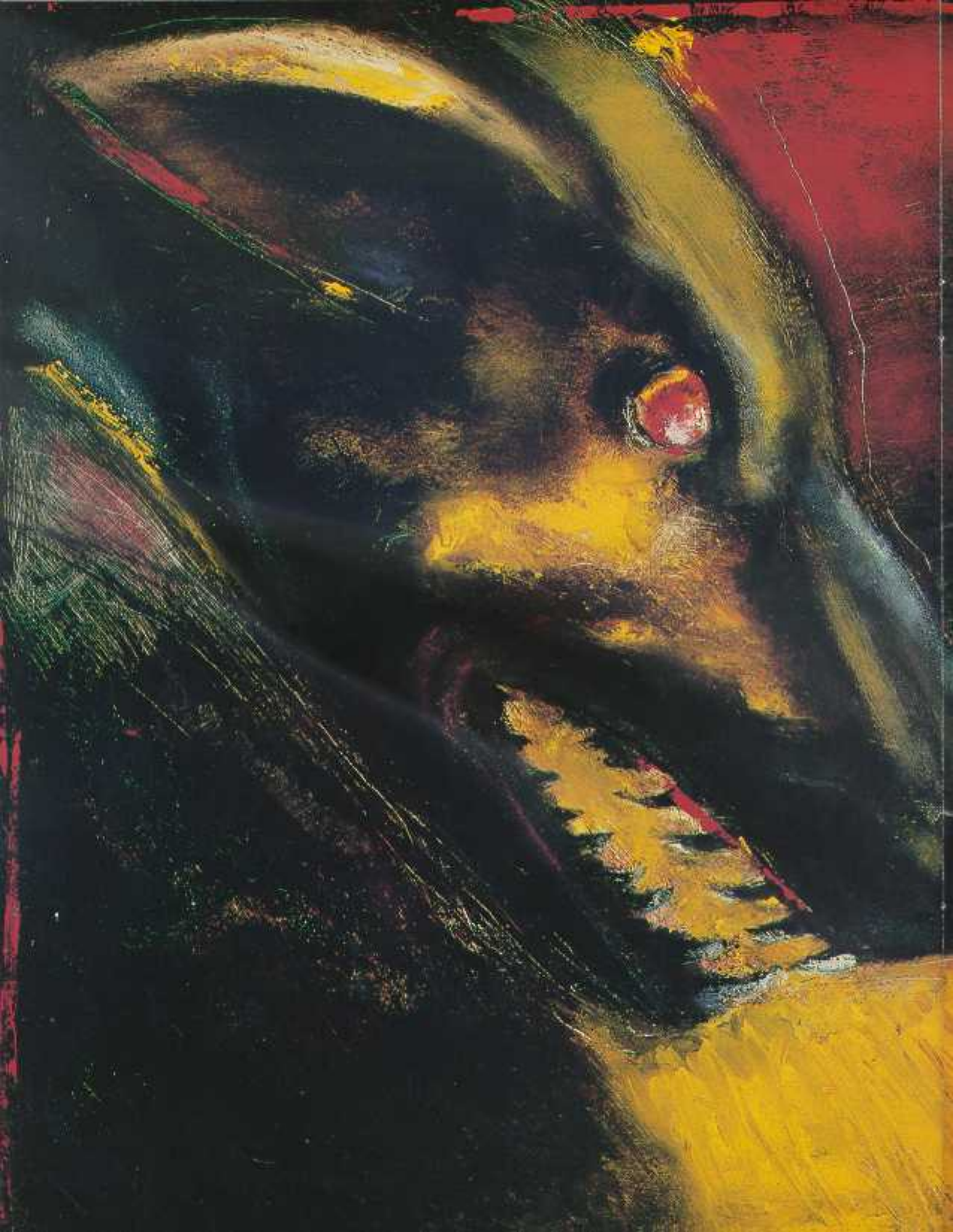
Receive the ordinances

Keep the covenants

Serve your fellow men

When you have done these things—which are clearly the weightier matters of the law—you will surely not have "left the others undone." You will also be as concerned about the pro bono as about the billable categories of your time sheets. You will probably find that synthesizing is more enjoyable and productive than analyzing. And you may also discover that a fair compromise is often more satisfying than a hard won victory. More importantly, you will enjoy a fullness of being with those you love, forever and ever. Of this I testify, expressing gratitude to him who made eternal life possible.

Finally, the challenge for us all, and maybe especially for lawyers, is to apply what we know to what we do. But some of us never get around to it. We are always in the contemplation of it.





Christianity

AND THE

MAD

DOG

Litigator

DAVID G. CAMPBELL

In the fall 1990 issue of the *Clark Memorandum*, Joseph Allegretti asked whether one can be both a good Christian and a good lawyer. He posed four models for dealing with the apparent discrepancy between these roles, the final model suggesting that a Christian life can not only coexist with the practice of law but can make it a powerful vehicle for the service of others.

The article caused me to reflect on conduct I often witness as a commercial litigator, conduct engaged in by lawyers who profess Christianity. I do not purport to have answers to the difficult moral questions to which Professor Allegretti alluded, but I do believe one common kind of lawyerly conduct can be characterized as both un-Christian and unprofessional. Let me begin by describing the conduct I see it in two forms: the mad dog lawyer and the hardball litigator.

