



THE **BYU**

ADVOCATE

2021



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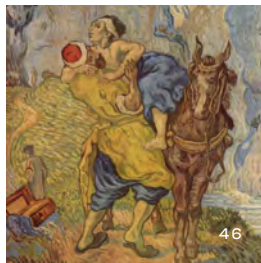
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FEATURE

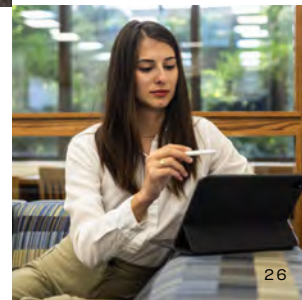
Cultivating Anti-racism at BYU Law School

Barbara Melendez and Kif Augustine-Adams



ALUMNI AND FRIENDS

Getting Proximate



OF GOOD REPORT

BYU Law's New Innovation Space

Amberly Page

FEATURE

Paths to Bar Licensure

Rachel Edwards

The past year at the Law School has brought unprecedented challenges and unanticipated blessings. As Kevin J Worthen, Brigham Young University president and former dean of BYU Law, said in August 2020, our “hope [is] that we do not just survive this unusual experience but that we lean into it in a way that both reconfirms the essential components of our prior core goals and also accelerates our progress toward them.”¹ Here are just a few examples of how the Law School is leaning into opportunities to adapt and innovate.

THE LAW SCHOOL'S MISSION

The effects of the pandemic, racial unrest, and political upheaval on the Law School (see my message in the 2020 issue of *The BYU Advocate*) forced us to reflect on our deepest values and to reengage the question “Why does BYU Law School exist?” As a result of this reflection and in anticipation of an upcoming accreditation visit, I charged a committee of faculty, staff, and students to create a new mission statement for the Law School. The committee produced an inspiring document, which begins: “BYU Law recognizes the inherent dignity and equality of each individual and welcomes people from the full range of human experience. We are committed to the teachings of Jesus Christ and honor His many roles, including healer, peacemaker, mediator, counselor, advocate, lawgiver, and judge.

In striving to emulate His example, we seek to be and develop people of integrity



who combine faith and intellect in lifelong service to God and neighbor.”

Recognition of the inherent dignity of each individual guides our understanding of our professional obligation as lawyers and our commitment to our students. These values are reflected in the Law School's new mission statement and educational objectives, which can be found at law.byu.edu/mission.

LAW AND LEADERSHIP CONFERENCES

In 2019 our Leadership Fellows, a group of students selected with the support of the Council of Inspiring Leaders, helped plan the inaugural Law and Leadership Conference. The conference, titled “Regulating the Legal Profession,” highlighted the leadership of the Utah Supreme Court in re-regulating the legal profession. These efforts and resulting developments, including the implementation of a “legal regulatory sandbox,” were examined in the 2019 conference.² Since that time, the Utah Supreme Court launched the Office of Legal Services Innovation, which has already approved more than 20 applications to operate in the sandbox.

For the 2020 Law and Leadership Conference, which was held remotely, we assembled a group of thought leaders to explore the features and shortcomings of the bar examination and other potential paths to bar licensure, considered lessons from the Utah experience with emergency diploma privilege, and offered alternatives to the bar examination for further consideration. Highlights from that conference are featured in this issue.



DIVERSITY, EQUITY, AND BELONGING

We are striving to create a Law School community that respects the entire range of human differences. Indeed, we aspire to be a place where differences are not just tolerated but welcomed. We believe that all members of the Law School community have the potential to become leaders, and we use a “whole building” approach to leadership training. This approach encourages every member of our community to help others feel valued and respected.

One of our greatest challenges as a community is to make this aspiration real, and we talk a lot about the need to help our students collaborate across differences. Even before the events of last summer, we were actively engaged in efforts to promote diversity, equity, and belonging among our students, but a joint statement made by Russell M. Nelson, president of The Church of Jesus Christ of Latter-day Saints (which sponsors BYU Law), and leaders of the NAACP in the wake of George Floyd's murder gave new impetus to our efforts. This statement called on “educational leaders at every level to review processes, laws, and organizational attitudes regarding racism and root them out once and for all.”³ Although this is a long-term project that will take humility, diligence, and perseverance, it is one we are determined to pursue.



ACADEMIES

In 2018 BYU Law School launched the Trial Academy, a weeklong boot-camp experience for 24 first-year students that involved a faculty of seasoned trial lawyers. The students talked about how much they improved from the beginning to the end, and one noted that it “was the best thing I have ever done.” The coaches were universally impressed with the students, and the benefits of the experience were quickly apparent. One of our trial advocacy competition teams, which included several students who had attended the Trial Academy, advanced to the semifinals of the National Trial Competition, and for the first time in the Law School’s history, we earned an invitation to the National Board of Trial Advocacy’s Tournament of Champions, an invitation-only tournament for the top 16 schools in the US in trial advocacy.

Inspired by the success of the Trial Academy, we established the Deals Academy in 2019 to focus on M&A work. We selected 12 students to participate in this academy, which was hosted in New York City by Kirkland & Ellis (K&E). Senior associates and junior partners from K&E served as coaches for the students as they worked through a simulated deal,

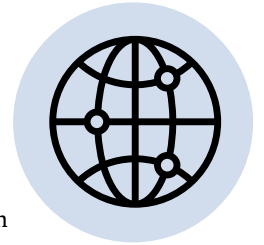
and senior partners spoke with the students at the end of each day. During the program, K&E identified several students they wanted to recruit as summer associates and expressed a strong interest in hosting the academy again. One of the Deals Academy alums returned to K&E this summer as a full-time associate.

The academies have been disrupted the past two years by the pandemic, but we are already planning a full slate of academies for spring 2022, including the Deals Academy in New York City (K&E), the Energy Academy in Houston (Orrick Herrington & Sutcliffe), the Immigration Academy in Salt Lake City (Fragomen), the Startup Academy in Palo Alto (Wilson Sonsini Goodrich & Rosati), and the Trial Academy in Dallas (K&E).

GLOBAL PROGRAMS

We speak often in the Law School about the need to develop “cross-cultural competency.” We hope our students develop skills that enable them to work effectively with others across various differences, including race, ethnicity, ideology, language, and culture. We have an incredible alumni and friends network throughout the world, and we already have a robust international externship program. In addition, many of our students have served missions for The Church of Jesus Christ of Latter-day Saints and speak multiple languages, so it is natural for us to take a leadership role in international legal education.

In the coming academic year, we will begin semester-away programs for our



students in London and Geneva. London is a vital venue for cross-border business transactions, and Geneva is a global hub for public international law. The purpose of these seminars is to allow our students to work as externs in that market while still earning classroom credits, thus enabling them to gain important experience and forge relationships that may lead to full-time employment. BYU Law is a global law school, and we are rapidly expanding our global footprint.

We are excited for these and the other new and ongoing innovations happening at BYU Law that continue to propel us forward in pursuit of our mission. As our founding dean Rex E. Lee said, “We’re here to teach and learn law, just like any other [law] school. . . . But there is also a plus factor at work here. We are just a little different from other schools. We are doing more than just turning out good lawyers. And it is in that ‘more’ element that the mission of the Law School is to be found.”⁴

D. GORDON SMITH

D. Gordon Smith
Dean, BYU Law School

NOTES

- 1 Kevin J Worthen, “How to Act While Being Acted Upon,” BYU university conference address, August 24, 2020, speeches.byu.edu/talks/kevin-j-worthen/act-while-acted-upon.
- 2 See Rachel Edwards, “Narrowing the Access-to-Justice Gap: BYU Law and Leadership Conference 2019,” *The BYU Advocate*, 2020, 32–33.
- 3 Russell M. Nelson, Derrick Johnson, Leon Russell, and Amos C. Brown, “Locking Arms for Racial Harmony in America: What the NAACP and The Church of Jesus Christ of Latter-day Saints Are Doing Together,” Religion, Medium.com, June 8, 2020, medium.com/@Ch_JesusChrist/locking-arms-for-racial-harmony-in-america-2f62180abf37.
- 4 Rex E. Lee, “Thoughts After 15 Years,” *Clark Memorandum*, Spring 1990, 17.





Cultivating Anti-racism at **BYU Law School**

by **Barbara
Melendez**
and **Kif Augustine-
Adams**

photos by **Bradley Slade**



On February 26, 2021, Brigham Young University released publicly the much anticipated *Report and Recommendations of the BYU Committee on Race, Equity, and Belonging*.¹ Eight months earlier, in June 2020, BYU president Kevin J Worthen had charged the newly formed ad hoc Committee on Race, Equity, and Belonging “to review processes, policies, and organizational attitudes at BYU” in order to “‘root out racism,’ as advised by President Russell M. Nelson of The Church of Jesus Christ of Latter-day Saints in his joint statement with the NAACP” that same month.²

Worthen specifically urged the committee to “seek strategies for historic, transformative change at BYU in order to more fully realize the unity, love, equity, and belonging that should characterize our campus culture and permeate our interactions as disciples of Jesus Christ.”³

In fulfilling Worthen’s charge, the committee compiled a detailed report on racism on campus and identified 26 recommendations for change. The eight committee members, including Law School professors Michalyn Steele and Carl Hernandez, spent hundreds of hours holding space for the pain of Black, Indigenous, and other people of color (BIPOC) in the BYU community: current students, alumni, faculty, staff, and employees. Committee members listened and they heard. They read and they reviewed. In their processes and through the report itself, the committee modeled best practices for rooting out racism, both institutional and individual, to cultivate a rich soil in which all children of God can flourish. The committee’s recommendations plant seeds of hope that we all can and will do better, individually and institutionally.

The report represents a different epistemology and methodology than the usual. It amplifies the voices of marginalized, minoritized people who bravely, painfully recounted their experiences with racism while at BYU. The most searing line of the report, a line that encapsulates our collective failure to fully live the gospel of Jesus Christ at BYU, comes from a BIPOC student who told the committee, “I got baptized in racism when I came to BYU.”⁴ The report acknowledges, with deep humility, that institutional decisions and individual actions, whether intentional or thoughtless, have created structures that cause pain and faith crises, especially for BIPOC students. The report does not shy away—it confronts racism within the BYU community straight on, eyes wide open. The report serves as a sacred reminder of our baptismal covenants “to mourn with those that mourn”⁵ and to take upon ourselves the name of Christ as members of The Church of Jesus Christ of Latter-day Saints.

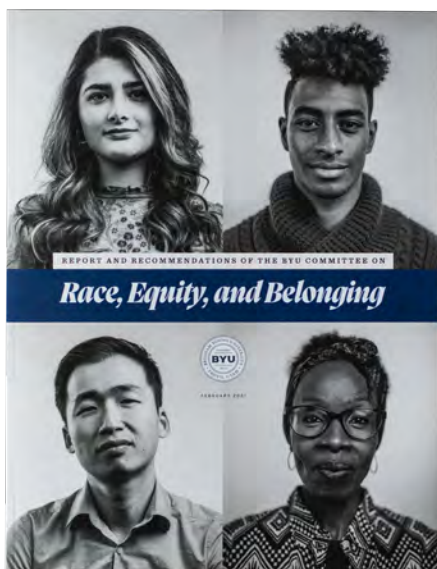
In an interview with the *Salt Lake Tribune*’s podcast *Mormon Land*, Steele noted that the report identifies an opportunity for us to repent, both individually and institutionally.⁶ She described how, as she and Worthen discussed the issues—mindful of structures of power—she initially shied away from using the term *repent*. Worthen embraced it. He responded that as Latter-day Saints, we understand repentance to be a joyful thing, the opportunity to change for



the better. In the podcast interview, Steele also reminded us that President Nelson has modeled the love that should inspire us to do the “rigorous work of building bridges of cooperation” as he called on institutions and individuals to make things better.⁷ In Steele’s view, that rigorous work will necessarily involve self-inquiry by every member of the BYU community. We all must embrace the work of anti-racism, rather than leaving the burden of both suffering and change with minoritized people, especially students. Grounded in the wisdom and practice of her Seneca foremothers, Steele calls us to “be animated by love for our neighbors,” “to carry out the injunction from Ephesians that we be ‘no more strangers . . . but fellow citizens . . . [in] the household of God.’”⁸

The Law School has been engaged in the rigorous work and self-inquiry that Steele identifies as so necessary to our repentance as individuals and institutions in matters related to race. Some of these efforts began prior to President Nelson’s invitation, but in the past several years, the Law School has undertaken the work with greater determination and urgency and with a renewed recognition of the need for deeper examination and change. We acknowledge that these efforts are beginnings. Rooting out racism, as President Nelson has counseled, requires sustained, long-term commitment. Developing the fertile soil necessary to the full flourishing of all God’s children necessitates not just the removal of racism but the cultivation of anti-racist attitudes and systems, as the scholar Ibram X. Kendi has powerfully taught. Anti-racism is an eternal commitment grounded in the fundamental understanding that “all are alike unto God.”⁹

Over the course of the year, the Law School community learned from the expertise of many speakers during the regular (virtual) law forum on Wednesdays at noon, including Professor Thomas W. Mitchell, a property law scholar named a MacArthur Fellow for his work to reform legal doctrines that disproportionately impoverish Black families, and Dr. Khiara M. Bridges, a legal scholar and anthropologist who spoke on intersections of health, law, and discrimination. Likewise, in December 2019, in one of the last big in-person events before the pandemic hit, the Law School engaged Professor Russell McClain to train faculty and staff in implicit bias at an employee retreat focused on diversity, equity, and belonging. McClain is the associate dean for diversity and inclusion at the University of Maryland Law School and director of its Academic Achievement Program. He also serves as president of



the Association of Academic Support Educators. McClain's training set the foundation for what we expect to be a sustained commitment to further education, skill development, and reflection within the entire Law School community.

Beyond law forums and McClain's training, we offer two in-depth examples of BYU Law School's efforts to root out racism and cultivate anti-racism. First, sessions of Introduction to Law for incoming first-year students and an innovative fall orientation for returning students modeled how to communicate across differences. Second, student work in a course focused on race and law demonstrated individual efforts. We know there is much to do. We trust that where the impact of the Law School's efforts go awry, now or in the future, individually or institutionally, we will be open to correction, willing to hold the pain of those we hurt, and always full of love.

COLLABORATING ACROSS DIFFERENCES

Dr. Mica McGriggs—a scholar, consultant, psychologist, and activist based in New York City—led a workshop focused on “Race, Culture, and Leadership” at both the returning-student orientation and Introduction to Law. She acknowledged that the themes of the workshop would be difficult, perhaps threatening, and provided guidance on the physiological responses workshop participants might experience. With respect to the lightning-rod of privilege, especially White privilege, McGriggs explained: “The things that privilege affords to you are not bad. It's just bad that they're afforded to one group of people, that only some people get to have those things and some people do not—access to economic resources, safety of your body, presumption of innocence, representation, and being the majority.”¹⁰ McGriggs encouraged us all to overcome the inevitable stumbles and mistakes we will make as we root out racism and cultivate anti-racism. She said, “The work is long, and it's hard, but it's good. I'm asking you to come on a journey with me that is going to make you uncomfortable, but it is a journey and a labor of love—love for yourself and love for humanity, your brothers and sisters.”¹¹ McGriggs empowered participants to transform privilege into love and change.

Timothy Overton—a 2007 BYU Law graduate, commercial litigator at the Arizona law firm of Dickinson Wright PLLC, and adjunct professor at the Sandra Day O'Connor College of Law—spoke on “Recognizing and Reducing Bias to Improve Communication.” Overton shared deeply personal stories of his own experiences and those of his family members, experiences shaped by biases others associate with his family's differing phenotypes. Overton counseled us to “consciously address our unconscious biases by recognizing them, defining them, controlling them, reducing them, and eliminating them.”¹² Doing so

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will remove roadblocks and walls that hinder effective communication and provide benefits that flow both personally and professionally.

In her presentation “Making Zion,” Dr. Melissa Wei-Tsing Inouye took a religious perspective on communicating across differences. Inouye is senior lecturer in Asian studies at the University of Auckland, a historian with the Church History Department of The Church of Jesus Christ of Latter-day Saints, and author of *Crossings: A Bald Asian American Latter-day Saint Woman Scholar’s Ventures Through Life, Death, Cancer, and Motherhood (Not Necessarily in That Order)*. Inouye explained that, in our efforts to create Zion, we must go beyond thinking, “I don’t hate anyone, so I’m not racist.”¹³ Rather, “the thing to do is ask your friends or people you don’t know, ‘What lack I yet?’ and then accept what they tell you.”¹⁴ This process requires listening to and respecting the experiences and perspectives of others, especially those whose lives are different from our own. Inouye defined racism broadly as “not just about hate” but also “about ignorance,” “about willful ignorance of others’ burdens and prideful unwillingness to do the work required to bear them.”¹⁵ As we acknowledge racism, recognizing its roots within ourselves and our institutions, we can work together to correct, heal, and change. We can make Zion.¹⁶

These presentations and others offered at the returning-student orientation provided students and the larger Law School community with an opportunity for increased understanding and reflection on how we individually and institutionally can and should do better.¹⁷

STUDENT WORK IN RACE, SYSTEMIC RACISM, AND THE LAW

During fall semester 2020, and for the first time in nearly 15 years, BYU Law School offered a course specifically focused on race: Race, Systemic Racism, and the Law. The course was designed to examine “theories of race and ethnicity and their concomitant evolution in US legal context, with particular attention to the interaction between law and other fields of endeavor such as public policy, philosophy, science, medicine, social sciences, literature, and journalism. In addition to studying minoritized groups, the course analyzes Whiteness as a racial category.” With the direction of Professors Brianna Rosier and Kif Augustine-Adams, all students read and discussed required books on four core topics: structure of racist ideas, housing and segregation, citizenship and immigration, and mass incarceration and criminal justice.¹⁸ Students chose among three options for a fifth topic: wealth, family, or Whiteness.¹⁹ In final papers and projects, students in the course engaged in the rigorous work and self-inquiry necessary to cultivate anti-racist attitudes and structures. Presented here are five very different examples: three research papers bookended by two creative projects, demonstrating the breadth and depth of the students’ commitment, grounded in their personal experiences, interests, and particular skill sets. Each student used their privilege to grapple with racist ideas and structures and to suggest anti-racist alternatives.

KATE ZURCHER, 3L

In a “creative and introspective project,” Kate Zurcher reflected deeply on critical-race scholar and law professor Roberta Flagg’s concept of the “transparency phenomenon,” in which the racial category of Whiteness is invisible to White people as the societal default. Zurcher applied Flagg’s antidote to transparency—the cultivation of “a carefully conceived race consciousness, one that begins with whites’ *consciousness* of whiteness”²⁰—to the rarified world of harp education and elite performance around which her life revolved prior to law school. Zurcher arranged, performed, and recorded a harp piece titled “Trouble in the City of Stars.”

In her process paper, Zurcher generalized the profound Whiteness of her own experience as a student, educator, and harp performer to classical music more broadly. In 2014, only 4.3 percent of US orchestral musicians and 8.3 percent of US orchestral staff were Black or Latino.²¹ Within that world, Zurcher called the harp “the quintessential instrument of White privilege.” Tying law and music together, Zurcher also argued that current US copyright law does not sufficiently protect Black artists from cultural appropriation because the fair use doctrine undervalues certain creative modes and processes.

