



“Go, and Sin No More”

APPLYING THE LORD’S MODEL IN MAN’S CRIMINAL JUSTICE DECISION MAKING

Keith N. Hamilton, '86, received the 2012 BYU Alumni Achievement Award for J. Reuben Clark Law School. Admitted to BYU Law School in 1981 after his baptism in 1980, Keith's place was deferred until 1983 so he could serve a mission. He practices law in Salt Lake City and has served as a member and chair of the Utah Board of Pardons and Parole and as a member of the governor's cabinet. He has served as a branch president, bishop, and temple worker. Keith is the author of the book Last Laborer: Thoughts and Reflections of a Black Mormon. Following are excerpts from his talk given to law students on October 16, 2012.

I love Brigham Young University, its alumni association, and J. Reuben Clark Law School with all my heart, and I cherish my associations with so many great and wonderful people related to each entity. After delaying matriculation into the Law School to serve a mission, I attended classes in this building from 1983 until 1986. For the most part it was a very lonely and difficult experience for me as the first and only black student at the Law School during my three-year tenure. I never let on to others how difficult it was for me, because I knew it wasn't their

fault. The faculty, the staff, and my fellow students were wonderful in their attempts to make me feel as comfortable as possible while I underwent the difficult and grueling course of study that is the law. I express my sincere gratitude and appreciation to them for all that they did for me in making a very demanding and challenging time much more enjoyable and considerably less burdensome. I particularly wish to publicly express my love and gratitude to Reese and Kathryn Hansen, who loved, fed, sheltered, guided, and mentored me through my law school years and since.

When I graduated from this law school and entered into active-duty service with the U.S. Navy JAG, I did not have much desire to return to Provo beyond coming back for the occasional visit with the Hansens and for special occurrences at the Law School, such as class reunions. But at the urging of then BYU president Rex E. Lee, who, as former dean of the Law School, was instrumental in my admittance here, in 1993 I returned to BYU with my young family to accept a position within the university's alumni association. From 1993 to 1996 I worked for the Alumni Association, which

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allowed me to establish lasting relationships with many more people associated with the university beyond my Law School associations.

I now will share a few thoughts about something for which I have more passion than even BYU or the Law School: the administration of criminal justice and particularly the way punishment is meted out against criminally convicted persons in the United States. Since my initial foray into the world of criminal justice some 35 years ago, our criminal justice system has become increasingly punitive and harsh toward adult criminal

offenders. Of the various purposes for punishment—general deterrence, specific or particular deterrence, incapacitation or restraint, rehabilitation or reformation, and retribution—retribution has become the primary purpose for sentencing, law making, and decision making within the United States. “Retribution . . . is the oldest theory of punishment, and the one which still commands considerable respect from the general public.”¹ Its roots stem from the Mosaic practice of “an eye for an eye, and a tooth for a tooth” (3 Nephi 12:38; see Exodus 21:24).

While retribution has been long accepted by the general public as a key punishment oriented for public safety, many criminal justice thinkers and practitioners and most social scientists and theorists have long regarded it as the “least accepted” theory of punishment. However, “[retribution] is suddenly being seen by thinkers of all political persuasions as perhaps the strongest ground, after all, upon which to base a system of punishment.”²

There is no doubt that retribution is now the predominant theory of punishment utilized in the decision-making process of those who make, enforce, and carry out the laws regarding punishment within the criminal justice systems of the United States. I have gathered the following statistics from various sources as evidence:

» “The United States is the world’s leader in incarceration with [2.3] million people currently in the nation’s prisons or jails—a 500% increase over the past thirty years.”³

» “China, which is four times more populous than the United States, is a distant second, with 1.6 million people in prison. (That number excludes hundreds of thousands of people held in administrative detention, most of them in China’s extrajudicial system of re-education through labor, which often singles out political activists who have not committed crimes.)”⁴

» “The United States has less than 5 percent of the world’s population. But it has almost a quarter of the world’s prisoners.”⁵

» “Since 1980, the federal prison population has grown almost 800 percent.”⁶

» “Since 2002, the United States has had the highest incarceration rate in the world. Although prison populations are increasing in some parts of the world, the natural rate of incarceration for countries comparable to the United States tends to stay around 100 prisoners per 100,000 population.”⁷ Experts tend to agree that, based upon the method of calculation, the U.S. rate is somewhere between 500 and 755 prisoners per 100,000 residents.⁸

» Huffington Post writers Nate M. Kamrany and Ryan J. Boyd note that the United States “incarcerates 753 per 100,000” and that “comparable European figures include 153 for England, 96 for France, 92 for Italy, 66 for Denmark and 90 for Germany. . . . Over the past forty years the number of incarcerated people [in the United States] has increased 350 percent while population increased 33 percent, violent crimes rose 3 percent higher than 1980 while property crimes dropped from 496.1 per 1,000 in 1980 to 134.7 in 2008, according to the Bureau of Justice Statistics.”⁹

» “According to data maintained by the International Center for Prison Studies at King’s College London, [the United States] has 751 people in prison or jail for every 100,000 in population. (If you count only adults, one in 100 Americans is locked up.) The only other major industrialized nation that even comes close is Russia, with 627 prisoners for