Mad dog lawyers are best described by a witness who was unfortunate enough to have been deposed by one. On the day of his deposition, the witness was calm and good natured as he entered the deposition room. He assumed that the event about to occur would be a reasonable, businesslike inquiry into the truth. He was prepared to tell what he knew, and to tell it honestly.

ILLUSTRATION BY BRANT DAY

What followed can best be described as a mental and emotional mugging. In the words of the witness, the deposing lawyer was "alternately—but consistently—rude, coercive, threatening, abusive, and insulting. His approach was to bait, belittle, [and] ridicule," even to the extent of mimicking the speech pattern of the witness. His venom was spewed at witness and counsel alike, and led to "bitter and vicious exchanges" between all involved in this supposed search for the facts. Forty years in the business world had not prepared the witness for such treatment. Never had he, in his words, "come away from an experience with the disillusionment and revulsion that followed this exposure to the legal profession." The witness aptly described his questioner as "The Junkyard Dog."¹

Such conduct shocks a person of ordinary sensibilities. It rarely occurs in offices, at restaurants, or over backyard fences. Unfortunately, it is all too familiar in litigation. Some lawyers and law firms apparently believe that zealous representation of one's client requires unmitigated hostility toward one's opponent.

A second breed of litigator appears outwardly to comply with the norms of civilized behavior, but is nearly as abusive as the first. This lawyer generally reserves his venom for opposing counsel, releasing it in measured doses through seemingly legitimate litigation procedures. Commonly called "hardball litigator" (I have never understood this analogy to the honorable sport of baseball), this lawyer views the rules of civil procedure as tools of obstruction. He may not yell during a deposition, but his relentless and long-winded objections will just as effectively prevent examination by opposing counsel. When asking questions himself, he will stretch a 30-minute deposition into two days if he thinks some advantage might be gained by the delay. Don't bother asking him for an extension or seeking to work out a discovery schedule; "real lawyers don't cooperate." Everything must be done the hard way.

The hardball litigator seems primarily intent on making opposing counsel's life as miserable as possible. His standard interrogatories include 800 questions, not counting definitions or subparts. If he detects the slightest defect in his opponent's response, a motion to compel will be filed immediately, requesting Rule 11 sanctions for good measure. This litigator files expedited motions on the eve of his opponent's long-planned vacation, moves to disqualify opposing counsel at the drop of a hat, and serves motion papers by placing them at the bottom of document production boxes, where, he hopes, they won't be discovered by his opponent until after the period for responding to

The deposing lawyer's approach was to bait, belittle, and ridicule, even to the extent of mimicking the speech pattern of the witness. His venom was spewed at witness and counsel alike, and led to "bitter and vicious exchanges" between all involved in this supposed search for the facts.

the motion has expired.

In short, the hardball litigator treats opposing counsel with the same contempt as the mad dog lawyer, but apparently with more concern about outward appearances. Both display utter disrespect for those with whom they deal daily, and both would tell us that such conduct is required by their profession.

It is this justification of the conduct that bothers me most. Shortly after reading Professor Allegretti's article, I was approached by a first-year law student who was very concerned about the profession he had chosen. While working as a legal assistant in a law firm last summer, he saw otherwise normal people behaving like ill-tempered children in their litigation practice. Belligerence and acrimony infected almost every case in the office and was practiced zealously by young and old lawyers. The exception was a new associate who had joined the firm only a few months earlier. He was pleasant to all, and particularly kind to my student friend. When my friend mentioned this associate's pleasant manner to a secretary in the office, she replied that all the lawyers had been that way when they joined the firm. "Just you wait," she said, "he'll become a jerk like the others. If he doesn't, he'll never make it here."

So I found this student in my office asking some troubling questions. Did he really have to become a jerk to succeed as a litigator? Are there law firms where lawyers behave normally? Is there any place in the practice of law for someone who treats other people with respect?

I believe the answers to these questions are easy. They do not fall in a gray area of uncertainty, nor do they implicate deep, moral questions. Abusive behavior toward opposing parties and counsel, far from being required by the profession, is expressly disapproved by the rules of professional conduct and leaders of the bar. Acrimony rarely serves the client's best interests, and always costs the client money. To those of us who profess to be Christians or to follow a comparable moral code, such conduct conflicts directly with fundamental tenets of our belief.

THE PROFESSION'S ETHIC

Talk to any mad dog lawyer or hardball litigator and you will be told that litigation requires aggressive tactics. Truly zealous representation of a client's interests, he will claim, demands a scorched-earth, take-no-prisoners approach. After all, litigation is civilized warfare and lawyers are the combatants.

To be sure, this view is fostered by some clients. What litigator has not been asked by a prospective client if he or she is mean enough to

handle the client's case? Mad dog clients often insist on being represented by their own kind.

This view has also had its champions at the bar. Lord Brougham taught that

*an advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client To save that client by all means and expedients, and at all hazards and costs to other persons, and among them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. . . . He must go on reckless of consequences*²

Adopting this view of the profession, a lawyer might rely on the twin principles of amoral lawyering identified in Professor Allegretti's article: zealousness and nonaccountability. The lawyer must be zealous in his client's cause, and, being required by the profession to use every means available to further his client's interests, will not be held accountable for the damage he inflicts on others

J don't buy it. At least when it comes to personal relations with others in the litigation process, there is nothing in the profession that requires a lawyer to act like a jerk. On the contrary, the profession's ethical standards call for respectful and courteous behavior.