In arranging, performing, and recording “Trouble in the City of Stars,” Zurcher sought to meet well-known African American choral conductor Rollo Dilworth’s definition of cultural appreciation rather than cultural appropriation.²² Zurcher “intertwined the African American spiritual ‘Nobody Knows the Trouble I’ve Seen’ with ‘City of Stars’ from *La La Land*,” the first “rooted in resistance to enslavement,” the second “in White appropriation.” In Zurcher’s life, the harp had become “a physical symbol of [her] personal White privilege.” By arranging “Trouble in the City of Stars,” she claimed an opportunity “to speak through that privilege” as a step toward eliminating the transparency of Whiteness.

STEPHANIE MAYNES ALDOUS, 3L

Stephanie Maynes Aldous wrote a deeply insightful paper titled “The Book of Mormon: A Racist and Anti-racist Text for Our Time.” Aldous identified the point of view in the Book of Mormon as Nephite-centric, “the story of *two* contemporary civilizations, yet we only get one side’s account.” Because the records are “kept almost exclusively by Nephites,” “our understanding of its history is limited by Nephite ego and biases.” However universal the Book of Mormon’s message as a second witness for Christ, acknowledging its written perspective as Nephite rather than Lamanite allowed Aldous to identify “stamps of racism” within its stories, including “prejudice based on skin color, fear of interracial marriage, derogatory language, segregation, and omitted perspectives.” In this context, the actions of some Nephites also become apparent as examples of striking anti-racism.²³

Aldous’s original and thought-provoking insight included examining the “omitted perspective” of Samuel the Lamanite and his prophesy of Christ’s visit. Aldous skillfully guided the reader through an analysis of 3 Nephi 23:7–13, recorded during Christ’s visit to the Nephite people, as a possible explanation of why we can read the full story of Samuel the Lamanite’s prophecy at the end of the Book of Helaman. Aldous’s explication made clear that, but for Christ’s express post hoc command to the prophet Nephi to include Samuel’s testimony,²⁴

it may have been omitted entirely from scripture. Christ queried his disciples about the absence of some portion of Samuel the Lamanite's prophecy from the scriptural record, and, in what feels like an excruciatingly awkward moment, the prophet "Nephi remembered that this thing had not been written."²⁵

While we cannot know exactly why Nephite prophets had not included Samuel the Lamanite's 40-year-old prophecy of Christ or some portion of it in scripture, Aldous identified several possibilities not focused on racial implications but instead on the immediacy of the prophecy's fulfillment. Maybe Nephi just had not had time to record the fulfillment of Samuel's prophecy. Yet, Aldous noted the whole purpose of the Book of Mormon was to testify of Christ and His coming: "In all of the Book of Mormon, Christ's coming was the most important part to get right." She raised the question of whether racial prejudice or indifference underlay the omission of Samuel the Lamanite's prophecy from the scriptural record. She noted that Christ had to specifically command the scriptural inclusion of "the only Lamanite prophet cited by name in the entire Book of Mormon." Had Christ "uncovered" prejudice behind the omission of Samuel the Lamanite's prophecy in scripture? Were Nephite record keepers wary of "legitimizing Samuel as a prophet" "because of his Lamanite identity"? Quoting Mormon, prophet-abridger of the scriptural record, Aldous concluded with the reminder that Nephite record keepers were not perfect. Even as scripture, the Book of Mormon may include "mistakes of men."²⁶

CHANDLER STEPAN, 21

In contrast to Aldous's scriptural exegesis, Chandler Stepan deployed statistical methods from his undergraduate economics degree to analyze the long-term effects of redlining in Salt Lake City. Redlining "is the practice of denying the extension of credit to specific geographic areas due to the income, race, or ethnicity of its residents."²⁷ In this historical practice, lenders and government agencies drew physical lines in red ink around defined geographical areas on maps to then deny mortgages and other credit within them. Stepan titled his paper "Home Owners' Loan Corporation Redlining in Salt Lake City and Impacts on Modern Home Prices and Settlement Patterns." Stepan explained that Home Owners' Loan Corporation, or HOLC, an entity Congress created as part of New Deal financial relief efforts, "zoned" geographic areas in cities around the country as "Best," "Still Desirable," "Definitely Declining," and "Hazardous" according to perceived desirability, desirability that correlated with extant racial and class demographics. Stepan sought to determine whether redlining affected modern home values and the east-west divide in Salt Lake City.

Stepan amassed extensive data to carry out his statistical analysis, drawing historical HOLC redlining and zoning data from the University of Richmond Mapping and Inequality and Redlining Project and fitting

HOLC zones to modern zip codes and census tracts. He "collected population demographic data from the US Census and the American Values Survey" to estimate "different racial categories in Salt Lake City per zip code" from the 1930s through the 2010s. He gathered "data on home prices in Salt Lake City through the *Salt Lake Tribune* as provided from the Wasatch Front Regional Multiple Listing Service," data that "reflects the median home price for zip codes in Salt Lake County for the second quarter of each year from 2003 to 2020." Stepan then used linear regression models and elasticity analysis to crunch the reams of data. Who says lawyers don't do math?

In the end, Stepan answered his primary research question with no: "Statistically, it is difficult to show that HOLC redlining has an



impact on modern home prices.” Nonetheless, “racial characteristics of neighborhoods in Salt Lake City are highly correlated to home price,” meaning that across time and through indirect ways, the historical practice of redlining contributed to current segregated housing patterns and lower home values on the west side of Salt Lake City. Even without direct correlation, “HOLC redlining reflects a pattern of systemic discrimination in zoning and lending that has denied access to credit and opportunities for Black and other minority individuals.” In his conclusion, Stepan highlighted how myriad factors interact to create and reinforce structures of racism and segregation in Salt Lake City neighborhoods.

EMMA WILCOX, 2L

Inspired in part by Chana Joffe-Walt’s podcast *Nice White Parents*, Emma Wilcox turned a critical eye on education and racism, using her high school alma mater as a template. Her paper, “Collective Parent Action: Funding and Segregation in K-12 Education,” tackled the complex, highly politicized interaction between school funding, school districting, and race in California. She focused on recent movements to change the structure of the Mt. Diablo Unified School District (MDUSD), where her old school, Northgate High, sits. The mostly White, mostly upper-middle-class parents leading those movements understandably had their own children’s best interests in mind as they mobilized for change. Through extensive research and original interviews with stakeholders—parents, educators, activists—Wilcox explored whether and how those interests align across a broader, more diverse geographic area. Even the most well-meaning collective parent action can contribute to structural racism in education.

Wilcox set the stage for her specific case study in two ways. First, she investigated “the history of racism and segregation in [US] education from *Brown v. Board of Education* to the present.” Second, she provided a cogent abbreviation of the byzantine structure of public funding for K-12 schools in California and the ways that structure incentivizes, almost requires, private fundraising efforts to make up both perceived and real fiscal shortfalls, at least for those with the discretionary time, energy, and wealth to donate or fundraise. The provocative heading “Northgate High School Secession Movement” framed Wilcox’s analysis of the case study itself, making explicit the racial tensions inherent in the parent movements’ call for “Northgate High School to secede from MDUSD.” Wilcox compared the racial demographics of nine high schools, five including Northgate in the MDUSD with four in the neighboring Acalanes District. Within MDUSD, Northgate was the only high school with a White majority, while all four Acalanes high schools had White majorities. In addition to being the whitest high school in MDUSD, Northgate High School stood in the district’s wealthiest area. Northgate was wealthy and White in a diverse school district.

Wilcox identified chronic funding precarity at Northgate as motivating parents’ dissatisfaction with MDUSD, not necessarily overt racism. At the same time, Wilcox made clear the racially segregatory effect of Northgate’s proposed secession from MDUSD and undercurrents of classism and racism in the parent movements themselves. She posed a poignant question: “How should we move forward when the futures of our children hang in the balance—not just our own children but all of the children who will grow up to play key roles in this nation and this world?” Wilcox’s most promising policy ideas included (1) restructuring school funding to increase state moneys while limiting or even eliminating local funding and (2) actively consulting all affected families, stakeholders, and communities. Wilcox recognized the pragmatism of using “law and policy to channel [parents’] instincts into a direction that would benefit all children instead of expecting parents to stop using their privileges altogether.”

BRYN LEWIS, 3L

Encounters with Kate Baer’s poetry sparked Bryn Lewis’s creative project to transform “racist statutes, court opinions, and statements made by prominent figures” into anti-racist poetry. In her process paper, Lewis explained why she displayed an original racist statement “side by side” with an anti-racist poem “to expose, acknowledge, and denounce racism of the past and present” with speaking to “the sacrosanct and unalterable sovereignty of each human

spirit.” Lewis’s project reflected “the need for transformation in law and society.” In a very literal sense, Lewis’s project fulfilled President Nelson’s counsel to root out racism. She took problematic statements and rooted out hateful and racist words to create instead poetry that affirmed “the worth of the human spirit.”

Lewis described her creative impulse and process as one of repentance, remorse, and apology: “I believe there is healing power in confronting past wrongs directly.” She had “grappled with—and still grapple[s] with—many tensions inherent to becoming a truly helpful White anti-racist.” Lewis understood that “creating poetry out of racist statements could come across as either condoning the racist statements or suggesting a rewrite of history,” but she hoped the visual and aural effect of her poetry would promote anti-racism instead.

Lewis presented her transformative poetry chronologically and thematically, choosing “statutes to represent racially discriminatory policy, court opinions to represent a hybrid of discriminatory policy and racist ideas, and statements made by prominent figures to represent a hybrid of racist ideas and ignorance and hate.” She removed racism from 18th- and 19th-century statutes related to nationality, taxation and trafficking in enslaved persons, and racial limitations on civil rights, including marriage and contracts. She created hope from infamous US Supreme Court decisions in *Pace v. Alabama*, 106 US 583 (1883), which affirmed the constitutionality of Alabama’s anti-miscegenation law, and *Plessy v. Ferguson*, 163 US 537 (1896), which established the doctrine of “separate but equal.” Like the report from BYU’s Committee on Race, Equity, and Belonging, Lewis did not blink at confronting racism in the Latter-day Saint faith tradition. She transformed statements by two mid-20th-century Latter-day Saint Church leaders—J. Reuben Clark against interracial dating or marriage and Delbert L. Stapley against full civil rights—into affirmations of humanity and belonging. Her final poems created love from the vitriol of political speech. Lewis’s poetry acknowledged “the ugly parts of reality that exist” because of racist ideas and structures and “the beautiful parts of reality that exist” despite that racism.

The Race, Systemic Racism, and the Law course is one way that the Law School sought to support students with both resources and space to pursue their individual efforts to root out racism and cultivate anti-racism. Again, we acknowledge that these efforts by themselves are not enough to fulfill President Nelson's charge or the scriptural imperative to build Zion. They are beginnings, a place to start.

In September 2018, BYU Law School associate dean D. Carolina Núñez delivered a BYU devotional address titled "Loving Our Neighbors." Relating her father's experience at BYU in the 1970s, Núñez expressed gratitude to all those who had embraced him, despite his differences religiously as a Catholic, ethnically as a Latino, and nationally as a Venezuelan. A nun at Núñez's private Catholic elementary school in Venezuela extended a similar generosity to her as a young girl, when, after a conversation about modes of prayer, the nun called the Latter-day Saint way "beautiful."²⁸ Núñez described how more recently her family's volunteer experience at Encircle, an LGBTQ support organization, had blessed them. Throughout her address, Núñez built on *prójimo*, the Spanish translation of the English word *neighbor*, to urge us each to be proximate to others, to draw a wide circle of inclusion. She expounded on the story of the good Samaritan to answer the question "Who is my neighbour?"²⁹

Although it does not cite the story of the good Samaritan explicitly, the *Report and Recommendations of the BYU Committee on Race, Equity, and Belonging* echoes its principles. In our haste and privilege, too many of us have too often been the priest and the publican walking by as our BIPOC neighbors suffer. We have too often been the bandits themselves, intentionally or inadvertently wounding the traveler rather than offering succor. We have not drawn proximate to our BIPOC neighbors to mourn with them, to lift them up when oppressed, to bear their burdens. The committee's report calls us to repentance. President Nelson calls us to root out racism. In humility and with good faith, we accept these calls and commit to continuing the essential work of cultivating anti-racism at BYU Law School. ■

- 1 Brigham Young University, *Report and Recommendations of the BYU Committee on Race, Equity, and Belonging*, February 2021, race.byu.edu/00000177-d543-dfa9-a7ff-d5cfc1dc0000/race-equity-belonging-report-feb-25-2021.
- 2 *Id.* at cover letter (citing Russell M. Nelson, Derrick Johnson, Leon Russell, and Amos C. Brown, "Locking Arms for Racial Harmony in America," *Medium*, June 8, 2020, medium.com/@Ch_JesusChrist/locking-arms-for-racial-harmony-in-america-2f62180abf37).
- 3 *Id.*
- 4 *Id.* at 8.
- 5 Mosiah 18:9.
- 6 "A Deeper Look at BYU's Report on Campus Racism and How the School Can Fix It," Episode 171, *Mormon Land*, podcast, March 3, 2021, sltrib.com/podcasts/mormonland.
- 7 *Id.* at 36:48 (citing Nelson, Johnson, Russell, and Brown, "Locking Arms").
- 8 *Id.* at 38:11 (citing Ephesians 2:19).
- 9 2 Nephi 26:33.
- 10 Mica McGriggs, "Race, Culture, and Leadership," BYU Law School Introduction to Law, August 19, 2020; "Race, Culture, and Leadership," BYU Law School Returning-Student Orientation, "Collaborating Across Differences," August 20, 2020.
- 11 *Id.*
- 12 Timothy Overton, "Recognizing and Reducing Bias to Improve Communication," BYU Law School Returning-Student Orientation, "Collaborating Across Differences," August 19, 2020.
- 13 Melissa Wei-Tsing Inouye, "Making Zion," BYU Law School Returning-Student Orientation, "Collaborating Across Differences," August 19, 2020.
- 14 *Id.*
- 15 *Id.*
- 16 Inouye expanded on her remarks in "Rooting Out Racism," *Clark Memorandum*, Spring 2021, 4.
- 17 The returning-student orientation on the theme of "Collaborating Across Differences" also included presentations from Elder Matthew S. Holland, "Civic Charity in the American Founding"; Judge Thomas B. Griffith, "How Latter-day Saints Are Uniquely Qualified to Tackle Racism in the Church and the World"; University of Utah scholar Dr. W. Paul Reeve, "The History of Race in the Church"; a panel of BYU professors including Dr. Jane Lilly López (sociology), Dr. David-James Gonzales (history), and Dr. Eric Ruiz Bybee (teacher education), "Race at BYU"; and Ahmad S. Corbitt, first counselor in the Young Men General Presidency of the Church, "The Righteousness of Your Lawyers and Your Judges."
- 18 See Syllabus, Law 795R, Section 6, Fall 2020. Readings for the four core topics were as follows:
 - Structure of racist ideas: Ibram X. Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America* (2017)
 - Housing and segregation: Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2018)
 - Citizenship and immigration: Ian Haney López, *White by Law: The Legal Construction of Race* (2006)
 - Mass incarceration and criminal justice: Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2012)
- 19 Readings for the optional topics were as follows:
 - Wealth: Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap* (2017)
 - Family: Peggy Pasco, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (2010)
 - Whiteness: John Biewen with Chenjerai Kumanyika, Robin DiAngelo, and William "Sandy" Darity Jr., *Seeing White*, podcast, sceneonradio.org/seeing-white (2017)
- 20 Barbara J. Flagg, "'Was Blind, but Now I See': White Race Consciousness and the Requirement of Discriminatory Intent," *Michigan Law Review* 91, no. 5 (March 1993): 957, 961 (emphasis added). See also López, *White by Law*, 16.
- 21 James Doeser and the League of American Orchestras, *Racial/Ethnic and Gender Diversity in the Orchestra Field* (2016).
- 22 Eugene Holley Jr. (reporting on Rollo Dilworth's webinar), "Cultural Appropriation: From Culture Stealing to Culture Sharing," *Chorus America*, June 24, 2019, chorusamerica.org/article/cultural-appropriation-culture-stealing-culture-sharing.
- 23 See Jacob's sermon to the Nephites in Jacob 3.
- 24 3 Nephi 23:13.
- 25 3 Nephi 23:12.
- 26 Title Page of the Book of Mormon.
- 27 *United Companies Lending Corp. v. Sargeant*, 20 F. Supp. 2d 192, 203 n. 5 (D. Mass. 1998).
- 28 D. Carolina Núñez, "Loving Our Neighbors," BYU devotional, September 18, 2018, speeches.byu.edu/talks/carolina-nunez/loving-our-neighbors.
- 29 Luke 10:29.



PATHS TO

BAR

THE 2021 BYU
LAW AND LEADERSHIP
CONFERENCE

LICENSURE

BY RACHEL EDWARDS

On Friday, January 29, 2021, BYU Law hosted its second annual Law and Leadership Conference. The virtual event, titled “Paths to Bar Licensure,” drew experts from across the nation for a colloquium on the history, attributes, and shortcomings of the current bar examination as well as alternative paths to attorney licensure. Highlights of the conference are included here.

Illustrations by Elizabeth Traynor

Our Opportunity to Lead

Welcoming attendees to the conference, D. Gordon Smith, dean of BYU Law, said: “Each year, BYU Law invites leaders on an issue of current importance to talk about how we might change the world for the better through legal education. Leadership begins by identifying some shortcoming, some limitation or problem with the status quo, and then collaborating with other people to change that status quo in a way that makes the world better.”

Smith then introduced the topic of the conference. “In March 2020, as the novel coronavirus was changing our lives in almost every imaginable way, 11 forward-thinking scholars, many of whom are with us today, published an article entitled ‘The Bar Exam and the COVID-19 Pandemic: The Need for

Immediate Action,’” he said. The article, which outlined six alternative licensing options for jurisdictions to consider during the pandemic, inspired Smith and several colleagues from BYU Law and the University of Utah’s S. J. Quinney School of Law to engage in collaborative dialogue with the Utah Supreme Court on how to best meet the needs of Utah’s legal community during the pandemic. “As luck would have it, I had already been in conversation with members of the court about the idea of diploma privilege as part of our wide-ranging efforts in Utah to improve access to justice,” Smith said. “We felt that this would be the most efficient way to get teams of licensed new lawyers to the front lines to help meet the legal challenges faced by our society, as we first waged war to combat the virus and then rebuilt our damaged economic, social, and legal systems.”

On April 21, 2020, Utah became the first state to adopt emergency diploma privilege during the COVID-19 pandemic. Some states followed Utah’s lead and issued emergency diploma privilege orders; others took their own path. “Most of us, even those of us in so-called leadership positions, spend much of our time managing the status quo,” Smith concluded. “Managing is important and valuable, but leading, when we choose to do it, is our opportunity, in the words of Steve Jobs, to ‘make a dent in the universe.’¹ The events of the last summer ignited a national discussion about bar licensure. We continue that discussion here today.”

