

BY DALE A. KIMBALL¹

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*The following speech
was presented at the BYU
Law School Founders
Day commemoration at
Little America Hotel
in Salt Lake City, Utah,
on August 27, 2009.*

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GOOD EVENING,
LADIES AND GENTLEMEN.
IT IS SO GOOD TO SEE
ALL OF YOU. I AM GRATEFUL
YOU ARE ALL HERE,
REGARDLESS OF WHO PAID
FOR YOUR DINNER.

ELDER QUENTIN COOK
IS HERE, AND I APPRECIATE
THAT. HOWEVER, HE
HAS TO BE HERE BECAUSE
HE IS MY COUSIN AND
BECAUSE I ATTENDED HIS
EXCELLENT SPEECH
TO J. REUBEN CLARK LAW
SOCIETY IN MARCH
OF THIS YEAR.

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PHOTOGRAPHY
BY BRADLEY SLADE

STORIES THAT DEFINED OUR LAW SCHOOL



THOSE
EARLY
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PROMISE.

It is always good to see President Samuelson. I call him President/Elder/Cec. He and I were in the Utah Air National Guard together many years ago. The official slogan of the Utah Air National Guard is "Sleep well. Your Air National Guard is awake." However, the unofficial enlisted men's slogan was "Sleep well. Your Air National Guard does." Whatever the slogan, we did our duty and we served.

Thank you so much, Bruce, for that wonderful and kind introduction. We have now been friends of the Hafens for 45 years. It has been a priceless friendship, and we too also hope that the friendship continues forever. One of my goals in life is to outlive the "Lee-Kimball-Benson story." My only defense is that even though I started it, Rex Lee and Dee Benson perpetuated it. I freely confess before all of you that that is no defense at all.

It is good to be here to celebrate the founding of a great law school, to be reminded of the importance of that interesting experiment begun so many years ago. I was honored then to be asked to play a small role in the beginning and am honored again to be asked to speak in this setting where we annually and collectively consider where we are going with respect to J. Reuben Clark Law School.

I was privileged to give the keynote speech on the occasion of the 25th anniversary of the charter class graduation on October 19, 2001. Perhaps a portion of a letter from Bill Wingo extending that invitation will at least partially describe my qualifications for this effort tonight. I quote from the Wingo letter:

As the committee has considered the program for the reunion, we have all felt that our classmates would enjoy hearing from you because of your involvement over the years with students, alumni, and faculty of the Law School. Not only were you our professor and friend, but you have also had opportunities as a practicing lawyer and judge to assess the impact of the Law School on the legal community and society in general. You are probably in as good a position as anyone to evaluate whether the "grand adventure" upon which we embarked in 1973 has, in retrospect, been worth the cost.

Incidentally, he also said in the letter, and I quote, "We are confident that the black robes of the judiciary and the 'weightier matters of the law' have not smothered your keen wit that we so enjoyed during law school."

There is no longer any way to measure either my wit or my intellect, for that matter. People who never laughed at anything I said before I became a judge now laugh at almost every joke I tell. People who appeared to believe that I was somewhat intellectually impaired before I went on the bench now suggest to me I have become brilliant.

The law and lawyers have been interesting and important to me since I was a teenager thinking about how I wanted to spend my working life. The law always seemed to me to be a fascinating career coupling the academic with the practical, doing some good, serving, and making a decent living. I have not been disappointed. A close friend

and law school classmate, Roger Thompson, put it this way: "For me, law was a magical combination of logic, reason, history, advocacy, and public policy. It appeared to offer many opportunities for employment and public service. It also provided a foundation in problem solving that could be used in almost any activity."² These insightful comments, unbelievably, were contained in a dunning letter seeking to raise funds for the University of Utah's law school.

Each person associated with BYU Law School has a story. Each of you so connected has a story. My story explains why I care so much about the success of J. Reuben Clark Law School.