Canon 7 of the Model Code of Professional Responsibility, the very canon that requires lawyers to "represent a client zealously within the bounds of law," states that a lawyer does *not* fail in his duty "by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, . . . by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process" (DR 7-101[A][1]). The canon similarly provides that, "in his representation of a client, a lawyer shall not file suit, assert a position, conduct a defense, delay a trial or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another" (DR 7-102[A][1]).

The newer Model Rules of Professional Conduct continue these themes. The rules prohibit lawyers from asserting frivolous claims or defenses (Rule 3.1), making a frivolous discovery request or refusing to comply with discovery requests from opposing counsel (Rule 3.4[d]), obstructing another party's access to evidence (Rule 3.4[a]), or engaging in conduct intended to embarrass, delay, or burden another person (Rule 4.4).

The Federal Rules of Civil Procedure expressly disapprove discovery or other written materials that are "interposed for any improper purpose,

such as to harass or to cause unnecessary delay or needless increase in the cost of litigation" (F.R.C.P. 11 and 26[g]). The Advisory Committee Notes to Rule 26(g) expressly state that "the spirit of the rules is violated when advocates attempt to use discovery tools as tactical weapons rather than to expose the facts and illuminate the issues."

In its Code of Trial Conduct, the American College of Trial Lawyers confirms that a lawyer owes his client "undivided allegiance," but instructs that "[a] lawyer should never be unfair or abusive or inconsiderate to adverse witnesses or opposing litigants" and "should avoid disparaging personal remarks or acrimony toward opposing counsel." The college admonishes lawyers to maintain "professional dignity," and teaches that a lawyer "should abide by these tenets and conform to the highest principles of professional rectitude irrespective of the desires of his client or others."³ Even the Supreme Court of the United States has stated that lawyers "owe a duty of courtesy to all other participants" in the litigation process (*In re Snyder*, 472 U.S. 634, 647 [1985]).

The ethic is thus well established. Courtesy and respect for others are fundamental requirements of good lawyering. The mad dogs and hardball litigators simply cannot claim that their profession requires them to act as they do. Those who routinely sow acrimony in their practice act unethically. The profession provides no justification for their behavior.⁴

Judge Noel Fidel, currently a member of the Arizona Court of Appeals, summed it up well:

*So a word to the Junkyard Dogs : If you take satisfaction in your style, spare us the sanctimony. You act as you do because it pleases you and not because you owe it to your clients or to your profession. That is your character; accept it*⁵

THE CLIENT'S INTEREST

Some litigators might argue, ethical rules aside, that they best serve their clients by ferociously attacking their opponents. I side with Judge Fidel: "That's baloney. You owe your client the best of yourself, not the worst of yourself."⁶ I further believe that acrimonious litigation tactics deserve clients

I do not profess to be an expert on the subject, but in nine years of litigation practice I have seen my share of abusive tactics. These include all the examples given at the outset of this article. Yet I cannot think of a single instance where the tactic produced a benefit for the client. On the contrary,

When it comes to personal relations with others in the litigation process, there is nothing in the profession that requires a lawyer to act like a jerk

in almost every instance the acrimonious behavior of the attorney resulted in wasted time, wasted motions, or wasted depositions, all billed to the client by the hour.

A lawyer who spends three hours of a day-long deposition arguing with the witness or opposing counsel charges his client for three hours of entirely unproductive time. And because he offends everyone within hearing, the lawyer most likely obtains far less relevant information during

*and evade appropriate disclosure, the result more often than not is to increase the cost, duration, and acrimony of legal proceedings to the detriment, not the benefit, of the client.*⁷

The most productive cases of my experience are those where lawyers cooperate. Each side knows what the other must do and makes no effort to obstruct. Depositions are scheduled well in advance to ensure that witnesses and counsel are available. Questioning proceeds without unnecessary interruption. Written discovery requests are fairly framed and fairly answered. Little or no time is wasted in disputes. Though the litigation is hard fought, with both sides vigorously preparing and presenting their cases, the focus is on the case itself, not on the personal battles that characterize so much of modern litigation.

In short, rancor is not required to serve one's client well. The most effective service is rendered by the lawyer who applies his skill and energy to the merits of the case, rather than dissipating them in side skirmishes with his opponent.

