

Spring 2005


# Clark Memorandum: Spring 2005

J. Reuben Clark Law Society

BYU Law School Alumni Association

J. Reuben Clark Law School

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CLARK MEMORANDUM

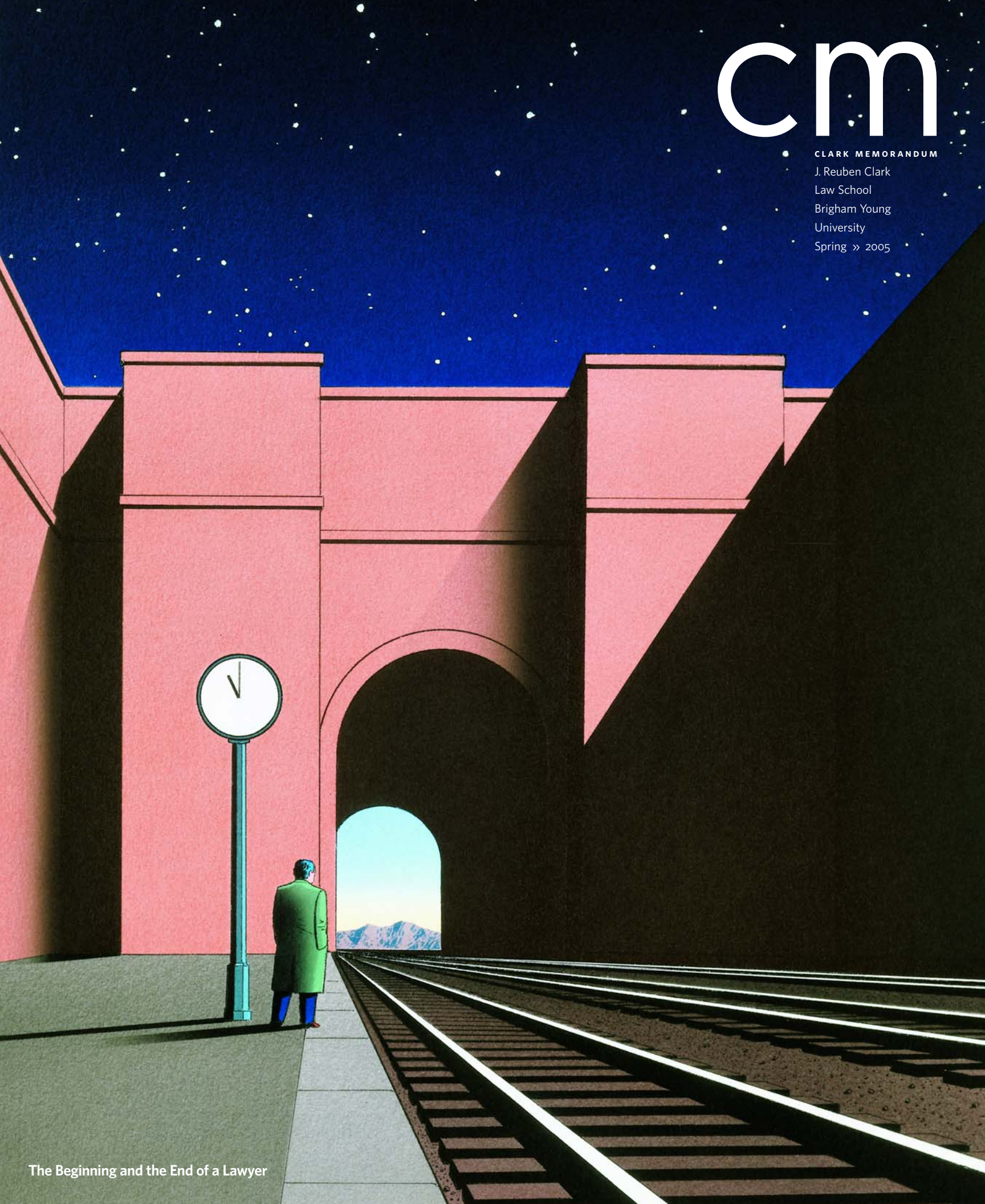
J. Reuben Clark

Law School

Brigham Young

University

Spring » 2005



The Beginning and the End of a Lawyer

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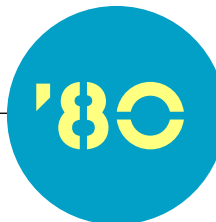
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The J. Reuben Clark Law Society draws on the philosophy and personal example of the Law School's namesake, J. Reuben Clark Jr., in fulfilling the following mission: We affirm the strength brought to the law by a lawyer's personal religious conviction. We strive through public service and professional excellence to promote fairness and virtue founded upon the rule of law.

T

HANK 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. >>>

THE  
Beginning

AND THE  
End

ILLUSTRATION BY GUY BILLOUT

OF A

LAWYER

BY ELDER DALLIN H. OAKS



# 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 the 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.

  
*This  
speech was  
presented  
to the J.  
Reuben  
Clark Law  
Society at  
the Church  
conference  
center in Salt  
Lake City,  
Utah, on  
February 11,  
2005.*



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.

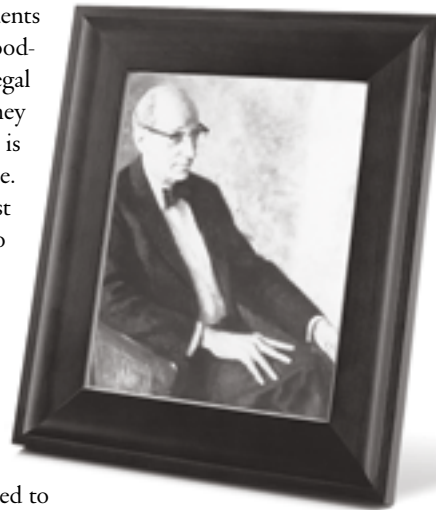
Oaks. You have to be *good* to do that." Years later I could laugh about that put-down, but the scar tissue and the motivation for preparation have never left me.

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





*Dallin Oaks' induction as president of Brigham Young University in 1971.*

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 mis-

sionary. 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.

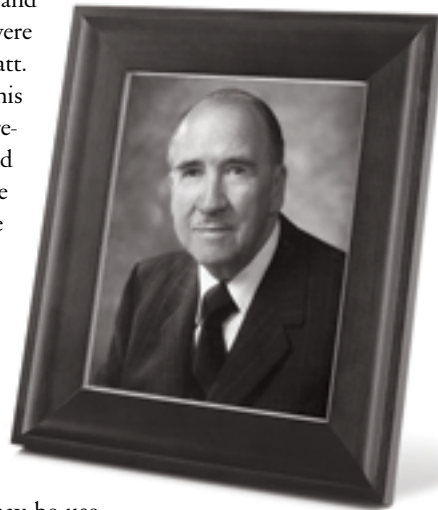
Here I feel to mention something else I learned by watching President Edmunds. This has influenced my Church work and may be useful to you also. In his administration of the Chicago Stake, President Edmunds gave special emphasis to a limited number of things. The ones I remember to this day as being 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 remark-

able 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*



IN MY LIFETIME I HAVE  
OBSERVED THAT SOME PEOPLE, LIKE THE CHIEF,  
HAVE THE QUALITY OF TREATING EVERYONE LIKE  
A CHILD OF GOD.



*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

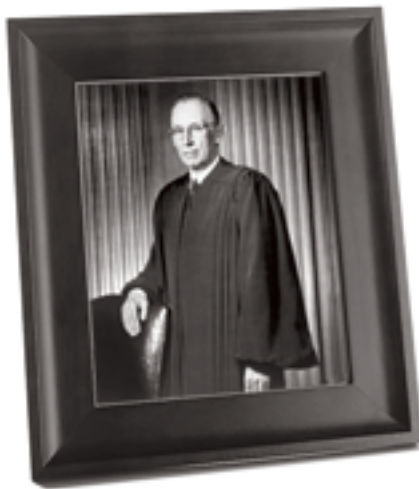
serving as chairman of the board of the American Bar Foundation, the research arm of the American Bar Association. ABF, as we called it, was located next door to the University of Chicago Law School. In the summer of 1970 Powell arranged for me to have 75 percent released time from the law school to 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



*Dallin Oaks, University of Chicago law student.*

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.

# JEHOVAH'S CODE OF CIVIL

by John W. Welch

VIRTUALLY EVERYONE IS FAMILIAR WITH THE TEN COMMANDMENTS. THEY CAN BE FOUND IN EXODUS 20. RIGHT AFTER THOSE COMMANDMENTS, IN EXODUS 21–23, STANDS A LESSER-KNOWN BODY OF LAWS. THAT SET OF LAWS IS KNOWN AMONG BIBLICAL SCHOLARS AS THE COVENANT CODE, ALTHOUGH IT IS NOT A “CODE” IN ANY MODERN SENSE OF CODIFICATION. THE WIDELY INVOKED TEN COMMANDMENTS, WHICH INTRODUCE THE COVENANT CODE, ARE WRITTEN IN THE DISTINCTIVE “THOU SHALT NOT” FORM. HEBREW SENTENCES THAT BEGIN IN THIS WAY ARE DESCRIBED AS “APODICTIC” LAWS. SUCH PROHIBITIONS ARE THOUGHT TO BE OF ELEVATED IMPORTANCE. THEY SURPASS IN GENERALITY AND FORCEFULNESS OTHER PROVISIONS IN BIBLICAL LAW, SUCH AS THOSE THAT ARE WRITTEN IN SENTENCES THAT BEGIN “IF A MAN,” AND THUS PERTAIN MORE TO INDIVIDUAL CASES OR PARTICULAR SITUATIONS.<sup>1</sup>

PHOTOGRAPHY BY BRADLEY SLADE

**JUSTICE**



Few people notice, however, that the Covenant Code is not only introduced by the familiar list of 10 apodictic commandments, but it also concludes with another series of “thou shalt not” prohibitions. This concluding set of laws can easily be called Jehovah’s code of civil justice. One Old Testament scholar, J. W. McKay, has called this second set of commandments a “decalogue for the administration of justice.”<sup>2</sup> Others agree that, behind or alongside the series of judicial rules found in Exodus 23, there once stood in ancient Israel other similar sets of instructions that were given to, or expected of, all

who participated in the legal process.<sup>3</sup> Frank Crüseman has stated that “like no other texts, the instructions regarding behavior in a trial, which we find in [Exodus 23:1–2, 7–8], give us a picture of legal procedure during the monarchic period,” from about 1000 to 600 B.C. in ancient Israel.<sup>4</sup>

I believe that these judicial commandments in Exodus 23 still offer important guidance to lawyers and litigants today. These commandments establish standards of behavior for judges and officials involved in the legal system. These rules also apply to plaintiffs and witnesses who appear in court. Nowhere else in scripture or in ancient law codes can one find a comparable cluster of mandates for judges and lawyers stated so succinctly. This body of ethical requirements is the earliest code of professional responsibility in legal history. Notwithstanding their antiquity, the principles of justice and righteousness embodied in this code of judicial conduct remain applicable today.

#### **Jehovah’s Judicial Code in Context**

McKay’s insightful article focuses on what he counts as 10 judicial commandments in Exodus 23:1–3 and 6–8. In actuality, if one begins counting at Exodus 22:18, the last columns of the Covenant Code contain not just 9 or 10 prohibitions but 24 “thou shalt not” expressions.<sup>5</sup> In Hebrew these 24 statements are grammatically distinctive and readily identifiable, all beginning with the word *lo*, literally “don’t!” These lines can be translated, for example, as “Don’t allow!” “Don’t vex!” “Don’t deny!” “Don’t take!” Grammatically, these apodictic prohibitions function much like the German expression “Nicht rauchen!” (“No smoking!”). Because all 24 of these imperatives in Exodus 22 and

23 are equal in form, McKay’s analysis should be expanded so that the central 10 judicial commandments are read in their full literary context. The 10 injunctions that precede the “judicial decalogue” and the four prohibitions that come after it provide the social and religious bookends that surround Jehovah’s code of civil justice. The 24 apodictic injunctions in Exodus 22–23 can thus be divided into three sets: Sets A, B, and C.

The first set of 10 (Set A) is found at the end of Exodus 22. It deals mainly with the creation of a just society with loyalty and devotion to God. These commandments are addressed to all people of the covenant and set forth legal preconditions of social justice that should prevail among the people at large. These laws rule out such things as reaching decisions through irrational divination, mistreating or taking unfair advantage of people, showing disrespect to proper authority, being late, and scavenging damaged goods. These principles must be present amidst the population at large before justice can be rationally and practically achieved in any society. According to this set of rules, just and righteous people are to stay away from sorcery or divination: God, not some oracle or astrologer, is to be the source of true guidance and revelation.<sup>6</sup> People in a just society must avoid taking advantage of the weak, the poor, or the vulnerable (widows, orphans, the impoverished, and people from other lands are specifically mentioned).<sup>7</sup> People in a just society are to respect authority (God and leaders), discharge their obligations punctually, and behave generally in a civilized manner. The motive clause that stands at the conclusion of these provisions and explains the purpose behind them establishes the beneficial status that will come to those who keep these commandments: namely, “ye shall be holy [people]” (Exodus 22:31). The basis of a just society is found in the fair, respectful, and dignified conduct of the general populace. These 10 injunctions may be translated as follows:



## SET A :: TEN COMMANDMENTS FOR SOCIAL JUSTICE AT LARGE

- Thou shalt not allow a witch to live (22:18).
- Thou shalt not vex or mistreat a resident alien (22:21).
- Thou shalt not oppress a resident alien (22:21).
- Thou shalt not afflict or take advantage of a widow or orphan (22:22).
- Thou shalt not loan money (silver) to the needy (22:25).
- Thou shalt not charge interest to the needy (22:25).
- Thou shalt not revile or blaspheme God (22:28).
- Thou shalt not curse a ruler over the people (22:28).
- Thou shalt not delay to offer the first of thy ripe fruits (22:29).
- Thou shalt not eat of torn flesh in the field (22:31).

The central body, or second set of 10 (Set B, McKay's 10), is found at the beginning of Exodus 23. It deals overtly with the operation of a just legal system. These 10 prohibitions are directed more specifically toward those involved personally in the administration of justice. Each of these 10 rules of professional conduct will be discussed in more detail below. In essence, they require that all people involved in the

legal process, especially those who act as judges, be honest, independent, impartial, careful, and compassionate. In particular, they must be beyond any reproach of spreading gossip or hearsay, colluding with the guilty, caving into group pressure, obstructing justice, favoring the rich, telling lies, killing the innocent, accepting bribes, or abusing their power over the vulnerable.

## SET B :: THE TEN COMMANDMENTS OF JEHOVAH'S CODE OF LEGAL JUSTICE

- Thou shalt not bring up a false rumor or report (23:1).
- Thou shalt not be in cahoots with a wicked person as a false witness (23:1).
- Thou shalt not follow the crowd with intent to do evil (23:2).
- Thou shalt not speak against the majority with intent to pervert justice (23:2).
- Thou shalt not be partial toward the poor in a lawsuit (23:3).
- Thou shalt not deny justice to the poor in a lawsuit (23:6).
- Thou shalt stay away from lies (23:7).<sup>8</sup>
- Thou shalt not execute the innocent or righteous (23:7).
- Thou shalt not take a bribe (23:8).
- Thou shalt not oppress a resident alien (23:9).

The final group of "thou shalt not" provisions (Set C) concludes the Covenant Code, in Exodus 23:13, 18–19. These commandments pertain primarily to religious duties, shifting attention toward the fulfillment of obligations owed to God. These four commandments appear together with several positively stated rules. Specifically mentioned are working six days and resting on the Sabbath (Exodus 23:10–12), keeping three festival

days holy (Exodus 23:14–17), and offering sacrifice of the first fruits (Exodus 23:19). The four apodictic rules in this section prohibit a person (including those swearing legal oaths or giving witness testimony) from speaking in the name of any other gods and, for reasons that remain obscure, do not allow sacrifices to be offered in improper or unseemly fashions that mix categories, such as blood and bread or meat and milk.

## SET C :: FOUR PROVISIONS FOR RITUAL JUSTICE

- Thou shalt not invoke the name of other gods (23:13).
- Thou shalt not speak the name of other gods (23:13).
- Thou shalt not offer blood sacrifice together with leavened bread (23:18).
- Thou shalt not seethe a kid in his mother's milk (23:19).

