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# The Beginning and the End of a Lawyer

Dallin H. Oaks

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# The Beginning and the End of a Lawyer

*Dallin H. Oaks*

Thank you, President Samuelson, for that gracious introduction. Thank you, thank you for this undeserved but deeply appreciated honor you have paid me this evening. I feel humbled by the presence of so many in this audience who I esteem as treasured friends and role models, and I express my personal affection and appreciation for each of the persons on the stand this evening—each a treasured, personal friend.

My dear brothers and sisters in the law: I appreciate this invitation to address you in person and electronically in more than 100 locations. At the outset I express my gratitude for that generous introduction and pray that I will be able to fulfill the challenge it poses.

Your invitation has given me cause to reminisce. This is one of the privileges of age, and I am getting to the point when I feel impressed to claim that privilege. I pray that these recollections will be sufficiently tied to general principles that their recital will be helpful to lawyers who are 20 to 50 years my junior.

I was admitted to the bar of the state of Illinois 48 years ago this summer. Next month it will be 34 years since the Board of Trustees of Brigham Young University announced the founding of J. Reuben Clark Law School—two months after which I was announced as president of BYU. I immediately undertook the planning of the Law School: the appointment of a dean, the recruitment of faculty, the assembling of a library, and the construction of suitable quarters. So much has happened in all of our lives since that time!

I have titled my remarks “The Beginning and the End of a Lawyer.” For “the beginning” I will reminisce about my own foundations in the law.

For “the end” I will review some of the things lawyers face as they reach the conclusion of their formal service in the profession.

### I. Fathers in the Law

In the beginning every lawyer has some fathers or mothers in the law—persons whose teaching and example has a profound influence on their initial thinking and development in the profession. I have had many influential teachers and mentors in my life, but when it comes to my initial thinking and development in the legal profession, four men stand out above all the rest. I want to tell you about each of these fathers in the law and what I credit them with teaching me. I will mention them in the order in which they came into my life.

#### 1. *Dean Edward H. Levi*

Most of you will remember Edward H. Levi as the United States attorney general whose stature and wisdom restored integrity to a Department of Justice badly bruised by the Watergate scandal.

Much earlier, Edward Levi was the dean of the University of Chicago Law School when I enrolled there in 1954. He was my teacher in various courses and circumstances. As dean he recruited me to the faculty in 1961. When he went to the university administration the following year, he appointed me acting dean of the law school and tutored me in those responsibilities. Still later he was the wise academic leader who spoke at my inauguration as president of Brigham Young University in 1971. The influence in my life of this great Jewish legal scholar and leader was prolonged and powerful.

In my first year Levi’s writings introduced me to the way of precedent and reasoning in the law (see Levi, *Introduction to Legal Reasoning* [1948]). As a teacher he was brilliant, thorough, and extremely rigorous. All of us remember being terrorized in classrooms by law teachers whose high expectations and threat of public humiliation drove us to exhaustive preparation and gave us the scar tissue and thick skin we would need to survive in an adversary profession. I will never forget the day Dean Levi called on me in his antitrust course. He directed me to state a particular case and to explain how it differed from another case. Being poorly prepared that day, I hesitated slightly. Reading the circumstance and wanting to teach a lesson to me and everyone else, he cut me off with, “Oh, never mind, Mr. Oaks. You have to be *good* to do that.” Years later I could laugh about that put-down, but the scar tissue and the motivation for preparation have never left me.

Levi taught that the law is a learned profession, so law study should be much more than preparation for the practice of law. The law requires

intellect as well as craftsmanship, and its obligations include improvement of the system of justice for the common good of mankind. “The problem for the lawyer,” he once said, “is not just to know the law, but how to create within it. It is a world of artistry and craftsmanship and change” (see Edward H. Levi, “An Approach to Law,” *Occasional Papers*, University of Chicago Law School, 13 [1976]; also see Edward H. Levi, *4 Talks on Legal Education*, University of Chicago Law School [1952]).

President James E. Faust has said that his law school dean “constantly impressed upon us that his primary mission was not to teach us the law, for the law would change; rather, his primary mission was to teach us to think straight, based upon sound principles” (James E. Faust, “The Doctrine and Covenants and Modern Revelation,” *The Doctrine and Covenants* [Craig K. Manschill, ed. (2004)], 1). Dean Levi did the same for me.

