


Fall 1988

## Clark Memorandum: Fall 1988

J. Reuben Clark Law Society of the J. Reuben Clark Law School

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# CLARK

MEMORANDUM

FALL 1988



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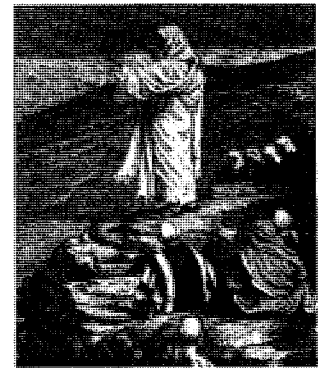
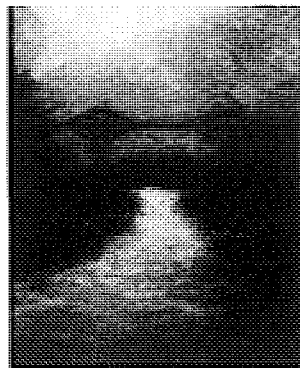
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# R E S C U E M I S S





# I O N

Pillsbury, Madison's Joseph Cannon set out to persuade Utah entrepreneurs to buy the doomed Geneva Steel plant from USX and retain him as their lawyer. Instead he launched a successful crusade to save the plant and its 1,500 jobs and ended up as president of the company.

It is a bright September morning in Orem, Utah, and Joseph Cannon—lawyer, Mormon, and now steel plant president—is enjoying the fruits of his year-long, faith-driven labors. Clad in steel-toed boots and hard hats, Cannon and a dozen plant managers gaze at

SUSAN ADAMS

ten-ton slabs of molten metal that come booming through the finishing mill, a 20-foot-high line of roaring black machinery. E.B. "Bud"

Patten, the broad-shouldered, gray-haired plant manager, has tears in his eyes. "This is a real emotional day for us," he shouts over the din. "This mill hasn't run in fourteen months and three days."

Patten is referring to a six-month-long work stoppage by the steelworkers and then the idling of the plant by its former owner, USX Corporation, putting 2,200 employees out of work. "Six months ago we thought there was about a 1 percent chance this would run again," says Patten, who was once a bishop in the Mormon church. "We thought we were all dead, and now we've been resurrected."

Patten's religious metaphor is appropriate. That the plant, known as Geneva Works, is running at all is, in fact, a kind of miracle.

Geneva is running again and providing much-needed jobs in the community because 38-year-old Joe Cannon—until recently a partner in the Washington office of San Francisco's Pillsbury, Madison & Sutro and now of counsel to the firm—pursued a seemingly insane venture: the \$40 million leveraged buyout of a failing steel mill at a time when the American steel industry was in deep trouble. An environmental lawyer who had never done a business deal in his life, Cannon found himself transformed from an intermediary into the deal's key player.

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As recently as July 31 of [last year] Geneva Works and the jobs of some 1,500 rehired workers looked to be dead in the water. Amid ultimatums and deadlines, a tense drama of delicate negotiations was played out, reaching a climax that involved Utah Senator Orrin Hatch, USX corporate chief David Roderick, and scores of lawyers, executives, bankers, and accountants

Joe Cannon doesn't fit the part of the big-time leveraged-buyout deal-maker. Plump and cheerful, he peppers his conversations with "golly" and "jeepers" and projects a casual, disarming style not usually associated with the mastermind of a risky, high-stakes takeover. Cannon says he never dreamed of becoming a businessman, let alone the head of a steel mill. The limits of his ambitions were always confined to the law. Recalling when he became a Pillsbury partner in 1985, he says, "My whole life—since I was young—I'd always wanted to be a partner at a major-league law firm."

A 1977 graduate of Utah's Brigham Young University Law School, Cannon decided to practice in Washington, D.C. "I really like Washington—power, fame, and glory," he says. After stints in the D.C. offices of Philadelphia's Morgan, Lewis and Bockius and then Houston's Andrews & Kurth, Cannon in 1981 joined the Environmental Protection Agency, where he worked his way up to

*Susan Adams is a writer for THE AMERICAN LAWYER. This article is republished with permission from the December 1987 issue of THE AMERICAN LAWYER. © 1987 THE AMERICAN LAWYER*

head the air division. In 1985 he moved to Pillsbury's growing, forty-lawyer environmental group.

His years in the capital did nothing to dampen Joe Cannon's American heartland style or weaken his strong ties to his Mormon faith. He belonged to one of Washington's Mormon networks, a group of government officials and professionals who maintained a community of fellowship far from the religion's natural center in Salt Lake City. He was a member of a Mormon congregation in Vienna, Virginia, the same one Orrin Hatch belongs to. (In fact, Cannon substituted for the senator when he was unavailable to teach his usual gospel doctrine class.)

Cannon kept up his close ties to Utah, too, where he'd been born into an old family of Mormon leaders (His great-grandfather was the state's territorial delegate to Washington.) He knew Utah's economy was faltering and that thousands of workers, many of them fellow Mormons, were out of work. Among the businesses and industries in trouble was Geneva Works. As an EPA regulator, Cannon had once toured the mill in Orem, a small city 50 miles south of Salt Lake City. Orem is near Brigham Young University, where he had spent seven years as an undergraduate and as a law student. There was a closer connection as well. While he was at school, his wife had worked as a secretary at Geneva. "The plant," Cannon likes to joke, "actually put me through law school."

Over the years, Geneva Works had played a strong role in Utah's economy. At

peak capacity the plant provided 5,000 of the most highly paid hourly wage jobs in the state—plus at least that many positions in allied industries. But Geneva was an economic anomaly: What was a full-fledged steel mill doing in Utah, far from major waterways and supply sources?

Built in the early 1940s by the U.S. government to supply steel to West Coast defense industries, the plant had been located in the Utah mountains to place it beyond the range of Japanese bombers. In 1946 USX—then called U.S. Steel—bought Geneva Works but never bothered to modernize the aging equipment. Still, the mill was well maintained and the work force was among the company's most productive. Over time, though, the plant evolved into a steel-industry dinosaur.

By the mid-1980s, the mill's future looked particularly bleak. Hurt by the influx of foreign steel, Geneva's profits declined along with those of the rest of the American steel industry. The main buyer of Geneva steel was another USX plant in California, but that market was scheduled to dry up. In 1985 USX had entered into a joint venture with a Korean concern to modernize the California facility. Geneva's steel wouldn't be needed after the project was completed in 1989. But closing the Utah plant would mean massive cleanup costs—estimates ran as high as \$30 million—and considerable political damage for USX at a time when it was struggling and needed a sympathetic ear in Congress.

One of the concerned

USX executives was Phillip Masciantonio, a vice-president in the company's environmental affairs division. Looking for advice from someone who had ties to both Washington and Utah—and to Geneva—Masciantonio thought of Joe Cannon, whom he had come to know during Cannon's tenure at EPA. In February 1986 Masciantonio put in a call to the Washington lawyer.

Cannon immediately understood the potentially devastating effect Geneva's closing would have on his home state. He volunteered to tap his Mormon business network. Says Cannon: "What I thought is, I'll call up some entrepreneurial types out in Utah, they'll buy the steel plant, and I'll be their lawyer."

But Cannon's solicitations to potential buyers met with instant rejection. They refused even to consider investing in Geneva. "Everybody said they thought it was the most idiotic idea they'd ever heard," Cannon recalls with a chuckle. But he received a more optimistic response from several steel industry consultants he knew through his work at the EPA. If managed properly, they told him, the plant had the potential to make money.

Joe Cannon turned to his brother Christopher, then an associate solicitor at the Department of the Interior. Only fifteen months apart in age, the two have always been close, though they offer a sharp contrast in attitudes and styles. While Joe had headed straight into a legal career, Chris instead had attended a year at Harvard's business school, then tried buying and running a trucking company before becoming a lawyer

Chris was a frustrated entrepreneur at heart, and as he talked with his brother he recognized in Geneva Works another chance to make it in business. He urged Joe to acquire the plant himself, volunteering to form a team with him. Even if they couldn't make a go of Geneva, Chris was convinced that purchasing the mill for its real estate value, scrap metal, and machinery would be a wise business move.

At first the idea seemed outrageous to Joe. He was no businessman. In nine years as a lawyer, he had gained only the most rudimentary experience in transactional work. But if he didn't act to save Orem's steel mill, who would? Using the information they had gathered from consultants, Joe and Chris mapped out rough financial projections on a chalkboard.

"It was a decision on two levels," Joe recalls "There was a heavy emotional component here . . . [but] I don't believe you can do a deal just for charity. The deal has to make sense."

The more Joe and Chris thought about it, the more the deal did make sense. There were several ways Geneva could become a profitable enterprise. One way was to remove corporate restrictions. USX distributes its overhead throughout its properties, and the brothers believed Geneva was bearing a disproportionate share. In addition, to avoid competition with its other plants, USX limited Geneva's market to the western states. All that would end when the plant was in private hands. More important, the Cannons



PHOTOS: JOHN SNYDER

intended to cut costs across the board—mainly by negotiating a new union agreement and lower-cost contracts with local suppliers.

The projections looked promising, but Joe hesitated. For one thing, there was his growing practice. "I thought, gosh, now I'm a partner at Pillsbury," he recalls. "I never really faced the decision of leaving Pillsbury to do this," he says. Instead he thought, "Maybe I can put it together and do the dealmaker part of it and somebody else will manage it."

Joe Cannon's uncertainty about his role at the firm was to continue for many months. Meantime he took decisive action: At a meeting in Pittsburgh in June 1986, the Cannon brothers reached a tentative agreement with USX to pursue the sale of Geneva Works.

The action presented Cannon's firm with a novel question. Pillsbury had no policy to guide a partner undertaking a leveraged buyout as to how he should bill his time. On his own, Cannon decided to record the hours he spent working

#### JOSEPH CANNON

on the deal and bill it to the new corporation as partner-hours. Cannon won't say how much his final bill totaled, but a Pillsbury partner who worked on the deal says it ran into six figures. The firm's total bill, including Cannon's time, amounted to more than \$250,000, says the partner. Cannon himself did not take any direct cut of the firm's fee.

Most deal sponsors collect a payment from the

acquiring company, but it is unusual for a lawyer/sponsor to allow his firm to collect the fee. In the view of Pillsbury chairman George Sears, however, Cannon's billing arrangement was entirely proper. "We viewed it not as a fee at all," he says. "It was just lawyer time put in by Joe Cannon."

We are not in the business of rendering business advice as distinct from legal advice."

Serious negotiations on the buyout didn't get under way until last January—six months after the Cannons' initial meeting with USX. The Cannons had submitted a contract offer in late summer of 1986, but USX cut off negotiations after a company-wide work stoppage began that August. By the time the Cannons and USX were talking again, the buyout of Geneva had become even riskier.

The plant, for one thing, was no longer in operation. The work stoppage had lasted six months, and during that time USX reached a fateful decision about its Utah plant: Geneva would not come back on-line when the stoppage ended, and the contract with the California plant would be shifted to a Pennsylvania mill. USX, though, would temporarily maintain Geneva in an idle state, leaving open the gas flow that powered the coke ovens—at a cost, it claimed, of \$100,000 per day. Once the gas was shut off, returning the coke ovens to operation would be prohibitively expensive.

Instead of a straightforward leveraged buyout, the Cannons were now looking at a proposition that was almost equivalent to starting a new business. They no longer had a secure

buyer for much of Geneva's product. And they suddenly found themselves under intense time pressure. Keeping the plant idle was costing USX \$3 million a month. If no deal was reached soon, the corporation made it clear, the plant would be closed down permanently.

Despite the turn of events, Joe and Chris Cannon pushed ahead. By spring they had incorporated as Basic Manufacturing and Technologies of Utah, Inc., and assembled a board of directors and a formidable team of lawyers, bankers, and accountants, many of whom were linked not only by dealmaking skills but also by the strong bonds of community and the Mormon faith.

A key figure was Robert Grow, then a real estate partner in Salt Lake City's 41-lawyer Kimball, Parr, Crockett & Waddoups. A mentor of Cannon's at Brigham Young law school, 38-year-old Grow led a Kimball, Parr team the brothers had retained during the preliminary negotiations with USX back in 1986. The team was to play a central role in the transaction.

When Grow took on the Cannons, though, he accepted what was then an extremely risky wager. Most large law firms that represent purchasers in leveraged buyouts arrange for a lesser fee if the deal falls through. Instead, Kimball, Parr accepted another arrangement: full fee if the deal closed; nothing if it didn't.

True, the work could mean hundreds of thousands of dollars for Kimball, Parr (the firm eventually collected more than a half-million dollars). But Grow

insists his commitment to the project sprang from his Mormon roots and his sense of responsibility to a state his ancestors had helped settle.

Others were driven by similar ties. Dallas Bradford, head of the Cannons' accounting team from Arthur Andersen & Co., is a Mormon whose relatives had worked at Geneva. Like the lawyers, the accountants had agreed that payment would depend on the deal's completion. Even C. James Bode, Jr., a non-Mormon who led the investment banking team from Denver-based Boettcher & Company, Inc., says he found himself caught up in the buying group's fervent enthusiasm.

Several prominent members of the community were tapped to serve on the board. Among them were Kent Larsen, a former name partner at Kimball, Parr and president and chief operating officer of Prudential Federal Savings & Loan, one of the state's largest S&L Associations, John Scowcroft, an independent consultant who works to bring high-technology jobs to Utah and who is the former head of Desert Management, Inc., the Mormon church's investment arm; and independent steel consultant Louis Ringer, a Swiss engineer who was the senior manager at Geneva for 30 years.

Another member of the board was Constance Lundberg, who left her post as Geneva's regular outside counsel to join the buying group. Now a professor at Brigham Young's law school, she provided a kind of emotional center for the acquiring group. For Lundberg—the only

member of the negotiating team who actually lived in Orem—buying Geneva turned into a moral crusade.

"I felt driven to get the plant running," Lundberg says, her eyes filling with tears as she recalls the hardships visited upon Orem when Geneva was idled. "From the day the plant closed there was never an empty bed in the spouse-abuse center. The child-abuse problems were just phenomenal. The increase of alcohol abuse. The increase of drug abuse. You had all the indications of a community under stress."

The first lenders the Cannons and their group approached turned down the Geneva deal. The prospects changed in late June, though, after Kimball, Parr partner James Cannon (a distant cousin) succeeded in negotiating a contract for BM&T with the steelworkers union. Union leaders knew that BM&T was the idled workers' only hope for future employment—if the deal went through—and they made substantial concessions in both wages and benefits, accepting in return a profit-sharing arrangement. By slashing the work force of the new Geneva, BM&T stood to save more than 30 percent a year—\$12 million—in labor costs alone.

Several weeks later—in mid July—BM&T secured a commitment letter from the merchant banking group of Houston-based First Texas Financial Corporation to finance Geneva's \$58 million purchase price. Appropriately, the early contact at First Texas was with vice-president John Romney, a Mormon who shared the BM&T group's concern for Utah.



With a July 31 deadline looming, both First Texas and the BM&T team worked feverishly to nail down the deal. To conduct its due diligence, First Texas retained three law firms. Regular counsel Butler & Binion of Houston worked with local counsel in the Salt Lake office of Denver's Holme, Roberts & Owen, while Washington, D.C.'s Beveridge & Diamond handled the environmental aspects.

On the BM&T side, six partners and four associates from Kimball, Parr worked on the closing, with one partner and five associates from Pillsbury providing assistance particularly on the environmental portion of the deal. "It was a mammoth task," recalls Kimball, Parr partner Scott Loveless "A plant of this magnitude has thousands of contractual relationships and legal issues"

On July 28 a USX team lead by Francis Adams, a vice-president in the steel division, flew to Salt Lake City prepared to close the deal at the Kimball, Parr offices, the command post for the buyout. A sense of optimism was in the air. Two days later, it abruptly vanished.

The letter First Texas had signed in June included a standard, though important, stipulation: The financing was dependent on the completion of due diligence to the satisfaction of the bank's loan committee. Working on an unusually tight schedule, the lawyers simply ran out of time. When the deadline arrived with questions still unanswered, the committee decided that the deal was too risky.

Late in the afternoon on



July 30, a Thursday, First Texas phoned from Houston to announce that the loan committee had vetoed a portion of the bridge financing

"I remember actually getting the telephone call and thinking, this is Kafkaesque," Cannon says "This is something unreal that is happening here." When the initial shock wore off, Cannon rebounded. "We were going to go not until we died but until somebody killed us," he says. Within an hour, negotiations resumed with

Adams and his USX team, and by mid-evening a new financing agreement was reached that would give USX much less money up front. Everything now depended on an okay from USX's Pittsburgh headquarters. Adams promised an answer by next morning

Discouraged by the collapse of the deal, Constance Lundberg had left around dinnertime "The day the financing blew apart was one of the darkest days of my life," she recalls. The next day, Friday, she drove past the plant on her

#### ROBERT GROW

way back to Kimball, Parr. "The parking lot was full of people who were waiting to get their physicals," she says. "They thought they were going back to work the next day. I cried all the way to Salt Lake."

