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*A Change of Venue: Joseph Smith's Escape
from Liberty Jail*

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[This was a graphics rich presentation. This transcript does not include slides from the presentation. You can view them in the video of this lecture on our Youtube site. Links provided below.]

JEFF WALKER: Thank you Br. Morris for that great conversation on Oliver Cowdery. I share a love for him, of course he was a lawyer and we have to keep our friends close. He turned 200 last year and as we contemplated what we might do to celebrate his great birthday after all the pageantry and necessary things we did for Joseph's we decided to look at his life a little more closely and I think it's a look that's long overdue. I actually had the opportunity to spend some time in Tiffin (Ohio) and we actually located over 2,300 hundred pages of his legal practice as he practiced there for nearly ten years. It's quite astounding to first realize how poorly lawyers' penmanship is but how beautiful Oliver's penmanship was and you could pick his handwriting out from almost every court document. As a matter of fact his partner Joel Wilson often had Oliver pen his briefs for him because his writing was so elegant which only makes sense he would be the primary scribe of the entire Book of Mormon.

I'm happy to be here today and talk about things that are not always pleasant in Church History but things that probably have not been considered close enough to understand some of the nuances that might make them more real to us. Certainly

the persecution in Missouri was a dark period for the Church. Some of the darkest times for Joseph as he would spend those months after months in Liberty Jail—a jail that he could not even stand upright in. I had the opportunity last year to actually give a talk and the patrons while very nervously watching allowed me to stand in the same area in that jail where he lived for those six months and what a tender and choice opportunity to realize that some of the most sublime scriptures would be received in that 14x14 room.

I remember when the last verses of Doctrine and Covenants 123 always caught my attention. At the very end of those great Liberty sections, the Lord counseled Joseph, and maybe all of us, to go about our lives doing all that we can cheerfully and then being willing to stand still and watch the arm of the Lord revealed. Certainly that was a challenge for the Saints in Missouri during the 1830s as well as for us today in our places.

Today I would like to talk a bit about what has often been referred to as Joseph's escape from Liberty.¹ I'd like to change the title if I might because I do believe maybe a better title for it would be *Joseph's Release from Liberty* because I believe once you start looking at the facts more carefully and concertedly only one conclusion can really be reached and that is that Joseph and his colleagues never escaped on the way to Boone County but they were actually released with the complete permission orchestrated by the legal authorities in Missouri.

To understand that you have to go back in time and realize a bit of the history of what brought Joseph and his friends to Liberty Jail and what ultimately would drive the Saints all the way across the State of Missouri back over into Illinois to Nauvoo. We have to realize that early on the Church started in its very first missionary efforts to look for Zion; the very embodiment of Joseph's administration. He would send his most trusted friend and scribe Oliver who would bring his new convert the Campbellite minister Parley P. Pratt. They would have tremendous success, as they would work through that mission ultimately resulting in the finding of a place for the gathering of the Saints in Missouri in Independence.

In those first couple of years, from 1831 to 1833, dramatic increases of Mormons came into Jackson County and by the end of 1832 we had nearly 1,200 Saints living in this frontier outpost. With that growth came great persecution and trouble significantly caused by the nature of our faith, the nature of our political capacity, the nature of our economic desires. We would then find by July 1833 that the first of several forceful events would happen—this would be, of course, the burning and destruction of Phelps' home and business, the printing presses. Also we know that the good Bishop Partridge would be tarred and feathered as he sent Phelps and

his wife, who was expecting, out of town and told him I'll watch the house the best I can and so the good Bishop took the beating.

We know from that point they'll be driven just north that winter of 1833 up into Clay County. There they would stay just for a short period of time realizing that their stay would only be temporary and that they needed to find a more permanent solution.

Now you have to realize the Mormons, as we still are, are a very optimistic group and we also think pretty big; we don't think small and Joseph never thought small. He didn't think small of Missouri either but often we don't get in context exactly what was happening in the environment in Missouri at that time.

This is a map of Missouri in the 1830s to get an idea of what it looked like. Today, when you talk about Jackson County, the place of gathering, you would look at one area [refers to slide] that would be what Jackson County is today. In Joseph's day however, when he received the revelation that said buy "All the land which can be purchased in Jackson county, and the counties round about, and leave the residue in mine hand"² we're talking about a significantly greater amount of property. The reason that's important is because once we leave Jackson and this significant landmass that we were looking to start to acquire we were also looking for a replacement of that sort of landmass.

When we realized by 1835 and early in 1836 that we were not going to be allowed to stay in Clay County which was just north of Jackson that the citizens there, their patience and their willingness to accommodate us—we almost doubled their population in that county when we came so you can imagine having a visitor that would actually overrun the house—we realized that we needed to find a new place to try to settle. Realizing the problems that we had back in our Jackson experience, we decided that we would employ legal help to help us try to legally obtain land that would protect us and so one of the lawyers that we had retained during the Jackson expulsion was Alexander Doniphan. He had just become a first-term House member in the House of Representatives in Missouri, he was from Clay County; Clay County of course is where Liberty Jail is. He had replaced his law partner, Atchison, who had also been retained as legal counsel for the Church. Interesting, it would be his only term that Doniphan would spend in the Legislature; and he would do one significant piece of legislation. He was initially put on the committee, per his request, to be over the creation of new counties in Missouri and he would then sponsor a Bill to provide for the Mormons all of what he termed the unoccupied and unincorporated portions of Ray County and what that would include would be this area right here. Now if you look it, it looks pretty close, if you're Joseph and the boys trying to figure out a replacement property the

unincorporated portions of Ray County would be a pretty significant landmass and this is where Joseph perceived that they would be moving.