In overview, these 24 "thou shalt not" injunctions set forth responsibilities toward one's neighbor, one's system of government, and one's God. From this overall arrangement one can readily see that Jehovah's code of justice operates on three levels: social, judicial, and religious. Without a sense of social justice among the populace at large, it is unlikely that any amount of legal enforcement will ever bring about a just society. Without a judicial system that functions with impeccable integrity, no collection of written norms will ever be implemented with justice or confidence. From the biblical perspective, without reverent and obedient devotion to God no people will be deeply committed and motivated to keep their laws, to become holy or gracious, as is God Himself.

Interestingly, Thomas Leclerc has found a similar threefold configuration in the construction of the book of Isaiah, confirming the depth of this conception of justice throughout both the law and the prophets in ancient Israel. As Leclerc shows, the concept of justice in Isaiah 1–39 is grounded in social settings, such as defending the weak, the widows and orphans, resident aliens, and the poor; in Isaiah 40–55, discussions of justice center on the procedural administration of justice; and in Isaiah 56–66, justice is associated with God and covenant obligations.<sup>9</sup>

### Jehovah's Judicial Decalogue

For present legal purposes we may now focus specifically on the meaning of the commandments in Set B, the rules of conduct that the Bible directs especially toward judges and lawyers. Anyone involved in the legal process would do well to consider carefully the meaning of these 10 commandments in this code of civil justice.



① **Thou shalt not spread any false reports (Exodus 23:1).** Gossip and rumors almost always damage reputations and the standing of people in the community. Talebearing, which would include hearsay and gossip, are off-limits for all people who work in the justice system (see Leviticus 19:16). Lawyers are in a particularly strong position to have inside information and to have reason to accuse or to disparage their opponents. People who spend all day trying to judge cases, advocate causes, or criticize opponents must exert special efforts to stop judging others in ordinary social settings. Especially because judges and lawyers are often influential and powerful people in the community, rumors or false reports started by them are likely to be given higher credence than information coming from ordinary people. With this high degree of potency comes a high level of responsibility.

Thus the biblical code of legal conduct requires its agents to be especially scrupulous in respecting confidences, in guarding against the dissemination of false information, and in keeping confidences. The Hebrew speaks literally against “spreading” or “carrying” any false report: one should simply drop such matters. Particularly, one should not carry such things “up,” that is, to the temple or to the gates of the city where the town elders or courts of judgment typically met in ancient Israel (see Ruth 4:1; Jeremiah 26:10). The Septuagint Greek adds the connotation that one should not “accept” or “welcome” any such rumors either. The Hebrew *shema* (“report”) can refer to any hearing, report, rumor, news, evidence, or witness. Truth in all such reports is to be promoted. To be avoided is any that is *shav*: false, empty, lying, vain, worthless, destructive, or deceitful.

② **Thou shalt not be a malicious witness to help a wicked man (Exodus 23:1).** Righteous conduct is inimical to malicious prosecution. Suborned witnesses, revengeful plaintiffs, and compliant counsel who use the legal system to promote unjust causes wield power and manipulate the judicial process wrongfully. The legal system is a tool. Like any other tool, it can be used either to build up or to tear down. Those who sit in seats of power must be careful at all times to use that power to promote just and right causes. The Hebrew concept behind the word *maliciousness* in this context involves greedy desire, ill

will, exploitation of the socially helpless, or even hatred. Thus the meaning of the biblical text is that fallacious and overreaching use of the legal process is to be abhorred and that kindness must be consciously cultivated in a setting that is prone to breed hostility and bad blood.

③ **Thou shalt not follow the crowd in perverting justice (Exodus 23:2).** Judicial morals require individuals to stand up courageously for what is right, regardless of peer pressure or the prevailing consensus. The independent vote of Alma the Younger in favor of acquitting Abinadi in the Book of Mormon is a heroic example of one who did not follow the crowd (Mosiah 17:2). The pressures on judges and lawyers are no less potent today. One must guard against being intimidated. The Hebrew word for *follow* here includes the connotations of submitting to or answering to those who would pervert justice.

④ **Thou shalt not speak against the majority with intent to pervert justice (Exodus 23:2).** This is an interesting provision. Biblical justice requires people not only to oppose the majority when it is wrong but also to be careful not to speak out *against* the majority when the speaker intends to obstruct justice. Minority views need to be heard, but special interests can become just as tyrannical as majority domination, especially if their advocates lack the intent of doing principled justice or wish to pervert (literally to “turn aside”) the course of justice. Cooperation is crucial to civic-mindedness and collective well-being.

⑤ **Thou shalt not be partial toward the poor in a lawsuit (KJV: Thou shalt not countenance the poor in his cause) (Exodus 23:3).** Since the beginning of civilization the rich have had easier access to the law. In addition, judges and lawyers are inclined to favor the rich for many reasons. The briefs of rich clients are usually better written than those of poor people. Thus the rich may appear more credible. The effects of this bias must be overcome (see, for example, commandment number 6). But that is not the focus of commandment number 5, which prohibits people from bending over too far in the opposite direction. The main question in interpreting this provision is, what does the Hebrew word *bidor* (“partial”) mean? What is it that a judge or lawyer should not do to the poor? This word may actually mean that one should not give “undue honor” to the poor. In other words, the text prohibits partiality of any kind, whether to the rich or to the poor. The Septuagint Greek goes so far as prohibiting the judge from showing too much mercy to the poor or from being swayed by pity.

⑥ **Thou shalt not deny justice to the poor in a lawsuit (KJV: Thou shalt not wrest the judgment of thy poor in his cause) (Exodus 23:6).** In this commandment readers must struggle with the meaning of the words *wrest* or *deny*. The Hebrew words here are broad in mean-

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ing and application. If a poor person asserts a claim of right, the legal process should not stand in the way; it should not make it difficult for a person to obtain the entitled benefit. The poor are granted several rights under biblical law: the right to glean in the fields of local farmers, the right to redeem sold property, the right to be given startup capital upon release from servitude, and other such rights. If a poor person comes forward and claims these benefits, the law should not stand in the way.

This commandment is related to the earlier commandment from the first set: “Thou shalt not take advantage of a widow or orphan” (Exodus 22:22). Justice in the biblical sense indeed is not blind. It makes a difference who the parties are. The weak need protection. Widows and orphans are especially vulnerable because they lack a husband or a father, who in biblical society would have advocated and defended their interests. Negotiating one’s way through the legal system requires knowledge and experience. In their loneliness widows and orphans are sometimes prone to making weak decisions; they may be in special need of counsel and advice. A football game between a championship college team and a regular high school team would be inherently unfair. Even though the football field was exactly the same size for both teams and even if the referees blew the whistle evenhandedly on both sides, their contest could in no way be thought of as a fair competition.

For the judicial code of the Bible, human law *should* be a respecter of persons, in the sense of looking out for the interests of others. Of us it is required to administer justice in a manner that is fair and equitable to the parties. Indeed, if lawyers and judges do not fashion justice in a fitting way, God will apply a fitting reciprocal punishment: “Your wives will become widows and your children orphans.” In the book of Mosiah, King Benjamin similarly required his people in a covenant context to give to the poor and the needy who ask for sustenance; if they did not, the reciprocal consequence would be that God would deny their petitions to him (Mosiah 4:22).

⑦ **Thou shalt stay away from lies (Exodus 23:7).** In the Ten Commandments one reads, “Thou shalt not bear false witness” (Exodus 20:16). When applicable to broad society, this means “Don’t lie.” But in a judicial context it requires judges and lawyers to stay away from any form of deception, misrepresentation, misleading omission, and perjury. Biblical law was especially hard on perjury. Deuteronomy 19:19 requires the judges to impose on a perjurer the following penalty: “Then shall ye do unto him, as he had thought to have done unto his brother.” In other words, in a capital case the penalty for perjury was death. Perjury is especially problematic because the legal process in ancient Israel involved God as a presence in the courtroom. Plaintiffs and witnesses verified their claims and assertions in the name of God. Defendants certified their innocence by solemn oaths and vows pledged before God or in His sanctuaries. Both taking the name of God in vain and swearing a false oath by the name of God were forms of blasphemy. Thus the Hebrew law requires the judge or participant to be “far away from, be distant from, to depart from, or to withdraw from” anything that approaches perjury. One should not even get close to this line.

⑧ **Thou shalt not execute the innocent or righteous (Exodus 23:7).** Biblical law requires a righteous legal system to take precautions to prevent the miscarriage of justice. The innocent, literally “those who are free from liability,” are explicitly entitled to protection. The judicial system must particularly see that those people are never executed. Those who break this commandment are themselves guilty of a serious infraction of the law, not just an excusable or unfortunate error (see Deuteronomy 19:16–21).

⑨ **Thou shalt not take a bribe (KJV “gift”) (Exodus 23:8).** Any kind of bribery or financial influence on judicial decision should be eschewed. Jewish law went so far as to prohibit any judge from accepting money from any party to a lawsuit—whether before, during, or after the lawsuit. Even an expectation that a wealthy or influential person might sometime in the future give favors to a judge in return for a favorable verdict or judgment was eschewed under Jewish law. The biblical code prohibits even a *shachad* (“gift” or “donation”) of any kind to or for the benefit of judges. Undue influence in the judicial process need not be as blatant as Zeezrom’s six *onti* (“reward”) offered to Alma and Amulek if they would reverse their indictments against the city of Ammonihah and reverse their religious position. Any such influence, according to the biblical command, will “twist, pervert, or overturn” the words of even an otherwise righteous man.

⑩ **Thou shalt not mistreat a resident alien or oppress him (Exodus 23:9).** The biblical code of legal conduct repeats the requirement that the legal system not be used to take advantage of foreigners living in the land. This point, which was made applicable to the general population in Set A, is directed also at those involved in the administration of justice—for good reason. Oppression of people from other lands is especially easy because of

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**PERJURY**

language barriers and the lack of familiarity with local judicial and governmental systems. Biblical law makes this mistreatment of foreigners especially odious and abhorrent because the people of Israel themselves were foreigners who were oppressed in a distant land. The law requires all participants in the judicial process to empathize with these disadvantaged parties, and just as God was kind to Israel in liberating them from bondage, so it is becoming of all lawyers to emulate this divine characteristic in promoting fairness in the interest of resident aliens.

For all their shortcomings and other failings, ancient Israel apparently honored these rules of judicial conduct in practice as well as in theory. Scholars strongly suspect that behind or alongside the series of judicial rules in Exodus 22–23 there once stood in ancient Israel specific sets of instructions that were given to or expected of those who participated in the legal process.<sup>10</sup> We see evidence of this in several places. Judges in Israel were charged with the duty of judging righteously according to these rules of conduct. In 2 Chronicles 19:7, 9, King Jehoshaphat installed judges and sent them to do justice. As he did so he reportedly “charged them” to avoid “iniquity” or any perversion of justice, “respect of persons” or improper partiality, and “taking of gifts” or bribes.

Similar reflections of this judicial code of conduct are found in several other places in the Old Testament. Classic formulations of judicial ethics are found in Deuteronomy: “Judge righteously between every man and his brother, and the stranger that is with him. Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of [or be intimidated by] the face of man” (Deuteronomy 1:16–17); “Judge the people with just judgment. Thou shalt not wrest [stretch, pervert] judgment; thou shalt not respect persons, neither take a gift” (Deuteronomy 16:18–19); “They shall justify the righteous, and condemn the wicked” (Deuteronomy 25:1).

The violation of these rules of professional conduct would call down the wrath of divine disapproval and justice. Amos 5:12 reads, “For I know your manifold transgressions and your mighty sins: they afflict the just, they take a bribe, and they turn aside the poor in the gate from their right.” The prophet Zechariah demanded, “Execute the judgment of truth

and peace in your gates: and let none of you imagine evil in your hearts against his neighbor; and love no false oath: for all these are things that I hate, saith the Lord” (Zechariah 8:16–17). For this reason “the fear of the Lord” is listed in Psalm 19 among the defining, operative components of Hebrew law, namely, the Torah, the testimony, the statutes, the commandments, and the judgments of the Lord altogether (Psalms 19:7–10).

### Conclusion

For those involved in the administration of justice under Hebrew law in biblical times, all this was serious business indeed. In these ancient roots can be found the direct ancestors of many of the requirements found in the modern code of professional responsibility that demands openness, truthfulness, fairness, diligence, competence, and avoidance of undue influence. Those roots are strong; in some ways they are even stronger than their manifestations in the modern code of professional conduct.

Every judicial system operates within a set of rules, regulations, and moral expectations. Sometimes these norms are set forth explicitly, other times they exist as general societal values. In the United States the concept of criminal justice is bound up with such legal values as affording due process, notice, the right to be heard, the opportunity to confront one’s accuser, the right to counsel, the privilege of appeal, and protection from double jeopardy. Going beyond the minimal requirements of civil justice, Elder Dallin H. Oaks has discussed the challenge of conducting litigation today “in the Lord’s way.”<sup>11</sup> Addressing those who would be plaintiffs in a lawsuit, Elder Oaks encourages people to remember to forgive, to pursue private settlement options, to eliminate revenge, to act to protect others, to consider the effect of civil action on those who are sued, and, in general, to think of one’s own responsibilities ahead of one’s rights. Although such modern value systems address the concerns of our day, they are still consonant with the ancient rules of judicial ethics that were embodied in Jehovah’s code of justice in Exodus 22–23.

In sum, one would hope that lawyers and judges in the modern world would find the biblical rules just as compelling as did the ancients. In requiring clear communication, honesty, fairness, diligence, competence, and

avoidance of bribes, modern rules of professional conduct still require many of the same virtues as did these ancient commandments. At the same time, Jehovah’s code of civil justice seems to go even farther in explicitly requiring participants in the judicial process to shun false rumors, to keep confidences, to avoid overreaching, to eschew ill will, to be courageously independent, not to be overzealous for a minority cause, to be affirmatively fair to those in need, to eradicate perjury, to be careful, and to accept no inappropriate personal benefits for the discharge of legal authority.

### NOTES

- ① See generally Ze’ev W. Falk, *Hebrew Law in Biblical Times*, 2d ed. (Provo: Brigham Young University Press, 2001), 2–3; Dale Patrick, *Old Testament Law* (Atlanta: John Knox, 1985); 21–24, 38–40. Lists of apodictic laws also appear among the prohibitions in Exodus 34 and Leviticus 19.
- ② J. W. McKay, “Exodus 23:1–3, 6–8: A Decalogue for the Administration of Justice in the City Gate,” *Vetus Testamentum* 21 (1974): 311–25.
- ③ The similar views of S. R. Driver, Roland de Vaux, and others are discussed in McKay, “Exodus 23:1–3, 6–8,” 322–25.
- ④ Frank Crüsemann, *The Torah: Theology and Social History of Old Testament Law* (Minneapolis: Fortress, 1996), 189.
- ⑤ The number 24 was a judicially significant number in ancient Egypt, Israel, and early Judaism, especially where judges appeared in panels of 24. “Number 24,” in John W. Welch, ed., *Reexploring the Book of Mormon* (Salt Lake City: Deseret Book, 1992), 272–74.
- ⑥ Moshe Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem: Magnes, 1995), 20–23, 179–214.
- ⑦ See generally, Bruce V. Malchow, *Social Justice in the Hebrew Bible* (Collegeville, Minn.: Liturgical Press, 1996); Christiana van Houten, *The Alien in Israelite Law* (Sheffield: Sheffield Academic Press, 1991); Leon Epsztejn, *Social Justice in the Ancient Near East and the People of the Bible* (London: SCM, 1983).
- ⑧ In this one case the command is stated in the form of a positive command. McKay and others believe that it may have originally been expressed as a command not to listen to lies or to utter lies. In Exodus 20, two of the Ten Commandments are also formulated as positive commands: “Remember the sabbath day” and “Honour thy father and thy mother.”
- ⑨ Thomas L. Leclerc, *Yabweb Is Exalted in Justice: Solidarity and Conflict in Isaiab* (Minneapolis: Fortress, 2001).
- ⑩ See the suggestions of S. R. Driver, Roland de Vaux, and others discussed in McKay, “Exodus 23:1–3, 6–8,” 322–25.
- ⑪ Dallin H. Oaks, *The Lord’s Way* (Salt Lake City: Deseret Book, 1991), 155–88.

