Fall 1995

Clark Memorandum: Fall 1995

J. Reuben Clark Law Society

J. Reuben Clark Law School

Follow this and additional works at: https://digitalcommons.law.byu.edu/clarkmemorandum

Part of the Christianity Commons, Legal Biography Commons, Legal Education Commons, Legal Ethics and Professional Responsibility Commons, and the Legal Profession Commons

Recommended Citation

https://digitalcommons.law.byu.edu/clarkmemorandum/18

This Article is brought to you for free and open access by the Law School Archives at BYU Law Digital Commons. It has been accepted for inclusion in The Clark Memorandum by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.
CONTENTS

FALL 1995

Soldiers of the Spirit
Elder Lance B. Wickman

The Profession Everyone Loves to Hate
James D. Gordon III

Selected Letters
Woody Deem

The Atonement—Infinite and Eternal
Bishop Merrill J. Bateman

Out of Kindergarten, Out of Law School
Marilyn V. Yarbrough

PORTRAITS

Kif Augustine Adams: Ins and Outs
Larry EchoHawk: Dreamer of Dreams, Maker of Reality
Jim Rasband: Things of Importance

MEMORANDA

42
Last Friday, I was talking with a dear friend and professional colleague of mine, a retired judge of the San Diego Superior Court and the California Court of Appeals, who is of counsel to our law firm, a man for whom I have both affection and high regard. I told him that I was going to be speaking to students at the BYU Law School this evening. “What is your subject?” he inquired. “Ethics,” I briefly replied. “Oh,” he said with a twinkle in his eye, “Do you know anything about it?” A sobering question! My dear friends, I can tell you this—whatever I may know about this subject, particularly...
as it relates to the practice of law as a Latter-day Saint, I have learned not so much in classroom or courtroom as in the silent chambers of the soul in coming to grips with a thousand, nay, a thousand thousand, decisions great and small in the daily course of attempting to practice my religion and my profession at the same time—in coming to understand what it means to be a Latter-day Saint lawyer. Do I know anything about it? Well, I will let you be the judge of what I know after you have heard what I have to say. My prayer has been, and is, only that if there is anything of intrinsic merit in what I say that it will be evident and thus of lasting value to you.

It was almost a year ago that my life changed dramatically. I was sitting in my law office in San Diego at noon a few days before April conference when the telephone rang. The voice on the other end was President Gordon B. Hinckley inviting my wife, Pat, and me to meet with him the following day. A very unsettling 27 hours followed. Then, as we sat with the president, he extended this special call to serve as a member of the Second Quorum of the Seventy. But, he explained, my service would not be full-time. I would continue to live in San Diego and practice law. I would serve as a member of the presidency of the North America West Area, which encompasses California and Hawaii (a tough assignment, but someone has to do it!).

Thus began a new phase of life—a life of being alternately "law man" and "church man." When I returned from general conference, I encountered one of our regional representatives, who is also a lawyer. Another lawyer in his firm and I had been on opposite sides of a lawsuit. Good-naturedly, he said, "Does this [my new call] mean that we have to give up now?!" Well, I gave him the only answer that any lawyer worthy of his hourly rate could give: "Of course, it does!" The question was intended, and received, in good humor, but it highlights indirectly a question that lingers in the mind of every Latter-day Saint lawyer (indeed in the mind of every lawyer of integrity) who daily witnesses the contentious, often strident, world of law. How do I conform my professional life with my private life? Am I the same man or woman in my workday activity that I am in my ecclesiastical activity? Can I be?

Happily, I can say categorically that the answer to that question is "yes." I have learned that it is really true that "no man can serve two masters." I have also learned that the profession of law does not require him to do so. I have learned that the lawyer's enemy is not his profession but the arrogance that all too often infects those who practice law. I have also learned that the profession of law does not require him to do so. I have learned that the lawyer's enemy is not his profession but the arrogance that all too often infects those who practice law. I have also learned that the profession of law does not require him to do so. I have learned that the lawyer's enemy is not his profession but the arrogance that all too often infects those who practice law.

The ensuing discussion between Alma and Amulek and these lawyers, including one in particular named Zezerom, illustrates the two most common manifestations of lawyer arrogance: the arrogance of power, or manipulative behavior, and the arrogance of sophistry, or what I call the arrogance of being clever.

The first of these, the arrogance of power, or manipulative behavior, stems from the enormous influence that a lawyer potentially wields simply because he knows "the system." It is the unprincipled use of a lawyer's knowledge of law and the legal system to manipulate others to his own selfish end that is the arrogance of power. The following exchange between Amulek and some of his listeners illustrates this evil:

And now behold, I say unto you that the foundation of the destruction of this people is beginning to be laid by the unrighteousness of your lawyers and your judges. And now it came to pass that when Amulek had spoken these words the people cried out against him, saying: Now we know that this man is a child of the devil, for he hath lied unto us; for he hath spoken against our law. Now he says that he has not spoken against it. And again, he has reviled against our lawyers, and our judges. And it came to pass that the lawyers put it into their hearts that they should remember these things against him. [Alma 10:27–30; emphasis added]

The lawyers put it into the people's hearts that Amulek was purportedly undermining their system of laws when the opposite was true. The manipulations of the lawyers themselves were the enemy to the people. Sadly, this phenomenon is all too present in the conduct of some lawyers today. It is manifest not only in some who attain high political office, which they then attempt to bend to their own purposes, but
it is also found in the super-aggressive antics of a few practitioners who seek to use their skill to bully and browbeat opponents to obtain an advantage, unfairly, for their clients. This arrogant manipulative behavior is widespread. Occasionally (but not often enough, in my opinion), the courts themselves will step in and pointedly slap the hands of those who engage in such practices. In Paramount Communications v. QVC Network, 637 A. 2d 34 (1993), the Supreme Court of Delaware quotes an extended excerpt from a deposition in which one lawyer crossed the line of propriety and collegiality. He was rude, insulting, and obstructing in his conduct, all in an effort to cow his opponent. In stating its intention not to allow this particular lawyer (from another state) to make future appearances in Delaware courts absent a showing of good cause, the court said: And there was one among them whose name was Zeezrom. Now he was the foremost to accuse Amulek and Alma, he being one of the most expert among them, having much business to do among the people. . . . And this Zeezrom began to question Amulek, saying: Will ye answer me a few questions which I shall ask you? Now Zeezrom was a man who was expert in the devices of the devil, that he might destroy that which was good; therefore, he said unto Amulek: Will ye answer the questions which shall be put unto you? [Alma 10:31; 11:21]

I have learned that the lawyer’s enemy is not his profession but rather the arrogance that all too often infects those who come into it.

Staunch advocacy on behalf of a client is proper and fully consistent with the finest effectuation of skill and professionalism. Indeed, it is a mark of professionalism, not weakness, for a lawyer zealously and firmly to protect and pursue a client’s legitimate interest by a professional, courteous, and civil attitude toward all persons involved in the litigation process. A lawyer who engages in the type of behavior exemplified by M.r. [X] on the record of the [Y] deposition is not properly representing his client, and the client’s cause is not advanced by a lawyer who engages in unprofessional conduct of this nature. [Id., at 54]

Such behavior is one of the reasons that many lay people are less than complimentary about lawyers. But there is another reason, and more widespread, and that is the arrogance of sophistry. The arrogance of lawyer sophistry—of being clever—is also illustrated in the tenth and eleventh chapters of Alma. There more than one God? “How knowest thou these things?” “Who is he that shall come?” “Is it the Son of God?” “Shall he save his people in their sins?”

Then, puffed up in his self-congratulatory prowess as a cross-examiner, Zeezrom said unto the people: See that you remember these things [referring to Amulek’s answers]; for he said there is but one God; yet he saith that the son of God shall come, but he shall not save his people— as though he had authority to command God. [Alma 11:35]

But, as so often happens with arrogant people, Zeezrom’s inflated ego obscured his vision. He failed to see that his foolish questions had only provided Amulek an opportunity for teaching some very fundamental doctrine concerning the redemptive power of Christ and the reality of an ultimate resurrection and judgment. In marked contrast to Zeezrom, Amulek was filled with the Spirit and with a fundamental
integrity and honesty that forcefully turned back Zeezrom's shallow intellectual questioning, confounding him. Amulek punctured Zeezrom's fragile bubble of self-importance—of cleverness. To his credit, Zeezrom changed his ways.

But Zeezrom is not the only scriptural example of a lawyer inflated by his own cleverness. Once the Savior was approached by a "certain lawyer," as he is described by Luke, who also fancied himself as clever. Seeking to tempt the Savior, he asked, "Master, what shall I do to inherit eternal life?" In the right context, the question is both profound and important. It is a question asked sooner or later by every honest truth seeker. But this lawyer's interest in the answer was pretended; his purpose was not truth but treachery. His question was also foolishly elementary for one schooled in the law. Jesus said: "What is written in the law? how readest thou?" The lawyer responded, "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength, and with all thy mind; and thy neighbor as thyself." The answer was a good one, but in so readily giving it the lawyer revealed the transparent insincerity—the sophistry, the attempt at cleverness—in his question. Jesus' divine mastery of the encounter is revealed in the simplicity of his response: "Thou hast answered right: this do, and thou shalt live" (See Luke 10:25–28).

And then Luke, to whom we are indebted for the record of this episode, provides this penetrating insight. Referring to the lawyer, he said: "But he, willing to justify himself..." The lawyer's true motive was exposed; he sought to justify himself. His purpose in asking the question about eternal life was vain self-aggrandizement. Outwitted, his motive of self-justification was even more evident. "But he, willing to justify himself, said unto Jesus, And who is my neighbor?" The Savior then taught the beautiful parable of the Good Samaritan—the story of one who, in marked contrast to this lawyer, was motivated by selfless service, not selfish posturing (Iv., verses 29–37).

But lest the judgments of sacred writ be left unbalanced on the matter of lawyers, Mark offers a glimmer of hope for those following the profession of the law.

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

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

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

And the second is like, namely this, Thou shalt love thy neighbor as thyself. There is none other commandment greater than these. [Mark 12:28–31]

Note how similar on the face of the written text are the two interviews with lawyers—one recorded by Luke and the other by Mark—similar at least to this point. However, note the difference in the response of this lawyer:

And the scribe said unto him, Well, Master, thou hast said the truth: for there is one God; and there is none other but he: And to love him with all the heart, and with all the understanding, and with all the soul, and with all the strength, and to love his neighbor as himself, is more than all whole burnt offerings and sacrifices. [Id., verses 32–33]

This man sought no self-justification. He sought not to be clever or self-promoting. His dialogue was honest, sincere. The integrity of his soul is revealed in his earnest response to the...
Savior’s answer. In the words of the Gospel writer, “he answered discreetly.”

“And when Jesus saw that he answered discreetly, he said unto him, Thou art not far from the kingdom of God” (Id., verse 34; emphasis added).

The difference between these two lawyers was not so much in their questions as in their attitude. One spoke “discreetly” that is to say sincerely and without sophistry. And of him the Master said, “Thou art not far from the kingdom of God.”

Nonetheless, to underscore the Savior’s mastery of any and all who sought to embarrass or condemn him through their sophistry and cleverness, Mark concludes his account of the incident with this telling epitaph, “And no man after that durst ask him any question” (Id.).

What accounted for the Savior’s mastery over his interrogators? To answer that he was the Christ merely begs the question. For then one must ask, What are the qualities that made him the Christ? Discovering those, one will unlock the door to success in law and happiness in living. One thing is patently obvious (and worthy of emulation by every would-be lawyer): He knew the law— “The Law.” He was a master of The Law. Faced with lawyers’ questions, he turned to The Law for the answer. In each case, faced with a question from one who was expected to know the law, Jesus responded by asking him to state the rule, albeit a rule of ecclesiastical law. It was his mastery of the system of rules we call the Law that enabled the Master to engage in persuasive conversation. There is a lesson here for each of us. In the profession of law there is no substitute for knowing The Law.

But there was something else, something much more important, something divine in Jesus’ handling of these situations. And that “something” is the special blend of personal qualities that comprised his character. Luke uses a single word to describe that blend of qualities Virtue.

And he came down with them, and stood in the plain, and healed them all. And he said unto her, Daughter, be of good comfort: thy faith hath made thee whole; go in peace [Luke 8:43–46, 48; emphasis added]

Christ’s virtue was honed and developed to the point that it was palpable. It could literally be felt by him and by others. It was, plain and simple, power.

Recently, in a meeting of the Quorums of Seventy Elder Carlos Asay of the presidency of the Seventy gave a marvelous presentation, which he entitled “Cherish Virtue.” Elder Asay said concerning the Savior:

Not only was he endowed with godly powers inherited from his Heavenly Father, but he also possessed the powers and strength that come from living a sinless life. He was the epitome of morality, manliness, and goodness. Hence, he had the power or virtue to cast out devils, heal the sick, raise people from the grave (and, we might add, contend with sophists) and do other marvelous and miraculous things. And, he could even discern the flow of virtue from his body when people of faith touched his garments as he passed by them. [Elder Carlos E. Asay, “Cherish Virtue,” p. 2]

Elder Asay pointed out that “the Greek translation of the word virtue is power or strength” (Id.). Brigham Young defined virtue (or power) as doing the will of our Father in Heaven:

That is the only virtue I wish to know. I do not recognize any other virtue than to do what the Lord Almighty requires of me from day to day. In this sense virtue embraces all good; it branch-es out into every avenue of mortal life, passes through the ranks of the sanctified in heaven, and makes its throne in the breast of Delit. When God commands the people, let them obey. [Brigham Young, Journal of Discourses, Vol. 2, p. 123]

Elder Asay after quoting Brother Brigham, then made this telling observation:

“Elder Nelson pointed out to me that one of the two words in the Greek New Testament (dunamis), translated as virtue in English, appears 120 times. Of those 120 times, it is translated as power 77 times” (Asay, p. 3).

Virtue is power! Virtue has a power, an influence, that is, quite literally, matchless. The Book of Mormon contains this profound insight:

And now, as the preaching of the word had a great tendency to lead the people to do that which was just—yea, it had had more powerful effect upon the minds of the people than the sword, or anything else, which had happened unto them—therefore, Alma thought it expedient that they should try the virtue of the word of God. [Alma 31:5; emphasis added]

The example and teachings of Christ illustrate that axiom of life. It is manifest in his brief interviews with the two lawyers. It is evident in Amulek’s mastery of Zeezrom. And it is evident in the lives of virtuous men and women in the legal
profession. The truly great ones are unfailingly people of honesty, integrity, decency and courtesy—and in that virtue they are also men and women of great power and influence.

A few years ago, I was asked to sit on a select committee of the San Diego County Bar Association. The committee was composed of a few practitioners and judges from the state and federal courts, trial and appellate. Our charter was to fashion the Litigation Code of Conduct, a set of guidelines that would go beyond the basic Rules of Professional Conduct and canonize collegiality and fair play fundamentals that ought to characterize the behavior of officers of the court. Here are a few excerpts from the code we drafted (which incidentally has now been adopted by a number of courts):

- Lawyers should honor their commitments.
- Lawyers should uphold the integrity of our system of justice.
- Lawyers should not compromise their integrity for the sake of a client, case or cause.
- Lawyers should conduct themselves in a professional manner.
- Lawyers should be guided by a fundamental sense of fair play.
- Lawyers should be courteous and respectful to the court.
- Lawyers must remember that conflicts with opposing counsel are professional and not personal—vigorous advocacy is not inconsistent with professional courtesy.
- Lawyers should not be influenced by ill feelings or anger between clients.
- Lawyers should discourage and decline to participate in litigation that is without merit or is designed primarily to harass or drain the financial resources of the opposing party.