My story is this: I graduated from BYU in August 1964 and from the University of Utah College of Law in June of 1967. Beginning in the late '60s, rumors started about a law school at BYU. One day in 1971 my friend and law partner, Keith Rooker (known to many students in the earlier classes at the Law School as Professor Kingsfield), told me that he had heard an announcement that the law school was a go. I did not feel good about it. I now quote from page 18 of Carl Hawkins' interesting book on the founding of the Law School. Carl, who is here tonight, summarized what I told him better than I could resummairize it myself.

Dale Kimball, a 1967 graduate of the University of Utah College of Law, was practicing in the same Salt Lake City law firm as Keith Rooker in 1971 when he heard the announced plans for a law school at BYU. Kimball feared that the school would become a captive of [extremists] and would, therefore, not be taken seriously in the legal academic world and detract from the reputation of BYU and the Church.

Several months after Rex Lee had been appointed as the founding dean of the new law school, he opened a dialogue with Dale Kimball and asked him to think about joining the faculty. Kimball had never seriously considered teaching before then, but he felt some sense of obligation if asked to serve to help Lee make the law school into one that would be worthy of respect. Kimball did not think, however, that he could break away from his law practice before 1974, when the new law school would begin its second year of classes.³



I am sure that Keith sold me to Rex. Bruce Hafen, I am sure, also had a hand in it. Bruce and I were law school classmates and friends. Also, my older brother, Lyn, had served a mission in Mexico with Rex. Incidentally, my brother Lyn told me that anything that Rex Lee was associated with would be a successful first-class operation.

When asked to help, I felt I had a duty to comply. I felt like I had to put my money, so to speak, where my big mouth had been. I felt honor bound to do my little bit to have this law school become a real law school with an excellent faculty and superb students—a law school respected among law schools. I had no right to be worried. In a legal sense, I had no standing—I was nobody. I admit it was highly presumptuous. Rex Lee and Bruce Hafen were involved. Dallin Oaks had been a noted and respected professor at the University of Chicago Law School and had a vision of a first-class law school backed and supported by the board of trustees. Carl Hawkins and other reputable, experienced law faculty types signed up. Some perspective and realistic humility took over as I realized I was greatly honored to even be thought of by anyone as part of this effort.

Those early days were full of promise. Who can forget the first years at the St. Francis School over on Ninth East rented from the Catholic Church, affectionately known to many of us as St. Reuben's. Who can forget the Charter and other early classes, the members of which exhibited some degree of courage in taking a chance on a new law school. Many of those, perhaps not surprisingly, were characters exhibiting a great deal of independence. I share with you a letter I received from one of them back in 2001.

I am just writing to thank you for taking the time to speak to the Freedom Academy students on August 2. By all accounts, you did an outstanding job and your remarks were well received. I am particularly appreciative that you were willing to step up and do this after your colleague and my former friend, Judge Benson, dropped the ball. This, of course, is no surprise to you.

Further, I regret ever having spread rumors about you in law school, and I promise to stop spreading any other rumors in the future as well.

Again, thank you for helping out.

With warmest regards,

Paul M. Warner / United States Attorney

Incidentally, within the last month, Paul Warner, now one of our magistrate judges, told me that he had been a whiz at math when it was just numbers. He further said

though that when they started to mix in the letters, he was lost. I assume that the “they” in his complaint was the conspiratorial educational establishment in his junior high school.

I recall the Order of the Cuff. I recall with nostalgia being charged by some students of being in substantial overcompliance with the dress and grooming code. I recall most of all serious and sustained effort on the part of the students, the faculty, and the administration to produce—to create—good, able, honest lawyers.

