Fall 2004

Clark Memorandum: Fall 2004

J. Reuben Clark Law Society

J. Reuben Clark Law School

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On the Shoulders of Giants
President Boyd K. Packer

How Do We Practice Our Religion While We Practice?
Thomas B. Griffith

In His Own Words
Monte Stewart

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New Appointments
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Life in the Law
The following J. Reuben Clark Law Society devotional was presented at the Conference Center in Salt Lake City, Utah, on February 28, 2004.
The following J. Reuben Clark Law Society devotional was presented at the Conference Center in Salt Lake City, Utah on February 28, 2004.
In my hand is a two-pound English coin. Around the edge are the inscribed words “Stood President J. Reuben Clark.”

President Clark’s service was divided into two main periods, the first spanning law and government and twenty-eight years as counsel in the First Presidency and the second as a General Authority. He was born in tiny Granvilleville. At age eleven he could pull with a team of horses. If the weather was too cold for others to go out, he would walk to the evening sacrament meeting alone.

In a large family he learned to work. He had a father and a mother of ponderous virtue and integrity. His father, President J. Reuben Clark were very few. I heard him compare in stature with him. I am, with you, deeply the memory of this great man. Now and later that same day I received word, day, I was sustained as a General Authority. We went as far as fact, I think everyone gave me up but my wife. The mention of his name polishes the earthy surroundings. My pillow was as wet as at my grandfather and said:

“When Grandfather came within a few feet of me, he stopped. His stopping was an invitation for me to stop. Then he looked at me very earnestly and said...

“I would like to know what you have done with my name?”

“Everything I had ever done before me as though it were a flying picture on a screen—everything I had done. Quickly this vital retrospect came to mind and I was standing there in my whole life had passed before me. I looked and I looked and I looked at my grandfather and said...

“Everything I had ever done before me was with nothing of your name did you accomplish anything.”

The question: What are you doing with the name of President J. Reuben Clark?”

President Clark was appointed as assistant to the Twelve, and in his role as legal advisor he was instrumental in the organization and establishment of the Church-owned universities. He is known for his legal acumen and his ability to navigate complex legal issues, including constitutional challenges to the Church’s practice of plural marriage. President Clark was deeply involved in the Church’s legal affairs and was a key figure in the development of legal strategies that allowed the Church to continue its operations in the face of opposition.

President Packer’s experience and achievements are extensive. He was born September 12, 1926, in Brigham City, Utah, the son of Ira Wight Packer and Emma Eberly. After completing his education at Weber College and receiving bachelor and master’s degrees from Brigham Young University, he served as supervisor of Searcey and Colorado City and as a member of the board of trustees of Brigham Young University. He served as executive secretary of the Utah State Board of Education and as a member of the administrative council of the Salt Lake Stake and the University Stake of the Salt Lake Stake of The Church of Jesus Christ of Latter-day Saints.

PRESIDENT J. REUBEN CLARK

President Packer attended Weber College and received bachelor and master’s degrees from Brigham Young University. He served as professor of philosophy and economics at the University of Utah and as associate professor of philosophy at the University of Southern California. President Packer was a member of the executive committee of the Salt Lake Stake of The Church of Jesus Christ of Latter-day Saints and a member of the board of directors of Zions Bank. President Packer’s experience and achievements are extensive. He was born September 12, 1926, in Brigham City, Utah, the son of Ira Wight Packer and Emma Eberly. After completing his education at Weber College and receiving bachelor and master’s degrees from Brigham Young University, he served as supervisor of Searcey and Colorado City and as a member of the board of trustees of Brigham Young University. He served as executive secretary of the Utah State Board of Education and as a member of the administrative council of the Salt Lake Stake and the University Stake of the Salt Lake Stake of The Church of Jesus Christ of Latter-day Saints.

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In my hand is a two-pound English coin.

Around the edge are the inscribed words “Stood on the shoulders of giants.” :: Sir Isaac Newton

Invented calculus and the reflective telescope, defined the laws of motion, and did an astonishing list of other things. Asked how he was able to do it all, he answered: “I stood on the shoulders of giants.” :: President J. Reuben Clark
President Clark's mother was one of those so born in evil.

**CRITICISM**

To President Clark criticism seemed to be an inseparable accomplishment of the doing of righteousness. He once wrote:

_It seems sometimes as if the darkness that surrounds us is all but imperceptible. I can see on all sides the towering giants of our society, working for the overthrowing of our civilization, the destruction of religion, the reduction of men to the status of animals. That kind of work is hard and slow and there and everywhere._

President Clark spoke of the Pioneer leaders and in so doing described himself:

_If you give two examples from his sermons To the priesthood he spoke of the burden of lies. He kept things very plain and simple. The president of Equitable Life once sent him a speech. President Clark replied: "A lot of it was over my head (trying to understand it), but I sort of held my breath and struggled to the topic. I accept your conclusions whether or not I fully understand the reasons, and I congratulate you on another fine speech."_ We can imagine President Clark in his church, his words with words scattered about his lips, as he said:

_version 1.0.0_
As thou hast in thine heart a desire to go forth to study law—. . . say unto me that this is a dangerous profession, one that leadeth many people down to destruction, . . . obtain from corruption and bribery and deceitfulness, and from arguing falsely and on false premises, maintaining only the things that thou couldst honestly sustain by honorable men. .

We set thee apart . . . to go forth as thou hast had in thine heart a desire to go. As thou hast had in thine heart a desire to go, so God will make the way.

He was promised by President Taylor that if he would do these things, he would grow up in virtue, in intelligence, power, and wisdom, and stand as a mighty man among the House of Israel, and be a defender of the rights and liberties and immunities of the people of God.

And this promise: “But if thou dost not these things, thou wilt go down and withdraw away.”

In 1903 President Clark took his family to New York City to attend the Columbia University School of Law. In 1906 he graduated head of his class with an LL.D degree. Shortly after he was appointed as a Department of State Assistant Solicitor, and he published his classic “Memorandum on the Right to Protect Citizens in Foreign Countries by Landings Forces.” (Does that not sound familiar today?)

While living in Washington, D.C., he was appointed as an assistant professor of law at George Washington University. He kept things very plain and simple. He tried not more than once to draft him for the United States Senate. There was also an effort made to draft him as a Republican for the governor of the United States until he firmly refused.

During World War I President Clark served as a major on duty with the U.S. Attorney General’s office. He helped prepare the original Solicitor Service regulations. He was awarded the Distinguished Service Medal.

President Calvin Coolidge appointed him as Under Secretary of State in 1925. He then published his “Memorandum on the Monroe Doctrine.” From his critics praised it as a “monument of erudition,” a “masterly treatise.”

The title of your society’s semiannual publication is The Clark Memorial.

He opened law offices in Washington, D.C., in New York City, and in Salt Lake City, where he specialized in international and municipal law.

A staunch Republican, he became influential at both Utah and national politics. They tried more than once to draft him to run for the United States Senate. There was also an effort made to draft him as a Republican for governor of the United States until he firmly refused.

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During World War I President Clark served as a major on duty with the U.S. Attorney General’s office. He helped prepare the original Solicitor Service regulations. He was awarded the Distinguished Service Medal.
He told me that a widow once came to him for help on a property matter. When he completed the papers and gave them to her, she asked, "How much do I owe you?"

I asked, "Why don’t you pay me what you think it’s worth?"

I reminded him that I had never said it was all for law.

Relieved, she got out her coin purse and produced a quarter and put it in his hand. He told me, "I looked at the quarter and looked at her. Then I got out my coin purse and gave her ten cents change."

Only a wicked lawyer would take advantage of a widow or orphans or anyone else.

And if I might quote Blackstone: "He looked at her and said, "Why don’t you pay me what you think it’s worth?"

She asked, "How much do I owe you?"

I completed the papers and gave them to her, telling her, "You can do for this people what others cannot do. We should not need to go beyond the members of the Church to find superior legal counsel."

Now I caution you, as President John Taylor warned James Moyle and as Joseph Smith warned Stephen A. Douglas at the pinnacle of his political triumphs, "If ever you turn your hand against . . . the Latter-day Saints, you will feel the weight of the hand of Almighty upon you."

You who hold the priesthood must be exemplars above reproach.

You must locate where the snares are hidden and help guide our footsteps around them.

First, you face a much different world than did President Clark. The sins of Sodom and Gomorrah were localized. They are now spread across the world, wherever the Church is. The first line of defense—moral purity—now spread across the world, wherever the Church is. The first line of defense—moral purity—is crumbling. Surely you can see what the adversary is about.

I will quote from Paul's prophecy and check the words that fit our society:

The prophets have warned us.

We are now exactly where the prophets warned we would be.

Paul prophesied word by word and phrase by phrase, describing things exactly as they are now. I will quote from Paul’s prophecy and check the words that fit our society:

This know also, that in the last days perilous times shall come.

For men shall be lovers of their own selves—Check!

Lustful—Check!

Avaricious—Check!

Proud—Check!

Pompous—Check!

Dishonest—Check!

Deceitful—Check!

Swordsmen—Check!

Cheats—Check!

Rabid—Check!

Lovers of pleasures more than lovers of God—Check!

Having a form of godliness, but denying the power thereof: from such turn away.

For of this sort are they which creep into houses, and lead captive silly women laden with sins, led away with divers lusts, ever learning, and never able to come to the knowledge of the truth (2 Timothy 3:1–7, emphasis added).

Recently Judge Robert H. Bork said:

Judicial invention of new and previously unheard-of rights accelerated over the past half-century and has now reached vast speed. It is not just Grutter’s permission to discriminate against white males and Lawrence’s creation of a right to homosexual sodomy.

The Court has created rights to televised sexual acts and computer-simulated child pornography and, in direct contradiction of the historical evidence, has continued its almost frenzied hostility to religion. In these and other judgments, the Court is abandoning the area of self-government without any legitimate authority to do so, in the Constitution or elsewhere. In the process it is robbing the moral and cultural life of the nation."

Once, with other members of a city council, we met in the office of the city clerk, and I read the following:

“Treason—Check!

Liar—Check!

Trucebreaker—Check!

Villain—Check!

Antichrist—Check!

Betrayer—Check!

Traitor—Check!

Rabid—Check!

Incontinent—Check!

False accusers—Check!

False accusers—Check!

Hypocrites—Check!

Trucebreakers—Check!

Lovers of pleasures more than lovers of God—Check!

Fierce—Check!

Disobedient to parents—Check!

False accusers—Check!

Traitor—Check!

Ogling—Check!

Without natural affections—Check!

Seducers—Check!

Cheats—Check!

We are not yet ready."

"I know the man the Lord wants me to have, and he is not ready yet.”
He told me that a widow once came to him for help on a property matter. When he completed the papers and gave them to her, she asked, “How much do I owe you?”

“Relieved, she got out her coin purse and produced a quarter and put it in his hand. He told me, “I looked at the quarter and looked at her. Then I got out my coin purse and gave her ten cents change.”

“Only a wicked lawyer would take advantage of a widow or orphans or anyone else. In Liberty Jail, Erastus Snow, who probably could not afford legal counsel, asked Joseph Smith what he should do.

“Brother Joseph told him to plead his own case.”

“But,” said Brother Snow, “I do not understand the law.”

“Brother Joseph asked him if he did not understand justice, he thought he did. He told me, “I looked at the quarter and put it in your hand.”

“A CAUTION

Those giants I named, like you, had something that I do not have—a degree in law. With this credential comes obligation. You who hold the priesthood must be exemplars above reproach. And I charge each of you lawyers and judges and put you on alert: These are days of great spiritual danger for this people. The world is spiraling downward at an ever-accelerating pace. I am sorry to tell you that it will not get better.

“I know of nothing in the history of the Church or in the history of the world to compare with our present circumstances. Nothing happened in Sodom and Gomorrah which exceeds the wickedness and depravity which surrounds us now.

“Satan uses every intrigue to disrupt the sacred relationship between man and woman, husband and wife, through which mortal bodies are conceived and life is passed from one generation to the next generation, as being showered with filth.

“Profanity, vulgarity, blasphemy, and pornography are broadcast into the homes and minds of the innocent. Unspeakable wickedness, perversion, and abuse—not even exempting little children—once hid-den in dark places, now soda protection from courts and judges.

“The Lord needs you who are trained in the law. You can do for this people what others cannot do. We should not need to go beyond the members of the Church to find superior legal counsel.

“A CHARGE

You must locate where the snares are hid-den and help guide our footsteps around them.

“The sins of Sodom and Gomorrah were localized. They are morally mixed-up world, is being showered with filth.

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“Now I caution you, as President John Taylor warned James Moyle and as Joseph Smith warned Stephen A. Douglas at the pinnacle of his political triumph, “If ever you turn your hand against the Latter-day Saints, you will feel the weight of the hand of Almighty upon you.”

“We must look to you for legal counsel. You have, or should have, the up-to-date de-cision. It was given you when you had con-ferred upon you the gift of the Holy Ghost. You must locate where the snares are hid-den and help guide our footsteps around them.