That last one calls to mind the words of Abraham Lincoln, written in July 1850, and contained in his "Notes for a Law Lecture":

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.

Never stir up litigation. A worse man can scarcely be found than one who does this.

There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events; and if in your judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave. [Id., p. 82.]

When our bar association committee finished our work, we recommended to the association that an annual award be established honoring the trial lawyer best exemplifying the

credo: "His word is his bond"—an award honoring both professional excellence and personal virtue. This recommendation was accepted, and the award was established. One of the first selected to receive the award is a good friend of mine and an outstanding civil trial lawyer. I attended the banquet where this award was presented to him. It was a lovely affair; several wonderful tributes were paid to this good man by his colleagues, both partners and opponents. All were universally complimentary. The moment came for him to receive the award. He came forward, and in receiving it, said in substance:

When I was a young lawyer, just starting out, I was anxious to know what it takes to be a successful courtroom attorney. So I went to judge Louis Welch [now retired from the San Diego Superior Court] and asked him that question. He answered me with five words that I have tried to live by. He said, "The decided are always gentle."
The decided are always gentle. What a wonderful philosophy! The Savior was “decided.” He knew where he stood. He knew The Law. More importantly, he had a firm grip on his moral compass. (As Elder Neal A. Maxwell has said, “His grip upon himself is our grip upon eternity”) His character was perfectly intact. He was a man of virtue. As with the Master, so with every person who knows where he stands. Truly, there is a gentility and strength about the “decided.” The great ones are consummate professionals—unfailingly gracious and awesome adversaries! The decided are always gentle.

But, there is more. We, you and I, have a special charge. As Latter-day Saints, we have a greater charge than merely being true to a moral code. We are the custodians of the Restoration, the gospel of Jesus Christ. We are more than just lawyers; we are Latter-day Saint lawyers. By virtue of the priesthood and our Church membership, as well as our professional membership, ours is a dual obligation. We have an affirmative obligation to use our legal training to make a difference. In his presentation to the Seventy, Elder Asay quoted from The White Company by A. Conan Doyle. Said he:

In one of my favorite books, there is an interesting conversation between a young man who seemed destined to become a monk and a young lady who had fallen in love with him. The young man, in a moment of despair, exclaimed:

“God help me! I am the weakest of the weak,” groaned Alleyne. “I pray that I may have more strength.”

“And to what end?” she asked sharply. “If you are, as I understand, to shut yourself forever in your cell within the four walls of the abbey, then of what use would it be were your prayer to be answered.”

“Thou art not far from the Kingdom of God.”

Elder Lance B. Wickman is a member of the Quorum of Seventy of The Church of Jesus Christ of Latter-day Saints.
am a member of a profession that the public loves to hate. That’s why people are always telling me lawyer jokes. I love lawyer jokes, because I love humor. Proverbs 17:22 says, “A merry heart doeth good like a medicine.” Here’s a lawyer joke: Suppose you’re walking down the beach and you come upon Saddam Hussein and a lawyer buried up to their necks in sand. Who do you kick first? Answer: Saddam Hussein. Business before pleasure. People say that’s how copper wire was invented: two lawyers fighting over a penny. And a while ago there was a classified ad in the National Review that said: “Hate Lawyers? Curse out a live one. 900/773-8245. $5/min. 18 or older.” So the public hates lawyers. My first response is: What does the public know? Studies show that one-third of the public suffers from some kind of severe mental disorder. So look at the people on each side of you. If they look normal to you, then you’re the one. The public is not entirely wrong. It’s true that some lawyers are dishonest, arrogant, venal, amoral, ruthless buckets of toxic slime. On the other hand, it’s unfair to judge the entire profession by five or six hundred thousand bad apples. Animosity toward lawyers is deeply seated in our tradition. Joseph Smith said that we should “send every lawyer as soon as he repents and obeys the ordinances of heaven, to preach the Gospel to the destitute, without purse or scrip.” Brigham Young once described a city in a stake of Zion conducted after the order of Enoch. He asked, “Do you think we shall want any lawyers in our society? No, I think not. Do you not think they will howl around? Yes, you will hear their howls going up morning and evening, bewailing one another. They will howl, ‘We can get no lawsuits here; we cannot find anybody that will quarrel with his neighbor. What shall we do?’ . . . Not but that lawyers are good in their place; but where is their place? I cannot find it.” Today I will address five complaints that the public makes against lawyers. First, lawyers defend guilty people. Second, as a class lawyers are dishonest and immoral. Third, lawyers are too interested in money.
Fourth, there are too many lawyers, and they are filing too many lawsuits and ruining our economy. And fifth, the legal system is seriously flawed. Because of these complaints, if you announce that you intend to go to law school, your grandparents might scrape off their bumper sticker that says, "Ask me about my grandchildren." I will address each of these five complaints in turn.

First, lawyers represent guilty people. This raises the issue of how the public knows that the defendant is guilty. Usually, the public makes the decision based on the media reports. Strangely enough, the public also deeply distrusts the media, which creates a puzzling logical conundrum. The framers of the Constitution knew that the public has a tendency to decide guilt or innocence based on media accounts. That's one reason that the framers gave us the Bill of Rights, which provides for a fair trial to decide questions of guilt and innocence, and does not relegate the fate of accused persons to the tribunal of public opinion.

The alternative is that no one should represent guilty people. Or, lawyers should only go through the motions, but not really try to protect the constitutional rights of the accused. The framers decided instead that every person, guilty or innocent, should have the right to counsel. They believed that without counsel accused persons cannot protect themselves against the awesome power of the state, or the prejudices of the majority who control the machinery of the state. They believed that effective representation of counsel was essential to the proper working of the criminal justice system. It is part of what makes us a free people.

The history of the Latter-day Saints helps illustrate this point. On June 23, 1843, the Prophet Joseph Smith was arrested in Illinois by Sheriff Reynolds of Jackson County, Missouri, and another person. The charge was treason against the state of Missouri. In the Prophet's words, "I'll have representing some prestigious but sometimes quite underhanded corporate clients."

The second criticism is that as a class lawyers are dishonest and immoral. It is said that the phrase "honest lawyer" is an oxymoron—self-contradictory phrase—like the phrases "civil war," "professional wrestling," "family vacation," and "reasonable attorney's fee." People believe that lawyers will argue any side of any question for money. Lawyers also argue in the alternative. My favorite example is the lawyer who told the judge, "Your honor, my client was out of town on the day of the murder. And if he wasn't, he was not at the scene of the crime. And if he was, he didn't pull the trigger. And if he did, he's insane."

In fact, it is not true that all lawyers will argue any side of a question for money. The Model Rules of Professional Conduct make clear that a lawyer should exercise independent judgment; and many clients do come to their lawyers for moral as well as legal advice. Often clients want not merely their lawyers' skill, but also their judgment, and it is my experience that most clients do try to follow their lawyers' moral advice.

Are lawyers less honest than other people? A survey conducted a number of years ago showed that more than a third of Americans believed that most lawyers would engage in unethical or illegal activities to help a client in an important case. However, seven out of eight of those who had used legal services gave their own lawyers high marks for honesty. I think that the difference in responses is significant.

My own experience in law practice led me to conclude that most lawyers are honest. Lawyers face disciplinary action for dishonesty. Elder Oaks has observed, "In our society the members of many groups are notable for lying, but none is punished more severely than lawyers. What is unique about lawyer lying is not that it is more widespread or more important than the lying of members of other groups, but that it is more severely condemned and more severely punished."
In addition, lawyers are repeat players in the legal community. They have to make representations of fact to other lawyers and judges nearly every working day of their lives. In order to get their work done, it is essential that they have a reputation for honesty. If they lie, their reputation for dishonesty will quickly spread among their peers. It comes as a surprise to many people that the legal system depends so heavily on trust, but it is true.

One of my favorite examples of a lawyer’s integrity involves Elder Dallin H. Oaks. As a young lawyer he was attending the deposition of an employee of one of his firm’s corporate clients. The witness began to lie under oath. Dallin Oaks got on the phone to the man’s employer and said, “Either you get somebody down here who is going to tell the truth, or you get yourself another lawyer.” Good lawyers have that kind of moral backbone.

According to a public opinion poll, nearly a third of Americans believe that lawyers are too interested in money.1 Some lawyers are. I believe that seeking wealth is a poor reason to go into law. Let me tell you about an experience that I had. When I was in law practice, my law firm had a car-leasing program in which each person received a very generous allowance for leasing a car. If you chose not to lease an expensive car, you simply forfeited part of the car allowance. So I went out and leased a beautiful sports car.

The car was the nicest toy I ever owned. It was superbly engineered, and it drove like a dream. When the turbo kicked in, the car would flatten your ears back against the headrest. A voice would tell you when the door was open or the fuel level was low. It would say something like, “Left door is ajar, Excellency.” The volume control on the stereo went from 1 to 10, and above 10 it had another setting that said: “Liquify Cerebral Cortex.” The night I brought the car home, I sat in it until two a.m., trying out all the buttons and gadgets. My wife, Nadine, refused to drive the car; it was too ostentatious.

One year later I left law practice and came to law school to teach. I gave up the sports car and bought a 1970 Valiant. It did not have a turbo-charger; instead, it had a wimpo-charger. There was a picture of my car in the dictionary, next to the definition of “Breach of warranty.”

What surprised me is that I did not miss the sports car at all. Oh sure, the car was fun for a few months. However, after the newness wore off, it was simply transportation. You’ve all had the experience of wanting a certain material thing. You looked forward to getting it, and it was exciting at first. After a while, however, the thrill wore off, and you began looking forward to acquiring some other material thing, something that was really going to satisfy you. To borrow an image from C. S. Lewis, wealth is like an onion; when you peel off one layer, you simply discover another layer underneath. This process continues until you realize that at the center of the onion there is nothing at all.

In 2 Nephi 9:51, Jacob taught, “Therefore, do not spend money for that which is of no worth, nor your labor for that which cannot satisfy.” Wealth does not satisfy the deepest hungers of the soul; it does not bring joy. Living the gospel brings joy. Serving and loving others bring joy. One of the deepest secrets of life is that we are not here to be served, but to serve.

On this issue I believe that the legal profession has begun to lose its way. It used to be that lawyers didn’t worry as much about money. They considered themselves a profession, not a business. However, recently lawyering has become more of a big business. Law firms have begun emphasizing the bottom line and have increased their billing rates accordingly. Firms now require lawyers to work longer hours and to bring in more clients. As a result of this increased mercantilizing of law practice, the job satisfaction of many lawyers has declined in recent years. This materialistic trend parallels broader trends in our society which generally is becoming more selfish, more greedy, and more acquisitive.

Things used to be different, at least in degree. For example, when I was a young associate my law firm represented 12 couples who were defrauded in an investment scam. As a result of the scam, each couple had a large second mortgage placed on their home. Our job was to prove that these people had been defrauded and to get the second mortgages removed. The litigation was lengthy and costly and it reached a point where our clients could not afford to pay us any more. A business whose client cannot pay usually makes
the rational economic decision not to provide services to that client. However, that was not how we saw things. We had made a commitment to these people to represent them, and we were going to do it, whether they could pay us or not. We took the case through trial, and we were able to obtain the relief they needed. We considered ourselves to be engaged not merely in economic activity but in something more. That sense is declining in the profession.

The fourth charge, based on accounts in the media, is that there is a litigation explosion in our country. There are too many lawyers, and they are filing too many frivolous lawsuits. It has been alleged that the United States has 70 percent of the world's lawyers, and that litigation is causing the United States to lose its competitive edge in the world economy. One economist asserts that each lawyer costs the nation one million dollars per year in lost gross national product. One tongue-in-cheek solution might be to pay lawyers not to practice law, just as we pay farmers not to grow crops. For example, we could pay each lawyer $800,000 a year to stay home, and everybody would be better off! As usual, there is a gap between the image and the reality. First, the United States does not have 70 percent of the world's lawyers. Calculating the number of lawyers in various countries is difficult, but one scholar has estimated that the United States actually has only 9.4 percent of the world's lawyers. Second, it is not quite true that people are willing to sue at the drop of a hat. A major study found that only 10 percent of grievances come to the attention of a lawyer, and only 5 percent become filed cases. A Rand Corporation study of people's responses to disabling injuries found that only 2 percent become filed lawsuits.

There has been a significant increase in the past thirty years in the frequency of lawsuits. This might be caused by several factors, including changes in the law, greater awareness of legal rights, increased urbanization and economic activity, a declining sense of community, and a greater belief that society should aid persons injured in accidents. The National Center for State Courts examined the data and found that although there were substantial increases in litigation rates during the late 1970s, any "litigation explosion" peaked in 1981.

The media also report frivolous cases, like the case a few years ago in which a child sued because there was no prize in her box of Cracker Jacks. We also hear about cases in which juries award apparently outrageous sums of money. A jury has been defined as a group of bright and intelligent people who never read newspapers or watch television. Meanwhile, the rest of us seem to pay for these awards through higher taxes, higher insurance premiums, and higher prices for goods and services. There is some truth to these claims. But, as Mark Twain once said about Wagner's music, "It's not as bad as it sounds."

Large jury awards certainly exist, especially in the areas of medical malpractice and products liability, and they drive the averages up. However, the data suggest that, adjusted for inflation, median (or typical) jury awards have increased only slightly over time. At this point it should be remembered, however, that "data" is Latin for "the plural of anecdote." The media generally do not report the run-of-the-mill cases; they report the strange, bizarre, and tantalizing cases, and the big verdicts. Suppose for a moment that your principal source of information about the traffic system were the 10 o'clock news. You would probably quickly conclude that the system had very little social utility. You would be correct in concluding that the system had serious problems that needed attention, but the image presented would be a distortion of reality.

The public's fifth complaint is that the legal system is flawed. Indeed it is. Dispute resolution is too expensive, too time-consuming, and too influenced by a disparity in the parties' resources. Effective legal representation is simply out of reach for many Americans. Former Chief Justice Burger said, "To rely on the adversary process as the principal means of resolving conflicting claims is a mistake that must be corrected." He explained, "For some disputes, trials will be the only means, but for many trials by the adversary contest must in time go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people."

Of course, the legal system is not the only institution that is in difficulty. The government, the family business, health care, education, and other institutions are all experiencing serious challenges. The legal system's problems are complex, and finding real solutions is not easy. Suggestions have been made, and to some degree implemented, like alternative dispute resolution, more legal clinics for low income people, insurance for legal services, requirements to provide pro bono services to the poor, procedural reforms, stricter lawyer discipline, and others. There are many problems, and there is much to be done to improve things.

It's also true that people have positive images of lawyers. For example, people recognize that our nation could not have been founded without the efforts of lawyers like Thomas Jefferson, John Adams, and others. Any of the signers of the Declaration of Independence and about one-half of the signers of the Constitution were lawyers. Abraham Lincoln was a lawyer; Sir Thomas More was a lawyer. Think of some of the lawyers you know, including distinguished people like James E. Faust, Dallin H. Oaks, and Rex E. Lee. Many lawyers serve ably and well; they are clear thinkers and speakers; they stand up for us and speak in our behalf. They also help resolve disputes, and good lawyers do this in a civil, peaceful, and noncontentious manner. These lawyers are to be praised. The Savior said that "he that hath the spirit of contention is not of me." He also said, "Blessed are all the peacemakers, for they shall be called the children of God."