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every 100,000 people. The others have much lower rates. England's rate is 151; Germany's is 88; and Japan's is 63. The median among all nations is about 125, roughly a sixth of the American rate."¹⁰

» "In addition to overall incarceration rates, the United States is also leading in rates of female incarceration. In the United States, women make up more than one-tenth of the whole prison population. In most countries, the proportion of female inmates to the larger population is closer to one in twenty."¹¹

» "The United States has striking statistics when observing the racial [and age] dimension[s] of mass incarceration."¹² United States prison populations are overwhelmingly comprised of young ethnic men.¹³ For all men, "incarceration rates are highest

for those in their 20s and early 30s. Prisoners also tend to be less educated: The average state prisoner has a 10th-grade education, and about 70 percent have not completed high school."¹⁴

All these statistics boil down to the fact that because of its sentencing policies, "the United States is the world's leader in incarceration," resulting "in prison overcrowding and state governments being overwhelmed by the burden of funding a rapidly expanding penal system, despite increasing evidence that large-scale incarceration is not the most effective means of achieving public safety."¹⁵

Here's another statistic: in 2010 state incarceration rates in the United States ranged from the high being 867 per 100,000 in Louisiana and the low at 151 per 100,000 in Maine. Utah ranked 45th at 232

per 100,000 and is the state with the lowest incarceration rate of all Mountain West and western states.¹⁶

Since I began practicing law in Utah I have pondered why Utah's incarceration rate is so much lower than its neighboring states and than many other states in which the majority of the electorate share similar political views, particularly the Southern states, whose incarceration rates are among the highest in the United States. I have concluded that it is, in large part, because of the influence of the gospel of Jesus Christ—especially the restored gospel as taught by The Church of Jesus Christ of Latter-day Saints—in the lives of a great number of its citizens. I do not have any empirical evidence to support my conclusion, but I truly believe that it is the efforts of the simple and average citizen to be Christlike that

translates into the low incarceration rate within Utah.

As far as criminal justice decision making in Utah goes, I am becoming alarmed at what I believe is a departure from Christlike attributes by many criminal justice law makers and decision makers in favor of more punitive laws and other decisions that result in the destruction of lives and costly burdens placed upon our governments and communities. It's easy to ask and answer the question "What would Jesus do?" I believe the much more pertinent question to ask is "What would Jesus have us do?"—an even harder question to answer on an individual basis.

In His appearance to the Nephites following His Resurrection and ascension to heaven, Jesus taught that He had fulfilled the law of Moses, including the law's "an eye for an eye, and a tooth for a tooth" requirement, saying, "Behold, I am he that gave the law, and I am he who covenanted with my people Israel; therefore, the law in me is fulfilled, for I have come to fulfil the law; therefore it hath an end" (3 Nephi 15:5). He taught His disciples that "whosoever shall smite thee on thy right cheek, turn to him the other also" (3 Nephi 12:39) and that we should love our enemies, bless them that curse us, do good to them that hate us, and pray for them who despitefully use us and persecute us (*see* 3 Nephi 12:44), "that ye may be the children of your Father who is in heaven; for he maketh his sun to rise on the evil and on the good" (3 Nephi 12:45).

President Thomas S. Monson recently spoke of our need to develop the capacity to see people not as they are at present

but as they may become—in essence, as the Lord sees them. He said:

There is absolutely nothing in this world that will provide more comfort and happiness than a testimony of the truth. . . .

My message tonight, brethren, is that there are countless individuals who have little or no testimony right now, those who could and would receive such a testimony if we would be willing to make the effort to share ours and to help them change. In some instances we can provide the incentive for change. . . .

. . . We need to bear in mind that people can change. They can put behind them bad habits. They can repent from transgressions. They can bear the priesthood worthily. And they can serve the Lord diligently.¹⁷

Like so many graduates of this great law school, I know one particular graduate who fully embodies what President Monson taught at the priesthood session. Through this graduate's support of college and professional athletic teams in Utah, most people know him as part of the law firm Siegfried & Jensen. But I know Ned Siegfried, '83, as an institute teacher who takes two days each week to teach the gospel to men and women at the Utah State Prison Draper facility. His efforts go beyond the prison walls, and he has been very instrumental in the lives of many toward their successful reentry into society. Ned is one who lives the Savior's doctrine "I was in prison, and ye came unto me. . . . Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me" (Matthew 25:36, 40).

"The worth of souls is great in the [eyes] of [the Lord]" (D&C 18:10), and America's current practice of retributive justice and its exorbitant rates of incarceration are throwing away too many of those lives precious in the sight of God. Many of those being damaged most are not the perpetrators themselves whom our systems seek to punish but the innocents, such as the children and loved ones of the offenders. Our decision makers' thirst for governmental vengeance is creating a new set of victims at a high cost to our societies and communities.

God's model of restorative, healing, and merciful decision making provides "a more excellent way" (1 Corinthians 12:31) to accomplish the demands of our criminal justice system. It reclaims lives and allows the offender to overcome his weaknesses and shortcomings and become productive again. I have seen this occur in the lives of many throughout my years in criminal justice. I have seen it happen in my own life. People can and do and have changed. God has always known that truth. We, His children, need to learn and understand that truth better.