MORNING KEYNOTE

A Short History of Attorney Licensing: Tales of Protection, Prestige, Exclusion, and Good Faith

“I’m excited to start the day talking about the history of attorney licensing in the United States, because knowing how we got here helps us to figure out and understand how to move forward,” said Joan W. Howarth, distinguished visiting professor and interim associate dean at the University of Nevada, Las Vegas, William S. Boyd School of Law. Highlighting important historical milestones in the evolution of the legal profession, Howarth illustrated how themes of protection, prestige, exclusion, and good faith have shaped—and in some cases hindered—the evolution of the legal profession in the United States.

“During the first half of the 18th century, most lawyers were office trained, and admission to the practice consisted of an informal oral exam conducted by justices of individual courts—a completely ad hoc, decentralized, homegrown version of the stratified bar,” Howarth said. She explained how the 19th century saw the proliferation of law schools and heralded the era of written bar exams, creating an escalating tension between law school-educated lawyers and office-trained lawyers. “With the stated mission of public protection, increasingly organized local bar associations spread throughout the nation, seeking more stringent, formal, statewide admission requirements for both prestige and anticompetitive purposes,” she explained.

According to Howarth, the practicing bar, bar examiners, and law schools subsequently formed a “triangle of shifting internal and external tensions and alliances” that enabled the legal profession to “continually raise the barriers to entry.” She argued that ethnic and religious outsiders were a chief target of the American Bar Association’s ever-increasing admission standards. “Escalating licensing and educational standards were particularly effective in knocking out many of the local law schools that were most successful at bringing immigrants and people of less means into the profession,” said Howarth. “The 1970s were a time of activism and reform of bar exams. National civil rights groups drew attention to the problems of racially disparate bar exam results by filing lawsuits in multiple states.” However, the results of those cases were “disappointing” and gave the bar exam immunity from oversight and scrutiny by the courts. These cases, Howarth argued, demonstrate “the lengths to which leaders of the

MANAGING IS IMPORTANT

AND VALUABLE, BUT **LEADING**

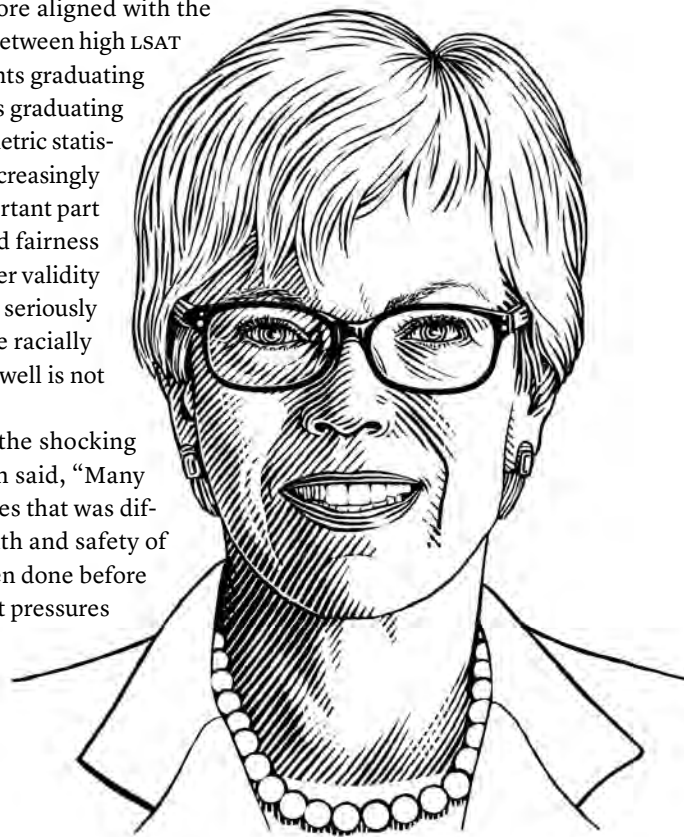
WHEN WE CHOOSE TO DO IT,

IS OUR OPPORTUNITY

profession went in order to maintain the prestige that was connected to the identity of the profession, which was overwhelmingly White, male, and people of means.”

The first LSAT was administered in 1948, and the Multistate Bar Exam (MBE) was introduced in 1972. As a result of the MBE, state bars became “much more aligned with the national law schools.” The focus on national law and the correlation between high LSAT scores and high MBE scores made bar exams more friendly to students graduating from the most elite law schools but caused problems for law students graduating from other law schools. “Based on increasingly sophisticated psychometric statistical methods, the National Conference of Bar Examiners developed increasingly reliable bar exams, meaning the score was stable over time—an important part of any high-stakes test,” Howarth said. But, she argued, validity and fairness are equally as important, and “we have overemphasized reliability over validity and fairness.” Howarth urged members of the legal profession to take seriously the mounting evidence suggesting that bar examinations perpetuate racially discriminatory results and are not sufficiently job related. “Meaning well is not sufficient,” she said.

Howarth observed that the COVID-19 pandemic illuminated “the shocking grip” that standardized tests have on the legal profession. Howarth said, “Many jurisdictions could not conceive of a way to license new law graduates that was different than what had been done before. Instead of putting the health and safety of new graduates as the priority, testing in the same way that it had been done before became the priority.” On a more positive note, Howarth insisted that pressures associated with the COVID-19 pandemic have created a “renewed interest” in the limitations of the bar exam, and that interest creates an opportunity for better licensing systems. She said, “We are in an era of taking more seriously the structural racism that is part of the world of bar exams and attorney admissions. We now have high-quality research to base our licensing decisions on. This is the biggest opportunity we have seen for many generations. For that reason, I am extremely optimistic.”



JOAN W. HOWARTH

PANEL

Examining the Bar Examination | *Why Things Are the Way They Are*

“Our panel is tasked with examining the bar exam,” said Marsha Griggs, associate professor of law and director of academic support and bar passage at Washburn University School of Law. “A logical first step is to take inventory of what we see when we look at the bar exam; we’re going to have to ask why things are as they are before we can see any real path into the next generation of attorney licensure.” Griggs went on to note: “The content and methodology of our principal licensing tool has not evolved substantially since its introduction almost 50 years ago. We need to ask why our profession continues to rely so heavily on bar examination in the face of such long-standing criticisms of invalidity and utility in assessing practical skills.”

Griggs proposed one possible answer. “For lawyers, the bar exam is an institutional norm that we have internalized. Our sense of belonging is based on that norm,” she said. She argued further that the bar exam is a “sacred cow in the legal profession” and that support for the bar exam is not based on evidence of competency but rather on its status as a “handed-down ritual, an initiation rite to the practice of law.”

“I hope that those of us here today can and will recognize two simultaneous truths: The first is that the public is owed our assurance of competence. The second is that future attorneys deserve a path to licensure that is both valid and nondiscriminatory.” Griggs insisted

that making the licensure process better for all involved will require stakeholders to engage in open dialogue. She said, “We need to have the difficult but productive conversations—without finger-pointing and scapegoating—that incorporate varied viewpoints, including those of the newest members of our profession and those that will supervise them.” Praising the states, including Utah, that have engaged in this work, she concluded: “I can only believe that the groundbreaking decision from this state involved many collaborative voices, including law school faculty, practitioners, leaders, students, and members of the public. That work and this great accomplishment all began by asking why.”

The Effect of the Cut Score on Diversity, Equity, and Inclusion in the Legal Profession

Is there a relationship between a state's minimum bar passage score, or "cut score," and the protection of the public and racial diversity in the legal profession? Victor D. Quintanilla, professor of law and codirector of the Center for Law, Society, and Culture at Indiana University Bloomington Maurer School of Law, and a team of scholars from the Monterey College of Law recently conducted a pivotal study to help answer that question. Their results were published in "Examining the California Cut Score: An Empirical Analysis of Minimum Competency, Public Protection, Disparate Impact, and National Standards" (October 15, 2020). "My aspiration is that this research will be useful to policymakers, who are weighing now how to improve diversity, equity, and inclusion within the legal profession," Quintanilla said.

"The pipeline into the legal profession involves key gatekeeping decisions," Quintanilla argued. "Choices about the cut score and the design of the licensure system more broadly are choices about the legal profession's racial and ethnic makeup." He stated that while people of color constitute 60 percent of California's population, only 6 percent of California attorneys are Latinx and 4 percent are Black. "This lack of diversity in California's legal profession—and in the legal profession more generally—is not inherent, fixed, or natural," argued Quintanilla. "It is constructed by policy choices affecting the pipeline."

In 1987, the California State Bar set the state's minimum cut score at 1440, the second highest in the nation. Quintanilla argued that cut scores have consistently produced disparities in passing rates among examinees of different racial and ethnic backgrounds, with examinees from minority communities consistently passing at a significantly lower percentage than examinees who are White. "For every 1,000 White test takers, 805 White examinees would eventually pass the California bar exam and join the legal profession. For every 1,000 Black test takers, only 531 Black examinees would eventually pass," he reported. Quintanilla and his team also examined how changing the cut score would impact these disparities in bar passage rates. "While every racial group's performance would have improved with a selection of a lower cut score, the data shows that the pass rates of minority test takers increased at a much higher rate," he said.

"In 2020, California lowered its cut score to 1390 (the national median is 1350), and the California Supreme Court said that it would consider further changes pending recommendations offered by a blue-ribbon commission on the future of the California bar exam," Quintanilla said. He applauded this as a "move in the right direction," but he hopes to see more changes in California and other states. "We found that according to the most recent six years of disciplinary data from 48 US jurisdictions, there was no statistically significant relationship between the selection of a cut score and complaints by members of the public against attorneys," he said. "If diversity, equity, and inclusion are important values that we seek to promote, we must recognize that this institutional choice of where the cut score sits impinges on our collective ability to reach these values."

The Need for Practical Preparation

"The bar exam influences legal education—not only the subjects and skills we teach but also how we assess those skills," said

Andrea A. Curcio, professor of law at Georgia State University College of Law. "But is the manner in which these skills are tested actually the manner in which they are used by lawyers to represent clients?" According to Curcio, most doctrinal courses focus on teaching a very narrow set of lawyering skills, and the assessments given in these courses often mirror the short essay format of the bar exam, with "neatly packaged facts and strict time constraints." She said, "We don't do this because the assessments actually mirror the skills lawyers need. We do this because it's convenient and efficient for us and because we think it is important to have students practice taking exams in the format that they will be given on the bar exam."

Curcio then suggested: "Understanding how to read, analyze, and synthesize legal rules is clearly a critical skill, but it's not the only skill students need to competently practice law. We want lawyers who know the right questions to ask, who can figure out how to approach problems, and who know enough to recognize when a question is outside of their area of expertise." She asserted that practical clinics are the best place to develop these skills; however, faculty-supervised clinics generally account for a small proportion of credit hours in law school. "Students often fill their elective schedule with bar classes rather than clinical experience because they fear failing the bar exam," she said. "They sacrifice learning how to be a lawyer in favor of learning doctrine that they won't remember and won't need later."

The National Conference of Bar Examiners has announced that in five years it will move to a test that looks more at foundational knowledge, recognizing that such a test will "more accurately assess competence." However, Curcio noted, there will be no adjustment made to the time constraints, and the MBE will remain closed book. "In a moment of unprecedented pandemic-related legal needs, this country needs lawyers who are equipped to hit the ground running. We need lawyers to represent low- and middle-income people, who have a host of legal needs. Studies show that those lawyers are generally new lawyers," Curcio stressed. "We need these lawyers now, not five or six years from now. It's important for both the rule of law and the diversity of our profession."

UNDERSTANDING HOW

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STUDENTS NEED TO

COMPETENTLY

PRACTICE LAW

Designing an Evidence-Based Licensing System

“Why do we need evidence to support a licensing system?” asked Deborah J. Merritt, the John Deaver Drinko-Baker and Hostetler Chair in Law at the Ohio State University Moritz College of Law. “Licensing is a gate; it limits the number and type of people who can provide a needed service—in our case, legal representation. We can justify those gates only if we’re protecting the public, and we can claim that justification only if we have evidence that the gates are built correctly. Unfortunately, our licensing system today does not rest on this type of evidence.”

Merritt and her colleagues from the Institute for the Advancement of the American Legal System recently conducted a comprehensive research project aimed at determining evidence-based skills that constitute minimal competence for the legal profession. They conducted 50 focus groups made up of new lawyers and their supervisors in 18 demographically diverse locations throughout the nation. Their results and recommendations were recently published in *Building a Better Bar: The Twelve Building Blocks of Minimum Competence* (December 2020).

“Our study was rich in findings for both legal education and licensing,” Merritt said. “We were able to capture the level of detail necessary to understand a profession that is as complex as law.” Merritt and her team found that well over half of the new lawyers in the study had substantial contact with clients and that many were taking primary responsibility for client matters. “New lawyers needed a range of lawyering skills, and these were as important, or more important, than memorized doctrine,” she said. “The key to competent practice is preparation, not speed. This is especially true for new lawyers who are still building expertise.”

Merritt shared another distinctive finding from the 2020 study—the importance of threshold concepts. “New attorneys need to know plenty about the law but in the form of what we call threshold concepts rather than memorized rules,” she explained. A threshold concept is an insight that transforms understanding of a subject. It is often counterintuitive and not what a lay person would have assumed it to be. “In law, threshold concepts are the foundation ideas that allow students to identify issues and then to research for the more detailed rules when needed,” Merritt said.

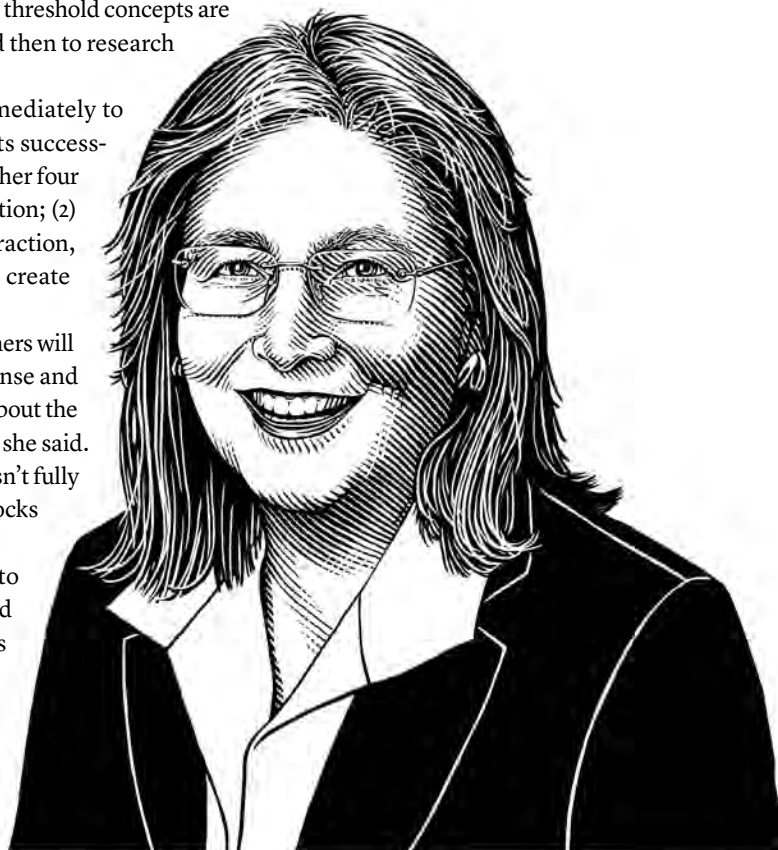
Merritt also offered three steps that could be taken immediately to improve the US licensing system: (1) require that law students successfully complete four credits of supervised clinical work and another four credits of externships or postgraduate practice before graduation; (2) add key courses to law school curricula, including client interaction, negotiation, and the lawyer’s role as a public citizen; and (3) create multiple pathways to licensure.

Merritt is hopeful that state supreme courts and bar examiners will accept alternative paths to licensure. “The diploma-based license and other options under consideration are based on real evidence about the knowledge and skills that new lawyers need in the workplace,” she said. “The current bar exam is not based on that evidence, and it doesn’t fully examine—never tried to fully examine—all of the building blocks that new lawyers need.”

Merritt concluded: “It is irresponsible for a profession to maintain a licensing exam that lacks evidence to support it and unconscionable to maintain an unsupported exam when it has a racially disproportionate impact. This is a problem for the entire profession to address. Let’s hope that we can all work together to create the best possible licensing system—one based on evidence that shakes us loose from our assumptions of the past, genuinely protects the public, and remains open to new information.”

The Twelve Building Blocks of Minimum Competence

- 1 Act professionally.
- 2 Understand legal processes and sources of law.
- 3 Understand threshold concepts.
- 4 Interpret legal materials.
- 5 Interact effectively with clients.
- 6 Identify legal issues.
- 7 Conduct research.
- 8 Communicate as a lawyer.
- 9 See the “big picture” of client matters.
- 10 Manage a law-related workload.
- 11 Cope with the stresses of legal practice.
- 12 Pursue self-directed learning.



DEBORAH J. MERRITT

Alternatives to Bar Licensure | Wisconsin's Diploma Privilege

Last year was the sesquicentennial year of Wisconsin's diploma privilege path to licensure. Wisconsin is the only state in the nation to offer nonemergency diploma privilege. Kevin M. Kelly, associate dean of student and academic affairs at the University of Wisconsin-Madison Law School, explained how the program works and addressed some common misconceptions.

"Diploma privilege is a curriculum-based licensure; it's something of a misnomer that all one needs is a diploma to get the privilege," he said. According to Kelly, law students at Wisconsin's two ABA-accredited law schools—the University of Wisconsin Law School and Marquette University Law School—must complete courses in 10 mandatory subject matter areas and meet a 60-hour requirement in order to qualify, which means "60 of the students' 90 credit hours must be in courses that have as their primary and direct purpose the study of rules and principles of substantive and procedural law as they may arise in courts and administrative agencies of the United States or in Wisconsin," Kelly explained. "There are many courses that you can take toward the JD that won't necessarily qualify for diploma privilege."

Graduates of out-of-state law schools, even if they are Wisconsin residents, must still take the Wisconsin bar exam to be admitted to practice law in Wisconsin. Likewise, graduates of Wisconsin law schools must take the bar exam in other states in which they are going to practice.

According to Kelly, attorney competence is a frequently raised concern about diploma privilege licensure. However, he said, "the Office of Lawyer Regulation, which receives grievances relating to lawyer misconduct, reports that there is no data indicating that diploma privilege is linked to lawyer incompetence in the Wisconsin bar." Instead, grievances are tied to lack of business acumen or interpersonal skills—skills that are not directly linked to either bar passage or diploma privilege. "Wisconsin's diploma privilege has been called by one historian 'the most restrictive diploma privilege rules ever written,'"² said Kelly. "That may account for our success with it. Wisconsin has had a very positive experience with diploma privilege."

The Daniel Webster Scholar Honors Program

"After serving for nearly 20 years as chief justice of the New Hampshire Supreme Court, Justice Linda Dalianis concluded that traditional law school courses and the bar exam didn't adequately prepare law school graduates to practice law," said Megan M. Carpenter, dean and professor of law at the University of New Hampshire Franklin Pierce School of Law. Dalianis and stakeholders from the New Hampshire Supreme Court, the New Hampshire Board

of Bar Examiners, and the Franklin Pierce School of Law collaborated on possible solutions and eventually launched a three-year pilot program known as the Daniel Webster Scholar (DWS) Honors Program. Since the program's launch in 2005, 247 students have graduated from the program.