In fact, through the summer and fall of 1836 dramatic moves into these areas had already commenced. As a matter of fact I've gone through all the land records just in Caldwell County as of January of 1837 and found 205 residents living in Caldwell County. Over 170 of those were acquired all in 1836 and almost all of them were Mormons. The reason why that's important is because that county would not be created until December 29th of 1836 so before even the county was created Mormons were moving in dramatic numbers not only into the Caldwell County which was a negotiated deal but also up into Daviess County and into the surrounding counties.

The concept that has often been prescribed that the Mormons had made a deal to only be in Caldwell County and that when we left Caldwell County and moved into Daviess and others that we violated that deal and that somehow validated their claim that we should be driven out just doesn't factually fit what happened.

What happened in the reality, in the backroom deals that Doniphan was able to broker; he was only able to get a small county called Caldwell. Typically a county would have sixteen townships; Caldwell would only be given twelve. The bottom four would be the red area and those would be given to Ray County as a buffer zone and then they also incorporated Daviess County, which were sixteen townships. By this time Mormons had already been living in both the Ray County addition, the Caldwell County land (twelve counties), as well we were already in Daviess County even before these counties are made. This will prove difficult because there was some belief that we would restrict our movement.

Of course, those restrictions could not be in writing. You cannot find them in any of the legislative history. You cannot find it in any of the resolutions or agreements because of course such agreements would be unconstitutional. As U.S. citizens, you could not be treated like the Indians were being treated with a reservation; that we had the right to live wherever we wanted to live. Now while there might be places that would be easier they couldn't legally preclude the Mormons from expanding to any place that we had the money to buy the land.

Certainly by 1838, especially by the summer of 1838 when we were leaving Kirtland, there was going to be a mass exodus into Missouri and that is going to predominantly be focused at going into Daviess County and while we could spend time to understand exactly why that happened we know that there is a center of the Church in Daviess County which is known as Adam-ondi-Ahman—an early settlement settled by Lyman Wight that then was made to be the center place of

the Church in Daviess County just as Far West would be the center place of the Church in Caldwell.

These were major cities. We figure there was close to 5,000 people living in the Far West area. There would be about 1,500 people living in Adam-ondi-Ahman. These would eclipse all the other cities in these two counties and so as we know that would happen in short order. There would come a series of conflicts that would escalate starting in August of 1838 when you have the first elections happening in Daviess County and all of a sudden people realize that the Mormons are most likely going to vote in blocks and there is a local resident named William Peniston who founded Millport just about 10 miles south of Gallatin and he's running for office and he is running as a Whig and he's running against a guy named Josiah Morin, a former judge who befriended Joseph Smith and is one of Joseph's non-Mormon friends in the area, and it becomes pretty clear to Peniston that the Mormons are going to throw their vote with Josiah Morin and that Peniston has no chance of winning the election if that happens. That's why we have what we call the Gallatin Election Day Battle is that they were trying to preclude the Mormons from voting at Gallatin. As a matter they were making the claim that the Mormons were already being precluded from voting in Ray County and that they could just implement the same manner of precluding us there. They weren't precluding us in Ray County for anything we can tell but of course this becomes a skirmish. No one is seriously hurt, it's a fist-fight with a hickory stick or an oak stick—that's the biggest weapon brought out by the infamous Danites—but the reports are going to back to Jefferson City that the Mormons are starting to not only be a powerful group but they are starting to be a violent group.

Now these are going to then be exacerbated tremendously through the rest of the summer as people start trying to preclude the voting to go on and the elections that have now incurred of people taking their rightful office and it will result in really the only real battle that will happen of any military significance happening in the end of October when we'll have what will be known as the Battle of Crooked River.

The Battle of Crooked River, you have to understand that in these days you had state militias. These state militias were what kept the peace and were called out and today it would be such a rarity to have any of our National Guard be called out to hold the peace, but in these days it was a common practice and they were well organized. Every county would have their own; there would be a general commander, his name would be John Clark, he would be the general commander for Missouri reporting to Governor Boggs. Then you are going to have the regional commander—he's going to be over the whole northwest portion of Missouri—he's going to be a guy named Atchison; as a matter of fact he's Doniphan's law partner if you remember.

Then each county is going to have their own commander and that's where you get some of these famous people that most of you have heard of and try to figure out exactly where they fit in this story and you get someone like Samuel Bogart—a Methodist minister but also the commander over the Ray County militia. Bogart was a scoundrel in anyone's view and he sent word that after these fights up in Gallatin that he needed to patrol the buffer zone between Ray County and Caldwell and that he would guard that with his men. What he was really doing is, and we have numerous accounts, making raids and intimidating the Mormons up in Caldwell County and in fact he would end up kidnapping three young boys and word gets back to Far West and Caldwell that these three young boys have been kidnapped and the Caldwell militia, who just, parenthetically, would be Mormons, called out their militia and their militia went to go rescue the boys from the Ray County militia. They would then confront this all on the field on a little creek now known as Crooked River and that battle would take place.

Commander David W. Patten, a member of the Quorum of the Twelve, he's known as Captain Fear-Not because he supposedly had virtually no fear and he proved it at this battle losing his life. Two will be killed at the Battle of Crooked River—Mormons' David Patten and Gideon Carter. One Missourian would also be killed, a guy named Rowland.