Recently an American Bar Association task force recommended that law schools emphasize the teaching of values. At the J. Reuben Clark Law School we take that responsibility...
seriously. Each student is required to take a course in professional ethics, and we make a conscious effort to discuss ethical issues in other classes. We offer professional seminars, which address the integration of religious, moral, and professional values. In the past few years, under the direction of Professor James Backman, we have also established an extensive program in which law students team up with lawyers in the community to provide free legal services to low income, disabled, and elderly people, to Spanish-speaking clients, and to immigrants, as well as to assist with the mediation of disputes outside of court.

Most important is the strong moral compass that our students bring with them, which is the product of powerful and irreplaceable family and religious training. We try to enhance that compass while our students are here. As they stay close to the Spirit of the Lord, it will serve them well throughout their lives.

John Tanner25 has brought to my attention a passage in Chaim Potok's novel, The Chosen.26 In the book, Reb Saunders, a Hasidic rabbi, had a brilliant son named Danny. Danny had "a mind like a jewel," "like a pearl, like a sun." Reb Saunders explained, "He enjoyed the story, he swallowed it, as one swallow's food or water. . . . It was a story in a Yiddish book about a poor Jew and his struggles. . . . Ah, how that man suffered! And my Daniel was four years old, I imposed upon him a regimen of silence—he didn't understand pain, indifferent to suffering. That is what it takes to be a truly good lawyer. And the world desperately needs truly good lawyers.

Clayton Memorial

Woody Clark

1 Professor of Law, J. Reuben Clark Law School, Brigham Young University. This article was presented as a BYU forum address on May 24, 1994. Apologies and thanks to Craig Griffin, Gary H.III, Jay Lens, Dick Selfridge, Jan Vetter, Kevin Worthen, and others.
3 Joseph Smith, VI History of the Church of Jesus Christ of Latter-day Saints 206 (1970 ed.).
4 Brigham Young et al., XV Journal of Discourses 224 (1867 ed.).
5 Joseph Smith, V History of the Church of Jesus Christ of Latter-day Saints 340-42 (1970 ed.).
6 Elder Dallin H. Oaks, Bridges, Gray Memorial, Fall 1988, at 10, 15.
9 American Bar Association Special Committee to Survey Legal Needs, Responses to Questionnaire, Part IV, Question 40.
21 Id.
22 3 Ne. 11:29.
23 3 Ne. 12:9.
25 John S. Tanner, Not a Mind Without a Soul, 45 BYU Today 42, Mar. 1991, at 26, 44.
27 Id. at 264-65.
28 Bruce C. Hafen, To Beginning Law Students on "Professionalism" 5 (unpublished manuscript).
29 See id.
Everyone I know thought of him as what the Japanese call “a national treasure.” He had a sometimes gruff exterior, but it was all a pose. I remember one orientation when the faculty sat in the front row, and each stood in turn to be introduced to the new students. Woody stood, turned to face the audience, scowled, and sat down.

The law school has had a few characters. Monroe McKay was known to lie on the floor during faculty meetings and declare his opinions with a voice from over there behind the chairs. He appeared in class on one of those first Halloweens as The Great Pumpkin, his round orange outfit stuffed with paper. This is the man who became a federal Court of Appeals judge? There is Jim Gordon, who does stand-up comedy and a Masked Marvel shtick at school and publishes articles and books people read mostly for the footnotes and the aside
And then there was Woody Deem, who rarely told a joke but was everybody's straight man. His boots, diet, and mock-serious manner were grist for teasing. My team-teaching Criminal Trial Practice with him 20 times was a highlight of my 41-year academic career. Woody was knowledgeable, experienced, enthusiastic—and he definitely had a flair. We played Mutt and Jeff; he was the overbearing prosecutor and I the advocate for the defense. Whatever the students may have got out of the dialogue, we had fun. Woody came to school one day well along in fall semester 1984 and announced that his doctor had said, "You've taught your last class." I taught his remaining Criminal Law classes and finished Criminal Trial Practice alone, but it was certainly not the same without Woody. Woody and Norrie moved to St. George for his last several years as he declined. New generations of students have come and gone, vaguely if at all aware of what they had missed. By now half of our graduates have spent their years here cheated of a chance to know one of the great souls.

Perhaps you think I am waxing sentimental, and I don't dispute it. But I have missed Woody this past decade and wish students had all had a chance to know him. A few years ago the Law School published "Criminals Are Stupid" as a tribute to Woody. It included many of the sort of stories Woody delighted to tell his classes about the impressive stupidity of some criminals. Woody was born in 1913 in Salt Lake City and grew up in North Ogden. From childhood he hoped to be a lawyer. After he finished two years at Weber College, his family moved to California, where he graduated from Occidental College at the top of his class in 1936. Recently Lorene Barker gave me a trove of letters that Woody had written to her in his young-adult years—a dozen substantial letters and several shorter notes that show his fluency, intelligence, and wit. The letters, written to a friend in Ogden, begin when Woody was just 21 and a student at Occidental. He wrote about his college experience—friends, academic success, a rich friend who took him to fancy parties "where I'm distinctly out of place," joining a fraternity, travel with the debate team, banter with faculty and fellow students, dating, and church activity. The letters, 1934 through 1939, reflect The Great Depression, but demonstrate that, whatever was happening in the economy, Woody refused to be depressed. The job market was dismal even for Phi Beta Kappas. At graduation Woody wrote: "As for the next year, nothing of any promise has presented itself. When I asked the Dean of Men for his advice, he told me to find a rich widow and get married. Thus far, even that course has brought no success. I may yet join the navy." In fact he joined the Civilian Conservation Corps, a government work program organized along military lines to give young men employment improving national forest lands. —EDWARD L. KIMBALL
nothing quite so pathetic as a dreaming young man who managed somehow to get clean through college with all of his ideals intact, only to have them tumble about his head when he tries to sally forth in the manner in which he has been directed by the august persons who address the graduates.

The same afternoon, I signed up for the CCC. For the first week, I’m quite sure that I endured more hardship, more insult, and more deceit than I have ever faced before in my life. We met at the P.E. station in the early morning fog to go in a body to Van N uys, some forty miles distant, where we were to formally enroll. As I sat in the dismal station (why are railroad stations always dismal?) I looked the gang over searching for one in all the assembled crowd with whom I might have something in common. . . . There was a commotion in the far end. It turned out to be a drunk as filthy and unsightly as some of the underworld characters in French novels. When the sound of his voice rose above his reeking clothes, he made the announcement that he was going along as a cook. Have you ever found a snake? Yes, that’s just how I felt!

After we had enrolled, we were poured into trucks going to the various camps in the district in much the same manner that grain is poured from the elevators into box cars headed for several destinations. But I learned very quickly. The temperature stood at somewhere around 120 degrees. In our truck load were [men who] at freezing temperature would make an apt subject for a Life Buoy ad. . . .

Upon our arrival at camp, someone bawled out that we were to assure me of an almost satisfactory place anyway. For the first week, I was a CCC boy. I’m sure I was no more than third in the race for CCC; I shall never forget it!

When supper was called, the rush to the mess hall defied description. You would have sworn none of them had eaten anything in a week. When I made my gentlemanly way in, I had to battle with the K.P.’s to make my way to a table. I seated myself very quietly and did my best not to act too much like a Phi Beta Kappa fresh from college who felt that he was in decidedly inferior company. A large burly chap sitting next to me, sniffed the air like a troubled bull and then turning, gave me a shower of potatoes and gravy as he slobbered, “You smell like a damned warehouse, why don’t you set somewhere else?” I spent more time looking than eating.

After the meal, I got out my sheet of instructions and did my best to dress up like a model CCC boy. On the whole I think I succeeded rather well. More was in store, however. I had no sooner started across campus than a rather over important chap grabbed me by the shoulder and shouted, “You’re on the K.P., the kitchen’s over there.” Everybody laughed, just as they do in the war movies at the K.P. During the course of the evening I managed to assist in the dropping of a dozen large plates; most of them broke, and the mess sergeant threatened to break the rest of them over our heads. It was long after dark when I finished my appointed task. Imagine my feelings when I discovered that the barracks where I had planned to sleep was locked. While I was sitting on the front steps trying to figure out the next move, the night watchman came along and informed me that the captain had ordered that barracks closed because it was infested with bed-bugs to the extent that one arose very ill after having slept there a single night. He told me of a shack at the other end of camp where I might find a discarded mattress. In the dark, I couldn’t see that it was rather filthy, so I was grateful. I made my way to another barracks and discovered an empty bunk purely by the sense of touch. It was an upper bunk at the far end. The fellow across the aisle inquired into the affair and loaned me a blanket. I used my clothes for a pillow and was optimist enough to think I would sleep. I had almost succeeded in courting the muse when from somewhere below a pair of trousers sprang across my face. A shirt followed. I had seen the size of CCC boots, so I leaned over and uttered a feeble, “Hey!” a voice in the dark, exclaimed, “What the hell are you doing up there?” I couldn’t think of anything clever, so I told him that I was sleeping. That, in short, was my first day in the CCC; I shall never forget it!

The next day we were kept in camp for orientation. As soon as I heard the word, I became suspicious. Big words, like big weapons, portend grave danger when manipulated by those who don’t know how to use them.

After the meal, I got out my sheet of instructions and did my best to dress up like a model CCC boy. On the whole I think I succeeded rather well. More was in store, however. I had no sooner started across campus than a rather over important chap grabbed me by the shoulder and shouted, “You’re on the K.P., the kitchen’s over there.” Everybody laughed, just as they do in the war movies at the K.P. During the course of the evening I managed to assist in the dropping of a dozen large plates; most of them broke, and the mess sergeant threatened to break the rest of them over our heads. It was long after dark when I finished my appointed task. Imagine my feelings when I discovered that the barracks where I had planned to sleep was locked. While I was sitting on the front steps trying to figure out the next move, the night watchman came along and informed me that the captain had ordered that barracks closed because it was infested with bed-bugs to the extent that one arose very ill after having slept there a single night. He told me of a shack at the other end of camp where I might find a discarded mattress. In the dark, I couldn’t see that it was rather filthy, so I was grateful. I made my way to another barracks and discovered an empty bunk purely by the sense of touch. It was an upper bunk at the far end. The fellow across the aisle inquired into the affair and loaned me a blanket. I used my clothes for a pillow and was optimist enough to think I would sleep. I had almost succeeded in courting the muse when from somewhere below a pair of trousers sprang across my face. A shirt followed. I had seen the size of CCC boots, so I leaned over and uttered a feeble, “Hey!” a voice in the dark, exclaimed, “What the hell are you doing up there?” I couldn’t think of anything clever, so I told him that I was sleeping. That, in short, was my first day in the CCC; I shall never forget it!
mind on my work. When the day's work was done, not a spot of paint remained in the joint and my bright yellow shoes had turned almost black. By this time, I was fairly well convinced that I couldn't take it. I had already learned that the most convenient way out of the CCC was to pack up at dusk and disappear just as the lights went out. The process is called "Going over the hill."

But the tide turned. The mess sergeant had apparently forgiven me for the broken dishes, because he had asked the captain to put me on as a regular K.P. That was the beginning of the two most delightful weeks of my life. I am quite sure. I was given the highly colorful title of dining room orderly. I was dressed in pure white with large pearl buttons. My sole task was to set the tables, sweep the dining room floor, and wait on the officers' table at meal time. Work began at five thirty a.m. That shift kept me busy until 8:30 a.m., at which time I was free until eleven thirty. I worked then until two, was off until four thirty and then worked until six thirty. In a nearby canyon, I found a secluded little spot entirely shielded by thick brush and towering trees. In fact, one had to know the one way to get in, or the brush proved impenetrable. I spend a great share of my spare time there, taking sunbaths, reading, writing, or just lying on a mat of oak leaves watching the clouds. The glorious part of it was that after working three days, I had three days off. At the close of my first shift, the captain came to me and complimented me upon the way I did my work. Without thinking, I felt a thrill of pride. Afterward, I worked until six thirty. In a nearby canyon, I found a secluded little spot entirely shielded by thick brush and towering trees. In fact, one had to know the one way to get short any property for which the captain was pecuniarily responsible. The mob antipathy was short lived, as is any mob action. I contrived to make possible a weekly change of sheets rather than a haphazard bi-weekly change that had been current. Next I learned to swear, an invaluable aid! Nine times out of ten when you tell a man to go to hell in a loud tone of voice, he won't call your bluff.

Next I learned to swear, an invaluable aid! Nine times out of ten when you tell a man to go to hell in a loud tone of voice, he won't call your bluff.
Next was "What my dear fellow, is a protocol?" He had ribbed me mercilessly for being a hude, so I spared him not a bit. After several more unimportant technical questions, I concluded my little show with the suave statement, "And so my dear fellow, I would know nothing at all about college, and especially about a merchandising major!" I pushed my goon hat back onto my neck and sauntered away to the tune of applause and guffaws from similarly persecuted hudes.

After that the game of getting goats became an interesting pastime. Very often it was my goat that suffered, but often enough it was someone else's. On one occasion, a first lieutenant of the Marine Corps refused to honor my requisition on a minor point because I had tricked him into accepting two hundred pairs of old shoes that should have been repaired and greased before they were turned in. I marched into the quartermaster's office and presented my case of injustice. It got results. The quartermaster called up the first lieutenant and informed him that he was to honor my requisition. I pressed the point too far, I fear, because the lieutenant declared war on me. I was quite relieved when my change of occupation took me out of his sphere of influence.

That was at Christmastime, when I rose to my present position of doubtful honor. I am now assistant company clerk, assistant canteen steward, assistant first aid man, and unofficial assistant to the supply steward (my brother, Aaron), assistant dispatcher, and clerk for the mess steward. You've guessed it, it's merely a matter of titles. I manage to keep very busy, but there is little immediate danger of a nervous breakdown.

. . . I think you know me well enough to understand just how disappointed I was at not being able to get into school this year. The outlook is now very bright. I will go to school next year. That is very certain. As to just where I will go, there is still some question. An influential friend, Leo J. Muir, has promised to get me in touch with Senator MacAdoo, who some time ago promised to help me find part-time work in Washington while I attend school there. I have corresponded with Michigan University and learned that one can go to law school there very cheaply—and Michigan ranks very high as a law school in the daytime.

Since last I wrote you, I have advanced to the much esteemed title of top sergeant at the same time keeping all my other duties and the net result is that I've had my nose to the grindstone continuously. . . .

I am somewhat hesitant about mailing this letter. I fear I have overemphasized for the most part the unpleasant aspects of this little colony of ours. Frankly, on the whole, I like it here. I think the CCC should be made a permanent organization, and I have high hopes that it will someday take its place in the country as a highly respectable institution.

Sincerely,
Woodruff

June 30, 1937

Dear Lorene,

The long and the short of it is that I have been offered a job in Washington, D.C., which I considered so worthwhile that I am giving up the scholarship at Duke University. I will have to work days and go to school nights for the first year, but after that I will have night shift and be able to go to school in the daytime.

Since last I wrote you, I have advanced to the much esteemed title of top sergeant at the same time keeping all my other duties and the net result is that I've had my nose to the grindstone continuously. . . .

I'm rather glad things turned out as they did because another two months of CCC life would have proved quite unbearable. All of my friends have left and the only officer for whom I had a wholesome respect is leaving today. It's strange how one comes to see that the changes in his life couldn't have occurred any other way under the circumstances.

