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LIFE in the LAW

RELIGIOUS CONVICTION

EDITED BY
JANE H. WISE, SCOTT W. CAMERON,
and GALEN L. FLETCHER

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Contents

James R. Rasband
Preface v

RELIGIOUS CONVICTION

D. Todd Christofferson
Law and Becoming 3

Elizabeth A. Clark
Becoming a Fruitful Tree: Christ and the Limits of Legal Thinking 13

Bruce C. Hafen
Ambiguity in Law and in Life 27

James R. Rasband
Unto Whom Much Is Given 39

Cecil O. Samuelson
Testimony of Jesus Christ 49

PUBLIC SERVICE

J. Reuben Clark Jr.
To Them of the Last Wagon 63

Quentin L. Cook
Latter-day Saint Lawyers and the Public Square 71

David Dominguez
A Walk of Thanksgiving 83

Carl S. Hawkins
The Work of Serving Others 89

Steven E. Snow
Musings of a Small-Town Lawyer 99

Seth P. Waxman
Civic Virtue 107

PROFESSIONAL EXCELLENCE

Mehrsa Baradaran
Education Multipliers 115

Ming W. Chin
Liberty, Civility, and Professionalism 121

Robert M. Daines
Lock In: Loved Ones and Lawyers 131
Annette W. Jarvis
  Serve God, Love Me, and Mend 139

John W. Welch
  The 21st Century as the Century of Duties? 147

FAIRNESS AND VIRTUE

Scott W. Cameron
  Repairers of the Breach 161

L. Whitney Clayton
  He Answered Discreetly 171

Matthew B. Durrant
  The Lawyer as Peacemaker 181

Kristin B. Gerdy
  The Heart of Lawyering: Clients, Empathy, and Compassion 189

H. Reese Hansen
  We Are to Love God and Our Neighbors 203

Brett G. Scharffs
  The Most Important Three Things in the World 215

RULE OF LAW

Larry Echo Hawk
  Empowered by Education and Vision 231

Monroe G. McKay
  Hysteria and the Bill of Rights 237

Thomas D. Morgan
  Heroes for Our Time: Going Beyond Ethical Codes 245

Dallin H. Oaks
  Preserving Religious Freedom 251

David A. Thomas
  A Law Upon Which All Blessings Are Predicated 269

Index of Chapter Authors 279

Index 281
Preface

James R. Rasband

This collection of essays continues BYU Law School’s effort to build an architecture of ideas to assist lawyers in their endeavor to integrate religious faith with commitment to the highest professional ideals. The manifestation of that effort with which readers will likely be most familiar is the Law School’s twice-yearly publication of the Clark Memorandum. The Life in the Law series, of which this is the third volume, recaptures highlights from the Clark Memorandum and also collects from other settings some of the most thoughtful insights by LDS lawyers and lawyers of other faiths. These essays acknowledge that while the law is a noble profession, it is fraught with potholes and traps for the unwary. In The Pilgrim’s Progress John Bunyan provided an allegory to assist 17th-century travelers as they wended their way from this world to the heavenly city. With wit and wisdom, the contributors to Life in the Law: Religious Conviction undertake a similar challenge for 21st-century lawyers.

My hope is that this essay collection, the Clark Memorandum, and the other work we do at BYU Law School to erect an architecture of rigorous thinking about the relationship among religious faith, the rule of law, and professional service will have an enduring influence on our commitment to each of these precepts.

In addition to the three compilers and the chapter authors, there are various members of BYU Law School and the campus community I would like to thank for their contributions to Life in the Law: Religious Conviction. These include Anne Apuakehau, Jeanette Befus, Cameron Carter, Jaylen Dodd, Dave Eliason, Diane Foerster, Matt Imbler, Lena Harper, Jessica Jones, Doug Maxwell, Robert L. Maxwell, Natalie Miles, Marny Parkin, and Bjorn Pendleton.
Each of us having a testimony of Jesus as the Christ has a heavy and great responsibility to live our life so that our conduct will match our convictions.

CECIL O. SAMUELSON (P. 58)
I have titled my remarks this evening “Law and Becoming.” By this I mean to talk about the vital role of law in what we may become. In speaking of becoming, I am taking the long view not only of what a person may be able to make of himself or herself in the space between birth and death, but also of the eternal potential of men and women. And, in speaking of law, I want to reference not only matters of our codes and courts but also the laws of God.

Through revelations granted to the Prophet Joseph and his predecessors, we learn some profound things about our relationship to God and our ultimate destiny. We learn that Jesus Christ, as the Son of God, progressed “from grace to grace, until he received a fulness”¹ and that we may follow in that same path. He said, “For if you keep my commandments you shall receive of his fulness, and be glorified in me as I am in the Father; therefore, I say unto you, you shall receive grace for grace.”² In explaining the natural conclusion of this pattern, Joseph Smith said:

> Here, then, is eternal life—to know the only wise and true God; and you have got to learn how to be gods yourselves, and to be kings and priests to God, . . . by going from one small degree to another, and from a small capacity to a great one; from grace to grace, from exaltation to exaltation, until you attain to the resurrection of the dead, and are able to dwell in everlasting burnings, and to sit in glory, as do those who sit enthroned in everlasting power.³

Joseph Smith also referred to God’s use of law in this process:

> The first principles of man are self-existent with God. God himself, finding he was in the midst of spirits and glory, because he was more intelligent, saw proper to institute laws whereby the rest could have a privilege to advance like himself. The relationship we have with God places us in a situation to advance in knowledge. He has power to institute laws to instruct the weaker intelligences, that they may be exalted with Himself, so that they might have one glory upon another.⁴
I cite one more teaching from the Prophet that adds the remaining element to this equation—agency:

All persons are entitled to their agency, for God has so ordained it. He has constituted mankind moral agents, and given them power to choose good or evil; to seek after that which is good, by pursuing the pathway of holiness in this life, which brings peace of mind, and joy in the Holy Ghost here, and a fulness of joy and happiness at His right hand hereafter; or to pursue an evil course, going on in sin and rebellion against God, thereby bringing condemnation to their souls in this world, and an eternal loss in the world to come.5

All of this declares that we have a potential made possible by God beyond anything we can fully comprehend or appreciate at present. And we recognize, of course, that none of us will achieve the ultimate end, the status of eternal life with God our Father, in a matter of days or years or without substantial help. We require the help of one another and an incalculable measure of divine grace originating in Christ and administered through the Holy Ghost. Nevertheless, our own choices will always be critical to what we become. And the capacity and power to choose are, as Joseph Smith declared, dependent on laws instituted by or under the authority of God.

Such laws link particular actions to fixed outcomes. If a given choice did not always and invariably yield the same result, we could not in the end control outcomes, and the power to choose would be meaningless. And even with law, if we are not free to act, either to follow or reject it, we likewise could not use law to progress from grace to grace. I believe that Satan's proposals in the premortal world attacked both of these principles. He wanted to be vested with a power of compulsion over the souls of men and with the honor or power of God:

And I, the Lord God, spake unto Moses, saying: That Satan, whom thou hast commanded in the name of mine Only Begotten, is the same which was from the beginning, and he came before me, saying—Behold, here am I, send me, I will be thy son, and I will redeem all mankind, that one soul shall not be lost, and surely I will do it; wherefore give me thine honor.6

Had Satan been granted power to dictate our choices, we would have become nothing more than his puppets, eternally dependent upon him. It is my personal opinion that in demanding “Give me thine honor,” Satan was also coveting God’s power to establish the law, and it was his intention to use that power arbitrarily—to apply, revoke, and change laws in an arbitrary fashion that would destroy our power to act independently and to choose our destiny. For whatever reason, Satan was exceptionally persuasive in lobbying for his approach. Happily, his plan was rejected, although echoes continue to reverberate in the world around us.

The deities of ancient Greek and Roman mythology were often arbitrary beings. While they were supposed to possess remarkable powers,
they were ruled by their passions. As they fought and jockeyed for position among themselves, or simply vented feelings of lust, anger, or frustration, mere mortals were sometimes caught in the cross fire. We can be grateful, to say the least, that the true and living God is nothing like the imaginary Zeus or Jupiter.

The scripture states, “There are many kingdoms. . . . And unto every kingdom is given a law; and unto every law there are certain bounds also and conditions.” Apparently, laws with their conditions and bounds may vary in different kingdoms or spheres—as, for example, the laws of the several kingdoms that prevail in our postmortal life. The Lord says that His celestial kingdom is populated by those who are “sanctified through the law which I have given unto you, even the law of Christ,” and that those who cannot abide this celestial law must inherit a lesser kingdom whose law they are able and willing to follow. While differing laws may apply in different parts of God’s creation, the laws that do apply do not themselves vary. Such beings and creations as are subject to them can rely on them to achieve their divine potential. We are told that those who are governed by law are preserved, perfected, and sanctified by the same.

Under the umbrella of divine law and order applicable to the “kingdom” that is our present mortal world, God delegates to us, His children, the opportunity and responsibility to establish laws and legal systems to govern human relations and conduct. Let me quote from section 134 of the Doctrine and Covenants:

We believe that governments were instituted of God for the benefit of man; and that he holds men accountable for their acts in relation to them, both in making laws and administering them, for the good and safety of society.

We believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right and control of property, and the protection of life.

These standards—(1) that laws are to be made and administered for “the good and safety of society” and (2) that they must secure to each individual the rights of life, property, and conscience—bespeak a legal environment in which man may progress toward his divine destiny, to become what God has ordained he may become. They establish the stability, order, and means whereby each individual may exercise moral agency. They produce a setting wherein each person, if he or she so desires, can “come unto Christ, and be perfected in him” and all that that entails.

In the infant days of The Church of Jesus Christ of Latter-day Saints, the Lord expressed in a revelation to Joseph Smith the wisdom and benefit of organizing the Church and its work “according to the laws of man; That your enemies may not have power over you; that you may be preserved in all things; that you may be enabled to keep my laws.” I read this to mean
that, as a general principle, submission to the laws of man will offer very real protections, providing in effect a safe haven within which we can act to obey and serve God.

In his book *The Clash of Orthodoxies*, Robert P. George has an interesting chapter titled “What Is Law?” He examines the debates among legal thinkers and philosophers in the English-speaking world over the last century, beginning with Oliver Wendell Holmes, about the origins and nature of law. He cites, for example, the group whose legal realist movement flourished to some extent in the 1930s and 1940s. These scholars debunked the idea of legal objectivity; to be realistic, they maintained, we “should abandon the idea that law pre-exists and is available to guide legal decisions.” They argued that judges’ reasoning and citation of laws as the basis of their decisions are in reality “mere legal rationalization of decisions reached on other grounds.”

George reviews other theories such as “legal positivism,” which in some versions holds to “the idea that law ought not to embody or enforce moral judgments.” Other proponents, however, acknowledge that the content of legal rules reflects “nothing so much as the moral judgments prevailing in any society regarding the subject matters regulated by law.” For George himself, “legal rules and principles function as practical reasons for citizens, as well as judges and other officials, because the citizens appreciate their moral value.” He subscribes to the proposition *lex iniusta non est lex* (an unjust law is not law), by which he means, if I understand him correctly, that it is essential for the laws and legal systems created by man to have a basis in natural law or morality.

In his 1993 encyclical letter titled “Veritatis Splendor,” Pope John Paul II expressed the relevant Catholic doctrine in these words:

> Only by obedience to universal moral norms does man find full confirmation of his personal uniqueness and the possibility of authentic moral growth. . . . These norms in fact represent the unshakable foundation and solid guarantee of a just and peaceful human coexistence, and hence of genuine democracy, which can come into being and develop only on the basis of the equality of all its members, who possess common rights and duties. *When it is a matter of the moral norms prohibiting intrinsic evil, there are no privileges or exceptions for anyone.* It makes no difference whether one is the master of the world or the “poorest of the poor” on the face of the earth. Before the demands of morality we are all absolutely equal.

Latter-day Saints would necessarily be included among those who believe in preexisting and universal natural law—or, as we might express it, law rooted in the preexisting justice and order of God. I firmly agree that insofar as humanly possible, man’s laws and legal systems should be tied to God’s laws and should reflect the same ultimate purpose: to foster our becoming all that we can become here and hereafter. People instinctively
appreciate the value of law that has valid moral underpinnings because it is in their nature as spiritual beings and children of God—the ultimate moral Being. The light of Christ that we sometimes call conscience lights every person who comes into this world.21

Some of you may be thinking, “This is all very grand, but where, for example, does tax law fit in?” I would answer that it probably does not, since tax codes are the work of the devil, right? But in all seriousness, even the very mundane can have a role if it is supportive of—or at least not inconsistent with—overarching divine principles and purpose. The Uniform Commercial Code, for example, would seem to have little if any contribution to make in helping us achieve our divine potential, but even something so unethereal can have value as part of a larger legal structure that supports fundamental fairness, minimizes strife, rewards honest labor, preserves stable families, and, ultimately, enshrines moral agency.

Returning again to the Doctrine and Covenants:

We believe that all governments necessarily require civil officers and magistrates to enforce the laws of the same; and that such as will administer the law in equity and justice should be sought for and upheld by the voice of the people if a republic, or the will of the sovereign.22

Here, more specifically, we come to many of you in the profession of law. You live in societies where the system of “civil officers and magistrates” includes judges and lawyers who occupy a vital role in administering the law “in equity and justice.” You whose first loyalty is to God can press in a variety of ways for laws and systems that track the divine model or that at least do not undermine it. Let me be clear that I am not speaking of any endeavor to impose upon society by some sort of fiat what we see as the appropriate application of divinely revealed principles. We cannot, and we make no attempt to do so. I am speaking of advocacy and persuasion. At the same time, it will not do to pretend that an individual or group may not participate in the debates and processes that shape our laws simply because their arguments are based on moral norms or because their moral vision is not shared by all citizens. Essentially all legislation is based on moral judgments—religious, secular, or otherwise—and all parties to the ongoing contest seek to have their ethical and moral concerns heard. In the end we are governed by those that prevail in the public mind. It is not an imposition of religion for religionists to take part in the discussion, and there is no justice in one side with deeply held values seeking to silence another because it espouses different deeply held values.

Consider the example of William Wilberforce and others of his time who sought to conform the laws of Great Britain to a higher moral standard of equity and justice. Wilberforce is rightly remembered and revered for his central role in the abolition of the slave trade that was then dominated by British ships. For some 18 years, beginning in 1789, he labored as
a member of Parliament to end this evil commerce and lay the groundwork for the abolition of slavery altogether:

Wilberforce’s involvement in the abolition movement was motivated by a desire to put his Christian principles into action and to serve God in public life. . . . [He] sensed a call from God, writing in a journal entry in 1787 that “God Almighty has set before me two great objects, the suppression of the Slave Trade and the Reformation of Manners [moral values].”

Initially, Wilberforce’s bills in the House of Commons were easily defeated. Then, just as momentum began to build, the French Revolution and slave revolts in the West Indies caused a shift back to caution and delay. During the protracted campaign, “Wilberforce’s commitment never wavered, despite frustration and hostility. He was supported in his work by fellow members of the so-called Clapham Sect . . . . Holding evangelical Christian convictions, and consequently dubbed ‘the Saints,’ the group lived in large adjoining houses in Clapham.” Finally, in 1807, Wilberforce’s Abolition Bill passed the House of Lords and was presented to the House of Commons. “As tributes were made to Wilberforce, whose face streamed with tears, the bill was carried by 283 votes to 16.”

It is significant to recognize that while Wilberforce, as a member of Parliament, took the leading role in official circles, the active and devoted efforts of many others with no political portfolio were essential to success in the campaign to end the slave trade. The collaboration of Thomas Clarkson, a fellow graduate of Wilberforce at St. John’s Cambridge, was especially important. Also critical was the part played by members of the Society for Effecting the Abolition of the Slave Trade, a group made up primarily of like-minded British Quakers and Anglicans that included Clarkson and that Wilberforce joined in 1791.

The society was highly successful in raising public awareness and support, and local chapters sprang up throughout Great Britain. Clarkson travelled the country researching and collecting firsthand testimony and statistics, while the committee promoted the campaign, pioneering techniques such as lobbying, writing pamphlets, holding public meetings, gaining press attention, organizing boycotts and even using a campaign logo: an image of a kneeling slave above the motto “Am I Not a Man and a Brother?” designed by the renowned pottery-maker Josiah Wedgwood. The committee also sought to influence slave-trading nations such as France, Spain, Portugal, Denmark, Holland and the United States, corresponding with anti-slavery activists in other countries and organising the translation of English-language books and pamphlets. These included books by former slaves Ottobah Cugoano and Olaudah Equiano, who had published influential works on slavery and the slave trade in 1787 and 1789, respectively. They and other free blacks, collectively known as “Sons of Africa,” spoke at debating societies and wrote spirited letters to newspapers, periodicals and prominent figures, as well as public letters of support to campaign allies. . . . The campaign proved to
be the world’s first grassroots human rights campaign, in which men and
women from different social classes and backgrounds volunteered to end the
injustices suffered by others.26

William Wilberforce and his allies provide an encouraging example
of success after much labor and against daunting opposition. Not every
effort, however, will succeed—at least not initially. Consider a more recent
example in the arena of things that bear on marriage and families and the
rearing of children. The “no-fault” divorce laws that have been adopted
in the United States and elsewhere were warned against decades ago by
President David O. McKay and others. The disastrous consequences vis-
ited on the institution of marriage since then are clearly evident, with
children being the primary victims—some of whom, given their suffer-
ing, are now reluctant to marry and rear families themselves. But whatever
the setbacks in our striving to sustain family or other moral imperatives
among our fellowman, surely we must, as Paul declared, fight the good
fight.27 Mohammed is reported to have said, “Who[so]ever sees a wrong
and is able to put it right with his hand, let him do so; if he can’t, then with
his tongue; if he can’t, then in his heart, and that is the bare minimum of
faith.”28

Of all the moral imperatives we seek to embrace and defend in our
legal systems, in my opinion it is individual agency and accountability
that must always be preeminent, because agency is so basic to realizing
our God-given potential. On the one hand, we should uphold those legal
and political concepts that protect legitimate individual action, and, on
the other, we should oppose those theories and schemes that exert unjust
dominion or diminish predictability and consistency in the operation of
law. True, there is some degree of compulsion in any law, but generally
it is the kind designed to preserve space and opportunity for life, liberty,
and the pursuit of happiness. Other proposals, however, look to compel
our acceptance or tolerance of actions that offend the moral conscience. A
potential example would be the case of a doctor being forced to participate
in an abortion against his or her conscientious objection on pain of forfeit-
ing the right to practice medicine.

All man-made legal systems are imperfect and include elements of
injustice. Still, you can strive to make the legal system within which you
live and work come as close as possible to the perfectly just “legal sys-
tem” of God. You can take as your guide not only the wisdom of simi-
larly minded men and women from the past but also the teachings of the
scriptures, prophets, and the Holy Spirit. In this, as in other matters, you
are invited to study out in your own mind concepts regarding the stan-
dards, direction, and even the specifics of what the law should be, how the
legal system should be structured, and how it should operate and then to
ask God if it be right.29 Surely you are entitled in your role and sphere to
revelation on things that bear so directly on not only the present estate of man but also his ultimate future.

God finds His glory, as Joseph Smith said, in providing laws by which other beings can come to enjoy the same perfections and glory He possesses. Our view and motivations should be the same. Rather than seeing law as an instrument of domination, it is our mission to use it as an enabling power to help men and women achieve greater independence and ultimate potential. We do so by acting to have our earthly governmental and legal systems mirror as closely as possible the divine order.

After all I have said in praise of law and all the effort I have enjoined you to make in sustaining and defending a moral order, we must in the end acknowledge that we cannot achieve ultimate justice apart from Jesus Christ. To establish and preserve the law is a great good, but the greatest good we can do in helping others become what they can become will be to lead them to the Savior. Only His Atonement has the power to overcome all weakness and imperfection and to make right all injustice. Only He can convert offense and injury into blessings; only He can bring life again to a life unjustly cut short; only He can return a perfect body for one diseased or malformed; only He can reinstate beloved associations lost and make them permanent; only He can make right the suffering entailed upon the innocent by ignorance and oppression; only He can erase the impact of sin on one who is wronged; only He can remove the stain and effect of sin in the sinner; only He can eliminate sorrow and wipe away all tears; only He can provide immortality; only His grace can compensate for our inadequacy and justify us before that law that enables us to become joint heirs of eternal life with Him. Of the glorious reality of the living Christ, I bear my witness.

This satellite fireside address was given to the J. Reuben Clark Law Society at the Conference Center Little Theater in Salt Lake City on February 4, 2011. Reprinted from the Clark Memorandum, spring 2011, 4–11.

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Notes

3. History of the Church, 6:306.
4. Id., 6:312.
5. Id., 4:45.
10. See D&C 88:34.
15. Id., 219.
16. Id., 222.
17. Id., 223.
18. Id., 226.
22. D&C 134:3.
24. Id.
25. Id.
26. Id.
27. See 2 Timothy 4:7.
30. See Moses 1:39.
Becoming a Fruitful Tree: Christ and the Limits of Legal Thinking

Elizabeth A. Clark

Over the years I have struggled with myself and have counseled with others as they have grappled with issues of compartmentalization, integrity, balance, choice of career, finding meaning in work, why we come to law school, and why we do what we do after we leave law school. Students ask whether they should pursue lofty goals or seek a job in which they can better support their family. Others wonder what it means to have a life of integrity while practicing law. Women and, increasingly, men ask how they can find an appropriate balance between competing demands of family and profession. We all attempt to make sense of our lives in the law.

I will return to some of these concerns about integrity, balance, and career choice, but I want to approach the issue through discussing idolatry and law. In a remarkable article in 1976 entitled “The False Gods We Worship,” President Spencer W. Kimball called us to repent from trusting in the arm of flesh: “In spite of our delight in defining ourselves as modern, and our tendency to think we possess a sophistication that no people in the past ever had—in spite of these things, we are, on the whole, an idolatrous people.” He explained, “I use the word idolatry intentionally. . . . Whatever thing a man sets his heart and his trust in most is his god; and if his god doesn’t also happen to be the true and living God of Israel, that man is laboring in idolatry.” If pressed to see how this would apply to us as lawyers, perhaps our initial response might be to see our false gods as vanity, power, wealth, or recognition. While I do not mean to underrate the allure of these false gods, today I mean to focus on two perhaps less obvious false gods that we as lawyers are also prone to worship: principles and goals.
In the first section of the Doctrine and Covenants, we are told that “every man walketh in his own way, and after the image of his own god, whose image is in the likeness of the world.” What is the image of our god, whose image is in the likeness of our legal world? In contrast to the physical creations of engineers or artists, lawyers create primarily a world of ideas. We balance, structure, restructure, categorize, recategorize, interpret, and apply ideas and concepts. “Preemption,” “501(c)(3) organization,” “illegal alien,” and “Fair Labor Standards Act violation” are all ultimately abstract conceptions in an equally abstract world of legal structures and norms. Law students are taught early to “think like a lawyer” in order to access this abstract legal world. Students quickly learn legal ways of thinking and arguing, chief among which are principles and goals.

We use both principles and goals in legal analysis: principles include black letter law, prima facie cases, or outlines of course material. Goals appear in balancing tests, arguments for public policy, and theories of legal realism or justice. We also often use principles and goals in how we think about the legal profession. Principle-based approaches see law as devotion to principle over emotion, as ensuring principles such as due process, or as a set of universal principles. Goal-oriented approaches see law as instrumental, such as pursuit of justice, equity, or social stability. My argument today is that we often create a god in the image of our legal world: we worship the god of correct principles or the god of worthwhile goals. These false gods are not exclusive to lawyers (to some extent they can be seen as occurring throughout Western thinking since the Enlightenment) but are endemic and patterned after the likeness of our legal world. Worship of these false gods has very practical implications. Let me illustrate this by looking at how they affect our understandings of integrity, balance, and career choice.

Worship of Principles and Goals

One form of idolatry borrowed from legal thinking is the worship of principles. We see the gospel as a set of principles to be learned and applied—a master outline to learn and follow. In this view the gospel can be reduced to a group of principles, such as justice, mercy, faith, tithing, and provident living. Our job is to learn and live each principle. We may understand that these principles have a hierarchy of importance or multiple elements, but we ultimately see the gospel as a set of principles to be understood and lived. With this mind-set there usually isn’t an obvious connection between the gospel and lawyering, except in seeing the gospel as a source of ultimate moral principles and ethical guidelines for our work as lawyers. In fact, it seems sort of silly to those worshipping abstract principles to suggest that there is more connection between the legal world and the gospel. While there may be some larger moral principles
underlying bankruptcy, tort law, or tax law, as well as some morally based ethical rules, these fields each operate primarily under their own set of very secular rules. Fencing-in and fencing-out rules, for example, seem completely unconnected to the gospel. In a similar way, from this vantage point our work in the legal world is also largely separate from the gospel. When we act in the world, we act on the world’s terms: billable hours, academic rank and status, cases won, IPOs handled. For the worshipper of correct principles, life is primarily a set of separate boxes governed by separate principles.

What does worship of principles mean for questions of integrity, balance, and career choice? In the worship of correct principles, integrity means accepting gospel limits on the box of our legal profession. The box of work as a lawyer must fit in the overall box of the gospel. Integrity here means that gospel principles provide ethical boundaries for our work and also that we drill some holes in the box of work, allowing gospel principles in to inspire high ethical and personal standards. Balance means trying to squeeze in all the needed boxes in our lives: professional obligations, Church work, family time, and personal spiritual development. If we’re honest, we’re often left a bit uncomfortable because the box of time spent on our legal work is usually larger than the boxes for family and the Church, which we know are higher in the ultimate hierarchy of principles. But the boxes often just seem to come that way. Career choice from this approach is equally problematic: we are torn between the worthwhile principles of supporting a family, having time for family, and contributing to society.

Principles, however, are not the only objects of worship we borrow from our legal world. Many law students are drawn to the practice of law because of goal-based approaches. Students want to make a difference, serve an underrepresented population, or improve access to justice. Legal norms themselves can be seen to embody the pursuit of worthwhile goals in public policy or reflect multiple goals, such as in balancing tests. We may begin to see the gospel as a set of goals or aspirations, following the likeness of our legal world. We see the goal of getting to the celestial kingdom, the goal of building an eternal family, and the goal of building the kingdom here on earth. We have multiple smaller goals, such as giving significant professional service, building the kingdom by faithfully fulfilling callings, and creating a spiritual home environment.

So what do integrity, balance, and career choice look like here? I suggest that when we worship worthwhile goals, integrity means spending all of one’s life dedicated to what matters most. A person with integrity in this view is one who stays focused on the big picture, who constantly remembers their eternal goals. Balance, theoretically at least, shouldn’t be a problem, because one is supposed to be focusing on what’s most important. The problem, of course, is balancing subsidiary goals such as professional
service, Church service, and family time. This can become a nightmare balancing test in which everything is the most important. Elder Bruce C. Hafen told the story of a young mother with “a large family, a responsible Church calling, and a busy husband. She was bewildered about what should come first in her life and when. Someone told her, ‘Well, just be sure you put the Lord’s work first.’ Her reply: ‘But what if it is all the Lord’s work?’”

Choosing a profession also seems simple—at least at the outset. Worshipping goals suggests that we should find a profession in which we can actively do the most good: we should defend the defenseless, build the Church and kingdom, or teach the gospel. If we can’t find work doing this, we feel discouraged and a bit guilty. Even if we do find deeply meaningful work, worship of goals can result in discouragement and burnout when we realize the inevitable amount of time spent in less meaningful aspects of our work or if we see limited success in accomplishing our goals.

Does Salvation Come by Principles or Goals?

At this point (or perhaps considerably earlier), some of you may respond that I am setting up straw men. “These aren’t false gods,” you might say. “If we really had a true understanding of all gospel principles, we would be humble, patient, kind, and long-suffering, and we would be celestial material.” Or, “Teaching the gospel is about teaching correct principles,” you might say. The most basic gospel manual is titled *Gospel Principles*, after all. We can use principles of revelation or priesthood blessings to help us resolve apparent conflicts among principles we are asked to meet. If one principle cannot resolve a situation, another, such as faith, humility, or patience, might be what is required.

Or you might argue that the gospel does require us to focus on worthy goals. We are regularly encouraged to focus on what matters most and to align our lives with celestial priorities. Issues of discouragement or burnout are merely a lack of vision. Balance itself or being in tune with revelation can be goals that we pursue, reconciling otherwise competing demands.

In response, let me diverge for a moment. When preaching to the unrighteous King Noah and his court, Abinadi posed this question: “Doth salvation come by the law of Moses? What say ye? And they answered and said that salvation did come by the law of Moses.” But here comes the telling part. Abinadi said, “I know if ye keep the commandments of God ye shall be saved.” And then, after reminding Noah and the priests that they weren’t quite living up to the Ten Commandments that were the core of the law of Moses, he gave a fuller answer: “And moreover, I say unto you, that salvation doth not come by the law alone; and were it not for the
atonement, which God himself shall make for the sins and iniquities of his people, that they must unavoidably perish, notwithstanding the law of Moses.”

Abinadi taught that if we could keep all the commandments we could be saved—“if ye keep the commandments of God ye shall be saved”—but explained that salvation does not come by the law alone: “[W]ere it not for the atonement, [his people] must unavoidably perish, notwithstanding the law of Moses.”

Our salvation will not come through our perfection. If we want to worship what will save us, we shouldn’t set up the law of Moses as our idol. In a similar vein, I would suggest that salvation does not come through the worship of correct principles or worthwhile goals. Of course, if our lives truly reflected a perfect understanding of gospel principles and goals, we would be saved, but our salvation will not come through principles and goals alone.

It may seem unduly harsh to suggest that we are tempted to actually worship principles and goals. But, as President Kimball explained, “Whatever thing a man sets his heart and his trust in most is his god.” Ultimately, we worship what we think will save us. We worship where we put our time, attention, focus, trust, and love. Do we devote time, attention, and love to marshaling and following gospel principles or seeking eternal goals? Do we trust these principles or goals to see us through difficult decisions? While correct principles and worthy goals are not bad in themselves, they are ultimately insufficient. We are saved only by the true and living God, not by principles or goals—however useful these may be. To repeat President Kimball, “Whatever thing a man sets his heart and his trust in most is his god; and if his god doesn’t also happen to be the true and living God of Israel, that man is laboring in idolatry.”

Please don’t misunderstand me. I recognize that principles can help us to understand and teach doctrine clearly and that goals can help us to exercise our agency wisely, but my point is that neither can save and that we should not use these to order our thinking about our lives. When our conceptions of integrity, balance, and career choice stem from beliefs in principles or goals instead of from worship of a living God, then principles and goals become the way we order our thinking and living. If we let principles and goals order our paths and define our lives, I suggest that we do indeed make these the focus of our worship. The practices and ordinances of the law of Moses were helpful as reminders, types, and teaching patterns, just as principles and goals can be in our world. The temptation for us, as it was for those under the law of Moses, is to see and worship the stepping-stone and to lose sight of what it points us to.
To what sayings was the Lord referring? The verses immediately prior to this contain a passage similar to that in the first chapter of the Gospel of John, which describes Christ as Creator, the Only Begotten of the Father, growing from grace to grace, being baptized, and receiving the Father's glory. What do we worship? We worship a living God. We worship Christ. If we see Christ as the center of our worship, so many scriptures and so much in life fall into place.

For example, Christ teaches in the book of 3 Nephi that “this is the gospel which I have given unto you—that I came into the world to do the will of my Father, because my Father sent me.” The gospel there is not defined as a set of principles or goals but as Christ doing the will of the Father. Or look at Nephi’s vision, also in the Book of Mormon. What was the tree, the purpose of our quest in life? When Nephi asked for an interpretation of the tree for which the righteous are seeking, he was shown the birth and life of Christ.

Maybe most or all of this was already obvious to you. To me, however, a clear understanding that we worship a living God rather than principles or goals gives illumination to hard questions of balance, integrity, and life as a lawyer. Let me illustrate this first visually with a scriptural image that I love. Christ and eternal life (which is a life like Christ’s), are often compared to trees in scripture, such as the tree of life in the Garden of Eden, the tree of Nephi’s vision, and the tree “springing up in you unto everlasting life” in chapters 32 and 33 of the book of Alma. To me this points toward the living power of Christ as opposed to the deadness of principles, goals, or other false gods. Worship of Christ builds our lives into organic, living wholes.

What does worship of a living God mean for difficult questions of integrity, balance, and career choice? If we worship principles, then it is easy to segregate work as a lawyer and the gospel. At most, integrity merely brings good principles, such as compassion or honesty, into the basically self-contained world of work. The rest of work is a matter of competing on the world’s terms, or figuring out and applying the laws and principles of that realm. But in the worship of Christ there is ultimately no distinction between secular and spiritual, no limits on what we must give to the Lord. All our lives are to be holy and consecrated, not just the parts when we attend the temple or prepare and teach our Sunday School lessons. Through the Holy Spirit we can have guidance in our lawyerly
work and careers and can be led to be instruments in the Lord’s hands. We serve Him when we serve “the least of these” through writing their wills, resolving their disputes, and helping them keep plans and decisions within the law. We serve the same Christ whether we serve in the home, in a general counsel’s office, or in Primary. Consecrated service knows no boundaries and has no boxes. Our legal work becomes an extension of our worship, wherever and however we are led to serve.

Integrity stemming from a worship of Christ means not merely consecration to a goal but consecration to an omnipotent, divine, omniscient, and loving Being who has our ultimate welfare at heart. We may not see how something we are doing contributes to His purposes, but we can trust that He does when we submit our agency and goals to His will. As President Ezra Taft Benson taught, “When we put God first, all other things fall into their proper place or drop out of our lives. Our love of the Lord will govern the claims for our affection, the demands on our time, the interests we pursue, and the order of our priorities.” I have found that when I am motivated by the love of the Lord rather than by my own goals, however righteous, I am less prone to discouragement or burnout. I ask and listen more for guidance in my daily life. I can submit to disappointments and the less fulfilling or enjoyable aspects of righteous service because I trust Christ, His timing, and His purposes. People with the integrity that flows from a life consecrated to God exude peace and inspire those around them. As Elder D. Todd Christofferson explained, “A consecrated life is a beautiful thing. Its strength and serenity are ‘as a very fruitful tree which is planted in a goodly land, by a pure stream, that yieldeth much precious fruit.’”

In a similar way, worshipping Christ brings balance to life. If life is merely a set of competing principles or goals, we can never be confident that we have hit the right balance. If I spend time with my family—a worthy principle—I may be ignoring the principles of fulfilling responsibilities at work or taking care of my health, which are also important principles. Or if I have one overriding goal, it’s hard to know how to divide my time among lesser goals or how to avoid burnout.

When I think of balance and worshipping Christ, I think of a wonderful allegory that Chieko N. Okazaki (a former counselor in the general Relief Society presidency) taught, also based on the image of a tree. She contrasted the image of a tree to more common images of balance, such as a fiddler on the roof; a gymnast on a balance beam; or “the traditional statue of Justice, blindfolded and [weighing] truth and error, justice and injustice.” As she described it:

[M]ost trees are naturally symmetrical, if they’re allowed to grow with access on all sides to the same amount of sun, wind, and soil. But sometimes a tree is close to a house, so it has lots of branches on one side but not very many on the other. Sometimes, like on the windward side of Hawaii, the wind blows
steadily for most of the year from one direction, so the tree bends under that wind, pointing inland. Sometimes a tree is too close to another tree, so that it grows in a curve, seeking an open space where it can get more sunlight.

We don't think of these trees as sick or handicapped or dysfunctional. We don't even think of them as out of balance, even though they are no longer symmetrical. They’re healthy and functional and will do just fine for years. Why? Because it’s not the branches on the right that have to balance the branches on the left. The point of balance is between the branches and the roots. If the roots are sturdy and run deep into the soil, then the tree as a whole is strong and healthy and in balance. . . .

What are the roots in our lives that give us this kind of health and stability? It’s our relationship with the Savior.18

We are to be “rooted and grounded in . . . the love of Christ, which passeth knowledge, that [we] might be filled with all the fulness of God.”19

Sister Okazaki wrote:

If you felt “rooted and grounded in love,” wouldn’t it be easier to feel balance in yourself? Wouldn’t you be able to put out new branches in areas where you need them? Wouldn’t you feel a stronger ability to stay focused on the important parts of your life? Wouldn’t it be easier to set priorities and make decisions?20

Worship of a true and living and loving God gives balance. The nightmare balancing test of too many all-important goals subsides as we trust in God and make our daily focus simply doing what He asks at any given moment. In contrast, worship of principles and goals ultimately leaves us like the heroes in a Greek epic, constantly trying to please one fickle god without upsetting another, caught between competing righteous goals and principles.

What about worship of a living God and career choices? I am reminded again of President Benson's teaching: “When we put God first, all other things fall into their proper place or drop out of our lives. Our love of the Lord will govern the claims for our affection, the demands on our time, the interests we pursue, and the order of our priorities.” What does that mean for our careers? Just as for the question of balance, the answer may be that this will not be the same for all of us or the same at all seasons of our lives. We are all given gifts to discover, develop, and share and have ways, both personal and professional, that we can use those gifts to serve God’s children.

Professor Jeffery Thompson of the BYU Marriott School of Management—who researches career choice and satisfaction issues—spoke at a BYU devotional and reminded us that we have all been given gifts and talents that can be expressed in one or many professional callings.21 He said:
Finding your calling in life may not be a matter of finding the one right job. Instead, it may be that your calling is to bring your unique spiritual gifts to whatever position the Lord blesses you with.

If you exercise faith in the Lord, follow His spirit, and seek to amplify your gifts, you will be led gradually to a place where you are well equipped to serve.22

He summarized his points about a professional calling, saying, “[A]s with all important questions, when it comes to asking what our calling in life is, Jesus Christ is in the answer. . . . You can call upon the grace of Christ to help you with your professional calling.”23 While we do have to use our agency and think through options and consequences, we don’t have to balance competing principles and desires alone as we work through career options.

In our attempts to live a consecrated life, we recognize that “[w]ork is simply one stage upon which we can act out our service to God and our fellowmen.”24 In contrast to the worship of goals, when worshiping a living God we don’t necessarily need to be pursuing a professional calling that others or even we see as ultimately important. If we want to serve, and if we pray and work for opportunities to do so, we can trust that an omnipotent, omniscient, and loving God can lead us to where we can serve best in all aspects of our lives, including our careers. Our own agency, desires, and plans still play an important role, but these take their proper place as merely stewardship decisions over time, talents, and lives that are not truly ours. We plan, organize, and balance the best we can but do so in the light of guidance from a Master who consecrates our efforts, at times overrides our plans, and always lovingly corrects and improves our paths as we let Him.

If we trust in Christ and seek His guidance in career decisions, we come to realize that the perhaps seemingly unrelated parts of our professional ministries and lives come together in one organic whole of service to God. At this point we may see ourselves as disciple-lawyers or disciple-scholars, but, as Elder Neal A. Maxwell stated, “in the end all the hyphenated words come off. We are finally disciples—men and women of Christ.”25 As disciples of Christ we can look back or look forward with an eye of faith and see our life, including our professional service, as something that continues to grow, progress, and shoot off new branches and is sometimes pruned for our own good.26 As we plant the word of Christ in our heart and nourish it with our faith, our consecrated life of worship becomes as “a tree, springing up in [us] unto everlasting life.”27

Worship, Salvation, and Burdens

Worship is at its essence a question of salvation. We worship what we think will save us. If we worship wealth and power, at some level that is
because we think that money and influence will smooth our path, resolve our problems, and save us from our greatest difficulties. If we worship principles, we think that we are saved by a correct understanding of true principles. Understanding true principles will solve challenges, open doors, and free us from unpleasant consequences in this life and the next. If we worship goals, we see salvation as the accomplishment of something eternally worthwhile, such as entering into the highest degree of glory or having an eternal family. Accomplishing these goals will save us from mistakes, regrets, and ultimate failure.

I would suggest that worshipping a living God involves a measurably different vision of salvation than that found in a worship of principles or goals. At its heart, a worship of principles relies on the power of knowing and understanding. However, “[i]n contrast to the institutions of the world, which teach us to know something,” taught Elder Dallin H. Oaks, “the gospel of Jesus Christ challenges us to become something.”

Instead of just a set of correct principles, “[t]he gospel of Jesus Christ is the plan by which we can become what children of God are supposed to become.” This is a difference in nature, not of emphasis. Some might argue that correct principles include the Atonement of Christ and that we cannot learn principles without living them. I would suggest, however, that worshipping principles and worshipping a living God are as different as a dead piece of lumber is to a living tree. Worship of a living God transforms us: we plant the seed of faith in the living Christ and it becomes “a tree, springing up in [us] unto everlasting life.” Christ’s Atonement provides us the cleansing and enabling power to save us from our own limitations and change our natures in a way that mere knowledge of principles cannot. Worshipping a living, powerful being means trusting in Him for our salvation from fear, fault, sin, and death.

In a similar way, worshipping a living God is sharply distinct from a worship of goals. One who worships goals sees them as the objects of our existence and sees salvation as checking off the boxes on a most eternally important to-do list. Salvation here is static—it means not being condemned, not missing out, and having some accomplishment completed. President Dieter F. Uchtdorf has repeatedly challenged this approach:

In our diligent efforts to fulfill all of the duties and obligations we take on as members of the Church, we sometimes see the gospel as a long list of tasks that we must add to our already impossibly long to-do list, as a block of time that we must somehow fit into our busy schedules. We focus on what the Lord wants us to do and how we might do it, but we sometimes forget why.

My dear sisters [and brothers], the gospel of Jesus Christ is not an obligation; it is a pathway, marked by our loving Father in Heaven, leading to happiness and peace in this life and glory and inexpressible fulfillment in the life to come.
In contrast to a worship of goals, which sees salvation as accomplishment and completion, worshipping Christ involves a salvation of continued development, a “pathway” to peace, glory, and inexpressible fulfillment. Salvation is understood as transformational becoming, not accomplishing a set of objectives. We worship a living God who has the power to overcome the limitations of our mortality and failures and help us be “alive in Christ,” bearing fruit and becoming increasingly like Him.

In the end, the problem with false gods is not that they are always wholly evil but that they prove more of a burden than a blessing. In an extended passage in chapter 46, Isaiah sets up a powerful and moving contrast between the power of false gods and that of the true and living God. He describes the Israelites carrying their idols on their cattle and in their carts as they go into bondage in Babylon: “[T]heir idols were upon the beasts, and upon the cattle: your carriages were heavy loaded; they are a burden to the weary beast. They stoop, they bow down together, they could not deliver the burden, but themselves are gone into captivity.”

Isaiah continues, posing the Lord’s question to those worshipping false gods:

To whom will ye liken me, and make me equal, and compare me, that we may be like?

They lavish gold out of the bag, and weigh silver in the balance, and hire a goldsmith; and he maketh it a god: they fall down, yea, they worship.

They bear him upon the shoulder, they carry him, and set him in his place, and he standeth; from his place shall he not remove: yea, one shall cry unto him, yet can he not answer, nor save him out of his trouble.

The idols of ancient Israel, like our modern false gods, are powerless. We build them and carry them, even as we are going into bondage, yet they cannot save us out of our troubles. They cannot carry our burdens, ease our pains, or answer our deepest longings. Instead, we carry them and are worn down by the burdens they place on us.

In contrast, the true and living God carries and delivers us. In this same chapter Isaiah proclaims the Lord’s encompassing promise of deliverance:

Hearken unto me, O house of Jacob, and all the remnant of the house of Israel, which are borne by me from the belly, which are carried from the womb:

And even to your old age I am he; and even to hoar hairs will I carry you: I have made, and I will bear; even I will carry, and will deliver you.

Jesus Christ is the true and living God of Israel who is mighty to save. From our birth through old age He has promised to carry, bear, and deliver us if we choose to worship Him. He alone is worthy of worship; He alone possesses the power to redeem and transform us and those we love. Our
false gods burden us and leave us feeling overwhelmed and inadequate, but Christ’s “yoke is easy, and [his] burden is light.”

I echo Amulek, who taught that “the word is in Christ unto salvation.” As we plant and nourish this word of “the Son of God, that he will come to redeem his people, and that he shall suffer and die to atone for their sins; and that he shall rise again from the dead,” as Alma promises, “it will become a tree, springing up in [us] unto everlasting life. And then may God grant unto [us] that [our] burdens may be light, through the joy of his Son.”

I am grateful for a living, loving God and for the reality of His saving power. I have felt His transformative power in my life and know that He has carried me and made my burdens light. May we all ever worship Him. In the name of Jesus Christ, amen.

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Notes
2. Id. at 4.
3. D&C 1:16.
10. 3 Nephi 27:13.
11. See 1 Nephi 11.
13. See 2 Nephi 25:27: “Wherefore, we speak concerning the law that our children may know the deadness of the law; and they, by knowing the deadness of the law, may look forward unto that life which is in Christ, and know for what end the law was given.”
17. Chieko N. Okazaki, *Aloha!* 64 (1995); *see also id. at 64–79*.  
18. *Id.* at 65–66.  
22. *Id.* at 46–47.  
23. *Id.* at 52.  
24. *Id.* at 50.  
27. Alma 33:23.  
29. *Id.* at 33.  
31. 2 Neph 25:25.  
35. Matthew 11:30.  
38. Alma 33:23.
We have many first-year law students here today who are already worrying about final exams. During my first year, my wife, Marie, and I lived in a little apartment on 13th East in Salt Lake City. We were expecting our first baby, Jonathan, who is now an active worker in the BYU Law School Alumni Association and whose daughter Sarah is here today.

As finals approached, I was so consumed by my daily study routine that it was like living in a diving bell. I just lived at my little worktable, constantly briefing cases and preparing outlines. I knew our baby would come soon, but my mind was elsewhere. Then one night I had this really vivid dream. I saw myself in my study nook, slaving away. I thought somebody was watching me. I looked over my shoulder and saw Marie standing in the doorway with a little boy who was about seven years old.

I said, “Is that our new baby?” She said, “Yes.” I replied, “Well, he’s pretty old, isn’t he?” She said, “Yes, and we’re sorry to disturb you—we know you’ve got to study. We just have one little question. Then we’ll leave you alone. You haven’t had time to give our boy a name in Church, and it’s becoming kind of a problem.”

I looked at this forlorn-looking child. “You don’t have a name?” He said, “No . . . no, Dad, but it’s okay. You need to study.” I said, “Well, are you in school?” “Yeah. I’m in second grade.” “Well, if you are in school, the kids have to call you something. What do they call you?” and he said, “Vargel.” “Vargel?! I asked. “Do you like that name?” “Well, it’s okay. . . .” I awoke clawing the air. In the morning I said to Marie, “When is the next fast Sunday?”

First-year law students are often frustrated to discover that our legal system is characterized not by hard, fast rules but by legal principles that often appear to contradict each other. One new student said he had a “low tolerance for ambiguity.” He had recently returned from a mission, where
his life was highly structured. But in law school he felt totally at sea, groping to find whatever would tell him all the rules of law. Let’s put his questions into a larger perspective. Ambiguity is not only part of law school—it is often part of life.

When we are young, most of us tend to think in terms of black or white; there isn’t much gray in our perspective. So most younger LDS adults have a childlike optimism and a loyalty that make them wonderfully teachable. One older BYU student said that one thing he likes about being in a student ward full of freshmen and sophomores is that when topics like faith or repentance are discussed, nobody yawns.

As time goes on, however, experience often introduces a new dimension to our perspective. We may begin to see a kind of gap between the real and the ideal, between what is and what ought to be.

Imagine two circles, one inside the other. The inner boundary is “the real,” or what is. The outer boundary is “the ideal,” or what ought to be. We stand at the inner boundary of reality, reaching to move our reality closer to the ideal. We first see the gap between these two boundaries when we realize that some things about ourselves or others are not what we expected—or what we wish they were. This realization can be frustrating.

Even our experience with Church institutions can introduce us to this gap, in part because our idealistic expectations may be very high. For example, a new BYU student may find it hard to be one among 30,000 students battling the red-tape machine that seems to control the processes of admission, registering for classes, or transferring credits from another school. A new student may feel unknown and nameless to a student ward bishop who is inundated with many new ward members all at once. Or he may brush up against a faculty member whose attitudes about the Church are more flexible (or more rigid) than he had expected them to be.

At a more personal level, perhaps an important prayer goes too long unanswered or one suffers a surprise health setback or an unexpected conflict with a family member. Perhaps one becomes conscious of the imperfections of other Church members or leaders or of one’s own parents. When we become acquainted at an adult level with those who have been our heroes, we naturally begin to see their human limitations. Or perhaps one has an encounter with anti-Mormon literature or one discovers differing doctrinal views among Church leaders.

Experiences like these can produce uncertainty and ambivalence—in a word, ambiguity—and we may yearn for simpler, easier times when life was more clear and felt more under our control. We might sense within ourselves the beginnings of skepticism, of unwillingness to respond to authority or to invitations to commit ourselves to demanding goals or projects.

Not everybody will encounter what I have been describing, and not everyone must encounter it. But sooner or later, many Church members
do run into at least some forms of ambiguity. Our basic doctrines are clear, potent, and unambiguous. But we can encounter some uncertainty even in studying the scriptures. Consider, for example, when Nephi took Laban’s life in order to obtain the brass plates. That exceptional case is not easy to interpret until the reader realizes that God Himself, who gave the original commandment not to kill, was also the source of Nephi’s instructions.

Consider also the case of Peter on the night he denied any knowledge of his Master. We typically regard Peter as something of a coward. We assume his commitment wasn’t strong enough to make him rise to the Savior’s defense. But I once heard President Spencer W. Kimball say that the Savior’s statement that Peter would deny Him three times just might have been a request to Peter, not a prediction. Jesus might have been instructing His chief Apostle to deny knowing Him in order to ensure strong leadership for the Church after the Crucifixion. So perhaps we shouldn’t judge Peter too quickly.

Consider other scriptures. The Lord has said that He “cannot look upon sin with the least degree of allowance” (D&C 1:31). Yet elsewhere He said, “I have forgiven you your sins” (D&C 64:3) and “Neither do I condemn thee: go, and sin no more” (John 8:11). Justice is indeed a divine law, but so is the doctrine of mercy. At times these two correct principles can seem inconsistent, until the unifying higher principles of the Atonement bring them together.

God has given us correct principles by which we may govern ourselves, yet these very principles may at times be in conflict. Choosing between two principled alternatives (two “goods”) is more difficult than choosing in a stark and obvious contrast between good and evil.

A common question among law students (and lawyers) is how to balance one’s duties to family, Church, and school or profession. One young mother had a large family, a responsible Church calling, and a busy husband. She was bewildered about what should come first in her life and when. Someone told her, “Well, just be sure you put the Lord’s work first.” Her reply: “But what if it is all the Lord’s work?”

Church and family life are not the only topics in which the right answer is not always on the tip of our tongues. Think about the recent U.S. war in Iraq. With the hindsight of a few years, was that war a colossal mistake or was it a heroic act of liberating a nation? Or consider whether we should sell everything except what is truly necessary for our survival and donate our surplus to those with far greater needs than ours. We might also ask how much governmental intervention into the regulation of business and private life is too much—or not enough.

The people on the extreme sides of such questions often seem very certain about the right answer. But some people would rather be certain than right.
We also encounter ambiguity in literature. One BYU teacher said that great literature will usually raise a profound question, explore the question skillfully, then leave the matter for the reader to resolve. If the resolution seems too clear or too simple, maybe the literature isn't very good or perhaps the reader has missed its point.

So life is full of ambiguities, because some uncertainty is characteristic of the mortal experience. The mists of darkness in Lehi's dream symbolize life as we face it on this planet. There are, thankfully, many things in mortality that are very certain and very clear—beautifully represented by the iron rod in Lehi's dream. But much complexity still surrounds us.

Given, then, the existence of a gap for most of us between where we stand and where we would like to be, and given that we will have at least some experiences that make us wonder what to do, I suggest three ascending levels of dealing with ambiguity.

At level one, I've noticed two typical attitudes. One of them occurs when we simply do not—perhaps cannot—even see the problems that exist. Some people seem almost consciously to filter out any perception of a gap between the real and the ideal. For them, the gospel at its best is a firm handshake, an enthusiastic greeting, and a smiley button. Their mission was the best, their ward is the best, and every new day is probably going to be the best day they ever had. These cheerful ones are happy, spontaneous, and optimistic, and they always manage to hang loose and relax. They are able to weather many storms that seem formidable to more pessimistic types, although one wonders if they have somehow missed hearing that a storm is going on.

A second group at level one has a different problem with the gap between what is and what ought to be. This group eliminates the distance between the real and the ideal by, in effect, erasing the inner circle of reality—and thereby removing the gap. They cling to the ideal so single-mindedly that they just don't feel the frustration that would come from facing the real facts—perhaps about themselves, about others, or about the world around them. People in this group have sometimes written letters to the editor of the Daily Universe expressing their shock at discovering that something at BYU falls short of perfection.

Those in this group struggle to distinguish between imperfections that matter a great deal and those that may not matter much. For instance, Hugh Nibley once said that some people think it is better to get up at 5:00 a.m. to write a bad book than to get up at 9:00 a.m. to write a good book. While self-discipline is a virtue, he didn't think the exact hour when we arise is quite as important as what we do once we are up.

I recall listening to a group of young Church members discussing which of the two types of people just described offered the best model for their emulation. They felt they had to choose between being relaxed, carefree, and happy about everything in life or being an intense,
uncompromising perfectionist. As I listened, I began to see that both categories suffer from the same limitation. There isn’t much real difference between a forced superficial happiness and a frantic concern with apparent perfection.

Both perspectives lack depth; they understand things too quickly, and they draw conclusions from their experience too easily. Neither is well prepared for adversity, and I fear that the first strong wind that comes along will blow them over. Their roots haven’t sunk deep enough into the soil of experience to establish a firm foundation. Both groups reflect the thinness of a philosophy that is untempered by common sense. It would help them if they were more realistic about life, even if that took them out of their comfort zone. That discomfort—the very discomfort you feel with law school’s ambiguity and in life—can motivate you to lean into the wind and experience some real growth. After all, the true Church is intended not only to comfort the afflicted but also to afflict the comfortable.

Let us then step up to level two, where we see what Jacob called “things as they really are” (Jacob 4:13). Only then can we deal with reality in a meaningful and constructive way. If we are not willing to grapple with the frustration that comes from facing bravely the uncertainties we encounter, we may never develop the kind of spiritual maturity that is necessary to reach our ultimate destination. Heber C. Kimball once said that the Church must yet pass through some very close places and that those who are living on “borrowed light” will not be able to stand when those days come (in Orson F. Whitney, Life of Heber C. Kimball [Salt Lake City: Bookcraft, 1967], 450). What is borrowed light? It is living off someone else’s testimony and not really dealing with whatever the issues are for you.

So we must learn how to form judgments of our own about the value of ideas, opportunities, or people who may come into our lives. We can’t depend on somebody else’s light to tell us whether a certain idea is “Church approved,” because new ideas don’t always come along with little tags attached saying whether they have been reviewed at Church headquarters. Whether in the form of music, books, friends, or opportunities to serve, there is much that is lovely or of good report or praiseworthy that is not the subject of detailed discussion in Church manuals, conference talks, or courses of instruction. Those who aren’t open to people or experiences that are not obviously related to some Church word or program may well live less abundant lives—and make fewer contributions—than the Lord intends.

One of today’s cultural soft spots is that we live in the age of the sound bite. If you can’t express a thought in a short phrase or reduce it to a quick text message, some think it must not matter very much. Be careful about that. That reductionist approach can destroy real thought, impairing our capacity to think about what is going on and to help solve real problems. Don’t just pick the label that kind of seems “in.”
We must develop enough independence and judgment that we are ready for the shafts of adversity and contradiction that may come to us. When those times come, we can’t be living on borrowed light. Don’t be deceived by the clear-cut labels others may use to describe circumstances that are, in fact, not so clear. Our encounters with reality and disappointment are actually vital stages in the development of our maturity and understanding.

Now, having considered the value of a level-two awareness, there are still some serious hazards at this stage. One’s acceptance of the clouds of uncertainty may be so complete that the iron rod seems to fade into the blurring mists and skepticism becomes a guiding philosophy. This perspective can come from erasing the outer circle representing the ideal, or what ought to be, and then focusing too much on the inner circle of reality. Sometimes you want to eliminate the frustration of the gap between the real and the ideal by just giving up on your ideals. And you can be persuaded to do that by your disappointment in seeing what some people do with their ideals when they are too shallow about them.

I spoke earlier of a new law student’s low tolerance for ambiguity. But I also saw that by the time our law students reached their third year of study, some of them could develop such a high tolerance for ambiguity that they were skeptical about everything. Where formerly they felt that they had all the answers but just didn’t know what the questions were, now they seemed to have all of the questions but few of the answers. Who wants answers? Isn’t law school only about questions?

People who take too much delight in their finely honed tools of skepticism and dispassionate analysis will limit their effectiveness in law practice, at home, in Church, and elsewhere because they can become contentious, arrogant, and unwilling to commit themselves. I have seen—and I suspect you have seen—some of them try out their new intellectual tools in a Church classroom. A well-meaning teacher will make a point that the skeptic considers a little silly, so he yields to an irresistible urge to leap to his feet and publicly deflate the teacher’s momentum.

These overly analytical types always look for opportunities to point out the exception to any rule anybody can state. They delight in cross-examining the unsuspecting mother-in-law. Or someone offers a good idea in gospel doctrine class, and they see a clever way to shoot it down. Then they sit there chortling because they have popped another idealistic bubble that people were liking until they heard the skeptical question. When some of those bubbles pop, out goes much of the feeling of trust, loyalty, harmony, and sincerity so essential to preserving the Spirit of the Lord.

If that begins to happen in our ward, in our home, or in our marriage, we may be eroding the fragile fabric of trust that binds us together in all loving relationships. People may come away from their encounters with
us wondering how we can possibly have a deep commitment to the gospel and say some of the things we say.

I am not saying we should always just smile and nod our approval, implying that everything is wonderful and that our highest hope is for everybody to have a nice day. That is level one. I am encouraging us to realize the potential for harm as well as good that can come with what education and experience can do to our minds and our way of dealing with other people.

These dangers are not limited to our relations with others. They can become very personal, prying into our own hearts in unhealthy ways. The ability to acknowledge ambiguity is not a final form of enlightenment. Once our increased tolerance and patience enable us to look longer and harder at difficult questions and pat answers, we must be careful that our basic posture toward spiritual things doesn't shift from being committed to being noncommittal. That is not a healthy posture.

Many people these days think it is naïve to be committed to such basic ideals as marriage or professionalism or patriotism. For instance, it is increasingly popular for people to feel hemmed in by marriage commitments; they prefer what some call a “nonbinding commitment,” a term that sounds quite trendy. But I don't know what a nonbinding commitment is. And I don't think that the people who use that term know what it is either. It just sort of gives them an escape. They think they can have it both ways: being committed but not being committed. Be careful about that.

Indeed, in many ways, a Church member who moves from a stage of commitment to a stage of being tentative and noncommittal is in a worse position than one who has never experienced a basic commitment. The previously committed person may too easily assume he has already been through the “positive mental attitude” routine and “knows better” now, as he judges. He may assume that being submissive, meek, obedient, and humble is the “been there, done that” part of his life and he has now outgrown the need to be that way again. Those are the assumptions of a hardened heart. In spiritual things—in our relationship with the Lord, the scriptures, and the Church—the shift from being committed to being noncommittal can actually be a switch from one shallow extreme to another.

I once learned quite a lesson about the way a highly developed tolerance for “being realistic” can inhibit the workings of the Spirit in our lives. When I had been on my mission in Germany about a year, I was assigned to work with a brand-new missionary. Just after he arrived, I was called to a meeting in another city. He stayed to work in our city with another new missionary whose companion went with me. We thought it would be good for their character to tract. There was no MTC in those days, so these two knew only a couple of sentences in German between them.

After returning, I asked how his day had gone. He said eagerly that they had found a woman who would surely join the Church. They hadn't
really talked with her, because she spoke no English. But he felt an unusually strong spiritual impression about her and her family. In our mission it was rare to see anyone join the Church, let alone a whole family. I asked for more details, but in his excitement he had forgotten to write down either the name or the address. He knew only that they were on the top floor of a five-story apartment house, and he thought he'd recognize the name next to the doorbell.

“Great,” I thought, contemplating all those flights of polished staircases. I explained that people who are polite don’t necessarily intend to join the Church. But off we went to find her. He couldn’t remember the street name either, so we picked a likely spot in our tracting area and began climbing stairs.

After a frustrating couple of hours, I decided I had to level with him. Based on my months of experience, I said it simply wasn’t worth our time to hunt any longer. Stunned, Elder Keeler said, “I told you what I felt about her. Are you telling me we’re not going to find her?” I tried patiently to explain the realities of missionary work in Europe. His eyes filled with tears as he said, “I came on my mission to find the honest in heart. The Spirit told me that that woman will someday be a member of the Church. Won’t you help me find her?” I mumbled something like, “Maybe the Spirit was just telling you to write down the name and address.”

So I raced him up one staircase after another. “Elder Keeler, had enough?” “No,” he said. “We’ve got to find her.” I stepped up the pace and decided to move so fast he would beg to stop—then maybe he would get the message. Finally, out of breath on a fifth floor, he saw the name by a doorbell and said, “I think that’s the one!” She came to the door. He jabbed my ribs with his elbow and whispered, “That’s the woman! Talk to her!”

That was over 40 years ago. Not long ago Marie and I were with that woman, her husband, and all of their four children and their spouses in the Frankfurt Temple. We saw the father, now a temple sealer, seal their youngest daughter and her new husband for eternity. The mother has been a Relief Society president. The father has been a bishop. Three of the children have served missions, and all four have married other faithful Europeans in the temple. Her grandson was in our home in Utah this summer, and he has just received his mission call.

That experience is a lesson I can never forget about the limitations of skepticism and a tolerance for ambiguity. I hope that I will never be so aware of reality that I am unresponsive to heavenly whisperings. So, be realistic, be honest and open, but don’t let those things harden your heart.

The most productive response to ambiguity is at level three, where we see things not only with our eyes wide open but with our hearts wide open as well. When we do that, there will be many times when we need to take action, even though we want more evidence before knowing exactly what to do. Such occasions may range from following the counsel of the Brethren
when we don’t understand the reasons for their counsel to accepting a Church calling when we are too busy to take on any more duties. My experience has taught me always to give the Lord and His Church the benefit of any doubts I may have when such a case seems too close to call.

The willingness to be believing and accepting in these cases is not the same as blind obedience. Don’t confuse the two—a good lawyer can see the difference. You can develop a loving and knowing kind of obedience that is not blind at all. G. K. Chesterton once distinguished between “optimists,” “pessimists,” and “improvers,” which roughly corresponds to our three levels of dealing with ambiguity. He concluded that both the optimists and the pessimists look too much at only one side of things—that’s level one and level two. Neither the extreme optimists nor the extreme pessimists would ever be of much help in improving human conditions, because people can’t solve problems unless they are willing to acknowledge that a problem exists while also remaining loyal enough to do something about it.

Chesterton said the evil of the excessive optimist (level one) is that he will defend the indefensible. He is the jingo of the universe; he will say, “My cosmos, right or wrong.” He will be less inclined to the reform of things; more inclined to a sort of front-bench official answer to all attacks, soothing everyone with assurances. He will not wash the world, but whitewash the world. [G. K. Chesterton, Orthodoxy (New York: Cosimo, Inc., 2007), 62]

On the other hand, the evil of the pessimist (level two) is “not that he chastises gods and men, but that he does not love what he chastises.” In being the so-called “candid friend,” the pessimist is not really candid. Chesterton continued:

He is keeping something back—his own gloomy pleasure in saying unpleasant things. He has a secret desire to hurt, not merely to help. . . .

. . . He is using that ugly knowledge which was allowed him [in order] to strengthen the army, to discourage people from joining it. [Id., 61]

In going on to describe the “improvers” (level three—from optimists to pessimists to improvers), Chesterton talked about women who are so loyal to those who need them:

Some stupid people started the idea that because women obviously back up their own people through everything, therefore women are blind and do not see anything. They can hardly have known any women. The same women who are ready to defend their men through thick and thin are . . . almost morbidly lucid about the thinness of his excuses or the thickness of his head. . . . Love is not blind; that is the last thing that it is. Love is bound; and the more it is bound the less it is blind. [Id., 63]

Chesterton’s arranging of these categories makes me think of one other way to compare the differing perspectives people bring to the way
they cope with ambiguity. Consider the image of “Lead, Kindly Light,” an image about light in a gathering storm. At level one, people either do not or cannot see that there are both a kindly light and a gloomy fog; or, even if they see both, they don't see the difference between the light and the gloom. At level two, the difference is acutely apparent, but one's acceptance of the ambiguity might be so pessimistic as to say, “Remember that the hour is darkest just before everything goes totally black.” Some people just focus on the light, others on the darkness. We need to see both and keep moving. “Lead, kindly Light, amid th' encircling gloom; Lead thou me on!”

Consider one final illustration from a lawyer who understood levels two and three. His eyes were fully open to the reality, including the pain, of seeing things for what they were. Yet he had moved beyond that to a third level where his mature perspective permitted him to subordinate what he saw with those wide-open eyes to what he felt in his wide-open heart.

This lawyer was my father. He was in his mid-50s and had a busy professional life with heavy obligations that often took him out of town for several days at a time. He was tired. At an earlier time in his life he had served for 10 years in a stake presidency.

His good friend was called to be the bishop of their ward. He said he couldn't accept the assignment unless my father would serve as his first counselor. Well, it's one thing to be called as a bishop's counselor when one is young and full of enthusiasm and one's time is not heavily committed. One might understandably have a different attitude at a later, busier time in life. Here are my father's inner thoughts as he wrote them that day in his journal:

My first reaction was, if it be possible, let this cup pass from me. . . . I know something of the work required of a bishopric; it is a constant, continual grind. . . . I am busy and my [personal] affairs demand what spare time and energy I have. In some respects I am not humble and prayerful enough; I have not always been willing to submit unquestioningly to all the decisions of the Church . . . but neither do I feel that I can say no to any call that is made by the Church, and so now I add to my first reaction, “Nevertheless, not as I will, but as Thou wilt.”

I will resolve to do it as best I can. There will be times when I will chafe under the endless meetings, but I am going to get completely in tune with the [Church] program. I do not intend to get sanctimonious, but there must be no reservations in my heart about my duties. It will not be hard for me to pay my tithing and attend regularly, as I have been doing that. But I will have to learn, I suppose, to love the Deseret News, or at least the Church Section, as much as I love the Tribune. . . . I will have to get to the temple more often. . . . I will have to become better acquainted with the ward members and be genuinely interested in them and their problems. . . . I will have to learn to love every one of them and to dispose myself in such a way that they might find it possible to feel the same toward me. Perhaps in my weak way I will have to try and live as close to the Lord as we expect the General Authorities to do.
My father was an honest man who chose to have a believing heart. His approach makes me want to deal directly, but humbly, with life’s ambiguities. I want to be as childlike as my education has taught me to be tough-minded, able to help solve a problem rather than just describe it.

May we be honest and courageous enough to face squarely the uncertainties we encounter, try to understand them, and then do something about them. Perhaps then we will not be living on borrowed light. “Love is not blind; that is the last thing that it is. Love is bound; and the more it is bound the less it is blind.”

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On behalf of my faculty colleagues as well as the rest of the administration and staff, I welcome you to BYU Law School. Among the many choices and opportunities you have had, I am convinced you have chosen well. We all consider it our duty to help ensure that your choice bears good fruit.

The theme for my remarks today will be a familiar one that I believe is applicable to all of us—students, faculty, administration, and staff. It comes from the book of Luke: “Unto whomsoever much is given, of him shall be much required: and to whom men have committed much, of him they will ask the more” (Luke 12:48; see also D&C 82:3).

All of us who gather today do so as the beneficiaries of the sacrifices and efforts of others. We all inherit a law school with a strong foundation and excellent reputation because of the efforts of so many students and faculty who have passed through our halls.

