

# THE CHRISTIAN LAWYER®

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## **Criminal Law**

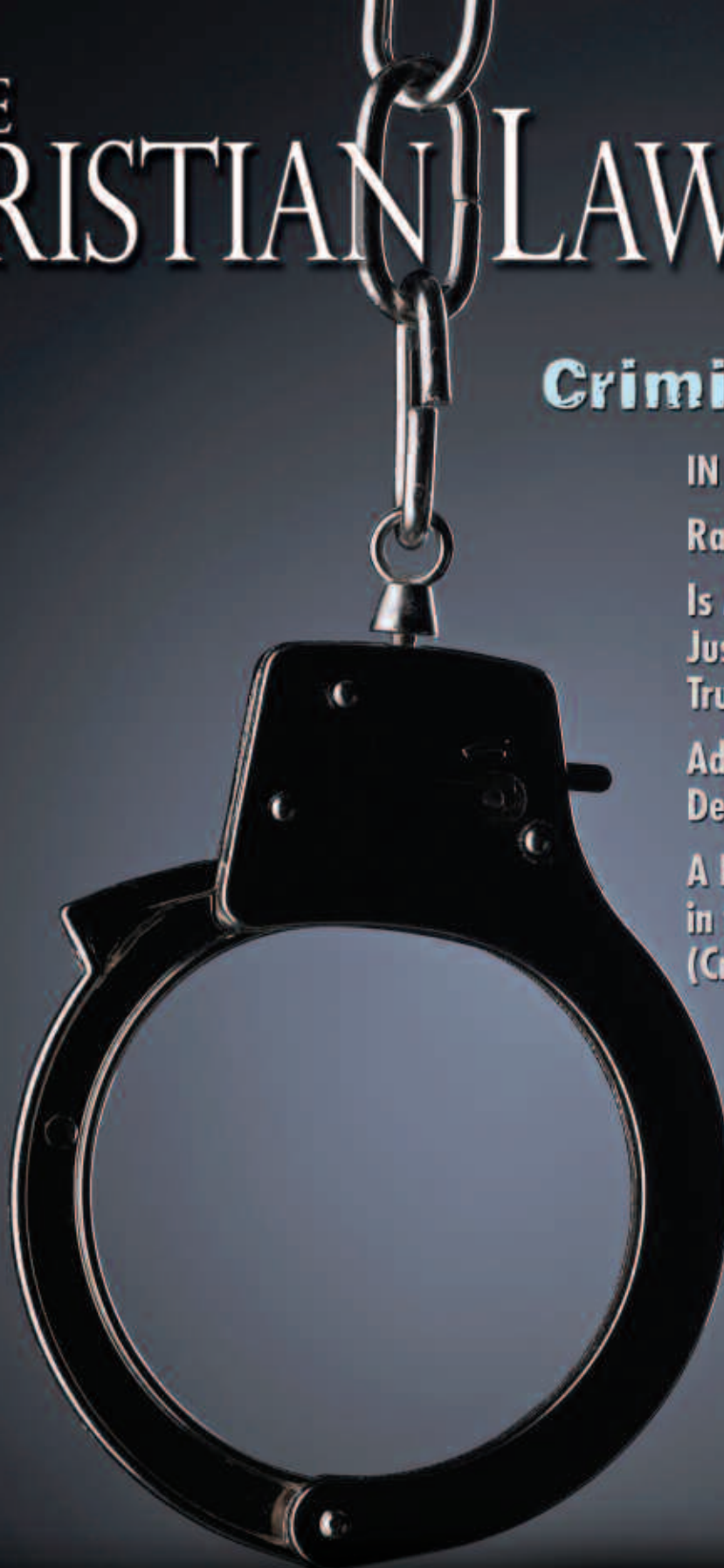
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Raising Cain

Is America's Criminal  
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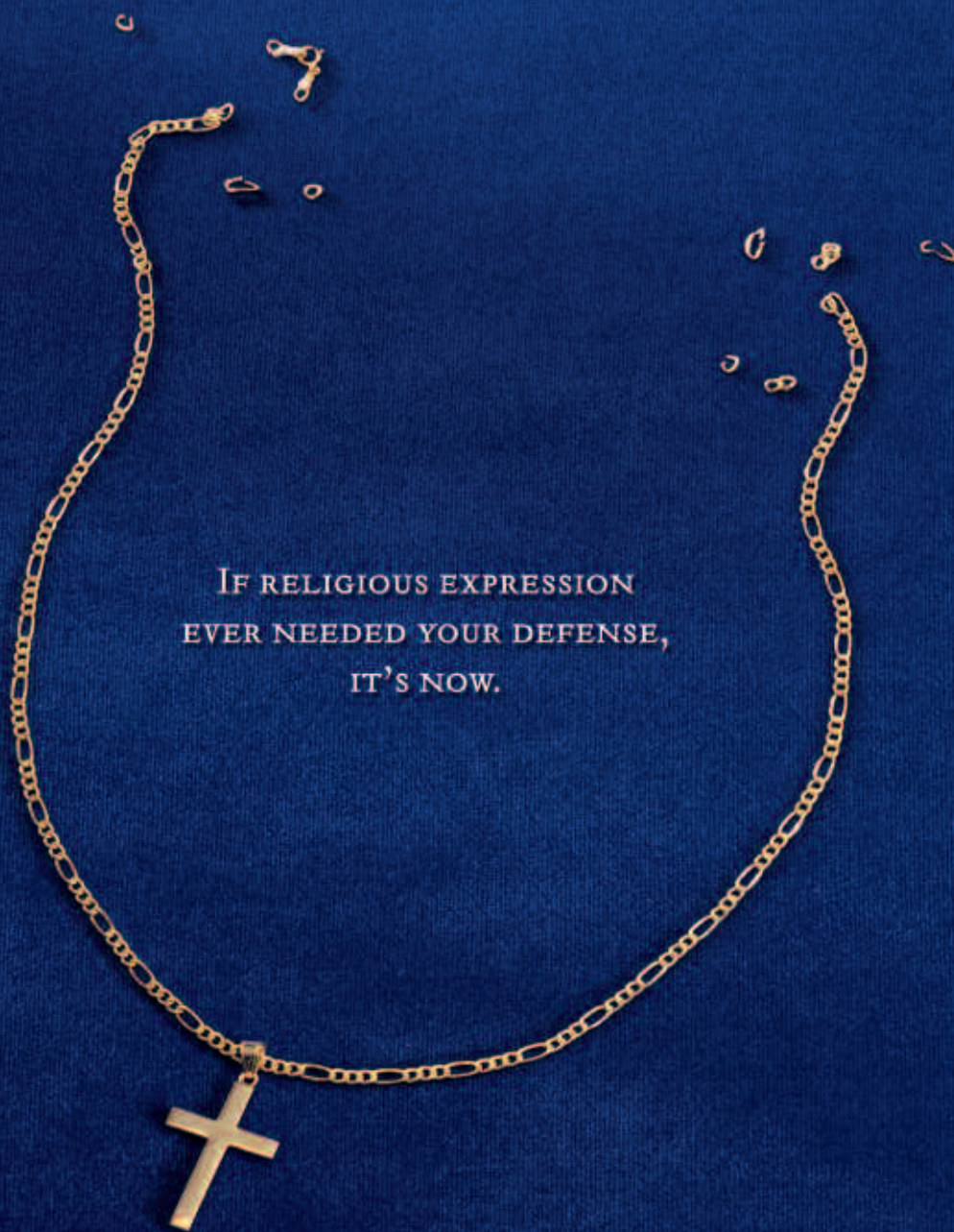
Advocating for the  
Defense

A Biblical Difference  
in the Practice of  
(Criminal) Law



**"For rulers are not a cause of fear for good behavior,  
but for evil. Do you want to have no fear of authority?  
Do what is good and you will have praise for the same."**

**Romans 13:3**



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Samuel B. Casey  
EXECUTIVE DIRECTOR  
AND CEO



## CRIME AND PUNISHMENT

*Be a good citizen. All governments are under God. Insofar as there is peace and order, it's God's order. So live responsibly as a citizen. If you're irresponsible to the state, then you're irresponsible with God, and God will hold you responsible. Duly constituted authorities are only a threat if you're trying to get by with something. Decent citizens should have nothing to fear. Do you want to be on good terms with the government? Be a responsible citizen and you'll get on just fine, the government working to your advantage. But if you're breaking the rules right and left, watch out. The police aren't there just to be admired in their uniforms. God also has an interest in keeping order, and he uses them to do it. That's why you must live responsibly—not just to avoid punishment but also because it's the right way to live.*

—ROMANS 13:1-5 (THE MESSAGE)

The Department of Justice recently reported the following 2005 data: (1) more than 2.3 million people are incarcerated in the US (more than any other country) at an annual average per capita cost of about \$23,000 (about twice the average annual cost (\$12,000) of room, board, tuition and fees at a public university); (2) more than 4.9 million Americans are on probation or parole; and (3) 1 in 15 people will serve a prison term during their lifetime (up from 1 in 52 in 1974).

When it comes to crime and punishment, followers of Jesus have much upon which to reflect. Jesus' parable about the Good Samaritan is a tale of how we as Christians are to respond to victims of crime (Luke 10:25-37). Jesus' final instructions for those who sought to live righteously include never forgetting about and always visiting those in prison (Matthew 25:34-46).

Jesus didn't just teach about criminal justice. He experienced it when his cousin John the Baptist was unjustly thrown in jail and then, as the victim of a whimsical pledge, wrongfully beheaded. Jesus too was later unjustly tried, convicted, tortured and executed as a common criminal with two justly convicted men. Demonstrating his divine judicial authority toward the convict who confessed the truth about his own guilt and Jesus' innocence, Jesus compassionately commuted the confessing convict's sentence to an eternity with Him in paradise (Luke 23:39-43). Even now Jesus serves as our criminal defense lawyer seeking the pardon of our sins before the bench of heaven (1 John 2:1; Hebrews 7:25).

The Apostle Paul also was no stranger to the criminal law. He began his legal career prosecuting Christians (Acts 9) until he was knocked off his prosecutorial horse. He too was later arrested and spent his final years in various "prisons" until he was unjustly beheaded at the tyrannical hands of a deranged Emperor.

But the Church's initial persecutions, including his own personal experience, did not prevent Paul from fairly setting forth in his letter to the Christian community at Rome (see above) God's definitive word on crime and punishment. Indeed, as summarized by Oxford Political Science Professor A.P. d'Entreves: "the whole history of Christian political theory can well be said to be nothing else than an uninterrupted commentary on this text." And here, in Professor d'Entreves' words, is the central contribution that this biblical text on the criminal law inaugurates:

*The idea that authority, whatever its origins, it forms, or its aspects, has in itself some element that is and never can be merely human; that therefore the exercise of power is a source less of rights than duties, and obedience is due less to man than to principles; that it is the subservience to the divine order of justice which alone can legitimate political rule and give it a divine character: such principles...have become outstanding landmarks of Christian political thought, and must remain unless Christianity abdicates all hope of constructive political action and takes refuge in a passive acceptance of the powers that be.*

And so aware of the growing prevalence of crime and mindful of the Christian principles mediating our response to criminal justice (and injustice), we focus our attention on the criminal law. As we do so, we will be reminded, in the wise words of Professor Craig Stern, our first contributor, that "criminal law is a gift of God that illuminates God's relationship to humankind." Indeed, none more candidly testify as to how we can open and better appreciate this gift of the criminal law, in the face of its imperfections and difficulties, than our other contributors. May our reflections on these matters rekindle our commitment to the ancient Christian calling to do justice with the love of God, correct injustice, comfort the victim and visit the prisoner - bringing the good news of the Gospel to whatever "prison" we may find.