Carpenter reported that, even in the midst of the pandemic, the DWS program is thriving. "Students apply to the program during their 1L year," she explained. "Each applicant undergoes a holistic professional, interpersonal, and academic assessment by a committee of professors and DWS graduates with the goal of creating a balanced group. The program is capped at 24 students per class." Students take specifically designed courses in pretrial advocacy, trial advocacy, dispute resolution, and negotiation. They also participate in a miniseries that exposes them to insurance law, family law, commercial paper, and conflict of laws and take a capstone course called Advanced Problem Solving and Client Counseling that integrates lessons learned throughout the program. "Instead of thinking about our students as not taking the bar exam to get licensed, we think of them as taking the bar exam throughout the last two years of law school," Carpenter explained. Upon completion of the DWS program, students who pass the multistate professional responsibility exam and a character and fitness check are sworn in to the New Hampshire bar, usually the day before graduation.

"The goal was to create a top-notch honors program," said Carpenter. "In the beginning, there was some concern over whether DWS graduates would be able to get jobs equivalent to their peers, but it is estimated that students who graduate from our program have the skills of an attorney who has already been practicing for two to three years. There is a point of pride in being a DWS graduate, and they are highly sought after in the marketplace. We have a phenomenal competency-based program, one I would love for all students to be able to experience."

Lawyers Justice Corps

Eileen Kaufman, professor emerita at the Jacob D. Fuchsberg Law Center at Touro College, discussed another possible alternative to bar licensure: the creation of a lawyers justice corps. "The COVID-19 pandemic produced an unprecedented need for new lawyers but, at the same time, prevented any safe and fair way to license them," Kaufman said. "The central idea of a lawyers justice corps is to create a cadre of new lawyers dedicated to providing quality legal services to underserved and vulnerable populations."

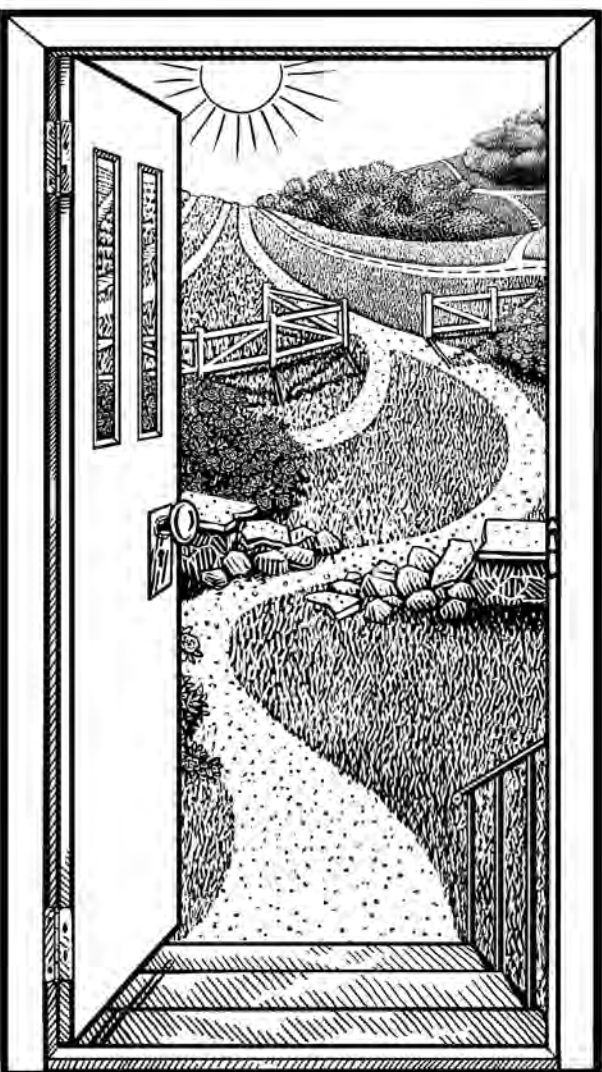
A lawyers justice corps would match law school graduates who are committed to increasing access to justice with legal services providers. These new lawyers who participate in the program would begin their work under supervised practice rules similar to those that Utah adopted during the pandemic. "They would be able to do much of the work of a licensed lawyer," Kaufman said, "helping both their clients and the organization they work for, and would

IF WE WANT PROFOUND

WE NEED TO

TO ALLOW EXPERTS

CULTURAL CHANGE,
HAVE THE COURAGE
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 TO HAVE INPUT



become licensed attorneys after six months of their one-year commitment”—provided that their supervisor certifies that their work was competent and in compliance with the state’s rules of professional conduct.

Kaufman believes that a lawyers justice corps would serve two needs: First, it would enhance access to justice and help address the “rampant inequality and systematic racism” in our society by placing new lawyers in organizations that serve underrepresented clients and populations dealing with urgent matters such as housing, healthcare, and mass incarceration. Second, it would avoid the “institutional racism of the bar exam” by providing an alternative pathway to licensure that operates as a true performance test. She noted that while a lawyers justice corps might start as a pilot program in “one brave state,” it could easily be replicated in other states around the country and would play a key role in expanding access to justice while simultaneously dismantling the status quo represented by the traditional bar exam. “Why waste months studying for an exam that fails to measure the range of competencies that lawyers need, when those months could be spent working with clients to prevent evictions, to access public benefits, and to challenge conditions of confinement?” she asked. “It makes no sense.”

Paths to Licensure in Canada

“The Canadian path to professional legal licensure constitutes a blend of American and English features,” said Ian Holloway, dean of the University of Calgary Faculty of Law. “Canadian schools offer a three-year graduate degree program, and licensure is a patchwork quilt of requirements that vary by province.” The chief English feature of licensure in Canada is a system of apprenticeship called “articling,” which is the last phase of formal legal education and occurs prior to being licensed to practice law. Articling involves working under the supervision of a licensed lawyer for 10 to 12 months in order to gain exposure to practice in a specific area of law.

Holloway discouraged the adoption of articling in the US because, he argued, it “exacerbates the access-to-justice problem.” He further explained, “Articling drives students to big firms because, in most cases, those are the only organizations that can afford to hire articling students in significant numbers. As is the case in America, we need lawyers in rural and inner-city communities.”

Holloway went on to suggest four features from the Canadian licensing system that the US could consider: (1) a focus on testing students’ competence rather than memorization skills; (2) an alternative path to licensure used in some provinces that is known as the Law Practice Program, which requires students to work in a simulated law firm for four months, followed by four months in a paid work placement; (3) the Integrated Practice Curriculum, which is a program made up of clinical courses designed to prepare students for practice without the added articling requirement; and (4) involving non-lawyers in leadership roles in the licensing system. “In Canada, the bar admission program was designed by an accountant who has expertise in assessing competence. Our accreditation system is overseen by an engineer,” he said. “If we want profound cultural change, we need to have the courage to allow experts from other fields to have input. When we do, we will be ready to have the licensure process we need for the 21st century.”

PANEL

Utah’s Emergency Diploma Privilege and Supervised Practice

In a panel moderated by Catherine Bramble, ’05, advocacy faculty and director of academic advisement and development at BYU Law, four BYU Law graduates who licensed under Utah’s emergency diploma privilege and a practitioner who supervises diploma privilege licensees shared their experiences. Bramble praised the order allowing for emergency diploma privilege as an act of heroism that gave “law graduates an opportunity to practice law during a time when access to justice was never more important.”

Hayley Cousin, ’20, who completed her supervised practice hours serving domestic violence victims and low-income persons with family law matters at the Timpanogos Legal

Center (TLC), echoed Bramble's sentiments. "I strongly believe we need to close the access-to-justice gap. It's something I want to emphasize in my career," she said. "Diploma privilege enabled me to focus on what I went to law school to do instead of focusing on another mini law school for months while I studied for the bar." Cousin has been able to use what she learned from mentors during her practice hours to help people who "needed someone with a JD on their side." She said, "Diploma privilege enhanced my ability to work with clients and to be a good listener and an advocate."

Susan Griffith, '87, adjunct faculty at BYU Law and executive director of the TLC, supervised Cousin's work. She said: "I see the benefits of diploma privilege being powerful for both the candidate and the organization they work with. As an employer, you can build in opportunities to spend extra time training and emphasize mentorship. It really sets up the graduate to take on the responsibilities of being an attorney." Griffith argued that law school teaches students how to find answers. "All of us have times in our legal careers when we have to go in and learn new things. Studying for the bar exam doesn't teach us everything that we need to know," she said. "This is true whether you are near retirement and taking on a pro bono project or whether you are a brand-new attorney just being admitted into the practice of law."

For Zachary Zundel, '20, a judicial clerk for the Fourth and Fifth District Courts of Utah, diploma privilege was beneficial from both a professional and financial standpoint. "I was able to spend time working on the specific areas of law that I am going to focus on rather than spending hours studying for the bar exam," he said. Zundel had some initial concerns about "push back" he might get for pursuing diploma privilege, but he said that hasn't been his experience. "The attorneys in the offices that I've worked in and the judges that I've worked with are all very happy with the system," he reported. "The only downside I can think of is that if I decide to practice in another state somewhere down the line, reciprocity may not work out."

"Diploma privilege steered me toward public interest law, and I found that I really liked it," said Lauren Heperi, '20, who completed her diploma privilege requirements while working with the Appellate Group, a firm in Bountiful, Utah. Her work there changed the trajectory of her law career. "I did criminal appeals, which I never would have thought about doing," she said. "I was set in my lane, corporate work or bust—and bust happened. I don't know if I would have discovered my love of public interest work if it hadn't been for diploma privilege." Heperi said that the key to her success with diploma privilege was having a great working relationship with her supervising attorney. "Working one-on-one with my supervising attorney, who is an evidence expert, I know more now than I believe I would have learned studying for the bar. She was able to teach me in real time how to make arguments work for our clients," Heperi said.

"It was easy to slide the time I would have spent in bar prep into service hours for the diploma privilege requirement," said Jarom Harrison, '20, who completed his supervised practice hours with Kirton McConkie in Salt Lake City. "I did a lot of pro bono work through organizations my firm has partnerships with, specifically helping people who don't have access to a lawyer to settle or discharge old debts. The most meaningful moment I've had as an attorney so far was with a pro bono case for a single mother with a young child whose husband left her with an apartment lease." Harrison was able to get in contact with the debt company's attorneys and negotiate a favorable deal for the client. He said, "That outcome didn't come out of anything I would have learned for the bar exam. There is nothing on that test that teaches you how to negotiate or bring up a client's financial position or appeal to basic human dignity. It was something I picked up from practice, knowing how the other side would react to my position."

The Utah bar has reported that the 47 graduates of Utah's law schools who applied for emergency diploma privilege performed over 3,000 hours of pro bono service in a matter of months. As Bramble noted, the emergency diploma privilege pathway to licensure enabled graduates to "go out in uncertain times and start doing good immediately." ^A

NOTES

- 1 Trip Hawkins, quoting Steve Jobs, in Jeffrey S. Young, *Steve Jobs: The Journey Is the Reward* (Glenview, Illinois: Scott, Foresman, and Company, 1988), 187.
- 2 Thomas W. Goldman, "Use of the Diploma Privilege in the United States," *Tulsa Law Journal* 10 (1974), 39.

DIPLOMA PRIVILEGE

ENABLED ME TO

FOCUS

ON WHAT I WENT

TO LAW SCHOOL TO DO

#1 Return on Investment (BY SOFI)

#1 Best Value Private Law School (BY NATIONAL JURIST)

#2 Best Value Law School (BY NATIONAL JURIST)

Top 20 Most Innovative Law Schools (BY NATIONAL JURIST)

BYU LAW STATS 2021

CLASS OF 2023 PROFILE

166
Median LSAT

3.82
Median GPA

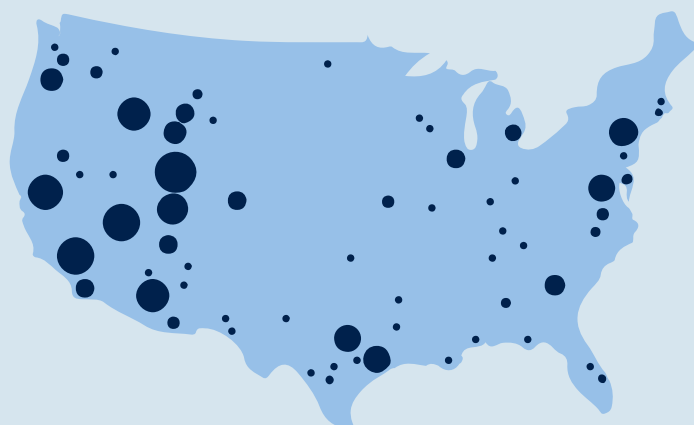
117
Class Size

19%
Racial/Ethnic Diversity

81%
Bilingual+

2016–2020 GRADUATE EMPLOYMENT

Where They Went



+10 Outside Contiguous US

Where They Work

- 49%** Law Firms
- 17%** Government
- 14%** Clerkships
- 11%** Business and Industry
- 5%** Public Interest
- 2%** Education

INFLUENTIAL IDEAS (A SAMPLER)

Law and Corpus Linguistics

BYU Law is leading the application of corpus linguistics to legal interpretation and analysis by producing scholarship and research tools, including the Corpus of Founding Era American English (COFEA).

Innovation Law

Professor Stephanie Plamondon Bair brings insights from neuroscience to shape scholarly discussions of innovation and intellectual property law, including work examining poverty's impact on creative decision-making and questioning IP's role in promoting distributive justice.

Transactional Design

Professor Matthew Jennejohn analyzes patterns in the development of innovative contractual structures, which helps explain how complex business transactions contribute to economic growth.

Disaster Law

As a pioneer in the field of disaster law, Professor Lisa Grow Sun writes about disaster preparation, mitigation, and response, exploring how popular misconceptions about human behavior during disasters and the importation of national-security and war rhetoric have adversely affected disaster law and policy.



D. Gordon Smith



Lisa Grow Sun



BYU LAW

The Extraordinary Life and Times of Eric Talbot Jensen

BY MADELINE OLSEN, 1L

There's an old sign hanging in the office of Eric Talbot Jensen. *Halt! Hier Grenze*, it reads—or, in English, “Stop! Border Here.” The sign’s edges are yellowed, its words slightly faded. It saw its fair share of sun and rain while serving as a marker for the border between East and West Germany. How, then, did it end up in an office in BYU’s J. Reuben Clark Law School? The answer lies in the extraordinary life of Professor Jensen.

Before Jensen dove into the waters of Antarctica or served as the deputy legal advisor for Task Force Baghdad, he was a student at Brigham Young University. He was a member of the ROTC and studied international relations, and upon graduating with his BA, he was commissioned as an officer in the US Army.

Early in his military career, he was assigned to the divisional cavalry unit in Germany. When he arrived, his unit was stationed at what was then the Czech border between East and West Germany. Usually, another regiment would have come and replaced his unit, but this time was different. No one came to relieve

them. No one needed to. It was the early months of 1990. The wall had come down, and the border was open.

“It was a pretty historic moment to be there,” Jensen says, holding up the border sign, “and it was just a great time.”

While in Germany, Jensen discovered the JAG program. He had joined the military because he felt he needed to give something back to his country. But he had also wanted to work in international law since his childhood, during which he did a great deal of

traveling. When he found out there was an opportunity to do international law in the military, combining his two passions, it was, as he puts it, “a bonanza.”

“I love to travel,” he says. “I love experiencing culture. I love meeting new people. I love trying to learn from what others are doing.”

Jensen’s interests made him the perfect JAG candidate. He applied and was accepted to the very competitive program, after which he attended law school at the University of Notre Dame before transitioning to become a judge advocate. Upon passing the Indiana bar, he spent 18 months as a prosecutor in Alaska, solidifying his skills in criminal law—a class he now teaches to first-year students at BYU Law. However, his interest in international law remained. When he received the opportunity to deploy with Task Force Eagle to Bosnia, he took it, leaving Alaska to spend the next four years in Europe.

Jensen knew from “pretty early on” that he wanted to

teach. He had the opportunity to do so at the Judge Advocate General’s Legal Center and School, and when he retired from the military, he spent two years teaching at Fordham University School of Law before joining the BYU Law faculty.

In addition to his extensive experience, Jensen’s openness to try new things and learn from others is much of what makes him such a wonderful professor. While one may wonder what Tom Jones’s “Delilah” has to do with premeditation or what John Wayne’s *McLintock!* has to do with inchoate crimes, Jensen uses them to creatively illustrate legal principles to his students.

“I like presenting using a number of different media and learning techniques,” he says. “I know some people are visual learners. Some people are auditory learners. That’s why I use a lot of videos. I try to present the same principles in several different ways in class so that people who learn using different methodologies can all try to get to where I want them to be.”

He adds: “And I’m really open to suggestions. I really want to be a great teacher for my students’ benefit. Anything I can do to make my instruction better for them is what I want to do.”

Jensen cares about his students, and, more broadly, he cares about making this world a better place. His most recent publication discusses how international law can enhance gender equality, a key contributor to international peace and security. We are lucky to have him here at BYU Law.

FACULTY HIGHLIGHT ERIC TALBOT JENSEN





FACULTY HIGHLIGHT
MELINDA K. BOWEN

But there was still something else Bowen wanted to do. From 2013 to 2015 she was president of the Utah Minority Bar Association (UMBA), an association of Black, Indigenous, and other people of color (BIPOC) attorneys in Utah. She wanted UMBA to do something more to empower historically oppressed groups within the legal field. Speaking of her days before teaching, she remembers, “I was almost always the only woman in the room. I was certainly always the only person of color in the room. I felt like I didn’t fit nicely into any one category, not that I wanted to. But still I had this feeling of loneliness that

firsthand the challenges faced by diverse students and attorneys as they enter the legal field. “I’ve heard people tell women not to go to law school, that they’re taking a man’s place and keeping a man from being able to feed his family,” she says. In addition to the openly hostile barriers, she’s seen many systemic hurdles that students may need help navigating: “Often diverse people don’t grow up around attorneys, and they don’t know anything about the legal profession or how to get started.” Bowen spearheaded an educational outreach program at UCLI that pairs attorneys with diverse students who are interested in entering the legal market. Students who are interested in this program should reach out to Bowen.

Bowen also runs a program at UCLI to educate and certify employers on diversity, equity, and inclusion in individual workplaces. “I’ve been mistaken repeatedly for a secretary, paralegal, and court interpreter. I’ve received sexist comments from opposing counsel that questioned my competence and even my appearance,” Bowen says of her experiences. “It can be exhausting being a minority. There is often so much loneliness, and people who don’t have that experience often see us as one dimensional and project their assumptions onto us.” The certification program is dedicated to helping employers create inclusive workplaces where minorities and other diverse individuals will not only want to come but, more important, want to stay.

Whether it be among employers or students, Bowen always seeks to create a place where everyone belongs.

Creating a Place of Belonging

BY JULIE BROOKS, 2L

When she was little, she told her mom she wanted to be US president. Her mom said, “Okay, let’s make that happen.” Her mom did some research and told her that most presidents are lawyers first. That’s when Melinda Bowen, ’10, decided that she would be a lawyer. She didn’t know any lawyers, her parents had not graduated from college, and going to law school wasn’t necessarily the thing to do in her social circles. Instead, it was what she wanted to do.