Lundberg's spirits didn't lift when she arrived at Kimball, Parr. The reply from Pittsburgh was blunt: no deal. USX would not accept a reduced sum up front, Adams told Cannon,

and he conveyed a chilling ultimatum: Unless BM&T came through with the agreed-on \$33 million in bridge financing by Monday at 9 a. m., USX would shut off the gas at Geneva, effectively closing down the plant for good

Adam's news wasn't all black USX was willing to grant a ten-day extension, but only if BM&T came up with \$1 million, nonrefundable, to cover the cost of keeping the plant idle for that period "I tried to find someone who'd be dumb enough to give me a million bucks," Cannon recalls "But no one would lay a check on the table for a million dollars unless they could be sure the deal was going to close "

Friday, as it happened, was Cannon's birthday. He had turned 38 His wife and five children were waiting for him to come home and cut his birthday cake But Cannon was closeted at Kimball, Parr trying to salvage the deal By Friday afternoon he realized that he needed help from someone with major clout He put in a call to Senator Orrin Hatch

Hatch, a Republican from Utah, wanted to see Geneva saved. Along with Utah's other senator, Jake Garn, and Representative Howard Nielson, he had already called on USX chief David Roderick to express support for the sale of the plant to BM&T. Once Hatch got Cannon's call, he galvanized himself into action—more action, in fact, than Joe Cannon had sought On Saturday Hatch pulled USX Washington representative Earl Mallick off the golf course and requested a meeting with Roderick as soon as possible. The CEO was

unavailable Buying time, Hatch met with Adams on Monday. At that meeting, the senator exercised all the clout he could muster

"I wouldn't let them off the hook," Hatch says, recalling the meeting with relish "I said, 'this can't be shut down until I chat with Mr Roderick ' . . . I frankly said, 'It's owed me I was the only one in my delegation who didn't badmouth you ' " He was referring to Garn's blast at USX when the company idled the plant. Hatch won a reprieve for Geneva.

On Wednesday—August 5—Roderick flew to Washington, and the senator got his meeting It didn't go well at first "He was upset because this had fallen through," Hatch recalls. "I made it clear these fellows had pulled a miracle to get it together so fast " In the course of an hour and a half, the senator pressed Roderick to give the Cannons an extension—and to reduce the \$58 million price

Joe Cannon had not asked Hatch to renegotiate the purchase price. All the lenders Cannon had dealt with agreed that \$58 million was fair The liquidation value of the plant alone, according to Cannon, was worth more than that amount. In fact, Cannon said he had pleaded with Hatch not to push USX too far. "Truly, I said to him, 'Senator, just get us the extension,' " recalls Cannon " "Don't bug these people by trying to renegotiate the price for us ' "

But in Hatch's view, \$58 million was just too high a price to pay for Geneva Works, and he believed he was in a position to bring it down "Frankly, [the Cannons] made some

mistakes," Hatch asserts

Hatch prevailed. When Roderick called the senator back the next morning, he agreed to an astonishing cut of \$18 million—a one-third reduction in the purchase price. The Cannons, according to the new agreement, would pay a total of \$40 million for the plant, with \$30 million up front plus a 2 percent royalty up to \$10 million on gross revenues Finally, the closing deadline was extended to August 31. Any reservations Cannon might have had about the unauthorized negotiations on the purchase price gave way to relief and gratitude.

But time was tight. BM&T had only three weeks to pull together a new group of lenders—First Texas was interested in doing only a portion of the deal. The lenders' counsel would need time to complete their due diligence, and their loan committees would have to give their approval Then, too, the lenders would need to "marry-up"—settle all the tricky intercreditor agreements

Once again, the pace at Kimball, Parr turned frenzied, though now Joe Cannon and everyone else could see that the tenor of the transaction had changed With a labor agreement and a new contract with USX in place, lenders were more eager to do the deal Word was reaching the steel market that Geneva was about to come back on-line "Our phone was ringing off the hook from people who wanted to buy steel from us," Cannon says.

Three more lenders joined the deal, along with three more law firms St Paul-based ITT Commercial

Finance Corp. relied on in-house counsel, and Washington Square Capital, Inc , of Minneapolis, tapped regular counsel Winston & Strawn of Chicago and retained Salt Lake's Poole, Cannon & Smith as local counsel A third lender, Union Carbide's pension fund, turned to New York's Kelley Drye & Warren. Thirty-five outside lawyers crammed into Kimball, Parr's offices for the last two days of the closing. From the morning of August 30—a Sunday—until late the following day, work on the deal continued without pause.

On Monday morning the pace grew frantic. The lenders had yet to sign the crucial inter-creditor agreement. First Texas had last-minute questions about USX's indemnification of the plant By lunchtime, these matters were settled At 3:30 in the afternoon, the money from the lenders arrived by wire in Salt Lake City At precisely 4:21 p m—uncomfortably close to the 5 p m. deadline when USX was to shut off the gas at the plant—Joe Cannon handed a certified cashier's check to Adams

By early evening, after three hours of signing documents, the buyout was done, and most of the weary dealmakers headed home Exhausted and exhilarated, the Cannons still had one more thing to do that evening. At midnight joined by Bud Patten, they went out to the plant gates to welcome the first shift of steelworkers as they returned to the mill "That was the capstone to this whole deal," says Joe. "I wouldn't have missed it for the world "

Cannon is sitting at his

desk at Geneva Works "Welcome to 1962," he says with a laugh, indicating the drab dated design of his spacious office with its olive green and burnt orange color scheme. It's a long way from Washington's K Street, but Cannon seems to have successfully transformed himself into a steel executive. His salary, he says, roughly matches what he received as partner compensation at Pillsbury—about \$200,000

Some aspects of the adjustment are tough for Cannon. After the buyout, Pillsbury chairman Sears gave him a choice: of counsel status or resignation. If Cannon took the first option, Pillsbury would not handle Geneva's work. Sears determined that from a malpractice standpoint, Cannon's position as the company's major shareholder, chairman of the board and principal officer would make it difficult for the firm to represent Geneva. If Cannon resigned from the firm, though, Pillsbury would take on Geneva as a client.

On October 1, Cannon went of counsel, but he is not entirely satisfied. "I love a lot of the lawyers at Pillsbury and I'd like to use them," he says. And he finds it difficult to juggle the demands of Geneva with those of his practice. At Pillsbury, Cannon managed a large book of business—more than \$1 million, according to a partner. Although he is transferring clients to other partners, he must fly to Washington, San Francisco, or Los Angeles at least twice a month to service firm business. Cannon intends to give this arrangement a few months and then reevaluate



Robert Grow, on the other hand, made a clean break with Kimball, Parr in October when he took the post of Geneva's general counsel. Kimball, Parr will continue to handle local work for Geneva.

For Chris Cannon, a dream has come true. In his new role as a co-owner of Geneva and its executive in charge of developing new industries and joint ventures, he has found his place as an entrepreneur.

As for Geneva Works, Joe Cannon says sales are ahead of projections. The

steel market took an upturn about six months ago, and Geneva is riding out the prosperity. "I don't want to be overly optimistic," says Cannon, "but I feel pretty good that we're going to make our projections and have enough money left over for profit sharing for the workers."

Considering the hurdles Joe Cannon managed to surmount, optimism about Geneva's survival seems justified. But then, the way Robert Grow sees it, the plant may have a spiritual edge on the rest of the

#### CHRIS CANNON

industry. Recently, a large piece of machinery broke down just two weeks after the plant had gotten a replacement for it. If the new machine hadn't been available, Grow says, the mill would have had to shut down temporarily. "I don't believe it was coincidence, completely," says Grow. From the outset, he says, "I always knew that if we worked at it hard enough, the way would open."



# bridges

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Elder Dallin H. Oaks

*A fireside talk given to the students and faculty and companions of the Brigham Young University J. Reuben Clark Law School at the Pleasant View Ward Chapel in Provo on February 8, 1987.*

I had a sobering duty as a justice of the Utah Supreme Court. I had to vote to disbar a graduate of the Brigham Young University J. Reuben Clark Law School. With that action I stopped assuming that people who have had the right kind of education automatically have the right kind of moral sense.

Law school is a distorting experience in many ways. No one said it better than my classmate and good friend, Roger C. Cramton, former dean of Cornell Law School, in his article "The Ordinary Religion of the Law School Classroom," 29 J LEGAL EDUC. 247 (1978). He talked about a number of value assumptions in the law

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we are called to do. We can shape our callings to our qualifications or we can try to shape ourselves to our callings. I mention this because it is not only a challenge to each of us in church service, but it also has something to do with the professional performance of lawyers.

Does training in the law dull one's sense of justice, or one's moral and ethical sensibilities? Does it matter what clients and causes we serve with the skills that we have developed?

You are in training for a noble profession, which our society could not do without. It has served humanity ably, responsibly, and effectively throughout my lifetime and for many lifetimes before me. But the whole system of law and the legal profession can be corrupting if we do not understand all of it. When you are busy learning the ins and outs of it, it is probably timely to remind you of the potential corruption of it. It can be corrupted.

**W**hen I considered prayerfully what I could say to you about this subject and about my deep concerns for the fundamental integrity of those who study and practice law, I had an inspiration to recall the story of *The Bridge over the River Kwai*. I saw the movie many years ago, but I had never read the book. I found a copy in a used-book store. As I studied it, I found the example I sought to illustrate my point. The principle is a very simple one.

The story told in the book is not a true one, but it is based on a true setting: World War II in Southeast Asia where the Japanese took about 60,000 prisoners from the British, Australian, Dutch, and American forces that were guarding the various bastions of their nations. Five hundred of these prisoners, according to the tale, wound up in a camp on the River Kwai in the jungles on the border between Burma and Siam (now Thailand). The Japanese desired to build a railway linking their great seaport at Singapore with the Bay of Bengal. There was great military significance in having a railway that could take the ship traffic that came through sheltered sea lanes to Singapore and move it overland to a point where it could be put to military use against the Allied forces in India.

So it was that the Japanese in the story began to build a railroad hundreds of miles in length between Singapore and the Bay of Bengal. A major obstacle was the River Kwai—a large stream in a chasm over which a great bridge had to be built. The Japanese constructed a prisoner-of-war camp at this site that held 500 prisoners. By luck, Colonel Nicholson, the British colonel and senior military officer in that camp, was an experienced engineer.

Colonel Nicholson's bridge building came to the attention of Allied intelligence in India. For very understandable military reasons, they assembled a commando force to go and blow up that bridge. As the story goes forward, we see the commandos planning the raid and the prisoners, under Colonel Nicholson, building the bridge.

Nicholson was a disciplinarian who got them to build it right. He had the engineering skills to design and build a bridge that was unbeatable for its purpose, and he did so.

The small commando team arrived at the jungle site and prepared to blow up the bridge. They monitored the construction from their observation post in the hills above and from their frequent infiltration into or near the camp.

Colonel Nicholson and his prisoner workers completed the bridge. The ceremonial first train was approaching. The charges had been planted to blow it up, which the commandos planned to do just as the initial train crossed the bridge. A wire had been strung from the explosives to a detonator some distance away so that a visual observation could determine the exact time to bring the bridge down. The train was puffing up with a whole load of enemy troops, generals, dignitaries, ammunition, and all the stores—the initial cargo over the bridge on the River Kwai. Shears, one of the commandos, whispers, "Nothing can stop us now. Fate has no more tricks to play. The train will surely be here in twenty minutes" (p. 203). He scrambles down from the observation post to get a little closer to the action.

Colonel Nicholson inspects the bridge and is satisfied that it's technically excellent. The author gives a long, loving description of this military engineer's pride in his professional craftsmanship. Then Nicholson sees the wires. The level of the river has dropped over night, and

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*The most important parts of my calling—the only parts that are really unique in the service of the Lord—were those parts that I knew nothing about—those parts where I would have to start all over at the beginning.*

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wires to the detonator, that should have been under water, are exposed. He runs down the bank calling for the Japanese colonel who commands the prisoner-of-war camp to come and see. They stand at the water's edge near the unbelieving commando, Shears, who is hiding in the weeds. Shears runs out with his knife and kills the Japanese Colonel. He has been trained to do that work quickly, and he does it. Colonel Nicholson stares at him, unbelieving, as the train chugs forward to the bridge.

Shears throws off the lifeless body of his enemy, climbs up the bank to Colonel Nicholson, and introduces himself: "British officer, sir! Force 316 from Calcutta. Commandos. Orders to blow up the bridge."

"Blow up the bridge?" Colonel Nicholson asks, still not understanding. It takes a little while for him to realize what is happening. When he finally understands, he shouts, "Help!" at the top of his lungs. The Japanese guards come running (p. 215). The *film* has a happy ending. Colonel

Nicholson falls across the detonator, the bridge goes up, and the train crashes in the gorge. The *book* is not that way at all. The train gets across the bridge. There is a small charge on the other side of the bridge, and it blows the train off the track. Two cars fall in the river, but the bridge is left standing. All the commando raid really accomplished was to create a very large diversion and to kill a few of the enemy. All of the commandos lost their lives, except one man who made his way back to report. In a conversation with his superior officer in India, he complains that Colonel Nicholson did not understand what was going on. And Shears, the commando with the knife at the water's edge, did not understand what was happening either. The surviving commando laments:

*He should have been more perceptive, more discerning. Then he would have understood that in our job it's no good cutting any old throat. You've got to cut the right throat. Isn't that so sir?*

*More insight, that's what he needed, then he would have known who his enemy really was, realized it was that old blockhead [Nicholson] who couldn't stand the idea of his fine work being destroyed. A really perceptive mind would have deduced that from the way he strode along the platform. I had my glasses trained on him, sir, if only it had been a rifle! He had the sanctimonious smile of a conqueror on his lips, I remember. A splendid example of the man of action, sir, as we say in Force 316. He never let misfortune get him down, always made a last effort. It was he who shouted to the Japs for help! . . .*

*He had a highly developed sense of duty and admired a job well done. He was also fond of action—just as you are sir, just as we all are. This idiotic worship of action, to which our little typists subscribe as much as our greatest generals! I'm not sure where it all leads to, when I stop to think about it. I've been thinking about it for the last month, sir. Perhaps that silly old fool was really quite a decent fellow at heart? Perhaps he really had a genuine ideal? An ideal as sacred as our own? . . . Perhaps . . . the same source that provides the impetus which lies behind our own activities? That mysterious atmosphere in which our natural impulses stir us to the point of action. Looking at it like that, perhaps the "result" may have no meaning at all—it's only the intrinsic quality of the effort that counts. [Pierre Boulle, *The Bridge over the River Kwai*, trans. Xan Fielding (New York: Grossett & Dunlap Publishers, 1954), pp. 145–46.]*

**I** do not know of a better example of the glories of a technical job well done—craftsmanship in the face of enormous adversity—and the hazards of ignoring whose cause you are serving by your blind craftsmanship, than this homely little adventure play.

I am not here to argue against the fact that everybody

needs representation. I am not here to argue with the adversary system. But I am here to say that the same kind of reasoning (or lack of it) that totally obscured the vision of Colonel Nicholson can have and has had its morally deadening effect on lawyers. I could even name names. They are people I knew many years ago when I was serving as a foot soldier in some large litigation wars and saw the seamy underside of legal conflict that is rarely visible to those who sit on the appellate bench or work in a

***I am here to say that the same kind of reasoning***

***(or lack of it) that totally obscured the vision of Colonel***

***Nicholson can have and has had its morally deadening***

***effect on lawyers. I could even name names.***

law school classroom. If you are not aware, you will be sometime. All of this has a lot to do with legal ethics. It has a lot to do with morality. It has a lot to do with what I hope is a suitable antidote for the worthy but distorting concentration on craftsmanship that is part of what Dean Cramton called the "ordinary religion of the law school classroom."

Some words of Alexander Solzhenitsyn provide a takeoff on the final subject I wish to mention before I conclude.

*Western society has given itself the organization best suited to its purposes, based, I would say, on the letter of the law. The limits of human rights and righteousness are determined by a system of laws; such limits are very broad. People in the West have acquired considerable skill in using, interpreting, and manipulating law, even though laws tend to be too complicated for an average person to understand without the help of an expert. Any conflict is solved according to the letter of the law and this is considered to be the ultimate solution. If one is right from a legal point of view, nothing more is required, nobody may mention that one could still not be entirely right, and urge self-restraint, a willingness to renounce such legal rights, sacrifice and selfless risk: it would sound simply absurd. One almost never sees voluntary self-restraint. Everybody operates at the extreme limit of those legal frames. . . . I have spent my life under a communist regime and I will tell you that a society without any objective legal scale is a terrible one indeed. But a society with no other scale but the legal one is not quite worthy of man either. A society which is based on the letter of the law and never reaches any higher is taking very scarce advantage of the high level of human possibilities. The letter of the law is too cold and formal to have a beneficial influence on society. Whenever the tissue of life is woven of legalistic relations, there is an atmosphere of*

*moral mediocrity, paralyzing man's noblest impulses.*  
[Alexander Solzhenitsyn, "A World Split Apart,"  
Commencement Address Delivered at Harvard University,  
June 8, 1978]

From those words I will skip over to others written recently in *Chronicles*, a publication of The Rockford Institute, by the director of Corporate Communications for Walgreen's.