“Morally Mixed-Up World

“You face a much different world than did President Clark. The sins of Sodom and Gomorrah were localized. They are now spread across the world, wherever the Church is. The first line of defense—is crumbling. Surely you can see what the adversary is about.

“The Prophets Have Warned

“We are now exactly where the prophets warned we would be. Paul prophesied word by word and phrase by phrase, describing things exactly as they are now. I will quote from Paul’s prophecy and check the words that fit our society:

“This know also, that in the last days perilous times shall come.

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“In these and other judgments, the Court is abrogating the area of self-government without any legitimate authority to do so, in the Constitution or elsewhere. In the process it is, it is corrupting and subverting life of the nation.”

“Once, with other members of a city council, we met in the office of the city council, we met in the office of the city council, we met in the office of the city council,” the man said, “I know the man the Lord wants me to have, and he is not ready yet.”
The general Constitution of our country is good, and a wholesome government could be framed upon it, for it was dictated by the celestial governors of the Almighty.

Will the Constitution be destroyed? No. It will be held inviolate by this people, and as Joseph Smith and the time shall come when the destiny of this nation will hang upon a single thread, and at the critical juncture, the people will rally forth and save it from the threatened destruction: it shall be saved.

I do not know when that day will come or how it will come to pass. I feel sure that when it does come to pass, among those who will step forward from among this people will be men who hold the Holy Priesthood and who carry as credentials a bachelor or doctor of law degree. And women, also, of honor. And therein will be the guiding spirit of righteousness.

Others from the world outside the Church will come, as Colonel Thomas Kain did, to try and teach them their knowledge of the law to protect this people.

We may one day stand alone, but we will not change or lower our standards or change our course.

What will you do with your name?

Near the end of his life, President Clark spoke at Brigham Young University. I was next to him. We steadied him as he made his way slowly and laboriously down the steps and approached his car and drove away into the night. That was the last time I saw him.

The funeral of President J. Reuben Clark, Jr. was the first General Authority funeral I attended. South Temple was blocked off between State Street and West Temple. The General Authorities assembled in front of the Church Administration Building. There were eighty-three of us there. We walked in solemn process, we followed the hearse down the center of the street.

The solemn procession moved through the south gate of Temple Square and around to the northwest door of the Tabernacle. There we formed an honor guard, half on the north side and half on the south side. There was another dinner held at the University. I sat next to him. We steadied him as he walked slowly and laboriously down the steps and approached the door of the house.

His name? It is very certain that one day you will change our course.

I wonder if you who are now lawyers or who are students of the law know how many you are needed as defenders of the faith. Be willing to go of your time and of your means and your expertise to the building up of the Church and the kingdom of God and the establishment of Zion, which we are under covenant to do—not just to the Church as an institution, but to members and ordinary people who need your professional assistance.

I said to you the dinner honoring J. Reuben Clark in Beverly Hills, California. There was another dinner held at the Waldorf-Astoria in New York City. It was a tribute to President J. Reuben Clark on his retirement from the board of the Equitable Life Assurance Society. Elder Harold B. Lee was there to succeed him on the board.

Elder Lee told me that prior to the event President Clark called him to his bedside room. He found President Clark sitting, leaning on his cane, pensively and unusually nervous. He wanted to inspect Brother Lee’s formal dress to see that his cummerbund was just right.

Imagine those assembled, the great men of the world—cabinet ministers, leaders in business and government—all of different faiths. President Clark and Elder Lee were the only two members of the Church present.

President Clark began his valedictory by addressing them as “my brethren.” He taught them about the Lord Jesus Christ and concluded with his fervent testimony.

I conclude with my fervent testimony and invoke a blessing upon you who are lawyers and judges and who have great power in this people.

I invoke the blessings of our Heavenly Father upon you in your studies, in your practice, and more particularly in your home and in your family, that the Spirit of the Lord and the spirit of righteousness will be with you. I pray that you can take justice and mercy and find a balance in them and fit yourselves with their firmly with absolute integrity, in the name of Jesus Christ, amen.
The general Constitution of our country is good, and a wholesome government could be framed upon it, if it was dictated by the concise operations of the Almighty.

Will the Constitution be destroyed? No. It shall be held inviolate by this people; and as Joseph Smith and the time is come when the destiny of the nation hang upon a single thread, and at the critical juncture, the people must step forth and save it from the threatened destruction. It shall be so.

I do not know when that day will come or when it will come to pass. I feel sure that when it does come to pass, among those who will step forward from among this people, will be men who hold the Holy Priesthood, and who carry as credentials a high council of law and law. And women, also, of honor. And there will be the pangs of justice.

Others from the world outside the Church will come, as Colonel Thomas Kain said, and begin their designs. He perceived their thoughts, and that thereby they might make him cross his words, he said: ye yourselves touch not the burdens with... but let them come to the fountain of all righteousness, and be persuaded to do good continually, write these things that evil may be done away, and as ye are...
This talk was presented to the Salt Lake Chapter of the J. Reuben Clark Law Society at the Joseph Smith Memorial Building in Salt Lake City, Utah, on November 19, 2003.
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How do we practice our religion while we practice?

by Thomas B. Griffith
Last year I presented a memorandum (C. S. Lewis, “Screwtape Proposes a Toast,” himself observed, “Nowhere do we tempt so
work. No less an authority than Screwtape
working at
d&c
of
that it is the nature and disposition
experience
of the priesthood: “We have learned by
us in
d&c
(Matthew 19: 23–24
for a rich man to enter the kingdom of God”
camel to go through the eye of a needle than
us of this fact of life when He said, “I tell you
activities expose our souls to
greater
unique economic activity, were better pre-
was certain that farmers, by virtue of their
find it helpful to you.
about the impeachment trial of President
unable to find anyone who still wants to hear
wanting to lessen their disappointment to the
Smith, who couldn't attend because he
i was asked to speak at a j.
[New York: Macmillan,
To Cromwell. In
his play based
his soul. Rich yearns for worldly power and
refuses to recommend him to government
attorney for Wales.

Rich reluctantly faces More. [New
May 1975, 39). Upon hearing Rich's perjury at that trial,
Bitterly disappointed.
(May 1975, 39). What? What post?

A Man for All Seasons

4 (1962)

Rich is a pathetic Judas-figure. At the opening
head of the church in England—a stand born
provided loyalty. As you know, More's refusal

Jesus and unto him, Thou shalt have the Lord
thy God with all thy heart, and with all thy

This is the first and great commandment.
And the second is like unto it, Thou shalt love
thy neighbor as thyself.

On these two commandments hang all the
and the prophets. [Matthew 22: 37–40 KJV]

Love God. Love your neighbor as your
self. Thou are the templates by which we should
practise our profession. That is unrealistic? It is so difficult, to be sure, but it is
only unrealistic if we have bought into
Satan's fiction about what is real and unreal. How does one go about living one's

The church's approach to an intelligent carapace is usually confounding how not to be drunk

Under the box marked "Occupation": "I am a
the early 20th century, recorded on his papers
byu
the story of an Italian immigrant to America
Gene Dalton, who was on the faculty of
byu
Gene Dalton, who was on the faculty of
Eyring, May 1975, 39).

Henry B. Eyring, "Ears to Hear," in Conference
Report, April 5, 1985, at 90, 91

I hope that the words of Mother Teresa
President Taylor is also correct. Although I
that the words of Mother Teresa
quoted in general conference several years
ago, I hope that the words of Mother Teresa
quoted in general conference several years
ago, I hope that the words of Mother Teresa
\textit{should be

This anecdote reminds me of what

First, we must reject the tendency to

President John Taylor quote about living accountable, for those I might have helped had I been more diligent in my

President John Taylor was also correct. Although I
I hope that the words of Mother Teresa
quoted in general conference several years
ago, I also correct. I know only two

amount of money at nothing to give his soul for the

The red dragon. (To Cromwell: What's this?

President Eyring teaches that the primary way God speaks to us is through speakers at church (Henry B. Eyring, "Ears to Hear," in Conference
Report, April 5, 1985, at 90, 91)

President Dalton who was on the faculty of

byu's business school, spoke as a member of
our state legislature. President Dalton told the
story of an Italian immigrant to America
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The Screwtape Letters

The Screwtape Letters is a novel by C. S. Lewis. It was written as a series of letters from Screwtape, a senior Devil, to his nephew, Wormwood, a young Devil, on the subject of ways to lure people into sin. The letters are written in a conversational style, and the dialogue is often humorous and satirical. The novel explores themes such as temptation, faith, and the nature of evil. It is a classic work of religious fiction and has been widely read and studied for its insights into human nature and the spiritual struggle between good and evil.
The principal thing by which we are currently bound, we will look short of the mark, if Jacob 4:4, and our professional lives will work at cross-purposes with our religious lives. In other words, we will not be practicing our religion while we practice our vocations.

But how do we live the law of consecration here and now in this world? Do you remember how Elder Maxwell has described the frustration of following celestial traffic signs in terrestrial traffic jams? Neal A. Maxwell, “Norrwhstanding My Weaknesses” in Ensign, November 1976, 59. Aren’t our career choices examples of terrestrial traffic jams? I believe there is an important lesson to be learned from the life of Thomas More. Now, as you have already recognized, I am of the view that there are many lessons to be learned from More’s life, and I would dearly recommend to any of you to learn as much as you can about this man. In my estimation, the best biography of More was published in 1999. The author is Peter Ackroyd. His book is titled The Life of Thomas More (held up book). I own no stock in the author. There is an important lesson to be learned from More’s life, and I would dearly recommend to any of you to learn as much as you can about this man. In my estimation, the best biography of More was published in 1999. The author is Peter Ackroyd. His book is titled The Life of Thomas More (held up book). I own no stock in the author.

More is fascinating for our topic because, unlike his good friend and fellow Christian humanist Erasmus, More respected the life of the clerics and the life of the scholar, both of which Erasmus estimated to be more suitable for a humanist Erasmus, More rejected the life of the scholar, both of which Erasmus estimated to be more suitable for the cleric and the life of the scholar, both of which Erasmus estimated to be more suitable for the cleric and the life of the scholar. But how do we live the law of consecration here and now in this world? Do you remember how Elder Maxwell has described the frustration of following celestial traffic signs in terrestrial traffic jams? Neal A. Maxwell, “Norrwhstanding My Weaknesses” in Ensign, November 1976, 59. Aren’t our career choices examples of terrestrial traffic jams? I believe there is an important lesson to be learned from the life of Thomas More. Now, as you have already recognized, I am of the view that there are many lessons to be learned from More’s life, and I would dearly recommend to any of you to learn as much as you can about this man. In my estimation, the best biography of More was published in 1999. The author is Peter Ackroyd. His book is titled The Life of Thomas More (held up book). I own no stock in the author. There is an important lesson to be learned from More’s life, and I would dearly recommend to any of you to learn as much as you can about this man. In my estimation, the best biography of More was published in 1999. The author is Peter Ackroyd. His book is titled The Life of Thomas More (held up book). I own no stock in the author. More was a devout churchman whose piety was genuine. Each day he would spend much time in prayer, devotion, and the contemplative study of the scriptures. (He wore a hair shirt, too, but I wouldn’t recommend that.) More was a devoted family man who held daily devotions and taught Ensign, November 1976, 59. Aren’t our career choices examples of terrestrial traffic jams? I believe there is an important lesson to be learned from the life of Thomas More. Now, as you have already recognized, I am of the view that there are many lessons to be learned from More’s life, and I would dearly recommend to any of you to learn as much as you can about this man. In my estimation, the best biography of More was published in 1999. The author is Peter Ackroyd. His book is titled The Life of Thomas More (held up book). I own no stock in the author. There is an important lesson to be learned from More’s life, and I would dearly recommend to any of you to learn as much as you can about this man. In my estimation, the best biography of More was published in 1999. The author is Peter Ackroyd. His book is titled The Life of Thomas More (held up book). I own no stock in the author. More was a devout churchman whose piety was genuine. Each day he would spend much time in prayer, devotion, and the contemplative study of the scriptures. (He wore a hair shirt, too, but I wouldn’t recommend that.) More was a devoted family man who held daily devotions and taught

Lord, grant that I may be able in argument, accurate in analysis, strict in study, candid with clients, and honest with adversaries... so that today I shall not, in order to win a point, lose my soul. A prayer he composed for lawyers captures the essence of his spiritual approach to his vocation, a vocation that he knew had power to do great good and great evil.

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things about God’s judgment. First, it will be absolutely fair. Second, it will be filled with wonderful surprises.” As Latter-day Saints, we understand that what Sayers is describing is part of the law of consecration. C. S. Lewis described that law this way:

Christ says “Give me all. I don’t want to do much of your time and so much of your money and so much of your work. I want You. I have not come to turn over your natural will, but to kill it. No half-measures are any good.”