Professor Bowen was a self-described overachiever as a student. After graduating

from BYU Law, she worked in courtrooms on civil cases and later specialized in white-collar criminal defense. But there was something else she wanted to do. “I wanted so badly to clerk, and I had been rejected many times by many judges,” she explains. “I decided to try again, and this time I got it.” She clerked for Judge Tena Campbell on the United States District Court for the District of Utah and later clerked for Judge Carolyn McHugh on the United States Court of Appeals for the Tenth Circuit. The next chapter in her life? Teaching at the Law School. “The students make it for me,” she says. “I love teaching so much.”

no one else in the room could understand.”

In 2017, Bowen and a select number of other distinguished attorneys started the Utah Center for Legal Inclusion (UCLI), a nonprofit that focuses on growing the pool of legal talent within historically underrepresented groups and promoting diverse and equitable employment in the legal profession. Now, in addition to teaching at the Law School, she is the executive director of UCLI. “It’s exciting,” she says. “I’ve been in the diversity space the entire time I’ve been a lawyer, and I’ve never seen this kind of momentum.”

And the momentum is much needed. Bowen has seen

The New Achievement Fellowship Program

In fall 2021, BYU Law will welcome its first class of Achievement Fellows—students who have qualified themselves academically for law school in the face of significant challenges and hardships.



Isabella Ang is from Utah and has spent the last 12 years on both the giving and receiving end of social justice advocacy. Her experiences as a justice-impacted individual have allowed her to develop her passion for law and to become an advocate for individuals found on the periphery. She hopes law school will enable her to make an impact on that community of individuals.

MEET THE FELLOWS



Breeze Parker is a native Hawaiian who grew up in Hawaii and has seen the legal struggles that her *lahui* (“nation”) suffers from every day. Her experiences as a minority at home and at BYU prompted her to pursue a law degree, which she hopes will be an effective tool in realizing her dream of equality across all sociocultural bounds, including race, gender, and immigration status.



Macy Shanklin is a wife and a mother of a two-year-old son and is from Missouri. She is pursuing a law degree because she knows what it is like to feel absolutely powerless and has seen good people in the law use their training and skills to empower the powerless. She is determined to make a difference and sees law as a means of making meaningful change.



Derek E. Rodriguez believes that the exercise of agency is humanity’s most important responsibility and seeks to be an advocate for justice, whether in defending the rights of the accused or ensuring that consequences are met for those found guilty. He finds that the law is always changing and believes we must work together to ensure it moves in the right direction.

For more information regarding the Achievement Fellowship program, please visit law.byu.edu/departments/admissions/tuition-and-scholarships/scholarships. For information on how to provide financial and mentoring support, please contact Tony Grover, assistant dean of admissions, at grovert@law.byu.edu or 801-422-6386.



Shubham Shah grew up on three different continents and experienced life in myriad cultures. He applied to law school to learn more about what makes society work and hopes to increase in knowledge and understanding and to assemble a multitude of skills that he can use to build his career while helping his family and others.



Jordin Annett is a high school dropout and college graduate who firmly believes that one's background doesn't have to predetermine one's future. Having firsthand knowledge that justice is not always a given, she hopes to use her future law degree to guide others through the legal system as they face their abusers and their former bad decisions.



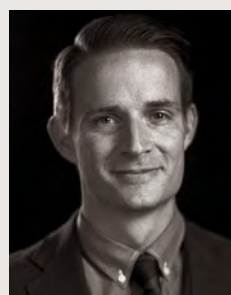
Paris Thomas went from being homeless and a high school dropout to becoming a Navy veteran and a community activist. After running for local office in his hometown of Tuskegee, Alabama, he is now pursuing a career in law to expand his influence on policy with the intent to help build safer and more inclusive communities.



Jacob Kuamoo is from Hilo, Hawaii. He originally planned to go to graduate school to become a therapist to help people find peace. However, after personally experiencing unfair treatment in court, he decided to attend law school so that he could someday defend those who are unfairly disadvantaged by the law and its enforcers, staying true to his desire to help people find peace.



NEW TO THE LAW SCHOOL



Cree Jones,
Associate Professor of Law

Jones is a law and economics scholar with an emphasis on international trade and investment. He was a Bigelow Fellow at the University of Chicago Law School and lead consultant to the United Nations Conference on Trade and Development.



Brook Gotberg,
Professor of Law

Gotberg is a scholar of commercial law who specializes in the study of debt and bankruptcy, particularly debtor and creditor relations. She is also an enthusiastic advocate for small businesses and a believer in active learning.



Anthony Grover, Assistant Dean for Admissions

Grover is a former partner at a Salt Lake City-based regional law firm, where he focused on civil litigation with an emphasis on creditor's rights in bankruptcy. He has also volunteered many pro bono hours toward Utah initiatives.



BYU Law's New Innovation Space

A TRANSFORMATIVE APPROACH
TO LEGAL EDUCATION

BY AMBERLY PAGE, '06

BYU Law dean D. Gordon Smith has said, "Leadership is a crucial factor in creating successful and sustainable institutions, and lawyers are expected to lead. Law students are graduating into an increasingly complex and unpredictable world."¹

BYU Law strives—through a rigorous theoretical curriculum and innovative teaching practices and skills training—to prepare students to go forth and lead, not solely along well-worn pathways shaped by others but along innovative new roads they forge while navigating the legal and social challenges of



our day. Innovation and innovative thinking are hallmarks of a BYU Law education and a touchstone for Dean Smith. In winter semester 2021, BYU Law opened an Innovation Space on the first floor of the Howard W. Hunter Law Library.

A Transformative Space

David Armond, the head of infrastructure and technology at BYU Law and a senior law librarian, describes the Innovation Space as "a transformative space" that can be adapted for various uses by students, faculty, and other

members of the BYU Law community. The spacious, square-shaped room can be set up for large lectures, with seating for close to 200 people, or as a more traditional law classroom, with seating for around 50 students in times of social distancing. But for Armond, one of the most exciting uses of the space is as a collaborative classroom for design-thinking and problem-based instruction.

Design thinking "is a non-linear, iterative process that teams use to understand users, challenge assumptions, redefine problems, and create



The Specs

Using state-of-the-art glass boards and rolling whiteboards, the Innovation Space can be subdivided into four identically furnished quadrants, each comfortably accommodating a team of 12. The abundance of whiteboard space in each quadrant allows teams to chart out ideas and brainstorm solutions. Each quadrant can also include a butcher-block table with stools, a smaller table with chairs, two love-seat-style sofas with built-in workstations for laptops, and two squishy cube seats. All of the furniture is easily movable so that teams can arrange their quadrants to best serve their needs and the assignment.

Each quadrant is also equipped with a monitor, which can display information sent via computer, phone, or other device by the instructor, the team working in that quadrant, or other teams in the class. The whiteboard “dividing walls” can be opened up to provide line-of-sight to the front of the room or into other quadrants as desired, making it easy to pitch ideas

and discuss proposed solutions from anywhere in the room.

Armond notes that the structural and interior design of the space was itself the result of collaboration, and the outcome demonstrates the benefit of that approach. Kory D. Staheli, director of the Howard W. Hunter Law Library, recommended using glass walls for the Innovation Space, which more seamlessly incorporates the space into the library and allows the continued flow of natural light throughout the library. The Office of Information Technology adjusted the audiovisual setup in the room by moving speakers into the ceiling tiles, which reduces the amplified sound that leaves the room. They also installed custom controls so that those using the room can determine where sound is transmitted in the space. Sarah Payne, an interior designer at BYU, selected furniture that facilitates adaptability and movement in the room and serves the collaborative purpose of the space. In designing the space, Armond says, the focus was on creating basic building blocks

innovative solutions to prototype and test.”² Armond notes that the traditional setup for a law classroom presents challenges to that type of process: the furnishings are not often conducive to group work and there’s not enough whiteboard space for brainstorming. “People have been calling for things like this in legal education for years, but not many places have been able to do it,” he says. The new Innovation Space at BYU Law was built specifically to facilitate design-thinking processes and collaborative problem-solving.



and trying to be as flexible and thoughtful as possible about potential uses for the space.

Welding Theory with Practice

Armond believes that, like the Innovation Space, incorporating principles of design thinking in legal education can be transformative as well, “welding legal theory with legal practice” by teaching law students to look at problems from multiple angles, brainstorm solutions, and iterate from a prototyped solution to solve those problems. “We need creative ideas to help address the complex challenges facing society, including the access-to-justice

gap,” Armond says. He notes that design thinking can elevate lawyers’ ability to solve complex problems, cultivating collaboration and empathy rather than competition and complacency. Armond sees that “innovative thinking and design thinking are means to craft real-world solutions to complex legal and social problems that serve the interests of all the stakeholders.”

This emphasis on collaboration and problem-solving in legal education is also a priority for BYU Law professor Eric Talbot Jensen. “In my experience, collaboration and problem-solving are at the core of legal practice,” he says. “A

problem-based approach to legal education is simply modeling the way that students will spend the rest of their careers.”

Jensen recently taught in the Innovation Space and is enthusiastic about the flexibility and adaptability the space allows. “I loved teaching in that space,” he says. “It’s ideal for my teaching style. I organize students into smaller groups in almost every class and assign at least one larger team exercise in each course. Giving students the freedom to move around and to meet in small groups and have confidential discussions is facilitated by the flexibility and mobility of the Innovation Space.”



Jensen structures his classes so that most begin with or include a problem for the students to solve and encourages them to collaborate in solving those problems. “Some lessons work better with students in chairs and some work better around tables; the mobility of the furniture in that space lets you adapt the room to serve the purposes of each lesson,” he says.



Jensen has also found that the room works well for instruction via Zoom and anticipates that this will be important even after COVID protocols are relaxed. "I travel a lot and will be teaching via Zoom from time to time," he notes. "With all the monitors in the room and the way the acoustics work, students have an easy time hearing and seeing me."

His own mobility in the space is a priority for Jensen as well. "I am not a stationary teacher," Jensen says. "I like to move around the room." The Innovation Space has a movable podium and teaching

stations at the center of the room and in the front so that instructors have more mobility in teaching. Although COVID-19 safety protocols limited his ability to move around much in winter semester, Jensen looks forward to taking advantage of the increased mobility of that space in the future.

The flexibility and adaptability of the Innovation Space, Armond notes, will be especially useful for LawX, the Law School's award-winning legal design lab. LawX "is structured as a design-thinking process in which students find the best solution to social legal issues, whether that is a change in

policy, process, or product."³ He is also enthusiastic about its usefulness for the Law School's Legal Tech Initiative, cross-disciplinary collaborations, and myriad other uses not yet imagined. "It will be fun to see how people envision using the space," Armond says. It is truly a space designed to facilitate the creativity, flexibility, and collaboration needed to innovate effective solutions and prepare students not only to successfully navigate "the increasingly complex and unpredictable world" they will graduate into but also to change that world for the better.

NOTES

- 1 D. Gordon Smith, "BYU Law School: Inspiring Leadership Initiative," Association of American Law Schools Section on Leadership, June 27, 2019, [sectiononleadership.org/2019/06/27/byu-law-school-inspiring-leadership-initiative](https://www.aals.org/2019/06/27/byu-law-school-inspiring-leadership-initiative).
- 2 "Design Thinking," Interaction Design Foundation, [interaction-design.org/literature/topics/design-thinking](https://www.interaction-design.org/literature/topics/design-thinking).
- 3 "Innovation at BYU Law: The LawX Legal Design Lab," *The BYU Advocate*, 2018, 39.

INTRODUCING THE PROXIMUS FUND

Get Proximate

The Latin word proximus means "neighbor."

Current BYU Law students (with a few recent grads) answered the Savior's call in Luke 10 to love and care for our neighbors, starting with those closest to us.

The new student-created Proximus Fund provides financial aid to current law students in need. Students can request help or be nominated by a classmate.



We invite you to **stay proximate** and to consider donating to the Proximus Fund, knowing your gift will help someone who may be struggling with the same challenges you faced as a law student.

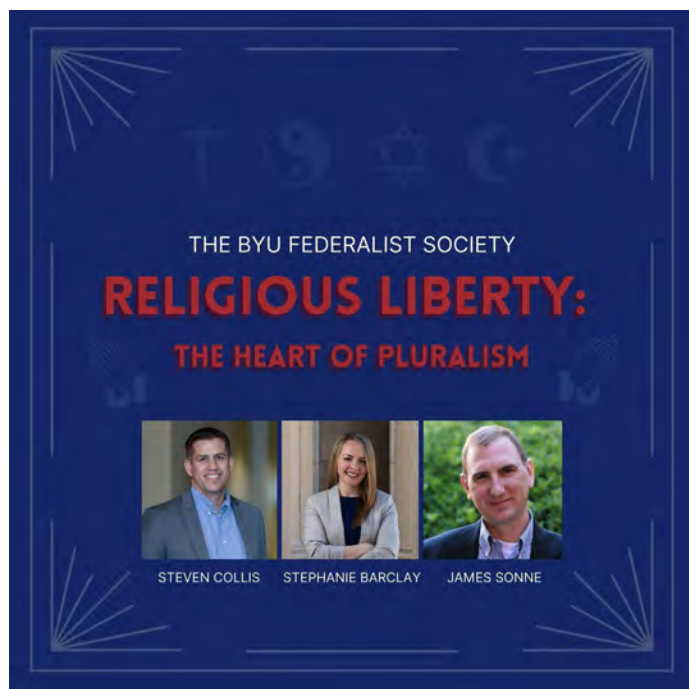


BYU LAW
PROXIMUS FUND

To help, click the "Donate" button on the top menu of law.byu.edu or call 801-422-7831.

Anxiously Engaged

GOOD WORK BEING DONE BY BYU LAW'S
STUDENT ORGANIZATIONS



Federalist Society

RELIGIOUS LIBERTY AND THE
HEART OF PLURALISM

The BYU Federalist Society chapter organized many virtual events during the 2020–21 school year that covered topics such as police reform, climate change, constitutional rights during the pandemic, and separation of powers issues. We particularly enjoyed hosting an event in which a panel of directors from three different religious liberty centers—James Sonne from Stanford Law School, Stephanie Barclay

from Notre Dame Law School, and Steven Collis from the University of Texas School of Law—discussed the future of religious liberty law following the US Supreme Court’s recent decision in *Bostock v. Clayton County*. While there is a deep political divide on how to best balance religious and LGBTQ+ rights, we had a civil and insightful discussion on this continually developing area of law. We appreciate the many legal practitioners, judges, scholars, and students who presented diverse perspectives in each of our events this year and look forward to meeting in person soon.

Women in Law

FAVORITE THINGS

Women in Law sponsors a service project at the Law School every year that usually involves collecting lightly used professional wear from law students to give to domestic violence survivors to help them look professional in job interviews and at work. This year, because of COVID-19, we asked the Refuge, Utah County’s domestic violence shelter, if there was anything different that they needed because of the changes that have happened in the world. Through our discussions, we identified a list of specific items that the Refuge was most in need of and that law students could donate. We then created a “favorite things” donation box to collect the items. Women in Law had the donation box available for two weeks in the Law School and collected four times the number of items expected.



American Constitution Society

A LESSON IN US ELECTIONS

The BYU chapter of the American Constitution Society (ACS) organized a service event during the 2020–21 school year that gave BYU Law students the opportunity to be directly involved in the elections process. Last October, ACS members visited the elections facility for Utah County and were given a tour by the Utah County clerk and the Utah County attorney general. Chapter members also volunteered as ballot processors for the November general election, assisting with signature verification, ballot collection, and ballot sorting. Rachel Johnson, 2L, said of the experience, “The tour of the elections facility was illuminating and educational on the detail and commitment required to preserve fair elections. Being able to volunteer in any capacity as part of this historic election was inspiring.”

Military and National Security Club

A PIVOT TO ONLINE NETWORKING

When club events were constrained due to social distancing measures, the Military and National Security Club (MNS) decided to temporarily suspend its events and pivot to an email-based outreach that focused on our club members’ professional success. This meant that instead of inviting students to network face-to-face at our club events, we sent an MNS Monthly Feature filled with career insights, professional

introductions, and networking opportunities. MNS featured nine outstanding individuals, including legal professionals and students heading into the military and national security legal field. We also teamed up with the Minority Law Student Association to highlight MLSA and MNS students working parallel to the military and national security legal field. Each of these inspiring people provided answers to the following three questions:

1. What area of law do you practice in or want to practice in?
2. What success have you had in overcoming obstacles?
3. What is the most rewarding part of your career or internship and why would you recommend it to future attorneys and students?

The participants were invited to provide their contact information for any student-initiated follow-up. Shortly after the Monthly Feature was distributed, we sent out a survey, through which participants could answer questions about the students and professionals and win MREs.

International Law Student Association

GETTING TO KNOW THE LLMs

BYU Law's LLM program is designed for international lawyers who intend to use their degree to enhance employment opportunities in their home countries. These international legal practitioners dramatically enrich the learning environment at BYU Law, but because there are so few of them, interactions with other JD students are limited. In 2019, BYU's chapter of the International Law Student Association (ILSA) stepped in and hosted an event spotlight-

ing each LLM and providing an opportunity for other students to connect with them. It was such a success that even an online semester couldn't dampen the momentum. In September 2020, ILSA hosted its second annual Getting to Know the LLMs event. ILSA board members created introduction videos for each LLM to learn about his or her background and then brought them all together (virtually) for a Q&A panel with the rest of the Law School community. The distinguished LLMs shared their diverse experiences—working at China's supreme court, deciding cases as a judge in Jordan, advocating for human rights in Colombia. Attendees gained a deeper understanding of legal systems across the world and left with personal connections to the LLM students and a better understanding of their rich international perspectives.

Health Industry Association Student Chapter

A FIRESIDE ON ADVANCE MEDICAL DIRECTIVES

On Wednesday, January 20, 2021, the graduate and law chapters of the BYU Healthcare Industry Association hosted Susan Griffith, executive director of the Timpanogos Legal Clinic and adjunct professor of law at BYU Law, for a digital fireside on the importance of advance medical directives. This event introduced an audience of primarily law, business, and public administration students with an interest in healthcare to a critical intersection of healthcare and the law: the importance of completing advance medical directives, also known as living wills, and medical power-of-

attorney forms. Griffith shared her experiences working with families in heart-wrenching situations: in dispute with each other or at a loss over how to care for a loved one who was no longer able to express their own wishes and had not made provisions beforehand. She taught students how to find state-approved forms (available from intermountainhealthcare.org/health-information/advance-directive), to prepare these documents in advance for themselves, and to assist friends, family members, and patients. The event was well attended and fostered networking between students at the BYU Marriott School of Business and the Law School.

JRCLS Student Chapter

THE POWER OF PAIRING LEGAL REASONING AND FAITH

In October 2020, the BYU student chapter of the J. Reuben Clark Law Society shared an inspirational evening with 2016 BYU Law graduate Adam Balinski. Balinski shared his experiences with learning to pair legal reasoning with his faith and ultimately how his legal education has strengthened his religious convictions. Balinski's "choosing to believe" story provided insights to those experiencing doubts

and offered hope that sincere questions, combined with intentional choice, can yield greater faith.