THE MORALITY OF ACRIMONY

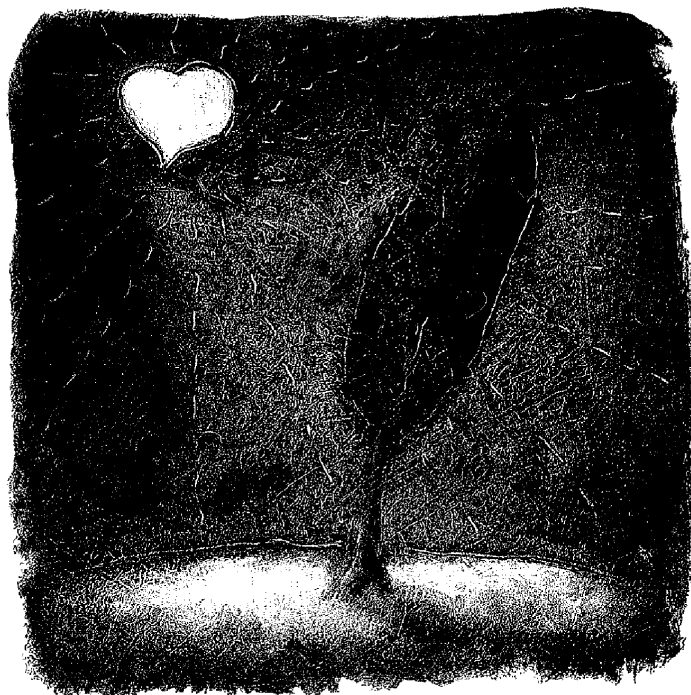
Once it is clear that the profession and the practice provide no justification for assaulting one's business associates, can there be any doubt about the morality of abusive behavior? Professor Allegretti's moral dilemma arises when the lawyer's profession requires him to act in a seemingly immoral manner. But when the lawyer is free to choose moral behavior without disserving his client or his profession, the dilemma never arises. The lawyer who professes to be a Christian, or who follows any other moral code that values respect and kindness in human relationships, thus should recognize that his hostile conduct might be costing far more than his client's money.

The immorality of abusive behavior would appear to be well settled under the Christian code. Christ taught: "Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets."⁸ The Apostle Paul expanded on the Golden Rule:

Let no corrupt communication proceed out of your mouth, but that which is good.

Let all bitterness, and wrath, and anger, and clamour, and evil speaking, be put away from you, with all malice.

*And be ye kind one to another.*⁹



the remaining four hours than he would in a civilized and courteous two.

A lawyer who refuses to respond with candor to his opponent's discovery requests, argues over the phone about the adequacy of his responses, exchanges accusatory letters, and finally surrenders the information only after motions have been filed, obtains absolutely no advantage for his client. Furthermore, he most likely charges several thousand dollars for the service. I have often wondered how clients would react if they really knew what they were getting for their money.

Judge Fidel, then a trial judge in the Arizona Superior Court, described the effectiveness of abusive tactics in this way:

Where lawyers play the margins, where they withhold consent to reasonable requests of opposing counsel, where they act discourteously, practice harassment,

I suspect that some lawyers attempt to "compartmentalize" their lives, acting one way with family and friends and another in the office. Such lawyers might believe that their behavior in the deposition room does not reflect or affect their true character. This seems like dangerous rationalization. As Mark Green observes, "Psychologists note that it is difficult for people to act one way and believe another. Ultimately, either action conforms to belief, or belief to action."¹⁰

Christ made the point in more direct terms:

For every tree is known by his own fruit. For of thorns men do not gather figs, nor of a bramble bush gather they grapes.

*A good man out of the good treasure of his heart bringeth forth that which is good; and an evil man out of the evil treasure of his heart bringeth forth that which is evil: for of the abundance of the heart his mouth speaketh*¹¹

Those who espouse the LDS faith have additional reasons to view their lawyerly conduct as directly related to their moral character. Individual agency and personal accountability are central doctrines in Mormon theology. Mormon scripture teaches that "every man may act . . . according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day of judgment"¹² Whatever difficult moral questions might arise in Professor Allegretti's dilemma, where seemingly immoral conduct is required by one's profession, they do not arise where the profession requires conduct consistent with one's moral beliefs. The strongest imperative seems to arise when one's moral beliefs and professional ethics coincide, both requiring respect and courtesy for others. In such a situation, where the lawyer is free to choose how he or she will act, the doctrines of agency and accountability seem to hold the lawyer responsible for his knowing mistreatment of others. This principle can be found in another passage of Mormon scripture:

And now remember, remember . . . that whosoever perisheth, perisheth unto himself; and whosoever doeth iniquity, doeth it unto himself; for behold, ye are free; ye are permitted to act for yourselves; for behold, God hath given unto you a knowledge and he hath made you free.

*He hath given unto you that you might know good from evil, and he hath given unto you that ye might choose life or death; and ye can do good and . . . have that which is good restored unto you; or ye can do evil, and have that which is evil restored unto you.*¹³

*The lawyer
who professes
to be a
Christian,
or who
follows any
other moral
code that
values
respect and
kindness
in human
relationships,
should
recognize
that his
hostile
conduct
might be
costing
far more
than his
client's
money.*

TO THE YOUNG LAWYERS IN ALL OF US

I told my young student friend that he need not sacrifice his character to succeed at litigation. If that is the price his law firm demands of him, it is too dear. He should practice elsewhere. There are many fine litigators who act like Christians.

To those of us who are a bit farther down the road and might have developed some sharp edges in the rough-and-tumble of litigation, the same notion applies. It is not too late to choose an alternate course. Reducing the acrimony in our practice will save clients money, increase our effectiveness, and probably lengthen our lives (see any recent medical study on the effects of stress). It will benefit the profession as well. Most importantly, it will bring our professional lives more closely into conformity with our moral beliefs.