*Businesses of every kind are much enamored these days with the demanding ideal they call the "pursuit of excellence." Devotion to this pursuit is so widespread as to qualify as a form of "natural religion" to which everyone can pay homage without the snickers that accompany talk of things divine. [Mammoer, "Letter from Corporate Headquarters," *Chronicles*, Jan. 1987, at 38.]*

The pursuit of excellence about which we hear so much is very closely related to the worship of self and the worship of technique illustrated in *The Bridge over the River Kwai* I continue the quote:

*The professional person is powerfully motivated today by the search for excellence. Let us hope that search can transcend the desire to just have more and extend to "being more." The true pursuit of happiness involves a personal—a moral—as well as a professional effort And if that man or woman is receptive to the Judeo-Christian tradition he or she realizes that the rewards of this effort [that is the effort to be more not just to make more] are imperishable. [Id. at 39.]*

It may seem a strange thing for me to make such a plea to students, my brothers and sisters who are essentially poverty stricken. But if you don't think seriously now about *being* more, not just *making* more, husbands and wives are likely to make so many promises to one another that the fulfillment of those promises is going to bend the lawyer out of shape in the formative years of his or her practice of law. And once you are bent out of shape in the legal profession, it is very difficult to get straightened out again.

There are a lot of hard choices ahead of you in determining what bridges you will build. I suggest that the books you use to tell you how to build a bridge are not going to tell you who to build it for, or in whose cause you will spend your professional qualifications.

I surely do not want to be understood as saying that you shouldn't represent a criminal defendant I need to tell you that the client who gave me the greatest personal satisfaction was a young Polish boy whom the Supreme Court of Illinois appointed me to represent in his appeal to that court. I lost the appeal seven to nothing and acknowledged the result as just. But I had a great deal more satisfaction in helping that young man have due process of law than I had representing some prestigious but sometimes quite underhanded corporate clients.

I'm not trying to make this advice easy by telling you who your clients should be. But I am suggesting that there is a large world of causes out there and that while one little piece of representation doesn't make one of those causes, a succession of representations of a particular character can add significantly to a mosaic and amount to a pattern. I am asking you to think about that, and I'm also asking you to think about what kind of rewards you want from the practice of law. Ask yourself whether those rewards amount to the reward of getting or the rewards of serving and becoming.

The Apostle Paul said "set your affections on things above, not on the things on the earth" (Col 3:2). He wrote to his young companion Timothy to withdraw from men of corrupt minds, "destitute of the truth, supposing that gain is godliness" (1 Tim 6:5) What a sermon there is in those words "supposing that gain is godliness." That is a lesson not learned by many, not understood or accepted by many in this church today, including a few in the profession for which you are in training

In the parable of the sower, in the 13th chapter of Matthew, the Savior taught that certain seeds, representing the word of God, fell among the thorns. In explaining this parable later to his apostles, he said that this represented the word that went to people who were caught up in the cares of the world and the deceitfulness of riches, which choke the word and render it unfruitful.

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y brothers and sisters, this is an exciting time of your life. Poor though you may be, rich you are and will be. The kind of riches you will gain depends on what you put into your head now in the way of priorities, more than what you learn in the way of techniques and professional craftsmanship. What you have in the way of priorities to guide your skills is of eternal significance What you have in terms of technical skills is going to be outdated when you draw your last breath.

I know that the gospel is true. I know that this Law School is pleasing to our Heavenly Father. I was close enough to the current of inspiration in the founding of this Law School to have my heart tingle I know that it serves a purpose. And I am positive that the purpose is not pecuniary. Though I do not understand what it is, I know well what it is not. It is not to augment the tithing revenues of the Church. It is to serve that end the Savior described when he said, "Lay not up for yourselves treasures upon earth, where moth and rust doth corrupt and where thieves break through and steal; But lay up for yourselves treasures in heaven, where neither moth nor rust doth corrupt and where thieves do not break through nor steal" (Matt. 6:19-20).

May God bless you to remember that admonition throughout your professional preparation and practice, is my prayer, which I offer as I bear my testimony to you of Jesus Christ, the light and life of the world. In the name of Jesus Christ, amen.





The Study and Practice of

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THE LAWS  
OF MEN  
IN LIGHT OF  
THE LAWS  
OF GOD

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*Elder James E. Faust*

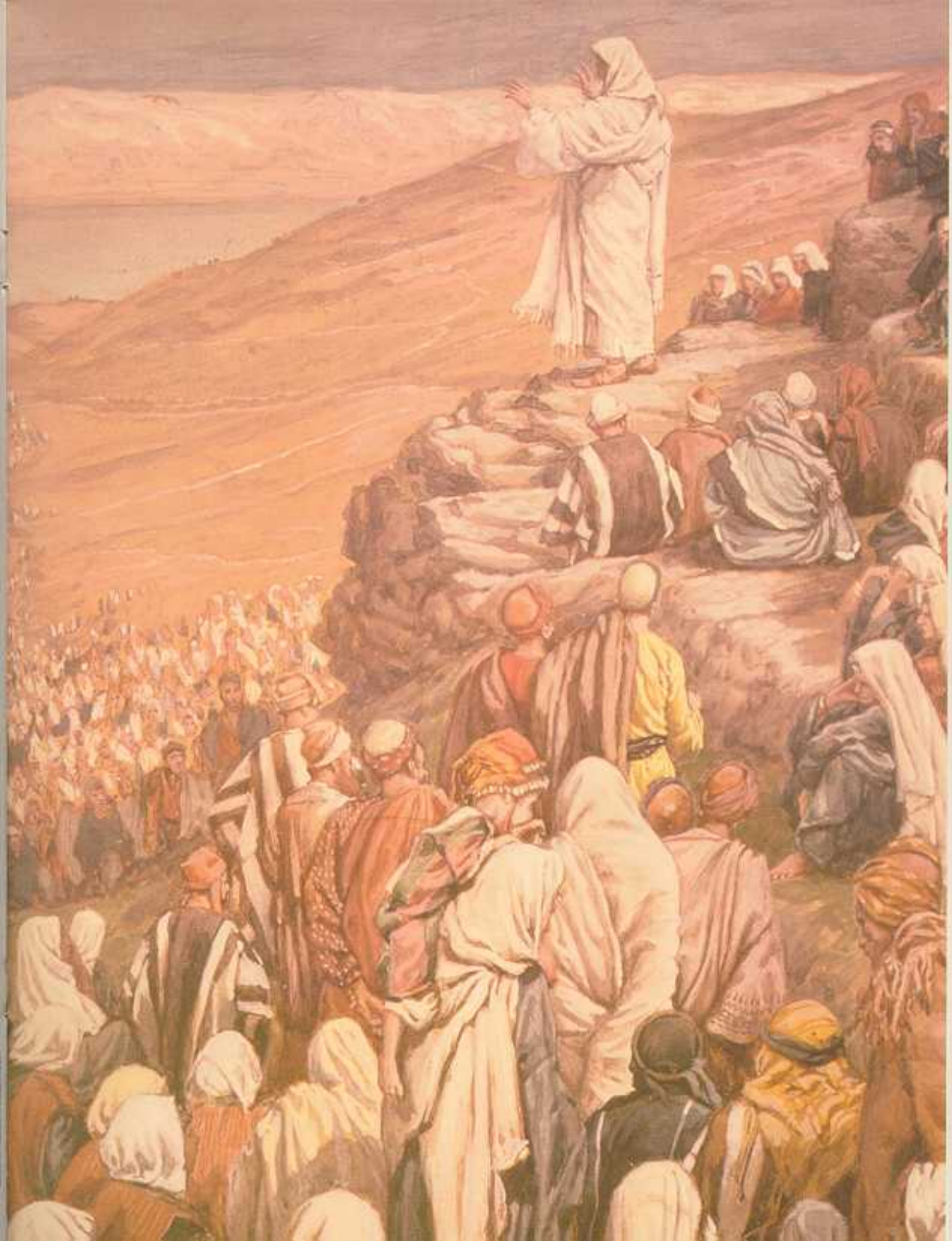
I AM HUMBLED by the presence of some of the distinguished members of the Law School faculty. As you would suppose, they are carefully chosen, even invited to this faculty, not only on the basis of what they know, but what they are. This faculty is competent and unique. Sister Faust and I have been grateful for and impressed by what this faculty has been able to do for two of our sons.

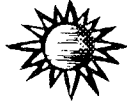
At the beginning I apologize to you because I will be drawing from my own experience. This is the risk you take when you invite an old, broken-down lawyer to speak to law students about the law. Even those who do not “suffer fools gladly” have to put up with such reminiscing in these circumstances (1 Cor. 11:19). Someone paraphrased General McArthur’s statement, “Old soldiers never die, they just fade away,” to “Old lawyers never die, they just lose their appeal.”

I hope that what I say of a personal nature will not be too subtle. President Hugh B. Brown told us of a lawyer who received an unfavorable ruling from the bench in one of Canada’s dominion courts. He reacted by turning his back on the judge. The judge asked: “Are you trying to show your contempt for this court?” The lawyer answered: “No, my Lord, I am trying to disguise it.”

Some time ago, Dean Bruce Hafen invited me to speak to you concerning a fundamental purpose for establishing the J. Reuben Clark Law School at Brigham Young University. My great respect for this school, as well as my gratitude for our system of law, encourages me to do so. My mentor, Dean Wm. H. Leary, a devout Catholic, taught us that a fundamental purpose of going to law school was to learn to think straight. He also taught us that our fundamental rights came from God himself.

*A fireside talk given to the students and faculty and  
companions of the Brigham Young University J. Reuben Clark Law School  
at the Pleasant View Chapel in Provo on November 22, 1987.*





THERE NEED BE NO CONFLICT BETWEEN WHAT  
THE SAVIOR HAS TAUGHT THROUGH THE CHURCH AND  
WHAT YOU DO AS A PROFESSIONAL LAWYER. INDEED,  
IF YOU ARE CAREFUL ABOUT OBSERVING THE  
MORAL STANDARDS THAT THE CHURCH REPRESENTS,  
YOU WILL STAND OUT IN YOUR PROFESSION.

I wish to address a principle that President Marion G Romney announced at the dedication of the J. Reuben Clark Law School. This principle is that students at this school should study the laws of man in the light of the laws of God. I should like to enlarge this to the study and practice of the laws of man in light of the laws of God.

I alert you that if you practice law you must be prepared to answer people who ask how you can be a good member of the Church and a lawyer. This question stems not only from misunderstanding but also from the fact that the law and lawyers are generally controversial, and many of our court and administrative proceedings are adversary in nature. The Prince of Peace did not advocate controversy, but he was involved in it. The adversary system, imperfect as it is, has evolved as the best means of extracting the truth out of controversy. Is not truth to be sought above other virtues?

Lay people will ask how you reconcile your religious convictions with being an advocate for a "criminal" or a "crook." Many forget the fundamental principle that people are presumed innocent until convicted. I sincerely believe that no committed member of the Church who is trying to keep the laws of God needs to compromise his or her religious and moral convictions in the practice of law. The canons of ethics, with which I hope you will become fully acquainted, support and are in harmony with the moral teachings of the Church. These ethical standards fully encourage many of the moral principles of our Church, specifically those high standards of honesty, integrity, loyalty, truthfulness, and sincerity.

In my opinion there need be no conflict between what the Savior has taught through the Church and what you do as a professional lawyer. Indeed, if you are careful about observing the high moral standards that the Church represents, you will stand out in your professions. Sir Thomas More did. Although he was beheaded, he fitted well the description of Job, "a perfect and an upright man, one that feareth God, and escheweth evil . . . holdeth fast his integrity" (Job 2:3). The great lawyers I have known have also had great souls.

As an advocate, in a large measure you can establish the moral tone of the case by your own integrity. Because you represent someone who has allegedly done something reprehensible, it does not mean that you approve of that conduct.

You will have more choice in whom you represent than did the lawyers of my era. When I began my practice of

law, all members of the bar had the duty to give every person charged with a crime the best defense they could under the law, without charge. There were no public defenders nor public defense funds. We did not enjoy the luxury of patting ourselves on the back for doing *pro bono* work. We were obligated to. We had no choice. In the federal courts the clerk would start down the alphabetical roll of the Utah Bar, assigning common criminals to be defended by the next name to come up, be he the senior member of the bar with the highest Martindale-Hubbel rating in the largest firm, or the most penurious, newly admitted member. It was an aggravating chore but a noble effort.

In one of my early appointments as defense counsel, I appeared before our venerable ninety-year-old federal judge, Tillman D. Johnson. I was appointed to defend a young man charged with taking a stolen motorcycle across state lines. As we approached the bench, Judge Johnson, whose eyes were dimmed with age, said: "Which one of you is the accused?"

The canons of ethics and the rules of court with which you must be familiar are helpful rules of conduct to abide by, but I have always believed that they are the lesser law. An attorney's own careful conscience and his own standards of high integrity ultimately ought to govern his conduct. This is particularly true of the graduates of this law school, most of whom are conversant with and have taught and tried to live in accordance with the laws of God. This is all in harmony with scripture: "He that keepeth the laws of God hath no need to break the laws of the land" (D&C 58:21).

I direct your attention to the first general epistle of John, chapter two, verse 27: "But the anointing which ye have received of him abideth in you, and ye need not that any man teach you: but as the same anointing teacheth you of all things, and is truth, and is no lie, and even as it hath taught you, ye shall abide in him."

I think you can rely on those two verses to help you make moral decisions. I do not think, however, you can rely on them to teach you the rules of law. Do not expect your professor, who may be a high priest, to concentrate his lessons out of the scriptures, although occasionally he may wish to do so. His obligation is to teach you the secular rules of civil and criminal law and matters that relate to them, such as procedures. Your obligation is to learn the rules of law and related matters. The whisperings





I MUST CONFESS TO YOU THAT I DID NOT  
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JUST COMMON FOLKS WHOSE PROPERTY AND  
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of the Holy Spirit will no doubt help you, but you must learn the rules of law, using Churchill's phrase, by "blood, sweat, and tears." There is an old Portuguese saying, "*Deus ajude os que trabalhe*" (God helps those who work). Just having a good heart does not get the job done.

May I now be more specific in terms of reconciling the laws of God in terms of having to live under the laws of man. I have always felt that the law could be a truly noble profession. That belief stems in part because the Savior is our advocate with the Father (D&C 110:4). That means everyone at times, in the broad sense, is entitled to or needs an advocate

I will confess to you that, when I say my personal prayers, I do not ask for justice, I ask for mercy. Since the Savior is our advocate with the Father, then everyone is entitled to justice: to have wrongs righted and, if truly repentant, to have a generous portion of mercy mixed in. That is my answer to the question of how can a lawyer represent "guilty" people. If the guilty are not entitled to an advocate, who then will be entitled to intercession before the judgment bar of God?

Of course, you can limit your practice to commerce and set yourself up as judge and jury, thus staying above the heart-breaking and the heart-rending matters that people bring into law offices. You can justify your conduct by saying to yourself, "This person is not worthy of my help." I must confess to you that, during the 20 years when I served as bishop or stake president and practiced law in a small office, I did not find much satisfaction in representing the large, soulless corporations with the deep pocket; I found more pleasure helping just common folks whose property and savings may have been at risk. They came into the office distraught and anguished. After they were told, "I think we can get this matter straightened out," they were greatly comforted.

While the time of the sole practitioner may about be gone, I still believe that you can be a good lawyer, have a good life, serve your church, your family, and your community, and not be a member of a large, prestigious law firm. Certainly you will have more independence and a more moderate lifestyle.

An attorney is a counselor. To help a client sort out the risks, exposures, and choices is a great service. Litigation itself is costly, hazardous, and often should be the last resort. Two attorneys of integrity and good faith can often negotiate a solution to difficulties with a better result

and with better feelings than a judge who, hearing the matter for the first time, has to decide for or against one or the other.

How do you reconcile your involvement in litigation with the Savior's Sermon on the Mount?

I should like to quote Arthur Nielsen, learned and experienced trial lawyer, currently special counsel to Brigham Young University in Jerusalem:

*I do not believe that Jesus was trying to abrogate the principle of justice in our society. He was endeavoring to eliminate injustice. If a person has done another an injustice so that the latter has to sue him at the law to obtain justice, the offender should do more than merely pay that which is due; . . . he should give his cloak also. If a person smite thee on thy right cheek, do not retaliate with an aggressive blow, but show forth compassion rather than hostility. But where efforts of conciliation or reconciliation or compromise are not productive, we should not refuse to champion the cause of justice to institute the proper legal action or to defend against the possible injustices being done. [Private letter]*

This philosophy is in harmony with direction given in Section 134 of the Doctrine and Covenants:

*We believe that men should appeal to the civil law for redress of all wrongs and grievances, where personal abuse is inflicted or the right of property or character infringed, where such laws exist as will protect the same, but we believe that all men are justified in defending themselves, their friends, and property, and the government, from the unlawful assaults and encroachments of all persons in times of exigency, where immediate appeal cannot be made to the laws, and relief afforded [D&C 134:11]*

And I now move to another important subject.

Members of this Church, professional and otherwise, have a balancing act to perform. How much time and effort should be devoted and dedicated to one's temporal calling as against the responsibility to one's family and the Church? This depends in part on what make of car we wish to drive, how large a home we wish to live in, and how big of a bank account we wish to enjoy. In my life my family and my Church callings came first. We lived carefully, and



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CONSIDERATION RATHER THAN THE FIRST.