The stories continue to this day. Let me tell you one more recent story. In late 2005 or early 2006, I received a telephone call from a friend of ours who lives near Eureka, California. She said that she was a good friend of a young woman who was graduating from NYU who wanted to go to BYU Law School. The young woman was not a member of the Church, but her mother had joined a few years before. Her father, incidentally, is a doctor who had been in a difficult business relationship with an LDS partner. The young woman was an excellent student and a fine athlete. Princeton had offered her a golf scholarship. NYU had offered her an academic scholarship, which she accepted. My friend said, “Help her get into the Law School.” I said I would do what I could. I called Tom Lee, who agreed to interview her. She was so anxious to attend that she flew to Salt Lake City and drove to Provo for interviews. I had done what I could: I called Tom Lee. Tom apparently did what he could. Most important, the young woman was impressive and was admitted. She joined the Church while she was attending law school and, perhaps more remarkably, so did her father. The intelligent, able, and friendly women students at the Law School were instrumental in her conversion. She was a very good student and was managing editor of publication of the *Law Review*. She graduated in April of this year and is working in San Diego. She and thousands of others (about 5,000 to date) have attended the Law School, have been shaped and influenced by it and all it offers, and then have proceeded to scatter and do good and influence their part of the world.

Why does it matter whether lawyers are properly educated and trained? Why does it matter what lawyers do? What difference does it make what LDS lawyers do and how

well they do it? I quote from a speech given by James D. Gordon III, then acting dean of J. Reuben Clark Law School, to entering law students on August 20, 2008:

*Lawyers help make the rule of law possible. They do so as law clerks, judges, legislators, and members of local governments. They do so by representing entities and private parties, by enforcing the law, by defending against government overreaching, by resolving disputes, by solving problems, and by helping the civil and criminal justice systems to function. They counsel and help people to comply with the law and protect and vindicate people's rights. They are essential to a free society.*⁴

Incidentally, I am pleased to reveal that Jim Gordon started as a practicing lawyer in my old firm.

The history of our own people demonstrates the difficulties encountered when the law is not honored. We were in some instances subject to mob activities and the perversion of the law. In those instances when due process was afforded the LDS people in Ohio, Missouri, and Illinois, it was almost always because a courageous local lawyer or judge was willing to help vindicate rights rather than allow power and corruption to carry the day. To again quote Jim Gordon, “If any people believe in due process of law, in protecting people's constitutional rights, and in the rule of law instead of mob rule, it should be the Latter-day Saints.”⁵

Lawyers have the capacity to provide a specialized type of service. Lawyers have unique knowledge and skills that most do not have. Lawyers have access to the systems provided to resolve disputes and settle differences in civilized and lawful ways. Lawyers have the duty and responsibility to counsel and to help others with respect to some of their most important and profound affairs.

Despite being periodically maligned, this nation is generally fortunate to have many members of the legal profession who are honorable, fair, effective, and reasonable advocates. Most lawyers I know believe in the rule of law. Consider the range of legal advice provided by lawyers to members of society. People quibble over fence lines and boundaries. People need to be prosecuted and defended ably. Most business arrangements require honest and careful lawyering to achieve the ends desired by

LET US

the parties. Our employment relationships provide fertile areas for dispute resolution. Civil rights and freedoms are violated and must be defended and vindicated. We see honest disputes over benefits and retirement issues. There are many public and private land issues. There are interesting questions regarding patents, trademarks, trade names, domain names, and on and on and on. It is so critical that able, fair, intelligent, honest lawyers represent their clients with a commitment to the rule of law. Additionally, lawyers are often in the forefront of many service organizations, contributing time and money. In many respects we would be vastly poorer as a country without our able lawyers.

Years ago when I was serving as a regional representative, I was assigned by one of the senior brethren to help him call a new stake presidency in one of my stakes. I picked him up at his home on both Saturday and Sunday. I took him home both days after our work and meetings. We talked of many things. One of the interesting items that he shared with me (and I don't know whether this is still true, but I suspect that it is) was that lawyer members of the Church had among the highest rate of Church dropouts. However, he also told me that those who were in were really in. Those lawyers who remained active members, he said, because of their training, capacities, and experience were among the foremost in leadership abilities, in solving problems, and in the ability to render effective service. Apparently what is true in society is true in the Church as well.