Again, Judge Fidel captured the basic truth:

*As for . . . the law students and young lawyers who worry whether they are tough enough for this hard field, don't confuse strength with abrasion. You can be firm without being rigid; you can be insistent without being petty; you can practice courtesy without weakness; you can choose your battles and make them count. Readily cooperative, you can save your clients time and money and preserve your combative energy for those fine tests of wit and planning that are litigation at its best. You can be successful without relinquishing those qualities that make your efforts worthy in your eyes.*¹⁴

Notes

1 M. Van Derveer, "Face to Face with an Abusive Attorney," *National Law Journal*, (14 May 1984), 13.

2 Trial of Queen Caroline 8 (J. Nightingale ed. 1821), quoted in Frankel, "The Search for Truth: An Umpireal View," 123 *U. Pa. L. Rev.* 1031, 1036 (1975).

3 *The American College of Trial Lawyers, Roster, Bylaws, Code of Conduct*, 294, 298 (1990).

4 See Allegretti, "Christ and the Code," *Clark Memorandum* (Fall 1990), 22.

5 Fidel, "Reflections on Discovery Practice, Sharp Elbows, Junkyard Dogs, and the Elusive Spirit of Cooperation," *Arizona Bar Journal*, (October–November 1984), 18.

6 *Ibid.*, 17.

7 *Ibid.*, 18.

8 Matthew 7:12.

9 Ephesians 4:29, 31–32. See also 1 Peter 3:8–10.

10 G. Hazard and D. Rhode, *The Legal Profession: Responsibility and Regulation* (2d ed. 1988) 181, quoting Chemerinsky, "Protecting Lawyers from Their Profession: Redefining the Lawyer's Role," 5 *Journal of the Legal Profession* 31, 34 (1980).

11 Luke 6:44–45.

12 D&C 101:78.

13 Helaman 14:30–31.

14 Fidel, 18.

Gender Bias in Law Explored at Week-Long Symposium

On the heels of Utah's three-year study of gender bias in the judiciary, the Women's Law Forum at BYU devoted a week in November to discussion of an area of prejudice that is alive within, as well as outside, the legal system. The American Trial Lawyers Association (ATLA), the Society of Law and Government, and the Diversity Committee, joined the forum in sponsoring "Gender in Law Week," November 8-15.

The Utah Task Force on Gender and Justice delivered its findings several days after Justice Christine Durham of the Supreme Court of Utah addressed faculty, students, and professional counselors. Reviewing the findings of the 1986 report of the New York Task Force on women and the court, Justice Durham noted that women attorneys, through their professionalism, can change things.

Durham said that 18 percent of those in the legal profession are women, and by the year 1995, women will make up one-third of the profession. "Assuming that women gain access to decision-making positions in proportion to their entrance into the profession," she asked, "what kinds of changes will women make in the profession?"

Quoting Judge Pat Walt of the D.C. Circuit, Durham said that the growing number of women lawyers must decide whether it is enough to aim no higher than their male counter-



parts, "to advocate the same causes, [and] to blink at the same outrages." Echoing Judge Walt, she concluded, "Why should we be any more idealistic about our profession than men are? Perhaps," the judge answered, "because we are women."

"Now the work is there for us to do," challenged Justice Durham. Presenting results of the New York Task Force Report on women and the court, she made it clear that there is a need for action. "Gender bias in the law and legal system is a matter of national proportions," Durham said. She then cited such problems as judges and lawyers being uninformed about the prevalence of domestic violence, the victim's inability to access the court to obtain protection, inequities in the distribution of a family's assets and income upon divorce, and inability of spouses to enforce awards for child support.

The report found that some judges and lawyers hold to stereotypes, whether choosing mothers as the preferred custodial parent or relating to women lawyers. Widespread problems result from some judges, male attorneys, and court

personnel treating women dismissingly and with less tolerance and respect than men.

Justice Durham noted that, in spite of stereotyping and favoritism, the "expressive capacities" relegated to women may provide the ethic of care needed to strengthen the quality of life for women, children, and families and create equal justice and social change. She asked her audience, "Is this an unrealistic approach to the potential of women in our profession?" Describing "access to power" as a matter of ratio, she maintained that the larger the proportion of women in law, the greater their impact.

"Because women compose half the population, any legal issue is a women's issue," noted Durham. She hoped that, as more women begin to have a voice, they will promote excellence and professionalism and make changes in the legal system to protect fairness, equity, and the quality of life for women, children, and families.

In line with Justice Durham's comments, members of the Utah Task Force on Gender and Justice spoke at the close of the week. Aileen H. Clyde,

Justice Michael Zimmerman, and Judge Pam Greenwood represented the 21 lawyers, judges, court personnel, and community leaders on the task force.

In 1986 Justice Gordon R. Hall, the chief justice of the Supreme Court of Utah, asked Aileen Clyde to chair a task force that would look into the nature and extent of gender bias within the Utah Court System and make recommendations for reform. Mrs. Clyde reported that the task force, after arduous debate, settled on the following definition of gender bias:

Gender bias encompasses society's perception of the value of work assigned to each sex, the myths and misconceptions about the social and economic realities of people's lives, and the stereotypes that society has assigned to the behavior of men and women.

Under this definition, gender bias can operate to the detriment of both men and women, although the national and the Utah data show that women are disproportionately affected by gender bias.

"Many people, because of the way they were raised or because of their religious

beliefs, intentionally and unintentionally become involved in gender-biased conduct," Justice Zimmerman said "This tendency to stereotype is a universal human problem, but whatever personal beliefs are, the law must operate to give women and men equal treatment," he emphasized.