You are the beneficiaries of an incredibly low tuition because of the generosity and sacrifice of many, many members of the Church. In these economic times, that generosity is welcome because it will allow you to avoid incurring so much debt, particularly if you are careful with your expenses over the next three years. But in light of the economic times and the many competing uses for those funds, it makes the gift of the tithe payers all the more remarkable. This is particularly the case because the vast majority of them will not ever be able to partake of this gift themselves. Parents and spouses are also likely giving much—financially and emotionally—so that you can be here and succeed.

You have been given much not just by others but also by your Maker. This is a remarkably gifted class whose collective experience and knowledge will be a well from which I hope you will all drink deeply during your three years here. The truth is that one of the greatest gifts this law
school will give you is to introduce you to your classmates. In this group gathered today in this moot court room are those who I hope and expect will become your lifelong friends.

All of us are persons to whom much has been given. It is not cause for congratulation—although I can’t help but pause and congratulate ourselves on putting together another such fantastic class—rather, it is cause for reflection and, ultimately, for sacrifice. There truly is much required of each one of us.

Now, I recognize that today, of all days, despite sterling academic credentials that place you among the top classes in the country, many of you probably do not feel like the person who has been given 10 talents. More likely, many are wondering whether they’ve been given enough talent for the task ahead. And if you are not wondering that today, you surely will over the next weeks and months as you are subjected to searching Socratic questioning or as you hear a classmate’s response and think, Why didn’t I see that? What am I missing?

Let me assure you that all of you have the capacity to succeed. You are those who have been given 10 talents. When you leave law school, you’ll have even more. The question will be how you will use them.

But for now, as you embark on this endeavor, there may be times when you will be tempted to think that you lack the necessary ability. As a counterweight let me suggest a couple of areas in which it is important to have some perspective.

First, it is wise to remember that when we do something for the first time, it is almost always difficult. When you begin preparing for class, it may take you a couple of hours to read, brief, and understand a three- to four-page case. Even then, you will walk into class, thinking that you are surely prepared, only to find out that the issues and questions raised by the case run much deeper than you had imagined.

Think for the moment about a garden-variety torts case, a personal injury case, where an older gentleman—we’ll call him Smith—was driving across an elevated causeway, lost control, hit a wooden guardrail, and plunged 100 feet to a severe injury, after which he sued the county that had constructed the bridge.

In preparing for class, you’ll need to read and understand this basic plotline of facts, but that won’t be enough. Nor will it be enough just to understand the legal issue and doctrine in the case: here, was the county’s construction of the causeway and guardrail negligent, reasonable, and the cause of the injury?

In addition to the facts and the legal rule, you’ll also need to think about the procedural posture of the case: should the court assume the allegations of Smith are true because it is the county who has moved to dismiss the case or vice versa?
You’ll need to look at other cases and consider how this particular case fits with precedent and whether it is distinguishable in meaningful ways.

Likewise, you’ll need to consider what a word like reasonable means. Think about how often each of us confidently asserts that a particular argument is “unreasonable” or a particular policy “unfair.” Part of learning the law is learning to unpack such words and give them content and meaning.

In the causeway crash case, for example, is reasonableness defined simply by our quick intuitive judgment of what we think a county should do to make its roads safe? Is the answer an economic one—to look at the costs of installing stronger guard rails vs. the number of accidents prevented? Is the answer a look at custom? Does it matter how other counties and states are building guardrails? And for any potential rule adopted, what sort of social impacts will it create? Will counties respond by building better guardrails or building fewer roads? What is the best way to care for people, like Smith, who suffer severe injuries? Is it the judicial system or some form of social insurance? And for all of these questions, what is the relative role of courts, the legislature, and the executive branch in such decisions?

In the hands of superb faculty, this sort of dialogue and the complexity of class discussion will go much further and peel back many more layers than this quick peek at the issues.

At the beginning, the process may feel a bit excruciating, particularly if you are on the proverbial Socratic hot seat, but you will improve over time if you give it your best effort.

Everything takes longer when you begin. Experience tends to be a little painful and a little embarrassing. But the alternative is no growth.

I began law practice in September 1990 in Seattle, Washington, following a clerkship in San Diego. I had not yet taken a bar examination, mostly because when I headed off to do a clerkship I hadn’t yet decided where I wanted to practice law, and I certainly wasn’t eager to take the bar exam twice. What this meant was that from September until April or May of the next year, I would not be able to appear in court or sign any court pleadings. In all of my correspondence with opposing counsel, my signature read: “James R. Rasband, not yet admitted to the bar.”

That fall, soon after I started, I was approached by a partner to handle an unlawful detainer case—an ideal opportunity for a young associate. The basic idea of an unlawful detainer is that a tenant who is in possession of a leased property refuses to pay rent or leave the premises. This particular case involved a western-wear store in Ellensburg, Washington, about 100 miles east of Seattle. As I recall, the tenant had not paid rent for a little more than a year, and the landlord decided he needed the help of the legal system.
These are very straightforward cases, but everything took me a great deal of time because I was so new. I puzzled over every step and would have preferred not to bill most of my time because much of it was wasted. The partner in charge, however, told me to write it down and that he would write off what was unnecessary once the case was resolved.

One early puzzle I remember was filing what is called a “motion to shorten time.” Basically, a motion to shorten time—as the title suggests—is a request for the court to shorten the amount of time normally required for a particular legal procedure. I’d never heard of a motion to shorten time. I read the rules. I thought about the equity. I looked at cases. I thought about the theory. I can't recall precisely, but I probably spent five hours on that motion to shorten time. Later, I would learn that all I needed to do was dictate a quick note to my secretary and have her prepare the motion for my signature. It was probably a 10-minute task and certainly no more than 30 minutes.

The motion to shorten time was not the only task that took me more time than an experienced attorney. I was young and learning.

In any event, the case moved forward, and we succeeded. It was certainly not a triumph of brilliant lawyering on my part. It's not too difficult to prove unlawful detainer when the defendant failed to pay rent for at least a year on a commercial lease.

Once the case was over, the Washington statute under which we proceeded allowed us to seek attorneys’ fees. The partner in charge told me to draft the motion and seek fees from the other side. Knowing how long everything had taken me, I was a bit queasy. We cut back the request some but plainly not enough, because I will never forget the response from opposing counsel.

Opposing counsel dissected the fee request and my billing statements line by line. The motion to shorten time, he said, could be prepared by a reasonably competent attorney in 30 minutes, but it took “James R. Rasband, not yet admitted to the bar,” and he quoted, five hours. And so it went, this task or that task could have been performed by a reasonably competent attorney in one hour, but it took “James R. Rasband, not yet admitted to the bar,” four hours.

By the time of the fee request, I had been admitted to the bar, much to the surprise of my opposing counsel. Unfortunately, that meant that I was fully capable of arguing the fee motion to the court. I headed over to Ellensburg to take my whipping. As luck would have it, the opposing counsel had filed his response brief late, and the court refused to consider it. The judge, who had done many, many unlawful detainer cases, assigned a reasonable fee, and we were done.

Here I was, after three years of law school and one year of a clerkship on the Ninth Circuit. I was still learning and still feeling inadequate. Now, the truth is that BYU does a much better job with teaching you some basics
of lawyering skills than I received. Nevertheless, you are likely to find your own versions of motions to shorten time. It’s okay. In fact, it is necessary. Spend the time to get it right. Don’t be worried or ashamed that your first effort takes longer. It almost always gets easier as you go.

Let me suggest a second counterweight to the almost inevitable feeling of lacking the necessary talent as you begin law school. Please keep in mind that lasting happiness and peace is not a function of comparing yourselves to others.

Last spring Elder Quentin L. Cook, who is a member of the Quorum of the Twelve Apostles of our sponsoring church, spoke at a fireside sponsored by the J. Reuben Clark Law Society, a society made up predominantly but not exclusively of LDS attorneys, which most of our graduates join in addition to the BYU Law School Alumni Association. Elder Cook, as most of you know, is an attorney, as are two of his three children—a daughter and a son, who is a graduate of our law school.

In one section of his address, Elder Cook suggested that too often our sense of happiness is derived from our perception of how we are doing vis-à-vis others. He told a story of how, years ago, he had been running a health care system and hired a consultant to help the company resolve some merger issues. The consultant had started by asking the group to list some of the skills that were important to what they needed to do, such as delegation, public speaking, working with others, etc. Elder Cook recalled listing out the various skills, at which point the consultant asked him to list individuals who he had met in his lifetime that were the very best in each area. Elder Cook related:

As I recall, there were approximately 10 of these skills. He then listed them across the top of the whiteboard and asked me, using an A, B, C grade formulation, to identify how each of these superstars performed in the other nine areas. To my great amazement, I realized that no one got straight As across the board. Most had significant numbers of Bs, and many had some Cs.

The consultant then pointed out that what we often compare ourselves with the A+ performers in each category that we value, and then we feel inadequate and unsuccessful in what we are doing. . . .

You might ask why I am sharing this with you. Law and the process of becoming a lawyer are very competitive. The respect for credentials can reach an inappropriate level where they are virtually “idols.” . . . In the hothouse environment of the law, there are many people who are very skilled, and there is always somebody who seems to be better in all the ingredients that make up the qualifications to be a lawyer. Notwithstanding these issues, I would ask, “Do we have to be an A in everything to be happy?” [“Latter-day Saint Lawyers and the Public Square,” Clark Memorandum, fall 2009, 7]

Elder Cook went on to suggest that our position vis-à-vis others cannot be the source of happiness. It is ephemeral, and we will always find
some character or attribute in which another person appears to be scoring higher. It is our own best effort that must be the source of peace.

I have always thought of learning the law as being something like learning a foreign language. For some, learning the language may come easily. It just clicks. For others, it comes with great difficulty. But for all who are willing to work hard at it, it comes.

To this I would add that the categories of legal skills upon which law school tends to focus are just a part of the broader equation of being a lawyer. Just like speaking a language doesn’t make the missionary, knowing the law isn’t enough to make the lawyer. It’s what you do with the language or what you do with the law that matters.

Whether you are someone for whom the language of the law comes quickly or one for whom it comes at a more regular pace, look for ways to help others. Learning is a gift that ought to be shared. It is the paradox of charity that the giver benefits more than does the receiver. This is certainly true in education. Those of us who have taught know this best. There is no better way to learn something than to teach it. As you work to help classmates—in study groups, in carrels, and elsewhere—your own legal skills will develop even faster. By help, I do not mean just spending time to explore the permutations of any particular legal doctrine. I mean also taking the time to comfort during times of stress or sorrow and taking the time to broaden your social circle. These too are lawyering skills.

Although I want you to have some perspective at what is likely a time of uncertainty, my primary goal is that we recognize how much we have been given and ask what should be required of this group of students and this law school to whom so much has been given by those with so much less. Let me suggest a few ways in which we can exemplify our recognition of this blessing.

First, I suggest that as you learn the skills of analyzing, taking apart, and making arguments that are the staple of a legal education, you remember how critical it is to deploy those skills with charity and civility.

Charity may seem easy today, particularly where the primary concern may be a faculty member dissecting your argument. But soon, perhaps too soon, it may not be. Experience suggests that the humility may start to wear off for some as we move further into the semester. Former dean Reese Hansen, when he spoke to the entering class, sometimes recalled, “It is often said that the boorish behavior of first-year law students has ruined more Thanksgiving Day family dinners than any other single factor.”

I always nervously chuckled at Dean Hansen’s remarks, knowing that I myself had spoiled the occasional dinner because I just couldn’t resist taking out my shiny Socratic pin and popping someone’s balloon.

I am not suggesting that we do not stand up for our principles or that we refrain from advocating causes about which we are passionate. Instead,
what I hope is that as you study the law, one of the lessons you internalize is the importance of what I would call charitable disagreement.

At a basic level, charitable disagreement should take the form of civility. The study of law is the study of the rules that regulate human behavior. Because you come from different backgrounds and have had different experiences, it is likely—indeed certain—that you will not see eye to eye with all of your classmates about what rules are best for ordering society. I hope that what that leads to in your classrooms is robust debate. It is out of such debate that real learning comes. Feel free to disagree vigorously and to disagree often, but to disagree respectfully.

Professor Brett Scharffs once told me that his mother used to say that if you find yourself disagreeing, and I paraphrase from memory, “there is no need to shout or get angry. If you are right, you don’t need to. And if you are wrong, you don’t want to.”

The law is an adversarial profession, but it works best and is most ennobling and satisfying when it is practiced with respect for opposing counsel and opposing clients. The best place to practice those traits before you enter the workplace will be in your classrooms here at the Law School.

Civility is, in some measure, a lesser law. When I speak of the importance of charitable disagreement, my hope is that we do more than simply be civil. Instead, I hope you will learn to dispute with real concern and care for those with whom you disagree. I hope you will listen, really listen, to your classmates and work to understand their arguments and positions in a charitable light. When you attempt to see another’s position charitably, they often reciprocate.

This is not just a function of Christian kindness. It is also good lawyering. When you understand another’s views in their best light, you will be better able to evaluate the wisdom and strength of your own, or your client’s position. It is neither charitable nor wise to assume that because a classmate disagrees he is misinformed, unreasonable, or unthinking. In law practice, whether in dealmaking or in litigation, once you understand the concerns animating the other side, it is much easier to find an acceptable resolution. Even if you can’t find a solution, you will better understand the nature of a just resolution to the dispute.

Your education to this point, and the skills of careful analysis and critical thinking that we hope you will hone during law school, will give you significant power and influence in society, indeed, in almost any group of which you are a part. As dean of this law school, that is precisely what I want. I want you to be influential leaders. But as you wield your influence, remember that worthy influence can be maintained only “by persuasion, by long-suffering, by gentleness and meekness, and by love unfeigned” (D&C 121:41).

Let me now suggest a second expectation where so much has been given. It is the expectation that we work hard to take advantage of our
blessings and then to make them available to others. Hard work is a lifelong way to give back a little of what we have been given. This isn’t just work at the office, it is work in the community, in your church, and in your home.

Later this fall we intend to give each of you a DVD documentary about the life of J. Reuben Clark Jr., after whom this law school was named. President Clark, of course, was a former member of the First Presidency of the Church, a former ambassador to Mexico, and a former undersecretary of state. Before all of that he grew up on a farm in Granstville, Utah. One of my favorite passages in the DVD quotes three diary entries from President Clark’s father describing his 12-year-old son, Reuben:

**Monday**
A very stormy morning. Snowing and the wind blowing from the north. Snow drifting. We advised the children not to go to school. Reuben thought he could stand it and so went. Edwin and Elmer remained at home.

**Tuesday**
A bitter cold morning. I think we are now having the coldest weather that I have ever experienced in the month of February. The boys started to go to school this morning but it was so cold and stormy that we called two of them back. Reuben had got out of hearing. Edwin and Elmer remained at home.

**Wednesday**
The weather was extremely cold last night and this morning. . . . We thought it was too cold to send Edwin and Elmer to school today, but Reuben would rather miss his meals than to miss a day from school. He is getting along well with his studies. [David H. Yarn Jr., *Young Reuben: The Early Life of J. Reuben Clark, Jr.* (Provo, Utah: Brigham Young University Press, 1973), 51–52]

My hope is that this same sort of passion can energize our entire learning community at the Law School. When you finish here, I hope you will have a lifelong passion for learning. The truth is that the critical and analytical thinking skills that we teach in law school are only the beginning of real learning, because they are the tools with which you will read, study, and learn for the remainder of your life.

What I also hope that you develop or, more properly, retain—because most of you already possess this in abundance—is the capacity to work until the task is done. Let it be said of BYU graduates that they always do their share and more. Certainly, save time for your family and friends. Relationships are more important than prominence in the workplace. Nevertheless, integrity demands that you give a full measure of effort in your employment. The gifts you have been given demand that you give much of yourself.

Let me take just a moment on another expectation that flows from the privilege and status afforded a lawyer—namely, the expectation of integrity. You have probably heard the term before that a lawyer is “an officer
of the court.” This means that a lawyer owes a duty not just to her client but also to the court. A lawyer has a duty to the public to ensure that judicial proceedings are fair. More broadly, a lawyer has a duty to place professional standards and integrity ahead of any individual or client advantage.

Integrity is also something that goes to the very heart of what an academic institution, and particularly a law school, does. At the end of your time at law school, you are not paid. What you receive instead is a “credential.” Think about that word. It comes from the Latin word *credentia*, which means “trust.” The dictionary defines the word *credential* as “that which entitles one to confidence, credit, or authority.” In essence, what the Law School certifies to the world upon your graduation is that you are entitled to the confidence, credit, and trust of your clients.

As you begin law school, recognize that many of you will be under the greatest academic pressure in your life. The workload is significant. Being graded on a curve alongside so many hardworking and accomplished classmates can be stressful. The deadlines in law school are typically firmer than in your prior academic work. With all of these pressures, the temptation to cut corners in law school can be great. Please remember that no temporary success on a paper or an exam is worth the price of your integrity.

Let me mention a final duty that accompanies our privileged status: the obligation to serve those who are less fortunate. Law—along with medicine and the clergy—is one of the three original professions. As traditionally understood, members of a profession were held to a specific code of ethics and required to swear some form of oath to uphold those ethics, thereby “professing” to a higher standard of accountability. The essence of being a genuine professional, whether a doctor or a lawyer, was the expectation that a professional would use her privileged position and her specialized knowledge for all who required it and not simply for personal advantage.

This is why the Rules of Professional Conduct provide that “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay” (Model Rule 6.1). Helping the less fortunate is part of the compact between lawyers and society. This service obligation, along with the obligation of ethical conduct, is what undergirds the unique and privileged position of lawyers. Thus far, states and the public have largely allowed state bars (in other words, groups of lawyers) to regulate who is able to practice law and what rules govern a lawyer’s conduct. This privilege brings corresponding duties.

These days it seems as though every job is labeled a profession, partly, I imagine, because of the historical connotation of privilege and authority associated with the professional label. At the same time, the understanding of law as one of the original noble professions seems to be dissipating. To fight the former would seem to be a misplaced focus on retaining a privi-
leged position in the hierarchy of job categories. But we must not give in to the latter trend of law drifting from its noble professional moorings. How powerful it would be if every BYU student and graduate took seriously the traditional professional label, working diligently to obtain knowledge and skills worthy of the title and then sharing those skills with integrity and a felt obligation to give back for what we have all been given. Let it not be on our watch that the professional label is further drained of its content.

I’d like to conclude by quoting two speakers who spoke to the very first Law School class when the Law School was founded. Their challenge rings down through the years and is no less compelling today than it was 36 years ago.

Speaking to the Law School’s charter class, President Marion G. Romney, then a counselor in the First Presidency of the Church, said:

You have been admitted for your superior qualifications. Appreciate your opportunities; make the best of them. Set a high standard for your successors to emulate. You know why you are here, what your school, the Board of Trustees, your own loved ones, and yes, your Father in Heaven expect of you. Don’t let any of them nor yourselves down. . . . Be your best. Society needs you, your country needs you, the world needs you.

At the same meeting, Dallin H. Oaks, then university president and now apostle, added: “We are privileged to participate in this great venture. It is our duty to make it great. He who builds anything unto the Lord must build in quality and flinch at no sacrifice toward that end.”

To their words of challenge, I add my words of welcome. I and my colleagues are excited that you have decided to join us at the Law School, and we are eager to begin with you the ennobling adventure of learning and then practicing law.

This address was given to entering law students at BYU Law School on August 19, 2009. Reprinted from the Clark Memorandum, spring 2010, 26–31.

Testimony of Jesus Christ

Cecil O. Samuelson

Thank you for coming and for the invitation to speak to you this evening. While all present are not attorneys, the fact that many of you are is quite daunting to this retired physician.

When I was invited to make this presentation, reference was made to a talk I gave more than two years ago at the Easter symposium presented by Religious Education here at Brigham Young University. As is the case tonight, I was somewhat intimidated then to speak to a group more sophisticated than I am about important matters under consideration. I concluded that perhaps the most important thing that I could contribute to that group of mainly accomplished biblical and religious scholars was my sure testimony of the Savior and of the reality of the Resurrection and all events associated with it. I will attempt to do the same this evening and will draw heavily from what I shared that Easter season of 2006.

As you know, my calling as a Seventy is “to preach the gospel” and to be a witness of Jesus Christ (D&C 107:25). While my scholarship, such as it is, is largely in arenas far from the expertise of most of you, my testimony is hopefully not distanced from yours in any significant way, because our witness of the Redeemer is not about our professions or preferences but rather about Him and His limitless Atonement for all of us.

In this regard, I will begin by relating some autobiographical learning events that have affected me significantly. I shall not dwell on details, nor shall I mention other profound personal and sacred experiences that are vital to my having a firm testimony and an unreserved witness of the Lord Jesus Christ. Let me just assure you that what I know, I know clearly and more reliably than the many things that I have learned or understood through traditional study, experimentation in the laboratory, and life experiences.
I confess that I have always had a testimony of Jesus Christ and His mission. I have wondered about many things, but the reality of the Savior has never been one of those. The Brethren used to talk about “believing blood” more than they do today. Having been something of a geneticist for a period of my academic career, I believe that I largely inherited my believing blood—together with growing up in a nurturing and supportive environment—and so I am grateful for that heritage which has made much of my life so much easier.

As I have tried to analyze my testimony and what has strengthened it, I have concluded that study, faith, and obedience are critical to obtaining and sustaining a testimony, but there is something more. Let me attempt to explain what I mean by relating some personal experiences.

The first occurred some 30 years ago. By then I had been a returned missionary and had several Church leadership experiences. As a stake president I chose to speak about spiritual gifts in a stake conference because some questions had arisen on this topic among a few members of our stake. While I was speaking I quoted these verses from section 46 of the Doctrine and Covenants:

> For all have not every gift given unto them; for there are many gifts, and to every man is given a gift by the Spirit of God.
> To some is given one, and to some is given another, that all may be profited thereby.
> To some it is given by the Holy Ghost to know that Jesus Christ is the Son of God, and that he was crucified for the sins of the world. [D&C 46:11–13]

As I read that last verse—“To some it is given by the Holy Ghost to know that Jesus Christ is the Son of God, and that he was crucified for the sins of the world”—it came to me with greater power than I had ever experienced that I had been given that gift of knowing. It wasn’t that I had not previously had a conviction of Jesus Christ and His unique and supernal role, because I had, as I have mentioned. It was the dramatic realization, confirmed by the Holy Ghost, that I indeed had this specific gift that is not the routine possession of everyone else. I have never forgotten that moment.

The second experience followed just months after the first. My wife, Sharon, and I, with some good friends, had the privilege of going to Israel. We had a great time and visited most of the special and expected sites throughout the Holy Land. When we visited the Garden Tomb in Jerusalem, we were not alone. In fact, we found ourselves in a long line waiting for our turn to look into the burial vault.

Our guide and caretaker at the tomb was a retired British army colonel who was tall, slender, and ramrod straight in his demeanor. He was serving as a missionary for another denomination from England and clearly was a committed Christian with a well-developed sense of propriety.
and reverence. He asked for people to be respectful of this sacred site and to keep voices low because there were those in the area praying and meditating.

Just ahead of us in the line were a couple of American women with accents that made me think they were from a borough in our largest American city. They loudly commented on how much time the line was taking and how it was interfering with their planned shopping. The guide said nothing to them directly but was clearly a little irritated by them, and we were embarrassed by our fellow countrywomen. Their dialogue continued almost nonstop until they finally reached the opening of the tomb.

The first one there said, “Why, Ethel, there is nothing in here!”

Our wonderful British caretaker said, with admirable restraint, “Madam, that is precisely the point!”

My witness of the reality of the Resurrection was again clearly, but quietly and personally, confirmed that day.

Many, including those of other Christian faiths, believe in the Resurrection and the divinity of Jesus Christ. However, it is a special blessing to know that He is the Christ, the Savior, and the Redeemer and that He lives today.

The third experience I will relate occurred in the fall of 1997. I was serving as the Europe North Area president and living in England. One day I received a very nice letter from the Divinity School at the University of Nottingham inviting me to participate in a seminar series on alternative religions. In an evening session each month, a group of clerics and graduate students in the ministry would invite a leader from another religious tradition to spend two hours with them. The format they suggested was that I might say anything I wished for the first half hour and then the remaining hour and a half would be devoted to a question-and-answer session both on what was said and what they had previously read or wondered about. In other words, it would be “open season”!

My first inclination, candidly, was to think of whom else I might send to respond to this invitation. I add parenthetically that for a number of years Nottingham University had been quite friendly to Latter-day Saints. Professor Douglas Davies had, until just a year or two before that time, been at Nottingham, and several of our British Church Educational System personnel had obtained graduate degrees in his program. By the time of this invitation, he had moved north to Durham University. For all the obvious reasons, I felt that I needed to respond and appear.

Accordingly, I arrived at the appointed time and place on campus and was treated quite graciously. As I entered the modest classroom, I noted that several of the approximately 40 people in attendance had missionary copies of the Book of Mormon on their desks along with their Bibles and other papers. Several of the copies of the Book of Mormon had little yellow Post-it notes marking selected pages and passages. I sensed I was in for
some serious discussion. I also had my scriptures, but my Bible was different from theirs. All that I saw on their tables were fairly recent revision or translation editions, and mine was the only King James Version I could see.

You can imagine much of what transpired. I took the first 30 minutes to tell them a little of our history, beginning with the First Vision, the visitations of the angel Moroni, the restoration of the priesthood, the translation of the Book of Mormon, the organization of the Church, and, briefly, our church history in Great Britain. They listened courteously, most took some notes, and all waited patiently for the question-and-answer period. Virtually all seemed to know something about us, and I sensed they were serious in their desire to understand.

Their initial questions were kind and respectful and related to such things as their wonderment that my professional training was not in religion or theology, given my Church leadership assignment; the willingness of Latter-day Saints to respond to mission calls; and the fact that we had really abandoned plural marriage—or had we?

Soon we got into doctrinal matters that focused on Latter-day Saint beliefs in continuing revelation, an open canon of scripture, a lay priesthood, and similar matters. We also discussed why Mormons do not accept the creeds and councils of their traditions and why we also believe an apostasy took place.

Several had marked the Book of Mormon passages that suggest that the Father, Son, and Holy Ghost are “one God.” They read to me the words of Abinadi in chapter 15 of Mosiah and wondered aloud if Abinadi didn’t actually believe in the Catholic Trinity. We talked of the Savior’s great Intercessory Prayer recorded in John 17 and other clarifying passages. It was clear that they thought my interpretation was “quaint,” and one opined that he could understand my “confusion.” We don’t have time today to relate all of their questions in detail, but the discourse and our discussion were respectful, cordial, and rather wide ranging.

Then, in the last half hour, we finally got to the question that I should have been expecting. It went something like this: “In light of the many differences you and we have identified between your beliefs and ours, how do you justify calling yourselves Christians?”

Because I had been so conditioned in our Latter-day Saint culture, I honestly thought that I had already spent an hour explaining our belief in Jesus Christ and His centrality to our theology and religious practice. At the moment of my growing frustration, I was helped by heaven in a way that had not occurred to me previously. I felt a spirit of calmness and comfort as a response to them formed within me.

I had already mentioned to the group my high regard for the King James Version and my appreciation for the role of England and its courageous reformers who made the Bible readily available to all of us. We had discussed our divergent views on the current utility of the King James
Version and also the Joseph Smith Translation, which they described as “curious.”

Wanting to avoid any of these issues or distractions in my response to their central question, I asked our discussion leader if I might borrow his Bible to use in answering my question. He readily handed it to me. I then asked the group if I might answer the question posed to me by asking them a few brief questions first. They nodded in agreement.

I lifted a red-covered New International Version of the Bible and, without opening it, asked if they accepted it as the word of God. Again, they nodded in assent.

I then asked three questions, asking them to answer only to themselves unless they wished to vocalize a response. The first was, “Do you accept your Bible’s version of the origins of Jesus Christ?” Some looked a little puzzled, and so I amplified by asking, “Do you believe that He was literally the physical Son of God the Father and Mary, a mortal mother?” Some nodded yes, some looked down, and some looked pained. I then told them that we, as Latter-day Saints, accept this biblical teaching without reservation.

The second question was, “Do you accept your Bible’s account of Jesus’s mortal ministry?” This includes the miracles that He performed and the organization of His Church with apostles having His authority to minister and administrate. Again I was met with the same general spectrum of mute responses I noticed with the first question. As with the first query, my answer was the same. We accept the biblical account without qualification. We then had a brief aside on the Lord’s miracles, and several admitted to being unsettled as to their literal veracity.

The third question was then presented: “Do you accept your Bible’s account of Christ’s Passion—to use a term more familiar to them than to us—His experience in the Garden of Gethsemane, His Crucifixion on Golgotha, and His literal Resurrection on the third day?” A few remained passive, but several of the group now needed to speak. Interestingly, the most agitated wanted to talk about the Resurrection as being only symbolic of new life, such as in the spring when the flowers and trees come out and blossom.

It was obvious that many were troubled by the thought of a literal resurrection, and a couple even expressed doubts about individual life after death. After a few minutes of various opinions, I replied that we as Latter-day Saints fully accept the biblical account of the Resurrection of Jesus.

I further bore my testimony of its truthfulness and then asked my last question: “Given the answers to the questions I have just posed, who do you think deserve to be called Christians?” Again, there were various looks and no comments except from one female graduate student who elbowed the previously vocal fellow next to her (who had asked the question concerning our Christianity) and said, “It looks like he got you there.”
The time was up, and the moderator took back the floor with gracious expressions of thanks and best wishes. Several of the attendees made civil and generous comments, although I am not aware that anyone’s previous convictions were altered. Three or four of the group lingered for a few minutes longer and expressed appreciation for our evening together as they had not understood how strongly we feel about the Savior. I do not tell this experience to be critical nor to make light of the feelings and beliefs of these good people. I believe that they were doing the best they could with the understanding that was theirs. I left them with increased appreciation for their general goodness. I also felt increased gratitude for the Holy Ghost and for my sustaining testimony of the Savior.

Two of them accepted my invitation to attend the open house for the new Preston England Temple then under construction. At the visit to the temple open house, both of these new friends went out of their way to mention the clear evidence they saw in the artwork and otherwise of our strong feelings about Jesus Christ.

I have not been invited to any of their baptisms into the restored Church, nor do I think that this has occurred. I do believe that what was most impressive and surprising to them about us and our theology is our testimony of the Savior.

The Sunday before my Easter conference address, I was introduced to a woman investigator who had come to the general session of a stake conference I was assigned to. As we visited briefly, she asked if I was going to talk about Palm Sunday, it being Palm Sunday. I responded and told her I indeed planned to speak about the Savior and some of the events related to His Atonement, Crucifixion, and Resurrection. She seemed somewhat relieved and reported that someone had told her that we do not worship the same Jesus others do. I told her that we worship the Living Christ and that she would hear several testimonies in music and talks that would demonstrate our convictions about and reverence for Him. That turned out to be the case, and I was grateful that it was so.

My stake conference experience with that investigator reminded me of another experience from now over 10 years ago also related to the Preston England Temple. At that time we were holding the open-house tours for the recently completed temple immediately prior to the dedication services scheduled for a couple of weeks hence. One of our tour supervisors approached me with some anxiety and said that a known critic and antagonist of the Church was in one of the tour groups and that the guide of that group was a fine man but also a fairly recent convert with limited speaking and leadership experience. The plea to me was to go with the group and rescue him. Accordingly, I found the group and lingered near the back where I could observe all that transpired and hopefully render some assistance to our guide if necessary.
It was not long before the outspoken opponent tried to take over the tour. Our guide was doing a fine job and was explaining the centrality of Jesus Christ to our theology. The critic interrupted and said something like, “How do you claim to be Christians when you don’t even celebrate Holy Week?” Happily, I restrained myself and just listened.

Our sweet guide, seemingly unruffled, just said, “Why sir, every week for us is Holy Week. Each Sabbath day we meet to partake of the sacred emblems of the sacrament where we promise to always remember Him, to keep His commandments, and plead to always have His Spirit to be with us.” I thought that this was a splendid answer.

Unfortunately, the critic was not mollified, and he said, “Well, you don’t celebrate Good Friday like real Christians.”

Our wonderful new Latter-day Saint guide then said, “For us, the day Jesus died was Bad Friday, and we give our attention to the day He was resurrected—Good Sunday, or Easter.” Another terrific answer. The man stayed a while longer, but he didn’t ask this great group leader any more questions.

As our group moved through the temple and was introduced to the baptistry and then the other sacred rooms and spaces, it seemed to me that there was a special spirit this good man brought to all of his clear and thoughtful responses to sincere questions that were asked. He concluded with a brief but touching testimony of Jesus Christ and the Restoration.

I hope that for all of us each week is Holy Week and that we recognize what a privilege it is to celebrate “Good Sunday,” or the Resurrection of the Lord.

As I have reflected on these experiences and others that I might relate, I have found new understanding in the words of the Prophet Joseph Smith, who said:

The fundamental principles of our religion are the testimony of the Apostles and Prophets, concerning Jesus Christ, that He died, was buried, and rose again the third day, and ascended into heaven; and all other things which pertain to our religion are only appendages to it. [Joseph Smith, History of The Church of Jesus Christ of Latter-day Saints, 2nd ed., ed. B. H. Roberts (Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 1948), 3:30]

Joseph Smith might have said that the fundamental principles of our religion are the facts or evidence concerning Jesus Christ, and I might not have initially appreciated any difference. But he did not choose those or other similar words. He said that the testimonies of the apostles and prophets concerning Jesus Christ provide the fundamental principles of our religion. I would likewise suggest that our own testimonies concerning Jesus Christ provide the basis of what is most dear to us.

Please do not misunderstand. Scholarship is essential and provides the framework to establish and protect our understanding of the unique
mission and contributions of the Lord Jesus Christ. Without serious scholarship into and on the life and ministry of the Lord, our testimonies may be in peril or never be established in the first instance. But scholarship alone does not provide the assurance that can come only from the true witness of the Holy Ghost. In fact, the nature of scholarship or research is that its conclusions are always tentative or incomplete, awaiting the next discovery, insight, or data. It is the testimony of Jesus, “the spirit of prophecy” (see Revelation 19:10), that brings full and unreserved confidence to our witness of Him.

We of all people welcome more knowledge and insight, but we also do not confuse even more robust understanding with the absolute conviction that can come only through the still, small voice whispered by the Holy Spirit. Thus it is “the testimony of the Apostles and Prophets” as well as our personal testimonies that cause us to be able to say without equivocation or reservation that Jesus is the Christ, our Savior and Redeemer, the Firstborn of the Father in the spirit world, and His Only Begotten Son in this mortal sphere.

That is why the 15 then-living apostles chose to share their testimonies in the wonderful document dated January 1, 2000, and entitled “The Living Christ: The Testimony of the Apostles of The Church of Jesus Christ of Latter-day Saints.” They might have written books that outlined the basis for their faith, understanding, and scholarship about Jesus. Interestingly, they decided to record their testimonies in 13 brief paragraphs held to one page that also includes room for all 15 signatures. Let me share again what they have written. I commend it to you as I bear my testimony of it and of Him.

“The Living Christ: The Testimony of the Apostles”

As we commemorate the birth of Jesus Christ two millennia ago, we offer our testimony of the reality of His matchless life and the infinite virtue of His great atoning sacrifice. None other has had so profound an influence upon all who have lived and will yet live upon the earth.

He was the Great Jehovah of the Old Testament, the Messiah of the New. Under the direction of His Father, He was the creator of the earth. “All things were made by him; and without him was not any thing made that was made” (John 1:3). Though sinless, He was baptized to fulfill all righteousness. He “went about doing good” (Acts 10:38), yet was despised for it. His gospel was a message of peace and goodwill. He entreated all to follow His example. He walked the roads of Palestine, healing the sick, causing the blind to see, and raising the dead. He taught the truths of eternity, the reality of our premortal existence, the purpose of our life on earth, and the potential for the sons and daughters of God in the life to come.

He instituted the sacrament as a reminder of His great atoning sacrifice. He was arrested and condemned on spurious charges, convicted to satisfy a mob, and sentenced to die on Calvary’s cross. He gave His life to atone for the
sins of all mankind. His was a great vicarious gift in behalf of all who would ever live upon the earth.

We solemnly testify that His life, which is central to all human history, neither began in Bethlehem nor concluded on Calvary. He was the Firstborn of the Father, the Only Begotten Son in the flesh, the Redeemer of the world.

He rose from the grave to “become the firstfruits of them that slept” (1 Corinthians 15:20). As Risen Lord, He visited among those He had loved in life. He also ministered among His “other sheep” (John 10:16) in ancient America. In the modern world, He and His Father appeared to the boy Joseph Smith, ushering in the long-promised “dispensation of the fulness of times” (Ephesians 1:10).

Of the Living Christ, the Prophet Joseph wrote: “His eyes were as a flame of fire; the hair of his head was white like the pure snow; his countenance shone above the brightness of the sun; and his voice was as the sound of the rushing of great waters, even the voice of Jehovah, saying:

“I am the first and the last; I am he who liveth, I am he who was slain; I am your advocate with the Father” (D&C 110:3–4).

Of Him the Prophet also declared: “And now, after the many testimonies which have been given of him, this is the testimony, last of all, which we give of him: That he lives!

“For we saw him, even on the right hand of God; and we heard the voice bearing record that he is the Only Begotten of the Father—

“That by him, and through him, and of him, the worlds are and were created, and the inhabitants thereof are begotten sons and daughters unto God” (D&C 76:22–24).

We declare in words of solemnity that His priesthood and His Church have been restored upon the earth—“built upon the foundation of . . . apostles and prophets, Jesus Christ himself being the chief corner stone” (Ephesians 2:20).

We testify that He will someday return to earth. “And the glory of the Lord shall be revealed, and all flesh shall see it together” (Isaiah 40:5). He will rule as King of Kings and reign as Lord of Lords, and every knee shall bend and every tongue shall speak in worship before Him. Each of us will stand to be judged of Him according to our works and the desires of our hearts.

We bear testimony, as His duly ordained Apostles—that Jesus is the Living Christ, the immortal Son of God. He is the great King Immanuel, who stands today on the right hand of His Father. He is the light, the life, and the hope of the world. His way is the path that leads to happiness in this life and eternal life in the world to come. God be thanked for the matchless gift of His divine Son. [Signed by the First Presidency and the Quorum of the Twelve, 1 January 2000]

This is the wonderful, moving, and affirmative testimony of the First Presidency and the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints. We understand that their testimonies are of special significance because these 15 men are “special witnesses” (D&C 107:23). For many in the world, including some who are striving for testimonies, the
witnesses of the apostles are essential because these seeking people are the “others [to whom] it is given to believe on their words [meaning their testimony of Jesus Christ], that they also might have eternal life if they continue faithful” (D&C 46:14).

I suppose some might think that because this scripture teaches that “to some it is given by the Holy Ghost to know that Jesus Christ is the Son of God, and that he was crucified for the sins of the world” (D&C 46:13; emphasis added), this must be an exclusionary or restricted gift, perhaps even akin to the sectarian notion of predestination to salvation or damnation. Nothing could be further from the truth. While acquiring the testimony of Jesus may be easier for some than for others, it is abundantly clear that God wishes every person to have this witness and conviction personally.

Think of these remarkable words of counsel and promise given for our time in November 1831:

Wherefore, I the Lord, knowing the calamity which should come upon the inhabitants of the earth, called upon my servant Joseph Smith, Jun., and spake unto him from heaven, and gave him commandments;
And also gave commandments to others, that they should proclaim these things unto the world; and all this that it might be fulfilled, which was written by the prophets—
The weak things of the world shall come forth and break down the mighty and strong ones, that man should not counsel his fellow man, neither trust in the arm of flesh—
But that every man might speak in the name of God the Lord, even the Savior of the world;
That faith also might increase in the earth. [D&C 1:17–21; emphasis added]

What a wonderful thing it would be if every man and woman could have the strength and conviction of their witness that they could confidently testify of truth in the name of the Savior. What a worthy goal for each of us and for each person that we have the occasion to touch and strengthen.

Each of us having a testimony of Jesus as the Christ has a heavy and great responsibility to live our life so that our conduct will match our convictions. As I bear again my witness of the literal, living reality of the resurrected Savior in our day, I also pray that we will do all that we can to build the testimonies of Jesus Christ of all with whom we are privileged to interact. Thanks to all of you who testify of your knowledge and love of the Lord by the goodness of your example and precepts. This is His work, and He does watch over Israel. In the name of Jesus Christ, amen.

This J. Reuben Clark Law Society fireside address was given during Campus Education Week at Brigham Young University on August 19, 2008.
Cecil O. Samuelson Jr. received his MD from the University of Utah in 1970. He was a professor of medicine 1973–1990, dean of the School of Medicine 1985–1988, and vice president of health sciences 1988–1990 at the University of Utah. He served as a member of the First Quorum of the Seventy 1994–2011 and as a member of the Presidency of the Seventy 2001–2003. He is currently an emeritus General Authority and president of Brigham Young University in Provo, Utah.
Each of us brings something special to the table, a unique gift to give back to society. For each one of you, there is some pro bono work that will be deeply fulfilling, no matter how busy you are and whatever your jurisprudential interests, your political or philosophical beliefs, or your professional skills.

SETH P. WAXMAN (P. 109)
In 1947, the centennial of the arrival of Latter-day Saint pioneers in the Salt Lake Valley, many tributes were paid to those who set their faces toward Zion and wore out their lives in pursuit of that spiritual homeland. One of the most poignant of those tributes was voiced by President J. Reuben Clark Jr., First Counselor in the First Presidency, in a general conference address Sunday, 5 October 1947.

My brethren and sisters, I should like in the beginning to add my testimony to the many that we have heard during this conference—my testimony that God lives; that Jesus is the Christ, the Redeemer of the world, the First Fruits of the Resurrection; that Joseph Smith was a prophet; that through him the gospel was restored and likewise the priesthood, the authority delegated to man on earth to represent Deity here among us; and that the Prophet has been followed down to and includes our present president, George Albert Smith, by men who possessed the keys of the last dispensation as conferred upon Joseph Smith.

The matter that I shall give you today is very dear to my soul. Since I should like to say what I have to say in the best way I can say it, I have written it down and shall read it. I hope that what I shall say will be in harmony with the spirit of this great conference—I think the greatest I have attended in its high spiritual tone.

At the near close of this 100th year of the entering into these valleys of your fathers and your mothers, some of yours and mine, I wish to speak a few further words of humble tribute and thanksgiving to them, and especially to the meekest and lowliest of them—those great souls, majestic in the simplicity of their faith and in their living testimony of the truth of the restored gospel; those souls in name unknown, unremembered, unhonored in the pages of history but lovingly revered round the hearthstones of
their children and their children's children, who pass down from generation to generation the story of their faith and their mighty works and the righteousness of their lives and living; those souls who worked and worked and prayed and followed and wrought so gloriously.

I would not take away one word of praise or gratitude, honor or reverence from the great men who led these humble ones of ours. They were mighty men in brain and brawn, in courage and valor, in honesty and in love of truth, living near the Lord—Brothers Brigham and Heber and Wilford and Willard and Charles, the two Orsons and Parley and John and George and Erastus and Lorenzo and Daniel and Joseph and Jedediah and a host of other giants, each and all richly blessed with the Lord's divine love and with that gift of the Holy Ghost that made them leaders truly like unto Moses of old. I yield—we yield—to no one in our gratitude for them and for their work of directing the conquest of the wilderness and of saving men's souls. Their names shine lustrously on those pages of history that record only the doings of the makers of epochs—those choice spirits, chosen before the foundation of the world to be the leaders and builders of dispensations of God's dealings with men; and these leaders of ours to be the builders of that dispensation which of old was named the "dispensation of the fulness of times" [Ephesians 1:10; D&C 112:30]. Unnumbered eternities will remember and honor them.

But I should like now and here to say a few words about those who trod after where those giants led—some in the same companies that the Brethren piloted, some in later companies following that year and the years after, some in the fateful handcarts, with their unexcelled devotion, heroism, and faith—all trickling forward in a never-failing, tiny stream till they filled the valley they entered and then flowed out at the sides and ends, peopling this whole wilderness waste, which they fructified, making it to fulfill the ancient prophecy that the desert should blossom as the rose.

I would like to say something about the last wagon in each of the long wagon trains that toiled slowly over the plains, up mountain defiles, down steep, narrow canyons, and out into the valley floor that was to be home—this last wagon: last, because the ox team that pulled it was the smallest and leanest and weakest and had the tenderest feet of any in the train; it was slow starting and slow moving; last, because, worn and creaking, it took more time to fix and to grease, for young Jimmy generally had trouble in getting the wagon jack under the "ex" [the point where a shaft called the "reach" crosses the axle]; last, because its wind-rent cover was old and patched and took hours to mend and tie up to keep out the storm; last, because the wife, heavy with child, must rest till the very moment of starting; last, because sickly little Bill, the last born, poorly nourished, must be washed and coaxed to eat the rough food, all they had; last, because with all his tasks—helping little Bill, cooking and cleaning up the breakfast (Mother was not able to help much)—Father took a little longer to yoke
his cattle and to gird himself for the day’s labor; last, because his morning prayers took a few more minutes than the others spent—he had so many blessings to thank the Lord for and some special blessings to ask the Lord to grant, blessings of health and strength, especially for his wife and for little Bill and for the rest, and then the blessings for himself that his own courage would not fail, but most of all for the blessing of faith, faith in God and in the Brethren who sometimes seemed so far away. For they were out in front where the air was clear and clean and where they had unbroken vision of the blue vault of heaven.

The Brethren had really visioned the glory of the Lord, who walked near them, put His thoughts into their minds; His Spirit guided and directed them, petitioned thereto by the thousands of Saints who were back in Winter Quarters, back in Iowa, back in the States, and beyond, even across the waters, for the faithful poured out their souls in fervent prayer to Almighty God that the Brethren should be inspired. The Saints buoyed up the Brethren out in front with encouragement, with praise, and sometimes even with adulation. Knowing the Brethren were prophets of God, the Saints gave them full confidence, daily, almost hourly, expressed. The Brethren lived in a world of commendation from friends and the tried and true Saints. Rarely was their word or their act questioned by the faithful Saints. This was as it should be and had to be to carry out the Lord’s purposes.

But back in the last wagon, not always could they see the Brethren way out in front, and the blue heaven was often shut out from their sight by heavy, dense clouds of the dust of the earth. Yet day after day, they of the last wagon pressed forward, worn and tired, footsore, sometimes almost disheartened, borne up by their faith that God loved them, that the restored gospel was true, and that the Lord led and directed the Brethren out in front. Sometimes, they in the last wagon glimpsed, for an instant, when faith surged strongest, the glories of a celestial world, but it seemed so far away, and the vision so quickly vanished because want and weariness and heartache and sometimes discouragement were always pressing so near.

When the vision faded, their hearts sank. But they prayed again and pushed on, with little praise, with not too much encouragement, and never with adulation. For there was nearly always something wrong with the last wagon or with its team—the off ox was a little lame in the right front shoulder; the hub of the left front wheel was often hot; the tire of the hind wheel on the same side was loose. So corrective counsel, sometimes strong reproof, was the rule, because the wagon must not delay the whole train. But yet in that last wagon there was devotion and loyalty and integrity and, above and beyond everything else, faith in the Brethren and in God’s power and goodness. For had not the Lord said that not even a sparrow falleth unnoticed by the Father [see Matthew 10:29], and were they not of
more value than sparrows? And then they had their testimony, burning always like an eternal fire on a holy altar, that the restored gospel was true, that Joseph was a prophet of God, and that Brigham was Joseph's chosen successor.

When the train moved forward in the early morning sun and the oxen with a swinging pull that almost broke the tongue got the last wagon on the move, the dust in the still morning air hung heavy over the road. Each wagon from the first stirred up its own cloud, till when the last wagon swung into line, the dust was dense and suffocating. It covered that last wagon and all that was in it; it clung to clothes; it blackened faces; it filled eyes already sore, and ears. The wife, soon to be a mother, could hardly catch her breath in the heavy, choking dust, for even in the pure air she breathed hard from her burden. Each jolt of the wagon, for those ahead had made wagon ruts almost "ex" deep, wrung from her clenched lips a half groan she did her best to keep from the ears of the anxious, solicitous husband plodding slowly along, guiding and goading the poor, dumb cattle, themselves weary from the long trek. So through the long day of jolting and discomfort and sometimes pain, and sometimes panting for breath, the mother, anxious only that the unborn babe should not be injured, rode, for she could not walk; and the children walked, for the load was too heavy and big for them to ride; and the father walked sturdily alongside and prayed.

When in the evening the last wagon creaked slowly into its place in the circle corral and the Brethren came to inquire how the day had gone with the mother, then joy leaped in their hearts, for had not the Brethren remembered them? New hope was born, weariness fled, fresh will to do was enkindled; gratitude to God was poured out for their knowledge of the truth, for their testimony that God lived, that Jesus was the Christ, that Joseph was a prophet, that Brigham was his ordained successor, and that for the righteous a crown of glory awaited that should be theirs during the eternities of the life to come. Then they would join in the songs and dancing in the camp, making the camp's gaiety their own—as much as Mother's condition would permit.

Then the morning came when from out that last wagon floated the la-la of the newborn babe, and Mother love made a shrine, and Father bowed in reverence before it. But the train must move on. So out into the dust and dirt the last wagon moved again, swaying and jolting, while Mother eased as best she could each pain-giving jolt so no harm might be done her, that she might be strong to feed the little one, bone of her bone, flesh of her flesh. Who will dare to say that angels did not cluster round and guard her and ease her rude bed, for she had given another choice spirit its mortal body that it might work out its God-given destiny?

My mother was one of those babes so born in 1848, 99 years ago.
Another morning came, when courageous little Bill, who, with a hero’s heart, had trudged through long days of hot sun and through miles of soggy mud in the rain, his little body drenched, when little Bill, weak and wan, must be crowded in to ride with Mother, for he was sick from a heavy cold. Months before, on that cold winter’s night when they fled Nauvoo for their lives to escape the fiendish wrath of a wild mob, Bill became dangerously ill with pneumonia, which left him with weak lungs. This old illness now returned. He grew worse and worse. The elders came and prayed he might get well. But the Lord wanted little Bill with Him. So a few mornings later a weeping mother and a grief-stricken father and that last wagon swung into place in the line, leaving beside the road under some scrub brush a little mound, unmarked save for heaped up rocks to keep out the wolves—a mound that covered another martyr to the cause of truth.

So through dust and dirt, dirt and dust, during the long hours, the longer days—that grew into weeks and then into months—they crept along till, passing down through its portals, the valley welcomed them to rest and home. The cattle dropped to their sides, wearied almost to death; nor moved they without goading, for they too sensed they had come to the journey’s end.

That evening was the last of the great trek, the mightiest trek that history records since Israel’s flight from Egypt, and as the sun sank below the mountain peaks of the west and the eastern crags were bathed in an amethyst glow that was a living light, while the western mountainsides were clothed in shadows of the rich blue of the deep sea, they of the last wagon, and of the wagon before them, and of the one before that, and so to the very front wagon of the train, these all sank to their knees in the joy of their souls, thanking God that at last they were in Zion—“Zion, Zion, lovely Zion; Beautiful Zion; Zion, city of our God!” [Hymns, no. 44]. They knew there was a God, for only He could have brought them, triumphant, militant, through all the scorn, the ridicule, the slander, the tarrings and featherings, the whippings, the burnings, the plunderings, the murderings, the ravishings of wives and daughters that had been their lot—the lot of their people since Joseph visioned the Father and the Son.

But hundreds of these stalwart souls of undoubting faith and great prowess were not yet at their journey’s end.

Brother Brigham again called them to the colors of the kingdom of God and sent them to settle the valleys, near and remote, in these vast mountains of refuge. So again they yoked their oxen and hitched up their teams, and putting their all in the covered wagon, this time willingly, unwhipped by the threat of mob cruelty and outrage, they wended their slow way to new valleys, again trusting with implicit faith in the wisdom and divine guidance of their Moses. The very elements obeyed their faith, faith close kin to that which made the world.
These tens of thousands who so moved and so built were the warp and the woof of Brother Brigham's great commonwealth. Without them Brother Brigham had failed his mission. These were the instruments—the shovelers, the plowers, the sowers and reapers, the machinists, the architects, the masons, the woodworkers, the organ builders, the artisans, the mathematicians, the men of letters—all gathered from the four corners of the earth, furnished by the Lord to Brother Brigham and the prophet leaders who came after, that he and they might direct the working out of His purposes. These wrought as God inspired Brother Brigham and the other prophets to plan, all to the glory of God and the upbuilding of His kingdom.

Upright men they were—and fearless, unmindful of what men thought or said of them, if they were in their line of duty. Calumny, slander, derision, scorn left them unmoved, if they were treading the straight and narrow way. Uncaring they were of men's blame and censure, if the Lord approved them. Unswayed they were by the praise of men to wander from the path of truth. Endowed by the spirit of discernment, they knew when kind words were mere courtesy and when they betokened honest interest. They moved neither to the right nor to the left from the path of truth to court the good favor of men.

So for a full hundred years, urged by the spirit of gathering and led by a burning testimony of the truth of the restored gospel, thousands upon tens of thousands of these humble souls, one from a city, two from a family, have bade farewell to friends and homes and loved ones and, with sun-dered heartstrings, companioned with privation and with sacrifice even to life itself, these multitudes have made their way to Zion to join those who were privileged to come earlier, that all might build up the kingdom of God on earth—all welded together by common hardship and suffering, never-ending work and deep privation, tragic woes and heart-eating griefs, abiding faith and exalting joy, firm testimony and living spiritual knowledge—a mighty people, missioned with the salvation not only of the living but of the dead also, saviors, not worshippers, of their ancestors, their hearts aglow with the divine fire of the spirit of Elijah, who turns the hearts of the fathers to the children and of the children to the fathers.

And thousands upon thousands of these tens of thousands, from the first till now, all the elect of God, measured to their humble calling and to their destiny as fully as Brother Brigham and the others measured to theirs, and God will so reward them. They were pioneers in word and thought and act and faith, even as were they of more exalted station. The building of this intermountain empire was not done in a corner by a select few but by this vast multitude flowing in from many nations, who came and labored and wrought, faithfully following their divinely called leaders.

In living our lives let us never forget that the deeds of our fathers and mothers are theirs, not ours; that their works cannot be counted to our
glory; that we can claim no excellence and no place because of what they did; that we must rise by our own labor, and that labor failing, we shall fall. We may claim no honor, no reward, no respect nor special position or recognition, no credit because of what our fathers were or what they wrought. We stand upon our own feet in our own shoes. There is no aristocracy of birth in this Church; it belongs equally to the highest and the lowliest; for as Peter said to Cornelius, the Roman centurion, seeking him: “Of a truth I perceive that God is no respecter of persons: But in every nation he that feareth him, and worketh righteousness, is accepted with him” (Acts 10:34–35).

So to these humble but great souls—our fathers and mothers, the tools of the Lord, who have, for this great people, hewed the stones and laid the foundations of God’s kingdom, solid as the granite mountains from which they carved the rocks for their temple—to these humble souls, great in faith, great in work, great in righteous living, great in fashioning our priceless heritage, I humbly render my love, my respect, my reverent homage. God keep their memories ever fresh among us, their children, to help us meet our duties even as they met theirs, that God’s work may grow and prosper till the restored gospel of Jesus Christ rules all nations and all peoples, till peace, Christ’s peace, shall fill the whole earth, till righteousness shall cover the earth even as the waters cover the mighty deep [see Moses 7:62]. Let us here and now dedicate all that we have and all that we are to this divine work. May God help us so to do, I humbly pray in Jesus’s name, His Son, amen.

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I am grateful to be with you this evening. I have always enjoyed being with lawyers. Let me take this opportunity to express my heartfelt gratitude to our Church general counsel: Elder Lance B. Wickman, William Atkin, and Boyd Black. They render magnificent service to the Church overseeing the General Counsel’s Office.

I am sure each of us here has a reason we decided to attend law school. The genesis of my own decision to become a lawyer came from two sources. The first was my father. His uncle, David S. Cook, had been a successful attorney and had created in my father a favorable disposition toward the law. (Incidentally, this uncle had roomed with Albert E. Bowen at the University of Chicago Law School. Elder Bowen, of course, was later an apostle.) In addition to his uncle, my father had utilized lawyers in his various businesses, and as he used to say, in a tone that made it clear he wasn’t serious and with a big smile, “Lawyers have a license to steal.” To be completely fair, he used the same language to describe doctors. I suppose that, viewed from the competitive business world in which he was involved, the law seemed like a pretty safe haven. My guess would be that most of us here would not concur with my dad’s assessment, particularly with the difficult economic times many lawyers are experiencing today.

The other person who influenced my decision to become a lawyer was my second mission president, Elder Marion D. Hanks, who is also a lawyer. In a serious conversation I had with him near the end of my mission, I told him the educational options I was considering. He told me that he thought I should pursue a legal education. From that very moment my decision was made. It wasn’t just because he said it, but because I knew he was right.
While I thoroughly enjoyed the practice of law, I did not feel inclined to influence our children toward any particular occupation. Nevertheless, two of the three did become lawyers and are both here this evening: my daughter, Kathryn, who after a 14-year hiatus raising four wonderful children has returned to part-time legal practice; and my son, Larry, who practiced for a time on Wall Street for Sullivan & Cromwell and is now a partner in a private equity firm.

I should also mention that I have two cousins who are distinguished lawyers, and they are both here. One is Judge Dale Kimball, who is a federal district judge here in Salt Lake; and the other is Kimball Johnson, who is in the Utah Attorney General’s Office. Kimball’s son is attending the University of Utah Law School and is here tonight with some of his classmates.

As I began preparing for this talk and paying more attention to what is being said today about lawyers and the law, I was interested in an article in the January 12, 2009, issue of Forbes magazine and in a subsequent account in the New York Times by Evan R. Chesler. Mr. Chesler is the presiding partner at Cravath, Swain & Moore, and the Forbes article was entitled “Kill the Billable Hour,” with a subheading of “Lawyers Should Bill the Way Joe the Contractor Does.” I have to admit that there were three aspects to my interest in his statements. First, I have always had a soft spot in my heart for the Cravath firm. In 1966 when I graduated from law school as a new lawyer, Cravath increased the “going rate” by a few hundred dollars to a magnificent sum exceeding $8,000 per year for beginning lawyers. My new firm decided to match that rate, and I was the grateful beneficiary of what at that time seemed like a significant increase. Lest you think we were starving to death, very adequate homes could be purchased for $20,000–$30,000 in those days. Second, Mr. Chesler described himself as the presiding partner of his firm. That is new terminology to me. When I was practicing, the term was managing partner. But even then it seemed like an oxymoron. Managing lawyers, an almost impossible task, has always resembled the oft-quoted comparison to herding cats. Third, and most important, anything that would take away the burden of billable hours would constitute an improvement to the legal profession.

When I was a second-year law student at Stanford University, a visiting professor arrived to teach first-year constitutional law. His name was Arvo Van Alstyne, and he was then a law professor at UCLA. He had also been president of the Los Angeles California Stake. He was teaching constitutional law to half of the first-year class. The constitutional law teacher for the other half was Gerald Gunther, who had clerked for both Judge Learned Hand and Chief Justice Earl Warren. He had been my teacher the previous year.

In the first few days of class, Professor Van Alstyne informed his students that he was a committed member of the LDS Church. He explained
to them that as part of his faith he believed that the United States Constitution was divinely inspired. He said he wanted them to know about his personal beliefs and predilections. He recognized that the students would need to reach their own conclusions.

This announcement made quite a stir at the law school and engendered both discussion and humor. The students would inquire of each other, “Do you attend the inspired constitutional law class or the uninspired constitutional law class?”

My intent here this evening is not to deliver a scholarly discourse on the U.S. Constitution. However, before I speak to the two concepts I do want to cover, a historical overview of how some have viewed the inspired aspects of the U.S. Constitution might be interesting. Both President J. Reuben Clark and Elder Dallin H. Oaks, two apostles who had previously been eminent lawyers, share a common view of our understanding that the Constitution is divinely inspired. Neither of them has seen every word of the Constitution as being inspired. Elder Oaks has said, “[Our] reverence for the United States Constitution is so great that sometimes individuals speak as if its every word and phrase had the same standing as scripture.” He continues, “I have never considered it necessary to defend [that possibility].” President J. Reuben Clark enunciated a similar view in an address given in 1939. I concur with their assessment.

President Clark saw three elements of the Constitution as being particularly inspired. First is the separation of powers into three independent branches of government. Second is the guarantee of freedom of speech, press, and religion in the Bill of Rights. And the third is the equality of all men before the law.

Elder Oaks, while concurring with President Clark on these three elements, also includes the federal system with the division of powers between the nation as a whole and the various states and the principle of popular sovereignty. The people are the source of government.

I think most of us would agree with President Clark and Elder Oaks that these incredibly significant fundamental principles elegantly combined in the constitutional documents are indeed inspired and coincide with doctrinal principles in our scriptures. It does not require detailed analysis of the Constitution to see that these five basic fundamentals have been a great blessing to the United States and were necessary as a precursor to the Restoration of the gospel of Jesus Christ.

I understand that some who are listening by satellite are in foreign countries. Many of the above principles had their antecedents in legal doctrines and philosophies established in Europe and particularly in Great Britain.

My purpose this evening is to let the founding U.S. documents—the Declaration of Independence, the Constitution, and the Bill of Rights—frame just two concepts that I will discuss in broad, practical terms.
I believe the concepts are as applicable internationally as they are in the United States.

Pursuit of Happiness

The first is the concept of happiness. Much has been written about the meaning of the words “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” The British political philosopher John Locke is credited with those enduring concepts. George Mason, Thomas Jefferson, and other Founding Fathers weighed into the writing of this language. With respect to the word *happiness*, there was at least some element of protecting possessions and property. For others, the concept of safety was also important. But it is clear that for the authors of the Declaration, happiness was something more than material well-being and the possession of property. One writer described it this way:

> Happiness has to do with a life well lived, or a good human life as a whole; it involves the achievement and practice by a person of such virtues as courage, decency, and charity, virtues that are entirely within a person's own power to attain.  

I have been amazed by the number of articles in the last two or three years that have focused on happiness. It is clear, for instance, that nations rich economically aren't necessarily happier than poor ones. Also, people at all income levels say they would be happy if only they made more money. The message of many magazines today is we're never quite happy enough.

Elder Oaks and I were in Beijing, China, a little over a year ago. An editorial in the *China Daily* was titled “Finding the Right Path to Happiness for All.” The editorial indicated that despite significant increases in material wealth, people don't feel any happier. A few paragraphs from this Chinese newspaper editorial might be interesting to you.

Growing stress from work and study is making many people blue, as high pressure and long hours offset the happiness brought by economic well-being.

This is also true for school children. Often spoiled, these little emperors and empresses don't smile as much as they should, weighed down by excessive homework and endless tests. They also play less and are physically less fit compared with their parents' generation.

While the divorce rate soars . . . the outcome is often damaging—especially for young children.

Deteriorating morality and manners are also getting people down. . . . Loneliness is also playing a role, as interpersonal relationships become more complicated and people living in urban concrete jungles lose their sense of community. . . .
Focusing on [gross domestic product growth] is not the right path to happiness.6

This debate about prosperity and happiness has been going on for a long time. The great Anglican theologian Frederic W. Farrar, in The Life and Work of St. Paul, wrote of the grandeur of ancient Greece, particularly of Athens. He asserted that those who believe government, culture, philosophy, business, science, or other worthy pursuits can bring permanent happiness are mistaken. He stated:

Had permanent happiness . . . been among the rewards of culture; had it been granted to man’s unaided power to win salvation by the gifts and qualities of his own nature, and to make for himself a new Paradise . . . then such ends would have been achieved at Athens in the day of her glory.7

He concluded that they definitely were not achieved.

The relationship between happiness and religion that was acknowledged by Farrar has been evident to almost all who have studied it. John Tierney, writing in the New York Times, December 30, 2008, stated: “Researchers around the world have repeatedly found that devoutly religious people tend to do better in school, live longer, have more satisfying marriages, and be generally happier.”

The Church’s doctrine leads to true happiness, and I will discuss that later. But there are issues relating to happiness with which many people struggle.

Don’t Underestimate Your Accomplishments and Capabilities

Almost all studies of happiness indicate that the relationship between how we think we are doing compared to others is more important than our actual circumstances. Arthur C. Brooks, who has written extensively on this subject, says it this way:

Imagine two people who are the same in income, education, age, sex, race, religion, politics and family status. One feels very successful; the other does not. The former is about twice as likely to be very happy about his or her life than the latter. And if they are the same in perceived success but one earns more than the other, there will be no happiness difference at all between the two.8

Many years ago a very wise consultant helped me understand this in a way that was meaningful to me. I was running a health care system and had just been called as an Area Authority. I had just returned from a stake conference in San Diego and was feeling that the talks I had given were less meaningful than I would have liked them to be. There were some merger issues in the business that the consultant was helping us resolve.

He took me to a whiteboard and went through the following analysis. He asked, “What are some of the skills that are inherent in what you
are trying to do?” We then listed those skills on the whiteboard. I don’t remember them exactly, but some of them were giving talks, providing inspired leadership, working with others, delegating, and other similar skills. He then asked me to list the individuals I had met in my lifetime who were the very best in each of the designated areas. I was surprised that in many of the skill areas, I knew immediately who I thought was the best. For instance, I knew that my mission president, Elder Marion D. Hanks, was as good a speaker as I had ever encountered, whether it was a prepared talk or one spoken extemporaneously. The quality of content and delivery was exceptional.

With respect to delegation I immediately identified a former stake president, David Barlow. He was the president of the Ortho Division of Standard Oil, now Chevron, and he was absolutely spectacular with respect to delegation. I can still remember, as a new high councilman assigned to the youth, reporting to him on some challenges that I thought our young people were experiencing. He immediately concurred with my assessment and then asked, “What is the solution?” I had to admit that I had thought deeply about the problem but had no solution as yet to propose. He helped me define what I was looking for and then set a specific time for us to meet to discuss a proposed solution that I was expected to bring to the next meeting. His success in both Church and business was most remarkable, and a significant part of that was his unusual ability to delegate and hold people accountable.

The consultant had me list additional people for each of the other skills or talents. Most of them I was able to identify very quickly. As I recall, there were approximately 10 of these skills. He then listed them across the top of the whiteboard and asked me, using an A, B, C grade formulation, to identify how each of these superstars performed in the other nine areas. To my great amazement, I realized that no one got straight As across the board. Most had significant numbers of Bs, and many had some Cs.

The consultant then pointed out that we often compare ourselves with the A+ performers in each category that we value, and then we feel inadequate and unsuccessful in what we are doing. As the studies I have mentioned indicate, when we feel unsuccessful we feel unhappy.

You might ask why I am sharing this with you. Law and the process of becoming a lawyer are very competitive. The respect for credentials can reach an inappropriate level where they are virtually “idols.” In addition, client expectations, regardless of the legal specialty, often exceed any realistic outcome. This can be exaggerated by the crushing impact of losing cases, sometimes in a public setting. In the hothouse environment of the law, there are many people who are very skilled, and there is always somebody who seems to be better in all the ingredients that make up the qualifications to be a lawyer. Notwithstanding these issues, I would ask, “Do we have to be an A in everything to be happy? Do we have to
be so hard on ourselves?” The scriptures do, of course, address happiness, but not in terms of material or academic success or skill or professional achievements.

Our doctrine is set forth succinctly in Mosiah 2:41. King Benjamin taught:

I would desire that ye should consider on the blessed and happy state of those that keep the commandments of God. For behold, they are blessed in all things, both temporal and spiritual; and if they hold out faithful to the end they are received into heaven, that thereby they may dwell with God in a state of never-ending happiness. O remember, remember that these things are true; for the Lord God hath spoken it.

I was impressed a while back by an editorial page article in the Wall Street Journal written by Steve Salerno. The title was “The Happiness Myth.” He remembered asking his dad when he was 13, “Are you happy?” His father answered, “Son, a man doesn’t have time to think about that. A man just does what a man needs doing.” He then recited a second encounter with his father. He said his dad told him, “Life isn’t built around fun. It’s built around peace of mind.”

That resonated with me as I read it, because one of my favorite scriptures is Doctrine and Covenants 59:23: “But learn that he who doeth the works of righteousness shall receive his reward, even peace in this world, and eternal life in the world to come.”

I would suggest a better list to put on the whiteboard would have been the attributes and teachings of the Savior. That is the list that, without comparing ourselves to others, we should be striving to achieve and would allow us to have the peace I have just described.

