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Clark Memorandum: Spring 2009

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Lawyers and the Rule of Law

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CLARK MEMORANDUM

J. Reuben Clark
Law School
Brigham Young
University
Spring » 2009



c o n t e n t s



**Liberty, Civility,
and Professionalism**

Ming W. Chin



A Mother's Pace

Gwen Goodson McNeal



Lawyers and the Rule of Law

James D. Gordon III

Leaders and Learning

Kim B. Clark



MEMORANDA

- + HANSEN PRESIDENT OF AALS
- + BATTING FOR THE CURE
- + LAW SCHOOL AWARDS
- + IN REMEMBRANCE
- + JRCLS JUDICIAL CLERKSHIPS
- + CLASS NOTES
- + LIFE IN THE LAW

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**The Truth About
Media Subpoenas**

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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.





LAWYERS AND THE RULE OF

BY JAMES D. GORDON III¹

WELCOME TO THE J. REUBEN CLARK LAW SCHOOL.

It is a privilege to study law, and it is a blessing to study it at Brigham Young University. The Law School's Mission and Goals state: "The mission of the J. Reuben Clark Law School is to teach the laws of men in the light of the laws of God. The Law School strives to be worthy in all respects of the name it bears, and to provide an education that is spiritually strengthening, intellectually enlarging, and character building, thus leading to lifelong learning and service."²

This address was presented to entering law students at the J. Reuben Clark Law School on August 20, 2008.

ILLUSTRATIONS BY JAMES STEINBERG

One of the Law School's goals is to "[f]oster an enlightened devotion to the rule of law."³ Respect for the rule of law makes a free society possible. Without it, society could devolve into tyranny on the one hand or anarchy on the other. Incidentally, my favorite bumper sticker says, "Anarchists for good government." Lawyers help the rule of law to function. It could not exist without them.

In 1972 five men broke into the Democratic National Committee Party headquarters in the Watergate Hotel in Washington, D.C. They were arrested. It turned out that they worked directly or indirectly for the Committee to Re-elect the President. The burglars were tried and convicted. As the result of the case, additional information came out. Eventually it appeared that President Nixon, some members of the White House staff, and the attorney general of the United States had attempted to cover up the break-in and to obstruct justice.

The U.S. Senate conducted an investigation. I remember as a young man watching part of the Watergate hearings on television. The Senate committee discovered that President Nixon had a tape recording system in the Oval Office. The special prosecutor and the Senate committee issued subpoenas for the tape recordings. President Nixon refused to provide the tapes, citing executive privilege. He released edited transcripts of some tapes, but he refused to release the actual tapes.

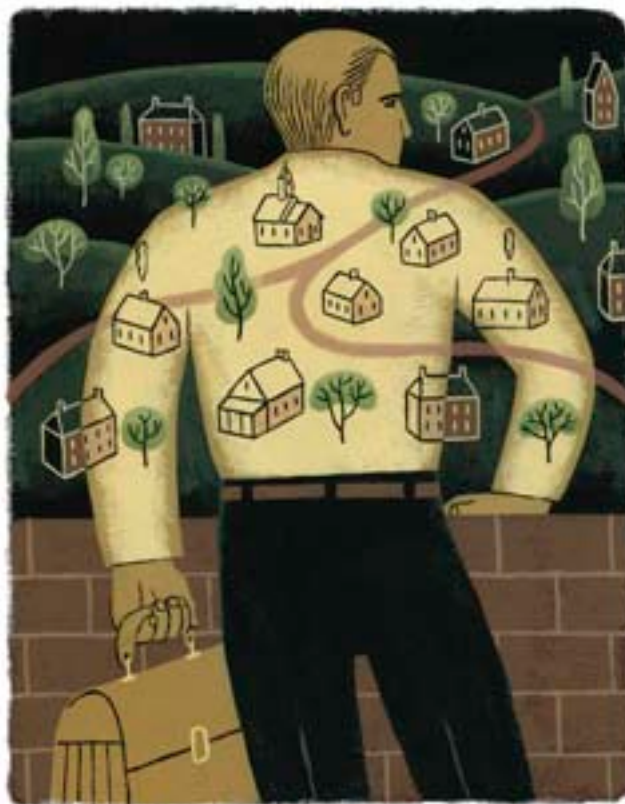
President Nixon asked that a federal district court judge quash the subpoena, but the judge ruled against the president.⁴ The president appealed to the Supreme Court, which unanimously ordered President Nixon to produce the tapes.⁵ Six days later President Nixon complied with the Supreme Court's order. Ten days after that he resigned the office of President of the United States. *Time* magazine called Watergate "the worst political scandal in U.S. history."⁶

The federal judge who presided over the trial of the Watergate burglars and who denied President Nixon's request to quash the subpoena was John J. Sirica. At the time he had a young law clerk named Todd. Many law students do a judicial clerkship, working

for a judge for a year after graduation. Todd planned to take a job with a Washington, D.C., law firm after the end of his one-year clerkship. However, Judge Sirica telephoned the law firm and said, "I can't let Todd go. He is too valuable. He is the only person I can talk to."⁷ So Todd stayed on longer as a clerk.

In April 2008, Todd—now Elder D. Todd Christopherson—was sustained as a member of the Quorum of the Twelve Apostles. When he was a law clerk, fresh out of law school, he helped the rule of law in our country to prevail.

In case you think that the rule of law is merely a jurisprudential abstraction, we might



think about places in the world where the rule of law does not function well. In some countries, governmental corruption is common, and basic human rights are not protected. Some countries lack a stable legal system. Contracts are not enforced, commerce is underdeveloped, and people are not able to lift themselves out of poverty.

Lawyers help make the rule of law possible. They do so as law clerks, judges, legislators, and members of local governments. They do so by representing public entities and private parties, by enforcing the law, by defending against government overreaching, by resolving disputes, by solving problems, and by helping the civil and criminal justice systems to function. They counsel and help people to comply with the law, and they protect and vindicate people's rights. They are essential to a free society.

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LAWYERS ARE THE
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ON THAT WALL.

—DALLIN H. OAKS

The Law School's goals mention "enlightened" devotion to the rule of law, suggesting that the law can be reformed and improved. Lawyers should work for legal reform and help to make a better society.

At the opening of the J. Reuben Clark Law School, BYU President Dallin H. Oaks said:

*The rule of law stands as a wall to protect civilization from the barbarians who would conduct public affairs and settle private disputes by power, position, or corruption, rather than by recourse to the impartiality of settled rules of law. Lawyers are the watchmen on that wall.*⁸

President Oaks also said:

*[A] lawyer's predominant professional loyalty should be to the principles of the law, not to the officials who administer them or to the person, organization, or other client in whose interest those principles are applied. A lawyer obviously owes a high duty of loyalty to his client, but the duty he owes to the Constitution and laws is higher still.*⁹

Interestingly, President Oaks made those remarks in August 1973, during the same summer as the Senate Watergate hearings, when the rule of law was a topic of national focus.

Dallin Oaks himself had demonstrated that a lawyer's duty to the rule of law is greater than the duty to a client. As a young lawyer in Chicago, he was attending the deposition of an employee of one of his firm's clients. The witness began to lie under oath. Dallin Oaks got on the phone to the man's employer and said, "Either you get somebody down here who is going to tell the truth, or you get yourself another lawyer." Good lawyers have that kind of moral backbone.

The history of the Latter-day Saints illustrates the importance of the rule of law and of lawyers in upholding it. For example, on June 23, 1843, the Prophet Joseph Smith was arrested in Illinois by Sheriff Reynolds of Jackson County, Missouri, and another person. The charge was treason against the state of Missouri. Joseph Smith said:

[B]oth of them presented cocked pistols to my breast, without showing any writ or serving any process. Reynolds cried out, ". . . [I]f you stir I'll shoot. . . ." I answered, "I am not afraid of your shooting; I am not afraid to die." I then bared my breast and told them to shoot away. . . .

They then hurried me off, put me in a wagon without serving any process, and were for hurrying me off without letting me see or bid farewell to my family or friends. . . . I then said, "Gentlemen, if you have any legal process, I wish to obtain a writ of habeas corpus," and was answered,—". . . [Y]ou shan't have one." They still continued their punching me on both sides with their pistols.

. . . The officers held their pistols with muzzles jamming into my side for more than eight miles, and they only desisted on being reproached by [Stephen] Markham for their cowardice in so brutally ill-treating an unarmed, defenseless prisoner. On arriving at the bouse of Mr. McKennie, the tavern-keeper, I was thrust into a room and guarded there, without being allowed to see anybody. . . .

I again stated to Reynolds, "I wish to get counsel," when he answered. . . . ["Y]ou shan't have counsel: one word more, . . . and I'll shoot you." . . . I saw a person passing and shouted to him through the window, "I am falsely imprisoned here, and I want a lawyer."¹⁰

Ultimately, Joseph Smith was able to get a lawyer, and he obtained a writ of habeas corpus, which resulted in his freedom. One year and four days later he was murdered by a mob at Carthage Jail. If any people believe in due process of law, in protecting people's constitutional rights, and in the rule of law instead of mob rule, it should be the Latter-day Saints.

Lawyers have played a critical role in our country's history. Our nation could not have been founded without the efforts of lawyers like Thomas Jefferson, John Adams, James Madison, and others. Many of the signers of the Declaration of Independence and about one-half of the signers of the Constitution were lawyers. Lawyers serve in elected and appointed positions in federal, state, and local governments. In large measure, ours is a society led by lawyers.

Many lawyers serve ably and well; they are clear thinkers and speakers; they stand up for us and speak in our behalf. They also help resolve disputes, and good lawyers do this in a civil, peaceful, and noncontentious manner. The Savior said that “he that hath the spirit of contention is not of me.”¹¹ He also said, “Blessed are all the peacemakers, for they shall be called the children of God.”¹²

The study of law is important. Brigham Young said:

*If I could get my own feelings answered I would have law in our school books, and have our youth study law at school. Then lead their minds to study the decisions and counsels of the just and the wise, and not forever be studying how to get the advantage of their neighbor. This is wisdom.*¹³

He also said, “[G]et up classes for the study of law.”¹⁴

Law school is a great time of preparation for future service. I loved law school, and I would like to give you a few words of advice to help you enjoy it and to have a successful experience. I hope that in doing so I don’t sound like Polonius to Laertes in Shakespeare’s play *Hamlet*—especially when I remember what happened to Polonius. I’m not referring to the fact that he was killed behind the arras, but rather that over the centuries he has been portrayed by literally thousands of bad actors.

Polonius gave such sage advice as “[n]either a borrower nor a lender be.”¹⁵ I suppose that this is fine if you want to live in preindustrial England and build your own house out of mud and sticks. But if you don’t care for a house made of wattle and daub, a mortgage is probably in your future—at least if we make it through the current mortgage crisis. And many of the people who will help resolve it will be lawyers. Since this is J. Reuben Clark’s law school, I should add that although J. Reuben Clark himself borrowed money to attend law school, he paid the debt off as soon as he could.

First, you might recall a story about a person who was asked to build a house. He decided to cut corners, use cheap materials, and do a poor job. When he was done, the owner handed him the key, and said, “I’d like to give you this house as a gift.” Attending law school is like that. You can work hard and do a good job. Or you can cut corners and do

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AND THE PEOPLE
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a poor job. Either way, you’re the person who is going to live in the house for the rest of your life. Your legal education will enable you to serve others and to provide a living for you and your family. At the end of law school, we’ll hand you the key. You will have created your own “house of learning.”

Education is one of the few things for which people want to get less than they pay for. The reason is that, while tuition is one cost, an additional cost is the work required to learn. Some people love to learn. Others seem to think that they know enough already. It reminds me of the story of a man who was asked if he wanted to learn a foreign language. He replied, “If heaven intended us to learn a foreign language, then how come the Bible was originally written in English?”

If you decide not to work hard, not only will you cheat yourself, but also you will affect others who will depend on you, including your family and the people whom you will

serve. I encourage you to work diligently, to learn a lot, and to prepare well for the future.

Second, keep up on class preparation, attendance, and outlining. There are people who have this philosophy: “The sooner you get behind, the more time you have to catch up. Do it today!” However, I recommend keeping up.

Third, have a study schedule. You could study all the time. I suggest that you have a time when you will study and a time when you will do other things. Decide on a schedule that works for you. Then try to stick to your schedule.

Fourth, break the sound barrier in class. Participate in the class discussion. You can improve your thinking and oral advocacy skills through practice. I used to be a slow thinker. Once I was attacked by a couple of snails. The police asked me about it, and I said, “I don’t know; it all happened so fast.” Then, in one law school class I had a professor who was a master of the Socratic method. Class discussion was exciting, and I decided that I wanted to get in on some of the fun. So one day I prepared extra well. I made a point in class. The professor didn’t humiliate me. It wasn’t so bad.

The next time was a little easier. You can get better at thinking quickly. You can learn to respond when you're being challenged and a lot of people are looking at you.

Fifth, have things in your life other than law school. Take time for family, friends, outside activities, physical exercise, and recreation. It's also important to fulfill Church callings and to perform other service. These things are important for their own sake, they help you keep a broader perspective on things, and they help keep you balanced.

Sixth, take time to become friends with your classmates. These friendships can last throughout your whole life and can be one of the sweetest aspects of your law school experience. Your classmates are bright, good, and fascinating people. Take time to make friends.

Seventh, don't be afraid of failure. Perhaps you're the kind of person who looks in the mirror and says, "No success can compensate for being a total failure." Don't be afraid. Fear causes anxiety. All of you have the background and academic qualifications to succeed here. And you will succeed, if you do the work.

Eighth, remember that honest failure is better than dishonesty. How many of you have had a dream in which you're not prepared for an exam? You wake up, and you're so relieved to realize that it was only a dream. Well, now you're in law school, and the nightmare is real. If you get a failing grade, you can recover from that. You can take the class again. But if you cheat or plagiarize, and you get caught, you will be in serious trouble. You worked too hard to get here to jeopardize your future through dishonesty.

Even more important than the pragmatic reasons for being honest are the moral and spiritual reasons. You want to be a person of character. The pressures to be dishonest in law practice will be even stronger than they are in law school. Also, to do your best in law school, you need the assistance of the Holy Ghost, which means that you need to try to be honest. Try to avoid situations that create temptations for cheating or plagiarizing. One of those situations is procrastination. If you keep up and are prepared, you won't be as tempted to depart from your standards of honesty.

It's not a coincidence that two of the values I've emphasized are hard work and honesty. They are two hallmarks of the life of J. Reuben Clark, the member of the First Presidency after whom the Law School is named. They should also be hallmarks of the students and graduates of this law school.

Lastly, enjoy law school. It's exciting, fascinating, challenging, and fun. Sometimes law school has been compared to a besieged city: everybody outside wants in, and everybody inside wants out. But the secret to happiness is not to look forward to some future time when all your problems will be solved. The secret is to be happy today. There is joy in learning. Hopefully you will be lifelong learners.

In the Doctrine and Covenants, it says that "intelligence" is "light and truth."¹⁶ It also says:

Whatever principle of intelligence we attain unto in this life, it will rise with us in the resurrection.

And if a person gains more knowledge and intelligence in this life through his diligence and obedience than another, he will have so much the advantage in the world to come.¹⁷

Note that it says that intelligence is obtained through diligence and obedience. That is an important principle. In the very next verses, it says:

There is a law, irrevocably decreed in heaven before the foundations of this world, upon which all blessings are predicated—

And when we obtain any blessing from God, it is by obedience to that law upon which it is predicated.¹⁸

If we do our best, God will strengthen us beyond our natural abilities and will bless us.

Law school is a wonderful time of preparation for the future. You have a mission in life. That mission has multiple dimensions. You have agency to choose your life's work and goals. Your legal education will help you to accomplish those goals and to fulfill your mission.

We're glad that you've decided to attend the J. Reuben Clark Law School. I believe that being a student here is a position of trust. You will have certain responsibilities, and you

will receive tremendous benefits. You will benefit from the contributions of faculty, staff, and tithe payers who make your legal education here possible. You will receive a heritage from students who have gone before you, and you will leave a legacy for the students who follow. Those contributions, that heritage, and that legacy are consecrated to an important and noble work. You are the most important part of that work. May the Lord bless you as you begin law school.

NOTES

- 1 Interim dean and Marion B. and Rulon A. Earl Professor of Law, J. Reuben Clark Law School, Brigham Young University. Apologies and thanks to Johnny Carson, Cliff Fleming, Doug Gordon, Elder Bruce C. Hafen, Gary Hooper, Steve Nelson, and Toby Threet.
- 2 BYU Law School, Mission and Goals of the J. Reuben Clark Law School (*quoting The Aims of a BYU Education*) <http://www.law2.byu.edu/mission_goals_learning_outcomes/missionandgoals.php> (accessed Dec. 19, 2008).
- 3 BYU Law School, Mission and Goals of the J. Reuben Clark Law School <http://www.law2.byu.edu/mission_goals_learning_outcomes/missionandgoals.php> (accessed Dec. 19, 2008).
- 4 *U.S. v. Mitchell*, 377 F. Supp. 1326 (D.D.C. 1974), *aff'd sub nom. U.S. v. Nixon*, 418 U.S. 683 (1974).
- 5 *U.S. v. Nixon*, 418 U.S. 683 (1974).
- 6 *Judge John J. Sirica: Standing Firm for the Primacy of Law*, Time, Jan. 7, 1974 <<http://www.time.com/time/magazine/article/0,9171,910949-1,00.html>> (accessed December 19, 2008). The facts regarding the Watergate scandal cited in my remarks come from Wikipedia, *Watergate scandal* <http://en.wikipedia.org/wiki/Watergate_scandal> (accessed Dec. 19, 2008).
- 7 Quentin L. Cook, Elder D. Todd Christofferson: *Prepared to Serve the Lord*, Ensign, Aug. 2008, at 10, 14.
- 8 Dallin H. Oaks, *Address*, in *Addresses at the Opening Ceremony of the J. Reuben Clark Law School* (Aug. 27, 1973).
- 9 *Id.*
- 10 Joseph Smith, V *History of the Church of Jesus Christ of Latter-day Saints* 440-42 (1964 ed.).
- 11 3 Nephi 11:29.
- 12 3 Nephi 12:9.
- 13 Brigham Young, 16 *Journal of Discourses* 9 (1967 ed.).
- 14 Brigham Young, 12 *Journal of Discourses* 32 (1967 ed.).
- 15 William Shakespeare, *Hamlet*, Act 1, Scene 3, 75 (1603).
- 16 D&C 93:36.
- 17 D&C 130:18-19.
- 18 D&C 130:20-21.



THE TRUTH ABOUT MEDIA SUBPOENAS

BY RONNELL ANDERSEN JONES

As a legislative tug-of-war between the Justice Department and the media enters a new era, a recent BYU study on subpoena frequency promises to inform the shield law debate.

In the early days of his presidency, Barack Obama's pen may well sign into law a number of significant pieces of legislation. If journalist organizations have their way, among the bills that cross his desk will be one that enacts a federal reporter's privilege giving members of the mainstream media a right to refuse to reveal certain information when subpoenaed to do so.