Sincerely,
Woodruff

A short time ago I attended the funeral of a friend’s 17-year-old son. Earlier in the week the young man and a number of youth had spent the night at a dance club without the knowledge of or permission from their parents. Just before dawn they left the club to return to their homes. My friend’s son, with six others in a small, compact car, was traveling south on the freeway when the driver of a car traveling in the opposite direction fell asleep. His car crossed the median and smashed head-on into them. The accident occurred with such swiftness that few, if any, brake marks showed on the highway and both cars were demolished. Amazingly six individuals lived, but three persons died: my friend’s son, a 17-year-old young woman, and the driver of the other car.
The atonement of the Lord Jesus Christ is the most transcendent event in history. It is the central feature of the Father’s plan to open the door for his children to return to him and obtain a fullness of joy. It is the foundation of the gospel plan and gives meaning and hope to mortality. The scriptures are filled with statements describing the importance of Christ’s sacrifice. The Prophet Joseph Smith recorded:

And this is the gospel, the glad tidings, which the voice out of the heavens bore record unto us—
That he came into the world, even Jesus, to be crucified for the world, and to bear the sins of the world, and to sanctify the world, and to cleanse it from all unrighteousness—
That through him all might be saved whom the Father had put into his power and made by him. [D&C 76:40–42]

The prophet Lehi taught the same principle:

Wherefore, redemption cometh in and through the Holy Messiah; for he is full of grace and truth.
Behold he offereth himself a sacrifice for sin, to answer the ends of the law, unto all those who have a broken heart and a contrite spirit; and unto none else can the ends of the law be answered.

Wherefore, how great the importance to make these things known unto the inhabitants of the earth, that they may know that there is no flesh that can dwell in the presence of God, save it be through the merits, and mercy, and grace of the Holy Messiah, who layeth down his life according to the flesh, and taketh it again by the power of the Spirit, that he may bring to pass the resurrection of the dead, being the first that should rise.
Wherefore, he is the firstfruits unto God, inasmuch as he is full of grace and truth; and unto none else can the ends of the law be answered.
Wherefore, he is the firstfruits unto God, inasmuch as he shall make intercession for all the children of men; and they that believe in him shall be saved. [2 Nephi 2:6–9]

Through the Atonement, mankind is given the opportunity to overcome both physical and spiritual death. Christ, because he is God, has the power to resurrect all mankind and to cleanse faithful men and women and make them worthy to return to their heavenly home.

Amulek commented on the nature of the Atonement as he and Alma were teaching the Zoramites.
The Infinite Atonement

The word infinite means "having no limit or extending indefinitely." Here it refers to the vastness of the Atonement's effects. There are many ways in which the Lord's suffering in the Garden and sacrifice on the cross is infinite. The first is that the offering was by an Infinite Being. Second, the sacrifice is infinite through time. Third, it is infinite across space. Also, the suffering of the Lord was numberless. Finally, the Atonement overcame physical death, which is universal and covers all creatures. 

The word finite means "having a limit." The atoning sacrifice is finite in the Garden and time. The death of the Lord was finite. Although he had the power of an endless life, he died as an example of what mortal beings must do. The Atonement is not limited by time. 

The word finite means "having a limit." The atoning sacrifice is finite in the Garden and time. The death of the Lord was finite. Although he had the power of an endless life, he died as an example of what mortal beings must do. The Atonement is not limited by time.

The Son of Man—An Infinite Being

Jesus is Jehovah, the God of the Old Testament. The name Jehovah, signifying "I Am" or "the Self-Existing One," connotes a being whose existence or duration has no end (James E. Talmage, Jesus the Christ, p. 36). Jesus is the son of an immortal Father and a mortal mother. As the Only Begotten Son of God, he inherited "life in himself" from his Father, who has life in himself (John 1:14; 5:26); i.e., Jesus had the seeds of immortality within him, and death was not mandatory. He had the power of an endless life. From his mother he inherited the seeds of mortality and could experience death if he so chose. As he said to the Pharisees, "Therefore doth my Father love me, because I lay down my life, that I might take it again. No man taketh it from me, but I lay it down of myself. I have power to lay it down, and I have power to take it again. This commandment have I received of my Father" (John 10:17–18).

Jesus had the power to live forever. He also had the power to lay down his life voluntarily to experience death of the body to live as a person of spirit in paradise, and then to reunite the spirit with the body according to the commandment he received from his Father. The sacrifice of a bird, an animal, or even a man could not satisfy the requirement of an infinite offering, because each of these living beings carries mortal seeds through the fall of Adam, and death is inevitable for them (1 Cor. 15:22). Only an Endless Being could make the voluntary act required. When a person understands Jesus as more than a mere human, hope and faith in him are kindled in the heart, and obedience follows.

The Atonement—Infinite Across Time

The Savior's atonement covers the sins of God's children throughout the eternities. It is timeless. It embraces the sins of the past, the present, and the future. It reaches back before Eden and forward beyond our millennium. In the space of a few hours, Jesus offered himself as a ransom for sins for those who believe, repent, receive the ordinances, and endure to the end—not for those who preceded him, but for all those who follow as well, for as long as the Father has children. He is the "Lamb slain from the foundation of the world" (Revelation 13:8). Through the Atonement, little children are born innocent in this life, redeemed from the Fall. At a later point in the eternities they are made whole again, resurrected from an endless sleep (D&C 93:38; Mormon 9:13). Although the timelessness of the Atonement is incomprehensible, one understands that the atoning sacrifice is beyond the capability of any mortal being; therefore, the Savior said: "I am the light which ye shall hold up" (3 Nephi 18:24). As the light of Christ quickens our understandings, our love and appreciation for the Savior deepens.

For it is expedient that there should be a great and last sacrifice; yea, not a sacrifice of man, neither of beast, not a sacrifice of fowl; for it shall not be a human sacrifice; but it must be an infinite and eternal sacrifice.

And behold, this is the whole meaning of the law, every whit pointing to that great and last sacrifice, and that great and last sacrifice will be the Son of God, yea, infinite and eternal. (Alma 34:10, 14)

What is meant by the great and last sacrifice being infinite and eternal? Can one differentiate between the infinite nature of the Lord's sacrifice and its eternal qualities without demeaning its wholeness? Ultimately the infinite and eternal aspects of the Atonement come together just as faith turns into repentance and repentance into baptism. But like the first principles, an appreciation of the differences increases one's understanding of the great plan of redemption and the Lord's redeeming power in terms of the Atonement's vastness as well as its intimacy. Thus we begin with a discussion of the infinite atonement.
The scriptures imply that the Savior's atonement extends beyond this orb. The Prophet Joseph Smith records the Lord's words to Moses as follows: "And by the word of my power, have I created them, which is mine Only Begotten Son. . . . And worlds without number have I created; . . . and by the Son I created them" (Moses 1:32–33). Under the direction of the Father, Jesus is the Creator of worlds without number. What happens to the inhabitants of other earths? Who atones for their sins? How are they redeemed? In a revelation to Joseph Smith and Sidney Rigdon, the two men saw Christ on the right hand of God and heard a voice bear record that "he is the Only Begotten of the Father—That by him, and through him, and of him, the worlds are and were created, and the inhabitants thereof are begotten sons and daughters unto God" (D&C 76:23–24).

Through the power of Christ's atonement, the inhabitants of other worlds become "begotten sons and daughters" of God; i.e., the saving procedures are the same for them as they are for us.

One of the clearer statements on this subject was given by President Marion G. Romney in a conference address in 1969. Referring to D&C 76, he said:

From this and other scripture we learn that, representing the Father and serving his purpose "to bring to pass the immortality and eternal life of man," Jesus Christ, in the sense of being its Creator and Redeemer, is the Lord of the whole universe. Except for his mortal ministry accomplished on this earth, his service and relationship to other worlds and their inhabitants are the same as his service and relationship to this earth and its inhabitants. [Marion G. Romney, "Jesus Christ, Lord of the Universe," Improvement Era 76 (November 1969):46]

No wonder the atoning sacrifice required an infinite being! The suffering in the Garden of Gethsemane and the sacrifice on Golgotha embraced not only the billions who have lived on this earth but also the numberless sons and daughters of God who have lived elsewhere.

Sins, Pains, Temptations, Weaknesses of Every Kind

Alma records that the Son of God "shall go forth, suffering pains and afflictions and temptations of every kind; . . . and he will take upon him their infirmities, . . . that he may know according to the flesh how to succor his people according to their infirmities" (Alma 7:11-12). Jacob taught that Jesus would "save all men if they will hearken unto his voice; for behold, he suffereth the pains of all men, yea, the pains of every living creature, both men, women, and children, who belong to the family of Adam" (2 Nephi 9:21). Isaiah said: "Surely he hath borne our griefs, and carried our sorrows" (Isaiah 53:4). John the Baptist introduced Jesus by saying: "Behold the Lamb of God, which taketh away the sin of the world" (John 1:29).

The magnitude and variety of sin, pain, temptation, and afflictions that he experienced appears limitless. This is the fourth aspect of the infinite nature of the Atonement.

The Universality of Death

As Alma indicates, Christ voluntarily suffered death in order to loose the bands of death for his people (Alma 7:12). Through the fall of Adam and Eve, death came upon all creatures and covered the landscape. Not only God's children but also plants, animals, and nature itself entered mortality through the Fall. Even the earth became subject to death because of Adam's transgression.

Christ's atonement and resurrection made temporary the separation of body and spirit (1 Corinthians 15:19-21). As part of the plan of salvation, all creatures will be resurrected. Even the earth, which was baptized with water, will be baptized with fire and eventually die. Through the atonement and resurrection of Christ, this physical earth will be reunited with its spirit and become exalted to a celestial sphere. The reality of the resurrection for all creation is made possible by the Savior's sacrifice (D&C 29:22-25; 88:25-26; Doctrines of Salvation, vol. 1, pp. 72-89).

An understanding of the infinite nature of the Atonement increases one's appreciation for the Lord Jesus Christ. We stand in awe as we contemplate the magnitude and dimensions of the suffering required to pay the price of sin for all humanity. Our hearts and souls become more contrite as we contemplate that he was tempted in every way in order to understand our weaknesses and flaws so that he "giveth power to the faint; and to them that have no might he increaseth strength" (Isaiah 40:29). With these thoughts in mind, the eternal nature of the Atonement leaves one even more awestruck.
ETERNAL ASPECTS OF

THE ATONEMENT

Eternal is one of the names of Deity (Moses 7:35). Although the word eternal is sometimes used to mean endless, it is often used in the scriptures to describe “godlike” attributes or principles. For example, the kind of life God lives is called eternal life (exaltation). It is the type or quality of life lived by God. The punishment meted out by God to transgressors is called eternal punishment, a name having reference to the type and not the duration of the penalty imposed (Bruce R. McConkie, Mormon Doctrine, pp. 216, 219). Where the term infinite refers to the outward dimensions of the Savior’s life and sacrifice when speaking of the Atonement, the term eternal refers, in part, to the inward quality of his being and the qualitative changes in mankind’s spirit and body that are the benefits of Gethsemane and Golgotha. In what ways were the Savior’s character and personality eternal and what are the eternal aspects of his atonement?

Jesus, An Eternal Being

The scriptures clearly teach that Jesus was Jehovah, the God of the Old Testament (Exodus 3:14; John 8:58, D&C 29:1, 38:1, 39:1). As the firstborn in the spirit, Jesus achieved godhood in the eternities prior to his life on earth. He was and is the Lord Omnipotent. Under the direction of the Father, he created all things, both in heaven and in earth. Prior to his birth, he had all wisdom and comprehended all things. In the words of King Benjamin:

The Lord Omnipotent who reigneth, who was, and is from all eternity to all eternity, shall come down from heaven among the children of men, and shall dwell in a tabernacle of clay, and shall go forth amongst men, working mighty miracles. . . . And he shall be called Jesus Christ, the Son of God, the Father of heaven and earth, the Creator of all things from the beginning; and his mother shall be called Mary [Moses 3:5, 8]

Thus the Atonement was performed by an eternal being.

A Perfect, Sinless Being

Not only was Jesus an eternal being prior to birth, but he lived a perfect, sinless life on earth. This was accomplished in spite of temptations and sufferings of every kind, “which suffering caused [him], even God, . . . to tremble because of pain, and to bleed at every pore” (D&C 19:18). The apostle Peter indicated that mankind was redeemed not by corruptible things such as silver and gold but “with the precious blood of Christ, as of a lamb without blemish and without spot; Who verily was foreordained before the foundation of the world” (1 Peter 1:19–20). Christ was selected in the premortal world as the sacrificial lamb. For centuries the Israelites were told that the lamb offered in similitude of the great sacrifice must be without blemish or spot as a type for the sinless Messiah. Adam learned in the beginning that he should offer the firstlings of the flock in similitude of the Savior’s offering—the sacrifice of God’s first-born (Moses 5:5–7). All Mosaic sacrifices were types and shadows of the great and last sacrifice of the Only Begotten (Genesis 4:4, Exodus 12:5, Numbers 9:32, Moses 5:7). The Savior’s perfect life reflected his eternal nature and satisfied the requirement of an eternal sacrifice. As President Howard W. Hunter indicated in April 1994 general conference: “The world is full of people who are willing to tell us, ‘Do as I say’ . . . But we have so few who are prepared to say ‘Do as I do.’ And, of course, only One in human history could rightfully and properly make that declaration. . . . Only Christ can be our ideal, our ‘bright and morning star’ (CR, April 1994, p. 83). Only Christ, the God of the Old Testament and a perfect, sinless, eternal being in mortality, had the capacity to take upon himself the sins, pains, sufferings, and temptations of mankind satisfying the requirements for an eternal sacrifice.

The Great Plan of Redemption

The purpose of the Savior’s atonement was to help men and women achieve eternal life, to redeem mankind from the fall of Adam and from sin. The Lord told Moses, “This is my work and my glory—to bring to pass the immortality and eternal life of man” (Moses 1:39). Prior to mortality mankind lived as spirits in the presence of the Father of spirits. In order for God’s children to progress, to achieve immortality and eternal life, it was necessary for them to leave the Father’s presence, receive a physical body, and prove themselves obedient to his commandments. Our Father in Heaven knew that mortality required the fall of mankind—a change in man’s nature in order for the test to occur. He knew the effects of the Fall: physical and spiritual death. Physical death would
result in a separation of body and spirit, whereas spiritual death would separate mankind from his presence, and God’s children would perish from that which is good. In order for mankind to experience lasting joy and happiness, both deaths would need to be overcome (Abraham 3:22–26).

God also knew the interworkings of the eternal laws of justice and mercy. The law of justice affixes rewards when laws are obeyed and penalties when laws are broken. Rewards bring happiness. Broken laws bring unhappiness and spiritual death. The eternal law of mercy allows the penalties of broken laws to be paid by the sufferings and sacrifice of a worthy Mediator, provided the offender satisfies certain conditions. The Mediator’s payment also allows for the restoration or redemption of the sinner’s soul on those same conditions. The requirements for each individual are a broken heart and a contrite spirit; faith in the Father, in his Son, and in the plan of redemption; repentance; and the making and keeping of gospel covenants (2 Nephi 2; Alma 41, 42; D&C 130:20–21).

Consequently the great plan of redemption was instituted. The Holy One of Israel was chosen as the Mediator and Redeemer in the grand council in heaven. An earth was created as a probationary state where men and women could prove themselves, agency was given, Satan was allowed to tempt Adam and Eve, and they fell that men might be.