Lawyers have much power for good or ill in American life. Except for the most recalcitrant and belligerent clients, lawyers can calm

SHOW UP.

and soothe. Lawyers can often impose sense and rationality on persons and situations leading to settlements or trials focused on real issues rather than on some of the peripheral nonsense that pervades some of our trials. Occasionally, in civil matters, you may just have to walk away from a dishonest or impossible client even though it is economically painful. I am not suggesting, incidentally, that you not represent those charged with crimes. (Sometimes the double negative is useful and necessary.) They are entitled to intelligent and fair representation. It is absolutely critical that good advocates hold the federal and state governments to their burdens of proof to ensure that the enormous power of the prosecutor is wielded fairly. It is also very important that prosecutors, particularly those who are LDS, not abuse prosecutorial power or hide evidence or do other nefarious things that we occasionally observe or hear about.

By properly performing their jobs and public service, LDS lawyers can have enormous power and influence for good in the Church and in society. It is critical and important that lawyers, including LDS lawyers, are properly educated and trained and faithfully perform the huge functions that have been carved out for them in the American nation from its inception.

Since each person associated with the Law School has a story, perhaps each also has a vision or a hope of what it ought to do, what it should be, and what kinds of lawyers it should produce. I offer my vision and my hopes.

In part, I share a portion of the view President Marion G. Romney expressed in the dedication of the Law School in 1975 when he said that at least one of the purposes for this enterprise ought to be “to teach, train, and inspire . . . students to be topflight lawyers and superior judges.”⁶ Competence is a valuable quality in any undertaking. It is surprising to me that some lawyers who have undergone seven years of higher education aren’t more competent, aren’t more able.

There are many intelligent, dedicated lawyers who exercise excellent judgment, who give their clients first-rate advice, who argue motions well, and who are superb in trying cases. There are brilliant and able practitioners who guide their clients through difficult business and tax transactions and who are very skilled at negotiating the complications associated in dealing with various administrative agencies.

And yet it is very disappointing to read incoherent briefs and listen to weak and rambling arguments. It is almost heavenly to listen to lawyers skillfully examine and cross-examine witnesses. It is painful to witness those who do not and to observe some lawyers who seem to have little acquaintance with the rules of evidence. We expect our mechanics, our doctors, our contractors, our accountants, our teachers, all who serve us, and all on whom we rely to know what they are doing. It is not too much to ask that lawyers trained at J. Reuben Clark Law School will be skillful, knowledgeable, informed, and good at what they do. Clients need competence. Courts need competence. Justice and society are served by good, skillful, competent, able, reasonable lawyers. Consequently, much of my hope and vision would be for competency—a consistently high level of the practice of law.

We have an obligation to be competent in what we do. Elder Neal Maxwell said it this way: “We cannot let the world condemn our value system by calling attention to our pro-

fessional mediocrity.”⁷ My father, Griff Kimball, perhaps foreshadowing Donald Trump, said it this way: “You’re fired! You and Bob are fired!” This happened late one morning on a hot summer day on my dad’s farm in Draper, Utah. He suggested that my best friend and I, if we couldn’t or wouldn’t thin his sugar beets properly, could get out of his field. We left partly ashamed and partly hoping that, for a while at least, we did not have to continue one of the worst jobs on earth. We had been abysmal. We had been paying no attention whatsoever to a job that requires constant and close attention. We had been talking about baseball and girls and throwing, fairly successfully, dirt clods at each other. My dad was right. Our lack of competence was going to cost him money in the fall when the beets were harvested. However, as he always did, a short time later he found us and said, “I am going to give you boys a chance to redeem yourselves.” He was big on redemption. Thereafter we performed competently. We did good work. We were redeemed. May we all be able to say we do good work or be redeemed when we do not.