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# Raising Cain

By Professor Craig A. Stern

**T**he state of things as usual—for now—begins just after the Fall. Genesis 4 tells the story. There is begetting and birthing. There is work and worship. The Lord God attends humankind and by word instructs. And brother commits crime upon brother.

Cain's crime and God's judgment on him display the lasting effects of the fall of Cain's parents and ours. Human history now continues to rehearse crime and judgment, for we are all of us criminals, and God is ever our judge, apart from the remedy God has promised and provided. Cain is a lawbreaker and a rebel against God. His rebellion poisons relationships, ruins his life, and takes the life of his brother. But to be a lawbreaker and a rebel, Cain must also be the sort of creature who might have kept the law and served his creator. If Cain is a criminal, he is no machine. His very crime and the judgment he incurs for it show that he was created in God's own image.

Before God announces that judgment, he calls to Cain. Knowing all, God nevertheless asks Cain about Abel and about what Cain has done to him. He honors Cain with the invitation to answer for his crime. And after God pronounces judgment, He assures Cain, the adjudged murderer, that Cain is no outlaw beyond the care and protection of his judge. In fact, God marks Cain for extraordinary protection. If Cain is a criminal, he yet retains the dignity of bearing God's image.

Crime and judgment stand for the broken state of humankind and for the consequences of that brokenness. But before brokenness comes the whole that is broken. Crime and judgment stand for this whole also. The God who pronounces judgment is the creator who made humankind in His image. His judgment does not dishonor that image. Instead, His judgment honors it.

*continued on page 4*

**N**

ow Adam knew Eve his wife, and she conceived and bore Cain, saying, "I have gotten a man with the help of the LORD." And again, she bore his brother Abel. Now Abel was a keeper of sheep, and Cain a worker of the ground. In the course of time Cain brought to the LORD an offering of the fruit of the ground, and Abel also brought of the firstborn of his flock and of their fat portions. And the LORD had regard for Abel and his offering, but for Cain and his offering he had no regard. So Cain was very angry, and his face fell. The LORD said to Cain, "Why are you angry, and why has your face fallen? If you do well, will you not be accepted? And if you do not do well, sin is crouching at the door. Its desire is for you, but you must rule over it." Cain spoke to Abel his brother. And when they were in the field, Cain rose up against his brother Abel and killed him. Then the LORD said to Cain, "Where is Abel your brother?" He said, "I do not know; am I my brother's keeper?" And the LORD said, "What have you done? The voice of your brother's blood is crying to me from the ground. And now you are cursed from the ground, which has opened its mouth to receive your brother's blood from your hand. When you work the ground, it shall no longer yield to you its strength. You shall be a fugitive and a wanderer on the earth." Cain said to the LORD, "My punishment is greater than I can bear. Behold, you have driven me today away from the ground, and from your face I shall be hidden. I shall be a fugitive and a wanderer on the earth, and whoever finds me will kill me." Then the LORD said to him, "Not so! If anyone kills Cain, vengeance shall be taken on him sevenfold." And the LORD put a mark on Cain, lest any who found him should attack him. Then Cain went away from the presence of the LORD and settled in the land of Nod, east of Eden.

Genesis 4:1-15 ESV

In time, God's judgment will restore His creation by working both justice for all crimes and mercy for criminals. The righteous judgment of the Father on the Son in whom the Holy Spirit has united members of criminal humankind will bring in a new creation. By this judgment on crime, God will offer a remedy for all crime and judgment.

If the Genesis 4 narrative speaks of crime and judgment, it speaks nothing of lawyers. Cain's crime and judgment occurred without benefit of counsel. God Himself did justice to Cain, and forbade any human to take part in Cain's punishment. After the Flood, however, God commands humans to do justice for crime and to exact the deserved punishment of the criminal. Genesis 9 makes the punish-

ment of murder the epitome of human civil justice, just as Cain's murder of Abel is the epitome of human injustice. Again, crime and judgment occupy a chief station in the life of humankind.

In calling upon humankind to exercise the image of God in judgment upon the evil exercise of that image in crime, God does not resign His own judgeship. He is and will be Supreme Judge. For now, however, He makes some

use of humans to administer His judgment upon crime. Romans 13 teaches that rulers are God's ministers for that purpose. Lawyers that act as rulers in administering justice upon crime act for God, and they act for Him in a manner symbolic of His relationship with humankind.

The rulers involved in administering God's justice upon crime would likely include not only lawyers within the penal system prop-

er but also lawyers who legislate, or prosecute, or who adjudicate in the criminal law. Such lawyers act for God, and both their offices and how they discharge them should indicate God's judgment.

And what of counsel for the defense? Counsel might perhaps speak for God in advising a criminal defendant. But what does counsel do for God in vigorously representing the criminal defendant and in mounting an effective defense designed to answer a prosecution directed toward administering God's judgment upon crime?

Defense counsel act for God in speaking on behalf of one made in His image. Again, crime and judgment point not only to the Fall. More fundamentally, they point to the Creation. Defense counsel act to guard the dignity God

**A**

nd for your lifeblood I will require a reckoning: from every beast I will require it and from man. From his fellow man I will require a reckoning for the life of man. "Whoever sheds the blood of man, by man shall his blood be shed, for God made man in his own image.

Genesis 9:5-6 ESV



granted humankind at Creation. In part to honor that dignity, the Law God gave Israel regulated procedure and punishment. Laws today regulate procedure and punishment, and thereby honor that dignity. Defense counsel speak for God when they speak for the dignity of His image.

But defense counsel speak for God's own dignity too. Rulers are God's ministers. They are called to do justice on God's behalf, justice only in part to be sure, but God's justice nevertheless. God's justice is a justice of law, of impartiality, of truth. So defense counsel honor God's justice when they call rulers to the law, to impartiality, and to truth.

Lawyers at work in criminal justice, then, answer a high calling. They minister in a setting that from the beginning of history speaks of our creation, fall, judgment, and restoration—of our relationship to God himself. In that setting, lawyers minister on God's behalf.

High callings present two aspects. One aspect invites supreme efforts. The other tells us that our supreme efforts are not enough. These aspects in tandem should lead us to trust God and His work in us to put forth whatever efforts are to be exerted. God is able to supply an answer to any invitation He gives.

Even so, we are unlikely to answer such a high calling to

our satisfaction, let alone in a manner we could think worthy of God's satisfaction. It may often be difficult even to associate the actual work of lawyers in the criminal practice with a ministry of God. Legislating is not the only activity in the law to resemble sausage making. But God does call this work His ministry. And whatever the gap between what a ministry should be and what a ministry is, this gap itself God uses to His purpose. As Saint Augustine might have us understand, to the extent a

ministry is performed well, it indicates the perfection of God. To the extent it is performed less well, it indicates the imperfection of a fallen creation awaiting the perfection of God. Both views, like crime and judgment themselves, show the state of God's creation and His work in it.

Criminal law is a gift of God, a gift that illuminates God's relationship to humankind. To work in the criminal law is likewise a gift of God. It is a high calling. May God truly be glorified in those who answer this call.



*Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore whoever resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of the one who is in authority? Then do what is good, and you will receive his approval, 4 for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer. Therefore one must be in subjection, not only to avoid God's wrath but also for the sake of conscience. 6 For because of this you also pay taxes, for the authorities are ministers of God, attending to this very thing. Pay to all what is owed to them: taxes to whom taxes are owed, revenue to whom revenue is owed, respect to whom respect is owed, honor to whom honor is owed.*

*Romans 13:1-7 ESV*



Professor Stern worked in the criminal law as subcommittee counsel with the United States Senate Committee on the Judiciary, and briefly as a federal prosecutor. He teaches criminal law at the Regent University School of Law.



# Is America's Criminal Justice System Trustworthy?

***A FORMER  
PROSECUTOR  
CONSIDERS  
JUSTICE IN A  
BROKEN WORLD***

**By Diane Munson**

**W**hen asked by friends, neighbors or colleagues if you trust our criminal justice system, how do you answer this question? When people learn I am an attorney and former federal prosecutor, they invariably ask about televised cases where before millions, justice has faltered. I have heard the questions, and I have had time to hone my answer.

I explain that we have the fairest system in the world, with due process checks and balances promoting equal treatment for all. Moreover, probable cause that the defendant committed a crime is required to obtain a grand jury indictment and an arrest warrant and to bind over a defendant after preliminary examination. To search our homes or offices, agents' affidavits must



first be approved by an Assistant U.S. Attorney (AUSA) and then convince a neutral judge. When such facts fail to satisfy, I remind them the judicial system crucified Christ, who was guilty of no crime, so we should not expect perfection on Earth. Only when they weave a tale of woe about family or friend at the hands of the police, a prosecutor or a judge, do I realize their pain is not academic – it is *personal*. At that moment, I tell them God has a plan for healing and reconciliation through Christ, and sometimes have the opportunity to pray with them.

You may be saying, “*I do not practice criminal law and never will. I have no way to help these people.*” On the other hand, you may have handled a misdemeanor case like a speeding ticket, but nothing as serious as a speeding bullet that led to felonious assault or murder. As believers in Christ, no matter

or change an entire community.

In finding the truth, a prosecutor has a tough balancing act. Justice Sutherland summed it up this way:

“[The United States Attorney] is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer.... But while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”<sup>1</sup>

Called a “minister of truth,”<sup>2</sup> a prosecutor needs to care more about the cause of justice than accumulating an impressive win-loss record.

Christian attorneys have an even higher calling. We are

21:15 NIV). I believe this means joy for all involved, the justice doer and our Lord.

During an interview for a job as federal prosecutor, I learned about the need for scrupulous ethics. The executive assistant U.S. Attorney posed a question something like: As an AUSA, you are about to enter a defendant’s guilty plea. On the way to court, you learn the only eye-witness against the defendant just died. What will you do?

My answer, to advise the judge and defense attorney the witness was dead, turned out to be pivotal to my future. If I had said, the defendant was guilty so his plea should go forward, despite the fact that it was now impossible to prove he was guilty, I would not have met the ethical standard required by the Department of Justice. This valuable lesson stayed with me, especially when I had to decide quickly if evidence was sufficient to

petence of those men and women who are selected to represent the public interest in the federal criminal justice process.”<sup>3</sup> Unfortunately, some cases in the headlines tell a different story, one that erodes confidence in our criminal laws.

While in police custody, Lee Harvey Oswald, a suspect in the assassination of President John F. Kennedy, was shot and killed. Because he never stood trial, the truth becomes a myth, the stuff of conspiracy theories. In a recent case filed against former Duke University lacrosse players for alleged crimes, pundits peel back a system where the prosecutor seems to mock justice. Media reports that the District Attorney (DA) allegedly held back evidence from the defense, used a constitutionally impermissible lineup, and improperly commented on the accused are nightly fare. As of this writing,

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## WHEN JUSTICE FAILS, THE RULE OF LAW, THE BEDROCK OF OUR NATION, IS THREATENED WHICH, IF WE LIKE IT OR NOT, HAS AN IMPACT ON HOW SOME PEOPLE SEE GOD.

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what type of law we practice, it is important to reflect why we should care if our criminal justice system is broken and how we can put justice back into our criminal justice system. When justice fails, the rule of law, the bedrock of our nation, is threatened which, if we like it or not, has an impact on how some people see God. While defense attorneys and judges must ensure justice, the prosecutor holds a special position of authority. When he or she exercises discretion to seek charges for a given offense, dismiss them or enter into a plea agreement, such acts can fracture a person’s life

disciples of the Truth-giver, no matter the field, no matter if the closest thing we come to criminal law is a church member who complains about a reckless driving ticket and asks how to fight it. The pertinent question is whether the driver deserves the ticket, not what the lawyer’s fee is. While we should encourage friends and family to be accountable for their actions, we can do more. If prosecutors ought to be ethical, we are to act justly, love mercy and walk humbly with God (Micah 6:8 NIV) because “when justice is done, it brings joy to the righteous but terror to evildoers” (Proverbs

prove the case beyond a reasonable doubt, the standard for a criminal conviction. One particular morning, I was handed a case right before trial. In assessing the evidence, I found it faulty and entered into a plea agreement to a lesser charge. In another, I doubted certain drugs were found in the manner described by the police and dismissed the case. Except for a handful of cases, I found the rest to be legitimate and so did the juries.

