Clark Memorandum: Spring 1996

J. Reuben Clark Law Society

J. Reuben Clark Law School

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Rex! The name, in Latin, means “King.” And he was.

I first met Rex E. Lee in 1977. I was an undergraduate journalism student on the staff of BYU's Daily Universe. He was dean of the new Law School, temporarily housed at the St. Francis Catholic School. I had been assigned to interview Rex about the new Law School building, then under construction across the street from the Wilkinson Center.

When I arrived for my scheduled appointment, the door to Rex’s office was open. He was talking energetically on the phone, his feet propped up on one corner of a utilitarian-looking desk, and the office walls rang with the rapid-fire rhetoric (punctuated with sweeping hand gestures, broad grins, almost random guffaws, and the occasional semi-stutter) so characteristic of Rex. As he stood to pace behind his desk, the phone now pressed to his ear with his shoulder, he saw me standing outside and waved me into the office. That was my first step into Rex’s charged and incredibly engaging world.

When he got off the phone, Rex greeted me like he already knew me and quickly
took control of the interview. He zestfully explained that "a law school education" was "different" from other academic pursuits because it taught one "to think like a lawyer." He launched into a brief, but impassioned, evaluation of something called "Socratic Method." He took a set of blueprints from the corner of his office, rolled them across his desk, and pointed out how "well thought out" the new building was. (The students would have study carrels in the library, their "homes away from home." The classrooms would have tables, not desks, because "law students use lots of books and take lots of notes." The classrooms themselves, moreover, would wrap around the professors "to facilitate Socratic questioning.")

As the interview ended, Rex rolled up the blueprints, leaned across his desk, looked straight in my eyes, and said—quite earnestly—"You know, you're a bright young man. You ought to consider coming to law school." I was surprised (and somewhat embarrassed) by the comment, because the last question still rumbling around in my befuddled mind was "Just what does Socrates have to do with "thinking like a lawyer" and "horse-shoe-shaped classrooms??" Of course, after being described as "bright," that question went unasked. (And probably just as well, considering how the first year of law school "matured" my opinion of the old Greek.) But one thing was quite clear as I left Rex's office that day: this man loved the law, loved people, loved life, and loved his role in all of it.

This man loved the law.

About 18 months later, I entered the J. Reuben Clark Law School to learn to think like a lawyer. Rex had infected me with his enthusiasm for a life in the law and had issued a challenge. Accordingly, I set about meeting that challenge. In a simple interview, Rex—the King—had changed me immeasurably for the better. I am not alone. His résumé (which would make any monarch blush) reveals that, during his reign, Rex improved innumerable lives. He did so by establishing himself as one of the country’s finest lawyers, organizing a nationally
recognized law school, serving a celebrat-
ed term as the nation's premier Supreme
Court advocate, and distinguishing him-
self as president of one of the largest pri-
vate universities in the United States. But
there was more to this man than an excep-
tional resume; pervading and undergird-
ing all of his achievements was an abso-
lutely central devotion to his family
and God.

Rex graduated first in his class from the
University of Chicago Law School in 1965.
From law school he went to Washington,
DC, to serve as law clerk to Byron White,
associate justice of the United States
Supreme Court. From Washington, DC, he
returned to his home state of Arizona,
where, as a partner in the Phoenix law firm
of Jennings, Stevus & Salmon, he estab-
lished himself as a lawyer of incredible
talent. Within four years of graduating
from law school (and before he had even
taken a single deposition in any lower-
court civil proceeding) Rex argued his first
case in the United States Supreme Court.

Rex went about setting up the Law
School with the same conviction and drive
that caused his spoken words, not only to
bump into each other. In record time he
collected a superbly talented faculty by

atti nation, first as an assistant attorney gen-
eral in charge of the Civil Division in the
United States Department of Justice from
1973 to 1976, and then as solicitor general
of the United States from 1979 to 1985. As
solicitor general, Rex had the incredible
opportunity to focus entirely on the legal
effort he enjoyed most: briefing and argu-
ings cases in the United States Supreme
Court. Supreme Court briefs and argu-
ments were vital nourishment for Rex's
legal soul. (Indeed, at the time of his
death, as he lay in a hospital bed, he was
preparing to argue his 66th case before the
Court.) Rex flourished as solicitor general.

However, as those who have lived life
fully well know, flourishing is often the
result not of perfect conditions but of
overcoming circumstances that are less
than ideal. Rex faced more than his share
of adversity as solicitor general. Through-
out his legal career, Rex was the consum-
mate "lawyer's lawyer." He knew the law.
He understood the law. And most impor-
tant, he respected the law. When political
forces within the Department of Justice
pushed for positions that could not be
supported within the boundaries of exist-
ing precedent, Rex held firm. He told me
something during his most difficult days as
solicitor general that is the most
important lesson I try to pass on to my
own students: "It is not enough to do the
right thing. You must do the right thing
the right way."
Because of his unwavering commitment
to and respect for the rule of law, Rex suf-
f ered substantial political opposition dur-
ing his tenure as solicitor general. But he
also built a unique and enduring reputation
as a man committed to principle, not mere
politics. Recently, the current assistant
attorney general in charge of the
Department of Justice's Office of Legal
Counsel, Walter Dellinger, visited Brigham
Young University's campus as an invited
lecturer. Although Mr. Dellinger's political
opinions are almost certainly in tension
with some views held by Rex when he was
at the Department of Justice, Mr. Dellinger
means "King." And he was.
The thing that stood out in my mind the most was that he had this inner peace. At that time, I did not know about the Mormon Church or what LDS meant. All I knew was that while others were scrambling around and, in some instances, spinning their wheels, there was Rex, steady as a rock.

After Rex left the Department of Justice as assistant attorney general, he called Carolyn at home “and asked me to do him a favor—he then changed that to ‘let me do you a favor’.”

He asked me if he could have the Mormon missionaries stop by. When I spoke with my husband, he said “if this were anyone but Rex Lee, I would say no. But go ahead and tell him to have them stop by. You know, we’ll never get rid of them.” Within the year we were baptized and eventually we were sealed in the temple, with Rex and his wife, Janet, by our sides. Personally, he inspired me to be better than I ever thought I could be. Spiritually, he showed me by example how “to walk the walk,” as the kids today might say.

Rex never stopped “walking the walk.” After resigning as solicitor general, he returned to Provo and BYU in 1986. Shortly thereafter, he was diagnosed with a serious—and rapidly developing—cancer. But, following an exceptionally difficult year of medical treatment and therapy, Rex (and all of us) were granted a miraculous reprieve. He recovered, for a time, his strength. During that extraordinary period of health, he was named president of Brigham Young University. As president he set a new standard for openness and access, meeting regularly (and individually) with faculty and students on important issues facing the university. Rex served the university community with distinction from July 1977 until December 1995, just two and one-half months before his Father in Heaven called him home.

The last time I saw my friend was in the Intensive Care Unit. As he had nearly 20 years ago, he waved me into the room. He couldn’t pace. He was too frail to stutter. He was even too weak to display his usual broad smile, but he still grinned. And he pulled me down to him to mouth the words, “I love you.” I told him, then, with all the conviction of a broken heart that I loved him, too. I told him that there were hundreds more, many of whom would read these words, who loved him as well. Then I had to leave, because tears were too close. Rex, my regal friend, deserved not tears but a celebration of all the riches he had bestowed upon me and so many others.

The rapid-fire voice, punctuated by sweeping gestures, ample smiles, random guffaws, and an occasional semi-stutter, that voice I heard for a first time as a senior journalism student, is now stilled. But the echoes ring on. They ring on in the lives of thousands of law students who, like me, have had the blessing of attending the J. Reuben Clark Law School. They ring on in the country strengthened by Rex E. Lee’s unwavering devotion to the rule of law. They ring on in the lives of his wife, sons and daughters, who will emulate the example set by a loving husband and father. They ring on, as well, for all those who have been touched by the steady, genuine devotion displayed by a man who knew not only that he was a son of God, but that we are all brothers and sisters. Rex’s voice is silent, but his influence will never be stilled.

Rex means King. Long live the King.

Notes
1. Although I worked with Rex E. Lee for nearly 20 years, I generally stood too much in awe of the man to address him simply as “Rex.” When I was a student at the Law School in 1977, he was “Dean Lee,” at the Solicitor General’s Office he was “General Lee,” and when we worked together again at BYU in the late 1980s he became “President Lee.” Rex, of course, never demanded such formality; I simply felt that addressing him by his various titles was appropriate. It was only during the last few years of our association, and at his urging, that I began to use his first name. In this short memorial, I write his name without titles, not out of disrespectful familiarity, but because—at least for me—the most important title he ever held was that of “friend.”
The Ethical Professional Consecration in the Workplace by Constance K. Lundberg
Nuclear physics was a morally questionable profession, and we learned that forced sterilization had been an American practice for 50 years. State government was the late noire of my generation. It was counterproductive, and regressive. State and local government meant the Scopes trial and George Corley Wallace stirring hate against the lone black child, Sharlane Hunter, who was escorted to school each day by U.S. marshals to protect her life. Bull Connor, turning the water hoses of Birmingham on civil rights demonstrators was the symbol of states’ rights, which meant segregation, Jim Crow, lynching, and economic exploitation of the poor.

Publicly perceived heroes and villains change with varying political currents. You cannot assure yourself morality or an ethical discipline or profession. So how do we judge? What is the hallmark of an ethical professional? The ethical professional is a servant of the people, and a steward, using her knowledge, wealth, power, and position in service of her God and her fellowman. Paraphrasing Moses’ farewell sermon to the Israelites, in a speech entitled “How to Get Rich,” Hugh Nibley wrote:

The first rule, and one never to be forgotten, is that everything you have or ever will have, individually and collectively, is a gift from God, something that he blesses you with, has blessed you with, or will bless you with—in all its aspects. Throughout the book of Deuteronomy, the refrain is repeated at the end of almost every pronouncement: You must do this in recognition of your dependence to God, because first and foremost he has given you your lives, he rescued you from Egypt, and he redeemed you—that is, he paid the price for you that you could not pay yourself.

As King Benjamin taught, we cannot withhold from one another a portion of all we have, when he has asked us to give, since all we have is his. The rich man in the account in Luke did not understand this first rule. He said he kept the commandments from his youth, but Jesus said, “Yet lackest thou one thing: sell all that thou hast, and distribute unto the poor, and thou shalt have treasure in heaven: and come, follow me.” The man was “very sorrowful: for he was very rich.”

In the scriptures, consecration has two forms. One can consecrate himself, his time, talents, and service. King David called the people to build the temple. “And he who does is willing to consecrate his service this day unto the Lord?” Or one can consecrate one’s wealth, as Christ commanded the rich man, and as saints did in the primitive Church and in the early days.

In my high school and college years, questions of morality surrounded other professions:

- Nuclear physics was a morally questionable profession. We agonized over the conflict between J. Robert Oppenheimer and Edward Teller. Was the Hiroshima bombing a morally justifiable act? Was the United States foreign policy of mutually assured destruction viable or a death sentence to the world? The Committee of Concerned Scientists began while I was in high school. I was thrilled that there were scientists that were not, as most seemed to be, moral ciphers.

- Doctors and medical researchers were in the ethical spotlight. Tennessee Williams wrote a play and film script focusing on the immorality of indiscriminate prenatal lobotomies. Disclosures in the aftermath of World War II raised the specter of human subject experimentation, and we learned that the same community with one of my “smoke stack” clients and also of killing families who might have accidents on a road the Department of Transportation couldn’t expand because I was suing to stop the construction. Clearly, at least in the minds of my self-appointed critics, lawyers do get away with murder.

Believe it or not, when I was in school, the morality of lawyers was not a major issue. Lawyers were the champions who tried to make corporate America accountable for the essentially unrestrained contamination of our air, water, and soils.

In the scriptures, consecration has two forms. One can consecrate himself, his time, talents, and service. King David called the people to build the temple. “And he who does is willing to consecrate his service this day unto the Lord?” Or one can consecrate one’s wealth, as Christ commanded the rich man, and as saints did in the primitive Church and in the early days.
of the latter-day Church. Both forms of consecration are partial obedience to the first commandment, as explained by Moses in Deuteronomy. Both forms require both giving and receiving. Again, Dr. Nibley explains the offerings required of the Israelites:

The great gathering and feasts, whose strict observance to spend time and energy helping young musicians grow. An example for me is that of a young musician in Utah with a promising career as a concert pianist. He was stricken with a nerve disease that ended his career as a pianist, but not his vocation. He began a chamber music group that has grown and now has several records and tapes and a regular concert season. This year, his third season, Grant Johannesen, the concert pianist and former head of the Cleveland Institute, came to Utah to appear as a guest artist with the group. I thought, as I watched this young man conducting the silver-haired, gracious master musician, how committed Johannesen is to the future of his profession. He drastically reduced his performing career to serve as director of the Institute, because it is the obligation of musicians to help the next generation, and here he was, gently and elegantly, helping a young conductor through the use of his name, his talents, and his subtle, unseen assistance in teaching the conductor how to accompany a soloist. It was the equivalent of a senior litigator from a national firm coming to Utah to sit at counsel table with a young lawyer in a major trial, coaching, but not trying the case himself.