After several years of fits and starts on Capitol Hill—and a threatened veto from former president George W. Bush—some members of the media hope that Obama’s apparent support of the privilege will mean that this will be the year that the legislative hope becomes a reality.

Depending on which version of the facts one believes, the federal shield law would either promote the free flow of information in a wide variety of situations or be a waste of legislative effort—“a solution in search of a problem.”¹ Unfortunately, though, it has been nearly impossible to know which is the case.

On the one hand, journalists across the country have testified that they have witnessed an alarming trend—an “avalanche” of recent cases in which members of the media have faced subpoenas seeking material they do not believe they should be compelled to provide. They report great concern at a perceived change in legal climate and have contended that subpoenas are on the increase and that federal subpoenas in particular present an ever-growing threat to important journalism in the public interest.²

On the other hand, deputy attorneys general also have taken the stand at legislative hearings, and their testimony is in entire disagreement with that of the journalists. The avalanche, they have said, is imaginary—built of rhetoric and fear generated from a handful of exceptionally high-profile cases in which reporters from large national news media asserted a reporter’s privilege in response to subpoenas and lost. In reality, they say, reporters are being subpoenaed only rarely, in numbers and scope not warranting any major federal legislation. Standing in ardent opposition to every proposed federal shield law in the last generation, Justice Department officials have insisted that internal departmental guidelines are sufficient to ensure that reporters will not face subpoenas with any meaningful frequency. Recently they have testified that, under these guidelines, the department has “approved subpoenas to the media seeking source-related information in only 19 cases since 1991,” only four of which “have occurred since 2001”³—an empirical assessment that seems to stand in stark contrast to the reporters’ tales of a deluge of subpoenas.

In the end, however, neither the media’s testimony of the avalanche nor the Department

of Justice’s testimony claiming undue alarm is very useful. The former is almost entirely anecdotal. The latter has cited only data narrowly focused on confidential-source materials and the prosecutorial setting—essentially responding to journalists’ claims about an orchard of apples with an assertion about a carton of oranges. The number of subpoenas the Department of Justice cites does not include, for example, subpoenas from special prosecutors, who have been the sources of the highest-profile media subpoenas in recent history, and does not include subpoenas issued in a wide variety of civil settings or those that seek something other than completely confidential material. In short, the two sides of the debate are speaking past one another in ways that have proven wholly unhelpful.

Indeed, for more than 30 years, the legislative battle over the need for a federal shield law for journalists has turned largely on assertions about the frequency of media subpoenas, and yet has been fought in the absence of any useful data on the question. As hearings on Capitol Hill last year continued to reverberate with journalists’ allegations of high numbers of subpoenas and Department of Justice representatives’ allegations of low numbers of subpoenas, a neutral, empirical assessment of the number of subpoenas actually received by members of the mainstream press was completely missing from the dialogue.

But this year, when debate on the Hill resumes, the data will exist. An article recently published in the *Minnesota Law Review*⁴ presents the results of the 2007 Media Subpoena Survey, a nationwide survey of newspaper editors and television news directors conducted by this article’s author. The survey aimed to assess the frequency and impact of media subpoenas by tallying the self-reported numbers of subpoenas received during 2006 at daily newspapers and network television news affiliates and by comparing those numbers to similar data collected before the recent spate of high-profile cases.

The survey data reveal that while the numbers of media subpoenas may not constitute an avalanche in scale, they do appear to justify federal legislation. Overall increases in subpoenas in the last five years are not as drastic as some media organizations have contended, but the number, scope, and nature of subpoenas—particularly those in federal proceedings and those related to confiden-

tial information—appear to be significantly broader than opponents have claimed, suggesting that the alarm is not entirely undue.

A Brief History of the Debate

The modern story of reporter’s privilege begins with the case of *Branzburg v. Hayes*, a 1972 Supreme Court decision in which a deeply divided Court held that there was no privilege under the First Amendment for journalists to refuse to testify before a grand jury.⁵ The case launched the most remarkable legal development in the history of media law, with the creative attorneys of a then-popular press turning a losing decision into a winning line of precedent that lasted for three decades.

The Supreme Court in *Branzburg* split 5–4, or, more accurately, 4–1–4, with Justice Lewis Powell providing the critical fifth vote for the majority’s denial of a constitutional privilege to reporters who had been subpoenaed to testify before grand juries. Powell did not join the plurality opinion authored by Justice Byron White, which flatly rejected the argument that the subpoenas implicated First Amendment concerns. Nor did he join the *Branzburg* dissenters, who would have recognized a qualified privilege rooted in the First Amendment.⁶ Justice Powell’s brief, tie-breaking, and legendarily nebulous concurrence agreed that the petitioners were unprotected by a constitutional privilege, but emphasized the narrowness of the holding. “In short,” he wrote, “the courts will be available to newsmen under circumstances where legitimate First Amendment interests require protection.”⁷

Seizing upon that language, media attorneys crafted an argument that legitimate First Amendment interests required a privilege for journalists in a wide variety of cases and that *Branzburg* was limited only to its very facts: assertions of reporter’s privilege in the grand jury setting. For three decades after *Branzburg*, a strong majority of state and federal courts found some form of qualified First Amendment or common-law privilege embodied in Justice Powell’s concurrence. Indeed, within a decade,⁸ nearly every federal circuit had interpreted that case to give rise to some form of qualified reporter’s privilege, and federal courts across the country had consistently recognized the existence of a

First Amendment–based privilege in both civil and criminal cases.

State courts followed suit in finding a qualified privilege,⁹ either as a matter of common law, or as a constitutional matter relying either on Powell’s concurrence or on the reporter-friendly standards of the applicable federal circuit. Some also recognized a privilege rooted in state constitutional law.¹⁰ In spite of *Branzburg*, the privilege was alive and well.

A Recent Shift?

Notwithstanding the significant success that media attorneys had in invoking a qualified privilege after *Branzburg*, recent developments have reminded these attorneys that what the courts give, the courts may take away. In 2003 one particularly prominent federal appellate judge authored an opinion that was seen by many as marking the beginning of the end for the court-created privilege. In *McKevitt v. Pallasch*,¹¹ Judge Richard Posner roundly criticized the journalist-friendly readings of *Branzburg* adopted by courts across the country and held that a subpoena for material not obtained under a promise of confidentiality could not raise First Amendment issues.

McKevitt sent waves of fear throughout the media world, in part because it came at a time in which journalists also were taking a beating in the court of public opinion. All told, in the five-year period between 2002 and 2007, journalists in the United States faced an unprecedented spurt of exceptionally high-profile cases in which subpoenaed reporters asserted a privilege, lost their arguments, and then either relented and testified or were jailed for contempt.

The nation watched closely as Rhode Island broadcast journalist James Taricani was sentenced for contempt. He was followed by a number of reporters who were thought to have information critical to the Federal Privacy Act suits brought against the federal government by physicist Wen Ho Lee and germ-weapons expert Steven Hatfill. Likewise, great attention was given to two *San Francisco Chronicle* reporters who were believed to have knowledge about the Bay Area Laboratory Co-Operative’s alleged distribution of illegal steroids to athletes. Most notoriously, *New York Times* reporter Judith Miller spent 85 days in jail in 2005 for refusing to reveal the “senior [Bush] administration officials” who had outed covert



CIA agent Valerie Plame to her and to other reporters from national news organizations.

The Push for a Federal Shield Law

Statements of media advocates that are peppered throughout the coverage of these high-profile cases, coupled with the strong assertions of reporters’ advocacy groups in the ongoing legislative debates, strongly suggest that journalists now believe that this string of cases adversely affected their legal climate. Journalists believe that prosecutors and civil litigants now feel much more comfortable subpoenaing the press. The conventional wisdom holds that attorneys who would not have subpoenaed the press five years ago now view a media subpoena as both more socially acceptable and more likely to be legally permissible.

The inevitable consequence of this emboldening, journalists suggest, is an increase in media subpoenas. The consequence of this uptick, they continue, is a change for the worse in the practices of American journalism. Not only are subpoenas believed to divert time and energy from news gathering, they also are said to deter good reporting. The theory is that reporters who feel threatened by subpoenas and the real possibility of jail time or substantial individual fines for noncompliance shy away from stories that might give rise to subpoenas—especially those involving confidential sources, who expect them to go to jail or pay the fines rather than revealing their identities.¹² Meanwhile, sources who see that journalists increasingly lose subpoena battles are increasingly unwilling to speak on condition of confidentiality. In either instance, the result is a

[Whether] reporters . . . shy away from stories that might give rise to subpoenas, [or] sources . . . are increasingly unwilling to speak, . . . the result is a chilling of the free press and a hampering of the ability to uncover important stories in the public interest.

chilling of the free press and a hampering of the ability to uncover important stories in the public interest.¹³

Supporters of a shield law point to the avalanche of subpoenas and to the string of consequences arising from that avalanche as evidence that legislation is needed to protect the free flow of information. But has the avalanche really happened? Or, as the Justice Department consistently has asserted in its opposition to the shield law, is this much ado about nothing? Is the practice of subpoenaing the media widespread, or has intense publicity surrounding cases that involved mostly very large national news organizations—reporting mostly on very sensitive national security-related topics—brought about undue alarm over an issue that is limited to those kinds of organizations and those sorts of topics? The Subpoena Survey sought to investigate these

questions, and the ongoing debate over the propriety of a federal shield law provided the framework for the survey's central inquiry: Do the number, scope, and nature of media subpoenas warrant federal legislation?

Comparisons Over Time

Although no neutral academic study had been conducted on the empirical question of subpoena frequency before the Subpoena Survey, there was not a total absence of data. Before the most recent string of high-profile cases, the Reporters Committee for Freedom of the Press, a nonprofit group formed to support newspaper and television reporters, conducted six biennial surveys attempting to document the incidence of subpoenas served on the media. The final of these studies gathered data for 2001. That study's results represent a baseline of data that is ideal as to topic and timing, if imperfect as to structure or statistical significance.

The current Subpoena Survey was sent to the same population targeted by the Reporters Committee: every editor of a U.S. daily newspaper, regardless of circulation or geographic location, and every news director of a U.S. television news station affiliated with ABC, NBC, CBS, or FOX. Respondents were asked to report the number of subpoenas received during calendar year 2006. With a few nonsubstantive alterations in format, the present Subpoena Survey adopted verbatim the questions from the Reporters Committee survey.

The response rate was 38 percent. The final report included both actually reported numbers and estimated numbers for the total population, produced using statistical software that weighted actual responses by the inverse of the probability of response.

Data analysis also was performed on a group of respondents who participated in both the 2001 study and the current study. This "comparison group" analysis provided an additional mechanism for tracking numerical trends over the five-year period and for confirming apparent changes in frequency suggested by other data.

The Frequency of Media Subpoenas

With its snapshot of the national experience for a single year, the survey provides a look at both the depth and the breadth of the media

subpoena situation. The data suggest that, while the news media is not experiencing the avalanche of subpoenas that some have described, there does appear to have been some increase in subpoenas over the five-year period of the study. Among the most important findings were as follows:

- **More than 7,000 subpoenas were received by the media in a single calendar year:** The 761 responding news organizations participating in the study reported that their "reporters, editors, or other news employees" received a total of 3,062 "subpoenas seeking information or material relating to newsgathering" in calendar year 2006. Weighting responses to estimate actual values for the entire population suggests that a total of 7,244 subpoenas were received by all daily newspapers and network-affiliated television news operations in the United States that year.

- **The subpoenas were geographically dispersed:** Subpoenas were reported by media organizations in Washington, D.C., and all 49 reporting states and by newspapers of every circulation category and broadcasters in every market size.

- **The distribution of subpoenas was greater than has been indicated by shield law opponents:** An analysis of the distribution of subpoenas among media organizations shows that greater than half of the 761 responding organizations reported receiving one or more subpoenas. The vast majority of those received subpoenas in single-digit amounts, although almost 10 percent received greater than 10, and two survey respondents—both broadcasters—reported receiving more than one hundred subpoenas. The largest total number reported was 160. When responses are weighted and generalized to the entire population, the data suggest 32.1 percent of all media organizations received between 1 and 5 subpoenas, 8.0 percent received between 6 and 10, 6.3 percent received between 10 and 25, and 2.3 percent received greater than 25.

- **The risk of receiving a subpoena appears to have increased:** Newsroom leaders' responses lean heavily toward a belief that both raw numbers and subpoena risk have increased. Sixty-four percent of all newsroom leaders believe the frequency of media subpoenas to be greater than it was five years ago. Nearly half believe the risk of their own organization receiving a subpoena is greater than it was five years ago, while only 6 percent believe the risk to be less. Some rudimentary trend data

appear to support this belief. The average number of subpoenas reported per respondent in this study was 4.02. Weighted to account for nonresponses, the data suggest that the average number of subpoenas received per news organization in the United States in 2006 was 3.6. The 144 members of the comparison group reported a total of 464 subpoenas, for an average of 3.22 subpoenas per respondent. In answers to identical numerical questions asked in the Reporters Committee study five years earlier, the average number of subpoenas per respondent was 2.6.

Federal Subpoena Data

Because the recent high-profile cases and current legislative debates have been federal in their focus, the numerical portion of the survey asked respondents to categorize the received subpoenas as arising out of federal proceedings or state proceedings. Consistent with past trends, and as would be expected given the significantly larger number of state courts than federal courts, subpoenas issued in connection with state proceedings greatly outnumbered those issued in connection with federal proceedings. However, analysis of the survey data suggests that federal subpoenas may be both more frequent than they were five years ago and more common than opponents of a federal shield law have suggested.

Ninety-one responding media organizations reported receiving one or more federal subpoenas in calendar year 2006. Sixteen organizations reported receiving five or more. All told, in actual numbers from the 38 percent of the nation's media outlets that responded to the survey, there were a reported 335 federal subpoenas issued in 2006. (Because an additional 529 reported subpoenas were not specified as either federal or state, the true number of federal subpoenas may well be even greater.) Sixty-four federal subpoenas were reported by newspapers; 271 were reported by television broadcasters. Extrapolating to the larger population, the statistically weighted data suggest that at least 774 federal subpoenas were issued to the press in 2006—132 to newspapers and 642 to television news operations.

• **Substantially greater numbers of federal subpoenas are being reported than were reported five years ago:** While the overall numbers do not seem monumental, they rep-

resent a notable increase in reported federal subpoenas. Nearly twice as many federal subpoenas per respondent were reported in the current survey than in the 2001 study. Moreover, the survey results and respondent commentary indicate that federal subpoenas in the United States are having an increasing impact on newsroom practices across the country and are casting a wider net than the high-profile media organizations involved in the recently publicized cases. Weighted responses suggest that 10.3 percent of all media organizations in the country received at least one federal subpoena in 2006.

• **Federal subpoenas are not limited to the largest media:** To be sure, larger media organizations face federal subpoenas with much greater frequency. Close to 70 percent of the federal subpoenas reported by newspapers were reported by the one hundred largest of the more than 1,400 daily newspapers in the country, and more than half of the federal subpoenas issued to broadcasters were issued to those in markets of one million households or more. But federal subpoenas were not exclusive to those major news outlets. Midsized organizations are receiving them with some regularity. Nearly 10 percent of newspapers with circulations between 50,000 and 100,000 received a federal subpoena in 2006; so did more than 20 percent of television newsrooms in markets of between 250,000 and 500,000 households. In all, federal subpoenas were issued to media organizations in 32 states and the District of Columbia and to newspapers and television news outlets in every circulation and market size.

• **The substance of federal subpoenas is greatly varied:** Beyond the high-profile national security stories and governmental leaks that result in Privacy Act cases—the stuff of which the recent headlines were made—media organizations in the United States report facing federal subpoenas related to immigration matters, employment discrimination suits, the prosecution of federal drug crimes, securities cases, civil rights actions, and even civil suits arising out of automobile accidents that took place in Washington, D.C. If 2006 is a representative year, it would appear that reporters and their organizations are spending time, energy, and money dealing with subpoenas in a wide variety of federal cases and that a federal shield law—even one with a strong national security exception—could

be expected to have a meaningful impact upon journalism.

• **The Department of Justice's subpoena activity may be greater than has been suggested:** Survey respondents were given the option of specifying the kind of proceeding in which the subpoena arose and the entity that issued the subpoena. A total of 160 federal subpoenas were specified as having arisen in connection with federal criminal matters. Of those, 78 were reported to have been issued by federal prosecutors, 3 by special prosecutors, 60 by defense attorneys, and 1 by federal law enforcement. These raw number totals, if weighted to account for nonresponses, suggest that *at least* 175 subpoenas were issued by the Department of Justice's Criminal Division in calendar year 2006 alone—a number that sheds greater light on the activity of the department than does the Justice Department's narrow testimony that the division has “approved subpoenas to the media seeking source-related information in only 19 cases since 1991,” only 4 of which “have occurred since 2001.”¹⁴

Subpoenas for Confidential Material

Another clear trend appearing in the data relates to subpoenas seeking confidential material.

• **The results suggest a dramatic increase since 2001 in reported subpoenas seeking material that a reporter obtained under a promise of confidentiality:** The Reporters Committee 2001 study indicated that just two of the 823 reported subpoenas in that survey had demanded the identity of a confidential source and that four had requested other information obtained under a promise of confidentiality, for a total of just six instances of subpoenas seeking confidential material. These subpoenas represented well under 1 percent of the total subpoenas reported. In contrast, respondents in the present survey reported 97 instances in which subpoenas sought information obtained under a promise of confidentiality. Although the percentage of total subpoenas seeking this information remains small, this number represents a more than four-fold increase from 2001 in the percentage of requests for confidential material.

Extrapolating with weighted values to account for nonresponses, the current data suggest there were a total of 213 instances in



which confidential information was sought in media subpoenas in calendar year 2006 alone, 92 of which sought the name of a confidential source. The conclusion that confidential-material subpoena requests have increased is further supported by an analysis of the comparison group. These 144 respondents, who represent just 45 percent of the participants of the 2001 study, report a total of 19 instances in which subpoenas sought confidential material in 2006—more than three times as many as were reported by the full 319 respondents in the earlier study.

• **Confidential-material subpoenas are a particular concern on a federal level:** It is worth noting that while federal subpoenas represent only about 10 percent of the total reported subpoenas, federal subpoenas seeking the names of confidential sources represent nearly 50 percent of the total subpoenas seeking the names of confidential sources, meaning reporters are facing this situation in federal courts as often as they are facing it in the state courts of all 50 states, where even the barest of reporter's privilege regimes provide a privilege for material obtained under a promise of confidentiality.

• **Federal subpoenas seeking confidential material were received by news organizations outside the major national media:** Demographic data gathered in connection with the numerical responses show that recipients of this kind of subpoena included, for example, midsized television news operations, 50,000-circulation newspapers, and media organizations in Georgia, Colorado, Kentucky, and Arizona—all of which, again, suggests that a federal shield law's protection would serve journalists nationally, and not merely the handful of top-tier news organizations that have been involved in the highest profile cases in recent years.

• **The data on confidential-material subpoenas suggest that these subpoenas are more widespread than has been reported:** These numbers, representing a single calendar year, stand in stark contrast to the 19 incidents in the past 15 years in which the Department of Justice's Criminal Division reports it has sought source-related information—particularly because a large percentage of federal subpoenas appear to have arisen in the criminal setting. At a minimum the numbers indicate that the incidence of federal subpoenas in general and federal subpoenas seeking source-

related material in particular may not be as rare as opponents of a shield law suggest.