In dealing with our sins and transgressions, the Lord does not seek to punish us; He only seeks that we "go, and sin no more" (John 8:11). Repentance and change are the endgame with God. Making us pay is not part of His justice equation. Sure, one must suffer the consequences of his or her actions, but there is a difference between penitently submitting to a consequence and being forced to pay a punitive price for an error or crime one has committed. One action is

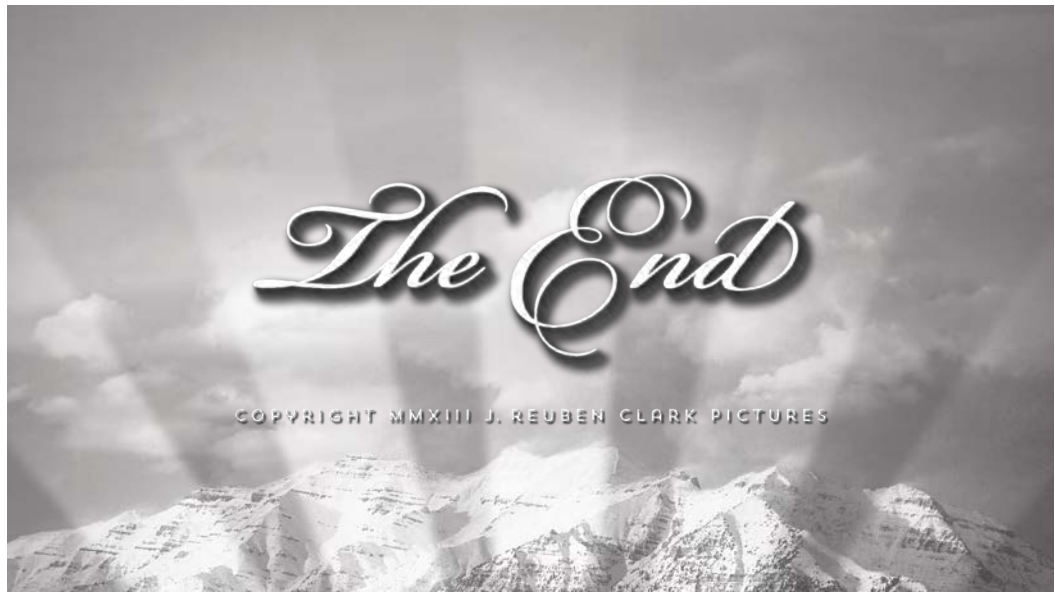
to reclaim the lost; the other is to avenge a wrong.

It is my prayer that we will learn to love and forgive our neighbors, especially those who have criminally offended us and our society, and that we can be a friend to them and as a society replace our punitive and vengeful sentiments toward them with feelings that heal and encourage and give hope. May we see them not as they are now or have been but as they can become when touched and influenced by the true gospel of Jesus Christ. May we show Christlike compassion, tolerance, and love toward them and all God's children, I humbly pray, in the name of our beloved Savior and Redeemer, even Jesus the Christ, amen.

NOTES

- 1 Lynn S. Branham and Michael S. Hamden, *Cases and Materials on the Law and Policy of Sentencing and Corrections*, 8th ed. (St. Paul, Minnesota: Thomson Reuters, 2009), 7; see also pp. 5-7.
- 2 Branham and Hamden, *Cases and Materials*, 7.
- 3 The Sentencing Project: Research and Advocacy for Reform, "Incarceration"; sentencingproject.org/template/page.cfm?id=107; see Marc Mauer, "Rising Prison Costs: Restricting Budgets and Crime Prevention Options," testimony prepared for The Sentencing Project for Senate Judiciary Committee Hearing, 1 August 2012, 1; www.sentencingproject.org/doc/publications/Mauer%20Testimony%20on%20Prison%20Costs.pdf.
- 4 Adam Liptak, "U.S. Prison Population Dwarfs That of Other Nations," *New York Times*, 23 April 2008; www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all.

- 5 Liptak, "U.S. Prison Population."
- 6 Kara Gotsch, "The U.S. Needs to Make Prison Reform a Priority," *Washington Post*, 27 February 2012; articles.washingtonpost.com/2012-02-27/opinions/35444338_1_prison-population-prison-reform-private-prison-beds.
- 7 Tyjen Tsai and Paola Scommegna, "U.S. Has World's Highest Incarceration Rate," Population Reference Bureau, August 2012; www.prb.org/Articles/2012/us-incarceration.aspx.
- 8 See, e.g., The Sentencing Project, "Incarceration"; Tsai and Scommegna, "U.S. Has World's Highest"; and Liptak, "U.S. Prison Population."
- 9 Nate M. Kamrany and Ryan J. Boyd, "U.S. Incarceration Rate Is a National Disgrace," *Huffington Post* blog, 13 April 2012; www.huffingtonpost.com/nate-m-kamrany/incarceration-rate_b_1423822.html.
- 10 Liptak, "U.S. Prison Population."
- 11 Wikipedia, "List of U.S. states by incarceration rate"; en.wikipedia.org/wiki/List_of_U.S._states_by_incarceration_rate.
- 12 Wikipedia, "List of U.S. states."
- 13 See Tsai and Scommegna, "U.S. Has World's Highest"; Wikipedia, "List of U.S. states"; and "Racial Disparity," The Sentencing Project, sentencingproject.org/template/page.cfm?id=122.
- 14 Tsai and Scommegna, "U.S. Has World's Highest."
- 15 The Sentencing Project, "Incarceration"; Mauer, "Rising Prison Costs," 1.
- 16 See Tsai and Scommegna, "U.S. Has World's Highest"; U.S. Department of Justice, Bureau of Justice Statistics, "Prisoners in 2010," December 2011, 22, bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf; and Wikipedia, "List of U.S. states."
- 17 Thomas S. Monson, "See Others as They May Become," *Ensign*, November 2012, 68; emphasis in original.