# Worlds of Joseph Smith

**T**he Library of Congress and Brigham Young University will hold a joint symposium May 6–7, 2005, in Washington, D.C., to examine the religious, social, and theological contributions of Joseph Smith Jr. in recognition of the bicentennial of his birth. The Worlds of Joseph Smith symposium, to be held in the Coolidge Auditorium of the Library of Congress, will feature sessions focusing on Smith's own world, his recovery of "past worlds," his challenges to the theological world, and his founding of a global religion, The Church of Jesus Christ of Latter-day Saints.

Religion experts from Baylor, BYU, Columbia, Pepperdine, and other major universities will participate in the symposium. Elder Dallin H. Oaks, a member of the Quorum of the Twelve Apostles, will be a featured speaker. Prior to his call to full-time Church service, Elder Oaks served as a Utah Supreme Court justice, as president of BYU, and as a professor of law at the University of Chicago.

The symposium is open to the news media and invited scholars in the fields of American religious history and religious studies. Each session will feature the presentation of a paper, three respondents, and time for open discussion. Some seating by registration only will be available to the public. The program will also be broadcast via the Internet.

James H. Hutson, chief of the manuscript division at the Library of Congress, says people will find it instructive to be informed by a group of distinguished scholars exactly how the Church, founded by Joseph Smith, evolved from a small, persecuted band to a major religion influential in the United States and the world.

"Other religious persuasions important in American history—Puritanism, for example—traced the same trajectory but, unlike Mormonism, reached a limit from which their influence receded," said Hutson. "This topic will be among the many subjects that should stimulate reflection and make the symposium an intellectual feast."

Jack Welch, professor of law at BYU and co-planner of the symposium along with Hutson, is pleased that the Library of Congress and BYU could come together to sponsor a scholarly examination of Smith's life.

"Joseph Smith is a towering religious figure. Perhaps for that very reason he draws a lot of lightning but also channels extraordinary power," said Welch. "The conference is not aimed at pros-

elytizing or advocating any particular point of view. It will not involve polemics or propaganda. Anyone who would be interested in knowing how informed scholars approach the study of Joseph Smith, just as they might study Buddha, Moses, Mohammed, St. Francis, or any other major religious leader, will find the outcome of this conference informative, up-to-date, interesting, and reliable. . . . We anticipate that modern scholars and the general public will appreciate the relevance of the principles he taught."

Robert Millet, the Richard L. Evans Professor of Religious Understanding at BYU, who was instrumental in the genesis of the symposium, says the event will recognize and explore the impact of an important religious figure.

"Even if one doesn't accept Joseph Smith's claims of divine inspiration and authorization, it's hard to dismiss his impact on the theological world," said Millet, a professor of ancient scripture. "As we approach the anniversary of his



*Daguerreotype of an etching with the image of Joseph Smith, the first president of The Church of Jesus Christ of Latter-day Saints, and his brother Hyrum. Courtesy of L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University, Provo, Utah.*

birth 200 years ago, it's important and worthwhile to examine and explore his contributions, which include the establishment of a worldwide church."

Another of Smith's contributions was the translation of the Book of Mormon, a religious history of peoples who lived on the American continents before and after the time of Christ. Today the book is printed in 104 languages. A first-ever commercial edition of the Book of Mormon will be published this November by Doubleday.

Richard Bushman, the Gouverneur Morris Professor of History emeritus at Columbia University and chair of the executive committee at the Joseph Fielding Smith Institute for Latter-day Saint History at BYU, said: "The time is ripe for an assessment of Joseph Smith's position in American culture. Events of the 200 years since his birth have proven that the religious culture he created has staying power."



THE REAGAN ERA



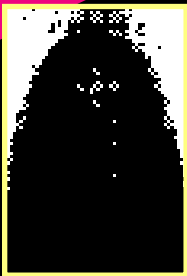
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Markham  
MILLER



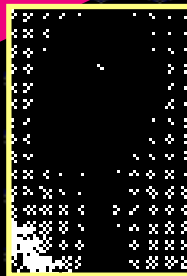
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MONAHAN



Jennifer S.  
MORGAN



Bradley E.  
MORRIS



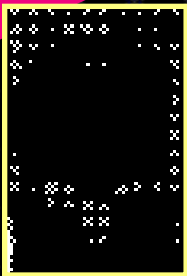
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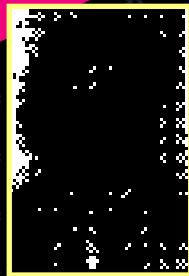
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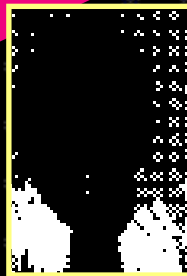
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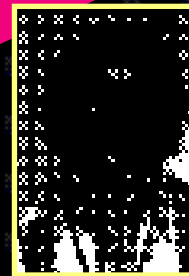
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J. David  
NELSON



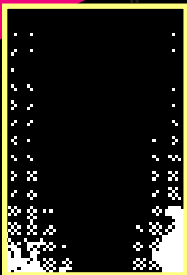
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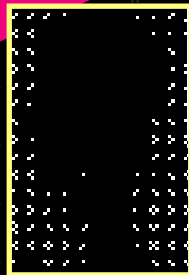
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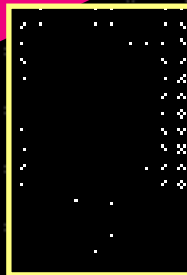
Jill  
OLSEN



William H.  
ORTON



Richard A.  
PARMLEY



Richard D.  
PARRY



MIRACLE ON ICE



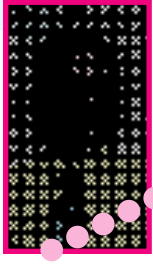
# H A P P Y A N N I V E R S A R Y

**F**all of 2005 will see the initiation of a new Law School tradition: the 25th anniversary book. This

compilation of pictures and stories of the class celebrating its 25th reunion must be preordered and

will be available during the fall reunions. ▲ Members of the Class of 1980 have been contacted and are

already submitting material for their anniversary book. Here's a sneak preview of some of those stories.



## Bruce E. Babcock, '80

Following graduation from the Law School, I attended New York University and received an LLM degree in taxation. The NYU tax program is excellent. Living in Manhattan for a year was a wonderful adventure that my wife, Susan, and I thoroughly enjoyed. Our next stop was Dayton, Ohio, where I took a job in the tax department of a regional law firm that is now part of the Cleveland, Ohio-based firm of Thompson Hine LLP. We loved Ohio and made many friends; however, Ohio was a long way from family. After three years the homing instinct set in, and we returned to Salt Lake City. In 1984 I joined Jones, Waldo, Holbrook & McDonough PC, where I remain today. My practice focuses primarily on ERISA compliance and tax planning for businesses, including mergers and acquisitions. I recently completed a three-year term as chair of the firm's corporate and transactions department. Practicing law has been challenging but very rewarding.

Our lives have been full. Our children and the Church have kept us busy and focused on the things that matter most in life. After having five biological children, Susan and I embarked on a new adventure through foreign adoptions. In 1990 we traveled to Kazakhstan for two children, and Susan made a return trip there for another child and a subsequent trip to Taiwan for our latest addition. Our family presently consists of Sarah (age 23), BYU nursing, Class of 2003; Mark (age 21), BYU—Idaho, Class of 2006; Alan (age 19), currently serving an LDS mission in Mozambique, BYU Class of 2008; Tim (age 18), concurrently enrolled at Olympus High School and BYU Salt Lake Center;

Drew (age 14); Anne (age 7); Paul (age 4); Rosalie (age 4); and Isaac (age 2).

I have fond memories of the Law School and am grateful for the faculty, classmates, staff, and the Church that made that wonderful experience possible for me. I am forever grateful.

## Kent Gilbert, '80

*The following account is something that I have never before and probably will never again put into print.*

When I was in law school I taught a Japanese class for the BYU Department of Asian and Slavic Languages each semester, and I was also a JD/MBA candidate. One day Dean Rex E. Lee called me in for one of his famous chats. He told me that I should decide whether I wanted to be a lawyer or a businessman, major either in law or in MBA, and get out of the university as quickly as possible so that he could admit new students. I told him that I wanted to do something that would require both disciplines, and he told me that he thought I just couldn't make up my mind. I then declared to him that I would graduate with the highest starting salary of all the law graduates in my class.

I kept this promise, but in order to do so I had to move my family to the most expensive city in the world—more or less entirely negating the financial effect of the achievement. I started out of law school at Tokyo Aoyama Law Office, the Tokyo, Japan, affiliate of Baker & McKenzie (Chicago). It is difficult to imagine a more diverse and interesting practice. We handled the largest industrial companies in the world as they attempted to penetrate the difficult Japanese

market. We had a French partner who brought in lots of European business. To top it all off, the LDS Church was our biggest client in terms of billings.

Two or three years into my practice I appeared in an amateur theater production, which led to an invitation to appear on Japanese television. As the shows in which I appeared cranked up their viewer ratings, the law firm put great pressure on me to end the media involvement. But the economics simply weren't there. Four years into my practice I went "of counsel," and at six years I went independent.

The media work seemed an extension of the legal work. This was a chance for me to make a big change in society, a society of which I was not a true citizen but a society that was closely allied to the United States. Along the way I have made records and movies; done thousands of television shows, speeches, and magazine articles; published a number of books; participated in various governmental and semi-governmental bodies; and founded several businesses.

A large part of my success can be attributed to my credentials as a lawyer in this academically oriented society. The J. Reuben Clark Law School may never have produced a graduate with such an unorthodox career path as mine—and most probably will not do so in the future—as it has become a top-class law school. But I am thankful every day for the chance that I had to learn at an institution that I believed would eventually be recognized as one of the best law schools in the nation.

## Darryl Lee, '80

After graduation we moved to Washington, D.C. (where Bonnie spent her high school years), to begin practice with McKenna & Cuneo, the national law firm I had clerked for the summer after my second year of law school. Although we enjoyed the East Coast, I was anxious to return "home" to northern California, where I grew up. After two years in the D.C. office, we transferred to the firm's San Francisco office. Then, after four more years of private practice with the firm, I seized the opportunity to go in-house with Thiokol Corporation, a major aerospace company.



Many of Thiokol's operations were in northern Utah, and that is what brought us back to Utah. I enjoyed 11 fulfilling years with Thiokol, joining the company just six short months after the Challenger accident. Although the myriad of problems brought on by that accident were painful for the company, they were interesting and challenging from a legal perspective, and I grew from those experiences. After about a decade of in-house practice, I began missing the battle of the courtroom, so I returned to private practice in Salt Lake City, partnering with one of my first-year professors, Mary Anne Wood. Who would have guessed it! I've been with Wood Crapo LLC for eight years now, and my practice consists of complex civil litigation, mainly in the areas of contract, real estate, and employment law.

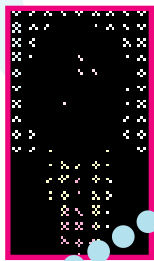
Bonnie and I have been blessed with five wonderful children. Our two oldest daughters graduated from BYU (Kristine in English and music, and Kathleen in math education). They are married to two excellent young men. Our eldest son, Daniel, recently returned from the Norway Oslo Mission and will be continuing his education at BYU. He will be joined by our fourth child, KaraLyn, who will begin her educational journey this fall at BYU. We will be left at home with only our youngest son, Darren, a sophomore in high school. With football, school, and guitar, he is very busy and seldom at home.

As we look back over these past 25 years, we recognize that we have been immensely blessed. We are eternally grateful for the strong pillars of faith, education, work, and service that continue to buoy us up. We look forward to many more challenges and opportunities to serve during the next 25 years.

**William J. Monahan,** 

The older I get, the better I was. As the years fly down mortality's inexorable path, there is some truth to my opening statement. However, like a seasoned trial lawyer, some things get better with age, and I hope we include ourselves in that rarified vintage called Experience and Wisdom.

As we attended our 20-year class reunion, I



noted how our talk turned from money and firms to family and grandchildren. We are all family, and law school welcomed us with open and selfless arms. At the heart of our collective experience in law school is the satisfaction of knowing that, like a family, it provided a foundation for the counselors, sleuths, teachers, mediators, advocates, and, yes, parents we were to become.

For LuAnn and me the years have been wonderful, exciting, and at times quite challenging as we raised our seven children and now spoil our seven grandchildren. We have seen many miracles and been blessed beyond measure by the gospel and the opportunities for service it provides. I have never been able or willing to separate the craft of my profession from the principles or doctrines of the gospel. Although I often fall short of my expectations and God's, I pray that the refining process of repentance and forgiveness continues to shape us all.

The Law School and the marvelous men and women who founded it and shared it with us helped to form foundations of respect, honesty, integrity, and fairness that compliment all the Savior would have us be. Perhaps in the end we can say we learned that although doing is important ("be ye doers of the word"), being is vital. Who we are, what we become, and what we will yet reveal about our natures is the ultimate challenge. No doubt the years ahead hold many secrets, blessings, promises, and a few missteps. We look forward to all of it with wonder and no small sense of awe.

I commend for your reflection a poem I published last year. Perhaps it expresses a slice of our collective feelings in some small way:

**THE PENTHOUSE**

In the penthouse busy and important men  
ask million-dollar questions  
over rare cigars and plump strawberries.  
With brandy breath they clear their throats  
and crunch big numbers  
for lawyers licking at percentages.

Across the street is a park with a sandbox where  
carefree children  
ask busy and important questions  
over priceless laughter.  
With candy breath they screech, wiggling sand  
between happy toes  
and licking the monkey bars for fun.

It will take the kids years to cross this street.  
Maybe we shouldn't teach them to look both ways.

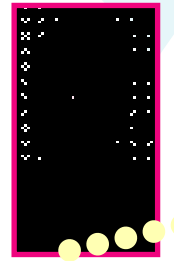
**Richard E. Riggs,** 

When my wife, Debbie, announced during our law school years that she'd be willing to live anywhere except Minnesota (20 degrees below zero in November was too much for this California girl), we had no idea we'd become longtime Tennessee residents. In fact, when law school friends would ask where I'd be willing to go, I often responded, "Anywhere except the South." My father (BYU Law School Professor Bob Riggs) had spent some time in the Deep South during the early days of the civil rights movement and had let his family know that the prejudices then held by many Southerners at that time were all too real.

Nevertheless, when the Tennessee Valley Authority (TVA) offered me a position with their Office of the General Counsel during my third year of law school, I decided to give them a try. I had heard they had high legal standards and that TVA would be a good place to quickly obtain excellent legal experience. TVA also offered to pay me while I studied for the bar. Hence our small family moved to Tennessee thinking we'd see the sights of the East and the South and move on in three or four years.

However, things didn't turn out that way. We liked the mild four-season weather with colorful masses of spring flowers, almost overwhelming summer greenery, and spectacular fall colors. We live within about an hour of several national parks. Moreover, the people of eastern Tennessee are genuinely kind and caring. Needless to say, we soon fell in love with our new home, and the three- or four-year stay has now turned into 25 years and counting.

When we arrived, the Church in eastern Tennessee was in its developing stages, the first stake having been created a few years earlier. There were less than a score of people in our ward who had been members longer than we had, and less than a half dozen couples had been married in the temple. Almost immediately my wife and I were called into leadership positions. Sometimes we have been given a bit more than we might otherwise have chosen (I have been serving as bishop or stake president without a break



since 1987). We realize that many of these opportunities to serve simply would not have been offered had we stayed in or returned to the Mountain West.

Professionally I have had the luxury of working for one large client (TVA, a corporate agency of the federal government) that generally takes my advice and does not ask me to compromise my standards. I have been able to work both as a litigator and as a consulting attorney while developing a wide range of legal experience.

Working for the federal government will never make me rich, but it will allow me to retire with 30 years service (the spring of 2010) without any reduction in pay. We look forward to serving a mission or two and then possibly embarking upon a new career. Or we may just become happy, lazy grandparents. Two of our four children are married, and both of them have blessed us with grandsons. Unfortunately our daughter, our son-in-law, and one of our grandsons have just moved out to Utah. It looks like we'll now look forward to seeing a lot more of Utah again. Such is life.