There would be several injuries. As a matter of fact some of the injuries are very serious. We also understand that one serious injury was done by a corn sickle and while that's troubling for us we know that's often what we hear when we talk about the next big battle or the massacre at Haun's Mill in which then the same local militias—this coming from Livingston and Carroll counties are going to now invade into Caldwell County and attack Haun's Mill killing seventeen people.

These battles and these armaments are going to go up to the Governor, greatly exaggerated by our participation and our orchestration and that will be the result of Governor Boggs issuing on October 27th the infamous Extermination Order. This Order is going to then allow, under color of law, the legal expulsion or termination of the Mormons in the full State of Missouri—not just in the areas of Daviess, not just in the areas of Caldwell, but in all of the State of Missouri. So this concept that because we had expanded outside of Caldwell was the problem; they were not going to isolate the problem they were going to actually exterminate us out of the state.

Pretty much this would end up being a free for all for several days. The travesties that would happen to the Saints, the retaliations that some of the Saints would put upon the Missourians, would be recorded and then reported back to Boggs that would further justify the Order. He would also, interestingly, when they were

having—you figure if someone is going to be told to leave the State they'd be told to leave but that's not really what happened. They said, you're to leave the State but no one can move and they actually sieged the cities and they actually started moving everyone into Far West. The key reason they claimed, and General Clark was the one orchestrating it, was he wanted to round up all the key leaders who were involved that might be charged with any crimes. So after about October 31st to November 9-10th, the entire city of Far West was under siege—no one could go in or out. They were bringing people in.

In the end they would arrest 53 of our leaders. They would first take them down to Liberty thinking that's where they were supposed to be taken. Then they got instructions from Governor Boggs to take them to Richmond, to Ray County, thinking in part because that's where some of the crimes had happened because the Battle of Crooked River took place in Ray County so they were trying to find a place where they had jurisdiction to hold a hearing because in Clay County there was no alleged crimes having been committed so there would no jurisdiction to hold a hearing and that's where we have kind of the belated but beginning of my story of trying to understand what happened when we get to the Austin King hearing.

Austin King was a circuit judge, a state judge. He probably should never have sat on the case, the truth of it was, because his brother-in-law was killed in 1832 in the course of the expulsion of the Mormons from Jackson County and so he had an inherent conflict of interest. Most people would say that the court that he convened, or the preliminary hearing that he convened was, well Hyrum called it, 'a pretend court.' Doniphan—one of the lawyers, we had three lawyers working for us during this case—he would say that it wouldn't matter "if a cohort of angels were to come down" Austin King had already decided before the case even began what he was going to do.

Well we know that what would happen is that they would be all brought down into Richmond, this is where the famous story that Parley Pratt writes of Joseph rebuking the guards would happen in Richmond. They weren't prepared; you'd figure 53 men they had no jail large enough to hold them so they started tying down houses—nailing down all the windows and doors—and then chaining our boys to the middle of the floor and that's where they would stay and Parley would write of that great rebuke that stands in our history.

During the course of the hearing the case became pretty complicated. There are two good records of it; they were ordered to be published. One was published in 1841 by the Missouri State Legislature; it's a very interesting record in that in it not only is the Austin King hearing itself but it has a whole group of about 100 pages of correspondence. It looks like Boggs wanted to put all the correspondence

that he had received from his commanders in the field to help justify why they were in the situation they were in and I think he felt it did. Luckily for us we have that correspondence because it helps give us some insight in exactly who was saying what to when and to whom and some of the errors that they were making. So in the end, I believe as an attorney, it would be evidence one of indicting them for malfeasance rather than protecting them. He also attached a bunch of things on the back end of it of affidavits and other things never admitted into evidence so it was never considered but in some way to help poison the minds of the Legislature.

In addition the U.S. Senate ordered a copy to be made and another copy was made in 1841 that just includes the testimony that was given. However, early on in December of 1838, so just after the hearings have concluded, the Missouri Legislature was sitting and this matter was of course brought to them immediately by us, immediately tried to be defended by Boggs, and they actually put a committee together to start reviewing what had happened and the record that they had prepared, or that Austin King had caused to be prepared, they made a preliminary finding. Now they ended punting on this. They ended up deciding that they weren't going to make any findings until after the grand jury was going to be held the following April because how the procedures would work was this was just a preliminary hearing to determine if there was enough evidence to hold them and then you have to have a full grand jury hearing in which you determine if there is enough evidence to indict them and the grand jury would not be held until the following April because they only held them three times a year and it was scattered depending on the county you were in.

And so this group took a preliminary look and in the end decided not to issue an official ruling from the Legislature until after the April grand jury because they felt they would be exposing all the evidence out to the public that might, as if you could, poison their minds, but they did make an observation about the records that they were given. They wrote, this is on December 18th, they wrote, "They consider the evidence adduced in the examination there held, in a great degree, *ex parte*" what that means is that the record contains none of the cross-examination. When you have a witness that's on the stand they have direct examination and then you cross-examination to question their testimony—to put it to task. If you're ever going to now decide whether that evidence, that testimony was credible, you need to both examine the direct evidence of it as well as the cross-examination. But in this case, for whatever reason, Austin King decided that he would not record the cross-examination. So the only record now going to be reviewed is the direct testimony which is curious; and so they say it is *ex parte* meaning it's only one party, we don't know what the other people were saying.