No matter how perfect our system is, its success ultimately relies on “the character, integrity, sensitivity, and com-

the most serious charge against the three defendants was dismissed due to the accuser changing her story; a complaint was filed against the DA by the North Carolina bar; and at the DA’s request, two special prosecutors appointed by the state’s Attorney General will handle the case. While it may be this DA properly exercised his discretion, when the news continually reports that such defendants do not receive due process, the rock of justice begins to turn to sand.

*continued on page 8*

## IS AMERICA'S CRIMINAL JUSTICE SYSTEM TRUSTWORTHY?

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Author John Grisham just wrote a book about Ron Williamson, a man convicted in Oklahoma of murder and sentenced to death.<sup>4</sup> After DNA in strands of hair found at the scene was determined not to be his, he was freed. Mr. Williamson died in 2004 at the age of 51. Grisham hopes his readers will have “[a] better understanding of how innocent people can be convicted, and a greater concern for the need to reimburse and rehabilitate innocent men after they have been released.”<sup>5</sup>

Another case hits closer to home. John A. Smietanka, former U.S. Attorney and now a



those who wronged him or her will not heal every victim, the prosecutor is in a position to recommend which cases are appropriate.

Besides bringing personal benefits, mediation also changes lives in neighborhoods plagued by drug sales, prostitution and gang activity. Prosecutors, including the U.S. Attorney's office in Washington, D.C., (now) use “community prosecution,” where prosecutors in designated geographic areas strategize with citizen and neighborhood groups to encourage residents to watch out for crime, cooperate with law enforcement and take an interest in their neighbors.<sup>7</sup> When people have relationships with police and prosecutors, their trust level grows and

**NO MATTER HOW PERFECT OUR SYSTEM IS, ITS SUCCESS ULTIMATELY RELIES ON “THE CHARACTER, INTEGRITY, SENSITIVITY, AND COMPETENCE OF THOSE MEN AND WOMEN WHO ARE SELECTED TO REPRESENT THE PUBLIC INTEREST IN THE FEDERAL CRIMINAL JUSTICE PROCESS.”**


defense attorney, uncovered injustice when he appealed a Michigan man's 1992 conviction for the death of a woman found lying in the middle of a road in 1979. Years later, Smietanka established the alleged murder weapon, an unbroken whiskey bottle, did not have a sharp edge. After the Sixth Circuit ordered a new hearing to determine if the defendant's incarceration was constitutional,<sup>6</sup> Smietanka's law firm was called by a woman who thought her father, then deceased, had struck the victim with the side mirror of his motor home. Her father had traveled that same highway the same day and replaced a damaged mirror. When the death occurred, that family member


had contacted the Sheriff's office, but the information was not available to the defense at trial. Michigan's Attorney General has since entered a confession of error in the application for *Habeas Corpus*, and the original court vacated the conviction. Smietanka confirmed for this writer that, “winning Mr. Souter's freedom is the best thing I've ever done as an attorney.” He hopes to create an innocence project to review other prisoners' claims.


Our criminal justice system also is embracing ways to repair harm done to people caused by crime. After I left Washington, D.C., a shift occurred in my practice (toward mediation). Prosecutors around the country are


taking the lead in using victim-offender mediation, especially in cases involving juveniles and first-time offenders. In controlled settings with trained mediators, victims of crime sit down with the persons who wronged them and explain how he or she was hurt by their actions. In one case, after a teen broke into a neighbor's home and stole a stereo, mediation allowed not only the woman to tell him how scared she was to know someone snuck into her home, but the young offender to see both the human consequences of his actions and that he was going down the wrong road. Because talking to the victim will not rehabilitate every defendant, and confronting

they feel safer. When they are integral to solutions, they are more willing to come forward as witnesses. A Christian lawyer, now a federal judge, once told our Sunday school class to imagine the day when we stand before the Lord Almighty who will have a thick transcript of all we have ever said. Although an incredible, and at times terrifying, thought, it motivates me to think about opportunities we lawyers have to help seek restoration of justice. We can:

 lead Bible studies with prisoners to encourage them to take the crucial step to seek forgiveness from God and their victims;

 help released offenders get jobs, write resumes, and give back to the community;

 work with a hammer and can of paint to alleviate signs of blight and crime; and

 volunteer with a victims group to help those who suffer at the hands of others.

The list goes on and the needs are enormous. You might get involved in the legal aid program of CLS or Prison Fellowship, where believers help the poor and downtrodden caught up in the criminal justice system. If we all aim to be a thousand watts of light for truth, it won't be up to the Grishams and Smietankas of the world to act justly, love mercy and walk humbly before God. An advocate for the poor from my church, Clare DeGraaf, told me "every believer has an obligation to be an advocate for those who are helpless, have given up hope and unable to navigate the system." Clare looks for such people every day on the streets, in the pew next to him, wherever God leads him,

and is a living example of caring for the least of these and, thus, for Christ.

Whether our system of justice works or fails, the answer is Jesus. His very presence sustains us, His resurrection pardons us, and His love transforms our lives and gives us peace. The future of justice depends on all of us doing our God-given part.

- 1 *Berger v. United States*, 295 U.S. 78, 88 (1935)
- 2 Gershman, *The Prosecutor's Duty to Truth*, 14 Georgetown Journal of Ethics 309 (2001)
- 3 U.S. Department of Justice, U.S. Attorney's Manual, Section 9-27. see: [http://www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm00162.htm](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00162.htm)
- 4 Grisham, *The Innocent Man: Murder and Injustice in a Small Town*, Doubleday 2006.
- 5 "Twenty Second Interview: A few Words with John Grisham" by Daphne Durham, on [www.amazon.com](http://www.amazon.com), under *The Innocent Man* listing.
- 6 *Souter v. Jones*, 395 F3d 377 (2005)
- 7 see: <http://www.usdoj.gov/usao/dc/index.html>



Diane Munson has been an Assistant U.S. Attorney in Washington, D.C., Deputy Administrator for the Office of Juvenile Justice and Delinquency Prevention at the U.S. Department of Justice, private practice attorney and mediator. Co-author with her husband of *Facing Justice* (FaithWalk Publishing 2005) and *Confirming Justice* (FaithWalk Publishing 2006), they are writing their third novel. A former National CLS Board Member, her website is: [www.dianeanddavidmunson.com](http://www.dianeanddavidmunson.com)



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- Edwin Meese III, Attorney General, Reagan Administration and member of the Iraq Study Group



### About the authors

Diane Munson is a former Federal Prosecutor and David Munson is a retired Federal Undercover Agent

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# Advocating for the Defense

## The Call of Christ on Christian Criminal Defense Lawyers

*by Raymond Dague*

The closest one can get to touching the role of our Savior in law practice is when we stand before a criminal court and advocate for the defendant. Much of what I do as a lawyer is quite fulfilling. Sometimes it is the house closing for the young couple starting a new life in a new place. Sometimes I help incorporate a church and watch as the new congregation starts to get on its feet. Other times, I deal with the aftermath of death where one can work with the family in a time of crisis. All of these are places where one can minister, and they can be satisfying. But none is better than what I do at the criminal defense bar.

When I started practicing 28 years ago, I immediately took on criminal cases. The first ones were legal aid assignments from our local judges. I loved handling these cases, but oftentimes the clients had backgrounds quite dissimilar to mine. It was not the lucrative middle- or upper- class law practice for the upwardly mobile young lawyer, but there is something about the defense of a criminal case that makes one feel more like a lawyer than anything else in the law.

Criminal defense is the struggle for the underdog. The odds are usually against me. I am battling the government. The prosecutor's resources far exceed mine. And to make matters more difficult, many of my clients are guilty, but not all of them. A felony jury trial defending an innocent client is both exhilarating and terrifying. One of my greatest feelings of accomplishment has been the verdict of "not guilty" at the end of the trial when I knew that to be the right result.

The innocent ones have an obvious need for my services. In those cases, I can exercise an almost Biblical quest for justice as I seek to vindicate the falsely accused. But oddly enough, I discovered that it was in representing guilty people that we can be the best as Christians and as lawyers.

Those who are guilty comprise the real calling for the Christian lawyer. Jesus

came not to the righteous, but to heal sinners. And that is what we do as lawyers in criminal cases. Similarly, we are all guilty as we stand with our sin before God. So there is something very Jesus-like in trying to vindicate the guilty before the bench. We are all guilty before God's bench.

To be an effective witness for Christ, one must be

rather than being assigned to me by a judge, I find that they are seeking out a Christian lawyer.

Some of the clients I represent have done something illegal and seriously wrong. They are the ones who are regarded as pariahs by society. Years ago, when I had a partner who also handled many criminal cases, we noticed that he got the

in the pod that day. The sheriff's deputies and the social worker on staff shook their heads with a friendly laugh. This lawyer actually liked and could get along with inmates who to the rest of the world were all crazy. That is fine with me. How we regard the least of His brethren is a measure of how we regard Him. Mind you, I have been slugged in

close to their soul and they know their need, a Christian lawyer can speak His word to them.

Some years ago, I represented a woman on a prostitution charge with a long history of that behavior. She was pregnant, and she knew that I was a Christian. I spoke about leaving her lifestyle and turning over a new leaf. I told her

## I DO NOT HIT CLIENTS OVER THE HEAD WITH A ZIPPERED BIBLE, BUT I AM NOT AFRAID TO LET THEM KNOW MY BIAS IN LIFE. THE JUDGES AND OTHER LAWYERS KNOW I AM A CHRISTIAN.

explicit about one's faith. I have no difficulty letting my clients know that I am a Christian. My office has the Ten Commandments, a framed "An Attorney's Prayer" on the wall of the waiting room, and a Bible on the coffee table. Copies of *Christianity Today* are in the magazine rack. There is an icon of Christ centered atop the certificates that I display on my "ego wall." It is my reminder that He comes over my ego. It is there for me as much as it is for my clients. There is another golden-framed icon of Jesus in the conference room. I always wear my CLS cross lapel pin when I go to court or visit the jail, or for that matter, whenever I wear a suit or sport coat anywhere.

I do not hit the clients over the head with a zippered Bible, but I am not afraid to let them know my bias in life. The judges and the other lawyers know I am a Christian. Once a judge even teased me in open court, on the record, while I appeared for a criminal case. I took it in the good-natured way he meant it as 15 other lawyers in the courtroom and their clients listened. These days when my clients seek me out

murder and assault cases, while I seemed to represent defendants charged with sex crimes or who committed offenses as they acted out of psychiatric symptoms. Not popular stuff, mind you. But Jesus did not hang around the popular crowd either. His crowd tended to be a bit slimy. Those fishermen were the best of his associates. After the fishermen, he regularly spent time around the religious establishment's watch list: prostitutes, tax collectors, lepers, collaborators with the Romans, and those who openly flaunted the law. Much of society wants to throw to the dogs any who commits those offenses, both then and today. But I found a mission in trying to keep them out of jail and give them something that would transform their lives. At times, I am as much of a social worker as I am a lawyer.