Physical and spiritual death entered the world and mankind was cut off from the presence of God through sin as well as Adam’s transgression. Adam and Eve and their children were taught the plan of redemption. A probationary period was established to allow men and women to exercise faith and to repent.

The Redemptive Power

John the Baptist bore record that Jesus received a fullness of power from the Father through his obedience. He received the power on a grace-for-grace basis by submitting his will to the Father in all things. Jesus received the fullness of the Father’s glory and possessed all power, both in heaven and on earth (D&C 93:6–30, Matthew 28:18).

Peter, the chief apostle, states in his second epistle that Jesus’ “divine power hath given unto us all things that pertain unto life and godliness” (2 Peter 1:3). Through Christ’s suffering in the garden and sacrifice on the cross, life was given to all mankind. Physical death was overcome; everyone will be resurrected. Also, Jesus received power from the Father to overcome spiritual death, i.e., to restore men and women to a state of godliness according to the laws of justice and mercy. Jesus told the Nephites after his resurrection: “As I have been lifted up by men even so should men be lifted up by the Father, to stand before me, to be judged of their works, whether they be good or whether they be evil” (3 Nephi 27:14). The honorable men and women of the earth who exercise faith in Christ, repent of their sins, partake of the covenants, and continue faithful to the end are sanctified by his blood and by the Holy Spirit during mortality and in the spirit world. They receive the gifts of

the Holy Spirit: love, joy, peace, long-suffering, gentleness, goodness, faith, meekness, temperance, etc. In Peter’s terms, they become “partners of the divine nature” (2 Peter 1:4), which opens the door into the everlasting kingdom of the Lord. In Moroni’s words, those individuals who deny themselves of ungodliness, who serve God with all their might, mind, and strength find that Christ’s grace (power) is sufficient for them, that by his grace they become perfect in Christ. And those who become perfect in Christ, and deny not his power, become holy, without spot (Moroni 10:32–33).

The Power to Heal From Within

As part of the redemptive power, Jesus can heal the troubled soul from pains and sicknesses of every kind. Jesus knows each of us personally through his premortal role as a member of the Godhead when we dwelt with him in premortality, and because of the Atonement. Alma records that Jesus experienced our pains, afflictions, temptations, sicknesses, and infirmities during his earthly sojourn so that his bowels would be filled with mercy and he would know, according to the flesh, how to succor us (Alma 7:11–12). This helps us understand, at least partially, his power to make whole, to restore, to redeem. Isaiah and the prophet Abinadi report that when Christ would “make his soul an offering for sin, he shall see his seed” (Isaiah 53:10, Mosiah 15:10). Abinadi explains that His seed are the righteous, those who follow the prophets (Mosiah 15:11). In the Garden of Gethsemane and on the cross, Jesus saw each of us and not only took upon himself our sins but also experienced our critical feelings such that he would know how to help us in mortality.

As part of his redeeming power, Jesus can restore the spiritual health of the faithful in that he knows how to succor each individual. Although the scriptures are filled with examples, a young Korean sister taught me this lesson. Sitting on the stand prior to a Sunday general session of stake conference in the Seoul North Korea Stake in early 1994, I was reviewing the program trying to identify each speaker’s name with the people on the stand. I was able to do this except for one name—that of Kim Young Hee. Off in the corner I noticed a young woman sitting in a wheelchair. I then quietly asked the stake president if the young woman was the speaker whom I could not identify. He assured me that she was. She was beautiful, but it was obvious that she could not walk. When it came time for her to speak, a brother pushed her chair to the front of the stand but off to the side of the pulpit so that she could see and be seen. He then handed her a microphone. She told us the story of her conversion.

As a young woman, she had been healthy, had an excellent job, and was content with life, although not a Christian. In 1987 she was in a terrible car accident that left her paralyzed from the waist down. Following her recovery in a hospital, she was living with her parents wondering what she could do with her life. She was dependent and felt empty. What could life possibly hold for her? One day a knock came at the door. Her mother answered, and two American women asked to share a message with the family. Though the mother tried...
to send them away, the daughter could hear
their voices and asked the mother to invite them
in. They were missionaries of The Church of
Jesus Christ of Latter-day Saints. Sister Hee
accepted the invitation to receive missionary
lessons. They began teaching her the gospel.
Although her parents discouraged her from
meeting with the missionaries, she continued
taking the lessons as she enjoyed the compan-
ionship at first and then began feeling the
warmth of the spirit as she read the Book of
Mormon and attended church. Eventually she
received a witness and was baptized.

As she bore her testimony in stake con-
ference, she said: “I know that Heavenly Father
does not look on the outward appearance but
on the heart. I also know that the greatest miracle is
the healing within, the change of heart, the loss
of pride. With an understanding of the gospel
plan and faith in Jesus Christ, I now can face the
world even if I am confined to a wheelchair.”

As I listened to her, I began to understand
that the greatest miracle of the Atonement was
the power Jesus received to change lives if peo-
ple come to the Father and the Son with a bro-
ken heart and a contrite spirit. Although her
physical body may not be healed in mortality,
his spirit had already been healed by the power
of the Holy Ghost. In the resurrection she
will receive a fully restored, perfected physical body
that will be inseparably connected with her
beautiful, healthy spirit. As a consequence, she
will experience a fullness of joy. But the great
miracle that will make her ultimate destiny pos-
sible is the healing of her spirit by the Holy
Ghost through the eternal atonement.

The Ten Lepers

Perhaps Sister Kim’s discovery reveals the mean-
ing of the Savior’s parable of the ten lepers. Luke
describes Jesus meeting ten lepers in a certain
village where they stood afar off. They lifted up
their voices and asked Jesus to have mercy on
them. When the Savior saw them, he told them
to show themselves to the priests. As they went
their way they were cleansed. One of them,
when he realized he was healed, returned to
Jesus, fell on his face at the feet of the Master
and gave thanks. Jesus said to him: “Were there
not ten cleansed? but where are the nine?” And
then the Lord said to the one who returned:
“Arise, go thy way; thy faith hath made thee
whole. In the case of the nine, the healing appar-
ently did not result in a spiritual blessing. The
tenth leper and Sister Hee were changed eternally
by their faith in the Savior and the healing power
of the Atonement.

Eternal judgment

Another aspect of the eternal atonement is the
power to make the final judgment regarding the
destiny of men’s and women’s souls. The Savior
revealed to his disciples in Jerusalem: “In my
Father’s house are many mansions” (John
14:2). The scriptures teach that there are many
kings and kingdoms to which one may be assigned
(D&C 76, 1 Corinthians 15:40–41). Who
determines our ultimate assignments? As part
of the eternal atonement, Jesus received the
power, the insight, and the understanding to
make the judgment that determines our eternal
destinies. Jacob explains that the “keeper of the
gate is the Holy One of Israel: and he
employeth no servant there” (2 Nephi 9:41). As
explained previously, Jesus experienced our
sorrows, sufferings, temptations, sins, sicknesses,
and infirmities. He knows us personally. Jesus
received a commission from the Father that
gives him the right to carry out the judgment.
The commission, combined with his knowledge
and insights regarding our desires and character
gleaned through the Atonement, coupled with
his knowledge of the laws of mercy and justice,
allow him to make a righteous judgment.

Conclusion

Alma and Amulek understood the gospel plan.
Although they lived decades before Jesus of
Nazareth was born, they knew that he would be
the Son of the Father. They understood that he
would have the seeds of immortality within him
so that his sacrifice would be voluntary.
Moreover, the sacrifice would be infinite and
eternal. It would span eternities as well as space.
But it would be an intimate offering as well.
The Savior’s eternal capacity would pay the
price of sin for all of us and internalize within
us the meaning of our pain, sicknesses, tempta-
tions, afflictions, and infirmities so that he
could heal us, restore us to a celestial state, and
help us achieve our potential.

Bishop Merrill J. Bateman is the Presiding Bishop
of the Church of Jesus Christ of Latter-day Saints.
In January 1996 he will become the president of
Brigham Young University and a member of the
First Quorum of Seventy.
Out of Kindergarten Out of Law

BY

MARILYN V. YARBROUGH

Members of the class of 1995 of BYU Law School, thank you for inviting me. I am honored. While I was thinking about the presentation for this afternoon, one of my favorite poems kept coming to mind:

Two roads diverged in a yellow wood,
And sorry I could not travel both
And be one traveler, long I stood
And looked down one as far as I could
To where it bent in the undergrowth.

[Robert Frost, "The Road Not Taken"]

For the last few years when speaking at an occasion like the one we celebrate today, I have quoted from the book All I Ever Really Needed to Know I Learned in Kindergarten, not just for law school graduation ceremonies but for orientations and honors days as well. With general student audiences, I have used it to reassure students that they are equipped to handle the anxiety and stress that inevitably occurs when they encounter new situations. For law students, I have used it to reassure them that they are equipped to handle the anxiety and stress that evidently affects law students and lawyers in exceptionally high proportions. I have used it hoping to enable them to answer critics of the profession who seek to judge them by their stereotypical depictions of lawyers as dishonest and greedy, by providing them with the confidence
that essay and another one in a few minutes; but first, back to the poem.

For some reason, of all the poems I learned in high school, that Robert Frost one sticks with me—at least that much of it. I sensed that it was appropriate for today’s talk, but I couldn’t remember anything beyond those first four lines. One of my daughters supplied the last lines of the poem:

Two roads diverged in the wood, and I—
I took the one less traveled by,
And that has made all the difference.

My objective today is to present a challenge to those of you who are graduating and also to reaffirm many things that you already know. The poem states the challenge: that you consider pursuing the road less traveled by. You are special people. Most of you have already taken that path in just how you’ve chosen to live your lives. In numbers, in level of education, in hours worked, in so many ways, you are very different from most of your non-law colleagues. In our professional code, you are—we are—unique as well.

Having said that, I want to devote the rest of my remarks to what I see as one of the most formidable obstacles to the future greatness of our society. It threatens us no matter how well off, how well educated, or how well protected we feel. It is the hopelessness felt by so large a segment of our population.

When your dean asked if I would deliver your commencement address, I began looking for themes especially meaningful to you. Last November I clipped from a recent issue of USA Today the cover story, entitled “Children Get Poorer; Nation Gets Richer.” I was saving it for inclusion in the materials I was collecting for the race and gender class I teach spring semester. Accompanying the feature was a straight news story headlined “In 1993, Child Poverty Levels Hit 30-Year High.”

I was struck by the opening paragraphs:

Seven-year-old Antoinette Thomas doesn’t know that here in her homeland, 15.7 million children are poor. But she knows she’s poor: She has to save her candy money to buy socks.

Nine-year-old Sandra Gomez doesn’t know that a greater share of U.S. kids are poor now than at any time in three decades. But she knows she’s poor. The family meal is donated by the local church.

Fourteen-year-old Ralph Montemayor doesn’t know that 31 percent of poor kids, like him, now live in suburbia. But he knows he’s poor: He hates to show people the crumbling house where he sleeps under a big hole in the ceiling.

They do not wash their hands before they eat. There is no water. Or soap.

And some do not have hands to wash.

—Robert Fulghum
The statistics record it: Nearly 23 percent of kids live in poverty, not in third world countries, but here in the United States.

Sandra Gomez’ father works from 6:30 a.m. until 10:00 p.m. In fact, almost two-thirds of poor families with kids have an adult who works; one-fifth have a full-time, year-round worker. Modesto Gomez earns $9,600 a year wages from a dry cleaner and gets about $200 a month in food stamps.

Antoinette Thomas’ mother was kicked out of her parents’ house when she became pregnant at age 16. For most of the last 12 years she has supported her kids through welfare, food stamps, and part-time jobs. A few months ago, she was hired into a full-time job as a nurse’s assistant, but her salary leaves her family well below the poverty line.

I shouldn’t have to recite the litany of reasons for that poverty—we know them all too well: family wages that have fallen in relation to inflation; global economic shifts that have changed employment requirements; and high divorce rates and out-of-wedlock child-bearing, rising sharply and giving rise to unprecedented numbers of children in single-parent and, if lucky, at least single-income households. Nonsupport or insufficient support from noncustodial parents compounds the problem.

In choosing a theme for today, I reflected on our responses—as lawyers, as legislators, and as citizens—to these problems. So much of what has been in the news has focused on a dislike or disapproval of the parents’ behavior and not on the poor children. Rather than rushing to provide them with the education, health services, nutrition, and guidance that might enable them to break this chain of poverty we seek to cut them off. Our discussions of welfare reform and stiffening immigration laws seem to focus more on insuring that this new generation of poor children—15.7 million of them—will be undereducated, undernourished, and unhealthy. I considered the essay I mentioned earlier, the “all that I really need to know” and its simplistic solutions to all of the world’s problems. Let me help you recall it now. It reads:

All I really need to know about how to live and what to do and how to be I learned in kindergarten. Wisdom was not at the top of the graduate-school mountain. In choosing a theme for today, I reflected on our responses—as lawyers, as legislators, and as citizens—to these problems. So much of what has been in the news has focused on a dislike or disapproval of the parents’ behavior and not on the poor children. Rather than rushing to provide them with the education, health services, nutrition, and guidance that might enable them to break this chain of poverty we seek to cut them off. Our discussions of welfare reform and stiffening immigration laws seem to focus more on insuring that this new generation of poor children—15.7 million of them—will be undereducated, undernourished, and unhealthy. I considered the essay I mentioned earlier, the “all that I really need to know” and its simplistic solutions to all of the world’s problems. Let me help you recall it now. It reads:

All I really need to know about how to live and what to do and how to be I learned in kindergarten. Wisdom was not at the top of the graduate-school mountain. In choosing a theme for today, I reflected on our responses—as lawyers, as legislators, and as citizens—to these problems. So much of what has been in the news has focused on a dislike or disapproval of the parents’ behavior and not on the poor children. Rather than rushing to provide them with the education, health services, nutrition, and guidance that might enable them to break this chain of poverty we seek to cut them off. Our discussions of welfare reform and stiffening immigration laws seem to focus more on insuring that this new generation of poor children—15.7 million of them—will be undereducated, undernourished, and unhealthy. I considered the essay I mentioned earlier, the “all that I really need to know” and its simplistic solutions to all of the world’s problems. Let me help you recall it now. It reads:

All I really need to know about how to live and what to do and how to be I learned in kindergarten. Wisdom was not at the top of the graduate-school mountain. In choosing a theme for today, I reflected on our responses—as lawyers, as legislators, and as citizens—to these problems. So much of what has been in the news has focused on a dislike or disapproval of the parents’ behavior and not on the poor children. Rather than rushing to provide them with the education, health services, nutrition, and guidance that might enable them to break this chain of poverty we seek to cut them off. Our discussions of welfare reform and stiffening immigration laws seem to focus more on insuring that this new generation of poor children—15.7 million of them—will be undereducated, undernourished, and unhealthy. I considered the essay I mentioned earlier, the “all that I really need to know” and its simplistic solutions to all of the world’s problems. Let me help you recall it now. It reads:

All I really need to know about how to live and what to do and how to be I learned in kindergarten. Wisdom was not at the top of the graduate-school mountain. In choosing a theme for today, I reflected on our responses—as lawyers, as legislators, and as citizens—to these problems. So much of what has been in the news has focused on a dislike or disapproval of the parents’ behavior and not on the poor children. Rather than rushing to provide them with the education, health services, nutrition, and guidance that might enable them to break this chain of poverty we seek to cut them off. Our discussions of welfare reform and stiffening immigration laws seem to focus more on insuring that this new generation of poor children—15.7 million of them—will be undereducated, undernourished, and unhealthy. I considered the essay I mentioned earlier, the “all that I really need to know” and its simplistic solutions to all of the world’s problems. Let me help you recall it now. It reads:

All I really need to know about how to live and what to do and how to be I learned in kindergarten. Wisdom was not at the top of the graduate-school mountain. In choosing a theme for today, I reflected on our responses—as lawyers, as legislators, and as citizens—to these problems. So much of what has been in the news has focused on a dislike or disapproval of the parents’ behavior and not on the poor children. Rather than rushing to provide them with the education, health services, nutrition, and guidance that might enable them to break this chain of poverty we seek to cut them off. Our discussions of welfare reform and stiffening immigration laws seem to focus more on insuring that this new generation of poor children—15.7 million of them—will be undereducated, undernourished, and unhealthy. I considered the essay I mentioned earlier, the “all that I really need to know” and its simplistic solutions to all of the world’s problems. Let me help you recall it now. It reads:

All I really need to know about how to live and what to do and how to be I learned in kindergarten. Wisdom was not at the top of the graduate-school mountain. In choosing a theme for today, I reflected on our responses—as lawyers, as legislators, and as citizens—to these problems. So much of what has been in the news has focused on a dislike or disapproval of the parents’ behavior and not on the poor children. Rather than rushing to provide them with the education, health services, nutrition, and guidance that might enable them to break this chain of poverty we seek to cut them off. Our discussions of welfare reform and stiffening immigration laws seem to focus more on insuring that this new generation of poor children—15.7 million of them—will be undereducated, undernourished, and unhealthy. I considered the essay I mentioned earlier, the “all that I really need to know” and its simplistic solutions to all of the world’s problems. Let me help you recall it now. It reads:

All I really need to know about how to live and what to do and how to be I learned in kindergarten. Wisdom was not at the top of the graduate-school mountain. In choosing a theme for today, I reflected on our responses—as lawyers, as legislators, and as citizens—to these problems. So much of what has been in the news has focused on a dislike or disappro
And remember the Dick-and-Jane books and the first word you learned—the biggest word of all—LOOK.