Beyond the obligation to use your skills and position to pay for your own education debts and for the benefit of any in need, there are constraints on how a professional functions. It is your intent to sell apples or clean streets, your obligation is to work hard, do your job well, and give a full day’s work for a full day’s pay. A true professional has other obligations. The original professions were the Church, medicine, and law. We have added others, to the irritation of some members of the original three. I define a profession as one where specialized higher education and a specific code of acceptable conduct and responsibilities are recognized by a legal or societal monopoly to give the service for which the professional is trained. I once did research on the chartering of professional licensing organizations. I learned that almost the first thing engineers, social workers, psychologists, librarians, and others did in establishing themselves as professionals was adopt codes of ethics.

What should those ethics include? Dr. Shaffer, a legal ethicist, identifies four roles for lawyers. For Shaffer, these are counseling roles. For me, counseling is when the lawyer interacts with his client in the full gamut of their professional relationship. The superficial elements of each of these roles will be used by any lawyer at one time or another. The question is not the facial elements of the roles, but the nature of the relationship underlying them—that determines whether the representation is ethical.

The godfather controls the action and serves the interests of his client, the godchild. Don Corleone, as his son Michael says, is a ‘man who is responsible for other people.’ Also . . . the godfather acts without regard to the harm his actions cause to other people. Godfather lawyers either decide what their clients’ interests are, without consulting their clients, or they persuade their clients to accept lawyers’ views on what their interests are. They pursue client interests with their own ‘technical’ devices, without much interest in their clients’ moral reservations.”

In President Ezra Taft Benson’s famous conference address on April 5, 1980, he spoke about the sin of pride and how it affects our relationships.

[A] major portion of this . . . sin . . . is vanity around our fellowmen. We are tempted daily to elevate ourselves above others and dismiss them.

The proud make every man their adversary by pitting their intellects, opinions, words, wealth, talents, or any other worldly measure against others.

Lawyers in the godfather role use their intellects, opinions, and skills against their opponents in the guise of being an advocate for their clients. In reality, like the lead character in the movie The Godfather, the

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We are tempted daily to elevate ourselves above others and diminish them. The proud make every man their adversary by pitting their intellects, opinions, works, wealth, talents, or any other worldly measuring device against others. —Ezra Taft Benson
...godfather lawyer establishes and maintains her own power, in her case, over both opponents and clients. In the elevated status of godfather, the lawyer no longer needs to interact with her client or her opponents—these concerns are irrelevant. She pretends to serve the interests of the client, whose reality she has denied. This pretense is no less acceptable if she deludes herself as well as her clients.

The double tragedy of the godfather role is that the professional overrides the client’s moral reservations, but can leave her own at the door, arguing that she is merely pursuing the client’s agenda, not her own. This is the classic defense of the scientist. “I am not a policy maker, I am a scientist. It is the politician’s job to decide what to do with my work.” This means there is no moral dialogue at any time in the representation.

Clients do not necessarily want a godfather lawyer. One third of all divorces granted in the United States never become final. Lawyers in my acquaintance comfort themselves with the often repeated observation that clients in family matters really don’t know what they want. I suggest that the lawyers don’t know what the clients really want and, as godfathers, deliver what they know how to deliver without inquiring too closely. If clients in one-third of the cases have the determination to extricate themselves from their lawyers’ imposed solutions, how many more are divined because they do not have the will or ability to fight back?

2. THE HIRED GUN. The hired gun, or client-centered counselor, focuses on the desires of the client. “The lawyer should not act in ways that would influence the client’s choice. The lawyer should be ‘neutral’ and ‘nonjudgmental.’” Shaffer points out the limitations of the hired gun, though literature is replete with examples. One example from recent pulp fiction is The Firm. In that book, an entire law firm surrenders moral autonomy to the mob and becomes owned by it. Autonomy is no virtue to be sought. By allowing clients moral autonomy, the right to make moral judgments with no controls and to have those judgments implemented unquestioningly, we are consigning clients to hell—people, as described by C. S. Lewis, “on the outskirts of a city who continually move further and further away from one another.”

Our own values and beliefs support the idea that we exist as part of a community. The autonomous model is unacceptable to a Christian, particularly a Mormon Christian, either as client or as lawyer. In addition, the hired gun model requires the professional to accept the moral code dictated by the client. This model is surely as unacceptable to a lawyer. But I think it equally unacceptable to a doctor counseling a client, whose reality she has denied. This is the classic defense of the scientist. “I am not a policy maker, I am a scientist. It is the politician’s job to decide what to do with my work.” This means there is no moral dialogue at any time in the representation.

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going that the lawyer can become a friend to every client, but that the lawyer and client should deal with moral issues that arise in representation in the way that friends deal with moral issues. One point of view here does not turn on friendship as a lot of good luck, but on being like a friend—as a counseling skill... A friend is a person who seeks the other as a person. In Martin Luther's terms, a friend treats the other as a person rather than as an "it." Or, in Kant's terms, perceives the other as an end and not merely as a means to some other end.

By friend, Shaffer means Aristotle's definition of friendship in Nicomachean Ethics: "Friends must enjoy one another's company, they must be useful to one another, and they must share a common commitment to the good."

Why is commitment to goodness important? Consider the constellation of professional problems surrounding the family. One in ten women lives in an abusive situation. The statistics for children are similar. Separation of the family may or may not eliminate the abuse—as we all know from news accounts, separated partners often return with violence and devastation. However, regardless of the abuse, 25 percent of children in Utah live below the poverty line, most children in single-head-of-household families. National statistics are worse.

If you are a lawyer, doctor, psychologist, nurse, social worker, or teacher representing one of the partners or the children in a troubled family, the model becomes a critical issue. Will you help those children, that family, if you seek victory of one member of the family over the others, or autonomy for your client from the rest of her family? Will externally imposed rectitude alter the internal dynamics of the family or leave the family in as great a distress as ever but give the professional a self-satisfied feeling?

Imagine that you are the lawyer contacted by the husband of a family in town. He is making $5,000/month and has a wife and three children ages 3, 5, and 7. He says he has had it with the marriage. The children have no discipline and are always crying and whining. His wife, of whom he speaks in ugly and derogatory terms, is nagging, he says, and getting uppity. She is turning the kids against him. She does not work—has a high school diploma but no particular skills and is unlikely to get more than minimum wage in any job, unlikely to get enough to pay for child care while she works. Her mother is an interfering old witch. The bishop stuck his nose into things that weren't any of his business. The man wants to be free, to get out of the marriage, to get enough of the $5,000/month to live on (all of it if he can). If you listen carefully, what do you hear from this man? He is poor. His family lives in poverty. Divorce or separation will make it impossible for the family to live without assistance. It seems probable that there is abuse in the home. There may be a support system for the wife—mother, Church leaders—but it is unlikely. It is equally unlikely that there is much support for the husband. How do you become a friend in this case? How do you establish a moral dialogue? The fact that you are handling this case should make it easier, but probably won't. Charity clients are more likely to be defensive and hostile than grateful.

Here is the real challenge of the professional. It is so easy to be moral in the abstract; so much harder in the dirty, raging, hate-filled reality that is muddering and swirling a blue streak in your office. Money won't get nice, clean, well-educated, upper-middle-class Heberes. He got illicit, superstitious slaves. As he reminded them in Deuteronomy, they were not the chosen people because they were more pure, more upright than others. But from these people came the seeds of the people of the covenant—they preserved the scriptures through war and pestilence. Finally, they were the family of the Savior. By the same token, Paul didn't get a nice, clean, well-behaved avuncular in Corinthians. He thanked God he didn't baptize the Corinthians, because they are so quarrelsome. He found the Corinthians carnal, envying, and full of strife and division. They were greedy, withholding support for missionary work and for the Church, but providing for themselves. What did Paul find in these quarrelsome and sinful Corinthians? He found them epistles from God, written on the fleshy tables of his heart.

As professionals, you will minister to the needy, the weary, those who are falling by the wayside. The whole do not come to the healer. If you wish to share a common commitment for the good, as described by Shaffer and Bellah, after Aristotle, you will have to look carefully. And it will not be enough to say it is a miracle of God that good could come from such people. They are the children of God, and you have consecrated your time and talents to serve them, to bring them into goodness. How do you do that? Not as one young lads associate in my very gentle law firm did. He stayed isolated in his office and increased the isolation by putting a very large painting of Moroni burying the gold plates on the wall in his office. Perhaps he could have created a greater division by putting a sign on his door reading "Desolation of Dragons," but I doubt it. Paul came to know the Corinthians. He listened to their quarrels, their concerns, their contentions. He scolded and upbraided them. But ultimately, he accepted them as God's children and looked for their strengths. Then he saw them as God's recommendation to him.
I spent a lot of time traversing the intellectual no-man’s-land between the requirements of my clients and the demands made upon them by government representatives or by opponents in the community. I learned that people often do not know what they want or need. Like children, their demands may be tokens or talismans for other unidentified and misunderstood needs. It takes patience and careful listening to hear the needs behind the demands. What does the young, confused father need?

One of my students, faced with a similar problem in a class assignment, showed his capacity as a representative of Christ, as well as a creative problem solver, when he sought out educational opportunities for the young man. He counseled him about the need to expand his capacities, asking about his willingness to take classes, seek additional training, and enter counseling. He gently explored the problems of dividing a pitance among two households. He explored ways to reduce family tensions, provide greater face with in-laws. He reached out to the young man and found the pain and need within him. From there he was able to suggest meaningful solutions.

Often it also takes the good fortune of a person well prepared to instinctively react to challenges that appear in the process. Atticus Finch is a hero in To Kill a Mockingbird because of who he is. He is successful, not in the trial, where he fails, but in his instinctive act of courage and defiance before the lynch mob. You can probe an apparently insoluble problem for months, even years; but you must understand it—and the capacities of your client—to see the light eking through a small crack in the opposition and know it suggests a solution acceptable to both parties. This understanding comes, I suggest, from love. “A good man out of the good treasure of the heart brings forth good things.”

I came to understand friendship and love in problem-solving from the man who is now my husband. He was the head of environmental control for a steel in the western United States. I was his lawyer—outhouse counsel, as we sometimes laughingly called it. He was committed to keeping Geneva Steel open and operating. I do not ask you to agree with him but to understand him. He felt a stewardship for each of the 4,500 employees of the plant. He worried about their families, their homes, their debts, and their children. Those were not institutional concerns in Pittsburgh. The plant operated under a constant shadow of threatened closure.

We were negotiating with $56,000/month of power bills that came when the equipment operated. This fact was unknown to me and to the Pittsburgh representatives. Pseudonymum broke loose. The senior US official from Pittsburgh threw the 4,500 representatives out of their own meeting, held in their offices. I sat with my head in my hands saying, “You can go to jail for this. People go to jail for this.” The Pittsburgh people were having a contact to see who could come up with the foulest and most profane epithets for the Geneva operators, one of whom was literally backed up against a wall grinding his teeth.

Boyd finally found a small window of quiet in the uproar and said, “You just have to understand . . .” and proceeded to make sure we did. He did not say the operators were right or justified. He just said they were human, doing their best under frightening and trying circumstances. That day I saw that a professional, operating with understanding and love, acts as the Savior’s representative on earth. He mediates with the judge. He does not pretend things are other than they are, but places them in their true context. Like Paul, he found a recommendation from God written in the fleshly tables of the heart. He never spoke directly of God, or the Savior, but he brought their spirit into a room that had, moments before, been filled with a spirit of anger and contention.

I believe that is the way consecration figures in our professional lives. It is not an artificial or externally imposed thing. But, by bringing understanding and love to our contacts with others—clients, opponents, judges—we can share those things most sacred to us—the spirit of the Savior, the eternal concepts of Christ’s love and the atonement—not through preaching, but through demonstration, not by announcement, but by letting others feel its sweetness and peace. I believe that we cannot perform amoral acts and pursue unethical courses if we remain true to that spirit as we bring it to our daily service.

Notes

3. 2 Chronicles 24
6. Nibley 8
8. Shaffer 8
9. Shaffer 49
11. Shaffer 36
13. Shaffer 52
15. 1 Corinthians 16:9–10.
16. 1 Corinthians 3:3.
17. 1 Corinthians 13:45–46.
18. 1 Corinthians 3:11.
Woody Deem, teacher extraordinaire. He came from a poor family, excelled in college, only to graduate (with a Phi Beta Kappa) key broke and with no job prospects. Failing to follow his dean’s advice to marry a rich widow, he joined the CCC, matching wits with the system for a year. Education came in handy as he found his niche as a clerk, putting him in possession of powers that made his life much easier (See “Woody Deem: Selected Letters, Part 1,” Clark Memorandum, Fall 1995). But come summer he turned down a scholarship at Duke Law School to take on work in Washington as assistant to a senator and as Capitol guard. That work would pay his living expenses and allow him to attend law school at Georgetown University.

Woody Deem

Selected Letters

Washington, D.C.

Illustration by Chris Gall

The keen mind, the playful wit, the commitment to hard work, the generous spirit, and the broad knowledge that he brought to teaching at BYU were evident back in his law school days. Those qualities developed and were adapted to changing circumstances, but they were already discernible in letters to a friend while Woody worked his way through law school.

If you knew Woody, you’ll never forget. If you did not, more’s the pity. — Edward L. Kimball
23rd, 1937. Apt. #2

Washington, d.c.