Levi also gave his students assurance of the natural goodness of the law and the legal profession, showing how they are ideally founded on what is right and good and workable. The practice of law is not just a way to earn a living or to secure a position of power. Levi’s paramount interest was making the law what it ought to be for the good of the people and the country and teaching his students and associates to do the same. He never seemed to have any personal interest. I saw him as a man without self-promotion or concern with political correctness who was fundamentally grounded in what he believed to be right. To me his leadership and his wisdom illustrated our doctrinal teaching that “the Spirit of Christ is given to every man, that he may know good from evil” (Moro. 7:16).

When I was a new law teacher, Dean and President Levi taught me the workings of higher education. This served me well as a faculty member, as an acting dean, and much later as a university president. For example, Levi was a master at honoring and leading his faculty. His faculty meetings were always routine, because he had already thoroughly analyzed every difficult matter, worked out the needed compromises, and done the advocacy with key individuals before the meeting was held. He avoided contention.

Levi also taught me the meaning of a university and the respective roles of faculty, students, administration, and board. These teachings were tested in 1969 in the crucible of a massive student demonstration that seized the University of Chicago’s administration building and held it for 15 days. As president of the university, Levi received enormous pressure to call in the police to forcibly evict and prosecute the trespassers. Instead, he announced that the university would govern itself. He appointed a disciplinary committee of nine faculty members from different fields. I was the chairman and the only lawyer on the committee.

Levi said later:

The University has sought throughout this period . . . to exemplify the values for which it stands. . . . In a world of considerable violence, and one

in which violence begets violence, it has emphasized the persuasive power of ideas. It has sought—and the unique response of faculty and students has made this possible—to handle its own affairs in a way consistent with its ideals. [Public statement, 14 February 1969]

That is a great lesson for every organization, especially those involved in teaching. Do your own work, and don't ask the law or other organizations to do it for you.

After two months of individual hearings on 150 students summoned to university discipline, our faculty committee concluded its assigned task and the university continued its work, all without outside intervention.

This was a time of great disruption on campuses throughout the country. When the political desire to punish student demonstrators produced proposals for federal legislation, I was asked to write my recommendations to Arthur F. Burns, a counselor to President Richard M. Nixon. I was merely following the teaching and leadership of Edward Levi when I wrote:

My advice is for the federal government and federal officials to stay out of this controversy. Spare us the spectacle of federal prosecutions of university students for campus-related activities. . . . Let the response to student disorders be local. Let universities, in cooperation with local law enforcement agencies if necessary, handle the problem. . . . [B]y all means stay off the campus, and don't make university administrators and faculty look like federal policemen. [Letter of 15 May 1969]

I am happy to recall that no federal legislation was enacted. As Levi was fond of saying, the law is a crude instrument. He taught that we should only use the law when we have to.

Two years later I left the University of Chicago to become president of BYU. President Levi gave me a brief but insightful send-off with this letter: "As I have told you, we are proud of you and sorry to lose you, but we bow, as we must, to this calling." As usual, he had it right.

## 2. *President John K. Edmunds*

John K. Edmunds was my stake president during my law studies, law practice, and early law teaching in Chicago. A giant in Church leadership, he served for over 20 years as president of the Chicago Stake. He was the only man I knew during my studies who was both an outstanding lawyer and an exemplary Latter-day Saint. (I had no lawyers in my family and hardly any among my acquaintances as I was growing up.)

President Edmunds had a powerful influence over my spiritual development. (See my tribute to him in *Church News*, 11 March 1978, 2.) The period of graduate education is an unsettling time when personal values and beliefs are challenged. This was especially true for me in my first

two years at the University of Chicago Law School when I was the only Mormon in the law school. This was also my first experience outside the small towns of Utah and Idaho where I had grown up. I was surrounded by philosophies and influences quite alien to anything I had ever experienced.

President Edmunds was instrumental in helping me gain the spiritual nourishment and eternal perspective I needed to handle these strains. He had a powerful testimony of the Lord Jesus Christ and of the Prophet Joseph Smith. He stressed the fundamentals: faith, repentance, love, tithing, and the reality of a living prophet. Except in occasional interviews, I rarely had personal conversations with him. But as I sat in stake conferences and in priesthood leadership meetings, I always felt that he was speaking directly to me.