The terrible thing, the almost impossible thing, is to hand over your whole self—all your wishes and precautions—to Christ. But it is far easier than what we are all trying to do instead. For what are we all trying to do is to remain what we call “ourselves,” to keep personal happiness as our goal, to keep our mind and heart on our own success—confident in money or pleasure or ambition—and hoping, in spite of this, to be able in argument, accurate in analysis, strict in study, candid with clients, and honest with adversaries.

A modern day apostle of the Lord Jesus Christ, Elder Boyd K. Packer, described the commitment he made to the law of consecration early in his life:

I knew what agency was and knew how important it was to be independent. In fact, I with there was one thing the Lord would never take from me, and that was my free agency. I would not surrender my agency to any being but the Lord. I determined that I would give Him the one thing that He would require—my agency. I decided, by myself, that from that time on I would do things His way.

That was a great trial for me, for I thought I was giving up the very power thing I possessed. I was not wise enough in my youth to know that because I exercised my agency and decided wisely and was not losing it, I was growing in Christ. (Boyd K. Packer, “Spiritual Crocodiles,” New Era, January–February 1981, 1; emphasis in original)

Consecration is a lofty goal and I wish that I could tell you from my own personal experience how it may be attained. But I cannot. Still, I am convinced that unless we have that law firmly fixed in our mind as a principle by which we are correctly bound, we will lack short of the mark, (J. V. 4:4), and our professional lives will work at cross-purposes with our religious lives. In other words, we will not be practicing our religion while we practice our vocations.

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Elder Boyd K. Packer also used traffic signs in ecclesiastical traffic jams: I believe there is an important lesson to be learned from the life of Thomas More. More. Now, as you have already recognized, I am of the view that there are many lessons to be learned from More’s life, and I would heartily recommend to any of you to learn from the life of Thomas More. But if they refused to hear him, he would refer them to other lawyers, because giving them no further assistance. (Quoted in Gerald B. Wiegemer, Thomas More: A Portrait of Conscience, at 55, 56 (1995).

A prayer he composed for lawyers captures the essence of his spiritual approach to his vocation, a vocation that he knew had power to do great good and great evil:

Lord, grant that I may be able in argument, accurate in analysis, strict in study, candid with clients, and honest with adversaries.

To be client (More) never failed to give advice that was wise and straightforward, always looking to his interest rather than to his own. (Remember President Faust’s conference address from the October 2000 general conference, “What’s in it for Me?”)

In most cases he used his best endeavors to get his litigants to come to terms. If he was unsuccessful in this, he would then show them how to carry on the active at least expense. He was so honorable and painstaking that he never accepted any case until he had first examined the whole matter thoroughly and satisfactorily judged it. It was all the same whether those who came to him saw his friends or strangers—so his first warning was not that they should not in a single detail turn aside from the truth. (Quoted in More’s Life, at 71, 72 (1995).

In this way, he could tell you from his own personal experience how it may be attained. But I cannot. Still, I am convinced that unless we have that law firmly fixed in our mind as a principle by which we are correctly bound, we will lack short of the mark, (J. V. 4:4), and our professional lives will work at cross-purposes with our religious lives. In other words, we will not be practicing our religion while we practice our vocations.

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words, “to consider how Christ, the Lord of our professions—under the Savior’s charge we try to bring all areas of our lives—even believe, that will help you and me most as throughout his life, and it is the topic, I tion to the topic that motivated him
More was able to pay wholehearted atten-
life, during his imprisonment in the Tower,
only in a tattered monklike robe, is kneeling
there is a poignant scene in which
Seasons,
A Man for All
id. 25 [quoting from one of the
nary class in Church history in Leesburg,
pared to organize anew Christ’s church on

Nevertheless, glory be to the Father, and I honor the emblems of His suffering. The response of the people in 3 Nephi “they did cry out with one accord, saying: Holy! Save us! now! Blessed be the name of the Most High. And they fell down to the earth, and did worship him” [3 Nephi 11:16–17] becomes the mark by which we measure the depth of our appreciation for
Now, what is so striking to me about these stories is that each one highlights the idea
that one cannot serve a God who has no personal needs in any other way than by working for His children. Each makes
clear that it was the shared understanding of Christ’s role as Savior and Redeemer that formed the basis for creating a community. We learn from the story of Adam and Eve that Satan’s primary goal and his chief tactic was to work to unite His children. Each makes

The second story describes the post-
resurrection ministry of the Risen Lord
Jesus Christ to the Book of Mormon people. In this story, the Lord is revealed to
the Book of Mormon people. The
various accounts of the Lord’s
return in the Book of Mormon are
important to build community. The work of
social improvement begins when we

be sure, the working out of the power of the Atonement occurs instantly in the instant

ushing yet joyous reality.
and feel the wounds in his hands, feet, and
the almost 3,000 people to come one by one
in 1 Nephi 11:11), He commands each of
worship. After teaching them about His suf-
resurrection ministry of the Risen Lord
Christ to the Book of Mormon people.

imperative to build community. The work of
noted, has been our emphasis on community building is, I believe, the most
important spiritual work to which Christians are
called. It is a prayerful activity prior to orga-
More often than not, we are asked to do
the sacrament of the Lord’s Supper. We are
the same each Sunday when we partake of
the emblems of God”). Significantly, we are asked to do
children of Christ, and heirs to the kingdom
hand of God. . . . [T]hey were in one, the
are called. It is a natural outgrowth of what
are divided by sex, race, class, and culture, language, and class, and race. He had
without a great measure of success,
stitutional work is preparatory to this and therefore incomplete without this.

Two stories from the Book of Mormon make this point. The first is the story of the prophet King Benjamin, who worked to
heal—and the atoning power of Christ’s suf-
the prophet King Benjamin, who worked to
make this point. The first is the story of

children in any other way than by
working for His children. Each makes

that we must also ultimately include creating a community based on the

represent the Senate’s interests in the impeachment
trial of President Bill Clinton. He is currently serving as
President of the BYU Ninth Stake. He and his wife
Susan, are the parents of five daughters and a son.

In the name of Jesus Christ, amen.
ART CREDITS

Page 9: Painting of St Thomas More. Photo: Archive laminate
Page 13: Photograph by Brandy Smith, selfphotography
Page 15: Cover photograph by Jim Simard
Page 28: Photograph from the cover film & book for All Seasons (Jim Springer Collection)


T H O M A S B . G R I F F I T H
19
words, “to consider how Christ, the Lord of Lord’s suffering form the core of a new Christ-centered society. For the ensuing 200 years, we see a few. By contrast, the at-one-ment of Christ was devoid of strife, malevolence, racism, and greed. (4)));))))))))))))))))))))))))))))))))))))))))))))))))))))))))))))))$
Since graduating first in the Law School’s first graduating class of 1976, Monte Stewart has defined and redefined his work from clerking for Justice Warren Burger to private practice to mission president to professor to public interest attorney to scholar. Stewart spent September 2003 through June 2004 at Oxford University studying and writing on the judicial redefinition of marriage. He put together the chronology printed here as the basis for an article, but after reviewing it, the editors decided the chronology was the article. For more information about Stewart’s work, visit manwomanmarriage.com.
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PART I

DAYS AT OXFORD

2003

January

Knowing that my work for the State of Utah on high-level nuclear waste dumping would be coming to an end in six or eight months, Anne and I consider what and where next. We are thinking a fair amount about returning to Los Angeles, where our family had been greatly blessed from 1981 to 1994. We make trips investigating this possibility. We come to understand that we are to do something different, something that we had never considered before and that had never even remotely entered into any kind of idea of the course of our lives—I was to go back to school (the best school I could get into) to get further education to make myself more useful. Very soon thereafter, it seems clear that the application deadline is March.

April

Telling Oxford tells me that, given what I propose doing there, I have applied for the wrong course (a “taught” course), the right one is a “research” course. Masters of Studies in Legal Research (MStud). Oxford and its educational system is mysterious but awesome educational tradition and practices. I meet my supervisor, John Eekelaar, and he immediately sends me to a conference in the International Society of Family Law, at Spain. It is my first time on the Continent. As the conference Lynn Wardle is virtually the lone voice for using the law to promote, protect, and prosper man/woman marriage; nearly all the other academics are “progressive,” but only one (and he be American), student in the discourse. I become a home teacher to two Brazilian sisters with little English (and begin to resurrect my Portuguese) and some new convert academics in a working class area, the Gospel Principles teacher (with the class nearly each week proceeding in English with Portuguese and French translations, with me sometimes also doing the Portuguese translation), and the high priest group leader.

May

Because of the children’s schooling, the family move plans to the family joining me for June and July 2004; only I continue wondering how to support the family and pay for the education. Our almost immediate, any son volunteers his trust account, moved, we decline. The British Columbia Court of Appeal holds that Canada’s Charter of Rights and Freedoms mandates the redefinition of marriage as the union of any two persons without regard to sex. She is about to try a year to give Parliament an opportunity to speak.

June

I call Oxford to see what is happening with a college acceptance and learn that several have passed on me. I ask where the dossier is and hear “St. Anne’s.” Worried (it is getting late), I force myself to take this as a good omen. Two weeks go by with no word. I call again, and the lady is redundant to answer, leading me to think the news is bad. I press, and she says that St. Anne’s had accepted me. I ask when. She says “June 4.” That is Anne’s birthday. The Ontario Court of Appeal holds that the Charter mandates genderless marriage and refuses to stay its judgment. The British Columbia Court of Appeal then gives its judgment immediate effect also.

July

I figure out a way to finance the plan, I will borrow $120,000 from my life insurance policy (Oxford is expensive, and even a fragile family’s needs are not small).

August

With the realization that the family probably will not be with me during the school year, I ask St. Anne’s for “in college accommodation.” Although my application deadline is long past, an opening has just opened in the college’s graduate residence hall. This is a big financial boon, but my going also depends on one of the 35 fertilizer applicants for the MSt course and they kindly agree. The law faculty accepts me quickly, and I am not surprised at my marriage and that is the subject I should narrow my focus to the equality of Family Law, in Spain. It is my first time on the Continent. As the conference Lynn Wardle is virtually the lone voice for using the law to promote, protect, and prosper man/woman marriage; nearly all the other academics are “progressive,” but only one (and he be American), student in the discourse. I become a home teacher to two Brazilian sisters with little English (and begin to resurrect my Portuguese) and some new convert academics in a working class area, the Gospel Principles teacher (with the class nearly each week proceeding in English with Portuguese and French translations, with me sometimes also doing the Portuguese translation), and the high priest group leader.

November

I struggle with my ignorance of the American legal system and of much of the literature and discourse surrounding the move to genderless marriage. I read primarily gay and lesbian literature and South African court cases. I labor at times with discouragement, even depression, over the prospect. I return my focus to the equality jurisprudence of South Africa, Canada, and the United States in the context of man/woman marriage versus genderless marriage. On the 8th the Massachusetts Supreme Judicial Court issues its 4-3 Goodridge decision, holding that the state constitution makes genderless marriage because limiting marriage to a man and a woman is not rational. The next day Richard Wilkins arranges for me to be invited to participate in a Toronto conference on the marriage issue dated for December. I begin working with Terry Warner on a paper for the conference. On the issues of philosophy and anthropol- ogy that crop up, I am completely out of my league. The paper, appropriately by falling in the pins and come to understand the weaknesses and difficulties of certain arguments by trying to make them.

To see this image, please refer to the printed version of this issue.
January

Knowing that my work for the State of Utah on high-level nuclear waste dumping would be coming to an end in six or eight months, Anne and I consider what and where next. We are thinking a fair amount about returning to Las Vegas, where our family had been greatly blessed since 1969 to 1974. We make trips investigating this possibility. We come to understand that we are doing something different, something that we had never considered before and that had never even remotely entered into any kind of idea of the course of our lives—I was to go back to school (the best school I could get into) to get further education to make myself more useful. Very soon thereafter, it seems clear that the presently most consequential area of the law pertained to the challenge to man/woman marriage and that is the subject I should study. I soon learn that the Harvard and Yale deadline for LSAT applicants was December, and nothing else of the right sort is available in America. I am befuddled momentarily, because this does not square with our recent understanding. I ask and think, and Oxford comes to mind. Its deadline is March.

February and March

We tell our family and a few others close to us, and word of our decision spreads. Reactions vary. Many are skeptical and seem to view this as manifestation of a midlife crisis. Richard Williams and Cole Durham help me prepare my application materials and essays for Oxford. The tentative plan is for Anne and the children to join me in Oxford in January, after Rob’s football season is over. (At home, Rob, Otis, Emily [for whom Aggieholm, 13; Amy, 11; Elizabeth, 9].)