Dear Lorene, December 19, 1937

Congress is fast becoming the butt of all jokes around here. All last week they held late sessions; one night they stayed until ten. More than half of the people who work in the Capitol were seen leaving before the last vote. I have heard that a son of hers would go to no war, save for invasion. She was very bitter, declaring thus to an American homes than they would to any other Britisher. She was very bitter, declaring thus to get the last word. One night I called the guard room for something and was answered by a very polite young lady who told me to raffle the cat off to the highest bidder. Several congressmen stopped to get him, and finally one of them offered to take him into the restaurant for a bit to eat and that's the last I saw of him. But now, I must get back to lessons.

Sincerely, Woodruff

Clark Memorandum

16

25th, 1938

Dear Lorene, January 1938

You should be glad you aren't here in Washington to have your faith in democracy shaken. Some of the goings on in the Senate rival slapstick comedy. Then in the House they're discussing the appropriation bill which covers so many items that nobody knows anything about it. There aren't more than half a dozen congressmen on the floor most of the time. They come in when there is a discussion of some department they are interested in and then leave until time for a vote. Things have just stopped happening. There is little hope of getting anything besides the appropriation bill passed before they adjourn early in the spring to go home for the campaign.

I made my first arrest yesterday. There is an ordinance in our police regulations that prohibits dogs and cats in the building. In walked a large gray tom cat, and in the interest of law and order there was nothing else to do but arrest him, which I promptly did. Then when I called the guard room for the squad car, I was told that it was out of gas. When I asked for suggestions, the sergeant told me to raffle the cat off to the highest bidder. Several congressmen stopped to get him, and finally one of them offered to take him into the restaurant for a bit to eat and that's the last I saw of him. But now, I must get back to lessons.

Sincerely, Woodruff

Woodruff

...
Dear Lorene,
March 20, 1938

And the people in the building are for the most part very interesting. There is one job here, a door job for one of the committees, that has been in one Negro family ever since before the Civil War, and, because of the meritorious service of the founder of the family, it probably will remain so for many generations yet to come. In the Senate post office, there is a very charming lady who captures everyone. People go out of their way to buy stamps at that station. Her husband was Georgia congressman who died in office, penniless after a life of unselfish public service. This position is by way of tribute to his memory. One of the engineers got his job during Teddy Roosevelt's administration and has remembered all of the scandal of the inter war. Every now and then he pauses and regards me for a couple of hours. One of the guides here, a rather old lady, lost a husband and two sons in the World War; as a result, war has become a hideous institution in her mind. There is a clerk on the House side, who has a mama for clothes and spends all his income on finery. He has a Texas summer outfit, broad hat, high heels, etc., then he has several outfits with swallow tail coats, collars that call for scarfs instead of mere ties. At the moment he's deeply bothered because the news boys refuse to deliver a paper to his office, claiming that they don't even do that for congressmen unless they get paid extra. The list could go on indefinitely. Last Sunday, I joined a law fraternity. The list of celebrated lawyers that are now fraternity brothers is quite breathtaking. Among them is the district attorney for the District of Columbia, who spoke at the banquet.

Lawyers, I fear, are a bit snobbish. They have their own jokes that aren't the least bit funny to one not steeped in the learning of the law. To them history is a series of great law cases, most of which they know by name and quote them quite frequently. It follows that the truly great men of the world have all been lawyers. We have their pictures framed and hung in the halls of the Law School. In front of my desk is a portrait of Lord Mansfield who is so much more important than Columbia that there is no comparison.

Lord Mansfield added an element to the law that no other man could possibly have added and maintained. There are dozens of them. To be quite frank, I hadn't heard of one of them before I started law school...

Sincerely,
w.d.

Dear Lorene,
July 4, 1938

School, of course, finally came to an end— with a smash up, rather than a bang, to be quite truthful. The examinations that they handed out to us were more like thunderbolts. In each class we would read over the examination and then laugh heartily before settling down to the miserable business of discovering some word in the question that we could nail on to and write about. One of the professors boasted, that on the basis of the examination he gave, he could flunk the whole class with not the least difficulty. From personal experience, I can say that he was probably right. Marks will be out in about a month, but the apathy that has developed is surprising. I'm quite sure now that if I flunked in everything, it would call forth only a sigh!

Just at the commencement period, we had the annual law club banquet. There it was my rare honor to sit across the table from Justice Butler of the Supreme Court. His has been a very interesting and eventful life. For more than forty years he has been the personal friend of the men who are counted as most important in the nation. His greatest sport is to tell stories after story of the events of recent history, lending the touches that will probably never get into the history books. It was my distinct pleasure to be elected secretary of the law club for next year. Very interesting things are in store. We are tentatively planning to get up a tournament of intercollegiate debating with the other law colleges here in the District, and perhaps with some a little more distant.

"Dear, by God, every one of them!" Then did he call an ambulance or a doctor? No, he exclaimed, "I must get a picture of this!"

The adjournment of Congress was characteristically colorful, as all of them are. (This makes three for me.) But times are changing. Heretofore, it has been the capitol police that really got things going in fine style. But this year, the captain issued orders to the restaurants in the capitol not to sell liquor of any description to the police until after midnight. Even the congressmen remarked upon how tame this celebration was compared with some others that we have had. Early in the afternoon, the congressmen started coming in prepared to sit to the bitter end. All of them practically made their train and plane reservations, and accordingly brought their luggage down with them and stacked it in the halls. The place closely resembled a baggage depot. Then, it came time for the discussion of an important bill in the House. Upon investigation, it was discovered that the bill had not yet returned from the printers, so a recess was called during which the gentlemen had liquor refreshments and谈ed baseball or cursed the printer. From my vantage point in the lower hall, I could get a bird's eye view of things as they came and went. One congressman sauntered in and over to the elevator. Another one asked him where he was going. He looked all around and then exclaimed in a stage whisper loud enough for everyone to hear, "I'm going up to the chamber to help steal some more of the people's money. Come on up, it's lots of fun!" Then someone in the Senate
pulled a filibuster that bade fair to last for a week. Things went wild in the House, and some of the things that were said about sena-
tors were most amazing, but things broke up in
the Senate and they were all out around ten.

In the senator’s office, we continue to be
one big delightful family. . . . Not long ago as
I was laboring over the files, one of the girls
flitted past and gave my suspenders a
resounding rip. Without thinking, I reward-
ed her with a howl that rattled the windows.
Out in the other room, interviewing the sec-
detary, were some important people from
New York. The secretary realized that she
had to explain or they set their minds at
ease. The thought of explaining any of the
antics of that crowd made her shudder, so
she merely called, “Woody, take that dog out
for some air!”

At another time, we were cleaning out the
closet when we came upon an old brief case
lying in a dark corner covered with inches of
dust. Upon examination, it turned out to be
the brief case that the senator took with him
on his trip to the Philippines and the Orient
some four years ago. We opened it and sorted
the stuff, saving what should have been filed
four years ago and discarding the rest. In the
very bottom, we found a little package with
strange Egyptian writing all over it. Then the
secretary remembered that the senator had
cautioned no one to touch the brief case, and
this must be the reason. The gentlemen in the
crowd insisted that it wouldn’t be cricket to
open the package, but the girls were fairly
being eaten alive with curiosity. When he saw
the sight of each other, the clerk, taking his
time, “Dead, by Gad, every one of them!”

Then, did he call an ambulance or a doctor?
and then surveyed the room again, exclaim-
ing, “Dead, by Gad, every one of them!” Then we
confused the visitors with conversation and
hope they’ll forget. Once they were gone,
back we dashed to examine the experiment.
The tablet had dissolved and the substance
in the glass was now a murky black color
with little beads of oil floating on the sur-
face. The next test was to discover the reac-
tion upon the human anatomy, so we drew
straws to see who should taste it. The unfor-
tunate young lady discovered that it was
nothing more nor less than coffee, very stale
coffee, and unsweetened. What a let down!

But we could still give the clerk the scare of
his life! Accordingly, we watched for him,
and as soon as we spied him sauntering
across the park, we took the ominous little
box and dropped it near the door. Each one
across the park, we took the ominous little
box and dropped it near the door. Each one
of us took one of the little black cubes and
then draped ourselves over the furniture in
attitudes that impressed us as being expres-
se of violent death. We even shuddered at
the sight of each other. The clerk, taking his
cues excellently, paused at the door, picked
up the box, noting it was empty, smelled it
and then surveyed the room again, exclaim-
ing, “Dead, by Gad, every one of them!”

Then, did he call an ambulance or a doctor?
No, he exclaimed, “I must get a picture of
that!” While he was in the next room
preparing his camera, the young lady who
had frozen herself in a death writhe across
the desk concluded that her lovely figure
would not be displayed to good advantage
there and accordingly picked herself off the
desk and draped gracefully over the dictio-
nary stand. Our little farce ended in a hasco
when the clerk and the stenog got into a
heated argument about whether or not it
was fair for a corpse to move! If the drama
of life were not everywhere so absorbing as
it is that office now and then, there would
be no need for the writers of thrill stories!

Sincerely,
Woodruff

Dear Lorene,

September 15, 1938

My personal problem is one that I fear will
never be completely solved. Four, no, five
years ago when I first went down to Occidental, I met a charming young lady by
the name of Floy. Her first glance rather put
me out to the count and I immediately
made inquiries as to any attachments the girl
might have. A friend offered the information
that she was engaged to be married and hap-
ply so. As chance would have it we had four
together, lived only two miles apart,
entered the same activities at college, and
spent much of our time together. However,
the story that Christ was a mere man in every regard,
that there was no pre-existence, and no life
after death, that the apostles undoubtedly
stole the body and concocted the story of
the resurrection to comfort them in their
disappointment. Mormonism means more
to me than it ever has in the past. How we
are ever going to reach a compromise is a
deep dark mystery. . . .

An interesting experience was a dinner
with Communists of the “There comes a
revolution and the working man will eat
cake” variety. The communists denounce
the prejudice of the capitalists when in
truth they are even more prejudiced. They
swear by statistics without bothering to
remember who compiled the statistics or
Dear Mrs. Smith,

December 3, 1939

Where? How strange it seems! And I suppose the next question should be, "How is Mr. Smith?"...

Things here have happened breathlessly since last I wrote to you, so breathlessly in fact, that whenever something was through happening, it took all my time resting up for something else. I've had three different jobs, one for a whisky firm. (I was not a troubser, rose religiously every Saturday and studied like a dumb bunny that I am, studied like a troup, rose religiously every Saturday and managed to pull down as ify! Regards to the family.

Sincerely,

Woody

222 E St. N.W.,
Washington, D.C.

Dear Mrs. Smith,

December 4, 1939

Where! How strange it seems! And I suppose the next question should be, "How is Mr. Smith?" . . .

Things here have happened breathlessly since last I wrote to you, so breathlessly in fact, that whenever something was through happening, it took all my time resting up for something else. I've had three different jobs, one for a whisky firm. (I was not a troubser, rose religiously every Saturday and studied like a dumb bunny that I am, studied like a troup, rose religiously every Saturday and managed to pull down as ify! Regards to the family.

Sincerely,

Woody

In 1940 Woody graduated at the top of his class, worked briefly for the Reconstruction Finance Corporation and the National Association of Manufacturers, and then for Uncle Sam as a lawyer buck private. After a colorful military career (told inimitably in the biographical sketch appended to Criminal's Are Stupid! A Tribute to Woody Deem [J. Reuben Clark Law School, 1990]) Woody returned to Washington to work for Ernest Wilkinson's law firm.

Last spring, my political friends in the law fraternity started the machine going and pronto, I was elected to the presidency. . . . It's an excellent gang of fellows, quite the best legal fraternity in the country and ours is the largest and most active chapter in the fraternity. There's only one difficulty. The fraternity over the years has acquired the reputation of being able to throw beer parties that have no equal. This year, I was on the phone here at the apartment making final arrangements for the first beer party of the season, when one of the roommates tore into us. You might watch the papers that way that it will be convincing both to me and to my associates. . . . This has been very choppy and not very communicative, but even so there are fifty pages of equity to read ere sleep overtakes us. Forgive this long delay, my regards to Mr. Smith and to the family,

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The fraternity over the years has acquired the reputation of being able to throw beer parties that have no equal. This year, I was on the phone here at the apartment making final arrangements for the first beer party of the season, when one of the roommates tore into us. You might watch the papers that way that it will be convincing both to me and to my associates. . . . This has been very choppy and not very communicative, but even so there are fifty pages of equity to read ere sleep overtakes us. Forgive this long delay, my regards to Mr. Smith and to the family,

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Sincerely,
Aileen H. Clyde
Second Counselor in the General Relief Society Presidency
of The Church of Jesus Christ of Latter-day Saints
This address was given at the J. Reuben Clark Law School Fireside, November 12, 1995.

Okazaki (who died suddenly in Buddhism. No member of her family has parents in Hawaii. She converted from living in New York and Alaska, they settled the Cardston Temple, grew up in Canada, women of the Church. President Jack was born in the shadow of the Cardston Temple, grew up in Canada, and then came to the University of Utah. She married her husband Joe, and they went east where he did his training as a surgeon. After living in New York and Alaska, they settled in Salt Lake City. President Okazaki was born of Japanese parents in Hawaii. She converted from Buddhism. No member of her family has since joined the Church. She married Eis Okazaki (who died suddenly in 1999), but he was not a member of the Church then. She had faith that because he was such a good man, the Spirit would work on him. Within a year after marriage, he did join the Church.

I was born and reared in Springville, Utah. My husband, Hal, and I met there in high school. I still go to some effort (by commuting to and from Salt Lake City) to sleep there. I studied and taught at Utah. My husband, Hal, and I met there in high school. I still go to some effort (by commuting to and from Salt Lake City) to sleep there. I studied and taught at Utah.