When the Missionary Department was working on the new missionary guide, Preach My Gospel, we knew that to be successful, missionaries needed to emulate the Savior. We also felt that if missionaries seriously worked on Christlike attributes, it could become a lifelong quest that would supersede the kind of comparisons I have described. I respectfully submit that members of the legal profession would be blessed if they did not underestimate their accomplishments and capabilities.

Freedom of Speech and Freedom of Religion

The second concept I want to touch on this evening is the constitutional provision that the United States Congress would “make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” My emphasis is religious freedom and the practical participation of people of faith in government. In speaking of the U.S. Constitution, John Adams said, “Our Constitution was made only for a moral and religious people.” James Madison, known as the Father of the Constitution, added his view that there had to be a “sufficient virtue among men for
self-government.” Thomas Jefferson favored protection of religion and conscience, but he also wanted freedom from religion.

The history of the members of our Church has caused us to be vigilant on free speech and freedom of religion issues. In our early Church history, the vast majority of our members were antislavery. This was prior to the Civil War and was a major element—along with our religious beliefs—in the hostility, the mob violence, and, ultimately, the extermination order issued by Governor Boggs of Missouri. The Prophet Joseph lamented that the U.S. Constitution was not “broad enough to cover the whole ground” and that the federal government could not intervene when the state militia expelled the Mormons from Missouri.

During the past year and a half, the Church has experienced many issues that have highlighted the significance of freedom of religion. At the direction of the First Presidency, Elder M. Russell Ballard and I, chairman and vice chairman, respectively, of the Church Public Affairs Committee, have visited with many members of the media as well as leaders of other faiths. Let me review some of these visits. In the latter part of 2007 and the early part of 2008, we visited with the editorial boards of 12 newspapers, magazines, and journals. These included several influential newspapers such as the Washington Post, USA Today, the Boston Globe, the Wall Street Journal, and the Chicago Tribune.

In addition, we visited the editorial boards of diverse magazines such as U.S. News & World Report, the National Review, and the New Republic. More recently we have met with broadcast media. For instance, in January of this year, we escorted many of the media through the new Draper Utah Temple open house. We were interviewed by Dan Harris of ABC for his Nightline program. Other equally significant media entities were visited.

One purpose of the visits was to explain to the media the neutrality the Church maintains in partisan politics. We do not support political parties or political candidates. We explained to them that we do not allow discussions of political parties or candidates to be made from our pulpits. We do not distribute cards indicating for whom members should vote. We pointed out to them that we have faithful members of the Church in the various political parties and used as examples Senate Majority Leader Harry Reid and senior Republican senator Orrin Hatch.

We told them that we always reserve the right as a Church to take specific positions on moral issues. From time to time the Church has done this. When the Church does take a position, it does so in a public and transparent manner. The Church does not tell legislators how to vote. Legislators and members are always free to vote their conscience.

We then opened the discussions to questions from them. There were two questions that were asked by almost every editorial board. The first was: “Why are you so secretive?” When we probed on this question, we were surprised to find that in virtually every case these highly educated,
well-informed people believed that one had to be invited by a member of the Church to attend a Latter-day Saint meeting. Elder Ballard and I were astounded, having both recently been in the Missionary Department, working with the 53,000 missionaries trying to get every investigator to attend Church; we could not believe what we were hearing. It soon became clear that they were all confusing our temples with our meetinghouses. We were able to explain to them that we have approximately 20,000 chapels, where meetings are held every Sunday that anyone can attend without permission. We have 128 operating temples, which were open to the public before their dedication and where tours were given to explain what occurs in the temple. Then they are dedicated to the Lord and are closed, because they are sacred—not because they are secret.

The vast majority of the media were surprised to learn that an unpaid lay leader presided over the ward and branch units. They were also surprised to find that women participate in giving talks and prayers at our most sacred meeting, sacrament meeting.

Turning to the second question that was uniformly asked—and remember, some of this was during the Romney for President Campaign in the u.s.—“Why do some people take the position that you are not Christians?” They had in front of them our cards describing us as apostles of The Church of Jesus Christ of Latter-day Saints. We told them that we are neither Catholic nor Protestant. We are restored New Testament Christians. We explained to them that if they wanted to know how Latter-day Saints live their lives, they should look at the Savior’s teachings in the New Testament. We attempt to emulate Christlike attributes. We were pleased to report to them our demonstrated efforts to help the poor, the sick, and the needy. Our commitment to fasting and giving offerings to assist those in need is a marvelous Christian effort. Faithful home and visiting teachers bless lives in a most remarkable, Christlike outreach.

We pointed to the concluding chapters of Matthew, Mark, Luke, and John, where the Risen Lord asked His disciples to preach His gospel and feed His sheep. We noted that in this dispensation over a million missionaries have served. We acknowledged that at some times to some people it feels like the missionaries are invading their privacy, but we noted that the Savior’s commandment requires us to preach His gospel.

In most of the meetings there was a discussion of the Nicene Creed to which we do not adhere because of the revelations received by the Prophet Joseph Smith. I would have to say that they seemed far more interested in the fact that we worship the Savior and emulate His teachings than in deep theological differences with other Christians.

Again, I want to note that we were well received and treated with great respect. Of course, there were numerous other questions that I do not have time to review tonight. In many of these meetings, and particularly in follow-up conversations, the issue was raised by some of the media
suggesting that the Church and its members be more vigorous with respect to answering legitimate questions people have about our faith and also in dealing with some of the bigotry that occurs.

Active Participant or Silent Observer?

My concluding and perhaps most important purpose is to invite you highly educated and talented individuals to do what the media has suggested. Additionally, I would like to challenge you to contemplate how you can improve the society in which you live. Participating in government and asserting righteous principles in the public square would be a commendable and much needed goal. Many times your particular talents are needed to defend our faith.

What exactly are we asking you to do? First, you will not speak for the Church itself. Only the First Presidency and those authorized from time to time by them will speak for the Church. We are asking you as individuals to respond appropriately and in a Christlike fashion whenever and wherever it is necessary.

Elder Ballard, speaking at BYU–Hawaii and BYU–Idaho, asked our young students to become more involved, particularly with respect to the Internet. The emergence of the Internet has generated countless worldwide conversations on a huge range of subjects, including religion. As we all know, many Internet conversations are about the Church. We see them on blogs, in readers’ letters to online publications, in YouTube videos, and in a variety of other formats. These conversations go on whether or not we choose to participate in them.

Most people, even in America, are uncertain what to make of Latter-day Saints. If they know a Latter-day Saint personally, they often have a good impression. But they also hear harsh or mean-spirited criticisms or accusations against the Church. By training, experience, and judgment, you are among the Church’s most articulate and thoughtful members. So what is your responsibility during this period of unusual public attention and debate? As Elder Ballard asked a BYU Marriott School of Management Society audience last year in Washington: “Are you going to be an active participant or only a silent observer?”

Elder Ballard went on to say:

Church leaders must not be reluctant to participate in public discussion. Where appropriate, we will engage with the media whether it’s the traditional, mainstream media or the new media of the Internet. But Church leaders can’t do it all, especially at the grass-roots, community level. While we do speak authoritatively for the Church, we look to our responsible and faithful members to engage personally with blogs, to write thoughtful, online letters to news organizations, and to act in other ways to correct the record with their own opinions.
Neither is it always about correcting information. Sometimes it's as simple as sharing your personal life experiences to show how your values and faith intersect, whether it's how you as a parent engage with your teens or whether it's how you find the time to volunteer in good causes. Countless members of the Church are now doing this. One example I recently became aware of is called *A Daily Scoop.*[^1] It is written by a Church sister in Las Vegas. This good woman experienced a tragic loss of a child in her family and began writing her blog to help her get through it. People began to notice, and she developed a following as she wrote about dealing with adversity. Often she doesn't mention the Church at all, but sometimes she does. For instance, she posted comments from a talk given by Elder Joseph B. Wirthlin at the last general conference on meeting adversity. Some of the responses from nonmembers are impressive as they relate to her circumstances. For some it may have been their first encounter with a Latter-day Saint. She comes across as real, thoughtful, intelligent, and dealing with the same problems that many others face, but in a remarkable way that allows gospel values to shine.

As people sense the common ground they share with you and engage in conversations intelligently, they will relate to your values. I'm well aware that part of the Internet is occupied by people who like to abuse and scream at each other rather than discuss things or, as the *Atlantic Monthly* recently reported, who seem to fit somewhere between bigotry and stupidity.[^2] It's not all like that. Those sites attract their own followers, but you can rise above that by reading and commenting on the more thoughtful sites and engaging in more respectful dialogue, sharing your values, and speaking out for the Church when required.

Many of you are not involved in the Internet, but the principles for being engaged in traditional media are similar. As you participate, regardless of the media involved, remember who you are. You are Latter-day Saints. Where possible, be peacemakers. Explain your beliefs in gentle, loving terms. Be wise, thoughtful, considerate, and friendly.

I am grateful that we have reached the point where there are thousands of faithful Latter-day Saint lawyers across the world. The dream of Church leaders when the J. Reuben Clark Law School and this Law Society were established is being fulfilled. I am not sure you can fully comprehend how significant you are and what you collectively accomplish in blessing mankind and building the kingdom of God here on earth.

You have my appreciation, respect, and best wishes.

[^1]: *A Daily Scoop*
[^2]: *Atlantic Monthly*
Quentin L. Cook received his JD from Stanford University in 1966. He has served as a General Authority since 1996 and is currently a member of the Quorum of the Twelve Apostles.

Notes

4. The Declaration of Independence, United States of America.
16. History of the Church, 6:57.
I was raised in, at the time, one of the toughest sections of Los Angeles in the vicinity of the University of Southern California campus. There was no way I was supposed to reach my 18th year, let alone attend Yale University, receive legal training at the University of California, Berkeley, then move to Utah to join the law faculty at Brigham Young University, where I have been teaching for 20 years.

1954

In 1954 all nine justices of the U.S. Supreme Court spoke with one voice in Brown v. Board of Education. Henceforth, America would be a land where all children would get equal opportunity to excel academically. No longer would children be robbed of their educational promise on account of skin color. A new nation was truly born in 1954, and the unanimity among nine, quite diverse Supreme Court justices was striking. Of one accord, they issued a challenge to all Americans to do whatever was necessary, as quickly as necessary, to take the printed words of a legal opinion and turn them into a full-fledged reality of educational equity and racial harmony.

In 1954 my story began as well. I, the newest member of the Dominguez family, was the fourth child, the oldest being five years of age at the time. Even though this would mean six people scratching out a living in a tiny ramshackle “cottage” in one of the scariest sections of inner-city Los Angeles, there was unanimity of joy and celebration in the household.

Both for Brown and for the new brown child, the legal and social reality of racial discrimination in 1954 America meant lean times lay ahead.
No matter how happy my father was at my birth, it did not increase employment opportunities or the size of the paycheck for a naturalized Mexican who immigrated with hope of achieving the American dream. He worked very hard but wound up with very little except bitter experiences of being told, “No Mexicans need apply,” or the ubiquitous sign “No dogs or Mexicans allowed.”

In 1962, when President Kennedy was forced to send federal marshals to assist in the enforcement of *Brown*, I did not know, as a boy of eight, that there was anything odd or amiss with the ethnic makeup of my predominately black and Latino neighborhood that included a smattering of virtually all other ethnic minorities. It did not faze me that the student population of my school included very few whites.

As every kid could testify growing up during my years in the killing fields of downtown and south central Los Angeles, the chances of surviving childhood in one piece were not good. If gangs, drugs, and gunfire did not claim us, sexually transmitted diseases would. If somehow I made it to my 18th birthday, Vietnam was waiting to send me to a new killing field far, far away—most likely to come back home in a pine box. Prospects were dim, to say the least, that *Brown* would ever mean anything to brown and black children.

**Jail**

When I was 10 or 11, a bunch of children, including me, gathered on the playground. Since it was a Sunday, the playground was closed and there was nothing to do. Bored and restless, someone suggested we break into the equipment room of the school and “liberate” the sports gear. Before the suggestion was complete, we were jimmying the lock into the facility. Once inside, we remembered that the best stuff was secured in a second-story closet. We climbed the steel ladder that led up to the closet and broke the lock. All inside, we marveled at the gloves, helmets, and baseball bats. One of the older guys blurted out, “Hey, we can fetch good coin for these items. I know where we can pawn this stuff.”

I was horrified. Breaking and entering to use the equipment struck me as worthwhile, even resourceful, but I had no desire to steal. I liked the playground director and could not bear the thought of him seeing me as a thief. So I started to back out of the room, saying to the others that I wanted no part of their plan. As my feet reached the threshold of the door, however, my heel caught on the lip of the threshold, and I started to fall straight back through the door. My knees buckled, and I fell headfirst from the second-story closet onto solid concrete. My body twitched uncontrollably, and then I froze.

I later learned from the other guys that they figured I had killed myself and that they would be blamed for causing the death. They immediately
replaced all the sports equipment, ran away from the playground, and left me there sprawled out on the concrete, bleeding from my head.

We were all on our way to the jail at the juvenile detention center when the playground director, piecing together the story of how we almost stole the baseball gear, intervened. You might say he went to bat for me, and I was removed from the group headed for lockup. Apparently, it was decided that the night spent at the county psych ward and the baseball-size lump on the side of my head was punishment enough.

Yale

Then 1972 happened. I was 17 and looking to graduate from high school that year. I had enjoyed the party life of high school and was prepared to join the workforce. I had no thought of going to college the day I was summoned to meet with the high school counselor. Mrs. MacKenzie, the lead counselor, wasted no time: “Have you heard of Yale?” “No,” I replied. “Do you know where New Haven, Connecticut, is?” Again I replied that I had no idea of what she was talking about. She reached back to a large rolled-up map of the United States, placed it on her desk, unrolled it, and asked: “Do you know where Los Angeles is on the map?” I placed my finger on the large dot signifying the City of Angels, and Mrs. MacKenzie then lifted my finger and placed it back down on the extreme other side of the map: “Here is New Haven.” She carefully explained that there was a group of illustrious universities on the East Coast known as the “Ivy League,” and Yale, in particular, was aggressively pursuing a radical social and educational experiment called “affirmative action.” Yale was asking Mrs. MacKenzie to identify one graduating senior who possessed the raw academic talent and boundless temerity to take his place in the 1972 entering class. “I immediately thought of you, David.”

So the Brown decision, helped mightily by explosive riots in major cities, as well as ongoing street protests and public demonstrations around the country, found a way to deliver on its promise to me in 1972. “But why was I picked?” I wondered. I had done nothing to deserve the radical new trajectory of my life story.

It was soon painfully obvious to everyone that I did not merit an admissions spot in the Yale freshman class. I had no credentials to stack up against the academic prowess, amazing accomplishments, and cultural sophistication of my fellow “Elis.” And this fact became abundantly clear when the first essay I wrote in English was returned to me covered in red ink with a note appended to the grade of zero. The professor wrote: “I would have given this paper an F, but that would be giving it too much credit.”

Things went from bad to worse that first semester of my freshman year. Consequently, I decided that I would bide my time until the
Christmas break rolled around, fly home, and never return. While pondering this plan over lunch one day in late November, a very pretty coed, Catie Stevens, asked what I was planning to do during the upcoming Thanksgiving weekend. When I said I’d be hanging around campus, she invited me to spend the weekend at her family estate in Wallingford. Mind you, the Stevens family, led by the father, John B. Stevens (J.B.), was truly the upper crust of East Coast society, and here I was, a low-class thug, for all intents and purposes, being asked to join in their traditional, family Thanksgiving dinner. I leapt at the chance!

That Thanksgiving the whole Stevens family made me feel completely at home despite the extreme cultural chasm between us. Catie’s act at the dining hall of going well out of her way to show kindness was, I soon learned, a common trait of the Stevens family. Early the next morning, J.B. asked me to join him along a favorite footpath. As we walked along the snowy fields of the Stevens estate, J.B. inquired about my experience so far at Yale. I was so grateful for his love and comfort—and already impressed that Yale meant so much to his family with many generations of “Old Blues”—that I could not bring myself to answer his question honestly. I still felt the acute sting of that zero on my first English essay.

J.B. could see disconsolation written all over me. After I mumbled something similar to “Yale is a great place, but, maybe, I am just too far behind academically to ever catch up,” he looked straight at me and asked if I was leaving something out, namely what I offered to the education of my Yale classmates. “Me?” I answered, incredulous at his suggestion. I thought to myself, the biggest “major” at my downtown Los Angeles high school was English as a second language! There is nothing I bring to the table at Yale except glaring, woeful deficiencies. I am totally out of my element, and there is no way I’ll ever fit in. Yep, I am going to quit. Despite the hope of Brown, the “affirmative action” experiment failed.

J.B. could see the wheels spinning in my mind and took it upon himself to forever change my life with his challenge. He said:

Let’s assume that it will take you working as hard as you ever have, day and night, for you to catch up to your classmates. Yes, it will be difficult, maybe even painful at times. But it can be done, and you can do it, or else Yale would not have asked you to join the freshman class. Now let’s consider this from the other side of the fence. What would it take for them to catch up to lessons you have learned growing up the way you did? How long do you think your classmates would last if they were dropped suddenly into your neighborhood?

I remember smiling broadly inside, perhaps laughing out loud, at the thought of my preppy classmates trying to make it alive through even one day in the ’hood. J.B. said:

You see, you can catch up with their book learning, but can they catch up to your street smarts? How? They will not grasp what life is like for poor people
in the inner city unless someone like you teaches them the lessons you learned the hard way. So go back and teach them. What you offer Yale is as important as what Yale offers you.

That morning walk and conversation with J.B. turned my life around. It was so wholly improbable that a top executive of a major international company would take a long walk with me. Why did Catie, then her dad, and the rest of the family go out of their way to help me?

I returned to Yale after Thanksgiving determined to make my voice speak for my family and the people of my background. It hit me full force that I needed to stick up for the guardian angels of my boyhood—devoted parents, teachers, playground leaders, and church folk—who did what they could to give me a second chance. To make a long story short, I brought my grades to respectable marks during my freshman year and then proceeded to excel for my remaining years.

But more to the point, I took the lesson of that Stevens family Thanksgiving to another level. I realized how few inner-city kids would ever learn the lesson J.B. taught me: What we have to teach the powerful is as important as anything they have to teach us.4


David Dominguez received his BA cum laude from Yale University in 1977 and his JD from the University of California, Berkeley in 1980. The recipient of numerous community service awards over the past 25 years, he currently is a law professor at J. Reuben Clark Law School.

Notes
2. See Lea Ybarra, Vietman Veteranos: Chicanos Recall the War 5 (2004). (“Mexican Americans accounted for approximately 20 percent of U.S. casualties in Vietnam, although they made up only 10 percent of this country’s population at the time.”)
3. For a second, I thought she pronounced the name as “jail,” producing flashbacks and freaking me out.
4. I have taken J.B.’s wisdom to heart ever since. At Yale I started a service organization that called upon fellow Yalies to hang around poor Puerto Rican children living in New Haven so each side could communicate in new ways with the other. During law school at UC Berkeley, I cofounded the Minority Pre-Law Coalition on the undergraduate campus, which highlighted the exceptional leadership and scholastic abilities of students of color and grew to 300 college students, mostly of color, but included college classmates from all backgrounds. During my years as a law professor, I have applied J.B.’s teaching to many community struggles for freedom and justice.
The Work of Serving Others

Carl S. Hawkins

You have chosen a career in which there will always be tension from competing demands and never enough time to satisfy all of them.

Rather than try to explain this tension in abstract terms, I will take examples from the lives of J. Reuben Clark Jr. and two other LDS lawyers I have known: John K. Edmunds and Robert W. Barker.

Before I speak of them, let me talk briefly about why the practice, itself, of law involves internal and external conflict. You hear Justice Joseph Story’s quote that “the law is a jealous mistress.” Despite that metaphor’s sexist connotation, it may not be entirely inappropriate. It aptly suggests that the law makes relentless demands on the time, energy, and loyalty of its practitioners and that it does so in conflict with other loyalties. You need to begin thinking realistically about why law is more than a nine-to-five job.

First, the intellectual element of law practice means that the task is always open-ended. You can never be sure that your research, investigation, or preparation is complete. Some of you have already experienced this in law school.

Second, and more important, your duty as a lawyer to put your client’s interests ahead of your own means that you cannot diminish your efforts just because the task has become tiresome, unprofitable, or too demanding. Time pressures, lack of resources, and fatigue may sometimes impose practical limits on what you can do for your clients, but you cannot regulate your professional tasks, once undertaken, to fit into a comfortable schedule that always leaves enough time for the other things you would like to do for family, friends, church, community, and personal enjoyment.

You will face these conflicting priorities throughout your life, so let’s talk about different individuals who have also faced them and who still served others well.
President J. Reuben Clark Jr. is known to your generation as an important figure in Church history who served as a counselor to three Church presidents: Heber J. Grant, George Albert Smith, and David O. McKay. To my generation he was a towering presence who exerted tremendous influence in Church administration, policy, politics, and intellectual style for almost three decades. But we knew little of the whole man, his family, or his career as a lawyer before he was called into the First Presidency. From his biography by Frank Fox we can now learn something about how he handled the competing demands of career, family, and the Church in his earlier years.

Reuben began his legal career later than most. He was 32 years old when he entered law school at Columbia University in 1903. He had a wife and two small children and had already experienced some success as an educator, as principal of Wasatch High in Heber and of the state normal school in Cedar City, and then as a teacher at the Salt Lake Business College. Reuben had to pay for his legal education with a series of personal loans from a benefactor in Salt Lake City, and those debts hung around his neck like a millstone for many years thereafter.

He did well in his first year of law school and was elected to the law review. Later he was chosen as a research assistant for Professor James Brown Scott and did most of the work in compiling Scott’s books on quasi-contracts and equity jurisprudence.

Reuben’s wife, Luacine, was never enthusiastic about the move to law school, but she went along as a dutiful Mormon wife and tried to make the best of it. Her health was frail, she hated New York City, and she missed her family and friends in Utah.

Law school swallowed up her husband like Jonah’s whale; he was in class all morning, in the library all afternoon, and often at work in the evening. . . . Every endeavor . . . brought its own kind of reward for him. . . . For Reuben it was a remarkable story of success. For Luacine it was a chronicle of disappointment. [Frank W. Fox, J. Reuben Clark: The Public Years (BYU Press and Deseret Book, 1980), 366]

Graduation did not bring any relief for Luacine. She wanted Reuben to return to Utah and practice law there, but he chose to follow Professor Scott to Washington, D.C., where Reuben accepted a position as assistant to the solicitor of the State Department. In fact, Reuben did most of the solicitor’s work and was later appointed acting solicitor and then solicitor. As the State Department’s lawyer, Reuben earned great respect for the high professional quality of his work. His comprehensive research memoranda became one of his trademarks. On each major legal problem he compiled the historical background; collected every relevant statute, precedent, and administrative ruling; and analyzed them so comprehensively that there was nothing left to be done by others. His famous Memorandum on the
Monroe Doctrine is only the best known of many such research memora-
danda that he prepared.

You should read those chapters in his biography that tell about some of
the professional challenges Reuben encountered in the State Department.
For example, there were several difficult occasions when Reuben had to
set aside his personal opinions and prepare legal rulings to support State
Department policies or actions of which he disapproved. There is a poi-
gnant story of Reuben’s preparing an evasive opinion that permitted
Mexican federal troops to be transported through United States territory,
in violation of the Neutrality Act, in order to protect Mormon colonists in
northern Mexico.

There is also the revealing portrait of a man who had the capacity to
grow and change as he learned from experience. Reuben began his career
in the State Department as an enthusiastic supporter of dollar diplomacy,
believing that national policy should foster the spread of American capi-
talism and protect it with armed intervention when necessary. But his
experience with several such interventions in Central America eventually
convinced him that they were politically unsound and morally wrong.

Reuben resigned his position with the State Department in 1913 and
opened his own law office in Washington, D.C., establishing a branch office
in New York City a few years later. But even then he spent more time in
public service than in private practice, accepting numerous appoint-
ments to serve on international commissions, as legal counsel to foreign
governments, and as an advisor to government officials involved in inter-
national relations. During World War I he served as a major in the Judge
Advocate General’s Corps, and after the war he served as an expert assis-
tant to the American commissioners to the Conference on the Limitation
of Armament.

Then, in 1920, at his wife’s insistence, Reuben finally closed his
Washington and New York law offices and moved his family to Salt Lake
City. But his eastern clients, along with various government appoint-
ments and special assignments, continued to keep him away from his fam-
ily for long periods of time. Included among these were a brief appoint-
ment as undersecretary of state and a later appointment as legal advisor
to the United States ambassador to Mexico. In that position Reuben used
his extraordinary professional skills to negotiate a settlement of the long-
standing dispute over Mexico’s expropriation of foreign oil holdings. This
led to his appointment in 1930 as ambassador to Mexico—an appointment
that he filled with such great success that, upon his release three years later,
President Herbert Hoover said:

Never have our relations been lifted to such a high point of confidence and
cooperation, and there is no more important service in the whole foreign rela-
tions of the United States than this. A large part of it is due to your efforts,
and I realize it has been done at great sacrifice to yourself. The American
people should be grateful to you for it. [Herbert Hoover, “Letter Accepting the Resignation of J. Reuben Clark, Jr., as United States Ambassador to Mexico, February 28, 1933,” in Public Papers of the Presidents of the United States: Herbert Hoover, 1932–33 (Government Printing Office, 1977), 1008]

But this review of Reuben’s professional achievements does not reveal enough about the competing demands of family and church while he was pursuing his professional career as a lawyer. For that purpose, you should read chapters 20 and 23 from Fox’s biography of J. Reuben Clark Jr.

From chapter 20, regarding his family life, you will learn that it was a constant struggle for Reuben to reconcile the competing demands of profession and family. Not only did his work keep him away from his growing family for long hours almost every day and not only did he bring a briefcase full of work home from the office every night, but he was completely separated from his wife and children for months at a time, when he would send them back to Salt Lake City to beat the summer heat or to save money needed to pay that “hideous debt” incurred in law school. Luacine’s health was fragile, and she suffered through one sickness after another and nursed her children through several serious illnesses—including one near-death experience—while Reuben was trying to get ahead in the State Department, working part-time as a law teacher, and trying to complete Professor Scott’s law books.

You may be tempted to think that Reuben was a compulsive workaholic who was not sensitive enough to the trials his family had to endure for the sake of his career. You may recall the time he was detained by business in New York and missed Christmas with his family or the more distressing time when, after leaving Luacine and the children in Salt Lake City for many months, he failed to keep his promise to be home in time for the birth of their fourth child. I remember especially the almost desperate letter that Luacine wrote to Reuben when he was stranded in the East doing legal work for an international conglomerate in the spring of 1923: “Let go before your health gives out. Come on home. We won’t starve, and if we do we will all go together. Let’s live normally just a little while before we die. Forget your dreams. What’s the difference anyway” (Fox, 387).

But before you judge Reuben too harshly, you should acknowledge that he took his family obligations very seriously. You should remember his carrying a sick child in one arm while he paced the floor with a law book in the other hand. If he brought work home from the office almost every night, he usually did some of that work while one or more of his children played at his feet or sat upon his lap. When Luacine’s illness did become critical, he put his work aside and personally nursed her night and day through the crisis. If he was away from his family for months at a time, his spiritual and moral leadership still guided his children pervasively, and they never strayed from the high standards he set for them. If he was
driven by ambition for professional success, we should remember that he never compromised his personal integrity, and when he was ultimately forced to a choice, he gave up his dreams of wealth and social standing in deference to the wishes of his family.

I would not presume to judge Reuben for how he met the competing demands of profession and family. My purpose, rather, is to help you to recognize that these competing demands were persistent and difficult and never really comfortably at rest, even for a man of Reuben’s great character and capacity. I hope that knowing of his experience will help you to become more sensitive to the competing demands of family and profession that you will have to face.

And how did Reuben respond to the competing demands of his church and religion during his turbulent professional years?

You may be surprised to learn that Reuben was something of a liberal intellectual in his early years as a lawyer. He had privately engaged in intellectual criticism of the Church’s positions on polygamy, the Word of Wisdom, and even the wearing of temple garments. He questioned Reed Smoot’s service as a senator while he was also an apostle. Regarding his intellectual approach to religious questions, Fox described Reuben as saying that

scientists and lawyers . . . were not usually “blindly credulous or religious,” because they . . . could accept nothing on faith. Scientists were always required to support their hypotheses through experimentation; lawyers were always responsible for facts. “[The lawyer] must consider motives, he must tear off the mask and lay bare the countenance, however hideous. The frightful skeleton of truth must always be exposed.” [Even with religion] the scientist or the lawyer had to submit every conclusion to “the firey [sic] ordeal of pitiless reason,” bringing to all doctrines, all preachments, and even the very scriptures themselves a final conclusive test. “What he can himself reason out according to his standards, he accepts unqualifiedly; whatever cannot stand his test, he rejects as unfit.” [Fox, 431]

You may be even more surprised to learn that the young lawyer Reuben was not always diligent in his Church responsibilities. He did not enjoy attending branch sacrament meetings in the Washington mansion of Senator Reed Smoot. Fox writes:

Reuben began to find excuses for staying away. Once the umbilical of the sacrament meeting was severed, the concept of an inviolate Sabbath began to alter. Reuben continued to hold the family to a more or less rigorous observance of the day—no movies, bicycling, or skating, for example—but reserved for himself the old loophole of the ox in the mire. Indeed, J. Reuben Clark distinguished himself as the man on the job on Sunday. [Fox, 432]

From my reading of Fox’s detailed account of Reuben’s years as a lawyer in Washington and New York, I found no evidence that he ever held an
official position in his local branch of the Church or even served as a home teacher. Luacine was sufficiently concerned about his Church activity to chide him on one occasion:

I don’t see why you can’t do a little church work where you are. Everyone loves to hear you talk, you would be such a big help if you would take hold. You have been nearly 20 years out of it [that is, since he went east to law school]. . . . However, we have thrashed this out before. I have hired you, I remember, more than once to go to church with me, but now you are of age. I will leave your religious training alone, and attend to my own. [Fox, 442]

Reuben was 51 years old when his wife sent that letter to him.

But again, before we judge him too quickly or too harshly, let’s remember that Reuben was driven by extraordinary intellectual capacity and by a consuming ambition to achieve professional success and recognition as a “stranger in Babylon.” He felt a need to prove that a poor Mormon farm boy from Grantsville, Utah, could make it in the sophisticated and powerful circles of eastern society and politics. Reuben was, as Fox observes, one of the first to prove that a Mormon could succeed in the East on its own terms without surrendering his Mormon identity. Others, like Reed Smoot, “remained essentially western careers built upon local bases of support, while Reuben Clark had gone to Washington penniless and unknown and had carved out his own success” (Fox, 439). And Reuben Clark had no George Romney or Willard Marriott or Ezra Taft Benson to mark the path ahead for him.

We should also remember that while he indulged in occasional intellectual criticism of Church practices, he personally lived in strict compliance with Church standards of personal conduct, including the Word of Wisdom and the wearing of his temple garments. He taught his children, both by precept and by example, the basic tenets of his Mormon faith, and he successfully indoctrinated them in traditional LDS values. If he was not always diligent in Church attendance or active in Church callings, he was, nevertheless, laying the foundations for later service that would contribute to building the kingdom in ways that only a man of his great accomplishments could do. And who, knowing of his later dedicated service to the Church, would ever presume to question the depths of his spiritual commitments or the animating power of his faith?

Once again, my purpose has been to show you that competing loyalties to church and profession confronted Reuben with persistent and difficult challenges never fully resolved until after he was called into full-time Church service. You, too, will have to confront competing demands from church and profession throughout your careers.

In the time that remains, I will briefly mention two more examples from the lives of contemporary LDS lawyers. I have chosen these two because I knew them personally and admired both of them, even though
they both made quite different accommodations to the competing demands of church and profession.

As a beginning law student at Northwestern University in Chicago, the first time I went to church at the Logan Square Ward I saw an old Studebaker Champion drive into the church parking lot. A Studebaker Champion was one of the cheapest, small American cars you could buy in those days, and this one was nine years old. Rust had eaten as many holes in the fenders and rocker panels as the lace on an old dowager’s petticoat. The man who stepped out of that car was John K. Edmunds, a lawyer and president of the Chicago Stake.

John and his wife, Jasmine, moved from Salt Lake City to Chicago in 1927, when he went to law school at Northwestern University. After John graduated from law school, he and Jasmine stayed in Chicago because a Church General Authority counseled them to help build up the Church in that area. The few organized branches of the Church in that area were then part of the old Northern States Mission. That was just at the beginning of the Great Depression, and jobs were not easy to come by in the established law firms in Chicago, so John set out to build his own private practice in a city where he had no prior connections. He later told me that, from the beginning of his law practice, he resolved to limit the number of his clients so that he could devote half of each working day to Church work. You can understand how this would keep him from developing a large or lucrative law practice.

John K. Edmunds became stake president in 1945, shortly after the Chicago Stake was carved out of the Northern States Mission. At that time the stake extended beyond the vast metropolitan area of Chicago and its suburbs to include Milwaukee, Wisconsin, on the north and South Bend, Indiana, on the south. For 18 years John was not only the president of the Chicago Stake, he was the soul of the Chicago Stake. Not only did he provide administrative leadership to the stake’s scattered and understaffed wards and branches but he also provided spiritual leadership to its people through his personal ministry. Hundreds of LDS students who came to Chicago for postgraduate and professional degrees were inspired by his example and encouraged by his personal interest in them. Many of us who were law students found in his example the assurance we needed that our professional careers could be combined with active Church service. Among those who are proud to claim John K. Edmunds as a mentor—like me—are Rex Lee, Monroe McKay, and Dallin Oaks.

John was released as stake president in 1963 and went on to serve as a patriarch and as a regional representative of the Quorum of the Twelve Apostles until 1969, when he retired from his law practice in Chicago to accept a call to preside over one of the Church’s missions in northern California. In 1972 he was called to be president of the Salt Lake Temple.
While in that calling, he also served on this law school’s first board of visitors.

When I attended John K. Edmunds’s funeral in 1989, I was moved to see four General Authorities of the Church seated on the stand. All four of them rose to their feet to show their respect when a little silver-haired man, who was to be the principal speaker, made his way up to the stand. It was David M. Kennedy, then the First Presidency’s ambassador at large and formerly U.S. ambassador to NATO, secretary of the treasury in the Nixon administration, and president of the Continental Illinois National Bank when it was the fourth-largest bank in the United States. David Kennedy, who was also a law graduate but never practiced law, had served for years as a counselor to President Edmunds in the Chicago Stake presidency.

John K. Edmunds never established a large law firm or aspired to honors or recognition among the Chicago bar, but he diligently served his clients with high professional standards while devoting so much of his time, energy, and skills in building up the kingdom wherever he was called to serve.

Another one of my mentors was Robert W. Barker, who was a partner in the Washington, D.C., firm where I practiced law for six years. Bob was the son of an Ogden judge. After receiving his bachelor’s degree from the University of Utah, he served as an army officer under General George S. Patton’s command in North Africa, Sicily, England, and Europe during World War II. After the war he earned his law degree at Georgetown University Law School, practiced briefly in Ogden, and then served for two years as the administrative assistant to Senator Wallace F. Bennett before becoming a partner in Ernest Wilkinson’s Washington law office.

Bob was the most demanding and professionally proficient lawyer I have known. He was also one of the most intense and tenacious lawyers I have known. He wore down many an adversary by using unrelenting pressure combined with brilliant legal strategies and skillful professional tactics. Bob typically worked well into the evening on weekdays and put in a full day at the office on most Saturdays.

He handled a remarkable variety of legal matters, from complex antitrust litigation to advising and representing corporate media clients in their dealings with the Federal Communications Commission and other government bureaucracies. He successfully defended Maurice Stans, chairman of the Finance Committee to Re-Elect the President (Nixon), through a notorious series of congressional hearings and a federal criminal prosecution arising out of the Watergate affair. He played the lead role in the consortium of lawyers who successfully prosecuted the largest and most complex of all Indian land claims against the United States government on behalf of the Indians of California.
In the midst of his busy practice, Bob found time for public service and service to the legal profession. He was a member of the American College of Trial Lawyers and a fellow of the American Bar Foundation. He chaired the American Bar Association’s Section on Indian Law, the D.C. Bar’s Legislative Committee, and the Court of Claims’ Lawyers Advisory Committee. He served as general counsel of the Inaugural Committee and chairman of the Law Committee for the Nixon inaugurals and as deputy general counsel and chairman of the Law Committee for the Reagan inaugurals.

Somehow, through all of these distinguished professional achievements, Bob also managed to serve his family and church very well. He and his wife, Amy, successfully reared one daughter and five sons and were the loving grandparents of 10 grandchildren when Bob died in the harness in 1987. In the meantime, Bob had served as bishop of the Chevy Chase Ward in Maryland, as a counselor in the presidency of the Washington D.C. Stake, as a regional representative of the Quorum of the Twelve Apostles, and as president of the Washington D.C. Temple. From his Washington law office Bob represented the Church in many sensitive matters in its relations with the federal government and foreign countries, and he also served on this law school’s board of visitors and was the principal benefactor in endowing one of our professorial chairs.

In his eulogy to Robert W. Barker, President Gordon B. Hinckley said:

Bob Barker was a remarkable man in whom I had total confidence. He was a tremendous attorney and legal scholar. His mind was disciplined, and he worked very hard. . . . Bob was absolutely undeviating in his faith and faithfulness. He responded to every call that was ever made upon him without hesitation, and the results were wonderful.

I have juxtaposed the lives of John K. Edmunds and Robert W. Barker to show that, notwithstanding real differences in their professional achievements and how they reconciled the competing demands of church and family, both men set examples to be admired. I would not presume to advise you as to whether you should choose the more modest law practice of a John K. Edmunds or the more ambitious legal career of a Robert W. Barker or some other career model. What matters is that you conscientiously try, as both of them did, to work out the continuing accommodation of family, church, and profession that is best suited to your unique circumstances and the special needs of your loved ones and that you serve each of these with skill and devotion. You may have to live with uneasy tensions in the process, but I believe that, if you persevere, you may achieve your own kind of success in your legal career while experiencing fulfillment in service to your family and to your church.

Thank you, Dean Rasband, for your kind words. It is a privilege to be back at J. Reuben Clark Law School. It’s always nice to meet with students, and I wish you all the best as you navigate your way through the interesting, often difficult, and even surprising study of the law.

To the faculty and administrators present, thank you for all you do to further higher education, particularly the study of the law. I hope you appreciate what an impact you have in the lives of others. My theory is that time passes much slower when we are younger and that at this age the experiences imprinted on the minds and psyches of our young people seem much more meaningful than later learning experiences. You have the opportunity to create these learning experiences. My thanks to you who continue to shape the minds and hearts of those students who will soon be the lawyers of tomorrow.

My own career is evidence of this. Shortly out of law school I became a deputy county prosecutor in Southern Utah. The words of criminal law professor Woody Deem and evidence professor Ed Kimball often rang in my mind as I prosecuted accused criminals in district court. Later, the things I learned in Professor Dale Whitman’s real property class, Professor Carl Hawkins’s tort class, and Professor Dale Kimball’s natural resources class (to name just a few) served me well in private practice. This early introduction to the law from dedicated professors laid the foundation for my own law practice. To them and to you who still carry the torch, I owe a debt of gratitude.

I have chosen to speak this morning about the practice of law in a small town. For reasons I will elaborate later, I chose this path, and I have been grateful I did. Don’t misunderstand.

I have been in law offices and conference rooms in high-rise office buildings in New York; I’ve had the privilege of being present in
congressional offices and hearing rooms in Washington, D.C.; and I’ve
dealt with law firms in Los Angeles that have more attorneys than the
entire Utah Bar south of Provo. I know about the opportunities to travel,
to earn large sums of money, to represent large multinational companies,
and, well, to just go after the brass ring. I understand the lure. I have even
stood on the streets of Manhattan and thought, “What if . . . ?” It is excit-
ing, and if that is your goal and your desire, I say go for it!

But before you jump, let me take a few minutes to share with you some
experiences about what it is like to practice in a small town.

In 1964 I was 14 years old. One day I came across an advertisement in
one of the magazines to which my parents subscribed. The advertisement
was from Columbia House Records, and it promised ten 33-rpm record
albums for a penny if you joined their record club. Such an offer I could
not resist, so I clipped and filled out the ad, enclosed a copper penny, and
sent it off. I was thrilled (and my mother was surprised) when two weeks
later a package arrived containing 10 record albums. I explained to mother
what I had done, reassured her, and settled back to listen to Gene Pitney,
Neil Sedaka, Lesley Gore, and others.

Things went along quite well until a few weeks later when I returned
home from school to face my angry mother, who displayed to me a bill
from Columbia House Records for $84. You have to understand that in
those days $84 would buy several weeks of groceries for our entire family.
To this day I don’t recall exactly what went wrong with my new record club
arrangement. In hindsight I probably missed the mailing from Columbia
House Records to buy the current month’s record, or perhaps I simply
missed the fine print in the ad. But upon seeing my mother’s distress, I did
something I had never done before or, for that matter, had ever seen my
parents do before—I called a lawyer.

F. Clayton Nelson was a chain-smoking attorney who had his small
law office on Tabernacle Street between the post office and Mathis Market.
At that time the town of St. George, Utah, had a population of 5,000. The
total population of Washington County, in which St. George is located,
was just over 10,000. Attorney Nelson was one of a half dozen lawyers who
served that corner of Utah.

I arrived at his office at the appointed time, and he invited me in. He
greeted me, asked me about the eighth grade, and then began to examine
my paperwork (what little of it there was!). After a couple of draws on his
cigarette, he looked up and began to speak. He told me to bundle up my 10
new record albums and return them to Columbia House Records. He fur-
ther instructed me to write the company a letter in my own handwriting
informing them that I was 14 years of age and that I was withdrawing from
their record club. As he walked me to the door, I asked him how much I
owed him. He told me I owed him nothing but to feel free to call if I ever
needed him again. I did as he instructed, and that was the last I ever heard from Columbia House Records.

F. Clayton Nelson died in 1986, and he is buried in the St. George Cemetery. I would guess he did not long remember that encounter with a 14-year-old boy. I don’t remember our family ever needing an attorney during the remaining 22 years of his life, but I do know that from that day forward he was “our family lawyer.”

That brief encounter instilled in me a deep and abiding appreciation for lawyers. In just a few minutes he had lifted a burden from my shoulders that had seemed very difficult to bear. I wanted to be like F. Clayton Nelson. I wanted to be able to help others, to solve problems, and to bring resolution and peace to difficult situations. It was on that day as a 14-year-old that I decided I wanted to be an attorney.

Fast forward 12 years. It is now 1976, and I am sitting in this same room in this same building in a similar gathering listening to a small-town practitioner from Richfield, Utah, named Ken Chamberlain. Ken had a law partner named Tex. By now I am in my second year of law school, and we are about to conclude our first full year in the new Law School building.

Mr. Chamberlain had been asked to talk to the law students about small-town legal practice. A veteran of World War II, Chamberlain received his law degree in 1950 from the University of Utah. In 1955 he and his family settled in Richfield, Utah, where he practiced law right up to the day of his passing in March 2003.

For about an hour he extolled the benefits of small-town practice and concluded by answering questions from the students. His practice was diverse and interesting. He had carved out a niche as a bond attorney, which was unusual for a small practitioner in rural Utah. During the time for questions and answers, one of my bolder classmates asked about the money. “What can a law school graduate expect to earn in rural Utah?” Ken informed us that if we worked hard, we could expect to earn up to $25,000 a year after gaining a few years’ experience.

Now bear in mind that this was 1976 and I had turned down an offer of $10,000 a year as an accounting graduate a couple of years earlier. I was actually encouraged that maybe it was possible for me to practice law in a smaller community similar to where I had grown up.

That is the way things turned out. The following year I accepted a position with a small firm in St. George, Utah, and headed south to become the tenth attorney in Washington County. My starting salary was $800 a month, but I received a generous raise of $110 when word was received that I had passed the Utah Bar Exam. By then St. George had grown to nearly 10,000 residents, and the county population was over 20,000. The future seemed bright.

By a stroke of luck I soon had the opportunity to gain a good deal of experience in the courtroom. One of the senior partners, Ronald W.
Thompson, was the sitting county attorney, and an opening became available for a part-time prosecutor. I applied, and the county commission approved the appointment. My time was then divided between private practice and the prosecution of misdemeanors and juvenile offenders. Later I moved up to felony prosecutions.

I found the courtroom to be an exciting arena. I know there are continued debates between solicitors and barristers regarding the value of solving legal matters with litigation. But in a rural law practice, most clients do not have the means to survive protracted litigation; it is an inefficient and expensive way to solve disputes. In criminal matters litigation is important to test our judicial processes and provide checks and balances against government abuse. Unfortunately, in some civil matters it is the only path available to bring finality to a dispute.

But if you are blessed with a competitive spirit—if in prior years you roamed the soccer field or the gridiron, you competed in musical or dance competitions, or you dribbled or spiked the ball on a hardwood court—you will love the courtroom. When the judge turns to the foreman of the jury and asks, “Ladies and gentlemen of the jury, have you reached a verdict?” it is fourth down and goal with three seconds remaining on the clock; it is a 30-foot jumper at the buzzer. There is really nothing quite like it. If you become a litigator you will have frayed nerves, an upset digestive system, and an occasional rush of adrenaline that will make it all worth it.

After a time, another associate in the firm and I decided to start our own law firm. It was January 1979. David Nuffer had been out of BYU Law School for eight months, and I had graduated a year earlier. Dave shaved his beard, and he and I decided we would start wearing ties to the office to make up for our obvious youth and inexperience.

We borrowed $12,000, bought some office furniture and an IBM Selectric II typewriter, rented an old house, and went to work. At first most of our work involved painting and wallpapering the old adobe home we were renting. I stayed on at the county attorney’s office for one more year, working evenings at the private office. Dave put in 15-hour days to make it all work.

Let me just say here that most of you will at one time or another make a choice regarding your professional associates. While these professional relationships do not rise to the level of a marriage, they do come close. If you don’t count sleeping, during my two decades of practice I clearly spent more time in the company of my law partners than I did in the company of my wife, Phyllis. Keep that in mind as you make decisions in the future regarding folks who will become an important part of your professional life. Let me say that we were richly blessed. David Nuffer and I were partners for 22 years, and during that time I never remember an argument or serious disagreement. Never did either of us raise our voices at one another in anger.
When we began, we sat in our office waiting for the phone to ring. There was little in the way of business and fees. When I left for full-time Church service in 2001, there were 25 attorneys between our offices in St. George, Salt Lake City, and Mesquite, Nevada. David left a year later in 2002 when he was appointed as a full-time federal magistrate in Salt Lake City. Earlier this year he was nominated by President Obama to fill an opening for a federal district judge here in Utah. Last week he was approved by the Senate Judiciary Committee and is one vote away from confirmation. I am grateful I had the privilege to be partners with David Nuffer for more than two decades. They were very good years, and I am grateful for his friendship.

Dave and I had the good fortune to partner and associate with a number of wonderful attorneys through the years. Coincidentally, most of them were J. Reuben Clark Law School graduates. Most of them continue in their legal careers in southern Utah and Salt Lake City. I am grateful to have worked with Chris Engstrom, Lyle Drake, Terry Wade, Randy Smart, Jeff Starkey, Mike Day, and many others. Choose your professional associates well, and your professional life will be much more enjoyable.

As our practice grew, so did the opportunities. We learned early that if you do good work and charge a reasonable fee, you will stay busy. Having grown up in St. George, I had an initial advantage in attracting clients. One disadvantage, however, was that many of those new clients were relatives. The family discount soon became a bit of a joke around the office.

There is a saying that in a small-town practice, one-half of the town loves you and the other half hates you, that is, until you sue the other half and then they all hate you. I was related to half the town, so that did cause some confusion in our conflict checks through the years.

My sense is that Dave and I would have been content with a very small law practice, but it turned out a bit differently for us. At the time we started our firm, St. George and southern Utah was on the cusp of three decades of unprecedented growth. Our opportunities and challenges grew with our community. To complete the work that was coming through the doors, we chose to grow rather than to turn work away and lose potential clients. However, others in our community chose to keep their practices small, and they likewise did well in the expanding local economy.

Gradually our attorneys chose their own areas of specialization. Of all my partners I remained the generalist. I enjoyed the variety of issues and problems and particularly the interaction with clients. In a rural practice you usually juggle a large number of clients with small matters rather than concentrate on large blocks of litigation or transactional work. My practice included municipal clients, real estate, business, environmental law, family law, and an occasional criminal defense matter.

I loved the practice of law. I enjoyed going to work every morning. I liked the people with whom I worked in the office, and yes, I even liked
most of my clients. I felt it was a privilege to help people solve problems, settle disputes, and move on with their lives. Occasionally I was able to right a wrong, change a law, or litigate a significant matter, but most of the time I gave counsel, negotiated settlements, prepared documents, or finalized an adoption. I represented different generations of the same clients and was occasionally introduced as “our family lawyer.” When that happened I would smile to myself and think back to F. Clayton Nelson.

Now, small-town practice may not be for everyone. It is my counsel, however, that you at least consider all your options before you set in motion a career that will likely last 35 to 40 years. In these difficult economic times, smaller firms, or even solo practice, may provide benefits that you may not have considered. Let me suggest two.

The first benefit is your family. One reason you decided to go to law school was to have some control over your destiny. A law degree can provide that opportunity. There are many different paths you can take with your degree. Some of you will be in the public sector, but most of you will earn your living in private practice. Right now, if you are like most law students, you are probably more concerned with getting a job, getting out of debt, and having sufficient income to never eat macaroni and cheese or tuna fish sandwiches ever again. But you will eventually reach a point in your life when time will mean more to you than money. Some of you, to your detriment, will learn this too late. Children grow up very quickly, and it really isn’t your money they want—it’s your time. If you ignore your family to further your legal career, you will pay a dear price. We were taught early in our law school education that “the law is a jealous mistress.” While this may not sound politically correct in today’s world, the principle is true. You who enter the profession of law will find this to be a continual challenge. There is never enough time. No case or document is perfect. The practice of law can be messy. Some matters drag on for months or years. If you like to lead a neat, tidy life in which chores are completed every day, I recommend being a mail carrier for the U.S. Postal Service. Not letting the practice of law consume you will be a challenge you will need to face throughout your career. That is difficult enough. But if you add to that burden the expectation that many large firms have for their associates to bill 200 or more hours a month, something is going to give. Sadly, all too often it is the family. Balance your priorities as you consider your future. Usually, though not always, you will find more time for family in smaller firms in which billing expectations are more modest and small-town family life is more appreciated.

The second benefit is community service. My grandfather was mayor of St. George during World War II; he served on community boards throughout his life; and he was dedicated in his church service. There are some things he taught me about service. He often quoted, “The public service we render is the rent we pay for our place on earth.” All of us have a
responsibility to make our communities a better place. Lawyers are particularly prepared to step forward and make a contribution. Our training helps us to analyze complex issues and identify a way forward. This ability is needed in public service.

Another thing my grandfather often told me was, “I would rather be a big fish in a small pond than a small fish in a big pond.” Meaning, of course, there are more opportunities to make contributions in a small town than there might exist in a large city.

In my personal life I have found this to be true. As I became more established in the practice of law, opportunities came to provide public service. In my case, I gravitated toward education, running for election to the local school board and serving on the statewide governing board over higher education. I also have a passion for the environment and eventually was invited to serve on the board of a regional environmental organization. These opportunities enriched my life, and I hope I’ve made some small difference in the community and state I so dearly love.

Such opportunities will come your way in your career. On the one hand you will be the butt of countless lawyer jokes that your friends and acquaintances will be eager to share. But I assure you, lawyers command respect. You will be an important part of the community, and those same friends and acquaintances will seek you out to serve in various capacities in the community. That doesn’t mean they will always understand you, but they will respect you.

Let me illustrate this with an experience I had shortly after I was called to serve as bishop years ago. In our ward there was a rough fellow who made his living as an excavation contractor. He approached me one Sunday before sacrament meeting, stuck out his hand, and looked me straight in the eye. “I don’t know, Bishop,” he said. “My testimony has been severely tested. Not only is my new bishop a lawyer, he’s a Democrat as well!” (I didn’t bother to ask which offended him the most.)

Take the opportunities to serve. It is my belief that such opportunities will abound if you choose to practice in a small town.

It is a privilege to be a lawyer. It is a noble responsibility to be an advocate, a counselor, and a peacemaker. While I am willing to accept that there is some satisfaction in representing the corporate behemoths of the world, I do know for certain that there is great satisfaction in representing friends, neighbors, and associates in your community. Attending a small-town city council meeting, sitting with local farmers in their irrigation company board meeting, visiting the home of an older couple to counsel them through a simple estate plan, resolving a difficult real estate boundary dispute—these are just a small sample of the kinds of experiences you will enjoy in small-town practice. I am reasonably certain those fellow members of the bar perched on the 52nd floor of a Manhattan high-rise will not have such experiences. As you consider the future, I hope you
will consider the benefits of a small town, with the added benefit of going home for lunch every day if you desire.

Let me conclude with three pieces of advice shared by a friend:

First, always go for the big engine.

Second, the early bird may get the worm, but the second mouse gets the cheese.

Third, don’t underestimate the power of stupid people in large groups.

Let me explain. “Always go for the big engine”—in other words, aim high. Set lofty goals. As Emily Dickinson wrote, “Live a big life!”

As to the second mouse and the cheese, in all your planning, plan to be surprised. Life has some great adventures for you, so take advantage of the opportunities that will come. Don’t be so busy focusing on your plan or doing your chores that you miss the surprises and opportunities that lie ahead.

Finally, in your professional and personal life it is sometimes necessary to take positions that may not seem popular or accepted. You will represent clients who may be guilty, unpopular, or polarized by society. Given your personal beliefs, there will undoubtedly be times in which your standards and decisions will be questioned or even ridiculed. Do not let the unruly crowd define you personally or professionally. Stand up for what’s right, and stand up for those you represent.

Thank you again for this opportunity to be with you this morning. I wish you all the very best as you move forward in your own legal careers. It is my hope that you, too, will enjoy the practice of law. It is also my hope that a few of you will provide legal representation to those fine citizens who reside in the small towns scattered across our great land. And for those who do, I hope that on occasion you, too, will be introduced as “our family lawyer.”

This Honored Alumni Lecture was given at BYU Law School on October 18, 2011. Reprinted from the Clark Memorandum, spring 2012, 9–15.

Steven E. Snow received his JD from BYU Law School in 1977. He has served as a General Authority since 2001 and is currently Church Historian and Recorder and the executive director of the Church History Department for The Church of Jesus Christ of Latter-day Saints.
Deans, members of this distinguished faculty, and all of you triumphant graduates, thank you for inviting me to share this wonderful occasion. I feel truly fortunate to be among you and to honor in my own way the memory of Rex Lee.

Before I address the graduates, I would like to pay tribute to the unsung heroes in this tabernacle, to the parents, grandparents, and other supporting family members of those receiving their degrees. It was only last year, when I sat bursting with pride at my eldest child's graduation from high school, that I genuinely appreciated how profoundly meaningful events like this are to all of us.

There are two things I don't remember about my own law school commencement and two things I do. What I don't remember is who the speaker was or what he said. One of the two things I do remember is how long the commencement speaker droned on. I promise that you are not going to be subjected to that today!

I also remember how I felt on that day. In addition to feeling pride and relief, I was excited at the prospect of joining a noble profession and anxious to go out and make a difference in the world. I know you all feel much the same way, and you should. My wish for you is that a year from now—and 10, 20, 30, and 40 years from now—you still will. Many practicing lawyers lose that feeling. I want to share some thoughts with you about how I think you can keep it fresh.

In a few minutes each of you will receive a degree that will accord you tremendous privileges: broad career options, geographic mobility, and the potential to earn substantial salaries. Most important, because of your professional status, you and your families will have access to justice. If a dispute arises with a landlord, an adjacent property owner, a doctor, an employer, or your city, state, or federal government, the education
you have received will enable you to ascertain what the legal options are and to navigate a complex justice system. Once you are admitted to the bar, your license will enable you to act within that justice system, to file motions, to obtain discovery, and to argue before judges and juries to get the right result. You will have the full force of the legal system within your grasp, and you and yours will never be left without recourse in the face of injustice.

But now, think back to your first days of law school. If you were like me, it all seemed terribly bewildering. If you will be the first attorney in your family, like I was, perhaps you can recall a time when someone you loved or knew needed help and had nowhere to turn.

Now that you’re an “insider,” don’t forget what it was like to be an “outsider,” when you were unable to comprehend the legal system, much less use it. Now that you are an insider, you are empowered to help those who do not have access to justice. If you reach out to those who cannot afford your fees, you will be helping not only those clients but also your community, your nation, and yourself. You will be participating in a venerable tradition of lawyerly public service that stretches back to the earliest days of our republic.

This marvelous nation was founded on the dual principles of individual liberty and public service—what our founders called “civic virtue.” As modern lawyers, we are highly attuned to the former; our Bill of Rights enshrines and protects the principles of individual liberty. But what about civic virtue? Where did that go? Our founders believed deeply that the sacred rights of the individual would not be safe unless people were also imbued with a sense of responsibility for their communities. “Without virtue there can be no liberty,” Benjamin Rush declared in a 1786 speech. Samuel Adams echoed that “men will be free no longer than while they remain virtuous.”

No group in colonial times felt this responsibility more palpably than lawyers. Perhaps no lawyer ever better exemplified the twin principles of individual liberty and civic virtue than Thomas Jefferson. He envisioned—and emulated—the citizen-lawyer dedicated to serving his community and his nation.

Jefferson had plenty of company: 33 of the 56 signers of the Declaration of Independence and 34 of the 55 members of the Constitutional Convention were lawyers. In a multitude of less prominent but equally significant ways, lawyers generally were mindful of their role in protecting the public interest. They were trained and proud to be lawyers and citizens.

When lawyers attended to the public interest in their professional lives, when they viewed themselves in civic terms, they were esteemed by a public—then as today—that valued those principles. Alexis de Tocqueville reported that “people in democratic states do not mistrust the members of the legal profession, because it is known that they are interested to serve
the popular cause; and the people listen to them without irritation because they do not attribute to them any sinister designs.”

Today, in the era of law as business, with the pressures of the bottom line, many people would smirk to hear those words. But 60 years after the founding of the republic, Abraham Lincoln—another skillful and public-spirited lawyer—often devoted time to representing people who could not pay his fees, such as widows seeking pension benefits, because he believed that he had a duty to help those who could not fend for themselves.

More than 100 years after the nation’s founding, long before he became a Supreme Court justice, Louis Brandeis was one of the most prominent private attorneys of his time. Yet he committed himself to donating at least one hour of each working day to public service legal work. Even if his pro bono clients could afford to pay something, Brandeis never accepted fees from them, both because he viewed this work as a lawyer’s responsibility and because he recognized that accepting payment would diminish the joy he received from helping others.

What Brandeis, Lincoln, Jefferson, and so many of our predecessors understood was that in doing public service, a lawyer helps himself as much as he helps others. Translated literally, of course, pro bono publico means “for the good of the public.” But pro bono work redounds at least equally to the lawyer’s own good and to the good of the profession. As Will Rogers observed (and no truer words were ever uttered): “A man makes a living by what he gets. He makes a life by what he gives.”

Today, many attorneys report feelings of apathy, malaise, and unhappiness. The ABA reports that the number of lawyers who were very satisfied with their jobs dropped by 20 percent in one recent seven-year period. I’ll bet not many dissatisfied lawyers are committed to pro bono or public service activities. They complain about lacking direction in their lives, yet they fail to recognize that by cutting out public service, they sacrifice opportunities to have new experiences that might help them find that direction. They complain about lacking a sense of meaning, but they fail to realize that by stinting on public service, they sacrifice the unparalleled satisfaction of working toward their own personal idea of justice.

Other lawyers recognize the connection but fail to see the opportunities. Another ABA survey found that a perceived “inability to make a contribution to social good through the practice of law” is the aspect of practice that seems to disappoint young lawyers the most.

Many law students and young lawyers think they were born too late, that the days of groundbreaking legal movements are over. That is not true. Each of us brings something special to the table, a unique gift to give back to society. For each one of you, there is some pro bono work that will be deeply fulfilling, no matter how busy you are and whatever your jurisprudential interests, your political or philosophical beliefs, or your professional skills.
If you are interested in corporate law, you can help not-for-profit community groups organize and operate. If your passion is individual liberties, volunteer with the ACLU or the American Center for Law and Justice, or a similar organization. If you feel artists deserve more support, get involved with Volunteer Lawyers for the Arts. If you want to help law enforcement without becoming a full-time prosecutor, call your local prosecutor’s office or victims’ support group and volunteer on a part-time basis. If you enjoy teaching, give a law-related class at a local school or adult education program. If you want to be a litigator but aren’t getting enough experience or responsibility at your law firm, volunteer to represent indigent criminal defendants or to handle a civil case for one of the thousands of ordinary citizens who simply cannot afford legal counsel.

Or volunteer outside the field of law altogether. When I was solicitor general, one of the attorneys in my office led a Girl Scout troop. Others tutored and taught classes. Throughout her entire tenure as attorney general of the United States, Janet Reno spent one day each month in a local elementary school. As our founders knew, education is the foundation of a successful society. You can teach a child about the importance of public service through your good example.

Before I entered government service, I spent 17 rewarding years in the private practice of law. Several of my law school friends told me I was the only private attorney they knew who actually seemed to enjoy his job. That was an exaggeration (I hope), but I never made any secret about what satisfied me. Yes, I had interesting cases and wonderful colleagues. But what made it truly worthwhile was the ability to use my skills to help people who were helpless and to promote a vision of society that I believed in. I gave away thousands of billable hours. But I was repaid a thousand times over for having done so. You will be too.

So before you get up to celebrate, while you are sitting right here, in the very last pause before your professional lives begin, resolve to emulate our founders in your careers. Understand that your professional obligations will extend far beyond your clients’ interests to those of the community and the nation. Understand that the bar’s tremendous power in American society brings an equally tremendous responsibility to protect the common good.

Think of your futures. Think of your lives. You are all, each one of you, at the brink of a wonderful adventure. Use the tools your teachers have given you to become great lawyers; use the values within you to become great citizens.

This J. Reuben Clark Law School convocation address was given at the Provo Tabernacle on April 27, 2001. Reprinted from the Clark Memorandum, fall 2001, 25–27.
Seth P. Waxman received his JD from Yale University in 1977 and clerked for Judge Gerhard A. Gesell of the U.S. District Court for the District of Columbia 1977–1978. He served as solicitor general of the United States 1997–2001 and is currently a partner with WilmerHale in Washington, D.C.
Success brings more ability to help others, and that is the obligation of those who succeed.

ANNETTE W. JARVIS (P. 145)
I teach banking law, and I would say that what makes banks unique institutions is that they are money multipliers. Money goes into a bank, and when the bank lends and leverages that money, it multiplies and increases much faster than it otherwise would.

I would like to make the case that, similarly, women are education multipliers. I will illustrate this point by telling you about my grandmother Mehri. She lived in a remote part of Iran on the Iraqi border in a primitive town called Ghasreh Shirin, which deceptively means “Sweet Castle.” Her family didn’t have electricity or running water. They had no refrigerator and cooked over a fire stove. The rest of Iran wasn’t as primitive, but Ghasreh Shirin was off the map and behind the times.

My grandmother’s relatives worked the land, and none of them had received a formal education; many of them were illiterate. My grandmother was given away in marriage when she was nine years old to my grandfather, who was 20—and her first cousin. (The fact that my grandparents were first cousins has had absolutely no negative effect on me genetically. My 12 toes have actually come in quite handy in my life—lots of increased stability.) My grandmother had her first child when she was 13, and then she had nine more, eight of whom lived. My father was her third child, her first son, and her favorite.

My grandmother never entered a classroom—obtaining an education was not something women did at that time and in that place. But she was determined to learn to read, so she taught herself how from the only book in the house: the family Qur’an. She would sit for hours memorizing passages in the book until she was fully literate. She must have worked hard at this, because the Qur’an was in Arabic, which is very different from spoken Farsi. My dad says that she had most of the book memorized and would recite passages from it.
My grandmother also taught herself how to make beautiful Persian rugs. My aunts say that she would go into town once a month and stare at the patterns on the rugs; then she would come home and replicate them.

Learning to read motivated my grandmother to educate her children. She was determined to send my dad to school, even against the wishes of my grandfather—who was a great and kind man but who was not yet sold on the value of education. My dad would sometimes hide in the outhouse and study for his exams against his father’s wishes but with his mother’s help and support.

My dad became the first person in his extended family to graduate from high school. He became a schoolteacher, and then he decided he wanted to be a doctor. He took the qualifying exams and was accepted into the University of Tehran—a difficult school in which only about 10 percent of the entering class graduate after six years. My father studied hard and became a brain surgeon. To pay for school he worked for the Shah’s police as a surgeon and then later for the Islamic Regime, where he had to work on the front lines of the long war with Iraq. At one point during the bloody war, he was performing about 20 brain surgeries per day.

Then my father sent his two little brothers to graduate schools—one to a school in Turkey and the other to a school in Iran. He even sent one of his little sisters and several of his nieces and nephews to school. He married a college-educated woman: my mother graduated with a degree in economics from one of Iran’s most prestigious universities.

Most of my family eventually moved to Tehran, and education became a part of their lives. All of my female and male cousins, who live in Iran, have college degrees—and most are professionals. I have three female cousins who are doctors and other cousins who are engineers, dentists, and architects.

In my immediate family, one of my sisters is a law professor and the other is a doctor. My little brother will be entering BYU as a freshman this fall with hopes to become a doctor.

I credit all of my family’s educational achievements to my grandmother, who was an education multiplier. She took the opportunity she had to learn—the one book in her home—and multiplied it to create a posterity of educated professionals. It took just one generation for her to create this heritage. My grandmother passed away many years ago, before I could meet her, but I hope she is now fully aware of her profound influence on our lives.

And her legacy lives on. I have three daughters. My oldest daughter, who is in kindergarten, created a book about herself. On the last page she drew a picture of a woman behind a podium—what she wants to be when she grows up. She says she wants to be a professor at BYU. I hope that all of
my girls continue in the tradition of education started by my grandmother and that they pass it on to their children as well. I hope that you do, too.

My father kept studying throughout his life. In fact, he had to complete his education all over again when we immigrated to America. He was 40 years old and had to start from scratch with no money and a huge language barrier. He worked diligently, and 10 years later he reestablished his medical practice in America. Every mental picture I have of my father—from when I was growing up and even now—is of him reading something.

My parents were adamant about education. These are the wise and inspiring words my dad told me about going to law school: “Mehrsa, why don’t you want to be a doctor?”

Allow me now to sell you on why you should come to BYU Law School and get a JD—or, as my dad would call it, an ND, for “not doctor.” I also want to discuss a few of the issues you women might have, mainly how to manage motherhood and a career. If you aren’t conflicted about this, that’s great, but I know from talking to many women in your position that this is a major—if not the major—issue some of you deal with. And I similarly dealt with this issue when I was deciding what I wanted to do.

Let me also lay a couple of myths to rest: First, somehow you need to devise a plan for your life right now in order to be successful. Truly, life will not always unfold as you expect it to. And second, you can do it all. You can do it all, just not at the same time and not without making some sacrifices.

The “Life Plan”

Before when I saw successful professionals with wonderful families, I assumed that they had always known where they were going and that they had followed a well-designed plan. I have since discovered that this is not the case for most people. Most successful people stumble a few times before they reach their destination. I am not sure what my destination will be, but my life thus far has gone from one prompting or opportunity to another. Before I was a “not doctor” student, I studied pre-med. Then I felt like I should go on a mission, so I did. Then I met my wonderful husband, and I got married. Afterward I decided that I wanted to go to law school, and I did. I had kids, and I am still just making sure I am worthy and qualified to take all the opportunities that present themselves to me. Meanwhile, I have managed to get both a job and a family that I love.

But here is one thing that I always did—and a bit of advice: try your hardest to do well in everything you do. That’s how you give yourself options and the ability to leap from one plan to another as your life unfolds.
Let me be specific about what I mean by working hard. It means studying hard—even if you need to study in an outhouse—getting good grades, doing well at work, and working hard to become the person God wants you to be.