Having this definition to frame its inquiry, the task force then held and gathered data from statewide public hearings and confidential meetings. Key information came from a survey of 2,000 Utah attorneys and feedback from court personnel. The task force also benefitted from appellate case law studies, personnel data, and studies conducted by other groups.

The findings: in courtroom interaction, women lawyers reported that female lawyers, witnesses, and litigants were interrupted more frequently than men. Women lawyers who were "helped" by the judge or received other deferential treatment felt their credibility with clients and other lawyers was undermined. They also reported receiving fees lower than those paid to men for similar work. Men lawyers reported that there was no gender bias in the courtroom and that deferential treatment given to women gave them an advantage.

Both men and women commonly reported that women tend to be addressed by first names or terms of endearment and subjected to comments about physical or sexual attributes or appearance. The report also showed that judges seldom intervened to remedy inappropriate gender-related

conduct in the courtroom.

After reviewing the findings of courtroom conduct, the task force made recommendations that judges refrain from any gender-biased conduct and that the bar amend the rules of professional conduct to prohibit attorneys from engaging in inappropriate gender-biased behavior. The task force also suggested gathering data to determine whether the gender of the attorney affects fee awards.

Another major concern of the task force was the problem of domestic violence. "We talk about family and family values in this state, but I'm convinced that we had better just watch it," Mrs. Clyde said, referring to the fact that Utah is right on par with the national average for occurrences of spouse and child abuse.

The task force reported that most victims of domestic violence are women. "Most women who go to the emergency room, go there as victims of domestic violence and more than 40 percent of the women killed in this country each year are killed by their husbands or partners," Justice Zimmerman said.

He and Judge Greenwood emphasized that the problem of domestic violence is a complex problem that cannot be solved by the judiciary alone. Still, police and prosecutors serve as "gatekeepers to safety" and have a profound effect on whether victims get access to protection. "Domestic violence cases will never reach the courts unless police arrest and prosecutors charge offenders," Judge Greenwood said.

Justice Zimmerman suggested that clergy and laypersons also might be gatekeepers to safety for abused persons. "It is important that gatekeepers and [laypersons] do not respond to domestic violence as less serious than similar violence between strangers," he said.

Among the report's many recommendations for reform were: (1) that the state legislature repeal Utah Code Section 76-5-407(1), which prevents prosecution for rape and other violent sexual offenses between married parties, (2) that the community give domestic violence victims more support, (3) that the courts afford victims easier access to the judicial system, (4) that courts and law enforcement cease the practice of issuing mutual protective orders *sua sponte* or on mere oral request by the respondent, and (5) that law schools include information on domestic violence in their curriculum and encourage clinical placements for law students in organizations that help domestic violence victims.

Concluding its report, the task force encouraged the audience to read the Utah Task Force on Gender and Justice report and to help educate the public and to reform the law. At the luncheon following the task force report, the panel made a final point—there is not only a need for mutual respect between the sexes but also a need for women to be empowered with choices that avoid exploitive situations.

—Rebecca Slater, Vice President of the Women's Law Forum

Justice Sandra Day O'Connor Chairs Moot Court Finals

The Seventeenth Annual J. Reuben Clark Moot Court Finals on January 28, 1991, included some of America's most distinguished jurists. The competition was chaired by Justice Sandra Day O'Connor of the United States Supreme Court. Other members included the Honorable Judge Ruth Bader Ginsburg of the District of Columbia Court of Appeals, the Honorable Judge Frank X. Altimari of the Second Circuit Court of Appeals, the Honorable Judge Alvin B. Rubin of the Fifth Circuit Court of Appeals, and the Honorable Judge Frank H. Easterbrook of the Seventh Circuit Court of Appeals. Justice O'Connor stated that being able to assemble the fine panel of judges was a compliment to the school as these judges were among "the finest in the country."

Although their credentials are overwhelming, the jurists were approachable and kind. Three of the judges, Ginsburg, Altimari, and Rubin, participated in a panel discussion and question and answer period before the competition. Judge Altimari started the discussion recounting his experience of the previous day watching the Super Bowl with 40 law students.

He said that he was impressed with the devotion of the students who had a prayer before the meal. However, he admitted that as the prayer continued and continued and continued, he began to worry that he

was going to miss the kickoff. But he didn't miss the kickoff, and since his team won, it made his stay here all the more pleasant. He also mentioned that being a judge was a very rewarding experience, given the collegiality of working with other judges and the ability to contribute to certain areas of the law. However, he felt that the most rewarding aspect of being a judge was the relationship that he had with his law clerks.

Judge Rubin began his remarks by clarifying that he was a "trial lawyer" and not a "litigator." A litigator he said, "is someone who takes depositions for five years and then settles." He also emphasized that being a judge is different from being a lawyer because judges' emotions do not go up and down with the wins and losses as much. He also agreed with Judge Altamari that being a judge was a positive and rewarding career. Judge Ginsburg said that she had been on the D.C. circuit for over 10 years and that she found the job both challenging and satisfying.