President Jack was called as general Relief Society president in April 1990 and Chieko Okazaki and I joined her as counselors, our first need was to find spiritual unity as we combined our diverse experiences in order to represent, for a time, the women of the Church.

President Jack suggested in our first week together a time of seclusion where we could come to better know one another. We spent a day studying scriptures to gain the clarity we needed to articulate the purposes and goals of Relief Society in the new decade before us. President Jack began the readings that day by opening the Book of Mormon. In Jacob 4:79 she read: "For the Spirit speaketh the truth and lieth not. Wherefore, it speaketh of things as they really are, and of things as they really will be; wherefore, these things are manifested unto us plainly, for the salvation of our souls."

As she finished reading, I looked over at Chieko and saw tears in her eyes. There were some in mine too. All three of us had chosen that scripture among the ones we had planned to share. That convergence helped us resolve to understand present realities in gospel light, to use that understanding as we taught hope for the future and faith in Christ. We asked, What are the circumstances surrounding our sisters’ lives? How can Relief Society include and bless each one amidst their widely varying conditions of life and status? That direction from Jacob became our hallmark as we began to serve our sisters in the Lord’s organization for women.

Since those days in 1990, we’ve heard from women all over the Church that what they want most from their Relief Society organization is spiritual strength. Such expressed desires have motivated our quest to understand what they mean. What is spiritual experience? What may stand it and what gives it nurture?

We’ve all had communal experience that touched us spiritually at hearing a sincere prayer or responding to hymns and other beautiful music. I’ve seen a Thai young woman accompany her sacrament meeting congregation on a portable keyboard as they struggled with the western tones and words of “O Little Town of Bethlehem” with electric spiritual effect. In Recife, Brazil, a chorus of Relief Society sisters who sang "Where Can I Turn For Peace?" had memorized the words in English. These efforts brought the most wonderful relief from my days’ long angst at not understanding Portuguese, and their countenances glowed with charity.

But even when we feel we have shared spiritual experience, individual responses are uniquely our own.

And it came to pass when they heard this voice, and beheld that it was not a voice of thunder, neither was it a voice of great tumultuous noise, but behold, it was a still voice of perfect mildness, as if it had been a whisper, and it did pierce even to the very soul—[Helaman 5:8].

Such getting to the soul happens to me unexpectedly at times. But I know because of the scriptures what it means when the Spirit speaks to my soul and pierces in a way I cannot mistake it. It is this voice that brings peace and puts the joy in rejoicing.

Listen to Parley P. Pratt’s eloquent description of the gift of the Holy Spirit.

It inspires, develops, cultivates, and maturest all the fine-toned sympathies, joys, tastes, kindred feelings, and affections of our nature. It inspires virtue, kindness, goodness, tenderness, gentleness, and charity. It develops beauty of person, form and features. It tends to health, animation and social feeling. It . . . invigorates all the faculties of the physical and intellectual [person] [Parley P. Pratt, Key to Theology, 4th ed., p. 96-97 as quoted in James E. Talmage, Articles of Faith, 481].

My spiritual understandings were greatly influenced by my mother, who joined the
We are taught that the Lord has given a commandment that all should have chari-
ty. Without charity we have nothing. It is explained to us that the iniquities and evils
of this world are murder, lying, stealing, envying, having malice and wormwood.
The list is explicit. Then in a Neph 26:35 we are told:
‘For none of these iniquities come of
the Lord; for he doeth that which is good among
the children of men; and he doeth nothing save it be plain unto the children of men; and he
instructeth them all to come unto him and par-
take of his goodness; and he deniseth none that
come unto him, black and white, bond and free, male and female, and he remembereth
the heathen; and all are alike unto God, both Jew
and Gentile.
Societies generally have neither under-
stood nor practiced the concepts of that
scripture. Two examples demonstrate how
women particularly have suffered from
this lack.
My South America assignment, which
included Arequipa, Peru, coincided with the
discovery in the high mountains near
there of the frozen remains of what
Newsweek called, “an ice maiden.” She
was, it is supposed, an Inca princess about
14 years old. Because of the way she
was frozen, her body fluids, her hair and
her skin are all intact and remarkably well
preserved. Consequently, scientists came
from around the world to study this star-
ing find.
I was struck that there had been a peo-
ple as sophisticated, disciplined, and dili-
gent as the Incas. Yet, in their search for
spiritual strength, they would offer one of
their most precious holdings to appease the
god of the mountain, whom they
feared and worshiped. Without the teach-
ings of Christ, without knowledge of what
sacrifice is or is not to be, things can be
done that not only are misused but can be
an awful waste.
As I was contemplating the Inca
princess, I remembered a story in Judges,
chapter 11. It reflects another time in a dif-
ferent culture, and it too suggests waste
masquerading as sacrifice.
Jephtha was born in a village to a harlot.
In due time his father had other wives and
children and Jephtha was driven out of that
village because he lacked status. He became
strong physically and must have been
remarkable, maybe somewhat like Samson,
because he was well known. When war with
the Ammonites was imminent, the villagers
sent for Jephtha and asked him to lead their
armies. Jephtha accepted the challenge. He
must have had some teachings about God
because we see in Judges 11:29–31:
And Jephtha vowed a vow unto the Lord,
and said, if thou shalt without fail deliver
the children of Ammon unto my hand,
Then it shall be, that whatsoever cometh
forth of the doors of my house to meet me,
when I return in peace from the children of
Ammon, shall surely be the Lord’s, and I will
offer it up for a burnt offering.
Now I don’t know who Jephtha thought
might come from his house when he
returned in peace from fighting the children
of Ammon. I don’t know why he thought
that in order for God to support him and to
strengthen him and to be with him that he
needed to make such a brash vow. But the
record says he did.
And Jephtha came to Mizpeh unto his
house, and behold, his daughter came out to
meet him with timbrels and with dances: and
she was his only child; beside her he had neither
son nor daughter.
And it came to pass, when he saw her, that
he rent his clothes, and said, Alas, my daughter!
though thou hast brought me very low, and thou art
one of them that trouble me: for I have opened
my mouth unto the Lord, and I cannot go back.
And she said unto him, my father,
when thou hast opened thy mouth unto the Lord, do
me according to that which hath proceeded out of
thy mouth. Jephtha said, I have opened my mouth
vengence for thee of those enemies, even of the
children of Ammon.
And she said unto her father, Let this thing
be done for me: let me alone two months that I
may go up and dress upon the mountains, and
breath my virginity, and my fellowship (sisters).
And he said, Go. And he sent her away for
two months: and she went with her companions,
and breathed her virginity upon the mountains.
And it came to pass at the end of two
months, that she returned unto her father, who
did with her according to his vow which he had
Church as an adult. She was an only and
high-achieving daughter of a Presbyterian
family. Her acquaintance with the Bible
through her early church life was enhanced
when she majored in English in college and
studied the Bible as literature. She was teach-
ing English and French in a high school when
she met my father, who was also on the fac-
tulty. His wife had died in the 1918 flu epidem-
ic, and he was left with a baby son.
As their friendship developed, they both
were aware that her not being a Mormon was
a major matter. Although her parents had
lived among Mormons, they had deeply held
biases about Mormon theology and about
marriage and eternal covenants.
Mother knew her understanding of the
restored gospel came mainly by hearsay, so
she decided to “take instruction.”
There were no local missionaries to assist
with such a task; member referrals were
unknown then in local Utah communities.
My father’s father, as a bishop for
years, had done such instruction from time to time.
My father hoped for objectivity, so he
thought my father’s father might be well equi-
pared for the task.
There were no regular Sunday school
classes then in Utah; member referrals were
unknown to the general public. My father’s father
was known among his peers. He was a
bishop for the Utah/Mexico area for 12
years, lived among Mormons, they had deeply held
biases about Mormon theology and about
marriage and eternal covenants.
My father’s father had other wives and
lived among Mormons, they had deeply held
biases about Mormon theology and about
marriage and eternal covenants.
Although her parents had
were aware that her not being a Mormon was
a major matter. Although her parents had
lived among Mormons, they had deeply held
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towards, and she knew no man. And it was a
custom in Israel.

That the daughters of Israel went yearly to
foster the daughter of Jephthah the Gileadite
four days in a year. [Judges 11:34-40]

For me, the story cautions that if we
know God, we know what he asks in terms
of sacrifice, and we know he would not
require of us or of our gender, status, stage
of education, or nationality. He wants us all
to have those blessings and makes it possi-
ble for each of us to have them.

One purpose of a recent assignment I
had in South America was to assess in a
brief time and a large area, "things as they
really are" (Jacob 4:9). I faced cities as huge
as Santiago, Buenos Aires, Rio de Janeiro,
São Paulo, and even Fortaleza and Recife
(which though somewhat smaller in Brazil,
are large cities to a person who grew up in
Springville, Utah). I knew that I could only
Teach and gain valid perceptions through
the Spirit.

And on arriving in Santiago, I learned that
members of the Church in South America find that almost
impossible to believe. They have such a sense
of adoration for President Hinckley and all
our priesthood leaders. It is difficult for them
to believe in the worth of their souls and
how necessary they are to building God’s
kingdom. That concept is difficult for us,
too. It is interesting to look at another cul-
ture where differences seem apparent. It is
easier to interpret them there. It is harder to
see them among us. Yet, we too struggle to
combine our abilities, to counsel together,
to understand their part in that great commit-
manship, as Santiago.

Yea, verily I say unto you, if ye will come
unto me ye shall have eternal life. Behold,
mine arm of mercy is extended towards you,
and whosoever will come, him [or her] will I
receive; and blessed are those who come unto
me.

And yet, having come unto Christ and
having made the baptismal covenant, mem-
bers of the Church in South America are
struggling, as we struggle, to more fully
understand their part in that great commit-
manship. They are learning, as we are, how
to combine their abilities to meet the needs they see all
around them—in the Church and in their
societies. They struggle to learn how to
counsel together: My assignment included
talking to priesthood and Relief Society
leaders together, inviting them to listen to
one another, to understand the resource they
can be to each other. In their culture that is
difficult. It has not been practiced. They have
had other ways of communicating. It is hard
for them to change, just as our ways are hard
for us to change. It is important for us to
comprehend that the culture of Christ is the
only culture we aspire to live. In that culture,
we learn to respect one another; we share
differences and listen to one another. We
are here to love and serve one another as
Christ commanded, not to restrict, dispar-
age, or discount one another.

President Gordon B. Hinckley said dur-
ing April 1995 Conference: "Your obligation
is as serious in your sphere of responsibility
as is my obligation in my sphere" (Ensign
May 1995, 79). That statement enormously
dignifies each of us in our efforts. The mem-
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we learn to respect one another; we share
differences and listen to one another. We

.......

Our best season
of sisterhood since that's where the daughter
turned as she prepared for her ordeal.

In 5 Nephi 9:19-20 we read:

Though maidens are no longer sacrificed,
I think we, too, are sometimes involved in
making "sacrifices" that the Lord may not
ask for, wasting things that if we really
understood the Lord, we would not waste.

Our God invites us to make life-giving
alliances with him. Think of the covenants
we have made. I believe the first time we
had Christ's teachings pierce our souls was
in our premortal existence when we under-
stood the options available to us. We under-
stand the plans that had been presented,
and we took the initiative to either stand or
raise our hand or in some other way say, I
will follow Christ. If we had not done that
we would not be here. That was the first
great commitment and covenant we made
with Christ—that we would follow him.

Then we come here and are taught the
gospel and have the opportunity for baptism.
The saving ordinances of the gospel that lead
us to salvation and exaltation come to men
and to women, to boys and to girls in exactly
the same way. For example, we are baptized
the same way. This is the other covenant that
we can make regularly to remember Christ is to
partake of the sacrament. That covenant is an
ordinance coming to us through priesthood
power and is also administered to us, men
and women, exactly the same way.

As we go forward in our spiritual lives
and are able to go to the temple to receive
endowments and make eternal covenants, we
find that men and women do that in
exactly the same way. This equity is evi-
dence of God's love for us regardless of
where we are or of our gender, status, stage
of education, or nationality. He wants us all
depend on our efforts to build on that founda-

---

Nephi

3

In Brazil, one country, there were
50,000 baptisms in the past year.
In Chile, Argentina, and Uruguay there
have been 45,000 baptisms in one calendar year.
These people have heard the Spirit. They know what
it's like. They have been converted by the
Spirit. The spiritual promise is explained in
5 Nephi 9:14:

Our best season depends on our efforts to build on that foundation.

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Nephi

3
Women have had difficulties because of their gender for reasons that most don’t entirely understand. It was late in the 19th century before women even in the United States could fully matriculate at universities. Earlier in that century, it was sometimes possible for women to attend a college or a university, but rarely were women matriculated. Little by little those doors have opened and now many don’t even know there was a time when they were closed. I was born in 1926, and I remember my Mormon grandmother and my Presbyterian grandmother taking me aside on separate occasions and each telling me how fortunate I was to be born in a time when women could vote. Their pronouncement had little affect on me as a child, but it has become more important to me as I measure our progress today.

It seems to me that we should carefully and prayerfully look through the doors the prophet says are opening. We can each decide how those doors can be useful to us and equip us, not so much for the things the world expects, but to make us more constructive with one another. Those opportunities can help us be more able to do the things the Lord would have us do by better qualifying us to receive guidance from the Spirit—to be the disciples of Christ that we deserve to be.