I tried not to become obsessed with financial gain. These conflicting interests were accommodated and, as I told President Holland recently, if I had to do it over, I would do it the same way. Large overhead, new technology, I suppose, require shockingly high billings for legal services. This means that some deserving people will not be able to afford your services. One of your challenges will be to make the economic rewards your last consideration rather than the first.

President Henry D. Moyle of the First Presidency, who had been one of the more successful attorneys of this state, gave me some advice as I started to practice the law. He said, "Don't worry too much about the money. If you take care of your office, it will take care of you." More than once I had clients pay me more than I asked and billed. I like to think that I was more interested in them and in solving their problems than I was in their money. I really could not do otherwise in many cases because their little businesses they had struggled with, their homes, their futures, and their good names, were in my hands.

Young attorneys often feel that they must win all of their cases. I am afraid I once wished that I could have won them all, but it does not work out that way. Trying to win at all costs can be fatal in the long run. It will certainly ruin your career and irreparably damage your reputation. As you become more experienced as a counselor, you will learn that you do not have to win all your cases. Because of the law and facts, some cases just cannot be won, but a good defense in such cases can result in more justice. All you have to do is your best. If you are at ease with this philosophy, you will be more successful than if you operate under the theory that every case must be won.

Settling cases is a noble art. This is also an area where integrity can be lost through deception. Again I quote my friend Arthur Nielsen.

*The attorney should at all times be honest, truthful, and not attempt to deceive the court on either the law or the facts or conceal that which should be disclosed. An attorney should also avoid deception when dealing with another attorney. Frequently, when negotiating with another attorney, one may be tempted to lie or conceal the truth. Although an attorney may be under no obligation to disclose facts to his opponent, he should not knowingly allow the other party to deal with him under the mistaken knowledge of what the facts are. Some attorneys have said that this is too much of an altruistic condition, but I feel*

*that you can always state your position and leave it up to the other party to identify his [or hers]—without 'educating' him [or her] as to what it ought to be. An attorney should avoid making any statement or refuse to make an answer unless he is prepared to state the truth. [Private letter]*

There is a great risk in justifying what we do individually and professionally on the basis of what is "legal" rather than what is "right." In so doing, we put our very souls at risk. The philosophy that what is "legal" is also "right" will rob us of what is highest and best in our nature. What conduct is actually "legal" is, in many instances, way below the standards of a civilized society and light years below the teachings of the Christ. If you accept what is "legal" as your standard of personal or professional conduct, you will rob yourself of that which is truly noble in your personal dignity and worth. You can be just as tough as you want as an advocate, but you must never, never lower your own integrity. To do that, you have to keep in control of yourself, your emotions, and your feelings at all times, particularly in the heat of battle.

Judge David K. Winder of the United States District Court for Utah recently told some admittees to the bar:

*The expedient or short-sighted lawyer who fails to fulfill verbal understandings with other lawyers, who presents dubious evidence, who deals loosely with the record, or who misleads judges, is quickly "pegged." In our bar and every bar there are certain lawyers who achieve the enviable and priceless status of a good name. That status is developed gradually by word of mouth, from judges in the privacy of their gatherings and from lawyers in theirs. And, unlike the litigation you will be handling, be aware that once the verdict of your professional peers is in there is no formal "due process," no rebuttal and no appeal from that verdict. [Judge David K. Winder, Utah State Bar Speech to Admittees for October 6, 1987]*

How do you study or practice the laws of men in the light of the laws of God? You must keep your own soul; you must not give it away. You must not compromise; by all means you should not sell it. I wish to testify that the sponsoring institution of this law school is the Church of Jesus Christ. This is my testimony. I pray that the Lord will bless you in your studies and activities so that you may do good upon the earth and render service to your fellowmen. In the name of Jesus Christ, amen.

## Letter from the Dean

With this issue of the *Clark Memorandum*, we welcome a much larger circle of readers—the expanding membership of the J. Reuben Clark Law Society, many of whom are not alumni of the BYU Law School.

Within the past year, the faculty and administration of the Law School have been talking at length with their alumni leaders and with leaders of the bar in various parts of the country about creating a national organization for lawyers who share an interest in BYU and an interest in the professional aspirations for which the name of J. Reuben Clark stands. The response to these conversations has been widespread, strong, and affirmative.

The events of last November brought together several elements in that response, suggesting what such an organization might look like: On November 16, 1987, in Washington, D.C., fifty alumni from the Law School were sworn in as members of the Supreme Court Bar (See story on p. 22) That same evening, these relatively young lawyers (all graduated since 1976, the year of the Law School's first graduating class) had dinner with more than 200 other Washington-area lawyers and their guests.

The dinner was planned by a committee composed of both Law School alumni and nonalumni attorneys interested in the Law School. In addition to featuring remarks by Rex Lee, the dinner honored the memory of the late Jim Reese, a relatively young attorney from northern Virginia whose life represented an exemplary balance of public service, professional achievement, and religious commitments.

I also announced at the dinner the creation of the Hugh W. Colton Professorship in Law (see story on p. 27), an endowment of several hundred thousand dollars made possible primarily by members of the Washington "prototype chapter" of the J. Reuben Clark Law Society. Moreover, one nonalumni lawyer who was present at the dinner but otherwise wishes to remain anonymous sent the Law School a \$50,000 contribution as the direct result of his participation in that day's activities.

This evening was so successful that a second annual Washington event was planned on October 14, 1988, with Elder Dallin H. Oaks as featured speaker. We announced the funding of a new professorship named for the late Robert W. Barker, a prominent Washington, D.C., lawyer and former president of the Washington, D.C., LDS temple.

We will continue to have a national alumni organization, organized primarily around representatives within each graduating class, who will help plan class reunions every five years and sponsor other activities, such as the first annual alumni dinner in Salt Lake City on October 7, 1988. Our national alumni chair is Val Christensen, a partner in LeBoeuf, Lamb, Leiby & MacRae in Salt Lake.

In addition, Ralph Hardy, a partner in Washington's Dow, Lohnes & Albertson and a graduate of Boalt Hall, chaired the first Washington dinner and will now chair the National Board of the J. Reuben Clark Law Society. This board, made up of

both alumni and nonalumni lawyers, held its first meeting in Provo on October 7, 1988. We are already assembling the material needed to publish a national professional directory of Law Society members. Lawyers in various cities around the country are beginning to think about local chapters of the Society, which may conduct annual dinners and sponsor other local professional activities.

A thoughtful and tasteful publication is an important element in a high quality, professional, and nationwide organization of this kind. The *Clark Memorandum* seeks to fill that need. It will henceforth become the official publication of the J. Reuben Clark Law Society, and will be distributed to Society members two times a year. The *Memorandum* will continue to feature information about the Law School and the activities of faculty and alumni, but will also share stories and ideas of interest to all lawyers who share the professional and personal aspirations for which the Law School and the name of J. Reuben Clark stand. Two articles in this issue especially illustrate such material—published versions of memorable talks given to our law students over the past two years by Elder James E. Faust and Elder Dallin H. Oaks, members of the LDS Council of the Twelve Apostles.

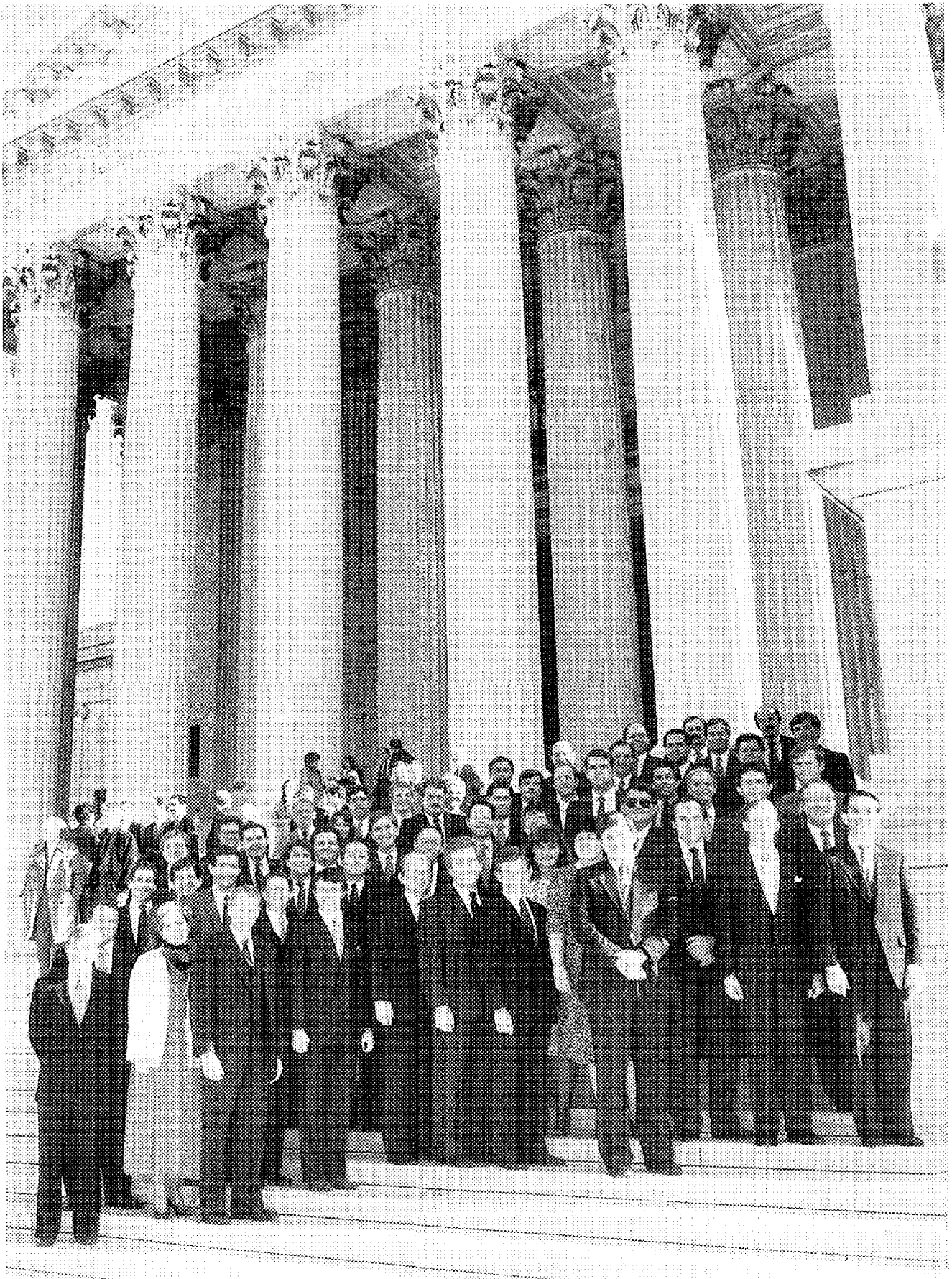
I am genuinely enthusiastic about the creation of the Law Society. This immediate broadening of the Law School's base of friendly support (call it "instant alumni") offers a senior level of advice and financial reinforcement that compares favorably with the alumni organizations of the nation's oldest and finest law schools. We encourage nonalumni Society members to continue supporting the law schools from which they obtained their own degrees. But by means of their additional support, the Law School at BYU can seriously sustain its upward climb toward being one of America's most influential and respected schools of law. As it does so, I believe that increased stature will reflect favorably upon each member of the Law Society, including our own alumni.



One nonalumni lawyer put it this way: "Because my colleagues know I am a committed Mormon, my professional reputation and the reputation of the BYU Law School are deeply intertwined, whether either of us likes it or not."

Further, and of equal significance, the Law Society will create a vehicle for communication and interaction among a group of lawyers who, like J. Reuben Clark himself, seek in their professional attitudes and in their personal lives to serve others through the grand profession of law. We need mutual reinforcement for those aspirations these days—I think the J. Reuben Clark Law Society will help provide it.

More information about membership in the Society will be forthcoming soon. —Bruce C. Hafen





## These Are My Students

Mr. Chief Justice, members of the Court . . . these are my students." With this introduction, Professor Rex E. Lee, founding dean of the J. Reuben Clark Law School and former solicitor general of the United States, moved the admission of fifty graduates of the Law School to membership in the bar of the United States Supreme Court on November 16, 1987.

The group admission to the Supreme Court culminated the Law School's celebration of the bicentennial of the United States Constitution. The celebration was initiated earlier in the year with a special lecture by Margaret Bush Wilson, former chair of the board of directors of the NAACP and a member of the school's board of visitors. The celebration included other lectures presented during the course of the year by noted constitutional scholars, federal judges and state court judges.

Alumni of the Law School traveled from all parts of the country to participate in this exceptional experience. The group met together for the first time on Sunday evening, November 15, and toured the visitors center at the Washington, D. C., Temple. Following the tour the alumni and their spouses and families, traveled to the McLean Virginia Stake Center for a special fireside with Jeffrey R. Holland, president of Brigham Young University.

President Holland related the question he is asked

most frequently as he travels around the world on behalf of the university. People casually ask him, "How is BYU?" He responds that the answer to this question is not determined on the campus in Provo, Utah, but is answered by the graduates around the world who are using the education they obtained at the Y. Citing the assembled Law School graduates as a prime example, he discussed the service being performed in secular and church responsibilities by BYU graduates.

President Holland concluded his remarks by expressing his personal joy in meeting with a group of lawyers from all over the country in a religious setting. Seeing a group of lawyers who share a common bond and commitment indicates why the Board of Trustees of the university decided to create Law School, he said.

The following morning the graduates and their family members or guests met in an elaborate conference room at the Supreme Court to prepare for their court appearance. The Court's admissions clerk amused the group by informing them that they were to leave their clothes in the conference room while they were appearing before the Court. She quickly corrected herself and requested that coats only be left behind.

The Court had made special arrangements for the BYU group to appear at the bar after the first admission motions for the day had been completed. Professor Lee stood at the podium in front of the Court and read the name and the state of admission for each

admittee. Following the motion by Professor Lee, Chief Justice Rehnquist addressed the admittees and discussed the meaning of membership in the Bar of the United States Supreme Court. At the conclusion of his remarks the entire group took the oath administered by the clerk of the Court.

In addition to family members and guests of the admittees, the ceremony was witnessed by President Jeffrey R. Holland, Dean Bruce C. Hafen, Associate Deans J. Clifton Fleming and H. Reese Hansen, Assistant Dean Claude Zobell, and Professors Stanley Neeleman and Constance Lundberg from the Law School. Professor Lundberg had been admitted as a member of the Supreme Court Bar on Rex Lee's motion earlier in the day.

After concluding the appearance before the Supreme Court, the group reassembled in an Appropriations Committee hearing room in the Dirksen Senate Office Building for lunch. Graduates told of their current involvement in practice and enjoyed becoming reacquainted. While the graduates were meeting together, Dean Hafen and Professors Neeleman and Lundberg hosted a placement luncheon at the Hay-Adams Hotel for Washington, D. C., law firms interested in recruiting BYU law students.

On Monday evening the group of new admittees joined with the members of the Washington, D. C., chapter of the J. Reuben Clark Law Society for a reception and dinner held at the Washington Marriott Hotel. This special dinner marked the first step in

the restructuring of the J. Reuben Clark Law Society to encompass not only graduates of the J. Reuben Clark Law School, but all lawyers with a special interest in the school's success. More than 250 people were in attendance.

During the course of the dinner Dean Hafen announced the creation of a new professorship at the Law School that is of special interest to lawyers in Washington, D. C. The professorship honors Hugh W. Colton, who currently practices law in Vernal, Utah. Mr. Colton was a cofounder of the Marriott operations. After a short period of time, however, Mr. Colton decided to return to Utah to practice law and sold his interests to J. Willard Marriott. Mr. Colton's son Sterling is currently general counsel for the Marriott Corporation, and two of Mr. Colton's grandchildren, David Colton and Carolyn Colton, are graduates of the Law School.

In announcing the creation of the new professorship, Dean Hafen explained that a professorship provides funds to enhance the academic climate at the Law School. Through enhanced support provided by professorships, selected faculty members of the Law School can devote their time and resources to scholarly pursuits and the development of teaching excellence. Unlike an endowed chair that provides an additional faculty position at the Law School, a professorship augments a position already funded by university sources.

The Washington, D. C., chapter of the Law Society

also honored a northern Virginia attorney who had recently been killed in an airplane accident. On behalf of her deceased husband, Mrs. James M. Reese received a memorial plaque presented by Bill Ingersoll, senior partner in the law firm of Ingersoll & Block and a member of the planning committee for the dinner. Mr Reese had been actively involved in numerous legal, civic, and Church activities and represented the type of lawyer that BYU Law School aspires to train.

Professor Rex E. Lee delivered the keynote address of the evening. Speaking to the new admittees to the Supreme Court, Professor Lee discussed the three obligations that membership in the Bar of the highest Court in the land entails.

First, attorneys practicing in the Supreme Court of the United States have an ethical obligation to make proper use of amici briefs, according to Professor Lee. These briefs are designed to provide the court with differing points of view, not as tools to allow the parties to the litigation to exceed the space limits the Court has set.