When It Is All Over

A FEW THOUGHTS FOR THE CHRISTIAN LAWYER



Marlin K. Jensen, a member of the Quorum of the Seventy of The Church of Jesus Christ of Latter-day Saints since 1989, spoke to law students on October 30, 2012. Elder Jensen served as the official Church Historian and Recorder from 2005 to 2012 and was made an emeritus General Authority in October 2012. Before his call to full-time Church service, he was an attorney in private practice in Ogden, Utah, specializing in business and estate planning. He and his family have a ranching enterprise in Huntsville, Utah—the place where he was born and raised and has always loved.

This is not a coherent sermon that I want to preach this morning—I am probably not capable of a coherent sermon—but random thoughts on a theme, and if you have read the article in volume 1 of the book *Life in the Law*, the talk I gave about God’s interrogatories as our son Matt graduated from here was probably my best thought on what you are learning (see Marlin K. Jensen, “Answering God’s Interrogatories,” in *Life in the Law: Answering God’s Interrogatories*, vol. 1, ed. Galen L. Fletcher and Jane H. Wise [Provo, Utah: Brigham Young University Press, 2002], 1–7).

A scripture I cherish is in 3 Nephi 19, when the apostles pray for that which they most desire: the Holy Ghost (see 3 Nephi 19:8–9). If I could have one desire for you—as law

students, as lawyers, as husbands and wives, and as children—it would be that this would be your prayer: that you practice law and live your lives under the influence of the Spirit.

Know the Code

I make another plea to you as you grow in your knowledge of legal codes: know them. I remember that the first time I went to court as a young lawyer was to handle an adoption. In this case the woman was divorced and had met a man and married him, and he now wanted to adopt her two children. So I did all the filings and got the hearings set and took the woman and the man to court. I put her on, and she talked about how her new husband would make a very good adopted father to her children. I put him on, and he said he was willing to support them. I

then moved for the adoption to be granted.

The judge, in a room full of lawyers on a law-in-motion day, mercifully said, “Mr. Jensen, will you approach the bench?”

He then whispered to me, “Where the heck are the children?”

And I said, “Well, I didn’t know that they were to come, Your Honor.”

He said, “Don’t you read your code?”

I said I always would in the future.

Then he said, “Go get the children.”

To the court he said, “This court will be in recess for 15 minutes.”

I walked back to the parents and, with a little half-truth that you will probably get good at as a lawyer, said, “For some reason the judge is requiring the children to be here this morning. Let’s go get them.”

Luckily they were in a school nearby, and when court resumed, the judge said, “I see the children here, don’t I, Mr. Jensen?”

“Yes, Your Honor, you do.”

“And I find them proper subjects for adoption and hereby grant the adoption.”

Well, that was a lesson I never forgot. Do you know what that episode made out of me? It made me what I would call a “code lawyer.” I never went anywhere—especially to court—without checking the code, making sure I was legally secure in what the written law said.

I would like to make that same plea for the scriptures. If you practice for the next 50 years, then you’ll know code sections backward and forward. But if you neglect the word of the Lord, then, when you are age 70, which is what I am now, you will have missed the better part. You have got to have equal doses as you go along. And I know that is challenging because you are all overextended with your education and your family and church and other responsibilities that you have, but try to get in a daily dose of the scriptures every day. Make learning the Doctrine and Covenants, the Book of Mormon, the New and Old Testaments, and the Pearl of Great Price part of your daily regimen.

Find Value in Mentors

I wanted to say something about the value of mentors in seeking to have the Spirit and balance in your lives. As I have been at Church headquarters the last 25 years I have noticed that almost all of the senior General Authorities have had mentors. Not that those relationships were ever formally

constituted or even talked about, but, in the course of their associations, those who are now the senior Brethren all came under the influence of the older General Authorities. In almost every case one of those senior Brethren over time became a mentor.

President Thomas S. Monson often speaks of his relationship with J. Reuben Clark. A lot of their interaction came when J. Reuben Clark was writing his books—*Our Lord of the Gospels*, for instance—and President Monson was working for the Deseret Press as his publisher. He would have long discussions with J. Reuben Clark. President Monson has talked often about the effect of those conversations on his thinking, his life, and his ideals as a person. I know a little bit about some of these men and women you associate with every day at the Law School, and every one of them that I know is completely worthy of emulation.