• **Journalists fear an impact on news gathering:** In response to open-ended questions, survey respondents told of a noticeable uptick in subpoenas seeking confidential material and of a concomitant increase in time, resources, and money spent dealing with them. If confidential sources can be integral to the acquisition of the news—as courts,¹⁵ commentators,¹⁶ and legislators¹⁷ routinely have recognized—these trends may be cause for concern. If the press needs to utilize confidential sources and information in order to act as a watchdog of government, or if, as many within the industry have suggested, it is only by making meaningful connections with the most significant confidential sources that investigative reporters are able to uncover governmental wrongdoing and produce stories that serve the public interest, then an increase in confidential-material subpoenas might signal a trend warranting legislative remedy.

Citing major historical examples like Watergate and more recent examples like the stories exposing Abu Ghraib misdeeds, and revealing mismanagement at Walter Reed Hospital, journalists have argued that major stories come to the public attention only when confidential sources talk to reporters. Even while agreeing that credibility dictates that confidential information be used with great caution, many argue that it is critically important to preserve the freedom to use it. Although some have contended that the ongoing ability of the media to produce these major investigative pieces—all in the absence of a federal shield law—suggests that the legal climate is not unduly oppressive and that the federal legislation is unnecessary,¹⁸ the data pointing to an increase in confidential-material subpoenas remain notable, in that even the most limited of state reporter's privilege regimes protect this kind of material. Indeed, some state shield laws protect reporters only from having to reveal confidential information.

Conclusion

Opponents and proponents of a federal shield law have offered empirical estimates of subpoena frequency that are either too narrow or too anecdotal to be helpful. The Subpoena Survey's data flesh out the empirical side of

the debate and provide a more useful starting point for the policy dialogue: subpoenas to the media are issued with some regularity; they are not limited to the media organizations or the substantive issues involved in the highest-profile recent cases; and, at least in some key categories, they appear to be on the increase.

The current study only begins to expose the depth and the breadth of media subpoenas. The studied population—daily newspapers and major-network-affiliated television news operations—comprises only one portion of the vast set of organizations in the country with employees who would be covered by even a narrow legislative definition of journalist. It excludes, among others, all radio journalists; the wide array of cable television news operations; reporters at newspapers with anything less than a daily circulation; journalists at all magazines, journals, and newsletters; and the ever-increasing number of journalists who make a living publishing exclusively online. If, as the statistically extrapolated data suggest, the limited population of news organizations studied here received more than 7,000 state and federal subpoenas in a single calendar year—and if, as common sense and reporter experience suggest, the determination of whether a future subpoena will arise in a federal or a state forum is nearly impossible to make in the course of ordinary reporting—a federal law addressing subpoenas would be relevant to a large amount of news gathering by a large number of reporters each year.

More specifically, survey data on federal subpoenas and on subpoenas seeking material obtained under a promise of confidentiality clearly indicate that a federal statute—even one applying only to confidential material—would have more than isolated applicability. Likewise, because the data indicate that the nature, source, and substance of federal subpoenas are diverse, even a shield law with a strong national security exception would be germane and useful to journalists in newsrooms that are widely varied in geography and organizational size.

Overall, the data do not reveal an avalanche of subpoenas, and it may well be that journalists are alarmed about subpoenas to a greater degree than is warranted by the actual numerical increases. But this apprehension might be expected, given the simultaneous signals that court-based privileges

may be on the decline. Even an incrementally larger number of subpoenas results in a larger number of opportunities for courts to continue to unravel a judicially created privilege. And with each high-profile case that rejects the privilege, the tone of the legislative debate turns ever more desperate for media organizations fearing that courts will retreat entirely from recognizing a privilege for journalists.

Ultimately, of course, there are many more arguments to be made for and against the creation of a federal legislative privilege for members of the press. Certainly, policy preferences should be aired, societal implications should be weighed, and the merits and drawbacks of enacting a federal shield for reporters should be debated in full. However, with the survey's new empirical evidence now available, lawmakers and interested parties should be able to turn their attention more fully to the substantive contours of legislative proposals, ending the "numbers game"¹⁹ that has occupied too much of the debate to date.

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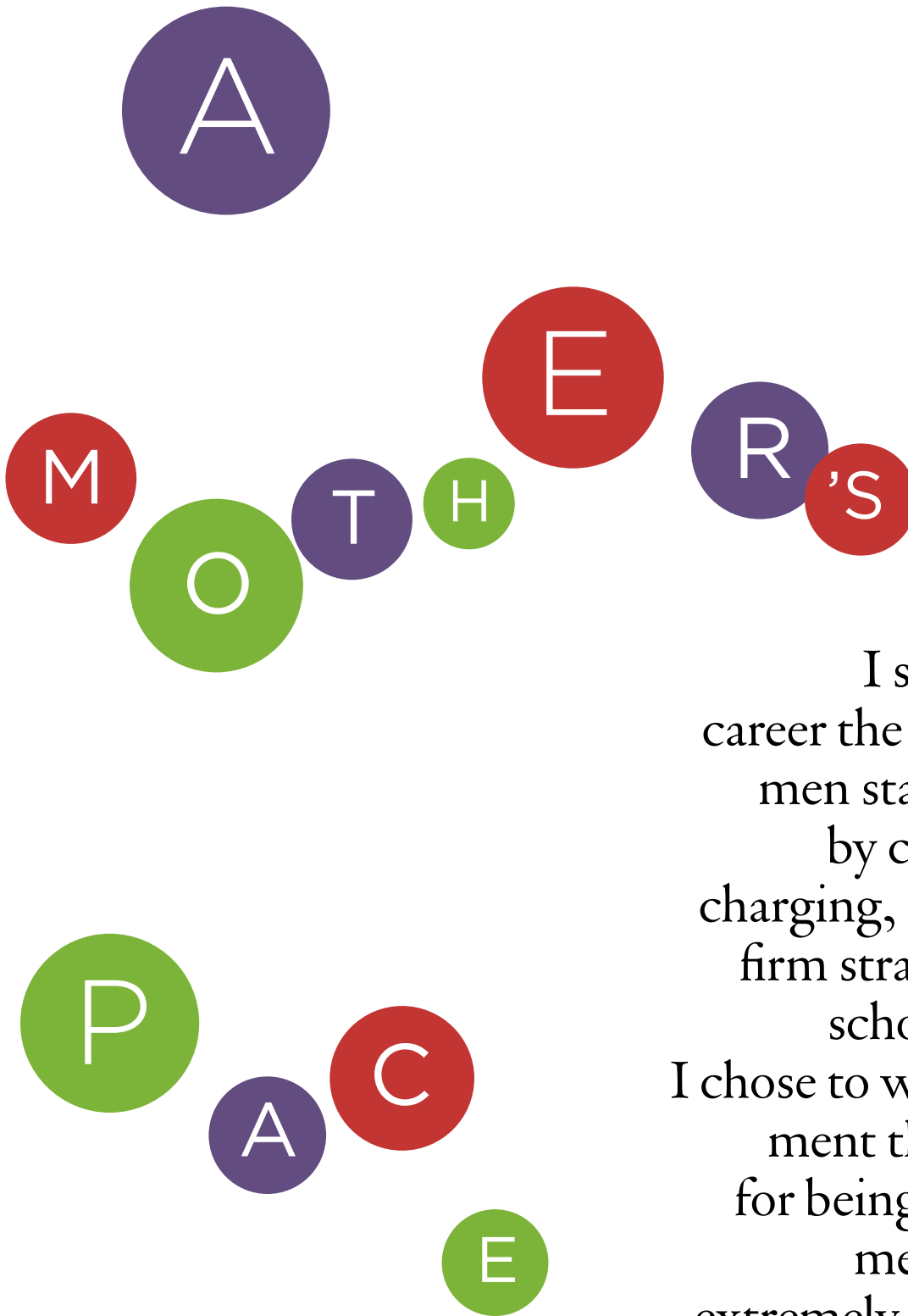
NOTES

- 1 *Reporters' Privilege Legislation: Preserving Effective Federal Law Enforcement*, 109th Cong. 2–8 (2006) (statement of Paul J. McNulty, deputy att'y gen. of the United States).
- 2 See, e.g., *Hearing on Reporters' Shield Legislation Before S. Comm. on the Judiciary*, 109th Cong. (July 20, 2005) (testimony of Matthew Cooper, White House correspondent, *Time* magazine referencing "a run of federal subpoenas of journalists"); *id.* (testimony of Norman Pearlstine, editor in chief, *Time*, Inc. citing a "disturbing trend" of subpoenas against the press); *Free Flow of Information Act of 2007: Hearing on H.R. 2102 Before the H. Comm. on the Judiciary*, 110th Cong. (2007) at 101 (statement of the National Association of Broadcasters that "[i]ncreasingly, subpoenas to journalists have become a weapon of first resort for those seeking information concerning confidential sources"); *id.* at 29 (testimony of William Safire that "the process of gathering of the news has been under unprecedented attack"); *id.* at 32 (testimony of media attorney Lee Levine that "this deluge of subpoenas in the federal courts has now reached epidemic proportions").
- 3 2007 *Free Flow of Information Act of 2007: Hearing on H.R. 2102 Before the H. Comm. on the Judiciary*, 110th Cong.

- (2007) at 18 (testimony of Rachel Brand, assistant att'y gen. of the United States). See also *Reporters' Privilege Legislation: Preserving Effective Federal Law Enforcement*, 109th Cong. 113 (2006) (statement of Paul J. McNulty, deputy att'y gen. of the United States) ("[O]nly rarely has the Department determined that the interests of justice warranted seeking to compel a journalist to reveal information obtained from a confidential source.")
- 4 Jones, RonNell Andersen, "Avalanche or Undue Alarm? An Empirical Study of Subpoenas Received by the News Media," 93 *Minn. L. Rev.* 101 (2008).
- 5 *Branzburg v. Hayes*, 408 U.S. 665, 667 (1972).
- 6 See *id.* at 743 (Stewart, J., dissenting).
- 7 *Id.* at 710 (Powell, J., concurring).
- 8 See John E. Osborn, *The Reporter's Confidentiality Privilege: Updating the Empirical Evidence After a Decade of Subpoenas*, 17 *COLUM. HUM. RTS. L. REV.* 57, 67 (1985).
- 9 See, e.g., *State v. Sandstrom*, 581 P.2d 812, 814–15 (Kan. 1978) (applying *Branzburg* and opinions from various other state courts); *State ex rel. Classic III Inc. v. Ely*, 954 S.W.2d 650, 653–60 (Mo. Ct. App. 1997) (relying on various state and federal cases, including *Branzburg*); *Brown v. Commonwealth*, 204 S.E.2d 429, 431 (Va. 1974); *State v. St. Peter*, 315 A.2d 254, 256 (Vt. 1974).
- 10 See, e.g., *In re Contempt of Wright*, 700 P.2d 40, 45 (Idaho 1985); *Winegard v. Oxberger*, 258 N.W.2d 847, 852 (Iowa 1977); *Opinion of the Justices*, 373 A.2d 644, 647 (N.H. 1977); *Zelenka v. State*, 266 N.W.2d 279, 286–87 (Wis. 1978). Indeed, nearly all states now recognize some form of reporter's privilege in state court, either as a common-law or constitutional matter or through statutory shield laws.
- 11 339 F.3d 530 (7th Cir. 2003).
- 12 See Casey Murray, *Sparring over a Shield*, *NEWS MEDIA & L.*, Fall 2005, at 16 (quoting ABC News president David Westin as insisting that "[e]here are some stories . . . that we could not report without the ability to give some protection to sources"); *id.* at 18 (quoting *Washington Post* reporter Howard Kurtz as asserting that "[e]very journalist is going through a bit of soul-searching about whether to grant anonymity to sources," because "the prospect of going to jail is no longer a hypothetical possibility").
- 13 See Anna Badkhen, *TV Reporter Gets Confined to Home*, *S.F. CHRON.*, Dec. 10, 2004, at A6 (quoting Frank Smyth of the New York-based Committee to Protect Journalists as asserting that one high-profile case was "going to have a chilling effect for sources to come forward with sensitive information, and it's going to result in less information to the public domain"); Paul Moore, *The Squeeze Is on for Reporters Asked to Reveal Sources*, *BALT. SUN.*, May 21, 2006, at 2F ("[I]t is hard to deny that the independence that keeps journalists from becoming part of the prosecutorial process is under more pressure than ever."); Jacques Steinberg, *Setbacks on Press Protections Are Seen*, *N.Y. TIMES*, Aug. 18, 2004, at

A16 (telling of "what legal experts characterize as an ominous trend for journalists: the weakening of fundamental protections for the gathering and publishing of news that had been generally viewed as settled since the Watergate era.").

- 14 2007 *Free Flow of Information Act of 2007: Hearing on H.R. 2102 Before the H. Comm. on the Judiciary*, 110th Cong. (2007) at 18 (testimony of Rachel Brand, assistant att'y gen. of the United States).
- 15 See, e.g., *Gonzales v. Nat'l Broadcasting Co.*, 194 F.3d 29, 32 (2d Cir. 1999) (noting that confidential sources should have greater protection than nonconfidential sources while also recognizing a qualified privilege for nonconfidential sources); *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981) ("Compelling a reporter to disclose the identity of a source may significantly interfere with this news-gathering ability; journalists frequently depend on informants to gather news, and confidentiality is often essential to establishing a relationship with an informant").
- 16 See, e.g., Laurence B. Alexander, *Looking Out for the Watchdogs: A Legislative Proposal Limiting News-gathering Privilege to Journalists in the Greatest Need of Protection for Sources and Information*, 20 *YALE L. & POL'Y REV.* 97, 101 (2002) at 102 ("Journalists use confidential sources to gather important news and information that they would not be able to obtain through other means."); William E. Lee, *The Priestly Class: Reflections on a Journalist's Privilege*, 23 *CARDOZO ARTS & ENT. L.J.* 635 (2006) at 685 ("Coverage of national security is an area where confidential sources are especially vital").
- 17 See, e.g., *Reporters' Privilege Legislation: Preserving Effective Federal Law Enforcement*, 109th Cong. 96 (2006) (statement of Sen. Leahy, member, S. Comm. on the Judiciary) ("[I]nvestigative journalism is the essence of the First Amendment. Investigative journalism is how whistleblowers, skeptics, and dissenters get out the facts that they know to the public."); *Hearing on Reporters' Shield Legislation Before S. Comm. on the Judiciary*, 109th Cong. (July 20, 2005) (statement of Sen. Feingold, member, S. Comm. on the Judiciary) (noting that "anonymous sources have been too important to exposing government and corporate wrongdoing" to not protect them).
- 18 *Free Flow of Information Act of 2007: Hearing on H.R. 2102 Before the H. Comm. on the Judiciary*, 110th Cong. (2007) at 52 (testimony of Randall Eliason, professor, George Washington University Law School). ("Major stories from Watergate and Iran Contra up through Abu Ghraib, secret CIA prisons, and unlawful surveillance by the Government, all have been reported without a Federal privilege law.")
- 19 *Free Flow of Information Act of 2007: Hearing on H.R. 2102 Before the H. Comm. on the Judiciary*, 110th Cong. (2007) at 88 (statement of Rep. Pence, member, H. Comm. on the Judiciary).



I started my legal career the way that many men start their careers— by choosing a hard-charging, prestigious law firm straight out of law school. In addition, I chose to work in a department that was known for being dominated by men and required extremely long hours and lots of travel. I went to work for Latham & Watkins in their project finance department,

devoting, what seems to me now, insanely long hours to work. I spent weeks, which at times rolled into months, in conference rooms in cities all over the country. And I loved it. I loved my colleagues, I loved the frenetic pace of the work, and I loved the challenge that came with the complexity of the work that I was doing.

There were some instances where I felt the gender gap—the endless sports talk, the golf-mania, and my personal favorite, being called a “little lady lawyer” by a client in a room full of men. Yet, I also felt that there was an equal amount of opportunities given to me because of my gender, such as attending important meetings (even as the junior attorney) to present a more gender-balanced team and being properly mentored as part of an attempt by management to improve the retention rate among women.

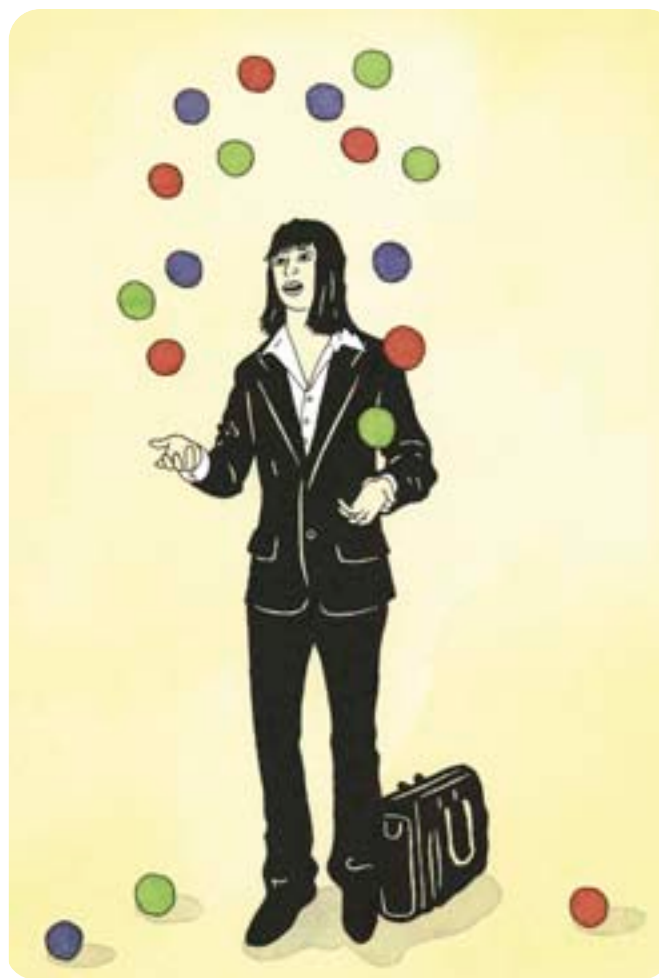
I didn't begin to understand that being a woman in the law is materially different than being a man in the law until after I had my first child. I was fortunate (or unfortunate, depending on your point of view) enough to finish law school at 23, which allowed me the luxury of practicing law before having children. And when I say it was a luxury, I do mean that, because I was able to devote myself to my career and clients in a manner that was never fully possible after the advent of children.

Certainly all working parents feel the dividing pressures of work and family. But I believe that women, and in particular women in a demanding profession like the law, feel it more keenly. There is the obvious reason: women, whether working full-time, working part-time, or staying at home, tend to be the

primary caregiver in the majority of households. In addition, I think that women tend to take a more holistic approach to their careers. The fathers that I worked with seemed to have an amazing ability to compartmentalize their work life, their family life, their religious life, and their free time. I watched many working fathers, each of whom loved their families as much as I did, have the ability to singularly focus on their work without allowing family concerns to disrupt them. The mothers that I worked with, and myself in particular, seemed to be constantly fielding family-related phone calls, planning the day-to-day details of their children's lives, and feeling guilty (that dreaded mother guilt) that they weren't at home fixing the PB&J for their three-year-old.