I suggest also that commitment and diligence are critical in the law and with respect to any endeavor that matters. You can be highly competent but not be committed. A lawyer not committed is not much of a lawyer no matter how competent. I quote Elder F. Burton Howard about commitment. He was speaking primarily of Church commitment, but his statement has general application:

*The Church does have many needs, and one of them is for more people who will just do what they have agreed to do, people who will show up for work and stay all day, who will quietly, patiently, and consistently do what they have agreed to do—for as long as it takes, and who will not stop until they have finished.*⁸

There is a great need for lawyers to be committed, to do what they say they will do, to be where they say they will be, to perform in a manner implied by their professional degree, and to finish what they start. These qualities do not seem to me to be too much to ask of anyone, let alone professionals. Was it Woody Allen or Kareem Abdul Jabbar who said (joined by many others I am sure) that much of success in life is assured by just showing up. Let us show up.



Hugh Nibley has urged that there ought to be a gospel culture. He suggests a good beginning point would be our 13th Article of Faith⁹: “We believe in being honest, true, chaste, benevolent, virtuous, and in doing good to all men.” We teach and talk a great deal about chastity and virtue; I am not taking issue with that. However, perhaps more emphasis on honesty would be useful. From where I sit, I would suggest that one of the greatest needs in today’s world and in our Church is honesty. In our Court we see the unpleasant consequences of dishonesty in a variety of ways in both criminal and civil cases. It appears to me that an uncomfortable number of members of the Church seem to believe that it is permissible to steal from people if it is not done violently or at gunpoint. They are wrong. Neither is it moral nor honest to file false or inflated insurance claims. It is not moral or honest to cheat on tax returns. It is not moral or honest to not work for what you get. It is not moral or honest to not pay people employed by you what they are worth.

I remember with sorrow the former local Young Women president standing in front of me for sentencing after being convicted of social security fraud. I confess that I am tired of reading about alleged LDS Ponzi schemes and other fraudulent behavior by members of the Church. Some is only alleged. Let me assure you that much has been proven in various forms and in various forums. Surely if more of us were less greedy and less gullible there would at least be more forced honesty. I restate: One of the greatest needs in our society is for more honesty. Not only should we be truthful, but we should not engage in the games of material omissions. Remember the point about lawyers having a disproportionate influence for good or for ill. Lawyers can often cut off fraudulent behavior at the inception. Lawyers can not only be honest themselves but also be good examples to those around them in connection with

behaving honestly in business and personally. I plead with all associated with this law school to be pillars of honesty.

President Spencer W. Kimball stated his vision for the Law School in terms of broad community and societal needs. He wanted lawyers who would “be responsive to community needs, to heal and cure the inevitable conflicts of our society, . . . to . . . serve the world.”¹⁰ This sounds to me like an appeal to go about doing good as the Master did and an appeal to *be* good. It is a call to serve the poor, the outcast, the ill, and the helpless—legally and generally. Joseph Smith said that a good person not only would be prompted to do good in his or her neighborhood but also would range far and wide seeking such opportunities.¹¹ Our Book of Mormon teaches in the first chapter of Alma, verse 30, that good members of the Church should do good to all, help all, and share with all “whether out of the Church, or in the Church.” More specifically, Joseph Smith said we are “to feed the hungry, to clothe the naked, to provide for the widow, to dry up the tear of the orphan, to comfort the afflicted, whether in this church, or in any other, or in no church at all, wherever he finds them.”¹² In short, we need to minister to each other. The institutional Church does much institutional good. There is a great need for all of us, particularly educated and professional lawyers, graduates of the Law School, to go about doing good and being good. I remember a release from a particularly difficult Church calling that had lasted for many years. I remember thinking on that occasion that I would now have the time to do much more unassigned and unstructured good. I have done some, but I still have much to learn and much to do in that effort.