But then they go, "and not of the character which should be desired for the basis of a fair and candid investigation." This is the Missourians talking about their own

trial. “Moreover, the papers, documents, etc., have not been certified in such manner as to satisfy the committee of their authenticity.” And that’s because you had no shorthands in those days and so after a hearing which you have to create a record you would create the record and then you have to give it to the witness that testified and then they would have to sign under perjury of court that it’s accurate because that’s how you make it credible. Then you say, yes I was the one who testified and the record that has been prepared I reviewed and it is accurate in all material respects. Virtually none of the testimony in this record has been certified so even the Missouri Legislature doing a cursory look is saying it’s very difficult for us to determine what’s right and what’s wrong on this whole thing.

Well, even with all those flaws one needs to take a look at what happened and even with the problems that it has, a story is so clearly told.

The first thing you realize is the very page of this transcript, [referring to slide] this lists all the people that are being charged. The case starts out with 53 defendants and one of the premises of the law is that you have a right to know what you are being charged with because how are you going to defend yourself if you don’t know. But we know that Joseph and his boys were never given what charges they were being charged with until at the trial. Most of the charges were not even decided until after the evidence was on so how would you even defend?

But very curiously when Austin King prepares the order to the court, the transcript, the very fourth or fifth line notes exactly what everyone being charged with as if somehow that was all in proper form. To charge someone, you have to file a complaint; that complaint would have to go to be a warrant. That warrant then would bring someone to court in which they would then be told of it. None of those documents existed and there are so many people who have testified, who gives their account from Sidney Rigdon to Joseph Smith to Hyrum Smith and others that they were never—actually they asked on repeated occasions, what are you charging us with here? There are 53 men locked in houses. As a matter of fact we found correspondence as late as two days into the trial where General Clark is still trying to get evidence put together to decide what they’re going to do the next day (inaudible) because they only had really one key witness.

They would call 36 people but only one was their witness and that was a guy named Sampson Avard and he was the *Benedict* of our trial. He was the dissident Mormon who was the orchestrator of the Danite movement who, he would tell several people, that he was testifying to save his own skin and turn state witness and he actually pled with other members who were arrested, please go do the same thing or you’re going to be kept in jail too.

As a matter of fact Chandler Holbrook was arrested in one of those 53 and he was told that, if you don't testify to the State you will stay in jail. And he's famous, he said, not only will I not testify but "I will stay in this dungeon until the worms carry me out the keyhole, and then I won't."

Well what we learn is that a significant amount, over a third of those that would testify would either be dissident or clearly intimidated Mormons into testifying. Why do we know that? Well some of these people, like Morris Phelps, the fifth witness—he's a state witness—fifth guy on the stand, this has gone on for weeks these testimonies. They pull him off the stand after a half a day because he refuses not to defend Joseph, that Joseph was not involved in the Danite movement and so what would they end up doing? He would actually be charged with murder and so not only would he be turned from a state witness he would be charged, be made a defendant and one of the people who be actually jailed.

Now, we put on a few witnesses. Not very many, it looks like a pretty short list. The problem with that list though is that 53 defendants started at the start of the hearing, by the time the hearing was over we had 64 defendants because what was happening is that as we started bringing our witnesses in they started saying, well if you know so much I think you're a defendant. So all of a sudden Joseph called the boys off and said, don't call anybody else. Don't call anyone else.

Well that's the record that would happen. Then what happened? The end of it, they would look at certain activities happening both in Daviess County, the "salt sermon" of Sidney Rigdon in Far West as well as The Battle Crooked River would be the core events that would lead.

What were the consequence at the end be? The consequence would be that the majority of the boys, 26 of them, would be released. Held in court for almost three weeks, in the jail, chained to the middle of the floor and then found no evidence to support any claims against them. There would be a bunch of others that would be charged with arson, burglary, robbery and larceny for the burning of a couple of buildings up in Daviess County and intimidating a Justice of the Peace, a guy named Adam Black. They would all beailable meaning you could post bail and then come back in April for the grand jury.

Now this is a very curious situation to be put in if you're a Mormon because there's an Extermination Order that says if you stay or if you come back you're subject to be killed. So I don't know quite how this all legitimately worked but a handful of our boys actually came up with bail and look at the amount of money they posted: Two were required to post \$1,000; "Carn" (Daniel Garn) was asked to post \$750 and the rest of the boys were all required to post \$500. That was the only amount they could—those were the only ones that had money. The rest, the

column on the other side, those fifteen boys or so didn't have the money so they were to be held in jail but Samuel Bogart had a better idea because he knew that they had stuff. So he became, remember this is the captain at The Battle of Crooked River which is the core event that's leading to all these problems, he takes these boys under guard and becomes their bondsman and he goes up to Daviess County and has them deed their property to him and his colleagues to post the money for the bail so then they can be driven out of the state. In the end all these boys, none of them actually spent time in jail but they do lose. Ultimately, I will tell you as a footnote, the Legislature finds all of those deeds to be ineffective; that they were wrongful, so even the Legislature in the end couldn't condone that.

The other boys though were going to be held on nonbailable charges—this would include Joseph for treason; Lyman Wight, Hyrum Smith, Alexander McRae and Caleb Baldwin for the events taking place in Daviess County; treason on the part of Sidney Rigdon for giving the “salt sermon”; and then at the Battle of Crooked River where the one Rowland was killed they are going to charge five of our boys with murder although they had no evidence of who shot what just that these people were part of that militia and they will be held.

Now because there is no jail in Daviess or Caldwell counties because these are new counties they are sent to Liberty—that's the closest jail and that's why they are sent over to Liberty Jail. The other boys are actually sent over to the Richmond Jail and they will be tendered there.