Two thousand years ago, a good number of my clients would have been regarded as possessed or would have been dragged to the city gates to be stoned. I will never forget the time I visited the psychiatric floor of our jail, and several of my clients greeted me on the floor of the pod. I think I had four clients or former clients

the face by psychiatric clients. Still, there is a strong sense when I do this sort of work, that by the grace of God, there go I.

Those who have committed offenses are oftentimes in great moments of personal crisis. When the arrow strikes

about Jesus and His transformation for those who followed Him. I did not think she was especially attentive to what I was telling her, until I was awakened one morning at 6:00 a.m. at home by her phone call. I was so groggy that I barely recognized her

*continued on page 12*

### AN ATTORNEY'S PRAYER

Heavenly Father,

You are the first and greatest giver of Law; in my life I am ever mindful that Yours are the highest commands. You are the wellspring from which all justice flows into the world. It is a comfort to know that Your judgment is not of appearance but of the heart. Lord, today I ask that You grant me the fortitude to counsel all who seek my advice in accordance with what You have decreed to the faithful as Your Holy will.

Your Son never let anyone stand accused in His presence without seeking a merciful verdict from those who would condemn. When, with outstretched arms, Jesus embraced the wood of the cross, He represented the human race and won for us eternal salvation over death. Jesus, today I ask that You press upon my mind Your example, and to aid me in representing those brought to stand trial here on Earth.

Above all, my God, send me Your Spirit that I may toil tirelessly to protect those who love You from injustice. Let Your hands reach through me into the courts, enlightening the ones empowered to make and interpret the law. Let the words of the Psalmist be upon their lips:

"Lord, the Earth is filled with your unfailing love; Teach me Your statutes."

Amen

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**ADVOCATING FOR THE DEFENSE**

*continued from page 11*

voice. She was at a payphone outside of an abortion clinic, she said, and she wanted to know how I felt about her getting an abortion. She was asking me a question to which she already knew my answer before she put the coin in the

could sentence him to hell for what he had done. The judge's words hit me like a sledgehammer! He was a good man and a good judge. But here was a judge who was not satisfied with the power to incarcerate. He wanted the power

**I DO NOT OVERLY ROMANTICIZE CRIMINAL DEFENSE. ... BUT IN THE DOCK WITH A CRIMINAL DEFENDANT, I CAN SEE THE ROLE OF CHRIST AS HE DEALS WITH ME.**

phone. She just wanted me to tell her what the Lord was already saying to her. She left the phone booth at the end of the call and did not go into the clinic.

of eternal damnation at his discretion and control. He wanted the power of God Himself. This time it was the judge who was both the saint and the sinner.

I have seen sinners and saints everywhere in the criminal defense bar and bench, oftentimes both in the same person. I vividly recall a judge sentencing a criminal defendant (not mine) for an especially heinous multiple rape and murder. He lamented that New York did not at the time have the death penalty, and then said that if he could do so, he would sentence him to death. But then he went on to say that he wished that he

I do not overly romanticize criminal defense. It has the same difficulties as any other part of the law. But in the dock with a criminal defendant, I can see the role of Christ as He deals with me. So perhaps the reason I like defending criminal cases, even for guilty people, is that I know how badly I need that defense on a much larger scale and in a far grander court than what my clients get in the courthouse.

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# A Biblical Difference in the Practice of (Criminal) Law

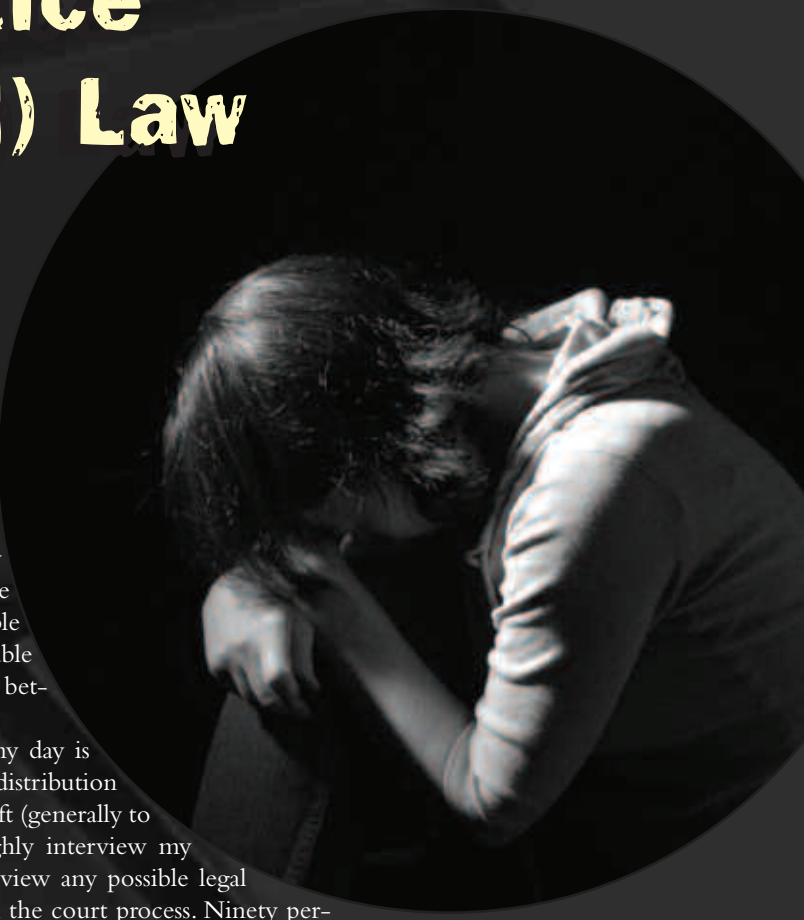
BY J. TYLER MAKEPEACE

**M**y criminal law practice parades every imaginable sin in front of my desk, from shoplifting and trespass to rape and murder. Throughout my career as a prosecutor for four years and a criminal defense attorney for 30 years, I tried over 600 cases before a jury. I have only recently, however, discovered how necessary the Bible is for all involved in the legal system. The Bible and our commitment to Christ are the undisputable keys to becoming not only better lawyers, but also better criminal defense lawyers.

When I arrive at my office in the morning, my day is filled with representing people charged with drug distribution and possession, domestic violence, burglary and theft (generally to support a drug addiction), and assault. I thoroughly interview my clients, gather all the facts, interview witnesses, review any possible legal defenses, and reassure my clients as we go through the court process. Ninety percent of my clients are guilty of something; in the earlier years, I would do my best to get them involved in counseling, drug classes, AA and other programs so that they would look good in front of the judge at sentencing. And it didn't stop there. I even went so far as to start programs for abused children in El Paso County, Colorado, and became involved in numerous charitable endeavors to help criminal defendants going through the court process. But up until the time I became a Christian in 1999, I believe that all of the foregoing was merely scratching the surface for my clients.

I now realize the Bible, as the inspired Word of God, is truly the answer. I also have come to believe that it is imperative for me as a Christian criminal defense attorney to view my law practice as a ministry. I am not afraid to go to trial, and holding the prosecution to their burden of proof is critically important. What I am talking about is ministering Christ to the vast majority of clients whose guilt has already been established.

Drug addiction is foremost. It is an underlying factor in most of our crimes today and a sin filled with snarls and tangles of deceit on many levels. The writer in Hebrews warned us of the deception of sin and that we all need daily encouragement "so that none of you may be hardened by sin's deceitful-



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## A BIBLICAL DIFFERENCE

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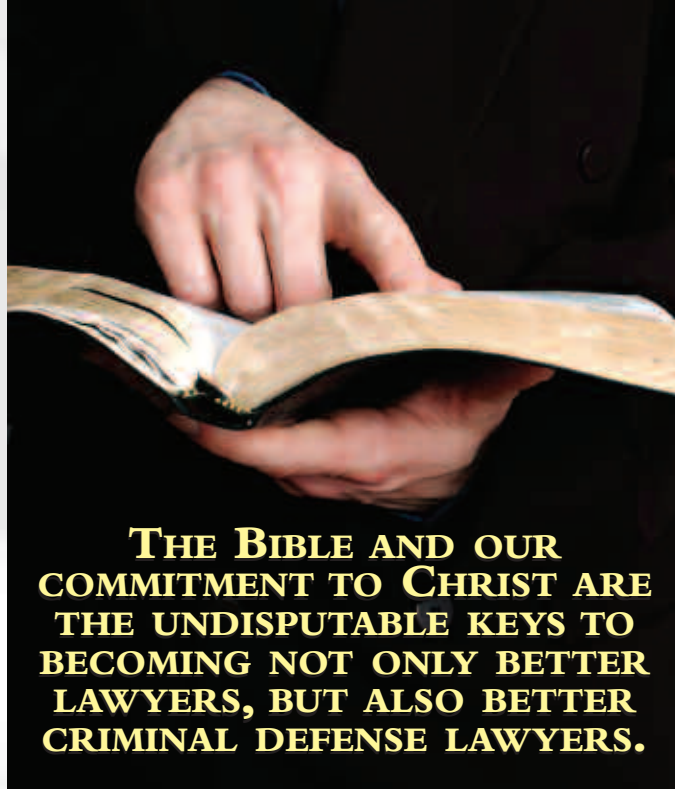
ness” (Hebrews 3:13 NIV). I see countless hardened clients that end up reaping what they sow, consistent with scripture.

Do not be deceived:  
God cannot be mocked.  
A man reaps what he sows.  
The one who sows to  
please his sinful nature,  
from that nature will reap  
destruction; the one  
who sows to please the  
Spirit, from the Spirit will  
reap eternal life.

Galatians 6:7, 8 NIV

I have represented clients who have stolen items out of thousands of cars to feed their drug addictions. The cycle of addiction leads to dissatisfaction, shame and guilt. People who are addicted, not only to drugs but also to sex and power, promise time and again to make amends; but without Christ, those promises only lead to disillusionment, despair and brokenness, which ultimately result in massive amounts of anger. The rage gets directed outwardly, yes, but it almost always turns inward, and the problem compounds. The basic Biblical truths of confessing sin, repenting from sin, accepting Jesus as Lord and Savior, and walking in the Holy Spirit are just as vital to share today in the drug-infested areas of our inner cities as they were 2000 years ago.

Before I became a believer, a Christian attorney and mentor told me that anger is almost always the result of fear and pain. You can't deal with anger unless you first deal with these two underlying causes. My angry clients have beaten their wives and husbands, abused their children, taken a



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shotgun to neighbors, and committed unspeakable damage to our community. Now, as a Christian criminal defense attorney, I have seen the fear and pain in clients dissolve when they come to realize God's great love for them and the truth of Jesus Christ. From that moment forward, it is not about what my clients have done in the past, it is about what they choose to do in their new journey with Christ.

My first obligation as an attorney is to try to get the case dismissed if the prosecution cannot meet its burden of proof; but in cases where guilt is obvious, the best advice, along with the legal advice we give, is to share with them the great truths of the Bible. Perhaps they have never heard what Jesus said in Matthew 5:22, "But I tell you that anyone who is angry with his brother will be subject to judgment." Or His words in Matthew 5:25 where He stated, "Settle matters quickly with your adversary who is taking you to court. Do it while you are still with him on the way, or he may hand you

over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison." It is possible that such a client never had a Bible of their own or had anyone show them how relevant it is to their life circumstances today.

Sentencing is the most important phase of any criminal proceeding. When the judge sees and hears an honest confession of sin, payment of restitution, and the genuine transformation that has come about in the defendant by allowing Jesus Christ to change their heart and life, they are more apt to grant a more lenient disposition that leads to true rehabilitation as opposed to punishment.