He always impressed and inspired me with his use of the scriptures, his spirituality, and the power of his example. Under his influence I was able to keep my life in balance—spiritual, intellectual, and practical. As to the latter, I saw him adjust his professional life to serve the Lord in his calling—a model I would later follow in my own life.

After graduation and a year clerking in Washington, D.C., I returned to Chicago to practice law with a large law firm in a highly competitive atmosphere. This was a time for further decisions on the relative priorities of family, Church, and profession. Soon, at a time when I was handling a heavy load of cases and working four evenings a week, President Edmunds called me as a stake missionary. He told me this calling would require about 40 hours of missionary time each month, which meant three to four evenings per week. I couldn't see how I could accept this calling and still keep up with my law practice. Yet I could not say no to a calling that I knew to be from the Lord, especially when that calling came through a servant of the Lord who had wielded such a powerful influence in my life. Gathering all my faith, I accepted the call.

That decision was a turning point in my life. I reduced the time spent in my law practice, almost entirely omitting night work, and devoted that time to missionary activity. Yet I observed no reduction in my performance or advancement in the profession. I was seeking first to build up the kingdom of God, and all those other things were added to me (see Matt. 6:33; JST Matt. 6:38). This altered pattern also prepared me to receive and accept an offer to become a professor of law at the University of Chicago. This proved to be a crucial decision in my life.

Here I feel to mention something else I learned by watching President Edmunds. This has influenced my Church work and may be useful to you also. In his administration of the Chicago Stake, President Edmunds gave special emphasis to a limited number of things. The ones I remember to this day as being repeated again and again in every meeting were tithing and the principle of priesthood leadership expressed in section 121 of the Doctrine and Covenants beginning at verse 34:

Behold, there are many called, but few are chosen. And why are they not chosen?

Because their hearts are set so much upon the things of this world, and aspire to the honors of men, that they do not learn this one lesson—

That the rights of the priesthood are inseparably connected with the powers of heaven, and that the powers of heaven cannot be controlled nor handled only upon the principles of righteousness. [D&C 121:34–36]

And so forth. I can still hear his voice speaking those words and sending them right into my heart as an inspiration and a challenge.

From his example I learned that if Church leaders single out a small number of key principles and emphasize them again and again, these few fundamentals have the capacity to raise individual performance on a multitude of other subjects rarely mentioned. This is more effective than trying to push everything equally, like the proverbial river a mile wide and an inch deep that never achieves the concentration necessary to erode a mark on the landscape. Leadership requires selective concentration.

Knowing that I am speaking to many who have important positions of leadership in the Church, I voice the prayer and challenge that you are doing for your impressionable young people what my inspiring stake president did for me.

### 3. *Chief Justice Earl Warren*

All of us know something about my third father in the law, Chief Justice Earl Warren. I served as one of his three law clerks for 1957–58. My law school sponsored and recommended me to another justice, but I was not chosen. I decided independently to apply to the chief justice. The law school had no connections with him and offered me no encouragement. I contacted President Ernest L. Wilkinson of BYU, who put me in touch with his law partner, Carl Hawkins, who had clerked for Warren's predecessor and still had a contact in that office. Hawkins also secured a recommendation from Senator Arthur V. Watkins of Utah. In March, after I had given up hope for a clerkship, we were all surprised when the chief justice phoned Dean Levi to ask if I was a likely enough prospect to invite to Washington for an interview. Levi gave me such a recommendation that the chief justice told him to tell me I had the job without an interview.

My year clerking for the chief justice was challenging, satisfying, and far-reaching. Beyond the obvious opening of doors for professional advancement, it was a remarkable educational experience. I was allowed to see and participate in the work of the nation's highest court and to work side by side with lawyers who were the present and future leaders of the bench, the bar, and the nation. Among the special guests our 18 law clerks invited to our weekly two-hour luncheon interchanges were Dean Acheson, the most impressive advocate I saw argue a case that year, and

John F. Kennedy, a young junior senator from Massachusetts who was to be elected president less than three years later.