Joseph then will spend, with the rest of his boys, almost six months in the squalor of Liberty Jail but as you would guess significant efforts were ongoing to try to get our boys out. Almost immediately we went to the Legislature that was sitting and so we initially filed multiple petitions but the main one being one that Heber C. Kimball and Brigham Young put together which asked for immediate relief; asked for the Legislature to immediately look at the cause both from Jackson because remember that this is now compounding, this isn't just an event of Crooked River or just an event of a store being burnt in Daviess County or a sermon being given in a town square in Far West—we've already been driven from our homes and lost all of our property in Jackson County without any redress so far. We now have an Extermination Order in which we have conceded to leave the county as soon as the weather turns en masse from the state and we are asking for them to look and that's what resulting in the Joint Committee being appointed who concluded that they weren't going to make a decision until after the end of the grand jury.

Joseph himself would write his own petition to the Legislature on the 24th of January, so now he's been in jail for almost two months. He will arrive in the Liberty Jail on the 1st of December, a “bitterly cold winter,” they say, “unusually cold.” And the problem was is that these small windows they had that would bring

in the air that they desperately needed also would bring in the cold and so it was a freezing cold winter. You can imagine him penning these lines that he would ask, not for you to change the rulings but merely that it's brought before some place not in this area where it would be a fair trial of them. They would be on deaf ears.

They had also made petitions to the courts. These would be a series of them. They would look for a writ of *habeas corpus* and very short, what that is saying, I need a new court to look at this to determine if everything was done right. You don't have new evidence, you don't put on a new case; you just say is there some systemic flaw in what's been done below? And they made those petitions; all of them were ineffective.

In some ways I don't fault the judges because the only thing they could rule upon was from the evidence of the record and the only record, first of all no record was initially sent so the judges would say, I have nothing to rule on. But then as soon as they start seeing the record—there's no cross-examination, there's no full testimonies—how to re-evaluate an incomplete record? Joseph and others will even write to the Missouri Supreme Court seeking redress; none of it to come to fruition.

In the end, Sidney Rigdon, which is such an interesting story but for another occasion, he gets himself out of jail at the end of January and there is a lot of speculation of why, of how he got himself out? I have my own opinion but God bless him for getting himself out and getting himself out of Missouri and I'm glad that he got himself out and I bet Joseph and the boys were glad he got out too but it was probably a bittersweet day when the jailor comes at night and opens the jail and lets Sidney out and then closes that jail and the five of them are still left in.

By April now would be the time of the grand jury and so they would be moved; they would be moved from Liberty then they'd have to go up to Gallatin, which would be the location. So after those months, after those writings of the Liberty sections of the Doctrine and Covenants, the petitions to the courts, the letters to the members, the driving majority of the Saints—now as a matter of fact during this period of time is when Brigham Young would take his firm footing and he would start what we would ultimately learn in Nauvoo would be called the “Nauvoo Covenant;” that covenant they would take all the poor with them to the West. Brigham Young had that same covenant used in Missouri as he put the people on covenant that they would take their people and not one of them would be left and he started that great caravan of tears.

Well when they get up to the grand jury, there is going to be now a full grand jury. The grand jury had to be between twelve and twenty men who owned property in the county and they had twenty. It was a popular thing! Now the first thing is just

who the jurors were. I think it's always interesting to me. First of all you've got two guys that are kind of curious to me. The foreman is Robert Peniston and his father Robert P. Peniston. Now who is this? Well, you've got William Peniston who is the guy, remember in the Gallatin election battle? He's the guy running for office. That's Robert's brother. And in fact one of the core indictments for arson and for burglary was the burning of William Peniston's home. So how could you have these guys sit on the jury? These guys can't sit on this! Their brother and their son are part of the key witnesses to try to indict them.

Well it even gets better (or worse). One of the main defenses that the Mormons are going to raise was going to be the Haun's Mill Massacre. If you want to say that we somewhat got ourselves a little out of control for a couple of minutes; well let's just put some perspective on this—let's talk about what happened at the banks of the Shoal Creek with the corn sickles and the young boys killed; let's talk about if we made some mistakes, like Joseph said to them, let the law take its course. But you have to put it context what was happening.

Well unfortunately three members of that jury were known people in the mob at Haun's Mill. As a matter of fact the one person that testified on it—now grand jury testimony is secret. We don't have who all the people were but you get people like Hyrum who is keeping notes and he notes that during the second day of trial, Stephen Markham comes up and he testifies and Hyrum writes every name of the people killed at Haun's Mill in his journal that day. I can imagine he knew all of them and so we know that was part of the testimony. We know that Nathan Blakely was so upset that Markham testified of those things that after that day's trial he assaulted him and Joseph had an impression that night—I don't think it would be a very hard impression but it was an impression—that maybe Markham needs to leave town; that these guys are going to do him great harm if he stays.

If you remember after two weeks of a very, very intense trial up in Richmond five men, six with Sidney, are going to be held guilty of treason; a very complicated crime. The reason they wanted it is because it was nonbailable. They could hold you in court.