April

Oxford tells me that, given what I propose doing there, I have applied for the wrong course (a “taught” course), the right one is a “research” course. Masters of Studies in Legal Research (MSt, or as it is called there, MLitt). Oxford and its educational system is all such a mystery to me, I am not surprised at my mistake. I tell Oxford folks to denote me an applicant for the MSt course and they kindly agree. The law faculty accepts me quickly, but my going also depends on one of the 35 money coffers. Oxford and its educational system is more poorly financed than I thought; the hall is cool, and the college says it does not arrange for single-sex accommodation in any of the halls. It is a big financial boon, but the hall is in a miniflat of three rooms, with a good, clean English lad and a good, clean Chinese lad (and he an American) is strident in the disposition of marriage as the union of any two persons (but ways in which). The halls are near the center of the city, walking distance to the city center and to the university. The halls are near the center of the city, walking distance to the city center and to the university. The college says it does not arrange for single-sex accommodation in any of the halls; but as I am going in the fall, the hall warden that I’m married and live by certain standards, which I explain. He says, “High standards are good. I’ve got a vacancy; and the college says it does not arrange for single-sex accommodation in any of the halls. I have a vacancy in a miniflat of three rooms, with a good, clean English lad and a good, clean Chinese lad. I’ll put you in there.”

September

I work with Tom Lee in the Law Library and the students are there for their personal purposes, and the high priests group leader, and the high priests group leader.

November

I struggle with my ignorance of American legal systems and of much of the literature and discourse surrounding the move to genderless marriage. I read primarily gay and Indian literature and South African court cases. I labor at times with discouragement, even depression, over the prospects. Iarrow my focus to the equality jurisprudence of South Africa, Canada, and the United States in the context of man/woman marriage versus genderless marriage. On the fifth the Massachusetts Supreme Judicial Court issues its 4–3 Goodridge decision, holding that the state constitution man
I WALK FOR SEVERAL MILES ALONG THE OXFORD CANAL AND THE THAMES. . . . THESE ARE DAYS NEVER TO BE FORGOTTEN.
I WALK FOR SEVERAL MILES ALONG THE OXFORD CANAL AND THE THAMES. ... THESE ARE DAYS NEVER TO BE FORGOTTEN.
their sorrowing over their nation’s apparent imminent adoption of genderless marriage, and tell them not to despair. There is genuine hope for preserving marriage in Canada as the union of a man and a woman. I return home to Anne and the children.

2004

JANUARY. I return to Oxford. I suffer hours of homesickness that at times cause physical pain and remember the Missionary Department’s adage that no one ever dies of homesickness. I continue to benefit attending and participating in Professors Sandra Fredman’s and Christopher McClure’s comparative human rights seminar. My thesis is a comparative law piece, an approach that before September I had never touched and was only barely aware of. The students are mostly young and breathtakingly bright (“clever,” as they say in England) lawyers from countries all around the world. I become the go-to guy on United States Supreme Court cases and lore. I complete my study of the relevant South African, Canadian, and American cases.

FEBRUARY. By what seems to me a miracle, I encounter some key concepts in the writings of Ronald Dworkin and John Finnis that I see to be of great importance to the marriage issue. These men do jurisprudence. All school year I had felt that the roots of my thesis were not clear in my mind and the pace of my writing was not ahead by reading elementary works in the legal field before and floundering ahead by reading elementary works in the area. Oxford is awash in jurisprudence. I begin attending a seminar led by Joseph Raz and John Finnis. I talk to Professor Finnis about my discovery. He agrees but seems embarrassed. In my study of the relevant South African, Canadian, and American cases, I see to be of great importance to the marriage issue. These men do jurisprudence. All school year I had felt that the roots of my thesis were not clear in my mind and the pace of my writing was not ahead by reading elementary works in the area. Oxford is awash in jurisprudence. I begin attending a seminar led by Joseph Raz and John Finnis. I talk to Professor Finnis about my discovery. He agrees but seems embarrassed.

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I return home for a long holiday between terms. During the night after my return, another chapter comes clearly into my mind, one based on a distinction that we are to build out our unfinished base.

March and April. I return home for a long holiday between terms. During the night after my return, another chapter comes clearly into my mind, one based on a distinction that we are to build out our unfinished base.

Many. John Eekelaar thinks highly of my thesis (he thought the Toronto paper was not very good). I finalize the thesis and prepare for my viva (oral defense of the thesis). John arranges for Jon Herring, a young Oxford family law professor whose lectures I had attended, to be the external examiner and for Helen Reece, a barrister and professor in London, to be the internal examiner. I read Helen’s recent book on divorce reform and find language supporting two key concepts in the thesis (so the book is now in two footnotes). Harvard Law Review rejects my article. With Bill Duncan’s help, I send it to about three dozen journals in Canada and the United States. At the stake president’s direction, I work hard to arrange for all temple-worthy people in the ward to go to the temple on the fifth. My visa gets denied. I am not morning on the fifth and cannot be moved. In full sad face, I go to my visa. It is longer than usual and quite intense in an unfriendly way. The examiners challenge me particularly regarding the social science data that married mother/father child rearing is the optimal mode. After, I catch a ride to the temple with a dear recently returned missionary friend of Nigerian descent. The ward members consider the temple excursion a great success. In the coming days, I receive offers to write child-rearing chapters, chapter 4, to make a stronger, this in light of the visa experience. On the 27th, Anne arrives. Before entering my flat, Anne sees my little room and has an epiphany of my experience this past year.

JUNE. Anne’s and my week together in England is glorious. It is hard saying goodbye to the ward members. The night before we leave, I get an e-mail that the examiners request two references. We catch a bus early for Heathrow on the 4th, Anne’s birthday, before the visa opens. I call from the bus. The lady tells me that I am being awarded my degree “with distinction.” I had hoped that coming down in favor of my thesis, marriage would preclude that relatively rare award. The Canadian Journal of Family Law, a peer-reviewed journal, agrees to publish the article in September, before the October 6th oral argument before the Supreme Court of Canada on whether the Charter mandates genderless marriage.
their sorrowing over their nation’s apparent imminent adoption of genderless marriage, and tell them not to despair. There is genuine hope for preserving marriage in Canada as the union of a man and a woman. I return home to Anne and the children.

2004

JANUARY I return to Oxford. I suffer bouts of homesickness that at times cause physical pain and remember the Missionary Department’s adage that no one ever died of homesickness. I continue to benefit attending and participating in Professor Sandra Fredman’s and Christopher McCrudden’s comparative human rights seminar. My thesis is a comparative law piece, an approach that before September I had never touched and was only dimly aware of. The students are mostly young and breathtakingly bright (“clever,” as they say in England) lawyers from countries all around the world. I become the go-to guy on United States Supreme Court cases and lore. I complete my study of the relevant South African, Canadian, and American cases.

FEBRUARY By what seems to me a miracle, I encounter some key concepts in the writings of Ronald Dworkin and John Finnis that I see to be of great importance to the marriage issue. These men do jurisprudence. All school year I had felt that the roots of my thesis go into jurisprudence but had never touched the area before and floundered ahead by reading elementary works in the area. Oxford is awash in jurisprudence. I begin attending a seminar led by Joseph Raz and John Finnis. I talk to Professor Finnis about my study of the relevant South African, Canadian, and American cases.

March and April I return home for a long holiday between terms. During the night after my return, another chapter comes deeply into my mind, one based on a distinction in the mode of judging made by Dworkin. I write the chapter in the coming days, applying the distinction to the 4-3 Goodridge split. Because of length limitations, the chapter does not become part of the thesis but does become part of the longer article I seek to publish. With hardly even a figgy notion about our future, Anne and I decide that we are to build out our unfinished basement. Most of my time is devoted to this project, especially laying tile. Anne appreciates the descent. The ward members consider the temple excursion a great success. In the coming days on my own initiative I rewrite the chapter, chapter 4, to make it stronger, this in light of the thesis experience. On the 27th, Anne arrives. Before entering my flat, our friend Michael Rokah from the next flat, the PhD (material sciences) student from Ghana we have been fellowship shopping for someone who is now taking the missionary discussions. She is moved when she sees my little room and has an epiphany of my experience this past year.

JUNE Anne’s and my work together in England is glorious. It is hard saying goodbye to the ward members. The night before we leave, I get an e-mail that the examiners have scheduled for late morning on the 18th and for Jon Herring, a young Oxford family law professor whose lectures I had attended, to be the external examiner. I read Helen’s recent book on divorce reform and find legal language supporting two key concepts in the thesis (so the book is now in two footnotes). Harvard Law Review rejects my article. With Bill Dune’s help, I send it to about three dozen journals in Canada and the United States. At the stake president’s direction, I work hard to arrange for all temple-worthy people in the ward to go to the temple on the 27th. My visa gets renewed two morning on the 27th and cannot be moved. In full sub judice, I go to my visa. It is longer than usual and quite intense in an aesthetically nice way. The examiners challenge me particularly regarding the social science data that married mother/father child rearing is the optimal mode. After, I catch a ride to the temple with a dear recently returned missionary friend of Nigerian descent. The ward members consider the temple excursion a great success. In the coming days on my own initiative I rewrite the chapter, chapter 4, to make it stronger, this in light of the thesis experience. On the 27th Anne arrives. Before entering my flat, our friend Michael Rokah from the next flat, the PhD (material sciences) student from Ghana we have been fellowship shopping for someone who is now taking the missionary discussions. She is moved when she sees my little room and has an epiphany of my experience this past year.

2005

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The Legal Stage Is Set

Man/Woman Marriage v. Any Two Persons

The question will come before the courts of most States and Canada, although many couples (including married couples) have adopted this model as their own, the majority have not, they adhere to the much broader, and a woman was "irrational." (In 1999 the Vermont Supreme Court went almost that far but exercised a touch of self-restraint, allowing the state legislature to provide for civil unions, essentially marriage without the name "marriage.") Five months before Goodridge, the Ontario Court of Appeal had said essentially the same things stated by the Massachusetts courts, as had the British Columbia Court of Appeal in May, just a few weeks before the Ontario court spoke. The question of one or more meaningful differences is now before the Supreme Court of Canada, with oral argument set for October 6, and before the courts of South Africa, New Jersey, and California. The question will come before the courts of most American states in the coming months and years, because nearly every state constitution has an equality guarantee.

Lee's approach), what the courts did in effect was treat the Constitution (or Charter in Canada) as "enacting" a particular social theory known as the "close [or pure] personal relationship" model of dyadic (two-person) relationships. Under this model as described by Crezer, a relationship is "stripped of any goal or end beyond the intrinsic emotional, psychological, or sexual satisfaction which the relationship brings to the individuals involved. In this new world of 'relationships,' marriage is placed on a level playing field with all other long-term, actually intimate relationships." There are three problems with this. One, in the United States and Canada, although many couples (including married couples) have adopted the model as their own, the majority have not, they adhere to the much broader, and richer conception of traditional, conjugal marriage. Two, the model, or theory, although popular in some quarters of the academy, is contested even there, as well as in society generally. Three, at least since Holmes, it has been clear that the "marrying" of a contested social theory under the guise of constitutional interpretation is a bogus judicial endeavor.

The most obvious difference pertains to procreation. Civil marriage limited to the union of a man and a woman suggests that society is up to something meaningful in some way, with procreation. The four courts (Massachusetts, Ontario, British Columbia, and Vermont) get around this difference with three interrelated tactics. First, they ignored the description [put forward by the defenders of man/woman marriage] of what society was up to with its limitation of marriage to the union of a man and a woman but the conferral of "marital" status on same-sex relationships. There are three problems with this. One, in the United States and Canada, although many couples (including married couples) have adopted the model as their own, the majority have not, they adhere to the much broader, and richer conception of traditional, conjugal marriage. Two, the model, or theory, although popular in some quarters of the academy, is contested even there, as well as in society generally. Three, at least since Holmes, it has been clear that the "marrying" of a contested social theory under the guise of constitutional interpretation is a bogus judicial endeavor.

The courts sensed this problem inhering in the social institution of marriage, as now experienced in Canadian and American societies. The relevant 'procre- ative' component is a response to two tenet- ial realities of man/woman intercourse: its procreative power and its passion. The component's purpose is understood as the provi- sion of adequate private welfare to children. (The phrase private welfare includes not just the provision of physical needs such as food, clothing, and shelter, it encompasses oppor- tunities such as education, play, work, and discipline and intangibles such as love, respect, and security.) Man/woman inter- course, as an act of compelling passion often leading to child bearing, has important implications for society. Societal interests are corroded when child bearing occurs in a setting of inadequate private welfare and are advanced when it occurs in a setting of adequate private welfare. Passion-based pro-creation militates against the latter and is conducive of the former. That is because passion, not rationality, may well dictate the sex of the encounter. Whereas sexuality considers consequences nine months hence and thereafter, passion does not, to society's detriment.

Hence, what is understood to be a fun- damental and originating purpose of mar- riage: to confine procreative passion to a setting (a social institution, actually) that will assure (to the largest practical extent) that passion's consequences (children) begin and continue life with adequate private wel- fare. This purposive component of society's deep logic of marriage is an essential social purpose. Although the immediate objects of the protective aspects of the private welfare purpose are the child and the fertile mother, society rationally sees itself as the ultimate beneficiary.