Second, Lee said that attorneys practicing before the Court must be very careful about the statements they make to the media about the cause before the Court while it is still pending. The spirit of the canons of ethics prohibits efforts by attorneys to influence the outcome of a case through the media.

Finally, Professor Lee discussed the importance of proper argument before the Court. The Court will test the limits of the theories

being presented; this is the only opportunity for the lawyers to divine the thinking of the members of the Court. According to Lee, any "ball advancing" that occurs during oral argument will develop during the question portion, not during a formal statement made by the lawyer. For this reason, preparation for argument should include development of answers to potential questions.

To illustrate this point, Professor Lee related a personal experience. Before appearing before the Court, he was impressed to take another look at the Harlan dissent in *Flast v. Cohen*. Rather than do so, he finished fixing his pants and combing his hair. During the questioning portion of his argument one of the justices asked him about the dissent in *Flast*. Lee "winged" a response. Later he took a closer look at the dissent and discovered that it would have been a home run ball. The day was not a total loss, however, as he received many compliments on how well his hair was combed and how nice his pants looked!

## Reflections After Admission to the Bar of the U.S. Supreme Court

*by Sheila McCleave, Utah Circuit Court Judge and 1976 Law School Graduate*

Philosopher Soren Kierkegaard observed that life must be lived from a perspective which looks forward but that it is

understood from a perspective which looks backward.

I was one of fifty BYU alumni who became members of the Bar of the United States Supreme Court in a special ceremony sponsored by the J. Reuben Clark Law School in November 1987. I participated in that event not simply to accomplish membership in that prestigious bar. As a charter class member of the J. Reuben Clark Law School, I had taken part in the establishment of a school which from its earliest inception was thought to hold a unique destiny. Along with everyone else at the beginning, I lived through those early days of the Law School's existence from a perspective which could only look forward. It was not possible to look back at the school's history and understand its destiny at that point. But in Washington, D.C., in November 1987 one could look backward, see history, and maybe begin to understand.

Perhaps there isn't a more fitting setting to gain perspective about the mission of the J. Reuben Clark Law School than in this country's capital. Anyone who explores Washington, D.C., discovers a good, free-people's history. It is highlighted in the night view of soldiers raising our flag that is the Iwo Jima statue of the U.S. Marine Corps War Memorial. It stands firmly as the towering white marble shaft of the Washington Monument against a morning skyline of the mall. It speaks to its citizens in the heroic-proportioned, rugged features of a determined

Civil War president who prayed for a united people. And it whispers on the steps of his memorial where a century later, with 200,000 others listening, a black man spoke of a dream of equality for his people that that peaceful Kentuckian had earlier borne.

One cannot search the scenes of Washington, D.C., without reverencing the noble principles of democratic government that made Americans a people and sustain us as a nation. A bronzed figure of Thomas Jefferson encircled by inscribed walls of his most famous writings—including excerpts from the Declaration of Independence—proclaims those noble principles. Thousands of American soldiers' graves and the eternal flame honoring John F. Kennedy at Arlington National Cemetery silently speak the principles. The deep, black-granite line of more than 58,000 Vietnam names across from three servicemen in bronze echoes the principles. Choice. Individual worth. The value of life. And more. Sacrifice. Service. Liberty in law.

Washington, D.C., affirms the nobility of law. Touring the House and Senate chambers in the Capitol Building, being guided through the public rooms of the White House, and entering the courtroom of the highest court in the land reaffirm the affirmation. Americans are a law-abiding people. We strive for justice, equality, due process. There is passion and pride in the striving. Not clichés.

Washington, D.C., is a fitting setting for gaining perspective about the

mission of the J. Reuben Clark Law School—not simply because the nation’s history is preserved in the Smithsonian Institution or at Ford’s Theater or along Pennsylvania Avenue, but because in understanding that history, dear democratic ideals become cherished in people’s hearts. Looking backward, one does begin to understand.

Looking backward, one can see something of the destiny of the J. Reuben Clark Law School—its contribution as an institution. As BYU President Jeffery Holland detailed in a fireside address to alumni in Washington, D.C., that November weekend, the Law School’s contribution lies in the lives of its people. People who as lawyers, judges, teachers have transformed cherished democratic ideals into actual service and sacrifice in their own lives. People who in practice, in government, in private still revere liberty in law and regard law as noble. I think that is what Dean Bruce Hafen meant in the Fall 1986 issue of the *Clark Memorandum* when he said, “The alumni are part of the mission of the Law School. Indeed, the mission of the Law School unfolds in their individual lives” (p. 15). On the steps outside of the Supreme Court building and at a dinner of the Washington, D.C., chapter of the J. Reuben Clark Law Society, I saw fifty-plus examples.

And if there was one example that more than any other gave me understanding of the mission of the Law School I had been privileged to take part in beginning, that example was found in the motion of

Rex Lee before the Justices of the United States Supreme Court. I remember my first week of law school where Dean Lee presented a series of cases (beginning with one affectionately known as “Yick Wo”) which developed an interpretation of the equal protection clause in the Fourteenth Amendment of the United States Constitution. I recall the charter class tenth-year reunion where Dean Lee in good humor revealed the challenges of faculty recruitment and student selection preliminary to the first year of law classes. But, I will never forget that touching moment last November when after he had read each of the proposed admittees’ names alphabetically by state as we stood, after the formal motion to the high court, he turned and gestured with great humility and love saying to them of us, “These are my students.” And in the justices’ eyes and faces I could sense the connection of principles and people—and I could see the contribution of one man who has lived the mission of the J. Reuben Clark Law School while looking forward.

We are a young law school with a destiny, I think, still barely understood. We live, as students, faculty, alumni, friends, looking forward—with faith. But in Washington, D.C., in November 1987, some of us, looking backward, caught a glimpse of understanding that we hope will increase our faith to live our lives in the law while looking forward.



## Kathy Pullins Named New Law School Director of Career Services and Alumni Relations

The Law School recently selected Kathy Pullins as its new director of Career Services and Alumni Relations.

Kathy Pullins, a graduate of the 1988 law class, replaces Anna Mae Goold, who retired earlier this year.

“We sought out Kathy,” says Claude Zobell, assistant dean. “We selected her because of her enthusiasm, her ability to get along with students, and her initiative.”

As director, Pullins will assist students in the employment search and work with recruiters both on and off campus. “Our office is expanding a resource library to provide information about legal employers, not just

private law firms, but all of the opportunities available to a student graduating with a law degree,” says Pullins. “While recruiters who come on campus interview the top students, I’m also speaking with different placement directors and law firms to extend our services to help other portions of the class. We’re doing some job fairs where students travel where they want to work, and we contact prospective employers. This fall we’re testing this new approach in Phoenix.”

Pullins also arranges seminars and enrichment lectures for students related to employment and provides basic counseling, such as résumé writing.

The new director received a bachelor’s degree in English with a physical education minor in 1985. While at law school, she served as president of the Women’s Law Association. She is the wife of BYU baseball coach Gary D. Pullins and is the mother of four sons.



PHOTO: DOLIC MARTIN

## Mary Alice Woolley Honored for Dedication to Law School Loan Fund

Since its inception in 1973, the Roland Rich Woolley Family Law Student Loan Fund has dispersed over \$5 million

dollars to over 1,000 law students. On April 26, 1988, the Law School paid tribute to Mary Alice Woolley, the daughter of Roland Rich Woolley and Mary Spry Woolley, for her personal dedication to the perpetuation of the fund

"Mary Woolley's continued generous support of the fund has allowed us to keep pace with the pressures

of inflation," Dean Hafen stated as he welcomed the dinner guests who had assembled to honor Miss Woolley.

In emphasizing the importance of the fund, the dean related an observation he had made while president of Ricks College. One day after a substantial rain storm, he was walking across the campus and noticed a great

number of worms that had crawled out on the sidewalks when the water had been abundant but had been left stranded after the water had dried "Federal aid to education is a little like the rain that attracted the worms," he stated "You are never sure where it came from, and you cannot tell when it is going to dry up." He stressed the importance of the privately endowed Woolley loan fund to the Law School in light of the unreliability of federal funding sources.

President Jeffrey R Holland and his wife, Patricia, attended the dinner, and President Holland discussed the importance of the Woolley gift to the Law School and to the university as a whole. He recalled the challenge he received when he became president of BYU to develop new funding sources for university endeavors. As pressures on Church funds increase, BYU must assume more of its own development expenses. He explained how gifts like the Woolley contributions aid that cause.

Following these tributes President Holland and Dean Hafen unveiled a portrait of Mary Spry Woolley and Mary Alice Woolley that had been commissioned by the Law School. The portrait now hangs outside the Law School's moot court room alongside the portrait of Roland Rich Woolley that Mary Alice Woolley had presented to the school previously

Responding to the tributes paid to her, Mary Alice Woolley reminisced about the decision her family made to provide the endowment for the loan



fund "Rex Lee came to us in the forming stages of this great institution," she remarked. "Through his eyes we became aware of the great potential this Law School could have in teaching constitutional principles to the students and possibly even helping to save this great country of ours Mother, Dad, and I wanted to help."

She described the letters of thanks she has received from the many students who have been assisted by the fund "The students have demonstrated their gratitude freely by the many letters of thanks we have received—letters which often bring tears to my eyes by the life stories they relate It thrills me to receive these letters, and I make it a practice to answer each one."

She concluded her remarks by thanking Rex Lee for bringing the Woolley family into the Law School family.

Mary Alice Woolley has served admirably in Church, political, social, and welfare capacities. She has held numerous positions in Church organizations, including the Young Women's Mutual Improvement Association She has also taught a course on the Constitution for her ward Relief Society Miss Woolley has been president of the North Hollywood Republican Women's Club; correspondence secretary, California Federation of Republican Women; delegate to two Republican National Conventions; and member, Republican State Central Committee. She has served as president and as lesson leader of the Los Angeles County Daughters of Utah Pioneers and has been honored

for her service to that organization by the planting of a tree on the grounds of the Utah State Capitol

In addition to the financial support that she provides to students at the J. Reuben Clark Law School, Miss Woolley has provided strong financial assistance to the Primary Children's Medical Center in Salt Lake City. She has also supported nineteen Mormon missionaries serving in foreign lands

### Seven Professors Appointed to Elite Organizations

Seven BYU Law School professors have recently received appointments to elite national and international legal organizations.

H Reese Hansen, associate dean of the Law School and professor of law, has been appointed to the National Conference of Commissioners on Uniform State Laws J. Clifton Fleming, associate dean of the Law School and professor of law, and Professors Constance Lundberg, Douglas Floyd, and Lynn Wardle have been appointed to membership in the American Law Institute. Professor Douglas Parker has been named to the executive committee of the Jewish Law Association. Professor Stephen G. Wood, a former associate dean of the Law School, has been named to leadership in the Administrative Law and Regulatory Practice Section of the American Bar Association.

The American Law Institute (ALI), in which Professors Fleming,

Lundberg, Floyd, and Wardle receive membership, was organized in 1923 "to promote the clarification and simplification of the law and its better adaptation to social needs." Founders of the organization included Elihu Root, Harlan Fiske Stone—who later served as chief justice of the United States Supreme Court—Benjamin Cardozo, and Learned Hand.

To fulfill its purpose the institute has produced the Restatement of Law series. These important legal works attempt to articulate the current status of the laws of the United States in particular areas The restatements have been cited as substantive authority by federal courts and state courts in all fifty states

Of the approximately 640,000 lawyers in the United States, only about 2,100 have been invited to membership in the ALI

The National Conference of Commissioners on Uniform State Laws, to which Dean Hansen was nominated, is composed of four commissioners from each state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands

The conference was founded in 1892 to bring about, by voluntary state action, greater unanimity in the law prevailing throughout the United States. When founded, the conference included participants from only seven states. Membership since that time has expanded to all states.

Since its inception, the conference has drafted over 200 uniform laws on numerous subjects and in various fields of law. In addition to their work in drafting the uniform acts,

commissioners are charged with the responsibility to encourage passage of the uniform acts by the legislatures of their respective states

Professor Wood's assignment to the Administrative Law and Regulatory Practice Section of the ABA caps a long history of service to the American Bar Association. He has been active in the Administrative Law and Regulatory Practice Section for several years. He also served as chair of the Immigration, Naturalization and Aliens Committee; and the Civil Rights and Employment Discrimination Committee; and as vice-chair of the International and Comparative Administrative Law Committee; and the Continuing Legal Education Programs Committee

Professor Parker is the only non-Jew to serve on the executive committee of the Jewish Law Association. The association includes members from throughout the world The executive committee is composed of approximately nine members, including two from the United States. The association holds biannual conferences, with every other conference held in Israel.

Professor Parker has prepared an encyclopedic dictionary of Jewish law, a Jewish law textbook, and a volume of the Jewish Law Annual that abstracted all articles on Jewish law published in the United States between 1980 and 1985 And he is currently abstracting articles from 1985 to 1988 He also spent a year on the Hebrew University Faculty of Law in Jerusalem as a visiting research professor in 1983.

## Professor Gerald Williams: Teaching the Skills of Negotiation

In the scholarly world of legal negotiation, few names are more well known or respected than Gerald R. Williams, professor of law at the J. Reuben Clark Law School. In fact, Williams and Roger Fisher, Williston Professor of Law at Harvard Law School, are the two people who have created the majority of the available data relating to the negotiating behavior of lawyers.

Williams' stature in the field of legal negotiations is reflected by the numerous articles and books he has published and his frequent invitations to teach negotiation seminars to practicing lawyers and students throughout the United States and in several foreign countries. Williams became a member of the charter faculty when the Law School opened in 1973. He has also taught law at Kabul University in Afghanistan, Arizona State University, University of Cairo in Egypt, Harvard Law School, and most recently at the Pepperdine University School of Law.

"My interests in the negotiation process began when my family and I were in Afghanistan. When we went shopping for groceries, every purchase we made was a result of haggling with various merchants," Williams said. "I realized that the merchant in Afghanistan is much like the lawyer because the entire process of legal practice involves

negotiation in various contexts and forms." Based on his early recognition of the necessity of negotiation, Williams began to observe people involved in the process. In addition, he became personally involved by acting as an advisor to the Afghanistan Supreme Court and the Ministry of Justice. "I became a fairly proficient negotiator due to the opportunities I had in Afghanistan," he said.

In 1973 Williams attended a conference for new law teachers. While there, he heard that negotiation was being taught as a formal part of the curriculum in only two law schools in the United States. "The people who were teaching the courses said they were trying to teach, but they were frustrated because there was only scant literature about the process. They suggested that negotiation would be a good area for a young law professor to explore and attempt to understand," Williams said. Williams recalled the interest he had developed in Afghanistan and returned to BYU intending to learn about how lawyers negotiate.

"I recognized that the area I intended to study lent itself to social science research. Because I did not have sufficient training in the field, I sought help. I was able to solicit the help of Larry Farmer, who was then a candidate for a doctoral degree in clinical psychology (Farmer has since become a professor of law at the Law School), and Dr. Lynn England of the BYU Sociology Department," Williams said. The team of researchers then developed a study designed to give

them insight into the characteristics that typified lawyers' negotiating behaviors

The research, which was funded by a grant from the Law and Social Science Division of the National Science Foundation, began with interviews of members of the bar in Denver, Colorado, and Phoenix, Arizona. Based on those interviews, Williams and his colleagues developed a questionnaire that was sent to members of the bar in Phoenix and Denver. Interestingly, their results in both cities were statistically the same, and they learned that lawyer negotiating behavior can be categorized into cooperative or aggressive categories. "We were very surprised at the reliability of our results," Williams said. "After doing the first survey, we conducted it again, and the results were replicated."

After completing the study, Williams began to present his results to lawyers in seminars. "The lawyers we talked to indicated that our results were a very accurate representation of their experience in legal negotiations. Consequently, the lawyers found the data to be very useful. However, when we presented the information to students, they seemed unable to grasp it," Williams said. Williams concluded that the reason his students struggled with the information was that they did not have the experience of participating in negotiations which could help them understand the framework for explaining negotiation behaviors. As a result, he decided to film lawyers in actual negotiations to provide

classroom examples of the process. "The purpose was to give the student a chance to see what a negotiation looked like before he got in the water," Williams said. Williams worked with Roger Croft of the BYU David O. McKay Institute to produce several different videotapes of lawyers in actual negotiations on various legal subjects.

Williams' work has now expanded far beyond teaching his own students at the Law School. His tapes are currently used in 112 law schools in the United States and his research data, which is compiled in his book *Legal Negotiation and Settlement* (1983), is used in eighty-five law schools. "Since I entered the negotiation field, interest has grown dramatically in the subject," Williams noted. "I think law schools have become more aware of the need to train their students in some of the practical aspects of practicing law and have responded by expanding their curriculums to include negotiations, interviewing and counseling, alternative dispute resolution, and other skill-related courses."