I would have never believed such things before 1999. In 1998, I had been practicing law for 26 years, but my marriage was crumbling. I was broke and drowning in my law practice. I was depressed all the time and could not understand or explain my predicament. I always worked hard, performed good works for the community, tried to be a good

parent to my child, and a good citizen. I was even a lay leader for my church. But something was missing.

One evening during this tumultuous time, I remember watching a Billy Graham Crusade and hearing him say, "God loves you," and I thought, "even me?" I could not get my mind around such a thought. Then, several weeks later, I recall picking up a book about the life story of Mother Teresa and reading about her life "abandoned to God." Such a thought began to intrigue me. Unbeknownst to me, God was pursuing me, and I had begun a journey toward a more rewarding spirit-filled life.

A few months later, I started driving a van on Sundays to bring homeless people to church. I actually picked up some of my clients, who were quite surprised to see their attorney driving them to church. I felt better than I had felt in a long time. Along the way, I read the Bible four times through and read 1500 books about Christianity. But most importantly, I accepted Jesus Christ as my Lord and Savior.

I have learned in the past seven years that evangelizing clients who are receptive to the Gospel can be an extremely powerful tool in their rehabilitation. As Christian lawyers we should not be afraid of handing out Bibles or tracts to defendants who are prepared to receive them. One of my favorite examples of how the Bible turned a potential life sentence into a 10-year sentence happened just a couple of years ago for one of my clients. In 2002, Brian (not his real name) was terrorizing our community. He went on a three-week crime spree to get drugs and was on the front page of the Metro section for



## DON'T BE AFRAID TO EVANGELIZE YOUR CLIENTS

two solid weeks. He tried to run over a police officer with a car, broke into an elderly woman's house to take items, and actually took a shower in her house, which was discovered when she walked in unexpectedly.

Brian was stealing cars and buying drugs until he was caught. I had previously represented him, and he had three prior felony convictions. He was charged with 57 felony counts and the prosecution wanted 96 years.

I met with Brian in jail later that year and gave him a Bible and some tracts from Radio Bible Class Ministries. We talked about becoming a Christian, and I asked him to start reading the Gospel of John. Soon thereafter he wanted more tracts about anger and addiction, and he started copying key passages in the Bible. I delayed his case for 6-

9 months, and he used that time to lead Bible studies in the county jail. The Lord changed his heart.

I worked out a plea for three felonies with an open sentence. The prosecutors could ask for 32 years, and I could ask for 10 years. I brought three people that Brian had led to Christ to testify at sentencing, as well as a pastor who was counseling him in jail. The bottom line is that he got 10 years from the judge. Afterwards, the judge told me that he could see the difference between Brian before he came to Christ and afterwards. Brian will be getting out of prison this year. He has reconciled with his wife and children and stands a chance to live the Abundant Life.

Don't be afraid to evangelize your clients. I look at courthouses all over America

as uncharted territory where we Christian lawyers need to bring the light of Christ. Likewise, for those of you who are members of the Christian Legal Society, don't be afraid to wear the pin. I wear it every day, and it's a great way to start a conversation about the good news of Jesus Christ. And I find that people respond to the pin in a very positive way.

Effective criminal defense lawyers get the best results for their clients, here and eternally. Prosecutors and judges are impressed by defendants who have a genuine change of heart, but a personal relation-

ship with Jesus Christ makes all the difference.

Looking at our clients and the criminal justice system as a mission field waiting to be evangelized will keep me going strong for many years to come. Matthew 28:19 says, "Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit." We as Christian lawyers have a tremendous opportunity to fulfill the Great Commission. The joy that this will bring to you and your practice will be immeasurable.



Tyler Makepeace has practiced criminal law as a prosecutor and defense lawyer for over 30 years in Colorado Springs, Colorado. However, he says that his law practice has been transformed since he came to Christ in 1999.

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## Lawyers, Actors, and Role-Playing: Private Lives and Professional Roles?

by Professor Robert F. Cochran, Jr.



deceptive. Lawyers do their utmost to convince juries that they believe in their cause; lawyers do what they can to keep out damaging, even truthful (maybe especially truthful), testimony; lawyers do what they can (within the bounds of the law) to keep the other side from gaining access to damaging evidence; lawyers make arguments to judges based not on what they believe the law should be, but rather on the interpretation of the law that is in the client's interest; and that in negotiations lawyers lie about (or at least conceal) their and their clients' true valuation of claims. Often such deception is necessary to get a fair result from other parties who are playing by the same "rules."

Dr. Johnson (the famous Victorian lawyer and dictionary author) gave the classic defense of the trial lawyer's role in the following exchange with his friend Boswell:

**Boswell:** "[W]hat do you think of supporting a cause which you know to be bad?"

**Johnson:** "Sir, you do not know it to be good or bad 'til the Judge determines it. . . . An argument which does not convince yourself may convince the Judge to whom you urge it; and if it does convince him, why, then Sir, you are wrong, and he is right."

All may not share Dr. Johnson's faith in the wisdom of judges, but he may be right to caution against lawyers placing too much faith in their own judgment. The advocate's role is important to the legal system. Judges are most confident in their decisions when they have heard strong

A few years ago, 20-year-old Stephanie Stephenson became a hero in evangelical Christian circles. She turned down the role of Cossette in the touring cast of the musical version of *Les Miserables* because, in addition to playing Cossette, she would have had to play a prostitute. The producers told her, "It's just acting, and if you cannot separate your personal life from the role, you'll never make it in this business." Stephanie took her stand as a matter of Christian conviction. To many, Stephanie Stephenson stands as a model of integrity in a day of moral schizophrenia.

Stephenson's case raises a problem faced by lawyers and other people whose professional roles at times call on them to do things that they would not ordinarily do. The difficult thing about Stephenson's case is that she was asked to play the role of

prostitute in a good play, a play with a strong moral message. *Les Miserables* is one of the few bright lights of modern culture. It has many profoundly moral—and Christian—messages.

Like Stephenson, lawyers are called to play a role for the sake of a bigger project. They act as advocates in an adversary system which is designed to yield truth and justice. But also like Stephenson, many lawyers feel that they are called to play the prostitute. In interviews conducted by Rand Jack and Dana Crowley Jack, lawyers described the moral tensions of their work: "I have to contradict myself depending on what role I'm taking . . . It's sort of professional prostitution." "It feels horrible to do something that you wouldn't do normally."<sup>2</sup>

A part of the problem is that the lawyer's job, at times, calls on them to be

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**LAWYERS PLAY A ROLE, A ROLE THAT CONTROLS THEIR MORAL CHOICES. LAWYERS WHO ARE CONTROLLED BY A MORALITY OTHER THAN THEIR OWN ARE AT MORAL RISK. MORALITY IS A SKILL LIKE OTHER SKILLS; IT IS SOMETHING THAT WE LEARN BY DOING.**

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advocates for either side, and the lawyer's role is important to clients as well. Lawyers empower people; they speak for people who would find it difficult to speak for themselves.

Nevertheless, there are costs to role-playing. Role-playing may affect character. Dr. Johnson was quick to dismiss this argument.

**Boswell:** "But, Sir, does not affecting warmth [for the client] when you have no warmth, and appearing to be clearly of one opinion when you are in reality of another, does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the mask in common life, in the intercourse with his friends?"

**Johnson:** "Why no, Sir. Everybody knows you are paid for affecting warmth for your client; and it is, therefore, properly no dissimulation: the moment you come from the bar you resume your usual behavior. Sir, a man will no more carry the artifice of the bar into the common intercourse of society, than a man who is paid for tumbling upon his hands will continue to tumble upon his hands when he should walk on his feet."

The implicit answer to Boswell's (leading) question may be closer to the mark. The "dissimulation" of role-playing is likely to "impair one's honesty," for habit is an important aspect of morality. If Stephanie Stephenson allowed men to paw her on stage in her role as a prostitute, it might become easier for her to allow men to paw her off stage. The moral life is largely a matter of habits—good or bad; therefore, a lawyer who is deceptive to juries or to opposing lawyers today is likely to be deceptive to clients, judges, partners, family, and friends tomorrow. The lawyer who is aggressive and crafty at work is likely to become aggressive and crafty at

home. Many were concerned that Bill Clinton's private moral weaknesses might infect his public life—"if he is unfaithful to Hillary, will he be unfaithful to us?" But it may be that the influence has gone the other way—that the roles he has played as politician and lawyer paved the way for the collapse of his personal moral life.

Lawyers play a role, a role that controls their moral choices. Lawyers who are controlled by a morality other than their own are at moral risk. Morality is a skill like other skills; it is something that we learn by doing. As we address problems morally, we develop the capacity to deal morally with other problems. If moral sensitivity has no place in lawyers' daily lives, they run the

risk that their moral sensitivity will atrophy.

There may be dangers in role-playing even when we play a good role for a good cause. We may be at risk when we live by "vicarious morality" (John Noonan's phrase), even when it is not a vicarious immorality. When we speak for someone else, we cut ourselves off from our true selves and our true beliefs. The danger is that we may stay cut off. When we make arguments that we do not believe, even on behalf of a good cause, it may make it easier to make arguments that we do not believe on behalf of a bad cause. Insincere

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speech may lead to more insincere speech.

An alternative to both those who reject role-playing and those who embrace role-playing are those who recognize the risks and seek to live faithfully within roles. Deitrich Bonhoeffer may be of some help. Bonhoeffer, the pacifist Lutheran pastor, joined the plot to assassinate Adolf Hitler. Although he accepted a role that was in tension with his character for the sake of a greater cause, he recognized the risks to character. He warned his colleagues in the resistance:

We have learnt the art of deception and of equivocal speech. Experience has made us suspicious of others and prevented us from being open and frank. Bitter conflicts have made us weary and even cynical. Are we still serviceable? It is not the genius that we shall need, not the cynic, not the misanthropist, not the adroit tactician, but honest, straightforward men. Will our spiritual resources prove adequate and our candor with ourselves remorseless enough to enable us to find our way back again to simplicity and straightforwardness?<sup>3</sup>

Bonhoeffer recognized that deception may become a habit, that there is danger that role-playing will infect character. Because he recognized the moral dangers that he and his colleagues faced, he was able to ask difficult questions: “Will our spiritual resources prove adequate and our candor with ourselves remorseless enough?” Bonhoeffer does not answer his questions, but his questioning may be an important part of the answer. An awareness of the conflict between the true self and the role may enable us to protect the true self.

Note also that Bonhoeffer (the author of the Christian classic, *Life Together*) speaks in the plural. “Will our spiritual resources prove adequate and our candor with ourselves remorseless enough?” We need one another to make sure that we remain true

to Christ.

I salute Stephenson for her courage. Too few today even question the requirements of role-playing. Nevertheless, I would have encouraged her to take the role. Christians are called to be “in the world, but not of it.” To have accepted the role would have put Stephenson in the entertainment world, a world that very much needs the influence of people like her.

More importantly, playing the prostitute in *Les Miserables* would have been a good thing. Its themes are of redemption, courage, and divine providence. The prostitution scene is an important part of the play’s message (not a bit of sex thrown in to sell tickets). Jean Valjean redeems Cossette from her mother’s world of prostitution. The treatment of the prostitutes helps to convey the degrading circumstances out of which Cossette is rescued. Stephenson may have viewed this too much in (possibly evangelical) individualistic terms. She focused on the part that she played rather than the profoundly moral—and ultimately Christian—message of the entire play. It’s the message of the play that is most important. For example, playing a prostitute in *Les Miserables* would be a good thing, but playing the mother of our Lord in *The Last Temptation of Christ* would be a bad thing. As to the risks of the role to character, they are real, but the courage and moral sensitivity that Stephenson showed in rejecting the role suggest that she would have been able to handle the moral risks.