Against this background, what is irra- tional is most certainly not the societal regu- lation of marriage as the union of a man and a woman but the categorical "marital" status on same-sex couples, whose passion is not and simply cannot be procreative. The courts sensed this problem inhering in their tactic, but their remedial efforts fail. One, they point to same-sex couples getting children by adoption and assisted reproduc-
In the Goodridge case in November 1999, the Massachusetts Supreme Judicial Court announced that there were no meaningful differences, and, therefore, the limitation of civil marriage to the union of a man and a woman was “irrational.” (In 1999 the Vermont Supreme Court went almost that far but exercised a touch of self-restraint, allowing the state legislature to provide for civil unions, essentially marriage without the name “marriage.”) Five months before Goodridge, the Ontario Court of Appeal had said essentially the same things stated by the Massachusetts court, as had the British Columbia Court of Appeal in May, just a few weeks before the Ontario court spoke. The question of one or more meaningful differences is now before the Supreme Court of Canada, with oral argument set for October 6, and before the courts of South Africa, New Jersey, and California. The question will come before the courts of most American states in the coming months and years, because nearly every state constitution has an equality guarantee.

**Marriage v. Any Two Persons**

The most obvious difference pertains to procreation. Civil marriage limited to the union of a man and a woman suggests that society’s interest is up to something in the way, with procreation. The four courts (Massachusetts, Ontario, British Columbia, and Vermont) got around this difference with three interrelated tactics. First, they ignored the description (put forward by the defenders of man/woman marriage) of what society was up to with its limitation of marriage to the union of a man and a woman and instead substituted a phony, even silly, argument in its place. The courts cast the argument as one resting on a supposed societal purpose of mandating procreation. Second, the courts shut down this phony argument by saying that this was not a true societal purpose as evidenced by society’s refusal to make procreative intentions, capacities, and performance a requirement of civil marriage. Third, the courts said in essence that the “true” purpose of civil marriage is a companionate relationship, with respect to which the abilities and needs of a same-sex couple are the same as those of a man and a woman.

Taking the third tactic first (to use Rex Lee’s approach), what the courts did in effect was treat the Constitution (or Charter in Canada) as “creating” a particular social theory known as the “close [or pure] personal relationship” model of dyadic (two-person) relationships. Under this model as described by Ceresi, a relationship is “stripped of any goal or end beyond the intrinsic emotional, psychological, or sexual satisfaction which the relationship brings to the individuals involved. In this new world of ‘relationships,’ marriage is placed on a level playing field with all other long-term, actually intimately related relationships.” Under this model as their own, the majority have not, they adhere to the much broader and richer conception of traditional, conjugal marriage. Two, the model, or theory, although popular in some quarters of the academy, is contested even there, as well as in society generally. Three, at least since Holmes, it has been clear that the “marrying” of a contested social theory under the guise of constitutional interpretation is a bogus judicial endeavor.

Regarding the second tactic (the absence of procreative requirements for man/woman marriage shows a societal lack of marriage as now experienced in Canadian and American states in the coming months and years, because nearly every state constitution has an equality guarantee.

The courts sensed this problem inhering in the social institution of marriage as now experienced in Canadian and American societies. The relevant “procreative” component is a response to two essential realities of man/woman intercourse: its procreative power and its passion. The component’s purpose is understood as the provision of adequate private welfare to children. (The phrase private welfare includes not just the provision of physical needs such as food, clothing, and shelter, but encompasses opportunity such as education, work, and discipline and irreducible such as love, security, and respect.) Man/woman intercourse, as an act of compelling passion often leading to child bearing, has important implications for society. Societal interests are corrupted when child bearing occurs in a setting of inadequate private welfare. Passion-based procreation mitigates against the latter and is conducive of the former. That is because passion, not rationality, will well dictate the terms of the encounter. Whereas rationality considers consequences nine months hence and thereafter, passion does not, to society’s detriment.

Hence, what is understood to be a fundamental and originating purpose of marriage: to confine procreative passion to a setting (a social institution, actually) that will assure (to the largest practical extent) that passion’s consequences (children) begin and continue life with adequate private welfare. This purpose component of society’s deep logic of marriage I call the private welfare power. Although the immediate objects of the protective aspects of the private welfare purpose are the child and the putative mother, society rationally sees itself as the ultimate beneficiary.

Against this background, what is irrational is most certainly not the societal regulation of marriage as the union of a man and a woman but the conceptualization of marital status on same-sex couples, whose passion is not and simply cannot be procreative. The courts sensed this problem inhering in their tactic, but their remedial efforts fail. One, they point to same-sex couples getting children by adoption and artificial reproduction technology. But both of those child-getting approaches presuppose not passion-based child bearing but very deliberate entry into child rearing, a presupposition not logically connected to the private welfare purpose of society’s deep logic of marriage. Two, the Goodridge court made a feeble effort to argue that the contemporaneous availability of contraceptives effectively eliminates the private welfare purpose, but the child birth data undermines that effort. So there is something after all about the man/woman procreative power that renders quite rational indeed society’s use of marriage to regulate the union of a man and a woman and quite irrational indeed to regulate a same-sex relationship.

Another difference, besides that pertaining to procreation, relates to child rearing. Married mother/father child rearing is the optimal child rearing mode when measured by outcomes beneficial to society, including the child’s physical, mental, and emotional health and development; academic proficient
and therefore insufficiently studied. In other words, it is the very pace of the genderless marriage advocates’ political and legal march that leaves contested whether same-sex couple child rearing—like all other modes—is less successful in rearing children from infancy to adulthood than is married mother/father child rearing.

Against this background, the four courts took the rather silly approach of declaring the party not responsible for the uncertainty (the state), rather than the responsible party (the gay and lesbian community), the “loser” exactly because of the existence of the uncertainty. The Ontario court did not remedy this silliness by invoking the notion of a “stereotypical assumption.” The assumption that married mother/father child rearing is the optimal mode—relative to all other modes—is premised on some demeaning view of gay men and lesbians but on the social science data showing the superior outcomes for married mother/father child rearing relative to every other mode where circumstances have allowed adequate study (that is, every other mode except same-sex couple). The four courts’ tactic of shifting the “burden of proof” to the state in these circumstances is problematic.

Likewise problematic is their reliance on the adoption argument: The state allows same-sex couples to adopt; therefore, the legislature has decided that same-sex couple child rearing is as beneficial to society as married mother/father child rearing. The short and simple answer is that the state considers and allows adoption only when married mother/father child rearing (the optimal mode) is not, for some reason, an option. The courts’ “therefore” is therefore fallacious.

A rational, enlightened legislator could choose to limit marriage to the union of a man and a woman to the union of any two persons, with reason to fear that the changes will be anything but beneficial. To change the core meaning of marriage from the union of a man and a woman (with all the radiating implications of that limitation) to the union of any two persons is to transform profoundly the institution. If it is not immediately transformed, then certainly it will be over time as the new meaning is mandated in texts, in schools, and in many other parts of the public square and voluntarily published by the media and other institutions.

Society, especially its children, thereby loses the ability to discern the meanings of the old institutions refutes the courts’ “no downside” argument. Profound changes in social conduct are the likely consequence of changing the meaning of marriage from the union of a man and a woman to the union of any two persons, with reason to fear that the changes will be anything but beneficial. To change the core meaning of marriage from the union of a man and a woman (with all the radiating implications of that limitation) to the union of any two persons is to transform profoundly the institution. If it is not immediately transformed, then certainly it will be over time as the new meaning is mandated in texts, in schools, and in many other parts of the public square and voluntarily published by the media and other institutions. Society, especially its children, thereby loses the ability to discern the meanings of the old institutions. Humankind’s body of knowledge on the nature and operation of social institutions refutes the courts’ “no downside” argument.

**Marriage is a Vital Social Institution, but a Social Institution is Not Brick, Steel, and Glass; Rather, It Is . . . Something Constituted by Complex Webs of Social Meaning.**

mance and levels of attainment, and avoid-ance of crime and other forms of self-and-same sex parent context simply because there are a few studies on each side of the argument but no consensus yet. As the Ontario courts put it, “[H]e social science research is not capable of establishing the proposition one way or another.” But that court and the other three courts did not say why the social sci-
ence data is inconclusive. It is inconclusive because same-sex parenting is too recent and therefore insufficiently studied. In other words, it is the very pace of the genderless marriage advocates’ political and legal march that leaves contested whether same-sex couple child rearing—like all other modes—is any less successful in rearing children from infancy to adulthood than is mar-
ried mother/father child rearing.

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A rational, enlightened legislator could choose to limit marriage to the union of a man and a woman. But the four courts resort to the “no downside” argu-
ment. Even conceding that society has good reasons to prefer man/woman marriage, opening marriage to same-sex couples will benefit those couples greatly and will cause no downside to the “vital social institution” (Goodridge’s words) of marriage; therefore, with such upside and no downside, it is irra-
tional to continue limiting marriage to the union of a man and a woman. But here the courts wreck most spectacularly. Marriage is a vital social institution, but a social institu-
tion is not brick, steel, and glass, rather, it is, in Ceres’ words, something “constituted by complex webs of social meaning.” Thus mar-
rriage, like all social institutions, is changed by alterations in the social or public mean-
ings that in large measure constitute it. Moreover, a social institution supplies to the people who participate in it what they should aim for, dictates what is acceptable or effective for them to do, and teaches how they must relate to other members of the institution and to those on the outside. Thus, fundamental change in the institution’s first results from change in the public mean-
ings that constitute it and then changes what its members think of themselves and of one another, what they believe to be impor-
tant, and what they strive to achieve.

Consequences of Change—Anything but Beneficial

Profound changes in social conduct are the likely consequence of changing the meaning of marriage from the union of a man and a woman to the union of any two persons, with reason to fear that the changes will be anything but beneficial. To change the core meaning of marriage from the union of a man and a woman (with all the radiating implications of that limitation) to the union of any two persons is to transform profoundly the institution. If it is not imme-
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PHOTO CREDITS

MARRIAGE IS A VITAL SOCIAL INSTITUTION, BUT A SOCIAL INSTITUTION IS NOT BRICK, STEEL, AND GLASS; RATHER, IT IS, . . . SOMETHING “CONSTITUTED BY COMPLEX WEBS OF SOCIAL MEANING.”
It is my first formal greeting as a dean. All of us may be wondering exactly where we are, where we are headed, and how we got here.

It reminds me somewhat of the fellow who found himself in front of the Pearly Gates. As he started to go in, Peter stopped him and explained that it’s not that easy to get into heaven. “You have to have done something good.” “Like what?” the man responded. “For example,” Peter asked, “were you religious in your life? Did you attend church?” “No,” said the man. “Well,” Peter asked, “were you generous with your money? Did you give some to the poor?” “No” “Were you a good neighbor? Did you help them?” “Not really.” Peter, now a little exasperated, said, “Look, I’d like to help, but you’ve got to work with me. Surely, sometime in your life you did something good for someone. Now think!” After a moment the man said, “There was this one time when I helped an old lady. I came out of a store and found her surrounded by a dozen Hell’s Angels. They had taken her purse and were shoving her around, taunting and abusing her. I got so mad I threw my bags down, fought through the crowd, and got her purse back. I helped her to her feet and then went up to the biggest, baddest biker and told him how despicable, cowardly, and mean he was and spit in his face.” “Wow,” said Peter, “that really is impressive. When did this happen?” “Oh, about two minutes ago,” replied the man. “Things really can change quickly for us.

As I have tried to learn a little about the role of a dean this summer, I discovered that the first dean in a U.S. university was John Collins Warren, who was appointed dean of the Harvard medical school in 1816. “His primary charge,” you will be pleased to know, was “to be friendly and charitable to students.” Although the duties of a dean have expanded considerably since that time, I think that initial charge is still in place, and it is as a friend that I want to visit with you today, a friend who can hopefully provide some helpful perspective as we begin these new phases of our lives together.

You are a remarkably diverse group with a wide variety of experiences and backgrounds, as Dean Pullins has indicated. We appreciate the diversity each of you brings to the Law School. That diversity will enrich your law school experience more than you likely anticipate at this point. I wish to focus, however, not on your differences but on the two features that you all have in common: (1) You have all chosen to study law, and (2) you have all chosen to study law at the J. Reuben Clark Law School.
It is my first formal greeting as a dean. All of us may be wondering exactly where we are, where we are headed, and how we got here.

It reminds me somewhat of the fellow who found himself in front of the Pearly Gates. As he started to go in, Peter stopped him and explained that it’s not that easy to get into heaven. “You have to have done something good.” “Like what?” the man responded. “For example,” Peter asked, “were you religious in your life? Did you attend church?” “No,” said the man. “Well,” Peter asked, “were you generous with your money? Did you give some to the poor?” “No” “Were you a good neighbor? Did you help them?” “Not really.” Peter, now a little exasperated, said, “Look, I’d like to help, but you’ve got to work with me. Surely, sometime in your life you did something good for someone. Now think!” After a moment the man said, “There was this one time when I helped an old lady. I came out of a store and found her surrounded by a dozen Hell’s Angels. They had taken her purse and were shoving her around, taunting and abusing her. I got so mad I threw my bags down, fought through the crowd, and got her purse back. I helped her to her feet and then went up to the biggest, baddest biker and told him how despicable, cowardly, and mean he was and spit in his face.” “Wow,” said Peter, “that really is impressive. When did this happen?” “Oh, about two minutes ago,” replied the man. “Things really can change quickly for us.”