Alma 9:26 is one of the most beautiful verses in scripture. I have many favorites, but I turn to this one often. I find it lifts my soul and particularly helps me sense what coming to Christ is about.

And not many days hence the Son of God shall come in his glory, and his glory shall be the glory of the Only Begotten of the Father, full of grace, equity, and truth, full of patience, mercy, and long-suffering, quick to hear the cries of his people and to answer their prayers. [Alma 9:26]

It seems to me that all of that comes to us by the Spirit—the most important is to know truth and know how to be equitable and merciful, to accept the blessings of Christ’s grace when we have done all that we can do. Then we, too, could respond as Christ would to bring peace, healing, happiness, and joy into the lives of our brothers and sisters.

And now . . . remember, remember that it is upon the rock of our Redeemer, who is Christ, the Son of God, that ye must build your foundations; that when the devil shall send forth his mighty winds, yea, his shafts in the whirlwind, yea, when all his bad and his mighty storms shall beat upon you, it shall have no power over you to drag you down to the gulf of misery and endless woe, because of the rock upon which ye are built, which is a sure foundation, a foundation less wo, because of the rock upon which ye are built, which is a sure foundation, a foundation wherein if men and women build they cannot fall. [Helaman 9:24]

Our best season depends on our efforts to build on that foundation. President Howard W. Hunter advised us to pay ever more attention to the life and teachings of Jesus Christ. Living those teachings by the Spirit is our source of strength.

I am grateful to the Lord for his blessings in my life. It is wonderful to work with President Jack and President Okazaki. I have been blessed with a faithful, strong, supportive husband, three sons, three daughters-in-law, six grandchildren, and five grandsons. That is a joyful balance. I approach the Thanksgiving season with a full heart and the knowledge that he loves us and we are his children. I know that through him we may have eternal life. I pray that we all may have peace in our souls as we carry out our responsibilities and fulfill our intentions. I pray that we will remember that this is a great time in history for women and for men because of the restored gospel. I pray you might have that peace which comes through knowing that voice of perfect-mindedness. I say this in the name of Jesus Christ. Amen.
The following are some excerpts from a delightful discussion the Clark Memorandum had with Ed Kimball after his recent retirement.

Photography by John Snyder
Others on the faculty have come and gone, but like the poor, I have always been with you. But don’t blame me; it is the fault of four deans who have been entirely too polite to tell me to go. Besides, tenure is more powerful than politeness.

The Man Behind the Bow Tie
I am by nature a bit of a stuffed shirt. I always wore a tie to class—in recent years a bow tie, joining the good company of Gerry Williams and J. Reuben Clark. As a member of the Diversity Committee, I wore a promotional tee-shirt to class, but a bow tie as well. But I am not without humor. I collect stories of criminal stupidity and of chutzpa among litigants, like the prisoner who sued Utah for the insect bites he suffered while hiding out during a brief escape. And I once placed a “For Sale” placard on Bruce Hafen’s car when he was dean.

My thrift came from my mother, though I may have carried the virtue to excess. I once owned two cars, but at least I took pride in thedisreputable condition of the second car. More recently I have ridden a decept little motor scooter as my “second car.” It does my heart good to fill up the tank with a gallon of gas every once in a while. I have the habit of fishing paper out of my waste basket to jot a note on. And I have a box of big used envelopes that I can draw on in case I should ever need a big used envelope.

My favorite animal is the orangutan. Cows come a close second.

I am a compulsive proofreader. Over the years I have nearly every year sent to the authors of the casebooks I use a list of errata in their books. Whatever may appear, I am basically a shy person. I find it difficult to meet new people. My idea of hell is an endless cocktail party, standing around with a drink in my hand, making small talk with people I don’t know.

Beginnings at the Law School
In September 1971 I was teaching at the University of Wisconsin. I received an invitation to meet in Salt Lake City with a committee laying plans for a new law school at BYU. I was very free with my advice that BYU did not need a law school, since there were already plenty of universi ties where Latter-day Saints could obtain a fine legal education. It would be an expensive proposition, with acquisition and upkeep of a building, faculty, and library facilities. Further, I thought it would be difficult to gather the kind of law faculty they would want at a university that took religion seriously.

In the unlikely case they were looking at me as a possible dean, they would have gotten the clear impression that I considered law school administration an assignment about as welcome as a root canal. They thanked me politely for coming but grandly disregarded my advice, going ahead with the creation of a new law school.

If they were determined to have a law school, my candidate for dean was Dallin Oaks of the University of Chicago. But they disregarded my advice on that, too—although they did manage to find another use for his talents. For dean they chose young Rex Lee and assigned him to pull off an organizational miracle.

I got a call from this Rex Lee person, who wanted to meet with me. I discouraged him, saying that I was really not interested in moving from Wisconsin, where I had been happy teaching for 11 years, after five years at Montana. But he was persistent, saying that he was going to be traveling to meet other faculty prospects and would like to come get my ideas about what the new school should be like. Who could say, “I won’t talk with you,” especially when he showed the good judgment to want my advice?

He proved to be a pleasant enough fellow; we had Arizona ties in common and we even figured out that we were about four cousins—and I enjoyed giving free advice. He hoped I would consider teaching at BYU. I had no interest, but wished him well, asking to be kept informed how his difficult assignment was coming along. As I recall, he was on his way to Michigan to talk with Carl Hawkins.

Not one to let go easily, Rex kept in touch and told me who else he was talking with and his hopes of success. He kept reminding me that the door was open. And meanwhile my wife, Bee, was thinking about the prospect of a move. Our oldest child was about to finish high school, and Bee thought that, although Madison, Wisconsin, was a beautiful place, Utah offered the advantages to our children of church associations and the nearness of family.

As usual, her wishes were crucial to our decision to move. I was caught up in my work and was less concerned with surroundings than she was, particularly as they affected the welfare of the children. In some ways Madison, green and flanked by lakes, was like a garden. The university was a fine one, and I felt valued there. But there were some negative factors, too. The antiwar and racial protests had created tension that was unpleasant. I have sharp memories of the smell of tear gas, the sound of students running to escape it, of being prevented from entering the law school by a cordon of protesters, and of picking up shrapnel from a car bomb that destroyed a university building—and here we were being invited to move to Utah.

By spring 1972, I was thinking seriously about coming to BYU, but was wary of signing on as a crew member for a ship that might sink—right off the launching skids. I kept asking, “Who else is committed to coming?” The answer, typical Lee, was always something like, “If you come that’ll make two of us.” “What about Carl?” Rex was hopeful but had no commitment. Carl was clearly the most important single person on his list, but there had to be others in the cast. Rex knew he could staff the law school with practitioners, if need be, but he considered it essential to the initial credibility of the school that there be at least a core of teachers whose credentials in law teaching were already established. And there were, at best, few of us.

At length, with some hesitancy, I took the step and said, “Well come.” I was the first to make that commitment. Carl agreed soon afterward and, with that much secure, Rex said he breathed a great sigh of relief. Now when he was asked, “Who else is coming,” he had a real answer.

Rex assembled his new faculty from all across the country in the fall, about nine
months before the doors would open, to
decide such basic things as curriculum,
schedule, and grading system. Res also had
to worry about recruiting students and
David Lloyd assembled a library.

A new building was coming, but for the
first two years we held forth in what had
been the St. Francis of Assisi School. We
called it St. Residents. Faculty offices were
the first two years occupied by the nuns
who taught there. Classrooms and part of
the gymnasium provided library space,
while the rest of the gym was the one large
classroom.

The Law School as a Place to Work
Before deciding to come to avv, I asked
a friend about the atmosphere here and
received assurance that things were not as
bad as often painted. Pressures to conform
were there, but the restrictions involved
were pretty much the same as I would
impose on myself if I were elsewhere. One
does not feel particularly oppressed if
what he has to do is what he wants to do
away. At Wisconsin, I was used to an
environment where there were fewer
explicit rules, but I was aware that the
conduct of faculty members there had con-
sequences, too—either for the individual,
the law school, or the whole university,
dependent as it is on the good will of the
legislature.

The avv Law School is a fine place to
work. Physical facilities and support sys-
tems have been excellent. The students
are capable; in every class there are some
who challenge my views and make me consider
questions I've never thought of before. My
faculty colleagues have been genuinely
friendly.

If I have a complaint, it is about the dif-
ficulty of maintaining faculty interaction.
People seem so busy. In the early years we
sought to create community by holding
weekly brown-bag lunches at which one of
the faculty would make a presentation.
Though we tried repeatedly, a series never
managed to survive long. The consequence
is that there is less professional sharing than
I would have hoped for. It is not lack of
friendliness, but lack of friendship. Some
faculty have played basketball or run
together, and others undoubtedly had social
contact away from school, but I have
always been somewhat isolated, in the
midst of people I like very much.

Overall, I consider the Law School a
success in providing students a high-quali-
ty education in a constructive setting.
There are some problems, however. Over
the years there has been occasional expres-
sion by male students that women ought
not to study law, particularly not here,
where they would occupy seats that might
better go to men, who hold the responsi-

the faculty would make a presentation.

Some have thought that responsibility
for making decisions about years of some-
one's life would weigh heavily on me, but it
never has. I simply use my best judgment,
make a decision (or recommendation) and
am done with the case. I know I have made
mistakes, both in being too lenient or too
tough in individual cases, but I do not feel
guilt or anxiety about the decisions; I have
done the best I can.

The most curious case I participated in
was the petition for the posthumous pardon
for Joe Hill, the Wobblie organizer who was
executed for a robbery-murder way back in
1915.

The most difficult was a petition for
commutation of the death sentence of
William Andrews in the Hi-Fi murders case.
Pierre Selby, in the robbery of a stereo
equipment store raped one victim, kicked
a ball point pen into the brain of another
through his ear, forced some to drink
Drano in expectation it would kill, and shot
them all, though two survived head
wounds. Andrews was sentenced to death
along with Selby, though he did not person-
ally kill anyone. He was present, helped
with the Drano, and gave his gun to Selby
to do the killing, but he did not pull the
trigger. The outcry was that Andrews had
not killed anyone and was to be executed in
large part because he was black and had not
had a fair trial (although the Supreme Court
had upheld the conviction).

I was brought in pro tem to sit with Pete
Hahn and Vicky Palacios because Paul
Boyden was related to a lawyer who had
assisted in the prosecution. The hearing was
highly publicized, with cameras in the hear-
ing room. We opted to simply give each side
four hours to present its case. The case
drew international notice and we received
stacks of letters and faxes, nearly all gener-
ated by Amnesty International. At is, of
course, opposed to any capital punishment,
It would be nice to have a law school community where competition was less and where we could see joint learning as the enterprise we share.

However, the lawyer is expected to be honest only with respect to things he knows to be facts. Beyond that, in interpreting evidence of possible facts and everything built thereon, his assigned role is to give a biased view. The only limitation on this sort of distortion is the practical one that he must seem reasonable or lose credibility. Candor about the weaknesses in one’s case may lend an air of credibility, but it can be justified only on that ground.

This role assignment is almost incomprehensible to laymen and gives many lawyers trouble. They cannot comfortably see themselves as role players, much as actors in a play who may express views quite at odds with their personal values.

The decision is made at the outset—whether to be an actor at all or whether to accept a particular part. The actor cannot rightly decide in mid-play that he will not speak the lines. That would destroy the integrity of the enterprise.

Lawyers do sometimes fudge, refusing to follow the rules when they believe the rules would work serious injustice in a particular case. I would do that, too, in an extreme enough case. But I think it poses a dilemma for one to espouse a profession yet reject those parts of its structure one finds uncomfortable.

Parting Advice

Students often express their dismay at having done less well in law school than they had expected. They are used to excelling, yet now they get average or below-average grades. I suggest the analogy of the Olympics. At that level of competition even the person who comes in last is a world-class athlete. One has to remember how selective the setting is. I have never been a popular teacher and am probably about average. I console myself with exactly that same analogy.

I urge students to realize that as lawyers they can with surprising ease have an influence on the law. For example, they can
So let it be written

In the last eight years the Chicago-Kent Law Review conducted three faculty productivity surveys to quantitatively and qualitatively identify the 50 most productive law school faculties in the nation. In the study published this year, BYU rose out of obscurity to nab slot number 25. Reasons for the rapid rise on this scale are various. “In the early years, the first order of business for faculty was to master courses taught and get the law school organized and running,” explains Associate Dean Clifton Fleming. “These issues haven’t gone away but are no longer emergency matters. Now faculty can turn to other important things, like publishing.”

by Louisa Lyman

---------  •  Robert Neubecker
Further he says, "The law school as an institution has given enormous encouragement to publishing. Hiring decisions consider potential or proven productivity and this is an issue in promotion and tenure issues as well."

"The biggest single factor," offers Kevin Worthen, "is Jim Gordon." Gordon, now associate academic vice president of the university, published quietly in the twenty top journals considered in the survey. He, however, is quick to credit others as well—among them Worthen. "We published in seven of the top ten journals," he observes modestly. "A nice recognition."

It's not an easy bunch to break into. With few exceptions, the list is limited to general interest law journals edited by students and published by universities, private organizations and practitioners, among them Worthen. "We published in seven of the top ten journals," he observes modestly. "A nice recognition."

Getting Started
In fact the eKU law faculty has performed well in all areas of professional writing. How they actually hit on a particular writing topic varies. "It's different with every project," purports David Thomas. "Some things I've done because I see a need. Others I've been assigned by a publisher."