Lawyers play an important role in a system that is designed to yield justice. Despite all of the publicity to cases that yield injustice, I think that generally, our legal system works pretty well. In many respects, of course, being a lawyer is different from being an actor. One difference is that the lawyer’s “director” is the client. The lawyer is likely to have a greater potential for moral influence with the client than the actor is with the director.

One of the saddest days of my life was when a student told me that he had decided not to practice law as a result of my course on Christian faith and the practice of law. I realized that I had emphasized the challenges of law practice at the expense of the opportunities of law practice. Ultimately, the legal system needs Christian lawyers who will bring their



faith and virtues to the law (and the entertainment world needs Christian actors who will bring their faith and virtues to that world).

- 1 Jenkins, “A Matter of Principle,” *Moody Monthly* 76 (September-October, 1997).
- 2 Rand Jack & Dana Crowley Jack, *Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers* 112 (1989); see also Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 *J. Legal Educ.* 247, 259-60 (1978).
- 3 Bonhoeffer, *Prisoner for God: Letters and Papers from Prison* 27 (1958), quoted in Gilbert C. Meilaender, *The Theory and Practice of Virtue* (1984) at 10.



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## Is Litigation the Right Course?

### CHRISTIAN STUDENT GROUPS, NON-DISCRIMINATION RULES, AND PUBLIC UNIVERSITIES

*by Gregory Baylor*



University, and the University of Georgia.

It is likely the Center will continue to file additional lawsuits against public university officials who use non-discrimination rules to punish religious student groups. These lawsuits, however, have not been completely uncontroversial among Christian lawyers and law students. Lawyers and law students who either support or oppose these lawsuits should at least understand the broader context of these lawsuits, which extend far beyond the threshold issues, as well as the purpose behind them.

#### THE CULTURE WAR: A CONFLICT OF WORLDVIEWS

In America, there is a profound and pervasive conflict between those holding what sociologist James Davison Hunter calls “orthodox” and “progressive” worldviews. The orthodox believe that there is some knowable, unchanging, and transcendent source of answers to key life questions: What is good? What is true? What is beautiful? The progressives, on the other hand, either deny the existence of transcendence or doubt mankind’s ability to know it. Those holding the progressive worldview draw upon reason and experience to answer life’s big questions. As a result, progressives are far more inclined to believe that moral and religious truths change dramatically over time. To be sure, institutions and individuals do not fit neatly into one box or the other. There is a range of worldviews along the spectrum between pure orthodoxy and pure progressivism. Nonetheless, Hunter’s analysis

**T**he Christian Legal Society’s Center for Law and Religious Freedom, in early 2004, filed the first of what would eventually be eight lawsuits against public universities on behalf of religious student groups. The lawsuits challenged the application of religion and sexual orientation non-discrimination rules to religious student groups at these universities.

In that first case, Ohio State University’s Moritz College of Law refused to recognize a CLS chapter at the law school because the chapter drew its leaders and

voting members from among those willing to profess faith in Christ and abide by traditional Christian sexual ethics. Although all students were welcome to attend CLS chapter meetings, Ohio State concluded that the chapter was guilty of discrimination on the basis of religion and sexual orientation. Since that time, the Center sued, on behalf of CLS chapters and other student religious groups, officials at Penn State University, Arizona State University, the University of Toledo, Washburn University, the University of California-Hastings College of Law, Southern Illinois

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**IN SHORT, THE ANSWER TO THE QUESTION “WHY SUE?” IS THIS:  
TO MAINTAIN A GROUP’S RELIGIOUS IDENTITY AND TO SECURE EQUAL  
ACCESS TO RESOURCES USED TO ADVANCE ITS MISSION.**

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helps us understand the foundations of so many of the divisions and disagreements in American society.

### **THE ROLE OF CHURCH-STATE LAW IN THE CULTURE WAR**

The law of church and state is at once a context for, an offensive weapon in, and a defensive shield in this cultural conflict. Although there are a number of important exceptions, progressives and orthodox both tend to hold very different views about what the legal rules governing the relationship between government and religion ought to be. For example, they advocate dramatically different interpretations of the First Amendment’s Establishment Clause. Progressives tend to argue that the Establishment Clause requires the government to deny religious speakers equal access to government property. To illustrate, many progressives opposed the federal Equal Access Act, which required public secondary schools to give student Bible clubs the same privileges given to secular student groups. Progressives also tend to argue that the Establishment Clause forbids the participation of seriously religious groups in government social service or education funding. The orthodox, on the other hand, consistently argue that the Establishment Clause does not require such discrimination, either in the speech or funding contexts. Those holding the orthodox view contend that the First Amendment’s Free Speech and Free Exercise Clauses actually forbid such discrimination.

These different commitments are not abstractions confined to the pages of the law reviews. Progressives and the orthodox use the legal rules to advance their broader objectives and to defend themselves. Many progressives believe that a traditional religious education is bad for students and our country. When a state legislature gives parents the freedom to redeem a publicly funded voucher at a private reli-

gious school, progressive advocacy groups inevitably file suit under the Establishment Clause (or an analogous state constitutional provision) to deny parents this choice. Similarly, when a state legislature *forbids* a student from directing state education aid to a religious school, orthodox advocacy groups will claim that this discrimination violates various constitutional guarantees, including the Free Exercise Clause.

### **PLAN B: NON-DISCRIMINATION RULES**

In a series of cases, the U.S. Supreme Court largely resolved one of the key church-state disputes that divided adherents of competing worldviews. The Court repeatedly rejected the progressive argument that the Establishment Clause required the government to discriminate against religious speakers. The Court reached this conclusion in *Widmar v. Vincent* (1981, university student religious groups), *Board of Education v. Mergens* (1990, student religious groups at secondary schools), *Lamb’s Chapel v. Center Moriches Union Free School District* (1993, after-hours use of public school by church), *Rosenberger v. Rector of the University of Virginia* (1995, funding of public university student publications), *Capitol Square Review and Advisory Board v. Pinette* (1995, private group’s display of cross on public property), and *Good News Club v. Milford Central School* (2001, after-hours access to elementary school for Child Evangelism Fellowship Good News Clubs geared toward younger children). In addition, the Court increasingly embraced the orthodox argument that the Establishment Clause does not require discrimination against religion in the funding context. Overruling a number of its older, more “separationist” decisions, the Court in recent years rejected the progressive argument for de-funding their cultural opponents.

The Court’s decisions in these speech and funding cases largely deprived the pro-

gressives of a key weapon in their arsenal. At the beginning of this decade, the need for a new weapon was particularly acute, as President George W. Bush had launched his faith-based and community initiative. Progressives largely opposed it, in part because the initiative would likely reduce the discriminatory exclusion of theologically and morally conservative groups from government social service programs.

It was at this time non-discrimination rules assumed a new prominence in the progressive playbook. The growing strength of homosexual rights advocates dovetailed nicely with the increasing emphasis on non-discrimination. With increasing frequency, progressives argued that theologically conservative groups should be excluded from speech *fora* and funding programs not because the Establishment Clause required it, but because those groups “discriminated” on the basis of religion and sexual orientation.

An individual’s religious beliefs and conduct (including homosexual conduct) are relevant in numerous contexts in the life of orthodox religious organizations. Because they tend to believe in the fixed nature of religious truth, such religious institutions are comfortable with memorializing their beliefs in creeds. By drawing their personnel from those who have voluntarily embraced their creed, these groups maintain a consistent identity over time. To the progressive, this attribute of orthodox religious groups is a legal vulnerability. In the current cultural milieu, discrimination and intolerance are the greatest sins. The conventional wisdom does not value nuance, and it generally ignores the subtle (but eminently sensible) distinction between true discrimination (the invidious reliance upon irrelevant characteristics) and the methods by which orthodox religious groups maintain their identity over time (voluntary assent to a creed).

*continued on page 22*

## IS LITIGATION THE RIGHT COURSE?

*continued from page 21*

As a result, progressives have been able to persuade many government rule makers to both adopt and enforce religion and “sexual orientation” non-discrimination rules that do *not* exempt religious groups. This represents a departure from the main current of American law, which generally exempts religious groups from rules banning religion and sexual orientation discrimination. And public universities, in their regulation of student groups, are particularly inclined to impose such rules, without exception for religious clubs, perhaps because of the near-universal embrace of progressivism among the higher education establishment.

### THE LAW AS A SHIELD

As mentioned above, the law of church and state is sometimes used as a shield in the culture wars. This is precisely what student religious groups are doing when they file lawsuits challenging a public university’s application of a religion or sexual orientation non-discrimination rule to them. Orthodox religious groups, unsurprisingly, desire to maintain their religious commitments by drawing their leadership from those who voluntarily embrace the group’s doctrines and ethical commitments. Progressives, on the other hand, are generally loathe to provide these groups equal access to benefits that help them pursue their mission, a mission they view with disapproval or even antipathy.

In short, the answer to the question “why sue?” is this: to maintain a group’s religious identity and to secure equal access to resources used to advance its mission. Every CLS member, given their voluntary assent to the CLS statement of faith, shares the belief in the truth of its assertions, and CLS chapters should not have to choose between the benefits of university recognition and an unapologetic embrace of the statement. Likewise, government should almost never use its considerable power to pressure religious groups to change what they believe, how they organize, and what they do. These things are worth fighting for, even to the point of filing civil rights lawsuits.



Yet these reasons are not the only ones. The progressive assault on associational freedom is not limited to the public university campus. The freedom of religious groups to draw their members from those who share their beliefs is under attack in a multitude of other contexts. Government-endorsed accreditors have threatened to deny accreditation to Christ-centered schools who during the hiring process take into consideration a potential faculty member’s unrepentant participation in immoral sexual conduct. Colorado denies state student aid to students at Colorado Christian University in part because the school draws its faculty from those who profess faith in Christ. More than ten states exclude from their state employee charitable campaigns those charities (including religious ones) that “discriminate” on the basis of religion or sexual orientation in their staffing decisions. Progressive advocacy groups have sued several states and the federal government because those governments have allowed “discriminatory” religious groups to compete for government social service funding. Progressive legal scholars have even begun to argue that religious groups that consider homosexual conduct in their personnel decisions should be denied tax-exempt status.

### A STAND TODAY FOR THE FUTURE

If the courts hold, as did the U.S. Court of Appeals for the Seventh Circuit in CLS’s case against Southern Illinois University, that the Constitution forbids government from applying religion and sexual orientation non-discrimination rules to religious groups, then orthodox religious groups will have a much better chance to prevail when they are in court defending their associational freedom. Given that the legal arguments in student group cases are stronger than the same arguments made in other contexts, CLS chapters truly are stewards of an issue that is critical to the future of theologically conservative religion in America.

Along the same lines, it is important to understand that the extent to which the Constitution restrains the power of government to apply religion and sexual orientation non-discrimination rules to religious groups is unsettled. Although I strongly believe that most courts will interpret and apply the Constitution correctly in these cases, it is by no means certain that the orthodox position will prevail. Our chances of prevailing, however, are better now than they will be in five or ten years, given the trajectory of the law and the culture. Therefore, when CLS chapters fight,



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**GOVERNMENT SHOULD ALMOST NEVER USE ITS CONSIDERABLE POWER TO PRESSURE RELIGIOUS GROUPS TO CHANGE WHAT THEY BELIEVE, HOW THEY ORGANIZE, AND WHAT THEY DO. THESE THINGS ARE WORTH FIGHTING FOR, EVEN TO THE POINT OF FILING CIVIL RIGHTS LAWSUITS.**

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they are fighting not only for themselves, but for theologically orthodox religious schools, colleges, universities, soup kitchens, homeless shelters, adoption agencies, substance abuse counselors, job training services, and countless others, both in our day and in the days to come.