In all of my professional life I have never seen success that didn’t abide by the law of the harvest, meaning that you cannot reap what you do not sow. You cannot ace your classes and get a great LSAT score or be really good at anything without putting in lots and lots of effort—and sacrificing some leisure time.

So it’s great if you do have a plan for your life, but if you don’t, don’t worry—just do really well along the way and look for opportunities.

Having It All

Ecclesiastes 3:1 reads: “To every thing there is a season, and a time to every purpose under the heaven.”

There is a season to work, a season to learn, a season to raise children, and so on. And sometimes those seasons overlap, and I am not going to lie to you, sometimes it can be difficult to manage it all.

It is absolutely crucial to have a supportive spouse to make it all work. Another added bonus is having good babies.

As some of my students and colleagues can attest, my baby, Ramona, came to school with me for the first year and a half of her life. She would sit on my office floor and play and take naps, and I would feed her in between student meetings. Sometimes I would have student meetings in a whisper so as not to wake her up. I was very blessed that she was a late crawler and a late walker and hardly ever cried.

I have worked full-time and part-time, and I have stayed home with my kids. I am still trying to figure it out—one decision at a time—like when I quit my Wall Street job because I just couldn’t stand being away from my newborn so much. I believe that the Lord has guided me each step of the way as I navigate motherhood and my career. And He will guide you too.

I have friends who have handled their careers in a variety of ways—taking a little or a lot of time off or finding flexible careers. Others who have no interest in working outside the home still use their education in a variety of ways to enrich their families and communities.

So I guess I don’t have an answer to this motherhood-career dilemma because I am still in the midst of it. But there are many examples of women who are figuring it out one way or another. I will tell you that you will never regret your education.
Gifts of a Law Degree

You will especially not regret a BYU law degree. What a gift to be able to graduate from law school without much debt! I was fortunate enough to do that (though not at BYU), so when I wanted to quit my job and stay home with my children, I had that option.

Another question you might have is, why law? My first year of law school was the most mind-expanding time of my life. Studying the law teaches you how to think critically, analyze problems, and articulate your viewpoints. Learning law is really a chance to peek at the wizard behind the curtain. It demystifies what is so elusive to so much of the world. It puts you in a position of power—true power—to lift burdens.

No matter what you do with your life, the skills you learn in law school will help you. A law degree is the most flexible advanced degree. I have friends with law degrees who work in government, business, and law firms. Some do public service work and others stay home with their children and use their law degree to teach their children about the world.

If you are trained well and are good at what you do, you can do a variety of meaningful part-time and contract work without working full-time. And even in those seasons of life in which you are not working at all, you can still be useful to family, friends, and your community by participating on boards, giving advice, and lending a hand to the disadvantaged or marginalized.

I strongly believe that happiness and growth come only from continued learning. When you go to law school you not only learn during those three years, but those three years lay the groundwork for learning for the rest of your life. I always tell my students that law school is such a luxury—I see them walking around talking to each other about Locke and Montesquieu and what they really think about Constitutional originalism vs. legal realism, and I think what a privilege it is to be able to immerse yourself in new ideas for three years.

Sometimes I think about my grandmother, who could never have dreamed of such an opportunity but still did the best with what she had.

What a blessing you and I have to learn and be educated. I hope that as women we seek those opportunities, show gratitude for them, and become education multipliers.

This address was given to prelaw students at Brigham Young University on March 12, 2012. Reprinted from the Clark Memorandum, fall 2012, 4–9.

Mehrsa Baradaran received her JD from New York University in 2005, was an associate at Davis, Polk & Wardwell in New York City 2005–2008, and taught at BYU Law School 2010–2012. She is currently teaching at the University of Georgia School of Law.
What an honor and a pleasure it is to participate in a Distinguished Trial Lawyer Lecture Series named after United States senator Orrin Hatch, 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 sculptures 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 education 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.

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.”

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 history 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.

**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. 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. Of all the honored professions, lawyers are ranked by the public last in honesty and integrity.

**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 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 her reputation for integrity. Few lawyers would dispute—in the abstract—the wisdom of maintaining your integrity while advocating on behalf of your client. . . .

> . . . [L]et 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.

Sol Linowitz

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 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 and 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.

This address was given at the Orrin G. Hatch Distinguished Trial Lawyer Lecture Series at BYU Law School on November 7, 2008. Reprinted from the Clark Memorandum, spring 2009, 20–25.

Ming W. Chin received his JD from the University of San Francisco in 1967, was awarded six honorary degrees by various law schools, and was given a Jurist of the Year Award by the Judicial Council of California in 2009. He served as Alameda County Superior Court judge 1988–1990 and as an associate and then presiding justice of Division Three, First District Court of Appeal in San Francisco 1990–1996. He is currently an associate justice of the Supreme Court of California.

Notes

2. Address by the Honorable Anthony Kennedy, associate justice of the United States Supreme Court, American Bar Association Annual Convention, San Francisco, August 1996.


5. Id.


7. Id. at 30.
Congratulations! You made it. Mostly. In truth, it turns out you still have a few briefs to write, patents to prosecute, and clients to land (and a few to fire) before you declare victory, accept your Nobel Prize or Article III tenure, and waltz off into the Cardinal sunset. And—before you’re done—there is that little matter of that debt you incurred for all this clinic-enriched, interdisciplinary glory you’ve enjoyed the past three years. But for now, enjoy it. Go on! You’ve earned it.

Well, to be honest, much of it was actually a gift from parents, mentors, and friends who helped you gain the skills to come here and do well. And, as for the means, most of that was actually the gift of generous alums and a growing economy. And you also bask here today in the reflected glory, good looks, genius, and witty charm of your fellow classmates—they also make you look good. But still, you did your part. And it was a huge part, and you did it wonderfully. Enjoy it, celebrate, and say thanks to the people who helped you get here.

Since we gather here today dressed in robes and hats originally modeled on an ancient clergy, it is only appropriate that I begin with a confession. Here it is: I am very fond of you and will really miss you. I served as chair of admissions when you applied. Teaching you and getting to know you has been the most important part of my professional life at Stanford these past three years. I am sad to see you leave these halls and these lawns. You’re a wonderful group of men and women. Actually, a few of you are a pain in the neck, and if you don’t know who you are, ask around—your classmates do. But, as a class, you’re wonderful.

Although I’m grateful for the teaching award, I would have thought twice before accepting it had I known I’d be required to talk at graduation. As Billy Collins and others have noted:
The commencement address is a tricky genre. To be asked to give one is an honor, of course, . . . but at the same time it puts [me] in the awkward position of having to dispense sage advice to [you and] a group of relative strangers, not to mention some of [your] strange[r] relatives.¹

For a while I thought about doing a kind of commencement karaoke—where you would all take turns coming up here to offer your own talk. That would have been memorable.

In the end, I listened to my colleague George Fisher, who has won plenty of these teaching awards. George said that I should talk about something I have learned while studying corporate law and raising five kids. He thought these twin trials of corporate law and my family would give me a unique perspective. So, here goes.

The Big Fear of Being Inconsequential

First, let me say that you start your career with enormous assets: a Stanford legal education, the goodwill and support of your classmates, your own talents, and perhaps, especially, your drive to succeed and to do good.

I recently reread many of your admission essays and was genuinely moved by your idealism and your desire to matter and to be a part of something valuable. One of you wrote of—probably for most of us—“that big fear: the fear of being inconsequential.” Today I want to talk to you about this desire to succeed and to matter. It is noble and worthy and one of your great assets. It will lead you to do good in the world.

But I want to warn you that there are a few risks that come with it. The desire to be on the inside of important firms and causes can lead you to make predictable mistakes that can bring unhappiness to you and to the people you love and care about.

I hope it is not bad form to talk about happiness at a law school graduation. We have spent three years and countless hours preparing you for professional success and giving you tools to change the world, and we’ve charged you plenty for it. But, before you leave, perhaps we can talk briefly about how to be happy as you do it.

First, a little law.

Takeovers and Yahoo

Several years ago, just as you were polishing off your law school applications, Microsoft approached the board of directors of Yahoo with a remarkable offer. They offered to pay Yahoo shareholders almost 50 billion dollars—roughly 50 percent more than the shares were worth at the time. Yahoo’s board of directors needed only to sign the merger agreement. Since most of the directors would not actually be needed after the merger,
they would also effectively resign their positions and hand over the keys to
the boardroom, and the shareholders would get $50 billion.

They didn’t. The board refused, stuck to their guns and their jobs, and
resisted the offer. Microsoft withdrew, and Yahoo shareholders lost billions
as a result; Yahoo is now worth less than a third of what Microsoft once
offered.

Why did the board of directors refuse such a good offer? I don’t know.
It is easy to spin a story of self-interest: directors and senior managers were
more concerned about their own salaries and stock options, and so they
ignored the valuable offer and their duties to shareholders.

But I don’t believe that the managers and directors of Yahoo made this
decision because it lined their own pockets. I think the board members
were likely honorable, careful, upright people who were generally scrupu-
lous about their duties, even when it cost them money. But I do think they
probably made an expensive mistake. And it is an error that, unless I am
very mistaken, some of you (some of us) are likely to make in the future.

That Big Fear, Relationships, and Success

I think the mistake they made is not that they put their own wealth
over duty. You’ve been warned of that, and I’m not going to give you the
“beware-of-focusing-on-money” talk. I think it’s more likely that they
rejected the offer because they liked being involved in something impor-
tant (like running the company) and because they wanted to make a dif-
ference, to be consequential, in charge, and in the inner ring. Perhaps they
rejected Microsoft’s valuable offer because they wanted to matter person-
ally and to make a contribution.

Obviously, this desire to matter and make a difference is laudable and
noble. But just as boards do real harm to shareholders when they focus on
their own role and job satisfaction (and not the welfare of shareholders),
you may find, along the way, that your desire to contribute and be con-
sequential can lead you to neglect valuable (but less immediately urgent)
goals, relationships, partners, family, and friends, and this will leave you
and your loved ones unhappy in the long run.

And all of you, even those who will devote their lives to nonprofits
and the public interest, are subject to these same risks and potential biases.
It’s not only about wealth.

I leave it to you to decide whether someone can be truly happy if they
reform prisons and right a string of wrong precedents but make a mess of
their relationships with friends and family; if they argue brilliantly and fre-
quently in court but too often with their loved ones; and if politicians and
reporters return their calls but their children won’t talk to them. As for me,
I believe that no other success will compensate for my failure with these
most important relationships.
But it is not always easy to remember this. I remember my first years of teaching and trying to get tenure. They were a blur of anxiety, antacid, and bleary-eyed, late-night fights with data and drafts. I had left a demanding job on Wall Street working for the investment bank Goldman Sachs (in its pre-vampire squid days), but I enjoyed research and soon found that the desire to succeed, to be “in the game,” drove me to work much harder as a new professor than I had at Goldman.

I became totally absorbed by my work. I was often physically present with family and friends, but my mind was far away, fretting about my research. If my wife or a colleague stopped by to talk, instead of being glad to see them, I’d get a pit in my stomach and my leg would begin to bounce up and down in my anxiety to get back to work. Luckily for me, others helped correct my errors. Colleagues like Larry Kramer pulled me aside and told me I was working too hard. But I didn’t change much.

So, one day, while I was working at home, my wife came into my office to talk about some concern. I don’t remember the issue—I maybe didn’t know it then—but I remember feeling in a hurry to get back to work, and I know that I glanced away from her and back at the computer screen once too often. Exasperated, she told me that if I was so focused on my work, she would make sure nothing disturbed me. She promptly left, found a lock, and locked me inside my home office. I couldn’t get out. Seriously. She wouldn’t open it. Luckily for me, I had just gone to the bathroom, and I had some Girl Scout cookies hidden in the room (some things in life are too important to trust to the kitchen), so I spent the better part of the afternoon there—locked in my office—much to the delight of neighbors who happened by.

Now I tell you this little story because here, surrounded by partners, friends, and family, you would probably say that you value and cherish your relationships and you’d say that they are important to your happiness and a meaningful life. You’d pass a written test. That’s what you do. But being true to the relationships and people in your life will not be easy—in part because you are all so driven to succeed, to do something important, and to avoid seeming, if only to yourself, inconsequential.

You may, like me, end up locked in your office—metaphorically, if not literally.

Four Challenges

Four things will make it especially difficult for you to achieve long-term success with family, friends, and a life of service and faith.
Opportunity Cost

First, you will have a lot of interesting opportunities in life. Though you may harbor private doubts about it, in time you will be offered exciting clerkships, professorships, partnerships, and judgeships; all manner of ships will be yours. The allure of these opportunities will make it more difficult to spend time with friends and family.

Incentives

Second, you are walking into institutions bristling with high-powered incentives and monitoring mechanisms primed to issue immediate feedback to help you stay focused on the success of the organization. To get more out of you, the firms and government institutions you work for will offer potent encouragement: partnership, praise, promotion, and prestige. Some offer the assurance that you are doing righteous work.

This can be exciting. It can also be a problem, because usually the most important commitments and relationships and people in your life do not have comparable built-in incentive and monitoring mechanisms to tell you how you’re doing.

You will probably not get annual reviews from your loved ones and friends. Unless I miss my guess, your children, family, girlfriends, and boyfriends will not send you monthly reports on how many hours you have spent with them year to date and whether you are meeting, exceeding, or falling below expectations. If they do, you’re in trouble; we should talk afterward.

In fact, not only will they not monitor you and give you immediate correction, but because they love you and want you to succeed, they will sacrifice for you and support you and encourage your efforts to make a difference. And so, if you are not very careful, you will go too long neglecting and damaging important relationships. And it can happen without you noticing it.

Years ago, freshly liberated from my home-office prison, I went to a movie with my wife and left our oldest son in charge for the first time. He had finally gotten old enough to babysit, so my wife and I happily went out and left him to watch the sleeping children. It was great. We enjoyed our newfound freedom. But when we returned home, I was horrified by the awful smoke and unmistakable scent of an electrical fire. I thought of my sleeping children, and I panicked and raced around the house looking for the fire.

I found my son lounging on the couch, reading *The Economist* (obviously, we didn’t have a TV).

“Hey!” I yelled. “What’s going on? Don’t you smell that?”
“Sure,” he languidly replied, “I do. I looked around and didn’t see anything. And you know, it was kind of irritating at first, but you get used to it.”

Well, everything turned out okay. We found the problem: our two-year-old had turned on an air-conditioning wall unit in the middle of winter, and it had burned out. Things were fine, but we didn’t go out again to a movie for a long time.

But I have learned that, in things that really matter, my son was right. If you only look a little, you won’t see anything wrong in your personal relationships. You will not see the disappointment you cause, and you will miss the shared experiences and the chances to build trust. And, after a while, you will get used to it. Even when the stakes are high, you can get used to signs of deadly trouble—and you may not notice the problem until it is too late to fix.

Short-Term Success

There is a third reason strivers are vulnerable and may end up ignoring their most important commitments and relationships. Driven, success-oriented people want to make a difference. You want to count for something. This may lead you to focus on projects in which you can quickly achieve and measure your success. This feels good. You may focus on projects and milestones (like billable hours, a brief, or a bench memo) that will allow you to produce observable results in the short run.

But relationships with family and friends, peace of mind, and a life of service and faith do not yield immediate results. Real friendships and—if you have children—raising a family will take thousands of hours of work that produce no immediately visible results. If you are not careful, a desire for measurable success will lead you to spend too little time on these relationships.

Ethical Compromise

One last warning: The desire to be on the inside and involved in important work may also lead you to compromise your ethical standards. You and I, and, it must be said, our profession, are as susceptible to the subtle charms of bending rules as part of an informed elite as we are to blatant financial corruption. I was actually once offered serious wealth for helping to facilitate a transaction that would have involved secret payments to corrupt foreign leaders. I found that blatant corruption actually pretty easy to resist.

But how many ethical or legal breaches are ultimately caused not by greed but by fear of being excluded from a desirable circle, group, or assignment; by the fear of being laughed at (or worse, ignored) for
objecting to a questionable practice? Be careful that your desire to be in the know and on the inside does not lead you to quiet your conscience when you should object.

Conclusion

So, there you have it. Target managers sometimes harm others and miss out on valuable opportunities because they want to be personally involved in something important. They will insist their actions and contributions aren’t understood or properly valued, but they will sometimes harm the shareholders they want to serve.

Today I’ve tried to say that you and I are no different. You have goals and hope to succeed personally as well as professionally; to be happy as well as accomplished; and to change the world and have meaningful relationships with those you love.

However, even if your intentions are good and noble and selfless, if you are not careful you may neglect meaningful personal relationships, family, and friends. And that would be a costly and painful mistake. You will insist you're not understood or properly valued, but you will have harmed those you love and want to help. None of you now want to return to Stanford at some point with fewer friends and with frayed family relationships. But to avoid that, you will need to fight now against the biases I’ve described.

We’re out of time, and so, as is typical in law school, I’ll spot the issue and leave the solution for you to figure out.

So that’s it. Do good. Succeed marvelously. Don’t get locked in your office. Be happy. Succeed personally as well as professionally. And make Stanford proud, because for the rest of your hopefully long and happy career—you will, nill you—you will bear the stamp, the brand, and the blaze of the Stanford Law School. Thank you.

This convocation address was given at Stanford Law School on June 16, 2012.


Notes

2. The best version of this argument is a memorial lecture by C. S. Lewis given at King’s College, University of London, 1944. See C. S. Lewis, *The Inner Ring*, in *The Weight of Glory and Other Addresses* 55–66 (1949).

3. With apologies to Leon Lipson, who, in his 1979 commencement speech to Yale Law School graduates, had a different school in mind with this image. See Leon S. Lipson, *Commencement*, Yale L. Rep., fall 1979, at 3, 4.
Serve God, Love Me, and Mend

Annette W. Jarvis

The title of this lecture is a quote from Shakespeare’s *Much Ado About Nothing*. I had the pleasure of watching this play at the Shakespeare Festival in Cedar City with my 14-year-old daughter this past summer. As we watched, I heard this line, which I had heard several times before, as I have seen this play on both film and stage, but this time it struck me as the encapsulation of what I have learned in my life and my career.

You may recall that *Much Ado About Nothing* is a comedy with two main characters, Benedick and Beatrice, each being the witty representative of their gender in castigating the opposite gender. As Shakespeare has their friends play on their egos and their inherent good natures (despite their prickly exteriors), these two people, who swore never to engage in the folly of love, develop and demonstrate a truly caring relationship with each other. As the play develops, Beatrice’s cousin Hero is maligned by the evil character Don John, and, choosing to believe the slander, Hero’s fiancé, Claudio, abandons and humiliates her at the marriage altar. Beatrice is devastated by this injury to her beloved cousin, and thus when Benedick comes to confess fully his love for her and asks her how he can demonstrate this love, she orders him to kill Claudio, Benedick’s best friend. When Benedick cannot talk Beatrice out of what to him seems an unreasonable demand, he reluctantly agrees to challenge Claudio to a duel. Benedick returns after making the challenge to report to Beatrice that he has done her bidding, and, after some witty repartee, the two have a serious moment. Benedick asks how her cousin fares. Beatrice reports that her cousin is very ill. He then asks Beatrice how she herself fares, and she reports that she is also very ill. He responds, in an uncharacteristic show of serious tenderness: “Serve God, love me, and mend.” I would suggest that this advice, seriously and lovingly given, is a template for success in our profession or, better said, a template for how to assess success in our lives.
Serve God

The first advice Benedick gives is to “serve God.” This statement is reminiscent of the admonition found in the New Testament:

Consider the lilies how they grow: they toil not, they spin not; and yet I say unto you, that Solomon in all his glory was not arrayed like one of these.

If then God so clothe the grass, which is to day in the field, and to morrow is cast into the oven; how much more will he clothe you, O ye of little faith?

And seek not ye what ye shall eat, or what ye shall drink, neither be ye of doubtful mind.

For all these things do the nations of the world seek after: and your Father knoweth that ye have need of these things.

But rather seek ye the kingdom of God; and all these things shall be added unto you. . . .

For where your treasure is, there will your heart be also.²

In this passage Jesus reminds us that the secular things in our careers—earning money for food, drink, and fancy clothes—are all things that “the nations of the world seek after.” Thus, when we focus primarily on this goal, we are like everyone else. What should distinguish us as followers of Christ is the focus of our minds, our hearts, and our souls on the kingdom of God. This seems like a pretty obvious component of success, but its obvious nature does not prevent the enticements of the trappings of material and worldly success from diverting many from a focus on serving God.

Does this scripture literally mean that we should not worry about how to feed and clothe ourselves and our families? I don’t think so. I think it is a lesson in priorities. If we serve God, if we seek the kingdom of God first, we will find personal success, whether or not it is success that is defined as such in the world. Success without serving God can never be true success because we can never be successful when we act counter to our inherent nature. We are children of our Heavenly Father, and if we are not serving Him, we are not acting consistently with our divine heritage. The apostle Paul asks: “Who shall separate us from the love of Christ? shall tribulation, or distress, or persecution, or famine, or nakedness, or peril, or sword?”³ He answers:

For I am persuaded, that neither death, nor life, nor angels, nor principalities, nor powers, nor things present, nor things to come,

Nor height, nor depth, nor any other creature, shall be able to separate us from the love of God, which is in Christ Jesus our Lord.⁴

While nothing can force or create a separation between us and the love of God, we need to remember that we can separate ourselves from that love by our own choices and our own actions resulting from these choices.
Does our devotion to God ever interfere with our sought-for success in our careers? Absolutely. We have both time and financial commitments to our Church with which others do not have to contend. We have family commitments that many of our colleagues find to be inconsistent with success. We have standards that we abide by that sometimes make us the focus of derision or disdain. We deal with people who are ignorantly intolerant of our religion and who judge us in the context of their preconceived (and most often ill-conceived) notion of what our religion means or is. Our religion is not a passive religion. Rather, it requires daily sacrifice of time, of money, of missed business opportunities, and sometimes even a sacrifice of worldly acclaim. “Serve God” has to be the first foundation of any success.

Love Me

Benedick’s second admonition is “love me.” He is talking to Beatrice as his future wife, and his advice really is a reminder to focus our efforts on loving our families. As with the admonition to serve God, we cannot find true success in our lives without being devoted to our families. And to go a step further, we cannot truly be devoted to our families without making sacrifices in our careers on their behalf. In fact, I would venture to say that if you have not made any sacrifices in your career for your family, you should question whether you really value your family above your career.

With five children, decisions made by and for our family did not always meet with universal approval by each of the children. When these situations arose, I would always remind the unhappy child or children that we were a family and that as a family we had to sacrifice for each other. While a particular decision might be for the benefit of only one family member—requiring the rest of the family to sacrifice for that family member—each of us knew in turn that when our time of need came, the family would sacrifice for us as well.

There were many times in my career when my choices made to meet the needs of my family came at the expected price of a failed or curtailed career. I worked part-time for many years at a time when this was highly unusual and with the attendant stigma that came (and sometimes still comes) with this choice that I was not truly devoted to my career or somehow was not keeping up with my peers. When I was invited by my firm to work in a home office, I agreed to do so to finish paying off my husband’s medical school debt, but I had no expectation that my career would go anywhere. I mean, in a time before email and the Internet, with four children at home, including a new baby, how could I possibly succeed in my career? I anticipated that this family-driven choice sounded the death knell of my career. It was surprising for me to discover that my mostly New York
clients did not care about my unorthodox working arrangements. They only cared about whether they were being represented and advised well.

Because of my choice to work part-time and then in a home office, I also watched my male contemporaries pass me by with higher pay, wider acclaim, and better work opportunities. It was at times very painful to realize that, from a career advancement perspective, I was being left behind in my profession, and I was not sure I would ever be able to catch up. Even after I moved into a more mainstream practice with my career, I still had to suffer enduring discrimination, particularly on the issue of unequal (meaning lesser) pay for women. A female colleague recently sent me an article on a new study conducted by professors at Temple University and the University of Texas–Pan American concluding that women attorneys are still paid significantly less than their male counterparts and that such disparity is not performance based—women lawyers being found to be just as productive as men. I did not need to read a study to conclude this. I lived this. I was not able to control this part of my career until recently, so I focused instead on building in the flexibility I needed to meet my family needs, on developing the skills I needed to be a good lawyer, and on feeling good about that.

In an oft-quoted statement among lawyers, Joseph Story said: “[The law] is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favors, but by lavish homage.” Anyone who has practiced law understands this analogy and the enticements of the 24/7 approach modern attorneys take to the practice.

How do we cope with this disparity between the realities of modern law practice and our need to devote time to our families? When we compare ourselves and our successes with others, we will always be disappointed. As I used to say to my children, just remember that no matter how smart you are, there will always be somebody smarter. We need to find satisfaction in doing the best we can in the sphere in which we find ourselves, large or small. We should not fall into the trap of competing with those who have accepted the law as their jealous (and only) mistress.

We also need to redefine the meaning of success. My father, now in his 80s, is an electrical engineer who had a very successful career and is a well-recognized inventor. He recently said to me that when you get to his age you realize that it is only family that matters. No matter how successful we are in our careers, it is only a fleeting aspect of this life. You may be king of the hill in your profession today, but there will always be others charging up the hill to take your place. Remember, however, that you will never be replaced as the mother or father or sister or brother or daughter or son in your family.

In a well-known passage from the Book of Mormon, Alma starts with the wish “O that I were an angel” and ends up with the hope that if he can be an “instrument in the hands of God to bring some soul to repentance,”
he will feel successful. Alma progresses from a grandiose wish to a feeling of contentment in whatever small sphere he finds himself with the hope for the opportunity to change even one life. This is a great pattern for redefining success.

“Love me” reminds us that you must love and sacrifice for your family as the second foundation of real success.

**Mend**

The third piece of advice Benedick gives is to mend. Beatrice and her cousin have suffered a great injustice, and they both are made unwell by the wrong done them. Beatrice’s response to this injustice is to ask Benedick to kill Claudio, the perceived source of the injustice. When Benedick is unable to talk her out of this demand for retributive justice, he returns, having made the challenge, but advises her that rather than seeking revenge, she should focus her efforts internally to mend.

My husband is a doctor, and when our oldest son was very young, he once explained, in response to a question as to what his parents did: “My dad helps sick people. My mom works for money.” I think this assessment is not far off from the public perception of what we do as lawyers. In reality our jobs are not much different than doctors. As lawyers, we are, or should be, problem solvers. We are there to heal, or mend, the problems of others. We are entrusted with resolving the injustices suffered by our clients. Sometimes those injustices are at the hands of other parties. Sometimes, as in my area of the law—bankruptcy—the source of the harm is less focused, but its impact can be widespread. It can be an unattributed injustice, being a by-product of a distressed economy or a changing industry or business environment or honest management mistakes; but it is a problem that we, as lawyers, are uniquely qualified to solve.

Similar to the reaction of Beatrice, our society has become so litigious that when any injustice is suffered, the first response is to sue. Sometimes this is the best response, but a good lawyer will understand the options and will help a client to mend, to figure out a solution that will focus on and then remedy the real problem, not just the emotionally perceived one. When I started practicing business bankruptcy law, I thought that at least this was not a practice that had an emotional component. It was not like divorce law, for example. This was a mistaken perception. I quickly learned that people are very emotional about money. In addition, my area of the law deals with people’s jobs, their abilities to support their families, their investments in their businesses, honestly made mistakes with serious consequences, and sometimes betrayal by dishonest or downright fraudulent behavior. I now understand that every area of the law has an emotional component. Like Benedick counseled Beatrice, we as lawyers need to help our clients work through emotionally charged situations and mend.
One of the things I love about practicing bankruptcy law is that, most of the time, bankruptcy lawyers know when to quit fighting. We litigate to bring about a business solution, understanding that with scarce resources and money, creative approaches are warranted. We understand that we are not just lawyers but counselors. As with all lawyers, our job is often to sacrifice our own inclinations in order to serve our clients. At times that may mean keeping an even temperament in an abusive or heated situation. It may mean that we settle a case that we feel certain we could win. It may mean that we submerge our ego or emotional investment in a course of action to accept a better solution for a client’s business needs. It may mean that we forego higher fees we could earn if the client were to choose a certain legal remedy because another legal remedy is a better fit for the client. Our job is to help our clients mend, to fully understand their problems, and to address them with caring and competence.

What I have found to be most important to clients who end up seeking to redress their injustices in the courts is simply to know that they have been heard, that they have been listened to and understood, and to feel that they have been fairly judged. It is our job to make sure this happens by being competent lawyers and helping clients, whether big or small, to mend. Harper Lee said it best, through the voice of her literary creation, Atticus Finch, when he said in his closing argument:

“There is one way in this country in which all men are created equal. . . . That institution . . . is a court. . . . Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal.”

We, as lawyers, provide access to this great societal equalizer. Serving our clients, or mending their injuries, should be the third foundation of success.

All three foundations of success I have mentioned are bound together by a common focus on others. This shared theme takes us back to the admonition in the scriptures: “For whosoever will save his life shall lose it: and whosoever will lose his life for my sake shall find it.” As a woman entering a profession at a time when there were very few practicing women lawyers, I struggled as a minority to find my way and to belong in this profession. What I discovered in my quest—something I did not even realize until I was there—was that when we talk about belonging, we need to change our focus. We need to stop focusing on ourselves and start focusing on others. When we focus on others, then we can belong, no matter how different we feel and are. Long before I even understood the foundations of my success in this profession, this is what I was inadvertently learning.

None of us are ever entirely responsible for success in our careers. None of us are self-made men or women, as is so well articulated in the
oft-quoted phrase of John Donne: “No man is an island.” Each of us
stands on the shoulders of others. Sometimes those supporting shoulders
come from unexpected places. For me, it was, surprisingly, the interces-
sion and support of some of the New York partners in my firm during
critical years. One of these partners, who started working with me while
I was working part-time in a home office, initially required that I check in
with him every single day, as he was concerned about whether I could ade-
quately handle a difficult case for one of his very important clients. After
he had watched me in action, he became one of my greatest advocates.
While, during that period, I saw limited prospects for my career as a home
office lawyer in the late ’80s, he and other of my New York partners looked
beyond my unconventional trappings and saw a talented problem solver
for whom they provided work opportunities and political support within
the firm. Remembering the kindness of these partners to me, I have tried
to emulate them when I am now asked for favors to help others in their
careers. Success brings more ability to help others, and that is the obliga-
tion of those who succeed.

Last week, at a meeting of the American College of Bankruptcy, I
heard a report on a historical project done by the college wherein bank-
ruptcy practitioners from the 1930s and 1940s (all men, of course) were
interviewed. During this time period, virtually all bankruptcy practi-
tioners nationwide were Jews. As was explained by these men, that was
because other areas of practice were not open to Jews. They were openly
discriminated against, and none of the large firms would hire them.
Bankruptcy law at that time was not a mainstream practice for large firms.
It was looked down on, so it was an area open for these excluded Jews to
fill in with their own small boutique firms. I found it interesting that the
area of practice I eventually specialized in—which was not what I intended
to choose in law school—has historically been a haven for the excluded in
the profession. Somehow, as a discriminated minority myself, I find it fit-
ting to eventually have been welcomed by this same specialty.

Harper Lee once wrote: “People who have made peace with them-
selves are the people I most admire in the world.” I agree. Perhaps, in the
end, that is why we admire her literary creation, Atticus Finch, so much,
because Harper Lee created a lawyer she admired, a lawyer who was not
perfect but who was a person who had made peace with himself. If we are
to belong in this profession, we also need to make peace with ourselves. I
would suggest that we can do this through serving God, loving our fami-
lies, and mending the wrongs suffered by our clients. In focusing our
efforts on others, in losing ourselves in serving others, we can be at peace
with ourselves. By focusing our education, our abilities, and our opportu-
nities on others, we can, in some small way, change this difficult profession
into something a bit better. “Serve God, love me, and mend.” With your
legal education, you have a wonderful opportunity to make a difference in the world. Do it.

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Notes

3. Romans 8:35.
The 21st Century as the Century of Duties?

John W. Welch

I wish to turn your minds to the concept of duty and to raise something of a call to action. I cannot imagine a better group on earth with which to share my heartfelt concerns and dreams about the importance of the principle of duty.

For us as Latter-day Saints, the fulfillment of duty comes almost as second nature. Our doctrines are strongly compatible with concepts of obedience, stewardship, choice and accountability, and a future state of rewards and punishments. LDS lawyers are exhilarated by the fulfillment of professional responsibilities. Inspired by numerous widely admired role models from our ranks, Latter-day Saints are happily drawn toward public service. We find joy in excellence, fairness, and virtue—all of which, as the mission statement of this society pronounces, are “founded upon the rule of law,” which brings us directly to the concept of duty, for duty gives the rule of law its only source of legitimate efficacy. Without a citizenry obliged in their hearts and souls to obey the law, the rule of law is left as a hollow shell of wishful thinking and empty promises. As Latter-day Saints, we make explicit our pledge to do our duty to honor, sustain, and uphold the rule of law.

For more than 30 years of teaching law, the topic of duties has refused to leave me alone. I have been drawn to it like a moth to a light. With many of you I have studied fiduciary duties in business associations, pension trusts, and private foundations. I have encountered ethical duties in ancient philosophy and modern jurisprudence and pondered communitarian duties in biblical times and natural duties in modern revelation. Indeed, in ancient scriptures the word duty appears 16 times.
with reference to duties of marriage; everyday duties; “the whole duty of man”; duties of servants and public officials; and, in the Book of Mormon, one’s “duty to God.” And, in numerous other instances in biblical society, the ubiquitous dynamics of honor and shame and collective responsibility were unspokenly taken for granted.

Perhaps signaling to us the need to be more explicit about our duties and obligations, the Doctrine and Covenants emphatically uses the word duty much more often—43 times—regarding all kinds of duties to family, to callings, and of priesthood leaders as well as imperative duties to God, angels, wives, children, widows, orphans, the rising generation, and all the pure in heart. From all of this I feel a duty to call for people everywhere to make a difference in promoting the fulfillment of duty.

Balancing the Rights-Duties Budget

In my title tonight I ask the question, can the 21st century become the century of duties? Let me explain what I mean. I have no doubt that the 20th century will go down in history as the century of rights. The rights trajectory of the 20th century was inexorable and indomitable, progressing from voting rights, suffrage rights, and women’s property rights in the 1920s to workers’ rights in the 1930s and ’40s, civil rights in the ’50s and ’60s, privacy rights in the ’70s, and also human rights, equal rights, gay rights, disability rights, children’s rights, and many more. While I certainly applaud these important steps forward, which have been won at the expense of lives, crusades, reputations, and costs untold, I can only hope that the 21st century will eventually go down in history as the century of duties: civic duties, human duties, equal duties, fiduciary duties, professional responsibilities, intellectual duties, religious obligations, environmental stewardships, and duties to future generations. In 1978 Ronald Dworkin published a book entitled Taking Rights Seriously. I’m still waiting for a book entitled Taking Duties Seriously, and I hope the wait won’t be too long.

But recent decades have not been very kind to duties. The ideas of obligation and responsibility have not been taken as seriously as rights. Simply do a search on Google Books of some of the literature of the last 200 years. As a search on Google Books can now quickly demonstrate, the word duty appeared more than twice as often in the early 1800s as did the word rights. But now the word rights appears four times more often than duty—a dramatic shift. Additionally, over the same time period the rate of occurrence for the word self has more than quadrupled. While these data points are probably not surprising to anyone in today’s entitlement culture, these radical shifts should be arresting to anyone interested in the survival of the rule of law.
It seems to me that this disparity and all that it signifies needs to be brought back into balance. We need to balance the Rights-Duties Budget. Our nation is being divided and tested over the challenge we face in balancing federal and state financial budgets. I believe that, in the long term, balancing the Rights-Duties Budget will be just as necessary and beneficial. While I do not have any silver bullet that will solve this problem, I believe it is time for us to begin taking steps in that direction. We can no more close our eyes and think that this imbalance will go away than think that somehow our public debt problems will spontaneously evaporate into thin air.

What do I mean by the Rights-Duties Budget? As I see it, any polity has choices.\footnote{32} A system may place on its citizens a high level of duties and obligations with a low level of rights. We call such a system tyranny or totalitarianism. Or a system may opt for a very low level of duties and a very high level of rights. We call this anarchy or chaos.

A system in which rights and duties are in balance we might call cooperative or well ordered. Its “body politic” functions smoothly, and, as a whole, it is at least in balance. Aristotle, with his emphasis on the golden mean, would be pleased—and any imbalance needs to be rectified—but balance alone is not enough. Whether a balanced system thrives or not depends on one more crucial thing: namely the height of that balance. Like a hurdle or high-jump bar, the level can be either high, medium, or low.

Should a community choose to support a low level of duties along with a correspondingly low level of rights, that regime could be stable and just, but it would probably not be very prosperous or fulfilling.

The ideal, I would suggest, for a nation, an economy, a family, or a Zion community, would be to maintain the enjoyment of the highest possible level of rights and opportunities while simultaneously engendering the fulfillment of an equally high level of duties and obligations. To accomplish this, it would seem, the first order of business would be to balance the Rights-Duties Budget. But who is even looking in this direction?

Implicit in what I have said is the idea that rights and duties are both necessary. While a state in which everyone has rights and no one has obligations is unimaginable, strides made forward with individual rights are only solidified by balancing steps forward with individual duties. And herein lies a second crucial point that has also been seriously overlooked: the world usually thinks that because I have a right, someone else has a duty, namely to fulfill my right. We are not surprised to see this kind of thinking in political pledges promising that all rights will be automatically taken care of; but even in more sophisticated discourse, the same inadequate logic usually holds sway. Classical contract theory,\footnote{33} for example,
says, “If I have a contractual right, then you have a duty. If you have a right, then I have a duty.”

Now, while that is true enough, as far as it goes, this is not the whole story. Duties and rights are not polar opposites. They do not stand on opposite sides of the street. Both necessarily go together, hand in glove, and here’s why: with rights come duties. This is because (1) every right naturally confers some power or privilege, either to act or to prevent someone else from acting (which in any event is a power of some sort); (2) every power or privilege is laden with some sort of duty, for all power will necessarily be used either for good or ill (and even the choice not to use a power is a choice for good or for ill); (3) however “good” may be defined, it is philosophically intuitive that people have a duty to do what is good; and, therefore, (4) with every right comes some duty.

As Latter-day Saint lawyers, we intuitively sense all of this. We know, for example, that with professional privilege and power come professional responsibilities. And our scriptures tell us that with greater knowledge (which is also a power and a privilege) comes greater accountability34 and that everyone who has been warned has the duty “to warn his neighbor.”35 Consequently, in every right, power, or privilege that I have, I inherently also have some duty as its flip side. These are the two sides of my coin. This, of course, is not the way people usually think about rights and duties or about balancing, for example, when analyzing Constitutional rights.36

But this linkage between one’s own rights and one’s own duties gives us new leverage in balancing the Rights-Duty Budget, for a society’s balance between rights and duties will naturally be achieved at the entity level if each individual member of society individually fulfills whatever obligations attend to the exercise of that individual’s rights and privileges. And, because of this linkage, no one person can simply say that because I have a right, someone else has the duty to satisfy my right without me having some obligation as a part of the package. I may have the right and privilege to drive, but with that right I have the duty to drive carefully and respectfully and to obey the traffic laws.

One cannot simply say that because I have a right to work, someone else has the duty to give me a job. I, too, have a duty to do my best to seek employment.

Property owners have the right to own property, but they still have the duties of property ownership and management.

Spouses have rights and duties in sickness and in health.

Plaintiffs have rights and duties. Defendants have rights and duties. Lawyers have rights and duties.37

Because I, as a speaker, have a right and a freedom to speak, others may have the duty to let me speak, but I also have the duty to speak honestly and fairly and to reciprocate by listening.
It would seem, then, that all rights entail duties. This is most obvious in cases in which the rights are extensive and potent, as in cases of high-level fiduciaries and top-level political officers. In cases of weaker powers, the obligations will also be at lower levels, but they will exist nonetheless, and to whatever extent a right confers a power, it confers a responsibility.

This next tells us that no rights are absolute. Even the exercise of inalienable rights is subject to conditions. The word inalienable does not mean absolute, unconditional, or nonforfeitable. Even the Declaration of Independence itself makes it clear that the inalienable right to abolish a government cannot be acted upon “for light and transient causes” and that a people’s right (and accompanying duty) to overthrow a government is preconditioned upon the showing of “a long train of abuses and usurpations” that “evinces a design to reduce them [the people] under absolute despotism.”

Moreover, all this also tells us that no single right can somehow be an absolute trump. Yet people often line up to support their favorite right without any regard for what obligations it might require to keep its exercise in balance. Some see freedom of speech as a trump over all restrictions. Others champion freedom of religion as a trump over all incursions. Some stand by the right to assemble or the right to bear arms as absolute privileges not subject to any chills or obligations. But an absolute trump is just another form of tyranny, and Dworkin’s game of trumps breaks down whenever two trump aces are played against each other. So, in the current clash between gay rights groups and religionists, Professor Douglas Laycock of the University of Virginia School of Law has it right: “The problem right now is that each side wants liberty for itself but nothing for the other side. . . . [R]ather than holding out for a total victory, both sides should look for ways to give and take.”38 They “should,” indeed, as all such claims of right come with some attendant duties.

Interestingly, Joseph Smith’s political platform in 1844 was wary of the idea of rights without duties. He championed the guarantee of freedom so far as the use of freedom “aids in the fulfillment of duty.”39 He opposed what some were calling “human rights” if their use was to detract from civic unity.40 All laws, he revealed, have certain bounds and conditions; thus, God-given liberty is contingent upon keeping God’s commands. He made similar points about duties: they are not absolutes either. For example, Doctrine and Covenants 134:5 says that one is bound to support a government but only so long as it protects people in their inherent and inalienable rights.

So, if you are with me so far, rights and duties go hand in hand. We talk lots about rights and privileges but much less about duties and accountabilities. There’s something wrong here. This imbalance needs balancing, both at the political and the individual levels. And the key to achieving
that balance at the political level is for each individual right holder to discharge some corresponding, correlative commensurate duty.

Indeed, Hugh Nibley once said that the lunch may be free, but work we still must.41 And as the prophet Micah says: “[God] hath [freely] shewed thee, O man, what is good; and [in return] what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God.”42

Creating the Century of Duties

Whether what I have said so far makes complete sense or not, I hope that I have gotten you thinking about duties. Whatever theories might eventually be developed to explain where rights and duties come from and what they might require of any of us, I hope that we are all agreed that the duty side of the Rights-Duties Budget is important and yet has been underrepresented in our contemporary discourse.

As we move further into the 21st century, what might be done to change this deficiency? What will it take? Here are some thoughts and modest suggestions.

First, it will take concerted effort. Let’s watch carefully for opportunities to give more attention to duties and their linkages with rights—for example, on blogs, in editorials, or through social media. We might also collect and publish a library of classic books and significant articles about duties. There is, of course, Cicero’s treatise on duties, and wider circulation should be given to books like David Selbourne’s The Principle of Duty43 and Jonathan Sacks’s The Persistence of Faith.44 Actually, the total library on duties is woefully small when compared with the massive and elegantly published library of books on rights and liberties so successfully produced by the Liberty Fund in Indiana.45 But with the web and e-book publications, it now becomes possible to imagine the world’s best writings on duties becoming readily available everywhere.

Next, it will take stories. We could collect real-life stories about lawyers, politicians, corporate officers, trustees, and ordinary people who did their duties, sometimes under extraordinary pressures, highlighting the complementarities of duties and rights. Stories such as Solicitor General Rex Lee refusing to take a case to the United States Supreme Court because he could not legally justify the position that his client, President Ronald Reagan, wanted him to argue—and over which Rex lost his job. Stories of lawyers, such as those that Elder Whitney Clayton told us in our Law Society broadcast in January 2012.46 There are stories of those such as Los Angeles lawyer Warren Christopher, who was known at O’Melveny & Myers as the Holy Ghost of the Democratic Party; I admired him greatly for leaving the firm to serve as secretary of state in the Carter administration, securing the release of U.S. hostages from Iran and brokering the
Bosnian peace agreement for President Clinton. Personally, I have been influenced by stories about my own father, John S. Welch, at Latham & Watkins, whose reputation for integrity at the negotiation table was legendary. One could collect stories of all kinds of ordinary people who admirably did their duty faced with all sorts of contrary pressures or stories of extraordinary people, such as George Washington, Abraham Lincoln, Susan B. Anthony, and Martin Luther King Jr., whose heroic honoring of rights and fulfillment of duties never fail to inspire and should never be forgotten. Shouldn’t thousands of such stories be organized, documented, and put online so they can be used in public education as well as in law school classes at appropriate junctures in the curriculum? Telling positive stories is the best way to teach ethical principles and to inculcate in the rising generation an enduring sense of civic responsibility. And think of the role that the J. Reuben Clark Law Society could play in the collection and publication of such positive stories and materials.

On the academic side, it will take motivators. We can easily offer scholarships, writing prizes, and subventions to encourage students, lawyers, and historians to write about duties. How about beginning with a book about the decline of duties in the 20th century? How did that decline happen? Likewise, we can encourage the best and the brightest to analyze the reciprocities of rights and duties from every imaginable perspective—legally, economically, and socially.

It will also take creative thinking about remedies and levels of enforcement of duties and about ways to give positive incentives to prompt the voluntary fulfillment of obligations and honorable civic service. What course this path may eventually take is hard to envision. But who in 1900 could have foreseen the long step-by-step path that rights jurisprudence took in that century? By the same token, we need not be dissuaded as we move into the 21st century.

In that effort it will certainly help if the amorphous corpus of duties could be given much more in the way of order and structure. For example, classifying all rights as to their source of origin would be a first step in understanding where their attendant duties concurrently come from.

If it is reasonable to claim that a natural right inheres in some state of nature, should it not be equally reasonable to ask what duty that state of nature concurrently requires? Beginning in 1948, Mahatma Gandhi insightfully insisted that there should be something like a Universal Declaration on Human Duties and Responsibilities to go together with the much more famous Universal Declaration of Human Rights. He went so far as to postulate that all human rights could be more accurately defined as duties that we all owe to each other. More work is needed moving in that direction.

Similarly, with political rights, the same authority that grants civic rights has equal authority to impose civic responsibilities. What the large
print giveth, the small print taketh away. And what might the duties of citizenship be? We of all people should note that in 1926 President J. Reuben Clark articulated a list of eight such duties. His list includes sincerely believing in the right of the people to govern themselves; honestly believing in the Constitution; participating as fully as possible in the functions of government; observing the laws of the land and encouraging and assisting others to do likewise; leading a clean life in public and private affairs; and exerting every lawful effort to correct any abuses of governmental power.\textsuperscript{50} Wouldn't any nation be improved by the promotion of such a list today? Shouldn't we at least be thinking about what our list could and should contain today?

Lawyers especially could help to advance the culture of duties by giving better structure and clarity to the nebulous law of fiduciary duties. Fiduciary law should be clarified so as to make it clearer who counts as a fiduciary. Besides conventional trustees, others such as investment advisors, real estate agents, mortgage lenders, ordinary employees, professors, and even elected officials should be more aware of when they are actually constructive trustees or virtual fiduciaries and, consequently, of what the law and society require of them as fiduciaries. More often than we think, we are our brother's keepers.

Typically, all fiduciaries owe the duties of (1) care; (2) diligence; (3) obedience in following instructions; (4) acting with informed prudence; (5) reporting and voluntarily disclosing information; (6) shunning any semblance of self-dealing or conflict of interest; and (7) taking the initiative to do the best for their principals, clients, and beneficiaries. But how many people can articulate these duties, which, with apologies to Stephen R. Covey, one might call “the seven habits of highly successful fiduciaries”?

The Preamble: Our Bill of Duties

Turning to constitutional rights, we often invoke the Bill of Rights. But here, also, one might well ask, are there constitutional duties that run with those rights? Recently I got to wondering, what might a Bill of Duties look like? Looking for an answer, I turned to the Constitution itself, and, just as the U.S. Constitution ends with the Bill of Rights, I realized that it actually already begins with a Bill of Duties, only we don’t call it that. We call it the Preamble. The importance of the Preamble should not be overlooked. Although it is hardly ever cited in judicial opinions today, that was not the case in the beginning. Early American jurisprudence held that “[e]very grant of power in the constitution has reference to the one or the other of these general objects [purposes or duties]” in the Preamble.\textsuperscript{51} The Preamble should not be treated as mere window dressing or as literary prologue. It states the sum and substance of the united obligations and objectives that
we as a people have collectively assumed and specifically authorized our government to accomplish.

Those duty-bound objectives are as follows:

- To perfect our union. Unity is the first and overriding objective, more salient, apparently, than prosperity, partisanship, or special interests.
- To “establish justice.” Everyone must contribute to the fulfillment of this duty.
- To “insure domestic tranquility.” This is the product of calm respect given to others by listening, caring, and cooperating in every part of civic life.
- To “provide for the common defense.” It remains the duty of all Americans to contribute to our common defense.
- We hereby undertook the obligation to “promote the general welfare,” but it will probably take decades to define what the words promote, general, and welfare actually will mean in the 21st century, just as it took decades in the 20th century to define words such as equal, protection, and law.
- It is also our agreed duty to “secure the blessings of liberty to ourselves and our posterity.” We are duty bound to hand blessings on to generations to come.

Here, I suggest, is the beginning of our constitutional Bill of Duties, if we will only embrace it. And whatever that Bill of Duties might eventually develop into, it must become more than a bill of particulars on paper. It must be written in the hearts of the people. This will take a social fabric in which all human relationships are not seen as optional, transitory, or dispensable. Today’s highly interdependent social and economic conditions, both at home and abroad, make the world more like a village than an open frontier, giving greater meaning to John Donne’s famous meditation that begins “No man is an island, entire of itself; every man is a piece of the continent, a part of the main,”52 which actually requires all to rethink the very idea of “self” itself.

Preserving the Rule of Law

What will it take to make the 21st century a century of duties? It will take a lot of work. It will take a lot of commitment. It will take organizations, like the J. Reuben Clark Law Society and other like-inclined organizations and leagues. It will take the identification of ways in which laws, theologies, and political philosophies are, or can become, duty friendly without being rights reducing. It will take some old-time religion and lawyers who bring a sense of religious commitment to the office every day. It will take help from world religions that promulgate the principles of both
individual rights and collective duties. It will take allies who see rights
and duties as inseparable for the betterment of society, who see duties as
lifting and ennobling and not to be used to oppress or hold down. It will
take prophetic guidance, as it will always be difficult to separate the false
freedom of doing what one wants from the true freedom that comes from
doing what one ought, for it is only the truth that makes us free.53 It will
take a dream of moving toward a new Jerusalem, that things may be done
on earth as they are in heaven. In sum, it will take all we have got, and then
some, including a lot of love and a little help from above.

With all due respect to Nephi,54 may it someday be said that we talked
of rights and duties, rejoiced in civic rights and obligations, preached of
religious rights and our accountability to God, and wrote of our rights and
responsibilities to one another so that our children might know the source
to which they can look for the preservation of the rule of law and of the
heart and soul of all civilization. That it may be so, I sincerely hope and pray.

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at Stanford University on February 16, 2012. Reprinted from the Clark
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Notes

1. See Hebrews 5:8; Doctrine and Covenants 130:21; Article of Faith 1:3.
5. See Matthew 25:26; Alma 41:14; Doctrine and Covenants 127:4.
6. See, e.g., Lance B. Wickman, In Search of Atticus Finch, in LIFE IN THE LAW:
SERVICE & INTEGRITY 173 (Scott W. Cameron, Galen L. Fletcher, & Jane H. Wise,
eds., 2009); Dale A. Whitman, Avoiding Pitfalls, in LIFE IN THE LAW: SERVICE &
INTEGRITY 167 (Scott W. Cameron, Galen L. Fletcher, & Jane H. Wise, eds., 2009).
7. See Boyd K. Packer, On the Shoulders of Giants, in LIFE IN THE LAW: SERVICE &
INTEGRITY 225 (Scott W. Cameron, Galen L. Fletcher, & Jane H. Wise, eds., 2009).
jrcls.org/about/mission_statement.php.
10. See Doctrine and Covenants 134:5.


15. See Doctrine and Covenants 134.


21. Alma 7:22; see also Alma 43:46; Mosiah 13:30.


23. See Kaminsky, supra note 14.


32. See, for example, Samuel J. Levine, Unenumerated Constitutional Rights and Unenumerated Biblical Obligations: A Preliminary Study in Comparative Hermeneutics, 15 Const. Comment. 511, 526 (1998) (“[T]here are limits on what rights society will recognize and protect. Likewise, there are limits to the conduct required.”).

33. See the work of Wesley Newcomb Hohfeld, including Some Fundamental Legal Conceptions as Applied in Judicial Reasoning, 23 Yale L.J. 16 (Nov. 1913).

35. Doctrine and Covenants 88:81.


40. Id. at 6.

41. See Hugh W. Nibley, Work We Must, but the Lunch Is Free, in Approaching Zion 202–51 (1989); reprinted from BYU Today, Nov. 1982, at 8–12.

42. Micah 6:8 (emphasis added). See the discussion of the applicability of these words from Micah to the duties of modern judges in Brett Scharffs, The Role of Humility in Exercising Practical Wisdom, 32 UC Davis L. Rev. 127 (1998).


49. Id.


If you are consistent in your character, if you treat others with respect and dignity, if you are scrupulously honest, if you are fair, if you are the same man or woman in the practice of law that you are in your church, your neighborhood, or your home, you will develop the kind of reputation that will give you enormous power as a peacemaker.

MATTHEW B. DURRANT (P. 184)
Repairers of the Breach

Scott W. Cameron

I have great love for BYU–Idaho and its predecessor institution, Ricks College, for two reasons. My son, Scott, who shares my first name but is my superior as a teacher and a poet, is now teaching in the English Department here. And my first full-time job was as a freshman English and literature teacher at Ricks College 41 years ago. My position at Ricks College was not only my first position, it was my favorite.

I came to Rexburg from Palo Alto, California, in 1971 after I had received my bachelor's and master's degrees. Rexburg was a welcome relief for me—no, not because of the weather. The climate of Palo Alto is milder. In fact, I had never had my eyelashes freeze before I moved to Rexburg. Rather, it was the peace of the campus. My life during the late '60s and early '70s at Stanford University had been marked by protests and tear gas and broken windows. I had to cross picket lines to get to class.

Ricks College, by contrast, was almost pastoral.

I was single and 25. I loved teaching and enjoyed the students who came from different communities all over the United States. As a single faculty member I did not date the coeds, so I had a lot of time to grade papers and read the scriptures. I had time to sit in on a number of religion classes and observe master teachers like President Henry B. Eyring, who was at that time president of Ricks College; Keith Sellers; and Mel Hammond. I loved the devotional assemblies in the Hart Building.

Once, while sitting in a devotional, my conscience was pierced by a comment made by Elder Spencer W. Kimball. To the best of my recollection, he said, “If you are a priesthood holder and 26 years old and still single, you are a menace to the Church.” I had just turned 25, and while I had aspirations to be married, I was not close. My number-one prospect was Sister Cameron; however, at that time she was in Salt Lake City, and I was not her number-one prospect.
I was inspired to make marriage my number-one priority. As I mentioned, I had a lot of free time and used my best freshman English–teacher skills to write her letters. I would write about my classes and include bits of poetry we were reading, like part of Sonnet 29 by Shakespeare:

Yet in these thoughts myself almost despising,
Haply I think on thee, and then my state,
Like to the lark at break of day arising
From sullen earth, sings hymns at heaven's gate;
For thy sweet love rememb'red such wealth brings
That then I scorn to change my state with kings.

With the help of friends, I convinced Christine to visit Rexburg, and we went on a geology field trip through Yellowstone National Park. She met President Eyring and his wife, Kathy, and we ate at Walker's Café. Could there be anything more memorable? We courted over Christmas vacation in Salt Lake, and she visited when I was called into the bishopric of the Ricks College 13th Ward. We were engaged at the end of my first year of teaching and married two days before I turned 26, saving me from becoming a menace.

I have wondered what would have happened had I not been intently listening in that devotional. The most important things in my life—my wife, our six children, their spouses, and our 17 grandchildren—might not have been mine. We spent our first year of marriage—my second year on the faculty—serving in the Ricks College 13th Ward with Bishop Bob Wilkes and his wife, Estella, and Lane and Helen Dearden. It was idyllic because we lived among people described in Moroni 7:3 as “peaceable followers of Christ.”

At approximately the same time that I was asked to speak at this devotional assembly, Sister Cameron received a document entitled “BYU–Idaho—Keeping a Sacred Trust.” This beautiful brochure states that “the primary reason for the existence of BYU–Idaho is to assist [you students] in developing and deepening [your] devotion as disciples of the Lord Jesus Christ” (part of the BYU–Idaho President’s Club mission statement; taken from David A. Bednar, “Brigham Young University–Idaho: A Disciple Preparation Center [DPC],” BYU–Idaho devotional, 31 August 2004). I immediately started thinking and praying about how I could help you develop and deepen your devotion to the Savior.

Two thoughts came to me: First, that I should center my address on a phrase in Isaiah 58:12: “repairer of the breach.” It is a phrase I have always associated with the mission of the Savior. And, second, that I should relate that scripture to why the Savior organized the Church as stated in Ephesians 4:11–13.

I was concerned that I was not focusing on the Book of Mormon until I remembered Nephi’s assessment of Isaiah: “My soul delighteth in
the words of Isaiah” (2 Nephi 25:5). And I remembered that the Savior had
given a commandment to search the words of Isaiah: “Yea, a command-
ment I give unto you that ye search these things diligently; for great are
the words of Isaiah” (3 Nephi 23:1). I also knew that the Savior's concern
for both the Saints in Jerusalem and the Nephites in the land of Bountiful,
when He was with them, was to assist them in developing and deepening
their devotion as disciples—and for this reason:

And he [Jesus] gave some, apostles; and some, prophets; and some, evan-
gelists; and some, pastors and teachers;
For the perfecting of the saints, for the work of the ministry, for the
edifying of the body of Christ:
Till we all come in the unity of the faith, and of the knowledge of the Son
of God, unto a perfect man, unto the measure of the stature of the fulness of
Christ. [Ephesians 4:11–13]

While the inspiration came almost immediately, over the next several
weeks I wondered how a phrase from Isaiah 58 covering the true law of the
fast and a brief passage in Ephesians could develop sufficiently to occupy
your time.

I thought deeply about the phrase “repairer of the breach.” What is
a breach? It is a separation, a division, a rift; whether accomplished over
a slow process of years or a single violent occurrence, it creates a pain-
ful separation. In personal relationships, a breach can be devastating. I
plumbed the depths of my legal training and remembered that a contract
is “an agreement between two or more parties creating obligations that
are enforceable or otherwise recognizable at law” (Black's Law Dictionary,
contract is a “violation of a contractual obligation by failing to perform
one's own promise, by repudiating it, or by interfering with another party's
performance” (Black’s, s.v. “breach of contract,” 213).

Think of how devastating a divorce (a breach of a marital contract) can
be not only to the parties under the contract as well as to those who love
them. Our Heavenly Father wants us to be whole, undivided, and united
with Him. The adversary wants to create a breach in all relationships—
causing individuals to be divided and fragmented—and has done so
since the War in Heaven. In fact, the word breach is used in another way
in times of war. If an army is defending a city against an enemy and the
enemy makes a hole in the line of defense, it is said to have “breached”
the line. Because this breach is a critical moment in any defense, it is usu-
ally very brave men and women who thrust themselves into the breach to
prevent the enemy from penetrating further. Consequently, I read Isaiah
to determine how a person can develop the courage and the wisdom to
become a “repairer of the breach.”
As I mentioned, I have always felt this title was one of the most beautiful references to the Savior, who is the Savior because He is the hero of this sojourn on earth. As we know from the scriptures and from “The Family: A Proclamation to the World”:

Each [of us] is a beloved spirit son or daughter of heavenly parents, and, as such, each has a divine nature and destiny. . . .

[We accepted God’s plan to] obtain a physical body and gain earthly experience to progress toward perfection and ultimately realize [our] divine destiny as an heir of eternal life. [Ensign, November 1995, 102]

The Fall of Adam caused a physical breach between each of us and our Father in Heaven; this fall separates us. Through the use of our agency, each of us has violated God’s laws, or, as Paul said in Romans 3:23, “all have sinned, and come short of the glory of God.” Sin is a breach in our relationship with God. Through His Resurrection and Atonement, Jesus Christ repairs the breach caused by death and sin and makes it possible for us to become whole and return to live with our Heavenly Father.

As we know, it is His “work and [His] glory . . . to bring to pass the immortality and eternal life of man” (Moses 1:39), and the Savior desires our assistance in His work and glory. He instructs us that each of us needs to become perfect, “even as [He], or [our] Father who is in heaven is perfect” (3 Nephi 12:48).

As Christ is the ultimate repairer of the breach between man and God, so Christ asks us to assist Him in repairing that breach by bringing others to Him so that they may be healed. The words of Isaiah are so beautiful to me. I can easily see why George Frideric Handel chose to use so many of Isaiah’s words in Messiah. Isaiah’s language and metaphors seem to speak to our hearts as well as to our minds. Perhaps the language of poetry he employed is close to the language that God taught Adam.

I have also pondered this phrase and how it relates to the true law of the fast, which seems to be Isaiah’s focal point in chapter 58. Last fast Sunday I seemed to get some clarification about how we increase our devotion to the Savior. I know through my reading and my own experience that merely abstaining from food does not constitute a true fast. The Pharisees were among the best at abstaining from food, but it did not help them to recognize the Son of God, even when He was among them.

Beginning in verse 5 of Isaiah 58, Isaiah uses a series of rhetorical questions that we must answer in determining what is a true fast. In verse 5 he instructs Israel that fasting is not to be seen of men:

Is it such a fast that I have chosen? a day for a man to afflict his soul? is it to bow down his head as a bulrush, and to spread sackcloth and ashes under him? wilt thou call this a fast, and an acceptable day to the Lord?
We are not outwardly to bow down our heads like a bulrush. We are not to spread sackcloth and ashes. Rather, we are
to loose the bands of wickedness, to undo the heavy burdens, and to let the
oppressed go free, and . . . break every yoke. . . .
[We are] to deal . . . bread to the hungry, and . . . bring the poor that are
cast out to [our] house. . . . When [we] seest the naked, . . . cover him; and . . .
hide not [ourselves] from [our] own flesh. [Isaiah 58:6–7]

All of us have been taught to give offerings as part of our fast to assist
the poor, but how do we calculate those offerings? Do you fast to check
it off your obedience list and then, as an afterthought, calculate with an
exceedingly sharp pencil the amount you have saved from not eating? Do
you determine the number of ounces in a box of Honey Nut Cheerios, the
cost of the box, the number of ounces in one bowl, and the fraction of the
entire cost of the box you saved by not eating? Do you determine the cost
of a half gallon of milk and the value of the cup you didn't use compared to
the entire half gallon? While this may be a good exercise in mathematics, it
is certainly not what is expected by the true law of the fast.

Perhaps I could relate an experience that helped me. January 1, 2012,
was fast Sunday for the missionaries in the Missionary Training Center
in Provo, and, as a branch president, I fasted with them. Rather than stay
up on New Year's Eve, I went to bed at 10:00 p.m. (At my age, one often
looks for reasons to go to bed at 10:00 p.m. on New Year's Eve.) I awak-
ened early on New Year's Day, hoping that in addition to enjoying the fast
I would be inspired in the preparation of this devotional address. I was
determined that I would not bow down my head as a bulrush and that I
would approach the missionaries with good cheer. I succeeded in that, and
it was a beautiful Sabbath.

During the day I read from President Thomas S. Monson's book
Pathways to Perfection as well as from many of his conference talks. I was
hoping to strengthen my testimony of his divine appointment.

It is not alone sufficient for us as Latter-day Saints to follow our leaders and to
accept their counsel, but we have the greater obligation to gain for ourselves
the unshakable testimony of the divine appointment of these men and the wit-
ness that what they have told us is the will of our Heavenly Father. [Harold B.
Lee, Conference Report, October 1950, 130]

Fasting and reading from President Monson's addresses helped me
to become even more convinced of the prophet's divine appointment. However, I was still unsure what I should say in this address. I was begin-
ning to be concerned, thinking about the thousands of you and taking 25
minutes of your time. Individually, it would be bad enough, but collec-
tively, I determined that it would be approximately 400 hours for every
1,000 people in attendance.
That evening we received a call from my brother-in-law in another state regarding a woman in his ward who was concerned about her son who lived in Provo. The son had a debilitating mental condition, and she was very worried that he was not eating. She had his address but wanted to get in touch with the bishop. My brother-in-law asked me to get the bishop's address, and I agreed.

The next day was a legal holiday, but I went into my office early to work on this talk. I felt I was finally making some progress when Sister Cameron called and reminded me that I needed to find the young man's bishop. I drove to the address I had been given, but the house was empty. I had a telephone number, and I called, asking if I could speak to the young man. I was told he was not home. I asked if I could leave a message, and the person said something strange: “He can hear you.”

I told him who I was and said that I had a message from his mother. He gave me another address and said I could stop by.

I drove to the new location and rang the doorbell. A young man not fully dressed answered the door. While I spoke to him, he alternated between being coherent and incoherent. He would periodically hit his head violently with his hand as he spoke. I asked if he had eaten, and he said no; he couldn't remember how to open a can of soup. I asked if I could leave a blessing in his home and then get him some lunch. He agreed. I left and got some soup, a sandwich, and a fruit cup and returned to his home. He seemed to have calmed down. I was able to find out the ward he lived in and the name of his bishop so that his mother could contact his bishop.

When I went back to preparing this talk, I read Isaiah 58:7–8 with new eyes:

Is it not to deal thy bread to the hungry, and that thou bring the poor that are cast out to thy house? when thou seest the naked, that thou cover him; and that thou hide not thyself from thine own flesh?

Then shall thy light break forth as the morning, and thine health shall spring forth speedily: and thy righteousness shall go before thee; the glory of the Lord shall be thy rereward.

It was then that I gained a new understanding of Isaiah and the true law of the fast. I learned there is a prerequisite to gaining inspiration, and that is to bring bread to the hungry and to “bring the poor that are cast out to thy house,” and “when thou seest the naked, that thou cover him.” I had been in a fog with regard to what to say to you dear brothers and sisters, and then I felt the “light break forth as the morning.”

What if I had decided not to visit this young man and had tried to justify my failure by saying, “I’m working on a talk for several thousand BYU–Idaho students, and I’m just getting into it. I can’t break up my day and look for someone in distress whom I don’t know”? What if I had just called
back and told my brother-in-law, “I’m sorry, but the house was vacant at the address I had been given”?

So what was the light that broke forth as the morning? I learned that fasting and serving others is a prerequisite to obtaining help from heaven. Through fasting I also saw the link with Ephesians 4:11 and why we are so blessed to have a prophet and apostles and evangelists and pastors and teachers: so that we can become like the Savior—repairers of the breach.

So that He can repair the breach in our own lives and then we can look for others to assist in the work of repairing the breaches in their lives, Christ did the following for us:

And he [Jesus] gave some, apostles; and some, prophets; and some, evangelists; and some, pastors and teachers;
For the perfecting of the saints, for the work of the ministry, for the edifying of the body of Christ. [Ephesians 4:11–12]

Let’s consider the offices that Jesus put in His Church to assist us: first, apostles and prophets. President Monson is an example. As I read his biography and his talks, I realized there was a pattern in his talks. It is the pattern for how we become like the Savior and obtain revelation in our lives. His stories are for children and all those who humble themselves like little children. What happens to your heart when you hear this story from President Monson’s biography, written by Heidi Swinton?