Moot Court

STAYING ON TOP OF THE COMPETITION

BYU Law kept busy with moot court throughout the year, participating in some eight different competitions across the country, including the University of Buffalo's Wechsler Criminal Law Moot Court Competition, William and Mary's Spong Moot Court Tournament, NYU's National Immigration Law Competition, and the Evans Constitutional Law Moot Court Competition. The Law School's two national moot court teams spent winter semester prepping for the ABA national moot court competition in March. Both teams' briefs scored high, and all advocates did exceptionally well throughout oral argument, with Brittany Urness (3L) winning Runner-up Best Oralist for the region. Back at home, Kyle Tanner, 3L, won Best Oralist and Lauren Malner, 2L, won Best Brief at BYU Law's annual Rex E. Lee Memorial Moot Court Competition. Looking ahead, Clara Hubbard, 2L, will preside over BYU Law's moot court teams next year as they head again to nationals in March.



What We're Listening To

THREE BYU LAW PROFESSORS GIVE A GLIMPSE OF WHAT'S IN THEIR PODCAST QUEUES

The History of English

BY KEVIN STROUD

Reviewed by Brook Gotberg,
Professor of Law

Why does English use so many words to express similar ideas? Why do so many words have bizarre spellings, like *height* and *daughter*? Why is something called *good* but then *better* and *best*? The answers to these questions and more can be found in *The History of English*, my new favorite podcast, which provides me with daily facts to astound, inform, and annoy my family and friends. This podcast takes you back (way back) to the first Proto-Indo-European language, which forms the basis for most of the European languages we know today as well as Russian, Persian, and even Sanskrit. Kevin Stroud, the host, traces how sounds shifted in the language over time, how the Viking invasions introduced



new words into English, and how the Normans reintroduced many Latin-based words when they invaded England. In addition to a healthy serving of history, the podcast also dabbles in linguistic terminology, explaining concepts like assimilation and palatalization. My favorite episode so far explained that *kind* and *gentle* are cognate: both are terms for how you would treat a family member, one from Germanic and one from Latin. I strongly encourage this podcast for anyone who loves history, language, or just geeking out every day.

Trade Talks

BY SOUMAYA KEYNES AND
CHAD P. BOWN

Reviewed by Cree Jones,
Associate Professor of Law

One of the hallmarks of the Trump administration was frequent, sudden, and often controversial changes to US trade policy. From negotiating, signing, and implementing the new United States-Mexico-Canada Agreement to waging a trade war (via tweets) with China, and from dismantling the WTO Appellate Body to threatening Mexico with tariffs to compel coordination on migration at the US-Mexico border, US trade policy truly ran the gamut.

If you have a desire to understand the nuances of these policies and the congressionally delegated authority President Trump wielded to implement them, I recommend you listen to Soumaya Keynes (of *The Economist*) and Chad P. Bown (of the Peterson Institute for International Economics) on *Trade Talks*. Episodes range



in length from 20 to 40 minutes and cover all of the above topics (and many more!) in thoughtful detail.

I recommend starting with Episode 111, "Trade Policy Under Trump," in which Keynes and Bown interview Stephen Vaughn (former general counsel to the US Trade Representative) on the Trump administration's approach to US trade policy. In addition to providing insight into the motivation behind many of these policies, this episode is also a great lesson in civility, with people that disagree with each other on very important issues having a robust and earnest conversation to respectfully explore the nuances of their differing perspectives.

Hardcore History: Supernova in the East

BY DAN CARLIN

Reviewed by Clark D. Asay,
Professor of Law

Recently, I've enjoyed listening to the *Supernova in the East* series of Dan Carlin's *Hardcore History* podcast. It's a five-part series totaling around 20 hours of a deep-dive into Japan's involvement in World War II. Carlin relies on primary sources as well as secondary historical accounts to help listeners

better understand important context surrounding World War II. Aside from fascinating details about Japanese history before, during, and after the war, the series includes lots of historical details about the time period more generally. From my perspective, Carlin does a good job of trying to incorporate various theories about controversial topics, including the roles of top US leaders, such as Franklin Delano Roosevelt and Douglas MacArthur, in the war. So if you have 20 or so hours to burn, give it a listen!



Listen Together Forum Series

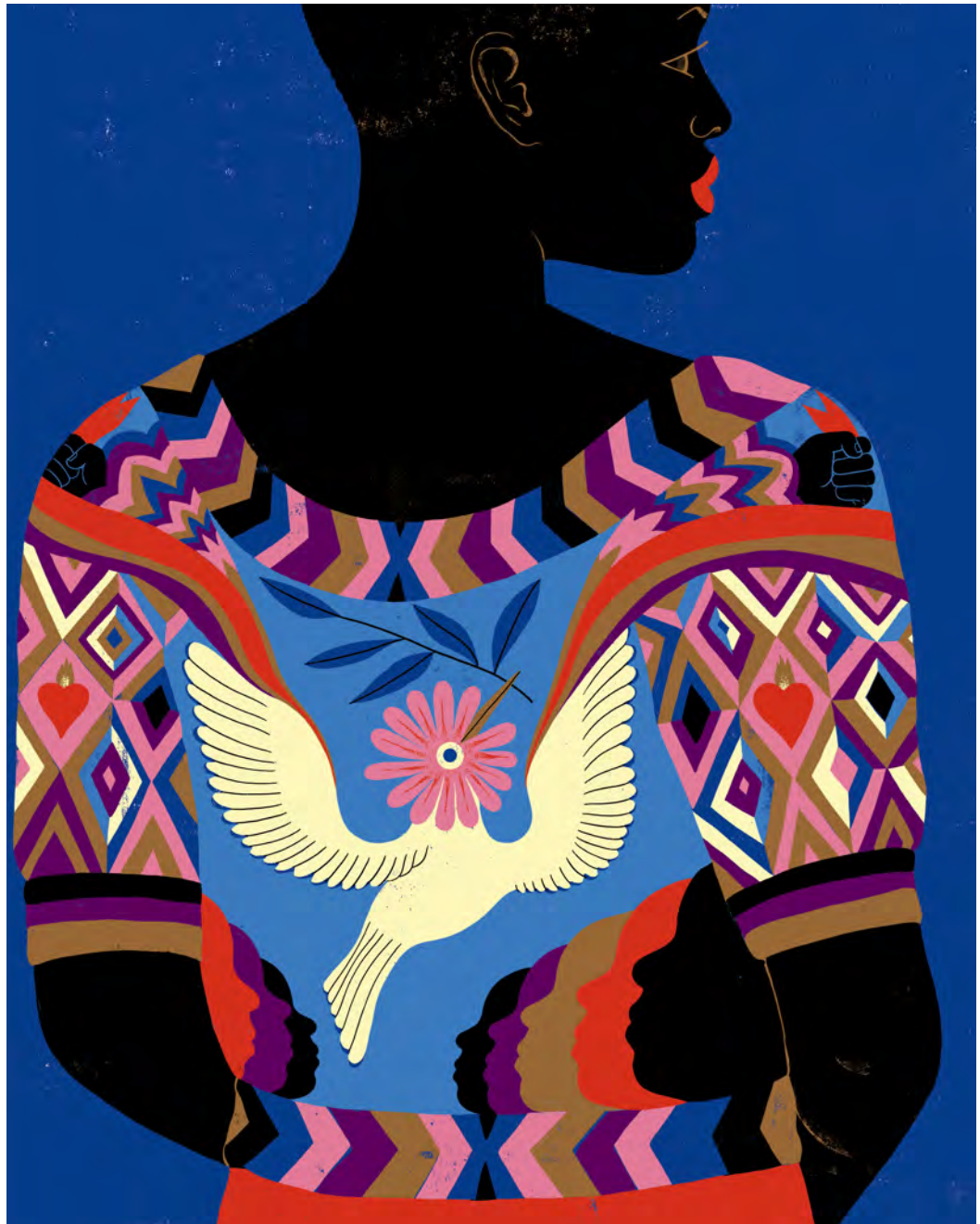
ENCOURAGING EXAMINATION AND BUILDING EMPATHY

BY AMBERLY PAGE, '06

In a message to the BYU Law community after the death of George Floyd in May 2020, D. Gordon Smith, dean of BYU Law, stated:

Human dignity resonates deeply within my faith tradition, which teaches me to “remember the worth of souls is great in the sight of God” (D&C 18:10). Embracing this truth, I cannot observe the deaths of Ahmaud Arbery, George Floyd, Breonna Taylor, and so many others without feeling the chasm between my ideals and my reality. Unfortunately, this dissonance is a steady companion. These latest events occur against the backdrop of a pandemic that is having a disproportionate effect on communities of color and a much longer history of racism that remains a source of pain and injustice in our society.

Many members of our community are hurting right now, and all of us should be “willing to mourn with those that mourn . . . and comfort those that stand in need of comfort” (Mosiah 18:9). But we need to do more. . . . I am striving to ensure that BYU Law School will be a place where racism is never



THE DOCKET

ignored but directly, consistently, and explicitly opposed. I will be working with faculty, staff, students, alumni, and friends of the Law School to study and listen so that we can acknowledge the problem and recognize our role in perpetuating the problem. We will invest in change until we have a law school that respects and values people of all races and ethnicities and makes a deliberate effort to ensure that these differences are not just tolerated but actively welcomed.¹

One of the efforts undertaken at the Law School to “study and listen” was a series of forums, open to the entire BYU Law community, titled *Listen Together*. The series takes its title from the scriptural admonition in Doctrine and Covenants 1:1 to “hearken” and “listen together.” “When we listen to understand,” Smith said in the first forum in September 2020, “and when we begin to see other people as God sees them, that is the first step toward loving other people as God loves them. This sort of empathy is a form of communion with God. When we place ourselves in this position, when we hear other people and understand them, we begin to hear the voice of the Lord.”

Held monthly during fall semester, the faculty-led forums in 2020 encouraged the study and discussion of the works, ideas, and experiences of several Black Americans. In the September forum, Smith emphasized that the purpose of *Listen Together* was not to decide who was “right” or to debate the merits of the different ideas presented but, instead, to “listen to understand.” He said:

My hope is that we will develop a genuine curiosity about people who have different experiences and a different worldview than we have. We have an amazing Law School community, but all is not well in Zion. We face a tremendous challenge at the Law School to make real our aspiration to unite all members of the Law School community in a shared vision of excellence that will change the world for good. We need to overcome our natural tendency to exclude those who are different, particularly when that difference is based on race, ethnicity, or LGBTQ status. . . . We believe that all members of the Law School community have the potential to become leaders, and we encourage every member to help others feel valued and respected. That is our aspiration. My hope is that we can truly transform our community by listening together.

Systemic Racism and Anti-racist Policies

In preparation for the September forum, Smith had invited the Law School community to study articles published in *The Atlantic* magazine by Ibram X. Kendi (Andrew W. Mellon Professor in the Humanities and founding director of the Boston University Center for Antiracist Research) and John McWhorter (senior fellow at the Manhattan Institute and associate professor at Columbia University).² Smith noted that “[Kendi and McWhorter] are sometimes writing in personal narrative and sometimes writing from a scholarly or policy perspective, but all of the essays address the issue of systemic racism,



A mural of George Floyd was painted on a wall along Colfax Avenue on June 7, 2020, in Denver, Colorado.

and our discussion will focus on this important concept.” Smith went on to note that “both Kendi and McWhorter have many fans and some critics, but we should avoid superficial categorizations that allow us to embrace or dismiss their views in their entirety. If you read their words carefully, I suspect you will find ideas to embrace, ideas to ponder, and ideas to challenge.”

Participants in the September forum discussed Kendi’s essays “Who Gets to Be Afraid in America” and “The American Nightmare,” and they addressed questions such as how the dismantling of systemic racism or changing of racist policies might prevent future incidents similar to the Ahmaud Arbery killing and what a world built on anti-racist policies and values might look like. In discussing McWhorter’s essays “The Dictionary Definition of Racism Has to Change” and “The Dehumanizing Condescension of White Fragility,” participants addressed the significance of distinguishing between racism and prejudice as set forth by

McWhorter, what it means to educate oneself on racism and other social issues, and how to grapple with differing and sometimes contradictory views on ideas such as White fragility.

Creating Connection While Discussing Race

For the October forum, Ben Cook, associate teaching professor at BYU Law, invited the Law School community to study excerpts from Claudia Rankine’s book *Citizen: An American Lyric* and to listen to a podcast in which Rankine discusses the book and the need to have frank and honest discussions related to race and the pain caused by lived racism in a way that brings people together. Rankine is the Frederick Iseman Professor of Poetry at Yale University and founder of the Racial Imaginary Institute. Participants discussed the powerful imagery of Rankine’s poetry and the thoughts and feelings it evoked regarding the pain experienced by people of color. Cook noted that poetry and other forms of art are resources we can use to seek understanding “with our hearts” as well as our heads.

Cook opened the discussion by reiterating the charge by Russell M. Nelson, president

of The Church of Jesus Christ of Latter-day Saints, to “lead out in abandoning attitudes and actions of prejudice.”³ He encouraged participants to ask themselves in what ways they were leading out in combating racism. Cook referenced Melissa Wei-Tsing Inouye’s definition of racism from her address to the BYU Law community in August 2020: “Racism is about the willful

The Beauty of Ordinary Life

For the November 2020 forum, Ivan Meitus Chair and BYU Law professor Kif Augustine-Adams invited participants to study experiences shared by Christopher Scott, who served 13 years in prison after being wrongfully convicted of capital murder and who, upon release, founded House of Renewed Hope, a

shared was the beauty of ordinary life. Augustine-Adams emphasized Scott’s joy after he was released from prison at being able to go to the refrigerator, take a walk outside, or get the mail whenever he chose. Referencing the description in Isaiah 61:3 of the Savior’s ability “to give . . . beauty for ashes,” Augustine-Adams said, “Scott is a remarkable individual who took the pain and the

The 2020 *Listen Together* series offered members of the BYU Law community an important opportunity to study and listen to the stories, experiences, and ideas of Black scholars and artists and Black Americans from various backgrounds. The intention and aspiration of *Listen Together* was to help members of the Law School community engage with a multiplicity of voices from various communities and a wide range of human experience, focusing in particular on voices that are often underrepresented or overlooked in American society. As Dean Smith noted, listening to these voices is essential in helping the BYU Law community examine, acknowledge, and work to remedy racism and prejudice individually and institutionally.⁶

... When we hear other
people and understand
them, we begin to hear the
voice of the Lord.

ignorance of others’ burdens and prideful unwillingness to do the work required to bear them as befits children of God and followers of Christ.”⁴ Inouye’s definition, he argued, “puts the responsibility on us to do something.” He went on to say, “There can be a reluctance to act or speak out because of the risks of saying or doing something wrong or because you aren’t sure what would be helpful.” But, Cook urged, we need to press forward despite those fears, to dig into the works of others, educate ourselves, and share what we learn. “This is how we start to more effectively combat racism,” he said.

nonprofit organization that seeks to exonerate wrongfully convicted prisoners. During the forum, Augustine-Adams shared media clips of several Black Americans from a variety of backgrounds, including Scott, veterans who had served in Vietnam, Senator Barbara Jordan, the poet and author Maya Angelou, and children playing games on Sesame Street. Augustine-Adams invited participants to share their impressions as they watched and listened to the life experiences of the different individuals.

One of the common themes identified by participants as they reflected on the stories

injustice and the ashes that racism created in his life and turned them into something beautiful, and that is his ongoing work: to help those who have been wrongly convicted and to help those who leave prison to reestablish their lives.” She encouraged participants “to develop the particular tools that lawyers have . . . to help protect, benefit, and preserve everyone’s ability to engage in the ordinary things of life.” Augustine-Adams also encouraged participants to “listen to those around you,” including other BYU students, and to seek out, read, and listen to people’s experiences being Black at BYU.⁵

NOTES

- 1 D. Gordon Smith, “Combating Racism,” law.byu.edu/news/combating-racism.
- 2 Biographical information for individuals featured in the *Listen Together* forums, citations to their works, and other materials suggested by the forum leaders can be found at law.byu.edu/listen-together.
- 3 Russell M. Nelson, “Let God Prevail,” *Ensign*, November 2020.
- 4 Melissa Wei-Tsing Inouye, “Making Zion,” BYU Law School Returning-Student Orientation, “Collaborating Across Differences,” August 19, 2020.
- 5 See Peter B. Gardner, “Black at BYU,” *BYU Magazine*, Fall 2020, magazine.byu.edu/article/black-at-byu.
- 6 See Smith, “Combating Racism.”

A Look at Six BYU Law Grads

BY RACHEL EDWARDS

INVESTING IN THE COMMUNITY

While living in Boston, Massachusetts, **Martha Wingate**, '21, founded a nonprofit organization that connected families experiencing homelessness to community resources with the goal of helping them get back into housing. That's when she first considered law school. "I realized how much the clients I was working with needed legal help," she says. "I was constantly interacting with attorneys and recognized that if I wanted to keep doing this kind of work, it would be really helpful to have a law degree."

At BYU Law, Wingate has worked as the lead student fellow of the Law School's Community Legal Clinic, which provides free legal services to clients in matters such as immigration, contracts, and housing. "Working with the clinic has been tremendously meaningful. I always feel uplifted and energized when I have the opportunity to listen to people.

I love knowing that I can make a difference by helping to resolve something legally that will help them move forward," she says. "It's inspiring that BYU Law is investing in the community in this way."



After graduation, Wingate will join Ray Quinney & Nebeker and will be involved with immigration, mergers and acquisitions, and estate planning. "The first years of practice are a continued part of your education," she says. "I'm excited to be around top-notch attorneys that I can learn so much from." Wingate also hopes to stay engaged with BYU Law's immigration efforts. "The Law School has a relationship with No More a Stranger, a foundation that advocates on behalf of individuals from immigrant, migrant, and refugee backgrounds—that's something that I'm really interested in working on," she says.

One thing that surprised Wingate about law school was the positive impact it had on her family. She and her husband, David Wingate, an assistant professor in BYU's Computer Science Department, have nine children between the ages of 3 and 16. "My children have been really engaged in school with me. We have great

legal discussions and have even held court on how to work through family disputes," Wingate says. "It has been fantastic to have them be such a big part of my experience."

AN ENLIGHTENED VIEW

"In middle school, I had an ambitious social studies teacher who involved her students in world events," says **Ben Forsgren**, '21. "She introduced us to the genocidal activities that were occurring in Sudan. It shocked me—I had never heard of anything like that before, and I wanted to help." Forsgren went on to establish a local chapter of the Genocide Intervention Network. "It gave me a sense of purpose to work on something that could help others," he says.

Forsgren continued to pursue activism as an undergraduate at BYU, serving in leadership with BYU's Anti-Human-Trafficking Club. He says, "I discovered that any good work that we did involved attorneys. Real differences are made through the law."

At BYU Law, Forsgren has had "formative and eye-opening" practical experiences with many of the areas of the law he is passionate about, including national security and international relations. He was an intern with the United States Senate Committee on the Judiciary during the height of the border crisis and recalls on one occasion coming face-to-face with a sobering reality during a partisan impasse. "One of the senior senators held up a copy of the committee rules and tore it in half to make his point—that the committee was broken and that the rules were



being ignored," Forsgren recalls. "The crisis was ongoing when I left. It was hard for me to realize that sometimes solutions don't happen in time." Despite this, he came away with a sense of hope. "There were times when the process did work. I saw integrity and functionality," he says. Though these experiences were at times "hard to reconcile," they gave Forsgren "a more enlightened view of the law and the world."