In your efforts to figure life out, there is great value in mentors and in being humble enough to take the correction and input that people around us can give. I remember an encounter that my wife and I observed. We were with President and Sister Hinckley on the Huntsman jet, and we were trying to be inconspicuous and let them be, but they were just across the aisle and there were only a few other people on the plane. They were involved in a discussion we couldn’t help overhearing. President Hinckley made an assertion about something, and then Sister Hinckley made a counter assertion. Then he reasserted and then she reasserted, and then he came back the third time. We heard her say very sweetly

but very firmly, “Okay, Gordon, have it your way.” It showed us that this was one wonderful woman who had her own identity, her own strengths, and her own views and perspectives and who was giving her husband tremendous input.

Every week for a long time President Hinckley brought his wife and his four adult children to lunch in the General Authority cafeteria in the Administration Building. They would go to a corner table away from the rest of the General Authorities, but I used to catch glimpses of what was going on over there. This family was giving their dad good, honest feedback about the way things really are, and I think that resulted in a president who was so connected, so contemporary, and so aware of how things really are that it blessed the entire Church. That wouldn’t have been possible if he was not willing to seek that kind of review and input that honest and good people around him were willing to give.

Live the Lord’s Program

I remember as a young lawyer coming home very uptight. I was called as a bishop just out of law school when I was 28. My wife went into labor the day I was to be sustained and had to be taken to the hospital by my brother. Thankfully I arrived in time for the baby’s birth, but it was right as sacrament meeting began. We had a lot of things going on, and I was crazy enough to think I could be a farmer and a lawyer at the same time. When I would come home at night from my law office, early on the Spirit said to me, “Stop at the front door and just ask the Lord to help you bless your family tonight.

Don’t go in thinking you are an advocate or a lawyer; don’t be a raging maniac for sure; just get a grip on yourself and go in there and be charitable and give your attention to your wife and your children and put your own cares aside.” In those years when I was first a bishop and eventually a stake president, I always had a rule: if the Spirit indicated that things at home needed me more, I would miss whatever was scheduled at that time. Sure there are some things that you can’t possibly miss, but most things can go along fine without you.

Living the Lord’s program has been such a security to me. We got behind once in paying our tithing when I was in law school, and Kathy and I borrowed to pay our tithing one year—which is a really poor thing to do. The next year we had a loan to pay off plus that year’s tithing, and I have never ever done that again. But even in these recent years when the economy has pinched everybody, I have always had in mind the assurance that as a tithe payer, faithful and solid all these years, I have a claim on God’s help and His blessings.

I feel the same way about the Sabbath. I remember wondering in my first year of law school if I would study on Sunday, especially if I had a test on Monday. My wife and I made the decision that I would study half of Saturday but always have the other half of Saturday to spend time with her and my little family, but I would never study on Sunday. I remember being in exams, trying to see the issues and bowing my head in a quiet prayer, saying, “Heavenly Father, I am doing the best I know how. I am trying to honor the covenants I

have made and keep Thy commandments. Please help me to remember what I know and record it in these blue books in some kind of understandable way." I always felt such a security knowing that I would be able to do the best I could do in that kind of situation.

I commend to you the program of the Church. If you are centered in it and find time to read the scriptures and have good prayers and go to the temple when you can and observe the Sabbath and pay your tithing, you are going to have a spirit that will envelop you and produce happiness in your life.

Of Time, Relationships, and Happiness

Lastly, what do you have when it is all over—or nearly over—as in my case at age 70? Well, the dearest things to me are the relationships I have and the relationships I am finding again. So, take time. I've sort of been an absentee grandpa for 25 years, and now I have 25 grandchildren who know me sort of as a figure, and yet I want them to know me as a grandpa. We have an interesting phrase called "quality time" that I think is a scab for those of us who don't have time at all or not much time, and I guess the biggest lesson I have learned is that good relationships take time. They really do take time, and if we really love people—our wife, our husband, our children, our parents, our grandchildren, and our neighbors—we will give them time. It is the greatest gift we can give. And we are all selfish in that way. We want to exercise, we want to read, we want to do the things that we enjoy, but if we are going to have relationships, if that

same sociality that exists here will exist there—only it will be coupled with glory—there is a real need to work on sociality. That is what is going to give us lasting happiness.

To be a Christian and a lawyer is to be conscious each day of our Savior and His role in our life, of our commitment to Him through covenants, and of the tremendous joy and fulfillment that can come when we live our lives as He wants us to. We should try to emulate His perspective, being as obedient to His Father as He is. Don't let law school do anything but reinforce your desire to do that. Don't let law school do anything but show you that everything you are learning here fits the eternal plan beautifully. With your training you will have a heightened sense of all of this. I think the greatest thing to me about law school was that I read the scriptures more critically, being able to understand them more and to see the relationship, the consistency, of the Lord's word. That was well worth the three years of torture.

Questions and Answers

Looking back at your experiences in your life and as a General Authority, what advice would you give? What would you do differently knowing what you now know?

I would be completely obedient. Someone asked me my biggest regret, and I said that I haven't always been exactly obedient. I see now just how important it is to obey all of God's commandments all the time and to not fudge or neglect them or outright break them. I feel grateful for the Atonement so that we don't have to be defined by our mistakes forever

and so that we can be forgiven. Learn the gospel and all its covenants and commandments. It is designed to liberate us and to make us happy and productive and useful in this life.

Reading Mormon history has been a jarring experience for me. Is there a way to make it so that is not a trying experience?