The home was buzzing with Thanksgiving preparations when Charlie Renshaw, a friend from over the back fence, stood outside, as was the custom of these young friends, and hollered, “Tom-my!”
When Tommy answered the summons, Charlie said, “It sure smells good in there. What are you eating?”
Tommy told him it was turkey, and Charlie asked what turkey tasted like.
Tom responded, “Oh, about like chicken,” to which Charlie asked, “What does chicken taste like?”
Tom ran into the kitchen, snatched a piece of breast meat, and handed it to his friend. “That’s good!” the boy said.
When Tom asked what Charlie’s family was having for dinner, the answer was, “I dunno. There’s nothing in the house.”
Tom pondered. . . . He had no extra turkeys, chickens, or money. But he did have two pet rabbits, a male and female, the pride of his life. . . . He motioned to his friend and headed for the specially constructed rabbit hutch. . . . He reached in and grabbed his two pet rabbits, put them in a gunnysack, and handed the bag to Charlie.
“Rabbit meat tastes better than chicken,” Tom said. [To the Rescue: The Biography of Thomas S. Monson (Salt Lake City: Deseret Book, 2010), 50]

Brothers and sisters, when one gives a love gift—all that one has—the meal will taste better than any dish prepared by a gourmet chef. President Monson’s stories are not just stories. They teach us how to become like the
Savior. He tells us that we should always obey the Spirit’s nudge to visit the sick even when it is inconvenient or seems to conflict with other Church duties. Through his stories I have realized that visiting those in need is even more important than conducting a Church meeting. Inspiration and revelation come from serving others. I note that C. S. Lewis was an atheist until he was converted by the children’s stories of George MacDonald, a Presbyterian minister from Scotland.

I love President Monson’s stories because they educate my heart and help me understand Matthew 25:40: “Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me.” When I have followed President Monson’s example and Isaiah’s promptings, when serving someone was more important than talking about service, I have realized there is a causal connection between loving others and receiving inspiration as stated in Isaiah 58:7–9. If you deal your bread to the hungry and assist the poor and cover the naked,

then shall thy light break forth as the morning, and thine health shall spring forth speedily: and thy righteousness shall go before thee; the glory of the Lord shall be thy reward.

Then shalt thou call, and the Lord shall answer; thou shalt cry, and he shall say, Here I am. [verses 8–9]

After reading President Thomas S. Monson’s words, pondering them, and praying about them, I received a testimony of his divine appointment. I have that same testimony of President Henry B. Eyring and President Dieter F. Uchtdorf and the Twelve Apostles. I believe that as we follow them and listen to them, we will be able to “call, and the Lord shall answer.”

I would like to speak of some other special people the Savior established to assist us in increasing our devotion to Him. Paul mentioned evangelists and pastors and teachers. An evangelist is a patriarch, as Elder Russell M. Nelson taught us in October conference:

His Church provides patriarchal blessings to give each recipient a vision for his or her future as well as a connection with the past, even a declaration of lineage back to Abraham, Isaac, and Jacob. [“Covenants,” Ensign, November 2011, 88]

I would encourage each of you to get your patriarchal blessing so that you understand why the Savior has called patriarchs to help you.

Paul says that the Savior also gave pastors to assist us. A pastor is a bishop. There is something important about the mantle of the bishop and about the keys he holds. I don’t know how to explain that importance to you except to say that when I was ordained a bishop, I saw people differently. As a counselor in the bishopric I had sat on the stand every week for several years. I knew which pew was occupied by each family. They always sat in the same place, and so it was easy to determine who was missing.
The week after I was ordained a bishop, I sat on the stand as usual, but I saw people in a new way. It was most noticeable with the widows who sat together on the left side about half of the way back. Usually I just noted who had been at the hairdressers by the tint in their white hair. This week it was as if I saw their years of caring for their families and serving others, and they were radiant.

I believe my bishops have had special insights into my heart, and I thank them for helping me understand the Atonement, repent of my sins, and prepare for the blessings of the temple. May I suggest that the bishops of your young single adult wards are called of God, and, as good as they are on their own, they are better when the mantle of a bishop rests on their shoulders. You young men and young women who plan to serve missions, let them help you prepare and repent and become fully worthy to serve—to assist the Savior in repairing the breach. If you try to serve while still feeling the effects of a breach in your life, it will hurt, and until you go back and allow the Savior’s Atonement to heal that breach, you will not be able to serve. You may feel the Holy Ghost on occasion, but the Holy Ghost will not be able to be the constant companion you will need as an emissary of Jesus Christ.

Now you may not think that the teachers Paul mentions are your teachers here at BYU–Idaho, but I would like to venture that they are. In Words of Mormon 1:17 we read that in addition to King Benjamin, to whom was given to lead the people, “there were many holy men in the land, and they did speak the word of God with power and with authority.”

From my own experience, the men and women who teach you are not only brilliant and accomplished, they are good. They want what is best for you. They want you to be prepared in your chosen academic and professional fields. They know that once you begin work, the time for preparation is over. If you have not been properly trained, you will suffer the embarrassment of not being able to do what you should have learned to do. They occasionally ask for a lot because they want you to apply yourselves and be competent.

These teachers want you to learn the scriptures and feel the power of music; they want you to discover for yourself the feeling of satisfaction that comes from applying your mind diligently to understanding a formula or an equation or how the branches of government work and how you can work within the laws of man. They want you to have happy and productive lives. Isaiah prophesied of the results that will come in your lives if you live the true law of the fast and follow those who have been chosen to lead you:

And the Lord shall guide thee continually, and satisfy thy soul in drought, and make fat thy bones: and thou shalt be like a watered garden, and like a spring of water, whose waters fail not.
And they that shall be of thee shall build the old waste places: thou shalt raise up the foundations of many generations; and thou shalt be called, The repairer of the breach, The restorer of paths to dwell in. [Isaiah 58:11–12]

I began my devotional address by saying that here at BYU–Idaho I found myself among the “peaceable followers of Christ.” May I suggest this is a blessed place to repair any breach—through the Savior’s love—that you may find in your life. You have the opportunity to be instructed by apostles and prophets, you have wonderful bishops to help you, and you have teachers who care about your happiness not only in mortality but also in the eternities. The year 2012 is a great year to prepare to fill your role in your families as well as in the kingdom by following the Savior and becoming a “repairer of the breach, [a] restorer of paths to dwell in.” In the name of Jesus Christ, amen.

This devotional address was given to the BYU–Idaho student body in Rexburg, Idaho, on January 17, 2012.

Scott W. Cameron received his MA in education from Stanford University in 1971 and JD from BYU Law School in 1976. He has served as an assistant or associate dean of BYU Law School since 1990 and as editor of Clark Memorandum 1990–2001. He is currently executive editor of Clark Memorandum, associate dean of external relations at J. Reuben Clark Law School, and executive director of the J. Reuben Clark Law Society.
I am grateful to be with you and sincerely appreciate the honor awarded this evening. I am also grateful that our daughter Brooke was asked to introduce me. Thank you for that thoughtful, personal consideration. I am very grateful both for the things Brooke said and for the things she generously omitted. I suspect that an important consideration for this award is the calling in which I serve rather than any personal merit on my part. There are many lawyers whose accomplishments far outstrip mine. Still, Mark Twain said that he could “live for two months on a good compliment.” His comment captures my feelings. Thank you very much. I have been a member of the J. Reuben Clark Law Society for several decades. Kathy and I attended what I recall as having been the inaugural meeting of the Law Society in Los Angeles. We unfailingly attended the meetings of the society in Orange County, California. Many of my closest friends are members of the society. I have tremendous respect for noble lawyers. At their best, lawyers help ease humankind through the rough spots of life.

The Two Great Commandments

I would like to recount an experience from early in my legal career. I met one afternoon with a new client in Orange County who asked me to accept a case that had just been filed in federal court in San Francisco. I agreed to do so. There was a hearing scheduled the next morning in San Francisco. Under the circumstances it was not possible to obtain a continuance of the hearing, so I flew to San Francisco that evening and went to the courthouse the next morning.

When the case was called, each of us attorneys who represented parties in the lawsuit made an appearance. However, I told the judge that I was not a member of the bar of the United States District Court for the Northern
District of California. When the judge heard this, she asked if there was anyone present who would move my admission so that I might participate in the hearing. One of the other attorneys stepped to the microphone and said, as I recall, the following: “Your honor, I am pleased to move the admission of Mr. Clayton. I have known him now for nearly two minutes, and during that entire time he has shown himself to be of good character and high professional standards.” The court granted my admission and the hearing went forward. The case was settled within a month or so.

But suppose the case had not been settled so quickly. Would that attorney have been willing to make the same statement about me had the case dragged on for several years, had a settlement been impossible, and had the stakes been very high? Similarly, how would his client have felt about my character, ethics, and reputation after depositions, cross-examination, and trial?

The record of an exchange between the Savior and the Sadducees about the resurrection is followed by an account of the Savior’s conversation with a scribe:

And one of the scribes came, and having heard them reasoning together, and perceiving that he had answered them well, asked him, Which is the first commandment of all?

And Jesus answered him, The first of all the commandments is, Hear, O Israel; The Lord our God is one Lord:

And thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind, and with all thy strength: this is the first commandment.

And the second is like, namely this, Thou shalt love thy neighbour as thyself. There is none other commandment greater than these.

And the scribe said unto him, Well, Master, thou hast said the truth: for there is one God; and there is none other but he:

And to love him with all the heart, and with all the understanding, and with all the soul, and with all the strength, and to love his neighbour as himself, is more than all whole burnt offerings and sacrifices.

And when Jesus saw that he answered discreetly, he said unto him, Thou art not far from the kingdom of God.1

The simple statement that “Jesus saw that he answered discreetly” is one that I have pondered. The first and second commandments were not given with an exception rendering them inapplicable to lawyers. The adversary system produces a charged atmosphere and intense competition. Fortunes, livelihoods, personal and professional reputations, liberty, and even life itself can be at stake. How can a lawyer reconcile these two commandments at the same time he or she satisfies the duty owed to the client?
We call these two commandments the great commandments because all other commandments depend on them. The Savior said, “On these two commandments hang all the law and the prophets.”

Compliance with these two fundamental commandments is the eternal standard for all that we say, do, and even think in our lives. “For our words will condemn us, yea, all our works will condemn us; we shall not be found spotless; and our thoughts will also condemn us.” Every aspect of our lives must bow to these two commandments, for, in the end, all that we do will be judged by how well our lives conform to them.

A Genuine Spirit of Christian Goodness

All of us are aware of the spirit of confrontation and discourtesy that infects communication in today’s public square. Too many people in the public eye or with access to the public ear speak with disdain, ridicule, or contempt for those with whom they disagree, apparently unconcerned about or oblivious to the harm such invective inflicts on public sentiment and morale. This abuse pervades newscasts, debates, and talk shows.

Many jurisdictions impose rules or standards for the professional conduct of the lawyers who have the privilege of working in them. Law schools in the United States commonly teach and require courses in professional responsibility, and, in most states, passing a professional responsibility exam is a requirement to practice law.

My experience with most attorneys, in and out of the Church, was that they conducted themselves professionally and diligently. Unfortunately, we nevertheless find discourse and correspondence among lawyers that is negligently or even intentionally abrasive. Some lawyers criticize and disparage other lawyers. They make *ad hominem* arguments that create a poisonous atmosphere among counsel. Some attorneys establish a persona of toughness by the noxious way in which they treat opposing counsel. In one case I saw an LDS attorney repeatedly mispronounce the opposing lawyer’s name to highlight its Jewish origin, which was sort of an ironic tragicomedy—a Mormon making fun of a Jew because of his religion.

These attorneys’ efforts seemed designed to wear their opponents out with personal attacks rather than calculated to weaken their adversaries’ cases and the evidence claimed to support them. I suspect that most of the lawyers who spend time in litigation have witnessed this sort of behavior.

At some point, tenacious representation becomes overzealous and unchristian. Godless behavior in the pursuit of legal victory is not a virtue; it is a rejection of the first and second commandments and of Him who gave them. If care is not taken, the demigods of victory, of personal reputation for ferocious advocacy, and of earning fees wither allegiance to divinity and become a form of apostate worship.
Sometimes lawyers seem to feel their offensive behavior is justified because they are zealously discharging their duty to their clients or they think that they are in the “right.” The goal in life, however, is not to be right but to be good. Being good means doing good. Even if an attorney believes that a client’s position is morally right or that in some point contested during a lawsuit the attorney personally is in the right, in a deposition or anywhere else the attorney’s communications and conduct should be drenched with the spirit of genuine Christian goodness. No variety of legal success will compensate for failure to keep the first and second commandments.

I do not mean to assert that an LDS attorney should be a timid milquetoast. An advocate is under no obligation to help his opponent make his case or to fail to take honorable and reasonable advantage of another’s mistakes or lack of preparation. An attorney may honorably outwork, out-prepare, outthink, and outpresent an opponent. An attorney can honorably cross-examine with skill, pointing out inconsistencies and reasons to doubt a witness’s testimony or credibility. It is no blemish on one’s moral honor to have an opponent feel impressed by and perhaps even fearful of one’s skill, reasoning, work ethic, preparation, and tirelessness.

I believe, however, that an attorney should never stoop to levels of behavior that are inimical to the key commandments and covenants that guide a Christian in daily living and undergird every moral precept. Ultimately, the golden rule is still in force, as are the first and second commandments. A Christian attorney’s duty is higher than to simply stay within the confines of the law.

If you are practicing law, most of your legal opponents will learn at some point that you are a member of The Church of Jesus Christ of Latter-day Saints. When they do, will that knowledge advance the progress of the kingdom of God because of their respect for your personal commitment to the highest ethical and personal standards? Will they observe that you follow the Savior in everything you do? Or will your behavior cause them to reject our faith because of the negative example they have seen?

Jesus taught:

A new commandment I give unto you, That ye love one another; as I have loved you, that ye also love one another.

By this shall all men know that ye are my disciples, if ye have love one to another.⁴

Although this commandment to love one another is two thousand years old, it must be kept evergreen in our conduct.

At baptism we covenant with God that we will
bear one another’s burdens, that they may be light;

...Mourn with those that mourn;...comfort those that stand in need of comfort, and...stand as witnesses of God at all times and in all things, and in all places that [we] may be in.5

When we succumb to the temptation to treat others in ways that do not accord with these fundamental commandments, to one degree or another we break our sacred baptismal covenants. Instead of helping others bear their own burdens, which surely are heavy enough, we become burdens for them to bear, we give them reason to feel like mourning, and we unquestionably fail to stand as witnesses of God.

“If Nothing Shall Offend Them”

In the New Testament, James recorded perceptive teachings about the importance of controlling what we say. He wrote:

If any man offend not in word, the same is a perfect man, and able also to bridle the whole body. . . .

...The tongue...is an unruly evil, full of deadly poison. Therewith bless we God, even the Father; and therewith curse we men, which are made after the similitude of God. Out of the same mouth proceedeth blessing and cursing. My brethren, these things ought not so to be.6

Paul taught that we should “give none offence”7 and noted that disciples of the Savior should live “giving no offence in any thing.”8

Challenges in our communications, of course, can and do arise outside the office and the courthouse. I will share a personal experience from last year. As I do, please remember my father-in-law’s clever comment that “even the worst of us can serve as a bad example.”

Late last summer I drove to a large gas station to fill my car. Big yellow arrows were painted on the ground to direct the flow of traffic through the station’s many gas pumps. Only a few cars were at the pumps, so I decided to save some time. I ignored the arrows and drove the wrong way into the station and over to a pump. I got out of my car and started to fill the tank.

A few moments later a station attendant walked over to me and asked nicely if I had seen the arrows. I said yes. He then politely asked why I hadn’t followed them. I felt a little defensive and told him I had noticed there were only a few cars at the pumps, so it didn’t make any difference that I hadn’t followed the arrows. He asked me to follow the arrows in the future. I agreed to do so, but I believe we could both feel that my agreement was grudging. He thanked me and walked away. I finished filling my car and drove away feeling embarrassed by my behavior.

I knew I needed to return and apologize. I could have done so right then, but I didn’t. A week later I drove to the station to see if the attendant
was there. He wasn’t. A few days later I went by again. This time he was there. I drove in (the right way this time, following all of the arrows) and started to fill my car. I then walked over to the attendant and told him I needed to apologize. I reminded him about our interaction and asked for forgiveness. He smiled and extended his hand to me. He was perfectly polite. We had a courteous exchange.

He was kind to forgive me so readily. I was grateful. But I also knew that if I had behaved better in the first place, there would have been nothing to forgive other than my failure to follow the arrows. I had given him offense, and he chose to disregard it. His behavior was exemplary.

The challenge of behaving our very best is a two-sided coin. First, an attorney should not resort to improper treatment of opposing counsel or witnesses, no matter the advantage that one believes will follow or the reasons that seem to justify doing so. This means that we should not give offense.

The gas station attendant’s example reveals the other side of the coin. We do not need to surrender ourselves emotionally to the behavior of others when their conduct sinks below acceptable levels. We neither give nor take offense, including in our professional practices.

Litigation can become tense and even heated. Tempers can flare and emotions can snap. The temptation may arise to become defensive, irritable, or rude; to get even; or to become abusive. In each case doing so would be giving in to feeling offended. It is hard not to be drawn in to the personal attacks, ridicule, and name-calling that can characterize litigation. Becoming offended is a choice, however; it is a decision. No one can compel someone else to become offended, angry, or vengeful. Our moral agency precludes that and places us, not others, in charge of our emotions and our conduct. Thus, while it is true that we should not give offense, it is likewise true that we should not take offense, no matter what another attorney says or does.

Understanding this law of personal accountability for both our actions and our reactions helps us see teachings from the Sermon on the Mount more clearly:

Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth:

But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also.

And if any man will sue thee at the law, and take away thy coat, let him have thy cloke also.

And whosoever shall compel thee to go a mile, go with him twain. . . .

Ye have heard that it hath been said, Thou shalt love thy neighbour, and hate thine enemy.
But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you.  

A devoted Christian attorney will likely need to be more astute, better prepared, doggedly relentless in pursuing the facts, and more resolute than one who seeks to weaken opposing counsel rather than win a case on the merits. There is a quiet dignity that comes from excruciating preparation and holding the moral high ground. There is great strength in righteous certainty of self. My experience was that attorneys, judges, and courtrooms become aware of and responsive to those attributes. The longer I practiced law the more fully I came to realize that I could do much to control the temperature in heated litigation. 

The Book of Mormon provides an example of choosing not to be offended. During a protracted war between the Nephites and the Lamanites, Captain Moroni sent a letter with stinging criticism to Pahoran, the head of the Nephite government. Pahoran’s return letter to Captain Moroni is instructive:

And now, in your epistle you have censured me, but it mattereth not; I am not angry, but do rejoice in the greatness of your heart. I, Pahoran, do not seek for power, save only to retain my judgment-seat that I may preserve the rights and the liberty of my people. My soul standeth fast in that liberty in the which God hath made us free. . . .

And now, Moroni, I do joy in receiving your epistle.

Pahoran’s charitable reaction to Moroni’s letter helped bring immediate resolution to a critical problem and set the foundation for the Nephites’ eventual victory in the lengthy war. If he had instead chosen to be offended, the resulting story might have been much different. His victory over his own emotions preceded the victory of his people and country. Indeed, “He that is slow to anger is better than the mighty; and he that ruleth his spirit than he that taketh a city.” Pahoran answered discreetly.

Mormon’s teachings capture the essence of charity, which is the crowning virtue possessed by true disciples of the Savior. Charity neither offends nor takes offense: “Charity suffereth long, and is kind, and envieth not, and is not puffed up, seeketh not her own, is not easily provoked, . . . beareth all things, . . . endureth all things.”

Following the agony of Gethsemane, the Savior was arraigned before angry scribes and Pharisees in an inquisition convened in the middle of the night. There He was falsely accused, spit upon, slapped, abused, and questioned. When the high priest said to him, “Answerest thou nothing?” Matthew recorded simply that “Jesus held his peace.”

Compelled to appear next before Pilate, He was again accused and questioned. “And the chief priests accused him of many things: but he answered nothing.”

L. Whitney Clayton
He was then taken to Herod, and the same thing occurred. “[Herod] questioned with him in many words; but he answered him nothing.”

The Psalmist taught that keeping the commandments immunizes us against being offended, saying, “Great peace have they which love thy law: and nothing shall offend them.” Personal spiritual ascendancy over the natural man is made possible when our own sincere efforts are multiplied by the blessings of the Atonement and the grace of Christ. Always, the Savior makes up what we yet lack if we turn to Him in genuine humility and faith.

To Act and Answer Discreetly

Recently I learned of a Church member who as a lawyer successfully handled a large case through complicated litigation. He greatly impressed the officers of the opposing client, a major corporation from another country. When the case ended, the opposing client asked him to leave his firm and practice to work in-house for them. He agreed to do so. His conduct must have been impressive, professionally and personally.

The Book of Mormon account of Ammon’s zealous defense of the king’s flocks and servants can be applied to teach us that a lawyer should do whatsoever the client wants him or her to do “which is right.”

Alma asked us to consider whether we have been stripped of pride and whether we make a mock of our brethren or heap on them persecutions. These questions should guide us when we think about how we speak to or about an opposing attorney or witness.

One evening years ago, while serving as a ward mission leader, I was in the apartment of some full-time missionaries as we prepared to leave for an evening of proselytizing. The phone rang and I was asked to answer it. The man at the other end of the phone line told me his name and asked for the missionaries to teach his wife and him the gospel. I asked him how he had learned about the Church. He said that he had done business with one of the local stake presidents and that “any church that can make a man like that is one that I have to know more about.” Within weeks the caller and his wife were baptized.

In the case in which the lawyer in San Francisco moved my admission based on our being acquainted for just two minutes, what would have happened had we known each other longer? There were hundreds of other cases in which I participated. Did my actions tend to help the work of the Lord go forward, or did they cause some disrepute to attach to His name and His Church? If the missionaries knock on the door of your opposing counsel or the opposing party, will he or she be more likely to listen as a consequence of your conduct?

I pray that we may all strive to answer discreetly in every aspect of our lives.
I pray the Lord’s blessings upon you in all that you do and share with you my witness of the Father of us all, His Living Son, and the Restoration of Their Church and kingdom to the earth. In the name of Jesus Christ, amen.

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Notes

7. 1 Corinthians 10:32.
8. 2 Corinthians 6:3.
10. Alma 61:9, 19.
12. Moroni 7:45.
17. See Matthew 19:16–22; Mark 10:17–22; Ether 12:27.
The Lawyer as Peacemaker

Matthew B. Durrant

Thank you, Dean Worthen. It is a great honor and privilege to be asked to speak on this day, one that marks the culmination of years of study and achievement—and of worry—both by you who are members of the Class of 2008 and by those who love you and support you. They sit here proudly—spouses, children, parents, grandparents, and others who have sacrificed to help you reach this moment. They are here to honor you, but I’d like to give you an opportunity to honor them. I ask that the graduates please stand and applaud those who have made this day possible.

The J. Reuben Clark Law School is an extraordinary institution. Measured by median LSAT scores and undergraduate GPAs, it is among the top 10 percent of all the law schools in the country. The Class of 2008 is an extraordinary class, possessing the highest incoming academic credentials of any graduating class in the Law School’s history. This school’s faculty is superb, and its graduates are highly respected in the legal community, both for their skills and for their integrity. As Elder Dallin H. Oaks has said, this Law School is “an institution superbly effective in strengthening the moral, ethical, and professional foundations that compose the finest heritage in our profession.” Your diploma will be a badge of honor that you will wear throughout your professional life.

Now, I have a confession to make. I like lawyers. I know this is not a popular position. But—putting all the jokes and the cultural misconceptions aside—as a group, lawyers are an admirable bunch. There are, of course, exceptions, but in my experience lawyers tend to be honest, thoughtful, hardworking, and interesting. Law is a profession that self-selects conscientious achievers.

With that preface, I’d like to announce my topic: the lawyer as peacemaker. This might strike some as an odd incongruity, an oxymoron. We hear lawyers called many things, but seldom “peacemaker.” Indeed, in
our popular culture—whether it be in movies, television shows, or lawyer jokes—the lawyer is often cast as the villain, fanning the flames of conflict, creating disputes, setting neighbor against neighbor. And, sadly, a few lawyers fit this stereotype. But most do not. The best never do.

Lawyers are uniquely positioned in our society to affect lives, whether for good or for ill, in the most profound ways. Often the fact that a person comes to a lawyer means that something has gone terribly wrong in that person’s life. People come to lawyers with broken marriages, broken partnerships, broken bodies, broken lives. They come when they have been done an injustice or stand accused of one. They come when their fortune, or even their freedom, is at risk. In short, people will come to you with a problem, often at a time in their lives when they are most vulnerable. It is how you see that problem that will define you as a lawyer. Do you see in it the potential for your own profit, or do you see in it an opportunity to serve?

To be a lawyer is to face an ongoing and inherent conflict of interest. Often what is best for you, in a strict financial sense, is worst for your client. Frequently the shortest path to resolution of a client’s problem, whether it be in the negotiation of a business deal or in a lawsuit, is the least profitable path for the lawyer. I’m reminded of my first trip to New York City. A cab driver recognized me for the naive, wide-eyed rube that I was, and he took me for a very long cab drive, which I later found out—as I came to understand the city better—was far longer than it needed to be. My financial interest was in the shortest route possible; his was in the longest.

Lawyers frequently face the same temptation to which that cab driver succumbed. They typically bill their time by the hour. The more hours the lawyer works, the more money he or she makes. By unnecessarily prolonging a business negotiation or a lawsuit, the lawyer can earn additional fees. The more interrogatories that are propounded, the more depositions taken, the more motions filed and hearings held, the fatter the lawyer’s wallet. The ugly reality is that, as a lawyer, your personal financial interest will often be in conflict with your client’s best interest.

So, what will stand between you and the unfettered pursuit of your personal financial interest? In a word, honor. Usually, only you will know what truly motivates your decisions as a lawyer. Your knowledge of the law and legal procedures will be vastly superior to that of your clients. They will be vulnerable to your manipulation. They have little choice but to trust you. Will you be worthy of that trust or will you twist it to your own ends? Despite what the movies, television shows, and jokes may suggest, the great majority of lawyers are worthy of that trust. They are honorable men and women. You, as a young lawyer, need to know that it is not necessary to choose between honesty and effectiveness. It is not necessary to choose between honor and success. You can be a good person and a good lawyer.
You can be a problem solver, someone dedicated to finding the shortest and least expensive path to resolution of your client’s problem. You can be a peacemaker.

How? First and foremost, you must see yourself primarily not as a businessperson but as a problem solver. As salaries have skyrocketed and discovery proliferated, the practice of law has come to be viewed, more and more, as a commercial enterprise. Partners demand higher and higher salaries, so they require that associates bill more and more hours, and it all results in greater and greater fees for clients. There is a ratchet effect. But as a lawyer you cannot be a purely self-interested, profit-maximizing, economic actor. Your fiduciary duty, your ethical obligations to your client, simply preclude it.

Now, I’m not so naive as to suggest that money doesn’t matter in the practice of law. It does. You need to keep the doors open, the staff paid, the books in the black, and your family fed. As the entertainer Sophi Tucker once said, “I’ve been rich and I’ve been poor. Rich is better.” And as NBA basketball player Patrick Ewing once said, in defense of his union’s demands for more money, “We make a lot of money, but we spend a lot of money.” I’m afraid I have only the latter part of that problem.

So you can’t ignore the importance of adequate money. But I simply want to say that in resolving to be a little less rich, you might find yourself a whole lot happier. It is not that first dollar but the last that is so insidious. Sometimes as lawyers we need to decide that enough is enough, that squeezing out that last dollar is not worth what it will cost us. There is much freedom that comes from being willing to walk away from that last dollar: freedom in the legal career we choose, in the clients we accept, in the advice we give, in the way in which we solve our clients’ problems, and in the way in which we balance our professional and family lives. There is a far deeper satisfaction in practicing law as a problem solver, as a peacemaker, than as a fee generator. There is enormous psychic income to be had in genuinely placing your client’s interests ahead of your own. And if you do so, while you may not make as much as you might have on a particular case, over time you’ll develop the kind of reputation that will attract more and more clients. So the irony is that your long-term financial well-being will ultimately be better served by a commitment to unerringly subordinate your own financial interests to those of your clients.

Second, to be a peacemaker in your practice of law you must treat others with civility. This will allow you to develop the kind of reputation that facilitates problem solving instead of impeding it. Some lawyers are of the view that they can be most effective by being obnoxious, rude, or mean-spirited. They employ personal abuse and name-calling as tools of the trade. In fact, practicing in this style is profoundly counterproductive. Opposing lawyers are typically not cowed or intimidated into concessions; when they are attacked personally they usually attack in return. People are
rarely persuaded by someone who belittles or insults them, and practicing in this way causes other lawyers to be defensive and suspicious. It prolongs business negotiations or litigation. It multiplies discovery and motions. It makes settlement more difficult. It increases the cost to the client.

The most effective problem solvers are those lawyers who consistently treat others with respect and dignity, who are professional even in the face of unprofessionalism, who refuse to mirror the mistreatment they receive. There is nothing more natural than to return slight for slight, insult for insult, and anger for anger. But the best lawyers realize that the case is not about them. It's not about the slights they may have received, the disrespect they may have been shown. It's not a personal contest with the other lawyer. The best don't make the cases personal. They are focused on resolving the problem in a way beneficial to their client. When cases become personal it only clutters and complicates their resolution.

Third, to be a peacemaker you must have consistency of character. You cannot compartmentalize your ethics. Here again, the reputation you develop is critical. Some lawyers treat the moral code that governs their private lives as inapplicable to their professional lives. Yet every principle by which you lead your life outside the law has equal force within it. If you are a dishonest lawyer, you are a dishonest person. If you are a cruel lawyer, you're a cruel person. If you are a dishonorable lawyer, you are a dishonorable person. No special set of rules excuses conduct by a lawyer that would be unethical or immoral outside the context of legal practice. And as you develop a reputation as someone who is unflinchingly honest, who does not seek to take unfair advantage, who is not out to trick anybody, you develop enormous power as a problem solver, as a peacemaker. Others respect you, believe you, trust you, and there is no more powerful cachet that you can have as a lawyer.

You sit here today with a reputational blank slate. You control what you write on it. If you are consistent in your character, if you treat others with respect and dignity, if you are scrupulously honest, if you are fair, if you are the same man or woman in the practice of law that you are in your church, your neighborhood, or your home, you will develop the kind of reputation that will give you enormous power as a peacemaker. And in peacemaking you not only will serve your clients but will find genuine personal and professional satisfaction.

Now, I'd like to share a story about my favorite lawyer, a man who exemplifies each of the traits I've discussed here today and who to me is the paradigmatic example of the lawyer as peacemaker: Abraham Lincoln. In 1855 Lincoln was asked to join the defense team in the McCormick Reaper Case, an enormously important and complex patent infringement case filed in an Illinois federal district court. Numerous Lincoln biographers have discussed his involvement in the case. In my account I draw primarily from biographies by William Miller and Stephen Oates.
sides in the reaper case were represented by high-powered and nationally prominent lawyers. The lead defense lawyers, Peter Watson and George Harding, decided, after some pressure from their clients, to retain a junior lawyer from Illinois as local counsel. Their first choice turned them down, and, somewhat reluctantly, they chose Abraham Lincoln. From the start, they did not envision a significant role for Lincoln, and when the case was later transferred to Cincinnati and yet another able and prominent lawyer, Edward M. Stanton, was added to the defense team, Lincoln became even more the odd man out.4

But Lincoln was unaware of this status. He labored under the impression that he would be presenting oral argument in the case and immersed himself in intense preparation. Perplexed that his colleagues would not send him key documents or respond to his letters, he dutifully made his way to Cincinnati for the trial. After he arrived it soon became clear that he would not be presenting oral argument. So he sent Harding a written manuscript of the argument he had intended to make, which he had worked for two months preparing. When Lincoln received word that Harding had not even bothered to glance at the manuscript, he asked for it back so that he could destroy it, and it was returned to him unopened.5

The indignities did not end there. Though Lincoln stayed in the same hotel as Stanton and Harding, they never sought to discuss the case with him, never asked him to their rooms, never even asked him to dine with them at their table. When the judge in the case invited counsel from both sides to dinner at his home, Lincoln was not invited. Further, William Herndon, his longtime law partner, remembered Lincoln telling him that he—Lincoln—had overheard, through a slightly open door, Stanton saying of him, “Where did that long-armed creature come from, and what can he expect to do in this case?”

By this time Lincoln was painfully aware that he was to have no role in the case. Yet he did not return home. He stayed in Cincinnati and attended the trial every day, sitting in the back of the courtroom determined to listen and learn from these legal masters. What he learned proved invaluable to him in his subsequent and very distinguished legal career. Finally, when the trial concluded and Harding and Stanton left Cincinnati without a farewell, or even so much as a word to him, Lincoln’s humiliation was complete. When Watson sent him the agreed-upon fee of one thousand dollars, a huge sum at the time, Lincoln sent it back, saying he didn’t deserve it because he had made no argument at the trial. Only when Watson sent the check again, insisting that Lincoln was entitled to it because he had prepared the argument, did Lincoln keep it.6

How flabbergasted must Harding, Stanton, and Watson have been when, just five years later, Lincoln became the Republican nominee for president? But even then their disdain for him continued unabated. In a letter to a friend shortly into Lincoln’s presidency, Stanton referred to “the
painful imbecility of Lincoln.” One source indicates that Stanton said he “had met [Lincoln] at the bar, and found him a low, cunning clown.” In conversations with General George McClellan, Stanton referred to Lincoln as “the original gorilla.” As Frederick Douglas said of Stanton, “Politeness was not one of his weaknesses.”

So, once he achieved power, what revenge did Lincoln exact on these three public men who had so humiliated him? How did he get even? Well, he didn’t. In fact, remarkably, he offered each of them a role in his administration, with Stanton accepting the position of secretary of war, the most powerful and significant position in Lincoln’s cabinet. Lincoln simply refused to let the personal offenses he had endured cloud his assessment of what was best for the country. However much Stanton may have belittled Lincoln personally, the fact remained that Stanton was extraordinarily capable. He was a superb advocate, as Lincoln had witnessed from the back of the Cincinnati courtroom, and was renowned as a competent leader, a master of detail, and an “incorruptibly honest” man. Stanton had precisely those abilities necessary to remedy what had become a deeply dysfunctional war department. Lincoln’s soul was simply too big and his commitment to the best interests of his country too great to allow his pride to stand in the way of the Union’s preservation.

Edward M. Stanton made an invaluable contribution to the Union war effort. He and Lincoln developed an extremely close working relationship in conducting the war, with Lincoln “cross[ing] the street to the war department almost every day” to confer with Stanton. Their relationship and the mutual trust and respect they developed proved to be crucial to the preservation of the Union and the abolition of slavery. Indeed, it could be said to be one of the most important relationships in our nation’s history, and, for that matter, the world’s history—all because Lincoln’s commitment to his country transcended his personal interest in protecting his pride.

Stanton came to know, quite personally, Lincoln’s remarkable qualities and became a committed and vigorous defender of him, telling Harding that “no men were ever so deceived as we at Cincinnati” and that “never afterwards, would any disparagement of Lincoln be tolerated by [him] or members of his family.” Lincoln’s son Robert Todd said that Stanton called upon him for more than 10 days after his father’s death “and spent the first few minutes of his visits weeping without saying a word.” And it was Stanton who said over Lincoln’s dead body: “Now he belongs to the ages.”

Lincoln exemplified what a lawyer should be, what a human being should be. He was driven not by money or by his emotions, but by principle. He subordinated his own interests first to those of his clients as a lawyer and then to those of his country as president. He refused to let personal slights deter him from his more important objectives. He did not let how he was treated by others dictate how he treated them. A man of
towering integrity, his character was consistent in every context of his life. I will close by quoting to you the advice that he once gave law students: “Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses, and wasted time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.”

Thank you.

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Notes

2. I wish to thank Douglas G. Mortensen for sharing his research on Abraham Lincoln.
5. Id. at 416.
6. Id. at 416–18.
7. Id. at 415, 421–23.
8. Id. at 422–24.
9. Id. at 424–25.
10. Id. at 426.
The Heart of Lawyering: Clients, Empathy, and Compassion

Kristin B. Gerdy

In September 2006 Karen J. Mathis, president of the American Bar Association, commented:

Ultimately, lawyering is a delicate balancing between a constantly evolving world and the fundamental principles that define our legal system. It calls upon your compassion as well as your intellect, your heart as well as your head. . . . [C]aring is as much a part of the legal profession as intelligence. . . . [I]t is every lawyer’s responsibility in every setting to serve others.¹

Understanding clients and exercising empathy and compassion comprise the heart of lawyering. The Oxford English Dictionary defines empathy as “the power of projecting one’s personality into (and so fully comprehending) the object of contemplation.”² The English word empathy comes from the German word Einfühlung, which literally translated means “feeling into.”³ According to Carl Rogers, the founder of the client-centered therapy movement, to demonstrate true empathy is “to sense the Client’s private world as if it were your own, but without ever losing the ‘as if’ quality,”⁴ whereas compassion, which is often mistakenly seen as synonymous with empathy, is “the feeling or emotion when a person is moved by the suffering or distress of another and by the desire to relieve it; pity that inclines one to spare or to succour.”⁵ This definition refers to the compassion given “towards a person in distress by one who is free from it, who is, in this respect, his superior.”⁶

Empathy and compassion must go hand in hand with “thinking like a lawyer,” and in fact, caring actually makes analysis stronger. If we accept the premise that understanding clients and demonstrating empathy and
compassion are essential to the successful practice of law, then it becomes important to understand how they function in practice.

Laura Biering and Debby Stone, professional coaches and consultants who specialize in working with lawyers, describe a hypothetical lawyer whom they call Catherine. Catherine is the typical law professor’s “dream graduate”: top of her class, Order of the Coif, highly recruited out of law school, and ultimately settling on a prestigious law firm. Members of the firm are impressed by the work she does and by her intellect and work ethic, and the overwhelming opinion is that she is on a fast track to the top: certainly partner, if not ultimately running the firm. The only problem is that as she begins working closely with clients, the firm finds that while she is certainly intelligent and competent, clients feel she doesn’t care about them:

They felt she didn’t hear them. There was no connection. It was as though she knew what they would say before they even met. She would ask elaborate questions, leading the clients to the answers she presupposed. And when the clients offered new information that didn’t fit with her agenda, she glossed right over it.7

While Catherine may possess a great level of legal knowledge, she lacks the greater intelligence necessary to see the value in what her client is saying, the value in really listening. What she wrongly assumes is that her great “intelligence” leads her to the arrogant and ignorant position of believing that she knows the answers before all of the information is on the table.

The hypothetical story of Catherine underscores the truth that “success in law (as in other fields) correlates significantly more with relationship skills than it does with intelligence, writing ability, or any other known factor.”8 Professor Joshua Rosenberg rightly explains the interplay between the heart and the head:

Basically, most lawyers and academics vastly overestimate the importance of reason and logic. We tend to view them as both the primary motivator of our behavior and the primary tool to change the thinking and behavior of others. Although they are important, they are only one part of the puzzle. There are important differences between the kind of dispassionate reasoning and analysis in which lawyers and law students engage while sitting at desks at home, in the office, or in the library, and the kind of activities in which we engage when we are dealing in real time with real people. Real-time, real-life interactions implicate emotions, learned patterns of behavior, habituated perspectives and frames of reference, and other human, but not reasoned, responses.9

In other words, while analyzing the law and using one’s intellectual skills is the key to preparation, to learning the law, to conducting legal research, and to analyzing problems, once the lawyer steps into the room with the client, her understanding, empathy, and compassion (which are often
expressly manifest in her ability to actually listen to the client) become equally important. As other scholars have noted,

Many lawyers believe that the practice of law demands concentration on the facts of a case and leaves no room for concern about the emotional state of a client. These lawyers seem to approach each case simply as a factual matter, giving at most minimal, and more frequently no attention to the emotions of their client. Most lawyers view the practice of law as a set of legal problems that must be solved like a puzzle, rather than as a vocation which assists people who have problems involving both factual and emotional dimensions. Their primary orientation is the problem; the person seems incidental.10

Not only does the involvement of empathy and compassion in practice make clients happier, it also makes lawyers happier. According to Professor Rosenberg:

When asked what they like best about their work, lawyers who like their work typically respond with statements about relationships: “I like to help people”; or “Last week, a client told me that what I did for her made a big difference in her life”; or “I like being part of a team.” Like other humans, lawyers get satisfaction from helping others and from good relationships . . . Not only do relationship skills allow one to enjoy her success, but, perhaps more importantly, they are essential tools to achieve that success.11

Empathy, or “the power of projecting one’s personality into (and so fully comprehending) the object of contemplation,”12 is a vital lawyering skill. Professor Carrie Menkel-Meadow describes empathy as “learning how to ‘feel with’ others,” and she asserts that empathy “is an essential part of the client-lawyer relationship.”13 Empathy is central to human relations and has been referred to as “the cornerstone of not only professional interpersonal relations, but also any meaningful human relationship.”14 Leading legal counseling scholars have said that empathy “is the real mortar of an attorney-client (indeed any) relationship.”15

To “understand, from a human point of view, what the other wants to happen in the world” requires the lawyer to think, feel, and understand what that person would think, feel, and understand, to be what Professor Martha Nussbaum terms “an intelligent reader of that person’s story.”16 Simply put, when a person experiences empathy, she is able to “stand in the shoes” of the other person. As Atticus Finch explained so clearly to his daughter, Scout, in Harper Lee’s classic novel To Kill a Mockingbird, “You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it.”17 Young Scout finally understood her father’s lesson much later after Boo Radley, the object of earlier mocking, saved her life and that of her brother. After walking Mr. Radley home, Scout reflects, “Atticus was right. One time he said you never really know a man until you stand in his shoes and walk around in them. Just standing on the Radley porch was enough.”18
To experience empathy means to share or at least understand a client’s feelings, to imagine and thereby nonjudgmentally understand what it would be like to be in the client’s position. Once the lawyer has developed empathy for the client, she can more effectively exercise her other skills on the client’s behalf.

To be truly effective in the use of empathy, the “intelligent reader” of the other’s story must become the “accurate translator” of that story to others. A lawyer fundamentally is a translator. As such, she needs to be able to empathize with the other side in order to translate that point of view for her client during settlement negotiations. She also needs to empathize with what opposing counsel is experiencing in order to relate effectively with her. She needs to empathize with the judge or the jury in order to know their concerns and address them as she conveys information to her client and as she makes her own strategic judgments. In other words, empathy is fundamental to the hard-core lawyering skills that affect results.

Despite some lawyers’ contentions that developing empathy for the client is at best uncomfortable and inefficient and at worst inappropriate and manipulative, empathy does play an important role in law practice. Every interaction a lawyer has with a client involves an emotional component, and facilitating the client’s discussion of her emotions through expressions of empathy is not only appropriate but also beneficial to the lawyer-client relationship and ultimately to the legal case itself.

Developing empathy is key to all types of law practice—it isn’t just a trait for the litigator:

The imagination of human distress, fear, anger, and overwhelming grief is an important attribute in the law. Lawyers need it to understand and depict effectively the plight of their clients. Judges need it to sort out the claims in the cases before them. Lawyers advising corporations need it in order to develop a complete picture of the likely consequences of various policy choices for the lives of consumers, workers, and the public at large, including the public in distant countries where corporations do business. Factual knowledge is crucial, and in its absence the imagination can often steer us wrong. But knowledge is inert without the ability to make situations real inside oneself, to understand their human meaning.

Thus, every lawyer must develop the capacity to empathize with others and in so doing will increase her effectiveness. Specifically, empathy can aid the lawyer in building rapport with her client, thus fostering a more beneficial relationship; foster open and complete communication; lead to more thorough legal analysis; improve the image of the legal profession; and satisfy client expectations.

First, instilling empathy in the relationship can improve rapport between lawyer and client and thereby improve the relationship. While there is a lively scholarly debate about the ideal relationship between
lawyers and their clients and the roles that each should play to maximize success, the unfortunate reality is that too many lawyers treat their clients like they are children who must be supervised, watched over, and occasionally even disciplined. These lawyers believe that they “know what is right” for the client and are willing to impose their views even when the client objects.

Relationships with clients are central, even critical, to the “helping professions,” which include counseling, teaching, social work, ministry, and law. Positive relationships between the professional and the client are conditioned upon “empathy, respect, and genuineness,” which is primarily in the control of the professional rather than the client. Additionally, “[r]apport, or mutual trust, is . . . central to a good client-professional relationship.” The most important ingredient in establishing rapport is empathy. In therapeutic contexts research shows that a therapist’s empathy is the “key behavioural element in professional-patient interactions which builds the therapeutic alliance, increases patient motivation to participate actively in treatment and is a predictor of successful outcomes.” The same is true with the attorney-client relationship. When clients feel understood and believe that the lawyer is truly interested in a successful solution to their problems and concerns, the client becomes less anxious and more at ease. And when a lawyer truly empathizes with what a client is feeling and experiencing, “decisions might be made differently and the process of arriving at decisions might be made with more consideration for the client’s actual needs.”

Second, instilling empathy can improve communication between lawyer and client. Clients who feel that their lawyer understands them are more willing to provide information, including information that might be potentially embarrassing yet important to their case. “Active listening,” which is a technique used to demonstrate empathy, has long been heralded as the key to effective legal interviewing and counseling. Through active listening, empathic lawyers can bolster their clients’ trust and more effectively open lines of communication. Expressions of empathy can also reduce client anxiety, which can lead to increased accuracy and relevancy in what the client tells the lawyer, and can prevent, or at least diminish, hostility toward the lawyer.

Third, instilling empathy can enhance a lawyer’s legal analysis. According to Professor Lynne Henderson, empathy plays a role not only in the lawyer’s analysis but also in the decisions that are ultimately made by judges and others. “Empathy aids both processes of discovery—the procedure by which a judge or other legal decisionmaker reaches a conclusion—and processes of justification—the procedure used by a judge or other decisionmaker to justify the conclusion—in a way that disembodied reason simply cannot.”
Fourth, instilling empathy in individual lawyer’s client interaction may ultimately improve the public’s perception of lawyers and the legal profession. If, as described above, many Americans feel that lawyers are uncaring and even manipulative, an increase of empathy among individual lawyers may benefit the overall image of the profession.

Finally, instilling empathy satisfies client expectations. Clients expect at least some degree of empathy from their lawyers. In fact, empathy is specifically mentioned by *Consumer Reports* editors in their article advising people about what to do when they need a lawyer:

> Communication with your attorney is crucial. Before you hire anyone, make sure you’ll feel comfortable speaking honestly and openly with him or her. Take note, too, of whether the lawyer can explain things clearly. Make it known that you want to be kept informed of what happens in the case, and agree on some ground rules—perhaps that you’ll be sent copies of documents or given periodic reports over the phone.

> That doesn't mean that your lawyer has to be your best friend. But you might expect him or her to be empathetic and supportive if you’re going through a crisis.32

While empathy is certainly beneficial to the lawyer’s practice and her relationship with clients, lawyers should be cautioned that too much empathy—in other words, “too complete identification with the client”—may be harmful. Effective lawyers must be able to “step back from the client’s situation, in ways that the client often cannot, in order to provide the critical eye and assessments that are part of [the lawyer’s] obligation to him.”33 Although too much empathy may cause problems, lack of empathy certainly will. Lawyers have to be objective, but not robotic. They must hone their empathic skills, and that takes training and practice.

Unlike learning how to analyze a case or write a persuasive argument, learning to empathize requires the lawyer to engage her ability to empathize with and care for her client in addition to her ability to analyze, strategize, and advocate. Developing empathy requires the lawyer to set aside her analytical tendencies and simply learn to feel. Professor Joshua Rosenberg explains that “[e]mpathy is not entirely, or even primarily, a cognitive experience. Indeed, it involves the momentary suspension of most of the key cognitive functions.”34 Such intellectual functions as judgment, evaluation, analysis, and problem solving must be set aside to allow the person to empathize with another. Doing this requires the person to do more than read or think; it requires her to actually place herself in positions to experience what the other person is feeling.

To fully empathize with a client, a lawyer must actually experience the legal world from the client’s point of view; the lawyer must try to figuratively “walk in the skin” of her client. Occasionally lawyers have the opportunity (if they can call it that) to actually be a client—to be involved
as a party to a lawsuit. That experience can be a tremendous opportunity to learn empathy. Gail Leverett Parenti, former president of the Florida Defense Lawyers Association, tells of her experience as a defendant in numerous cases, including a malpractice action that lasted 15 years, and how these experiences taught her things and gave her “insights [she] couldn’t have learned in any other way” about what it means to be a client. For example, she relates that lawyers “can’t have a true appreciation of the anguish, the sleepless nights, the self-doubt, the depression, the impotent rage, the frustration with the legal system, the delays and the endless nonsense that a litigant experiences until [they] have experienced it firsthand.”

But lawyers need not actually be involved as clients in litigation to have at least limited personal experience with what their clients are feeling. Lawyers can gain a level of understanding and empathy by meeting their clients in “their environment” rather than in the sterile law office. Being in the client’s environment helps the lawyer see firsthand what the client experiences. For example, a domestic relations lawyer could interview her clients in a shelter for battered women—or at the very least she could spend a few hours volunteering there to better understand and appreciate the plight of the women who come there for solace.

Lawyers can also develop their empathic skills by participating in role-playing and other simulation scenarios with their colleagues. Such participative, hands-on experience is essential to gaining true empathy because “studies indicate that learning to care must be situated in concrete learning rather than in general, abstracted learning.” Such experiential learning must be repeated throughout a lawyer’s career, because empathy or “the imagination of human predicaments is like a muscle: It atrophies unless it is continually used.”

In addition to being aware that they need to find concrete experiences in which to come into contact with the feelings and experiences of their clients, lawyers wishing to develop greater empathy must be aware of behaviors and character traits that detract from empathy. Smith and Nester summarized empathy-detracting behaviors including:

- Saying nothing, failing to accurately respond to the client, using clichés, distorting what the client says, ignoring his feelings, putting the client’s problem in a bigger picture too soon, ignoring client clues about the inaccuracy of the lawyer’s responses to him, feigning understanding, parroting the client’s words back to him, allowing the client to ramble too much, doing nothing else but communicating empathy, seeming overeager, using inappropriate language, using legal jargon or stilted phrases, being longwinded, making wrong choices about whether to respond to the client’s feelings or the content of his speech, responding to the feelings of the client too quickly, responding defensively or negatively to client questions, asking too many questions, asking only leading questions, and asking questions whose answers do not help the lawyer in counseling the client.
Thus, developing and exercising empathy is key to successful lawyering.

In addition to showing empathy—feeling with the client—a successful, effective lawyer also shows compassion and feels “for” her client—she feels that desire to relieve her client’s distress and provide aid and succor. Dean Kevin J Worthen acknowledged this reality to a group of law students on their first day of law school:

Because of the ubiquity and complex nature of law in our society, people are required to trust lawyers with their hopes, their dreams, their fortunes, their rights, and sometimes even their lives. How lawyers deal with those precious commodities is of extreme importance to those people. . . . How important it is that [lawyers] learn to really care enough about the human condition that they will refine and use those skills to improve others’ lives.39

The lawyer’s ability to care for others has been lauded by multiple leaders in the legal community. For example, Paul L. Stevens, then president of the Pennsylvania Bar Association, wrote that lawyers “need to become more compassionate about our clients. We need to show them we care for them, and we need to communicate with them as people, not treat them as just another case. We need to let them feel they are helping ‘run the store.’”40 Similarly, Maryland Lieutenant Governor Michael Steele, speaking at the Catholic University Law School, exhorted students: “Be a lawyer, yes, be a good lawyer, absolutely, but be a man or woman . . . whose words and deeds are touched by . . . compassion and abundant love.”41

Compassion deeply engrained in a lawyer can provide the reason and the motivation for the hard work, long hours, and personal dedication necessary to succeed in law practice. As Sharon Salzberg stated:

Compassion is not at all weak. It is the strength that arises out of seeing the true nature of suffering in the world. Compassion allows us to bear witness to that suffering, whether it is in ourselves or others, without fear; it allows us to name injustice without hesitation, and to act strongly, with all the skill at our disposal.42

Some lawyers may mistakenly believe that compassion detracts from their ability to practice law or even makes it impossible for them to do some of the things that lawyers frequently find that they must do in practice. For example, some lawyers may believe that if they develop compassion in their practice they might have difficulty impeaching a hostile witness at trial, painting the facts in the light most advantageous for their client, or in other ways zealously advocating for their clients. While this may be true to a small extent for some lawyers, it is a small price to pay for the other benefits of compassion.
In her piece about enlightened advocacy and a more humanistic and holistic approach to lawyering, Ingrid Tollefson made the following key observation:

The lawyer as nurturer implies a focus on the client’s needs encompassing humanistic, analytical, and technical approaches to conflict resolution. The metaphor, however, does not imply a “new-age,” “feel-good,” “touchy-feely,” or “warm-fuzzy” approach to lawyering. Proficiency in the intellectual and technical rigors of legal analysis, or “thinking like a lawyer” is fundamental to capable and accomplished lawyering. However, compassion is equally pragmatic. It functions as an essential and practical component of the nurturing practice. Thus, for the nurturing lawyer, ambition to master critical reading, writing, argument, and reasoning skills met with the ambition to cultivate compassion creates the ideal for what it means to be “successful” in the art of legal advocacy and counseling.43

Despite its possible misuse, compassion plays an important role in the effective practice of law. In fact, lawyers need to develop and express compassion to best serve their clients because “the quality that elevates us from being a great lawyer and moves us into the next level is simply caring.”44

Compassion plays a role in nearly all interactions with clients, but it is essential in those where emotions are strong and pain very real. Philip Weinstein, of the Rhode Island Bar Association, reminds lawyers that family law is ripe with the need for compassion: “It behooves us to work to better understand and appreciate the pain and grief that people go through with a failed marriage, the pain their children endure, and the anger that people feel in a divorce.”45 But compassion and care are not limited to the personal emotions of family law, they are keys in other litigation contexts as well. For example, lawyers can show compassion for plaintiffs injured because of another’s negligence or for a patient whose life is forever changed because of medical malpractice.

Truly compassionate lawyers also find opportunities to extend care to those accused of negligent behavior or even “for a physician who is being sued for producing an injury despite his Hippocratic Oath to do no harm.”46 Compassion even comes into play in purely transactional practice as lawyers extend care to aging parents who seek to create an estate plan to best protect their children or structure business arrangements between partners who ultimately may have differences that lead to the dissolution of the partnership.

Finally, lawyers should develop compassion because their clients often value it. When a client feels that a lawyer truly cares about her and is compassionate, she feels that the lawyer is loyal to her cause and “can be a source of emotional sustenance, particularly for those clients whose legal problems are as painful as they are complex.” With the emotional support of a compassionate lawyer, the client may be better equipped to face a long, difficult legal battle. A client who feels compassion from her lawyer “may
be more responsive to the lawyer’s advice, and while this possibility opens the door to manipulation, it also offers the hope that good advice, which would have been discounted by a more reserved client, will now be taken seriously.

Compassionate lawyers bear the burdens of others, namely, their clients. F. Burton Howard once said that it “is the principal business of a lawyer to bear the burdens of another.” Speaking to students graduating from BYU Law School, James E. Faust, a former attorney, encouraged them to “[l]ook upon your learning and license to practice law as a way to do great things for little people and little things for everyone.” The ways that lawyers can serve others differ from the more tangible services provided by those in other professions like engineering or medicine, but, as John W. Davis once remarked, that service is equally valued and necessary. He said,

True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures—unless as amateurs for our own amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men’s burdens and by our efforts we make possible the peaceful life of men in a peaceful state.

Compassionate lawyers can hardly be restrained from trying to render assistance and to bring healing when they witness suffering, pain, and other injustice. A moving example of the desire to bear another’s burden is found in the following story, shared by an extraordinary lawyer:

[A] few weeks ago, I went to see one of the children who is a named plaintiff in a mental health class action I am litigating in Massachusetts. He lives with his grandmother in a tiny, one-bedroom apartment also shared by his aunt, her husband, and their two infant children. He has profound behavioral and language challenges, strikes out frequently and hugs, a bit roughly, almost as frequently. He has much to say but can barely speak. He loves to play but has no one to play with. He is loved by his grandmother but almost no one else. As a result of his behavioral challenges, complex needs, and poverty, he is isolated, segregated, and abandoned by most educational and mental health providers. I had been spending long hours on this complex case on behalf of the class of children and had little time left over for individual advocacy. But when I left his tiny apartment, got in my car and closed my eyes, I made a decision that I would do everything in my power to alter this desperate situation. I vowed to represent him in whatever forums, for however long, in whatever ways necessary to remedy this neglect.

Truly this lawyer has developed compassion, and all lawyers can help to bear the burdens of others as they focus on the people they serve and seek solutions for the problems they face.

Further, compassionate lawyers comfort those who stand in need of comfort. Often this comfort is given by small acts of compassion that may or may not be directly related to the legal proceedings in which the
lawyer is involved. Sometimes this compassion is shown simply by the way the lawyer interacts with the client and in the relationship that develops between the two. The lawyer who could not be restrained from aiding the struggling boy in Massachusetts shared this example of compassionate comforting:

Laurie was a client of mine at the Northampton State Hospital. She was a twenty-five year old woman who had been institutionalized for eight years. She was afraid to talk to anyone. I spent almost a year, visiting with her at least once a week. For months we only sat quietly together. After a while we held hands, and gradually she began to respond to my questions, albeit with only a nod of her head. Eventually we started having conversations. A year later she initiated these conversations, eagerly and with a smile on her face. She told me of her abuse, and witnessing the abuse of her siblings. Eventually, as her confidant and dedicated advocate, I helped her leave the hospital and move to a community home. When she died a few years later . . . I cried because I had lost a dear friend. But her presence and friendship was an enormous teaching in patience and compassion.52

While this lawyer did offer traditional legal services to Laurie, perhaps the most important service he rendered was by being a comforter and a friend. Lawyers can employ that same compassion in their interactions with opposing counsel and others by seeking to transcend the adversarial nature of the proceedings. The following story about an otherwise typical lawyer illustrates such integration:

[L]itigation is often contentious, sometimes overly so. On one occasion this lawyer found himself in a deposition involving several attorneys, one of whom repeatedly verbally abused one of the other lawyers, engaging in personal attacks and tirades. [The lawyer], somewhat stunned, did little to intervene on behalf of the victim, in part because the issues which sparked the outbursts had nothing to do with his client. That evening, however, he felt horrible because he had done nothing to prevent the attack from continuing. He resolved that he would never again allow that to happen to another attorney or witness when he was present. . . .53

By bearing burdens, giving comfort, and showing care in their interactions with others, lawyers can demonstrate compassion in their professional practice.


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Teaching and Learning 2008–2011. She is currently a teaching professor and director of the Rex E. Lee Advocacy Program at J. Reuben Clark Law School.

Notes


4. *Id.* (quoting CARL ROGERS, ON BECOMING A PERSON 284 (1961)).

5. *3 Oxford English Dictionary*, supra note 2, at 597. The *Oxford English Dictionary* gives two definitions for compassion. The first is very similar to the definition of empathy; under this definition, compassion is “suffering together with another, participation in suffering; fellow-feeling, sympathy.” However, this first definition is obsolete and was used “between equals or fellow-sufferers.” It is this second current definition of compassion—the desire to relieve distress or succor another—that is most applicable to lawyers.

6. *Id.*


9. *Id.*


11. Rosenberg, supra note 8, at 1228.


18. *Id.* at 282.


21. Thanks to Professor Linda H. Edwards both for this phrase and for her insights on this point.
23. *Id.*
33. Dinerstein et al., *supra* note 19, at 767.
46. *Id.*

49. James E. Faust, *Become Deliverers*, Clark Memorandum, fall 2002, at 29. While I was finishing the longer version of this article for the *Nebraska Law Review*, President James E. Faust, who served as the Second Counselor in the First Presidency of The Church of Jesus Christ of Latter-day Saints, passed away on August 10, 2007. I would be remiss if I failed to publicly acknowledge his example of compassion and empathy both as a lawyer and as a Church leader. His example is one that attorneys of all faiths would be wise to emulate.


51. Steven J. Schwartz, Maintaining Integrity and Cultivating Compassion, Keynote Address at the National Association for Rights Protection and Advocacy Annual Conference (Nov. 21, 2003), http://narpa.org/integrity.htm.

52. Id.

We Are to Love God and Our Neighbors

H. Reese Hansen

I appreciated the opening prayer offered by Matt Jensen. I’m going to let you in on a little secret—Matt had a special reason this morning to pray for the Spirit to be here today. You see, Matt did much of the research for my remarks. And so he is really hoping that this will go well. A couple of days ago, I asked Vice President Jim Gordon for some advice on giving this talk. This morning as I came into the Marriott Center, he handed me this folded note on which he had provided important advice. On the front of the note, as you can see if you are close enough, is written one word: Socrates. When I opened the note I read his sound counsel: “Socrates gave long speeches. Socrates was poisoned by his friends.”

I will try not to overstay my welcome at the podium today, although I will admit that the attorney in me regrets there is no one to whom I can bill this time!

I feel a burden of responsibility this morning to speak of things that will be useful to you. I am aware that this is the last devotional of the semester. By now many students are in the beginning stages of the awful realization that there is more to be done than can possibly be accomplished by the end of the semester. So I understand that you may be a bit distracted just now. But for the next few minutes I hope we can focus together on our Savior; on his profound love for, and unfailing patience with, each one of us; and on how his teachings and example of love should guide our individual lives.

Whenever I think of the Savior, I think of the scripture recorded in the Gospel of John:
As the Father hath loved me, so have I loved you: continue ye in my love.

These things have I spoken unto you, that my joy might remain in you, and that your joy might be full.

This is my commandment, That ye love one another, as I have loved you.

Greater love hath no man than this, that a man lay down his life for his friends. [John 15:9–13]

The promise of this commandment is that by loving others our joy might be full. What a profound insight. When you truly love another person, both you and the loved one are blessed.

Actually, we know from our own experience that this promise is a reality.

Loving others, then, is much, much more than a suggestion. It is not given to us as an option. The heart and soul of the gospel of Jesus Christ is love—love of God and love of mankind. I worry that we treat this commandment as one of those that must have been meant for someone else to heed—someone, for example, like an enemy.

The well-known commandment to love one another speaks to and challenges all of us. And it is learning to love—both God and one another—that ought to take the central place in our efforts to follow the Savior. Those who would truly follow Christ must learn to love in the way Christ intended us to love. “By this,” he said, “shall all men know that ye are my disciples, if ye have love one to another” (John 13:35).

It is through learning to love others that we not only keep the commandment but build the foundation upon which obedience to every other of God’s commandments is fundamentally rooted, and love is the cornerstone around which every other virtue in our lives is built.

It is a relatively easy thing, of course, to love those who love us, who are kind to us, and who are like us. This familiar scripture teaches that the commandment to love one another comes with no such limitation: “For if ye love them which love you, what reward have ye? do not even the publicans the same?” (Matthew 5:46).

Elder David B. Haight taught:

Besides loving God, we are commanded to do what to many is a more difficult commandment—to love all, even enemies, and to go beyond the barriers of race or class or family relationships.

Are we not commanded to cultivate genuine fellowship and even a kinship with every human being on earth? Whom would you bar from your circle? We might deny ourselves a nearness to our Savior because of our prejudices of neighborhood or possessions or race—attitudes that Christ would surely condemn. Love has no boundary, no limitation of good will. [“Love All,” Ensign, November 1982, 10–11]
God does not love us because we are particularly lovable; he does not love us only if we keep his commandments; he does not love us because we are just like him. Our Father in Heaven loves us in spite of our weaknesses, our sins, and our failures to be kind to one another. In spite of who we are or what we have done, I believe that for our Heavenly Father, even those among us who are viewed as unlovable are loved by him. God wants to pour out his love on us. And in fact he has done so by providing for us the Savior, whose ultimate sacrifice made possible the opportunity for every person to return to the celestial home and to be with him for all eternity: “For God so loved the world, that he gave his only begotten Son, that whoever believeth in him should not perish, but have everlasting life” (John 3:16).

Having a Christlike love requires more than a pleasant response to those who enter into our lives. God’s love requires reaching out to others and enfolding them in our hearts and lives.

Mother Teresa, the Catholic nun who has spent her life in the slums of Calcutta helping the poorest of the poor—the lepers and abandoned children—said, “Love each other with a clean heart. . . . [The poor] are not hungry for bread; they are hungry for love” (“Grads Hear Noted Nun,” Salt Lake Tribune, 31 May 1982, A-4, quoted in Haight, “Love All,” 12).

I recently learned of a student at BYU who came to Provo from an eastern European country to work on a second graduate degree. He had been a student at one of the most prestigious universities in Europe. That university had provided a scholarship to cover his costs while he studied here. But he was not like a typical BYU student. He dressed somewhat differently—at least by our standards. He is not a member of the Church. He speaks fluent and beautiful English with a discernible accent that our linguists could trace to his home country. Two weeks ago this student was asked by a fellow student how he felt about his stay at BYU.

He said, “For the most part, I have hated it! For the entire three months of my stay I have been lonely. I have felt depressed and homesick—like a loner. I have made no friends.”

How can this be? I wondered. Especially here at BYU, where we are committed followers of the Savior. A majority of us have experienced living in other lands and know the loneliness one can feel in that situation. I wondered what could have been done to make his stay here more enjoyable. I wondered, too, what report he will give about BYU, our church, and our lifestyle when he returns to his homeland. I admit that I wondered if any classmate had done anything to make him feel accepted, valued, and loved. I wondered how many of us who had come into contact with this student from a foreign land had remembered the Savior’s direction:
But the stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself; for ye were strangers in the land of Egypt: I am the Lord your God. [Leviticus 19:34]

Living with godlike love demands that we come to really feel that all people are within our circle of loved ones and that we feel a responsibility toward them.

This principle was taught by the Savior in an excellent example of the Socratic teaching method in common use in law schools today. A certain lawyer asked the Savior what he should do to inherit eternal life. The Savior answered with a question:

What is written in the law? how readest thou?

And he [the lawyer] answering said, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all they strength, and with all thy mind; and thy neighbour as thyself.


The follow-up question from the lawyer was, “And who is my neighbor?” (v. 29).

The Savior responded with the parable of the Good Samaritan. The Samaritans were looked down upon by the Jews. The priest and the Levite—both of whom were Jews—should have come to the aid of the unfortunate man but did not. It was the despised Samaritan who braved the social barriers of that day and showed when he cared for the stricken man the love Christ was expecting. After telling the story, Christ then gave this command: “Go, and do thou likewise” (Luke 10:37).

I fear there are too many among us whose behaviors toward others reveal that, in their own way, they (like the lawyer in Jesus’s day) are still asking: “Who is my neighbor?” A good lawyer would object to a witness being asked the same question again and again in a trial by saying, “Asked and answered.” Indeed, the question has been asked and answered. But, unfortunately, even some members of the Church who clearly ought to know better have not incorporated this important teaching into their personal, everyday lives.

As in Christ’s time, the message of the gospel is there for all people. Despite the passage of centuries the gospel message has not changed. It was offered then, just like it is now, to anyone who was willing to listen. As the apostle Peter said, “I perceive that God is no respecter of persons: But in every nation he that feareth him, and worketh righteousness, is accepted with him” (Acts 10:34–35).

This statement by Peter is the essence of the gospel we preach and ought to live—namely, the inclusion of all people. The teachings and blessings of Christ are not limited to certain groups or nationalities.
Despite this regular declaration of our beliefs, the Church and its members are too often criticized for their overall intolerance of other faiths, or lifestyles, and an attitude of exclusion and superiority. In a 1992 press release the Church acknowledged its concern over this matter. The statement said:

We reaffirm the longstanding concern of The Church of Jesus Christ of Latter-day Saints for the well-being and intrinsic worth of all people. Latter-day Saints believe that “God is no respecter of persons: But in every nation he that feareth him, and worketh righteousness, is accepted with him.” (Acts 10:34–35.)

All men and women are children of God. It is morally wrong for any person or group to deny anyone his or her inalienable dignity on the tragic and abhorrent theory of racial or cultural superiority.