After graduation, Forsgren will clerk for the United States Court of Appeals for the Armed Forces. "I care intensely about national security, and I also care about due process and the rule of law," he says. "How do we pursue effective security while at the same time maintaining America's moral leadership, making sure that we don't lose ourselves as we seek to protect ourselves? Those are the kinds of legal issues I would love to work on in the future."

LEGAL ACCESS FOR ALL

Laura Kyte, '21, first became interested in law as an undergraduate history major. "My senior thesis was on slavery in the United States," she says. "It became so apparent to me

how important the law was in creating meaning and identity for people. I was inspired by attorneys who were willing to help fight against a system that was acceptable to most of the population. The very instrument that was being used to oppress was also being used to push against that oppression.” When one of Kyte’s professors suggested that she consider law school, Kyte says it felt right: “I decided a career in the



law would allow me to use my skill set to make a difference in things I care deeply about.”

At BYU Law, Kyte served as president of the Government and Politics Legal Society, which helps students gain knowledge about externships, service, and careers in government. She has been actively involved in planning and organizing the society’s annual State and Local Government Conference, an event that invites students, academics, and practitioners to collectively examine pressing issues spanning the areas of civil, criminal, and political law. “We put together an excellent day of learning with engaging panels and speakers,” she says. “It’s a great opportunity for students to build connections and to

see the inner workings of legal practice.”

Another highlight for Kyte was interning with Justice John A. Pearce of the Utah Supreme Court. “Justice Pearce gives a lot of his time to interns and includes them in much of the work done in chambers,” Kyte says. “It was eye-opening to see what a judge does and to see what they consider to be good advocacy.”

After graduation, Kyte will complete a fellowship in the civil litigation department of the Utah Attorney General’s Office, followed by a clerkship for Judge Diana Hagen of the Utah Court of Appeals. “I came to law school because I would love to practice civil rights litigation,” she says. “I crave opportunities to get involved with anything that helps provide legal access to those who have not traditionally had it. That resonates with me.”

A DIFFERENT PATH TO ADVOCACY

“Looking back on my life, I see the seeds of desire and motivation that made law feel like the right fit for me,” says **McKenna Rammell**, ’21, an accomplished pianist who studied music as an undergraduate. “My original intention was to open a piano studio,” she says. However, persistent hand pain sent Rammell “back to the drawing board.”

Rammell’s grandfather and father were both attorneys. “I grew up listening to courtroom stories told by my grandpa who was a trial attorney in a small town in Montana,” she says. “It seemed exciting to be in a courtroom, directly communicating with people. I’m a people person, and litigation seemed like a way to provide real help



to people in need.” When her father urged her to consider law school, Rammell started researching and found that law aligned with the difference she wanted to make.

At BYU Law, Rammell has been involved with trial advocacy, first at BYU Law’s Trial Academy—a weeklong program that teaches students trial skills through intense and repetitive practice—and later as a mentor and judge in trial advocacy competitions. “My job after law school is geared towards litigation. Being immersed in how trial works launched me down that path. It was one of my favorite experiences in law school,” she says. After graduation, she will join Dykema Gossett in Dallas, Texas, and hopes to work with the commercial litigation group. “I always thought I wanted to be involved in the community, that I wanted to make a difference. When you are serving as someone’s advocate, you are helping them with real-life problems and giving them real-life solutions,” she says.

For Rammell, the most valuable part of her experience at BYU Law has been her relationships. “My world has been opened to a vast array of amazing, intelligent, hardworking, passionate people,” she says. “Law school—and specifically mentors—have taught me to think big and to believe that I am capable of more. You have an idea of what you want, but at times you go around in circles and take different paths. I feel like this is my place.”

CHARTING A LEGACY

“Becoming comfortable with change and new experiences has been an important part of my journey,” says **Tanner Schenewark**, ’21. “I didn’t know what type of law I wanted to practice coming into law school. BYU Law gave me a lot of options and flexibility while I was figuring that out.”

A formative influence for Schenewark was his involvement with BYU Law’s Deals Academy, an immersive, multiday dealmaking program



in New York City that guides students through the process of mergers and acquisitions. “Being exposed to corporate law confirmed for me that it was the direction I wanted to go,” he says. Schenewark interned with Clifford Chance, a prestigious multinational law firm. After graduation he will join the firm’s transactional group. “There’s so much good that can be done from that platform—that’s one of the most exciting things about it for me,” he says.

Another highlight for Schenewark was a blockchain and cryptocurrency law course with Professor Matthew Jennejohn. “I was able to get involved with groups at Clifford Chance who were doing that type of work and feel really competent doing it,” he says. D. Gordon Smith, dean of BYU Law, also inspired Schenewark to think deeply about the future and how he could give back. Schenewark launched the New York Law Society, which invites practitioners from New York City firms to speak at BYU Law and also holds résumé and

cover letter workshops tailored to corporate law. “We really want to build momentum and make that path easier for future students,” he says.

Ultimately, BYU Law has helped Schenewark to understand what drives his interests. “Law school has also done a good job of teaching me what really matters. One thing that can be crushing to law students their first year is the idea that you are defined by your grades,” he says. “If I had one message to send, it would be that being at BYU Law is enough. You have the tools to succeed. I hope future students will understand and be encouraged by that. You have every option open to you.”

EMPOWERING OTHERS

Andrew Navarro, '21, has always been self-motivated. “Whenever I do anything, I try to go at it with all my heart,” he says. A first-generation college student, Navarro was born in Miami, Florida, to parents who immigrated to the United

States from Colombia and Mexico. “Both my mother and father had to quit school by the equivalent of the fifth grade in their countries,” he says. “Although they had difficult lives, they were always very supportive of my goals.”

Navarro completed his undergraduate degree in history at Harvard University and worked as the head Spanish translator for the Romney for President campaign in 2012. He later worked as a financial systems analyst in the San Francisco Bay Area. Feeling like he could do more to help people, Navarro accepted a position as senior program director for Humanitarian Experience Inc., a faith-based organization dedicated to building infrastructure in developing countries through youth service projects. “It was amazing to see the self-sufficiency and the entrepreneurial spirit of people. I hope to use my law degree to empower people to live better lives,” he says.

At BYU Law, Navarro has been involved with the Minority

Law Students Association, a forum for law students interested in sharing the values of different cultures and heritages. “A lot of minority students are immigrants or the children of immigrants. It can be hard to march to the beat of the same drum as everyone else because we’ve had distinct types of experiences,” he says. “Law school can help you become more conscientious of others, more empathetic, less judgmental. It helped me overcome preconceived notions about myself and my life.”

After graduation, Navarro will join Ballard Spahr in Salt Lake City, a firm that encourages associates to devote significant time to pro bono work. Navarro says, “With my business and legal background, I would love to be able to help nonprofits by creating a business model to help them establish themselves legally.” Navarro also hopes to continue working with BYU Law’s Community Legal Clinic. “There are many ways to help people with a law degree,” he says.





It started with a world-wide pandemic. Travel halted, home quarantine began, goods were unavailable. And we learned that zoom doesn't only mean "move swiftly." It might've seemed an unlikely time to plan a global month dedicated to giving back, but for the J. Reuben Clark Law Society (JRCLS), the timing felt just right.

"The Law Society is in a perfect position to gather people around a call to serve," explains Joshua Randall, JRCLS international chair. Because COVID-19 made holding the annual conference

An International Call to Serve

BY NICOLE BOYD

in person impossible, JRCLS leaders invited society members everywhere to instead take a pledge to make March 2021 a meaningful JRCLS International Month of Service.

Randall says that the society founders created an aspiring, even prophetic, mission statement that is philanthropic at its core. The mission statement provides: "We affirm the

strength brought to the law by a lawyer's personal religious conviction. We strive through public service and professional excellence to promote fairness and virtue founded upon the rule of law." Randall says, "We've been making a concerted effort to integrate service into what we talk about, what we want to accomplish, and what we do as a law society. We don't

expect anyone to give a lot of their time in public service, but we do hope and appreciate any time they can carve out to give back. As a society we will be strengthened."

Individual members and JRCLS chapters around the world heeded the call to serve. Here are a few examples of the meaningful work done during the JRCLS 2021 International Month of Service.

Colorado

Christopher Schmidt, Kaleb Brimhall, and Barb Snow comprise the newly created Northern Colorado chapter of JRCLS. They kicked off their first chapter meeting with the JRCLS annual fireside broadcast. Elder Evan A. Schmutz, a general authority seventy of The Church of Jesus Christ of Latter-day Saints, gave the keynote address and spoke about an inmate finding his faith while behind bars. "The inmates think they have been thrown away and forgotten by society," says Snow, a criminal defense attorney. "That's especially true for those whose family and friends have moved on. Many feel hopeless and like they are in this alone."

Schmidt, Brimhall, and Snow gathered together with their spouses and children to create artwork and notes with kind messages to give to prison inmates. "We used a theme of taking one day at a time and looking for the light wherever it can be found," Snow says. She then worked with the Colorado Department of Corrections to ensure that the 50 letters written by the group would reach those who needed them the most. "Inmates appreciate any indication that they have retained their humanity," Snow

says. “Knowing that someone has cared enough to reach out to them with a kind word and remind them that they are still human and have purpose goes a long way.” The Northern Colorado chapter plans to continue writing letters in the future.

Oregon

Ann Metler is the JRCLS area director for the Pacific Northwest. Her Portland, Oregon, chapter cosponsored a virtual interfaith religious freedom conference with The Church of Jesus Christ of Latter-day Saints. Steven T. Collis, chair of the JRCLS Religious Freedom Committee, gave the keynote address, in which he shared what religious freedom is and why it’s vital to everyone. The event also included a panel discussion with Collis, Elder David L. Wright, who is an area seventy for the Church, and leaders from the Catholic, Muslim, Baptist, and Evangelical faiths.

“Each representative was very respectful of the other faith traditions. It showed that while we have differences, we still have a lot in common and can work together,” Metler says. “We can support each other as we utilize our religious freedom rights.”

The Portland chapter plans to hold another religious freedom event soon, this time to educate the youth. Metler says it was humbling to see how much the participants appreciated the conference. “People were hopeful,” she says. “They learned how our laws are set up to give us a right to practice our religion and it’s our responsibility to make sure that we utilize that right. People were just grateful to have that knowledge.”

Brazil

Claudio Antonio Klaus Jr., member and historian for the Curitiba, Brazil, chapter, helped organize and facilitate many online service and educational events. “We as legal professionals have a role in giving back to the community to make it stronger,” says Klaus.

Brazilian members held events around the topic of religious freedom. Klaus recalls, “When COVID first hit and all of our churches were closed, we realized that our religious freedom was at stake. Our society mission statement says that we will fight for the rule of law and religious freedom. We thought, ‘What can we do about it?’”

The 15 JRCLS chapters across Brazil donated hundreds of hours of pro bono time. “People realized that it wasn’t that hard to organize virtual live service or training events. So they did more and more of those,” explains Klaus. “People wanted to be part of giving back; they didn’t want to be left out of what the Law Society was doing.”

Utilizing online platforms, each chapter facilitated at least two live events. The events covered topics such as labor and social security rights, parental alienation, legal marketing, the influence of religion in politics, and ending violence against women.

Bolivia

Selected for the 2021 Franklin S. Richards award for public service, the La Paz, Bolivia, chapter demonstrated a passion for helping their fellow brothers and sisters. Their service encompassed in-person and virtual legal advice and legal education that brought together community and faith groups. Chapter member



Attorneys and psychologists provide information on intra-family violence at a free clinic in La Paz, Bolivia.

Beimar Paye, a tax attorney and university professor, explains how a charity mindset helped build the group: “We started with only two people, but before long, we had 146 members. In our chapter we have so many active members because of our desire to serve. There is just so much to do. It’s beautiful. As a group, we feel useful to the people we serve. To be able to apply what I’ve learned to help others makes me happy.”

In March 2021 the chapter held an online Facebook event about leasing and antichresis, in which chapter member Rodrigo Mita shared his legal expertise. “We saw that many Bolivian families feel defenseless and face many injustices in this legal area caused by COVID-19,” explains Paye. Minutes after the live event finished, people began sharing the information, eventually reaching more than 35,000 people. “We honestly did not expect the activity would touch so many people,” Paye says. “So we decided to build legal teams of attorneys and law students who can serve people in this area.”

Peru and Mexico

In Peru, the Lima chapter hosted three virtual events covering the timely topics of family violence, sexual harassment, and food rights for minors. The Piura, Arequipa,

and Cusco chapters tackled issues such as family violence, eviction, the fundamental right to life, and access to food.

Members from three chapters in Mexico organized online forums touching on topics such as the need for pro bono work in a broken justice system, insurance policies, and conflict resolution. Attorneys also dedicated time to helping in two delicate pro bono cases involving the domestic abuse and sex trafficking of two young women.

“We’ve learned a lot from the Latin American chapters,” says Randall. “They’ve built their chapters around public service.”

March 2021 marked the one-year anniversary of the WHO’s official declaration of the COVID-19 global pandemic. For many JRCLS members, March 2021 represented 31 days of global hope and healing.

Randall and the International Board expressed their deep appreciation to all those who gave of their time and skills to serve, and they announced plans to make the JRCLS International Month of Service an annual event that sparks feelings of charity all around the world. “We are here for a reason, and God has blessed us with the opportunity to learn a special skill set. We are in a position to be an influence for good in a unique way,” Randall says.

Answering the Open Questions

A SUPREME COURT BRIEF

BY GRACE NIELSEN, '21

Higher education is as much about learning what we know as it is about understanding what we don't. Every field is full of unanswered questions: How are memories encoded in the brain? Why have US crime rates fallen so consistently over the last 30 years? What happened to John White's Roanoke Island colony?

Learning about the legal field's open questions has been one of my favorite parts of law school. When I took Professor Aaron Nielson's administrative law class in fall 2019, we discussed agency structure and the United States president's power to appoint and remove agency officials. Most agencies, we learned, are either led by a single person who answers directly to—and thus can be fired at any time by—the president (think of the Environmental Protection Agency or the Department of the Treasury) or led by a group of people,

typically from both parties, who cannot be fired by the president for mere policy disagreements (think of the Securities and Exchange Commission or the Federal Trade Commission [FTC]).

While the constitutional requirements and protections for agency heads had mostly been decided by the Supreme Court, Nielson explained, at least one key question was still being litigated: Could Congress create an agency with a single, independent director whom the president could not fire for mere political disagreements? Or would that structure create an unconstitutional intrusion into the president's executive authority by hampering her ability to control the agency's policy agenda?

Luckily for our class, this question was pending before the Supreme Court that very semester. A Democratic Congress had designed the Consumer Financial Protection Bureau (CFPB) exactly this way in the wake of the financial crisis during the second half of the 2000s, and it was rather unpopular with most Republicans. The case testing the constitutionality of the CFPB's structure, *Seila Law LLC v. CFPB*, was decided in June 2020 (too late for our final exam in December 2019!). The agency's structure, the Court held, violated the Constitution's separation of powers between the legislative and executive branches, in part because the single CFPB director had so



much authority over a broad swath of the economy without being directly accountable to the president, unlike the removable-at-will treasury secretary on the one hand or the five politically insulated FTC commissioners on the other.

Finally, there was an answer to at least *this* open question, right? Not quite.

The *Seila Law* decision applied only to the CFPB, but other agencies were structured in a similar way, and so their constitutionality was now ripe for adjudication.

during the fall 2008 stock market collapse.

With just over two months to file a brief and less than four months before oral argument, Nielson—with the assistance of some of his law professor friends—quickly pulled together a team of student research assistants. I was thrilled to be invited to join the team. I had thoroughly enjoyed Nielson’s administrative law class, especially debating the broad separation-of-powers questions implicated in *Collins*, and the chance to help prepare

After graduation, I am headed to the corporate group of a law firm that specializes in, among other things, the regulation of financial institutions, so this piece of the brief was a perfect fit for my interests and career path. Researching the FHFA also gave me an opportunity to talk shop with my grandfather Dale Whitman, a law professor who has spent his career studying and helping reform the real estate finance and mortgage industries. Of course, I didn’t tip my hand about our appellate strategy

Bowl. Nielson, who would be arguing the case, scheduled multiple moot courts—the scrimmage matches of appellate practice—to prepare for oral argument in December. During each moot, a panel of scholars or appellate practitioners would stand in for the Justices and ask Nielson rapid-fire questions. Moots can be pretty rough on the person preparing for oral argument because the goal is to catch holes in the argument and in the way answers are phrased. But Nielson did a fantastic job from the start, and with each round of moots, his answers became sharper and more refined.

When game day finally arrived, the team tuned in to the oral argument, which was held over the phone due to COVID, and started a live thread over email to discuss the argument. Although I couldn’t listen to the oral argument recording until the evening—I had a final exam that day—I found myself nodding along to Nielson’s responses to the Justices and silently applauding his memorable one-liners. And just like the loyal football fan who talks back to the TV—and sometimes the referees!—I found myself responding aloud to the other party’s arguments and even the Justices themselves, all from the comfort of my home.

My role in the *Collins* case was small, but the opportunity to participate will remain one of my most treasured law school memories, precisely because I was able to help answer one of the legal field’s open questions and see firsthand how many more questions remain unanswered.

... The chance to help prepare a Supreme Court brief was a fantastic opportunity I hadn't even dreamed was possible during law school.

Fast forward just two months to August 2020. Nielson was appointed by the Supreme Court in a case called *Collins v. Mnuchin*—now *Collins v. Yellen*—to defend the Federal Housing Finance Agency (FHFA), whose single director could only be removed by the president “for cause.” (The Trump administration had declined to defend the agency’s structure, so the Supreme Court appointed Nielson to do it.) The FHFA, like the CFPB, is a product of the financial crisis. It regulates the government-sponsored (but publicly traded) mortgage finance corporations Fannie Mae and Freddie Mac and had put them into conservatorship

a Supreme Court brief was a fantastic opportunity I hadn’t even dreamed was possible during law school.

Nielson divided up responsibilities, and we all got down to work. My fellow research assistant, Garrett Meisman, and I were assigned to help write the background section describing the FHFA’s origins and structure to explain how the FHFA differs from the CFPB. We went through the text of the agencies’ respective founding statutes section by section, cataloguing the key differences.

While other students might have groaned at this assignment, I was excited to dig into the details of these two financial regulatory agencies.

or arguments, but it was fun to hear his take on the birth of the FHFA, the history of Fannie and Freddie, and the financial crisis more broadly.

Within three weeks, Garrett and I had completed our research, put together an outline, and helped Nielson churn out a first draft of our section. As we researched and wrote about the FHFA itself, other teams focused on other issues, including the history of conservatorship and the meaning of “for cause” removal. After multiple rounds of edits and review, the *Collins* brief was shipped out to the printer and filed in mid-October.

The next seven weeks felt like the run up to the Super

INTELLECTUAL LIFE

BYU Law is home to a variety of academic colloquia and influential conferences that promote the exploration of compelling legal and social issues, including law and leadership, legal technology, corpus linguistics, transactional design, diversity and belonging, and religious freedom.