So while my colleagues at my law firm went out of their way to make sure that I could continue to work and parent, I finally found that the juggling act wasn't working for me. I simply had too many balls up in the air, and the pressure was getting to be too much for me. I left Latham & Watkins two years after having my first child, deciding that I couldn't make it work (although my hat is off to those women in large firms who have made it work). Since my tenure at a large firm, I have worked at a real estate boutique and, most recently, as in-house counsel. While the juggling still continues, the frenetic pace of it has become manageable for me and my family.

I am currently in-house with a family-friendly company that has been very accommodating of my schedule and family demands. Yet, as my male colleagues watch my scaled-down juggling act, they are the first to remark that it's very different



for working mothers than for working fathers. And I say this not to try to elicit kudos or help or (heaven forbid) pity, but as a statement of the facts of how it is and always will be for mothers working in the law, regardless of how many committees are formed by our law schools or law firms to try to address the issues of women in the law.

However, I have become pretty darn good at keeping pace with the often conflicting demands. I've become much better at saying no to the peripheral stuff* that gets in the way of my primary obligations: my children, my husband, my employer, and my religion. I know that there will be a time and a season, coming faster every day, when my juggling act slows and finally ends.

And I will miss it. Just as I loved the frenetic pace of my early career, I have come to love the frenetic pace of racing from a strategy meeting to pick up a car pool, then taking a conference call in my minivan while waiting for soccer practice to finish, and finally calling my paralegal and asking her to distribute signature pages while I grill veggies for my family's dinner.

My life as a mother working in the law is full and it's busy and sometimes it's really, really crazy, but at the end of the day, I know that I am blessed.

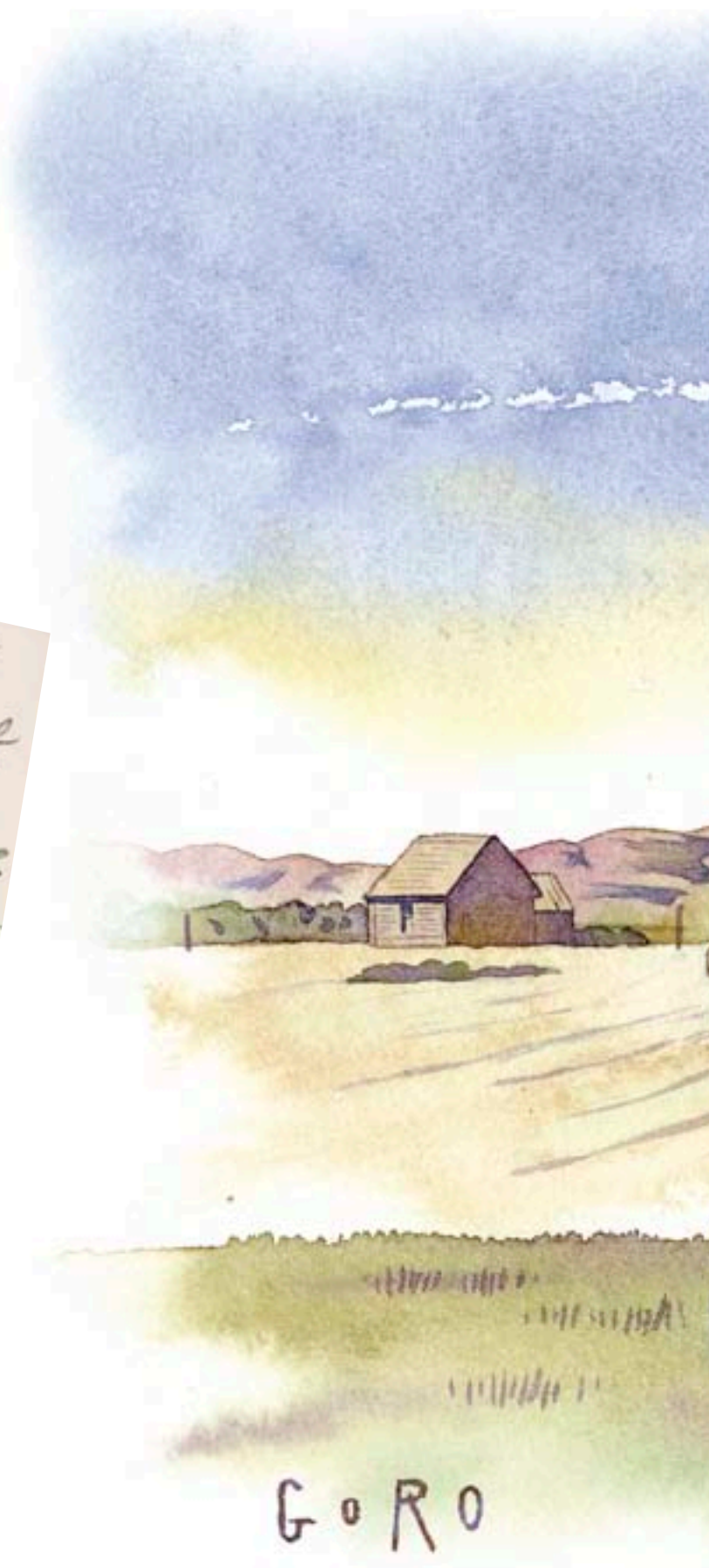
**NOTE TO READER: I told the editors that I didn't have time to write this piece initially, and only after they were desperate did I concede. I guess I still need to work on saying no.*

LIBERTY,
CIVILITY,
AND
PROFESSIONALISM

by Ming W. Chin

The following talk was
delivered at the Marvin S.
Hatch Distinguished Trial
Lawyer Lecture Series at
the J. Reuben Clark Law
School on November 7, 2008.

What an honor and a pleasure
it is to participate in a
Distinguished Trial Lawyer
Lecture Series named after
an outstanding United States
senator whom I have long
admired and respected, not
only for his remarkable
service to the nation but
also for his steadfast
commitment to the rule of
law and judicial independence.





In a book entitled *The Lost Lawyer*, Professor Anthony Kronman of Yale Law School laments the near disappearance of what he calls “the lawyer-statesman.” He describes an outstanding lawyer not simply as an accomplished technician but as a person of prudence, of practical wisdom, of good judgment. He gives the historical example of Abraham Lincoln as the ideal of a lawyer-statesman, and who could argue with that? Today, I walked through the beautiful BYU law library. I stopped to admire the sculpture of Abraham Lincoln in the three stages of his life.

Frankly, I do not agree with Professor Kronman that lawyer-statesmen have nearly disappeared from the legal scene. All you have to do is look to the distinguished lawyer for whom this series is named to find an ideal lawyer-statesman. Senator Hatch has served in the United States Senate since 1977—the longest-serving senator from Utah. He ably chaired the Judiciary Committee from 1995 to 2001, and again from 2003 to 2005. He also chaired the Labor and Human Resources Committee from 1981 to 1987. You could find no greater lawyer-statesman, or champion for the rule of law, than Senator Orrin G. Hatch.

To the law students attending this evening—you will all soon be lawyers. Through this series Jim Parkinson, Justice Doug Miller, and Michael Goldsmith hope to inspire you to become trial lawyers. I began trying cases when I was in the army handling courts-martial. When I returned from Vietnam, I became a prosecutor. I tried numerous cases before a jury before I went into private practice in 1973. I was a business trial lawyer for 16 years before I was appointed to the trial court.

For me, being in the courtroom was the best part of being a lawyer. In these remarks, I will share with you some of my personal background, which affected my decision to become a trial lawyer.

I grew up on a small potato farm in southern Oregon. When I was in junior high school, I lived with a judge for two years. The judge’s name was David Vandenberg. Judge Vandenberg was one of the most highly respected jurists in the state. He was obviously well-educated and very well-read. He was also a great conversationalist. The judge had a friend with whom he spent hours in animated conversation. The unusual part of

the relationship was that the judge’s friend didn’t speak English very well and had never attended a day of school in his life. Yet the judge saw in his friend a remarkable man who was self-made and certainly devoted to his family. The judge’s friend was my father. It was the judge who inspired me to become a trial lawyer.

THEME

The theme of my remarks today is liberty, civility, and professionalism. Why these ideas are important for trial lawyers, I hope, will become apparent.

JOURNEY

There is an old Chinese proverb that tells us that a journey of a thousand miles begins with a single step. My father took that first step 95 years ago. He left the village of Fu Shan, China. He stepped aboard a ship—destination: the United States of America. He began his odyssey in search of the American dream. The year was 1913. He was only 18 years old. He came without family, without funds, and without language. When you think about it, he came to an America that was not all that friendly to Chinese immigrants. After all, in 1902 the U.S. Congress extended the Chinese Exclusion Act indefinitely.

My father ignored the hate. He ignored the hostility. He ignored the discrimination. He worked long, *hard* days in the potato fields. He saved the little money that he made to support his family in China. In 1917 he returned to his village to marry my mother. It was a marriage that was to last a lifetime of 59 years. Together they raised eight children—I am the youngest. My brothers’ and sisters’ names are Mary, George, Joe, Betty, Jack, Jeanne, and Tom. I have no idea where my name, Ming, came from.

My parents came to this country not demanding the best that America had to offer but willing to accept the worst, because even that was so much better than life in their homeland. As it turned out, America gave them its best, but it was not without pain, it was not without struggle, and it was not without disappointment.

For many years my parents worked together in the potato fields in Stockton.

They started their own family and continued to support their families in China. In 1930 they tried farming in Fallon, Nevada, and then Alturas, California. Both were failures. While they were in Alturas, my mother ran a Chinese restaurant. She saved the profits from the restaurant in a coffee can.

In 1936 they moved to Klamath Falls, Oregon, and again raised potatoes. This time it was on 50 acres of fertile land that were loaned to them by a friend. The first potato crop was so successful that they almost had enough money to purchase the land. My father said we would have to wait until the next year’s crop was in before they could buy the farm. My mother went to the kitchen, pulled the coffee can from the shelf, and poured the money onto the table. They bought the land.

That small family farm flourished over the years. But my father and mother also carefully fostered, nurtured, and educated their family. My parents did not have the opportunity to go to grammar school or high school, much less college, and yet they were among the very best teachers I have ever known. They taught by example, never by edict or demand. They taught us to respect and care for our elders. They taught us to live life to its fullest and remain loyal to our family and our friends. They taught us the importance of giving back to the community. They taught us the importance of education, optimism, determination, and hard work. They taught us to celebrate freedom.

Hard work was definitely something with which they were familiar. They were determined that I learn it as well. Beginning at the age of nine, I learned to drive and operate farm equipment. By the time I was 14, there was not a piece of equipment on the farm that I could not operate. The entire family, including my mother, worked from sunup to sundown, seven days a week. During the summer we spent most of the time irrigating the potatoes. My goal was to get the irrigation system so well organized that I could sit down and read a book in the fields. Because I always had a book in my hand, my father called me “Mr. Lincoln.” One time I was actually reading a biography of Abraham Lincoln. I got so engrossed in the book that I neglected my duties in the field, and the whole field was flooded. My father was not amused. He had a few choice

words for me, but he never told me to stop reading. I think that incident told him early on that farming was not going to be my strong suit.

When I was four years old, a fire consumed our family home on that farm. We lost everything in that fire. My brother Jack, who was only nine at the time, was killed. Although we lost all our material possessions, the loss of Jack was, of course, the most devastating. I learned at a very young age that people are more important than things. But even in the face of that disaster, my parents *never* gave up. We all pulled together to put the shattered pieces of our lives back in order. But we also had some help. We lived in one of those small town communities where people took care of each other. It did not matter that we were the only Asian family in the community. When our neighbors from the farm next door to us heard about our tragedy, they were away on their honeymoon. They immediately returned and gave us the keys to their home, where we stayed until we got back on our feet.

Since the farm was located some distance from the closest town, the three youngest of us attended Sacred Heart Academy, a Catholic boarding school run by the Sisters of St. Francis. The Sisters were wonderful teachers as well as great role models.

When I entered junior high school, Sacred Heart stopped its boarding program. Fortunately, I found another place to live so that I could continue attending the school. Judge Vandenberg offered to let me live with him, which I did for two years. He took me down to the courthouse to observe trials and gave me law books to read; it was a terrific introduction to the law. He taught me everything a good judge ought to be.

My parents waited for 30 years, until 1943, for the U.S. Congress to decide that the Chinese Exclusion Act was wrong and to finally permit Chinese immigrants to become U.S. citizens. That decision made it possible for my parents to enter a courtroom for the first and only time in their entire lives and to take the oath as American citizens. It was one of the proudest days of their lives. In spite of the discrimination they endured, they loved their adopted country. They loved the freedom and liberty it gave them in such great abundance. They were free to raise and to educate their children, to give us the educa-

tion they were denied. They treasured the same liberty that so many of us so often take for granted. Why? Because they knew from firsthand experience what it was like to live without it.

As you embark on your own journeys as lawyers, remember this place, remember this time, remember that you as lawyers have a special responsibility to be the guardians and the champions of this most treasured of American rights that we call freedom and liberty. When you leave this great university, remember why you came.

LEARNED HAND

I'm sure you are familiar with Judge Learned Hand, one of America's finest jurists. In 1944, when my parents became naturalized citizens, there was a ceremony in New York City's Central Park. It was called "I Am an American Day." Judge Hand spoke about his concept of liberty to 150,000 newly naturalized citizens who swore the oath of allegiance in the midst of World War II. Judge Hand had this to say to the new citizens:

What then is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias.¹

OPEN-MINDED

In those few words, Judge Hand described the philosophy that made him one of the last century's greatest judges. Judge Hand was open to all points of view, including those with which he disagreed. He was both skeptical and open-minded; he considered these qualities central to the art of judging.

But these words convey more than a philosophy on the art of judging. Judge Hand taught us that in order to foster change and growth in our communities and the legal profession, we must be open to new ideas, be compassionate, and attempt to understand other people's points of view. In short, we must learn to discuss our differences in a civil manner. If we will all lower our voices, do a

bit more listening than talking, and resist the urge to marginalize viewpoints, perhaps we will learn the lesson Judge Hand was trying to teach us.

Judge Hand also recognized that the other side of the liberty coin is individual responsibility from each of us who is blessed to live in this great land. But this responsibility is even more important for those of us who take the oath as judges and lawyers.

JUSTICE KENNEDY

Justice Anthony Kennedy, in an address before the American Bar Association, borrowed from Judge Hand the theme of liberty and individual responsibility. Justice Kennedy said the rule of law will survive only if we have individual responsibility, rationality or reason, and civility. He also said, "Liberty was born in protest, but it survives in civility."²

The importance of *liberty*, *civility*, and *professionalism* to the rule of law and, in particular, to new *lawyers* cannot be overstated.

LAWYER JOKES

It is very popular these days to denigrate lawyers and the legal profession. You've all heard lawyer jokes; I'm even known to tell a few myself. But this is certainly not a recent phenomenon. There is a famous line from Shakespeare that is often quoted: "The first thing we do, let's kill all the lawyers." Many people take great delight in using it to malign lawyers. I believe it has even been adopted as a title to a popular book decrying the so-called decrepit state of the legal profession. The quote is from Shakespeare's play *Henry VI*. However, it is far from being a negative comment against the legal profession. Shakespeare was really paying the ultimate compliment to lawyers. In the play, the Duke of York was stirring up the people to overthrow the government. A boorish man named Jack Cade was leading the rebellion. In the midst of their plot, one of the villains, Dick the Butcher, shouted, "The first thing we do, let's kill all the lawyers." The butcher was concerned that the rebellion could not succeed so long as there were lawyers around to act as a voice of reason. The line from Shakespeare praises the legal profession because throughout his

tory lawyers have been the conscience of the community. It is lawyers, judges, and courts that are called upon to resolve the toughest and most difficult disputes. Down through the centuries, we have been the protectors of the poor, the weak, and the powerless. We have been the protectors of individual rights, the defenders of liberty.

Throughout history, lawyers have been the conscience of the community.

Down through the centuries, we have been the protectors of the poor, the weak, and the powerless. We have been the protectors of individual rights, the defenders of liberty.



have focused on winning at all costs. Civility and professionalism, which are essential to the art of lawyering and to justice, are too often forgotten. Trial lawyers are not and should not act only as “hired guns.” Too many lawyers have apparently forgotten that the dispute is between their *clients*, not their clients’ *lawyers*. As U.S. Supreme Court Justice John Paul Stevens once said:

[A] lawyer’s most important asset is his or her reputation for integrity. Few lawyers would dispute—in the abstract—the wisdom of maintaining your integrity while advocating on behalf of your client. Let me remind you how often the paths of trial lawyers cross and recross over and over again. Lawyers have long memories, particularly about the conduct of colleagues or adversaries.

Justice Stevens also reminded us to be civil. He said “[a] polite rejection of a settlement proposal can be just as firm as a show of indignation, and a succinct objection as telling as an unnecessary harangue. . . . Courtesy is an essential element to effective advocacy.” He could not be more correct.

SOLUTION

The solution to this loss of civility and professionalism in the practice of law will require a firm commitment, from each of you, to do better. The question each of you must answer is whether you, as a lawyer, will be part of the problem or part of the solution.

In order to be part of the solution, lawyers must reclaim their reputation for integrity, honesty, and public service. You must return civility to the practice of law. You must become dispute resolvers rather than dispute enhancers. You must become problem solvers within your communities. You must return professionalism to the practice of law.

SOLLINOWITZ

In his book *The Betrayed Profession*, Ambassador Sol Linowitz lamented the loss of professionalism among lawyers. He said: “Professionals are people who make decisions and take responsibility for them. Professionals do not take orders and do not prostitute their judgment.” Linowitz went on

PERCEPTION

I am convinced that most of us chose to become lawyers, at least in part, because of a deep-seated passion for justice and a commitment to freedom. But that is often not the public perception. Several years ago about half of the respondents to a poll of the National Center for State Courts felt that lawyers were too expensive and 23 percent felt that lawyers were more interested in themselves than in their clients.³ A recent survey of the *National Law Journal* reveals that these sentiments remain true. Thirty-six percent of respondents said that the image of lawyers has worsened.⁴ Of all the honored professions, lawyers are ranked by the public last in honesty and integrity.⁵

CIVILITY

This is not simply a public relations problem. It is a crisis that goes to the very heart of the legal profession. Too many trial lawyers

to say, “We inherited a noble profession, and we made it a business. We have lost the ability to differentiate between what we can do and what we ought to do.”

PUBLIC SERVICE

Public service honors our profession and elevates our spirits. There is no finer example of a lawyer in public service than Utah’s senior senator, Orrin Hatch. Other walks of life, other trades, other professions are very, very different. Few professionals are as committed as lawyers to public service and improving the community. This commitment sets lawyering apart. It makes the law a true profession rather than just another business. I strongly urge all of you to follow Senator Hatch and dedicate your legal career to public service. But if you choose to be trial lawyers, I urge you to volunteer some of your precious and valuable hours for the public good.