We call upon all people everywhere to recommit themselves to the time-honored ideals of tolerance and mutual respect. We sincerely believe that as we acknowledge one another with consideration and compassion we will discover that we can all peacefully coexist despite our deepest differences. [“Church Exhorts Ethnic, Religious Tolerance,” Church News, 24 October 1992, 4]

Our obligation to love requires us to distinguish the sin from the sinner and to love all men. Jesus made this clear when he taught the Nephites after his resurrection:

Nevertheless, ye shall not cast him out of your synagogues, or your places of worship, for unto such shall ye continue to minister; for ye know not but what they will return and repent, and come unto me with full purpose of heart, and I shall heal them; and ye shall be the means of bringing salvation unto them. [3 Nephi 18:32]

I remember vividly, even today, a scene I witnessed nearly 20 years ago in the foyer of the church where I was the bishop. In those days we had a large group of young adults in the ward. This was before our resident stakes had single-adult wards. It was a Sunday before sacrament meeting. A dozen or so of our young adults were gathered in the foyer visiting about an outing they had scheduled for the following week. Their enthusiasm for the event was evident from the animated way they were talking about their plans. Everyone was deeply involved in the discussion. Then a young woman, about the age of those in the group, came rather timidly into the foyer. Although a member of the ward, she was not a regular attender—in fact, she rarely came. She was not blessed with gifts and graces that made her fit easily anywhere. Most of the time she seemed hostile and unpleasant. Although she was known to the group, she had no friends. She lived a lifestyle that was different and, in many respects, contrary to the commandments. And everyone knew it—or thought they knew it. Then it happened. One of the young men, who was a natural and charismatic leader, saw her come in. He excused himself from the group, walked over to the
young lady, put an arm around her, and exclaimed how glad he was to see her. Would she sit with him in the meeting, and would she go with the group on their exciting excursion that week? She replied yes, and yes. A new friendship was begun. It would have been easy—even natural—for him to ignore her or to offer only a polite nod or hello. But he did what all of us should do. He extended himself to her in an offering of friendship.

Elder David B. Haight observed the truth that “God accomplishes His purposes heart to heart” (“Love All,” 12).

Unfortunately, feelings of loneliness are not peculiar to the young man from eastern Europe I spoke of, nor are feelings of alienation limited to an occasional person like the young woman in my ward who just didn’t fit in. Campus Church leaders are constantly trying to help students who are depressed, homesick, or lonely. Here, among us, there should be welcome for everyone.

The message of the Messiah was a message of inclusion. There should be no reason for people here to feel left out, lonely, unappreciated, or unloved.

In one of his first public statements after becoming the prophet and president of the Church, President Howard W. Hunter said:

I would invite all members of the Church to live with ever more attention to the life and example of the Lord Jesus Christ, especially the love and hope and compassion He displayed.

I pray that we might treat each other with more kindness, more courtesy, more humility and patience and forgiveness. [Press conference of 6 June 1994, in Jay M. Todd, “President Howard W. Hunter,” Ensign, July 1994, 4]

What a powerful invitation—and reminder! About two weeks ago, our third son, who recently moved to Chicago for employment, was diagnosed with a serious illness. Although he is doing well now, and the prognosis is good, I can tell you that the distance between Chicago and Provo never seemed so great as it did in those first several days while our family came to grips with the reality and implications of this unwelcome situation. This event reminded me forcefully of the common experience of all people who have loved ones in distant places. I dare to speculate that every person here at some time, now or in the past, has or has had a loved one in special need. It might be a concern about health or family or perhaps about one who is not being faithful to covenants and is wandering from the gospel. It might be a brother or sister, a parent or child or other loved one somewhere in the Church—perhaps in the East or in a western state—for whom you have prayed that kind of pleading prayer that seeks for a miraculous intervention or for special attention from someone. And we pray that a roommate, priesthood leader, home teacher, visiting teacher, or neighbor—or anyone there where our loved one is—will see in them the nobility and worth that we see. We pray that there is someone who
H. Reese Hansen

will care enough to love them with a special attentive and healing love. I'm confident most of you have had such an experience.

And just as you pray or have prayed for your loved one somewhere in the Church today, a parent or brother or sister or child prays that their loved one who lives here among us will be recognized for the potential and nobility that they possess. They pray that someone here will love them and assist in a gentle way to nurture the Spirit of our Heavenly Father in their loved one’s life. My dear brothers and sisters, I believe that you and I have got to try harder to be the answers to the prayers of thousands of parents that their son or daughter, who is away from home and is here among us, will be accepted, looked out for, and loved.

Yes, we are our brother’s keeper. We have been called to love all of God’s children. Let us pledge anew our commitment to our Savior and to his flock. Let us help our Heavenly Father by being the instrument through which the prayers for loved ones are answered.

Remember the worth of souls is great in the sight of God;
For, behold, the Lord your Redeemer suffered death in the flesh; wherefore he suffered the pain of all men, that all men might repent and come unto him. [D&C 18:10–11]

There are three principle elements that need to find places in our hearts and in our acts if we are to become successful in loving others with a Christlike love. These three keys, if learned and applied, will open the door to your heart and to the hearts of others. They are not new. They are found in the familiar words of our Savior, whose love was a perfect love. The three keys are: judge not, forgive freely, and serve generously.

First, judge not. Because you and I can never really know all there is to know of others’ life experiences and circumstances, and because we do not have a perfect scale of judgment with which to weigh others’ acts, habits, reactions, or behavior, it is inappropriate for us to make judgments about others. It is impossible for any person who has faults to presume to be in a position to judge others. The Savior taught this lesson many times—once in the familiar account of the woman taken in adultery: “He that is without sin among you, let him first cast a stone at her” (John 8:7).

As second teaching of this principle is given in the Sermon on the Mount.

For with what judgment ye judge, ye shall be judged: and with what measure ye mete, it shall be measured to you again.
And why beholdest thou the mote that is in thy brother’s eye, but considerest not the beam that is in thine own eye? [Matthew 7:2–3]

I can’t resist telling a story many of you will quickly be able to relate to, which perhaps helps make the point. It seems a son was not measuring up to his father’s expectations for him. There were the constant problems
of the messy bedroom, too much television, and not enough study being done. The son’s grades were not as good as the father wanted them to be. And besides, household chores were often undone or poorly done. The father was disappointed, and, of course—like most of us—he wanted to deliver the kind of message to his son that would make him change. Finally, in exasperation the father said, “Son, do you have any idea what Abraham Lincoln was doing at your age?”

The son thought for only a moment and then replied, “No, Dad, I don’t know what Abraham Lincoln was doing at my age, but I do know what he was doing at your age.”

Another reason why we should not judge others, I believe, is because many of the differences among people are the result of the fact that our Heavenly Father did not equip us equally with gifts and graces before sending us off to our earth life.

In the Doctrine and Covenants we are told:

For all have not every gift given unto them; for there are many gifts, and to every man is given a gift by the Spirit of God.

To some is given one, and to some is given another, that all may be profited thereby. [D&C 46:11–12]

It is well for each of us to remember this scripture. It clearly teaches that Heavenly Father intentionally made us individually unique so that all could be blessed by each. That we are each different in our abilities and interests and development obviously cannot justify a determination that one is superior or inferior to another. That we are different, but neither superior nor inferior, tells us something about the way we ought to appreciate each other. The fact is, it is precisely because we are each different that there is so much that is good and interesting and wonderful about others for us to discover and then to appreciate and eventually become personally enriched and blessed. If we do not seek to learn from others, we are missing much that is good and wonderful.

When I set apart a missionary, especially those going to foreign lands or into different cultures and races, often I am moved to advise the missionary that he or she is going on a mission to learn as well as to teach. By learning about the culture, history, and ways of the people the missionary meets, the missionary will be richly blessed personally and will come to love the people more quickly and more completely—and the Spirit will then be more likely to be received by those the missionary comes into contact with.

Learning to appreciate rather than judge others, especially those who are different from ourselves, is often difficult because of a tendency in many of us to believe that our ways are the “right” ways. Because of a perceived advantage of gender, race, culture, religion, education, physical
stature, appearance, or mental quickness, we may feel we are superior to others.

That some people have a perception of their superiority over others reminds me of the children’s story of The Sneetches, written by Dr. Seuss. You may recall the simple story of the Star-Belly Sneetches who, because of the stars on their bellies, felt far superior to those who did not carry this obvious mark of distinction. In Dr. Seuss’s words:

Because they had stars, all the Star-Belly Sneetches
Would brag, “We’re the best kind of Sneetch on the beaches.”
With their snoots in the air, they would sniff and they’d snort
“We'll have nothing to do with the Plain-Belly sort!”
And whenever they met some, when they were out walking,
They’d hike right on past them without even talking.

Such treatment, as you can imagine, was not enjoyed by those with plain bellies. After hearing about the plight of the Plain-Belly bunch, Sylvester McMonkey McBean, the so-called “Fix-it-Up Chappie,” came into town with a machine that would give Plain-Belly Sneetches a star upon their stomachs. Of course this did not sit well with those who had previously enjoyed having the exclusive star. In fact, this same businessman, after giving everyone a star, began to operate a machine that would remove stars, thus maintaining the shallow distinction. It was not too long before it was impossible to tell if a Sneetch had been star-bellied or plain-bellied to begin with. At this point the two groups could no longer afford to continue their attempt to keep themselves separated from the others. In addition, a change began to come over them. In fact, they realized how ridiculous their actions had been. Again using the words of Dr. Seuss:

I’m quite happy to say
That the Sneetches got really quite smart on that day,
The day they decided that Sneetches are Sneetches
And no kind of Sneetch is the best on the beaches.
That day, all the Sneetches forgot about stars
And whether they had one, or not, upon thars.

This story has a message for each of us. As we come to BYU from all over the world, we each bring our own stars or items we think are “in vogue” or somehow especially desirable. This is fine, but we must remember that our roommates, classmates, and every other person has his or her own stars as well. I hope each of us will learn to look past the external characteristics that so often are used to justify our classification of people. In other words, we need to take the time to get to know some plain-bellied types. As you become more loving and tolerant of others, your circle of friends will grow, you will expand your horizon, and you will change your
We Are to Love God and Our Neighbors

perspective of the world along the way. You will be greatly blessed, and so will your new friends.

There is a passage in the Book of Mormon, in 3 Nephi, that I want to draw special attention to this morning because I have felt particularly vulnerable to the warning taught in the account. Within a few years after the Savior’s birth, all of the people living among the Nephites, which included many Lamanites, came to know that Christ had come. They repented of their sins, preached the gospel to the prisoners they had taken in the war against the Gadianton robbers, and set free those prisoners who covenanted to keep the peace. The Nephite leaders, Gidgiddoni and Lachoneus, had brought great peace in the land. The scripture tells us, “There was nothing in all the land to hinder the people from prospering continually, except they should fall into transgression” (3 Nephi 6:5). And they did prosper. But within a very short time “there began to be some disputings among the people” (3 Nephi 6:10).

And the people began to be distinguished by ranks, according to their riches and their chances for learning; yea, some were ignorant because of their poverty, and others did receive great learning because of their riches. [3 Nephi 6:12; emphasis added]

I believe this account is a warning to those of us who have been blessed to have received an education. We ought never to suppose that our “learning” entitles us to special rank or privilege.

The second key to learning to live with Christlike love is to forgive freely. The principle of forgiveness and its relation to love was clearly taught by the Savior in the familiar passages from the Sermon on the Mount found in Matthew. I suggest you take a close look at the sermon again and consider how much of it is devoted to teaching about the principle of forgiveness. Ask yourself why this is so. My estimate is that nearly one-half of that great sermon speaks of some element of forgiveness.

[R]esist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also.

And if any man will sue thee at the law, and take away thy coat, let him have thy cloke also.

And whosoever shall compel thee to go a mile, go with him twain. . . .

Ye have heard that it hath been said, Thou shalt love thy neighbour, and hate thine enemy.

But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you. [Matthew 5:39–41, 43–44]

Peter asked the Savior how often he should forgive one who sinned against him: “Till seven times?”

The Savior replied: “I say not unto thee, Until seven times: but, Until seventy times seven” (Matthew 18:21–22).
Learning to forgive those who have offended or in some manner caused injury may be the most important key to living with real Christlike love: “Then said Jesus, Father, forgive them; for they know not what they do” (Luke 23:34).

The final key is to serve generously. I believe we learn best to love by serving. C. S. Lewis, in his book *Mere Christianity*, provides an insight to this key:

Do not waste time bothering whether you “love” your neighbour; act as if you did. As soon as we do this we find one of the great secrets. When you are behaving as if you loved someone, you will presently come to love him. If you injure someone you dislike, you will find yourself disliking him more. If you do him a good turn, you will find yourself disliking him less . . . But whenever we do good to another self, just because it is a self, made (like us) by God, and desiring its own happiness as we desire ours, we shall have learned to love it a little more or, at least, to dislike it less. [C. S. Lewis, *Mere Christianity* (New York: Macmillan Publishing Company, 1952), 116–17]

Any returned missionary can testify that their love for the people they worked with on their mission was primarily the product of serving them. Elder Marvin J. Ashton taught, “What we serve we learn to love” (“We Serve That Which We Love,” *Ensign*, May 1981, 24). And to quote once again from Elder David B. Haight:

Love is a gift of God, and as we obey His laws and genuinely learn to serve others, we develop God’s love in our lives . . .

Someone has written, “Love is a verb.” It requires doing—not just saying and thinking. The test is in what one does, how one acts, for love is conveyed in word and deed. [“Love All,” 12]

I will conclude with the profound teachings of the prophets Moroni and Mormon:

And again, behold I say unto you that he cannot have faith and hope, save he shall be meek, and lowly of heart.

If so, his faith and hope is vain, for none is acceptable before God, save the meek and lowly in heart; and if a man be meek and lowly in heart, and confesses by the power of the Holy Ghost that Jesus is the Christ, he must needs have charity; for if he have not charity he is nothing; wherefore he must needs have charity.

And charity suffereth long, and is kind, and envieth not, and is not puffed up, seeketh not her own, is not easily provoked, thinketh no evil, and rejoiceth not in iniquity but rejoiceth in the truth, beareth all things, believeth all things, hopeth all things, endureth all things.

Wherefore, my beloved brethren, if ye have not charity, ye are nothing, for charity never faileth. Wherefore, cleave unto charity, which is the greatest of all, for all things must fail—
But charity is the pure love of Christ, and it endureth forever; and whoso is found possessed of it at the last day, it shall be well with him.

Wherefore, my beloved brethren, pray unto the Father with all the energy of heart, that ye may be filled with this love, which he hath bestowed upon all who are true followers of his Son, Jesus Christ; that ye may become the sons of God; that when he shall appear we shall be like him, for we shall see him as he is; that we may have this hope; that we may be purified even as he is pure. [Moroni 7:43–48]

From Christlike love comes all that is good. With it every commandment becomes easier to live and our lives become enriched by the abundance of others who teach and influence us. Only love will bring peace to the earth. I testify that as we learn to judge not, to forgive freely, and to serve generously, we will become more tolerant, and eventually we will come to have the gift of charity bestowed upon us by our Heavenly Father. That we may so do is my prayer in the holy name of our Lord and Savior, Jesus Christ, amen.

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The Most Important Three Things in the World

Brett G. Scharffs

I wish to thank President Samuelson, Academic Vice President Tanner, and Advancement Vice President Worthen for the opportunity to speak today. I am grateful for these devotionals and the occasion they give us to explore what it means to be a community of faith as well as a community of reason. I want to express my gratitude for the beautiful music and to Megan Grant and Suzanne Disparte for their prayers. They are two of my research assistants who prop me up on a daily basis, so it is entirely fitting that they do the same thing here. I want to also acknowledge my father and stepmother; my wife, Deirdre; and my three children, Elliot, Sophelia, and Ella. They are missing school to be here, so I know I have a grateful audience of at least three.

As I prepared to speak with you today, I actually worked through three different topics, each more personal than the last, and I hope you will forgive me as I speak from the heart about some aspects of my own journey of faith.

I traveled in my mind's eye back to my student days. At Oxford University I attended a series of lectures in which a famous and fashionable professor asserted confidently that the study of ancient Greek philosophy was one of the three best things in life. With a sly smile and an arched eyebrow, he did not tell us out loud what he thought the other two were.

But his assertion left me wondering: What are the most important three things in the world? Later, during my personal scripture study, I searched the Topical Guide for inspiration and was led to the apostle Paul's famous formulation in 1 Corinthians:
Though I speak with the tongues of men and of angels, and have not charity, I am become as sounding brass, or a tinkling cymbal.

And though I have the gift of prophecy, and understand all mysteries, and all knowledge; and though I have all faith, so that I could remove mountains, and have not charity, I am nothing. . . .

And now abideth faith, hope, charity, these three; but the greatest of these is charity.²

At the very end of the Book of Mormon, after completing his abridgement of the Jaredite record, the prophet Moroni is surprised to find that he is not dead yet.³ Fortunately, he catches a second wind and recounts a few of his father’s teachings, including Mormon’s powerful discourse on faith, hope, and charity.⁴ And then, in Moroni 10, the last chapter of the Book of Mormon, Moroni returns to this theme as he offers his final exhortations. (By my count, in that chapter alone he uses the words exhortation or exhort nine times.) Moroni says:

And I would exhort you, my beloved brethren, that ye remember that every good gift cometh of Christ. . . .

Wherefore, there must be faith; and if there must be faith there must also be hope; and if there must be hope there must also be charity.

And except ye have charity ye can in nowise be saved in the kingdom of God; neither can ye be saved in the kingdom of God if ye have not faith; neither can ye if ye have no hope.⁵

Today I would like to spend our time together talking about faith, hope, and charity.

These are not simply three good things on a list. In a certain sense, they are the most important three things in the world. They are the foundational Christian virtues. Each is a trait of character to be cultivated and developed. Each is a set of attitudes and beliefs to guide thought and action. Each is a choice. Each is a gift from God.

Faith, hope, and charity may be likened to the three legs of a stool. As a boy visiting my grandmother’s farm, I was impressed with the three-legged stool used for milking cows. Just as the stool’s three legs enabled it to rest firmly on uneven ground, if we are grounded in faith, hope, and charity, we too will be on solid footing, even when the ground beneath us is rough or bumpy. Just as a one- or two-legged stool will teeter precariously, we too will be vulnerable to toppling over if we neglect any of these three virtues.

In my study of this topic, I’ve noticed several things. First, faith, hope, and charity are mutually reinforcing. An increase in one tends to result in an increase in the others. If we are feeling weak with respect to one, we can gather strength by focusing on the other two.

There is also a temporal dimension to the relationship. Faith is rooted in the past—in Christ’s death and resurrection and in His Atonement
for our sins. Hope is focused on the future—in the promise that through Christ’s Atonement and by the covenants we make and keep, we can return to the presence of our Father in Heaven. And charity is enacted in the present—because it is only here and now that we can really love.

There is also a dimension of progression and culmination: faith and hope lead to charity, and it is charity—Christ’s love for us—that never fails. If we desire to develop and be endowed with this Christlike love, it will be by traveling the road of faith and hope.

I. Faith

First, a few words about faith.

As a freshman at Georgetown University, I took a required course, The Problem of God, from a wonderful professor, Dr. John F. Haught. This Catholic theologian became one of my most influential teachers and mentors.

One day toward the end of fall semester, Dr. Haught introduced theologian Paul Ricoeur’s concept of the three stages of religious faith.7

The first stage, childlike faith, may be likened to the clear, unimpeded view that one enjoys standing atop a tall mountain. As children, our faith is simple and uncritical, and we can see clearly in every direction. There is something quite beautiful about this stage of faith. To me it is exemplified by hearing a chorus of Primary children sing “I Know My Father Lives.”9

The second stage Ricoeur calls the desert of criticism. At some point, often during adolescence, we descend from the mountain of childlike faith and enter the critical world. We might label this world “high school” or, better yet, “college.” Here we find that others do not share our faith. In fact, some openly disparage what we hold dear. We learn that the very idea of faith is thought by many to be childish or delusional. We may become skeptical, perhaps even cynical.

The desert of criticism is akin to being in the midst of a blinding sandstorm, where you are forced to lean into the wind and take one step at a time without a clear view of where you are going. Walking by faith becomes difficult. Some of our former beliefs cannot survive the desert of criticism.

Ricoeur did not malign the desert of criticism, for some childish beliefs are incorrect and should be abandoned. As the apostle Paul says in his discourse on faith, hope, and charity, “When I was a child, I spake as a child, I understood as a child, I thought as a child: but when I became a man, I put away childish things.”10

Furthermore, it is only in coming down from the mountain that we are able to enter into the world and engage others who are different from us. To a great extent this is where life is lived and where we can make a difference in the world. Some people never leave the desert of criticism,
and in time the memory of their childlike faith may dim. After prolonged exposure to the desert of criticism, some even lose their faith altogether. Ricoeur maintained that once one has entered the desert of criticism, it is not possible to return to the mountain of childlike faith. It is a little like leaving Eden. Something has been lost; life and faith can never be quite so simple again.¹¹

But he held out the possibility of a third stage of religious faith. On the other side of the desert of criticism lies another mountain, not as tall as the mountain of childlike faith, with views that are not quite as clear and unobstructed. But we can, as Dr. Haught explained it, remove ourselves periodically from the desert of criticism and ascend this somewhat less majestic mountain. Ricoeur calls this possibility of a second faith “post-critical naïveté” or a “second naïveté.”¹²

Here the truths and realities of our childlike faith can be reaffirmed or revised. Although the view is not completely unimpeded, and the storms of the desert of criticism remain in view, and some of our childish beliefs may be left behind, we can emerge from the storm and reaffirm our faith. Our faith will not be as simple as it once was, but it need not be lost. In fact, I believe our faith may become more powerful than before, for it will have weathered and survived the assaults of the desert of criticism.

To me, postcritical naïveté is a state in which both our hearts and our minds are open and we remain willing to experience childlike spiritual wonder; it is a place where we remain open to the promptings of the Holy Spirit. As Paul puts it, “Brethren, be not children in understanding: howbeit in malice be ye children, but in understanding be men.”¹³

My father told me about an experience he had when he was roughly the age of most of you. As a young adult he was, in a sense, in the desert of criticism and found himself questioning his faith and the Church. One day he took out a pad of paper and made a list of his criticisms and doubts. He put the list in a drawer and forgot about it. Years later he found it again, and he was surprised that nearly every concern had been answered in his mind and in his heart. He reflected upon how different his life, and the lives of his posterity, would have been if he had followed his questions and concerns out of the Church.

One of my favorite stories that illustrates what faith and trust mean is the account of Shadrach, Meshach, and Abed-nego. You recall the story.¹⁴ King Nebuchadnezzar commanded all his subjects to worship a golden image, and these three young men boldly refused. They were condemned to death by fire. The furnace was heated to seven times its normal strength¹⁵ and was so hot that the guards around it were consumed by the flames.¹⁶ As the three young men walked out of the fiery furnace, not a hair of their heads was singed, their coats were not burned, and they didn’t even smell like smoke.¹⁷ That’s impressive.
But to me there is another aspect to the story that is even more impressive. When Shadrach, Meshach, and Abed-nego addressed King Nebuchadnezzar before being thrown into the fire, they declared:

Our God whom we serve is able to deliver us from the burning fiery furnace, and he will deliver us out of thine hand, O king.

But if not, be it known unto thee, O king, that we will not serve thy gods, nor worship the golden image which thou hast set up.

The words that impress me are “but if not.” I understand Shadrach, Meshach, and Abed-nego to be saying that even if God, for His own reasons, does not intervene to save them, they will not question or doubt His power and goodness. Their trust in God is unequivocal.

Trust like that is not easy. Faith is not the power to bend God’s will to ours, but rather the power to align our will with that of Heavenly Father. God is mighty to save, but sometimes He does not intervene in the affairs of men. He allows mind-boggling evil and suffering in the world. He allows us to hurt each other in unimaginable ways. To me, more impressive than the fact that God could save Shadrach, Meshach, and Abed-nego was that they could trust God, whatever the physical outcome of their being thrown into the fire.

In my experience, sometimes God gives us direction that is unmistakable and clear. But the answers to our prayers do not always come in the time frame and way we expect.

Perhaps you will indulge me another personal story. I had the dream of becoming a law professor even before I went to law school. In an abundance of caution, I applied to 10 schools and found myself in a fortunate situation, like you have, with a number of good choices.

I knew where I wanted to attend, but I decided to ask Heavenly Father. I prayed and pondered without receiving an answer. As the days turned to weeks, I’m sorry to say I grew impatient, annoyed, and perhaps even angry. “If I’m willing to do your will,” I complained, “you could at least have the common courtesy to tell me what your will is.”

After weeks had passed, I decided to make a more serious attempt. I climbed on my bicycle and rode to a quiet place beside a small river a few miles out of town. I spent the day on my knees with my scriptures and a notebook. Finally, as the shadows grew long, I gave up in frustration. I was pounding the pedals on my bicycle as I rode home. Gradually I calmed, and my cadence slowed. A thought entered my mind, at first faint, and then increasingly distinct: “Honor your priesthood and remember your covenants.” I repeated this in my mind with the revolution of the bicycle pedals: “Honor your priesthood, remember your covenants. Honor your priesthood, remember your covenants.”

I stopped my bike, looked up to heaven, and exclaimed, perhaps audibly, “You don’t care where I go to law school! You want me to honor my
priesthood and keep my covenants.” As I spoke these words, I was flooded with the classic confirmation of the Holy Spirit, a combination of a shiver down my spine and a burning in my chest that was so strong I could hardly stand it.

So I went to the law school of my choice. During my years there, when I was tempted to think too much of myself or to be too caught up in the cares and preoccupations with which I was surrounded, I thought often, “Brett, honor your priesthood and remember your covenants.” It was precisely the message I needed to keep me on track during those three years of law school. My prayers had been answered in a deeply meaningful—but entirely unexpected—way.

I have had the opposite experience as well, in which I was directed to a particular place. On those occasions, too, the answer was sometimes quite different than I expected.

II. Hope

A few words about hope. Hope is not just a positive attitude, a sunny disposition, or looking on the bright side of life. Hope is rooted in Jesus Christ and the prospect of being with Him back in the presence of God. Deep down, it is a surrender and a trust in God and His promises—that He, and they, are real. Shadrach, Meshach, and Abed-nego had hope, but not just that they would survive the fiery furnace. They also had confidence in God's plan.

Hope is neither ethereal nor wispy; it is an anchor for the soul. Hope is focused on the future and gives us the disciple’s perspective that the current state of affairs will not last. Hope is not simply the truism “This too shall pass,” helpful though that truism is. Rather, hope is a quiet confidence about what shall come to pass—that Christ is mighty to save and that His grace is sufficient for us.

Perhaps the reason I am so drawn to the concepts of faith, hope, and charity is that even though I work hard and am reasonably diligent, sometimes I get discouraged or frustrated with my own limitations. For me there is comfort in the concept of hope, understood as a quiet confidence and belief that my best will be good enough and that Jesus Christ is there to carry me the rest of the way.

Maybe because I am a lawyer, one of my favorite descriptions of the Savior is that He is our Advocate. Both John and Mormon describe Jesus Christ as our Advocate with the Father. And in the Doctrine and Covenants we read:

Listen to him who is the advocate with the Father, who is pleading your cause before him—

Saying: Father, behold the sufferings and death of him who did no sin, in whom thou wast well pleased. . . .
Wherefore, Father, spare these my brethren that believe on my name, that they may come unto me and have everlasting life.31

Perhaps less familiar is the description of Satan, who is not our advocate but is rather our accuser. Revelation 12:10 says:

And I heard a loud voice saying in heaven, Now is come salvation, and strength, and the kingdom of our God, and the power of his Christ: for the accuser of our brethren is cast down, which accused them before our God day and night.

Isn't this description of Satan interesting? He accuses us before God both night and day. Lucifer is relentless in his desire to accuse and convict us before God.24

In our own lives we often hear voices that tell us that we are not good enough and that we are unworthy or even unredeemable. Sometimes, and most dangerously, these voices come from within our own heads and hearts. I believe that these voices, external and internal, are often tools and messages of the adversary. If he can convince us that we are failures, or if he can persuade us that we are good for nothing, unloved, or unlovable, then he is succeeding in accomplishing his work and his glory, to bring to pass the death and eternal damnation of mankind.25

Which voice will we heed—that of the Savior, whose message is that even when we stray or fail, His hand is outstretched still,26 or that of Satan, whose aim is to make us miserable like unto himself?27

Not only is the Savior our Advocate with the Father, pleading for us, but Jesus also pleads with us to keep His commandments so that we may enjoy the complete blessings of His Atonement:

Hearken, O ye people of my church, to whom the kingdom has been given; hearken ye and give ear . . .

Listen to him who is the advocate with the Father, who is pleading your cause before him . . .

Hearken, O ye people of my church, and ye elders listen together, and hear my voice while it is called today, and harden not your hearts.28

For example, the passage in D&C 45 we just read, about Christ being our Advocate pleading for us, is bookended by Jesus pleading with us to hearken, give ear, hear His voice, and harden not our hearts.29

III. Charity

Finally, charity. The importance of charity can scarcely be overstated. Paul calls charity the greatest of all things30 and says that without it we are nothing.31 Mormon urges us to “cleave unto charity,”32 and the Doctrine and Covenants instructs us to clothe ourselves in it.33 Paul mentions charity 75 times and calls it “the end of the commandment,”34 and John
mentions it 30 times. Amulek puts it starkly: “If ye do not remember to be charitable, ye are as dross, which the refiners do cast out, (it being of no worth) and is trodden under foot of men.”

Perhaps picking up on the concept of the three degrees of glory, I like to think of three degrees of charity. The first involves how we listen, the second how we give, and the third how we love.

Charity in Listening

The first degree of charity involves the way we listen to and seek to understand others. Charity in this sense is often associated with being fair-minded and giving others the benefit of the doubt.

This sense of charity is captured in *The Oxford English Dictionary*’s definition of charitable as “inclined to think no evil of others, to put the most favourable construction on their actions.” This definition echoes Paul, who declares that charity “thinketh no evil.”

The philosopher Eugene Garver has written thoughtfully about what it means to listen and understand with charity:

Discourse is always incomplete and always requires interpretation, filling in missing premises, understanding ambiguities, etc. Our rational reconstructions depend on charity because we are inevitably making choices in understanding another.

In striving to become charitable listeners, we may gain an increased appreciation for Mormon’s observation that an essential component of charity is being “meek and lowly in heart.” It takes a certain measure of humility to strive to understand others rather than to construe them in a way that serves our purposes.

Consider Mormon’s description of charity while focusing specifically on seeking to become a charitable listener:

And charity suffereth long, and is kind, and envieth not, and is not puffed up, seeketh not her own, is not easily provoked, thinketh no evil, and rejoiceth not in iniquity but rejoiceth in the truth.

This is an impressive road map of how we should listen to one another.

Charity in Giving

The second degree of charity involves the way we give to and seek to serve others. Charity in this sense is often associated with almsgiving, which can easily lead to a distorted understanding of what charity really means. The British have a phrase, “as cold as charity,” which they use to describe the heart and attitude of charity given in a way that is condescending or self-righteous.
When we act with genuine charity, we seek to lift others up or to give them a boost, perhaps while we stay below.43

Charity in Loving

The third degree of charity involves the way we care for and love others. Charity in this sense is celestial.

Perhaps the most moving definition of charity is found in the Book of Mormon. The prophet Mormon declared, “Charity is the pure love of Christ, and it endureth forever; and whoso is found possessed of it at the last day, it shall be well with him.”44

There seems to be a progression from the easier to the more difficult among the three degrees of charity. We cannot hope to have genuine charity if we are not charitable as listeners and givers. Not surprisingly, cultivating the “pure love of Christ” involves taking steps. We do not simply develop such love instantly; for most of us, it will be a lifelong process. Ultimately, it is a gift of God.

Conclusion

In conclusion, I stand with Paul in declaring the centrality of faith, hope, and charity. In saying this, I am constrained to acknowledge that we often find most appealing those ideals that we recognize we fall short of ourselves. This is certainly true in this case with me.

Nevertheless, I do have faith. God is our Father and we are His children, with all that implies. I pray that the wind and dust in the desert of criticism will not blind us to the truths of the gospel and that we may seek and find our own postcritical naïveté—a place where we can sing with wholehearted childlike amazement (as we have this morning):

Then sings my soul, my Savior God, to thee,
How great thou art! How great thou art!45

I testify that Jesus Christ is the Savior and Redeemer of the world, and of you and even of me, and that He is mighty to save!46

This faith gives me hope that Christ’s Atonement is sufficient for us—for you and for me. I have hope that through the principles and ordinances of the gospel and by making and keeping covenants, we will be saved as “children of God: and if children, then heirs; . . . joint-heirs with Christ.”47 I am grateful that our Savior is our Advocate with the Father, pleading for us, and also pleading with us, to come unto Him.

I testify that charity—Heavenly Father and Jesus Christ’s pure love for us—is real. I pray that we may be blessed with a more abundant measure of charity in accordance with the work of our hands and the desires of our hearts.
Finally, I am grateful that “God so loved the world, that he gave his only begotten Son, that whosoever believeth in him should not perish, but have everlasting life.” In the name of Jesus Christ, amen.

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Notes

1. Thanks to Suzanne Disparte and Megan Grant for research assistance.
2. 1 Corinthians 13:1–2, 13.
8. Ricoeur calls this “primitive naïveté” or a “precritical form of immediate belief” (Symbolism of Evil, at 351–52).
10. 1 Corinthians 13:11.
11. See Symbolism of Evil, at 351 (“Does that mean that we could go back to a primitive naïveté? Not at all. In every way, something has been lost, irremediably lost: immediacy of belief.”).
12. Id. at 352 (“I believe that being can still speak to me—no longer, of course, under the precritical form of immediate belief, but as the second immediacy aimed at by hermeneutics. This second naïveté aims to be the postcritical equivalent of the precritical hierophany.”).
19. I express my gratitude to Brent Bowles for helping me appreciate this aspect of this story. See Dennis E. Simmons, “But If Not . . ., ” Ensign, May 2004, 73–75.
20. Many years ago I heard a story about a pioneer couple, and it deeply impressed me. They had joined the Church and, with their infant child, made the difficult trek to Utah. Their journey was treacherous, and along the way their only child died. Husband and wife were heartbroken, and neither would ever be the same again. But their responses to this tragedy were very different. The husband became hard, bitter, and angry with God and the Church, and he developed a heart of stone. His wife, on the other hand, became more empathetic to the suffering of others and developed a deep spirituality and trust in Heavenly Father. Her heart became tender and soft.

Perhaps this story made such an impression on me because I recognized in myself the capacity to respond to life in both of these ways. When confronted with disappointment or difficulty, I can become withdrawn and distant, I can turn inward, and I can feel my heart harden. But I have also taken the other road—perhaps the road less traveled—in which I respond with a softening of my heart. To me, this story represents the very different reactions we can have to the hard realities of life: we can remain in the desert of criticism, or we can seek a deeper faith—our own “postcritical naïveté.”

21. In an address to the Wisconsin State Agricultural Society in 1859, Abraham Lincoln observed, “It is said an Eastern monarch once charged his wise men to invent him a sentence, to be ever in view, and which should be true and appropriate in all times and situations. They presented him the words: ‘And this, too, shall pass away.’ How much it expresses! How chastening in the hour of pride!—how consoling in the depths of affliction!” (Abraham Lincoln, address before the Wisconsin State Agricultural Society, Milwaukee, Wisconsin [Sept. 30, 1859], in *The Collected Works of Abraham Lincoln*, 471, 481–82 [Roy P. Basler ed., 1953].)

22. See 1 John 2:1–2 and Moroni 7:28.


24. I express gratitude to Louis Pope for drawing my attention to the distinction between Jesus Christ the Advocate and Lucifer the accuser.


27. See 2 Nephi 2:27.


29. D&C 45:1 begins, “Hearken, O ye people of my church, to whom the kingdom has been given; hearken ye and give ear to him who laid the foundation of the earth.” And in verse six, the verse following the passage about Jesus pleading our cause, Christ again pleads with us: “Hearken, O ye people of my church, and ye elders listen together, and hear my voice while it is called today, and harden not your hearts.” We see something similar in Moroni’s account of his father Mormon’s words, in which Mormon pleads with us to “cleave unto every good thing” (Moroni 7:28) and teaches that Christ has said, “Repent all ye ends of the earth, and come unto me, and be baptized in my name, and have faith in me, that ye may be saved” (Moroni 7:34). The passage in 1 John describing Jesus as our Advocate with the Father is also followed with an admonition to keep the commandments (see 1 John 2:3–5).

30. See 1 Corinthians 13:13; see also Moroni 7:44, 46.

31. See 1 Corinthians 13:2; see also Moroni 7:46.
When listening with charity, we are not primarily concerned with ourselves and planning our response but with seeking genuinely to understand. Being a generous listener reduces the distance between oneself and others.

38. 3 Oxford English Dictionary 41–42 (2d ed. 1989). A related definition of charity in The Oxford English Dictionary is “[a] disposition to judge leniently and hopefully of the character, aims, and destinies of others, to make allowance for their apparent faults and shortcomings; large-heartedness. (But often it amounts barely to fair-mindedness towards people disapproved of or disliked, this being appraised as a magnanimous virtue.)” (id. at 42). This sense is summed up in the OED as “fairness; equity.” Cruden’s Dictionary of Bible Terms includes this dimension of charity in its expansive definition of the term. “A person endued [with charity] does not interpret doubtful things to the worst sense, but the best; is sorry for the sins of others, but rejoices when any one does well, and is apt to bear with their failings and infirmities” (ed. Alexander Cruden [Grand Rapids, Michigan: Baker Book House: 1958], s.v. “charity”).

39. 1 Corinthians 13:5.

40. Eugene Garver, “Why Should Anybody Listen? The Rhetoric of Religious Argument in Democracy,” 36 Wake For. L. Rev. 353, 378–79 (2001). Garver continues, “Like friendship, being trustworthy involves complicated relations between speaker and hearer” (id. at 378). Thus, listening with charity involves not just the skillful use of techniques; rather it reflects a certain type of disposition or character. Indeed, the techniques may vary. For example, sometimes charity requires looking beyond the words spoken, while sometimes it requires taking words at face value. But the underlying attitude of the charitable listener will remain constant. Listening with charity will always involve generosity, trust, good faith, and being large hearted and fair-minded.

41. Moroni 7:44.

42. Moroni 7:45.

43. It may be that because the modern ear associates the word charity with alms-giving, and because such giving often magnifies rather than reduces the differences between ourselves and others, that most modern translations of the New Testament render the Greek word ἀγαπή as love, rather than charity, in order to avoid the minimalist, even negative, associations of charity. The Encyclopedia Americana notes, however, that “in the Middle Ages the Latin word caritas, from which charity is derived, was filled with the richest meanings of self-denial and self-sacrifice for the sake of others. It was only in the post-Reformation period that charity became identified with alms-giving. To the Reformers, giving alms was a pretended means of winning merit, and this led to the rejection of ‘charity’ in Biblical texts and hence in general religious usage among Protestants.” Nevertheless, The Encyclopedia Americana continues, “the word is too rich in meaning to be abandoned: pure charity is the noblest of virtues” (International edition, s.v. “charity”).

44. Moroni 7:47. The LDS Bible Dictionary defines charity as “[t]he highest, noblest, strongest kind of love, not merely affection; the pure love of Christ” (s.v.
“charity,” 632). To his disciples, Jesus said, “A new commandment I give unto you, That ye love one another; as I have loved you, that ye also love one another. By this shall all men know that ye are my disciples, if ye have love one to another” (John 13:34–35).


47. Romans 8:16–17.

Follow the ethical rules—better yet, help improve them. But recognize that it is still true that lawyers are hired as much for the wisdom they are thought to have as for their technical skills—for who they are as much as for what they know.

THOMAS D. MORGAN (P. 248)
Empowered by Education and Vision

Larry Echo Hawk

It is with heartfelt appreciation that I stand before you, having been invited to be the commencement speaker for the class of 1994. I want to first express the high emotions that I have today in coming back to Brigham Young University. There are six Echo Hawk children that were born to my parents, and four of us received our education here at BYU. It is here that I find many friends, and, most important, the greatest mentors in my life were the people I became associated with when I had the opportunity to obtain my education and play football at Brigham Young University.

I want to extend my congratulations to all the members of the class of 1994. Your graduation from law school is one of the very highest achievements that you will have in life, and we honor you today. But I also want to say a word of congratulations to the grandparents, parents, family members, and friends who have supported you graduates through the very challenging years of law school. I know there are many people here today who feel a great sense of pride because of your achievements. Perhaps you are the first generation in your family to receive this high education, and we all join today in commemorating your efforts and congratulating you.

I have wondered why I was invited to be the graduation speaker, because, as you know, I’m a politician. Politicians are not necessarily held in high esteem today. I remember when I first ran for the office of attorney general in Idaho. One of the political analysts stated very early in my campaign that “Larry Echo Hawk starts with three strikes against him: he’s a Mormon, an Indian, and a Democrat.”

To add to that, I recall one day when I was riding in an elevator in a high-rise building in Boise. I had been thinking about the challenge that my campaign managers had been putting to me. I was raised among quiet people. I am known as a quiet, reserved, serious individual, and they kept
saying, “You need to reach out, smile, greet people, and be more of an extrovert.”

So one day as I was in the elevator, the elevator stopped, the doors opened, three women walked in, and the doors closed. The light went on in my head. I thought, “This is my captive audience.” So I built up my courage, and I said, “I’m Larry Echo Hawk. I’m running for the office of the attorney general.” I should have stopped right there, but instead I said, “I bet you didn’t realize when you woke up this morning that you would be riding in an elevator with a politician running for a statewide office.”

And I was pretty proud of myself until one of the women shot back, “Well, unfortunately, my whole day has been going that way.”

In spite of those challenges, I have had the opportunity to serve as the state attorney general in Idaho. My thoughts today go back to a time when I was getting my undergraduate degree here at Brigham Young University and my brother John was receiving his law degree at another university. BYU did not have a law school in those days. But I remember he pulled me aside as my older brother and gave me some advice. He told me to pursue an education in the law: it would be the power to change. And I took that to mean that law would be the power to change from some humble beginnings in life to a better quality of life. But over the years I came to understand that what he was really talking about was not only the power to change yourself but also the power to change the world for others.

I’ve had some wonderful experiences as a state attorney general. In January 1991 I stood on the steps of the state capitol building in Boise, placed a hand on the Bible, raised the other to the square, and took the oath of office as Idaho’s 30th attorney general. I was the first American Indian in United States history to serve in any statewide executive office. That day my heart was full with appreciation. Just days later I stood in the rotunda of that same capitol building and delivered the keynote address for Idaho’s first-ever Martin Luther King human rights day. Two months later I stood in the United States Supreme Court preparing for argument, which would ultimately be one of the great professional experiences of my life.

I remember I was trying to get rid of the butterflies that day when counsel in the next case walked up to me—he was a person I knew well—and said, “Is this your first case?”

I responded to Rex Lee, “Yes, it is.” Then I asked him, “How many have you argued?”

And he said, nonchalantly, “Fifty-four.”

That kind of intimidated me.

But my memories also go back to the opportunity I had as a newly elected attorney general to meet the United States president in person—a rare opportunity for anyone. Regardless of whether you identify yourself as a Republican or a Democrat, to be in the presence of a United States
presents president is something very special. And I had that opportunity the second year I was in office.

Last year I was given a new opportunity because there was a new United States president. I remember there was great anticipation among the ranks of the 50 state attorneys general as we gathered in Washington, D.C., to go to the White House and meet President Bill Clinton. But the next day we got the news that our appointment had been canceled because the president was at the bedside of Hillary Clinton's father, who was gravely ill. We went on to meet the vice president, Al Gore, and the United States attorney general, Janet Reno.

I was in my hotel room that night when the phone rang at 11:30 p.m., and I answered. A voice said, “Would you like to go jogging with the president in the morning? He has just returned from Little Rock.” I thought it was a joke. But the next morning I found myself standing in the diplomatic reception room with two other state attorneys general—one from Ohio and one from Vermont. Pretty soon the president joined us, and we had a brief conversation.

Then the Secret Service walked through to take a look at us, and I think there was a look of concern. An agent said, “Well, I hope you guys are in shape, because the president ran four miles the day before in Little Rock, each mile in under eight minutes.” That may not sound like much to you young graduates, but wait until you’re 46 years old.

As we started out the back of the White House, I thought we were going to start jogging immediately, but there was a limousine with the doors open—a part of a motorcade—and the president told us to get in. I got in the backseat in the middle, the doors closed, and we started to move. I looked over, and the president of the United States was sitting right next to me, and there I was in my jogging clothes. It was a very strange feeling.

We went just a short way from the White House by the Washington Monument. The press was there shouting out questions, and then we started jogging up toward the Capitol building. When you see the president running on TV, he looks kind of slow, and I was glad, because he was slow. We started at a conversational pace and went about a mile and a half up near the Capitol. Then we turned around and headed back toward the White House and had good conversation for a while. Then the president started to pick up the pace, and the conversation started to dissipate. He kept picking up the pace, and then all of a sudden there went Ohio—it was a golden opportunity to jog with the president, but he was out of shape. So we went a little further, and the president started to pick up the pace a little more. Then all of a sudden there went Vermont. And I was feeling very fortunate at that time. I’m a marathon runner, so I figured I would be okay. The president kept picking up the pace, and—wouldn’t you know it—about 20 yards before the White House gate I got a charley horse and
had to drop back, so the president won. Well, now you know why I’m state attorney general. I’m not stupid.

The reason I mention that story is to make a point about what happened afterward. As soon as Ohio and Vermont straggled in, we went into the Oval Office and spent about 45 minutes with the president sitting behind his desk talking about articles there that were of historic interest. He came to a point when he mentioned the desk that he had brought in when he was elected president, and he said that it was the desk of John F. Kennedy. When he said that, I noticed a hesitation and a little crack in his voice, and I could see there was some emotion. At that moment a picture came into my mind of a 17-year-old boy shaking the hand of President John F. Kennedy. Clinton was a student leader, and, as part of Boys Nation, he met President Kennedy.

As I stood there, right in front of that desk in the Oval Office, the thought “Who is he?” came into my mind—not in terms of position or politics but in terms of his roots. Clinton was born in a small town. He never knew his natural father because his father was killed before he was born. His mother didn’t even raise him in those early years—his grandparents did. At best, you would describe him then as lower middle class. But there he was, president of the United States, empowered by vision and empowered by education. And whether you are a Republican or a Democrat, that principle exemplifies what we all believe in: the promise of America—the American dream.

And then I had a second thought: “What am I doing here?” Echo Hawk was the name given to my great-grandfather, a Pawnee Indian. He didn’t speak English, and he lived in what is now the state of Nebraska in the mid-1800s. Among the Pawnee at that time, people did not have a first and a last name, but they acquired a name because of something about them. Among the Pawnee, the hawk is a symbol of a warrior, and my great-grandfather was known for his bravery. He was also known for being a quiet man. He never spoke of his own accomplishments. But others did. And as they did, it was like an echo in the village—an echo from one side of the village to the other as they talked about his deeds. This is how he got his name from the elders. Echo Hawk: the hawk whose deeds are echoed.

I never knew my great-grandfather, but I am proud of that heritage. Yet there is pain when I think about what he went through, because at one time the Pawnee people occupied a land that, under the United States laws, was recognized as their homeland. In the winter of 1874 Echo Hawk was marched away from his home to the Oklahoma Indian Territory. No longer could he visit his ancestral gravesites. No longer could he seek visions upon the high grassy plains of his homelands. No longer would he be able to pursue the great herds. And, most painfully, when he was relocated into the Oklahoma Indian Territory, the Pawnee people had gone from more than 25,000 people to fewer than 750.
I’m sure I cannot fully comprehend the challenges he faced, but out of that pain was born promise—the promise of America. I knew that promise probably more than at any other time on election night in 1990 in the state of Idaho when I learned that I would have the opportunity to be Idaho’s 30th attorney general. I was asked by the news media to make a statement, and I remember kneeling in a hotel room, with my youngest child asleep in the bed, thinking about what I would say. I walked out into another hotel room to face the television cameras and the news reporters with my father, the grandson of Echo Hawk, by my side. My thoughts went back to words of inspiration that I heard when I was 15 years old. A black civil rights leader stood on the steps of the Lincoln Memorial and made an impassioned plea for peace and fairness and justice and equality. That night in Pocatello, Idaho, I spoke from memory those words:

“I . . . have a dream. It is a dream deeply rooted in the American dream that one day this nation will rise up and live out the true meaning of its creed: ‘We hold these truths to be self-evident, that all men are created equal.’ . . .

“I have a dream that my . . . children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.” [Martin Luther King Jr., “I Have a Dream,” speech at the Lincoln Memorial, Washington, d.c., 28 August 1963]

I believe in America. I believe in the spirit of America. I believe that America must stand as a land of opportunity for all, regardless of race, religion, gender, physical disability, ethnic heritage, or economic status. I believe very strongly in that promise. But I stand before you today to tell you that as long as we have people in our communities and across this nation who are hungry and homeless, the promise of America is unfulfilled. As long as our youth struggle with substance abuse and are being beckoned to be participants of gangs and victims of drive-by shootings and violence, the promise of America is unfulfilled. As long as we have young people who don’t dream about their potential and about what education can do in their lives, and they set their sights low, then the pain goes on and the promise of America is unfulfilled.

Only six weeks ago I walked down the center lane of a highway in a city in rural Idaho on a very cold, overcast, dark winter day, and before me was a sight I will never forget. Cars were lined up along the highway bumper to bumper, stretching nearly a mile; police cars’ overhead lights flashed; and officers in uniform stood next to those cars. It was a tragic and sorrowful day. I walked nearly a mile to the graveside service for the father of four small children—a police officer gunned down by a 14-year-old. It was an emotional experience, and I remember walking up after the graveside service to the wife and those small children. I took her hand and said, “I’m Larry Echo Hawk, attorney general of the state of Idaho, and, on
behalf of the people of my state, I express my deepest sympathy and sorrow for the loss you have suffered.” She broke down weeping.

I gave her a hug, and after she began to gain her composure, she whispered in my ear with a broken voice, “Please, Mr. Echo Hawk, do all you can to make sure this does not happen to someone else.” That experience has haunted me. I have felt the burden of that moment, but I welcome the responsibility.

My message to you graduates today is to turn your hearts to the next generation—to your children. You are surrounded today by proud parents and grandparents who made sacrifices years ago. You represent today their dreams and aspirations. Now, today, as I speak to you, I ask you to think about your children and your grandchildren and to ask yourself, what kind of world will they live in? You take upon yourself that responsibility and that burden that I speak of today because you are problem solvers and you are the hope of a nation because you are empowered with education. But it takes more: It takes a strong commitment. It takes a vision about what you can do. It requires character.

I have spoken very frankly today of the challenges that face our communities and America. I believe that my home state is one of the last of the best places in America to live and to raise a family. But of the communities that you will go into, it will be your challenge to not only preserve those places but to reclaim them in many areas as places to live, to prosper, and to raise a good family. I have spoken of some of the serious challenges that we face. I think it’s time for frank talk.

But I leave with you some inspirational words I heard in my youth that I hope will empower you, because I am where I am today because of the great promise of this country. In my youth I heard the words spoken by Robert F. Kennedy when he said, “Some men see things as they are and say, why; I dream things that never were and say, why not?” (paraphrasing George Bernard Shaw, “In the Beginning,” Part 1, Back to Methuselah [1921], act 1).

Why not? Each of you has to ask yourself and your community, why not bring forth the promise of America?

This J. Reuben Clark Law School convocation address was given at the Provo Tabernacle on April 22, 1994.

Larry Echo Hawk received his JD from the University of Utah in 1973. He was elected Idaho state attorney general 1990–1994, served as a law professor at J. Reuben Clark Law School 1995–2009, and served as assistant secretary for Indian Affairs in the U.S. Department of the Interior in Washington, D.C., 2009–2012. Recipient of the J. Reuben Clark Law Society Distinguished Service Award in 2013, he is currently a member of the First Quorum of the Seventy.
My colleagues would feel insecure if I didn’t tell a story. It’s a ritual introduction to anything I have to say. Once Clarence Darrow was asked, “Mr. Darrow, did you ever get into trouble because you were misunderstood?” And he said, “Oh my, yes, but a heck of a lot less than if I had been understood.”

Those who took what they laughably called classes from me will tell you that no matter what the label of the course was, the substance, if any, was always the same. So those of you who have heard me before might recognize only a difference of emphasis rather than a change in the underlying message.

Contrary to popular belief, I always write out for myself a conclusion of what I hope to achieve. But I’ve taught in Mormon Sunday School long enough to know that if there’s a trigger that pulls down a curtain over the brain, it’s to announce in advance your objective. I have an objective, but, to bedevil you, I will not announce it.

By good fortune, not of my own creating, what they asked me to speak about fits perfectly into my fundamental thesis: the Bill of Rights has never enjoyed real, widespread support, though verbally it is almost adored. The reason is perfectly understandable if not perfectly justifiable: the Bill of Rights has no practical consequences in society except in reprehensible, disgusting, frightening circumstances.

When I grew up there were three kinds of sermons in the Mormon Church: pay your tithing, live the Word of Wisdom, and they’re coming to get us. That is the entrenched minority mentality with which I grew up: nobody will protect us, and on the slightest pretext they will do anything to destroy, inconvenience, or upset us. It comes to me in my adult life as an incomprehensible shock that in my own community the response to the Bill of Rights seems to flow from an internal majoritarian orientation.
I repeat my opening thesis: the Bill of Rights has never enjoyed widespread support. I wish to use the Indian sweat-lodge case to illustrate my point. I like this case because it arises in a unique circumstance. We’re talking about liberties—protected liberties—but in a prison context. We justifiably have determined to restrict the liberty, within the constraints of the Constitution, of those who are confined in those premises.

What happened in the sweat-lodge case? In an Oklahoma State prison, a Native American prisoner brought an action because they had denied him his medicine bags. Officials were also going to force him to cut his hair, and they would not permit him or any Native American prisoners to enter a sweat lodge.

To understand the rest of the story, I must give some procedural background. Our court has undertaken strategic measures to solve caseload concerns. We began to do what we all want but don’t agree with when it’s done, and that is to implement what we learned on *MASH* as triage. We have to determine that this patient is going to die, so let him die; this patient hurts like heck, but nothing is going to happen in the next two hours, so let him lie here and scream; this patient we have a very good chance of saving if we take care of him right now. That’s the same problem we run into when we decide certain cases deliberately rather than accidentally across the board. Thus there’s a body of cases that can be quickly disposed of with minimal risk of serious error.

Any of you who believe in zero-based anything don’t belong in this world. If you had the Supreme Court working all year on one case, every fourth year there would be a clear-cut mistake after all that effort. But we’re talking now about minimizing the trouble. One way we do that is to send certain cases to a screening panel. One judge looks at it without consultation and sends a quick proposed solution to the three other judges on the panel. They read it and typically agree with the choice. So only a few minutes are taken. I participate as a voting member on over 600 cases a year. How would you like your more serious matters to be decided by someone who has to divide their attention to your work with 599 other people in 365 days? Those are the problems with which we are confronted in the judicial system.

The sweat-lodge case came to a screening panel for dismissal. The trial court said the prisoner was not entitled to any relief. Though a prisoner with limited education wrote the petition, he still spelled out a violation of the First Amendment. He even had the good wit to cite the Fourteenth Amendment. The judge adopted the magistrate’s report and threw the case out.

It came to a panel that I was on. The judge who got it on a random-slot, drop-it-in-the-box basis proposed to dismiss it as frivolous. But I was persuaded that it wasn’t frivolous, though two colleagues considered it so. They felt it didn’t even require an answer from the defendants.
I wrote a dissent from the order that dismissed the case. Because of procedural circumstances, the dissent did not get filed. I invoked a court rule that says no case may be ordered or submitted on the briefs unless by unanimous vote of all three panel members. I proposed in my dissent that we appoint counsel and have it argued to a regular panel. They didn’t agree, so it was sent back into the inventory. I was out of the case. Unfortunately for my colleagues, it came back through some procedural quirk to another panel—and guess who showed up on that panel? At that stage we couldn’t agree on how to dispose of it. We did agree that it was a serious case, and since it was a screen case, we had the option of sending it to the oral-argument calendar. The oral-argument panel appointed counsel to argue the case. One judge, who originally considered the case frivolous, joined in a decision saying it was a serious allegation of a constitutional violation. It was remanded to the trial court for further proceedings—appointment of counsel, opportunity to develop the factual record, and so on.

The original judges were troubled because the word “construct” was attached to “sweat lodge,” and in their white, male, affluent minds they imagined a vast expenditure of state funds to build a chapel (a chapel which, of course, was built for our Christian friends in prison). Had the judges known more about this tiny, little, strange group of Americans (the original ones I might add), they would have treated more sympathetically the arguments I introduced originally.

A sweat lodge is a little place out in an open courtyard where you turn prisoners loose (especially if they get into trouble in the cells). There’s a lot of dirt out there, so you scoop out a little hole and heat up some rocks and toss them in. Then you bend three or four sticks that you’ve pulled down from any tree around, just enough to bend them over and throw a piece of canvas or a couple blankets over the top. Then you toss a little water on the rocks. Now that’s the “construction” that is necessary. The problem is that in the very setting in which the Bill of Rights has its validity—the protection of the obnoxious, the strange, and the unusual—it gets a negative response. It seems to me that this response is the flip side of the whole notion of the Bill of Rights.

Now, let me tell you the response we got from the state: It’s a fire hazard. (I didn’t have to turn to the record for an answer—they light Catholic candles in the chapel where Catholic prisoners worship at state expense.) Well, it’s a safety hazard. (Never mind that every prison in the state of Nebraska has a sweat lodge. Never mind that on my desk was an article and a series of pictures of a member of the Utah Governor’s personal staff entering the sweat lodge at the Utah prison.) The problem here was equal protection in a First Amendment setting.

The final argument on the sweat lodge (which amused me because I happened to have on my desk a double-bunking case under the Eighth Amendment) was that letting these Native Americans go unsupervised
into this little thing—four feet each way with just a little dome—represented a security risk. I thought there was a little incongruity in that argument. In the end the court affirmed the sweat lodge as central to the Native American’s religion and concluded that refusing it violated the prisoner’s First Amendment rights.

To further illustrate, let’s look at the Supreme Court. The Court has skeptically viewed Jewish people who want to wear odd articles of clothing in the Army. The Court has skeptically viewed Muslims claiming to be restrained by a prison rule that says you don’t come back into the prison during work detail until the work is over. In these cases, the Supreme Court is saying, “Yes, you’ve got rights, but society can’t be expected to adjust to meet everybody’s claim.” Why did the Supreme Court glibly toss that off instead of going right through the roof? The system has already accommodated the Court and their fellows; we have Christian chapels, and we have a Christian workday schedule. What if we get a request from somebody who is offended by that? What if, for instance, we get a Jewish majority state? Guess what the work schedule is going to be? Now I know you’re not threatened personally by that. That’s what troubles me in my own community—we are not threatened by that analogy. Even with all the Jewish people in the United States, we’re sure they’ll never get into one state in large enough numbers to control it. Even if they did, we could always move to Utah. Let me remind you of three little incidents that should disturb you in your majoritarian mentality when examining the Bill of Rights.

A certain well-known Mormon led a successful political movement in a nearby state by force of his personality. When the time came for his party’s convention, another member of the group suggested that they needed somebody other than a Mormon to lead the movement. He was offended by that and asked, “Is there something we disagree on?” The response was, “No, but we need a Christian to lead our movement.”

In North Carolina, a county organization threw the Mormon softball team out of the league because they were not Christian. One more example. I got a letter from the dean of one of the United States’ most distinguished divinity schools in support of an applicant wanting to clerk in my chambers. Thinking he was helping, he wrote, “Now this is a scholarly man, a dispassionate man, a brilliantly educated man. Though he is a Mormon, yet he proved himself capable of understanding Christian principles.”

If you’re not threatened by now, let me give you a dictum you ignore at your peril. You do not get to decide, when the power of government is invoked, who you are. If you reject that, you do it at your peril and in ignorance of your own history and in ignorance of the movements that are afoot in today’s society.

I opened by saying the Bill of Rights by design never is invoked in circumstances when anyone with a majoritarian mentality can gag it down.
So the founders selected a tiny handful of matters they carved out as none of the majority's business. Those who were then in the majority recognized that there are no true majorities—only uneasy shifting alliances. Any member of today's majority may be tomorrow's hated minority.

Look at the flag-burning case. This may surprise you: I'm personally not troubled if we wanted to write a statute that outlaws flag desecration. But let me tell you about the problems you'll have, however, if you set about to.

Pass an act that says you shall not desecrate the flag—it will be a crime. Suppose I put on a T-shirt with the American flag on it—the stars under my sweaty right arm and the end of the bars under my sweaty left arm, and "I Love America" and the Pledge of Allegiance below it. Would you arrest me? Your instinct is no—it might be covered by the statute but your instinct is not to arrest me.

How about the Fourth of July picnic? Let's talk about those flag replications that we hang around the table so we can dribble our gravy on them. Somebody might be so patriotic that they leave their flag out in the storm and lightning strikes it and burns it up. We know whom we'll arrest—the person who does what the person in the flag-burning case did. Guess what distinguishes the flag-burning case from these scenarios? It's the message contained in the conduct.

I'd like to challenge you students of statutory construction to write a bill that legitimately exempts everything you would protect in dealing with the flag: a bill that would stop the conduct in the flag-burning case but not make criminal all the things that you don't want to make criminal. Do all this without saying explicitly that we intend to prosecute a flag burner wishing to send a negative message about the country or the flag—a classic First Amendment definition.

I sometimes get a little lonely. My colleagues think I enjoy being a crank and a crackpot. But what I'm telling you today has been the central burden of my active life. It has been the central burden of my life since I went to my first sacrament meeting and stayed awake and listened.

We had in my day, as you remember, three subjects: the Word of Wisdom, pay your tithing, and they're coming to get us. Living in my day were children of those who left the blood of their feet on the Mississippi ice as they were driven out of Illinois. Let me describe us (the Mormons) from the view of people like Governor Ford, who had the power to decide with gunpoint who we were.

We were blasphemers. We still are. That is why the dean from a most distinguished divinity school in the United States would write to me, “Though he is a Mormon, yet he proved himself capable of understanding Christian principles.” (That is the thesis of the film The Godmakers.) We were adulterers. We were enslavers. Unless you are good students of history, you will not know the principal cliché of Lincoln's campaign. It wasn't
freedom for the slaves; it was save the union. But the popular campaign talked about those twin relics of barbarism—slavery and polygamy.

I recommend you read Reynolds v. United States, written by the United States Supreme Court. It is still out there and still being cited as the law of this country. It includes a discussion of the conduct of most of your forebears, comparing them to the East Indians who burned the living widows on the funeral pyres of their husbands. Reynolds is still the law of the United States. When the 52 percent majority decides that its interest lies more in power than in the individual, some of you might be challenged and even persecuted because the written words of your scriptures still contain the doctrines for which your forbears were persecuted.

I hope I’ve bedeviled you enough. I hope that you’ll be troubled by this proposition because there is this problem: the time that the Bill of Rights is needed most is in times of hysteria, which is when we are most likely to offend it most egregiously. I cite the abuses of the McCarthy era. I cite the present-day hysteria over the illegal drugs that are used in our society. We are so hysterical that we are willing to insist that the Constitution yield rather than examining whether there are more effective methods of achieving the same goal.

If you think hysteria won’t arise again, you can’t yet be 30 years of age. It happens in society so quickly that we wonder where it came from. Having been the object of it a time or two in my life, maybe I’m oversensitive and I probably exaggerate. The only way the Bill of Rights has any chance of ameliorating unconstitutional hysteria (since we’re entitled to be hysterical as Americans as long as we don’t do it in violation of the Constitution) is if generously enforcing it becomes a habit of mind and emotion for our principal opinion makers.

I made my talk personal to those here today so that in your humble moments you might say, “Oh boy, are we in trouble.” You are the opinion makers who should be busy embedding these principles in the habits of our enforcement institutions, in our private dialogues, and in our political exchanges. If you and enough people do, there is a modest chance that the next time hysteria breaks out, and you’re the object of that hysteria, the courts—the institutions that give life to the Constitution when it’s needed in a practical situation—will be amenable to making it a living document rather than an icon. I leave you now with my proposition: when the power of government is invoked against individuals in a way that arguably implicates a right enumerated in the Bill of Rights, we should instinctively be inclined to give the Bill of Rights a broad and generous application.

This address was given at the Bill of Rights Symposium at BYU Law School on October 9, 1992. Reprinted from the Clark Memorandum, spring 1993, 19–23.
For the last 25 years, the legal profession has been experimenting to learn whether requiring lawyers to follow detailed rules would improve professional conduct. I describe the effort as an experiment because we so quickly forget that rule-oriented legal ethics are really a recent development.

Most of today’s graduates were born before 1969, the year the ABA published its first Model Code of Professional Responsibility. That code was widely adopted by the states, but it proved so problematic that by 1983, when most of you were at least in high school, the ABA had adopted a new set of standards, the Model Rules of Professional Conduct.

At least two-thirds of lawyers now in practice received their ethics training under these sets of standards, so we tend to think they have governed us forever. A century ago, however, only Alabama had codified even general requirements for lawyer behavior, the “canons” of lawyer ethics. It was not until 1908 that the ABA proposed such “Canons of Ethics” for wider use.

Before that time, and in some states much later, lawyers were licensed based on “I know it when I see it” tests of character. They lost their licenses forever based on standards as vague as “conduct unbecoming a lawyer.”

We changed that approach in 1969 for some good reasons. Unstated standards presuppose there is a universal consensus about appropriate behavior. We are in a period of our nation’s history where that is not so. Also, application of non-reviewable standards can foster prejudices masquerading as principles. Women, members of racial and religious minorities, and defenders of unpopular causes were often victims of that problem.
Yet the period before rule-oriented ethics had a quality that is lost today. ABA Canon 32 states:

No client . . . , however powerful, nor any cause, civil or political, however important, is entitled to receive . . . any lawyer[s] . . . service . . . involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person . . . exercising a public office or private trust, or deception or betrayal of the public. . . . [A]bove all a lawyer will find . . . highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest [person] and as a patriotic and loyal citizen.

My purpose in these remarks is not to call for resistance to the rules of legal ethics. However, if we ignore calls to the traditions of lawyering at its best, we do so at real cost. Ask yourself whether the bar you are entering is more humane and more just than the one that existed before 1970. We certainly had problems then, but think about the viciousness and cost of litigation today. Think about the lack of ability to trust another lawyer’s word—the loss of loyalty many lawyers feel even to others in their own firms. Think about lawyer blindness even to criminal and fraudulent conduct of their clients, particularly clients that pay promptly and pay well.

You have all studied the ABA Code and Model Rules. One does not find there, for the most part, calls to public responsibility—or to loyalty that transcends client service. And one does not find central there a call to the highest standards of personal character.

While it was not a time immune from moral blindness, the pre-code period was a time when individual lawyers took personal pride in their reputations for integrity, not simply in their technical skill. It was a time when the bar was more a community, one that could engage in serious self-evaluation, not merely create ethical standards that look for all the world like a criminal code.

Part of the problem with rule ethics is we tend to think that once we have defined a problem, the solution will come easily. It is important to learn that problems are usually more complex than they seem, and regulatory solutions are likely to miss their target as often as not. Also, Americans—and especially lawyers—tend to be lured to loopholes as moths to a bright light. For example, we say in our standards that lawyers must tell a court about legal precedent contrary to their client’s interest, but I find that many more lawyers can quote the language about when the rule does not apply than when it does.

Ethical rules are often just window dressing we use to pretend we have dealt with a problem. We flatly prohibit “knowingly making a false statement of law or fact,” for example, but we make no pretense of enforcing it with respect to negotiating behavior.
Make no mistake, of course, our “experiment” with rules is likely to be permanent. It should be. At their best, the rules governing lawyers go much deeper than what I have suggested. At their best, they describe a network of shared understandings that permit lawyers to deal with others they do not know, without assuming the worst about them.

It is important that lawyers from this graduating class—from this institution with its historic sense and religious commitment—retain a sense of personal responsibility for, and toughening of, the ethical standards governing our whole profession. Pressures not to do so have never been greater. All over the country today, lawyers are under pressure to affirm and facilitate client misconduct.

In the demise of important savings and loan associations, for example, it is often charged that lawyers assisted dishonest managers in exchange for a piece of the action. While charges are a long way from proof, I am concerned that in many of those cases—as in other cases in which lawyers are accused of falling short—honest lawyers may have been caught in situations where the rules were not helpful. The ABA Model Rules of Professional Conduct, for example, affirmatively prohibit a lawyer from disclosing a client’s intention to commit a major, criminal financial fraud. The bar is only now learning that, in spite of compliance with ABA-approved standards of professional conduct, lawyers may be asked to pay millions of dollars in damages to the victims of their clients’ actions.