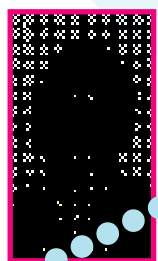
### Susan M. Smith,

Law school was an unexpected development in my life. The idea never occurred to me until a summer day in 1976 (I was almost 27 years old). By then I had a bachelor of arts and science degree and had served in the Italy South Mission (1971–1973). I was working in Calgary, Alberta, but feeling unsettled about the future when out of the blue the words “Prepare for law school” came clearly into my mind.

I loved the study of law—two years at the JRCLS and one at the University of Alberta Law School (to fulfill Canadian requirements). After law school I loved the process of helping people understand how the law applied to their circumstances. But the small, general practice firm of Maxwell Larson, where I articulated and worked (1980–1985), was so busy it felt as if 20 years of practice were compacted into five. I was burning out, and though I loved the practice and the firm, the bimonthly necessity of converting my enjoyment into billable hours became increasingly unbearable. This dislike of having to bill for work and advice I preferred to give away free eventually moved

me to leave private practice and to begin work on writing projects. Twenty years have come and gone, packed with a thousand things, but I still retain my love of the law and my gratitude for how law school and law practice shaped and blessed my life.

My life's dream has gradually evolved during these past 20 years. That dream was to found the New Play Development

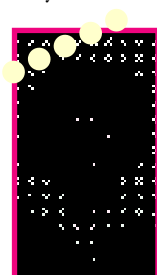


Center to refine and polish works that give hope and light. But sometimes life detours us. I was set to begin an MA program in theatre and media arts in 2001 when my widowed mother had a serious fall and I became her full-time caregiver. She is a 90-year-old gem, and the silver lining of this detour is that I have been able to complete a substantial family history project that otherwise would not have been done.

Unexpected detours and delays seem an inevitable part of life, like sojourns in Haran or Egypt, deserts, or wildernesses—or in extended caregiving. But sometimes in these delays our self-will becomes too heavy to bear, and at length we are glad to get rid of it and to wait upon God. (Alas, if only this lesson did not have to be recycled so many times!) But for now I have a dream, an extended time of preparation, and, most important, a gracious mother whose well-being is worth whatever delay is required.

### M. Gay Taylor,

My law school training has given me a career where no two days are the same, where what I do is challenging and unique. I am in my third six-year term as general counsel to the Utah legislature, an appointed position that I began five years out of law school. It is a nonpartisan position working with the House and Senate and Republicans and Democrats. The environment is sometimes stressful, but my fellow attorneys, staff members, and I pull together and help each other as we can.



I have a wonderful family. My father died in 1996, so I invited my mother to move into the new home I had just completed in 1994. As the situation became permanent, Mom decided to finish my walk-out basement as her own apartment and to do it just how she wanted it. My brother Gary had a plaque inscribed with “The Mary Kay Suite,” as the carpet and walls were all pink! Mom and I had many happy times together. She was my best friend. She reminded me of the importance of slowing down and visiting with people and taking time for them. Mom died in January of 2004, just before the start of the general session. My siblings are close, and that has helped me continue forward and transition.

My ward is great, with wonderful, kind people. I believe that when I was called to my ward Relief Society presidency in late November 2003 that the Lord was making me ready for Mom to die and leave me by giving me something challenging to do in a Church job. I serve with a terrific president and counselor, who are great friends.

I have had many opportunities to travel. I have gone to Europe backpacking with a friend; to Kenya on safari with my brother and family; to Sweden and Norway with my mom, aunt, and brother; to Alaska on a cruise with my mom and friends; and to Havasupai in the Grand Canyon with my brother and friends. I have taken the 1,000-mile journey from Salt Lake City to Nauvoo with my mom and niece and her family. I have been to Hawaii four times with family and friends.

I have gone to Peru twice. The first time I went with friends. Two years later my brother Graig, who is legally blind, convinced me to go again and to take him, another brother who is legally blind, and other family and friends. We took the 26-mile trek to Manchu Picchu. Last year my brother Graig and I hiked to the top of Mount Whitney with my cousin and some other friends. That was a thrilling accomplishment!

#### PHOTO CREDITS

Page 22—*The Reagans*: ©CORBIS; *Donny and Marie Osmond*: ©Henry Diltz/CORBIS; *1980 U.S. Hockey Team*: ©Bettmann/CORBIS

# David Golden, '92

TALKING ABOUT  
ETHICS IN A POST-  
ENRON WORLD



Since August of 2002 David A. Golden, '92, has been employed as the director of ethics and compliance at \$5.8 billion Eastman Chemical. With this company he is working in the post-Enron generation of legal compliance, directing the implementation of the latest governmental regulations in corporate finances, securities, and governance. His job at Eastman is to ensure that the company's practices and policies are in keeping with "the U.S.

Sentencing Guidelines' definition of an effective compliance program," including the 2002 Sarbanes-Oxley Act, which imposed stricter accountability—and penalties—on corporate securities and governance.

In a 2004 interview with *Compliance Week*, Golden expressed that, to him, the job goes beyond legal compliance. "Part of our baseline compliance," he explained, "is what the law might allow, but it's just not the right thing to do. So we expect our employees to comply to the higher standard of the law, or the right thing to do." Eastman, he said, is an environment where this kind of attention to ethics has worked out. "Is that to say I'm 100 percent confident we've never had wrongdoing? No," he stated. But Eastman has "never had anything like what others have reported. I think we have a good culture. . . . Before I took this job I told the CEO that I really didn't want it unless he was committed."

The role of corporate counsel has changed since Enron in two significant ways, says Golden. "First, there are a myriad of new requirements that have arisen because of the scandal, with Sarbanes-Oxley and associated rule-makings leading the way. So corporate counsel needs to be aware of the new laws.

"Second, I think the scandal highlights in very graphic terms the importance of proactive compliance counseling. From all accounts Enron lost its way. I'm sure there were a number of really good people who worked there, but at the end of the day, Enron's compliance failures destroyed the company as well as Arthur Anderson and impacted a lot of innocent lives.

Corporations rely on counsel not only to advise them of the law but also to serve as a conscience for the company—to render sound judgment."

Unfortunately, says Golden, "this sort of judgment is not always picked up in law school. It's always been important," he adds, "but [the] Enron [incident] just highlights the importance."

In this new atmosphere of corporate ethics, the BYU Law School and its graduates have a role to play in the tenor of corporate compliance. "Certainly," says Golden, "BYU doesn't have a monopoly on incorporating ethics in day-to-day learning. But I think it is in a unique position to do so."

Golden recalls interviewing for a summer job during his second year of law school and asking the interviewer whether he thought there were "too many lawyers in the country." The interviewer's answer, says Golden "has always stuck with me. He said that for someone who wants to be an unethical lawyer or someone concerned only with what is legally permissible and nothing else—then, yes, there are too many lawyers. But if someone wants to be ethical and encourage their client to be ethical—then, no, there are not enough of those lawyers."

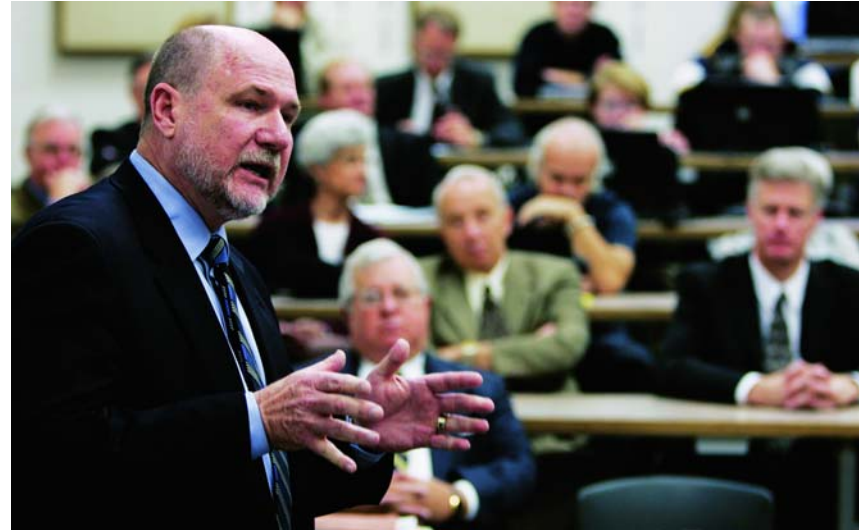
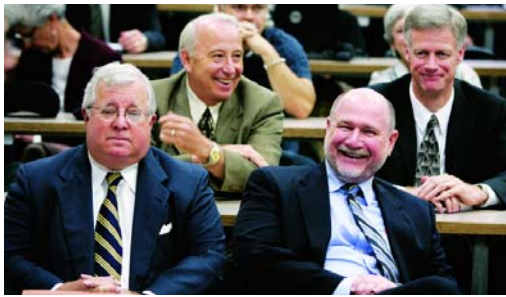
He adds that his experience at BYU was one where ethics were addressed in the classroom, even "before it was vogue, as it is in the post-Enron world." "A BYU education has the potential of grounding a lawyer," Golden continues, "so that they can make a difference as they go into the world and confront real problems and issues that take moral courage to resolve."

# T H E   A R T   O F   C O U R T R O O M

➤  
Russ Herman  
giving the  
keynote address



➤  
Front row: Russ  
Herman, Jim  
Parkinson.  
Back row: Reese  
Hansen, and  
Dean Kevin  
Worthen.



➤ Jim Parkinson addresses the student/attorney audience.

George Frey (3)

THE IDEA HAD BEEN GROWING IN TRIAL ATTORNEY JIM PARKINSON'S MIND FOR YEARS. PARKINSON, '76, HAD SEEN THE INSIDE OF COURTROOMS ALL OVER THE COUNTRY AND SHARED THE AIR WITH JURIES, EXPERT WITNESSES, AND PANELS OF JUDGES, LEARNING THE STEPS OF EFFECTIVE TRIAL ADVOCACY. WHY COULDN'T THERE BE A SERIES OF SEMINARS ASSEMBLING PANELS OF EXPERTS TO TEACH AND TRAIN LAW STUDENTS IN PRINCIPLES OF TRIAL ADVOCACY?

Couldn't this be expanded to practitioners to get some mentoring from the experts? Excellent advocacy in the courtroom was a science, an art, that could be taught and passed on. The Art of Courtroom Advocacy could be the first in a series of presentations.

Parkinson enlisted the help of Michael Goldsmith from the J. Reuben Clark Law School, an expert on evidence and criminal procedure; the Herman brothers from New Orleans, Russ and Maury, who had been instru-

mental in obtaining billions of dollars for plaintiffs in the tobacco company litigation; and others. When Senator Orrin Hatch agreed to lend his name to the conference, the first annual Orrin G. Hatch Distinguished Trial Lawyer Series became a reality.

Panels were assembled on topics such as The Key to Effective Trial Practice, Jury Selection, Opening Statements, Direct and Cross Examination, Difficult Foundational Issues, and Closing Statements.

Parkinson knew that obtaining experts to sit on these panels would be key to the conference's success, so he enlisted Judges Dee Benson, Dale Kimball, Monroe McKay, and Douglas Miller, as well as noted practitioners Paul Warner, Wil Colom, Max Wheeler, David Schwendiman, and Robert Davis.

October 29 and 30 saw the first Orrin G. Hatch Distinguished Trial Lawyer Series presented at the J. Reuben Clark Law School. Russ Herman gave the keynote address. Acknowledging the large numbers of returned missionaries among the audience, he exclaimed: "If you can convert people to the Mormon Church on a two-year mission to Estonia, you can convince a jury of anything!"

Herman was especially pleased the series was named for Senator Orrin Hatch, stating: "Orrin Hatch is an extraordinary

messenger for Utah, for the Latter-day Saints, and for America. After the election on November 2, 2004, he continued as one of the most influential individuals in the country and as one of the most persuasive members of the United States Senate, serving with intellect, integrity, and industry."

Regaling the audience with stories from his lawyering family and from his practice, Herman related:

*I tried a case in El Dorado, Arkansas, a small rural town in southeast Arkansas. The case was over, and we had a decent result. I had two hours to spend in an airport literally no bigger than this room, but I had nothing to read. I had already read the weekly newspaper and every book that I had brought with me. When I went to the book stand there was only one book left. I guess others had been trapped in El Dorado and had raided the paperback display*

# A D V O C A C Y



before I got there. The cover of the remaining book was illustrated with a cowboy on horseback saving a woman in distress. The author's name was Louis L'Amour. I said, "I don't have much humility, but who would name himself 'Louis of Love'?" I didn't really want to read a cowboy book, but I picked it up because it was the only thing there was to read. In the space of the next year I read 123 Louis L'Amour novels.

Herman was hooked on Louis L'Amour because he was already hooked on good stories—the heart of trial practice—learning the problems of his client's lives and picking up his gift of persuasion to right wrongs.

Our firm's primary practice since 1940 has been to represent the little guy, the individual, the powerless, to be a voice for the voiceless, to represent individuals, small firms, and businesses. That is our orientation. So I offer no excuse when I tell you that I

love what I do, and I love my clients. I am what is referred to as a plaintiff's trial lawyer. I am proud to be a trial lawyer. I fear no one except God. In the words of the prophet Isaiah: "Seek judgement, relieve the oppressed, judge the fatherless [i.e., give a just verdict to the fatherless], plead for the widow" (Isaiah 1:17).

This tradition of taking care of the "little guy" had come from Herman's father, a lawyer who was faced with setting up a practice in the depression.

When you take a case for the right reason, for someone who has little or no power against the arrogance of larger interests, it is a mark of courage. After all, you're facing in a state court generally twelve strangers, and in a federal court mostly six, who don't want to be there but who are well qualified to dispense justice. To face them takes courage.

My father opened a law office in New Orleans around 1940 with my

uncle, who worked the WPA to get through LSU Law School. My father and uncle had a sense of humanity but had no clients.

At that time African-Americans couldn't find representation north of New Orleans in the lumber mills owned by Crown Zellerbach and International Paper. So my father opened his law practice in the front section of a store in rural Louisiana and decided he would represent everyone. My brother and I traveled with our father as he visited his clients, and I remember the lessons we learned about humanity and dignity from him. We would go to Jacob Long's house in Tylertown, Mississippi, the home of a proud African-American man who lived in the middle of Klan country, and I remember my father saying to us that he could forgive any human being for anything except a person that attempted to strip another human being of his personal dignity. In a large sense we are in the profession of restoring human dignity.

Dad said to us, "Every member of Jacob Long's church will provide food for our meals." And I said, "Well, I won't eat much. I know they don't have much." He said, "No, you must eat more than you have ever had to eat before because that shows respect, and they will give you or offer you a Coca-Cola. Do not drink out of the bottle. Ask for a glass, because seldom, if ever, has anyone at their table who has white skin had a drink from one of their own glasses. Jacob Long," my father said, "stands proud with me. He is my friend."

Finally, Herman admonished those wishing to pursue the art of trial advocacy to carry the kind of responsibility that that would bring.

You need to take cases for the right reason and to stand up. Whatever money you think you can earn practicing law, plow back your wealth and talent for the restoration of life, property, and dignity.

In our country we have not seen fit to appropriate more than one-fourth of 1 percent of this nation's resources to the judiciary. Nevertheless it is the judiciary and legal systems that keep us free.



The law is more than a profession; it is a calling. A single lawyer can make a difference. You can make a difference—first for the client, then for the larger society in which we live.



If we allow bad law, whether legislative or judicial, to go unchallenged, then as trial lawyers we are complicit in denying our citizens their rightful place in democracy. If we allow bad laws to deprive our citizens of their rightful place in democracy, we have failed the profession, our calling, and this country. Remember, when government acts to deny or to limit citizen rights, it is the court that restores to the citizens their entitlement to freedom.



So for tomorrow, your tomorrow, I want to ask you these questions: Will at least one of you say, "I think I would like to be a trial lawyer"?

Will at least one of you pick up a gauntlet no matter what fear is in your heart? Will at least one of you accept a challenge to do right in the face of abuse?