Williams suggested that scholarship in the negotiation area is now at a point that new plateaus need to be reached. "It is becoming increasingly clear that lawyers must make choices with regard to the style they use in negotiations. The way one approaches a negotiation almost always dictates the results one will come away with. The problem we have now is that most negotiated agreements leave value on the table because lawyers are not yet proficient in maximizing their results

Thus, the challenge for myself and others in the field is to learn how to recognize and then teach students and lawyers how they can improve their results "

Williams added that he enjoys teaching students at the Law School. "I decided a long time ago that my career choices would be made based on the opportunities I would have to serve and perhaps contribute to the society and profession. For me, the audience I want to reach can be found at the BYU Law School."

## ABA Approves New Master's Degree

The Law School recently took a major step to enhance its status as a center for the study of comparative law. The American Bar Association approved the offering of a new master of comparative law degree by the Law School

"The implementation of this new post-graduate program designed for foreign-trained lawyers will allow us to develop new ties with lawyers and law firms all over the world," according to Professor James H. Backman, the faculty advisor for the program "Our juris doctor students will be able to rub shoulders with lawyers trained in foreign legal systems, and our MCL students will be able to learn about the American legal system in the unique BYU environment."

The accreditation process by the American Bar Association included a site visit and evaluation by

a team chosen by the ABA from other law schools. After their on-site evaluation visit, the members of the ABA team concluded that BYU, probably more than most other law schools in the country, was equipped to offer a graduate program for foreign lawyers. Citing the abundance of foreign language skills possessed by members of the student body, the visitation team concluded that available support systems for foreign students were outstanding

Students enrolled in the master of comparative law program will receive the MCL degree on completion of a minimum of twenty-four credit hours earned during at least two semesters in residence following completion of legal training in their home country. Participants will take a special introduction to American law course with other MCL students. All other courses will be selected from the standard Law School curriculum.

"By utilizing our standard course offerings as the foundation for the MCL program, we will be able to provide comparative insights throughout the curriculum," Backman added. "Further, by limiting the enrollment in the MCL program to no more than eight students per year we can ensure that the program participants receive the individual attention that this new educational experience will require."

Although approval from the American Bar Association was received only in late May, four students were able to complete the application process for the fall semester, 1988. The four

students currently enrolled in the program are from Japan, the People's Republic of China, Canada, and Cameroon.

## How I Became Converted to Law: My Summer at Utah Legal Services

by Shauna Hansen

My first love, without equivocation or embarrassment, is music. If I could support myself through music, I would do it and be happy. But tales of starving musicians are legion, and I have three bad habits: breakfast, lunch, and dinner. So, I chose law, hoping that it would provide the necessary income to meet basic needs and allow me the freedom to pursue music in my spare time

My first year at law school was almost unbearable. The workload was intense, and I reeled under the "mental cruelty" of some of my professors. When final grades came out I seriously considered quitting. I found it difficult not being the best of the best anymore. Then I got the idea to combine music and law; I knew I could do well in music. The possibility that I could teach at a junior college, if I could not find legal employment, offered some slight hope for the future.

Then I went through the second-year clerkship interviews. After the weeks of rejections and quizzical stares which said "What are you doing in music?" I finally got a callback

interview. I went to Salt Lake hopeful. As I sat across the desk, the interviewer said, "We're very interested in you, Ms. Hansen, but we have one concern. You're single, attractive, and a good catch, and we don't want to train you just to lose you to a marriage proposal." I am still mad.

Around February of my second year, I had a long talk with Professor Jean Burns. I told her what happened and expressed my now very dismal view of my legal future. She listened very sympathetically and then advised me to "hang in there." After sharing her experiences as a clerk in a Chicago legal-aid office, she said that some good hands-on legal experience might change my outlook. I decided to try it. If it didn't work, then I would leave the law.

I began working at Utah Legal Services with high hopes. I had always admired lawyers who stood up for the downtrodden and oppressed in society. I must confess that I had some fairly foolish and romantic notions, but the feeling that I was able to help someone with their problems when they had nowhere else to go was pretty heady stuff.

My first assignment was a case where a local credit bureau had been trying to collect a debt using some rather nasty methods. Our clients were a young couple whose debts had arisen from the tragic crib death of one child and the premature birth of another. It was a very exciting case, since I was enrolled in Professor Winnie Taylor's consumer-protection course. We had just completed the unit on the Fair Debt Collection

Practices Act, and I was ready to nail the credit bureau right between the eyes. I drafted a complaint for my supervising attorney, claiming damages for everything in sight.

I then had my first experience as Clerk of the Day. I was on the phone for almost two hours. Every call that day came from battered wives, all wondering how they could protect themselves and their children from violent husbands and fathers. I went home emotionally exhausted.

For the next two weeks, all I saw were the same kind of cases. One woman was only seventeen years old. She had been married for a year and had an eight-month-old baby. Her twenty-one-year-old husband had threatened to kill her with a chain.

Another woman's husband broke a chair over her back. His complaint was that she couldn't stop their infant son from crying. The boy was multiple handicapped and only slept fitfully. He was awakened when his father came home drunk.

A third woman was beaten with a belt when she tried to protect her children from their drunken father. He had thrown two of the children against the wall, and she had intervened.

I was amazed at the stories of pain and brutality that I witnessed. I have never personally experienced domestic violence. I felt brutal myself as I probed each woman for specific facts. I had to ask questions like "How many times did he hit you?" or "What did he hit you with?" I usually met silence, downcast stares, and then

anguished tears. One woman looked at me with stricken eyes and pleaded, "What did I do wrong? All I wanted was a loving marriage and a happy family. What did I do wrong?"

After two weeks of dealing with such intense emotional wounds, I cracked. I fled the office and sat in my car, crying uncontrollably. There was so much suffering. And we had to turn people away because they weren't bloody enough yet. There weren't enough funds, nor enough staff or time. There wasn't enough of anything, except pain.

A while later, another clerk came out and saw me there. He came over to my car, and we talked about my feelings. Having worked for legal services before, he had seen what I was seeing and could understand how I felt. He helped me to understand that while I couldn't do everything for everybody, I could do—and was doing—something worthwhile. That something, even though small, was important. He suggested I talk with one of the attorneys to find out how she handled the emotional stress of domestic cases. On her suggestion I took a break from seeing clients.

However, during that break, I did take one call from a Vietnamese man who spoke very poor English. With some difficulty I learned that his brother had purchased some used tires from a local business. After the tires were mounted, the brother took the car for a test drive. One of the new tires failed and the brother, fearing the tires were unsafe, wished to replace them. He offered to

pay the difference for a higher grade of tire. The vendor agreed to exchange the failed tire, but refused to exchange the other tire.

I spent the majority of my time that week in negotiations with the manager and assistant manager of the tire place. After several discussions they agreed to replace both tires and to mount them free. The clients were satisfied. I was ecstatic!

I think the internship as a whole was a crucial turning point in my legal education. For the first time I felt that my education was useful. These people did not care if I was on law review. They did not ask me if I was in the top third of my class. All they wanted was my best efforts directed toward solving their real problems. For the first time in two very long, discouraging years I realized that I could solve real problems.

At the same time, I learned the limits of my ability. I cannot do everything for everybody. I cannot right all the world's wrongs. The credit bureau complaint is probably still on my supervising attorney's desk. The spouse abuse calls are still coming in unabated, and some victims are still being turned away. Merchants continue to take advantage of immigrants.

But I know that I was able to help some people who needed help. I know that I will develop my knowledge and skill so that I can help more people with more problems. I can look at a prospective employer in the eye with confidence, knowing what I can do and what I cannot yet do. More importantly, I can look at myself with satisfaction,

and even a little pride, because I have grown in knowledge, in experience, and in compassion.

## Utah Lawyer Assistance Society Formed

A group of Utah lawyers recently formed the Stew Hanson, Sr., Society in the memory of a fine lawyer and judge who was known and lived for his personal commitment to helping young lawyers. The members of the society have pledged to help carry on Stew's work as a mentor by making themselves available to respond to questions posed by inexperienced practitioners. The members have each agreed to contribute at least ten hours each year to the society's work.

Members of the society are available for specific advice in practical matters as well as help with professional judgments and ethical decisions. Assistance is available from both plaintiff and defense attorneys with expertise in specific areas.

Stew Hanson, Sr., was the mentor, friend, and gentle critic of many of the members of the society, and they hope to expand and carry on that work in his name and memory.

Commenting on the organization of the society, Gordon R. Hall, chief justice of the Supreme Court of Utah stated: "Judge Hanson's guidance of young lawyers was also extended to young judges. I was privileged to serve with him on the district bench beginning in 1969, and in



his own gracious way he assisted greatly in my transition from the bar to the bench

"It is fitting that this society bear the name of Stewart M. Hanson, Sr., because he stands tall among those who have contributed so much to the well being of we who are engaged in the pursuit of justice."

For further information on the society, contact the Utah State Bar Office at (801) 531-9077.

## Two Professorships Announced

Professorships honoring a former member of the First Presidency of the Church of Jesus Christ of Latter-day Saints and honoring a Utah lawyer who was also a cofounder of the Marriott Corporation were recently announced by Law School Dean Bruce C. Hafen. Funding for the two endowments has been substantially completed

The Stephen L Richards Professorship and the Hugh W. Colton Professorship will provide funds to augment the support provided to selected members of the Law School faculty. "Professorship funds help us to attract and retain legal scholars of extraordinary accomplishment whose work enhances the stature and influence of students, alumni, and all others affiliated with the J. Reuben Clark Law School," according to Dean Hafen. The faculty members selected for appointment to the professorships will be

announced at a later date

Richards began his career as a rancher and principal of public schools in Malad, Idaho. Though able and efficient in both undertakings, he resolved to pursue a new profession through the study of law.

After a year at the University of Michigan Law School, he transferred to the University of Chicago School of Law and graduated cum laude as a member of that school's first graduating class. While at Chicago he impressed the dean with his abilities to such an extent that, years later, the dean declared that Richards was the most capable student he had ever met.

Upon completion of law school, he was admitted to practice in Utah and soon became city attorney of Murray. Two years later he began teaching at the University of Utah College of Law. He continued teaching part-time for nine years. He was senior member of the law firm of Richards, Hart and Van Dam.

Richards and his wife raised seven children: Lynn S. Richards, Louise Richards Covey, Lois Richards Hinckley, Alice Richards Allen, Georgia Richards Olson (deceased), Philip L. Richards, and Richard M. Richards.

In 1917 Richards was ordained an Apostle of The Church of Jesus Christ of Latter-day Saints after having served as a first assistant general superintendent of the Deseret Sunday School Union General Board and as a member of the general Church Board of Education

Reflecting upon the life and accomplishment of

President Richards, Dean Bruce C. Hafen stated: "The life of Stephen L. Richards represents the fine balance toward which we hope our law students aspire: he was highly intelligent, a gifted advocate, and a skilled professional—yet he was also deeply devoted to his family, the Church, and the things of the spirit. This rare blend of mind and heart, focused in a rich life of integrity and compassion, is an example worthy of our highest emulation." Lynn S. Richards and his wife, Lucille, of Salt Lake City provided a major portion of the funding for the professorship to help develop this delicate balance in BYU law students

Hugh W. Colton's life provides a study in contrasts—from the foundations of one of the country's largest corporations to the practice of country law. Describing Hugh W. Colton, Dean Hafen states: "The writer Bellamy Partridge concluded some years ago that 'the country lawyer, as he existed between the days of Abraham Lincoln and Calvin Coolidge, is no more.' But in the life of Hugh W. Colton, we find embodied the same independence, versatility, and boundless sense of public service that have long characterized that noble strand in the heritage of the legal profession: the country lawyer. The Colton endowment will help keep that valuable heritage alive in the minds of our law students for the long-range benefit of both city and country."

Born in Ashley Valley, Utah, Colton obtained his early education in Uintah

County public schools and graduated from Brigham Young High School in 1920. After returning from a mission for the Church in the eastern states, he enrolled in the University of Utah as a pre-law student. Following graduation and marriage to Marguerite Maughan, he moved to Washington, D. C., and enrolled in George Washington University Law School.

While in law school Colton persuaded his lifelong friend, J. Willard Marriott, to come to Washington, D. C. Together they borrowed money to start a new business venture, a nine-seat A&W root beer stand, later known as the "Hot Shoppe," the forerunner of the present Marriott Corporation.

Convinced that his future was in the West, Colton sold his interest in the Hot Shoppe to the Marriotts and returned to Vernal, Utah, where he started the general practice of law in 1929. He also served several terms as Uintah County attorney. His Church service included high council work and counselor in a stake presidency. Colton's military service during World War II involved command of units that were in combat on D-Day. He also commanded units that built the first bridges in France, Holland, and Germany.

During his years in Uintah County he worked on the Upper Colorado River Project, was chairman of the four-state promotion committee for the Colorado River Storage Project, and assisted in the organization of the Uintah Water Conservancy District. He was also president of

the Uintah Cattlemen's and the Utah Cattlemen's Associations and vice president of the American National Cattlemen's Association.

The Coltons are the parents of four children, including a son, who returned to the Marriott Corporation and is currently senior vice president, general counsel, and a director of the corporation. Two of the Coltons' grandchildren—David and Carolyn—are graduates of the J. Reuben Clark Law School.

## Symposium Held on Legal and Business Affairs of China

Several prominent lawyers and business experts visited BYU in January 1988 to participate in a special symposium addressing the conduct of business and legal affairs in the People's Republic of China. The symposium was sponsored by the Law School's International and Comparative Law Society, the university's David M. Kennedy Center for International Studies, the School of Management, and the Intermountain Program in Pacific Rim Relations at the University of Utah.

The program included presentations by some of the most eminently qualified experts in the field of law and business in China.

Jerome A. Cohen, resident in the Hong Kong office of New York City's Paul, Weiss, Rifkind, Wharton & Garrison, described the lack of foreign investment in China's

business climate prior to 1979 and subsequent reforms. He called the joint venture law, a reform that allowed participation in China by foreign interests, a symbol of China's recent economic revolution. He also addressed the subsequent innovations in business contracts with China, including various factors contributing to the creation of a supportive legal environment. These factors include the creation of domestic legal institutions, the enactment of appropriate national and local legislation, and participation with other nations in bilateral and multilateral treaties. Mr. Cohen specifically addressed the advantages of utilizing Sino-foreign equity joint ventures as effective vehicles for the conduct of business in China. Finally, he emphasized the importance of having a good contract to facilitate cooperation between the parties, reduce the likelihood of disputes, and protect the interests of both parties.

Timothy P. Stratford, a law partner of Mr. Cohen in the Hong Kong office of Weiss, Rifkind, discussed cooperative joint ventures between foreigners and Chinese parties. He distributed a translation of a fairly typical cooperative joint venture contract concluded between a Hong Kong investor and a Chinese company, and gave advice on avoiding some of the typical problems which arise in these contract negotiations.

Charles J. Conroy, of the Chicago firm Baker & McKenzie, provided an overview of the tax consequences which arise

when foreigners transact business in China. He explained that foreigners residing in China and foreign business operating in China may be subject to a variety of taxes not normally encountered in foreign investment situations.

Gareth C. C. Chang, president of McDonnell Douglas China, Inc., used his own company's involvement in China as a good illustration of the strategic approach to doing business in China. His remarks specifically addressed the transfer of technology as his company entered into an agreement to co-produce aircraft in China. Mr. Chang indicated that McDonnell was successful in penetrating and capturing a highly competitive market by transferring technology to China, thus preparing the way for a number of other business opportunities such as helicopter information systems equipment and wide-body aircraft.

Other participants in the symposium included Samuel R. Baker, Jinyan Li, Cole R. Capener, and William F. Atkin, residents in various domestic and international offices of Baker & McKenzie; Stanley B. Lubman of San Francisco's Thelen, Marrin, Johnson & Bridges; Gregory H. Jackson, executive vice president of Security Pacific National Bank in Hong Kong; Allen Anderson, vice president of Continental China Tai International, Ltd. in Hong Kong; Paul C.B. Liu, professor of Law at the University of Washington School of Law; and Arthur Hummel, former U.S. ambassador to the People's Republic of China.

## BYU Graduate Receives U.S. Supreme Court Clerkship Invitation

Denise Posse-Blanco Lindberg, a 1988 graduate of the Law School, has been appointed as a clerk for Supreme Court Justice Sandra Day O'Connor.

She is the first woman from the school to receive this prestigious honor, BYU's first clerk with a minority background, and the first BYU clerk with Justice O'Connor, according to Bruce Hafen, dean of the Law School.

In receiving the honor, she joins the ranks of four other former students who also received Supreme Court clerkships: Monte Stewart, 1976, a partner in his own law firm in Las Vegas; Eric Anderson, 1977, a law professor at the University of Iowa Law School; Kevin Worthen, 1982, a law professor at BYU; and Michael Mosman, 1983, who practices law in Portland, Oregon.

Lindberg served as articles editor of the BYU Law Review during her third year of law school. Her comment, "The Accountant-Client Privilege: Does It and Should It Survive the Death of the Client," was included in the 1987 law review; and her comment, "A Constitutional Analysis of the Public Trust Doctrine," was prepared for the 1988 edition of the review.

She will serve a one-year judicial clerkship with the Honorable Monroe G. McKay of the United States

Court of Appeals of the Tenth Circuit beginning this fall. Her appointment with Justice O'Connor is for the 1990-91 term.

She has been a research assistant for Dean Bruce Hafen and a summer clerk with two firms in Salt Lake City and one in Washington, D.C.