The professional liability cases further remind us of another truth. To most lawyers, most of the time, there is little likelihood that their behavior will be scrutinized. Occasionally you may have a case that will attract public attention, but most often, you will labor in obscurity. If fear of prosecution is your only compass, you will surely lose your way.

What can we as modern lawyers do to keep our perspective when decisions are tough and only we will know the choices we have made? I believe a big part of today’s answer should be one prior generations would have recognized. One way the profession kept its bearings in the days before codes and rules was to focus attention on the lawyers who behaved well—those we might call heroes and heroines of the bar.

I am frustrated by my use of the terms hero and heroine, but I was not able to come up with better ones. The counsel to look for heroes sounds anachronistic today; after all, we live in an age largely without heroic figures. If a public official ever makes a mistake, be it a careless remark or worse, we are reminded of it endlessly. That moment tends to be made the defining moment of our potential hero or heroine’s life, and we are encouraged to feel cynical and superior.

It is always easier to see the speck in another’s eye than the log in our own. Professional life is a constant struggle with uncertain facts, mixed motives, and ambiguous law. None of us has much to feel superior about.
The best we have to guide us are not perfect people, but men and women of character, doing their best to live their own lives with integrity.

We cannot shift the responsibility for our own action to such people, but focusing on men and women we admire can give the sterile pages of an ethical code a human face. Asking yourself what these people would do in a given situation—or asking whether you could satisfactorily explain to such a person what you plan to do—can bring a clarity to the right answer that parsing the case law will not.

Who are the heroes and heroines you can turn to? Today, lawyers tend to lack the mentors that they once had—men and women who worked closely with beginning lawyers and affected their personalities and understanding for a lifetime.

If you are struggling with the question of whom to admire, you might begin by asking whose example made you want to become a lawyer. In my case it was clearly my dad, a man who successfully practiced law in downstate Illinois yet who took important time away from his practice to give of himself to community service at a time when our city desperately needed honest leadership.

This morning I had the chance to spend some time with the man who gave me my first job in law teaching. It was a critical time of career decision for me, and he was someone whose own character and enthusiasm showed that teaching could be a career with satisfaction and value. You will understand what I mean because he has continued to demonstrate those qualities in all of the subsequent roles he has filled. Many of you know him much better than I; he is Elder Dallin Oaks.

Whoever your heroes or heroines may be, try to remind yourself regularly what drew you to them in the first place. And keep your eyes out for others to admire and emulate. Heroes of your 30s and 40s may be different from those in your 20s; don’t freeze your ideals at one moment in your life. If you keep this focus, you just may find that even a profession now approaching a million practitioners can be an enriching community.

Follow the ethical rules—better yet, help improve them. But recognize that it is still true that lawyers are hired as much for the wisdom they are thought to have as for their technical skills—for who they are as much as for what they know.

Like it or not—resist it or not—in less time than you can imagine, you will be heroes and heroines for the lawyers who follow you. Some of you already are today. Your conduct—your life—is something that will affect for good or ill the way law is practiced in future generations. Your influence will exceed your knowing. Resolve to make yours an influence of which you and your family—and this law school—can be proud.
This J. Reuben Clark Law School convocation address was given at the Provo Tabernacle on April 24, 1992. Reprinted from the Clark Memorandum, fall 1992, 23–25.

Preserving Religious Freedom

Dallin H. Oaks

I am here to speak of the state of religious freedom in the United States, why it seems to be diminishing, and what can be done about it.

Although I will refer briefly to some implications of the Proposition 8 controversy and its constitutional arguments, I am not here to participate in the debate on the desirability or effects of same-sex marriage. I am here to contend for religious freedom. I am here to describe fundamental principles that I hope will be meaningful for decades to come.

I believe you will find no unique Mormon doctrine in what I say. My sources are law and secular history. I will quote the words of Catholic, Evangelical Christian, and Jewish leaders, among others. I am convinced that on this issue, what all believers have in common is far more important than their differences. We must unite to strengthen our freedom to teach and exercise what we have in common as well as our very real differences in religious doctrine.

I. I begin with a truth that is increasingly challenged: religious teachings and religious organizations are valuable and important to our free society and therefore deserving of special legal protection. I will cite a few examples.

Our nation’s inimitable private sector of charitable works originated and is still furthered most significantly by religious impulses and religious organizations. I refer to such charities as schools and higher education, hospitals, and care for the poor, where religiously motivated persons contribute personal service and financial support of great value to our citizens. Our nation’s incredible generosity in many forms of aid to other nations and their peoples are manifestations of our common religious faith that all peoples are children of God. Religious beliefs instill patterns of altruistic behavior.
Many of the great moral advances in Western society have been motivated by religious principles and moved through the public square by pulpit preaching. The abolition of the slave trade in England and the Emancipation Proclamation in the United States are notable illustrations. These revolutionary steps were not motivated and moved by secular ethics or by coalitions of persons who believed in moral relativism. They were driven primarily by individuals who had a clear vision of what was morally right and what was morally wrong. In our time, the Civil Rights movement was, of course, inspired and furthered by religious leaders.

Religion also strengthens our nation in the matter of honesty and integrity. Modern science and technology have given us remarkable devices, but we are frequently reminded that their operation in our economic system and the resulting prosperity of our nation rest on the honesty of the men and women who use them. Americans' honesty is also reflected in our public servants' remarkable resistance to official corruption. These standards and practices of honesty and integrity rest, ultimately, on our ideas of right and wrong, which, for most of us, are grounded in principles of religion and the teachings of religious leaders.

Our society is not held together just by law and its enforcement but, most important, by voluntary obedience to the unenforceable and by widespread adherence to unwritten norms of right or righteous behavior. Religious belief in right and wrong is a vital influence to advocate and persuade such voluntary compliance by a large proportion of our citizens. Others, of course, have a moral compass not expressly grounded in religion. John Adams relied on all of these when he wisely observed that we have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.

Even the agnostic Oxford-educated British journalist Melanie Phillips admitted that one does not have to be a religious believer to grasp that the core values of Western Civilization are grounded in religion, and to be concerned that the erosion of religious observance therefore undermines those values and the "secular ideas" they reflect.

My final example of the importance of religion in our country concerns the origin of the Constitution. Its formation over 200 years ago was made possible by religious principles of human worth and dignity, and only those principles in the hearts of a majority of our diverse population can sustain that Constitution today. I submit that religious values and political realities are so interlinked in the origin and perpetuation of this
nation that we cannot lose the influence of religion in our public life without seriously jeopardizing our freedoms.

Unfortunately, the extent and nature of religious devotion in this nation is changing. Belief in a personal God who defines right and wrong is challenged by many. “By some counts,” an article in *The Economist* declares, “there are at least 500 [million] declared non-believers in the world—enough to make atheism the fourth-biggest religion.” Others who do not consider themselves atheists also reject the idea of a supernatural power but affirm the existence of some impersonal force and the value of compassion and love and justice.

Organized religion is surely on the decline. Last year’s Pew Forum Study on Religion and Public Life found that the percentage of young adults affiliated with a particular religious faith is declining significantly. Scholars Robert Putnam and David Campbell have concluded that “the prospects for religious observance in the coming decades are substantially diminished.”

Whatever the extent of formal religious affiliation, I believe that the tide of public opinion in favor of religion is receding. A writer for the *Christian Science Monitor* predicts that the coming century will be “very secular and religiously antagonistic,” with intolerance of Christianity “ris[ing] to levels many of us have not believed possible in our lifetimes.”

A visible measure of the decline of religion in our public life is the diminished mention of religious faith and references to God in our public discourse. One has only to compare the current rhetoric with the major addresses of our political leaders in the 18th, 19th, and the first part of the 20th centuries. Similarly, compare what Lincoln said about God and religious practices like prayer on key occasions with the edited versions of his remarks quoted in current history books. It is easy to believe that there is an informal conspiracy of correctness to scrub out references to God and the influence of religion in the founding and preservation of our nation.

The impact of this on the rising generation is detailed in an Oxford University Press book, *Souls in Transition*. There we read:

Most of the dynamics of emerging adult culture and life in the United States today seem to have a tendency to reduce the appeal and importance of religious faith and practice. . . . Religion for the most part is just something in the background.

Granted that reduced religious affiliation puts religion “in the background,” the effect of that on the religious beliefs of young adults is still in controversy. The negative view appears in the Oxford book, whose author concludes that this age group of 18 to 23 had difficulty seeing the possible distinction between, in this case, objective moral truth and relative human invention. . . . [T]hey simply cannot, for whatever reason, believe in—or sometimes even conceive of—a given, objective
truth, fact, reality, or nature of the world that is independent of their subjective self-experience.  

On the positive side, the Pew Forum study reported that over three-quarters of young adults believe that there are absolute standards of right and wrong. For reasons explained later, I believe this finding is very positive for the future of religious freedom.

II.

Before reviewing the effects of the decline of religion in our public life, I will speak briefly of the free exercise of religion. The first provision in the Bill of Rights of the United States Constitution is what many believe to be its most important guarantee. It reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

The prohibition against “an establishment of religion” was intended to separate churches and government, to forbid a national church of the kind found in Europe. In the interest of time, I will say no more about the establishment of religion but only concentrate on the First Amendment’s direction that the United States shall have “no law . . . prohibiting the free exercise [of religion].” For almost a century this guarantee of religious freedom has been understood as a limitation on state as well as federal power.

The guarantee of religious freedom is one of the supremely important founding principles in the United States Constitution, and it is reflected in the constitutions of all 50 of our states. As noted by many, the guarantee’s “pre-eminent place” as the first expression in the First Amendment to the United States Constitution identifies freedom of religion as “a cornerstone of American democracy.” The American colonies were originally settled by people who, for the most part, came to this continent for the freedom to practice their religious faith without persecution, and their successors deliberately placed religious freedom first in the nation’s Bill of Rights.

So it is that our federal law formally declares: “The right to freedom of religion undergirds the very origin and existence of the United States.” So it is, I maintain, that in our nation’s founding and in our constitutional order, religious freedom and its associated First Amendment freedoms of speech and the press are the motivating and dominating civil liberties and civil rights.

III.

Notwithstanding its special place in our Constitution, a number of trends are eroding both the protections the free exercise clause was intended to provide and the public esteem this fundamental value has had during most of our history. For some time we have been experiencing laws
and official actions that impinge on religious freedom. In a few moments I will give illustrations, but first I offer some generalizations.

The free “exercise” of religion obviously involves both (1) the right to choose religious beliefs and affiliations and (2) the right to “exercise” or practice those beliefs without government restraint. However, in a nation with citizens of many different religious beliefs, the right of some to act upon their religious beliefs must be qualified by the government’s responsibility to further compelling government interests, such as the health and safety of all. Otherwise, for example, the government could not protect its citizens’ persons or properties from neighbors whose religious principles compelled practices that threatened others’ health or personal security. Government authorities have wrestled with this tension for many years, so we have considerable experience in working out the necessary accommodations.

The inherent conflict between the precious religious freedom of the people and the legitimate regulatory responsibilities of the government is the central issue of religious freedom. The problems are not simple, and over the years the United States Supreme Court, which has the ultimate responsibility of interpreting the meaning of the lofty and general provisions of the Constitution, has struggled to identify principles that can guide its decisions when a law or regulation is claimed to violate someone’s free exercise of religion. As would be expected, many of these battles have involved government efforts to restrict the religious practices of small groups like Jehovah’s Witnesses and Mormons. Recent experience suggests adding the example of Muslims.

Much of the controversy in recent years has focused on the extent to which state laws that are neutral and generally applicable can override the strong protections contained in the free exercise clause of the United States Constitution. As noted hereafter, in the 1990s the Supreme Court ruled that such state laws could prevail. Fortunately, in a stunning demonstration of the resilience of the guarantee of free exercise of religion, over half of the states have passed legislation or interpreted their state constitutions to preserve a higher standard for protecting religious freedom. Only a handful have followed the Supreme Court’s approach that the federal free exercise protection must bow to state laws that are neutral as to religion.¹⁷

Another important current debate over religious freedom concerns whether the guarantee of free exercise of religion gives one who acts on religious grounds greater protection against government prohibitions than are already guaranteed to everyone by other provisions of the Constitution, like freedom of speech. I, of course, maintain that unless religious freedom has a unique position, we erase the significance of this separate provision in the First Amendment. Treating actions based on religious belief the same as actions based on other systems of belief is not enough to satisfy the special guarantee of religious freedom in the United States
Constitution. Religion must preserve its preferred status in our pluralistic society in order to make its unique contribution—its recognition and commitment to values that transcend the secular world.

Over a quarter century ago I reviewed the history and predicted the future of church/state law in a lecture at DePaul University in Chicago. I took sad notice of the fact that the United States Supreme Court had diminished the significance of free exercise by expanding the definition of religion to include what the Court called “religions” not based on belief in God. I wrote:

The problem with a definition of religion that includes almost everything is that the practical effect of inclusion comes to mean almost nothing. Free exercise protections become diluted as their scope becomes more diffuse. When religion has no more right to free exercise than irreligion or any other secular philosophy, the whole newly expanded category of “religion” is likely to diminish in significance.

Unfortunately, the tide of thought and precedent seems contrary to this position. While I have no concern with expanding comparable protections to non-religious belief systems, as is done in international norms that protect freedom of religion or belief, I object to doing so by reinterpreting the First Amendment guarantee of free exercise of religion.

It was apparent 25 years ago, and it is undeniable today, that the significance of religious freedom is diminishing. Five years after I gave my DePaul lecture, the United States Supreme Court issued its most important free exercise decision in many years. In Employment Division v. Smith, the Court significantly narrowed the traditional protection of religion by holding that the guarantee of free exercise did not prevent government from interfering with religious activities when it did so by neutral, generally applicable laws. This ruling removed religious activities from their sanctuary—the preferred position the First Amendment had given them.

Now, over 20 years later, some are contending that a religious message is just another message in a world full of messages, not something to be given unique or special protection. One author takes the extreme position that religious speech should have even less protection. In Freedom from Religion, published by the Oxford University Press, a law professor makes this three-step argument:

1. In many nations “society is at risk from religious extremism.”
2. “A follower is far more likely to act on the words of a religious authority figure than other speakers.”
3. Therefore, “in some cases, society and government should view religious speech as inherently less protected than secular political speech because of its extraordinary ability to influence the listener.”

The professor then offers this shocking conclusion:
We must begin to consider the possibility that religious speech can no longer hide behind the shield of freedom of expression. Contemporary religious extremism leaves decision-makers and the public alike with no choice but to re-contour constitutionally granted rights as they pertain to religion and speech.

I believe most thoughtful people would reject that extreme conclusion. All should realize how easy it would be to gradually manipulate the definition of “religious extremism” to suppress any unpopular religion or any unpopular preaching based on religious doctrine. In addition, I hope most would see that it is manifestly unfair and short sighted to threaten religious freedom by focusing on some undoubted abuses without crediting religion’s many benefits. I am grateful that there are responsible voices and evidence affirming the vital importance of religious freedom worldwide.

When Cardinal Francis George, then president of the U.S. Conference of Catholic Bishops, spoke at Brigham Young University last year, he referred to “threats to religious freedom in America that are new to our history and to our tradition.” He gave two examples: one concerning threats to current religious-based exemptions from participating in abortions and the other “the development of gay rights and the call for same-sex marriage.” He spoke of possible government punishments for churches or religious leaders whose doctrines lead them to refuse to participate in government-sponsored programs.

Along with many others, I see a serious threat to the freedom of religion in the current assertion of a “civil right” of homosexuals to be free from religious preaching against their relationships. Religious leaders of various denominations affirm and preach that sexual relations should only occur between a man and a woman joined together in marriage. One would think that the preaching of such a doctrinal belief would be protected by the constitutional guarantee of the free exercise of religion, to say nothing of the guarantee of free speech. However, we are beginning to see worldwide indications that this may not be so.

Religious preaching of the wrongfulness of homosexual relations is beginning to be threatened with criminal prosecution or actually prosecuted or made the subject of civil penalties. Canada has been especially aggressive, charging numerous religious authorities and persons of faith with violating its human rights law by “impacting an individual’s sense of self-worth and acceptance.” Other countries where this has occurred include Sweden, the United Kingdom, and Singapore.

I do not know enough to comment on whether these suppressions of religious speech violate the laws of other countries, but I do know something of religious freedom in the United States, and I am alarmed at what is reported to be happening here.
In New Mexico, the state’s Human Rights Commission held that a photographer who had declined on religious grounds to photograph a same-sex commitment ceremony had engaged in impermissible conduct and must pay over $6,000 attorney’s fees to the same-sex couple. A state judge upheld the order to pay.31 In New Jersey the United Methodist Church was investigated and penalized under state antidiscrimination law for denying same-sex couples access to a church-owned pavilion for their civil-union ceremonies. A federal court refused to give relief from the state penalties.32 Professors at state universities in Illinois and Wisconsin were fired or disciplined for expressing personal convictions that homosexual behavior is sinful.33 Candidates for master’s degrees in counseling in Georgia and Michigan universities were penalized or dismissed from programs for their religious views about the wrongfulness of homosexual relations.34 A Los Angeles policeman claimed he was demoted after he spoke against the wrongfulness of homosexual conduct in the church where he is a lay pastor.35 The Catholic Church’s difficulties with adoption services and the Boy Scouts’ challenges in various locations are too well known to require further comment.

We must also be concerned at recent official expressions that would narrow the field of activities protected by the free exercise of religion. Thus, when President Barack Obama used the words freedom of worship instead of free exercise of religion, a writer for the Becket Fund for Religious Liberty sounded this warning:

To anyone who closely follows prominent discussion of religious freedom in the diplomatic and political arena, this linguistic shift is troubling.

The reason is simple. Any person of faith knows that religious exercise is about a lot more than freedom of worship. It’s about the right to dress according to one’s religious dictates, to preach openly, to evangelize, to engage in the public square.36

Fortunately, more recent expressions by President Obama and his state department have used the traditional references to the right to practice religious faith.37

Even more alarming are recent evidences of a narrowing definition of religious expression and an expanding definition of the so-called civil rights of “dignity,” “autonomy,” and “self-fulfillment” of persons offended by religious preaching. Thus, President Obama’s head of the Equal Employment Opportunity Commission, Chai Feldblum, recently framed the issue in terms of a “sexual-orientation liberty” that is such a fundamental right that it should prevail over a competing “religious-belief liberty.”38 Such a radical assertion should not escape analysis. It has three elements. First, the freedom of religion—an express provision of the Bill of Rights that has been recognized as a fundamental right for over 200 years—is recast as a simple “liberty” that ranks among many other liberties. Second,
Feldblum asserts that sexual orientation is now to be defined as a “sexual liberty” that has the status of a fundamental right. Finally, it is claimed that “the best framework for dealing with this conflict is to analyze religious people’s claims as ‘belief liberty interest’ not as free exercise claims under the First Amendment.” The conclusion: religious expressions are to be overridden by the fundamental right to “sexual liberty.”

It is well to remember James Madison’s warning: “There are more instances of the abridgement of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.”

We are beginning to experience the expansion of rhetoric and remedies that seem likely to be used to chill or even to penalize religious expression. Like the professors in Illinois and Wisconsin and the lay clergyman in California, individuals of faith are experiencing real retribution merely because they seek to express their sincerely held religious beliefs.

All of this shows an alarming trajectory of events pointing toward constraining the freedom of religious speech by forcing it to give way to the “rights” of those offended by such speech. If that happens, we will have criminal prosecution of those whose religious doctrines or speech offend those whose public influence and political power establish them as an officially protected class.

Closely related to the danger of criminal prosecutions are the current arguments seeking to brand religious beliefs as an unacceptable basis for citizen action or even for argument in the public square. For an example of this we need go no further than the district court’s opinion in the Proposition 8 case, Perry v. Schwarzenegger.

A few generations ago the idea that religious organizations and religious persons would be unwelcome in the public square would have been unthinkable. Now such arguments are prominent enough to cause serious concern. It is not difficult to see a conscious strategy to neutralize the influence of religion and churches and religious motivations on any issues that could be characterized as public policy. As noted by John A. Howard of the Howard Center for Family, Religion, and Society, the proponents of banishment “have developed great skills in demonizing those who disagree with them, turning their opponents into objects of fear, hatred and scorn.” Legal commentator Hugh Hewitt described the current circumstance this way:

There is a growing anti-religious bigotry in the United States. . . . For three decades people of faith have watched a systematic and very effective effort waged in the courts and the media to drive them from the public square and to delegitimize their participation in politics as somehow threatening.
The forces that would intimidate persons with religious-based points of view from influencing or making the laws of their state or nation should answer this question: How would the great movements toward social justice cited earlier have been advocated and pressed toward adoption if their religious proponents had been banned from the public square by insistence that private religious or moral positions were not a rational basis for public discourse?

We have already seen a significant deterioration in the legal position of the family, a key institution defined by religious doctrine. In his essay “The Judicial Assault on the Family,” Allan W. Carlson examines the “formal influence of Christianity” on American family law, citing many state and United States Supreme Court decisions through the 1950s affirming the fundamental nature of the family. He then reviews a series of decisions beginning in the mid-1960s that gave what he calls “an alternate vision of family life and family law.” For example, he quotes a 1972 decision in which the Court characterized marriage as “an association of two individuals each with a separate intellectual and emotional makeup.” “Through these words,” Carlson concludes, “the U.S. Supreme Court essentially enlisted in the Sexual Revolution.” Over these same years, “the federal courts also radically altered the meaning of parenthood.”

I quote Carlson again:

The broad trend has been from a view of marriage as a social institution with binding claims of its own and with prescribed rules for men and women into a free association, easily entered and easily broken, with a focus on the needs of individuals. However, the ironical result of so expanding the “freedom to marry” has been to enhance the authority and sway of government. . . .

. . . As the American founders understood, marriage and the autonomous family were the true bulwarks of liberty, for they were the principal rivals to the state. . . . And surely, as the American judiciary has deconstructed marriage and the family over the last 40 years, the result has been the growth of government.

All of this has culminated in attempts to redefine marriage or to urge its complete abolition. The debate continues in the press and elsewhere.

IV.

What has caused the current public and legal climate of mounting threats to religious freedom? I believe the cause is not legal but cultural and religious. I believe the diminished value being attached to religious freedom stems from the ascendancy of moral relativism.

More and more of our citizens support the idea that all authority and all rules of behavior are man-made and can be accepted or rejected as one chooses. Each person is free to decide for himself or herself what is right
and wrong. Our children face the challenge of living in an increasingly godless and amoral society.

I have neither the time nor the expertise to define the various aspects of moral relativism or the extent to which they have entered the culture or consciousness of our nation and its people. I can only rely on respected observers whose descriptions feel right to me.

In his book Modern Times, the British author Paul Johnson writes:

At the beginning of the 1920s the belief began to circulate, for the first time at a popular level, that there were no longer any absolutes: of time and space, of good and evil, of knowledge, above all of value.52

On this side of the Atlantic, Gertrude Himmelfarb describes how the virtues associated with good and evil have been degraded into relative values.53

A variety of observers have described the consequences of moral relativism. All of them affirm the existence of God as the Ultimate Lawgiver and the source of the absolute truth that distinguishes good from evil.

Rabbi Harold Kushner speaks of God-given “absolute standards of good and evil built into the human soul.”54 He writes:

As I see it, there are two possibilities. Either you affirm the existence of a God who stands for morality and makes moral demands of us, who built a law of truthfulness into His world even as He built in a law of gravity. . . . Or else you give everyone the right to decide what is good and what is evil by his or her own lights, balancing the voice of one’s conscience against the voice of temptation and need. . . . 55

Rabbi Kushner also observes that a philosophy that rejects the idea of absolute right and wrong inevitably leads to a deadening of conscience:

Without God, it would be a world where no one was outraged by crime or cruelty, and no one was inspired to put an end to them. . . . [T]here would be no more inspiring goal for our lives than self-interest. . . . Neither room nor reason for tenderness, generosity, helpfulness.56

Dr. Timothy Keller, a much-published pastor in New York, asks:

What happens if you eliminate anything from the Bible that offends your sensibility and crosses your will? If you pick and choose what you want to believe and reject the rest, how will you ever have a God who can contradict you? You won’t! . . .

Though we have been taught that all moral values are relative to individuals and cultures, we can’t live like that. In actual practice we inevitably treat some principles as absolute standards by which we judge the behavior of those who don’t share our values. . . . People who laugh at the claim that there is a transcendent moral order do not think that racial genocide is just impractical or self-defeating, but that it is wrong. . . .57
My esteemed fellow apostle, Elder Neal A. Maxwell, asked: “[H]ow can a society set priorities if there are no basic standards? Are we to make our calculations using only the arithmetic of appetite?”

He made this practical observation:

Decrease the belief in God, and you increase the numbers of those who wish to play at being God by being “society’s supervisors.” Such “supervisors” deny the existence of divine standards, but are very serious about imposing their own standards on society.

Elder Maxwell also observed that we increase the power of governments when people do not believe in absolute truths and in a God who will hold them and their government leaders accountable.

Moral relativism leads to a loss of respect for religion and even to anger against religion and the guilt that is seen to flow from it. As it diminishes religion, it encourages the proliferation of rights that claim ascendency over the free exercise of religion.

The founders who established this nation believed in God and in the existence of moral absolutes—right and wrong—established by this Ultimate Lawgiver. The Constitution they established assumed and relied on morality in the actions of its citizens. Where did that morality come from, and how was it to be retained? Belief in God and the consequent reality of right and wrong was taught by religious leaders in churches and synagogues, and the founders gave us the First Amendment to preserve that foundation for the Constitution.

The preservation of religious freedom in our nation depends on the value we attach to the teachings of right and wrong in our churches, synagogues, and mosques. It is faith in God—however defined—that translates these religious teachings into the moral behavior that benefits the nation. As fewer and fewer citizens believe in God and in the existence of the moral absolutes taught by religious leaders, the importance of religious freedom to the totality of our citizens is diminished. We stand to lose that freedom if many believe that religious leaders, who preach right and wrong, make no unique contribution to society and therefore should have no special legal protection.

V. Conclusion

I have made four major points:

1. Religious teachings and religious organizations are valuable and important to our free society and therefore deserving of their special legal protection.
2. Religious freedom undergirds the origin and existence of this country and is the dominating civil liberty.
3. The guarantee of free exercise of religion is weakening in its effects and in public esteem.

4. This weakening is attributable to the ascendancy of moral relativism.

We must never see the day when the public square is not open to religious ideas and religious persons. The religious community must unite to be sure we are not coerced or deterred into silence by the kinds of intimidation or threatening rhetoric that are being experienced. Whether or not such actions are antireligious, they are surely antidemocratic and should be condemned by all who are interested in democratic government. There should be room for all good-faith views in the public square, be they secular, religious, or a mixture of the two. When expressed sincerely and without sanctimoniousness, the religious voice adds much to the text and tenor of public debate. As Elder Quentin L. Cook has said:

In our increasingly unrighteous world, it is essential that values based on religious belief be part of the public discourse. Moral positions informed by a religious conscience must be accorded equal access to the public square.\(^6\)

Religious persons should insist on their constitutional right and duty to exercise their religion, to vote their consciences on public issues, and to participate in elections and in debates in the public square and the halls of justice. These are the rights of all citizens, and they are also the rights of religious leaders and religious organizations. In this circumstance, it is imperative that those of us who believe in God and in the reality of right and wrong unite more effectively to protect our religious freedom to preach and practice our faith in God and the principles of right and wrong He has established.

This proposal that we unite more effectively does not require any examination of the doctrinal differences among Christians, Jews, and Muslims—or even an identification of the many common elements of our beliefs. All that is necessary for unity and a broad coalition along the lines I am suggesting is a common belief that there is a right and wrong in human behavior that has been established by a Supreme Being. All who believe in that fundamental should unite more effectively to preserve and strengthen the freedom to advocate and practice our religious beliefs, whatever they are. We must walk together for a ways on the same path in order to secure our freedom to pursue our separate ways when that is necessary according to our own beliefs.

I am not proposing a resurrection of the so-called “moral majority,” which was identified with a particular religious group and a particular political party. Nor am I proposing an alliance or identification with any current political movement, tea party or other. I speak for a broader principle, nonpartisan and, in its own focused objective, ecumenical. I speak
for what Cardinal Francis George described in his address at Brigham Young University just a year ago. His title was “Catholics and Latter-day Saints: Partners in the Defense of Religious Freedom.” He proposed 

that Catholics and Mormons stand with one another and with other defenders of conscience, and that we can and should stand as one in the defense of religious liberty. In the coming years, interreligious coalitions formed to defend the rights of conscience for individuals and for religious institutions should become a vital bulwark against the tide of forces at work in our government and society to reduce religion to a purely private reality. At stake is whether or not the religious voice will maintain its right to be heard in the public square.62

We join in that call for religious coalitions to protect religious freedom. In doing so we recall the wisdom of Benjamin Franklin. At another critical time in our nation’s history, he declared: “We must all hang together, or assuredly we shall all hang separately.”63

In conclusion, as an apostle of the Lord Jesus Christ, I affirm His love for all people on this earth, and I affirm the importance His followers must attach to religious freedom for all people—whatever their beliefs. I pray for the blessings of God upon our cooperative efforts to preserve that freedom.

This address was given at Chapman University School of Law in Orange, California, on February 4, 2011.

Dallin H. Oaks received his JD from the University of Chicago in 1957 and clerked for Chief Justice Earl Warren of the U.S. Supreme Court 1957–1958. He served as president of Brigham Young University 1971–1980 and as a justice on the Utah Supreme Court 1980–1984. He is currently a member of the Quorum of the Twelve Apostles.

Notes

5. See PUTNAM & CAMPBELL, supra note 3, at Chs. 3–4.


13. Smith, supra note 12 at 46.


23. Id. at 30.

24. Id. at 31.

25. Id. at 31.

26. Id. at 39.


35 (b.c. Human Rights Trib. 2002); see e.g., Marshall Breger, Gay Activists vs. the First Amendment, Moment, Jan./Feb. 2010, at 16.


39. Id. See also Chai Feldblum, Moral Conflict and Liberty: Gay Rights and Religion, 72 Brooklyn L. Rev. 61 (2006).


45. See, e.g., De Burgh v. De Burgh, 250 P.2d 598 (Cal. 1957), quoted in id., at 59.

46. Carlson, supra note 44, at 60.


49. Id. at 64.

50. Id. at 62, 66-67.


52. Paul Johnson, Modern Times: The World from the Twenties to the Nineties (rev. ed., 1991), at 4. Declaring that secular ideology came to replace religious belief, Johnson charges moral relativism with being one of the underlying evils that made possible the catastrophic failures and tragedies of the century. Id. at 48, 784.


55. Id. at 65–66.

56. Id. at 208–09.


59. Id. at 53.

60. See Maxwell, supra note 58, at 52–53.

61. Cook, supra note 1, at 29.


63. At the signing of the Declaration of Independence, July 4, 1776.
A Law Upon Which All Blessings Are Predicated

David A. Thomas

It is a privilege to stand before you at this podium today. This is not an occasion that I anticipated or aspired to, but it is indeed a privilege, and I welcome the opportunity to share my testimony of the Savior and some things I have learned about being His disciple.

On April 8, 2008, I noted, as I always do on that date, the anniversary of my appointment as a faculty member here at BYU, beginning 34 years ago on April 8, 1974. I was not among the original group of faculty hired for what was then the new J. Reuben Clark Law School, but I was the first of the “non-originals” and now, with the passage of time, have become the longest continuously serving member of the Law School faculty. I am profoundly grateful for the many students and colleagues—both at the Law School and the university generally—who have enriched my life.

I first became a student of the law at Duke University School of Law in September 1967—nearly 41 years ago. Only four years earlier I had received my patriarchal blessing, which included the admonition “Study the laws of the temporal affairs of men as well as of their spiritual affairs.” I began teaching here at the BYU Law School less than two years after completing law studies at Duke, and when I reread this patriarchal blessing a few years ago, I realized that most of my legal career had indeed centered on the “study” of the law.

My remarks today will touch on the laws of our temporal affairs as well as on the laws of our spiritual affairs. Our scriptures contain dozens of references to both temporal and spiritual laws. The Lord declared “that all things unto me are spiritual, and not at any time have I given you a law which was temporal” (D&C 29:34). Joseph Smith was urged by the Lord “to
obtain a knowledge of history, and of countries, and of kingdoms, of laws of God and man, and all this for the salvation of Zion” (D&C 93:53). And to all of us the Lord commanded: “Let no man break the laws of the land, for he that keepeth the laws of God hath no need to break the laws of the land” (D&C 58:21). And thus we proclaim in the 12th article of faith our commitment to “obeying, honoring, and sustaining the law.”

The great prophet Lehi taught us that without the law of God there would be no sin, righteousness, happiness, punishment, or misery: “And if these things are not there is no God” (2 Nephi 2:13). Alma affirmed this by teaching:

There is a law given, and a punishment affixed, and a repentance granted; which repentance, mercy claimeth; otherwise, justice claimeth the creature and executeth the law, and the law inflicteth the punishment; if not so, the works of justice would be destroyed, and God would cease to be God. [Alma 42:22]

Whatever else we learn from these scriptures, we learn that one of the important godly attributes is adherence to law.

However, it is important to realize that the law is not only for inflicting punishment. One of my favorite scriptures is the passage that teaches us how the law is also the gateway to blessings:

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. [D&C 130:20–21]

One of the really important things we should think about each day is the blessings we have received and whether those blessings seem to be coming to us in response to our obedience to laws and commandments of the Lord. We should always remember to express our gratitude for these blessings. I think this is helpful to think about, even though, as King Benjamin put it, we will always be “unprofitable servants” (Mosiah 2:21)—that is, always in debt to our Father in Heaven.

I don’t know that there is a list of specific laws with specific blessings attached to them, but as we go through life we come to understand some of the important cause-and-effect relationships between our conduct and our blessings. Let me mention a few examples that are important to me.

Liberty and the Rule of Law

Each year at our Law School convocation in the Provo Tabernacle, we conclude our services by all standing and singing “America the Beautiful.” The sights and sounds of that experience have always stirred me, even after participating in this for over 30 years. One of the verses teaches an important law upon which blessings are predicated:
America! America!
God mend thine ev’ry flaw,
Confirm thy soul in self-control,
Thy liberty in law.’

“Thy liberty in law” is a phrase that we might also describe as “the rule of law.” After a career of observation and study, it is clear to me that all of our human rights and civil liberties, indeed every blessing emanating from this promised land, are predicated on our success in “obeying, honoring, and sustaining the law,” as we declare in our 12th article of faith. In those nations where the commitment to rule of law is weakest, the suffering of the people is the deepest. Strengthening the commitment to rule of law is not only a national or community undertaking but also a challenge we all face individually. We do not disobey or ignore or flaunt our laws without weakening the fabric of our society. If our laws are not wise, we have well-known processes for addressing those flaws. One of those processes is wise participation in our electoral events. Thus King Mosiah taught:

Therefore, choose you by the voice of this people, judges, that ye may be judged according to the laws which have been given you by our fathers, which are correct, and which were given them by the hand of the Lord.

Now it is not common that the voice of the people desireth anything contrary to that which is right; but it is common for the lesser part of the people to desire that which is not right; therefore this shall ye observe and make it your law—to do your business by the voice of the people.

And if the time comes that the voice of the people doth choose iniquity, then is the time that the judgments of God will come upon you. [Mosiah 29:25–27]

Blessings Predicated on Health Laws

Another law upon which important blessings are predicated is found in section 89 of the Doctrine and Covenants, familiar to us as the Word of Wisdom. This revelation “show[s] forth the order and will of God in the temporal salvation of all saints in the last days” (D&C 89:2). It tells us things to avoid and things to do. Then it states what almost sounds like a legal principle:

And all saints who remember to keep and do these sayings, walking in obedience to the commandments, shall receive health in their navel and marrow to their bones;
And shall find wisdom and great treasures of knowledge, even hidden treasures;
And shall run and not be weary, and shall walk and not faint.
And I, the Lord, give unto them a promise, that the destroying angel shall pass by them, as the children of Israel, and not slay them. Amen. [D&C 89:18–21]
Everywhere we go we see the negative and positive consequences of this law on the physical condition of our people. Less visible, but more important, is the effect of this law on the spiritual health of the Saints. Our obedience to this law has much to do with whether we are inviting the Spirit into our lives or leading lives that are not welcoming to the Spirit.

Somewhat related to this law are three minor laws I learned about when I was required to begin military service midway through law school. When I arrived in Vietnam on August 15, 1969, I was assigned to the army’s First Infantry Division. Because it was too dangerous to travel on the ground, I was told to get in a helicopter.

The helicopter was what they called a Huey. A Huey had eight campstool-like canvas seats for passengers like myself. Four of the seats faced forward, and two on each side faced out to the sides. These Hueys had a machine gun mounted on each side. The side doors, like doors on a van, were pulled all the way back so the machine gunners could operate their guns if needed.

I took my place on one of the side seats, facing out to the side with a completely clear and open view because the side door had been pulled all the way back. I took my seat with my M16 automatic rifle in one hand and my steel helmet in the other arm, looking forward to my first ride in a Huey helicopter. In a great roar of its engine and the rush of wind from its rotor blades, the chopper lifted off, rising straight in the air for about two hundred feet. Then, as it prepared to turn in the direction of where it was taking me, it leaned over, or banked steeply, to my side, so that I was looking almost straight down out of my open door.

At that moment I realized (1) that I had forgotten to fasten my seat belt and (2) that both my hands were full of important things that I did not want to drop out of the helicopter: my rifle and my helmet. Then realization number three happened. I started to slide out of my seat and drop out of the turning helicopter.

What happened next? Just before I fell from the helicopter, my feet discovered that each of these little seats had two little, straight, aluminum legs. My left foot found one of these, and I wrapped my boot tightly around it just as I was about to fall, and I managed to hold on until the helicopter straightened out. You will probably not be surprised to learn that I now always fasten my seat belt when I drive.

And it was on this occasion that I learned some new things about the law of unintended consequences, about Murphy’s Law (if anything can go wrong, it will), and about the law of gravity.

Blessings Predicated on the Law of Obedience

Indeed, obedience is its own law. Pioneer wagon tracks exemplify to me that principle. In the summer of 1847, enduring tracks were first made
by the creaking wagons and the dusty, weary members of the pioneer company of Latter-day Saints blazing the trail to the Salt Lake Valley. The tracks are found in a remote corner of southwestern Wyoming, away from human activity. It was at this spot that Brigham Young fell seriously ill with fever. Over the next 21 years, until 1868, tens of thousands of wagon and handcart wheels and pioneer feet—adult and child—wore down these tracks. Now, over 160 years after that first pioneer wagon train, in places the vegetation still will not grow back and the tracks are still discernible. These faithful emigrants, these “blessed, honored Pioneer[s],” symbolize a commitment to obedience that must forever remain an example to us.

Among those many thousands of pioneers were the great-great-grandparents of my wife, Paula. Hans and Maren Rasmussen were prosperous farmers when they accepted the restored gospel in Denmark. They responded eagerly and obediently to the call to come to Zion. After selling their farm, they paid their tithing, made a substantial contribution to the Perpetual Emigration Fund, and then equipped and funded themselves and about 30 other Danish Saints for the journey to Salt Lake City. With a covered wagon, they joined one of the two wagon trains accompanying the ill-fated Willie and Martin Handcart Companies. But they had started their journey too late in the summer of 1856. Among their several children were two-year-old twin girls. Soon after they got started, one of these little girls, named Christina—and known as Stina—came down with a simple childhood infection. She was unable to be treated on the trail and died in June 1856. As if this tragedy were not enough, three months later they were caught in the early and ferocious snowstorms and windstorms that caused so much terrible suffering for all in the Willie and Martin Companies. They also lost almost all of their goods.

Shortly after arriving in Salt Lake City, the Rasmussens were called to go south and help settle the pioneer community of Ephraim. Soon thereafter they were sent further south to help settle the community of Richfield, where they lived in a dugout. A year later they were sent back to Ephraim.

Here Hans and Maren Rasmussen established their home by digging a dugout to which was added a two-room adobe house later and which was the home where this onetime rich young Danish convert couple spent the remainder of their lives. Here they raised their family, and though they never enjoyed even the luxury of a cookstove, they often gave expression to their joy of having been found worthy to make these sacrifices and to live among the Saints of latter days. They often said they would gladly do it all over again if necessary to enjoy the blessings of their deep testimony of the gospel.

Many, many blessings are predicated upon the law of obedience.
Blessings Predicated on the Laws of Teaching and Learning by the Spirit

Another law upon which blessings are predicated is found in the admonition—which sounds like a law—that “the Spirit shall be given unto you by the prayer of faith; and if ye receive not the Spirit ye shall not teach” (D&C 42:14). Our scriptures refer to spiritual gifts of knowledge and wisdom (see D&C 46:13, 15–18; Moroni 10:9–10) and to admonitions to “seek learning . . . by study and also by faith” (D&C 88:118, 109:7). I understand from these scriptures that both teaching and learning are gifts of the Spirit and that they are enjoyed as spiritual gifts when we do our very best to invite the Spirit into our lives. Maybe this has always been really obvious to most of you, but there is in fact a connection between spirituality and success in our academic endeavors.

So what sort of obedience may yield the blessings of enhanced teaching and learning? According to the scriptures:

1. We should be humble—that is, not prideful in our learning: “And the wise, and the learned, and they that are rich, who are puffed up because of their learning, and their wisdom, and their riches—yea, they are they whom he despiseth” (2 Nephi 9:42).
2. We should be receptive to the teachings of the Spirit: “He that receiveth light, and continueth in God, receiveth more light” (D&C 50:24).
3. We should be obedient to the commandments: “When they are learned they think they are wise, and they hearken not unto the counsel of God. . . . To be learned is good if they hearken unto the counsels of God” (2 Nephi 9:28–29).

I am sure there are many things we can do to enhance our teaching and learning. Here’s one that I have had personal experience with. When I was in my early teens, I made a personal commitment to avoid doing homework on the Sabbath and to do all I could to keep my Sabbath days holy. Despite all of the circumstances that have challenged and continue to challenge that commitment, I know I have been blessed specifically in academic endeavors and in my professional life since then by whatever success I’ve had in honoring that commitment. This same cause-and-effect relationship pertains to all of our other efforts to obey the commandments and serve our God and fellow beings with faithful diligence.

Sometimes when I am asked by prospective law students why they should choose BYU Law School over other good law schools they may have opportunity to attend, I am tempted to answer: “Well, at BYU you could have me as one of your teachers, of course.” More seriously, perhaps the best answer I can give is this: This is a place where you will be surrounded by faculty and students who are striving to bring the Spirit of God into their lives, and therefore the spiritual gifts of teaching and learning will
be found here in great abundance. Certainly it has been my privilege here, for over three decades, to be surrounded by friends and colleagues, both students and faculty, who are persons of great learning and wonderful intellectual attainment and who are also persons of faith and wisdom. Nowhere else on earth will you find that blessing in such abundance.

So, here are some principles of the law upon which these blessings of teaching and learning are predicated:

- The gospel of Jesus Christ includes and encompasses all knowledge and all truth.
- Ultimately all knowledge is revealed through the medium of the Holy Ghost.
- Increased spirituality and spiritual power increase access to and mastery of knowledge.
- Teaching and learning are gifts of the Spirit; therefore, greater spirituality and greater spiritual power should help us expand our present abilities to teach and learn.

Because my intellectual powers are enhanced by my spiritual powers, it is no coincidence that my most productive and successful years as a teacher, scholar, and lawyer have been in those years when I have tried my best to give a full measure of service in the intense Church callings of a campus stake presidency, a bishop of my home ward and of a BYU ward, and in the other callings that have come to me. I am edified by the example of my very busy law students who accept and serve faithfully in heavy Church callings while successfully pursuing their law studies.

Blessings Predicated on Humility and Being Not “Weary in Well-Doing”

As in all else, we are led by the example of the Savior. Once during His mortal ministry, His disciples tried to protect Him from the press of people who sought His healing blessings. The disciples rebuked those who brought young children in the hope that the Savior would touch them.

But when Jesus saw it, he was much displeased, and said unto them, Suffer the little children to come unto me, and forbid them not: for of such is the kingdom of God. [Mark 10:14]

A similar incident occurred when the Savior visited the Nephites after His Resurrection. In chapter 17 of 3 Nephi we read of the Savior’s ministry among the people who had survived the great destruction that had occurred at the time of the Resurrection. After teaching many important doctrines throughout that day, he prepared to leave, saying, “My time is at hand” (3 Nephi 17:1). But then,
he cast his eyes round about again on the multitude, and beheld they were in
 tears, and did look steadfastly upon him as if they would ask him to tarry a
 little longer with them.

And he said unto them: Behold, my bowels are filled with compassion
towards you.

Have ye any that are sick among you? . . .

And it came to pass . . . all the multitude, with one accord, did go forth
with their sick and their afflicted, and their lame, and with their blind, and
with their dumb, and with all them that were afflicted in any manner; and
he did heal them every one as they were brought forth unto him. [3 Nephi
17:5–7, 9]

And then He commanded them to bring their little children to Him.
After praying,

he wept, . . . and he took their little children, one by one, and blessed them,
and prayed unto the Father for them.

And when he had done this he wept again. [3 Nephi 17:21–22]

There followed then the marvelous miracle when these little ones were
encircled about with fire (see verse 24). All of this happened after Jesus had
spent a full day teaching the people.

This reminds me that we have been asked to “be not weary in well-
doing” (D&C 64:33), and we have the Savior’s example before us. As we
seek to be the Savior’s true disciples, this is one of our constant challenges.
A month ago I was reminded of this Christlike quality as I learned some-
thing about the life of Abraham Lincoln.

In May of this year I had occasion to visit the recently restored
Lincoln Cottage, a house about three miles north of the White House,
where Abraham Lincoln lived with his family for five months a year dur-
ing 1862, 1863, and 1864. Each day he rode, usually on horseback, from the
White House to this sanctuary, where he could escape from the hot and
muggy weather, from the crowds seeking his personal assistance, and from
the gloom of the recent death of his son Willie. He accomplished much
important work in this “Cottage,” not the least of which was his drafting of
the Emancipation Proclamation.

Late one hot summer evening in 1862, Lincoln was at home in the
Cottage trying to calm his mind on the eve of a significant Civil War bat-
tle about to be fought on the outskirts of Washington, D.C. He was also
relieved to be momentarily free of an especially persistent woman who
had called on him in the White House that day seeking a promotion for
her husband.

Nevertheless, late that evening another private citizen, having been
aided in finding the president by a Treasury Department employee, was
admitted to see Mr. Lincoln. His story was poignant and wrenching. A
Union officer from New Hampshire had been wounded in recent fighting.
The officer's wife and her friend had both made the journey from New Hampshire to locate the wounded soldier and help him recover. As they journeyed by boat back to Washington, the boat collided with another boat at night and 73 passengers drowned, including both ladies. The wounded soldier barely escaped with his life.

The president's visitor had returned to Washington to locate and return the bodies of these ladies to New Hampshire. He sought access to the area of the disaster, which had been closed because of the pending battle. The Secretary of War had gruffly refused his request, so he was now before the president seeking intervention:

Without making any interruptions, Lincoln listened to the [visitor's] long and tragic story. At the end, however, . . . instead of displaying his legendary generosity, Lincoln reportedly said, "Am I to have no rest? Is there no hour or spot when or where I may escape this constant call? Why do you follow me out here with such business as this? Why do you not go to the War-office, where they have charge of all this matter of papers and transportation?" The embarrassed [visitor] tried to argue his case with the exhausted president, but to no avail . . . [He was] dismissed curtly and sent back to the city without any relief.4

Lincoln later appeared at the visitor's hotel apologizing. He confessed, "I was a brute last night."5 Another version of the story reports:

[The president said:] "I fear, Sir, that my conduct has been such as to make it appear that I had forgotten my humanity." . . . The two men sat down and talked as familiarly as old friends. Great tears rolled down the President's careworn face as he heard the story of the shipwreck. . . . He then wrote a mandatory order to [the Secretary of War], requiring him to furnish a pass, transportation to the scene of the disaster, and all necessary assistance to find the bodies. . . . The result was that after cruising along the shore in the vicinity of the wreck, and after much inquiry among the inhabitants, the place where the bodies washed ashore and the place of interment were discovered, and they were brought home to their native New-Hampshire.6

Seeking the Spirit in our lives consists of much more than keeping basic commandments. Yes, it is important that we refrain from transgression. But there is a higher law. For me, this higher law is well expressed in two familiar scriptural passages.

The concluding statement of the 13th article of faith proclaims: "If there is anything virtuous, lovely, or of good report or praiseworthy, we seek after these things."

And in the marvelous, divine instructions recorded in section 121 of the Doctrine and Covenants, we are told:
Let thy bowels also be full of charity towards all men, and to the house-
hold of faith, and let virtue garnish thy thoughts unceasingly; then shall thy
confidence wax strong in the presence of God; and the doctrine of the priest-
hood shall distil upon thy soul as the dews from heaven. [D&C 121:45]

If we faithfully strive to do these things, I testify that we will have
within our grasp the “law . . . upon which all blessings are predicated,”
helping us along the way to happiness in this life and exaltation in the
next. In the name of Jesus Christ, amen.

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Notes
2. “They, the Builders of the Nation,” Hymns, 1985, no. 36.
3. Text modernized and modified to refer to both Hans and Maren; see Mary R.
Olsen, comp., History of Hans Rasmussen and Maren Stephensen and Their Children
(Salt Lake City: [1927]), 13–14.
4. Matthew Pinsker, Lincoln’s Sanctuary: Abraham Lincoln and the Soldiers’
Home (New York: Oxford University Press, 2003), 53; quoting from John R. French,
“Reminiscences of Famous Americans,” North American Review 141, no. 346
(September 1885): 238.
5. Abraham Lincoln, in Pinsker, Sanctuary, 53; from French, “Reminiscences,”
239.
6. “Mr. Lincoln’s Humanity: How He Atoned for His Seeming Rudeness to a
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Times, 10.
Index of Chapter Authors

References are to volumes and page numbers in the following:
Life in the Law: Service & Integrity (2009) [volume 2]
Life in the Law: Religious Conviction (2013) [volume 3]

Atkin, William F., 1:266
Backman, Robert L., 1:11
Baradaran, Mehrsa, 3:115
Benson, Dee V., 2:261
Callister, Tad R., 1:209
Cameron, Scott W., 3:161
Campbell, David G., 1:61
Carmack, John K., 1:23
Chin, Ming W., 3:121
Christofferson, D. Todd, 1:69; 3:3
Clark, Elizabeth A., 3:13
Clark, J. Reuben, Jr., 1:227; 3:63
Clayton, L. Whitney, 3:171
Cook, Quentin L., 3:71
Daines, Robert M., 3:131
Domínguez, David, 3:83
Durham, W. Cole, Jr., 2:65
Durrant, Matthew B., 3:181
Echo Hawk, Larry, 2:187; 3:231
Faust, James E., 1:35; 2:83
Gerdy, Kristin B., 3:189
Gordon, James D., III, 2:295
Griffith, Thomas B., 1:233; 2:3
Hafen, Bruce C., 1:147; 2:269; 3:27
Hanks, Marion D., 1:153
Hansen, H. Reese, 1:v; 3:203
Hawkins, Carl S., 1:163; 3:89
Hinckley, Gordon B., 2:255
Holland, Matthew S., 2:195
Jarvis, Annette W., 3:139
Jensen, Marlin K., 1:1
Kofford, Cree-L, 2:15
Lee, Rex E., 1:167
Lundberg, Constance K., 1:175; 2:91
Mabey, Ralph R., 1:187
Maxwell, Neal A., 1:79; 2:203
McCleve, Sheila, 2:21
McKay, Monroe G., 3:237
Morgan, Thomas D., 3:245
Morrison, Alexander B., 1:91
Mosman, Michael W., 1:43
Nelson, Russell M., 1:49
O’Connor, Sandra Day, 2:27
Okazaki, Chieko N., 2:101
Packer, Boyd K., 2:225
Rasband, James R., 3:v, 39
Romney, Marion G., 1:245; 2:249
Samuelson, Cecil O., 2:129; 3:49
Santiago, Tessa Meyer, 1:251
Scharffs, Brett G., 2:135; 3:215
Snow, Steven E., 3:99
Starr, Kenneth W., 2:239
Tacha, Deanell Reece, 2:149
Thomas, David A., 3:269
Wallentine, Kenneth R., 1:197
Waxman, Seth P., 3:107
Welch, John W., 2:155; 3:147
West, Stephen A., 1:123
Whitman, Dale A., 2:167
Wickman, Lance B., 1:133; 2:173
Williams, Gerald R., 2:37
Wise, Jane H., 2:111
Worthen, Kevin J, 2:47, 281
Young, Michael K., 2:119
Index

References are to volumes and page numbers in the following:
Life in the Law: Service & Integrity (2009) [volume 2]
Life in the Law: Religious Conviction (2013) [volume 3]

Aaron
- denied responsibility for golden calf, 1:75 on repentance, 1:211
Abinadi, on salvation, 3:16–17
abortion, 1:115–117
Abraham
- covenant of, 1:4–5
- faithfulness of, 2:210
- accountability, 2:162, 208
- actions, 1:5, 216–217
Acton, Lord, on power, 2:243
Adam
- asked where he was, 1:1, 6
- blamed Eve, 1:6
- hid from God, 1:6
- as man who fell among thieves, 1:256
Adams, Abigail, influence of, 2:205
Adams, John
- supported America’s founding, 2:205
- on U.S. Constitution, 2:209
- on U.S. Constitution and religion, 3:77, 252
Adams, Samuel, on virtue and freedom, 3:108
adversary system, purpose and advantage of, 2:87, 103
advertising, by doctors, 2:132
Advisory Commission on Electronic Commerce, 1:234
- enables progression, 3:4
- as expression of God’s love, 2:26, 72
- and judgment, 2:25, 208, 251
Albania, law on religious freedom, 2:72
Albanian leader, on lining up for bread or to worship, 2:72
alibi witness, 2:169
Alma
- asked questions, 2:159
- confronted stubborn issues, 2:124–125, 157
- counsel of, 1:19
- on God and law, 3:270
- and good seeds, 2:112, 164
- and lawyers, 1:134
- on mercy and repentance, 1:218, 220
- and obedience, 2:157, 164
- on persecution of others, 3:178
- and power of word, 2:98
- on success, 3:142–143
ambiguity, 3:27–37
America
- founding of, 2:32–34, 203, 250–251
- liberty of, only lost by internal forces, 2:196
- as promised land, 2:69
- sins of, atonement for, 2:202
“America the Beautiful,” 3:270–271
American Bar Association, site visit, report on J. Reuben Clark Law School, 2:48
American Bar Foundation, 2:221–222, 240
American Inns of Court, 2:152
American Medical Association Council on Continuing Medical Education, 2:131
Ammon
- defended king’s flocks, 3:178
- as missionary, 2:73
Amulek
- on charity, 3:222
- and lawyers, 1:134–135; 2:234
- on the unrepentant, 1:220
Anacharsis, on the tongue, 2:97
angel, 2:84, 104
Angelou, Maya, on result of divine parentage, 1:202
anger, 2:43, 103–104
answer, best, is how we live, 1:3
Apollo, 2:13, 95–96
apostles, testimony of, 3:56–58
Aristotle
on friendship, 1:81
on unexamined life, 2:239
army
care for those who serve in, 2:199
professionalism in, 2:177–178
Arnold, Thurman Wesley, on physicians, 2:132
arrogance, 1:134–137; 2:75, 137–140, 144, 177–178, 234; 3:190. See also pride
arson, 1:62–65
Article of Faith 8, 2:262
Article of Faith 11, 2:65
Article of Faith 12, 3:270, 271
Article of Faith 13, 2:77
Asay, Carlos E., on virtue, 1:139
Ashton, Alan C., 2:256
Ashton, Marvin J.
on love, 3:213
on treating others, 1:6
assumption, 2:135–144
definition of, 2:136, 145
Atkin, William F., 2:83
Atonement. See also Jesus Christ
and agency, 2:26, 66
allows repentance of academic pride, 2:163–164
and balance between mercy and justice, 1:219–220, 224
belief in, 1:6
and building Zion, 1:235–236, 243
Joseph Smith learned about, 2:10–11
and love, 2:25, 106
makes mercy possible, 2:127, 219–220
possible through Jesus’s integrity, 1:86
can unite communities, 2:11–13
attorneys. See lawyers
avoidance behavior, 2:168
Azerbaijan, conference on religious freedom in, 2:73
Bagehot, Walter, on example of Robert E. Lee, 1:81
balance
mentally, physically, spiritually, and socially, 1:12–21, 32–33
between responsibilities, 1:30, 38–39, 43
between rules and initiative, 1:49, 57
trees as symbol of, 3:19–20
and worship, 3:19–20
Baldwin, Stanley, pride of, 1:84
Ballard, Charles, founded Teen Fathers of Cleveland, Ohio, 1:203
Ballard, M. Russell, on being active in public discussion, 3:80
Bangerter, W. Grant, 2:4
bankruptcy, 3:143–144, 145
baptism, 2:115
Baradaran, Mehrsa, education opportunities of family of, 3:115–117
Barkan, Steve, on Jesuit law schools, 2:48
Barker, Robert W., competing demands on, 3:96–97
Barlow, David, as example of delegation, 3:76
Barton, John, on growth of appellate court, 1:169
basketball player, language of, 2:95–97
Becket Fund for Religious Liberty, 3:258
believers, in right and wrong established by God, should unite, 3:263–264
Bell, Derrick, on importance of conscience as lawyer, 2:50
Bell, Griffin, on duty of lawyers toward the law, 2:241
Benson, Ezra Taft
on pride, 1:179
on priorities, 3:19, 20
Berman, Harold, on religion’s importance in legal education, 2:49
Berra, Yogi, on humility, 2:86
Betrayed Profession, The, by Sol Linowitz, 3:127
Biering, Laura, use of hypothetical lawyer Catherine by, 3:190
bill, on policy problems, 1:169–170
bishops, insights of, 3:168–169
Bismarck, Otto von, maxim on laws and sausages, 2:243
blessing
comes from obedience to law, 3:270–278
on James Henry Moyle to attend law school, 2:227–228, 287
Bob Jones University v. United States (1983), 2:124
Bok, Derek, on motivation for service, 2:176
Bolt, Robert, A Man for All Seasons, 2:4–5, 9–10
Book of Mormon, 2:108, 193–194, 262
law in, supports religious freedom, 2:124–125
and Native American ancestors, 2:192
teaches to serve needy, 2:124
testimony of, 2:190–192
books, seek out of the best, 2:78
Boren, Richard, example of, 2:189–190
Bork, Robert H., on judicial activism, 2:233–234
Bowen, Catherine Drinker, on ratification of U.S. Constitution, 2:204
Brandeis, Louis
as citizen lawyer, 2:34
pro bono work of, 3:109
breach, repairers of, 3:161–170
Breyer, Stephen G., on professional service, 2:176, 178
briefcase, what to pack in, 2:149–154
Brigham Young University
experience at, 2:192–193, 298–301
International Center for Law and Religion Studies, 2:72
Law School. See J. Reuben Clark Jr. Law School
lonely student at, 3:205
as perfect fit, 2:222
and tolerance for others, 2:75
British Museum, 2:257
Brooks, Arthur C., on happiness, 3:75
brother of Jared, on God's compliance with law, 1:213
Browning, Elizabeth Barrett, on love, 2:158
Brzezinski, Zbigniew, on moral relativism, 2:207
Buber, Martin, on I-thou relationships, 1:180–181
burden, imposed on covenant people, 1:4
Burger, Warren E., as founder of American Inns of Court, 2:152
Burke, Edmund, on adversity, 1:99
Buttercup, not married, 2:92
Calabresi, Guido, on cynicism and skepticism, 2:142
Cameron, Scott W., 2:195
helped young man, 1:166–167
love of, for BYU–Idaho, 3:161–162
testimony of prophet's divine appointment, 3:165
Cameron, William J., on covenant people's burden, 1:4–5
Campbell, David, on religious observance, 3:253
Canada, prosecution of preaching against homosexuality in, 3:257
Cannon, Angus, negative opinion of lawyers of, 2:287
Cannon, George Q., on use of lawyers by LDS Church leaders, 2:227, 287
Canons of Ethics, 3:245, 246
Captain Moroni, and conflict with Pahoran, 2:41–43; 3:177
career management, 1:28–30
and motherhood, 3:118
Carlson, Allan W., on influence of Christianity on family law, 3:260
casino case, 1:252–253
Catherine, as hypothetical example, 3:190
Catholic universities, 2:52–54
Catrícura, Domingo, Chilean student, 2:285–286
celestial glory, marriage as a requirement for, 2:18–19
Chamberlain, Ken, as small-town lawyer, 3:101
Chamberlain, Neville, policies of, 1:83
character
integrity as evidence of, 1:80
of lawyers, 2:85–86, 2:40–244; 3:184
Lincoln as example of good, 3:184–187
reminders of, in briefcase, 2:151–153
Chardin, Teilhard de, on love, 2:108
charity, 2:195–202
in disagreement, 3:44–45
and equality, 1:189, 204
examples of, 1:125, 160–161, 183–185
as higher law, 3:275
as indication of what we think of Christ, 1:6–7
and not taking offense, 3:177
as one of most important things, 3:215–217, 221–223
reason for, 1:198
Chesterton, G. K., on optimists, pessimists, and improvers, 3:35
chiasmus, discovery of, in Book of Mormon, 2:161
children. See also family; parenting
effect of words on, 2:99–100
stand up for father, 2:183
waking up, 2:130
Chin, Gus, on civility and professionalism, 2:103–104
Chin, Ming W., journey of, 3:121–124
China, law on religious freedom, 2:120
chocolate and milk, 2:160
consequences of, 2:21–22, 94–95, 131, 298–301
Christensen, A. Sherman, 2:152
Christian, defined by behavior, 1:5–6
Christofferson, D. Todd
on consecration, 3:19
judicial clerkship of, 2:296
Christopher, Warren, as example of doing duty, 3:152–153
Church callings, 1:31, 32, 44–45, 104–105, 123–129, 133–134, 164
Church of Jesus Christ of Latter-day Saints, The
approach of, to proselyting, 2:69, 71, 73–74, 80, 124, 189, 275
embraces all truth, 2:67, 76–78, 160
and freedom of religion, 3:78–80
organization of, 3:167, 168
status of, as a minority religion, 2:69–70, 75, 103, 193–194, 236–237, 297–298
submits to laws of man, 3:5–7
tolerance in, for all, 3:207
Churchill, Winston
on conscience, 1:83, 155
felt prepared, 1:92
on hope, 2:268
on need for work, 2:58
on opportunities to serve, 1:92
on useless worry, 2:133
civil religion, 2:195–196
Civil War, 2:196–202
   casualties from, 2:198
   damage from, 2:197–199
   as God’s war, 2:200
civility. See also professionalism
   brings peace of conscience, 2:103–104
   codifying, 2:103, 180
   during disagreements, 3:45
   leads to effective problem solving, 3:183–184
   reminders to help have, 2:152–153
   as sign of a true professional, 2:180; 3:125, 126–127
   toward those who are uncivil, 2:51
Clark, Elizabeth, helped with French religious freedom law, 2:72–73
Clark, J. Reuben, Jr.
   as ambassador to Mexico, 2:i, 228–229, 288
   believed in law, 2:250
   on Church service, 2:288–289
   Church service of, in LDS First Presidency, 2:228–229, 288
   competing demands on, 3:92–94
   on consistency between public and private behaviors, 2:131–132
   credo of, 1:192
   on debt, 2:229–230, 298
   on duties, 3:154
   early life of, 2:227, 287
   on eloquence of his grandfather Edwin D. Woolley, 2:231
   on ethics, 1:72–73
   on evil, 2:230
   example of, 1:165–166, 192–193, 246–247, 249
   gratitude for example of, 2:252, 256, 288–289
   handled criticism well, 2:230
   honoring legacy of, 2:235, 225–226, 236–237, 249–250, 252, 272
   importance of family to, 1:247; 3:92–93
   integrity of, 2:300
   intellect of, 2:227, 287
   legal studies of, 2:228, 288, 298
   marriage and children of, 2:227
   on need for lawyers with integrity, 2:251–252
   passing of, 2:225, 236
   photos of, 2:i, 227, 185, 247
   on pioneers, 2:230
   professional career of, 2:227–229, 236–237; 3:90–92
   speeches of, 2:225, 229–231, 236–237, 251–252
   testimony of, 1:232; 2:229–230, 237
   on U.S. Constitution as inspired document, 3:73
   on work, 2:287–288
   work ethic of, 2:131–132, 227, 256, 287–288, 300
   writings of, 2:228–229
Clark, Joshua
   annual prayer for crops of, 2:227
   as father of J. Reuben Clark Jr., 2:227
Clark, Luacine
   illness of, 1:247
   photo of, 2:63
   relationship of, with J. Reuben Clark Jr., 3:90, 92, 94
Clark, Mary Louisa, mother of J. Reuben Clark Jr., 2:227, 230
Clarkson, Thomas, 3:8
   class inequality, 1:199–201
Clayton, L. Whitney
   admission moved for, 3:171–172, 178
   behavior of, at gas station, 2:175–176
Cleopas, saw risen Christ, 1:228
cobbler, as a servant of God, 2:6
Collins, Billy, on giving a commencement address, 3:131–132
commendments, 2:155–157; 3:174–175, 221
ten, 2:207, 250
two great, 3:171–173
commitment, 1:97, 164; 2:150, 230
common law, 2:32, 153, 263
communication, 3:175–176, 193
   importance of, to lawyers, 2:152–153
community
   versus autonomy, 1:180
   building, 1:236, 241–43
   laws of, 1:236
   of Saints, 1:118
   service to, 1:13–14, 30, 97–98; 3:104–105
   comparison, of ourselves with others, 3:43, 76
   compartmentalization, of life, 2:6, 105, 131–132
   compassion, 3:189, 196–199. See also empathy; mercy
   compromise, 3:136–137
conflict
   definition of, 2:37
   how to respond to, 2:42–43, 97–98, 103, 215, 222
   humility in, 2:39–40
   as mirror for self-knowledge, 2:44
   propositions about, 2:37–38, 44
Connor, Bull, and civil rights, 1:176
   consecration, 1:177, 182–85; 2:8, 17, 158, 301
   consequences, of choices, 2:21–22, 94–95, 131, 298–301
Constitution of the United States. See u.s. Constitution
Constitutional Convention, 2:33–34, 241, 284
Consumer Reports, on hiring a lawyer, 3:194
   continuing education, standards in, 2:131–132
contracts
  definition of, 2:93
  spiritual, 2:17–20, 94
Cook, Quentin L.
  on comparing ourselves to others, 3:43
  influences on, to become a lawyer, 2:71–72
  on religious values as part of public discourse, 3:263
Coolidge, Calvin, on sin, 2:47
Cossitt, James H., on ethics, 1:72
Council in Heaven, 1:213–215
courage, 1:99, 126
courts, number of cases in and proposals for relief of, 1:169
coyens, 1:42; 2:102, 115–116, 180, 224, 236
  as contracts, 2:17–19
  power of words to make, 2:93–94
  written upon mind, 2:164
Covey, Steven, on family, 1:94
Cowdery, Oliver
  baptism of, 2:273
  resolved conflicts, 2:68–41
Cox, Archibald, and Watergate, 1:70
Cramer, Anthony, legal defense of, 2:181–182
Cramer, Lew, 2:265
Cramton, Roger C., on value assumptions in law school, 1:103–104; 2:49
creativity, 2:105, 158, 215
crises, leads to either danger or opportunity, 3:128
 cynic, definition of, 2:142
  cynicism, 2:142–144, 154, 163
Czechoslovakia, Church in, 1:53–55
Daines, Robert M.
  and electrical fire in house, 3:135–136
  locked in home office, 3:134
Dalton, Gene W., on serving God in our work, 2:6
damages, punitive, 2:84
Darrow, Clarence, on being understood, 3:236
Davis, France, helped the elderly, 1:203
Davis, Frederick, on having song to sing, 2:53
Davis, John W.
  example of, 1:249
  on promoting peace, 2:88
  on worth of lawyers, 1:25, 130–131, 3:198
  de Chardin, Teilhard, on building future, 1:98
  debt, 2:229–230, 234
  decided, are always gentle, 2:180–181
Declaration of Independence (1776), 2:32–33, 188, 205, 268, 284, 298
Deem, Woodruff J., 2:264
defense, criminal, 2:169–170, 174–175, 181–182, 261–262
dentist, on work in heaven, 2:57
deposition, story about, 2:28, 51–52, 129
Descartes, René, on discovery, 1:14–15
Dickens, Charles, on service, 1:66
Didier, Charles, on language, 2:97–98
difficulty, because of newness, 3:40–42
disagreement, charitable, 3:44–45
discretion, acting and answering with, 3:171–178
discrimination, 1:193–194, 197–198
discussion, public, actively participating in, 3:80–81
diversity, 1:117–120, 192–193, 204; 2:52–54, 124
divine law. See God, laws of; law, spiritual
divinity school, Cecil O. Samuelson’s experience at, 3:51–54
Dominguez, David, learned he needed to teach classmates, 3:83–87
Donne, John, on social interaction, 1:16
Dooley, Thomas, righted wrongs, 1:160–161
Douglas, Stephen A., warned by Joseph Smith, 2:232
Doyle, A. Conan, on soldiers of the spirit, 1:41–42
Drucker, Peter
  on competence, 1:29
  on integrity, 1:26
Duffield, Bruce, 2:265
Durham, Christine M., on civility, 2:103–104
Durham, Thomas, hymn of, 2:75
Durham, W. Cole, Jr.
  blessed to teach with Holy Ghost, 2:65
  and international religious freedom, 2:71, 275–276
Durrant, Matthew B., cab ride of, in New York City, 3:182
  to rescue, 1:252–253, 257
  return to, in 21st century, 3:147–156
e pluribus unum, 1:187, 189
Echo Hawk, definition of name, 2:187; 3:234
Echo Hawk, Larry
  elected as Idaho attorney general, 2:188; 3:231–232, 235
  experience of, with scriptures as Marine, 2:193–194
  football injury of, 2:190–191
  met President Clinton, 3:233–234
  played football, 2:189–193
  sought to serve his people as lawyer, 2:193
Edinger, Edward F., on self-knowledge, 2:43
Edmuns, John K.
  Church service of, 2:216–218
  competing demands on, 3:95–96
  as mentor to Dallin H. Oaks, 2:216–218
  on value of service, 1:31
  and widow’s payment for legal work, 2:231
  doesn’t give entitlement, 3:212
  importance of, 2:116, 131, 133, 188–189, 193, 298–301
  multipliers of, 3:115–119
obedience to laws brings blessings in, 3:274–275
reciprocal nature of, 3:86–87
egoism, 2:178–179, 200, 207
Eliot, T. S., on the permanent things, 2:243
Ellis Island (New York), 2:6
Elwork, Amiram, on lawyer stress, 2:15
Emerson, Ralph Waldo, on hard words, 2:98
emotions, 1:103; 3:143, 189–199
empathy, 3:189–199
definition of, 2:147
England, Eugene
on Christ's suffering, 1:238
on gratitude for Atonement, 2:13
Enoch
built Zion among his people, 1:235
on Christ as judge, 1:216
on consequences of inequality, 1:200
Enron Corporation, 2:29, 31, 93
enterprise zones, 1:202
environment, service to nature and, 2:153
equality, 1:197–204
Erasmus, chose life of cleric and scholar, 2:8
Erickson, Boyd, used love in his profession, 1:184
eternal progression, 2:99–100
ethics, 2:18, 28–31, 87, 93, 103, 131–132, 209–210, 234;
3:245–248
in army, 2:177–178
cannot substitute for morals, 1:166
codifying, 3:245–247
don't compromise, 3:136–137
goes beyond base requirements and rules,
2:27–28, 151–152
in harmony with Church, 1:36
and money, 2:167–170
and moral principles, 1:72–73
of professions, 1:175–176, 178
for small or large law firm practices,
2:168–169
European Convention for the Protection of
Human Rights and Fundamental Freedoms (1950), 2:79
European Court of Human Rights, 2:79
Evans, Richard L., compared weapons to words,
2:98
Eve, blamed serpent, 1:6
evidence, manufactured, is unethical, 2:28–29,
93, 141–142
Ewing, Patrick, on money, 3:183
Ex Corde Ecclesiae, on Catholic universities, 2:54
excellence, 1:109
excuses, 2:162–163, 275
expert witness, 2:169
extremism, religious, as basis for less protection
for religious speech, 3:256–257
eye, single to God's glory, 2:20
Eyring, Henry, and education and gospel, 1:15
Eyring, Henry B., on revelation, 2:6
faces, seen by trial judges, 2:23
faith, 2:23–24, 161
in both religion and law, 1:123, 130–131
can be threatened by legal philosophies, 2:49,
138–139, 216–217
leads to repentance, 1:6
need for, 1:1–2, 113, 223
often supported by hindsight, 2:270
as one of the most important things,
3:215–220
of pioneers, 3:65–69
family. See also children; parenting
benefits to, from small-town practice, 3:104
counsel with, 1:29
good language in, 2:98–100
helping, as a professional, 1:181–182
importance of, 1:2, 13, 46, 57, 79, 94–95, 114,
133–137
moral grounding of, 2:207, 276–277
sacrificing for, 3:141–143
“Family: A Proclamation to the World, The”
family and friends, importance of, 2:130–131, 133,
150–151, 220; 3:133–137
Farrar, Frederic W., on happiness, 3:75
fasting, 3:164–167
Faust, James E.
on being a lawyer, 2:4, 9, 83–85, 87
counsel of patriarchal blessing of, 2:84–85
on danger of living on the edge, 2:132–133
on doing things for others, 3:198
on ending his law practice, 2:87
example of, 2:270–271
on involvement with laws of men and God,
2:83
on law school, 2:57–58, 215
on lawyer jokes, 2:86, 178
on "legal" versus "right," 1:197
as mentor to Neal A. Maxwell, 2:203
on political affiliations, 2:271
on service, 2:271
fear, of being inconsequential, 3:132–137
Feldblum, Chai, on "religious-belief liberty"
versus "sexual-orientation liberty, "
3:258–259
fighting words, definition of, 2:96
courage of, 1:183
on courts as social equalizers, 3:144
on understanding others, 3:191
why admired, 3:145
“Finding the Right Path to Happiness for All,”
3:74–75
First Presidency, testimony of, 3:56–58
Fischer, David Hackett, quotes soldier on
motivation, 2:204
flag-burning case, 3:241
Flexner, James Thomas, on character of George
Washington, 2:205
focus, on others instead of self, 3:144, 145
foreordination, to share gospel, 1:4
Foundation for Ancient Research and Mormon Studies, 2:158
Founding Fathers, 2:143, 153–154, 188, 203–211
assumed moral basis for Constitution, 3:262
greatness of, 2:204–205
inspired by God, 2:203–206, 235, 250–251
many lawyers among, 2:32–33, 241, 284, 298
on public virtue, 3:108–109
on self-government, 2:209–210
and structure of government, 2:33–34
France, law on religious freedom in, 2:72–73
Francis of Assisi, on example, 2:108
Frankfurter, Felix, on Learned Hand’s humility, 2:140
Frankl, Viktor, on success, 1:17–18
Franklin, Benjamin
character of, 2:205
on hanging together, 3:264
on humility, 2:143
supported America’s founding, 2:205
fraud
blessing if abstain from, 2:227
definition of, 2:93
man accused of securities, 2:138
freedom, 2:196, 204
religious, and agency, 2:124–125, 206–208
religious, diminishishment of, 3:255–257
religious, implications of, for LDS Church, 2:66–71, 76–78, 103, 119, 122–125, 194, 210
religious, in different countries, 2:69–74, 79–80, 119–123
religious, preservation of, 3:251–264
Freedom from Religion, posits religious speech should be less protected, 3:256–257
fundamentals, 1:49–52, 57
Fybel, Richard D., on mean lawyers, 2:103–104
Gandhi, Mahatma, on duties, 3:153
gangs, 2:235
Garden Tomb, Cecil O. Samuelson’s experience at, 3:50–51
Gardner, David, as example of integrity, 1:26–27
Gareth, wanted to become knight, 1:153–154
Garver, Eugene, on listening with charity, 3:222
Gathers, Hank, death of, 1:56
Geneva Steel, 1:184
gentle, decided are always, 2:180–181
George, Francis
on partners in defense of religious freedom, 3:264
on threats to religious freedom, 3:257
George, Robert P. on origin and nature of law, 3:6
Gethsemane, 2:10–11, 106
gifts, given to all, to edify community, 3:210
Gilmore, Jim, and Advisory Commission on Electronic Commerce, 1:234
Ginsburg, Ruth Bader, service of, 2:35
Girdler, Ray, wrongful imprisonment of, 1:65
Gladwell, Malcolm, on student snap-judgments, 2:139–140
glory, eye single to God’s, 2:20
goals
eternal, 1:18, 113–121
and salvation, 3:16–17
social, 1:103
worship of, 3:14–16, 22
God. See also Jesus Christ
asks penetrating questions, 1:1v
children of, 2:14, 159, 164, 219, 291, 298
compassion of, 1:223
in the details, 2:159, 203, 206
doing will of, 2:85, 162–163, 170; 3:18
as father of truth, 2:94
guides our lives, 2:114, 199
as healer, 1:149–150
as judge, 1:225 n. 31
justice of, 2:242
mercy and grace come from, 1:216–219
as no respecter of persons, 3:206, 207
plan of, 1:212
potential for man to become like, 2:17
punishes the unrighteous, 2:200, 209
purpose and work of, 2:17, 56, 200–201, 208, 250
raises up, 1:4
requires responsibility, 1:75
respects the principle of liberty, 2:72, 207
reveals where we are, 1:2–3
serving, 3:140–141
as subject to laws, 1:209–210
teaches through questions, 1:1, 7
trust in, 3:219
as ultimate lawmaker, 3:261
witnesses of Son and Holy Ghost, 2:76
worship of, 3:18–24
Gold, Mike, reasons for actions of, 1:160
Goldberg, Elkhonon, on problem solving, 2:139
Golden Rule, 2:10, 68, 74, 79, 201
Goleman, Daniel, on unmeasureable skills, 1:26
good Samaritan. See parable, of the good Samaritan
good Samaritan laws, 1:256; 2:83
goodness, Christian, 3:173–175
living the, 1:19–20
reference points in, useful for self-evaluation, 1:1
sharing the, 1:5
government
regulatory responsibilities of, in conflict with religion, 3:255–256
participating in, 3:80
grace, 1:216–218
Grant, Heber J., calls J. Reuben Clark Jr. to First Presidency, 2:228–229
Great Depression, 2:173
greed, 2:16, 84, 115, 176, 227, 243
Grow, Stewart, on unmeasurable skills, 1:26
guidelines, 1:51, 52
Gunther, Gerald, on Learned Hand’s humility, 2:140
Hafen, Bruce C.
and founding of J. Reuben Clark Law Society, 2:259
as missionary in Germany, 3:33–34
on what should come first in life, 3:16
Hafen, Marie K., 2:275
Haig, Douglas, as example of inflexibility, 1:83–84
Haight, David B., on loving others, 3:204, 208, 213
Hamilton, Alexander, given small gold box as retirement gift, 2:240
Hand, Learned
greatness of, 2:143–144, 182
humility of, 2:140–141, 143–144
on intellectual humility, 2:140–141, 143
on liberty, 3:124–125
succeeded by Harold R. Medina, 2:182
Hanks, Marion D., as example of public speaker, 3:76
on boorish behavior, 3:44
happiness, 1:18, 109; 3:43, 44
pursuit of, 3:74–75
“Happiness Myth, The,” by Steve Salerno, 3:77
Hardy, Ralph, and founding of J. Reuben Clark Law Society, 2:59
Harvey, Paul, on troubled times, 2:133
Hatch, Orrin G., 2:265
as example of public service, 3:127
as lawyer-statesman, 3:121
Haught, John F., taught Ricoeur’s stages of faith, 3:217, 218
Havel, Vaclav
asked for spiritual assistance for Czechoslovakia, 1:55
as religious prisoner, 1:54
Hawkins, Carl S., 2:218, 264, 270, 275, 286
decision of, to join faculty of J. Reuben Clark Law School, 2:273–274
on timing of law school, 2:286
Hawkins, Nelma, 2:274
Haynsworth, Clement, on lawyer in control, 1:180
head scarves, 2:123
healers, 1:149–150, 151; 3:143
healing, 2:83–88, 99–100
health, laws governing, 3:271–272
Helaman, on the greatness of the evidences, 2:278
Henderson, Lynne, on empathy, 3:193
Henry vi, by Shakespeare, 3:126
heroes and heroines, 3:247–248
Herrnstein, Richard, on unmeasurable skills, 1:25–26
Hewitt, Hugh, on antireligious bigotry, 3:259
Himmelfarb, Gertrude, on relative values, 3:261
Hinckley, Gordon B.
as common folk, 1:24
on effect of crumbling families, 2:276
gives wise advice, 1:29
love of learning, books, and libraries, 2:78, 157, 257
on proper priorities, 1:95
on things that count, 1:13
on tolerance, 2:74–75, 80–81
on unity and individuality, 1:119
history, inevitable change in, 1:171–172
Holland, Josiah Gilbert, on need for men of honor, 2:252–253
Holmes, Oliver Wendell, Jr.
on courage, 2:140–141
eexample of, 2:34
on learning, 1:32
on living greatly in the law, 2:244
on perspective in decision making, 1:29
Holy Ghost
bears record of Father and Son, 2:76
changes hearts, 2:65, 114, 161, 208
discerns, 2:32
gives life, 2:86
guidance of, 1:85
learning with, 2:155, 161
not to be offended, 2:87
teaches truth, 2:84
whispers, 2:19–20; 3:34
homeless man, story of, 1:231–252
homosexuality, preaching against, threatened, 3:257–258
honor, 2:102, 115; 3:182
hope, 2:13, 153–154, 278; 3:220–221
Howard, F. Burton
on bearing others’ burdens, 3:198
on example of Marion G. Romney, 1:80
Howard, John A., on antireligious proponents, 3:259
Howard W. Hunter Law Library Dedication
Prayer, 2:257–258