R U S S H E R M A N

## Anxiously Engaged in a Good Cause:

Cliff Fleming and David Thomas  
Research, Write, Teach, and Speak

*J. Reuben Clark Law School professors Cliff Fleming and David Thomas are prolific in their scholarly output—researching, writing, teaching, speaking, and serving on boards and committees. Here is a brief look at how and why they are “anxiously engaged” in doing all they do.*



CLIFF FLEMING

Professor J. Clifton Fleming says there is a point to all his research and writing. Recently he completed an article on international income taxation where he argued that American businesses incorporating in foreign nations should be brought fully into the United States income tax base to reduce the federal deficit and lower rates for everyone else. That kind of premise would translate into a wide-reaching financial boon to the country if lawmakers would listen, “but deep-pocket corporate America is winning,” he deadpans.

Professor Fleming’s demeanor is serious; he is a serious runner who puts in 20 to 30 miles a week. But the seriousness is belied by the ironic punch lines scattered through-

out his conversation and the poster on his office wall of a runner, sweating, tongue lolling, collapsed at the finish line, the words heralding what “fun” it is to run. For 18 years Fleming served as an assistant dean at the Law School, starting with Bruce Hafen and continuing through the administration of Reese Hansen. He has introduced the members of the faculty to many classes of first-year law students in their first week of school, billing himself as “the accountant with an accountant’s sense of humor.”

Every spring Fleming travels to Budapest and Central European University, where he teaches graduate-level courses on taxation to eastern European and central Asian students. The point of his participation? “I teach these young lawyers things that will allow them both to build up their professional self-confidence and to build their market economies. I hope it will make a difference.” He has also developed contacts with law schools in Australia and teaches there to give those law students an opportunity to learn more about comparative taxation in light of Australia’s sophisticated tax system.

Professor Fleming came into legal education so he could teach and write. He stepped into law school administration when called and has spent years in the AALS accreditation process, inspecting and evaluating other schools’ programs as they come up for either membership or membership renewal. All of this is to help institutions be the best they can be for their students. He is happy to return to a full teaching load explaining basic and international tax law to eager young students primed to make a difference in the world.



DAVID THOMAS

Professor David A. Thomas joined the J. Reuben Clark Law School faculty in 1974, the first new hire added to the original complement of professors who started with the school. His initial assignment was to teach civil procedure. Thus began a trend in his professional life of accepting assignments, becoming engaged in those assignments, and then expanding them beyond their original limits. The new professor engaged in teaching civil procedure was soon asked to add Law Library director to his duties. Not long after that he was contracted to write *Utah Civil Practice*, which continues to be updated yearly.

Thomas was asked to teach first-year property, which expanded to an offer to revise *Thompson on Real Property*. The “Thomas” edition now stands at 15 volumes, and he continues to revise one volume of the series each year. With Professor Jim Backman, Thomas wrote *Thomas and Backman on Utah Real Property Law*, and he is the author of *A Practical Guide to Disputes Between Adjoining Landowners*.

While director of the Law Library, Professor Thomas escalated his scholarly writing. He started with library issues, property, and civil procedure themes but has also written prolifically on free speech, legal education,

fair housing, and legal history from Roman, Dark Ages Britain, and Norman laws to the legal history of Jerusalem. It is not unusual for him to produce 30 to 35 single-spaced pages a day. How? He is steady, efficient, knows his sources, and writes almost every day.

In addition to his teaching and scholarly research and writing, Thomas has been asked to sit on many committees and boards. He has been part of the Law School Admissions Committee for the past eight years, is an expert witness on property matters, and is in the real property and trust section for the ABA, an unusual position for a professor in a section that is predominantly made up of practitioners.

Thomas is also the faculty advisor to the student group Spirit in the Law, providing monthly faculty/student discussions on gospel topics. Recently he was the featured speaker on “Teaching and Learning as Gifts of the Spirit.” He quoted from D&C 46:18 that “the word of knowledge [is a spiritual gift], that all may be taught” and pointed out how as he has sought to teach others he has taken on projects that stretched him. “I don’t want to just ride off into the sunset,” said Thomas, “but to remain active and vigorous—a model for my younger colleagues.”

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### IN MEMORIAM

Henry Keonaona Chai II, '79, died August 1, 2004, of cancer. Born in Provo, Utah, Keo was a founding partner in the Salt Lake City firm of Blackburn and Stoll, where he practiced law until the time of his death. He is survived by his wife of 28 years, Judith Ann Christensen, and their six children and two grandchildren. Contributions in his name may be made to the Utah Cancer Foundation (801-281-6861).



# “Doin’ Justice”

On the 85th Birthday of Judge Ruggero J. Aldisert<sup>1</sup> :: BY ED CARTER

When I looked at Judge Ruggero J. Aldisert across the table, I could tell he had been digging deep into his remarkable 83-year-old memory. The occasion was a small celebration in chambers on October 29, 2003, the day I became a member of the Utah State Bar.

“It just occurred to me that you are the second Utahn I have sworn into the bar,” the judge said. “The first was Orrin Hatch.”

Before President Lyndon B. Johnson appointed Judge

Aldisert to the United States Court of Appeals for the Third Circuit in 1968, the man now known to 44 generations of law clerks simply as “The Judge” had already served seven years on the Allegheny County (Pennsylvania) Court of Common Pleas. It was during that time that Judge Aldisert admitted Hatch, now serving his fifth term in the United States Senate, to the Pennsylvania bar.

To the judge the most memorable part of Hatch’s admission ceremony had been hearing that Hatch made it through the University of Pittsburgh School of Law while living with his wife and two children in a converted chicken coop.<sup>2</sup>

When I recall that day, I picture the small sign hanging near the table where we ate chocolate cake. The embroidered sign, a gift from a former law clerk, seemed particularly appropriate on the day I became a lawyer. It read: “Doin’ Justice.”

Judge Aldisert tells new law clerks the story of U.S. Supreme Court Justice Oliver Wendell Holmes upon parting with Judge Learned Hand of the U.S. Court of Appeals for the Second Circuit after a lunch appointment. As Justice Holmes entered his carriage to be driven away, Judge Hand stated: “Do justice, sir, do justice.”

Holmes ordered the carriage stopped. “That is not my job,” he told Hand. “It is my job to apply the law.”<sup>3</sup>

Even a casual reader of portions of Judge Aldisert’s four books, hundreds of judicial opinions, or dozens of law

review articles will quickly realize he is a disciple of Holmes. Judge Aldisert understands and advocates the idea that the job of a judge is to apply the law. He has written extensively on the limited jurisdiction of federal courts and the standards of review that govern appellate examination.

Yet, as I reflect on the year I spent as a law clerk to Judge Aldisert, it is his commitment to do justice perhaps more than anything else that sticks with me. More than once, the judge surprised me and my co-clerk with the depth of his feeling for the human condition, to which too many lawyers and judges become hardened. The judge does not believe in what Roscoe Pound called “mechanical jurisprudence.”<sup>4</sup> The judge quotes Pound: “Law must be stable, and yet it cannot stand still.”<sup>5</sup>

I recall in particular one Monday morning of oral argument. Conferring with the clerks just before he went on the bench, the judge said he had been bothered all weekend by the plight of a litigant in a case that I already had mentally filed away as resolved. It had bothered him so much he had been unable to sleep. Ashamed at my own indifference, I marveled that even after four decades of hearing every imaginable story of hardship—some true, some not—the judge still had such compassion for another human being he did not even know. Undoubtedly, the judge applied the law in that case, but what made a difference was the way he did justice.

I cannot forget my first week on the job, which culminated with an animated philosophical discussion with the judge on the drive from Pasadena to Santa Barbara. Fortunately, I had my laptop,

and my 12 pages of notes contain a measure of Judge Aldisert’s learning and wisdom. After a discussion of Pound, the judge made a statement that I believe represents the altruism and humility we in the legal profession must strive for.

“When I look at myself,” he said, “I don’t consider whether I’m liberal, conservative, or moderate. I look to whether I have sufficient precedent to bring about a result that benefits society.”

I have concluded that Judge Aldisert believed both Holmes and Hand were correct. For a man like Judge Aldisert—who has both campaigned for political office and occupied the ivory tower, who has both met with presidents and vigorously defended those the government sought to convict, and who is both intellectual and streetwise—the apparent contradiction does not seem unsettling.

Whenever I think about what it means to be a lawyer, I always end up back at the sign I saw on my first day as a member of the bar. That’s what Judge Aldisert taught me: Apply the law, sure, but “do justice, sir, do justice.”

## NOTES

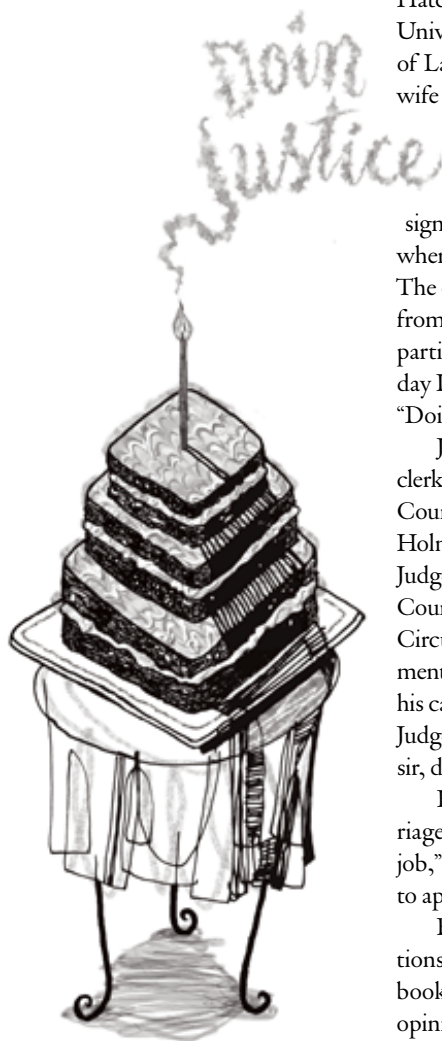
<sup>1</sup> Judge Aldisert celebrated his 85th birthday November 10, 2004. A shorter version of this essay was presented to the judge along with essays from other former Aldisert law clerks at a birthday celebration in New York City.

<sup>2</sup> For a journalistic account of Hatch’s law school days, including the chicken coop, see Doug Robinson, *The two lives of Orrin Hatch*, DESERET MORNING NEWS, July 6, 2003, at A1.

<sup>3</sup> ROBERT H. BORK, *THE TEMPTING OF AMERICA* 6 (1990).

<sup>4</sup> See Roscoe Pound, *Mechanical Jurisprudence*, 8 COLUM. L. REV. 605 (1908).

<sup>5</sup> ROSCOE POUND, *INTERPRETATIONS OF LEGAL HISTORY* 1 (1923).





ED CARTER



KORY STAHELI

## Two Law Alums Join BYU

Ed Carter, '03, and Kory Staheli, '87, have recently become faculty of Brigham Young University. Carter joins the Communications Department; and Staheli, the Law Library.

Ed Carter graduated from BYU in print journalism in 1996 and received a master's degree in journalism from Northwestern University's Medill School in 1999. Following his graduation from the BYU Law School, he took a clerkship with Judge Ruggero J. Aldisert of the United States Court of Appeals for the Third Circuit. Rather than take employment with a firm or agency, Carter has accepted a position as an assistant professor of journalism in the Communications Department at BYU.

Carter's experiences are varied, from working as a reporter for the *Daily Herald* and the *Deseret News* to working as a reporter in Washington, D.C., for the *Mexico City News* to his clerkship.

"I enjoyed newspaper reporting because it allowed me to learn things about various topics," says Carter. "One day I was interviewing a congressman or multimillionaire business-

man, and the next day I was interviewing a little old lady about her unique aluminum can collection." In D.C., Carter met a lot of lawyers, and he explains, "That got me thinking I should pursue a law degree. Initially I believed law school would make me a better journalist, but in the back of my mind, I considered that I could practice media law or perhaps go into academia."

Law school was a whole new kind of challenge. "My wife will tell you that I nearly dropped out after the first semester, because I figured I had failed every final exam," says Carter cheerfully. "Eventually, though, I came to enjoy it." In particular, he was inspired by an externship experience directed by Jim Backman at the Multicultural Legal Center in Salt Lake City. Carter worked to help underprivileged Spanish-speakers with various legal problems such as employment and labor. "I wrote in my externship journal that perhaps I should give up any thought of working at a high-paying law firm job and just go into public legal service," Carter reminisces.

Carter was offered a job with the firm Parr Waddoups Brown Gee & Loveless, but at

the conclusion of his clerkship with Judge Aldisert, he opted instead to come back to BYU and teach journalism and media law. "Many people go to law school with the thought of changing the world for the better. I felt the appropriate path for me at this time was to contribute to the mission of BYU and take advantage of the privilege to work with the excellent students and professors here.

"I feel a profound sense of responsibility to help BYU students prepare themselves for careers not just as journalists but as professional servants engaged in a Christian ministry," Carter says of his career now. "I hope to carve out a successful career in teaching and research as a journalism and media law scholar. I love BYU and am honored to be here."

Kory Staheli started out as a lawyer for a firm in St. George, but he decided after only a few years that it wasn't for him. "I always looked at law as a helping profession," he explains, "and somehow I ended up in private practice. I just had more of a desire to be in public service." So he returned to BYU for an MA in library and information science in 1990, and it is in this field that his career has progressed.

Staheli was first hired by the BYU Law Library in 1991 as a reference librarian; soon he became the assistant director for public service. Then in 1998 he left BYU and went with his family to the University of Nevada at Las Vegas, where he was hired as an assistant director of the new law library. "It was a great opportunity for me to go there and work with the founders of the law school and the law library."

He stayed in Nevada from February 1998 until August 2004 and assisted in all aspects of creating the UNLV Law

Library. From the building to the staff to the collection to the legal research program and the law school's accreditation, he was involved. "We were accredited by the American Bar Association at the earliest possible time," says Staheli. "The library got rave reviews in all of the inspections, which was very satisfying."

Staheli is now back at BYU's Law Library as the assistant director for collection development and faculty outreach. His responsibilities cover the law library budget and the design of a library collection geared to meet the needs of students and faculty. He is also working to update the collection development policy, which "hasn't been updated for several years."

Staheli likes the variety of his librarian career. He has been able to work as an administrator and as a teacher of legal research both at BYU and at UNLV and to pursue research in his own academic interests. With David Armond, '04, another BYU law school librarian, he attended a February conference in Nashville on the uses of SIRSI, the library catalogue's search engine, for collection development purposes. He is also involved with the Deseret States Law Librarians Consortium, a syndicate of law schools in Utah, Arizona, Nevada, New Mexico, and Colorado that works to share resources. "Everyone's on a tight budget," Staheli explains, so the goal of the consortium is to "carve out areas that we will specialize in, so that we can interlibrary-loan materials and all have access to a broader range of materials. It's a good way to stretch a law school budget that can't possibly grow as quickly as the price of library materials does. "I think that's the challenge," Staheli says, "for col-

lection development librarians now: to stretch the budget to best meet the needs of the students and faculty.”

“A lot of things I learned at BYU I was able to take to UNLV,” says Staheli, “and a lot of the things I learned there I was able to bring back here. It was exciting at UNLV to be involved in creating something new, creating everything ground up, coming up with new ways to do things that had never been done before—or at least not having to do things a certain way just because that’s how they’d always been done. There was so much support down there; we had a lot of money to do whatever was necessary in terms of collection development and technology and so forth.”

Staheli adds that BYU has stayed up with—and even exceeded—the standards of technology that UNLV met and can be proud of a bigger and busier law school library, with more public access and more undergraduates coming in to research. “We have individually assigned carrels here,” he adds wryly. “That’s nice. That’s *very* nice.”

Staheli is as grateful for the opportunities he had at UNLV as he is to be back at BYU. “I’ve grown in ways I otherwise couldn’t have. And there’s no place like BYU as far as the atmosphere and the people, the spirit of the university, the beauty of the area, and the campus,” says Staheli. “I had a great experience down there in terms of wonderful people, but it’s great to be back in this environment where people share common values.”

And for the future? “Right now,” Staheli asserts, “my plan is to stay here at BYU and just contribute in any way I can, carrying on the tradition of a great collection.”