For a long time I'd been preoccupied with a particular topic that I'd been interested in," according to Wilkins, "but also appropriate to direct output to the scholarly academic audience," Fleming continues, "but also appropriate to direct output to the judiciary, practicing bar, and law students."

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Though the current survey, unlike others in the past, considered faculty-edited, specialty, and interdisciplinary journals, very few of these figures in the final list. Still excluded are the many privately published law journals rife in the country. "Some law reviews aimed at the practicing bar have much larger circulation than the top ten," asserts Fleming.

Fleming's criticism—that the survey is limited to such a small list of journals—was one of those leveled at the study when it was first published. Another was that it didn't allow for the many other types of faculty publishing. Fleming concedes on this last point as well. "The survey is a very narrow measure of productivity and not a particularly appropriate measure for a professional school."

Law reviews are heavily skewed to an audience of law professors and their theoretical concerns, and law school constituencies, such as lawyers and judges, are underserved. The Chicago-Kent response in both cases was that expanding the list to include more journals or to other types of publishing "would [fall] by its weight."

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"Religion is a plus. There aren't many LDS legal scholars and...
The imposing bank of filing cabinets in his office is organized by section numbers for the five books he authors and updates for West Publishing. Though this organization facilitates updating his work, he laments, "It is an abomination around my neck." He consults the same files when he prepares an article. Generally 80 percent to 90 percent of the material he needs is in his files, and he is only to decide what position to take before he begins to write.

The supply of topics, says Fleming, is "inexhaustible." His "concern is not what to write about, but how to find time to write on topics out there in abundance." Topics for writing, laments Worthen, are "a two-edged sword. At first you wonder what you'll write about, but the more you write, the more you find to write about. Right now I have 47 ideas. The biggest challenge is to focus." Cheryl Preston, looking at the boxes ranged around her office, agrees. "Papers are just bursting to get out of every one of these. My brother once said he had a paper itching to get out of his head, and I could visualize Athena bursting full-grown from Zeus's brow. The metaphor is different for me. I feel like I'm pregnant, and I won't be comfortable until the baby has arrived."

Getting Published in the Top 25

Naturally, potential publishers influence the choice of topic. Nowhere is this more evident than in the journals considered in the Chicago-Kent survey. The top journals are heavily "oriented to questions of individual rights and not necessarily to getting the work of the world done," criticizes Fleming. "Though these theoretical materials are important, they are not on issues most lawyers deal with." Burns, who Worthen credits with an uncanny ability to psyche out potential law review markets, agrees. "The major journals often concentrate on what I term jurisprudence. Roughly, jurisprudential topics are those related to high profile constitutional issues—many written under the guise of incomprehensible titles. These include abortion, same-sex marriage, and feminist issues over more prosaic subjects such as banking, property, and antitrust. Says Burns, "It's easier to get an article on law and religion published now days than one on the ice." Even if an article deals with a topic commonly treated in a journal, the author must consider that certain points of view are not tolerated. "The most popular journals have a political correctness attitude that makes it hard to get a conservative article on an issue of social morality published," Lynn Wardle believes.

As to why some topics are popular and others not, Burns recalls: "Michael Goldsmith once told me that the student editors favor articles on first-year class subjects, especially constitutional and criminal law. Current hot topics in constitutional law are law and religion and freedom of speech. In criminal law, it's the death penalty." Though Burns does not advocate picking topics by what is currently popular, authors can't afford to discount the importance of student preference. "Though some articles may be referred to faculty members if the editors have questions," cautions Burns, "students usually have both the first and the last word about what is published."

Gordon concedes that "the students who select the articles for publication in the law reviews tend to be influenced by current fashion, but fashion is only one factor in the process." Other major considerations are well-reasoned development, impressive research, and writing style. No matter how well an article is written, however, it makes sense to submit it to journals known to publish similar pieces. Says Burns, "You watch which journals are publishing which things. If you run into entire issues or symposia about things you don't understand and you need Fred Gedicks to explain it to you, then you know the journal's not for you." Burns regularly reads the top journals and those in her particular areas of interest and pays close attention to the articles similar to those she is working on as well as their footnotes. Footnotes give her names of other journals to consider.

If a faculty member's areas of teaching or writing do not fall precisely into subjects favored by the major journals, writers do better to send their work to special interest journals or link their area of interest to a constitutional or rights issue. "I write Indians and ____ (fill in the blank) articles," Worthen says. Because Indian law, his main interest, is not at the top of most people's lists, he gives the Indian law a "spin" to more popular areas of law—the federal court jurisdiction in an Indian law context for example, as well as state and local government, international law, equal protection, and same-sex education—meaning all-boy or all-girl schools. "I ask myself, 'How does Indian law inform this issue?'" Jurisprudential or esoteric topics don't turn Gedicks away from the top journals. With an undergraduate degree in economics and lots of philosophy and literary criticism to his credit, he's armed to take on deconstruction, hermeneutics, postmodernism and a lot of other -isms, -isms and -ics with aplomb. "I've learned to trust my instincts," he explains. If he has a particular reaction, he knows he should develop it into an article. "Religion is a plus. There aren't many law legal scholars and our religion gives us a unique perspective. We shouldn't be embarrassed to talk about it."

He doesn't apologize for quoting scriptures to make his point, nor for references to law history and has placed articles with a Mormon slant in prestigious law reviews. One of his books, Rhetoric of Church and State, was published by Duke University.

Like Gedicks, Jack Welch frequently writes on law and religion because he feels that what he says hasn't been said before. For him writing ideas concisely and analytically is an exercise. "I like to try to organize vast amounts of information into coherent patterns or categories. I never feel I've understood a subject until I've written

perspective. We shouldn't be embarrassed to talk about it."

— Frederick Mark Gedicks
I like to try to organize vast amounts of information into coherent

Whitman also updates titles of particular interest to the bar. His approach is methodical and ongoing: “I get the releases for all of the reporters. With student help I go through each one, eventually sifting all those cases that impact on the subjects of my publications and file them under section and paragraphs. Anything not in his files, he can usually get from WESTLAW. Fleming’s publications also benefit the bar. Though distanced from the ivory tower, “good lawyers are looking for creative solutions and need good analysis and theories,” he says.

Serving Students. Besides the kinds of materials the BYU law faculty publish in journals, treatises, and loose-leaf services, several also author textbooks and other student-oriented materials. Whitman

about it.” And like Worthen, he often links major interests to law—Book of Mormon and law and Biblical law, for example.

Wilkins, Wandle, and Preston all write on constitutional issues that are often in the news. Though Preston’s first published piece after coming to BYU was on a banking issue, feminist issues now vie with her banking interest and place her squarely in the top journals. As she says, “I explore the way gender-specific experiences affect the way we make legal decisions.”

 Likewise Wandle’s current writing coincides with the interests of the major journals. He just finished an article on same-sex marriage and has published several pieces on abortion. He feels compelled to write on such subjects, not because they are popular issues and not because he feels his contributions have changed the law, but because the literature is one-sided and he wants to make the community aware of the issues, laws, and contradictions, particularly of the abortion doctrine. Wandle hopes that “someday that doctrine will change. Maybe our students will be instrumental in getting the law corrected.”

Wilkins also addresses the abortion issue, though he is not as optimistic that the law will change. Because of his teaching focus on constitutional law, civil rights, and simultaneous submissions are being made, and this puts pressure on the staffs to respond quickly if they want a particular piece. “If the article isn’t accepted, by the first 20, I try the next 20 journals on my list,” explains Burns. Whitman prefers to “save the trees” by not sending out an article until he has some assurance that it will be considered. “I call a colleague on the faculty and tell him or her what I have. Usually she or he will offer to hand carry it down to the law review.”

Whichever method is used to get an article into the hands of the law review staffs and accepted for publication, nearly every article produced by the BYU law faculty is eventually accepted and published somewhere, many in the top markets. The difficulties entailed in placing articles in high-profile journals may not seem worth the bother, but Preston feels they are counterbalanced by the sense of community engendered: “I find it much easier to stay involved in research if it relates to broad life experience. You get the sense that you are in a conversation with people.” When she first came to BYU, someone advised her to find a little niche where no one else was writing and fill the need. She has rejected that idea. “It’s much more interesting to work where everyone is building on everyone else.”

Getting Published Elsewhere

Certainly, the Chicago-Kent rating is valuable to the Law School. “It shows that we have a faculty measured by several important constituencies of law schools and judged to be excellent,” sums up Fleming. “It will catch the attention of students and new faculty we want to recruit and should also benefit our fund-raising efforts.” But its value should not be overestimated to the exclusion of other valuable writing, all of which is of service to the Law School’s constituencies and is rewarding in its own way.

Serving the Bar. One constituency is the practicing bar. People will often decide how they feel about the legal system based on personal experiences. When faculty members produce materials to help thoughtful lawyers be more effective in addressing client problems, they are serving both the practicing bar and their clients,” says Fleming.

Though Thomas and James Backman have both been published in law reviews, they are currently deeply involved in loose-leaf publishing of particular value to attorneys. “Some years ago, a colleague approached me after a professional meeting to ask if I knew anyone who would update a chapter in a highly regarded property service,” recounts Thomas. “I gave her some names but soon saw that what she wanted was for me to volunteer.” That began a long-term commitment for Thomas and for Backman, who agreed to join him in the effort. What started as one chapter expand- ed to several over time as well as to other loose-leaves for the same publisher. The key to continued relationships with publishers, observes Backman, “begins with getting a chance” then being “loyal, consistent, and diligent in meeting deadlines.” Most recently Thomas revised an entire property set for a different publisher, with an extremely positive response. Both men comment on the value of collaborating. “It’s nice to work with Dave,” comments Backman. “We encourage each other, share experiences, and often use each other on our pro jects.”

federal courts, his writing usually addresses social issues that find their way into the courts. His controversial topics include voting rights, and modern notions of community and relations. Interestingly enough, one of his latest articles deals with Charles Dickens and modern notions of community and responsibility. Of his writing he asserts, “I don’t write to clarify an arcane little area of interest to academics. I’m more interested in debating broad social issues relevant to society.”

Once an article is completed, the submission process begins. Burns and others send their pieces out in waves of 25 or 35 journals at once, opting for the most prestigious first. Most law reviews expect that

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than hope his articles reach the judges and have an influence on them, he prefers to be actively involved in the system. He freely admits that "one of the biggest enemies to academic productivity is getting involved in real-life litigation." Nevertheless he will continue to contribute pro bono time to such causes as prolife, profamily, and prochildren movements because that service has, in his view, "a more significant contribution to make than law review articles." A substantial amount of writing goes into defending such causes, though none if it figures in the publishing indexes. Over the past few years he has written briefs or amicus briefs on issues like school prayer, racial discrimination, voting rights, and abortion. "I believe that work, fully as difficult as writing articles on the same subject, may have more impact in the long run."

Likewise, the research and writing to prepare testimony for the United States House and Senate or for teaching constitutional adjudication to state and federal judges in Utah requires large expenditures of time. "Not measured on a scale of productivity, those efforts may do more to promote ordered and reasoned development of law than any single article," Wilkins said.

Serving the Larger Community. Naturally all the scholarly writing undertaken by law professors at BYU is not law related. Welch has written on such diverse subjects as scriptural poetry and prominent LDS scholars. "I've always loved to write," he confesses. "I published my first article on chiasmus in the Book of Mormon when I was a junior at BYU. Since then there has only been one year, my first year at Duke Law School, when I haven't had something published." His writing takes him into "many different worlds," and he "can't imagine doing without any of these dimensions. They all have a way of complementing each other and compelling thinking takes him into "many different worlds," and he "can't imagine doing without any of these dimensions. They all have a way of complementing each other and compelling thoughts to make sense of the world." Welch is often called on to write for the Good Book. Currently he edits The Book of Mormon and Mormon Studies (Foundation for Ancient Research and Mormon Studies) publications, almost all of which he has had a hand in editing. Recently he edited a local history book, Beyond the Contributions Made by the Teaching Faculty, the Law Library Faculty Publishes Widely in Law Librarianship, General Librarianship, and in Nonlibrary Publications.

Getting the Time

The time required to produce the materials sent out by the Law School is prodigious, but the faculty accept it as their due rather than an annoyance. For some, like Thomas, output is steady throughout the year. For others it is, as Backman says, "a juggling act." "It helps to make commitments so when they approach, they turn into emergencies," Fleming observes. Welch tries to write daily. He carries a laptop, he dictates, and he has a home computer and two offices on campus. "I can write wherever there's a phone's not ringing." Burns has staked out a retreat at the University of Utah medical school library near her husband's office. "It's quiet and air-conditioned; I don't know anyone, and I'm not tempted to read the books. Somewhat computer phobic, she writes her first draft longhand and often calls on the "excellent law school secretaries" in preparing the final drafts. Usually, scholarly writing requires uninterrupted blocks of time, a rare commodity during the school year. "Books, the computer, things on the desk yell out at me," says Backman. He addresses the problem when classes are in session by having an office in the Lee Library and by retreating, when possible, to his cabin. Most prefer to do their intensive writing during the summer. Not only are generous research grants available to support such writing, but computer systems and librarians are less in demand and more available to the faculty. Whitman, who does summer bar-preparation courses around the country, carries his laptop with him and books into WESTLAW in his hotel room or spends his days writing at a local library. Naturally all writing does not occur during the summer, but as Backman explains, "editing, updating, and reading proofs is something that doesn't require the same level of concentration as the initial research and writing. It can be done when school is in session, in the evenings, or on weekends."