Many years ago as a young missionary in northern California, I met then Elder Howard W. Hunter, who was a relatively new member of the Quorum of the Twelve. He was touring our mission. I was to help. At the end of his tour he said he needed to pick up some trunks belonging to his son who had returned from a mission in Australia. The son had flown to Los Angeles and on to Salt Lake City. The trunks had been shipped to San Francisco. Some of my mission assignments included much of the mission business. My mission president said,

“You know about these things. Take Elder Hunter to the piers and help him get these trunks.” Elder Hunter knew the name of the ship. I made a few calls and ascertained at which pier the relevant ship was docked. In those days San Francisco was still one of the major world ports. I got the mission station wagon, Elder Hunter got in, and off we went. I said, “Do you have any shipping documents?” He said, “No.” I said, “Do you have a bill of lading?” He said, “No.” I said, “Do you have any documents at all relating to these trunks?” He said, “No.” I said, “I don’t think we’re going to get them.” He said, “Have some faith, Elder. We will.”

We reached the pier and parked. We or rather he talked his way through the clerks in the outer office and through the clerks in the inner office, and we arrived at the main office man. After a discussion with him, he said that if we went out onto the pier and could persuade the longshoremen to find and bring the trunks to us, we could take them. After Elder Hunter talked to the longshoremen, they found the trunks and offered to and did carry them to the car for us. All of this was a miracle to me.

Transactions at the piers worked with proof and documents. Longshoremen do not do favors. I knew Elder Hunter had been a lawyer, and this helped affirm my mid-teen decision to be a lawyer, since I had never before observed anyone equaling his abilities. However, later, as I reflected on this experience, I realized that his legal abilities were actually irrelevant. What mattered was that after spending a few moments with him, not one person dealing with him could believe that he would lie. He did not advertise his goodness, but it was apparent to the toughest of the tough within a minute or two. The toughest of the tough went out of their way to help him and accommodate him just because of what he was. What he was, what he had become, a magnificently good person, was what Elder Dallin H. Oaks suggested in one of his conference speeches that we all ought to become¹³—particularly, I say, those who have had any connection to J. Reuben Clark School of Law.

Thank you for this opportunity. If we are competent, if we are committed, if we are honest, and if we are good, a magnificent legacy for J. Reuben Clark Law School is assured.

NOTES

- 1 Dale A. Kimball is a judge for the United States district court for the District of Utah.
- 2 Letter from Roger H. Thompson to Dale A. Kimball, dated October 1, 2001.
- 3 Carl S. Hawkins, “The Founding of the J. Reuben Clark Law School,” *BYU Studies*, 18.
- 4 James D. Gordon III, “Lawyers and the Rule of Law,” *Clark Memorandum*, spring 2009, 4.
- 5 *Id.* at 5.
- 6 Marion G. Romney, “Why the J. Reuben Clark Law School?” Dedicatory Address and Prayer of the J. Reuben Clark Law Building, *Dedication: To Justice, to Excellence, to Responsibility: Proceedings at the Convocation and Dedication of the J. Reuben Clark College of Law, Brigham Young University, Provo, Utah, September 5, 1975*, 47.
- 7 Bruce C. Hafen, *A Disciple’s Life: The Biography of Neal A. Maxwell* (Salt Lake City: Deseret Book Co., 2002), 380.
- 8 F. Burton Howard, “Commitment,” *Ensign*, May 1996, 27–28.
- 9 See *Temple and Cosmos: Beyond This Ignorant Present*, vol. 12 of *The Collected Works of Hugh Nibley: Ancient History* (Salt Lake City: Deseret Book Co., 1992), 543.
- 10 Spencer W. Kimball, “Honoring the Trust of Our Founding Fathers,” *Dedication: To Justice, to Excellence, to Responsibility: Proceedings at the Convocation and Dedication of the J. Reuben Clark College of Law, Brigham Young University, Provo, Utah, September 5, 1975*, 20.
- 11 *History of the Church*, 4:226–27.
- 12 Editor’s reply to a letter from Richard Savary, *Times and Seasons*, March 15, 1842, 732; Joseph Smith was the editor of the periodical.
- 13 Dallin H. Oaks, “The Challenge to Become,” *Ensign*, November 2000, 32.