BYU AWLF board members from left to right: Kimberly Chytraus, '00; Kate Norman, '02; Sara Jones, '01; Beth Hansen, '95; Natalie Peterson, '02; and Kimberly Mantz, '00.



Supreme Court clerks from left to right: Ronnell Anderson Jones, Lisa Grow Sun, and Hannah Clayson Smith.

## Alumni Women’s Law Forum Hosts Women U.S. Supreme Court Clerks

**T**he Alumni Women’s Law Forum (AWLF), formed in the spring of 2004, was born from the vision of Kimberly Mantz, '00; Sara Dansie Jones, '01; Alaska Turner, '01; and Katherine Norman, '02; who saw a need for networking women who face the same kinds of challenges in balancing family and work.

“BYU women law graduates have so many choices, like the choices all women law graduates have, but each choice has its own set of challenges,” said Sara Dansie Jones. “Women graduates who choose to be mothers and stay at home appreciate being able to communicate and exchange ideas with women in the same situation. Women who choose a career often have to look outside their law firm or agency for adequate support from other female professionals. Women who choose to balance a career with children have a whole set of other issues that don’t necessarily coincide with the goals or aspirations of other women in their law firms. We want AWLF to be that resource for communicating.”

Recognizing these challenges, AWLF’s mission statement is: “The BYU Alumni Women’s Law Forum seeks to provide social and professional support for women law graduates of diverse backgrounds. AWLF seeks to encourage interaction between women alumni as they face various issues that affect women law graduates. AWLF also provides a support and resource for current and future women law students. AWLF strives to contribute to the community and the law school community and to advance the intellectual pursuits of its members.”

The organization’s first event, held on October 15, 2004, featured a panel discussion with three former United States Supreme Court clerks. All the clerks are

LDS women who were quick to point out the challenges they, too, face in balancing work and family.

Lisa Grow Sun graduated summa cum laude from the University of Utah in chemistry. At Harvard Law School she became the first woman to graduate summa cum laude and number one in her class in the history of the school. After clerking on the Fourth Circuit and then for Justice Anthony M. Kennedy, she taught at Stanford Law School. She is now doing only occasional legal consulting and teaching as she raises her two children.

Ronnell Anderson Jones graduated from Utah State University, did master’s work at the University of Nevada, and graduated from Ohio State University Law School. She worked at the law firm of Jones Day and clerked for the Ninth Circuit and for Justice Sandra Day O’Connor. Jones currently teaches media law, First Amendment, and legislation/statutory interpretation at the University of Arizona’s College of Law. She has one son and is pregnant with her second child.

Hannah Clayson Smith received her BA from Princeton and her JD, magna cum laude, from the J. Reuben Clark Law School, where she was the executive editor of the *BYU Law Review*. She was awarded the J. Reuben Clark Award for academic excellence, integrity, and service and has clerked for the Third Circuit and for Justice Clarence Thomas. Hannah lives in Virginia with her husband, John.

Katherine Norman said that this first event was a celebration of choices women law graduates have made. “It is exciting to find three women who all clerked for the United States Supreme Court and made such different subsequent choices. It was interesting to hear stories about the justices, but even more interesting was hearing about these women and the paths they had taken both before and after their clerkships.”



### Adoption, Orphanages, and a Child's Hope Foundation

Kenneth Paul MacArthur, '98, divides his time between three law and law-related practices. He has an adoption practice and an estate, business, and tax-planning practice with the law firm MacArthur, Heder & Mantz, where he is president and CEO. He also works in developing nations, building orphanages and helping place orphaned children with families who are trying to adopt them through an organization he cofounded called A Child's Hope Foundation.

The story goes back to 2002, when about 50 orphaned babies and children had been left with Mardy Guesno, an LDS bishop in Haiti. At that time MacArthur, who has an MS in taxation from Washington Law School as well as his BYU law degree, was looking for ways "to promote adoption through a tax-exempt entity." "My first two children are adopted, and my firm does more than half of Utah County's adoptions," MacArthur explains. "Hence, my interest in adoption!"

Paul Cook, a former vice president of Novell and of SonicWALL, Inc., and the father of an adopted daughter from China, was approached about building an orphanage for the Haitians living with Bishop Guesno. "Cook had the

resources and the drive," says MacArthur. "Within days we heard through the grapevine that I and a few others had set up a nonprofit corporation called A Child's Hope Foundation. He approached us and asked if we would be willing to join forces with him to build orphanages."

MacArthur agreed to incorporate his foundation with Cook's orphanage "only if a second part of the organization was to work to get the children in the orphanage placed for adoption." Since then ACHF has completed the building of Crèche De L'enfant Jesus—an adoption center in Port-au-Prince, Haiti, with room for 300 children—and is moving forward with plans to build an orphanage in Tijuana, Mexico.

In Haiti alone, 1.2 million children are "orphaned and vulnerable," says MacArthur. In a nation where 80 percent of the population live in abject poverty, there are few resources to care for these abandoned children. Ironically, he says, "thousands of families in developed countries are trying to adopt, but they are hindered by prohibitive costs, complicated procedures, and government regulations." A Child's Hope Foundation works to close that gap by defraying the cost of adoption, offering loans to adoptive parents, and increasing the efficiency of the adoption process "at the highest levels of government."

Much of this legal work is the responsibility of MacArthur, who is now the vice president in charge of adoptions for ACHF as well as legal counsel and one of four board members of the foundation. He travels internationally and works with international adoption agencies "to facilitate placement of our children into good families," and he stays in touch with Crèche De

L'enfant Jesus "to make sure that the children that we have in the orphanage are happy, healthy, and adoptable."

This year ACHF has plans to branch beyond Haiti. "First," says MacArthur, the foundation will "continue to place our children from Haiti." Second, ACHF plans to build a second orphanage in Mexico. And third, the organization will move into China. Beyond this year ACHF is exploring options to open orphanages in several more countries.

Those interested in assisting the foundation and the orphans can help in a variety of ways. "Fund-raising is always the number-one priority for us," says MacArthur. Monetary or asset donations can be arranged through the ACHF Web site, <http://www.achf.org>. Volunteers may travel to an adoption orphanage in a third-world country with ACHF and contribute a week's time to work on construction projects and help care for the children at the orphanage. There is also a great deal of volunteer work to be done locally in collecting and inventorying donations, making goods such as blankets and diapers, and holding awareness and fund-raising events like firesides, open houses, hunger banquets, and concerts.

A Child's Hope Foundation can be reached by phone at 801.494.9200; by e-mail at [info@achildshopefoundation.org](mailto:info@achildshopefoundation.org); or by post at A Child's Hope Foundation, 1481 East 840 North, Orem, Utah 84097.

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### Elder Bednar Addresses Austin Chapter Law Society

More than 270 J. Reuben Clark Law Society members and their guests enjoyed an evening at the Austin Marriott Hotel on November 6, 2004. Elder David A. Bednar of the Quorum of the

Twelve Apostles and his wife, Susan, were keynote speakers at the Annual Outstanding Leader Seminar, cohosted by the J. Reuben Clark Law Society and the Austin Management Society.

Welcomed by AMS President Eric Storm and Clark Society Chair Karen Whitt, the Law Society presented its Faith and Integrity in Legal Services Award to Texas Supreme Court Justice Scott Brister. Reputed throughout his legal career for his dedication, fairness, and unflinching integrity, Justice Brister was elected to serve another term on the supreme court just a few days prior to the event. He related how his faith had influenced his legal career, including the impact of a lawsuit brought against him after he displayed the Ten Commandments in his courtroom.

Elder David A. Bednar of the Quorum of the Twelve Apostles addressed the audience following his wife's remarks. Sister Bednar shared her testimony regarding her husband's recent call to the Quorum of the Twelve Apostles. Elder Bednar also spoke of his call to the Quorum of the Twelve and related multiple experiences where he had felt the "tender mercies of the Lord" in his life, including the day he was sustained as an Apostle.

A masterful teacher, he fielded questions from the audience on a variety of subjects, including Church doctrine, his work at BYU-Idaho (including the transition from Rick's College), and his thoughts about the juggling act of life. He also made an appeal for local Management Society Chapter members to assist the Intern Department at BYU-Idaho in placing interns in central Texas. Elder Bednar concluded his remarks with his testimony of the Church and bore his apostolic witness that the Savior lives.

# Class Notes

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## CLASS OF 1976

**Donald L. Harris** was presented with the Idaho State Bar Outstanding Service Award at the summer isb meeting. He has chaired the isb Litigation Section since December 2001, and his term will end June 2005. The Section was moribund at the time the Board of Commissioners appointed him to reinvigorate the Section. The award was for the work that was performed to recreate the Section and move it forward. Harris is with Holden Kidwell Hahn & Crapo PLLC in Idaho Falls, ID.

**Ron Olsen**, after a summer clerkship following his second year of law school, confirmed his decision to make his career in financial planning/investment management rather than the practice of law. He is an active member of the Tax and Estate Planning Sections of the Utah State Bar but holds an inactive license. He began his career during his third year of law school, maintaining an office in his home in Lindon, UT (for over 25 years), and he continues to use a "family-managed office in home" business model, through which all of his eight children have worked. Two of his sons are now coming into the business full-time.

**Jeff Young** has recently written a book entitled *How to Receive Discernable Answers to Your Prayers*. The book takes the reader step-by-step through the process of prayer. Drawn from the scriptures, it discusses one's proper preparation for prayer, seven models for prayer, and the practical descriptions and explanations of the different methods the Lord uses to answer prayers. The most encouraging message of all is that there is an answer to every prayer. Published by Horizon Publishers, the book is available through LDS bookstores and Amazon.com.

## CLASS OF 1977

**Casey Christensen** is the political counselor at the U.S. Embassy in Stockholm, Sweden. He and his wife, Margie, and their 10 children have spent most of the past 18 years abroad in connection with his work for the State Department in Guatemala, France, Bolivia, Austria/OSCE, Nicaragua, and Ukraine. Casey says, "The Church has been our bridge to a deeper experience living in other cultures." His diplomatic activities have included working on judicial reform, extradition, democratization, human rights, arms control, nonproliferation, and conflict avoidance and resolution.

**Nathan Kirk** practiced 15 years in trials, appeals, divorces, and personal injury work. He became a trailing spouse to a regional manager of the FAA and lived in Washington, D.C., for two years. He then trailed his wife to Federal Way, WA, and became an on-site coordinator for an East Indian IT consulting firm, Patni. His accomplishments include being a cook at the Community Supper for 50 homeless folks once a month; raising three kids who have college degrees and jobs; having five grandkids who love him; being loved by and consoling to his wife's family; and maintaining a correspondence with a lifer in Angola Prison for five years.

## CLASS OF 1978

**Kenneth W. Jennings Jr.** spent 15 years practicing in Asia. His son, Ken Jennings III, just completed his famous stint on the television game show *Jeopardy*.

**Edward Robbins** moved his family and practice from the Wasatch Front to the hinterlands of southwestern Utah about 10 years ago. Although the slower pace he expected eluded him, there are some interesting, quirky things about being a "country lawyer." He'll never forget climbing on the back of a client's snowmobile and heading to his snowbound cabin with laptop in tow for completion of discovery responses or those regular back-road jaunts to view properties involved in boundary or road disputes. Depositions are rare—just ask around to find out who says what about what. You turn down lots of work, not because of actual conflicts but because you don't want to go to a basketball game and sit next to some guy you just sued.

## CLASS OF 1979

**Dennis Richardson** has just been elected to a second term in the Oregon State Legislature and was sworn in as Oregon House Speaker Pro Tem on January 10, 2005.

## CLASS OF 1980

**Alan Passey** retired from the U.S. Air Force as a colonel and immediately began work as assistant Air Force general counsel under the deputy general counsel for National Security and Military Affairs.

## CLASS OF 1981

**Glade Myler** is currently employed with the Nevada Department of Justice Office of the Attorney General as a senior deputy attorney general. She represents the Division of Emergency Management, the Nevada Homeland Security Commission, the State Emergency Response Commission, the Nevada Earthquake Safety Council, the Nevada Hazard Mitigation Planning Committee, and the Nevada Communications Steering Committee. She also does some workers' compensation for the Department of Motor Vehicles and the Department of Public Safety. Her practice is mainly in administrative, personnel, contract law, and workmen's compensation law. She recently compiled a bioterrorism legal preparedness tabletop exercise for the legal community in Nevada. Her real life involves her family and especially her five grandchildren. She says, "Life is good."

## CLASS OF 1982

**Jamie Dester** is in his sixth year as an international legal counsel for The Church of Jesus Christ of Latter-day Saints. He spent his first four years supervising the Church's legal affairs in Africa, and in July 2003 he moved his family to São Paulo, Brazil, where he supervises the Church's legal affairs in South America.

**Kurt Krieger** now supervises Church legal affairs in Africa. He lives with his family in Accra, Ghana.

## CLASS OF 1983

**Mark Davis** and his daughters have issued their sixth CD by their alter-ego Celtic music group ([www.fiddle-sticks.com](http://www.fiddle-sticks.com)). The CD is a collection of old-time hymns called *Return to Nauvoo*. In his spare time Mark has an international trade-law firm and teaches part-time at the JRCLS.

**Bryan A. Larson** is currently president and shareholder of the law firm of Larson, Turner, Dalby & Ethington, a five-attorney firm in South Jordan, UT, that practices throughout the state. They maintain a Web site at [www.bestattorneys.com](http://www.bestattorneys.com). Bryan is also currently the treasurer of the Utah Trial Lawyers Association, a position that will lead to being president in a few years. His practice focuses on tort and insurance work, primarily

representing plaintiffs, in addition to insurance defense work. He and his wife, Kath, live in Draper, UT, and are the parents of six children. So far, all of their three oldest children have served missions, with a few years to go for the three younger ones. Bryan remains a rabid Cougar sports fan.

**Jan P. Malmberg** is president of Perry, Malmberg & Perry in Logan, UT. The firm consists of five attorneys whose practice includes insurance defense, personal injury, subrogation, collections, and family law.

## CLASS OF 1984

**Sheila R. Breen** is the superintendent of the Grand Canyon Unified School District in Grand Canyon, Arizona. Her interest and specialty in education law is now being put into practice on a daily basis.

**David R. Lynch** just published a book with Carolina Academic Press entitled *Inside the Criminal Courts*. After graduation he worked both as a public defender and as an assistant district attorney in his home state of Pennsylvania and is currently an associate professor of criminal justice at Weber State University in Ogden, UT.

## CLASS OF 1985

**Vai Io Lo** will publish another book, entitled *Law and Investment in China: Legal and Business Environments After WTO Accession*. The book is a handy reference on Chinese laws relating to foreign direct investment.

**Frederick Judd** is currently in Irvine, CA, and for the last four years has developed a successful "heir finding" business. Previously a stressed-out technology company CFO and business attorney, he latched onto his new endeavor casually and now loves the challenges of doing genealogy for long-lost relatives to support their rights to inherit. He counts among his most challenging and rewarding cases the location of heirs of a Holocaust survivor who died in San Diego with relatives in Argentina (where he served a mission), Panama, and Israel. He is married and has two college-age daughters and a nine-year-old son.

**Ninalynne Bills Roesberry**, after graduating and taking the bar exam, began what she thought would be a 30-year career with the FBI. She became an FBI agent in 1985 and started in New Orleans. From there she transferred to Washington, D.C., for an intensive course in Russian language and culture for 18 months to prepare for a special, long-term assignment. After training she spent five years working with Russians in a counterintelligence capacity. When that assignment concluded she transferred to Las Vegas, where she spent eight years working in espionage and counterintelligence. In 2000 she and her husband were married in the Logan Temple, and in April 2003 their son was born. After 9/11 she was able to go to New York City and assist in the body recovery efforts at the World Trade Center site. Then, in late 2003, she was disabled on the job and forced to retire, pending further reconstructive surgery to her knees. She and her family now live in North Logan, UT, where her husband is a computer consultant and she is a full-time mom after almost 20 years with the FBI.