In the end, our ability to meet and solve the many problems in our communities depends on you. What you do will matter. How you do it will matter. You have the ability to affect people’s lives in a positive way to improve the quality of life in your communities. The future of the legal profession and its commitment to liberty and public service is up to you. We all share responsibility to ensure that the legal profession continues to be a noble and compassionate profession.

As author Anna Quindlen once said, “All of you want to do well. But if you do not do good, too, then doing well will never be enough.” Follow the outstanding example of Jim Parkinson, who delivered medical equipment to Tanzania with Wilbur Colom and Doug Miller, researched the plight of American prisoners of war in Bataan and wrote about it in a book titled *Soldier Slaves*, and started this Orrin Hatch Lecture Series with Mike Goldsmith and Doug Miller.

CONTRIBUTION

As Professor Kronman says, “Each generation of lawyers makes its own contribution to the architecture of the law.” My question to our law students is straightforward: What contribution will you make to the practice of law? My hope is that you will not betray the legal profession and that each of you will embody the high ideals of a noble profession.

To paraphrase Ambassador Linowitz, lawyers must create a legal profession that is independent, willing to sacrifice money for pride, and eager to reassert its role as the guarantor of liberty. We must accept, not just assert, our responsibilities. Civic leadership should count for more than billable hours, a sense of justice for more than winning at all costs. We must provide legal services to those who *need* the law rather than those who merely *use* the law. San Diego practitioner Andrea Leavitt is an outstanding example of a fine attorney who helps those who need the law. In providing assistance to the victims of clergy abuse, she is the voice of the powerless and of the helpless.

CRISIS

There is a Chinese character for crisis. It is made up of two characters: one meaning danger, the other, opportunity. The legal profession is at a crossroads. One road leads to the danger that a growing commercialism will come to dominate the practice of law; the other represents an opportunity to return professionalism to legal practice. The danger road leads to the practice of law becoming just another business, where the bottom line is of prime concern. If a case doesn’t make money, it isn’t worth pursuing. On the other hand, the opportunity road will restore civility and professionalism in the practice of law.

CONCLUSION

I am now going to utter the two most important words in any speech: *In conclusion*. In the chaotic rush to success in your legal careers, do not forget your personal lives. Do not forget your families. When each of us comes to the end of the road on this good earth, I doubt any of us will say, “Gee, I really wish I had spent more time at the office,” or “Gee, I really wish I had billed more hours.” When I was a trial lawyer, I spent a lot of time away from home, taking depositions and trying cases. Of course, I would always call home to keep in touch with my family. Once I was in Los Angeles for a six-week trial. One night I called home. My daughter, Jennifer, who was three at the time, answered. I said, “Hello, Jennifer. How are you?” She said, “Fine.” “How’s mother?” “Fine.” How’s your brother,

Jason?” “Fine.” “How was your gymnastic lesson?” “Fine.” After about a minute into the conversation, Jennifer said, “May I ask who’s calling, please?”

Well, you’re about to become lawyers. As I look around the room, I can sense your eagerness and enthusiasm. I had an excellent conversation with your moot court boards this morning; I am confident you will be part of the solution for the legal profession, not part of the problem. In 20 years you will be the senior partners in the major firms around the state; perhaps some of you will be district attorneys or public defenders or the attorney general; perhaps some of you may become judges; perhaps one of you will inherit the seat of the distinguished senior senator of Utah.

I urge the graduates of this distinguished law school to make a difference to the legal profession as trial lawyers. It is my hope that you will help return civility and professionalism to the practice of law and that you will be the defenders of the liberty we all cherish. In 20 years when you look back on how well you have done, you can say with pride that you took the road less traveled and returned honesty, integrity, and public service to the legal profession. I wish you good luck and Godspeed in this great adventure you are about to begin.

As you leave this place, remember why you came.

Judge Ming W. Cbin is an associate justice of the California Supreme Court.

NOTES

- 1 Learned Hand, “The Spirit of Liberty,” *The Spirit of Liberty: Papers and Addresses of Learned Hand*, ed. Irving Dilliard (New York: Knopf, 1952), 144.
- 2 Address by the Honorable Anthony Kennedy, associate justice of the United States Supreme Court, American Bar Association Annual Convention, San Francisco, August 1996.
- 3 National Conference on the State Judiciary, “The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers, and Community Leaders,” in *State Courts, a Blueprint for the Future* (1978), 39.
- 4 Randall Samborn, “Anti-Lawyer Attitude Up,” *The National Law Journal* (August 9, 1993), 1.
- 5 Ibid.

ART CREDITS

Illustrations by Goro Sasaki. Photo on page 20 by Bradley Slade.





LEADERS | AND | LEARNING

♦♦♦♦
BY KIM B. CLARK,
PRESIDENT
of BYU-IDAHO

♦♦♦♦
*The following
speech was presented
at the BYU Law
School Founders Day
dinner at the
Little America Hotel
in Salt Lake City,
Utah, on
August 27, 2008.*

I would like
you to reflect with
me for a few
moments on leaders
and on learning.
I have spent the last
15 years of my
life thinking about
and working
on the education
of leaders at
two very different
universities.

My years at Harvard were full of opportunities to observe and study remarkable leaders and the role of the university in their development. However, I want to focus on my experience at Brigham Young University–Idaho and what we are doing there to realize our mission. I hope to share with you something of the excitement that is on the campus. But I also hope what I say may be useful to you as you reflect on your own opportunities and responsibilities to lead and to learn.

LEADERSHIP WITH A SMALL L

At BYU–Idaho we have a wonderful mission that can be summarized in two words: “disciple” and “leader.” This mission is to help our students become disciples of the Savior and leaders in their families, in the Church, and in the world. The leadership we have in mind is leadership with a small *l*. It is leadership that serves and inspires with vision, courage, and faith. It is leadership by ordinary people acting in an extraordinary way. It is the kind of leadership we need at every level of every kind of organization in society.

It is our great blessing, and the great blessing of our students, to live in a world where being a disciple-leader demands the very best of us. Indeed, I believe our students will need to be stronger, more faithful, better educated, and better prepared than ever before if they are to accomplish everything the Lord has for them to do. If we are to realize BYU–Idaho’s mission, we must be far more effective in the way we educate and prepare disciple-leaders.

We live in a remarkable era. It is a wondrous time in the kingdom, when temples dot the land and the Church is spreading across the earth. The power of faith is evident all around us. But this is also a time of profound change in technologies, in social and political institutions, in international relationships, in the character of important industries, and in whole countries. It is a time of turmoil, turbulence, and uncertainty. It is also a time of great opportunity. And because of all this, people across the land have recognized and discussed at length the need for effective leaders.

I believe the great emphasis we see on leadership today reflects the commotion around us. Effective leaders set direction in times of uncertainty and challenge. They



align people with that direction and motivate and inspire others to innovate. Leaders take effective action and do new things in times of change. In fact, the rate and pace of change and the degree of difficulty organizations and communities face today have few precedents in all of human history. This situation is not going to slow down or get easier. In this time of turmoil, commotion, and rapid change, we feel a need for more and better leaders. And we feel the need for them everywhere.

We need mothers and fathers to be stronger, more effective disciple-leaders in their families. We need more effective disciple-leaders in the Young Men and the Young Women organizations, in priesthood quorums and the Relief Society, and in ward missionary efforts all across the world. We need more effective leaders in schools and hospitals, in companies, and in communities of all kinds.

The Lord has called his followers to be exactly the disciple-leaders we need. In the Sermon on the Mount, He proclaimed:

*Ye are the light of the world. . . .
Let your light so shine . . . that they may see
your good works, and glorify your Father which is in
heaven.¹*

Later, to the Twelve, He said:

Whosoever will be great among you, let him be your minister;

And whosoever will be chief among you, let him be your servant:

Even as the Son of man came not to be ministered unto, but to minister, and to give his life a ransom for many.²

In its deepest meaning, this message is a call for us to fill our lives with the light of the gospel. But that is not all. It is a call to action in the world. We cannot let our light shine unless we are engaged in work that connects us to our Father’s children wherever they are in this world.

These words are also a call to truth, to live our lives according to true principles. I believe that the light within us shines through true principles in action. This is a call to bring true principles to bear on the work we do. It is a call to minister, to love and lift, to strengthen and develop, to guide and teach those we serve with the Savior as the great Exemplar.

Though this call to leadership in light and truth will take us into the world, it is not about earning the honors of men or the praise

of the world. It is a call to bring light where there is darkness; to bring faith where there is cynicism and doubt; to bring peace where there is turmoil; to bring beauty where there is blight; to bring honest labor where there is waste and laziness; to bring hope where there is despair; to teach and lift up; to bring order; and to seek after everything that is beautiful, lovely, and of good report.

If we heed this call to be disciple-leaders, we will bring the strength and power that comes from the application of true principles to every organization and every community in which we take part. Indeed, I believe leadership based on true principles will be the only effective leadership in the turbulent, challenging world ahead. I believe this is especially true in our families.

I want to illustrate the importance of leadership based on truth with five characteristics of effective leaders. The principles of leadership I will discuss apply to any organization, but I want to specifically emphasize their power in the family because that is where all of us will accomplish our most important leading. There are many characteristics that could be discussed, but I have chosen to highlight five I think are particularly salient now and will be in the years ahead. As I review these five characteristics, remember that we are talking about leaders who are disciples of the Savior with testimonies of the gospel deep in their hearts, who keep their covenants, and who are directed by the Holy Ghost.

CHARACTERISTICS OF LEADERS

The first characteristic is integrity. With all the uncertainty and turbulence in the world, we need leaders with integrity. These are leaders with strong values who put those values into action by taking personal responsibility for everything they do.

- In your family, you cannot set direction for your children without integrity. For example, if you teach your children the importance of the temple but do not attend the temple yourselves, your children will get the message that the temple is not important.

The second characteristic is energy. I believe we need leaders who energize others and who make everyone around them better. They cre-

ate energy, not by administrating but by ministering. These leaders care about other people by recognizing the value in them and by creating opportunities for them to grow.

- Leading through love in our families is the Savior's way. Your children know you love them because you tell them, hug them, serve them, set limits for them, and sacrifice for them, and because you teach them to work and give them responsibility. No matter what they do, you never let them get outside the circle of love.

The third characteristic is inspiration. Effective leaders in the years ahead will inspire trust and confidence in those around them. This will come in part from their integrity and in part from the guidance of the Spirit, but it will also come from their knowledge, competence, and skill. Inspired leaders will create meaning in the organizations they serve by sharing a vision of what is possible and by clearly establishing the larger purpose of the work.

- In your family, you have a charge to lead by inspiration. For example, you could lead by connecting the chores of daily family life to the larger purpose of the family, if you act under inspiration. You could perhaps draw a connection between taking out the garbage and creating an eternal family, and your children will believe you because they trust you and have confidence in you and because they can tell that you have the Spirit with you.

The fourth characteristic is wisdom. Leaders need to be teachers. They must have the ability to see beyond the horizon and help others understand how to get there. They need to deeply understand and put into practice the true principles that underlie success in the work and teach those principles every way they can. They need to be great communicators and teach in word and deed—especially deed.

- In your family, you need to teach your children about the plan of salvation, the Savior and His Atonement, eternal families, and living the gospel every day. There is a way to life and salvation, joy, and happiness; and you know the way. You need to teach and communicate and lead your family on that journey.

Finally, I come to the characteristic of courage. Leadership, even leadership with a small *l*, requires courage. Leaders need to do hard things, to set high standards, and to uphold them. They must make tough decisions, be unpopular, and do the right thing even though the wrong thing may sometimes seem easier.

- Children thrive on structure, discipline, and hard work. You lead by holding your children to high standards, even if those standards are unpopular.

LEARNING AND TEACHING AT BYU-IDAHO

These five characteristics have important implications for the education of disciple-leaders at BYU-Idaho. If we are to realize our mission, especially in light of the tremendous challenges in the world ahead, our classrooms and everything associated with them must be places where our students:

- Grow in obedience and spirituality and in their faith in Christ.
- Acquire substantive knowledge, competence, and skill.
- Learn to take personal responsibility for their actions.
- Learn to minister to, serve, lift, and strengthen others.
- Learn to create meaning for others.
- Learn to teach.
- Learn to communicate.
- Learn to set high standards and meet them.

This means that the central activities of the university—learning and teaching—must be more effective, deeper, and more powerful than ever before. In addition to the subjects that normally engage university students such as math, English, science, history, languages, literature, music, and so forth, the processes of teaching and learning at BYU-Idaho must also address the spiritual and personal growth of our students as disciple-leaders.

In September 2001, President Henry B. Eyring spoke at BYU-Idaho and outlined the effects such an approach to teaching and learning would have on generations of BYU-Idaho students. This is what he said:

The students will learn from example how to keep on a steady upward course in times of great

TO ILLUSTRATE THE EFFECTIVENESS OF PEER INSTRUCTION, BYU-IDAHO PRESIDENT KIM B. CLARK CONDUCTED AN EXPERIMENT WITH A GROUP OF PARTICIPANTS. HE HAD EACH OF THEM SILENTLY PONDER A PHYSICS QUESTION WITH MULTIPLE ANSWER CHOICES AND CHOOSE THE CORRECT SOLUTION. A VOTE WAS THEN TAKEN TO SEE WHAT EACH PARTICIPANT HAD CHOSEN. AFTER THE VOTE, HE HAD THEM BREAK INTO SMALL GROUPS WITH A CHARGE TO CONVINC ONE ANOTHER OF THE CORRECT ANSWER.

PRESIDENT CLARK THEN RETESTED THE STUDENTS AND FOUND THAT MOST OF THEM HAD SWITCHED THEIR ANSWER FROM THEIR ORIGINAL RESPONSE TO THE CORRECT ANSWER, SUGGESTING THAT PEER INSTRUCTION HAS A POWERFUL EFFECT ON LEARNING. OF THIS, PRESIDENT CLARK TAUGHT: "WHEN YOU TEACH, YOU WILL LEARN MORE THAN IN ALMOST ANY OTHER ACTIVITY YOU WILL EVER ENGAGE IN. AND WHEN YOU LEARN FROM PEERS, YOU LEARN TO DO SOMETHING THAT WILL BE INCREDIBLY VALUABLE THROUGHOUT YOUR LIFE."

change. They will see leaders and teachers and staff members for whom the Savior and His kingdom are at the center of their lives. From that example, I make a prophecy. Now listen carefully.

From that example they—you—will become lifelong teachers in their families, in the Church, and in their work, and they will bless others wherever they go by what they have learned about innovating with scarce resources and treating all they have as if it were the Lord's.

You can imagine the joy of an employer or a Church leader when such a graduate arrives. The graduates will be at personal peace by having kept the commandments. They will be natural leaders who know how to teach and how to learn. They will have the power to innovate and improve without requiring more of what money can buy. Those graduates of BYU-Idaho will become—and this is a prophecy that I am prepared to make and make solemnly—those graduates of BYU-Idaho will become legendary for their capacity to build the people around them and to add value wherever they serve.³

In order to substantially improve the effectiveness and power of teaching and learning at BYU-Idaho, we have introduced a number of initiatives in learning and teaching over the last two years. I want to talk about two: (1) the BYU-Idaho Learning Model and (2) Peer Instruction.

THE BYU-IDAHO LEARNING MODEL

The BYU-Idaho Learning Model creates an overarching framework of principles and processes for learning and teaching across the whole university. Our intent is to create a framework that students and faculty will learn and put into practice. It should be a living framework that grows and develops as we gain experience and deepen our understanding of the learning process.

Five fundamental principles define the BYU-Idaho Learning Model. As I share them, please note there is nothing here that we have invented. These are principles drawn from the revelations of the Restoration. They are true principles that apply anywhere Heavenly Father's children seek to teach and to learn. Here are the principles:

Learners and teachers at BYU-Idaho:

- Exercise faith in the Lord Jesus Christ as a principle of action and power.

- Understand that all true teaching is done by and with the Holy Ghost.
- Lay hold on the word of God—as found in the scriptures and the words of the prophets—in all disciplines.
- Act for themselves and take responsibility for learning and teaching.
- Love, serve, and teach one another.

We put these principles into practice in three steps:

- **Step 1: PREPARE** personally and in small groups before class.
- **Step 2: TEACH ONE ANOTHER** through discussion, by presenting ideas, by sharing results of experiments, by teaching a segment of the class, and in many other ways.
- **Step 3: PONDER and PROVE** by reflecting, discussing, keeping a learning journal, participating in assessment, and getting ready for *Step 1*.

This simple framework of principles and processes has several implications for faculty and students. In applying this process, everyone learns by study and also by faith. Students have opportunities to act, to prepare, to speak, to participate, and to teach (in which they authorize the Holy Ghost to teach them). Faculty become the designers of learning experiences rather than dispensers of knowledge. Both students and faculty prepare to learn and to teach for every class. There is a focus on active learning and experiential learning using many different pedagogies and methods. This means that students are engaged in the learning process. They teach one another and take responsibility for their preparation and their learning. And there is much more work in teams, both before and after class.

We have built Web sites to assist students and faculty in learning about and applying the Learning Model. These Web sites will be public and open to anyone.

PEER INSTRUCTION

One of the approaches we have developed to implement the Learning Model is Peer Instruction. Peer Instruction is a set of methods or practices where faculty design learning



experiences in which students teach and are taught by each other. Here are a few examples:

- *Peer interaction:* Immersion and formative assessment using study groups and peer comparison.
- *Peer response:* Deepening and integrating learning through case studies, paired teaching, and concept tests.
- *Peer collaboration:* Joint problem solving and concept application through team projects and group assignments in class.
- *Peer feedback:* Expanded evaluation through peer review.
- *Peer-facilitated instruction:* Student-led instruction and student-directed lesson development.

Our experience with Peer Instruction suggests that students who have recently learned a difficult concept are often in a better position to teach the concept to someone who does not understand it than those with much longer experience. We know that students learn more when they teach something to someone else. Thus, peer instruction not only helps students deepen their conceptual understanding, but it also helps them develop lifelong learning skills. They learn how to teach

peers and colleagues, and they learn how to learn from peers and colleagues.

I believe the Learning Model and the other initiatives we have launched will have profound consequences for the development of our students as disciple-leaders. These initiatives address the development of the critical skills and characteristics that leaders need, and they will help our students learn how to learn.

“Small *l*” leaders will need to learn throughout their lives. With greater faith in Jesus Christ, they will need to be *increasingly* knowledgeable and skilled; and they will need to *grow* in personal spiritual power. Small *l* leaders will need to take *increased* responsibility to love, serve, and strengthen others and to teach and communicate more effectively.

Herein lies the power of a university-wide approach to teaching and learning based on true principles. Our students will be immersed in the Learning Model. It will not be in just one class; it will be in every class. They will not only experience it in every class, but they will become proficient at applying it in their lives. They will learn by faith and be taught by the Holy Ghost. Our students will learn to take action and exercise faith to prepare, to teach one another, and to ponder and prove. BYU–Idaho students will be better educated in all the dimensions that matter to disciple-leaders. And that capacity to teach and to learn will remain with them all of their lives.

There is a little saying that captures the power in the Learning Model. The saying is: How we teach is what we teach. There are three corollaries that describe what happens to BYU–Idaho students:

- (1) Teach to learn; (2) learn to teach; and (3) learn to learn.