Because of the cordiality and frankness of the panel, the judges were able to field only a few questions. Judge Ginsburg responded to the first question concerning her views on abortion. The judge began by putting *Roe v. Wade* in perspective. She noted that, though generally the U.S. Supreme Court moves in small steps, the *Roe* decision was a giant step in one direction and it pushed the political machinery of the states in the opposite direction. In other words, if the Supreme

Court would have left the state and local governments alone the women's rights movement would have pushed more liberal abortion laws through the legislatures, but since the Supreme Court took such a big step in that direction, it took a lot of momentum out of the pro-choice movement. Nevertheless, the judge predicted that eventually abortion legislation would follow the

meaning of its words, like a *statute*. The second category would look to the intent of the creators of the Constitution if the wording is unclear. The third category is a more liberal view, which goes beyond the first two. Judge Rubin left the question of original intent with questions of his own. He queried as to whose intent would clarify the Constitution: Madison's secret notes, the colonial

Pinkney were counsel for the petitioner. The counsel for the respondent were David Cole, John C. Hyer, Andrew S. Williams. The topic of the moot court competition this year involved current Fourth and Sixth Amendment problems. The fact pattern involved two issues: (1) the use of a parabolic microphone to record the petitioner's conversations, and (2) the use of an invited



trend of no-fault divorce and that the majority of states would adopt a more liberal position.

The second main question pertained to the concept of original intent in constitutional decisions and how the original intent theory applied in cases of ambiguity. Judge Altamari proposed that there were two schools of thought. One espouses original intent and the other considers the U.S. Constitution a living document subject to change as unforeseen circumstances arise. For Judge Altamari, denying the latter would be to deny the genius of the Constitution.

Judge Rubin divided the schools into three categories. The first would interpret the Constitution according to the literal

citizens at that time, or perhaps the legislators who ratified it? Judge Ginsburg added that certain parts of the Constitution are easily understood, like the requirements of a senator, but other areas are vague and are meant to be interpreted broadly. She also added that the original Constitution was short-sighted, allowing a significant minority, white male landowners, the majority of the rights.

The panel discussion was followed later in the afternoon by the moot court finals. Second-year members of the Board of Advocates had participated in preliminary rounds of competition with the six finalists chosen to compete in the finals. Jill Covington, Kelly Dunaway, and John

informer to record the petitioner's statements after the petitioner had retained counsel for a prior arrest.

At the close of the competition each of the judges commented on the competition. Judge Ginsburg called the competition "a truly great show" and all the other panelists agreed. Judge Ginsburg also pointed out that the experience closely mirrored that of her court, including lots of questions from the judges. Judge Rubin noted that the participants were better than most lawyers who argue before his court. Judge Easterbrook added that although, as a student, he had been skeptical of comments like Judge Rubin's, now that he has become a judge in

the court of appeals, he must confess that Judge Rubin is right Judge Altimari also left some parting advice with the participants: "Don't ever let them see you sweat."

Justice O'Connor began her closing remarks by thanking BYU for allowing the panelists to visit She complimented the school for its beautiful setting and high quality of education. Before extolling the virtues of the moot court system, Justice O'Connor noted that one of the finest oral advocates in the United States works at BYU. She said that Rex E. Lee is among the best in the country.

The justice pointed out that the problems involved in this moot court competition were well-chosen. Both issues were legitimate and neither had clear answers She went on to say that moot court was an important part of legal education. She emphasized that in this day of legal practice it is critical to be able to write well and that oral skills are useful in many settings besides the courtroom.

Finally, Justice O'Connor announced the winners and handed out the awards Andrew Williams received the Dean's Cup for best oral argument. He and his teammates, Hyer and Cole, won the competition and David Cole was awarded a trophy for writing the best brief. The other team received an honorable mention award and all the finalists will have their names inscribed on a plaque that hangs outside the Guy Anderson Moot Court Room.



Former Librarian David Thomas Focuses on Teaching, Research

Walking into the office of David Thomas, one could easily mistake him for a photography instructor. Prized photos line the walls, distractions from the laden bookshelves and piled desk. The scenes are artistic pauses in the academic pace of Law Professor Thomas.

Director of the law library for the past 16 years, David has now shifted his efforts to his teaching and writing. He passed the directorship to Constance Lundberg in the summer of 1990 after building "one of the most automated law libraries in the world. I started to get the feeling my time could be even more productive, and there was more I wanted to do," David said.

A person who thinks in terms of "growth curves" and "mileage," Professor Thomas is bound to exceed his own hard-to-follow act. A prolific scholar, he has a personal record filled with chapters of experience as well as productivity.

By the time he was 26 years old, David had served

a mission to Germany, married and had two children, graduated cum laude from BYU, and served in Vietnam. After earning a law degree from Duke University in 1972, he returned to his alma mater, where he joined Peter Mueller and others in organizing the law library in the new J. Reuben Clark Law School. Within two years David was the director of the law library and a law professor. By 1977 he had added a master of library science degree from BYU to his credentials.

Though the law library was "first in some areas of automation," David did not forget the "traditional mission" of law. "There are all kinds of people who are experts on computers, but they haven't grasped that they have to draft their documents and think about things." He admits, however, that with the aid of computers his "scholarly productivity has increased about fourfold."

David's knowledge of real property and legal history, besides that of legal research tools, is evident in a list of his publications. Topics ranging from "Access to Foreign Legal Databases" to

"The Disappearance of Roman Law from Dark Age Britain" fill his vita. A respected author, he is also in demand as an editor, presently writing three of the 15 revised volumes of Michie Company's *Thompson on Real Property*.