## CLASS OF 1987

**John E. McClurg** currently serves as vice president and executive director of Lucent Technology's Global Business Assurance and Risk Mitigation Services. His responsibilities include strategic focus and tactical operations of Lucent's internal global security services,

including those currently being advanced in Iraq. He is also charged with the seamless integration of Lucent's various security offerings and improving the effectiveness and efficiency of security initiatives. Before joining Lucent John served in the U.S. Intelligence Community as a twice-decorated member of the Federal Bureau of Investigation (FBI), where he held an assignment with the U.S. Department of Energy (DOE) as a branch chief charged with establishing a cyber-counterintelligence program within the DOE's newly created Office of Counterintelligence. Prior to that he served as a supervisory special agent within the FBI, charged with establishing the FBI's new Computer Investigations and Infrastructure Threat Assessment Center, or what is today known as the National Infrastructure Protection Center within the Department of Homeland Defense. John also served for a time on assignment as a deputy branch chief with the Central Intelligence Agency helping to establish the new counterespionage group and was responsible for the management of complex counterespionage investigations. He also served as a special agent for the FBI in the Los Angeles Field Office, where he implemented plans to protect critical U.S. technologies targeted for unlawful acquisition by foreign powers.

## CLASS OF 1989

**Mark Cottle**, after serving for 12 years on the City Council of Sherwood, OR, has stepped down as the mayor (last four years). He is still active in the community, serving on the board of directors of Providence Newberg Hospital and other community committees. His triplets and teenage daughter are keeping him hopping.

**Christopher A. Newton** was sworn in as Vigo (Indiana) Superior Court Division Four judge on December 17, 2004. Newton won the Democratic primary by a large margin in May. He was unopposed in November and will serve a six-year term.

## CLASS OF 1990

**Jill Marchant**, after 12 years as senior counsel for Honeywell FM&T (a division of Honeywell International Inc.), is leaving to take the position of associate general counsel—litigation and employment, Applebee's International, Inc., headquartered in Overland Park, KS (a Kansas City suburb). She will be responsible for managing all of Applebee's litigation and employment matters.

## CLASS OF 1991

**Mike Bothwell** is well known for his work with False Claims Act (FCA) cases, having many of the largest settlements on record in Georgia. The firm has litigated most of the unique and difficult issues involving the FCA, such as the first-to-file and public disclosure bars, the applicability of Federal Rule of Civil Procedure 9(b), the application of government *Touhy* regulations, municipal liability, and the FCA's "alternate remedy" provision, as well as having extensive experience in general civil litigation. Firm cases have recently been featured in the *Wall Street Journal*, *New York Times*, *Chicago Tribune*, *Atlanta Journal and Constitution*, *Macon Telegraph*, *Savannah Morning News*, and *Fulton County Daily Report*. A story about one of the firm's cases aired on CNN recently, another on the *Oprah Winfrey Show*, and a third was broadcast nationally by the Cox Broadcasting Company.

**Susan Polizzotto** is the staff judge advocate for the Coast Guard's Maritime Law Enforcement Academy in Charleston, SC. She provides legal counsel and assistance to the commanding officer, instructors, and staff, and she teaches law and law enforcement to approximately 1,800

boarding officers and team member candidates per year. While in training at the Academy, prospective officers learn to conduct safe, effective, and legally sound homeland security boardings; counterdrug and illegal alien interdiction operations; and federal fisheries, environmental, and boating safety law enforcement missions. It's not JAG, but due to her three years at sea and two years in tactical counterdrug operational planning, her shipmates nicknamed her "Harm." She looks forward to a postretirement career in Hollywood screenwriting.

#### CLASS OF 1992

**David Berndt** was hired as the director of regulatory affairs for Lightship Telecom in October 2004. In this position he is the company's in-house attorney, dealing with several state public utility commissions and the FCC, along with engaging in lobbying activities for the telecom services provider. He and his family moved to southern New Hampshire at the end of 2004 to be closer to Lightship's operational headquarters.

**Jack Pate** and **Hal D. Baird**, former classmates and study partners in law school, got back together in 2000 as shareholders in the Salt Lake City intellectual property law firm of Pate Pierce & Baird, representing clients around the world on patents, trademarks, copyrights, trade secrets, licensing, contracts, and related litigation. Lt. Col. Baird was more recently activated by the Army Reserve, due to the Iraq war, as a JAG focusing on federal personnel law for the Reserve. He expects to return to private practice in the firm in 2005. Dr. Pate, who says he does more engineering as a patent attorney than he did as an engineer, continues his focus on patents and patent litigation.

**Val Ricks** was a visiting professor of law at Texas Tech University School of Law in Lubbock, TX, fall semester 2004. He taught securities regulation and mergers and acquisitions.

#### CLASS OF 1993

**Greg King**, a partner at the law firm of Payne & Fears LLP, recently relocated from Orange County, CA, to Las Vegas, NV, to open and head P&F's new Las Vegas office.

#### CLASS OF 1994

**Lorie D. Fowlke** was elected to the Utah House of Representatives as a representative for District 59 in Orem, UT. She also published a book entitled *Thinking Divorce? Think Again!* along with a DVD this last year that is available at Deseret Book and Barnes & Noble and online at Amazon.com and Thinkingdivorce.com. She still practices law at Scribner & McCandless, P.C., in Provo, doing mostly civil litigation, family law, and collections.

#### CLASS OF 1995

**Larry Meyers**, after nearly eight years as a prosecutor in St. George, UT, went into private practice in 2003 and started his own solo practice in July 2004. He specializes in criminal defense and family law and greatly enjoys his work as a solo practitioner.

#### CLASS OF 1996

**Kirk Hermann** was named associate editor of *Nanotechnology Law and Business Journal* (NLBJ), a printed publication about the emerging field of nanotechnology. Information about the journal can be found at [www.nanolabweb.com](http://www.nanolabweb.com). This year he coauthored the article "Standards in Nanotechnology," NLBJ, vol. 1, issue 2, June 2004. He also authored the article "The Impact of

Nanotechnology on Energy," NLBJ, vol. 1, issue 3, September 2004; and coauthored "Strategies for Resolving Patent Disputes over Nanoparticle Drug Delivery Systems," NLBJ, vol. 1, issue 4, December 2004.

**Brent C. Rummler** was promoted to supervisory special agent and transferred from San Juan, Puerto Rico, to FBI headquarters in Washington, D.C. He and his wife, Alyson, now have five children after the birth of their son Braden Joseph on April 6, 2004.

#### CLASS OF 1997

**B. Scott McBride**, an associate in the Health Law Section of Vinson & Elkins LLP in Houston, has been named one of 14 outstanding young health-care lawyers in the United States for 2004. The Outstanding Young Healthcare Lawyers 2004 special report is compiled by *Nightingale's Healthcare News*, a publication for professionals who service the business of health care, including accountants, consultants, executives, investment bankers, lawyers, and others interested in the industry.

**Amy Mitchell Wilson** worked as a deputy district attorney in Orange County, CA, for about one year. She and her husband, Scott, moved to the San Francisco Bay Area to allow him to go to dental school from 1999 to 2002. Amy worked during that time as a deputy district attorney and later as a private criminal defense attorney in San Mateo County. They currently live in the northwest area of Phoenix, AZ, where Scott has a private dental practice. Amy keeps busy practicing "mommy law" at home with their three boys, McKay (8), Jack (3), and Gavin (1). She is also serving as the Arizona regional director for the BYU Alumni Women's Law Forum.

#### CLASS OF 1998

**Richard Blake** and his wife, **Jenny Blake, '99**, welcomed twins to their family—a son and daughter named Sean and Eliza—in January 2005. After completing clerkships at the Supreme Court of Utah and the Ninth Circuit Court of Appeals, Richard has practiced corporate and securities law at Wilson Sosnini Goodrich & Rosati in Palo Alto, CA. Richard also serves as the elders quorum president in their ward.

**Bill Duncan** is the director of the Marriage Law Foundation in Orem, UT.

**Tamara Fackrell** has been hired as the Community Mediation Center director in Provo, UT. She is also having her first book published through Deseret Book in February: *The (Potentially) Sane Mother's Guide to Raising Young Children*.

**Christopher J. Kyler** has been working as general counsel for the Utah Association of Realtors for the past several years and in July was promoted to be the chief executive officer for the corporation. The UAR's main functions include advocacy at the legislature on real estate and development issues and for the Legal Resource Center. He has also retained partnership interest in his small law firm, Marchant, Kohler, & Kyler LLP. The firm, which specializes in business law, tax law, and government relations, has grown rapidly over the past few years. Their southern Utah office has expanded by several employees, and their Salt Lake operation has added two new partners and support staff. On a personal level, he, his wife, and their four children moved into a home they had built in Alpine, UT, in 2004.

**Tim Renyon** writes: "My greatest achievement so far has been becoming a father. Four years ago my wife, Maile, and I adopted two boys, Mitchell Kawikamekealoha (7) and Jaeden Daniel

Kalikokuponomaikanahale (4) from the Puyallup Tribe. The four of us live in Puyallup, WA. In 2002 we gave birth to our third son, our first biological child, Austin Taelor Kiliwehionalani, but he returned to his heavenly home the same day he joined our earthly family. After graduation I returned to work for my tribe, the Puyallup Tribe, where I had been clerking during the summers. I started out working in the tribe's law office and worked as a tribal attorney for two years, primarily on Indian child welfare cases and advising the tribal council on a variety of legal issues including employment/personnel, housing, and contracts. In 2000 the tribal administration asked me to join their team, and I have been serving as the tribe's executive director of human resources, training, and education ever since.

#### CLASS OF 1999

**Jenny Holman Blake** and her husband, **Richard Blake, '98**, recently added twins to their family—a son and daughter named Sean and Eliza in January 2005. After completing a clerkship at the Supreme Court of Utah, Jennie worked at employment law boutique Littler Mendelson prior to three-year-old son Miles' arrival in 2002.

**Todd C. Hilbig** was made a partner at Morgan, Minnock, Rice & James LC in October 2004 and practices litigation. He and his wife, Jennifer Johnson Hilbig, have four children: Mitchell (7), Isaac (5), Abigail (3), and Madison (1).

**Mike Ostermiller** was hired to be the chief executive officer for the Weber/North Davis Association of Realtors. He also joined Marchant Kohler, and Kyler LLP as a partner, working exclusively in the government relations practice group in Salt Lake City. He, his wife, and their children just built and moved into a home in Layton, UT.

**Ryan Robinson**, his wife, Katie, and their two children are living in the Davis County area in Utah. Ryan is the chief prosecuting attorney for West Valley City.

#### CLASS OF 2001

**Spencer Adams** has accepted a position with the Portland, OR, firm of Gordon & Polser. He previously practiced with the San Ramon, CA, law firm Greenan, Pepper, Sallander & Lally.

**S. Jason Crawford** accepted an offer to be an assistant attorney general for the state of Alaska in April 2004 after two and a half years as a law clerk for U.S. District Court Judge Ralph R. Beistline in Fairbanks, AK.

**Claire Foley** has accepted the yearlong position of president of the King County Washington Women Lawyers for 2005. King County Washington Women Lawyers (kcwwl) was founded in the 1970s and is now the largest chapter of Washington Women Lawyers. As a group, kcwwl is devoted to the interests of women attorneys and judges in Washington State: to further the full integration of women in the legal profession, promote equal rights and opportunities for women, and prevent discrimination. You can find out more information at [www.kcwwl.org](http://www.kcwwl.org).

**Alexander F. Kennedy** transferred in February 2004 from the New York headquarters of the law firm of Milbank, Tweed, Hadley & McCloy LLP to the firm's London office for a one- to two-year stint. In London, Alex's practice emphasizes high-yield debt offerings and acquisition financings.

**Hannah C. Smith** completed her U.S. Supreme Court clerkship with Justice Clarence Thomas and has returned to private litigation practice at the D.C. firm Williams & Connolly.

**John M. Smith's** practice in international law at the D.C. firm Covington & Burling took him to Russia, Ukraine, Switzerland, France, and the republic of Georgia, where he helped win the release from prison of an individual close to Georgia's former leadership.

**Alysson Russell Snow** is currently practicing at Piper Rudnick Gray Cary, specializing in mass tort and productions liability. She was married to Cliff John Snow on July 27, 2002. The couple had a new baby, James Gardner Snow, in 2004.

#### CLASS OF 2002

**Kam H. Brian** has been with the Clark County DA's office since graduation. He has tried just about every type of criminal case ranging from solicitation of prostitution to murder. He is having a great time doing it and truly loves his job.

**Thayne Larson** moved from Orange County, CA, to Las Vegas, NV, to help with the Payne & Fears LLP Las Vegas office.

**James Patrick** and **Jaimee Macanas Neel** live in São Paulo, Brazil. While working as an international trade law specialist for the Department of Commerce, Jim graduated with honors from Georgetown University Law School with an LL.M. in international law. In 2003 Jim was commissioned as an economic officer in the foreign service. He completed his first assignment as special assistant to the coordinator for counterterrorism for the U.S. State Department and received recognition for his leadership and work with the 9/11 commission. Jim is enjoying his new diplomatic post as vice-consul at the U.S. Consulate in São Paulo. Jaimee joined Teach for America in 2002, becoming an inner-city schoolteacher in the Bronx and in southeast Washington, D.C. Her experience as a teacher was featured in an article entitled "Teaching Hope" in the January 2004 issue of *Good Housekeeping* magazine. Jaimee is also enjoying Brazil and her new position as a biometric specialist in consular affairs at the U.S. Consulate in São Paulo. Jim and Jaimee are members of the Utah and D.C. bars, respectively. They have one son, Jimmy, who just celebrated his first birthday.

#### CLASS OF 2003

**Curtis Bullock** was hired as associate counsel to the Utah Association of Realtors, where he staffs the legal resource center. He and his wife added a baby girl to their family and bought a new home near Thanksgiving Point, UT.

**J. Evan Robbins** opened his own law practice on November 1, 2004, after working for a year and a half with a small firm. James Robbins, PC, is the name of his new firm, and he is solo with a general practice, concentrating primarily in the areas of family law, criminal defense, personal injury, and mediation. His office is located in Sherman, TX.

**Bridget E. Ryan** is a health lawyer in Austin, TX. She does work in the managed care litigation and reimbursement practice groups.

**Ryan West** has joined Greg King and Thayne Larson at the Las Vegas office of Payne and Fears LLP.

#### CLASS OF 2004

**Matthew Poulter**, an associate in the New York City office of Morgan, Lewis & Bockius LLP, has an article, "My Client's Going to Brazil: A U.S. Practitioner's Guide to Brazilian Limitadas Under the New Civil Code," in the February issue of *Southwestern Journal of Law and Trade in the Americas*.

# Watching Ukraine Vote Orange

## EYEWITNESS TO

In December 2004 John M. Smith, '01, traveled to Ukraine as an official international observer for its presidential election. John practices international, white collar, and food and drug law at Covington & Burling in Washington, D.C. Since graduation he has been serving as an Alumni Fellow of the J. Reuben Clark Law School's International Center for Law and Religion Studies, with a special focus on Ukraine and Russia. cm inquired about his experience.



### How and why did you get involved in observing the election in Ukraine?

My wife, Hannah, '01, and I were enjoying time with family during Thanksgiving when we first saw images of Ukraine's Orange Revolution on TV. In an inspired moment characteristic of my wife, she urged me to go witness history.

Born of a Ukrainian mother, my love for the Ukrainian people has grown during eight sojourns there since 1992. My various roles there—humanitarian aid worker, thesis researcher, LDS missionary, Army reservist on a NATO Partnerships-for-Peace mission, and three-time law symposium participant—were all related, to varying degrees, to bringing the blessings of liberty and the rule of law to Ukraine. When the Ukrainian people seemed poised to seize those blessings last November, it was time to go again.

To help monitor the December revote, I joined a non-partisan delegation of U.S. and European observers as an adviser. The U.S.–Ukraine Foundation (a nonprofit NGO based in Washington, D.C.) organized the mission, with funding from the U.S. Agency for International Development. My law firm has

long championed pro bono service, so it agreed to cover my travel expenses. Our delegation included 30 former members of the U.S. Congress and the European Parliament.

### What happened in this disputed election, and why does it matter?

A pro-Western challenger, Viktor Yushchenko (YOO-shen-ko), eventually prevailed over the incumbent prime minister, Viktor Yanukovich, after a near-fatal poisoning, a peaceful "Orange Revolution," and three rounds of high-turnout voting.