Everything you need to know is there somewhere. The Golden Rule and love and basic sanitation. Ecology and politics and equality and sane living. . . Think what a better world it would be if we all—the whole world—had cookies and milk about three o'clock every afternoon and then lay down with our blankies for a nap. Or if all governments had as a basic policy to always put things back where they found them and to clean up their own mess.

And it is still true, no matter how old you are—when you go out into the world, it is best to hold hands and stick together. [Robert Fulghum, All I Really Need to Know I Learned in Kindergarten (New York: Ivy Books, 1989), pp. 4-5]

That essay is by Robert Fulghum, an amateur philosopher. Since the success of his first published collection of essays that takes its title from the one I just read, he has published another, entitled It Was on Fire When I Lay Down on It. In one of the book’s essays that I recently read for the first time, he revisits his kindergarten theme. He tells us:

Here’s the tough part of what I know now: that the lessons of kindergarten are hard to practice if they don’t apply to you. It’s hard to share everything and play fair if you don’t have anything to share and life is itself unjust. I think of the children of this earth who see the world through barbed wire, who live in a filthy rubble not of their own making and that they can never clean up. They do not wash their hands before they eat. There is no water. Or soap. And some do not have hands to wash. They do not know about warm cookies and cold milk, only stale scraps and hunger. They have no blankie to wrap themselves in, and do not take naps because it is too dangerous to close their eyes.

Their is not the kindergarten of finger paint and nursery rhymes, but an X-rated school of harsh dailiness. Their teachers are not sweet women who care, but the indifferent instructors called Pain, Fear, and Misery. Like all children everywhere, they tell stories of monsters. Theirs are for real—what they have seen with their own eyes. In broad daylight. We do not want to know what they have learned. But we know.


A commencement celebration is not the time for discussion of such weighty matters. The celebration of your accomplishments should be just that, a celebration. We should celebrate all of the good that you do, all of

The search for meaning in life is an individual’s most personal concern.

And remember the Dick-and-Jane books and the first word you learned—the biggest word of all—LOOK.

Everything you need to know is there somewhere. The Golden Rule and love and basic sanitation. Ecology and politics and equality and sane living.

. . . Think what a better world it would be if we all—the whole world—had cookies and milk about three o’clock every afternoon and then lay down with our blankies for a nap. Or if all governments had as a basic policy to always put things back where they found them and to clean up their own mess.

And it is still true, no matter how old you are—when you go out into the world, it is best to hold hands and stick together. [Robert Fulghum, All I Really Need to Know I Learned in Kindergarten (New York: Ivy Books, 1989), pp. 4-5]

That essay is by Robert Fulghum, an amateur philosopher. Since the success of his first published collection of essays that takes its title from the one I just read, he has published another, entitled It Was on Fire When I Lay Down on It. In one of the book’s essays that I recently read for the first time, he revisits his kindergarten theme. He tells us:

Here’s the tough part of what I know now: that the lessons of kindergarten are hard to practice if they don’t apply to you. It’s hard to share everything and play fair if you don’t have anything to share and life is itself unjust. I think of the children of this earth who see the world through barbed wire, who live in a filthy rubble not of their own making and that they can never clean up. They do not wash their hands before they eat. There is no water. Or soap. And some do not have hands to wash. They do not know about warm cookies and cold milk, only stale scraps and hunger. They have no blankie to wrap themselves in, and do not take naps because it is too dangerous to close their eyes.

Their is not the kindergarten of finger paint and nursery rhymes, but an X-rated school of harsh dailiness. Their teachers are not sweet women who care, but the indifferent instructors called Pain, Fear, and Misery. Like all children everywhere, they tell stories of monsters. Theirs are for real—what they have seen with their own eyes. In broad daylight. We do not want to know what they have learned. But we know.


A commencement celebration is not the time for discussion of such weighty matters. The celebration of your accomplishments should be just that, a celebration. We should celebrate all of the good that you do, all of
... They tell stories of monsters. T heirs are for real—what they have seen with their own eyes. In broad daylight.

When we take the road less traveled by, we can make a difference in their worlds. We have all of the tools. Despite appearances to the contrary, our educations and personal journeys represent individualized processes of learning, of aspiring, of forming ideas that can be claimed as our own, even as we study with and learn from others and from a largely static canon. Our journeys are private and individualized as well by the nature of the particular set of circumstances that brings each of us to whatever are our tasks.

But we have a responsibility not only to ourselves and our loved ones but also to society. We can fulfill that responsibility by recognizing and assuming that which we have to ourselves: a responsibility to take ourselves seriously to live, as philosophers describe it, "the examined life." A commitment to examine life guarantees that life will be taken seriously not just by us but by those around us as well.

The search for meaning in life is an individual’s most personal concern. Some might seek meaning in retreat, retreat to a formula, wrapping up complex questions in a limited set of answers, simplifying the task, circumscribing behavior. Leaders cannot afford this luxury. There are no easy answers. Indeed, often there are no answers at all, just as there is no "find" to the search for meaning in life. It is not something to be found. It is something that each of us creates by our own actions, by our own behavior.

We try, by our example, to teach others that we define ourselves by the lives we choose to live; in the goals we choose to make our own. One of my mentors, now president of the City University of New York’s Graduate Center, once remarked:

We can choose to tack up a large canvas on which to paint, or we can choose to live a life whose meaning is defined as nothing more than bits and pieces of scraps of paper.

We in essence define ourselves by the permanence of our contributions, by the effects we have on the lives of others and on the world, by the nature of the changes that our lives produce.

When I was growing up, one of my stated goals was to have some significant positive effect on the lives of at least three people. I felt that was an ambitious goal. I was naive. And I was lucky. As an attorney and as a university professor and administrator, I realize that I am empowered as few others are. Whatever the utilization of the degree, the education I received prepared me to both understand and shape public policy. It prepared me to discern and affect issues related to labor, corporations, property, government, education, foreign affairs, health, and the general affairs of people—the list is long. But the key is to recognize the responsibility that attends such power.

Formal education is a device of modern society to help people create meanings in their lives by giving them tools that enlarge their choices, that offer them the perspectives that can enable them to fashion their own creations. But it is not the only way to accomplish that. You in this place this day are uniquely suited to do the job that needs to be done to ensure that basic freedoms and aspirations are in reach of everyone. That first, idealistic essay of Fulghum’s speaks of "the Golden Rule and love and basic sanitation. Ecology and politics and equality and sane living." It refers to "a basic policy to always put things back where [we] found them and to clean up [our] own mess" and the desirability of, "when [we] go out into the world, ... hold[ing] hands and stick[ing] together." Beyond that we can add our voices and our talents in our daily personal lives to making this a better place for everyone, a world that cares, a world different from that in Fulghum’s second essay. That’s my challenge to you. Together we can make it happen.

Marilyn V. Yarbrough is associate provost and a professor of law at the University of North Carolina at Chapel Hill.
"I've always been interested in how we use law to organize society," observes Kif Augustine Adams, one of the Law School's newest professors, "...how we use law to include and exclude people and as a 'coordination solution,'" she continues. It was her favorite political science professor at BYU, Noel Reynolds, who used the term "coordination solution" to refer to ordering human interaction. But her consciousness of exclusion and inclusion did not begin as an undergraduate. Growing up in Oregon as a bright student and a "peculiar" Mormon, she knew what it was to sometimes be left out of high school parties and activities. In fact, she occasionally had to exclude herself, like the time she sat in the car for most of a party because guests were smoking marijuana. BYU was easier, with more opportunity to be involved in useful activity.

She got to know husband Stirling Adams when they both volunteered for a Spanish-language magazine for the blind after their Spanish-speaking missions—a project aimed at including both the blind and the Spanish speaking. After Kif and Stirling married and completed their undergraduate degrees, she with a BA in international relations and English, they both opted for law school. She went to Harvard and he to Boston University. Again she was a minority as a BYU graduate, a Mormon, and a woman. None of those things worked against her, however. She saw her time at Harvard as a "mind-expanding opportunity." She particularly enjoyed getting to know her classmates. She chose not to "specialize" in law school but rather to get a basic foundation of the law that would be helpful to her both as a practitioner and as a law professor, which, even then, she planned to become. She was managing editor of the Harvard Journal of Law and Public Policy and graduated in 1992 magna cum laude. Stirling graduated at the same time and they both accepted jobs in Washington, D.C. He went to the Office of the General Council of the Navy and Kif to Covington & Burling, a large firm known to be a feeder for law school faculties. With the firm's blessing, academics who once practiced there got the map, while the firm continues to actively seek and welcome new blood.

Covington & Burling's wide-ranging practice includes many of Kif's areas of particular interest: administrative and regulatory law and export and import work—particularly the Export Administration Act. Her work centered on the antiboycott provisions.

In addition to the firm's lucrative areas of practice, it places a high priority on pro bono. In fact it always tops the list in The American Lawyer for hours put in and percentage of attorneys contributing their services to prison reform, housing class actions, veteran representation, neighborhood legal services, asylum cases, and the like. Kif soon discovered that at Covington & Burling, high profile pro bono cases like the Baby K case, where the firm represented the mother in a life-support issue, are treated with the same care as a car accident involving the spouse of an employee.

Among her most memorable pro bono assignments at the firm were two asylum cases, one where the client was included and the other where the client was excluded. The first dealt with a radio journalist from Togo, a small, volatile island between Ivory Coast and the curve of Africa. The journalist had aired broadcasts against the island's dictator illegally. The firm was contacted by the Lawyers Committee for Human Rights and asked to represent him. The man fit the legal criteria for inclusion. Not only had he risked his life for the principles of democracy but he held a PhD and spoke English, French, and the local language. Kif and her associates assigned to the case literally saved the man's life.

Another case was not so successful. A Chinese ship, the Gold Venture, ran aground off Long Island. Approximately two hundred Chinese citizens were on the boat. Some drowned. Among those who made their way to shore was a young man from rural China. He and the other survivors were placed in detention by the Immigration and Naturalization Service. INS judges requested help from the
Lawyers Committee for Human Rights in seeking representation for the Chinese individuals. Kif and others assigned to the case had two weeks to prepare for trial. First they had to find someone who could speak the man’s local dialect, then they had to put together a defense. The man was requesting asylum based on persecution he suffered because his brother had more than one child, in violation of China’s one-child-per-family policy. Complex issues existed regarding persecution based on family-planning policies as a basis for asylum. In addition to the legal issues, the case logistics were complex. Kif made several trips to Winchester, Virginia, where the man was being held, and spent many hours in the jail interview room with a frightened and distrustful client and a translator. Despite the fact that professionally it was a disappointment, Kif found the case to be a “culturally fascinating experience.” “We tried to convince the man to answer questions straight-on, but that was not the way of his culture. If asked, ‘Why did the police come to your house?’ he would answer, ‘Because the family is one,’ meaning that he was persecuted because of his brother.” The immigration judge denied the man’s asylum request on the basis that persecution under the one-child rule was not sufficient under statutory criteria for asylum. In reality, the law is still up in the air on the issue. Appeal to the Board of Immigration Appeals ended with the ruling that the man should have been in deportation rather than exclusion proceedings and was entitled to a new hearing. At that point the man, upon very poor advice, switched from pro bono counsel to another attorney. The last Kif heard of him, he was still languishing in the Winchester Jail.

After Kif worked on these cases and others like them, she became even more skeptical that inclusion and exclusion laws are fair. Immigration regulations are based on the true premise that we can’t include everyone, but when Kif met people who didn’t meet criteria for inclusion, yet could make and were making contributions to our society, the regulations seemed highly inadequate.

When Kif had been at Covington & Burling for almost two years, her daughter Sofia was born. The firm’s practice often supported new parents, limiting travel during the first year of the child’s life. Quite a number of associates, men and women, had young children, and they freely discussed their concerns about child care, preschools, and work loads. A few months after Sofia was born, Kif was offered a position teaching torts and public international law at BYU. Given
Kif’s opportunity. Stirling decided to look for a job in Utah as well. He currently works as in-house counsel at Novell. “Traditional practice was exciting because there were immediate problems to be solved and a unique sort of energy generated,” observes Kif. “However, law practice does not offer as many opportunities to look at the whole picture. As a law professor, you are able to think of the bigger picture rather than specific questions your clients need answered immediately.” Kif likes looking at larger issues, investigating change and improvement at the policy level.

Though the community at BYU’s J. Reuben Clark Law School is more homogeneous that the ones Kif has worked in and lived in for most of her life, there will be much opportunity for her particular philosophy: “I want to be judged by what I do, whatever it is—work, family, church service—makes a difference in improving people’s lives, whether it helps them to belong to a community that they value.”

LARRY ECHOHAWK

DREAMER OF DREAMS, MAKER OF REALITY

For Larry EchoHawk there are two dream speeches. One he watched on television with his itinerant oil-rigger father when he was 14 years old. They sat in their little living room in Farmington, New Mexico, following the flickering images on a black-and-white TV, and Larry heard for the first time “the booming voice of Martin Luther King, Jr.” The words “transformed me,” he avers. “Dreams that had lived only in my soul rose to the surface, and I pursued them with the vigor and single-mindedness of youth.” The speech was a revelation to a boy who had sat at the back of one classroom after another, cringing and staring at his shoes during history lessons where he and his father’s people were referred to as savage, heathen, renegade, and bloodthirsty. He began to hold his head up a little more after that August night in 1963.