The students and chapters that have been willing to stand firm deserve our deepest gratitude. Taking a stand on campus is far more difficult than serving as a chapter's legal representative. Taking a stand on campus is more difficult than challenging a distant bureaucrat in Washington. As those CLS chapter leaders can attest, taking a counter-cultural stand on issues of religious truth and morality does not endear you to most of your classmates and teachers. Nonetheless, I believe that many of these courageous students



would confirm that these controversies have provided opportunities to share the Good News and to actually dispel the unfortunate stereotype that Christians hate homosexuals or those who do not trust Christ. I can certainly testify that these students, without exception, have handled these controversies with Christ-like humility and grace, all the while maintaining a steadfast commitment to Him and to His Truth.



Gregory S. Baylor is Director of the Center for Law & Religious Freedom, the advocacy division of the Christian Legal Society. He is a graduate of Dartmouth College and Duke University School of Law. He has been on the Center staff since 1994.

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## God's Plan, Law School and College Football

by Melissa Gardner, 3L, Georgetown University School of Law



The Lord often finds creative ways to teach me spiritual lessons I refuse to learn on my own. Over the past couple of years, I have consistently questioned Him concerning my struggles throughout law school. I expected tough professors, competitive classmates, and tests on complicated legal theories, but I never considered the spiritual trials I would face. Likewise, I was quick to question why God would send me here, as well as convinced that if I kept going, God would make things easier for me. Finally, I understood His answer to me through one of the most unlikely sources—this year's college football national championship.

Practically no one outside of the state of Florida thought the University of Florida's football team had a chance against Ohio State in the national championship game. The experts, sportswriters, and non-

Florida football fans (including me) believed that Ohio State was easily going to win the game. After all, Ohio State had spent the entire season ranked #1. They hadn't lost a single game. Heisman winner Troy Smith and veteran coach Jim Tressel led the talent-packed squad. Florida, on the other hand, was much less impressive on paper. They had lost one game and won a few others by close margins. They were led by two quarterbacks, something not respected in college football. The Florida coach, Urban Meyer, was only in his second year. Nothing pointed to a Florida win. On the night of January 8, however, Florida dominated Ohio State in a decisive 44-14 victory. I later began to wonder how the Gators pulled it off and dominated the Buckeyes.

I could not help but wonder what everyone, the experts and sportswriters,

had missed. How could the people who get paid to predict this sort of thing have been so wrong? The only answer I came up with was training. I am not saying that Florida watched more film, or that Ohio State didn't run enough drills. Rather, Florida had been practicing all season to play in the national championship game. Florida played their entire regular season against some of the toughest teams in college football. Their conference schedule included such football powerhouses as LSU, South Carolina, and Arkansas. After much reflection, I now have little doubt that facing grueling competition week after week prepared the Gators to become the national champions. It was this realization that God used to teach me two spiritual lessons directly related to my law school experience: 1) do not listen to your critics and 2) you can't overestimate the power of training.

As Christians, we will always have critics. I live in Washington, D.C., and I can assure you that our critics are not shy. They are quick to claim that we are uneducated, narrow-minded, intolerant and just plain mean. The legal profession has its fair share of critics as well. Christian lawyers and law students have a lot of people rooting against us and expecting us to fail.

If Florida believed the "experts" who claimed they did not have a chance, they would not have shown up for the game. We, as Christians, should learn from their experience. We should train to prove our critics wrong because God continually shows us how He works in spite of the world. In one of my favorite passages, Paul points out that God uses the weak things,

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**AS CHRISTIANS, WE WILL ALWAYS HAVE CRITICS...**  
**THE LEGAL PROFESSION HAS ITS FAIR SHARE OF CRITICS AS WELL.**  
**CHRISTIAN LAWYERS AND LAW STUDENTS HAVE A LOT OF PEOPLE**  
**ROOTING AGAINST US AND EXPECTING US TO FAIL.**

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the despised things, the things that are not to fulfill His purposes (1 Cor. 1:26-31).

Likewise, if we were expected to succeed, then we would get the credit. If the Florida team had been the heavy favorite, we would not be talking about their amazing victory. It would make sense. But, if we are expected to fail and we persevere, it has to be because of something outside ourselves. If we survive in the legal world while keeping our focus on God, people will have to figure out how we are doing something they are not. How are we able to face the temptations surrounding us? The answer is, of course, that we know the outcome and the Author of that outcome. We know that He has promised to direct our paths, even when it seems everything is stacked against us.

The Gator victory also proved to me the importance of training. If they only faced mediocre teams all season, they would have felt prepared. They would not have pushed themselves. This is a lesson that could (and should) change my life. I am sure there were weeks when the Florida players were frustrated by the fact that they had to go out and face yet another challenge. There had to be weeks when they were ready to give up, when they needed a break. I understand that more in law school than ever before in my life. I did not anticipate the spiritual struggles that would meet me when I got to law school. They have been the toughest opponents I've ever faced. The skeptics are smarter, the cynics are more devoted, and the loneliness is more acute than anything I could have prepared for. I'll take a stand for my convictions only to walk out and have to face a classmate who questions my core beliefs. I am forced daily to decide between the busyness that law school demands and the time God has called me to spend with Him, His people, and His Word. It seems that as soon as one struggle goes by, there is another waiting right behind it. I'm sure these opponents are

even more present and vocal in the practice of law. But, if tough opponents prepared Florida to win the "big one," maybe there is something on the other side of these daily struggles. God is showing me that hard is not always bad. So what if my beliefs are directly in opposition to almost everyone around me? God will use this to His glory.

My whole life I have read Jeremiah 29:11 as a verse for hope...and it is. But, you can't truly understand verse 11 until you read verse 10:

*"This is what the Lord says: 'When seventy years are completed for Babylon, I will come to you and fulfill my gracious promise to bring you back to this place. For I know the plans I have for you,' declares the Lord, 'plans to prosper you and not to harm you, plans to give you hope and a future.'"*

*Jeremiah 29:10-11*

The Babylon experiences do not naturally foster hopeful attitudes. I know because I'm currently going through one of the deepest struggles of my life. I do not have a job. I graduate in May, and God has chosen to keep His plans hidden from me. For the last two and a half years, I have known that God called me to law school. Now I wake up wondering when He is going to show me why. Every interview I go to, every person that asks my career plans, every rejection letter I receive is a painful reminder of the fact that I do not understand God's calling in my life. It is almost as if God chose a struggle that would go to the heart of my trust issues. In law school, an environment centered on professional accomplishment and worldly acclaim, He has left me in a place where I am without either. As difficult as it may be,

I have to live my life in the truth that God will use this pain to bring about His plans. More than that, He will use this time to train me to gain the characteristics I will need to fulfill His plans.

Although I know the truth in my head, convincing my heart has been a different matter. I want to feel sure of His provision. I say that I trust in His plans for me. Yet, when He does not reveal His plans for me, I live as if I do not believe He even has plans for me. I buy into the lie that if something hurts, it must be outside of God's will. I do ultimately know that if I'm seeking after God's will and struggling, I have to trust that God has a divine purpose that is worthy of my faith.

God will use all my experiences in law school for good, but I have to go through them first. I should look on the bright side: law school is only three years in Babylon, not seventy. I am in the training stages of what He has in store for me. If I persevere through this portion, I'll be prepared for the national championships in my future. If I give up, I might never make it to those championship games. The truth in this has taught me not just to put up with difficult opposition, but to be honored by it. The better my opposition, the better my training. The better my training, the better my chances to fulfill the plans God has for my life. And, what an incredible blessing to realize that the God of the universe has plans for me - even if they are hard - especially if they are hard.



Melissa Gardner is a 3L at Georgetown University School of Law. She received her Bachelor of Science from Oklahoma State University. Melissa is currently active in Georgetown's Christian Legal Fellowship, Just Praise Gospel Choir, and her local church.



## How Small Steps Can Make a Huge Difference

by Benjamin Tompkins

Austin entered the Central Union Mission's ("Mission") spiritual transformation program last year in order to get his life back on track. He was in his late thirties, divorced, and he had two kids for whom he wanted to be the best father he could be. Unfortunately, out-of-state criminal charges resulting from his alleged participation in theft and deception posed a stumbling block to making this transformation a reality. He eventually appeared at the door of the Mission's Christian Legal Aid office in Washington, D.C., looking for help.

A majority of the men staying at the Mission are either overnight "guests" or participating in a year-long spiritual transformation program that provides the opportunity for these men to turn their lives around. The faith-based program focuses on reformation, transformation, empowerment and finally, commencement.

The foundation of the Mission's program is a relationship with Jesus Christ. As the program states, "changes happen when the men are encouraged and taught to cultivate an intimate and active relationship with Christ." The program also helps the men develop the necessary job training skills that are essential to becoming independent productive members of society. Many of these men come to the Mission struggling with alcohol and drug addiction and other destructive behaviors. Through the Mission's rigorous program, the men can overcome their addictions and develop the skills necessary to become self-sufficient and productive.

Austin renewed his relationship with Jesus Christ through participation in the



*Austin Ballard*

program and began working toward transforming his life. He wanted to get a steady job that would enable him to support himself and his children. The program helped him develop the necessary skills, but many employers will not hire an individual who has a criminal record. Austin's predicament is typical of many men who have criminal records or who have been charged with crimes. Securing long-term employment is difficult if a particular job requires a criminal background check.

The out-of-state prosecutors had initially charged Austin with several crimes, but dismissed these charges before bringing him to trial. Although he was not convicted, the charges remained on his record and impeded his path to gaining meaningful employment. Austin came to the legal aid office in June and again in August, when I agreed to provide him with the necessary help to expunge his record. Though the requirements vary from state to state, an expungement is generally available to an individual who has stayed out of trouble for a certain amount of time or who was charged but not convicted.

An attorney in the city where the

charges had been filed graciously agreed to help Austin with this matter. After receiving my file, he ran the background check to show that Austin satisfied the state requirements for expungement. He then filed the necessary motion on Austin's record. The state did not oppose the motion, and the court granted the motion and ordered Austin's record expunged.

The filing of this relatively simple legal motion was all it took to clear the path for Austin's continuing transformation. The Lord provided an attorney in the city where the charges were brought and worked through him to provide the necessary assistance to file the expungement papers. While this process was relatively easy for Christian Legal Aid attorneys, the process took almost four months. For Austin, it was worth the wait. In November, I personally handed Austin the expungement order during our monthly intake sessions. The order brought a smile to Austin's face and became a concrete example to me of the difference we can make as Christian Legal Aid volunteers.

Small victories like these confirm that Christian attorneys should continue to provide legal services, as well as spiritual guidance, to those in need. No matter how small the service, we can make a difference in helping the clients we serve through the Christian Legal Aid Program.



Ben Tompkins is a Christian Legal Society member and Christian Legal Aid volunteer attorney. Ben Tompkins recently left private practice where he practiced financial services litigation to become a trial attorney with the United States government.

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## Invisible Hands and Albanian Judges

by Samuel E. Ericsson



*Sam Ericsson and Chief Justice Brozi.*

### VISITING ALBANIA

When we arrived in Albania that summer, the country was in shambles. The destruction by the former Communist dictator was seen everywhere. It resembled a poor, African country, where the average monthly income was \$40 per capita. Albanians had water pressure only a few hours each morning, and electricity was sporadic.

Atheism became the official religion of Albania in 1967, and most churches had been torn down or put to use as warehouses, bars or gyms. The main Orthodox Church in Tirana had been razed to make way for the Tirana International Hotel, where the secret police had used the top floor for interrogation and torture. Albanians who used to complain openly about the lack of bread in the stores could go to prison! Until 1984, an Albanian caught with a Bible, cross or crucifix faced a ten-year prison term. Teachers even played a game where their students would report to them the foreign radio programs they heard at home. Speaker of the Parliament Peter Arbunori, whom we met on our first visit, served 26 years in prison for being politically incorrect and a devout Roman Catholic.