In addition to her law school credentials, Lindberg holds a B.A. degree in communications, an M.S. in educational psychology, a master's degree in social work, and a Ph.D. in health sciences.

She is a native of Cuba and was raised in Cuba and Puerto Rico. Her husband, Neil Lindberg, is also studying at the Law School and will graduate in 1990. They are the parents of two sons.

## Fried and Millet Address Graduates

**T**ake the worst, the ugliest case in the world. Fight as hard as you know for the worst of clients, against opponents who are angels. You will still serve justice if you respect the truth," Charles Fried, solicitor general of the United States, explained in his address to the 1988 graduating class of the J. Reuben Clark Law School.

Fried, who was a member of the Harvard Law School faculty prior to his entrance into government service, was introduced to the audience by his predecessor as solicitor general, Professor Rex E. Lee. Lee described Fried as a friend who "values you and has your interests at heart, no matter the situation or the cost."

In discussing the importance of truth in the practice, as well as the teaching of law, Fried pointed out that a lawyer can best serve the client and serve the law by holding fast to the truth. The duty of the lawyer to her client is a given, he stated, but that duty cannot entail indifference to the truth.

A lawyer's duty to hold fast to the truth obviously includes not falsifying evidence, not fooling the court, and not telling lies. An ethical lawyer cannot lie, even if she does not disclose everything.

Fried provided a test to determine the difference between lying to an opponent and refusing to disclose everything one knows. When the opponent discovers the information on her own, and they always do, will she say, "She plays hard, but she plays fair," or will she say, "Why the sneaky . . . ."

Fried warned the graduates that this dedication to truth may cause them to forfeit opportunities and lose some clients, but in the long run, it is worth the cost.

When advising a client, a lawyer has a duty to present the unvarnished truth. In negotiations, however, not laying out all of the weaknesses of a client's position is not deception. A competent lawyer on the other side knows what disclosures he may or may not expect.

"It is a little bit like judo," Fried explained. "If both you and your adversary are well trained, you can have a good fight without either of you getting hurt."

Fried related these concepts of truth to the art of advocacy. An advocate

helps the judge and jury arrive at the truth, but does not usurp their function. The advocate, according to Fried, presents to the judge or jury a way of viewing the evidence, but she does not make up evidence, misstate the record, or distort the authorities. The expert lawyer knows the difference between deception on one hand and doing the opposing lawyer's job on the other. A good judge will know the difference as well.

In conclusion, Fried reviewed the relationship between truth and clear and simple speaking and writing. "If you are direct and simple in your expression," he explained, "it may be impossible to hide and deceive."

Tim Millet, the speaker for the graduating class, cited Robert Frost's poem "The Road Not Taken," to describe the law school experience. He views law school, particularly here at BYU, as a journey down the less-traveled road. "I hope it will make a difference in where, ages hence, we find ourselves."

Mr. Millet recalled the bittersweet experience that law school is to all those who brave their fears and embark on a discovery of the law and themselves. His opinion of Socrates has suffered, perhaps more from the way the professors practice the Socratic method than from anything Socrates has done personally. The three lessons learned from the final year of law school were work hard, study harder, and pray for mercy.

He used the crucial crossroads analogy to emphasize the ability of the graduates to take control of their own lives. They are at the beginning moments

of the rest of their stay on Earth. They have the power to determine what manner of men and women they will be.

"It is important to contemplate such decisions because specialized knowledge may be a potential source of material wealth and power, which may be highly dangerous if misused," he explained. "As attorneys we will be regarded as having specialized knowledge. Those people who surround us will force upon us an elite status, derived from our common experience in law school. We do not need to apologize for that status. We have worked for it and paid the price. However, we do need to recognize the responsibility that accompanies that status and the positive role we must assume in society."

Members of the "Me" generation must learn to think of others, Millet continued. "As members of that generation we must use our knowledge for the benefit of society and for individuals. The training we have received at J. Reuben Clark Law School qualifies us to do just that, if we so choose."

Millet presented his belief that the J. Reuben Clark Law School is unique among law schools. The education one received from this school offers more than simply a legal education. If one is willing to accept them, the Law School has stressed four attributes that could work to make all the difference in the lives of its graduates. Those four attributes are: (1) commitment, (2) integrity, (3) service and (4) divine heritage.



## Faculty Notes

^ **James H. Backman**  
Professor Backman joined the Law School faculty in 1974. He is currently an instructor of courses in property, banking law, real estate finance, and the new master of comparative law introduction course. Backman's course instruction is augmented by his scholarly publications.

He is the author of "Financing in Purchase and Sale of Real Property," which is incorporated as a chapter in Matthew Bender's *Real Estate Transactions* series. He is

responsible for the revision of four chapters in Powell's *The Law of Real Property*. In 1987 Professor Backman's article, "The Law of Practical Location of Boundaries and the Need for an Adverse Possession Remedy," was published in the *BYU Law Review*. He and Professor Thomas are completing a treatise, "Adjoining Landowner's Disputes," with publication scheduled for 1989.

Professor Backman's interests extend beyond the strict academic scene. He is keenly aware of civic and religious affairs. This awareness has opened up

international opportunities for him. His paper titled "The Two German Temples—Legal Background" was presented at two prominent gatherings. One was the Mormon History Association Conference at Oxford, England, and the other was the LDS Symposium on Culture and History, held at Stuttgart, West Germany.

Some of the various positions which Backman holds outside the Law School include member of the Harvard Alumni Association Schools Committee and vice chairman of the Boy Scouts of America for the Provo Cascade District.

√ **Ray Jay Davis**  
Professor Davis has been writing a book on Utah

workers' compensation law. A draft of this book was used in the fall 1987 workers' compensation course, and an updated version of the text is being used in fall 1988. Davis has presented portions of the book in talks at conferences and universities over the past couple of years. Shortly, he will be taking a leave from teaching to visit New Zealand and research its unique accident compensation system. That research will provide the material for an article comparing the New Zealand and American systems of compensation.

Professor Davis also has an interest in natural resources law. He has given presentations addressing water and flood law during the past two years at





conferences sponsored by the Association of State Flood Plain Managers, Mormon History Association, American Meteorological Association, and American Society of Agricultural Engineers. He is working with the Utah Water Resources Laboratory on a major study of water rights transfer in Utah. This and similar studies in the other Colorado River Basin states are being prepared under a grant from the United States Geological Survey. Davis' articles have been recently published or accepted for publication in the *Journal of Weather Modification*, the *Journal of Irrigation and Drainage*, and the *Journal of Energy Law and Policy*.

Outside the areas of natural resources law and workers' compensation, Professor Davis has prepared a chapter on the legal aspects of the nineteenth-century British Mormon immigration that will be published in a book on the history of The Church of Jesus Christ of Latter-day Saints in Victorian Britain. His innovative high school text on American government law, using the case method, has also been accepted for publication.

Professor Davis enjoys classroom teaching. Fall semester 1988 he is teaching workers' compensation law and water law, and team teaching a section of the first-year professional seminar with Professor Welch. In past years he has regularly taught first-year torts.

Davis, active in professional and community service, is a member of the board of directors of the Provo Rotary Club and is

also an officer of the Rocky Mountain Mineral Law Institute, the Consortium for Atmospheric Resources Development, and the North American Interstate Weather Modification Council. He recently completed a term as a member of the board of advisors to the Utah Water Resources Research Center.

#### **H. Reese Hansen**

Associate Dean Hansen first assumed his duties in 1973. The position title has undergone several alterations since that time. His current duties as associate dean include overseeing admissions, placement, and serving as university liaison.

In addition to his administrative duties, Dean Hansen teaches courses on federal estate and gift tax as well as on wills, trusts, and estates.

Dean Hansen has co-authored with Professor Stanley Neeleman two attorney practice books focusing on probate practice under the then-newly adopted uniform probate code in Utah and Idaho. These books remain viable tools to probate practitioners.

Dean Hansen's interests extend beyond the scope of the Law School. He has served and is serving on the board of trustees for two important organizations—the Law School Admissions Council and Utah Legal Services. He also served as a director of Utah Legal Services, Inc., and is a commissioner of the National Conference on Uniform State Laws. He is concerned about the quality of legal education and the quality of legal services offered in the community.

#### **Edward L. Kimball**

Professor Kimball currently instructs classes in criminal law, criminal trial practice, and evidence. He also is involved in leading the discussion sessions for the first year ethical responsibility segments. His probing questions and direct confrontation of ethical and moral issues are a trademark.

Professor Kimball is also known outside the classroom. He is the author of numerous works in a variety of publications. His article "Utah Rules of Evidence 1983, Part II" appeared in the *Utah Law Review*. *Sunstone* published his review of "Dew, the Trial" and "The Administration of Spencer W Kimball." Professor Kimball was the coeditor of *BYU Studies*' Fall 1986 issue which focused on the life and achievements of his father, Spencer W Kimball.

Kimball has maintained interest in the leading criminal events in the Utah area. He has recently finished an article about Mark Hoffman and Han van Meegeren, which is published in *BYU Studies*. Presently, he is a member of the Utah Supreme Court Advisory Committee on Rules of Evidence and serves on the Test Development Committee for National Conference of Bar Examiners. He has also appeared on radio and television to comment on current criminal trials in Utah.

#### **Robert E. Riggs**

Professor Riggs returned to BYU in August 1987 after spending six months in England on a professional

development leave. While in England, he completed research on the English legal concept of "legitimate expectation," which formed the foundation for an article, "Legitimate Expectation. Development of a Legal Doctrine." The article will be published in the *American Journal of Comparative Law*.

When asked about his English adventures, Riggs reported, "I did a fair amount of reading in English constitutional law and enjoyed becoming more familiar with the English system of legal education. I attended a number of classes at the London School of Economics Law Department and other branches of the University of London. I found it a genuine opportunity for professional development."

Riggs has recently served on the International Relations Program Advisory Committee, the Planning Committee for the 1987 Constitutional Bicentennial, and the Political Science International Relations and Faculty Recruitment Committees. He was the Orem area coordinator for the Democratic Party before his leave to England.

Professor Riggs teaches contracts, international law, and constitutional law. He prefers to devote most of his time to teaching and relevant research.

In connection with his interest in international law, Riggs has written two chapters for Matthew Bender's *Privacy Law and Practice*, and recently coauthored a book with Jack Plano, *The United Nations International Organization and World Politics*.

**David A. Thomas**

Professor Thomas organized and presented a paper at a conference at Oxford and London held in July 1986. The conference, "The Anglo-American Legal Heritage: A Course for Law Librarians," was the most highly rated educational program of the American Association of Law Libraries (AALL) in the 1980s, according to an AALL survey. Professor Thomas has subsequently edited the conference papers for publication in a 1988 issue of *Law Library Journal*

Professor Thomas' library publications include "1986-87 Statistical Survey of Law School Libraries and Librarians," published in *Law Library Journal*, "Training American Law Students in Computer-Assisted Legal Research," published in *Law Librarian*, and "A Slide-Sound Show for Anglo-American Legal History," published in *Newsletter of the Association of American Law Schools' Section of Legal Writing, Reasoning, and Research*

Thomas has also contributed to academic publications by writing six chapters for *Powell on Real Property*, four chapters and updates for *Holtzschue, Purchase and Sale of Real Property*, a chapter for *Rohan, Zoning and Land Use Controls* and contributions to surveys of significant legislation and decisions published each year in *Real Property, Probate and Trust Journal*.

As a faculty member of the AALL Institute on Reference Services, Thomas presented a paper on British legal materials

He also presented "Qualitative Measurements for Law Libraries" at the annual AALL meeting in Chicago, "Costs and Implications of Technology for Law School Administration and Teaching" at the annual meeting of the Association of American Law Schools (AALS) in Miami Beach, and "Impact of Technology on Teaching" at the annual meeting of the Mid-Continent Association of Law Schools in Park City, Utah.

Professor Thomas served as the chair for the Utah College Library Council during 1987-88 and is currently the chair of the Law Program Committee for the Research Libraries Group. For the AALL he is the national statistics coordinator, representative to the British and Irish Association of Law Librarians, and member of the National Legal Resources Committee. For the AALS Thomas serves on the National Law Placement Database Committee.

**Lynn D. Wardle**

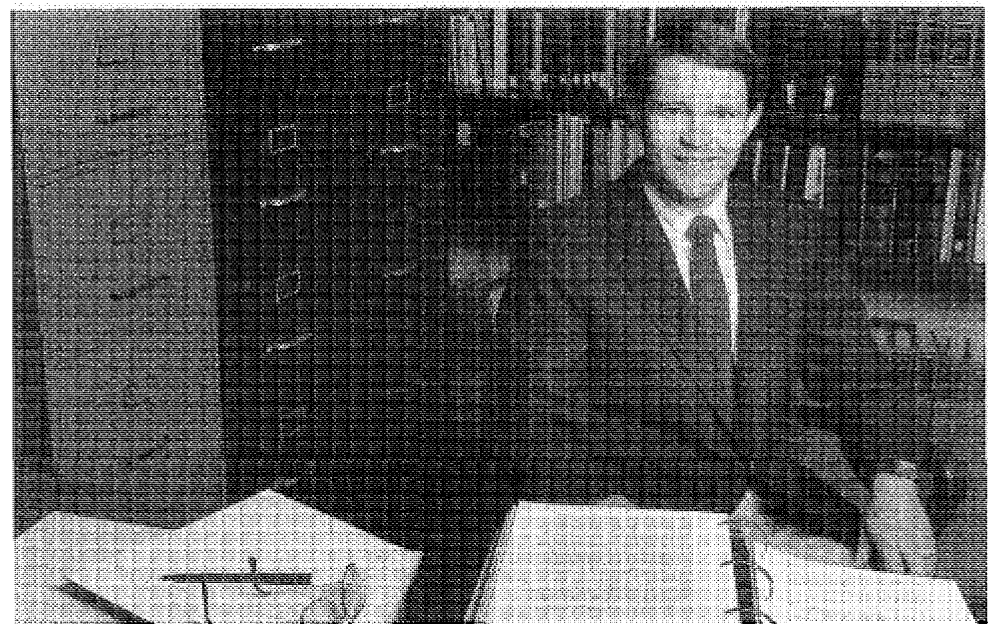
The multivolume treatise, *Contemporary Family Law*, which Professor Wardle coauthored and for which he was the lead editor, was published this past summer. Professor Wardle also authored a chapter entitled "Judicial Appointments to the Lower Federal Courts: Ultimate Arbiters of the Abortion Doctrine," which was included in the book *Abortion and the Constitution: Reversing Roe v. Wade Through the Courts*, published in 1987. His article "The Constitution as Covenant" was published in *BYU Studies' Bicentennial Issue*. *Issues in Law and Medicine* published his article "Legal Implications of Sanctioned Assisted Suicide: Separate But Equal 'Treatment for New Illegitimates.'" "

Wardle has also produced several scholarly papers. Some of those papers were "Parental Rights Regarding the Provision of Contraceptive Services to Minors," and "The Uniform Child Custody Jurisdiction Act."