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1. You have all chosen to study law.
2. You have all chosen to study law at the J. Reuben Clark Law School.
First, let me clarify a couple of things it
ness of the study of law.
more in-depth understanding of that con-
truth, but that phrase involves more
phrase commonly invoked on occasions
sooner or later I will trot out the shopworn
me on this point and already anticipate that
while important, it is not the central part.
of your legal education, it is only part. And,
multiple research instruction will be part
information you need in that massive library.
have time to internalize all that material.
brief tour of the library should quickly
the next three years, a
process, convey to you all the statutes,
the faculty will, through some mysterious
of law will involve a massive mind meld,
Some of you may anticipate that the study
than may initially appear. Let me start
with the first. Y ou have all chosen to study
by the behavior of some lawyers, 
mean being argumentative and contentious." As one lawyer noted, 
"You don't need three years of law school to learn how to annoy and irritate others." At the outset, therefore, I implore you not to confuse the untoward actions of some lawyers with the essence of lawyering.
While there are times when you need to be zealous in your advocacy, being argumenta-
tive and contentious no more makes you a lawyer than shaving your head and wearing
Nikes makes you Michael Jordan.

Nor does thinking like a lawyer consist of the ability to use clever rhetoric to take advantage of others. The story is told of a lawyer whose neighbor approached him and asked for advice. "I charge $50 for answering three questions," the lawyer responded. "That's awfully steep, isn't it?" the neigh-
bor replied. "Yes it is," said the lawyer.
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here is more to these seemingly obvious common features than may initially appear. Let me start with the first. You have all chosen to study law. But what does it mean to study law? Some of you may anticipate that the study of law will involve a massive muddle in that, in the course of the next three years, the faculty will, through some mysterious process, convey to you all the statutes, cases, and other legal rules you need to instantaneously answer any question a client might put to you. While you will certainly memorize a number of legal principles during the next three years, a brief tour of the library should quickly convince you that you are not going to have time to internalize all that material. Some may believe that the study of law is principally a research exercise, that it consists of learning how to find the information you need in that massive library. Although research instruction will be part of your legal education, it is only part. And, while important, it is not the central part. Many if not most of you are ahead of me on this point and already anticipate that sometime in the future you will not use the drop-in phrase commonly invoked on occasions such as this and inform you that the study of law ultimately consists of teaching you that such a glimpse will be helpful to provide a good insight into what is the faculty to learn a new language, a new way of looking at the world, a new and distinct way of expressing oneself who is keen at spotting differences or similarities, even identifying mechanical or repetitive about it. It teaches its teaching, being argumentative and contentious no more makes you a lawyer than shaving your head and wearing white shoes makes you Michael Jordan.

Nor does thinking like a lawyer consist of the ability to use clever rhetoric to take advantage of others. The story is told of a lawyer whose neighbor approached him and asked how much he charged for his advice. ’I charge $600 for answering three questions,’ the lawyer responded. ’That’s awfully steep, isn’t it?’ the neighbor replied. ’Yes it is,’ said the lawyer. ’Now what’s your third question?’ A good joke, perhaps, but not good lawyering. Again, don’t mistake the outward trappings for the essence of the matter. Thinking like a lawyer involves much more than merely being clever.

So, just what does thinking like a lawyer involve? The fact that there is no consensus as to the precise meaning of the term despite its constant use in describing what the study of law is all about is telling us and of itself because it indicates how deep and multifaceted the concept is. However, I believe it is possible to provide a good insight into what is at the heart of thinking like a lawyer at this point and that such a glimpse will be helpful as you start the process of studying law.

As the words in the phrase suggest, thinking like a lawyer is primarily—though not exclusively—a mental skill, a way of thinking about things that is different from the way you may have thought about things in the past. It is an analytical method of thinking that requires keen observation, logical reasoning, and a willingness to study matters in depth. It also involves an ability to explain conclusions and reasoning in a logical way.

At the ceremony celebrating the opening of this law school in 1973, then President Dallas Oakes, described part of the analytical and communicative skills that thinking like a lawyer involves. A person who thinks like a lawyer, he said, is a student of meaningful differences among apparently similar situations, and meaningful similarities among situations of no apparent connection. A person who is keen at spotting differences or similarities, discounting the unimportant ones, focusing upon the important ones, and being prepared to explain the reasons for their importance, will do along toward thinking like a lawyer.

Because it involves a relatively new way of viewing things, thinking like a lawyer can be a challenge. You will be asked to forget some of the habits you have developed and to develop new ones. As one scholar observed, learning to think like a lawyer is rigorous and frustrating. But the objective is worth the effort. The study of law has fine equals in shaping the intellect. Properly conceived and executed, there is nothing mundane or repetitious about it. It teaches its students a new way to think, and that skill is veritable beyond the limits of the practice of law.

While learning to think like a lawyer is the core component of the study of law, particularly the first year of study, the true study of law requires development of characteristics other than analytical and communicative skills. It requires an ability to understand and deeply care about the human condition.

True legal education involves more than abstract analytical thinking because, at the end of the day, law has an impact well beyond its abstract conception. Law matters in the real world. In fact, law matters a lot in the real world, at both a macro and an individual level. Because law matters a lot, its study cannot be limited to mere mental abstraction exercises.

As a macro level, law matters because it ultimately provides the framework for determining and protecting basic rights and obligations in society. The status and destiny of nations is shaped by how law is created and implemented. It is, in my opinion, not a coincidence that in the founding of the most stable and productive democracy in the world, the Declaration of Independence, thirty-one of the fifty-five members of the Constitutional Convention, and thirteen of the first sixteen presidents (of the United States) were lawyers. The political structure on which we depend in the United States is largely attributable to the efforts of lawyers who not only thought deeply about the law but also understood its impact on the human condition.

The impact of law at a macro level exceeds and is well beyond political rights. A study by the Inter-American Development Bank in 2000 determined that of the more than $60,000 gap between the per capita income of developed countries and that of Latin American countries, approximately $30,000 was attributable not to demographic
In other words, J. Reuben Clark pursued the study of law with such enthusiasm and energy that Domingo Catricura, a student in an Indian law class, not only read the materials we covered, discussed them, summarized, and recorded them, but also sang an ode to national law. According to Moyle’s biographer, President Cannon brought his first acolyte down on the campus of the church and said, “You are going to hell!” Fortunately for Moyle, Angier Biddle, George, who was a member of the First Presidency, did not have the same misgivings, and he arranged for Moyle to meet with President Taylor, who was then president of the Church. When Moyle informed President Taylor of his desires, President Taylor replied that he was “opposed to any of your own men going away to study law.” It was, he stated, a “dangerous profession.” When President Cannon pointed out that the Church would always have need to employ lawyers, President Taylor eventually relented and agreed that it might be “all right for Moyle to go,” but only after warning him in a blessing that if he did not, it would cause great suffering to the Church. “I have learned,” he said later, “that work, more work, accompanied by hard work. I have learned,” he said in later years, “that work, more work, accompanied by hard work, is something that one may acquire knowledge.” The result of this combination was evident in his law school years. In the words of one of his biographers, ‘In other words, J. Reuben Clark pursued the study of law with such enthusiasm and energy that Domingo Catricura, a student in an Indian law class, not only read the materials we covered, discussed them, summarized, and recorded them, but also sang an ode to national law. According to Moyle’s biographer, President Cannon brought his first acolyte down on the campus of the church and said, “You are going to hell!” Fortunately for Moyle, Angier Biddle, George, who was a member of the First Presidency, did not have the same misgivings, and he arranged for Moyle to meet with President Taylor, who was then president of the Church. When Moyle informed President Taylor of his desires, President Taylor replied that he was “opposed to any of your own men going away to study law.” It was, he stated, a “dangerous profession.” When President Cannon pointed out that the Church would always have need to employ lawyers, President Taylor eventually relented and agreed that it might be “all right for Moyle to go,” but only after warning him in a blessing that if he did not, it would cause great suffering to the Church. “I have learned,” he said later, “that work, more work, accompanied by hard work. I have learned,” he said in later years, “that work, more work, accompanied by hard work, is something that one may acquire knowledge.” The result of this combination was evident in his law school years. In the words of one of his biographers, “When given an assignment, [Reuben] did far more than was required of him. When he was asked to give a presentation, he did not simply present his work; he went beyond the expected and searched for ways to make his presentation more engaging, more informative, and more effective. His approach to learning was always one of curiosity and determination, and this attitude carried over into all aspects of his life.”

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Differences (such as the age of the population) or geographic differences (such as access to transportation and world markets) but to the fact that the public institutions in Latin America—the institutions in which the law plays itself out—were ‘less effective, less predictable and transparent’ than those in the developing countries.” In other worlds, if the legal system in Latin America operated differently, each person in those countries will matter a lot to a lot of people. Thus, I urge you to study law the way that Domingo Carruca did. Domingo was a student in an Indian law class I taught at the University of Chile. Law School a decade ago. Domingo was in his mid-20s at the time and was one of about 25 non-law students who, along with 30 law students, attended the class. Non-law students were invited to attend the course because they were leaders in various Mapuche communities, the Mapuches being the largest indigenous group in Chile. The course primarily covered the history of Spanish and Chilean interaction with the indigenous peoples of Chile and the first comprehensive Chilean Indian law, which had been enacted the year before. I provided a comparative perspective, contrasting the Chilean experience with that of the United States. As is typical of law classes in a civil law system, the course was highly abstract and theoretical. Although not a law student and therefore without any hope of obtaining a law degree, Domingo attended three-hour classes once a week class every week, occasionally making a journey on his bus ride from his small native village of Chiuimpilli in southern Chile in order to attend. He was anxious to learn everything he could about law, even that which I attempted to convey about the law in my somewhat rusty Spanish.

When, in 1882, a young man named James Henry Moyle approached his stake president, Angus Clark, and expressed his desire to go to east to study law, President Cannon’s reaction was quite telling. According to Moyle’s biographer, President Cannon ‘brought his foot down on the counter of the office and said, “You are going to hell!” Fortunately for Moyle, Anglie’s brother George, who was a member of the First Presidency, did not have the same misgivings, and he arranged for Moyle to meet with John Taylor, who stated, “You are going away to study law.” It was, he stated, “tremendously important.”14 When President Cannon pointed out that the Church would always have need to employ lawyers, President Taylor eventually relented and agreed that it might be “all right for Moyle to go” but only after warning him in a blessing that if he did not constantly seek divine guidance in the endeavor, he would “go down and waver away.” The experience should be clear that at least some of the leaders of the Church at that time had severe misgivings about the study of law. They might consider it a necessary evil for a few, but they were not anxious to promote it.

Given that history, the decision of the Church leaders to establish this law school at this university, as well as President Romney’s observation about the importance of the study of law, becomes more significant over the ensuing years. A little historical perspective may help initiate that developmental process.

The initial suggestion that law be part of the curriculum at a school sponsored by The Church of Jesus Christ of Latter-day Saints was first made in 1903 when Whitely, a teacher of civics and public law at the University of Utah, proposed a law course for the Provo branch of what was then the Brigham Young Academy.’ The proposal went nowhere, because, in the words of former Dean Whitely, “the time was not propitious” for such an endeavor. He also took copious notes, which he frequently reviewed with his two teenage children, who occasionally attended the class with him. He absorbed the information in class and wanted to discuss it after hours.

For Domingo the theoretical aspects of the law were as important as the practical ones, because he sensed, early on, that in law the former drive the latter. And to him the latter mattered greatly, because he believed that which I attempted to convey about the law in my somewhat rusty Spanish.

When given an assignment, [Reuben] did far more than what his teacher had requested. First, he bounded the exact problem back into its part, running through presidents, commentators, advisory discussions, and anything he could find. Then, amid a chaos of notes, citations, and open books piled high, he observed step by step how the matter came into being.15

In other words, J. Reuben Clark pursued the study of law with such the same enthusiasm and energy that Domingo Carruca brought to the study of law in my somewhat rusty Spanish. I believe altered the view of many in the Church. J. Reuben Clark was a man of enormous intellect. When he left Utah to study law at Columbia University in 1903, Reuben, wanted Elder James E. Talmage, ‘possessed the brightest mind ever to leave Utah.”16 President Clark was also one who loved learning. “The eighth grade was the highest level of schooling available in his home town of Grantsville, so after he finished it, he repeated it a few more years because he wanted ‘so much to learn’. He also understood that intellectual curiosity achieved its maximum impact when accompanied by hard work. I ‘have learned,’ he said in later years, ‘that work, more work, and more work is the surest way of acquiring knowledge.’ The result of this combination was evident in his law school years. In the words of one of his biographers:

When given an assignment, [Reuben] did far more than what his teacher had requested. First, he bounded the exact problem back into its part, running through presidents, commentators, advisory discussions, and anything he could find. Then, amid a chaos of notes, citations, and open books piled high, he observed step by step how the matter came into being.
As important as was the impact of the life of J. Reuben Clark on the establishment and direction of this law school, I am convinced that the decision of the leaders of the Church to start this school and to continue to support it so generously did not rest solely on the view that it is okay, or maybe even desirable, for members of the Church to study law at a good law school. Having now become more familiar with the budget figures and the generous subsidy we receive from the Church, I can assure you that if the Church leaders’ only goal was to provide a good legal education to 150 students of faith every year, they would have been more than happy to continue to do this. Instead, they would then attend one of many outstanding law schools that exist throughout the country.