His father was also touched but not as optimistic. Ernest EchoHawk had been sent away from the Pawnee Reservation in Oklahoma during the depression to a boarding school where he was taught was how not to be an Indian. If he had ever believed in the American Dream, years of following low-paying jobs and dulling his memories and inadequacies with alcohol had almost erased any hope. Gone the once proud heritage of the first EchoHawk, Larry’s great-grandfather. “To the Pawnee, the hawk is a symbol of a silent warrior,” Larry once wrote. “My great-grandfather was known for his bravery but he was also known as a modest and quiet man. He did not speak about his own deeds, but word of his courage ‘echoed throughout the village.’” That family pride had dissipated. In fact in the early sixties, it looked like the EchoHawk family itself was headed for break up. Larry’s father and non-Indian mother had been through too many troubled years. The six children, four older than Larry, were facing a bleak future.

Just a year before the King speech the family situation had begun to improve. A Mormon neighbor sent stage mis- sionaries to visit the EchoHawks. Those visits changed the direction of the family for years to come. For the first time the family attended church together. To be baptized, Larry’s father gave up alcohol. Little by little, Ernest began to again take pride in his heritage, which would later culminate in a return to the Pawnee Reservation and the traditions he had been beaten and punished for remembering. Larry’s mother, who had not finished high school, now saw each of her six children obtain a college education. Three sons and a daughter graduated from Brigham Young University, all on either athletic or academic scholarships. Larry came to BYU on a full-ride football scholarship. He played in every BYU football game from 1967 to 1969, was a two-year starter at defensive safety and earned All-WAC academic honors as a senior. With this kind of accomplishment it was natural that he should consider a career in sports.

That was not to be, for at BYU he heard about another dream speech that opened even wider vistas and possibilities. Spencer W. Kimball, Church president and ever advocate for the Lamanites, spoke to a group of Native Americans:

(In 1946) I had a dream of my progress and development. Now this is precisely what I dreamed; this was my vision for the people of the Lamanites. I got up from my bed and wrote my dream. This is what I wrote:

As I looked into the future, I saw the Lamanites from the isles of the sea and the Americas rise to a great destiny. I saw great numbers of Lamanites in beautiful homes that have all the comforts that science can afford. . . . I saw the people of Lehi as engineers and builders, building lofty bridges and great edifices. I saw you in great political positions and functioning as administrators over the land. I saw you as heads of government and of the counties and states and cities. I saw you in legislative positions, where as legislators and good Latter-day Saint citizens, you were able to help make the best laws for your brethren and sisters.

I saw many of you becoming attorneys and becoming the solution of the world’s problems. . . . I saw you as owners of industries and factories. . . . I saw [you] as doctors, as well as lawyers, looking after your people.

Now, that was my dream. Maybe it was a vision. Maybe the Lord was showing to me what this great people would accomplish.

Suddenly Larry’s possibilities expanded to include a whole list of other professions. At about this time older brother John, the first Native American graduate on the American Indian Law Scholarship, suggested that Larry could do much good for his people if he were a lawyer. Larry applied and was admitted to the University of Utah, where he also received an American Indian Law Scholarship. He and his wife, Terry Pries, headed for Salt Lake City, where the hardest part of attending law school would be cheering for the Utes. After three years Larry decided they weren’t as bad as he had been led to believe.
Since his graduation in 1973, it appears that Larry has taken President Kimball’s dream as his personal blueprint. First he served the Indian people by working for the California Indian Legal Services. Next he opened a private practice in Salt Lake City where most of his clients were Native Americans. The practice expanded to seven attorneys, still maintaining a largely Native American client base, before Larry left in 1977 to become Chief General Counsel to the Shoshone-Bannock Tribes at Fort Hall, Idaho. The tribes had always been represented by Anglo attorneys, and Larry competed with several large firms for the position. He continued in their service for eight and a half years. During that time, he was elected to the Idaho House of Representatives in 1982 and re-elected in 1984. He became Bannock County prosecutor in 1986. (Bannock is the fourth largest county in Idaho and borders on Fort Hall Reservation.) He continued as prosecutor until he was elected in 1990 as attorney general of Idaho, the first Native American in U.S. history to be elected to a statewide office. In this position other honors and opportunities came his way. He argued a case before the Supreme Court of the United States. In 1992 he spoke at the Democratic National Convention on the final night to an audience of 20,000 people and nationwide television. In that address he talked, as he often does, about the values he grew up with and the importance of education as an opportunity all should have, no matter where they come from. He was a welcome visitor to the White House. Still he put the needs of his state foremost. It was with his state in mind that he opposed casino gambling on the reservation. Larry had been elected to his office with tribal support. During the campaign, he cautioned the tribes that if he were elected he could not be the tribal attorney in the statehouse and that they now needed to retain their own counsel. Nevertheless he promised, “Though we may disagree on issues, I will never disagree with you in spirit.” In his new office he supported the Indian viewpoint until the issue of casino gambling arose. For the first time he opposed a tribal stand on an issue. Reservations are under federal jurisdiction and Indian gambling is controlled by the federal government. Nonetheless, federal law does not go against established state law and constitution. A window in the existing Idaho law could have been construed to allow casinos on the reservation. A special
keeping insurance rates down. "Though my father's physician-owned insurance company established in an effort to be a member of the board of directors of NORCAL, a 

Though my father's physician-owned insurance company established in an effort to be a member of the board of directors of NORCAL, a personal injury or medical malpractice."

interestingly along with water law, jim is teaching torts, but he sees no incongruity there: "Torts is one of the last great common-law courses. It epitomizes the majesty of the common-law tradition. Teaching and learning torts is thus much more about legal reasoning and process than it is about learning to practice in the personal injury bar."

Jim describes his and his brother Win's upbringing as "traditional." "We were given the opportunity and encouragement to pursue our interests," says Jim. "Early on my interest was sports of any kind. Any significant aspirations ended at junior high, however, when I learned that being the top athlete in a small elementary school was going to have to satisfy any need for memories of on-the-field heroism.

Many of Jim's early summers were spent in Heritage Halls with his mother and brother while his mother pursued her degree in English. "My mom and dad's tenacity to get that degree taught me a lot about the value of education."

Jim attended a private high school in Pebble Beach. He finished his freshman year with his usual 4.0 while playing baseball, lacrosse, and basketball. His teammates razzed him about his grades and to "ensure credibility" he went down to a 3.0 his sophomore year. Once established as a non-nerd, however, his grades rose with impunity.

When Jim arrived at BYU at barely age 17, he didn't have law in mind. In fact his main interest was learning. He was like a kid in a candy store. He took a little of every thing—Hebrew, Korean, philosophy Middle Eastern history, politics, Arab-Israeli conflict. When finally he had to decide, one major couldn't cover the territory, so he settled on two: English and Near Eastern studies. After a mission to Korea, he added a Korean minor. Always in the back of his mind was academics. At one point he considered a PhD in English and teaching, a route chosen by two of his favorite authors, Tolkien and C. S. Lewis. In the meantime he had met Mary, a chemical engineering major on her way to a master's degree. They married, and as he neared graduation ("I was one of those 190-hour seniors you hear so much about these days."), he decided to apply for law school rather than pursue an English PhD. Though the decision was difficult, he saw law, unlike English, as a real-life application for academics—with interesting, intellectual debates as well as an opportunity to deal with the problems of living antagonists and protagonists. He was accepted by his first choice—Harvard—and became the only BYU graduate in his first year class.

When the couple headed for Cambridge, Mary had only her master's degrees to complete for her degree, which she did between the births of the couple's first two children while Jim was in law school. "I actually enjoyed law school," avers Jim, "especially my first year." Enjoyment diminished somewhat during the second and third years with law review stress.
After graduation he spent a year clerking for Judge J. Clifford Wallace on the Ninth Circuit before moving on to Seattle, Washington, to work for Perkins Coie, the largest firm in the Northwest.

One of Jim's first assignments was in the firm's labor group. There he had a revelation: Unlike at school and the clerkship, the facts did not come neatly packaged. They had to be discovered and painstakingly developed. Quickly he came to enjoy doing the fact development that is the bread and butter of litigation. Early on in his time at Perkins, he represented the Seattle School District in challenges to its bilingual and special education programs. He also performed consulting for various agencies and municipalities seeking to establish women- and minority-owned business preference programs. Soon he added some natural resource work, and he seemed to find his niche. He worked on endangered species issues as well as a number of Indian treaty issues. (During this period he also began doing pro bono work for the Nature Conservancy.)

The case that most stands out dealt with tribal shellfish rights. Jim represented family farmers, many of whom had supported themselves for five generations with their shellfish beds. He characterizes these clients as "salt of the earth." Shell-fishing rights had never been carefully spelled out, and Jim found the history of the case fascinating. It was litigation at its highest. "The attorneys for the tribes were fine people, and their work was high caliber." This case particularly reinforced and fueled his interest in natural resource law, encompassing as it did issues of sovereignty and division and allocation of natural resources—on which much of his scholarly work now concentrates. It also brought to the fore the things he likes most about legal practice—"collaboration with colleagues and clients in researching, writing, and then trying a case." What he won't miss about practice is the aggressive litigation that sometimes overshadows rational discussion—the win-no-matter-what-the-cost attitude. When litigation degenerates to that level, Jim feels like saying, "If it's that important to you . . ."

What is most important to Jim Rasband?
Being a good father to his four children: Rachel Maria, age 9; James Anders, age 6; Danford Edwin, age 4; and Reese David, age 19 months.

Being a good husband. "It's a challenge. When we get away alone, it takes a few hours for the adrenalin to slow down so we can really talk. It's hard to really talk in the brief snippets between hearing about the size of the latest grasshopper catch, looking for missing hamsters, and serving as a tackling dummy."

Being a good Christian. For Jim that includes taking an active role, serving others, and living with integrity.

Does he always succeed? "No," he admits. "I'm often selfish and flawed, but I don't give up on important things."
This past summer the First Presidency called several new mission presidents who are members of the J. Reuben Clark Law Society. Henry K. Chai II, BYU Law School '79, is serving as president of the Philippines Manila Mission; Sterling D. Colton, Stanford Law School '53 and member of the Mid-Atlantic Chapter of the J. Reuben Clark Law Society, is serving as president of the Canada Vancouver Mission; Michael L. Jensen, BYU Law School '78, is serving as president of the Germany Hamburg Mission; A. Keith Thompson, general counsel, Pacific Area, The Church of Jesus Christ of Latter-day Saints, and chair of the Pacific Rim Chapter of the J. Reuben Clark Law Society, is serving as president of the New Zealand Wellington Mission; and William H. Wingo, BYU Law School '76, is serving as president of the New Zealand Wellington Mission; and William H. Wingo, BYU Law School '76, is serving as president of the New Zealand Wellington Mission; and William H. Wingo, BYU Law School '76, is serving as president of the New Zealand Wellington Mission.

In addition, the Law Society welcomes back two members who have recently completed their service as mission presidents: Anthony I. Bentley, Jr., Argentina Buenos Aires North Mission; and William H. Wingo, BYU Law School '76, is serving as president of the New Zealand Wellington Mission; and William H. Wingo, BYU Law School '76, is serving as president of the New Zealand Wellington Mission; and William H. Wingo, BYU Law School '76, is serving as president of the New Zealand Wellington Mission.

Keo worked for the Salt Lake City law firm of Snow Christensen & Martineau from graduation in 1978 until 1992 and then helped organize the firm of Blackburn & Stoll. His practice focused on workers compensation. President Chai’s partner, Michael Dyer, reports that after three months in the mission field, Keo is working even harder than he did in the practice of law. Keo feels that his experience in organizing a new law firm prepared him for organizing a mission. He says that his nine years as stake president of the West Jordan Westbrook Stake prepared him for frequent speaking assignments as a mission president. In addition to his normal workload, President Chai is learning Tagalog so that he can converse more freely with members and investigators.

After 15 years of practice, which include 11 years with the San Diego firm of Luce, Forward, Hamilton & Scripps, Michael Jensen has left labor and employment law and litigation to serve as president of the Germany Frankfurt Mission. This calling is a return to Germany for Michael, who served in the Germany Munich Mission from 1972 to 1974. He and his wife, Jean, are accompanied by their six children: Matthew, 17; Nathan, 15; Jason, 12; Brooke, 11; Justin, 9; and Jacob, 4. The children attend the International School in Frankfurt. Jean, who taught American literature at Ricks College before their marriage, is looking forward to increasing her family of six sons by approximately 300 elders and sisters over the next three years. Church service is not new to Michael. He served as the bishop of the North Hollywood Third Ward, as stake president of the Penasquitos Stake from 1986–1994, and as regional representative in the San Diego and Blythe Regions for two years.

Six other law graduates are serving or have served as mission presidents: Rulon Munns ’76, Mark Zobrist ’76, Von Packard ’77, James Hamula ’85, Steve Snow ’77, and Monte Steward ’76.
A TASTE OF AIR FORCE LAWYERING

by James Gerard McLaren ’89

“You’re crazy!” they said in unison. It wasn’t quite the reaction I had expected. I had just told my law school friends of my plans to join the Air Force Judge Advocate Corps. Apparently they had little respect for military lawyers. Four years later, having finished my tour, I thought I’d set the record straight.

I first became interested in the Air Force when I was turned down by all the East coast firms with international law offices abroad. I had studied at Glasgow and Edinburgh, and thought I might get an opportunity to work in England. However, the tone of letters of rejection from firms with names like Goldberg, Finkelman & Sapperstein left me wondering whether my qualifications weren’t up to snuff, whether BYU didn’t have a big enough reputation, or whether I didn’t have the right last name. I saw an ad in an ABA Journal where Imwinkelreid touted the virtues of being a judge advocate (JAG). He writes books, so he should know. I thought this might be a good opportunity to work in England. I applied to the Air Force (they have more slots in England than the Army or Navy do) and went for an interview at Hill Air Force Base.

At the interview the colonel in charge of lawyers at the base liked me. A top-third finish in law school and moot court/law review are expected. There are about 160 applicants for every 20 slots. I was asked if I liked courtroom work. Apparently most recruits are attracted by the thought of litigating their own cases instead of letting the senior partners get the glory. I wasn’t at all interested in the courtroom. “Too bad,” he said, “that’s where you’ll be spending a lot of your time.”

The Air Force tried to convince me that England was out of the question for a first assignment, but a little persistence paid off. I was selected and offered a choice of England, Germany, or North Dakota. I ended up at a base near Cambridge, a mile from Prime Minister John Major’s private residence. I rented a home for my wife and three children in a quaint village called Hemmingford Abbots. It had the atmosphere of an Agatha Christie novel about murder at the Rectory. Most of the homes were thatched, most of the residents tweedy. Our neighbors were delightfully friendly, except when someone attending bishopric meeting at our house would park on the verge of their huge, manicured lawns.

The colonel had been right. Much as I hated it, I was thrust into the courtroom trying criminal cases. However, after half a dozen or so courts-martial, I found myself relishing the challenge. I found I had a knack for closing arguments and rebuttal, though my cross-examination was never as exciting as Perry Mason’s. At least I’ve learned never to ask that “one question too many” or to ask the defendant in open court to try on the gloves found at the crime scene, or, as happened to me once, to try to lay a foundation with the wrong witness.