The principles of the Learning Model are not limited in their application to the university. They are based on true principles that apply to our families, to the Church, and to our work. In the same way, the principles of leadership are universal in their application. I hope that each of us will take to heart the Lord’s call to be disciple-leaders and use these principles of leadership and learning in our families. In doing so we will accomplish the great work that lies before us.

My dear brothers and sisters, we live in a great time. This is a time of revelation. The Lord is moving with great power in His kingdom and in the world. Many new things will be revealed that have never been revealed before. We all need to learn how to teach and to learn so that we can help each other grow in our capacity to serve in every part of our lives. In section 100 of the Doctrine and Covenants, the Lord said, “I will raise up unto myself a pure people.”⁴ And He will. He will build His kingdom, Zion will be established, and the Lord will come. I pray we will be ready to either meet Him when He comes or to come with Him. I leave my witness and my love with you. In the name of Jesus Christ, amen.

NOTES

- 1 Matthew 5:14, 16.
- 2 Matthew 20:26–28.
- 3 Henry B. Eyring, “A Steady, Upward Course,” BYU–Idaho devotional, September 18, 2001.
- 4 D&C 100:16.

ART CREDITS

Page 27: Max Thalmann, *Last Supper*, ca. 1920, woodcut print, 14 ¼ x 11 ½ inches. Brigham Young University Museum of Art. Page 28: Max Thalmann, *The Resurrected Christ*, ca. 1920, woodcut print, 14 7/16 x 11 ½ inches. Brigham Young University Museum of Art. Page 31: Max Thalmann, *On the Cross*, ca. 1920, woodcut print, 14 7/16 x 11 ½ inches. Brigham Young University Museum of Art.

H. Reese Hansen Elected President of Association of American Law Schools

BY SCOTT W. CAMERON

H. Reese Hansen commenced his term as president-elect of the Association of American Law Schools (AALS) in January 2009. This begins a three-year term (president-elect, president, and past president) in a key leadership role in an organization that is the main representative of legal education to the federal government, other national higher education organizations, learned societies, and international law schools. AALS is an association of 171 law schools and more than 10,000 law faculty and library professionals employed at those schools and is a significant resource to those who choose volunteer or public service. » Hansen's achievement is the culmination of over 35 years of volunteer service to legal education.

CAMERON » *Did you start your career at the Law School with a goal to become involved with national organizations like the Law School Admission Council (LSAC) and the Association of American Law Schools (AALS)?*

HANSEN » No, my first week at the Law School as assistant dean and assistant professor was in June of 1974. That week, I went with then associate dean Bruce Hafen to an LSAC conference at the Lake of the Ozarks in Missouri. My natural instinct in that experience was: "Run from this—don't engage. This is not fun; I don't fit in. Just go back to the office and do your work there. If you don't get involved with this, nobody will notice."

C » *What caused you to not follow your natural instinct?*

H » I met Tom Read, another member of the Church, at the conference. He was then one of the leaders of LSAC. He was a serial dean in legal education. Over the years he served as the dean of five law schools for nearly 30 years. Tom encouraged me to get involved and was willing to help. He made it possible for me to be appointed to the Services Committee of the council. I eventually became chair of the committee and then chair of the Legal Affairs Committee. I served on the executive committee of the council and then as a director of the Law School Admission Services Corporation.

C » *How did you shift your involvement from the Law School Admission Council to the Association of American Law Schools?*

H » It was really just a small jump from the LSAC, because my first service with AALS was on the Section on Prelegal Education and Admission to Law School. I ultimately chaired that section.

C » *Were there people in legal education, in addition to Tom Read, that assisted you along the way by giving you opportunities to serve?*

H » First, I must mention Carl Hawkins. Carl's role within the Law School was tremendously important, of course. But Carl's importance to the Law School that may not be well understood is that he was also trusted outside of the Law School in the legal academy. Because of his stature in legal education, Carl had credibility with important constituent groups; so when he spoke to them about the BYU Law School, they knew they could

trust what he said. I think the chance the Law School would succeed would have been tremendously diminished without Carl's being here.

Years ago, on an inspection visit to Washburn Law School that Carl chaired for the ABA, he met and became a friend with Carl Monk, the dean of Washburn. Carl Monk was greatly impressed with Carl Hawkins. Later, when Carl Monk went to the AALS as chief executive officer, he helped Carl Hawkins be appointed to the Membership Review Committee at AALS. Carl Hawkins was so well received that when he finished his tenure, I was selected for appointment to Membership Review. Carl Monk became a mentor and friend. I was appointed the first chair of the Section for the Law School Dean at AALS.

Also along the way, Marilyn Yarborough, a good friend from my service at LSAC, became president of LSAC and gave me additional opportunities to serve at LSAC. So she was an important person to me. Jim White, the executive director of the American Bar Association, became a good friend over the years as I served on over 20 inspections of other law schools. They asked me to serve on the advisory committee for the Sister Law School Program of the Central and East European Law Initiative sponsored by the American Bar Association.

C » *Even though this service did not grow out of your natural inclination, was it accidental?*

H » It seems almost accidental. One thing I noticed early on was that the people in leadership positions all knew each other very well. Their relationships went beyond casual and kind—they were friends, and their friendships were borne out of regular and ongoing working relationships. I observed



that there was nobody at the BYU Law School who was significantly involved in these organizations. We were a brand-new law school, and at some point along the way, it occurred to me that if BYU was to have a place at the leadership table, somebody had to work at it. So when an opportunity came for me to get involved, I said, "I'll take this opportunity and we'll see what happens." It all just sort of came out of that early observation.

C » *Why do you think you were selected so frequently to chair these volunteer committees?*

H » One of the things I noticed was when I became chair, I had already run a whole lot of meetings as bishop and also as stake president. So that Church experience was immediately transferable. Practice helps you know when to let people speak, when to bring things to a close, and when it's time to make a decision and move on. In the Church we do that

all of the time. You do it every Sunday, you do it every Tuesday, and you just do it over and over again and pretty soon it becomes second nature.

C » *After 35 years of volunteer service in legal education and 15 years as dean of the BYU Law School, what are your hopes for the AALS in the next three years?*

H » I don't think the AALS needs a major course correction. I think that the organization has been blessed with strong leadership, it has strong leadership now, and so I don't see a need for big course corrections. What I do see are storm clouds gathering around three things:

① The financial crisis that law schools are now starting to feel: I think there is a significant possibility that financial concerns will become more acute at many law schools and will present some significant challenges for them. And I

think that one place to perhaps provide some leadership is in helping law schools understand that in the financial crisis there will have to be important decisions made by law schools about programmatic changes required in the face of diminished resources while delivering a high-quality educational experience for our students.

② The debt burden that our students are leaving law school with: I think this is a very serious problem. Many, perhaps most, law schools are living off the money their students are borrowing to pay tuition. Many law schools are significantly dependent on the Federal Student Loan Program. The debt burden of many law students cannot be serviced by the earnings they can expect upon graduation. In the next years law students will be graduating into an economic situation where jobs will be more difficult to find and salaries are not sufficient to support the carrying cost of their loans. I believe both law students and law schools will have to learn to live within their means.

③ The push from the universities and accrediting agencies to require an array of "outcome measures": I am gravely skeptical that we know enough now about how to measure outcomes. What we do know is that developing these measures will be expensive. I believe we need to be very careful to avoid a rush to outcome measures.

C » *Is there something you've always wanted to say to the members of the BYU Law School student body, the alumni, and the members of the J. Reuben Clark Law Society?*

H » It has occurred to me over time that my membership in The Church of Jesus Christ of Latter-day Saints has never been a disadvantage to me, ever, in any situation, anywhere. I am not certain how widely felt that view is. I

think especially some of our young people worry: "I'm different, I'm odd, I don't know if I want them to know I am a member of the Church." I've always found it to be an advantage—a huge advantage."

C » *In your life you have been a dean, a stake president, and a volunteer leader in legal education all at the same time. How have you been able to keep it together?*

H » Well, I think that every life experience we have helps shape what we ultimately become in our lifetime. It isn't the case that all of your "becoming" only occurs in the chapel. All of our "becoming" doesn't occur in the classroom, in the office, or at the family reunion. Every experience builds on, becomes part of, and completes the tapestry that we are building into our lives. And so, I have never thought in terms of segmenting my life into family, church, profession, and public service. I have never understood those categories as being independent of each other. I have always thought, "Look, I'm a guy who's trying to do the best I can when I'm called upon, when opportunities come. When the demands confront you, you do the best you can with the job at hand and then you move on." I'm just a guy who grew up in Cache Valley. In Cache Valley you do the job that needs doing when it needs doing. If the ditch breaks, sometimes you leave church and go fix the ditch. If the cows need feeding, you may have to leave something more fun and feed them now. I just haven't seen life in compartments. I think that life is a whole, and you exist in this whole. Life isn't what happens in the ideal. It is what happens day in and day out. You do not partake of life occasionally. We're here and life is here, and we just do the best we can every day and in every situation.

Batting for the Cure

BY MICHAEL GOLDSMITH

I received my death sentence in September 2006 when doctors told me I had amyotrophic lateral sclerosis (ALS), a progressively paralyzing neuromuscular disorder. There is no cure. Commonly known as Lou Gehrig's disease after the Yankee Hall of Famer who died of it, ALS is so uncommon that medical researchers consider it an "orphan" illness—so few people have it that pharmaceutical companies lack financial incentive to invest in finding a cure.

The public also pays scant attention to ALS. (May 2008 was ALS Awareness Month. Who knew?) Public attention and contributions understandably go to more widespread killers like cancer, heart disease, and diabetes.

All this means that ALS patients must seize the initiative for funding research. Of course, the vast majority of ALS patients are too sick and incapacitated to take such steps. I am one of the lucky ones. My neuromuscular decline has been steady, but slow enough to let me lead a reasonably normal life. After holding endless pity parties for myself, I decided—not entirely successfully—to transform myself from victim to ALS funding advocate.

Lacking any fund-raising experience (I've rarely even asked for a pay raise), I took some time off and returned to my childhood roots: the baseball field. While I still had the strength to hold a bat, I attended a Baltimore Orioles fantasy baseball camp. Some might call it Old Man's Little League, but I reveled in what would likely be my last chance to play the game of my youth. And as a lifetime Orioles fan, this particular camp held special appeal to me.

I expected to have a good time. I did not expect to find the

potential solution to my ALS fund-raising problem. But I did.

If Little League makes men out of boys, Orioles camp makes boys out of men. The games were highly competitive, but they were also marked by youthful enthusiasm, pure joy, and moments of compassion. When my teammates saw me struggling to swing a standard bat, they bought me a lighter one that could still generate power (this helped, but often I just missed the pitch faster).

We hung out with former Orioles, most of whom were blue-collar guys thrilled to have made it to the majors. They didn't just give us cursory face time; they coached us intensively and did their best to improve our game. Everyone played, talked, and laughed baseball. Orioles manager Dave Trembley told us how he tried to get thrown out of a game without using cuss words; it wasn't easy, and he succeeded only after calling the umpire a "den mother." There was much more. We also shared life stories, and I learned that I was not the only one battling a terminal disease.

At some point we talked about what Major League Baseball could do to fight ALS, and I realized that next July 4 will mark the 70th anniversary of Lou Gehrig's famous farewell speech at Yankee Stadium. Since his retirement more than 600,000 Americans have shared Gehrig's fate, as medical science has made virtually no progress toward finding a cure. Through the years some players and a few teams have occasionally helped raise funds, but Major League Baseball has never taken comprehensive action against ALS. Defeating ALS will require the same type of



Susan Cohen

determination, dedication, and drive that Gehrig and Cal Ripken demonstrated when they set superhuman records for consecutive games played. With this in mind, why not make July 4, 2009, ALS-Lou Gehrig Day? Dedicate this grim anniversary to funding research for a cure; every major- and minor-league stadium might project the video of Gehrig's farewell, and teams, players, and fans could contribute to this cause. An event of this magnitude has the potential to raise millions, dwarfing the relatively scant sums that ALS walks, rides, and similar small-scale efforts have produced.

To this day Lou Gehrig is still named in some polls as the greatest player in baseball history; by all accounts, he also had a reputation

for uncommon decency. His legacy for greatness will live forever, but it's time to end the heartbreaking legacy of the disease that bears his name. Major League Baseball can help make that happen.

Of course, this is just a distant dream of a single ALS patient who played baseball every day of every summer growing up. I now look to the game of my youth to help give me and others like me a chance for life.

This article was published in the November 10, 2008, issue of Newsweek magazine.

Michael Goldsmith is the Woodruff J. Deem Professor of Law at the J. Reuben Clark Law School at Brigham Young University.

EXTRA! EXTRA!

Michael Goldsmith's efforts to help battle amyotrophic lateral sclerosis (ALS), known as Lou Gehrig's disease, made the front page of the *New York Times* on February 2, 2009. See "Baseball to Focus Attention on Gehrig's Disease," <http://www.nytimes.com/2009/02/03/sports/baseball/03vecsey.html?emc=eta1>

In his November 2008 *Newsweek* article, the BYU law professor—who has a slower version of ALS—challenged Major League Baseball to publicly take on the killer disease this July 4, the 70th anniversary of Gehrig's immortal "luckiest man on the earth" speech. Baseball commissioner Bud Selig responded to Goldsmith's appeal, and now MLB has joined efforts with four ALS organizations.

Image from House Industries



**W. Cole Durham Jr.
Honored with International
First Freedom Award**

W. Cole Durham Jr. was given the 2009 International First Freedom Award for his advocacy of religious freedom by the First Freedom Center on January 15 in Richmond, Virginia, in conjunction with National Religious Freedom Day.

Each year, the First Freedom Center acknowledges an international, a national, and a Virginia-based recipient for advancing freedom of conscience and basic human rights.

The First Freedom Center has sponsored the annual First Freedom Awards for 15 years. Past recipients include Madeleine K. Albright, former u.s. secretary of state; Garry Wills, Pulitzer Prize-winning author; Tony Blair, former prime minister of Great Britain; Václav Havel, former president of the Czech Republic; M. Farooq Kathwari, chair and CEO of Ethan Allen Inc. and founder of the Kashmir Study Group; and the Honorable Richard C. Holbrooke, chief negotiator of the Dayton Peace Accords and u.s. ambassador to the United Nations.

Durham is the Susa Young Gates University Professor of Law and director of the International Center for Law and Religion Studies. He is a graduate of Harvard College (AB 1972) and the Harvard Law School (JD 1975).



**Dennis Sears Elected Chair
of AALL Section**

Senior law librarian Dennis S. Sears was named chair of the Foreign, Comparative, and International Law Special Interest Section of the American Association of Law Libraries.

Sears began working at the BYU Law Library in 1988. The library was expanded—doubling its floor space—and named the Howard W. Hunter Law Library in 1995. Currently the associate director for legal research instruction at the library, Sears received his JD degree from the J. Reuben Clark Law School in 1985.



**Brett Scharffs Named to
International Center for Law
and Religion Studies**

Brett Scharffs has been appointed as associate director of the International Center for Law and Religion Studies at the J. Reuben Clark Law School. He will have particular responsibility for Asia, drawing on his background in both religious liberty and Asia, and will assist in the academic work of the center.

Professor Scharffs joined the law faculty at Brigham Young University in 1997. He holds a bachelor's and a master's degree from Georgetown University, a bachelor's of philosophy from Oxford University (Rhodes scholar), and a juris doctorate from Yale University. He practiced law at Sullivan & Cromwell in Washington, D.C.



**Kristin Gerdy Receives
Fellowship**

Kristin Gerdy, law professor and director of the Rex E. Lee Advocacy Program, has won the R. Wayne Hansen Teaching and Learning Faculty Fellowship. The term of the fellowship is three years beginning fall semester 2008, providing a salary stipend and a research grant for each year of the fellowship.

Gerdy joined the J. Reuben Clark Law School faculty in 1995 as a reference librarian and legal research professor after graduating from the Law School that year. She teaches introduction to advocacy, introduction to legal research and writing, and advanced appellate brief writing.



James E. Sabine, Visiting Professor

James Edward Sabine, 99, passed away December 24, 2008, in Salt Lake City. He taught at the J. Reuben Clark Law School as a visiting professor from 1976 to 1990. > A dedicated student, James attended LDS High School and graduated from the University of Utah as valedictorian of his class. He attended Harvard Law School for two years, but the effects of the Great Depression prevented his return to Harvard for his final year of law school. He later obtained his law degree from Boalt Hall School of Law at the University of California, Berkeley. > James had a distinguished career as an assistant attorney general for the state of California. Following his retirement he taught at BYU Law School, during which time he was a charter member of the first Inn of Court to be established in America.



JRCLS Strong in Judicial Clerkships

The J. Reuben Clark Law School has a strong showing of federal and state judicial clerkships this year. Recent rankings place the Law School among top schools for both United States Supreme Court justices and federal appellate judges. According to a study by University of Chicago law professor Brian Leiter (http://www.leiterrankings.com/jobs/2000_o8_scotus_clerks.shtml), BYU Law School is ranked 13th in the nation for the number of BYU graduates hired as clerks by United States Supreme Court justices since 2000.

"Employers, including judges, who hire BYU graduates love them because they are mature and responsible and have excellent research and writing skills, thanks to our great Rex E. Lee Advocacy Program," said Beth Hansen, director of the BYU Law School career services. "If we can get a graduate into chambers, judges will want to hire other BYU graduates because of their good experience."

According to Lisa Sun, associate BYU law professor and chair of the clerkship committee, judicial clerkships provide a strong investment in the future.

"Spending one or two years clerking—at any court—after law school is a great investment that will pay dividends throughout one's legal career," Sun said. She clerked for Associate Justice Anthony M. Kennedy, u.s. Supreme Court, and for Judge J. Michael Luttig, u.s. Court of Appeals for the Fourth Circuit.

Law school graduate Blake Bertagna, '06, after two years of practicing trademark and copyright law for a firm in Washington, D.C., is now clerking for u.s. District Court Judge Robert Clive Jones in Las Vegas, Nevada.

"You learn a lot," Bertagna said. "You definitely learn a lot about the rules of procedure. In law school you have civil procedure class and go through rules, but they don't make much sense until you see and participate in them. Even in a law firm, you're not exposed to the breadth of civil procedure."

Clerking also provides students with opportunities to increase their writing, research, and analytical skills. Because the general role of a clerk is to help the judge make the right decision, clerks spend most of their time researching both sides of the legal argument. After their

research they write a memo to the judge with a recommendation of how the judge should rule.

"Judicial clerkships are probably the most valuable legal experience a young attorney can have. . . . It's a lot of responsibility, and it's cool to help a judge with such important cases," Bertagna said.

In preparing memos clerks learn the traits of a successful argument. "Clerks get an inside look at what makes legal advocacy effective (or ineffective) and what kinds of legal arguments persuade judges or juries," Professor Sun said.

Kelley Marsden, '06, who is currently clerking for Judge J. Clifford Wallace of the u.s. Court of Appeals for the Ninth Circuit, noted that one of the greatest challenges of clerking is the task of distinguishing between right and wrong.