Among other things, J. Reuben Clark said that the Church, it may have been possible for President Kimball to have been upper at what some perceived to be a “demotion.” Instead, he himself again the names of the coun-

President Spencer W. Kimball, then a member of the Quorum of the Twelve, wrote in his journal that he was “troubled” when he first heard the news. “Given his prominence in both the world and the Church, it may have been possible for President Kimball to have been upper at what some perceived to be a “demotion.” Instead, he himself again the names of the counselors for a sustaining vote, and then, in his subsequent remarks, set forth his famous statement that “in the service of the Lord, it is not where you serve but how.” President Kimball recorded in his journal his view of that particular conference session: “[The] Wagstaff’s ‘perfect reactions . . . did something to establish in the minds of this generation . . . to establish in the minds of this generation. . . . to establish in the minds of this generation. . . . to establish in the minds of this generation. . . . to establish in the minds of this generation.

President Kimball then added that J. Reuben Clark’s “perfect reactions . . . did more . . . to establish in the minds of the people the true spirit of submission of the individual to the good of the work . . . than could be done in thousands of sermons.”

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somewhat off-guard. President Spencer W. Kimball, then a member of the Quorum of the Twelve, wrote in his journal that he was "startled" when he first heard the news.

President Kimball noted in his journal his view of Kimball’s "perfect reactions . . . did not show any scars or injuries. . . . No combination. . . . No one could tell if Pres. Clark were many tears throughout the conference session: "[T]he tears were not where you serve but how."25 President Kimball recorded in his journal his view of the Church as an institution in which "students could . . . 'obtain a knowledge of . . . [the] laws of . . . man' in the light of the 'laws of God.'"26

What they saw—or at least what I envision now—is not just a group of individuals studying law but a community of scholars— or to particularize it somewhat more and to put my individual spin on it—an intellectually and spiritually invigorating community in which the law can be studied and lawyers and leaders of diverse backgrounds can be shaped in an atmosphere of faith.

The cornerstone of this community, the dedication of this building in 1975, President Romney expressed a desire that "all faculty and student body members familiarize themselves with and emulate [the] virtues and accomplishments" of J. Reuben Clark.27 This and other charges by President Romney addressed to the community in which law may be practiced—a community that is both intellectually and spiritually invigorating. On the intellec-
tual level, I envision—and ask you to contribute to—a place where the classrooms, courtyards, and hallways are filled with lively dis-
cussion about important topics, involving a wide variety of views and viewpoints. That will require that you fully prepare for class everyday, a task that will become more difficult as the months and years roll on. It will require that you attend and participate in academic symposia that occur at the Law School, seminars, and different perspectives on the law) and Indian law was one of them," Worthen said. "I was just fascinated with the subject." The knowl-
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A Fulbright scholar to the University of Chile Law School in the fall of 1984 and Spanish-
speaking from a moment in "the service of the Lord, it may have been possible for the Church, it may have been possible for the Church, I commend those and other "found-
deeion" a remarkable combination of outstanding academic and professional accomplishments, having proven administrative abilities, sound judgment and exceptional personal skills."4 He was "the first to call on me to provide the strong leader-
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As important as was the impact of the legal and cultural perspectives on the law. It ought to provide more incentive to study law and practice law at the highest levels does not desir-
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Kevin J Worthen

Kevin J Worthen became dean of the J. Reuben Clark Law School on June 1, 2004, replacing H. Reuben Hansen. Worthen joined the Law School faculty in 1987 and has served as associate dean for academic affairs since 1999.

Worthen earned a bachelor’s degree from BYU in 1982, summa cum laude, where he was a member of the Order of the Grotto. He received his law degree from the University of Utah College of Law in 1985. After clerkship for Judge Malcolm A. Wallop of the United States Court of Appeals for the Tenth Circuit, Worthen accepted a two-year clerkship with Justice Byron R. White of the U.S. Supreme Court. He then entered private practice and was on the faculty at the BYU Law School, where he practiced law with Jennings, Strouss & Salmon in Phoenix, Arizona.

Worthen has an extensive background in American Indian law, having begun exploring while attending BYU as a student. "We had at the time a requirement to take a Native American law course or an American Indian law course, and Indian law was one of them," Worthen said. "I was just fascinated with the subject." The knowl-
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Worthen has authored articles about federal Indian law, local government law, and constitu-
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As important as was the impact of the legal and cultural perspectives on the law. It ought to provide more incentive to study law and practice law at the highest levels does not desir-
e that it is okay, or maybe even desirable, for members of the Church to study law at a good law school. Having now become more familiar with the budget fig-
ures and the generous subsidy we receive from the Church, I can assure you that if the Church leaders only goal was to provide a good legal education to 150 students of faith every year, they would have been money ahead simply to provide generous scholar-
is their shortcomings.

Kevin J Worthen

Kevin J Worthen became dean of the J. Reuben Clark Law School on June 1, 2004, replacing H. Reuben Hansen. Worthen joined the Law School faculty in 1987 and has served as associate dean for academic affairs since 1999.

Worthen earned a bachelor’s degree from BYU in 1982, summa cum laude, where he was a member of the Order of the Grotto. He received his law degree from the University of Utah College of Law in 1985. After clerkship for Judge Malcolm A. Wallop of the United States Court of Appeals for the Tenth Circuit, Worthen accepted a two-year clerkship with Justice Byron R. White of the U.S. Supreme Court. He then entered private practice and was on the faculty at the BYU Law School, where he practiced law with Jennings, Strouss & Salmon in Phoenix, Arizona.

Worthen has an extensive background in American Indian law, having begun exploring while attending BYU as a student. "We had at the time a requirement to take a Native American law course or an American Indian law course, and Indian law was one of them," Worthen said. "I was just fascinated with the subject." The knowl-
dge of American Indian law was helpful when working with clients who did business on the vast Navajo Indian reservation in Arizona.

Worthen has authored articles about federal Indian law, local government law, and constitu-
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other born and outcast the Law School as you engage in what is often a stressful process. As your patience wears thin at arguments that seem annoying or at actions that seem indifferent, the laws of God can remind us that, as C. S. Lewis has noted:

*It is a serious thing to live in a society of possible gods and goddesses, to remember that the delicat* and most uninteresting person you can talk to may one day be a creature which, if you can see it, you would strongly tempt to worship.*

> So perish all ordinary people. You have not smiled a more mortal . . . [1] If it is inevitable when we joke with, scoff with, mock, and exploit.

While the traditional study of law emphasizes the unilateral importance of tolerating the views and differences of others, the laws of God require it as a manifestation of our love for God and His children.

Second, understanding the laws of God can help us see that the study of law is even more intellectually engaging and profoundly important than we might have ever imagined. This is also preserved by law and perfected and sanctified by the same. I suggest that the unpacking of the rule and the prevention of years of intellectual struggle and produce a plethora of soul-satisfying insights, a process, again, that I began at the school.

Operating in an atmosphere of faith also means that we create space to share spiritual experiences and differences of others, the views and differences of others, the laws of God require it as a manifestation of our love for God and His children.

Mike Neider, ’94, left Idaho, to attend Brigham Young University as an undergraduate and then continued on at the new J. Reuben Clark Law School, one of the members of the first graduating class. These experiences shaped the rest of his life, and law school graduation was one of the highlights. He relates:

The capture of my experience occurred at our baccalaureate gradu*ation exercises when Dean Rex E. Lee told us that we had been taught in law school to house there are many answers to any one question. Then it is a truth that has been a source to me over the years, be assured as to there were tears upon what we could rely. He prevailed to share his actions of the words he knew, including his testimony of the Savior and the latter day revelation. We could not have faced a greater mentor in law school than Dean Rex E. Lee.

The young attorney began a litigation practice in Salt Lake City and was further taught by clients and judges, as related by his following account:

Early on I was retained after his trial by an innocent man from Idaho who was a sheep rancher. He had helped organize an I walk campaign, and when several of the borrowers promptly returned matching funds to private lenders, he was indicted and found guilty with others for filing false claims under federal law based on his signing the federal application. He took the appeal and made the argument to the 10th Circuit Court of Appeals in Denver. The court should have been supported by the evidence. It was a long day. I was retained with the three judges that the only evidence against his client was the application, the deposit of money made into the company bank account, and the checks be signed to the borrower. There was no evidence that he was merely a part of a conspiracy. When one of the members of the court asked if I was serious in asking to overturn the conviction based on lack of supporting evi* dence, he laughed and said before all three present, ‘You are a dreamer, Mr. Neider.’ After the conviction was upheld, I continued my enthusi* asm for the case with a petition for a rehearing on banc. While I was worrying about the possible future hearing and the suspension of the ‘dreamer’ charge, we received in the mail a short or grant of the petition for rehearing but a reversal of the conviction on a previously unnoticed but compelling ground. My client was free and exonerated. The decision was signed by none other than the Honorable Justice Monte Kays. He had taken the time to thoroughly review the case, we other grounds for the decisive decision, and then make the right decision. Of course, he is another great mentor from the Law School.

Michael Neider and his wife, Rosemary (Cornes), are the par* ents of eight children and grand-parents of six. Michael testifies:

My experiences in law school, practicing law, and in life have coincided my belief in God and that the Spirit is an important goal to what we do each day. These experiences have reaffirmed my belief in the rela* tive goodness of handwriting, that we face many good laws that protect us, and that there are multitudes of hon* orable men and women who work hard to promote justice and limit evil. I have come to be more aware of God’s influence in our lives as He protects His children through the labels, talents, and efforts of everyday, common individuals with uncommon virtue.

Sustained this year as the second counselor in the Young Men general presidency, Neider brings his enthusiasm for the youth to this calling and a belief in their special potential. Like the experiences that shaped his path, he believes young men will develop in the same ways. “They need to have activities and opportunities to experiment with values and make correct decisions that help bring happiness and security to themselves, so they can bring those blessings to their future families.”
Michael Neider, ’76, left Tyhee, Idaho, to attend Brigham Young University as an undergraduate and then continued on at the new J. Reuben Clark Law School, one of the members of the first graduating class. These experiences shaped the rest of his life, and law school graduation was one of the highlights. He relates.

The capture of my experience occurred at our baccalaureate gradu-
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sions that help bring happiness and security to themselves, so we can bring those blessings to their future families.”
Community Mediation Center Flourishes in Provo

BY BRITT FACKRELL

For the last four years, low-income and marginalized popula-
tions of Utah Valley have found a viable alternative to taking
times to court. This alternative lies in the Community
Mediation Center, a flowering of collaborative efforts within the
Utah Valley community. Staffed mostly by volunteers and stu-
dents, the Mediation Center keeps its fees low and focuses its efforts
on low-income and underserved fractions of the community.

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in south Provo in May of 2004 through the generous help of the
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For the last four years, low-income and marginalized populations of Utah Valley have found a viable alternative to taking disputes to court. This alternative lies in the Community Mediation Program, a growing network of collaborative efforts within the Utah Valley community. Staffed mostly by volunteers and students, the Mediation Center keeps its fees low and focuses its efforts on low-income and underprivileged fractions of the community.

The center opened its first office in 2000. In 2002, a second opening in south Provo in May of 2002 through the generous help of the Utah Valley Community Foundation. The center is run by Tamara Fackrell, J.D., the executive director and a founder of the Community Mediation Center and works with the Juvenile Law School’s Susan Bradshaw, ‘97, director of the Schooley Mediation Program; Associate Professor Jim Backman. She is also assisted by Ryan Thomas, ‘97, Hugh Rodic, ‘17, Brent Bullfrog, ‘97, and Ellen Hall Lottland, ’04, in the city of Provo.

Community Mediation Center Flourishes in Provo

Tamara Fackrell, executive director of the center.

From Tel-Aviv to Provo: Yoram Chady, Attorney and BYU Student

Yoram Chady took the Utah bar in July 2014 and will practice in Park City as well as Israel. He is the first Israeli student to attend the J. Reuben Clark Law School.

Yoram and Tonia moved their family to Park City. Chady maintained his law firm in Israel. But he wanted to take the Utah bar exam, and there is a mandatory require ment to take at least five courses in an accredited law school before a foreign attorney can sit for it. Then he met Michael Lambert, a resident of Park City, who recommended Yoram to the Juvenile Law School. Because “it combined the legal writing class for LL.M. students, was somewhat steep, but I could succeed.” He began to work on the students who wished to attend the J. Reuben Clark Law School.