Well here in a day and a half about of testimony they are going to indict 41 men of treason including the original ones. Now that's curious and I'm going to spend about three minutes on this; Gordon Madsen has written a very excellent article talking about treason in early America. There are others than have and it's a very important concept because I believe it roots to the cause of action they tried to have against our prophet. This is the statute of Missouri; it is matched exactly to the U.S. Constitutional statute. Most crimes are reduced to statutes—the Legislature enacts them but because, as you would guess, as our Founding Fathers founded our country the issue of treason was a very sensitive one because in fact

all of the Founding Fathers may be guilty. So they decided rather than leaving it to the Legislature to enact these laws they would do it as a constitutional—part of the Constitution—and each state that adopted it, adopted it as a constitutional provision.

Now there are a couple of big cases that happened that give us some definition of it and the most famous and most important case was the Aaron Burr case. Remember, he's the guy who was vice-president; he is famous because he had that duel with Alexander Hamilton. Now what a lot of you don't realize is he was charged with treason because he tried to break off the western parts of the United States and Mexico into its own country and he had actually raised an army to do it. He had also sought assistance from the French and he sought assistance from the Spanish and he was actually actively putting an army together. And the issue was did he commit treason when it was found out?

What Madison and Marshall, head of the Supreme Court, ruled on these looking at Madison's writing in the Federalist Papers is that it has to be narrowly construed and you cannot have any conspiracy theories with treason. Treason requires an overt act with two people and that means that if you conspire, if you promote it, if you try to assemble it, if you try to enlist it, unless you're the person physically carrying the gun there is no treason.

As a matter of fact the doctrine of being an accessory, being treated as a principal, we often refer that in the law as the spoke and wheel theory that if you are connected to the spokes in any place you are connected to the wheel. That means that all accessories are principals specifically not apply to treason. Everyone has to act as an individual.

Now the reason why I thought that was curious is then you think, well what did the indictment say about those 41 men? Who were the two witnesses of the same overt act for each of these people? And the most bizarre thing I found, as a matter of fact I looked for transcripts and then people say—

I want to make a footnote, would they have known about this law? Right? Maybe I'm just being picky because I'm a lawyer and I get paid to be picky! But, you know in all that correspondence that they attach to the front end of the stuff that they put into the Missouri Legislature? If you go through and look at the correspondence I find it when they talk about the Arron Burr case. Clark is talking to Boggs, is talking to King, that they all know that the Burr Case is the law of the land. Now whether they understood all of it? But clearly they were aware this was the law. Why do I think they know that also? Because when I look at the indictments themselves, there are blanks. Now you can't see that very well can you [slide] so I can say what it says whatever I want (laughter). But I will tell you

what it really says: These are all allegations of acts—the dates are all left blank because they don't have any dates to fill in. Throughout it there is no evidence of when the acts that they were going to claim were treasonous occurred, with whom. Kind of a problem? You kind of think, if I was them I would've filled something in before putting that in the record but there it sits some of the indictment of this charge available.

Well, Joseph is desperately worried. Desperately wanting to get the Saints to get his trial moved and so we know very early on in his petition to the Legislature he noted that we believe that a state of excitement exists in most of the upper counties is such that a jury would be improperly influenced by it saying move it to some place else. At the end of this when they all get indicted their lawyer is again asked, please change the venue so we can get tried with some legitimacy; but they had a problem because what the law required was that to get a change of venue you had to not only make a plea for it but you have to set out in the last paragraph the truth that allegations be supported by an affidavit of any credible disinterested person.

What are you going to do? Well, what you're going to do is you're going to look to Markham because he solved it for us because one thing we know is that there was a new act enacted. It was enacted on March 21st 1839 in that very session of the Legislature and what did it do? It removed the requirement of using a disinterested person and said it could be, "verified by the affidavit of the defendant." Do we think the lawyers understood that? Well we know that Markham rode a hard horse, they tell us, he rode through streams and arrived among us in the afternoon and spent the evening in our company. Br. Markham brought us a written copy of a statute, which had been passed by the Legislature giving us the privilege of a change of venue on our own affidavit. Do you think that was going to work? Do you think they would have good cause, was it well supported? The judge denies it.

Then, the rest of the story because who was the judge? That's when it gets curious because when you look at the front matter of these correspondence, right, that they've attached to the Legislature, you start realizing that this guy named Thomas Burch is a good lawyer and entering into this matter with his whole energy. Who is this Thomas Burch? He's the prosecuting attorney. You then further look on where they've attached all these affidavits that were just not properly introduced at the hearing, all these affidavits were taken by the honorable Thomas C. Burch the circuit attorney in the judicial circuit. He was the prosecuting attorney at the Austin King hearing. He is now the judge at Gallatin between November and April he had been made judge and not only just any judge, he was made a judge for Daviess County and he sat as the judge over this entire hearing. Maybe a conflict? Well even Thomas Burch could not deny. And the lawyers tried to make the move with these new affidavits that (inaudible) is going to work and the judge denies it,

they say, but your honor, doesn't the law say that the same shall be removed where the judge in anywise interested or shall have been counsel in the cause. He had no choice. And he grants the change of venue in every single one of the indictments involving our five boys. And it was ruled, this is one of them, that the reason was that the judge of this court has been a counsel in the cause and they move the case to Boone County, to the Columbia, in the middle of the state.

Now they take several days, Sheriff Morgan is going to take a couple of deputies with him. He's going to take some we would know, Bowman, we know he was the former sheriff of Daviess County; we know Brassfield, he's an interesting deputy he was the guy that wrestled Joseph at one point. They had a little wrestling match, did some entertainment and threw him several times. Now these guys are out and they first take him up, they take several days to get where they are going. They don't seem like they are moving very fast. It's about 100 miles. The first day they go five and they take them out to Bowman's house to get some horses and supplies. The only thing that's weird is it's really not Bowman's house—he is living in Lyman Wight's house that he took at Adam-ondi-Ahman and Lyman Wight is one of the prisoners. So he's saying, I've got to stop by my house, I can imagine Lyman going, YOUR house? This is MY house! But nonetheless kind of a little awkward, they get some extra supplies.