Thank you for your honesty. That is a great question. I work with Rick Turley, who is a graduate of this law school. He practiced law for a few months and then was called to work in the Church History Department as managing director. He has a very profound saying: "Don't study Church history too little." There is much wisdom in that. There is great danger, I think, in picking out just one piece of that puzzle and looking at it in isolation. When we enjoy a perfect knowledge of Church history, many of the things that are jarring won't be jarring at all. The new curriculum for the Young Men and the Young Women includes a more complete view of the Church's history. In this information age there is nothing that is hidden. It would be the most counterproductive thing the Church could do to try to keep something hidden. There will always be a need to believe. There will always be reasons to doubt, and there will always be reasons to believe. All I can say is that I stake my life in the truthfulness of the gospel. This Church is historically and doctrinally true, so I urge you to keep putting your puzzle together. I promise you that out of that will emerge greater faith in the Church and in its history.

I was reading information about you yesterday, and it sounds like

your political views are a little different than the majority of the members of the Church. Especially at this time with politics being big, how do you state your political views without going against Church doctrines?

That's an excellent question. I'll give you a brief answer. I've actually had fun being one of the few Democrats among the Brethren, and I probably should have been a lot quieter about it. In 1998 I was asked to make a statement in favor of political diversity. There is a concern on the part of the Brethren that we have become a one-party Church. There's concern that in the public conception of us you have to be a conservative Republican to become a Latter-day Saint, and that can be a very detrimental thought to the Church's growth. So there is a desire to have a more balanced approach to politics. In part, at least in recent years, the Democratic Party platform has had planks in it that did run counter to the Church's view—on gay marriage, for instance, and on abortion. When that has happened, I've been able to say I'm a Utah Democrat. I believe in a lot of the ideas of the Democratic Party, but I don't believe its ideas if they run counter to the Church's moral issues. All this is really about being able to pick and choose. I think we can all be very thoughtful about how we exercise our franchise and work out our own private political philosophies. I have to say that overall—and I'm from a rural Utah farm town and I've stayed there all my life, so I'm not a flaming eastern liberal by any sense—I've resonated more with the principles of the Democratic Party. So there I have stayed, and I think it is a healthy thing.

*D. Gordon Smith,
associate dean of BYU
Law School and
Glen L. Farr Professor of
Law, gave this BYU
devotional address on
June 26, 2012,
about the importance
of names and what
they represent.
Following are excerpts
from his talk.*



What's in a Name?

D. GORDON SMITH

Today is my father's birthday. He is 87 years old. He and my mother are in Wisconsin watching this devotional, and if the volume on the television is turned all the way up, they are listening to it too.

My father's name is Gordon Smith. My mother told me recently—and she reminds me often—that my father never wanted a son named Gordon, but he agreed to give me his first name as my middle name. This is the story about why I took that name upon myself and why I have come to believe that the names we call each other are important.

Why I Took My Father's Name

To understand why I took my father's name as my own, you need to know a bit about my relationship with my father. My father and several generations before him had been dairy farmers in Wisconsin, but in the wake of the Japanese attack on Pearl Harbor, my father, only seventeen years old at the time, joined the navy and was assigned to serve in the South Pacific. He eventually made a career of the military, and I was born in a naval hospital in Bremerton, Washington. Shortly after my birth he was transferred to San Diego,

California, where he taught Teletype repair for five years. Following his retirement our family returned to his childhood home of Wisconsin, and that's where I grew up. Many of my earliest memories involve feeding and caring for cows, pigs, and chickens on our small farm, though I was temperamentally not well suited to farming.

Despite our humble and remote circumstances, I managed to cultivate big dreams on that farm, in no small part because of my dad. During his last year of service in the navy he traveled the world and sent us souvenirs from Europe,

Asia, and Africa. He was gone for a year, and I remember that when he returned, I didn't know what he looked like because I was only four years old when he left and five when he returned. But I treasured those souvenirs that he sent me, and I spent many hours in my room in Wisconsin looking at photos of Rome or pounding on a drum from Africa or playing with toys from the Philippines, imagining what it would be like to visit those faraway lands.

Some of my most treasured memories from childhood involve sitting in the living room or in the backyard listening to stories about my father's childhood or about his adventures in the navy. Like Aesop's fables, these stories almost always came with some moral that we were supposed to take from them. My son Drew and I were recently in Wisconsin for a family reunion, and we again heard stories about the importance of hard work, competence, and integrity.

My father also taught me—more through his reaction to war than through his words—to despise war. Although he could never speak of combat—and he still can't to this day—one navy story inevitably connected to another, and he often found himself led to memories that he would rather suppress. We could discern when he had reached this point because he swallowed hard, his eyes welled with tears, and he looked off into the distance. My mother recently observed, “They don't give Purple Hearts for those wounds.”

Another significant lesson—never stated explicitly but reinforced repeatedly in his stories—was that one person

could change the world. As far as I know, my dad never changed the course of the war through his naval service, but his stories showed me why the navy always valued one more good man. During the war he was only an enlisted radioman, but I was convinced as a young boy that, aside from Admiral Nimitz, my father was the most important person in the Pacific Fleet. To me he was—and he remains—a great man.

As President Joseph F. Smith wrote over 100 years ago:

Those things which we call extraordinary, remarkable, or unusual may make history, but they do not make real life.