Chief Justice Earl Warren was an unlikely mentor and boss for a conservative lawyer like me. As you know, he and others on the so-called “Warren Court” are the authors of many opinions that represent and set the direction for what is now known as judicial activism. In my view this judicial activism has worked far-reaching mischief in the law. Whether one agrees or disagrees with the outcome of these activist decisions, they are unfortunate precedents because they are matters that should be decided by elected lawmakers, not life-tenured federal judges.

For this and other reasons my confidential personal year-end tally shows that I disagreed with the chief justice’s votes on 40 percent of the cases decided on the merits that year. The 60 percent in which I agreed with him were obviously more comfortable for me, especially in cases where he was writing the opinion for the Court. Many of these were very satisfying to me personally.

Those cases in which I disagreed with the votes of the chief justice allowed me to learn a good lesson in professionalism. Regardless of your opinion of your client’s choices, it is your professional duty to serve your client to the best of your ability—subject, of course, to the constraints of legality and legal ethics.

In contrast to my disagreements with his votes on some cases, I adored the chief justice as a person, and I admired him as an administrator of the Court and as a wise and considerate employer. On his part, the Chief (as we always called him) frequently praised my work, we got along well in every circumstance, and after about nine months he asked me to stay another year. But, typical of his consideration for his clerks, he told me I should feel free to decline if I felt this was best for me and my family. I therefore acted on my urge to get back to Chicago to practice law.

I loved how the Chief treated those who came to his office. He always came from behind his desk, shook hands, and ushered the visitor to a seat. He often did this even for his law clerks, who were in and out of his office on a daily basis. He told me he adopted this practice as a public official in California. He said it was his way of showing his feeling that each person was important and his official position did not put him above anyone. Here I recall the prophet Nephi’s statement that “all are alike unto God” (2 Ne. 26:33) and Jacob’s teaching that “the one being is as precious in [God’s] sight as the other” (Jacob 2:21). In my lifetime I have observed that some people, like the Chief, have the quality of treating everyone like a child of God even though they lack the doctrinal understanding that requires this. Others who have the doctrine sometimes fail to act on it.

The Chief also taught me about professional confidences. He shared everything with his clerks, and in return advised us that he expected absolute confidentiality about the work of the Court, forever. We should



never talk or write about the confidential matters we had observed at the Court, since this was, as he said, “destructive of the free exchange of ideas among court members and of public confidence in the Court.” Since I was schooled in that way, you can imagine my disgust at some of the disclosures made by former confidants of public figures who get wealthy by betraying their confidences in so-called “kiss and tell” autobiographies.

The chief justice was faithful to his wife and his family in every sense of that word. We talked about family things many times. He had me bring my wife and our three young children to meet him, and he spent considerable time with them. His interest was genuine. In all of this I was learning how a man of the law—even the chief justice of the United States—assigned the highest priority to his family.

He shared one example I have never forgotten. I only wish I had applied it as effectively in my professional life as he did in his. He told me that when he was attorney general and governor of California he would never allow any state papers to be delivered to his home. That was his home, the place where he devoted himself to his family, he explained, and he didn’t want any outside intrusions there. Once one of his staff phoned to say he had some papers of the utmost importance he needed to get to the governor right away. Could he bring them over to the house? Warren said he told him no, not to the home, but if the matter was that important the governor would change his clothes and come to the office and receive them there. The Chief said that when this became known, it reduced drastically the amount of interruptions he had at home without cutting off the avenue to deal with true emergencies—at the office.

The chief justice had a great respect for our Church and its leaders. He often spoke of his fondness for President Heber J. Grant. This gave me freedom to speak with him about Church matters, and that led to a funny experience. The Chief took me along when he dedicated the new University of Chicago Law School building during the year of my service. After dinner that evening Dean Levi had the honored guests to his house for after-dinner drinks. When Earl Warren declined a drink, indicating that he seldom drank after dinner, I told Dean Levi in the presence of the chief justice “that I had the Chief living the Word of Wisdom.” Both seemed to enjoy that claim, but candor compels me to admit that if the Chief was living the Word of Wisdom after dinner, he was not a teetotaler before. He partook, but very moderately.