Getting Support

Time to write in the summer is generously supported by the Law School through funds it has raised. "Grants are available to almost everyone who submits a proposal,
explanes Worthen, currently on the Faculty Research Committee. “At the end of the summer, faculty report on their progress and submit any new publications to the committee.” Grants received elsewhere are also encouraged by the university. Wardle, for example, received a grant from the National Endowment for the Humanities that allowed him to travel to outside sources. A Fulbright Grant recently allowed Worthen to live, teach, and research Indian issues in Chile. All faculty are allowed funds for research assistants. Much of what student assistants do is akin to clerking duties at a firm. They find cases, locate laws and regulations, and do research. Generally they do not do any of the writing for the final products, but their contribution is immeasurable. Some students make such a contribution that their names figure in the final publications. The annual survey of Supreme Court opinions that Wilkins compiles, most recently published by Hastings Constitutional Law Quarterly, bears the names of his student aids as well. Similarly several of Welch’s law review articles are coauthored by student research assistants and even classes. “I like collaborating with students and colleagues. Each brings different perspectives to the project.” He also appreciates the opportunity this gives to critique each other’s work.

Besides student assistants, faculty may occasionally have reduced teaching loads during the school year to allow more writing time. Finally, professional research librarians and the extensive library collection make an important contribution. Unlike law schools where faculty researchers are expected to purchase their own sources, a significant portion of the Howard W. Hunter Library collection supports faculty writing. Library reference faculty devote untold hours to aiding faculty by accessing the collection and locating obscure sources. “I joke with Gary Hill,” says Worthen, “that if I’m going to give him a source he can’t find—but so far I haven’t succeeded.” Fleming also emphasizes the advanced electronic capabilities, available to every faculty office, which allow access to on-line and cd-rom databases.

The level of university support, in time, money, human and computer assistance, makes writing at BYU less arduous and more rewarding than at many other schools. “We are liberated in this environment,” says Wardle. “There’s not a negative competitiveness—if she gets ahead, I look bad.” Rather it’s “If she gets ahead, we all look better.” There’s less turf protection and narrow-minded parochialism here.” Preston appreciates this as well. “Just the fact that they let me do this stuff,” she says, referring to her current research interests, “is a great show of support. But colleagues also edit for me, allow me to bounce ideas off them, and route me articles of interest.”

Despite the high levels of support, Fleming feels more can still be done to foster a writing faculty. Sabbatical leaves, currently not funded, “would help faculty to approach a bigger project presently beyond our capabilities.” Likewise an enlarged travel budget, which is currently “somewhat constrained—particularly concerning international travel—would send more faculty out to cross-fertilize by presenting papers at conferences.” Additional faculty slots, “particularly in international areas, would broaden subjects in which faculty do research,” says Fleming. Additional funding for administrators to assume some nonscholarly chores now done by faculty and additional funds for librarians and secretarial help would all contribute to productivity.

Getting Published

The BYU Law School profits from the increasing output of its faculty, but most faculty agree that, ultimately, writing is its own reward.

“When I first went into teaching,” confesses master teacher Gordon, “I thought doing scholarship was the price one had to pay to be able to teach. But then I discovered that doing scholarship itself is exciting and enjoyable. It sharpens your thinking, helps you learn, and involves you in a larger dialogue about law.”

Notes


'It isn’t better.' — Lynn Wardle
Jean Burns glances past a miniature winged gargoyle crouched atop her computer and out a long narrow window at the falling flakes. They’re not thick yet, but a storm is on the way. She is driving herself today—contrary to an old student rumor that she can’t drive—and she doesn’t relish tackling the snow: “I read somewhere that 90 percent of drivers believe they are above average. I freely admit to being in the remaining 10 percent,” she quips.

The gargoyle on the computer monitor, one of many in her office, is not just a decoration: “Computers, like dogs, can sense fear,” she explains. “My gargoyles protect me from the evils of the world.” Today, she says, she needs a gargoyle in her car.

It’s amazing that Jean Burns would need protection from any-
Jean's colleague, Michael Goldsmith, has turned the commute into a fun and broadening experience. Jean furnishes the car and the gas, and a student, who also lives in Salt Lake, does the driving. Sometimes it's been just her and the student; other times Michael Goldsmith has commuted with them; and then there has been the steady flow of car-pool "guests.

Jean uses the hour on the way down to prepare for class and the hour on the way home to chat with her student driver about everything and anything. Jean explains that "it's been a wonderful way for me to get to know a few students really well—and also to find out what's really going on at BYU."

The student drivers have varied widely over the years. The first was Solomon, a BYU engineering student and a Shiite Moslem, who had just emigrated from Lebanon and only learned to drive after arriving in the U.S. Solomon was "our most exciting" driver, Jean says. She explains that Michael Goldsmith taught Solomon the right-turn-on-red rule. The problem was that either Michael did not teach or Solomon did not learn the stop-before-you-turn part of the rule. "We'd just go whizzing around corners, barely missing pedestrians a few times. Occasionally Michael or I would let out a scream. With a Middle Eastern stoicism, Solomon would just say, 'We don't need them' and keep going."

Thereafter Jean stuck with BYU law students for her drivers. Over the years she's carpooled with Matt Lalli (now practicing in California), Robert Booker (now practicing in Salt Lake), and Kim Littlefield (also working in Salt Lake). During the last two years she has carpooled with Marnie Jorgensen, currently a third-year student, and Diana Grant, a second-year student. In fact, as Jean and some of her former carpoolers tell it, the car-pool experience provides valuable lessons in law and life.

Evidence: The Car-Pool Privilege

When the car pool began, Jean and Michael created a new evidentiary privilege: the car-pool privilege. This rule, Jean says, is more sacred than the attorney-client or doctor-patient privilege. It means that anything said in a car pool is confidential and can't leave the car pool. Jean says, "This way we're all free to rant and rave about anything at all. I think we all say things in the car pool that we'd never tell a spouse." Which brings up the next insight.

Negotiations

"Gerry Williams should assign carpooling as part of his negotiations class," Jean chuckles. "My car pool has outlasted some of the riders' marriages and relationships with 'significant others.'" Jean's convinced that the reason is twofold. First, "there's more honesty in the car pool than in most marriages." For instance, if a carpooler doesn't like the music being played or even a fellow rider's cologne, he or she never suffers in silence. Second, Jean laughingly says, "Car pools are probably harder to get and keep than spouses, so people are more willing to negotiate."

Over time, rules evolve, like, "Whoever's driving gets to pick the route." Time to leave Salt Lake is roughly determined by when carpoolers' classes begin. Departure time is completely negotiable, depending on the needs of the car-pool members.

In fact, car-pool departure is a great way of escaping a late afternoon meeting. The words "My car pool is leaving," are wonderful, says Jean. "People respect it; it's like, 'My mother is dying.'" She adds, "Of course I never mention that it's my car."

One thing is not negotiable in Jean's car: the music is only 1960s and 70s Motown. Jean admits, "I'm a sucker for the Four Tops, the Supremes and the Temptations." Says Kim Littlefield, "Every once in a while I would get into the car and see a big grin on Jean's face, and she..."
would announce, "I just made a new tape for the car." It was a different tune on those days when the car pool used Michael’s car. Kim explains, "We listened to the light jazz stuff he likes." Michael counters, "It’s amazing that the car pool survived Jean’s taste in music.

One car-pool guest, Paul Werner, was the source of another car-pool rule. Paul (now practicing in Salt Lake) always brought treats—cookies, cake, pie—when he hitched a ride in the Burns car pool. Soon the rule was established: Guests must bring treats (or suffer harassment the whole way to Salt Lake).

**Family Law**

"Lots of car-pool conversation revolves around spouses," reports Michael. Jean and her husband, Jim, have been married more than 25 years. They met when both were undergraduates at Vanderbilt and married after graduating. Jean went to the University of Chicago Law School while Jim attended Northwestern Medical School. "It’s great being in school together. No one feels guilty about studying on Friday night. Besides," Jean adds, "it’s so cold in Chicago that there’s nothing to do but stay inside and study."

After graduation, both found jobs in Philadelphia. Ten years later, Jim, a neurologist who does medical research, got an inquiry from the University of Utah Hospital. He visited the department and liked it. Jean had been considering teaching and interviewed at BYU. Since Jean and Jim took most of their vacations hiking in the West, it was a perfect solution for them. Jean says that her carpoolers know all about Jim. "The problem is that my carpoolers almost always decided that he’s too good for me." Kim Littlefield, who worked for Jim as a research assistant before coming to law school, agrees. "Jim is the nicest man on earth; the best boss I ever had." Jean laughingly counters that Jean thought Marnie had encountered the strangest penal regulation when she reported being ticketed by a BYU cop for "unauthorized use of a washing machine." (Marnie is quick to add that she "beat the rap" in court.) But then Diana confessed to being nabbed for after-hours visits to a city wall. It seems that recently one night Diana and some friends were enjoying the view of the Salt Lake City lights from a wall overlooking Memorial Grove Park (less than a block from Diana’s home). A policeman stopped and told them to move on, because "the wall closes at 10 p.m." Diana’s confession led to numerous car-pool discussions concerning such matters as: How do you close a wall? Is the sidewalk also closed? The street? The sidewalk on the other side of the street? What about sitting in a car in the street next to the wall?

**Criminal Law**

Jean reports that her two most recent drivers, Marnie Jorgensen and Diana Grant, have added criminal-law experiences to the car-pool dialogue. "I keep getting mixed up with these law breakers," Jean jokes. Jean thought Marnie had encountered the strangest penal regulation when she reported being ticketed by a BYU cop for "unauthorized use of a washing machine." (Marnie is quick to add that she "beat the rap" in court.) But then Diana confessed to being nabbed for after-hours visits to a city wall. It seems that recently one night Diana and some friends were enjoying the view of the

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him: "To be a successful lawyer, you need to explain things as though a juror were in the sixth grade." Robert has found this to be true: "Lawyers tend to talk about big concepts in big words. What they really need to do is break it down and dose it out in bite-sized pieces."

Matt Lalli claims, "I can't remember a thing Jean Burns taught me about the Uniform Commercial Code, but I'll take to my grave these valuable lessons I picked up as we slid white-knuckled through the snow at the point of the mountain: Never make important decisions on Monday morning (and if possible avoid making any decision on Monday); recognize when you don't have any power and keep your mouth shut; organize important papers on your desk under one rock and unimportant papers under a different rock; and, most important, when you are in a strange land where people do funny things, keep a sense of humor."

Jean believes her background in litigation helped her make a smooth transition into law teaching. "I structure my class exactly like I would a direct examination. I try to find a logical, step-by-step progression through the material."

Jean also takes her leisure activities seriously. A self-described "weekend warrior," she enjoys running and hiking. Recently Kim Littlefield got her interested in weight lifting a couple of times a week. "Kim explained how muscle tissue burned more calories even when a person's just sitting. I figured you couldn't beat that," Jean says.

Snow is coming down faster now, and Jean wants to be on her way. Just then there's a knock at the door and a student sticks her head in. "I can do it!" she announces. Jean is obviously pleased and relieved. "Wednesday then. I'll pick you up. You drive."
by Kevin J. Worthen, Professor of Law

If It Is Broken, Fix It
A review of Judge Malcolm R. Wilkey's Is It Time for a Second Constitutional Convention? The National Center for the Public Interest, 1995

The American system of government is broken. At least it is if you believe many thoughtful persons involved with the system, such as Bill Bradley and Warren Rudman. Other, less-experienced people are arriving at that same conclusion as they see repeated government shutdowns due to congressional and presidential squabbling over continuing budget resolutions and airplane seat assignments, and popular, well-qualified candidates refusing to seek high office. With the publication of Is It Time for A Second Constitutional Convention? we can now add Judge Malcolm R. Wilkey to the list of those whose governmental experience and seasoned observations lead them to believe that serious change is in order.

The avo Law School played an important role in the coming forth of this intriguing book. In November 1993, Judge Wilkey visited the school as a scholar in residence. During that time, he gave a series of lectures about constitutional reform, the last of which summarized "Why the Founding Fathers Would Call Another Constitutional Convention Now." This concluding lecture was published in Clark Memorandum in 1994. The entire series of lectures, expanded and reorganized, are in this book, which should be of great interest to anyone interested in the current state and future course of government in America—an audience one hopes is quite large.

The main message of the book is that our duty as heirs of the Framers of the Constitution is to assume the same responsibilities that they did: to address our current political and social problems with imagination and courage. This course requires that we discover, discuss, and seriously consider the nature of the fundamental problems with our current system and all potential solutions that might address those problems. The book provides an excellent starting point for that important process. The book is divided into two parts. The first contains the expanded text of the "Wilkey lectures." The second consists of commentary by what one author calls "a variety of conservatives..." a pair of think-tank denizens [Walter Berns of the American Enterprise Institute and Terry Eastland of the Ethics and Public Policy Center],... a pair of conservative activists [former U.S. Attorney General Edwin Meese, a Fellow at the Heritage Foundation, and Phyllis Schlafly of the Eagle Forum], and finally three academics [Michael DeBow of the Cumberland School of Law at Samford University, Dwight Lee from the University of Georgia Economics Department, and Michael Stokes Paulson of the University of Minnesota Law School]. The diverse nature of the responses from this somewhat politically homogeneous group testifies to the provocative nature of the ideas Wilkey sets forth. Wilkey has clearly touched on subjects about which people feel strongly, and the ideas he addresses are wide-ranging enough to draw praise and criticism from almost every direction.