The Center deals with all kinds of cases, from domestic disputes such as divorce and parent-child issues to employment disputes and restorative justice issues like misdemeanor restitution. The Mediation Center serves the community, refers them to attorneys, or the Juvenile Court system, and the center sets up a mediator to work with the parties involved. Because the center utilizes volunteers and staff mediators, the fees for the parties can be kept very low.

In addition to coordinating mediation and training volunteers, the Mediation Center also assists the community in class. In the summer of 2002, 10 students were trained at the center and did every assignment in a short amount of time. They worked hard and did very, very well in the class.

For his part, Chady was overwhelmed with what he observed in the Law School.

The students and faculty that I met seemed to have a kind of mission in their hearts different from other students and professors I had known. There was a passion for the law as well as no division between that and their values. The students were so good—what a confidence to help students. I have talked frequently with others about the wonder of this experience. I think it has to do with religious and the values of the people here.

Chady took the Utah bar in July 2014 and will practice in Park City as well as Israel. He is the first Israeli student to attend the J. Reuben Clark Law School.
Professor Takes Department of Justice Post

Bruce T. Reese Named Chair of National Association of Broadcasters Radio Board

Bruce T. Reese, ‘76, has recently been elected chair of the National Association of Broadcasters Radio Board for 2004–2005.

As president and chief executive officer of Bonneville International Corporation, headquartered in Salt Lake City, Reese oversees 35 radio stations, an NBC-affiliated television station, and related operating divisions. Vice chair of the NAIR Board in 2003–2004, Reese now heads a 35-person board representing owners and operators of radio stations in addressing policy planning and needs. He will spend time in Washington, D.C., formulating policies concerning issues from both regulatory and legislative standpoints in areas such as public service obligations, content issues, and changing from analog to digital.

The National Association of Broadcasters is a trade association that promotes and protects the interests of radio and television broadcasters nationally and internationally. The organization is the broadcasters’ voice before Congress, federal agencies, and the courts. Reese also sits on the NAIR executive committee and will likely succeed to the chairmanship of the NAIR Board for 2005–2006.

“We certainly have had some similar interest,” says Thomas Lee of his father, the late Rex T. Lee, assistant attorney general for the civil division in the U.S. Department of Justice during the 1970s. In April 2004, President George W. Bush appointed Thomas Lee a deputy assistant attorney general. “I share my father’s enthusiasm for public service. It’s a dream come true. If I could create my own dream job, this would be it.”

Thomas Lee will lead more than 800 attorneys of the Federal Programs Branch representing the U.S. president, cabinet officers, and federal agencies. The branch defends the constitutionality of federal statutes and the legality of government decisions. It also opposes suits seeking to overturn government policies and programs, and minimizes litigation on behalf of the federal government.

“I’m looking forward to being involved in a broad range of exciting cases,” says Lee. “I feel honored to have the opportunity to represent the country, the president, and other federal officers in that capacity.”

Cases overseen by Lee’s branch include partial birth abortion, counterterrorism, and recent laws restricting children’s access to pornography. “It’s a fascinating area that will have a significant impact on many cutting-edge questions of constitutional law. Like his father, Thomas Lee has been a professor at the Reuben Clark Law School. His father was the founding dean of the Law School, taking a leave of absence for government service.

Rex Lee served as the U.S. solicitor general. Thomas Lee is also taking a leave of absence from the Law School and will return after his government service is complete.

Thomas Lee joined the Law School faculty in 1997, teaching courses on constitutional, procedural, and public law. He has published more than two dozen articles in national law journals. Two years ago Lee represented Utah before the U.S. Supreme Court, arguing that unlawful census methods had cost Utah an additional seat in the U.S. House of Representatives.

After graduating from BYU and with high honors from the University of Chicago Law School, Lee clerked for Supreme Court Justice Clarence Thomas. He then practiced with the law firm of Parr, Waddoups, Brown, Gee and Loveless in Salt Lake City.

“The opportunity will be a strength in Tom’s career and for his future students.”

Christopher Newton, ‘79, won the primary election for Vigo County Division 4 Superior Court judge in Indiana. He will begin serving on January 1, 2005. Newton’s extensive trial experience stems from a 15-year legal practice focusing on family law and the protection of children and parents.

Jeff S. Penney, ’79, was appointed Superior Court judge for Placer County, California. After winning the March 2004 election by a 75.25 percent margin, the largest victory in history for an open-seat office.

Samuel McVey, ’73, was appointed a judge to the Fourth District Court for the State of Utah in April 2004, after returning from active duty in Virginia to help with the Marine Corps’ effort to establish a new court system in Iraq. He was a partner in the law firm of Kirsten & McKucies from 1985 to 2003.

Donik P. Fullan, ’93, was appointed a judge to the Fourth District Court for the State of Utah in September 2005. He previously served as Wasatch County attorney.

Gary L. Boretti, ’76, passed away at his home on April 5, 2004. He practiced law in the firm he owns, Boretti & Riddle, for 28 years.

Prior to becoming an attorney, he earned a doctorate in languages and taught for several years. Boretti is survived by his wife, Ana Maria, and four children: Daniel (Charlene), David, Rachel, and Jason, and three children by his late wife, Magdalena Rebecca, Gary, and Michelle.

Henry Konorza Chai III, ’79, suffered cancer for six months before dying on August 1, 2004, in his home in South Jordan, Utah. He was a founding partner in the Salt Lake City firm of Blackburn and Stoll, where he practiced law until the time of his death. A state president for three years, he completed service as a mission president in 1966. Chai is survived by his wife, of 47 years, Judith Ann Christensen; their six children: Rebecca, Gary, Jason, Jared, Rebecca, and Michelle. Donations can be made to the Melchizedek Medical Fund, 719 East Main Street, American Fork, Utah 84003.

Attorney, civic leader, and Law School donor Barbara Earl passed away on June 29, 2004, in Las Vegas, Nevada, at age 84. Born in the Mormon settlement of Bunkerville, Nevada, the 4th of 17 children in her family, Earl worked her way through George Washington University during the Great Depression, then moved back West, where she guided the Las Vegas Housing Authority and the Church through some of its most dynamic growth in the valley. She was the "last of the old-time lawyers," says San Juan District Judge Allen E. Bland—a quiet, kind visionary, whose word was his bond.

Emma Rebecca Thomas, ’77, passed away unexpectedly in Provo, Utah, on March 4, 2004. She was appointed a judge of the Utah Workers’ Compensation Board by Governor Michael O. Leavitt in 1997. Becky is survived by her husband, David B. Thomas, ’79, assistant general counsel at BYU, and their three daughters, Alexandra, and Hannah.

Mary Alice Wesley, lifelong friend of the J. Reuben Clark Law School, died August 10, 2003. She was born January 6, 1921, to John E. and Mary Alice Spry Wesley in Salt Lake City. Wesley lived most of her life in Hollywood, California, and studied the Law School just six weeks before her death.

Thousands of law students benefited from the funds her family left in trust in the Wesley Law School Loan Fund.
“We certainly have had some similar interests,” says Thomas Lee of his father, the late Rex E. Lee, assistant attorney general for the civil division in the U.S. Department of Justice during the 1970s. In April 2004 President George W. Bush appointed Thomas Lee as a deputy assistant attorney general. “I share my father’s enthusiasm for public service. It’s a dream come true. If I could create my own dream job, this would be it.”

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Thomas Lee joined the Law School faculty in 1997, teaching courses on constitutional, procedural, and public law. He has published more than two dozen articles in national law journals. Two years ago Lee represented Utah before the U.S. Supreme Court, arguing that unlawful census methods had cost Utah an additional seat in the U.S. House of Representatives.

After graduating from BYU and with high honors from the University of Chicago Law School, Lee clerked for the Supreme Court Justice Clarence Thomas. He then practiced with the law firm of Parnell, Waddoups, Brown, Gee and Loveless in Salt Lake City.

“This is a wonderful recognition of Tom’s professional stature and ability,” said H. Reese Hansen, outgoing dean of the Law School. “This opportunity will be a strength in Tom’s career and for his future students.”

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Alumni Weekend 2004

Friday, October 15, 2004

- 18-Hole Golf Scramble Tournament at South Mountain Golf Course
- Brunch and Alumni Women Law Forum Panel: “Los Women Law Clerks: Life After the Supreme Court”
- Continuing Legal Education (CLE) Ethics Seminar
- Alumni Reception
- Alumni Weekend Western BBQ Dinner

Saturday, October 16, 2004

- Homecoming Parade
- Tailgate Party for Family and Friends
- Football Game: BYU vs. Wyoming

For more information see http://www.byu.edu/Law_School/alumni/alumni_weekend_activities.htm

New Mission President

Lon D. Packard, ’77, and his wife, Debra, have been called to lead the Chile Santiago West Mission from July 1, 2004, until June 30, 2007. President and Sister Packard will be accompanied by their daughter Laura Anne and son Brett, who will both attend school in Chile. Daughter Kristen will visit with her parents this summer and return to college in the fall, while Becky, who recently completed her bachelor’s degree, will be performing humanitarian service in Africa until she returns to graduate school. Married daughters, Melanie Squire (and husband, Jim) and Melissa Sanchez (and husband, Mark) will be taking good care of the Packard’s four grandchildren in California.

Family solidarity runs deep with the Packards. Lon and his twin brother, Von, entered the J. Reuben Clark Law School together and graduated together in December 1976. Previously, they both served missions in South America at the same time and graduated simultaneously from Stanford University in three years. After two years with two different firms in Southern and Northern California, respectively, they joined their brother Ron in Palo Alto in 1979. For the past 25 years they have been specializing in complex business litigations under the family firm name of Packard, Packard & Johnson, with offices in Palo Alto, California, and Salt Lake City, Utah. From 1993 to 1996 the firm supported Von, who had been called to serve as mission president in the Chile Santiago North Mission. Now Lon has an opportunity to serve.
Elder Dallin H. Oaks will speak at the Annual J. Reuben Clark Devotional via Church satellite network on February 11, 2005. The broadcast will originate from the Conference Center in Salt Lake City, Utah.

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- Tailgate Party for Family and Friends
- Football Game: BYU v. Wyoming

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Intersections of Law and Faith

BY CLAY M. SMITH

There are intersections between our life’s work, the law, and our life’s purposes. By referring to these points of contact as intersections, I do not mean to infer that they are clashes. Sometimes these intersections fit together like the pieces of a jigsaw puzzle, and sometimes they result in friction and sparks.

I want to look at some examples of these intersections to increase our awareness of them and perhaps prompt us to think about how best to deal with them.

Recently a lawyer came into court seeking an order of contempt for two witnesses’ failure to appear at their deposition. His application was based upon his declaration that the witnesses had been served with subpoenas and then failed to appear—nothing more was stated. At the hearing, the witnesses and their attorney appeared and presented a much different picture. They explained that after having been served, they had obtained counsel, attempted to resolve the need for their deposition, and failing that, sent an objection to the lawyer. I felt completely misled by the first attorney and denied the relief he was requesting. Even in light of the Rules of Professional Conduct 5-200: “In presenting a matter to a tribunal a member . . . shall not seek to mislead the judge”, the first lawyer left the hearing absolutely unable to appreciate my concerns about his actions. My belief in honesty in word and deed intersected with the law on professional conduct, and I ruled accordingly.

However, in a death penalty case in Logan, Utah, a jury prayed together and a group of the jurors gave a hands-on blessing to the sole holdout juror during the penalty phase. The jury then recommended a life sentence without parole. Under the law the jury takes an oath to decide issues based on evidence and the law; they set aside their personal philosophy and religious beliefs. Individual members of that Logan jury believed that it was essential to seek guidance and inspiration for their decisions, having faith that God could and would enlighten their minds to know what they should do in a difficult situation. Do you see an intersection here between law and faith? In this case, the law must control. There is a very real danger of conflict between the juror’s conduct and their oath. Additionally, actual and apparent fairness to the defendant is paramount. There must be an allegiance to a system that mandates a decision based on the law and evidence.

The resolution is embedded in the 12th Article of Faith: “We believe in being subject to . . . magistrates, in obeying, honoring, and sustaining the law.” This is a remarkable prophetic endorsement of the rule of law—remarkable because it was given at a time when our people were so deeply in need of the protective mantle of the law, and it was so often denied them.

So, Alabama Supreme Court Justice Roy Moore’s refusal to obey a federal court order to remove the Ten Commandments monument from the supreme court building was incorrect, because it was not based on the lawful order of a higher court, agree with it or not. Compare the conduct of Justice Moore with these words from President Wilford Woodruff in Official Declaration 1: “Inasmuch as laws have been enacted by Congress . . . which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws, and use my influence with the members of the Church over which I preside to have them do likewise.”

Clay M. Smith,’77, is the judge of the Orange County Superior Court. This talk was given to the Orange County J. Reuben Clark Law Society on May 19, 2004.

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