The chief justice gave his three law clerks a farewell luncheon on July 3, 1958. I recorded these thoughts in my personal journal:

I felt a keen loss at leaving him. Though these pages scold him severely . . . in regard to what I consider his faulty notion of how a judge should reach decisions, I have developed a profound affection and respect for him. I believe he is completely honest, sincere, and utterly without guile. He has wonderfully

mature judgment about many matters, and he is the most kind and considerate employer one could ask for. I will miss him.

The Chief continued his interest in all his clerks. He urged me not to practice law in Chicago, which he considered a “crooked” place, but he later rejoiced when I told him I was leaving the practice to teach.

“Oh, that’s great,” he said. “You’ll be able to influence these young lawyers. That’s a wonderful thing to do” (from my personal journal, quoted in Ed Cray, *Chief Justice*, 355 [1997]).

When the chief justice resigned in 1969, while still in good health at age 78, I wrote him a letter recognizing his resignation as a fulfillment of his intention—frequently voiced to his law clerks—to resign while still at the peak of his powers and effectiveness.

“I believe you have done that,” I wrote, then expressed my belief that this was “the right and proper course.” I continued, “That is what I would have wanted for you if you had been my father, and I feel the same way about you as one of a small group of men who are in a very real sense my fathers in the law.”

#### 4. *Lewis F. Powell*

The fourth of my fathers in the law is Lewis F. Powell. You will remember him as a highly respected justice of the United States Supreme Court. But that came later. His impact on me was in the year 1970–71, when he was a practicing lawyer in Richmond, Virginia, and I was a professor of law at the University of Chicago. Although Powell’s contribution to my education came 13 years after I graduated from law school, I consider him one of my fathers in the law because his tutelage was vital in preparing me for important things I needed to do as president of Brigham Young University and in other important responsibilities that followed.

A highly respected former president of the American Bar Association, Powell was serving as chairman of the board of the American Bar Foundation, the research arm of the American Bar Association. ABF, as we called it, was located next door to the University of Chicago Law School. In the summer of 1970 Powell arranged for me to have 75 percent released time from the law school to serve as the executive director of ABF. I was responsible to work with the board of directors and to direct the professional staff—the same task as the president of a corporation or the president of a university. I had never served on a board or worked under the direction of a board, so this was an entirely new experience.

I could not have had a better teacher than Lewis Powell. He was an expert at defining the respective responsibilities of a board and a professional staff. He was also brilliant at analyzing how to present matters to a board to obtain fruitful discussions and clear decisions to guide the staff. Powell was very wise in organizational principles, he knew the concerns

of the entities, and he knew the people who had to make and implement the decisions. All of these skills were needed because I was appointed to manage ABF at a time when its board was so dissatisfied with the work of the staff that its continued funding was in doubt. Differences had to be resolved, new policies had to be formulated, and confidence had to be restored.

I described the results in my personal history:

One of the most valuable experiences was watching Lewis Powell arrange and preside over ABF board meetings, skillfully resolving hot issues by deft phrasing and skillful compromise, all with the purpose of preserving harmony and keeping the organization moving forward within the limits of consensus and cheerful support.

Less than a month after this tutorial ended, I was meeting with the Board of Trustees of Brigham Young University, which then included the First Presidency and members of the Quorum of the Twelve, including five future presidents of the Church. What I learned from Lewis Powell was vital to my responsibility to help the board make the policies that would move the university forward. These included the foundation policies for the new J. Reuben Clark Law School.

Many times I have thanked a loving Heavenly Father for what I was privileged to learn from Lewis Powell. His teachings have been crucial in my subsequent and frequent service on boards, including particularly my five years as chairman of the board of the Public Broadcasting Service and my eight years as chairman of the board of the Polynesian Cultural Center.

My last meeting with Lewis Powell concerned Brigham Young University. When President Harold B. Lee, First Counselor in the First Presidency, advised me that I had been chosen as president of BYU, I told him that when I was made head of the American Bar Foundation just a year earlier, I had committed to Lewis Powell that I would serve for at least five years.

“Go see him,” President Lee directed, “and ask if he will release you from that commitment.”