I was clothing myself
in his name, and I felt obliged
to wear it honorably.

After all, to do well those things which God ordained to be the common lot of all mankind, is the truest greatness. To be a successful father or a successful mother is greater than to be a successful general or a successful statesman. [“Common-Place Things,” *Juvenile Instructor*, 15 December 1905, 752]

Changing My Name

During those growing-up years in Osseo, Wisconsin, everyone called me by my first name, Doug. Strangely, my group of friends went through a phase in which we decided to call each other by our fathers' names. Some of those names

stuck, but “Gordon Smith” did not seem like a good fit for me at that time.

I was still Doug Smith when I arrived at BYU in August 1980. I was not a member of The Church of Jesus Christ of Latter-day Saints, but my first class in college was Religion 121: The Book of Mormon. My best friend in high school, who had convinced me to attend BYU with him, told me I shouldn't worry about this class. He said the Book of Mormon was just a history of South America, and that was all I knew about the course.

So I showed up on the first day, and the professor introduced the course by saying we would be covering the first half

That guy is cool!” Everybody laughed, and I completely missed the joke. Then another person said something, and by this point in the class I was starting to panic.

I wasn't in the habit of praying at the time—I didn't really pray much at all—but I just decided that since I was at BYU, I would bow my head and say a little prayer: “Please, God, make them stop.”

Well, it did eventually stop, and at the end of class I approached the teacher and asked, “Did you post an assignment for the first class?”

“No, why do you ask?”

“Well, it just seems like everybody's read ahead.”

He looked me up and down and said, “You aren't a member, are you?”

I thought about that for a second, and I responded, “A member of what?”

So we had a nice long talk about the class, and I read the Book of Mormon in my first year at BYU.

The transition from that first day of college to my baptism in the fall semester of my sophomore year did not require a dramatic change in my lifestyle, but my worldview was completely upended. Embracing the gospel impelled me to look outward in a way that I never had before, to place others before myself: “Whosoever will save his life shall lose it: and whosoever will lose his life for my sake shall find it” (Matthew 16:25).

I decided to serve a mission, and one year after my baptism I was called to serve in Vienna, Austria. I became Elder Smith. Over the past few weeks I have read my missionary journals. I don't know if any of you have done that, but it is a horrifying

experience. I'm not a great journal writer, but I was impressed by the effort I expended in trying to create a new identity for myself as Elder Smith. I wanted to become a powerful missionary. I knew that Austria was not a high-baptizing mission, but, I thought, England wasn't a high-baptizing mission before Wilford Woodruff got there either. Unfortunately my motives were entirely self-interested: I felt like I had a debt to pay, and I wanted to pay it. I hadn't internalized the lesson taught by King Benjamin that even if we serve God with our "whole souls," we remain "unprofitable servants" (Mosiah 2:21).

I worked hard in Austria, and I was frustrated at my inability to reduce my debt. Every sacrifice that I made, every extra effort that I made, was repaid many times over, and early in my mission I wrote about my frustration in my journal:

I have been so blessed by the Lord . . . , and I wanted to go on a mission, in part, to show the Lord how much I love Him. To think of my mission as just something else by which I can make myself better is offensive to me. That implies that the biggest attempt I've made in my life to be selfish endeavor that I have ever undertaken.

By the end of my mission I had come to terms with God over my indebtedness, and I had learned that the most valuable lesson of my mission was to love the people. As King Benjamin said, "When ye are in the service of your fellow beings ye are only in the service of your God" (Mosiah 2:17).

When I returned to Osseo, I shed the title of Elder Smith, and, like many returned missionaries, including my son Drew, who just came home from Ukraine, I went through that awkward phase of adjusting to being called by my first name. In my case, however, my pre-mission name evoked thoughts about a confused young boy who had arrived at BYU three years before. "Doug" just didn't seem to fit anymore, but I didn't do anything about it until I met a young woman at BYU the following year who was changing her name. She just decided one day to ask people to call her by her middle name. And they did!

This was a revelation to me. I didn't have to be Doug Smith anymore. I could be anything I wanted! After much contemplation I decided that using my middle name would not only be the simplest change—after all, I wouldn't have to make a legal change to my name—but it would also honor my father. What I did not fully comprehend was how that change would affect me.

Changing my name was a tremendous hassle. My wife, Sue, was supportive, and I didn't ask our families to call me Gordon, so when we visit relatives I'm still Doug. But the real challenge was among my friends. In my first accounting class of the fall semester, legendary accounting professor Jay Smith called on me by my first name, and I asked, "Would you mind calling me Gordon?"

By that time I was well into my major, and both he and my classmates looked at me quizzically, wondering, "What's the punch line?"

But I didn't have a punch line. "Um . . . I changed my name to Gordon."

In another class so many people knew me by the name Doug that they simply wouldn't allow me to change my name to Gordon. They insisted, over my protests, that I was joking. My coworkers and supervisors in the Reading and Writing Center split about evenly between those who made the adjustment and those who couldn't, and that just caused confusion. It was hard on people.

At the same time I was surprised to discover that when people called me Gordon, it felt different than being called Doug. In the beginning, each reference to Gordon caused me to think about my father. I was clothing myself in his name, and I felt obliged to wear it honorably. I didn't want to become my father, but I wanted to become a person who would make him proud. Over time I came to associate the name Gordon with my Mormon identity and the name Doug with my pre-Mormon life.