Wilkey begins the book by briefly outlining fundamental premises held by the Framers of the Constitution (about the need for the executive to resist legislative encroachments on his powers, the sorts of persons who would serve in the presidency and Congress, and the limited role of the federal government), changes that have occurred since that document was drafted in 1787 (the enormous infrastructure and technological changes), and what has not changed (the fundamental structure of the government). It is this last factor, the limited number of structural changes to the federal government despite changes in the shared premises and other transformations in American and global society over the past 200 years, that Wilkey finds most surprising and most telling. That Americans have not more frequently availed themselves of the amendment process to make necessary structural adjustments is evidence to Wilkey that something is amiss. That something, he postulates, is that "the people who would be most affected by changes, who would have their powers altered, are precisely those who can most easily originate constitutional amendments, namely, members of Congress" (p. 17). Thus, the book’s recurring theme is introduced: It is time for the American people to circumvent Congress, as Article V permits them to do, and make the necessary structural changes themselves.

Some may be tempted to dismiss the book as another right-wing tract advocating the return of the Constitution to
its original pristine form from whence it has been wrested by evil conspirators. However, Wilkey’s argument is much different and more complex than that. He advocates not that we readopt the specific constitutional remedies the Framers found applicable to their 18th-century problems, but that we consider ways to adapt the Constitution, as its Framers intended it to be, to the new challenges. If any part of the Constitution has been wrongly ignored, Wilkey seems to contend, it is Article V, whose provisions outline two separate ways in which the document can be amended—evidence that the Framers themselves foresaw the need for updating and adapting the document. In our zest to attribute near perfection to the Framers, we may be missing their main message to us and frustrating their efforts. “We will fritter away, or have destroyed overnight, what the Framers gave us,” Wilkey asserts, “unless we confront our current problems with the same imagination, practicality, courage, and selflessness they displayed in 1787. And that requires us to acknowledge that our world is dramatically different from theirs” (p. 97).

Having sounded the basic theme, Wilkey then describes three manifestations of the current woeful state of national politics: legislative “gridlock” (the inability to enact constructive legislation that a vast majority supports), “perpetual incumbency” (even during the “Republican Revolution” of 1994, 91 percent of the members of Congress who sought reelection were successful), and the “total unaccountability” (evidenced by the budget crisis in which Congress blames the president and vice versa) (pp. 19–23). Following a short chapter contending that judicial activism (another “example of systemic failure under the Constitution”) is itself attributable, at least in part, to the three legislative failures noted above (pp. 23–46), Wilkey then turns to a lengthy chapter discussing “Needed Reforms” (pp. 47–73).

This chapter is the heart and most interesting feature of the Wilkey lectures. The possible reforms discussed are wide-ranging, extending from such well-known suggestions as term limits for Congress, line-item veto power for the president, and a balanced-budget amendment to changes familiar to students of political science than the general public: longer terms for the president and members of the House and changes even more novel, such as having the president elected first and then Congress elected a few weeks later.

Two novel specific proposals seem particularly timely in light of recent events and present more positive examples of the kind of analysis Wilkey provides for each possible reform. First, Wilkey suggests that on every ballot for federal office there be a line and an opportunity to vote for “None of the above.” . . . If “None of the above” received a plurality for the office, there would be another election in thirty to sixty days. The salutary effects would be obvious. If “None of the above” won, which would be sure, it would be clear that the major parties nominated obviously unacceptable candidates. The citizens would deserve better, and “None of the above” would force the parties—or the independents—to come up with better . . . Even if “None of the above” never won, it would have an important salutary effect under many circumstances. For example, if a candidate for Congress won 40% of the vote, “none of the above” received 35%, and the second major party 25%, then the 40% winner has a warning. . . . A “None of the above” choice would give an officially recorded protest vote, much more authentic than polling. It might even increase voter turnout. The discontented voter would have something better to do than stay home. (pp. 68–69)

Although this is not one of Wilkey’s major proposals, one wonders how the current Republican presidential primaries would have been different, or how the upcoming presidential election would vary, if such a system were in place. Similarly, with the recent spate of Washington budget, if any part of the Constitution has been wrongly ignored, Wilkey seems to contend, it is Article V.

LAW SCHOOL RANKS HIGH

trend that the original Framers ignored the instructions given them by Congress to convene for "the sole and express purpose of revising the Articles of Incorporation" overlooked the salient fact that this congressional resolution was not the legal document that authorized the convention to convene. Congressional action followed by several months the action of no less than eight state legislatures calling for a convention. It was in the enabling legislation of the states that the source of the delegates' authority lay," Wilkey contends, and these instruments "with a single exception...were cast in general terms and did not impart specific instruction" (p. 19, quoting Julius Goebels, Jr.'s History of the Supreme Court of the United States, 1789-1837). Therefore, he argues, "the Framers had no binding instruction on the scope of their action. This need not now be the case were there a Constitutional Convention held" (p. 19). States calling for a constitutional convention today could well limit the scope of the convention. Wilkey maintains, although they chose not to in 1787. Moreover, Wilkey argues, even an unlimited convention is not likely to cause the chaos predicted by some, because "a Constitutional Convention can only 'propose' amendments" (p. 19). If the convention were to adopt some outlandish provisions, Wilkey asks, "who would approve?" Unless three-fourths of the states agreed with them (something unlikely if they are truly outlandish), the proposals would remain just that—proposals. Wilkey acknowledges that the secrecy surrounding the original Constitution (which may have allowed the kinds of discussions and compromises needed to reach the best result), is unlikely today, but even that difficulty does not justify putting off the constitutional convention "any more than it does putting off day-by-day legislation just because of the distortions which may appear in the press." The responses of the commentators (which range from three to 14 pages in length) each focus on particular reforms or aspects of Wilkey's arguments, some with disdain, others with praise. Walter Berns criticizes most of Wilkey's proposed reforms, because they "are designed to empower popular majorities" (p. 49), whereas the original Constitution was designed to guard against misrule by popular majorities (p. 47). Berns also questions whether the "very propitious circumstances" that permitted the original Constitution to achieve such stunning success can ever be recreated in our modern times. Terry Eastland agrees with Judge Wilkey that we need to reorient the federal government, and that term limitations, balanced budget reform, and line-item veto would serve to further that end. He also agrees that "Congress now appears unlikely to propose to the states for ratification even one" of these proposals (p. 43). He is willing to wait, however, until the next election to see if the current political process can be used "not simply to stop but even to reverse the trend in our politics" (p. 43). Phyllis Schlafly is Wilkey's most pointed critic, charging that Wilkey "just doesn't like the American form of govern-
ment created by the United States Constitution” (p. 131) and contending that his proposed “structural reforms are virtually a carbon copy of those made by the Committee on the Constitutional System,” a “power group,” of Washington insiders, who want to “change our system of government and move us toward a parliamentary system” (p. 144). She also notes disparagingly that this Wilkey-ccs campaign to “totally restructure our government” has been joined by Utah Governor Mike Leavitt and other advocates of the Conference on the States (p. 46–47). Edwin Meese disagrees with Schall’s about the merits of the Conference of the States, calling it “a new development with great promise” (p. 169). However, he does not think the time has yet come to convene another constitutional convention. While agreeing with much of Wilkey’s analysis, Meese concludes that “because of recent events that demonstrate changes taking place within government among them, the Republican electoral success using the Contract with America, as well as in the approach of the people toward their government, there may be alternative means [such as the Conference of the States] to achieve the same goals that the Judge sets forth, without resorting to the more drastic step of a Constitutional Convention” (p. 176).

Professors DeBow and Lee examine Wilkey’s proposal using the insights of “public-choice” theory (a theory using “economic reasoning to analyze political and governmental processes,” the basic premise of which is “that people in the political process act primarily to advance their own self-interest, in much the same way as they act in the marketplace” (p. 150 n. 4)). They share Wilkey’s preference for the Cincinnatus model over the status quo, but . . . do not agree that the professional political class model would be an improvement” (p. 188). They are also skeptical about the chances that a constitutional convention can fix the problems. Like many public-choice theorists, DeBow and Lee doubt the ability of any political body, including a constitutional convention, to come up with the right answers. (They assert that “if[ ]virtually every instance, there is no ‘correct’ answer to a public policy question waiting to be discovered by well-meaning office holders” would affect their own future prospects, as well as the prospects of their political party” (p. 190). Their alternate solution is to revitalize the idea of limited government by requesting that members of Congress take a public pledge “not to vote for any governmental program or activity that cannot be squared with the enumerated powers of Congress set out in Article I, Section 8—read as of the time of the Founding” (p. 198). While Paulsen concludes that this Wilkey conference of the states has in place some kind of restricted, unelected application for a convention (pp. 209–210). For Paulsen, the call has already gone forth.

BRUCE C. HAFEN CALLED TO FIRST QUORUM OF SEVENTY

Just when the Law School thought that Bruce C. Hafen would be returning, President Hinckley had other plans. On April 6, 1996, Provost Hafen was called to the First Quorum of the Seventy. As third provost, the Law School has maintained a place for Bruce. It is always hard to fill the place of an exemplar dean, scholar, and teacher; it is not possible to fill the place of a trusted friend.

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Wilkey responds briefly to each commentary (as one might expect, his response to Schlafly is the most extensive), taking the debate even one level deeper. While most (but not all) of the specific proposals in the book have been expressed in one form or another in other publications, this book collects all these ideas in one place and provides some analysis of each. Moreover, Judge Wilkey’s insights concerning the potential cause of our current struggles and the need to decide which basic model Americans want to adopt are valuable contributions to the ongoing discussion. The book thus serves as a valuable primer for understanding the terms of the debate that is beginning to be waged. Ultimately, however, the book is a call to action.

Instead of repressing at Congress or the President, as citizens we ought to be considering reforms to make these elected officials accountable, responsive, and effective. Instead of permitting the Congress and the President to abdicate so much of their duty and responsibilities, ought to be devising—or revising—a framework to compel them to perform their constitutional duties.

National Chair
Honored with Appointment to Arizona Supreme Court

On March 26, 1996, Charles E. "Bud" Jones was appointed by Governor Fife Symington to fill a vacancy on the Arizona Supreme Court. The appointment crowns a distinguished 30-year career in labor and employment law with the Phoenix firm of Jennings, Strouss & Salmon. Bud completed his undergraduate work at Brigham Young University in 1959 and graduated from the Stanford Law School in 1962. He is currently serving as national chair of the J. Reuben Clark Law Society. During his tenure, the Law Society has added two new chapters and increased its membership by nearly 500 members.

The screening process for nominees to the Arizona Supreme Court is an arduous one. The Commission on Appellate Court Appointments, a diverse citizen group, carefully chooses three candidates for the governor’s final consideration. Bud made his way through the process with aplomb. One group that opposed his appointment questioned the governor on whether Bud met the ten-year residency requirement. They argued that because of the three years Bud served as president of the France Paris Mission of the Church he did not meet the requirement.

The state Attorney General’s Office concluded that he was a bona-fide resident. When asked about the opinion, Chief Justice Stanley Feldman suggested that residence does not always require physical presence. "It was quiet clear from the facts that he [Jones] intended to remain a resident here," Feldman said.

The chief justice also noted that Mr. Jones had even voted by absentee ballot in the elections held while he was mission president. In an article in the Arizona Republic the chief justice said that Bud has a "sterling reputation. He’s a man of unquestioned integrity, a fine lawyer, active in all sorts of community and public affairs, and one of the most highly respected practitioners in the state."

Letters
Re: Soldiers of the Spirit by Elder Lance W. Wickman

Dear Editor:

As a veteran of many "white knuckles" lawsuits, I humbly express concern that Soldiers of the Spirit is idealistic. I love its concepts. I would love to always see them reciprocally implemented. However, many of our rising generation of lawyers, in their efforts to implement the lofty principles outlined by Elder Wickman, may be disadvantaged in the real world of legal combat. If your adversary resorts to tactics which in your honest evaluation are abusive of the legal system, when do you "get tough"? Consider this: With the original complaint in a personal injury case discovery is filed seeking, inter alia, a copy of the liability insurance carrier’s policy. A specific rule of procedure authorizes the discovery of this document. Your opponent objects to its production on the basis that it is "not relevant." An abecedarian knows better. Would you conclude that the objection is asserted to harass, cause unnecessary delay, or needless increase in litigation? (See Rule 11, frcp) I did! I always have! I ever shall! "The decided are always gentle," but sometimes they have to be "as stout as Aunt Nellie’s breath."

Let me be clear. I believe in Christ. I believe that his way of life is the only true way to happiness. I want to discourage litigation. I want to resolve civil conflicts amicably. I embrace the conceptual correctness of Elder Wickman’s article, but brace yourself! Do not waste your time trying to handle cranky opponents with kid gloves. Resort to the compilation available within the system. I am not offended if you disagree. Do not be offended with my position. May your professional career be void of conflict, contention and all "white knuckles" encounters. But if it is not, do not think you have failed as a Christian. All (even good Christians) engage insubordinately in such encounters many times in a legal career. Celestial principles can only be implemented in a celestial world if all concerned are willing. The vast majority usually are not so inclined.

Sincerely,

H. Deleroy Bailey
Provo, Utah