The next day they go seven miles. Not in a big hurry. They go to Millport. Where do they stop? They stop at Josiah Morin's house—the friendly judge. Well it's raining one day so of course they've got to stop. But they do go and by April 16th they get to a point where, our reports are, Sheriff Morgan said, I'm not going any further. I've gotten you out of the way of all of the mobsters in the counties. We've now entered into a new county and in this county now you are free to go, I'm going no further. Well he used some words that Hyrum keeps putting blanks on so you have to kind of guess but, he's saying I'm not going any 'blank' further you kind of get an idea of what he was saying.

So then there's a curious part of the story, that's the part of the story that Joseph says we then had this whisky that we bought and they all drank it and they all got drunk and we walked away. Well of course Morgan several months later, he comes back to town and everyone wants to know, they had gotten less than a third of the way, he gives an explanation. Morgan gives an explanation and he tries, he doesn't write very well, but he does say, that the Smith, Wight and others made their escape without the common consent or negligence of myself or said guard. Well, if I was the sheriff, that's what I'd say and I'd stay with it!

Now what did the citizens of Gallatin think? Well they actually were so mad about this that they filed a petition. Now in part the petition says, we don't think the law will reach these guys, these sheriffs, and so we're going to take actions in our own

hands. We're petitioning for you to fire them. And in part he says, wherein many reports are in circulation relative to the escape of the Mormon prisoners from the sheriff of this county which have created and confirmed the suspicion of this meeting that their escape was not accidental nor unavoidable but on the contrary from the facts within our knowledge and all circumstances taken together we are forced to accept the opinion that they were willfully set at liberty.

Now, that could be exhibit one but you know everyone wants to find the smoking gun in a case—they want to have that silver bullet. What is going to just win the case? Would this win the case? Probably to be honest! But, would I have anything better?

Well we know that Joseph and the five of them left off on two horses and they say that they took turns. Now sweet Joseph said he didn't take the first turn which I think is so cool but I wish he would've because you remember he said by the time that first day he had run so hard and he took his boots off his boots were puddled with blood from running so hard so you wish, you just say, Joseph get on the horse, you know you're the prophet. Lyman can walk for a while but we know that they had these two horses and where did they get the two horses well that's the smoking gun. Because what we have found is a promissory note.

A promissory note to John Brassfield dated the 16th day of April 1839 for \$150. So I don't how the conversation went. Maybe it went with something like, well what do you need for these horses? Well I'm going to need \$200. Joseph's like, okay John I've got \$50. Heber C. Kimball we know gave him some money. That's all I have will you take a note? Okay. He takes a note.

Now what's funny is almost four years later Joseph makes a very short entry into his journal, he says, "Mr. John Brassfield, with whom I became acquainted in Missouri, called on me and spent the day and night."³ His son Joseph Smith III had a little bit of memory of that, he said, "When Father came to Quincy from his imprisonment in Missouri he brought with him a fine saddle horse—a dark chestnut sorrel stallion, named Medley, which he had obtained from the men who guarded them at the time of their escape. From circumstances which I remember in connection therewith I have reason to believe it had been purchased at a good figure. Whether or not Uncle Hyrum had also secured a horse I cannot now say, but I remember that after the passage of some time, two men came to the house to see Father, one of whom was named John Brassfield. I understood at the time that these men had come for the purpose of collecting the amount of the bribe for which they had allowed the prisoners to escape."⁴ So actually John Brassfield comes and collects on his note.

I've wondered why Joseph doesn't tell this story better and why it's left to his sweet son because sons do this right? They just tell people how it is and the spin that you might've put on it gets fractured a little bit. Why? Because Joseph had one seminal quality and that was loyalty and I think what hurt him the greatest was when people showed a lack of loyalty to him, to the Church, to the Lord.

The most bitterest of times was when William W. Phelps would testify at Austin King's hearing against his friend and when he would then afterwards ask for that forgiveness saying the mote was in his own eye and Joseph would pen those poetic lines, ". . . for friends at first are friends again at last"⁵ is because he valued loyalty and what do you think he had said to John Brassfield and Bowman and Morgan? So you guys are going to let go right? Yes. How far do we have to go? Just a little bit further, I don't want to go any further. I've got your back. I don't know but it makes sense to me because at the end of the day the only thing that the people really wanted was to drive our people from the state. They had accomplished that and then it was time that their sweet prophet joined them and even though those shoes might've been bloodied he came stronger and wiser and a better man because he learned how to do everything he could cheerfully and then he let himself stand still and watched the arm of the Lord be revealed.

These are great stories and perhaps all the legal nuances are more than most people want to know but for me, it gives me the reality of the qualities that he acquired in the trials of his life. Thank you.

Q: Who was giving Joseph Smith advice?

JEFF WALKER: Joseph would have a whole bank of lawyers; we figure we spent over \$5,000 in legal fees, so a tremendous amount of money was spent. He had different lawyers at different times. We know while he is in the Austin King hearing, first of all, who is representing whom is very complicated because you have 53—now 64 defendants. They would all probably want to have their own lawyer. There's four lawyers representing all of them. But Joseph would definitely claim to have Doniphan be his friend. Doniphan you remember saved his life when he was arrested and they tried to have him killed at a court martial. Doniphan was a friend of him.