The military judges were very sympathetic toward fledgling litigators. I learned most when Judge McShane was on the bench. With every objection he would expect you to quote the federal rule of evidence number and be specific in the language of the rule. When defense stated objections, he would expect a prosecution rebuttal. Sometimes defense would come up with an unexpected objection. If you didn’t have a clue, you at
least scored points by standing up and saying "Frivolous!" in an airy manner. The judge would not press the matter farther, knowing that you were clueless. I tried about 16 courts in all and could have done 50 if I'd wanted to. I'm glad now the Air Force made me do it. Every time I jump to my feet and state an objection, I think of Professor Kimball's classes. Maybe he'd give me a better grade if he could see me now.

I had a unique experience when I was sent to Holland as an investigating officer (I.O.) in a fraud case. I.O.'s perform the same function as the grand jury. Kevin Cutler, an LDS JAG, was prosecuting. Mark Strickland, also an LDS JAG, was defending. The three of us were in a courtroom in the middle of Holland serving three different functions. I resisted the desire to ask the accused if he was LDS too. I quickly got business out of the way, took some leave, and settled down to touring Holland and Germany with my wife, Kathleen. The Air Force partially paid for the car ferry, and our military gas coupons enabled us to fill up anywhere at one fourth of the local cost. Now that's living!

We frequently visited my family who still live in Glasgow. We visited antique markets, Elizabethan homes, and medieval castles. We ate in pubs, and Kathleen even went to tea at Lord and Lady Hemmingford's residence, called, you may have guessed, "The Old Rectory." I went to local courts and to the appeals court in London to view cases. I even pursued an advanced law degree at Leicester University.

Entry-level judge advocates are usually called on to work in one of three subject areas: justice, civil law, or claims. These rotate roughly each year. By the end of three years you may know quite a bit of criminal law, have written 100 opinions on contracts, environmental, and labor law, and have negotiated 50 tort claims. One of my most memorable days at work was investigating a claim made by someone who asserted that he had a government listening device implanted during a hemorrhoidectomy. I'm sure all Orwell devotees will sleep sounder knowing that I got to the bottom of the case, and the claim was without foundation. JAGs also do "legal assistance." During my busiest year, I had 947 legal consultations on inter alia, taxes, divorce, wills and estates, consumer law, real estate, landlord/tenant, and immigration. At times it felt like "M.A.S.H.," doing meatball law and seeing six divorce clients in just under three hours. However, if you want to get your feet wet, this is this place. My job gave me the opportunity to travel in Europe and to be close to my family in Scotland. The academic credentials of many of the JAGs with whom I worked were impressive. Most of the JAGs were great people to work with and to work for. T here was always good camaraderie and excellent work ethic. The hours were reasonable with only occasional call-outs at midnight or 5 a.m. By day I might be dining with British solicitors, by evening donning full chemical warfare equipment and sheltering under a desk during an exercise. My four years met all my expectations and made me a much more competent lawyer. Air Force lawyering may not have the respect it merits. Many JAGs stay on because jobs after the military are scarce. One thing's for sure though, I wasn't crazy.

James Gerard McLaren '89 now works at Hill Harrison Johnson & Smutz, PC, in Provo.

MAKING SENSE

Gary C. Bryner '94


The Supreme Court's rulings on religious freedom and establishment of religion are among the most unpopular of the Court's decisions and are more widely criticized, challenged, and ignored than perhaps any other constitutional law area. Scholars and practitioners have struggled to make sense of these decisions and to deduce from them a coherent theory of religious freedom. Dissatisfaction with the Court's religion clause decisions has produced a proposed Religious Equality Amendment to the U.S. Constitution and other constitutional amendments aimed at reversing the Court's decisions. The Court's inability to provide
a coherent constitutional framework for these issues is part of a much broader ferment over religion's role in American politics and society.

In The Rhetoric of Church and State, Professor Frederick Mark Gedicks of BYU's J. Reuben Clark Law School argues that the Supreme Court has greatly contributed to the controversy over the place of religion in American life. In the Court's establishment clause cases, it generally requires governments to have secular purposes before interacting with religion, but its holdings are inconsistent. Even more troubling are the Court's decisions under the free exercise clause. In the past, the Court contended that religious freedom was to be measured by whether the government actions infringe on their liberties in theory, in practice, non-Christians lost cherished rights, and authority or tradition; and religion is an irrational and regressive force in society that must be strictly confined to the private sphere. Government can only act if it has a secular purpose. Government actions or laws must rest on a foundation of reason; knowledge is discovered by reason and cannot be established through an appeal to religious authority or tradition; and religion is an irrational and regressive force in society that must be strictly confined to the private sphere. In this secular individualism, religious belief is a private matter free from government interference, and insulation of public life from religion is essential to ensure individual freedom and political balance. The individual is paramount: "The emphasis is on preservation of individual choice through value-neutral procedures, so that individuals remain free to act upon the truths they discover in the exercise of their own reason. Secular individualism permits religion to influence government and public life, but only indirectly as the result of private choice rather than as the result of direct government encouragement or assistance" (p. 13).

The culmination of a continuous process of secularization and privatization of American life, secular individualism has replaced religious communitarianism as our public, constitutional discourse. While a religious communitarian approach occasionally surfaces, the secularist discourse dominates. In every area of religious clause jurisprudence, the Court has replaced the discourse of religious communitarianism with secular individualism.

As Professor Gedicks argues, the two discourses somewhat parallel a debate among legal scholars, political scientists, sociologists, and others about the American Founding and its understanding of individual rights. The republican tradition assumes "an objective conception of the public interest and a state that could legitimately promote virtue"; in contrast, liberalism assumes "individual self-interest as the only legitimate animating force in society" and denies "any conception of an autonomous public interest independent of the sum of individual interests" (p. 21). Republicanism permits government to promote virtue, while liberalism requires government neutrality concerning religion in public life. However, theories of republicanism do not agree
on the role of religion in such a society or the source of truth. Liberals disagree over whether religious practices could be exempt from otherwise neutral laws.

Professor Gedicks believes three problems result from the Supreme Court’s inability to deal with these competing discourses. Two problems are the shortcomings in the Court’s reasoning. First, the Court’s decisions appear to be confused and inconsistent because different holdings rely on different theories. Since the theories are contradictory, the decisions seem erratic and unpredictable. Under the Establishment clause, for example, states may provide religious schools with maps and films but not textbooks. They may assist schools with busing students to and from school, but not with field trips.

The second shortcoming is that even as the Court has shifted ideologically to the right, it has still relied on a secular individualism to view government involvement in or support of religious activities. The reasoning that rejects interchange of church and state is now used to defend close ties between the two. For example, in upholding Sunday closing laws, prayers in legislatures, religious displays on public property and some assistance to religious-based higher education institutions, the Court relies on a secular individualist value of neutrality instead of the religious communitarian view that religion plays an important social role and should be encouraged. Under the Court’s view, public religious expressions are acceptable only if they can be secularized. So, the Court denies the religious nature of activities it seeks to protect and weakens public commitment to religion.

The third problem is the result of the Court’s jumbled jurisprudence. The Court has failed to provide clear and dependable guidelines for determining what is required to ensure governmental neutrality about religion, secular purposes underlying government actions, and the protection of religious freedom. This failure has spawned tension. Overwhelming public support is for the religious communitarian view, and there is corresponding little support for secular individualism.

The justices have failed to recognize the subjectivity of the discourse they embrace. The Court gives preference to secular, objective knowledge over that which is subjective or based in religion. As a result, religious freedom has not been secured. The Court has failed to provide exemptions for religious practices such as an Orthodox Jew wearing a yarmulke in the military or the government halting a highway construction project because it prevented a Native American tribe from worshipping.

Several chapters of the book show these problems and review in detail the major Supreme Court cases that have arisen under the First Amendment’s religion clauses. In chapter three, Professor Gedicks argues that the idea of neutrality is manipulated in deciding cases concerning public aid to parochial schools. The Court relies on a secular individualist discourse that requires governments to be neutral regarding religion: aid that flows directly to religious schools is unconstitutional, while assistance aimed at individual students is acceptable.

In the equal-access cases, reviewed in chapter four, religious groups can be given access to public facilities if they are simply one of many groups and if assistance to religion is incidental. A neutral position toward religion does not justify denial of financial and other benefits to religious schools; denying government aid to parochial schools can only be viewed as neutral if government educational funding is insignificant—an implausible position given current spending levels.

Chapter five discusses cases where the Court has permitted aid to religiously sponsored colleges and social service agencies and upheld property tax exemptions for churches but failed to acknowledge the value of these organizations as religious bodies.

Chapter six charts the failure of the Court to find ways of accommodating religious practices. Professor Gedicks is particularly critical of the Court’s decision in Employment Division v. Smith. The Court’s decision is consistent with a religious communitarian outcome, but it tries to fashion a rationale through secular individualism. In a several cases, the Court has required that government actions that burden religious freedom or religious-based objections be justified by a compelling interest. In some cases, such as
payment of social security taxes, the Court has found such an interest. But it abandoned that standard in Smith, “effectively repealing” the free exercise clause (p. 108). Government can now reinforce religious values that contribute to social order while rejecting deviant religious beliefs. The Court “uses a secular individualist analysis to justify what is a religious communitarian result” (p. 116), and ultimately fails to ensure religious liberty.

Professor Gedicks concludes that the secular individualist approach should be rejected because it cannot provide an effective guide for the Court’s religion clause decisions. It is also unable to produce a coherent theory for exemptions to the free-exercise standard that prohibits religious discrimination and ensures real religious liberty. The discourse itself is also highly unpopular. But a religious communitarian discourse is not a viable option, because of the way it operated in the 19th century “to justify legal persecution of religious, racial, and ethnic minorities” and continues to fail to protect “those who find themselves outside the religious mainstream in the locality in which they live” (pp. 122–23). Unfortunately, secular individualism and religious communitarianism are, according to Professor Gedicks, “the only two imaginable alternatives” (p. 125), and a new discourse will only emerge when justices and others become convinced of the failure of secular individualism to provide the basis for church-state relations.

A CREATIVE READING BETWEEN THE LINES OF HISTORY

Michael Patrick O’Brien


The late 1980s and early 1990s were a momentous, evolutionary, and historical time to be alive. Just think about what happened. The Berlin Wall fell. Czechoslovakia’s dissident playwright became its president. Solidarity came to rule the Poland that had banned it just a few years before. The Baltic Soviet republics again gained independence. A Chinese Statue of Liberty was raised in Tiananmen Square. Boris Yeltsin stood on a tank to thwart one coup and while initiating the one that brought to an end the existence of the Soviet Union as a nation. Nearly a half century’s worth of maps were redrawn with almost a wink of the eye and the nod of the head. It all seemed to happen so fast, so easily—maybe too fast, too easily?

Such suspicions are at the heart of Timothy Burton Anderson’s first novel, The Reign of the Stavka. Anderson is a 1978 graduate of the J. Reuben Clark Law School and a shareholder with the Utah law firm of Jones, Waldo, Holbrook & McDonough. He practices in the fields of litigation and international commercial law and lives with his wife and three children in St. George, Utah. In the early 1990s, Anderson worked as U.S. legal counsel for a corporate subsidiary of the Soviet Ministry of Aviation, leading to regular visits with the KGB and, as you might expect, the FBI, the latter intrigued with the motives of a cadre of Soviet businessmen interested in southern Utah. In his spare time, Anderson now writes novels.

In The Reign of the Stavka, Anderson spins an enthralling, Tom Clancy-esque tale linking dead cosmonauts, elite KGB troops, and the polygamists of southern Utah in a dramatic conspiracy played out on the streets of Moscow, in the Caucasian mountains of former Soviet Republic Georgia, and in the shadows of the red rocks of Utah’s Color Country.

The Reign of the Stavka starts with the suspicion that the fall of the Soviet empire happened too fast and too easily. Anderson provides a fictional explanation of why it happened the way it did. In the world of Anderson’s novel, democratic Russia may just be the most clever geopolitical strategic gambit since the Trojan Horse. Whether or not this gambit succeeds rests on the

M r. O’Brien practices law in the Salt Lake office of Jones, Waldo, Olbrok & McDonough. He holds degrees from the University of Utah College of Law and the University of Notre Dame. The substance of this review is in no way based on the gracious Christian charity Tim Anderson bestowed on Mr. O’Brien after last year’s BYU – Notre Dame football game.
wits of the novel’s three main characters. The novel takes the reader through seven eventful months in the lives of these main characters. One is a Dutch computer businessman who served an LDS mission in southern Utah and suddenly finds himself returning to his mission field as executive director of the Russia Center, a new cultural facility and historical museum to be built in St. George.

The second character is a colonel who, having served both the Soviet and now the Russian KGB, finds his own internal struggle symbolic of the intense struggle for the future and the freedom of Russia. Finally there is the young, untested, diamond-in-the-rough Washington County deputy sheriff who finds his life suddenly and surprisingly intertwined with the other two main characters and with a global struggle he cannot even begin to fully contemplate.

Anderson also has created other minor— but nonetheless fascinating— characters for his book. Watch out especially for the female KGB operative with a chilling ambition and female KGB operative with a surprising history. The Reign of the Stavka is a fine first book by a Utah lawyer/novelist who shows a great deal of potential. By reading between the lines of history and asking questions such as “what if?” or “how about?” as he does in The Reign of the Stavka, Anderson has already established a unique personal style that can be applied to many different settings. Based on Anderson’s first novel, we can look forward with excitement to where he next sets his creative sights.

WELCOME HOME R & B

W hile for music aficionados in mainstream America, R&B may stand for “rhythm and blues,” at the BYU Law School the initials stand from Rex and Bruce. Their collaboration will be remembered long after contemporary “r&b” tunes have been forgotten. It is a collaboration for the ages. In the history of the J. Reuben Clark Law School and the Brigham Young University, it is virtually impossible to think about one without the other. Over twenty-three years ago these two young lawyers from Arizona and Utah left law practice and threw in their lots with a grand adventure: the formation of the J. Reuben Clark Law School at Brigham Young University. They have left their indelible marks on the building: after all, Rex fought for the white cast stone facade over GI pale-yellow brick, and no one will forget that it was Bruce who commissioned the Valoy Eaton paintings of famous courthouses which grace the Law School foyer (not to mention the Hafen autumnal color scheme which has been a part of the Law School since 1975.) More importantly they have left their marks on their students and colleagues over two decades.

Although their lives have taken interesting turns and their careers have been more rich and varied than they would have imagined, the J. Reuben Clark Law School has remained the touchstone. A striking similarity in their lives has been their willingness to put personal desires and personal projects in the background and focus on the duties to which they are assigned. Rex’s life has extended from the university to the Justice Department and the Office of Solicitor General, and back to the Law School; Bruce’s has extended from Ricks College to the deanship, the provost’s office, and back to the Law School. Each has been given weighty responsibilities on several occasions and each has completed them with honor. Leadership roles have not kept our quintessential lawyers from their ties with scholarship and the law.

Rex, the advocate, has continued and will continue to try cases before the United States Supreme Court; Bruce, the scholar, has continued and will continue to be on the cutting edge of legal scholarship in family law.

The law school is pleased that each will be given a deserved sabbatical before returning, but more pleased that the sabbaticals will be of fairly short duration. During the 1996-97 school year the students, faculty administration and staff will be waiting with open arms to welcome them home.

Alumni envy the students who will learn about the constitution, about law governing familial relations, and most of all about life— from Rex and Bruce, the law school kings of R&B.