### NO PAPER IN THE COURT

During our July 1992 visit, we met the Chief Justice of Albania's Court of Cassation, the Albanian Supreme Court. When we asked how we could serve him, he told us that the Court did not have any

### TWO FAXES

CLS member Roger Sherrard arrived at his law office in Poulsbo, Washington, early one morning in late March 1992 and found two faxes. One fax was from a missionary friend in Vienna, Austria. The other was from a stranger who was on staff with Youth With A Mission (YWAM) in Kona, Hawaii.

The first fax mentioned that Roger and I had visited Sofia, Bulgaria, a couple of times and inquired whether we could visit Tirana, Albania, to meet the Minister of Justice to discuss ethics. Ten minutes later, the second fax had arrived. The writer mentioned that he heard that Roger and I had visited Sofia, Bulgaria, and wondered

whether we would consider visiting Tirana, Albania, to meet the Minister of Justice to discuss ethics. The second fax ended with "for such a time as this," the oft-quoted verse from Esther. It was the verse Roger and I had chosen as our theme on our second visit to Bulgaria ten weeks earlier.

When Roger called me, he excitedly read the two faxes and asked what we should do. My response was that when you receive two faxes within ten minutes from opposite sides of the planet inviting you to visit the same country, go to the same city, meet the same person and discuss the same issue, you do not need to wait for a third fax! We decided to go to Albania.

**...WHEN YOU RECEIVE TWO FAXES WITHIN TEN MINUTES FROM OPPOSITE SIDES OF THE PLANET INVITING YOU TO VISIT THE SAME COUNTRY, GO TO THE SAME CITY, MEET THE SAME PERSON AND DISCUSS THE SAME ISSUE, YOU DO NOT NEED TO WAIT FOR A THIRD FAX! WE DECIDED TO GO TO ALBANIA.**

writing paper. Roger and I found several missionaries in Tirana who shared a few reams that we gave to the Chief Justice. It wasn't a Mercedes Benz, but he was very grateful.

### **HOW CAN WE SERVE YOU?**

A few months later, Roger's law partner, John Johnson, went to Tirana and met the new Chief Justice Jozef Brozi, a bright 34-year-old, former law professor. When John asked, "How can we serve you?" Justice Brozi told John that it was difficult to run a Supreme Court, with 36 district courts, without a fax machine. John bought a fax in Tirana and gave it to Justice Brozi the next day, which led to the two of

them spending 12 hours discussing how Advocates International could help Albania rebuild its judiciary. By the end of the day, Justice Brozi invited Advocates International to help organize the first judicial conference ever held for Albanian judges. Advocates International's cost to sponsor a national judicial conference was only three reams of paper and one fax machine. It was a very good exchange!

### **PLANNING STAGES AND A TIMELY CALL**

Over the next year, Roger, John and Justice Brozi, along with the involvement and help from former Washington State Supreme Court Chief Justice Robert

Utter and various other judges, planned the judicial conference set for August 1993. Several weeks before the conference, however, some American judges had to withdraw due to scheduling conflicts. For some reason, John called former CLS Executive Director Lynn Buzzard, a law professor at Campbell University Law School, to see if he had any ideas as to judges who might be available. Lynn was stunned. Sitting in his office at that moment was the first Albanian applicant to Campbell Law School, who also had been chief of staff for Albania's president. He was

*continued on page 30*

## **A Christian Alternative to the Court Room**



*"If any of you has a dispute with another, dare he take it before the ungodly for judgment instead of before the saints?"  
I Corinthians 6:1*



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the first Albanian that Lynn had ever met. Lynn recommended several judges.

### A COURIER IS NEEDED

Roger and John finally led the team of nine American lawyers and judges to Tirana for the 1993 conference. While they worked with Chief Justice Brozi on the program and assembled the team, my role was to get the conference syllabus translated into Albanian and printed in Northern Virginia. The staff at the Albanian embassy in Washington, D.C., helped with the translation.

I could not travel to Tirana because Advocates International was hosting a separate program in Bulgaria at the same time; therefore, we needed to get the 160 syllabi to Philadelphia so a judge from the “city of brotherly love” could take them with him to Tirana. We planned to hire a courier for \$250 to ship the boxes that day. Meanwhile, I was hosting three Russian lawyers later that day in Washington, D.C. While we were eating lunch at the Union Station food court near Capitol Hill, we found a five-chair table in the crowded food court with four empty chairs. The man in the fifth chair invited us to join him as we introduced ourselves. The man turned out to be a seminary professor who had a two-hour wait before his train was to leave – for Philadelphia! When I told him of my need for a courier, he offered to take the boxes to Philadelphia *gratis*.

### JUDICIAL ROBES

The 1993 Albanian judicial conference was such a success that Chief Justice Brozi invited us to plan a larger conference for 180 judges the following year. He also asked whether we could arrange for those 180 judges to receive judicial robes, because robes had not been used during the Communist era. The price tag for one American judicial robe was about \$500, and we did not have \$90,000 for this project and did not know how to fund it.

Back in Seattle, Roger and John heard that the University Presbyterian Church (UPC) near the University of Washington had redecorated their sanctuary. The old black choir robes did not go well with the church’s new décor. Roger and John met with the missions pastor at UPC who

gladly gave them the 90 choir robes so that we could “convert them” to Albanian judicial robes.

### AN ANGEL AT THE TICKET COUNTER

Roger and John packed the 90 high quality robes in about a dozen boxes. As they checked the baggage at SeaTac Airport, Roger was concerned about excess baggage costs for the robes as he handed the eight packets of tickets to the petite woman working the ticket counter. After she had put all the boxes on the conveyor belt and given Roger the ticket packets, he asked about excess charges. She replied, “If I can lift them, they’re not excess.”

When Roger opened his ticket folder at the boarding gate he found the following verses stapled inside the jacket: *Trust in the Lord with all your heart and lean not on your own understanding; in all your ways acknowledge him, and he will make your paths straight. Proverbs 3:5-6.* Apparently, an angel of mercy worked the ticket counter at SeaTac Airport that day. The 90 robes were en route to Tirana *gratis*.

### A JUDGE'S PROMISE AND THE LORD'S ANSWER

On the first morning of the three-day, 1994 judicial conference, Chief Justice Brozi greeted the 180 judges and told them they would each receive an American judicial robe at the conclusion of the conference. Roger and I had not told him that we had only 90 robes. The next day, the chief justice repeated his statement that every judge would receive an American judicial robe the next day. Roger and I both prayed.

Before the proceedings began on the

third day of the conference, Roger and I met with the US Embassy liaison who had helped with several logistical matters. At the end of the meeting, she excused herself to go to the airport. Roger and I returned to the conference with no idea how we would deal with the 90-robe shortfall that needed an answer in less than three hours.

About thirty minutes before the end of the conference, the embassy liaison returned to the conference center from the airport. She carried with her a dozen boxes of 90 high-quality black choir robes from a church in Pennsylvania! Roger, John and I have no doubt Who was behind the shipment, but to this day, we do not know which church sent the robes to Tirana. Praise the Lord!

Since that time, Advocates International has helped organize over a dozen Albanian judicial conferences and training seminars. The most important thing we have learned in that time is that we can do all things through

Christ who strengthens us – including organizing Albanian judicial conferences.



An immigrant from Sweden, Sam Ericsson is a graduate of Harvard Law School. He practiced complex business litigation in the 1970s and was the executive director of the CLS through the 1980s.

He is now the president of Advocates International, which he launched in the early 1990s to create a global network of lawyers committed to religious liberty, human rights, conflict resolution and ethics.



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## RETHINKING THE WALL OF CHURCH/STATE SEPARATION

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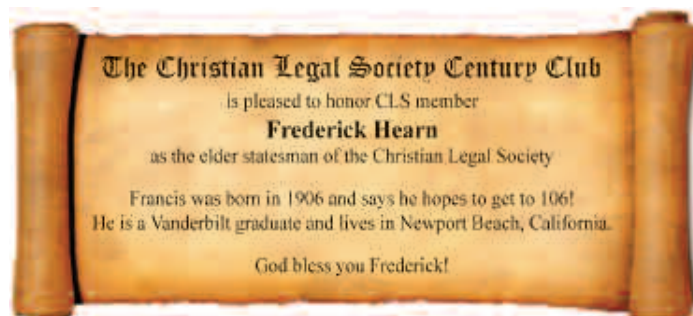
The Christians and Deists who participated in that convention held in common three politically important religious convictions:

- 1) God rules the world and guides peoples and their governments with His providence.
- 2) Morality is rooted in religion and cannot long survive without it.
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**D. James Kennedy**  
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from the jerk in the driver's seat. Some "new creature" I turned out to be on the road that day. And, of course, the next time my daughter got in the car, she asked with a sad face why her present to me had been torn down. Her only thought was that maybe I didn't like it.

For days, the cross just stayed on my passenger seat. I continued to look at it and wonder, where was that "new creation"? How can I fix my attitude and actions so such embarrassing acts are a thing of the past? And why, like Paul in Romans, do I keep doing the things I do not want to do?

While reading through the articles of this issue, I realized that we are all criminals at heart – evil (as Jesus even called his disciples in Luke 11) – and deserving of death. If it were not for the amazing love of God, who first loved us, there would be no hope. It is this love that I need to realize in my life.

Jacob of the Old Testament worked for 14 years to gain the hand of Rachel in marriage. The years were like days to Jacob because of his love for her. Similarly, in Gethsemane, Jesus was willing to go through the pain of the cross because of His amazing love for His bride.

It should be the growing reality of that truth – the true love of Christ – that should change my life (and my driving) and that truth ALONE. It cannot be from some kind of self-salvation, self-sanctification process. I will always fail on my own. It is time for a different kind of radical driving for me – driving this truth deeper into my life where it will change my life.

I'm sure that the road is long and that my sins will clutter the highway and keep the driving to a minimum, but it is time to get the right car on the right road and, besides, it is time to put some of those aggressive driving skills to eternal use – down deep. And the first thing I will do, re-hang that cross on my mirror. It's the only hope I have.

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David Nammo is the director of Attorney Ministries and Law Student Ministries for the Christian Legal Society.

On any given Sunday, especially after a particularly good sermon, I often get inspired to go out and change the world for Christ, that is at least until I get behind the wheel of my car. The conviction held just moments earlier seems to melt like ice in the frustrations of traffic, sometimes even before I leave the parking lot.

I am prayerfully trying to be less aggressive and more forgiving in traffic these days (although I still haven't put that "fish" on my car). However, I was recently trying to merge onto a local highway one morning while stuck behind a car that had decided to merge onto the expressway at about 45 mph. It was one of those moments where you fantasize about having a "monster truck" and the ability to ride over the car in front of you. (I realize I might be the only one with that fantasy).

Needless to say, I laid on the horn – as if it was going to make them go faster. And the moment I had the opportunity, I swung my car

around them with my wheels on the line – forcing them to slow down even more and move over the shoulder – and sped past them. As I raced alongside their car and approached the driver's window, I suddenly became aware of this flapping piece of foam in front of my face.

Hanging from the rearview mirror was a Sunday school gift given to me weeks before from Olivia, my second daughter. It was a purple, foam cross with the word "PRAY" on it. Although instantly aware of the disgraceful witness I was displaying, I did not slow down as I should have done. Instead I did the shameful thing – I tore down the cross from the mirror. All I could think about was what an atrocious witness I was being at that moment and what those people would think of this "Christian" when they looked over and saw the cross.

Needless to say, just moments later down the road, I came to my complete senses. There on the passenger seat was the cross, just a foot away

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