Taking Christ's Name Upon Us

I have sometimes thought of the experience of changing my name in relation to my baptism—an ordinance in which I took upon myself the name of Jesus Christ. In both instances the name was given to me by another but I was asked to embrace the name as my own. Now each week in taking the sacrament I reaffirm my willingness to take upon myself the name of Jesus Christ (see D&C 20:77). What is the significance of this representation?

When I took upon myself the name of my father, I was not using his name as a description of my character. I was not saying, "I am my

father." Rather, I was using the name to honor him and to inspire myself to develop attributes like him. Similarly, taking upon ourselves the name of Christ is not a recognition of an achievement but rather a nudge toward improved behavior.

King Benjamin gave his people the name of Christ only after the Spirit had changed their hearts, but he gave them the name not because they had reached some threshold and not because they had "no more disposition to do evil, but to do good continually" (Mosiah 5:2). Rather, he gave them the name so that they could remember that moment and remain "steadfast and immovable, always abounding in good works" (Mosiah 5:15).

When faithful people take upon themselves the name of Jesus Christ, they assume a name that is imbued with meaning. President Spencer W. Kimball once said, "The name Jesus Christ and what it represents has been plowed deep into the history of the world, never to be uprooted" ("Why Call Me Lord, Lord, and Do Not the Things Which I Say?" *Ensign*, May 1975, 4). This feature of the name is useful in transmitting large quantities of information. Rather than saying that we should have "faith, virtue, knowledge, temperance, patience, brotherly kindness, godliness, charity, humility, diligence" (D&C 4:6)—or any of the other myriad of attributes that we associate with Jesus Christ—we can say more simply that we take upon ourselves the name of Christ.

I pray that we may all come closer to that ideal, in the name of Jesus Christ, amen.

Jerry's Boys: Leaving a Christlike Legacy

by David W. Magnusson, '79

♦ ♦ ♦ ♦ ♦

I had been called back for a second interview by two of the Brethren who came to reorganize the Santa Barbara California Stake presidency in 2000. After a few assessing questions, I was asked, “How do you manage balancing the demands of zealously representing clients with being a Christian and a member of the Church?”

The same question had been posed by President Marion G. Romney at the 1981 BYU Law School convocation: “But how, you may ask, can concern, respect, and even love for other people be reconciled with a lawyer’s duty to vigorously represent his client?”¹

I thought for a second and then recounted my first solo court appearance after passing the bar. It was a routine law and motion matter in the local state trial court across the street from the office. When the case was called, I arose, approached the counsel table, and announced my name, firm, and representation. The seemingly aged judge paused, peered at me over his half-frame reading glasses, and asked, “You one of Jerry’s boys?”

Surprised at the familiarity, I realized he was referring to E. Jerald Haws, my firm’s founder and senior partner. I replied that I was. To me it seemed he snorted, and then he returned to the papers before him and ruled on my matter.

I returned to the office, looked in on Jerry, and recounted the event. “What was that all about?” I asked.

He leaned back in his chair and laughed out loud. “Don’t you know? It was because you are now one of the Mormons. You can’t ever lie, cheat, or steal. Better remember that,” he added as he dismissed me. There were other LDS attorneys in town, but Jerry Haws had assembled the only all-LDS firm.

From that day forward, I explained to the visiting authorities, being one of “Jerry’s boys” was a badge I knew I wore each day. Jerry had assembled as nice a crew as I could have known—and I was now of them. They had set a standard of honesty, integrity, ethics, and competency for a fair price.

That was the last question the Brethren asked before I was called to serve as stake president.

President Romney’s answer to his own question mirrored the standards my partners portrayed:

First, neither your obligation to your client nor any other professional obligation should ever require you to be dishonest or in any other respect to compromise your integrity. . . .

Second, even beyond the requirements of truth-telling, service to the client and his interests seldom requires the lawyer to sacrifice the kind of civility that is consistent with the Savior’s instruction that we should love all people. . . .

Third, integrity means being prepared to say or do what must be said or done, regardless of the consequences.²

Three of the seven permanent attorneys of that firm were BYU Law School graduates. The good of this school will continue to be felt through its graduates’ contributions. They build upon a foundation of equally honest, competent, and exemplary graduates of other schools who, in the words of Elder Neal A. Maxwell, have their “citizenship in the kingdom, but [carry their] passport into the professional world—not the other way around.”³

While each of us benefits from legacies of example and goodwill left to us, we must leave a similar legacy of a Christlike person, as President Romney challenged us to be.

NOTES

1. Marion G. Romney, “A Christlike Attitude,” in *Life in the Law: Answering God’s Interrogatories*, ed. Galen L. Fletcher and Jane H. Wise (Provo: BYU Press, 2002), 246.
2. *Id.* 246–47.
3. Neal A. Maxwell, “Speaking Today: Some Thoughts on the Gospel and the Behavioral Sciences,” *Ensign*, July 1976, 70.

The *Clark Memorandum* welcomes the submission of short essays and anecdotes from its readers. Send your short article (650 words or fewer) for “Life in the Law” to wisej@law.byu.edu.