The former was published in *Values and Public Policy* (1988) under the title of "Don't Tell My Parents—Parental Rights Regarding the Provision of Contraceptive Services to Minors"

1988 has been a busy and eventful year for Professor Wardle. Besides his publications, he has had the opportunity to be a visiting professor on the law faculty at Sophia University in Tokyo, Japan, this past summer. While in Tokyo he taught a course titled "Introduction to the American Legal System" and co-taught a course on comparative family law. Wardle also did research on abortion in Japan under a grant from the David M. Kennedy Center for International Studies

It was this year that a law school dream was realized when he was elected member of the American Law Institute. When he is in residence at BYU, Professor Wardle instructs courses on civil procedure, family law, origins of the Constitution, and biomedical legal issues

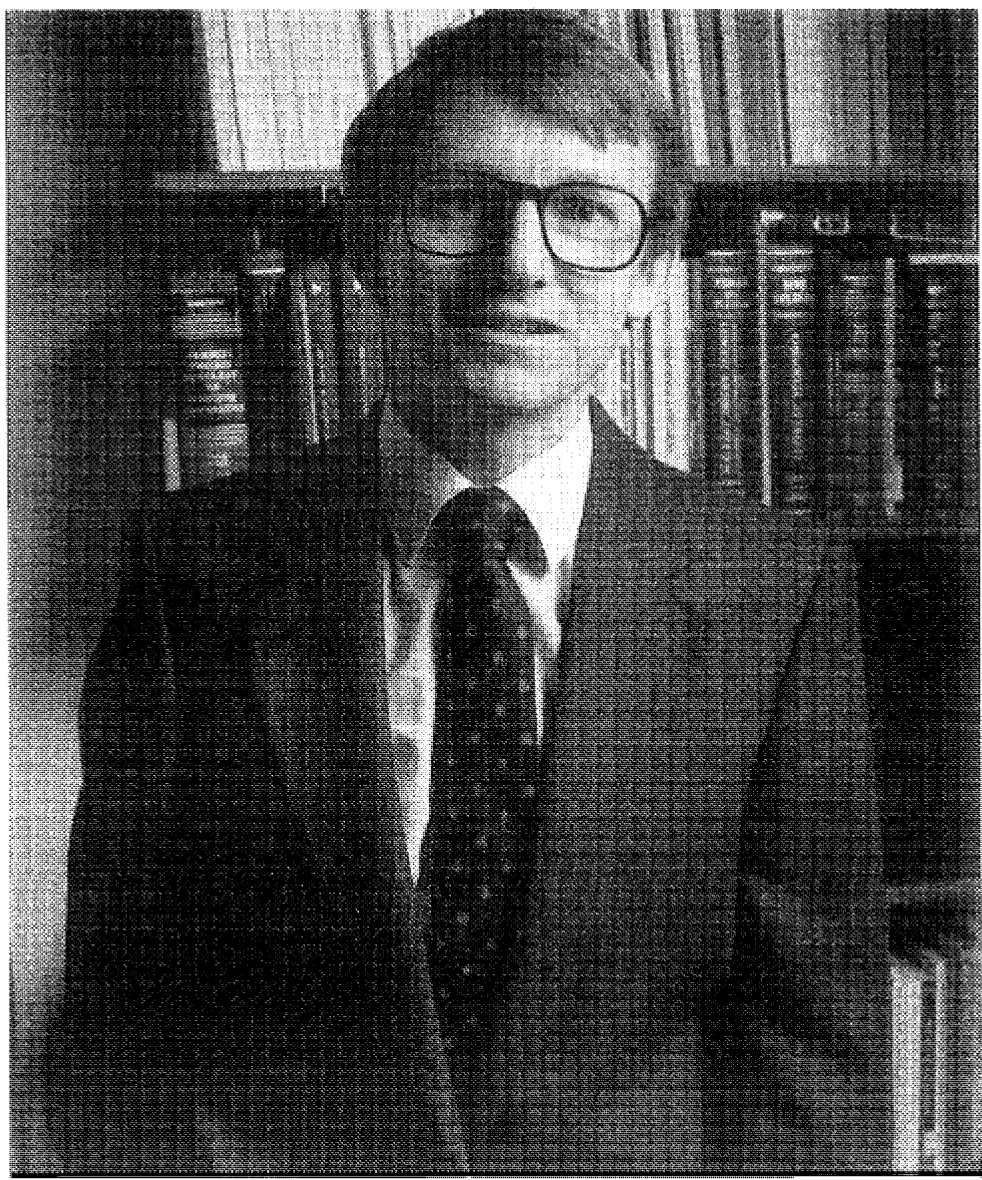


In addition to teaching and researching, Wardle finds time for public service. He recently resigned as a judge pro tempore of the Utah Eighth Circuit Court, where he heard small claims cases every three weeks. He was also a member of the Utah State Judicial Commission Child Support Task Force that finished drafting the child support guidelines for Utah this summer, and he serves on the board of directors of both the Americans United for Life Legal Defense Fund and the Utah Valley Family Support Center, a child abuse prevention agency.

> **John W. Welch**

Professor Welch is the coeditor of *Religion and Law. Biblical, Jewish and Islamic Perspectives*, a substantial collection of papers from an international conference sponsored by the Law School in 1985. Published in 1988 by Eisenbrauns, this collection includes one of Welch's own papers. Additionally, the *Journal of Pension Planning and Compliance* published his paper, "Non-Qualified Deferred Compensation Plans," which was also presented at the First Annual Rocky Mountain Tax Planning Institute and is being reprinted in a volume on tax planning for small businesses. This past summer Professor Welch also attended the biannual conference of the Jewish Law Association at Boston University, where he presented "Chiasmus in Biblical Law."

Welch has also written several articles for the Foundation for Ancient Research and Mormon



Studies (FARMS) and is serving as the president and a director of that foundation. He is serving as general editor of the *Collected Works of Hugh Nibley*, a twenty-volume series. Seven volumes have been published and three volumes are near completion. Another FARMS article, "I Have a Question: How Long did it Take Joseph Smith to Translate the Book of Mormon?" appeared in the January 1988 issue of the *Ensign*.

As a part-time director of

the BYU Religious Studies Center, he is coordinating several research projects and has an assignment to coauthor an article about Joseph Smith discussing the restoration of early Christian doctrines. Other publications include "The Calling of a Prophet: An Analysis of the Call of Lehi and 1 Nephi," and "Hugh Nibley—Thoroughly Modern."

An article about Professor Welch, titled "Taking the Stand" appeared in *This People Magazine*. He currently

instructs the following courses: Business Associations, Advising Closely Held Businesses, and a professional seminar.

Welch was the featured speaker at the BYU May 1988 Devotional, where he presented a talk titled "The Book of Mormon—By Study and Also by Faith." That talk has since been televised numerous times and published in *BYU Today* and *Speeches of the Year*. He is on the editorial board of the newly announced *LDS Encyclopedia*, to be published by Macmillan.

## Class Notes

### **Lynn W. Davis '76**

Lynn was recently appointed a circuit court judge by Utah's Governor Norman Bangertter. Prior to becoming a judge he had an active career in public law, private practice, and legal teaching

### **Larry Jensen '76**

Larry was recently appointed general counsel at the Environmental Protection Agency in Washington, D.C. His appointment was made by President Reagan followed by Senate confirmation. Larry began working for the EPA in 1985 as assistant administrator for water. Prior to joining the EPA he spent four years in the Department of Interior. In his new position, Larry supervises a staff of more than 100 attorneys.



### **David R. Bradford '77**

David returned to Provo in 1985 when he accepted a position at Novell, Inc., where he was instrumental in organizing the legal department. He is currently senior corporate counsel and

secretary to the board of directors at Novell. Prior to his job at Novell, David worked for Irsfeld, Irsfeld & Younger in Glendale, California, Prime Computer, Inc. (western division), and Businessland. David has had an integral role in four corporate acquisitions, two public offerings, and the mergers of three companies. In addition to his J.D., David holds an MBA degree from Pepperdine University. However, his real claim to fame is being paired with Billy Casper in the Jeremy Ranch Showdown Golf Classic Pro Am in August 1987

### **Robert D. Christenson '77**

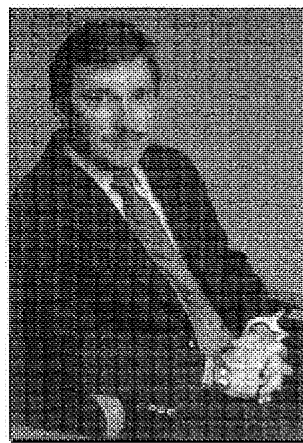
Robert has been practicing law with Christenson, Kralowec, & Roper in Porterville, California, for the past ten years. He enjoys the companionship of his father, two brothers, and a brother-in-law, who all work for the same firm. Living in a smaller community brings many opportunities for civic service. Robert serves in the Tulare County Bar Association, the Porterville Optimist Club, Porterville Youth Inc., and the Porterville Community Concerts.

### **Stephen Hill '77**

Stephen first worked for Lane, Powell, Moss & Miller in the Emerald City of Seattle. Leaving Seattle in 1981, he currently works for Snow, Christensen & Martineau in Salt Lake City. In 1982 Stephen was involved in the case of *Cook v Atlas*. Along with Dee Benson and David Williams (also BYU graduates), he was instrumental in winning a \$3.5 million verdict for his client

### **Marianne M. Jennings '77**

Marianne's postlaw school experience is diverse. She has worked with the Federal Public Defender and the U.S. Attorney for Nevada. In addition she has consulted for several law firms and area businesses in Phoenix, Arizona. Marianne was not content to stay away from academia; she joined the faculty at Arizona State University in 1977. Currently she is a full professor at ASU. In her spare time, Marianne is a member of twelve professional organizations and has served on several boards of directors. Marianne is presently filling a term as president of the Pacific Business Law Association



### **G. Kevin Jones '77**

Kevin's educational pursuits did not end with his J.D. He has gone on to receive an LL.M. in energy law from the University of Utah and will soon receive a JSD from the University of Virginia in Charlottesville. Kevin works for the U.S. Department of the Interior

in the Salt Lake City offices. Among other awards and scholarships he has received, Kevin wrote the winning essay in the Eleventh Annual National Energy Law and Policy Institute's Energy Law Essay Competition (1987). His publications have appeared in *Southern California Law Review*, *UCLA-Alaska Law Review*, *Public Land and Resources Law Digest*, *Virginia Journal of Natural Resources Law*, and *California Western International Law Journal*. Kevin's civic activities include being a coach for East High School's girls' soccer team and a volunteer editor for *Dialogue: A Journal of Mormon Thought*, the Sunstone Foundation, and the Mormon History Association.



### **James P. Rupper '77**

After leaving BYU, James worked for the U.S. Government for about ten years. Presently, James is a private contractor with Aldrich, Nelson, Weight & E splin in Provo, Utah.

He is experienced in general practice, estate planning, corporations, domestic relations, and personal injury litigation. James has served in a variety of Church callings, including primary teacher, young men president, elders quorum president, and counselor

**Steven R. Scow '77**

Steven has been a partner at Morse & Mowbray in Las Vegas, Nevada, since 1984. He resides in Las Vegas and specializes in private civil practice, which includes estates, trusts, and taxes. Steven had the opportunity to be involved with the Howard Hughes' estate and in the MGM hotel fire litigation. In the Church he has served as a counselor in two bishoprics and the ward mission leader and is now serving as deacons' quorum advisor/scoutmaster.

**Dale W. Storer '77**

Dale was at Cox and Bowen for one year and then went to Anderson, Pike & Bush, where he maintains a general practice. In addition to his private practice, Dale is the city attorney for Idaho Falls, Idaho. He is representing the City in the Washington Public Power Supply System (WPPSS) litigation, one of the largest lawsuits ever filed in the history of the United States. Dale has also served as president of the Idaho City Attorneys Association during the 1986-87 term and is currently a legislative committee member of the Association of Idaho Cities.

**Boyd B. White '77**

Boyd worked at McDevitt, Meyers & White in Boise, Idaho until 1982, when he became a Magistrate Judge. He hears all misdemeanor-

felony preliminary hearings, divorces and probates, habeas corpus motions, civil disputes up to \$10,000, child custody, and juvenile matters. Boyd finds adoption proceedings to be the most pleasant aspect of his job, while contested child custody battles are distinctly unpleasant. He is currently part of the Misdemeanor Rules Committee of the Idaho Supreme Court. Boyd's Church service has included callings as a member of the high council, a bishop, and gospel doctrine teacher.

**Randell L. Wilkinson '77**

Randell worked in the Orange County District Attorney's office from graduation until 1986. He currently sits as a judge for the State of California. In 1985 Randell authored a bill, which was enacted by the California Legislature, to increase the penalties for drunk drivers who injure multiple victims. A few weeks after taking the bench as judge, he received national media attention because of a traffic case he dismissed in the interest of justice. The case involved a mother, six months pregnant, who claimed she was entitled to drive in the "ride-sharing" lane on the freeway. She argued that, as a pregnant woman, she was driving for two. (*Time*, Feb. 2, 1987). Randell is also active in his ward. He has held the callings of seminary teacher, elders quorum president, and young men's president. He is currently a counselor in the bishopric.

**Michael L. Hutchings '79**

Michael has been serving as a circuit court judge in Utah since 1983. Appointed at

age 29, he is the youngest person appointed to Utah's circuit court bench. Before accepting his judicial position, Michael was employed as prosecuting attorney for West Valley City. This summer the Utah State Bar honored Judge Hutchings as Circuit Court Judge of the Year. He has served as a member of the Utah State Bar Fee Arbitration Committee and the Utah Bar Journal Committee.

**Cheryl Preston '79**

Cheryl was recently promoted to vice president and assistant corporate secretary at First Interstate Bank of Utah. She joined First Interstate's legal department in 1987. Before joining the bank Cheryl was associated with Holme, Roberts & Owen in Salt Lake City and O'Melveny & Myers in Los Angeles. She has been a member of the Law School's Board of Visitors, Utah Lawyers for the Arts, and Women Lawyers in Utah.

**D. Gary Beck '82**

Gary has worked with the U.S. Coast Guard since 1972. After graduating from BYU, he became an assistant legal officer, and, in 1986, Gary was appointed as an assistant professor of law at the U.S. Coast Guard Academy. In 1985 he successfully argued an entrapment defense against cocaine-related charges. The result was an acquittal at U.S. Coast Guard Court-Martial proceedings in Hawaii. Gary's Church service has included callings as bishop, stake executive secretary, and second counselor in the stake presidency.

**Michael Gary Belnap '82**

Michael started his own general practice in 1987, after spending five years with Farr, Kaufman & Hamilton. He is a member of the Employment Law Section of the Utah State Bar and has participated as coach, panel judge, and presiding judge in the Utah State Bar sponsored High School Mock Trial Program. Michael serves as first counselor in the elders quorum presidency of the Clinton Tenth Ward.

**Jordan Clements '82**

Jordan has a practice in corporate/business law at Carr, McClellan, Ingersoll, Thompson & Horn in Burlingame, California. He has done several large nonprofit hospital mergers and reorganizations. Jordan also facilitated the conversion of three public hospitals to private, nonprofit institutions. These conversions were the first of their kind in California. Jordan serves as bishop of the Hillsdale Ward. He has also served as ward clerk, seminary teacher, and elders quorum president.

**S. David Colton '82**

David is with Van Cott, Bagley, Cornwall & McCarthy in Salt Lake City, where he practices in the areas of natural resources and general corporate law. He helped represent Intermountain Health Care on tax-exemption issues in counties throughout Utah. David has served as an elders quorum president and is currently a second counselor in the bishopric.

**James R. Layton '82**

James was a federal judicial clerk for a year following graduation. He lives in



Virginia and works for Vinson & Elkins' Washington, D.C., office. His areas of practice include antitrust, complex commercial, and administrative litigation. James is representing the plaintiff in a \$2.5 billion antitrust suit. The plaintiff is a joint venture that attempted to build a coal slurry pipeline from Wyoming to Arkansas. The defendants in the action are five western railroads.

**Dan Livingston '82**

Dan worked five years for O'Melveny & Meyers in Los Angeles prior to joining Call, Clayton & Jensen; a ten person firm located in Newport Beach. Dan specializes in business litigation. After five smoggy years in L.A., Dan loves being five minutes from the office and the beach. He is a counselor in the bishopric.

**McKay Marsden '82**

McKay has "survived the practice of law for six years" and is working for Holme, Roberts & Owen's Salt Lake City branch office. He specializes in federal taxation and estate planning. He enjoys Church service and has served as a counselor in the elders quorum presidency.

**Stephen R. Marsh '82**

Stephen works with H. Deloyd Bailey in Wichita Falls, Texas. He specializes in personal injury and commercial litigation. Stephen still enjoys the thrill of winning at trial. Besides his law career, he is interested in karate, writing, and various entrepreneurial endeavors.

**Michael J. Read '82**

Upon graduation Michael clerked for Judge Durtschi

for one year and then spent a year with Hamlin & Sasser, Boise, Idaho. His present employment is with Albertson's Inc., where he practices real estate, litigation, and general corporate law. Michael finds that his job allows him a sophisticated exposure to corporate and real estate matters, and at the same time enables him to supervise nationwide litigation. He has continued his interest in music and theatre, some of his performances include leading roles in "Music Man," "South Pacific," "Sweeney Todd," and "Camelot."

**Rick J. W. Riggers '82**

Rick continues to utilize the Japanese language skills acquired on his LDS mission. While working for Hansell & Post in Atlanta, Georgia, he assisted approximately twenty-five Japanese corporations with their operations in Georgia. For obvious reasons Rick specializes in international/corporate law. Some of his other clients within that scope are the Government of the Kingdom of Sweden, Mitsubishi Corp., and Sumitomo Corp. of Japan. Rick currently serves as a member of the Japan/America Society of Georgia, the Treasurer and President-Elect of International Transactions Section of the Atlanta Bar Association, and a campaign worker for the Atlanta Association for Retarded Citizens.

**Robin L. Riggs '82**

Robin began working for the Utah Office of Legislative Research and General Counsel following graduation. In 1985 he was

appointed executive director of the Utah Constitutional Revision Commission. In this capacity he has supervised the revision of the Utah Constitution articles dealing with local government and education. Robin is also serving as senior counsel to the Tax Recodification Commission and was the chief drafter of the recently recodified Utah Tax Code. Robin's civic positions include serving a term as the secretary of the Utah State Bar's Young Lawyer's Section and as a member of the bar's Law Day and Law Related Education Committee. He is preparing two articles on state taxation and one article on the Utah Constitution for publication. In the Church he has served in three elders quorum presidencies, as ward mission leader, and as gospel doctrine teacher.

IN MEMORIAM

**Gregg I. Alvord '78**

Gregg was killed in a one-car accident in Southern Utah in August 1988. Prior to his death he was a partner at Jones, Waldo, Holbrook & McDonough in Salt Lake City. While at BYU Gregg served on the board of editors of the Law Review. He is survived by his wife and four children.

In recognition of his contributions to the firm, his law partners are establishing a scholarship fund in memory of Gregg I. Alvord at the Law School. The funds from the scholarship will be used to assist a needy second- or third-year law student who has excelled academically. For additional information about this memorial to Gregg, please contact Dean Zobell at the Law School.

Clark Memorandum

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