I flew to Richmond and met my friend and teacher in his law office. I told him what had happened and asked him what I should do. I remember his words as if they had been uttered yesterday:

“I have been offered the presidency of several universities during my professional life,” he said, “and I have never seriously considered leaving the practice of law for that occupation. But I know enough about you and enough about Brigham Young University to know that yours is a perfect fit. We give you an honorable release from your commitment. You go with our blessing.”

A few years later Justice Lewis F. Powell came to BYU for the ceremony dedicating the new Law School, and we awarded him an honorary degree.

I have spoken of four men whom I call my fathers in the law, reviewing some of the things they taught me in my formative years in the legal profession. Each of you has had or is having mentors who teach you and help you fix your ethical and practical course in the profession. I hope you have been as blessed through your mentors as I have been through mine.

## II. The End of a Lawyer

Now I speak of the conclusion of the professional journey. In time, each of us will come to the end of our formal work in the legal profession. It may be by planned retirement, by serious illness, by death, or by a switch in occupations—planned or otherwise. Mine was the latter.

In 1984, while happily serving on the Utah Supreme Court, I went to the University of Arizona to judge a moot court. There, on Friday evening, April 6, I received a telephone call from President Hinckley of the First Presidency that changed my life. I enjoyed serving as an appellate judge more than anything else I had done in my 30 years in the legal profession, and now it was over, and I was to leave the active practice of the law. Suddenly I saw my work in the legal profession in a new light, as a means of preparing me for something else to follow. Since that transition will come to all of us, it is wise to ask now: What will remain when we reach the end of our formal work in the legal profession? What will we have besides the property we must also leave behind, eventually?

Most of us will conclude our formal activity in the legal profession before we die. But the skills and ways of thinking we have acquired as lawyers will remain—for better or for worse. And when properly applied, those skills and ways will still be a source of blessing to many.

For example, I am conscious every day that my approach to gathering facts, analyzing problems, and proposing action is a product of my legal training. So is my idea of justice. (The law has been less influential in teaching me about mercy.) If one makes proper use of opportunities, the study of law disciplines the mind and the practice of law strengthens the character.

My participation in litigation wars has stamped my soul with an imperative to avoid the uncertainties and ambiguities that foster controversy. It has also given me a bias to resolve differences, where possible, by private settlement rather than by adversary litigation, causing me to believe that sometimes even a poor settlement is better than a good lawsuit.

I have also seen the gospel ideal of service to others being nobly expressed by the uncompensated and even the compensated service of members of the legal profession.

And, finally, I rejoice in the fact that the profession of the law is clearly the best preparation for the role of Advocate, a role and title our Savior designated for Himself (e.g., D&C 29:5, 110:4; 1 John 2:1; Moro. 7:28).

So what will remain when a lawyer comes to the end? Each of us will have our record of service to our clients, our profession, our communities, and our God. There will remain what we have become by that service. We will also have the eternal family relationships we treasure, as defined by the terms of our covenants and promised blessings and our fulfillment of the conditions on which they are based. All of this we can take with us as we have our last appearance before a judge. As we know from sacred writ, we “must all stand before the judgment-seat of Christ” (Morm. 3:20), who “will judge all men according to their works, according to the desire of their hearts” (D&C 137:9). That appearance will provide the ultimate definition of what remains at the end of a lawyer.

My dear brothers and sisters, our lives are patterned by our faith in the Lord Jesus Christ. I testify to you that that faith is sound and justified and that the promises we receive from keeping the commandments of our Lord are sure. The gospel of Jesus Christ is a safe anchor, and we are led by a prophet as we walk the path designated by that gospel. I testify to you of the truth of these things and pray the Lord’s blessings upon you as you serve your families, your communities, your profession, and our God, in the name of Jesus Christ, amen.

*This satellite fireside address was given to the J. Reuben Clark Law Society at the Conference Center in Salt Lake City on February 11, 2005. Reprinted from the Clark Memorandum, spring 2005, 2–11.*

*Dallin H. Oaks received his JD from the University of Chicago in 1957 and clerked for Chief Justice Earl Warren of the U.S. Supreme Court 1957–58. He served as president of Brigham Young University 1971–1980 and as a justice on the Utah Supreme Court 1980–84. He is currently a member of the Quorum of the Twelve Apostles.*