"Many of the cases we get are quite complex and present difficult questions. I thought that it would be very clear in most cases whom the law should favor. There are a lot of really close questions . . . , and reading the parties' arguments and analyzing the current state of the law is often quite challenging. I expected things to

be black and white, but often it's not that easy," she said.

Students' education, careers, and sense of good judgment are shaped by such close contact with an appointed judge. Bertagna remembered something a judge said to him last year about clerking: "Our clerks are like family to us. Fifteen years later, we're still in touch with our clerks."

Judges can help students apply for and secure prestigious jobs in the government and universities. Of this relationship and speaking from personal experience, Professor Sun added that "working closely with distinguished jurists also helps new lawyers learn good judgment—a skill that is difficult both to teach and to learn in law school."

Bertagna particularly values this relationship. "Every day you get to talk with a judge. You get to pick his brain and see how he approaches cases," he said.

Marsden agreed that clerking has great benefits. She said, "I was a corporate lawyer and intend to return to corporate law, but from a purely intellectual standpoint, I'll be glad to have this year. I'll learn more here than during any other year."

Class Notes

E-MAIL YOUR PROFESSIONAL NEWS TO
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The spring issue of the Clark Memorandum publishes news of the graduates of the J. Reuben Clark Law School. Due to space constraints it is not always possible to publish every submission for the class notes.

CLASS OF 1976

Lawrence E. Corbridge was called to the First Quorum of the Seventy in April 2008. As a young man, he spent his summers on a ranch in Idaho. While a missionary in Argentina, Elder David B. Haight asked him what he was going to do afterwards. When he said ranching, Elder Haight offered a different career path: "You should be a lawyer. The Church needs honest lawyers." Those words planted in his mind a seed that was not there before. Lawrence returned to BYU and eventually entered the charter class at the J. Reuben Clark Law School. **Jeffrey R. Young** shifted his practice to estate, financial, and retirement planning five years ago. Through his unique business model in Charter Financial Resources LLC, clients find in one place an attorney, a CPA, a life- and health-insurance expert, a long-term care specialist, a Chartered Financial Analyst (money manager), a Certified Market Technician, and two general financial advisors.

CLASS OF 1977

Casey Christensen resides in Vienna, Austria, where he serves as the political and economic counselor at the U.S. Mission to the Organization for Security and Cooperation in Europe. His previous diplomatic assignments include Sweden, Ukraine, Vienna-osce, Bolivia, France, and Guatemala. He and his wife, Margie, are the parents of 10 children. **Robert Dennis** is CEO of Foundation Partners LLC, a company focused on the development of fitness sites for clients throughout the country, and lives in San Diego. He started a company called Deseret Educational Foundation, a nonprofit entity whose primary mission is to develop educational curriculum for developing populations. **Stephen Dunn** was appointed as a district judge for the Sixth Judicial District in southeastern Idaho, effective October 2, 2008. **Larry Holdaway** is a contract administrator for Northrop Grumman Corp (22 years), relocating to Oklahoma City (Tinker Air Force Base) last year after having worked at Hill Air Force Base in Ogden, Utah, for six years. **Von Packard** started general law practice in San Jose, California, with two other attorneys under the name of Hunter Peterson & Packard. Two years later he joined his brothers in the law firm of Packard & Packard, focusing on construction litigation for four years, then on personal injury practice for the following nine years. Von and his wife were called to preside over the Chile Santiago North Mission from 1993 to 1996. Upon returning, the firm resolved the largest government nonintervention case in history: \$55 million against Hercules Rocket Motor Company. In the meantime, it had settled another False Claims Act case for \$88 million. Since 2000 the firm has settled class actions for a value of over \$1.5 billion and several other False Claims Act cases, continuing to work jointly with the Department of Justice to ferret out and prose-

cute fraud around the country. Packard & Packard is currently the second largest False Claims Act-dedicated law firm in the nation.

CLASS OF 1978

Timothy Burton Anderson recently published his second political thriller novel, *Too Close to Kill?* The book is a fictional look at a plot to "fix" the U.S. presidential election. His prior novel, *The Reign of the Stavka*, another political thriller, involved the return of communists to power in Russia.

Denton M. Hatch worked for 15 years in a Salt Lake City firm doing insurance defense work. For the last 15 years, he has been in solo practice in Spanish Fork, Utah, doing municipal work, plaintiff's work, and estate planning.

Richard E. Winder is currently the deputy director and finance manager of the Michigan State Bar Foundation. He presented "Finding the Invisible Hand: From Invisible Hand to Hand in Hand," a paper on the concept of relational economics that he coauthored with Lindon J. Robison at the 2008 World Conference on Quality and Improvement.

CLASS OF 1979

Lynn Grebe has been serving as the South Texas regional welfare specialist, working with seven stakes in the Houston area. His oldest daughter and son-in-law are both attorneys in Austin, and his oldest son is in medical school.

Brett London is currently serving as a California superior court judge in Newport Beach. He is an adjunct constitutional law professor and teaches the course Religion and Law. He and his wife, Donna, have six children and six grandchildren. **Jay Pimentel** will preside in the Berlin Germany Mission for the next three years, beginning in July 2009. He has worked for 20 years with a law firm in the San Francisco Financial District and for 10 years as in-house counsel at TriNet in San Leandro, California.

Myrna South practiced law in Idaho for several years and married Vaughn North, patent attorney and member of the Mormon Tabernacle Choir, in 2004. Currently, they are serving a mission in San Diego, teaching institute and directing the institute choir.

Curtis Taylor is president and CEO of Grand Valley Bank, which also does business as Heber Valley Bank. The bank has seven locations: three in Utah and four in western Colorado. He and his wife, Mary, live in Heber City, Utah. They have seven children, six of whom are married and 19 grandchildren.

CLASS OF 1980

Art Edgson returns this summer for his fifth training camp with British Columbia's football team, the BC Lions. He played alongside Wally Buono at Idaho State University and with the Montreal Alouettes when they won a Grey Cup in 1974. Art also served as a guest coach with the Calgary Stampeders from 2001 to 2003. He has enjoyed a successful practice in Vancouver since 1980.

James N. McCormick will be returning home to Hawaii to work for the U.S. Navy at Pearl Harbor, reporting in mid-February 2009. He served for 35 years with the Air Force (20 years on active duty and 15 years as a civilian employee).

William Monahan became a solo practitioner in July so that his previous law firm could refer more business. His youngest son is serving a mission; now William and his wife are empty nesters in Gilbert, Arizona.

M. Gay Taylor, general counsel to the Utah legislature, retired on May 30, 2008, after 25 years with the Office of Legislative Research and General Counsel.

CLASS OF 1981

Bob Herrick served as president of the City Attorneys Department of the League of California Cities after being elected by fellow city attorneys. He previously served as a vice president for two years.

Ron Madson is practicing law with his son and daughter-in-law, Joshua and Cheryl Madson, in Alpine, Utah, handling mostly civil matters with a primary emphasis on personal injury. Currently, Ron and his son contribute antiwar essays monthly to the *Mormon Worker* newspaper.

James Stewart practices law in Salt Lake City at Ballard Spahr Andrews & Ingersoll LLP, a large national firm with a regional office of about 40 attorneys in Salt Lake City. James is a labor and employment attorney, as well as a general litigator. He loves art and paints in oils and watercolors, occasionally selling a painting. He has been president of the charitable organization Utah Lawyers for the Arts, which provides free or low-cost legal services for low-income Utah artists.

Stephen A. Van Dyke was reelected to the Utah State Board of Judges in September of 2008. Judge Van Dyke is a past chair of the board and has served for more than 16 of the last 23 years as a member. The board is the policy-making body for the state juvenile courts. He has also served one term on the State Judicial Council, and as a member of various state task forces, including the Children at Risk Task Force and the State Court Facilities Task Force.

CLASS OF 1982

Kurt Krieger has returned to the United States and joined Huntsman Gay Global Capital, a new private equity firm, as in-house legal counsel after completing five and a half years of service as an international legal counsel for the Church in Africa and Mexico.

Vernon F. "Rick" Romney was appointed the first judge of the Provo City Justice Court in April 2007, taking the bench in July 2007, after serving in the Provo City Attorney's Office for 22 years, most of the time as lead city prosecutor.

CLASS OF 1983

Alain C. Balmanno has moved to a larger firm, starting the new year with Christensen & Jensen in Salt Lake City, after 17 years with the Army JAG, five years with the Utah attorney general, and almost four years with Hutchings Baird Curtis & Astill, a small law firm in Sandy, Utah. **Stephen J. Dahl**, justice court judge in North Las Vegas, was the recipient of the J. Reuben Clark Honored Alumni Award for 2008 for his service to the profession.

Mark Davis plays guitar and Irish drum in a family Celtic band called FiddleSticks and has released eight CD recordings. In his spare time he practices international trade law in Washington, D.C., all the while living in Orem, Utah. He also teaches international arbitration at the J. Reuben Clark Law School and coaches the BYU international moot court teams.

R. Clyde Parker, of The Woodlands Winstead office, has been named the chair of the board of the South Montgomery County Woodlands Economic Development Partnership, just north of Houston, Texas.

CLASS OF 1984

Craig G. Taylor has joined the Boise law firm Belnap Curtis & Williams PLLC after serving for several years as vice president, corporate secretary, and associate general counsel of Washington Group International, Inc.

CLASS OF 1985

Marvin D. Bagley was appointed to fill a Sixth District Court vacancy in Utah. He has

been the county attorney for both Piute and Wayne counties.

David Blackwell just began his 15th year as the elected Emery County attorney (Utah). His wife, Natalie, was recently called to sing with the Mormon Tabernacle Choir. They are the parents of four grown children and have two grandsons as well as a granddaughter on the way.

Frederick Judd currently works as the vice president of finance and general counsel for Candelis, Inc., a relatively small, Irvine, California-based medical device manufacturer. His hobby and second job is "their finding"—locating heirs for estates through genealogical research. Using the LDS Family History and Ellis Island records, a Polish neighbor translator, and other resources, Fred recently assisted some 15 people from around the world in the recovery of the estate of a Holocaust survivor.

James R. Pratt has been partner in the firm Graham, Builder, Jones, Pratt & Marks in Winter Park, Florida, for several years. As of January 1, 2009, the firm merged with Burr & Forman LLP, a law firm out of Birmingham, Alabama, with offices in Birmingham, Montgomery, and Mobile, Alabama; Atlanta, Georgia; Nashville, Tennessee; Jackson, Mississippi; and Winter Park, Florida. James has served as stake president of the Orlando Florida Stake since April 2001.

Jared O. Smith is back in Safford, Arizona, where he began his legal career. Sometime in the murky past, he served one term on the Arizona State Bar Board of Governors. He is currently on the board of the Mountain Meadows Association. He is the father of seven children.

CLASS OF 1986

Dean Ellis is in solo practice in a home office, working primarily on adoptions. He is married and has three children: one is married and living in Virginia; two are in college in Utah.

Cornell Evans is a lieutenant colonel in the Air Force Reserve JAG Corps. He has been sent all over the world prosecuting courts-martial and other legal matters. Last summer he was the legal voice for the Air Force when it prevented a presidential candidate from using a proposed stopover at Ramstein Air Base, Germany, as a campaign appearance. A recent highlight was a four-month tour of duty in Washington, D.C., and Guantanamo Bay, Cuba, preparing the prosecution cases of certain "high interest" detainees for trial before the military tribunal.

Larry Jenkins was elected to the board of trustees of the American Academy of Adoption Attorneys (AAAA), an elite group of about 300 adoption attorneys nationwide. Entry into AAAA is by invitation only, after a rigid application and peer review process. The academy is recognized nationally as a leader in advancing adoption law and policy.

Kirt Naylor has served pro bono as attorney for Guardian Ad Litem volunteers in child protection cases for the past 20 years and was honored for his service with the Idaho Law Foundation Pro Bono Award. He currently serves as chair of the Idaho Governor's Task Force on Children at Risk, addressing statewide review and improvement of the legal systems affecting neglected and abused children.

Kevin Stolworthy is co-chair of the litigation department of Jones Vargas in Las Vegas, Nevada. In 1996 he cofounded the "I Have a Dream" Foundation in Las Vegas, Nevada, sponsoring 65 at-risk children who lived in the Weeks Plaza, a federal housing project, and promising them scholarships if they would stay out of trouble, get good grades, and graduate from high school. The foundation also provides an after-school program through its three employees and several consultants. Many of those children are now attending college.

Mark S. Webber has been named state manager for Nevada and Utah for the First American Title Insurance Company. He has been the Utah manager since 2004 and will now cover both states.

CLASS OF 1988

Steve Averett of the Howard W. Hunter Law Library has published his free resource book containing Utah's latest versions of marriage and divorce laws and codes. The book has served the local communities for the last 10 years making the search for changes in the laws more accessible.

G. Paulo Bangerter is the chief legal officer of Unicity International, Inc. He is married to Jalayne Garlick, and they have seven children: two daughters and five sons.

Charles Centinaro has been appointed director of New Jersey's Office of Attorney Ethics. He previously served as the director of juvenile defense services for the Office of the Public Defender. Charles is also the president-elect of the Hispanic Bar Association of New Jersey, for which he has served as treasurer.

CLASS OF 1989

Carl Britsch was recently appointed as senior vice president of Human Resources for Iberdrola Renewables (renewable energy located in Portland, Oregon). Carl recently left Loomis AS (cash transportation) after four years as the head of Human Resources in the United States.

Christopher A. Newton, Vigo County Superior Court Division Four judge in Terre Haute, Indiana, recently completed his two-year appointment as chief judge of the Vigo Superior Courts and a three-year term as president of Indiana's District Seven Pro Bono Corporation. He was reappointed last year by Indiana Chief Justice Randall Shepherd to a second three-year term on the state's Protection Order Committee. Chris is a frequent presenter of protection orders at Indiana's judicial and clerk conferences.

Clifford J. Payne recently returned to the law firm Strong & Hanni, where he had clerked during law school and spent his first three years of practice as an attorney. He previously worked at Nelson, Chipman & Payne for 16 years, serving as the president of that firm. He continues to do mostly civil litigation defense work and has served as the president of the Utah Defense Lawyers Association. His twin daughters are planning to graduate this year from the University of Utah; his oldest son will graduate from high school; and he and his wife are still enjoying the last of the grade school years with their two youngest sons.

CLASS OF 1990

Dana E. Morris has given up the perils and pitfalls of a law partnership and has struck out on his own. He is now found in Las Vegas, Nevada, at the law offices of Dana E. Morris, Ltd. He has recently been appointed as a district court judge pro tem and presides over Clark County District Court civil jury and bench trials of one-day duration or less. Additionally, he continues to sit as a justice court referee, having been initially appointed to that position in 1999, and is also an arbitrator. Occasionally he finds a little time to practice law. Five of his eight children are now married, and he currently has nine grandchildren.

Jini Roby is currently in Cambodia with UNICEF to help set up a system of placement, review, and permanency planning for children whose families cannot raise them. She was chosen from among international experts due to her prior experience in other countries.

Mark V. Withers is the deputy attorney general in the Division of Human Services, Region VII, of the Idaho Office of the Attorney General. He

provides legal services to the following divisions and state offices in a nine-county region in Idaho: Regional Director, Family and Children Services; Medicaid; Self Reliance/Welfare; Behavioral Health; and Child Support Enforcement.

CLASS OF 1991

Mike Bothwell has recently welcomed Julie Bracker and Sara Vann as partners at his law firm, which is now named Bothwell Bracker & Vann. The firm, which originally opened in 1996, continues to do only one type of law: False Claims Act cases, and is a national practice from California to Florida to New York.

David Brinley and his family are enjoying life back in North America. David is general counsel to the Royal Dutch Shell companies in Canada, based in Calgary, Alberta. The Canadian posting follows Shell legal management assignments in Singapore, Holland, Tokyo, and London. David's oldest son, Darin, entered the MTC on December 31 bound for Tokyo. This is the first opportunity for their four children to live in North America and Canada. They expect another year or two in Calgary.

Craig Dallon is the associate dean for Academic Affairs and a professor of law at Creighton University School of Law in Omaha, Nebraska. He teaches torts, trademarks, copyrights, and professional responsibility.

Matt Harmer moved back to the Salt Lake area in the fall of 2006 after five years in San Diego. He is vice president and general counsel of Blue Source LLC, which holds the largest portfolio of North American-based greenhouse gas offsets and develops carbon sequestration, or carbon capture and storage systems.

Dan Lewis has been elected to the Management Committee and as president of Hatch, Allen & Shepherd, PA—where he has worked for the past 17 years—in Albuquerque, New Mexico. He also serves as the chair of the Albuquerque Chapter of the Law Society.

Shane Reed is still a solo practitioner in Oregon and expecting his eleventh child. He recently sued a child molester civilly and as a result has received death threats from the incarcerated offender.

Rob Vail practices in Boise, Idaho, and has three sons.

CLASS OF 1992

Steve Baldrige received the 2008 Service Award at Southern Virginia University, where he is an associate professor of politics and education. After completing his undergraduate work at Washington & Lee, he earned a law degree and a PhD in educational leadership at Brigham Young University.

Gregory B. Butters and his wife, **Tracey Reynolds Butters**, '93, are living in Shanghai, China, after both practicing law in California. In May 2003, Greg was hired to open the Chinese office of Orbit Irrigation, a North Salt Lake City-based company.

Christopher Chaney has accepted a position as deputy director in the U.S. Department of Justice, Office of Tribal Justice, in Washington, D.C., where he works on law enforcement, judiciary, corrections, and other criminal justice issues pertaining to Indian communities throughout the U.S.

Darin Todd Judd was called as the new stake president of the Napa California Stake on August 24, 2008. He is an attorney and partner at Lippenberger, Thompson, Welch, Soroko & Gilbert.

David W. Neuman was appointed as the assistant United States trustee for the District of Idaho overseeing the federal bankruptcy system in Idaho on January 20, 2008. Prior to this appointment he served as a trial attorney for the United States Trustee Program in Tulsa, Oklahoma.

Rick Varner is currently serving his second term on the Judiciary Committee of the Orange County Bar Association and also serves on the board of

directors of the Orange County Chapter of the J. Reuben Clark Law Society. In addition to his other professional associations, Rick is a master in the Warren J. Ferguson American Inn of Court, where he has served on its executive and nominations committees, and as team leader, moderator, and program panelist. Rick is the widowed father of three children and continues his business litigation practice, representing both domestic and international clients in federal and state courts.

CLASS OF 1993

Tracey Reynolds Butters and her husband, **Gregory B. Butters**, '92, are living in Shanghai, China, after both practicing law in California. In May 2003, Greg was hired to open the Chinese office of Orbit Irrigation, a North Salt Lake City-based company.

David S. Doty is superintendent of the newly formed East Jordan School District in Sandy, Utah, having formerly served as the assistant commissioner and director of Policy Studies for the Utah System of Higher Education.

Lorena Rizzo Jensen was recently appointed to the Board of Trustees of the University of Utah Hospitals and Clinics.

Richard Smurthwaite practices in Bountiful, Utah, with Hutchison & Steffen, a Las Vegas firm. His wife, Lisa, passed away in early 2007. At the end of that year, he married Pamela Anderson. She adds her two sons to his four.

CLASS OF 1994

Ryan J. Earl practices law in Reno, Nevada, and was recently certified as an Elder Law Attorney by the National Elder Law Foundation.