He has lectured from podiums throughout the United States and in other countries such as Israel and Great Britain. The U.S. representative to the British Law Library Association for eight years, David sees the life-time membership awarded him this past year as "probably the nicest honor I have received."

He is actively involved with many professional and academic groups and has served, for example, as a president of the American Association of Law Libraries. In the Law School he chairs or sits on numerous committees, focusing on the student level of legal preparation. David, an educator who has practiced law privately and publicly, also drafts questions for bar exams in four states.

Professor Thomas finds more time to submerge himself in research now that Dean Lundberg oversees the library and its large staff. When he is not writing about real property and legal history, he is teaching it. Among his various legal courses, David finds his class in advanced legal writing particularly gratifying, discovering that with each new semester he has "gotten better prepared students."

David carries his enthusiasm home, where his wife, Paula, and their eight children share his nonstop,

absorbing approach to learning. Revealing one source of his motivation, he notes with delight that for several successive years the entire family has accompanied him to Europe while he researched legal history

David Campbell Enjoys Sabbatical at BYU

One of the high points of the first semester of law school for the entering class of 1990 was the opportunity to study civil procedure with visiting professor David Campbell. David was on a four-month sabbatical from his practice with Meyer, Hendricks, Victor, Osborn & Maledon in Phoenix. On the last day of the semester, David's students honored him with a citation for his superior teaching. They commented on his interest in them, the care he took in preparing and presenting the material, and his ability to convey difficult concepts

David has had a diverse legal career. After graduating from the University of Utah College of Law in 1979, David clerked for Judge J. Clifford Wallace of the 9th Circuit Court of Appeals. He then worked as an associate in the New York and Los Angeles offices of O'Melveny & Meyers for one year before serving as a law clerk for Justice William Renquist of the U.S. Supreme Court. He has been a litigator with Meyer, Hendricks since his clerkship.

It is not often that a trial attorney can take four months away from a full litigation calendar and teach civil procedure, but then it is not every firm that takes

a flexible approach to the practice of law. David explains that he accepted a position with Meyer, Hendricks just to be able to have this type of flexibility

For every year of partnership at Meyer, Hendricks a partner accrues one month paid sabbatical. The sabbatical can be from two to nine months long. The firm places no restrictions on what a partner does during his or her sabbatical. The partner collects a full salary while he or she is away.

David makes a convincing argument that Meyer, Hendricks' flexible policy has strengthened the firm and increased the loyalty of associates and partners. He maintains that it contributes to the mental and physical health of the lawyers and makes for a more interesting and diverse firm. The benefit to the firm, according to David, is that the clients are of necessity clients of the firm. With a lawyer periodically taking a sabbatical, his or her clients are of necessity handed to others in the firm, fostering a spirit of cooperation.

When asked to comment on his experience at the Law School, David was quick to point out that as an alumnus of the University of Utah and the University of Utah College of Law, he was pleased to find out that he could thoroughly enjoy BYU, and he was impressed with the quality of the students. He thought that Civil Procedure would be a difficult course to teach because it is not intuitive, but he was impressed by how quickly the students grasped complicated ideas and how hard they worked to thoroughly understand

them. His bottom line assessment: teaching is a lot of fun. "The students have great senses of humor. They were interested; they asked good questions; and I enjoyed the give and take," he stated. He especially liked the one-on-one time with the students. "I spent a lot of time talking to the students about where they are going with their careers and about their lives as well as legal issues," David commented. "I have gotten to know many of the students well, and they are wonderful people."

The life of a scholar was attractive to David. He enjoyed having the freedom and flexibility to really learn a subject he wanted to learn. Contrasting his experience as a litigator, David noted, "as a lawyer you have to be concerned about your client's interests, as a law professor you can be curious about any facet of the subject you choose."

When asked how his firm benefitted from his experience at the Law School, David replied, "by my understanding of *International Shoe*." David states that he knows civil procedure better now than ever before even though he has practiced for a number of years as a litigator. He feels he is going back to his practice well rested and enthused about the law and the issues he faces. While David *believes* he will return as a better lawyer, he *knows* he is a better father and husband because he has had four months to spend half of his time with his family.

David said that when he graduated from the University of Utah College of Law in 1979 and

contemplated a judicial clerkship he asked himself, "Will this be a valuable way to spend my time?" He decided then that this is a far superior question to "Will this experience be a stepping stone in my career?" or even "Will I be a better lawyer for having this experience?" David also indicated that if a student is marginally interested in a federal clerkship he or she should consider it. "As a federal clerk you get to see the world from the mountain top," according to Campbell. "For one year you get to question what is right or wrong in these particular cases. From then on in the practice, the right answer will be your client's answer unless you become a judge. So there is an objectivity you get to bring into it and a creativity that most lawyers will never get the opportunity to experience. I found that to be very stimulating."

When asked if he had some final advice for the students who had become his friends, David said he would encourage them not to lose their "moral compasses." He indicated that in an interview after Watergate, Jeb Magruder said that somewhere along the way he had lost his "moral compass." David said, "In the practice of law I perceive that many lawyers are losing their moral compasses and forgetting what is most important in life. It is an easy thing when you get caught up in your client's cause for that to be the governing principle of your life. I do not believe that your client's cause should ever divert you from what you know is right."