As a matter of fact many believe that Alexander Doniphan, that Joseph actually names a son after him—Alexander Smith—after his friend the lawyer.

He had different lawyers at the grand jury. He actually would have a lawyer named Peter Burnett. Peter Burnett would have been a journalist who was at the Austin King hearing and actually writes about it and by April 1839 when they are

up at the grand jury he is acting as his legal counsel. A very capable man, he will end up being Governor of California.

Q: After the Extermination Order got issued what atrocities do we have recorded that were done against the Mormons?

JEFF WALKER: You first have to remember that the Extermination Order came after Haun's Mill. There is no evidence that these men seemed to have any belief that it had a call of authority to meet the atrocities at Haun's Mill under the purview of the Extermination Order. It was pretty much fair game from the period between the 30th of October under the 9-10th of November and so the atrocities are listed, as a matter of fact remember while Joseph is in Liberty Jail part of the revelations he received is the revelation to have people pull together their petitions and to petition the government. In the end over 770 separate petitions will be filed and lodged with the U.S. Government to itemize; that's been published by Johnson⁶ and he's done a fabulous job. We made I think maybe three maybe four separate attempts in getting some redress out of Washington as evidenced by those redress petitions.

Q: Do defendants who were coerced to sign over their properties as bail now own their properties?

JEFF WALKER: My belief is that there were clouds on all the title of property in these counties and even to this day I think there's a legitimate claim that there could be clouds. For example, when you incorporate a city you dedicate the streets to the state. You don't own your streets when you have a city they are state-owned. Well, Far West was fully incorporated so now all those farms in Far West there are slices of roads through all those farms that they don't own, they still are owned by the state because that city has never been revoked and all that land been turned back over. That's an easy example.

The second is I believe that they lost all their property through legal recourse in most cases. In most cases what happened is that they would not pay property taxes or assessments after we got driven out and so then they would lose their property at foreclosure sales or individuals would claim that they owe them a small amount. You know, you owe me \$7.10 for stuff I did and so you bring a lawsuit against him. You get a judgment because he's in Illinois; he says I can't even come to the state because there's an Extermination Order still in place and you get a judgment and then you attach that judgment to his property and you collect on the judgment by getting his property.

Now there was some concerted efforts that we made to try to keep some property especially in Jackson because remember that was sacred ground. Over time Bishop

Partridge had a lot of that property because he was the Bishop; he will die in Nauvoo and then his wife actually will go back to Missouri with instructions from the Church. She'll try to salvage some things; eventually we'll lose them all.

The bigger question is, I believe, that because of the Extermination Order none of those judgments would be deemed valid because if you're legally precluded from going into the state to defend yourself how can you have due process of having those judgments validated and I believe the statute of limitations would be told or stayed as long as that Extermination Order was in place. But we know that the good Governor of Missouri in 1976 he rescinded as a note of good faith and good effort; that he rescinded that Extermination Order and the healing that was all necessary because the Church is strong there, the Spirit is strong there. If you go there with the missionary work that is going on, the temple work that is being done there and so of course all those (inaudible) need to be done and those official things that the state needed to do, needed to happen. But on a very technical legal matter I believe at that moment the statute of limitations began to run and the statute of limitations were eight years and so eight years after that all the legal claims that anyone might have after that time would be lost.

I'm confident that no one could have ever succeeded but the intellectual exercise of thinking that you could try is interesting. But the truth is that the healing is necessary. That the events are never to be forgotten but the healing as was so beautifully spoken of earlier today, needs to go in many quarters and this is certainly one of them, which I think we've done a pretty good job.

Watch the video of this lecture on our Youtube site at:

Pt. 1- http://www.youtube.com/watch?v=E_dL9frHG7g

Pt. 2- http://www.youtube.com/watch?v=iI_UY1BrmaE

Pt. 3- <http://www.youtube.com/watch?v=aMni8VUu-aY>

Pt. 4- <http://www.youtube.com/watch?v=MU2aGCFWk9w>

Pt. 5- <http://www.youtube.com/watch?v=kCwxE1ZD2cg>

Pt. 6- <http://www.youtube.com/watch?v=lPHn3mpaRCY>

[Transcriber's endnotes.]

¹ Further reading:

● Gordon A. Madsen, “Joseph Smith and the Missouri Court of Inquiry: Austin A. King’s Quest for Hostages,” *BYU Studies* 43:4:92–136.

[<http://byustudies.byu.edu/shop/pdfsRC/43.4Madsen.pdf>]

● Alexander L. Baugh, ““We Took Our Change of Venue to the State of Illinois””: The Gallatin Hearing and the Escape of Joseph Smith and the Mormon Prisoners from Missouri, April 1839,” *Mormon Historical Studies* 2:1:59–82.

[http://www.mormonhistoricsitesfoundation.org/publications/studies_spring_01/MHS2.1Baugh.pdf]

² Doctrine and Covenants 101: 71.

³ *HC* 5:290.

⁴ Joseph Smith III, “The Memoirs of President Joseph Smith (1832–1914),” Mary Audentia Smith Anderson, ed., *Saints’ Herald* 81, no. 46 (13 November 1934): 1454.

⁵ *Documentary History of the Church*, 5:162

⁶ Johnson, Clark V., *Mormon Redress Petitions: Documents of the 1833–1838 Missouri Conflict*, Religious Studies Center, BYU, 1992.