Ukraine has been a strategic place for a thousand years. Its name fittingly means "borderland," as fault lines of three civilizations run through the country: European Catholicism, Slavic Orthodox Christianity, and Ottoman Islam. European empires have fought the Russian/Soviet empire for control of Ukraine, tugging it in opposite directions for four centuries. The Soviet Union's collapse in 1991 reopened the question of Ukraine's orientation. Would Ukraine retain its Soviet legacy: authoritarian rule, a state economy, media suppression, and fealty toward Moscow? Or would it turn toward the West: rule of law, open markets,

individual rights and property, and self-government? Its 2004 election confronted Ukraine with this fundamental choice as Russia seems to be slipping back into authoritarian habits.

This election's two main candidates generally embodied that divergence—Yushchenko as the pro-Western reformer and Yanukovich as the pro-Moscow strongman. The outgoing president, Leonid Kuchma, chose Yanukovich to continue his legacy, which was marred by corruption and brutality. (For example, journalists routinely received *temnyky*, state instructions on how to report the news; dozens died suspiciously during Kuchma's decade in office.) Overwhelming evidence from the November round of voting indicated that Kuchma's government participated heavily in rigging the outcome and declaring Yanukovich the official winner. This fraud provoked the mass demonstrations known as the Orange Revolution. Ukraine's supreme court then ordered an electoral do-over. After Parliament adopted electoral and constitutional reforms, a third, relatively clean round of voting occurred on December 26, which Yushchenko won convincingly.

### Who poisoned Yushchenko?

The case is still under investigation. Suspicion has swirled around Kuchma's former regime, which included Yanukovich, and its Russian allies. For a fascinating theory, read Tom Mangold's "The Man Who Survived Russia's Poison Chalice," *The Age* (January 23, 2005).

Dramatic before-and-after photos of Yushchenko's scarred face caused a media sensation in the West. I sensed that Ukrainians viewed the poisoning in its grim, less sensational context. It capped a year of active bullying against Yushchenko's campaign. In Ukraine's sad political history, it was yet another lethal attempt against yet another voice daring to oppose an authoritarian regime.

### How did the Orange Revolution remain peaceful?

Only by a miracle. Peace and the constitutional order hung by a thread at several points. The moment of truth occurred in Kiev, Ukraine's capital, on the night of November 28. After Kuchma's government watched the prodemocracy demonstrations gather strength for a week—in Kiev and other key cities—"the Empire struck back," according to U.S. Ambassador John Herbst, who briefed our delegation before the revote. A top official in Kuchma's government ordered soldiers to smash the main demonstration in Kiev's Independence Square. Thousands of soldiers received weapons and live ammunition, climbed into trucks, and rumbled toward the Square.

A renegade group of top Ukrainian intelligence officers tipped off Ambassador Herbst that a bloody government crackdown was imminent. Secretary Colin Powell struggled in vain to reach Kuchma by phone.

Suddenly the trucks stopped, then turned around, and finally returned to base. Our ambassador later learned that a top Ukrainian general had called Kuchma's top official with this (paraphrased) ultimatum: "If your boys don't stand down, my boys are going in" to defend the demonstrators. That did it. For a fuller account of this extraordinary test of wills, I highly recommend C. J. Chivers, "How Ukraine's Top Spies Changed the Nation's Path," *New York Times* (January 17, 2005).

**a Why did the prodemocracy forces succeed?**

Among several key factors, Ambassador Herbst singled out one factor that stunned everyone—even the opposition itself—and may have been decisive: the pure determination of the Orange demonstrators. The government hurled threats, the weather turned frigid and wet, and still those demonstrators stood their ground, swelling in numbers to half a million strong in Kiev, with proportionally large crowds in other cities.

The chair of Ukraine's Parliament, Volodymyr Lytvyn, met with our delegation and shared his view of what motivated the Orange Revolution: "We want to live in a civilized, democratic country." He explained that Ukrainians were so used to being lied to that "when truth began to be spoken, people awoke."

**a What was it like among the demonstrators on Kiev's Independence Square?**

Exhilarating. I attended rallies before and after the revote. For a nation stereotyped as passive, the enthusiasm of these Ukrainians, young and old, was irrepressible. The demonstrators sang hymns about God's mercy and Ukraine's beauty. Their leaders spoke of

Ukraine as "the center of Europe," of restoring personal dignity, and of throwing off prior governments' disgrace: Chernobyl, corruption, and crackdowns. My extremities were soon numb with cold, yet the demonstrators imperviously chanted their slogans for hours: "Freedom cannot be stopped!" and "We are many, and we will overcome!" When a trio of supportive officials from Western Europe took the stage, the crowd erupted with "Ev-ro-pa! Ev-ro-pa!" Another chant, "East and West—together," responded to threats that democracy in Ukraine would split the country or reignite the Cold War. (Then Minister of Foreign Affairs Konstantyn Gryshenko met with our delegation and expressed a similar sentiment toward Europe and Russia: "We don't want to get into a good family and forget about our brothers.")

To me the Orange demonstrators seemed very aware that their victory would impact the region geopolitically, and they reveled in it. Among the forest of Ukrainian and orange flags, the crowd waved the flags of other post-Communist countries that likewise recently embraced democracy: Poland, Georgia, and the Baltics—and one flag from the state of California. I also spotted flags from neighboring Belarus, Europe's only remaining dictatorship. One Orange entertainer half-jokingly proposed that they all go on a world tour. "We'll call it the 'Square Tour.' First to Belarus, then on to Russia." The crowd roared its approval.

As a missionary in Ukraine a decade ago, I had looked into the eyes of thousands of its citizens. For many, despair and powerlessness had dimmed their spirits. But on the Square in 2004 I saw bright eyes radiating hope and strength. For perhaps the first

time as a people, they had discovered the liberating power of taking *personal* action to shape their future—and succeeding. Many parents brought to the Square their young children, who were quick to flash a smile and a V-for-victory hand sign. They wanted their children to absorb and remember this moment.

As an aside, I don't pretend to understand exactly how divine will manifests itself in the sequencing of historical events. But it's worth noting two religious milestones that had already occurred near Kiev's Independence Square. In May 2004 in a palace that overlooks the Square (and formerly was a KGB torture facility), an LDS Apostle created the Church's first stake in the entire former Communist bloc. Six months later, the Orange Revolution swept Ukraine, and the new stake president and several bishops stood among the Saints gathered on the Square. In the fall of 1991, at a spot near the Square that overlooks the Dnipro River, another LDS Apostle dedicated Ukraine for the proclaiming of the restored gospel. Three months later the Soviet Union collapsed, and missionaries poured in.

**a Describe the Orange Revolution's "tent city" in Kiev.**

The tent city was the heart of the mass demonstrations in Kiev. When the fraud of the November round became obvious, well-organized teams of young men cordoned off a half mile of Kiev's main street in front of city hall (and a block downhill from the LDS mission office). Scores of large tents became home to hordes of students who converged on the capital from around the country. Protruding from every tent were signs proclaiming the occupants' hometown.

Before the revote I engaged several tent city inhabitants. One group from Ivano-Frankivsk, home of my maternal ancestors, were chopping wood and warming themselves by a barrel fire. How long had they lived in these tents? "Since November 22," the day after the November round. How long did they plan to stay? Their answers were all the same: "Until Yushchenko is president."

The high degree of discipline and planning in the tent city was like nothing I'd ever seen after a dozen years in post-Soviet countries. A barricade guarded the entire perimeter, which was patrolled by uniformed, unarmed soldiers wearing orange armbands. The main gate boasted a sign: "Entering Orange Revolution Country." Heat came from generators inside the tents. Food came from grateful Kievans and was cooked in two white trailers parked alongside the barricade. Portable toilets lined the tent city's southern boundary. Showers were available by rotation in the homes of Kiev's residents. A radio station broadcast music and messages from inside the defended perimeter.

**a What did election monitors do?**

Over 12,500 official international election monitors—reportedly the largest such body ever—poured into Ukraine and spread across its 33,000 local polling stations to observe the December 26 revote. My observer badge labeled me No. 8,870. Our neutral delegation split into teams for 10 different cities. My team traveled to Cherkassy, a heartland city along the Dnipro River, Ukraine's Mississippi. On Christmas Day we watched local officials set up polling stations, verify the voter registration lists, and review requests for absentee ballots.



On election day itself, our 20-hour effort began at Polling Station No. 7 in Cherkassy's "Friendship of Nations Palace of Culture." We watched ballots being removed from the sealed safe, counted, and issued to voters on the rolls. During the day we inspected the voting at a dozen other polling stations selected because of reported fraud or violence there last time. We presented our credentials, interviewed officials and judges, and took photographs. We checked the process we observed in each station against a protocol that incorporated the election laws, noting any discrepancies. After the polls closed we watched the ballots tallied, recorded the totals, and then traveled in parallel with local officials to the regional HQ, to ensure that these same totals were properly reported up the chain.

**Q Did you observe any election fraud in the December revote?**

Our team in Cherkassy did not. Although we noted minor technical deviations from election rules, we saw nothing that prevented voters from expressing their will at the polls. Our team's experience was consistent with the generally positive conclusions of the OSCE and other Western observer delegations about the fairness and transparency of the December revote.

The locals we encountered in Cherkassy related their accounts of fraud and violence during the prior round. One woman described to us violations from November and then concluded: "But not this time. They are afraid and ashamed to strike again, because you are here." This comment epitomized how warmly Cherkassy received us. When we entered one polling station, its matronly chairwoman gushed: "We feel

toward you like we feel toward our mother and father." A radio journalist confided his initial dismay when the revote was scheduled for the day after Christmas, thinking would-be Western observers would stay home: but his sorrow turned to joy when so many observers came.

In Kiev, Anatoliy Tkachuk, a drafter of Parliament's swift electoral reforms, described to our delegation 13 types of major violations that occurred during the November vote, including the finishing touch: hacking into the Central Election Commission's computer system to manipulate the official vote tally. Although irregularities occurred throughout the country in November, in general, ballot boxes had been stuffed in regions controlled by Yanukovich. In one method his supporters were routinely bused from one polling station to another, voting "absentee" at each one. In regions favoring Yushchenko, thugs destroyed ballot boxes (smashing, burning, or pouring acid or ink into them) and killed or brutalized local poll officials and police officers. The Yushchenko-friendly province of Cherkassy suffered several such hits in November. A regional official, Evhen Heroshchenko, explained to us how syringes had been rigged as explosive devices and tossed into full ballot boxes.

**Q How did results differ between the November vote and the December revote?**

In the Cherkassy province, Yushchenko's margin of victory increased by 10 percent. This difference mirrored the national trend. Overall, Yushchenko went from 3 percent *behind* Yanukovich in November to 8 percent *ahead* in December's final results. Overall voter turnout in December was 77 percent.

Ukraine's most famous patriot is Taras Shevchenko, a 19th-century poet and prophet of national rebirth and liberation, who was born and buried in Cherkassy province. He spent most of his short life as a serf and a political prisoner to foreign masters. In one stirring poem he yearns for a leader who can secure for oppressed Ukraine the freedoms that America has won: "When will we have our [George] Washington?" The day for which the poet prayed may finally have dawned. For some Ukrainians that yearning was fulfilled at last. The morning after election day, an exuberant Volodymyr Kolodochka, head of a civic organization in Cherkassy, found our team and rushed young TV and radio journalists to interview the Westerners. As we parted for Kiev, he heartily clasped our hands and said, "Thank you for supporting us as we choose our Washington."

**Q What are the implications now for religious liberty in Ukraine?**

Positive, although Ukraine has already become a leader among post-Soviet countries for its relatively progressive religious freedoms. Blessed with a pluralist history—multiple traditional churches, supplemented since 1991 by many more new ones—Ukraine's religiously tolerant leaders have allowed a renaissance of faith there.

This positive trend promises to accelerate in the wake of the Orange Revolution, considering the centrality of faith and morality to the popular movement as a conscious reaction against entrenched depravity. Yushchenko, a devout Orthodox believer, promoted religious freedom and pluralism in his campaign. The demonstrations on Independence Square opened



*Polling commission members of Station No. 7 in Cherkassy count the ballots after the polls close. Final count: Yushchenko 832, Yanukovich 297 (report of previous round's results: 857 to 462, and 126 ballots missing).*

daily with a prayer, pronounced in turn by clergy from various churches. My LDS Kievan friends called the Square the "Mormon Zone," because organizers banned drinking, foul language, and rowdiness to keep the demonstrations beyond reproach. A ubiquitous Yushchenko campaign poster depicted him extending a scriptural greeting: "Peace be unto you." Participants in the Orange Revolution frequently described the catharsis as a spiritual experience. At our meeting with the National Reform Press Club in Kiev after the revote, its director, Sierhiy Hubin, told us that he left the Square "feeling as if I was coming out of church—cleansed."

After the results of the revote became official, I witnessed Yushchenko's victory speech on Independence Square. He acknowledged the dreams of many past generations of Ukrainians who had worked and waited for this day of freedom but had not lived to see it. Before joining the crowd in singing the hymn "Great God," Yushchenko concluded with his trademark invocation of Providence: "Glory be to Ukraine, glory be to the Ukrainian people, and glory be to the Lord God."

# Unfolding in Time

BY GALEN L. FLETCHER, '93

I HAVE BEEN INVOLVED AS A STUDENT OR AN EMPLOYEE WITH THE BYU LAW SCHOOL for half of its existence. As such, I attest to the truthfulness of Dallin H. Oaks' first-day-of-school prediction of a long-term, "slow-release" mission for the institution and its students. Rex E. Lee made a similar statement in 1988, commenting that "the amalgam of values that constitute the mission of this Law School will become more apparent to us over the years," adding that he had always felt that way.

The best way I know to describe the mission of the J. Reuben Clark Law School is with an example about children and learning. Children pass through experiences whose meanings often change and become deeper much later in their lives. For example, a child does not often understand her parents' sacrifices for her until she is grown. In the same way, I expect the meaning and purpose of the BYU Law School to become something different for each of us as time passes.

The constant changes in our mission are fitting, however, since the Law School and Law Library are dedicated as places of *learning*. I'm reminded of the time a few years ago when one of the law librarians encountered a well-dressed woman looking confused in the halls of the building. The woman asked where the temple entrance was. The woman was closer to the truth than she may have realized. The spiritual learning in the temple and the learning in the Law School both have the power to impact our lives now and far into the future.

The scriptures describing the Kirtland Temple can apply to the J. Reuben Clark Law School: "Seek ye out of the best books words of wisdom. . . . Establish a house, even a house of prayer, a house of fasting, a house of faith, a house of learning, a house of glory, a house of order, a house of God" (D&C 88:118–19).

President Marion G. Romney spoke to the Law School in 1981 about our personal learning beyond graduation, urging us to follow the example of President J. Reuben Clark: "You must not regard your legal education as consisting of the three years that you have spent in this Law School. . . . The great lawyers are the ones for whom the legal education process never ends."

Such learning will come as we follow the counsel of President James E. Faust (and President Romney) to "study *and practice* . . . the laws of man in light of the laws of God." Returning to President Romney's remarks, "Much more important than a list of the Law School's purposes is this fact: whatever they are[,] . . . the best way to achieve them is for you and those who have graduated before you and those who will graduate after you to respond to the challenge . . . to become Christlike advocates."

Thomas Proffit, a student speaker at the Law School's 1982 convocation, concluded, "The J. Reuben Clark Law School will have fulfilled its mission if its graduates seek first the kingdom of God and his righteousness, not riches, not the honors of men, or worldly power."

What is our mission, Law School and graduates, *today*? Elder Dallin H. Oaks shared an observation by University of Chicago Law School Dean Edward H. Levi. "Don't refer too much to the early days and the great faculty members who were here when this law school was founded," Levi counseled. "You have to avoid talking too much about the great faculty members of the early days lest the students and the public conclude that the great people who have taught at this law school were all in the early days and overlook the fact that the really great ones are those who are here now."

I agree. As important as the BYU Law School's founders were and are in fulfilling their mission, our purpose is to faithfully fulfill God's mission for us *now*, content in the assurance from Elder Oaks that in some future time the meaning of our actions today will be realized.

The *Clark Memorandum* welcomes the submission of short essays and anecdotes from its readers. Send your short article (750 words or less) for Life in the Law to [wisnej@lawgate.byu.edu](mailto:wisnej@lawgate.byu.edu).

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