Lorie Fowlke was recently reelected to her third term as a state legislator at the Utah House of Representatives. She represents Utah State House District 59, which is most of north Orem. Currently, Lorie serves as chair of the House Judiciary Committee and also as a member of the Utilities and Technology Committee and the Public Education Appropriations Committee. Lorie still practices law in Provo with the firm of Scribner & McCandless PC. Four of Lorie's six children are now married, and she has three grandchildren. Her two youngest sons are serving missions in Uruguay and Massachusetts.

Ken Meyer was reelected in November 2008 to serve a four-year term as state attorney for Lake County, South Dakota. Ken, his wife, Casualene, and their six children enjoy living in Lake County's county seat, the City of Madison.

Shayne Jay Young, Grammy Award-winning vocalist and a partner at the law firm of Marquis & Aurbach, has released the gospel music CD *One More Stone*.

CLASS OF 1995

Larry Meyers was a Utah delegate to the Republican National Convention in St. Paul, Minnesota, and will be celebrating his five-year anniversary as a solo practitioner in July 2009.

Kathleen Phinney practiced in Utah for several years and is now the managing attorney for a personal injury firm in Tacoma, Washington. Her six children are grown, and five of them are in college.

Keith Woodwell has been appointed as the new director of the Utah Division of Securities, effective June 30, 2008.

Michael Zhang has the law offices of Michael J. Zhang in the City of Industry, California.

CLASS OF 1996

Darin Christensen is a shareholder in the Portland office of Bullivant, Houser, Bailey PC, a West Coast regional law firm. Darin's legal practice focuses on taxes, business transactions, and estate planning.

Mel Cook works in downtown Salt Lake City in the firm of Nelson, Cook, & Taylor, focusing

primarily on family law, workers compensation, and disability rights.

Paul Johnson was involved in a presidential campaign this year, working on the ground as a volunteer in both the Iowa and Nevada caucuses. He returned safely from Afghanistan and his deployment to Operation Enduring Freedom. Paul served primarily as an embedded tactical trainer to the Afghan National Army, helping them to implement their new legal code. Paul's wife, Amy, and their five children are glad to have Paul home. He has returned to private law practice at the Provo law firm of Esplin|Weight.

Robert Kerr has opened his own practice in Oregon City, leaving his downtown Portland firm (and the commute). Robert's practice continues to focus on closely held business and real estate matters.

T. James Lee is a board-certified trust and estate specialist and a director of the regional, Phoenix-based law firm of Fenemore Craig, PC.

Violetta Volovnikov Milnov is working at Krauss and Krauss in Encino, California, doing family law and civil litigation. She is married and has a son and a daughter.

Matthew Lynn Mitton became a shareholder at Jones, Waldo, Holbrook & McDonough in September 2006. His practice focuses on estate planning and wealth management. He and his wife, Andrea, have five children.

Todd Weiler's boutique litigation firm merged with the Salt Lake office of Dorsey & Whitney LLP in 2007. Todd went from a firm with seven attorneys to a firm with almost 700 (with offices all over the world). The change has been a good one, and Todd is now working with **Sam Gardiner** from the Class of 1997. Todd is also serving as the chair of the Davis Chamber of Commerce and as the vice chair of the Utah Republican Party.

CLASS OF 1997

Jerry Dunlap is leaving Washington, D.C., for Germany. He has accepted a position as primary legal advisor within the command of the Judge Advocate General's Office. He just completed a stint in Army litigation in the Washington, D.C., JAG, where his duties were primarily defending the Army against lawsuits and policy challenges and defending the court-martial process against military prisoners.

Don Garner was recently promoted to lieutenant colonel in the United States Air Force Reserve JAG Corps after being in the military for nearly 18 years. He served during Desert Storm as a mental health officer. (He is also a licensed clinical social worker.) Afterwards, he transferred to the JAG Corps and as a captain worked in military justice for over 10 years at Nellis AFB in Nevada and as a major in the 59th Medical Wing of Wilford Hall Medical Center, Lackland AFB, Texas.

Andrea Bachman Mitton is an attorney for Workers Compensation Fund. Her focus is on employer liability and subrogation. She and her husband, Matthew, have five children.

Jamie Swink was appointed as Interim Cache County attorney on January 13, 2009. He has been the county's chief civil deputy.

CLASS OF 1998

Jeremiah Morgan has been named counsel at the international law firm of Bryan Cave LLP, effective July 1, 2008. He is a member of the Appellate, Commercial Litigation, and Labor and Employment Client Service Groups. He has experience in appellate advocacy as a former appellate clerk for the United States Court of Appeals for the Eighth Circuit, having briefed and argued cases in state and federal courts of appeals. Jeremiah also has an active litigation practice in both state and federal trial courts in several jurisdictions, successfully trying cases in both Kansas and Missouri.

Amy Wilson practiced law in California as a prosecutor with Orange and San Mateo Counties after graduation. She lived in Las Vegas for a couple of years after her husband, Scott (BYU, BS 1997), finished dental school. She practiced "mommy law" at home with her three boys for five years, then moved to Arizona, where she worked as a prosecutor for the Maricopa County Attorney's Office. She now works as a pro tem judge in the Maricopa County Justice Courts.

CLASS OF 1999

Melanie McLean Kennedy relocated her family to Redmond, Washington, in January 2009 for her husband's job with Microsoft. She continues to work at MarketStar Corporation in Ogden, Utah, and will commute.

Steven G. Loertscher recently earned an LL.M. in environmental law from The George Washington University Law School, graduating with highest honors. An Air Force judge advocate, he is currently the environmental liaison officer assigned to Air Education and Training Command, Randolph Air Force Base, Texas.

CLASS OF 2000

Liz Romney Bird ran a home-based estate planning practice until her family moved to Oxford, England, because of her husband's schooling. While there, she taught classes in American-style cheerleading, training over 100 students who performed at community events, and was interviewed for the BBC. Returning soon to Indianapolis, Indiana, she will begin another limited estate planning practice along with raising four children.

Jennifer E. Decker is of counsel in the Salt Lake law firm of Fabian & Clendenin. She practices primarily in the area of probate and estate planning. Jennifer has three children.

Joe Hardy joined the national law firm of Gordon & Rees in October 2008. He is a partner in its Las Vegas office.

Eric Myers is in Fresno, California, as in-house counsel for MuniServices LLC.

Lindsey Cottam Nelson practiced civil litigation in California before getting married. She then practiced in Iowa, working in-house for a large company while her husband attended medical school. After the birth of twin boys, she quit work to stay home with them. Her husband's medical residency then took them to North Carolina for three years and then to Arizona for more training. They recently had a third boy.

Rick Rambo has been named vice president of clinical services to Omniflight Helicopters, Inc., a national provider of air medical services. He is responsible for all clinical operations for the company.

Kevin Stinger has recently taken a position as associate in-house patent counsel at Bard Access Systems, a medical device company located in Salt Lake City. Prior to working with Bard, Kevin was an associate at the intellectual property law firm of Workman Nydegger, also located in Salt Lake City. Kevin, his wife, Kimberly, and their six children reside in Farmington, Utah.

Kimberly Mantz Swallow serves on the boards of directors of Serving with Smiles-Children Saving the World and the Live Well Foundation charities. She is working part-time for her former law firm, MacArthur, Heder & Metler PLLC and is looking forward to assisting with the creation of a medical clinic in the remote village of Huilloq, Peru, this summer. Kimberly lives in American Fork, Utah, with her husband, Ben, and three children.

Cristian Turriani has been appointed CEO of Calypso Wireless, a cell phone company that converts voice to text and visa versa and also does wireless conversions.

CLASS OF 2001

Karin Schambeck Briggs works full-time in Los Angeles for the law offices of William Ross, representing various municipal entities and fire districts. In September 2008 she gave birth to a son, her first child.

Drew Briney performs juggling at the Timpanogos Storytelling Festival. He practices law in Spanish Fork, Utah.

Greg Dyer recently started with Stephens Friedland LLP in Newport Beach, where he continues a civil litigation practice. In addition to this recent work-related change, he also celebrated the birth of a third child (and first girl) on September 29, 2008.

CLASS OF 2002

Jon Eskelson works for the Department of Defense Office of General Counsel, litigating on behalf of the government's habeas cases arising from Guantanamo Bay.

Peter C. Schofield was recently named shareholder at the law firm of Kirton & McConkie, which maintains offices in Salt Lake City and Orem, Utah. He practices in the Orem office and is a member of the business litigation section of the firm. Peter focuses his practice on general commercial and real estate litigation.

CLASS OF 2003

Ruben Arredondo served as staff attorney for six second district judges after graduation. He then opened a practice in Utah County focusing on employment, construction, and commercial litigation and now is legal counsel for the state of Utah's Public Service Commission.

Chad Balfanz is an active duty Army officer currently assigned to the United States Military Academy at West Point, New York, as an assistant professor teaching constitutional and military criminal law to seniors and juniors. Prior to this assignment Captain Balfanz was a defense counsel representing soldiers accused of crimes at courts-martial.

Matthew Bell spent five years in the Department of Justice's Dallas field office. He has helped to open a new branch of the United States Attorney's Office in St. George, Utah.

Douglas R. Larson has recently joined Southern Utah University as the executive director of the Michael O. Leavitt Center for Politics and Public Service. Larson comes to suu from the Salt Lake City law firm of Manning Curtis Bradshaw & Bednar, where his practice focused on education law, labor and employment law, administrative law, and commercial litigation.

CLASS OF 2004

Shima Baradaran-Robison has been appointed to serve as a J. William Fulbright scholar through the U.S. Department of State to research and lecture on criminal reform issues in Malawi in 2008-09. She is leaving her position as a litigation and intellectual property attorney at Kirkland & Ellis LLP in New York in August 2008.

David Dibble began practicing in the litigation section at Ray Quinney & Nebeker in Salt Lake City following a judicial clerkship with Judge Dee Benson at the U.S. District Court in 2006. He has since moved into the firm's employment section, where he is involved in litigation and advising clients with respect to employment issues.

Buster Driscoll is with Smith, Driscoll & Associates PLLC in Idaho Falls in a general civil litigation practice, principally commercial, with some municipal.

Jared Hawkins, a JAG in the U.S. Air Force, returned in February from a six-month deployment to Baghdad, Iraq, where he served as a

legal advisor to the Combined Review and Release Board (CRRB). The CRRB is a board of coalition and Iraqi members who evaluate the security risk posed by individual detainees and recommend their release or continued internment to coalition authorities. Jared, his wife, and four sons have been reassigned to Mountain Home Air Force Base, Idaho, in July 2008.

Carolyn Howard-Morris is currently an associate professor in the Legal Studies Program at Utah Valley University and its Legal Studies director. She also practices in criminal defense, family law, defamation cases, and appellate work.

Jonathan Madsen, a partner at the IP boutique firm of Schmeiser, Olsen & Watts LLP, is currently serving in his first year of a two-year appointment as co-chair of the IP Practice in Europe Committee of the American Intellectual Property Law Association (AIPLA). As co-chair, Jonathan works to plan and organize CLE sessions for AIPLA members interested in IP practice in Europe, to coordinate joint meetings with European intellectual property law organizations, and to facilitate committee commentary with regard to amicus submissions on behalf of AIPLA in pertinent U.S. and European cases involving intellectual property issues.

Kim Pearson is at UCLA Law School on a law teaching fellowship with the Williams Institute, having just finished her first semester teaching the course Sexuality and the Law. Her fellowship ends in July 2010. She has three children.

Lance Starr is currently the president of Lance C. Starr LLC, in American Fork, Utah, a sole proprietorship specializing in immigration law and criminal defense. His practice focuses on the defense of immigrants in deportation and removal proceedings in front of the U.S. immigration court. He also specializes in representing aliens in front of the state and federal criminal courts and families with immigration issues.

CLASS OF 2005

Michelle Allred was recently elected as the president-elect of the Utah Young Lawyers Division of the Utah State Bar. She will assume the position of president at the Utah State Bar Summer Convention in Sun Valley in July 2009. She also currently serves as the American Bar Association district representative for the states of Nevada and Utah.

Eric Carlson transferred from the Washington, D.C., office of Covington & Burling LLP to help start the firm's new office in Beijing, China. He will continue to work on international trade matters.

Matthew Fogt is at Allen Matkins in Orange County, California, doing real estate and land use law.

Russell W. Hall III ("BBQ Man") has practiced law in Myrtle Beach, South Carolina, with Clemmons Law Firm LLC for the past 18 months. He still has an annual BBQ. Everyone is invited to come on April 25, 2009; please call 843-267-0906 for directions.

Seth Hobby left the law firm of Parsons Behle & Latimer to assume the role of associate general counsel at Dyno Nobel Inc., a Salt Lake City-based global commercial explosives corporation.

Kalani A. Morse, JD/MPA, is managing a growing caseload of clients as a management defense attorney at the labor and employment defense firm of Torkildson Katz in Honolulu, Hawai'i. He lives in Kailua, Hawai'i and likes to spend time with his wife, three small children, and surfboard.

Tyson B. Snow, along with his firm, Manning Curtis Bradshaw & Bednar LLC, has relocated offices to the U.S. Bank Building located at 170 South Main Street in Salt Lake City, Utah. Tyson invites you to stop by and check out the new digs.

Todd M. Sparks is the deputy staff judge advocate for the Information Directorate, Air Force Research Lab, Rome, New York. Captain Sparks oversees labor law, environmental law, and other civil law matters in addition to his military specific duties. He was previously assigned to McGuire Air Force Base, where he served as the chief of civil law and claims and as a special assistant U.S. attorney, District of New Jersey.

CLASS OF 2006

Kristin Evans Bunnell and her husband, David Bunnell, are living in Kansas City, Missouri. She recently finished her Eighth Circuit Court of Appeals clerkship with the Hon. Duane Benton, worked for Sprint Nextel in their Commercial Real Estate Department, and will begin working for the Office of General Counsel of the Social Security Administration in Kansas City, Missouri.

Nathan Catchpole and his family have moved to Wilmington, Delaware, where he is serving a one-year term as a law clerk for the Hon. Sue L. Robinson, United States district judge for the District of Delaware, after two years as a trial attorney at the United States Department of Housing and Urban Development in Washington, D.C. Nathan's clerkship ends in August 2009.

Jacob Reynolds finished his clerkship with Chief Roger L. Hunt in the U.S. District Court, Las Vegas. He has now joined the firm Hutchison & Steffen in Las Vegas, a firm focusing mostly on litigation matters. Currently the firm is trying to protect the largest jury award in the nation for 2008. He and Tammy Richards were married in October 2008.

CLASS OF 2008

Jordan Baggs passed the New York Bar exam and after spending two months travelling in China and southern Africa, started work at Lovells LLP in New York City. He works primarily with the Financial Institutions Group, spending time on reinsurance deals, capital markets deals, banking and finance deals, M&A, and general corporate work. He is actively involved with pro bono matters that deal with violations of international human rights.

Gil Bradshaw and wife, **Marin Bradshaw**, '06, have moved to New York City, where Gil started at the law firm of Chadbourne and Parke LLP. He practices in the Corporate Bankruptcy and Restructuring Department and has been busy assisting in the representation of secured creditors in the Lehman Brothers Chapter 11 bankruptcy filing, in the representation of the creditors committee for Tribune Company, and in the ASARCO LLC copper mine reorganization.

J. Spencer Clark has joined the law firm of Roetzel & Andress as an associate in the Naples, Florida, location.

Rob Crockett enjoys his work as an associate at Fabian & Clendenin in Salt Lake City in the areas of energy law, commercial litigation, and real estate litigation.

Randall L. Jeffs is practicing at Jeffs & Jeffs, in Provo, Utah, handling general litigation with a focus on land use disputes. He is loving every minute of it!

Rachel Murdock is in a Presidential Management Fellowship with the federal government in Washington, D.C. The fellowship is two years and involves a number of rotations with various agencies within the government. She is currently working with the General Services Administration, Office of Government-wide Policy.

Jacob Ong has been hired by Brinks Hofer Gilson & Lione, one of the largest intellectual property law firms in the United States. He'll be working in the Salt Lake City office.

Stellar to Stalker in Five Minutes

(RUMINATIONS ON THE SHORT HALF-LIFE OF PERCEIVED AUTHORITY)

by John L. Rozier

JD, BYU, '82, founding partner of Nelson & Rozier
(a two-attorney firm founded three months ago)

A LAW DEGREE BRINGS A MODICUM OF AUTHORITY SOME WOULD CALL POWER. Influence or clout may be better terms, though, perhaps only in our own small circles or in our own small minds. Anytime I press a point too far at the dinner table, I'm sure to hear the refrain "All right, counselor"—and not with a lifting uplift in my wife's voice nor with the joy of saying, "Alright, outta sight," as in "I can really grove what you're saying." No, she who must be obeyed (Suzanne Hawkins Rozier, BYU class of '82, with my apologies to Rumpole at the Bailey) is knocking me down to my proper notch.

The biggest joys in my practice have come from fees discounted, free advice dispensed, and profits shared with partners. The temptation, however, has been to set financial goals, stretch to meet them, and, along the way, to charge what started as a fair fee and blossomed into a rout. My father, who still invests carefully and spends infrequently, upon hearing of my latest conquest, wisely stated: "It's never enough, is it?" And certainly it never is. The scorecard must be maintained, or so we tell ourselves.

Along the way, some rough balance ensues. Bills get paid, and clients appreciate getting charged perhaps a little less than from those other guys. Undercharged clients still grouse, overcharged clients effuse with praise, and nonpayers line up at the door. The other day at the gym, a fellow bar member was a bit melancholy as he related a recent courtroom loss and the financial blow it struck to his small shop. "I used to think we charge too much," he said, "but now I'm not so sure." And so it goes. In a better world the losing case would go unpursued and everyone would be charged less. Until I find that better world, my clients will probably continue to include both winners and losers.

Most things in life do seem to even out. I recently finished one of those five-year Church assignments where the honor bestowed outshines the worth of any one man. I could walk down any hallway and be greeted by flocks of Primary children calling out my title. I could tussle the hair of each young man and call each young girl by her first name, and their proud parents would beam over the acknowledgement of their offspring. Then, not unexpectedly, but with the numbing quickness of a congregational vote of thanks, my role and my place shrank to its proper slot in the rank and file of all others, and with a sigh of relief, I rested.

When I next walked the halls, I was mortal once again, ordinary and regular. Tempted to call out to little Sally or Sam, I held back, wondering how it would look coming from a 52-year-old man without my wife close by my side. Now if I teach a Primary class, the door is left ajar, and women leaders poke their heads in at regular intervals. Stellar to stalker in five minutes. And so it goes.

Or perhaps I never was so stellar, just trying to be obedient and useful. I certainly don't see myself as a stalker. The truth lies somewhere between. Perhaps when I die or retire and gain my release as a lawyer, I will learn that that too was fleeting and overinflated and was notable mostly for its usefulness to others and not for its attendant honors and rewards. At least, that is the lesson I hope I have learned.

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 wisej@lawgate.byu.edu.

Clark Memorandum

J. Reuben Clark Law Society

J. Reuben Clark Law School

Brigham Young University