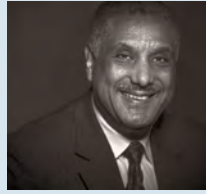
RECENT SPEAKERS



Nicole Black, Legal Technology Evangelist at MyCase



Thomas W. Mitchell, MacArthur Fellow and Professor of Law at Texas A&M University School of Law



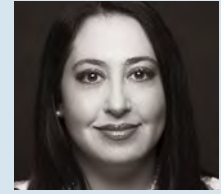
Wilbur O. Colom, Founding Senior Partner at Colom Law Firm and Founder of the Colom Foundation



Roni Jo Draper, Professor of Teacher Education at Brigham Young University



The Honorable Paul C. Ney Jr., Former General Counsel of the US Department of Defense



Farrah Pepper, Chief Legal Innovation Counsel at Marsh McLennan



Khiara M. Bridges, Professor of Law at UC Berkeley School of Law



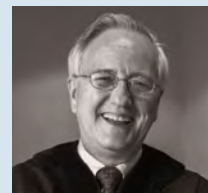
Andrew Byrnes, Former Senior Legal Director at Uber Technologies



Jacob S. Rugh, Associate Professor of Sociology at Brigham Young University



Jack Newton, CEO and Cofounder of Clio and President of the Legal Cloud Computing Association



William Eskridge Jr., John A. Garver Professor of Jurisprudence at Yale Law School



Andrea Steinacker, Special Litigation Counsel for Fair Housing at the US Department of Justice



Roberto Unger, Roscoe Pound Professor of Law at Harvard Law School



Carlos Avenancio-León, Assistant Professor of Finance at the Rady School of Management, UCSD



Andrew Koppelman, John Paul Stevens Professor of Law at Northwestern University



Troy Williams, Executive Director at Equality Utah



Adam Ziegler, Director of the Library Innovation Lab at Harvard Law School



Christopher Jones, Assistant Professor of History at Brigham Young University



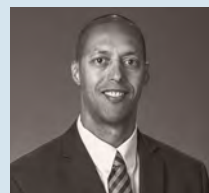
Ekow N. Yankah, Professor of Law at Cardozo School of Law



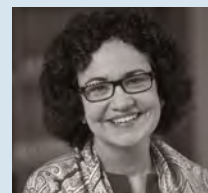
Deborah Burand, Professor of Clinical Law at New York University School of Law



Jordan Furlong, Legal Market Analyst and Principal at Law21



Tim Overton, Litigation Attorney and Member at Dickinson Wright in Phoenix



Rachel Moran, Distinguished Professor of Law at UC Irvine School of Law



Kenneth D. Chestek, Professor of Law at the University of Wyoming College of Law



Ryan Calo, Lane Powell and D. Wayne Gittinger Professor at the University of Washington School of Law



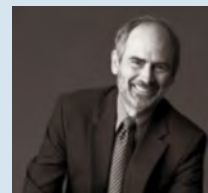
The Honorable Craig H. Smith Jr., Municipal Judge for the City of Ferguson, Missouri



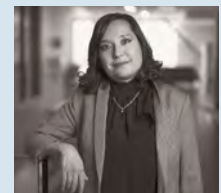
Ivy Grey, Vice President of Strategy and Business Development at WordRake



Justice Gregory W. Moeller, Idaho Supreme Court



Robert B. Thompson, Peter P. Weidenbruch Jr. Professor of Business Law at Georgetown University Law Center



Annie Isabel Fukushima, Associate Professor in the Division of Ethnic Studies at the University of Utah

He earns his living now as a Texas trial lawyer. When advocating for clients, he stands before berobed judges and empaneled juries, each decision they make ultimately determining his success or failure. His level of confidence in these pressure-filled moments comes in part because Richard Salgado, '06, knows the importance of decisions and where they lead, both in the courtroom and in life.

As a young man, Salgado faced a critical decision: pursue either a master of fine arts degree in film directing at UCLA or a law degree at Stanford. He'd been accepted by both acclaimed programs. In the end, his choice shocked everyone—except maybe those who knew him best. After much prayer and contemplation, he chose BYU Law.

Carl Hernandez, a professor at BYU Law and then assistant dean for admissions, recalls that Salgado had many outstanding offers to attend other prestigious law schools. "Each time we would meet to discuss his options," Hernandez says, "I was impressed with his sincere desire to make the right choice so that he could be of most value in society and to those he would serve in the future."

In recruiting Salgado, BYU definitely had the home-field advantage: he had earned an undergraduate degree in English at BYU. But his decision to attend BYU the first time had also been an unlikely one. Salgado was raised in California and was not a member of The Church of Jesus Christ of Latter-day



The Salgado family on a visit to the Comuna 13 neighborhood in Medellín, Colombia, in 2021

Reflecting and Magnifying Light

BY MICHAEL MIDDLETON,
ASSISTANT DEAN FOR
EXTERNAL RELATIONS

Saints until he was 17. "The Lord knew me," Salgado states. "He knew that with my life and my personality, this might be the only window where I would be open and ready to accept the gospel."

When Salgado first attended church services his junior year of high school, he discovered that many of his friends from school were undercover members of the Church. "I was really surprised," he confides. "Some I already knew about, but there were several who I had no idea were members even though I'd known them for years."

But Salgado saw their families. "They were strong and

unified and complete," he says, "a stark contrast from my dysfunctional home." He decided then and there that this was the type of home life he wanted for himself and his future family, and, after much study and prayer, he chose to be baptized one month after high school graduation.

Salgado would be the first to point out that not every decision he has made has been easy or immediately successful. Plans to play collegiate basketball at the University of Redlands ended with a broken ankle and a transfer to BYU. His choice to serve a mission as a new convert brought myriad challenges, including a

companion in the Missionary Training Center who confronted him about not knowing the scriptures or the gospel well enough and told him, "You don't belong here. You're going to hurt the Lord's work and should go home."

Salgado struggled with identity, belonging, and self-context while growing up. He was raised in a single-parent household and never met his father. However, he has since learned that his paternal heritage is Colombian and that his grandparents and various other relatives had immigrated to Miami. "I didn't know it at the time," he says, "but some of the people I grew to love on

my Spanish-speaking mission to Florida could have been extended family.”

Throughout his life, Salgado has learned that the Lord uses obedient servants with willing and loving hearts. And it is Salgado’s heart that has guided his legal education and career. “A quality I admired in Richard was his willingness to humbly and cheerfully accept opportunities to address some of the most challenging student academic matters at the law school,” Hernandez recalls.

“On one occasion, a fellow student struggled mightily due to personal and health issues. Without hesitation, Richard stepped forward to assist this colleague in ways that literally saved the student from failing out of law school.”

As a partner with Jones Day in Dallas, Salgado is highly involved in pro bono work and appreciates that his firm recognizes how important it is to him. He has worked on issues relating to immigration, religious liberty, minority rights, and, informed by his wife’s work as a special education teacher, disability rights. In 2019, *Texas Lawyer* named him a Diversity and Inclusion Champion. He is currently serving as the diversity and inclusion partner for his firm’s Dallas office.

Since he is a litigator, you might think Salgado’s most memorable cases would be wins with big dollar amounts for corporate clients, but what he values most are the cases for legal causes that are sometimes overlooked or undersupported, where his intervention has not only changed lives but sometimes changed laws. “His interest in helping marginal-



Salgado with his mother, Erin, in 1989

ized communities continues to inspire me,” says Hernandez.

Salgado experienced homelessness as a child, living in shelters and moving 16 times before he finished elementary school. “You don’t grow up the way I did and not want to make a difference when you can,” he says. “So often as lawyers we fail to recognize the light we can contribute and the burdens we can lift in our communities.”

He tells the story of an emergency phone call from a woman he had never met but had spoken with months before in connection with an immigration clinic. She had a family member in a dire situation who was afraid of seeking assistance through typical services because she was undocumented. “I could speak Spanish and I was a lawyer,” Salgado says. “She knew I could help her. The help she needed wasn’t something I personally had any expertise with, but it was urgent and I was able to connect her with resources that could help. The fact that she called me in that moment speaks to the mantle of responsibility that we have as lawyers. There are plenty of times when we are uniquely able to step forward and help.”

Salgado advises young attorneys to make time for

family, service, and recreation and to set clear boundaries before they begin their careers. “Otherwise, big law firms will take everything you give and demand 20 percent more,” he says.

In a personal decision tied to faith and family, Salgado determined from the onset of his law career that he would not do legal work on Sundays. While that commitment might be unique in the sometimes 24/7 culture of large law firms, his firms and clients have always been supportive. Clear communication and the assurance that clients’ needs will never suffer has been key to that. Salgado has sacrificed time on Saturdays as needed, many times working until midnight and then returning at three in the morning on Monday to ensure his personal standards do not compromise any attention due to the case or his client.

He has never regretted being true to his religious convictions and credits much of his professional success to doing so. Another such sacrifice came when he gladly accepted the call to serve as an early-morning seminary teacher during his first four years as a junior associate at a large law firm. “I never attended

seminary myself,” Salgado says, “but with the Lord’s help, the sleepy teenagers and I all learned something.” While in that calling, he observed that his caseload at work seemed more manageable during the school year, enabling him to do his church service.

Salgado recently made another decision that will shape his life and the lives of others. He accepted the invitation to serve a two-year term as president of the BYU Law Alumni Association beginning in January 2022. “Being an alumnus of BYU Law means being part of something bigger,” Salgado says. “We have a large, growing, and influential alumni base that spans not just the country but the world and ranges across several generations. There’s tremendous power in that.”

He continues, “At the start of my career, I benefited so much from the great examples set by the BYU Law graduates who came before me. But our role evolves. The longer we are out of school, the less it becomes about others helping us and more about how we can help others—how we can reach back and fortify those bridges that we ourselves were helped across.”

In the Law School’s charge to teach the laws of man in the light of God’s laws, Salgado sees an application to all alumni, wherever they happen to be. “Law in the light isn’t something that we only experience as students,” he says. “Beyond simply basking in that light and just absorbing it ourselves—which we all can and should do—it’s our responsibility to help reflect that light and magnify it. We can spread that light to others.”

Getting Proximate

NEW FUND BLESSES LIVES AT BYU LAW

While some lawyers may read the New Testament with chagrin—hearing their ancient counterparts categorized with Pharisees, hypocrites, and blind guides—such scriptural stories can also lead to introspection and growth.

Christ's parable recorded in Luke 10, for example, was the impetus behind the Law School's new Proximus Fund. The Latin word *proximus* means "closest" and can be interpreted as the word *neighbor*. Unlike the insincere lawyer in Luke 10, who questioned Jesus about the law and sought to justify himself, several current law students are following the example of the good Samaritan, whom Jesus described in seeking to define "neighbor" as broadly as possible.

"We were impressed when a group of current students, along with a few recent grads, approached us about a student-led, student-focused initiative that would meet needs within the student body through awareness and kindness," says D. Gordon Smith, dean of BYU Law. "We have invited the Law School faculty and staff and the entire BYU Law community to participate in this initiative that benefits both those who give and all

those who will be blessed by the Proximus Fund."

After a year of chaos, uncertainty, isolation, and illness, there are certainly a lot of disrupted lives and many people in need. The creators of the Proximus Fund felt more could be done within the Law School community to be proximate with the concerns of classmates and friends.

While asking to remain anonymous, those who proposed and initially funded the Proximus Fund explained their intentions in a short statement:

Despite the many excellent resources marshaled for the benefit of students at BYU Law, there remain some that face very real, very daunting financial hurdles on their way to a legal career. We know—from personal experience—how these needs can impact everything from the type of internship experiences students are able to pursue to the time students are able to devote to their studies. We hope this fund will ease some of these burdens for our incredible friends and classmates as well as future BYU Law torchbearers.

One unique aspect of the new fund is that while students can request help for themselves, they can also be nominated for assistance by a friend or classmate.



THE GOOD SAMARITAN (AFTER DELACROIX). 1890, VINCENT VAN GOGH.

"We're proud of the resilience and self-sufficiency of our students," says Michael Middleton, assistant dean for external relations at BYU Law. "However, this is not a survival or emergency fund. While pressing needs will be prioritized, we also hope to lift non-life-threatening burdens and to open doors of opportunity."

The Proximus Fund might provide help with tuition, housing, or food in dire situations, but it could also fund a plane ticket to help a student accept

a preferred internship or intervene in other situations where a little extra support might enhance a résumé or provide better career opportunities.

All BYU Law supporters can give to the Proximus Fund by following the instructions provided on the letters that were mailed and emailed during the Law School's spring giving campaign or simply by selecting the donate button in the top menu of the Law School's website, law.byu.edu.

"When author and attorney Bryan Stevenson visited BYU [in 2018], his simple and powerful message was to 'get proximate'—with people and with problems and with life," Smith says. "Over the years we hope that the Proximus Fund will benefit many students who attend the Law School, but more importantly, we hope the inclination and responsibility to see the needs of others and to sacrifice to help them, both friends and strangers, will become part of every BYU Law student."

"When you get proximate . . . , you learn things that you need to understand if we're going to change the world. . . . Proximity will empower you."

—BRYAN STEVENSON,
author of the book
Just Mercy

Keeping an Eye on the Algorithms

By Tina Wilder, '14, Legal Technology Librarian,
Howard W. Hunter Law Library



An algorithm is a series of steps that ultimately performs a specified task. Most legal tasks are algorithmic, and courts have been quick to adopt algorithmically assisted tools in pursuit of greater efficiency. However, efficiency is not the highest good in the court system, and the use of computer-assisted tools begs the question “What objections can or should an attorney make when the use of algorithms is negatively affecting their client’s case?”

Here are three tips to help practitioners:

1 Counter the algorithm with the substantive law.

Remember that statutory and constitutional laws remain controlling.

2 Make evidence-based objections when appropriate.

When computer-assisted tools fail to consider the factors set forth in substantive law, object to their use on your client’s case, including the lack of a record considering the factors required by statute.

3 Remember the goal is due process.

The goal for each person in the court system is due process. Keep the focus on that.

For a real-world example, we can look to the Nevada Supreme Court’s order mandating the use of the Nevada Pretrial Risk Assessment tool (NPRA) in all judicial districts in Nevada.¹ The NPRA, which is used in

determining pretrial release of a defendant in a criminal trial, asks a series of questions about the defendant and applies a score to each response. The final result is a numeric score that functions as “evidence” for the judge in determining whether a defendant should be released, detained, or released on bail.

Although automating this kind of process may be efficient, translating a multi-factor, statutorily created test can be difficult. In addition, the way inputs are weighted mathematically may be flawed and can produce results that have serious implications. For example, the American Civil Liberties Union argued that questions in the NPRA form—about the age of a defendant at the time of their first arrest and how long they have lived at their current residence—perpetuate racial disparities and fail to apply Nevada’s statutory test. As algorithms become increasingly prevalent in court administration, it is vital for attorneys to be aware of the way those processes affect their clients and to prepare to challenge the use of those algorithms where necessary.

NOTE

- 1 Order Adopting Statewide Use of the Nevada Pretrial Risk Assessment, Nevada Supreme Court, ADKT 0539, March 19, 2019, found at nvcourts.gov/AOC/Templates/documents.aspx?folderID=19312.

Invest Early in Government Affairs

By Jason J. Redd, '07,
Director, Gibbons PC

As an advisor to policymakers and now as a consultant to organizations of various sizes, I have found government affairs to be an area of focus that is often neglected until a crisis disrupts an organization’s core mission. Developing relationships and engaging officials at all levels of government requires minimal investment and should be treated as a critical element of doing business.

Here are my top tips on incorporating government affairs into your organization:

1 Engage before the crisis hits.

Before a problem occurs, engage with your local officials and build relationships. Let them know about your work and your people. Remember that your people may be their constituents and that this interaction allows them the opportunity to develop their presence in the community. Early engagement will ensure that there are existing relationships when the challenges occur.

2 Maximize your chamber of commerce membership.

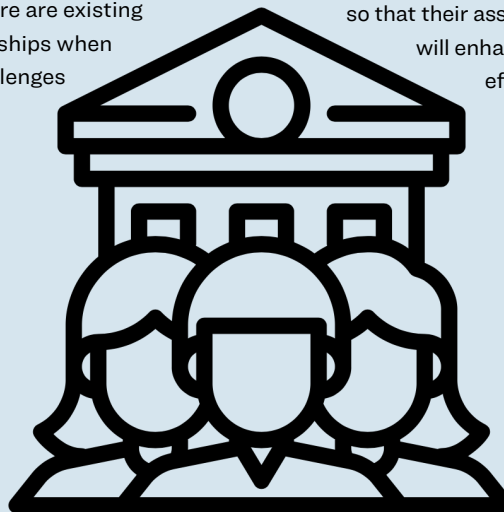
Most chambers of commerce have government relations committees that alert members to significant legislative and regulatory matters, which can help members stay abreast of potential issues. Additionally, they provide opportunities to meet with key officials in your state.

3 Get out in front of potential problems.

Incorporate government affairs into your organization’s planning processes. This simple act will enable you to identify challenges early so that the right individuals are engaged. In some instances, you will find that early action is sufficient to avert future quandaries.

4 Call in the cavalry when necessary.

Sometimes a significant issue arises, and you may need to employ a consultant to assist you with engaging government officials. When hiring an outside consultant, review the qualifications of multiple consultants and interview firms to determine the best choice for your organization. Make sure you set clear expectations and identify potential conflicts based on the consultant’s existing work so that their assistance will enhance your efforts.



Lines That Separate

BY RUBEN FELIX, '21



There are borders—
made of great cement walls
and cold ascending bars
with wires that are barbed.

There are borders—made of men
with weapons filled with lead
and rivers painted red
by the blood of those that might have
been their friends.

There are borders—made of fences
to protect our businesses and homes,
because “good fences make good
neighbors”
and we want to get along.

And there are borders
that are more difficult to see
because there are borders in our minds
that we have built so carefully.

And there are borders
that we build unintentionally
when the things that we see and hear
are individually perceived.

There are borders.
And every day we build more—
more borders, more borders
to keep our egos secure . . .

But where there are borders,
we are forced to pick a side,
and they divide you and me.
Oh, the great beams in our eyes!

Now I see that borders
made of great cement walls
are only physical manifestations
of the ones inside our skulls.

And borders
only pretend to create order
when what we really need
is to see each other as brothers and
sisters.

Because borders
convince us we are not equal.
So a world with borders
will never be peaceful.

We are each other's keepers.

No more borders!
We need to be “of one heart and one mind,”
because if we are trying to build Zion,
we cannot build it blind!

No more borders—
if we are to prepare for His return.
When Zion in heaven will meet Zion
on earth . . .

there will be no more borders!

All will be gathered as one.
Because good fences don't make
good neighbors,
so fences there will be none . . .

But if there must be borders,
let it not be because of us—
because they need us
and we need them just as much.

There are borders.
I finally see.
There are borders and borders.
I accept responsibility
for my borders,
the ones I have built over and over.
I finally feel
their weight on my shoulders.

A border
can be defined as a line that separates.
I could finish reciting the definition,
but the point has been made.
A border
is a line that separates.
Now that I see,
how will I change?

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