Hromadka, Josef
asked for spiritual assistance for
Czechoslovakia, 1:55
and Church in Czechoslovakia, 1:53

Hughes, Charles Evans, on being a lawyer, 1:249
human rights, 2:65, 69, 72, 79–80, 122, 181, 197, 240

Hunter, Howard, and Watergate, 1:69
Hunter, Howard W.
character of, 2:256–257
on love, 2:158–159; 3:208
on race, 1:198
on seeking truth, 2:77
service by, 2:256–258
Hunter, Sharlane, and civil rights, 1:176
Huntsman, Jon, Sr., 2:255
Huntsman, Karen, 2:255
hypocrite, 2:140, 147, 233–234

Ibsen, Henrik, on self-knowledge, 2:240
Idaho Falls Temple dedicatory prayer, 2:68–69, 207

idealism, 3:28, 30
idolatry, and law, 3:13–24
improvers, 3:35
incentives, 3:135

Indians. See Native Americans
individuality, 3:210
initiatives, 1:49, 52–53, 57
innocence, presumption of, 2:136

integrity, 2:180, 208, 237, 297, 300; 3:15. See also professionalism
brings peace of conscience, 2:102, 108
as characteristic of Christlike advocate, 1:246–247
definitions of, 1:26, 80, 246
as evidence of character, 1:80
elements of, 1:26–28, 80, 137–138
as expectation because of privilege, 3:46–47
importance of, in field of law, 1:27, 36–37, 40
as ingredient to success, 1:26–28
and worship, 3:18–19

intelligence, 2:139, 156–157, 160–164, 300–301
definition of, 2:156, 300

Interfaith Conference of Metropolitan
Washington, 1:130

interrogatory, definition of, 1:1. See also questions

Isaiah
as a brilliant writer, 2:157
on Christ as judge, 1:216
on false gods, 3:23
on fasting, 3:164–165, 166, 168, 169–170
on mission of Messiah, 2:116
study of, 3:162–163
vision of last days of, 2:68, 207, 253

accomplishments of alumni of, 2:73, 149, 252, 265
accomplishments of law students at, 2:72–73
benefited by LDS law students elsewhere, 2:58–59
dedicatory prayer for building of, 2:252–253, 289
dedicatory prayer for library addition to, 2:257–258
divine role in founding of, 2:274–278, 291
duties of alumni of, 2:84, 102, 208, 258, 277, 300
founding of, 2:213, 222, 249–250, 261–279
as the house that Rex E. Lee built, 2:263–265, 268, 272–273
an LDS law school, 2:48, 55–57, 249, 271
as location of first American Inns of Court, 2:152
nonpolitical agenda of, 2:269–270
ranking of, 2:167, 257, 263
reasons to attend, over other schools, 3:274–275
recruiting faculty for, 2:252, 264–265, 272–274
report by ABA site inspection team on, 2:48
strengthens foundations of legal profession, 3:v, 181
students at, 2:112–117, 149, 167, 252, 257–258, 265, 277, 289–290, 298–301
why established, 2:v, 55–59, 83, 249–253, 275–277, 289

J. Reuben Clark Law Society
commitment of, to service and ethics, 2:27, 84, 102, 178–179
founding of, 2:59, 83
growth of student chapters, 2:58
honoring namesake of, 2:194; 2:255–266, 236–237
mission of, 1:94; 2:58, 83–84; 3:i
principles of, 1:94

Jackson, Andrew, on role of Supreme Court, 2:206
Jackson, Ian, service of, 1:96–97

Jacob, and Esau, 1:171
Jacob, brother of Nephi
on equality before God, 2:219
on grace, 1:216
on justice, 1:190
on riches, 1:241
on service, 2:157

James the apostle
on controlling speech, 3:175
on language, 2:97

Japan, law on religious freedom in, 2:219

Japanese law professor, on J. Reuben Clark Law School, 2:277

Jefferson, Thomas
on being remembered, 2:268
as citizen lawyer, 2:32–34; 3:108
on farmers as citizens, 2:4
on government and rights, 1:236
not motivated by riches, 2:243–244
on religious freedoms, 3:78
supported America's founding, 2:205, 244
Jennings, Marianne M., on moral standards, 1:71–72
Jeremiah, on covenants, 2:164
Jesus Christ. See also Atonement; God
as advocate/lawyer, 1:37, 190, 222–224, 225 n. 31; 2:223, 271; 3:220–221
on agency, 2:208
all laws given by, are spiritual laws, 3:269
appearances of, after Resurrection, 1:227–232, 245; 3:53, 57
called the Christ during mortal ministry, 1:231
as center of worship, 3:18
commanded us to keep laws of the land, 3:270
compassion of, 1:247
on entering the kingdom of heaven, 2:4
disciples of, 2:23, 67–68, 116, 132, 155–156, 178, 211, 224, 229, 236
enables justice, 3:10
on faith, 2:277
on family, 2:18
and feeding the five thousand, 1:247
following, 1:5–6
foreordained mission, 2:66, 116
on forgiveness, 3:212–213
on founding fathers of America, 2:203, 235, 251
as good Samaritan, 1:256
held his peace when questioned, 3:177–178
on humility, 2:43–44, 76, 99, 140, 159
integrity of, 1:85–88
as judge, 1:235–216, 225 n. 31; 2:224
knew the law, 1:138
on learning, 2:116, 156–157, 159–160, 163, 300
light of, 2:78, 250, 277
love of, 2:6, 10, 67–68, 75, 155–156, 162, 179
love of, 2:108, 202; 3:203–204
on marriage, 2:18, 93
mercy of, 1:219, 256–257
name of, 2:116–117, 180, 236
need to know, for eternal life, 2:17
obeyed the law, 1:210
organization of Church by, 3:57, 163
our lives as witness of, 1:164
parallels of, with Abraham Lincoln, 2:201–202
pleads with us to keep commandments, 3:221
power of, 1:139
power of example of, 2:9, 178, 202
preparing to meet, 1:17
on priorities, 2:88, 115, 179, 224
progression of, 33
questioned by lawyers, 1:36–38; 3:206
as repairer of breach, 3:164
as rescuer, 1:257
resolved conflicts, 2:41, 67–68, 104, 140, 298
and rich man, 1:177, 240
salvation through, 1:236; 3:23–24
Second Coming of, 2:12; 3:57
on seeking the kingdom of God first, 3:140
on service, 2:84, 115, 132, 155–156, 162, 179, 218
service of, to us, 2:25, 116, 178, 271
suffering of, 1:237–238
taught about justice, 1:211
testimony of, 3:49–58
urged study of many things, 3:269–270
on U.S. Constitution, 2:203, 207–208, 235, 251
virtue of, 1:138–139, 141
as volunteer, 1:257
warns against unrighteous dominion, 2:3, 99, 132, 207, 217–218, 234
and woman taken in adultery, 3:209
as the Word, 2:92
Job, as example of integrity, 1:36
Johannesen, Grant, service of, 1:178
John Paul II. See Pope John Paul II
John the Baptist
integrity of, 1:81
and Jesus's Messiahship, 1:87
John the Beloved
at empty tomb, 1:227
saw risen Christ, 1:230
on the Savior as the Word, 2:92
on war in the last days, 2:102
Johnson, Paul, on moral relativism, 3:261
jokes, about lawyers, 2:86, 88, 178, 234, 266, 281, 283; 3:125
joy, 2:75, 153, 291, 300
Judaism, distinctive trait of, 1:233
judge, 'tis high to be a, 2:22
judges, 1:168–169, 215–216
judgment, final, a perspective on, 2:94
judicial activism, 2:219, 233–234
justice
adversarial system best chance to find, 2:103
demanded by the people, 1:213–215
and God, 1:37, 211–215
as immutable law, 1:209
and Jesus, 1:38, 190
and mercy, 1:219–222
and religious freedom, 2:72
serving the cause of, 2:242
justification, definition of, 2:141
Kant, Immanuel, on man’s imperfection, 2:138
Kazakhstan, law on religious freedom in, 2:71, 73
Keller, Timothy, on moral relativism, 3:261
Kennedy, Anthony, on liberty and responsibility, 3:125
Kennedy, David M., as example of integrity, 1:27–28
Kennedy, John F., pride of, 1:84
Kennedy, Robert F.
on building community, 1:242
on dreams, 3:236
Kidd, Jason, potential of, 1:25
"Kill the Billable Hour," by Evan R. Chesler, 3:72
Kimball, Dale A., 2:266–267
Kimball, Edward L., 2:264
Kimball, Heber C.
on education for eternity, 2:57
on education for Native Americans, 2:193
on humility of J. Reuben Clark Jr., 2:288–289
on idolatry and false gods, 3:13, 17
and mirror analogy, 2:43
and Native Americans, 2:192–193
offered help, 1:81
passing of, 2:266–267
on racial prejudice, 1:198
resoluteness of, 2:231
on riches, 1:240
kindness, 2:180
King Benjamin
on debt to God, 1:177
on happiness, 3:77
on obedience, 2:164
as role model, 2:8
on service, 1:96, 97, 177, 198
speech of, memorized by students, 2:159
taught by angel, 2:84
united people through Atonement, 2:11
King David
asked people to give service, 1:177
on benevolence of God, 1:219
on Christ as judge, 1:216
King Lamoni, mind of, was enlightened, 2:164
King, Martin Luther, Jr.
on the American dream, 2:188; 3:235
on death, 1:127
quoted in Church meetings, 1:127
on religion and service, 1:130
on unity, 1:202
king, over Israel, 1:214–215
Kipling, Rudyard, on service by British soldiers, 2:177
Kirkham, Francis, impressed by older lawyer’s ability, 1:128–249
Knapp, John Henry, wrongful imprisonment of, 1:62–65
Knapp, Linda, burning of home of, 1:62, 64
Knight, Newell, described Hiram Page revelations, 2:40–41
Korihor, as example of secular anti-Christ, 2:70, 124–125
Kronman, Anthony
on contribution of lawyers, 3:128
on lawyer-statesman, 3:121
on legal training, 2:138
Kushner, Harold
on deadening of conscience, 3:261
on God as lawgiver, 3:261
Kyrgyzstan, law on religious freedom in, 2:71
La Rochefoucauld, François duc de, on truth, 2:142
Langdell, Christopher Columbus, taught law as a logical science, 2:49
language, 2:91, 95; 3:175–176
Laurie, mental health patient, story about, 3:199
law
based in preexisting natural law, 3:6–7
in Book of Mormon, supports religious freedom, 2:124–125
civil, 1:188
of common consent, 1:214–215
contract, 1:187
criminal, 1:17, 188
as crude instrument, 2:216
divine. See God, laws of
each kingdom has own, 3:5
establishing, delegated to us by God, 3:5
eternal significance of study of, 2:56–59, 223, 285
as force for good, 2:173, 175, 181, 215, 284–286, 295
good Samaritan, 1:256
immutable, 1:209–212
improving, for benefit of society, 2:87, 214–215, 296
as instrument for achieving social goals, 1:103
makes one free, 1:189
of man, 2:83–84, 209, 251, 289–290
as most important branch of learning, 2:56–57, 249
natural, 1:49, 210
natural, and God’s law, 2:22
and politics, 2:195, 204
purpose of, 1:188
reasoning in, 2:214–215, 223, 283–284
and religion, 2:53, 45–55, 59, 207–208, 251
rule of, 1:236; 3:252
spirit of, 1:55
spiritual, 1:210–211; 2:84, 250–251, 300
study of, 3:270
to go forth out of Zion, 2:68, 207, 253
tort, 1:75, 253, 257
why study, 3:119
law practice
adversarial nature of, 2:51, 87, 106, 137–138, 214
balance in, 2:217
billable hours in, 2:32, 151–152, 171, 243
burnout in, 2:133–134, 152, 171, 174, 242
as calling, 2:111–112, 114–116
choosing clients in, 2:84, 168, 181
as Christian ministry, 1:163–166
civility and courtesy in, 2:50, 87, 102–104, 133,
commercialization of, 1:61
competing demands and priorities in, 3:89–97
confidentiality in, 2:27, 30–31, 86, 132, 181–182,
219–220, 285
conscience needed in, 2:50, 104–105, 142,
170–171, 227–228, 234
dissatisfaction with, 1:62, 66; 3:109
end of career in, 2:223
finding satisfaction in, 2:174, 242; 3:101–106
future of, 2:240
growing with, 1:30–32
individuality in, 2:16
justifications in, 1:37–38, 40
minorities in, 3:45
motivation for, 2:113–117, 173, 242
need for income from, 2:32, 84, 113, 168, 231,
243–244
and other interests, 1:13, 28
and pecuniary remuneration, 1:109–110
potential for corruption in, 1:105, 149
and pro bono service, 1:30–31, 36, 61–67, 177;
public service in, 2:88, 113–116, 134, 152,
176–180, 215, 242–244, 296
role models in, 2:103, 133, 174–183, 214, 216,
223
role of, misunderstood, 1:23, 36
in small town, 3:99–106
stress in, 2:15, 50, 106, 168–169, 171, 242
temptations in, 2:30–31, 84, 103, 133–134,
136–140, 152–153, 167–171, 219, 227–228,
242
uniqueness of cases in, 1:172
law school
calling to, 2:111–117, 173
can be sacred, 2:116–117
dean of, mission of, 2:215, 264, 282
develops leaders, 2:54–55, 173, 215, 221, 263,
289
diversity in, 2:52–54, 290
education at, gives power to change, 3:119, 232
legal problems in, 1:104
preparation for, 2:112–115, 173–174, 214,
227–228
religiously affiliated, 2:47–62, 273
religiously affiliated, fewer exist, 2:48–49, 54
religiously affiliated, statistics about, 2:48
religiously affiliated, teachings and impact
of, 2:52, 84
teaches skepticism and moral relativism, 2:49,
137–138, 216–217
teaches straight thinking, 2:49, 83, 215,
trend towards secularization at, 2:48–50
value assumptions in, 1:103–104
women in, 2:111–112; 3:117–119
law students
deal with ambiguity, 3:27–28, 32
demands on, 1:43, 164–165
given much, 3:39–40, 44, 48
indebted to tithe payers, 1:163
integrity as, 3:47
obligations of, 1:37
lawyers
arrogance of power, or manipulative behavior,
of, 1:134–136
arrogance of sophistry, or cleverness, of,
1:136–137
autonomy of, 1:180
being good, while being good Church members, 1:36–40, 133–143, 165–166, 188–195. See also balance
as champions, 1:175
character of, 2:73–74, 85, 88, 105, 138–139,
173–183, 208, 231–234; 3:184
characteristics of, 1:154, 194–195, 245–249
and Christ, 1:176
and Christlike advocates, 2:45–249
cleverness of, 1:136–137
create world of ideas, 3:14
as counselors, 1:38, 168
deal with patterns, 2:138
as defenders of faith, 2:54–55, 74, 227–228,
232, 236, 253
as defenders of liberty, 3:126
develop perspective, 1:25
duty of, to preserve rule of law, 2:209, 214–215,
empathy as important skill for, 3:192
ethical, choose to do good, 2:27, 51–52, 73–74,
103, 155–156, 175
ethical, refrain from doing wrong, 2:27, 105,
168–171
financial interests of, 3:182, 183
as founders of America, 2:32–34, 241, 284
as friend, 1:181–185
as godfather, 1:179, 181
gratitude for, 2:178
as guru, 1:180–181
have richer experience when appreciating
uniqueness of cases, 1:172
as healers, 1:149, 151, 183; 2:51–52, 55, 83–88,
102, 116–117, 179, 231, 271
help build community based on rule of law, 1:236
help create equality, 1:202, 203
help unify people, 1:190–195
as heroes and heroines, 3:247–248
as hired guns, 1:180, 234
and honesty, 2:87, 133, 168–171, 227–228, 234
importance of role of, 1:130–131
intangible skills of, 1:25–33
jokes about, 2:86, 88, 178, 234, 266, 281, 283; 3:125
Latter-day Saint, 2:17, 178, 180, 216, 227–228, 232, 235, 297–298
as leaders, 2:193, 241, 298
love of, for opposing clients and counsel, 2:106–107, 133, 155–156
as mediators, 1:191
as mentors, 1:100
Native American, 2:193
need of, to seek common ground, 1:191
as officers of court, 2:30, 113, 175–176, 178–179
as peacemakers, 3:181–187
perceptions of, 3:126, 194
as policy makers, 1:167–169
pondering as, 2:239–240, 242
portrayed negatively, 2:103, 178; 3:125–126
potential for good as, 2:87, 102, 113, 142, 174–183, 232
potential for harm as, 2:88, 103–104, 133, 138, 142, 169, 209, 219, 234
pride of, 2:132–133
as problem solvers, 3:143–145, 183, 184
professional liability of, 3:247
purpose of, 1:188–195
reputation of, 1:171; 2:176–178
responsibilities of, to serve, 2:11, 152, 178–179, 181, 236, 242–244
righteous, to save the nation, 2:235
in scriptures, 1:134–138
should have respect for adversary, 1:193, 247
should reach fair settlement, 1:192
should share gifts, 1:177–178
skepticism of, 1:104, 172–173
as translators, 3:192
unrighteous, lay foundation of people’s destruction, 2:234
use words as tools, 2:91, 156, 234
as whistleblowers, 2:31, 133, 252, 296
and winning all cases, 1:39
Laycock, Douglas, on compromise, 3:151
leaders, developed in law school, 2:54, 72–73, 113
learning. See education and learning
Leary, William H.
on fundamental purpose of law school, 1:35
on law as jealous mistress, 1:13, 20
Lee, Earl, bought crack houses to rehabilitate, 1:203
Lee, Harold B.
asked Dallin H. Oaks to serve as BYU president, 2:222
on intellect of J. Reuben Clark Jr., 2:230–231
on law going forth out of Zion, 2:68–69, 207
on retirement dinner for J. Reuben Clark Jr., 2:236–237
passing of, 2:266
on preparing to meet Christ, 1:17
telephone Rex E. Lee about new J. Reuben Clark Law School, 2:261, 264
on testimony, 1:19, 46
Lee, Harper
To Kill a Mockingbird, 2:174–175; 3:191. See also Finch, Atticus
Lee, Janet G., 2:271
Lee, Rex E.
called by Harold B. Lee about new J. Reuben Clark Law School, 2:261, 264
honoring legacy of, 2:268
humor of, 2:265–267, 271–272
dual career of, 2:240, 261–268
marriage of, 2:271
on freedom of religion, 2:206
on religiously affiliated law schools, 2:49–51
on thinking like a lawyer, 2:262–263
passing of, 2:267
as president of Brigham Young University, 2:240, 242, 267
as solicitor general of the United States, 2:265–267
testimony of, 2:272
Lee, Robert E.
on duty, 1:98
as example of integrity, 1:80–81
legacy, definition of, 2:149
legal system, creating moral, 3:6–10
Lehi
on God and law, 2:270
on mercy of God, 1:219
on sacrifice of Christ, 1:220
on salvation, 1:217
on Satan as the father of all lies, 2:94
Levi, Edward H.
career of, 2:214–216
on creativity within law, 2:215
on limits of law, 2:216
as mentor to Dallin H. Oaks, 2:214–216
on role of a university, 2:215–216
Lewis, C. S.
on consecration, 2:7
defined hell, 1:180
on faith and works, 1:218
on human potential, 1:238
on neighbors, 2:13, 291; 3:213
on praise, 2:76
on riches, 1:240
on spiritual risks, 2:3
liberty, 3:124–125
conflict between types of, 3:258–259
Libby, J. Gordon, and Watergate, 1:69
life
becoming well rounded in, 1:12–21, 28
compartmentalizing, 2:6, 105, 131–132
consecrated, 3:19–21
meaning in, 1:91–92
as ministry, 1:164
outcome of, based on service, 1:7
pace of, 1:99–100
plan for, 3:117–118
pure, 1:154–157
light, 2:75, 78, 108, 164, 250
borrowed, 3:31–32
Limhi, on service, 2:157
Lincoln, Abraham
assassination of, 2:201–202
on being a peacemaker, 3:187
on charity, 1:204
on Civil War, 2:198–201
on conduct of lawyers, 1:140
on discouraging litigation, 2:87–88, 231; 3:187
was empathetic even though weary, 3:276–277
encouraged religious faith and behavior, 2:195–202
as example of good character, 3:184–187
as exemplary lawyer-statesman, 3:121
First Inaugural Address, 2:197
on honesty, 2:85
and McCormick Reaper case, 3:184–185
mercy of, 1:219, 222
parallels of, with Jesus Christ, 2:201–202
political religion of, 2:195–197
pro bono work of, 3:109
public image of, 2:198–199, 201–202
religious beliefs of, 2:195–197, 200–202
on respect for law, 2:195
on respect given to lawyers, 2:86
Second Inaugural Address, 2:195–202
strive for unity, 2:201
Lincoln, Tad, goes with father to Richmond, 2:201
Lindbergh, Anne Morrow, on expectations, 1:80
Linowizt, Sol, on professionalism, 3:127
listening, 1:127; 2:133, 199; 3:193, 222
Litigation Code of Conduct, 1:140
Llewellyn, Karl N., The Bramble Bush, 2:284
Lombardi, Vince, on success, 1:26
loneliness, 3:205–206
Lopez, David, service given to, 1:96–97
Lost Lawyer, The, by Anthony Kronman, 3:121
love, 3:203–214
and charity, 3:204, 223
comes from service, 1:16–17
as commandment, 1:16, 114; 2:5, 68, 75, 106–107, 155–165
of enemies, 2:106–107, 202
of God, 1:114
and peacemaking, 2:106–108
and problem solving, 1:183–184
statements on, in our actions, 2:24
ways to, 2:158–160
Lund, John, taught don’t abandon what you know, 1:47
Lundberg, Constance K., childhood experience of, with speech, 2:95
Lundberg, Philip, asked about being perfect, 2:99–100
lying, 2:85, 93–95, 97, 300
Madison, James
as citizen lawyer, 2:33
drafted and promoted U.S. Constitution, 2:33, 205, 241
on self-government, 2:210; 3:77
warning of, about abridgment of freedom, 3:259
Malik, Charles, on opposites, 1:156
Man for All Seasons, A, by Robert Bolt, 2:4–5, 9–10
marriage
eternal, covenant of, 2:17, 92–93, 171, 224
kindness in lasting, 2:98–100, 158
legal threats to, 2:276–277
redefinition of, 3:260
Marshall, George C., as example of integrity, 1:81
Marshall, John
as definer of a nation, 2:205–206
discouraged over progress of U.S. Constitution, 2:206
Marshall, Thurgood, service and example of, 2:34–35, 240, 242
Martha, knew Jesus the Christ, 1:231
Mary, the mother of James, saw risen Christ, 1:228
Mary Magdalene, saw risen Christ, 1:227–228
Mathis, Karen J., on compassion, 3:189
matters, weightier, 1:3–4, 113–114, 115–116, 120
maturity, signs of, 2:104, 130, 143
Maxwell, Neal A.
on discipleship, 2:8, 158; 3:21
on moral relativism, 3:262
on religious freedom, 2:208
Mayer, Milton, on doctor knowledge, 2:133
McCloy, John J., on value of legal profession, 1:31–32
McConkie, Bruce R., on doctrine of freedom of worship, 2:66 on mercy, 1:217 on repentance, 1:220
McConkie, Oscar W., as mentor to Cecil O. Samuelson, 2:129–130
McConnell, Michael W., on religious universities, 2:53–54
McCord, James, and Watergate, 1:69, 71
McKay, David O., on accountability, 1:94 on Christ-based life, 1:15 on family, 2:100
mediation, 2:101
Medina, Harold R., as ethical trial lawyer and judge, 2:181–182
Menkel-Meadow, Carrie, on empathy, 3:191 mental health cases, stories about, 3:198, 199 mercy, 1:3, 37–38, 216–222, 256–257
Mere Christianity, by C. S. Lewis, on loving your neighbor, 3:213
Merlin, on learning, 1:93
Micha, on what the Lord requires, 3:152
Michener, James, Centennial, 1:171–172
Millennium, religious freedom during, 2:78
Milosevic, Slobodan, arrest of, 2:70
Mitchell, John, and Watergate, 1:70–71
Model Code of Professional Responsibility, 3:245
Model Rules and Code of Professional Responsibility, 1:61, 71–72
Model Rules of Professional Conduct, 3:245
models, for ethical behavior, 3:248
Modern Times, by Paul Johnson, 3:261
money connection of, to ethics, 2:168–169 don't use client's, for personal use, 2:168–169 gold box acquired by character and not, 2:240 monkey traps, 1:17
Monnet, Jean, on perspective of American lawyers, 1:25
Nelson, F. Clayton, as small-town lawyer, 3:100–101
Nelson, Russell M.
on evangelists, 3:168
on God’s power, 2:160
Nephi
on equality before God, 2:219
on grace, 1:217
on Jesus Christ, 2:229
on learning, 1:15
on obedience, 2:164, 170
on pride, 2:163
on repentance, 1:213
on salvation, 1:217
on trust in God, 1:97
on unrighteous lawyers and judges, 2:234
Nepihah, as chief judge, 1:212
Nephites, chances for learning of, 3:212
Neusner, Jacob, on study, 1:233
New Jersey, prosecution of antihomosexuality discrimination in, 3:258
New Mexico, prosecution of antihomosexuality discrimination in, 3:258
Newton, Isaac, stood on the shoulders of giants, 2:225
Nibley, Hugh
on stewardship, 1:176, 177
on true leaders, 1:202
on work, 3:152
Nielsen, Arthur
on integrity, 1:39
on the Sermon on the Mount, 1:38
 nihil humanorum alienum meum est, 2:138
Nixon, Richard M.
role of, in Watergate scandal, 2:295–296
and Watergate and integrity, 1:70, 71
nonbelievers, importance of religiously affiliated law schools to, 2:58–59
Novak, Michael, on spiritual roots of America, 2:209
Nuffer, David, as partner to Steven E. Snow, 3:102–103
Nussbaum, Martha, on reading another person’s story, 3:191
Oaks, Dallin H.
on becoming instead of knowing, 3:22
career of, 2:213–224, 270
on civic virtue, 2:209–210
clerkship of, 2:218–221
experiences of, as law student, 2:214–218
on J. Reuben Clark Law School, 3:181
mentors to, 2:213–223
on nonpolitical agenda of J. Reuben Clark Law School, 2:270
on privileges and responsibilities of law students, 3:48
response of, to lies during deposition, 2:297
on role of university during civil unrest, 2:216
on rule of law, 2:296–297
on thinking like a lawyer, 2:283–284
on U.S. Constitution as inspired document, 3:73
on use of clean language, 2:95
Obama, Barack, terminology of, about religious freedom, 3:258
obedience. See also commandments
cannot be forced, 2:209
excess of, 2:170
to laws, brings blessings, 2:250, 300–301;
3:272–273
is remembrance, 2:162
obituary, 2:271
offence, giving or taking, 3:175–178
Okazaki, Chieko N., on trees and balance, 3:19–20
Okazaki, Kenneth A., on law and peacemaking, 2:101–102
operational self-refutation, definition of, 2:147–148
Oppenheimer, J. Robert, and professional morality, 1:175
opportunities, 3:135
optimists, 3:35
Organization for Security and Cooperation in Europe, 2:71
others, possess truth, 2:78, 215
Oxford English Dictionary, on empathy, 2:140, 147
Pace, Glenn, on being salt of the earth, 1:203
Packer, Boyd K.
on agency, 2:7–8
on choice, 1:47
on faith, 2:161
memories of J. Reuben Clark Jr. of, 2:225, 236
on revelation, 2:19
teaches parable of debtor, 1:221
Page, Hiram, and conflict with Joseph Smith Jr., 2:40–41
Pahoran charitably reacted to Captain Moroni, 3:177
humbly reacted to Captain Moroni, 2:41–43, 125
Papantonio, Mike, on Atticus Finch, 2:174
parable
of the debtor, 1:221–222
of the good Samaritan, 1:128, 137, 247, 255–256;
3:206
of the sower, 1:110
paradoxes, in gospel, 2:66–68; 3:29
 Paramount Communications v. qvc Network (1994), 1:135
Parenti, Gail Leverett, experiences of, as a defendant, 3:195
parenting. See also children; family
and children’s friends, 2:80–81 n. 34
as contract, 2:18
and peacemaking, 2:105–106, 108
Index

reminders of, in briefcase, 2:150–152
and talking with children, 2:99–100
Parrish, Stan, 2:265
patience, 2:72
Paul the apostle
on Abraham’s faithfulness, 2:210
on armor of God, 2:104
as articulate, 2:157
on being like child, 3:217, 218
on charity, 1:204; 3:215–216
on Christ, 1:88, 248
on commitment, 1:48
on conditions in last days, 2:233
on Corinthians as epistles from God, 1:182, 183
on equality, 1:198
on faith, 2:278
on giving offence, 3:175
on grace, 1:217
on love of Jesus Christ, 2:108
on love of money, 2:243
on mercy, 1:216
on peace, 2:108, 164
on perspective, 1:113
on renewal, 2:164
on reward, 1:110
on separation from love of God, 3:140
on sin, 3:164
on spiritually discerned knowledge, 1:82
on universality of sin, 2:244
on zeal, 1:114
Pawnee Indians, 2:187–189
peace, 2:102, 104, 108, 199–201; 3:77
Pearson, Carol Lynn, on growing spiritually, 1:18
Pepper, George Wharton, on balance, 1:30
Peres, Shimon, story of, about Jewish rabbi, 2:75
perfection, 2:99–100, 139–140, 163, 211, 244, 291
gap between reality and, 3:28, 30–37
Pericles, on honor, 1:91
Peru, law on religious freedom in, 2:41
Pew Forum Study on Religion and Public Life, 3:253, 254
Pfaff, Tony, on military ethics, 2:177–178
Phillips, Melanie, on religious values, 3:252
physical development, 1:15–16
Pilgrim’s Progress, The, by John Bunyan, 3:v
Plessy v. Ferguson (1896), 2:35, 240
Pope John Paul II
on moral standards, 1:71
on universities, 2:54
Porter, Bruce D., on building the kingdom, 2:80
Portia, on justice and mercy, 1:197, 216, 218
post-modernism, 2:177–178
potential, 3:3–10
Pound, Roscoe, on profession of law, 1:66
poverty, 1:198–202, 241
Powell, Lewis F., as mentor to Dallin H. Oaks, 2:221–222
power
arrogance of, 1:135
corrupting nature of, 2:243
gentle use of, 1:82; 2:205
to help, 1:66
source of, 1:151–152
and trust, 1:149, 151
virtue as, 1:139
praise, 2:76, 230
prayer
awakens reverence, 2:100
of Carl Hawkins, 2:274–275
dedictory, 2:252–253, 257–258
at end of Sunday School, story of, 1:125–126
of family from Africa, 1:124–125
to keep from temptation, 2:163
of Larry Echo Hawk, 2:190–191
for lawyers, 2:9, 51–52, 227, 237
before miracles, 2:160
for others to help loved ones, 3:208–209
as response to conflicts, 2:41, 107
for students, 2:164, 227
where are you concerning, 1:12
prejudging, 1:127–129; 2:140
Preston England Temple, Cecil O. Samuelson’s experiences at, 3:54–55
Preston, Levi, on motivation for American Revolution, 2:204
presumption
definition of, 2:136
of innocence, 2:136
Pride. See also arrogance
and assumptions, 2:136
in Book of Mormon, 1:199
Index

versus integrity, 1:84
intellectual, 2:162–164
versus professionalism, 1:179; 2:176–178
priestcraft, 1:164; 2:39
priesthood
handled with righteousness, 2:218
influence of leaders in, 2:189, 217–218
unrighteous use of, 2:3, 67, 75, 115
Princess Bride, The, by William Goldman, 2:92
principles
and salvation, 3:16–17
worship of, 3:14–16, 22
pro bono service. See law practice, and pro bono service
problem solving, 2:140, 215, 275
procrastination, 2:168, 299
professionalism. See also civility of army, 2:176–178
Atticus Finch as example of, 2:182–183
and courtesy, 3:126–127
definition of, 1:147–148; 2:130, 170, 175–176, 179–180
embodied in Atticus Finch, 2:175, 180
imposed, 3:173
and obedience to principles, 2:170–171
and peace, 2:103
personal philosophy of, of Cecil O. Samuelson, 2:129–134
requires best service to clients, 2:219
requires public and private consistency, 2:131–132
and service, 2:178–179; 3:128
professions, 1:148–149
allegiance of members of, 1:149
codes of, 2:102, 170, 180; 3:47
have codes of ethics, 1:178
obedience to, 2:170
morality of, 1:175–176
and service, 1:150
property, 1:3–4
prophecy, 2:66, 68–69, 207, 253
Proverbs
on peacemaking, 2:43, 87, 104–105
on thoughts, 2:164
public service. See law practice, and pro bono service; law practice, public service in;

service
public square, religious and secular voices in, 3:252, 259, 260, 263
purity, 1:154–157
pursuit of excellence, 1:109
Putnam, Robert, on religious observance, 3:253
questions
asked and answered, 3:206
God teaches through, 1:3, 7
God will ask penetrating, 1:7
importance of, 2:159–160, 164
Lord provides answers to His, 1:3
need to ask self, 1:2, 5, 7
Quindlen, Anna, on doing good, 3:128
rashi, story of Jewish, 2:75
racial inequality, 1:197–198
Rasband, James R., took extra time when new to law practice, 3:40–42
Rasmussen, Hans and Maren, were obedient, 3:273
rat race, 2:15, 50
Reagan, Ronald, selected Rex E. Lee as solicitor general, 2:265
reconciliation, between being a good lawyer and being a good Church member, 1:36–40, 133–143, 165–166, 195
referee, bad language of, 2:96–97
Rehnquist, William H., on time and money, 1:47
relationships
don’t sacrifice, for success, 3:132–137
quality of, shows devotion to Christ, 1:6
Relief Society bazaar, story of James E. Faust about supporting, 2:85
religion
in academics, 2:49, 124
civil, 2:195–196
decline of, 3:253
erosion of the protection of, 3:254–260
freedom of. See freedom, religious
importance of, to country, 2:209; 3:251–254
importance of, to individuals, 2:66, 151, 190–194, 216–217
reasons to protect, 3:251–254
role of, in international events, 2:119
suppression of, 2:70, 120–122, 124–125
wars fought for, 2:197
remember, definition of, 2:162
repentance, 1:6, 212–213, 220; 2:163
repetition, value of, 2:218
respect, 2:106
responsibilities, 1:43–48, 74–76
resurrection, 2:11, 17, 57, 163, 300; 3:50–58
revelation
in calling J. Reuben Clark Jr., 2:228
in calling Rex E. Lee, 2:272
of Carl Hawkins, 2:274–275
diligently seeking, 2:157, 161
exploring, 2:203
of Joseph Smith, 2:210–211
of law student, 2:114
be prepared to receive, 2:108
in professional life as well as elsewhere, 2:84
Revolutionary War, 2:34, 153–154, 204
Reynolds v. United States (1803), 3:242
Rich, Richard, lost his soul, 2:4–6
Ricoeur, Paul, on stages of faith, 3:217–218
rigor, 2:88, 180, 218
even when unpopular, 2:181–183, 230
practical benefits of, 2:157–159, 170–171
righting wrongs, 1:159–161
rights-duties budget, 3:148–152
Ringger, Hans B., and Church in Czechoslovakia, 1:53–54
risk, 1:55, 2:132, 2:181, 2:299
Robbins, Lynn G., on contention, 2:99
Roberts, B. H., on God’s limits, 1:209
Robinson, Stephen E., story of, of bicycle, 1:217
Robinson, Tom, legal defense of, 2:174–176, 182–183
rod of iron, 1:52
Rogers, Carl, on empathy, 3:189
Rogers, Will
on complacency, 2:86–87
on J. Reuben Clark Jr., 2:229
on loving our neighbor, 1:17
on making a life, 3:109
Romania, law on religious freedom in, 2:71
Romney, Marion G.
desire of, for law school, 1:79
example of, 1:80
experience of, with J. Reuben Clark Jr., 2:249
on honoring legacy of J. Reuben Clark Jr., 2:55, 249–250, 287, 289
on importance of study of law, 2:56–57, 59, 249–252, 285, 287
integrity of, 1:81
on nonpolitical agenda of J. Reuben Clark Law School, 2:270
on privileges and responsibilities of law students, 1:48
on process of selecting leaders, 2:272–273
on study of law, 1:35
on suffering for sins, 1:220
Rooker, C. Keith, 2:264–265
Roosevelt, Franklin D.
and General Marshall, 1:81
on public speaking, 2:129
Roper v. Simmons (2005), 2:146
Rosenberg, Joshua
on empathy, 3:194
on interplay between heart and head, 3:190
on satisfaction, 3:191
rule of law, 2:295–298
Atonement and building community based on, 1:236; 2:13
blessings from following, 3:271
and U.S. Constitution, 2:33–34
regard for, 2:22
thanks for, 2:255
rules, 1:50, 52, 72, 73, 138
Rush, Benjamin, on virtue and liberty, 3:108
sabbatical, spiritual, 1:45, 46
Sabrina, on value of having more, 2:16
sacrament, 2:12, 157, 180
sacrifice, 1:126; 2:157, 199
Salerno, Steve, on happiness, 3:77
Salome, saw risen Christ, 1:228
salvation, 3:16–17, 21–22
Salzberg, Sharon, on compassion, 3:196
Samaritan. See parable, of the good Samaritan
Samuel, and king over Israel, 1:215
Samuelson, Cecil O.
career of, 2:131
education of, 2:130–131
experience of, at divinity school, 3:51–54
mentor of, 2:129–130
testimonial of, 3:49–58
Samuelson, Sharon G., 2:131
Santiago, Ella, as good Samaritan, 1:255
Satan
as accuser, 3:221
and agency, 3:4
as father of contention, 2:99, 230
as father of lies, 2:94, 163
Sayers, Dorothy L., on link between work and religious life, 2:6–7
Scharffs, Brett G.
bike ride of, with uncle, 2:135–136
father of, puts away criticisms and doubts, 3:218
on not getting angry when disagreeing, 3:44
prayers of, answers to, 3:219–220
Scopes trial, 1:176
scribe, asks Jesus about commandments, 2:155–156
scriptures, 1:1, 2, 118, 228; 2:159, 161–162, 229
as collection of personal stories, 2:269
contain jewels, 2:203
not primary source for legal education, 2:57–58
teach of justice, 1:211
warnings about lawyers in, 2:234
Second Inaugural Address, given by Abraham Lincoln, 2:195–202
securities fraud, man accused of, 2:138
seeds, growth of good, 2:112
self-control, 1:69–76
self-evaluation, 1:1–7, 29
self-government, 2:216–216, 233–234
self-justification, 1:137
self-refutation, operational, definition of, 2:147–148
September 11, 2001, impact of, 2:114
Sermon on the Mount, 2:161, 250; 3:176–177, 209, 212
service
brings happiness, 1:17
charity in, 3:222–223
in Church, 1:30–31; 2:288
develops love, 3:213–214
by doctors, 1:96–97, 160–161
by God, 2:17
by God, 1:56; 3:140–141
importance of, 2:124, 151, 157, 161–162, 243–244, 299
judging can be a form of, 2:23
obligation of, 2:102, 152, 176
as obligation of being a professional, 1:176–177
through practice of law, 1:57, 163–166, 168;
2:114, 179, 223, 231, 236, 243–244, 271
as prerequisite to inspiration, 3:166, 168
public, 1:13–14, 30, 168
remember God’s, when performing our, 2:11
“sack-of-hickory-nuts” type of, 2:179
to the under-represented. See law practice,
and pro bono service
seven, symbolism of number, 2:157
Seymour, Charles, urged Christian living at Yale
University, 2:49
Shadrach, Meshach, and Abed-nego, 3:218–219
Shaffer, Thomas L.
on four roles of lawyers, 1:178–181
on law and religion, 2:54–55
Shakespeare, William
on borrowing, 2:298
on humility, 2:86
on lawyers, 2:86; 3:125–126
on reputation, 2:86
on “serve God, love me, and mend,” 3:139, 143
Sherem, as example of unrighteous religious
orthodoxy, 2:70
Sidel, Ruth, on class bias, 1:201
Simpson, O. J., trial of, 2:87
sin, 2:47, 163, 201–202, 208, 233, 244
sinner, versus sin, 3:207
Sirica, John J., and Watergate, 1:69; 2:296
Skelton v. City of Birmingham (1976), 2:96
skepticism, 2:49, 70; 3:32–34
in law practice, 2:142–144
slave trade, abolition of, in Great Britain, 3:7–9
slavery, 2:196–197, 200–201, 208
sleep deprivation, in medical training, 2:132
Smith, George A., asks grandson in dream about
honoring name, 2:226
Smith, George Albert
on honoring name, 2:225–226
on religious freedom, 2:68–69
on U.S. Constitution, 2:68–69, 207
Smith, Gordon, question of, about religion and
work, 2:3, 9
Smith, Hannah Clayson, helped with French
religious freedom law, 2:72–73
Smith, Jean Edward, on life of John Marshall,
2:205–206
Smith, John M., organizes religious freedom
conference in Ukraine, 2:73
Smith, Joseph F.
on council in heaven, 1:214
on seeking truth, 2:77
set apart J. Reuben Clark Jr., 2:227
Smith, Joseph, Jr.
on agency, 3:4
baptism of, 2:273
on becoming gods, 3:3
Bible study of, 1:235
on council in heaven, 1:213, 215
on the Doctrine and Covenants, 2:88, 116
on education, 2:252
on elements, 1:210
as Everyman figure, 2:10–11
experience of, with illegal arrest, 2:297
on friends, 1:81
on God’s laws, 2:57
on God’s use of law, 3:3, 10
on humility, 2:43, 211
on influence of the Savior, 1:223
on law practice, 2:232
on marriage, 2:19
and modern revelation, 2:104
motivations of, for prayer leading to First
Vision, 1:242
on nation hanging by a thread, 2:235
on need for religious freedom, 2:65, 76
prayer of, 2:41, 210
on progression, 2:17
on purpose of God’s plan, 1:212
resolved conflicts, 2:38–41
on responsibility to lift up our kindred, 1:200
and restoration of gospel, 1:236–237; 2:189,
210–211, 272
revelation of, on suffering of Christ, 1:237
on rights and duties, 3:151
on sacrificing for religious freedom, 2:67, 125
supplication of, 1:2
teachings of, on discipleship, 2:10
on testimony, 3:55
on U.S. Constitution, 2:210, 251; 3:78
visions of Christ of, 1:231–232, 245; 3:57–58
warned Stephen A. Douglas, 2:232
Snedrfler, Jiri, example of, 1:54
Snedrfler, Olga, sustained husband, 1:54
Sneetches, The, by Dr. Seuss, 3:211
Snider, Don M., on military ethics, 2:177
Snow, Eliza R., poem of, on justice and mercy,
1:222
Snow, Erastus
asked about self-representation in law, 2:232
on barriers to God’s spirit, 1:85
on eternal laws, 1:212
Society of Separationists v. Whitehead (1993), 2:80
soldier, on motivation for Revolutionary War,
2:204
Solzhenitsyn, Alexander
on courage, 1:98–99
on system of laws, 1:108–109
son, story of, as disappointment to father,
3:209–210
song, world more interesting when people have
a, 2:53
soul
giving, for the world, 25
loss of, 1:240
Souls in Transition, on religion, 3:253
Southern Baptist Convention, courteous response to, called for, 2:74

speech. See language

spirit, gives life, 2:86

Spirit, teaching and learning by the, 2:274–275

Spirit of the Law address, 2:135–147; 3:13–25

Stanton, Edward M., and Abraham Lincoln, 3:185–186

statute of limitations, definition of, 2:94

Steele, Michael, on having compassion, 3:196

stereotyping, 2:138–140, 144

Stevens, John Paul, on professionalism and civility, 3:126–127

Stevens, Paul L., on being compassionate, 3:196

stewardship, 1:176–177

Stockton, John, as example of success, 1:24

Stone, Debby, use of hypothetical lawyer Catherine by, 3:190

stories, needed, about doing duty, 3:152–153

Story, Joseph, on law as a jealous mistress, 3:89, 104, 142

storytelling, power in, 2:269

Stowe, Harriet Beecher, Uncle Tom’s Cabin, 2:196–197

stress, in law practice, 2:15, 50, 106, 168–169, 171, 242

Strohmeyer, Jeremy, casino case of, 1:252

Student, lonely, at BYU, 3:205

style, 1:51–52

success, 1:17–18, 24–33; 3:132–137

sweat-lodge case, 3:238–240

Sweden, missionary and legal experiences of Dee V. Benson in, 2:261–262

Talmage, James E.
on intellect of J. Reuben Clark Jr., 2:227, 287

as mentor to J. Reuben Clark Jr., 2:227

on U.S. Constitution, 2:207

Taylor, John

on being accountable for unserved individuals, 2:7

on being open to all truth, 2:77

on eternal laws, 1:210

gave blessing to James Henry Moyle to attend law school, 2:227–232, 232, 287

on justice and mercy, 1:222

provided counsel regarding law studies, 2:227–228

on those we fail to help, 1:46

teachability, 1:48–249

teacher evaluations, 2:139–140

teachers, as good people, 3:168

teaching

conflicts are designed for, 2:40

by the Spirit, 3:274–275

by students enhances learning, 3:44

Teller, Edward, and professional morality, 1:175

temper, makes bad situations worse, 2:104

temples, covenants of, 2:17, 93, 115–116, 159, 161

temptation, 1:44, 98

10-run rule, in Little League, 2:267

Tennyson, Alfred Lord, Idylls of the King, 1:153–54


Thomas the apostle, saw risen Christ, 1:229

Thomas, David A.
helicopter ride of, 3:272

obedient to law of Sabbath, 3:274

paternal blessing of, urged study of law, 3:269

Thomas, Robert K., 2:273

Thompson, Jeffery, on using talents in profession, 3:20–21

thread, U.S. Constitution to hang by a, 2:235

ticket, for speeding, 2:266

Tierney, John, on religion and happiness, 3:75

timber, crooked, man made of, 2:138

time, choices of what to do with, 2:115

tithes and offerings, 1:277; 2:217

To Kill a Mockingbird, by Harper Lee, 2:174–175; 3:191. See also Finch, Atticus

Tocqueville, Alexis de

on people’s trust of lawyers, 3:108

on role of lawyers in America, 2:241


religious, Latter-day Saints’ need for, 2:65–68, 74–75, 80–81, 124–125

Tolkien, J. R. R.
on giving succor, 1:84

on how to judge, 1:176

Tollefson, Ingrid, on lawyer as nurturer, 3:197

Tolstoy, Leo, on Abraham Lincoln, 2:202

“Tommy,” by Rudyard Kipling, 2:177–178

tongue, as best and worst part of man, 2:97

treason, 2:181–182

trees, as symbol of balance, 3:19–20

Truman, Harry S.
appointed Harold R. Medina as judge, 2:182

on doing what’s right, 2:180

trust, 1:47, 97, 149; 2:86, 168–169

truth

gospel embraces all, 2:67, 76–78 n. 8

objective, 2:177

in scriptures, 2:203

speaking, 1:157–159

Tuchman, Barbara W., on founding fathers, 2:204

Tucker, Sophi, on being rich, 3:183

Tushnet, Mark, on religious universities and reputation, 2:50

Uchtdorf, Deiter F., on salvation as pathway, 3:22

Uncle Tom, definition of, 2:196–197

Uncle Tom’s Cabin, by Harriet Beecher Stowe, 2:196–197

understanding, definition of, 2:156

Uniform Probate Code, on presumption of death, 2:136, 146

unity, 1:118–119, 187–195, 202, 204

University of Chicago, response of, to student demonstrations, 2:215–216

U.S. Constitution, 3:72–73, 77–78

based in religious values, 3:252

Bill of Duties in, called the Preamble, 3:154–155


as divinely inspired, 2:203–207, 210–211, 235, 250–251


Fourteenth Amendment of, 2:210

gratitude for, 2:251, 255


moral basis of, 3:262

oath to uphold, 2:241

as pattern for all laws, 2:68–69, 153–154, 207

ratification of, 2:203–204

structure of, 2:33–34, 243

to be threatened in latter days, 2:235–236


Utah, law on religious freedom in, 2:74

Utah Standards of Professionalism and Civility (2003), 2:103, 180

Utah State Bar, women members of, 2:112

value assumptions, 1:103–111

values, 1:119–120, 202

Van Alstyne, Arvo, on U.S. Constitution as inspired document, 3:72

Vandenberg, David, 3:122, 124

Vannoy, Jeremy, wanted peace and quiet, 2:105

Vannoy, Stephen, on experience with son, 2:105

Vatican Library, 2:256

verbal abuse, story about, 3:199


Wheatley, Jack R., 2:256

Whitaker, Scott, on growing spiritually, 1:18

White, Byron R., on humility, 2:290

Whitely, Joseph, proposed law course for Brigham Young Academy, 2:286

Whiting, Bruce, 2:263

Whitmer family, 2:38–39

Whitney, Orson F., on suffering for sins, 1:220

Wichman, Lance B., mother of, wanted him to be lawyer, 2:173

widow's mite, 1:126

Wilberforce, William, dedication of, to abolishing slave trade, 3:7–9

Wilkinson, Ernest L., proposed J. Reuben Clark Law School, 2:269–270

Williams, Grace, on experience, 2:130

Williams, Tennessee, play of, about prefrontal lobotomies, 1:75

Wilson, John, influence of, 1:127

Wilson, John Q., on personal responsibility, 1:75–76

Wilson, Woodrow

on individualization, 1:86

on service, 1:66–67

Winder, David K., on integrity, 1:40

Wise, Jane H., decision of, to attend law school, 2:111–112

Wister, Owen, The Virginian, 2:95

witness

alibi, 2:169

expert, 2:169

Wooden, John, on learning, 1:25, 30

Woodruff, Wilford

on founding fathers, 2:204–205

on integrity, 1:82, 88

and Joseph Smith, 1:81

on seeking truth, 2:77

Walkover, Andrew, on infancy defense, 2:146

Wallace, Clifford, as example of success, 1:31

Wallace, George Corley, and Sharlene Hunter, 1:176

war, 2:102, 122–123, 125, 177, 181, 197–201

in heaven, 1:114–115

Wardle, Lynn D., 2:241

Warren, Earl

character of, 2:219–221

as mentor to Dallin H. Oaks, 2:218–221

on professional confidences, 2:219–220

Warren, John Collins, as first U.S. university dean, 2:282

Washington, George

character of, 2:205

as example of integrity, 1:82–83

inspired by God, 2:204–205

on law, 2:241–242


Watson, Thomas, on pure life, 1:154–155

Weinstein, Philip, on compassion in family law, 3:197

Welch, Jeannie, 2:158

Welch, John S., as example of doing duty, 3:153

Welch, John W.,

discovered chiasmus in Book of Mormon, 2:161

memorized Sermon on the Mount, 2:159

witnessed miracles, 2:160–161

Welch, Louis M., on gentleness and professionalism, 2:180–181

well-doing, be not weary in, 3:275–277

Wesley, John, on doing good, 2:34–35

West, Jessamyn, on stereotypings, 2:141

Westley, on marriage vows, 2:92

Whitaker, Scott, on growing spiritually, 1:18

White, Byron R., on humility, 2:290

Whitely, Joseph, proposed law course for Brigham Young Academy, 2:286

Whiting, Bruce, 2:263

Whitmer family, 2:38–39

Whitney, Orson F., on suffering for sins, 1:220

wickedness, in modern times, 2:232–233

Wickman, Lance B., mother of, wanted him to be lawyer, 2:173

Willingham, William, dedication of, to abolishing slave trade, 3:7–9

Wilkinson, Ernest L., proposed J. Reuben Clark Law School, 2:269–270

Williams, Grace, on experience, 2:130

Williams, Tennessee, play of, about prefrontal lobotomies, 1:75

Wilson, John, influence of, 1:127

Wilson, John Q., on personal responsibility, 1:75–76

Wilson, Woodrow

on individualization, 1:86

on service, 1:66–67

Winsor, David K., on integrity, 1:40

Wise, Jane H., decision of, to attend law school, 2:111–112

Wister, Owen, The Virginian, 2:95

witness

alibi, 2:169

expert, 2:169

Wooden, John, on learning, 1:25, 30

Woodruff, Wilford

on founding fathers, 2:204–205

on integrity, 1:82, 88

and Joseph Smith, 1:81

on seeking truth, 2:77
Woolley, Edwin D., eloquence and stubbornness of, 2:231
vulgar, 2:94–97
work
don't accept, you can't handle, 2:168–169
given to others, 2:234
importance of hard, in giving back, 3:46
importance of hard, in obtaining education, 2:157, 286–286, 298–301
works, 1:216–217
World War II
aftermath, 2:69, 123, 133, 268
and bridge over River Kwai, 1:106–108
Douglas Haig during, 1:83
Stanley Baldwin during, 1:84
treason trial during, 2:181
Winston Churchill during, 1:83
worry, 2:133, 199
worship
pursuit of excellence as, 1:109
of technique, 1:106–108, 109
what do we, 3:13–24
Worthen, Kevin J, 2:149, 268
on dealing with clients, 3:196
experience with dentist, 2:57
Wright, Charles Alan
on Learned Hand's humility, 2:143
and Watergate, 1:70
wrong
often, never in doubt, 2:139, 290
righting that which is, 1:159–161
Yahoo, 3:132–133
Yale law student, on thinking more rather than studying more, 2:239
Young, Brigham
on breadth of gospel truth, 2:76–78
on conflicts, 2:38
on consent, 1:214
on elements, 1:210
on grace and works, 1:218
on integrity, 1:81
on laws, 1:209–210
on religious freedom during the Millennium, 2:78
on salvation, 1:218
on study of law, 2:298
on suffering for sins, 1:220
on taking time for self, 1:80
on teaching with the Spirit, 2:155
on U.S. Constitution, 2:235
on virtue, 1:139
Young, John W., quoted Descartes, 1:15
young woman, story of, being accepted into ward, 3:207–208
Zeezrom, 1:134, 136
suffering of, 2:163
Zion
as a choice, 2:72
establishment of, 2:236
out of, shall go forth the law, 2:68, 207, 253
salvation of, 1:189
society of, characteristics of, 1:235, 240; 3:149